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Kay Goff v. Annette Doble Goff : Brief of Respondent

Utah Supreme Court

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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

KAY GOFF,
Plaintiff and Respondent,
- vs -
ANNETTE DOBLE GOFF,
Defendant and Appellant.

Case No.
~~5710~~
13893

BRIEF OF PLAINTIFF and RESPONDENT

Appeal from the Judgment of the
Second District Court for Weber County
Honorable Calvin Gould, District Judge

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Case No. 57116

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NATURE OF THE CASE

This was an action by the Plaintiff-Respondent (hereinafter called Kay Goff or Plaintiff) against Defendant-Appellant (hereinafter called Annette Doble Goff or Defendant) for damages for personal injury sustained by the Plaintiff arising out of an automobile accident which occurred on the 22nd day of January, 1973, near the outskirts of Salt Lake City. (At the time

of the accident, Annette Doble Goff was the fiancee of one of the Plaintiff's sons. They were married subsequent to the accident, but before the action was filed).

The sole issue involved before the Trial Court which is involved in this appeal concerns the question whether or not the Plaintiff was a guest at the time of the accident as defined in 41-9-2, U.C.A. 1953.

DISPOSITION IN THE LOWER COURT

The trial was heard in this case on September 10, 1974, before the Honorable Calvin Gould, in and for Weber County, Utah, sitting without a jury, the same having been waived by both parties.

On the 20th day of September, 1974, Judge Gould issued a Memorandum Decision in which he found in favor of the Plaintiff and against the Defendant and thereafter a formal Findings of Fact, Conclusions of Law and Judgment were entered consistent with Judge Gould's Memorandum Decision.

RELIEF SOUGHT ON APPEAL

Plaintiff-Respondent seeks to have the Judgment rendered by Judge Gould affirmed in favor of the Plaintiff and Against the Defendant.

STATEMENT OF FACTS

Plaintiff-Respondent agrees with the Statement of Facts set forth in Appellant's Brief.

ARGUMENT

POINT I

PRESUMPTIONS FAVOR CORRECTNESS AND CREDIBILITY OF THE FINDINGS AND JUDGMENT OF THE TRIAL COURT. THE BURDEN OF SHOWING THAT THEY ARE IN ERROR IS UPON THE ATTACKER.

The Utah Supreme Court in *First Security Bank of Utah, N.A. vs. Wright,* 521 P.2d 563, held at Page 567,

> "Applicable to the various points discussed here is the traditional rule of review: that the presumptions favor the correctness and credibility of the findings and judgment; and that the burden of showing they are in error and should be overturned is upon the attacker."

The only factual issue in dispute at the trial level was whether or not the Plaintiff was a guest within the meaning of the tUah Statute which states as follows:

> "41-9-2. *'Guest' defined* — For the purpose of this section the term 'guest' is hereby defined as being a person who accepts a ride in any vehicle without giving compensation therefor."

There is no real dispute as to the status of the law in this State. We accept the Court's prior decision in *Smith* vs. *Franklin,* 14 Utah 2d 16, 376 P.2d 541 (1962).

"The test is simple to state and under most circumstances is easy to apply: a passenger for hire is one who pays for his ride; a guest is one who is furnished a ride free of charge. The former is in the nature of a business transaction for money; whereas the latter is motivated by other considerations, usually of a social nature. Difficulties are encountered where both factors are present in such a way that it does not appear with sufficient certainty to justify a ruling as a matter of law either that the rider was a guest or a passenger for hire. Where such uncertainty exists, the definition given by Sec. 41-9-2, U.C.A. 1953, that a guest is 'a person who accepts a ride in any vehicle without giving 'compensation' therefor, does not provide the conclusive answer. The question arises as to what constitutes 'compensation' sufficient to change what normally would be a guest to a passenger for hire.

It must be conceded that where it is shown that the rider is basically a social guest, neither the giving of just any 'compensation,' which might be some inconsequential amount of money or other consideration of value, nor even the sharing of expenses, merely in social reciprocation for the ride, would change the relationship to that of passenger for hire. The phrase 'compensation therefor' as used in the statute means compensation for the ride. Therefore, it would have to be sufficient money 'or other thing of value' that is reasonably could be supposed that the parties so regarded it. But whether there is profit in the transac-

tion is obviously not the determining factor. Where payment for the ride is the main inducement for it, the fact that there may also exist some social incentive which makes giving the ride enjoyable or desirable for the driver would not change its character to that of host and guest."

