

1995

Paul Hatch dba P.H. Properties v. Kevin Rogan dba Sierra Properties : Reply Brief of Appellant

Utah Court of Appeals

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ARGUMENT

A. Introduction

A reading of the principal briefs filed for both parties shows that the issues are adequately framed. Appellant will not duplicate the arguments made in his original brief but will, in the interest of time, make a summary response to the points raised by the appellee.

B. The Judgment Should Be Set Aside for Excusable Neglect

Hatch argues in his brief that the summary judgments entered should remain in place because there is evidence that Rogan neglected to protect his interests. This argument begs the question at issue under Rule 60(b) of whether the neglect was excusable.

Rogan fully acknowledges that the judgments were entered because certain procedural steps were not taken to protect his interest. There is no factual issue about what he did or did not do procedurally. The issue presented is whether, under the law, failure to act was excusable. The very nature of a Rule 60(b)(1) motion is that the party making the motion will always be subject to the accusation that he failed to act in a particular way thus leading to a judgment. The argument made by Hatch avoids a discussion of the applicable standard of review for the circumstances by just stating a conclusion.

As Rogan points out in his principal brief, motions to set aside judgments may be granted where there is a showing of good faith, the default resulted from a genuine mistake, and there is a

showing of a potentially meritorious defense. May v. Thompson, 677 P.2d 1109 (Utah 1984); Erickson v. Schenkers International Forwarders, Inc., 882 P.2d 1147 (Utah 1994). Rogan has shown that he meets this standard by taking affirmative steps to protect himself and then suffered judgments on the pending motions because he relied erroneously on the representations of a court clerk. An examination of the record described in Rogan's primary brief shows that there was always forward movement on his part to address the problem once he became aware there was a problem.

C. Judgment on the Counterclaim Should be Set Aside

Again, Rogan does not here repeat in detail the arguments he makes in his principal brief. The responsive brief by appellee Hatch discusses both personal and subject matter jurisdiction. A reading of the argument made thereunder shows that Hatch fails to create a substantive argument in opposition.

The discussion by Hatch of personal jurisdiction is without legal effect here. Rogan does not challenge the personal jurisdiction of the circuit court over him. As Hatch himself points out, subject matter jurisdiction is a separate consideration from personal jurisdiction. A trial court must have both personal and subject matter jurisdiction. State v. Bickford, 672 P.2d 607 (Kan. 1983). Failure to have complete jurisdiction deprives the court of the authority to enter an order. Davis v. State, 813 P.2d 1178 (Utah 1991); Matter of Estate of McLaughlin, 754 P.2d 679 (Utah App. 1988).

Hatch cites no legal authority contrary to Rogan's argument

that the circuit court lacked subject matter jurisdiction because the counterclaim exceeded \$20,000. Instead, Hatch constructs an argument that because the circuit court had personal jurisdiction and because it had jurisdiction up to \$20,000, somehow the court could enter a summary judgment on the counterclaim in the hundreds of thousands of dollars. The argument is illogical and ignores the fundamental principles that jurisdiction of the court is limited to that granted by constitution or statute. Matter of Estate of McLaughlin, Id.

The lack of subject matter (claims over \$20,000) jurisdiction remains unrefuted. At a minimum, the judgment on the counterclaim should be reversed.

CONCLUSION

Rogan has shown that this court should find the trial court abused its discretion in sustaining the summary judgment on the principal claim. Rogan has shown that he thought he had legal counsel and, when he discovered he did not, he appeared at the court, made an arrangement with the court clerk, and immediately hired current counsel when he learned that judgments were entered contrary to the representations of the court clerk. With public policy disfavoring resolutions of claims by default, the trial court should have set aside the summary judgment and allowed Rogan to respond.


Rogan has also shown without any contrary authority cited by the appellee that the circuit court was without jurisdiction to enter summary judgment on the counterclaim. Consequently, this

court should find that even if the neglect by Rogan was not excusable it was error to not set aside the summary judgment for lack of jurisdiction.

This court is respectfully requested to set aside the judgments entered and find there was no jurisdiction in the circuit court.

DATED this 13th day of June, 1995.

KIPP AND CHRISTIAN, P.C.



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MAILING CERTIFICATE

I HEREBY CERTIFY that on the 13th day of June, 1995, I caused two true and correct copies of the foregoing REPLY BRIEF OF APPELLANT to be mailed, postage prepaid, to the following:

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A handwritten signature in black ink, appearing to read "R. Wallace", is written over a horizontal line.

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