1983

Layne R. Meacham v. Great Basin Youth Service: Brief of Appellant

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IN THE SUPREME COURT OF THE

STATE OF UTAH

LAYNE R. MEACHAM,	:	
Plaintiff/Appellant,	:	**BRIEF OF APPELLANT**
vs.	:	
GREAT BASIN YOUTH SERVICE,	:	Case No. 19137
Defendant/Respondent.	:	

BRIEF OF APPELLANT

Appeal from Judgment of District

Court of Salt Lake County

Honorable J. Dennis Fredericks, Judge

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CASES CITED

RESTATEMENT OF CONTRACTS (2nd)

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NATURE OF CASE

This is an action for breach of a written contract for social services.

STATEMENT OF FACTS:

On December 23, 1982, the parties entered into a contract for personal services whereby Plaintiff/Appellant was to provide social services in 1983 for certain troubled youth as part of the services requested by a contract which the Defendant/Respondent had with the State of Utah. The contract provided that Plaintiff/Appellant would be paid a total of Twenty-four Thousand Dollars ($24,000) as he performed services at the rate of Fifty Dollars ($50) per hour, but not to exceed Three Thousand Dollars ($3,000) in any one (1) month, but if not paid that much in any month the difference was to accumulate so he would be paid a total of Eighteen Thousand Dollars ($18,000) by June 30, 1983, if he was ready, willing and able to provide the

requested services in that amount in the first half of 1983 and Six Thousand Dollars ($6,000) by December 31, 1983, subject to the same availability requirement. Difficulties insued as a result of the Defendant/Respondent not requesting any services of the Plaintiff/Appellant prior to the termination of the contract by Defendant/Respondent letter of February 10, 1983, except for two (2) assignments (Findings of Fact Nos. 2 and 3) which involved a total of five (5) hours of services (see Findings of Fact No. 5). In connection with an advance of One Thousand Five Hundred Dollars ($1,500) made by Defendant/Respondent to Plaintiff/Appellant on January 10, 1983, when the first assignment was made, the Plaintiff/Appellant made an unauthorized phone call to a state official requesting that the State advance certain monies to the Defendant/Respondent (Findings of Fact No. 3). On January 25, 1983, (date not specified in Findings of fact, but no dispute in evidence as to when it occurred) Plaintiff/Appellant met with one Steve Trotter, a youth for which the Defendant/Respondent had responsibility without first contacting said youth's home parent or assigned social worker (Findings of Fact No. 6). On January 31, 1983, Defendant/Respondent requested Plaintiff/Appellant to move into an interior office in the buildings where both parties had their offices at 9136 South State Street and Plaintiff/Appellant refused to do so (he contended his contract did not require it and it would be too expensive to move all his furniture). (See Findings of Fact No. 4.) Without making any express conclusion of law that the above acts of Defendant breached the contract in question or that the breaches were material so as to warrant termination of the contract the Court concluded that "Defendant justifiably terminated 'for cause' the December 1982 contract with Plaintiff."

DISPOSITION BELOW

After a bench trial on the merits, the lower Court concluded that Defendants terminated the subject contract for cause and denied any relief to Plaintiff for breach of contract or for anticipatory breach of contract.

RELIEF SOUGHT ON APPEAL

Plaintiff/Appellant seeks to have this Court reverse the lower Court's conclusion that the subject contract was terminated for cause and to remand the case to the lower Court to ascertain the amount of judgment that should be entered in favor of Plaintiff/Appellant and against Defendant/Respondent since Defendant/Respondent has failed, negleted, and refused to pay the Twenty-two Thousand Five Hundred Dollars ($22,500) balance due on the contract for services to be performed prior to January 1, 1984, less the appropriate offset due to mitigation or costs saved from not fulfilling the services Plaintiff/Appellant was obligated to perform if asked to do so.

ARGUMENT

POINT I

THE PARTIAL BREACHES OF CONTRACT, IF ANY, SET FORTH IN THE TRIAL COURT'S FINDINGS OF FACT WERE NOT SO MATERIAL AS TO WARRANT THE LOWER COURT IN TERMINATING THE CONTRACT IN QUESTION

Section 241 of the second Restatement of Contract sets forth the applicable principle in such cases. It reads as follows:

> Section 241 Circumstances Significant in Determining Whether a Failure is Material
>
> In determining whether a failure to render or to offer performance is material, the following circumstances are significant:
>
> (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;

(b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;

(c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;

(d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances;

(e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

In the case of Prudential Federal Savings & Loan Association vs. Hartford Acc. & Ind. Co., 325 P2d 899(1958) this Court cited the first Restatment of Contracts, Section 274 and 313 with favor. In that case the opinion on this point reads as follows:

> Furthermore, it is a recognized principle of contract law that a breach of an insubstantial nature, which is severable and does not vitally change the transaction, does not release the other party completely from performing his obligations under the contract, but gives rise to a right for damages for any loss occasioned thereby. This $2,000 was allowed as an offset in favor of Cassady and Hartford and that is all they are entitled to. (Footnote omitted).

In the instant case none of the breaches of contract, if in fact they were breaches of contract, were substantial, all were minor and certainly did not vitally change the transaction which was a contract to render social services. These conclusions find support in the following facts taking each arguable breach in the order of the Court's findings.

