

1996

Jana D. Edwards v. Bruce C. Edwards : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS

UTAH

IN THE UTAH COURT OF APPEALS

JANA D. EDWARDS (ROSS),

Plaintiff/Appellee,

vs.

BRUCE C. EDWARDS

Defendant/Appellant.

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CKET NO. 960548-CA

Case No. 960548-CA

Priority No. 15

BRIEF OF APPELLANT

APPEAL FROM FINAL JUDGMENT,
TWENTY THIRD DAY OF JULY, 1996,
IN THE SECOND JUDICIAL COURT OF DAVIS COUNTY, STATE OF UTAH
THE HONORABLE RODNEY S. PAGE PRESIDING.

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FILED

DEC 19 1996

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

JANA D. EDWARDS (ROSS),	*	
	*	
Plaintiff/Appellee,	*	
	*	Case No. 960548-CA
vs.	*	
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TABLE OF CONTENTS

TABLE OF AUTHORITIES	i
TABLE OF STATUTES, RULES AND CONSTITUTIONAL PROVISIONS	ii
JURISDICTION AND NATURE OF PROCEEDINGS	1
STATEMENT OF ISSUES PRESENTED	1
STANDARD OF APPELLATE REVIEW	2
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES	2
STATEMENT OF THE CASE	4
STATEMENT OF FACTS WITH CITATIONS TO THE RECORD	4
SUMMARY OF THE ARGUMENT	8
ARGUMENT	8
I. THE TRIAL COURT WAS INCORRECT WHEN IT FAILED TO DISQUALIFY ITSELF FOR BIAS AND PREJUDICE	8
a. <u>The trial court displayed actual bias and prejudice against the Defendant</u>	9
b. <u>The Judge who reviewed Defendant's affidavit for legal sufficiency did so improperly.</u>	12
II. THE TRIAL COURT WAS INCORRECT IN SUMMARILY FINDING CONTEMPT OF COURT WHERE THE PROSPECTIVE CONTEMPTUOUS BEHAVIOR, INDIRECT IN NATURE, HAD NOT OCCURRED	13
CONCLUSION	15
CERTIFICATE OF MAILING	16
ADDENDUM	

TABLE OF AUTHORITIES

<u>Barnard v. Murphy</u>	
852 P.2d 1023 (Utah Ct. App. 1993)	8, 9
<u>Boggs v. Boggs</u>	
824 P.2d 478 (Utah Ct. App. 1991)	14, 15
<u>Burgers v. Maiben</u>	
652 P.2d 1320 (Utah 1982)	14
<u>Haslam v. Morrison</u>	
190 P.2d 520 (Utah 1948)	8
<u>Liljeberg v. Health Services Acquisition Corp.</u>	
108 S. Ct. 2194 (1988)	10
<u>State v. Boyington</u>	
200 P.2d 723 (Utah 1948)	10, 11, 12
<u>State v. Long</u>	
844 P.2d 381 (Utah Ct. App. 1992)	14
<u>State v. Neeley</u>	
748 P.2d 1091 (Utah 1988)	10
<u>State v. Pena</u>	
869 P.2d 932 (Utah 1994)	1, 2
<u>Thomas v. Thomas</u>	
569 P.2d 1119 (Utah 1977)	15
<u>Von Hake v. Thomas</u>	
759 P.2d 1162 (Utah 1988)	13, 14
<u>Young v. Patterson</u>	
922 P.2d 1280 (Utah 1996)	12

TABLE OF STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

Rule 63(b) - Utah Rules of Civil Pro.	12
Utah Code Ann. § 78-2a-3(2)(e) (1995)	1
Utah Code Ann. § 78-32-1(5) (1992)	1, 4, 13
Utah Code Ann. § 78-32-3 (1992)	1, 13
United States Constitution	
Amendment VI	8
United States Constitution	
Amendment XIV	8
Utah Constitution	
Article I, Section 7	1
Utah Code of Judicial Conduct	
3(c)(1)(b) (1981)	10

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JURISDICTION AND NATURE OF PROCEEDING

The Utah Court of Appeals has jurisdiction to hear this matter pursuant to U.C.A. §78-2a-3(2)(e) and/or (h) (Supp. 1995), which provides that the court has appellate jurisdiction over appeals from the district court involving criminal and domestic relations cases.

This appeal is proper pursuant to U.C.A. §77-18a-1(a), as it follows an order finding contempt pursuant to U.C.A. §78-32-1(5). This order followed an evidentiary hearing before the Honorable Rodney S. Page, Judge of the Second Judicial District Court of Davis County, on the 23rd day of July, 1996.

ISSUES PRESENTED BY THIS APPEAL AND STANDARD OF REVIEW

1. Whether the trial court was correct in failing to disqualify itself for bias and prejudice.

Standard of Review: The trial court's determinations of law will be reviewed for "correctness." This matter approximates a "de novo" review as the appellate courts closely and regularly determine the legal effect of specific facts. State v. Pena, 869

P.2d 932 (Utah 1994).

2. Whether the trial court was correct in summarily finding contempt of court where the prospective contemptuous behavior, indirect in nature, had not occurred.

Standard of Review: The trial court's determinations of law will be reviewed for "correctness" i.e., the appellate court owes no deference to the lower court. State v. Pena, 869 P.2d 932 (Utah 1994).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

UNITED STATES CONSTITUTION, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

UNITED STATES CONSTITUTION, Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UTAH CONSTITUTION Article I, Section 7

No person shall be deprived of life, liberty or property, without due process of law.

UTAH RULE OF CIVIL PROCEDURE 63(b)

Disqualification. Whenever a party to any action or proceeding, civil or criminal, or his attorney shall make and file an affidavit that the judge before whom such action or proceeding is to be tried or heard has a bias or prejudice, either against such party or his attorney or in favor of any opposite party to the suit, such judge shall proceed no further therein, except to call in another judge to hear and determine the matter.

Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed as soon as practicable after the case has been assigned or such bias or prejudice is known. If the judge against whom the affidavit is directed questions the sufficiency of the affidavit, he shall enter an order directing that a copy thereof be forthwith certified to another judge (naming him) of the same court or of a court of like jurisdiction, which judge shall then pass upon the legal sufficiency of the affidavit. If the judge against whom the affidavit is directed does not question the legal sufficiency of the affidavit, or if the judge to whom the affidavit is certified finds that it is legally sufficient, another judge must be called in to try the case or determine the matter in question. No party shall be entitled in any case to file more than one affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

UTAH CODE ANNOTATED Section §78-2a-3(2)(e)(i)

The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over: (e) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony; (i) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity.

UTAH CODE ANNOTATED Section §78-32-1(5)

The following acts or omissions in respect to a court or proceeding therein are contempts of the authority of the court: (5) Disobedience of any lawful judgment, order or process of the court.

UTAH CODE ANNOTATED Section §78-32-3

When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily, for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as prescribed in Section 78-32-10 thereof. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators or other judicial officers.

