1964

Thorp Finance Corp. v. F. M. Wright and Alice J. Wright : Brief of Respondent

Utah Supreme Court

Robert H. Ruggeri; Attorney for Defendants-Appellants;
Harry E. Snow; Attorney for Plaintiff-Respondent;

IN THE SUPREME COURT
of the
STATE OF UTAH

No. 10185

THORP FINANCE CORPORATION,
A Wisconsin Corporation,

Plaintiff-Respondent

-vs.-

F. M. WRIGHT and ALICE J. WRIGHT,
Husband and Wife,

Defendants-Appellants

RESPONDENT'S BRIEF

Appeal from the Judgment of the
Seventh District Court for Grand County
Honorable F. W. Keller, Judge

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STATEMENT OF THE KIND OF CASE

This is an action brought for the replevin of Seven Bermuda Units. The Defendants contend that the said Seven Bermuda Units are motor vehicles and subject to the provisions of Section 3, Title 41, Utah Code Annotated, 1953, as amended.

DISPOSITION IN LOWER COURT

The Court held that the said seven Bermuda Units were not motor vehicles and granted judgment to the Plaintiff.

RELIEF SOUGHT ON APPEAL

The Plaintiff seeks to have the Court affirm the judgment of the District Court.

STATEMENT OF FACTS

There were numerous hearings in the District Court of Grand County, State of Utah, between the 10th day of June, 1963, and the 10th day of February, 1964. The Defendants called Mr. Ross D. Frandsen of the Utah State Tax Commission as a witness. All other facts were stipulated and undisputed. In addition to the facts stated in Appellant's Brief, the Respondent adds the following:

The said Bermuda Units were each constructed in such a manner that axles and wheels could be placed under them for the purpose of moving them upon the public highways, however, the said Bermuda Units were never equipped with axles and wheels, except when actually being trans-

ported, and no such equipment was ever sold by Mr. George Dannenbaum to the Defendants.

Further, each Bermuda Unit consists of two separate apartments with separate entrances. Each apartment has a kitchen, bedroom, and bath.

All seven of the said Agreements were assigned by Mr. Dannenbaum to the Plaintiff. The Defendant made regular monthly payments on the Agreements until August 1962, then they became delinquent and this suit was brought to recover the said seven Bermuda Units.

ARGUMENT

POINT I.

THE TRIAL COURT PROPERLY HELD THAT THE SEVEN BERMUDA UNITS WERE NOT INTENDED PRIMARILY FOR OPERATION ON THE PUBLIC HIGHWAYS AND THEREFORE NOT MOTOR VEHICLES AS DEFINED BY SECTION 3, TITLE 41, UTAH CODE ANNOTATED, 1953, AS AMENDED.

41-6-2 Utah Code Annotated, 1953, as amended, defines various types of hevicles as follows:

> "(a) "Vehicle." Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.
>
> "(b) "Motor Vehicle." Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails."

41-6-4 Utah Code Annotated 1953, as amended, defines various types of trailers as follows:

> ". . . . (c) "Trailer." Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle . . . .
>
> "(d) "Semi-Trailer." Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle . . .
>
> "(f) "House Trailer." A trailer or semi-trailer in excess of 1500 pounds gross weight which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, either permanently or temporarily and is equipped for use as a conveyance on streets and highways, or . . . .
>
> "(g) "Trailer or Semi-Trailer." A trailer or semi-trailer whose chassis and exterior shell is designed and constructed for use as a House Trailer, as defined in paragraph (f), but which is used instead permanently or temporarily for the advertising, sales, display, or promotion of merchandise or service, or for any other commercial purposes except the transportation of property for hire or the transportation of property for distribution by a private carrier."

The Motor Vehicle Act has defined Motor Vehicle, Trailer, Semi-Trailer, House Trailer, separately. It specifically states that a Motor Vehicle is one that is self propelled, and the Utah Court has so held.

