

1987

Michael Williams v. M. Chris Harrison : Brief of Respondent

Utah Court of Appeals

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L. Zane Gill, Ann Wise; Biele, Haslam & Hatch; Attorneys for Appellant.

Robert L. Lord; Attorney for Repspondent.

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DOCKET NO. 870096 IN THE UTAH COURT OF APPEALS

MICHAEL WILLIAMS,

Plaintiff and
Respondent,

vs.

M. CHRIS HARRISON,

Defendant and
Appellant.

Case No. 870096-CA

Argument Priority #13.b

APPEAL OF A FINAL JUDGMENT BY DEFAULT FROM THE
FIFTH CIRCUIT COURT, COUNTY OF SALT LAKE,
STATE OF UTAH, SALT LAKE DEPARTMENT

Honorable Robert C. Gibson, Judge

BRIEF OF RESPONDENT

L. Zane Gill (3716)
Ann Wise (5026)
BIELE, HASLAM & HATCH
Attorneys for Defendant
and Appellant
50 West Broadway, 4th Floor
Salt Lake City, Utah 84101
Telephone: (801) 328-1666

Robert L. Lord
Utah State Bar No. 1994
Attorney for Plaintiff
and Respondent
320 South 300 East, #4A
Salt Lake City, Utah 84111
Telephone: 32804241

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870096-CA
Court of Appeals

IN THE UTAH COURT OF APPEALS

MICHAEL WILLIAMS,)	
)	
Plaintiff and)	Case No. 870096-CA
Respondent,)	
)	
vs.)	Argument Priority #13.b
)	
M. CHRIS HARRISON,)	
)	
Defendant and)	
Appellant.)	

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Telephone: (801) 328-1666

Robert L. Lord
Utah State Bar No. 1994
Attorney for Plaintiff
and Respondent
320 South 300 East, #4A
Salt Lake City, Utah 84111
Telephone: 32804241

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STATEMENT OF JURISDICTION

This is an appeal from an order denying defendant's motion to set aside a default judgment (R-82) entered by the Honorable Robert C. Gibson, judge of the Fifth Circuit Court, County of Salt Lake, State of Utah, Salt Lake Department (default judgment was entered as a result of defendant's failure to appear for the trial). Judge Gibson specifically ruled that defendant had failed to use due diligence prior to the trial and that there was no excusable neglect which would excuse him from appearing at the time and place set for the trial.

Jurisdiction is based on Rule 4 of the Rules of the Utah Court of Appeals (hereinafter referred to as R.U.C.A.) and on 78-4-11, Utah Code Annotated, 1953, as amended.

ISSUES PRESENTED FOR APPEAL

- (a) WHETHER THE CIRCUIT COURT ERRED BY REFUSING TO SET ASIDE THE DEFAULT JUDGMENT WHERE DEFENDANT INEXCUSABLY FAILED TO APPEAR FOR THE TRIAL.
- (b) WHETHER THE CIRCUIT COURT ERRED BY GRANTING DEFAULT JUDGMENT WITHOUT TAKING TESTIMONY FROM THE PLAINTIFF.

RULES

Rules 55 and 60 are set out in full in the Addendum.

STATEMENT OF THE CASE

Nature of the case, course of proceedings, disposition below. This action was commenced October 27, 1986, by service of summons upon the defendant (R-5), and involves a dispute over services as a private detective allegedly rendered by the defendant for the plaintiff as set forth in plaintiff's complaint (R 1-2).

Defendant answered the complaint pro se (R 7-8), responded initially to plaintiff's discovery pro se (R 24-30), and ultimately responded with assistance of counsel (R 40-45). Counsel then withdrew (R 48). Plaintiff notified defendant to appoint counsel (R 49), and defendant proceeded thereafter pro se. Notice of trial was mailed to the defendant November 20, 1986, by the clerk of the court (R 51), noticing the trial for 9:30 a.m., January 5, 1987.

The case was called for trial by the Court on January 5, shortly after 9:30 a.m. No one appeared for the defendant. The undersigned appeared as attorney for the plaintiff, advised the Court that he had no witnesses, moved the Court for an order striking the answer of the defendant, entering his default, and entering judgment against the defendant pursuant to the prayer of the complaint. Judge Gibson took the motion under advisement and requested counsel to submit some authority for the proposition that he could enter default judgment without proof from the plaintiff where the defendant had answered and the case was at issue at the time of trial (R 52-53, 64, 73-74).

