

1989

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

Utah Court of Appeals

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Recommended Citation

Reply Brief, *Knight Adjustment Bureau v. Williams and Williams*, No. 890418 (Utah Court of Appeals, 1989).
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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 89-0418

IN THE UTAH COURT OF APPEALS

KNIGHT ADJUSTMENT BUREAU,

Plaintiff,

vs.

ROBERT L. WILLIAMS and
JAMES R. WILLIAMS,

Defendants.

:

:

Case No. 890418-CA

:

:

Priority No. 14b

:

APPELLANT'S REPLY

DEPOSITED BY THE
STATE OF UTAH
AUG 17 1990

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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FILED

FEB 21 1990

COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

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REPLY ARGUMENT

I

APPELLANT'S REPLY TO RESPONDENT'S POINT I

Plaintiff argues that the initial entry of judgment was proper: that at the time the stipulation was entered "the terms were clear and uncomplicated;" that a "signed" stipulation was submitted to the court; that defendant "did not request a hearing on this matter;" and "the fact of defendant's default is not contested." (Respondent's Brief page 2-3) The record demonstrates the inaccuracy of every one of these propositions.

First and foremost, without belaboring the point, from the stipulation that plaintiff had prepared to plaintiff's verified motion for judgment, to the judgment itself, plaintiff insisted on naming Robert Williams as the named defendant, as the named subject of the stipulation, as the named subject of the motion for judgment

and as the person against whom judgment would be and was entered. That was obvious error and defendant attempted (with futility) to point the error out. There is no question that plaintiff's verified motion seeking judgment against Robert Williams should have been denied.

Defendant did and continues to contest the "fact of default;" defendant raised several arguments in its opposition to entry of judgment (see Record pages 36-37) including the fact that defendant had tendered a sum that would have made all payments current according to plaintiff's version or understanding of the stipulation, notwithstanding defendant's position that the oral stipulation contemplated that a written stipulation setting forth the dates and amounts of payments would be prepared before said payments would become due; defendant's understanding of what was contemplated by the oral stipulation is supported by the fact that there was no reference as to specific amounts or the dates installment payments were due in the discussions before the court indicating that an agreement had been reached (no specific stipulation, per se, was read into the record, see transcript of proceedings September 16, 1988).

Additionally, the terms of the oral stipulation were not clear, though the agreement generally was uncomplicated. It was specifically contemplated that the agreement would be reduced to writing and clear terms based on the general understanding. When the Court inquired as to who would prepare "the judgment" (page 7, line 22-23 transcript of September 16, 1988 proceedings), Ms.

Denholm specifically responded that she would prepare the documents (page 7, line 24, transcript of September 16, 1988 proceedings), not a "judgment" and not a single document, but plural, more than one document; that was because the parties and counsel understood that in addition to an order or judgment there would a written agreement or stipulation.

Plaintiff asserts that defendant never "requested" a hearing on the motion for entry of judgment. Defendant was never given an opportunity to request a hearing! No request or notice to submit for decision was filed. Without notice to the parties, or at least without notice to defendant or his counsel, on the second working day after defendant timely filed his objection to entry of judgment (actually, defendant had until five p. m. the day that the trial court signed the judgment to file a response), the trial court summarily granted judgment. The trial court as much as admits that when it did so it was "asleep." (See record at page 61) If the trial court was asleep when it came to defendant's most obvious and simple objection, what consideration can defendant infer his other arguments received? Defendant was not even accorded the relatively abbreviated procedures set forth in Rule 4-501, Utah Rules of Judicial Administration. Due process as guaranteed by the Constitutions of both Utah and the United States was denied the defendant.

II

APPELLANT'S REPLY TO RESPONDENT'S POINT II

Plaintiff argues that its Rule 60(a) motion to amend the judgment was properly granted. That motion asserted that the judgment bore a "clerical" error and that the clerical error should be corrected. Allowing, for the sake of brevity of argument only, that the identity of the party on a judgment could be a clerical error (one having such devastating, substantive implications to the aggrieved person, that it should not be considered as "clerical"), it would be clerical only when an incorrect name different from the name of the party appearing on the pleadings leading to the granting of judgment, was mistakenly typed in. Robert Williams name appeared throughout all of plaintiff's pleadings seeking judgment, from stipulation to verified motion. The name that appeared on the judgment was the same as plaintiff had sought judgment against. It was error, certainly, and defendant succinctly pointed the error out. It was not clerical error, however, and therefore the motion to amend should have been denied.

Plaintiff argues that "an error in the caption is not material to the substance of the agreement." That is hardly the question. The only place the defendant is identified in plaintiff's pleadings seeking judgment is in the caption of both the "stipulation" (not signed by either defendant or counsel, see Record 40-41) and the verified motion; only Robert Williams is there identified. Counsel for defendant respectfully submits that plaintiff is in error, that

there is nothing more material or substantive than the identity of a party against whom a pleading or more particularly a judgment is directed. There is no indicia whatsoever in plaintiff's pleadings that they are directed to any one other than Robert Williams! (No "et al" in the caption, and so on.)

