1991

Sandra Beynon v. St George - Dixie Lodge # 1743, Benevolent and Protective Order of Elks : Unknown

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

SANDRA BEYNON, Plaintiff/Appellant, vs. ST. GEORGE - DIXIE LODGE # 1743, BENEVOLENT & PROTECTIVE ORDER OF ELKS, Defendant/Appellee.	**DEFENDANT'S FIRST CITATION OF SUPPLEMENTAL AUTHORITIES** Case No. 91-0551 Priority No. 16

Defendant St. George - Dixie Lodge # 1743, Benevolent & Protective Order of Elks, through counsel, hereby provides the Court with the following citations to supplemental authorities both pertinent and significant to this case. Defendant/Appellee submits these citations pursuant to Rule 24(j) of the Utah Rules of Appellate Procedure. The reasons for the supplemental citations are also set forth, as required by rule.

SUPPLEMENTAL CITATIONS

Defendant has recently discovered the existence of three cases addressing the issues presented on this appeal:

A. Maine Human Rights Comm'n. v. Le Club Calumet.

The first supplemental citation offered by defendant is Maine Human Rights Comm'n. v. Le Club Calumet, 609 A.2d 285 (Me. 1992). The decision of the Supreme Court of Maine in Le Club Calumet is significant to this case for a number of reasons:

1. In Le Club Calumet, the Maine Supreme Court held that the state's Human Rights Act did not prohibit Le Club Calumet from limiting its membership practices to males only. This supports the argument made by defendant in Point I of its brief (pp. 11-33) that the male-only membership practices of the Elks Lodge are not prohibited under the Utah Civil Rights Act.

2. In Le Club Calumet the court found it significant that the defendant was "a fraternal organization with the primary purpose of propagating the french language. . . ." Id. at 286. The court further found it significant that the general public could not attend the club's private meetings, even though the public could attend other public social functions held by the club. These facts are similar to the facts asserted on pages 3-8 of defendant's brief, wherein it is shown that the Elks Lodge is

also a fraternal organization that has as its central activity a weekly membership meeting that can only be attended by members of the lodge.

3. In Le Club Calumet the court held that Le Club Calumet did not fit within the scope of the Human Rights Act because it was not a "place of public accommodation." A place of "public accommodation" was defined by the statutes of Maine as "any establishment which in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public." Id. (emphasis added). The Supreme Court held that Le Club Calumet did not satisfy this definition. Le Club Calumet's holding directly supports the argument made in Point I of defendant's brief that defendant is not a "business establishment" within the meaning of the Utah Civil Rights Act.

4. In Le Club Calumet the court found it significant that there was "no evidence that club membership [was] essential to the maintenance of social or business opportunities in the . . . community." Id. at 287. This fact is pertinent to the instant case because the statement of facts contained in appellant's brief similarly fail to allege that the admission practices of the Elks Lodge have had any adverse consequence on plaintiff's business dealings.

B. Welsh v. Boy Scouts of America.

The second supplemental citation offered by defendant is Welsh v. Boy Scouts of America, 787 F. Supp. 1511 (N.D. Ill. 1992). This case is significant to the instant case for a number of reasons:

1. Welsh held that the Boy Scouts of America organization does not fall within the scope of the Federal Civil Rights Act. The court explained that the Act only applies to "places of public accommodation" and concluded that the Boy Scouts is not a "place." In so holding, the court stated that the term "place" was not simply a term of convenience, but rather was intended to limit the scope of the Civil Rights Act. The court further stated that "place" should be given its customary meaning. Id. at 1530, 1534, 1537-39. These observations are analogous to the points made in pages 22-25 of defendant's brief, wherein defendant argues that the Elks Lodge is not included within the scope of the Utah Civil Rights Act because it is not a "business." As in Welsh, plaintiff has argued that the term "business" is simply a term of convenience that adds nothing to the Act, while defendant has argued that "business" limits the scope of the Act and must be interpreted according to its ordinary meaning. Welsh suggests that "business" is in fact a

limitation on the scope of the Utah Civil Rights Act, as argued in pages 22-25 of defendant's brief.

2. In Welsh the court set forth 63 paragraphs of facts. Id. at 1514-21. All of the facts set forth were considered to be relevant to a determination of whether an entity falls within the scope of a civil rights act. Id. at 1514 N.2. These facts are pertinent to the instant case because they are very similar to the statements of fact found in pages 3-8 of defendant's brief.

3. Welsh was held to be distinguishable from two key cases relied upon by plaintiff throughout her various briefs: Curran v. Mount Diablo Council of the Boy Scouts of America, 195 Cal. Rpt. 325 (1983), and United States Jaycees v. McClure, 305 N.W.2d 764 (Minn. 1981). See Welsh, 787 F. Supp. at 1530.

4. Welsh refused to follow United States Power Squadron's v. State Human Rights Appeal Bd, 452 N.E.2d 1199 (N.Y. 1983), a case relied upon by plaintiff on pages 16-17 of her second reply brief. Id.

C. United States Jaycees v. Iowa Civil Rights Comm'n.

The third supplemental citation offered by defendant is United States Jaycees v. Iowa Civil Rights Comm'n., 427 N.W.2d 450 (Iowa 1988) (en banc). Jaycees is pertinent and significant to this case for a number of reasons:

1. Jaycees declined to follow United States Jaycees v. McClure, 305 N.W.2d 764, 768-69 (Minn. 1981), a case relied upon by plaintiff on page 11 of her second reply brief. Id. at 453.

2. Jaycees was held to be distinguishable from two key cases relied upon by plaintiff throughout her various briefs: Board of Directors of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537 (1987), and Roberts v. United States Jaycees, 486 U.S. 609 (1984). See Jaycees, 427 N.W.2d at 453.

3. Jaycees held that the Iowa Civil Rights Act did not prohibit the Jaycees organization from denying membership to females because the Act only applied to "places of public accommodation." "Public accommodation" was defined very broadly to include "every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public. . . . " Id. at 452 (emphasis added). The Iowa Supreme Court held that the Jaycees was not a "place" or an "establishment" under this definition. Id. at 454. These holdings are synonymous with Point I of defendant's brief, which similarly asserts that the Elks Lodge is not included within the scope of the Utah Civil Rights Act because it is not a "business establishment."

4. Jaycees held that "place" and "establishment," as used

in the Civil Rights Act, should be given their ordinary and customary meanings. This supports the argument made by defendant on pages 22-25 of its brief that the term "business" should be given its ordinary meaning when interpreting the Utah Civil Rights Act.

As demonstrated, the three supplemental authorities cited above are pertinent and significant to a resolution of this case. Defendant therefore urges this court to consider these additional authorities prior to ruling on plaintiff's appeal.

DATED this 2nd day of December, 1992.

STRONG & HANNI

By _____
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MAILING CERTIFICATE

I hereby certify that on this 2nd day of December, 1992, I mailed a true and correct copy of the foregoing, by placing such in the United States mail, first class postage prepaid, and addressed to:

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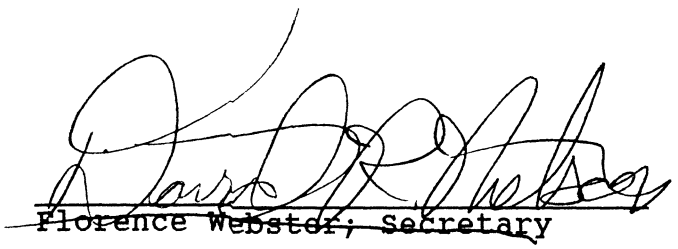

Florence Webster, Secretary