2016

Thomas D. Boyle, Respondent/Appellee v. Clyde Snow & Sessions, p.c., Petitioner/Appellant

Utah Supreme Court

No. 20160621-SC

IN THE
SUPREME COURT OF THE STATE OF UTAH

THOMAS D. BOYLE,
Respondent/Appellee

v.

CLYDE SNOW & SESSIONS, P.C.,
Petitioner/Appellant

REPLY BRIEF OF APPELLANT/PETITIONER

On Writ of Certiorari to the Utah Court of Appeals

Third Judicial District Court, Salt Lake County, Utah,
West Jordan Department, Honorable Barry Lawrence
District Court No. 090400630, Utah Court of Appeals No. 20140820-CA

Scott R. Hoyt (14558)
PIA ANDERSON MOSS HOYT, LLC
136 E. South Temple, Suite 1900
Salt Lake City, Utah 84111
T. (801) 350-9000; F. (801) 350-9010

Attorneys for Respondent/Appellee

Jeffery S. Williams (6054)
NELSON CHRISTENSEN HOLLINGWORTH & WILLIAMS
68 South Main Street, Suite 600
Salt Lake City, UT 84101
T. (801) 531-8400; F. (801) 363-3614

Attorneys for Petitioner/Appellant

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I. Appellee Thomas Boyle's Brief is Procedurally Defective And Exceeds the Scope of the Grant of Certiorari.

A. Appellee's Brief Fails to Comply with Rule 24 of the Utah Rules of Appellate Procedure.

Appellee Thomas D. Boyle's ("Boyle") Brief is procedurally deficient because he fails to include citations to the record for the vast majority of the factual statements in his brief. The Utah Rules of Appellate Procedure require that "[a]ll statements of facts and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule." Utah R. App. P. 24(a)(7); *see also id.* 24(e) (requiring references to be "made to the pages of the original record" and references to transcripts to include both the sequential record number on the cover sheet and the individual page cite within the transcript). "The briefing requirements of rule 24 exist for good reason. '[T]he requirements of the rule serve to focus the briefs, thus promoting more accuracy and efficiency in the processing of appeals.'" *Van Den Eikhof v. Vista Sch.*, 2012 UT App 125, ¶ 3, 278 P.3d 622 (citation omitted).

Boyle substantially disregarded these requirements. Boyle includes no record cites for the first three (3) pages of his Statement of the Case. (*See* Brief of Appellee, p. 4-6.) His entire Statement of the Case contains only five (5) record cites. (*See id.*, p. 4-8.) Several of Boyle's citations to hearing transcripts in his Argument also do not provide page citations within the transcripts as required by Rule 24(e), leaving to Appellant Clyde Snow & Sessions, P.C. ("Clyde Snow"), or this Court the burden of

combing through lengthy transcripts to determine whether the statements made by Boyle are supported by the record. (*See id.*, p. 25, 33 n. 5.) Other times, when Boyle does cite to the record, the cite provided does not support the factual contention made.[1]

Notably, in several of the instances in which Boyle fails to provide a record cite, his statements are false. For example, Boyle claims:

- "Clyde Snow was discharged by Woodson in 2010 after declining to provide a budget to litigate her case and firing her lead attorney (Boyle) who wanted to proceed with depositions as she wished." (Brief of Appellee, p. 13). This statement is not only unsupported by Boyle, it is contradicted by the record. R. 4877-78.

- Clyde Snow "declin[ed] to fund [Woodson's] litigation, even to take a single deposition and . . . fire[d] her lead attorney" in order to "shift the effort and risk of the Woodson case back to Woodson, allowing Clyde Snow to sit on the sidelines, hedge its bets and wait for a free ride." (*Id.*, p. 19). This statement is again unsupported by Boyle and is contradicted by the evidence presented to, and findings made by the trial court following the evidentiary hearing, including but not limited to, that Clyde Snow invested 2,761.2 hours of professional time in the Woodson matter, *under Boyle's direction*, and that "[t]here are no facts in the record that support that Clyde Snow ever abandoned the representation of Mrs. Woodson." R. 4819, 4829, 6324-25; *see also* Appellant's Brief, Add. E, at p. 3-11(R. 6324-6332).

