

1988

# Kathy Ann Dopp v. Jonathan Olch : Brief in Opposition to Certiorari

Utah Supreme Court

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Robert Felton; attorney for respondent.

Robert B. Hansen; attorney for appellant.

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## Recommended Citation

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Priority No. 13

\* \* \* \* \*

Robert B. Hansen, A-1344  
Attorney for Petitioner/Appellant  
320 South 500 East  
Salt Lake City, Utah 84102  
Telephone: (801) 322-5804

UTAH SUPREME COURT

\* \* \* \* \*

KATHY ANN DOPP,	)	
	)	
Plaintiff/Appellant,	)	
	)	Case No. 88-0058
vs.	)	
	)	Priority No. 13
JONATHAN OLCH,	)	
	)	
Defendant/Respondent.	)	

\* \* \* \* \*

---

BRIEF IN OPPOSITION TO PETITION  
FOR A WRIT OF CERTIORARI

---

Brief in opposition for review of decision of Court of Appeals (Case No. 87-0572-CA), per curium.

Honorable Richard C. Davidson, Regnal W. Garff, and Pamela T. Greenwood, Judges of Court of Appeals.

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## TABLE OF AUTHORITIES

### CASES

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### STATUTES

§78-45A-13 U.C.A. (1953 amended 1965).....4  
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## **COURT OF APPEALS OPINION**

The Court of Appeals Memorandum Decision was ordered not published. That decision granted the Defendant's Motion for Summary Disposition and summarily affirmed the trial court's order (Appendix 1).

## **STATEMENT OF THE CASE**

The statement of the case is succinctly set forth in the Memorandum Decision of the Utah Court of Appeals and reiterated verbatim:

"Dopp filed a paternity proceeding alleging that Olch was the father of her child. Olch disputed the allegations of paternity. In February of 1980, Olch and Dopp, individually and "as guardian ad litem" for her child, entered into a stipulation for settlement which provided for a lump sum settlement of all claims as to paternity, expenses of pregnancy, any education and support expenses, inheritance rights and any claim otherwise related to the allegations of the pleadings or subject matter of the litigation. The Settlement Agreement contained an express disclaimer of paternity and a waiver of any rights to the child. Finally the Agreement contained the following language regarding disposition of the litigation:

5. 'Both parties agree not to initiate any communications with the other party or members of their family.'

6. 'The parties agree that upon payment of the entire \$16,500.00 and any accrued interest, the above-entitled action shall be dismissed with prejudice and upon the merits, each party to bear his or her own costs.'

7. 'This agreement is conditioned upon approval of the Court where the above-entitled action is pending and a dismissal with prejudice of said action.'

The document also contained an 'Order' which recited that the Court approve the Agreement of Settlement, and that the matter was continued without date. The Order

further provided 'the Defendant shall submit to the Court an Order of Dismissal upon final payment of the amounts referred to in the foregoing Agreement of Settlement.'" The Order was signed on February 19, 1980 and filed on the same day.

On January 27, 1981, Dopp's counsel filed a Satisfaction of Judgment acknowledging receipt of the settlement amount and authorizing and directing the Court to enter satisfaction. Although not conforming with the express direction of the February 19, 1980 Order to prepare an Order of Dismissal, the Satisfaction of Judgment was clearly intended to culminate the paternity action.

In or about June of 1987, Olch caused an Order to Show Cause to be issued requiring Dopp to appear and show why she should not be held in contempt for initiating communication with Olch and his family. The Court declined to hold Dopp in contempt, but ordered that:

'It was the intent of the parties that no communication be instigated between them or their families and the Court now enters this Order that neither party shall communicate with the other or their families in any way, whether such communication be written or verbal, or through utilizing third parties.'

Dopp subsequently brought a Motion to Dismiss with Prejudice and in the alternative, a Motion to Amend Decree to allow for communication between the minor child, Olch and his family. Both Motions were denied. Dopp appealed, contending that the trial court erred in "sua sponte" entering an order of no communication, in refusing to dismiss the case, in not amending the 'Decree' based on 'changed circumstances, and in denying appellant attorney's fees."

The Order to Show Cause was personally served upon Kathy Dopp on May 22, 1987 (Appendix 2). The original hearing date was continued at the request of the Appellant's counsel and she later appeared in person and with counsel at the hearing on June 29, 1987 (Appellant's Petition, Appendix 3).

## ARGUMENT

### I.

#### APPELLANT'S BRIEF LACKS ACCURACY AND CLARITY AND MUST BE DISMISSED ON ITS FACE

Petitioner's Brief is inaccurate and does not clarify issues sufficiently to allow determination that review is appropriate in this case, R. Utah S.Ct. No. 46(e).

