2011

Annabelle Stone v. Hidden Lake Homeowners Association, Barbara Wise, Earthwork Property Management CO., and Barbara Wilson : Reply Brief

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

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ANNABELLE STONE, an individual, Petitioner and Appellee, vs. HIDDEN LAKE HOMEOWNERS ASSOCIATION, BARBARA WISE, an individual, EARTHWORK PROPERTY MANAGEMENT CO., and BARBARA WILSON, an individual, Respondents and Appellants.	)	Case No. 20110990-CA

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REPLY BRIEF OF APPELLANTS

Appeal from the Third Judicial District Court of
Salt Lake County
The Honorable Joseph C. Fratto, Jr.
The Honorable Robert P. Faust

Annabelle Stone
3747 Hillside Lane
Salt Lake City, UT 84109
Pro Se
Petitioner and Appellee

Ryan B. Braithwaite (8817)
Daniel K. Brough (10283)
BENNETT TUELLER JOHNSON & DEERE
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121
Attorneys for Appellants

IN THE UTAH COURT OF APPEALS

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Salt Lake City, Utah 84121
Attorneys for Appellants

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Appellants Hidden Lakes Homeowners Association, Barbara Wise, Earthwork Property Management Co., and Barbara Wilson (collectively, "Appellants") submit this Reply Brief.

INTRODUCTION

Appellee Annabelle Stone ("Stone") has filed a brief in opposition to Appellants' initial brief. Troublingly, Stone's brief does not lay out her arguments in any manner that permits Appellants to identify and reply to them. Stone's briefing places Appellants at a considerable disadvantage in responding to whatever arguments Stone makes. If Stone has something to say, she should have said it in conformity with the Utah Rules of Appellate Procedure. She did not. The Court should disregard Stone's brief and grant Appellants their requested relief on that basis alone.

Happily, however, even if the Court is not inclined to disregard Stone's brief, the record is such that the Court must still grant Appellants their requested relief. Despite Stone's see-what-sticks approach, the only issue before the Court is whether the district court abused its discretion by declining to enforce the settlement agreement (the "Settlement Agreement") between Stone and Appellants, and whether it further erred by failing to award fees and costs. The answer to both questions is yes. Stone makes no meritorious argument in response.

For these reasons, the issues in this simple appeal should not be belabored any longer. The Court should reverse the district court's refusal to enforce the Settlement

Agreement, should remand for a determination of attorney fees and costs, and should award attorney fees and costs on appeal.

ARGUMENT

I. THE COURT SHOULD STRIKE STONE'S BRIEF OR DISREGARD HER ARGUMENTS.

Utah Rules of Appellate Procedure 24 and 25, among others, set forth numerous criteria for appellate briefs. *See* Utah R. App. P. 24(a), (f), 25(a)(5). In a letter dated September 24, 2012, this Court highlighted numerous deficiencies in Stone's brief, based on those rules. *See* Letter dated Sept. 24, 2012 (on file with the Court). Through Stone's motion practice, the Court has effectively cleared her brief for filing. However, that does not make Stone's brief any more capable of providing notice of her arguments.

The Court's September 24, 2012, letter noted Stone's failure to set forth "argument indicating the contentions and reasons . . . with respect to the issues presented, with citations to the authorities, statutes, and parts of the record relied upon." *See id.* That requirement has special significance. This Court is not a "depository in which [a] party may dump the burden of argument and research." *See State v. Gomez*, 2002 UT 120, ¶ 20, 63 P.3d 72 (internal quotation marks omitted). Nor is it the job of any court to "root through the record like a pig in search of truffles to determine whether there is a" basis for a party's contentions. *See Keaton v. Cobb County*, 545 F. Supp. 2d 1275, 1309 (N.D. Ga. 2008) (internal quotation marks omitted). Stone is obligated to set forth her arguments with authorities and citations to the record in an orderly and coherent manner.

Although perhaps entitled to some leniency as a pro se litigant,[1] she cannot expect Appellants or this Court to prospect through her brief to figure out what her arguments actually are.

