

1985

Republic Insurance Group v. Bonnie Lou Doman and Todd Hadley v. Scott Duke : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

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1986

DOCKET NO. 20838

IN THE SUPREME COURT
OF THE STATE OF UTAH

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)	
REPUBLIC INSURANCE GROUP,	(
)	
Plaintiff and Respondent,	(
)	
-v-	(BRIEF OF PROPOSED
)	INTERVENOR AND
)	APPELLANT
BONNIE LOU DOMAN and	(
TODD HADLEY,)	
	(
Defendants and Respondents,)	
	(
-v-)	
	(
SCOTT DUKE,)	Case No. 20838
	(
Proposed Intervenor and)	
Appellant.	(
	oOo	

BRIEF OF PROPOSED INTERVENOR AND APPELLANT

APPEAL FROM THE SECOND JUDICIAL DISTRICT
COURT IN AND FOR THE COUNTY OF DAVIS,
STATE OF UTAH, HONORABLE DOUGLAS L.
CORNABY, JUDGE, PRESIDING

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FILED

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IN THE SUPREME COURT
OF THE STATE OF UTAH

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)	
REPUBLIC INSURANCE GROUP,		(
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Plaintiff and Respondent,		(
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-v-		(BRIEF OF PROPOSED
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)	APPELLANT
BONNIE LOU DOMAN and		(
TODD HADLEY,)	
		(
Defendants and Respondents,)	
		(
-v-)	
		(
SCOTT DUKE,)	Case No. 20838
		(
Proposed Intervenor and)	
Appellant.		(
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BRIEF OF PROPOSED INTERVENOR AND APPELLANT

STATEMENT OF ISSUES
PRESENTED ON APPEAL

1. Did the Court err in denying Scott Duke's Motion to Intervene?
2. Did the Court err in granting Republic's Motion for Summary Judgment?

STATEMENT OF THE CASE

This is an appeal from the granting of a Summary Judgment and the denial of a Motion to Intervene in a Declaratory Judgment action in the Second Judicial District Court of Davis County. Republic Insurance Group sought a declaratory judgment that a Republic Insurance Group policy issued to Bonnie Lou Doman did not afford coverage to Doman due to the alleged intentional acts committed by Todd Hadley

(the son of Bonnie Lou Doman) on Scott Duke (R-4). In order to adequately protect his interests, Duke attempted to intervene as a Defendant pursuant to the provisions of Rule 24(a) of the Utah Rules of Civil Procedure or, in the alternative, Rule 24(b) of the Utah Rules of Civil Procedure (R-55). Prior to Duke's Motion for Intervention, Republic moved the court for Summary Judgment pursuant to Rule 56 of the Utah Rules of Civil Procedure (R-25). Republic's Motion for Summary Judgment was based upon the failure of Hadley/Doman to respond timely to Plaintiff's Requests for Admission (R-29). Duke appeals from the ruling on Motion to Intervene (R-90) and the Ruling on Motion for Summary Judgment (R-92).

STATEMENT OF FACTS

On July 5, 1983, Scott Duke and Todd Hadley were involved in an incident resulting in injuries to Duke, allegedly having been caused by Hadley (R-2). Duke filed a Complaint against Hadley and his mother, Bonnie Lou Doman, in the Second Judicial District Court of Davis County, State of Utah, Civil Number 35245 (R-3).

Republic provided Homeowner's Insurance coverage to Doman (R-2). Doman's insurance policy provided coverage for personal liability (R-3). However, the policy contained certain exclusionary provisions which would deny coverage for an intentional act (R-3).

Republic brought the instant action seeking a Declaratory Judgment that Doman's policy did not afford coverage for any liability which may have resulted from Duke -v- Hadley and Doman, Civil Number 35245, Second Judicial District Court, Davis County, State of Utah (R-1 through 5).

On February 25, 1985, Republic submitted Interrogatories, Requests for Admissions and Request for Production of Documents to Hadley and Doman (R-21, 23). By April 26, 1985, Doman/Hadley had not responded to the discovery requests (R-29) and Republic moved for Summary Judgment based upon Doman/Hadley's failure to deny the Requests for Admission (R-25, 29).

