

2000

Wendy Lomsdal v. Keith Cox : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Keith Cox, Pro Se Appellant.

Dennis Matthews; Attorney for Appellee; Martha Pierce; Attorney for Guardian Ad Litem.

Recommended Citation

Reply Brief, *Lomsdal v. Cox*, No. 20000370 (Utah Court of Appeals, 2000).

https://digitalcommons.law.byu.edu/byu_ca2/2755

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 Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

WENDY LOMSDAL,

Plaintiff/Appellee

*

APPELLANT'S REPLY
BRIEF

vs.

*

KEITH COX,

Defendant/Appellant

*

20000370-CA
~~200370-CA~~
App. Ct. No. ~~20000370-CA~~
Trial Ct. No. 974100564
Priority 4

APPEAL FROM FINAL CUSTODY ORDER
FIRST DISTRICT COURT LOGAN DEPARTMENT
JUDGE CLINT JUDKINS

Keith Cox, Pro Se
Appellant
5380 Hollow Road
Nibley, Utah 84321

Dennis Matthews
Attorney for Appellee
55 North Main
Logan, Utah 84321

Martha Pierce
Attorney for Guardian Ad Litem
450 South State St. 2nd Flr.
Salt Lake City, Utah 84114

PUBLISHED OPINION REQUESTED

FILED
Utah Court of Appeals

DEC 12 2000

Paulette Stagg
Clerk of the Court

IN THE UTAH COURT OF APPEALS

WENDY LOMSDAL,

Plaintiff/Appellee

*

APPELLANT'S REPLY
BRIEF

*

vs.

*

KEITH COX,

Defendant/Appellant

*

App. Ct. No. 2000370-CA
Trial Ct. No. 974100564

* Priority 4

APPEAL FROM FINAL CUSTODY ORDER
FIRST DISTRICT COURT LOGAN DEPARTMENT
JUDGE CLINT JUDKINS

Keith Cox, Pro Se
Appellant
5380 Hollow Road
Nibley, Utah 84321

Dennis Matthew
Attorney for Appellee
55 North Main Street, Suite 302
Logan, Utah 84321

Martha Pierce
Guardian Ad Litem
450 South State Street, 2nd Flr.
Salt Lake City, Utah 84114

PUBLISHED OPINION REQUESTED

TABLE OF CONTENTS

Jurisdiction	1
Statement of Issues	1
Issues for Review	2
Statutes, Rules, and Constitutional Provisions	3
Statement of the Case	3
Summary of Argument	6
Argument	6

Point I : The trial court abused its discretion when it assessed \$1000.00 in attorney fees against the appellant and when it failed to address the issue of res judicata of the Missouri order and Utah stipulation.....6

Point II: The Clerk of the Court of the Utah Court of Appeals acted as though it were independent of the judiciary, contrary to legislative intent and enacted an arbitrary standard as it applied the rules of appellate procedure9

Point III: The Utah Court of Appeals violated the appellant's constitutional right to due process of law when it denied appellant' motion to strike guardian ad litem's brief by suggestion of mootness with its suspension of the rules of appellate procedure in an ex post facto fashion.....10

Point IV: The attorney for the Guardian Ad Litem and the attorney for

the appellee have been working in an illegal union against the defendant	12
Publication of Opinion	14
Conclusion and Precise Relief Sought	15
Certificate of Service	16
Addendum	17

Table of Authorities

Anderson vs. Anderson, 757 P. 2d 476	8
Maxwell vs. Maxwell, 796 P. 2d 403	9
Rasband vs . Rasband, 752 P. 2d 1331	8
Riche vs. Riche, 784 P. 2d 465	7

IN THE UTAH COURT OF APPEALS

WENDY LOMSDAL,

APPELLEE,

*

APPELLANT'S BRIEF

VS.

*

KEITH COX,

*

App. Ct. Case No. 2000370

APPELLANT.