- Boyle also asserts, again without record support, that Clyde Snow "objected to Woodson's settlement agreement with CEC [the underlying Defendant]." (*Id.*, p. 20). This statement is not true, and that Boyle could not find record support for it is compelling evidence that he knows it is untrue.

This Court has repeatedly confirmed that it "need not, and will not, consider any facts not properly cited to, or supported by, the record." *Uckerman v. Lincoln Nat. Life*

[1] For example, on page 6 of his Brief, Boyle claims that "[t]he record shows Prince Yeates had given Boyle an assignment of rights," for which he cited R. 5082. (Brief of Appellee, p. 6). That record cite is to a page of Prince Yeates & Geldzahler's ("PYG") Memorandum in Support of Motion to Interplead Funds, which does not reference the purported assignment, let alone include it.

Ins. Co., 588 P.2d 142, 144 (Utah 1978). "The requirement that all factual contentions be accompanied by a record citation is particularly important because '[o]n appeal, we are limited to the findings of fact made by the trial court and may not find new facts or reweigh the evidence[.]" *Van Den Eikhof*, 2012 UT App 125 at ¶ 5 n. 1 (citation omitted). Failure to cite to the record, or providing cites that "are actually inconsistent with what *is* in the record," is not adequate briefing and is grounds to strike a brief or disregard the merits of an argument in an appellate brief. *See id.* (emphasis in original). Clyde Snow respectfully requests that the Court disregard Boyle's unsupported and inaccurate factual statements and, to the extent the Court deems appropriate, strike Boyle's brief in whole or in part.

B. The Court Should Disregard Boyle's Challenges to the Merits of the District Court's Decision Regarding Distribution of the Interpleaded *Res* As Beyond the Scope of the Grant of Certiorari.

Boyle includes a number of arguments that purport to challenge the merits of the district court's rulings with respect to the distribution of the fees interpleaded and deposited with the Court. For example, Boyle argues: (a) the district court erred by refusing to consider Boyle's employment claims against Clyde Snow (Brief of Appellee, p. 36-37); (b) the district court erred in awarding the entire interpleader *res* to Clyde Snow following the evidentiary hearing, including because Clyde Snow was not entitled "to be paid the value of PYG's services under its contract with Woodson," (*Id.*, p. 19-20); and (c) Clyde Snow breached its fiduciary obligations to Woodson in pursuing its claim to recover fees under its contingency fee agreement with Woodson. (*Id.*, 19-20.)

These issues, going to the merits of issues before the district court, are well beyond the issues identified in this Court's grant of the petition for Certiorari, (*see* Order Granting Petition, p. 1), or considered by the Court of Appeals in its decision below. *See Boyle v. Clyde Snow & Sessions, P.C.* 2016 UT App 114, 378 P.3d 98. These arguments should therefore be disregarded. *See, e.g., State v. Loveless,* 2010 UT 24, ¶ 1 n.1, 232 P.3d 510 (declining to review an issue that is "beyond the scope of the question upon which [the Supreme Court] granted certiorari," and that "was not addressed by the court of appeals.").

II. The Court of Appeals' Intervention and Waiver Holdings Are Inconsistent with Established Authority and the Circumstances of This Case Demonstrating That No Party Objected to Clyde Snow's Participation.

Clyde Snow addressed the errors in the Utah Court of Appeals' intervention and waiver holdings at length in its opening Brief, including the Utah Court of Appeals' (a) failure to provide the proper deference to the district court's rulings on the timeliness of Clyde Snow's requests to participate in the action and waiver, (b) undue reliance on the distinguishable circumstances of *Ostler v. Buhler,* 1999 UT 99, 989 P.2d 1073; and (c) the disastrous effects of the Court of Appeals' decision upon contingency-fee lawyers' ability to recover fees under an attorney's lien. (*See* Appellant's Brief, p. 18-30.) Clyde Snow will not repeat the details of these arguments, but instead will limit its response to addressing the misconceptions in Boyle's arguments.

Before veering off course to argue about issues not before this Court, such as the validity of Clyde Snow's attorney lien, Boyle adopts the erroneous reasoning of the Court of Appeals to argue that Clyde Snow never became a party to the action because it did

not timely file a formal motion to intervene and that there was no waiver of the formal intervention requirement. However, these arguments miss the point, and ignore the actual events of this case pursuant to which the district court allowed Clyde Snow to participate as a party for the limited purpose of enforcing its lien.

