

2000

George R. Bradford v. Andrea O. Bradford and James A. Demita : Brief in Opposition to Certiorari

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

2000 0126

IN THE UTAH SUPREME COURT

GEORGE R. BRADFORD,

Plaintiff-Appellee,

vs.

ANDREA O. BRADFORD and
JAMES A. DEMITA,

Defendant-Appellant.

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:
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Case No. 200000126

Priority No. 16

BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

APPEAL FROM THE JUDGMENT OF THE
UTAH COURT OF APPEALS

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CLERK SUPREME COURT
UTAH

IN THE UTAH SUPREME COURT

GEORGE R. BRADFORD,	:	
	:	
Plaintiff-Appellee,	:	Case No. 200000126
	:	
vs.	:	
	:	Priority No. 16
ANDREA O. BRADFORD and	:	
JAMES A. DEMITA,	:	
	:	
Defendant-Appellant.	:	

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF
ANY OPINIONS ISSUED BY THE COURT OF APPEALS

1. The opinion of the Utah Court of Appeals in this matter is reported as *Bradford v. DeMita*, 993 P.2d 887 (Utah App. 1999); 384 Utah Adv. Rep. 26.

STATEMENT OF THE GROUNDS UPON WHICH JURISDICTION OF
SUPREME COURT IS INVOKED

The Utah Court of Appeals entered its opinion on December 16, 1999.

1. There have been no orders respecting either a rehearing or an extension of time in this matter.

2. Since this Response is not a cross-petition, there is no reliance made on Rule 47(c) of the Utah Rules of Appellate Procedure.

3. This court has jurisdiction over this appeal pursuant to Utah Code Annotated §78-2-2(3)(a) (1953, as amended). The writ of certiorari is sought in order to review

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IN THE UTAH SUPREME COURT

GEORGE R. BRADFORD,	:	
	:	
Plaintiff-Appellee,	:	Case No. 200000126
	:	
vs.	:	
	:	
ANDREA O. BRADFORD and	:	Priority No. 16
JAMES A. DEMITA,	:	
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Defendant-Appellant.	:	

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claims of the Petitioner.

STATEMENT OF FACTS

1. Mr. and Mrs. Bradford were married in June 1985, in Provo, Utah (Findings of Fact No. 1, p. 152, Record) (3/4/98 Tr. at 37).

2. Effective July 14, 1998, the lower court found that the existence of irreconcilable differences between Mr. and Mrs. Bradford made the continuation of their marriage no longer possible (Findings of Fact No. 3, p. 152, Record).

3. Mr. and Mrs. Bradford are 63 and 65 years old, respectively (Findings of Fact No. 6, p. 151, Record) (3/4/98 Tr. at 89).

4. While there were married, Mrs. Bradford possessed few assets other than some personal property and land in Indianola, Utah. After paying the debt on this land with money given to her by her husband, Mrs. Bradford eventually sold this land. She kept all of the profits herself (Findings of Fact No. 7, p. 151, Record) (3/4/98 Tr. at 3-4).

5. During the marriage, Mrs. Bradford worked at temporary jobs. Because she has trouble focusing on her task and may have carpal tunnel syndrome, she is unable to work (Findings of Fact No. 10, p. 151, Record) (3/4/98 Tr. at 90-92).

6. Mrs. Bradford receives approximately \$150.00 per month in child care for taking care of her granddaughter and \$381.00 in Social Security, which amounts to

\$531.00 in monthly income (Findings of Fact No. 11, p. 151, Record) (3/4/98 Tr. at 93).

7. Neither Mr. nor Mrs. Bradford can be retained or develop new skills in order to substantially increase their income (Findings of Fact No. 12, p. 151, Record).

8. Mr. and Mrs. Bradford have lived in Mr. Bradford's home in Spanish Fork, Utah, since the beginning of their marriage. This home was paid for and then given to Mr. Bradford as an inheritance gift before he married Mrs. Bradford. Mr. Bradford was born and raised in this house, and it has been passed from generation to generation within his family (Findings of Fact No. 13, p. 151, Record) (3/4/98 Tr. at 34-35).

