1982

C&J Industries, Inc. et al v. Edward O. Bailey et al : Reply Brief of Plaintiffs-Appellants

Utah Supreme Court

Kay M. Lewis; Jensen & Lewis; Attorneys for Appellants;
T. Quentin Cannon; Cannon & Duffin; Attorneys for Respondents;

IN THE SUPREME COURT

OF THE STATE OF UTAH

LINDA K. LARSEN and THE STATE OF UTAH, by and through UTAH STATE DEPARTMENT OF SOCIAL SERVICES,	:	
Plaintiffs-Respondents,	:	Case No. 18328
-vs-	:	
DOUGLAS COLLINA,	:	
Defendant-Appellant.	:	

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT RENDERED IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE MARUICE D. JONES, PRESIDING.

STEVEN L. HANSEN
4872 Poplar Street
Murray, Utah 84107

Attorney for Appellant

IN THE SUPREME COURT

OF THE STATE OF UTAH

LINDA K. LARSEN and THE STATE OF UTAH, by and through UTAH STATE DEPARTMENT OF SOCIAL SERVICES,	:	
Plaintiffs-Respondents,	:	Case No. 18328
-vs-	:	
DOUGLAS COLLINA,	:	
Defendant-Appellant.	:	

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT RENDERED IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE MARUICE D. JONES, PRESIDING.

STEVEN L. HANSEN
4872 Poplar Street
Murray, Utah 84107

Attorney for Appellant

TABLE OF CONTENTS

CASES CITED

OTHER AUTHORITIES

IN THE SUPREME COURT OF THE

STATE OF UTAH

LINDA K. LARSEN and THE STATE OF UTAH, by and through UTAH STATE DEPARTMENT OF SOCIAL SERVICES,	:	
Plaintiffs-Respondents,	:	Case No. 18328
-vs-	:	
DOUGLAS COLLINA,	:	
Defendant-Appellant.	:	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Defendant-Appellant (hereinafter referred to as Appellant) made a Motion to Set Aside Default and for Relief from Judgment under Utah Rules of Civil Procedure, Rule 60(b). Appellant's Motion was heard on February 17, 1982, in the Third Judicial District Court. This is a civil appeal from the Court's Order denying Appellant's Motion.

DISPOSITION OF THE LOWER COURT

Appellant's Motion was denied by the Honorable Maurice D. Jones following the hearing in the Third Judicial District Court on February 17, 1982. The date of the Judgment Order was February 19, 1982.

RELIEF SOUGHT ON APPEAL

Appellant seeks the reversal of the judgment of the lower court.

STATEMENT OF FACTS

Plaintiffs-Respondents (hereinafter referred to as Respondents) sued Appellant to establish Appellant's paternity of a child born out of wedlock to Respondent, Linda K. Larsen. Appellant filed an Answer to the Complaint denying paternity. Interrogatories were mailed to Appellant's former attorney, Bradley Parker, on June 23, 1980. The Interrogatories had not been answered as of August, 1980, and so on August 25, 1980, Respondents moved the lower court for an Order striking the Appellant's Answer and for a Default Judgment.

Respondents' Motion was heard on September 17, 1980, at which time the Court granted Appellant's former attorney 15 days from September 17, 1980 (i.e. until October 2, 1980) to Answer said Interrogatories. This Order was dated October 10, 1980. Appellant, Douglas Collina, was not present at the hearing held on September 17, 1980.

The 15-day extension elapsed on October 2, 1980. Mr. Brad Parker withdrew as Appellant's counsel on October 15, 1980. Prior to the time of withdrawal, Appellant avers that he was never notified by his counsel that he must answer Respondents' Interrogatories within any time period or possibly have a Default Judgment entered against him. At the hearing on February 17, 1982, Respondents' counsel made a proffer that sometime after December

17, 1980, Appellant filed a Complaint against Bradley Parker, which was later dismissed; and, further, that Mr. Parker had been informed by Appellant that Appellant had received Bradley Parker's previous Notice of Withdrawal, which Mr. Parker had sent to Appellant on or shortly after October 15, 1980.

