

1990

Helen Coleman v. Brian R. Florence, Florence and Hutchinson, John Blair Hurchinson, Felshaw King, King and King : Reply to Brief in Opposition

Utah Supreme Court

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Recommended Citation

Reply Brief, *Coleman v. Florence*, No. 900141.00 (Utah Supreme Court, 1990).
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BRIEF

900141

IN THE UTAH SUPREME COURT

HELEN COLEMAN,

Plaintiff and
Appellant,

v.

BRIAN R. FLORENCE, FLORENCE &
HUTCHISON, JOHN BLAIR HUTCHISON,
FELSHAW KING, KING & KING,
and DOES 1 through 10,

Defendants and
Appellees.

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Reply

CASE NO. 900141

REPLY TO OPPOSITION BRIEF
TO WRIT OF CERTIORARI

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FILED

MAY 9 1990

Clerk, Supreme Court, Utah

IN THE UTAH SUPREME COURT

HELEN COLEMAN,	:	
	:	
Plaintiff and	:	Reply
Appellant,	:	
	:	
v.	:	
	:	
BRIAN R. FLORENCE, FLORENCE &	:	CASE NO. 900141
HUTCHISON, JOHN BLAIR HUTCHISON,	:	
FELSHAW KING, KING & KING,	:	
and DOES 1 through 10,	:	
	:	
Defendants and	:	
Appellees.	:	

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I. REPLY TO DEFENDANT FLORENCE'S CLAIM FOR DENIAL
UNDER RULE 49(e)

Plaintiff offers her apologies to the Court and to the defendants if her petition is largely discursive and obtuse. The defense of defendants Florence and King has been based upon unproven and collateral facts and when the defense failed to respond to the claim of collusion, deceit, fraud, misrepresentation and gross negligence, it appeared the defense did not understand the claims of the Complaint. Due to the large number of errors and the multiple parties involved in this matter, it has been very difficult to be brief in making it clear.

A rule holding a Pro Se person to the "same standard of knowledge and practice as a qualified member of the bar" would be a denial of Plaintiff's First Amendment rights of our United States Constitution. Such a rule would certainly empower the legal profession and the judiciary as a dictatorship.

II. REASONS FOR OSCAR HOWARD COLEMAN'S DECISION
TO WITHDRAW HIS CLAIM

The defendants Florence's and King's inference that Mr. Coleman's decision was because he did not believe he had a claim is not true. Mr. Coleman has suffered for many years from Schizophrenia and has a great fear of those in authority and a greater need for approval. Therefore, he is very susceptible to any suggestions from those whom he perceives to have authority and may be able to chastise him in any way.

His withdrawal was caused through intimidation from Lynn P. Heward telling him he could not possibly win the case and could be

sued by the defendants and, for sure, would have to pay their attorney fees if he remained a party in the claim.

His needs and unrealistic fears from the intimidation caused his decision to withdraw his claim. He does not have the ability to make an evaluation of the facts which brought about the claim.

Due to Mr. Coleman's mental condition, Plaintiff has been the decision maker of the family. His fears created by the intimidation from these attorneys caused dissension and disrupted our marriage.

III. REPLY TO QUESTION #1 OF DEFENDANT FLORENCE AND
QUESTION #3 OF DEFENDANT KING

At this time, the Honorable Judge Rodney S. Page and the defendant Attorney - Officers of the Court - through power abuse and Petitioner's ignorance of the law and its procedures, has been successful in preventing the relevant evidence which will reveal the chicanery perpetrated in this matter before the court.

The defendants should not be allowed to dictate to the Review Court, as they have to the Trial Court, which rules and laws will be enforced and what evidence will be suppressed. This would put law and order in our state at great risk if they are allowed to do so. "To avoid a manifest miscarriage of justice" the Court must uphold Rule 56 of the Rules of Civil Procedures and Rule 4-501 of the Utah Code of Judicial Administration in the matter of failure to serve Plaintiff.

Rule 103(d) of the Utah Rules of Evidence and the supporting case of State v. Stephens, 667 P. 2d 586 (Utah 1983) states:

Exclusion.