The Appellant states there has been no determination as to paternity in this case, yet the District Court approved a settlement which was signed by Ms. Dopp in 1980 (Appendix 3) and entered an Order that Jonathan Olch was not the father of Petitioner's child. Satisfaction of Judgment was filed by Ms. Dopp's lawyer in January, 1981 (Appendix 4). The validity of that Order was not challenged for eight years. It was later upheld at the Order to Show Cause (Petitioner's Brief, Appendix 4) and by the Court of Appeals (Appendix 1).

Petitioner asserts vague claims, without authority to support them, that she did not receive adequate notice of the Order to Show Cause (Petitioner's Brief pp. 4,5). The Order to Show Cause (Appendix 2) reflects it was personally served upon her on May 22, 1987 and sets forth the purpose of the hearing as an inquiry regarding violation of the Court Order of February 19, 1980; "that you not contact the Defendant or members of his family". Thereafter Petitioner appeared with her attorney at the hearing. The Court of Appeals found this argument to be "wholly without merit" (Court of Appeals, Opinion, pg. 3, Appendix 1).

The Petition does not adequately or clearly describe what the Petitioner wants or any authority requiring review.

## II.

### THE FACTUAL HISTORY AND SUMMARY DISPOSITION BY THE COURT OF APPEALS CLEARLY INDICATES THAT REVIEW IS UNNECESSARY

It is important to emphasize that the Court of Appeals carefully reviewed the factual history of this case prior to deciding that it should be summarily dismissed without the filing of briefs.

The paternity action was filed over eight years ago and disputed by Mr. Olch. That proceeding was settled and the settlement approved by the Court and required by § 78-45(a)-13 U.C.A. (1953, amended 1965). Both parties signed the Stipulation (Appendix 3) eight years ago.

In conformance with the Settlement Agreement and the Order of the Court, Ms. Dopp filed a complete and full Satisfaction of Judgment in January, 1981. (See Appendix 4). As part of that Stipulation and Order Ms. Dopp was "not to initiate any communication with the other party or members of their family" (Appendix 3). The Order to Show Cause only requested that she comply with her stipulation and agreement and not harass Mr. Olch. Judge Sawaya did not find Ms. Dopp in contempt of court, but simply issued an order that she live up to her earlier stipulation and the ensuing Order that she not harass Mr. Olch and his family (Appendix 5).

Besides the rules of this Court, the Petitioner relies upon general references to the XIV Amendment to the Constitution of the United States and the due process clause of the Constitution

of Utah, Article 1, Section 7 (Petitioner's Brief, p. ii). Also, in addition, three statutes are cited as authority, though none of them are referred to in the argument (Petitioner's Brief, p. 2). Those statutes are irrelevant and not dispositive of any of the issues urged for consideration.

The first statute describes the discretionary nature of review of this Court in considering the Petition, § 78-2-2(5) U.C.A. (1953, amended 1986).

The second statute has nothing to do with this case at all. It is the title section of the Utah Exemptions Act, §78-23-1 U.C.A 1953, amended 1981).

The third statute deals with attorney's fees in an action commenced in bad faith, § 78-27-56 U.C.A. (1953, amended 1981).

In addition to the aforementioned, while not referred to in Petitioner's Table of Authorities, the Brief also sets forth § 78-45A-1 et seq., U.C.A. (1953) as being applicable to this case. None of those sections are referred to in the Brief. That section of the Utah Code is the Uniform Act on Paternity under which the original action was commenced in 1979. Petitioner does not contend there is any provision of that Act which is now applicable.

### III.

#### RESPONDENT SHOULD BE ENTITLED TO AN AWARD OF ATTORNEY'S FEES FOR THE PROSECUTION OF THIS APPEAL.

Respondent respectfully requests this Court consider the appropriateness of an award of attorney's fees as provided by Rule 11 of the Utah Rules of Civil Procedure and § 78-27-56 U.C.A. (1953, amended).

It would appear that the Petitioner has prosecuted this appeal more for the purposes of harassing Mr. Olch, than addressing any actual controversy. The parties resolved their differences approximately eight years ago. Mr. Olch paid Ms. Dopp the sum of \$16,000.00 and a complete Satisfaction of Judgment was entered by her attorney. Eight years later she commenced contacting and harassing Mr. Olch in direct violation of an agreement she made and which was adopted and approved by the District Court Judge.

Mr. Olch requested the assistance of the District Court in encouraging Ms. Dopp to obey the earlier agreement. This request was upheld, not only by the District Court but on summary review by the Court of Appeals. Petitioner now comes before this Court asking it to review the appropriateness of the other Orders without citing any substantive authority.


