

1987

Monty Higley and Jonnie Higley v. Ralph L. Walker : Reply to Petition for Rehearing

Utah Supreme Court

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Ralph L. Walker; Appellant Pro Se.

Recommended Citation

Response to Petition for Rehearing, *Higley v. Walker*, No. 870456.00 (Utah Supreme Court, 1987).
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BRIEF

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DOCKET NO. 870456 ~~IN THE~~ SUPREME COURT OF THE STATE OF UTAH

MONTY HIGLEY AND JONNIE
HIGLEY,

Case No. 870456

Plaintiffs/Respondents,

vs.

RALPH L. WALKER,

Defendant/ Appellant.

REPLY TO PETITION FOR REHEARING

ON APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT OF
CACHE COUNTY, STATE OF UTAH
HONORABLE VENOY CHRISTOFFERSEN
DISTRICT JUDGE

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FILED

JUN 17 1983

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

MONTY HIGLEY AND JONNIE
HIGLEY,

Case No. 87045

Plaintiffs/Respondents,

vs.

RALPH L. WALKER,

Defendant/ Appellant.

REPLY TO PETITION FOR REHEARING

BACKGROUND

This court granted Appellant's motion for summary reversal of the trial court's denial of a motion to vacate. The respondent has filed a petition for rehearing.

I.

THE RESPONDENT'S PETITION HAS NO MERIT

The petition violates Rule 35(a) of the Rules of Appellate Procedure which states, " Counsel for petitioner must certify that the petition is presented in good faith and not for delay." counsel makes no such statement. The petition has been filed for delay and to cause further damage to the appellant. The Respondent's reply to the motion for summary reversal was a one paragraph statement. Now after the court's ruling, counsel files a 29 page petition for rehearing. This after Counsel in Bankruptcy Court smugly admits that "the judgment entered on November 28, 1986

is void as to Walker."

The petition does not shed light on any new facts or law that would ultimately change the court's decision. He states that the court can take judicial notice of the Bankruptcy proceeding to show lack of notice to the Higleys but doesn't want the court to notice the date of filing. The Respondents have not offered any other dates or challenged the date of filing only stated that the date is not a fact before this court. The date of the entry of judgment is also undisputed. In the Respondent's Petition on page one line four, he lists the date of judgment as November 28, 1986. These two dates are the basis for the summary reversal, the court lacked jurisdiction and therefore the judgment entered was void. The Respondents have not offered one fact or applicable law or court precedent that could possibly affect the outcome of this case. The Respondents have filed this petition to delay and cause additional damage to the appellant by delaying the reinstatement of the appellant's real estate brokers license. This petition is a continuation of the bad faith and fraud the respondents have brought on the court by dragging the bankruptcy, filed in 1986, on as long as possible thereby inflicting the maximum amount of time and pain to the appellant and his family.

II.

THE RECORD ON APPEAL CONTAINED THE CONTROLLING FACTS
AND THE DATES PERTINENT TO THIS CASE HAVE NEVER BEEN DISPUTED.

The facts that are necessary for the determination of this case are 1) The date of the filing of chapter 7 bankruptcy and 2)

the date of the entry of judgment. Both dates are included in the docketing statement, the motion for summary reversal, and the affidavit of Ralph L. Walker. The dates are part of the court record and certified copies are part of the affidavit. The one paragraph response from the respondent in opposition to the motion for summary reversal did not offer any other dates or claim that the dates were in error. The court can take judicial notice of the date of the entry of the judgment November 28, 1986. The filing of the bankruptcy was November 21, 1986, no evidence has been offered challenging the date of the filing and a certified copy of the filing is part of the court record in the affidavit of Ralph L. Walker. The respondents have attempted to make an issue of whether the Higleys received notice of the filing and whether the Higleys violated the automatic stay imposed by the filing of bankruptcy. The Higleys alleged lack of knowledge of the bankruptcy is irrelevant. The issue is whether the court had jurisdiction to enter the judgment.

III.

THE JUDGMENT ENTERED SIX DAYS AFTER THE FILING OF BANKRUPTCY
IS VOID AS THE COURT HAD NO JURISDICTION.

