

1994

Robert Mabey, Pacific Management v. Stanley L. Wade, Janet B. Wade : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

ROBERT MABEY d/b/a PACIFIC
MANAGEMENT,

Plaintiff and Appellant,

vs.

STANLEY L. WADE and JANET B.
WADE,

Defendants and Appellees.

BRIEF OF THE APPELLEES

Appeal No. 940458-CA

Priority No. 15

BRIEF OF APPELLEES
STANLEY L. AND JANET B. WADE

On Appeal from a Judgment of
the Third Circuit Court
Honorable Dennis Fuchs, Circuit Judge

UTAH COURT OF APPEALS
BRIEF

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STATEMENT OF JURISDICTION

The Court of Appeals lacks jurisdiction to hear this appeal. Robert Mabey ("Mabey") appeals from an oral ruling denying his request for attorney's fees that has never been signed by the trial judge. An order denying Stanley L. and Janet B. Wade's (the "Wades") motion to set aside the judgment prepared by counsel for Mabey is silent on the issue of attorney's fees. (Appellant's Opening Brief, Ex. C). Therefore, the denial of attorney's fees has never been reduced to a final order or judgement and is not properly before this court. Ron Shepherd Ins. Inc. v. Shields, 882 P.2d 650, 653 (Utah 1994)(and cases cited therein).

STATEMENT OF THE ISSUES FOR REVIEW

1. Does the Court of Appeals have jurisdiction to hear this appeal where Mabey is appealing from an oral order that has never been reduced to a writing and signed by the judge and where the final order appealed from is silent as to attorney's fees?

2. Was the trial court correct in finding that no attorney's fees should be awarded on the motion to set aside the judgment where the motion was not brought in bad faith and where the motion was not contemplated by the contract or the November 22, 1993 Order?

STANDARDS OF REVIEW

1. This Court must look at the question of jurisdiction as a matter of law. Shields, 882 P.2d at 653.

2. The determination of attorney's fees is "within the sound discretion of the trial court, and will not be overturned unless there is a showing of a clear abuse of discretion." Equitable Life & Casualty Ins. Co. v. Ross, 849 P.2d 1187, 1193 (Utah Ct. App. 1993) citing Dixie State Bank v. Bracken, 764 P.2d 985, 988 (Utah 1988). In addition, this Court "'will presume that the discretion of the trial court was properly exercised unless the record clearly shows to the contrary.'" Equitable, 849 P.2d at 1193, (quoting Goddard v. Hickman, 685 P.2d 530, 534-35 (Utah 1984)(quoting State ex rel. Road Comm's v. General Oil Co., 22 Utah 2d 60, 62, 448 P.2d 718, 719 (1968)).

STATEMENT OF THE CASE

Nature of the Case

This is an appeal from an oral order by Judge Fuchs wherein he denied Mabey's attorney's fees in defending the Motion to Set Aside the Judgment. (Appellant's Opening Brief, Ex. A).

SUMMARY OF THE ARGUMENT

The Court of Appeals lacks jurisdiction to hear this appeal. Utah law is clear that an appealable order must be in written

form and signed by the judge. In this case, the written order appealed from does not even mention an award of attorney's fees. Therefore, this case is not properly before the Court of Appeals and should be dismissed.

Even if the Court of Appeals finds that it has jurisdiction, the judgment of the trial court must still be affirmed because the trial judge did not abuse his discretion in denying Mabey's attorney's fees. The trial judge properly determined that the Motion to Set Aside the Judgment was not brought in bad faith and neither the contract nor the November 22, 1993 judgment contemplated awarding attorney's fees for the motion to set aside the judgment.

In addition, the trial judge did not abuse his discretion by denying Mabey's request for attorney's fees based on the November 22, 1993 Judgment where the language in the contract only allowed for attorney's fees in "collecting" on the judgment.

ARGUMENT

- I. THIS COURT LACKS JURISDICTION TO HEAR THIS APPEAL BECAUSE THE ORDER APPEALED FROM WAS NEVER PUT IN WRITING AND SIGNED BY THE TRIAL JUDGE.

When an appeal is brought before Utah appellate courts from an oral order that was never signed by the trial court, the appellate court is precluded from hearing the appeal and the appeal must be dismissed for lack of jurisdiction. In this case,

there is no final order, prepared in writing, and signed by the trial judge that decides the issue of attorney's fees on the Motion to Set Aside the Judgment.

In Shields, 882 P.2d 650 (Utah 1994), the court restated its old rule that "'an unsigned minute entry does not constitute an entry of judgment, nor is it a final judgment for purposes of [appeal].'" Id. at 653, citing Wilson v. Manning, 645 P.2d 655, 655 (Utah 1982); accord State v. Crowley, 737 P.2d 198, 198-99 (Utah 1987); South Salt Lake v. Burton, 718 P.2d 405, 406 (Utah 1986); Steadman v. Lake Hills, 20 Utah 2d 61, 63, 433 P.2d 1, 3 (1967); Hartford Accident & Indem. Co. v. Clegg, 103 Utah 414, 419, 135 P.2d 919, 922 (1943).

