

1992

Margaret B. Hall v. Process Instruments and Control, Inc. : Petition for Rehearing

Utah Court of Appeals

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Recommended Citation

Legal Brief, *Hall v. Process Instruments and Control, Inc.*, No. 920332 (Utah Court of Appeals, 1992).
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UTAH COURT OF APPEALS
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DOCKET NO. 920332 IN THE UTAH COURT OF APPEALS

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MARGARET B. HALL,

Plaintiff/Appellant,

v.

PROCESS INSTRUMENTS AND
CONTROL, INC., a Utah
corporation,

Defendant/Appellee.

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* PETITION FOR REHEARING
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* Appeal No. 920332-CA
*
* Priority 16

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APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE HONORABLE JOHN A. ROKICH PRESIDING

* * * * *

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FILED
Utah Court of Appeals

JAN 06 1994


Mary T. Noonan
Clerk of the Court

IN THE UTAH COURT OF APPEALS

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| MARGARET B. HALL, | * | |
| | * | PETITION FOR REHEARING |
| Plaintiff/Appellant, | * | |
| | * | |
| v. | * | |
| | * | |
| PROCESS INSTRUMENTS AND | * | |
| CONTROL, INC., a Utah | * | |
| corporation, | * | Appeal No. 920332-CA |
| | * | |
| Defendant/Appellee. | * | Priority 16 |

* * * * *

Pursuant to Rule 35 of the Utah Rules of Appellate Procedure, Plaintiff/Appellant respectfully petitions the Court for a rehearing.

I. THE TRIAL COURT DID NOT MAKE A DETERMINATION THAT THE EMPLOYMENT AGREEMENT WAS "INTEGRATED" AND IT WAS NOT PROPER FOR THIS COURT TO INFER THAT IT DID.

In its Opinion dated December 28, 1993, this Court affirmed the trial court's holding that the parol evidence rule rendered inadmissible Mrs. Hall's testimony that the parties never intended that she would go to work for Defendant under the Employment Agreement. The Court explained as follows:

The trial court ... found, ***after reviewing evidence of the contract's integration***, that the terms of the employment agreement ***appeared to be "complete and certain."*** ***After reviewing the employment agreement at issue, we agree.*** The employment agreement unambiguously provides that Mrs. Hall agreed to work for Process for a period of three years at a monthly compensation of \$1000. There is no mention in the contract of alimony, nor is Mrs. Hall's agreement to work for Process qualified in any way. ***In addition, Mr. Hall testified that the parties intended this agreement to be a valid and binding employment agreement.***

Opinion at p. 4 (emphasis added).

Thus, the Court affirmed the trial court's holding in regard to the parol evidence issue on the grounds that the Employment Agreement appears to be complete and certain and that Mr. Hall testified that "the parties intended this agreement to be a valid and binding employment contract."

Mrs. Hall respectfully submits that in affirming the trial court's application of the parol evidence rule the Court has failed to properly apply the well settled law of this state.

In Union Bank v. Swenson, 707 P.2d 663, 665 (Utah 1985), the Supreme Court recognized that the parol evidence rule has a very narrow application. Before the rule may be applied to exclude otherwise admissible evidence, a court must first determine whether the writing was intended by the parties to be an integration. *Id.* In other words, **a court must first make a determination that the parties intended for the writing to represent their full and complete agreement.** Colonial leasing Co. v. Larsen Bros. Const., 731 P.2d 483, 486 (Utah 1986).

In the case at bar, the trial court did **not** make the required threshold finding that the parties intended for the Employment Agreement to represent their "full and complete agreement." **What the trial court did find was that the terms of the Employment Agreement were "clear and unambiguous and appear to be complete and certain."** (R. 00171).

In making its determination as to whether the Employment Agreement was intended to be the full and complete agreement

between the parties, however, the trial court was not entitled to simply look at the face of the document to see if it appeared to be complete and certain. Union Bank, supra at 665. To the contrary, the trial court was required to specifically "determine as a question of fact whether the parties did in fact adopt [the writing] as the final and complete expression of their bargain." Bullfrog Marina, Inc. v. Lentz, 501 P.2d 266, 270 (Utah 1972).

As the Union Bank Court recognized:

What appears to be a complete and binding integrated agreement may be a ... *joke, a sham* ... Such invalidating causes need not and commonly do not appear on the face of the writing.

707 P.2d at 665 (emphasis added).

This Court appears to have inferred that the trial court did make a determination that the Employment Agreement was an integration based upon the trial court's finding that "Plaintiff was allowed to introduce parole (sic) evidence, subject to exclusion, in order to attempt to establish that the agreement was not either an integration or a partially integrated contract." (R.00172). Mrs. Hall respectfully submits that such an inference was not proper. The trial court was required to make specific, detailed findings on all material issues, including what has turned out to be the central issue in this case: whether the Employment Agreement was intended to represent the full and complete agreement of the parties. See, e.g., Acton v. Deliran, 737 P.2d 996, 999 (Utah 1987)(findings should be detailed and include enough subsidiary facts to disclose steps by

which ultimate conclusion on each factual issue was reached); Kinkella v. Baugh, 660 P.2d 233, 236 (Utah 1983)(trial court should make findings on all material issues tried by the parties); and Rucker v. Dalton, 598 P.2d 1336, 1338-39 (Utah 1979)(findings are not sufficient to support judgment until the trial court has found on all material issues raised by the pleadings).

