

1978

Rose Marie Hume v. Small Claims Court of Murray City : Appellant's Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

ROSE MARIE HUME, :
Plaintiff/Appellant, :
v. :

SMALL CLAIMS COURT OF : Case No. 15
MURRAY CITY, :
Defendant/Respondent. :

APPELLANT'S REPLY BRIEF

Appeal from the Third Judicial District Court
The Honorable David S. DeLeon

Witness my hand and seal of the Court
this 15th day of May, 1984.
At Salt Lake City, Utah.
Honorable David S. DeLeon
Judge of the Third Judicial District Court

H. CRAIG HALL
Murray City Attorney

DALE R. KENT
Assistant City Attorney

5461 South State Street
Murray, Utah 84107

Attorneys for Defendant/Respondent

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IN THE SUPREME COURT
OF THE STATE OF UTAH

ROSE MARIE HUME,	:	
Plaintiff/Appellant,	:	
v.	:	
SMALL CLAIMS COURT OF	:	Case No. 15634
MURRAY CITY,	:	
Defendant/Respondent.	:	

APPELLANT'S REPLY BRIEF

PRELIMINARY STATEMENT

Appellant is now before this Court seeking to be allowed to pursue her right to appeal to the District Court from a small claims judgment entered against her. The Respondent City Court that entered the small claims judgment refuses to forward the record to the District Court on the ground that Appellant did not appeal within five days after entry of the judgment. The reason Appellant did not timely appeal is that she did not receive notice that the judgment had been entered until after the five-day period had elapsed. Respondent takes the indefensible position that the five-day period began to run when the judgment was entered notwithstanding that the record is devoid of sufficient evidence that Respondent gave her notice of the judgment's entry.

Respondent's Brief wholly ignores the merits of Appellant's claim to her right of appeal and, instead, asserts that Appellant may not now be heard on the merits because of a procedural technicality. On this procedural point Respondent is incorrect; Appellant's remaining points stand unanswered.

I APPELLANT'S MOTION TO ALTER JUDGMENT
 UNDER RULE 59(e) WAS PROPER PROCEDURE.

Appellant petitioned the District Court for a Writ of Mandamus compelling Respondent City Court to forward its record for appeal. Upon dismissal of the Petition, Appellant moved the District Court pursuant to Rule 59(e) of the Utah Rules of Civil Procedure to alter its judgment -- essentially, to reconsider its decision.

In moving the District Court to alter its judgment, Appellant presented further legal arguments as to why her Petition should have been granted, in view of the deficiencies in Respondent's factual presentation at the hearing on the Petition. Appellant attempted to conserve judicial resources by exhausting every available avenue for relief from the District Court before appealing to this Court.

Utah Rule of Civil Procedure 59(e) is identical to Federal Rule of Civil Procedure 59(e). In his discussion of Federal Rule 59(e), Professor Moore flatly states that a

Motion to Alter pursuant to Rule 59(e) is a proper means to seek reconsideration or reversal of a judgment. Moore, thus, directly contradicts the sole argument in Respondent's brief. 6A Moore's Federal Practice ¶59.13 at 59-250 (1974). The cases cited in Appellant's original Brief support Moore's interpretation of the Rule. See also Browder v. Director, Ill. Dept. of Corrections, ____ U.S. ____, 54 L.Ed. 2d 521, 529 n.5 (1978).

The few cases cited in Respondent's Brief do not refute Appellant's position that a Rule 59(e) motion is a proper means to seek reconsideration of a judgment. In Utah State Employees Credit Union v. Riding, 24 Utah 2d 211, 469 P.2d 1 (1970), a disappointed litigant moved the district court, presumably pursuant to Rule 59(e), to vacate a judgment. The court refused. The litigant then moved the court again under Rule 59(e) to reconsider its refusal to vacate its judgment. In essence, the litigant brought two successive motions seeking reconsideration of a judgment. Accordingly, Riding stands out for the very reasonable proposition that a motion to reconsider a motion to reconsider is improper. Riding prevents an endless string of Rule 59(e) motions; it does not prohibit one Rule 59(e) motion.

Erickson Tool Co. v. Balas Cullet Co., 277 F.Supp.