Plaintiff argues that the error and the amendment were not "prejudicial" to James Williams. It was plaintiff's sloth and plaintiff's refusal to acknowledge the mistake in the written version of the stipulation as to the identity of the responsible, liable party that led to the disagreement and the withholding of payment in the first place! It was plaintiff who declined tendered payments from James Williams. Regarding which James Williams never had the opportunity to address the trial court because, first, he was not the subject of the motion before the court when judgment was granted (Robert was), and secondly because the defendant never had the opportunity provided by Rule 4-501 Rules of Judicial Administration to seek a hearing! All of which has resulted in a judgment for more than fifty thousand dollars against, first Robert Williams and later against James Williams. There was prejudice, indeed!

Finally, plaintiff asserts that the trial court "clearly shows that it read" defendant's objection. The record itself shows that the trial court ignored defendant's objection, for despite the objection's clear, absolutely accurate point that Robert Williams was not the proper party, the trial court granted a motion against Robert Williams and signed a judgment against Robert Williams.

While a great deal of deference is due the trial court, it would be stretching rational standards of review beyond any sensible application to overlook the trial court's overlooking of an error pointed out so specifically. Reasonable persons can only infer that the trial court did not read the defendant's objection.

III

APPELLANT'S REPLY TO RESPONDENT'S POINT II

Appellant urges, inter alia, that the trial court also erred at the April 1988 pretrial when it compelled defendant to elect between the risk of contempt and jail or stipulate that he had signed a personal guarantee. Plaintiff argues that the threat of jail made by the trial court was in the context of a citation for "contempt" aimed at "misconduct," arising out of a "heated exchange" between counsel and the trial court. Plaintiff's characterization is entirely inaccurate and conclusively disputed by the transcript of the pretrial proceedings.

Counsel admits that the demeanor of the trial court was impatient and perhaps "heated." That was obvious from the first, in the tone and manner of the trial court's inquiry following counsel's identification of James Williams: the court brusquely asked "What does he have to do with it?" (pretrial transcript page 2 line 10) It was not so much the question itself, which implied that the court was not familiar with the status or parties in the case (although at that date the court's file consisted of twenty pages only), but its tone that caused counsel for defendant to be

stunned (being surprised at the court's apparent ire) and at a loss of words to the point that it was counsel for plaintiff that responded to the inquiry directed to counsel for the defendant (pretrial transcript page 2 line 11-12).

This counsel will confess that on that occasion he was inarticulate, unpersuasive and even slow in responding to the trial court's inquiries. In defense, however, this counsel will also urge that the trial court was impatient and seemed to have already decided the case even though it was not familiar with its status or the nature of the parties. The trial court seemed to believe that defense counsel had or should have completed discovery (see the trial court's statement at the top of page 6 of the pretrial transcript), even though a brief review of the twenty pages of the record would have informed the court that while the defense had responded to plaintiff's discovery requests, the defense had elected to not pursue discovery. (There is nothing in the Rules of Civil Procedure mandating that a party expend legal costs in pursuing discovery.) Counsel did not anticipate having to argue persuasively at pretrial the merits and weight of evidence, particularly as the majority of defendant's defenses were related to the denial of several factual allegations and the application of law to the facts, actually to the lack of facts in that the defense anticipated that plaintiff would be unable to meet its burden of proof as to many of the allegations (particularly as to whether there was a personal guarantee or that defendant had agreed to be responsible for the debts of the third party corporation).

Counsel was immediately inhibited by the court's apparent hostility; thereafter counsel's efforts to explain defendant's position were repeatedly cutoff (counsel was interrupted on at least a dozen occasions in the brief pretrial; see pretrial transcript page 3 line 7, page 5 line 13, page 6 line 14, page 7 line 2, page 7 line 22, page 8 line 7, page 9 line 7, page 10 line 12, line 14, line 21, page 11 line 20, page 12 line 7). Counsel was hampered, if not stymied, by the trial court's effort at pretrial to hear the evidence, judge its weight and make findings:

THE COURT: Now, you have a guarantee.

MISS DENHOLM: Yes, we do.

THE COURT: Was there ever a cancellation of the guarantee?

MISS DENHOLM: No.

THE COURT: You are claiming this is a cancellation, then, of the guarantee.

MR. LINDSLEY: We are claiming, as a matter of fact, there was a cash on delivery relationship that occurred prior to 1983 between the corporate entity and the plaintiff.

THE COURT: Doesn't make any difference, does it? Does it make any difference to a guarantee if you leave the guarantee in effect?

MR. LINDSLEY: Well, first of all, first defense is that there's no guarantee from James Williams.

THE COURT: Okay. Let me see the guarantee. Okay. Show it to counsel. Does it have his name on it?

MR. LINDSLEY: I am not sure that does.

THE COURT: Well, you show it to me. Does it have his name on it?

MISS DENHOLM: Yes. Well, we believe it does. Signature is identical to other signatures.

THE COURT: Okay. Simple matter. Is that your signature on there?

MR. WILLIAMS: It could be. I don't recall signing that ever.

THE COURT: Doesn't matter. Look at it and tell me if that's your signature.

