

1986

# Mannes - Vale, Inc. v. Robert K. Vale : Reply Brief

Utah Supreme Court

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1986 20917

THE SUPREME COURT OF THE STATE OF UTAH

MANNES-VALE, INC. and/or :  
STATE INSURANCE FUND, :  
Defendants/Appellants, : Supreme Court No. 20917  
vs. :  
ROBERT K. VALE and/or the :  
INDUSTRIAL COMMISSION OF UTAH, :  
Applicant/Respondents. :

APPELLANTS' REPLY BRIEF

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ARGUMENT

POINT I

THERE WAS NO DOUBT AS TO THE COMMISSION'S MEANING WHEN IT HELD THAT IT WAS "WITHOUT JURISDICTION" TO ACT IN 1976.

One of respondent's first arguments in his brief is that the Commission did in fact have jurisdiction when it issued the Order of December 9, 1976, and that a decision was rendered on the merits of the case. According to the plain language of the 1976 decision, the respondent's statement is simply not true. The Commission was very clear when it stated:

The cases clearly show that the three year statute does apply in this case and that the application of the statute of limitations requiring a filing within three years is jurisdictional and not discretionary with the Commission. If the claimant failed to file an application within three years after the date of injury or the payment of last compensation, no matter how equitable the claim may be, the Commission is without jurisdiction to do other than dismiss the application. (Emphasis added.) (R.36.)

The applicant goes on to state that the term "without jurisdiction" was used by the Administrative Law Judge in a "general

sense as the equivalent of "without discretion." (Respondent's brief, p.5.) However, as indicated above, the December 9, 1976 Order was very clear as to its meaning of "jurisdiction". The Order was pursuant to Utah Code Ann., Section 35-1-99 as it read at that time:

. . . If no claim for compensation is filed with the industrial commission within three years from the date of the accident or the date of the last payment of compensation, the right to compensation shall be wholly barred.

The above-quoted section should be construed in conjunction with Utah Code Ann., Sections 35-1-99 and 35-1-100 as it read at the time of the 1976 Order:

Whenever an employee sustains an accident arising out of or in the course of his employment it shall be mandatory that the employee file with the commission in writing notice of such accident with a copy to the employer; if such notice is so filed within three years of the time of the accident the commission shall obtain jurisdiction to make its award when the injury becomes apparent. (Emphasis added.)

Since the applicant Robert Vale failed to file the necessary notice of his accident with the Commission in accordance with the terms of Sections 35-1-99 and 100, the Commission never obtained jurisdiction over Mr. Vale's claim in the first place, which was the Commission's Order at the time. The definition of jurisdiction as it appears in Section 35-1-100 should be taken at its plain meaning, which is the "power and authority of a court to hear and determine a judicial proceeding." Black's Law Dictionary 766 (5th ed. 1979).

That the Legislature intended sections 35-1-99 and 100 to be considered together for the purposes of conferring jurisdiction on the Commission becomes clear upon reading the 1981 amendment to Section 35-1-100:

Whenever an employee sustains an accident arising out of or in the course of his employment, the employee shall file with the commission, in writing, notice of such accident, with a copy to the employer; if such notice is so filed within three years of the time of the accident or within the time limitation provided in section 35-1-99, the commission shall obtain jurisdiction to make its award when the injury becomes apparent. (Emphasis added.)

Inasmuch as the language of the 1976 Order, together with the statutes conferring jurisdiction on the Commission are clear as to the definition of jurisdiction in the context of the present case, respondent's argument on this point must fail.

Furthermore, the Commission's Order of 1976 cannot be characterized as a decision on the merits because the applicant's claim was dismissed for lack of jurisdiction without reaching the merits. Utah Code Ann., Section 35-1-78 does not apply because, as argued before, in order to exercise continuing jurisdiction pursuant to that section, the Commission must first obtain jurisdiction over the case pursuant to Sections 35-1-99 and 100.

## POINT II

THE 1976 ORDER DISMISSING APPLICANT'S CLAIM INCLUDED CLAIMS FOR MEDICAL EXPENSES INCURRED AFTER THE ORDER.

