

2000

Lynn Allan Jenkins v. Albert "Lynn" Payne, David Young Payne, Utah State Bar, North Salt Lake City, Davis County, and Uintah County : Brief of Appellee

Utah Court of Appeals

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Gerald E. Hess; Davis County Attorney's Office; Brent M. Johnson; attorneys for appellee.

Lynn A. Jenkins; pro se.

Recommended Citation

Brief of Appellee, *Jenkins v. Payne*, No. 20000956 (Utah Court of Appeals, 2000).

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

LYNN ALLAN JENKINS,

Plaintiff and Appellant,

vs.

ALBERT "LYNN" PAYNE, DAVID
YOUNG PAYNE, UTAH STATE BAR,
NORTH SALT LAKE CITY, DAVIS
COUNTY, and UTAH COUNTY.

Defendants and Appellees.

Case No. 20000956-CA

Priority No. _____

BRIEF OF APPELLEE DAVIS COUNTY

Appeal from the Second Judicial District Court
of Davis County, State of Utah
Honorable Rodney S. Page District Judge Presiding

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Three East 2750 South
Bountiful, Utah 84010

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FILED
Utah Court of Appeals

JUN 15 2001

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

LYNN ALLAN JENKINS,	:	Case No. 20000956-CA
	:	
Plaintiff and Appellant,	:	
	:	
vs.	:	
	:	
ALBERT "LYNN" PAYNE, DAVID	:	
YOUNG PAYNE, UTAH STATE BAR,	:	
NORTH SALT LAKE CITY, DAVIS	:	
COUNTY, and UINTAH COUNTY.	:	
	:	
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PARTIES

All parties to this action are listed in the caption

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JURISDICTION OF THIS COURT

1 Appellant filed his appeal in the Supreme Court of Utah on November 7,
2000. Thereafter, the Supreme Court under date of January 17, 2001, directed that the
case be transferred to the Court of Appeals for disposition. Appellant appeals from the
Order of the Honorable Rodney S. Page dated October 5, 2000, which granted Davis
County's Motion to Dismiss.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1 It is Appellee Davis County's position that Appellant raises no issue to be
decided by this Court and, consequently, the ruling of the lower Court dismissing
Plaintiff's Complaint against Appellee Davis County should be affirmed. The Brief of
Appellant is so muddled and flawed that Appellee Davis County will not attempt to
interpret the issues raised by it. Rather, the issue which Appellee Davis County addresses
is that the lower Court was correct in granting Appellee Davis County's Motion to
Dismiss and this Court should affirm the decision of the lower Court.

2 Appellant is not entitled to an award of attorney's fees against Appellee
Davis County.

APPLICABLE STATUTES AND RULES

The applicable rules and statutes are as follows:

- 1 Rule 12 of the *Utah Rules of Civil Procedure*,
- 2 Section 78-3-13.4, *Utah Code Ann.*, (1953) as amended,
- 3 Section 78-3-19, *Utah Code Ann.*, (1953) as amended,

4. Section 78-3-14.2, *Utah Code Ann.*, (1953) as amended,
5. Section 78-3-24, *Utah Code Ann.*, (1953) as amended, and
6. Section 78-27-56.5, *Utah Code Ann.*, (1953) as amended, disposes of Appellant's claim for attorney's fees.

STATEMENT OF THE CASE AND OF THE FACTS

On July 23, 1997, Appellant filed his Complaint *pro se* in the District Court of Davis County naming Appellee Davis County as a party defendant. The prayer for relief by Appellant against Appellee Davis County is as follows:

Davis County shall on August 22, 1997, impanel in Davis County a jury of its citizens to determine the facts of Plaintiff's Davis County real property with the Honorable A. Lynn Payne presiding.

Appellant alleges in his Complaint that he is the owner of certain property located in Davis County, but Appellee Davis County is not the owner of the property, nor is Appellee Davis County in any contractual relationship with Appellant.

Appellee Davis County filed its Motion to Dismiss with the Court on August 5, 1997, asserting that Plaintiff's Complaint should be dismissed for the reason that it failed to state a claim against Davis County upon which relief could be granted. Appellee Davis County's Motion to Dismiss was granted by the Court on October 5, 2000. Thereafter, Appellant filed his Notice of Appeal on November 3, 2000.