*

Trial Ct. Case No. 974100564

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to the Utah Code Annotated §78-2a-3, as amended,[1953].

STATEMENT OF ISSUES

The trial court erred when it accepted the Plaintiff's Affidavit of Impecuniosity, in light of the plaintiff removing \$4,025.66 from her checking account after she admitted to having equity in real property. The trial court abused its discretion when the trial court judge levied a \$1000.00 charge for attorney's fees against the appellant, for a perceived excessive use of the court's time.

The Utah Court of Appeals created or furthered the legal bias against the Appellant by denying Appellant's Motion to Strike Guardian Ad Litem's Brief by Suggestion of

Mootness. The Court of Appeals infringed upon the Appellant's Constitutional right to due process of law.

The Clerk of the Court arbitrarily applied the Rules of Appellate Procedure and the Utah Court of Appeals placed the Appellant to a higher standard as a Pro Se litigant than counsel for the opposition and the Guardian Ad Litem's office.

The Guardian Ad Litem and the Attorney for the Appellee conspired together to further injure the Appellant's rights to custody with his daughter and now have attempted to elicit the Utah Court of Appeals to sanctify such activity.

ISSUES FOR REVIEW

1. Whether the trial court abused its discretion in awarding attorney fees to the appellee.

2. Can the Utah Court of Appeals deny Appellant's Motion to Strike Guardian Ad Litem's Brief, by suspending the Appellate Rules in an ex post facto fashion and declare the GAL's Brief to be beneficial to the Court of Appeals in rendering a final decision.

3. Should the Clerk of the Court or the Utah Court of Appeals be allowed to apply the Rules of Appellate Procedure arbitrarily.

4. Does the union of the Attorney for Guardian Ad Litem and Counsel for the Appellee amount to a serious miscarriage of justice.

5. Has the Utah Court of Appeals violated the Appellant's Constitutional right to due process of law when it denied Appellant's Motion to Strike Guardian Ad Litem's Brief by Suggestion of Mootness by its capricious suspension of the Rules of Appellate Procedure in an ex post facto fashion.

STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS

United States Constitution Article I, Section 10, [1]

Constitution of Utah Article I, Section 18

Utah Code Annotated §78-51-31

Utah Code Annotated §78-51-30

Utah Rules of Evidence, Rule 902 (9)

Utah Rules of Evidence, Rule 803 (8)

Utah Code of Judicial Administration, Rule 4-911 (2) (a)

Utah Rules of Appellate Procedure, Rule 2

Utah Rules of Appellate Procedure, Rule 24

Utah Rules of Appellate Procedure, Rule 25

Utah Rules of Appellate Procedure, Rule 26

Utah Rules of Appellate Procedure, Rules 27

STATEMENT OF THE CASE

A. Nature of Case

The Appellant is appealing the final disposition of the trial court, by way of his original brief and reply brief.

B. Course of Proceeding

Appellant, Keith Cox, brought this action for relief, contrary to the entry of the Decree for Custody entered against him in the First Judicial District Court, pursuant to the Equal Protection Clause and 42 U.S.C. § 1983, U.S. Constitution Amendment XIV. Appellant alleges that he was denied due process and equal protection under the law

because the trial court refused to acknowledge a prior judgment entered in Missouri, and initially reduced the appellant's custody rights, which are inherent rights reserved under the IX and X Amendments of the U.S. Constitution, for no reason other than his gender. The appellant further contends that the trial court abused its discretion by refusing to take judicial notice when properly motioned and when the court failed to adequately explain the basis for its decision to award custody to the appellee.

C. Disposition in the Court Below

On February 23, 2000, the First District Court-Logan Department, J. Judkins presiding, concluded a civil bench trial for custody and rendered its decision. That decision was against the Appellant and in favor of the Appellee, granting custody of the minor child to the Appellee.

In contention were the hearings before Commissioner Garner, on May 7, 1998, and April 29, 1999, as gross injustices visited upon the Appellant by the trial court.

