

2015

Pacificorp, Plaintiff and Appellee, v. Paul F. Cardon, Defendant and Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

PACIFICORP

Plaintiff and Appellee,

v.

PAUL F. CARDON.

Defendant and Appellant.

Appeal No. 20141103-CA

Civ. No. 090100469

REPLY BRIEF OF THE APPELLANT

APPEAL FROM THE FIRST DISTRICT COURT, CACHE COUNTY,
STATE OF UTAH, JUDGE KEVIN K. ALLEN

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INTRODUCTION

The trial court lacked the authority to modify a three-year-old judgment. No rule, case, or statute allows modification of a judgment so many years after its entry. Neither PacifiCorp nor the trial court specified any rule or authority governing the so-called motion to enforce, and that is because no such authority exists.

PacifiCorp argues that the language of the judgment was clear. Why then, did it feel the need to add additional language to the judgment? The fact is the language of the judgment is ambiguous. Indeed, PacifiCorp cannot assert its position without referencing additional facts and language. Likewise, the ambiguity of the judgment is evident by the fact that law enforcement was not willing to enforce the judgment according to PacifiCorp's overreaching interpretation of the order. Because the judgment is ambiguous, the trial court should have required a new complaint before expanding the scope of the injunction and, at least, held an evidentiary hearing on the matter. It is procedurally improper for the trial court to rewrite the three-year-old judgment without new evidence, particularly where the original judgment was the result, not of evidentiary determination, but default. Adding insult to injury, the movant requested, and the trial court imposed, its expanded injunction that now invades Mr. Cardon's curtilage without reference to the rule it is basing its ruling upon.

The default injunction entered in this case said nothing about allowing PacifiCorp to cross defendant's curtilage and pass through his barnyard. It was in violation of the

rules and patently unfair for the trial court to expand the scope of the default injunction beyond what PacifiCorp had demanded in its complaint and beyond the scope of the default injunction that PacifiCorp drafted without requiring the filing of a new complaint.

OBJECTION TO PACIFICORP'S STATEMENT OF THE CASE

Perhaps in an effort to distract this Court from the significant errors in the lower court's order and/or to prejudice this Court against Mr. Cardon, PacifiCorp dedicates several pages of its brief to discussion of irrelevant and inappropriate "facts" that have no bearing on the substance of this appeal.¹ Why the default judgment was entered, as well as post-judgment actions by the parties are irrelevant to the issues on this appeal. The relevant facts are that a default judgment was entered in 2011. Three years later, the parties dispute the scope of that judgment according to its language, and the trial court entered an order adding additional language to the judgment without complaint or hearing. All other facts and allegation should be disregarded by the Court.

¹ Mr. Cardon does not concede the "facts" PacifiCorp asserts. Had the trial court properly held an evidentiary hearing, and had PacifiCorp asserted those "facts", and had they been relevant or material to the expansion of the injunction PacifiCorp sought, Mr. Cardon would have had the opportunity to refute PacifiCorp's version of those facts. This is precisely why this Court cannot let stand the rewritten and expanded judgment the trial court entered without following proper procedure.

ARGUMENT

A. The Trial Court Lacked Authority to Alter or Modify the Judgment

Many totalitarian regimes throughout history and throughout the world have had glowing constitutions that proclaim human rights while their citizens suffer gross indignities and deprivations. The one thing that distinguishes our government from those with hollow promises of civil rights is procedure. Our courts require that proper procedure be followed before a person is deprived of property or subjected to the indignity of force or bully tactics. Mr. Cardon understands that PacifiCorp is an important part of Cache Valley. But, though he is but a lowly farmer, Mr. Cardon is entitled to the dignity of proper procedure before the Court allows this bully to run roughshod over his property and rights. The trial court's order granting the motion to enforce is not about enforcement; it is about modification. PacifiCorp's motion was a motion to alter or amend in the guise of a motion to enforce. While the trial court would have power to enforce its decree, modification of the decree is governed by specific rules and law. See Utah R. Civ. P. 59, 60. Neither PacifiCorp's Motion to Enforce nor the trial court's order reference any Utah statute, rule, or case providing a basis for modification or even clarification of the original injunction. That is because none can be found.