Stone's brief is crammed with statements suggesting arguments, but it does not contain a single argument that is developed in a way that permits a response. Despite an attempt at labeling her arguments, Stone's brief meanders from point to point without forewarning or clarification. Long stretches of her brief are mere lists of court decisions, with little to no explanation of the applicability of those decisions. Although Stone's brief contains long lists of "arguments," Appellants must attempt to shuffle the various concepts and points with Stone's lists of court decisions to determine what, from a legal perspective, Stone seeks to argue. Approximately half of Stone's brief improperly resides in the form of an "Appendix" that sets forth additional summaries of tilted-at arguments. *See DeBry v. Cascade Enters.*, 879 P.2d 1353, 1360 n.3 (Utah 1994) ("It is improper . . . to attempt to enlarge the page limit of briefing by placing critical facts in appendices."). In sum, Appellants are as in the dark about Stone's arguments as they were prior to receiving her brief. Her brief is not "concise, presented with accuracy, logically arranged with proper headings [or] free from burdensome, irrelevant, immaterial or scandalous matters." *See* Utah R. App. P. 24(j).

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[1] "Perhaps" is a stretch. As this Court is well aware, Stone has a very long history of litigation in Utah courts. She should therefore be "charged with full knowledge and understanding of all relevant statutes, rules, and case law," despite her *pro se* status. *See Lundahl v. Quinn*, 2003 UT 11, ¶ 5, 67 P.3d 1000.

On the subject of "scandalous" matters, Stone accuses not only Appellants, but their counsel, of "relentless" attacks, "over-zealousness," failure to adhere to the Utah Rules of Professional Conduct, and other conduct that is not only vindictive, but demonstrably untrue. Such language is contrary to Rule 24(j) and is, itself, grounds for this Court to disregard Stone's brief.

In fine, the Court should not reach the merits of Stone's arguments. Rather, it should disregard Stone's continually nonconforming brief and grant Appellants their requested relief on that basis alone.

II. THE DISTRICT COURT ABUSED ITS DISCRETION BY DECLINING TO ENFORCE THE SETTLEMENT AGREEMENT AND BY DECLINING TO AWARD ATTORNEY FEES.

Based on Appellants' sense that Stone's arguments address literally every topic under the sun except the one issue truly before this Court, as well as the difficulty inhering in responding to Stone's arguments due to the way they are framed and organized in her brief, Appellants do not pretend to respond to each and every argument that Stone levels, or to even be able to. Rather, Appellants take this opportunity, on reply, to re-address and re-emphasize the one critical issue before the Court on appeal: whether the district court abused its discretion when it credited Stone's self-serving denial that she agreed to the Settlement Agreement over unequivocal evidence that she, through her attorney, agreed to the Settlement Agreement, and declined to enforce the Settlement Agreement or to award fees on that basis. As the following demonstrates, the answer to that question is an unequivocal yes. This Court should therefore reverse the

district court's decision and enforce the Settlement Agreement. It should also remand this case to the district court for a determination of attorney fees and costs.

A. The Substance of the District Court's Abuse of Discretion

1. *The District Court's Refusal to Enforce the Settlement Agreement*

The district court denied Appellants' motion to enforce the Settlement Agreement based solely on Stone's "contention that a Settlement Agreement was not reached in this case." (R. at 764.) But Stone's "contention" is not, as a matter of law, dispositive of whether she entered into a settlement agreement. It is a matter of undisputed Utah law that an attorney possesses apparent authority to bind a client to a settlement agreement. *Goodmansen v. Liberty Vending Sys., Inc.*, 866 P.2d 581, 584–85 (Utah Ct. App. 1993) (affirming a decision enforcing a settlement agreement based on correspondence between counsel); *see also Luddington v. Bodenvest Ltd.*, 855 P.2d 204, 208–09 (Utah 1993) (outlining the parameters of the doctrine of apparent authority).