D. Statement of the Facts

Appellant had filed an action where the parties at issue resided at that time, the State of Missouri. The Appellee was properly served and failed to file a responsive pleading, or appear on the designated date and time. The Circuit Court of Missouri issued a Judgment, November, 1996, wherein both parties were given joint legal custody of their minor child Anna.

The mother fled from that jurisdiction and began to reside in Utah, where she then filed an action in the First District in 1997. Initially she claimed that the Appellant was not the natural father and had a protective order taken out against him. Subsequent to a trial, the Appellee and Appellant, signed a Stipulation, January 21, 1997, within which she agreed to acknowledge the Missouri Judgment as a Utah Judgment, and a copy of which was filed with the district court.

The protective order, taken out January 26, 1996, Plato, Missouri, was recognized by Commissioner Daniel Garner, but the court at all other times refused, ignored, or disregarded any mentioning of prior orders, judgments, or official documents outside of Utah, as they related to this case.

April 29, 1999, the court recognized that both the appellant and the appellee were “good parents,” based upon Mr. Price’s input and the evaluation reflected the same. The Divorce was granted, under the bifurcation, which was denied, but somehow granted, and the issues of custody, visitation, and the evaluation were reserved until trial.

The trial occurred February 3 and 23, 2000. The Appellant, after having bore the entire economic burden of pretrial legal maneuvering and exploitation by the court and opposition, was forced to represent himself Pro Se.

The Appellant used an estimated one(1) hour, and forty-five (45) minutes of the total 7 hours of trial time. The end result was that J. Judkins awarded attorney fee equaling \$1000.00 to the appellee, based upon the appellant’s perceived excessive use of time during the trial. The court affirmed and awarded primary custody to the appellee, subject to the appellant’s right to visitation. Hence, the origination of this claim currently before the Utah Court of Appeals.

The remaining facts that are disputed are readily within the trial court record and within Appellant’s Brief and this the Appellant’s Reply Brief currently before this Court now.

SUMMARY OF ARGUMENT

The trial court erred when is assessed \$1000.00 in attorney fees against the Appellant and in favor of the Appellee contrary to statute and judicial precedent.

The Clerk of the Court of the Utah Court of Appeals acted as the judiciary contrary to Legislative intent. The Clerk of the Court arbitrarily set one standard for the Appellant to adhere to and a lower standard for both the Guardian Ad Litem and the Appellee.

The Utah Court of Appeals violated the Appellant's Constitutional right to due process of law when it denied Appellant' Motion to Strike Guardian Ad Litem's Brief by Suggestion of Mootness by suspension of the Rules of Appellate Procedure in an ex post facto fashion.

The Clerk of the Court of Appeals has applied a higher standard for the Appellant to adhere to and a lower standard for the Appellee and the GAL to follow as it relates to the filing process.

The GAL and the Appellee has been working in an unjust union against the Appellant in conflict with Utah Code Annotated §78-51-31, §78-51-30.

ARGUMENT

Point I

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ASSESSED \$1000.00 IN ATTORNEY FEES AGAINST THE APPELLANT AND WHEN IT FAILED TO ADDRESS THE ISSUE OF RES JUDICATA OF THE MISSOURI ORDER AND UTAH STIPULATION.

Appellee contends that the award of attorney fees against the Appellant should be affirmed. Yet, appellee offers proof against such a proposition by way and through the transcripts entered as addenda within in her brief. The appellee, under direct testimony, established that she could and did have access to pay for her attorney fees with the equity in the home she placed the down payment on.

On page 100 of the transcript the appellee, establishing the causational link of the \$4,000.00, stated “It was a gift from my brother from my mother’s passing, and I used it for a down payment on the home that I was in.” Then on page 101, when asked if at the time she signed the affidavit her claims were true, she said “I didn’t have any money.” Which is it, she has a home with at least \$4,000.00 in equity, or she didn’t have any money? The answer is that she had both. To date the mother remains in possession of same house, and presumably has earned additional equity in the home, in which she could liquidate at any time or borrow against.