MR. WILLIAMS: It could be my signature.

THE COURT: Does it look to be somebody's else's signature.

MR. WILLIAMS: Probably not.

THE COURT: Then that's not a defense, is it?

MR. LINDSLEY: In the admissions we denied that that's a personal guarantee.

THE COURT: That doesn't matter.

(Pre-trial Transcript Page 7-9)

The document referred to as the "guarantee" is found in the record at page 3 and 14, and is also in the addendum of appellant's brief. Although the trial court repeatedly referred to the document as a "guarantee" it was not a guarantee and it had not been relied on by plaintiff in extending credit. The following are observations arising from a brief review of the subject document and the trial court record up to the date of the pretrial:

1. Plaintiff attached a copy of the same document to its original complaint and alleged that it was an agreement executed by Robert Williams. (And by inference, plaintiff was alleging that

it had relied on Robert Williams' promise to personally be responsible for the debts of the corporation.) (Record page 1-3)

2. It was purportedly executed in April of 1979, five years prior to the insolvency of the corporation and its dissolution, more than eight years prior to plaintiff's filing a complaint against James Williams, and more than nine years prior to the pretrial. (Record page 3, page 12-14)

3. The signature is illegible. (Record page 3 and page 14)

4. The name printed on the form is that of Robert Williams. (Record page 3 and 14)

5. The address and telephone identified as "home" on the document next to the signature were those of Robert Williams. (Record page 3 and 14)

6. The form is blank in the space provided to identify the party to whom credit is being advanced, the "debtor" whose debts are being guaranteed. (Record page 3 and 14)

Counsel for defendant held the opinion that evidence at trial would show not only that the plaintiff did not rely on a promise of James Williams in extending credit, but plaintiff did not perceive or believe the illegible signature on the "credit application" to be James Williams' until several years after the last extension of credit to the corporation, until after the corporation was insolvent and had been dissolved, until after its lawsuit against Robert Williams was being dismissed.

The court repeatedly responded to statements or proffers of counsel and/or James Williams with comments like: "That's not a

defense, is it?" (pretrial transcript page 9 line 5) "That doesn't matter." (pretrial transcript page 9 line 8) "You cannot waste time just because you want to waste time." (pretrial transcript page 11 line 9-10 and line 23, page 9 line 14,) The trial court's cross-examination of defendant (pretrial transcript page 8 line 20 to page 9 line 5) conjoined with the above, conjoined with the court's demeanor and the repeated interruptions of counsel, culminated by the trial court admonishing counsel that jail was guaranteed if counsel persisted in denying that there was a personal guarantee: the totality of circumstances make it clear that the court was assuring counsel and defendant that to raise the issue and lose on it was going to entail sanctions far more severe than those provided for in the rules of civil procedure, that the court would find someone in contempt and impose jail. That was error. That denied defendant due process.

The trial court was not familiar with the status of the case nor the nature of the parties, at the commencement of the pretrial, and the trial court still was not familiar with the identity or nature of the parties eight months later when it signed a judgment against Robert Williams. Counsel was not playing games and counsel had no intention of "wasting" the court's time: counsel did intend to contest whether there was a personal guarantee, to contest if and when the alleged debt occurred and by whom, to contest the delay in pursuing a claim against James Williams (pursuant to both statute of limitations and the doctrine of laches).

The trial court's threatened invocation of incarceration for contesting an issue (which constituted questions of fact and of law) epitomized the trial court's demeanor in the pretrial: the defendant was indeed intimidated and denied due process.

Counsel does not suggest any malice on the part of the trial court. Counsel does not suggest that the trial court intended to deny defendant due process. To err is human and judges can and do err. This counsel had appeared frequently before the Honorable Judge Cornaby before the referenced pretrial and has continued to frequently appear before the same court. Professional disagreement both as to fact and as to interpretation of law has and continues to occur in some cases. Counsel also admits that if, on the occasion of the pretrial, he had been more articulate, more quickly responsive, the problem may have been avoided. But it did happen and Mr. James Williams paid for it by a loss of due process.

CONCLUSION

The trial court below repeatedly denied James Williams an opportunity to be heard, from the coercion to stipulate that he had signed the credit application, to the failure to comply with Rule 4-501 Utah Rules of Judicial Administration and granting plaintiff's verified motion without hearing or an opportunity for defendant to request a hearing, to the trial court's sua sponte amendment of plaintiff's verified motion and granting of an amended judgment based upon that. The lack of a written stipulation or an order reflecting and adopting the oral stipulation was due to

plaintiff's negligence, in part, and in plaintiff's persistence in placing Robert Williams name as the responsible party. James Williams had tendered performance which plaintiff rejected (see defendant's objection Record at 36). The totality of circumstances reflect a denial of due process and reversible error. The amended judgment should be reversed and ordered set aside.

Respectfully submitted this _____ day of February, 1990.

William H. Lindsley
Attorney for Defendants/Appellants

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing to Kathryn S. Denholm, 263 East 2100 South, Salt Lake City, Utah 84115, this _____ day of February, 1990.
