

1988

Randall B. Woodward v. Utah Wholesale Framing : Petition for Rehearing

Utah Court of Appeals

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the Court
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IN THE UTAH COURT OF APPEALS

RANDALL B. WOODWARD, :
 :
 Plaintiff/Respondent, : PETITION FOR REHEARING
 :
 -vs.- :
 :
 UTAH WHOLESALE FRAMING, STEVE :
 L. BURTON, JANICE D. BURTON :
 (Agent), SHARP L. BURTON, : Court of Appeals
 : No. 880221-CA
 Defendants/Appellants. :

WILLIAM H. CHRISTENSEN (#4810)
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Attorneys for Respondent

Respondent/plaintiff, Randall B. Woodward, pursuant to Rule 35 of the Rules of the Utah Court of Appeals, hereby petitions the Court for rehearing of the decision entered herein on February 17, 1989.

BACKGROUND

This case involves a contract dispute between the parties. The trial court determined that the respondent was entitled to damages pursuant to implied contract and awarded him damages. This Court reversed, holding that there was a "lack of any evidence in the record to support a finding of implied contract" This Petition for Rehearing relates solely to the jurisdictional issue of time for filing an appeal which was raised in the respondent's brief but not addressed by the Court's decision.

ARGUMENT

STATUTORY CONSTRUCTION REQUIRES DISMISSAL OF APPELLANTS' APPEAL BECAUSE IT WAS UNTIMELY FILED.

Unlike other areas of judicial procedure, the Legislature specifically set forth the timing of appeals from small claims court to this Court. Utah Code Ann. §78-6-10(2) provided that notice of appeal from small claims court must be filed within five days from entry of judgment. (Copy of the

statute annexed hereto as Exhibit 1).¹ Rule 4(a) and (b) of this Court are displaced by the statute. The record before the Court indicates that judgment was signed and entered on March 10, 1988 and that Motion for New Trial was filed on March 17, 1988. After the new trial motion was denied, notice of appeal was filed.

Utah Code Ann. §68-3-7 (attached hereto as Exhibit 2) specifies how time is to be computed pursuant to statute. That statute does not provide for exclusion of intermediate Saturdays and Sundays in calculating time periods of less than seven days -- unlike Rule 6(a) of the Utah Rules of Civil Procedure. Therefore, appeals from small claims court must be filed within five days of judgment, not five working days.

Rule 1 of the Utah Rules of Civil Procedure and Rule 1(c) and (d) of the Rules of the Utah Court of Appeals provide that court rules are displaced when a specific statutory provision applies. Respondent maintains that where the legislative branch has spoken concerning procedure, the rules promulgated by the judiciary must give way. Therefore, appellants' notice of appeal was untimely, filed more than five days after

¹ The relevant statute has now been amended and superceded and the Court of Appeals is no longer burdened with direct appeals from the small claims courts.

judgment was rendered. Defendants/appellants' Motion for New Trial did not toll the time for filing an appeal because it was filed after the time for filing a notice of appeal had expired.

CONCLUSION

Based on the foregoing, respondent respectfully submits that this Court lacks jurisdiction over the appellants' appeal and that the Court should vacate its February 17, 1989 Order and dismiss appellants' appeal.

DATED this 3rd day of March, 1989.

WATKISS & CAMPBELL


WILLIAM H. CHRISTENSEN

Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of March, 1989, a true and correct copy of the foregoing was mailed, postage prepaid, to the following:

R. Paul Van Dam, Esq.
Attorney for Defendants/Appellants
236 State Capitol Building
Salt Lake City, Utah 84114

William F. Christensen

Exhibit 1

is necessary, and the hearing and disposition of the actions may be informal, except that the circuit court shall maintain the proceeding on the record as in any other case, with the sole object of dispensing speedy justice between the parties. Attachment, garnishment, and execution may issue after judgment in the manner prescribed by law upon the payment of the fees allowed by law for those services.

78-6-9. Judgment - Against defendant. 1986

If the judgment or order be against the defendant, he shall pay the same forthwith or at such times and upon such terms and conditions as the justice or court shall prescribe. 1953

78-6-10. Small claims - When conclusive - Exception - Appeal - Attorney's fee.

(1) The judgment of the small claims department of the justices' and circuit court is conclusive upon the plaintiff unless a counterclaim has been interposed.

(2) If the matter is heard in the small claims department of the circuit court, the defendant may appeal the judgment of the circuit court to the Court of Appeals by filing a notice of appeal within five days of the entry of the judgment against him.

(3) If the matter is heard in the small claims department of the justices' court, the defendant may obtain a trial de novo in the circuit court by filing in the circuit court of the county a petition for trial de novo within five days of the entry of the judgment against him. 1986

78-6-11. Repealed. 1986

78-6-12. Abstract of judgment - Form.

If no appeal be taken by the defendant and the defendant fails to pay the judgment according to the terms and conditions thereof, the justice before whom such a hearing was had, shall, on application of the plaintiff, certify such judgment in substantially the following form:

IN THE SMALL CLAIMS COURT OF _____,
COUNTY OF _____, STATE OF UTAH.

Plaintiff
vs.

Defendant.
State of Utah)
) ss.
County of)

ABSTRACT OF JUDGMENT

In the above entitled court and action on the _____ day of _____, 19____, judgment was entered for plaintiff for \$____; that no appeal from said judgment has been taken.
Dated this _____ day of _____, 19____

Justice of said Court. 1953

78-6-12.5. Abstract of judgment for defendant - Form.

