

2011

Midland Funding LLC v. Kenneth Pipkin : Brief of Appellee

Utah Court of Appeals

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Grady R. McNett; Appellee/Plaintiff.

Kenneth Pipkin; Defendant/Appellant.

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IN THE UTAH COURT OF APPEALS

MIDLAND FUNDING LLC,

Plaintiff/Appellee,

-vs-

KENNETH PIPKIN,

Defendant/Appellant.

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)
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)

Case No. 20110788-CA

BRIEF OF APPELLEES

**RESPONSE TO APPEAL FROM THE TRIAL COURTS GRANT OF
APPELLEE'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULES
7 AND 56 OF THE UTAH RULES OF CIVIL PROCEDURE IN THE FIFTH
JUDICIAL DISTRICT COURT, WASHINGTON COUNTY, UTAH, THE
HONORABLE ERIC A. LUDLOW PRESIDING**

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Defendant/Appellant

FILED
UTAH APPELLATE COURT

IN THE UTAH COURT OF APPEALS

MIDLAND FUNDING LLC,)	
)	
Plaintiff/Appellee,)	
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)	
-vs-)	Case No. 20110788-CA
)	
KENNETH PIPKIN,)	
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Defendant/Appellant.)	

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IN THE UTAH COURT OF APPEALS

MIDLAND FUNDING LLC,)	
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Plaintiff/Appellee,)	
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-vs-)	Case No. 20110788-CA
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KENNETH PIPKIN,)	
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Defendant/Appellant.)	

BRIEF OF APPELLEES

JURISDICTION

Appellant appeals the trial court's granting of Appellee's Motion for Summary Judgment pursuant to Rule 56 of the Utah Rules of Civil Procedure in the Fifth District Court, Washington County, Utah, the Honorable Eric A. Ludlow presiding. This Court has jurisdiction pursuant to Utah Code Annotated § 78A-4-103(j).

ISSUES PRESENTED ON APPEAL AND STANDARD OF REVIEW

Issue I: Should the Court of Appeals disregard or strike Appellant's arguments when his brief is inadequate as 1) Appellant presents issues not preserved in the trial court; 2) Appellant's brief fails to cite proper authority; and 3) Appellant's brief fails to provide meaningful legal authority and analysis thereby shifting the burden of research and argument to the court?

Whether a case is inadequately briefed is an original question first brought before the Appellate Court.

Issue II: Were the Appellants first two arguments preserved when they were not raised in the answer, a counterclaim, or a cross claim, were not properly before the trial court and there were no findings of fact or rulings made on Appellants allegations?

Whether an issue was preserved is an original question first brought before the Appellate Court.

Issue III: Did the Appellant fail to marshal the evidence when he failed to cite or present the evidence supporting the entry of summary judgment?

Whether the evidence was marshaled is an original question first brought before the Appellate Court.

Issue VI: Did the Trial Court error in granting Appellee's Motion for Summary Judgment, which was supported by affidavit, when the Appellant failed to state any facts that were controverted under Rules 7(c)(3)(B) and 56(e) of the Utah Rules of Civil Procedure?

The propriety of a motion for summary judgment is a question of law and, therefore, is given no deference by the appellate court and is reviewed for correctness. *Schurtz v. BMW of N. Am., Inc.*, 814 P.2d 1108, 1111-12 (Utah 1991).

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

Rules 7, 8, 12 and 56 of the Utah Rules of Civil Procedure which are reproduced in *Addendum A*. Rule 24 of the Utah Rules of Appellate Procedure is reproduced in *Addendum B*. Utah Code Annotated § 78A-4-103 is reproduced in *Addendum C*. United States Code 15 § 1692k is reproduced in *Addendum D*.

STATEMENT OF THE CASE

On March 16, 2011 Appellee filed a complaint alleging a breach of contract claim (R. 1). The complaint alleged that the Appellant entered into an agreement with HSBC Bank Nevada, N.A. (hereinafter HSBC) which was assigned to the Appellee. *Id.* The complaint was served on Appellant on March 7, 2011. (R. 3). Appellant filed an answer on March 28, 2011 (R. 5). The answer did not admit or deny the allegations in Appellee's complaint but asked for "ORIGINAL Documentation and ORIGINAL contracts from Appellee." *Id.* (emphasis in the original). On July 7, 2011 Appellee filed a Motion and Memorandum for Summary Judgment along with the supporting affidavit and documents (R. 16-35). Appellant filed an Opposition and Memorandum in Support of his Opposition on July 11, 2011. (R. 36-43). Appellant did not file an affidavit or other evidence in support of his Opposition. *Id.* Appellee filed a Reply and Notice to Submit on July 21, 2011 (R. 44-46).¹ Appellee's Motion for Summary Judgment was granted on August 2, 2011 (R. 57). Appellant filed a timely notice of appeal on August 29, 2011 (R. 90).

