

1995

Joseph M. Wisden v. Warren J. Granville : Brief of Appellee

Utah Court of Appeals

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Joseph M. Wisden.

Grant Woods; John E. Birkemeier.

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS DOCKET NO. 950486

Joseph M. Wisden,	:	
	:	
Plaintiff / Appellant,	:	Court of Appeals No. 950486
	:	Supreme Court No. 950237
v.	:	
	:	
Warren J. Granville,	:	
	:	Priority #15
Defendant / Appellee.	:	

BRIEF OF APPELLEE WARREN J. GRANVILLE

APPEAL FROM A SUMMARY JUDGMENT DISMISSAL, IN FAVOR OF THE
DEFENDANT WARREN J. GRANVILLE, BY THE FIFTH JUDICIAL DISTRICT
COURT IN AND FOR WASHINGTON COUNTY, STATE OF UTAH, THE HONORABLE
J. PHILIP EVES, PRESIDING.

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FILED
Utah Court of Appeals

NOV 01 1995

Marilyn M. Branch
Clerk of the Court

*Admitted Pro Hac Vice by
Order of the Fifth Judicial
Court in Saint George, Utah

~~**FILED**~~
~~Utah Court of Appeals~~
~~OCT 23 1995~~
~~Marilyn M. Branch~~
~~Clerk of the Court~~

IN THE UTAH COURT OF APPEALS

Joseph M. Wisden,

Plaintiff / Appellant,

v.

Warren J. Granville,

Defendant / Appellee.

Court of Appeals No. 950486

Supreme Court No. 950237

Priority #15

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IN THE UTAH COURT OF APPEALS

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	:	Supreme Court No. 950237
v.	:	
	:	
Warren J. Granville,	:	
	:	Priority #15
Defendant / Appellee.	:	

BRIEF OF APPELLEE WARREN J. GRANVILLE

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal was taken from a grant of Summary Judgment, in favor of the Defendant/Appellee, Warren J. Granville, on May 2, 1995. Pursuant to Utah Code Ann. § 78-2-2 (Supp. 1994), the Utah Supreme Court has appellate jurisdiction over this matter.

This matter was transferred to the Utah Court of Appeals for disposition, pursuant to the authority of the Utah Supreme Court. This court has jurisdiction to hear this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(K).

ISSUES PRESENTED UPON APPEAL

Plaintiff Joseph Wisden ("Wisden") presents two issues on appeal.

The first issue is whether the district court correctly granted summary judgment on Wisden's claim for False Arrest against Warren J. Granville, an Assistant Attorney General for the State of Arizona, on the ground of absolute immunity when the

activity at issue arose out of Granville's prosecution of Wisden in Arizona.

The second issue is whether the district court correctly granted summary judgment on Wisden's claim of fraud when he failed to present a prima facia case in support of this claim.

STANDARDS OF APPELLATE REVIEW

A lower court's determination that a grant of Summary Judgment is appropriate is reviewed de novo and "for correctness without deference to the trial court's ruling." Peterson v. Board of Education, 855 P.2d 241, 242 (Utah 1993).

RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

All relevant text of constitutional provisions, statutes, and rules pertinent to the resolution of the issue before the Court is contained in the body of this brief, or is set forth in the Wisden's Opening Brief.

STATEMENT OF THE CASE

A. Nature of the Case and Course of the Proceedings Below

Wisden brought suit on February 1, 1994, in the Fifth Judicial Court in Saint George, Utah, alleging that Defendant Warren J. Granville intentionally caused improper process to issue, resulting in Wisden's arrest, incarceration, extradition from Utah to Arizona, and criminal conviction in Arizona.

(Record, p.1, Complaint.) These events arose from the indictment

of Wisden on criminal charges for fraud in the State of Arizona. (Record, p.271, Indictment.

