

1996

Intermountain Health Care, Inc., a Utah
corporation, dba Credit Assurance Agency v.
Thomas Smith and Marie Smith : Brief of Appellee

Utah Court of Appeals

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Thomas Smith; For the Defendant-Appellant.

Lawrence R. Peterson; Peterson & Simpson; For the Plaintiff-Appellee.

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**UTAH COURT OF APPEALS
BRIEF**

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IN THE UTAH COURT OF APPEALS

INTERMOUNTAIN HEALTH CARE, INC., a Utah corporation, dba Credit Assurance Agency,	:	
	:	Case No 960694CA
Plaintiff/Appellee	:	
vs.	:	Priority 15
THOMAS SMITH,	:	
Defendant/Appellant	:	
and MARIE SMITH,	:	
Defendant.	:	

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
STATE OF UTAH, SANDY DEPARTMENT,
THE HONORABLE ROGER A. LIVINGSTON, JUDGE, PRESIDING

APPELLEE'S BRIEF

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FILED

FEB 13 1997

COURT OF APPEALS

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INC., a Utah corporation, :
dba Credit Assurance Agency, : Case No 96069-CA
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JURISDICTION

The Appeals Court may lack jurisdiction because the Trial Court has not entered judgment against the Co-defendant, Marie Smith, (See Course of Proceedings, below). In order to avoid multiple appeals, jurisdiction of the Appeals Court is limited to cases where a final order has disposed of the case as to all of the parties. Utah R. App. P. 3; *Southern American Ins. Co., v. Utah Ins. Comm.*, 1996 Utah App. LEXIS 127; *Kennedy v. New Era Indus., Inc.*, 600 P.2d 534, (Utah 1979).

STATEMENT OF THE ISSUES

Defendant has filed an appeal pro se. The brief of Appellant does not conform to the formal requirements for setting forth and supporting appealable issues and Appeals Court could affirm the Trial Courts judgment on that ground alone. See, e.g., *Trees v. Lewis*, 738 P.2d 612-13 (Utah 1987); *State v. Pursifull*, 751 P.2d 825, (Utah Ct. App. 1988); see also *Amica Mutual Ins. Co., v. Schettler*, 768 P.2d 950,957 (Utah Ct. App. 1989). Appellee has culled from Appellant's brief the following issues:

1. Does Plaintiff's complaint state a cause of action upon which relief can be granted? This is an issue of law for the Appeals Court to determine by construing the pleadings in a light

most favorable to the claimant, *Olson v. Park-Craig-Olson., Inc.*, 815 P.2d 1356(Utah Ct. App. 1991).

2. Did the Trial Court err in granting summary judgment to the Plaintiff? Summary judgment is a matter of law upon which the Appeals Court may make its own determination regarding whether any issue of material fact remains, *Glover v. Boy Scouts of America*, 923 P.2d 1383 (Utah 1996).

3. Did the Trial Court err in failing to grant default judgment to the Defendant on Defendant's Counterclaim? The Trial judge has discretion to grant or set aside default judgment, *Utah DOT v. Osguthorpe*, 892 P.2d 4 (Utah 1995). The Appeals Court must find that the Trial Court abused its discretion in order to reverse.

STATEMENT OF THE CASE

Nature of the case

This is a collection case in which the Plaintiff is attempting to collect \$1506.27, from the Defendants for hospital services and supplies rendered by Plaintiff to the minor child of the Defendants. Defendant, Thomas Smith, mailed Plaintiff an answer and subsequently filed with the Trial Court, but failed to mail to the Plaintiff, a pleading entitled "Counter Complaint"

which alleges \$9000.00 in damages for malicious prosecution. It has been the position of the Defendant, Thomas Smith, that he is not liable for services rendered to his child because his wife took the child to the hospital without his permission.

Course of proceedings

Plaintiff's original summons and complaint were filed on August 16, 1995(Record 1-5). After filing an answer (Record 6,7), Defendant filed with the Court, but failed to mail to Attorney for Plaintiff, a pleading entitled counter complaint, in October of 1995(Record 8-12). In December 1995, Plaintiff moved to amend its complaint to name Mrs. Thomas Smith, the current wife of Thomas Smith and the mother of the minor child patient, as an additional defendant(Record 13-20). Thereupon, Defendant filed with the Court, but failed to serve upon Plaintiff, documents entitled, Certificate and Entry of Default, and Default Judgment for a Sum Certain and Order(Record 21-24).

