

2003

Utah v. Matthew Clark : Reply Brief

Utah Court of Appeals

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

STATE OF UTAH,	:	REPLY BRIEF OF THE
	:	APPELLANT
Plaintiff/	:	
Appellee	:	
	:	
v.	:	
	:	
MATTHEW CLARK,	:	Court of Appeal
	:	Case No.: 20030132-CA
Defendant/	:	
Appellant.	:	

**APPEAL FROM AN ORDER OF RESTITUTION OF THE
THIRD JUDICIAL DISTRICT OF SUMMIT COUNTY
HONORABLE BRUCE LUBECK PRESIDING**

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JURISDICTION AND NATURE OF PROCEEDINGS

This is a reply brief on an appeal from a restitution award filed pursuant to Utah Rule of Appellate Procedure 24(c).

FACTS

Identity Properties was not the owner of the property, but a management company.

SUMMARY OF THE ARGUMENT

The State is incorrect that the management company was the owner of the property, and could therefore claim under a civil trespass action. The State does not dispute that the wages claimed by the management company are incorrect, but only indicates that they are not so “inherently unreasonable” as to constitute an abuse of discretion. No citation is given for this standard.

ARGUMENT

1. Identity Properties was not an owner, but a management company.

The State alleges that Identity Properties was the owner of the building. (Statement of Facts at Appellee’s Brief, page 3 and .1 of argument at page 4). It was not the owner. See, e.g., line 15 page 9 of Addendum 1, the restitution hearing (emphasis added):

A. For a full clean. That’s charged to the owner. In this case, we incurred the charge, the owner’s you know, we didn’t charge the owner’s.

Q. Ok, which was my next question. You indicate you usually bill the owners for these cleanings. But you did not bill the owners for these items?

A. That's correct.

These were condominiums. Indeed, the trial attorney for the State at the hearing recognized this:

Your honor, the victim has indicated the costs associated with recovering and returning these two units that were used on four separate occasions, both units twice, has incurred significant costs to both the company and has not been passed on to the homeowners that actually own those particular units. I believe Mr. Sheldon has indicated that in one instance, or the instance of the cleaning costs that those were not passed on to the homeowners because they had to take responsibility for returning the units to the capacity and ability to be used from that date after defendant's were caught. See Addendum 1 at 14, line 22 (emphasis added).

Again, Identity Properties was not the owner. The State in its own Brief notes that these are condominiums. See statement of the case at page 2 of the Appellee's Brief. "...for entering three condominiums with the intent to commit theft and for taking two televisions..."

Thus, the State acknowledges that the management company, Identify Properties, was not the owner. The condominium owners were, indeed, the owners.

This was recognized by the court as well: The owners had to do these things themselves and either hire someone else to do it or take the time to do it themselves. R.100-01.

Thus, the Court also knew that the management company was not the owner.

2. The appellant continues to argue that the property management company (Identity Properties) was not a victim within the meaning of the statute.

The State, in a footnote on page 5, suggests that the defendant has not pursued the argument that the management company was not a victim within the meaning of the statute. The Court's attention is respectfully invited to page 11 of Appellant's Brief in which it is indicated that the management company was not a victim within the meaning of the statute.

3. Identity Properties could not recover against defendant in a civil action for trespass as Identity Properties was not the owner.

The State properly recognizes that for the management company to recover as a victim, it must be entitled to obtain civil recovery against the accused. To promote this argument, the State argues that Identity Properties could recover against the defendant in a civil action for trespass.

The State cites to *Walker Drug Co., Inc. v. LaSal Oil Co.*, 972 P.2d 1238 (Utah 1998). Walker Drug does hold that trespass is a wrongful entry upon the land of others, citing to the Restatement (2nd) of Torts as well as other cases. However, the

management company was not the owner or possessor. These were condominiums which were burgled. See Addendum 1 at 11, line 11...”so we assume they had a key and we searched the complex to see if there were any other missing items or any other condominiums had been entered.”

4. The Court has been provided with an adequate appellate record.

The State complains that the Court must have before it the document of which there witness was questioned during the restitution hearing, i.e., exhibit 1. The State admits that this document was appended to Defendant’s appellate brief.

While the defendant believes that the addendum when coupled with the transcript of the testimony adequately prepares the Court for ruling, he has, nevertheless, moved to supplement the record. This motion has been granted.

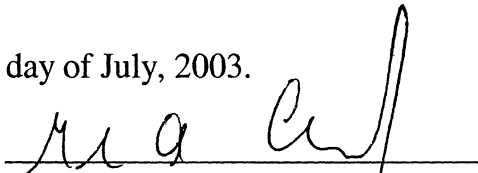
5. The trial court’s conclusion constitutes an abuse of discretion.

Defendant at both the hearing and in his brief (see page 11), argued that the trial court’s finding as to the amount owed, even if the management company was a victim, was not supported by the evidence. The wages claimed were not paid. Indeed, the clear weight of the evidence was against the findings. The State does not address the amounts. It does not address the Due Process arguments. The State simply indicates that the amount is not “so inherently unreasonable as to constitute an abuse of discretion.” Thus, the State provides argument, but does not rebut the facts. The clear facts are that the management company did not pay the amounts it claims.

CONCLUSION

The State has not disagreed with the evidence indicating that the wages purportedly paid by the management company were less than the amounts claimed and awarded in restitution. The State is incorrect in arguing that the management company, Identity Properties, was an owner. Because it was not an owner and not a victim and did not suffer pecuniary damages, the management company could not qualify as a victim under the statute.

Respectfully submitted this 28 day of July, 2003.

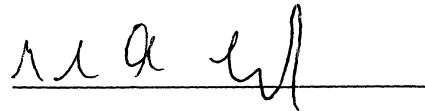


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the “REPLY BRIEF OF APPELLANT” was mailed via first-class U.S. Postal Service mail, postage pre-paid, on July 29, 2003, to:

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A handwritten signature in black ink, appearing to read "Joanne C. Slotnik", is written over a horizontal line.