

1983

# Kay J. Larsen v. Judy Larsen (Thomas) : Petition for Rehearing

Utah Supreme Court

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D. Kendall Perkins; Attorney for Kay J. Larsen;

Phillip A. Harding; Attorney for Judy Larsen (Thomas);

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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FILED

FEB 9 1983

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Clark, Supreme Court, Utah

KAY J. LARSEN, :  
Plaintiff & Respondent, :  
vs. : Case No. 18198  
JUDY LARSEN (THOMAS), :  
Defendant & Appellant. :

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BRIEF OF JUDY LARSEN (THOMAS)

---

PETITION FOR REHEARING AND BRIEF  
SUPPORTING PETITION FOR REHEARING  
FOLLOWING PER CURIAM DECISION OF  
THE SUPREME COURT OF THE  
STATE OF UTAH

---

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FILED

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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Plaintiff & Respondent, :  
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JUDY LARSEN (THOMAS), :  
Defendant & Appellant. :

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PETITION FOR REHEARING  
OF JUDY LARSEN (THOMAS)

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DISPOSITION BY THE SUPREME COURT

This Petition for Rehearing by the Defendant-Appellant, Judy Larsen (now Thomas) follows the PER CURIAM decision of this Court entered on the 21st day of January, 1983, wherein the Court determined that there did not exist jurisdiction for the appeal, the appeal not having been filed within one month of a Judgment signed November 17, 1981, bearing a date stamp from the Clerk's Office of November 18, 1981.

This Motion for Rehearing is brought because, as stated in the Court's opinion, the decision is based upon the alleged fact that judgment was "filed on the 18th of November, 1981."

However, the judgment referred to by the Court was not entered in the Register of Actions of the District Court on the 18th day of November, 1981, nor at any subsequent date, even to the present time. A certified copy of the Register of Actions for this case is hereto attached, as Exhibit "A".

It is clear from the opinion of the Court that they were mistaken as to a material fact concerning the entry of a judgment in this action, which Defendant respectfully submits, substantially alters the requirement of the time in which to file the Notice of Appeal in the case.

#### RELIEF SOUGHT BY JUDY LARSEN (THOMAS)

Defendant-Appellant seeks the Court to rehear the issue of the timely filing of the Notice of Appeal, and to reach the merits of this case.

#### STATEMENT OF FACTS

The facts in this case are the same as stated in Defendant-Appellant's original brief, except that it should be emphasized that the judgment signed on November 17, 1981, bearing a date stamp of the Clerk's Office of November 18, 1981, was never entered in the Register of Actions of the Clerk's Office. (See Exhibit "A".)

ARGUMENT

POINT I

THE EVENT WHICH COMMENCES THE RUNNING OF TIME FOR THE FILING OF A NOTICE OF APPEAL IS THE ENTRY OF A JUDGMENT IN THE REGISTER OF ACTIONS MAINTAINED BY THE CLERK'S OFFICE.

Rule 73(a) of the Utah Rules of Civil Procedure states in the relevant portion:

"When an appeal is permitted from a District Court to the Supreme Court, the time within which an appeal may be taken shall be one month from the date of entry in the Register of Actions of the Judgment or Order appealed from unless a shorter time is provided by law..."

The time for appeal of a judgment is not from the date of the signing of the order nor from the date stamp placed by the Clerk's Office on the document, but from the date of the entry in the Register of Actions.

The copy of the Register of Actions of this case clearly indicates that the judgment which this Court refers to in its PER CURIAM decision as having been filed on the 18th day of November, 1981, was not entered on that date, and in fact, never has been entered in the Register of Actions. It follows then that the date for the filing of appeal cannot have run from the 18th day of November, 1981, or any other date in reference to this particular judgment.

In fact, the only judgment entered in the Register of Actions is the order which was signed by Judge Baldwin on the 12th day of October, 1981, and entered in the Register of Actions

on the 1st day of December, 1981. This being the case, the appeal of Defendant filed on the 4th day of January, 1982, was timely.

