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# Doris Starzel and State of Utah v. Johnny Jaramillo : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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DORIS STARZEL and STATE OF UTAH, by and through Office of Recovery Services, State Department of Social Services,

Plaintiffs-Respondents,

-v-

JOHNNY JARAMILLO,

Defendant-Appellant.

Case No. 18374

---

# BRIEF OF APPELLANT

---

Appeal from the Judgment of the
Seventh Judicial District Court
Carbon County, State of Utah
Honorable Boyd Bunnell, Judge

---


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Clerk, Supreme Court, Utah



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## TABLE OF CONTENTS

| | Page |
|---|---|
| NATURE OF THE CASE | 1 |
| DISPOSITION IN LOWER COURT | 1 |
| RELIEF SOUGHT ON APPEAL | 2 |
| STATEMENT OF THE FACTS | 2 |
| ARGUMENT | |
| POINT I THE DEFAULT JUDGMENT SHOULD BE SET ASIDE IN FAVOR OF A DECISION ON THE MERITS | 3 |
| POINT II THE ADVANTAGE OF RES JUDICATA IS OUTWEIGHED BY THE BENEFITS OF A HEARING ON THE MERITS | 7 |
| CONCLUSION | 10 |

## CASES CITED

| | |
|---|---|
| Board of Education of Granite School District v. Cox, 384 P.2d 806 (1963) | 5,6 |
| Chrysler v. Chrysler, 303 P.2d 995 (1956) | 5,7 |
| Cutler v. Haycock, 90 P. 897 (1907) | 9 |
| Heath v. Mower, 597 P.2d 855 (1979) | 5 |
| Heathman v. Fabian and Clendenin, 377 P.2d 189 (1962) | 4 |
| Hurd v. Ford, 276 P. 908 (1929) | 9 |
| Mayhew v. Standard Gilsonite Co., 376 P.2d 951 (1962) | 4,6 |
| Olsen v. Cummings, 565 P.2d 1123 (1977) | 6 |
| Utah Commercial & Savings Bank v. Trumbo, 53 P. 1033 (1890) | 4,5,9 |
| Utah Sand & Gravel Products Corp. v. Tolbert, 402 P.2d 703 (1965) | 4 |
| Warren v. Dixon Ranch, 260 P.2d 741 (1959) | 9 |
| Warren v. Dixon Ranch Co., 260 P.2d 711 (1953) | 7,8 |
| Westinghouse Electric Supply Co. v. Larsen, 544 P.2d 876 (1975) | 6,10 |



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## STATUTES CITED

Page

Utah Code Ann. § 68-3-2 (1953) .......................... 4

## OTHER AUTHORITIES

Rule 1, Utah Rules of Civil Procedure .................. 4

Rule 33(a), Utah Rules of Civil Procedure .............. 2

Rule 60(b)(1), Utah Rules of Civil Procedure ........... 3,4,5,6



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IN THE SUPREME COURT OF THE STATE OF UTAH

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| | : | Case No. 18374 |
| Plaintiffs-Respondents, | : | |
| -v- | : | |
| JOHNNY JARAMILLO, | : | |
| Defendant-Appellant. | : | |

BRIEF OF APPELLANT

## NATURE OF THE CASE

The above-captioned action was brought against the appellant by Doris Starzel and State of Utah to determine if the appellant was the natural father of respondent's child, Chad Starzel, born August 20, 1977.

## DISPOSITION IN LOWER COURT

On January 26, 1982, respondents moved to have the appellant's answer to the complaint set aside for failure to answer interrogatories. The court struck said answer on the failure of both the appellant and counsel to appear. Appellant, by and through new counsel, filed a motion to set aside default

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judgment which was subsequently denied by the Honorable Boyd Bunnell on April 19, 1982.

## RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the lower court's order denying the motion to set aside judgment and the right to have a trial upon the merits of the case.

## STATEMENT OF THE FACTS

This suit was initiated in December of 1980. The respondents' first set of interrogatories was filed with the court May 18, 1981. The appellant failed to answer said interrogatories within the thirty (30) day time limit imposed by Rule 33(a) of the Utah Rules of Civil Procedure. Subsequently, Deputy Carbon County Attorney Gene Strate wrote to Walter R. Ellett, former attorney for appellant, and requested the answers to interrogatories. On September 23, 1981, Mr. Ellett responded by letter and advised the County Attorney that he would be meeting with the appellant personally to obtain the answers. Apparently, Mr. Ellett failed to do so, which prompted Fred Howard, Deputy Carbon County Attorney, to file a Motion to Compel Discovery. The court granted said motion on November 30, 1981, giving the appellant ten (10) days to comply. On January 26, 1982, respondents moved the court to set aside appellant's answer to the complaint for failure to comply with said order compelling discovery. A hearing on this motion was set for February 23, 1982. Neither the appellant nor his counsel appeared at said hearing. On February 26, 1982, the court



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ordered the appellant's answer stricken. On March 11, 1982, a default judgment was entered, wherein the appellant was adjudged to be the natural father of the child in question. The court retained jurisdiction to determine the amount of child support. On March 14, 1982, the appellant was personally served with an Order to Show Cause requiring him to appear before the court for the purpose of determining his ability to pay child support. The following day, March 15, 1982, the appellant met with his present counsel, Phil L. Hansen, for the first time. On March 23, 1982, said counsel filed a motion to have the default judgment set aside pursuant to Rule 60(b)(1) of the Utah Rules of Civil Procedure. This motion was heard on April 5, 1982, and the order denying same was entered on April 19, 1982. Notice of Appeal was filed by appellant on May 14, 1982.

