

1968

Michael Mukasey v. Robert S. Aaron : Appellant's Petition For Rehearing And Brief In Support Thereof

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IN THE SUPREME COURT OF THE STATE OF UTAH

MICHAEL MUKASEY,

Plaintiff and Appellant,

vs.

ROBERT S. AARON,

Defendant and Respondent.

Case No.
11008

APPELLANT'S PETITION FOR RE-HEARING AND BRIEF IN SUPPORT THEREOF

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COMES NOW the plaintiff-appellant herein and respectfully petitions this Honorable Court for a re-hearing in the above-entitled case and to vacate the order of this Court herein, affirming the judgment for respondent. This petition is based on the following grounds:

POINT I

THERE IS STILL PENDING AN ISSUE OF FACT THAT SHOULD BE SUBMITTED TO A JURY.

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POINT I

THERE IS STILL PENDING AN ISSUE OF FACT THAT SHOULD BE SUBMITTED TO A JURY.

Plaintiff-appellant respectfully submits he is entitled to a rehearing in this case because the decision rendered by this Court has the effect of terminating this action and preventing plaintiff from proceeding further against the defendant. It is submitted that the holding in this case should not, in the interest of justice, preclude the appellant from proceeding against the respondent on the grounds of simple negligence.

The complaint on file alleges theories of recovery on a two-pronged approach: (1) recovery based on negligence, and (2) recovery based on willful misconduct. The defendant at the pre-trial asserted that there were insufficient facts to show willful misconduct and

argued that the guest statute precluded recovery by the plaintiff. The plaintiff-appellant countered by contending the guest statute was not applicable and claimed that the parties were engaged in a joint venture. The trial court rejected this theory and without designating the basis for its ruling, granted defendant's motion for summary judgment and dismissed the case with prejudice.

The opinion in this case agreed with the position of the plaintiff that if there existed a relationship of a joint venture, that the guest statute would not be applicable. The Court was of the opinion, however, that the evidence did not establish such a relationship and, therefore, sustained the trial court's ruling.

The question presented, therefore, and, it is respectfully submitted, remaining to be decided, is whether or not the plaintiff should be prevented from proceeding further in the prosecution of his claim. Summary judgment may be granted in whole or in part in regard to certain theories of liability. It appears, therefore, that this opinion has just disposed of the question of whether or not there was a joint venture. The court found that there wasn't; and, therefore, since the facts do not rise to willful misconduct, the plaintiff would be precluded from recovery because of the guest statute.

The question that has not been decided is—what is the relationship between the parties herein? The majority decision, rightfully so, does not hold that all drivers and passengers create a guest-host relationship. The

decision simply met the issue that the parties were not engaged in a joint enterprise. Therefore, it appears that there still remains a factual determination, that is, whether or not the plaintiff and appellant may proceed against the defendant-respondent based upon simple negligence.

In this case the trial court did not make findings of fact or conclusions of law so as to advise this Court as to the issues which were being incorporated in the judgment of dismissal. In view of the foregoing there is no reason that the arguments of the parties before the pre-trial judge or this Honorable Court should result in a complete denial of plaintiff to proceed with the case upon the merits. Plaintiff respectfully submits a careful examination of the entire record clearly indicates there is still pending the issue as to the legal relationship between the parties which has not been determined. Therefore, plaintiff-appellant submits that in order for the rights of the parties to be fully protected and the interests of justice duly served, this Honorable Court must grant this Petition for Rehearing.

Respectfully submitted,

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