

2000

Jayni Searle v. Boyd and Dorothy Searle : Reply Brief

Utah Court of Appeals

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Recommended Citation

Reply Brief, *Searle v. Searle*, No. 20000274 (Utah Court of Appeals, 2000).
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FOR THE STATE OF UTAH

Priority 4

Paulette Stagg
Clerk of the Court

Jayni Searle,
Appellant,
v.
Boyd & Dorothy Searle,
Appellee.

Case No. 20000274-CA

Priority 4

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ORAL ARGUMENT/PUBLISHED OPINION REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
ARGUMENT	1
A. STANDARD OF REVIEW	1
B. TRANSCRIPT, RES JUDICATA, AND RULE 60(B) ISSUES	2
ISSUE I: FAILURE TO PROVIDE A TRANSCRIPT"	2
Purpose of the November 23, 1999 Hearing	3
Language of February 7, 2000 Ruling	5
Testimony or Evidence at Hearing	6
Relevant Evidence: Orders	7
Utah Rules of App. Proc.: Rule 11 Case Law	7
ISSUE II: <i>RES JUDICATA</i>	10
ISSUE III: MOTION TO SET ASIDE	14
Argument #1: Timeliness	14
Argument #2: Timeliness Issue not Frivolous	17
Argument #3: Transcript	18
Argument #4: Preservation of Issue	18
CONCLUSION	21
CERTIFICATE OF MAILING	21

TABLE OF AUTHORITIES

Case Law

Fackrell v. Fackrell, 740 P.2d 1318 (Utah 1987)	8
Howard v. Howard, 601 P.2d 931, 934 (Utah 1979)	10
In re C.J.F.T. v. J.W., 1999 WL 33244660 (Utah App.,1999)	9
Intermountain Power Agency v. Bowers-Irons Recreation Land & Cattle Co., 786 P.2d 250, 252 (Utah App.,1990)	9
Mosdell v. Mosdell, 2001 WL 361723, (Utah App. 2001)	19
Prudential Capital Group Co. v. Mattson, 802 P.2d 104 (Utah App. 1990)	8
Rayburn v. Rayburn, 738 P.2d 238, 240 (Utah App.1987)	8
Sampson v. Richins, 770 P.2d 998, 1000 (Utah App. 1989)	9
Shields v. Santana, 2000 WL 33250567 (Utah App.,2000)	9, 10
Sittner v. Schriever, 2 P.3d 442, 445 (Utah 2000)	18
State v. Byrns, 911 P.2d 981, 987-88 (Utah App.,1995)	9
State v. Simmons, 5 P.3d 1228, 1231 (Utah App.,2000)	9
Watson v. Watson, 837 P.2d 1, 8 (Utah App.,1992)	9
Willey v. Willey, 951 P.2d 226, 230 (Utah 1997).	2, 20

Rules

Rule 11(e) (2) of the Utah Rules of Appellate Procedure	7, 8
Rule 60(b) of the Utah Rules of Civil Procedure	8, 14, 15, 18, 19

Statutes

Utah Code Anno. §§ 78-22a-1	15
Utah Code Anno. § 78-22a-2	15
Utah Code Anno. §§ 78-22a-4	15

IN THE COURT OF APPEALS
FOR THE STATE OF UTAH

Jayni Searle,)	
)	
Appellant,)	
)	
v.)	Case No. 20000274-CA
)	
Boyd Searle,)	
)	
Appellee.)	
)	Priority 4
)	

REPLY BRIEF OF APPELLANT

ARGUMENT

A. STANDARD OF REVIEW

Appellees dispute Appellant's designation of the standard of review. In response thereto Appellant would offer the following:

1. Did the trial court err when it concluded that the October 16, 1999 Tribal Court Order was unenforceable because it "relates to and stems from" the May 22, 1998 Order?

Appellees argue that a Findings of Fact standard should apply. However, in the order which was drafted by Appellees and approved by the trial court, the contested issue is identified a conclusion of law (See Addenda B attached to Appellant's Brief). Appellant would concede that if there are adequate findings, the Appellate Court decides the matter for itself and does not defer to the trial court's determination as to the law. However, the

determination whether the foreign order is both final and valid is a question of law which was left unresolved by the trial court in its ruling.

2. Did the trial court err in setting aside the Entry of Judgment under Rule 60(b)?

Appellant would concede that generally a Rule 60(b) Motion is treated as a discretionary ruling. However, there is no discretion where there is no jurisdiction. As to the timeliness of the Rule 60(b) Motion, the issue is an issue of law. Given the lack of findings, the appellate court cannot determine whether there was an abuse of discretion or not. The appellate court must either decide the issue for itself or remand for further determinations. Willey v. Willey, 951 P.2d 226, 230 (Utah 1997). Therefore, this issue involves questions of law.

B. TRANSCRIPT, RES JUDICATA, AND RULE 60(B) ISSUES

For purposes of this section and consistent with Appellant's Brief, Appellant will use: (1) The term "Tribal Court" to refer to the Fort Peck Sioux and Assiniboine Tribal Court; (2) The term "Juvenile Court" to refer to the Third District Juvenile Court; and (3) The term "trial court" to refer to the Third District Court from which this appeal was taken. In reply to the issues raised in Appellee's Brief, the following is offered:

ISSUE I: APPELLEES ARGUE "THE APPELLATE COURT MUST AFFIRM THE TRIAL COURT'S FINDINGS AND CONCLUSIONS BECAUSE THE MOTHER FAILED TO PROVIDE A TRANSCRIPT"

Appellees raise an interesting issue with regard to the

transcript. The case law and Rule 11 of the Utah Rules of Appellate Procedure are clear that a transcript of pertinent evidence is necessary. In the instant matter, a transcript of November 23, 1999 hearing was unnecessary. Appellees fail to identify critical facts that reveal that the transcript was unnecessary. A review of these facts is as follows:

Purpose of the November 23, 1999 Hearing

Appellees failed to properly identify the issues addressed at the November 23, 1999 Hearing. On or about the 18th day of November, 1999, Appellees contacted the Court and requested that a hearing be scheduled for November 23, 1999 on an "EXPEDITED MOTION TO STAY." See **Docket at Page 4** (attached as Addenda C). On or about November 22, 1999, Appellees drafted and served Appellant with a copy of an "Emergency Motion for Stay Pending Rule 60 Motion." See **R. at 151 & 168**. Appellees "Emergency Motion for Stay Pending Rule 60 Motion" was filed on November 22, 1999. See **R. at 151 and Docket at Page 4**.

On November 23, 1999, a hearing was held to address "the Motion to Stay Enforcement."¹ The "Emergency Motion for Stay

¹ Pursuant to Rule 201 of the Utah Rules of Evidence, Appellant would request that the Court take judicial notice of the transcript of the November 23, 1999 Hearing. (A copy is attached as Addenda A hereto). The original has been filed with the Court. Under Rule 201 of the Utah Rules of Evidence, "judicial notice may be taken at any stage of the proceeding." The Original Transcript filed herein satisfies "necessary information" requirement. The transcript is "not subject to reasonable dispute in that it is ... capable of accurate and ready determination by resort to" the recording.

Pending Rule 60 Motion" specifically requested that the Court stay enforcement of the August 23, 1999 Entry of Judgment so that argument could be made on the "motion to set aside." **See R. 151.** Nowhere in the record does it state that the hearing was held to address the Rule 60(b) Motion to Set Aside.² The order from the November 23, 1999 Hearing provides that the Court only issued a temporary stay "until further order of the Court." **See R. at 445** (attached as Addenda B). The minute entry from the hearing also states that the hearing was scheduled on the "motion to stay enforcement." **See R. at 324** (attached as Addenda C).³ The clear

² References to the transcript are footnoted because the Court has discretion to take judicial notice of the transcript. Such discretion has not been exercised. A review of the transcript also reveals that the was set to address the Motion for Stay. The following language from the transcript substantiates that the hearing was set to deal solely with the Motion for Stay:

Page 2, Ln 18-20: Ms. Santana: Your honor, it's very simple. I have a motion to stay enforcement of an order that you entered on August 23rd.

