

1986

Utah Hay and Cattle Company v. Robert Holt, et al., Escalante Farms, INC. : Reply Brief

Utah Supreme Court

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BRIEF

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IN THE SUPREME COURT
OF THE STATE OF UTAH

20612

UTAH HAY & CATTLE COMPANY,)	
)	
Appellant-Plaintiff,)	
)	
vs.)	
)	
ROBERT HOLT, et al.,)	Appeal No. 20612
ESCALANTE FARMS, INC.,)	
)	Category No. 13 b.
Respondents-Defendants.)	

APPELLANT'S REPLY BRIEF

Appeal from the Judgment of the Fifth
District Court for Iron County
Hon. J. Harlan Burns

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Clark, Supreme Court, Utah

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Abbreviations

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Rules of Civil Procedure

Utah Rules of Civil Procedure
3, 7, 8, 52(a), and 58A

Treatise

American Jurisprudence 4 Am Jur 2d §97 4

List of Parties

Appellants: Utah Hay & Cattle Company

Respondents: Robert Holt and
Escalante Farms, Inc.

Appellant Utah Hay & Cattle Company files this reply brief to respond to the brief of appellees Robert Holt and Escalante Farms, Inc.

RESTATEMENT OF THE FACTS

Utah Hay incorporates by reference the statement of facts in appellant's brief, which facts were unchallenged and not controverted in Holt's brief.¹

The only issues on appeal pertain to the Utah Hay's personal property. The original complaint filed by Utah Hay dealt exclusively with a contract for real property.

Holt, the defendant, without any pleading, filed a motion to have Utah Hay's personal property removed from the ranch. The record reveals that when Holt filed his motion Utah Hay was not represented by counsel in that the Judge Burns had allowed Utah Hay's counsel to be withdrawn. R.49.

Further, Holt claims that the Judge Burns received evidence of personal service to Utah Hay (Holt's brief, p.4) but the record fails to disclose any facts or documentary evidence showing that any service was perfected for the motion.

¹ Holt elected to recite Holt's version fo the prior facts regarding the personal property, but Holt failed to cite any facts or refer to any pleading in the redord, which provides a basis for jurisdiction.

Thereafter on November 17, 1984, Judge Burns signed an order that Utah Hay remove its personal property within thirty days or the property would be deemed abandoned and required personal service of his order on Utah Hay. No findings of fact and no judgment accompanied the November 17, 1984 order when it was entered on December 7, 1984. The order requiring removal was served on Utah Hay on December 5, 1984.

Later Utah Hay requested that the Court stay the enforcement of the order entered December 7, 1984.²

On March 25, 1985, Judge Burns entered findings of fact and conclusions of law and denied Utah Hay's stay request. In paragraph 10 of the findings Judge Burns adopted, reaffirmed and ratified his order entered December 7, 1984.

Utah Hay appeals from the findings of fact and conclusions of law Judge Burns entered on March 25, 1985, and Utah Hay asserts that the District Court never had subject matter jurisdiction.

The following comment does not relate to any issues before the Court. Holt in his brief ballyhooes claims that Mr. Holt was struck by agents of Utah Hay. The recitation appears to be an attempt to inflame the Court against Utah Hay. Second in the record the only references to any striking are Holt's assertions which at best are self-serving. Third, Utah Hay has never had an opportunity to respond to Holt's assertions. (RB, p.4)

² Holt refers to this motion as a post judgment motion. His argument is that Judge Burns' order entered on December 7, 1984, was a judgment.

ARGUMENT

I

THE DISTRICT COURT LACKED JURISDICTION
BECAUSE HOLT FILED NO PLEADING TO CONFER
SUBJECT MATTER JURISDICTION

Without jurisdiction Judge Burns' order entered December 7, 1984, and the findings of fact ratifying the December 7, 1984 order entered on March 25, 1985, are void and a nullity.

Utah Hay previously argued in its brief that the District Court lacked jurisdiction. See AB, pp. 7-11. The gravamen of this argument is that no pleading was filed as required under Rules 7 and 8 of the Utah Rules of Civil Procedure (URCP) to confer jurisdiction of the Court.³ Further, Rule 3(a) URCP addresses the manner in which the legal process starts. It simply states: "A civil action is commenced (1) by filing a complaint, or (2) by the service of a summons ..." .

In U.S. vs. Choate 276 F2d 724 (5th Cir. 1960) the Court at 728 stated:

Before jurisdiction attaches in a particular "case", there must be a suit instituted according to the regular course of judicial procedure." Muskrat v. U.S. 1911, 219 U.S. 346, 356, 31 S. Ct. 250, 253, 55 L. Ed. 246. Jurisdiction must be properly invoked

In the instant matter jurisdiction was not properly invoked because Holt failed to file an appropriate pleading.

