

2000

Yvette Madsen as guardian, and Karly Madsen v. The Estate of Kory Pasquin : Brief of Appellee

Utah Supreme Court

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IN THE UTAH SUPREME COURT

YVETTE MADSEN, AS GUARDIAN, AND
KARLY MADSEN, A MINOR

Petitioners/Appellees,

vs.

THE ESTATE OF KORY PASQUIN,
Respondent/Appellant

APPELLEE'S BRIEF

CASE No. 20000979-SC

NATURE OF PROCEEDING:
APPEAL FROM THIRD DISTRICT
COURT, STATE OF UTAH, THE
HONORABLE LESLIE A. LEWIS
PRESIDING

ARGUMENT PRIORITY 15

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PETITIONERS/APPELLEES
REQUEST ORAL ARGUMENT AND A PUBLISHED OPINION

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JURISDICTIONAL STATEMENT

The appellees maintain that this Court does not have jurisdiction to hear this appeal because the appellant has not complied with Rule 4 of the Utah Rules of Appellate Procedure. If the Court rejects this argument, however, this Court has jurisdiction to hear this appeal under Utah Code §78-2-2 (1996) and Article VIII, §3 of the Constitution of the State of Utah.

STATEMENT OF ISSUES & STANDARD OF REVIEW

1. Does this Court have jurisdiction to hear this matter because the Estate of Kory Pasquin did not file its appeal within 30 days as required by Rule 4 of the Utah Rules of Appellate Procedure? This Court reviews this legal issue for correctness, *State v. Petersen*, 810 P.2d 421, 425 (Utah 1991). This issue was preserved in the trial court in the Final Judgment entered by the District Court on March 2, 1999 (R. 678), and by the Stipulation of the parties dated December 23, 1999 (R. 808-810).
2. Is the Estate's appeal barred by the terms of the Stipulation dated December 23, 1999? The legal issues raised by this issue are reviewed for correctness, *State v. Petersen*, 810 P.2d 421, 425 (Utah 1991), and the factual issues are reviewed under an abuse of discretion standard. *David K. Mast v. Brent Overson*, 971 P.2d 928 (Utah App. 1998.). This issue was preserved by the Stipulation of the parties dated December 23, 1999 (R. 808-810).
3. Is there a statutory basis for the District Court's award of reasonable attorney's fees to the appellees? This Court reviews the legal issues raised by the District Court's decision for correctness, *State v. Petersen*, 810 P.2d 421, 425 (Utah 1991). This issue was

preserved in the trial court by Karly's Motion and Memorandum for Attorney's Fees (R. 404).

4. Does the doctrine of estoppel bar the Estate's appeal? This issue of law arises for the first time on appeal, and arises because of the appeal; therefore, it could not be raised at the District Court level. This Court has considered a new issue of law arising in an appeal *de novo*. See, e.g., *State v. Newman*, 928 P.2d 1040, 1043 (Utah App. 1996). Moreover, in the event that this Court reverses the District Court's rulings and remands for further proceedings, this Court should consider this issue because it would arise on remand. See, e.g., *State v. James*, 819 P.2d 781, 795 n. 42 (Utah 1991). The issue arises out of the Stipulation of the parties. (R. 808-810).
5. Does the doctrine of waiver bar the Estate's appeal? This issue of law arises for the first time on appeal, and arises because of the appeal; therefore, it could not be raised at the District Court level. This Court has considered a new issue of law arising in an appeal *de novo*. See, e.g., *State v. Newman*, 928 P.2d 1040, 1043 (Utah App. 1996). Moreover, in the event that this Court reverses the District Court's rulings and remands for further proceedings, this Court should consider this issue because it would arise on remand. See, e.g., *State v. James*, 819 P.2d 781, 795 n. 42 (Utah 1991). The issue arises out of the Stipulation of the parties. (808-810).
6. Does the doctrine of quasi-estoppel bar the Estate's appeal? This issue of law arises for the first time on appeal, and arises because of the appeal; therefore, it could not be raised at the District Court level. This Court has considered a new issue of law arising in an appeal *de novo*. See, e.g., *State v. Newman*, 928 P.2d 1040, 1043 (Utah App.

1996). Moreover, in the event that this Court reverses the District Court's rulings and remands for further proceedings, this Court should consider this issue because it would arise on remand. *See, e.g. State v. James*, 819 P.2d 781, 795 n. 42 (Utah 1991). The issue arises out of the Stipulation of the parties. (R. 808-810).

7. Does the doctrine of judicial estoppel bar the Estate's appeal? This issue of law arises for the first time on appeal, and arises because of the appeal; therefore, it could not be raised at the District Court level. This Court has considered a new issue of law arising in an appeal *de novo*. *See, e.g., State v. Newman*, 928 P.2d 1040, 1043 (Utah App. 1996). Moreover, in the event that this Court reverses the District Court's rulings and remands for further proceedings, this Court should consider this issue because it would arise on remand. *See, e.g. State v. James*, 819 P.2d 781, 795 n. 42 (Utah 1991). The issue arises out of the Stipulation of the parties and this appeal. (R. 808-810).
8. Is the Estate's appeal barred because it failed to raise its argument regarding the lack of findings of fact and conclusions of law regarding the award of Karly's attorney's fees at the District Court level? This is a legal issue reviewed for correctness. *State v. Petersen*, 810 P.2d 421, 425 (Utah 1991).
9. Can this Court imply findings of fact in the rulings of the District Court awarding Karly her attorney's fees and costs? The legal issues raised by this issue are reviewed for correctness, *State v. Petersen*, 810 P.2d 421, 425 (Utah 1991), and the factual issues are reviewed under an abuse of discretion standard. *David K. Mast v. Brent Overson*, 971 P.2d 928, 931 (Utah App. 1998.). This issue was preserved in the trial court in the Judgment entered by the District Court on March 2, 1999 (R. 678), and by the Stipula-

tion of the parties dated December 23, 1999 (R. 808-810).

10. Was the District Court's award of Karly's attorney's fees and costs reasonable? This factual issue is reviewed under an abuse of discretion standard. *David K. Mast v. Brent Overson*, 971 P.2d 928, 931 (Utah App. 1998.). This issue was preserved in the trial court in the Order Awarding Attorney's Fees and Costs (R. 801-804) and by the Court's Ruling of July 27, 2000 (R. 937, 938-939).

STATUTORY PROVISIONS

The following statutes are attached in the addendum:

Utah Code §§ 78-45a-2 through 78-45a-10 (1997).

STATEMENT OF CASE

This is a case about a little girl, Karly Madsen, and her four year battle to be recognized as the heir of her father, Kory Pasquin, who died in a boating accident at Lake Powell. Karly was born out of wedlock to Kory Pasquin and Kristie Madsen. Because of drug abuse problems, Kristie Madsen eventually surrendered all parental rights over Karly to Kristie's mother, Yvette Madsen, who has since cared for the child and acted as her guardian. Kristie is currently in drug rehabilitation.

Before Kory's death, Kristie informed Kory that he was Karly's father. In order to assure Kory that he was, indeed, Karly's father, Kory and Kristie went to the University of Utah Eccles Institute of Human Genetics, DNA Paternity Testing Laboratory, to give blood samples for the purpose of undergoing genetic testing to determine paternity. The DNA tests showed, with an extraordinarily high degree of mathematical certainty, that Kory Pas-

quin was Karly's natural father—the test resulted in a paternity index of 5021. The results of the DNA test created a presumption of paternity under the Utah Uniform Act on Paternity, Utah Code § 78-45a-10(3)(a) (1997) (a paternity index of only 150 is necessary to create the statutory presumption).

Notwithstanding the overwhelmingly positive DNA test, however, after Kory's death the Estate of Kory Pasquin refused to recognize Karly as an heir to the Estate. That was made by Candace Suiter, a former girlfriend of Kory Pasquin, who had been appointed as the Estate's personal representative. Ms. Suiter is the mother of Tory Pasquin. Kory Pasquin was also the natural father of Tory, who was born out of wedlock to Ms. Suiter. Ms. Suiter's refusal to recognize Karly as an heir was a transparent attempt to keep all of the Estate's assets for the benefit of her own child, Tory Pasquin.

Therefore, the Estate objected to the DNA test under the Utah Uniform Act on Paternity, Utah Code §§ 78-45a-2 et seq. (UUAP), insisting that it had the right to a jury trial on the paternity issue under the UUAP, in which Karly had to prove that she is Kory's child.

On December 1-2, 1998, the Honorable Douglas L. Cornaby presided over a jury trial regarding the paternity issue and regarding whether Karly was an heir of the Estate. At trial, Karly submitted evidence that included testimony of Kristie Madsen that Kory was, indeed, Karly's father (after all, a mother would know). Kristie also testified that Kory had accompanied her to have blood drawn for the DNA test. In addition, Karly's expert witness testified as to the validity of the DNA test and the virtual certainty that Kory was Karly's natural father. The jury rendered a verdict that Kory Pasquin was Karly's natural father and an heir to the Estate.

Therefore, on March 2, 1999, Judge Cornaby entered a Final Judgment holding that Karly was an heir entitled to one half of Kory Pasquin's Estate, and that Karly was entitled to her reasonable attorney's fees and costs in an amount to be determined by the Court. Karly's counsel then filed a motion for attorney's fees and costs, supported by the detailed affidavit of her counsel. The Estate opposed Karly's motion for attorney's fees, protesting that the amounts requested were unreasonable.

Judge Cornaby then held a hearing regarding the issue of fees, during which the Estate called Karly's counsel as its sole witness. The Estate extensively cross examined Karly's counsel regarding the fees and costs, and regarding his affidavit testimony. However, the Estate submitted no evidence, either by affidavit or otherwise, to controvert the written and oral testimony of Karly's counsel. The District Court also heard oral argument from both parties regarding Karly's motion for fees. Finding that Karly's attorney's fees were reasonable, the District Court entered an order awarding Karly all of her attorney's fees in the amount of \$41,212.50 and \$3,933.25 in itemized costs. The District Court rejected part of Karly's claim for costs, however, disallowing \$800.03 in itemized costs.

The Estate then appealed all of the District Court's rulings, including the Final Judgment and the award of attorney's fees and costs (that appeal, #990315-SC, is hereinafter referred to as *Pasquin I*). After the Estate filed *Pasquin I*, however, one Sheri Marion filed, in the District Court, a Petition for Determination of Additional Heirs and Demand for Notice in the District Court. Sheri Marion's Petition alleged that her child, Kody Jon Marion, was also the child and heir of Kory Pasquin. Following negotiations between counsel, all three parties stipulated as follows: 1) genetic testing would be performed to determine

whether Kory was also Kody's father, *using the same laboratory, blood, DNA, and DNA information of Kory Pasquin that was used to determine that Kory was Karly's natural father*; 2) if the DNA test established that Kory was Kody Marion's natural father, then it would serve as "conclusive evidence" that Kory Pasquin was the father of *both* Karly Madsen and Kody Marion; and 3) the Estate would then dismiss its appeal in *Pasquin I*; and 4) the parties would modify the Final Judgment solely to state that Kody Marion is the natural child of Kory Pasquin and an heir entitled to one-third of the Estate (thus, each child would receive one-third of the estate). The parties filed their Stipulation with the Court.