Page 13, Ln 1: I'm going to grant a stay.

Page 13, Ln 9-25: Mr. Shirley: Judge, I'd just like a chance to file a written response.

The Court: To?

Mr. Shirley: To the pleadings.

The Court: The motion to stay?

Mr. Shirley: Yeah.

The Court: All right. Counsel? Ms. Santana?

Ms. Santana: Well, I think it's unnecessary, but -

The Court: What do you mean you think it's unnecessary?

Ms. Santana: Well, you have - if you're going to look at the issue and only order a stay temporarily, I don't see wanting to respond to it.

See also R. at Page 15, lns 10-17.

³ At page 5 of Appellees' Brief, Appellees state that "On November 23, 1999, the trial court held a hearing on the

purpose of the November hearing was to deal with the Motion to Stay Enforcement.

Appellant has not appealed the trial court's grant of the temporary order of stay. This Court can presume that the Order of Stay was properly entered to give the trial court time to deal with the Rule 60(b) Motion as requested by Appellees. However, the temporary hearing did not address the propriety of the Rule 60(b) Motion which was not before the court for decision at that time.

Language of February 7, 2000 Ruling

The language of the February 7, 2000 Ruling of the trial court also substantiates this interpretation. The Ruling states "A hearing was held before the Court on November 23, 1999, on the Emergency Motion to Stay." **R. 616.** "At that time, the Court granted the Motion to Stay temporarily, but deferred making a final ruling on the Motion until counsel for the petitioner had an opportunity to respond to the Motion..." **R. 616.** Based upon this language, it is fairly clear that the trial court believed

grandparents Emergency Motion for Stay and Motion to Set Aside. (R.324). After hearing argument at the hearing, the trial court granted a stay and took under advisement whether to set aside the judgment. (R. 324; 445-447). Nowhere in either part of the record is Appellees' statements substantiated. The minute entry at R.324 clearly provides that the hearing was on the Motion to Stay. The Order and Minute Entry do not state that the Motion to Set Aside was taken under advisement. The ten days for responding to the Motion to Set Aside had not passed on November 23, 1999.

that the hearing on November 23, 1999 pertained solely to the Emergency Motion to Stay filed by Petitioners on November 22, 1999. Nothing in the ruling indicates that the Court used any evidence from the hearing in making her decision with regard to the Rule 60(b) Motion to Set Aside.

The trial court ruling goes on to state "having reviewed the moving and responding memoranda with respect to the remaining motions, the Court rules as stated herein." R. 617. The Court does not state that it relied on the argument made at the November 23, 1999 hearing. In fact, nowhere in the record does the trial court state that the November 23, 1999 hearing related to the Rule 60(b) Motion to Set Aside. Rather, the Court explains that it was relying on the written documents submitted by the parties.

Testimony or Evidence at November 23, 1999 Hearing

A review of the minute entry demonstrates that no oral testimony was taken at the hearing.⁴ There are no references to any evidence being taken other than the documents found at R. 193-323 (which are primarily copies of cases and other orders that are found in the record elsewhere-Appellees do not cite to any of this evidence as supporting their position). It should be clearly noted that Appellees do not argue that evidence was taken at the hearing that bears upon the Motion to Set Aside.

⁴ A review of the transcript also shows that no oral testimony was taken.

Appellees only argue that the hearing was held and a transcript should have been provided. Appellees offer no proffer that there was even relevant evidence offered at the hearing.

Relevant Evidence: Orders

The only true evidence relevant to the trial court's findings and conclusions are: (1) The May 22, 1998 Tribal Court Temporary Order (R. 526); (2) The October 16, 1998 Tribal Court Custody Decree (R. 2-4); (3) The November 19, 1998 Tribal Court Order on Order to Show Cause (R. 5-12); (4) Judge Hanson's Order of Dismissal (R. 174-77); and (5) Judge Hanson's July 15, 1999 Letter (R. 378-79). There is no other evidence that is relevant to the Rule 60(b) Motion which was submitted to the trial court. Appellees do not assert that any other relevant evidence exists. There is no parol evidence that changes the documents. A review of the ruling makes it clear that Judge Lewis' determination was based upon these documents. R. 616-18.

Utah Rules of App. Proc.: Rule 11 Case Law

Rule 11(e)(2) of the Utah Rules of Appellate Procedure, provides that "if the appellant intends to urge on appeal that a finding or conclusion is unsupported by or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion." The key issue of the rule is whether evidence is relevant to a finding or a conclusion. The cases are in uniformity that this Court

presumes the finding/conclusion to be correct when the evidence relevant to such a finding/conclusion is not included. As stated in King v. Industrial Commission of Utah, 850 P.2d 1281, 1287 (Utah App. 1993), Rule 11(e)(2) "requires counsel provide the appellate court with all evidence pertinent to the issues on appeal." The issue on appeal in the instant matter concerns the Rule 60(b) Motion to Set Aside, not the Appellees' "Emergency Motion to Stay Enforcement Pending a Ruling on Rule 60(b) Motion."

On page 9 of their brief, Appellees cite to King, Prudential Capital Group Co. v. Mattson, 802 P.2d 104 (Utah App. 1990), and Fackrell v. Fackrell, 740 P.2d 1318 (Utah 1987). These cases are readily distinguishable from the instant case in that there were identifiable transcripts that were needed, but were not included. In King, the appellant had failed to include a transcript of the proceedings before an administrative agency. In Prudential, the appellant had failed to include the relevant portions of a transcript from the trial. In Fackrell, the appellant failed to provide a transcript of hearing on a Rule 60(b) motion. In each case, the missing transcript related to issues before the appellate court.

The cases seem to be in uniformity in holding that the evidence has to be pertinent to the issues on appeal. See Rayburn v. Rayburn, 738 P.2d 238, 240 (Utah App.1987) (appellant

only provided 30 pages of the transcript from trial which only represented a "tiny fraction of the testimony" where the findings based upon the testimony was at issue); Intermountain Power Agency v. Bowers-Irons Recreation Land & Cattle Co., 786 P.2d 250, 252 (Utah App.,1990) (appellant failed to provide transcript from trial where the findings based upon the testimony was at issue); Watson v. Watson, 837 P.2d 1, 8 (Utah App.,1992) (appellant failed to provide copies of the transcript from a deposition which was central to the appeal issue); State v. Byrns, 911 P.2d 981, 987-88 (Utah App.,1995) (appellant failed to provide a transcript of a hearing on an entrapment hearing where the issue was the entrapment ruling); In re C.J.F.T. v. J.W., 1999 WL 33244660 (Utah App.,1999) (failed to provide a transcript of the adoption consent proceeding where the viability of the consent was the issue on appeal); State v. Simmons, 5 P.3d 1228, 1231 (Utah App.,2000) (failed to provide transcript from Rule 23B hearing where 23B hearing orders were being contested); Shields v. Santana, 2000 WL 33250567 (Utah App.,2000) **(Unpublished)** (Summary Judgment Motion on a lease in which a hearing was held and findings entered upon the hearing, appeal issue was adequacy of evidence at the hearing); Sampson v. Richins, 770 P.2d 998, 1000 (Utah App. 1989) (Transcripts were not requested in bench trial with 23 witnesses and 398 exhibits and 177 page court memorandum and 234 page findings of fact and conclusions of law

and verdict, issue on appeal were findings). In Santana, the Court noted that the "judgment, which was based upon a hearing, found 'no merit sufficient to withstand judgment for [Appellee] based on any of the affirmative defenses or the one remaining counterclaim....' No transcript of the hearing has been provided to this court, so 'the trial court's ruling on the evidence must be presumed correct.'" citing to Howard v. Howard, 601 P.2d 931, 934 (Utah 1979).