On May 14, 1985, Duke, pursuant to the provisions of Rule 24(a) of the Utah Rules of Civil Procedure, or in the alternative Rule 24(b) of the Utah Rules of Civil Procedure, moved the court for leave to intervene (R-55). Duke had not been made a party to the instant action (R-2) and only became aware that the possibility of Summary Judgment was imminent through a conversation with Doman/Hadley's counsel (R-56). Duke filed a "Motion for Intervention as Defendant" (R-55 through 59) and an "Answer in Intervention" (R-60 through 63). Duke alleged that the representation of his interests by Doman and Hadley was inadequate and that he would, or may, be bound by a judgment in the declaratory action (R-85).

In its "Ruling on Motion for Summary Judgment" the court stated:

The Defendant's failure to answer or otherwise respond to Plaintiff's Request for Admissions within the required thirty days has resulted in the same being admitted, pursuant to the provisions of Rule 36 of the Rules of Civil Procedure. As such, Defendants have admitted each and every material fact at issue in this Declaratory action and Plaintiff is entitled to a judgment as a matter of law. (R-92).

The court then used this rationale in its "Ruling on Motion to Intervene" when it stated "Since the Plaintiff has been granted Summary Judgment, there is nothing left for Scott Duke to intervene in." (R-90, 91). The court then issued a formal judgment and order in conformity with its Memorandum Decisions and signed both the Order denying Motion to Intervene and the Summary Judgment on July 15, 1985, (R-94, 97). Duke filed his Notice of Appeal on August 13, 1985 (R-99, 100).

SUMMARY OF ARGUMENT

Duke's interest in this case is different from that of any existing party. Duke's interest is not being adequately represented by any of the parties. Relevant precedent makes it clear that representation is not adequate if the original party is not diligent in defending the action or allows a default to be entered. In this case, the effect of the granting of Summary Judgment was identical to the entrance of a default. Either would foreclose any further action to

protect the proposed intervenor's interest. Close "cooperation" between Republic and Doman/Hadley also illustrates an absence of the adversarial relationship essential to a fair litigation of the coverage issue.

Duke's interest will be impaired in the Declaratory Judgment action. This impairment is sufficient to meet the requirement of being "bound" by a judgment as required by Rule 24(a), Utah Rules of Civil Procedure.

Duke, having met all the requirements for intervention as of right pursuant to Rule 24(a), Utah Rules of Civil Procedure, was entitled to such intervention.

It was, therefore, error for the court to deny Duke's Motion for Intervention.

Relevant case law purports to limit Duke's right to intervene in this case. However, on further examination, it is clear that this case is limited by its facts to joinder under Rule 20, Utah Rules of Civil Procedure, and cannot be extended to intervention under Rule 24, Utah Rules of Civil Procedure. Furthermore, the purported "holding" in such case clearly goes beyond the issues presented on appeal. Therefore, such "holding" goes into an area of supposition by the court and is mere dicta.

Duke also met the requirements for permissive intervention under Rule 24 (b), Utah Rules of Civil Procedure. The questions of law and fact relating to

liability under Doman's policy are common to all parties involved. Duke was a proper party to the declaratory judgment even though his claim against Republic was contingent upon securing a Judgment against Doman/Hadley.

It was an abuse of discretion for the court to deny Duke's Motion to Intervene.

The court must also analyze the propriety of the trial court's Summary Judgment. If Duke's appeal of the denial of Motion to Intervene is successful, and if the court refuses to reverse the Summary Judgment, then Duke is left with the right to intervene in a suit which is already decided; a right which in such a situation is worthless. A review of the Summary Judgment is a necessary corollary to the examination of Duke's right to intervene.

A R G U M E N T

POINT ONE

THE TRIAL COURT ERRED IN DENYING DUKE'S
MOTION TO INTERVENE.

A. Duke was entitled to Intervention of Right under the terms of Rule 24(a), Utah Rules of Civil Procedure.

Pursuant to Rule 24(a), Utah Rules of Civil Procedure, intervention of right is available when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by the judgment. (Add. x)

In analyzing the interpretation of this Rule, the court held in Lima -v- Chambers, 657 P.2d 279 (Utah, 1982), that: "Adequacy of representation generally turns on whether there is an identity or divergence of interest between the potential intervenor and an original party and on whether that interest is diligently represented. 657 P.2d at 283. (Citations omitted.)

