1969

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

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 Appel

BRIEF OF RESPONDE

Appeal from the Judgment of the
of Weber County, State of Utah, Hon.
Wahlquist, Judge.

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IN THE SUPREME COURT

of the

STATE OF UTAH

SUMNER J. HATCH and
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Plaintiffs and Respondents,

vs.

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

Case No.

11594

STATEMENT OF KIND OF CASE

This is an action to recover attorneys' fees and costs under the provisions of Title 77, Chapter 64, UCA, 1953, as amended, for services claimed rendered by the respondents 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 plaintiffs, the respondents herein, the defendant, the appellant herein, appeals.

RELIEF SOUGHT ON APPEAL

Respondents seek a decision from this court affirming the judgment of the lower court.

STATEMENT OF FACTS

Respondents agree in general with the Statement of Facts of the appellant, except that portion which reads, "No other procedures or steps were taken by the respondents to follow 'proper procedures', . . . than the filing of this complaint . . . "

On November 18, 1967, respondents mailed a letter to the Board of County Commissioners, defendant's Exhibit 1, enclosing a copy of the motion filed in the District Court of Weber County, defendant's Exhibit 2. In said letter, respondents presented their claim as follows:

> "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 . . . the preparation of brief and argument of this case before the Supreme Court.

> In the event I do not receive an acceptance or rejection of this claim prior to the date of hearing . . . I deem your failure to do so as a denial of said claim. . . "

Said letter and enclosed motion were duly received by the Board of County Commissioners, Weber County, with a carbon copy to the Weber County Attorney. (Amended answer to interrogatory No. 1, R. 6; T. 11 and 12.)

Respondents filed the complaint in this action on November 27, 1968, prior, rather than after, the denial of their appeal in case No. 11187. In paragraph 4 of said complaint, it is specifically pointed out that the complaint was filed prior to the possible expiration of the period of limitations contained in 17-15-12 UCA, as amended. (R.1)

ARGUMENT

POINT I. APPELLANT'S CLAIM OF RES JUDICATA IS WITHOUT MERIT.

While appellant quotes from Am.Jur. on this subject, the following additional statements from 30A Am. Jur. Judgments clearly show that the instant case is not barred by this doctrine. 30A Am. Jur. section 347, p. 388, reads as follows:

> "Generally.—In stating the doctrine of res judicata, the courts usually refer to the fact that the judgment sought to be used as a basis of the doctrine was rendered upon the merits, since it

is a general rule that a judgment rendered on any grounds which do not involve the merits of the action may not be used as a basis for the operation of the doctrine of res judicata. Under this rule, an adjudication on grounds purely technical, where the merits cannot come into question, is limited to the point actually decided, and does not preclude the maintenance of a subsequent action brought in a way to avoid the objection which proved fatal in the first action. . . "

And, in section 348, p. 390:

"What Is a Judgment on Merits, Generally.—A judgment on the merits is said to be one which is based on legal rights as distinguished from mere matters of practice, procedure, jurisdiction, or form, . . . "

And, in section 349, p. 391:

"Judgment Because of Misconception of Remedy.—The doctrine of res judicata is not available as a bar to a subsequent action if the judgment in the former action was rendered because of a misconception of the remedy available or of the proper form of proceeding. In such situation, the plaintiff is entitled to bring the proper proceeding to enforce his cause of action. . . "

And, in section 353, p. 394:

"Judgment Based on Want of Jurisdiction.—A former adjudication is regarded as not being on the merits where it was based upon the fact that the court lacked jurisdiction. Consequently, the general rule is that a judgment for the defendant

> based on lack of jurisdiction does not bar the plaintiff from bringing an action on the same cause in a court having jurisdiction. . . "

Here, on examination of this court's decision in case No. 11187, the court only decided that the provisions of Chapter 64, Title 77 are mandatory, not permissive, that a county was responsible for fees where the appointment was made by this court, and that the proper procedure had not been followed in case No. 11187; and it is only as to these matters that the said decision is res judicata.

Further, as stated in 30A Am.Jur., section 325, p. 371:

> "General Application and Limitations.—The doctrine of res judicata is a principle of universal jurisprudence, forming a part of the legal systems of all civilized nations. The doctrine is to be applied in particular situations as justice and sound application of the policy behind the doctrine require; it is not to be applied so rigidly as to defeat the ends of justice or so as to work an injustice. . . "

Certainly, where, as in the instant case, there was no clear-cut guide as to the procedure to be followed until this court, in Washington County vs. Day, clarified and set forth the proper procedure, it would clearly be a miscarriage of justice to use the doctrine of res judicata to preclude a hearing of respondents' case on its merits.

POINT II. THERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF 17-15-10 UCA 1953, AS AMENDED, BY THE RESPONDENTS.