This case was resolved eight years ago and the sole objective in these appeals by Ms. Dopp is to obtain legal sanctions for the right to harass the Respondent. There is no other relief which can be afforded her nor has any other relief ultimately been requested either in this Court or the court below.

The Respondent would submit this is an appropriate circumstance for an award of attorney's fees in favor of the Respondent for the continued bad faith prosecution of these appeals.

### CONCLUSION

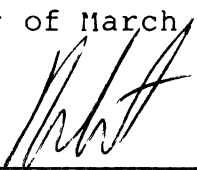
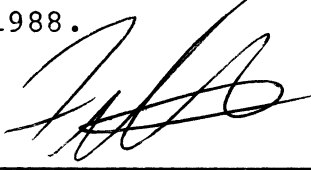
Respondent requests this Court that the Petition filed by Kathy Ann Dopp be denied and Respondent be awarded his costs and attorney's fees for this appeal and that which was perfected to the Court of Appeals.

DATED this 14 day of March, 1988.

  
\_\_\_\_\_  
Robert Felton

### MAILING CERTIFICATE

I certify that I mailed four (4) true and correct copy of the foregoing BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI by United States first-class mail, postage prepaid, to Robert Hansen, Attorney at Law, 320 South Fifth East, Salt Lake City, Utah 84102 on the 14 day of March, 1988.

   
\_\_\_\_\_

## **APPENDIX**

- 1 - Utah Court of Appeals Decision, Kathy Ann Dopp v. Jonathan Olch, Case No. 87-572CA (1988)
- 2 - Order to Show Case dated May 15, 1987
- 3 - Agreement of Settlement and and Order Approving Settlement
- 4 - Satisfaction of Judgment
- 5 - Order of the District Court Sought to be Reviewed
- 6 - Statutes -
  - § 78-2-2(5) U.C.A. (1953)
  - § 78-23-1 U.C.A. (1953)
  - § 78-27-56 U.C.A. (1953)



FILED

JAN 6 1988

IN THE UTAH COURT OF APPEALS

Timothy M. Shea  
Clerk of the Court  
Utah Court of Appeals

-----oo0oo-----

Kathy Ann Dopp,	)	
	)	
Plaintiff and Appellant,	)	MEMORANDUM DECISION
	)	(Not for Publication)
v.	)	
	)	Case No. 870572-CA
Jonathan Olch,	)	
	)	
Defendant and Respondent.	)	

Before Judges Davidson, Garff and Greenwood (On Law and Motion).

-----

PER CURIAM:

This matter is before the Court on the Motion for Summary Disposition of appellant Kathy Ann Dopp (hereinafter "Dopp") and on the Motion for Summary Disposition and Response of respondent Jonathan Olch (hereinafter "Olch"). We grant the motion made by Olch and summarily affirm the trial court's order.

Dopp filed a paternity proceeding alleging that Olch was the father of her child. Olch disputed the allegations of paternity. In February of 1980, Olch and Dopp, individually and "as guardian ad litem" for her child, entered into a stipulation for settlement which provided for a lump sum settlement of all claims as to paternity, expenses of pregnancy, any education and support expenses, inheritance rights and any claim otherwise related to the allegations of the pleadings or subject matter of the litigation. The settlement agreement contained an express disclaimer of paternity and a waiver of any rights to the child. Finally, the agreement contained the following language regarding disposition of the litigation:

5. "Both parties agree not to initiate any communications with the other party or members of their family."

6. "The parties agree that upon the payment of the entire \$16,500.00 and any

accrued interest, the above-entitled action shall be dismissed with prejudice and upon the merits, each party to bear his or her own costs."

7. "This agreement is conditioned upon the approval of the court where the above-entitled action is pending and a dismissal with prejudice of said action."

The document also contained an "Order" which recited that the court approved the Agreement of Settlement, and that the matter was continued without date. The Order further provided, "The defendant shall submit to the court an Order of Dismissal upon final payment of the amounts referred to in the foregoing Agreement of Settlement." The Order was signed on February 19, 1980 and filed on the same date.

On January 27, 1981, Dopp's counsel filed a Satisfaction of Judgment acknowledging receipt of the settlement amount and authorizing and directing the court to enter satisfaction. Although not conforming with the express direction of the February 19, 1980 Order to prepare an Order of Dismissal, the Satisfaction of Judgment was clearly intended to culminate the paternity action.

In or about June of 1987, Olch caused an Order to Show Cause to be issued requiring Dopp to appear and show why she should not be held in contempt for initiating communication with Olch and his family. The court declined to hold Dopp in contempt, but ordered that

It was the intent of the parties that no communication be instigated between them or their families and the court now enters this Order that neither party shall communicate with the other or their families in any way, whether such communication be written or verbal, or through utilizing third parties.

