1984

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

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IN THE SUPREME COURT OF THE

STATE OF UTAH

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

REPLY BRIEF OF APPELLANT

Appeal from Judgment of District

Court of Salt Lake County

Honorable J. Dennis Fredericks, Judge

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ARGUMENT

Point 1

PLAINTIFF-APPELLANT HAS IN ITS BRIEF PRESENTED AN ARGUMENT WHICH WOULD SUPPORT A DECISION BY THIS COURT THAT THE LOWER COURT DID NOT HAVE A REASONABLE BASIS FOR CONCLUDING THAT THE CONTRACT IN QUESTION WAS PROPERLY TERMINATED.

Under this point respondent does not address the thrust of appellant's issue on appeal, namely that appellant's conduct did not consititute such a material breach of contract as would justify termination of the entire contract assuming arguendo that the conduct in question constituted breaches of the contract. Accordingly respondent here did not contend that appellant's conduct would constitute a material failure under Restatement of Contracts (2nd) Sec. 241 or that such rule is not or should not be the law. Instead respondent asserts that the decision of the lower court is supportable if the evidence justifies the trial court's determination that appellant's conduct did not "foster the type of relations required under the contract of December 23, 1982, to mutually benefit both parties" (P. 4). This assertion clearly focuses on the reason for this appeal, to-wit that the court did not properly conclude that the main purpose of the contract of December 23, 1982, was the delivery of social services to troubled youth but rather that the contract was to assure a certain relationship between the contracting parties. This misunderstanding of the contract makes understandable the trial court's citation of appellant's refusal for reasons of expense to relocate his office (Findings of Fact No. 4) which would certainly be a proper instruction for one in an employment relationship but not one in an independent contractor relationship. The same is true also

with respect to the phone call which is the basis of Findings of Fact No. 3.

Point 2

PLAINTIFF-APPELLANT DID NOT MISCONSTRUE THE EVIDENCE BY SHOWING THE ACTS WERE MINOR IN NATURE AND DID NOT INVOLVE THE MAIN PURPOSE OF THE CONTRACT

(1) Phone Call of January 10, 1983 (Findings of Fact No. 3)

Whether or not in his deposition of March 8, 1983, Kent Burke did not remember the phone call he made to Mr. Van Vleet after appellant's call to the same genelemen or appellant's call to Mr. Van Vleet the fact remains that at least part of this transaction was not so important to him that he recalled in just a few weeks later, a factor of importance in determining whether it had such an adverse effect on the state agency as to constitute a breach.

More important than the breach, however, if it was one, is whether it went to the main purpose of the contract. Clearly it did not as it did not involve rendering social services to troubled youth.

(2) Request of January 31, 1983, to move office (Findings of Fact No. 4)

Respondent's argument under this subpoint would be well taken if the contract's main purpose involved the parties' relationship. As noted above, however, it did not and it was wholly irrelevant as to the social services to be rendered by appellant as to where he maintained his office.

(3) Home Parent/Foster Parent Manual Submitted January 22, 1983 (Findings of Fact No. 5)

A fair reading of the transcript on this point clearly shows that both parties were seeking a legal means whereby respondent could pay appellant $1,500 (one-half of the first $3,000 per month contemplated by the contract) and the manual was the vehicle they used to justify that. Appellant never

contended that he would not have to provide the hours of service that sum represented less the 5 hours (not one hour as respondent contends - see Finding of Fact No. 5). This points up the core of this entire dispute - the failure if not refusal of respondent to assign social service tasks sufficient for appellant to earn his $3,000 per month rather than wait until June 30, 1983, to receive $18,000 for doing nothing, a situation appellant objected to on behalf of the youth needing services as well as for his own benefit.

(4) Plaintiff-Appellant's meeting with Steve Trotter (Findings of Fact No. 6)

Despite the conflict in the testimony between appellant and Burke on behalf of respondent with respect to oral permission to make this contract as pointed out in respondent's brief, the application of the well settled presumption that evidence available to a party which is not produced will be presumed to be adverse leads one to conclude here that this contract did not produce any adverse effects since respondent did not produce any of the five parties who might have supported its position on this point, namely the two social workers, Roy Hussy and Matt Calpool, the foster parents, or the boy himself. In any event the court made no finding of any adverse effect and could not have done so as there was no evidence to justify it or even infer it. At most it was a violation of protocol which did not go to a material aspect of the contract.

With respect to the home parent training and counseling program assigned on January 20, 1983, appellant did not address that in its brief as the trial court did not make any findings with respect to it. Appellant respectfully submits to this court that the implication in respondent's brief that the fact that this assignment was not completed prior to respondent's

termination of the contract is without any support in the record. Within such a short period it would be totally unreasonable to complete such a project.

Respondent concludes under this point as follows: "Each of these goes to the very heart of the contract and the type of relationship needed in a contract for professional services" underscoring added). In short respondent urges this Court to look to the relationship of the contracting parties rather than to the contract itself in determining whether certain conduct breaches an agreement. Such a proposition seeks a fundamental change in contract law totally unsupported by precedent or principle.

Point 3

THE TERMINATION WAS NOT PROPERLY BASED ON REASONABLE GROUNDS AND DONE IN GOOD FAITH AS REQUIRED UNDER A TERMINATION "FOR CAUSE" PROVISION.

Except for the ipse dixit declaration that ". . . the acts of Plaintiff-Appellant clearly meet the test of materiality as set forth in the cases as well as the restatement section cited" respondent makes no effort to argue materiality. Certainly it sets forth no specifics and cites no cases where similar acts only remotely connected with a professional service contract breached it so materially as to warrant termination.