Counsel for Defendant-Appellant is unable to explain the failure of the judgment dated November 17, 1981, to be entered in the Register of Actions other than to say that it was an error on the part of the court personnel whose responsibility it was to enter judgments in the Register of Actions. However, the Rules of Civil Procedure are specific that the appeal time is commenced by the entry of the judgment in the Register of Actions.

During the period of October and November, 1981, Counsel for Defendant-Appellant was calling the Clerk's Office on a regular basis requesting information concerning the entry of a judgment in this matter; the decision to file an appeal in this matter having already been made. Counsel for the Defendant-Appellant was repeatedly told that no judgment had been entered in this matter until shortly after the 1st day of December, 1981, when Counsel for the Defendant-Appellant was informed that the order was entered on the 1st day of December, 1981. Notice of Appeal was prepared and filed in accordance with the rules based on this information provided by the Clerk's Office.

The policy behind this rule is based on the necessity to give proper notice to the parties in order to allow a timely appeal to be filed. In this case, the fact that the November 17<sup>th</sup> judgment was not entered in the Register of Actions deprived Defendant-Appellant of the knowledge of the order, and well

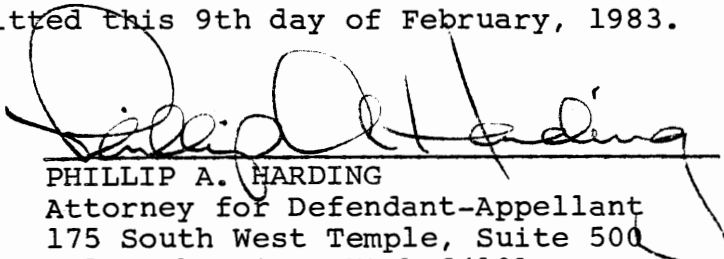


illustrates the wisdom of this rule. Counsel for Defendant did not learn about the November 17, 1981 judgment until after the filing of the Notice of Appeal in this matter.

#### CONCLUSION

Defendant respectfully submits that the calculation of time for filing an appeal from November 18, 1981 was incorrect, that this judgment having never been entered in the Register of Actions; that the time for appeal commenced on the 1st day of December, 1981; and the January 4, 1982 Notice of Appeal was timely. The decision of the Court should be reversed, and the case heard on its merits as contained in the briefs of the parties.

Respectfully submitted this 9th day of February, 1983.

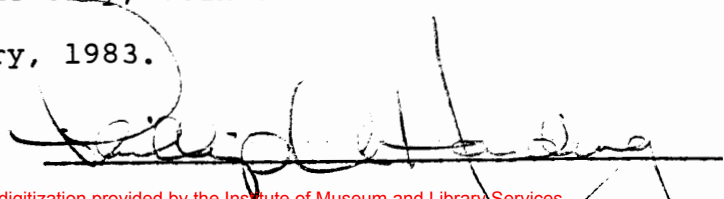
  
PHILLIP A. HARDING  
Attorney for Defendant-Appellant  
175 South West Temple, Suite 500  
Salt Lake City, Utah 84101

#### CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, two (2) copies of the foregoing BRIEF OF JUDY LARSEN (THOMAS) to:

D. Kendall Perkins  
Attorney for Plaintiff-Respondent  
525 South Third East  
Salt Lake City, Utah 84111

on the 9<sup>th</sup> day of February, 1983.



KELLY CO. APPL. SALT LAKE 1 793

*Judy J. Larsen*

Plaintiff

*J. M. Shields*

Attorney for Plaintiff

vs.

*Judy Larsen*

Defendant

Attorney for Defendant

1966

DATE

PROCEEDINGS

FEEES

PTFF. DR. DEFT. DR. CREDITS

Nov. 2, Filed Complaint (Mit. stat.)

5.00 - OS 296  
8.50 - 75.50  
7.50 - 657 1/2

Copy of Complaint to

11.14 - Filed - agr. & counterclaim  
11.15 - Summons - On stat.

