

2004

L. Earl Hawley v. Union Pacific Railroad Company : Reply Brief

Utah Court of Appeals

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Kent W. Hansen; Attorney for Appellee.

Richard Ranney; Ranney and Peatross; Attorneys for Appellant.

Recommended Citation

Reply Brief, *Hawley v. Union Pacific Railroad Company*, No. 20040461 (Utah Court of Appeals, 2004).
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**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO. 20040461-CA

IN THE UTAH COURT OF APPEALS

L. EARL HAWLEY,

Plaintiff and Appellant

vs.

**UNION PACIFIC RAILROAD
COMPANY,
A Delaware Corporation,**

Defendant and Appellee.

APPELLANT'S REPLY BRIEF

Appellate Case No. 20040461-CA

**Appeal From the Fifth District Court
Case No. 000500737**

**ON APPEAL FROM THE FIFTH JUDICIAL DISTRICT COURT,
THE HONORABLE J. PHILIP EAVES PRESIDING**

**KENT W. HANSEN (#6560)
UNION PACIFIC RAILROAD
280 South 400 West
Salt Lake City, UT 84101
Attorney for Appellee**

**RICHARD RANNEY (#9696)
RANNEY & PEATROSS
1722 East 280 North, Suite C2
St. George, UT 84790
Telephone: (435) 656-2004
Facsimile: (435) 656-2107
Attorneys for Appellant**

**FILED
UTAH APPELLATE COURT
NOV 29 2004**

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KENT W. HANSEN (#6560)
UNION PACIFIC RAILROAD
280 South 400 West
Salt Lake City, UT 84101
Attorney for Appellee

RICHARD RANNEY (#9696)
RANNEY & PEATROSS
1722 East 280 North, Suite C2
St. George, UT 84790
Telephone: (435) 656-2004
Facsimile: (435) 656-2107
Attorneys for Appellant

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Argument

I. The Motion For Summary Judgment Was Granted By An Oral Order

Union Pacific assumes, without citation to any authority, that only a written order can suffice to constitute the issuance of “an order” within the meaning of 4-506 Utah Rules of Judicial Administration. They argue that that the court only “indicated its intention” to grant the Motion for Summary Judgment at the June 10, 2003 hearing. The record says otherwise, and says that the Court did orally grant the motion for summary judgment from the bench on that day.

There is a distinction between “an order” granting a motion for summary judgment, which can be issued orally like any other order, and a written memorandum giving the reasons for the order, or a written judgment. At the hearing on June 10, 2003 the court did rule on the motion for summary judgment that had just been orally argued. The Clerk’s minute entry (“The Court grants the Motion for Summary Judgment as a whole.”) and the District Court’s Opinion itself (“The Court granted Summary Judgment to the defendant from the bench...”) both establish this fact.

In our case, after orally granting the Motion for Summary Judgment, the Court did go on to issue a written final Judgment, which gave the court's reasons for granting the Motion. But that Judgment was distinct from the **order** granting the Motion for Summary Judgment, which was, according to the court's own record and words, issued orally on June 10, 2003.

Our argument here is not contradicted by the provisions of Rule 52(a), URCP, regarding written findings by the Court. First, that rule states generally that "The trial court need not enter findings of fact and conclusions of law in rulings on motions, except as provided in Rule 41(b)." So the general rule is that a ruling on a motion for summary judgment **can** be issued orally.

Rule 52 also provides that "The court shall, however, issue a brief written statement of the ground for its decision on all motions granted under Rules ... 56...when the motion is based on more than one ground." Rule 52(a), URCP. In our case, the motion was not based on multiple grounds, but a single unitary argument. Furthermore, the "brief written statement of the grounds" for the decision required by Rule 52(a) is obviously distinct from the order granting the motion. It can, and often does, come some time after the granting of the motion itself, as happened in our case.

Rule 4-506 Utah Rules of Judicial Administration does not say that an attorney can withdraw only upon approval of the court when a motion has been filed and the court has not issued a final judgment, or a written memorandum opinion, on the matter. It says that “an attorney may withdraw as counsel of record only upon approval of the court when a motion has been filed and the court has not issued an order on the motion...” The only reasonable interpretation of this Rule is that after a court orally grants a Motion for Summary Judgment, following full briefing and oral argument from all counsel, that the attorney is free to withdraw without leave of court.

II. Hawley Was Not Served With Any Notice

At His “Last Known Address”

Union Pacific cites Rule 5(b)(1), URCP: “Service . . . upon a party shall be made by delivering a copy or by mailing a copy to the last known address. . .” They argue that the address given in the Complaint was Hawley’s “last known address.” We disagree. The Rule does not say service is sufficient on “the address given in the Complaint.” It says the “last known address.” When a party’s attorney withdraws, by a simple two page written document

filed in the case and served on opposing counsel, and in that written document is contained the Party's correct mailing address, we submit that that becomes the Party's "last known address."

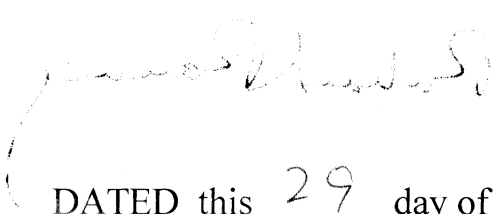
When parties are represented by counsel, it is not necessary to keep track of the party's address for service, since then "service shall be made upon the attorney." Rule 5(b)(1), URCP. Only when a Party is pro se is it necessary to find the Party's correct address. When a Party is represented by Counsel for a long time in a case, and then his attorney withdraws, it would be normal to look at the document by which the attorney withdrew to find the party's proper address for service. When the attorney's Notice of Withdrawal does contain the formerly represented party's correct mailing address, this must be considered the party's "last known address" within the meaning of Rule 5(b)(1).

Conclusion

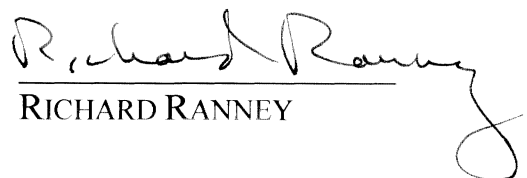
The Clerk's written minute entry, and the District's Courts own Opinion in this matter, establish that the District Court did more than "indicate its intention" to grant the summary judgment motion. It issued an oral order granting the motion for summary judgment at the hearing on June 10, 2003.

Hawley's former attorney then properly withdrew by simply filing his Notice of Withdrawal.

Since the required "Notices to Appear or Appoint Counsel" were not served on Hawley at his "last known address", as given in writing in the last document filed by his former attorney in the case, he never received them. Accordingly Rule 4-506 required that "no further proceedings shall be held in the case." The subsequent judgment was therefore entered in violation of this Rule, and the District Court erred in failing to grant relief by vacating this judgment. We respectfully submit that this Court should reverse and remand, with instructions to vacate the Final Judgment of August 20, 2003.


DATED this 29 day of November, 2004.

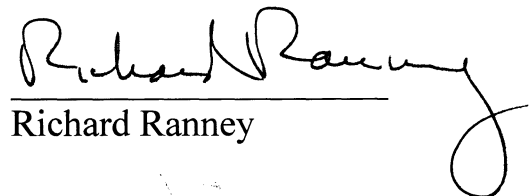
RANNEY & PEATROSS


RICHARD RANNEY

Certificate of Service

I hereby certify that on the 29 day of November, 2004, two true and correct copies of this "**Appellant's Reply Brief**", were served by first-class mail, with postage prepaid thereon, to:

Kent W. Hansen, Esq.
Union Pacific Railroad
280 South 400 West
Salt Lake City, UT 84101


Richard Ranney

