2001

Larson Ford Sales, Inc. v. J. Taylor Silver : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT

OF THE STATE OF UTAH

[redacted] SALES, INC.,

Plaintiff and Respondent

vs.

J. TAYLOR SILVER,

Defendant and Appellant.

No. 14391

BRIEF OF APPELLANT

Appeal from an Order of the Third District Court
of Salt Lake County, State of Utah, the Honorable
Ernest H. Croft, Judge, presiding.

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Appeal from an Order of the Third District Court for Salt Lake County, State of Utah, the Honorable Bryant H. Croft, Judge, presiding.

NATURE OF CASE

This appeal alleges that § 78-6-10 Utah Code Annotated (1953) which requires an appellant from Small Claims Court to perfect his appeal within five (5) days after entry of judgment while the District, City, and Justice Courts allow thirty (30) days for filing appeals from the same lawsuit filed therein denied Taylor Silver the equal protection of the law.

DISPOSITION IN LOWER COURTS

1. On June 14, 1974, plaintiff Larson Ford Sales, Inc., commenced a lawsuit in the small claims court of Murray City seeking $197.66 damages from Taylor Silver by filing their June 5, 1974, affidavit.

2. On July 11, 1974, trial was held before the Honorab LeRoy H. Griffiths, Judge of the Small Claims Court of Murray City who entered judgment against Taylor Silver in the amount of $106.23.

3. On August 5, 1974, Taylor Silver through counsel filed a Notice of Appeal with the Murray City Court.

4. On December 15, 1975, the Honorable Bryant H. Croft Judge of the District Court for Salt Lake County, on Larson Ford Sales' Motion and pursuant to § 78-6-10 U.C.A. (1953) di missed Taylor Silver's appeal. (Please note the Order prepar by John L. McCoy, Esq., is in error where it states "no one appearing for defendant" in that Gordon F. Esplin did appear for defendant as noted in the minute record).

NATURE OF RELIEF SOUGHT ON APPEAL

1. Declaration that § 78-6-10, Utah Code Annotated (is unconstitutional.

2. Declaration that appellants from Small Claims Cou must be allowed thirty (30) days to perfect their appeals.

3. Ordering the District Court for Salt Lake County to reinstate Taylor Silver's appeal of the July 11, 1974, judgment entered in the Small Claims Court of Murray City.

MATERIAL FACTS

Larson Ford Sales, Inc., sought to recover $197.66 from Taylor Silver, a Utah resident, by filing a lawsuit in the Small Claims Court of Murray City. On June 14, 1974, the Justice, City and District Courts would have had jurisdiction to decide the lawsuit if it had been filed in those courts (see jurisdiction: for Justice Courts § 78-5-2, U.C.A., (1953) for City Court § 78-4-14, U.C.A. (1953) and for District Court § 78-3-4, U.C.A. (1953)).

The challenged § 78-6-10 U.C.A. (1953) requires an appellant to file his notice "within five days from the entry of said judgment against him, appeal to the district court of the county in which said court is held." Rule 73(h) of the Utah Rules of Civil Procedure governing appeals from the City and Justice Courts states, "An appeal may be taken to the district court from a final judgment rendered in a city or justice court within one month after notice of the entry of such judgment, or within such shorter time as may be provided by law". Rule 73(a) of the Utah Rules of Civil Procedure states,

> When an appeal is permitted from a district court to the Supreme Court, the time within which an appeal may be taken shall be one month from the entry of the judgment or order appealed from unless a shorter time

> is provided by law, except that upon a showing of excusable neglect based on a failure of a party to learn of the entry of the judgment the district court in an action may extend the time for appeal not exceeding one month from the original time herein prescribed.

Thus, the laws of Utah allow an appellant thirty (30) days to appeal a judicial decision from the courts of original jurisdiction except for the five (5) day requirement of § 78-6-10, U.C.A. for Small Claims Courts. (All underlining in the preceeding paragraph was added by this author to the original).

ARGUMENT

Article I § 2 of the Utah Constitution requires the Ut government to protect all Utah citizens equally. Section 1 of the 14th Amendment to the United States Constitution prohi the State of Utah from denying "any person within its jurisdiction equal protection of the laws." § 78-6-10, U.C.A. (195 which states:

> The judgment of said court shall be conclusive upon the plaintiff unless a counter claim has been interposed. If the defendant is dissatisfied, he may, within five days from the entry of said judgment against him, appeal to the district court of the county in which said court is held. Such district court may award the prevailing party on such appeal a reasonable attorney's fee to be fixed by the court.

denied appellant Taylor Silver the equal protection of the law.