SUMMARY OF ARGUMENT

Under no facts that could be presented before the District Court would Appellee

Davis County, a body politic of the State of Utah, have authority to empanel a jury to hear a case and require that it be before a District Court Judge from Uintah County. Therefore, the lower Court properly granted Appellee Davis County's Motion to Dismiss.

ARGUMENT

POINT I

THE LOWER COURT PROPERLY GRANTED DAVIS COUNTY'S MOTION TO DISMISS BECAUSE NO FACTS PRESENTED BEFORE THE COURT WOULD AUTHORIZE APPELLEE DAVIS COUNTY TO IMPANEL A JURY TO HEAR A CASE AND REQUIRE THAT IT BE BEFORE A DISTRICT JUDGE FROM UINTAH COUNTY.

Plaintiff's Complaint and his numerous motions and memoranda are garbled and unclear as to what the basis is for his claim against Appellee Davis County. It appears from his Complaint he asserts ownership in property that is located within Davis County but no claim is made that Appellee Davis County owns any property in which he claims an interest or is any contractual relationship with Appellee Davis County. The prayer in the Complaint of Appellant is as follows:

Wherefore, plaintiff demands judgment against defendants as follows...(2) Davis County shall on August 22, 1997 empanel in Davis County, a Jury of its citizens to determine the facts of plaintiff's Davis County Real Property with the Hon. A. Lynn Payne, presiding.

The prayer in Appellant's Complaint is more in the form of a special writ requiring Appellee Davis County to impanel a jury, thereby allowing Appellant's claim to be heard.

Appellee Davis County has not operated or been responsible for the operation of

the District Courts for many years. Pursuant to Section 78-3-13.4, *Utah Code Ann.*, (1953) as amended, the County's determination to transfer the responsibility for operation of the District Court to the State is irrevocable. Moreover, in Section 78-3-14.2, *Utah Code Ann.* (1953) as amended, the Legislature mandated that the District Court, not the County, develop a system of case management. Additionally, in Section 78-3-19, *Utah Code Ann.*, (1953) as amended, the Legislature created an administrative system for all courts of the State which is separate and apart from any control that could be exercised by Appellee Davis County. Under Section 78-3-24, *Utah Code Ann.* (1953) as amended, the Court Administrator is given responsibility to manage the non-judicial activities of the Courts.

Under no facts presented by Plaintiff/Appellant would Davis County be authorized to impanel a jury. The District Court or the Court Administrator's Office would have jurisdiction and control over the court system and not Appellee Davis County. In *Liquor Control Commissioners v. Athas*, 243P.2d 441 (Utah 1952), the Court ruled that a complaint does not fail to state a claim unless it appears to a certainty that the Plaintiff would be entitled to no relief under state of facts which could be proved in support of the claim. Appellee Davis County respectfully asserts that Plaintiff Appellee is entitled to no relief against Appellee Davis County under any state of facts which could be proved in support of his claim. Therefore, Appellee Davis County urges the Court to affirm the ruling of the District Court which granted Appellee Davis County's Motion to Dismiss.

ARGUMENT

POINT II

APPELLANT IS NOT ENTITLED TO ATTORNEY'S FEES AGAINST APPELLEE DAVIS COUNTY.

Appellant in his prayer for relief demands attorney's fees against Appellee Davis County. Section 78-27-56.5, *Utah Code Ann.* (1953) as amended, states the following :

A court may award costs and attorney's fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorneys' fees.

The statutory provision is consistent with prior Utah case law. In *Carr v. Enoch Smith Co.*, 781.P2d 1292 (Utah Court of Appeals 1989), the court said:

We do, however, find error in awarding attorney's fees in favor of Smith. "The general rule in Utah is that attorney fees cannot be recovered absent statutory authorization or contract." Cooper v. Deseret Federal Savings and Loan Association, 757 P.2d 483, 486 (Utah Court of Appeals 1988). See also Mecham v Benson 590P.2d 304, 309 (Utah 1979)...

At page 1296.


There is no promissory note, written contract or any other written instrument executed by Davis County that would authorize the payment of attorney's fees.

Therefore, Appellant is entitled to no award of attorney's fees against Appellee Davis County.