STATEMENT OF THE CASE

This is an appeal from the order, rendered by the Honorable Rodney S. Page on the 23rd day of July, 1996, finding Mr. Bruce Edwards, appellant, in contempt pursuant to §78-32-1(5) U.C.A.(1953) for a prospective failure to comply with a court decree. The appellant also appeals the court's previous ruling concerning the legal insufficiency of the appellant's affidavit for disqualification filed prior to the above referenced hearing. The parties herein, having one child, were divorced in November of 1985, and since that time have had numerous court hearings. Pursuant to the most recent Order to Show Cause brought by the custodial parent Jana Edwards (Ross) the court ordered that Mr. Edwards pay child support on or before the 10th of each month. The court further ordered that for any and all months the payments were not timely, the defendant would be in contempt, sentenced to 30 days jail and a bench warrant issued for his arrest. The court also granted judgment for attorney fees in the sum of \$250.00 for plaintiff's counsel and ordered that the fees be paid at the rate of \$50.00 per month with similar contempt provisions. The appellant now appeals this order.

STATEMENT OF FACTS

The parties, previously husband and wife, were divorced in November of 1985, in the District Court of Davis County, State of Utah. Plaintiff was granted the custody of the parties minor child, namely: Wesley Kenneth Edwards, presently 14 years of age. Defendant, Bruce C. Edwards, was granted visitation with the

child and was ordered to pay child support in an amount set by the court. The amount of the child support was later raised to the sum of \$175.00 per month. On November 6, 1995, at the request of plaintiff, Jana D. Edwards (Ross), a hearing was held wherein Ms. Edwards sought contempt sanctions against Mr. Edwards for failure to pay five months of child support and certain marital debts as set forth in the parties' divorce decree. The amount of the marital debt to be paid by Mr. Edwards was undefined at the time of the divorce. In December of 1995, the marital debt was fixed and the defendant stipulated that he would pay the recently determined amount. The court ruled that Mr. Edwards was in contempt of court for his failure to pay this marital debt and sentenced him to 3 days in jail.

In May of 1996, plaintiff brought another Order to Show Cause In re Contempt, along with her petition for modification of the decree of divorce, claiming, among other things, that the defendant had failed to pay child support for two months. Plaintiff requested an adjudication of contempt, judgment for the past due support, attorney fees and related relief. In the modification petition, plaintiff sought to increase the support and to terminate the child visitation.

Just prior to her above referenced filing, plaintiff denied defendant's summer visitation with his son. (Tr. 20) As a result defendant sought a restraining order to allow visitation. The proposed order was presented to Judge W. Brent West, in Weber County. Judge West signed the order, but then rescinded after

conferring by telephone with Judge Page (addendum IV). During the telephone conference Judge Page on his own motion suspended Mr. Edwards' visitation until further court hearing. (Tr. 21)

In June of 1996, prior to the hearing on plaintiff's Order to Show Cause, defendant filed with the court his affidavit seeking the disqualification of District Judge Page (addendum II), pursuant to Rule 63, Utah R. Civ. P. Plaintiff, appellee herein, filed an affidavit in opposition. Both affidavits were reviewed by District Judge Jon Memmott, who subsequently denied the disqualification in his written ruling of June 18, 1996 (addendum III).

Plaintiff's Order to Show Cause and Petition for Modification came on for hearing before Judge Page on the 3rd of July, 1996. The defendant was again found to be in contempt for his failure to keep his child support current. Specifically, the court found that Mr. Edwards had missed two consecutive months of child support payments; (Tr. 63) notwithstanding the fact that no evidence of such was presented at the hearing. (Tr. 33) However, it was determined that Mr. Edwards was current at the time of the hearing. (Tr. 4) Based on the contempt finding, the court entered a jail sentence of 30 days and stayed the sentence on the condition of future performance. (Tr. 65) Further, the court ordered that the defendant pay his child support on the 5th of each month through the clerk of the court and in the event the payment is not made by the 10th of the month, then the defendant would be adjudged in contempt, sentenced to 30 days jail and a

bench warrant be issued for his arrest, with each month being considered a separate contempt action. (Tr. 65) The court also granted judgment for attorney fees in the sum of \$250.00 for plaintiff's counsel and ordered that the fees be paid at the rate of \$50.00 per month with similar contempt provisions. (Tr. 65)

During the course of the hearing the court itself interrogated Mr. Edwards. In an attempt to discover Mr. Edwards' income the court asked "... what did your income tax return show for the year 1995 as to gross receipts from your business?" (Tr. 44) Mr. Edwards replied, "I'm in the process of filing several back years worth of taxes." The court then proceeded to inquire not about Mr. Edwards income but whether he had filed an income tax return. (Tr. 44) When Mr. Edwards stated that he could not recall his last filing of an income tax return the court responded, "Is this what you taught your son, also, I assume?" Later in the questioning the court again returns to the issue of income tax and asks the defendant when the last year was that he filed a tax return. (Tr. 45)

The court then turned to the source of defendant's income and asked if he had borrowed money from his parents. (Tr. 52) When Mr. Edwards stated, "yes" the court asked rhetorically, "... basically supported you?" The court went on to ask whether Mr. Edwards had siblings and whether they had borrowed similar sums of money. (Tr. 52)

Immediately prior to its ruling the court made two derogatory comments concerning Mr. Edwards. The court stated,

"I'm somewhat appalled at your parenting techniques" (Tr. 60) and ". . . here's a man who has filed no income tax for over six years, essentially has lived off his parents for that period of time, none of which would rate very high on my scale when it comes to integrity." (Tr. 61)

SUMMARY OF THE ARGUMENT

The appellant's right to fair trial under the sixth amendment of the United States Constitution was violated when the trial court displayed actual bias and prejudice toward the defendant, but refused to disqualify himself. The appellant's constitutional right to due process under the fourteenth amendment of the United States Constitution was violated when the trial court ordered that he be held in contempt in the event his future child support obligations were not timely met.

ARGUMENT

I. THE TRIAL COURT WAS INCORRECT WHEN IT FAILED TO DISQUALIFY ITSELF FOR BIAS AND PREJUDICE.

In Haslam v. Morrison, 190 P.2d 520 (Utah 1948), the court held that actual bias and prejudice on the part of a judge disqualifies him. The court went on to define the key terms, bias and prejudice "mean a hostile feeling or spirit of ill will toward one of the litigants, or undue friendship or favoritism towards one." Id. at 520. In the case at hand the defendant timely filed an affidavit with the trial court pursuant to Rule 63 of the Utah Rules of Civil Procedure. (addendum 2)

The court of appeals found in Barnard v. Murphy, 852 P.2d

1023 (Utah Ct. App. 1993), "[T]he clear import of Rule 63(b) is that a judge against whom the affidavit is directed must either recuse him- or herself, or if he or she questions the legal sufficiency of the affidavit, certify the matter to another named judge for a ruling on its legal sufficiency." Id. at 1025. The court from which this appeal is taken has shown bias and prejudice toward the defendant and the disqualification affidavit filed pursuant to Rule 63 was improperly reviewed.

a. The trial court displayed actual bias and prejudice against the defendant

The trial judge who the parties have appeared before on several occasions is openly biased against the defendant. In his affidavit seeking disqualification of trial Judge Rodney S. Page the defendant alleged the following: (1) The court had precluded defendant's counsel from arguing a valid legal point, (2) the court had previously sentenced the defendant to jail for contempt in the same matter, (3) the court was openly critical of defendant's parenting style, (4) the court invited further ex-parte communication with defendant's son, (5) the court circumvented its customary and usual practices and (6) the court made findings of fact contrary to the parties' stipulation.