Dopp subsequently brought a Motion to Dismiss with Prejudice and in the alternative, a Motion to Amend Decree to allow for communication between the minor child, Olch and his family. Both motions were denied. Dopp appeals, contending that the trial court erred in "sui sponte" entering an order of

no communication, in refusing to dismiss the case, in not amending the "decree" based on "changed circumstances", and in denying appellant attorney fees.

The Utah Uniform Act on Paternity establishes that the father of a child born out of wedlock is liable to the same extent as the father of child born in wedlock "for the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support and funeral expenses of the child." Utah Code Ann. § 78-45a-1 (1987). Utah Code Ann. § 78-45a-2 (1987) prescribes the means for enforcement of the father's obligation "[i]f paternity has been determined or has been acknowledged according to the laws of this state." "The court has continuing jurisdiction to modify or revoke a judgment for future education and necessary support." Utah Code Ann. § 78-45a-5 (1987). "An agreement of settlement with the alleged father is binding only when approved by the court." Utah Code Ann. § 78-45a-13 (1987).

Dopp's first contention on appeal is that the trial court erred in "sui sponte" entering an order prohibiting her and her child from communicating with Olch and his family. This argument is wholly without merit. Dopp received notice of the hearing on the order to show cause, appeared at the hearing and was represented by counsel. The court declined to find Dopp in contempt, but reiterated the provision of the settlement approved by the court precluding communication between the parties or their families.

Dopp next claims that the trial court erred in refusing to amend the "decree" based on "changed circumstances" consisting of the emotional problems of the child. This argument misconstrues the effect of the order of the court approving the settlement reached between Dopp and Olch. The Utah Uniform Act on Paternity provides for continuing jurisdiction to modify or revoke a judgment for future education and necessary support. See Utah Code Ann. 78-45a-5. The threshold determination is whether the February 19, 1980 Order is a judgment susceptible of modification. The Order approves a lump sum settlement of a disputed paternity action between Dopp and Olch. The Order does not contain any provision for future support nor does it establish the paternity of the child. The Order is not a

judgment susceptible of modification under Utah Code Ann.  
§ 78-45a-5.<sup>1</sup>

Dopp also appeals from the denial of an award of attorney fees to her. The Utah Uniform Act on Paternity contains no provision authorizing an award of attorneys fees in paternity actions. We can find no other basis for an award of attorney fees under the circumstances of this case and the appellant has indicated none.

Finally, Dopp contends that the trial court erred in refusing to dismiss the case. The Stipulation for Settlement and the Order approving the settlement each provide that upon payment of the settlement amount, Olch shall cause the case to be dismissed with prejudice. Rather than prepare a dismissal, counsel for Olch prepared a Satisfaction of Judgment, with the apparent intention to culminate the litigation between the parties insofar as the financial aspects of the settlement

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1. We do not have before us in this case the issue of whether the parties could validly waive the child's right to support, and we, therefore, decline to rule upon the effect of an order approving a settlement of the support rights of the minor child. The Utah Supreme Court ruled in Huck v. Huck, 734 P.2d 417, 419 (1986), that the parents of a child could not, by agreement, waive that child's right to support. See also Reick v. Reick, 652 P.2d 916, 917 (Utah 1982); Strong v. Strong, 548 P.2d 626, 627-28 (Utah 1976). Our determination does not require a resolution of that issue. Instead, our holding that the present Order does not invoke the trial court's continuing jurisdiction is based on the literal terms of Utah Code Ann. § 78-45a-5 providing that continuing jurisdiction is dependent upon the existence of a judgment for future support. Similarly, Utah Code Ann. § 78-45a-2, referring to enforcement of the liabilities of the father of a child born out of wedlock, requires a determination that a parental relationship exists under the laws of this state. The February 1980 order approving the settlement satisfies neither of those prerequisites. The Order makes no determination of paternity and contains no judgment for future support. Similarly, although Dopp purportedly entered the settlement as guardian ad litem of her child, this Court does not have before it and makes no determination of the effect of the order on any future action by or on behalf of the child to adjudicate paternity and establish the right to support.

between Dopp and Olch are concerned. Appellant's motion before the trial court sought relief in the alternative: either an order dismissing the case with prejudice or an order amending the "decree" to modify the non-communication provision. The strategy suggests that Dopp believes the dismissal of the case would nullify the non-communication agreement. That contention is erroneous. The settlement, having been approved by the trial court, is binding upon the parties and the non-communication clause is subject to enforcement by the trial court. Dismissal of the case, although contemplated by the February 1980 Order, would not relieve Dopp and Olch of the requirements of their settlement, particularly where Olch has paid the amount set forth in the agreement.

