

1996

Gordon E. Johnson v. Legal Services Plan of America, Kipp and Christian, P.C., and Gregory J. Sanders : Brief of Appellee

Utah Court of Appeals

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Gordon E. Johnson; Appellant Pro Se.

R. Brent Stephens; Snow, Christensen & Martineau; Attorneys for Appellees.

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**UTAH COURT OF APPEAL
BRIEF**

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IN THE UTAH COURT OF APPEALS

DOCKET NO. 960802-0A

GORDON E. JOHNSON,

Plaintiff and Appellant,

960802
No. 960375-CA

vs.

LEGAL SERVICES PLAN OF
AMERICA, KIPP AND CHRISTIAN,
P.C., AND GREGORY J. SANDERS,

Priority 15

Defendants and
Appellees.

BRIEF OF APPELLEES

APPEAL FROM THE SUMMARY JUDGMENT OF THE THIRD
JUDICIAL DISTRICT COURT, HONORABLE FRANK G. NOEL
PRESIDING, SALT LAKE CITY, STATE OF UTAH.

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FILED

DEC 18 1996

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

GORDON E. JOHNSON,

Plaintiff and Appellant,

No. 960375-CA

vs.

LEGAL SERVICES PLAN OF
AMERICA, KIPP AND CHRISTIAN,
P.C., AND GREGORY J. SANDERS,

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I. LIST OF ALL PARTIES

The persons listed in the caption consist of all parties to this action.

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IV. STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to § 78-2-2, et. seq. of the Utah Code and Rules 3(a) and 4 of the Utah Rules of Appellate Procedure.

V. STATEMENT OF ISSUES PRESENTED FOR REVIEW

- A. Viewing the facts and inferences from the facts in the light most favorable to plaintiff, are there material issues of fact precluding summary judgment.
- B. Is this appeal frivolous pursuant to Rule 33(a) of the Utah Rules of Appellate Procedure and, therefore, should the court award damages to the appellees.

VI. STANDARD OF REVIEW

As to issue A, the standard of review of a summary judgment is that the appeals court views the facts and inferences from the facts in a light most favorable to the party against whom summary judgment was entered, and reviews legal conclusions of the trial court for correctness. United Park City Mines Co. v. Greater Park City Co., 870 P.2d 880, 885 (Utah 1993); Christensen v. Burns International Security Services, 844 P.2d 992, 993 (Utah Ct. App. 1992).

As to issue B, the standard of review is a de novo review as to whether Rule 33(a) of the Utah Rules of Appellate Procedure has been violated as defined by Rule 33(b) of the Utah Rules of Appellate Procedure.

VII. DETERMINATIVE AUTHORITY

- A. Rule 56(c) of the Utah Rules of Civil Procedure.
- B. Rules 33 and 34 of the Utah Rules of Appellate Procedure.

VIII. STATEMENT OF THE CASE

A. NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION BELOW.

Plaintiff, acting *pro se*, sued the appellees for breach of contract. Defendants moved the trial court for summary judgment on the ground that as a matter of law there was no breach of contract by the defendants in defendants' alleged failure to represent plaintiff in a civil rights suit against a social services office or the State of Utah and to bring a malpractice action against certain physicians. The court heard oral argument on defendants' Motion for Summary Judgment pursuant to Minute Entry with notice to the parties. (Addendum, Exhibit 1.) Hearing on the motion was set for April 19, 1996. Plaintiff did not appear, and after review of the briefs defendants' Motion for Summary Judgment was granted from the bench. (Addendum, Exhibit 2.) Summary Judgment was entered on May 15, 1996. (Addendum, Exhibit 3.) Plaintiff moved for reconsideration which was denied by the court by Order dated June 12, 1996. In that same order, the court reaffirmed the summary judgment entered on May 15, 1996 (Addendum, Exhibit 4.) On August 13, 1996, the court granted plaintiff's Motion for an Extension of Time to file his Notice of Appeal and gave plaintiff ten days to file such Notice of Appeal. (Addendum, Exhibit 5.) A Notice of Appeal was filed by plaintiff with an Affidavit of Impecuniosity on August 23, 1996. (Addendum, Exhibit 6.)

