

1993

# Larry Swalberg v. Todd Hannegan : Brief of Appellant

Utah Court of Appeals

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Bret B. Hicken; Baker & Hicken; Attorney for Appellee.

Dean N. Zabriskie; Attorney for Appellant.

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Docket No. 930313-CA

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930313

In the  
Utah Court of Appeals

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LARRY SWALBERG,

*Plaintiff and Appellant,*

- against -

TODD HANNEGAN,

*Defendant and Appellant.*

---

BRIEF OF THE APPELLANT

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Appeal for the Fourth Circuit Court,  
Utah County, Spanish Fork Department  
Judge John C. Backlund

---

Priority No. 15

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### **JURISDICTIONAL STATEMENT**

This Court has jurisdiction pursuant to Utah Code Annotated Section 78-2a-3(2)(c) as this case constitutes an appeal from Spanish Fork Circuit Court on a civil matter.

### **STATEMENT OF THE ISSUES**

Whether, as part of his disaffirmance of a contract made during his minority, Defendant is required to compensate Plaintiff for the depreciation and/or use-value of the property which formed the basis for that contract?

As this issue is a question of law--i.e., whether Utah law requires a disaffirming minor to return the adult party to his pre-contractual status--this Court will review the lower court's decision for correctness, applying a de novo review in which no deference is granted to the trial court's ruling. Ron Case Roofing and Asphalt Paving, Inc. v. Blomquist, 773 P.2d 1382 (Utah 1989).

### **CONSTITUTIONAL AND STATUTORY PROVISIONS**

The sole determinative statute in the present case is Utah Code Annotated Section 15-2-2, and is set forth verbatim in the Appendix at A-1.

### **STATEMENT OF THE CASE**

This case involves an action on a contractual debt by Plaintiff/Appellee against Defendant/Appellant despite Defendant's prior disaffirmance of the contract as one made during his minority. This appeal is from a granting of summary judgment in behalf of Plaintiff against Defendant by the

Honorable Judge John C. Backlund, Fourth Circuit Court, State of Utah, Utah County, Spanish Fork Department, awarding Plaintiff an amount equivalent with the depreciation of the subject-matter property, \$1,160.00, plus interest and court costs.

#### **BACKGROUND FACTS**

Defendant/Appellant contracted with Plaintiff/Appellee for the purchase of a 1974 Ford truck on October 5, 1990, while he was yet a minor. Plaintiff's Complaint at 1 (see Appendix at A-2). At the time of the contract, Plaintiff received \$640 from Defendant, with an additional \$1,860 to be due three months later on January 1, 1991. Id. Later, as all parties have already agreed, Defendant appropriately disaffirmed his contract with Plaintiff. Id. at 2 (Appendix at A-3); see also Ruling of the Court (Appendix at A-8). Despite Defendant's disaffirmance of said contract, however, Plaintiff filed a Complaint against Defendant on May 13, 1991, seeking that the contract be enforced, or in the alternative, that Plaintiff be compensated for the depreciation and/or use-value of the truck while the truck was in Defendant's possession. Plaintiff claims that the truck had depreciated to a value of \$700 at the time of disaffirmance and therefore sought \$1,160 in damages, which is equal to the sum due, \$1,860, less the \$700 residual value of the truck. Plaintiff' Motion For Summary Judgment at 4 (Appendix at A-7).

Negotiations between Plaintiff's attorney and Defendant's attorney ensued for some time after Plaintiff's Complaint was filed, until Defendant filed a Motion For Summary Judgment And

Return Of Garnished Wages on January 26, 1993. No response was had on this Motion until Plaintiff's attorney filed his own Motion For Summary Judgment on April 1, 1993, requesting that Plaintiff be compensated for the diminished value of the truck at the time of its return to Plaintiff. Circuit Court Judge John C. Backlund issued a Ruling granting Plaintiff's Motion For Summary Judgment on April 12, 1993. Judge Backlund held as follows:

The Court finds there is no genuine dispute as to plaintiff's claim for damages in the sum of \$1,160.00. While defendant, being a minor, exercised his right to disaffirm the contract, he violated his obligation to promptly return the vehicle in as good a condition as when he received it. This he failed to do.