Appellee claims that “She received an inheritance from her mother’s estate, some \$4000.00. The money was put aside to purchase a home and was used for that purpose prior to the filing of the affidavit (sic) a petition for divorce.” Appellee’s Brief, Page 4. This rebuts their claim of “need,” as cited by Appellee using **Riche v Riche, 784 P. 2d 465**. By claiming that the appellee is the mother of six children all of whom are living at home, opens one door for deceit and another for fallacious appeals to pity.

The Appellee further contends (Page 4) that the fee assessment was “reasonable.” Nothing could be farther from reality when the appellant’s ability to pay was and remains diminished. The Appellant was forced to solely pay for the custody evaluation, and his own attorney fees. Especially when the Respondent filed a Motion for Costs and Fees on February 3, 2000, pursuant to Utah Rules of Evidence Rule 902 (9) and Rule 803 (8), and Utah Rules of Judicial Administration, Rule 4-911 (2) (A), wherein he request the same fees to defend this action.

The trial court has discretion in awarding attorney fees, but when it abuses that discretion or the appellee uses fraud by deception the trial court erred in its award. The decision to award attorney fees must be based on evidence of both financial need and reasonableness. **Rasband v. Rasband, 752 P.2d 1331 (Utah 1988), Anderson v. Anderson, 757 P. 2d. 476 (Utah 1988).**

The trial court should have made findings regarding need for reimbursement and ability to pay when one party sought reimbursement, as the appellant had, in defending or prosecuting this action. As noted on page 219 of the transcripts, included in Appellee's Brief, the court specifically instructed Attorney for the Appellee to "include that in the findings as well," and as the Decree of Divorce absently indicates inadequate findings of fact as it relates to the Decree.

In addressing the Guardian Ad Litem's supposed brief, and its holding, concerning the doctrine of *res judicata*, it is with stern clarification that the Appellant now takes. The GAL asserts, footnote 4, page 8, that the Father would not be helped if the Utah Court had adopted the Missouri Order. As stated both in the Missouri Order and the Utah Stipulation, awarded Keith Cox, Plaintiff, paternal rights as the natural father with "the birth certificate," to be "changed to reflect," that point; and furthermore that joint legal custody would exist with primary physical custody of the minor child remaining with the natural mother. The Father would be given a legal voice in all decisions pertaining to the child. Also, there would be changes in visitation reflected in the following:

- A. Eight weeks in the summer;
- B. Alternating holidays;
- C. One (1) week in October and March of each year;
- D. Each party to be responsible for one half of any transportation costs involved in transporting the minor child to and from the afore-mentioned visits with Plaintiff.

Additionally, the Utah Stipulation, as agreed by both parties, laid out the following, which of according to the GAL's Brief "would not have helped the Father," despite the clear language:

1. Plaintiff, Wendy Lomsdal, agrees to dismiss her Utah action for paternity.
2. Plaintiff, agrees to dismiss the Protective Order and incorporate same in this action.
3. Plaintiff, agrees to recognize the Missouri Judgment as a Utah Judgment

The GAL claims that the trial court "acknowledged earlier orders," however, the trial court did not have jurisdiction to address those earlier orders except to recognize their existence without benefit of a evidentiary hearing or any hearing at all. This Court has ruled, **Maxwell v. Maxwell, 796 P. 2d 403,406 (1990)**, by declaring that stipulations entered into in contemplation of divorce "are conclusive and binding on the parties unless, upon timely notice and for good cause shown, relief is granted therefrom."

Point II

THE CLERK OF THE COURT OF THE UTAH COURT OF APPEALS ACTED AS THOUGH IT WERE INDEPENDENT OF THE JUDICIARY, CONTRARY TO LEGISLATIVE INTENT AND ENACTED AN ARBITRARY STANDARD AS IT APPLIED THE RULES OF APPELLATE PROCEDURE .

