

1990

Knight Adjustment Bureau v. Robert Young : Unknown

Utah Court of Appeals

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Kathryn Schuler Denholm; Attorney for Plaintiff.

Lynn P. Heward; Attorney for Defendant.

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UTAH COURT OF APPEALS
BRIEF

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~~CIRCUIT COURT, STATE OF UTAH~~

SALT LAKE COUNTY, MURRAY DEPARTMENT

KNIGHT ADJUSTMENT BUREAU,

Plaintiff,

VS.

ROBERT YOUNG,

Defendant.

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Case No. 893001346

TRANSCRIPT OF ELECTRONIC TAPES

TAKEN AT: 263 East 2100 South, Salt Lake City, Utah

DATE: December 19, 1989

REPORTED BY: Beverly Lowe, CSR

From the Reporting Offices of:

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P. O. Box 1477, Salt Lake City, Utah 84110

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File No. 10049

DISCOVERY THE

A P P E A R A N C E S

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1 P R O C E E D I N G S

2 THE COURT: Go ahead, Ms. Denholm.

3 MS. DENHOLM: Your Honor, by way of
4 opening statement, this would be a (inaudible) for
5 certain agreements for services which the dental
6 services provided by a Dr. Steven Moore. The
7 amount we're claiming is \$267.65.

8 THE COURT: Mr. Heward, did you want to say
9 more?

10 MR. HEWARD: Yes, if I might, your Honor.
11 In this case there was an insurance claim that was
12 to cover the cost of the two crowns that were put
13 in, and also I guess there was some work on a chip
14 since that time, and not very long after the work
15 was done, one of the crowns fell out and was lost,
16 and the other, that was chipped, the part that had
17 been repaired also fell out.

18 So, it is a matter of poor workmanship.
19 He's going to have to pay for most of it to be
20 redone. So, under the circumstances, there should
21 be an offset for whatever amount remains to be
22 paid, which is less than half.

23 THE COURT: Ms. Denholm?

24 MS. DENHOLM: Yes, your Honor, we will call
25 Cindy Duke.

P R O C E E D I N G S

CINDY DUKE,

being first duly sworn

testified as follows:

EXAMINATION

BY MS. DENHOLM:

Q. Please state your name and your business address.

A. Cynthia Duke, 4788 South Redwood Road, Salt Lake City, Utah.

Q. By whom are you employed?

A. Steven A. Moore, DDS.

Q. In what capacity are you employed?

A. I'm his office manager.

Q. Are you familiar with this particular account?

A. Uh-huh.

Q. Have you reviewed the records pertaining to this account before coming to court today?

A. Yes.

Q. Are those records maintained in the regular course of business?

A. Yes.

Q. Are they maintained under your supervision and control?

1 DUKE-DIRECT (By Ms. Denholm)

2 A. The financial part is. The patient
3 charting, Dr. Moore does that, personally, himself.

4 Q. And are those records that you've
5 testified that are maintained under your control
6 accurate and complete to your knowledge and belief?

7 A. Yes, they are.

8 Q. Now, based on those records, does it
9 appear that there's an amount due and owing by the
10 defendant?

11 A. Yes, there is.

12 Q. And what is the amount claimed to be here?

13 A. \$267.65.

14 Q. Do you know what that's for? Can you tell
15 us what that's for?

16 A. It's for the remaining balance, plus
17 interest after Mr. Young's insurance paid for the
18 work that we did for him.

19 Q. What's the amount minus the interest?

20 A. I don't know. It's probably less than \$20
21 interest on that small account. (Inaudible) 21 for
22 service charges. Would be less than \$20.

