

1978

# Rose Marie Hume v. Small Claims Court of Murray City : Brief of Defendant-Respondent Small Claims Court of Murray City

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

ROSE MARIE HUME,

Plaintiff and  
Appellant

vs

Case No. 15034

SMALL CLAIMS COURT  
OF  
MURRAY CITY

Defendant and  
Respondent

BRIEF OF DEFENDANT-RESPONDENT  
SMALL CLAIMS COURT OF MURRAY CITY

An Appeal From the Order of Dismissal  
the Third Judicial District Court  
In and For Salt Lake County, State of Utah  
The Honorable David Bee, Judge Presiding

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## TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE . . . . .	1
DISPOSITION IN LOWER COURT . . . . .	1
RELIEF SOUGHT ON APPEAL . . . . .	1
STATEMENT OF FACTS . . . . .	1
ARGUMENT . . . . .	3
POINT I      THE SOLE ISSUE PRESENTLY BEFORE THIS COURT IS WHETHER RULE 59 (e) IS THE PROPER PROCEDURE TO USE TO SECURE REVIEW OF THE ORDER DENYING APPELLANT'S PETITION FOR WRIT OF MANDAMUS . . . . .	3
POINT II     THE TRIAL COURT RULED CORRECTLY IN DENYING APPELLANT'S MOTION TO ALTER OR AMEND JUDGMENT . . . . .	4
A.     RULE 59 (e) OF THE U.R.C.P., IS NOT AVAILABLE AS AN EXCUSE TO ALLOW AGGRIEVED PARTIES TO REARGUE THE SAME ISSUES ARGUED AT PRIOR HEARINGS IN THE SAME COURT . . . . .	4
B.     THE RULE 59 (e) MOTION TO ALTER OR AMEND JUDGMENT SHOULD BE USED ONLY TO ALTER OR AMEND A JUDGMENT, NOT TO APPEAL A JUDGMENT . . . . .	7
POINT III    ASSUMING ARGUENDO THE RIGHT TO HAVE THE DISTRICT COURT CONSIDER A RULE 59 (e) MOTION, SUCH AN ORDER IS NOT REVIEWABLE BY THIS COURT WHERE THERE IS NO ASSERTION OR SHOWING OF AN ABUSE OF DISCRETION OF THE DISTRICT COURT . . . . .	9
CONCLUSION . . . . .	11

## INDEX OF CASES AND AUTHORITIES

### Cases:

- Erickson Tool Company v. Balas Collet Company, 277 F. Supp (D.C. Ohio 1967) . . . . .
- Farrar v. McCormick, 25 App. 3d 706, 102 Cal Rptr 190 (1972) . . . . .
- Gainey v. Brotherhood of Railroad & Steamship Clerks, 303 F.2d 716 (3d Cir. 1962). . . . .
- Greco V. Gentile, 88 U 255, 53 P.2d 1155 . . . . .
- Lavino v. Jamison, (9 Cir.), 230 F.2d 909 . . . . .
- Meehan v. Gulf Oil Corp., (C.A. Penn. 1976) 312 F.2d 737 . . . . .
- Nichols v. State, 554 P.2d 231 (Utah, 1976) . . . . .
- Sommerville v. Capitol Transit Company, 192 F.2d 413, 89 U.S. App. D.C. 343 (1951) . . . . .
- Spatz v. Mascone, 368 F. Supp 352 (W.D. Pa. 1973) . . . . .
- Trapp v. U.S., (C.A. Oklahoma 1949) 177 F.2d 1 . . . . .
- Utah State Employee Credit Union v. Anthony R. Riding, 469 P.2d 1, 24 Utah 2d 211 (1970) . . . . .
- Walker v. Bank of America National Trust & Savings Association, 268 F.2d 16 (C.A. Cal 1959) . . . . .

### STATUTES

- RULE 59 (e) UTAH RULES OF CIVIL PROCEDURE  
RULE 59 (e) FEDERAL RULES OF CIVIL PROCEDURE  
RULE 59 (e) FEDERAL RULES OF CIVIL PROCEDURE

### STATEMENT OF THE NATURE OF CASE

There is an action resulting from a Denial of a Motion to Alter or Amend Judgment.

### DISPOSITION IN LOWER COURT

The District Court denied a petition for a Writ of Mandamus to compel Murray City Court to forward to the District Court the transcript of a Small Claims Court proceeding on appeal. Thereafter the Appellant filed a motion to the District Court under Rule 59 (e) of the U.R.C.P. to alter or amend the Judgment. This Motion was denied by the District Court. From the order denying plaintiff's Motion to Alter or Amend Judgment, the plaintiff appealed.