STATEMENT OF FACTS

On March 16, 2011 Appellee filed a complaint for a breach of contract against Appellant. (R. 1). The complaint alleged that the Appellant entered into an agreement with HSBC Bank Nevada, N.A. (hereinafter HSBC), that the Appellant defaulted on his obligation leaving a balance of \$6,148.03 plus interest, costs and attorney fees and that the account was assigned to the Appellee. *Id.* Appellant filed an answer on March 28, 2011 (R. 5). Appellant's answer did not admit or deny the allegations in Appellee's complaint but asked for "ORIGINAL Documentation

¹ The Appellant filed a Reply in Opposition to Appellee's Motion for Summary Judgment but it was not considered as "[n]o other memorandum will be considered without leave of the court." U.R.C.P. Rule 7(c)(1).

and ORIGINAL contracts from Appellee.” *Id.* (emphasis in the original). Appellant’s answer also did not raise any affirmative defenses, counterclaims or cross-claims. *Id.*

On July 7, 2011 Appellee filed a Motion and Memorandum for Summary Judgment along with a supporting Affidavit and Cardmember Agreement (R. 16-35). In Appellee’s Memorandum in Support of Summary Judgment, Appellee presented facts that the account had been assigned from HSBC to Appellee, that the Appellant owes a balance of \$6,148.03, and that Appellee is entitled to attorney fees in having to pursue the breach of contract claim. *Id.*

Appellant filed an Opposition and Memorandum in Support of his Opposition on July 11, 2011. (R. 36-43). Appellant’s Opposition did not include any restatement of facts that were controverted or provide any evidence, by affidavit or otherwise, denying that the Appellant had entered into the credit agreement with HSBC, that he had defaulted or that the balance was owed. *Id.* Appellant also did not “dispute the validity of age, competency or employment of Affiant.” *Id.* Appellant argued that the Appellee’s evidence was insufficient and that he “cannot determine any validity of alleged debt.” *Id.*

Appellee filed a Reply and Notice to Submit on July 21, 2011 (R. 44-46). Appellee argued in its Reply that Appellee’s Affidavit was uncontroverted as Appellant failed to “provide any contrary facts or evidence” and that Appellant’s had failed to even provide a “bare denial” of the facts as set forth by the Appellee Motion and Affidavit. *Id.*

The trial court granted summary judgment in favor of Appellee based upon Appellee’s Motion for Summary Judgment on August 2, 2011 (R. 57).

SUMMARY OF ARGUMENT

POINT I: The Utah Rules of Appellate Procedure clearly set forth the requirements for appellate briefs. Briefs that fail to conform to said requirements place an undue burden on the appellate courts as they would have to conduct research and formulate arguments for the offending party in order to address the merits of the case. As such, the court may disregard, strike or affirm based upon an inadequate brief. Presently, Appellant has failed to cite proper authority and has failed to provide any meaningful analysis. Appellant has only presented conclusory arguments leaving the burden on the Appellate Court to research the law and flesh out the arguments. As this is contrary to the Utah Rules of Appellate Procedure, the Appellant's brief should be stricken or disregarded.

POINT II: In order to properly preserve an issue it must be brought before the trial court. The Appellant has failed to preserve the first two issues in his appeal as the alleged FDCPA claims were never at issue before the trial court. The action is based upon the Appellee's breach of contract claim. An FDCPA claim is a separate cause of action from a breach of contract claim. It was not raised as a cross-claim or a counter claim. There were no findings of fact or conclusions of law to appeal as the alleged FDCPA claim was not before the trial court and no rulings were made. As the alleged FDCPA claim was not properly before the trial court it was not preserved for appeal and Appellant's first two arguments should be stricken or disregarded.

POINT III: In order to challenge the trial courts entry of summary judgment the Appellant must first marshal all the evidence supporting the trial court's decision. The Appellant has failed to marshal the evidence as he has fails to present the evidence submitted in favor of summary judgment. Based on this failure, this Court should assume the record supports the entry

of summary judgment and affirm the trial court's decision.

POINT IV: Assuming, arguendo, that this court overlooks all of Appellant's briefing flaws, Appellant's claims also fail on their merits. The ruling at issue on appeal is the trial court's grant of Appellee's Motion for Summary Judgment. Appellee supported the motion by affidavit. The Appellant did not set forth any contrary facts or evidence with any admissible evidence. The Appellant did not deny opening the credit account or that he owes a balance. As the Appellant failed to provide any contrary evidence, summary judgment was proper and the trial court decision should be affirmed.

ARGUMENT

I. THE COURT OF APPEALS SHOULD AFFIRM THE TRIAL COURT'S RULING AS APPELLANT'S BRIEF IS INADEQUATE

"It is well established that a reviewing court will not address arguments that are not adequately briefed." *State v. Thomas*, 961 P.2d 299, 304 (Utah 1998) (internal citations omitted). The Rules of Appellate Procedure set forth the requirements "that appellants and appellees *must* meet when submitting briefs." *MacKay v. Hardy*, 973 P.2d 941, 947 (Utah 1998) (emphasis in original).

Pursuant to Rule 24 of the Utah Rules of Appellate Procedure, a brief "shall contain," among other various requirements, "[a] statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority" (Rule 24(a)(5)); "citation to the record showing that the issue was preserved in the trial court" (Rule 24(a)(5)(A)); and an argument which contains "the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied upon" (Rule 24(a)(9)). "All briefs under this rule must be concise, presented with accuracy, logically arranged

with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters.”

Rule 24(k) of the Utah Rules of Appellate Procedure.

Further, Rule 24 “requires not just bald citation to authority but development of that authority and reasoned analysis based on that authority.” *Thomas*, 961 P.2d at 305. An appellant must “fully identify, analyze, and cite its legal arguments” rather than provide a “conclusory statement unsupported by analysis or authority.” *State v. Green*, 2005 UT 9, ¶11.