Respondent cites Restatement of Contracts (2nd) Sec. 283 which is entitled "Agreement of Recission" as stating a distinction between termination of contracts and cancellation of contracts. This is not so but comment (a) to that section points out that distinction in the course of distinguishing both from an agreement of recission. It is evident in the instant case,

however, that the respondent, the trial court, and the respondent's brief itself (See P. 5) all based their claim to nullification of the subject contract on the grounds of cancellation not termination within the meaning of those terms as used in that comment.

Appellant takes no issue with the general proposition 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" and the three texts in support thereof cited by respondent on P. 11 so state. However, none of them lend any support to respondent's implication that a right to terminate "for cause" gave either of these contracting parties a right to terminate the contract for reasons which would not justify termination for a material breach under the rules set forth in Restatement of Contracts (2nd) Section 241. If the contract were silent as to the grounds for termination R 241 would require a material breach. Is it not fair to say that the specification of "good cause" was for the very purpose of incorporating a material breach standard so no one could contend on the one hand that any breach however trivial would justify termination nor on the other hand that the contract could not be ended during its term no matter how gross the breaches might be. In short appellant submits that the inclusion of "good cause" gave him the protection of the materiality standard afortori.

Appellants' research failed to locate any Utah decision discussing "good cause" in a contract.

With respect to Quick v. Southern Churchman Co., Inc., 199 SE 489 (Vir. 1938) the facts there speak for themselves in showing how very

opposite that case was from the instant one. The court's opinion as to that states on P. 495:

> [9] The evidence shows that the venture had failed. The plaintiff and the defendant were each admittedly insolvent, certainly so far as funds were required for the prosecution of the venture. No donations or contracts for advertisements had been received for several months. It was costing more to publish and circulate the paper than the defendant was realizing therefrom. Quick had been advanced, from time to time, more than $3,000. He had failed to pay the expenses of the promotion campaign from his commissions. He had overdrawn a sum in excess of the amount he was entitled to under the contract. Approximately 25% of the subscriptions were being cancelled for lack of payment by the subscribers. Both parties were going further and further into debt every month. All these facts and circumstances were fully and fairly known to each of them, and discussed by them. The situation was that neither of them was able to fairly fulfill the provisions of the contract, nor to realize their first expectations. A termination of the contract relation would manifestly avoid further loss to each of them. There was nothing to indicate that conditions would improve in the future. No advantage to either could be gained by continuing the precarious situation. The entire circumstances afforded good and just grounds for bringing the contract to an end.
>
> Nowhere is the testimony of the defendant's officers denied, or contradicted. The evidence discloses that the notice of cancellation was given in good faith. The facts therein contained, except as to the amount of money originally claimed to be due from the plaintiff, are admitted to be true. The erroneous amount claimed was corrected upon a proper audit.
>
> Quick did not disagree with the material facts contained in the letter or notice of cancellation of August 2nd. He admitted that he was unable to perform his part of the contract, and to keep his representatives in the field, for lack of money. This latter admission, with the consequences necessarily following therefrom, if it did not actually constitute a legal breach of the contract under the circumstances, taken in connection with the other facts, furnished an additional ground for termination of the contract.

As for R. J. Cardinal Co. v. Ritchie, 32 Cal. Rept. 545 (Cal. App. 1963) the issue there with respect to "good cause" termination was solely whether

the existence of such a provision rendered the contract invalid as an arbitrary and absolute power to cancel it. It held that it did not (head notes 14-16 on P. 559). It certainly gives no support for the proposition that acts not breaches of contract or breaches of contract which are not material may constitute "good grounds."

Even if this Court were to adopt the "for cause" termination rule as advocated by respondent despite its vagueness and lack of acceptance, appellant submits that the foregoing minor breaches of contract, if they were breaches at all, do not establish the first of the two requirements, namely "reasonable grounds" (Respondent's brief P. 11). As for the second of the requirements, that is good faith the evidence is especially clear as to the absence of that requirement. This is clearly demonstrated by respondent's answer admitting this allegation of the complaint (No. 3):

> On February 4, 1983, Michael L. Hutchings advised Plaintiff's attorney that Defendant was sending a letter that date to Plaintiff advising him that the subject contract was terminated for cause.

Four days thereafter on February 8, 1983, respondent's president wrote appellant as follows:

> I appreciate your eagerness to get going on your next assignment; however we are in the process of putting together our program and trying to determine which Y.C. workers will let you counsel with them. I hope you will bear with us while we determine where we can best use your talents. I expect to use your talents on a weekly basis giving you new assignments to do as you complete old ones etc., so that you can earn up to your contracted maximum amount and even more on occasion each month.

Then two days later without anything further transpiring appellant received the formal letter of termination which is Exhibit D-32 in this case.

It's true that the Court stated that respondent acted in good faith (T 121,122) but no finding of that fact was made in the Findings of Fact (R 58-60) and in any event could not be supported on the basis of respondent's own acts and admissions set forth above.

The letter of February 8, 1983, is also significant in showing respondent's awareness of appellant's basic complaint that he was not being allowed to earn the monthly income he expected because the respondent had not given him a single assignment to work with troubled youth for whose benefit respondent had contracted with the State to serve (Ex P-10) and the subject contract was the means of providing such service. Thus it provides strong support for appellant's argument that this factor was the basic cause of the difficulties between the parties. That issue was highlighted in the statement of facts in both briefs.

CONCLUSION

Respondent did not have any legal justification to terminate the contract of December 23, 1982, on February 10, 1983, either on the basis of material breach or on the basis of reasonable acts in good faith. The judgment of the lower court should be reversed.

Respectfully submitted this 29th day of February, 1983.

Robert B. Hansen

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