2006

Layne D. Hess, an individual v. Jody Johnston, an individual : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LAYNE D. HESS, an individual, Plaintiff/Appellant and Cross-Appellee, vs. JODY JOHNSTON, an individual, Defendant/Appellee and Cross-Appellant.	Appeal Case No. ~~20050030~~ 20060497 Trial Court No. 050919801

BRIEF OF CROSS-APPELLEE AND REPLY BRIEF OF APPELLANT

Appeal from the Final Order Dismissing Action with Prejudice of the Third District Court, in and for Salt Lake County, State of Utah. Dated April 25, 2006. Honorable J. Dennis Frederick

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Plaintiff/Appellant and Cross-Appellee,

Appeal Case No. 20050036

vs.

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JURISDICTION OVER APPEAL

This Court has jarisdiction over this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(j).

STATEMENT OF ISSUES ON CROSS-APPEAL AND STANDARD OF REVIEW

Did the district court err by ruling that there was no violation of Utah R. Civ. P. 11 and denying defendant's motion for sanctions?

A trial court's denial of Rule 11 sanctions is reviewed under a correction of error standard. Barnard v. Sutliff, 846 P.2d 1229, 1234 (Utah 1992); Morse v. Packer, 2000 UT 86, ¶16, 15 P.3d 1021.

STATEMENT OF THE CASE

This case arises from a failed engagement between Plaintiff Mr. Hess and Defendant Ms. Johnston. [R. at 2-6]. During the engagement period Mr. Hess incurred substantial expenses at Ms. Johnston's request and for her benefit, as well as, undergoing a vasectomy procedure. [R. at 2-6]. Following the termination of the engagement by Ms. Johnston, Mr. Hess filed a Complaint on November 5, 2005 in which Mr. Hess sought to recover half of the major costs incurred by Mr. Hess and for Ms. Johnston to pay for the cost of the reversal of Mr. Hess' vasectomy procedure. [R. at 1-9]. Mr. Hess' Complaint asserted claims for unjust enrichment, conditional gift, promissory estoppel, reasonable reliance, and breach of contract. [R. at 6-9].

On January 9, 2006, Defendant filed her Motion for Sanctions and Motion for Dismissal with Prejudice along with supporting memoranda. [R. at 15-32]. Defendant's motions essentially asserted that Mr. Hess' claims were barred by the Utah Supreme Court's decision in Jackson v. Brown, 904 P.2d 685 (Utah 1995), which held that Utah's cause of action for breach of an agreement to marry was abolished. [R. at 15-32]. Plaintiff filed a memorandum in opposition to Plaintiff's motions on January 27, 2006, and Defendant filed a reply memorandum on February 9, 2006. [R. at 34-54]. Following briefing, a hearing was held before the Honorable Dennis J. Frederick on April 10, 2006. [R. at 58, 88]. By its April 11, 2006 Minute Entry, the trial court issued its decision granting Defendant's Motion to Dismiss, but denying Defendant's Motion for Sanctions. [R. at 61-63]. The trial court signed a Final Order Dismissing Action with Prejudice on April 25, 2006. [R. at 64-65].

Plaintiff filed his Notice of Appeal of the Final Order Dismissing Action with Prejudice on May 25, 2006. [R. at 70-71]. Defendant filed her Notice of Cross-Appeal on May 31, 2006, by which Defendant seeks a reversal of the trial court's denial of Defendant's Motion for Sanctions. [R. at 72].

STATEMENT OF FACTS

No additional facts are necessary for purposes of this Brief of Cross-Appellee.

SUMMARY OF ARGUMENT

The trial court correctly denied Ms. Johnston's motion for Rule 11 sanctions. Mr. Hess' claims are warranted under existing law, or, at the very least, by a nonfrivolous

argument for the extension, modification, or reversal of existing law or the establishment of new law and, therefore, Rule 11 sanctions are inappropriate.

Contrary to Ms. Johnston's argument, the Utah Supreme Court's decision in Jackson did not abolish all possible causes of actions arising from the termination of an engagement to be married. Rather, the Court's decision in Jackson abolished a very narrow cause of action whereby a plaintiff could recover damages for the emotional injury caused by a terminated engagement, and seek to be put in the same financial position the plaintiff would have been had the parties married. Mr. Hess is not seeking either remedy. The Utah Supreme Court made it abundantly clear that it was not abolishing all possible claims that happen to arise from a terminated engagement. Accordingly, Mr. Hess' claims are warranted by existing law, or, at the very least, by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law and, therefore, the trial court's denial of Ms. Johnston's Motion for Sanction should be affirmed.