9. Neither party disputes that the value of the home is \$180,000.00 (Findings of Fact No. 17, p. 150 Record).

10. Mr. Bradford deeded the home by way of warranty deed to he and Mrs. Bradford as "joint tenants with full rights of survivorship and not as tenants in common: approximately four years after they had married (Findings of Fact No. 18, p. 150, Record) (3/4/98 Tr. at 44).

11. Mr. Bradford filed for divorce from Mrs. Bradford in 1992. At that time, Mr. Bradford requested that both the home and other real property be awarded to him. The divorce action was dismissed in 1993 (Findings of Fact No. 19, p. 150, Record) (3/4/98 Tr. at 55).

12. Since 1992, Mr. and Mrs. Bradford have had many arguments, and Mr. Bradford has threatened to divorce Mrs. Bradford on many occasions (Findings of Fact No. 20, p. 150, Record) (3/4/98 Tr. at 55).

13. James DeMita, Mrs. Bradford's adult son, has been living with Mr. and Mrs. Bradford since 1995. Mr. DeMita's son also stays at the home from time to time. In exchange for these living arrangements, Mr. DeMita neither pays rent nor the utility bill and resides in the home rent-free (Findings of Fact No. 21, p. 150, Record).

14. Mr. DeMita attended one year of law school and has since worked at various jobs. At the time of the trial, Mr. DeMita was employed on a part-time basis at a computer store. His 1996 gross income was approximately \$3,500.00 (Findings of Fact No. 22, p. 150, Record) (3/4/98 Tr. at 106-08).

15. In July 1996, Mr. Bradford discovered various engineers in his home when he entered his house. Although the reasons for the ensuing argument with Mrs. Bradford are in dispute, Mr. Bradford was upset with the project's development. This argument was more severe than the others, and divorce was again discussed (Findings of Fact No. 24, p. 149, Record) (3/4/98 Tr. at 38-40).

16. On August 8, 1996, Mrs. Bradford deeded her share of the home by way of quit claim deed to her son James DeMita. Mr. DeMita gave his mother \$10.00 for the transaction (Findings of Fact No. 25, p. 149, Record) (3/4/98 Tr. at 4-10).

17. Ten Dollars (\$10.00) is not the equivalent value of one-half of the house and property (Findings of Fact No. 26, p. 149, Record).

18. Because Mr. DeMita is Mrs. Bradford's son, the quit-claim transfer of her property to his name was made to an "insider," according to Utah Law (Findings of Fact No. 27, p. 149, Record).

19. Although she deeded her portion of the property to Mr. DeMita rather than any of her other children, Mrs. Bradford claimed that the transfer was made for estate planning purposes. At trial, however, she acknowledged that she did not prepare a will nor did she prepare any instructions whatsoever regarding the disposition of the property (Findings of Fact No. 28, p. 149, Record) (3/4/98 Tr. at 10-14).

20. After this transfer, Mrs. Bradford and Mr. DeMita continued to live in the home as they had before (Findings of Fact No. 29, p. 149, Record) (3/4/98 Tr. at 12-14).

21. Neither Mrs. Bradford nor Mr. DeMita ever told Mr. Bradford about the quit-claim transfer. Mr. Bradford discovered the existence of the deed when his daughter went to the recorder's office to verify that the home and property had been re-zoned for development as Mr. DeMita had mentioned. At this time, the daughter discovered the quit-claim deed and that the property had actually never been re-zoned (Findings of Fact No. 30, p.149-49, Record) (3/4/98 Tr. at 14, 42, 45).

22. After discovering this information, Mr. Bradford commenced another divorce action against his wife. The time between the granting of the deed and the filing of divorce was approximately 11 months (Findings of Fact No. 31, p. 148, Record) (3/4/98 Tr. at 46).

23. The transfer of Mrs. Bradford's portion of the home to her son left her in possession of only her personal property, which was limited value. Thus, this transfer constituted substantially all of her assets (Findings of Fact No. 32, p.148, Record).

