

1987

Gordon Heath v. Cindy Roundy : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS, STATE OF UTAH

870245-CA

GORDON HEATH,

PLAINTIFF/RESPONDENT,

vs.

CINDY ROUNDY,

DEFENDANT/APPELLANT.

: Court of Appeals

: Case No. 870245CA

: Category No. 7

:

BRIEF OF APPELLANT CINDY ROUNDY

Appeal from denial of motion to set aside default judgment, Third District Court, Judge Michael R. Murphy.

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TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| JURISDICTION | 1 |
| NATURE OF THE CASE | 1 |
| ISSUES ON APPEAL | 2 |
| DETERMINATIVE PROVISIONS | 2 |
| STATEMENT OF THE CASE | 3,4 |
| SUMMARY OF ARGUMENT | 5 |
| ARGUMENT | |
| POINT I | |
| THE UNCONTROVERTED AFFIDAVIT OF MOTHER SHOWS MISTAKE AND INADVERTENCE | 6 |
| POINT II | |
| THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT REFUSED TO SET ASIDE THE DEFAULT | 10 |
| CONCLUSION | 14 |
| MAILING CERTIFICATE | 16 |
| APPENDIX 1 | 17,18 |
| APPENDIX 11 | 19 |

TABLES OF AUTHORITIES

| <u>CASES</u> | <u>Page</u> |
|--|-------------|
| <u>Helgesen v. Inyangumia</u> , 636 P.2d 1079 (Utah 1981) | 10,11,12 |
| <u>Interstate Excavating v. Agla Development</u> , 611 P.2d 369 (Utah 1980) | 10,11 |
| <u>Larson v. Collina</u> , 684 P.2d 52, (Utah 1984) | 13 |
| <u>May v. Thompson</u> , 667 P.2d 1109 (Utah 1984) | 10 |
| <u>State v. Musselman</u> , 667 P.2d 1053 (Utah 1983) | 6 |

STATUTES

| | |
|--|-------|
| Utah Rules of Civil Procedure, Rule 55(c) | 2,6 |
| Utah Rules of Civil Procedure, Rule 60(b) | 2,6,7 |

SUPPLEMENTAL AUTHORITIES

| | |
|--------------------------------------|---|
| 49 C.J.S. Judgments §334(n)(2)(a) | 7 |
| 49 C.J.S. Judgments §334(n)(4) | 8 |

JURISDICTIONAL STATEMENT

This court has jurisdiction over this appeal pursuant to §78-2a-3(2)(g) U.C.86-87 for the reason that the underlying cause of action is for paternity.

NATURE OF THE CASE

Appellant (hereinafter referred to as "mother") and respondent (hereinafter referred to as "alleged father"), formerly husband and wife, were divorced in 1974. They had one child, a daughter, at the time of the divorce. Approximately five years later mother gave birth to a son. Five years after the birth, alleged father sought to modify the 1974 divorce decree to obtain custody over the son.

The District Court through Judge Russon in D14139 ordered alleged father to institute a proper paternity action regarding paternity of the afterborn child in October of 1986.

Alleged father instituted the present action on Dec. 26, 1986 and gained jurisdiction over mother on Feb. 2, 1987. Mother failed to answer and a default was taken. Mother immediately moved the trial court to set aside the default. Her motion was denied. This appeal ensued.

STATEMENT OF ISSUES ON APPEAL

Mother presents two issues on appeal. First, did the trial court err when it ruled as a matter of law that the affidavit of mother failed to show the type of excuse or inadvertence contemplated by Rule 60(b)(1) of the Utah Rules of Civil Procedure?

Secondly, did the trial court abuse its discretion when it refused to set aside the default paternity judgment?

DETERMINATIVE PROVISIONS

Mother respectfully submits that the following statutory provisions are determinative of the issues to be decided in this appeal:

Rule 55(c) Utah Rules of Civil Procedure:
Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

Rule 60(b)(1) Utah Rules of Civil Procedure:
On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party of his legal representative from a final judgment, order, or proceeding for the following reasons:
(1) mistake, inadvertence, surprise, or excusable neglect;.

(See Appendix 1 for complete texts).

