

1992

Marlo D. Jenkins, Terry D. Jenkins, Val D. Jenkins,
Lael Jenkins, Patricia D. Jenkins (Wood) and Marva
Lou Jenkins Cutler v. Kay D. Jenkins, darlene
Jenkins Schmidt, Mabel D. Jenkins, Utah State Tax
Commission, and John David Schmidt : Brief of
Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Darlene Schmidt; Appellant Pro Se.

Marlo Jenkins; Appellee Pro Se.

Recommended Citation

Brief of Appellee, *Jenkins v. Jenkins*, No. 920223 (Utah Court of Appeals, 1992).
https://digitalcommons.law.byu.edu/byu_ca1/3143

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BRIEF

UTAH
COURT
OF APPEALS
50
A10

DOCKET NO. 920223CA UTAH COURT OF APPEALS

MARLO D. JENKINS, TERRY D. JENKINS,
VAL D. JENKINS, LAEL JENKINS, PATRICIA D.
JENKINS (WOOD), and MARVA LOU JENKINS
CUTLER,

Plaintiffs/Appellee,

vs.

KAY D. JENKINS, DARLENE JENKINS SCHMIDT,
MABEL D. JENKINS, UTAH STATE TAX
COMMISSION, and JOHN DAVID SCHMIDT,

Defendants/Appellant.

Case No.: 920223CA

Priority No. ^{MDT}16/15

BRIEF OF APPELLEE

APPEAL FROM A FINAL ORDER OF THE THIRD JUDICIAL
DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH,
THE HONORABLE MICHAEL R. MURPHY

Marlo Jenkins
9676 Indian Ridge Drive
Sandy, Utah 84092

APPELLEE PRO SE

Darlene Schmidt
1450 East 9175 South
Sandy, Utah 84093

APPELLANT PRO SE

LED

NOV 16 1992

Utah
Clerk
of
Court

MARLO D. JENKINS, TERRY D. JENKINS,)
VAL D. JENKINS, LAEL JENKINS, PATRICIA D.)
JENKINS (WOOD), and MARVA LOU JENKINS)
CUTLER.)

VS.

KAY D. JENKINS, DARLENE JENKINS SCHMIDT,)
MABEL D. JENKINS, UTAH STATE TAX)
COMMISSION, and JOHN DAVID SCHMIDT,)

Case No.: 920223CA

Priority No. 16

APPEAL FROM A FINAL ORDER OF THE THIRD JUDICIAL
DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH,
THE HONORABLE MICHAEL R. MURPHY

Marlo Jenkins
9676 Indian Ridge Drive
Sandy, Utah 84092

APPELLEE PRO SE

Darlene Schmidt
1450 East 9175 South
Sandy, Utah 84093

APPELLANT PRO SE

PARTIES TO THE PROCEEDING IN THE DISTRICT COURT

The following parties were named in the proceeding before the district court:

1. Plaintiff Marlo D. Jenkins was initially represented by his counsel, B. Ray Zoll. This plaintiff is now pro se and only Marlo D. Jenkins is making his appearance as appellee. (R.2-10; R.643-645)
2. Plaintiffs Terry D. Jenkins, Patricia D. Jenkins (Wood), Val D. Jenkins, Lael D. Jenkins, and Marva Lou Jenkins Cutler were initially represented by B. Ray Zoll and became pro se litigants during litigation. (R.2-10; R.285-86)
3. Defendant K. D. Jenkins was served and was represented by his attorney, David E. Halliday. (R.90-91) Appellee understands that Mr. Jenkins is now pro se and has not made an appearance before this court.
4. Darlene Jenkins Schmidt was a pro se defendant in the court below and is the appellant before this court. (R.132-35; R.706-708)
5. Mabel D. Jenkins was a pro se litigant in the court below and is now deceased.
6. Utah State Tax Commission entered an appearance through its counsel, David L. Wilkinson, of the Attorney General's Office. (R.27-30)
7. Defendant John David Schmidt filed a pro se answer in the court below. (R.57-58)