### RELIEF SOUGHT ON APPEAL

Respondent seeks an order of this Court affirming the decision of the District Court in all respects.

### STATEMENT OF FACTS

On April 21, 1977 in the Small Claims Court of Murray City a hearing was held on the matter of the State of Utah v. Rose Marie Hume. On May 2nd, 1977, Judge L. H. Griffiths of the Small Claims Murray Court found in favor of the Plaintiff, State of Utah, and awarded Judgment against the Appellant in the amount

of \$175.00 plus \$8.00 Court Costs. On this date Respondent Court Clerk mailed the Notice of Judgment to Appellant. Then on the 7th day of July, 1977, the Appellant filed a Notice of Appeal in the Third District Court appealing the Judgment of the Small Claims Court of Murray City. Thereafter, on July 18, 1977, the Respondent Court Clerk sent a Notice to Appellant that would not forward the Notice of Appeal to the Third District Court for the reason that it had not been timely filed.

On August 16, 1977, the Appellant then filed a petition with the Third District Court for a Writ of Mandamus to compel the Respondent Court Clerk to forward the transcript of the final judgment in the case State of Utah vs. Rose Marie Hume to the District Court for appeal. On October 14, 1977, the District Court, after hearing on the matter, entered its order denying the petition for a Writ of Mandamus and ruled that the time for appeal from the Murray City Small Claims Court obviously had elapsed. On October 31, 1977, the Appellant then filed a Motion to Alter the Judgment pursuant to Rule 59 (e) of the Utah Rules of Civil Procedure. This Motion was also denied by the District Court. An Order entered December 22, 1977, ruling that the Appellant's Motion was not a proper procedure for the Appellant to pursue. Thereafter, the Appellant filed its Notice of Appeal to the Utah State Supreme Court from the Order of the District Court entered December 22, 1977.

## ARGUMENT

### POINT I

THE SOLE ISSUE PRESENTLY BEFORE THIS COURT IS WHETHER RULE 59 (e) IS THE PROPER PROCEDURE TO USE TO SECURE REVIEW OF THE ORDER DENYING APPELLANT'S PETITION FOR WRIT OF MANDAMUS.

Appellant in its brief cites several "Questions to be Decided". However, the first question cited by Appellant is the sole question at issue before this Court. The Notice of Appeal filed by Appellant states that she was appealing to this Court from the District Court's order denying Petitioner's Motion to Alter Judgment, dated December 21, 1977. This Order, entered December 22, 1977, stated simply that the Appellant's Motion to Alter Judgment was not the proper procedure for the Appellant to pursue and therefore denied the Motion.

Appellant proposes that several other issues or questions need to be decided by this Court. However, all of the other questions together with the substantial documentation and argument cited in connection therewith go to the merits of Appellant's Petition for Writ of Mandamus. None of the issues discussed therein concern the availability of the Rule 59 (e) procedure to secure review of the District Court Order denying Appellant's Petition for Writ of Mandamus.

Therefore the only question before this Court is the

propriety of the use of the Rule 59 (e) Motion to secure  
of the District Court's previous order and all other argu-  
contained in Appellant's brief are superfluous and not in

## POINT II

THE TRIAL COURT RULED CORRECTLY IN DENYING APPELLANT  
MOTION TO ALTER OR AMEND JUDGMENT.

## POINT A

RULE 59 (e) OF THE U.R.C.P., IS NOT AVAILABLE AS A  
TO ALLOW AGGRIEVED PARTIES TO REARGUE THE SAME ISSUES ARG  
PRIOR HEARINGS IN THE SAME COURT.

The Appellant in her Motion to Alter or Amend Judgment  
not introduce any new issues, evidence or argument that has  
been introduced at the prior hearing on her Petition for  
Mandamus. In filing the Motion to Alter or Amend the Judgment  
all that the Appellant had actually done was to ask the Court  
a Motion for a Rehearing to reconsider an unfavorable ruling  
a prior motion.

This Court has had occasion to rule directly on Motion  
Reconsider. In Utah State Employees Credit Union v. Anthony  
Riding, 469 P.2d 1, 24 Utah 2d 211, the aggrieved Defendant  
filed a Motion to Reconsider the Court's previous ruling.  
Court in discussing this issue stated, "We are unaware of



such motion under our rules," and stated further that "The motion to reconsider . . . the judgment is abortive under our Rules." Riding at P.2.

The Supreme Court of the State of California has also had opportunity to rule on precisely this same issue. In the case Farrar v. McCormick 25 Cal. App 3d 706, 102 Cal Rptr 190 (1972), the Court acknowledged that there was also no such rule or other authority for such a motion in the California jurisdiction by stating as follows:

We now weigh plaintiff's appeal from the order denying his Motion to Reconsider. No statutory or other authority exists for a bare "Motion to Reconsider."