Inadequate briefs place an “undue burden upon the judiciary’s time and energy,” *Green*, 2005 UT 9, ¶9, as the “burden of research and argument [is shifted] to the reviewing court.” *Thomas*, 961 P.2d at 305. The appellate court “is not a depository in which the appealing party may dump the burden of argument and research,” *id.*, and briefs which do not comply with the Utah Rules of Appellate Procedure “may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.” Rule 24(k) of the Utah Rules of Appellate Procedure; see also *Nipper v. Douglas*, 2004 UT App 118, ¶¶16, 19-20 (stating that the court need not address the merits of a case in an inadequately briefed case and an award of attorney’s fees).

In this case, Appellee’s brief is inadequate as the Appellant fails to support his factual assertions with cites to the record, fails to cite proper authority supporting his conclusions and arguments and he fails to provide any meaningful analysis.

Appellant’s first argument is that the Fair Debt Collection Practices Act (hereinafter FDCPA) has been violated. Applt. Br. at 12. While the Appellant cites to the FDCPA and a few cases, he does not develop the cases or provide any meaningful analysis on how it applies to the Appellee’s breach of contract claim. The Appellant makes unsupported statements like “no contract or verification has been presented” without any cite to any factual finding supporting his

conclusion. Aplt. Br. at 13. In essence, he is asking this Court to become a finder of fact as the FDCPA was never before the trial court and no factual findings were ever made. The trial court only decided the issue before it, namely Appellee's breach of contract claim. As Appellant's has not provided any legal authority or meaningful analysis which support his argument or suggests that it should be before this Court when it was not before the trial court, his first argument should be stricken, disregarded and this Court should summarily dismiss Appellant's appeal on this issue.

Likewise, the Appellant's second claim also is unsupported by any factual finding or any meaningful legal analysis. The Appellant has again made the unsupported statement that the Appellee "is in violation of the FDCPA." Aplt. Br. at 15. Again there are no factual findings on this issue as it was not before the trial court. The Appellant also fails to provide any meaningful legal citations or analysis leaving the burden of research and analysis on the appellate court. See Thomas, 961 P.2d at 305. As the alleged claims under the FDCPA were not properly before the trial court, no findings were made and no issues on appeal were preserved. As a result, the Appellant has failed to provide any legal basis or analysis and his second argument should be stricken, disregarded and this Court should summarily dismiss Appellant's appeal on this issue.

Although the Appellant's third claim concerns the breach of contract claim addressed by the trial court, Appellant's brief is inadequate as it does not provide relevant authoritative case law or meaningful analysis. Appellant does cite to his Opposition to Summary Judgment wherein he states that he "has no familiarity" to Appellee's business records and that he "cannot determine any validity of alleged debt" but the Appellant fails to provide any citations or legal analysis regarding what a party opposing summary judgment must present in Utah to create a genuine issue of fact. Aplt. Br. at 15. For example, the Appellant did not cite to *Heglar Ranch*,

Inc. v. Stillman, 619 P.2d 1390, 1391 (Utah 1980), which holds that summary judgment is not precluded "simply whenever some fact remains in dispute, but only when a material fact is genuinely controverted" or to *Massey v. Utah Power & Light*, 609 P.2d 937, 938 (Utah 1980) which states "bare contentions, unsupported by any specification of facts in support thereof, raise no material questions of fact as will preclude the entry of summary judgment" or any other applicable case to define the standard under which the trial court reviewed the motion for summary judgment. The Appellant also did not provide any meaningful analysis applying the facts to the law governing summary judgment in Utah. As such, the Appellant's third argument should be stricken, disregarded and this Court should summarily dismiss Appellant's appeal on this issue.

Finally, the Appellant has also failed to support his fourth argument with any meaningful legal analysis or review. The Appellant again fails to make any meaningful analysis regarding the proof submitted and supporting summary judgment. By failing to "fully identify, analyze, and cite its legal arguments" the Appellant provided a "conclusory statement unsupported by analysis or authority." *State v. Green*, 2005 UT 9, ¶11. As this leaves the burden on the Appellate Court of research and argument, it also should be disregarded or stricken.

II. THE COURT OF APPEALS SHOULD NOT ADDRESS APPELLANT'S FIRST TWO ARGUMENTS REGARDING THE ALLEGED FDCPA CLAIMS AS THEY WERE NOT BEFORE THE TRIAL COURT

Pursuant to Rule 24(a)(5)(A) of the Utah Rules of Appellate Procedure, a brief must contain a "citation to the record showing that the issue was preserved in the trial court." An issue is only properly preserved if: "(1) the issue is raised in a timely fashion; (2) the issue is specifically raised; and (3) the issue is supported by evidence or relevant legal authority." *Hatch v. Davis*, 2004 UT App 378, ¶56. "Absent plain error or exceptional circumstances . . . an

appellate court will not consider an issue—even a constitutional issue—which is raised for the first time on appeal.” *Id.*

Appellant’s first two issues are not preserved for appeal. The matter before the trial court consisted of the Appellee’s breach of contract claim. (R. 1). It did not involve any counterclaims, third party claims or even any affirmative defenses. (R. 5). Appellant’s claim on appeal—a FDCPA violation—is essentially a separate and distinct cause of action from the breach of contract matter before the trial court. A violation of the FDCPA does not affect the validity of a debt or bar state court action on a breach of contract claim. See *Maynard v. Cannon*, 650 F.Supp.2d 1138, 1143 (D. Utah 2008)(citing *Shimek v. Weissman, Nowack, Curry & Wilco, P.C.*, 374 F.3d 1011, 1013 (11th Cir.2004)) (holding that the “FDCPA ‘does not extinguish a creditor’s right to secure a debt under state law, but instead merely prohibits deceptive collection techniques.’”); *Vitullo v. Mancini*, 684 F.Supp.2d 760, 765 (E.D. Virginia 2010) (holding “The statute’s remedial scheme does not envision, and indeed does not permit, courts to cancel or extinguish debts as a remedy for FDCPA violations.”); see also 15 U.S.C. § 1692k(a) (stating “any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person”). Additionally, an FDCPA claim is not an affirmative defense.² The trial court only ruled on the issue before it--Appellee’s breach of contract claim. (R. 57). As the alleged FDCPA claim was before the trial court it was not preserved for appeal and should not be addressed for the first time on appeal. Therefore, Appellant’s first two arguments should not be considered.

