1969

Sumner J. Hatch and Robert M. Mcrae v. Weber County, A Party Corporate and Politic, State of Utah : Brief of Appellant

IN THE SUPREME COURT

OF THE

STATE OF UTAH

SUMNER J. HATCH and
ROBERT M. McRAE,
Plaintiffs and Respondents,

vs.

WEBER COUNTY, a party corporate and politic, State of Utah,
Defendant and Appellant.

Case No. 11594

BRIEF OF APPELLANT

Appeal from the Judgment of the Second District Court of Weber County, State of Utah, with Honorable John F. Wahlquist, Judge.

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STATEMENT OF KIND OF CASE

This is an action to recover attorneys' fees and costs under the provisions of Title 77, Chapter 54, UCA, 1953, as amended, for services claimed rendered by the respondent under appointment to represent an indigent defendant in a criminal proceeding before the above entitled court.

DISPOSITION IN LOWER COURT

The case was tried before the court. From a judgment for the plaintiff, the respondent herein, the defendant, the appellant herein, appeals.

RELIEF SOUGHT ON APPEAL

Appellant seeks the reversal of the judgment and judgment in its favor as a matter of law.

STATEMENT OF FACTS

Respondents were appointed by the above entitled court to represent one Robert Lee Dixon in the perfecting and carrying forward his appeal from a previous conviction before the Second Judicial District Court of Weber County, State of Utah, which appeal was carried forward before the above entitled court in its Case #11187. Thereafter, on Nov. 15, 1967, respondents filed a motion to fix attorneys fees and for an order directing Weber County to pay the requested attorneys fees and expenses, which motion was filed in the office of the Weber County Clerk.

Previous to the filing of this motion a similar motion had been filed before the above entitled court in its Case #10905 and was denied by the above entitled court on the basis that the motion was brought in the wrong forum.

The respondent's motion was denied by the District Court of Weber County and appeal was taken to the above entitled court.

The above entitled court, in its Case #11187, again denied the appeal of the respondents herein for the reason that respondents had not followed proper procedure.

Upon that rejection by the Supreme Court of the State of Utah the respondents filed complaint against the appellant in Civil File #48987 in the District Court of Weber County, State of Utah. No other procedures or steps were taken by the respondents to follow "proper procedures", as so termed by the Supreme Court in its decision in its Case #11187, than the filing of this complaint and the carrying forward of the matter to trial.

Upon hearing by the District Court of Weber County, State of Utah, with Honorable John F. Wahlquist, one of the judges thereof, presiding, judgment was entered in favor of the respondents and against the appellant in the sum of $669.50, together with the further sum of $20.60 court costs, a total judgment in the sum of $690.10.

ARGUMENT

POINT I.

THIS MATTER IS RES JUDICATA, HAVING BEEN FULLY DECIDED IN CASE #11187 BEFORE THE ABOVE ENTITLED COURT.

As stated in 30 Am. Jur., p 908 et seq., "Briefly stated, the doctrine of res judicata is that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of rights, questions, and facts in issue, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction. To adopt the language of the English court in announcing the doctrine in an early case..., the judgment of a court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive, between the same parties, upon the same matter, directly in question in another court...

"Under the rule firmly established in the United States, the doctrine of res judicata extends to judgments of all courts...It applies to a judgment rendered by...the highest court having jurisdiction to pass on the question involved. However, in order that a judgment may be admissable as res judicata in subsequent proceedings, it must be rendered by a court known to the law...

"The doctrine of res judicata may be said to inhere in the legal systems of all civilized nations as an obvious rule of expediency, justice, and public tranquillity. Public policy and the interest of litigants alike require that there be an end to litigation, which, without the doctrine of res judicata, would be endless. The doctrine of res judicata rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigate it again to the harassment and vexation of matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent..."

All of the above essential elements of res judicata are present in this action as shown by the following facts and law.

This court, in the case of The State of Utah vs. Dixon, Hatch and McRae, 448 P. 2d 716, hereinbefore referred to as Case #11187, held as follows:

> "Although the provisions of Chapter 64, Title 77, are mandatory and not permissive, the appellant attorneys did not follow the proper procedure, as set forth in the Washington County case. They should have filed a claim with the county as provided in Chapter 15, Title 17, U.C.A. 1953 and, if it is rejected, bring suit under the provisions of Section 12 thereof."