The second DNA test established that Kory Pasquin was the natural father of Kody Marion. Therefore, the Estate dismissed its appeal in *Pasquin I*. Despite the Stipulation, the Estate then filed a petition and several frivolous motions in the District Court attempting to convince the District Court to vacate the Final Judgment it had appealed from in *Pasquin I*, and sought to have the District Court reverse its award of Karly's fees and costs. The Estate obviously sought to vacate the Final Judgment because it knew it was bound by that judgment, and that it had waived its right to appeal when it dismissed *Pasquin I*. Ultimately, the District Court denied the Estate's petition and motions, affirming its prior judgment and orders, including the award of Karly's attorney's fees and costs.

On September 21, 2000, the District Court entered an Amended Final Judgment (amended solely to include Kody Marion as an heir of the Estate). The Amended Final Judgment incorporated the previous Final Judgment and award of attorney's fees and costs to Karly. Despite the Stipulation, the Estate has now filed the present appeal, seeking to re-litigate issues regarding the award of Karly's attorney's fees and costs.

STATEMENT OF FACTS

1. Some time in 1995, Kristie Madsen became pregnant with Kory Pasquin's child. Kristie informed Kory that she was pregnant with his child. On February 5, 1996, Kristie gave birth to Kory's child, Karly Madsen. (Trial Tr. Vol. 1, 57- 61 (December 1-2, 1999); R. 817, 57-61).
2. After Karly's birth, Kory Pasquin told Kristie that he wanted to have genetic testing done to determine whether he was Karly's father. Kory and Kristie then went to the University of Utah Eccles Institute of Human Genetics, DNA Paternity Testing Laboratory, to give blood samples for the purpose of undergoing genetic testing to determine paternity. (Trial Tr. Vol. 1, 94-101; R. 817, 94-101).
3. The DNA tests showed, with an extraordinarily high degree of mathematical certainty (99.7%), that Kory Pasquin was Karly's natural father; the test resulted in a paternity index of 5021. (Trial Tr. Vol. 2, 289-294; R. 818, 289-294).
4. Kory Pasquin died on October 26, 1996 when he was 28 years old. (R.1) At the time of Kory's death, Kory and Kristie Madsen were living together. (Trial Tr. Vol. 1, 53; R. 817, 53).
5. At the date of Kory's death, Tori Lynn Pasquin was listed in the official birth records as his child. (R.2) Tory is the child Kory Pasquin and one Candace Souter, who was one of Kory's former girl friends. (Aff. Of Geri Pasquin ¶ 3, R. 104). Thus, it appeared that Kory died leaving behind two children.
6. Candace Souter appeared and filed an Application for Informal Appointment as the Personal Representative of the Estate, in which she represented to the Court that her

child, Tory Pasquin, was the only child of Kory Pasquin. On March 4, 1997, Third District Court Judge Tyrone E. Medley appointed Candace M. Souter, the mother of Tory Pasquin, as the personal representative of the Estate of Kory Pasquin. (R. 8).

7. On April 1, 1997, Kristie Madsen filed a petition claiming that Karly Madsen, as a child of Kory Pasquin, had a “property right in or a claim against the decedent’s estate...” (R. 11).
8. Although Kristie initially appeared as guardian for Karly, because of drug abuse problems, Kristie was unable to fulfill her duties and obligations as a single parent for Karly. Therefore, she surrendered all of her parental rights to Kristie’s mother, Yvette Madsen, who has been acting as Karly’s parent and guardian. (Trial Tr., Vol. 1, 52; R. 817, 52). Kristie is currently in drug rehabilitation.
9. The Estate opposed Karly’s Petition, arguing that it was entitled to a trial in which Karly had the burden of proving paternity. Judge Medley heard Karly’s Petition and referred it to the trial calendar of the Hon. Leslie A. Lewis. (R. 38).
10. Because Ms. Souter had knowingly and intentionally misrepresented to the District Court that Tory Pasquin was Kory’s only child, Karly filed a motion to remove Candace Souter as personal representative of the estate. In support of her motion, Karly filed the affidavits of Geri Pasquin (who is Kory’s mother), Julie Flarity (who is Kory’s half-sister), and Kristie Madsen. All three affidavits contain sworn testimony that: 1) all three witnesses knew that Karly was Kory’s child; 2) Kory had openly acknowledged to them that Karly was his child; 3) Kory had supported Karly; 4) they knew Ms. Souter; and 5) Ms. Souter had misrepresented to the District Court that Tory Pasquin

was Kory's only child. (R. 104-109).

11. In her affidavit, Kory's mother, Geri Pasquin, testified that:

I have serious concerns about whether Candy Sutter is looking out for the interest of all interested persons or whether she is only looking out for her own interests and that of her daughter, Tori. Indeed, in my experience, she has not exhibited the degree of objectivity and reasonableness one would expect from a Personal Representative of an Estate". (Aff. Geri Pasquin, ¶ 9; R. 105).

12. In her affidavit, Julie Flarity testified that she knew both Ms. Souter and Kristie Madsen, and that she had welcomed both women and their children into her home. Julie testified that she spent many hours caring for both Karly and Tory. (Aff. Julie Flarity ¶ 8; R. 107). Ms. Flarity testified that "I am very concerned about whether Candy Souter is acting in the best interests of both of his children, Tory Pasquin and Karly Madsen." (Aff. Julie Flarity ¶ 10; R. 107).
13. The District Court never ruled on Karly's motion to remove Ms. Souter as personal representative of the Estate.
14. The Estate then argued to the District Court that Karly had to establish paternity at trial under the Utah Uniform Act on Paternity, Utah Code §§ 78-45a-1 et seq. (UUAP) (R. 501). Under the UUAP, the standard of proof in a trial to determine paternity is "by a preponderance of the evidence." Utah Code § 78-45a-6.5 (1997).
15. Karly represented to the Court that instead of causing Kory's family the emotional pain of exhuming Kory Pasquin's body to obtain DNA samples, at trial she would rely on the DNA test that had previously determined that Kory was Karly's biological father. (R. 411).
16. The District Court granted the Estate's request for a trial, and scheduled a jury trial to

occur on December 1-2, 1998.

17. On January 16, 1998, Karly filed a motion to award her reasonable attorney's fees and costs she had incurred and would be forced to incur through trial, thus preserving her claim for attorney's fees and costs. (R. 404).
18. The Honorable Douglas L. Cornaby presided over the jury trial on December 1 and 2, 1998. (Trial Tr., vol. 1, 1; R. 817).
19. After a two day trial, a jury rendered a verdict that Kory Pasquin was the natural father of Karly Madsen and an heir to the Estate. (Trial Tr., Vol. 2, 357-360; R. 818, 375-360).
20. On March 2, 1999, the District Court entered its Final Judgment that Karly Madsen is an heir of Kory Pasquin's Estate, and that she was thus entitled to one-half of the Estate. The Final Judgment also held that Karly was entitled to an award of reasonable attorney's fees and costs incurred in pursuing her petition in an amount to be determined by the Court. (R. 678) A copy of the Final Judgment is attached in the Addendum to this brief.
21. Therefore, on January 26, 1999 Karly's counsel, David W. Steffensen, filed an affidavit regarding Karly's attorney's fees, costs, and witness fees incurred in litigating the paternity issue. Mr. Steffensen's affidavit detailed the experience of counsel, the hourly rate of counsel that was competitive in the community, and the number of hours worked on the case. Attached and incorporated into Mr. Steffensen's affidavit was a detailed itemized narrative of services rendered, including detailed descriptions of work performed, when the work was performed, and time required for each task. (Aff.

David W. Steffensen Regarding Attorney's Fees, Costs and Witness Fees (January 25, 1999); R. 639-650). A copy of Mr. Steffensen's Affidavit is attached in the Addendum to this brief.

22. The District Court reviewed the affidavit of Karly's counsel, and on April 29, 1999, held a hearing regarding Karly's motion for attorney's fees and costs. During the hearing, the Estate called Karly's counsel as a witness and extensively cross-examined him under oath. The District then heard oral argument regarding the motion. Ultimately, the District Court awarded Karly attorney's fees of \$41,212.50 and costs of \$3,933.25. The District Court denied Karly \$800.03 of her itemized costs. (Order Awarding Attorney's Fees (August 24, 1999); R. 801-804). A copy of the Order is attached in the Addendum to this brief.
23. The Estate filed a Notice of Appeal from the Final Judgment on March 31, 1999, appealing all aspects of the District Court's rulings, including the award of Karly's attorney's fees and costs. (R. 686)
24. After the Estate filed its appeal one Sheri Marion filed, in the District Court, a Petition for Determination of Additional Heirs and Demand for Notice in the District Court. Sheri Marion's Petition alleged that her minor child, Kody Jon Marion, was also the natural child and heir of Kory Pasquin. (R. 695)
25. Therefore, following negotiations between counsel, the parties stipulated as follows: 1) a DNA test would be performed to determine whether Kory was also Kody's father, using the same blood, DNA, and DNA information of Kory Pasquin that was used to conclusively determine that Kory was Karly's natural father; 2) if the test was positive,

the parties would add Kody Marion as an heir of the Estate; 3) if the DNA test established that Kory was Kody Marion's natural father, then it would serve as "conclusive evidence" that Kory Pasquin was the father of *both* Karly Madsen and Kody Marion; 4) the Estate would then dismiss its appeal from the Final Judgment; and 5) the parties would modify the Final Judgment to state that Kody Marion is the natural child of Kory Pasquin and an heir of the Estate. The parties filed the Stipulation with the Court on January 3, 2000. (R. 808-810) (the "Stipulation"). A copy of the Stipulation is attached in the Addendum to this brief.

26. The DNA test proved that Kory Pasquin was, indeed, the natural father of Kody Marion. Therefore, the Estate filed Estate of Kory Pasquin's Notice of DNA Test Results and Recognition of Heirs, which gave notice that Karly was a child and heir of Kory Pasquin. (R. 842)
27. Therefore, the Estate dismissed its appeal from the Final Judgment. (R. 820)
28. Recognizing that it was bound by the terms of the Stipulation and the Final Judgment, the Estate then began an extensive battle to avoid the judgment and its award of Karly's attorney's fees. The Estate filed, in the District Court, a Petition to Vacate Final Judgment, and brought several frivolous motions in the District Court in an attempt to convince the Court to vacate the Final Judgment and rescind its award of Karly's attorney's fees. (R. 822-824).
29. Ultimately, on July 27, 2000, the District Court issued an order entitled "Court's Ruling." The Court's Ruling denied the Estate's Petition to vacate the final judgment, and stated:

After again carefully reviewing the record, the Court agrees with Ms. Madsen that the issue of attorney's fees has clearly been adjudicated in her favor. Moreover, after reviewing the basis for this award, the Court remains convinced that it was proper in the first place. The Court is not inclined nor is there a legal basis to revisit the issue of attorney's fees.