The argument and references to the record set forth herein, clearly demonstrate that the hearing had no bearing on the Motion to Set Aside. If the Motion had been dealt with in the November 23, 1999 hearing, Appellees' argument may have some merit. Accordingly, Appellees' argument lacks sufficient merit. This Court has been given all the evidence relevant to the issues on appeal as set forth above.

**ISSUE II: APPELLEES ARGUE "THE TRIAL COURT DID NOT ERR
BECAUSE RES JUDICATA BARRED ENFORCEMENT**

Appellant does not dispute that the case law cited to by Appellees with regard to *Res Judicata* contains the applicable elements and explanations of the doctrine of *Res Judicata*. Appellant would dispute the application of *Res Judicata* to the matter before the Court. Appellees argue that *Res Judicata* precluded the trial court from enforcing the October Tribal Court Order because Judge Hanson had refused to enforce a temporary

order of custody in a separate action. Appellees' argument assumes that the trial court ruled that *Res Judicata* applies. There is no such indication in the record.

However, Appellees fail to point out some very distinct issues that make the application of the principles of *Res Judicata* inappropriate. First, the issue before the trial court in the instant matter and the issue before Judge Hanson in the previous matter are distinct. The issue before Judge Hanson dealt with the enforcement of the temporary May 22, 1998 tribal court order. The issue before Judge Lewis in the instant matter dealt with the enforcement of the October 16, 1998 permanent Decree of Custody. While both sets of orders are related to custody of Appellant's minor child, the issues are different because the issue is enforcement of the order, and enforcement relates to the order, not to custody. The following table illustrates the differences:

JUDGE HANSON ACTION	JUDGE LEWIS ACTION (October)
Type: Temporary Custody Order	Permanent Order of Custody
Notice: Appellees were not served with a Motion prior to hearing with notice of hearing.	Appellees were served with a Petition for Sole Custody See R.at 8 (para.27) (uncontested).
Pleading: Tribe's Ex Parte Oral Motion	Appellant's Written Petition for Sole Custody
Court Proceeding: Hearing on Ex Parte Motion	Default Judgment, Application, and Entry of Default

Document: An Order with Jurisdictional Findings and Temporary Custody Transfer	Findings of Fact, Conclusions of Law
Issue Before Utah Court: Did the May 22, 1998 order comply with the validity and finality requirements under the Utah Foreign Judgment Act.	Issue Before Utah Court: Did the October 16, 1998 order comply with the validity and finality requirements under the Utah Foreign Judgment Act.

As demonstrated by the table, there are several distinctions that have to be looked at between the October and May orders. Despite Appellees' assertions to the contrary, the action before Judge Lewis did not involve the same issue because the order was different. The action did not involve the issues which Judge Hanson found to preclude enforcement, to wit: (1) A lack of notice; and (2) Lack of compliance with the Foreign Judgment Act. *Res Judicata* is not applicable to the instant matter, even though the parties are the same because the issues are different as they relate to each order.

The second issue that Appellees conveniently ignore and do not argue to the Court is that Judge Hanson found that:

the above-entitled action is dismissed without prejudice as to any Order entered subsequent to the May 22, 1998 Order which has been entered by the Fort Peck Tribal Court and **the dismissal of this action in no way precludes subsequent enforcement of Orders through a filing under the Utah Foreign Judgment Act...** See R. at 177 (para. 3 of Order) (emphasis added).

Contrary to Appellees' assertions, the validity of the May 22, 1998 Tribal Court Order has nothing to do with the

enforcement of the subsequent permanent orders (as noted by Judge Hanson) and the subsequent orders do not countermand Judge Hanson's Order. The orders were entered prior to Judge Hanson's Order. Judge Hanson did not find that the subsequent proceedings lacked due process or that his order would preclude enforcement. In fact, Judge Hanson found just the opposite (i.e. that his order did not preclude subsequent enforcement). Appellees never appealed this ruling. As a fully litigated and undisturbed ruling, Judge Hanson's ruling does have *Res Judicata* effect and is the law of the case as between the parties with regard to that specific ruling⁵.

The only issues with regard to the October Decree is whether the order complied with the validity and finality requirements of the foreign judgment act. Since *res judicata* is inapplicable, this court should focus on the validity and finality analysis required under the Utah Foreign Judgment Act. There are no findings as to this issue. However, through their silence, Appellees appear to concede that the validity and finality requirements of the Utah Foreign Judgment Act were satisfied.

⁵ Appellees take some issue that this action was commenced after Judge Hanson denied enforcement of the May 22, 1998 Tribal Court Order. However, Appellees were aware that Judge Hanson in a hearing on March 9, 1999 stated that he expected that the October and November Orders would be filed in accordance with the Utah Foreign Judgment Act and that "one of his colleagues" would deal with it appropriately. This intent was confirmed in a subsequent letter. See R. at 370.

The trial court's order does not address these two core requirements. There is no evidence before this Court or the trial court which would dispute that the October custody order was both final and valid. The issues are all based upon documentary evidence which this Court can decide as easily as the trial court (in that there is no need for testimony). This Court can either remand on that issue or decide the issue for itself after disposing of the *res judicata* and "relates to and stems from" issues.

ISSUE III: APPELLEES ARGUE "TRIAL COURT'S ORDER SETTING ASIDE JUDGMENT MUST BE AFFIRMED BECAUSE THE TRIAL COURT DID NOT ABUSE ITS DISCRETION"

Appellees argue that the appropriate standard of review is abuse of discretion in relation to a Rule 60(b) Motion. Appellant does not dispute that this would be the general rule. However, whether the Rule 60(b) Motion is timely or not is not a matter a of discretion. Rather, this involves a question of law which does not allow deference to the trial court. With regard to the grounds for a Rule 60(b) Motion, the trial court is given discretion in determining whether the Motion should be granted. In the instant matter, as argued below, the Motion was not filed in a timely manner and the trial court failed to make appropriate factual findings. Appellant sets forth Appellees' four separate arguments in this regard as set forth below:

Argument #1: Appellees Argue That Appellees' Motion to Set Aside Was Timely

Appellees argue in essence that because the August 25, 1999 Entry of Judgment stated that the Tribal Court Order was given full faith and credit, the date for filing a Motion to Set Aside would run from the August 25, 1999 Order and not from an earlier date. However, this argument ignores the central crux of Appellant's argument below in the trial court and on appeal before this Court. The central crux of the argument is that if Appellees wanted to prevent the order from gaining full faith and credit, Appellees had to file within one hundred twenty days (ninety days for Rule 60(b) and thirty days for the Utah Foreign Judgment Act) of the filing of the foreign judgment action.

The Utah Foreign Judgment Action is very clear that the Appellees, as the judgment debtor, had thirty days to obtain a stay of the order. Under Utah Code Anno. § 78-22a-2 provides that:

A foreign judgment filed under this chapter has the same effect and is subject to the same procedures, defenses, enforcement, satisfaction, and proceedings for reopening, vacating, setting aside, or staying as a judgment of a district court of this state.

Under the Utah Foreign Judgment Act, the foreign judgment obtains the status of a lien if a stay of execution is not granted within the thirty days. See Utah Code Anno. §§ 78-22a-1 & 4. Under this scheme, the Tribal Court orders became effective on July 15, 2001, thirty days after filing. If tribal court orders had been monetary judgments (as is generally contemplated

by the language in the Foreign Judgment Act), Appellant would have had the right to file a Writ of Execution or Garnishment after the thirty days. In such a case, the appeal of the full faith and credit issue would lie when the judgment became recognized with the same enforcement as a Utah Judgment.