STATEMENT OF THE CASE

The facts relevant to this case are as follows:

Plaintiff/respondent (referred to as "Alleged father") and defendant/appellant (referred to as "mother"), formerly husband and wife respectively, were divorced on August 28, 1974 in the Third District Court, case no. D-14139. (R. 24.) They had one child, a daughter, at the time of the divorce. (R. 24.)

Mother gave birth to a son, David Heath, on Dec. 21, 1979. (R. 24.)

On March 14, 1986 alleged father sought to gain custody of the boy David Heath by seeking to modify the 1974 divorce decree D-14139. (R. 24,24.)

On or about Oct. 10, 1986, following a hearing on Sept. 29, 1986 Judge Leonard Russon ordered alleged father to institute a proper paternity action independent of the original divorce. (R. 25.) The basis for the order was that the court had no jurisdiction over the boy because he was not born until some five years after the decree sought to be modified became final. (R. 25.)

Alleged father finally did file a paternity action on or about Dec. 23, 1986. (R. 25.)

Alleged father's attorney contacted counsel for mother in mid-January 1987 because alleged father

had been unable to locate mother for purposes of serving a summons and complaint. (R. 25.) Counsel for mother ascertained the address of mother and provided it to counsel for alleged father. (R. 25.) Service of process was completed on Feb. 7, 1987. (R. 6, 25.)

Because of the communication between attorneys regarding her address, mother assumed that her attorney knew she had been served, and therefore did not notify him of the service. (R. 8, 25.) A default certificate was filed on March 2, 1987. (R. 7.) A copy of the default judgment was mailed to mother on March 25, 1987. (R. 13.)

Mother filed a motion to set aside default on March 30, 1987. (R. 9.) Mother also filed an affidavit in support of her motion to set aside default which set forth her reason for failing to answer. (R. 8.)

Even though mother's affidavit was uncontroverted, the trial court refused to set aside the default, ruling that the affidavit of mother did not show the type of mistake or inadvertence contemplated by Rule 60(b) of the Utah Rules of Civil Procedure. (R. 15.) This appeal ensued. (R. 21.)

SUMMARY OF ARGUMENT

The mother failed to notify her attorney that she had been served with a summons. As a result no answer was filed.

Mother acted under a reasonable misapprehension due to the fact that her attorney and attorney for alleged father had been in touch by telephone on at least two occasions just before default was taken.

Under the facts of this case and particularly because it is a paternity action the trial court violated public policy and abused its discretion when it refused to set aside the default herein. Fairness to all the parties and the fact that alleged father would suffer no harm from allowing this matter to be litigated militate in favor of setting aside the default.

Counsel for alleged father engaged in unprofessional conduct and ignored common courtesy when he took a judgment by stealth without so much as a phone call to counsel for mother.

Therefore, justice would be best served by allowing the parties to litigate this matter with state of the art blood analysis.

ARGUMENT

POINT 1

THE UNCONTROVERTED AFFIDAVIT OF THE MOTHER SHOW MISTAKE AND INADVERTENCE

The peculiar facts of this case involve two similiar rules, either of which might be dispositive of this appeal. Rule 55(c) Utah Rules of Civil Procedure deals with setting aside an entry of default. Rule 60(b) involves setting aside a default judgment.

When the mother filed her motion to set aside default and default judgment on March 30, 1986 a certificate of default was filed however a default judgment had not been entered. (R. 7.)

Judgment was taken on April 3, 1986 during the interlude between the filing of the motion to set aside default and the hearing on the motion. (R. 12.) Therefore, it appears that this court may dispose of this matter by either of the cited rules.

Rules 55(c) requires "good cause" to set aside an entry of default. Rule 60(b)(1) requires mistake, inadvertence, suprise or excusable neglect.

The general rules regarding relief from default judgments are well settled. In State v. Musselman, 667 P.2d 1053 (Utah 1983) the Utah Supreme Court summarized by stating, "We are in accord gener-

ally with the doctrine ...that the courts should be liberal in granting relief against judgment by default to the end that controversies may be tried on the merits." Id. at 1055. The court went on to state, "In order to be relieved from default judgment, he must not only show that the judgment was entered against him through excusable neglect (or any other reason specified in Rule 60(b)), he must also show that his motion was timely, and that he had a meritorious defense to the action." Id. at 1055-56.

The trial court ruled that the affidavit of defendant did not show the type of mistake contemplated by Rule 60(b). (R. 15.) The mother asserts that said ruling was gross error.