24. When asked on cross-examination whether she could afford to pay Mr. Bradford for one-half of the property's value, Mrs. Bradford indicated that she would not be able to do so, but that she would have to rely on family members if she were obligated to pay such a sum (Findings of Fact No. 33, p. 148, Record) (3/4/98 Tr. at 101-02).

25. At the time of the transfer of the quit-claim deed, Mrs. Bradford should have reasonably believed that Mr. Bradford might seek to divorce her, and that he would probably claim the home and property as his own as he had done so in the previous 1992 divorce action (Findings of Fact No. 34, p. 148, Record).

26. The house and property are not partitionable, as they contain a residence, road and river frontage. If an interest were conveyed, the house would have to be refinanced or sold (Findings of Fact No. 35, p. 148, Record).

27. Even though Mr. Bradford placed Mrs. Bradford's name on the deed to the house in 1992, the trial court found that the house and property belong to Mr. Bradford since he inherited this from his father before he married Mrs. Bradford. This finding is consistent with previous Utah Supreme Court decisions wherein the parties married later in life, and one of the parties had brought into the marriage an inheritance gift which was subsequently deeded to the other party. See *Georgedes v. Georgedes*, 627 P.2d 44 (Utah 1981); *Jespersion v. Jespersen*, 610 P.2d 326 (Utah 1980) (Findings of Fact No. 36, p. 148, Record).

28. Mrs. Bradford has expenses which exceed her income, but she cannot make up for this shortfall. Mr. Bradford has approximately \$600.00 per month after expenses. Therefore, Mr. Bradford is required to pay Mrs. Bradford \$600.00 per month in alimony for a term not to exceed the length of the marriage. This gives \$1,131.00 to Mrs. Bradford to meet her expenses and leaves \$1,058.00 for Mr. Bradford's expenses (Findings of Fact No. 40, p. 147, Record).

ARGUMENT AGAINST THE ISSUANCE OF A WRIT OF CERTIORARI

The Utah Court of Appeals' determination that the trial court correctly ruled that Mrs. Bradford was a "creditor" of Mr. Bradford, is not only a correct ruling based on the facts of this case, but is consistent with Utah statutory authority.

The past disposition of this case by both the trial and appellate courts can be

characterized thus: When this issue was litigated during divorce proceedings, the trial court determined that pursuant to Utah Code Ann. §25-6-2(4) and §25-6-5, plaintiff was a creditor of defendant. The Court of Appeals affirmed, set aside the transfer, and held that plaintiff was a creditor with a claim. Indeed, since this very issue is in question here, the Court of Appeal's language is quoted in its entirety:

A "creditor," according to section 25-6-2(4), "means a person who has a claim." A "'claim' means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." Utah Code Ann. §25-6-2(3) (1998); *see also Zuniga v. Evans*, 87 Utah 198, 206, 48 P.2d 513, 516 (1935) (holding persons having tort claim against grantor that was not reduced to judgment at time of conveyance are "creditors").

Although no Utah cases directly address whether a husband or wife becomes a creditor of his or her spouse when contemplating divorce, the Oregon Supreme Court's statement on the subject is helpful to our analysis:

In *Weber v. Rothchild*, 15 Ore. 385, 388-89, 15 P. 650, 3 Am. St. Rep. 162 (1887), we held that a person in the position of plaintiff may maintain a suit to set aside a transaction which may defeat her recovery and rights in a contemplated suit [**8] for divorce. This rule prevails in other jurisdictions that have considered the matter.

We conclude, as did the trial court, that the conveyance by deed of April 14, 1972, was obtained by fraud to hinder or prevent plaintiff's recovery of [defendant's] equitable interest in the fourplex, in the divorce suit, and is therefore set aside and held to be void.

Adamson v. Adamson, 273 Ore. 382, 541 P.2d 460, 466 (Or. 1975) (citations omitted).