After Wisden filed an Amended Complaint (Record, p. 221, Amended Complaint), the Arizona Attorney General's Office moved for summary judgment, on behalf of Granville, based on absolute prosecutorial immunity. (Record, p.27, Defendant's Motion for Summary Judgment.) At or about the same time, Wisden also moved for summary judgment. (Record, p.419, Plaintiff's Motion for Summary Judgment.) The district court held a hearing on the issues raised in both summary judgment motions. (Record, p.455, Hearing on Motions for Summary Judgment.) On April 6, 1995, the district court, by memorandum decision, ordered Summary Judgment in favor of Defendant, Warren J. Granville. (Record, p.463, Memorandum Decision; Record, p.457, Order.)

Wisden filed a Notice of Appeal, on May 30, 1995. (Record, p.479, Notice of Appeal.) This case was transferred, for disposition by the Utah Court of Appeals, pursuant to an order by the Utah Supreme Court dated August 2, 1995.

B. STATEMENT OF RELEVANT FACTS

On December 15, 1988, in the Arizona Superior Court in and for the County of Maricopa County, Arizona, an Arizona grand jury indicted Joseph Michael Wisden (Plaintiff) for thirteen Felony counts of Fraudulent Schemes and Artifices, one Felony count of Attempted Fraudulent Schemes and Artifices, and one Felony count of Illegal Enterprise. (Record, p.3, Complaint; Record, p.271,

Indictment. On January 19, 1989, the Honorable Judge O'Toole of the Maricopa County (Arizona) Superior Court issued a warrant for Wisden's arrest. (Record, p.15, Warrant for Arrest.)

On August 23, 1990, the Washington County, Utah, Sheriff's Department arrested Wisden, and the Washington County Attorney filed a Fugitive Complaint. (Record, p.300, Fugitive Complaint No.901001238.) The State of Arizona, relying upon Wisden's statements that he would appear voluntarily, did not seek extradition. (Record, p.334, Affidavit of Warren J. Granville.) Instead, Wisden was allowed to post bail. He then was released from custody. (Id.)

When Wisden failed to appear in Arizona as he had promised, Arizona authorities contacted the police in Hurricane City, Utah. On February 15, 1991, Utah authorities arrested Wisden again, and a second Fugitive Complaint was filed. (Record, p.305, Fugitive Complaint No.911000305.) On March 6, 1991, the Honorable Judge Shumate of the Circuit Court in and for Washington County, Utah, dismissed the first Fugitive Complaint. (Record, p.307, Order of Dismissal.)

On March 14, 1991, the Governor of Arizona, Fife Symington, issued a Governor's Warrant for the extradition of the Plaintiff. (Record p.312, Arizona Governor's Warrant.) However, on March 21, 1991, before the Extradition Warrant was received by the Utah authorities, the Plaintiff requested and was granted a Writ of Habeas Corpus. Plaintiff was again released from all restraints imposed by the courts of Utah in the County of Washington.

(Record p.308, Order - Habeas Corpus.)

On August 26, 1991, pursuant to the outstanding extradition warrant, a Utah Governor's Warrant was served upon the Plaintiff. (Record p.313, Utah Governor's Warrant.) Finally, on September 6, 1991, the Plaintiff was remanded to the custody of the State of Arizona. At that time, the original arrest warrant was executed by the Maricopa County (Arizona) Sheriff's Office. (Record p.282, Warrant for Arrest.)

On February 18, 1992, a judge found Wisden guilty on 5 Felony counts of Fraudulent Schemes and Artifices, and 1 Felony count of Illegally Conducting an Enterprise in Maricopa County, Arizona, Criminal Cause no. 88-11353. (Record p.324, Minutes Dated 2-18-92.) The judge placed Wisden on probation for seven years and ordered him to pay restitution in the total amount of \$33,895.10. (Records p.335, Standard Terms of Probation.) Wisden appealed this decision, challenging the sufficiency of the evidence. The Arizona Court of Appeals affirmed both the criminal conviction and the sentences. (Records p.336, Memorandum Decision.)

