

1990

Michael L. Miller v. Gordon E. Johnson : Brief of Appellant

Utah Court of Appeals

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Gordon E. Johnson; pro se for Appellant.

Michael L. Miller; Attorney.

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IN THE UTAH COURT OF APPEALS

MICHAEL L. MILLER,)
)
Plaintiff/Respondent,)
)
vs.)
)
GORDON E. JOHNSON,)
)
Defendant/Appellant.)

Court Of Appeals No. 900469-CA

APPELLANT'S CLOSING BRIEF FOR DAMAGES
ON CROSS-COMPLAINT

APPEAL FROM THE JUDGMENT OF THE FIRST CIRCUIT
COURT IN AND FOR BOX ELDER, STATE OF UTAH,
BRIGHAM CITY DEPARTMENT, THE HONORABLE PARLEY
R. BALDWIN, CIRCUIT COURT JUDGE, PRESIDING

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO.

900469-CA

FILED

FEB 25 1991

COURT OF APPEALS

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1 Q Okay, In the same amount? (Emphasis: Not \$7,500)

2 A Yes." (Rptr Tr. p. 5, line 21 to page 6)

3 Attorney Miller did not mention attorney Phillip W. Dyer who
4 got a better settlement after Mr. Miller quit. Thus, it appeared
5 that appellant had cheated Mr. Miller out of a contingent fee and
6 was deserving of punishment.

7 Since it is too late for a new criminal trial, appellant re-
8 quests his cross-complaint not be dismissed but transferred to Dis-
9 trict Court for adjudication of damages flowing from the criminal
10 conviction and default judgment even though there was an answer
11 on file: Case No. 880324-CA

12 "On November 12, 1987, appellant Johnson filed a document enti-
13 tled Points and Authorities in which he stated if his motion for
14 summary judgment was denied, he [incorporated] by reference the
15 fee arbitration committee's decision on file herein as his answer.
16 We conclude that Johnson reasonably believed that he had filed an
17 appropriate responsive pleading to the complaint and that the default
18 judgment should be set aside under Utah R. Civ. Pro. 60 (b) (1)."

19 Restatement, Torts §682 (1938) reads:"One who uses legal process
20 whether criminal or civil, against another to accomplish a purpose
21 for which it is not designed is liable to the other for the pecunary
22 loss thereby."

23 The Declaration of Costs On Appeal in the underlying appeal on
24 file is attributable to the improper default judgment as are appel-
25 lant's jailing and legal harassment all of which happened after his
26 cross-complaint was filed. See Reporter's Transcript Page 6, line 17
27 through page 7 of State Of Utah vs. Johnson.

28 Appellant's Opening Brief incorrectly stated that Plaintiff
Miller took his default judgment before attorney Phillip W. Dyer
obtained a settlement in the underlying case. Mr. Miller filed the
lawsuit at bar, Mr. Dyer obtained the settlement, and then Mr. Miller

1 took his default judgment exparte although an answer was on file.

2 "Q Did you have a contract with him to receive a contingency
3 fee of some sort?

4 A Yes. I did.

5 Q And was that entire transaction and the contract we just
6 mentioned, the basis of the lawsuit which you filed?

7 A Yes."

8 He ignored the ruling of his own fee arbitration committee,
9 sued for a contingent fee even before any settlement, breached said
10 contract by quitting, lied to both courts, and tore defendant's
11 family apart with his legal sophistry. Punitive damages are called
12 for. Three attorneys worked on the case. Do they each deserve 1/3?

13 The Phillips case 100 Utah Adv. 3 (1989) suggests attorney
14 Miller may have an action in quantum meruit against attorney Dyer
15 who directly benefited from the former's work on the case. But he
16 cannot recover against appellant.

17 Dated February 11, 1991 at Brigham City, Utah

18 Respectfully Submitted

19 Gordon E. Johnson
20 Gordon E. Johnson

21 Proof Of Service By Mail

22 I hereby certify or declare under penalty of perjury that on
23 February 22, 1991 I mailed, postage prepaid, four copies of the
24 foregoing to Michael L. Miller, Attorney At Law, 20 South Main St.,
25 Brigham City, Utah 84302, and one copy to Judith Mayorga, Attorney
26 At Law, Utah Legal Services, Inc., 385 24th St. # 522, Ogden, Utah
27 84401.

28 Mary Alice Hobbs
Mary Alice Hobbs

FILED

JAN 1 ~ 1991

Mary Thomas

Mary Thomas
Clerk of the Court
Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

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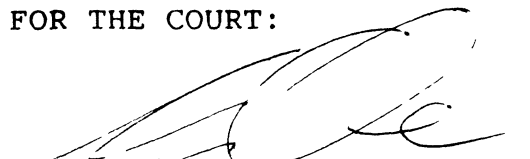
Michael Miller,)	
)	
Plaintiff and Appellee,)	ORDER RE SCHEDULING
v.)	APPELLEE'S BRIEF AND
)	RULE 31 ARGUMENT
Gordon E. Johnson,)	
)	Case No. 900469-CA
Defendant and Appellant.)	

Based upon Appellant's response to our sua sponte notice and upon Appellee's lack of response, the court declines to summarily dismiss this appeal, which appears to have been timely filed under Utah R. App. P. 4(d).

Appellee is hereby ordered to file his Appellee's brief on or before Monday, February 4, 1991. Any reply brief by appellant must be filed on or before Monday, February 18, 1991. Thereafter, this matter will be calendared for oral argument in March 1991, under Utah R. App. P. 31.

DATED this 17th day of January, 1991.

FOR THE COURT:



Gregory K. Orme, Judge

CERTIFICATE OF MAILING

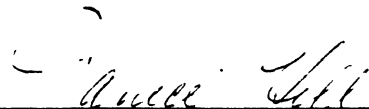
I hereby certify that on the 17th day of January, 1991, a true and correct copy of the foregoing ORDER RE SCHEDULING APPELLEE'S BRIEF AND RULE 31 ARGUMENT was hand-delivered or deposited in the United States mail.

Gordon E. Johnson
216 West 1st North
Brigham City, UT 84302

Michael L. Miller
Attorney at Law
20 South Main Street
P. O. Box 399
Brigham City, UT 84302

DATED this 17th day of January, 1991.

By



Deputy Clerk