In July of 2010, shortly after Ms. Woodson's representation transferred from Clyde Snow to PYG, Clyde Snow filed a Notice of Attorney's Lien. R. 1031-33. The notice did not create the lien, however. Rather, by statute, Clyde Snow's attorney's lien "commence[d] at the time of employment of the attorney by the client." Utah Code Ann. § 38-2-7(3). Further, "[a]ny person who takes an interest in any property. . . that is subject to an attorney's lien with actual or constructive knowledge of the attorney's lien, takes the interest subject to the attorney's lien." *Id.* § 38-2-7(8). There is no evidence in the record of any party or counsel challenging or objecting to the content of Clyde Snow's Notice of Lien. In fact, in recognition of the lien, PYG paid Clyde Snow the costs Clyde Snow incurred during its representation of Ms. Woodson. R. 6525, at p. 67.

Subsequently, the parties to the Woodson case entered into a confidential settlement agreement to resolve the matter in June of 2013, and sought immediate dismissal. R. 4661-68. Upon learning of the settlement and the filing of the stipulated dismissal papers, Clyde Snow filed a Restated Notice of Attorney's Lien and Objection to Dismissal of Action on June 28, 2013. R. 4669-73. The filing of this Restated Notice of Lien was authorized by Utah law, *see* Utah Code Ann. § 38-2-7(5) and (6), and leave of court was not required for this filing. *See id.* Also, prior to dismissal of the Woodson case, on July 8, 2013, a Notice of Appearance of Counsel was filed on behalf of Clyde

Snow. R. 4674-75. This Notice of Appearance stated that counsel was "appearing as counsel of record for the law firm of Clyde Snow & Sessions for purposes of enforcing" the attorney's lien. *Id.* Given the appearance of counsel on Clyde Snow's behalf and the filing of the Restated Notice of Lien, the district court was not in a position to disregard the lien and dismiss the Woodson case unilaterally in disregard of the lien.

Clyde Snow's Notice of Appearance signaled Clyde Snow's intent to intervene to enforce its attorney's lien before the case was dismissed. In recognition of this, the district court, on its own initiative, noticed and conducted a hearing on the Motion to Dismiss the Woodson case in light of Clyde Snow's Objection on July 15, 2013. R. 4677-78; 6528, at pp.5-11, 16-18. The sole issue before the district court at the July 2013 hearing was whether the court should retain jurisdiction to resolve Clyde Snow's lien claim. *Id.*

No party objected to this hearing, to Clyde Snow's filing of the Restated Notice of Attorney's Lien, or to the appearance of counsel in the action on Clyde Snow's behalf. *Id.* No party objected to Clyde Snow's participation in the hearing. *Id.* (*See also* Appellant's Brief, p. 26-27.) Nor were there any objections to the district court's order at the July 2013 hearing directing Clyde Snow, PYG and Boyle to engage in mediation regarding the attorney's lien. *Id.* Moreover, all affected persons, including both Ms. Woodson and the underlying defendants (collectively, "CEC"), approved the district

court's July 22, 2013 written order reflecting the court's rulings at the July 15, 2013 hearing.[2] R. 4683-86.

At that point, two things occurred relative to question of intervention. First, the district court exercised its discretion to treat Clyde Snow's Notice of Appearance, Objection to Dismissal, Restated Notice of Lien, and statements during the July, 2013, hearing as timely requests to intervene or participate for the purpose of resolving its attorney's lien. The district court confirmed in its July 1, 2014 Order denying Boyle's Motion to Dismiss and/or Strike Clyde Snow's Purported Attempt to Intervene ("Motion to Dismiss") that this is what it intended to accomplish in July of 2013. R. 6285. It is undisputed that all of the aforementioned filings, and Clyde Snow's appearance and requests at the July 2013 hearing for the district court to retain jurisdiction occurred *before* the entry of final judgment.

