

SUPREME COURT OF UTAH

Dipoma v. McPhie

29 P.3d 1225 (Utah 2001) · No. No. 20000466 · Decided July 20, 2001

SUMMARY

The Utah Supreme Court reviews whether payment of a filing fee is a jurisdictional prerequisite to commencing a civil action under Utah Rule of Civil Procedure 3. The court holds that filing fees are not jurisdictional, but concludes that the plaintiff unreasonably delayed paying the fee after notice that her original check had been dishonored. The court therefore affirms dismissal of the complaint, while also noting that service was untimely under Rule 4.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Russon, Associate Chief Justice; Howe, Chief Justice; Durham, Justice; Durrant, Justice; Wilkins, Justice
JURISDICTION	Utah
DECIDED	July 20, 2001
DOCKET	No. 20000466
DISPOSITION	other
PROCEDURAL POSTURE	On certiorari, McPhie sought review of the Utah Court of Appeals' reversal of the district court's dismissal of Dipoma's complaint.
STANDARD OF REVIEW	On certiorari, the court reviewed the decision of the Utah Court of Appeals rather than the trial court. Because the issues involved questions of law concerning construction of statutes and rules, the court reviewed for correctness without deference.
PRECEDENTIAL VALUE	Published precedential opinion of the Utah Supreme Court
PARTIES	Brian McPhie v. Mary Ann Lucero Dipoma

TOPICS

- civil procedure
- statute of limitations
- service of process
- appellate procedure
- statutory interpretation

PRACTICE AREAS

- civil procedure
- torts

QUESTIONS PRESENTED

1. Whether payment of the required filing fee is a jurisdictional prerequisite to commencing a civil action under Utah Rule of Civil Procedure 3.
2. Whether Dipoma's failure to pay the filing fee within five months after notice that her original check had been dishonored was unreasonable as a matter of law and supported dismissal.
3. Whether the appellate court could affirm dismissal on the alternative ground that the filing fee was not paid within a reasonable time, despite that ground not having been raised before the trial court.
4. Whether Dipoma's complaint was independently subject to dismissal for failure to serve the summons and complaint within 120 days under Utah Rule of Civil Procedure 4.

HOLDINGS

1. Payment of the required filing fee is not a jurisdictional prerequisite to commencing an action under Utah Rule of Civil Procedure 3; an action is commenced when the complaint is filed with the court clerk.
2. Although payment of the filing fee is not jurisdictional to commencement, a litigant must pay the required fee within a reasonable time after notice that the original payment failed, and Dipoma's five-month delay was unreasonable as a matter of law under the circumstances.
3. An appellate court may affirm a judgment on any legal ground apparent from the record, even if the ground differs from the trial court's stated basis and was not raised or considered below, when the ground has been briefed and argued on appeal.
4. Because the action commenced when the complaint was filed, the 120-day service period began on that date; service approximately 275 days later violated Utah Rule of Civil Procedure 4 and independently subjected the complaint to dismissal without prejudice.

KEY QUOTATIONS

"In determining whether the payment of filing fees is a jurisdictional requirement for commencement of an action at the trial level, we must look to the plain language of rule 3 of the Utah Rules of Civil Procedure." (29 P.3d at 1228-29)

"In determining that filing fees are not a jurisdictional requirement for the commencement of an action at the trial level, the above courts have noted that "[t]o decide otherwise would eliminate reasonable reliance by parties on a [court clerk's] acceptance of a pleading," DiAntonio, 618 A.2d at 1184, and that "[t]he loss of a potentially valid cause of action is a rather harsh penalty for an oversight of this type." (29 P.3d at 1229)

"Accordingly, although we establish no bright-line rule for all cases, we hold that under the circumstances of this case, Dipoma's failure to pay the required filing fee for five months after she was notified that her original check had bounced was unreasonable as a matter of law." (29 P.3d at 1230)

FACTUAL BACKGROUND

Dipoma was injured in an automobile accident with McPhie on November 29, 1993. Five days before the four-year statute of limitations expired, she filed a complaint and submitted a \$120 personal check for the filing fee.

The check was returned for insufficient funds, and after being notified that another personal check would not be accepted, Dipoma waited approximately five months before paying with a certified check. She served McPhie approximately 275 days after filing the complaint.

PROCEDURAL HISTORY

Dipoma filed a complaint shortly before the statute of limitations expired and submitted a personal check for the filing fee. The check was returned for insufficient funds, and she later paid the fee by certified check approximately five months after receiving notice that her original payment had failed. The district court granted McPhie's summary-judgment motion and dismissed the complaint. The Utah Court of Appeals reversed, holding that payment of the filing fee was not jurisdictional. The Utah Supreme Court granted certiorari, agreed that the fee was not jurisdictional, but held that Dipoma's delay in paying it was unreasonable as a matter of law and that dismissal was proper.

DISPOSITION

other

CASES CITED

- *Macris & Assocs., Inc. v. Neways, Inc.*, 2000 UT 93, 16 P.3d 1214
- *Carrier v. Pro-Tech Restoration*, 944 P.2d 346 (Utah 1997)
- *Longley v. Leucadia Fin. Corp.*, 2000 UT 69, 9 P.3d 762
- *Prowswood, Inc. v. Mountain Fuel Supply Co.*, 676 P.2d 952 (Utah 1984)
- *State v. Johnson*, 700 P.2d 1125, 1129 n. 1 (Utah 1985)
- *Hausknect v. Indus. Comm'n*, 882 P.2d 683 (Utah Ct. App. 1994)
- *Burnett v. Perry Mfg., Inc.*, 151 F.R.D. 398 (D. Kan. 1993)
- *Cintron v. Union Pac. R.R. Co.*, 813 F.2d 917 (9th Cir. 1987)
- *Rodgers v. Bowen*, 790 F.2d 1550 (11th Cir. 1986)
- *Wrenn v. Am. Cast Iron Pipe Co.*, 575 F.2d 544 (5th Cir. 1978)
- *Johnson v. Brown*, 803 F. Supp. 1414 (N.D. Ind. 1992)
- *Bolduc v. United States*, 189 F. Supp. 640 (D. Me. 1960)
- *Southeastern Pennsylvania Transp. Auth. v. DiAntonio*, 618 A.2d 1182 (Pa. Commw. Ct. 1992)
- *Foley v. Foley*, 304 P.2d 719 (Cal. Ct. App. 1956)
- *Broker House Int'l, Ltd. v. Bendelow*, 952 P.2d 860 (Colo. Ct. App. 1998)
- *Orton v. Carter*, 970 P.2d 1254 (Utah 1998)
- *Ovard v. Cannon*, 600 P.2d 1246 (Utah 1979)
- *Dipoma v. McPhie*, 2000 UT App 130, 1 P.3d 564