1970

Lynda M. Jennings v. Jack C. Mahoney, Director, Financial Responsibility Division, Department Of Public Safety, State of Utah : Brief of Appellant

In The Supreme Court of the State of Utah

LYNDA M. JENNINGS,

Plaintiff and Appellant,

vs.

JACK C. MAHONEY, Director, Financial Responsibility Division, Department of Public Safety, State of Utah,

Defendant and Respondent.

BRIEF OF PLAINTIFF

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LYNDA M. JENNINGS,
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Case No. 12171

BRIEF OF PLAINTIFF-APPELLANT

NATURE OF THE CASE

This is an appeal from the decision of the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable D. Frank Wilkins, presiding, which affirmed the Order issued by the defendant April 29, 1970, effective May 14, 1970, as the result of an accident occurred on March 16, 1970, which required the plaintiff in the alternative either to suffer suspension of her driver's license or post security in the amount of $241.00. The Order was affirmed on the grounds that the defendant did

not abuse his discretion in issuing the said Order. The plaintiff-appellant would contend that this decision was in error as a result of the failure of the District Court to afford her a hearing on the question of her culpability in this matter that would accord with the procedural requirements of Due Process of Law in the conduct of the said hearing and would request this Court to reverse the judgment of the District Court and to remand this matter for a hearing which is in accord with the procedural requirements of Due Process of Law.

STATEMENT OF THE FACTS

The plaintiff-appellant, Lynda M. Jennings, was involved in a two-car automobile accident on or about March 16, 1970, at 253 Center Street, Salt Lake City, Utah (Tr. 18, 23). This accident was investigated by Officer William C. Duncan of the Salt Lake City Police Department who duly filed a report thereof with the defendant (Exhibit 3-D). Reports on the accident were also filed by the plaintiff and the driver of the other car, Brigham J. Young, within five days following the accident (Exhibit 3-D). The damage to the automobile driven by Brigham J. Young was estimated to exceed $100.00 (Exhibit 3-D), and the plaintiff did not own, at the time of the accident, an automobile liability insurance policy (Tr. 25, Exhibit 3-D). Based on these accident reports, the defendant determined that the plaintiff would be required to either post security in the amount of $241.00 or suffer the suspension

of her driver's license (Tr. 27-28) and issued an Order dated April 29, 1970, effective May 14, 1970 (Exhibit 2-D). Thereafter, on the 12th day of May, 1970, by Order of the Third Judicial District Court in and for Salt Lake County signed by Gordon R. Hall, the Order of the defendant was stayed and the defendant was ordered to show cause why the stay of said Order should not be made permanent (R. 7-9). A hearing on this matter was held before the Honorable D. Frank Wilkins on May 22, 1970, as part of the Law in Motion calendar for said day, at which time the plaintiff submitted that she was entitled to a full hearing in which she could present all witnesses that were necessary to a proper hearing of this matter (Tr. 18-23, 30). The defendant maintained that a hearing should be held only by reviewing the reports submitted to the defendant and that although other witnesses could be called by the plaintiff, they were not necessary since the alleged sole question involved was one of whether or not the defendant abused his discretion (Tr. 15, 17, 19, 21). It was pointed out to the Court by the plaintiff that she had nowhere in the proceedings had any type of formal hearing with an opportunity to present or subpoena witnesses in her behalf or to cross-examine other witnesses (Tr. 20, 21). After examining the reports, hearing the testimony of plaintiff Lynda M. Jennings (Tr. 17, 23-26), and defendant Jack C. Mahoney (Tr. 27, 28), and permitting a proffer of proof by the plaintiff (Tr. 30), the Court, although conceding the importance to the plaintiff of having Officer Duncan

present (Tr. 29), denied the plaintiff's Motion for Continuance to bring him before the Court and upheld the Order of Suspension (Tr. 30) over the objection of the plaintiff that this procedure violated the plaintiffs right to procedural Due Process of Law by not allowing her a hearing in accord with those constitutionally protected rights (Tr. 20-22, 29-30). A judgment was subsequently entered on the 8th day of June, 1970 (R. 20), but this judgment was stayed on appeal (Tr. 30-31) by an Order of the Court entered on the 1st day of July, 1970 (R. 21-22).

DISPOSITION IN THE LOWER COURT

At a hearing on May 22, 1970, before the Honorable D. Frank Wilkins, Judge of the Third Judicial District Court in and for Salt Lake County, State of Utah, the Order issued by the defendant on April 29, 1970, effective May 14, 1970, requiring in the alternative either the posting of a bond in the sum of $241.00, or the suspension of the plaintiff's driver's license was affirmed and enforced by the Court in a judgment entered on June 8, 1970, which was then stayed pending this appeal by an Order entered on July 1st, 1970.