On page 7 of respondent's brief, he argues that the Commission's Order of 1976 barred claims for medical expenses

merits  
concedes no a



prior to the time of the Order but not claims for medical expenses incurred after the Order. This argument, however, is unfounded. In its Order dated December 9, 1976, the Commission relied on Utah Code Ann., Section 35-1-99 which wholly bars the right to compensation if no claim is filed within three years of the accident or the last compensation payment. A claim which is wholly barred must include past as well as future medical expenses at the time the claim is barred. Future medical expenses can only be based on the industrial accident that is the root of the rights provided for in Workers' Compensation Act of Utah, 35-1-1, et seq. If the root or basis for a claim is gone, the future incurrence of expenses cannot revive a dead claim. There is no doubt that the Commission intended to deny the claim for past as well as future medical benefits in the 1976 Order.

### POINT III

#### THE INSURANCE FUND'S PAYMENT OF MEDICAL EXPENSES IN 1975 DID NOT TOLL THE RUNNING OF THE THREE YEAR STATUTE OF LIMITATIONS.

In footnote 1 of respondent's brief, he argues that since the Insurance Fund made a payment of medical expenses on September 17, 1975, the three-year statute of limitations was satisfied because Mr. Vale filed his claim less than a year after the 1975 payment. This argument is also unfounded because the case law in 1976, as well as at present, is clear that such a payment by the Insurance Fund does not toll the running of the statute of limitations. This issue was also addressed by the Administrative Law Judge in his December 9, 1976 Order. (R. pp. 34-35.)

In the case of Jones v. Industrial Commission, 17 Utah 2d 28, 404 P.2d 27 (1965) the claimant was last attended by a doctor more than three years before he filed a claim with the Commission. The employer failed to pay the doctor bill until more than three years after the medical service. The claimant alleged that the employer's payment of medical expenses after the three-year period tolled the statute. The Supreme Court affirmed the decision of the Industrial Commission denying the applicant's claim, holding that the payment of such medical expenses did not toll the statute of limitations contained in Section 35-1-99, Utah Code Annotated. The holding in Jones is precisely on point in the present case where the employer paid some medical expenses on September 17, 1975, and the statute of limitations had run as of August 23, 1974. See also Kennecott Copper Corp. v. Industrial Commission, 597 P.2d 875 (Utah 1979) ("[I]t is our conclusion that the furnishing of and payment for medical services to the applicant does not extend the statute of limitation [35-1-99] and that his filing of his application more than three years after his alleged injury came too late." 597 P.2d at 878.)

#### POINT IV

RESPONDENT'S ARGUMENTS BASED ON THE RESTATEMENT (SECOND) OF JUDGMENTS ARE MISLEADING, INAPPLICABLE TO THE PRESENT FACT SITUATION, AND SHOULD BE DISREGARDED.

On page 8 of respondent's brief, he argues that "even if the 1977 ruling of the Industrial Commission were found to be a ruling on the question of subject matter jurisdiction, that question can

be relitigated where, as here, '[a]llowing the judgment to stand would substantially infringe on the authority of another tribunal'." Respondent cites Section 12(2) of the Restatement (Second) of Judgments as authority for this argument. However, Section 12 of the Restatement (Second) of Judgments applies to situations where a court has exercised jurisdiction over an action and rendered judgment, not where, as here, the court has denied subject matter jurisdiction altogether. The section in its entirety reads as follows:

Section 12. Contesting Subject Matter Jurisdiction

When a court has rendered a judgment in contested action, the judgment precludes the parties from litigating the question of the court's subject matter jurisdiction in subsequent litigation except if:

(1) The subject matter of the action was so plainly beyond the court's jurisdiction that its entertaining the action was a manifest abuse of authority; or

(2) Allowing the judgment to stand would substantially infringe the authority of another tribunal or agency of government; or

(3) The judgment was rendered by a court lacking capability to make an adequately informed determination of a question concerning its own jurisdiction and as a matter of procedural fairness the party seeking to avoid the judgment should have opportunity belatedly to attack the court's subject matter jurisdiction.

Restatement (Second) of Judgments, Section 12 (1982). Since the foregoing Section of the Restatement clearly applies to situations only where a court has exercised jurisdiction in a matter, respondent's argument on this point must fail. Furthermore, even

if this section did apply, it would be of no consequence because the Commission's decision of December 9, 1986, did not "substantially infringe on the authority of another tribunal" because the Commission was the proper tribunal authorized to hear the claim and render a decision thereon, which decision was in total harmony with the law as it existed at that time.

