

1982

# Diane E. Kapetanov v. Small Claims Court of Ogden, Utah : Brief of Intervening Respondent

Utah Supreme Court

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W> Paul Wharton; Michael E. Bulson; Attorneys for Appellants;

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IN THE SUPREME COURT OF THE STATE OF UTAH

-----  
DIANE E. KAPETANOV, on )  
behalf of herself and )  
others similarly situated, )

Plaintiffs- )  
Appellants, )

-vs- )

SMALL CLAIMS COURT OF )  
OGDEN, UTAH, )

Defendant- )  
Respondent. )

STATE OF UTAH, OFFICE OF )  
RECOVERY SERVICES, )

Intervening )  
Respondent. )

Case No. 18182

-----  
BRIEF OF INTERVENING RESPONDENT  
-----

Appeal from the Memorandum Decision by Judge  
Ronald O. Hyde of the District Court for Weber County,  
State of Utah.

-----  
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Attorney for Intervening Respondent  
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**FILED**

APR 15 1982

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Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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DIANE E. KAPETANOV, on	)	
behalf of herself and	)	
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IN THE SUPREME COURT OF THE STATE OF UTAH

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RECOVERY SERVICES, )

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Case No. 18182

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BRIEF OF INTERVENING RESPONDENT  
-----

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from the Memorandum Decision dated November 24, 1981, by Judge Ronald O. Hyde of the District Court of Weber County, State of Utah. Specifically, Plaintiff-Appellant appeals the trial court's denial of a Motion for a Writ of Prohibition on the basis that the Small Claims Court is a court of appropriate jurisdiction for the determination of Food Stamp fraud cases.

### DISPOSITION OF THE LOWER COURT

The Second Judicial District Court of Weber County denied Plaintiff-Appellants' Petition for Writ of Prohibition in which she and others similarly situated have sought to prevent the Small Claims Court from exercising jurisdiction in cases in which the State of Utah, Office of Recovery Services, seeks to collect on food stamp overpayments where fraud is alleged.

### RELIEF SOUGHT ON APPEAL

Intervening Respondent prays the Court uphold the decision of the Second Judicial District Court denying Plaintiff-Appellants' Writ of Prohibition.

### STATEMENT OF FACTS

Plaintiff-Appellant, Diane Kapetanov, (hereinafter Plaintiff-Appellant), applied for and received food stamp assistance from the State of Utah during October and November, 1979. On a review of her eligibility, November 28, 1979, she failed to report income from her son, though in boldface type the question asked "Are you, or ANYONE in your household, employed full or part-time? a. If yes, list their names, where employed and date they started work."

The Assistance Payments Administration was notified by Job Service that Plaintiff-Appellant's son was employed. Verification proved the combined income caused the family to be wholly ineligible for benefits.



Many contacts were made with Plaintiff-Appellant and her attorney by the Office of Recovery Services informing her of the cause and amount of overpayment and seeking repayment from her. When she did not make any repayment, notice was sent indicating legal action would be taken.

On June 16, 1981, a letter was sent specifying that a judgment would be sought against Plaintiff-Appellant. A complaint was filed in Small Claims Court specifying the debt was for collection of an overpayment - unreported income. Said complaint was served upon Plaintiff-Appellant. She did not appear at the hearing and a default was entered.

At request of Plaintiff-Appellant's counsel, the default was set aside and a new trial date was set. She was represented in the second proceeding by Utah Legal Services. Utah Legal Services moved that the Court dismiss the action for want of jurisdiction, which motion was denied. Utah Legal Services was given the opportunity to request a Writ of Prohibition from the District Court and the evidentiary matter was continued until after that time.

On October 2, 1981, the matter was heard in the Second Judicial District Court of Weber County. On November 24, 1981, the Court entered a Memorandum Decision denying the Petition. From that decision, Plaintiffs-Appellants have now appealed.

## ARGUMENT

### POINT I: THE FOOD STAMP ACT SETS FORTH THREE ENTIRELY SEPARATE MEANS OF COLLECTION OF FOOD STAMP OVERPAYMENTS.

The regulations set forth by the Department of Agriculture, Food and Nutrition Service as implementation of the Food Stamp Act of 1977, 7 CFR 270 et seq. (1981), establishes both a means for collection of food stamp overpayments by the State and an obligation to do so. See 7 CFR 273.15, 273.18 (1981). Three processes are separately set forth in order that persons may be afforded full due process when an overpayment claim is made.

