

2016

Kelli A. Gonzalez, Plaintiff/Appellant v. Department of Workforce Services, Defendant/Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS
IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE CITY, STATE OF UTAH

KELLI A. GONZALEZ,
Plaintiff/Appellant

Appellate Case No. 20150582-CA

v.

DEPARTMENT OF WORKFORCE
SERVICES,
Defendant/Appellee

Third District Case No. 140906172

Brief of Appellant
Kelli A. Gonzalez

Kelli Gonzalez
5226 S. Autumn Wood Ln
Taylorsville, Utah 84129
801-696-9230
keln3kds@gmail.com
Appellant

FILED
UTAH APPELLATE COURTS

FEB 29 2016

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Summary of Argument

On July 8th 2015, Final Order Dismissing Plaintiff's Petition for Judicial Review of Final Agency Action was dismissed, failure to appear at the final pretrial conference.

Argument

This case has a lot of work put into it by both parties, Kelli Gonzalez was and has been prepared for the bench trial since May 15th 2015 when the final document exchange was due. The Failure to appear was a family medical emergency and was non-intentionally. Kelli Gonzalez contacted the court clerk via email informing the court of the family medical emergency. Judge Kate Bernard's-Goodman did allow a hearing for Kelli Gonzalez to present evidence for emergency and objection on June 19th 2015. It was a family medical emergency with Kelli Gonzalez's mother at her home, she had fallen down the stairs and was injured on the morning of June 5th 2015 and occurred in between 7:30-8:00 am. Kelli Gonzalez had to assist her mother with the fall, she proceeded to to persuade her to go to the emergency room and her mother absolutely refused to go at that time.

Kelli Gonzalez non-intentionally failed to appear it was a true family medical emergency. Kelli Gonzalez is not guilty with out a trial being heard by Third District Court Judge.

Conclusion

A trial needs to be scheduled for a fair hearing. Both parties have all evidence and documents ready for bench trial. In all fairness to let the Judge decide accordingly to the law.

Certificate of Compliance with Rule

Rule 16 (c) Final Pretrial Conferences

Rule 16 (d) Sanctions

Rule 23 (c) Motion for emergency relief

Certificate of Service

I certify that a copy of the attached Brief of Appellant was served upon the parties listed below by mailing it first class mail, personal delivery, fax or email to the following addresses.

Name: Court of Appeals - Clerk
Address: 450 S. State Street
5th Floor
SLC, UT 84114

Sent Via:
 Mail
 Personal Delivery
Fax# _____
Email: _____

Name: Workforce Services - Peggy Stone
Address: PO Box 140856
1606 300 S.
SLC, UT 84114

Sent Via:
 Mail
 Personal Delivery
Fax# _____
 Email: stone@utah.gov

Address: _____
Address: _____

Sent Via:
 Mail
 Personal Delivery
Fax# _____
Email: _____

By: [Signature]
signature

Dated: 2/16/2016

Statement of Facts

1. On June 5th, 2015, the Final Pre Trial Conference was held at 9am. Kelli Gonzalez was not able to attend due to a family medical emergency. court did receive Kelli Gonzalez email in regards to the family medical emergency.
2. The Defendant requested to dismiss the appeal and strike the bench trial, court advised defendant to file a formal Motion to Dismiss Appeal.
3. On June 19th, 2015 Motion to Dismiss Appeal scheduled for 9am, and allowed Kelli Gonzalez to present evidence for emergency and objection.
4. Kelli Gonzalez gave court statement opposing motion to dismiss appeal and evidence that it was a non intentional failure to appear.

Addendum

1. Rule 16 (c), (d)
2. Rule 23C
3. Statement Opposing Motion to Dismiss Appeal
4. Final Order Dismissing Petition for Judicial Review of Final Agency Action.

Rule 16. Pretrial conferences.

(a) Pretrial conferences. The court, in its discretion or upon motion, may direct the attorneys and, when appropriate, the parties to appear for such purposes as:

- (a)(1) expediting the disposition of the action;
- (a)(2) establishing early and continuing control so that the case will not be protracted for lack of management;
- (a)(3) discouraging wasteful pretrial activities;
- (a)(4) improving the quality of the trial through more thorough preparation;
- (a)(5) facilitating mediation or other ADR processes for the settlement of the case;
- (a)(6) considering all matters as may aid in the disposition of the case;
- (a)(7) establishing the time to join other parties and to amend the pleadings;
- (a)(8) establishing the time to file motions;
- (a)(9) establishing the time to complete discovery;
- (a)(10) extending fact discovery;
- (a)(11) setting the date for pretrial and final pretrial conferences and trial;
- (a)(12) provisions providing for the preservation, disclosure or discovery of electronically stored information;
- (a)(13) considering any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production; and
- (a)(14) considering any other appropriate matters.

