1964

Porcupine Reservoir Co. v. Lloyd W. Keller Corporation et al : Brief in Answer to Petition for Rehearing

Utah Supreme Court

Walter G. Mann; Reed W. Hadfield; Attorneys for Appellants;
E. J. Skeen; Attorney for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

PORCUPINE RESERVOIR COMPANY, a corporation

Plaintiff and Respondent)

v.) Case No. 9961

LLOYD W. KELLER CORPORATION, a corporation; AVON LAND AND LIVESTOCK CO., a corporation; H. A. SUMMERS AND CLELLA SUMMERS, his wife et al)

Defendants and Appellants

BRIEF IN ANSWER TO PETITION FOR RE-HEARING

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PORCUPINE RESERVOIR
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ANSWER TO PETITION FOR RE-HEARING

Appellants contend that:

1. The Court did not err in remanding the Summers case for new trial.

2. The Court properly found that there is an indication in the record that the jury verdicts were

unusually small, suggesting passion or prejudice, or a misunderstanding of the law or facts submitted.

3. The Court has not ignored the rule that in the absence of record that a presumption will be indulged in, in favor of the record, for the reason that sufficient record has been presented and is before said Court.

ARGUMENT

POINT 1: THE COURT DID NOT ERR IN REMANDING THE SUMMERS CASE FOR NEW TRIAL.

POINT 2: THE COURT PROPERLY FOUND THAT THERE IS AN INDICATION IN THE RECORD THAT THE JURY VERDICTS WERE UNUSUALLY SMALL, SUGGESTING PASSION OR PREJUDICE, OR A MISUNDERSTANDING OF THE LAW OR FACTS SUBMITTED.

For the reason that nothing new has been presented by petitioner's brief, appellants have

elected to argue Points 1 and 2 above for the reason that their argument would apply to both statements and Point 3 will be argued separately.

Appellants in their brief on page 7 have set out a complete list of the testimony of each and every party and their witnesses on the three cases and is hereby adopted by reference. The great spread between the testimony of the various parties, both as to the value of the land taken and the severance damage, is set out at a glance in all three cases. Take the Keller case for instance, the severance goes from a low of the jury of $3,200.00 to that of the land owner of $18,000.00. In the Keller matter, the jury demonstrated very forcibly that they were going to adopt a figure lower than the condemning parties own witnesses. In doing this, I believe they demonstrated, without question of doubt, their prejudice or refusal to follow the Court's instructions. At the very time they were deciding the Keller case they also had the

evidence before them on the Avon Land and Livestock Company. Again, when we take the figures in the Avon matter, they demonstrate their prejudice and come up with a figure which utterly disregards the testimony of the witnesses, which they had been listening to. At the very same time they had before them the Summers case with the owner's testimony reaching $15,712.00 on the severance damage. They again came out with a very low figure. It appears to the writer that a person would have to conclude that prejudice in two of the cases has been very definitely shown. Also that when a low figure has been brought in for the third, that prejudice no doubt must have entered into it. I cannot see how we could conclude that if two people out of the three, without question of doubt, were not given a fair trial, that the same jury, listening to the same witnesses, could not help but carry the same unfairness into their deliberations into the third matter and not restrict it to just the two parties out of three.

it appears it would be very inconsistent to conclude that this jury could definitely show prejudice and demonstrate it in 2/3rds of the matter and not have some of that rub off in the third one portion. Further, if there is any question of doubt, why shouldn't equity and fair play dictate just like the Court has done in its decision, direct that new trials be had in all three of the cases. Mr. Skeen talks about his witness, Marcellus Palmer, coming in with a testimony of $2,009.00 on the Summers case for severance. He is two and one half times less than Alden Adams; he is seven times less than Thomas Baum; he is five and one half times less than Haven Barlow and nearly eight times less than the owner. It is so inconsistent that it has no particular value.

Consequently, I must conclude in reply to paragraphs 1 and 2 that the jury verdicts were unusually small. That the jury could not have

arrived at their verdict unless passion and prejudice were carried into that jury room.

POINT 3: THE COURT HAS NOT IGNORED THE RULE THAT IN THE ABSENCE OF RECORD THAT A PRESUMPTION WILL BE INDULGED IN, IN FAVOR OF THE RECORD, FOR THE REASON THAT SUFFICIENT RECORD HAS BEEN PRESENTED AND IS BEFORE SAID COURT.

The attorney for the respondent complains greatly because there was not an entire transcript of the evidence in the record. Any transcript of the evidence presented to the Court would have eventually shown the testimony of the different witnesses to have been the same as set out by their exhibits, all shown on page 7 of appellants' brief. As these people testified, an exhibit was made and accepted as an exhibit, representing the testimony as to figures of the witness and carried by the jury into their jury

room. These exhibits and the total results as shown from them is a record that is before the Court that can be taken notice of. There is then no absence of the record but a sufficient record before the Court. This Court, having acted upon the record that was before it and that record being sufficient to justify its decision which held that the jury verdicts were unusually small and suggested passion and prejudice, or a misunderstanding of the law or the facts, is correct.

CONCLUSION

This case was argued before this Body on the 17th day of January, 1964, after very detailed printed briefs on all of the points involved including those on which respondent seems to seek a rehearing. The tone of his brief seems to imply that even though the Supreme Court has the briefs and after having deliberated and thrashed this case

about in conferences, and after having unanimously agreed upon an opinion and reduced the same to writing, does not understand the fine points involved and needs his very capable and masterful help and enlightenment to overcome their lack of understanding. Maybe I am from the old school, but I have always felt that no decision out of the Supreme Court is unanimously decided upon without careful consideration and thorough study. I believe also, however, that any attorney who works for months over his case, becomes so deeply involved with one side of the matter that he cannot see how any person can think differently than he does.

I do sincerely believe however, that this Court has, for many months past, carefully and fully examined this case, together with that portion of the record before it; that the portion of the record

before it was sufficient for it to make a determination; that the determination made is sound and well supported and respondent's petition for a re-hearing should be denied.

Respectfully submitted,

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