B. STATEMENT OF FACTS

At relevant times the plaintiff was a plan member in Montgomery Ward's Legal Services Plan improperly denominated in plaintiff's Complaint as Legal Services Plan of America (R. 1-8, 9-14). In return for a monthly payment, the Plan entitled Plan members to receive certain limited

legal services from participating Plan attorneys in accordance with the Plan's Benefit Handbook. (R. 1-2, 31-43).

The Plan's Benefit Handbook provided in pertinent part as follows: "The Plan Administrator contracts with attorneys in your area as independent contractors. . . . In all cases, your Attorneys' obligations and relations will be exclusively with you. The Legal Services Plan will not interfere with that relationship or give any instructions or direction to Plan Attorneys in that regard. . . . Certain matters will be excluded from your Plan benefits:. . . . Frivolous matters, as determined by the Plan Attorney. . . . CONFLICT OF INTEREST SITUATIONS. If Plan Attorneys have a possible conflict of interest they will advise you fully about it. You may then select another Plan Attorney at your option." (R.32, 38, 42, 43.)

At relevant times Kipp & Christian were Plan Attorneys pursuant to the Participating Attorneys Legal Services Agreement with Montgomery Ward Enterprises, Inc. Gregory J. Sanders was a partner in the firm of Kipp & Christian (R.45).

In 1989, plaintiff contacted Kipp & Christian and requested that firm to represent him in a claim against a state social services office in which he had applied for benefits. Apparently certain statements he wrote on a reapplication for assistance (Medicaid) were interpreted as threats to an identified lawyer, judge and doctor. The office had turned over his application to the police, and authorities eventually tried and convicted plaintiff of the crime of assault on a public official, a Class B misdemeanor. (R. 45, 51-52.) Plaintiff wished to assert a civil rights claim against the social services office for disclosing his statements to law enforcement authorities. (R. 2, 45.)

Kipp & Christian reviewed plaintiff's potential claim against the state or social services office, and in the exercise of independent legal judgment determined that any claim asserted would have no merit and would be frivolous; therefore, Kipp & Christian determined not to represent plaintiff in asserting a civil rights claim arising from his criminal conviction. (R. 2, 45-46.)

Plaintiff also requested Kipp & Christian to represent him in a medical malpractice suit against certain physicians who had treated him in the past. Kipp & Christian did not undertake to further investigate plaintiff's request or to represent plaintiff on the medical malpractice matter because the firm regularly represented physicians in medical malpractice cases and viewed plaintiff's potential claims as a conflict of interest. (R. 2, 3, 46.)

Kipp & Christian did promptly inform both the Plan and plaintiff of this conflict and suggested alternative means for plaintiff to consult with counsel regarding any medical malpractice claim. Plaintiff did not consult with either the Plan or other Plan counsel. (R. 32, 46.)

IX. SUMMARY OF ARGUMENT

Plaintiff's complaint sounded solely in breach of contract as to Kipp & Christian's alleged failure to file an action that it considered to be frivolous and another action that it considered to create conflicts of interest for the law firm. The question of whether and what contractual duties are owed by parties to a contract are generally questions of law for the court and the court may not enforce asserted rights that are not supported by the contract itself. In this case, plaintiff's claims fail as a matter of law because defendants had no contractual or other legally cognizable duty to either sue the state or the social services office or provide him with representation on the medical malpractice matter.

Based upon the above argument and based on plaintiff's opening brief which is totally devoid of merit or authority to support his position, plaintiff's appeal is frivolous pursuant to Rule 33(a) of the Utah Rules of Appellate Procedure and these defendants are entitled to damages, double costs and attorneys fees as defined in Rules 33 and 34 of the Utah Rules of Appellate Procedure.

X. ARGUMENT

A. MOVING DEFENDANTS HAD NO CONTRACTUAL OBLIGATION TO SUE THE SOCIAL SERVICES OFFICE OR THE STATE ON CLAIMS THE PLAN ATTORNEY DEEMED FRIVOLOUS.