In this case, the trial court determined that "pursuant to Utah Code Ann. §25-6-2(4) and §25-6-5 Mr. Bradford is a creditor of Mrs. Bradford in that he has a claim to the real property which Mrs. Bradford deeded to her son, Mr. DeMita." The trial court based this conclusion on the fact that Mr. Bradford had threatened divorce just weeks before Mrs. Bradford made the transfer. That conclusion is consistent with the Oregon Supreme Court's analysis in *Adamson*, which we adopt. In our view, the trial court correctly concluded Mr. Bradford was, indeed, a creditor of Mrs. Bradford, given that his claim to the house—although not reduced to judgment in a divorce proceeding—had arisen through recent threats of [**9] divorce. We note this conclusion is consistent with our supreme court's admonition to construe the statute liberally "to reach all artifices and evasions designed to rob the Act of its full force and effect." *Butler v. Wilkinson*, 740 P.2d 1244, 1260 (Utah 1987); see also *Givan v. Lambeth*, 10 Utah 2d 287, 291, 351 P.2d 959, 962 (1960) ("All statutes made against fraud should be liberally and beneficially expounded to suppress the fraud.") (quoting *Twyne's Case*, 76 Eng. Rep. 809 (1601)).

Bradford v. DeMita, 993 P.2d 887 (Utah App. 1999) 384 Utah Adv. Rep. 26.

Appellee can offer little more guidance than that issued by the above-mentioned holding. The Court of Appeals issued its ruling in light of case law that admonishes courts to be wary of a debtor's activity that could be deemed as fraudulent vis-a-vis a creditor. This admonition was heeded when the Court went to the very language of the act – finding that future threats of divorce, especially in light of the facts at hand (a particularly contentious marriage with numerous talks about separation) – indicated that

Mr. Bradford was a creditor with a claim.

CONCLUSION

The decision of both the Utah Court of Appeals and the trial court below it represent clear applications of statutory construction, reliance on appropriate precedent, and the overall charge to read the UFCA in a way that will protect individuals just like Mr. Bradford, a man whose family home was titled away from him, without notice, only after Mrs. Bradford realized that she might very well lose an interest in the home altogether.

RESPECTFULLY SUBMITTED this 14th day of April, 2000.

ALDRICH, NELSON, WEIGHT & ESPLIN

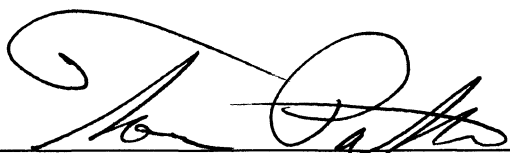


THOMAS R. PATTON
Attorney for Appellee

MAILING CERTIFICATE

I hereby certify that I mailed, postage prepaid, this 14th day of April, 2000, two copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the following:

James DeMita
Appellant
1138 East 100 North
Spanish Fork, UT 84660



ADDENDUM

Rule 47(c) of the Utah Rules of Appellate Procedure

Utah Code Ann. §25-6-2(4) and §25-6-5

Utah Code Annotated §78-2-2(3)(a) (1953, as amended)

may petition separately, or any two or more of them may join in a petition. When two or more cases are sought to be reviewed on certiorari and involve identical or closely related questions, it will suffice to file a single petition for a writ of certiorari covering all the cases. A cross petition for writ of certiorari shall not be joined with any other filing.

(b) *Parties* All parties to the proceeding in the Court of Appeals shall be deemed parties in the Supreme Court, unless the petitioner notifies the Clerk of the Supreme Court in writing of the petitioner's belief that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served on all parties to the proceeding below, and a party noted as no longer interested may remain a party by notifying the clerk, with service on the other parties, that the party has an interest in the petition.