CONCLUSION

Appellee Davis County respectfully submits that based upon the foregoing arguments this Court must dismiss the appeal and affirm the judgment of the lower Court.

RESPECTFULLY SUBMITTED this 15 day of June, 2001.


Gerald E. Hess, Chief Civil Deputy
Davis County Attorney's Office
Attorney for Defendant/Appellee
Davis County

CERTIFICATE OF DELIVERY AND MAILING

I hereby certify that I delivered an original and seven (7) true and correct copies of the foregoing BRIEF OF APPELLEE to

Utah Court of Appeals
Office of the Clerk
450 South State
P O Box 140230
Salt Lake City UT 84114-0230

I further certify that I mailed a true and correct copy of the foregoing BRIEF OF APPELLEE, with postage prepaid thereon to

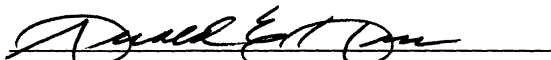
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Kent L Christiansen
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Salt Lake City, Utah 84111

DATED this 15 day of JUNE, 2001


Gerald E Hess

ADDENDUM

- Exhibit 1 - Rule 12 *Utah Rules of Civil Procedure*
- Exhibit 2 - Sections 78-3-13.4, 14.2, 19, and 24, *Utah Code Ann.* (1953) as amended
- Exhibit 3 - Section 78-27-56.5 *Utah Code Ann.* (1953) as amended
- Exhibit 4 - Plaintiff's Complaint
- Exhibit 5 - Ruling of Judge Page dated October 5, 2000

Exhibit 1

A.L.R. — Liability of attorney, acting for client, for malicious prosecution, 46 A.L.R. 4th 249.

Inherent power of federal district court to impose monetary sanctions on counsel in absence of contempt of court, 77 A.L.R. Fed. 789

Comment Note — General principles regarding imposition of sanctions under Rule 11, Federal Rules of Civil Procedure, 95 A.L.R. Fed. 107

Imposition of sanctions under Rule 11, Federal Rules of Civil Procedure, pertaining to signing and verification of pleadings, in actions for defamation, 95 A.L.R. Fed. 181

Imposition of sanctions under Rule 11, Federal Rules of Civil Procedure, pertaining to signing and verification of pleadings, in action for wrongful discharge from employment, 96 A.L.R. Fed. 13

Imposition of sanctions under Rule 11, Federal Rules of Civil Procedure, pertaining to signing and verification of pleadings, in actions for securities fraud, 97 A.L.R. Fed. 107

Imposition of sanctions under Rule 11, Federal Rules of Civil Procedure, pertaining to signing and verification of pleadings, in actions for infliction of emotional distress, 98 A.L.R. Fed. 442

Imposition of sanctions under Rule 11, Federal Rules of Civil Procedure, pertaining to signing and verification of pleadings, in anti-trust actions, 99 A.L.R. Fed. 573.

Procedural requirements for imposition of sanctions under Rule 11, Federal Rules of Civil Procedure, 100 A.L.R. Fed. 556.

Rule 12. Defenses and objections.

(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:

(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;

(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 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.

(Amended effective Sept. 4, 1985; April 1, 1990; November 1, 2000.)

Exhibit 2

78-3-13. Repealed.

Repeals. — Laws 1988, ch. 152, § 26 and ch. 248, § 50 each repeals § 78-3-13, as amended by Laws 1969, ch. 250, § 1, providing that a district judge may hold court in any county on request, effective April 25, 1988.

78-3-13.4. Transfer of court operating responsibilities — Facilities — Staff — Budget.

(1) A county's determination to transfer responsibility for operation of the district court to the state is irrevocable.

(2) (a) Court space suitable for the conduct of judicial business as specified by the Judicial Council shall be provided by the state from appropriations made by the Legislature for these purposes.

(b) The state may, in order to carry out its obligation to provide these facilities, lease space from a county, or reimburse a county for the number of square feet used by the district. Any lease and reimbursement shall be determined in accordance with the standards of the State Building Board applicable to state agencies generally. A county or municipality terminating a lease with the court shall provide written notice to the Judicial Council at least one year prior to the effective date of the termination.

