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MBNA America Bank, N.A. v. Donn Wiliams : Reply Brief

Utah Court of Appeals

R. Bradley Neff; Tefton J. Smith; Attorneys for Plaintiff.
John C. Heath; Paul H. Johnson; Counsel for Defendant/Appellant.

IN THE UTAH COURT OF APPEALS

MBNA AMERICA BANK, N.A.,	)	
Plaintiff/Appellee,	)	
vs.	)	Docket No. 20060073-CA
DONN WILLIAMS,	)	
Defendant/Appellant.	)	

REPLY BRIEF OF APPELLANT

Appeal from the Fifth Judicial District Court, Washington County
Case No. 050500394, Honorable James L. Shumate

R. Bradley Neff (#5325)
Tefton J. Smith (#A10083)
P.O. Box 1128
Sandy, Utah 84091-1128
Telephone: (801) 571-5151
Counsel for Plaintiff/Appellee

JOHN C. HEATH, PLLC
Paul H. Johnson (#4856)
P.O. Box 1173
Salt Lake City, Utah 84110
Telephone: (801) 297-2494
Counsel for Defendant/Appellant

ORAL ARGUMENT REQUESTED

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Paul H. Johnson (#4856)
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I. WILLIAMS PROPERLY SERVED HIS MOTION FOR SUMMARY JUDGMENT ON MBNA; FURTHERMORE, BECAUSE MBNA DID NOT MAKE ANY OBJECTION CONCERNING THE ALLEGED UNTIMELY FILING OF SUCH MOTION WITH THE TRIAL COURT, MBNA WAIVED ANY RIGHT IT MAY HAVE HAD TO OBJECT TO THE ALLEGED UNTIMELINESS OF THE FILING OF SUCH MOTION.

MBNA has argued that Williams did not properly serve his Motion for Summary Judgment, and therefore, MBNA had no legal obligation to respond to such motion. However, MBNA's argument misconstrues the facts of the case and is without merit.

As has been pointed out to the Court previously, Williams served his Motion for Summary Judgment on MBNA by serving such motion by certified mail upon MBNA's attorneys on December 13, 2004 (R. 19-24, 50). Furthermore, MBNA concedes that it received Williams' motion on December 15, 2004. (See, Appellee's Brief, page 5.) URCP Rule 5(b)(1) states the following concerning service of pleadings:

> "Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing a copy to the last known address or, if no address is known, by leaving it with the clerk of the court."

Based on the facts in the record, and the admission by MBNA of receipt of Williams' Motion for Summary Judgment, it is clear that Williams complied with URCP Rule 5(b)(1) concerning service of his Motion for Summary Judgment by mailing a copy of such motion to MBNA's attorneys.

It is also clear from the language of URCP Rule 7 that MBNA had an obligation to respond to such motion within ten days after the motion was ***served*** on MBNA. URCP 7(c)(1) states the following in relevant part: "Within ten days after ***service*** of the motion and supporting memorandum, a party opposing the motion shall file a memorandum in opposition." (Emphasis added.)

The gist of MBNA's argument appears to be that Williams did not timely ***file*** his Motion for Summary Judgment, rather than that he did not properly ***serve*** such motion. The record reflects that Williams did file his Motion for Summary Judgment on December 13, 2004, but he filed it with the Fifth District Court—rather than with the Third District Court, wherein MBNA's Petition to Confirm Arbitration Award had been filed (R. 19). The original of Williams' Motion for Summary Judgment was returned to him by the clerk of the Fifth District Court, undocketed (R. 8, 9, 18, 19 and Judgment Roll and Index). Then, after MBNA filed a motion to change

venue on February 14, 2005, and the case file was transferred to the Utah Fifth District Court on March 14, 2005, Williams re-filed the original of his Motion for Summary Judgment with the clerk of the Fifth District Court on April 26, 2005 (R. 1, 2, 19-24).

Williams' Motion for Summary Judgment was filed timely with the trial court for two reasons. First of all, Williams' motion was filed with the clerk of the court for the Fifth District Court on December 13, 2004—the same date on which it was served on MBNA by mailing. URCP Rule 5(e) is the Utah procedural rule that governs the filing of pleadings in civil cases, which states the following in relevant part: "*Filing with the court defined.* The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court." The language of URCP 5(e) does not specifically require pleadings to be filed in the correct venue of the district court. Furthermore, Williams is not aware of any other Utah statutory or case law that would indicate that Williams' filing of the motion with the Utah Fifth District Court was not a valid filing.