## ARGUMENT

### POINT I

### THE DEFAULT JUDGMENT SHOULD BE SET ASIDE IN FAVOR OF A DECISION ON THE MERITS.

Appellant's motion to set aside the default judgment was made pursuant to Rule 60(b) of the Utah Rules of Civil Procedure which reads as follows:

> "On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect.... The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than three months after the judgment, order, or proceeding was entered or taken..."

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It is well settled that the rules of civil procedure are to be liberally construed with a view to promote justice. Rule 1, Utah Rules of Civil Procedure, 68-3-2, Utah Code Annotated (1953). In this regard, then Justice Crockett in Utah Sand & Gravel Products Corp. v. Tolbert, 402 P.2d 703 (1965) stated:

> "It is true that our new rules of civil procedure were intended to eliminate undue and emphasis on technicalities and to provide liberality in procedure to the end that disputes be heard and determined on the merits.... Liberality in their interpretation and application should be indulged where no prejudice or disadvantage to anyone results..."

This statutory and judicial policy of liberality has been especially evident in those decisions in which the interpretation of Rule 60(b) has arisen in the context of a default judgment. From the earliest decisions of this court, it has been emphasized that default judgments are viewed with suspicion and that the authority of the trial court to set aside judgments obtained by default is to be liberally applied so that there might be a decision on the merits. Utah Commercial & Savings Bank v. Trumbo, 53 P. 1033 (1890). This suspicion and disfavor arises from the recognition that it is a harsh and oppressive action to place a judgment rigidly and irrevocably on a party without a hearing and that it is fundamental to our system of justice that each party to a controversy be given an opportunity to present his side of the controversy. Mayhew v. Standard Gilsonite Co., 376 P.2d 951 (1962). Illustrative is the following language from Heathman v.



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Fabian and Clendenin, 377 P.2d 189 (1962):

> "Judgments by default are not favored by the courts nor are they in the interest of justice and fair play. No one has an inalienable or constitutional right to a judgment by default without a hearing on the merits. The courts, in the interest of justice and fair play, favor, where possible, a full and complete opportunity for a hearing on the merits of every case..."

Rule 60(b) and its statutory predecessors[1] are of long standing and have been construed by this court on numerous occasions. These decisions have uniformly embraced several general propositions, the first of which is that the trial court's determination involving a motion to set aside a default judgment is largely a discretionary matter, and as a concomitant, that this court will reverse such a determination only in the event of an abuse of that discretion. For example, see Board of Education of Granite School District v. Cox, 384 P.2d 806 (1963). Although it is true that no general rule can be promulgated respecting the exercise of discretion in setting aside or refusing to set aside a default judgment since each case must necessarily turn on its own peculiar facts and circumstances, Trumbo, supra; Heath v. Mower, 597 P.2d 855 (1979). This court has, however, been careful to define the scope of that discretion, and has by no means given the trial courts a free hand to refuse to set aside default judgments. Thus, in Chrysler v. Chrysler, 303 P.2d 995 (1956)

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[1] Comp. Laws, 1876, § 1293; Rev. Stat. 1898, § 3005; Comp. Laws, 1917, §6619; 104-14-4 Rev. Stat., 1933; 104-14-4 Utah Code Annotated, 1943.

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then Justice Crockett, writing for a unanimous court, stated:

> "We are entirely in accord with the authorities cited by plaintiff to the effect that it is generally regarded as an abuse of discretion for a trial court to refuse to vacate a default judgment where timely application is made and there is any reasonable grounds for doing so, to the end that cases may be decided on their merits."

This two-pronged requirement of timeliness and reasonable justification has been subsequently cited with approval in many decisions. Mayhew, supra; Board of Education, supra; Westinghouse Electric Supply Co. v. Larsen, 544 P.2d 876 (1975); and Olsen v. Cummings, 565 P.2d 1123 (1977).

That the motion was timely is clear. Rule 60(b) imposes a three (3) month time limitation on a motion to set aside due to neglect. The day after petitioner was served personally with the Order to Show Cause he met with present counsel who filed a motion to set aside in five (5) days, clearly within the statutory time limit.

Appellant also presents a reasonable justification for setting aside the default judgment. The fact that appellant has properly and timely prosecuted this appeal demonstrates a deep, personal resolve of his innocence and a desire to have the facts presented and decided on their merits. Appellant should not be judged by his former counsel's apparent neglect in getting answers to the interrogatories, especially in light of the fact that present counsel has secured the requested answers to the interrog-



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atories and is prepared to prosecute the case with due diligence. Present counsel feels it is inappropriate to emphasize the acts of prior counsel as an excuse for any delays, and would rather emphasize the pursuit with which present counsel has handled the case on appeal and suggest that these actions should be examined in deciding whether the case ought to be heard on the merits.