See Appendix at A-8. It is from this Ruling and ensuing Order granting Plaintiff \$1,160 plus costs and interest that Defendant appeals.

#### **SUMMARY OF THE ARGUMENT**

The only dispute before this Court is whether Defendant is responsible for returning Plaintiff to Plaintiff's pre-contractual status. Defendant is not so liable. Despite the fact that other states may have gone in other directions, Utah statutory and case law unequivocally holds that a minor is not liable to the adult party of a contract for the depreciation and/or use-value of the property which formed the subject matter for the contract. Therefore, in the present case, Defendant cannot be held liable to Plaintiff for the depreciation of the truck which Defendant had contracted to buy from Plaintiff. Instead, Defendant is actually entitled to a return of the

consideration which he paid Plaintiff as a down-payment on the truck.

### **ARGUMENT**

#### **I. DEFENDANT APPROPRIATELY DISAFFIRMED HIS CONTRACT WITH PLAINTIFF.**

It is clear from the record that Defendant has appropriately disaffirmed his contract with Plaintiff. The requirements for disaffirmance pursuant to Utah Code Annotated Section 15-2-2 are simple and have been met by Defendant in the present case. In order to disaffirm, a minor must (1) disaffirm the contract (2) in a reasonable time and (3) restore to the other party all money or property received by him by virtue of the contract and remaining within his control. These requirements, as is clear from Plaintiff's Motion For Summary Judgment and the Court's Ruling, have been met in the present case.

Plaintiff's Motion For Summary Judgment does not raise the issue of ineffective disaffirmance. Instead, Plaintiff's Motion admits,

All facts related above are not disputed by either party. The Defendant was a minor when he entered into the contract, and disaffirmed before the age of majority. However, in this matter, the Defendant obtained the use of a vehicle without revealing his age to the Plaintiff, utilized that vehicle, damaged the vehicle, and when the vehicle was no longer operative, attempted to escape his responsibility.

Plaintiff's Motion For Summary Judgment at 2 (see Appendix at A-5). Thus Plaintiff's claim assumes effective disaffirmance and claims that, despite the disaffirmance, Defendant remains liable



for the depreciation and/or the value of the vehicle's use during Defendant's possession of that vehicle.

The lower court's logic is a little more difficult to follow, but it nevertheless makes clear that no dispute exists as to whether Defendant complied with the Utah Code Annotated Section 15-2-2 in his disaffirmance. The court stated that, "[w]hile defendant, being a minor, exercised his right to disaffirm the contract, he violated his obligation to promptly return the vehicle in as good a condition as when he received it." See Appendix at A-8. Thus the lower court likewise found that Defendant appropriately "exercised his right to disaffirm the contract" but agreed with Plaintiff that Defendant had a duty to return Plaintiff to his pre-contract status.

As the decision granting Plaintiff's Motion For Summary Judgment, from which this appeal is made, is based solely on Defendant's alleged duty to return Plaintiff to his pre-contractual status, that is the sole issue before this Court. And, as will be shown, such a duty imposed upon a disaffirming minor is in direct contravention to Utah law.

## **POINT II**

### **THE ORDER GRANTING SUMMARY JUDGMENT GOES AGAINST ESTABLISHED UTAH LAW.**

As already mentioned, the lower court imposed upon Defendant a duty to "return the vehicle in as good a condition as when he received it." See Appendix at A-8. Clearly, however, the Utah Legislature has opted to not impose such a duty.

Utah Code Annotated Section 15-2-2 permits a minor to

disaffirm contracts that are not for necessities and thereafter not be held thereto. This section imposes an obligation upon the minor to "restore[] to the other party all money or property received by him by virtue of said contracts *and remaining within his control* at any time after attaining his majority." U.C.A. § 15-2-2 (emphasis added). Thus the statute clearly requires only that the property remaining within the minor's control be returned to the other party. In the present case, Defendant complied with this requirement when he returned the truck to Plaintiff. However, this requirement was apparently read and understood by the lower court as imposing a duty upon the minor to restore all property in its *original* condition. This is simply not the case. In fact, such a reading of the statute effectively renders the disaffirming right nugatory.

