

1990

Knight Adjustment Bureau v. Robert Young : Brief of Appellant

Utah Court of Appeals

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BRIEF

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IN THE UTAH COURT OF APPEALS

KNIGHT ADJUSTMENT BUREAU,

Plaintiff,

VS

ROBERT YOUNG,

Defendant.

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Argument Priority #16

Case No. 900029 CA

APPELLANT'S BRIEF

Appeal from the Judgment of the
Third Judicial Circuit Court
State of Utah
Honorable Michael K. Burton

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IN THE UTAH COURT OF APPEALS

KNIGHT ADJUSTMENT BUREAU,	*	
	*	
Plaintiff,	*	Argument Priority #16
	*	
vs	*	
	*	
ROBERT YOUNG,	*	Case No. 900029 CA
	*	
Defendant.	*	

APPELLANT'S BRIEF

Appeal from the Judgment of the
Third Judicial Circuit Court
State of Utah
Honorable Michael K. Burton

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JURISDICTION

The appeal in this matter is filed of right, pursuant to Rule 3 of the Rules of the Utah Court of Appeals from a final judgment of the Third Circuit Court in a contract/collection proceeding tried to the Honorable Michael Burton on December 19, 1989. Notice of Appeal was filed timely.

ISSUES PRESENTED FOR REVIEW

1. Were there any facts entered into evidence at trial to support the defense's argument of faulty workmanship in the provision of dental work?

2. Did the trial judge take judicial notice of evidence contrary to the Utah Rules of Evidence?

3. Does the defense have the burden of proof to establish that the services were provided in an unworkmanlike manner?

STATEMENT OF THE CASE

Nature of the Case

1. This is an appeal from the Findings of Fact and Conclusions of Law entered by the court and Judgment docketed by the Third Judicial Circuit Court, Murray Department, the Honorable Michael K. Burton presiding. The judgment against Plaintiff, Knight Adjustment Bureau, denied Plaintiff's claim for payment of a dental bill in the amount of \$267.65 and awarded Defendant's attorney fees of \$150.00.

Disposition of the Case Below

The action was commenced by Knight Adjustment Bureau on behalf of Dr. Stephen Moore against Robert Young for unpaid dental

services (Tr. 6). The case came for trial before the Honorable Michael K. Burton on December 19, 1989. After trial, the court entered its Findings of Fact and Conclusions of Law (Tr 31-32).

Statement of the Facts

This is a suit for collection of an unpaid dental bill for services provided by Dr. Moore to Robert Young. Dr. Moore's claim was assigned to Knight Adjustment Bureau for collection. (Tr. 6). Mr. Young received dental services (two damaged teeth were provided with crowns) from Dr. Stephen A. Moore in August of 1986. Mr. Young signed a written agreement to pay Dr. Moore for these services. Some payments were made by Mr. Young's insurance company, however, the balance of \$267.65 was never paid. Mr. Young reports that one of the crowns came off one and one-half years after it was placed (Tr. 19). Robert Young and Cindy Duke, an employee of Dr. Moore, were the only witnesses at trial.

SUMMARY OF ARGUMENT

The issue of whether the dental work was faulty turns on facts not generally known or capable of accurate and ready determination. The trial court was not justified in taking judicial notice of facts not in evidence for which no expert testimony was given.

ARGUMENT

1. Mr. Young's basis for not payment all the charges for the services received from Dr. Moore is that an implied warranty exists for a crown to last longer than one and one-half years and therefore the workmanship must be considered to be faulty. (Tr. 28). No expert testimony was given nor any evidence offered to

support the contention that the workmanship of Dr. Moore was unsatisfactory. Of the two crowns used to repair Mr. Young's teeth, one has remained in place and one has come out. (Tr. 24). Since there was nothing presented at trial to substantiate the claim that the workmanship was faulty it is only conjecture to conclude that anything about the placement of the crowns was amiss. It is just as likely that the crown was loosened in some manner by Mr. Young when he ate hard food or abused the crown. From the testimony and evidence presented at trial one cannot tell what caused the crown to come off. No evidence was submitted to the court to indicate the length of time a crown might reasonably be expected to last or what conditions of abuse or non-compliance by the patient might limit the effectiveness of a crown. The Utah Rules of Evidence state:

If scientific, technical, or other specialized knowledge will assist the trier of facts to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. Utah Rules of Evidence, Rule 702.

