

2000

State of Utah v. All Real Property, Residence and Appurtenances : Reply Brief

Utah Court of Appeals

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Steven B. Wall; Wall and Wall; attorney for appellant.

David E. Yocom, Clark Harms, Chad L. Platt; attorneys for appellee.

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therefore Appellant's challenge can be asserted at any time and need not show or allege a meritorious defense to Appellee's Complaint.

B. Notice was not properly given.

Appellee fails to apprehend the fact that Utah Code Annotated §58-37-13(9)(d) only refers to service of the Notice of Seizure and Intended Forfeiture and makes no mention of how the Complaint for Forfeiture is to be served therefore because the forfeiture action is a civil matter Rule 4 of the Utah Rules of Civil Procedure must necessarily apply and control as to how service of the Complaint is to occur nevertheless, if Utah Code Annotated §58-37-13(9)(d) does govern service of the Complaint then the clear and unambiguous language of the statute requires that personal service be effected on the Appellant since he was charged in a criminal indictment.

While Appellee claims that the intent of the statute requiring personal service of forfeiture action by the State only applies to a person who has been charged in a Criminal Information or Indictment by the State belies the clear language of the statute which makes no such distinction. Nor has Appellee put forth any authority establishing legislative intent or case law supporting such a construction or interpretation.

Moreover, it is permissible under the Federal Rules of Civil Procedure to join a State claim in the prosecution of the criminal indictment

POINT II

THE TRIAL COURT DID ABUSE ITS DISCRETION IN DENYING
DEFENDANT'S MOTION TO SET ASIDE DEFAULT JUDGMENT

Plaintiff argues that the Trial Court did not mechanically adopt its proposed Findings of Fact since Defendant filed objections to the proposed Findings of Fact and a Motion for Reconsideration and therefore the Court had an opposing viewpoint if you will to consider when it rendered its decision.

As noted in its own Brief, our Supreme Court in Boyer v. Lignell, 567 P.2d 1112, 1113 (Utah 77), established that in contested cases, it is the duty of the Trial Court to make findings upon all material issues unless findings are waived which was not the case here and while the Court can request prevailing counsel to submit findings to aid the court in making the necessary findings, it should not mechanically adopt these findings.

Here the Court made no findings or in any way reconciled the disputed issues or contested facts so that Plaintiff could prepare findings to comport with the Court's decision. The Trial Court merely signed Plaintiff's proposed Findings of Fact and Order without addressing the objections to said Findings of Fact and issues raised by way of its Motion for Reconsideration. The Trial Court's signing of Plaintiff's proposed Findings of Fact can be considered nothing but a mechanical adoption of Appellee's Findings of Fact.

POINT III

DEFENDANT DOES HAVE A MERITORIOUS DEFENSE TO THE ALLEGATIONS OF PLAINTIFF'S COMPLAINT FOR FORFEITURE, HOWEVER, WHERE DEFENDANT'S ARGUMENT CHALLENGES THE TRIAL COURT'S JURISDICTION TO GRANT JUDGMENT THE ISSUE OF MERITORIOUS DEFENSE IS IRRELEVANT

- A. Defendant's failure to file an answer or make a claim is irrelevant and immaterial.

As argued supra Defendant's challenge to the judgment is jurisdictional thus if Defendant is correct the judgment cannot stand regardless of whether Defendant asserted a meritorious defense in its Motion to Set Aside Judgment or not. Plaintiff's failure to file an answer after a default judgment has entered does not prejudice or impair its ability to assail the judgment. Filing an answer would in no wise erode the efficacy of the judgment or provide Plaintiff with any legal advantage.

- B. The seized property is not presumed to be forfeitable.

Appellee's assertions in Point III, Paragraph B are not only untrue but have no support in the record and therefore have no relevance to Appellant's claim asserted in its Motion to Set Aside Judgment or is appeal.

- C. Up to this point in the proceedings there is no necessity that Defendant make a meritorious claim to the property.

As argued supra there is no necessity that Defendant assert a meritorious claim to the property where its challenge is jurisdictional.

CONCLUSION

DATED this _____ day of August, 2001.

Respectfully submitted,

STEVEN B. WALL
Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

This is to certify that one (1) true and correct copy of the foregoing Reply Brief of Appellant was [] mailed, postage prepaid, [] sent via facsimile transmission, [] hand-delivered on this _____ day of August, 2001, to the following:

David E. Yocom
District Attorney
Clark Harms
Chad L. Platt
Deputy District Attorneys
231 East 400 South, Suite 300
Salt Lake City, Utah 84111