

2000

Jayni Searle v. Boyd Searle and Dorothy Searle : Brief of Appellee

Utah Court of Appeals

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IN THE COURT OF APPEALS
STATE OF UTAH

JAYNI SEARLE,

Appellant,

vs.

BOYD and DOROTHY SEARLE,

Appellees.

Case No. 2000-0274-CA

Priority 4

BRIEF OF APPELLEES

This is an appeal from a final order of the Third District Court dated February 25, 2000 entered by the Honorable Judge Leslie A. Lewis presiding.

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FILED
Utah Court of Appeals

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Paulette Stagg
Clerk of the Court

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PARTIES TO THE PROCEEDINGS

The following are parties to the proceedings:

1. Petitioner/ Appellant Jayni Searle;
2. Respondents/ Appellees Boyd and Dorothy Searle;
3. Other persons and entities mentioned are the Fort Peck Assiniboine and Sioux Tribe and its counsel Gary Beaudry, whom are not parties in the Third District Court case. These persons and entities participated in the proceedings before the Third District Juvenile Court and the Fort Peck Tribal Court. While Appellant makes references to them in her brief and serves copies of the brief upon Mr. Beaudry, Appellee does not include them because they did not intervene in the Third District Court case.

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JURISDICTION OF THE COURT

The Court of Appeals does not have jurisdiction over this appeal of a final order of the Third District Court involving domestication and enforcement of a foreign judgment. The Utah Supreme Court has jurisdiction over this matter under Utah Code Ann. § 78-2-2(3)(j).

ISSUES PRESENTED FOR REVIEW

Appellees disagree with Appellant's characterization of the nature of the issues presented for review. More particularly, Appellant erroneously designates factual and discretionary issues as legal issues and thereby purports to apply an incorrect standard of review. Appellees will hereinafter recite the issues which Appellant presents for review noting Appellees' position as to the nature of the issue and the appropriate standard of review.

- 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 disagree with the designation of this issue as a question of law. This issue involves mixed questions of fact and law. Findings of Fact are reviewed under the clearly erroneous standard and will not be set aside unless they are so lacking in support as to be against the clear weight of the evidence. *Young v. Young*, 979 P.2d 338, 342, (Utah 1999); *Pennington v. Allstate Ins. Co.*, 973 P.2d 932, 937 (Utah 1998); *Johnson v. Higley*, 977 P.2d 1209, 1214 (Utah App. 1999); Rule 52(a), Utah R. Civ. P. (hereinafter "Standard of Review"). Conclusions of law are reviewed for correctness. *Howell v. Howell*, 806 P.2d 1209, 1211 (Utah

App. 1991); *Pendeleton v. Pendeleton*, 918 P.2d 159, 160 (Utah App. 1996); *Smith v. Smith*, 793 P.2d 407, 409 (Utah App. 1990). In determining the correctness of the trial court's determination, the Appellate Court decides the matter for itself and does not defer in any degree to the trial judge's determination of law. *State v. Pena*, 869 P.2d 932, 935 (Utah 1994).

Appellees disagree that *Marguiles By and Through Marguiles v. Upchurch*, 696 P.2d 1195, 1199-2000 (Utah 1985) supports the designation of this issue as a question of law as the case provides no support for the designation.

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

Appellees disagree with the designation of this issue as a question of law. This issue involves questions of discretion. Discretionary rulings are reviewed under an abuse of discretion standard. *State v. Pena*, 869 P.2d 932, 936-39 (Utah 1994); *Crookston v. Fire Ins. Exch.*, 860 P.2d 937, 938 (Utah 1993); *Kunzler v. O'Dell*, 855 P.2d 270, 275; *Ames v. Maas*, 846 P.2d 468, 476 (Utah Ct. App. 1993) (hereinafter "Standard of Review").

Appellees disagree that *Marguiles By and Through Marguiles v. Upchurch*, 696 P.2d 1195, 1199-2000 (Utah 1985) supports the designation of this issue as a question of law as the case provides no support for the designation.

