

2009

# Westling Family Trust v. Westling : Unknown

Utah Court of Appeals

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RE: Supplemental Authority pursuant Rule 24(j)  
Appellate Court No. 20090970-CA

This letter is written pursuant to Rule 24(j), Utah Rules of Appellate Procedure.

On May 7, 2010, the Utah Supreme Court issued its opinion No. 20080274, cited as 2010 UT 28, *Johnson v. Johnson*. The Court extensively analyzed at ¶¶ 8 and 9 of the cited case the issue of “subject matter jurisdiction,” which is the central issue in the above referenced case now on appeal, Case No. 20090970-CA.

On pages 16 and 17 of the Appellants’ brief, the issue of whether the trial court had subject matter jurisdiction for the purposes of Rule 12(b)(1) is discussed. The newly issued case of *Johnson v. Johnson* cited above is squarely on point and it supports Appellants’ position. That is, as a matter of law, the trial court has subject matter jurisdiction, and therefore, the trial court made its ruling on the merits. As a result, the trial court should have then treated the Intervener’s motion to dismiss as a Rule 12(b)(6) motion and not a Rule 12(b)(1) or a Rule 12(b)(2) motion.

Sincerely yours,

  
Michael A. Jensen

CC: Kent B. Alderman, Attorney for Intervener  
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