It is obvious that the duration and effectiveness of a crown placement is a technical question, and no expert testimony was introduced to establish the standard by which it could be measured.

2. The court took judicial notice of the alleged fact that the workmanship was faulty (Tr. 31-32) despite the absence in the record of any evidence. The Utah Rules of Evidence state:

A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the terminal jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be

questioned. Utah Rules of Evidence, Rule 201.

The performance of a crown on a specific tooth is not a matter of general knowledge and it is not reasonable for a technical matter to receive judicial notice when experts are needed to determine the reasonable standard as in this specific instance.

The Court admits that it does not have the information to make such a judgment and yet does so. (Tr. 31-32).

The Supreme Court of Utah stated (citing 49 A.L.R.21d 764) in Defusion Company v. Utah Liquor Control Commission 613 P2d 1124 (Utah 1980) that "as a matter becomes disputable it ceases to fall under the head of common knowledge and so will not be judicially noticed. This is precisely the case in this matter, the key issue of what constitutes a workmanlike placement is not a matter of common knowledge and is a matter of dispute and therefore should not receive judicial notice.

3. Mr. Young contends that the burden of proof falls to Knight Adjustment Bureau to establish that the crown was placed in a workmanlike manner. There is no dispute that (1) Mr. Young agreed to pay for the services (Tr. 6,7), and (2) that the refuses to pay because he believes that the services were not performed in a workmanlike manner. (Tr. 28). In Utah the burden of proof is with the proponent of a proposition to persuade the trier of fact by a preponderance of evidence. This principle was stated in Koesling v. Basamaklis, 539 P.2d 1046 (Utah 1975) as follows:

The proponent of proposition has two burdens relative to his proof: to produce evidence which proves or tends to prove the proposition asserted; and to persuade the trier of facts that his evidence is more credible or entitled

to the greater weight.

In this case, Mr. Young asserts that he will not pay for the services he received because of faulty workmanship. No proof of this proposition was introduced at trial. The court admitted that there was no proof of faulty workmanship.

. . . I think that a crown ought to stay in your mouth a lot longer than a year and a half if you do it--and I don't know why it came out, but nobody knows. All we know today is that it came out. If he grinds his teeth then the other one should have come out. So, I mean, given the information that I have, I have to conclude that it came out because it wasn't put in right. I mean, there may be ten other reasons, but I don't have any basis upon which to conclude other than it came out in a short time. I mean that's all I really know. (Tr. 31,32).

The burden of proof was not met because no evidence was submitted to support the proposition. The court properly admits that there is no evidentiary basis for the conclusion, yet, decides that the workmanship is faulty. Since Mr. Young asserted that the placement of the crown was not done in a workmanlike manner, some proof of this should have been submitted at trial. Knight Adjustment Bureau did not have a burden of proof to validate the quality of this dental service. Thus, the alleged faulty workmanship has not been supported with one bit of evidence; the fact that the crown came off after one and one-half years is just as credibly explained by some abuse of the crown by Mr. Young.

It was an error on the part of the court to attribute the loss of the crown to the work of the dentist without evidence to support this proposition.

CONCLUSION

Based upon the foregoing arguments, Knight Adjustment Bureau respectfully urges the Court to reverse the judgment on the grounds that the trial court took improper judicial notice of alleged facts inconsistent with the Utah Rules of Evidence and that the Respondent did not meet the burden of proof to prove his proposition that the workmanship was faulty, justifying the refusal to pay for the services rendered pursuant to the written agreement. Knight Adjustment Bureau also requests its reasonable attorney fees.

DATED this 5 day of June, 1990.

Respectfully submitted,

LSJ
Kathryn Schuler Denholm

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing Brief of Appellant to Lynn Heward, Attorney for Respondent, at 923 East 5375 South #E, Salt Lake City, Utah 84117 on this 5 day of June, 1990.

LSJ
Kathryn Schuler Denholm

DISPOSITIVE CONSTITUTIONAL PROVISIONS, STATUTES

There are no dispositive constitutional provisions, statutes or ordinances.