"Howsoever convenient or expedient it may be to see things as either black or white and to avoid perplexing problems in the twilight areas of uncertainty, that cannot always be done. *Where both payment and social incentive are present, and the evidence would support a finding that each exerted a substantial influence on hauling the passenger, the problem as to the relationship between the parties must be faced up to and resolved by submititng the issue to the jury* (or fact trier). (emphasis added)

From our consideration of this subject and the authorities which have dealt with it, we are persuaded that the sound and practical view is that the determination should be made on the basis of which was the chief inducement for giving the ride."

Assuming the test is not what is the "main inducement" but in fact what is the "chief inducement", as suggested by the Defendant-Appellant, the decision of the Trial Court was correct in view of the totality of the circumstances.

Counsel has cited other cases in which the parties

were clearly social guests and the whole purpose of the venture was clearly social in nature. There are many factors to distinguish the case now before the Court from the other cases in which the Courts have found the injured passenger to be a guest. *Facts that distinguish the present case are*:

1. The purpose of the trip for everyone in the automobile, with the exception of the Plaintiff and his wife, was to attend a Tupperware meeting in Salt Lake City. (T. 20) The purpose of the trip for the Plaintiff was to visit the hospital in Salt Lake City. Therefore, the incentive for travelling to Salt Lake City was different for the Plaintiff. The other persons in the automobile intended to part company with the Plaintiff upon their arrival in Salt Lake City.

2. The ride was solicited by the Plaintiff. (T.9) Five Dollars, ($5.00) were paid in advance of the trip by the Plaintiff's wife. (T. 29)

3. John took the money, departed from his father's home in Riverdale, and journeyed to 12th Street and Wall Avenue, Ogden, Utah, some substantial distance from his father's home where he secured gasoline at a cost of $4.00, pocketing the remaining $1.00 which he used for lunch at a later time during the week. (T. 24-29)

4. After leaving the gas station, John picked up all of the other persons who were to accompany him to Salt Lake with the exception of his mother and

father. They all lived reasonably close to the gas station on 12th and Wall Avenue, where the gas was secured. (T. 30)

5. The most expeditious or convenient route for John and the others to journey to Salt Lake was to get on the freeway at 24th Street, avoid the traffic of Wall Avenue, Riverdale, Road, etc., and proceed directly to Salt Lake City. (T. 31)

6. It was substantially out of their way to return to the Goff home to pick up the Plaintiff and his wife. The route of travel required travelling south on Wall Avenue, then on to Riverdale Road, leaving Riverdale Road and travelling one mile from Riverdale Road to the Goff home, then returning over that distance of one mile back to Riverdale Road and proceeding to Salt Lake City. (T. 8)

7. John had to go out of his way, accept inconvenience, and accept delay in time in order to provide the transportation to his father and mother. When asked why he returned to the Goff home, he stated clearly, "Because they paid me the money". (T. 3)

In the Smith case, Justice Crockett said,

> "The phrase, 'compensation therefor', as used in the statute means compensation for the ride. *Therefore, it would have to be sufficient money (or other thing of value) that it reasonably could be supposed that the parties so regarded it.*" (Emphasis added)

This Court in *Charlton* vs. *Hackett,* 11 Utah 2d 389, 360 P.2d 176 (1961) said,

> "In considering the attack on the findings and judgment of the trial court it is our duty to follow these cardinal rules of review: to indulge them a presumption of validity and correctness; to require the appellant to sustain the burden of showing error; to review the record in the light most favorable to them; and not to disturb them if they find *substantial support* in the evidence." (Emphasis added)

From the evidence adduced at the trial, this Court can find substantial support for Judge Gould's determination that the payment of $5.00 was sufficient compensation that the parties regarded it to be of sufficient value to cause John to return to the home of his father and provide transportation for him to Salt Lake City.

John and the others would have gone to Salt Lake City with or without the father. Their business there was completely separate and independent from the business of the Plaintiff. True, the payment of money had nothing whatever to do with their journey to Salt Lake City, but it obviously had everything to do with their return to the Goff residence to pick up the Plaintiff. The evidence would indicate that it was not only the main inducement, or the chief inducement, but was in all likelihood the *only* inducement for their return to the Goff home and to provide transportation to Salt Lake City. These are the facts consistent with the testi-

mony and the findings of the Court, and they ought not be lightly overturned. The presumption is for correctness and credibility of the findings of the Trial Court and the Defendant-Appellant has not met their burden.

POINT II

THIS COURT SHOULD VIEW THE EVIDENCE IN A LIGHT MOST FAVORABLE TO THE PLAINTIFF-RESPONDENT TO SUSTAIN THE FINDINGS OF THE LOWER COURT.

The above-stated principle was enunciated in *Hardy* vs. *Hendrickson,* 27 Utah 2d 251, 495 P.2d 28, (1972), where the Court said.

