

1992

Gordon E. Johnson v. Carolyn Smith, Bear River Social Services, Mary Miller, Douglas Miller, Michael L. Miller, and Jon J. Bunderson : Brief of Respondent

Utah Court of Appeals

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Gordon E. Johnson; Michael L. Miller; Debra J. Moore; Office of the Attorney General.
Dale J. Lambert; Karra J. Porter; Christensen, Jensen & Powell; Attorneys for Defendant/
Respondent.

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COURT OF APPEALS

FILED

OCT 26 1992

COURT OF APPEALS

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In Propria Persona

IN THE UTAH COURT OF APPEALS

GORDON E. JOHNSON,

Plaintiff and Appellant,

vs.

CAROLYN SMITH, et. al.,

Defendants and Appellees.

Case No. 920115-CA

PETITION FOR REHEARING

Plaintiff/appellant admits he did not send a Notice Of Claim to the Attorney General and the notice to County Attorney Bunderson was not within one year, but he did give notice to defendant/appellee Carolyn Smith on April 17, 1989, within one year after she illegally turned his Medicaid records over to the police. The original of this faxed notice was within the records of Kipp And Christian, P.C. and not discovered until after her Motion To Dismiss had passed.

Medicaid is funded by the federal government, and there are no notice requirements where federal rights are involved. The leading state court case rejecting the application of a notice of claim requirements to § 1983 actions in state courts is Williams v. Horvath, 16 Cal.3d 834, 841, 548 P.2d 1125, 1129-30, 129 Cal. Rptr. 453, 457-58 (1976), in which Justice Mosk, writing for a unanimous court, stated that:

"The purpose underlying section 1983 -- i.e., to serve as an antidote to discriminatory laws, to protect federal rights where state law is inadequate, and to protect federal rights where state processes are available in theory but not in practice . . . may not be frustrated by state substantive limitations couched in procedural language." Cf. Edwards v. Hare, 682 F. Supp. 1528 (D. Utah 1988).

1 Defendant/appellee Carolyn Smith violated the Code Of Federal
2 Regulations by turning the Medicaid records over to the police and
3 allowing herself and the records to be subpoenaed.

4 A State plan must provide, under a State statute, that imposes
5 legal sanctions, safeguards meeting the requirements of this subpart
6 that restrict the use or disclosure of information concerning applicants
and recipients to purposes directly connected with the administration
of the plan. 42 C.F.R. § 431.301

7 If a court issues a subpoena for a case record or for any agency
8 representative to testify concerning an applicant or recipient, the
agency must advise the court of the confidential nature of the records.
42 C.F.R. § 431.306(f).

9
10 Burns v. Reed, 111 S.Ct. 1934 (1991) abolished prosecutorial
11 immunity for out-of-court activities. Clearly the decision to prosecute
12 plaintiff/appellant was an administrative act. Signing an information,
13 advising the police in their investigation, and subpoenaing Mrs. Smith
14 & Cheryl Andreason & the records provided only qualified immunity to
15 defendant/appellee Jon J. Bunderson.

16 When there was a contingent fee agreement, suing by attorney
17 Michael L. Miller before any settlement was malicious prosecution.
18 Taking a default judgment against plaintiff/appellant when there was an
19 answer on file and after another attorney had been paid a contingent
20 fee, was an abuse of process.

21 The Supreme Court Of Utah had previously denied Appellee
22 Bunderson's Motion For Summary Dismissal of this appeal which indicates
23 it was not without merit and frivolous enough to justify any award of
24 costs and attorneys fees.

25 Proof Of Service

26 I hereby certify that on October 24, 1992 I faxed the foregoing to
27 Karra J. Porter, Attorney At Law, Debra J. Moore, Assistant Attorney
28 General, and mailed a copy to Michael L. Miller, Attorney At Law, 75
East 300 North, #3, St. George, Utah 84770.

April 17, 1989
216 West 1st North
Brigham City, Utah (taxed)

Carolyn Smith, Social Worker
Bear River Social Services
Brigham City, Utah 84302

Dear Ms. Smith

I intend to sue you for Breach of
A Confidential Relationship, i.e. turning my
correspondence over to the police!

If you have insurance, maybe we can
work something out and save us both alot
of legal expenses.

Ch. 18

987

4. In such cases it appears to be agreed that there must be public disclosure of the private facts. Thus there is no invasion of privacy where defendant merely calls the plaintiff's employer and asks his help in collecting a debt from the plaintiff. *Household Finance Corp. v. Bridge* (1969) 252 Md 531 250 A.2d 878; *Harrison v. Humble Oil & Ref. Co.* (D.S.C.1967) 264 F.Supp 89; *Timperley v. Chase Collection Service* (1969) 272 Cal.App.2d 697, 77 Cal Rptr 782. See Note (1969) 36 Brook.L.Rev. 95. The only case to the contrary is *Park v. Wise* (La.App.1964) 155 So.2d 909, writ refused 245 La 84, 157 So.2d 231.