When the Clerk of the Court accepted and filed the Guardian Ad Litem's Brief on November 3, 2000, it acted as the judiciary itself. Rule 25 specifically calls for the Clerk of the Court to file that brief "only if accompanied by written consent of all parties, or by leave of the court granted on motion or at the request of the court."

GAL's Brief did not contain the accompaniment of written consent of all parties. It did not have leave of the court, as well the Clerk could have ascertained by the court's

own record, and at that time the Utah Court of Appeals had not requested the Brief. Therefore the Clerk of the Court should have returned the GAL's Brief, *In situ*.

Furthermore, the Clerk of the Court stated directly to the Appellant that "each brief will be checked for compliance," and then personally gave the appellant a Pro Se packet wherein copies of Form 8, Checklist for Briefs - Rules 24,26,27, were found. On page 17 it states under "Printing Requirements," that the "typeface must be 13-point or larger for both text and footnotes. The Appellee's Brief is printed at 11 point, and yet was filed without compliance or rejection as indicated on pages 5 and 6 of the Pro Se packet.

On the Cover page of the Appellee's Brief, it states that it is in fact "Guardian ad Litem's Brief," but the color is Red for an Appellee Brief. Likewise on the Caption Page it reads "Guardian ad Litem's Brief," and it is supposed to contain "Title of the document (e.g. "Brief of the Appellee."),," and the appellee's is labeled "Guardian ad Litem's Brief."

Supposedly the attorney for the appellee is well versed in the law and it is assumed he can distinguish an Appellee from a Guardian ad Litem.

Point III

THE UTAH COURT OF APPEALS VIOLATED THE APPELLANT'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW WHEN IT DENIED APPELLANT' MOTION TO STRIKE GUARDIAN AD LITEM'S BRIEF BY SUGGESTION OF MOOTNESS WITH ITS SUSPENSION OF THE RULES OF APPELLATE PROCEDURE IN AN EX POST FACTO FASHION.

The Utah Court of Appeals in denying Appellant's Motion to Strike GAL's Brief by suspending the operation of Rule 25, Rules of Appellate Procedure, so that "the GAL's brief may be of assistance to the court in resolving the appeal,"has inflamed the eyes of justice shut. A bias such as the suspension of the operation of Rule 25 retroactively can

only be considered an ex post facto determination by the state judiciary. United States Constitution, Article I, Sec. 10, [1] forbids any State to pass any ex post facto laws. The Constitution of Utah, Article I, Sec. 18 strictly disallows ex post facto law.

When the Guardian Ad Litem, Attorney Martha Pierce, U.S.B. #4900, filed her Notice of Appearance as Guardian Ad Litem with the Utah Court of Appeals on May 22, 2000, as an attorney, it is presumed that she is more than aware of the two specific requirements which allow a Guardian Ad Litem to file an Appellate Court Brief. One, with the accompaniment of written consent of all parties. Two, upon leave of the court after having properly Motioned the Court. Neither of these criteria were addressed between May 22 and November 3, 2000 when she filed her brief.

The Utah Court of Appeals, by abstaining from the persona of an independent judiciary has increased the damage caused by the trial court and should immediately rectify it wrongful decision of November 20, 2000. When the court first sets out, within the Rules of Appellate Procedure Rule 24, 25, 26, 27, it is supposed to remain indifferent to the parties before it. One standard of application cannot exist for one party while a lower standard is set for another party in a legal dispute. Judicial economy cannot outweigh due process nor a citizens individual Constitutional protections and rights. The Guardian Ad Litem filed its brief on November 3, 2000, and the Appellee's brief was filed November 8, 2000, and the Court of Appeals Order Denying Motion to Strike was ordered November 20, 2000. This time-line shows that the Guardian Ad Litem had sufficient time to motion the court or request written consent but failed to do so. The court also had ample opportunity to request that the Guardian Ad Litem do so properly, thereby granting the Appellant to challenge it properly. In effect the Court has re-routed the Appellant's due process of law by implementing a higher standard for a Pro Se Litigant and a lower standard for the Guardian Ad Litem, a State of Utah agency with vast resources at it's disposal.