Court's Ruling, 2-3 (July 27, 2000); R. 937, 938-939). The Court entered the Amended Final Judgment on September 26, 2000, which included Kody Marion as an heir. Thus, after considering the evidence, two District Court judges (Judges Cornaby and Lewis) separately reached the same conclusion that the award of Karly's attorney's fees and costs was reasonable.

30. The Estate then filed a Notice of Appeal on October 17, 2000, appealing the award of Karly's attorney's fees.
31. Although the Estate has always argued that Karly's attorney's fees of \$41,212.50 were unreasonable, the Estate filed in the District Court a Petition to Dispose of Estate Property, dated June 7, 1999. The Petition revealed that John Pasquin, Kory's father, had been paying the Estate's legal fees and costs, *which amounted to \$40,023.00*. (Pet. Dispose Estate Prop., 2, R. 760, 761, 764). Thus, Kory's father was fueling the battle to block Karly's claim to her share of the Estate.

SUMMARY OF ARGUMENT

On appeal, the Estate argues that this Court should reverse the District Court's award of Karly's attorney's fees, and argues two issues: 1) there is purportedly no statutory basis for the award of attorney's fees; and 2) the District Court failed to enter findings of fact and conclusions of law to support the award of Karly's attorney's fees. However, the Estate also argues a number of other issues that are scattered throughout its brief in random order.

The Court should reject the Estate's arguments, and affirm the District Court's rulings and the award of attorney's fees and costs to Karly for the following reasons:

1. This Court has no jurisdiction to hear this appeal because the Estate did not file its appeal within thirty days of the entry of the Final Judgment in this matter as required by Rule 4 of the Utah Rules of Appellate Procedure;
2. The Estate's appeal is barred by the terms of the Stipulation.
3. There is explicit statutory authority for the award of Karly's attorney's fees;
4. The Estate's appeal is barred by the doctrine of estoppel;
5. The Estate's appeal is barred by the doctrine of waiver;
6. The Estate's appeal is barred by the doctrine of quasi-estoppel;
7. The Estate's appeal is barred by the doctrine of judicial estoppel;
8. The Estate failed to raise the lack of findings of fact and conclusions of law regarding the award of attorney's fees at the District Court level, and is thus barred from raising it on appeal for the first time;
9. Findings of fact and conclusions of law are implicit in the District Court's award of attorney's fees and costs to Karly. Judge Cornaby, after reviewing written testimony and evidence, and after presiding over a hearing, held Karly's attorney's fees and costs to be reasonable and entered an order awarding her the fees. Moreover, Judge Lewis carefully reviewed the evidence considered by Judge Cornaby, and issued a written ruling upholding the award of attorney's fees; and
10. Karly's attorney's fees were reasonable.

ARGUMENT

1. This Court has no jurisdiction to hear this appeal because the Estate did not file its appeal within thirty days of the entry of the Final Judgment in this matter as required by Rule 4 of the Utah Rules of Appellate Procedure.

The District Court entered the Final Judgment awarding Karly her attorney's fees and costs on March 22, 1999. The Estate filed its Notice of Appeal in the present action on October 17, 2000, one year and seven months after the District Court entered its Final Judgment. Rule 4 of the Utah Rules of Appellate Procedure requires that a notice of appeal must be filed within 30 days of the date the District Court enters judgment or order appealed from. Therefore, because the Notice of Appeal was not filed within 30 days of the date of the Final Judgment, this Court lacks jurisdiction to hear the Estate's appeal, and the Court should dismiss the Estate's appeal.

2. The Estate's appeal is barred by the terms of the Stipulation.

Under Utah law, stipulations are conclusive and binding on the parties.¹ "Ordinarily, courts are bound by the stipulations of the parties."² Therefore, the Estate is bound by the terms of the Stipulation.

Under the clear and unambiguous terms of the Stipulation, if genetic testing proved that Kody Marion was Kory's child, the results were to be taken as "conclusive evidence" that Karly is the natural child of Kory, "therefore determining once and for all that Kody

¹ *Maxwell v. Maxwell*, 796 P.2d 403, 406 (Utah App. 1990); *Higley v. McDonald*, 685 P.2d 496, 499 (Utah 1984); *Dove v. Cude*, 710 P.2d 170, 171 (Utah 1985).

² *First Denver Mortgage Investors v. Zundel*, 600 P.2d 521, 527 (Utah 1979).

Marion and Karly Madsen are heirs to the estate of Kory Pasquin.” Stipulation ¶ 2 (December 23, 1999). Furthermore, in such case, the Estate was required to dismiss its appeal in *Pasquin I*. If the Estate wanted to appeal the Final Judgment and award of Karly’s attorney’s fees, it could have proceeded with *Pasquin I*. Instead, the Estate chose to enter into the Stipulation. Karly relied on the Estate’s agreement to dismiss its appeal when she entered into the Stipulation—the sole further action to be the amendment of the Final Judgment to include Kody as an heir.

The genetic testing proved that Kody Marion is the child of Kory Pasquin. Therefore, it was conclusively determined that Karly is Kory’s child, and an heir of the Estate. The Estate then dismissed its appeal in *Pasquin I*.

Notwithstanding the Stipulation, in Appellant’s Brief the Estate attempts to resurrect the issue of paternity, extensively briefing the evidence Karly introduced at trial, and focusing primarily on the paternity issue. The Estate argues that Karly did not comply with the requirements for genetic testing under Utah Code § 78-45a-10 (1997), and that she failed to provide sufficient foundation for the genetic testing that she relied on at trial. The Estate’s lengthy recitation of the procedure, evidence, and testimony at trial is irrelevant to the present appeal, however, because the Stipulation renders all of these issues moot. Pursuant to the Stipulation, it has now been conclusively established that Karly is the natural child of Kory Pasquin. There is simply no issue regarding paternity, nor is there any issue as to whether Karly’s evidence satisfied the requirements of the Utah Uniform Paternity Act.

The Estate abandoned its appeal in *Pasquin I*. The terms of the Stipulation bar the Estate’s present appeal and its attempt to revive issues of paternity. Therefore, this Court

should reject the Estate's arguments, and affirm the District Court's rulings.

3. There is a statutory basis for the award of Karly's attorney's fees and costs.

Even though there was a DNA test that proved that Kory Pasquin was Karly's father, under Utah Code § 78-45a-10 (1997), the Estate objected to the DNA test that proved that Kory Pasquin was Karly's father. The Estate insisted that it had the right to a trial at which Karly had to establish paternity under the Utah Uniform Act on Paternity (R. 501). Therefore, the District Court held a jury trial, the governing law being the UUAP, which resulted in a jury verdict that Kory Pasquin was Karly's father. The UUAP explicitly provides for the award of attorney's fees, witness fees, and costs upon a judgment of paternity. Utah Code § 78-45a-5(4) (1997).³ Therefore, there is a clear and unambiguous statutory basis for the District Court's award of Karly's attorney's fees and costs, and this Court should affirm the rulings of the District Court.

4. The Doctrine of estoppel bars the Estate from bringing this appeal.

The Utah Supreme Court has held that a party is estopped from asserting a legal position if the following three elements are present:

(i) a statement, admission, act, or failure to act by one party inconsistent with a claim later asserted; (ii) reasonable action or inaction by the other party taken or not taken on the basis of the first party's statement, admission, act, or failure to act; and (iii) injury to the second party that would result from allowing the first party to contradict or repudiate such statement, admission, act, or failure to act.⁴

³ "The Court may enter an order awarding costs, attorney fees, and witness fees in the manner prescribed in Section 30-3-3 upon a judgment or acknowledgment of paternity." Utah Code § 78-45a-5(4) (1997).

⁴ *S&G, Inc. v. Intermountain Power Agency*, 913 P.2d 735, 741-42 (Utah 1996), *quoting* *CECO v. Concrete Specialists, Inc.*, 772 P.2d 967, 969-70 (Utah 1989).

All three of the elements of estoppel are present in the Estate's appeal. First, in the Stipulation, the Estate agreed to withdraw its first appeal if DNA testing proved that Kory Pasquin was the father of Kody Marion. Second, Karly took action by agreeing to the terms of the stipulation if it contained a provision for dismissal of *Pasquin I*, and Karly agreed to modification of the Final Judgment only if the Estate's appeal was dismissed. Third, Karly is suffering injury by allowing the Estate to proceed with the present appeal. Karly is being forced to incur substantial additional attorney's fees in connection with the appeal, and she is forced to litigate an issue which was resolved by stipulation. Therefore, the Estate's appeal is barred by the doctrine of estoppel, and the Court should affirm the District Court's rulings.

5. The doctrine of waiver bars the Estate from bringing this appeal.

The Utah Supreme Court has held that the doctrine of waiver is the "intentional relinquishment of a known right," which occurs when three elements are present: "(1) an existing right, benefit, or advantage; (2) knowledge of its existence; and (3) an intention to relinquish the right."⁵ The Estate is barred by the doctrine of waiver because all three elements of the doctrine are present in this case.

First, in the Stipulation, the Estate intentionally and knowingly relinquished an existing right to appeal the award of attorney's fees and costs—in fact, the Estate was pursuing its rights in *Pasquin I* when it entered into the Stipulation, and the Estate voluntarily dismissed that appeal. Thus, there was the existence of a right, knowledge of its existence, and an intention to relinquish that right. As the Utah Court of Appeals has said:

⁵ *Soter's Inc. v. Deseret Federal Savings & Loan Ass'n*, 857 P.2d 935, 939-40 (Utah 1993).

Generally in legal proceedings a party with knowledge of all the facts will not be allowed to take a position, pursue that position to fruition, and later, with no substantial change in circumstances, return to attack the validity of the prior position or the outcome flowing from it.⁶

Therefore, the Estate's appeal is barred by the doctrine of waiver, and the Court should affirm the District Court's rulings.

6. The doctrine of quasi-estoppel bars the Estate from bringing this appeal.

The doctrine of quasi-estoppel bars a party from changing its position in litigation when "it appeals to the conscience of the court to prevent injustice by precluding a party from asserting a right inconsistent with a position previously taken by him."⁷ The doctrine of quasi-estoppel "was developed to prevent a party from retaining a benefit by asserting a position to the disadvantage of another and then asserting a right which is inconsistent with that previous position."⁸ Quasi-estoppel operates to bar a party from asserting inconsistent positions when the party (1) with knowledge of the facts (2) takes a position inconsistent with its former position (3) to the disadvantage of another.⁹ Under the doctrine of quasi-estoppel, "where one having the right to accept or reject a transaction or instrument takes

⁶ *Occidental/Nebraska Federal Savings Bank v. Mehr*, 791 P.2d 217, 220 (Utah App. 1990); citing 28 Am. Jur. 2d *Estoppel and Waiver* §§ 68-70 (1966).