23 Q. Now, is this claim also based upon a
24 written agreement?

25 A. A Truth and Lending form, yes.

1 DUKE-DIRECT (By Ms. Denholm)

2 Q. Let me show you a document marked as
3 Plaintiff's Exhibit 1. Do you recognize that
4 document?

5 A. Yes.

6 Q. What is that?

7 A. That's the Truth and Lending form from my
8 office.

9 Q. All right, and by whom does it appear to
10 be signed?

11 A. Robert Young.

12 Q. On what date?

13 A. August 9th, 1986.

14 Q. And is this the agreement on which this
15 claim is based?

16 A. Yes.

17 Q. Has this claim been assigned to Knight
18 Adjustment Bureau for collection?

19 A. Yes.

20 Q. And these exhibits here are a memorandum
21 of that assignment; is that right?

22 A. Yes.

23 Q. And the document marked as Exhibit 3, can
24 you tell me what that is?

25 A. That is a ledger card.

1 DUKE-DIRECT (By Ms. Denholm)

2 Q. Is that the ledger card on this account?

3 A. Yes, it is.

4 Q. All right. Now, you've indicated that all
5 of the entries marked 21 are interest charges?

6 A. Right.

7 Q. Now, has Mr. Young been billed for
8 services other than were actually performed by
9 Dr. Moore?

10 A. No.

11 THE COURT: What was that?

12 A. No.

13 Q. Other than the interest, no services
14 that --

15 A. He was billed for services actually
16 performed.

17 Q. And has he been given credit for all
18 payments received by him?

19 A. Yes. I believe so, yes.

20 Q. Are you familiar with the rates that
21 Dr. Moore customarily charges for his services?

22 A. Yes.

23 Q. Has Mr. Young been billed at the usual and
24 customary rate for the services?

25 A. Yes.

1 DUKE-DIRECT (By Ms. Denholm)

2 MS. DENHOLM: That's all the questions I
3 have.

4 THE COURT: Mr. Heward, any questions of
5 Ms. Duke?

6 MR. HEWARD: Yes.

7 CROSS-EXAMINATION

8 BY MR. HEWARD:

9 Q. Now, I guess these charges that you've
10 mentioned are normal and customary for these
11 particular services; is that what you said?

12 A. Yes.

13 Q. Okay, and is there any relationship
14 between the workmanship and the quality than the
15 charges, or is there no relationship there?

16 A. I don't know how to answer that question.

17 Q. Okay. Are you familiar with what would be
18 involved as far as, say, you've got a No. 7 root
19 canal, a root canal (inaudible). Are you familiar
20 at all with what would be quality workmanship with
21 respect to root canal?

22 A. Am I familiar? In my opinion, I am. I do
23 not have a degree or anything in that. I just --

24 Q. Okay. On what -- what is the basis for
25 your belief that you are qualified to comment or to

1 DUKE-CROSS (By Mr. Heward)

2 testify as to what the workmanlike quality on the
3 performance of a root canal?

4 A. I have chair-sided and office managed for
5 dentists for 12 years.

6 Q. Do you have any other qualification on
7 that?

8 A. To say that it's good workmanship?

9 Q. Yes.

10 A. No, because I don't have a degree. Who
11 would I be to say? It would only be my opinion as
12 to the dentistry.

13 MR. HEWARD: Your Honor, could we have a
14 ruling as to this witness' qualification to give an
15 opinion -- an expert opinion on workmanship
16 quality?

17 THE COURT: I won't worry about it unless
18 the question is asked and objected to. If you want
19 to ask her and Ms. Denholm doesn't object, it
20 doesn't seem to me I need to worry. I mean, at
21 this juncture nobody is contesting that she should
22 or shouldn't say anything. I think it's more --
23 it's premature.

24 Q. However, these charges are based on the
25 services performed in an appropriate manner, and a

1 DUKE-CROSS (By Mr. Heward)

2 workmanlike manner corresponding to what a dentist
3 would do; is that correct?

4 A. Yes.

5 Q. Up to the standards of practice; is that
6 right?

7 A. Yes.

8 Q. Now, has work been -- on Exhibit 3,
9 Plaintiff's Exhibit No. 3, have you reviewed this
10 Exhibit No. 3?

11 A. Yes.

12 Q. It shows various payments. Now, these
13 payments were made before it was assigned to Knight
14 Adjustment Bureau; is that correct?