At the November 6, 1995, hearing plaintiff requested that defendant be held in contempt for failure to pay marital debts in the approximate amount of \$1,100.00. Defendant's counsel attempted to argue that such an obligation was not alimony or child support and that the appropriate remedy should be a

judgment rather than a citation of contempt. However, prior to advancing this argument the court took the unusual step of ordering counsel not to make such an argument. The court then ruled that defendant was in contempt; notwithstanding the fact that defendant was not allowed an opportunity to explain why the debts remained unpaid. Defendant was sentenced to 3 days in the Davis County Jail.

As a general proposition, a judge should recuse himself when his "impartiality" might reasonably be questioned. Utah Code of Judicial Conduct 3(c)(1)(b) (1981). This standard set forth by the Utah Code of Judicial Conduct should be given careful consideration by the trial judge as it may require recusal in instances where no actual bias is shown. State v. Neeley, 748 P.2d 1091 (Utah 1988). The court's various statements made during the July hearing coupled with the prior ruling of contempt allow for Judge Page's impartiality to be questioned.

In Liljeberg v. Health Services Acquisition Corp., 108 S. Ct. 2194 (1988), the United States Supreme Court concluded that disqualifying facts which a federal district judge should have known but which he had forgotten were sufficient to disqualify the judge under the federal statute. While the federal statute in question in that case, 28 U.S.C. § 455(a) (1982), requires disqualification for an appearance of bias, the court's preference is clear. In the interests of promoting confidence in the judiciary a judge should recuse himself when faced with legitimate, substantive reasons.

In State v. Boyington, 200 P.2d 723 (Utah 1948), a criminal matter, the court held that the trial judge had erred when he refused to disqualify himself. The court in Boyington took it upon himself to question the defendant. During the examination, the record indicated a change in the attitude of the judge. The appellate court found that he (the trial court) was no longer the arbiter between two litigants, but that he appeared to have assumed the role as prosecutor of the defendant. The court found that the remarks made by the trial court clearly indicated that before the hearing was over, the trial judge was firmly convinced that the defendant was lying.

Here, in the July 3, 1996, hearing, the trial court's interrogation of the defendant evidenced a similar mind-set. During the course of the hearing, the court clearly makes evident its predisposition toward the defendant. Concerning the defendant's manner of disciplining his son, the court remarked, "I'm somewhat appalled at your parenting techniques." (Tr. 60) The court when asking the defendant about whether he had filed a federal income tax return, the court stated "Is this what you taught your son, (sic) also I assume?" (Tr. 44) Upon further inquiry about the source of his income, the defendant admitted that he had borrowed a large sum over the past 8 to 10 years from his parents. The court then asked whether this practice was followed by defendant's siblings; a clear attempt to humble the defendant in open court. The court was aware that Mr. Edwards' parents were in the courtroom at the time. The court also

questioned the defendant's integrity when it found that the defendant had not filed recent income tax returns.

In Boyington, 200 P.2d 723 (Utah 1948), the court found that with "the haste, the procedural irregularities, and the lack of consideration shown the defendant . . . , it is apparent that the judge became hostile to the defendant and biased and prejudiced to the extent" Id. at 727-728 that disqualification would have been necessary. The court found that the trial court's "actions and words adequately displayed bias and prejudice, and as a result, a person in defendant's predicament could never be convinced that he was fairly tried, convicted and sentenced." Id.

b. The judge who reviewed defendant's affidavit for legal sufficiency did so improperly.

The court in Young v. Patterson, 922 P.2d 1280 (Utah 1996), opined concerning Rule 63(b) of the Utah R. Civ. Pro., that "the rule's operation will render a trial judge unable to defend [himself] against false or inaccurate allegations." Id. at 1281 The court made this observation in acknowledging that the affidavit for disqualification was to be presented to the reviewing judge without opposition. The judge who reviews the affidavit does so for "legal sufficiency" only. He does not weigh evidence. The court further stated the an "affidavit may be false but not so demonstrably so and therefore legally 'sufficient' for purposes of rule." Id. at 1280. In the case at hand Judge Jon M. Memmot goes beyond a review of "legal sufficiency" and determines that Mr. Edwards' affidavit is not

credible. Judge Memmot states in his Ruling on defendant's Motion for Disqualification, that the affidavit represents "merely defendant's version of the history of the case," and "self-serving interpretations of the facts and do not represent the actual facts..." (addendum III, pgs. 2, 3) Further, Judge Memmot states in his opinion that "mere accusations in the defendant's affidavit are not sufficient evidence on which to establish grounds for bias and prejudice, particularly where plaintiff's counsel contradicts the allegations in plaintiff's affidavit." Clearly Judge Memmot chose to weigh the evidence provided in both affidavits, rather than merely review defendant's affidavit for "legal sufficiency."

II. THE TRIAL COURT WAS INCORRECT IN SUMMARILY FINDING CONTEMPT OF COURT WHERE THE PROSPECTIVE CONTEMPTUOUS BEHAVIOR, INDIRECT IN NATURE, HAD NOT OCCURRED.

A person faced with the possibility of being held in contempt must be "afforded certain minimal procedural protections" guaranteed by the fourteenth amendment's due process clause. Von Hake v. Thomas, 759 P.2d 1162, at 1169 (Utah 1988). Utah law recognizes two types of contempt proceedings: one for direct contempt, i.e., contempt committed in the presence of the court, and the other for indirect contempt, i.e., contempt committed outside the presence of the court. Utah Code Ann. § 78-32-3 (1992). In the case at hand, the court found that Mr. Edwards was in contempt of court for "failure to pay child support on time and for failure to pay each month as previously ordered by the court." (Tr. 65) After sentencing, the court

added, "[e]very month you fail to make the payment on time *will be a seperate contempt.*" (Tr. 65 emphasis added) Further, the court added that ". . . you have one 30 day commitment right now. If there are any future, any of those contempts will be added onto that 30 day period." (Tr. 65) The court's position is clear. Ms. Edwards by merely notifying the court ex-parte of an untimely payment will trigger a 30 day jail sentence. The imposition of the sentence will not follow an inquiry into the circumstance of Mr. Edwards' noncompliance with the order.

A finding of out of court contempt requires specific procedural protections, namely a hearing. Under section 78-32-3, an affidavit must be presented to the court reciting the facts constituting the alleged contemptuous conduct. Case law recognizes that, as a function of due process, one charged with indirect contempt must "be advised of the nature of the action against him, have assistance of counsel, if requested, have the right to confront witnesses, and have the right to offer testimony on his behalf." Burgers v. Maiben, 652 P.2d 1320, at 1322 (Utah 1982).

The necessity of an affidavit ensures "that the court and the person charged are informed of the conduct alleged to be contemptuous." Von Hake, 759 P.2d 1162, at 1170. "An affidavit satisfies section 78-32-3 and due process if it sets forth the acts done or omitted that form the factual basis for the contempt charge." State v. Long, 844 P.2d 381, at 384 (Utah App. 1992). This Court has ruled that where no such affidavit is presented to

the court, indirect contempt cannot be found. See Boggs v. Boggs, 824 P.2d 478, 481-82 (Utah Ct. App. 1991).