Contrary to the lower court's ruling, the Utah Supreme Court has held that under Utah's statute a minor may disaffirm his contracts even if the property he has received has become worthless and the return thereof does not make the other party whole. Blake v. Harding, 54 Utah 158, 180 P. 172 (1919). The Blake court continued by stating that to hold that a minor may not "disaffirm and recover if the property he has received has become worthless . . . is to impose the duty upon the infant to place the other party to the contract in exact status quo. To so hold is to disregard and misapply the purpose of the law." 180 P. at 174. Consequently, Blake held, a disaffirming minor is not required to compensate the adult party for any losses the adult

may have suffered as a result of the disaffirmance.

The Utah Supreme Court has echoed its holding in Blake in Merchants' Credit Bureau v. Kaoru Akiyama, 64 Utah 364, 230 P. 1017 (1924), in which the court likewise held that a minor who has squandered property during his minority is not required to restore it in order to effectuate disaffirmance. And, in a case somewhat similar to the present, the court held that a minor could not be held liable to a seller for damages resulting from the minor's disaffirmance of a contract to purchase a house-trailer. Harvey v. Hadfield, 13 Utah 2d 258, 372 P.2d 985 (1962). In so holding, the court stated, "[O]ur statute cannot be tortured to support the defendant's contention[] that the disaffirming minor must compensate him for damages he may have incurred." Id. at 987.

Consequently, Utah law, as established by statute and relevant case law, clearly indicates that a minor does not have the obligation to return the other party to his pre-contractual status. Instead, the minor must merely return to the other party that part of the consideration "remaining within his control at any time after attaining his majority." U.C.A. § 15-2-2. Therefore, in the present case, Defendant complied with Utah statutory and case law by returning the truck to Plaintiff. Defendant did not have the duty to return the truck in a better shape than it was in at the time of the disaffirmance; nor did Defendant have the duty to compensate Plaintiff for the depreciation and/or rental value of the truck for the time in

which Defendant possessed the truck. Instead, as stated in Blake, "an adult, in dealing with a minor, assumes all the risk of loss." 180 P. at 174.

In addition to the clarity of Utah law on the point, public policy likewise supports the rule as it now stands. Utah's courts have recognized the long-standing "responsibility of our courts to . . . safeguard [minors'] rights until they have attained their majority and thus presumably have the maturity of judgment necessary to deal with opposing parties on equal terms . . . ." Harvey, 372 P.2d at 986. Until such time, "[i]t is fair to assume that because of their immaturity they may lack the judgment, experience and will power which they should have to bind themselves to what may turn out to be burdensome and longlasting obligations." Id. "Accordingly, adults dealing with minors must be deemed to do so in an awareness of the privilege the law affords the minor of disaffirming his contracts." Id.

In the present case, therefore, Plaintiff is deemed to have been aware of the protection the law affords a minor. Plaintiff proceeded to enter into a contract with a minor despite that protection. Therefore, any losses which Plaintiff may have suffered as a result of that contract are likewise his to bear, and Defendant does not have the duty to compensate him for those losses. Consequently, Defendant cannot be required to compensate Plaintiff's claimed losses of \$1,160, which has been calculated as the amount still owing on the contract after Defendant's disaffirmance minus the current market value of the truck.

Defendant recognizes that some other states have followed a minority rule that differs somewhat from Utah law. For example, in the lower court, Plaintiff relied on Arizona and Idaho decisions to support his contention that a disaffirming minor is required to account for the benefit he has received from the adult party. However, reliance on such cases is misguided because, first, Arizona does not have a statute on point, and second, while Idaho does have a relevant statute, it is entirely different from Utah's. Therefore, Utah's statutory and case law, while perhaps different from those of other states, is controlling in the present case and mandates that Defendant not be required to compensate Plaintiff for Plaintiff's losses.