Conversely, the federal courts actually have a statute (28 U.S.C. § 1631) that requires a court to transfer pleadings to the proper court, if filed with a federal court that does not have proper jurisdiction. *See*, *Paul v. Immigration and Naturalization Service*, 348 F.3d 43, 44-46 (2d Cir. 2003);

see also, *Lucaj v. Gonzales*, 425 F.3d 203, 205 (2d Cir. 2005). Also, at least one state appellate court has held that minor defects in a pleading should not cause a court clerk to reject the filing of the pleading. *See*, *Rojas v. Cutsforth*, 79 Cal. Rptr. 292 (Cal. App. 1998). Finally, the United States Supreme Court has held that pro se litigants should be held to less stringent standards than attorneys concerning pleadings. *See*, *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 596 (U.S. 1972). Based on the foregoing, the Appellate Court should rule that Williams' Motion for Summary Judgment was filed on December 13, 2004.

Secondly, under the circumstances of the case, sufficient evidence existed for the trial court to find (in its exercise of discretion) that Williams "re-filed" his Motion for Summary Judgment in a timely manner. URCP Rule 5(d) requires a pleading to be filed "with the court either before or within a reasonable time after service." In addition, Utah case law dictates that the issue of what constitutes a reasonable time for filing a pleading is a matter within the discretion of the trial court. *See, State Bank of Sevier v. American Cement & Plaster Co.*, 10 P.2d 1065, 1067 (Utah 1932); *Culmer v. Caine*, 61 P. 1008, 1011 (Utah 1900).

In this case, the following considerations supported a finding by the trial court that Williams' re-filed his motion in a timely manner: 1) Williams

was a pro se litigant; 2) MBNA confused Williams concerning the proper venue for filing his motion by placing an erroneous heading on its Petition to Confirm Arbitration Award; 3) the trial court further confused Williams by returning his original filing to him; 4) thereafter, MBNA filed a motion to change venue, and venue of the case was transferred to the Fifth District Court on March 14, 2005; 5) Williams re-filed his motion on April 26, 2005, six (6) weeks after venue was transferred and 29 days before he filed his Notice to Submit for Decision (on May 25, 2005).

Finally, MBNA did not object to the alleged untimely filing of Williams' Motion for Summary Judgment at the trial court level, and therefore, waived any objection it might have had to such filing. *See, Evans v. Humphrey*, 5 P.2d 545, 548 (Idaho 1931). Without citing any supporting law, MBNA argued that it was relieved of its duty to respond to Williams' motion, because of the alleged untimely filing of such motion. Yet, Williams was not prevented by any person or any rule of law from objecting to the alleged untimely filing of such motion. The proper procedure would have been for MBNA to file a motion to strike Williams' motion, based on the alleged untimely filing of such motion. *See, Split Rock Hardwoods, Inc. v. Lumber Liquidators, Inc.*, 646 N.W.2d 19, 29-30 (Wis. 2002). However,

MBNA did not take any action whatsoever to object to such untimely filing in the trial court, and therefore, waived any right it had to do so.

Based on the foregoing, it is clear there is no merit to MBNA's arguments that Williams did not properly serve his Motion for Summary Judgment, and that MBNA was relieved of its duty to respond to such motion.

II. BECAUSE MBNA, AS A MATTER OF LAW, COULD NOT SATISFY THE LEGAL STANDARD FOR VACATING A JUDGMENT ON THE BASIS OF MISTAKE, INADVERTENCE, SURPRISE OR EXCUSABLE NEGLECT BASED ON THE FACTS BEFORE THE TRIAL COURT, THE APPELLATE COURT CAN FIND THAT THE TRIAL COURT ABUSED ITS DISCRETION, EVEN THOUGH THE TRIAL COURT MADE NO FINDINGS CONCERNING ITS ORDER TO VACATE THE SUMMARY JUDGMENT.

MBNA has argued that the trial court had broad discretion in determining whether to vacate a summary judgment, and therefore, did not commit reversible error in vacating Williams' summary judgment. MBNA further argued that the trial court did not make findings concerning its ruling to vacate Williams' summary judgment, and therefore, the Appellate Court cannot determine whether the trial court abused its discretion in its ruling.

MBNA's arguments are without merit. Even though the trial court had broad discretion in determining whether to set aside the summary

judgment, it still had to abide by the applicable standard of law in doing so. In this case, as has been explained in detail in Williams' Appellate Brief, in order to prevail on a motion to vacate a judgment based on mistake, inadvertence, surprise or excusable neglect, the moving party must demonstrate that its actions were caused by circumstances beyond the movant's control, rather than by the actions of the movant that could have been avoided by a reasonably prudent person under similar circumstances. (See, Brief of Appellant, pages 18-20.) Also, as has been explained in detail in Williams' Appellate Brief, as a matter of law, based on the facts of the case, MBNA could not satisfy the applicable legal standard. (See, Brief of Appellant, pages 20-27.)