Plaintiff's first alleged breach of contract arose from these defendants' alleged failure to represent plaintiff in a civil rights suit against the state or social services office. (R. 2.) It was undisputed, however, that Kipp & Christian reviewed the potential claim and believed it to be without merit and frivolous in the exercise of independent legal judgment. Again, the affidavit supporting the Motion for Summary Judgment filed by Gregory Sanders stated as follows:

5. I carefully reviewed the information plaintiff provided me with respect to his potential claim against the state or social services office. After that review, and in the exercise of independent legal judgment, I determined that any claim asserted would have no merit and would be frivolous. I therefore determined not [to] represent plaintiff in asserting civil rights claims arising from his criminal conviction.

(R. 45, 46.) (Bracket added.)

Under the circumstances, plaintiff could not identify any written provision giving him a contractual right to have Kipp & Christian bring suit against the social services office or the state

on his behalf. On the contrary, the benefit plan expressly excludes benefits for “[f]rivolous matters as determined by the Plan Attorney.” (R. 42.)

Moreover, Kipp & Christian had an ethical obligation both to plaintiff and to others to refrain from pursuing civil rights claims they believed had no merit. See, e.g., Davidson v. Allis-Chalmers Corp., 567 F. Supp. 1532 (W.D. Mo. 1983). And the Plan expressly refrains from interfering with the attorney-client relationship or substituting rights under the Plan with the Plan Attorney’s ethical obligations to plaintiff or others. (R. 38.)

In fact, the Rules of Professional Conduct promulgated pursuant to the integration of the Utah State Bar by the Supreme Court on June 30, 1981, In re Integration and Governance of the Utah State Bar, 632 P.2d 845 (Utah 1981), and Article VIII, Section 4 of the Utah Constitution, amended effective July 1, 1985, states in Rule 1.16 that, “[a] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) The representation will result in a violation of the Rules of Professional Conduct or other law.” The bringing of such an action, based upon the lawyer’s independent professional judgment, would be a violation of Rule 3.1 of the Rules of Professional Conduct which states that “[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.” It would also violate Rule 11 of the Utah Rules of Civil Procedure.

In his opening brief at page 5, plaintiff merely states that on his reapplication for assistance he wrote a joke that was misinterpreted as a threat but yet was convicted. Nevertheless, plaintiff

asserts that the agency still was obligated to keep his Medicaid information private pursuant to 42 C.F.R. § 431.301-307. (See plaintiff's Opening Brief at 5.)

However, that statement does nothing to address other factors the Plan Attorney had to consider in valuating a cause of action: considerations, for example, of the state agency's duties to protect the persons plaintiff threatened from possible harm, and the privileges that attach to disclosure under the circumstances. See, e.g., Bryson v. Tillinghast, 749 P.2d 110 (Okla. 1988). In Bryson the court stated that the state has an interest in the protection of its citizens from violent acts and to insure swift apprehension of criminals who commit such acts. The court further stated that applying this statute [restricting disclosure of communications between physicians and patients] in the broad manner urged by appellant would serve as a cloak for crime.

Id. at 112.

B. DEFENDANTS HAD NO CONTRACTUAL OBLIGATION TO ENGAGE IN CONFLICTING REPRESENTATION OR TO FIND SOME OTHER COUNSEL UNDER THE CIRCUMSTANCES.

Plaintiff's second alleged breach of contract in the court below concerned defendants' failure to bring a malpractice suit against certain physicians. (R. 2.) It is undisputed, however, that Kipp & Christian did not take the case because the firm perceived a conflict of interest between plaintiff's case and medical malpractice defense work done by the firm. Kipp & Christian explained the conflict both to plaintiff and to the Plan and plaintiff did not discuss the matter with the Plan or any other Plan Attorney, but simply filed the matter himself "in pro per."

Again, under the circumstances, plaintiff does not and cannot identify any contractual obligation on the part of either the Plan or Kipp & Christian to provide him representation on the

claim. All of the defendants did what was required by the contract between the parties, and it was incumbent upon plaintiff, if he wanted representation on the claim, to exercise some option to see another Plan Attorney or other counsel. (R. 46.)