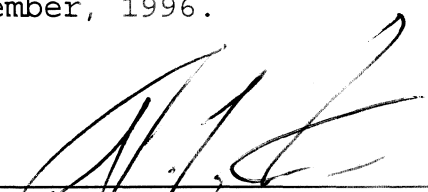
Provided the procedural criteria are met as outlined above, there is then a substantive review. At a court hearing, the court must make the determination that: "(1), the party knew what was required of him; (2), that he had the ability to comply; and (3), that he wilfully and knowingly failed and refused to do so." Thomas v. Thomas, 569 P.2d 1119, at 1121 (Utah 1977) The trial court has deemed the above to be unnecessary. In light of the court's standing order there would be no assessment of Mr. Edwards and his circumstances in the event his child support obligation was not timely paid. Mr. Edwards could find himself in jail for contempt without having an opportunity to be heard in court. The court's order violates Mr. Edwards' right to due process.

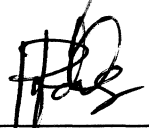
CONCLUSION

The trial court was not correct when it failed to disqualify itself based on Mr. Edwards' affidavit. Moreover, at the trial court level Mr. Edwards' disqualification affidavit was not correctly reviewed for legally sufficient. The trial court was not correct when it sentenced appellant to 30 days in jail for contempt, when, and if, his child support was not timely paid in the future.

The appellant, Bruce C. Edwards, requests this Court to reverse and vacate the order concerning future contempts and an adjudication on the issue of disqualification.

Dated this 19 day of December, 1996.




David J. Knowlton
Attorney for Appellant

Paul H. Olds
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing Brief of Appellant were mailed first-class, postage prepaid, to the following:

Brian R. Florence
FLORENCE AND HUTCHISON
818 26th Street
Ogden, Utah 84401



Paul H. Olds

ADDENDUM I

1 on this occasion. Shortly after he received notice
2 of this petition, he brought one of those delinquent
3 months current, and then yesterday afternoon he
4 delivered June support to my office and I have given
5 that to my client this afternoon.

6 So at least as of right now, Mr. Edwards is
7 current in his support through the month of June, but
8 it's the same old story. We're out of court two
9 months and he starts to become more tardy and fall
10 behind and he just doesn't get it, or if he does get
11 it, he manipulates it.

12 This Court has previously entered a judgment
13 for attorney fees. It is our view that Mr. Edwards,
14 being in the business that he is, is basically
15 judgment proof. He knows how to work the system,
16 he's involved with judgments and collection of
17 judgments and has previously boasted to my client
18 that she wouldn't ever be able to collect a simple,
19 ordinary judgment.

20 In point of fact, every time she has to hire
21 me to take some action, she agrees to pay me a
22 reasonable attorney fee, and in a sense then it comes
23 out of the support she is otherwise receiving and,
24 thereby, Mr. Edwards, in effect, is escaping an
25 obligation of child support.

1 A. She did call me once.

2 Q. Okay. You sought, in fact, to obtain an ex parte
3 order from the Court to give you the child for your
4 summer visitation?

5 A. I did.

6 Q. And that was a pro se order that you had prepared
7 and affidavit.

8 A. That's correct.

9 Q. Apparently, you met with Judge West, if I recall,
10 personally?

11 A. That's correct.

12 Q. And then he contacted this Court?

13 A. That's correct.

14 Q. And then -- in fact, he'd signed it and then
15 whited it out after talking with this Court. This
16 Court apparently indicated -- as you understand -- to
17 Judge West that visitation would be put on hold until
18 today.

19 A. That's correct

20 Q. There would be no visitation.

21 A. That's correct.

22 Q. Okay. Notwithstanding that, apparently you have
23 seen your son once or twice since that date?

24 A. I have. Twice.

25 Q. And what were the circumstances of you seeing

1 Wesley on those occasions, Bruce? Did you go to the
2 house and get him?
3 A. I did not.
4 Q. Why not?
5 A. Because you suggested that I do not do so.
6 Q. Well, I told you what Judge West told me
7 telephonically.
8 A. Correct.
9 Q. All right. So to avoid being in contempt of any
10 court, you declined to seek the custody -- or the
11 visitation with the child?
12 A. I did.
13 Q. All right. How did you -- how did it come to you
14 then that you had these visits?
15 A. My ex-wife delivered my son to my parent's house
16 the day before Father's Day and then one other time.
17 Q. So you've seen him those two times?
18 A. That's correct.
19 Q. Okay. Mr. Edwards, let me move quickly through
20 this. You have some feelings towards your son, do
21 you not?
22 A. I do.
23 Q. Do you have a desire to have visitation with
24 Wesley?
25 A. I do.

1 Q. And then the support for April and May was
2 delivered at one time by Wesley, those two payments
3 being made on June 16th. Do you dispute that?

4 A. I don't recall the dates that Wesley delivered
5 any of those checks.

6 Q. Do you dispute that you gave him the support on
7 the dates that I have just mentioned?

8 A. No.

9 Q. Mr. Knowlton has just handed me checks -- copies
10 of checks purportedly being your child support
11 checks, and there are two that are dated June 6th and
12 June 10th for \$175 each. Do you deny that those
13 would be checks payable for your support for April
14 and May?

15 A. (No response.)

16 Q. You delivered June support yesterday to me,
17 correct, Mr. Edwards?

18 A. That's correct.

19 Q. And so the two checks dated June 10th and June
20 6th --

21 A. The check dated June 10th was the one I delivered
22 to you yesterday.

23 (Off-the-record discussion between Mr.
24 Florence and Ms. Ross.)

25 Q. (By Mr. Florence) Well, while she's looking for

1 MR. EDWARDS: I'd have to go through
2 my budget and see exactly what my cash flow is.

3 MR. KNOWLTON: That's all, Judge.

4 THE COURT: You may step -- well, I
5 have a couple of questions myself.

6 Mr. Edwards, what did your income tax return
7 show for the year 1995 as to gross receipts from your
8 business?

9 MR. EDWARDS: I'm in the process of
10 filing several back year's worth of taxes.

11 THE COURT: When is the last time
12 you filed a tax return?

13 MR. EDWARDS: It's been several
14 years.

15 THE COURT: When was the last time?

16 MR. EDWARDS: I don't recall.

17 THE COURT: Is this what you taught
18 your son, also, I assume?

19 MR. EDWARDS: What?

20 THE COURT: To handle his affairs in
21 this manner?

22 MR. EDWARDS: No, sir.

23 THE COURT: How much income did you
24 have last year?

25 MR. EDWARDS: Approximately a little

1 over 20,000.

