

1979

Kim L. Norris et al v. A. M. Anderson : Petition Response

Utah Supreme Court

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Recommended Citation

Response to Petition for Rehearing, *Norris v. Anderson*, No. 15718 (Utah Supreme Court, 1979).
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IN THE SUPREME COURT
OF THE STATE OF UTAH

KIM L. NORRIS, LEX R. NORRIS, et al.,

Plaintiffs-Appellants,

-vs-

A. M. ANDERSON and NORA S. ANDERSON,
husband and wife,

Defendants-Respondents.

CASE NO. 15718

REPLY TO APPELLANTS' PETITION FOR REHEARING OF DECISION
RENDERED BY THE SUPREME COURT OF THE STATE OF UTAH ON
JANUARY 22, 1979

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FILED

FEB 15 1979

Utah Supreme Court, Utah

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Plaintiffs-Appellants,)	
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CASE NO. 15718

REPLY TO APPELLANTS' PETITION FOR REHEARING

Reply to Appellants' Petition for Rehearing of the decision rendered in the above captioned matter on January 22, 1979.

Respondents' Reply to Appellants' Petition is submitted pursuant to the provisions of Rule 76 (e) (2), Utah Rules of Civil Procedure, and respectfully represents:

1. The Court properly construed and accurately stated all relevant facts material to its decision.
2. The Court correctly applied the law to the facts stated and rendered a proper decision.
3. Appellants' Petition for a Rehearing amounts to a re-argument of the facts and citations already fully presented to the Court.

Respectfully submitted,



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CASES CITED

BURTON v. COOMBS (Utah), 557 P.2d 148 (1976)

IN THE SUPREME COURT
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husband and wife,)

Defendants-Respondents.)

CASE NO. 15718

RESPONDENTS' REPLY TO APPELLANTS'
PETITION FOR REHEARING

NATURE OF THE CASE

Respondents incorporate the Nature of the Case as set forth in Respondents' Brief on Appeal.

DISPOSITION IN LOWER COURT

Respondents incorporate the Disposition in Lower Court as set forth in Respondents' Brief on Appeal.

RELIEF SOUGHT ON APPEAL

Respondents incorporate the Relief Sought on Appeal as set forth in Respondents' Brief on Appeal.

STATEMENT OF FACTS

The Statement of Facts is as set out in full in Respondents' original Brief on Appeal.

DISPOSITION ON APPEAL

This Court rendered a Decision on January 22, 1979, wherein the Decision of the Trial Court was affirmed.

ARGUMENT

POINT I

THE COURT PROPERLY AND ACCURATELY STATED ALL RELEVANT FACTS MATERIAL TO ITS DECISION.

Three technical inaccuracies may exist in the language employed in the Court's PER CURIAM Decision rendered January 22, 1979, but none of them is material to the validity of that Decision nor inimical to it, and all of them were called to the attention of personnel in the office of the Clerk of the Court by the Respondents immediately after the Decision was published.

The first technical inaccuracy appears in the last sentence of the first paragraph of the Decision, as follows:

"The salesmen, Taylor and Hall, represented Norris."

In truth and in fact, the salesman, Taylor, alone represented Norris. (Exhibit 2) The salesman, Hall, represented the Respondents and was their listing agent. (Exhibit 1; TR., pp. 116)

The second technical inaccuracy appears in the sixth sentence of the second paragraph of the Decision as follows:

"On January 17th Taylor called Anderson and said that Norris can do no more".

The substance of this statement is entirely accurate and factual. The inaccuracy occurs only in the fact that on

the date stated the call was initially made by Hall to Taylor

or by Taylor to Hall, and in the course of the conversation, Hall told Taylor that the Respondents would not modify their counter-offer, as Appellants had requested, and in response, Taylor told Hall "the Norris brothers can do no more", which message, Hall then communicated to the Respondents, Anderson. Mr. Anderson then informed Hall that the counter-offer had expired and that the deal was off. (TR., pp. 122-124, 18-20) The statement "the Norris brothers can do no more" was made by Taylor, on behalf of Norris brothers, to the Respondents, Anderson, through the Respondents' representative, Hall, and was communicated by Hall to the Respondents. The slight inaccuracy in the statement that "Taylor called Anderson" is not at all material. The fact remains that Taylor communicated his clients' rejection to the Respondents, through Hall.

The third technical inaccuracy appears in the ninth sentence of the second paragraph of the decision, as follows:

"On January 19th, Taylor approached Anderson again with another offer, this time from Boley."

The only inaccuracy in this statement lies in the fact that it was Hall rather than Taylor who approached Anderson on January 19th with an offer from Boley. (Exhibit 11; TR., pp. 130-133, 22, 37, 101, 126, 135) This fact, when accurately stated, does no violence whatever to the Court's Decision and is immaterial thereto.

