

2001

Meldrum v. Meldrum : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

DEC 9 1975

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

GENEVA MELDRUM

Plaintiff-Respondent

-vs.-

KLARENCE MELDRUM

Defendant-Appellant

Case No.
13684

APPELLANT'S REPLY BRIEF

Appeal from Judgment of Fifth District Court
Juab County
Honorable J. Harlan Burns, Judge

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Nov 5 1975

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

GENEVA MELDRUM
Plaintiff-Respondent
-vs.-
KLARENCE MELDRUM
Defendant-Appellant

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APPELLANT'S REPLY BRIEF

A reading of respondent's brief evokes the questions: Wherein has respondent made answer to any of the seven points of alleged error set forth in appellant's brief? Which one of defendant's points is claimed to be incorrect? And why?

Defendant set forth in his brief the following Propositions:

That plaintiff claimed in her complaint (R.6) that the 1964 contract between plaintiff and defendant was superseded by the Rasmussen contract, and defendant in his answer denied this.

That in her complaint plaintiff alleged that she was entitled to receive 65.81 of sums received and to be received under the Rasmussen contract on the half interest in the ranch covered by her 1964 contract with defendant. That defendant in his answer denied this and contended that the rights of plaintiff and defendant were fixed by the 1964 contract.

That plaintiff's claim amounted to the sum of \$49,390.00, exclusive of interest, costs and attorney fees. That under the 1964 contract plaintiff's entitlement from sale of the ranch amounted to \$17,525.00, exclusive of interest or costs to either party. That the difference between the two claims amounted to

\$31,865.00 exclusive of interest or costs to either party.

That the trial court decided against the plaintiff on these issues (R.87) and declared that the 1964 contract was not modified, amended, merged or novated by the Rasmussen contract.

That at the time of commencement of this action defendant was not in default under the 1964 contract, and that the evidence at trial proves this.

That prior to commencement of this action defendant made offers in writing to permit plaintiff to receive from the escrow agent sums greatly in excess of installments required under the 1964 contract and plaintiff rejected such offers.

That defendant offered proof at trial of such offers and the plaintiff objected to such offers and the court sustained the objection.

That the 1964 contract between plaintiff and defendant provided that the purchase price did not bear interest except in case of default and then at only three per cent per annum.

That the 1964 contract provided that, in event of default of either party and action brought for enforcement, the party not at fault should be awarded costs and attorney fee. That the court failed to give effect to this provision.

That the trial court mis-interpreted an extension agreement (R-68) and awarded plaintiff interest to which she was not entitled.

That the defendant offered documentary evidence to prove certain payments made to plaintiff by the escrow agent, and the court sustained plaintiff's objections to such evidence and also sustained plaintiff's objections to defendant's request for a continuance.

Defendant submits that each and all of the foregoing propositions are shown by the record and evidence herein to be true. Also that appellant's former brief sets forth references to the record which sustain these propositions. It is further submitted that respondent's brief does not contain any citation or reference to the record which disproves any of said propositions nor any citation or point of law which supports plaintiff's objections to the relevance and materiality of such propositions.

On page 8 of respondent's brief, counsel states:

“The court made no finding that the defendant was in default on the contract at the time of commencement of the action, and did not need to do so.”

A study of plaintiff's complaint and the answer and counterclaim of defendant shows the utter fallacy of such argument—and the necessity of giving consideration to the propositions above mentioned and to the points made in appellant's former brief.

In Point III of respondent's brief it is argued that the offering of a pre-trial settlement of a claim is not admissible in evidence at a trial. And counsel cites authorities to support that argument. Counsel then asks this court to declare irrelevant the evidence offered by defendant to show that prior to commencement of this action he had made written offer (Exhibits D-1, D-2, D-3, D-4, D-5, Tr. 57) to permit plaintiff to receive from the escrow agent payments greatly in excess of installments required of defendant under the 1964 contract. Plaintiff's reference to such offers as “compromise offers” is wholly erroneous. A reading of the exhibits referred to will show that they were unconditional, unequivocal offers and that plaintiff's rejection and subsequent commencement of this action

against the defendant was entirely unjust and unwarranted.

In point IV of respondent's brief it is argued that the reviewing court should respect the trial court's findings unless there is a preponderance of evidence to the contrary. That is certainly no answer to Point IV of appellant's brief in which it is contended that the trial court erred in failing to make findings as to payments made by defendant on his contract nor to Point V in which defendant contends that the court erred in its interpretation of a written agreement for extension of time (R-68). Also it is no answer to defendant's allegation that the court erred in awarding interest to plaintiff in derogation of defendant's rights under the language of the 1964 contract. A reviewing court has a duty to review a trial court's interpretation of written instruments, and defendant submits that a reading of the documents referred to will conclusively show the merit of defendant's contention of error.

Point V of respondent's brief is directed against Point VI of appellant's brief in which defendant contends that the court erred in denying defendant judgment for interest and costs and attorney fees. Plaintiff's response to this is that "Inasmuch as the court found against the defendant then it must of necessity not award defendant his costs and attorney fee."

In answer to this, defendant unequivocally asserts that the court did not decide against the defendant on the main issues in this case. The main issue was on plaintiff's claim that the 1964 contract between plaintiff and defendant was superseded by the Rasmussen contract. That issue was decided against the plaintiff (R-87) and that decision then called for a correct interpretation of the 1964 contract. That contract in plain terms negated plaintiff's claim for

interest and gave defendant a rightful claim to costs and attorney fees in this case. And the extension agreement relied upon by plaintiff contained no language whatever which gave plaintiff a right to interest as claimed by plaintiff.

Plaintiff's Point VI is an attempted answer to Point VII of defendant's brief in which defendant complains of the court's rulings sustaining plaintiff's objections to introduction of defendant's exhibits D-6 and D-7 which defendant offered to prove certain payments made to plaintiff by Walker Bank as escrow agent, also that the court erred in sustaining plaintiff's objections to defendant's motion for a continuance to permit defendant to call witnesses to prove the making of such payments by the escrow agent.

Defendant maintains that the exhibits mentioned were not irrelevant or incompetent, and that plaintiff's objections should not have been sustained. And, when the court rejected the documents and defendant moved for a continuance to permit testimony from the escrow agent, the plaintiff's objection to such continuance was arbitrary, and should not have been allowed. Counsel for plaintiff argues in his brief that the case had been set for trial on that day and that defendant should have had his witnesses present. The record shows that the case had not been set for trial on that day but came on for hearing on defendant's motion for ruling upon legal issues and upon objections to proposed findings of fact and conclusions of law (See Reporter's Transcript B pages 1 and 8-16). After the parties were unable to agree upon items of payment made by the escrow agent, the court called for trial of the issues at 1:30 p.m. of that day. When plaintiff objected to documents received from the escrow agent showing cer-

tain payments, the court should have overruled the objection or granted defendant's motion for a continuance.

In conclusion the appellant asserts that the points made in his former brief and the propositions hereinabove set forth are fully sustained by the record and evidence and that nothing is shown in the answering brief of respondent which justifies a denial of the relief prayed for in defendant's counterclaim and in appellant's former brief.

Respectively submitted,
Will L. Hoyt
Attorney for Defendant-
Appellant