

1997

Lester Romero v. Dick Hansen : Brief of Appellee

Utah Court of Appeals

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DOCKET NO. 970334-CA

IN THE UTAH COURT OF APPEALS

LESTER ROMERO,)	
)	
Plaintiff/Appellant,)	
)	Docket No. 970334-CA
vs.)	
)	
DICK HANSEN,)	Priority No. 15
)	
Defendant/Appellee.)	

BRIEF OF APPELLEE

APPEAL FROM AN ORDER DENYING REQUEST
TO SET ASIDE STIPULATION FOR DISMISSAL
ENTERED ON DECEMBER 26, 1996
IN THE THIRD JUDICIAL DISTRICT COURT
COUNTY OF SALT LAKE, STATE OF UTAH

HONORABLE TIMOTHY R. HANSON
DISTRICT COURT JUDGE

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COURT OF APPEALS

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BRIEF OF APPELLEE

JURISDICTION

The Utah Court of Appeals has jurisdiction pursuant to Section 78-2a-3(2)(k).

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Did the trial court err in refusing to set aside a dismissal with prejudice, which was based upon a stipulation filed by counsel for the parties, where Appellee/ Defendant had fully performed the terms of settlement? Reviewed under the abuse of discretion standard, Goodmansen v. Liberty Vending Systems, Inc., 866 P.2d 581, 584 (Utah App. 1993).

2. Did the trial court's decision to enforce the written stipulation for dismissal with prejudice, entered into the record by counsel for the parties, deprive Appellant of due process of law? Reviewed under an abuse of discretion standard, Goodmansen v. Liberty Vending Systems, Inc., 866 P.2d 581, 584 (Utah App. 1993).

STATEMENT OF THE CASE

A. NATURE OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION AT TRIAL COURT.

This is an appeal from a post-judgment order denying Plaintiff's motion to set aside a stipulation for dismissal with prejudice. Trial in this matter was originally scheduled for September 30, 1996, however, four days prior to that date, counsel for the parties negotiated a settlement, and executed a stipulation on behalf of their clients dismissing all pending claims with prejudice. (Record 279) Upon being appraised by counsel that a settlement had been achieved the Honorable Timothy Hansen struck the trial. (Record 278)

On October 3, 1996, Plaintiff filed a pro-se motion requesting that the court set aside the dismissal, claiming that his counsel had acted improperly in settling the case. (Record 281) Defendant filed a memorandum in opposition (Record 284-291), and on or about December 9, 1997, Judge Timothy Hansen issued a minute entry denying Plaintiff's request to set aside the dismissal. (Record 294-295). A final order denying Plaintiff's request was entered on December 26, 1996. (Record 297-298)

Other than the motion to set aside the dismissal, no post judgment motions were filed by either party.

B. STATEMENT OF THE RELEVANT FACTS OF THE CASE;

1. Plaintiff/Appellant brought this action, alleging that Defendant/Appellee Hansen improperly sold a 1974 Marhmon Truck which he had left at Mr. Hansen's business premises. (Record 1)

2. On September 24, 1997 counsel for Plaintiff/Appellant, Lynn Heward, and counsel for Defendant/Appellee, John B. Anderson, executed a stipulation for dismissal with prejudice of all claims against Defendant/Appellee Dick Hansen, and filed the stipulation with the trial court. (Record 279)

4. Defendant/Appellee Richard Hansen paid the sum of \$2,000.00 as consideration for the dismissal of the action. (Record 291)

5. Plaintiff/Appellant filed a motion to set aside the dismissal, alleging that his counsel had improperly settled the action against Appellee. (Record 281)

6. Defendant/Appellee filed a memorandum seeking enforcement of the stipulation and dismissal. (Record 284-291)

7. In a minute entry signed on December 9, 1996, Judge Timothy R. Hansen denied Plaintiff/Appellant's motion. (Record 294-295)

8. A final order denying Plaintiff/Appellant's motion to set aside the dismissal with prejudice was entered on December 26, 1996. (Record 297-298)

SUMMARY OF ARGUMENTS

1. Appellant's brief does not comply with the provisions of Rule 24(9) of the Utah R. App. P., as Appellant has failed to set forth meaningful argument, supported by citations to the record and relevant statutory and/or case law. The court should decline to consider the appeal and affirm the judgment of the trial court.