The court added that where a proposed intervenor's interest is different from an existing party, the intervenor's interest is not represented. 657 P.2d at 283. In this case, Republic's interest is to have the actions of Hadley declared to be willful and deliberate, thereby avoiding liability under Doman's insurance policy. Duke, having suffered serious injuries at the hands of Hadley, is interested in maintaining the potential for recovery of damages should he prove victorious in his suit. Doman and Hadley are interested in bringing the whole matter to a close as soon as possible with little regard for the amount of damages awarded. It is, therefore, clear that Duke's interest is different from that of any existing party and it is, therefore, not represented.

In Lima, an automobile liability insurance carrier attempted to intervene as of right as a defendant in a tort action between its insured and an uninsured motorist tortfeasor. The trial court denied intervention and the supreme court reversed. 657 P.2d at 280.

The Lima court enunciated an additional analytical tool:

Closely related to the question of similarity of interests is whether the interests of the applicant, even if assumed to be represented, is represented diligently. Representation is considered to be inadequate if the original party is not diligent in the prosecution or defense of the action or allows a default judgment to be entered.
657 P.2d at 283. [Emphasis added.]

Since Doman/Hadley failed to respond to discovery in a timely manner, and such failure resulted in the entry of Summary Judgment, Doman/Hadley have obviously not diligently defended the action. Since any recovery which Duke may hope to receive in his action is or may be dependent upon the outcome of the declaratory action, Duke is a real party in interest in this action. The absence of Duke does, as a practical matter, impair or impede his ability to protect that interest. In fact, if Duke is kept out of the action between Republic and Doman/Hadley, and the case is decided in favor of Republic, Duke's claim is in reality defeated in a proceeding in which he had no chance to participate.

There also exists the possibility of collusion between Doman/Hadley and Republic. Republic brought this action to determine the availability of coverage should the action against Doman/Hadley result in their liability. Republic and Doman/Hadley then become involved in this action in such

a manner as to terminate any financial responsibility on the part of Republic for Doman/Hadley's liability. This was, of course, due to the failure of Doman/Hadley's attorney to respond timely to discovery requests. It is obvious that in the event there is no insurance for Doman/Hadley's liability, then Duke will be in the unenviable position of suffering serious injuries at the hands of a party who is unable to respond in damages.

In examining a similar set of circumstances, the Lima court noted: "The close cooperation between Plaintiff and defendant in resolving the liability issue in this case evidences an absence of the adverse relationship essential to a full and fair litigation of the damage issue." 657 P.2d at 283. Such potential "cooperation" between Republic and Doman/Hadley seems to be exactly that which the court had in mind when discussing diligence of representation.

Neither is it legitimate to argue that the supervision of the trial court has adequately protected Duke's interest. In determining whether the interests of a defaulting defendant (and hence the interest of the potential intervenor) were adequately protected by the trial court, the court has noted:

We think the argument that relators interest will be "adequately represented" in respect to Count 1 because the court required proof of Plaintiff's cause is specious. It is not the duty of the trial court to subpoena and interrogate witnesses who might contradict

the testimony of plaintiffs or those who might testify to compelling facts which show that plaintiff is not "legally entitled to recover" the damages he claims. The court cannot, and should not, act as attorney for the defaulting defendants. Every practicing lawyer knows that, insofar as the issues of fact are concerned, the defaulting defendants are not "adequately represented". Lima -v- Chambers, 657 P.2d 279, 283-284 (Utah, 1982) (quoting State -v- Craig, 364 S.W.2d 343, 346 (Mo. App. 1963)).

Duke's interest was not, therefore, adequately represented in the Motion for Summary Judgment.

Even if representation of Duke's interest by the existing parties is inadequate, in order to intervene as of right, pursuant to Rule 24(a), Utah Rules of Civil Procedure, Duke must still demonstrate that he is or may be bound by judgment in the action.

In Centurion Corp. -v- Cripp, 577 P.2d 955 (Utah, 1978), the court stated that Rule 24 should be liberally construed to achieve the purpose of eliminating unnecessary duplication of litigation. This sentiment was also echoed by Lima -v- Chambers, 657 P.2d 279 (Utah, 1982). The Lima court then added that, in order to effectuate the liberal construction of Rule 24, the "bound" requirement would be met by a showing that the judgment would in some way impair the applicant's interest. 657 P.2d at 284. As demonstrated herein, if Duke is not allowed to intervene and if the Summary Judgment is allowed to stand, then Duke will effectively have lost his

right to recover for injuries which he has suffered at the hands of Hadley. Furthermore, Duke will have lost this right in a proceeding in which he was not allowed to participate. A clearer example of impairment of an applicant's interest cannot be found.