Plaintiff in his opening brief merely states as to the second claim for breach of contract that it was not enough for Kipp & Christian to claim a conflict of interest in representing plaintiff in a medical malpractice action, but that the assertion is a material fact to be determined at trial. However, Mr. Sanders' affidavit in support of the defendants' Motion for Summary Judgment is uncontroverted as to the following statement:

6. Plaintiff also requested Kipp & Christian to represent him in the medical malpractice suit against certain physicians who had treated him in the past. I did not undertake to further investigate plaintiff's request or to represent plaintiff in the medical malpractice matter because our firm did and does regularly represent physicians in medical malpractice cases and I viewed plaintiff's potential claims as a conflict of interest with that prior representation. (R. 46.)

Moreover, again, such representation in the medical malpractice claim would have violated Rule 1.7 of the Utah Rules of Professional Conduct: Conflict of Interest: General Rule. Rule 1.7 states: "(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest...."

The comment to Rule 1.7 clearly states as follows: "Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation."

Further, none of plaintiff's submissions with respect to declarations or affidavits were ever signed under oath and even if the purported declarations were signed under oath, they do not

controvert the affidavits filed by these defendants in support of their Motion for Summary Judgment. (R. 49, 50.)

C. PLAINTIFF’S APPEAL IS CLEARLY FRIVOLOUS PURSUANT TO RULE 33 OF THE UTAH RULES OF APPELLATE PROCEDURE.

Rule 33(a) states as follows: “Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as defined in Rule 34, and/or reasonable attorney’s fees, to the prevailing party.”

Rule 33(b) states as follows: “For the purposes of these rules, a frivolous appeal, motion, brief or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good-faith argument to extend, modify, or reverse existing law.”

The appeal by the plaintiff is clearly frivolous, coming within the scope of Rule 33, in at least the following particulars:

1. Plaintiff’s complaint in the underlying action sounded in breach of contract. The record is clear that there was no contractual obligation whatsoever for Mr. Sanders or the law firm of Kipp & Christian to sue the state or the office of social services pursuant to the Montgomery Ward Enterprises Legal Services Plan and they considered that such an action would be frivolous.

2. Neither was there a contractual obligation under that same plan for Gregory Sanders and Kipp & Christian to sue physicians who they have represented.

3. In fact, to bring either suit would have violated the Rules of Professional Conduct adopted by the Utah Supreme Court and a violation of Rule 11 of the Utah Rules of Civil Procedure.

4. The affidavits in support of the Motion for Summary Judgment were uncontroverted in their entirety.

5. Plaintiff's opening brief does not even make what is constituted as an argument as required by the Utah Rules of Appellate Procedure. See English v. Standard Optical Co., 814 P.2d 613 (Utah Ct. App. 1991) in which the appellate court would not address any issue where appellant's brief contained no citations to the record and no legal authority concerning such issue. Appellant's opening brief, filed prior to the receipt of the index transmitted by the clerk of the trial court pursuant to Rule 13, has no citation to the record or citation to pertinent authority. There is nothing contained in the plaintiff's brief that negates the trial court's conclusions of law for correctness in any manner.

6. Finally, appellant's brief does not comport with the form of briefs, including the contents of the cover, pursuant to Rule 27 of the Utah Rules of Appellate Procedure, including but not limited to the nature of the proceeding, the name of the trial court, the name of the judge, or argument priority classification. Likewise, the content requirements of the appellant's brief pursuant to Rule 24 of the Utah Rules of Appellate Procedure are similarly deficient including a lack of a statement showing jurisdiction of the appellate court, the statement of the issues, relevant facts with citation to the record, or even an original signature of the party appearing without counsel on one copy of the brief and reproduced signatures on other copies.

In Hunt v. Hurst, 785 P.2d 414 (Utah 1990), plaintiff's counsel was found to have violated Rule 33 and was therefore subject to sanction when, after he investigated plaintiff's malpractice action against a defendant orthodontist and found that he could not prove breach of duty or

causation, the record was devoid of any relevant admissible evidence showing negligence, and after losing on summary judgment he persisted in filing an appeal.


As in Hunt v. Hurst, plaintiff violated this rule when the record was totally devoid of any contractual obligation to file the complaint under the Montgomery Ward Enterprises Plan, is totally devoid of any relevant admissible evidence showing any contract or breach thereof and when the record in the court below was uncontroverted by plaintiff as to any material fact.