226 (N.D. Ohio 1967), Respondent's only other principal case, also stands for the proposition that a party is entitled only to one motion to reconsider. In Erickson Tool, an unsuccessful party moved the court to reconsider its findings of fact and make contrary findings instead. The court heard the motion but decided to retain its findings and denied the motion. The party then further moved the court, pursuant to Rule 59(e), to reconsider its findings a second time. The court's refusal to entertain the additional motion was merely another application of the rule that a motion to reconsider the denial of a motion to reconsider is improper.

Neither Riding nor Erickson Tool is relevant to the present case. Appellant's cases and secondary authority that her Rule 59(e) motion was procedurally proper stand effectively uncontradicted.

II APPELLANT PROPERLY RAISES BEFORE THIS COURT
ALL ARGUMENTS WHY HER RULE 59(e) MOTION
SHOULD HAVE BEEN GRANTED.

In her original Brief, Appellant pointed out the District Court's error in rebuffing her Rule 59(e) motion as procedurally improper. Appellant then addressed the substantive reasons why the District Court should have granted her Petition for a Writ of Mandamus. Respondent incorrectly

argues that only the procedural question -- and not the substantive issues -- are now before this Court.

According to Professor Moore, the effect of the denial of a Rule 59(e) motion is to restore the finality of the judgment sought to be altered and restart the appeal period for that judgment. 6A Moore's Federal Practice ¶ 59.13 at 59-256 (1974). Appellant has timely appealed from the denial of her Rule 59(e) motion, placing before this Court all issues -- substantive as well as procedural -- relative to why her motion should have been granted. Appellant's procedural point is that the Rule 59(e) motion should have been heard; her substantive point is that it should have been granted. The substantive issues are the same that would be before this Court had an appeal been taken directly from the denial of Appellant's Petition for Writ of Mandamus. It is clear that a District Court's denial of a Petition for Writ of Mandamus may be the subject of an appeal to this Court. See, e.g., Archer v. Utah State Land Board, 15 Utah 2d 321, 392 P.2d 622 (1964).

The question before this Court, then, is whether the District Court's decision is correct, not just whether the procedural reason for the decision is correct. All matters raised in the District Court, not just those upon

which the District Court may have based its decision, are subject to appellate review. 5 Am. Jur. 2d, Appeal and Error §726 at n.18 (1962). Both the procedural and substantive issues are therefore before this Court, and Appellant properly addressed them in her original brief.

III IF THIS COURT SHOULD DECIDE ONLY THE PROCEDURAL ISSUE, IT SHOULD NEVERTHELESS GUIDE THE DISTRICT COURT IN CONSIDERING ALL THE SUBSTANTIVE ISSUES THAT WILL BE RAISED UPON REMAND.

Appellant makes one further point in the event that this Court decides the procedural issue in Appellant's favor, but remands the case to the District Court for consideration of the substantive issues. This Court has consistently held that when it remands a case, its opinion should guide the lower court on any issues of law that will have to be considered. Salt Lake County v. Salt Lake City, 570 P.2d 119, 121 (Utah 1977); LeGrand Johnson Corp. v. Peterson, 18 Utah 2d 260, 420 P.2d 615, 617 (1966). This Court's opinion, therefore, should at least address the substantive issues even if they are not finally decided.

CONCLUSION

The authority is uncontradicted that Appellant's Motion to Alter pursuant to Rule 59(e) was procedurally proper. The District Court erred when it denied Appellant's motion on the ground that it was procedurally improper.

This Court should reverse the District Court both on the ground of procedure and on the merits. The merits involve important issues of law, based on constitutional, statutory and common law principles. This Court should decide them based on the authority that Appellant has presented in her original Brief. This Court need not leave these important issues to be decided by the District Court and to be the subject of another appeal.

Respectfully submitted,

Lucy Billings

UTAH LEGAL SERVICES, INC.
By LUCY BILLINGS
Attorney for Plaintiff/Appell

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that I mailed two true and correct copies of the foregoing Appellant's Reply Brief to H. Craig Hall, Murray City Attorney, 5461 South State Street, Murray, Utah, 84107 and Dale R. Kent, Assistant City Attorney, 5461 South State Street, Murray, Utah 84107.

DATED this 20th day of October, 1978.

Lucy Billings