But there may be other bases of liability. In *Peterson v. Idaho First Nat. Bank* (1961) 83 Idaho 578, [367 P.2d 284], the private disclosure of plaintiff's finances by a bank was held not to be an invasion of privacy, but a tort action was held to lie for breach of the confidential relation. Cf. *Copley v. Northwestern Mut. Life Ins. Co.* (S.D.W.Va.1968) 295 F. Supp. 93 (disclosure to plaintiff's competitors of information supplied to defendant insurance company to qualify for insurance).

4. Compare *Banks v. King Features Syndicate* (S.D.N.Y.1939) 30 F. Supp. 352 (newspaper publication of X-rays of woman's pelvic region); *Feeney v. Young* (1920) 191 App.Div. 501, 181 N.Y.S. 481 (public exhibition of films of caesarian operation); *Griffin v. Medical Society* (1939) 7 Misc.2d 549, 11 N.Y.S.2d 109 (publication in medical journal of pictures of plaintiff's deformed nose).

5. There is general agreement that there is no liability for the disclosure of facts which are a matter of public record, since they are already public. *Meetze v. Associated Press* (1966) 230 S.C. 330, 95 S.E.2d 606 (dates of birth and marriage); *Stryker v. Republic Pictures Corp.* (1951) 108 Cal.App.2d 191, 238 P.2d 670 (military service record); *Bell v. Courier-Journal & Louisville Times Co.* (Ky.1966) 402 S.W.2d 84 (tax delinquency); cf. *Rome Sentinel Co. v. Boustedt* (1964) 43 Misc.2d 598, 252 N.Y.S.2d 10 (death certificate). How, then, is the principal case to be distinguished?

6. There are serious questions as to how far the principal case, and

KIPP AND CHRISTIAN, P. C.

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JAMES B. HANKE
GMS
MIC
MIC
SH
REL

Gordon E. Johnson
216 West 1st North
Brigham City, Utah 84302

Dear Mr. Johnson:

The fact that Carolyn Smith was not a social worker makes it even more clear that there is no confidential relationship breached. The law does not create any confidentiality in the communications between you and any attorney.

Additionally, because the documents were utilized in a court proceeding, I am assuming that the county attorney already issued a subpoena for them. Consequently, even if there was a confidential relationship, it was likely destroyed by the issuance of a subpoena. Even if a subpoena was not issued, the proper procedure to protect a confidential relationship is to make objection to it at the time it is introduced at court. As you were not there, you waived your objection.

Yours very truly,

KIPP AND CHRISTIAN, P.C.


Gregory J. Sanders

GJS:tc

August 13, 1989

The issue of a subpoena is moot as the criminal trial is over except for the appeals.

UTAH COURT OF APPEALS

STATE OF UTAH

GORDON E. JOHNSON,)	
)	
Plaintiff/Appellant.)	
)	
vs.)	Case No. 920115-CA
)	
CAROLYN SMITH, BEAR RIVER)	Priority No. 16
SOCIAL SERVICES, MARY MILLER,)	
DOUGLAS MILLER, MICHAEL L.)	
MILLER, and JON J. BUNDERSON,)	
)	
Defendants/Respondents.)	

BRIEF OF RESPONDENT BUNDERSON

**AN APPEAL FROM THE FIRST DISTRICT COURT
IN AND FOR BOX ELDER COUNTY, STATE OF UTAH
HONORABLE FRANKLIN L. GUNNELL**

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PARTIES TO THE PROCEEDINGS

The names of all parties to the proceedings in the lower court are set forth in the caption of the case on appeal.

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JURISDICTION

This Court has jurisdiction of this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(j), as amended. Jurisdiction in the Supreme Court prior to transfer was proper under Utah Code Ann. § 78-2-2(3)(j), as amended.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

In his Opening Brief, appellant states that he "won't challenge the dismissal of Defendants Mary Miller and Jon J. Bunderson but believes award of attorney's fees is not warranted." (Appellant's Opening Brief, p. 5.) The sole issue to be decided regarding respondent Bunderson, therefore, is whether the district court properly awarded him reasonable attorney fees under Utah Code Ann. § 78-27-56.

STANDARD OF REVIEW: The district court's determination that plaintiff's claims were meritless is a conclusion of law, reviewed by this Court for correctness. Jeschke v. Willis, 811 P.2d 202, 203-04 (Utah App. 1991). The district court's finding that plaintiff's claims were asserted in bad faith may be overturned only if clearly erroneous. Id. at 204.

STATUTES AND RULES

Utah Code Ann. § 63-30-13:

A claim against a political subdivision, or against its employee for an act or omission occurring during the performance of his duties, within the scope of

employment, or under color of authority, is barred unless notice of claim is filed with the governing body of the political subdivision within one year after the claim arises, ... regardless of whether or not the function giving rise to the claim is characterized as governmental.