This fact alone takes this case outside of *Ostler v. Buhler*, 1999 UT 99, 989 P.2d 1073, heavily relied upon by Boyle and the Court of Appeals to argue the Clyde Snow's efforts to intervene were untimely.[3] Seeking intervention prior to entry of final judgment is timely. *See Supernova Media, Inc. v. Pia Anderson Dorius Reynard & Moss, LLC*, 2013 UT 7, ¶ 24, 297 P.3d 599 ("Generally, a motion to intervene is timely if it is filed

[2] Boyle argues that Ms. Woodson and CEC did not approve the district court's July 22, 2013 Order of Dismissal with Prejudice and Preservation of Attorney Lien ("July 22 Order"). (Appellee's Brief, p. 16). This is not true. The July 22 Order was prepared by CEC's counsel. R. 4683-86. It was approved to form by both Boyle (then with PYG), as counsel for Woodson, and Jeffery Williams, as counsel for Clyde Snow. *Id.*

[3] *See Ostler*, 1999 UT 99 at ¶ 9 (noting the attorney at issue made no filings until after the trial court "had dismissed [the client's] action with prejudice.").

before the 'final settlement of all issues by all parties,' and before entry of judgment or dismissal." (Emphasis added)).[4] And, as detailed in Clyde Snow's opening brief, Clyde Snow could not have sought to intervene to enforce its lien at any earlier point in time because its right to compensation under its contingency fee agreement did not ripen until settlement, and its lien rights then attached as a matter of law to the settlement proceeds and fees paid to PYG. (*See* Appellant's Brief, p. 19-21.)

Second, the parties waived the need for Clyde Snow to formally intervene by not objecting to: (a) Clyde Snow's filing of the Notice of Appearance, (b) Clyde Snow's filing of the Objection to Dismissal and Restated Notice of Lien, (c) Clyde Snow's participation in the July, 2013, hearing and requests during that hearing for the district court to retain jurisdiction to resolve the attorney's lien; and (d) the substantial process relating to the attorney's lien that occurred between July, 2013, and the entry of the final judgment, following the evidentiary hearing on the interpleader in July of 2014. *See, e.g., Ostler,* 1999 UT 99 at ¶ 7 (noting the general rule that parties can waive the intervention requirements under Rule 24 and any objection "informal intervention"); *see also Pub. Serv. Co. of Colorado v. Blue River Irr. Co.*, 753 P.2d 737, 740 (Colo. 1988) (viewing a nonparty's "filing of an entry of appearance as analogous to the filing of a defective motion to intervene," and noting that "[w]hen a technically defective motion to intervene is filed, the existing parties may waive their right to object to the intervention by failing

[4] Even the entry of judgment does not cutoff the ability to intervene under federal law. *See United Airlines, Inc. v. McDonald,* 432 U.S. 385, 395-396 (1977) (noting with approval that there are "several decisions of the federal courts permitting post-judgment intervention for the purpose of appeal," and citing authorities).

to make timely objections"). Simply put, nobody – neither Ms. Woodson, CEC, Boyle, nor PYG – raised any timely objections to Clyde Snow's participation. That is waiver,[5] as determined by the district court. R. 6285. Moreover, the complete lack of prejudice to any of the underlying parties, or to Boyle, from Clyde Snow's participation at the hearing and to the district court's decision to retain jurisdiction to resolve the attorney's lien in the existing action, further supports the actions of the district court on these issues.[6]

Furthermore, Boyle's reliance on the Petition to Nullify Attorney's Lien, purportedly filed on behalf of Ms. Woodson in August of 2013, does not help Boyle; it hurts his position. Arguments concerning the merits of the lien, including all issues associated with the validity, enforceability and value of the lien can only be resolved once the court assumes jurisdiction over the lien. To the extent the Petition to Nullify Lien was filed on Ms. Woodson's behalf, it constitutes yet a further act of acquiescence, by a party to the underlying action, to the district court's retention of jurisdiction over the lien issues.

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[5] *See, e.g., State v. Olsen*, 860 P.2d 332, 335 (Utah 1993) ("As we have repeatedly held, failure to object constitutes waiver of the objection.").

[6] *See* Utah R. Civ. P. 61 (setting forth the "harmless error rule" as requiring "[t]he court at every stage of the proceedings must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."); *accord Batt v. State*, 28 Utah 2d 417, 421–22, 503 P.2d 855 (1972) (observing, "when the parties have had their entitlement of an opportunity to fully present their evidence and arguments to a court and jury, who have arrived at a verdict and judgment, this court should be reluctant to interfere therewith, and should not do so merely because of imperfections or irregularities. The verdict should not be disturbed unless there was some substantial error so that the party was deprived of a fair trial and there is a reasonable likelihood that in its absence there would have been a different result.").