In Shields, the plaintiff, among other things, was challenging a bench ruling in favor of defendant's motion for summary judgment. The bench ruling appeared only as an unsigned minute entry. The court held that because the ruling was never signed, there was not a "final order or judgment by [the trial judge] to be considered." Shields 882 P.2d at 653.

The situation in this case is very much like that in the Shields case cited above. Nowhere in the June 6, 1994 Order, prepared by attorney's for the plaintiff, is there a finding of fact or an order of the Court denying Mabey's attorney's fees and costs. (Appellant's Opening Brief, Ex. C). Therefore, this Court lacks jurisdiction to hear this appeal and it should be dismissed.

II. THE TRIAL COURT'S DENIAL OF ATTORNEY'S FEES SHOULD BE AFFIRMED BECAUSE THE CONTRACT DID NOT CONTEMPLATE AN AWARD OF ATTORNEY'S FEES ON THE MOTION TO SET ASIDE THE ORDER.

Even if this Court finds that it has jurisdiction to decide this appeal, the trial court's decision not to award attorney's fees should be affirmed. Attorney's fees are properly awarded when they are awarded pursuant to activities attributable to successfully enforcing contractual rights within the terms of the agreement. In this case, the provisions of the contract do not allow for attorney's fees to be awarded on the motion to set aside the judgment.

In Traynor v. Cushing, 688 P.2d 856 (Utah 1984), the court stated that "a party is entitled only to those fees attributable to the successful vindication of contractual rights within the terms of their agreement." Id. at 858. In the instant case, the trial court correctly awarded attorney's fees in accordance with the terms of contract on the November 22, 1993 Order. (Appellant's Opening Brief, Ex. B). However, Judge Fuchs did not abuse his discretion by not awarding attorney's fees to Mabey in defending the motion to set aside the judgment because the provision of the contract allowing for attorney's fees did not apply to matters outside of the contract.

The contract states that "[i]n the event of non-payment, Client agrees to pay all resulting collection cost, court cost and reasonable attorney's fees." (Appellant's Opening Brief, Ex.

D). Judge Fuchs correctly told Mabey that "you have your judgment and you have your fees in your judgment, but I'm not going to award any additional fees." (Appellant's Opening Brief, Ex. A). Judge Fuchs did not abuse his discretion because the motion to set aside the judgment did not result from non-payment but was a motion on the judgment and had no relation to the contract. Therefore, attorney's fees were properly disallowed on the motion to set aside the judgment and the decision of the trial court should be affirmed.

III. MABEY IS NOT ENTITLED TO AN AWARD OF ATTORNEY'S FEES PURSUANT TO THE NOVEMBER 22, 1993 JUDGMENT.

The November 22, 1993 Judgment only allowed for "attorney's fees expended in collecting said judgment. . . ." (Appellant's Opening Brief, Ex. B)(emphasis added). Defending the motion to set aside the judgment should not be considered "collecting" the money awarded in the judgment. Judge Fuchs was correct, therefore, in refusing to award attorney's fees based on the November 22, 1993 Judgment and so his denial of attorney's fees should be affirmed.

CONCLUSION

This Court lacks jurisdiction to hear this appeal. Because there is no final order signed by the trial judge as to the issue of attorney's fees, this appeal is not properly before this Court

and must be dismissed.

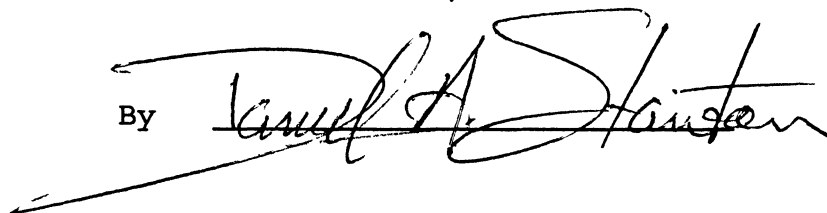
Even if this Court finds that it has jurisdiction to hear this appeal, the judgment of the trial judge should be affirmed because he did not abuse his discretion in denying Mabey's request for attorney's fees when the contract did not provide for attorney's fees on the motion to set aside the judgment.

Additionally, the trial judge did not abuse his discretion by denying Mabey's request for attorney's fees based on the November 22, 1993 Judgment. Therefore, the judgment of the trial court should be affirmed in all respects and Mabey's request for attorney's fees on this appeal should be denied.

RESPECTFULLY SUBMITTED this 11 day of April, 1995.

ARON STANTON, P.C.

By

A handwritten signature in black ink, appearing to read "Aron Stanton", written over a horizontal line. The signature is stylized and cursive.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that two true and correct copies of the foregoing Brief of Appellees Stanley L. Wade and Janet B. Wade were mailed, postage prepaid, this 11 day of April, 1995, to:

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By 