15 A. Yes.

16 Q. Are you familiar with any payments that
17 were made after the assignment?

18 A. No, I'm not.

19 MR. HEWARD: Your Honor, I have no other
20 questions.

21 THE COURT: Ms. Denholm, any more?

22 MS. DENHOLM: Only to the admittance of 1,
23 2 and 3.

24 THE COURT: Any objection, Mr. Heward?

25 MR. HEWARD: No, your Honor.

1 DUKE-CROSS (By Mr. Heward)

2 THE COURT: Thank you. We'll admit
3 Plaintiff's 1 through 3.

4 MS. DENHOLM: Your Honor, we'll call
5 Mr. Young.

6 THE COURT: Before you do, before you step
7 down, Ms. Duke, what all got done?

8 A. We did two porcelain fuse to metal crown
9 on Mr. Young. One was on a fractured tooth. In my
10 record it doesn't state the reason for the second
11 one, so I'm assuming it was -- well, I guess it
12 doesn't matter what I assume. The first tooth was
13 fractured, so we did a porcelain fuse to metal
14 crown on it.

15 THE COURT: Okay. So, you just did the
16 crowns. You didn't do any of the other work?

17 A. We did an exam, I believe.

18 THE COURT: Okay.

19 A. And a cleaning.

20 THE COURT: Okay, and you say there are two
21 of them?

22 A. Two crowns, yes.

23 THE COURT: All right. Mr. Heward, when he
24 began said there was a third item, a chip or
25 something. You wouldn't show that?

1 DUKE-CROSS (By Mr. Heward)

2 A. No, the chip that he's talking about, no.
3 I thought the chip he was talking about was off of
4 one of the crowns, but I could be wrong.

5 THE COURT: Okay. So, as you looked at
6 that billing, you just see two items, and they're
7 both crowns?

8 A. Right.

9 THE COURT: And the total charge,
10 originally?

11 A. Was \$615. Each crown was \$300, and there
12 was a \$15 charge to adjust -- I believe it's a -- I
13 can't remember if it's a lower or an upper partial
14 to the crown, an expert step the lab takes in
15 making the crown a process.

16 THE COURT: And to your knowledge, you got
17 paid down to the \$267?

18 A. Yes, the insurance paid over 50 percent of
19 both the crowns that I billed, and I have two
20 20-dollar payments on my record from Mr. Young.

21 THE COURT: Thank you. Anything else,
22 Ms. Denholm?

23 MS. DENHOLM: Not of this witness.

24 THE COURT: Mr. Heward, anything else of
25 this witness?

1 DUKE-CROSS (By Mr. Heward)

2 MR. HEWARD: No, your Honor.

3 THE COURT: Thank you. If you'll step
4 down.

5 MS. DENHOLM: Call Robert Young.

6 ROBERT YOUNG,
7 being first duly sworn
8 testified as follows:

9 EXAMINATION

10 BY MS. DENHOLM:

11 Q. Please state your name and your address.

12 A. Robert Young, 5312 Cobblecreek Road.

13 Q. Mr. Young, I'm going to show you Exhibit
14 No. 1. Is this your signature on that document?

15 A. Yes, it is.

16 Q. Okay. You received billings from
17 Dr. Moore's office?

18 A. I have.

19 Q. And have you paid those billings?

20 A. Two or three of them, I think. Two of
21 them.

22 Q. Have you made any payments on the account
23 except or in addition to the ones that are shown on
24 Exhibit 3?

25 A. To Knight Adjustment Bureau I have, yes.

1 YOUNG-DIRECT (By Ms. Denholm)

2 Q. All right. When did you make a payment?

3 A. I'm not sure. It's, I think, three
4 different payments to Knight Adjustment Bureau.

5 Q. Do you have receipts or cancelled checks?

6 A. I didn't think to bring them today, but I
7 do have them.

8 Q. Would be in a total of \$30?

9 A. Yes.

10 MS. DENHOLM: All right. Your Honor, we
11 acknowledge that Mr. Young has paid \$30 since this
12 account was assigned to Knight Adjustment Bureau,
13 which should be deducted as a credit on the
14 account. That's all the questions I have for
15 Mr. Young.

