1955

Donald Buckner v. Main Realty and Insurance Company and Robert Stevenson : Brief of Respondent

Utah Supreme Court

D. H. Oliver; Attorney for Respondent;

Case No. 8345

IN THE SUPREME COURT of the STATE OF UTAH

DONALD BUCKNER,

Respondent,

vs.

MAIN REALTY AND INSURANCE COMPANY, a Corporation, and ROBERT STEVENSON,

Appellants.

RESPONDENT'S BRIEF

D. H. OLIVER,
Attorney for Respondent,
309 Frick Building,

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STATEMENT

Appellants' statement of facts is substantially correct.

POINTS

The lower court did not error in dismissing appellants appeal to the District from the City Court.

To sustain the judgment of the lower court, Respondent relies on the following

PROPOSITION OF LAW
I.

STATUTES SHOULD BE INTERPRETED ACCORDING TO THE LEGISLATIVE INTENT, TO BE ASCERTAINED FROM THE WHOLE STATUTE AND A CONSIDERATION OF THE MISCHIEF WHICH IT WAS DESIGNED TO REMEDY.

Irr. Co. vs. Stock Co., 173 P 265
State vs. Gates, 206 P 863
Dryden vs. Board, 51 P2nd 177
Gietz vs. Webster, 50 P2nd 573
McGeal vs. Phelps, 128 NW 1041
Peo. vs. Henning, 103 NE 530

ARGUMENT

In *State vs. Gates,* supra, at page 867 the Oregon Supreme Court said,

> "Statutes should be interpreted according to the Legislative intent, to be ascertained from the whole statute and a consideration of the mischief which it was designed to remedy."

In *Irr. Co. vs. Stock Co.,* the same court said, at page 266

> "In order to discern the legislative intent which is the main object, we should look at the whole statute and section."

These decisions have been cited with approval and followed in all of the cases cited above, and many more.

This court can take judicial notice that the New Rules were approved by this court and incorporated in

the 1953 Statutes as the Code of Civil Procedure by the legislature.

The purpose of this Code is expressed by the legislature in Rule 1 (a) as follows

> "These rules shall govern the procedure in the District Courts of this State, and such *other Courts* as may *hereafter be determined,* in all actions, suits and proceedings of a civil nature, whether cognizable at law of equity. . . . They shall be liberally construed to secure the *just, speedy, and inexpensive* determination of every action."

Rule 5(a) provides for the filing and service of pleadings and other papers in civil actions, and expressly provides

> "No service need be made on parties in default for failure to appear, etc."

Rule 77(d) provides the manner of service and by whom notice of judgment should be made, and specifically excepts from its operation parties in default, and then provided

> "Lack of notice of the entry of judgment by the clerk does not affect the time for appeal or relieve or otherwise authorize the court to relieve a party for failure to appeal within the time allowed."

Rule 81(c) provides

> "These rules shall apply to civil actions commenced in the City or Justice Courts except in so far as such rules are by their nature inapplicable to such courts or proceedings therein."

This court is familiar with the evil existing in the courts of this state prior to the adoption of the new rules and the mischief perpetrated upon society by prolonged, expensive and oft times dilatory tactics of neglectful and careless litigants.

Viewing Rule 73 (h) in the light of all the rules of civil procedure and the evil intended to be remedied thereby, the conclusion is unescapable that the notice provided for therein was not meant for parties in default, and in this we respectfully submit that the judgment of the District Court should be affirmed with costs to Respondent.

Respectfully submitted,

D. H. OLIVER,
Attorney for Respondent,

309 Frick Building,
Salt Lake City, Utah