

1991

Guiff v. Taylor : Brief of Appellee

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

David J. Knowlton; Attorney for Plaintiff/Appellee.

Larrie A. Carmichael; Attorney for Defendant/Appellant.

Recommended Citation

Brief of Appellee, *Guiff v. Taylor*, No. 910601.00 (Utah Supreme Court, 1991).

https://digitalcommons.law.byu.edu/byu_sc1/3807

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
K F U
50
.A10
DOCKET NO

910601A

91-0601-3A

Defendant/Appellant.

Priority No. 16

APPEAL FROM THE SECOND DISTRICT COURT, DAVIS COUNTY, STATE OF UTAH

LARRIE A. CARMICHAEL (0580)
Attorney for Defendant/Appellant
65 North 3700 West #313
Hurricane, Utah 84737
(801) 635-0815

DAVID J. KNOWLTON (1850)
Attorney for Plaintiff/Appellee
2910 Washington Boulevard, Suite 305
Ogden, Utah 84401
Telephone (801) 621-4852

FILED

'SEP 5 1991

CLERK SUPREME COURT
UTAH

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Statement of the Case and Factual Background	1
Argument	3
Point I.	
THE TRIAL COURT'S DENIAL OF APPELLANT'S MOTION FOR A NEW TRIAL WAS CORRECT.	3
Point II.	
THE FINDINGS OF FACT WERE SUPPORTED BY THE EVIDENCE AND WERE WELL WITHIN THE TRIAL COURT'S DISCRETION	5
Point III.	
PUNITIVE DAMAGES ARE APPROPRIATE AND CERTAINLY NOT EXCESSIVE IN THIS MATTER	6
Point IV.	
PLAINTIFF COULD NOT HAVE JOINED AN UNAVAILABLE PARTY	7
Conclusion	7
Certificate of Service	8

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Butler v. Lee</u> , 774 P.2d 1150 (Utah 1989)	6
<u>G.M. Leasing v. Murray Thrift</u> , 567 P.2d 179 (Utah 1975) . . .	5
<u>Jensen v. Baughman</u> , 563 P.2d 179 (Utah 1977)	5
<u>Kusy v. K Mart Apparel</u> , 781 P.2d 232 (Utah 1984)	3, 4
<u>Moses v. Moses</u> , 505 P.2d 1302 (Colo. 1973)	4
<u>Reid v. Mutual of Omaha Ins. Co.</u> , 776 P.2d 896 (Utah 1989)	6
<u>Tucker Realty v. Kennecott Copper Corp.</u> , 495 P.2d 1254 (Utah 1972)	5
<u>WR Skousen Contractors v. Chatter</u> , 536 P.2d 722 (Ariz. 1975)	4
<u>WW & WB Gardner Ins. v. Park W. Village</u> , 568 P.2d 734 (Utah 1977)	3, 4
<u>Rules</u>	
Rule 26(g), Utah Rules of Civil Procedure	4
Rule 33(a), Utah Rules of Civil Procedure	3
Rule 37(a), Utah Rules of Civil Procedure	3

IN THE SUPREME COURT OF THE STATE OF UTAH

TERRELL W. GUIFF,)	
)	
Plaintiff/Appellee,)	Supreme Court No. 910114
)	
vs.)	
)	
GINA TAYLOR,)	Priority No. 16
)	
Defendant/Appellant.)	

APPELLEE'S RESPONSIVE BRIEF

STATEMENT OF THE CASE
AND FACTUAL BACKGROUND

On January 24, 1990, Janet Guiff, a Utah resident, died intestate. Plaintiff/Appellee is the surviving spouse of Janet Guiff, who is also survived by a son whose whereabouts are unknown to either party. Defendant/Appellant is the sister of the deceased, Janet Guiff. (See Findings of Fact and Conclusions of law, hereinafter designated "FFCL, p.2)

On the date of Janet Guiff's death, plaintiff was in lawful possession of certain jewelry and personal property owned by decedent and located in plaintiff's home. About two weeks after his wife's funeral, plaintiff gave defendant a key to his home and told defendant she could remove and keep the decedent's clothing. ("FFCL" pp.2-4.)

On July 24, 1990, Plaintiff/Appellee filed a complaint for conversion and replevin of the jewelry and requested attorney's fees, costs and punitive damages. Both parties filed and answered interrogatories without objection or request for a more definite answer.