I. THE TRIAL COURT WAS CORRECT IN REFUSING TO IMPOSE SANCTIONS BECAUSE MR. HESS' CLAIMS SATISFY THE REQUIREMENTS OF RULE 11.

Regardless of whether Mr. Hess can prevail on his claims, sanctions pursuant to Rule 11 of the Utah Rules of Civil Procedure are inappropriate because Mr. Hess' claims are warranted under existing law, or, at the very least, by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. A trial court's denial of Rule 11 sanctions is reviewed under a correction of error standard.

Barnard v. Sutliff, 846 P.2d 1229, 1234 (Utah 1992); Morse v. Packer, 2000 UT 86, ¶16, 15 P.3d 1021. As set forth below, the trial court did not error in denying Ms. Johnston's motion for Rule 11 sanctions.

Rule 11 provides that:

> By presenting a pleading, written motion, or other paper to the court . . . an attorney or unrepresented party is certifying to the best of the person's knowledge, information, and belief, formed after a inquiry reasonable under the circumstances.
>
> . . .
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

Utah R. Civ. P. Rule 11(b)(2). Rule 11 further provides that if "the court determines that subdivision (d) has been violated, the court may . . . impose an appropriate sanction. . . ." Utah R. Civ. P. Rule 11(c) (emphasis added). Accordingly, in order for sanctions to be appropriate this Court must determine that Mr. Hess' claims were not warranted by existing Utah law or by a nonfrivolous argument for the extension, modification, or reversal of existing Utah law or the establishment of new law. However, even if this Court finds that the trial court erred on whether that standard has been met, sanctions are not mandatory.

A. Mr. Hess' Claims Are Warranted By Existing Law.

Simply put, the Utah Supreme Court's decision in Jackson v. Brown, 904 P.2d 685 (Utah 1995), abolishing the common law cause of action for breach of a promise to

marry, does not abolish all causes of action arising from the termination of an agreement to marry as argued by Ms. Johnston. In Utah, prior to the Jackson case, a cause of action existed for breach of a promise to marry, which allowed a plaintiff to "recover such amounts as will compensate [plaintiff] for the benefits lost or detriments suffered because of the breach, and the distress, mortification, mental suffering, and injury to [plaintiff's] affections which she has undergone in consequence thereof." Arbon v. Blyth, 179 P. 979, 979 (Utah 1919) (rejecting challenge to jury instruction describing the damages plaintiff was entitled to if the jury found that the defendant had breached his promise to marry). Furthermore, under the breach of promise to marry cause of action the successful plaintiff was "entitled to such a sum as would place [plaintiff] in as good a position presumably as [plaintiff] would have been in" had plaintiff married. Id. at 979-80. It is that cause of action that the Court in *Jackson* understandably rejected as being outdated contrary to public policy and not the proper vehicle to redress emotional loss. Jackson, 904 P.2d at 687.

The Court in Jackson, however, did not abolish all possible causes of actions arising from a cancelled engagement. In fact, the Court in Jackson goes out of its way to expressly state that, despite abolishing the breach of promise to marry cause of action, "no injury to a plaintiff, upon proper showing, goes unremedied" and that "no fundamental remedy is lost to this or any other plaintiff by our decision that breach of a promise to marry no longer exists." Id. (emphasis added). Justice Durham's statement that "any losses suffered because of [plaintiff's] reasonable reliance upon [defendant's]

promise to marry her (such as normal expenses attendant to a wedding) may be recoverable under a theory of reasonable reliance or breach of contract," simply suggests the types of causes of action that remain viable. Id. at 687. Associate Chief Justice Stewart's concurring opinion only objects to the last quoted sentence of Justice Durham's opinion by stating that the "issue should be addressed, in my view, only when it is properly presented to this Court and properly argued by the parties." Id. at 688 (A.C.J. Stewart concurring). Justice Stewart does not challenge Justice Durham's statement, but simply would leave the issue to be decided "when it is properly presented to this Court." Id.

Ms. Johnston completely ignores the fact that the court in Jackson affirmed the lower court's refusal to dismiss the plaintiff's intentional infliction of emotional distress cause of action, which arose from the defendant's cancellation of their engagement. Id at 687-88. In doing so, the Jackson court expressly rejected the very argument made by Ms. Johnston:

> [Defendant] argues that because [plaintiff's] claim of intentional infliction of emotional distress is based upon the same alleged acts as her claim of breach of promise to marry, "as one fails, so must the other." We disagree.

Id. at 688 (emphasis added). Accordingly, this court should reject Ms. Johnston's argument that any and all causes of action arising from the termination of an agreement to marry are barred by the Jackson case.