Therefore, the Court of Appeals erred by determining that Clyde Snow failed to become a party and that the district court improperly retained jurisdiction, given the lack of objection of any party. Its decision should be reversed.

III. The Establishment of the Interpleader Provided an Independent Jurisdictional Basis for the District Court's Judgment.

A. The Court of Appeals Erred by Disregarding the Effect the Deposit of the Attorney Fees Had Upon the District Court's Jurisdiction.

As detailed in Clyde Snow's opening Brief, any possible lingering requirement for Clyde Snow to file a formal motion to intervene was further extinguished when PYG, with the consent of both Clyde Snow and Boyle, deposited the fees at issue with the district court to establish the interpleader proceeding. (*See* Appellant's Brief, p. 30-38.) Once PYG deposited the fees into the district court there was no reason for Clyde Snow to intervene in the underlying action because the district court had jurisdiction over the interpled fees. (*See id.*) Instead, Clyde Snow filed a complaint against the interpleaded *res* held by the court, asserting its claims to recover against the stake. R. 5289-5466.

The district court recognized the effect of the interpleading of funds upon the intervention issue in its July 1, 2014 order denying Boyle's Motion to Dismiss. R. 6285. And, the district court's acquisition of jurisdiction over the fees at issue is also supported by the authorities cited in Clyde Snow's opening brief that considered similar issues. (Appellant's Brief, p. 33-38.) For example, as held by the United States District Court for the Southern District of New York in a well-reasoned decision: regardless of how the "procedural steps" leading up to the deposit of fees in the court "may be rationalized," the deposit of the fees into the court's registry established an independent and

"fundamental" jurisdictional basis in the district court to "exercise the 'right to say' (jurisdiction) where the fees belong," and which creates a "basic obligation, inherent in the court's very functioning as a court" that prevents a court from "simply cast[ing] the money away without deciding who has a right to take it." *Reliable Marine Boiler Repair Inc. v. Sum of $35,000.00*, 270 F.Supp. 1017, 1020-21 (S.D.N.Y. 1967).

These principles are very much in line with Utah's own formulation of the concept of subject matter jurisdiction.[7] Utah, similar to other jurisdictions, determines whether a court has subject matter jurisdiction by "focus[ing] on whether the court has authority over the general class of cases to which the particular case at issue belongs, rather than on the specific facts presented by any individual case." *In re Adoption of Baby E.Z.*, 2011 UT 38, ¶ 33, 266 P.3d 702. The district court has subject matter jurisdiction to establish and hear an interpleader proceeding to resolve competing claims to attorney fees stemming from the settlement of a contingency fee case and to render decisions affecting the disbursement of the fees at issue in the interpleader. *See* Utah Const. art. VIII, § 5 (stating "the district court has shall have original jurisdiction in all matters except as limited by this constitution or statute."); Utah Code Ann. § 78A-5-102(1) (same). Rule 22 of the Utah Rules of Civil Procedure expressly authorizes "interpleader" as a general class of cases the district court may hear. Utah R. Civ. P. 22.

As detailed in Clyde Snow's opening brief, p. 30-38, the Court of Appeals departed from these principles in its decision by disregarding the effect the deposit of fees into the court had upon the district court's jurisdiction with respect to those fees. Boyle,

[7] Clyde Snow is unable to locate any Utah authority addressing this precise issue.

for his part, has failed to respond to this argument and this issue as raised by this Court, [8] which provides an independent basis for the reversal of the Court of Appeals.

B. Boyle's Argument that He Was Not A Claimant In the Interpleader Proceeding is Unfounded.

Boyle denies that he was a "claimant" to the interpleader proceeding and argues that Clyde Snow was the only party to the interpleader proceeding. (Appellee's Brief, p. 26-32). Although the reasoning behind this assertion is unclear from Boyle's brief and difficult to follow, it appears that Boyle rests this assertion upon his contentions that (a) he was never served with process in the interpleader action; (b) the trial court refused to adjudicate Boyle's claims against Clyde Snow and PYG; and (c) Ms. Woodson was never named a claimant. (*Id*.) There are many problems with Boyle's factually inaccurate and highly perplexing arguments that Clyde Snow will focus only upon a few of them.