(b) Trial settings. Unless an order sets the trial date, any party may and the plaintiff shall, at the close of all discovery, certify to the court that discovery is complete, that any required mediation or other ADR processes have been completed or excused and that the case is ready for trial. The court shall schedule the trial as soon as mutually convenient to the court and parties. The court shall notify parties of the trial date and of any final pretrial conference.

(c) Final pretrial conferences. The court, in its discretion or upon motion, may direct the attorneys and, when appropriate, the parties to appear for such purposes as settlement and trial management. The conference shall be held as close to the time of trial as reasonable under the circumstances.

(d) Sanctions. If a party or a party's attorney fails to obey an order, if a party or a party's attorney fails to attend a conference, if a party or a party's attorney is substantially unprepared to participate in a conference, or if a party or a party's attorney fails to participate in good faith, the court, upon motion or its own initiative, may take any action authorized by Rule [37\(b\)](#).

Advisory Committee Notes

Rule 23C. Motion for emergency relief.

(a) Emergency relief; exception. Emergency relief is any relief sought within a time period shorter than specified by otherwise applicable rules. A motion for emergency relief filed under this Rule is not sufficient to invoke the jurisdiction of the appellate court. No emergency relief will be granted in the absence of a separately filed petition or notice that invokes the appellate jurisdiction of the court.

(b) Content of motion. A party seeking emergency relief shall file with the appellate court a motion for emergency relief containing under appropriate headings and in the order indicated:

(b)(1) a specification of the order from which relief is sought;

(b)(2) a copy of any written order at issue;

(b)(3) a specific and clear statement of the relief sought;

(b)(4) a statement of the factual and legal grounds entitling the party to relief;

(b)(5) a statement of the facts justifying emergency action; and

(b)(6) a certificate that all papers filed with the court have been served upon all parties by overnight mail, hand delivery, facsimile, or electronic transmission.

The motion shall not exceed fifteen pages, exclusive of any addendum containing statutes, rules, regulations, or portions of the record necessary to decide the matter. It also shall not seek relief beyond that necessitated by the emergency circumstances justifying the motion.

(c) Service in criminal and juvenile delinquency cases. Any motion filed by a defendant in a criminal case originally charged as a felony or by a juvenile in a delinquency proceeding shall be served on the Appeals Division of the Office of the Utah Attorney General.

(d) Response; no reply. Any party may file a response to the motion within three days after service of the motion or whatever shorter time the appellate court may fix. The response shall not exceed fifteen pages, exclusive of any addendum containing statutes, rules, regulations, or portions of the record necessary to decide the matter. No reply shall be permitted. Unless the appellate court is persuaded that an emergency circumstance justifies and requires a temporary stay of a lower tribunal's proceedings prior to the opportunity to receive or review a response, no motion shall be granted before the response period expires.

(e) Form of papers and number of copies. Papers filed pursuant to this rule shall

comply with the requirements of Rule 23(f).

(f) Hearing. A hearing on the motion will be granted only in exceptional circumstances. No motion for emergency relief will be heard without the presence of an adverse party except on a showing that the party (1) was served with reasonable notice of the hearing, and (2) cannot be reached by telephone.

(g) Power of a single justice or judge to entertain motions. A single justice or judge may act upon a motion for emergency relief to the extent permitted by Rule 19(d) where the relief sought is an extraordinary writ and by Rule 23(e) in all other cases.

Kelli A. Gonzalez
My Name

5226 S. Autumnwood Ln
Address

Taylorville, UT 84129
City, State, Zip

801-696-9230
Phone

KELN3KDS@gmail.com
Email

I am the Plaintiff/Petitioner
 Defendant/Respondent
 Witness for the Plaintiff/Petitioner Defendant/Respondent
 Attorney for the Plaintiff/Petitioner Defendant/Respondent and my
Utah Bar number is _____

In the District Juvenile Justice Court of Utah

Third Judicial District Salt Lake County

Court Address 450 South State Street SLU, UT 84114

Kelli A. Gonzalez
Plaintiff/Petitioner

v.