TABLE OF CONTENTS

	<u>Page</u>
Parties to the Proceeding	ii
Table of Authorities	iii
Statement of Jurisdiction	1
Issues/Standards of Review	1
Determinative Statutes and Rules	1
Statement of the Case	2
Summary of the Arguments	5
Arguments	
I. A Co-Tenant is Entitled to a Sale of the Property and Distribution of the Proceeds	6
II. The Court's Disposition of Other Motions Was Proper	7
III. The Court Should Order That Appellant Not Be Allowed to File In Forma Pauperis Except Upon Proof of Probable Cause	7
Conclusion	11
Exhibits Follow Certificate of Service	

Table of Authorities

	Page
 <u>Cases</u>	
<i>Barrett v. Vickers</i> , 362 P.2d 586, 12 Utah 2d 73 (1961)	6
<i>Bellon v. Malnar</i> , 808 P.2d 1089, 1092 (Utah 1991)	1
<i>Ex rel. Mayo v. Satan and His Staff</i> , 54 F.R.D. 282 (W.D. Penn. 1971)	9
<i>Gordon v. Secretary of State of New Jersey</i> , 460 F.Supp. 1026 (D.N.J. 1978)	9
<i>Green v. Arnold</i> , 512 F.Supp.650 (W.D. Texas 1981)	9
<i>In re McDonald</i> , 109 S.Ct. 993, 996 (1989)	10
<i>Kazmaier v. Central Intelligence Agency</i> , 562 F.Supp. 263 (E.D.Wisc. 1983)	9
<i>Ketchum v. Cruz</i> , 961 F.2d 916 (10th Cir. 1992)	10
<i>Lowe v. Frohnmayer</i> , 615 F.Supp. 54 (D.C. Oregon 1985)	9
<i>Norman v. Reagan</i> , 95 F.R.D. 476 (D. Oregon 1982)	9
<i>Paweleck v. Paramount Studios Corp.</i> , 571 F.Supp. 1082 (N.D. Illinois E.D. 1983)	9
<i>Seawright v. State of New Jersey</i> , 412 F.Supp. 413 (D.N.J. 1976)	9
<i>Tripathi v. Beaman</i> , 878 F.2d 351 (10th Cir. 1989)	9, 10
 <u>Statutes</u>	
Utah Code Annotated §57-1-5	6
Utah Code Annotated §78-39-1	1, 6
Utah Code Annotated §78-39-12	1, 6

Other Authorities

None

JURISDICTION

This court has jurisdiction pursuant to the Utah Constitution, Article VIII, Section 3, and Utah Code Annotated §78-2a-3(2)(j).

ISSUES PRESENTED AND THE STANDARD OF REVIEW

A. Whether the court erred in construing a quitclaim deed as conveying title to co-tenants.

Standard of Review: The trial court's legal conclusions are afforded no deference and the appellate court reviews the trial court's conclusions *de novo*. *Bellon v. Malnar*, 808 P.2d 1089, 1092 (Utah 1991).

B. Whether the court's orders were contrary to the evidence offered by the parties.

Standard of Review: The court's orders will be set aside only if clearly erroneous. *Bellon*, 808 P.2d at 1091.

DETERMINATIVE STATUTES AND RULES

The appellee believes that Utah Code Annotated §§ 78-39-1 and 78-39-12 are determinative of the issues before this court. Section 78-39-1 states:

When several cotenants hold and are in possession of real property as joint tenants or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof according to the respective rights of the persons interested therein, and for sale of such property or a pat thereof, if it appears that a partition cannot be made without great prejudice to the owners.

Section 78-39-12 states:

If it is alleged in the complaint and established by the evidence, or if it appears by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property or any

part of it is so situated that the partition cannot be made without great prejudice to the owners, the court may order a sale thereof; otherwise, upon the requisite proofs being made, it must order a partition according to the respective rights of the parties as ascertained by the court and appoint three referees therefor, and must designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained; provided, however, that when the action is for partition of a mining claim among the tenants thereof the court, upon good cause shown by any party or parties in interest, may, instead of ordering partition to be made in the manner as hereinbefore provided, or a sale of the premises for cash, direct the referees to divide the claim in the manner hereinafter provided.

STATEMENT OF THE CASE

A. Nature of the Case. This is defendant Darlene Schmidt's appeal from a final judgment denying her Motion for Reconsideration entered on December 27, 1991. Schmidt had asked the court to reconsider two orders, one entered December 23, 1991 acknowledging that the sale of certain real property was proper and for fair market value, and the other entered October 22, 1991 disbursing proceeds from the sale of the property.