First, Boyle's current position as to his status as a claimant and party to the interpleader, as well as to the procedure employed by trial court in establishing the interpleader, stands in stark contrast to the position he took before the Court of Appeals. In his Supplemental Brief, for example, Boyle claimed:

> Unlike the attorney in *Utah Down Syndrome*, Thomas D. Boyle, the Appellant in this case, is a named claimant in an interpleader action, which the lower court determined was properly filed. Unlike the attorney in *Utah Down Syndrome*, the Appellant in this case was

[8] Boyle, like the Court of Appeals, cited no authority for this proposition and it is not stated in Rule 22. *See* Utah R. Civ. P. 22. Furthermore, Boyle ignores that PYG filed a motion to support its deposit of the fees in the court, which is authorized by Rule 67 of the Utah Rules of Civil Procedure. However, because PYG disclaimed any interest in those fees, there was no reason for PYG to file a complaint asserting any claim to those fees. The actual claimants, Clyde Snow and Boyle, each filed pleadings setting forth their claims to the interpleader *res.* R. 5104-5183, 5289-5466, 5509-5585.

> served with process and affirmatively brought into the case as a claimant. This appeal stems from Boyle's status as a party claimant, giving this Court proper appellate jurisdiction over this matter.

(Boyle's Supplemental Brief to the Utah Court of Appeals, p. 2, *see also id.* p. 5-6.)

Similarly, Boyle's contention that he "did not consent to the interpleader" in the district court is completely inaccurate. (Appellee's Brief, p. 32.) The record establishes that Boyle did not oppose PYG's motion to deposit fees and establish the interpleader. R. 5104-83. Boyle further stated: "Should the Court rule that the correct sum to interpleaded is in fact $XXXX.00, Boyle does not intend to contest the issue further[.]" R. 5106. Boyle's acquiescence to the interpleader proceeding is further evidenced by his consistent participation in that proceeding, including at the evidentiary hearing *he* requested, demonstrated in the record. R. 5050-51.

The law does not permit Boyle to now change his position before this Court, and such efforts should be rejected. *See Hanson v. Gen. Builders Supply Co.*, 15 Utah 2d 143, 389 P.2d 61, 61 (1964) ("[T]he rules will not justify or condone an expression by defendant of satisfaction, – without a word of objection, with the trial court's ruling as a matter of law . . ., only to change its position when it loses, otherwise it would have the enviable effect of permitting a litigant to blow hot and cold, depending on the outcome . . . ."); *see also Pratt v. Nelson*, 2007 UT 41, ¶ 17, 164 P.3d 366 (observing that that "invited error" doctrine precludes "appellate review" of a claimed "error committed at trial when that party led the trial court into committing the error," and that under the doctrine "parties are <u>not</u> entitled to <u>both the benefit of not objecting at trial and the benefit of objecting on appeal</u>." *Id.* (emphasis added) (quotations and citation omitted)).

Second, Boyle's argument that he was not a claimant because the district court refused to consider his potential claims against Clyde Snow and PYG, reveals a fundamental misapprehension about the nature of an interpleader proceeding.

The funds deposited into the district court were fees collected by PYG pursuant to PYG's contingency fee agreement with Ms. Woodson. R. 5073-85; 6325. The interpleader *res* or stake constituted a portion of the overall fee collected by PYG under its contingency fee agreement with Woodson. Thus, only claims to recover a portion of the fees collected by PYG could be presented and resolved in the context of the interpleader. *See, e.g., In re Millennium Multiple Employer Welfare Ben. Plan,* 772 F.3d 634, 640 (10th Cir. 2014) ("'In an interpleader action, ... jurisdiction extends only to the fund deposited with the court,'" and '"the subject matter of the action is not a set of facts, a transaction or occurrence which gives rise to the litigation, but *a specific identified fund or property.* Claims must not only relate to that property, but be asserted against it....'" (alterations in original) (internal citations omitted)). Stated otherwise, claims against or between and among the parties, as extensively argued by Boyle, are irrelevant and beyond the interpleader. *See United States v. Chapman,* 281 F.2d 862, 867 (10th Cir. 1960) ("Right to recover from the [interpleader] fund must be based on the strength of a claimant's title and not on the weakness of the title of another claimant.").