⁷ *Willard v. Ward*, 875 P.2d 441, 443 (Okla. Ct. App. 1994), citing *Jamison v. Consolidated Utilities, Inc.*, 576 P.2d 97, 102 (Alaska 1978)). See also *Sailes v. Jones*, 499 P.2d 721, 724 (Ariz. Ct. App. 1972), *reh'd denied* (quoting *Unruh v. Industrial Comm'n*, 301 P.2d 1029, 1031 (Ariz. 1956)); *Pattison v. State Farm Fire & Cas. Co.*, 495 P.2d 975, 980 (Kan. 1972).

⁸ *Keesee v. Fetzek*, 723 P.2d 904, 905 (Idaho Ct. App. 1986).

⁹ See *Steubner Realty 19, Ltd. v. Cravens Rd. 88, Ltd.*, 817 S.W.2d 160, 164 (Tex. App. 1991) (citing *Stimpson v. Plano Indep. School Dist.*, 743 S.W.2d 944, 946 (Tex. App. 1987, *writ denied*); 31 C.J.S. *Estoppel* § 107 (1964)).

and retains benefits thereunder, he ratifies it, and cannot avoid its obligation or effect by taking a position inconsistent with it.”¹⁰

The elements of quasi-estoppel are present in this appeal. In the Stipulation, the Estate agreed to dismiss its appeal, and Karly entered into the Stipulation in reliance upon the Estate’s promise to dismiss its appeal. The Estate did dismiss *Pasquin I*. However, the Estate now wishes to renew its appeal, to the disadvantage of Karly Madsen. Therefore, the doctrine of quasi-estoppel bars the Estate’s present appeal, and this Court should and affirm the rulings of the District Court.

7. The Doctrine of judicial estoppel bars the Estate from bringing this appeal.

Under the doctrine of judicial estoppel, a “person may not, to the prejudice of another person deny any position taken in a prior judicial proceeding between the same persons or their privies involving the same subject-matter, if such prior position is successfully maintained.”¹¹ In the Stipulation entered while *Pasquin I* was pending, the Estate took the position that if a DNA test proved that Kody Marion was Kory Pasquin’s child, then that test would serve as “conclusive evidence” that Karly Madsen was Kory’s child. The Estate also took the position that it would then dismiss its appeal in *Pasquin I*.

Nonetheless, the Estate has revived its appeal, and argues issues regarding paternity and the award of Karly’s attorney’s fees and costs. The doctrine of judicial estoppel bars this appeal, which is inconsistent with the Stipulation in the prior proceeding. Therefore, this

¹⁰ *Carolina Medicorp, Inc. v. Board of Trustees of North Carolina Teachers' and State Employees' Comprehensive Major Med. Plan*, 456 S.E.2d 116, 120 (N.C. Ct. App. 1995).

¹¹ *Salt Lake City v. Silver Fork Pipeline*, 913 P.2d 731, 734 (Utah 1996); *see also Salt Lake City v. Silver Fork Pipeline Corp.*, 5 P.3d 1206, 1222 (Utah 2000).

Court should affirm the District Court's rulings.

8. The Estate's appeal is barred because it failed to raise the lack of findings of fact and conclusions of law regarding the award of attorney's fees at the District Court level.

The Estate argues that this Court should reverse the District Court's award of Karly's attorney's fees and costs because the District Court did not enter findings of fact and conclusions of law regarding the fee award. However, the Court's Order Awarding Attorney's Fees, Costs, and Witness Fees contains an extensive and detailed recitation of the facts, testimony, pleadings, papers, hearing, and arguments upon which it based its decision to award Karly her fees. Thus, although the District Court did not caption its Order as "Findings of Fact and Conclusions of Law," the Order contains the substance that would be contained in findings.

Moreover, at the trial level, the Estate vigorously opposed the award of Karly's fees, and argued the matter to two District Court judges, who both found the fees to be reasonable. Thus, the Estate had ample opportunity to request the entry of findings of fact, but it did not do so. If the Estate had made such a request, the District Court could have obliged the Estate by entering a separate document captioned "Findings of Fact." However, it is in this appeal that the Estate raises the issue of findings for the first time.

It is axiomatic that this Court will not consider issues that can be raised at the trial court level, but are raised for the first time on appeal.¹² The rule against considering new is-

¹² See, e.g., *Espinal v. Salt Lake City Bd. Of Educ.*, 797 P.2d 412, 413 (Utah 1990); *Progressive Acquisition, Inc. v. Lytle*, 806 P.2d 239, 242 (Utah App. 1991); *Ringwood v. Foreign Auto Works, Inc.*, 786 P.2d 1350, 1358 (Utah App.), cert. denied, 795 P.2d 1138 (Utah 1990); *Shire Dev. v. Frontier Invs.*, 799 P.2d 221, 224 (Utah App. 1990); *Werner-Jacobsen v. Bednarik*, 946 P.2d 744, 748 (Utah App. 1997); *Certified Sur. Group, Ltd. v. UT Inc.*, 960 P.2d 904, 906 (Utah 1998).

sues on appeal is ancient.¹³ Judge Ruggero Aldisert of the Court of Appeals of the Third Circuit has succinctly stated the rationale for the continued application of the ancient rule in modern practice. Judge Aldisert has said that the reasons for the rule:

[G]o to the heart of the common law tradition and the adversary system. It affords an opportunity for correction and avoidance in the trial court in various ways: it gives the adversary the opportunity either to avoid the challenged action or to present a reasoned defense of the trial court's action; *and it provides the trial court with the alternative of altering or modifying a decision or of ordering a more fully developed record for review.* (emphasis added).¹⁴

If an appellate court were to deviate from this ancient rule, it would inject a degree of uncertainty into the law that is detrimental to our system of justice, and weaken the predictability that is an important part of appellate review. Without this predictability, appellate review is degraded into a process in which appellants attempt to relitigate the issues and to persuade the appellate court that the trial court did not reach the “right” result. Thus, every appeal would become a *de novo* proceeding in which the appellate court holds a trial on the merits. This is exactly what the Estate attempts to do in the present appeal.

Rule 46 of the Utah Rules of Civil Procedure embodies the rationale for the ancient rule against considering new issues on appeal. Rule 46 requires a party, “at the time the rul-

¹³ R. Martineau, *Modern Appellate Practice: Federal and State Civil Appeals* § 1.1 (1983); R. Pound, *Appellate Procedure in Civil Cases*, 38-71 (1941); C. Warren, *A History of the American Bar* 39-324 (1911 & reprint 1980); Martineau, *The Value of Appellate Oral Argument: A Challenge to the Conventional Wisdom*, 72 Iowa L. Rev. 1-11 (1986); Sunderland, *Improvement of Appellate Procedure*, 26 Iowa L. Rev. 3, 7-12 (1940).

¹⁴ *Pfeifer v. Jones & Laughlin Steel Corp.*, 678 F.2d 453, 456-457 n.1 (3d Cir. 1982), *vacated and remanded*, 462 U.S. 523 (1983).

ing or order of the court is made or sought,” to make “known to the court the action which he desires the Court to take or his objection to the action of the court and his grounds therefore....” The Estate failed to comply with Rule 46 by not requesting that the District Court enter findings of fact and conclusions of law when the Court entered its order regarding the award of Karly’s attorney’s fees and costs.

Therefore, this Court should enforce Rule 46, adhere to the ancient rule against considering new issues on appeal, and affirm the District Court’s award of Karly’s attorney’s fees and costs.

9. Findings of fact and conclusions of law are implicit in the District Court’s award of Karly’s attorney’s fees and costs.

Although the District Court did not enter a document entitled “Findings of Fact and Conclusions of Law” regarding the award of Karly’s attorney’s fees and costs, findings “can be implied if it is reasonable to assume that the trial court actually considered the controverted evidence and necessarily made a finding”.¹⁵ The Court should imply findings in the District Court’s award of Karly’s attorney’s fees for the following reasons:

1. Karly’s counsel submitted a detailed affidavit setting forth his hourly rate and the hourly rates of those who assisted him with the case, which were similar to the rates charged by similar attorneys for similar services in Salt Lake City;
2. The affidavit of Karly’s counsel included a detailed itemized description of all work performed on the paternity case, including a description of what work was performed and the time spent on each task;

¹⁵ See, e.g., *Hall v. Hall*, 858 P.2d 1018, 1025 (Utah Ct. App. 1993).

3. The affidavit of Karly's counsel included only time and costs spent on the paternity litigation; explicitly omitted were some of Karly's attorney's fees, which were related only to the probate litigation and not related to the paternity litigation;
4. At the Estate's request, Judge Cornaby presided over a hearing regarding Karly's motion for attorney's fees and costs, and at the hearing the Estate called Karly's counsel, David W. Steffensen, as its only witness, subjecting Mr. Steffensen to extensive cross-examination regarding Karly's attorney's fees and costs;
5. Judge Cornaby heard oral argument from both Karly's counsel and the Estate regarding Karly's motion for attorney's fees and costs;
6. The Estate introduced no evidence or expert witness testimony to controvert the affidavit and oral testimony of Karly's counsel regarding her fees;
7. At the April 29, 1999 hearing, Judge Cornaby ruled that Karly was entitled to her attorney's fees and most of her costs. In the Order Awarding Attorney's Fees, Costs, and Witness Fees to Karly, 1-2 (August 24, 1999), the District Court explicitly identified the extensive material upon which it relied in making its award:

[H]aving reviewed Petitioner, Karly Madsen's, Motion to Award Attorney's Fees and Costs, Petitioner's Memorandum in Support thereof, the Affidavit of David W. Steffensen Regarding Attorney's Fees, Costs, and Witness Expenses, The Estate's Consolidated Response to Pending Trial and Discovery Motions, the Estate's Request for Hearing on Pending Trial and Discovery Motions, the Estate's Memorandum in Opposition to Karly Madsen's Motion for Attorney's Fees, Petitioner's Reply Memorandum to the Estate's Consolidated Response to Pending Trial and Discovery Motions, Petitioner's Reply Memorandum to the Estate's Memorandum in Opposition to Motion for Attorney's Fees, the Final Judgment, the other pleadings in this matter, having further received sworn testimony from David W. Steffensen at the hearing held on the Motion on April 29, 1999, who was cross examined thereon by counsel for the Decedent's Estate, and having further heard and considered the arguments of counsel for Petitioner, Karly Madsen, and for

the Decedent's Estate at said hearing held on the Motion on April 29, 1999, and good cause appearing therefore . . .

8. The August 24, 1999 Order itemizes each cost awarded to Karly;
9. After the Estate dismissed its first appeal, it brought in the District Court a Petition to Vacate Final Judgment, seeking a reversal of the award of Karly's fees and costs. Judge Leslie Lewis issued a ruling denying the Estate's Petition, and stated:

After again carefully reviewing the record, the Court agrees with Ms. Madsen that the issue of attorney's fees has clearly been adjudicated in her favor. Moreover, after reviewing the basis for this award, the Court remains convinced that it was proper in the first place. The Court is not inclined nor is there a legal basis to revisit the issue of attorney's fees.