Plaintiff filed the requested memorandum January 26, 1987, with Judge Gibson (R 52-54), discussed the contents thereof with the Court, and the Court thereupon entered default judgment as prayed (R 60-61).

Defendant, thereafter made timely motion to vacate the default judgment (R 62-63), supported by his affidavit (R 65-66). The undersigned filed an affidavit in opposition (R 73-75), and the motion was argued March 18 (R 82). It was denied upon the ground that defendant had failed to exercise due diligence prior to the trial, and that there was no excusable neglect that would excuse him from attending the trial (R 82). Defendant filed his notice of appeal March 19 (R 84), 12 days before entry of the order appealed from on March 31 (R 82).

Statement of Additional Facts. In addition to the facts set forth in the foregoing discussion of the nature, course and disposition of the case, the following facts are significant:

1. All pleadings filed by the defendant prior to the appearance of Randy Ludlow as his counsel, listed his address as 5564 West Jeremiah Drive, Salt Lake City, Utah 84118 (R 7, 24, 26). The summons was served upon him at that address (R 6) and the complaint mailed to him at that address (R 2).

2. Discovery, notices and correspondence mailed by the undersigned were directed to defendant at 5564 West Jeremiah Drive (R 13, 15, 16, 17, 18, 20, 23, 33, 34 and 36).

3. A supplemental order was served upon defendant at that address (R 47), as was the notice to appoint counsel (R 49) and the request for trial setting (R 50). There is nothing in the file to indicate that any of them were not received by the defendant.

4. Notice of Trial was sent to the defendant at the said address giving him just over six weeks advance notice.

5. Defendant's pro se motion to set aside the default judgment, once again, listed his address as 5564 West Jeremiah Drive.

6. Except for the unsworn representations in defendant's motion to vacate the default judgment (R 62), the only thing in the record purporting to excuse the defendant from appearing at the trial is the statement contained as paragraph 3 of the affidavit of M. Chris Harrison (R 65-66) which states: "That the notice of trial in the above entitled matter was inadequate, and that defendant received said notice by telephone from his daughter".

SUMMARY OF ARGUMENT

All pleadings in the file, either those sent by the plaintiff or those received from the defendant, list defendant's address as 5564 West Jeremiah Drive, Salt Lake City, Utah. Since defendant himself supplied the address, it is presumed to be the address to which notice should be sent until such time as defendant notifies the court and counsel to the contrary.

Notice of the trial was mailed to defendant at the Jeremiah Drive address, by the clerk of the court over six weeks prior to the time scheduled for trial. Defendant received that notice and also was additionally notified by his daughter at some unspecified time.

Defendant failed to show due diligence and/or that he was prevented from appearing at the trial by circumstances over which he had no control.

The trial court is endowed with considerable latitude of discretion in granting or denying a motion to vacate, and will be reversed by the Appellate Court only where an abuse of discretion is clearly established.

Rule 55, Utah Rules of Civil Procedure provides that even the clerk of the court may enter a default judgment for a sum certain (as in this case), once the default of the defendant has been entered. The court entered the defendant's default when he failed to appear for trial. Plaintiff applied to the court, and the court, as it is permitted to do by Rule 55, determined that it was not necessary to take testimony on the sum certain before entering judgment by default.

The appeal of the plaintiff is frivolous and plaintiff should be awarded double costs and reasonable attorney fees pursuant to Rule 33 R.U.C.A.

ARGUMENT

POINT I

THE CIRCUIT COURT DID NOT ERR BY REFUSING TO SET ASIDE THE DEFAULT JUDGMENT WHERE DEFENDANT INEXCUSABLY FAILED TO APPEAR FOR THE TRIAL

Applicable facts. Without restating the facts in detail, the following series of facts and events are controlling: (a) Summons was served on the defendant at 5564 West Jeremiah Drive, Salt Lake City, Utah, and the complaint was mailed to him at that address. (b) Defendant answered the complaint, pro se, and listed his address as 5564 West Jeremiah Drive. (c) Discovery was mailed to him at the Jeremiah Drive address and he responded, pro se, listing, once again, his address as the Jeremiah Drive address. (d) The only address on any of the pleadings filed by defendant (except for those filed by his attorney) list 5564 West Jeremiah Drive as his address. (e) There is nothing in the record to support the contention made by the defendant in his brief that his daughter is a teenager, or that he only received notice of the trial from her by telephone on the day of the trial. (f) To the contrary, all indications are that he actually received all pleadings and correspondence in a timely manner. For instance, the complaint was mailed to him October 30, 1984, and he filed his answer only 14 days later on November 13. (g) The notice of trial was mailed to defendant at the Jeremiah Drive address November 20, 1986, giving him just over six weeks advance notice. (h) The only thing in the record purporting to excuse defendant from appearing at the trial is the statement contained in his affidavit (paragraph 3) wherein he states "that a notice of trial in the above entitled matter was inadequate, and that the defendant received said notice by telephone from his daughter". Note that nothing

is said about when he received either the written notice or the telephone call from his daughter.