² Even if the FDCPA did constitute an affirmative defense to an action, it would have been waived as Appellant did not raise it in his Answer. See U.R.C.P. 8(c) (“In pleading to a preceding pleading, a party shall set forth affirmatively . . . any other matter constituting an avoidance or affirmative defense”); U.R.C.P. 12(h)(A party waives all defenses and objections

III. AS APPELLANT FAILS TO MARSHAL ANY OF THE EVIDENCE IN SUPPORT OF SUMMARY JUDGMENT THE COURT OF APPEALS SHOULD ASSUME THE RECORD SUPPORTS THE TRIAL COURT'S ENTRY OF SUMMARY JUDGMENT AND AFFIRM

"To successfully challenge a trial court's findings of fact on appeal, an appellant must marshal the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be 'against the clear weight of the evidence, thus making them 'clearly erroneous.'" *Valcarce v. Fitzgerald*, 961 P.2d 305, 312 (Utah 1998) (internal citations omitted). An appellant may not "merely state[] those facts most favorable to his position and ignore[] the contrary evidence." *Whitear v. Labor Comm'n*, 973 P.2d 982, 985 (Utah Ct. App. 1998). This burden is heavy because appellate courts "do not sit to retry cases submitted on disputed facts." *Hoth v. White*, 799 P.2d 213, 216 (Utah Ct. App. 1990).

"In order to properly discharge the duty of marshaling the evidence, the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which *supports* the very findings the appellant resists. After constructing this magnificent array of supporting evidence, the challenger must ferret out a fatal flaw in the evidence. The gravity of this flaw must be sufficient to convince the appellate court that the court's finding resting upon the evidence is clearly erroneous." *West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah Ct. App. 1991).

"If the appellant fails to marshal the evidence, the appellate court assumes that the record supports the findings of the trial court." *Saunders v. Sharp*, 806 P.2d 198, 199 (Utah 1991).

The Appellant has failed to marshal the evidence in support of the entry of Summary Judgment. The Appellant has failed to present the evidence provided by the Affidavit of Mycah

not presented either by motion or by answer or reply").

Struck or the Cardholder agreement that was filed in support of Appellee's Motion for Summary Judgment. (R. 18, 24). The only statements to which the Appellant cites are his arguments that were presented in Opposition to Summary Judgment. Aplt. Br. at 15-18. By failing to marshal any of the evidence that supports summary judgment the appellate court should assume the record supports the trial courts entry of judgment and affirm.

IV. SUMMARY JUDGMENT SHOULD BE AFFIRMED BECAUSE APPELLEE PROVIDED UNCONTROVERTED EVIDENCE IN SUPPORT OF SUMMARY JUDGMENT

Pursuant to Rule 56(c) of the Utah Rules of Civil Procedure, summary judgment "shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages." Additionally, "[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the pleadings, but the response, by affidavits or as otherwise provided for in this rule, must set forth specific facts showing that there is a genuine issue for trial." Utah R. Civ. P. 56(e).

Additionally, "[e]ach fact set forth in the moving party's memorandum is deemed admitted for the purpose of summary judgment unless controverted by the responding party." Utah R. Civ. P. 7(c)(3)(A). In order to controvert a parties facts the opposing memorandum "shall contain a verbatim restatement of each of the moving party's facts that is controverted" along with "an explanation of the grounds for any dispute, supported by citation to relevant materials, such as affidavits or discovery materials." Utah R. Civ. P. 7(c)(3)(B).

Initially, the "movant must establish each element of his claim in order to show that he is entitled to judgment as a matter of law." *Orvis v. Johnson*, 2008 UT 2, ¶10. Once established, "[t]he burden on summary judgment then shifts to the nonmoving party to identify contested material facts, or legal flaws." *Id.* If the adverse party fails to set forth "specific evidentiary facts showing that there is a genuine issue for trial" then the moving party is entitled to summary judgment. *Treloggan v. Treloggan*, 699 P.2d 747, 748 (Utah 1985) (internal citations omitted). "However, bare contentions, unsupported by any specification of facts in support thereof, raise no material questions of fact as will preclude the entry of summary judgment." *Massey v. Utah Power & Light*, 609 P.2d 937, 938 (Utah 1980). Additionally, summary judgment is not precluded "simply whenever some fact remains in dispute, but only when a material fact is genuinely controverted." *Heglar Ranch, Inc. v. Stillman*, 619 P.2d 1390, 1391 (Utah 1980).

Even assuming, arguendo, that the Appellant had adequately briefed, preserved and marshaled the evidence properly, the trial courts entry of Summary Judgment should be affirmed as the Appellant did not provide any contrary evidence. The Appellee supported their motion by affidavit which sets forth that the Appellant obtained a credit card from HSBC; that the account was assigned to Appellee; and that the balance of \$6,148.03 is due and owing on the credit account. (R. 14, 24). The Appellant did "not dispute validity of age, competency or employment of Affiant" or any other fact as set forth. (R. 37).