Here, Stone was represented by counsel—specifically, David Ross ("Ross")—at all times pertinent to the inquiry of her Settlement Agreement. On June 22, 2011, Appellants' attorney, Ryan Braithwaite ("Braithwaite") sent Ross a draft settlement agreement and dismissal documents reflecting revisions that Braithwaite had made to documents Ross had previously provided. (R. at 597, 618, 620–22.) On June 27, 2011, Ross emailed Braithwaite, stating, "The proposed changes were sent to the Stone's [*sic*] and waiting for response." (R. at 597, 626.) Later, on July 22, 2011, Ross sent an email to Braithwaite stating as follows:

> *Mrs. Stone ok*, delay is waiting on definitive response from son, Todd—last discussion I had with him was that he was not settling. *I propose we proceed with the settlement and release with Mrs. Stone along with dismissal of the suit, her appeal and lien release.* At such point I believe that Todd Stone would have not standing—assuming that he has any to begin with—I do not see where the Court allowed him to intervene.

(Emphasis added.) (R. at 597, 628.) In response, on July 29, 2011, Braithwaite stated as follows:

> My clients would obviously prefer to have a global settlement involving Todd Stone. However, in light of the facts that he wasn't allowed to intervene, his appeal has been dismissed, and he isn't even an owner of a unit within the condo association, we're content to proceed with the settlement with Mrs. Stone only.
>
> To that end, I have re-attached a copy of the settlement agreement I previously sent to you (and which I understand from your 7/22 email that Mrs. Stone has approved) and another version of the settlement that deletes the references to Todd Stone. If he is now willing to participate in the settlement, then we'd prefer to proceed that way and use the settlement agreement to which he is a party. However, if he's not willing to participate, then we can use the other attached settlement agreement.

(R. at 598, 630.) The Settlement Agreement is the document attached to Braithwaite's July 29, 2011, email—the version that excluded Todd Stone from its purview. (R. at 598, 634–38.)

In response, on July 29, Ross emailed Braithwaite stating, "I am traveling on business this week and partly next week and then end of week . . . meantime will review your attachments—*I read quickly and they look fine. If any concerns will get back with you otherwise I will send out to Mrs. Stone for signature*." (Emphasis added.) (R. at 598, 640.) Subsequently, on August 9, 2011, Ross sent an email to Braithwaite stating as follows:

> *The stipulation and the settlement agreement with your changes comport with the settlement agreement.* I suggest you obtain your clients and earthwork [*sic*] signatures and you sign and send to me. I will sign and obtain the signature of Mrs. Stone—then send the Stipulation to you along with a conforming proposed order that you can sign the "Approved as to Form" part and provide you with an original fully executed settlement agreement. You can then file the Stip and proposed order with court and mail me a copy of the proposed order after you have signed approved as to form.
>
> *I sent a copy of the proposed stipulation and settlement agreement to Mrs. Stone indicating that this was the offer she made to you through me and you accepted.*

(R. at 598–99, 645.) (Emphasis added.)

Critically, Ross did not file his motion for leave to withdraw as counsel for Stone until *after* all of this correspondence occurred, and indeed, not until *after* Stone refused to honor her obligations pursuant to the Settlement Agreement. (R. at 522–24.) Ross was, no doubt, Stone's attorney when he represented, on several occasions, that Stone agreed to the terms of the Settlement Agreement. In fact, Ross was very careful to note that Todd Stone did not agree to the Settlement Agreement, while Stone did.

In all material respects, this case is exactly like *Goodmansen**Error! Bookmark not defined.***. There, counsel exchanged several letters memorializing the terms of a settlement agreement between counsel's respective clients. Those letters reflected the parties' agreement to the terms contained therein. *See Goodmansen*, 866 P.2d at 583–84. One of the parties declined to honor the terms set forth in counsel's correspondence, and counsel for that party withdrew. *See id.* at 584. Although no settlement agreement or other signed settlement documents had been executed, the aggrieved party brought a

motion to enforce the settlement agreement based on the letters between counsel. *See id.* The district court granted the motion. *See id.* This Court affirmed, concluding that "the three letters between [counsel] dated March 22, 1991 constitute a binding agreement between the parties." *See id.* at 585. The Court specifically noted the conveyances of offers and acceptances in the letters on behalf of counsel's respective clients. *See id.* In *Goodmansen*, as here, there was no executed, formalized settlement agreement, and the offers and acceptances were exchanged between counsel rather than the parties. Still, the district court and this Court enforced the settlement agreement.