Phone calls of January 10, 1983 to Russ Van Vleet (R58, Findings of Fact No. 3). Although the Court cited the protion of the contract which prohibited Plaintiff/Appellant from any conduct which would "tend to complicate or otherwise negatively effect services relationship with said

department" thus implying that this call violated that provision, the Court did not make any express finding to that effect and the testimony of the Defendant/Respondent's director, Kent Burke, was to the contrary. When he was asked, "Did Mr. Van Vleet say anything to you that would indicate that that was creating an adversary relationship between you and the State of Utah," he responded, "he thought it was very strange that Layne would be calling about that, yes." (T.4) Furthermore, Mr. Burke admitted testifying in his deposition that, "I didn't remember the telephone call." (T.5)

Request of January 31, 1983 to Move Offices (R.59, Findings of Fact No.4). Nothing in the contract required Plaintiff/Appellant to work at any particular location much less in a particular office. The Court did not find that it did. In fact the finding in question faults Plaintiff/Appellant for renting space already rented by Defendant/Respondent, an issue which is collateral to the contract in question.

Home Parent/Foster Parent Manual Submitted January 22, 1983 (R.59 Finding No. 5.) Here again the Trial Court makes no finding that the manual in question failed to meet contract specifications. In fact, the contract did not require Plaintiff/Appellant to produce any such manual although the assignment was a proper one and within the general scope of the work required by the contract (R. 4 and 5.) This finding merely established the fact that Plaintiff/Appellant could receive at most Two Hundred Fifty Dollars ($250) under the contract and he had not earned the balance of the One Thousand Five Hundred Dollars ($1,500) advance he had received at the time of the assignment. Plaintiff/Appellant has never claimed that he had earned the One Thousand Two Hundred Fifty Dollars ($1,250) difference, but only that he was guaranteed sufficient work to earn the contract total of Twenty-four Thousand

Dollars ($24,000). The fact that he elected not to "reinvent the wheel," but to use another's work product that he had compiled caused no injury to Defendant/Respondent, but actually gave it the means of providing that much more social services for the youth for whom the state had contracted. (Ex. P-10.)

Appellant's Meeting With Steve Trotter (R.60, Finding No. 6.) Plaintiff/Appellant took this young man to breakfast after learning he was not going to school and was unsupervised. He did that after he was unable to contact the boy's parents and the social worker assigned to that boy. His testimony that he had permission of Defendant/Respondent's director to contact the youth under the agency's program was uncontradicted. After being told no contact should be made without express parental or social worker permission, he did not do so but was frustrated by not having been given any assignments by the social worker in question. No claim is made that this contact with this boy had any actual or even potentially detrimental consequences.

Whether taken individually or in their entirety, these four incidents certainly did not involve the main purpose of the contract, to wit delivery of social services to troubled youth. In fact, Plaintiff/Appellant's eagerness to perform the work which constituted to reason for the contract seems to have been a source of friction between the parties. (See Exhibits "P14-P26.")

Plaintiff/Appellant submits that the foregoing shows that circumstances (a) as applied to the facts of this case favors Plaintiff/Appellant.

As for circumstance (b), it seems clear that any breach by Plaintiff/Appellant would be adequately compensated in damages and could

simply be witheld from the Twenty-two Thousand Five Hundred Dollars ($22,500) yet due in his contract.

Circumstance (c) is the single most critical factor in this particular case as the hardship upon Plaintiff/Appellant of losing Twenty-two Thousand Five Hundred Dollars ($22,500) is most disproportionate to the minor breaches and any injury caused Defendant/Respondent by them.

As for circumstance (d), there is no dispute that Plaintiff/Appellant was at all times ready, willing and able to perform the work assigned to him and was pressing Defendant/Respondent for assignments. (Ex. P-19, P-23, P-26.)

As for circumstance (e), the behavior of Plaintiff/Appellant should be classified as innocent as to the phone call to Russ Van Vleet, in compiling the parenting manual and in taking Steve Trotter to breakfast. His refusal to move his office was willful, but within his rights as the contract was one of an independent contractor not one of employment. In short, he did act in good faith and met the standards of fair dealing.

Circumstance (f), would favor relief on appeal as Defendant/Respondent has control of Plaintiff/Appellant's performance in that payment under the contact is made as services are rendered.

The most applicable comment from case precedent which Plaintiff/Appellant has found is his from M & W Development Inc. vs. El Paso Water Co. 634 P2d 166 (Kansas app., 1981). It reads as follows:

> The record contains substantial competent evidence to support the trial judge's finding that El Paso breached the contract by not issuing notes to M & W. We cannot say, however, that "material breach" justifying rescission of the contract has occurred, as was concluded by the trial judge. What justifies rescission of a contract was considered in In re Estate of Johnson, 202

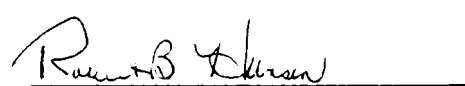
Kan. 684, 691 92, 452 P.2d 286 (1969), wherein the Supreme Court commented:

> "The right to rescind a contract is extreme and does not necessarily arise from every breach. To warrant rescission, the breach must be material and the failure to perform so substantial as to defeat the object of the parties in making the agreement. A breach which goes to only a part of the consideration, which is incidental and subordinate to the main purpose of a contract, does not warrant a rescission. (Baron vs. Lyman, 136 Kan. 842, 18 P.2d 137; 17 Am.Jur.2d, Contracts Section 504; 17A C.J.S., Contracts Section 422 (1); Corbin on Contracts Section 1104.)" (Emphasis supplied.)

CONCLUSION

This case should be remanded to the lower Court to enter judgment in favor of Plaintiff/Appellant in against Defendant/Respondent for the contract balance less income received by Plaintiff/Appellant for like services rendered other or which should have been rendered to others in mitigation of damages during the contract period.

Respectfully submitted this 6th day of September, 1983.



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MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Appellant to Paul T. Morris, Attorney at Law, 4247 South Wade Way, West Valley City, Utah 84119, postage prepaid, this 7th day of September, 1983.

Robert B. Hansen