(c) District courts shall be located in municipalities that are sites for the district court or circuit court as of January 1, 1994. Removal of the district court from the municipality shall require prior legislative approval by joint resolution.

(3) The state shall provide legal reference materials for all district judges' chambers and courtrooms, as required by Judicial Council rule. Maintenance of county law libraries shall be in consultation with the court executive of the district court.

(4) (a) At the request of the Judicial Council, the county or municipality shall provide staff for the district court in county seats or municipalities under contract with the administrative office of the courts.

(b) Payment for necessary expenses shall be by a contract entered into annually between the state and the county or municipality, which shall specifically state the agreed costs of personnel, supplies, and services, as well as the method and terms of payment.

(c) Workload measures prepared by the state court administrator and projected costs for the next fiscal year shall be considered in the negotiation of contracts.

(d) Each May 1 preceding the general session of the Legislature, the county or municipality shall submit a budget request to the Judicial Council, the governor, and the legislative fiscal analyst for services to be rendered as part of the contract under Subsection (b) for the fiscal year immediately following the legislative session. The Judicial Council shall consider this information in developing its budget request. The legislative fiscal analyst shall provide the Legislature with the county's or municipality's original estimate of expenses. By June 15 preceding the state's fiscal year, the county and the state court administrator shall negotiate a contract to cover expenses in accordance with the appropriation approved by the Legislature. The contracts may not include payments for expenses of service of process, indigent defense costs, or other costs or expenses provided by law as an obligation of the county or municipality.

History: C. 1953, 78-3-13.4, enacted by L. 1988, ch. 152, § 20; 1991, ch. 268, § 26; 1996, ch. 198, § 52.

Amendment Notes. — The 1996 amendment, effective July 1, 1996, rewrote this section.

78-3-13.5, 78-3-14. Repealed.

Repeals. — Section 78-3-13.5 (L. 1963, ch. 191, § 2), relating to election of presiding district judge and assignment of judges to assist in trial of cases in other districts, was repealed by Laws 1967, ch. 222, § 9. Laws 1988, ch. 152,

§ 26 and ch. 248, § 50 both repeal § 78-3-14, Utah Code Annotated 1953, relating to ex parte applications from another district, effective April 25, 1988.

78-3-14.2. District court case management.

(1) The district court of each district shall develop systems of case management.

(2) The case management systems developed by a district court shall:

(a) ensure judicial accountability for the just and timely disposition of cases;

(b) provide for each judge a full judicial work load that accommodates differences in the subject matter or complexity of cases assigned to different judges; and

(c) provide that judges of the district court and judges of the court formerly denominated the circuit court who took office prior to July 1, 1991, are entitled to be assigned only cases from the subject matter jurisdiction of their respective courts as that jurisdiction existed on June 30, 1996. If the volume of such cases does not constitute a full work load, other cases shall be assigned.

(3) A district court may establish divisions within the court for the efficient management of different types of cases. The existence of divisions within the court may not affect the jurisdiction of the court nor the validity of court orders. The existence of divisions within the court may not impede public access to the courts.

History: C. 1953, 78-3-14.2, enacted by L. 1996, ch. 198, § 53.

Effective Dates. — Laws 1996, ch. 198, § 70 makes the act effective on July 1, 1996.

78-3-14.5. Allocation of district court fees and forfeitures.

(1) Except as provided in this section, district court fines and forfeitures collected for violation of state statutes shall be paid to the state treasurer.

(2) Fines and forfeitures collected by the court for violation of a state statute or county or municipal ordinance constituting a misdemeanor or an infraction shall be remitted $\frac{1}{2}$ to the state treasurer and $\frac{1}{2}$ to the treasurer of the government which prosecutes or which would prosecute the violation.

(3) Fines and forfeitures collected for violations of Title 23, Wildlife Resources Code of Utah, or Title 73, Chapter 18, State Boating Act, shall be paid to the state treasurer.

(a) For violations of Title 23, the state treasurer shall allocate 85% to the Division of Wildlife Resources and 15% to the General Fund.

(b) For violations of Title 73, Chapter 18, the state treasurer shall allocate 85% to the Division of Parks and Recreation and 15% to the General Fund.

