1983

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

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IN THE SUPREME COURT OF THE STATE OF UTAH

LAYNE R. MEACHAM, Plaintiff-Appellant, vs. GREAT BASIN YOUTH SERVICES, Defendant-Respondent.	BRIEF OF RESPONDENT Case No. 19137

BRIEF OF RESPONDENT

Appeal From Judgment of the Third District Court
of Salt Lake County
Honorable J. Dennis Fredericks, Judge

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NATURE OF CASE

This is a claim and counterclaim regarding a termination of a written contract for professional services (a copy of the contract is attached hereto as Appendix "A").

DISPOSITION OF CASE IN LOWER COURT

After a bench trial on the merits, the lower Court granted Defendant-Respondent's counterclaim for declaratory judgment by finding that the subject contract was properly terminated for cause as per the terms of the contract, that there was not any breach of the subject contract by Defendant-Respondent, and denied both specific performance or damages to Plaintiff-Appellant.

RELIEF SOUGHT ON APPEAL

Defendant-Respondent seeks to have this Court uphold and affirm the lower Court's decision in granting declaratory judgment by finding that the contract was terminated for cause and to deny Plaintiff-Appellant's appeal to reverse the lower Court's decision and enter a judgment for damages.

STATEMENT OF FACTS

Defendant-Respondent adopts the statement of facts set forth in Plaintiff-Appellant's brief except as follows:

(1) Difficulties did not insue as a result of Defendant-Respondent's not having requested any services of Plaintiff-Appellant prior to the termination of the contract as stated in Plaintiff-Appellant's statement of facts (Plaintiff-Appellant's brief, p. 2). The difficulties insued as a result of Plaintiff-Appellant's failure to complete the two assignments given him (trial transcript, p. 121, Findings of Fact No. 2); the unauthorized exchange with a state official in the Department of Social Services in direct violation of one of the provisions of the contract (Findings of Fact No. 3); the submission of 57 pages of photocopied materials from a U.S. Justice Department publication as a Home Parent/ Foster Parent Manual compiled by Plaintiff-Appellant (Findings of Fact No. 5); the visit with the youth Steve Trotter, a juvenile for which Defendant-Respondent had supervisory responsibility, without contacting the home parent or the social worker assigned to the youth (Findings of Fact No. 6); and, Plaintiff-Appellant's failure to move into one of Defendant-Respondent's interior offices at 9136 South State Street from an office on the same floor for which Defendant-Respondent also paid the rent.

(2) Plaintiff-Appellant's brief states that the Court did not make any express conclusion of law that the acts of the Plaintiff-Appellant "breached the contract in question or that the breaches were material." (Plaintiff-Appellant's brief, p. 2). Plaintiff-Appellant misconstrues the law and is attempting to argue it in the "statement of facts." Such an express finding is not necessary and even if it were, there is ample evidence demonstrating a material breach by Plaintiff-Appellant. (See Points 2 and 3 infra.)

ARGUMENT

POINT 1

PLAINTIFF-APPELLANT HAS NOT PRESENTED ANY ARGUMENTS WHICH WOULD SUPPORT A FINDING THAT THE LOWER COURT DID NOT HAVE A REASONABLE BASIS FOR ITS CONCLUSIONS

On appeal, Plaintiff-Appellant's sole argument for reversal of the lower Court's decision is that the lower Court misconstrued the evidence in finding that the Defendant-Respondent properly terminated the contract "for cause" because of the Plaintiff-Appellant's conduct. The Plaintiff-Appellant attempts to reconstruct the evidence in a light most favorable to him. The standard of review of lower Court decisions is well established and uncontroverted.

This Court stated in Nielsen v. Chin-Hsien Wang, 613 P.2d 512, 514 (Utah 1980) that:

> The findings and conclusions of the District Court must be affirmed unless there is no reasonable basis in the evidence to support them (footnote omitted). Further, the evidence and all inferences that fairly and reasonably might be drawn therefrom must be viewed in a light most favorable to the judgment entered (footnote omitted).

Again in 1981, this Court reiterated the presumption in favor of a lower Court's decision. Piacitelli v. Southern Utah State College, 636 P.2d 1063, 1067 (Utah 1981).

> On appeal, this Court must consider all evidence in the light most favorable to the trial court's findings of fact. Those findings are entitled to a presumption of correctness and may not be overturned so long as they are supported by substantial evidence in the record. (Citations omitted)

Both of these standards were most recently reaffirmed by this Court in Hal Taylor Associates v. Unionamerica, Inc., 657 P.2d 743, 747 (Utah 1982).

