Brigham Young University Law School
BYU Law Digital Commons

Utah Supreme Court Briefs (1965 –)

1982

Paul Christensen v. Weldon S. Abbott : Appellant's Reply Brief

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Part of the Law Commons

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.
Wallace D. Hurd; Attorney for Appellant;
George E. Mangan; Attorney for Respondent;

Recommended Citation
Reply Brief, *Christensen v. Abbott*, No. 18115 (Utah Supreme Court, 1982).
https://digitalcommons.law.byu.edu/uofu_sc2/2745

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

PAUL CHRISTENSEN,	:	
Plaintiff-Respondent,	:	Case No. 18115
vs.	:	
WELDON S. ABBOTT,	:	
Defendant-Appellant.	:	

APPELLANT'S REPLY BRIEF

APPEAL FROM JUDGMENT
of the
FOURTH JUDICIAL DISTRICT COURT
DUCHESNE COUNTY, STATE OF UTAH

The Honorable Allen B Sorensen, Judge

Wallace D. Hurd
#9 Exchange Place, Suite 520
Salt Lake City, Utah 84111

Attorney for Appellant

George E. Mangan
P.O. Box 246
Roosevelt, Utah 84066

Attorney for Respondent

FILED

OCT 20 1982

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

IN THE SUPREME COURT OF THE STATE OF UTAH

PAUL CHRISTENSEN,	:	
Plaintiff-Respondent,	:	
	:	Case No. 18115
vs.	:	
	:	
WELDON S. ABBOTT,	:	
	:	
Defendant-Appellant.	:	

APPELLANT'S REPLY BRIEF

APPEAL FROM JUDGMENT
of the
FOURTH JUDICIAL DISTRICT COURT
DUCHESNE COUNTY, STATE OF UTAH

The Honorable Allen B Sorensen, Judge

Wallace D. Hurd
#9 Exchange Place, Suite 520
Salt Lake City, Utah 84111

Attorney for Appellant

George E. Mangan
P.O. Box 246
Roosevelt, Utah 84066

Attorney for Respondent

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

TABLE OF CONTENTS

		Page
STATEMENT OF FACTS		1
ARGUMENT		5
POINT I	PLAINTIFF IS NOT ENTITLED TO RECOVER FOR FEEDING AND CARE OF CATTLE WRONGFULLY RETAINED	5
POINT II	QUANTUM MERUIT OR UNJUST ENRICHMENT	6
POINT III	THE TRIAL COURT ERRED IN COMPUTING THE AMOUNT OF THE JUDGMENT	8
POINT IV	CHRISTENSEN IS NOT ENTITLED TO PROCEEDS FROM THE SALE OF HIS COW	11
POINT V	AWARD OF ATTORNEYS FEES	12
CONCLUSION		12

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

IN THE SUPREME COURT OF THE STATE OF UTAH

PAUL CHRISTENSEN,	:	
Plaintiff-Respondent,	:	
vs.	:	Case No. 18115
WELDON S. ABBOTT,	:	
Defendant-Appellant.	:	

REPLY BRIEF OF APPELLANT

STATEMENT OF FACTS

Several comments in the statement of facts in Christensen's brief require a response.

Counsel expresses some surprise that "for the first time" it is acknowledged that the purchase of the black Angus cattle and the purchase of the Blue Mountain Ranch were separate business transactions. It is very elementary that they were totally separate transactions but were both part of the single operational plan of the parties. The purchase of the black Angus cows between Christensen and Abbott it was evidenced by a promissory note (Exhibit P-1) and a bill of sale (Exhibit P-2) while the Blue Mountain transaction between Haslems, Abbott and Christensen was

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

evidenced by a contract of sale covering real property and a bill of sale covering the cattle.

