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Ken Holm and Glen Steed v. B & M Service, Inc. : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT

OF THE STATE OF UTAH

KEN HOLM and GLEN STEED d/b/a H & S ENTERPRISES, a partnership,

Plaintiffs-Appellants,

vs.

B & M SERVICE, INC.,

Defendant-Respondent.

Civil No. 18067

BRIEF OF RESPONDENT

APPEAL FROM AN ORDER OF THE THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY GRANTING DEFENDANT'S MOTION TO DISMISS
HONORABLE G. HAL TAYLOR, JUDGE

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vs.	)	
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Defendant-Respondent.	)	

BRIEF OF RESPONDENT

STATEMENT OF THE KIND OF CASE

Plaintiffs filed this action against defendant to recover damages for allegedly negligently damaging plaintiffs' personal property.

DISPOSITION IN LOWER COURT

Defendant's Motion to Dismiss was granted on the grounds that the statute of limitations barred the plaintiffs' claim.

RELIEF SOUGHT ON APPEAL

Respondents seek affirmance of the district court's Order dismissing plaintiffs' Complaint.

STATEMENT OF FACTS

Plaintiffs' Complaint alleges that on June 30, 1978, defendant negligently damaged plaintiffs' steel pipe when hauling it away from an accident scene at the request of the highway

patrol. Plaintiffs' Complaint was filed on August 5, 1981, in the district court for Salt Lake County, more than three years after the accident. The district court dismissed plaintiffs' Complaint on the grounds that the Complaint was barred by the applicable Utah statute of limitations.

ARGUMENT

POINT I

THE UTAH STATUTE IS CLEAR ON ITS FACE AND UNEQUIVOCALLY BARS PLAINTIFFS' CLAIM

Utah Code Ann. Section 78-12-26 sets forth those civil actions which must be commenced within three years. Subsection (2) provides as follows:

> (2) an action for taking, detaining or injuring personal property, including actions for specific recovery thereof; provided, that in all cases where the subject of the action is a domestic animal usually included in the term 'livestock,' having upon it at the time of the loss a recorded mark or brand, if such animal had strayed or was stolen from the true owner without his fault, the cause shall not be deemed to have accrued until the owner has actual knowledge of such facts as would put a reasonable man upon inquiry as to the possession thereof by the defendant. (Emphasis added.)

Unquestionably, the instant case is "an action for . . . injuring personal property." Appellants do not contest that the steel pipe in question was "personal property" and that the alleged damage was "injury" thereto. It is equally clear that a complaint of negligence is "an action." "An action," in absence of any restrictive words, is a broad generic term with comprehensive application, and includes any judicial proceeding which

could result in a judgment. See, Dinsmore v. Barker, 61 Utah 332, 212 P. 1109 at 1110 (1923). There is no limitation in the statute on the phrase "an action" which would justify the contention, made by appellants, that the statute refers to intentional torts only, and not negligence. Appellants argue that the word "injuring" must be read in conjunction with the words "taking, detaining." If the Legislature had intended this result, the statute should have been worded "an action for taking or detaining and injuring personal property." To read the statute as appellants suggest would lead to the absurd conclusion that the statute applies only where the taking or detaining property results in damage to the property, but would not apply to someone who took personal property but did not damage it. The only way to reasonably read the statute is that it applies to any action involving taking personal property, detaining personal property, "or" damaging personal property. If the Legislature had intended to limit the statute strictly to intentional torts, or to just taking or detaining personal property, they could have easily so provided.

Appellants contend that the applicable statute is Utah Code Ann. Section 78-12-25(2), which provides a four year limitation for "an action for relief not otherwise provided for by law." As has been seen, however, the present case is an action which is otherwise provided for by law. The four year statute does apply to negligence actions for personal injuries (which are not otherwise provided for by law), but no personal injury is

involved in the instant case. Appellants contend, however, that inasmuch as personal property damage and personal injury may both be involved in some of the same cases, the same four year statute should apply. Of course, it could just as reasonably be concluded from this logic that the three year statute should apply to negligence actions where both property damage and personal injury are involved in the same case. If there is any merit in appellants' argument it should be made to the Legislature, which establishes the statute of limitations for the various classes of cases. The advantage of the present statutory scheme is it provides for one period of limitations applicable to damage to personal property, regardless of the theory under which the suit is brought.

There is perhaps no better cannon of statutory interpretation than where language is clear and unambiguous it must be held to mean that which it plainly expresses. Utah's three year statute of limitations clearly applies to negligence actions for injury to personal property.

POINT II

THE APPLICABLE CASE LAW COMPELS THE CONCLUSION THAT THE DISTRICT COURT WAS CORRECT IN APPLYING THE THREE YEAR STATUTE

The cases which discuss the statute before the Court on this appeal can only be reasonably read as interpreting the statute as including all tortious (including negligent) damage to personal property. The best discussion of the statute in question is contained in Utah Poultry & Farmers Cooperative v.