NOV 23 Entd Order: Dept is o/s/c on 11-29-66 at 10:30 AM

Anderson J  
66955 J  
250 250

NOV 23 Issued Order

NOV 23 Filed: Order

NOV 27 Entd Order: The ct order Dept to expy # 215.00

on or before 12-25-66. Dept to expy # 251.00

on or before 5-25-67. Both to be made according. Anderson J

Dec 10 Filed: Summons 99/689

1967 Feb 17 ✓ Letter

✓ ✓ Amended counterclaim

✓ ✓ Entd Order: Dept granted dismissal counterclaim

Anderson J

Mar 7 Filed: findings & conclusions

100/1576

✓ ✓ Decree

✓ 24 ✓ motion

April 12 Entd Order: matter cont. w/o date

Anderson J

May 12 Filed: stipulation

✓ ✓ Entd Order: Decree amended in accordance with stip

Anderson J

✓ ✓ Filed: Amended decree

101/1571

1968 Feb 19 Entd Order: Dept is o/s/c on 2-13-68 at 9:00 am

7/c

✓ ✓ Issued Order as above

Jepson J

Feb 19 Filed: Affidavits for o/s/c

April 8 Entd Order: Dept to appear o/s/c 5-8-68 9:00 a.m.

Jepson J

April 4 Issued Order as above

7/c

✓ ✓ Filed: Petition under 2025.1

✓ ✓ Filed: Copy of order

76. Apr 16 Emergency Temp restraining order o/s/c 3-19-76 at 11:00 a.m. Dept 250

21491

✓ ✓ Filed: Affidavit of W. Walden Lloyd

✓ ✓ Motion for temporary restraining order & o/s/c

✓ ✓ Motion for Modification of Divorce Decree

Mar 11 Filed: Motion to dissolve temporary Restraining Order & o/s/c

1977

PROCEEDINGS

FEES

PTFF. DR. DEPT. DR. CREDITS

DATE

Nov. 3, Filed Complaint

Copy of Complaint to

(Mkt. - flt.)

5-6-68277.  
5.58 - 15.50  
278

10/11/77 Filed 2-1-78 - Judgment of Dismissal

Contd. from p. 116

Larson Vs. Larson #168246

- ✓ 12 Filed: Motion & Notice 3-19-76 @ 10 AM
- ✓ 13 Filed: Temp. Rest. Order; and o/s/c as return
- ✓ 17 ✓ : Answer to motion re modification of divorce decree
- ✓ 17 Filed: Answer to motion re temporary support & custody of minor children
- ✓ 12 Filed: o/s/c motion to Dis. Ord. Decret.
- ✓ 12 Filed: order
- ✓ 19 Entered: ord. o/s/c & Temp. Rest. Ord. Terminable. No change of custody → child to remain at Mother's.
- ✓ 20 Filed: order
- ✓ May 3 Filed: notice of hearing 5-21-76 @ 10:00 AM
- ✓ 21 Entered: ord. child to go to PTH
- July 16 Filed: Child's Waiver
- July 16 Filed & Issued: Pltf OSC 7-9-81 @ 9 AM
- Aug 23 Filed: letter (or exhibit)
- 81 June 17 Filed: Order on return 10-7-81 @ 2 PM 250 T 927 Taylor
- July 2 Entered: Order o/s/c granted and PTH -
- 81 Aug 13 Filed: objection to Ref's motion
- 81 Oct 5 Filed: affidavit
- 81 Oct 7 Filed: affidavit and PTH to pay support of 150.00 wks - Bald
- 81 Oct 7 Filed: pltf reply memo
- Dec 1 Filed: Order
- 81 Jan 4 Filed: Judgment - 167/2584
- 81 Jan 4 Filed: notice of appeal
- 81 Jan 4 Filed: undertaking on appeal
- 81 Jan 15 Filed: petition under MR 5.2 A
- 81 Feb 26 Filed: letter

STATE OF UTAH  
COUNTY OF SALT LAKE ) SS  
I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.  
WITNESS MY HAND AND SEAL OR SAID COURT THIS 23 DAY OF Feb 19 83  
H. DIXON HANNEY, CLERK