Even now in its brief, PacifiCorp cannot cite any controlling authority granting the court the power to modify its three-year-old judgment. PacifiCorp cites to broad statements by federal circuit courts about a district court's power to clarify, but ignores governing Utah law that restricts the when and where of modification. See Utah R. Civ.

P. 59, 60. "In our system, the rules provide the source of available relief. They are designed to provide a pattern of regularity of procedure which the parties and the courts can follow and rely upon." Workers Compensation Fund v. Argonaut Ins., 266 P. 3d 792 (Utah 2011) (quoting Gillett v. Price, 135 P.3d 861 (Utah 2006)). As the Argonaut court explained, "[A] movant's failure to specify the rule governing the motion is unfairly prejudicial to the opposing party, whose task in preparing a response to the motion is made more difficult." Id. Here, PacifiCorp and the trial court provided no legal basis for any modifications, clarifications, or additions to the judgment. The burden should not be placed on this Court or on the appellant to identify the rule under which the relief was granted.

PacifiCorp cites to Ward v. Richfield City, 776 p.2d 93, 96 (Utah Ct. App. 1989) for the broad proposition that the court has inherent power to enforce its decree. See Brief of Appellee at 13. However, what the Ward court instructs, and what PacifiCorp omitted, is that "[t]he inherent power of a court rendering a permanent injunction to enforce its decree and to modify or revoke the injunction for equitable reasons due to changed conditions is generally recognized." Ward, 776 p.2d at 96 (emphasis added to show portion of quote omitted by appellee). Neither PacifiCorp nor the trial court identified any changed conditions that would merit the modification of the injunction.

In this case, PacifiCorp seeks clarification of the Judgment through the addition of supplementary language to the original order. This Court addressed this very issue in Kunzler v. O'dell. 855 P. 2d 270 (Utah Ct. App. 1993). In Kunzler, the moving party filed

a “Motion for Clarification.” The Court explained, “A Motion for “Clarification of Judgment” is not specifically provided for in the Utah Rules of Civil Procedure. . . . If the clarity of the judgment is called into question because the opposing party is improperly applying the judgment, then implicit in the motion is a request to change the judgment to provide relief to a party harmed by the lack of clarity. Accordingly, we hold that in the case before us, appellee’s motion for clarification, in which appellants joined, was sufficient to invoke Rule 60(b).” Id. at 274.

PacifiCorp cannot meet the requirements of Rule 60(b). PacifiCorp’s motion was not in the form of a rule 60 motion and it is questionable how it could be construed as such. Its motion was neither captioned with a rule nor did it cite to any rules or other authority. See Argonaut at 797. Additionally, PacifiCorp’s motion did not reference any of the circumstances enumerated in Rule 60 as justifying relief from judgment. The district court should have rejected the motion on those grounds alone. Most importantly, the time for filing such a motion has long passed — a point reiterated by PacifiCorp in its brief. See Brief of Appellee at 25; Utah R. Civ. P. 60(b) (“The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 90 days after the judgment, order, or proceeding was entered or taken.”). The trial court’s alteration and expansion of the 2011 injunction is much too late and not in harmony with the rules.

B. The Judgment is Ambiguous

PacifiCorp argues that the language of paragraph 9 of the Judgment is not ambiguous, yet dedicates page after page of their brief discussing the alleged facts of the

case. Likewise, the trial court held that the language was not ambiguous. R. 422. “A judgment must be enforced as written if the language is clear and unambiguous.”

Bettinger v. Bettinger, 793 P. 2d 389, 391-92 (Utah Ct. App. 1990) (citing Park City Utah Corp. v. Ensign Co., 586 P.2d 446, 450 (Utah 1978)). Whether a judgment is ambiguous is a question of law, which this Court reviews for correctness. Bettinger at 391 (Therefore, we are not required to give the trial court's interpretation of an unambiguous judgment any particular weight, but review its interpretation under a correctness standard.); see also Kimball v. Campbell, 699 P.2d 714, 716 (Utah 1985); Regional Sales Agency, Inc. v. Reichert, 784 P.2d 1210, 1213 (Utah Ct. App. 1989).