16 THE COURT: All right. Mr. Heward, did you
17 want to ask any questions of Mr. Young at this
18 point.

19 MR. HEWARD: No, your Honor, not on cross
20 examination.

21 THE COURT: Why don't you step down,
22 Mr. Young.

23 MS. DENHOLM: And then I'll need to testify
24 as to attorney's fees.

25 KATHRYN DENHOLM,

1 DENHOLM (Examination by Mr. Heward)

2 being first duly sworn,

3 testified as follows:

4 MS. DENHOLM: My name is Kathryn Denholm.

5 I'm an attorney licensed to practice in the State

6 of Utah, and I office at 263 East 21st South. I

7 have spent time in the preparation of documents,

8 preparation for trial, appearance in trial, and

9 other matters pertaining to this case.

10 I would testify that there would be

11 approximately two hours including trial and

12 preparation of documents at the trial, and my

13 regular billing rate is \$90 per hour, and that that

14 rate would be consistent with the rates normally

15 charged among attorneys in this area for cases of

16 similar kind.

17 THE COURT: Mr. Heward, any questions of

18 Ms. Denholm?

19 MR. HEWARD: Yes.

20 EXAMINATION

21 BY MR. HEWARD:

22 Q. How did you come up with the figure of two

23 hours?

24 A. That's an approximation. I have an

25 itemized worksheet at my office whereby I've --

1 DENHOLM (Examination by Mr. Heward)

2 rather, I don't have a specific worksheet for this
3 particular case, but I know for instance that it
4 takes "X" proportion of an hour to prepare and
5 review the complaint, the summons, et cetera, the
6 other documents. There's been discovery in this
7 case, and it's based upon that. But I make an
8 estimation that it's approximately two hours. It's
9 probably not exactly two hours.

10 Q. Judging from other cases, in other words,
11 is that what you judged from?

12 A. And as far as preparing the summons and
13 those kinds of documents, yes. It would be about
14 the same in each case. As you can see, these are
15 basically forms, and they come off the word
16 processor, and you always spend a little time
17 involved in each particular step within the
18 multiple steps.

19 Q. About how much time do you spend on a
20 complaint, usually?

21 A. I (tape inaudible) two-tenths of an hour
22 for the complaint, because I have to review the
23 documents and review the complaint before I sign
24 them.

25 Q. Discovery?

1 DENHOLM (Examination by Mr. Heward)

2 A. Let me look at my file. Two-tenths, as
3 well.

4 Q. Okay. Anything else before trial?

5 A. That's for preparation of the discovery.
6 There's reviews of responses that would be another
7 two-tenths. There would be approximately
8 two-tenths for preparation, review, and speaking
9 with the witnesses. There would be approximately a
10 half an hour involved in the trial itself. There
11 was a motion for summary judgment, I believe, filed
12 in this case, and there was a response to that.
13 That would be another half an hour, roughly, in
14 dealing with that. I think that's about it.

15 MR. HEWARD: I have no other questions.

16 THE COURT: Thank you. Anything else,
17 Ms. Denholm?

18 MS. DENHOLM: No.

19 THE COURT: Thank you. Take your seat.

20 MS. DENHOLM: Plaintiff will rest.

21 THE COURT: And Mr. Heward.

22 MR. HEWARD: Yes, your Honor. At this time
23 I'd like to make a motion that there be a dismissal
24 on the basis that it's inherent that these services
25 would have to be done in a workmanlike manner.