Plaintiff-Appellant cites each of the findings of fact and attempts to either construe the evidence such that the finding is incorrect or fault the lower Court for not

expressly stating that each finding of fact was a breach by the Plaintiff-Appellant of the contract.

The issues and evidence were fully presented and argued at trial. At the close of trial, the Court stated that "I have reviewed the exhibits that were received by the Court. I have reviewed your trial Memorandum, Mr. Hansen. I have reviewed the file before trial this morning, and now having heard the evidence . . . The court is constrained to find that on the basis of evidence that taken together, the actions or inactions of the Plaintiff, if you will, constitute a course of conduct contrary to the fostering of the type of relations required under the contract of December 23, 1982 to mutually benefit both parties." (Trial transcript, p. 120).

The lower Court further concluded that the findings of fact were the basis for the proper termination by stating in the conclusions of law that, "Based upon the foregoing Findings of Fact . . . (1) the totality of the facts convince the Court by a preponderance of the evidence that defendant justifiably terminated 'for cause' the December 23, 1982 contract with Plaintiff." (Conclusion of Law no. 1).

The trial Court clearly took into account all of the evidence in rendering its decision. Plaintiff-Appellant should not be allowed to rehash the evidence on appeal. The Plaintiff-Appellant has presented nothing which would lead this Court to find "no reasonable basis in the evidence to support" the lower Court's conclusions.

POINT 2

PLAINTIFF-APPELLANT MISCONSTRUES THE EVIDENCE IN ATTEMPTING TO SHOW THAT THE ACTS OF PLAINTIFF-APPELLANT WERE MINOR IN NATURE AND NOT INVOLVING THE MAIN PURPOSE OF THE CONTRACT

Plaintiff-Appellant cites four (4) of the situations as found in the findings of fact:

(1) Phone call of January 10, 1983 to Russ Van Vleet (Findings of Fact No. 3). Plaintiff-Appellant notes that the finding of fact cites the provision of the contract

prohibiting contact by Plaintiff-Appellant with the State Department of Social Services but then argues that the finding of fact did not make any express finding that the call violated the provision. However, it is beyond argument that the citing of the provision right after stating that Plaintiff-Appellant made the call clearly indicates that the lower Court held that it was a violation of the provision. Plaintiff-Appellant admits that it is implied (Plaintiff-Appellant's brief, p. 5). As stated above, the rule of review is that all inferences must be viewed "in a light most favorable to the judgment entered."

Plaintiff-Appellant also argues that the testimony of Defendant-Respondent's director, Kent Burke, is that it did not violate the contract provision. This allegation is difficult to comprehend since Plaintiff-Appellant quotes Mr. Burke correctly (Plaintiff-Appellant's brief, p. 5) in responding in the affirmative to the question, "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?" Mr. Burke's response was, "He thought it was very strange that Layne would be calling about that, yes." (Trial transcript, p. 64; emphasis added). In fact, in previous testimony, Mr. Burke made it very clear that he felt the unauthorized telephone call by Plaintiff-Appellant had a negative effect. Mr. Burke was asked, "After you were informed that Mr. Meacham had contacted the State of Utah, did you have any concern or feeling about that?" His answer was, "Yes, I did." He was then asked, "What was your concern?" He responded, "I felt like he ought not to be doing that type of thing. We had asked him not to, and it put us in a bad light in the sense that I felt like he was explaining at least to them that we didn't have the money to pay him or we are not managing our company well enough to meet our bills."

Then, Plaintiff-Appellant's brief quotes Mr. Burke as admitting at trial that in his deposition that, "I didn't remember the telephone call." (Plaintiff-Appellant's brief, p. 5). This is inserted in an attempt to show that the telephone call by Plaintiff-Appellant

to the state official was inconsequential because Mr. Burke did not even recall it at his deposition. This quote completely misconstrues Mr. Burke's testimony and takes it out of context. In fact, the telephone call Mr. Burke is referring to is not Plaintiff-Appellant's call to the state but its his own phone call to Mr. Van Vleet regarding Plaintiff-Appellant's previous unauthorized call.

> By Mr. Hansen:
>
> Q Mr. Burke, how long was it after the time that you learned or Mr. Meacham's phone call to Mr. Russell Van Vleet that you contacted Mr. Van Vleet?
>
> A. I believe it was probably a couple of days before I called him and asked him about it, and then I talked with him again about two or three weeks later at a youth corrections meeting.
>
> Q In your deposition, didn't you testify that it could have been three weeks or so?
>
> A Yes. At the time, I didn't remember the telephone call.
>
> Q So you are saying between the time of your deposition that was taken on March 8th and the present time, you now recall a phone call within two days of that that you hadn't —
>
> A I believe it was two or three days after that.
>
> (Trial transcript, p. 67; emphasis added).