Stone provides no answer to an integral part of Appellants' argument. The Utah Rules of Professional Conduct *prohibited* Braithwaite from speaking directly with Stone, a represented party. *See* Utah R. Prof'l Conduct 4.2(a). Ross was the only person with whom Braithwaite could discuss settlement.[2] Stone cannot be heard to argue (if that is, in fact, her argument) that the only person with whom Braithwaite could speak regarding the Settlement Agreement with Stone did not, in fact, speak for Stone. If that is her argument, it is one of convenience and not legal merit.

For all of these reasons, it is irrelevant that Stone merely denied, in a self-serving, conclusory document, that she agreed to the Settlement Agreement. Her attorney possessed apparent authority to agree to bind her to the Settlement Agreement, and if he

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[2] Stone appears to argue otherwise, but appears to attempt to straddle a delicate middle ground between arguing she was pro se and arguing that Braithwaite should have corresponded with another attorney. Nowhere does she explain why Braithwaite wrongfully engaged in communication with her counsel of record, the only one who had actually appeared in court.

miscommunicated her intent, Stone's remedy is with her attorney, not with Appellants. The district court's decision to credit Stone's so-called testimony instead of her counsel's prior, undisputed statements binding her to the Settlement Agreement—the only statements that are legally significant—is legal error, and the district court abused its discretion by basing its decision on that error. *See Taylor-West Weber Water Improv. Dist. v. Olds*, 2009 UT 86, ¶ 3, 224 P.3d 709 ("The trial court abuses its discretion when it relies on an erroneous conclusion of law to come to its decision.").

The closest Stone comes to an argument appears to be a contention that not Ross, but another attorney, Jeffrie Hollingsworth ("Hollingsworth), was her attorney. But Stone's argument ignores the reality that Ross filed, only ten days prior to Braithwaite's initial correspondence to Ross, a Motion for Leave to File First Amended Complaint. (R. at 496–98.) He obviously deemed himself Stone's counsel, else he would not have filed a Motion for Leave to Withdraw. (R. at 522–24.) Contrary to Stone's suggestion, the Court did, in fact, rule on that motion. (R. at 646.) All filings subsequent to Ross's filing of his motion to withdraw were made by Stone, *pro se*, not by Hollingsworth. If Ross was somehow not Stone's counsel, or even if he was, if he did not possess settlement authority, that is an issue between Stone and Ross. For their part, Appellants were perfectly entitled to rely upon Ross's representations.

Stone also suggests (but does not flesh out why) that the Settlement Agreement is too vague to be enforceable, and that it bears on individuals (specifically, Stone's son

Todd Stone[3]) that are not parties to this lawsuit. At the outset, the agreement, as conveyed by Ross, was that the version of the Settlement Agreement bearing only on Stone, and not Todd Stone, reflected the terms of agreement between the parties. (R. at 598–99, 634–38, 640, 645.) By this appeal, Appellants do not seek to enforce anything against Todd Stone. Moreover, the Settlement Agreement, on its face, plainly reflects a meeting of the minds between Appellants and Stone on all essential terms of the contemplated settlement. (R. at 598, 634–38.) *See Nielsen v. Gold's Gym*, 2003 UT 37, ¶ 11, 78 P.3d 600 ("It is fundamental that a meeting of the minds on the integral features of an agreement is essential to the formation of a contract." (internal quotation marks omitted)).

Finally, Stone suggests that a number of evils arise from the alleged fact that Hidden Lakes Homeowners Association no longer wishes to litigate against Stone. Not only is that alleged fact untrue, but it is unsupported by Stone and irrelevant to the issue of whether Stone, through her counsel, bound herself to the Settlement Agreement.

Any other argument raised by Stone in her brief is either not properly raised and therefore waived, *see Brown v. Glover*, 2000 UT 89, ¶ 24, 16 P.3d 540, or irrelevant to the sole issue before the Court.

