Land & Water Law Review

Volume 2 | Issue 2 Article 11

1967

Wyoming Rules of Civil Procedure - Rule 8 - Sufficiency of Pleadings - Words of Art Required in Complaint - Bishop v. City of Casper

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WYOMING RULES OF CIVIL PROCEDURE—Rule 8—Sufficiency of Pleadings—Words of Art Required in Complaint. Bishop v. City of Casper, 420 P.2d 446 (Wyo. 1966).

The plaintiff state engineer, acting under authority of section 41-128 of the 1957 Wyoming Statutes, submitted an amended complaint which alleged that since 1935 Humborg had a water well upon his property which was located near Casper, Wyoming. In 1935 the first well was drilled to a depth of 14 feet. In 1961 another was drilled to a depth of 24 feet. In 1959 three wells were drilled by the defendant, under permit from the plaintiff. The defendant City's wells were located about 1,100 feet from the Humborg wells and were stratigraphically deeper in the same alluvial acquifer. It was alleged that defendant's wells had withdrawn water so that they had unreasonably interfered with the Humborg well which was developed for domestic and family use under section 41-124 of the current Wyoming Statutes. Section 41-124 provides that appropriators of underground water developed solely for domestic uses have a preferred right to the use of enough water to supply the domestic needs of a one acre plot.[1] Defendant's answer was a general denial coupled with a motion to dismiss for failure to state a claim upon which relief could be granted. The Wyoming Supreme Court noted that although the briefs of the parties alluded to numerous aspects of the controversy, the trial court's reason for granting defendant's motion for judgment on the pleadings was so patent that it was only necessary to look at the pleadings. *Held,* under the applicable Wyoming Statute[2] relief is given only for an "adequate well," and unless there is an allegation of an adequate well the complaint must be dismissed for failure to state a claim upon which relief can be granted.[3]

It was not until the nineteenth century that judges, lawyers and laymen finally became so discouraged with common law pleading practices that reform measures were seriously considered and formed. In this country, state legislatures had indicated a trend to amend some of the common law's technicalities even before the Revolution. The Field Code of 1848, however, was the major reform in this area of the law.

1. WYO. STAT. § 41-124 (1957).
2. WYO. STAT. § 41-128 (1957).
3. Bishop v. City of Casper, 420 P.2d 446 (Wyo. 1966).

Its main features consisted of (1) an abolishment of the writ system; (2) a reduction of pleadings to the complaint, answer and reply; and (3) the merger of law and equity.[4] The Field Code was the principal antecedant of the Federal Rules of Civil Procedure which were drafted by an Advisory Committee of the United States Supreme Court and became effective in 1938.[5] The Wyoming Rules of Civil Procedure, adopted in 1957,[6] are modeled after the Federal Rules, and in fact are almost identical.[7] It would be expected that Wyoming decisions would follow the policy considerations and the general reasoning of the Federal courts, and it appears that such has been the case in at least some instances.[8]

Rule 8 (a) of both the Wyoming and Federal Rules of Civil Procedure provides: "A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief . . . ."

According to Moore[9] as long as the common law system of pleading was followed, a legal cause of action meant a set of facts which would support a judgment under a particular writ. "The common law as developed did not adopt itself to any existing factual arrangement but sought artificially to straight-jacket certain fragments into causes of action. With the advent of the codes an effort was made to adopt procedure to the exigencies of life."[10] With the advent of the Federal Rules of Civil Procedure an even stronger effort was made to relax the technical requirements in pleadings.

