

1980

Robert Myers and Jackie Myers v. Reggie McDonald : Reply Brief of Plaintiffs-Appellants

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

ROBERT MYERS and
JACKIE MYERS, his
wife,

Plaintiffs-Appellants,

vs.

REGGIE MC DONALD,

Defendant-Respondent.

Case No. 17046

REPLY BRIEF OF PLAINTIFFS-APPELLANTS

POINT I

RESPONDENT'S RELIANCE UPON THIS
COURT'S OPINION IN PLATZ V. INTER-
NATIONAL SMELTING CO. IS MISPLACED

The respondent's appeal brief is in general a reiteration of this Court's opinion in Platz v. International Smelting Co., 61 Utah 342, 213 P. 187 (1922). Appellants do not dispute the holding of that opinion, but do emphasize that Platz did not address the fact situation presented here, i.e., the fact that the death of appellants' decedent was unknown to all for more than two years. Platz cannot be helpful to respondent's position because it is simply not in point.

POINT II

THIS COURT'S HOLDING IN FOIL V. BALLINGER IS PERTINENT BY WAY OF ANALOGY

The references in appellants' brief to Foil v. Ballinger, 601 P.2d 144 (Utah 1979), were for purposes of analogy. It is beyond dispute that this Court was directing its attention to the Medical Malpractice Statute in Foil. However, this Court's treatment of the question of a plaintiff's discovery of a cause of action and its effect upon a limitations period are relevant here, and for that reason were brought to the Court's attention in appellants' brief.

POINT III

EQUITABLE DOCTRINES MAY, UNDER UTAH LAW, AFFECT A STATUTE OF LIMITATIONS DEFENSE AT LAW

Respondent cites this Court's decision in Patsy v. Budge, 38 P.2d 712 (1934) as support for his assertion that an equitable doctrine cannot affect a limitations defense. Such a bald assertion ignores this Court's holding in Attorney General v. Pomeroy, 93 Utah 426, 73 P.2d 1277, 114 A.L.R. 726 (1937). Justice Wolfe therein addressed the issue and held:

There seems to be no doubt that if this were an action of fraud, the statute would not begin to run until the fraud was discovered or reasonably could have been discovered. But even when the action

is not based on fraud, in equity where the cause of action is concealed from the one in whom it resides by the one against whom it lies, the statute will be postponed. In 37 C.J. 973 it is said that by the weight of authority the same rule applies in a case at law. (Emphasis added.)

The Court remanded for a determination of that issue, among others.

To the extent (if at all) that Platz can be read as a contrary decision, the fact that the Pomeroy opinion came later requires that it be followed, since it would to that extent impliedly overrule Platz.

To adopt the Trial Court's position in this case would produce a result which defies logic. Persons finding themselves in appellants' position would be required to file an action within two years when they neither knew of the death, were aware of the circumstances constituting a viable cause of action, or the identity of a defendant. The state's interest in promoting judicial economy dictates against this Court's (or any other) requiring the filing of such chimerical lawsuits in order to protect against the possibility of a genuine cause of action coming to light after the two-year period had run.

CONCLUSION

Appellants submit that the Trial Court's judgment of dismissal constitutes error and should accordingly be reversed.

DATED this 5th day of September, 1980.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Reply Brief of Plaintiffs-Appellants were personally served upon Nelson L. Hayes of Richards, Brandt, Miller & Nelson, attorneys for defendant-respondent, 48 Post Office Place, Salt Lake City, Utah 84110, this 5th day of September, 1980.