2. The District Court's Decision to Not Award Attorney Fees

The Settlement Agreement contains the following language:

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[3] Stone also argues that this appeal improperly influences the rights of Joanne Stone. But she is not named anywhere in the Settlement Agreement, and she has no interest in the outcome of this appeal, which involves only Appellants and Stone.

> Attorneys Fees. In the event any suit is brought to enforce any of the provisions of this Agreement, in addition to any damages which may be claimed, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such action.

(R. at 637.) When a party successfully enforces a settlement agreement, Utah courts also enforce the agreement's attorney fee provision. *See Goodmansen*, 866 P.2d at 586 (affirming district court's enforcement of settlement agreement and attorney fee provision).

Here, because the district court should have enforced the Settlement Agreement, and because the Settlement Agreement contains a provision awarding fees and costs to a prevailing party seeking to enforce the Settlement Agreement, the district court further abused its discretion by declining to award Appellants their fees and costs incurred in enforcing the Settlement Agreement.

B. The Materiality of Stone's Breach of the Settlement Agreement

Stone's actions contrary to the terms of the Settlement Agreement—which was never really in dispute, even in the district court—are material to Appellants in at least two ways. First, "[i]t is a basic rule that the law favors the settlement of disputes." *Mascaro v. Davis*, 741 P.2d 938, 942 (Utah 1987). Because settlement agreements foster the efficient resolution of disputes, Utah law enforces them efficiently. A "district court has power to summarily enforce on motion a settlement agreement entered into by the litigants where all the litigation is pending before it." *Tracy-Collins Bank & Trust Co. v. Travelstead*, 592 P.2d 605, 609 (Utah 1979). Those efficiency concerns mean that Utah

courts do not even require a fully written settlement agreement. "It is of no legal consequence that the parties have not signed a settlement agreement." *Goodmansen v. Liberty Vending Sys., Inc.*, 866 P.2d 581, 584 (Utah Ct. App. 1993); *see also Murray v. State*, 737 P.2d 1000, 1001 (Utah 1987) (noting that "[t]he fact that plaintiffs had not yet signed a written [settlement] agreement is of no legal consequence," and that so long as the statute of frauds does not require a written settlement agreement, oral or unsigned settlement agreements are unenforceable); *John Deere Co. v. A & H Equip., Inc.*, 876 P.2d 880, 887 (Utah Ct. App. 1994) (affirming the enforceability of oral settlement agreements. "Parties have no right to welch on a settlement deal during the sometimes substantial period between when the deal is struck and when all necessary signatures can be garnered on a stipulation." *Brown v. Brown*, 744 P.2d 333, 336 (Utah Ct. App. 1987) (Orme, J., dissenting) (quoted in *Goodmansen*, 866 P.2d at 585).

The Settlement Agreement contains the following language:

> Mutual Release: Upon execution of this Agreement, each of the parties, including and without limitation their respective directors, officers, partners, principals, employees, agents, trustees, attorneys, predecessors and successors, insurers, parents, subsidiaries and affiliates, divisions, assigns, representatives, heirs, and executors and administrators, do hereby acknowledge full and complete satisfaction of, and do hereby fully and finally settle, release, and discharge each other individually and collectively from any and all claims, demands, rights, liabilities, contractual obligations, grievances, charges, attorneys' fees, and causes of action of any nature under any laws of any jurisdiction, known or unknown, fixed or contingent, patent or latent, anticipated or unanticipated, at law or in equity, including and without limitation any rights of subrogation, contribution, indemnification, or apportionment that may exist in law or equity or by contract, that they or any other person had or has or may have against any of the others arising from, based upon, relating to, or in connection with the Lawsuit, or the facts and circumstances surrounding the Lawsuit, or that

were asserted in the Lawsuit or the Appeal, could have been asserted in the Lawsuit or the Appeal, or exist as of the date of this Agreement.

(R. at 635–36.)

> Attorneys Fees: In the event any suit is brought to enforce any of the provisions of this Agreement, in addition to any damages which may be claimed, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such action.

(R. at 637.)