DETERMINATIVE AUTHORITIES

The legal authorities that are determinative of the appeal or of central importance to the appeal include:

Constitutional Provisions:

U. S. Const., Amend. 5, 14

Utah Const. Art. 1, § 7

Utah Const. Art. 1, § 24

Statutory Provisions:

Utah Code Ann. § 78-2-2(3)(j)

Utah Code Ann. § 78-22a-1 *et. seq.* (1998)

Rules of Procedure:

Utah Rules of Appellate Procedure, Rule 4

Utah Rules of Appellate Procedure, Rule 24(a)(5)

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STATEMENT OF CASE

In addressing the issues raised by the Appeal, Respondent/Appellees, Boyd Searle will be referred to as “the grandfather” while Boyd and Dorothy Searle collectively will be referred to as “the grandparents” and Petitioner/Appellant, Jayni Searle will be referred to as “the mother.”

A. Nature of Case.

This case concerns the enforceability of a foreign judgment entered by the Fort Peck Assiniboiné and Sioux Tribal Court (hereinafter “the Fort Peck Tribal Court”) located on an Indian Reservation in Poplar, Montana.

B. Course of Proceedings.

In February 1998, the grandparents filed in the Third District Juvenile Court (hereinafter “the Juvenile Court”) a Petition to Terminate the Parental Rights of the mother in relation her minor child. **(R. 361.)** The Juvenile Court granted temporary custody of the child to the grandparents on March 3, 1998. **(R. 362.)** The mother subsequently filed in the Juvenile Court a Petition to Transfer to the Fort Peck Tribal Court. The Juvenile Court transferred jurisdiction over the pending Petition to Terminate Parental Rights to the Fort Peck Tribal Court (hereinafter “the Tribal Court.”). **(R. 333.)** On May 22, 1998, the Tribal Court issued an ex-parte temporary order accepting jurisdiction and transferring custody of the minor child to the mother. **(R. 335.)** On May 28, 1998 the mother filed a Petition for Writ of Assistance with the Third District Court, Judge Timothy R. Hanson, presiding, seeking enforcement of the May 22, 1998 Fort Peck Tribal Court Order against the grandfather. (It is inexplicable why this action was commenced only against the grandfather rather than both grandparents, particularly since the Tribal Court Order named both grandparents). **(R. 174.)** On March 8, 1999, Judge Hanson convened a hearing and dismissed the Petition for Writ of Assistance on grounds that the action was not properly filed under the Foreign Judgment Act and the Tribal Court order is not entitled to full faith and credit because the grandfather’s due process rights were violated. **(R. 174-177.)** A few weeks later, on June 15, 1999, the mother commenced a second action in the Third District Court (hereinafter “the trial

SUMMARY OF ARGUMENT

I.

The mother's failure to provide a transcript makes it impossible for the Appellate Court to review all the evidence and determine whether the challenged findings or conclusions are in error. In the absence of a transcript, the mother must demonstrate the conclusions are inconsistent with the findings, something she has failed to do. Consequently, the Appellate Court must disregard the arguments and affirm both the findings and conclusions.

II.

The trial court was barred by res judicata from giving full faith and credit to the October 16, 1998 Tribal Court order because it continued and affirmed the May 22, 1998 Tribal Court order that Judge Hanson had dismissed and found to not be entitled to full faith and credit.

III.

The trial court's order granting the grandparent's motion to set aside was not an abuse of discretion and therefore must be affirmed. Further, the mother's position that the motion was untimely and that the trial court lacked sufficient grounds to grant the motion is unsupported by a transcript or marshalling of the evidence. The mother's complaint that the trial court did not enter findings as to Rule 60(b) grounds must not be considered by the Appellate Court because the issue was not properly preserved for appellate review.

court”) seeking enforcement of a second Tribal Court order that specifically held the grandparents in contempt for noncompliance with the May 22, 1998 Tribal Court order which Judge Hanson had determined was entered in violation of the grandfather’s due process rights. **(R. 15-16)**. The grandparents filed a Response objecting to entry of the Tribal Court order. **(R. 31)**. The trial court issued an Entry of Judgment on August 25, 1999 recognizing and giving full faith and credit to the Tribal Court order. **(R. 68-74)**. On November 16, 1999, the grandparents filed an Emergency Motion for Stay, Motion to Set Aside Judgment and Motion for Declaratory Judgment. **(R. 151-207)**. On November 23, 1999, the trial court held a hearing on the 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)**. The trial court issued a written ruling on February 7, 2000, and entered an Order setting aside the Entry of Judgment on February 25, 2000. **(R. 611-615; 620-624)**. The trial court further set for hearing the Motion for Declaratory Judgment for April 2000 **(R. 611-615)**. The mother filed notice of appeal on March 27, 2000 before the Motion for Declaratory Judgment was heard. **(R. 627-633)**. The trial court convened a hearing on the motion for Declaratory Judgment and determined that since the issue was on appeal, hearing on the motion was no longer necessary (despite the grandparents objection). **(R. 673)**.