1 DENHOLM (Examination by Mr. Heward)

2 There's been no testimony that they were, and
3 therefore, there's no indication that the charges
4 are reasonable, which would be necessary for the
5 good faith inherent in any contract. Therefore,
6 they should be dismissed at this point.

7 THE COURT: I think at this juncture
8 that's premature. If you'd like me to keep it
9 under advisement, I will, but I would deny it at
10 this point, because I think there is at least
11 established from the plaintiff sufficient evidence
12 to -- if nothing more were said, to require that
13 Mr. Young pay.

14 MR. HEWARD: At this time we call Mr. Young
15 to the stand.

16 THE COURT: Mr. Young has been previously
17 sworn, so he can just take his seat and go ahead.

18 EXAMINATION

19 BY MR. HEWARD:

20 Q. Mr. Young, have you had any services
21 performed by the dentist that has been mentioned
22 today, Mr. Moore, before the time that -- well,
23 before the date of this agreement of '86?

24 A. No.

25 Q. That was the first time?

1 YOUNG-DIRECT (By Mr. Heward)

2 A. Yeah. Well, years ago. Probably 20 years
3 ago.

4 Q. I see, but not until now -- not just
5 before that time. At that time or just after that
6 time, what services were performed?

7 A. He put two crowns, and I had a small
8 chip. He said, "We'll take care of that." He put a
9 bonding. He shaved the back of the tooth and
10 bonded it, and that was it.

11 Q. What happened after that?

12 A. The upper crown fell out. The bonding on
13 the chipped tooth is gone. It fell out.

14 Q. About when did these happen?

15 A. Probably a year or two -- probably two
16 years -- well, let's see, a year and a half ago.

17 Q. Okay. So, that would make it about how
18 long after they were put in?

19 A. About a year and a half -- a year. A year
20 and a half.

21 Q. About a year and a half, okay. Did they
22 both come out about the same time or how far apart?

23 A. No, the bonding on the chipped tooth came
24 off first.

25 Q. Okay. About how long before the crown?

1 YOUNG-DIRECT (By Mr. Heward)

2 A. Probably three or four months.

3 Q. And do you recall anything that happened
4 by the time that that came off; anything that would
5 have caused that?

6 A. No, I don't.

7 Q. Have you consulted any dentists with
8 respect to that tooth -- that bonding?

9 A. Yes.

10 Q. And what have they indicated --

11 MS. DENHOLM: I'll object to anything that
12 someone else who's not in court to testify may have
13 to say.

14 THE COURT: That's going to be a problem on
15 hearsay, Mr. Heward. Do you have any exception
16 that you think it falls in?

17 MR. HEWARD: Perhaps I can rephrase the
18 question first of all.

19 THE COURT: Okay.

20 Q. What are your intentions with respect to
21 that?

22 A. Well, I went to see another dentist.

23 Q. Okay, and do you intend to do anything
24 about that tooth or just leave it like it is?

25 A. Well, he told me it was --

1 YOUNG-DIRECT (By Mr. Heward)

2 MS. DENHOLM: Objection; (inaudible).

3 THE COURT: Unless you can lay a foundation
4 that he could proffer the same opinion, or give me
5 an exception, because I can't see one right off.

6 A. (tape inaudible).

7 THE COURT: I think it becomes hearsay,
8 Mr. Young, and the problem there is Ms. Denholm
9 doesn't get to question the person who told you.
10 For that reason we don't allow you to speak about
11 what others have told you.

12 A. I understand.

13 Q. The question is just your intention on
14 that.

15 A. I (inaudible) crown put on it.

16 Q. Not the crown, but I mean the other tooth,
17 one that was chipped, the No. 13, I guess it was.

18 A. Well, it's damaged a tooth where he shaved
19 it in the back, and I don't if they can do anything
20 other than shave it down.

21 Q. You don't know the cost of doing that, do
22 you?

23 A. No, I don't.

24 Q. How about with respect to the crown that
25 was missing. Now, when you -- do you still have

1 YOUNG-DIRECT (By Mr. Heward)

2 the crown?