"Here so far as can be told, Plaintiff merely renewed his previous opposition to defend its motion to dismiss, asking the Court to think about its ruling once again." Farrar at P.193.

Such is precisely the case now before this Court. All the Appellant tried to achieve through the Rule 59 (e) Motion was to simply ask the Court to think about its ruling once more, presenting no new evidence, facts or issues to be decided by the Court.

Appellant cites several cases as authority for allowing the use of the 59 (e) Motion to allow her to have a second chance to argue her Motion. However, her cases can be easily distinguished from the instant case. In the case cited by the Appellant, Nichols v. State, 554 P.2d 231 (Utah 1976), the Appellant had filed the 59 (e) Motion in an effort to have the

Court amend an order rendered some seven months prior which missed the Plaintiff's complaint and to allow the Appellant file an amended Complaint. That case is different from the instant case in that in Nichols the Appellant was seeking to amend the Judgment entered by the District Court previously to allow them to introduce new issues raised in an Amended Complaint. This then lead to this Court's conclusion that "after an order of dismissal, the Plaintiff must move under rules 59 (e) or 60 to reopen the Judgment." Nichols at P.232. The purpose in amending the Judgment, however, would have been to allow the Plaintiff to file an Amended Complaint.

The Appellant also cites the cases of Spatz v. Masc 368 F Supp. 352 and Gainey v. Brotherhood of Railroad and Clerks, 303 F. 2d 716, as further authority to allow the Plaintiff the Rule 59 (e) Motion. Both of those cases, however, were decided by a Federal Court applying the local procedural rules which in those cases, were the Pennsylvania Rules of Procedure which allow Motions for Reconsideration and Reargument. The Court in both of these cases held in affect that since the Pennsylvania local rules allowed a "Motion for Reconsideration and Reargument" they would construe the Federal Rule 59 (e) to be substantially the same rule. This argument, however, could not work in this jurisdiction, where this Court was held in the instant case that there simply is no Motion to Reconsider or Reargument a case in this jurisdiction.

POINT B

THE RULE 59 (e) MOTION TO ALTER OR AMEND JUDGMENT SHOULD BE USED ONLY TO ALTER OR AMEND A JUDGMENT, NOT TO APPEAL A JUDGMENT.

This Court is urged to adopt an interpretation of the Rule 59 (e) Motion that it should be used only to Alter or Amend a Judgment, exactly as the rule reads in the Rules of Civil Procedure. It should not be used as a method of appeal from a judgment of the District Court. That authority lies within the sole province of this Court. Rule 59 (e) of the Utah Rules of Civil Procedure is identical to the Federal Rules of Civil Procedure and therefore discussions in Federal jurisdictions considering Rule 59 (e) are demonstrative of the interpretation which this Court is urged to place upon the Rule 59 (e) Motion.

The Federal District Court of Ohio arrived at exactly the conclusion urged upon this Court in Erickson Tool Co. v. Balas Collet Co., 277 F Supp 266 (D.C. Ohio, 1967).

Plaintiff has also moved pursuant to rule 59 (e) of the Federal Rules of Procedure for alteration or amendment of the Court's Judgment. Plaintiff has not set out the alterations or amendments it desires. It appears, however, from a glance at the motion and from the arguments contained in the brief of counsel accompanying the motion, that Plaintiff is presenting substantially the same contentions that were made in support of its Rule 52 (b) Motion, and that Plaintiff is seeking a complete reversal of the Court's judgment. Such is not the purpose of the Rules relied upon. Erickson at P. 234.

Based upon this argument, the Ohio District Court denied the Plaintiff's motion for alteration or amendment judgment.

From this case emerge two principles concerning the Rule 59 (e) Motion. First, it should not be used to simply reargue substantially the same contentions that are made in an earlier motion. Second, that the 59 (e) Motion should be used only to Alter or Amend the judgment, not to appeal a previous ruling. Sound public policy certainly dictates that such an interpretation of the Rules should be adopted by this Court. A multiplicity of problems arise if this Court were to allow the Rule 59 (e) Motion to be used simply to reargue the same issues a second time. This Court should give finality to the District Court's decisions and thereby prevent a substantial waste of District Courts' time by requiring them to hear twice even issues already made and ruled upon. Therefore, this Court is urged to rule that the Rule 59 (e) Motion is to be used to Alter a judgment not to appeal from one.

### POINT III

ASSUMING ARGUENDO THE RIGHT TO HAVE THE DISTRICT COURT CONSIDER A RULE 59 (e) MOTION, SUCH AN ORDER IS NOT REVIEWABLE BY THIS COURT WHERE THERE IS NO ASSERTION OR SHOWING OF AN ABUSE OF DISCRETION OF THE DISTRICT COURT.