B. Course of Proceedings and Disposition in the Court Below. Plaintiffs filed their Complaint on March 22, 1988, to sever co-tenancy in certain real property located in Salt Lake County owned by the parties as tenants-in-common. (R.2) The Complaint also requested an accounting from defendants Kay Jenkins and Darlene Jenkins Schmidt for profits received from the real property and also alleged that these two defendants committed waste. Finally, the Complaint sought to quiet title in the names of the tenants-in-common. Kay Jenkins filed a Motion to Dismiss (R.90); Darlene Schmidt filed a Motion to Dismiss (R.31); State of Utah filed an Answer (R.27); and David Schmidt filed an Answer pro se (R.57).¹

¹ The State of Utah claimed an interest in the property pursuant to a tax lien, and Mr. Schmidt, former husband of Darlene Schmidt, claimed an interest pursuant to a judgment lien.

With the complaint, plaintiffs filed a Motion for Appointment of Receiver. (R.14) This motion was granted on July 12, 1988. (R.110) The order authorized the receiver to sell the real property and hold the proceeds for the tenants-in-common.

On or about May 31, 1988, defendant Darlene Schmidt served an Answer and Counterclaim.² (R.132) In response to Schmidt's Answer and Counterclaim, plaintiffs filed Motions to Dismiss or to Strike Pleadings for More Definite Statement on June 17, 1988. (R.101) Plaintiffs' Motion to Dismiss or Strike Darlene Schmidt's Answer and Counterclaim was granted by the court on August 11, 1988. (R.136)

Defendant Darlene Schmidt filed a Verified Counterclaim Requesting an Answer on August 22, 1988. (R.158-74) In response, plaintiffs again filed a Motion to Dismiss. (R.193)

On October 28, 1988, plaintiffs filed a Motion for Summary Judgment (R.253), which was denied by the court on December 28, 1988. (R.282)

On May 4, 1989, the receiver sold the real property. (R.576, ¶4)

On October 20, 1989, plaintiffs filed a Motion for Order of Disbursement and Dismissal of Action. (R.303) Counsel for Kay Jenkins filed an Objection to Motion for Order of Disbursement on November 6, 1989 (R.326), as did Darlene Schmidt. (R.308) While this motion was pending, the Honorable Raymond S. Uno recused himself from the case and referred it to Judge Daniels for reassignment. (R.318) On November 8, 1989, the case was reassigned to Judge Michael R. Murphy. (R.352) On November 17, 1989, Darlene Schmidt filed an Amended Answer and Counterclaim. (R.357) The plaintiffs' Motion for Order of Disbursement and Dismissal of Action was denied without prejudice on January 8, 1990. (R.374)

² This Answer and Counterclaim was apparently served in May or June, 1988 but not filed until August.

On January 22, 1990, defendant Darlene Schmidt filed a Motion for Summary Judgment to Settle the Case. (R.375) On April 16, 1990, plaintiffs filed a Motion to Dismiss Counterclaim of defendant Darlene Schmidt in response to Motion for Summary Judgment. (R.473) On October 12, 1990, the court denied defendant Schmidt's Motion for Summary Judgment and granted plaintiff's Motion to Dismiss the Counterclaim of Darlene Schmidt. (R.533)

On November 1, 1990, the defendant Darlene Schmidt filed a Notice of Appeal (R.555), but the case was remitted by the Supreme Court since it was not a final appealable judgment. (R.558)

After hearing evidence on the matter (R.574), the court executed an Amended Order of Disbursement on October 22, 1991. (R.625) Zoll & Branch then withdrew as counsel for the plaintiff on November 22, 1991. (R.643) Darlene Schmidt filed a Motion for Reconsideration on November 22, 1991 (R.646), which was denied on December 27, 1991. (R.696) On December 23, 1991, the court entered an order finalizing all pending matters before it. (R.693) Thereafter, defendant filed her Notice of Appeal on January 17, 1992. (R.706)

In addition to the foregoing documents, defendant Darlene Schmidt has filed numerous other documents including a Motion to Show Fraud and Determine Legal Ownership of 101 Celeste (R.65-82), which was denied on June 1, 1988 (R.98); a Motion to Strike Disbursement and Dismissal of Action on Grounds That Defendants Have Never Been to Trial No [sic] Allowed to Defend, Nor Allowed to Understand Law or Give Evidence That Is Heard, filed October 25, 1989 (R.311), wherein she called for execution "at the guillotine" of Mr. Zoll, Judge Uno and all of their alleged accomplices (R.311); a Motion and Order to Deny Plaintiff's Motion for Order of Disbursement and Dismissal of Action (R.308), wherein the defendant Darlene

Schmidt stated that the court appeared "as mentally retarded"; and a memorandum, filed August 22, 1988 (R.175), which rehashed many of Darlene Schmidt's childhood memories. These and other unnecessary filings from Darlene Schmidt unnecessarily cluttered and expanded the court's files at a great expense and delay to the appellee.