By the same token, the Tribal Court Orders became effective after thirty days filing and any Motion to prevent the full faith and credit from attaching must have been filed within 90 days of the effective date. Unlike a Writ of Execution or Garnishment, there is no formalized mechanism for enforcing a custody order. The preferred mechanism is through a directive to law enforcement. The Entry of Judgment provided such a mechanism. A review of the Application for an Entry of Judgment (attached as Addenda G of Appellant's Brief) clarifies that Appellant's position has always been that the Entry of Judgment was merely the enforcement mechanism.

Contrary to Appellees' argument, the statutory framework governs the time periods, as was argued before the trial court. The Order does state that the tribal court decree was given full faith and credit, but that is only an announcement to the world. The statute provides that the full faith and credit begins after thirty days when enforcement may begin.

As stated in the last sentence of the Entry of Judgment, the primary purpose of the order was to direct law enforcement to

enforce the order.⁶ The Entry correctly states that the thirty days had passed and that the order was given full faith and credit. Appellee's argument in this regard is incorrect. It should also be noted that the trial court did not make any conclusion as to the timeliness of the Motion. This would be governed by the law set forth in Argument #4 *infra*.

Argument #2: Appellees Argue That The Timeliness Issue Is Frivolous

Appellant's argument is not frivolous as defined by Rule 33 because the time periods are governed by the Utah Foreign Judgment Act, not the Entry of Judgment. Appellees ignore the Utah Foreign Judgment Act throughout their argument and fail to address the core issues in relation thereto. Appellees also do not cite the court to the key statement in the Application for Entry of Judgment (R. 67), "petitioner hereby requests that the Court enter the foreign judgment for enforcement in Utah..." Appellant's argument is not frivolous in that it is grounded in fact and law.

⁶ Law enforcement should refrain from enforcing a foreign judgment absent some declaration by a Utah Court. This policy is in line with the Foreign Judgment Act.

Argument #3: Appellees Argue that Sufficient Grounds To Set Aside Must Be Presumed In That Appellant Did Not Provide Transcript

Appellant would incorporate by reference the argument set forth in Section I *supra* as to the need for a transcript. This issue is not meritorious in that the issues decided in the Rule 60(b) Motion were determined upon the pleadings before the Court. The record currently before the Court is clear that no evidence was taken as to the Rule 60(b) Motion at the November 23, 1999 Hearing. Accordingly, this issue does not prevent the Court from addressing the issues raised by Appellant on appeal.

Argument #4: Appellees Argue that Appellant Did Not Preserve Issue For Appellate Review

Appellees argue "the appellate court cannot reverse on this issue [trial court's failure to make findings as to the specific Rule 60(b) Motion grounds] because the [Appellant] failed to preserve the issue by failing to make a timely objection⁷ in the trial court." A modicum of research would have revealed that Appellant's argument is clearly frivolous in that it is not supported by law and fact. In Sittner v. Schriever, 2 P.3d 442, 445 (Utah 2000), the Utah Supreme Court held:

Defendants correctly state the general rule that failure to raise an argument before the trial court precludes a party from raising that argument on appeal. (Citation ommitted). However, this rule does not

⁷ An objection would not have tolled the time for appeal. Therefore, a mere objection would have done no good. A Rule 59 Motion would have been necessary.

require a party to file a post-judgment motion before the trial court as a prerequisite to filing an appeal. See, e.g., Dugan v. Jones, 724 P.2d 955, 956 (Utah 1986) (per curiam) (" 'It is settled that ... a rule 59 motion is [not] a condition precedent to appeal from final judgment.' " (quoting Nature Conservancy v. Nakila, 4 Haw.App. 584, 671 P.2d 1025, 1035 (Ct. App.1983)). It would be absurd to require Sittner to raise such an issue of appellate procedure before the trial court, which would have lacked authority and jurisdiction to decide the issue. Moreover, the merits of Sittner's appeal, which we do not address today, can be summarized as two issues: (1) whether the trial court properly granted summary judgment in favor of defendants, and (2) whether defendants are entitled to attorney fees. Sittner's arguments on these two issues are fully briefed in his own summary judgment memorandum, his memoranda in opposition to defendants' motions for summary judgment, and other pleadings filed below. He therefore preserved below the issues he now raises on appeal.

The issues regarding the Rule 60(b) Motion were properly raised and briefed before the trial court. See Appellant's Brief at Pages 2, 30-40. The trial court had ample opportunity to rule on all the issues raised but failed to make appropriate determinations as to the grounds for granting a Rule 60(b) Motion. In Mosdell v. Mosdell, 2001 WL 361723, (Utah App. 2001), this Court made the following observations:

"[T]he trial court in exercising its discretion must make the findings of fact explicit in support of its legal conclusions." Willey v. Willey, 951 P.2d 226, 230 (Utah 1997). "It is essential that such determinations be based on proper findings of fact and conclusions of law." Montoya v. Montoya, 696 P.2d 1193, 1194-95 (Utah 1985). Here, the trial court's findings of fact and conclusions of law are insufficient to support its order modifying the divorce decree. With such meager findings, this court cannot meaningfully review whether the trial court abused its discretion. See Willey, 951 P.2d at 230.

"Although this Court has power in an equity case such

as this to weigh the evidence and substitute our judgment for that of the trial court, we decline to do so where we have no means of knowing upon which facts the trial judge relied in entering his judgment." Montoya, 696 P.2d at 1195 (citation omitted). Thus, we vacate the order entered below and remand this case to the Search Term Begin trial court Search Term End with instructions to Search Term Begin enter Search Term End written Search Term Begin findings Search Term End of fact.

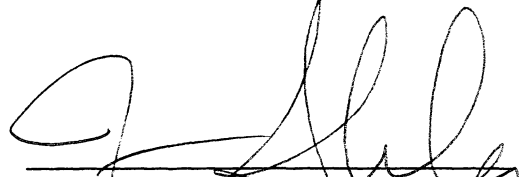
Clearly, this Court must either substitute its judgment for that of the trial court or remand on the issue of the grounds to sustain a Rule 60(b) Motion. In Willey v. Willey, 951 P.2d 226, (Utah 1997), the Utah Supreme Court made it clear that "if the appellate court determines that the findings of fact are insufficient to support the conclusion, the appellate court normally remands the matter to the trial court for further proceedings." Appellants concede "the trial court did not enter findings or conclusions as to the grounds for setting aside the order." See Appellees' Brief at 16. The Rule 60(b) Motion is critical to setting aside the Entry of Judgment and a decision not to enforce a foreign judgment that had obtained full faith and credit. Accordingly, this issue, second only to the grounds for denying full faith and credit, is dispositive of the entire matter.

Given the frivolous nature of Appellant's position and the little research that would have been required to correctly identify the issues to the court, an award of attorneys fees is hereby requested on this issue.

CONCLUSION

Appellant would ask the Court to either reverse the trial court based upon the timeliness issue and fact that Judge Hanson's order does not preclude enforcement of the foreign judgments. In the alternative, Appellant would request remand for further proceedings with the instruction that the ruling that the May 22, 1998 order precluded enforcement is erroneous and that the trial court must analyze the matter within the rubric of the validity and finality issues.

DATED this 10th day of August, 2001.



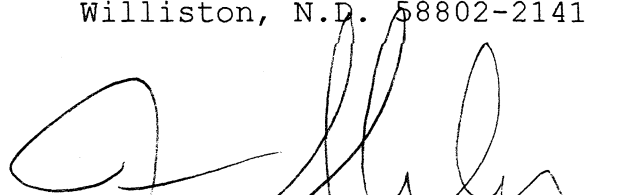
Jim C. Shirley
Counsel for Appellant

CERTIFICATE OF MAILING

I hereby certify that on this 13th day of August, 2001, I mailed, first class postage prepaid, true and correct copies of the foregoing Appellant's Reply Brief to:

Maria Santana
Attorney for Appellants
44 West Broadway, Suite 304
Salt Lake City, UT 84111

Gary Beaudry
Attorney for Fort Peck Tribes
322 Main Street, Suite 102
Williston, N.D. 58802-2141



Jim C. Shirley
Attorney for Appellant

IN THE COURT OF APPEALS

FOR THE STATE OF UTAH

Jayni Searle,	}	
	}	
Appellant,	}	Case No. 20000274CA
	}	
v.	}	
	}	
Boyd and Dorothy Searle,	}	
	}	
Appellees.	}	

Appellant’s Reply Brief – Addenda A

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

JAYNI SEARLE,]	
]	
Petitioner,]	
]	
vs.]	Case No. 996907234
]	
BOYD SEARLE and]	
DOROTHY SEARLE,]	
]	
]	
Respondents.]	