Duke is or may be bound by the judgment and, having met all the requirements for intervention as of right pursuant to Rule 24(a), Utah Rules of Civil Procedure, he was entitled to intervention as of right. It was error for the court to deny his Motion for Intervention.

B. The relevant portion of the court's opinion in Utah Farm Bureau Insurance Company -v- Chugg, 6 Utah 2d 399, 315 P.2d 277 (1957) goes beyond the facts of such case and is, therefore, dicta.

In the case of Utah Farm Bureau Insurance Company -v- Chugg, 6 Utah 2d 399, 315 P.2d 277 (1957), the court analyzed a suit brought for declaratory judgment to determine the rights of an insurance company under an automobile insurance policy. The policy contained an exclusion clause which suspended all coverage when the car was being operated by a driver who was under the influence of alcohol. The court noted that the "insurance company should not be permitted to delay the main action for the purpose of determining in advance whether it should defend Chugg in that action". 315 P.2d at 281. The injured party had been forced into the case by joinder under Rule 20, Utah Rules of Civil Procedure.

The court then went on to note: ".....we want to repel any inference which may be drawn from this opinion that one who claims to be damaged by the negligent act of another is a proper party to an action by the insurer of the latter under a public liability policy, whereby a declaratory judgment is sought declaring the legal effects of the terms of such policy." 345 P.2d at 281. The court clearly did not analyze the propriety of intervention in such a case. By its facts, Chugg is limited in application to cases where the injured third party is forced into the case through joinder.

In this case, Republic brought a declaratory judgment action against Doman/Hadley seeking an order that Republic's insurance policy would not provide coverage in the event Doman/Hadley were held liable to Duke. Counsel for Doman/Hadley refused to respond to discovery requests. Thereafter, Republic moved for summary judgment based on such refusal. Republic's Summary Judgment was granted. For all practical purposes this defeated Duke's original suit against Doman/Hadley. In Chugg, however, the coverage issue was being diligently represented by the insurance counsel. This is obviously not the case in Republic -v- Doman/Hadley.

A further distinction between the case at hand and Chugg is that the Chugg holding is, in fact, dicta.

The Chugg case involved a suit for declaratory judgment by an insurer against the insured and the automobile driver who was in an accident with the insured. The case was brought to determine the insurer's right under the automobile liability insurance policy. After addressing the issues presented, the Court goes on to note that in the event the tort victim had objected to joinder ".....it would have been error to have compelled his joinder even under the most liberal view of Rule 20, Utah Rules of Civil Procedure." 315 P.2d at 381.

As stated previously, the court then adds that the tort victim would not be a proper party to declaratory judgment declaring the liability of the insurer. This language, however, clearly goes beyond the issues presented in the case and into an area of supposition by the court. The issue on appeal was whether or not the insurance company was obligated to defend the suit because Chugg was driving under the influence of alcohol and, whether the coverage under the policy was suspended by virtue of its exclusion clause. 315 P.2d at 278.

The court thoroughly analyzed the affect of testimony about the alcoholic content of Chugg's blood sample which was admitted over Chugg's objection. The court also examined the issue of admitting in evidence Chugg's plea of guilty to drunken driving. The court held that both of these items were reversible error. After so holding and disposing of the

issues on appeal, the court then goes on to examine the joinder of the tort victim in a declaratory judgment between the insurer and the insured. The court at no time discusses whether intervention is permissible in such a case. Therefore, such language purporting to limit the availability of intervention is dicta and is no part of the holding of the case.

Furthermore, later cases make it clear that the modern trend favors a liberal interpretation of Rule 24 and a generous granting of intervention. See, e.g. State Farm Fire and Casualty Company -v- Reuter, 294 Or. 446, 657 P. 2d 1231 (1983), rev'd on other grounds, 299 Or. 155, 700 P.2d 236 (1985). Insurance Company of Pennsylvania -v- Lumberman's Mutual Casualty Company, 405 Pa. 613, 177 A.2d 94 (1962).