### **POINT III**

#### **DEFENDANT IS ENTITLED TO A RETURN OF THE CONSIDERATION HE FURNISHED TO PLAINTIFF UNDER THE PRESENT CONTRACT.**

Defendant is clearly entitled to his money back. As the Court in Harvey held, "The plaintiff minor having disaffirmed the contract [he] is entitled to the return of his money." 372 P.2d at 987. And as the Court in Blake implied, a minor who becomes dissatisfied with his contract can undo the deal and get his consideration back. 180 P. 172. Moreover, in neither of these cases was the minor's right to a refund conditioned on his returning the adult to his pre-contractual status. Similarly, in the present case, Defendant has disaffirmed the contract and is entitled to a return of the money he spent in consideration of the void contract, namely \$640, regardless of the fact that Defendant does not have the duty to return Plaintiff to his pre-

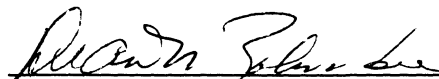
contractual status.

#### CONCLUSION

It has been agreed by Plaintiff and by the lower court that Defendant appropriately disaffirmed his contract with Plaintiff. However, the lower court has erroneously granted Plaintiff's Summary Judgment Motion requiring that Defendant compensate Plaintiff for damages resulting from the disaffirmance. Consequently, the lower court's granting of Plaintiff's Motion For Summary Judgment should be reversed, and the lower court should be ordered to enter judgment in the amount of \$640 for Defendant.

Respectfully submitted this 8 day of September, 1993.

Respectfully submitted,



DEAN N. ZABRISKIE  
ATTORNEY FOR DEFENDANT/APPELLANT

## **APPENDIX**

**Utah Code Annotated Section 15-2-2**

15-2-2. Liability for necessities and on contracts--  
Disaffirmance

A minor is bound not only for reasonable value of necessities but also by his contracts, unless he disaffirms them before or within a reasonable time after he attains his majority and restores to the other party all money or property received by him by virtue of said contracts and remaining within his control at any time after attaining his majority.



**Pages A-2 through A-3: Plaintiff's Complaint**

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-----oooOooo-----  
IN THE FOURTH CIRCUIT COURT, STATE OF UTAH  
COUNTY OF UTAH, SPANISH FORK DEPARTMENT  
-----oooOooo-----

LARRY SWALBERG, :  
 : COMPLAINT  
Plaintiff, :  
v. :  
 :  
TODD HANNEGAN :  
2741 West 170 North : Civil No.  
Provo, Utah 84601 :  
Defendant. :  
-----oooOooo-----

COMES NOW the Plaintiff and Complains against the  
Defendant and for cause of action alleges:

1. The Plaintiff is a resident of Utah County. *Admt*
2. The Defendant is a resident of Utah County. *Admt*
3. The amount in question is less than \$10,000.
4. On October 5, 1990, the Plaintiff entered into a written agreement with Defendant wherein Defendant purchased a 1974 Ford truck from the Plaintiff.
5. Terms of the agreement were that Defendant paid the sum of \$640.00 on October 5, 1990. The balance of \$1,860.00 would be paid by January 1, 1991.
6. The written agreement further stated that the Defendant would not receive title to the truck until the balance was paid and that Defendant took the vehicle "as is".

7. At the time of the agreement, the Defendant was 17 years old. Plaintiff had no knowledge of this fact and assumed the Defendant had reached the age of majority.

8. The Plaintiff has made demand for payment or return of the truck from the Defendant on several occasions and the Defendant has refused. He stated that he was a minor at the time of the contract and is, therefore, not responsible.

WHEREFORE, the Plaintiff demands Judgment as follows:

1. For Judgment in the amount of \$1,860.00, which represents the balance due and owing; or, in the alternative that should the contract be determined to be voidable, that the Defendant return the vehicle to the Plaintiff and that the Defendant be responsible for a reasonable cost for having used said vehicle.