It might be that Appellant received Mr. Parker's Notice of Withdrawal, but the important point for this Appeal is that Mr. Parker did not withdraw from counsel until sometime well after October 2, 1980, when the 15-day extension on the deadline for answering the Interrogatories in question had already expired. It was not shown that Mr. Parker had made any attempt at all to contact Appellant within the 15-day extension period. Also, even though the County Attorney asserted at the lower court hearing that it, too, had sent out Notice to Appellant on October 21, 1980, to obtain counsel or appear on his own behalf, this Notice was also sent well after the 15-day extension had expired.

A Default Judgment was entered against Appellant on December 17, 1980, decreeing him to be the father of the child and ordering him to pay unpaid child support in the amount of Four Thousand Nine Hundred Forty-Six Dollars ($4,946.00) and the sum of One Hundred Eighty-Three Dollars ($183.00) per month as continuing support.

Appellant contacted present counsel in early March of 1981, and filed a Motion to Set Aside the Default and for Relief

of Judgment on March 17, 1981, within 90 days from the date of the Order. Appellant answered Respondents' Interrogatories on May 29, 1981, as part of negotiations to have the Default set aside. The parties, by oral stipulation, declined to set the matter for hearing pending a thorough review by the Salt Lake County Attorney's Office. The opposing counsel involved in the stipulation negotiations was replaced due to an assignment change, and the new counsel, in late 1981, notified Appellant's present counsel that it would not stipulate to setting aside the Default Judgment. Consequently, Appellant renewed his earlier Motion, a hearing was held, and the Order was entered from which this Appeal is being taken.

ARGUMENT

POINT I

THE ACTION OF THE LOWER COURT IN DENYING APPELLANT'S MOTION TO SET ASIDE THE DEFAULT AND FOR RELIEF FROM JUDGMENT WAS ARBITRARY AND AN ABUSE OF DISCRETION AND SHOULD BE REVERSED.

Utah Rules of Civil Procedure, Rule 60(b), states:

> "On motion and upon such terms as are just, the Court may in the furtherance of justice relieve a party or legal representative from a final judgment, order, or proceedings for the following reasons:
>
> (1) Mistake, inadvertence, surprise or excusable neglect; or
>
> (2) Any other reason justifying relief from the operation of the judgment."

In the case of Ney v. Harrison, 5 U.2d 217, 299 P.2d

1114, the Utah Supreme Court stated it was not abuse of discretion for a trial court to relieve a defendant from a judgment and to allow her to answer where it was shown that she had mistakenly believed she was fully protected by a Divorce Decree and felt that such a Decree required her husband to bear the obligation of defending the action for her. An analogy can be made to the facts of the instant case where Appellant, Douglas Collina, had assumed and was led to believe that his attorney would undertake all the activities necessary to answer the complaint and interrogatories in a timely fashion. It was reasonable for Appellant, Douglas Collina, to rely on his attorney to do so.

In the case of Westinghouse Electric Supply Co. v. Paul W. Larson Contractor, Inc., 544 P.2d 876, the Utah Supreme Court stated:

> "Where any reasonable excuse is offered by defaulting party, courts generally tend to favor granting relief from a default judgment, unless it appears that to do so would result in substantial injustice to the adverse party."

See, also, the case of Meyhew v. Standard Gilsonite Co., 376 P.2d 951, (Ut. 1962), where the Utah Supreme Court said, p. 952:

> "It is undoubtedly correct that the trial court is endowed with considerable latitude of discretion in granting or denying such motions. However, it is also true that the court cannot act arbitrarily in that regard, but should be generally indulgent toward permitting full inquiry and knowledge of disputes so they can be settled advisedly and in conformity with law and justice. To clamp a judgment rigidly and

> irrevocably on a party without a hearing is obviously a harsh and oppressive thing. It is fundamental in our system of justice that each party to a controversy should be afforded an opportunity to present his side of the case. For that reason it is quite uniformly regarded as an abuse of discretion to refuse to vacate a default judgment where there is reasonable justification or excuse for the defendant's failure to appear, and timely application is made to set it aside." (Emphasis added.)

As the Mayhew case indicated, there is a presumption in favor of granting parties a full hearing on the merits and it will generally be "regarded as an abuse of discretion to refuse to vacate a default judgment where there is reasonable justification or excuse."