RELIEF SOUGHT ON APPEAL

The plaintiff requests this Court to find the hearing held before the Honorable D. Frank Wilkins, Judge of the Third Judicial District Court in and for Salt Lake County, State of Utah, on May 22, 1970,

failed to provide to the plaintiff a hearing that was in accord with the requirements of procedural Due Process of Law as guaranteed by Article I, Section 7, of the Constitution of the State of Utah and the Fifth and Fourteenth Amendments to the Constitution of the United States of America, to order the reversal of the decision entered as a result of that hearing and to remand this matter for a further hearing on the merits.

ARGUMENT

POINT I.

APPELLANT IS ENTITLED TO A HEARING WHICH ACCORDS WITH THE FULL REQUIREMENTS OF DUE PROCESS OF LAW BEFORE HER DRIVER'S LICENSE MAY BE SUSPENDED UNDER THE UTAH FINANCIAL RESPONSIBILITY ACT, TITLE 41, CHAPTER 12, UTAH CODE ANNOTATED 1953.

Section 41-12-2(b), Utah Code Annotated 1953, states:

> "(b)" Any person aggrieved by an order or act of the commission, may, within ten days after notice thereof, file a petition in the district court for a review thereof; but the filing of such petition shall not suspend the order or act unless a stay thereof shall be allowed by a judge of said court pending final determination of the review. The court shall summarily hear the petition and may make any appropriate order or decree."

This provision was held by this Court in *Hague v. State of Utah*, 23 Utah 2d 299, 462 P.2d 418 (1969), to mean that the District Court has jurisdiction to review the Order of the Director of Financial Responsibility Division requiring in the alternative the posting of security or the suffering of suspension of driver's license and to determine whether or not the person who is the subject of such an Order is at fault at the time of the collision. To make that determination, it is now submitted by the plaintiff that the hearing held before the District Court must be one that accords with the minimum procedural protections of law provided by Article I, Section 7, of the Constitution of the State of Utah and the Fifth and Fourteenth Amendments to the Constitution of the United States of America, Due Process of Law. This is required due to the fact that no administrative hearing is held and the recipient of such an order has no chance to have such a hearing before the administrative agency prior to review by the District Court.

The provisions of Article I, Section 7, of the Constitution of the State of Utah were interpreted by this Court in the case of *Jensen v. Union Pacific Railroad Company*, 6 Utah 253, 21 Pac. 994, 4 ALR 724 (1889), to mean that a person was entitled to have an opportunity to have his day in court. In the course of this opinion, this Court traced the history of this constitutional concept back to the common origin of that with the Due Process of Clause of the Fifth Amendment and Fourteenth Amendment to the Con-

stitution of the United States of America. Then, in *Tolman v. Salt Lake County*, 21 Utah 2d 310, 437 P.2d 442 (1968), and *Riggins v. District Court of Salt Lake County*, 89 Utah 183, 51 P.2d 645 (1936), this Court adopted, in interpretation of Section 7 of Article I of the Constitution of the State of Utah, the definition of Due Process of Law, "day in court", articulated by the United States Supreme Court in *Armstrong v. Manzo*, 380 U.S. 545, 14 L.Ed.2d 62, 85 S Ct. 1187 (1965), wherein the United States Supreme Court had quoted the definition which had been articulated in *Mullane v. Central Hanover Trust Company*, 339 U.S. 306, 94 L.Ed. 865, 70 S. Ct. 652 (1950):

> **"Many controversies have raged about the cryptic and abstract words of the due process clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." 339 U.S. at 313, 94 L. Ed. at 872, 70 S.Ct. 652.**

Expansion of this concept in the area of the instant matter are two recent cases recently decided by the United States Supreme Court, *Sniadach v. Family Finance Corporation of Bay View*, 395 U.S. 337, 23 L.Ed. 349, 89 S.Ct. 1820 (1969), and *Goldberg v. Kelly*, 397 U.S. ....., 25 L.Ed.2d. 287, 90 S.Ct. ..... (1970). In the *Sniadach* matter, the United States Supreme Court held that

one's wages, ie., property, could not be taken absent notice and a prior hearing. In the instant matter, it would be submitted that there was sufficient notice and there was a prior hearing. However, as held by the Supreme Court, the prior hearing must be one that complies with the procedural requirements of Due Process of Law and such a hearing was not had in the instant matter.