(c) *Motion for certification and transmission of record* A party intending to file a petition for certiorari, prior to filing the petition or at any time prior to action by the Supreme Court on the petition, may file a motion for an order to have the Clerk of the Court of Appeals or the clerk of the trial court certify the record, or any part of it, and provide for its transmission to the Supreme Court. Motions to certify the record prior to action on the petition by the Supreme Court should rarely be made, only when the record is essential to the Supreme Court's proper understanding of the petition or the brief in opposition and such understanding cannot be derived from the contents of the petition or the brief in opposition, including the appendix. If a motion is appropriate, it shall be made to the Supreme Court after the filing of a petition but prior to action by the Supreme Court on the petition. In the case of a stay of execution of a judgment of the Court of Appeals, such a motion may be made before the filing of the petition. Thereafter, the Clerk of the Supreme Court or any party to the case may request that additional parts of the record be certified and transmitted to the Supreme Court.

Rule 48. Time for petitioning.

(a) *Timeliness of petition* A petition for a writ of certiorari must be filed with the Clerk of the Supreme Court within 30 days after the entry of the final decision by the Court of Appeals. The docket fee shall be paid at the time of filing the petition.

(b) *Refusal of petition* The clerk will refuse to receive any petition for a writ of certiorari which is beyond the time indicated in paragraph (a) of this rule or which is not accompanied by the docket fee.

(c) *Effect of petition for rehearing* The time for filing a petition for a writ of certiorari runs from the date the decision is entered by the Court of Appeals, not from the date of the issuance of the remittitur. If a petition for rehearing is timely filed by any party, the time for filing the petition for a writ of certiorari for all parties runs from the date of the denial of rehearing or of the entry of a subsequent decision entered upon the rehearing.

(d) *Time for cross petition*

(1) A cross-petition for a writ of certiorari must be filed

(A) within the time provided in Subdivisions (a) and (c) of this rule, or

(B) within 30 days of the filing of the petition for a writ of certiorari.

(2) Any cross-petition timely only pursuant to paragraph (d)(1)(B) of this rule will not be granted unless a timely petition for a writ of certiorari of another party to the case is granted.

(3) The docket fee shall be paid at the time of filing the cross petition. The clerk shall refuse any cross petition not accompanied by the docket fee.

(4) A cross petition for a writ of certiorari may not be joined with any other filing. The clerk of the court shall refuse any filing so joined.

(e) *Extension of time* The Supreme Court, upon a showing of excusable neglect or good cause, may extend the time for filing a petition or a cross petition for a writ of certiorari upon motion filed not later than 30 days after the expiration of the time prescribed by paragraph (a) or (c) of this rule, whichever is applicable. Any such motion which is filed before expiration of the prescribed time may be ex parte, unless the Supreme Court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties. No extension shall exceed 30 days past the prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(f) The number of copies to be filed and served shall be the same as provided in Rule 26.

Rule 49. Petition for writ of certiorari.

(a) *Contents* The petition for a writ of certiorari shall contain, in the order indicated:

(1) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed, except where the caption of the case in the Supreme Court contains the names of all parties.

(2) A table of contents with page references.

(3) A table of authorities with cases alphabetically arranged and with parallel citations, agency rules, court rules, statutes, and authorities cited, with references to the pages of the petition where they are cited.

(4) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise and should not be argumentative or repetitious. General conclusions, such as "the decision of the Court of Appeals is not supported by the law or facts," are not acceptable. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the Supreme Court.

(5) A reference to the official and unofficial reports of any opinions issued by the Court of Appeals.

(6) A concise statement of the grounds on which the jurisdiction of the Supreme Court is invoked, showing:

(A) the date of the entry of the decision sought to be reviewed,

(B) the date of the entry of any order respecting a rehearing and the date of the entry and terms of any order granting an extension of time within which to petition for certiorari,

(C) reliance upon Rule 47(c), where a cross-petition for a writ of certiorari is filed, stating the filing date of the petition for a writ of certiorari in connection with which the cross-petition is filed, and

(D) the statutory provision believed to confer jurisdiction on the Supreme Court.

(7) Controlling provisions of constitutions, statutes, ordinances, and regulations set forth verbatim with the appropriate citation. If the controlling provisions involved are lengthy, their citation alone will suffice and their pertinent text shall be set forth in the appendix referred to in subparagraph (10) of this paragraph.

