

2003

Maria Elena Gomez v. Essential Botanical Farms, LC : Reply Brief

Utah Court of Appeals

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W. Mark Gravre; Angie Nelson; Parsons Behle and Latimer; Attorneys for Appellee.

Thomas W. Seiler; Ryan T. Peel; Robinson, Seiler and Glazier; Attorneys for Appellant.

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IN THE UTAH COURT OF APPEALS

MARIA ELENA GOMEZ, personally)
and as Personal Representative) Case No. 20030691-CA
of the Estate of JUAN GOMEZ,)
Deceased,)
)
Plaintiff and Appellant,)
)
vs.)
)
ESSENTIAL BOTANICAL)
FARMS, LC,)
)
Defendant and Appellee.)

REPLY BRIEF OF APPELLANT

APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

HONORABLE JAMES R. TAYLOR, DISTRICT COURT JUDGE

W. Mark Gavre
Angie Nelson
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
P.O. Box 45898
Salt Lake City, Utah 84145-0898
Telephone: (801) 532-1234

Thomas W. Seiler
Ryan T. Peel
ROBINSON, SEILER &
GLAZIER, LC
80 North 100 East
P.O. Box 1266
Provo, Utah 84603-1266
Telephone: (801) 375-1920

Attorneys for Defendant and Appellee

Attorneys for Plaintiff and Appellant

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ARGUMENT

I. Ms. Gomez's wrongful death claim can only be barred by the exclusive remedy provision of the Utah Worker's Compensation Act if Essential Botanical Farms, L.C. is found to be true holder of the "dba" of Mr. Gomez's employer, Young Living Farms.

Essential Botanical Farms, L.C. (hereinafter referred to as "Essential Botanical") argues that Ms. Gomez's claim for the wrongful death of her husband against Essential Botanical is barred by the exclusive remedy provision of the Utah Worker's Compensation Act (hereinafter referred to as "UWCA"). However, such argument is premised on a determination that Essential Botanical was the employer of Mr. Gomez at the time of his death; if Essential Botanical was not Mr. Gomez's employer at the time of his death, then UWCA's exclusive remedy provision would not apply.

The exclusive remedy provision is found at UTAH CODE ANN. § 34A-2-105(1), and states:

The right to recover compensation pursuant to this chapter for injuries sustained by an employee...shall be the exclusive remedy **against the employer and shall be the exclusive remedy against any officer, agent, or employee of the employer**...and no action at law may be maintained against an employer or against any officer, agent, or employee of the employer based upon any accident, injury, or death of an employee... (Emphasis added).

The exclusive remedy provision only applies to actions against the employer, officer, agent or other employee of employer, and not to any third party which may have contributed or been responsible for the employee's injuries. If Essential Botanical is found to not be the true holder of the "dba" of Mr. Gomez's employer, the exclusive remedy

provision would not apply and Ms. Gomez's claims against Essential Botanical would not be barred.

II. The undisputed facts demonstrate that the YLF "dba" was actually held by another company, and not Essential Botanical.

Essential Botanical claims that Ms. Gomez's various arguments which support her contention that the YLF "dba" was held by another company are without merit; an analysis of the facts demonstrate that the YLF "dba" was, in reality, held and used by Aromatic Research and Technology, L.L.C. (hereinafter referred to as "Aromatic Research").

While it is not disputed that YLF was registered as a "dba" of Essential Botanical with the Utah Department of Commerce, Division of Corporations, (R. 92), Essential Botanical permitted Aromatic Research to claim the YLF "dba." Essential Botanical's manager and member, Aromatic Research's manager and member, Don Gary Young and Mary Billeter Young, as well as YLF's and Aromatic Research's registered agent, Bruce L. Olson, represented to the Fourth District Court of Utah in an unrelated litigation, that the YLF "dba" belonged to Aromatic Research—the actual caption of the case listed the defendants as "Aromatic Research and Technology, L.L.C., dba Young Living Essential Oils, dba Young Living Farms..." (R. 88-89). Essential Botanical claims that the defendants' attorney merely used the plaintiffs' caption because he was representing all defendants, the designation of the YLF "dba" was not material, and did not want to generate confusion by changing the names in the caption. Brief of Appellee at 10-11.

However, the defendants were able to successfully disqualify plaintiff's counsel, Darwin C. Fisher, because Mr. Fisher was the former attorney of Young Living Essential Oils, a "dba" of Aromatic Research. (R. 80, 88). If there was a mistake or error in the caption of the unrelated action, as Essential Botanical argues, Mr. Fisher, as the former attorney of another "dba" of Aromatic Research would have known about it and would have corrected it before initiating the lawsuit.

