

1950

T. J. Bryant v. Deseret News Publishing Co. : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * *

T. J. BRYANT,

Appellant,

vs.

No. 7556

DESERET NEWS PUBLISHING
COMPANY, A Corporation,

Respondent

* * * * *

BRIEF OF APPELLANT

* * * * *

WILFORD W. KIRTON, JR.
Attorney for Appellant

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I N D E X

STATEMENT OF FACTS.	Page 1
STATEMENT OF POINTS.	5
ARGUMENT.	6

1. Trial court erred in resting it's decision upon a Finding:

"That the said W. F. Bailey was the father of Frank D. Bailey, an employee of the Deseret News and lived separate and apart from him being more than 21 years of age, married and living with his wife and children in their own home and in no way dependant upon his father. . . 6

2. Trial court erred in concluding:

"That the said W. F. Bailey was not a member of the immediate family of his son Frank D. Bailey, an employee of the Deseret News and was therefore not inelible to compete in the "Giant Quarterback Contest, Class A" under the rules of said contest. . . . 6

3. Trial court erred in concluding:

"That the plaintiff is not entitled to recover the sum of \$2,967.50 from the defendant or any part thereof and that said complaint be dismissed. 6

4. Trial court erred in its judgment dismissing plaintiff's complaint. . . . 6

INDEX OF AUTHORITIES

42 C.J.S. 387.	8
12 Am Jur Sec. 250.	13
12 Am Jur Sec. 252.	14
Danielson v. Wilson 73 Ill App 287.	7
Warner v. Rice 8 A. 84.	7
Norwegian etc. v. Wilson 176 Ill 94.	7
Davin v. Davin 99 N.Y.S. 1012.	7
Calton v. Knights etc.	7

STATE EX NEE Veeder v. State etc.	9
People v. Lavender 31 F 2d 516.	9
Continental Roll v. Dept of Treas.	10
Em. Liability etc. v. Light Co.	10
Spencer v. Spencer Paige 159.	10
Whelan v. Reilly 3 W. Va. 597.	10
In re Bennett's Estate 66 F 370.	11

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IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * *

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Appellant,

vs.

DESERT NEWS PUBLISHING
COMPANY, A corporation,

Respondent, ((

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APPELLANT'S BRIEF

* * * * *

Statement of facts

The facts are simple and without dispute. Defendant publishes a leading intermountain newspaper with its principal place of business in Salt Lake City, Utah. Prior to the 1949 fall High School and College football season, defendant extensively advertized various football prediction contests it proposed to hold in connection with it's

intensive subscription promotion campaign of the year. One of these contests, advertised as it's "Giant Quarterback Contest, Class A" offered various important prizes to contest winners. Defendant extensively published it's list of prizes and rules of this contest, which were as follows.

GIANT QUARTERBACK CONTEST

Weekly Prizes

Class A

Two new 6-month Deseret News subscriptions needed to qualify, Select football game winners and exact score of headline,

First Prize \$250 Third Prize \$25

Second Prize \$50 Five Prizes \$10

Fifteen Prizes \$5

Period Grand Prizes

Selecting most number of headline games in each three week period.

Grand Prize New Automobile

CONTEST RULES

From the list of 20 games, predict the correct outcome of as many as possible and indicate the exact score of headline game. Reason for exact score prediction must be given to be eligible for any awards.. Contest is divided into two classes, "A" and "B".

CLASS A

Each week contestant selecting most number of winners--\$250, second most--\$50; third most--\$25; the 5 persons next highest, \$10 each and the 15 persons selecting the next highest, \$5 each in cash. Class A of the Giant Quarterback Club will be divided into three periods:

Sept 26 to Oct. 14; Oct 17 to Nov. 4 and Nov. 7 to Nov. 24.

Contestant selecting the exact score of the most number of headline games during each period will receive a new automobile. To be eligible for a period prize a contestant must submit a letter of notification to the Deseret News contest editor listing the number of headline games in which he has correctly selected the scores.

Deadline for receipt of this statement for the first period is midnight, Oct. 22; second period, midnight, Nov. 12 and third period, midnight, Dec. 3. All persons who fail to send in the notification by these deadlines are disqualified for period prizes.

In the event of ties, contestants giving the most logical reason for prediction of headline game will be adjudged winners. Reasons for score prediction must be given to be eligible for any award.

Two new six-month subscriptions to the Deseret News must be sub-mitted with a contestant's first entry to join the contest at any time. Contestant then becomes eligible to win any of the weekly and period prizes during the entire contest period. For every additional new six-month subscription to the Deseret News, a contestant may send in one additional entry each week. . . .

Contests are open to anyone except employees of the Deseret News and their families. . . .

Before the begining date of the Second Period of this "Giant Quarterback Contest, Class A".

