

1950

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

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



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.

Ben E. Roberts; Attorney for Respondent;

Recommended Citation

Brief of Respondent, *Bryant v. Deseret News*, No. 7556 (Utah Supreme Court, 1950).
https://digitalcommons.law.byu.edu/uofu_sc1/1323

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 (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE
STATE OF UTAH

T. J. BRYANT,
Plaintiff and Appellant,

vs.

DESERET NEWS PUBLISHING
COMPANY,
a corporation,

Defendant and Respondent.

No. 7556

Brief of Respondent

FILED

NOV 3 1950

BEN E. ROBERTS

Attorney for Respondent.

Clerk, Supreme Court, Utah

TABLE OF CONTENTS

	<i>Page</i>
STATEMENT OF FACTS.....	1
STATEMENT OF POINTS.....	2
I. No error was committed by the court in holding as a matter of fact and as a matter of law that 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 said contest under the rules of the contest.....	2
ARGUMENT	2
CONCLUSION	6

INDEX OF AUTHORITIES

	<i>Page</i>
Crosgrove vs. Crosgrove, 8 Atl. 219, 69 Conn. 416.....	5
Dalton vs. Knights of Columbus, 67 Atl. 510, 80 Conn. 212	5
Danielson vs. Wilson, 73 Ill. Appl. 287	5
Dodge vs. Boston P.R. Corp. 28 N.E. 243, 154 Mass. 299	4
Fratellanga Italiana vs. Nugnes, 168 Atl. 589	4
Hart vs. Goldsmith, 51 Conn. 479	5
Hoadly vs. Wood, 42 Atl. 263, 71 Conn. 452	5
In re Bennett's Estate reported in 66 Pac. at page 370..	5
Knights of Columbus vs. Rowe, 40 Atl. 451, 70 Conn. 545	5
Norwegian Old People's Home Society vs. Wilson, 52 N.E. 41, 176 Ill. 94	5
People vs. Sagazei, 59 N.Y.S. 701	4
Volume 20, Permanent Edition of Words and Phrases, pages 102 & 103	5
Wood vs. Wood, 28 Atl. 520, 63 Conn. 324	5

IN THE SUPREME COURT OF THE STATE OF UTAH

T. J. BRYANT,

Plaintiff and Appellant,

vs.

DESERET NEWS PUBLISHING
COMPANY,

a corporation,

Defendant and Respondent.

BRIEF

OF

RESPONDENT

No. 7556

STATEMENT OF FACTS

We are in substantial agreement with the plaintiff as to the Statement of Facts in his brief in this case but we desire to call the court's attention to one omission in the rules of the contest where the word "immediate" on page 3 was inadvertently left out.

We are also in agreement with the plaintiff that the only issue to be decided in this case is whether W. F. Bailey, one of the contestants and the father of Frank D. Bailey, an employee of the Deseret News, is a member of his "immediate family" and thus ineligible to compete under the rules of the contest.

As to Point No. 1 raised by the plaintiff it has been stipulated in accordance with Findings of Fact No. 1 that W. F. Bailey is the father of Frank D. Bailey, an employee of the Deseret News, who was more than 21 years of age,

married and living with his wife and children in his own home and was in no way dependent upon his father nor was his father dependent upon the son.

That point having been disposed of the next point raised by the plaintiff is the Conclusion of Law No. 1 made by the Court to the effect that W. F. Bailey was not a member of the "immediately family" of his son, Frank D. Bailey, an employee of the Deseret News, and therefore was not ineligible to compete in said contest.

STATEMENT OF POINTS

Point 1

NO ERROR WAS COMMITTED BY THE COURT IN HOLDING AS A MATTER OF FACT AND AS A MATTER OF LAW THAT 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 SAID CONTEST UNDER THE RULES OF THE CONTEST.

ARGUMENT

"Family" as a word has been construed in the law innumerable times and is an expression of great flexibility and has been construed differently as the circumstances require in order that the apparent meaning may be carried into effect.

In this case it was used in a restrictive sense because it

only applied to the member of the "immediate family" of an employee of the Deseret News. The rules in the contest provided that the first prize for each period was based upon the prediction of the headline game designated each week in the schedule. With each headline game the contestant was required to submit with his prediction a statement in writing in which he gave his reason for choosing the winner in the headline game.

If there were no ties these statements had no bearing on the contest and the award was made to the contestant who turned in the most exact scores of the headline games.

