

1988

Michael L. Miller v. Gordon E. Johnson : Brief of Appellant

Utah Court of Appeals

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Gordon E. Johnson; Prose for Appellant.

Michael L. Miller; Attorney for Respondent.

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BRIEF

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IN THE COURT OF APPEALS

880324-CA OF THE STATE OF UTAH

Michael L. Miller
Plaintiff/Respondent

vs.

Gordon E. Johnson,
Defendant/Appellant

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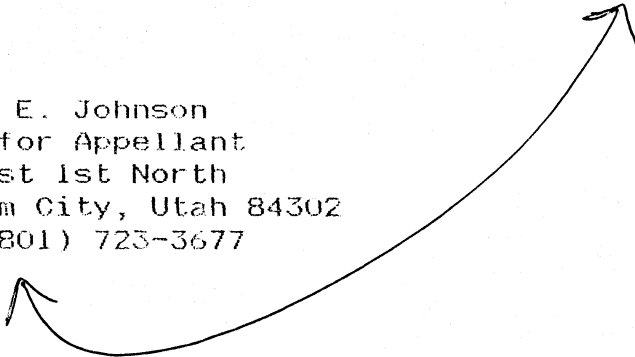
Case No. 880324-CA

APPELLANT'S CLOSING BRIEF

APPEAL FROM THE JUDGMENT OF THE FIRST CIRCUIT COURT
OF BRIGHAM CITY, BOX ELDER COUNTY, STATE OF UTAH, THE
HONORABLE ROBERT W. DAINES, CIRCUIT COURT JUDGE, PRESIDING

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A R G U M E N T

The trial court clearly abused the discretion by ignoring the ruling of another judge, distinguished layman, and attorney that Mr. Miller did not earn any fees because he quit.

It abused its discretion by not hearing Mr. Miller's evidence. The Default Judgment of respondent's addendum does not say that it was heard.

Bass vs. Hoagland (1949) 172 F.2d 205, Cert. denied 358 U.S.816, 705.Ct 57 cites Hovey vs. Elliott with approval:

"It was held that the Court of the District of Columbia had no right to strike the answer and treat the case as in default and give judgment without evidence,..."

Also, see McKean vs. Mountain View 17 Utah 2d 323.

The default and Default Judgment of respondent's addendum do not show proof of service. This is confirmed by affidavits in the file. That, plus defendant's inability to hire a local attorney account for any delay in filing motion to vacate the default judgment.

Defendant's typed answer was the ruling of the Utah State Bar Fee Arbitration Committee on file. (Lines 17 & 18, last page of Respondent's Brief)

When said committee ruled against him, Mr. Miller realized his action was not just and should not have maintained it, Rule 11.

His conduct in continuing and having Appellant/Defendant jailed while seriously ill justifies punitive damages, costs, sanctions and/or referred to District Court of the cross-complaint.

PROOF OF SERVICE

I hereby certify that as the following date I mailed four (4) copies, postage prepaid, of the foregoing to Michael L. Miller, Attorney at Law, 20 South Main St., Brigham City, Utah 84302.

Dated 30 December 1988 at Brigham City, Utah

Gorden E. Johnson