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Lynda C. Baldwin, Paul Richins v. Willard D. Wood,
Tonya Lazier Wood, Max D. Burton; Sr.; Emily A.
Burton; Max D. Burton, Jr., "Pete" Hayward, Keith L.
Buckner : Response to Petition for Rehearing

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

900339

IN THE SUPREME COURT OF THE STATE OF UTAH

--ooOoo--

LYNDA C. BALDWIN,)

Plaintiff/Appellee,)

PAUL RICHINS,)

Substitute Appellee,)

vs.)

Case No. 900339

WILLARD D. WOOD; TONYA GLAZIER)

Priority No. 16

WOOD; MAX D. BURTON, SR.;)

EMILY A. BURTON; MAX D. BURTON,)

JR.; N.D. "PETE" HAYWARD,)

Sheriff of Salt Lake County,)

Utah; and KEITH L. BUCKNER,)

Deputy Sheriff of Salt Lake)

County, Utah,)

Defendants/Appellants.)

G. STEPHEN SULLIVAN, RONALD C.)

BARKER and STEVEN A. TROST,)

individuals,)

Amicus Curiae.

--ooOoo--

Filed in Response to Substitute Appellee's Petition
for Rehearing From the Corrected Decision of the
Utah Supreme Court, dated April 7, 1993

FILED

MAY 4 1993

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I. SUMMARY OF FACTS.

This Court announced a decision in this matter in detailed opinion dated February 19, 1993. That decision contained one a section dealing with the unauthorized practice of law. The unauthorized practice of law issue was not raised on appeal and did not affect this Court's decision.

The first sentence of that section of the opinion contained the following language:

. . . While Richins is free to take assignment of the judgment and appear on his own behalf to represent his interest in the matter, such a practice gives rise to at least the appearance of practicing law without a license.

On April 7, 1993, this Court corrected its opinion. Specifically the above quoted language was properly removed and the following language was appropriately added.

. . . While Richins is free to take assignment of the judgment, it would appear that he is statutorily precluded from appearing on his own behalf to represent his interest in the matter.

A footnote citing UCA 78-51-25 followed the above referenced quote. The pertinent part of that statute is set forth as follows.

No person who is not duly admitted and licensed to practice law within this state . . . shall practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer within the state. . . Nothing in this section shall prohibit a person who is unlicensed as an attorney from personally representing his own interests in a cause to which he

is a party in his own right and not as assignee.

(Emphasis added).

After this Court filed its corrected decision, Mr. Richins filed a Petition for Rehearing. This amicus brief is submitted in response thereto.

II. ARGUMENT

POINT ONE. THE CORRECTED LANGUAGE IS MERELY DICTA OF THE COURT AND DOES NOT CHANGE THE DECISION ANNOUNCED.

The general rule of law is that an expression in a supreme court decision which is not necessary to support the decision reached by the court is dictum. See, e.g. Parker v. Stonehouse Drainage District, 152 Kan 188, 102 P.2d 1017 (1940).

The decision of this Court in the present case clearly dealt with the affirmation of a district court's entry of summary judgment and award of attorney fees on the issue of a wrongful execution on certain property. The portion of that decision which discusses possible unauthorized practice of law was dicta since that issue was not raised on appeal and it had nothing to do with the Supreme Court's affirmation of the trial court's decision. The above quoted comment contained in the decision is nothing more than a comment made by this Court and is consequently dictum. Indeed, the Court specifically stated that the issue of possible unauthorized practice of law was not raised on appeal (at page 19).

Because the statement contained in the corrected decision was merely dicta, there is no reason to grant Richins' petition. An attempt to change the dicta is not proper grounds for granting a rehearing.

POINT TWO. THE COURT HAS NOT VISITED THE ISSUE OF UNAUTHORIZED PRACTICE OF LAW OR OF THE CONSTITUTIONALITY OF UCA 78-51-25.

The Court has only commented in passing on its feelings about possible unauthorized practice of law. It did not make a finding that Richins had engaged in the unauthorized practice of law or as to the constitutionality of UCA 78-51-25. Obviously, the Court refrained from deciding such issues as they were not before it.

The Court merely commented that it "appeared" that Richins may be precluded by UCA 78-51-25 from appearing pro se. Similarly, the Court did not decide the constitutionality of UCA 78-51-25 as it might apply to Mr. Richins. To do so would be tantamount to issuing an advisory opinion since these issues were not before the Court. The Court properly refrained from rendering an advisory opinion on whether Mr. Richins was engaging in the unauthorized practice of law.

III. CONCLUSION

The language of the corrected opinion dealing with the unauthorized practice of law is dicta. Similarly, the Court made no finding that Mr. Richins engaged in the unauthorized

practice of law or that UCA 78-51-25 was constitutional. Accordingly, Mr. Richins has no grounds upon which to have the matter reheard.

Respectfully submitted this 4th day of May, 1993.

G. Stephen Sullivan,
Ronald C. Barker,
Steven A. Trost,

By Ronald C. Barker
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May, 1993, I caused to be mailed, postage prepaid, 4 true and correct copies of the foregoing to the following parties at the addresses indicated.

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