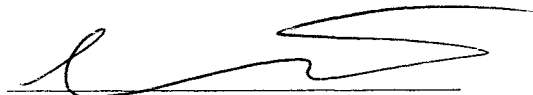
As the Motion for Summary Judgment was supported by Affidavit, the burden shifted to the Appellant to show that there was a genuine dispute for trial. See *Orvis*, 2008 UT 2, ¶10. The Appellant needed to set forth "specific evidentiary facts" by affidavit or with other evidence contesting the facts as set forth. *Treloggan*, 699 P.2d at 748. The Appellant did not provide "a verbatim restatement of each of the moving party's facts that is controverted" along with "an

explanation of the grounds for any dispute, supported by citation to relevant materials, such as affidavits or discovery materials” as required by Rule 7(c)(3)(B) of the Utah Rules of Civil Procedure. The Appellant did not provide a sworn statement that he never had the credit card or that he had paid off the balance of the credit card. Summary Judgment entered as the Appellant failed to provide any contrary evidence as required by Rules 7(c)(3)(B) and 56(e) of the Utah Rules of Civil Procedure or as required by Utah Law. As the trial court correctly entered Summary Judgment, it should be affirmed.

CONCLUSION

For the foregoing reasons, Appellee respectfully requests the Court to affirm the trial courts entry of Summary Judgment.

DATED: January 27, 2012

A handwritten signature in black ink, appearing to read 'Grady R. McNett', is written over a horizontal line.

Grady R. McNett, Attorney for Appellee

ADDENDUM A

West's Utah Code Annotated

State Court Rules

Utah Rules of Civil Procedure (Refs & Annos)

Part III. Pleadings, Motions, and Orders

Utah Rules of Civil Procedure, Rule 7

RULE 7. PLEADINGS ALLOWED; MOTIONS, MEMORANDA, HEARINGS, ORDERS

Currentness

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

(b)(1) Motions. An application to the court for an order shall be by motion which, unless made during a hearing or trial or in proceedings before a court commissioner, shall be made in accordance with this rule. A motion shall be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought.

(b)(2) Limit on order to show cause. An application to the court for an order to show cause shall be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by an affidavit sufficient to show cause to believe a party has violated a court order.

(c) Memoranda.

(c)(1) Memoranda required, exceptions, filing times. All motions, except uncontested or ex parte motions, shall be accompanied by a supporting memorandum. Within ten days after service of the motion and supporting memorandum, a party opposing the motion shall file a memorandum in opposition. Within five days after service of the memorandum in opposition, the moving party may file a reply memorandum, which shall be limited to rebuttal of matters raised in the memorandum in opposition. No other memoranda will be considered without leave of court. A party may attach a proposed order to its initial memorandum.

(c)(2) Length. Initial memoranda shall not exceed 10 pages of argument without leave of the court. Reply memoranda shall not exceed 5 pages of argument without leave of the court. The court may permit a party to file an over-length memorandum upon ex parte application and a showing of good cause.

(c)(3) Content.

(c)(3)(A) A memorandum supporting a motion for summary judgment shall contain a statement of material facts as to which the moving party contends no genuine issue exists. Each fact shall be separately stated and numbered and supported by citation to relevant materials, such as affidavits or discovery materials. Each fact set forth in the moving party's memorandum is deemed admitted for the purpose of summary judgment unless controverted by the responding party.

(c)(3)(B) A memorandum opposing a motion for summary judgment shall contain a verbatim restatement of each of the moving party's facts that is controverted, and may contain a separate statement of additional facts in dispute. For each of the moving party's facts that is controverted, the opposing party shall provide an explanation of the grounds for any dispute, supported by citation to relevant materials, such as affidavits or discovery materials. For any additional facts set forth in the opposing memorandum, each fact shall be separately stated and numbered and supported by citation to supporting materials, such as affidavits or discovery materials.

RULE 7. PLEADINGS ALLOWED; MOTIONS, MEMORANDA,...., UT R RCP Rule 7

(c)(3)(C) A memorandum with more than 10 pages of argument shall contain a table of contents and a table of authorities with page references.

(c)(3)(D) A party may attach as exhibits to a memorandum relevant portions of documents cited in the memorandum, such as affidavits or discovery materials.

(d) Request to submit for decision. When briefing is complete, either party may file a "Request to Submit for Decision." The request to submit for decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. If no party files a request, the motion will not be submitted for decision.

(e) Hearings. The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing shall be separately identified in the caption of the document containing the request. The court shall grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

(f) Orders.

(f)(1) An order includes every direction of the court, including a minute order entered in writing, not included in a judgment. An order for the payment of money may be enforced in the same manner as if it were a judgment. Except as otherwise provided by these rules, any order made without notice to the adverse party may be vacated or modified by the judge who made it with or without notice. Orders shall state whether they are entered upon trial, stipulation, motion or the court's initiative.

(f)(2) Unless the court approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, serve upon the other parties a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed within five days after service. The party preparing the order shall file the proposed order upon being served with an objection or upon expiration of the time to object.

(f)(3) Unless otherwise directed by the court, all orders shall be prepared as separate documents and shall not incorporate any matter by reference.

Credits

[Amended effective November 1, 2003; April 1, 2004; November 1, 2005; April 1, 2008; November 1, 2009.]