History: C. 1953, 78-3-13.4, enacted by L. 1988, ch. 152, § 20; 1991, ch. 268, § 26; 1996, ch. 198, § 52.

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 - (c) provide that judges of the district court and judges of the court formerly denominated the circuit court who took office prior to July 1, 1991, are entitled to be assigned only cases from the subject matter jurisdiction of their respective courts as that jurisdiction existed on June 30, 1996. If the volume of such cases does not constitute a full work load, other cases shall be assigned.
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 - (b) For violations of Title 73, Chapter 18, the state treasurer shall allocate 85% to the Division of Parks and Recreation and 15% to the General Fund.

COLLATERAL REFERENCES

Brigham Young Law Review. — The Training of Court Managers, 1981 B.Y.U. L. Rev. 683.

78-3-19. Purpose of act.

The purpose of this act is to create an administrative system for all courts of this state, subject to central direction by the Judicial Council, to enable these courts to provide uniformity and coordination in the administration of justice.

History: C. 1953, 78-3-19, enacted by L. 1973, ch. 202, § 2; 1977, ch. 77, § 57; 1983, ch. 156, § 1; 1986, ch. 47, § 51.

Repeals and Reenactments. — Laws 1973, ch. 202, § 2 repeals former § 78-3-19 (L. 1967, ch. 222, § 3; 1971, ch. 209, § 1), relating

to the appointment of assistants by the administrator, and enacts the above section.

Meaning of “this act.” — The term “this act” refers to Laws 1973, ch. 202, which enacted §§ 78-3-18 to 78-3-27.

78-3-20. Definitions.

As used in this act:

(1) “Administrator” means the administrator of the courts appointed under Section 78-3-23.

(2) “Conference” means the annual statewide judicial conference established by Section 78-3-27.

(3) “Council” means the Judicial Council established by Article VIII, Sec. 12, Utah Constitution.

(4) “Courts” mean all courts of this state, including all courts of record and not of record.

History: C. 1953, 78-3-20, enacted by L. 1973, ch. 202, § 3; 1977, ch. 77, § 58; 1983, ch. 156, § 2; 1986, ch. 47, § 52; 1988, ch. 248, § 13.

Repeals and Reenactments. — Laws 1973, ch. 202, § 3 repeals former § 78-3-20 (L. 1967, ch. 222, § 4; 1969, ch. 251, § 1; 1971, ch.

209, § 2), relating to designation, compensation and powers of an assignment justice, and enacts the above section.

Meaning of “this act.” — The term “this act” refers to Laws 1973, ch. 202, which enacted §§ 78-3-18 to 78-3-27.

78-3-21. Judicial Council — Creation — Members — Terms and election — Responsibilities — Reports [Effective until January 1, 1997].

(1) The Judicial Council, established by Article VIII, Section 12, Utah Constitution, shall be composed of:

(a) the chief justice of the Supreme Court;

(b) one member elected by the justices of the Supreme Court;

(c) one member elected by the judges of the Court of Appeals;

(d) five members elected by the judges of the district courts;

(e) two members elected by the judges of the juvenile courts;

(f) three members elected by the justice court judges; and

(g) a member or ex officio member of the Board of Commissioners of the Utah State Bar who is an active member of the Bar in good standing elected by the Board of Commissioners.

78-3-23. Administrator of the courts — Appointment — Qualifications — Salary.

The Supreme Court shall appoint a chief administrative officer of the council who shall have the title of the administrator of the courts and shall serve at the pleasure of the council and/or the Supreme Court. The administrator shall be selected on the basis of professional ability and experience in the field of public administration and shall possess an understanding of court procedures as well as of the nature and significance of other court services. He shall devote his full time and attention to the duties of his office, and shall receive a salary equal to that of a district judge.

History: C. 1953, 78-3-23, enacted by L. 1973, ch. 202, § 6.

Repeals and Reenactments. — Laws 1973, ch. 202, § 6 repeals former § 78-3-23 (L. 1967, ch. 222, § 7), the title of the Court Administrator Act, and enacts the above section

Sunset Act. — See § 63-55-278 for the repeal date of the Office of the Court Administrator, created by this section.

Cross-References. — State court administrator, Rule 3-301, Code of Judicial Administration.

COLLATERAL REFERENCES

Key Numbers. — Court Commissioners ☞
1 to 3.