Plaintiff mailed to Defendant, Thomas Smith copies of Plaintiff's detailed billings in December, 1995(Record 25). In February, 1996, Plaintiff filed a Motion for Summary Judgment, in which Plaintiff alleged that Defendant's only defense was a lack of supporting documentation and that supporting documents had been mailed to the Defendant(Record 28-31).

The Court scheduled the case for oral argument on March 22,

1996, at which time the Defendant, Thomas Smith, pro se, and the Attorney for Plaintiff were present. At the hearing the Court granted Plaintiff leave to amend its complaint once more to correctly identify the second Defendant as Marie Smith instead of Mrs. Thomas Smith. The Court reserved ruling on Plaintiff's Motion for Summary Judgment to a future time.

On February 22, 1996, Defendant filed with the Court, but failed to serve upon Plaintiff, an affidavit in which he admits that certificates regarding mailings to the Attorney for Plaintiff contained the wrong address(Record 32). Summons and amended complaint were served upon Defendant, Marie Smith, on April 19, 1996 (Record 42). No answer has been filed by Marie Smith.

The Court scheduled the case for a scheduling conference on May 31, 1996. The Attorney for Plaintiff appeared at the scheduling conference but Defendant failed to appear. In open court, on the motion of Plaintiff, and based on Defendant's failure to appear, the Court granted Plaintiff's Motion for Summary Judgment against Defendant, Thomas Smith. On June 6, 1996, Defendant, Thomas Smith, filed his appeal at the Trial Court.

Disposition in the Trial Court

The Order and Judgment dismissing Defendant's Counterclaim and granting Judgment against Defendant, Thomas Smith, in the sum of \$1822.81, was signed by the Court on June 11, 1996 (Record 44,45). The Trial Court will not accept Plaintiff's default certificate and default judgement against Defendant, Marie Smith, because the case is on appeal.

Statement of facts relevant to the issues presented for review

The facts relevant to the issues presented for review are set forth in the course of proceedings above. Plaintiff's Complaint is seeking to recover \$1506.27 in medical bills stemming from services rendered to the minor son of Defendant. Defendant's answer alleges only that Plaintiff has not produced "admissible evidence" of Plaintiff's allegations. Plaintiff construed this answer as a general denial and moved for summary judgment. Defendant does not deny that the services were rendered to Defendant's minor child at the request of Defendant's wife, Marie Smith, who is the mother of the child. Defendant has not disputed the appropriateness of the charges nor that they are due from Defendant, Marie Smith. Mr. Smith's only claim is that he is not liable, because he did not authorize them.

Defendant's Counterclaim for malicious prosecution was not served on the Attorney for Plaintiff. The mailing certificate

alleges that the Counterclaim was mailed to 640 South 700 East, Salt Lake City, 84107 instead of the actual address of Plaintiff's Attorney, 4516 South 700 East (Record 10, 32). The Attorney for Plaintiff was first notified of a Counterclaim at the oral argument on March 22, 1996, when the judge mentioned that there was a counterclaim in the file.

SUMMARY OF THE ARGUMENT

Plaintiff's complaint is based on Utah Code Ann. Section 78-45-3 (1995) and Utah Code Ann. Section 30-2-9(1992), which specify that parents are jointly liable for the expenses of their children. The Court properly granted Plaintiff's Motion for Summary Judgment because, after ample opportunity to do so, Defendant had not placed at issue, either by pleading or by argument, any material fact. The Court did not abuse its discretion by refusing to enter the default of the Plaintiff to Defendant's Counterclaim because the Counterclaim failed to state a claim upon which relief could be granted, was not properly served, and the facts upon which a counterclaim might have rested were already contested by the allegations of Plaintiff's complaint.

DETAIL OF THE ARGUMENT

1. Plaintiff's complaint states a cause of action against Defendant, Thomas Smith.

Plaintiff's original and amended complaints each state that,

...in the alternative, the Defendants are liable for the services and supplies rendered as necessary expenses of spouse or dependant, as required by statute.

The Utah statutes that impose liability on Defendant, Thomas Smith are Utah Code Ann. Section 78-45-3 (1995), and Utah Code Ann. Section 30-2-9(1992). Utah Code Ann. Section 78-45-3(1995) states:

(1) Every father shall support his child; and every man shall support his wife when she is in need.

(2) Except as limited in a court order under Section 30-3-5, 30-4-3, or 78-45-7.15:

(a) The expenses incurred on behalf of a minor child for reasonable and necessary medical and dental expenses, and other necessities are chargeable upon the property of both parents, regardless of the marital status of the parents.

(b) Either or both parents may be sued by a creditor for the expenses describe in Subsection (2)(a) incurred on behalf of minor children.

