1982

Utah Farm Bureau Mutual Insurance Co. v. Orville Andrews & Sons et al : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

UTAH FARM BUREAU MUTUAL INSURANCE COMPANY, Plaintiff/Appellant, -vs- ORVIL ANDREWS & SONS, d/b/a NEBO BLACK ANGUS RANCH, ORVIL ANDREWS, and NELDON ANDREWS, Defendants/Respondents.	)	Case No. 18239

BRIEF OF RESPONDENTS

Appeal from a Summary Judgment of the Fourth Judicial District Court in and for Juab County, State of Utah, The Honorable George E. Ballif, Presiding

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BRIEF OF RESPONDENTS

I. STATEMENT OF CASE

The statement of Appellant is accurate.

II. DISPOSITION IN LOWER COURT

The statement of Appellant is basically accurate, however, it fails to set forth the totality of relevant procedural occurrances and issues decided in the lower court.

Procedurally, in addition to granting Defendants'/Respondents' Motion for Summary Judgment, the lower court specifically rejected and denied a Motion for Summary Judgment asserted by Plaintiff/Appellant on the same issues as presented in Respondents' motion.

With respect to omitted issues, the lower court in it's written decision rendered on or about October 26, 1981,

held, that, in addition to not being an "automobile" as that term is defined by the subject insurance policy, the vehicle owned and operated by Respondents was and remains a "farm implement not subject to Utah motor vehicle registration and design[ed] for use principally off public roads." (R. 135)

III. RELIEF SOUGHT ON APPEAL

The statement of Appellant is accurate.

IV. STATEMENT OF FACTS

The statement of Appellant is basically accurate, however, several relevant and arguably controlling facts have been omitted.

As alleged by Appellant, Respondents own and operate a 2800 acre cattle farm in Juab County, State of Utah (R. 132). In connection with the operation of said farm, Respondents purchased and had constructed a "feeder unit", consisting of a "Gehl" animal feeder box assembly mounted on a "Ford" truck chassis (R. 46, 59, 67-102, 132). Said feeder unit was designed solely for the purpose of spreading feed in Respondent's fields and is not fit nor suitable for other purpose (R. 48, 49, 67-102, 135). Said unit, as acknowledged by Appellant, was used by Respondents for this purpose and, in fact, was used exclusively therefor (R. 60, 132, 135, Deposition of Orvil Andrews, pp. 4, 7, 14, and Deposition of Neldon Andrews, pp. 13, 14, 16, 17, 25, and 28).

Indeed, at the time of the subject accident the feeder unit was being utilized by Respondents in connection with said

feeding operations (R. 60, 133, 136). Admittedly, the unit was located on a public highway at the point of collision, but it was only there momentarily on its way to another feeding area maintained by Respondents.

The operation of said unit on the public road was only incidental to its intended use and was, by no means, necessary to its operation nor its ability to perform that function for which it was designed. Similarly, the only time said unit was located on public roads was in connection with its transmission between certain fields maintained by Respondents (R. 136). It was neither economical nor practical to use it on such roads for any other purpose (Deposition of Neldon Andrews, p. 25).

As alleged by Appellant, Respondents believed and at all times considered the subject feeder unit to be personal property "just like other farm machinery", and indeed, were confirmed in that belief by Juab County, which, for tax purposes, assessed it as a non-licensed vehicle (R. 107). At all times the subject unit was, without objection, listed on Respondent's affidavits to said taxing authority as an item of personal property (R. 107).

Respondents take exception to the description offered by Appellants with regard to the precise manner in which the subject accident occurred. The particulars thereof are not as yet known, are not relevant hereto and do not aid the court in resolving the issues germane to this appeal.

Finally, the subject insurance policy was, in all respects, drafted, prepared and constructed by Appellant. With the exception of executing the same, Respondents were in no way involved in the drafting, preparation or selection of its terms, conditions or language.

V. ARGUMENT

THE LOWER COURT WAS CORRECT IN DETERMINING THAT THE SUBJECT FEEDER UNIT WAS NOT AN "AUTOMOBILE" UNDER APPELLANT'S FARM LIABILITY POLICY.