Much of the Christensen brief is devoted to the question of demands made by Abbott for the return of his cattle, both before and after April 28, 1976. Christensen's attorney appears to imply that in some fashion Abbott has altered the transcript of the first trial. On page six after quoting from this court's opinion that "the record indicates no demand by Abbott" Christensen's attorney states "that <u>was</u> the status of the record at that time." (emphasis added)

The fact is that the transcript contains five instances in which Abbott demanded return of his cattle. They are listed in the analysis directed by the Trial Judge (R-103). These demands appear as follows, all references being to the transcript of the first trial:

Page 47 line 16
Page 56 line 21
Page 58 line 12
Page 61 line 7
Page 172 line 7

In this same connection Christensen's attorney also devotes much space to comments on Abbott's statements regarding the purchase of the 200 head of black Angus. Christensen's counsel has persisted throughout two trials in

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

refusing to acknowledge that the controversy was not limited to the 200 head of black Angus cows but also included the cows purchased with the Blue Mountain Ranch. Abbott's attorney called the trial court's attention to this attitude:

> "Mr. Hurd: I might say your honor that this whole matter was gone into and gone into, the matter of black cows and red cows.
>
> The Court: Over and over and over again. I remember.
>
> Mr. Hurd: Many, many times and always Dr. Abbott's response was that he didn't care whether they were black or red, he had 200 coming." (TRII-76)

It is respectfully submitted that both Abbott's counsel and the trial court were correct in those statements.

In testifying as to the application of monies paid for the Haslem cattle Dr. Abbott said:

> "***in our final settlement that $51,500.00 went on my 200 cattle. It didn't make any difference to me what color they were." (TR-1 Page 40 Line 30)

Continuing along the same line:

> "***because he kept the Haslem cattle when we divided things. He kept the red ones and I got the black ones." (TR-I p43 Line 23)

Dr. Abbott is explaining to Christensen's attorney:

> "I got 200 and he got 200. The color didn't make any difference. He was taking the red ones so the black ones were then mine and he was supposed to tear up the note." (TR-1 161 Line 29 FF)

And a further statement:

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

"The color doesn't make any difference Mr. Mangan. They were on 200 cattle that we settled out at the end, the 200 that I got and he took his." (TR-1 174 Line 3)

And in examining Abbott regarding Exhibit P-37 the following testimony was given:

"At that time the agreement was I was getting the red cows. It doesn't make any difference what color my cattle are Mr. Mangan. You can tear up the note and keep the black cattle and let me have the red ones or you can keep the red ones and tear up the note and give me the black ones." (TR-1 182 Line 23)

And further testifying:

"$51,600 that I paid on the Haslem cattle in the first place, that was transferred to the Angus cattle when he took the red ones." (TR-1 189 Line 13)

And by way of final summary is the testimony:

"Q. On what basis did you agree that Paul might have the rest of the Haslem cows?

A. That I got the 200 Angus cattle to balance it out.

Q. I see. That was the basis?

A. Again it didn't make any difference what color. I had paid on the red ones but he kept the red ones. So the payment went on the black ones and the black ones were mine and the note was to be torn up." (TR-1 204 Line 12)

Perhaps the foregoing has been unduly verbose. If so, it is only because of the persistence with which Christensen's attorney continues to ignore the fact that the parties were dealing not with only 200 head of

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

black Angus cattle but also with cattle purchased as part of the Blue Mountain transaction. Abbott feels impelled to call the court's attention to the clear, concise and numerous statements made by him, and not rebutted, that by the termination agreement he was entitled to 200 cows whether they were black or red. It is respectfully submitted that any statements or suggestions made by Abbott prior to the disposition of the matter are inmaterial. As shown in the last cited quote, at one time Abbott thought he was getting the red cows, in which event Christensen would have the black ones. As it turned out Christensen kept the red ones so Abbott was entitled to the black ones.

We respectfully suggest that the statement on page 8 of Christensen's brief that Abbott's testimony was "figments of an active imagination" is to say the least inappropriate and uncalled for.