When the Clerk of the Court accepted the GAL's brief without accompanied written consent, or by leave of the court granted on motion or at the request of the court, this Court should have interceded and examined each of the opposing briefs for compliance prior to rendering a final determination. Therein laid the insufficiency of the Guardian Ad Litem's Brief. Utah Rules of Appellate Procedure, Rule 2 does not grant to the Appellate Court the power to retroactively suspend any rule of law's operation or create a new law.

The Appellate Court acted arbitrarily and with bias in allowing the GAL's brief to stand, and by stating the brief may assist the court only caused a greater injury upon the Appellant.

Point IV

THE ATTORNEY FOR THE GUARDIAN AD LITEM AND THE ATTORNEY FOR THE APPELLEE HAVE BEEN WORKING IN AN ILLEGAL UNION AGAINST THE DEFENDANT.

Alternatively, this Court in examining each of the respective briefs would have noticed the near identical cover and caption pages and even language, at some points only the pica and font have been altered. Utah Code Annotated §78-51-30, and §78-51-31 bars this specific type of activity. As the Guardian Ad Litem is a public attorney and Mr. Matthews is private counsel; collusion, where "an attorney * * * who consents thereto, with intent to deceive a court or judge or a party to an action or proceeding is liable to be disbarred, and shall forfeit to the injured party treble damages," and "an attorney who directly or indirectly advises in relation to, or aids or promotes the defense of, any action or proceeding in any court, the prosecution of which is carried on, aided or promoted by a person as public attorney," are criminal offenses.

Martha Pierce, by filing Notice of Appearance, dated May 22, 2000, assumed legal responsibility for this case, on behalf of the minor child, and Dennis Matthews in filing a brief dated November 8, 2000 assumed legal responsibility for this case, on behalf of the Plaintiff. For whatever reasons, Martha Pierce allowed, assisted, or aided Dennis Matthews in deceiving both this court and the Appellant by proffering fraudulent briefs in opposition. On the cover and caption pages of each of their respective, not respectable, briefs "Guardian Ad Litem's Brief," is located in the caption. The only differences are the font, pica, and placement of the attorney names. On page ii of each the only differences are the font and pica. On page 2 of the supposedly Appellee's brief, the attorney admits "The issues set forth in Paragraph 2 above, have been addressed in the brief filed by the Guardian Ad Litem," knowledge to the collusion and aiding a public prosecutor and vice versa. Under "Issues For Review," contained within the Appellee's brief, subheading 2, numeration (1), until its entirety at numeration (8) are word for word plagiarism of the GAL's brief, under "Argument," page 5, numeration (1) until its entirety at numeration (8). The exact small case letter "a" located within numeration 4, [Guardian ad Litem's] is present in each brief. That exact and specific language match is not present in the Appellant's Opening Brief and it is thereby inferred that Martha Pierce aided Dennis Matthews in collusion, and deceit, in the defense of this appeal while attempting to receive the sanctification of the Utah Court of Appeals. The Appellant originally claimed that collusion and deceit propagated by the Guardian Ad Litem attorney, Diane Balmain and Dennis Matthew during the trial court's jurisdiction.

It is the most diseased transgression that State Agencies, and an officer of the court, would endeavor to act in this fashion when a child's welfare has been at stake. This nefarious marriage between the Guardian Ad Litem's Office and private counsel Dennis Matthews can be allowed to continue. Based upon the history of this case a Judicial Investigation into the allegations of gender bias, outright discrimination, and corruption as it applies to all custody cases within the State of Utah's Administrative Office of the Court

records and an immediate rectification in this case with the implementation of judicial honor should commence. Since neither of the briefs should be given an opportunity to comply with any of the Utah Rules of Appellate Procedure, both should be thrown out and all costs, treble, incurred by the Appellant should be awarded

PUBLICATION OF OPINION

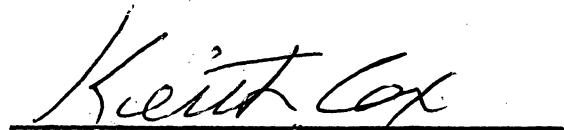
The Appellant, Keith Cox, hereby requests that the Utah Court of Appeals Publish its Legal Opinion in this matter.