TRANSCRIPT OF HEARING

November 23, 1999

BEFORE THE HONORABLE LESLIE A. LEWIS
District Court Judge

A P P E A R A N C E S:

For the Petitioner: Jim C. Shirley
Attorney at Law
10 East Exchange Place, Suite 527
Salt Lake City, Utah 84111

For the Respondents: Maria C. Santana
Attorney at Law
44 West Broadway, Suite 304
Salt Lake City, Utah 84101

Jeri Kearbey
Certified Court Transcriber

1230 Gaylene Circle
Sandy, Utah 84094
(801) 566-4540

1 SALT LAKE CITY, UTAH; TUESDAY, NOVEMBER 23, 1999, 10:56 A.M.

2 -ooo0ooo-

3 THE COURT: I don't know if we can do this without
4 her being present. I guess we can give it a shot.

5 Do you have clients here, Mr. Shirley?

6 MR. SHIRLEY: No. She lives in Montana.

7 THE COURT: Have we got the video on?

8 THE CLERK: It's on.

9 THE COURT: Are you there?

10 Are you there?

11 Are you there?

12 MS. SANTANA: I am here.

13 THE COURT: All right. We've got the speaker
14 phone, obviously, on and also the video recorder.

15 This is a motion hearing, so if you want to state
16 your position first, Ms. Santana, and then we'll let Counsel
17 respond.

18 MS. SANTANA: Your Honor, it's very simple. I
19 have a motion to stay enforcement of an order that you
20 entered on August 23rd. And the grounds for it is that the
21 petitioner requested that you enter an order giving full
22 faith and credit to the tribal court order that contradicts
23 findings and conclusions of law that Judge Hanson has
24 already ruled upon on July 26th and insofar as res judicata.

25 THE COURT: Well, we looked at the issue, I

1 remember, looked at Judge Hanson's file before I ruled. So
2 my perception is it was consistent with Judge Hanson's
3 ruling. How do you view it as res judicata?

4 MS. SANTANA: Well, Your Honor, Judge Hanson's
5 ruling specifically says that the May 22nd order by the
6 tribal court is not enforceable and that my clients were not
7 given notice or due process when custody was transferred.

8 Your order entered the trial court findings that
9 my clients were in violation of that order, and that
10 contradicts what Judge Hanson has said, that they were not
11 provided due process. And it was not enforceable as to
12 them.

13 THE COURT: Now, in the case before Judge Hanson,
14 who are the parties?

15 MS. SANTANA: Boyd Searle. For some reason, I
16 don't know what the reason was, Jayni Searle (inaudible)
17 Boyd Searle.

18 THE COURT: So it's the same parties?

19 MS. SANTANA: It's one of the same parties. And
20 the action before you, she names Boyd Searle and his wife,
21 Dorothy Searle.

22 THE COURT: So why are the two different actions
23 pending?

24 MS. SANTANA: Why are they pending?

25 THE COURT: Why are there two different actions --

1 MS. SANTANA: That you need to ask the petitioner.
2 He just turned around after Judge Hanson declined to enforce
3 that May 22nd order and found that it was entered without
4 due process of law. He said it in open court. When you
5 entered findings, the petitioner turned around and filed
6 another action in your court asking specifically that he
7 give full faith and credit to an order that says the May
8 22nd, 1998 order was enforceable and that my clients
9 violated it and, you know, basically that they were
10 wrongfully maintaining custody of the child as far as that
11 May 22nd order. And that specifically contradicts what
12 Judge Hanson said.

13 THE COURT: Counsel?

14 MR. SHIRLEY: Your Honor, are you ready for my
15 argument?

16 THE COURT: Yes.

17 MR. SHIRLEY: All right. First of all, I've got
18 these documents and the orders and stuff that went in. With
19 regard to --

20 THE COURT: You may need to speak up, Counsel.

21 MR. SHIRLEY: Huh?

22 THE COURT: You'll need to speak up.

23 MR. SHIRLEY: Sorry. With regard to the res
24 judicata issue, in order to be res judicata, you have to
25 have the same issue or the same claim that's being raised.

1 The May 22nd order was a temporary order that was entered by
2 the tribal court upon accepting jurisdiction.

3 The October 16th order was issued pursuant to the
4 filing of a petition for sole custody in the tribal court on
5 September 8th, which was nearly three or four months after
6 the May 22nd order.

7 Additionally, the -- I think, by analogy, if the
8 Court were to look at it, if this Court were to issue --
9 were to have a petition for custody pending forth and a
10 motion for temporary custody and the Court granted the
11 motion for temporary custody, and then subsequently went on
12 to adjudicate the petition for custody on a more permanent
13 basis and for some reason the motion was found to be
14 defective and the Court made findings within the
15 adjudication on the petition that it had granted the motion,
16 that wouldn't make the subsequent order granting the
17 petition defective.

18 The May 22nd involved custody but it did not
19 involve permanent custody as the October 16th order does.
20 They're two different claims, they're two different issues,
21 and --

22 THE COURT: The same child, isn't it?

23 MR. SHIRLEY: It's the same child.

24 THE COURT: And the issue was custody in both
25 cases, isn't it?

1 THE COURT: It is. But the second one was based
2 upon the petition for custody, which was served upon
3 respondent's counsel. The first one was based upon, what,
4 an ex parte motion by Mr. Gary Bowdrey of the tribal court
5 when they accepted jurisdiction. There were two different
6 pleadings. The only thing that ties them together at all
7 is, number one, they were in tribal court. Number two, they
8 involved custody. And, number three, the tribal court made
9 findings that it had previously entered the temporary order.

10 But res judicata does not apply in this type of
11 situation because their issue -- the claims are not the
12 same, the issues are not the same.

13 THE COURT: How are the claims and issues
14 different?

15 MR. SHIRLEY: Okay. The issues are different on
16 the May 22nd order because the claim was that it was
17 defective because they didn't have notice of the
18 proceedings. The October 16th order was based upon a
19 petition which respondent's counsel was served with.

20 THE COURT: And the underlying issues had to do
21 with custody, right?

22 MR. SHIRLEY: They did. They did.

23 THE COURT: In this case, it's the same thing.

24 MR. SHIRLEY: That's the same thing, but what
25 you're looking at is that May 22nd order's never been set

1 aside. And just because the court -- the tribal court makes
2 a finding that it entered that order, that doesn't make the
3 adjudication on the petition for custody invalid. It would
4 be similar -- like I said, if this Court had entered a
5 temporary order and then, later, in its permanent findings
6 it says, "Here's the procedural history of this case. We
7 entered an order on this date; it hasn't been complied
8 with," even if subsequently that order is set aside, that
9 temporary order, it doesn't impugn the final order.

10 THE COURT: But the point that I can't get past is
11 it seems like this all should have been handled in one case.
12 Why have we got two different cases, same thing?

13 MR. SHIRLEY: Well, and what we did is we filed a
14 petition for writ of assistance before Judge Hanson in June
15 of 1998. That was before the October order was entered.
16 The juvenile court action which originated all this, Judge--
17 or Judge -- let me back up.

18 There was a juvenile court action which
19 transferred jurisdiction to the tribal court. The
20 respondents appealed that transferred jurisdiction. In the
21 interim, we had filed the petition for writ of assistance.