In the instant case it would be patently unfair to require Appellant to pay child support for eighteen years on the basis of his failure to answer Interrogatories, expecially since the blood test results do not show a very high probability that he was the father. The blood test results are summarized by Dr. C. W. DeWitt, Ph.D., of the University of Utah College of Medicine in a letter dated May 15, 1980, and attached hereto. Dr. DeWitt states:

> "Some estimate can be made of the probability that Mr. Collina is indeed the father. The antigen pair (A30, B18) in the baby obviously comes from the mother. The following probabilities then are based on our published knowledge of the percentage occurrence of the antigen pair (A1, B8) in a large population which should contain the baby's father and other potential consorts. Simple statistical analysis then allows us to make the following estimates: If the mother had sexual relations with only one man (Mr. Collina) at the time of conception,

then the probability that he is the father is, of course, 100 percent, and blood and tissue typing would not be necessary. As the number of men the mother had sexual relations with at that time rises, the probability that Mr. Collins is the father decreases. This is in order of:

Consorts	Probability
2	74%
3	58%
4	48%
5	41%

You realize, of course, that these are probabilities based on a large number of occurrences, whereas in this case we are dealing with one occurrence."

As can be seen, if plaintiff, Linda K. Larsen, had sexual relations with only three consorts at the critical time, the chances of Appellant being the father are only 58 percent, just slightly better than fifty-fifty. This is too low a probability to impose eighteen years of child support on him on the basis of a default judgment, without even making the slightest inquiry into the facts of the case. Respondent may try to assert that there are no allegations by Appellant that Respondent, Linda K. Larsen, had intercourse with more than one person during the time period of conception, and further, that in Appellant's Answers to the Interrogatories Appellant stated that he did not know of any other consort that Respondent may have had intercourse with during the critical time. Appellant would respond to this as follows: First of all, since the Default Judgment which was upheld at the Hearing on February 17, 1980, was entered because

of Appellant's earlier failure to timely answer these Interrogatories, Respondents should not now be allowed to bring into evidence any answers Appellant later gave when answering said Interrogatories. If Respondents are allowed to bring in such Answers, however, let the Court consider the Interrogatory and the exact wording of the Answer of Appellant:

> "(Interrogatory) 37. Do you contend that co-plaintiff had sexual relations with any person other than defendant during the period December, 1975 to April, 1976? If so, give the name and address of each such person.
>
> A. Defendant is without information to either admit or deny plaintiff's Interrogatory #37."

It is clear from the above Question and Answer, that Appellant did not admit or state the Respondent, Linda K. Larsen, had sexual relations with only one consort during the period of conception. Rather, the Appellant merely stated that he was without any knowledge as to what said Respondent may or may not have done during said time period.

The Lower Court did recognize that communications between Appellant and his pervious attorney, Bradley Parker, had broken down, but apparently reasoned that since it was proferred that Appellant had received the Notice of Withdrawal which Mr. Parker had sent out on or after October 15, 1980, Appellant must have received all of Mr. Parker's earlier correspondence. This does not necessarily follow, however. Question No. 3 of the Interrogatories and its Answer are as follows:

"(Interrogatory) 3. If you have resided at any other address or addresses since 1975, list the addresses and the date of residence at each.

A. 5/2/80 through 2/15/80, P.O. Box 517, Ferron, Utah. 2/1/79 through 5/2/80, 171 North Redwood Road, Salt Lake City, Utah. 3/1/75 through 2/1/79, 6641 West 3785 South, Hunter, Utah."

From this Answer, it is clear that Appellant did not reside at the Redwood Road address during the months of July, August, September and October of 1980. It was to the Redwood Road address that Bradley Parker sent his correspondence. Therefore, even though Appellant received the Notice of Withdrawal of Mr. Parker, it does not follow that he received the earlier notices and letters. Appellant filed an Affidavit to accompany his Memorandum in Support of his Motion with the lower Court.

In his Affidavit, Appellant averred as follows:

"1. That I was never notified by my attorney of record at that time, Bradley H. Parker, that I must answer plaintiff's Interrogatories within fifteen (15) days from September 15, 1980, or my answer to the complaint would be stricken and a default judgment entered against me.

2. That an Order directing me to answer plaintiff's Interrogatories was made by the Court on October 10, 1980, while I was still represented by said counsel.