2 THE COURT: Well, if you made 2,000
3 a month up through November of 1995, that's what,
4 20,000, 22,000?

5 MR. EDWARDS: Yes, sir.

6 THE COURT: And you're telling me
7 you collected what, 2,000 in the last eight months?

8 MR. EDWARDS: Yes, sir.

9 THE COURT: Where do you reside?

10 MR. EDWARDS: 4695 Birch Creek.

11 THE COURT: Is that an apartment or
12 a house?

13 MR. EDWARDS: It's a house.

14 THE COURT: Whose name is it in?

15 MR. EDWARDS: I rent from my
16 parents.

17 THE COURT: Has that name (sic) ever
18 been in your name?

19 MR. EDWARDS: The house ever been in
20 my name?

21 THE COURT: Yes.

22 MR. EDWARDS: No, Your Honor.

23 THE COURT: Has it been in their
24 name alone?

25 MR. EDWARDS: Yes.

1 MR. EDWARDS: No inheritance. No, I
2 have not.

3 THE COURT: Have you received any
4 loans from them?

5 MR. EDWARDS: Yes, I have.

6 THE COURT: How much and when?

7 MR. EDWARDS: Over the last -- well,
8 let's see. In February I borrowed \$10,000 from them;
9 March --

10 THE COURT: So you had plenty of
11 money to pay support?

12 MR. EDWARDS: (Nods head up and
13 down.)

14 THE COURT: What else?

15 MR. EDWARDS: I have borrowed
16 approximately \$200,000 over a period of eight to 10
17 years from them.

18 THE COURT: Basically supported you?

19 MR. EDWARD: To a large extent, yes.

20 THE COURT: Have other siblings
21 besides yourself?

22 MR. EDWARDS: Yes, I do.

23 THE COURT: Have they received
24 similar sums?

25 MR. EDWARDS: No, they naven't.

1 THE COURT: All right. Anything
2 further, Mr. Florence?

3 MR. FLORENCE: No, Your Honor.

4 THE COURT: The record should note
5 that I have again met with Wesley in chambers and
6 talked about the visitation situation and his
7 relationship with his father. I think it's fair to
8 say that that relationship is not the best it's ever
9 been.

10 But I still sense, Mr. Edwards, in spite of
11 the rocky situation that you've been going through,
12 that he has a desire to be part of your life.

13 I'm concerned a little bit about the
14 statements that you made and your methods of
15 disciplining. I'm not without some experience as a
16 father, and having sat here for a number of years and
17 observed what goes on in families. And I'll have to
18 admit, I'm somewhat appalled at your parenting
19 techniques. I think you could well be served with a
20 parenting class in your own right. Somehow you've
21 missed the concept that 90 percent of the things that
22 we teach our children are what they see us do, and
23 that's a pretty bad example, if I were to consider
24 that's the only thing that you've taught your son.

25 You make big statements about integrity and

1 those kinds of things and yet here's a man who has
2 filed no income tax for over six years, essentially
3 has lived off his parents for that period of time,
4 none of which would rate very high on my scale when
5 it comes to integrity.

6 You're a man of abilities. You're a man of
7 education. You're a man of intelligence, yet you
8 have sore records as far as using any of them.

9 My major concern, as I've said many times, is
10 Wesley. And I'm not naive enough to think that
11 Wesley doesn't manipulate when and where he can. He
12 is a child and children learn to do that early on.
13 In particular, they learn to do that in divorce
14 situations. And the parent who doesn't recognize
15 that and allows himself to be drawn into that, does
16 no service to their child.

17 And I say this for your benefit, Mrs. Ross,
18 because he uses you just as much as he uses his
19 father. And he will continue to do that so long as
20 you two allow it to occur. That doesn't mean you
21 need to be cruel with him or mean with him. But it
22 just means that you need to use some common sense as
23 to what's going on.

24 As to the question of support, Mr. Edwards,
25 you know what your obligation is. I have tried to

1 the problem. She refuses -- if you'll go back in the
2 court file, you'll find that I made a motion pro se
3 four years ago to have the Court appoint an -- some
4 mediator, an arbitrator besides our son.

5 And when my son sits there and beats me up
6 over child support that's been paid, so I -- I take
7 my payments and I give them to my son so he doesn't
8 bother -- you know, so he doesn't antagonize me about
9 that.

10 The payments are timely relative to the month.
11 I did miss one month.

12 THE COURT: Well, sounds to me like
13 you missed about two months in two successions.

14 MR. EDWARDS: If there's --

15 THE COURT: I think April and May
16 was paid in June, was it not?

17 MR. EDWARDS: Well, Feb -- one month
18 got missed and that was an error. I mean, I didn't
19 know that it had not been paid. So when it was
20 brought -- if my ex-wife would have communicated with
21 me and said, you know, what about this month's
22 payment or -- I would have got it to her.

23 THE COURT: All right.

24 MR. EDWARDS: It was a month that it
25 slipped my mind, but I have paid each and every

1 Clerk by the 10th of each month, a bench warrant will
2 issue.

3 Mr. Edwards, you understand what that is?

4 MR. EDWARDS: Yes, sir.

5 THE COURT: Court finds that you're
6 in Contempt of Court for failure to pay child support
7 on time and for failure to pay each month as
8 previously ordered by the Court. The Court will
9 sentence you to 30 days in the Davis County Jail. I
10 will stay the imposition of that sentence, contingent
11 upon your payment of the support as previously
12 ordered. Every month you fail to make the payment on
13 time will be a separate contempt.

14 So you have one 30 day commitment right now.
15 If there are any future, any of those contempts will
16 be added onto that 30 day period.

17 The Court will find that you were in arrears
18 when this affidavit was filed and you should be
19 required to pay a reasonable attorney's fee. I'll
20 order that you pay \$250 to your ex-wife for the
21 benefit of her attorney.

22 The Court will order that that be added to the
23 prior judgment and that you be ordered to pay \$50 per
24 month towards that judgment, and that's to be paid
25 along with your attorney's fees -- or excuse me, the

ADDENDUM II

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IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY

STATE OF UTAH

JANA D. EDWARDS (ROSS),

Plaintiff.

Vs.

BRUCE C. EDWARDS,

Defendant.

)

)

)

)

)

)

AFFIDAVIT OF DISQUALIFICATION

Civil No. 840735759

Hon. Rodney S. Page

STATE OF UTAH

COUNTY OF WEBER

Bruce C. Edwards, first being duly sworn, upon oath, deposes and says as follows:

1. That affiant is the defendant in the above entitled divorce matter.

2. That the parties received a decree of divorce in the above matter on or about the 4th of November, 1995. Under the terms and conditions of the decree of divorce, the plaintiff was awarded the custody of the minor child of the parties, Wesley Kenneth Edwards, now 14 years of age. The decree granted to the defendant reasonable rights of visitation with the minor child.

3. That despite extraordinary efforts by the defendant to enforce and exercise his visitation rights as granted under the decree of divorce, there has not been one year in the last 10 years when the defendant was allowed to fully exercise all rights of visitation as granted by the court. The plaintiff as custodial parent, over the years, has blocked and frustrated defendant's visitation in all ways imaginable. As a result, the parties have appeared back before the court again and again since the entry of the divorce over 10 years ago.

4. That in November of 1994, after years of litigation between the parties, defendant filed and served a petition for the modification of the divorce decree seeking to change the custody of the minor child to the defendant. This action was

taken owing to the fact that the minor child, then 12 years of age, had indicated to the defendant his dissatisfaction with living with the plaintiff, his mother, and her new husband and complained about the treatment that he had received from them. This petition for the change of custody later came on for hearing before Commissioner Allphin and the commissioner was requested by the defendant to speak to the minor child. After this discussion, the commissioner indicated that the child was satisfied with the living and custody arrangement with his mother, and thereupon recommended that the defendant not be granted custody. The commissioner allowed, however, that a home study could be conducted, but that the defendant would be required to pay the cost of such a study.