Court's Ruling, 2-3 (July 27, 2000)(R. 937, 938-939).

10. Thus, after considering the written evidence, all of the papers filed by the parties, hearing witness testimony, and hearing the oral arguments of the parties, two District Court judges (Judges Cornaby and Lewis) separately reached the same conclusion that the award of Karly's attorney's fees and costs was reasonable.

It is indisputable that the District Court considered all of the evidence in the record regarding attorney's fees and costs—Karly's evidence being uncontroverted by the Estate, which submitted no evidence at all. It is thus reasonable to assume that the District Court necessarily made findings supporting its award of Karly's attorney's fees and costs. Therefore, this Court should imply findings of fact and conclusions of law, and affirm the District Court's award of Karly's attorney's fees and costs.

10. The award of Karly's attorney's fees and costs was reasonable.

Rule 24(5) of the Utah Rules of Appellate Procedure requires a party to provide, under appropriate headings, "a statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority." In Appellant's Brief, the

the standard of appellate review with supporting authority.” In Appellant’s Brief, the Estate identifies only two issues on appeal. The Estate does *not* identify the reasonableness of the award of Karly’s attorney’s fees as an issue on appeal. Nonetheless, the Estate argues, at great length, that the fee award was unreasonable. Because the Estate did not comply with Rule 24(5) in raising the reasonableness issue, this Court should not consider the issue. However, Karly will briefly address the reasonableness issue in the event that the Court does consider the Estate’s argument.

The Estate argues that preparing for and trying the paternity case should have cost “no more than \$5,000.” (Appellant’s Brief at 16). Yet Karly was required to incur substantially more in legal fees because the Estate has employed an endless series of complex legal tactics that constitute conduct perhaps exceeded only by that of the poisoning princes of the Medici family in Renaissance Italy. Kory Pasquin’s father, determined to keep Karly from her rightful inheritance, personally incurred over \$40,000 in attorney’s fees on behalf of the Estate, and has asked that the Estate reimburse him for those fees. Thus, the fees the Estate has incurred in simply defending the case were substantially the same as the fees incurred by Karly, even though it was Karly who bore the burden of proving paternity. Therefore, it is ludicrous for the Estate to argue that Karly’s fees are unreasonable.

Moreover, the Affidavit of David W. Steffensen regarding Karly’s attorney’s fees and costs, and the testimony during the hearing on the attorney’s fees issues, prove that the District Court must have considered the following:

1. The legal work that Karly’s counsel actually performed;
2. The legal work Karly’s counsel performed was reasonably necessary to adequately

prosecute the matter;

3. Karly's counsel had a billing rate consistent with the rates customarily charged in Salt Lake City, Utah, for similar services; and
4. That there were circumstances that required consideration of additional factors, including those listed in Rule 1.1 of the Code of Professional Responsibility, particularly:
 - a. The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; Utah Code of Professional Responsibility, R. 1.5(a)(1);
 - b. The fee customarily charged in the locality for similar legal services; Utah Code of Professional Responsibility, R. 1.5(a)(3);
 - c. The amount involved and the results obtained; Utah Code of Professional Responsibility, R. 1.5(a)(4);
 - d. The ability of the lawyers representing Karly Madsen; Utah Code of Professional Responsibility, R. 1.5(a)(7).

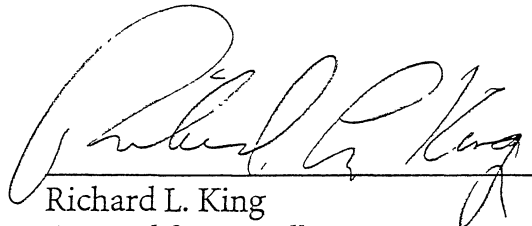
Thus, the evidence presented to the District Court presented the factors required by the Utah Supreme Court in *Dixie State Bank v. Bracken*, 764 P.2d 985, 992 (Utah 1988). Therefore, this Court should affirm the District Court's rulings.

CONCLUSION

The Estate raises only two issues on appeal. The Court should reject the Estate's ar-

guments regarding both issues. Notwithstanding the Estate's argument to the contrary, there is a clear and unambiguous statute that provides for the recovery of attorney's fees, costs, and witness fees in paternity actions. Moreover, the District Court's orders awarding attorney's fees were detailed enough to serve as findings of fact, and the Estate has waived its right to challenge the alleged lack of findings by failing to raise the issue at the District Court level. In addition, this Court should impute findings of fact in the District Court's order awarding attorney's fees and costs. Thus, the Court should affirm the District Court's rulings.

DATED this 29th day of June, 2001.



Richard L. King
Counsel for Appellees

ADDENDUM

1. Utah Code §§ 78-45a-2 through 78-45a-10 (1997).
2. Final Judgment (March 2, 1999).
3. Affidavit of David W. Steffensen Regarding Attorney's Fees, Costs and Witness Fees (January 26, 1999).
4. Order Awarding Attorney's Fees (August 24, 1999).
5. Stipulation (January 3, 2000).

PART 1

78-45a-2. Determination of paternity — Effect — Enforcement.

- (1) Paternity may be determined upon:
 - (a) the petition of the mother, child, putative father, or the Office of Recovery Services; or
 - (b) a voluntary declaration of paternity executed in accordance with Title 78, Chapter 45e, Voluntary Declaration of Paternity Act.
- (2) If paternity has been determined or has been acknowledged according to the laws of this state or any other state, the liabilities of the father may be enforced in the same or other proceedings by:
 - (a) the mother, child, the Office of Recovery Services, or the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, necessary support, or funeral expenses; and
 - (b) other persons including private agencies to the extent that they have furnished the reasonable expenses of pregnancy, confinement, education, necessary support, or funeral expenses.
- (3) An adjudication of paternity or a voluntary declaration executed in accordance with Title 78, Chapter 45e, Voluntary Declaration of Paternity Act, shall be filed with the state registrar in accordance with Section 26-2-5.
- (4) A party to an action under this chapter has a continuing obligation to keep the court informed of the party's current address.

History: L. 1965, ch. 158, § 2; 1990, ch. 245, § 23; 1994, ch. 127, § 2; 1997, ch. 232, § 74.

Amendment Notes. — The 1997 amendment, effective July 1, 1997 substituted "Office

of Recovery Services" for "public authority chargeable by law with the support of the child" in Subsection (1)(a); added "the Office of Recovery Services" in Subsection (2)(a); and added Subsections (3) and (4).

78-45a-5. Remedies.

- (1) The district court has jurisdiction of an action to establish paternity. All remedies for enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, necessary support, or funeral expenses for legitimate children shall apply. The court has continuing jurisdiction to modify or revoke a judgment for future education and necessary support. All remedies under Title 78, Chapter 45f, Uniform Interstate Family Support Act, are available for enforcement of duties of support under this chapter.
- (2) (a) The obligee may enforce his right of support against the obligor and the state may proceed on behalf of the obligee or in its own behalf, pursuant to the provisions of Title 62A, Chapter 11, Recovery Services, to enforce that right of support against the obligor.
 - (b) The provisions of Title 62A, Chapter 11, Recovery Services, apply in all actions by the state.
 - (c) Whenever the state commences an action under this chapter, it shall be the duty of the attorney general or the county attorney of the county where the obligee resides to represent the state. Neither the attorney general nor the county attorney represents or has an attorney-client relationship with the obligee or the obligor, in carrying out his responsibilities under this chapter.
- (3) Upon motion by a party, the court shall issue a temporary order in a paternity action to require the payment of child support pending a determination of paternity if there is clear and convincing evidence of paternity in the

form of genetic test results under Section 78-45a-7 or 78-45a-10, or evidence.

(4) The court may enter an order awarding costs, attorney fees, and fees in the manner prescribed by Section 30-3-3 upon a judgment or acknowledgment of paternity.

(5) Rule 55, Default Judgment, Utah Rules of Civil Procedure, applies to paternity actions commenced under this chapter.

History: L. 1965, ch. 158, § 5; 1975, ch. 96, § 24; 1990, ch. 183, § 60; 1992, ch. 160, § 2; 1993, ch. 137, § 16; 1994, ch. 140, § 16; 1997, ch. 232, § 75.

Amendment Notes. — The 1997 amendment, effective July 1, 1997, in the last sentence of Subsection (1) substituted “Title 78, Chapter 45f, Uniform Interstate Family Sup-

port Act” for “Title 77, Chapter 31, Uniform Reciprocal Enforcement of Support Act”; substituted “chapter” for “act”; in Subsection (2)(a) substituted “state” for “Department of Human Services”; substituted “state” for “department” throughout Subsections (2)(b) and (2)(c); added Subsection (3) and made redesignations; and made stylistic changes.

78-45a-6.5. Standard of proof.

The standard of proof in a trial to determine paternity is “by a preponderance of the evidence.”

History: C. 1953, 78-45a-6.5, enacted by L. 1988, ch. 93, § 1; 1997, ch. 232, § 76.

Amendment Notes. — The 1997 amend-

ment, effective July 1, 1997, rewrote this section.

78-45a-7. Authority for genetic testing.

(1) Upon motion of any party to the action, made at a time so as not to delay the proceedings unduly, the court shall order the mother, the child, and the alleged father to submit to genetic testing if the request is supported by a sworn statement by the requesting party:

(a) alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(b) denying paternity and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(2) The court may, upon its own initiative, order the mother, the child, and the alleged father to submit to genetic testing.

(3) (a) The court shall order genetic testing:

(i) of a type generally acknowledged as reliable by accrediting bodies designated by the federal Secretary of Health and Human Services; and

(ii) to be performed by a laboratory approved by such an accreditation body.

(b) Except as provided in Subsection (6), the cost of genetic testing shall be paid by the party who requested it or shared between the parties if requested by the court, subject to recoupment against the party who challenges the existence or nonexistence of paternity if the result of the genetic test is contrary to the position of the challenger.

(4) Upon request by a party, a court may order a second genetic test if the first complies with Subsection (3) if paid for in advance by the requesting party requested within 15 days of the result of the first genetic test being sent to the last-known address on file under Section 78-45a-2.

(5) If any party refuses to submit to genetic testing, the court may resolve the question of paternity against that party, or may enforce its order if the rights of others and the interests of justice so require.

(6) The office may request genetic testing under this section and shall pay for genetic testing it requests subject to recoupment as provided in Section 2A-11-304.1

History: L. 1965, ch. 158, § 7; 1992, ch. 10, § 3; 1997, ch. 232, § 77.

Amendment Notes. — The 1997 amendment, effective July 1, 1997 added “if the request is supported by a sworn statement by the requesting party” in the opening paragraph of

Subsection (1), added Subsections (1)(a) and (1)(b), deleted “or upon request made by or on behalf of any person whose blood is involved” after “initiative” in Subsection (2), added Subsections (3), (4), and (6) and made related redesignations; and made stylistic changes

§ 8-45a-8, 78-45a-9. Repealed.