Since, as mentioned previously, the proper procedure to be followed in collecting attorneys fees under an appointment by this court was not clear, respondents, in order to preserve their rights if this court decided, as it did in case No. 11187, that the proper procedure was to have filed a claim under 17-15-10 UCA 1953, as amended, presented their claim to the Board of County Commissioners, Weber County, by letter dated November 18, 1967. Said letter enclosed a copy of the motion then pending before the Weber County District Court and requested that the Weber County Board of Commissioners either accept or reject the claim and that an appearance by the county in opposition to the motion would be considered a denial of plaintiffs' claim.

The proper rule, when construing a statute of this nature, is found in 50 Am.Jur. Statutes, section 392, p. 392:

> "Remedial Statutes.—It is a general rule of law that statutes which are remedial in nature are entitled to a liberal construction, in favor of the remedy provided by law, or in favor of those entitled to the benefits of the statute. This is true of a curative statute having a remedial purpose, or statutes seeking the correction of recognized errors and abuses, remedying defects in earlier acts, or implying an intention to reform or extend existing rights."

Where, as here, the Board of County Commissioners and the County Attorney received respondents' letter claim and appeared to resist the motion and on the appeal, they should not be permitted to attempt to deny notice of such claim, apparently on the grounds that respondents should have presented the claim to the Weber County Auditor. This is particularly true in view of the language of 17-15-10, wherein it says: " . . . nor shall the board *credit or allow* any claim . . . until it has been passed upon by the county auditor . . . Every claim against the county must be presented to the county auditor . . . " (emphasis supplied), which could be interpreted to require the presentation of the claim to the auditor by the Board of County Commissioners, rather than by the respondent, and then only if they are allowing the claim. Further, the last sentence of 17-15-10, which it should be noted was omitted from the quote of this statute by the appellant, reads as follows: "If the board shall refuse to hear or consider a claim because it is not properly made out, it shall cause notice of the fact to be given to the claimant or to his agent. . . " This sentence is obviously intended to preclude what the County is attempting to do here, i.e. to evade its responsibility for the payment of a valid claim on technical grounds, and casts upon the board an affirmative duty to give a claimant notice of defects in his claim and time to correct the same.

The proper rule was set out by this court in *Burton vs. Salt Lake City,* 69 Utah 186, 253 P 443, 51 ALR 364, wherein the court stated:

> "The statute requires that, in case a claim is deemed insufficient or defective in certain particulars, the insufficiency or defect must be pointed out by the city. The city not having done so, it cannot now be heard to say that the claim is insufficient."

See also *Bowman vs. Ogden City,* 33 Utah 196, 93 P 561. At no time or in any manner has the Board of County Commissioners attempted to comply with this affirmative duty in the instant case, but instead, both at the hearing of the motion in the District Court and on subsequent appeal to this court, has repeatedly denied any obligation to pay respondents.

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

As discussed previously, respondents' letter claim was filed with the Board of County Commissioners on November 18, 1967, for services performed in case No. 10905, which, contrary to the statement in appellant's brief, page 11, is the proper case number for the appeal in State vs. Dixon. It is now, apparently, appellant's contention that the claim was premature, on the ground that the last services had not been performed at the time the claim was filed. However, as testified to by respondent at T. 4 and 5, the criminal work performed by respondents is performed on a flat-fee basis. Consequently, under this concept, respondents' claim matured at the time of acceptance of the appointment and, under this

concept, was completely adequate to comply with the requirements of 17-15-10 UCA 1953, as amended.

Further, in view of the County's participation in the hearing before the Weber County District Court and, subsequently, before this Court, it is impossible to believe, as a practical matter, that the County was not completely informed of the nature and type of respondents' claim and of their continuing assertion thereof. Respondents had informed Weber County that they would consider their appearance at the hearing on December 4, 1967, as a rejection; and at no time did the Weber County Board of Commissioners, through their attorney, indicate any attitude except rejection of the claim in toto. 17-15-12 UCA 1953, as amended, reads as follows:

> "Action on rejected claim—Limitation.—A claimant dissatisfied with the rejection of his claim or demand . . . may sue the county therefor at any time within one year after the first rejection thereof by the board, but not afterward. . . "

Respondents filed their complaint in the instant action on November 27, 1968, prior to the expiration of one year from December 4, 1967.

CONCLUSION

Based on the foregoing and the well-established rule of law in this jurisdiction that, upon appeal, the evidence

must be viewed in a light most favorable to supporting the judgment of the trial court, and, where, as here, there is substantial evidence to suport his decision, the judgment should be affirmed and respondents granted their costs.

Respectfully submitted,

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Attorney for Plaintiff and Respondents.