Editors' Notes

ADVISORY COMMITTEE NOTE

The practice for courtesy copies varies by judge and so is not regulated by rule. Each party should ascertain whether the judge wants a courtesy copy of that party's motion, memoranda and supporting documents and, if so, when and where to deliver them.

Paragraph (f) applies to all orders, not just orders upon motion.

Notes of Decisions (58)

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RULE 8. GENERAL RULES OF PLEADINGS, UT R RCP Rule 8

West's Utah Code Annotated

State Court Rules

Utah Rules of Civil Procedure (Refs & Annos)

Part III. Pleadings, Motions, and Orders

Utah Rules of Civil Procedure, Rule 8

RULE 8. GENERAL RULES OF PLEADINGS

Currentness

(a) Claims for relief. An original claim, counterclaim, cross-claim or third-party claim shall contain a short and plain: (1) statement of the claim showing that the party is entitled to relief; and (2) demand for judgment for specified relief. Relief in the alternative or of several different types may be demanded. A party who claims damages but does not plead an amount shall plead that their damages are such as to qualify for a specified tier defined by Rule 26(c)(3). A pleading that qualifies for tier 1 or tier 2 discovery shall constitute a waiver of any right to recover damages above the tier limits specified in Rule 26(c)(3), unless the pleading is amended under Rule 15.

(b) Defenses; form of denials. A party shall state in simple, short and plain terms any defenses to each claim asserted and shall admit or deny the statements in the claim. A party without knowledge or information sufficient to form a belief about the truth of a statement shall so state, and this has the effect of a denial. Denials shall fairly meet the substance of the statements denied. A party may deny all of the statements in a claim by general denial. A party may specify the statement or part of a statement that is admitted and deny the rest. A party may specify the statement or part of a statement that is denied and admit the rest.

(c) Affirmative defenses. An affirmative defense shall contain a short and plain: (1) statement of the affirmative defense; and (2) a demand for relief. A party shall set forth affirmatively in a responsive pleading accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. If a party mistakenly designates a defense as a counterclaim or a counterclaim as a defense, the court, on terms, may treat the pleadings as if the defense or counterclaim had been properly designated.

(d) Effect of failure to deny. Statements in a pleading to which a responsive pleading is required, other than statements of the amount of damage, are admitted if not denied in the responsive pleading. Statements in a pleading to which no responsive pleading is required or permitted are deemed denied or avoided.

(e) Consistency. A party may state a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. If statements are made in the alternative and one of them is sufficient, the pleading is not made insufficient by the insufficiency of an alternative statement. A party may state legal and equitable claims or legal and equitable defenses regardless of consistency.

(f) Construction of pleadings. All pleadings shall be construed to do substantial justice.

Credits

[Amended effective November 1, 2011.]

RULE 8. GENERAL RULES OF PLEADINGS, UT RCP Rule 8

Editors' Notes

ADVISORY COMMITTEE NOTES

The pleading standard under Rule 8 remains “notice pleading” as exemplified by the official forms appended to the Rules. But parties are encouraged to plead facts that entitle them to relief or establish affirmative defenses because more expansive pleadings will trigger broader disclosures from the opponent under Rule 26. This encouragement is consistent with the general approach of the 2011 amendments which require each party to disclose its affirmative case early in the process so that the adversary might evaluate its merits and focus the need for discovery.

The amount of damages pled will determine the amount of standard discovery available under Rule 26(c)(3). It would be unfair for a party to plead a smaller amount of damages in order to take advantage of the streamlined discovery and then seek to recover greater damages. Thus, Rule 8 provides that a party waives its right to recover damages in excess of the maximums provided for that tier unless the pleading is amended. The trial court may determine if the amendment requires further discovery.

Notes of Decisions (323)

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RULE 12. DEFENSES AND OBJECTIONS, UT RCP Rule 12

West's Utah Code Annotated

State Court Rules

Utah Rules of Civil Procedure (Refs & Annos)

Part III. Pleadings, Motions, and Orders

Utah Rules of Civil Procedure, Rule 12

RULE 12. DEFENSES AND OBJECTIONS

Currentness

(a) When presented. Unless otherwise provided by statute or order of the court, a defendant shall serve an answer within twenty days after the service of the summons and complaint is complete within the state and within thirty days after service of the summons and complaint is complete outside the state. A party served with a pleading stating a cross-claim shall serve an answer thereto within twenty days after the service. The plaintiff shall serve a reply to a counterclaim in the answer within twenty days after service of the answer or, if a reply is ordered by the court, within twenty days after service of the order, unless the order otherwise directs. The service of a motion under this rule alters these periods of time as follows, unless a different time is fixed by order of the court, but a motion directed to fewer than all of the claims in a pleading does not affect the time for responding to the remaining claims:

(a)(1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the court's action;

(a)(2) If the court grants a motion for a more definite statement, the responsive pleading shall be served within ten days after the service of the more definite statement.

(b) How presented. Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion or by further pleading after the denial of such motion or objection. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined

RULE 12. DEFENSES AND OBJECTIONS, UT R RCP Rule 12

before trial on application of any party, unless the court orders that the hearings and determination thereof be deferred until the trial.

(e) Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after the service of the pleading, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of defenses. A party who makes a motion under this rule may join with it the other motions herein provided for and then available. If a party makes a motion under this rule and does not include therein all defenses and objections then available which this rule permits to be raised by motion, the party shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

(h) Waiver of defenses. A party waives all defenses and objections not presented either by motion or by answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15(b) in the light of any evidence that may have been received.