Plaintiff secured qualifying subscriptions,

turned them in to defendant, and submitted scores

on all football games involved in this period.

of contest, all in accordance with the contest

rules. The contest ended with eight contestants

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tied for first place. As a result defendant notified each contestant by mail, (Exhibit A) that it would hold a play off contest in which each of these eight contestants would be required to predict exact scores on two football games to be played on Saturday Nov. 12, 1949, vs: College of the Pacific vs: Utah game and the Utah Aggie vs: Montana State game; that the latter score prediction would only be considered if two or more of the eight contestants also tied in predicting the exact score of the college of the Pacific vs: Utah game. There were no ties in predicting that game and consequently the Utah Aggie vs: Montana State game was disregarded.

The plaintiff's score prediction of the College of the Pacific vs: Utah game was Second closest. The winning score was submitted by one W. F. Bailey. It is admitted that he is the father of Frank D. Bailey, who was at all times herein mentioned one of defendant's employees. Plaintiff admitted that Frank D. Bailey was at the time of the contest a married man over the age

of 21 years of age with a wife and child, owning his own home and financially independent of his father, W. F. Bailey.

The second period prize consisted of a new 1949 plymouth Special Deluxe sedan automobile of the value of \$2,067.50 and awarded by defendant to W. F. Bailey whose eligibility to compete in the contest is the sole question to be decided.

The matter was argued on an agreed statement of facts, the complaint and answer all of which appear in the record on appeal.

STATEMENT OF POINTS

1. The trial court erred in resting its decision upon a finding:

"That the said W. F. Bailey was the father of Frank D. Bailey, an employee of the Deseret News and lived separate and apart from him being more than 21 years of age married and living with his wife and children in their own home and in no way dependant upon his father."

In that the parties never intended such facts to be decisive of eligibility.

2. The trial court erred in concluding in Conclusion No. 1,

"That the said W. F. Bailey was not a member of the immediate family of his son Frank D. Bailey, an employee of the Deseret News and was therefore not ineligible to compete in the "Giant Quarterback Contest, Class A" under the rules of said contest."

in that the facts and the law clearly show that W. F. Bailey was a member of Frank D. Bailey's family for purposes of this contest and as such was ineligible to compete.

3. The trial court erred in concluding in its Second Conclusion,

"That the plaintiff is not entitled to recover the sum of \$2,067.50 from the defendant or any part thereof and that said complaint be dismissed."

in that the same is contrary to the facts and the law.

4. The trial court erred in its judgment dismissing plaintiff's complaint in that the same is contrary to the facts and the law.

ARGUMENT

The sole issue to be here decided is as to whether Mr. W. F. Bailey, who admittedly is the father of Frank D. Bailey aforesaid, who

admittedly is an employee of the defendant, is a member of the immediate family of Frank D. Bailey, for purposes of this contest and thus ineligible to compete under that provision of the contest rules which provides that the contest was open to "anyone except employees of the Deseret News and their immediate families."

This writer has been unable to discover any case construing the term "immediate family" which is in point with the case at bar. In fact, there are only several cases in which the term has been construed at all. *Danielson v. Wilson* 73 Ill. App. 287; *Warner v. Ace*, 8 A. 84, 66 Md. 436; *Norwegian Old People's Home Soc. v. Wilson*, 52 N. E. 41, 176 Ill. 94; *Davin v. Davin*, 99 N.Y.S. 1012, 114 App Div 396; *Dalton v. Knights of Columbus* 67 A. 510, 80 Conn. 212. In each of the decided cases, the court quoted the provision of the document in which the term has been used. It will be noted that the provision involved in each has to do with providing for the support, relief and aid of the "immediate families" of the members of

a beneficial association. The key to the decision in each case is DEPENDENCY, and rightfully so in that type of case. It will be noted that the Supreme Court of the state of Illinois in the case of Danielson v. Wilson, supra, held that even in this type of case, an adult, married daughter, having a home of her own, living separate and apart from her father and financially independent of him should be considered a member of her father's "immediate family" and entitled to benefits under the policy.

In the opinion of the writer, however, none of those cases are controlling here for the reason that GOOD FAITH and not DEPENDENCY is the key to defining the term "immediate family" in this case.

Before going further, however, I should like to discuss the authorities as they have defined both the term "immediate" and the term "family," because of the absence of authority construing "immediate family" as that term has been used in the case at bar.

In 42 C.J.S. at page 387, we find the fol-

lowing treatment of the term "immediate."

A comprehensive and elastic term, of no very definite signification, but admitting of many varieties of definition, depending on the context, the connection in which it is used, or on the facts of each case. It is the indicium of a time interval as well as that of an interval of space; is used in ordinary language as a relative and comparative term, of relative signification, and so it is often not construed in its usual meaning. It is not a technical word, for to give the term its literal signification, regardless of the attending situations and circumstances, would defeat meritorious claims, in many cases, on purely technical grounds; and in construing statutory or other provisions, would strip them of all practical sense and applicability. Generally it may mean close, not separated, with respect to place, by anything intervening, hence proximate; near in kinship.