3. That my attorney of record at that time, Bradley H. Parker, did not file a withdrawal of counsel until October 15, 1980.

4. That the fifteen days in which to answer plaintiff's interrogatories had lapsed prior to my counsel's withdrawal on October 15, 1980.

5. That prior to my counsel's withdrawal, I was never

notified that I must answer plaintiff's interrogatories or a Default Judgment would be taken against me.

6. That I was relying on my counsel to inform me as to what needed to be done and what deadlines were to be met in order to defend myself against the Complaint.

Appellant wishes to point out to this Court that his Affidavit was unopposed by either opposing Affidavits or direct testimony and, therefore, should be taken as true.

In conclusion, Appellant requests this Court to reverse the decision of the lower Court and to allow this matter to be heard at trial, because to uphold the Default Judgment would be against the interest of justice, since it would mean that Plaintiff would have to pay child support for eighteen years without having had his day in court to establish whether or not he is in fact the father of the child. Admittedly, the State has an interest in seeing to it that minor children are provided for, but this interest should not overide that of protective fathers. This case is similar in its facts to that of Interestate Excavating, Inc. v. Agla Development Corporation, 611 P.2d 369 (Utah 1980). There, the Appellant's attorney withdrew from the case and certified that he had mailed a notice of the trial to Appellant. No one appeared at the trial on behalf of Appellant, even though the Respondents' attorney also certified that he, too, had mailed a notice of trial to Appellant. On Appeal, Appellant asserted that it had never received notice of trial, and that its attorney may have misplaced the notice of trial among numerous papers mailed

by his office at the time he withdrew. A Default Judgment was entered when no one appeared for Appellant at trial. Appellant immediately contacted new counsel when it received notice of Default Judgment, and the new counsel then filed an appeal 17 days later. (Although, Appellant in the instant case did not obtain new counsel immediately, he did file a complaint against his former attorney, Bradley Parker, in or about December, 1980, the month he learned of the Default Judgment). In Agla Development, the Court set aside the Default Judgment stating:

> It is not to be questioned that in appropriate circumstances default judgments are justified; and when they are, they are invulnerable to attack. However, they are not favored in the law, especially where a party has timely responded with challenging pleadings. When that has been done some caution should be observed to see that the party is not taken advantage of. Speaking generally about such problems, it is to be kept in mind that access to the courts for the protection of rights and the settlement of disputes is one of the most important factors in the maintenance of a peaceable and well-ordered society. This of course must be done in obedience to rules; and it is to be conceded that there is a possibility that the defendant was less than diligent in attending to its interest in this lawsuit. But no evidence was taken, nor did the court make any findings other than the order denying defendant's motion.
>
> This is admittedly a perplexing case. From the standpoint of the plaintiff and its counsel, they appear to have proceeded without any impropriety, including appearing on the trial date and presenting their case. Defendant

counters with the averments that it received no such notice. Supportive of the defendant's position, are the facts that the justification for its default rests upon the assertion of service of notice by ordinary mail; and that immediately upon learning of the judgment, it proceeded diligently with efforts to set it aside and contest the issues on the merits.

The uniformally acknowledged policy of the law is to accord litigants the opportunity for a hearing on the merits, where that can be done without serious injustice to the other party. To that end, the courts are generally indulgent toward the setting aside of default judgments where there is a reasonable justification or excuse for the defendant's failure to appear, and where timely application is made to set it aside. Consistent with the objective just stated, where there is doubt about whether a default should be set aside, the doubt should be resolved in favor of doing so, to the end that each party may have an opportunity to present his side of the controversy and that there be a resolution in accordance with law and justice. Ibid, 611 P.2d 369, 371.

So, too, in the instant case, Appellant requests this Court to set aside the Default Judgment in the interests of justice. Appellant filed a timely answer to the complaint. There was no proof that Appellant ever received letters notifying him of the need to answer the Interrogatories by any deadline, or of the 15-day extension. Further, the lower Court made no findings as to what grounds it denied Appellant's motion. Also, it is clear that Appellant did take immediate action when he learned of the Default Judgment by filing a Complaint with the Utah State Bar against his former attorney.

It is submitted, therefore, that this Court should follow the principles laid down in the Agla Development case (supra), and reverse the decision of the lower Court in the instant case to allow Appellant to have his day in Court.