B. Mr. Hess' Claims Are Nonfrivolous.

At the very least, a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law can be made in support of Mr. Hess' claims. For a claim to be "nonfrivolous" under Rule 11, the claim does not need to be successful, it need only be based on a "reasonable opinion" formed after "conducting appropriate research" of the law. Barnard v. Sutliff, 846 P.2d 1229, 1236 (Utah 1992). Furthermore, "[t]he mere fact that the attorney's view of the law was wrong cannot support a finding of a rule 11 violation." Id.

Even if this Court determines that Jackson does in fact prohibit Mr. Hess' claims, sanctions against Mr. Hess are not warranted inasmuch as his claims are based on reasonable opinion formed after conducting appropriate research of the state of Utah law. It is clear that the Justices in Jackson, both in the main opinion and concurring opinion, intentionally left the door open as to claims arising from a termination of an engagement situation. 904 P.2d at 687-688. Accordingly, even if Mr. Hess is wrong, sanctions are by no means warranted.

CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's denial of Ms. Johnston's Motion for Sanctions.

REPLY BRIEF OF APPELLANT

ARGUMENT

To avoid repetition, Mr. Hess will only respond to a few of points raised by Ms. Johnston in her Brief of Appellee. First, as set forth above, Ms. Johnston's interpretation of the Jackson case is absolutely contrary to the express language and holding of that case and, therefore, should be rejected by this Court.

Second, Ms. Johnston makes much of the decisions of other jurisdiction, which are instructive at best, but certainly not controlling with this Court. Mr. Hess' intent in citing to non-Utah case law in his Appellate Brief was simply to demonstrate that, although there is very little Utah case law regarding claims relating to the termination of an engagement, such claims are not unusual and courts have relied upon various grounds for granting relief in similar situations, including for conditional gift, promissory estoppel, unjust enrichment, and breach of contract. *See, e.g.*, Tomko, Elaine M., Annotation, Rights in Respect of Engagement and Courtship Presents When Marriage Does Not Ensue, 44 A.L.R.5th 1 (2005). Obviously, as demonstrated by the Jackson case, the exact scope of such claims under Utah law is an open question. The fact remains that, as Justice Durham points out, "no injury to a plaintiff, upon proper showing, goes unremedied" and that "no fundamental remedy is lost to this or any other plaintiff by our decision that breach of a promise to marry no longer exists." Jackson, 904 P.2d at 687. Just because Mr. Claims are of first impression in Utah, does not mean that they lack merit.

Third, and finally, Ms. Johnston's appeal to public policy is misplaced. Mr. Hess does not dispute that a cause of action for breach of an agreement to marry, as pointed out in the Jackson case, is against public policy. Id. However, it does not follow that such claims as promissory estoppel and unjust enrichment are likewise against public policy just because they arise out of a terminated engagement. As is made clear in the Jackson case, despite the strong public policy that dictated the abolishment of the breach of an agreement to marry cause of action, the Supreme Court relied on an equally strong public policy to assure us that "no injury to a plaintiff, upon proper showing, goes unremedied" and that "no fundamental remedy is lost to this or any other plaintiff by our decision that breach of a promise to marry no longer exists." Id. Such policy is rooted in the basic tenants of fairness and accountability, and is fundamental to this State's judicial system.

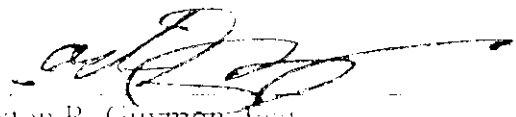
Mr. Hess is not seeking damages for a broken heart, nor is he seeking some financial windfall putting him in a better position than when he began. Rather, Mr. Hess is simply seeking basic fairness and accountability from Ms. Johnston. The bottom line is that Ms. Johnston caused Mr. Hess to incur substantial debt during their courtship for which Ms. Johnston should be required to take some responsibility. It certainly isn't fair that Ms. Johnston is able to simply walk away from an engagement leaving behind a wake of indebtedness.

CONCLUSION

For the foregoing reasons, as well as, the reasons set forth in Mr. Hess' Brief of Appellant, this Court should reverse the lower court's dismissal of Mr. Hess' complaint.

DATED this 28th day of November, 2006.

MILLER GUYMON, P.C.



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CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law firm of MILLER GUYMON, P.C., 165 Regent Street, Salt Lake City, Utah 84111, and that pursuant to Rule 26(a), Utah Rules of Appellate Procedure, a true and correct copy of the foregoing **BRIEF OF CROSS-APPELLEE AND REPLY BRIEF OF APPELLANT** was delivered to the following this 28th day of November, 2006, by:

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