Due diligence and excusable neglect. While it is true, as stated in defendant's brief that ". . . it is quite uniformly regarded as an abuse of discretion to refuse to vacate a default judgment where there is reasonable justification or excuse for the defendant's failure to appear, and timely application is made to set it aside", Mayhew vs. Standard Gilsonite Co., 14 U.2d. 52, 376 P.2d. 951 (1962), and that the remedy should be liberally administered in order to grant the defaulting party his day in court, Warren vs. Dixon Ranch Co., 123 U. 416, 260 P.2d. 741 (1953), it is likewise beyond dispute that such policy coexists with the broad latitude of discretion accorded the trial court in ruling upon such motions. See Warren vs. Dixon Ranch (supra), and Board of Education of Granite School District vs. Cox, 14 U.2d. 385, 384 P.2d. 806 (1963). In fact, the implementation of the policy has been specifically committed to the trial court as follows:

"The trial court is endowed with considerable latitude of discretion in granting or denying a motion to relieve a party from a final judgment under Rule 60(b)(1), Utah Rules of Civil Procedure, and this court will reverse the trial court only where an abuse of discretion is clearly established . . . the rule that the courts will incline toward granting relief to a party, who has not had the opportunity to present his case, is ordinarily applied at the trial court level, and this court will not reverse the determination of the trial court merely because the motion could have been granted." Airkem Intermountain Inc. vs. Parker, 30 U.2d. 65, 513 P.2d. 429 (1973), emphasis added.

Justice Hall, in his vigorous dissent in the matter of Interstate Excavating, Inc., vs. Agla Development Corporation, 611 P.2d. 369 (1980), observed that such discretion accorded the trial court has been given the "widest berth" by reviewing courts relative to motions to vacate judgments which are based on allegations of mistake, inadvertence, and excusable neglect. He reminds us that a determination at the trial court level that a given course of conduct did not

constitute mistake, inadvertence or excusable neglect sufficient to justify relief from a default judgment will, therefor, be disturbed on appeal "only in the presence of a manifest abuse of discretion". See 611 P.2d. at 372. He further reminds us that excusable neglect must occur despite the exercise of due diligence, that it must have been the act of a reasonably prudent person under the same circumstances, that simple carelessness will not qualify, nor will simple business difficulties which allegedly prevent the dedication of adequate attention to the litigation in question.

The case of Heath vs. Mower, 597 P.2d. 855 (1979) seems to say it all. In that case, defendant failed to respond to the complaint and his default was entered. Upon motion it was vacated and plaintiffs filed an amended complaint to which defendant responded. Notice of pre-trial was sent to defendant at various known addresses. Defendant did not show up for the pre-trial, but allegedly sent a mailgram to the court stating that he would be unable to attend, was looking for a local attorney to handle the matter, and asked how he should proceed from that point on. The mailgram did not arrive at the clerk's office until 4 days after the pre-trial hearing. At the hearing, the Court entered defendant's default and entered judgment pursuant to the prayer of the complaint.

Thereafter he obtained the services of an attorney who promptly moved to vacate the judgment. Accompanying the motion was Mower's affidavit stating, among other things, that he had never received the certified notice mailed by plaintiff's counsel (and which he had refused to claim). He pointedly made no mention of the notice mailed by the clerk of the court and claimed that he had "become aware" of the pre-trial hearing, 2 days before it was scheduled, through a telephone conversation with his wife (a co-defendant). The trial court denied the motion to set aside the default judgment, finding that Mower knew about the pre-

trial date and that he had received timely notice. Mower claimed that he had been given insufficient notice of the pre-trial hearing (does that remind one of anything alleged by the defendant in the instant case?) and cited several cases standing for the proposition that the court should favor granting relief from a default judgment whenever there is reasonable excuse and it would not result in substantial prejudice or injustice to the adverse party. Justice Stewart, writing the unanimous decision said:

"While we agree that trial courts should be generally indulgent toward permitting full inquiry and knowledge of disputes so they can be settled advisedly and in conformity with law and justice (citing *Mayhew vs. Standard Gilsonite Co.*, supra), each case must, nevertheless, depend upon its own peculiar facts and circumstances. 'No general rule can be laid down respecting the discretion to be exercised in setting aside or refusing to set aside a judgment by default.' " Page 858.