Department of Workforce Services
Defendant/Respondent

Statement Supporting

Opposing

Motion to Dismiss Appeal

Hearing Requested

140906172 AA
Case Number

Katie Bernards-Goodman
Judge

Commissioner

Instructions:

- You must complete this form before you file it. Court staff cannot complete this form for you.
- Keep a copy of all documents for your records.
- Attend all court hearings.
- Attach the following:

- o Additional pages as needed to complete paragraphs that don't have enough space. Write the paragraph number on the additional page.
- o Non-Public Information Form, more fully describing non-public information asked for in this document.
- o Documents supporting your statements (if applicable).

(1) I say as follows: (State the facts of your case that support/oppose the motion. Make your statements in clear, simple sentences. Make each point a separate paragraph. Number the paragraphs. Arrange the paragraphs logically. Type your statements or print them clearly. The person signing this document must have first-hand knowledge of the facts stated.)

JUNE 5th 2015 at approximately 7:30 AM I Kelli Gonzalez had a family emergency. My mother Debra Johnson had a Fall down my stairs at my residence. My mother was in alot of pain and needed my assistance the rest of her stay while visting. My mother Debra Johnson was visiting from Nevada for my daughter Jaymee Gonzalez's graduation Ceremony. My mother went to Doctors in Nevada on June 12th 2015. They performed X-rays.

(2) I request a hearing.
 I do not request a hearing.

(3) List any documents you have attached that support your statements.

Letter from Debra Johnson signed, Reno orthopaedic Clinic Statement and Patient Receipt.

I have not included any non-public information in this document.

I declare under penalty of Utah Code Section 78B-5-705 that everything stated in this document is true.

June 13th 2015 Sign here ► Kelli A. Gonzalez
 Date Typed or Printed Name Kelli A. Gonzalez

June 14, 2015

To Whom It May Concern:

This is to verify that I, Debra Johnson, daughter of Kelli Gonzalez experienced a fall down her stairs at her residence at 5226 Autumnwood Lane in Taylorsville, UT on June 5, 2015 at approximately 7:30 a.m.

I had arrived earlier that morning at 2:30 a.m. from my residence in Reno, NV to attend my granddaughter's high school graduation that evening. My daughter wanted me to go to the local ER, however, I refused at that time.

Upon my return to Reno, I saw my doctor, John Zebrack, on Friday, June 12, 2015. They were concerned that I may have broke something from the fall and performed numerous x-rays. I am under Dr. Zebrack's care as I am anticipating upcoming complete knee replacements on both of my knees.

You may contact Dr. Zebrack to verify this information at: Reno Orthopaedic Clinic, 10085 Double R Blvd, Suite #220, Reno, NV 89521. Also, please find a copy of my receipt for that appointment.

Please let me know if you have any questions or further information you may need.

Thank you,



Debra Johnson

1770 Glen Cove Ct.

Reno, NV 89521

(775) 247-4577

Remit payment to:

Reno Orthopaedic Clinic
555 North Arlington Ave
RENO, NV 89503-4724
(775) 786-3040

Patient Receipt

Friday, June 12, 2015

Amount Due	Amount Paid
\$0.00	\$150.00

DEBRA D JOHNSON
1770 GLEN COVE COURT
RENO, NV 89521

Date	Description	Check #	Fee	Units	Insurance	Patient
	DEBRA D JOHNSON(160030)/John Zebrack MD/1431825					
06/12/2015	Payment from JOHNSON, DEBRA D				\$0.00	-\$150.00
	Balance:				\$0.00	-\$150.00

10085 DOUBLE R BLVD SUITE 220
RENO, NV 89521
775 786 3040
79300981632825

Pat. Acct. ID: 240361602825 Ref. ID: 000000

Sale

XXXXXXXXXXXX2227

VISA Entry Method: Swiped

Total: \$ 150.00

06/12/15 10:19:05
Inv #: 002227 Appr Code: 011905
Transaction ID: 465163623458198
Apprvd: Online Batch#: 000025

10085 DOUBLE R BLVD SUITE 220
RENO, NV 89521

Thank you for your payment! Please visit us at www.renoortho.com

Deposit	0-30	31-60	61-90	91-120	Over 120	Total Balance	Ins. Balance	Pat. Balance
\$150.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$150.00	\$0.00	-\$150.00

Certificate of Service

I certify that I served a copy of this document on the following people.