Once the district court received the interpleaded fees with the consent of the parties, the district court's jurisdiction necessarily wrapped around that *res* of fees. As established by the authorities set forth in Clyde Snow's opening brief, p. 36-37, the district court's jurisdiction over the fees on deposit with the court was independent of any

other process or procedure that occurred prior to that deposit, and continued until the funds were disbursed. *See Reliable Marine,* 270 F.Supp. at 1020-21*; Garrett v. McRee,* 201 F.2d 250, 253 (10th Cir. 1953); *accord In re Millennium,* 772 F.3d at 642. By failing to adhere to these jurisdictional principals, the Court of Appeals' erred.

Third, Boyle argues that the interpleader proceeding was improper because Ms. Woodson was never named a claimant. Ms. Woodson was not separately named as a claimant to the fees because she had no claim to recover from the interpleader stake because it was limited to fees collected by PYG pursuant to its contingency fee agreement with Woodson. R. 5073-85; 6325. She did not dispute, and to Clyde Snow's knowledge has never disputed, that PYG was entitled to collect the portion of money it collected from the settlement amount as fees under its contingency fee agreement with Ms. Woodson.

Additionally, Boyle claims he received an assignment of Ms. Woodson's interests in any claims to the fees at issue in Clyde Snow's attorney's lien before PYG deposited those fees with the district court. (*See* R. 5706.) Thus, Boyle participated in the interpleader proceeding before the trial court both in his individual capacity and as the assignee of Ms. Woodson. Boyle's arguments should therefore be rejected by this Court.

IV. The Supreme Court has Independent Jurisdiction to Issue a Writ of Certiorari to Review and Reverse the Court of Appeals' Erroneous Opinion.

A. Boyle Ignores this Court's Original Jurisdiction Under the Utah Constitution to Issue Writs of Certiorari Even In Favor of NonParties.

As set forth in Clyde Snow's opening brief, this Court has original jurisdiction, stemming from Article VIII, section 3 of the Utah Constitution, to issue a writ of

certiorari to review and reverse an erroneous decision of the Court of Appeals, even if Clyde Snow did not acquire formal party status through intervention, waiver or through the establishment of the interpleader. (*See* Appellant's Brief, p. 40-43.) Boyle's does not respond to the authorities and argument presented by Clyde Snow on this issue. Instead, Boyle frames his argument around the concept of subject matter jurisdiction, including to argue "[t]he Court of Appeals, as the one charged with reviewing the district court, has the authority to review whether or not it has jurisdiction to hear the merits of an argument, or if there was jurisdiction of the lower court . . . .," for which point he cites a law review article. (*See* Appellee's Brief, p. 42-43.)

This is not responsive to the question presented on certiorari, which specifically queried whether this Court has jurisdiction to issue of writ of certiorari to reverse or vacate an erroneous Court of Appeals' decision, *if Clyde Snow* "did not acquire party status." (Order Granting Petition, p. 1 (emphasis added).) As indicated, the authorities cited by Clyde Snow in its opening brief identifying the writ of certiorari as an extraordinary writ establish this Court's jurisdiction to issue the writ of certiorari in favor of Clyde Snow even assuming *arguendo* it never became a formal party. (Appellant's Brief, p. 40-43.) There simply cannot be a ruling by any Utah court, including the Court of Appeals, that is beyond this Court's power of review under the Utah Constitution. This is the purpose of the writ of certiorari, as a Constitutional creation, and why a writ of certiorari is deemed to be an extraordinary writ. Where Boyle made no effort to rebut the

controlling authorities cited by Clyde Snow, this Court should follow Clyde Snow's analysis to the extent this Court reaches this issue.[9]

B. Boyle Disregards this Court's Precedent in Arguing that the Utah Court of Appeals Had the Authority to Declare the District Court's Judgment Void and Reverse Its Decision.

Boyle claims, at p. 46-48, that the Utah Court of Appeals had the authority, even after determining that Boyle was not party and had no right to appeal, to review the district court's jurisdiction, to declare the district court's judgment to be void and to reverse the district court's decision and to remand for entry of an order consistent with its opinion. *See Boyle*, 2016 UT App 114 at ¶ 23, 25. Boyle argues that the Court of Appeals did not actually void any judgments of the district court, but only performed its "duty" to "recognize a void judgment" already in the record. (Appellee's Brief, p. 46, 48.) In support of this proposition, Boyle cites a number of authorities from other jurisdictions. (*Id.* at 47-48.)