The first means of collection is an administrative procedure. Concern was taken to insure adequate due process protections would be given in such a nonjudicial setting. In the General Comments Section of 43 Fed. Reg. 47845, 47846, (1978), there is clarification of the policy for administrative proceedings as applied to fraud disqualification.

"Some State agencies expressed concern over the constitutionality of administrative fraud hearing procedures and cited State laws which require that fraud be determined only by courts. Notwithstanding State law, Congress has authority to provide an administrative procedure for disqualifying individuals from Federal benefit programs who have committed fraud so long as the constitutional requirements of due process are met. The Department carefully considered those due process requirements in establishing the fraud hearing standards. In addition, the term "fraud" is strictly defined in the regulations to protect the individual and to assure that the administrative determination of fraud is applied consistently."

Although the matter before the Court does not involve disqualification (Comments Section 45 Fed. Reg. 7208 (1980)), the concerns about administrative procedure are pertinent to the matter at hand. The subsequent comments about fair and fraud hearing procedures elaborate upon the concerns about administrative procedures.

The State, through the Office of Recovery Services, (hereinafter State), may also proceed civilly for collection through a "Court of appropriate jurisdiction", 7 CFR 273.18(c). Again, procedures for civil collection are intertwined with those for disqualification, but in Section 273.18(c)(2)(ii), administrative repayment is extensively discussed ending with the following:

. . . . A written demand letter for an unpaid or partially paid claim shall be sent even if the household has previously received a nonfraud demand letter because the time period covered by the claim and the method of collection are different for fraud and nonfraud claims. In addition to the written agreement letter, a personal contact shall be made, if possible. THE STATE AGENCY MAY ALSO INITIATE CIVIL COURT ACTION TO OBTAIN THE CLAIM. (emphasis not in original).

Office of Recovery Services may also prosecute food stamp recipients criminally for fraudulent receipt of food stamp benefits. Section 273.18 (c)(2)(i) states:

The State agency shall initiate such collection unless... the legal representative prosecuting a member of the household for fraud advises, in writing, that collection action will prejudice the case. In cases where a household member was FOUND GUILTY OF FRAUD by a court, the State agency shall request the matter of restitution be brought before the court. (emphasis not in original)

The sections on disqualification which precede the collection section address administrative disqualification, and, in doing so, specify which cases are appropriate for civil or criminal action, to-wit:

(d) ADMINISTRATIVE DISQUALIFICATION. Each State agency shall establish procedures for conducting fraud hearings which must conform with the procedures outlined in this section. An administrative fraud hearing should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has committed one or more acts of fraud as defined in paragraph (b) of this section. Such cases may include those in which the State agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system. Other cases may be those previously referred for prosecution but for which prosecution was declined by the appropriate legal authority. 7 CFR 273.16(d)

These three procedures are clearly separate in the regulations. Criminal and civil proceedings are clearly separate in the law. See Utah Code Annotated, 68-3-4 (as amended). Also see Gross v. U.S., 228 F.2d 602, 614 and 615, (1956). Administrative rules for conduct by a department regulate that department and cannot regulate due process by a court. The administrative rules for fair and fraud hearings were adopted to insure only that the State did not abuse the administrative process and said guidelines are separate from the civil and criminal proceedings. A careful reading of the regulations demonstrates that the failure to specify that the civil and criminal judicial determinations were to also be subject to

those rules was pointedly, necessarily and intentionally done. The regulatory rules do not apply to the judicial system.

POINT II: THE ADMINISTRATIVE RULES  
ARE TO REGULATE ADMINISTRATIVE PRO-  
CEEDINGS, NOT TO REGULATE JUDICIAL  
PROCEDURE.

To support the theory of the Plaintiff-Appellants in this action, one would have to discard the separation of powers doctrine. Plaintiff-Appellants' entire argument is based on her assertion that the jurisdiction of the Small Claims Court is governed by the same rules as those for administrative proceedings.