The Order of the trial court is affirmed.

ALL CONCUR:

---

Richard C. Davidson, Judge

---

Regnal W. Garff, Judge

---

Pamela T. Greenwood, Judge

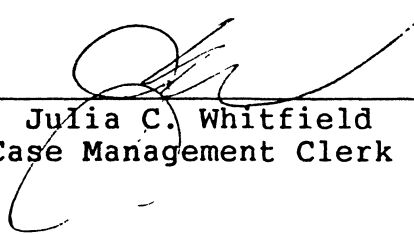
**CERTIFICATE OF MAILING**

I hereby certify that on the 7th day of January, 1988, a true and correct copy of the foregoing Memorandum Decision was mailed to each of the following:

Robert B. Hansen  
Attorney for Appellant  
320 South 500 East  
Salt Lake City, Utah 84102

Robert Felton  
Attorney at Law  
5 Triad Center, Suite 585  
Salt Lake City, Utah 84180

HON. James S. Sawaya  
Third District Court  
Salt Lake County  
Civil No. C-78-6634



---

Julia C. Whitfield  
Case Management Clerk



Robert Felton, 1056  
5 Triad Center, Suite 585  
Salt Lake City, Utah 84180  
Phone: (801) 359-9216

Place - Residence  
by -  
RECEIVED  
Date 5/22/87 Time 1:30  
B: Kathy Dopp  
At S/L Assistant Forester  
Constable, Park City

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

KATHY ANN DOPP,

Plaintiff,

vs.

JONATHAN OLCH,

Defendant.

ORDER TO SHOW CAUSE

Civil No. C78-6634

TO: Kathy Ann Dopp

You are hereby ordered and required to appear before the  
Honorable James S. Sawaya, Judge of the above-entitled court at  
240 East 4th South, Salt Lake City, Utah on the 15<sup>th</sup> day of <sup>June</sup>~~May~~,  
1987 at the hour of 2:00 p.m. o'clock then and there to show  
cause why you should not be found in contempt of this Court for  
violating the Order entered on or about February 19, 1980  
demanding that you not contact the Defendant or members of his  
family.

You are also further required to appear and show cause why  
you should not be ordered to assume and pay the Defendant's legal  
fees for the prosecution of this action and why this court should  
not take the other action requested in the Verified Motion filed  
by the Defendant, including the posting of a bond to ensure  
future compliance with this Court's Order.

DATED this 15 day of <sup>May</sup>~~February~~, 1987.

By the Court:

Judge

Serve the Defendant at:



FILED IN CASE NO. 10-1-10  
COUNTY OF ALBANY, N.Y.

$V = \frac{1}{2} \pi r^2 h$   
 $BV = \frac{1}{2} \pi r^2 h$

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

## A G R E E M E N T

1. The plaintiff in her own behalf and as guardian ad litem of her minor child, Alister Fox Dopp, hereby releases and forever discharges the defendant of and from any and all claims, demands, causes of action, damages, actions, suits of law, costs or expenses of any kind on account of, resulting from, or in any manner related to (1) any actual or alleged pregnancy confinement, hospital or medical expenses incurred by the plaintiff, (2) any education expense, support obligation or inheritance right of Alister Fox Dopp, or (3) any claim as to the paternity of Alister Fox Dopp, or (4) any claim otherwise related to the allegations of the pleadings or the subject matter of the above-entitled

LAW OFFICES OF  
VAN COTT, BAGLEY, CORNWALL & MCCARTHY  
SUITE 300 141 EAST FIRST SOUTH  
SALT LAKE CITY, UTAH 84111

litigation.

2. The defendant agrees to pay the sum of SIXTEEN THOUSAND FIVE HUNDRED and No/100 DOLLARS (\$16,500.00). Said sum is to be paid as follows:

At least FIVE THOUSAND and No/100 DOLLARS (\$5,000.00) is to be paid on or before February 10, 1980. On or before the twentieth day of each month thereafter, the defendant shall pay at least ONE THOUSAND and No/100 DOLLARS (\$1,000.00), or the balance of the amount remaining to be paid, whichever is the lesser sum, until the entire SIXTEEN THOUSAND FIVE HUNDRED and No/100 DOLLARS (\$16,500.00) and accrued interest is paid in full. The plaintiff shall receive interest on any amount of the \$16,500.00 not paid as of February 11, 1980, at the prevailing rate of interest paid by banks in Salt Lake County for money market certificates on said date. All interest shall be simple interest, computed but not compounded monthly on only the unpaid balance of the \$16,500.00. All sums paid shall be applied first to reduce the principal and only after \$16,500.00 has been paid shall any amount paid be applied to reduce accrued interest. Nothing herein shall be construed to prohibit or penalize the early payment of the \$16,500.00, or any portion thereof.