22 THE COURT: And that has been the Judge Hanson --

23 MR. SHIRLEY: The Judge Hanson case. When
24 Judge Hanson saw that the Court of Appeals had not ruled yet
25 on the appeal, he waited until he had a ruling before he

1 would issue anything. The petition for custody wasn't filed
2 until September, after the -- at the same time that they had
3 dismissed their -- their termination action which they'd
4 filed in juvenile court. So the petition came at a
5 subsequent time.

6 In reality, the petition in tribal court was the
7 tribe's, it was not my client's.

8 THE COURT: Do you want to respond to that,
9 Counsel?

10 MS. SANTANA: Your Honor, I have Judge Hanson's
11 order in front of me and it specifically says the May 22nd
12 1998 order transferring custody is not entitled to full
13 faith and credit.

14 Mr. Shirley's petition in this court was that you
15 give full faith and credit to the tribal court order, which
16 specifically contradicts that and says that my client
17 wrongfully maintained custody in contravention of the May
18 22nd order. And so you have entered a finding by giving
19 full faith and credit to that, that the May 22nd order was
20 wrongfully disobeyed by my client.

21 THE COURT: All right. Where is --

22 MS. SANTANA: (Inaudible).

23 THE COURT: Where is the child or the children
24 now?

25 MS. SANTANA: Your Honor, Mr. Shirley went to the

1 child's school when he -- this is what I understand. He
2 went to the school and picked him up and gave him over to a
3 person from the Indian tribe to transport him to Montana.
4 In the process, that person decided that he was not going to
5 transport him and dropped him off at the house of a
6 relative.

7 THE COURT: Let me ask again: Where is the child
8 or the children? Do you know, Mr. Shirley?

9 MR. SHIRLEY: I don't know. They won't disclose
10 that.

11 MS. SANTANA: He's at the home of a relative, Your
12 Honor. And I reported it to DCFS the day that he was
13 dropped off. He's not in the custody of my clients,
14 however.

15 THE COURT: But your clients know where he is.

16 MS. SANTANA: My clients know where he is by word
17 of mouth. They have not had any involvement in what has
18 happened.

19 THE COURT: Is there anything else?

20 MS. SANTANA: Basically, Your Honor, I disagree
21 with Mr. Shirley's explanation of the law. I think that the
22 issue is specifically exactly the same issue, the issue that
23 he brought before this Court was that you give full faith
24 and credit to an order that says that the May 22nd order was
25 wrongfully disobeyed. And that issue Judge Hanson has ruled

1 upon and said that the May 22nd order is not enforceable and
2 not entitled to full faith and credit in Utah.

3 THE COURT: Well, there's also another case -- at
4 least I assume it's a separate case -- and this was one that
5 was assigned to Judge Medley and is styled 934903601, *Jayni*
6 *Searle v. Boyd Carl Searle*, where Judge Medley has entered a
7 decree of divorce dealing with custody issues.

8 What about that?

9 MS. SANTANA: The thing there, Your Honor, is that
10 that Boyd Searle is actually a different person. That is
11 Jayni Searle's ex-husband, who has now died. And my clients
12 are the grandparents.

13 THE COURT: I see. Would you like to say anything
14 further, Counsel?

15 MR. SHIRLEY: I would, Your Honor.

16 In *Crowther v. The District Court of Salt Lake*
17 *County*, 54 P.2d 243 Utah 1936, the court held that:
18 " Disobedience of an order made by the court within its
19 jurisdiction and power is contempt, although the order may
20 be clearly erroneous. Consequently, the authorities are
21 made in accordance that, where the court has jurisdiction
22 over the parties and of the subject matter of a suit and the
23 legal authority to make the order, a party refusing to obey
24 it, however erroneously made, is liable for contempt. Such
25 order, though erroneous, is lawful within the meaning of

1 contempt statutes until it is reversed by an appellate
2 court.

3 "The fact that a witness may disagree with the court on
4 the propriety of its ruling, of course, is no excuse for not
5 complying with it. The proper method for challenging the
6 correctness of an adverse ruling is by appeal and not by
7 disobedience."

8 THE COURT: Well, there's no question about that
9 being the state of the law. But at this point in time, what
10 I'm more interested in -- far more interested in than
11 assessing who's in contempt and why is making a
12 determination of what the proper method of the stating is.
13 And I'm not at this point in time. I'm inclined to grant
14 the stay, not agreeing to either of your positions beyond
15 that, and take a closer look at where we are and whether a
16 second file should have been set up or whether everything
17 was taken care of in the preceding action. And I'm not sure
18 what the answer is.

19 MR. SHIRLEY: Can I also give you this letter from
20 Judge Hanson in which he addressed this complaint of
21 bringing the -- excuse me -- of bringing the subsequent
22 matter. And in it he says, "With regard to the complaints
23 of Ms. Santana that Mr. Shirley has brought this matter
24 before Judge Lewis, please be advised that I do not find any
25 impropriety in that regard, as it was my intention to only

1 address the May 22nd, 1998 order and the writ of assistance
2 that was requested based thereon.

3 "If any subsequent order has been properly domesticated
4 under the Utah Foreign Judgment Act and is otherwise
5 enforceable, I am confident that Judge Lewis, who apparently
6 is assigned to the case, will handle the matter in
7 accordance with the facts as she finds them in accordance
8 with the law."

9 So even Judge Hanson didn't believe -- understood
10 that there would be a subsequent action.

11 MS. SANTANA: May I respond to that, Your Honor?

12 THE COURT: Yes.

13 MS. SANTANA: Judge Hanson, however, is stating
14 there that he's only dealing with the May 22nd order.

15 THE COURT: That's right.

16 MS. SANTANA: He's not looking at those other
17 orders, and those other orders specifically have findings
18 within them that say that the May 22nd order was proper and
19 that my clients disobeyed it. And so he's not dealing with
20 the issue on the merits; he's basically saying that if there
21 are other orders that are otherwise enforceable, that is
22 something that you would decide.

23 THE COURT: Well, right. I think that was
24 Counsel's position, that what Judge Hanson had dealt with
25 did not dispose of all the issues.

1 I'm going to grant a stay. I would like
2 immediately for the information, however, about the
3 whereabouts of the child to be shared so everybody has that
4 information. And I will take this under advisement and look
5 at it and see if we've erred or if we're on the right track
6 here.

7 Is there anything either of you would like to say
8 in response to that?

9 MR. SHIRLEY: Judge, I'd just like a chance to
10 file a written response.

11 THE COURT: To?

12 MR. SHIRLEY: To the pleadings.

13 THE COURT: The motion to stay?

14 MR. SHIRLEY: Yeah.

15 THE COURT: All right. Counsel? Ms. Santana?

16 MS. SANTANA: Well, I think it's unnecessary,
17 but --

18 THE COURT: What do you mean you think it's
19 unnecessary?

20 MS. SANTANA: Well, you have -- if you're going to
21 look at the issue and only order a stay temporarily, I don't
22 see wanting to respond to it.

23 THE COURT: Because he's entitled to state his
24 position just as you were.

25 MS. SANTANA: Okay. That's fine.

1 THE COURT: In writing, as well as orally.

2 How long do you need, Counsel?

3 MR. SHIRLEY: I just need until Monday.

4 THE COURT: I'll give you a week to file that, and
5 I will look again at Ms. Santana's pleading and yours, and
6 I'll consider what both of you had to say today. And in the
7 meantime, we'll pull Judge Hanson's case, which I don't have
8 before me.

9 It seems to me that we did look at the earlier,
10 but we'll do it again and make sure that we're correct in
11 the meantime with the very short-term stay in place to allow
12 me to revisit the issue.