The separation of powers doctrine established as the prevailing rule that there shall be a complete separation of powers without qualification. O'Donoghue v. U.S., 53 S Ct 740 289 U.S. 516, 530, 77 L Ed 1356 (1933). One department should not act to control or embarrass another. State ex rel Kostos v. Johnson, 69 NE2d 592, 595 (Ind 1946). Although there have been numerous exceptions to the rule, the intent of such a policy is intact. The Department of Agriculture cannot, therefore, propagate rules which would govern judicial procedure. To allow such a policy would cause the judicial system to be at the mercy of the constantly changing regulations of differing administrative agencies. For example, the Department of Agriculture could require 30 days notice and another department require no more than 10 days. Such chaos was not the intent of the regulations in question.

The purpose of the substantial procedure set forth in the regulations was to insure there would not be an abuse of due process in the administrative system. At no point in the regulations does it state that such procedures must be utilized in civil or criminal judicial proceedings. In fact, numerous times procedure is carefully enumerated for administrative proceedings and concluded with a single sentence that the State may also collect civilly or criminally. See 7 CFR 273.16, 273.18(c).

Any noncompliance with administrative regulations by a department does not eliminate the Court's ability to hear the matter, but is a matter for the court to consider as it determines the State's right to a judgment. Noncompliance with regulations by a State could result in penalties by the Department of Agriculture or in the court's determination that the State does not have a valid claim for money judgment. The defendant in any such action could raise as a defense the State's failure to provide the protections afforded in administrative proceedings.

Perhaps the fallacy of the Plaintiff-Appellants' arguments becomes most clear when applied to District Court. The Plaintiff-Appellants' argument would mean the District Court could not exercise jurisdiction in a matter if the State failed to comply with regulations. The District Court does have jurisdiction to determine money owed and even to declare

the rights of the parties, and failure of the State to comply with administrative regulations would be a consideration of the court in awarding a judgment, but not reason to deny the Court jurisdiction. The District Court, without question, would have jurisdiction in determinations of food stamp fraud.

The ridiculousness of Plaintiff-Appellants' argument as to jurisdiction of the judicial system reaches its extreme in this matter. If Plaintiff-Appellants' argument were followed to the logical conclusion, even this Court, the Utah State Supreme Court, would be unable to hear this very matter if the State were found to have failed to comply with the administrative regulations. The actions of an administrative body would rob our Court of jurisdiction which would otherwise be proper.

The intent of the term "court of appropriate jurisdiction" is not to regulate administratively which court is appropriate, but to refer to the judicial system and to develop an alternative to judicial action by administrative procedure.

The administrative rules referred to do not govern judicially enforced repayments and do not apply to the case at hand.

POINT III: APPELLANT WAS ACCORDED FULL  
DUE PROCESS IN SMALL CLAIMS COURT.

The Plaintiff-Appellants have been afforded adequate due process protections. The United States Supreme Court has

stated in Morrissey v. Brewer, 408 US 471, 33 L Ed 484, 92 S Ct 2593:

Once it is determined that due process applies, the question remains what process is due. It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for such procedural protections as the particular situation demands. Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action. Cafeteria & Restaurant Workers Union vs. McElroy, 367 U.S. 886, 895, 6 L Ed2d 1230, 1236, 81 S Ct 1743 (1961). To say that the concept of due process is flexible does not mean that judges are at large to apply it to any and all relationships. Its flexibility is in its scope once it has been determined that some process is due; it is a recognition that not all situations calling for procedural safeguards call for the same kind of procedure. Supra at 481 (1972)

The Plaintiff-Appellant was accorded full due process rights in small claims court. She was personally served with a copy of the Affidavit stating it was for an overpayment with the State and further specifying it was based on unreported income. The Affiant in Small Claims Court must attest that he/she has demanded payment but that defendant refused to pay. Utah Code Ann., 78-6-2, (as amended). The defendant also had the right to present witnesses and evidence in the case. Utah Code Ann., 78-6-7, (as amended).

The plaintiff in Small Claims Court, the State, had many contacts with both Plaintiff-Appellant and her counsel.