Justice Stewart went on to say:

"The rule that the courts will incline towards granting relief to a party who has not had the opportunity to present his case, is ordinarily applied at the trial court level, and this court will not reverse the determination of the trial court merely because the motion could have been granted." Emphasis added.

Referring to *Airkem Intermountain, Inc. vs. Parker*, 30 U.2d. at 68, 513 P.2d. at 431, he said:

". . . a party trying to set aside a default judgment 'must show that he has used due diligence and that he was prevented from appearing by circumstances over which he had no control.' "

See also *Warren vs. Dixon Ranch Co.*, supra, also stating that movant must have exercised due diligence.

Application to defendant. Movant's only excuse for failing to appear at the trial was that the notice was allegedly "inadequate" and that he received notice by telephone from his daughter. Nothing is said about why the notice was inadequate, nor what effect notice from his daughter purportedly had. There is a

complete dearth of information concerning due diligence of the defendant prior to the trial, why he could not attend at the appointed time, what efforts he made to notify the court or counsel of any change of address or to assure that he would get notices in the future, when he received the notice in the mail, when he received the telephone call from his daughter, where he was at the time, what efforts he made to notify the court or counsel that he would be late or could not attend, and etc. Is it any wonder that the trial judge concluded that defendant had not exercised due diligence prior to the trial and that there was no excusable neglect excusing him from appearing at the trial? There is no manifest abuse of discretion shown and the decision of the trial court should be upheld.

POINT II

THE CIRCUIT COURT ACTED PROPERLY BY GRANTING DEFAULT JUDGMENT WITHOUT TAKING TESTIMONY FROM THE PLAINTIFF

Applicable facts. The case was called for trial by the court shortly after 9:30 on the 5th of January, 1987. No one appeared on behalf of the defendant. The undersigned appeared on behalf of the plaintiff, advised the court that he did not have any witnesses present and moved the court for an order striking the answer of the defendant, entering his default, and entering judgment against the defendant pursuant to the prayer of the complaint. The Court took the matter under advisement and requested counsel to submit some authority for the proposition that he could enter default judgment without proof by the plaintiff where the defendant had answered and case was at issue. The requested memorandum was submitted to the court on January 26 and judgment entered accordingly. See above statement of the case for citations to the record.

Post Hearing Contacts with Court. Defendant attempts to make something improper out of the submission of the memorandum and discussion with

the Court (as requested by the Court) without further notice to him (the defendant) who was in default. The memorandum and discussion with the Court was, in reality, a continuation of the discussion had between counsel and the court on the 5th at the time of trial. It is clear that there was no obligation, nor even expectation, of counsel or the Court to notify defendant thereof. Rule 55(a)(2), U.R.C.P. provides that after the entry of default, there is no need to notify defendant of any other action to be taken, nor to serve any notice or pleading on him thereafter, except pleadings asserting new or different matters, and notice of entry of judgment (which was done in this case).

Effect of Rule 55. Rule 55, Utah Rules of Civil Procedure provides that "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules . . . the clerk shall enter his default." (Emphasis added). Although defendant did plead, he has not "otherwise defended" by virtue of his failure to appear for the trial. The writer was not able to find any Utah cases directly on point. The Supreme Court of the State of Montana, however, has spoken clearly on this issue. In the case of Archer vs. LaMarch Creek Ranch (1977), 571 P.2d. 379, the defendant had denied the allegations of the complaint and had raised certain affirmative defenses in his answer. He failed to appear at the trial, however, and the plaintiff moved the court for default judgment. The trial court granted the motion and entered default judgment against the defendant, who subsequently appealed, on the ground (among others) that the trial court could not enter judgment upon motion of the plaintiff where no proof was offered to contravert the allegations of the answer (including the affirmative defenses). The Supreme Court, citing Rule 55 of the Montana Rules of Civil Procedure said that since no one appeared on behalf of the defendant at the trial, the defendant had thereby failed to "otherwise defend" and "the

District Court had no alternative but to grant plaintiff's motion for default judgment". Emphasis added. See page 382.

The earliest reported case that the undersigned was able to find in support of the proposition that the Court should enter default judgment against the defendant when he fails to appear at the trial was a reference to a Kentucky case, *Schooler vs. Asherst*, 11 Ky (1 Litt) 216.