When evidence is excluded by the trial court, any error which may have resulted from such exclusion

is cured when the substance of the evidence is later admitted through some other means.

Also the supporting case of State v. Eldredge, 101 Utah Adv. Rep.

15 (1989) states:

Plain error.

The first requirement for a finding of "plain error" is that the error be "plain", i.e., it should have been obvious to a trial court that it was committing error. The second requirement for a finding of "plain error" is that the error affect the substantial rights of the accused, i.e., that the error be harmful.

Support for this is cited in 15 other cases which would, thereby, give the Court latitude to admit the excluded memorandum and suppressed evidence.

"To avoid a manifest miscarriage of justice", the review Court is empowered through Rule 2 of the Rules of the Utah Supreme Court to issue a writ of certiorari in this case:

In the interest of expediting a decision, the Supreme Court, on its own motion or for extraordinary cause shown, may, except as to the provisions of Rules 4(1), 4(3), 5(1) and 45, suspend the requirements or provisions of any of these rules in a particular case and may order proceedings in that case in accordance with its direction.

The "special and important reasons" of "extraordinary cause" being the Trial Court judge's failure to appoint a receiver and unconstitutionally impaired the obligation of Plaintiff's contract and made it impossible to collect the monies owed. Defendant Florence allowed him to do so without any argument. Had a receiver been appointed, it would not have mattered that three of the buyers had been released by the verified complaint. This was defendant Florence's argument when he asked Plaintiff to sign it.

Defendant Florence's failure to have a receiver appointed set the stage for him, through deceit, misrepresentation and fraud, to

begin the foreclosure actions which freed the buyers, the Logans and the Carloses, from their contract obligations.

Due to this foreclosure action, the Carloses, (Wayne, an entrepreneur business owner and bail bondsman for the Courts of Davis and Weber Counties and Kim, a Tax Examiner for the IRS) were able to discharge more than \$32,000 in Federal and State Tax Liens and write-off a \$21,000 debt due to unsubstantiated claims made to the Utah State Nutrition Program. These debts were incurred during January 1, 1981 to February 1984; the period in which they purchased a half interest in another day-care business, a cafe and billiard parlour, and pledge for a bail bonds business. This period was prior to the contract modification in March 1984, which increased the interest rate of which the defendants have inferred destroyed the business.

Due to the Court's decision that the modification was a novation for Wayne and defendant Florence's created deceptive value of the property foreclosed, the buyers assets were protected from deficiency judgment. The Carloses kept \$36,000 of Plaintiff's court judgment and took a \$126,000 from the business during the 18 months of foreclosure. Had the business been placed in receivership, per contract terms, all of the creditors could have collected.

The foreclosure action made it possible for Kim Carlos to discharge more than \$18,000 of personal debt through bankruptcy.

The misconduct of Judge Page and the defendants netted the Carloses a considerable windfall while Plaintiff lost more than half of her court judgment and got back a piece of property which, to make habitable, requires more repairs than its value; lost

standing in the business community and suffered, and is still suffering, great health problems.

At no time was the real property value ever represented to be worth \$105,000. Defendant Florence was very much aware the contract was for a business with real property; the contract and the verified complaint he prepared stated this fact.


The Honorable Judge Rodney S. Page should have disqualified himself from the proceedings of the Motion for Summary Judgment. His impartiality could be reasonably questioned since he had heard and rendered judgments in Case No. 39944, from which resulted the legal negligence actions of Case No. 43390.

The contentions of the Complaint, the suppressed evidentiary facts, the disputed material facts, Court rules and case law does not support Judge Page's decision to grant the defendants Summary Judgment.

This is a clear case of discrimination against the Petitioner and the defendants should be cited for their delaying tactics to deny the claim of liability and damages.

The dispositive facts of the case justifies it to be reviewed as an extraordinary cause and should be expedited by reversing the decision and awarding of damages.

Dated this 9th day of May, 1990.



HELEN S. COLEMAN
Pro Se Plaintiff

CERTIFICATE OF DELIVERY

I hereby certify that on the 9th day of May, 1990, four (4) true and correct copies of the foregoing Reply to Opposition Brief to Writ of Certiorari were delivered to the following:

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