Assuming arguendo that this Court were to hold that the Rule 59 (e) Motion was available to the Appellant to secure review of the District Court's previous ruling, this Court cannot review the district Court's decision denying appellant's Motion to Alter or Amend without a showing or at least an assertion that there was an abuse of discretion by the District Court. The various State Supreme Courts and the Federal Courts throughout the country have had countless opportunities to rule on Rule 59 (a) Motions for New Trial. These Courts have uniformly held that orders denying motions for new trial are not reviewable when the trial judge's discretion is exercised in accordance with accepted legal standards. Meehan v. Gulf Oil Corp., (C.A. Penn. 1963) 312 F. 2d 737. All Federal Courts are in accord that, "a Motion for New Trial is addressed to the sound judicial discretion of the trial court, and its action thereon will not be disturbed on appeal unless such action constitutes a manifest abuse of discretion." Trapp v. U.S. (C.A. Oklahoma, 1949) 177 F.2d 1.

In determining whether or not there has been an abuse of

discretion, the Courts have outlined certain guidelines.

Abuse of discretion in granting or denying a new trial is ordinarily established by a showing that the new trial court acted without authority, for an erroneous reason, or arbitrarily and without justification in the light of all the circumstances as shown by review of the record as a whole. Sommer v. Capitol Transit Company. 192 F. 2d. 413, 89 U.S. D.C. 343 (1951).

This so-called rule of "Abuse of Discretion" has long been the established rule of law in this State. In Greco v. General Motors, 88 U 255, 53 P.2d 1155, this Court stated:

"Motion for New Trial on ground of newly discovered evidence was a matter wholly within the trial court's discretion as long as that discretion was not abused the Supreme Court could not interfere". (emphasis added) Greco at 1156.

If this Court should hold that the 59 (e) Motion was proper then it is urged that this Court adopt a similar standard for appeals from orders denying Rule 59 (e) Motions. Authority for such a standard can be found in the case Walker v. Bank of National Trust & Savings Association 268 F.2d 16 (C.A. 9).

If a motion for a new trial is denied, the order of denial may be reviewed only for manifest abuse of discretion. Lavino v. Jamison, (9 Cir.), 230 F.2d 909. We think it follows, or at least is sufficiently analogous to reach the conclusion that an Order denying the motion made under Rule 59 (e) to Alter or Amend the Judgment is appealable, but only on the question of whether there has been a manifest abuse of discretion. Walker at 16.

In the instant case, there has been no assertion by Appellant that there was an abuse of discretion committed by the District Court Judge. Examination of the Court proceedings

District Court further leads to the conclusion that such claim simply cannot be made in this case. There is no evidence of the District Court acting without authority, for an erroneous reason, arbitrarily, or without justification; and in fact the trial court acted at all times within the proper exercise of all judicial discretion. Therefore, this Court should rule that if the 59 (e) Motion were available to the Appellant, the denial of this Motion is not reviewable by this Court by reason of there having been no claim nor any evidence of an abuse of discretion by the District Court.

#### CONCLUSION

The Appellant has raised several questions to be decided in her brief. However, the only question at issue before this Court is the availability of the Rule 59 (e) Motion to secure review of the District Court's previous ruling.

Aggrieved parties simply should not be allowed to use the Rule 59 (e) Motion as an excuse to reargue an unfavorable decision when no new issues are asserted or raised. The Rule 59 (e) Motion should be allowed to be used only to do exactly as it states: to alter or amend a judgment, not to appeal from one.

Aggrieved parties cannot be allowed to continually fish for methods and arguments for reconsideration but should be required to raise all points and arguments at the time of the initial hearing. Thus parties cannot be allowed to continually

attack every judgment of the District Court. The Rules of Procedure were created to give finality to Judgments and Appellate conduct in this case shows a clear intent to disregard those. Sound public policy dictates that appeals from District Judgments are the sole province of this Court and therefore the District Court did not err in denying Appellant's Motion to Alter or Amend its Judgment.

Further, even conceding that the Rule 59 (e) Motion was not available in this case, the District Court's denial of that Motion is not appealable where there was no showing or assumption of an abuse of discretion by the District Court.

Accordingly, this Court is urged to affirm the District Court's order in all respects.

DATED this 13<sup>th</sup> day of May, 1978.

Respectfully Submitted,

/s/  
Dale R. Kent

CERTIFICATE OF MAILING

I do hereby certify that I mailed a true and correct copy of the foregoing Brief to Lucy Billings, 352 Denver Street, Lake City, Utah 84111.

/s/