78-3-24. Court administrator — Powers, duties, and responsibilities.

Under the general supervision of the presiding officer of the Judicial Council, and within the policies established by the council, the administrator shall:

- (1) organize and administer all of the nonjudicial activities of the courts;
- (2) assign, supervise, and direct the work of the nonjudicial officers of the courts;
- (3) implement the standards, policies, and rules established by the council;
- (4) formulate and administer a system of personnel administration, including in-service training programs;
- (5) prepare and administer the state judicial budget, fiscal, accounting, and procurement activities for the operation of the courts of record, and assist justices' courts in their budgetary, fiscal, and accounting procedures;
- (6) conduct studies of the business of the courts, including the preparation of recommendations and reports relating to them;
- (7) develop uniform procedures for the management of court business, including the management of court calendars;
- (8) maintain liaison with the governmental and other public and private groups having an interest in the administration of the courts;
- (9) establish uniform policy concerning vacations and sick leave for judges and nonjudicial officers of the courts;
- (10) establish uniform hours for court sessions throughout the state and may, with the consent of the presiding officer of the Judicial Council, call and appoint justices or judges of courts of record to serve temporarily as Court of Appeals, district court, or juvenile court judges and set reasonable compensation for their services;

(11) when necessary for administrative reasons, change the county for trial of any case if no party to the litigation files timely objections to this change;

(12) organize and administer a program of continuing education for judges and support staff, including training for justices of the peace;

(13) provide for an annual meeting for each level of the courts of record, and the annual judicial conference; and

(14) perform other duties as assigned by the presiding officer of the council.

History: C. 1953, 78-3-24, enacted by L. 1973, ch. 202, § 7; 1977, ch. 77, § 60; 1981, ch. 90, § 6; 1983, ch. 156, § 5; 1986, ch. 47, § 55; 1988, ch. 248, § 15; 1996, ch. 198, § 56.

Amendment Notes. — The 1996 amendment, effective July 1, 1996, deleted “or circuit

court” before “judges” near the end of Subsection (10).

Cross-References. — Court administrators, Rule 3-301, Code of Judicial Administration.

NOTES TO DECISIONS

Cited in City of Orem v. Crandall, 760 P.2d 920 (Utah Ct. App. 1988).

COLLATERAL REFERENCES

Key Numbers. — Court Commissioners ☞ 1, 3 to 5.

78-3-25. Assistants for administrator of the courts — Appointment of trial court executives.

(1) The administrator of the courts, with the approval of the presiding officer of the council, is responsible for the establishment of positions and salaries of assistants as necessary to enable him to perform the powers and duties vested in him by this act, including the positions of appellate court administrator, district court administrator, juvenile court administrator, and justices’ court administrator, whose appointments shall be made by the administrator of the courts with the concurrence of the respective boards as established by the council.

(2) The district court administrator, with the concurrence of the presiding judge of a district or the district court judge in single judge districts, may appoint in each district a trial court executive. The trial court executive may appoint, subject to budget limitations, necessary support personnel including clerks, research clerks, secretaries, and other persons required to carry out the work of the court. The trial court executive shall supervise the work of all nonjudicial court staff and serve as administrative officer of the district.

History: C. 1953, 78-3-25, enacted by L. 1973, ch. 202, § 8; 1983, ch. 156, § 6; 1986, ch. 47, § 56; 1996, ch. 198, § 57.

Amendment Notes. — The 1996 amendment, effective July 1, 1996, deleted “circuit

court administrator” from the list of administrators in Subsection (1).

Meaning of “this act.” — The term “this act,” in Subsection (1), refers to Laws 1973, ch. 202, which enacted §§ 78-3-18 to 78-3-27.

Exhibit 3

(Utah 1987); Hatanaka v. Struhs, 738 P.2d 1052 (Utah Ct. App. 1987); O'Brien v. Rush, 744 P.2d 306 (Utah Ct. App. 1987); DeBry v. Occidental/Nebraska Fed. Sav. Bank, 754 P.2d 60 (Utah 1988); Taylor v. Estate of Taylor, 770 P.2d 163

(Utah Ct. App. 1989); Cascade Energy & Metals Corp. v. Banks, 896 F.2d 1557 (10th Cir. 1990); Burns Chiropractic Clinic v. Allstate Ins. Co., 851 P.2d 1209 (Utah Ct. App. 1993).