(i) Pleading after denial of a motion. The filing of a responsive pleading after the denial of any motion made pursuant to these rules shall not be deemed a waiver of such motion.

(j) Security for costs of a nonresident plaintiff. When the plaintiff in an action resides out of this state, or is a foreign corporation, the defendant may file a motion to require the plaintiff to furnish security for costs and charges which may be awarded against such plaintiff. Upon hearing and determination by the court of the reasonable necessity therefor, the court shall order the plaintiff to file a \$300.00 undertaking with sufficient sureties as security for payment of such costs and charges as may be awarded against such plaintiff. No security shall be required of any officer, instrumentality, or agency of the United States.

(k) Effect of failure to file undertaking. If the plaintiff fails to file the undertaking as ordered within 30 days of the service of the order, the court shall, upon motion of the defendant, enter an order dismissing the action.

Credits

[Amended effective September 4, 1985; April 1, 1990; November 1, 2000.]

Notes of Decisions (347)

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West's Utah Code Annotated

State Court Rules

Utah Rules of Civil Procedure (Refs & Annos)

Part VII. Judgment

Utah Rules of Civil Procedure, Rule 56

RULE 56. SUMMARY JUDGMENT

Currentness

(a) For claimant. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move for summary judgment upon all or any part thereof.

(b) For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move for summary judgment as to all or any part thereof.

(c) Motion and proceedings thereon. The motion, memoranda and affidavits shall be in accordance with Rule 7. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. Summary judgment, if appropriate, shall be entered against a party failing to file such a response.

(f) When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits made in bad faith. If any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party presenting them to pay to the other party the amount of the

RULE 56. SUMMARY JUDGMENT, UT R RCP Rule 56

reasonable expenses which the filing of the affidavits caused, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Credits

[Amended effective November 1, 1997; November 1, 2004.]

Notes of Decisions (879)

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ADDENDUM B

West's Utah Code Annotated

State Court Rules

Utah Rules of Appellate Procedure (Refs & Annos)

Title V. General Provisions

Rules App.Proc., Rule 24

RULE 24. BRIEFS

Currentness

(a) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order indicated:

(a)(1) A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties. The list should be set out on a separate page which appears immediately inside the cover.

(a)(2) A table of contents, including the contents of the addendum, with page references.

(a)(3) A table of authorities with cases alphabetically arranged and with parallel citations, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(a)(4) A brief statement showing the jurisdiction of the appellate court.

(a)(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and

(a)(5)(A) citation to the record showing that the issue was preserved in the trial court; or

(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the trial court.

(a)(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.

(a)(7) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule.

(a)(8) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.

(a)(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged

RULE 24. BRIEFS, UT R RAP Rule 24

finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(a)(10) A short conclusion stating the precise relief sought.

(a)(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. The addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of:

(a)(11)(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;

(a)(11)(B) in cases being reviewed on certiorari, a copy of the Court of Appeals opinion; in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service; and

(a)(11)(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.

(b) Brief of the appellee. The brief of the appellee shall conform to the requirements of paragraph (a) of this rule, except that the appellee need not include:

(b)(1) a statement of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant; or

(b)(2) an addendum, except to provide material not included in the addendum of the appellant. The appellee may refer to the addendum of the appellant.

(c) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraphs (a)(2), (3), (9), and (10) of this rule. No further briefs may be filed except with leave of the appellate court.

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs.

(f)(1) Type-volume limitation.

(f)(1)(A) A principal brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text; and a reply brief is acceptable if it contains no more than 7,000 words or it uses a monospaced face and contains no more than 650 lines of text.

RULE 24. BRIEFS, UT R RAP Rule 24

(f)(1)(B) Headings, footnotes and quotations count toward the word and line limitations, but the table of contents, table of citations, and any addendum containing statutes, rules, regulations or portions of the record as required by paragraph (a) of this rule do not count toward the word and line limitations.

(f)(1)(C) Certificate of compliance. A brief submitted under Rule 24(f)(1) must include a certificate by the attorney or an unrepresented party that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word processing system used to prepare the brief. The certificate must state either the number of words in the brief or the number of lines of monospaced type in the brief.

(f)(2) Page limitation. Unless a brief complies with Rule 24(f)(1), a principal brief shall not exceed 30 pages, and a reply brief shall not exceed 15 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (a) of this rule.

In cases involving cross-appeals, paragraph (g) of this rule sets forth the length of briefs.

(g) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant, unless the parties otherwise agree or the court otherwise orders. Each party shall be entitled to file two briefs.

(g)(1) The appellant shall file a Brief of Appellant, which shall present the issues raised in the appeal.

(g)(2) The appellee shall then file one brief, entitled Brief of Appellee and Cross-Appellant, which shall respond to the issues raised in the Brief of Appellant and present the issues raised in the cross-appeal.

(g)(3) The appellant shall then file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee, which shall reply to the Brief of Appellee and respond to the Brief of Cross-Appellant.

(g)(4) The appellee may then file a Reply Brief of Cross-Appellant, which shall reply to the Brief of Cross-Appellee.

(g)(5) Type-Volume Limitation.

(g)(5)(A) The appellant's Brief of Appellant is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(g)(5)(B) The appellee's Brief of Appellee and Cross-Appellant is acceptable if it contains no more than 16,500 words or it uses a monospaced face and contains no more than 1,500 lines of text.

(g)(5)(C) The appellant's Reply Brief of Appellant and Brief of Cross-Appellee is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(g)(5)(D) The appellee's Reply Brief of Cross-Appellant is acceptable if it contains no more than half of the type volume specified in Rule 24(g)(5)(A).