ARGUMENT

I. THE APPELLATE COURT MUST AFFIRM THE TRIAL COURT'S FINDINGS AND CONCLUSIONS BECAUSE THE MOTHER FAILED TO PROVIDE A TRANSCRIPT.

The mother's first issue asks, *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?* This issue is improperly characterized by the mother as a question of law. It should be properly characterized as a mixed question of fact and law because the mother challenges the sufficiency of the evidence throughout her brief and because the question hinges on whether the factual finding that one order related to and stemmed from another is correct.

The Appellate Court need not reach these issues, however, because of the mother's failure to provide a transcript. On November 23, 1999, the trial court held a hearing on the Motion for Stay and Motion to Set Aside Judgment. While the minute entry does not accurately reflect the entire substance of the hearing, it indicates the issue of "the second filing of complaint" (or the second filing for full faith and credit of the May 22, 1998 Tribal Court order, which was the crux of the Motion to Set Aside) was addressed and the trial court took under advisement the issue "to make a determination if the court erred or if there needs to be an adjustment in the Court's ruling." (R. 324.)

The mother's failure to provide a transcript makes it impossible for the Appellate Court to review all the evidence and determine whether the findings or conclusions are in error. The trial court's ruling must be affirmed particularly

since the mother's appeal relies heavily on her contention that the trial court either ignored the evidence, misread the evidence or reached conclusions contrary to the evidence. The mother's brief is riddled with assertions in this regard, for instance,

"ANALYSIS OF THE ERROR IN THE CONCLUSION OF LAW

(1) Court Incorrectly Entered a Conclusion Based Upon the Evidence"

(Appellant's Brief, 19.)

"...[T]he trial court's conclusion, based upon these findings and order, that the Custody Decree stemmed from the May 22, 1998 Order is not supported by the facts in the record. The evidence presented below indicates that the trial court's conclusion fails to factor in the entire gambit of language in the [Tribal Court's] Findings, Conclusions, and Order from October 1998."

(Appellant's Brief, 20.)

"Additionally, the Court's conclusion is not supported by the evidence."

(Appellant's Brief, 24.)

"The trial court's findings are insufficient to form a basis upon which to deny enforcement under the relevant case law."

(Appellant's Brief, 29.)

"The Judgment should be reversed in that Appellee's failed to demonstrate evidence justifying relief."

(Appellant's Brief, 32.)

"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 a finding or conclusion. Rule 11 [of the Utah Rules of Appellate Procedure] requires counsel provide the appellate court all evidence pertinent to the issues on appeal." *King v. Industrial*

Commission of Utah, 850 P.2d 1281, 1285; *Prudential Capital Group Co. v. Mattson*, 802 P.2d 104, 106 (Utah Ct. App. 1990), *Fackrell v. Fackrell*, 740 P.2d 1318, 1319 (Utah 1987). “A petitioner must also provide a transcript if he argues a legal conclusion is unsupported by the evidence in the case. Otherwise we [the appellate courts] have no basis on which to evaluate the findings and conclusions.” *King v. Industrial Commission of Utah* at 1285. Without a transcript, the Appellate Court must “review the court’s legal conclusions for consistency with the findings.” *Prudential Capital Group Co. v. Mattson* at 106; *Scarf v. BMG Co.*, 700 P.2d 1068, 1070 (Utah 198); *King v. Industrial Commission of Utah* at 1285.

The mother undeniably argues exactly what the preceding case law holds must be accompanied by a transcript: that the findings or conclusions are unsupported or contrary to the evidence as demonstrated *supra* from excerpts of the mother’s brief. In the absence of a transcript the mother must demonstrate the conclusions are simply inconsistent with the findings and she has failed to do this altogether. Consequently, the Appellate Court must disregard the arguments outright and affirm both the findings and conclusions.