Repeals. — Laws 1997, ch. 232, § 141 repeals §§ 78-45a-8 and 78-45a-9, as enacted by Laws 1965, ch. 158, §§ 8 and 9, relating to

selection and compensation of experts, effective July 1, 1997

§ 8-45a-10. Effect of genetic test results.

1) Genetic test results shall be admissible as evidence of paternity without need for foundation testimony or other proof of authenticity or accuracy if:

(a) of a type generally acknowledged as reliable by accreditation bodies designated by the federal Secretary of Health and Human Services;

(b) performed by a laboratory approved by such an accreditation body; and

(c) not objected to with particularity and in writing within 15 days after the written test results being sent to the parties.

2) (a) Upon a motion of a party, a court may receive testimony from genetic testing experts and others involved in conducting the genetic tests if the testimony:

(i) is based on a genetic test performed in accordance with Subsection 78-45a-7(3)(a) or 78-45a-7(4); and

(ii) is useful to the court in determining paternity.

(b) Unless a party objects with particularity and in writing within 15 days after the written test results are sent to the last-known address of that party on file under Section 78-45a-2, testimony received under Subsection (2)(a) shall be in affidavit form.

(a) A man is presumed to be the natural father of a child if genetic testing results in a paternity index of at least 150.

(b) A presumption under Subsection (3)(a) may only be rebutted by a second genetic test:

(i) that complies with Subsection 78-45a-7(4); and

(ii) results in an exclusion.

If a presumption of paternity established under Subsection (1) is not rebutted by a second genetic test under Subsection (2), the court shall issue an order establishing paternity.

Bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony and shall constitute prima facie evidence of amounts incurred for such services or for testing a part of the child.

History: C. 1953, 78-45a-10, enacted by Laws 1965, ch. 158, § 78.

Amendments and Reenactments. — Laws 1997, ch. 232, § 78 repeals former § 78-45a-10,

as amended by Laws 1992, ch. 160, § 4, prescribing the effect of genetic test results, and enacts the present section, effective July 1, 1997

78-45a-11.5. Social security number in court records.

The social security number of any individual who is subject to a paternity determination shall be placed in the records relating to the matter.

History: C. 1953, 78-45a-11.5, enacted by L. 1997, ch. 232, § 79. Effective Dates. — Laws 1997, ch. 2 § 142 makes the act effective on July 1, 1997.

CHAPTER 45e

VOLUNTARY DECLARATION OF PATERNITY

Section	Section
78-45e-2. Voluntary declaration of paternity.	78-45e-3. Requirements for filing. 78-45e-4. Rescission of the declaration.

78-45e-2. Voluntary declaration of paternity.

(1) (a) A voluntary declaration of paternity filed in compliance with this chapter establishes a father-child relationship identical to the relationship established when a child is born to persons married to each other.

(b) When a voluntary declaration of paternity is filed, the liabilities the father include, but are not limited to, the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support, and any funeral expenses for the child.

(c) When a father voluntarily declares paternity, his liability for payments due is limited to a period of four years immediately preceding the date that the voluntary declaration of paternity was filed.

(2) When a voluntary declaration of paternity is filed it shall be recognized as a basis for a child support order without any further requirement of a proceeding regarding the establishment of paternity.

(3) The voluntary declaration of paternity may be completed and signed at any time after the birth of the child. A voluntary declaration of paternity may not be executed or filed after consent to or relinquishment for adoption has been signed.

(4) The voluntary declaration of paternity shall become an amendment to the original birth certificate. The original certificate and the declaration shall be marked so as to be distinguishable. The declaration may be included as part of subsequently issued certified copies of the birth certificate. Alternatively, electronically issued copies of a certificate may reflect the amended information and the date of amendment only.

(5) The voluntary declaration of paternity shall be in the form prescribed by the state registrar of vital statistics and shall be accompanied with an explanation of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the declaration.

(6) The social security number of any person who is subject to a voluntary declaration of paternity shall be placed in the records relating to the matter.

History: C. 1953, 78-45e-2, enacted by L. 1994, ch. 127, § 4; 1995, ch. 258, § 16; 1997, ch. 232, § 80. Amendment Notes. — The 1997 amendment, effective July 1, 1997 added "and shall be accompanied..." in Subsection (5) and added Subsection (6).

Amendment Notes. — The 1997 amendment

PART 2

DAVID W. STEFFENSEN, (A4677)
STEFFENSEN MCDONALD STEFFENSEN
675 East 2100 South, Suite 350
Salt Lake City, Utah 84106
Telephone: (801) 485-1818

THIRD JUDICIAL DISTRICT COURT, DIVISION I
SALT LAKE COUNTY STATE OF UTAH
PROBATE DIVISION

In the Matter of the Estate

of

KORY PASQUIN,

Deceased.

FINAL JUDGEMENT

Probate No. 973900253

Judge Leslie A. Lewis

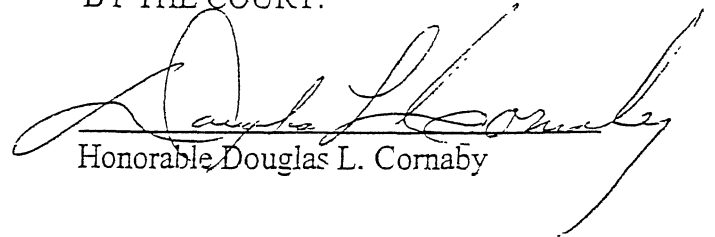
A trial was held regarding the petitioner's Petition for Determination of Heirs, the Honorable Douglas L. Cornaby, presiding, on December 1 through December 2, 1998 before the Court and a jury. The issues having been duly tried and the jury having duly rendered its verdict:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Karly Madsen is an heir of Kory Pasquin's Estate entitled, under applicable statute, to one-half of Kory Pasquin's intestate estate. It is further ordered, adjudged and decreed that petitioner is entitled to reasonable attorney's fees and costs incurred in pursuing her petition in an amount to be determined by the Court, together with interest on such attorney's fees and costs accruing from the date this judgment is entered by the court. It is further ordered, adjudged and decreed that this judgment

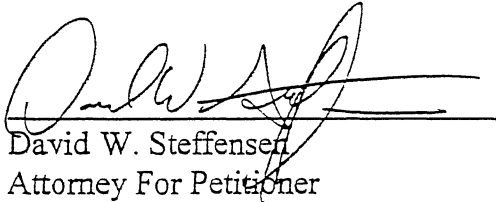
may be supplemented with petitioner's reasonable attorney's fees and costs of collecting this judgment, as may be established from time to time by affidavit.

DATED this 2 day of March, 1999.

BY THE COURT:


Honorable Douglas L. Cornaby

APPROVED AS TO FORM:


David W. Steffensen
Attorney For Petitioner

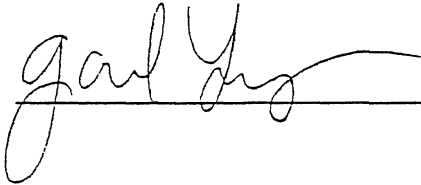
Robert H. Copier
Attorney for the Estate of Kory Pasquin

MAILING CERTIFICATE

I hereby certify that on this 22nd day of January, 1999, I caused a true and correct copy of the foregoing paper to be mailed, postage prepaid, and addressed to:

Robert Copier
200 Metro Place
243 East 400 South
Salt Lake City, Utah 84111

DATED this 22nd day of January, 1999.



PART 3

DAVID W. STEFFENSEN, P.C. (4677)
STEFFENSEN ❖ MCDONALD ❖ STEFFENSEN
2159 South 700 East, Suite 100
Salt Lake City, Utah 84106
Telephone: (801) 485-1818

Attorney for Petitioner, Karly Madsen

THIRD JUDICIAL DISTRICT COURT, DIVISION I

SALT LAKE COUNTY STATE OF UTAH

PROBATE DIVISION

In the Matter of the Estate

of

KORY PASQUIN,

Deceased.

AFFIDAVIT OF DAVID W. STEFFENSEN
REGARDING ATTORNEYS FEES,
COSTS AND WITNESS FEES

Probate No. 973900253

Judge Leslie A. Lewis

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

David W. Steffensen, having been first duly sworn, avers as follows:

1. My name is David W. Steffensen, and my business address is 2159 South 700 East, Suite 100, Salt Lake City, Utah 84106, 485-1818.
2. I have personal knowledge of the matters set forth in this Affidavit. If called upon to do so, I could and would testify to these matters in a court of law.
3. I am an attorney licensed to practice in the State of Utah. I have practiced in the tax, estate planning and probate areas in Salt Lake County, Utah, for thirteen years. In addition,

Richard L. King, an attorney practicing in my office, is licensed to practice in the State of Utah, and has so practiced law as a litigation attorney in Salt Lake County, Utah, for thirteen years. As a result, I am familiar with the rates charged by attorneys in Salt Lake County, Utah.

4. In April of 1997, I was retained to represent Karly Madsen, a minor, who successfully obtained a jury verdict on December 2, 1998, that she is an heir of the decedent, Kory Pasquin. In August of 1998, I requested and obtained the able assistance of Richard L. King to help me finish the preparation of Karly Madsen's claim for trial, and to help me conduct the trial.

5. In performing that successful representation of Karly Madsen, I performed 223 hours of legal work, and Richard L. King performed, at my request and subject to my supervision, 51.75 hours of legal work. At our hourly rate of \$150 per hour, which rate is a reasonable rate for attorneys with Mr. King's and my years of experience, the legal fees incurred total \$41,212.50. In this regard, it should be noted that the 223 hours of legal work performed by me does not include 22 hours of work in representing Julie Flarity in her petition to have the personal representative removed.

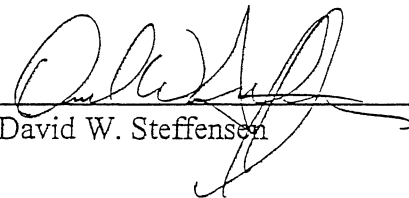
6. In addition, I have incurred and paid for the following costs and expenses in connection with this matter:

6/27/97	Constable	\$10.00
10/11/97	Copying charges	4.25
12/15/97	Subpoena fees for depositions and trial	68.00
1/24/98	Constable	45.00
2/25/98	Rocky Mountain Reporting-Deposition	306.25
10/10/98	Binders/tabs for court pleadings	175.34

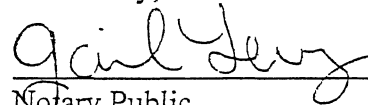
11/23/98	Dr. Kenneth Ward—Expert Witness Fee	1,000.00
12/31/98	Dr. Kenneth Ward—Expert Witness Fee	2,806.00
12/31/98	Billie Way: Transcript of Hearing	70.00
12/31/98	Westlaw research charges	248.44
TOTAL FEES AND COSTS:		<u>\$4,733.28</u>

7. A detailed narrative of the fees, description of services rendered and costs and expenses incurred, totaling \$45,945.78, is set forth in that certain Statement No. 1675 attached hereto and incorporated herein as Exhibit "A."