C. Statement of Relevant Facts. On September 9, 1974, the appellee, Marlo D. Jenkins, quitclaimed certain real property to Mabel D. Jenkins, Kay D. Jenkins, Lael D. Jenkins, Marlo D. Jenkins, Val D. Jenkins, Terry D. Jenkins, Darlene Jenkins Schmidt, Patricia D. Jenkins, and Marva Lou Jenkins Cutler. (R.10)

On March 22, 1988, appellee filed a complaint to sever the co-tenancy of the real property. (R.2)

Pursuant to order of the court, a receiver was appointed who was authorized to sell the real property for a reasonable amount. (R.111)

On May 4, 1989, the real property was sold by the receiver. (R.576, ¶4)

After the sale of the property, the proceeds were disbursed to the tenants-in-common in accordance with an Amended Order of Disbursement dated October 22, 1991. (R.625)

SUMMARY OF THE ARGUMENTS

The court below properly reviewed the evidence and severed the co-tenancy of certain real property by allowing the sale of the real property and the disbursement of proceeds to the co-tenants.

ARGUMENTS

I.

A CO-TENANT IS ENTITLED TO A SALE OF THE PROPERTY AND DISTRIBUTION OF THE PROCEEDS.

The 1974 quitclaim deed from the appellee created a tenancy in common among the grantees, who included the plaintiffs and the appellant. Utah Code Annotated §57-1-5. Any time a co-tenant desires to sever a co-tenancy, he may petition the court to partition the property. *Id.* §78-39-1. If it is impossible or impractical to partition the property fairly among the co-tenants, the court may order the sale of the property and distribute proceeds accordingly. *Id.* §78-39-12.

It is obvious that where a co-tenancy is undesirable to one or more of the parties and they cannot agree upon a solution to the problems it presents, there must be some method of terminating it. To meet such exigencies our statutes provide that when an action is brought, the court "must order a partition according to the respective rights of the parties," or alternatively that upon proof "to the satisfaction of the court," that . . . the partition cannot be made without great prejudice to the owners, the court may order a sale thereof. The proceeds must then be allocated according to the interests of the parties. A co-tenant who has properly invoked the aid of this statute is entitled to one or the other of these remedies as a matter of right. . . .

Barrett v. Vickers, 12 Utah 2d 73, 362 P.2d 586, 587-88 (1961).

As requested by co-tenant Marlo Jenkins, the property was sold and the proceeds divided among the co-tenants. Defendant Darlene Schmidt was unable to refute the validity of the deed which established the co-tenancy (R.10), and she did not submit any evidence to the court of any improprieties, fraud, duress, or anything else that would affect the plaintiffs' interest in the property. Despite the numerous allegations contained in the documents filed by the appellant,

the court did not find any reason to reject the sale and distribution of proceeds. The court's orders should be affirmed.

II.

THE COURT'S DISPOSITION OF OTHER MOTIONS WAS PROPER.

Both plaintiffs and defendants filed numerous motions in the lower court, some of which were granted and others denied. The court gave the parties every opportunity to be heard and present evidence, and after weighing the evidence the court issued its orders based on the evidence. It is appellant's burden to marshal the evidence supporting the trial court's findings and to show error by the court, if any. Appellant has failed in that burden.

III.

THE COURT SHOULD ORDER THAT APPELLANT NOT BE ALLOWED TO FILE IN FORMA PAUPERIS EXCEPT UPON PROOF OF PROBABLE CAUSE.