II. THE TRIAL COURT DID NOT ERR BECAUSE RES JUDICATA BARRED ENFORCEMENT OF AND CONTEMPT FOR NONCOMPLIANCE WITH THE MAY 22, 1998 TRIBAL COURT ORDER.

Judge Hanson issued an order dismissing the mother’s petition seeking full faith and credit to a May 22, 1998 Tribal Court order on grounds that the grandfather’s due process rights had been violated on July 26, 1999. **(R. 174-177)**. The mother then submitted a second Tribal Court order dated October 16, 1998

to the trial court in this matter purporting to hold the grandfather in contempt for violating the May 22, 1998 order Judge Hanson had found to have been entered without due process and seeking to uphold and continue said order. **(R. 15-16).**

Based upon Judge Hanson's findings that the May 22, 1998 Tribal Court order was not entitled to full faith and credit, res judicata barred the trial court from enforcing the October 16, 1998 Tribal Court order that found the grandfather had wrongfully maintained custody and continued the order. "The doctrine of res judicata is based on the premise that the proper administration of justice is best served by limiting parties to one fair trial of an issue or cause." *Trimble Real Estate v. Monte Vista Ranch*, 758 P.2d 451, 453 (Utah Ct. App. 1988). Res judicata has two distinct branches. The first branch is claim preclusion, which bars the relitigation of claims that have been previously litigated between the same parties, and two, issue preclusion, which prevents relitigation of issues that have been decided. *BJH v. State of Utah ex rel. H.R. & B.R.*, 945 P.2d 158 (Utah Ct. App. 1997.)

The claim preclusion branch of res judicata requires three elements: "First, both cases must involve the same parties or their privies. Second the claim that is alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits." *State in the Interest of T.J.*, 945 P.2d 158, 162 (Utah Ct. App. 1997).

Both claim preclusion and issue preclusion apply to this case because the same parties and the same issues pertaining to transfer of custody and the validity of the May 22, 1998 Tribal Court order were before the trial court. Judge Hanson irrevocably decided the issues on July 26, 1999. Therefore the trial court in this matter had no choice but to deny giving full faith and credit to the October 16, 1998 Tribal Court order which would directly contradict and overturn Judge Hanson's ruling regarding the earlier May 22, 1998 order. Doing otherwise would overturn Judge Hanson's ruling and affirm the May 22, 1998 in violation of the doctrine of res judicata after Judge Hanson entered findings that it was not entitled to full faith and credit.

III. THE TRIAL COURT'S ORDER SETTING ASIDE JUDGMENT MUST BE AFFIRMED BECAUSE THE TRIAL COURT DID NOT ABUSE ITS DISCRETION.

The mother's second issue asks, *Did the trial court err in setting aside the Entry of the Foreign Judgment under Rule 60(b) of the Utah Rules of Civil Procedure?* The mother's brief mischaracterizes this issue as a question of law. Whether a trial court should grant a motion for relief from judgment is a matter of discretion. *Gillmor v. Wright*, 850 P.2d 431, 434-36 (Utah 1993); *Mascaro v. Davis*, 741 P.2d 938, 942 (Utah 1987); *Laub v. South Cent. Utah Tel Ass'n*, 657 P.2d 1304, 1306 (Utah 1982). A trial court abuses its discretion if there is no reasonable basis for the decision. *Crookston v. Fire Ins. Exch.*, 850 P.2d 937, 938 (Utah 1993). A trial court's ruling will be reversed if the ruling is so unreasonable as to be classified as arbitrary and capricious or a clear abuse of discretion. *Kunzler v. O'Dell*, 855

P.2d 270, 275 (Utah Ct. App. 1993); *Ames v. Maas*, 846 P.2d 468, 476 (Utah Ct. App. 1993).

The mother argues that the Motion to Set Aside was untimely filed, the trial court erred because the grandparents failed to prove sufficient grounds under Rule 60 (b) and the trial court failed to make any conclusion or finding on Rule 60 (b) grounds. **(Appellant's Brief, 30-40)** None of the mother's arguments support abuse of discretion in granting the motion to set aside. The mother's arguments, improperly seeking review under the correctness standard, are discussed *infra*.