Defendant swore in an affidavit and testified at trial that plaintiff invited her to his home after his wife's death, was present when she found the decedent's jewelry in a purse, and gave the jewelry to her. Defendant testified that after plaintiff had given her decedent's jewelry, he asked her to have sex with him; when she refused, he demanded the jewelry back. (See Defendant's August 1, 1990, affidavit, p.2; TR 18-20, 25-29, 33-34.)

The trial court found defendant entered plaintiff's home, unlawfully removed and converted decedent's jewelry, specifically set forth in the court's ruling on valuations, and that plaintiff did not make a gift of any portion of his wife's jewelry or assist or participate in defendant's taking, conversion and sale of the jewelry. ("FFCL" pp. 3-4.) Moreover, the trial judge found defendant's testimony perjurious, completely lacking in credibility and ruled: "That the conduct of defendant, Tina Taylor, was unlawful, knowing, and intentional, and in addition thereto, said Tina Taylor at the time of trial falsely testified about the taking conversion of the jewelry and further falsely testified about the number of items taken from plaintiff's home." ("FFCL" p. 4.)

On February 7, 1991, defendant's motion for a new trial was denied. As noted by appellant (Appellant's Opening Brief, p. 6), in his denial of defendant's motion for a new trial, the trial judge stated the following: "In fact, the Court did not state it was finding by a preponderance of the evidence. In this case, the evidence was so one sided that the Court could have found the evidence against the defendant, Gina Taylor, beyond all reasonable

doubt."

POINTS AND AUTHORITIES

ARGUMENT

POINT I

THE TRIAL COURT'S DENIAL OF APPELLANT'S MOTION FOR A NEW TRIAL WAS CORRECT

The "key" issue appellant raises on appeal is not the trial court's failure to grant his motion for a new trial, but counsel's own failure to question his client prior to trial.

Appellant's remedy for defective discovery, if any, is either to follow the procedures set forth in Utah Rules of Civil Procedure, Rule 33, subsection (a), and move the trial court for an order to compel discovery, under Rule 37, subsection (a), with respect to any failure to answer interrogatories, or move the trial court to order sanctions, under Rule 26, subsection (g), for unsigned answers. (Kusy v. K Mart Apparel, (Utah 1984) 681 P.2d 232; WW & WB Gardner Ins. v. Park W. Village, (Utah 1977) 568 P.2d 734.)

Appellant complains on appeal that the following answer to his interrogatory:

"5. Did you hand over the jewelry of Janet Guiff to defendant, Tina Taylor? If not, explant (sic) how she got it?" "ANSWER: No. Plaintiff understands that defendant, Tina Taylor removed said property from the home of plaintiff and Janet Guiff, but without authorization of either party."

is "a total and deceptive failure to answer" and attempts to buttress this spurious argument on his claim that plaintiff's explanation of how defendant got into his home was the "key" to his

case (Appellant's Opening Brief, hereinafter designated "AOB", pp. 7-9).

Defendant's particular method of entering plaintiff's home had marginal, if any, relevance to the issues at trial. Appellant claims that: "(i)n preparation for trial counsel questioned defendant extensively about how she could have possibly got the jewelry out of plaintiff's residence without his knowledge because plaintiff did not have a reasonable explanation on this point. Defendant did not tell her counsel about the key, and her counsel never asked her about the keys." (AOB p. 9.) However, plaintiff's consent for defendant to enter his home and remove the decedent's clothing was never disputed. It was defendant's perjurious testimony that plaintiff gave her his deceased wife's jewelry shortly after the funeral in exchange for sex and fraud as to the items and value of the jewelry that rightly incensed the trial court. The trial judge awarded punitive damages and found that "... the evidence was so one sided that the court could have found the evidence against the defendant, Gina Taylor, beyond all reasonable doubt."

It is well-established that sanctions may lie for any alleged failure to answer interrogatories (WR Skousen Contractors v. Chatter, (Ariz. 1975) 536 P.2d 722; Moses v. Moses, (Colo. 1973) 505 P.2d 1302), to sign answers to interrogatories (Kusy v. K Mart Apparel, (Utah 1984) 681 P.2d 1232) or to produce documents for inspection (WW & WB Gardner v. Park West Village, (Utah 1977) 568 P.2d 734), are vested with trial court, which is given a wide

latitude of discretionary power. (See also G.M. Leasing Corp. v. Murray Thrift, (Utah 1975) 567 P.2d 179, 180; Jensen v. Baughman, (Utah 1977) 563 P.2d 179; Tucker Realty v. Kennecott Copper Corp., (Utah 1972) 495 P.2d 1254. Defendant raised this issue of the alleged defective answer in his motion for a new trial which was denied on February 7, 1991.