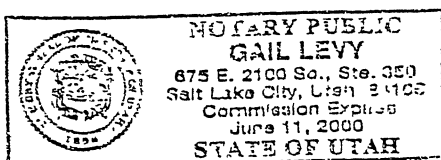
Dated this 25 day of January, 1999.


David W. Steffensen

Subscribed and sworn to before me by David W. Steffensen, a person I either know or who properly identified himself to me, this 25 day of January, 1999.


Notary Public

My Commission Expires:



DAVID W. STEFFENSEN, P.C.
2159 South 700 East, Suite 100
Salt Lake City, Utah 84106
(801) 485-1818

Karly Madsen
c/o Kristie Madsen, Guardian
1327 West Diane Drive
Bennion UT 84123

Page: 01/23/97
Account No: 493-000
Statement No: 170

Attn: Kristie Madsen

Kory Pasquin Estate/Intestacy Claim

	Hours
04/15/97 Telephone conference with Kristie regarding new matter	.25
04/16/97 Review of probate file; legal research on guardian ad litem	1.00
04/17/97 Preparation of petition to probate court; telephone conference with Kristie	2.50
04/18/97 Preparation of petition to probate court; office conference with Kristie Madsen.	.50
05/05/97 Review of withdrawal of counsel.	.25
05/13/97 Office conference with Kristie Madsen regarding hearing; review of documents.	1.00
05/14/97 Preparation of petition for determination of heirs and attendance at hearing.	1.00
05/15/97 Review of documents received from Bob Copier.	.25
05/16/97 Preparation of letter to Bob Copier to demand withdrawal of notice of claim disallowance.	.50
05/26/97 Legal Research regarding paternity testing and paternity evidentiary issues.	1.00
05/28/97 Preparation of Objection to Disallowance of Claim, Affidavits; telephone conference with Bob Copier.	2.50

Karly Madsen

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01/23/99
Account No: 493-000N
Statement No: 1702

Kory Pasquin Estate/Intestacy Claim

	Hours
05/29/97 Preparation of documents; office conference with Geri Pasquin, Julie Flarity, and Kristie Madsen; telephone conference with Bob Copier.	5.25
06/02/97 Review of dna subpoenas; telephone conference with Terry Rooney (attorney for dna lab); preparation of Gramma release authorizations.	.75
06/03/97 Review of objection; preparation of letter to Bob Copier.	.25
06/04/97 Review of pleadings.	.25
06/20/97 Telephone conference with Bob Copier regarding Gramma release form.	.50
06/27/97 Telephone conference with Bob Copier's office; preparation of letter to Bob Copier regarding Gramma releases and motion to compel on dna test records.	.25
07/08/97 Telephone conference with Bob Copier regarding releases for DNA tests.	.25
07/22/97 Telephone conference with Bob Copier's office; telephone conference with Bob Copier regarding letter; preparation of letter to Bob Copier.	2.50
07/23/97 Preparation of motion to compel on DNA test documents; telephone conference with Kristie Madsen; telephone conference with Bob Copier; preparation of joint motion and order for release of DNA test records.	4.00
08/28/97 Telephone conference with Kristie Madsen; telephone conference with Geri Pasquin; work on petitions.	.25
09/05/97 Preparation of letter to DNA lab to obtain documents with court order to compel.	.25
09/15/97 Preparation of discovery responses.	1.00

Karly Madsen

01/23/
Account No: 493-00
Statement No: 17

Kory Pasquin Estate/Intestacy Claim

	Hours
09/18/97 Office conference with Kristie Madsen; follow up.	1.25
09/22/97 Review of DNA testing documents; preparation of letter to Bob Copier.	.75
09/25/97 Telephone conference with Michael Lawrence and Yvette Madsen regarding social security issues; review Copier's letter.	1.25
09/26/97 Preparation of interrogatories to Candy Suitter.	.50
10/20/97 Telephone conference with Yvette Madsen regarding probate, Karly's social security benefits.	.50
10/21/97 Telephone conference with Division of Family Services.	.25
10/28/97 Telephone conference with Geri Pasquin; preparation for status conference.	2.25
10/29/97 Attend pretrial status conference; out of the office conference with Bob Copier, Geri Pasquin, and Julie Flarity regarding settlement options.	2.50
11/04/97 Telephone conference with Yvette Madsen.	.25
11/07/97 Review of Bob Copier's letter, proposed settlement.	.75
11/11/97 Preparation of settlement documents.	.25
11/12/97 Preparation of settlement documents; telephone conference with Geri Pasquin and Steve Coonhousen.	4.00
11/13/97 Preparation of settlement documents; telephone conference with Kristie Madsen regarding social security.	2.00
11/14/97 Preparation of settlement documents.	.50
11/20/97 Telephone conference with Bob Copier regarding settlement.	.25

Karly Madsen

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Account No: 493-000N
Statement No: 1702

Kory Pasquin Estate/Intestacy Claim

	Hours
12/01/97 Review of Bob Copier's motion/memo to strike hearing; call to Geri Pasquin; telephone conference with Bob Copier.	.75
12/02/97 Telephone conference with Bob Copier regarding settlement.	1.00
12/04/97 Telephone conference with Bob Copier, Julie Flarity, and Geri Pasquin regarding settlement.	1.50
12/09/97 Preparation of letter to Bob Copier, witness designations; telephone conferences with DNA lab, Bob Copier; line up expert witness.	3.50
12/12/97 Office conference with Geri Pasquin; telephone conference with Steve Taylor (John Pasquin's attorney) regarding taking John Pasquin's deposition.	2.25
12/15/97 Out of the office conference with Dr. Ken Ward for expert interview.	1.00
12/16/97 Preparation for depositions; preparation of letters to Copier.	1.50
12/18/97 work on discovery.	.50
12/19/97 Telephone conference with Geri Pasquin; preparation for trial.	1.50
12/22/97 Work on discovery.	.50
12/26/97 Preparation of depositions; review of documents; office conference with Kristie Madsen.	4.00
12/27/97 Preparation for depositions.	3.50
12/29/97 Preparation for and attend deposition of John Pasquin; prepared deposition record of Candy Suitter's deposition (she did not show).	5.00
12/30/97 Preparation of supplemental discovery responses.	2.00

Karly Madsen

01/23/
Account No: 493-00
Statement No: 17

Kory Pasquin Estate/Intestacy Claim

	Hours
01/02/98 Preparation of motion to compel.	2.00
01/05/98 Preparation of objection to motion to strike.	4.00
01/06/98 Preparation of Objection to Motion to Strike, memorandum, and supplemental affidavit.	8.50
01/07/98 Preparation of Objection, memorandum, telephone conference with Kristie Madsen, trial preparation.	5.00
01/08/98 Telephone conference with Yvette Madsen.	1.00
01/09/98 Preparation for trial.	.50
01/12/98 Preparation of objection, memorandum, pretrial order, trial exhibits; telephone conference with Dr. Hallam.	7.00
01/13/98 Preparation of pretrial order, motion in limine, memorandum, jury instructions, voir dire, trial exhibits.	7.75
01/14/98 Preparation of trial brief and other trial documents.	5.50
01/16/98 Preparation for and attend pretrial conference.	3.50
01/20/98 Preparation of objection and motion to compel Candy Suitter's deposition.	2.75
01/23/98 Out of the office conference with Robert Copier; telephone conference with Robert Copier.	1.50
01/27/98 Preparation of reply memo to objection to jury instructions, motion for summary judgment, and supporting memorandum.	1.50
01/29/98 Preparation of reply memoranddum on consolidated response.	1.50
02/03/98 Telephone conference with Yvette Madsen.	.25

Karly Madsen

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01/23/99
Account No: 493-000N
Statement No: 1702

Kory Pasquin Estate/Intestacy Claim

	Hours
02/06/98 Preparation of letters.	1.00
02/09/98 Review of documents from Robert Copier.	.25
02/13/98 Preparation of reply memoranda.	4.00
02/14/98 Telephone conference with Robert Copier.	1.75
02/20/98 Review of documents from Robert Copier.	.25
02/23/98 Preparation of objection to claim disallowance.	.75
04/17/98 Telephone conference with Julie Flarity for trial preparation.	.25
05/14/98 Office conference with Bob Copier regarding new trial date.	.75
06/12/98 Telephone conference with Geri Pasquin for trial preparation.	.25
06/26/98 Preparation of witnesses for trial.	.25
07/13/98 Office conference with Geri Pasquin for trial preparation.	.25
08/24/98 Preparation for trial.	.25
08/25/98 Preparation for trial.	3.50
08/26/98 Preparation for trial.	3.00
09/01/98 Telephone conference with Julie Flarity regarding trial preparation.	.25
09/04/98 Telephone conference with Dr. Ward's office regarding DNA Lab's certification.	.25
10/08/98 Preparation for motions argument.	6.00
10/09/98 Preparation for motions argument.	1.00

Karly Madsen

01/23

Account No: 493-0
Statement No: 1

Kory Pasquin Estate/Intestacy Claim

	Hours
10/21/98 Preparation for oral argument on all pending motions.	5.00
10/22/98 Preparation for oral argument on pending motions.	1.00
10/23/98 Preparation for oral argument on pending motions.	6.00
10/29/98 Preparation for oral argument on all pending motions.	1.25
10/30/98 Preparation for and argue pending motions.	3.00
11/02/98 Preparation of order on pending motions.	1.00
11/05/98 Review of Copier's motion for Rule 54(b) relief.	.25
11/09/98 Preparation for trial.	4.00
11/10/98 Preparation for trial.	3.00
11/11/98 Preparation for trial.	.50
11/12/98 Preparation for trial.	1.50
11/20/98 Preparation for meeting with Dr. Ward.	.75
11/23/98 Out of the office conference with Dr. Ward regarding expert testimony.	4.00
11/24/98 Preparation for trial.	1.00
11/25/98 Preparation for trial.	1.75
11/30/98 Preparation for trial.	13.00
12/01/98 Preparation for and conduct trial.	13.00
12/02/98 Preparation for and conduct trial.	9.00
12/03/98 Work on trial follow-up issues; preparation of judgment.	1.00

Karly Madsen

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01/23/99
Account No: 493-0001
Statement No: 1702

Kory Pasquin Estate/Intestacy Claim

	Hours
12/31/98 Telephone conference with Yvette Madsen regarding trial follow-up issues.	.25
01/05/99 Preparation of affidavit regarding attorneys fees and costs.	2.00
01/22/99 Preparation of judgment, affidavit re fees, notice to submit	2.50

David W. Steffensen	223.00
08/25/98 Review of trial brief; work on trial preparation	1.00
08/26/98 Review of pleadings; preparation for trial	1.00
10/20/98 Legal Research regarding standards for admission of scientific evidence and expert testimony	3.75
10/23/98 Preparation for trial	.25
11/11/98 Legal Research regarding requirements for Rule 54(b) relief; preparation of memorandum in opposition to Motion for Rule 54(b) relief	4.25
11/16/98 Legal Research regarding Daubert standards and DNA testing	4.75
11/17/98 Preparation of Rule 54(b) memorandum in opposition	.25
11/19/98 Legal Research regarding admissibility of RFLP DNA tests and the DAubert/Rimmasch standard	4.75
11/24/98 Legal Research and drafting of Memorandum in Support of Request for Judicial Notice that RFLP test is inherently reliable	4.25
11/25/98 Legal Research regarding motion in limine and memorandum in support thereof; preparation for trial	4.50
11/30/98 Preparation for trial	5.00