3 A. No, I don't.

4 Q. What happened?

5 A. When I was brushing my teeth it went down
6 the drain.

7 Q. I see. So, nothing happened that you
8 recall besides brushing your teeth?

9 A. Nothing.

10 Q. Okay, and have you -- what's your
11 intention on that?

12 A. To have a new crown put in.

13 Q. Now, with respect to the financial
14 arrangements, what was your understanding as to the
15 financial arrangements when you went to the
16 dentist?

17 MS. DENHOLM: I will object to that
18 question because we have a written agreement as to
19 the financial arrangements, and if that's going to
20 vary it would be (tape inaudible) evidence and it
21 would have to be foundation for that.

22 THE COURT: Well, we haven't heard the
23 answer yet, so go ahead.

24 Q. What was your understanding with respect
25 to the financial arrangements?

1 YOUNG-DIRECT (By Mr. Heward)

2 A. I thought my insurance would cover
3 everything.

4 MR. HEWARD: Okay. I have no other
5 questions, your Honor.

6 MS. DENHOLM: I have no further questions
7 for Mr. Young -- well, excuse me, I do.

8 CROSS-EXAMINATION

9 BY MS. DENHOLM:

10 Q. Just one question. Mr. Young, when you
11 had the problem with the work coming out or coming
12 off, did you go back to Dr. Moore and ask him to
13 fix it?

14 A. I called his office and told him the crown
15 had fallen off. That was when they turned me over
16 to the Knight Adjustment Bureau. She said she
17 would pass the word to Dr. Moore. That's all I
18 ever heard.

19 Q. You didn't make an appointment?

20 A. No, I did not. I don't want him to do
21 anymore work on my mouth.

22 Q. Okay. So, when you contacted them, that
23 was not held that you wanted them to fix the work
24 that you thought was defective?

25 A. No, I never got in touch with him. All I

1 YOUNG-CROSS (By Ms. Denholm)

2 talked to was -- I don't know if it was her, but
3 somebody at the office.

4 MS. DENHOLM: Your Honor, that's all the
5 questions I'd have.

6 THE COURT: Why did you need the crowns?

7 A. Well, the one tooth apparently was
8 cracked. He told me I needed a crown -- Dr. Moore.

9 THE COURT: Okay. You experienced no pain
10 prior?

11 A. Not that I recall -- any pain, no.

12 THE COURT: And you say it's been a year-
13 and-a-half You haven't had anything done to take
14 care of what essentially appears to be a problem?

15 A. I can't afford it.

16 THE COURT: And so I'm be clear, were there
17 two crowns, and one of them is still in your mouth?

18 A. One of them is still in. The bottom one
19 is still in.

20 THE COURT: I just looked in this and they
21 don't seem to see that (tape interrupted) and you
22 say that you called the office and at that point
23 they turned you over to Knight. When did you call
24 the office about --

25 A. No, I think -- I'm sorry if you

1 YOUNG-CROSS (By Ms. Denholm)

2 misunderstood. Probably turned me over to Knight
3 after I called.

4 THE COURT: Okay. I mean, I understood you
5 to say that was pretty close in time.

6 A. Right.

7 THE COURT: Like, you called them and just
8 a while later Knight zapped you. So, can you
9 explain to me when you called them?

10 A. I don't recall the exact (tape
11 interruption) the bonding had come off the
12 chipped tooth. She said she would pass that word
13 to Dr. Moore.