Notably, however, Boyle entirely ignores the controlling Utah authority on this issue that contradicts his position. The Utah Court of Appeals' actions in reviewing the district court's jurisdiction, declaring its judgments void and thereafter reversing the

[9] Boyle makes a cursory attempt to claim that one must be a party to petition for a writ of certiorari, for which he relies entirely on a misguided interpretation of federal authorities. (Appellee's Brief, p. 43.) Boyle's federal authorities are inapplicable to the question at bar regarding this Court's jurisdiction to issue a writ of certiorari under the Utah Constitution, for which there is Utah precedent on point. Furthermore, the U.S. Supreme Court's decision in *Marino v. Ortiz*, 484 U.S. 301, 304 (1988), actually undermines Boyle's contention because the *Marino* Court did not refuse to consider the petition of certiorari of a non-party on the basis it lacked jurisdiction, or even consider the issue for which Boyle cites it. *See* 484 U.S. at 303-04. Rather, the *Marino* Court "granted certiorari" to consider the Court of Appeals' dismissal of the appeal of non-parties. *See id* at 304.

district court decision on that basis *after* the Court of Appeals determined it lacked appellate jurisdiction over Boyle's appeal is inconsistent with this Court's decisions in *Utah Down Syndrome Foundation, Inc. v. Utah Down Syndrome Association*, 2012 UT 86, 293 P.3d 241 and *Brigham Young University v. Tremco Consultants, Inc.*, 2005 UT 19, 110 P.3d 678.

Both *Down Syndrome* and *Tremco* involved direct appeals to the Utah Supreme Court (rather than a writ of certiorari) by nonparties of orders entered against them. . *Down Syndrome*, 2012 UT 86 at ¶¶ 5-6, 9-10, 12-13; *Tremco*, 2005 UT 19 at ¶ 10-11, 44, 46. In both cases, the Supreme Court determined that the nonparties had no appeal of right, and dismissed their appeals for lack of appellate jurisdiction because "'[w]here an appeal is not properly taken, this court lacks jurisdiction and we must dismiss.'" *Down Syndrome*, 2012 UT 86 at ¶ 13 (quoting *Tremco*, 2005 UT 19 at ¶46) (further quotations and citations omitted)). Importantly, in both cases, the Supreme Court left in place the underlying orders entered by the district court against the nonparties; it did not declare them void; it did not reverse them. *See Down Syndrome*, 2012 UT 86 at ¶11, 32; *Tremco*, 2005 UT 19 at ¶¶ 45-46. Indeed, in *Tremco*, this Court left the order at issue in place because it "lack[ed] jurisdiction to review it," even though this Court expressed "serious concerns regarding the validity of the supplemental order" at issue. *Tremco*, 2005 UT 19 at ¶ 45.

These authorities are dispositive of Boyle's argument and establish that the Court of Appeals erred. Upon determining that Boyle was not a party, the Court of Appeals was left with a single option: to dismiss his appeal. By going beyond this to review the

validity of the district court's judgment, including to declaring it void and to reverse it, the Court of Appeals erred. Accordingly, the Court of Appeals' decision must be reversed and vacated, even if this Court concludes Clyde Snow was never made a formal party.

CONCLUSION

For each and all of the foregoing reasons, this Court should issue the writ of certiorari to the Court of Appeals, and reverse or vacate the Court of Appeals' Opinion.

DATED this 23rd day of January 2017.

NELSON CHRISTENSEN
HOLLINGWORTH & WILLIAMS

/s/ Jeffery S. Williams
Jeffery S. Williams
Attorney for Clyde Snow & Sessions, P.C.

CERTIFICATE OF COMPLIANCE WITH RULE 24(f)(1)

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because this brief contains 6,620 words.

This brief complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 13-point font.

Dated this 23rd day of January, 2017.

NELSON CHRISTENSEN
HOLLINGWORTH & WILLIAMS

/s/ Jeffery S. Williams
Jeffery S. Williams
Attorney for Clyde Snow & Sessions, P.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of January, 2017, I filed the foregoing **REPLY BRIEF OF APPELLANT/PETITIONER CLYDE SNOW & SESSIONS, P.C.** with the Clerk of the Court and served two (2) true and correct copies of such filing via U.S. first-class mail, postage prepaid, upon:

Scott R. Hoyt
PIA ANDERSON MOSS HOYT, LLC
136 E. South Temple, Suite 1900
Salt Lake City, Utah 84111
shoyt@pamhlaw.com

/s/ Jeffery S. Williams