Utah Code Ann. Section 30-2-9(1992), reads as follows:

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife or of either of them, and in relation thereto they may be sued jointly or separately.

Liability under Utah Code Ann. Section 30-2-9 is limited to expenses incurred within a family or marriage relationship. See *Sentry Investigations, Inc., v. Davis*, 841 P.2d 732 (Utah Ct. App. 1992). But Liability for medical expenses of minor children is imposed by Utah Code Ann. Section 78-45-3 without regard to the marital status of the parents.

It is Defendant's contention that he should not be held liable for medical expenses that he did not authorize and for which he did not sign or agree to be liable. As an alternative to liability by contract, Plaintiff's Complaint states a claim under the obligation of support imposed by statute. The consent or agreement of the Defendant is not required.

2. The Court did not err in granting Plaintiff's Motion for Summary Judgment since no material issue of fact remains to be tried.

The sole defense, presented by Defendant, Thomas Smith, both at the Trial Court and again on appeal, has been that he should not be held liable for medical expenses of his minor child to which he did not agree. He has argued that the child was taken to the hospital by Defendant's current wife without his consent. Defendant has not contested the reasonableness of the charges, or the fact of treatment, nor has he alleged payment of any kind.

Defendant's answer alleges only that "Plaintiff has provided no admissible evidence" (Record 6,7) Defendant's Counterclaim make no factual allegations other than the fact of Plaintiff's suit (Record 8,9). It is not a defense to Plaintiff's claim that Defendant did not consent to the treatment of his minor child. See the argument at Issue 1., above.

The Trial Court scheduled a hearing of Plaintiff's motion for summary judgment at which the Court heard the arguments of Defendant, pro se, regarding the case. After the case had been amended to properly include the Defendant's wife as a co-Defendant, the Trial Court again scheduled the case for hearing. When the Defendant, Thomas Smith, failed to appear at the second hearing, the Court granted the Motion for Summary Judgment previously filed by Plaintiff.

In the Docket, the Court based its judgment on Defendant's failure to appear. The Court had given Defendant ample opportunity to present a defense, and Defendant had failed to do so. Plaintiff respectfully submits that nothing in Defendant's pleadings or argument places a material fact at issue for the trier of fact, and the Trial Court properly granted judgment as a matter of law.

3. The Court did not abuse its discretion by refusing to enter the default of the Plaintiff to Defendant's Counterclaim.

Defendant argues that the Trial Court erred in refusing to grant default judgment against Plaintiff on Defendant's Counterclaim. The record clearly shows that at the time Defendant applied for default judgment, Defendant's Counterclaim had not been served on the Attorney for Plaintiff (see Order of Proceedings and Statement of Facts, above). The Attorney for Plaintiff could not reply to Defendant's Counterclaim because he was not aware of it. In any case, the Plaintiff's Complaint was before the Trial Court at the time Defendant applied for default judgment, and the Trial Court was aware of the Plaintiff's allegations therein regarding the facts of the case, which placed at issue any possible factual allegation of Defendant's Counterclaim.

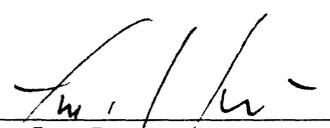
Finally, Defendant's Counterclaim failed to state a claim upon which a judgment could be based. The only allegation of Defendant's Counterclaim is that Plaintiff is guilty of malicious prosecution. Among other problems with this claim, a claim for malicious prosecution cannot be raised until after the conclusion of the prosecution on which it is based. See *Amica Mutual Ins. Co., v. Schettler*, 768 P.2d 950, 959 (Utah Ct. App. 1989). Plaintiff respectfully submits that the Trial Court did not abuse

its discretion in refusing to grant Defendant's improper request for default judgment. The propriety of the Trial Court's grant of summary judgment on Plaintiff claim implies denial of Defendant's claim of bad faith.

CONCLUSION

Appellee respectfully submits that the Trial Court properly granted summary judgment to Plaintiff in this case, and requests that the judgment be affirmed. In the alternative, Appellee requests that the appeal be dismissed for lack of a final order from which to appeal. Appellant requests that costs be awarded Appellee for being required to respond to the appeal.

Dated this 17 day of February, 1997.



Lawrence R. Peterson
Attorney for Plaintiff/Appellee

Certificate of Mailing

I certify that I mailed two copies of the foregoing brief to Appellant, Thomas Smith, pro se, at 252 Crescent Wood Dr. #243, Sandy, Utah 84070, first class postage prepaid this 17 day of February, 1997.