There is nothing in Rule 55 which requires the Court to take testimony, particularly where the amount sought is for a sum certain, as in this case. According to the Rule, once the default had been entered (by the Court), even the Clerk of the Court could enter the judgment for the pleaded sum certain. The Rule provides that judgment may be entered as follows:

"(1) By the Clerk. When the plaintiff's claim against the defendant is for a sum certain or for a sum which can by computation be made certain, . . . the clerk upon request of the plaintiff shall enter judgment for the amount due and costs against the defendant, if he has been defaulted for failure to appear . . .

"(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper." Emphasis added.

It is apparent that the plaintiff's claim is for a sum certain, that even the Clerk could have entered the judgment after the Court had entered the default, that plaintiff did, in fact, apply to the Court for judgment, and that the Court did not deem it necessary for the plaintiff to present evidence on the balance due, or otherwise. All of which procedure is clearly within the scope of the spirit and the letter of Rule 55.

CONCLUSION


Defendant clearly failed to establish that he had used due diligence and that he should be excused for failure to appear at the trial due to circumstances over which he had no control. Notice of the trial was sent to him (at the address which he had provided the court) over six weeks prior to the time set for trial. He makes no claim that he did not receive it, but attempts to excuse himself on the ground that his daughter (also?) notified him by telephone at some unstated time and without any explanation as to why, in fact, he could not attend the trial at the designated time.

Neither Rule 55 of the Rules of Civil Procedure, nor any other Rule, prohibits the entry of default judgment, without evidence, where the amount claimed is for a sum certain, as was the claim in the instant case. Even so, the court may enter default judgment upon application of the plaintiff and may take testimony if it deems it necessary. Obviously it was not necessary in this case.

Plaintiff urges this Court to uphold the decision of the trial court and sustain the entry of judgment by default.

Plaintiff further requests that the Court make a determination under Rule 33 R.U.C.A., that the appeal of the defendant is frivolous and/or for the purpose of delay, and award double costs, including a reasonable attorney fee to plaintiff.

Respectfully submitted this 17th day of July, 1987.



Robert L. Lord
Attorney for Plaintiff
and Respondent

A D D E N D U M

Rule 55. Default.

(a) Default.

(1) **Entry.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear the clerk shall enter his default

(2) **Notice to party in default.** After the entry of the default of any party, as provided in Subdivision (a)(1) of this rule, it shall not be necessary to give such party in default any notice of action taken or to be taken or to serve any notice or paper otherwise required by these rules to be served on a party to the action or proceeding, except as provided in Rule 5(a), in Rule 58A(d) or in the event that it is necessary for the court to conduct a hearing with regard to the amount of damages of the nondefaulting party

(b) Judgment. Judgment by default may be entered as follows:

(1) **By the clerk.** When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, and the defendant has been personally served otherwise than by publication or by personal service outside of this state, the clerk upon request of the plaintiff shall enter judgment for the amount due and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person

(2) **By the court.** In all other cases the party entitled to a judgment by default shall apply to the court therefor. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper

(c) **Setting aside default.** For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)

(d) **Plaintiffs, counterclaimants, cross-claimants.** The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c)

(e) **Judgment against the state or officer or agency thereof.** No judgment by default shall be entered against the State of Utah or against an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

(Amended, effective Sept. 4, 1985.)

Rule 60. Relief from judgment or order.

(a) **Clerical mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) **Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.** On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Circuit Court, State of Utah
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

MICHAEL WILLIAMS
Plaintiff(s)
VS.
M. CHRIS HARRISON
Defendant(s)

NOTICE OF TRIAL
CASE NO. 84 CV 10295
JUDGE GIBSON

TO Robert L. Lord ATTORNEY FOR PLANTIFF
TO M. Chris Harrison Pro-Se DEFENDANT

You and each of you will please take notice that the above entitled case is set for
trial in said court at 9:30 o'clock A. M., on the 5th day of January, 19 87.

CERTIFICATE OF MAILING

I certify that I mailed a copy of the above notice of trial on this 20th day of November, 19 86; to:
Robert L. Lord M. Chris Harrison
Attorney at Law 5564 W. Jeremiah Drive
431 South 300 East, Suite 444 Salt Lake City, Utah 84118
Salt Lake City, Utah 84111

PAUL L. VANCE
CLERK, CIRCUIT COURT

By: [Signature] Deputy Clerk
[Seal]

FIFTH CIRCUIT COURT - SLC

WEDNESDAY JANUARY 7, 1987

9:48 AM

Case.....: 845102950 CV Civil

Filing Date: 11/01/84

Case Title:

WILLIAMS MICHAEL VS HARRISON M CHRIS

Cause of Action:

Amount of Suit.: \$.00

Return Date.....