A. Introduction

It is undisputed that, on or about February 6, 1980, the date of the accident giving rise to the instant action, there existed, in full force and effect, a "Country Squire" comprehensive liablity insurance policy between Appellant and Respondent (R. 132, 133, 135). Pursuant to the "Farmers-Ranchers Liability" coverage portion of said policy, it was provided that:

> "This policy agreement does not apply:
>
> 2. Under Coverages F1 (Bodily Injury Liability), F2 (Premises Medical), G (Property Damage Liability), H (Employer's Liability), I (Medical Payments--Employee), or J (Medical Payments--Named Persons) to bodily injury or property damage arising out of the ownership, maintenance, operation, or use, loading or unloading of:
>
> b. Any automobile owned or operated by or rented or loaned to any insured. But this subjection (b) does not apply to bodily injury or property damage occurring on the insured premises if the motor vehicle is not subject to motor vehicle registration, because it is used exclusively on the insured premises."

Said policy further defines the term "automobile" as follows:

> "Automobile means a land motor vehicle, trailer, or semi-trailer, but the word automobile does not include any crawler or farm-type tractor, farm implement and, if not subject to motor vehicle registration, any equipment, which is designed for use principally off public roads."

Pursuant to the above-cited language, where it can be established that the vehicle involved was either a "farm implement" or "equipment" which is not subject to Utah's motor vehicle provisions and is designed to be principally used off public roads it will not be considered an "automobile" and the policy will apply.

Respondents join with the lower court in its decision that the feeder unit in question herein is not an "automobile", and that it is a "farm implement not subject to Utah motor vehicle registration and design[ed] for use principally of public roads" (R. 135). Respondents assert that said lower court decision was correct and should be upheld. Respondents further assert, for the reasons set forth hereinbelow, that Appellant has not and cannot sustain the burden of establishing that the lower court's decision was incorrect as a matter of law, and urge the Court herein to summarily dismiss Appellant's appeal.

B. Insurance Policies are to be Construed Strictly Against the Issuing Company Giving Insured Broadest Protection.

Initially, in scrutinizing the lower court's decision and in considering the issues presented on appeal herein, it is vital that this court remain cognizant of the rules and procedures to be applied in resolving contractual interpretation disputes.

It is a universally accepted rule of contract law that in those instances where a contract or a portion thereof, is found to be ambiguous or unclear, the ambiguous portion is to be construed most strongly against the party drafting the document. Continental Bank and Trust Co. v. Bybee, 6 Utah 2d 98, 306 P.2d 773 (1967). As noted in 43 Am. Jur. 2d, Insurance §271 (1969), this rule of law is particularly applicable to insurance contracts and policies:

> "The general rule applicable to contracts generally, that a written agreement should in case of doubt as to the meaning thereof be interpreted against the party that has drawn it, is very frequently applied to policies of insurance. It constitutes an important rule of construction in such respect. In view of the fact that ordinarily and in practically all cases, it is the insurer who furnishes or prepares the policies used to embody insurance contracts. The general rule is that terms in an insurance policy which are ambiguous, equivocal, or uncertain to the extent that intention of the parties is not clear and cannot be ascertained clearly by the application of the ordinary rules of construction, are to be construed strictly and most strongly against the insurer and liberally in favor of the insured so as to effect the dominant purpose of identity or payment to the insured."

The Utah Supreme Court has adopted and applied this principal in numerous cases involving insurance policy construction. Said Court, in Handley v. Mutual Life Insurance Co. of New York, 106 Utah 184, 191, 147 P.2d 319, 322 (1944), stated:

> "It is to be granted that a contract in case of ambiguity must be construed against the party who drew it and especially is that so in the case of contracts which are sold widely to the average man under sales talk which cannot be too technical in its expositions and yet which very easily lull him into a belief that he has purchased certain benefits which on closer scrutiny of the contract are asserted not to be included."