At one point, action was completely deferred for six weeks at request of Defendant's counsel. Several letters were then again sent before the case went to Small Claims. Plaintiff-Appellant had months of notice before judgment was granted and then it was set aside to allow appearance of counsel.

Small Claims Court also provides for a de novo trial in District Court should the defendant be dissatisfied. Utah Code Ann., 78-6-11, (as amended). Such an appeals procedure insures every due process protection to the defendant.

Additionally, the defendant in Small Claims Court has the opportunity to have the determination of fraud made by a judicial officer who is well acquainted with the statutes and case law pertaining to fraud.

All of these due process rights have been afforded the defendant and to all members of the class in this action.

POINT IV: THE SMALL CLAIMS COURT HAS JURISDICTION IN THIS MATTER.

The Small Claims Court has similar jurisdiction to the Circuit Court with the limitation being that jurisdiction is limited in Small Claims to cases for "money only" where the sum claimed does not exceed \$400.00. Utah Code Ann., 78-6-1, (as amended) sets forth the creation of the Small Claims Court, to-wit:

"There is hereby created in the circuit courts and justice's courts of this state,

a department to be known as the "SMALL CLAIMS COURT" which shall have jurisdiction, but not exclusive, in cases for the recovery of money only where the amount claimed does not exceed \$400 and where the defendant resides or action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained. Persons or corporations may litigate actions on behalf of themselves in person or through authorized employees or without counsel." Utah Code Ann. 78-6-1 (as amended)

Since Small Claims Court's jurisdictional definition does not specify what types of cases are meant by "cases for the recovery of money only", one must consult the mother statute in which those civil actions which may be taken in Circuit Court are specified, to-wit:

(1) The circuit court shall have civil jurisdiction:

(a) In actions arising on contract, for the recovery of money only if the sum claimed is less than \$5,000, exclusive of costs or court.

(b) In actions to recover a fine, penalty, or forfeiture less than \$5,000 given by statute or by ordinance of an incorporated city or town.

Utah Code Ann., 78-4-7 (as amended)

The statutory definition specifies two types of cases which are for "recovery of money only". The first is for actions arising on contract. The second is to recovery a fine, penalty or forfeiture.

This action fits jurisdictionally in both areas. The application Plaintiff-Appellant signed to receive benefits states the requirements for reporting changes in the household.

Plaintiff-Appellant agreed to provide such information as a consideration for receipt of benefits. When she failed to provide such information, she breached the agreement for benefits. When the State filed the Small Claims affidavit, the State asked for "money only", return of the money they expended to Plaintiff-Appellant when she was ineligible.

Jurisdiction in Small Claims Court was also proper because the State of Utah, Utah Code Ann., 78-4-7 (as amended), and Federal Government, 7 CFR 273.18, require that food stamp assistance received improperly must be repaid. Such statutorily mandated repayment would be a fine, penalty or forfeiture under the jurisdiction definition.

Nothing more than money has been sought in Small Claims Court. Plaintiff-Appellant asserts that an order of disqualification could be ordered by the Court without motion by the State. Such a position is not supported in logic. If, in fact, the State chooses to proceed in Small Claims Court for a money judgment, they have also chosen, by virtue of the jurisdictional limitations of Small Claims Court, to not have a judicial determination of disqualification. If disqualification was requested, the Small Claims Court would simply deny the request as not being a money judgment. A declaratory judgment as they call it, need not be granted where there is an adequate remedy at law as in this case. Plaintiff-Appellants assert that a determination of fraud cannot be made by the

Small Claims Court. This issue will be fully addressed in the next section.

Plaintiff-Appellant has also alleged that the Small Claims Court was not intended as a court of proper jurisdiction and cites in support, 7 CFR § 273.16(e)(2). Plaintiff-Appellants' brief at page 15. Plaintiff-Appellants misrepresent the regulations in arguing that an amount less than \$400.00 is not a "large amount" as defined in the regulations. Although no reference is made to a minimum collection amount for fraud claims, at 7 CFR 273.18(b)(3)(A), the minimum amount for non-fraud claims is designated as \$35.00. Since all fraud claims must be handled as nonfraud until a determination of fraud is made in an administrative hearing or by a court of appropriate jurisdiction, it would appear that the \$35.00 minimum would also apply to fraud claims. 7 CFR 273.18(c).