C. Duke was entitled to permissive intervention under the terms of Rule 24(b), Utah Rules of Civil Procedure.

If Duke was not entitled to intervention as of right, he was most assuredly entitled to permissive intervention under Rule 24(b), Utah Rules of Civil Procedure (App. x). Cases which are supportive of intervention in Duke's situation have frequently done so on the theory that the interest of the intervenor arises out of the same contract and is governed by the same occurrences. "The questions of law and fact relating to liability under the policy are common to both. If, therefore, [Duke] is not a necessary and indispensable party, [he] is assuredly an interested and proper party to

the declaratory action." Franklin Life Insurance Company -v- Johnson, 157 F.2d 653, 658 (10th Cir. 1946).

In the Franklin Life case, the insurance company brought a declaratory action for a determination of liability under an insurance contract issued on the life of the son of the defendant. The complaint alleged the death of the insured as a result of self-inflicted gunshot wounds. The risk was specifically exempt from the coverage of the accidental death benefit provisions in the policy. The court noted:

In declaratory actions brought to determine coverage under an insurance policy issued to protect the insured against liability to third persons, third persons asserting such liability have been held to be proper parties to a declaratory judgment proceeding, although their claims against an insurer are contingent upon recovery of a judgment against the insured. Ordinarily in an action for declaratory judgment, all persons interested in the declaration are necessary parties. 157 F.2d at 658. [Emphasis added.] (Citations omitted.)

The Supreme Court also analyzed this issue in Maryland Casualty Co. -v- Pacific Coal and Oil Co., 312 U.S. 270 (1941). In that case, Maryland Casualty issued an automobile liability policy in which it agreed to indemnify the insured for any sums the insured might be required to pay to third parties. The insurance company also agreed that it would defend any action covered by the policy which was brought against the insured. While the policy was in force, there was a collision involving a third party and an employee of the insured. The third party brought an action in state court. The insurance company then brought an action in

federal district court seeking a declaratory judgment that the vehicle involved in the collision was not one hired by the insured and, therefore, that the insurance company was not liable to defend the action. The court noted: "It is clear that there is an actual controversy between the insurance company and the insured." 312 U.S. at 274. The insured had demurred to the complaint on the ground that it did not state a cause of action against him. The court then held that there was an actual controversy between the insurance company and the injured third party. There is reference in the court's opinion to the deleterious effect that a contrary decision would have on the uniformity of federal and state court judgments. However, it is still clear that in a declaratory judgment action brought to determine coverage under an insurance policy issued to protect the insured against liability to third persons, such third persons are proper parties to a declaratory judgment proceeding.

All requirements having been met, it was an abuse of discretion for the trial court to deny permissive intervention under Rule 24(b), Utah Rules of Civil Procedure.

POINT TWO

THE COURT'S SUMMARY JUDGMENT OF JULY 15, 1985, AGAINST DOMAN AND HADLEY, MUST AS A COROLLARY TO THE MOTION TO INTERVENE, BE REVIEWED THROUGH THIS APPEAL.

In order to accord full relief to Duke, it is imperative that the court analyze the propriety of the trial court's

summary judgment against Doman/Hadley. In the event that Duke's appeal on the denial of the Motion to Intervene is successful, it would be a hollow victory, indeed, if the trial court's Summary Judgment against Doman and Hadley were to stand. The court's analysis of the trial court's Summary Judgment is a necessary corollary to the court's review of the denial of the Motion to Intervene. Furthermore, 4 Am.Jur.2d, Appeal and Error, § 175 (1962), states in part: "In some jurisdictions it has been held that a stranger whose application for leave to intervene has been denied may appeal from the final judgment in the cause."

The view that a stranger whose application for leave to intervene has been denied may appeal from final judgment on the cause is also supported by League of United Latin American Citizens -v- Lo-Vaca Gathering Co., 527 S.W. 2d 507 (Tex. Civ. App. 1975) cert. denied, 425 U.S. 959 (1976). See also cases annotated at 15 A.L.R. 2d 336, at § 8 (1951).

Similarly, the court in Commercial Block Realty Co. -v- U. S. Fidelity and Guarantee Co., 83 Utah 414, 28 P.2d 1081 (1934) noted that:

It is often the case that an intervenor has more interest in the subject matter of litigation than either the plaintiff or the defendant, to deny an intervenor in such case the right to intervene or to say that he could not be heard to appeal from a judgment denying him such a right would be most unusual.
28 P.2d at 1082.