In Pacific Intermountain Express Co. v. State Tax Commission, 8 U. 2d 144, 329 P. 2d 650, the Court states as follows:

". . . . Under the Motor Vehicle Act we find the term Motor Vehicle, Trailer, and Semi-Trailer, significantly described separately. It states that a Motor Vehicle is one that is self-propelled. A Trailer is one without motive power . . . . drawn by a Motor Vehicle, and a Semi-Trailer is described as a vehicle without active power . . . . drawn by a motor vehicle. The last two definitions do not lend themselves to any compelling conclusion that such pieces of equipment are self-propelled as in the case with the definition of Motor Vevicle. On the other hand, the Motor Vehicle Act, by treating them separately, would indicate an intent not to include trailers and semi-trailers in the term Motor Vehicle. Such conclusion is further substantiated in the section that requires motor vehicles, trailers, and semi-trailers to be registered separately (Title 41-1-19, U. C. A. 1953). If the contention of the tax commission that a truck and a trailer together are a Motor Vehicle, it would follow that the two pieces of equipment would be subject to but one registration. This cannot be done under the registration statute.

"Aside from the statutes themselves, very respectable authority (Hayes Freight Lines v. Cheatham, Okl. 1954, 277 P. 2d 664, 48 A. L. R. 2d 1278; Prudential Ins. Co. of Great Britain v. Associated Emp. Lloyds, supra; Vest v. Kramer, Ohio App. 1951, 111 N. E. 2d 696, where the statute is very similar to Utah's Gendreau v. State Farm Fire Ins. Co., of Bloomington, Ill., 1939, 206 Minn. 237, 288 N. W. 225, contra.) treats a motor vehicle and a piece of tandem equipment as being mutually exclusive at least if they are not actually operational by attachment, and as a unit, — a

problem not presented here. The attitudes of courts that have had the question before them, succinctly are summarized in 60 C. J. S. Motor Vehicles: 1, p. 110, where it is said:

"A trailer or semitrailer is a vehicle, but is not a motor vehicle except that insofar as it facilitates the primary function of a motor vehicle of transporting persons and things, after being attached to the motor vehicle for that purpose, it may be regarded as becoming a party of the motor vehicle, although as to the latter proposition there is also authority to the contrary.
"A New York Case (Hennessy v. Walker, 1938, 279 N. Y. 94, 17 N. E. 2d 782, 784, 119 A. L. R. 1029) holding that trailers and semi-trailers were not motor vehicles, pointed out that:

> "Trailers and semi-trailers are vehicles within the meaning of the Vehicle and Traffic Law, ***but they are not Motor Vehicles. The Legislature having defined and classified a trailer and semi-trailer as separate and distinct vehicles, ***it is presumed that it would have referred to them by name had it intended to include them within the provisions of Section 59.

"We approve that the above statement and consider it particularly applicable to our statutes and the definitions therein contained . . . ."

The seven Bermuda Units certainly cannot qualify as motor vehicles under the general provisions of Title 41, Utah Code Annotated, 1953, as amended. The question then is whether or not the said Bermuda Units are "Motor Vehicles" as the term is defined by the provisions of 41-3-7 Utah Code Annotated, 1953, as amended which states:

"41-3-7. Definitions — Motor vehicle dealers' administrator, — Appointment — Supervision by state tax

commission. — The following words and phrases, when used in this act, shall for the purpose of this act, have the meaning respectively ascribed as follows, to wit:

> '(a) Motor Vehicle. Every vehicle intended primarily for use and operation on the public highways which is self-propelled; and every vehicle intended PRIMARILY for operation on the public highways which is not driven or propelled by its own power, but which is designated either to be attached to and become a part of, or to be drawn by a self-propelled vehicle; but not including farm tractors and other machines and tools used in the production, harvesting, and care of farm products . . ."

In Charvos v. Bonneville Irrig. Dist., 120 U. 480, 235 P. 2d 780, in interpreting the word "Primary" the Court states:

> "The argument that the words 'Primary Cause,' should be interpreted as meaning 'sole cause,' can have no merit since the word 'Primary' cannotes the existance of plurality, while the word 'sole' cannotes the singular."

In construing the language of the statute with the above cited case, one must certainly reach the conclusion that the legislature recognized that there were some items of personal property that may be drawn upon a public highway from time to time by a motor vehicle that would not fall within the provisions of the statute.