1. Federal courts have exclusive jurisdiction of all matters and proceedings in bankruptcy, 28 U.S.C. 1334. The state court has NO jurisdiction.

In addition to the very broad grant of jurisdiction in 28 U.S.C. 1334(a) and (b), section 1334(d) provides in particular that " The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the

commencement of the case, and of property of the estate." The stay power and the automatic stay will not be limited by any concept of sovereign immunity.

The power of the bankruptcy court under section 105 to enjoin litigation which seeks to obtain a judgement against the estate or to interfere with property of the debtor has been long recognized. Collier on Bankruptcy Paragraph 362.02

The automatic stay imposed by the filing of bankruptcy is extremely broad in scope and applies to any type of formal or informal action against the debtor. The stay applies to all entities, including state courts. Subsection 362 (a)(1) of the bankruptcy code provides for a broad stay of litigation against the debtor and includes administrative, judicial, and other similar proceedings. Assoc. of St. Croix Condominium Owners v. St. Croix Hotel Corp., 682 F.2d 446, 7 C.B.C.2d 137

The stay is effective upon the date of the filing of the petition and formal service of process is not required. Mueller v. Nugent, 184 U.S. 1, 22 S. CT. (1901), however notice was given both the court and the plaintiff before the trial started, later in the objection to the findings of fact and conclusions of law, and through the listings of the creditors on the appropriate schedules of the chapter 7 filing.

POINT IV.

THE JUDGEMENT ENTERED AGAINST THE DEFENDANT IS VOID

The trial court lacked jurisdiction over the defendant after November 21, 1986 and therefore the entry of judgement on November 28, 1986 was void. In Brimhall v. Meacham 27 Utah 2d 222, 494 P2d 525 (1972) the court held that

A judgement is void only if the court which rendered it lacked

jurisdiction of the subject matter or of the parties, or if it acted in a manner inconsistent with due process of law.

The court did lack jurisdiction as the defendant was under the exclusive jurisdiction of the Federal Bankruptcy Court.

V.

THE RESPONDENT'S ACTIONS AFTER ENTRY OF JUDGMENT ARE NOT BEFORE THIS COURT.

The Respondents have tried to confuse the issue before this court by justifying their actions to collect from the recovery fund. The issue before this court is whether the trial court had jurisdiction to enter the judgment. The actions of the Respondents to collect from the recovery fund on a void judgment were improper. The respondents claim that the actions were proper because it was not against the appellant but against a third party. The judgment is void to all the world not just to Walker. The real estate recovery fund was not a quasi - defendant and if the judgment is void as to Walker how can it have any validity before the recovery fund. The issue is brought only to confuse the relevant issue of whether the trial court had jurisdiction which it clearly did not.

VI.

VACATION OF THE VOID JUDGMENT IS PROPER.

In the Respondent's conclusion he states " If the judgment is to be voided he must follow proper procedure in the Bankruptcy Court." This is ludicrous. The void judgment was entered in state

court, a request to vacate in state court is proper where the state court lacked jurisdiction. The action the Respondents refer to in the bankruptcy court is a complaint for damages for violating the automatic stay. The issue in that case is not whether there was a violation of the stay but whether the violation was willful and what were the damages suffered. The appellant is entitled to the relief sought, to have the judgment vacated.

CONCLUSION

The controlling facts in this case are the two dates, the filing of the bankruptcy and the entry of the judgment. These dates are November 21, 1986 and November 28, 1986 respectively. These dates are not disputed and are part of the record. Since the entry of judgment occurred after the filing of the bankruptcy the judgment is void.

Summary Reversal in this action is appropriate and the petition for rehearing should be denied as it does not meet the requirements of Rule 35(a) and is meritless.

RESPECTFULLY SUBMITTED

Dated this _____ day of June , 1988

Ralph L. Walker, pro se

MAILING CERTIFICATE

I hereby certify that I mailed four true and correct copies of the above and foregoing REPLY TO PETITION FOR REHEARING to Robert H. Wilde 6925 Union Blvd., Midvale Utah 84947 this ____ day of June, 1988.

Ralph L. Walker