14 THE COURT: All right, thanks. Why don't
15 you step down. Is there anything else?

16 MR. HEWARD: Yes, your Honor, it would
17 appear --

18 (End of first tape and beginning of next tape)

19 LYNN HEWARD,
20 being first duly sworn
21 testified as follows:

22 MR. HEWARD: I guess as to the time that
23 I've spent on this, unfortunately, not specializing
24 in these types of cases as does opposing counsel,
25 it takes me a little bit longer to draft the

1 HEWARD (Statement of fees)

2 pleadings and answers and so on that correspond to
3 this matter. My regular fee is \$60 an hour that
4 I've been charging, and I've incurred costs of
5 minor amounts, like \$3 or so, and the total before
6 the trial, the attorneys fees and costs amounted to
7 \$186.10, and of course, we've been here for about
8 an hour so far this afternoon. That should be
9 another \$60 as far as the attorney's fees.

10 Naturally, the intent has been --
11 especially in view of the amounts involved -- to
12 keep that as minimal as possible, and yet explain
13 as clearly as I could my client's position so that
14 if this did not have to progress any further, then
15 that would be the best way.

16 For that reason, I have, for example,
17 responded -- let's see, I've been asked to -- I was
18 asked to enter this after there was a pro se answer
19 filed, and when the discovery was presented. So, I
20 tried to be as detailed as I could in response to
21 the answers to request for admissions, the answers
22 to interrogatories, and also in responding to --
23 with the statement of answering points and
24 authorities and opposition to the motion for
25 summary judgment setting forth the facts and

1 HEWARD (Statement of fees)

2 showing that there should be offsets equal to or
3 greater than the amount paid, by reason of the
4 facts in this case.

5 Therefore, these attorney's fees would be
6 reasonable under the circumstances.

7 THE COURT: Ms. Denholm, any questions?

8 MS. DENHOLM: No.

9 THE COURT: Thanks, Mr. Heward.

10 Anything else from the defendant?

11 MR. HEWARD: No other witnesses, your
12 Honor.

13 THE COURT: Ms. Denholm, anything else?

14 MS. DENHOLM: No, your Honor.

15 THE COURT: And closing argument?

16 MS. DENHOLM: I'll submit it.

17 THE COURT: Mr. Heward, any closing
18 argument?

19 MR. HEWARD: Yes, your Honor, I would.

20 I think as was indicated and in light of
21 the amounts involved -- of course, there was some
22 mention that Mr. Young could not proffer certain
23 testimony because it would be hearsay, and
24 obviously, the facts related to address this case,
25 that if the amounts were justified, it would be to

1 HEWARD (Closing argument)

2 have the witnesses here, the dentist that he's gone
3 through subsequently to testify as to the quality
4 and so on.

5 I think it's obvious that when you have a
6 crown which is to be permanent, if it falls off in
7 a year and a half when somebody is brushing their
8 teeth, and also when you have a chip that's
9 repaired with bonding, and even though there was no
10 charge on that, it would seem to me that the tooth
11 would probably be worse off, having been scraped
12 and then have the bonding fall off.

13 It seems to me under these circumstances
14 where more than half has been paid, and of course
15 just the one crown is there, that under these
16 circumstances what was done was not -- what was
17 charged was not reasonable in view of what was
18 done.

19 It would seem to me that at least there's
20 an implied warranty that what is done would be done
21 in a workmanship-like manner, and the facts
22 indicate that that was not the case here.

23 Therefore, Mr. Young has paid at least as
24 much as what he should, from the facts of this
25 case, your Honor.

1 DENHOLM (Response to Mr. Heward's argument)

2 THE COURT: Thank you. Any response,
3 Ms. Denholm?

4 MS. DENHOLM: Just brief.

5 Of course, we don't have any facts to
6 indicate that this was not workmanlike work either,
7 and, of course, doctors cannot guarantee their
8 work. We don't know whether or not Mr. Young
9 grinds his teeth in the night and wears these
10 things off. There's too many variables, and we
11 would assume that the work was done and that he was
12 billed at the regular rate, and he should pay the
13 balance.

14 THE COURT: While I'll grant you we don't
15 have an expert saying that it was or wasn't done,
16 but it seems to me it ought to stay in the mouth
17 for a longer time. We don't have anything to
18 contradict that it came out.