SUMMARY OF ARGUMENTS

Wisden's first allegation, that Prosecutor Granville's actions constituted false arrest, was properly rejected on the ground of absolute immunity. When a prosecutor takes action pursuant to his duties, public policy and common law properly protect him from any civil lawsuit, frivolous or not. Without

this protection, prosecutors would be subject to harassing litigation by those, like Wisden, who are pursued by state authorities for their criminal acts.

The allegations here stem from Granville's legal attempts to secure Wisden's presence before an Arizona court to answer a criminal indictment. Despite Wisden's efforts to avoid facing charges, Granville eventually succeeded in securing Wisden's arrest and extradition to the Arizona courts, where the criminal justice system made Wisden answer for his crimes.

At all relevant times, Granville acted pursuant to his authority as a prosecutor for the Arizona Attorney General's Office to make Wisden available for prosecution. "If prosecutors are concerned with possible liability when they take the steps necessary to make a defendant available for prosecution, the decision whether or not to prosecute may be directly affected. And that is precisely the type of concern that absolute immunity seeks to foreclose." Pinaud v. County of Suffolk, 52 F.3d 1139, 1150 (2d Cir. 1995). Warren J. Granville is entitled to absolute immunity.

The district court also properly rejected Wisden's second assertion that Granville's actions constituted Fraud. Wisden's claim is based upon his inaccurate characterization of the arrest and extradition process. When an outstanding arrest warrant exists from a foreign jurisdiction, local authorities have probable cause to arrest the subject. Even without a warrant, the suspect can be taken into custody while the other state

institutes extradition proceedings. The outstanding warrant is not extinguished by an arrest, but remains in effect until the subject is in the custody of the jurisdiction that issued the warrant. Wisden's claim, that he was arrested under an expired warrant, is wrong.

Moreover, Wisden's argument, that Pace v. Parrish, 274 P.2d 273 (Utah 1952), should be expanded to fit the facts of this case, has no factual or legal merit. Pace clearly establishes the requirements for a *prima facie* showing of fraud. Wisden cannot establish the majority of the elements necessary to state a fraud claim. Furthermore, there is no basis in statute or case law for his assertion that fraud can be perpetuated vicariously through a third party's reliance on fraudulent misrepresentations. Because there is no basis for Wisden's fraud claim, this Court should affirm the lower court's summary judgment for Granville.

ARGUMENT

Point 1.

THE DISTRICT COURT CORRECTLY HELD THAT GRANVILLE'S ACTS WERE TAKEN PURSUANT TO HIS RESPONSIBILITIES AS AN ASSISTANT ATTORNEY GENERAL FOR THE STATE OF ARIZONA, THEREBY ESTABLISHING A COMPLETE DEFENSE BASED UPON ABSOLUTE PROSECUTORIAL IMMUNITY.

The principle of prosecutorial immunity dates back to the old English common law. The Supreme Court traced the history of this principle in Imbler v. Pachtman, 424 U.S. 409, 96 S. Ct. 984 (1976). Prosecutorial immunity is "predicated upon a considered

inquiry into the immunity historically accorded the relevant official and the interests behind it." Id. at 422, 96 S. Ct. at 990. These interests include "concern that harassment by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust." Id. at 424, 96 S. Ct. at 991. The Supreme Court found that these interests would not be adequately served by qualified immunity and, therefore, concluded that prosecutors must be afforded absolute immunity.

The Court reached this conclusion despite the realization that "such immunity does leave the genuinely wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty." Id. at 427, 96 S. Ct. at 993. To temper the onerous effect of its holding, the Court explicitly delineated the boundaries of the available immunity, limiting it to activities that are an "integral part of the judicial process." Id. at 431, 96 S. Ct. at 995. The Supreme Court concluded that absolute immunity properly extends to prosecutors "in initiating a prosecution and in presenting the state's case" Id. at 432, 96 S. Ct. at 995.

Subsequent decisions have struggled to identify when a prosecutor is acting as an advocate, as an administrator, or as an investigator. As a result, courts have determined that if a prosecutor's actions "are encompassed within 'the preparation necessary to present a case, [they] are immunized as involving

the prosecutor's advocacy functions." Rose v. Bartle, 871 F.2d 331, 334 (1989), (citing, Mevers v. Morris, 810 F.2d 1437, 1449 (8th Cir.), cert. denied, 108 S. Ct. 97 (1987)).