POINT II

THE LOWER COURT COMMITTED PREJUDICIAL ERROR BY ALLOWING INTO EVIDENCE A MEMORANDUM WHICH ARGUED THE RESULTS OF THE BLOOD TESTS AND WHICH INCORPORATED A LETTER OF APPELLANT'S FORMER ATTORNEY. THE MEMORANDUM HAD NOT BEEN SERVED ON APPELLANT AS REQUIRED BY THE UTAH RULES OF CIVIL PROCEDURE AND NO PROPER FOUNDATION WAS LAID FOR THE RESULTS OF THE BLOOD TESTS.

At the lower Court hearing, the Respondent, the State of Utah Department of Social Services served Appellant with their Memorandum In Opposition to Appellant's Motion. In Respondents' Memorandum they argued the results of the blood tests Appellant had taken, even though they only had a letter from Dr. C.W. DeWitt of the University of Utah College of Medicine. Dr. DeWitt was not present to testify, nor was Dr. DeWitt's signature certified. Further, Respondent's brief incorporated a letter from Appellant's former counsel, in which it was stated that Appellant had received Notice of Counsel's withdrawal.

It is Appellant's position that the Court committed prejudicial error in allowing Respondents' Memorandum, the blood tests, and Bradley Parker's letter into evidence because they were only served upon Appellant at the day of the hearing, thus violating Utah Rules of Civil Procedure, Rule 6 (d) which states:

> (d) For Motions--Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59 (c), opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

Further, Respondent should not have been allowed to argue the results of the blood tests when no proper foundation had been laid. In the case of Phillips and State of Utah Department of Social Services vs. Jackson, No. 15618 (Filed July 22, 1980), this Court laid down the following requirements regarding the admissibility of the HLA blood factor tests into evidence in paternity suits:

> "Dr. DeWitt, a pathologist, was relied on to establish the necessary scientific foundation. Counsel stipulated that he is an expert, a practice wholly appropriate in many cases, but one that leaves this record devoid of evidence of his qualifications--evidence that is essential in this particular case. In a case dealing with the proposed admissibility of a new scientific test which presumably will be relied on innum-

erable times in the future, the stipulation leaves a hiatus in the necessary foundation.

Furthermore, this testimony does not supply the necessary information as to the general acceptance of the test, the existence of verification studies, if any, and the particular tests that were in fact performed in this case. There is no evidence in the record which establishes his expertise either in the theory or in the use of HLA testing for paternity purposes. In addition, there is no evidence indicating whether special training in pathology or some other field is a necessary prerequisite to qualify a witness to testify concerning the test.

Dr. DeWitt did state that the test is highly accurate and has been in use for some fifteen years, and that "the figures that we used to deduce the possibilities are based on the analysis of a large number of families." He further testified that the test was widely used "for medical purposes." The difficulty with this testimony is that it is too general, too vague, and too unrelated to the specific means for determining reliability. Since his testimony did not focus specifically on paternity identification, it may and, as best as can be determined from the record, in fact does refer to other medical uses such as tissue compatibility for purposes of organ transplantation. Furthermore, Dr. DeWitt did not indicate how the table of percentages used to establish paternity probabilities was arrived at, "were widely accepted" and "supported by similar work elsewhere done in public by other people. But he did not explain what he meant by "widely accepted" or by whom, and he did not supply any detail as to the work done by others. Nor does it appear that he had particular knowledge obtained from a technical background and training in the area, or from familiarity with the scientific literature on the subject. The general statement that the method is used widely and had wide scientific acceptance is not sufficient, especially in view of the fact that the test applications apparently were unrelated to paternity identification.