13 Anything further?

14 MS. SANTANA: Well, Your Honor, I do have one
15 question.

16 THE COURT: Yes.

17 MS. SANTANA: My clients do know where the child
18 is.

19 THE COURT: Yes.

20 MS. SANTANA: And they have not had any contact
21 with him because they don't want to, in any way, disobey the
22 Court's order. Are they now authorized to have contact with
23 him?

24 THE COURT: No.

25 MS. SANTANA: Excuse me?

1 THE COURT: No.

2 MS. SANTANA: No?

3 THE COURT: We're not changing anything, we're
4 just staying things at the moment to determine whether or
5 not the Court has erred, whether or not things need to be
6 adjusted. But I do think that all sides ought to be in the
7 same position vis-a-vis information about the child.
8 Everybody's entitled to know where the child is.

9 MS. SANTANA: Okay, Your Honor.

10 THE COURT: And do you want to do an order,
11 Ms. Santana, covering what we've worked on today, or some
12 little issue we've addressed? In the meantime, I'm going to
13 take full benefit of the excellent pleadings that have been
14 filed by you and what I assume Mr. Shirley may be filing in
15 addition and make sure that I have not erred and take
16 another look at this. Because I want to be sure I'm
17 correct. And I appreciate your calling it to my attention.

18 Is there anything further?

19 MS. SANTANA: Your Honor, just one little, small
20 issue that I'd like to address.

21 THE COURT: Yes.

22 MS. SANTANA: And that's as to how they would
23 serve your pleadings. Mr. Shirley has recently begun
24 sending me everything certified mail and recently has sent
25 me something, and I don't know if it's in this case or not,

1 that I was not able to get because there was no one at the
2 office yesterday when it came. And I would just like
3 service to be by mail.

4 THE COURT: Well, certified mail is by mail. Are
5 you saying you'd like a simple mailing as well as a
6 certified mailing, if he chooses to use certified mail?

7 MS. SANTANA: Exactly.

8 THE COURT: All right.

9 MS. SANTANA: Because now I'm in the position of
10 having to go to the post office to go pick up the mail now.

11 THE COURT: All right. Well, I think that's a
12 reasonable request. If Mr. Shirley wants to use certified
13 mail, he's welcome to do that, but I'm going to ask you also
14 to send via regular mail the same pleadings.

15 MR. SHIRLEY: That's fine.

16 THE COURT: Okay? Anything else, counsel?

17 MS. SANTANA: That's all. Thank you.

18 THE COURT: All right. Thank you.

19 (Whereupon, the hearing was concluded.)

20 -ooo0ooo-

21

22

23

24

25

C E R T I F I C A T E

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

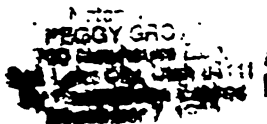
I, JERI KEARBHEY, a Certified Court Transcriber in
and for the State of Utah, do hereby certify that the foregoing
electronically-recorded proceedings were transcribed by me from tapes
furnished by the Third Judicial District Court in and for Salt Lake
County, State of Utah;

That pages 1 through 16, both inclusive, represent
a full, true, and correct transcript of the testimony given and the
proceedings had on November 23, 1999, and that said transcript
contains all of the evidence, all of the objections of counsel and rulings
of the Court, and all matters to which the same relate.

DATED this 27th day of July 2001.


JERI KEARBHEY, CCT

I hereby affirm that the foregoing transcript was
prepared under my supervision and direction.




Peggy Grover, CSR, RPR/Notary

IN THE COURT OF APPEALS

FOR THE STATE OF UTAH

Jayni Searle,	}	
	}	
Appellant,	}	Case No. 20000274CA
	}	
v.	}	
	}	
Boyd and Dorothy Searle,	}	
	}	
Appellees.	}	

Appellant’s Reply Brief – Addenda B

Maria Cristina Santana (7300)
SANTANA LAW FIRM
44 West Broadway, Suite 304
Salt Lake City, Utah 84101
Telephone: (801) 363-5803

FILED
THIRD JUDICIAL DISTRICT COURT
99 DEC -6 AM 7:56
SALT LAKE DEPARTMENT
BY
DEPUTY CLERK
CLERK OF DISTRICT COURT
Third Judicial District
DEC 8 1999
SALT LAKE COUNTY
M. Small

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

JAYNI SEARLE,	:	
	:	ORDER OF STAY
Plaintiff,	:	
	:	
vs.	:	
	:	
BOYD SEARLE, and	:	Case No. 99-690-7234FJ
DOROTHY SEARLE,.	:	
	:	Judge: Leslie Lewis
Defendants.	:	

The above-entitled matter came on for hearing on November 23, 1999, before the Honorable Leslie Lewis, Third District Court Judge, pursuant to Respondent's Emergency Motion for Stay. Present at said hearing were Jim C. Shirley, counsel for Petitioner; and Maria Cristina Santana, counsel for Respondents via telephone. The Court having reviewed the pleadings, and the Court having heard argument by the respective parties and being fully advised in the premises, it is hereby

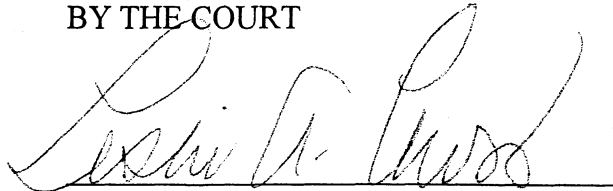
ORDERED, ADJUDGED AND DECREED as follows:

1. That the Court's August 25, 1999 Order entitled "Entry of Judgment" is stayed and shall not be enforced by the parties or law enforcement until further order of the Court;

2. Petitioner and Respondents shall share information regarding the minor child so that the parties have equal access to information regarding the child.

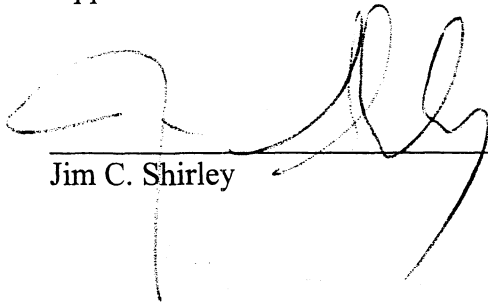
DATED this 8th day of Dec 1999.

BY THE COURT

A handwritten signature in cursive script, appearing to read "Leslie Lewis", written over a horizontal line.

Honorable Leslie Lewis
Third District Court Judge

Approved as to form


A handwritten signature in cursive script, appearing to read "Jim C. Shirley", written over a horizontal line.

Jim C. Shirley

CERTIFICATE OF SERVICE

I hereby certify that on this 28 day of Nov 1999, I caused to be served by mail
and **fax** a true and correct copy of the foregoing upon:

Jim Shirley
9 East Exchange Place, Suite 400
Salt Lake City, Utah 84111
Fax: 359-0181

A handwritten signature in cursive script, reading "Maria C. Santana", written over a horizontal line.

IN THE COURT OF APPEALS

FOR THE STATE OF UTAH

Jayni Searle,	}	
	}	
Appellant,	}	Case No. 20000274CA
	}	
v.	}	
	}	
Boyd and Dorothy Searle,	}	
	}	
Appellees.	}	

Appellant’s Reply Brief – Addenda C

THIRD DISTRICT COURT - SLC COURT
SALT LAKE COUNTY, STATE OF UTAH

JAYNI SEARLE,	:	MINUTES
Plaintiff,	:	LAW & MOTION
	:	
	:	
vs.	:	Case No: 996907234 FJ
	:	
BOYD SEARLE Et al,	:	Judge: LESLIE A. LEWIS
Defendant.	:	Date: November 23, 1999

Clerk: chells

PRESENT

Plaintiff's Attorney(s): JIM C SHIRLEY
Defendant's Attorney(s): MARIA CRISTINA SANTANA
Video

HEARING

TIME: 10:50 AM At this time the motion to stay enforcement of the order is argued to the court.

Based on the arguments, the Court grants the motion to stay.