Jurisdiction of this matter is proper in Small Claims Court.

POINT V: A DETERMINATION OF FRAUD IN  
FOOD STAMP OVERPAYMENT CASES IS NOT  
A DECLARATORY JUDGMENT.

Plaintiff-Appellants argue in their brief that the determination of fraud in a food stamp overpayment matter before Small Claims Court is a declaratory judgment. Their position is unfounded in law and in fact.

For their argument Plaintiff-Appellants rely upon the previously cited regulations of the Department of Agriculture, Food Stamp Department. Those regulations do not apply

to regulate judicial proceedings. This point was fully set forth in Point II.

Plaintiff-Appellants have misconstrued the regulations pertaining to fraud determinations even if the Court was to apply the regulations. They assert that two separate actions must be taken in determination of fraudulent receipt of food stamps. (Plaintiff-Appellants' brief at page 13). The regulations do not require a bifurcated process wherein fraud is first determined and then judgment obtained.

The specifications for collection after a judgment is obtained do not make the judgment of no affect as Plaintiff-Appellants seem to assert. The regulations merely make requirements of the State before the State may utilize further powers of the court to enforce. Again, failure to comply with such regulations by the State is inapplicable to the jurisdiction of the court, but goes only to the State's compliance with the Federal regulations for State eligibility in the program.

Plaintiff-Appellants attempt to define the fraud determination as separate from the judgment, making that determination a declaratory judgment, and thereby outside the jurisdiction because it is not for money only.

A declaratory judgment is generally accepted to be:

One which simply declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done. Its distinctive characteristics are that no executory process follows as of course nor is it necessary that an actual wrong,

giving rise to action for damages should have been done, or be immediately threatened. Black's Law Dictionary, citing Petition of Kariher, 284 Pa. 455, 131 A. 265, 268.

The State is not asking for a declaration of the rights of the parties. The State is requesting a money judgment for food stamps improperly received by Plaintiff-Appellants because of the alleged fraudulent application or receipt by Plaintiff-Appellants.

A declaratory judgment is not to be made in cases in which an adequate remedy at law is available. Watson v. Washington Preferred Life Ins. Co., 81 Wash. 2d. 403, 502 P.2d 1016, 1019 (Wash., 1972). There is an adequate remedy at law in the instant case. The Small Claims Court will determine first, if the matter is properly before the court; second, if the State has met the burden of the allegations of the affidavit; third, if the State has a proper claim for which relief should be granted; and fourth, if the amount of the State's claim has been adequately verified as to damages. Such determinations are properly before the Small Claims Court.

Plaintiff-Appellants in arguing that a determination as to fraud goes beyond the jurisdiction of the Small Claims Court effectively eliminate the Small Claims Court's jurisdiction at all. If a determination of fraud was outside the scope of jurisdiction of the Court, many cases would also be a "declaratory judgment", to-wit: (1) any contract before the Small Claims Court wherein fraud was alleged; (2) any case in which the amount

of the claim was in dispute; (3) any case in which satisfaction was a term of the contract; (4) any case in which damages occurred in an accident in which the defending party was cited to be at fault by the investigating officer; (5) any case in which one party paid for goods from a check without sufficient funds. Such actions commonly are brought to the Small Claims Court and were intended to be brought there.

Such actions are not "declaratory judgments" and are contrary to the intent of such judgments. Plaintiff-Appellants rely upon Aetna Life Ins. Co. of Hartford Conn. v. Haworth, 300 U.S. 227, 240 (1937) and the Federal Declaratory Judgment Act, 28 USC §2201 to support their argument that the determination of fraud is a declaratory judgment.

It would appear that Plaintiff-Appellants have misrepresented the Federal Declaratory Judgment Act. In Steffel v. Thompson, 415 U.S. 452, 39 L.Ed. 2d 505, 94 S Ct 1209 (1974) the United States Supreme Court discussed at length the Act and its purpose.