As can be seen from the numerous documents she filed, the appellant Darlene Schmidt, disrespects anyone and everyone who disagrees with her immoderate positions. She accuses Judge Uno of holding "secret courts using secret evidence." (R.700) She accuses Judge Murphy of holding a "cult court." (R.701) She infers that the lower court removed documents from the file. (R.702, ¶22) She believes that "Utah's courts are courts of treason resulting from Utah's sucession [sic] from the union," and states that the court below was a court of treason and lies. (R.611) She calls the Third District court a "Nazi court," and recommends that Judge Murphy set aside his "Nazi affiliations." (R.509-10) For some unknown cause, she reported Judge Murphy's decisions to the Iraqi Consulate. (R.604-609) Darlene Schmidt filed this poetic threat against Judge Uno who, after this threat was delivered, recused himself (R.318):

I shall testify of a court and his accomplices unfit to be burried [sic] in American soil, and of a title of nobility that must be stripped from this court and all his accomplices. Nor shall I flinch when the screams wrench the spouse and seed of this court and his accomplices from comfortable lifestyles to wallow in the salve [sic] camps paying back the debt they have left. Four generations shall pass before the taste of freedom is savord [sic] again.

(R.316)

Darlene Schmidt is extremely litigious. She has previously sued the appellee and his wife making unintelligible allegations that did not withstand a motion to dismiss. (R.485-86) *See* this court's Memorandum Decision in case number 88-0256-CA, a copy of which is contained in this record at R.488-90. Appellant has sued the Boy Scouts of America, the United States of America, the State of Utah, and the Church of Jesus Christ of Latter-Day Saints and "Does 1 to 6,000,000 Followers," seeking \$1 billion in damages and an order "directing that all members of the Church be branded on the forehead or hands." (R.512) She has sued: Court Commissioner Thomas N. Arnett, Third District Court case C88-4989; Judge Tyrone Medley, United States District Court case 90-C-566S; the Salt Lake City Police Department, United States District Court case 90-C-565G; the Sandy City Police Department and Jordan School Board, United States District Court case 90-C-647J,³ Justice Hall, Justice Stewart, Justice Durham, Justice Howe, Governor Bangerter, the City of West Jordan, Sandy City, Jordan School District, Judge Sawaya, Judge Conder, Judge Rigtrup, Commissioner Peuler, the Internal Revenue Service Appeals Court, John Sindt, Dallin Oaks, Boyd Packer, the State Board of Education, Midvale

³ U.S. District Court cases 90-C-565G, 90-C-566S, and 90-C-647J were affirmed on appeal in an unpublished disposition, 935 F.2d 278. See Exhibit A for the text of the unreported decision.

City Police, the Republican Party, the Utah State Bar, and 100 billion John Does for conspiracy to deprive appellant of her tranquility, United States District Court case 85-C-1161.⁴

As evidenced by this and the aforementioned cases, the appellant has abused the court system, filing cases in forma pauperis at little expense to herself but at great expense to all others. Appellee has been required to expend a substantial amount on attorney's fees, costs, time, and effort in responding to appellant's insouciant allegations. Appellant has subjected appellee and his family to scathing and scandalous statements contained in documents presented to the court and open to public scrutiny, which are not easily stricken from the record. (R.339-341)

Courts have the ability to curb an appellant's prodigal litigation. Litigants have no right to utilize the courts to pursue frivolous or malicious allegations. *Tripati v. Beaman*, 878 F.2d 351 (10th Cir. 1989). In *Tripati*, an impecunious litigious plaintiff was subject to court-imposed preconditions of filing: (1) He had to carry a stronger burden of proof that he was economically unable to pay the filing fees; (2) he had to demonstrate to the court that his action was commenced in good faith and not malicious or "without arguable merit"; (3) his pleading must