(2) Request of January 31, 1983 to Move Offices (Findings of Fact No. 4). Plaintiff-Appellant argues that the request to move offices was not part of the contract and that the lower "Court did not find that it did" (Plaintiff-Appellant's brief, p. 5). Plaintiff-Appellant again attempts to reargue the evidence and the findings of fact. The Finding of Fact No. 4 was clearly a part of the basis for the lower Court's decision as all of the findings of fact were as found in Conclusion of Law No. 1 quoted above.

There is substantial evidence to support the conclusion that Plaintiff-Appellant's unwillingness to move from an office paid for by Defendant-Respondent to another closer office also paid for by Defendant-Respondent so that he could interact better and develop a better working relationship with Defendant-Respondent's staff was one of the actions or inactions of Plaintiff-Appellant which gave rise to the proper termination of the contract. (Trial transcript, pp. 49-53).

(3) Home Parent/Foster Parent Manual Submitted January 22, 1983 (Findings of Fact No. 5). Again Plaintiff-Appellant argues that there is no finding that the "manual failed to meet contract specifications." (Plaintiff-Appellant's brief, p. 5). However, Plaintiff-Appellant then goes on to admit that while the manual was not an express provision of the contract, the assignment to do the manual "was a proper one and within the general scope of the work required by the contract." (Plaintiff-Appellant's brief, p. 5). The Trial Court did find that the manual did not meet the parameters of the assignment. As quoted above, the Court based it's conclusion of law on the findings of fact. Furthermore, the Court at the conclusion of trial expressly stated that the manual episode in and of itself might have been sufficient to justify the termination (trial transcript, p. 120). This conclusion is clearly supported by the evidence, when interpreted in a light most favorable to support the judgment. It shows that Plaintiff-Appellant only did one hour of work on the manual for which he was prepaid $1,500 (trial transcript, p. 86); he did no more than photocopy 57 pages of someone else's work and type a cover page (trial transcript, pp. 34-36, 55, 79, 86; Exhibits D-29 and D-30); the Defendant-Respondent already had a copy of the entire book from which Plaintiff-Appellant copied (trial transcript, p. 35); Plaintiff-Respondent initially attempted to take credit for the work and act as if he had spent several hours on it (trial transcript, pp. 36, 37); and it did not contain the information required by the assignment (trial transcript,

pp. 13-14, 31, 57; Exhibit D-28).

(4) Plaintiff-Appellant's Meeting with Steve Trotter (Findings of Fact No. 6). Plaintiff-Appellant does not allege that Plaintiff-Appellant actually contacted the youth's home parent or social worker prior to making contact with the boy nor that he was not aware of the Defendant-Respondent's basic rule that he should make contact with them prior to seeing any of the youth. (Letter to Plaintiff-Appellant explaining rule prior to his seeing Steve Trotter, Exhibit P-5). He alleges that the evidence was uncontradicted that Defendant-Respondent's director orally gave permission for Plaintiff-Appellant to see Steve Trotter. There is evidence that clearly contradicts this. Mr. Burke, Defendant-Respondent's director, was asked "Did you even tell him [Plaintiff-Appellant] in that meeting that he did not have to first talk with the home parent before he went out and met with the youth?" His answer was, "No. I would never say that." He was then asked, "Did you ever tell him that before he talked, that he did not have to talk with the social worker, Roy Hussey or Matt Calpooa before he went out and talked with Steve Trotter or any youth." He responded, "No. It's standard procedure to contact these people and to go through them and provide them any kind of interaction with the youth." (Trial transcript, pp. 48, 49.)

Next Plaintiff-Appellant states that "no claim is made that this contact with this boy had any actual or even potentially detrimental consequence." However, Mr. Burke testified that he discovered that Plaintiff-Appellant had not followed proper procedure when he found out that the social worker "was upset and the home parent was wondering what was going on." (Trial transcript, p. 47). Furthermore, when Mr. Burke was asked by Plaintiff-Appellant's counsel if Steve Trotter had made any negative comment about the contact, he responded, "Only in the sense that he was unsure of who Layne [Plaintiff-Appellant] was and why he was coming over to talk to him, which caused anxiety, I

suppose." (Trial transcript, p. 62.)