Person's Name	Method of Service	Served at this Address	Served on this Date
Department OF WORK FORCE SERVICES (Other Party or Attorney)	<input type="checkbox"/> Mail <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)	Third District Court 450 S. State Street Ste UT 84114	6/19/15
Lynsay Martinez (Clerk of Court)	<input type="checkbox"/> Mail <input checked="" type="checkbox"/> Hand Delivery / Email <input type="checkbox"/> Electronic File		6/14/15
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

June 14th 2015
 Date

Sign here ► *Kelli Gonzalez*
 Typed or Printed Name Kelli Gonzalez

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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

<p>KELLI A. GONZALEZ, Plaintiff, v. DEPARTMENT OF WORKFORCE SERVICES, Defendant.</p>	<p>FINAL ORDER DISMISSING PLAINTIFF'S PETITION FOR JUDICIAL REVIEW OF FINAL AGENCY ACTION (PROPOSED)</p> <p>Case No. 140906172</p> <p>Judge Katie Bernards-Goodman</p>
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On June 5, 2015, Plaintiff failed to appear at the final pretrial conference for a bench trial scheduled for June 9, 2015 at 9:00 a.m. Based on Plaintiff's failure to appear, Defendant moved to dismiss the appeal and strike the bench trial. The Court gave Plaintiff until 2:00 p.m. on June 5, 2015 to appear for the final pretrial conference. After Plaintiff failed to appear by 2:00 p.m., the Court struck the bench trial.

Plaintiff subsequently emailed the court to request that her absence at the final pretrial conference be excused due to an unspecified family emergency. The Court scheduled a motion

to dismiss hearing for June 19, 2015 to allow Plaintiff the opportunity to state the reason for her failure to appear. At the motion to dismiss hearing, Plaintiff stated that she failed to appear because her mother had fallen down the stairs at Plaintiff's house, and Plaintiff needed to assist her. The fall occurred at 7:30 a.m. Plaintiff's mother declined emergency care. Plaintiff was able to make several other phone calls before the scheduled time of the final pretrial conference, but did not call the Court or opposing counsel. Plaintiff's mother also waited seven days before seeking any type of medical assessment, and the receipt evidencing a medical assessment does not specify that there was an injury or that any medical care was indeed provided to Plaintiff's mother. Plaintiff was not the one injured, and Plaintiff failed to keep the Court apprised of the reason for Plaintiff's failure to appear.

Based on the foregoing, the Court finds that Plaintiff's reason for not appearing at the final pretrial conference does not excuse her failure to appear. Accordingly, Plaintiff's Petition for Judicial Review of Final Agency Action is dismissed with prejudice.

This is the final order of the Court.

*****END OF ORDER*****

(Signature at the Top of First Page)

CERTIFICATE OF SERVICE

Pursuant to Utah R. Civ. P 5(b)(1)(A)(i), I certify that on June 24, 2015, a true and correct copy of the foregoing **FINAL ORDER DISMISSING PLAINTIFF'S PETITION FOR JUDICIAL REVIEW OF FINAL AGENCY ACTION (PROPOSED)** was sent via United States mail, first class, postage prepaid, to:

Kelli A. Gonzalez
5226 Autumn Wood Lane
Taylorsville, UT 84129-1694
Pro Se

/s/ Cecilia Lesmes

CERTIFICATE OF SERVICE

Statement of Facts
AND addendum

I certify that a copy of the attached Addendum for Brief was served upon the party(ies) listed below by mailing it by first class mail, personal delivery, or fax to the following address(es):

Name: Court of Appeals - Clerk

Address: 450 South State Street
Salt Lake City, Utah 84114

Sent Via:
 Mail (postage prepaid)
 Personal delivery
 Fax # _____

Name: Workforce Services - Peggy Stone

Address: 160 East 300 South
PO Box 140856
Salt Lake City, UT 84114

Sent Via:
 Mail (postage prepaid)
 Personal delivery
 Fax # _____

Email: pstone@utah.gov

Name: _____

Address: _____

Sent Via:
 Mail (postage prepaid)
 Personal delivery
 Fax # _____

By: 
Signature

Dated: 02/29/2016