In the event of ties, the rules provided that the contestants giving the most logical reason for their prediction of headline games would be adjudged the winner of the contest by the judges.

Here is where the first human element enters into the contest, the only place where the judges conducting the contest could show any favoritism or do anything unfair in awarding the prizes to employees of the Deseret News or to their friends who were participating in the contest.

When it developed at the end of the second period that eight contestants had tied for first place, in a letter addressed to each of the contestants, it proposed a change in the rules of the contest and asked the contestants for their approval in writing. The letter, exhibit "B" introduced in evidence, proposed that instead of having the judges refer to the statements of the contestants giving the reason for choosing the winner and awarding the first prize to the contestant which in their opinion gave the most logical reason for the prediction, proposed a play-off contest in which each of these eight tied contestants would be re-

quired to submit scores of two football games to be played on Saturday, November 12, 1949, to-wit: University of Utah vs. College of the Pacific and the Utah Aggies vs. Montana State game. It was further provided that if there were no ties in the predictions of the first game, University of Utah vs. College of the Pacific then the predictions on the Utah Aggies vs. Montana State would be disregarded.

The letter changing the rules of the contest explained the entire proceedings in the play-off and gave an example of how the point differential would be applied. The letter further explained that the statements submitted by the contestants giving the reasons for their headline game prediction were usually too vague and superfluous to use in awarding such an important prize. Each contestant approved the plan and submitted their scores.

The winning score was submitted by W. F. Bailey and the plaintiff submitted the second closest score.

In *re Bennett's estate* reported in 66 Pac. at page 370 and cited by the Appellant in his brief, quotes with approval from a very early English case in which Lord Kenyon said:

"In common parlance the family consists of those who live under the same roof with the pater-familias; those who form, if I may use the expression, his fireside. But when they branch out, and become members of new establishments they cease to be a part of the father's family."

This quotation has been used and approved in a number of cases and among them; *Dodge vs. Boston P.R. Corp.* 28 N.E. 243, 154 Mass. 299; *Peoples vs. Sagazei* 59 N.Y.S. 701; *Fratellanga Italiana vs. Nugnes*, 168 Atl. 589.

In this case the rules of the contest provided that only the "immediate members" of families of employees of the Deseret News are ineligible to participate in the contest. This certainly is a much more restricted use of the term "family" and certainly would exclude any blood relation who is not a member of the household of Frank D. Bailey who happened to be employed by the Deseret News.

There are few cases in which the term "immediate family" has been construed. The cases are collected under the title "Immediate Family" in Volume 20 of the Permanent Edition of Words and Phrases, pages 102 and 103. Plaintiff has cited several of the cases and relies chiefly on the two cases from Illinois, to-wit: *Danielson vs. Wilson*, 73 Ill. Appl. 287; *Norwegian Old People's Home Society vs. Wilson* 52 N.E. 41, 176 Ill. 94. They give him faint hope and the other cases are contrary to his contention.

In the case *Dalton vs. Knights of Columbus*, 67 Atl. 510, 80 Conn. 212, it is said the family is frequently used to denote those connected by the tie of common descent as well as that of a common household. The words "immediate family" are used in this connection to indicate a group of persons of which the insured is one connected as one family and from which is excluded any member who has become separated from the group as constituting one household, and "immediate family" certainly includes all persons bound together by the ties of relationship and parents and children living together as members of one household under one head. *Hart vs. Goldsmith*, 51, Conn. 479; *Wood vs. Wood* 28 Atl. 520, 63 Conn. 324; *Crosgrove vs. Crosgrove*, 8 Atl. 219, 69 Conn. 416; *Knights of Columbus vs. Rowe*, 40 Atl. 451, 70 Conn. 545; *Hoadly vs. Wood*, 42 Atl. 263, 71 Conn. 452.

CONCLUSION

Applying this as a criterion to the present case, and it appears to be the weight of authority, the father of Frank D. Bailey would not be a member of his "immediate family" as a matter of law and therefore not ineligible to compete in the contest.

The plaintiff places considerable stress upon the proposition that the primary reason for the provision that the contest was not open to Deseret News employees or members of their "immediate family" was to gain the good will of the public and induce large numbers to enter the contest. There is no evidence that the contest was not carried on fairly and in good faith or that there was any fraud, cheating or favoritism played in awarding any of the prizes and we submit in conclusion, that the judgment entered by the trial court in this case should be affirmed.

Respectfully submitted,

BEN E. ROBERTS

Attorney for Respondent.