ARGUMENT

POINT I

PLAINTIFF IS NOT ENTITLED TO RECOVER FOR FEEDING AND CARE OF CATTLE WRONGFULLY RETAINED

Christensen's response to Abbott's brief on this point completely ignores the references to the complaint filed by

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

Christensen which we respectfully submit are very pertinent to show his state of mind and course of conduct. As pointed out in the Appellant's original brief Christensen admitted having received half of the proceeds from the sale of the calf crop in the year 1974 and also in the year 1975. Thus, even under Christensen's version of the agreement, he had been paid for the care of both the black Angus cows and the red cows during those years.

Nevertheless in paragraph 5 of the complaint (R 2) Christensen asks to be paid for caring for feeding and calving the 200 head of cattle from March, 1974 to the date of filing, July 4, 1976. By his own testimony, as shown in the Abbott's original brief, Christensen had been paid for these services at least for the years 1974 and 1975.

We suggest that filing a complaint seeking to recover a second time for such services clearly shows an unconscionable and over-reaching course of conduct.

POINT II

QUANTUM MERUIT

OR

UNJUST ENRICHMENT

As to the question of reasonableness of the costs claimed for care, attention is called to Exhibit 32 wherein a total

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

labor cost is shown as $2,989.20 at the rate of $.15 per head per day for 106 days.

Abbott testified that he was in possession of the Angus cow at the time of the first trial and that they were being cared for by a 16-year-old neighbor boy at a charge of $2.50 an hour. He further stated that it took that boy about an hour and a half to feed the cows (TR-1-196 Line 5 FF).

It is respectfully submitted that the trial court was correct in determining that the labor charge at least was excessive.

Under subdivision F (page 21) respondent argues on the matter of burden of proof and simply assumes that Christensen had proved that the amount claimed was reasonable. It is respectfully suggested that trial court did not so find and that such finding would not be supported by the record. In this regard we call the court's attention to the analysis of costs contained in a letter requested by the trial Judge (R 103) which shows that on Christensen's testimony as to the "reasonable" costs of feeding and caring for the cattle there would have been a loss of $70.42 per head. It must be assumed that the trial court took these figures into account in determining that Christensen's claims were exorbitant.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

It is further respectfully submitted that Christensen's conduct from and after filing the action shows a lack of good faith and bona fides.

Christensen was aware that Abbott owned property in the area and had a place to care for the cattle and the means to do so. He could easily have delivered the cattle maintaining nevertheless his right to be paid for their prior care and could have included in the action a claim for their care. It is noted that the parties did agree that the calves from these cattle be sold and the proceeds of sale placed in an escrow interest bearing account to await disposition by the court.(R 19) It is respectfully submitted that some such similar procedure would have minimized the great loss now claimed by Plaintiff.

POINT III

THE TRIAL COURT ERRED IN COMPUTING THE AMOUNT OF THE JUDGMENT

Christensen devotes more than 12 pages of his brief to a tortuous review of the testimony, most of which is simply a recapitulation of the memorandum submitted to the trial court under the caption "Value for Feeding and Care of Cattle" (R114).

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

It is respectfully submitted that this recapitulation is no more persuasive as now presented than it was found to be by the trial court.

In the course of this disertation, Christensen endeavors to show "what testimony should have been considered" by the trial court. It is too elementary to require citation of authority that the trial court has the right to accept such testamony that the trial judge finds believable and credible.

The most that can be said for Christensen's argument under this subdivision is that he is complaining that the trial court failed to adopt his view of the facts as shown by the testimony of the witnesses that he produced.

In the so-called analysis of Bleazard's testimony Christensen's attorney states that Christensen had in fact paid $65 per ton for the hay he fed whereas the figure of $45 per ton was used in Abbott's figures. We suggest that this is irrelevant. If hay is selling for $45 per ton and can be obtained for that price, even though the party claims to have paid $20 more per ton there is no reason that the court should accept this and allow recovery on that basis.