There are great numbers of cases cited in the footnotes to the above citation to support the text. Typical of the statements to be found in such cases are the following. "It is used more or less latitude by universal consent, according to the subject to which it is applied." *State ex rel Veeder v. State Board of Education* 33 P 2d 516, 97 Mont. 121. "It may be properly used in many different senses." *People v. Lavender* 31 P 2d 439, 137 Cal App 582 "The word must always be construed with the particular facts and circumstances involved in

mind." Continental Reel etc. v. Department of Treasury of Indiana, 117 F 2d 198.

"Near in kinship". Employer's Liability Assur. Corp. v. Light, Heat and Power Co. 63 N.E. 54, 28 Ind. App. 437.

The term "family" may mean the whole body of persons who form one household, thus including also servants; the parents, with their children whether they dwell together or not; or a whole group of persons closely related by blood. Another definition is that it may mean a man's household, consisting of himself, his wife, children, and servants, or his wife and children, or his children, excluding his wife, or, in the absence of wife and children, it may mean his brothers and sisters or next of kin, or it may mean the genealogical stock from which he may have sprung. Norwegian Old People's Home Soc. v. Wilson, supra; Spencer v. Spencer N.Y. Paige, 159; Whelan v. Reilly, 3 W. Va. 597.

The meaning which is to be given to the word "family" is to be determined by the context. and also is to be determined from a con-

sideration of the subject-matter to which it relates. It is sometimes used to include parents, with their children, whether dwelling together or not. In re Bennett's Estate 66 P 370, 134 Cal 320.

The books abound with authority reiterating the foregoing rules that both terms have elasticity and the court will give them that meaning which context and use dictate.

Following this rule, we turn now to the particular facts and circumstances of this case to determine the meaning of "immediate family." Defendant's obvious purpose in providing that the contest was not open to Deseret News employees or members of their immediate families was to gain the GOOD WILL of the public which it knew was necessary to enlist an army of subscription sales people all out securing subscriptions to defendant's newspaper. Defendant knew, as does everyone else, that if it were to permit employees and members of their families to participate in such a contest, it would destroy public confidence in the honesty and

integrity with which the contest should be conducted, because of the normal feeling among human beings that they have no confidence in competition wherein some are allowed to participate who are in a position to commit acts of dishonesty which the public, knowing human nature, suspects will be practiced.

By providing that the contest was open to anyone except employees of the Deseret News and their immediate families, the defendant's manifest intention was to set the public mind at ease by telling them that persons who might cheat either for gain for themselves or for persons so closely related to them that the motive for securing gain for them would be substantially equivalent to a personal gain, were to be excluded from the competition, and that this contest was to be run with integrity. It is unnecessary for us to determine what the outer limits of an immediate family under these rules would be—because we need only concern ourselves with the nearest of blood relatives, a father and son.

we insist that if the Deseret News had expressly worded the rule as they now urge it to be understood, its subscription promotion contest would have been a grand flop. Defendant knew this and by its own rules which it chose to draft, induced the public to believe otherwise. It has received the fruits of the contest by gaining the trust and confidence of the public which in turn produced many subscriptions for its newspaper and it may not now be permitted to breach that trust.

There are two rules on construction and interpretation that ought also to be borne in mind in this case. The first of these is found in 12 Am. Jur. section 250 as follows:

Sec. 250. Reasonable and Fair Interpretation. Agreements must receive a reasonable interpretation, according to the intention of the parties at the time of executing them, if that intention can be ascertained from their language. In the transactions of business life, sanity of end and aim is at least a presumption, though a rebuttable one. A reasonable interpretation will be preferred to one which is unreasonable. When the evidence of the agreement furnished by the contract itself is not plain and unmistakable, but is open to more than one interpretation, the reasonableness of one meaning as compared with the other and the probability that men in the circumstances of the parties would enter into one agreement or the other are com-

petent for consideration of the question as to what the agreement was which the written contract establishes. Where the language of an agreement is contradictory, obscure, or ambiguous, or where its meaning is doubtful, so that it is susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred. The interpretation of any instrument ought to be broad enough to allow it to operate fairly and justly under all the conditions to which it may apply. A court will not place an unjust interpretation upon a contract, unless the terms thereof compel it to do so. An agreement will not be interpreted so as to render it oppressive or inequitable as to either party or so as to place one of the parties at the mercy of the other, unless it is clear that such was their intention at the time the agreement was made. . . Every intendment is to be made against the interpretation of a contract under which it would operation as a snare. . . .

See 252 Interpretation in Favor of One of Parties. Doubtful language in contracts should be interpreted most strongly against the party who uses it. A written agreement should, in case of doubt, be interpreted against the party who has drawn it. Sometimes the rule is stated to be that where doubt exists as to the interpretation of an instrument prepared by one party thereto, upon the faith of which the other has incurred an obligation, that interpretation will be adopted which will be favorable to the latter

CONCLUSION

Plaintiff and appellant submits that the

facts of the case and the arguments herein advanced in support of Points 1 to 4 inclusive justify a reversal by this court of the judgment of the trial court and the making and entering of judgment in favor of plaintiff and appellant as prayed in his complaint.

Respectfully submitted,

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