5. That the defendant was willing to drop the request for a change of custody following the hearing with Commissioner Allphin, however, after the hearing the child indicated to the affiant that when he met in private with the commissioner that the court never asked him to state a preference as to custody and that he was never allowed to give any opinion as to which parent should have his custody. The child further stated to the affiant that he continued in his preference and desire to live and reside with the defendant. At this time, it became clear to the defendant that the minor child could be telling the defendant one thing and the court another. In order to give the child the benefit of the doubt, the defendant had a home study performed by Joseph E. Prantil. During the home study, it became evident that the child was reasonably pleased to remain in the custody of the plaintiff and was mostly satisfied with that arrangement. Mr. Prantil thereupon recommended that the minor child remain in the custody of the plaintiff. More importantly, the home study pointed up to the defendant the real likelihood that what the child had been telling him was not his real preference and desire, but simply what he, the child, believed the defendant wanted to hear. Upon receipt of the home study and in reviewing the same with his counsel, it was apparent that given the real desire of the child to remain with his mother, that defendant had little possibility to prevail in an attempt at the change of custody. Had he not been misled by the child, he would not have pursued his petition for modification, notwithstanding defendant's love for his child and defendant's long time

desire to have the custody of his child.

6. Thereupon, affiant instructed his counsel to communicate with plaintiff's counsel, Mr. Florence, that defendant would not thereafter pursue the change of custody. Defendant's counsel, Mr. Knowlton then telephoned the office of Mr. Florence and advised his secretary that defendant would not move forward his custody trial in the District Court.

7. That in spite of plaintiff's knowledge that defendant would not be pursuing his request for a change of custody, Mr. Florence still wished further hearing in the District Court on such issues of back support, contempt, and attorney fees. Hearing was then scheduled with Judge Rodney S. Page for the 6th of November, 1995.

8. That the parties and their counsel appeared before Judge Page on November 6, 1995, whereupon Mr. Florence requested contempt sanctions be imposed upon the affiant for failure to pay some five months of child support and also for the defendant's failure to pay certain marital debts as set forth in the parties' decree and subsequent orders in the approximate sum of \$1,000.00.

9. That at the time of the hearing, it appeared that the defendant had paid all back child support in full prior to the hearing. However, Mr. Florence sought contempt for failure to have paid some \$1,000.00 of marital debts. Defendant, through his counsel, sought to argue that the obligation to pay marital debts was part of the property division of the parties and not an obligation of child support or alimony. Not being an order to pay support, plaintiff's remedy would be for a judgment against the defendant, rather than a citation of contempt. Before defendant's position on the matter could be advanced to the court, Judge Page took the unusual step of ordering defendant's counsel not to make such an argument, stating in effect "Mr. Knowlton, you are not going to make that argument." During this time, it became obvious to the defendant that the court had determined to punish the defendant notwithstanding the legal merits of the defendant's position. Accordingly, after defendant's counsel was ordered not to argue the merits of defendant's position, Judge Page ruled that the defendant was in contempt of court for his failure to have paid the marital debts

and ordered the defendant incarcerated forthwith for 3 days in the Davis County Jail. Further, the court ordered that the defendant pay the \$1,000.00 of marital debts within 10 days or face further sanctions. This order was entered without even an inquiry of defendant's financial ability to make such a payment. Indeed, defendant did not have the ability to make this payment within the time allotted by the court, but on advise of his counsel, borrowed this sum from his parents and paid it to Mr. Florence.

10. That owing to the nature of affiant's business and this instant litigation, affiant has been in court hearings on many many occasions. In every such instance, it has been the experience of the affiant that both parties, individually or through their counsel, are given the opportunity to assert and argue their legal positions to the court before a decision is made by the court. Never before has the affiant observed the court specifically order an attorney not to advance a client's cause prior to the court's decision. When affiant's counsel was so ordered not to argue defendant's position (that failure to pay marital debts was not punishable by contempt) it became apparent to the defendant that the court determined to incarcerate him notwithstanding the facts of the case or the requirements of the law. Defendant then served three days in the Davis County Jail.

11. That a further hearing was held before Judge Page on the 24th of January, 1996. Defendant does not recall being served with any order to show cause or affidavit seeking relief or claiming any default by the defendant. This hearing was scheduled at the request of Mr. Florence apparently by conference call to Judge Page while defendant's counsel was in the office of Mr. Florence. At the time of the hearing Mr. Florence requested that the defendant again be punished by contempt. It was claimed that the defendant had violated an oral order of the court by requiring the minor child to perform certain household work to work off the cost of the home study. Also, as before, Mr. Florence requested attorney fees. At this hearing the court meet privately with the parties' child. Following this interview, the court spent some 20 to 30 minutes lecturing the defendant on how to raise a child. While not

finding the defendant in contempt, the court was severely critical of the defendant's parenting techniques. Specifically, defendant explained to the court that he thought it was important to teach the child principles of honesty and was concerned that the child had not been honest and forthright with defendant in the custody proceeding.

12. That at the hearing of January 24, 1996, plaintiff counsel requested attorney fees as before. Presumably, Mr. Florence sought attorney fees not only on the issue of the defendant's contempt, as granted earlier by the court, but also for time and effort on the custody issue. However, at the hearing of January 24, 1996, Mr. Florence never claimed that he had not received notice of the defendant's decision to withdraw the custody request. Indeed, Mr. Florence and his client did not appear at the January 24 hearing prepared to or intending to litigate the custody issue, but rather to seek further contempt. The very hearing was scheduled by conference call with the court from Mr. Florence's office at a time when Mr. Knowlton was in attendance. Mr. Florence had repeatedly been told that the custody would not be pursued. Similarly, at the hearing, Mr. Florence never claimed that he had no knowledge of defendant's withdrawal of the custody request. Defendant's counsel repeatedly explained to the court that he told Mr. Florence and his office of the withdrawal of the custody issue, and this was not controverted by Mr. Florence. Despite the stipulation of both counsel on the 22nd of February, 1996, the court in its Ruling of Plaintiff's Motion for Attorney's Fees stated:

The Court hereby concludes that the primary purpose of the hearing on January 24, 1996, was in fact the custody issue; however, the parties stipulated early on to the custody matter, and the majority of the hearing concerned the question of payment of support and contempt. It did appear to the Court, however, that Defendant had failed to notify Plaintiff that the issue was conceded even though that issue had been agreed between Defendant and his attorney several weeks before.

From the foregoing, the Court concludes that Plaintiff is entitled to the award of reasonable attorney's fees applicable to Defendant's Petition to Modify Custody which the Commissioner had recommended previously was without foundation.

As can be seen, the court specifically found that defendant's counsel failed to notify plaintiff's counsel of defendant's withdrawal of the custody claim even where both counsel stipulated to this fact in open court.

13. That affiant finds it very strange and unusual that the court could have found facts disputed by the stipulation of both parties (that plaintiff knew of defendant's withdrawal of the custody claim) and proceed to award attorney fees on the basis of such facts.

14. That apparently at the hearing of January 24th, while meeting privately with the minor child, Judge Page told the parties' child that he could call the judge directly if further difficulties occurred between him and the defendant. Defendant and his counsel were never informed of this fact or at least do not recall it being made a part of the record. It would, of course, be most unusual in affiant's experience for a court to invite ex parte communications of a future nature from a witness or a child the subject of litigation.