The function of pleadings under the Federal Rules, according to Moore, has been recognized by the courts as: (1) to give fair notice of the claim asserted so as to enable the adverse party to answer and prepare for trial; (2) allow for the application of res judicata; and (3) to show the

4. LOUISELL & HAZARD, CASES AND MATERIALS ON PLEADING AND PROCEDURE 36 (1962).
5. *Id.* at 37.
6. WYO. STAT., "General Note as to Sources," at 35 (1957).
7. *Ibid.*
8. State Highway Commission v. Bourne, 425 P.2d 59 (Wyo. 1967); Citing: Southern R.R. v. Fox, 339 F.2d 560 (5th Cir. 1965); Duke v. Reconstruction Finance Corp., 209 F.2d 204 (4th Cir. 1954).
9. MOORE, MANUAL OF FEDERAL PRACTICE AND PROCEDURE 122-23 (1965).
10. *Ibid.*

type of case brought, so that it may be assigned to the proper form of trial.[11]

> The pleading must state "a cause of action" in the sense that it must show that the pleader is entitled to relief. It is not enough to indicate merely that the plaintiff has a grievance, sufficient detail must be given so that the defendant and the court, can see that there is some legal basis for recovery. However, the courts have ruled time and again that a motion to dismiss should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim. If, within the framework of the complaint, evidence may be introduced which will sustain a grant of relief to the plaintiff, the complaint is sufficient.[12]

Cases supporting the above statements are myriad, many of them appearing within the last few years.[13]

Other decisions support the view that under the Federal Rules a case consists not of pleadings, but of evidence, for which the pleadings furnish the basis, and therefore, cases are generally to be tried on the proofs rather than the pleadings.[14] In a case which involved a class action brought by Negroes seeking an injunction and declaratory relief against compulsory segregation in railroad waiting rooms, the court found that the complaint was not subject to dismissal for formal deficiencies. "In Federal Civil Procedure if the allegations are general, there are ample discovery weapons to fill them out or in."[15] Another case stated that the test of the sufficiency of a complaint is whether or not the complaint states a claim which is wholly frivolous.[16] Still another decision notes that in order to determine what constitutes a "short and plain statement" of the plaintiff's claim, factors to be considered include the type of case, the relief sought, the situation of the parties, and whether it is desirable that greater

11. *Id.* at 612-13.
12. *Ibid.*
13. Edgar Rice-Burroughs, Inc. v. Charlton Publications, Inc., 243 F.Supp. 731 (S.D.N.Y. 1965); Washington v. Official Court Stenographer, 251 F. Supp. 945 (E.D.Penn. 1966); Edwards v. Duncan, 355 F.2d 993 (4th Cir. 1966); United States v. Bruce, 353 F.2d 474 (5th Cir. 1965).
14. Des Isles v. Evans, 200 F.2d 614 (5th Cir. 1952); De Loach v. Crowleys, Inc., 128 F.2d 378 (5th Cir. 1942).
15. Baldwin v. Morgan, 251 F.2d 780 (5th Cir. 1958).
16. Radovich v. National Football League, 352 U.S. 445 (1957).

particularity be required of the pleader.[17] In the case of *Wilson v. Illinois Central R. R.*[18] the court said, "We note that under the practice laid down by the Federal Rules of Civil Procedure, disposition of cases solely upon the pleading is not encouraged."[19]

Rule 8(e)(1) of both the Wyoming and Federal Rules of Civil Procedure requires that "Each averment of a pleading be simple, concise and direct." In keeping with the tenor of the Rules generally any technical requirement of form is nonessential. The essence of a complaint is not the statement of a technical cause of action, but a statement of the conduct, transaction or occurence, out of which the plaintiff's right and the defendant's wrong arose.[20]

The heart of the Wyoming and Federal Rules of Civil Procedure is Rule 8(f) which provides: "All pleadings shall be so construed as to do substantial justice." Under this Rule the underlying spirit of the Federal Rules is reflected. The Rule is generally construed as requiring that cases should be decided upon their merits, rather than upon technical deficiencies in the pleading. "Litigation is not an act in writing nice pleadings."[21] Cases must be tested on a broad basis by their substance and the reasonable inferences which can be drawn from them rather than by the nicety of their expression.[22] In *Maty v. Grassali Chemical Co.*[23] the Supreme Court said, "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end."[24] "The modern philosophy concerning pleadings is that they do little more than indicate generally the type of litigation that is involved. A generalized summary of the case that affords fair notice is all that is required."[25]