COLLATERAL REFERENCES

Utah Law Review. — Attorney's Fees in Utah, 1984 Utah L. Rev. 553.

Attorney's Fees in Bad Faith, Meritless Actions, 1984 Utah L. Rev. 593.

Recent Developments in Utah Law — Legislative Enactments — Attorney's Fees, 1989 Utah L. Rev. 342.

Note, "The Negligent Infliction of Emotional Distress: A New Cause of Action in Utah," 1989 Utah L. Rev. 571.

A.L.R. — Construction and application of state statute or rule subjecting party making untrue allegations or denials to payment of

costs or attorneys' fees, 68 A.L.R.3d 209.

Attorneys' fees as recoverable in fraud action, 44 A.L.R.4th 776.

Attorneys' fees: obduracy as basis for state-court award, 49 A.L.R.4th 825.

Attorney's liability under state law for opposing party's counsel fees, 56 A.L.R.4th 486.

Recovery of attorneys' fees and costs of litigation incurred as result of breach of agreement not to sue, 9 A.L.R.5th 933.

Award of counsel fees to prevailing party based on adversary's bad faith, obduracy, or other misconduct, 31 A.L.R. Fed. 833.

78-27-56.5. Attorney's fees — Reciprocal rights to recover attorney's fees.

A court may award costs and attorney's fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney's fees.

History: C. 1953, 78-27-56.5, enacted by L. 1986, ch. 79, § 1.

NOTES TO DECISIONS

ANALYSIS

Discretion of court.
Cited.

Discretion of court.

In an action involving claims for breach of warranty, misrepresentation, and mutual mistake, where the only claim stemmed from the

contract, it was not an abuse of discretion for the trial court to determine not to attempt to allocate the attorney's fees and denial of attorney fees was appropriate. Schafir v. Harrigan, 879 P.2d 1384 (Utah Ct. App. 1994).

Cited in Carr v. Enoch Smith Co., 781 P.2d 1292 (Utah Ct. App. 1989); Saunders v. Sharp, 840 P.2d 796 (Utah Ct. App. 1992).

COLLATERAL REFERENCES

A.L.R. — Attorney's liability under state law for opposing party's counsel fees, 56 A.L.R.4th 486.

Excessiveness or adequacy of attorneys' fees in matters involving real estate, 10 A.L.R.5th 448.

Exhibit 4

Said children are now in their own care and custody.

4. Defendant Albert "Lynn" Payne, resides in Uintah County, Utah, and is believed to be the son of "Albert" L. Payne and Sylvia Young Payne. Defendant Lynn Payne is also a Utah District Court Judge for Uintah County and a member in good standing with the Utah State Bar.

5. Defendant David Young Payne resides in Davis County Utah, and is believed to be the son of "Albert" L. Payne and Sylvia Young Payne. Defendant David Young Payne, is a Judge for North Salt Lake City, Utah and a member in good standing with the Utah State Bar.

6. Defendant Utah State Bar is the regulatory branch for the practice of law in the State of Utah.

7. On January 11, 1995, on a public highway called Interstate 15, in North Salt Lake City, Utah, plaintiff was stopped by the Utah Highway Patrol for crossing over the left yellow line of said highway for a distance of approximately 50 feet at 60 MPH.

8. Plaintiff after taking and passing a blood alcohol breath test, was arrested for driving under the influence of alcohol even though he had a negative blood alcohol level as shown on North Salt Lake City's breath machine.

9. As a result plaintiff was thrown into jail and blood was taken from his body and given to the U.S. Mail Service's custody who then delivered the blood samples to the Utah Department of Health about one week later. The blood samples analyzed by the Department of Health showed a negative alcohol level however 72

nano grams of alprazalam which North Salt Lake City determined to be beyond any therapeutic level allowed under Utah law.

10. On or about January 12, 1995, plaintiff filed a demand for Jury Trial with the North Salt Lake City Court, which was denied by its judge the Hon. David Young Payne and City Prosecutor Michael Nielsen.