- A. The Motion to Set Aside Judgment was timely because the mother's own Entry of Judgment provided that the foreign judgment was given full faith and credit on August 25, 1999 and the motion was brought within three months of the order.**

Despite the fact that the Motion to Set Aside sought relief under Rule 60(b)(3),(4),(5)and/or(6), **(R. 157)** and the trial court granted the motion without entering findings or conclusions as to grounds under Rule 60(b), the mother appears to request that the Appellate Court assume the motion was granted under (60)(b)(3) which would require filing within three months. This is the underlying presumption supporting her contention that the trial court erred because the motion was untimely. Notwithstanding this assumption, nothing in the record supports a determination that the motion was granted specifically under 60(b)(3).

Further, the mother makes the frivolous argument that the grandparents Motion to Set Aside filed on November 16, 1999, within three months of the August 25, 1999 “Entry of Judgment,” was untimely because the foreign judgment “obtained full faith and credit on July 15, 1999, thirty days after the filing on June 15, 1999.” (**Appellant’s Brief, 31**) In essence, the mother argues that the grandparents and the trial court should have presumed the foreign order obtained full faith and credit at a certain date by making a calculation. No such presumption or calculation was necessary, nor binding, because the Entry of Judgment spells out a later date when the foreign judgment was given full faith and credit.

The Entry of Judgment drafted by the mother’s own counsel, and signed by the trial court on August 25, 1999, directly states that: “the Court hereby recognizes and gives full faith and credit to the October 16, 1998 order of the Fort Peck Tribal Court attached hereto. The attached order is hereby given full faith and credit, subject to all the enforcement provisions which govern such judgments.” The order makes it sufficiently clear that the foreign judgment is “hereby” given full faith and credit on the date the order is signed by the Court. (**See Appellant’s Brief, Addenda “H,” R. 68-74.**)

The second tier of the mother’s timeliness argument is that, despite the fact that the Motion to Set Aside specifically sought to set aside an order dated August 25, 1999, the motion **should have** sought to set aside some earlier order and would therefore be untimely. The motion clearly sought to set aside the

August 25, 1999 order, and whether the mother believes this was the proper remedy that should have been requested is irrelevant on the issue of timeliness because there is no question that the motion was brought within three months of the August 25, 1999 order.

The mother's argument fails entirely to demonstrate an abuse of discretion regarding timeliness. Not only did the trial court NOT reach an unreasonable conclusion, it reached the ONLY reasonable conclusion. Moreover, even review of the conclusion under the inappropriate correction of error standard, the Appellate Court must find that trial court's legal conclusion on timeliness is the only correct conclusion inasmuch as it is consistent with the facts on the record regarding the amount of time between the August 25, 1999 order and the November 19, 1999 motion seeking to set it aside.

B. Appeal of the timeliness of the motion is frivolous under Rule 33 of the Utah Rules of Appellate Procedure and should be sanctioned.

The mother's new position, that the judgment should be presumed to have obtained full faith and credit on the date it was filed rather than the date the entry of judgment was issued, is frivolous under Rule 33 of the Utah Rules of Appellate Procedure because it is not grounded in fact or law. The position is not grounded in fact or law because the Entry of Judgment itself provides the date the foreign order was given full faith and credit as August 25, 1999, and the Motion to Set Aside clearly sought to set aside that order within three months of entry. This position taken in the mother's brief contradicts the position taken in

the Entry of Judgment her counsel drafted and appears to be made in bad faith. The Court should sanction the mother in the amount of attorneys fees for bringing this frivolous appeal.

C. Sufficient grounds to set aside must be presumed because the mother failed to provide a transcript demonstrating there were insufficient grounds to set aside under Rule 60(b) and failed to marshal the evidence.