Furthermore, in order to make a proper determination of the advisability of admitting HLA test results in any given case, the foundational information before the court should include the number and type of other blood and tissue tests which have been administered to the persons involved in the litigation and the cumulative effect of the additional tests on the predictive accuracy of the HLA test. As stated in J.B. v. A.F., supra, 285 N.W.2d at 883:

> The mean probability of excluding a male who in fact is not the father of a child through HLA testing, alone, is between 78% and 80% blacks, whites, and Japanese. If six systems (ABO, Rh, MNSs, Kell, Duffy and Kidd) plus HLA are used, the cumulative probability of excluding a male who in fact is not the father of a child rises to 91.21% for blacks, 93.34% for whites and 91.42% for Japanese.
>
> In the instant case there is not evidence at all that the ABO, Rh, MNSs, Kell, Duffy of Kidd tests were employed, yet the percentage Dr. DeWitt testified to seems to assume that those tests were administered. It may be that there was no necessity for administering these tests, but if so, the record must so demonstrate.
>
> Also, evidence should be adduced showing the effect, if any, of the particular racial or ethnic origin of the subject on the calculated probability of exclusion or inclusion of paternity. In addition, qualified witnesses should address the significance of the particular genetic markers relied upon, whether they were inherited from only one parent or both, and the frequency with which they may appear in the population at large."

Here, none of these requirements were met. In fact, Dr. DeWitt was not even present at the hearing and, therefore, it was not even proved that he in fact was the author of the letter in question:

Moreover, since the lower Court did not make any findings to support its decision to deny Appellant's motion it is uncertain as to what its decision was based on. Appellany would argue, however, that the lower Court's decision should be reversed for the further reason that it improperly took into consideration the results of blood tests for which no proper foundation had been laid and because Respondents' Memorandum and supporting documents were not timely served on Appellant.

POINT III

IN THE EVENT THE DEFAULT JUDGMENT IS UPHELD THE CASE SHOULD STILL BE REMANDED TO THE LOWER COURT FOR AN EVIDENTIARY HEARING TO DETERMINE HOW MUCH CHILD SUPPORT SHOULD BE AWARDED.

In the recent case of Pitts v. Pine Meadows Ranch, Inc., 589 P.2d. 767 (Utah, 1978), the lower Court granted Respondents' judgment by Appellant when Appellant failed to appear on the trial date. Appellant failed to timely appeal under Utah Rules of Procedure, Rule 60 (b). Moreover, the Respondents' had moved out of the country. Therefore, this Court held that it would not reverse the decision of the lower Court to not set aside the default. This Court did remand for a taking of further findings as to the amount of damages, however, because the lower Court had not made adequate findings or properly weighed the evidence as to damages (as required by

Utah Rules of Civil Procedure, Rule 55 (b) (2)):

> "We hold that the defendants are entitled to a new hearing to determine the issue of damages conditioned, however on the defendants paying to plaintiff's all of their reasonable and necessary expenses in returning to this jurisdiction (which defendants have volunteered to do) for the purpose of re-litigating plaintiffs' damages. This matter is remanded to the District Court for the purpose of determining the details concerning these expenses, including the amount thereof and the period of time in which they are to be paid and for such further proceedings on the issue of damages as are consistent with this opinion."

The principle enunciated above was reaffirmed in the case of J.P.W. Enterprises, Inc., vs. Naef, 604 P.2d. 486 (Utah, 1979), Where this Court also upheld a default judgment, but remanded for an evidentiary hearing.

In the instant case, the lower Court merely denied Appellant's Motion to Set Aside and upheld the judgment of the lower Court which had entered judgment in favor of the State of Utah against Appellant in the amount of four thousand nine hundred forty six dollars ($4,946.00) for unpaid child support from March, 1979, through December, 1979, and for ongoing child support in the amount of one hundred eighty-three dollars ($183.00) per month. This is clearly enormous in light of the Pine Meadows Ranch and Naef cases above, especially since the lower Court did not enter any findings to support the above amounts nor did it inquire into the earnings of the putative father, his ability to pay, or the needs of this particular child.

Nevertheless, if the decision of the lower Court is not reversed, Appellant requests that this Court remand this matter for an evidentiary hearing to determine the amount of child support he should be required to pay.

CONCLUSION

For the above stated reasons, Appellant reqpectfully asks this Court to reverse the judgment of the lower Court and grant Appellant a trial on the merits.

Respectfully submitted,

Steven L. Hansen

STEVEN L. HANSEN
Attorney for Defendant-Appellant

CERTIFICATE OF DELIVERY

I hereby certify that I delivered two copies of the foregoing Brief of Appellant to Jeffrey H. Thorpe, Deputy Salt Lake County Attorney, 431 South 300 East, Suite 301, Salt Lake City, Utah 84111, this 12th day of July, 1982.

Molly Bronich