(8) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and its disposition in the lower courts. There shall follow a statement of the facts relevant to the issues presented for review. All statements of fact and references to the proceedings below shall be supported by citations to the record before and to the opinion of the Court of Appeals.

- outstanding voting securities of the debtor, other than a person who holds the securities
- (i) as a fiduciary or agent without sole discretionary power to vote the securities, or
 - (ii) solely to secure a debt, if the person has not exercised the power to vote,
 - (b) a corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities
 - (i) as a fiduciary or agent without sole power to vote the securities, or
 - (ii) solely to secure a debt, if the person has not exercised the power to vote,
 - (c) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor, or
 - (d) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets
- (2) "Asset" means property of a debtor, but does not include
- (a) property to the extent it is encumbered by a valid lien,
 - (b) property to the extent it is generally exempt under nonbankruptcy law, or
 - (c) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant
- (3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, undisputed, legal, equitable, secured, or unsecured
- (4) "Creditor" means a person who has a claim
- (5) "Debt" means liability on a claim
- (6) "Debtor" means a person who is liable on a claim
- (7) "Insider" includes
- (a) if the debtor is an individual
 - (i) a relative of the debtor or of a general partner of the debtor,
 - (ii) a partnership in which the debtor is a general partner,
 - (iii) a general partner in a partnership described in Subsection (7)(a)(ii),
 - (iv) a corporation of which the debtor is a director, officer, or person in control, or
 - (v) a limited liability company of which the debtor is a member or manager,
 - (b) if the debtor is a corporation
 - (i) a director of the debtor,
 - (ii) an officer of the debtor,
 - (iii) a person in control of the debtor,
 - (iv) a partnership in which the debtor is a general partner,
 - (v) a general partner in a partnership described in Subsection (7)(b)(iv),
 - (vi) a limited liability company of which the debtor is a member or manager, or
 - (vii) a relative of a general partner, director, officer, or person in control of the debtor,
 - (c) if the debtor is a partnership
 - (i) a general partner in the debtor,
 - (ii) a relative of a general partner in, a general partner of, or a person in control of the debtor,
 - (iii) another partnership in which the debtor is a general partner,
 - (iv) a general partner in a partnership described in Subsection (7)(c)(iii),
 - (v) a limited liability company of which the debtor is a member or manager, or
 - (vi) a person in control of the debtor,
 - (d) if the debtor is a limited liability company
 - (i) a member or manager of the debtor,
 - (ii) another limited liability company in which the debtor is a member or manager,
 - (iii) a partnership in which the debtor is a general partner,
 - (iv) a general partner in a partnership described in Subsection (7)(d)(iii),
 - (v) a person in control of the debtor, or
 - (vi) a relative of a general partner, member, manager or person in control of the debtor,
 - (e) an affiliate, or an insider of an affiliate as if the affiliate were the debtor, and
 - (f) a managing agent of the debtor
- (8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien
- (9) "Person" means an individual, partnership, limited liability company, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity
- (10) "Property" means anything that may be the subject of ownership
- (11) "Relative" means an individual or an individual related to a spouse, related by consanguinity within the third degree as determined by the common law, or a spouse, and includes an individual in an adoptive relationship within the third degree
- (12) "Transfer" means every mode, direct or indirect, absolute or conditional, or voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance
- (13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings
- 1992
- 25-6-3. Insolvency.**
- (1) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation
- (2) A debtor who is generally not paying his debts as they become due is presumed to be insolvent
- (3) A partnership is insolvent under Subsection (1) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts
- (4) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter
- (5) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset
- 1988
- 25-6-4. Value — Transfer.**
- (1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied. However, value does not include an unperformed promise made other than in

- (3) 30 district judges in the Third District,
- (4) 12 district judges in the Fourth District,
- (5) four district judges in the Fifth District,
- (6) two district judges in the Sixth District,
- (7) three district judges in the Seventh District, and
- (8) two district judges in the Eighth District 1998

78-1-2.3 Number of juvenile judges and jurisdictions.