XI. CONCLUSION

The District Court's Summary Judgment should be affirmed and damages, attorney's fees and double costs as defined in Rules 33 and 34 of the Utah Rules of Appellate Procedure should be awarded.

DATED this 18 day of December, 1996.

SNOW, CHRISTENSEN & MARTINEAU

By 
R. BRENT STEPHENS
Attorneys for Appellees

N:\18823\1\BRIEF.WPD

ADDENDUM

EXHIBIT 1

Minute Entry

SALT LAKE COUNTY, STATE OF UTAH

• • • • •

JUDGE FRANK G. NOEL

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, postage prepaid, to the following on this 29 day of March, 1996.

Gordon E. Johnson
Plaintiff
216 West 1st North
Brigham City, UT 84302

R. Brent Stephens
SNOW, CHRISTENSEN & MARTINEAU
Attorney for Defendants
P. O. Box 45000
Salt Lake City, UT 84145

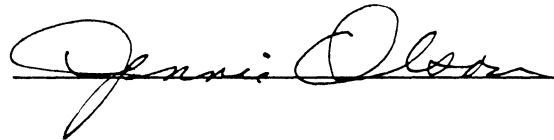
A handwritten signature in cursive script, appearing to read "Jenni Olson", written over a horizontal line.

EXHIBIT 2

Orders

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

JOHNSON, GORDON E	:	CASE NUMBER 950904326 CN
PLAINTIFF,	:	DATE 04/19/96
VS	:	JUDGE FRANK G NOEL
	:	COURT REPORTER NOT PRESENT
DOE I	:	COURT CLERK PAJ
DEFENDANT.	:	

TYPE OF HEARING: SUM
PRESENT:

P. ATTY. JOHNSON, GORDON E
D. ATTY. STEVENS, BRENT

ORDERS

THIS IS THE TIME SET FOR HEARING ON DEFT'S MOTION FOR SUMMARY
JUDGMENT. THE COURT WAITED FOR 45 MINUTES PAST THE TIME SCHEDUL
ED AND PLTF DID NOT APPEAR.
DEFT'S MOTION FOR SUMMARY JUDGMENT IS GRANTED

EXHIBIT 3

Summary Judgment

R. BRENT STEPHENS (A3098)
ROBERT C. KELLER (A4861)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Defendants
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

THIRD JUDICIAL DISTRICT COURT
Third Judicial District

MAY 15 1996

By Pat Jones Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

GORDON E. JOHNSON,

Plaintiff,

vs.

SUMMARY JUDGMENT

No. 950904326 CN

Judge Frank G. Noel

DOE I d/b/a LEGAL SERVICES PLAN
OF AMERICA, KIPP AND CHRISTIAN,
P.C., GREGORY J. SANDERS, and DOES
II Through X,

Defendants.

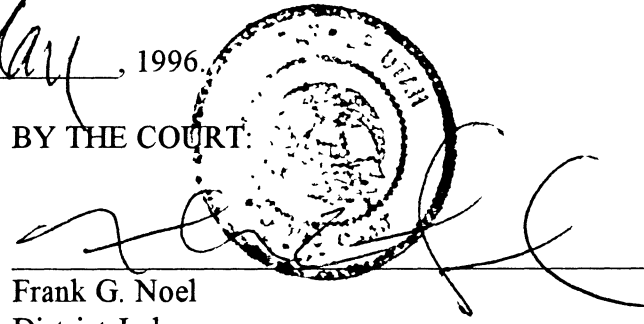
Defendants' Motion for Summary Judgment came regularly for hearing before the Honorable Frank G. Noel on April 19, 1996, at 9 a.m. Plaintiff did not appear after having received Notice of Hearing on April 2, 1996. The defendants appeared by and through their counsel, R. Brent Stephens, of the law firm of Snow, Christensen & Martineau. The Court reviewed the pleadings, affidavits and memoranda on file. Based upon the analysis and reasoning

set forth in the memoranda on file filed by the defendants, and it appearing that there are no material issues of fact, and that the defendants are entitled to judgment as a matter of law,

IT IS ORDERED that summary judgment is entered in favor of all defendants and against the plaintiff, no cause of action,

DATED this 15th day of May, 1996.