2. For attorney's fees and costs of Court incurred in bringing this matter.

3. For such other and further relief as the Court deems just in the premises.

DATED this 13 day of May.

  
-----  
BRET B. HICKEN  
TAYLOR, BAKER & HICKEN  
Attorney for Plaintiff

**Pages A-4 through A-7: Plaintiff's Memorandum  
in Support of Plaintiff's Motion  
For Summary Judgment**

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---

IN THE CIRCUIT COURT, STATE OF UTAH  
COUNTY OF UTAH, SPANISH FORK DEPARTMENT

---

LARRY SWALBERG,	:	MEMORANDUM OF POINTS AND
	:	AUTHORITIES IN SUPPORT OF
Plaintiff,	:	PLAINTIFF'S MOTION FOR
	:	SUMMARY JUDGMENT
vs.	:	
	:	Case No. 913000020
TODD HANNEGAN,	:	
	:	
Defendant.	:	

---

COMES NOW the Plaintiff, Larry Swalberg, by and through his attorney, Bret B. Hicken, and hereby submits the following Memorandum in support of his Motion for Summary Judgment.

**FACTS**

On October 5, 1990, the Defendant purchased the 1974 Ford truck from the Plaintiff. The Plaintiff was unaware that Defendant was a minor. Defendant contracted to purchase the vehicle for a total purchase price of \$2,500.00. Of that sum, \$640.00 was paid from Defendant to Plaintiff, with the balance of \$1,860.00 to be paid at a later date. Prior to paying the balance of the money, Defendant contacted the Plaintiff and indicated he would not honor the contract, and further refused to return the vehicle.

The vehicle was later returned pursuant to an order of

the court, but had been severely diminished in value.

#### ARGUMENT

Summary judgment is appropriate in a situation where there are no material facts at issue. All facts related above are not disputed by either party. The Defendant was a minor when he entered into the contract, and disaffirmed before the age of majority. However, in this matter, the Defendant obtained the use of a vehicle without revealing his age to the Plaintiff, utilized that vehicle, damaged the vehicle, and when the vehicle was no longer operative, attempted to escape his responsibility.

To allow the Defendant to take advantage of the Plaintiff in this fashion is unconscionable. The appropriate principal is stated in 12 A.L.R. 3d §1174, pg. 1182; "In several jurisdictions, the absolute immunity of an infant from contract liability has been modified to the extent that in an action for recovery of a disaffirming minor's payments, the courts have allowed the Defendant merchant an offset for the amount by which the property is diminished or depreciated while in the minor's possession." It goes on further to state that page 1187; "The courts in several jurisdictions have permitted the Defendant vendor, in an action brought by a minor to recover payments that have been made under a disaffirmed contract, to recap an allowance for the reasonable rental value or value of the use of the subject matter of the contract while it was in the minor's possession."

The above principal should apply in the case before the court. At the time the Defendant took possession of the vehicle,

it was worth \$2,500.00 (the purchase price agreed to by the Defendant). When the property was returned, it was worth approximately \$700.00 (see attached Affidavit of Randy Brailsford, general manager of Smith Auto Ford).

Such a drastic reduction in value took place while the property was in the hands of the Defendant, and it should be his responsibility. The bulk of case law, as stated by Defendant in his memorandum, requires the Defendant to "restore the property to the merchant." Certainly the \$700.00 unworking vehicle returned to the Plaintiff was not the same vehicle purchased by the Defendant for \$2,500.00.

The Court, in Valencia vs. White, 654 P.2d 287, 174 Ariz. 139, (Ariz. App. 1982), reviewed a similar question, in a case where a minor contracted for repair of trucks in his ownership. Upon reaching the age of majority, he disaffirmed the contract. The Court stated that upon disaffirming, the minor was required to pay any benefits received in order to return both parties to the status quo. The Court further stated; "Upon reaching the age of majority, the Defendant is required to account for any and all benefits he received."