See, e.g., American Casualty Co. of Redding, Pa. v. Eagle Star Ins. Co., Ltd., 568 P.2d 731 (Utah 1977); Christensen v. Farmers Ins. Exchange, 21 Utah 2d 194, 443 P.2d 385 (1968).

There can be no doubt that substantial ambiguity exists in the present insurance policy and such uncertainty constitutes the basis of this action and appeal. Consequently, the Court herein must, in its consideration of this appeal, apply the rule as stated in Handley, and construe all ambiguities in the subject policy in Respondent's favor. Similarly, the decision of the lower court should be viewed and scrutinized with recognition for the application of this most important rule of law.

C. The Subject Feeder Unit is a "Farm Implement" and not an "Automobile" Under the Terms of the Subject Insurance Policy.

In accordance with the holding in the lower court and as outlined hereinbelow, the subject feeder unit is a "farm implement" under the terms of the subject insurance policy, thereby constituting a specific exception to the policy's definition of "automobile" (R. 132, 135, 136).

While Utah law is silent as to what constitutes a "farm implement", Utah Code Ann. §41-1-1(m) (1953) provides a definition of the term "Implement of Husbandry":

> "Implement of Husbandry." Every vehicle which is designed for agricultural purposes and exclusively used by the owner thereof in the conduct of his agricultural operations."

In light of the accepted definitions of both terms, the vehicles encompassed under "farm implement" and "implement of husbandry" are suffciently similar, if not in fact identical.

The common definition of "husbandry" is agriculture including both farming and livestock. See Webster's Dictionary. Similarly, Utah Code Ann. §59-5-58 (1953), defines agricultural use in terms of "raising of plants and animals useful to man including...grains and feed crops...livestock, including beef cattle, sheep, swine, horses...." Thus, the meaning of "farm implement" would be similar, if not the same, as the meaning of "implement of husbandry".

It is also relevant to note the unofficial Opinion of the Attorney General of the State of Utah dated September 12, 1982, (R. 105-106), a copy of which is attached as Appendix "A" hereto. That Opinion construed the above-noted statutory section to mean that a vehicle originally constructed for non-agricultural purposes but adapted and modified for agricultural purposes and used exclusively for agricultural purposes is an "implement of husbandry" within the meaning of Utah Code Ann., Sections 41-1-1(m) and 41-1-19(c).

Pursuant to the above-cited definition and Opinions, two requirements must be met in order for a vehicle to qualify as an "Implement of Husbandry". Those requirements are:

(a) the vehicle must be designed for agricultural purposes; and,

(b) the vehicle must be used exclusively by the owner in the conduct of his agricultural operations.

In the instant case, as evidenced by the facts as outlined by Appellants and supplemented above, the feeder unit was and is designed solely for the purpose of delivering and distributing feed to livestock; a specialized agricultural function. The facts further show that the said unit was used exclusively for that specified and specialized function.

The record reveals that Respondents, in an effort to improve the efficiency of their farm operations, acquired the

feeder unit to assist in their manual feeding operations and used it to eliminate much of the hand labor associated therewith. Respondents further testified that they did not use the feeder unit for any other purpose and that it would not be economical to use the same to haul grain or run errands (Deposition of Neldon Andrews, p. 25). Respondents have and do operate registered trucks for those purposes (Deposition of Orvil Andrews, p. 23).

Such testimony clearly establishes that the subject unit was designed for a specific agricultural purpose and was used exclusively in connection with Respondent's agricultural operations, as required by statute. Consequently, the subject feeder unit meets the Utah requirements for an "Implement of Husbandry", it is a "farm implement" and not an "automobile", and is, therefore, encompassed by Appellant's insurance policy.

In support of this conclusion, see the case of Allred v. Engelman, 123 Tex. 205, 61 S.W.2d 75 (1933). Allred is a Texas case wherein certain tank trucks, used for hauling water for irrigation and gasoline to tractors in the fields were determined to be "implements of husbandry" within the meaning of a statute strikingly similar to Utah Code Ann. §41-1-19 (1953). The Court in Allred stated:

> "The Legislature evidently had in mind that it was impossible to anticipate and expressly describe every motor vehicle whose particular design and use would make of it an implement of

husbandry. It did name the ones that readily come to mind as implements of husbandry, and it was evidently intended by the Legislature that what other vehicles that might be implements of husbandry could be well left to the facts of any particular case, and it was obviously for this reason that the general term "implements of husbandry" was added. It is clear that the purpose of the legislation was to exempt from registration all motor vehicles primarily designed and used for agricultural purposes, temporarily using the highways."