Furthermore, the "[f]ailure of the trial court to make findings on all material issues is reversible error unless the facts in the record are 'clear, uncontroverted, and capable of supporting only a finding in favor of the judgment.'" Acton, supra at 999 (quoting from Kinkella, supra at 236). There is no question that the facts in the record of this case are *not* clear, uncontroverted, and capable of supporting only a finding that the Employment Agreement was integrated and, therefore, subject to the parol evidence rule¹.

¹Not only did Mrs. Hall testify that the Employment Agreement was not intended to be the parties' full and complete agreement, but Mr. Hall and his attorney both testified that it was not the full and complete agreement. (Trial Tr. at p. 64, lines 8-22; and p. 119, lines 13-23). Furthermore, after Mrs. Hall and Mr. Hall had both testified with respect to their intent, the trial court ridiculed Defendant's argument that the parties actually expected Mrs. Hall to go to work for Mr. Hall. (Trial Tr. at p. 72, lines 14-17; p. 73, lines 3-4; p. 74, lines 9-20).

Accordingly, Mrs. Hall respectfully requests that this case be remanded to the trial court with instruction for the entry of specific findings on the issue of whether or not the parties intended for the Employment Agreement to represent their full and complete agreement.

II. MR. TURLEY'S TESTIMONY WOULD CLEARLY HAVE BEEN RELEVANT TO THE TRIAL COURT'S DETERMINATION OF THE "INTEGRATION" ISSUE.

In footnote 2 of its Opinion, the Court summarily dismisses Mrs. Hall's argument that the trial court abused its discretion in not admitting Mr. Brent Turley's testimony that Mr. Hall once offered him a salaried position with Defendant, where Mr. Turley would not actually have had to work, in lieu of a down payment for the purchase of Mr. Turley's home. The Court explains as follows:

Given the trial court's determination that the terms of the employment agreement were clear and unambiguous, there was no need for evidence regarding Mr. Hall's intent in drafting this contract. Therefore, the trial court's decision to exclude Turley's testimony on grounds of relevance was a legitimate exercise of discretion.

Again, Mrs. Hall respectfully submits that the Court has failed to properly apply the relevant law.

In making its determination as to whether the Employment Agreement was intended to represent the "full and complete" agreement between the parties, i.e., whether it was an "integration", the trial court was ***required to consider all relevant evidence***, parol and written. Union Bank, supra at 665

("Protection against judicial enforcement of writings that appear

to be binding integrations but in fact are not lies in the provision that all relevant evidence is admissible on the threshold issue of whether the writing was adopted by the parties as an integration of their agreement. This appears to be so even if the writing clearly states it to be a complete and final statement of the parties' agreement"); Eie v. St. Benedict's Hospital, 638 P.2d 1190, 1194 (Utah 1981)("Whether a document was or was not adopted as an integration may be proved by any relevant evidence").

There is no question that Mr. Turley's testimony would have been relevant to the question of whether the parties intended for the Employment Agreement to represent their full and complete agreement. As the Court recognizes, Mr. Turley would have testified that Mr. Hall had attempted to use an employment contract with his company (containing terms virtually identical to those at issue in the case at bar, including that Mr. Turley would not be required to go to work for Mr. Hall's company) as the down payment on the purchase of Mr. Turley's home. In other words, Mr. Turley would have testified that on at least one other occasion Mr. Hall had attempted to use an employment contract with his company as consideration for the payment of his own personal obligations. This testimony would clearly have had a tendency to make it more probable that the consideration promised and given by Mrs. Hall for Defendant's obligations under the Employment Agreement was not her promise to go to work for Defendant (as indicated on the face of the Employment Agreement),

but, rather, was her promise to forego her claim to alimony in the divorce proceedings simultaneously taking place between herself and Mr. Hall.

By definition, then, Mr. Turley's testimony would have been relevant to the issue of whether the parties intended for the Employment Agreement to represent their "full and complete agreement." Rule 402, Utah Rules of Evidence. Therefore, because the trial court was required to consider all relevant evidence in making the determination as to whether the Employment Agreement was an integration, Mrs. Hall respectfully submits that it is clear that the trial court abused its discretion in refusing to admit Mr. Turley's testimony.

Accordingly, Mrs. Hall requests that this case be remanded to the trial court and that the trial court be instructed to hear and consider Mr. Turley's testimony in making its determination on the issue of whether the Employment Agreement was intended to represent the full and complete agreement between the parties.

CONCLUSION

Based upon the foregoing, Mrs. Hall respectfully requests that her Petition for Rehearing be granted. Mrs. Hall further requests that, upon rehearing, this case be remanded to the trial court with instructions for the entry of specific findings on the issue of whether or not the Employment Agreement was intended to represent the full and complete agreement between the parties and with instructions that Mr. Turley's testimony be heard and considered in that regard.

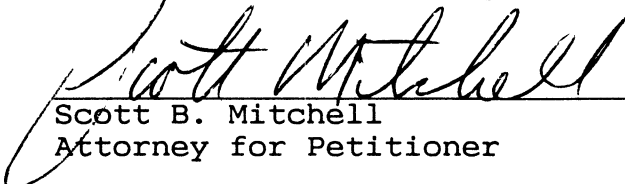
DATED this 6th day of January, 1994.



Scott B. Mitchell
Attorney for Petitioner

CERTIFICATE OF GOOD FAITH

Pursuant to Rule 35 of the Utah Rules of Appellate Procedure, counsel for Petitioner certifies that this Petition for Rehearing is presented in good faith and not for delay.



Scott B. Mitchell
Attorney for Petitioner

MAILING CERTIFICATE

The undersigned hereby certifies that two copies of the foregoing were mailed on the above date via first class U.S. Mail, postage prepaid, addressed as follows:

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