In Defreitas vs. Defreitas 398 S2d 991 (Fla. 1981) the case involved similar issues as present in the instant matter. In

³ Utah Hay need not even argue whether service on Utah Hay was properly effected as required under Rule 4, URCP. Nevertheless, the record is void of any proof of service.

Defreitas the claim was that a petition for modification of custody rights was insufficient pleading to support a change in child support. The Court stated at 992:

Florida law clearly holds that a trial court lacks jurisdiction to hear and determine matters which are not the subject of appropriate pleadings and notice.

In the instant matter no appropriate pleading exists to support any judicial action pertaining to Utah Hay's personal property.

In his brief, Holt makes no challenge to Utah Hay's argument that the District Court lacked jurisdiction or offers any countervailing authority to Utah Hay's argument that the District Court lacked jurisdiction.

II

ANY ORDER ISSUED WHEN THE DISTRICT COURT LACKED JURISDICTION IS VOID.

The District Court's lack of jurisdiction renders any orders void and a nullity. The District Court was without jurisdiction as to Utah Hay's personal property and any order pertaining to Utah personal property is void.⁴

In 4 Am Jur 2D at §97 it states the effect of a court acting

⁴ Holt makes a technical argument that Judge Burns order entered on December 7, 1984, is the final order and is nonappealable. Holt's argument ignores the findings of fact Judge Burns entered on March 25, 1985, which are the only findings of fact made under Rule 52(a). Usually findings are made in connection with a judgment entered under Rule 58A, URCP. Further, in the findings of fact at paragraph 10, Judge Burns reaffirms, incorporates and ratifies his order entered on December 7, 1984. Judge Burns' findings of fact are the final judgment and therefor appealable even under Holt's argument.

acting without jurisdiction:

The general rule is that the proceedings conducted or decisions made by a court are legally void where there is an absence of jurisdiction over the subject matter.

Any order of the District Court is void for lack of jurisdiction.

In Conant v. Deep Creek & Curlew Valley Irr. Co. 66 P 188 (Utah 1901) the Utah Supreme Court held that an order of an Idaho court which determined water rights in Utah was void because the Idaho court lacked subject matter jurisdiction.

It is fundamental that a court have jurisdiction for its findings, orders or judgments to have validity.

In the instant matter when District Court lacked subject matter jurisdiction, its order regarding Utah Hay's personal property is void and a nullity.

III

LACK OF JURISDICTION CAN BE RAISED FOR THE FIRST TIME ON APPEAL.

Utah Hay may properly raise the lack of subject matter jurisdiction as an issue for the first time on appeal.

The U.S. Supreme Court in Gainesville v. Brown Crummer Investment 277 U.S. 54, 72 L. Ed. 781, 48 S. Ct. 454, addressed the question of when jurisdiction can be considered by an appellate court. At 783, the Supreme Court quoting Grace v. American Cent. Ins. Co. 109 U.S. 278, 283, 27 L. Ed 932, 934, 3 S. Ct. 207, stated: "Jurisdiction should affirmatively appear,

and the question may be raised at any time." Whether the lower court had jurisdiction is an issued which may be advanced on appeal.

Holt does not argue that the question of jurisdiction cannot be raised on appeal. (RB pp. 10-13) Instead Holt argues that the constitutional arguments and other arguments of Utah Hay are not subject to review or should be affirmed. Holt's arguments are premised on the lower court having jurisdiction. The District Court's lack of jurisdiction causes all of Holt's arguments to fail.

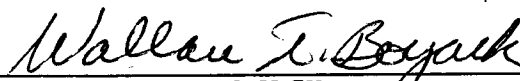
Once this Court determines there is no jurisdiction, this Court need not consider any other issues as that fundamental issue is dispoitive of all other issues. Nevertheless, the error and abuse of discretion arguments of Utah Hay are valid.

But, given the staus of the record, this Court can not find jurisdiction.

Conclusion

Utah Hay request that this Court declare the District Court lacked jurisdiction and to declare all actions of the District Court pertaining to the personal property of Utah Hay null and void.

Dated this 14 day of April, 1986.


WALLACE T. BOYACK
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Hay & Cattle Company

MAILING CERTIFICATE

I hereby certify that I mailed four true and correct copies of the foregoing Appellant's Reply Brief, postage prepaid, this 24 day of April, 1986, to the following person:

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