Language is considered ambiguous if the words used to express the meaning and intention of the drafter are "insufficient in a sense that the [writing] may be understood to reach two or more plausible meanings." Metropolitan Property & Liab. Ins. Co. v. Finlayson, 751 P.2d 254, 257 (Utah Ct. App. 1988) (quoting Central Sec. Mut. Ins. Co. v. DePinto, 235 Kan. 331, 681 P.2d 15, 17 (1984)); Eyring v. Fairbanks, 918 P. 2d 489, 491 (Utah Ct. App. 1996) (“A term is ambiguous if it has two or more possible interpretations.”); Crowther v. Carter, 767 P.2d 129, 131 (Utah Ct. App. 1989).

Ambiguous judgments are subject to the same rules of construction that apply to all written instruments. Bettinger at 391. If the trial court determines the language is ambiguous, it may resort to extrinsic evidence to ascertain the meaning of the language.

Id.

Paragraph 9 of the original Judgment stated:

Defendant is hereby immediately, permanently enjoined from the following:

...

9. Obstructing or preventing PacifiCorp access to Cutler Reservoir, including access along the former county road or lane that connects to Sam Fellow Road and that crosses through defendant's property.

Record at 241.

There is nothing in the language of the default injunction that would allow PacifiCorp access beyond the termination of the county road. It is an injunction preventing Mr. Cardon from interfering with PacifiCorp's access to Cutler Reservoir. This position is in harmony with the other eight paragraphs of the Judgment, all of which relate to trespass and damage to PacifiCorp property. There is absolutely no language in the injunction that would be sufficient to create an easement through Cardon's barnyard beyond termination of the former county road or lane. Yet, this is the position PacifiCorp now asserts. PacifiCorp argues that this language grants it, in essence, a de facto prescriptive easement across Mr. Cardon's property and through his curtilage even though the lane ends at the Cardon barnyard. As such, PacifiCorp needed to add the following language to the original judgment to make the "unambiguous" judgment fit what they wanted it to do: "This includes the lane that passes through Cardon's property and connects with the route leading to PacifiCorp's property." Record at 432 (emphasis in original).

Further, the Davies' Declaration states that the Cache County Sherriff's Deputy could not "definitively instruct" Cardon that the original order allows PacifiCorp to access Cardon's barnyard. Record at 344. Because the language is ambiguous, subject to more than one interpretation, the trial court was obligated to consider extrinsic evidence and should have held an evidentiary hearing on the specific matter. A judge should not rely upon his or her own memory of the matter. See Behrman v. Behrman, 139 P. 3d 307, n.4 (Utah Ct. App. 2006) (citing 46 Am. Jur.2d Judgments § 188 (1994)). Especially when the previous judgment was not based upon evidence, but was the result of default.

CONCLUSION

The trial court lacked the authority to modify the three-year-old judgment. Even if it had the authority without a new complaint to modify the injunction, the language of the judgment is ambiguous and would at least require an evidentiary hearing on the matter. Appellant reaffirms his request for oral argument on this matter and believes that it would significantly aid the decisional process.²

² Contrary to PacifiCorp's statement in the conclusion to its brief, Appellant has requested oral argument. See Brief of the Appellant at 16, titled: "REQUEST FOR ORAL ARGUMENT."

Dated this 26th day of May, 2015.

ATKIN LAW OFFICES, PC

/s/ Blake S. Atkin
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PROOF OF SERVICE

I hereby certify on this 26th day of May, 2015 I caused a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT to be placed in the United States Mail, first class, postage prepaid or hand-delivered, as follows:

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**CERTIFICATE OF COMPLIANCE
WITH RULES 24(f)(1) AND 27(b)**

I hereby certify that this brief complies with the type-volume limitation of Utah R. App. P.24(f)(1) because this brief contains 2,056 words, excluding the parts of the brief exempted by Utah R. App. P.24(f)(1)(B). Further, this brief complies with the typeface requirements of Utah R. App. P.27(b) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 13 pt. Times New Roman font.

Dated this 26th day of May, 2015

ATKIN LAW OFFICES, PC

/s/ Randall T. Todd

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