Additionally, the Court in Clark vs. Stites, 404 P.2d 339, 89 Idaho 191 (Idaho 1965), held that: "Notice of a decision of minor over 18 years old to disaffirm a contract is not the only requirement to accomplish a complete disaffirmance; the minor must also restore consideration to the party, or pay its equivalent."

### CONCLUSION

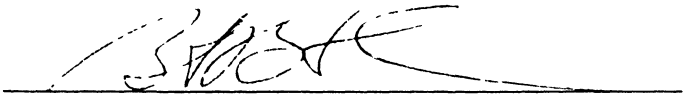
The Defendant received a vehicle worth \$2,500.00 from the Plaintiff. When the Defendant disaffirmed, he returned the vehicle worth \$700.00 to the Plaintiff. This does not constitute a restoration of property on behalf of the Defendant.

It is reasonable that this Plaintiff be granted judgment in the amount of the diminution of value of the property in question.

Summary judgment should be granted in this matter on behalf of the Plaintiff in the amount of \$1,160.00 (the remaining sum due of \$1,860.00, less the \$700.00 value of the truck) plus reasonable amount of attorney's fees incurred in bringing this matter.

Respectfully, the Plaintiff requests relief as mentioned above.

DATED this 31 day of March, 1993.

  
BRET B. HICKEN,  
Attorney for the Plaintiff

### CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, postage prepaid, to Dean N. Zabriskie, 3507 N. University Ave., Suite 370, Jamestown Square, Hanover Building, Provo, UT 84604, this 1 day of April, 1993.

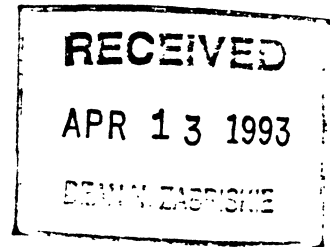
  
SECRETARY



**Page A-8: Ruling of the Honorable Judge**

**John C. Backlund**

CIRCUIT COURT, STATE OF UTAH  
SPANISH FORK DEPARTMENT



<u>LARRY SWALBERG</u>	)	
	)	
Plaintiff	)	
	)	
	)	RULING
	)	
vs	)	CASE NO. 913000020
	)	
	)	
<u>TODD HANNEGAN</u>	)	
	)	
Defendant	)	
	)	
	)	
	)	

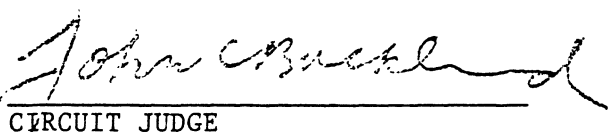
Plaintiff's Motion for Summary Judgment is granted. Plaintiff is entitled to Summary Judgment in the sum of \$1,160.00 plus interest and court costs. The Court finds there is no genuine dispute as to plaintiff's claim for damages in the sum of \$1,160.00. While defendant, being a minor, exercised his right to disaffirm the contract, he violated his obligation to promptly return the vehicle in as good a condition as when he received it. This he failed to do.

Defendant's Motion for Summary Judgment is denied.

Counsel for plaintiff is directed to prepare an Order and Summary Judgment consistent herewith.

DATED: April 12, 1993

BY THE COURT:

  
CIRCUIT JUDGE

DEAN N. ZABRISKIE #3599  
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Provo, Utah 84604  
Telephone: 375-7680

FILED

SEP 13 1993

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

LARRY SWALBERG,	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
vs.	)	
TODD HANNEGAN,	)	Docket No. 930313 CA
Defendant.	)	

---

I hereby certify that I mailed a true and correct copy of the foregoing Brief of the Appellant in the above entitled action to Bret B. Hicken at 40 South Main, Suite 10, Spanish Fork, Utah 84660 in an envelope postage prepaid this 8 day of September, 1993 addressed as follows:

Bret B. Hicken  
40 South Main, Suite 10  
Spanish Fork, Utah 84660

  
\_\_\_\_\_  
DEAN N. ZABRISKIE