It would also be most unusual to deny him a right to have the entire panorama of his claims examined, instead of merely a review of the denial of his right to intervene. Therefore, in order to successfully and adequately review this case, it is imperative that the Order Granting Summary Judgment also be reviewed. To allow only an appeal of the Order Denying Intervention is to deny Duke an opportunity to present his claim.

C O N C L U S I O N

Based upon the facts and the law stated herein, Appellant respectfully requests that the Order Granting Summary Judgment and the Order Denying Motion to Intervene be reversed and that this case be remanded for a trial with an opinion which is instructive with respect to the issues raised herein.

DATED this 22nd day of November, 1985.

KING & KING

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Attorney for Scott Duke
Proposed Intervenor-Appellant
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P. O. Box 220
Clearfield, Utah 84015
Telephone: (801) 825-2202

A D D E N D U M

In the District Court of the Second Judicial District

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DAVIS COUNTY, UTAH

IN AND FOR THE

1985 JUN 21 PM 3:48

County of Davis, State of Utah

MICHAEL G. ALLPHIN, CLERK
2ND DISTRICT COURT

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DEPUTY CLERK

REPUBLIC INSURANCE GROUP,)	
Plaintiff,)	RULING ON MOTION
vs.)	TO INTERVENE
BONNIE LOU DOMAN, et al.,)	Civil No. 36730
Defendant.)	

The motion of Scott Duke to intervene came before the court on June 11, 1985, for oral argument, with Felshaw King appearing for Scott Duke, Heinz J. Mahler appearing for the plaintiff and Steven Lee Payton appearing for the defendants. After oral argument, the court took the motion under advisement. The court now rules on the motion.

Scott Duke relies heavily on the case of Lima vs. Chambers, 657 P.2d 279 (Utah, 1982). In that case the Supreme Court said:

"When intervention is permitted, the intervenor must accept the pending action as he finds it; his right to litigate is only as broad as that of the other parties to the action." (657 P.2d at 284-5)

Irrespective of whether Scott Duke is a proper party to this action or not, he must accept the case as it is. What is the status of the case. On April 26, 1985, the plaintiff filed a motion for summary judgment. The defendants failed to respond to that motion. On May 8, 1985, the plaintiff filed a request for ruling on its motion for summary judgment pursuant to Rule 2.8 of the Rules of Practice and waived oral argument. The defendants have not responded to this motion. The case is, therefore, in a position for a ruling on the motion for summary judgment. This court has this day ruled on plaintiff's motion for summary judgment and has granted the same. Since the plaintiff

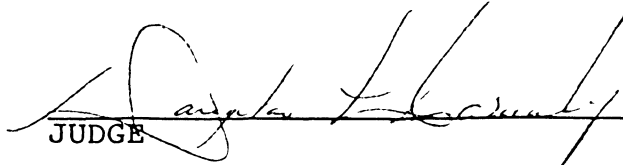
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has been granted summary judgment, there is nothing left for Scott Duke to intervene in.

The motion of Scott Duke to intervene in this action is denied.

Dated June 20, 1985.

BY THE COURT:


JUDGE

Certificate of Mailing:

This is to certify that the undersigned mailed a true and correct copy of the foregoing Ruling to Heinz J. Mahler, 600 Commercial Club Building, Salt Lake City, Utah 84111; Steven Lee Payton, 431 South 300 East, Suite 40, Salt Lake City, Utah 84111; and Felshaw King, P. O. Box 220, Clearfield, Utah 84015 on June 21, 1985.


Deputy Clerk

In the District Court of the Second Judicial District

FILED IN CLERK'S OFFICE
DAVIS COUNTY, UTAH

IN AND FOR THE

1985 JUN 21 PM 3:49

County of Davis, State of Utah

MICHAEL G. ALLPHIN, CLERK
2ND DISTRICT COURT

BY ^{al}
DEPUTY CLERK
REPUBLIC INSURANCE GROUP,)
 Plaintiff,)
 vs.)
BONNIE LOU DOMAN, et al.,)
 Defendant.)