The number of juvenile court judges shall be

- (1) two juvenile judges in the First Juvenile District,
- (2) five juvenile judges in the Second Juvenile District,
- (3) eight juvenile judges in the Third Juvenile District,
- (4) four juvenile judges in the Fourth Juvenile District,
- (5) two juvenile judges in the Fifth Juvenile District,
- (6) one juvenile judge in the Sixth Juvenile District,
- (7) two juvenile judges in the Seventh Juvenile District, and
- (8) one juvenile judge in the Eighth Juvenile District 1999

78-1-2.4, 78-1-3. Repealed.

1996

CHAPTER 2

SUPREME COURT

Section

- 78-2-1 Number of justices — Terms — Chief justice and associate chief justice — Selection and functions
- 78-2-1 5, 78-2-1 6 Repealed
- 78-2-2 Supreme Court jurisdiction
- 78-2-3 Repealed
- 78-2-4 Supreme Court — Rulemaking, judges pro tempore, and practice of law
- 78-2-5 Repealed
- 78-2-6 Appellate court administrator
- 78-2-7 Repealed
- 78-2-7 5 Service of sheriff to court
- 78-2-8 to 78-2-14 Repealed

78-2-1. Number of justices — Terms — Chief justice and associate chief justice — Selection and functions.

- (1) The Supreme Court consists of five justices
- (2) A justice of the Supreme Court shall be appointed initially to serve until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office of a justice of the Supreme Court is ten years and commences on the first Monday in January following the date of election. A justice whose term expires may serve upon request of the Judicial Council until a successor is appointed and qualified
- (3) The justices of the Supreme Court shall elect a chief justice from among the members of the court by a majority vote of all justices. The term of the office of chief justice is four years. The chief justice may serve successive terms. The chief justice may resign from the office of chief justice without resigning from the Supreme Court. The chief justice may be removed from the office of chief justice by a majority vote of all justices of the Supreme Court
- (4) If the justices are unable to elect a chief justice within 30 days of a vacancy in that office, the associate chief justice shall act as chief justice until a chief justice is elected under this section. If the associate chief justice is unable or unwilling to act as chief justice, the most senior justice shall act as chief justice until a chief justice is elected under this section
- (5) In addition to the chief justice's duties as a member of the Supreme Court, the chief justice has duties as provided by law

- (6) There is created the office of associate chief justice. The term of office of the associate chief justice is two years. The associate chief justice may serve in that office no more than two successive terms. The associate chief justice shall be elected by a majority vote of the members of the Supreme Court and shall be allocated duties as the chief justice determines. If the chief justice is absent or otherwise unable to serve, the associate chief justice shall serve as chief justice. The chief justice may delegate responsibilities to the associate chief justice as consistent with law 1990

78-2-1.5, 78-2-1.6. Repealed.

1971, 1981

78-2-2 Supreme Court jurisdiction.

- (1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States
- (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction
- (3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over
 - (a) a judgment of the Court of Appeals,
 - (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals,
 - (c) discipline of lawyers,
 - (d) final orders of the Judicial Conduct Commission,
 - (e) final orders and decrees in formal adjudicative proceedings originating with
 - (i) the Public Service Commission,
 - (ii) the State Tax Commission,
 - (iii) the School and Institutional Trust Lands Board of Trustees,
 - (iv) the Board of Oil, Gas, and Mining,
 - (v) the state engineer, or
 - (vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire and State Lands,
 - (f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (e),
 - (g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution,
 - (h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony,
 - (i) appeals from the district court involving a conviction of a first degree or capital felony,
 - (j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction, and
 - (k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas
- (4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except
 - (a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony,
 - (b) election and voting contests,
 - (c) reapportionment of election districts,
 - (d) retention or removal of public officers,
 - (e) matters involving legislative subpoenas, and
 - (f) those matters described in Subsections (3)(a) through (d)
- (5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall