

1978

Royal Nordell Allred v. Mark E. Cook et al : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Don R. Stringham; Robert L. Nosay; Robert C. Fillerup; Alan Larson; Attorneys for Respondents; Gerald E. Nielson; Attorney for Appellant;

Recommended Citation

Brief of Respondent, *Allred v. Cook*, No. 15688 (Utah Supreme Court, 1978).
https://digitalcommons.law.byu.edu/uofu_sc2/1151

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT
STATE OF UTAH

ROYAL NORDELL ALLRED,
Plaintiff-Appellant,
vs.
MARK E. COOK, BRYANT MADSEN,
KENNETH E. STRATE and TOM
MOWER,
Defendants-Respondents.

CASE NO.

BRIEF OF RESPONDENT MOWER

Appeal from a Judgment of the District Court
of Sanpete County
Honorable Don V. Tibbs, Judge

Don R. Strong
197 South Main
Springville,
Attorney for
Tom Mower

Gerald E. Nielson
1795 W 2300 So.
Salt Lake City, Utah 84119
Attorney for Appellant

Robert L. Moss
55 East Center
Provo, Utah 84601
Attorney for
Mark E. Cook

Alan Larson
700 Continental Bank Bldg.
Salt Lake City, Utah 84101
Attorney for Respondent
Bryant Madsen

Robert C. Fillerus
120 East 300 North
Provo, Utah 84601
Attorney for Respondent
Kenneth Strate

FILE

JUN 22 1979

IN THE SUPREME COURT

STATE OF UTAH

ROYAL NORDELL ALLRED,)	
)	
Plaintiff-Appellant,)	
)	
vs.)	CASE NO. 15688
)	
MARK E. COOK, BRYANT MADSEN,)	
KENNETH E. STRATE and TOM)	
MOWER,)	
)	
Defendants-Respondents.)	
)	

BRIEF OF RESPONDENT MOWER

Appeal from a Judgment of the District Court
of Sanpete County
Honorable Don V. Tibbs, Judge

Don R. Strong
197 South Main
Springville, Utah 84663
Attorney for Respondent
Tom Mower

Gerald E. Nielson
1795 W 2300 So.
Salt Lake City, Utah 84119
Attorney for Appellant

Robert L. Moody
55 East Center Street
Provo, Utah 84601
Attorney for Respondent
Mark E. Cook

Alan Larson
700 Continental Bank Bldg.
Salt Lake City, Utah 84101
Attorney for Respondent
Bryant Madsen

Robert C. Fillerup
120 East 300 North
Provo, Utah 84601
Attorney for Respondent
Kenneth Strate

TABLE OF CONTENTS

	Page
NATURE OF THE CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	1
STATEMENT OF FACTS	1
ARGUMENT	2
POINT I - THE COMPLAINT DOES NOT STATE A CAUSE OF ACTION AGAINST RESPONDENT TOM MOWER	2
POINT II - APPELLANT DOES NOT MAKE ANY CLAIM IN HIS BRIEF THAT THE COMPLAINT WAS NOT PROPERLY DISMISSED AS AGAINST RESPONDENT TOM MOWER	3
CONCLUSION	4

IN THE SUPREME COURT
STATE OF UTAH

ROYAL NORDELL ALLRED,)	
)	
Plaintiff-Appellant,)	
)	
vs.)	CASE NO. 15688
)	
MARK E. COOK, BRYANT MADSEN,)	
KENNETH E. STRATE and TOM)	
MOWER,)	
)	
Defendants-Respondents.)	
)	

NATURE OF THE CASE

The case is an action for slander.

DISPOSITION IN THE LOWER COURT

The complaint was dismissed against all defendants by an order of the District Court dated January 24, 1978.

RELIEF SOUGHT ON APPEAL

Respondent, Tom Mower, seeks to have the dismissal entered by the District Court affirmed.

STATEMENT OF FACTS

This action was brought by plaintiff who at the time of the alleged incidents which are the subject hereof was Superintendent of the North Sanpete School District. Defendants, Mark E. Cook, Bryant Madsen, and Kenneth E. Strate were members of the Board of Education of that school district. Defendant, Tom Mower, was a citizen, resident, and

voter of the school district. Following service of the summons and complaint in this matter, each defendant filed a motion to dismiss. All of such motions were granted and plaintiff appealed.

ARGUMENT

POINT I - THE COMPLAINT DOES NOT STATE A CAUSE OF ACTION AGAINST RESPONDENT, TOM MOWER.

The proper test in evaluating a complaint which is challenged by a motion to dismiss for failure to state a claim is to treat, for purposes of the motion only, all allegations of the complaint as true and then to determine whether plaintiff could have a right of recovery against defendant under those facts. That was precisely the test applied by the District Court in dismissing the complaint herein.

The only allegation in the complaint against respondent, Tom Mower, is found in paragraph 2 thereof. After generally alleging that the defendants, including Mr. Mower, desired to remove plaintiff from his position as Superintendent and communicated their desire and intention to do so to others, plaintiff specifically alleges that "...the defendants...with the assistance of the defendant Mower, sought and obtained election to membership of the School Board of the North Sanpete School District." There are no other allegations concerning the defendant or other

portion of the complaint. All other portions of the complaint are directed toward the other three defendants who were members of the school board. Plaintiff does not allege that any act, other than those specified in paragraph 2, was done by Mr. Mower.

In applying the test given above to the allegations made in the complaint concerning acts of Tom Mower, it is clear that the complaint as against him was properly dismissed for failure to state a claim. Assuming that Mr. Mower did desire that plaintiff be removed as Superintendent, that he did communicate such a desire to others, and that he did assist the other defendants in being elected to the school board, he has not committed any act which would allow recovery against him. Any citizen has a constitutional right to desire to have a public official removed and to communicate that desire to others. He also certainly has a right to assist whomever he desires to win an election to public office. Without those rights, our system of government could not possibly function as we intend it to do. The allegations of the complaint are only that Mr. Mower exercised the constitutional rights given to every citizen. There is no allegation that he did so wrongfully.

POINT II - APPELLANT DOES NOT MAKE ANY CLAIM IN HIS BRIEF THAT THE COMPLAINT WAS NOT PROPERLY DISMISSED AS AGAINST

RESPONDENT, TOM MOWER.

A reading of appellant's brief filed here in reveals no mention of respondent, Tom Mower, nor of any act by him. Appellant's discussion of the facts of the case as alleged in the complaint does not even mention paragraph 2 of the complaint. All of the alleged facts which are discussed concern the actions and statements of the other three defendants. Furthermore, none of the argument in appellant's brief is directed toward Mr. Mower. Point I concerns statements made by the defendants. Since there is no allegation that any statements were made by Mr. Mower, this argument cannot refer to him. Point II concerns the question of defendants' immunity for their statements. No claim of immunity is made for Mr. Mower. This argument, likewise, is directed to the other three defendants.

CONCLUSION

Plaintiff's complaint was properly dismissed as against respondent, Tom Mower. All actions of Mr. Mower which are alleged in the complaint would not give plaintiff a right of recovery against him. In addition, appellant has not challenged in his brief the dismissal of the complaint against Mr. Mower. For that reason alone, the action of the District Court should be affirmed.

Respectfully submitted,



Don B. Henson
Attorney at Law, Salt Lake City, Utah