3. All sums paid by the defendant to the plaintiff pursuant to the terms of this agreement, except for the first \$2,500.00, shall be placed in trust, and the income and principal of said trust shall only be used for the education, support or other benefit of Alister Fox Dopp.

4. The parties acknowledge that this settlement agreement is a compromise of a doubtful and disputed claim and that the said payment received by the plaintiff is not to be construed as

an admission of liability of the defendant, who expressly denies any liability to either the plaintiff or Alister Fox Dopp. The defendant denies that he is the father of Alister Fox Dopp and denies that he had or has any rights with respect to said child. If defendant had or has any rights with respect to said child, he hereby waives them, including the right, if any, to consent to adoption.

5. Both parties agree not to initiate any communications with the other party or members of their family.

6. The parties agree that upon the payment of the entire \$16,500.00 and any accrued interest, the above-entitled action shall be dismissed with prejudice and upon the merits, each party to bear his or her own costs.

7. This agreement is conditioned upon the approval of the court where the above-entitled action is pending and a dismissal with prejudice of said action.

DATED this 14<sup>th</sup> day of February, 1980.

Kathy A. Dopp  
KATHY ANNE DOPP, Individu-  
ally and as Guardian Ad  
Litem for Alister Fox Dopp

Jonathan Olch  
JONATHAN OLCH

O R D E R

The Court, having read the foregoing Agreement of Settlement, and being advised in the premises,

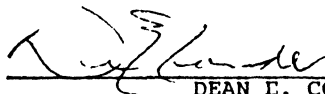
IT IS HEREBY ORDERED as follows:

1. The foregoing Agreement of Settlement is hereby approved.
2. This matter is stricken from the trial calendar and continued without date.
3. The defendant shall submit to the Court an Order of

Dismissal upon final payment of the amounts referred to in the foregoing Agreement of Settlement.

DATED this 19 day of February, 1980.

BY THE COURT:



DEAN E. CONDER  
District Court Judge

ATTEST

W STERLING EVANS  
CLERK

BY

  
Deputy Clerk



JAN 11 1981  
W. STERLING EVANS, CLERK  
3RD DIST COURT  
BY [Signature]  
DEPUTY CLERK

B. L. Dart  
DART & STEGALL  
Attorneys for Plaintiff  
430 Ten Broadway Building  
Salt Lake City, Utah 84101  
Telephone: 521-6383

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

---0000000---

KATHY ANNE DOPP, :  
Plaintiff, : SATISFACTION OF JUDGMENT  
v. :  
JONATHAN OLCH, : Civil No. C-78-6634  
Defendant. :

---0000000---

Acknowledging receipt of \$16,500.00 in full and complete satisfaction of the judgment heretofore entered in the above-entitled action, B. L. Dart, attorney for plaintiff, hereby authorizes and directs the clerk of the above court to enter such full and complete satisfaction accordingly.

DATED this 21 day of January, 1981.

DART & STEGALL

By [Signature]  
B. L. Dart  
Attorney for Plaintiff

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

On the 21 day of January, 1981, personally appeared before me B.L. Dart, and did acknowledge that he was the attorney of record for the above-named plaintiff and that he executed the foregoing.

Commission Expires:  
9-1-84

[Signature]  
Notary Public  
Residing in Salt Lake County, Utah

Robert Felton, 1056  
5 Triad Center  
Suite 585  
Salt Lake City, Utah 84180  
Phone: (801) 359-9216  
Attorney for Defendant

FILED

FILED IN CLERK'S OFFICE  
SALT LAKE COUNTY, UTAH

AUG 13 '87 10:51 AM '87

H. DIXON HINDLEY CLERK  
3RD DIST. COURT

BY [Signature] DEPUTY CLERK

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

KATHY ANN DOPP,

Plaintiff,

vs.

JONATHAN OLCH,

Defendant.

\* \* \* \* \*

ORDER

Civil No. C-786634  
Judge James S. Sawaya

\* \* \* \* \*

This matter came on for hearing before the Honorable James S. Sawaya, Judge of the above-entitled Court on June 29, 1987 pursuant to the Order to Show Cause filed by the Defendant.

The Court having reviewed the pleadings on file herein and for good cause appearing now enters this Order as follows:

1. Plaintiff is not in contempt of this Court.
2. It was the intent of the parties that no communication be instigated between them or their families and the Court now enters this Order that neither party shall communicate with the other or their families in any way, whether such communication be written or verbal, or through utilizing third parties.

DATED this 13 day of Aug, 1987.