Reference is here made to the Interrogatories propounded to the respondents by the appellants here and to respondents' Amended Answers to Interrogatories. These Interrogatories and the Amended Answers to the Interrogatories are not quoted in detail because of the length involved and because they are otherwise available to the Court. However, because it bears most directly on this point, Interrogatory #3 and its Answer are quoted as follows:

> Interrogatory #3. "State in detail how the claims set forth in your complaint filed herein differ from the claims made by you in Case #11187 before the Supreme Court of the State of Utah."

> Amended Answer to Interrogatory #3. "The claim in Case No. 11187 before the Supreme Court of the State of Utah was based on the same services as the present claim."

Reference is now made to the cross-examination of the respondent, Robert McRae, in Case No. 48987, from which this appeal is taken, as shown on page 10 of the transcript of testimony taken on trial of that matter:

> "Q. And, the action on which you have based your present claim is the same one that was before the Supreme Court in the matter decided under the date of December 12, 1968? I don't want to mislead you.
>
> "A. I know what the case says. I am not understanding your question.
>
> "Q. My question is that the action you have now commenced and the complaint that you have filed now is the same complaint as that on which this decision is based? *There has been no other claim,* you have rendered only one set of services for this Mr. Dickson? (Italics are mine.)
>
> "A. This is true for which claim is here being made.
>
> "Q. Yes?
>
> "A. Yes.
>
> "Q. And, was made in the Supreme Court for a decision on which this is based?"
>
> "A. Right."

That the "proper procedure", as required by this Court in its previous decision as contained in the case of State of Utah vs. Dixon, Hatch and McRae, 448 P. 2d 716, has still not been followed is shown be testimony of respondent as shown on pages 10, 11, and 12 of the tran-

script of testimony of the trial before the lower court, Case #48987, as follows:

> "Q. Have you, at any time, submitted to the Weber County Auditor an itemized claim showing the date of service and what services were rendered and the hours of service?
>
> "A. No, sir.
>
> "Q. Have you rendered such a detailed claim to any Weber County officer?
>
> "A. The only claim that I have rendered at all is the letter and the attached motion.
>
> "Q. And, if I understand, Mr. McRae, the only outlines you have made on your claim are as represented in the letter under date of November 18, 1967 which is marked as Defendant's Exhibit 1, and in your motion for attorney fees and notice of hearing, marked as Defendant's Exhibit 2?
>
> "A. Well, there was testimony given at the time of hearing on Defendant's Exhibit 2.
>
> "Q. These are the only things in writing that you have submitted to the County officers?
>
> "A. That is true."

Reference is made to Defendant's Exhibit 1, a letter under date of Nov. 18, 1967, addressed to Board of County Commissioners, Weber County Court House, Ogden, Utah, from Robert M. McRae, on which respondents base their claim for having satisfied the proper procedures required by this court in 448 P 2d 716, wherein it is stated:

> "Pursuant to statute, you are entitled to notice of my claim, which claim is herewith made against Weber County for the sum of $1,000.00 as fair and reasonable compensation for services rendered in connection with said court-appointed representation, the preparation of brief and argument to this case before the Supreme Court."

Nothing else is said in this letter as to the basis of the fee claimed.

Reference is further made to Defendant's Exhibit 2, a Motion for Attorneys' Fees and Notice of Hearing, filed in the District Court of Weber Cunty, State of Utah, dated Nov. 10, 1967, which forms the other basis on which respondents rely for having fulfilled the satutory requirements under 17-15-10, U.C.A., 1953, as amended. There is no itemization, no statement of dates on which the claim is based, no particular service rendered—rather, just a general statement that upon appointment of the Supreme Court services were rendered. In this motion the respondents do not even set forth a value for their services, and on these two purported "notices" claim to have fulfilled the requirements of this court as established in State vs. Dixon, Hatch and McRae, 449 P 2d 716.

It should further be noted and emphasized that whatever claim the respondents testified to have made were made *prior* to the filing of this action. The only claim made by respondents as far as this action is concerned is the filing of the complaint itself. It is submitted to the Court that even this complaint does not fulfill the requirements of 17-15-10, U.C.A. 1953, as amended, which requires that the claim, "... is itemized, giving names, dates and particular service rendered...".

For the reasons above stated the lower court erred in finding that Defendant's Exhibits 1 and 2, and the respondent's appearances to argue its motion, Defendant's Exhibit 2, "... constituted substantial compliance with the provisions of the law pertaining to claims against counties ...".