This release language is of inestimable worth to Appellants. As Appellants noted in their initial brief, to date, Stone has filed no fewer than seven appeals arising out of this single case. *See* the dockets for Cases Nos. 20110990-CA, 20110992-CA, 20120046-CA, 20120361-CA, 20120423-CA, 20110383-CA, and 20110452-CA. The Court may also note Stone's numerous, repetitive, and meritless filings in the district court, particularly after the district court dismissed her single claim. Stone's refusal to adhere to the terms to which she, through her attorney, agreed does not harm Appellants in this case alone. Rather, it forces Appellants to continue to litigate, on numerous fronts, against the "motion machine"[4] that is Stone.

All of this litigation should have been resolved with the efficiency that settlement agreements foster, and Appellants bargained for such a resolution. Instead, Appellants must continue to expend their time and resources against Stone. Stone's failure to adhere to the terms of the Settlement Agreement is material and inordinately damaging to Appellants.

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[4] *See Houghton v. Dep't of Health*, 2005 UT 63, ¶ 11, 125 P.3d 860.

III. STONE CANNOT, AND DOES NOT, MAKE ANY ARGUMENT THAT UNDERMINES APPELLANTS' POSITION.

The *only* issue before this Court is whether the district court abused its discretion by refusing to enforce the Settlement Agreement and award attorney fees and costs. Neither the merits of the underlying, settled case, nor any other procedural or substantive issue Stone raises, is properly before the Court. Nothing herein should be deemed an acknowledgement of, or agreement with, any of Stone's arguments, just because Appellants did not specifically respond to them. Appellants do respond to them, and their response is that such arguments are not properly before the Court and irrelevant, in addition to being factually and legally misplaced and incorrect.

IV. APPELLANTS ARE ENTITLED TO RECOVER ATTORNEY FEES AND COSTS INCURRED ON APPEAL.

"If the trial court determines that a party is entitled to an award of attorney fees by law, the party may also recover its attorney fees on appeal." *PP&T, LLC v. Brinar*, Case No. 20070538-CA, 2008 UT App 198, *4 (2008) (unpublished disposition) (citing *Coates v. Am. Economy Ins. Co.*, 627 P.2d 92, 93 (Utah 1981)). Utah appellate courts award attorney fees and costs on appeal where there is a contractual basis for doing so. *See Oakwood Vill. LLC v. Albertsons, Inc.*, 2005 UT 101, ¶ 57, 104 P.3d 1226 (affirming an award of attorney fees and costs on appeal pursuant to contract).

As explained above and in Appellants' opening brief, Appellants are entitled to an order and judgment enforcing the Settlement Agreement, which contains an attorney fee provision. Appellants are therefore entitled to an award of attorney fees on appeal.

CONCLUSION

The district court abused its discretion by refusing to enforce the Settlement Agreement and to award fees. Even if the Court considers Stone's brief on its merits, which it should not, Stone makes no argument on appeal that compels, requires, or even suggests a different conclusion. This Court should reverse the district court's decision and enforce the Settlement Agreement. It should also award fees and costs incurred both in connection with Appellants' enforcement of the Settlement Agreement, and on appeal.

RESPECTFULLY SUBMITTED this 10th day of December, 2012

BENNETT TUELLER JOHNSON & DEERE

/s/ Daniel K. Brough
Ryan B. Braithwaite
Daniel K. Brough
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of December, 2012, I caused to be served, via U.S. Mail, First Class, two (2) true and correct copies of the foregoing **REPLY BRIEF OF APPELLANT** and that in accordance with Utah Supreme Court Standing Order No. 8, a **COURTESY BRIEF ON CD** in searchable portable document format (pdf) was filed with the Court and served upon the following:

Annabelle Stone
3747 Hillside Lane
Salt Lake City, UT 84109
Pro Se
Petitioner and Cross-Appellee

BENNETT TUELLER JOHNSON & DEERE

/s/ Daniel K. Brough
Ryan B. Braithwaite
Daniel K. Brough
Attorneys for Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because it contains 4,709 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B) and complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 13 point font size.

BENNETT TUELLER JOHNSON & DEERE

/s/ Daniel K. Brough
Ryan B. Braithwaite
Daniel K. Brough
Attorneys for Appellants