

2012

# Edwin B. Parry and Express Recovery Services v. Luonda M. Davis : Unknown

Utah Supreme Court

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**Utah Supreme Court/Utah Courts of Appeals**

**Case No.**

**20120284**

**Edwin B. Parry  
and Express  
Recovery  
Services,**

**Vs.**

**Luonda M. Davis,  
Appellant,**

**Appellee,**

Case No. 20120284 and 110418042  
State of Utah, in County of Salt Lake  
vs. [illegible]  
[illegible]

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**BRIEF OF APPELLANT**

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**On appeal from the Third District Court of the**  
**State of Utah, in County of Salt Lake**

**ON REVIEW FOR THE DISTRICT COURT OF APPEALS,**

**THIRD DISTRICT**

**CASE NOS. 20120284 and 110418042**

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**Utah Court of Appeals**  
**450 South State Street**  
**P.O. Box 140230**  
**Salt Lake City, Utah 84111**

**APPELLEE and**  
**ATTORNEY:**

**EXPRESS RECOVERY**  
**SERVICE**

**Edwin B. Parry, Express**  
**Recovery Services**

**PO Box 25727**

**Salt Lake City, Utah 84125-**  
**0727**

**(801) 486-2942**

**APPELLANT:**

**LUONDA M. DAVIS**

**5340 Polaris CT**

**Kearns, UT 84118**

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## JURISDICTIONAL STATEMENT

Jurisdiction is set with in the Court of Appeals as the Third District Court of West Jordan, UT Trial Court has turned this over to the Court of Appeals upon me filing for an appeal, due to that I never received the Notice of Judgment and it entered default Judgment on January 10 2012, I filed an order to dismiss judgment on January 31 2012, Order to Dismiss Judgment denied April 3 2012 on April 4 2012 I entered a Notice of Appeal. On May 02 2012 Letter that Court of Appeals was assigned case.

## STATEMENT OF ISSUES

**1.** Did the District Court award Judgment upon receipt of Notice of Service on the grounds that someone at Residence accepted papers served to someone other than the Appellant (that did not reside at the residence)?

**2.** Did the District Courts review the Bill in question to verify that this is a bill that is owed by the Appellant and that Appellant has acknowledged the bill by signing for services or otherwise? Is this in Fact a Family Expense , or is it a **Medical Expense** that is NOT that of Minor Child **Medical expenses**? Is the State of Utah a state that recognizes the **Doctrine of Necessities** or is the State of Utah a **Community Property State** that would allow for someone that has not signed for services rendered to be billed for the bill?

## STATEMENT OF CASE

In February 2010 late husband was treated at University of Utah Hospital for sickness, in March of 2011 husband passed away from sickness. While late

husband was at the University of Utah Hospital he received services that he signed for and accepted acknowledgment that he was the person that would pay the bills that generated for services rendered. The collection agency has added this bill on my credit and they are trying to collect money from me the spouse of husband that is deceased. In review of all the laws and codes that are in place on this, I am not liable for the medical bills as described below, I never signed anything stating that I would pay for services rendered.

In the Utah Codes Family Expenses and Medical Expenses are separate items, the **Medical Expenses Utah Code 78B-12-212** specifies that I would be responsible for medical expenses of my minor children but not that of my husband and the Family Expense specifies the expenses of the family and the education of the children are chargeable upon the property of both husband and wife.

As this is not a Community Property State or a state that recognizes the Doctrine of Necessities, I should not be liable for the hospital bills of deceased husband.

**STATEMENT OF THE FACTS**

In December 2011, The Appellant Express Recovery Services served papers of judgment to someone at the residents that is listed, the person receiving the papers is at least 18 years of age and was at the residence of the Appellant (**did not live at the Residence**). In January 2011, a Judgment was granted to the Appellant in default of Appellant not showing up in court. **Utah Rule 4 (d) (1) (A)**

In February 2010, The Appellants' late Husband had received services by the University Of Utah Hospitals (services not rendered to Appellant) and Appellant did not sign any papers recognizing services rendered, whereas the District Courts issued a judgment in default of Appellant not showing up in court. Utah is NOT a State that recognizes Doctrine of Necessities and Utah is NOT a Community Property State.

### **SUMMARY OF ARGUMENT**

I did not sign for services rendered and as this a individual need not a family necessity, in a none community property state, and a state that does not recognize the doctrine of necessities, the bill should be removed from my credit and I should not be harassed by collection agency to pay the bill.

### **ARGUMENT**

#### **1. Judgment upon receipt of Notice of Service on the grounds that someone at Residence accepted papers served to someone other than the Appellant?**

##### **1. (A) Appellant Never Received the Notice of Judgment**

I the Appellant was not aware that there was a Judgment being entered against me as I did not received the Documents served on me to someone that was at the place of residence, that was 18 years of age or older, but did not reside at the place of residence.

The way I found out about the Judgment was looking at my credit score and later receiving something in the mail from Express Recovery Services.