15. That on or about the 3rd of June, 1996, the parties' child delivered a letter to Judge Page and may have met personally with the court. Neither defendant or his counsel were aware in advance of this meeting or communication until contacted by the court on a conference call with counsel on the 3rd of June, 1996. During this conference, the court indicated that he had a letter from Wesley and wished to schedule a hearing with the parties and their counsel. This hearing was set for the 3rd of July, 1996. Prior to this conference call, defendant and his counsel had not seen any letter, had not been aware of any meeting between the court and the child, and had not been served with any motions, affidavits, or other pleadings. To the knowledge of defendant and his counsel, nothing was pending before the court. However, plaintiff and her counsel must have been aware of this contact with the court as Mr. Florence indicated that he had an order to show cause pending and was still awaiting service on the defendant. In the opinion of defendant and from the experience of defendant, it would be most unusual for any court to in essence interview a witness, much less a minor child, in advance of a matter yet to be scheduled and heard by the court. Notwithstanding, the court indicated that he wanted the matter scheduled directly with him and that the Domestic Relations

Commissioner would be bypassed, contrary to the customary and usual procedures of the judicial system in these matters.

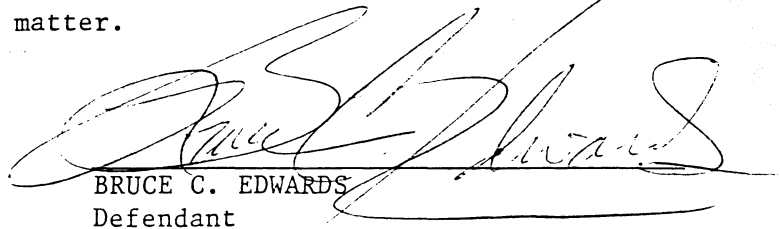
16. That during the telephone conversation of June 3, affiant's counsel requested of Mr. Florence copies of the pleadings that he was attempting to serve on the defendant. These were thereupon mailed to defendant and his counsel and delivered to both at his counsel's office June 7th. The documents, a Request for Order to Show Cause in re Contempt and Petition for Modification of Decree of Divorce were signed by plaintiff's counsel May 20, 1996, well in advance of the child's letter and/or visitation to the court. Affiant must therefore conclude that the plaintiff and/or her counsel knew of and may have participated in the child's communication to the court, all in advance of defendant being served and without the knowledge of the defendant.

17. That in the pleadings now filed with the court, plaintiff seeks to terminate the defendant's child visitation. This is essentially what the minor child has requested in his letter to the court. In addition, plaintiff again seeks to punish the defendant for contempt for failure to pay two months of child support. As with the November 1995 hearing, plaintiff again seeks to punish by contempt defendant's failure to pay the attorney fees ordered by the court. As in November, with the marital debts issue, it is the judgment and position of the defendant that an award of attorney fees is not a support order for child support or alimony the failure of which may be punished by contempt. However, as with the November hearing, the defendant is fearful that this court will not allow the defendant to be heard in opposition to plaintiff's position and that he and his counsel will be silenced and that defendant will again be jailed for failure and inability to pay a civil judgment not amounting to child support or alimony.

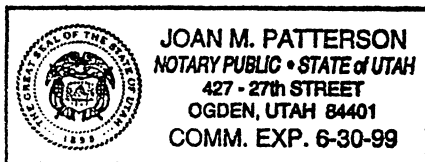
18. That on the basis of the foregoing facts and circumstances; that the court has ordered defendant's counsel not to argue his legal position with the court; that the court has previously jailed the defendant; that the court has critically

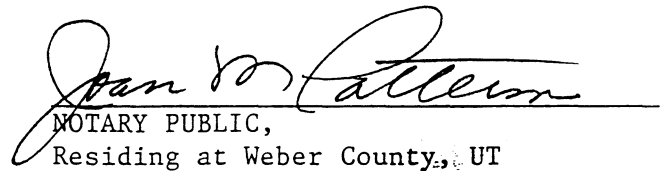
found fault in the parenting style and ability of the defendant; that the court has invited future ex parte communications from the defendant's child; that the court has bypassed the customary and usual procedures of this court; and that the court has made findings of fact in opposition of the stipulated facts of the parties in order to penalize the defendant, it is the judgment of the defendant that the Honorable Rodney S. Page has a bias or prejudice either against the defendant or in favor of the opposite party, and by virtue of the same should proceed no further in this matter, except to call in another judge to hear and determine the matter.

Dated this 19 day of June, 1996.


BRUCE C. EDWARDS
Defendant

Sworn and subscribed to before me this 10 day of June, 1996.

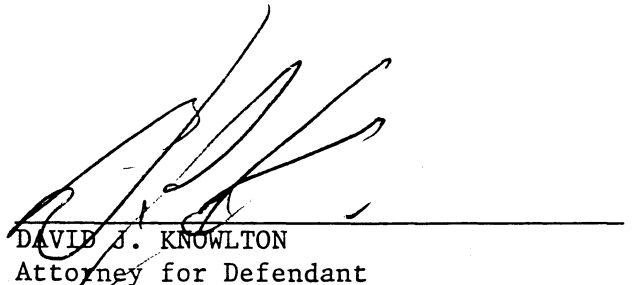



NOTARY PUBLIC,
Residing at Weber County, UT

CERTIFICATE OF COUNSEL OF RECORD

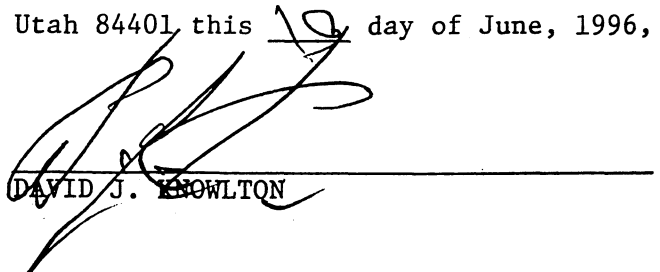
The undersigned counsel of record for the defendant in the above matter hereby certifies, that in his opinion, the foregoing Affidavit of Disqualification is brought in good faith by the defendant.

Dated this 10 day of June, 1996.


DAVID J. KNOWLTON
Attorney for Defendant

CERTIFICATE OF MAILING

Certify mailing a true and correct copy of the foregoing to Brian R. Florence, Attorney for Plaintiff, 818 26th Street, Ogden, Utah 84401 this 19 day of June, 1996, postage prepaid.


DAVID J. KNOWLTON

ADDENDUM III

IN THE SECOND DISTRICT COURT OF DAVIS COUNTY
STATE OF UTAH

JANA D. EDWARDS (ROSS),
Plaintiff,

v.

BRUCE C. EDWARDS,
Defendant.

**RULING ON DEFENDANT'S
MOTION FOR DISQUALIFICATION**

Case No. 840735759

This Court has reviewed defendant's affidavit of disqualification to remove Judge Page on the basis of bias and prejudice. The Court has also reviewed plaintiff's response to defendant's affidavit. In addition, the Court has reviewed the various pleadings and rulings in the file.

Pursuant to Rule 63(b) URCP, this Court is to pass on the legal sufficiency of the defendant's affidavit to determine if the motion should be granted or denied. Defendant, has in his affidavit, discussed several areas in his motion to disqualify. The Court will review each paragraph and issues raised.

In reviewing the record, the Court has reviewed previous cases interpreting Rule 63(b) and believes the standard set forth in Christensen vs. Christensen, 18 Ut 2d 315 (1967) is still applicable today. It states:

"Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists. This, we take it, means reasonable reasons. (Emphasis added) 18 Utah 2d at 318.