POINT I. § 78-6-10, U.C.A. (1953) DOES NOT PROVIDE LIKE TREATMENT FOR ALL APPELLANTS FROM CIVIL LAWSUITS INVOLVING LESS THAN $200.00 FROM COURTS OF ORIGINAL JURISDICTION IN THE STATE OF UTAH

AND THERE IS NO RATIONAL BASIS FOR CLASSIFYING ONLY APPELLANTS FROM SMALL CLAIMS COURT FOR EXPEDITED TREATMENT.

Because of the supremecy clause in Article VI of the United States Constitution the United States Supreme Court is the ultimate authority on the United States Constitution. The Utah Supreme Court is likewise the ultimate authority in interpreting the Utah Constitution. Because the equal protection analysis of the two courts are similar the argument herein will cite only the teachings of the United States Supreme Court to avoid unnecessary repetition. The Supreme Court of the United States has traditionally been reluctant to set aside laws on the grounds of equal protection. The U. S. Supreme Court only required a law which classified individuals to accomplish its purpose in a reasonable manner. Railway Express Agency v. New York, 336 US 106, 69 S Ct 463, 93 L ed 533 (1949). In Railway, the City of New York sought to prohibit advertising on motor vehicles except for vehicles engaged in the advertised business. The United States Supreme Court held in Railway that the effect of the New York regulation prohibiting Railway Express Agency or anyone else from advertising for other concerns on their trucks was an unreasonable classification to gain the legislation's avowed purpose in promoting traffic safety when the vehicles of the other businesses could advertise on their own trucks. This is the traditional analysis used by the U. S. Supreme Court and the Utah court commonly known as the rational relation requirement. This analysis looks at three things.

First, the purpose of the law (in Railway the purpose was promot ing traffic safety). Second, the reasonableness of the classi- fication in relation to the purpose of the law. (in Railway the classification of vehicles displaying advertising for other businesses was held not to be reasonably related to the purpose of promoting traffic safety) And, third, the reasonableness of the laws effect (in Railway the law did not considerably improve traffic safety by reducing distraction to drivers but simply prohibited REA, etc., from deriving extra revenues from selling advertising on their trucks).

In applying the rational relation requirement to the facts of this case we find:

First, § 78-6-8, U.C.A.'s (1953)..."with the sole obje of dispensing speedy justice between the parties" is probably the purpose of § 78-6-10's five (5) day time requirement.

Second, § 78-6-10, U.C.A. (1953) only applies to appel lants from Small Claims Courts which § 78-6-1, U.C.A. (1953) restricts civil lawsuits to amounts involving less than $200 The classification then is appellants from Small Claims Cour The crucial question for this court to consider is whether t goal of speedy justice is reasonably furthered by only requi ing small claims appellants to perfect their appeals within five (5) days. As Justice Douglas said for the majority in Railway, Id. 110, "It is by such practical considerations b on experience rather than by theoretical inconsistencies th the question of equal protection is to be answered." The p cticalities which this Court should consider are:

1. Though most small claims litigants represent themselves it is doubtful if many could successfully handle their own appeals since this court is well aware that the trained bar have a difficult time with appellate procedure.

2. The small claims appellant needs to contact a lawyer, get an appointment, and review the matter with his attorney. In Utah most require more than the five (5) days allowed to retain, consult with, and have an attorney file an appeal.

3. The Bar is generally unfamiliar with small claims procedure and would likely proceed as was done in the instant case assuming a thirty (30) day period to perfect appeals.

4. § 78-6-10, U.C.A. does not require the unsuccessful litigant in a small claims action be given notice of his right to appeal or of the short time period in which the appeal must be taken. There is no indication in the record that Mr. Silver ever received notice of his right to appeal and he certainly did not learn of the short time period until Larson Ford's December 15, 1975, Motion.

5. The appeal procedure from small claims court requires a trial de novo and thus the liklihood of involving attorneys is increased. The effect of the five (5) day appeal period is the same as though the unsuccessful litigant was served summons and complaint with only five (5) days to answer.