2. The court did not abuse its discretion in declining to set aside a dismissal with prejudice, which had been filed by the parties' counsel. Appellant's counsel was acting as his agent when he accepted Appellee's settlement offer, and Appellant is bound by the settlement under the doctrine of apparent authority.

3. The trial court may enforce an oral settlement agreement, and Appellant's refusal to execute a written release of claims does not preclude the trial court's enforcement of the agreement.

4. Appellant was not denied due process by the trial court's enforcement of the agreement. Appellant has failed to identify what due process right was implicated by the trial court's action, and Appellant was not entitled to his "day in court" because an enforceable settlement agreement had been reached.

5. Appellee should recover his costs and attorney's fees. Appellant has failed to set forth any argument, supported by citation to authority, in favor of his claim that the trial court erred in enforcing the agreement. Additionally, Appellant's claim that he is not bound by the agreement because he did not sign the written stipulation is contrary to established case law.

ARGUMENT

(I)

**THE APPEAL MUST FAIL BECAUSE APPELLANT HAS
FAILED TO SET FORTH ANY ARGUMENT IN SUPPORT OF
HIS POSITION, AS REQUIRED BY RULE 24(9) OF THE
UTAH RULES OF APPELLATE PROCEDURE.**

Defendant/Appellee requests that the Court reject this appeal in the first instance, because Plaintiff/Appellant has failed to comply with Rule 24(9), Utah R. App. P., which requires that an appellant's brief contain an argument, including "contentions and reasons with respect to the issues presented ..." and "... citations to the authorities, statutes and parts of the record relied on."

Even a cursory review of the brief submitted by the appellant demonstrates that he has failed to comply with these provisions. The document not only lacks any citation to authority which would support a decision to overturn the trial court's determination that the parties entered into a binding stipulation and settlement agreement, it utterly fails to set forth any coherent argument.

In fact, the only portion of the brief that even approaches the level of argument is contained in two conclusory allegations found in the appellant's statement of relevant facts. In the first appellant claims that he "thinks that the law requires that I have my day in Court, and that Attorney Lynn Heward and Attorney John B. Anderson should not be able to set my rights just because I hired Attorney Lynn Heward does not give him the right to prepair documents and make settlement with out my oral or witten

consent(sic)." (Appellant's Brief, p. 5). In the second, Appellant asserts that "Attorney Anderson sates a number of laws he sates his possession, but no where does he state that there is a document signed by me to settle this law suite. Ther for this settment should be set for trial (sic)" (Appellant's Brief, p.5.)

On at least two prior occasions, this court has made clear that the failure to set forth a reasoned argument, supported by citations to authority, is grounds for it to decline to address the issues and assume the correctness of the judgment below. English v. Standard Optical Co., 814 P.2d 613, 618 (Utah App. 1991) and Evans By and Through Evans v. Doty, 824 P.2d 460, 469 (Utah App. 1992). In Evans this court summarily refused to consider an issue which was raised only by a short statement in the "issues" portion of the brief, without further argument, ruling that because the appellant had not:

"... sufficiently briefed or argued the issue on appeal, we decline to address its merits. Generally, this court will not manufacture a legal argument for an appellant who fails to brief or argue an issue." Id., at 469.

The situation addressed in Evans is nearly identical to that presented here. Appellant has set forth two issues for the court's consideration: (1) whether he was deprived of due process of law, and (2) whether the stipulation entered into by his attorney was binding without his signature on a settlement agreement: however, he has made no argument in favor of his position, other than the two conclusory allegations made in his statement of relevant facts.

Consistent with the ruling in Evans the Court should now refuse to consider all issues raised in Appellant's brief that are not supported by adequate argument. The Court should therefore deny Appellant all relief requested in his brief.

(II)
THE TRIAL COURT DID NOT ABUSE ITS DISCRETION
IN ENFORCING THE STIPULATION FOR DISMISSAL
WITH PREJUDICE EXECUTED AND FILED BY
COUNSEL FOR THE LITIGANTS.

The decision of a trial court to summarily enforce a settlement agreement is reviewed under an abuse of discretion standard.¹ Goodmansen v. Liberty Vending Systems, Inc., 866 P.2d 581, 584 (Utah App. 1993). In order to determine whether such an abuse of discretion occurred, two questions should ordinarily be addressed: first, whether the court abused its discretion in finding that there was a binding agreement; and, second, whether the non-performing party has a substantial excuse for its non-performance. Zions Bank v. Barbara Jensen Interiors, Inc., 781 P.2d 478, 479 (Utah App. 1989).