Here, Wisden argued below that the trial court allegedly failed to follow one segment of the holding of Weathers v. Ebert, 505 F.2d 514, 517 (4th Cir. 1974), that "[m]aking an arrest is a police function, not a judicial one" However, in making this argument, Wisden fails to recognize the important distinction between simply obtaining authorization for an arrest and actually making the arrest. While physically taking someone into custody is a police function, obtaining the legal authorization to do so falls within the ambit of advocacy. Wisden has focused erroneously on the arrest, when the true issue he raises about the prosecutor's actions concerns the validity of the arrest warrant, at the time it was served.

Securing an uncooperative criminal defendant's presence and requiring him to answer legitimate charges that have been brought against him in another state is a necessary step in the prosecution of a criminal case. Warren Granville, as the prosecutor, merely requested the entry of a valid felony arrest warrant into the computers of the National Crime Information Center (NCIC). Wisden's extradition from Utah was a required element of the initiation of Arizona's prosecution of Wisden.¹

¹ When he was arrested in Utah, Wisden instituted a series of tactics designed to delay his return to Arizona. He initially agreed to waive extradition and appear voluntarily, but failed to honor his promise. When Wisden failed to appear, the warrant was again entered into the NCIC computer. Wisden was rearrested and

Contrary to Wisden's assertions, "[o]ne of the most important duties of a prosecutor pursuing a criminal proceeding is to ensure [the] defendants presen[ce] at trial." Ehrlich v. Guliani, 910 F.2d 1220, 1223 (4th Cir. 1990). "If prosecutors are concerned with possible liability when they take steps necessary to make a defendant available for prosecution, the decision whether or not to prosecute may be directly effected. And that is precisely the type of concern that absolute immunity seeks to foreclose." Pinaud, 52 F.3d at 1150.

Wisden's only other argument⁷ is based on dicta contained in a footnote of a concurring opinion in Imbler, 424 U.S. at 441 n.6, 96 S. Ct. at 1000 n.6. In that footnote, Justice White, joined by Justices Brennan and Marshall, explained that the majority's opinion appeared to unnecessarily expand absolute prosecutorial immunity. The three Justices expressed concern that a broadly interpreted absolute prosecutorial privilege would foreclose legitimate actions for intentional constitutional violations, especially subornation of perjury and the withholding of exculpatory evidence. However, the dissent conceded that even where "the prosecutor's decision to prosecute was malicious and without probable cause - at least where there is no independent allegation that the prosecutor withheld exculpatory information . . . the judicial process is better served by absolute immunity than by any other rule." Imbler, 424 U.S. at 438, 96 S.Ct. at

the extradition proceedings were instituted. (Record p.33, Affidavit of Warren Granville.)

999. Under this standard, the court below correctly granted summary judgment.

Point 2.

WISDEN'S ASSERTION THAT THE PARAMETERS OF PACE V. PARISH SHOULD BE EXPANDED TO FIT THE FACTS OF THIS CASE, HAS NO FACTUAL OR LEGAL MERIT. FURTHER, THERE IS NO LEGAL BASIS FOR WISDEN'S ASSERTION THAT FRAUD CAN BE PERPETUATED VICARIOUSLY VIA THE ACTS OF GOVERNMENT AGENTS.

Wisden's second issue alleges that Warren Granville committed fraud by requesting that an executed arrest warrant be entered into the NCIC computer. However, the arrest warrant issued by the Superior Court of the State of Arizona remained valid until Arizona secured custody of Wisden. The trial court, therefore, properly rejected this theory of liability.