With respect to mistake, it is generally incumbent upon the defaulting party to show that his mistake was one of fact, and not of law. 49 C.J.S. Judgments §334(n)(2)(a). Even a cursory reading of the mother's affidavit (see appendix 2.) and the record on appeal shows that the mother was operating under the mistaken impression that her attorney knew that she had been served and would therefore file a timely answer. (R. 8.) Such a misapprehension by a client falls clearly into the category of mistake of fact, and not of law.

In order for inadvertence so serve as a ground for relief, the inadvertence must be based upon more than forgetfulness, and must be such as might be expected on the part of a reasonably prudent person under the circumstances. 49 C.J.S. Judgments §334(n)(4). The primary inquiry as respects inadvertence is whether a reasonable man similiarly situated might be expected to make a similiar error.

The record shows that counsel for both parties had conversed by telephone on at least two occassions in mid-January 1987 regarding the instant paternity action. (R. 25.)

The mother provided her address to her attorney and it was duly forwarded to counsel for the alleged father. (R. 25.) The conduct of the mother was clearly forthright and sincere and done in anticipation that litigation would ensue.

The relevant portion of the mother's affidavit reads as follows: "2. No answer was filed in this case because I assumed my attorney knew that I had been served so I failed to inform him that I had been served until March 26, 1987." (R. 8.)

It is beyond dispute that mother strenuously resisted alleged father's wrongful attempt to modify the custody decree entered in 1974. (R. 25.) Alleged counsel and his attorney were therefore

on notice that the mother wanted to litigate the paternity issue.

Once ordered to do so, alleged father delayed for nearly three months before filing the paternity action. (R. 2.) It was nearly six more weeks before the mother was served with a summons on Feb. 7, 1987. (R. 6.)

The long periods of delay coupled with the fact that counsel for both parties had been in touch by telephone on at least two occasions in mid-January 1987 set a scenario in which a reasonable person under similar circumstances would mistakenly believe that their attorney was aware of the lawsuit and would file a timely answer.

The mother acted quite reasonably under the circumstances. Once she learned of the default she immediately contacted her attorney and a motion to set aside default was filed within five days of the date the judgment was mailed to her. (R. 9.)

POINT II

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO SET ASIDE THE DEFAULT

"The decision to relieve a party from a final judgment under Rule 60(b)(1) is subject to the discretion of the trial court. But discretion should be exercised in furtherance of justice and should incline towards granting relief in a doubtful case to the end that the party may have a hearing." Helgesen v. Inyangumia, 636 P.2d 1079,1081 (Utah 1981).

In May v. Thompson, 677 P.2d 1109 (Utah 1984) the Utah Supreme Court stated with respect to setting aside a default that, "On appeal, we should not reverse the trial court's determination unless it is arbitray, capricious, or not based on adequate findings of fact or on the law." *Id.* at 1110.

It is also well settled in Utah law that default judgments are not favored, especially if they can be set aside without serious injustice to the other party. In Interstate Excavating v. Agla Development, 611 P.2d 369 (Utah 1980) it was stated that, "The uniformly acknowledged policy of the law is to accord litigants the opportunity for a hearing on the merits, when this can be done without serious injustice to the other party. To

that end, the courts are generally indulgent toward the setting aside of default judgments where there is reasonable justification or excuse for the defendant's failure to appear, and when timely application is made to set it aside. Consistent with the objective just stated, where there is doubt about whether a default should be set aside, the doubt should be resolved in favor of doing so ...". Id. at 371.

Appellant herein (mother) asserts that the trial court abused its discretion because its finding that there was no mistake or inadvertence was without a legal or factual basis, and was therefore arbitrary and capricious as well as unfair to the mother and the child.

In the 1981 case of Helgesen v. Inyangumia, 636 P. 2d 1079,1081 the Utah Supreme Court faced a problem similar to this appeal. In Helgesen a default was taken even though discussions were ongoing through the parties' agents. Said the court at 1081, "the plaintiff's attorney ... proceeded ... to have the default of the defendant entered in the case without so little as a phone call to the adjustor." The court continued, "Common courtesy and ordinary professional conduct dictate that before proceeding to the court the attorney should have made contact with the adjustor with whom he had been dealing for so long, and to have made inquiry

as to why an answer had not been filed." Id. at 1081.

