1980

Utah State Department of Social Services v. Salvador P. Toscano, Sr : Reply Brief of Appellant

Utah Supreme Court

UTAH LEGAL SERVICES, INC.; Attorneys for Appellant;ROBERT B. HANSEN & STEPHEN G. SCHWENDIMAN; Attorneys for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

UTAH STATE DEPARTMENT OF SOCIAL SERVICES,	:	
Plaintiff-Respondent,	:	
vs.	:	Case No. 16777
SALVADOR P. TOSCANO, SR.,	:	
Defendant-Appellant.	:	

REPLY BRIEF OF APPELLANT

Appeal from the Judgment of the Second Judicial District Court of Weber County, the Honorable Calvin Gould, Judge Presiding.

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INTRODUCTION

At the outset, it must be clear that while this case concerns information given by Appellant, it does not concern an affirmative misrepresentation, as Respondent implies. Instead the crucial issues center on the meaning of the word "occupy" and comprise widespread public policy ramifications concerning the State's treatment of migrant workers and the application of equitable estoppel when the State's conduct is less than scrupulous.

ARGUMENT

POINT I

APPELLANT WAS ENTITLED TO RECEIVE FINANCIAL ASSISTANCE BECAUSE HE OWNED EXEMPT PROPERTY IN MULESHOE, TEXAS.

The regulation that is the basis for this controversy is found at Utah's Vol. II Assistance Payments Manual §410.1,

pertaining to exempt assets. That regulation allows the exemption of one "home and lot owned or being purchased and occupied by the applicant...." However, if the applicant's home does not fit that requirement, it will be considered a resource in evaluating his need for financial assistance.

Appellant has offered many ways to assist the Court in interpreting whether Appellant has indeed satisfied the requirement. In the endeavor to shed some light on the meaning of this previously undefined, but crucial word "occupy," Appellant offered the guidance used in a similar program of public assistance, that of food stamp assistance. Contrary to Respondent's allegation that Appellant has attempted to confuse the Court by offering the regulations governing food stamp eligibility, Brief of Respondent at 4, Appellant merely suggests that some guidance might be had by referring to regulations that have been tested by similar situations as those presented by the instant case.

It is important to note that food stamp assistance is not governed exclusively by regulations of the United States Department of Agriculture and that cash assistance is not governed exclusively by regulations of the United States Department of Health, Education, and Welfare (now Health and Human Services). See Brief of Respondent at 5. Both programs are governed by more specific State regulations. The State is free to interpret the definition of an exempt home for financial assistance in the same way as for food stamp

assistance. 45 C.F.R. §233.20(a)(3) [1975]. Presented with the situation of migrant workers whose homes are located in other states, the State promulgated Vol. IV Assistance Payments Manual §§304.21 and 680.3 (presently 680.5). The effect of these provisions is to allow a migrant worker to own a home in another state and consider it an exempt resource. The sense of this is obvious: a person should not be denied the assistance he so gravely needs because he maintains a home for his family, but because of his work skills and economic status is forced to travel interstate to find employment. When his situation allows, he returns to the house that only he and his family occupy. In interpreting the regulations otherwise, the State has no qualms about giving a person who resides in a house financial assistance, but because a person is forced by his occupation to live in various tents and shacks, the State will deny him assistance.

Therefore, since the State in its food stamp program, whose goals are similar to the financial assistance program, has considered the equities and public policy considerations of a migrant's living situation, reference to the regulations that address this specific situation should suggest the approach to be taken in this case.

To further assist the Court in determining the occupancy requirement, Appellant cited past cases that have passed upon the meaning of "occupy." Appellant's Brief at 5-7. Respondent gives only a cursory answer to those cases, simply categorizing them as "insurance cases" and does not

even attempt to respond to Macomber v. State Social Welfare Board, 175 Cal.App.2d 614, 346 P.2d 808 (Ct.App. 1968), which faced a similar issue in the public assistance context. Instead, Respondent attempts to refute the case law interpretations of "occupy" by reciting Respondent's counsel's life history. Counsel's educational and travel background hardly seems appropriate in the present context. By his recitation of personal history, counsel for Respondent clearly shows his failure to comprehend the basic nature of this case. His travel for educational purposes and the duration of his absence were by choice. Appellant, on the other hand, had to travel and be absent from his home in order to pursue a livelihood. Further, counsel's life story evidences an intent to remain in Utah. He reveals nothing to indicate that he still considered his parent's house the home he then occupied.

Respondent also emphasizes that Appellant was in Utah from the period of December, 1975, to June, 1976. Brief of Respondent at 10. However, Respondent fails to note that Appellant's injury severely limited his mobility, hindering his ability to travel back home to Texas. Appellant felt further compelled to remain in Utah to make sure that liability for medical expenses was resolved. Tr. at 95, Supplemental Record. To twist Appellant's physical pain and extreme honesty to look like he stayed in Utah only to collect his financial assistance is particularly insidious.

Taken overall, case law and other similar public assistance programs, like food stamps, have interpreted "occupy" in a way that only supports Appellant. Most importantly, the equities favor Appellant: to allow the State recovery is to punish a man because he must travel to make a living.

POINT II

APPELLANT WAS WITHOUT FAULT IN SUPPLYING THE INFORMATION ON HIS FINANCIAL ASSISTANCE APPLICATION AND SHOULD NOT BE HELD LIABLE THEREFOR.

In order to accurately complete any sort of application, one must be able to understand what questions are being asked. It is clear from the record that Appellant did not understand the questions on his application for financial assistance. This resulted from the absence of a person reasonably fluent in Spanish to assist Appellant at the time he was filling out the application. The caseworker who assisted Appellant was Lloyd Laws, an employee of the Assistance Payments office. As the record demonstrates, Mr. Laws does not speak Spanish. R. at 113-14, Tr. at 22-23. Nor could Respondent prove that any Spanish-speaking individual was present while Appellant applied for aid. R. at 126, Tr. at 35.

Respondent seeks to rebut this by suggesting the possibility that the Assistance Payments office employed at least one person who spoke Spanish at the time Appellant applied for assistance. Then Respondent makes the illogical leap that if Appellant applied at the Assistance Payments office, he would have had assistance from an interpreter.

This argument exhibits several fallacies. First, the testimony reveals only that someone spoke Spanish. There is nothing in the record to indicate that anyone was fluent. To say in such general terms that someone "speaks" Spanish may mean someone is fluent, or it may mean someone knows enough Spanish words to order from a menu in Spanish. Second, and most important, even assuming a person fluent in Spanish was employed by the Assistance Payments office, there is absolutely no indication that this person assisted Appellant. The office could have many employees fluent in Spanish, but they are of no avail if they are not present during an applicant's application procedure.

Further, Respondent wonders whether Appellant applied at the Migrant Council's office or the Assistance Payments office. Brief, supra at 12. The Migrant Council office had not yet even been opened at the time of application in 1975. R. at 150, Tr. at 59. Respondent's assertions as to assistance by an interpreter do not have much credence, when they are not even sure where the application was filled out.

To further attempt to show that Appellant had the assistance of someone fluent in Spanish, Respondent cites the fact that Millie Rodriguez Valencia notarized the financial assistance application. Brief, supra at 13. Obviously, there is a difference between notarizing and interpreting. In fact, the record reveals that Mrs. Valencia testified she

did not assist Appellant in filling out the application. R. at 145, Tr. at 54. The extent of her contact was merely to notarize the application.

Respondent has used this fallacious assumption that an interpreter was available to assist Appellant to try to prove Appellant was at fault. Brief, supra. As stated before, the record does not reveal that an interpreter was made available to Appellant. Again even if an interpreter was available, nothing suggests that an interpreter assisted Appellant. Yet even if Respondent's allegation was true, it still does not prove Appellant was the one at fault.

Even if Appellant admitted all that Respondent alleges in his Point II, there still remains the question of how Appellant interpreted the meaning of "occupy" as used in Vol. II §410.1. If, for instance, Appellant was asked by an interpreter whether he owned a home that he did not occupy, Appellant would have understood "occupy" to mean having a residence that he occupies by returning to it at the end of the picking season.

In summary, Respondent has failed to prove that Appellant had anyone fluent in Spanish help him accurately complete the application for financial assistance. Further, Respondent has not proved that Appellant was at fault in any way in filling out the application.

POINT III

APPELLANT HAS NOT RAISED ANY ARGUMENT THAT WAS NOT PUT IN ISSUE IN THE LOWER COURT.

In Appellant's Brief at 14-15 the elements for equitable estoppel were listed. Those four criteria were: (1) whether the State's Assistance Payments office could have been aware of the relevant facts through reasonable diligence, as Appellant supplied all information that the State requested; (2) whether the Assistance Payments office should reasonably have expected Appellant to rely on its determination of his eligibility; (3) whether Appellant acted in good faith, unaware of a possible administrative error; and (4) whether Appellant, due to his reliance on the State's determination of his eligibility, will be injured by a recoupment of the alleged overpayment.

In applying estoppel against the State, this Court in Celebrity Club, Inc. v. Utah Liquor Control, 602 P.2d 689, 694 (Utah 1979), listed five criteria for equitable estoppel that are even less demanding than those set out in Appellant's Brief:

(1) An "act inconsistent with the claim afterwards asserted." Obviously in this case, this is satisfied by the recoupment of funds after the State determined Appellant eligible for assistance.
(2) Reliance by the other party on such act. Again it is obvious that Appellant has relied on the State by accepting the assistance.
(3) Injury resulting from the contradiction or repudiation of such act. A recoupment of the funds will gravely injure Appellant, since the funds were paid for basic necessities, and requiring repayment will deprive Appellant of his ongoing necessary living expenses.
(4) "Manifest injustice." If equitable estoppel is not applied against the State, Appellant will be punished for his migrant status and the State's failure to provide a competent interpreter.

(5) Lastly, not impairing the "exercise of governmental powers." Although discussed more extensively later in this Brief, suffice it to say that allowing Appellant to retain $2,921.00 will not impair the exercise of governmental powers; it should even be an incentive to the State to prevent more erroneous payments by providing competent interpreters.

A perusal of the transcript reveals that these elements comprising estoppel were put in issue in the lower court.

Additionally, while careful perusal of the transcript reveals that the elements as to violations of Appellant's Due Process and Equal Protection rights are implicit in all that was presented below, important constitutional issues should be dealt with no matter when they are raised. This Court in In re State in Interest of Woodward, 14 Utah 2d 336, 384 P.2d 110 (1963), found that in case of doubt as to resolving constitutional issues raised for the first time on appeal, the Court would resolve in favor of considering constitutional questions. Utah is not alone in this view. The Arizona Supreme Court, for example, in Ruth v. Industrial Commission, 107 Ariz. 572, 490 P.2d 828 (1971), held that notwithstanding the general rule that questions not raised in the lower court will not be considered on appeal, questions of constitutionality that would impact with statewide significance, such as on Workmen's Compensation, should be considered. See also Norcor of America v. Southern Arizona Intern. Livestock Ass'n, 122 Ariz. 542, 596 P.2d 377 (1979). Clearly denying Spanish-speaking persons the opportunity to present their case for financial assistance has an impact on the migrant

population, who every year enters the state to be employed by Utah's agricultural economy, of such statewide significance as to be considered, even if the Court finds the constitutional questions not to have been raised in the lower court.

POINT IV

THE DOCTRINE OF EQUITABLE ESTOPPEL IS APPLICABLE TO THIS CASE.

Respondent seeks to attack this point in three ways. (1) Estoppel will not lie unless Appellant is completely without fault; (2) estoppels against the public are seldom allowed; and (3) estoppel will not lie based on only an innocent mistake.

In asserting that the estopping party must be completely without fault, Respondent has made two mistakes. First, Respondent asserts that it has been proven Appellant was not without fault. As has been demonstrated, Respondent has not proved any fault on Appellant's part. Indeed, Respondent has not even successfully proved that Appellant made a mistake in claiming the Muleshoe property to be exempt. Second, Respondent relies on cases that do not stand for the position asserted: to invoke estoppel the party asserting it must be "completely without fault." Brief, supra at 18. On the contrary, in Newton v. Hornblower, Inc. 224 Kan. 506, 582 P.2d 1136 (1978), corporate directors were denied the use of estoppel in a stockholder's derivative action because they failed to show good faith and fairness in regard to certain transactions. The court held: "Equitable

estoppel is founded upon principles of morality and fair dealing and is available only for the protection of claims made in good faith." 582 P.2d at 1144. Nowhere is it said that the estopping party must be completely without fault. Instead the emphasis is upon good faith and fairness. Appellant's honesty, sincerity, and good faith have never been questioned. Additionally, fairness lies on the side of the Appellant. See Appellant's Brief at 10-14. Respondent also cites Morgan v. Board of State Lands, 549 P.2d 695 (Utah 1976), for the "completely without fault" proposition. Nowhere in that case may that proposition be found. Rather that case emphasizes an obligation on the part of one party where there is a possibility of inducing reliance on the part of the other.

Next, Respondent states that according to Corpus Juris Secundum, estoppels against the public are not common. Brief of Respondent at 13. We are not concerned here with the popularity of various forms of relief, but with the appropriateness of relief. The C.J.S. quotation that Respondent relies on states that estoppel will not be allowed if it defeats public policy or the interests of justice. It has been shown that such public policy factors as encouraging those recipients who have been overpaid to come forward with that error and preventing further administrative errors would be promoted by granting estoppel. Also, the interests of justice lie on the side of Appellant. To recover financial

assistance from Appellant is to punish him for having to live a transient lifestyle in order to be employed, rather than living in his house year-round. Additionally, the courts have increasingly endorsed equitable estoppel against the government, Celebrity Club v. Utah Liquor Control Commission, supra; Hoeber v. District of Columbia Redev. Land, 483 F.Supp. 1356 (D.D.C. 1980).

Respondent's third point is that an innocent mistake does not justify estoppel. Whereas that may be very true, Respondent must take blame for more than an innocent mistake. In having no bilingual staff to assist migrants, Respondent has made more than an innocent mistake. Because it is inevitable in Utah that some Spanish-speaking people will at times find themselves in need of public assistance, it falls within the realm of culpable negligence to not adequately provide for competent interpreters. In fact, this is the sort of culpable negligence this Court had in mind in Morgan, supra, 549 P.2d at 697, upon which Respondent again relies. Brief of Respondent at 19.

In Celebrity Club, supra at 694-95, this Court had occasion to further elaborate upon the criteria for estoppel from Morgan, supra. Applying those criteria to a claim for estoppel against the government, the Court found language from State v. Sponburgh, 66 Wash.2d 135, 401 P.2d 635, 640 (1965), "particularly appropriate":

> The doctrine of equitable estoppel is properly applicable in a case such as this, otherwise the whim of an administrative body could bankrupt an applicant who acted in good faith in reliance upon a solemn written commitment.

. . . .

> The conduct of government should always be scrupulously just in dealing with its citizens; and where a public official, acting within his authority and with knowledge of the pertinent facts, has made a commitment and the party to whom it was made has acted to his detriment in reliance on that commitment, the official should not be permitted to revoke that commitment.

In the present case, Appellant followed the application procedures to the best of his understanding as they were explained to him at Respondent's office. Appellant then relied upon Respondent's determination of his eligibility.

Thus Respondent has failed entirely in rebuttal to Appellant's claim of equitable estoppel.

POINT V

APPELLANT'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS WERE INFRINGED UPON IN APPELLANT's INTERVIEW FOR FINANCIAL ASSISTANCE.

Respondent attacks Appellant's claim to violation of his constitutional rights in only one way: by asserting that the interview was in fact conducted in Spanish. Throughout this case it has been conclusively shown that Appellant did not have a fluent Spanish interpreter to assist in the application procedure. Specifically, even if the Assistance Payments office had an interpreter, it has not been shown that the interpreter was competent. And even if there was a competent interpreter, it has not been proven that the interpreter assisted Appellant. For Respondent to say, "It is conceivable that Millie Valencia assisted the Appellant in completing his financial assistance form," Brief, supra at 21, is directly contrary to her testimony. R. at 145,

Tr. at 54. For Respondent to point to the writing of "torn cartilage, left knee" on Appellant's application as indicating the aid of an interpreter, Brief, supra at 22, is to deny the very likely possibility that this information was obtained from a doctor's report.

Respondent has conceded all the other arguments Appellant raised in relation to his constitutional claims. Respondent has based his argument on the invalid presumption that Appellant had a competent Spanish interpreter to assist him. Since that has been shown to be without adequate proof, Respondent is left with no rebuttal to the constitutional violations.

CONCLUSION

However, this Court need not deal with the constitutional, equitable, or policy issues, if the Court simply finds that under the proper interpretation of the regulation in question, a man who owns his home and has travelled away from it, intending to return to it and without occupying any other home, "occupies" that home, so as to be equally entitled to assistance as a homeowner who is not compelled to seek a living on an itinerant basis.

On this basis, the Court should reverse Appellant's liability for incorrect assistance assessed by the lower court and remand to the Department of Social Services for a determination of Appellant's eligibility for assistance under the correct interpretation of the regulation, during the period in question, and after termination of benefits

upon discovery of the "error." If, on the other hand, the Court determines Appellant was not eligible under the correct interpretation of the regulation, but that it is inequitable for the State to hold him liable for erroneous payments when he was unassisted in understanding the eligibility requirements, then the Court should still reverse Appellant's liability, but he cannot claim further eligibility for benefits.

DATED this 5th day of November, 1980.

Respectfully submitted,

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CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Appellant was mailed, postage prepaid, to Stephen G. Schwendiman, Esq., Assistant Attorney General, 150 West North Temple, Salt Lake City, Utah 84103, this 6th day of November, 1980.

Lucy Billings