BY THE COURT:

A handwritten signature in black ink is written over a circular official seal. The seal features a central emblem surrounded by the words "DISTRICT COURT OF THE STATE OF UTAH". The signature is fluid and extends across the right side of the seal.

Frank G. Noel
District Judge

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

Gordon E. Johnson
216 West 100 North
Brigham City, Utah 84302

Dixie Bowen
Dixie Bowen

Cynthia Prado
NOTARY PUBLIC


 **NOTARY PUBLIC**
CYNTHIA PRADO
10 Exchange Pl
Salt Lake City, Utah 84111
My Commission Expires
April 17, 1999
STATE OF UTAH

EXHIBIT 4

**Order Denying Motion for
Reconsideration Under Rule 59,
and for Summary Judgment
in Favor of Defendants**

THIRD JUDICIAL DISTRICT COURT
Third Judicial District

JUN 12 1996

R. BRENT STEPHENS (A3098)
ROBERT C. KELLER (A4861)
SNOW, CHRISTENSEN & MARTINEAU
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By Pat Jones
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

GORDON E. JOHNSON,

Plaintiff,

vs.

DOE I d/b/a LEGAL SERVICES PLAN
OF AMERICA, KIPP AND CHRISTIAN,
P.C., GREGORY J. SANDERS, and
DOES II Through X,

Defendants.

**ORDER DENYING MOTION FOR
RECONSIDERATION UNDER RULE
59, AND FOR SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANTS**

No. 950904326 CN

Judge Frank G. Noel

Defendants' Motion for Summary Judgment having come on regularly for hearing before the Honorable Frank G. Noel on April 19, 1996, at 9:00 a.m., and plaintiff having received notice of hearing on April 2, 1996, but not appearing, and the defendants having appeared by and through their counsel, R. Brent Stephens of Snow, Christensen & Martineau, and the Court having reviewed the pleadings, affidavits and memoranda on file, and it

appearing that there were no issues of material fact and that defendants were entitled to judgment as a matter of law, the Court orally granted defendants' Motion for Summary Judgment at the close of the hearing.

And prior to entry of summary judgment, plaintiff having timely filed a Motion for Reconsideration under Rule 59, and the Court having now reviewed plaintiff's Motion for Reconsideration, and the memoranda filed in connection therewith, and having issued its Minute Entry of May 17, 1996, denying plaintiff's Motion for Reconsideration Under Rule 59, the Court hereby

ORDERS, that plaintiff's Motion for Reconsideration is denied, and that Summary Judgment, no cause of action, is entered in favor of all defendants and against plaintiff.

DATED this 12th day of June, 1996.

BY THE COURT




Frank G. Noel
District Court Judge

N \18823\1\RCK\SJ ORD

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

Gordon E. Johnson
216 West 100 North
Brigham City, Utah 84302

Suzanne H. Hurst
Suzanne H. Hurst


NOTARY PUBLIC

NOTARY PUBLIC
CHERYL A. HUNTER
10 Exchange Place #1100
Salt Lake City Utah 84111
My Commission Expires
Aug. 29, 1997
STATE OF UTAH

EXHIBIT 5

Court Order

**IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

**Gordon E. Johnson,
Plaintiff,**

vs.

**Doe I 3/b/a Legal Services Plan Of
America, Kipp and Christian, P.C.,
Gregory J. Sanders, and Does II
through X,
Defendants.**

COURT ORDER

CASE NO: 950904326 CN

JUDGE FRANK G. NOEL

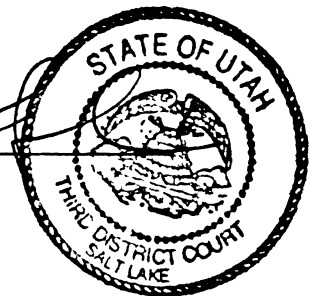
The court has reviewed plaintiff's Motion For Extension of Time to Appeal and feels that under the circumstances the motion should be granted. The court therefore grants the plaintiff ten days from the date of the entry of this order within which to file his Notice of Appeal.

The court declines to waive the requirement for a notarization.

IT IS SO ORDERED.

Dated this 13th day of August, 1996.


Frank G. Noel
District Court Judge



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, postage prepaid, to the following on this 13 day of August, 1996.