Although a different cause of action was involved herein the procedural background of Helgesen was very similiar to that of this appeal.

The mother's attorney had been with with alleged father's attorney for many months, in a dispute that spanned two separate action. (R. 24,25.) Counsel for alleged father even called counsel for mother in mid-January 1987 to obtain the address of mother. (R. 25.) Counsel for mother provided the address to counsel for alleged father. (R. 25.)

What did counsel for alleged father do when no answer was filed? Did he have the common courtesy and professional integrity to make a simple telephone call to mother's counsel in order to inquire as to why no answer had been filed as outlined in the Helgesen case? No, counsel for alleged father proceeded to take a default by stealth. (R. 7.) He never even mailed a copy of the default certificate or the default judgment to mother's counsel. (R. 7,12.)

The Helgesen court also stated that, "it is quite uniformly regarded as an abuse of discretion

to refuse to vacate a default judgment where there is reasonable justification or excuse and timely application is made to set it aside." Id. at 1081.

The action of the trial court was not only unfair, it was contrary to public policy. In Larson v. Collina, 684 P.2d 52,54 (Utah 1984) Utah adopted the position that default judgments in a paternity action are not favored. Said the court, "Since such a determination could have important consequences for the child in the future, that determination should be made, even in default proceedings, on the basis of reliable blood tests, if possible, ...".

In the instant case the trial court made an adjudication of paternity without any blood test at all even though all parties were before the court and blood tests could have been ordered as a matter of course.

CONCLUSION

That the mother established mistake and inadvertence in her affidavit is quite clearly beyond dispute. That being the case, the other issue is whether or not, under the facts of this case, the trial court abuse its discretion.

The case cited herein outline a number of factors to be considered once a party in default make the threshold showing of excuse, meritorious defense and a timely motion.

Fairness and due process of law favor litigation on the merits when it can be done without injustice to the other side. If this default were set aside, alleged father would not suffer. In fact, he would benefit if the case were litigated and the proper blood analysis performed by competent pathology experts. With blood tests, the father will know with certainty whether he is in fact the father of the boy whose paternity is in dispute. As the case now stands, all the alleged father knows for certain is that his attorney was able to obtain a judgment without any factual basis to support it.

If the default is set aside and the matter

is fully and fairly litigated, all of the parties, including the boy, will be able to make an intelligent and rational determination based upon the latest scientific methods, rather than by stealth and suprise.

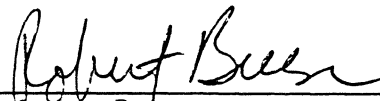
Fairness also requires that borderline cases be resolved in favor of setting aside the default.

Public policy requires blood tests in paternity cases, even in default paternity cases. The trial court committed clear error when it adjudicated paternity without the standard blood test.

The lack of common courtesy and professional conduct by counsel for alleged father in obtaining the default judgment without so much as a phone call to mother's attorney should not be rewarded by the Utah Court of Appeal.

Justice, the needs of the child, the facts, the conduct of the parties and public policy all demand that this case be remanded for a full and fair trial on the merits or such other proceedings as are proper after blood tests are performed.

Dated this 24th day of August, 1987.



Robert Breeze
Attorney for Defendant/
Appellant.

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing brief was mailed, first class, postage prepaid on the 25 day of August, 1987, to the following counsel of record:

James T. Dunn
4516 So. 700 East, #330
Salt Lake City, Utah 84107

R. Burn

in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, and/or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination by the court that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment.

(1) Generally.

Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. It may be given for or against one or more of several claimants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between or among themselves.

(2) Judgment by Default.

A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.

(d) Costs.

(1) To Whom Awarded.

Except when express provision therefor is made either in a statute of this state or in these Rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; provided, however, where an appeal or other proceedings for review is taken, costs of the action, other than costs in connection with such appeal or other proceeding for review, shall abide the final determination of the cause. Costs against the State of Utah, its officers and agencies shall be imposed only to the extent permitted by law.

(2) How Assessed.

The party who claims his costs must within five days after the entry of judgment serve upon the adverse party against whom costs are claimed, a copy of a memorandum of the items of his costs and necessary disbursements in the action, and file with the court a like memorandum thereof duly verified stating that to affiant's knowledge the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed may, within seven days after service of the memorandum of costs, file a motion to have the bill of costs taxed by the court in which the judgment was rendered.

