

1988

Kip Quinn v. Estate of Fenton Glade Quinn and Fenton Quinn, Jr. : Reply Brief

Utah Supreme Court

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Recommended Citation

Reply Brief, *Quinn v. Estate of Fenton*, No. 880504.00 (Utah Supreme Court, 1988).
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DOCKET NO. 88-0504-CA

THE SUPREME COURT OF THE STATE OF UTAH

KIP QUINN, Personal)
Representative of the Estate)
of Dawna W. Quinn, and the)
ESTATE OF DAWNA W. QUINN,)
)
Plaintiffs and)
Respondents,)
)
v.)
)
ESTATE OF FENTON GLADE QUINN)
and FENTON QUINN, JR., the)
Personal Representative of the)
Estate of Fenton Glade Quinn)
)
Defendants and)
Appellants.)

Case No. 870113
Priority Classification 14b

88-0504-CA

APPELLANTS' REPLY BRIEF

Appeal from a Judgment of the
Third Judicial District Court of Salt Lake County
Judge John A. Rokich

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FILED
JUL 13 1988

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SUMMARY OF ARGUMENT

It is a basic principle of appellate review that new evidence should not be considered on appeal. Respondents seek to introduce new evidence in direct violation of this fundamental rule. The new evidence, consisting of two documents which are not in the record on appeal and were never presented to the district court, should not be allowed or considered by this Court.

There is no reason to create an exception in this case and allow the new evidence. Respondents knew about and were in possession of the two documents when the issues now on appeal were presented to the court below. It would be unfair to Appellants if Respondents were now allowed to present new evidence which they knowingly failed to use in the trial court.

ARGUMENT

I.

RESPONDENTS' BRIEF CONTAINS DOCUMENTS NOT PROPERLY BEFORE THE COURT WHICH SHOULD NOT BE CONSIDERED IN DECIDING THIS APPEAL.

Respondents' brief (Respondents shall hereinafter be referred to as "Kip Quinn") relied in large part upon two documents which should not be considered by this Court: first, a letter from Robert Felton to Fenton Quinn, Jr. dated August 6, 1984 and second, a Petition for Order Determining that Fenton Quinn Predeceased Dawna W. Quinn.

Neither of these documents is contained in the record on appeal and neither was filed with the district court below. Until now, Kip Quinn has never relied upon or referred to these documents at any time in this case.

The primary issue raised by this appeal (i.e., whether Kip Quinn ever filed a claim for wrongful death) was presented to the district court in the form of a Motion to Dismiss filed by Defendants Estate of Fenton Glade Quinn and Fenton Quinn, Jr. (hereafter the "Estate"). Kip Quinn opposed the Estate's Motion to Dismiss, both by memorandum and by oral argument. However, in arguing to the district court that the claim he presented to the Estate was a claim for wrongful death, Kip Quinn never once mentioned or referred to the documents he now seeks to rely upon. Instead, he agreed with the Estate that the relevant claim was the claim for \$650,000.00 which was mailed on August 11, 1984. Only now, for the first time on appeal, has Kip Quinn produced two new documents as evidence of his claim.

This Court has repeatedly held that no new documents, evidence, claims, or defenses will be allowed for the first time on appeal. See, e.g., Bekins Bar V Ranch v. Beryl Baptist Church, 642 P.2d 371, 372 (Utah 1982); In re Estate of Ekker, 432 P.2d 45, 46 (Utah 1967); Park City Utah Corp. v. Ensign Co., 586 P.2d 446, 450 (Utah 1978); Yost v. State, 640 P.2d 1044, 1046 (Utah 1981); and Pilcher v. State, 663 P.2d 450, 453 (Utah 1983).

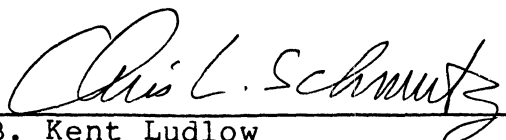
These cases, and many others, establish the important principle that appellate courts should not receive new evidence. If Kip Quinn wanted to rely on the documents he now seeks to introduce, he should have done so in the court below. The same issues, regarding the validity and nature of his claim, were raised there, and the same documents were known to him and were in his possession.

There is no reason to allow these documents for the first time on appeal. If this Court were to consider Kip Quinn's new documents, it should in fairness also allow rebuttal or explanatory evidence from the Estate. Certainly, it would be unfair for this Court to allow Kip Quinn's documents into evidence without also allowing the Estate to present new evidence. Unless the Court wishes to become a trial court with regard to the validity and nature of Kip Quinn's claim, it should not allow or consider these two documents.

CONCLUSION

New evidence should not be allowed for the first time on appeal. The documents sought to be introduced by Kip Quinn were available to him in the court below but were not used. They should not be allowed or considered now.

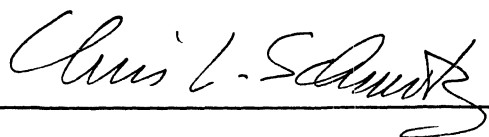
DATED this 13th day of July, 1988.



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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Appellants' Reply Brief by hand delivering four (4) copies thereof to Robert Felton, Attorney for Respondents, 310 South Main Street, Suite 1309, Salt Lake City, Utah 84101, this 13th day of July, 1988.



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