11. On or about March 15, 1995, plaintiff filed with the Hon. A. Lynn Payne a demand for Jury Trial in a Uintah County cause of action that should more properly in the jurisdiction of Davis County.


12. On or about April 26, 1995, Judge A. Lynn Payne ruled that plaintiff was not entitled to a Jury Trial on his Davis County real property and its Uniform Real Estate Contract purportedly date December 26, 1977, which clearly was paid in full on December 27, 1977 as recorded by the Davis County Recorder in August 1978.

13. July 16, 1997, Judge Lynn Payne ruled that the Utah State Bar picnic to be held on August 22, 1997 at a park near his home, was more important than the plaintiff's wife and his Thirty-fifth Wedding Anniversary and scheduled his continuing non-jury trial on the plaintiff's Davis County real property.

Wherefore, plaintiff demands judgment against defendants as follows (1) the Utah State Bar shall cancel its August 22, 1997, Basin Bar Picnic so that plaintiff may attend his wife Anniversary Party; (2) Davis County shall on August 22, 1997 empanel in Davis County, a Jury of its citizens to determine the facts of plaintiff's Davis County Real Property with the Hon. A. Lynn Payne,

presiding; (3) that North Salt Lake City shall grant plaintiff a Jury Trial in its courtroom on the issues of its January 11, 1995 DUI arrest; (4) Uintah County shall file a report with the court as to its findings and conclusions of law concerning the Uintah County Court lawsuit; (5) for plaintiff's costs and attorney fees; AND for such other relief the court deem proper.

DATED this 25 day of July 1997.



LYNN ALLAN JENKINS
Plaintiff

Exhibit 5

RECEIVED
OCT 10 2000
DAVIS COUNTY ATTORNEY

**SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY
STATE OF UTAH
FARMINGTON DEPARTMENT**

LYNN ALLAN JENKINS, Plaintiff(s), vs ALBERT "LYNN" PAYNE, DAVID YOUNG PAYNE, UTAH STATE BAR, NORTH SALT LAKE CITY, DAVIS COUNTY and UINTAH COUNTY Defendant(s)	RULING ON DEFENDANT NORTH SALT LAKE CITY AND DAVIS COUNTY'S MOTION TO DISMISS AND ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (ENTITLED MOTION FOR DECLARATORY JUDGMENT) Case No 970700315
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Comes now the Court and having reviewed Defendant North Salt Lake City and Davis County's Motion to Dismiss and Plaintiff's Motion for Summary Judgment (Entitled Motion for Declaratory Judgment) and having reviewed the Memorandums in support thereof and in opposition thereto and having heard the arguments of Plaintiff and counsel and being fully advised in the premises, the Court hereby rules as follows

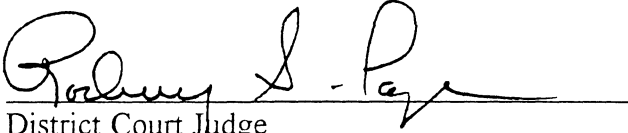
The Motions of North Salt Lake City and Davis County to dismiss are hereby granted based upon the arguments set forth in their respective Memorandums filed in support thereof

As to Plaintiff's Motion Entitled Motion for Declaratory Judgment which the Court treats as a motion for summary judgment, the Court rules as follows

This Court has this date and heretofore either granted the motion of each defendant to dismiss or dismissed them by stipulation and therefore, denies the Plaintiff's Motion for Summary Judgment. Further, since there are no defendants left, the Court hereby dismisses Plaintiff's Complaint for no cause of action.

Dated this 5th day of October, 2000.

By the Court:


District Court Judge

CERTIFICATE OF MAILING

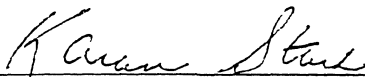
I, the undersigned, do hereby certify that I mailed a true and correct copy of the foregoing, Ruling, postage prepaid, to the following

Mr Lynn A Jenkins
Three East 2750 South
Bountiful, UT 84010

Mr Gerald E Hess
Deputy Davis County Attorney
800 West State Street
P O Box 618
Farmington, UT 84025

Mr Kent L Christiansen
448 East 400 South, Suite 301
Salt Lake City UT 84111

Dated this 5 day of October, 2000.



Clerk/ Deputy Clerk