¹ While the appellate courts have recognized that "abuse of discretion" is a term which is incapable of precise definition, and which encompasses a broad spectrum of possible review, in State v. White, 880 P.2d 18, 20 (Utah App. 1994), this court stated that one way to determine whether the trial court has abused its discretion is to ascertain whether its ruling "was beyond the limits of reasonability". This is the definition that makes most sense in this case.

Here, Appellant has focused all of his attention on the first prong of this test, alleging that there is no enforceable agreement because he did not personally assent to the terms² agreed to by counsel, and because he did not execute the final settlement document. As will be explained in greater detail directly below, neither of these allegations are supported by the facts in the record or by relevant case law. Accordingly, this court must find that the trial court did not abuse its discretion in refusing to set aside the stipulation for dismissal with prejudice.

(a)
ATTORNEY HEWARD WAS ACTING AS APPELLANT'S
AGENT IN SETTLING THE CASE AND STIPULATING
TO ITS DISMISSAL. APPELLANT IS BOUND BY
THE ACTS OF HIS AGENT.

In support of his request that this court overturn the trial court's decision to enforce the stipulation filed by counsel in this matter, Appellant asserts that his attorney, Mr. Lynn Heward, was not entitled to accept the settlement proposed by Appellee, and that Mr. Heward's acceptance of the offer and subsequent execution of the stipulation for dismissal with prejudice did not create a enforceable agreement. (Appellant's Brief, p. 5) In making this claim, Appellant ignores the basic principles of agency, which when applied to the facts in the record demonstrate the correctness of Judge Hansen's decision.

² It must be emphasized that Appellant does not argue that no agreement was reached, rather, his sole claim is that he is not bound thereby.

In analyzing Appellant's claim, the court must first determine whether Mr. Heward, when acting in his capacity as legal counsel, was also acting as an agent for his client. Well established case and statutory authority confirm that this question may be answered only in the affirmative. (See Goodmansen v. Liberty Vending Systems, Inc., supra at 584: a client may be bound by the acts of its attorney under the doctrine of apparent authority. See also Utah Code Ann., §78-51-32 (1953, as amended), an attorney has authority to bind his client in any step of the litigation.) Indeed in the brief he filed with this court, Appellant concedes that his counsel was authorized to act as his agent and to conduct settlement negotiations in connection with the lawsuit against Mr. Hansen. (Appellant's Brief, p. 5: "Attorney Lynn Heward has the rights to negotiate (sic) my rights...")

With the question of status settled, the sole remaining issue is whether a settlement negotiated by Mr. Heward is binding on Appellant, if Mr. Heward accepted terms which were less than those authorized by the Appellant³.

In addressing this issue in the trial court, Appellee argued that under the doctrine of apparent authority Mr. Heward's acceptance of his settlement offer, and the subsequent negotiation

³ Appellee does not concede that there is any proof that Attorney Heward exceeded his authority in accepting the settlement of \$2,00.00. Exhibits 1-A and 1-C to Appellant's brief indicate that Mr. Heward had discussed the terms of settlement with Appellant, and understood that they were acceptable.

of the settlement check, bound Appellant to honor the terms of the agreement. (Record 284-291) This argument is well supported by established case law. (See Forsyth v. Pendleton, 617 P.2d 358, 360 (Utah 1980), where the Utah Supreme Court held that principals are bound by the acts of their agents, when those acts are within the scope of the authority apparently possessed by the agent.)

In Luddington v. Bodenvest, Ltd., 855 P.2d 204 (Utah 1993) the Utah Supreme Court held that the following elements must be established in order to demonstrate that an agent is acting with apparent authority:

"(1) that the principal has manifested his consent to the exercise of such authority ... (2) that the third person knew of the facts and, acting in good faith, had reason to believe and did actually believe that the agent possessed such authority; and, (3) that the third person, relying on such appearance of authority, has changed his position and will be injured or suffer loss if the ... transaction executed by the agent does not bind the principal." Id., 209.