Utah Ice & Storage Co., 187 F.2d 652 (10th Cir. 1951). In that case, the plaintiff brought suit alleging that the defendant had negligently damaged a large quantity of eggs. The U.S. District Court, District of Utah, dismissed the action as being barred by the three year statute of limitations. The plaintiff appealed on the grounds that, although negligent injury of personal property would be barred by the three year statute of limitations, the warehouse receipt constituted a contract and therefore the case should be controlled by the statute of limitations governing contracts. Although the appellant court held that the action was tortious in nature, it reasoned that the three year statute would be applicable regardless of whether the action sounded in tort or contract:

> [I]t has been said that the statute is applicable whether the suit is brought on "a negligence theory or a breach of warranty theory." Automobile Ins. Co. v. Union Oil Co., 85 Cal. App. 2d 302, 193 P.2d 48, 51. See also Gosling v. Nichols, 59 Cal. App. 2d 442, 139 P.2d 86; Lowe v. Ozmun, 137 Cal. 257, 70 P. 87; Nathan v. Locke, 108 Cal. App. 158, 287 P. 550, 291 P. 286. In speaking of the applicability of this statute, the Supreme Court of Utah in Reese v. Qualtrough, said "if the injuries are to personal property, the statute fixes the time within which such an action must be brought, and the name of the action can have no effect upon the question of what statute controls." 156 P. at 959. See also Taylor Bros. Co. v. Duden, 112 Utah 436, 188 P.2d 995. Speaking of an identical statute, the Idaho Supreme Court in Common School District No. 18 v. Twin Falls Bank & Trust Co., 52 Idaho 200, 12 P.2d 774, 775, stated: The statute says 'an action.' It does not place the limitation upon an action in tort, but upon any action based upon a wrongful taking, detaining, or injuring of goods or chattels . . . ."

> In speaking of the immateriality of the "form of action' to which the statute is applicable, we think the courts undoubtedly used that term in its generic sense to denote a claim for relief on any legal basis. See Dinsmore v. Barker, 61 Utah 332, 212 P. 1109. Certainly, there is nothing in the statute indicating a legislative purpose to cut off remedies for tortious injuries to personal property, while making it inapplicable to remedies for injuries resulting from the breach of contract. To so construe the statute would lead to an anomalous situation, with both a three year and a six year limitation applying to the same action, depending merely upon the form in which the pleader chose to cast his complaint. See Common School District No. 18 v. Twin Falls Bank & Trust Co., 52 Idaho 200, 12 P.2d 774, at page 776.

Id. at 653-54.

The Utah Supreme Court also discussed an identical predecessor statute in Reese v. Qualtrough, 156 P. 955 (1916). In that case, plaintiff alleged that the defendant destroyed plaintiff's fish. Defendant argued that the action was barred by the three year statute of limitations, but plaintiff, as in the instant case, argued that the four year statute was applicable. The court concluded that it did not make any difference what the action in which relief is sought is called:

> It is the wrongful acts which result in injury and damage which give the right of action, and, if the injuries are to personal property, this statute fixes the time within which such an action must be brought, and the name of the action can have no effect upon the question of what statute controls.

Id. at 959 (emphasis added).

The Reese case has been cited as authority for reaching the same conclusion in other jurisdictions. E.g., Common School

District No. 18 v. Twin Falls Bank & Trust Co., 12 P.2d 774 (Idaho 1932); Deetz v. Cobbs & Mitchell Co., 253 P. 542 (Or. 1927).

It is significant to note that appellant cites no cases, either in Utah or in another jurisdiction, which holds that this statute, or one like it, does not apply to negligent damage to personal property. In O'Neal v. San Pedro L.A. & S.L.R. Co., 38 Utah 475, 114 P. 127 (1911) (discussed in Appellants' Brief at pp. 4-5), the plaintiff alleged that defendants constructed a railroad track adjoining his property and the movement of trains thereon damaged his real property. The defendant argued that the action was barred under a predecessor statute to Utah Code Ann. Section 78-12-26(1) wherein an action was barred if not brought within three years "for waste or trespass of real property." The present statute provides a three year statute of limitations for "an action for waste, or trespass upon or injury to real property." (Emphasis added.) The court held that the action did not involve "trespass" but was what was called at common law an "action on the case" and therefore the three year statute concerning trespass to real property was not applicable. The case is easily distinguishable from the instant case because the instant case does not involve real property and the precedessor statute involved in O'Neal made no reference to "injury to real property." The case of Welch v. Seattle & M.R. Co., 56 Wash. 97, 105 P. 166 (1909) (discussed in Appellants' Brief at p. 15), involves the same distinction between an action for trespass and

an action on the case, where there was one limitation period for waste or trespass to real property, and another limitation period applicable to actions otherwise provided for by law, which was held to include an action on the case. The court in Dearden v. Hey, 24 N.E.2d 644 (Mass. 1939) (discussed in Appellants' Brief at p. 6), in fact notes that Massachusetts has a different limitations period for negligence actions for damage to personal property and negligence actions for personal injury. Id. at 646. The case involves a res judicata issue, and does not challenge the distinction in the limitations period.

CONCLUSION

The only reasonable interpretation of the statute in question, and the cases which have discussed it, compels the conclusion that the statute bars a negligence action for damage to personal property if not commenced within three years after the cause of action has accrued. Accordingly, the district court was correct is dismissing this case and the dismissal should be affirmed.

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CERTIFICATE OF SERVICE

This is to certify that on the 7 day of April, 1982, a true and correct copy of the foregoing Brief of Respondent was

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