17. Hawkeye Cas. Co. v. Rose, 8 F.R.D. 586 (W.D.Mo. 1948).
18. 147 F.Supp. 513 (N.D.Ill. 1957)
19. *Id.* at 515.
20. 35A C.J.S. *Fed. Civ. Pro.* § 262 (1960).
21. Lomartira v. American Automobile Insurance Co., 245 F.Supp. 124, 129 (D.Conn. 1965).
22. Hawkeye Cas. Co. v. Rose, *supra* note 17.
23. 303 U.S. 197 (1938).
24. *Id.* at 200.
25. Securities Exchange Comm'n. v. Timetrust, Inc., 28 F.Supp. 34, 41 (N.D. Cal. 1939). *Accord:* Temperato v. Rainbolt, 163 F.Supp. 744 (E.D.Ill. 1957).

Just as verbosity and prolixity have been excused by courts in endeavoring to meet the spirit of the Federal Rules of Civil Procedure,[26] vagueness or indefiteness have also been held to be insufficient grounds for dismissing a complaint.[27] It was declared in *Securities & Exchange Comm'n. v. Timetrust, Inc.*,[28] that "Courts should deal with substance and the form of language of the pleadings, and should hesitate to disturb a pleading where no harm will result from immaterial matters not affecting the substance thereof."[29]

The leading case in this area and cited as authority in many of the above noted cases is *Conley v. Gibson*.[30] The action there was brought by Negro railway employees for declaratory judgment and other relief against their union, alleging breach of the union's statutory duty to represent fairly and without hostile discrimination, all of the employees in the union. In the Court's discussion of the case, Justice Black said, "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."[31]

American courts have, since the compilation and adoption of the Federal Rules of Civil Procedure, striven to support and uphold the spirit under which the Rules were composed and approved. That spirit demanded simplicity in the construction of pleadings and in their interpretation. Under the Federal Rules the very purpose of the use of pleadings is to facilitate a proper discussion on the merits and, as construed by a long line of federal cases already cited, those pleadings should not be dismissed where such an opportunity for discussion on the merits exists in any form.

Wyoming courts, however, have not been quite as liberal in their interpretation of the Rules. In *Sump v. Sheridan*[32]

26. McCoy v. Providence Journal Co., 190 F.2d 760 (1st Cir. 1951); Sherman v. Air Reduction Sales Co., 251 F.2d 543 (6th Cir. 1958); Byrd v. Bates, 220 F.2d 480 (5th Cir. 1955).
27. Rogers v. Dwight, 145 F.Supp. 537 (E.D.Wis. 1956).
28. 28 F.Supp. 34 (N.D.Cal. 1939).
29. *Id.* at 42. *Accord*: Kraus v. General Motors Corp., 27 F.Supp. 537 (S.D.N.Y. 1939); Blitz v. Boog, 328 F.2d 596 (2d Cir. 1964).
30. 355 U.S. 41 (1957).
31. *Id.* at 48.
32. 358 P.2d 637 (Wyo. 1961).

an action was brought by a city taxpayer charging the city with expending money unlawfully for the acquisition of easements, employment of persons to obtain easements, and a survey of land in and adjacent to the city for the purpose of controlling floods. The city filed a motion to dismiss for failure to state a claim upon which relief could be granted. In its discussion the court cited an earlier decision which stated, "It is sufficient, and indeed all that is permissible, if the complaint concisely states facts upon which relief can be granted upon any legally sustainable basis."[33] The court agreed that the plaintiff's pleading should be so viewed, but also said that a complaint must state something more than facts which, at most, would create only a suspicion that the plaintiff had a right to relief. "Liberality," the court said, "does not go so far as to excuse omission of that which is material and necessary in order to entitle relief."[34] The plaintiff's right to relief depended entirely upon whether the laws of Wyoming authorized such expenditures. The court found there was statutory authority for the defendant city's actions, and stated that inasmuch as the constitutionality of the statutes had not been raised, there was nothing to do but dismiss the complaint.