A memorandum of costs served and filed after the verdict, or at the time of or subsequent to the service and filing of the findings of fact and conclusions of law, but before the entry of judgment, shall nevertheless be considered as served and filed on the date judgment is entered.

(3)-(4) Repealed. January 1, 1985. See Utah Rules of Appellate Procedure.

(e) Interest and Costs to be Included in the Judgment.

The clerk must include in any judgment signed by

him any interest on the verdict or decision from the time it was rendered, and the costs, if the same have been taxed or ascertained. The clerk must, within two days after the costs have been taxed or ascertained, in any case where not included in the judgment, insert the amount thereof in a blank left in the judgment for that purpose, and make a similar notation thereof in the Register of Actions and in the Judgment Docket.

RULE 55. DEFAULT

(a) Default.

(b) Judgment.

(c) Setting Aside Default.

(d) Plaintiffs, Counterclaimants, Cross-Claimants.

(e) Judgment Against the State or Officer or Agency Thereof.

(a) Default.

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

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

(b) Judgment.

Judgment by default may be entered as follows:

(1) By the Clerk.

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

(2) By the Court.

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

(c) Setting Aside Default.

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

(d) Plaintiffs, Counterclaimants, Cross-Claimants.

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

(e) Judgment Against the State or Officer or Agency Thereof.

(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

(7) Error in law.

(b) Time for Motion.

A motion for a new trial shall be served not later than ten days after the entry of the judgment.

(c) Affidavits; Time for Filing.

When the application for a new trial is made under subdivisions (1), (2), (3), or (4), it shall be supported by affidavit. Whenever a motion for a new trial is based upon affidavits they shall be served with the motion. The opposing party has ten days after such service within which to serve opposing affidavits. The time within which the affidavits or opposing affidavits shall be served may be extended for an additional period not exceeding twenty days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court.

Not later than ten days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.

(e) Motion to Alter or Amend a Judgment.

A motion to alter or amend the judgment shall be served not later than ten days after entry of the judgment.

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.

(a) Clerical Mistakes.

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

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.

On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion

shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than three months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these Rules or by an independent action.

RULE 61. HARMLESS ERROR

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties, is ground for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Stay Upon Entry of Judgment.

(b) Stay on Motion for New Trial or for Judgment.

(c) Injunction Pending Appeal.

(d) Stay Upon Appeal.

(e) Stay in Favor of the State, or Agency Thereof.

(f) Stay in Quo Warranto Proceedings.

(g) Power of Appellate Court not Limited.

(h) Stay of Judgment Upon Multiple Claims.

(i) Excepting to Sureties; Justification; Multiple Sureties; Deposit in Lieu of Bond.

(j) Waiver of Undertaking.

(a) Stay Upon Entry of Judgment.

Execution or other proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

(b) Stay on Motion for New Trial or for Judgment.

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction Pending Appeal.

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.

(d) Stay Upon Appeal.

When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay, unless such stay is otherwise prohibited by law or these Rules. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the

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SALT LAKE COUNTY, UTAH

MAR 30 4 57 PM '87

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

H. D. HINDLEY, CLERK
3rd DIST. COURT
BY Cherie Peterson
DEPUTY CLERK

Gordon Heath,)
Plaintiff,) AFFIDAVIT IN SUPPORT OF
MOTION TO SET ASIDE DEFAULT
AND DEFAULT JUDGMENT

v.)

Cindy Roundy,) Case No. C86-9470

Defendant.)

Judge Michael Murphy

State of Utah ss.
County of Salt Lake

Affiant, Cindy Roundy, being first duly sworn deposes
and says as follows:

1. I am the defendant in the above entitled matter;
2. No answer was filed in this case because I assumed my attorney knew that I had been served so I failed to inform him that I had been served until March 26, 1987.
3. I never received any papers regarding this case (except the complaint and summons) until March 28, 1987 when I received a copy of a Judgment.
4. I believe with all my heart that the plaintiff, Gordon Heath, is not the father of my son David Heath.

Dated this 30 day of March, 1987.

Cindy Roundy
Cindy Roundy

Subscribed and sworn to before me this 30th day of
March, 1987.

Caryn H. Brughurst
Notary Public

My commission expires: 9-10-89

Residing at SL County

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