

1989

Knight Adjustment Bureau v. Robert L. Williams and James R. Williams : Brief of Respondent

Utah Court of Appeals

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Kathryn Denholm; Attorney for Respondents.

William H. Lindsley; Diumentis and Lindsley; Attorney for Appellant.

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IN THE UTAH COURT OF APPEALS

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DOCKET NO. 89-0418

KNIGHT ADJUSTMENT BUREAU,

Plaintiff,

vs

ROBERT L. WILLIAMS and
JAMES R. WILLIAMS,
Defendant.

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Case No. 890418-CA

Priority No. 14b

RESPONDENT'S BRIEF

Appeal from the Judgment of the Second Judicial
District Court In and For Davis County,
State of Utah, The Honorable
Douglas L. Cornaby, Presiding

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DEPOSITED BY THE
STATE OF UTAH
AUG 17 1990

JAN 17 1990

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TABLE OF AUTHORITIES

None cited

DESIGNATION OF PARTIES

Plaintiff/Appellee is Knight Adjustment Bureau, a Utah Corporation. Defendant/Appellants are James R. Williams, against whom judgment entered, and Robert L. Williams, who was dismissed from the action on August 13, 1987 (Record 10)

STATEMENT OF JURISDICTION

Plaintiff concedes that this Court has jurisdiction to hear this matter.

STATEMENT OF ISSUES ON APPEAL

Plaintiff submits no issues to this Court.

DETERMINATIVE CONSTITUTIONAL PROVISION OR STATUTES

- (1) Rule 60(a) Utah Rules of Civil Procedure
- (2) Rule 4-501 of the Utah Code of Judicial Administration
- (3) 78-32-1 Utah Code Annotated

STATEMENT OF THE CASE

Plaintiff adopts Defendant's Statement of the case with the following amendments:

1. Robert Williams was dismissed from the case at the time the original complaint was amended to name James Williams (Record 10). Plaintiff has made no effort to collect this claim from Robert Williams, since his dismissal.

2. The stipulation upon which judgment was based was recited in open court, approved by the parties and ratified by the court. (record 35; September 16, 1988 transcript, all). The stipulation required that payment of specific amounts be paid within thirty days of that date, and is signed by Defendant's attorney

(addendum). The stipulation was not filed with the court.

3. The stipulation of the parties, notwithstanding disagreements concerning any other terms, required Defendant to pay \$6,000 by October 16, 1988 (September 16 transcript P 3 L 12-14); Defendant paid only \$5,000 on November 17, 1988 (Record 38).

4. Plaintiff submits that the stipulation does, in fact, conform to the agreement of the parties, except that Robert L. Williams is incorrectly named as Defendant.

SUMMARY OF ARGUMENT

The trial court did not err in granting Plaintiff's verified Motion to Amend to correct a clerical error in the case caption for the reasons explained by the trial court.

Defendant, James Williams, had orally agreed to the terms of the settlement; the same had been reduced to writing and signed by Defendant's attorney. Defendant had not made the payments required by the settlement, thereby triggering entry of judgment.

No prejudicial error occurred.

I. ENTRY OF JUDGMENT WAS PROPER

The September 16, 1988 transcript shows that the parties voluntarily agreed to terms in open court on that date, saving computation of the monthly payment, which was estimated. The terms were clear and uncomplicated, as the trial court noted in its Ruling on Motion to Strike (Record 91).

Plaintiff's counsel subsequently submitted a stipulation, which was signed by Defendant's attorney, though it incorrectly designates Robert Williams as defendant. It was not contemplated

that the stipulation be filed with the court. Plaintiff concedes that the stipulation was not submitted to the court for signature, but argues this is not prejudicial.

James Williams made partial payment, after the due date of the first installment, and no subsequent payments.

Plaintiff thereupon filed it's Verified Motion for Entry of Judgment on February 1, 1989 (Record 38). Defendant objected to Plaintiff's motion on January 27, 1989 (Record 36) but did not request a hearing on this matter. Judgment was granted on January 31, 1989.

Entry of judgment was proper, as Defendant had defaulted on his very first payment, notwithstanding his further and continuing default.

Defendant did not request a hearing at the time he objected to entry of judgment, and has put forward no additional arguments which Defendant might have made at such a hearing. The fact of Defendant's default is not contested. Where the facts are clear, and Defendant proposes no additional arguments, the trial court properly ruled summarily.

II. PLAINTIFF'S MOTION TO AMEND JUDGMENT WAS PROPERLY GRANTED

Robert Williams was the original Defendant in this action. Plaintiff conceded that he was not a proper party and did not proceed against him. Robert Williams did not appear at the pretrial on April 25, 1988 and May 23, 1988 nor at the trial on September 16, 1988. James Williams was present on all occasions and personally agreed to the terms of the settlement in open court.

The judgment in this case was granted based upon the settlement stipulation. An error in the caption is not material to the substance of the agreement. Plaintiff submits that this error was not prejudicial to Defendant. Plaintiff had no intention of docketing a judgment against Robert Williams, who was not a party to the action and the trial court found no ill will or improper purpose in the error. (Record 61). The court, in its ruling, clearly shows that it read Defendant objection (Record 90).

III. PRETRIAL PROCEEDINGS IN THIS CASE DO NOT CALL FOR REVERSAL

During the course of the pre-trial on April 25, 1988, defense counsel, Mr. Lindsley, and the trial judge engaged in a heated exchange. As a result thereof, pretrial was continued to May 23, 1988. Defense counsel, Mr. Lindsley, on April 25, challenged the trial court, and carried that challenge beyond the bounds of discretion. The court's remarks complained of were directed to counsel, rather than to the Defendant, who conceded that the signature in questions appeared to be his (April 25, 1988 transcript P 8 L 20 - P 9 L 4).

At the second pre-trial, Mr. George Diumentti appeared with Defendant. At trial, Mr. Bruce Oliver appeared with Defendant and the matter of sanctions was not addressed. No affidavits were filed as to how the April 25 interchange may have affected Defendant's thinking in agreeing to settlement. Plaintiff submits that the discount was more persuasive.

Contempt sanctions are available to the trial court, pursuant to 78-32-1 (1)(4) UCA in the event of misconduct by either counsel

or parties, and the court fully explained it's rationale in discussing sanctions to Mr. Lindsley during the first pre-trial (April 25, 1988 transcript, P 9 L 8 - P 10 L 10).

CONCLUSION

At trial, Plaintiff's claim was substantially discounted in consideration of a settlement stipulation. The terms of the settlement were sufficiently clear and definite as to be understood by the parties and was reduced to writing. Defendant defaulted, and pursuant to the stipulation, judgment was entered pursuant to rule 4-501, without oral argument. Defendant fails to show that more could have been argued orally than was submitted in writing. Plaintiff submits that no error occurred in amending the judgment.

Plaintiff submits that Defendant's arguments are without merit. The judgment below should be affirmed, and Plaintiff should be awarded it's costs and a reasonable attorney fee.

DATED this 17 day of January, 1990.

Respectfully submitted,

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Kathryn Schuler Denholm, Attorney
for Respondent/Plaintiff

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing Brief to William H. Lindsley at 505 South Main, Bountiful, Utah 84010 on this 17 day of January, 1990.

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ADDENDUM

Rule 60. Relief from judgment or order.

(a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may

in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

78-31a-20. Scope of chapter.

This chapter is not intended to provide a means of arbitration exclusive of those sanctioned under common law.

History: C. 1953, 78-31a-20, enacted by L. 1985, ch. 225, § 1.

CHAPTER 32

CONTEMPT

Section		Section	
78-32-1	Acts and omissions constituting contempt	78-32-9	Hearing
78-32-2	Re-entry after eviction from real property	78-32-10	Judgment
78-32-3	In immediate presence of court, summary action — Without immediate presence, procedure	78-32-11	Damages to party aggrieved
78-32-4	Warrant of attachment or commitment order to show cause	78-32-12	Imprisonment to compel performance
78-32-5	Bail	78-32-13	Procedure when party charged fails to appear
78-32-6	Duty of sheriff	78-32-14	Excuse for nonappearance — Unnecessary restraint forbidden
78-32-7	Bail bond — Form	78-32-15	Contempt of process of nonjudicial officer.
78-32-8	Officer's return	78-32-16	Procedure

78-32-1. Acts and omissions constituting contempt.

The following acts or omissions in respect to a court or proceedings therein are contempts of the authority of the court

- (1) Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding.
- (2) Breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding
- (3) Misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial service.
- (4) Deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding.
- (5) Disobedience of any lawful judgment, order or process of the court.
- (6) Assuming to be an officer, attorney or counselor of a court, and acting as such without authority.
- (7) Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.
- (8) Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial.
- (9) Any other unlawful interference with the process or proceedings of a court.
- (10) Disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness.

(11) When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person, concerning the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

(12) Disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-32-1.

Cross-References. — Abuse of office, § 76-8-201 et seq

Criminal Code not to affect contempt power, §§ 76-1-107, 76-3-201

Defense costs in criminal actions, contempt based on failure of convicted defendant to pay, §§ 77-32a-7 to 77-32a-12

Discovery, sanctions for noncompliance with order compelling discovery, Rule 37(b)(D), U R C P

Execution sale bidder, refusal to pay sum bid, Rule 69(e)(4), U R C P

Judgment directing performance of specific act, Rule 70, U R C P

Juvenile courts, §§ 78-3a-28, 78-3a-52.

Labor disputes, §§ 34-19-9, 34-19-10.

Masters, refusal of witness to appear or give evidence before, Rule 53(d)(2), U R.C.P.

Penalties for failure to appear or complete jury service, § 76-46-20

Power of judicial officers to punish for contempt, § 78-7-18.

Practice of law without a license, § 78-51-25.

Repeated application for orders as contempt, § 78-7-20.

Subpoena, refusal to obey, Rule 45(f), U.R.C.P.

Summary judgment affidavits made in bad faith, Rule 56(g), U.R.C.P.

NOTES TO DECISIONS

ANALYSIS

Ability to comply

"Any other unlawful interference"

Civil or criminal nature of proceedings

Criticism or comments

Deceit or abuse of process

Disobedience by inferior tribunal

Disobedience of judgment, order or process

Excuses or defenses

Findings of fact required

Independent proceeding

Inherent power of courts

Perjury

Purpose of section

Territorial courts

Ability to comply.

It is important that the ability of the party charged with contempt to perform receive consideration before the court is justified in awarding damages. *Foreman v Foreman*, 111 Utah 72, 176 P.2d 144 (1946)

One who puts forth every reasonable effort to comply with court order, but is unable to do so, is not guilty of contempt on account of such failure. *Limb v Limb*, 113 Utah 385, 195 P.2d 263 (1948)

Judgment finding defendant in contempt for failure to comply with divorce decree, requiring payment of \$75 per month for alimony and support of minor children, was upheld as supported by evidence that defendant was able to comply with that decree and that his failure to do so was willful, even though defendant testified that he had been sick and out of employment and that, since starting work again, he had paid divorced wife \$50 a month out of monthly salary of \$180, from which he also

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IN THE SECOND JUDICIAL DISTRICT COURT, WEBER COUNTY
STATE OF UTAH

KNIGHT ADJUSTMENT BUREAU	*	STIPULATION
A Utah Corporation	*	
	*	
Plaintiff,	*	
	*	
-vs-	*	
	*	
ROBERT L. WILLIAMS,	*	Civil No. 86-39441
	*	
Defendant.	*	


This matter came for trial before the Honorable Douglas Cornaby on the 16th day of September, 1988. Plaintiff appeared by counsel, Kathryn Denholm; Defendant appeared personally and by counsel, Bruce Oliver. Based upon stipulation of the parties made in open court, it is agreed as follows:

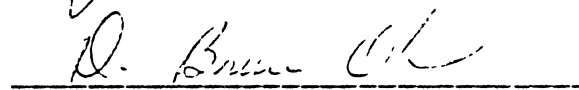
1. Defendant shall pay to Plaintiff, on or before October 16, 1988, the sum of \$6,000.00. In addition thereto, Defendant shall pay to Plaintiff an additional \$9,101.00 over a period of two (2) years with interest at the rate of 11%. Payment shall commence November 15, 1988, in the sum of \$424.18.

2. In the event Defendant becomes more than thirty (30) days in arrears of any payment, Plaintiff may, on it's

ex-parte motion and affiavit, have judgment for the unpaid balance of the original prayer of the Complaint.

DATED this 17 day of November, 1988.


Kathryn Schuler Denholm;
Attorney for Plaintiff


Bruce Oliver
Attorney for Defendant