If no appeal is taken by the plaintiff and the plaintiff fails to pay the judgment according to the terms and conditions of the judgment, the judge before whom the hearing was conducted, shall, on application of the defendant, certify the judgment in substantially the following form:

IN THE SMALL CLAIMS COURT OF _____,
COUNTY OF _____, STATE OF UTAH.

vs.

Defendant.
State of Utah)
) ss.
County of)

ABSTRACT OF JUDGMENT

In the above entitled court and action on the _____ day of _____, 19____, judgment was entered for defendant for \$____; that no appeal from said judgment has been taken.
Dated this _____ day of _____, 19____.

Justice of said Court 1983

78-6-13. Filing and docketing.

The abstract may be filed in the office of the county clerk of the county in which the judgment was rendered, and the judgment docketed in the judgment docket of the district court thereof. The date of the receipt of the abstract by the clerk will be noted by him thereon, and entered in the docket. 1953

78-6-14. Fees.

A fee of \$15 shall be charged and collected for the filing of an affidavit for the commencement of any action. Service of process costs and fees shall be the same as those provided in Section 21-2-4. Fees collected in connection with actions filed in the circuit courts shall be remitted in their entirety to the state treasurer. Fees collected in connection with actions filed in justices' courts shall be remitted to the county treasurer for cases filed in county justice of the peace courts and to the city treasurer for cases filed with a city or town justice of the peace. 1986

78-6-15. Costs.

The prevailing party in any action in the small claims court is entitled to costs of the action and also the costs of execution upon a judgment rendered therein, the same as in other courts. 1953

Chapter 7. General Provisions Applicable to Courts and Judges

- 78-7-1. Disqualification for interest or relation to parties.
- 78-7-2. Justices and Judges - Limitations during terms.
- 78-7-3. Sittings of courts - To be public.
- 78-7-4. Right to exclude in certain cases.
- 78-7-5. Powers of every court.
- 78-7-6. Rules - Right to make - Limitation.
- 78-7-7. Court days.
- 78-7-8. Certain days excepted - Certain business permitted.
- 78-7-9. Nonattendance of judge - Adjournment by clerk or sheriff.
- 78-7-10. Failure of term - Change of time of holding court - Process does not abate.
- 78-7-11. Proceedings commenced may continue.
- 78-7-12. Change of place of trial because of calamity.
- 78-7-13. Sheriff to supply court rooms when county commissioners neglect.
- 78-7-14. Courts having a seal enumerated.
- 78-7-15. When seal must be affixed.
- 78-7-16. Powers of judge contradistinguished from court.
- 78-7-17. Powers of every judicial officer.
- 78-7-18. Power to punish for contempt.
- 78-7-19. Repeated application for orders forbidden.
- 78-7-20. Disobedience, contempt.
- 78-7-21. Proceedings unaffected by vacancy in office of judge.
- 78-7-22. English language to be used.
- 78-7-23. Abbreviations and numerals may be used.
- 78-7-24. Process and procedure when statutory provisions insufficient.
- 78-7-25. Judicial decisions to be rendered within sixty

Exhibit 2

COLLATERAL REFERENCES

Am. Jur. 2d. — 73 Am. Jur. 2d Statutes § 384.

C.J.S. — 82 C.J.S. Statutes § 386.
Key Numbers. — Statutes ⇐ 232.

68-3-6. Identical provisions deemed a continuation, not new enactment.

The provisions of any statute, so far as they are the same as those of any prior statute, shall be construed as a continuation of such provisions, and not as a new enactment.

History: Code Report; R.S. 1933 & C. 1943, 88-2-6.

Cross-References. — Effect of 1933 revision on limitation of actions, § 68-2-7.

NOTES TO DECISIONS

ANALYSIS

Re-enactment of statutes.
—Statutes of limitation.

Re-enactment of statutes.

By re-enacting statutes Supreme Court must assume that Legislature was satisfied with construction court placed upon statute before re-enactment. *State v. Roberts*, 56 Utah 136, 190 P. 351 (1911).

—Statutes of limitation.

Re-enactment of statutes of limitation by 1933 revision amounted not to a repeal of the antecedent sections, but to a reaffirmation thereof. *Attorney General v. Pomeroy*, 93 Utah 426, 73 P.2d 1277, 114 A.L.R. 726 (1937).

COLLATERAL REFERENCES

Am. Jur. 2d. — 73 Am. Jur. 2d Statutes § 322.

C.J.S. — 82 C.J.S. Statutes §§ 276, 370.
Key Numbers. — Statutes ⇐ 147, 223.5.

68-3-7. Time, how computed.

The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last is a holiday, and then it also is excluded.

History: R.S. 1898 & C.L. 1907, § 2493; C.L. 1917, § 5843; R.S. 1933 & C. 1943, 88-2-7.

Cross-References. — Computation of time, Rule 6(a), U.R.C.P.

Enlargement of time for doing an act, Rule 6(b), U.R.C.P.

Election title, Sundays included in time computations, § 20-1-12.

Holidays, § 63-13-2.

Juvenile Court Act, time to be computed in accordance with Rules of Civil Procedure, § 78-3a-27