We respectfully suggest that Christensen's statement at page 33 of his brief that he established at the first trial

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

the sum of $58,448.80 to be a fair sum for the care of the cattle is unwarranted. That Exhibits 31 and 32 were identified as painting a summary of Christensen's testimony and were admitted in evidence. Both of these Exhibits purport to show expenses for an entire year. Nowhere in the transcript of either the first or second trial is there a segregation or breakdown of these Exhibits for the period in question and the number of head of cattle involved.

For an interesting comparison we suggest that the court examine Exhibit P29 which purports to include all expenses for the year 1975 in the operation of Blue Mountain Ranch including the care, maintenance and feeding of then 400 head of cattle. Total expenses were $58,709.42 which included a claimed wage of $1,000 per month for Christensen. It is most revealing to note that for a time from April 28, 1976 to April 19, 1977 for the care and feeding of only 1/2 as many cows and no claims for capital improvements, the cost claimed is only $260.00 less. We respectfully suggest that a comparison of these two Exhibits, without more, clearly illustrates the unreasonable claims of Christensen.

Christensen testified that Abbott received additional cattle which were not accounted for, more than the 44 head. On cross-examination the truth of this matter was revealed.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

There were in fact 9 head of culls. Christensen stated (TR 1 222 Line 6):

> A. "They was some culls but they was thin and needed feeding, they couldn't go on the winter range***
>
> I don't know what they was worth if he would have took them home and fed them they would have brought more.
>
> Q. They were something that you couldn't do much with at the moment.
>
> A. No. Not in the shape they was in. I don't imagine you could. A little feed would have made them a lot better.
>
> Q. For six or eight months.
>
> A. That is right.
>
> Q. Well weren't some of them in fact cancerous?
>
> A. I imagine they was. One or two cancerous.
>
> Q. There isn't much you can do with those but sell them off?
>
> A. Depends on how bad they are. If they're not to bad you can have that eye taken out and they're just as good as -"

POINT IV

CHRISTENSEN IS NOT ENTITLED TO PROCEEDS FROM THE SALE OF HIS COW

An examination of the record shows that this contention is an afterthought. The Plaintiff filed objections to the Memorandum Decision prepared by the trial court (TR 99). Nowhere in those objections was it called to the trial

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

court's attention that Christensen should be awarded the sum of $245.81, or any other sum for one cow which was allegedly sold with certain other cattle. It is too elementary to require citation of authority that no matter may be raised on appeal when it was not brought to the attention of the trial court.

POINT V

AWARD OF ATTORNEYS FEES

Under this point Christensen argues that he is entitled to be awarded "attorneys fees, costs, etc.". We are at a loss to determine what is intended to be included in the word "etc.".

The entire basis of Christensen's argument which is commendably short is that Abbott's appeal is without merit and therefore he should be penalized by having an award of attorneys fees made against him.

We respectfully submit that such argument is specious and should receive no consideration.

CONCLUSION

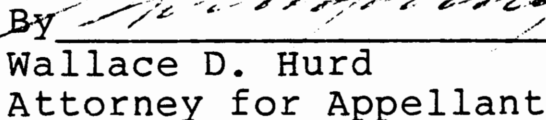
To summarize the matter it is respectfully urged that the inequitable conduct of Christensen has been clearly demonstrated in both the original brief and in this reply

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

brief and the citations contained therein to the transcript and the record.

Upon such showing the trial court should have denied recovery to Christensen and this court should so order. In the alternative, the judgment should be reduced in accordance with the conclusion in appellant's original brief.

RESPECTFULLY SUBMITTED.

By 

Wallace D. Hurd
Attorney for Appellant

CERTIFICATE OF MAILING

This is to certify that on the _____ day of October, 1982, a true and correct copy of the foregoing Appellant's Reply Brief was mailed postage pre-paid to George E. Mangan, P.O. Box 246, Roosevelt, Utah 84066.

____

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.