The rationale exhibited in Allred should be applied herein.

Appellant, in its brief, discusses the fact that the feeder unit was used to transport feed on a public highway eleven miles per day (5-1/2 miles each way) six days a week. It is their assertion that the said unit thereby ceased being a farm implement and instead was transformed into a transport vehicle. Such an assertion is obviously contrary to the facts present before the trial court.

There is no evidence of any kind that anything was transported in the feeder unit without the intention of and actually being fed to Respondent's lifestock. There is, similarly, no evidence that the subject unit was ever used for any contrary purpose. Additionally, there exists no threshold requirement relating to frequency and extent of operation on public roads or highways in either the term "farm implement" as used in the policy or "implement of husbandry" as defined in the above-cited statute. It is common knowledge that many farm

implements such as tractors, hay wagons and combines move on and transport equipment and commodities on public roads without changing their intended nature or character.

Appellant has undoubtedly insured farmers for years and should certainly be expected to contemplate that farm implements travel from farm to farm on public roads. How else could farmers farming non-contiguous pieces of property move from field to field with their farm implements? If plaintiff had intended to exclude mobile farm implements, the policy should have been written to specifically exclude them from coverage. That was appellant's prerogative in drafting the policy and the logic of the rules of construction discussed above.

The specific design of the feeder truck in question, with its beaters, conveyors and spouts for moving and directing feed, clearly make it an "implement of husbandry" or "farm implement" used to feed livestock. Given the plain meaning of the words used, the feeder unit cannot reasonably be considered an "automobile" as that term is defined by the subject insurance policy, and the lower court's decision in that regard must be upheld. Should there be any doubt, the principals of contract construction applicable to insurance policies dictate that the court construe any and all ambiguities in favor of Respondents herein and uphold the lower court's decision.

Appellant, in arguing that the subject feeder unit was not a "farm implement," cites several cases from outside the state of Utah. None of the cited cases consider statutes or vehicles at all similar to those in question herein and all cases so cited are wholly inapplicable to the issues to be decided herein. Most notable in this respect is the case of Nepstad v. Randall, 82 S.D. 615, 152 N.W. 2d 383 (1967), wherein the South Dakota Supreme Court held solely that "a motor driven goft cart while being operated on a golf course is not a motor vehicle within the meaning of the [South Dakota] guest statute." Nepstad v. Randall, Id. @ 386. The inapplicability of this cite to the instant case is obvious. The other cases cited by Appellant are of a similar nature and totally fail to offer any assistance to the court in its resolution of the instant appeal.

D. The Subject Feeder Unit was "Equipment" not Subject to Motor Vehicle Registration and Designed for use Principally off Public Roads.

In addition to being properly classified as a "farm implement", the lower court held that the subject feeder unit constituted "equipment" not subject to motor vehicle registration and designed for use principally off public roads (R. 135).

1. Not subject to Motor Vehicle Registration.

The applicable Utah statutes relating to the registration of motor vehicles is codified at Title 41 of the

Utah Code Annotated. That statute, in relevant part, provides as follows:

> "Every motor vehicle, combination of vehicles, trailer, and semitrailer, when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this act except:
>
> (c) Any implement of husbandry, whether of a type otherwise subject to registration hereunder or not, which is only incidentally operated or moved upon a highway."
>
> Utah Code Ann. §41-1-19 (1953).

As outlined above, there can be no doubt that the subject feeder unit was an implement of husbandry. It was specifically designed for agricultural purposes; the mechanical unloading and distribution of forage to cattle; and was utilized exclusively by Respondents for that purpose. As such, it is fundamental that the vehicle, so designed and used, is not subject to the applicable registration statutes.