Gordon E. Johnson
Plaintiff
216 West 100 North
Brigham City, UT 84302

R. Brent Stephens
SNOW, CHRISTENSEN & MARTINEAU
Attorney for Defendants
P. O. Box 45000
Salt Lake City, UT 84145

A handwritten signature in cursive script, appearing to read "Jennie Olson", is written over a horizontal line.

EXHIBIT 6

Notice of Appeal

1 Gordon E. Johnson
2 216 West 1st North
3 Brigham City, Utah 84302
4 Tel. 801 723-3677

5 In Propria Persona

FILED

95 AUG 22 PM 1:27

CT
BY B. Kleinlein

6 THIRD JUDICIAL DISTRICT COURT

7 FOR THE STATE OF UTAH, SALT LAKE COUNTY

8 GORDON E. JOHNSON,)

9 vs.)

10 KIPP & CHRISTIAN, P.C., et al.,)

11 Defendants/Appellees.)

Case No. 950904326

Notice Of Appeal

12 Plaintiff/appellant Gordon E. Johnson hereby appeals the Court's
13 April 1996 Order granting summary judgment in favor of all defendants
14 and the May 17, 1996 Minute Order denying a Motion For Reconsideration.

15 Dated August 17, 1996 at Brigham City, Utah

16 Gordon E. Johnson
17 Gordon E. Johnson
18

19 Proof Of Service By Mail

20 I hereby certify or declare under penalty of perjury that on
21 August 17, 1996 I mailed, postage prepaid, a copy of this Notice Of
22 Appeal to R. Brent Stephens, Attorney At Law, P.O. Box 45000, Salt
23 Lake City, Utah 84145.

24 Gordon E. Johnson
25
26
27
28

IN THE DISTRICT COURT OF THE _____
COUNTY OF _____, STATE OF UTAH

FILED DISTRICT COURT
JUDICIAL DISTRICT
AUG 2, 1996

GORDON E. JOHNSON, _____,
Plaintiff (s),

vs.

KIPP & CHRISTIAN, P.C. et al.,

Defendant (s).

By [Signature] Salt Lake County
AFFIDAVIT OF IMPEDIMENT
Clerk

Civil No. 950904326
Judge: None

County of Salt Lake)
: ss.
State of Utah)

I, Gordon E. Johnson, do solemnly swear [or affirm] that due to my poverty I am unable to bear the expenses of the action or legal proceedings which I am about to commence, and that I believe I am entitled to the relief sought by the action, legal proceedings, or appeal.

To support this claim I further swear:

1. My monthly income, including government financial support, alimony, and child support is \$ 636.00 Social Security Disability

2. I own the following assets (including real and personal property): _____
An old 386 Computer and Printer, clothes, electronics, books _____.

3. I have an interest in the following business(es): none _____.

Page 2

Affidavit of Impecuniosity

4. There is currently the sum of \$ 0.00 owed me.

5. The total balance of my savings, checking, and security accounts is \$ 7.31.

6. I owe the following debts: Outstanding judgment over \$10,000.00

7. My monthly expenses are \$650.00

Dated this 10th day of July, 1996.

Gordon E. Johnson
Gordon E. Johnson

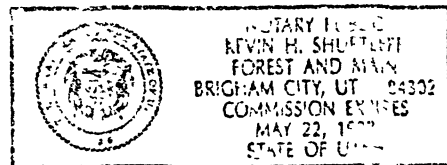
Affiant

Subscribed and sworn to before me this 22 day of August, 1996.

I am unable to get to a notary because I am housebound with health problems!

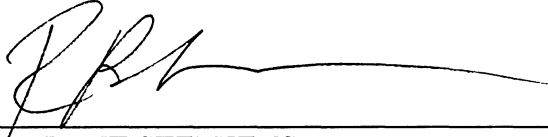
Gordon E. Johnson

[Signature]
Notary Public/Deputy Clerk



CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of December, 1996, I caused two (2) true and correct copies of the **BRIEF OF APPELLEES** to be mailed to Gorden E. Johnson, 216 West 1st North, Brigham City, Utah 84032, Appellant Pro Se.



R. BRENT STEPHENS