

1955

Ralph Thompson v. Grant M. Aldrich and Dale V. Bowles : Brief of Appellants

Utah Supreme Court

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No. 8387

IN THE SUPREME COURT OF THE STATE OF UTAH

RALPH THOMPSON,

Plaintiff and Respondent

vs.

GRANT M. ALDRICH and
DALE V. BOWLES,

Defendants and Appellants

Appeal from the District Court of the
Third Judicial District, in and for
Salt Lake County, State of Utah.

BRIEF OF APPELLANTS

William J. Cayias
Attorney for Defendants
and Appellants

No. 8387

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vs.

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Appeal from the District Court of the
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Lake County, State of Utah.

Honorable Joseph G. Jeppson, Judge

- - - - -

BRIEF OF APPELLANT

- - - - -

William J. Cayias
Attorney for Defendants
and Appellants.

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STATEMENT OF FACTS

This case arises from a set of circumstances that took place in the evening of October 30, 1954, on Exchange Place between Main and State Streets in Salt Lake City, Utah.

Plaintiff and defendants were engaged in an altercation and the parties each testified as to the reason for such physical encounter. The testimony of defendants and plaintiff differ to quite an extent. (See transcript pages 148 through 252.

Without any question, however, there was a physical encounter between plaintiff and defendants on the corner of Cactus Street and Exchange Place in Salt Lake City, Utah, on the evening in question. The parties separated and defendants proceeded to the liquor store

just east of such intersection.

When defendants came out of the store the plaintiff accosted them again and another altercation ensued. (See page 153 to 161 and 225 to 231 and 238 to 240 of transcript of testimony.)

Plaintiff initiated his action for damages against the defendants and the court found in his favor, awarding damages, both special and general, and also awarding punitive damages.

STATEMENT OF POINTS

The defendants and appellants rely upon the following points with respect to the appeal herein, and for reversal of the judgment of the District Court.

1. The court erred in awarding general and special damages as it did, in two respects:

a. The general damages awarded were excessive with respect to the actual injury suffered.

b. Certain special damages were allowed without proper evidence to justify allowance of same.

2. The court erred with respect to its award of punitive damages in two respects:

a. The award of punitive damages was not justified by the evidence.

b. The award of \$2,000.00 punitive damages was excessive.

3. The Findings of Fact as determined by the Court were not substantiated by the evidence presented at the trial, and the Conclusions of Law and Decree based thereupon were therefore in error.

ARGUMENT

Point 1.

a. Attention of the court is respectfully called to the testimony of the plaintiff as it appears in the transcript of testimony herein, in that the only injury of any serious consequence was to his thumb, and the major medical treatment was the administration of penicillin on five office visits

and then a final check up.

The general rule with respect to damages is well known, and as Chancellor Kent once said in passing upon objections to verdicts as being excessive: "The damages, therefore, must be so excessive as to strike mankind, at first blush, as being, beyond all measure, unreasonable, and outrageous, and such as manifestly show the jury to have been actuated by passion, partiality, prejudice or corruption. In short, the damages must be flagrantly outrageous and extravagant, or the court cannot undertake to draw the line; for they have no standard by which to ascertain the excess." (See 15 American Jurisprudence 623)

We respectfully submit that the verdict of the District Court

herein exceeds any rational appraisal of the damages involved.

b. With respect to the special damages allowed herein, it is respectfully submitted that there is no evidence in the transcript to show payment to or the need for a dentist, or any evidence of damage with respect to discoloring of clothing. These items are not pecuniarily important, but are called to the attention of the court as an indication that damages were allowed which were not properly proven.

Point 2.

a. With respect to the award of any punitive damages, the burden rests on the plaintiff to establish that the wrongful act was done recklessly, wantonly, or maliciously, or was attended with insult, oppression,

or other circumstances of aggravation. (See 6 Corpus Juris Secundum 902). In other words the burden rests on the plaintiff to establish that the act complained of had malice, was done wantonly, or had some other circumstance to justify any award of punitive damages. It is submitted that the evidence in this case does not so show.

b. In volume 6 Corpus Juris Secundum at page 908 through 911 there appears a number of cases with respect to the amount of punitive damages that have been allowed with respect to assault and battery matters. A review of those cases indicates that in the majority of such cases, punitive damages do not greatly exceed any amount of actual damages awarded. Attention is respectfully called to the following

cases that appear on page 909 of the second volume: Evans vs. Ball, 6 S.W. (Second) 180; Powell vs. Meiers, 54 North Dakota 336, 209 N.S. 547; Buttier v. Wells, 241 S.W. 664; Gieske vs. Redemeyer, 224 S.W. 92; Parker vs. Mather, 59 S.W. (Second) 961.

With respect to the Utah law, attention is respectfully called to the case of Murphy vs. Booth, a Utah case found at 103 Pacific 768.

In this case a jury found issue in favor of a plaintiff and assessed actual damages of \$1,187.50. They also awarded her exemplary damages in the amount of \$2,000.00. Upon defendant filing a motion for a new trial, the court announced in case the plaintiff should consent that judgment for exemplary damages be reduced to \$500.00, the motion for a new trial would be over-

ruled, otherwise a new trial would be granted. Plaintiff consented to the reduction and the judgment of \$1,687.50 was allowed to stand. Appeal to our Supreme Court was had and the matter was affirmed. It is submitted that the line of reasoning as taken by the District Court in this matter has been approved by the Supreme Court of the State of Utah and that an award of \$2,000.00 in this matter now before the Court is excessive in view of the outstanding case of Utah Supreme Court as above cited. The case of Murphy vs. Booth has been cited with approval in one or two cases that have arisen in the State of Utah since that time.

It is submitted that an award of \$2,000.00 in punitive damages is excessive where the actual damage to the plaintiff consisted of certain

small items and doctor bills of not to exceed \$110.00, some loss of wages, and where the only real injury was an injured thumb.

Point 3.

A review of transcript in this matter will show that there is a very serious and sharp conflict between the testimony of the plaintiff and the defendants. Reviewing the testimony of all parties, it would appear that there was definitely an altercation between the parties, but that there is a serious question as to whether there was any wantonness, maliciousness, or other acts on the part of the defendants that would justify the court in making Findings of Fact as it did. It is submitted that the Findings of Fact should reflect and show an altercation between the parties, and then a determination by the

Court as to who was at fault, but certainly there should not be any finding that the acts of the defendants were unprovoked, inexcusable, brutal, or malicious, as the evidence in this case did not show these to exist as facts. If the Court erred in so determining the facts, then of course, it follows that the Conclusions of Law and the Decree are in error and especially with respect to the award of any punitive damages.

Respectfully submitted,

William J. Cayias
Attorney for Defendants
and Appellants