⁴ Appellant has placed herself in the company of some distinguished pro se litigants. See *Norman v. Reagan*, 95 F.R.D. 476 (D. Oregon 1982) (Kent ® Norman sued Ronald Reagan for deliberate, reckless and nefarious disregard of his constitutional rights); *Seawright v. New Jersey*, 412 F.Supp. 413 (D.N.J. 1976) (plaintiff alleged that state unlawfully injected him in the left eye with a radium beam, causing him to receive radio communications); *Kazmaier v. Central Intelligence Agency*, 562 F.Supp. 263 (E.D.Wis. 1983) (civil rights action alleging brainwashing and torture through the use of satellite beams); *Gordon v. Secretary of State of New Jersey*, 460 F.Supp. 1026 (D.N.J. 1978) (plaintiff complained that he had been deprived of the office of President of the United States); *Green v. Arnold*, 512 F.Supp. 650 (W.D. Tex. 1981) (leave to proceed in forma pauperis improvidently granted to plaintiff who had previously filed 554 lawsuits; the court quoted O. A. "Bum" Phillips, former coach of the Houston Oilers football team: "He may not be in a class by himself, but it doesn't take long to call the roll." *Id.* at 651); *Lowe v. Frohnmayer*, 615 F.Supp. 54 (D. Or. 1985) (complaint related to birth certificate did not state a basis for invoking admiralty jurisdiction in the federal court); *Paweleck v. Paramount Studios Corp.*, 571 F.Supp. 1082 (N.D. Ill. E.D. 1983) (plaintiff claimed damages from use of "Polish jokes" in the motion picture "Flashdance"); *Ex rel. Mayo v. Satan and His Staff*, 54 F.R.D. 282 (W.D. Pa. 1971) (plaintiff claimed deprivation of his constitutional rights).

be certified in accordance with Rule 11; (4) he must include in every complaint a list of every previous action filed; and (5) he must send all pleadings to defendants and provide the court with proof of service. The court in *Tripati* cited numerous cases supporting such tailored restrictions upon abusive litigants. 878 F.2d at 352, 353. Reasons for such restrictions are best stated by the U. S. Supreme Court:

But paupers filing pro se petitions are not subject to the financial considerations--filing fees and attorney's fees--that deter other litigants from filing frivolous petitions. Every paper filed with the clerk of this court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice.

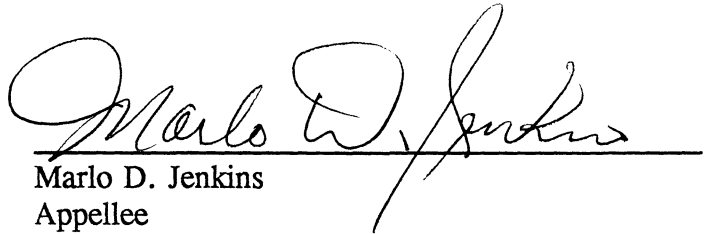
In re McDonald, 109 S.Ct. 993, 996 (1989).

In *Ketchum v. Cruz*, 961 F.2d 916 (10th Cir. 1992), the Tenth Circuit affirmed a district court's order that permitted a litigious pro se party access to the court only when represented by an attorney admitted before that district court or required him to obtain leave of the court prior to filing an action pro se. *Id.* at 921. This court should also impose reasonable restrictions upon appellant's access to the courts or remand this case to the district court for the imposition of such restrictions.

CONCLUSION

The orders of the court below should be affirmed, and an order entered placing appropriate restrictions upon appellant's access to courts in the future.

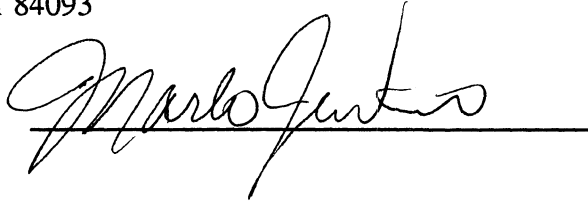
DATED this 6th day of November, 1992.


Marlo D. Jenkins
Appellee

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served four true and correct copies of the foregoing BRIEF OF APPELLEES by depositing the same in the United States mail, postage prepaid, this 16th day of November, 1992, to the following:

Darlene Schmidt
1450 East 9175 South
Sandy, Utah 84093



Citation	Rank(R)	Database	Mode
935 F.2d 278 (Table)	R 2 OF 4	CTA10	P
Unpublished Disposition			
(Cite as: 935 F.2d 278)			

NOTICE: Tenth Circuit Rule 36.3 states that unpublished opinions and orders and judgments have no precedential value and shall not be cited except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel.

NOTE: THIS OPINION WILL NOT BE PUBLISHED IN A PRINTED VOLUME. THE DECISION WILL APPEAR IN TABLES PUBLISHED PERIODICALLY.

Darlene SCHMIDT, Petitioner-Appellant,

v.

The Honorable Tyrone MEDLEY, Respondent-Appellee.

Darlene SCHMIDT, Petitioner-Appellant,

v.

JORDAN SCHOOL BOARD, Tom Owens, Barrison, Sandy City Police, Respondents-Appellees.