In further analyzing the statute, and specifically the phrase "Intended Primarily for Operation on the Public Highways," it is clear that one must look to the use and operation of any vehicle in order to establish its primary purpose. Pacific Northwest Alloys v. State, 306, P 2d 197,

1957, Washington Case, the Court in discussing the words "Primary Purpose," states:

> "What do the words "Primary Purpose" mean. A cardinal rule of statutary construction is that the words to be construed must be given their usual and ordinary meaning. State v. Houck, 1949, 32 Wash. 2d 681, 685, 203 P 2d 693; Sandona v. City of Cle Elum, 1951, 37 Wash. 2d 831, 837, 226, P. 2d 889. In Black's Law Dictionary (4th Ed.), "Primary" is designed as first, principal, chief, leading. "Primary Purpose" is defined as "That which is first in intention, which is fundamental."

See also People of the State of California ex rel. Ernest D. Breuning, County Surveyor of the County of Shasta, State of California v. Raymond H. Berry and Scott Lumber Company, a corporation, 304 P. 2d 818.

In consideraing use as an element in determining the primary purpose of the said Bermuda Units in question, one can hardly consider them to be vehicles. From sometime prior to October of 1961 for the five Units and prior to December 1961 for the other two Units, these Units have been on the public highway but two times, and in each of those cases it took special equipment to move them.

In addition to needing special equipment to move these Units, they also have the distinction of being able to house two separate families in the two separate apartments in each Unit, which apartments can be rented at different times and for different periods of time.

The present case is very similar to the Motel Case spoken of by Mr. Ross D. Frandsen from the Utah State Tax Commission, who testified as follows:

> "Well, now let me explain that. The specific unit that I was talking about or that we were talking about was a motel that was being constructed in Cedar City, Utah. Now this motel was built out of state and brought into this state with three units of the motel together. They were brought in on three sets of axles and set up as a motel in Cedar City. It's the only one that I know of. Now that was purchased out of state and was brought in along the highway. That is the only one that I know of. That is the specific one." (Page 6 of Tr.)

It is logical to assume from Mr. Frandsen's testimony that The Utah State Tax Commission does not take the rigid position the defendants advocate. That it is necessary to consider the use for which the Units shall be put to before they can be classed as "Motor Vehicles."

POINT II.

THE ASSIGNMENT OF THE SEVEN CONDITIONAL SALES AGREEMENTS BY GEORGE DANNENBAUM, A RESIDENT OF THE STATE OF NEW MEXICO, TO THE PLAINTIFF, AND THE COLLECTIONS MADE PURSUANT TO SAID AGREEMENTS BY THE PLAINTIFF IS NOT "DOING BUSINESS" IN THE STATE OF UTAH, WITHIN THE MEANING OF THE STATUTE.

16-10-102 Utah Code Annotated 1953, as amended, states in part:

> ". . . . Without excluding other activities which may constitute transacting business in this State, foreign corporations shall not be considered to be transacting business in this state, for the purpose of this act, by reason of carrying on in this state any one or more of the following activities:

". . . . (g) Creating evidence of debt, mortgages or liens on real or personal property.

". . . . (k) Acquiring, in transactings (transactions) outside Utah or in interstate commerce, of conditional sale contracts or of debts secured by mortgages or liens on real or personal property in Utah, collecting or adjusting or (of) principal and interest payments thereon, enforcing or adjusting any rights and (in) property provided for in said conditional sale contracts or securing said debts, taking any actions necessary to preserve and protect the interest of the conditional vendor in the property covered by said conditional sale contracts or the interest of the mortgagee or holder of the lien in said security, or any combination of such transactions . . ."

See General Motors Acceptance Corp. v. Lund, 60 U. 247, 208 P. 502; East Coast Discount Corp. v. Reynolds, 7 U. 2d 362, 325 P. 2d 853.

CONCLUSION

To allow the Defendants to prevail in the present cause would be a great miscarriage of justice, and would be contrary to the express intent of the legislature. It is very apparent when considering the language used by the said legislature, that there are some items of personal property that may from time to time be attached to a motor vehicle and drawn upon the public highway, that do not fall within the provisions of the statute.

That the seven Bermuda Units are not intended primarily for operation on the public highway and therefore not motor vehicles under the law.

That the Plaintiff Corporation is not doing business in the State of Utah, within the meaning of the statute.

That judgment should be affirmed and Plainiff should recover its costs.

Respectfully submitted,

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Attorney for Thorp Finance Corporation
Plaintiff-Respondent.