The lower court further erred in its Conclusion of Law #3 in which it stated, "The decision of the Supreme Court of the State of Utah, file No. 11187, filed December 12, 1968, was not a consideration of this claim on the merits and said decision did not render the matter res judicata."

POINT II.

THERE HAS BEEN NO SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF 17-15-10, U.C.A., 1953, AS AMENDED, AS TO THE GIVING OF NOTICE TO THE COUNTY OF A CLAIM AGAINST IT.

In the handling of public moneys great care must be taken that this money is expended only when allowed by statute. Unless the provisions of statutes are fulfilled public officials can not authorize the expenditures of public funds. For this reason the provisions of 17-15-10 U.C.A. 1953, as amended, were passed. It was held in State vs. District Court for Salt Lake County, 115 P 2d 913, that statutes allowing suit against the state (or, as in this instance against a governmental unit) must be construed so as to give effect to the legislative intent. There must be substantial compliance with the designated statutory procedure for bringing such action.

The pertinent parts of 17-15-10, U.C.A. 1953, as amended, read as follows:

> "The board of county commissioners shall not hear or consider any claim of any person against the county, nor shall the board credit or allow any claim or bill against the county, unless the same is itemized, giving names, dates and particular service rendered, or until it has been passed upon by the county auditor...Every claim against the county must be presented to the county auditor within a year after the last item of the account or claim accrued. In all cases claims shall be duly substantiated as to their correctness and as to the fact that they are justly due...".

Detailed recital of facts will not again be repeated here as they are set forth under Point I of the Argument herein. It is here pointed out that on the testimony and answers to Interrogatories of the respondents herein they admit that there has never been an itemized statement of any nature presented to any official of Weber County. It is specifically admitted, as above quoted from the transcript of testimony of respondent at the trial, that no claim was at any time presented by him or by anyone else on his behalf to the Weber County Auditor. There has never been substantial compliance with this statute by the respondents on their own behalf or by anyone else on their behalf.

As decided by the lower court, there is no basis on which the county officials of this State can know when a valid claim against a county has been filed. To say that the paragraph quoted above in Point I from Defendant's Exhibit 1, the letter of Nov. 18, 1967, constitutes a valid

claim is to make a mockery of the "substantial compliance" requirements of statutes. All that is there said is,

> "Pursuant to statute, you are entitled to notice of my claim, which claim is herewith made against Weber County for the sum of $1,000.00 as fair and reasonable compensation for services rendered in connection with said court-appointed representation, the preparation of brief and argument of this case before the Supreme Court...".

This does not meet the requirements of detailed itemizing nor the requirement that it be presented to the Weber County Auditor.

POINT III.

THE CLAIM OF THE RESPONDENTS IS BARRED BY STATUTE AS NOT BEING TIMELY FILED.

In answer to Interrogatory #5 of appellant as to the date of the last service rendered under appointment by respondents their answer was as follows:

> "5. For all practical purposes all services in Case No. 10905 (which is not the case number involved in this action but was a companion case not involving Weber County, so that a transfer of the wrong case number was here used) were completed on the date the motion for attorneys' fees was filed, to wit:
>
> "Oct. 31, 1967, however, the last service rendered in this matter was the review of the Supreme Court 'green sheet' on January 24, 1968." Parenthetical comment is added.

17-15-10 U.C.A. 1953, as amended, required, in part, as follows:

> "Every claim against the county must be presented to the county auditor within a year after the last item of the account of claim accrued."

As before stated, there has never been a claim filed with the Weber County Auditor on this matter. Since the decision of this Court in the case reported at 448 P 2d 716 there still is no claim of any nature which has been filed by the respondents with any officer of Weber County. There are two requirements made by this part of the cited statute—that the claims be presented to the county auditor tor and the claim be so presented within one year after the last item of account or claim accrued. Neither of these requirements has been met by the defendants.

CONCLUSION

The trial court erred in not finding that this matter was res judicata, in finding that there had been substantial compliance with the provisions of 17-15-10, U.C.A. 1953, as amended, and in finding that the claim of respondents was not barred under the provisions of 17-15-10, U.C.A. 1953, as amended. A county of this State is entitled to detailed, itemized claims to be filed against it with the office of the County Auditor of that County. This matter has already been decided by this court and is now res judicata. The time has now passed so that respondents cannot now file an enforceable claim against Weber County based on the claim constituting the basis of this action. The judgment of the lower court should be reversed and judgment entered for the appellant herein.

Respectfully submitted,

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