Again, appellant stresses the words of Justice Crockett in Chrysler, supra, that "where timely application is made and there is any reasonable grounds for doing so," cases should be decided on the merits.

POINT II

THE ADVANTAGE OF RES JUDICATA IS OUTWEIGHED BY THE BENEFITS OF A HEARING ON THE MERITS.

It is apparent that in exercising its discretion to set aside a default judgment the trial court is engaged in a balancing process between two valid considerations. Warren v. Dixon Ranch Co., 260 P.2d 711 (1953). In that case this court stated:

> "A rule which would permit the re-opening of cases previously decided because of error or ignorance during the progress of the trial would in large measure vitiate the effects of res judicata and create a hardship to the successful litigant in causing him to prosecute his action more than once and possibly lose the ability to collect his judgment; on the other hand, the court is anxious to protect the losing party who has not had the opportunity to present his claim or defense."



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Thus, the court, in exercising its discretion to refuse to set aside a default judgment must weigh between the advantage of enforcing the effect of res judicata and the disadvantage of not conducting a hearing on the merits. While a contested action yields a judgment wherein the value of res judicata is greatest, a default judgment followed by a delayed appearance, as in the instant case, carries with it a very low value of finality, that is:

> "There has been no examination of the merits or, usually, matters of abatement such as the statute of limitations, and no substantial investment of judicial time and authority. At the same time, the appearance itself, even though delayed, indicates that the defaulting party wishes to contest the justness of the plaintiff's claim. Indeed, the only purpose the default has served is that of enforcing the rules concerning time appearance."

Restatement, Second, Judgments, Tentative Draft No. 6, pg. 19.

It appears that the concerns manifested by this court in Warren, supra, with respect to vacating judgments are outweighed by the benefits that would be bestowed by a hearing on the merits in the instant case. That is, the value of res judicata is low, since there has been a minimal investment of judicial time and authority and since respondent would not be substantially prejudiced by a setting aside of the default and a re-hearing on the merits. Respondent will not be prejudiced in her ability



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to collect the judgment and any costs and attorney's fees incurred by respondent in taking the default judgment can be made a condition precedent to the setting aside of the judgment. Thus, respondent would in no way be prejudiced by a setting aside of the default judgment. Furthermore, it is well established that in all doubtful cases the court should resolve any doubt in the balancing process towards granting relief from the default judgment to bring about a trial on the merits. Cutler v. Haycock, 90 P. 897 (1907); Hurd v. Ford, 276 P. 908 (1929); Trumbo, supra. Additionally, the court in Cutler made the point that when a difference of opinion exists between the trial court and the appellate court as to whether a reasonable basis exists for setting aside the default judgment, then the judgment shall be set aside.

> "...While as we have already stated, the mere difference of judgment between this court and the trial court may not be conclusive, still it raises a serious doubt, and in such a case a reasonable doubt is always resolved in favor of granting a trial upon the merits where none was had..."

It should not be forgotten that the allowance of a vacation of judgment is a creature of equity and the equity takes into consideration factors which may be irrelevant in actions at law, such as the unfairness of a party's conduct, his delay in bringing or continuing the action and the hardship in granting or denying relief. Warren v. Dixon Ranch, 260 P.2d 741 (1959).



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## CONCLUSION

The refusal of the lower court to set aside the default judgment constituted an abuse of discretion. Appellant did timely file his motion to set aside supported by reasonable grounds. Disputed issues should be disposed of on substantive, rather than on technical grounds in the interest of justice and fair play.

> "It is indeed commendable to handle cases with dispatch and to move calendars with expedition in order to keep them up to date. But it is even more important to keep in mind that the very reason for the existence of courts is to afford disputants an opportunity to be heard and to do justice between them."

Westinghouse Electric Supply v. Larsen, 544 P.2d 876 (1975)

RESPECTFULLY SUBMITTED this 21st day of July, 1982.

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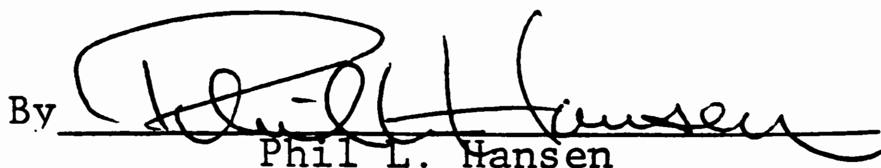
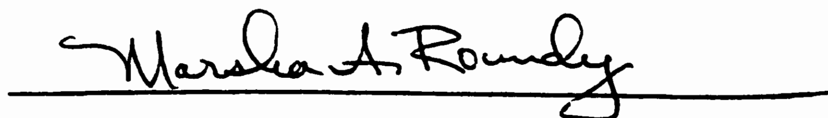


By ______________________
Phil L. Hansen

## CERTIFICATE OF SERVICE

I hereby certify that two (2) copies of the foregoing Brief of Appellant were served this 21st day of July, 1982, on the office of David L. Wilkinson, Utah Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84114.





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