Judgment.....

Disposition.....

Date:

Amt:

\$.00

Date:

Court Set: TRIAL

on 01/05/87 at 0930 A in room ? with RCG

No Tracking Activity.

No Accounts Payable Activity.

Party...: PLA Plaintiff

Name....:

WILLIAMS MICHAEL

Home Phone.: ()

Work Phone.: ()

Party...: DEF Defendant

Name....:

HARRISON M CHRIS

Home Phone.: ()

Work Phone.: ()

J2/25/86 Case converted from SLC system... Civil file date 11/01/84. SLC
I 10/17/86 FILED NOTICE OF WITHDRAWAL OF COUNSEL (DEFENDANT) MRS
I 10/27/86 FILED NOTICE TO APPEAR IN PERSON OR APPOINT OTHER COUNSEL MRS
I 11/05/86 FILED REQUEST FOR TRIAL SETTING NMD
11/18/86 TRL scheduled for 1/ 5/87 at 9:30 A in room ? with RCG NMD
01/05/87 GIBSON/CKO T870002 C44 PLAINTIFF PRESENT THRU ATTY ROBERT LORD. CKO
DEFENDANT NOT PRESENT. PLAINTIFF NOT PREPARED WITH EVIDENCE. CKO
I PLAINTIFFS ATTY MOTION FOR JUDGMENT C/O MOTION DENIED CKO

End of the docket report for this case.

ROBERT L. LORD
Utah State Bar No. 1994
Attorney for Plaintiff
444 Metropolitan Law Building
431 South 300 East
Salt Lake City, Utah 84111
Telephone: 328-4241

IN THE FIFTH CIRCUIT COURT, COUNTY OF SALT LAKE

STATE OF UTAH, SALT LAKE DEPARTMENT

—ooo0ooo—

MICHAEL WILLIAMS,)	
)	
... Plaintiff,	)	JUDGMENT BY DEFAULT
)	
vs.	)	Civil No. 84-CV-10295
)	
M. CHRIS HARRISON,)	
)	
... Defendant.)	

—ooo0ooo—

The above entitled matter came on regularly for trial before the undersigned, one of the judges of the above entitled court, on the 5th day of January, 1987, at the hour of 9:30 a.m. Plaintiff appeared by and through his attorney, Robert L. Lord. No one appeared on behalf of the defendant, whereupon counsel for the plaintiff moved for judgment pursuant to the prayer of the complaint on file herein.

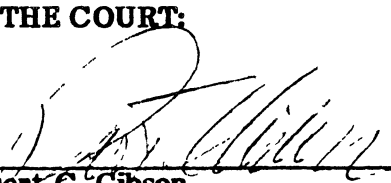
The Court, having considered the motion of the plaintiff, together with the memorandum in support thereof, having examined the files and records herein, being fully advised in the premises, and good cause appearing, hereby finds that the plaintiff is entitled to a return of the \$2,100 advance fees paid to the defendant for failure of the defendant to provide services as agreed.

WHEREFORE, by virtue of the law, and by reason of the premises aforesaid, it is **ORDERED, ADJUDGED AND DECREED** that said plaintiff do have and recover from the defendant, the sum of \$2,100, interest thereon at the rate of 10% per annum from December 15, 1983, in the sum of \$647.50, together with plaintiff's costs and disbursement incurred in this action amounting to the sum

of \$30.00, making a total judgment of \$2,777.50, all to bear interest at the rate of 12% per annum from the date hereof till paid.

DATED this 26 day of January 1987.

BY THE COURT:



Robert C. Gibson
Circuit Court Judge

7-10

MICHAEL WILLIAMS,
Plaintiff,
vs.
M. CHRIS HARRISON,
Defendant.

~~MOTION TO SET
ASIDE DEFAULT
JUDGMENT, AND
NOTICE OF HEARING~~

CIVIL NO. 84-CV-10295

Addendum " F "

Plaintiff was not present and Plaintiff's attorney was not prepared.

DATED this 3rd day of February, 1987.