RULING ON MOTION FOR
SUMMARY JUDGMENT

Civil No. 36730

The plaintiff's motion for summary judgment was filed with the court on April 26, 1985. The defendants did not respond to the motion. On May 8, 1985, the plaintiff filed a motion requesting the court to rule on its motion for summary judgment pursuant to Rule 2.8 of the Rules of Practice and waived oral argument. On May 14, 1985, Scott Duke filed a motion for intervention as a defendant. On June 11, 1985, both Heinz J. Mahler, counsel for the plaintiff, and Steven Lee Payton, counsel for the defendants were before the court on a motion by Scott Duke to intervene in this action. Neither counsel indicated any intention of doing anything more with regard to the motion for summary judgment. The court now rules on the motion for summary judgment.

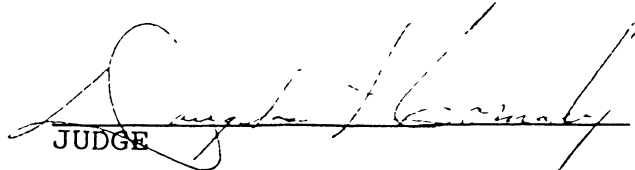
On February 25, 1985, the plaintiff served upon defendants Interrogatories, Requests for Admissions and Requests for Production of documents. Over three months have passed and neither defendant has responded to said requests. The defendants' failure to answer or otherwise respond to plaintiff's requests for admissions within the required thirty days has resulted in the same being admitted, pursuant to the provisions of Rule 36 of the Rules of Civil Procedure. As such, defendants have admitted each and every material fact at issue in this declaratory action and plaintiff is entitled to judgment as a matter of law.

The plaintiff's motion for summary judgment is granted.

The plaintiff is directed to draw a formal order in conformity with this ruling.

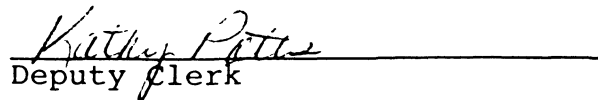
Dated June 20, 1985.

BY THE COURT:


JUDGE

Certificate of Mailing:

This is to certify that the undersigned mailed a true and correct copy of the foregoing Ruling to Heinz J. Mahler, 600 Commercial Club Building, Salt Lake City, Utah 84111; Steven Lee Payton, 431 South 300 East, Suite 40, Salt Lake City, Utah 84111; and Felshaw King, P. O. Box 220, Clearfield, Utah 84015 on June 21, 1985.


Deputy Clerk

FILED IN CLERK'S OFFICE
DAVIS COUNTY, UTAH

1985 JUL 15 AM 10:49

MICHAEL G. ALLPHIN, CLERK
2ND DISTRICT COURT

BY MS
DEPUTY CLERK

D. GARY CHRISTIAN
HEINZ J. MAHLER
KIPP and CHRISTIAN, P.C.
ATTORNEYS FOR Plaintiff
600 COMMERCIAL CLUB BUILDING
SALT LAKE CITY, UTAH 84111
(801) 521-3773

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

REPUBLIC INSURANCE GROUP,	:	
	:	ORDER
Plaintiff,	:	
vs.	:	
BONNIE LOU DOMAN and	:	
TODD HADLEY,	:	Civil No. 36730
Defendants.	:	
	:	

The Motion of Scott Duke to Intervene in this matter came on regularly before the Court on June 11, 1985. Scott Duke represented by Felshaw King, plaintiff Republic Insurance Group represented by Heinz J. Mahler and defendants represented by Steven Lee Payton, the Court having heard the argument of the parties and being fully advised in the premises, and pursuant to the Court's ruling on Motion to Intervene dated June 20, 1985;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the Motion of Scott Duke to Intervene in this action is denied.

DATED this 15 day of July, 1985.

BY THE COURT:

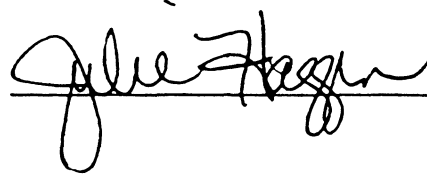
FILMED

CERTIFICATE OF MAILING

MAILED, postage prepaid, pursuant to Rule 2.9, this
24th day of June, 1985, a true and correct copy of the foregoing
Order, to the following:

Steven Lee Payton
Attorney for Defendants
Suite 40
431 South 300 East
Salt Lake City, Utah 84111

