

1991

Timm v. Dewsnup : Unknown

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF.

910157

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CLERK SUPREME COURT
UTAH

April 20, 1992

Geoffrey J. Butler
Clerk, Utah Supreme Court
332 State Capitol Bldg.
Salt Lake City, Utah 84114

Re: Citation of Supplemental Authorities, Timm et al. v. Dewsnap, Docket No. 91-0157.

Dear Mr. Butler:

This letter is filed with you as Clerk of the Utah Supreme Court pursuant to Rule 24(j) of the Utah Rules of Appellate Procedure. In the above-captioned case, since the briefs have been filed, two pertinent cases have come to my attention.

1. Hill v. Seattle First National Bank, 181 Utah Adv. Rep. 3 (Supreme Court, February 24, 1992) - collateral estoppel.

The collateral estoppel issue in Hill v. Seattle First National Bank, 181 Utah Adv. Rep. 3 (Supreme Court, February 24, 1992) is nearly identical to the collateral estoppel issue in Dewsnap. In Hill, a counterclaimant had raised in a federal court proceeding the existence of an oral contract. However, the federal court did not consider whether there was an oral contract because the federal court "ruled inadmissible any evidence of oral representations that might establish a contract." Id. at 4. In a later state court proceeding, where evidence of the oral contract was admissible, the counterclaimant again tried to raise the same issue of the existence of an oral contract. This Court held that collateral estoppel did not preclude the counterclaimant from raising the issue of the oral contract in state court since "the federal court never reached the question of whether [there was an oral contract]." Id. at 5.

Similarly, in Dewsnap, the Dewsnums raised in bankruptcy court the issue of whether the Trust Deed had been paid off. However, under Heiser v. Woodruff, 327 U.S. 726 (1946), the bankruptcy court

gave full faith and credit to the state court decree of foreclosure and did not reach the underlying issue of whether the Trust Deed had been paid off. Just as in Hill, the Dewsnups should not be collaterally estopped from raising that issue in state court, where that issue can be considered. The collateral estoppel issue is briefed in the Respondents brief at pages 16-19 and in the Reply brief at pages 14-20.

2. Robertson v. Gem Insurance Co., 181 Utah Adv. Rep. 36 (Court of Appeals, February 27, 1992) - Standard of Review.

In Robertson v. Gem Insurance Co., 181 Utah Adv. Rep. 36 (Court of Appeals, February 27, 1992), the Court of Appeals held that the correctness standard is the appropriate standard of review where a ruling is made on a question of law, even through the discretionary standard would otherwise apply:

Generally, an attorney fee award is within the court's discretion and will not be reversed absent an abuse of discretion. [Citation omitted.] However, some of the arguments presented on the attorney fees issue involve questions of law, which we review without deference, for correctness. [Citation omitted.]

Id. at 37.

Similarly, in Dewsnup, the correctness standard should apply to a review of the trial court's denial of the Motion to Amend Counterclaim and the Motion to Either Reconsider and Set Aside or to Certify as Final, because the trial court denied both motions on a question of law (denying both motions on the basis of its ruling that the Dewsnups' counterclaim had been implicitly disposed of). This issue was briefed in the Appellant's brief at pages 3-4, the Respondent's brief at pages 1, 16, and in the Reply brief at pages 13-14.

Very truly yours,



Russell A. Cline

RAC/aa

cc: Michael Z. Hayes
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