

1961

Agnes Lundberg v. Le Grand P. Backman : Petition for Rehearing and Brief in Support Thereof

Utah Supreme Court

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Richard C. Dibblee; Counsel for Appellant;

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IN THE SUPREME COURT
of the
STATE OF UTAH

FILED

MAR 20 1961

AGNES LUNDBERG,

Plaintiff and Appellant, Clerk, Supreme Court, Utah

—vs.—

LeGRAND BACKMAN,

Defendant and Respondent.

PETITION FOR REHEARING AND BRIEF
IN SUPPORT THEREOF

RICHARD C. DIBBLEE

Counsel for Appellant

530 Judge Building

Salt Lake City, Utah

INDEX

	<i>Page</i>
PETITION FOR REHEARING	1
BRIEF IN SUPPORT OF PETITION FOR REHEARING	2
POINT I. THE COURT ERRED IN GRANTING THE SUMMARY JUDGMENT.....	2
CONCLUSION	5

IN THE SUPREME COURT
of the
STATE OF UTAH

AGNES LUNDBERG,
Plaintiff and Appellant,

—vs.—

LeGRAND BACKMAN,
Defendant and Respondent.

} Case No. 9212

PETITION FOR REHEARING AND BRIEF
IN SUPPORT THEREOF

PETITION FOR REHEARING

COMES NOW Agnes Lundberg, appellant herein, and respectfully petitions this Honorable Court for a rehearing in the above-entitled case and to vacate the order of the Court herein, affirming the judgment for respondents.

This Petition is based on the following grounds:

POINT I

THE COURT ERRED IN GRANTING THE SUMMARY
JUDGMENT.

RICHARD C. DIBBLEE
*Counsel for Plaintiff and
Appellant*

530 Judge Building
Salt Lake City, Utah

I hereby certify that I am the attorney for the appellant, petitioner herein, and that in my opinion there is good cause to believe the judgment objected to is erroneous and that the case ought to be re-examined as prayed for in said petition.

Dated this 20th day of March, 1961.

RICHARD C. DIBBLEE

BRIEF IN SUPPORT OF PETITION FOR
REHEARING

ARGUMENT

POINT I

THE COURT ERRED IN GRANTING THE SUMMARY
JUDGMENT.

The plaintiff respectfully submits this court erred in failing to view the record in the light most favorable to plaintiff and ruling there was no genuine issue as to any material fact.

This court, by its opinion, has ruled as a matter of law that upon the entry of the final judgment the relationship of attorney and client between plaintiff and defendant terminated without the defendant filing a formal notice of withdrawal.

We submit such a ruling ignores a material issue of fact. That issue is whether defendant so conducted himself in handling plaintiff's affairs that the relationship of attorney and client could be found by the trier of the fact to have been of a continuing nature in the absence of a formal notice of withdrawal.

We call particular attention to the fact that after entry of the final judgment defendant filed a motion for new trial on behalf of plaintiff. While this motion was not filed within time, we submit that the only proper inference is that defendant considered himself to be and was in fact representing plaintiff. We submit that this court has erroneously overlooked the filing of the motion for new trial by defendant in arriving at its decision. The simple dictates of justice demand that the aforementioned controlling fact be recognized. Recognition of said fact and the fair inferences therefrom requires recognition of the grave error committed by this court in deciding as a matter of law a clear question of fact.

The uncontroverted facts in this case also reveal that after entry of the final judgment plaintiff contacted defendant personally and requested a formal notice of withdrawal. The affidavit of plaintiff states she made the request upon advice of another attorney in the com-

munity, who indicated he would be unable to assist her in perfecting an appeal until the defendant withdrew as counsel of record. Defendant failed to file the notice as requested and this became a basis for plaintiff's complaint.

The defendant, in answer to these facts, did not deny that plaintiff had made such a request, but alleged in great detail the fact he had perfected a withdrawal as her attorney within the time for her appeal. In support of his position he stated he prepared a notice of withdrawal on December 1, 1954 which the record indicates was not filed with the court until January 24, 1955, *after the time to file a notice of appeal had elapsed.*

We respectfully submit the facts referred to above clearly indicate that defendant was of the opinion that to legally terminate his relationship with the plaintiff he was under a duty to file a notice of withdrawal. He breached this duty and as a result plaintiff was denied the right to have an erroneous judgment reviewed by this court. We contend, that by his own conduct defendant established a standard of practice which he was required to perform as an attorney at law. But this court, by its ruling, has completely relieved defendant of any duty whatsoever, and has declared that filing of the withdrawal was a beneficent gift rather than a discharge of duty. We submit, having undertaken to file a notice of withdrawal, defendant owed a duty to properly and timely withdraw.

The issue presented in this case does not involve the question of whether defendant was employed to appeal a case, as seems to be contended in the majority opinion, but concerns the question of whether defendant violated his obligation, as an attorney, of exercising care in the performance of his duties.

Defendant did not conduct himself as an attorney who had terminated his relationship with his client. He filed motions for new trial, discussed the matter with other attorneys, and prepared a notice of withdrawal. But not once did he ever advise plaintiff that he considered their relationship terminated and that he was no longer counsel of record. We contend that to permit him to escape responsibility for his conduct is error.

CONCLUSION

We respectfully submit that the court erred in sustaining the order granting the summary judgment. We contend there was a genuine issue of fact as to whether or not the defendant had terminated the relationship of attorney and client.

It would seem to be the responsibility of the bench and bar to meticulously and with utmost fidelity protect the interests of all persons in their dealings with the legal profession. It is our view that this court's opinion if reaffirmed, can have no other effect than to reduce and deplete the reputation of the entire legal profession in this community.

We submit the judgment in this case should be reversed or a rehearing granted.

Respectfully submitted,

RICHARD C. DIBBLEE
Counsel for Appellant

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Salt Lake City, Utah