In *Watts v. Holmes,*[35] an action was brought against an automobile parking lot owner for injuries received in a fall on ice. The court said that no attempt was made to prove the defendant had allowed ice to accumulate unlawfully in its parking area, or that defendant had created a situation which caused the ice to accumulate. "Irrespective of any views that may be taken for procedural reform, . . . a complaint still must show that the pleader has a claim on which he is entitled to relief."[36]

The *Bishop* decision appears to rest on the court's finding that an "adequate well" was not alleged concerning the 1961 well. The original complaint alleged that "Prior to the drilling and operation of such city wells, the Humborg *well*

33. New Home Appliance Center v. Thompson, 250 F.2d 881, 883 (10th Cir. 1957). Sump v. Sheridan, *supra* note 32, at 642.

34. Sump v. Sheridan, *supra* note 32, at 642. *Accord:* Hays v. Hercules Powder Co., 7 F.R.D. 599 (W.D.Mo. 1947); Eli v. Albert, Inc. v. Dunn & Bradstreet, 91 F.Supp. 283 (S.D.N.Y. 1950)

35. 386 P.2d 718 (Wyo. 1963).

36. *Id.* at 719.

adequately supplied him with water for the irrigation of lawn and garden." (Emphasis supplied.) Significantly, the word "well" is singular, referring apparently to the fourteen foot well since the twenty-four foot well was not drilled until after the defendant's wells were in operation. The original and amended complaints both alleged that "the withdrawal of water from the city wells has interfered unreasonably with the Humborg *well* developed for domestic and family use." (Emphasis Supplied.) Again the word "well" is singular, not plural. Here the court was faced with the question of deciding to which "well" the complaint referred. The court resolved the conflict by examining the notice given by the plaintiff to the defendant which sought to have defendant cease or reduce the withdrawals. The notice referred only to a water level in a Humborg well "22 feet below the top" of the well indicating the well referred to as the 1961 well, since it was only one that deep. The court also found that the words "interfered unreasonably" were not substitutes for alleging an "adequate well" in the amended complaint. Though the court takes note in its opinion that, "Admittedly, any claimed right arising from the underground water statutes could well give rise to innumerable serious questions in a new field as yet unlitigated in this jurisdiction,"[37] the complaint was not adequate in reaching the merits of those claims or of certain "constitutional questions" because an "adequate well" was not alleged. Apparently the court is requiring that the words "adequate well," as words of art, are essential to the sufficiency of the complaint. The court in its discussion gives no authority in which might be revealed the prevailing standard by which similar insufficient complaints are judged. Undoubtedly, the court has chosen to follow the Wyoming cases already discussed, but from a reading of the opinion this is not discernable. The *Bishop* case can be distinguished from the earlier decisions, in that the complaint in *Bishop* was dismissed because of the failure to use the word "adequate" as a word of art in alleging that Humborg's well had been sufficent, while the earlier decisions were based on a failure of the complaints to state facts upon which relief could be granted. It is not revealed why the court chose to ignore the numerous and leading cases in other jurisdictions, including the

37. Bishop v. City of Casper, *supra* note 3, at 447.

Supreme Court of the United States, which have repeatedly held that the purpose of pleading is to facilitate a proper discussion on the merits.

Arthur R. Vanderbilt, a former President of the American Bar Association, said "It is for the federal judges to determine the spirit in which the new Rules are to be applied. Upon their attitude in dealing with the Rules will depend the future of procedure, and perhaps, of the law itself in the United States. Their object must at all times control 'to secure the just, speedy and inexpensive determination of every action.' "[38]

The *Bishop* decision then, would appear to represent a regression in time and reason to the common law past. It will no doubt fall by the wayside as the general law movement to overcome the technicalities and simplify the preparations of pleadings spread further afield. *Bishop* within a few years will stand only as a curiosity; but in the meantime attorneys practicing in Wyoming would be well advised to take note of the decision, and to take heed in the preparation of their pleadings.

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38. Excerpt from a forward to two volumes of proceedings at meetings of the Institute on Federal Rules of the American Bar Association.