M. CHRIS HARRISON, PRO SE

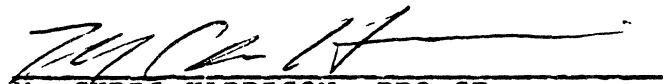
NOTICE OF HEARING

TO THE PLAINTIFF ABOVE-NAMED AND HIS ATTORNEY OF RECORD, ROBERT L. LORD:

PLEASE TAKE NOTICE that a hearing on Defendant's Motion to Set Aside Default Judgment has been scheduled to be heard before one of the Law and Motion Judges of the above entitled Court on the 10th day of February, 1987 at the hour of 2:00 P.M. or as soon thereafter as counsel may be heard.

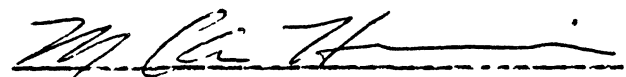
Please govern yourselves accordingly.

DATED this 3rd day of February, 1987.


M. CHRIS HARRISON, PRO SE

CERTIFICATE OF MAILING

I HERERY CERTIFY that on this 3rd day of February, 1987, I hand-delivered a true and correct copy of the foregoing Motion to Set Aside Default Judgment and Notice of Hearing, to Robert L. Lord, attorney for Plaintiff, 444 Metropolitan Law Building, 431 South 300 East, Salt Lake City, Utah 84111.



M. CHRIS HARRISON
Pro Se
5564 West Jeremiah Drive
Salt Lake City, Utah 84118
Telephone: (801) 482-4151

IN THE FIFTH CIRCUIT COURT, COUNTY OF SALT LAKE
STATE OF UTAH, SALT LAKE DEPARTMENT

MICHAEL WILLIAMS,
Plaintiff,

VS.

M. CHRIS HARRISON,
Defendant.

AFFIDAVIT OF
M. CHRIS HARRISON

CIVIL NO. 84-CV-10295

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

COMES NOW the Affiant, M. Chris Harrison, Pro Se, after first being duly sworn under oath states as follows:

1. That Affiant is a resident of Salt Lake County,
State of Utah.

2. That the Answer to Plaintiff's Complaint in the above-entitled matter, is on file raising valid defenses to Plaintiff's claim.

3. That a Notice of Trial in the above entitled matter was inadequate, and that Defendant received said notice by telephone from his daughter.

4. That Affiant appeared in Court at the time of trial, but he was advised by the clerk that no action was taken, and that said Trial would be rescheduled.


Addendum " G "

5. That Affiant checked with the clerk and found that the Plaintiff and his attorney were not prepared to present evidence at the time of trial, as shown in minute entry, copy of which is attached to Motion to Set Aside Default Judgment.

DATED this 3rd day of February, 1987.


M. CHRIS HARRISON, PRO SE

SUBSCRIBED AND SWORN to before me this 3rd day of February, 1987.


NOTARY PUBLIC
RESIDING AT: Salt Lake City Utah

MY COMMISSION EXPIRES:

6/6/88

ROBERT L. LORD
Utah State Bar No. 1994
Attorney for Plaintiff
444 Metropolitan Law Building
431 South 300 East
Salt Lake City, Utah 84111
Telephone: 328-4241

IN THE FIFTH CIRCUIT COURT, COUNTY OF SALT LAKE

STATE OF UTAH, SALT LAKE DEPARTMENT

---ooo0ooo---

MICHAEL WILLIAMS,)	
)	
... Plaintiff,	)	AFFIDAVIT IN OPPOSITION
	)	TO MOTION TO SET ASIDE
vs.	)	DEFAULT JUDGMENT
)	
M. CHRIS HARRISON,	)	Civil No. 84-CV-10295
)	
... Defendant.)	

---ooo0ooo---

STATE OF UTAH)
 : SS.
COUNTY OF SALT LAKE)

ROBERT L. LORD, being first duly sworn, upon his oath deposes and says that:

1. I am the attorney for the plaintiff in the above entitled matter and have personal knowlege of all matters alleged herein, except for those matters alleged on information and belief, and as to those matters, I believe them to be true.

2. Under date of November 20, 1986, the clerk of the court mailed a copy of the notice of trial to the defendant, M. Chris Harrison, at his address of 5564 West Jeremiah Drive (the address of the defendant as contained on all pleadings in the file).

3. On January 5, 1987, at the appointed time and place, I appeared on behalf of the plaintiff. The case was called by the Honorable Robert C. Gibson. No one appeared for the defendant. I then moved for default judgment based upon the failure of the defendant to appear for the trial.

4. The Court denied the motion at that time and took it under advisement, pending citation by plaintiff of authority to grant the judgment under the circumstances.


5. On January 26, 1987, I presented to the Court a memorandum in support of my motion, together with a proposed default judgment.