Felshaw King
Attorney for Scott Duke
251 East 200 South
Clearfield, Utah 84015

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

FILED IN CLERK'S OFFICE
DAVIS COUNTY, UTAH

1985 JUL 15 AM 10:49

MICHAEL G. ALLPHIN, CLERK
2ND DISTRICT COURT

BY _____
DEPUTY CLERK

D. GARY CHRISTIAN
HEINZ J. MAHLER
KIPP and CHRISTIAN P.C.
ATTORNEYS FOR Plaintiff
600 COMMERCIAL CLUB BUILDING
SALT LAKE CITY, UTAH 84111
(801) 521-3773

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

REPUBLIC INSURANCE GROUP,	:	
Plaintiff,	:	JUDGMENT
vs.	:	
BONNIE LOU DOMAN and	:	Civil No. 36730
TODD HADLEY,	:	
Defendants.	:	U-72
	:	U-140B

Plaintiff's Motion for Summary Judgment filed April 26, 1985, came on regularly before the Honorable Douglas L. Cornaby, Judge of the above-entitled Court, the Court being fully advised in the premises and pursuant to the Court's ruling on Motion for Summary Judgment dated June 20, 1985,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the Republic Insurance Policy #5150860 issued to Bonnie Lou Doman does not afford or in any provide coverage to Bonnie Lou Doman nor to Todd Hadley in the case of Scott Duke vs. Todd Hadley and Bonnie Lou Doman, Civil No. 35245, filed in the Second Judicial District Court, Davis County, State of Utah.

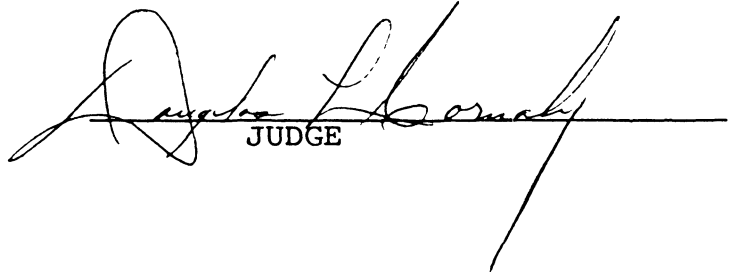
FILMED

2. That neither the Republic Insurance Group nor any of the individual insurance company members of the group have any obligation to defend or otherwise represent Bonnie Lou Doman nor Todd Hadley in the case of Scott Duke vs. Todd Hadley and Bonnie Lou Doman, Civil No. 35245, filed in the Second Judicial District Court, Davis County, State of Utah, nor to pay or indemnify them for any judgment which may be awarded in favor of Scott Duke and against the defendants in said action.

3. For costs incurred in the sum of \$72.75.

DATED this 15 day of July, 1985.

BY THE COURT:

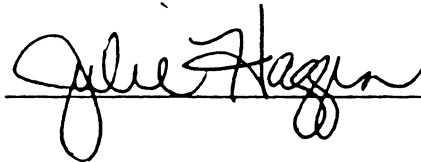

JUDGE

CERTIFICATE OF MAILING

MAILED, postage prepaid, pursuant to Rule 2.9, this
24th day of June, 1985, a true and correct copy of the foregoing
Judgment, to the following:

Steven Lee Payton
Attorney for Defendants
Suite 40
431 South 300 East
Salt Lake City, Utah 84111

Felshaw King
Attorney for Scott Duke
251 East 200 South
Clearfield, Utah 84015

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

RULE 24
INTERVENTION

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof.

(b) **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention

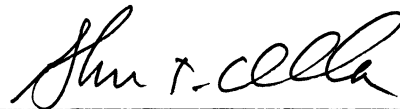
CERTIFICATE OF MAILING

I hereby certify that I mailed four true and correct manually signed copies of the foregoing BRIEF OF PROPOSED INTERVENOR AND APPELLANT to:

D. Gary Christian, Esquire
Heinz J. Mahler, Esquire
Attorneys at Law
600 Commercial Club Building
Salt Lake City, Utah 84111

Steven L. Payton, Esquire
Attorney at Law
431 South 300 East
Suite 40
Salt Lake City, Utah 84111

postage prepaid, this 22nd day of November, 1985.

A handwritten signature in cursive script, reading "Glen T. Cella", written over a horizontal line.

GLEN T. CELLA, Esquire