The Court will look at the issue of the second filing of a complaint, and make a determination if the Court has erred or if there needs to be an adjustment in the Court's ruling.

Mr Shirley may file a written response to the motion to stay.

Ms Santana is to disclose the location of the child. All parties are to know where the child is at.

There is no changes as to the status of contact with the child.

IN THE COURT OF APPEALS
FOR THE STATE OF UTAH

Jayni Searle,	}	
	}	
Appellant,	}	Case No. 20000274CA
	}	
v.	}	
	}	
Boyd and Dorothy Searle,	}	
	}	
Appellees.	}	

Appellant's Reply Brief – Addenda D

THIRD DISTRICT COURT - SLC
SALT LAKE COUNTY, STATE OF UTAH

JAYNI SEARLE vs.

CASE NUMBER 996907234 Foreign Judgment

CURRENT ASSIGNED JUDGE
LESLIE A. LEWIS

PARTIES

Plaintiff - JAYNI SEARLE
P O Box 702
Wolf Point, MT 59201
Represented by: JIM C SHIRLEY

Defendant - BOYD SEARLE
4906 South 4460 West
Kearns, UT 84118
Represented by: MARIA CRISTINA SANTANA

Defendant - DOROTHY SEARLE
4906 South 4460 West
Kearns, UT 84118

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	15.00
	Amount Paid:	15.00
	Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: CERTIFICATION

	Amount Due:	2.00
	Amount Paid:	2.00
	Amount Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: CERTIFIED COPIES

	Amount Due:	1.00
	Amount Paid:	1.00
	Amount Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: CERTIFICATION

	Amount Due:	2.00
	Amount Paid:	2.00
	Amount Credit:	0.00

Balance:	0.00
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Amount Due:	3.00
Amount Paid:	3.00
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Balance:	0.00
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Amount Paid:	0.75
Amount Credit:	0.00
Balance:	0.00
REVENUE DETAIL - TYPE: CERTIFICATION	
Amount Due:	2.00
Amount Paid:	2.00
Amount Credit:	0.00
Balance:	0.00
REVENUE DETAIL - TYPE: COPY FEE	
Amount Due:	0.75
Amount Paid:	0.75
Amount Credit:	0.00
Balance:	0.00

CASE NOTE

PROCEEDINGS

06-15-99	Judge LEWIS assigned.	susies
06-15-99	Filed: Affidavit of Impecuniosity	susies
06-15-99	Filed: Complaint	susies
06-15-99	Filed: Findings of Fact, Conclusions of Law and Decree (from Fort Peck Tribal Court)	susies
06-15-99	Filed: Order Re: Order to Show Cause (from Fort Peck Tribal Court)	susies
06-15-99	Filed: Affidavit in Support of Entry of Foreign Judgment	susies
06-15-99	Filed: Notice of Judgment (copy of file mailed to defendants)	susies
06-15-99	Case Disposition is Judgment on Pleading	susies
	Disposition Judge is LESLIE A. LEWIS	susies
06-24-99	Filed: Response to notice of judgment and affidavit in support	

	of entry of foreign judgment		janeilm
06-24-99	Filed: Response to notice of judgment and affidavit in support of entry of foreign judgment		chells
06-25-99	Filed: Notice of intent to file responsive pleading to respondent's pleadings		janeilm
06-25-99	Filed: Objection to June 21, 1998 Letter & motion to strike June 21, 1998 letter		janeilm
07-06-99	Filed: Memorandum in support of entry of foreign judgment and in response to motion for consolidation		margeneg
08-13-99	Filed: Notice to submit and request for decision		chells
08-13-99	Filed: Application for entry of judgment		chells
08-25-99	Filed order: Signed Entry of judgment Judge llewis Signed August 25, 1999		margeneg
09-08-99	Filed: Entry of Judgment @		margeneg
10-04-99	Fee Account created Total Due: 2.00		nancyka
10-04-99	Fee Account created Total Due: 1.00		nancyka
10-04-99	CERTIFICATION Payment Received: 2.00		nancyka
10-04-99	CERTIFIED COPIES Payment Received: 1.00		nancyka
10-04-99	Fee Account created Total Due: 2.00		heaths
10-04-99	Fee Account created Total Due: 3.00		heaths
10-04-99	CERTIFICATION Payment Received: 2.00		heaths
10-04-99	CERTIFIED COPIES Payment Received: 3.00		heaths
10-22-99	TEMP RESTRAIN ORDER scheduled on October 26, 1999 at 03:00 PM in Fourth Floor - N44 with Judge LEWIS.		chells
10-26-99	TEMP RESTRAIN ORDER Cancelled. Reason: ATD requested continuance.		chells
11-03-99	Filed: Notice of deposition		janeilm
11-03-99	Filed: Notice of deposition		janeilm
11-09-99	Fee Account created Total Due: 3.50		kimbers
11-09-99	Fee Account created Total Due: 0.75		kimbers
11-09-99	Fee Account created Total Due: 2.00		kimbers
11-09-99	CERTIFIED COPIES Payment Received: 3.50		kimbers
11-09-99	COPY FEE Payment Received: 0.75		kimbers
11-09-99	CERTIFICATION Payment Received: 2.00		kimbers
11-10-99	Filed: Notice of change of address		janeilm
11-10-99	Filed: Motion for protective order and motion for attorneys fees		janeilm
11-12-99	Fee Account created Total Due: 0.75		betsyc
11-12-99	COPY FEE Payment Received: 0.75		betsyc
11-12-99	Filed: Response in opposition to motion for protective order		janeilm
11-12-99	Filed: Response in opposition to motion for attorneys fees		janeilm
11-12-99	Filed: Response in opposition to motion for protective order		janeilm
11-12-99	Filed: Memorandum in support of response in opposition to motion for protective order		janeilm
11-12-99	Filed: Response in opposition to motion for attorneys fees		janeilm
11-12-99	Filed: Memorandum in support of expedited motion and order to compel		janeilm
11-12-99	Filed: Ex parte motion for expedited disposition		janeilm

11-12-99	Filed: Notice of motion for expedited disposition	janeilm
11-12-99	Filed: Request for ruling on motion for expedited disposition	janeilm
11-16-99	Filed: Reply to opposition to motion for protective order and motion for attorney's fees	janeilm
11-16-99	EXPEDITED MO TO STAY scheduled on November 23, 1999 at 10:00 AM in Fourth Floor - N44 with Judge LEWIS.	chells
11-18-99	Filed: Objection to ex parte motion for expedited disposition and motion to compel (request for hearing)	janeilm
11-18-99	Filed: Notice to submit for decision	janeilm
11-22-99	Filed: Amendment to response in opposition to motion for protective order	chells
11-22-99	Filed: Emergency motion for stay pending rule 60 motion	chells
11-22-99	Filed: Motion to set aside judgment and motion for declaratory judgment	chells
11-22-99	Filed: Memorandum in support of motion to set aside judgment and motion for declaratory judgment	chells
11-22-99	Filed: Amendedment to response in opposition to motion for protective order	chells
11-22-99	Filed: Documents responding to 11/22/99 emergency motion for stay	chells
11-22-99	Filed: Unsigned Expedited motion and order to compel	chells
11-23-99	Minute Entry - Minutes for Law & Motion	chells
	Judge: LESLIE A. LEWIS	
	Clerk: chells	
	PRESENT	

Plaintiff's Attorney(s): JIM C SHIRLEY
Defendant's Attorney(s): MARIA CRISTINA SANTANA
Video

HEARING

TIME: 10:50 AM At this time the motion to stay enforcement of the order is argued to the court.

Based on the arguments, the Court grants the motion to stay.

The Court will look at the issue of the second filing of a complaint, and make a determination if the Court has erred or if there needs to be an adjustment in the Court's ruling.

Mr Shirley may file a written response to the motion to stay.

Ms Santana is to disclose the location of the child. All parties are to know where the child is at.

There is no changes as to the status of contact with the child.