Plaintiff-Appellant does not make any mention of Plaintiff-Appellant's failure to perform an assignment to begin a home parent training and youth counseling program given to him by letter on January 20, 1983. (Findings of Fact no. 2). The lower Court specifically found that this assignment was never completed. (Trial transcript, p. 121.)

Plaintiff-Appellant attempts to characterize his conduct as insubstantial and minor and not involving the main purpose of the contract, i.e., to provide home parent/proctor training, youth counseling, and program development as needed. However, the evidence clearly shows that in a matter of one month from when the contract began, Plaintiff-Appellant made a contact expressly prohibited by the contract, failed in an assignment to develop a training manual for which he was prepaid, violated one of the basic rules of youth counseling by not contacting the home parent and social worker, failed to develop a schedule for home parent training and youth counseling as assigned and refused to change offices supplied by Defendant-Respondent in the same building on the same floor in order to have better interaction with Defendant-Respondent's staff. Each of these goes to the very heart of the contract and the type of relationship needed in a contract for professional services.

POINT 3

THE TERMINATION WAS PROPERLY BASED ON REASONABLE GROUNDS AND DONE IN GOOD FAITH AS REQUIRED UNDER A TERMINATION "FOR CAUSE" PROVISION

Plaintiff-Appellant cites two (2) cases, M & W Development, Inc. v. El Paso Water Co., 634 P.2d 166 (Kan. 1981) and Prudential Federal Savings & Loan Assoc. v. Hartford Acc. & Ind. Co., 325 P.2d 899 (Utah 1958) and the Restatement of Contracts 2nd, Section 241 as setting forth the applicable law in judging whether the acts of Plaintiff-Appellant were justification for the termination by Defendant-Respondent. However, closer

examination of the lower Court's decision and applicable contract law shows that the two (2) cases and the restatement section are not on point.

Nevertheless, assuming for a moment that they do set forth the controlling law on the issue, it is clear from the evidence that Plaintiff-Appellant's conduct would have constituted a material breach. (See Point 2, supra). Unlike the subject contract, the breaches alleged in the cited cases clearly did not go to the heart of either contract. In Prudential at 903, this Court affirmed the lower Court's decision in finding that a construction performance bond and contract for $763,000 was not terminated by a minor breach when the other party failed to provide power for a short period at the beginning of construction which "did not have the effect of preventing construction or substantially [delay] the project." Likewise, in M & W Development the breach was not material because the rest of the contract was "fully executed." Unlike those contracts, the subject contract was a contract for personal services and the acts of Plaintiff-Appellant clearly meet the test of materiality as set forth in the cases as well as the restatement section cited.

Notwithstanding the fact that Plaintiff-Appellant's actions would be considered a material breach, material breach is not the proper standard here. This case involves an exercise of an express termination clause. Neither the cases cited nor does the restatement section deal with a termination provision.

The Restatement of Contracts 2nd recognizes the difference between a cancellation because of a breach and a termination pursuant to a contract provision. Restatement of Contracts 2nd Section 283(a) states that a "termination . . . occurs when either party pursuant to a power created by agreement or law put an end to the contract otherwise then for its breach" while a "cancellation . . . occurs when either party puts an end to the contract for breach by the other." (emphasis added) Thus, this case does not

involve a cancellation, it involves a termination.

There is ample authority holding that "grounds for termination of a contract under express provisions therein are controlled by such provisions, which ordinarily will be enforced according to their terms . . ." 17A C.J.S., § 399, p. 484. See also 17 Am Jur 2d, §495, p. 968 and 6 Corbin on Contracts §1266, p. 66.

In this case, the contract provision provided that the contract "may be terminated at any time prior to the termination date for cause." While the clause in question is not often found in contracts coming before the courts, all of the cases Defendant-Respondent found have been consistent in their interpretation of the clause. Two (2) of the cases which have dealt with the meaning of "for cause" are Quick v. Southern Churchman Co. Inc., 199 S.E. 489 (Vir. 1938) and R. J. Cardinal Co. v. Ritchie, 32 Cal.Rptr. 545 (Cal. App. 1963)

In Quick the Court explained that:

> It is obvious that 'just cause' or 'good cause' is not synonymous with legal cause . . . 'just cause' or 'good cause' cannot be reduced to a legal certainty. To be effective, it must relate to the circumstances relied on. The grounds upon which it is based must be reasonable, and there should not be an abuse of the conferred right. It must be a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power. It limits the party to the exercise of good faith, based upon just and fair grounds as distinguished from an arbitrary power. (emphasis added)

In R. J. Cardinal at 558 and 559, the Court analyzed the words "for cause," "for just cause" or "for good cause" at length, citing the Quick case and several other cases. The Court concluded its discussion by explaining that "we are of the opinion that a right to terminate 'for cause' or 'for good cause' means upon reasonable grounds assigned in good faith."