CONCLUSION AND PRECISE RELIEF SOUGHT

The GAL and Dennis Matthew committed numerous illegalities to further their actions. The Clerk of the Court has bent and shifted the Rules of Appellate Procedure to aid the GAL and Attorney for the Appellee while installing a higher hurdle for the Appellant to clear. The Court of Appeals acted irresponsibly when it retroactively suspended the operation of Procedural Law. If the Court of Appeals cannot act without bias or additional prejudice against the Appellant then the case ought to be referred to the Utah Supreme Court.

The Appellant believes that both the Guardian Ad Litem's Brief and the Appellee's Brief should be stricken, and their claims denounced, and treble damages awarded to the Appellant, and for any other relief that this court feels is just and equitable.

RESPECTFULLY SUBMITTED this 12th day of December, 2000.

A handwritten signature in black ink, reading "Keith Cox", is written over a horizontal line.

Keith Cox, Pro Se

Appellant

CERTIFICATE OF SERVICE

I hereby certify that I hand delivered two true and correct copies of the foregoing Appellant's Reply Brief, this the 12th day of December, 2000, to Dennis Matthews, attorney for the appellee, two copies to Guardian Ad Litem, and eight copies to the Utah Court of Appeals.

A handwritten signature in black ink, appearing to read "Keith Cox", is written over a horizontal line.

Keith Cox, Pro Se

Appellant

ADDENDUM

1. Notice of Appearance, Martha Pierce, May 22, 2000, Utah Court of Appeals Case No. 2000370.
2. Order Denying Motion to Strike, Utah Court of Appeals, November 20, 2000.
3. Pages 5 and 6 of Utah Court of Appeals Pro Se Litigant Packet.


MARTHA PIERCE, #4900
Office of the Guardian Ad Litem
230 South 500 East, Suite 170
Salt Lake City, Utah 84102
(801) 578-3962/ FAX 578-3965

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, in the interest of)	NOTICE OF APPEARANCE
)	
Lomsdahl)	
v.)	
Cox)	Case No. 20000370-CA
)	

Pursuant to U.C.A. 78-3A-314(4), Martha M. Pierce hereby enters her appearance as
Guardian ad Litem and counsel for the minor child in all matters relating to the pending
appeal.

DATED this 22nd day of May, 2000.



Martha Pierce
Guardian Ad Litem

CERTIFICATE OF DELIVERY

I hereby certify that on the 22nd day of May, 2000, a true
and correct copy of the foregoing Notice of Appearance was delivered to:

Dianne R. Balmainm Esq.
55 North Main, Suite 104
Logan, Utah 84321

Dennis R. Mathews, Esq.
55 N. Main, Suite 302
Logan, Utah 84321

Keith Cox
619 East 400 North
Logan, Utah 84321

Pfahmo

NOV 20 2000

Pauletta Stagg
Clerk of the Court

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Wendy Lomsdal,)	
)	
Plaintiff and Appellee,)	ORDER DENYING
)	MOTION TO STRIKE
v.)	
)	Case No. 20000370-CA
Keith Cox,)	
)	
Defendant and Appellant.)	
)	
)	

This matter is before the court on appellant's "Objection and Motion to Strike Guardian Ad Litem's Brief by Suggestion of Mootness." As appellant argues, Utah Rule of Appellate Procedure 25 requires the Guardian Ad Litem (GAL) to obtain permission to file a brief, either from the parties or the court, if his/her client is not a party to the appeal, which the GAL has not done. However, because the GAL's brief may be of assistance to the court in resolving the appeal and because appellant will have the opportunity to respond to the GAL's arguments in his reply brief, we accept the GAL's brief as properly filed. See Utah R. App. P. 2, 25.