"The general rule of law in this situation is that a warrant of arrest issued in one state can not be executed outside the boundary of the issuing state. . . . [However] where an officer of the non-issuing state has knowledge of the warrant, probable cause exists for the arrest in that state." State v. Everett, 110 Ariz. 429, 431, 520 P.2d 301 (1974), cert. denied, 419 U.S. 880 (1974) (citations omitted). The mere existence of a felony arrest warrant from another jurisdiction constitutes probable cause for arrest without a warrant. After taking a fleeing felon into custody, the arresting authority may hold the felon for a reasonable time to allow the state that issued the warrant to institute extradition proceedings. Utah Code Ann. §§ 77-30-14 and 77-30-15 (Uniform Extradition Act).

Wisden's claim that the Arizona arrest warrant was executed at the time of his initial arrest, and was therefore invalid at the time of his second arrest, is erroneous. Here, each time Utah authorities took Wisden into custody, it constituted an arrest without a warrant. The Utah authorities acted on information from the NCIC computer because Arizona had an outstanding arrest warrant for Wisden. This action was consistent with the Uniform Extradition Act. Id. Throughout the events in question, the Arizona warrant remained valid. Prosecutor Granville could not commit fraud because the warrant, entered into the NCIC computer, remained valid.

Additionally, there is no legal basis for Wisden's assertion that he was the victim of "fraud by proxy." No such cause of action exists.² The only theory Wisden offers on this point is his suggestion that the concept of agency can be expanded to cover the present situation. Under this theory, Wisden would hold Granville responsible for the allegedly fraudulent acts of Utah law enforcement officials. However, there is simply no basis for this proposition under statute or case law.

Furthermore, even if Wisden's theory were viable, he would still be required to present a prima facie case for fraud. The "[e]lements of actionable fraud to be proved are a false representation of existing material fact, made knowingly or recklessly, for the purpose of inducing reliance thereon, upon

² Wisden's claim that he was unable to research this point is irrelevant to this proceeding.

which plaintiff reasonable relies to his injury." Pace v. Parrish, 274 P.2d 273 (Utah 1952). Wisden has failed to offer the trial court any evidence that there was a knowing or reckless false misrepresentation of fact, by Warren Granville or anyone else. To do so, Plaintiff would need to offer proof that the arrest warrant was invalid, that the party knew that the arrest warrant was invalid, and that the party chose to pursue the warrant anyway. Further, Wisden would have to show that the party intended to induce Wisden's reliance on the fraudulent misrepresentations. Finally, Wisden would have to show that he suffered injury.

Wisden did not--and cannot--meet any of these requirements. First, the warrant remained valid at all times. Second, neither Warren Granville, nor anyone else, intended to induce or actually induced any action by Wisden. Finally, Wisden did not suffer 'injury.' Any detriment that resulted from Wisden's appearance before the Arizona court was the result of his own criminal behavior, not any sinister scheme concocted by Warren Granville and Utah's law enforcement officials.

Wisden's fraud claim has no merit. The summary judgment in favor of Warren Granville should be affirmed.

CONCLUSION

The district court's decision, to grant summary judgment to Warren Granville, should be affirmed. Because of the frivolous nature of the case, Appellee Warren Granville respectfully

requests attorney's fees for this appeal.

Dated this 23rd day of October, 1995.

GRANT WOODS
Arizona Attorney General

A handwritten signature in cursive script, appearing to read "John E. Birkemeier", is written over a horizontal line.


John E. Birkemeier
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CERTIFICATE OF MAILING

I hereby certify that on this 23rd day of October, 1995, I caused to be mailed, postage prepaid, two true and accurate copies of the foregoing BRIEF OF APPELLEE WARREN J. GRANVILLE to the following:

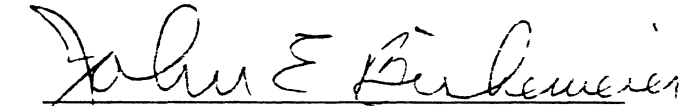
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CERTIFICATE OF MAILING

I hereby certify that on this 30th day of October, 1995, I caused to be mailed, postage prepaid, two true and accurate copies of the foregoing BRIEF OF APPELLEE WARREN J. GRANVILLE, copied on both sides of the page, to the following:

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