By the Court

[Signature]  
James S. Sawaya, Judge

ATTEST

H. DIXON HINDLEY

Clerk

By [Signature]  
Deputy Clerk



- (i) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction.
- (4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except for the following matters:
  - (a) first degree and capital felony convictions;
  - (b) election and voting contests;
  - (c) reapportionment of election districts;
  - (d) retention or removal of public officers;
  - (e) general water adjudication;
  - (f) taxation and revenue; and
  - (g) those matters described in Subsections (3)(a) through (h).
- (5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

### **Supreme Court jurisdiction [Effective January 1, 1988].**

- (1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.
- (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.
- (3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
  - (a) a judgment of the Court of Appeals;
  - (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
  - (c) discipline of lawyers;
  - (d) final orders of the Judicial Conduct Commission;
  - (e) final orders and decrees in cases originating in:
    - (i) the Public Service Commission;
    - (ii) the State Tax Commission;
    - (iii) the Board of State Lands;
    - (iv) the Board of Oil, Gas, and Mining; and
    - (v) the state engineer;
  - (f) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;
  - (g) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;
  - (h) appeals from the district court involving a conviction of a first degree or capital felony; and
  - (i) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction.
- (4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except for the following matters:
  - (a) first degree and capital felony convictions;

- (b) election and voting contests;
- (c) reapportionment of election districts;
- (d) retention or removal of public officers;
- (e) general water adjudication;
- (f) taxation and revenue; and
- (g) those matters described in Subsections (3)(a) through (h).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Chapter 46b, Title 63, in its review of agency adjudicative proceedings.

**History:** C. 1953, 78-2-2, enacted by L. 1986, ch. 47, § 41; 1987, ch. 161, § 303.

**Amended effective January 1, 1988.** — Laws 1987, ch. 161, § 303 amends this section effective January 1, 1988. See catchline "Amendment Notes," below

**Repeals and Enactments.** — Laws 1986, ch. 47, § 41 repeals former § 78-2-2, as enacted by Laws 1951, ch. 58, § 1, relating to original appellate jurisdiction of Supreme Court, and enacts the above section

**Amendment Notes.** — The 1987 amendment, effective January 1, 1988, added Subsection (6).

**Cross-References.** — Appeals from juvenile courts, § 78-3a-51.

Appeals in criminal cases, U R Cr P 26

Certiorari, Utah Const., Art VIII, Sec. 4; U R C P 65B

Chief justice to preside over impeachment of governor, § 77-6-3

Election contest appeals, §§ 20-3-35, 20-15-14

Extraordinary writs, U R C P 65B

Industrial commission orders, review of, § 35-1-36

Jurisdiction, Utah Const., Art VIII, Sec. 3.

Public service commission orders, exclusive jurisdiction to review, §§ 54-7-16 to 54-7-18

State bar, promulgation of rules, review of disciplinary orders, §§ 78-51-14, 78-51-19

Unemployment compensation decisions, review of, § 35-4-10

## NOTES TO DECISIONS

### ANALYSIS

#### In general

Appellate jurisdiction

— Probate orders.

Certiorari

Original jurisdiction

—Equity

—Extraordinary writs

Rehearings

—District judge filling vacancy

—Newly elected justice

Scope of review

#### In general.

Supreme Court is exclusive judge of its own jurisdiction. *National Bank v Lewis*, 13 Utah 507, 45 P 890 (1896)

The Supreme Court is not a court of general original jurisdiction, it is a reviewing court. *Nielsen v Utah Nat'l Bank*, 40 Utah 95, 120 P 211 (1911)

Supreme Court can inquire into its own jurisdiction no matter how that question is called to its attention and regardless of whether par-

ties desire it to do so. *Woldberg v Industrial Comm'n*, 74 Utah 309, 279 P 609 (1929)

Question of Supreme Court's jurisdiction to hear and determine an appeal is one that can be raised by the court on its own motion. *City of Logan City v Blotter*, 75 Utah 272, 284 P. 333 (1929)

#### Appellate jurisdiction.

—Probate orders.