**1.(B)** Upon any individual other than one covered by subparagraphs (B), (C) or (D) below, by delivering a copy of the summons and the complaint to the individual personally, or **by leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion there residing**, or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service of process;

**2. (A) Appellant never signed for services rendered, the state of Utah does NOT recognize the Doctrine of Necessities and is NOT a Community Property State.**

I the appellant never signed for services rendered, I was not the patient and the hospital never obtained my signature on anything stating that I would pay for the medical services rendered to late husband Marvin C. Davis. The services rendered where for comfort of individual not necessary for comfort of the family.

**2. (B) 3. In accordance with Utah Code 30-2-9 Family Expenses -Joint and Several Liability.**

**2. 3. (1)** The expenses of the family and the education of the children are chargeable upon the property of both husband and wife or of either of them, and in relation thereto they may be sued jointly or separately.

**2. 3. (2)** In an action by a creditor against either husband or wife for the payment of a family expense, the creditor or debtor as the prevailing party shall be entitled to recover reasonable collection costs, interest, and attorney fees as provided in a contract between the creditor and debtor.

**2. (C) Utah Code 30-2-5. Separate debts**

(1) Neither spouse is personally liable for the separate debts, obligations, or liabilities of the other:

- (a) contracted or incurred before marriage;
- (b) contracted or incurred during marriage, except family expenses as provided in Section 30-2-9;
- (c) contracted or incurred after divorce or an order for separate maintenance under this title, except the spouse is personally liable for that portion of the expenses incurred on behalf of a minor child for reasonable and necessary medical and dental expenses, and other similar necessities as provided in a court order.

**2. (D) Existence of a "Family Expense."**

A closely related, but nevertheless separate, test that expenses must meet that goods or services purchased must be expenses for the "family," as opposed to those "individual, personal, or business expenses of a member of the family which do not contribute to family convenience, enjoyment or comfort."

**2. (E) Existence of "Family Necessities."**

In addition to other elements of a family expenses statute, a creditor must plead and prove that the expenses sought to be collected are, in fact "family necessities."

**2. (F) Utah is NOT a Community Property State:**

**Community Property States include:** Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

**2. (G) Utah is a State that does NOT recognize The Doctrine of Necessities:**

This doctrine was established under Common Law. Under the **Doctrine of Necessities**, one spouse is liable for “necessary” expenses incurred by the other spouse during a marriage. This holds true but particularly for medical bills, which are almost always deemed “**necessary.**”

There are 15 states which do “NOT” have the **Doctrine of Necessities** in place, which include UT states that do “NOT” have the **Doctrine of Necessities** is Alaska, Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Maryland, Michigan, Mississippi, Montana, New York, Vermont and **Utah**. In these states spouse is responsible for their own medical debt and cannot legally be compelled to paid medical debt for debt of the other spouse.

**Conclusion**

For these reasons, the decision of the District Court should be reversed and the Judgment removed from my Credit Report.

This does not fall under the Family Expense Code in Utah State Codes.

I did not sign documents before, during, or after services were rendered acknowledging that I would pay for services performed on deceased husband.

This is not a Community Property State or a State that recognizes The Doctrine of Necessities

Therefor I am not liable for the medical bills of my late husband.

Respectfully submitted this 6<sup>th</sup> day of July, 2012

*Luonda Davis 7/6/12*

Luonda M. Davis

5340 Polaris CT

Kearns, UT 84118

Certificate of Compliance With Rule 24 (f) (1)

Certificate of Compliance With Type-Volume Limitation. Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Utah R. App. P 24 (f)(1) because:

This brief contains 1851 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

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Pro Se Luonda Davis

Luonda Davis

Date: 7/6/12

Certificate of Service

I certify that a copy of the attached Brief for Appellant was serviced upon the party (ies) listed below by mailing it by first class mail, personal delivery, or fax to the following address (es):

Name:

Sent Via:

Supreme Court of Utah

Address: 450 South State Street

Mail (postaged prepaid)

P.O. Box 140210

Personal Delivery

Salt Lake City, Utah  
84114

Fax # \_\_\_\_\_

Name:

Sent Via:

Express Recovery Services

Mail (postaged prepaid)

Address: P.O. Box 26415

Personal Delivery

Salt Lake City, Utah  
84126

Fax # \_\_\_\_\_

By: *Kwonda Davis*

Dated: 7/6/12

**Addendum:**

As I have found in the Utah State Code it does not state that in fact Medical of a Spouse is a Family Expense as it does have a separate Utah State Code for that of the Minor Children and Medical Expenses, it does not have that of the Spouse. As I did not sign any documents stating that I would pay for services rendered, I am asking the courts to dismiss the Judgment that is against me and remove it from my credit reports.

If in fact I am liable for this bill, I am not currently working and have minor children to take care of, I ask that I can possibly find some other source to see if they can assist in taking care of this bill.