Clearly the record demonstrates that Mr. Heward was clothed with the authority to settle the litigation.⁴ First, as set forth

⁴ The question of whether an attorney has apparent authority to bind his client may well be settled by dicta in Goodmansen v. Liberty Vending Systems, Inc., 866, P.2d 581, 584, (Utah App. 1993) where this court noted, with approval, that the Appellants had conceded that they were bound by the acts of their counsel, under the doctrine of appendant authority. See also Forsyth v. Pendleton, 617 P.2d 358, 360-361 (Utah 1980), in which the Utah Supreme Court upheld a trial court's determination that representations by defendants attorney that the plaintiff could adopt a payment schedule different from that set forth in a contract for the sale of land were binding upon the defendant under the doctrine of apparent authority.

above, Appellant has conceded that his attorney was authorized to enter into negotiations with Appellee's counsel to resolve the lawsuit. Second, Appellee's counsel had no reason to believe that Mr. Heward was not empowered to accept the offer of \$2,000.00 in complete settlement of all claims. In fact, Appellee's counsel was ethically prohibited from contacting Appellant directly to determine whether the offer was acceptable. Thus, not only was Appellee's reliance upon Mr. Heward's representations reasonable under the circumstances, it was mandatory. Finally, there is no doubt that Appellee has changed his position in reliance upon the representations of Mr. Heward. He agreed to settle the lawsuit, and fully performed his obligations under the agreement by tendering payment to Appellant's agent. (Record 291)

The only conclusions that may be drawn from these facts are that Mr. Heward was duly empowered to act on behalf of his client, and that under the circumstances Appellee was justified in his belief that Mr. Heward had authority to accept his offer of settlement. Since Mr. Heward possessed the apparent authority to make reasonable settlement arrangements, his acceptance of Appellee's offer, as reflected in the written stipulation for dismissal filed with the trial court (Record 279), is binding on his client. Accordingly the trial court's refusal to set aside the dismissal with prejudice was not an abuse of its discretion.

(b)
ORAL SETTLEMENT AGREEMENTS MAY BE ENFORCED.
APPELLANT'S REFUSAL TO EXECUTE THE FINAL SETTLEMENT
DOCUMENT DOES NOT RENDER THE AGREEMENT UNENFORCEABLE.

Appellant also asks this court to overturn the trial court's decision to honor the stipulation for dismissal, because he did not sign any document manifesting his intent to settle the lawsuit. (Appellant's Brief, p. 5, paragraph 10.) Essentially Appellant appears to claim that in order for a settlement to be binding there must be a written agreement, and he must have personally executed that document. This claim has no basis in law.

The question of whether a written document, signed by the parties to the litigation, is required to create an enforceable settlement agreement was recently addressed by this court in John Deere Co. v. A & H Equipment, Inc., 876 P.2d 880 (Utah App. 1994). In that case counsel for Defendant proposed that the pending litigation be settled by a mutual dismissal of all claims with prejudice. Plaintiff's counsel accepted on behalf of his client, and a written memorialization of their agreement was prepared and presented to Defendant for its signature. Defendant, however, refused to sign the written agreement, claiming that the settlement proposed by its counsel did not contain all of the terms and conditions it desired. Plaintiff then moved to enforce the agreement, and Defendant opposed on the grounds that it had not signed the settlement document. The trial court determined that the terms of settlement offered by Defendant's counsel were

sufficiently clear, and that the acceptance of those terms by Plaintiff's counsel created an enforceable agreement. This court agreed with the trial court's analysis, and stated that the agreement was enforceable "despite the fact that it had not been reduced to writing and signed by the parties." Id., at 887.

The issues and facts considered in John Deere are directly on point with those presented to the court by this appeal, and its holding should be dispositive of Appellant's request for relief. As in Deere, a clear offer of compromise was suggested by counsel for Appellee; i.e., the payment of \$2,000.00 in return for a dismissal of all claims; and counsel for Appellant accepted the offer. Only after the negotiations were complete; the proposed compromise accepted; payment made; and, a written stipulation for dismissal filed with the court, pursuant to Rule 4-504(8) of the Utah Code of Judicial Administration; did Appellant come forth and state that his counsel had not obtained the settlement he desired. Again, as in the Deere case, Appellant refused to sign the settlement agreement, and seeks to rely upon that refusal as justification to set aside the agreement. The holding in Deere, however, makes clear that Appellant's claim that he is not bound by the settlement, merely because he did not sign a written memorialization of the agreement, is without basis. This court should follow its holding in Deere and uphold the trial court's decision to enforce the parties' stipulation for dismissal.

(III)
THE TRIAL COURT'S DECISION TO ENFORCE THE
STIPULATION FOR DISMISSAL DID NOT DEPRIVE
APPELLANT OF ANY DUE PROCESS RIGHT.