Respondent's reliance on Section 16 of the Restatement (Second) of Judgments is also misleading. He represents that Section 16 allows "for setting aside . . . a judgment, such as the 1977 Order, which was based on an earlier judgment, such as rulings prior to Kennecott Copper and Christensen, and which was nullified by a later judgment, such as Kennecott Copper and Christensen." Respondent's Brief at 8. The entire section states:

Section 16. Judgment Based Upon a Judgment  
That Is Subsequently Reversed

A judgment based on an earlier judgment is not nullified automatically by reason of the setting aside, or reversal on appeal, or other nullification of that earlier judgment; but the later judgment may be set aside, in appropriate proceedings, with provision for any suitable restitution of benefits received under it.

Restatement (Second) of Judgments Section 16 (1982). Comment(a) of Section 16 illustrates the fact situation to which the section applies:

a. How the problem arises. Under Section 13, Comments f and g, a judgment in an action may be regarded as final for purposes of res judicata, and be entitled to conclusive effect in a second action, notwithstanding the fact that it is still liable to be

nullified, for example, by a post-judgment motion such as a motion for a new trial, or by reversal on appeal. If judgment is rendered in the second action on the basis of the judgment in the first, and the judgment in the first is then nullified, the problem arises what is to happen to the second, dependent judgment.

Restatement (Second) of Judgments, §16 comment a (1982). Section 16, then, refers to judgments based on an earlier ruling in the same case that is subsequently reversed. It has nothing to do with judgments based upon case law in other actions which is subsequently modified.

Finally, respondent argues that under Section 83(2)(d) of the Restatement (Second) of Judgments, the "rules of res judicata do not apply to an administrative decision if the decision is not final." Respondent's Brief at 8. The section in question reads in relevant part:

§83. Adjudicative Determination by Administrative Tribunal

(1) Except as stated in Subsections (2), (3), and (4), a valid and final adjudicative determination by an administrative tribunal has the same effects under the rules of res judicata, subject to the same exceptions and qualifications, as a judgment of a court.

(2) An adjudicative determination by an administrative tribunal is conclusive under the rules of res judicata only insofar as the proceeding resulting in the determination entailed the essential elements of adjudication, including:

(a) Adequate notice to persons who are to be bound by the adjudication, as stated in §2;

(b) The right on behalf of a party to present evidence and legal argument in support of the party's contentions and fair

opportunity to rebut evidence and argument by opposing parties;

(c) A formulation of issues of law and fact in terms of the application of rules with respect to specified parties concerning a specific transaction, situation, or status, or a specific series thereof;

(d) A rule of finality, specifying a point in the proceeding when presentations are terminated and a final decision is rendered; and

(e) Such other procedural elements as may be necessary to constitute the proceeding a sufficient means of conclusively determining the matter in question, having regard for the magnitude and complexity of the matter in question, the urgency with which the matter must be resolved, and the opportunity of the parties to obtain evidence and formulate legal contentions.

According to case and statutory law as it existed at the time of the December 1976 decision, the decision was final. It makes no difference that under the later Kennecott Copper or Christensen decisions a claim for medical expenses may be appropriate in a case where there was no final determination of entitlement. Respondent has not provided any persuasive authority indicating that these two decisions should be given retroactive effect. The Frank v. Mangum decision, 237 U.S. 309, 59 L. Ed. 969 (1915) was cited by respondent as standing for the proposition that "judicial constructions extend to all times past and supercede prior 'erroneous or inconsistent decisions.'" That case merely held that erroneous or inconsistent decisions by the courts are not reached by the prohibition of the U.S. Constitution, article 1


§10, against ex post facto laws, but that such provision is directed against legislative action only.


#### CONCLUSION

Under the doctrine of res judicata the Industrial Commission's Order of May 17, 1977 was a final determination of Mr. Vale's claim which cannot be modified or changed by any later case decisions of the Supreme Court. The 1977 decision was in harmony with the law as it existed at that time, and it makes no difference that later decisions such as Kennecott Copper or Christensen may have changed the outcome. The applicant could have had the input of the Supreme Court on his case had he chosen to appeal the decision which he did not do. The purpose behind the doctrine of res judicata of giving decisions finality and promoting the policy of ending disputes will be best served by reversing or vacating the Commission's Order of July 12, 1985.

DATED this 27 day of March, 1986.

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CERTIFICATE OF MAILING

I hereby certify that four true and correct copies of the above and foregoing Appellants' Reply Brief, was mailed, postage paid, on the   7   day of March, 1986, to the following:

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