6. An extremely short time period in itself may offend due process. See Fallon v. U.S., 378 US 139, 12 L ed 2d 760, 84 S Ct 1689 in which a non-resident defendant was given ten (10)

days to drop all business and come to Texas to defend himself in a suit. See also Roller v. Holly, 176 US 398, 44 L ed 20 S C 410 in which a non resident was given five (5) days to answer a lienors action of foreclosure. Notice of a hearing means nothi if the petitioner is practically denied the opportunity of maki an appearance. Mullane v. Central Hanover B & T Co., 339 US 3(94 L ed 865, 70 S Ct 652.

Though five (5) days is speedy it is doubtful whether the goal of "speedy justice" or any justice, is furthered by requiring small claims appellants to perfect their appeals wit in five (5) days.

Third, the effect of § 78-6-10, U.C.A. (1953) is to pro only small claims appellants from perfecting their appeals aft five days when appellants from the same judgment if entered in the Justice, City or District Courts have a full thirty (3 days. This underinclusive and discriminatory classification is untenable.

POINT II. ACCESS TO THE LEGAL PROCESS IS A FUNDAMENTAL RIGHT REQUIRING THE STATE TO SHOW A COMPELLING JUSTIFICATION FOR ANY CLASSIFICATION.

Historically, laws which classify individuals using s pect criteria or affect fundamental rights receive much stri scrutiny from the U. S. Supreme Court than the rational rela requirement. The majority of the early strict scrutiny case involved racial classifications. The landmark decisions wh treat access to the courts and equality in that access as a

fundamental right are: Griffin v. Illinois, 351 US 12, 100 L ed 891 76 S Ct 585, 55 ALR 2d 1055; Douglas v. California, 372 US 353, 83 S Ct 814, 9 L ed 2d 811 (1963); and Boddie v. Connecticut, 401 US 371, 28 L ed 2d 113, 91 S Ct 780 (1971). In Griffin, indigent criminal appellants were denied free transcripts by the Illinois State Court. Because individuals were being denied access to the courts because of their poverty the court merely labled this "invidious discrimination" which violated equal protection and due process of law and required Illinois to correct the situation. The court's analysis was very brief. Once the fundamental right was perceived the opinion abruptly ended. Likewise in Douglas the Supreme Court did not examine the rationality of California's failure to provide separate lawyers for joint criminal defendants. The Douglas court merely labeled the denial "invidious discrimination" because of poverty involving the fundamental right of access to the court and ended the opinion.

In Boddie, indigents sought to require Connecticut to allow them access to the courts without court fees or costs of service to terminate their marriage. The court stated it could not and probably should not require poor and affluent to always be treated the same but in Boddie the only way to terminate a marriage in Connecticut was through court action. Thus, access to the court was a fundamental right for Mr. and Mrs. Boddie. After the court decided that the Boddies had

a fundamental right of access to the court, then the court held that court's are governed by due process fairness and the Boddies could not be denied that access because of their poverty.

Applying these principles to this appeal, the only way Taylor Silver is going to have redress from the judgment entere on June 11, 1974, in Murray City Small Claims Court is to be allowed an appeal in a higher court. Access to the appellate court is a fundamental right. The watering down of this right because Plaintiff Larson Ford chose the Small Claims Court instead of the Justice, City or District Court is the same type of invidious discrimination which has been abhorent to the Court in the cases cited and the cases involving race, alienage, and gender. Obtaining "speedy justice" is not even a rational basis for §78-6-10, U.C.A.'s classification let alone a compelling justification for diminishing Taylor Silver fundamental right of access to an appellate court. "Once the to appellate review are established, they must be kept free o reasonable distinctions that can only impede open and equal a to the courts". Rinaldi v. Yeager, 384 US 305, 16 L ed 2d 47 86 S Ct 1497.

CONCLUSION

§ 78-6-10 U.C.A. (1953) does not provide the equal pr tection of the laws for Small Claims Court appellants as re-

quired by the United States and Utah Supreme Court's "rational relationship" or "strict scrutiny" tests.

Respectfully submitted this 28th day of February, 1976.

Gordon F. Esplin

GORDON F. ESPLIN
Attorney for Appellant

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I mailed a copy of the foregoing Brief of Appellant to the Honorable Vernon B. Romney, Attorney General, State of Utah, State Capitol Building, Salt Lake City, Utah 84114, and to Mr. Richard B. Cuatto, Attorney for Respondent, 325 South Third East, Salt Lake City, Utah 84111, this 28th day of February, 1976.

Gordon F. Esplin