Appellant also alleges that the decision of the trial court to enforce the stipulation for dismissal, which was executed and filed by the parties' counsel pursuant to Rule 4-504 of the Utah Code Jud. Admin., deprived him of due process of law.⁵ Appellant has failed to identify the right that was infringed upon by the trial court's decision, however it appears that he believes that he has an absolute right to present his case at trial. This position is entirely without merit.

It is indisputable that a trial court may summarily enforce a settlement agreement reached by the parties to litigation, and so long as it does not abuse its discretion in doing so its decision will be upheld on appeal. John Deere, supra, at 883. Naturally, the enforcement of a settlement agreement necessarily precludes the granting of a trial, and therefore Appellant's claim of an absolute right to trial is shown to be without any basis whatsoever.

⁵ Appellant has failed to set forth any argument in favor of his position, and, as argued in Section I, above, this alone should lead the court to deny his request for relief. The failure to specify the precise deprivation of due process also makes it difficult to determine which level of review the court should utilize in addressing Appellant's claim. As set forth in the body of this brief, the claim that Appellant was denied his "day in court" is fundamentally no different than his claim that the trial court erred in enforcing the stipulation reached by counsel. Therefore Appellee believes that the issue should be addressed under the same level of review; the abuse of discretion standard.

As explained above, the trial court did not abuse its discretion in this case. Rather it determined that a binding agreement was reached by the parties, and it properly decided to enforce that agreement. Appellant's request for relief should be denied.

(IV)
**APPELLANT HAS BROUGHT THIS APPEAL WITHOUT
FACTUAL OR LEGAL BASIS. APPELLEE SHOULD BE AWARDED
ITS COSTS AND ATTORNEY'S FEES AS SANCTIONS.**

Rule 33 of the Utah R. App. P., provides that this court may award costs and attorney's fees as sanctions in the event that a party files a frivolous appeal, which is defined as "one which is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify or reverse existing law." Appellee would request that the court impose such sanctions against Appellant for violating the provisions of this rule.

In Larson v. Overland Thrift and Loan, 818 P.2d 1316 (Utah App. 1992), this court considered the question of sanctions under Rule 33, and found that it was proper to assess costs and attorney's fees where the appellant had offered "absolutely no explanation" to support its theory on appeal. Such is the case here. Appellant has utterly failed to set out any reason or argument in favor of his position that the trial court erred in upholding the stipulation for dismissal with prejudice, or in favor of his claim that the trial court's decision denied him due process of law.

Additionally, Appellant's only attempt at argument; i.e., the conclusory allegation that he was not bound by the stipulation because he did not sign a formal release; is contrary to well established law. Had he made even the briefest review of the case and statutory authority on this issue, he would have found that this court has repeatedly enforced oral settlement agreements, and that it has expressly ruled that a written memorialization, signed by the parties to the litigation, is not necessary to form a binding contract for settlement. (See Goodmansen v. Liberty Vending Systems, Inc., supra, at 581; John Deere Co., v. A & H Equipment, Inc., supra, at 887; and, Rule 4-504 Utah Code Jud. Admin.)

In light of the obvious deficiencies in Appellant's brief, and in light of the fact that Appellant's position is directly contradicted by well established authority, Appellee would pray that this court find that Appellant has filed a frivolous appeal, and award him his costs and attorney's fees incurred in defending this action.

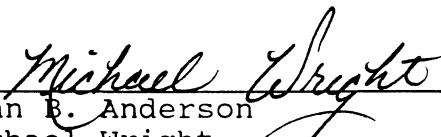
CONCLUSION

The trial court did not abuse its discretion in summarily enforcing the stipulation for dismissal with prejudice filed by the parties' counsel in this matter. Mr. Heward was acting as Appellant's agent when he negotiated and accepted the settlement proposed by Appellee, and Appellant is bound by this acceptance under the doctrine of apparent authority, notwithstanding his

subsequent refusal to execute the document memorializing the agreement. Appellant has failed to set forth any argument to the contrary, and for this reason alone the Court of Appeals should uphold the decision of the trial court.

This court should also sanction Appellant for filing an appeal that is unsupported by argument and which is not warranted by existing law.

RESPECTFULLY SUBMITTED this 30th day of June, 1997.



John B. Anderson
Michael Wright
Attorneys for Defendant/Appellee

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June, 1997, two (2) true and correct copies of the foregoing Brief of Appellee were mailed, postage prepaid, to Lester Romero, Pro Se, 6270 South 2005 West, West Jordan, Utah 84084.