As to the relationship with A-Plus Benefits, Inc., Essential Botanical argues that because two separate agreements were entered into, one with Young Living Essential Oils (hereinafter referred to as "YLEO") and the other with YLF, A-Plus Benefits, Inc. was contracting with two separate companies. Brief of Appellee at 9. Even if two separate agreements were entered into, YLEO still provided a check, drawn on YLEO's account, for the YLF agreement. Additionally, the agreement purported to be the YLF agreement with A-Plus Benefits, Inc. does not list YLF; the only identification is a copy of YLEO's check (R. 157). Furthermore, when A-Plus Benefits, Inc. conducted correspondence regarding Mr. Gomez's claim, A-Plus Benefits, Inc. addressed correspondence to YLEO, not to Essential Botanical. (R. 69). Therefore, A-Plus Benefits, Inc. did not believe that YLF and YLEO were separate entities.

III. Ms. Gomez's estoppel argument is not a new argument and was made before the trial court.

Essential Botanical further claims that Ms. Gomez's estoppel argument is made for the first time on appeal and cannot properly be considered by this court. Brief of Appellee, 12. Essential Botanical correctly cites Utah law that issues not raised in the trial court cannot be raised for the first time on appeal. See Coombs v. Juice Works Development, Inc., 2003 Ut App 388, 81 P.3d 769 (Utah App. 2003). However, Ms. Gomez's estoppel argument was presented in the trial court. While the argument was not titled an estoppel argument, the characterization of Ms. Gomez's arguments is that of an estoppel-type argument. Thomas W. Seiler, Ms. Gomez's counsel, in summarizing Ms. Gomez's position at oral arguments before Judge Steven L. Hansen, stated:

Everywhere you look representations to the Court, representations to the actual employer A Plus Benefits, representations apparently throughout the world through their website show that Young Living Farms is owned and controlled by Young Living Essential Oils which is a dba of, of Aromatic Research and Technology, LCC [sic].

I'll submit to the Court that, that it is clear, that the facts are clear. The clear facts are that the actual dba, what was actually being done here was that Aromatic Research and Technology, Inc. was using Young Living Farms as a dba and using it exclusively. There's no evidence, there's not any evidence before the Court that it was used any other way... (Transcript of Oral Argument, 22).

The thrust of Mr. Seiler's argument was that because of those undisputed facts, Essential Botanical cannot now claim that it holds the "dba" of YLF, especially after it permitted a separate entity to use and hold out the YLF "dba" to others. While the term 'estoppel' was

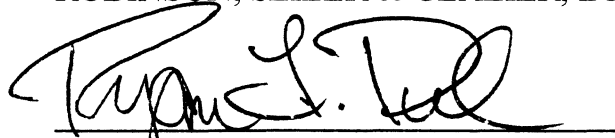
never used, Ms. Gomez's arguments before the trial court can be characterized as an estoppel-like argument. Because it was presented at the trial level, Ms. Gomez can be permitted to make such arguments before this Court.

CONCLUSION

Essential Botanical allowed YLEO and Aromatic Research to claim ownership of the YLF "dba," Mr. Gomez's employer, and is now seeking protection as the registered holder of the "dba." Ms. Gomez respectfully requests that this Court reverse the trial court's July 22, 2003 Order Granting Defendant's Motion for Summary Judgment and direct the trial court to find that Essential Botanical was not Mr. Gomez's employer and that Ms. Gomez's wrongful death claim is not barred by the exclusive remedy provision of the UWCA.

DATED this 1st day of June, 2004.

ROBINSON, SEILER & GLAZIER, LC

A handwritten signature in black ink, appearing to read 'Thomas W. Seiler', written over a horizontal line.

Thomas W. Seiler

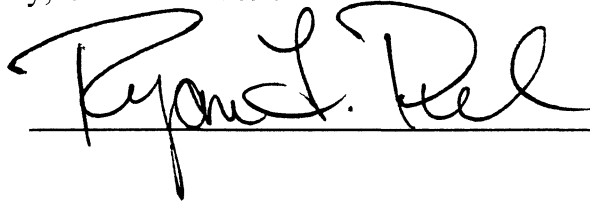
Ryan T. Peel

Attorneys for Plaintiff/Appellant

CERTIFICATE OF MAILING

I hereby certify that on the 1st day of June, 2004, I caused two (2) true and correct copies of the foregoing Reply Brief of Appellant to be served upon Appellee, through counsel, via U.S. First Class Mail, with postage pre-paid, addressed to:

W. Mark Gavre
Angie Nelson
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
P.O. Box 45898
Salt Lake City, UT 84145-0898

A handwritten signature in black ink, appearing to read "Raymond L. Behle", is written over a horizontal line.