The only basis asserted by MBNA for setting aside the summary judgment was mistake, inadvertence, surprise or excusable neglect (R. 77-81, 101-103). Whereas, as a matter of law, MBNA could not satisfy the applicable legal standard for setting aside a judgment based on mistake, inadvertence, surprise or excusable neglect, the only proper exercise of the trial court's discretion was to deny MBNA's motion to vacate Williams' summary judgment. Accordingly, regardless of whether the trial court made findings concerning its order vacating Williams' summary judgment, it is clear that it abused its discretion in doing so.

III. REGARDLESS OF WHETHER THE HEARING HELD BY THE TRIAL COURT SHOULD BE CONSTRUED TO BE A MOTION HEARING OR A NON-JURY TRIAL, AT A MINIMUM, THE TRIAL COURT WAS REQUIRED TO ISSUE A BRIEF WRITTEN STATEMENT OF THE GROUNDS FOR ITS DECISION.

URCP Rule 52(a) states that a trial court "shall issue a brief written statement of the ground for its decision" on all motions granted under Rules 12(b) and 56 when the motion is "based on more than one ground." In this case, Williams place several legal and factual issues before the court on December 6, 2005, through his Motion to Strike Arbitration Award and Motion for Summary Judgment (R. 10-24, Judgment Roll and Index). MBNA disputed the merits of Williams' motions, but also argued that Williams did not timely file his Motion to Vacate Arbitration Award, and therefore, MBNA's Motion to Confirm Arbitration Award—the equivalent of a URCP Rule 12(b) or Rule 56 motion—could be granted solely on that basis, without considering the merits of Williams' motions (Tr. pp.10-15).

UCA § 78-31a-106(2) states that a motion to vacate arbitration award can be filed in a pending action concerning an agreement to arbitrate, or in a separate action—but if filed in a separate action, the motion must be served in the same manner as a summons. In this case, Williams served MBNA's agents for service—its attorneys in the above-entitled action—with his

Motion to Vacate Arbitration Award by certified mail, and such attorneys signed a document indicating receipt (R. 50). URCP Rule 4(d)(2)(B) allows for service in that manner. Furthermore, a case should be deemed to have been commenced at the time it was filed with the clerk of the trial court, even if no filing fee was paid at that time. *Dipoma v. McPhie*, 29 P.3d 1225, 1229 (Utah 2001). Payment of a filing fee was never an issue in this case, because no filing fee was ever assessed to Williams concerning his motion.

Other than the proof of service of MBNA's Petition to Confirm Arbitration Award—served on December 7, 2004—there was no evidence in the court record of when Williams first ***received*** the Arbitration Award (R. 4-6, 9). If Williams first received the Award on December 7, 2004, and filed his motion to vacate the award on December 13, 2004, his motion was timely filed—within 90 days of ***receipt*** of the Arbitration Award.

Based on the foregoing, it is clear the court could have based its decision either on a ruling that Williams' Motion to Vacate Arbitration Award was not timely filed or on a ruling that such motion had no merit. Accordingly, at a minimum, the Appellate Court should remand the case to the trial court to make a written ruling concerning its decision, regardless of whether the hearing held on December 6, 2005, should be construed to be a motion hearing or a non-jury trial.

CONCLUSION

For the foregoing reasons, the Appellate Court should reverse the trial court's Order Vacating Judgment Award entered on September 6, 2005. In addition, the Appellate Court should either vacate or remand the trial court's Order Confirming Arbitration Award entered on December 16, 2005, because the trial court failed to make any formal ruling or findings of any kind whatsoever in support of such Order.

DATED this 21st day of August, 2006.

JOHN C. HEATH, PLLC

By: _____
Paul H. Johnson, Esq.
Attorney for Appellant/Defendant
Launale A. Williams

CERTIFICATE OF SERVICE

I hereby certify that I caused two (2) true and correct copies of the foregoing REPLY BRIEF OF APPELLANTS to be served by First Class U.S. mail, postage prepaid, on this 21st day of August, 2006, to the following counsel of record:

R. Bradley Neff, Esq.
Tefton J. Smith, Esq.
P.O. Box 1128
Sandy, UT 84091-1128