Darlene SCHMIDT, Petitioner-Appellant,

v.

INTERNAL AFFAIRS OF SALT LAKE POLICE DEPARTMENT, Officers Fulson, Collier, Barraclousa, Billies, Lindsay, Respondents-Appellees.

Nos. 90-4176 to 90-4178.

United States Court of Appeals, Tenth Circuit.

June 5, 1991.

D. Utah, Nos. 90-C-565 G, 90-C-647 J and 90-C-566 S.

D. Utah:

AFFIRMED.

(The decision of the Court is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter.)

(THE FOLLOWING UNREPORTED DECISION IS REPRODUCED FOR THE CONVENIENCE OF RESEARCHERS. ADD THE NOTATION: (text in WESTLAW) TO ANY CITATION OF THIS DECISION.)

ORDER AND JUDGMENT (FN*)

Before SEYMOUR, McWILLIAMS and EBEL, Circuit Judges.

EBEL, Circuit Judge.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed.R.App.P. 34(a); 10th Cir.R. 34.1.9. Therefore, the case is ordered submitted without oral argument.

The appellant, Darlene Schmidt, has lodged three appeals before this court. As a threshold matter we must address her request that we transfer these appeals to the United States Court of Appeals for the Third Circuit on the ground that the Tenth Circuit is under the improper influence of the Church of Jesus Christ of Latter Day Saints (The Mormons). We treat this as a motion for disqualification of this entire court from presiding over these instant appeals. As such, it is denied.

COPR. (C) WEST 1992 NO CLAIM TO ORIG. U.S. GOVT. WORKS

(Cite as: 935 F.2d 278)

In her first appeal, *Schmidt v. Medley*, No. 90-4176, Schmidt claims that the district court erred in refusing to grant her request for a common law writ of prohibition to prohibit a Utah State trial judge from presiding over a case involving a traffic citation given to her daughter by a police officer. The district court is affirmed for the reasons stated by the district court.

In her second appeal, *Schmidt v. Jordan School Board*, No. 90-4177, Schmidt claims that the district court has failed to rule on her request that it intervene in a dispute between Schmidt and the school district concerning her contention that the school district discriminates against non-Mormon children. We were unable to find a dispositive final order entered by the district court sufficient to enable us to exercise jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. The district court only acted twice prior to Schmidt's filing her notice of appeal: (1) the court granted her motion to proceed in forma pauperis; and (2) the court appointed a magistrate to preside over her case. As neither of these actions represents a final order for purposes of triggering our appellate jurisdiction, we are unable to review the merits of her underlying claim, [FN1] and accordingly we dismiss that appeal for lack of jurisdiction.

Finally, in her third appeal, *Schmidt v. Internal Affairs of Salt Lake Police Department*, No. 90-4178, Schmidt claims that the district court erred in dismissing her complaint against the Salt Lake Police Department in which she requested the court to order the police department to correct statements written on a traffic citation given to her daughter. The district court is affirmed for the reasons stated by the district court.

FN* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir.R. 36.3.

FN1. Further, the record does not indicate that the district court has entered a final order since Schmidt filed her notice of appeal.

P.A.10 (Utah), 1991.

Schmidt v. Medley

935 F.2d 278 (Table), Unpublished Disposition

END OF DOCUMENT

COPR. (C) WEST 1992 NO CLAIM TO ORIG. U.S. GOVT. WORKS

CITATIONS LIST
Database: CTA10

Search Result Documents: 4

1. Schmidt v. C.I.R., 968 F.2d 21 (Table, Text in WESTLAW), Unpublished Disposition (10th Cir., Jun 05, 1992) (NO. 92-9000)
2. Schmidt v. Medley, 935 F.2d 278 (Table, Text in WESTLAW), Unpublished Disposition (10th Cir.Utah, Jun 05, 1991) (NO. 90-4176)
3. Schmidt v. Jordan School Bd., 935 F.2d 278 (Table) (10th Cir.Utah, Jun 05, 1991) (NO. 90-4177)
4. Schmidt v. Internal Affairs of Salt Lake Police Dept., 935 F.2d 278 (Table) (10th Cir.Utah, Jun 05, 1991) (NO. 90-4178)

END OF CITATIONS LIST

COPR. (C) WEST 1992 NO CLAIM TO ORIG. U.S. GOVT. WORKS