In the case of Allred v. Engleman, supra, @ 422, in holding that certain water and gasoline carrying trucks were not subject to state vehicle registration, the Court stated:

> "The further contention is made that these vehicles were not temporarily moved or operated upon the highways, but that they were permanently operated upon the highways, and being so used they were not subject to the exemption from registration. The highways were used by these vehicles, according to the statement of facts, only in passing from orchard to orchard, or from the source of supply of the water to the particular orchard where the water was discharged

> for irrigating purposes. Such use of the highways was inevitable because of the manner in which the tract as a whole is cut up and criss-crossed by the roads. Because it so happens, under the facts in this case, that there was laid out across a portion of this tract of land, one or more highways, which necessarily interfered with the operation of these trucks by the owner thereof, in carrying out his agricultural enterprises upon the land, and compelled him temporarily to operate his trucks upon these highways, would not have the effect to subject vehicles to registration when the same vehicles, if used wholly on one tract of land and never touching the highways, would not be subject to registration. The Legislature has defined "temporary" use of the highways as "the operation or conveying between different farms." The facts of this case seem clearly within that definition."

Although the Court in Allred utilized the term "temporarily" instead of "incidentally", as found in the applicable Utah Statute, the obvious intent is the same. The test is not whether it is necessary to go on a public road to get from one field to another, but rather, whether it is necessary to go on a public road to perform the function for which the farm implement is designed.

This analysis and rationale comports with the Utah statutes in this area. Indeed, if that were not the case, paragraph c of Utah Code Ann. §41-1-19 (1953) would be entirely unnecessary in light of paragraph b's registration exemption for "any vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another". Surely, if the Utah legislature had not intended

that farm implements be given the latitude suggested by Respondents, it would have so stated.

In the present case, contrary to Appellant's implications, it was not necessary that the feeder unit go on a public road to perform its intended function. Its use thereon was merely incidental to its operation and necessitated only because of the location of certain of Respondent's animals. Clearly, therefore, pursuant to the applicable registration statutes, the Respondents' vehicle was not in any way subject to the Utah State motor vehicle registration requirements.

It should again be noted that none of the applicable Utah statutes set any criteria as to distance that can be traveled on a public highway by an exempt vehicle. Said statutes merely require that the operation thereon be "incidental". The undisputed evidence is that for ten years the feeder truck was used by defendants exclusively on and about their 2800-acre ranch or the property adjacent thereto or across the road therefrom. (Deposition of Orvil Andrews, page 25.) Any use on the public road was incidental to the cattle feeding purposes for which the feeder truck was designed.

For the reasons set forth hereinabove, and in accordance with the provisions of Utah Code Ann. 41-1-19(c) (1953), Respondents assert that the lower court was correct in its decision that the feeder unit in question herein was not subject to Utah motor vehicle registration.

2. Designed for use principally off public roads.

It is undisputed that, at the time of the subject accident, the feeder unit in question was exclusively designed to unload and deliver forage to cattle in a particular way with a minimum of hand labor and at greater speed and efficiency. It is similarly undisputed that Respondents, at no time, attempted to feed or maintain their cattle on public roads or highways. As such, it is obvious that the subject feeder unit was designed for use principally off public roads.

Considering essentially the same issue as presented herein, the Texas Supreme Court in Allred v. Engleman reached the same result as noted above. In that case an issue was raised as to whether the trucks with water and gas tanks installed were designed primarily for agriculture use as opposed to use on public highways. The court considered the uses of the respective vehicles and concluded that the water trucks provided irrigation water to otherwise dry land and that the gas trucks provided fuel for tractors in the field without which the tractors would be useless. The Court, referring to the water and gas trucks, said, "While they might conceivably be put to other uses they were designed primarily and used exclusively for agricultural purposes." Pursuant to that statement, the Court went on to hold that the trucks were, as a result, designed for use principally off public highway and not subject to highway motor vehicle registration.