The Court properly construed the pertinent facts and found that the Appellants firmly rejected the counter-offer of

can do no more" and the Respondents acknowledged and accepted that decision on the same date. This construction fully supports the Court's conclusion that the Respondents' counter-offer was terminated by the Appellants' rejection.

POINT II

THE COURT CORRECTLY APPLIED THE LAW TO THE FACTS STATED AND RENDERED A PROPER DECISION.

Point II of Appellants' Argument is self-defeating. In its PER CURIAM Decision, the Court said:

"On January 15th Taylor and Hall met with Anderson and tried to get him to accept the Norris conditions, but Anderson refused, insisting on the terms of his seven-point counter-offer "exactly as written", pointing out that Norris still had one day to accept his seven-point counter-offer."

The critical fact which cannot be gainsaid or denied, but which Appellants in their Petition choose to over-look or ignore, is that even if left intact by the conversation of January 15th, set out above, the Respondents' counter-offer was not under any viable interpretation, ever extended beyond its original expiration date, "exactly as written". Further, even when that date, January 16th, is extended to January 17th to allow for the exclusion of Sunday, pursuant to statute, the fact remains indisputable that Appellants not only did not accept the counter-offer, unconditionally, prior to its expiration on January 17th, but, to the contrary, they expressly rejected it with the words "the Norris brothers can do no more." This leaves no room for any element of conjecture on the question of absolute termination of the Respondents' counter-offer and lays permanently at rest any claim that the

negotiations between the Appellants and the Respondents resulted in a meeting of the minds and the formation of an enforceable contract. The Court correctly followed the rule properly laid down in BURTON v. COOMBS (Utah) 557 P. 2d 148 (1976).

POINT III

APPELLANTS' PETITION FOR A REHEARING AMOUNTS TO A RE-ARGUMENT OF THE FACTS AND CITATIONS ALREADY FULLY PRESENTED TO THE COURT.

In CUMMINGS v. NIELSON, 42 U 157, 129 P 619, 624, this Court dealt with an application for a rehearing of its decision and made clear its position with respect to such applications by employing the following language:

To make an application for a rehearing is a matter of right, and we have no desire to discourage the practice of filing Petitions for Rehearings in proper cases. When this Court, however, has considered and decided all of the material questions involved in a case, a rehearing should not be applied for, unless we have misconstrued or over-looked some material fact or facts, or have over-looked some statute or decision which may affect the result, or that we have based the decision on some wrong principle of law, or have misapplied or over-looked something which materially affects the result. In this case, nothing was done or attempted by counsel except to re-argue the very propositions we had fully considered and decided. If we should write opinions on all the Petitions for Rehearings filed, we would have to devote a very large portion of our time in answering counsel's contentions a second time; and if we should grant rehearings because they are demanded, we should do nothing else save to write and re-write opinions in a few cases.

As noted herein, none of the technical inaccuracies in the Court's Statement of Facts affects the propriety or validity of the Court's Decision. On the contrary, a completely accurate statement of the facts strengthens and bolsters the

any material fact or facts in its determination of the case, and no new decision or statute which would alter the Court's Decision in this case has been advanced by the Appellants in their Petition for Rehearing.

In the Utah case of FERRY v. STREET, 9 P 299, the Court **set out the three grounds upon which a re-hearing would be allowed, as follows:**

"We must be convinced either that (1) the Court failed to consider some material points in the case or (2) that some matter has been discovered which was unknown when the case was argued or (3) that it erred in its conclusion."

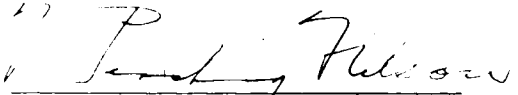
All the material issues raised in the Appellants' Petition for Rehearing were thoroughly discussed and argued at the initial hearing. Any further consideration of these issues would constitute a re-argument of the same propositions that the Court has already considered and decided. The only issues raised by the Appellants in their Petition relate to minor factual statements which are immaterial to the Court's Decision, and, as noted above, a correct statement of such facts tends to strengthen rather than to impair that Decision. The Appellants have not brought themselves within any of the three situations justifying a rehearing as announced in FERRY v. STREET.

CONCLUSION

The Court did not err in its construction of the material facts and in its application of the law thereto. The Court's Decision is fully supported by the evidence and any rehearing would amount to nothing more than a re-argument of the issues

already considered and decided in the original hearing. The Appellants' Petition for Rehearing should be denied.

Respectfully submitted



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MAILED a copy of the foregoing Reply to Appellants' Petition for Rehearing to S. REX LEWIS, HOWARD, LEWIS & PETERSEN, Attorneys for Plaintiffs-Appellants, 120 East 300 North, Provo, Utah 84601, this 14 day of February, 1979.


Secretary