In *Goldberg v. Kelly, supra,* Mr. Justice Brennan, delivering the opinion of the Court, stated in regard to the requirements of a Due Process hearing:

> " 'The fundamental requisite of due process of law is the opportunity to be heard.' *Grannis v. Ordean,* 234 US 385, 394, 58 L Ed 1363, 1369, 34 S Ct 779 (1914). The hearing must be 'at a meaningful time and in a meaningful manner.' *Armstrong v. Manzo,* 380 US 545, 552, 14 L Ed 2d 62, 66, 85 S Ct 1187 (1965). In the present context these principles require that a recipient have timely and adequate notice detailing the reasons for a proposed termination *and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally.* These rights are important in cases such as those before us, where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases.
>
> . . . .
>
> The opportunity to be heard must be tailored to the capacities and circumstances

of those who are to be heard. . . ." 397 U.S. at ....., 25 L.Ed. 2d at 299. (Emphasis added)

The Court went on to state:

"In almost every setting where important decisions turn on question of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. E. g., ICC v. Louisville & N.R.R. Co. 227 US 88, 93-94, 57 L Ed 431, 434, 33 S Ct 185 (1913); Willner v. Committee on Character & Fitness, 373 US 96, 103-104, 10 L Ed 2d 224, 229, 230, 83 S Ct 1175, 2 ALR3d 1254 (1963). What we said in Greene v. McElroy, 360 US 474, 496-497, 3 L Ed 2d 1377, 1390, 1391, 79 S Ct 1400 (1959), is particularly pertinent here:

'Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where evidence concists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurors or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment . . . . This Court has been zealous

> to protect these rights from erosion. It has spoken out not only in criminal cases, . . . *but also in all types of cases where administrative . . . actions were under scrutiny.*' " (Emphasis added)

Applying these principles to the instant case, it is quite clear that one challenging the Order of Suspension of the Department of Public Safety must be allowed to bring in all necessary witnesses and have a hearing at which these may be presented before an Order is to be sustained. This is in accord with the requirements of Due Process of Law which require that one be given the chance to be heard, to subpoena witnesses and to cross-examine witnesses presented against one's own interests. This was effectively denied to the plaintiff by not permitting her to have an administrative hearing, by the placing of her matter on the Law in Motion Calendar, by the action of defendant's attorneys who indicated before the hearing that their position was that no witnesses could testify and their refusal to have the matter placed on the trial calendar (Tr. 15-16), and by the Court who denied plaintiff's request for a continuance so as to have time to subpoena witnesses in her own behalf when advised of these matters (Tr. 30). This denial of the right to present her witness was not only contrary to the general requirements of Due Process of Law, it was contrary to the specific holding of this Court in a collateral but obviously analagous area of the suspension of

a driver's license by the Department of Public Safety, pursuant to the provisions of Title 41, Chapter 2, Utah Code Annotated 1953, where this Court so required, stating:

> "We feel, and so hold, that the court was required to take testimony, examine into the facts, and make its own independent determination as to whether the appellant was habitually a negligent driver, and whether his driver's license should be suspended.
>
> For the guidance of the Department of Public Safety, we observe that if there is a request by a suspended driver, he should have the privilege of having witnesses subpoenaed on his own behalf. The Department, in conducting its hearings, should substantially comply with the fundamental rules of due process in legal proceedings, even though all of the particular formalities required in court proceedings need not be met." *McAnerney v. State*, 9 Utah 2d 191, 194, 341 P.2d 212, 214 (1959).

Plaintiffs would submit that although there is no provision for a trial de novo in the Financial Responsibility provisions, Sections 41-12-1, et seq., Utah Code Annotated 1953, the hearing before the District Court must be treated as though it were a trial de novo because at no point in the administrative proceedings prior to that hearing in the District Court is there any provision for any hearing. Accordingly, if the provisions of the Financial Responsibility statutes, Sectons 41-12-1, et seq., Utah Code Annotated 1953, are to be interpreted so as to be

constitutional, that is, in accord with the requirements of Due Process of Law, the hearing held in the District Court must be considered as a trial de novo and all of the procedural protections under the descriptive phrase, Due Process of Law, as summarized herein, must be accorded to the plaintiff. These were denied to the plaintiff in the instant matter by the failure of the Court to permit her time within which to call the witnesses she wished to present in her own behalf, which itself was a result of the defendant's insistance that this matter be heard on the Law of Motion Calendar, rather than receiving a trial setting. The Trial Court compounded this denial of plaintiff's right to present her evidence for consideration by deciding this case solely on the written records submitted to the Court by the defendant. This procedure denied her those procedural protections to these rights that are summarized in the phrase, Due Process of Law, as set forth above. cf. *Christiansen v. Harris,* 109 Utah 1, 163 P.2d 314 (1945).

Accordingly, this Court should reverse the Judgment of the District Court and remand this matter to that Court for a hearing on the merits and order that the hearing so held should be one that is held in accord with the procedural requirements incorporated in the phrase, Due Process of Law.

CONCLUSION

The hearing held in the District Court in the

instant matter having failed to comply with the procedural requirements of Due Process of Law and the plaintiff having been granted no hearing at which it complied with the said requirements of Due Process of Law, this Court should reverse the judgment of the District Court and remand this matter for a further hearing on the merits, which hearing must be held in accordance with the provisions of procedural Due Process of Law.

Respectfully Submitted,

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