Any error in plaintiff's failure to explicitly describe defendant's entry into his home, assuming he had knowledge of how she entered his home, and further assuming the fact was even relevant, was either waived by defendant's failure to object and/or request sanctions at trial, or was determined by the trial court to be invited, harmless and inconsequential error. Appellant had ample opportunity, even during trial, to object to what he claims now was a "defective answer." Appellants counsel is certainly charged with knowledge of appellant. Counsel's failure to query his own client as to how she entered the house should not be ascribed as some deceitful answer by plaintiff to somehow dignify an otherwise irrelevant issue into grounds for an appeal.

POINT II

THE FINDINGS OF FACT WERE SUPPORTED BY THE EVIDENCE AND WERE WELL WITHIN THE TRIAL COURTS DISCRETION

Appellant concedes that findings by the trial court will not be set aside on appeal unless "clearly erroneous." Appellant cites Reid v. Mutual of Omaha Ins. Co., 776 P.2d 896 (Utah 1989) for the proposition that any finding by the trial court must be articulated with detail sufficient to permit review by a court of appeal. The

court in Reid noted:

"To mount a successful challenge to the correctness of a trial court's findings of fact, an appellant must first marshal the evidence supporting the finding and then demonstrate that the evidence is legally insufficient to support the findings even in viewing in the light most favorable to the court below. (cites omitted) The legal sufficiency of the evidence is determined by the standard set out in civil rule 52(a), which provides: "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

Also see Butler v. Lee, 774 P.2d 1150 (Utah 1989).

As appellant notes in her brief, the trial court in this case made appropriate valuations from plaintiff's testimony, miscellaneous documents, receipts and other papers. The court made a specific ruling on valuation of the items appellant complains of on December 12, 1990 and set forth valid reasons therefore. Such ruling was supported by the evidence and explained by the court. Other than dissatisfaction, appellant fails to demonstrate that the valuations were not supported by the evidence, that they were clearly erroneous, or that the court abused its discretion in finding that appellant lied. Accordingly, there exists more than an ample basis for the court's findings in this matter.

POINT III.

PUNITIVE DAMAGES ARE APPROPRIATE AND CERTAINLY NOT EXCESSIVE IN THIS MATTER.

The trial court found appellant liable for an intentional tort of conversion of property of appellee and in addition thereto, falsely testified about the conversion and the extent of the property converted. The court found that appellant converted property in an amount of \$7,598.00 and awarded punitive damages in

an amount of \$3,000.00. Such an award is within the sound discretion of the trial court and is certainly not disproportionate to the injury and actual damage.

Appellant further complains that the burden of proof required for an award of punitive damages is wrong. Regardless of appellant's opinion, the law is clear and the court followed the law as it is obliged to do.

POINT IV.


PLAINTIFF COULD NOT HAVE JOINED AN UNAVAILABLE PARTY

Appellant argues that plaintiff was required to join an unavailable party and that his failure to do so deprived him of standing. Such an argument presumes several factors not in issue in this case, but fundamentally assumes that plaintiff could have joined another party. As appellant is fully aware, said party could not be located at all, much less brought within the jurisdiction of the court. Appellant's conduct in this matter was sufficiently egregious that to suggest to this court that she should be exonerated or entitled to another trial because there may be another victim who can't be located, is contrary to sound judicial policy and good reason.

CONCLUSION

For the reasons set forth above, the trial court's decision in this matter should be affirmed in all respects and appellee should be awarded his costs and attorneys fees in having to respond to this appeal.

DATED this 3rd day of September, 1991.


DAVID J. KNOWLTON
Attorney for Appellee

CERTIFICATE OF SERVICE

I, David J. Knowlton, attorney for plaintiff/appellee, certify that on the 3rd day of September, 1991, I served 4 copies of the foregoing Brief of Appellee upon Mr. Larrie A. Carmichael, Attorney for Appellant, by mailing same to 65 North 3700 West #313, Hurricane, Utah 84737, postage prepaid.