In the present case, there can be no question but that the feeder unit was used exclusively for agricultural purposes. In accordance with the holding in Allred, the Court herein must uphold the lower court and find that the subject feeder unit was designed for use principally off public roads.

This conclusion is similarly mandated by the language contained within the subject insurance policy. As noted above, that policy states that an excempt vehicle is one "which is designed for use principally off public roads." It does not say that the vehicle must be used primarily off public roads. Obviously, the policies language and intent centers around the purpose for which the vehicle was designed and not its occasional non-conforming use.

In the instant case, the vehicle was specifically designed to directly feed cattle by mechanically unloading and depositing feed in mangers or on the ground. The above-quoted language does not, as written, prohibit use on the highway as appellant urges. If such a prohibition were intended, the word "designed" would have to have been omitted. Insofar as it has been included however, the obvious intent of the provision is to look to the use for which the vehicle is designed, not whether it is capable of, or in fact, used on a public road. As noted numerous times above, the subject unit was clearly designed for use off public roads and must be considered as such by the Court herein.

The feeder unit in question is, as noted above, exempt from motor vehicle registration and is designed for feeding cattle; a use which is principally performed off public highways. As such, the subject vehicle clearly qualifies as a piece of "equipment" not subject to Utah highway registration and designed principally for off road uses. Pursuant thereto, it constitutes an exemption from the term "automobile" and is encompassed by the terms of the subject insurance policy. Respondents assert, therefore, that the lower court was correct in its decision and urge this Court to summarily dismiss Appellant's appeal.

IV. CONCLUSION

For the reasons set forth hereinabove, Respondents assert that the subject vehicle is not an "automobile" pursuant to the terms of the applicable insurance policy, that the policy should apply and protect Respondents herein and that the lower court was entirely correct in it's decision in that regard. It is respectfully submitted, therefore, that Appellant has not established the required burden of showing reversible error as a matter of law, and consequently, the lower court's holding must be upheld and not reversed and Appellant's appeal herein must be summarily dismissed.

DATED this 12 day of July, 1982.

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CERTIFICATE OF MAILING

This is to certify that the above Brief of Respondents was mailed by certified mail, postage prepaid, on the 13 day of July, 1982, to:

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OFFICE OF THE ATTORNEY GENERAL

UNOFFICIAL OPINION

STATUTES EXEMPTING FARM VEHICLES AND IMPLEMENTS OF HUSBANDRY FROM THE REQUIREMENT OF REGISTRATION MUST BE LIBERALLY CONSTRUED

September 12, 1962

Mr. A. O. Whiting
Garland
Utah

Dear Sir:

We have been asked for an opinion on the following question: Is a vehicle originally constructed for non-agricultural purposes, but adapted and modified for agricultural purposes and now used exclusively therefor, an "implement of husbandry" within the meanings of 41-1-1 (m) and 41-1-19 (c) of the U.C.A. 1953?

41-1-1 (m) defines an implement of husbandry as "(e)very vehicle which is designed for agricultural purposes and exclusively used by the owner thereof in the conduct of his agricultural operations."

41-1-19(c) allows for "(a)ny implement of husbandry, whether of a type otherwise subject to registration hereunder or not, which is only incidentally operated or moved upon a highway."

Our conclusion is that such a vehicle would be covered by these sections and thus exempted from registration requirements.

The trend today in most jurisdictions is to allow an exemption in doubtful cases. In Re Slade's Estate, 122 Cal. 434, 55 Pac. 158 and Allred v. Engleman, Inc., Tex. Civ. App., 54 S.W. 2d 352. These excerpts from the last named case are revealing:

> "Statutes exempting farm vehicles and implements of husbandry from the requirment of registration must be liberally construed."
>
> " Implements of husbandry is a braod term and must include every machine, tool or implement used to advance farming interest and property."

Our statute presents a special problem with its requirement that a vehicle be designed for agricultural purposes. However, "design" does not refer exclusively to the construction of the original designer but should also be construed to have reference to the product of any individual who worked on, remodeled or modified the vehicle at any time in its history. This being the case, the person who adapted it for its current use would be considered a designer within the meaning of this statute.