The Court has applied this standard in this review in determining whether there is a

reasonable basis for bias and prejudice raised in defendant's affidavit for disqualification.

The Court finds the following as to defendant's allegations:

1. Paragraphs 1, 2, 3, 4, 5, and 6 are merely defendant's version of the history of the case preceding Judge Page's rulings. As indicated in plaintiff's response, they vigorously dispute many of the factual allegations as stated by the defendant in paragraphs 3, 4, 5 and 6. In reviewing the pleadings and findings in the file, the Court finds that many of the statements set forth in paragraphs 1 through 6 are self-serving interpretations of the facts and do not represent the actual facts upon which rulings were made in this case.

2. As to paragraph 7, the Court finds that the purpose of the hearing was not to address the issue of custody, but rather was scheduled by plaintiff's counsel to address defendant's failure to pay child support and to pay as ordered on the judgment entered January 1994.

3. As to paragraphs 8, 9 and 10, the Court has reviewed the minute entry in the file in addition to the findings of fact and order signed by Judge Page concerning the November 6, 1995 hearing. The Court finds that the minute entry specifically addressed defendant's failure to pay the \$100 per month for the judgment. The Court finds this failure to pay \$100 as ordered was a proper basis for entering contempt against the defendant and does not represent bias and prejudice.

4. As to paragraphs 8, 9, and 10, allegations that Judge Page did not allow Mr. Knowlton to make an appropriate legal argument, the record is not clear. Plaintiff's counsel has indicated that Judge Page allowed Mr. Knowlton to argue his theory, but following the argument informed Mr. Knowlton that the argument was without merit. The burden is on the

defendant in his affidavit to show specific instances of bias and prejudice. If, in fact, Judge Page has inappropriately not allowed Mr. Knowlton to proceed with appropriate argument, the defendant could have easily provided a transcript of the hearing as evidence. He has failed to do so and mere accusations in the defendant's affidavit are not sufficient evidence in which to establish grounds for bias and prejudice particularly where plaintiff's counsel contradicts the allegations in plaintiff's affidavit. Therefore, the Court finds on the evidence presented there was no bias or prejudice in Judge Page's conduct in relating to Mr. Knowlton presenting legal arguments in the November hearing.

5. As to paragraphs 11, 12, and 13, the Court has reviewed the record and finds that notice of the hearing of January 24, 1996 was sent out on January 12, 1996 by Mr. Brian Florence. That in reviewing Judge Page's ruling on plaintiff's motion for attorney fees found that Judge Page ruled as follows:

"The Court hereby concludes that the primary purpose of the hearing on January 24, 1996, was in fact the custody issue; however, the parties stipulated early on to the custody matter, and the majority of the hearing concerned the question of payment of support and contempt. It did appear to the Court, however, that defendant had failed to notify plaintiff that the custody issue was conceded even though that issue had been agreed between defendant and his attorney several weeks before."

This Court reviewed the minute entry and findings of fact and conclusions of law and order signed by Judge Page on February 15 1996 and approved as to form by defendant's attorney David J. Knowlton. In that order Judge Page, the Court found that the defendant had failed to pay the \$1,019.12 that he was ordered to pay within ten days of the hearing held November 6, 1995. With the assistance of his parents, it was paid to the plaintiff a few days prior to this trial. Accordingly, the Court will not find the defendant in contempt. Further Judge Page visited with the minor child to determine his concerns about his father's reaction

to the negative custody evaluation. Specific findings approved by Mr. Knowlton indicated that Judge Page did not find the defendant in contempt of court for these actions, but recommended that he be more understanding and prudent in his dealings with the minor child on these issues. Judge Page would further consider the request of plaintiff for additional attorney fees for having to defend the Petition for Modification brought by the defendant. As indicated previously, this order was approved as to form by defendant's attorney David J. Knowlton and it appears that the defendant is raising issues in these paragraphs that have been previously ordered and agreed upon by his own legal counsel. It appears that the defendant is dissatisfied with an order approved by his own counsel. If defendant or his counsel felt the order was improper or in error their remedy was to challenge the order through a proper motion rather than attack the order collaterally through this affidavit. Mr. Knowlton approved the order; for purposes of this review the Court assumes he did approve the order and content of the findings. Therefore, the Court finds no bias and prejudice in Judge Page's actions listed in these paragraphs.

6. As to paragraphs 14 and 15, the Court has reviewed the order by Judge Page that the minor child contact him if there are additional difficulties between him and the defendant. The Court has reviewed the letter sent by the minor child and the conduct by Judge Page in setting further hearings. The Court finds that Judge Page had an overriding responsibility to see that the welfare and best interests of the minor child were being taken care of. This is particularly so in this case based on the prior inappropriate conduct of the defendant in relation to his son because of the custody evaluation. The Court finds based on the record that the conduct of Judge Page was appropriate in protecting the child and would

not constitute any inappropriate ex parte communications. The Court doesn't find any bias and prejudice by Judge Page against the defendant.

7. As to paragraphs 16, 17 and 18 , the Court has reviewed defendant's allegations and finds that they represent suppositions about what the Court may or may not do in regards to future hearings. There is no basis in fact for these allegations. The Court does not find they raise sufficient factual basis that Judge Page has bias and prejudice against the defendant.

CONCLUSION:

Based upon these findings the Court finds the affidavit of the defendant dated June 10, 1996 is legally insufficient and denies the defendant's motion to disqualify Judge Page pursuant to 63(b) on the basis of bias and prejudice. In reviewing the totality of defendant's affidavit, it appears to this Court that the defendant appears dissatisfied with the prior rulings of Judge Page and is using this motion to disqualify him from the case because of his dissatisfaction with prior rulings rather than on the basis of bias and prejudice. The Court remands this case back to Judge Page for further disposition and hearing in this matter.

Dated June 18, 1996.

BY THE COURT:


DISTRICT JUDGE

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing Ruling on the 19th
of June, 1996, postage prepaid, to the following:

Brian R. Florence
818 - 26th Street
Ogden, Utah 84401

David J. Knowlton
427 - 27th Street
Ogden, Utah 84401

Kathy Powell
Deputy Clerk

ADDENDUM IV

BRUCE EDWARDS
Pro Se
P.O. Box 1886
Ogden, Utah 84402
(801) 479-0666

IN THE DISTRICT COURT, SECOND JUDICIAL DISTRICT
DAVIS COUNTY, STATE OF UTAH

JANA D. EDWARDS)	
)	
Plaintiff,)	
)	ORDER GRANTING VISITATION
vs.)	
)	
BRUCE C. EDWARDS)	Civil No. 35759
)	
Defendant,)	

Based on the motion of the defendant as supported by the affidavit of defendant,
and the court being fully advised in the premises, and good cause appearing therefore,
now,

IT IS HEREBY ADJUDGED, ORDERED, AND DECREED that the defendant
shall be and is hereby granted visitation with the minor child of the parties to commence
forthwith and to continue to and through the 14 day of June, 1996, as per the amended
stipulated order of the parties, with the defendant to return the minor child to plaintiff on
the 15th day of June, 1996. Further, defendant shall be entitled to forthwith have the
minor child Wesley Edwards delivered to him for the purpose of carrying out the
visitation.

DATED this 6th day of June, 1996

BY THE COURT

DISTRICT JUDGE