The mother argues there were insufficient grounds for the trial court to grant a Rule 60(b) motion. The mother frames this issue as an issue of law although she clearly questions the facts. The mother challenges the sufficiency of the facts at least twice in her brief, stating: "The trial court failed to identify which grounds were applicable to the Rule 60(b) Motion to Set Aside...The judgment should be reversed in that the Appellee's failed to demonstrate evidence justifying relief." (**Appellant's Brief, 32.**) "Appellant's did not demonstrate an adequate factual basis to support this alleged ground for relief. This Court can determine from the record, which is all based upon a Motion and Response, that the factual assertions by the Appellee would have failed to adequately state a claim for any relief under Rule 60(b)(3)." (**Appellant's Brief, 40.**)

As previously set forth, the mother provided no transcript of the November 23, 1999 hearing where the motion was argued and taken under advisement. In fact, the Appellate Court defaulted the mother and set the briefing schedule without benefit of a transcript because she failed to file a

request for transcript or a notice that no transcript was necessary. In absence of a transcript, the Appellate Court has no basis on which to evaluate the findings and conclusions and must review the trial court's legal conclusions for consistency with the findings. *Prudential Capital Group Co. v. Mattson* at 106; *Scarf v. BMG Co.*, 700 P.2d 1068, 1070 (Utah 198); *King v. Industrial Commission of Utah* at 1285.

D. The mother did not preserve for appellate review the issue of Rule 60(b) grounds.

The mother argues the appellate court should reverse the trial court 's order setting aside the August 25, 1999 "Entry of Judgment" because the trial court failed to make findings as to Rule 60(b) grounds. Admittedly, the trial court did not enter findings or conclusions as to the grounds for setting aside the order. However, the appellate court cannot reverse on this issue because the mother failed to preserve the issue for appellate review by failing to make a timely objection in the trial court.

The mother had at least two opportunities to make objections and preserve the issue. First, the trial court issued a written ruling setting aside the order but made no reference to Rule 60(b) grounds. The mother did not object to the ruling generally nor did she object to the omission of Rule 60(b) grounds. Second, the grandparents' counsel prepared a proposed order containing Findings of Fact and Conclusions of Law based on the written ruling as instructed by the trial court. The mother did not object to the proposed order nor

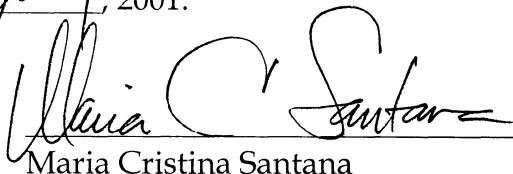
did she object to the omission of Rule 60(b) grounds. An issue is preserved for appellate review when three requirements are satisfied: i) the issue must be raised in a timely fashion; ii) the issue must be specifically raised; and iii) a party must introduce supporting evidence or provide relevant legal authority. *Hart v. Salt Lake County Comm'n*, 945 P.2d 125, 130 (Utah Ct. App. 1997). The three requirements are intended to “put the judge on notice of the asserted error and allow [] the opportunity for correction at the time in the course of the proceeding.” *Borberg v. Hess*, 782 P.2d 198, 210 (Utah Ct. App. 1989). The rationale for preservation of issues is that the trial court, in fairness, ought to have the chance to correct its own errors. *State v. Rudolph*, 970 P.2d 1221, 1225-26, 1227 (Utah 1998).

Contrary to this standard, the mother did not object and made no effort to notify the trial court of the alleged error, failed to provide the trial court relevant legal authority or the requisite opportunity to correct the alleged error. Consequently, the issue was not preserved and is improper for appellate review.

CONCLUSION

For all the foregoing reasons, the Appellate Court must affirm the trial court's order and award costs and attorneys fees against Appellant's counsel in favor of the Appellees.

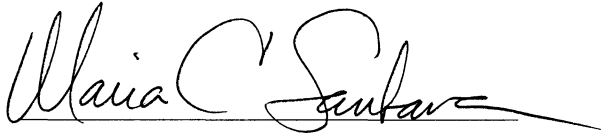
DATED this 3 day July, 2001.


Maria Cristina Santana

CERTIFICATE OF SERVICE

I hereby certify that on this 3 day of July, 2001, I caused to be served by US Mail a true and correct copy of the foregoing upon:

Jim C. Shirley
10 E. Exchange Place, Suite 527
Salt Lake City, Utah 84111

A handwritten signature in black ink, reading "Maia C Santos". The signature is written in a cursive style with a long horizontal flourish at the end.