> "On appeal evidence is viewed in light most favorable to sustain the lower court, and the findings will not be disturbed unless they are clearly against the weight of the evidence or it manifestly appears that the court misapplied the law to the established facts."

If the Court views the evidence most favorable to the Plaintiff-Respondent, we must conclude that the purpose for the trip to Salt Lake City for Annette, Diane and John was to attend the Tupperware meeting, and that they would have gone to Salt Lake whether or not the Plaintiff was in the automobile.

At no time has the Plaintiff implied that this was

a joint business trip between the Plaintiff and the other people. The Plaintiff's business was with the Railroad Retirement Board, the other persons involved had business dealing with a Tupperware meeting.

The sole question was "Why did John Goff and his girlfriend, and the girlfriend of his brother, return to the Goff home to pick up the Plaintiff, after they had already left, secured gasoline, and were in a position to secure easy acces sto the Freway and the immediate trip to Salt Lake City?" John said it was because his father gave him $5.00. (T. 31)

On cross-xamination John admitted that he would not turn his father down simply because he didn't give him money. The payment of money was obviously an established pattern with the Plaintiff because he could not drive. (T. 9) And, he didn't want to be a free loader either. (T. 18)

We are concerned here with the isolated incident of returning to the Goff home to pick up the Plaintiff. The Defendant in his brief suggests that this was a close family and that the transaction was a social one. It should be remembered, that although the Defendant now is a daughter-in-law of the Plaintiff, she was not married to the Plaintiff's son at the time of the accident and John was not married to Diane at the time of the accident. These were young people who were girlfriends and boyfriends and who in all likelihood anticipated marriage, but the record is void of any evidence to indicate that there was some social benefit to these

young people to bring along a chaperon. The facts indicate that it was inconvenient to return to the Goff residence. It was more expedient to get on the freway at 24th Street or some other point. Even after they returned to Riverdale Road the Goff home was a mile from the road. (T. 8) The Plaintiff-Respondent suggests that John Goff, who is an uneducated young man, who now makes his living as a garbage collector, but who at the time of the accident was a janitor, told the truth at the time of trial and responded to the questions in a very forthright and candid manner, and when asked the reason for return, stated that it was the money that induced him to do so. He did not say that it was *one* of the reasons, or a *main* reason, or the *chief* reason, it was stated by him as the *only* reason, but counsel would now have use read into that answer something other than the facts stated by the witness.

The Court observed the witnesses, their demeanor, their frankness, their candor and made a finding of fact based upon that testimony. The finding was clearly that, the payment of money was the inducement for furnishing carriage to Kay Goff, transporting him to Salt Lake City. Admittedly, it was not the inducement for John, Diane, or Annette travelling to Salt Lake City, that is not the issue, but it was the inducement for them to return to the Goff home and transport the Plaintiff to Salt Lake City.

The thrust of the Appellant's Brief is to convince the Court that the Appellant should have won the case.

This Court clearly stated in *Brigham* vs. *Moon Lake Electric Association,* 24 Utah 2d 292, 470 P.2d 393, at Page 397, (1970),

> "On appeal, the burden is upon the appellant to convince us that the trial court committed error and not that the appellant should have won the case . . ."

In the separate opinion by Justice Ellett, he stated,

> "When we on this court try to do justice in a law case, we become jurors and thereby give notice to litigants that if they are dissatisfied with the judgment below, they can have a new trial by appealing, and if WE do not think they got a just verdict below, we still see that they get it regardless of whether there were any errors of law committed during the trial. That is too great a burden for and not a function of this court. We should not reverse the trial court simply because we disagree with the jury."

This same concept is applicable to cases tried by a Court without a jury.

Appellants have shown no errors in law, they have simply implied that their client should have won at the trial, and their reference to the responsibility of the insurance company to pay the claim, and the fact that the parties are now related by the marriage of the Plaintiff's son, are only intended to obscure the issue and are certainly immaterial.

CONCLUSION

There is no dispute between the parties as to the status of the law in determining when a person is a guest within the meaning of the statute. And where both payment of money and some social incentive are present, that problem must be resolved by the trier of fact, in this case, Judge Gould, sitting without a jury.

Likewise, there can be no dispute as to the law relative to the presumptions that favor correctness of the findings of fact and the judgment of the trial court, or as to the nature of the burden of the Defendant-Appellant when that finding is challenged. True, there may have been some social incentive, although the evidence does not so indicate. The evidence is clear as to why transportation was furnished to the Plaintiff. That evidence must be viewed in a light most favorable to the Plaintiff and we should presume the correctness of the findings of the trial court. The decision of the trial court should therefore be affirmed.

Respectfully submitted,

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