To dispel these difficulties, Congress in 1934 enacted the Declaratory Judgment Act, 28 USC §§2201-2202 (28 USCS §§2201-2202). That Congress plainly intended declaratory relief to act as an alternative to the strong medicine of the injunction and to be utilized to test the constitutionality of state criminal statutes in cases where injunctive relief would be unavailable is amply evidenced by the legislative history of the Act, traced in full detail in Perez v. Ledesma, supra at 111-115, 27 L Ed 2d 701, 91 S Ct 674 (separate opinion of Brennan, J.)....

. . . .

. . . .The Federal Declaratory Judgment Act was

intended to provide an alternative to injunctions against state officials, except where there was a federal policy against federal adjudication of the class of litigation altogether. . . . Moreover, the Senate report's clear implication that declaratory relief would have been appropriate in Pierce v. Society of Sisters, 268 US 510, 69 L Ed 1070, 45 S Ct 571, 39 ALR 468 (1925), and Village of Euclid v. Ambler Realty Co., 272 US 365, 71 L Ed 303, 47 S Ct 114, 54 ALR 1016 (1926), both cases involving federal adjudication of the constitutionality of a state statute carrying criminal penalties, and the report's quotation from Terrace v. Thompson, which also involved anticipatory federal adjudication of the constitutionality of a state criminal statute, make it plain that Congress anticipated that the declaratory judgment procedure would be used by the federal courts to test the Constitutionality (415 US 468) of state criminal statutes." Id., at 111-112, 115, 27 L Ed 2d 701.

Steffel, supra at 466 and 467.

The purpose and intent of declaratory judgments is to set controversies at rest before they lead to repudiation of obligations, invasion of rights, and the commission of wrongs. State v. Lawson, 2 So 2d 765, 767 (Ala 1941).

The action before this Court had already become an obligation of the Plaintiff-Appellants.

The Plaintiff-Appellants argue both that executory process follows as of course and that it does not. If executory process does not follow as of course and Plaintiff-Appellants were correct in their position that the proceeding must be bifurcated, then the Small Claims Court action would be in full compliance with the rules.

Plaintiff-Appellants even state such to be the case at page 13 of Plaintiff-Appellants brief, to-wit:



"As a general statement, the District Court's decision is correct in holding that a Small Claims Court can find that money is due and owing based on its finding that fraud was committed without running afoul of that Court's incapacity to render declaratory judgments. But the character of the relief sought must determine the relief to be afforded..."

The character of the relief sought was the award of a money judgment. As such, the Small Claims Court had jurisdiction.

The action is not one to stabilize rights. The right of the State to collect on food stamp overpayment cases is a clearly legislated right. 7 CFR 270 et seq. The State does not have to have rights declared when they have been legislatively declared.

The action sought was not a declaratory judgment, but was an action for collection of money pursuant to the regulations and was appropriately brought in Small Claims Court.


#### CONCLUSION

The Memorandum Decision of the Second Judicial District Court should be upheld and the case be determined on its merits by the Small Claims Court. The Food Stamp Act sets forth three entirely separate means of collection for food stamp overpayments and in setting those regulations forth could not and did not intend to bar civil court jurisdiction when the regulations for administrative proceedings were not followed.

The rules do not regulate judicial proceedings but merely set forth a minimum standard of due process. Plaintiff-Appellants have been afforded full due process in these matters including adequate notice.


Small Claims Court is not making a declaratory judgment when it determines a claim of fraud and therefore has valid jurisdiction for this action.

Respectfully submitted this 14th day of April, 1982.

  
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First Floor, Municipal Bldg.  
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CERTIFICATE OF DELIVERY

I hereby certify that I delivered two true and correct copies of the foregoing Brief of Intervening Respondent to W. Paul Wharton, Attorney for Appellants, UTAHNS AGAINST HUNGER, 565 East 400 South, Salt Lake City; Michael E. Bulson, UTAH LEGAL SERVICES, INC., Attorney for Appellants, 385 24th St., Suite 522, Ogden, Utah; and to the Small Claims Court, 2nd Floor Municipal Bldg., Ogden, Utah, on this 15th day of April, 1982.

  
Karma K. Grimm  
Deputy County Attorney  
Attorney for Intervening  
Respondent