Accordingly, IT IS HEREBY ORDERED that appellant's motion to strike is denied.

Dated this 20th day of November, 2000.

FOR THE COURT:



Gregory K. Orme, Judge

Due Dates for Appeal Procedures
(Applicable to either a notice of appeal or a petition for agency review.)

1. Notice Regarding Transcript (Required Filing)(See sample forms on pages 13 and 14)

RULE 11(e)(1)

Within ten days of the filing of the notice of appeal or petition for review, you must request in writing from the trial court executive or the government agency a transcript of all parts of the proceedings you think necessary or file a notice that no transcript is required. Copies of the transcript request or notice that no transcript is required also must be filed in the appropriate appellate court and the trial court. The transcript is a typewritten account of the proceeding from which the appeal is taken. The transcript is used in the preparation of the brief. You are not required to have a transcript for the appeal. You must be prepared to pay the estimated cost of the transcript to the trial court at the time the transcript is requested.

2. Docketing Statement (Required Filing) (See example outline on page 15)

RULE 9

You must file a docketing statement (original and 2 copies) in the appropriate appellate court within 21 days form the filing of the notice of appeal or petition for review. A copy of the docketing statement must also be mailed or delivered to opposing counsel. The trial court documents that must be attached to the docketing statement must show the trial court's filing date. (See pg. 16, item 12.)

The docketing statement is not a brief. It is not intended to detail the factual or legal basis of the appeal. Instead, its purpose is to inform the court generally about the appeal in order that the court may assign the case a priority, consider summary disposition and establish a preliminary calendar assignment. The docketing statement is, therefore, critical in the early stages of an appeal. Pursuant to **Rule 3(a) of the Utah Rules of Appellate Procedure**, failure to file the docketing statement will result in dismissal of the appeal.

3. Brief on Appeal (Required)

RULES 24 26, 27

A brief explains to the court, in careful detail, the reason why you should prevail in the appeal. Briefs may be rejected if they do not conform to **Rules 24, 26, and 27**.

Time for Filing and Service

An appellant's brief is due after the record (in criminal cases) and the record index (in civil cases) has been prepared by the trial court and sent to the appellate court. The appellate court will notify you as to the date your brief is due. Included in this packet is a checklist for the brief, which indicates how the brief should appear, what it should contain and how it should be prepared.

You must file your brief on or before the date set by the court. You must also prepare a mailing certificate and mail the appropriate copies on or before that date.

The appellee must serve and file its brief within **30** days after service of the appellant's brief. An appellant's reply brief is not required. However, if you choose to file a reply brief, it must be served and filed within **30** days after the filing and service of appellee's brief. A reply brief is limited to answering any new matter stated in the appellee's brief. It may not include material which has already been stated in your opening brief.

Number of Copies

- a. Supreme Court: **10** copies of brief, one containing original signature.
- b. Court of Appeals: **8** copies of brief, one containing original signature.
- c. Opposing counsel/opposing party: **2** copies must be served on opposing counsel or opposing party if not represented. The brief must include a certificate of service showing you have hand-delivered or mailed copies to the opposing party or counsel.

Format

Rules 24, 26, and 27 of the Utah Rules of Appellate Procedure govern the form and content of each brief type. Each brief will be checked for compliance. Attached at page **17** is a "Checklist for Briefs" which outlines the various requirements. Briefs may be rejected if they do not conform to these requirements.

4. Enlargement of Time

RULES 22 and 26

26(A) By stipulation filed with the court, the parties may stipulate to an enlargement of the time periods prescribed for filing of briefs. Such stipulation may extend the time periods for no more than **30** days. No stipulation shall be effective unless it is filed prior to the expiration of the original deadline.