(g)(6) Certificate of Compliance. A brief submitted under Rule 24(g)(5) must comply with Rule 24(f)(1)(C).

(g)(7) Page Limitation. Unless it complies with Rule 24(g)(5) and (6), the appellant's Brief of Appellant must not exceed 30 pages; the appellee's Brief of Appellee and Cross-Appellant, 35 pages; the appellant's Reply Brief of Appellant and Brief of Cross-Appellee, 30 pages; and the appellee's Reply Brief of Cross-Appellant, 15 pages.

(h) Permission for over length brief. While such motions are disfavored, the court for good cause shown may upon motion permit a party to file a brief that exceeds the page, word, or line limitations of this rule. The motion shall state with specificity the issues to be briefed, the number of additional pages, words, or lines requested, and the good cause for granting the motion. A motion filed at least seven days prior to the date the brief is due or seeking three or fewer additional pages, 1,400 or fewer additional words, or 130 or fewer lines of text need not be accompanied by a copy of the brief. A motion filed within seven

days of the date the brief is due and seeking more than three additional pages, 1,400 additional words, or 130 lines of text shall be accompanied by a copy of the finished brief. If the motion is granted, the responding party is entitled to an equal number of additional pages, words, or lines without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

(i) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after that party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the appellate court, by letter setting forth the citations. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall state the reasons for the supplemental citations. The body of the letter must not exceed 350 words. Any response shall be made within seven days of filing and shall be similarly limited.

(k) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

Credits

[Amended effective October 1, 1992; July 1, 1994; April 1, 1995; April 1, 1998; November 1, 1999; April 1, 2003; November 1, 2004; April 1, 2006; November 1, 2006; April 1, 2008; November 1, 2011.]

Editors' Notes

ADVISORY COMMITTEE NOTE

Rule 24 (a)(9) now reflects what Utah appellate courts have long held. See *In re Beesley*, 883 P.2d 1343, 1349 (Utah 1994); *Newmeyer v. Newmeyer*, 745 P.2d 1276, 1278 (Utah 1987). "To successfully appeal a trial court's findings of fact, appellate counsel must play the devil's advocate. 'Attorneys must extricate themselves from the client's shoes and fully assume the adversary's position. In order to properly discharge the marshalling duty ..., the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists.'" *ONEIDA/SLIC, v. ONEIDA Cold Storage and Warehouse, Inc.*, 872 P.2d 1051, 1052-53 (Utah App. 1994) (alteration in original)(quoting *West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah App. 1991)). See also *State ex rel. M.S. v. Salata*, 806 P.2d 1216, 1218 (Utah App. 1991); *Bell v. Elder*, 782 P.2d 545, 547 (Utah App. 1989); *State v. Moore*, 802 P.2d 732, 738-39 (Utah App. 1990).

The brief must contain for each issue raised on appeal, a statement of the applicable standard of review and citation of supporting authority.

Notes of Decisions (444)

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ADDENDUM C

West's Utah Code Annotated

Title 78A. Judiciary and Judicial Administration (Refs & Annos)

Chapter 4. Court of Appeals

U.C.A. 1953 § **78A-4-103**
Formerly cited as UT ST § 78-2a-3

§ **78A-4-103**. Court of Appeals jurisdiction

Currentness

- (1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:
 - (a) to carry into effect its judgments, orders, and decrees; or
 - (b) in aid of its jurisdiction.
- (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
 - (a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire, and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;
 - (b) appeals from the district court review of:
 - (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
 - (ii) a challenge to agency action under Section 63G-3-602;
 - (c) appeals from the juvenile courts;
 - (d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;
 - (e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;
 - (f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;
 - (g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;
 - (h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;
 - (i) appeals from the Utah Military Court; and

§ 78A-4-103. Court of Appeals jurisdiction, UT ST § 78A-4-103

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Credits

Laws 2008, c. 3, § 350, eff. Feb. 7, 2008; Laws 2008, c. 382, § 2210, eff. May 5, 2008; Laws 2009, c. 344, § 42, eff. May 12, 2009.

Notes of Decisions containing your search terms (0)

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Current through 2011 Third Special Session.

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ADDENDUM D

United States Code Annotated

Title 15. Commerce and Trade

Chapter 41. Consumer Credit Protection (Refs & Annos)

Subchapter V. Debt Collection Practices (Refs & Annos)

15 U.S.C.A. § 1692k

§ 1692k. Civil liability

Currentness

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of--

- (1) any actual damage sustained by such person as a result of such failure;
- (2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or
- (B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and
- (3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors--

- (1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or
- (2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of Commission

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Credits

(Pub.L. 90-321, Title VIII, § 813, as added Pub.L. 95-109, Sept. 20, 1977, 91 Stat. 881.)

Sections 41 to 60 appear in this Volume

Editors' Notes

AMENDMENT OF SECTION

<Pub.L. 111-203, Title X, §§ 1089(1), 1100H, July 21, 2010, 124 Stat. 2092, 2113, provided that effective on the designated transfer date [see 12 U.S.C.A. § 5582 for definition of “designated transfer date”], section is amended by striking “Commission” each place that term appears and inserting “Bureau”.>

Notes of Decisions (785)

Current through P.L. 112-71 (excluding P.L. 112-55 and 112-56) approved 12-19-11

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CERTIFICATE OF MAILING

I certify that I mailed two copies of the Brief of Appellees, postage prepaid, first class mail, on January 27, 2012, to the following person:

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