Karly Madsen

01/23/
Account No: 493-00
Statement No: 17

Kory Pasquin Estate/Intestacy Claim

	Hours
12/01/98 Preparation for and attendance at trial	9.00
12/02/98 Preparation for and attendance at trial	9.00

Richard L. King	51.75

For Current Services Rendered

274.75 41,212.50

Timekeeper	Recapitulation		Total
	Hours	Hourly Rate	
-----	-----	-----	-----
David W. Steffensen	223.00	\$150.00	\$33,450.00
Richard L. King	51.75	150.00	7,762.50

06/27/97 Constable for Service of Process or Pleadings	10.00
10/11/97 Copying Charges	4.00
12/15/97 Subpoena fees for depositions and trial (Zions Bank, Candy Suttter, John Pasquin, and DNA Lab).	68.00
01/24/98 Constable for Service of Process or Pleadings.	45.00
02/25/98 Outside Professional Services: Rocky Mountain Reporting Services.	306.00
10/10/98 Binders/tabs for court pleadings filed this week	175.00
11/23/98 Dr. Kenneth Ward, expert witness fees	1,000.00
12/31/98 Dr. Kenneth Ward, expert witness fee.	2,806.00
12/31/98 Billie Way: hearing transcript	70.00
12/31/98 Westlaw research charges (3098)	248.00

Total Expenses 4,733.00

Total Current Work 45,945.00

Balance Due \$45,945.00
=====

PAYMENT IS DUE IN 10 DAYS. THEREAFTER, INTEREST AT EIGHTEEN PERCENT (18%) A.P.R. WILL ACCRUE UNTIL PAID IN FULL. CLIENT SHALL BE LIABLE FOR REASONABLE ATTORNEYS FEES AND COSTS OF COLLECTION.

PART 4

AUG 23 1999

By SALT LAKE COUNTY
Deputy Clerk

DAVID W. STEFFENSEN, P.C. (4677)
STEFFENSEN ❖ MCDONALD ❖ STEFFENSEN
2159 South 700 East, Suite 100
Salt Lake City, Utah 84106
Telephone: (801) 485-1818

Attorney for Petitioner, Karly Madsen

THIRD JUDICIAL DISTRICT COURT, DIVISION I

SALT LAKE COUNTY STATE OF UTAH

PROBATE DIVISION

In the Matter of the Estate

of

KORY PASQUIN,

Deceased.

ORDER AWARDING ATTORNEYS
FEES, COSTS AND WITNESS FEES

Probate No. 973900253

Judge Leslie A. Lewis

Petitioner, Karly Madsen's, Motion to Award Attorney's Fees and Costs came on for hearing before the Honorable Douglas L. Cornaby on April 29, 1999. The Court, having reviewed Petitioner, Karly Madsen's, Motion to Award Attorney's Fees and Costs, Petitioner's Memorandum in Support thereof, the Affidavit of David W. Steffensen Regarding Attorney's Fees, Costs and Witness Expenses, The Estate's Consolidated Response to Pending Trial and Discovery Motions, the Estate's Request for Hearing on Pending Trial and Discovery Motions, the Estate's Memorandum in Opposition to Karly Madsen's Motion for Attorney's Fees, Petitioner's Reply Memorandum to the Estate's Consolidated Response to Pending Trial and Discovery Motions, Petitioner's Reply Memorandum to the Estate's Memorandum in Opposition

EXHIBIT

00001

to Motion for Attorney's Fees, the Final Judgment, the other pleadings filed in this matter, having further received sworn testimony from David W. Steffensen at the hearing held on the Motion on April 29, 1999, who was cross examined thereon by counsel for the Decedent's Estate, and having further heard and considered the arguments of counsel for Petitioner, Karly Madsen, and for the Decedent's Estate at said hearing held on the Motion on April 29, 1999, and finding good cause therefor:

HEREBY ORDERS that Petitioner Karly Madsen's Motion to Award Attorney's Fees and Costs is hereby granted in the following respects: First, all attorneys fees in the amount of \$41,212.50 are approved and awarded to Petitioner, Karly Madsen. Second, as to costs and witness fees, the following costs and witness fees are approved and awarded to Petitioner, Karly Madsen:

1.	6/27/97	Constable	\$10.00
2.	10/11/97	Copying charges	4.25
3.	12/15/97	Subpoena fees for depositions and trial	68.00
4.	1/24/98	Constable	45.00
5.	11/23/98	Dr. Kenneth Ward—Expert Witness Fee	1,000.00
6.	12/31/98	Dr. Kenneth Ward—Expert Witness Fee	2,806.00
Total Approved Costs :			<u>\$3,933.25</u>

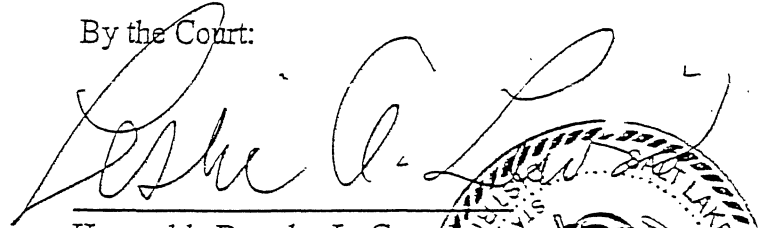
The following applied for costs are disallowed:

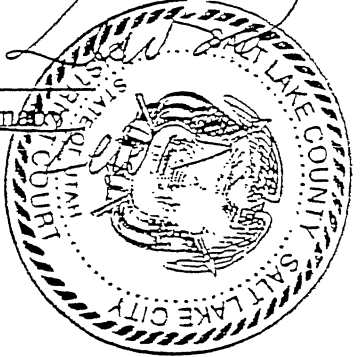
1.	2/25/98	Rocky Mountain Reporting—Deposition	306.25
2.	10/10/98	Binders/tabs for court pleadings	175.34
3.	12/31/98	Billie Way: Transcript of Hearing	70.00
4.	12/31/98	Westlaw research charges	248.44

Accordingly, the total amount of attorneys fees and costs awarded to Petitioner, Karly Madsen, is \$45,145.75, to be paid by the Decedent's Estate.

DATED this 24th day of August, 1999.

By the Court:


HONORABLE ~~DOUGLAS L. CORNATO~~
L.A.



APPROVED AS TO FORM:

Robert H. Copier
Attorney for the Estate of Kory Pasquin

PART 5

Michael E. Day (7843)
DAY SHELL & LILJENQUIST, L.C.
Attorneys for Petitioner Sheri Marion
45 East Vine Street
Murray, Utah 84107
Telephone: (801) 262-6800

FILED DISTRICT COURT
Third Judicial District

JAN 3 2000

SALT LAKE COUNTY
By

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH
PROBATE DIVISION

In the matter of the Estate	:	STIPULATION
of	:	
KORY PASQUIN,	:	Probate No. 973900253 EI
Deceased.	:	Judge Leslie A. Lewis

Sheri Marion and Kody Marion by and through their counsel of record, Michael E. Day; and Kristie Madsen and Karly Madsen by and through their counsel of record, David W. Steffensen; and the Estate of Kory Pasquin, by and though Robert H. Copier hereby stipulate and agree as follows:

1. The parties stipulate to court-ordered DNA testing to be conducted using the

blood, DNA, and DNA information that is already in the possession of the University of Utah DNA lab that is purportedly the late Kory Pasquin's blood, DNA and DNA information and for court-ordered DNA testing of Sheri Marion and Kody Marion for the purpose of determining whether Kory Pasquin is the natural father of Kody Marion.

2. The parties further stipulate that if the results from such DNA testing establish a paternity index greater than 150 as between Kory Pasquin and Kody Marion, such results will be taken as conclusive evidence that (1) Kody Marion is the natural child of Kory Pasquin, and (2) Karly Madsen is the natural child of Kory Pasquin; therefore determining once and for all that Kody Marion and Karly Madsen are heirs to the estate of Kory Pasquin. In such case, the Estate of Kory Pasquin agrees to withdraw its appeal and the parties stipulate to modify the Court's Final Judgment to state that Kody Marion is the natural child of Kory Pasquin and an heir to his estate.

3. In the event that there is not sufficient blood, DNA, or other DNA information that is already in the possession of the University of Utah DNA lab to perform a reliable DNA test, or the results from such testing exclude the late Kory Pasquin as the father of Kody Marion or are otherwise inconclusive, then the parties stipulate that Kody Marion will not suffer any prejudice whatsoever from said events, but that Kody Marion will be free to otherwise establish that Kory Pasquin is his natural father, including, but not limited to, taking such measures as petitioning the court for an order to exhume Kory Pasquin's body and obtain

DNA testing using a DNA sample retrieved directly from Kory Pasquin's body

DATED this 23 day of December, 1999.

Michael E. Day
Michael E. Day

Attorney for Sheri Marion and Kody Marion

Robert H. Copier
Robert H. Copier

Attorney for Candance M Souter,
Personal Representative for the
Estate of Kory Pasquin

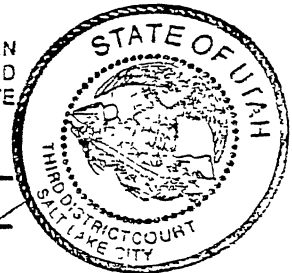
David W. Steffensen
David W. Steffensen

Attorney for Kristie Madsen and Karly Madsen

I CERTIFY THAT THIS IS A TRUE COPY OF AN
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY, STATE
OF UTAH.

DATE: June 9, 2000

Deputy Court Clerk
DEPUTY COURT CLERK

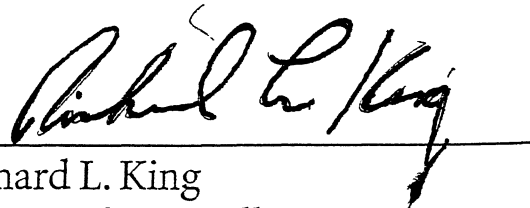


CERTIFICATE OF SERVICE

Richard L. King
2159 South 700 East, Suite 100
Salt Lake City, Utah 84106
Telephone: (801) 485-7138
Bar Number: 4611

I, Richard L. King, certify that on June 29, 2001 I served two copies of the attached Appellee's Brief upon Robert H. Copier, the counsel for the appellant in this matter, by mailing it to him by first class mail with sufficient postage prepaid to the following address:

Robert H. Copier
200 Metro Place
243 East 400 South
Suite 200, Salt Lake City, Utah 84111-2803

A handwritten signature in black ink, appearing to read "Richard L. King", is written over a horizontal line.

Richard L. King
Attorney for Appellee
Karly Madsen