Final orders in probate were appealable un-

# CHAPTER 23

## UTAH EXEMPTIONS ACT

Section		Section	
78-23-1.	Short title.		tools, motor vehicle up to \$1,500.
78-23-2.	Definitions.	78-23-9.	Exemption of proceeds from property sold, taken by condemnation, lost, damaged, or destroyed — Tracing exempt property and proceeds.
78-23-3.	Homestead exemption — Excepted obligations — "Head of family" defined — Water rights and interests — Conveyance of homestead — Married homestead claimant — Sale and disposition of homestead.	78-23-10.	Allowable claims against exempt property.
78-23-4.	Declaration of homestead — Filing — Contents — Failure to file — Conveyance by married person — No execution sale if bid less than exemption — Redemption rights of judgment creditor.	78-23-11.	Waiver of exemptions in favor of unsecured creditor unenforceable.
78-23-5.	Property exempt from execution.	78-23-12.	Exertion of individual's rights by spouse, dependent or other authorized person.
78-23-6.	Property exempt from execution to extent necessary for support.	78-23-13.	Injunctive relief, damages, or both allowed against creditor to prevent violation of chapter — Costs and attorney's fees.
78-23-7.	Exemption of unmatured life insurance contracts.	78-23-14.	Property held by joint tenants or tenants in common.
78-23-8.	Exempt property up to aggregate value of \$500 — Exemption of implements, professional books,	78-23-15.	Exemption provisions applicable in bankruptcy proceedings.

### 78-23-1. Short title.

This chapter shall be known and may be cited as the "Utah Exemptions Act."

**History:** C. 1953, 78-23-1, enacted by L. 1981, ch. 111, § 1.

**Repeals and Enactments.** — Laws 1981, ch. 111, § 1 repealed former § 78-23-1 (L. 1951, ch. 58, § 1; C. 1943, Supp., 104-23-1; L. 1969, ch. 18, § 9.103(2)(c)), relating to property exempt from execution, and enacted present § 78-23-1.

**Cross-References.** — County property, § 17-15-13.

Firemen's Retirement Act, benefits exempt, § 49-6a-36.

Governmental Immunity Act, execution not to issue against governmental entity, § 63-30-22.

Housing authority's property exempt, obligees excepted, waiver, § 55-18-23.

Judges' Retirement Act, payments and contributions exempt, § 49-7a-33.

Mechanics' liens, building materials not subject to execution except for purchase money, § 38-1-23.

Military property exempt, § 39-1-47.

Military property wrongfully used, fines, § 39-1-48.

Occupational Disease Disability Law, § 35-2-35.

Partner's interest not subject to execution except on claim against partnership, § 48-1-22.

Public aid for dependent mothers exempt, § 17-13-9.

Public assistance payments, § 55-15-32.

Public Safety Retirement Act, § 49-11-43.

Public transit district property, § 11-20-57.

Salaries of public officials and employees, § 78-27-15.

School board property, § 53-4-12.

School employees' retirement benefits, §§ 53-29-46, 53-29-56.

State Retirement Act, § 49-10-48.

Unemployment compensation, § 35-4-18.

Uniform Consumer Credit Code, §§ 70C-1-101 et seq., 70C-7-101 et seq.

Workmen's compensation, § 35-1-80.

### **78-27-54. Inherent risks of skiing — Trail boards listing inherent risks and limitations on liability.**

Ski area operators shall post trail boards at one or more prominent locations within each ski area which shall include a list of the inherent risks of skiing, and the limitations on liability of ski area operators, as defined in this act.

**History:** L. 1979, ch. 166, § 4.

**Meaning of "this act".** — See note following same catchline in notes to § 78-27-51.

### **78-27-55. Repealed.**

**Repeals.** — Section 78-27-55 (L. 1979, ch. 166, § 5), relating to notice requirements in case of injury arising from the inherent risks of

skiing and the statute of limitations on such action, was repealed by Laws 1980, ch. 43, § 1.

### **78-27-56. Attorney's fees — Award where action or defense in bad faith.**

In civil actions, where not otherwise provided by statute or agreement, the court may award reasonable attorney's fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith.

**History:** L. 1981, ch. 13, § 1.

#### NOTES TO DECISIONS

#### **"Without merit" and "good faith."**

A frivolous action having no basis in law or fact is "without merit," but is nevertheless in "good faith" as long as there is an honest belief

that it is appropriate, and as long as there is no intent to hinder, delay, defraud or take advantage of another *Cady v. Johnson*, 671 P.2d 149 (Utah 1983).

#### COLLATERAL REFERENCES

**Utah Law Review.** — Attorney's Fees in Utah, 1984 Utah L. Rev. 553

Attorney's Fees in Bad Faith, Meritless Actions, 1984 Utah L. Rev. 593

**A.L.R.** — Construction and application of state statute or rule subjecting party making untrue allegations or denials to payment of costs or attorneys' fees, 68 A.L.R.3d 209.

Attorneys' fees as recoverable in fraud action, 44 A.L.R.4th 776.

Attorneys' fees obduracy as basis for state-court award, 49 A.L.R.4th 825

Award of counsel fees to prevailing party based on adversary's bad faith, obduracy, or other misconduct, 31 A.L.R. Fed. 833.

### **78-27-56.5. Attorney's fees — Reciprocal rights to recover attorney's fees.**

A court may award costs and attorney's fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney's fees.