The Trial Court correctly understood this principle of reasonable grounds and good faith. It stated at the conclusion of the trial that "on the basis of evidence that taken

together the actions or inactions of the Plaintiff, if you will, constitute a course of conduct contrary to the fostering of the type of relations required under the contract of December 23, 1982 to mutually benefit both parties. The Court believes, based on the candor of the witnesses and the testimony and from the demeanor of the witnesses, that the defendant, through its agent, Mr. Burke, did act in good faith. The voluminous exchange of correspondence flowing from the defendant makes many references to a co-operative and even forgiving attitude by the defendant. The Court believes that there were, and evidence supports that there were at least two separate assignments . . . Therefore, the Court finds that the termination of the 10th of February of 1983 was proper and based upon sufficient grounds to fall within that termination provision of the contract in question." (Trial transcript, pp. 120, 121; emphasis added).

CONCLUSION

There is a reasonable basis and substantial evidence to support the lower Court's conclusion that based on the conduct of Plaintiff-Appellant, the Defendant-Respondent acted reasonably and in good faith in terminating the contract in question "for cause" as per the terms of the contract and this Court should affirm that decision.

Respectfully submitted this 4th day of January, 1984.

Paul Morris

PAUL T. MORRIS
Attorney for Defendant-Respondent

APPENDIX "A"

GREAT BASIN YOUTH SERVICES

561-5217
9136 South State Street, Sandy, Utah 84070

December 23, 1982

CONTRACT FOR SERVICES

The undersigned hereby agrees that Layne Meacham, hereinafter called Meacham, shall be employed as an independent consultant by Great Basin Youth Services, Inc., hereinafter called Services, to provide the following services:

1. Home parent/Proctor training
2. Youth Counseling
3. Program development as needed

Meacham's compensation shall be $50.00 per hour for six (6) months, January 1, 1983 to June 30, 1983, not to exceed $3,000.00 in any one month. On July 1, 1983, Meacham's monthly compensation (not hourly wage) shall be reduced not to exceed $1,000.00 per month based on a total contracted amount of $172,000.00 with Youth Corrections until December 31, 1983. Meacham's total monthly compensation will not exceed the sum by which services contracts with Youth Corrections exceeds the sum of $82,000 on an annualized basis. If the hours of service in any month are less than the $3000.00 point prior to July 1, 1983 and $1000.00 thereafter, then the short fall will accumulate so the maximum amount is increased in the future so that Meacham will receive $18000.00 in the first half of 1983 and $6000.00 in the second half of 1983

1/4/83

Deposition Exhibit 2

provided that he stands ready willing and able to provide services necessary to provide said compensation.

Meacham's compensation on other contracts that Services might receive shall be determined on an individual and as needed basis.

The term of this contract is therefore from January 1, 1983 to December 31, 1983, and may be renewed at that time if all parties are agreeable.

Part of the terms of this contract shall be that Meacham will not have or develop any ongoing opposition relationships with the Departmetn of Social Services of the State of Utah or any of it's Divisions, nor shall he represent Services or any of Services' clients with any of said state agencies. This shall not be construed to mean that if Meacham has a complaint with Services or any of Services' shall not have the right to file a grievance with the appropriate agency. It shall mean only that Meacham shall not be involved in law suits or other serious exchanges with the Utah Department of Social Services or any of it's agencies or personnel that would tend to complicate or otherwise negatively affect Services relationship with said Department. If Meacham should become involved in any such exchange this contract shall be void and Meacham's services and compensation shall cease until Meacham's conflict with the before mentioned Department shall be resolved or until the contract period has expired.

This contract may be terminated at anytime prior to the termination date for cause. The party at fault in keeping this contract agrees to pay all costs and fees relative to the settle- of this contract.

Dated this 23 day of December, 1982

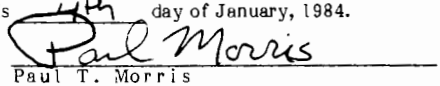
GREAT BASIN YOUTH SERVICES INC.

BY C. Kent Burke

Layne R Meacham

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Respondent to Robert B. Hansen, Attorney at Law, 965 East 4800 South, Suite 2, Salt Lake City, Utah 84117, postage prepaid this 4th day of January, 1984.



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