19 I mean, I have to conclude, given the
20 testimony that Mr. Young is accurate, that he
21 didn't get the services that he's been billed for.
22 So, I'd have to deny recovery to the defendant.

23 We do have, then, the problem of the
24 attorney's fees. The statute says if one party
25 would have been allowed the fees, then another

1 THE COURT (Judgment)

2 ought to be allowed. I would award for the
3 defendant \$150 for attorney's fees based on what
4 I've heard today.

5 MS. DENHOLM: Your Honor, if I recall the
6 statute correctly, that was (inaudible) that you
7 can award attorney's fees in a defendant case like
8 this only if you find the case was brought in bad
9 faith.

10 THE COURT: I don't think that's true, but
11 I'll look. I think it's worth a look, if it's bad
12 faith. I don't think he's proceeding under bad
13 faith. It's the reciprocal -- it's a creation by
14 statute of reciprocal agreement that if you have in
15 your agreement and a proceeding and I prevail, I
16 get the benefit of your agreement. I want to look
17 again to make sure.

18 MS. DENHOLM: Your Honor, would it be
19 helpful -- I happen to have the citation to deal
20 with that statute here.

21 THE COURT: Sure.

22 MS. DENHOLM: (inaudible) 782756.6.

23 THE COURT: "Court may award costs and fees
24 to either party that prevails in a civil action
25 based upon a promissory note, written contract, or

1 THE COURT (Judgment)

2 other writing --" well, there's the kicker, maybe
3 -- "executed after April 28, 1986." You beat him
4 by four months -- I mean, he beat you by four
5 months. He's August of '86. "When the provisions
6 of the note, contract or other writing allow at
7 least one party to recover attorney's fees." So,
8 by statute, they've created this reciprocal right,
9 and it's not the bad-faith one.

10 MS. DENHOLM: Excuse me, I thought that was
11 the one.

12 THE COURT: I understand why they do it,
13 and I don't think I can -- well, it says I may, but
14 I don't think in fairness I can come to any other
15 conclusion at this point. So, Mr. Heward --

16 MS. DENHOLM: You're making a finding that
17 the work was defective?

18 THE COURT: Yeah, I think that a crown
19 ought to stay in your mouth a lot longer than a
20 year and a half if you do it -- and I don't know
21 why it came out, but nobody knows. All we know
22 today is that it came out. If he grinds his teeth,
23 then the other one should have come out.

24 So, I mean, given the information that I
25 have, I have to conclude that it came out because

1 THE COURT (Judgment)

2 it wasn't put in right. I mean, there may be ten
3 other reasons, but I don't have any other reason.
4 I mean, I just don't have any basis upon which to
5 conclude other than it came out in a short time. I
6 mean, that's really all I know.

7 I mean, I'd be happy to make another
8 decision, but I just don't have enough information,
9 and I don't feel it's my prerogative to really try
10 and guess.

11 I know -- and I think I have -- one other
12 thing. I just don't think that Mr. Young pulled
13 off his crown in hopes that he wouldn't have to
14 pay. I mean, that doesn't make sense to me.

15 So, I think logic tells me that it came
16 out through no fault of his, and the only
17 conclusion I can say is that he didn't get what he
18 was billed for. You'll prepare something, Mr.
19 Heward?

20 MR. HEWARD: Yes, your Honor, I will.

21 (Trial concluded)

22

23

24

25

REPORTER'S CERTIFICATE

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

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for the State of Utah, do hereby certify:

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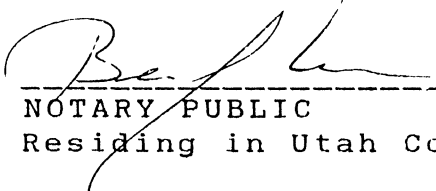
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WITNESS MY HAND AND SEAL this 22nd day of
March, 1990.

My commission expires:
February 24, 1992



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Residing in Utah County