6. After discussing the matter with me, the Court concluded that he would sign the judgment, which was duly entered of record by the clerk of the court.

7. Under date of January 29, 1987, I mailed a copy of the notice of judgment to the defendant at the aforesaid address on Jeremiah Drive.

8. On February 2, 1987, I received a telephone call from an individual who identified himself as M. Chris Harrison. He told me that he was late for the trial on January 5, having been delayed coming from out of town. He said he had just received my notice of judgment and told me that he was not notified of any hearing on the 26th. I explained to him that there was no hearing on the 26th, but that that was the date upon which the judge actually signed the judgment. He insisted that I could not take judgment as I had done, and that I needed to present evidence.

9. I have spent a total of 2.8 hours for appearance at the trial, research and preparation of the memorandum and preparation of this affidavit. My customary and reasonable charge for matters of this nature, and the amount agreed upon between me and the plaintiff, is the sum of \$75.00 per hour, making a total fee incurred by my client (from and including the appearance for trial of this matter) of \$210.00.


Robert L. Lord
Attorney for Plaintiff

Subscribed and sworn to before me this date of February 4, 1987.


NOTARY PUBLIC
Residing in Salt Lake County

My Commission Expires:

11/17/87

ROBERT L. LORD
Utah State Bar No. 1994
Attorney for Plaintiff
444 Metropolitan Law Building
431 South 300 East
Salt Lake City, Utah 84111
Telephone: 328-4241

IN THE FIFTH CIRCUIT COURT, COUNTY OF SALT LAKE

STATE OF UTAH, SALT LAKE DEPARTMENT

---ooo0ooo---

MICHAEL WILLIAMS,)	
)	
... Plaintiff,	)	ORDER DENYING
)	MOTION TO SET ASIDE
vs.)	DEFAULT JUDGMENT
)	
M. CHRIS HARRISON,)	Civil No. 84-CV-10295
)	
... Defendant.)	

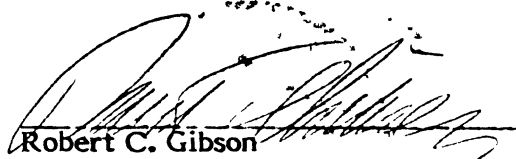
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The defendant's motion to set aside default judgment came on regularly for hearing before the undersigned, one of the judges of the above entitled court, on the 18th day of March, 1987. Plaintiff was represented by his attorney, Robert L. Lord. Defendant was present in court and represented by his attorney, L. Zane Gill.

The Court, having reviewed the files and records herein, having weighed and considered the affidavits submitted in support and opposition to the motion together with the representations and arguments of counsel, finding that the defendant had failed to use due diligence prior to the trial, and that there was no excusable neglect excusing him for failing to appear for the trial, it is hereby **ORDERED** that the defendant's motion be, and the same hereby is, denied.

DATED this 4/ day of March 1987.

BY THE COURT:


Robert C. Gibson
Circuit Court Judge

L. ZANE GILL (3716), of
BIELE, HASLAM & HATCH
Attorneys for Defendant
50 West Broadway, Fourth Floor
Salt Lake City, Utah 84101
Telephone: (801) 328-1666

IN THE FIFTH CIRCUIT COURT, COUNTY OF SALT LAKE

STATE OF UTAH, SALT LAKE DEPARTMENT

MICHAEL WILLIAMS,)	
)	
Plaintiff/Respondent,)	
	)	NOTICE OF APPEAL
v.	)	TO UTAH COURT OF APPEALS
)	
M. CHRIS HARRISON,	)	Civil No. 84-CV-10295
	)	Judge Gibson
Defendant/Appellant.)	

Notice is hereby given that M. Chris Harrison, Defendant above-named, hereby appeals to the Utah Court of Appeals from the Default Judgment entered on or about January 26, 1987, in the amount of two thousand, one hundred dollars (\$2,100.00) in favor of Michael Williams, Plaintiff and Respondent, against M. Chris Harrison, Defendant and Appellant.

This Notice of Appeal is given pursuant to Utah Code Ann. §78-2a-3(2)(c) and Rule 3a of the Rules of the Utah Court of Appeals.

DATED this 19 day of March, 1987.

BIELE, HASLAM & HATCH



L. Zane Gill
Attorneys for Defendant/Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed four copies of the foregoing Brief of Respondent, this 20 day of July, 1986, to L. Zane Gill, attorney for defendant, BIELE, HASLAM & HATCH, 50 West Broadway, 4th Floor, Salt Lake City, Utah 84101.

13/
Robert L. Lord