Utah Code Ann. § 78-27-56:

(1) In civil actions, the court shall award reasonable attorney's fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith, except under Subsection (2).

(2) The court, in its discretion, may award no fees or limited fees against a party under Subsection (1), but only if the court:

(a) Finds the party has filed an affidavit of impecuniosity in the action before the court; or

(b) The court enters in the record the reason for not awarding fees under the provision of Subsection (1).

STATEMENT OF THE CASE

Nature of the Case and Course of Proceeding

Plaintiff/Appellant Gordon E. Johnson ("Johnson") filed suit against respondent Bunderson and others alleging breach of confidential relationship, malicious prosecution, and abuse of process. (R.1-10). The district court initially quashed service against the Miller defendants (R.032-33). After proper service had been obtained on defendant Mary Miller, the district court granted summary judgment in her favor on November 29, 1990 (R.111), and denied a motion to vacate the judgment on March 21, 1991. (R.127). The district court dismissed defendants Carolyn Smith and Bear

River Social Services, based upon Johnson's failure to comply with the provisions of the Utah Governmental Immunity Act, on July 5, 1991. (R.209-10).

On September 30, 1991, the district court granted summary judgment to this respondent ("Bunderson"). The court ruled that Johnson's claims against Bunderson were barred by the doctrine of prosecutorial immunity and, in the alternative, that Johnson had failed to comply with the provisions of the Utah Governmental Immunity Act. In its order, the district court also reaffirmed all prior orders entered in the case, and dismissed any remaining claims against the defendants. Finally, the court found that plaintiff's claims against Bunderson were meritless and asserted in bad faith, and awarded Bunderson attorney fees in accordance with Utah Code Ann. § 78-27-56. (R.263-64, 276-77).

Statement of Facts

The following facts were uncontroverted below:

Respondent Bunderson was county attorney in and for the county of Box Elder, State of Utah, at all relevant times. In 1988, Johnson submitted an application form to Bear River Social Services which included a handwritten note that on July 20, 1988, he would be in jail for killing a judge, an attorney, and a doctor. (See Appellant's Opening Brief, Exhibit E.) The threats reached the attention of the police and, eventually, County Attorney Bunderson. It was reported to Bunderson that the judge in question was the Honorable Robert W. Daines, and the attorney was respondent Michael

L. Miller. The doctor's identity was not specified. (R.86, 170, 179). Following a review of the evidence and the law, Bunderson caused charges to be filed against Johnson arising out of the threats and other related conduct. (R.86, 170, 179).

Upon trial to the bench in September 1988, appellant was acquitted of telephone harassment and convicted of assault on an elected official. (R.171, 179). Appellant appealed his conviction, which was subsequently affirmed by this Court. (Case No. 880586-CA, June 5, 1989.) (R.171, 179). In its decision, this Court stated, "[t]here was sufficient circumstantial evidence that defendant intended the threats made," and "we firmly reject defendant's argument that his threats were made in jest or were just part of a request for medical or legal assistance because he was about to be arrested. Such thinking cannot ever rationalize or justify expressions which threaten physical harm or, in this case, death to anyone." (R.007). This Court also held that the handwritten notes on the application form were not privileged. (R.007, para.4).

On June 29, 1990, more than a year after his conviction was affirmed, Johnson filed this action setting forth state law claims against Bunderson and others. The Complaint was captioned "Breach of a Confidential Relationship, Malicious Prosecution, Abuse of Process," and sought recovery of \$1 million from each defendant. (R.1-2). Appellant's cause of action against Bunderson was set forth in paragraph V:

Defendant Jon J. Bunderson selectively prosecuted plaintiff to drain his time and resources from his lawsuit with friend Miller and from Mendocino (Calif.) Sup. Ct. 48175 in which Mr. Bunderson represented defendants.

During the course of the litigation, Johnson also alleged that Bunderson acted improperly by eliciting testimony at trial about the application form, which Johnson asserted was privileged. (R.200-01).

Johnson did not file a notice of claim with Box Elder County prior to instituting his lawsuit. (R.171, 179). In the court below, Johnson admitted that "[he] was aware of the one-year notice requirements, but he could not commence this action while he was still on probation until September 1989. Otherwise, Judge Baldwin might have revoked the probation had he known plaintiff were not repentant and suing those responsible for his harassment." Johnson asserted that his claimed fear of retribution excused his non-compliance under Utah Code Ann. § 78-12-36, which provides that the statute of limitations is tolled for mental incompetence. (R.182).

SUMMARY OF ARGUMENT

The district court's award of attorney fees under Utah Code Ann. § 78-27-56 was appropriate. Johnson's claims against Bunderson were wholly unsupported by law or fact, and ignored previous express rulings by this Court. It was well-established that persons acting in a prosecutorial capacity are absolutely immune from suit, and that a notice of claim must be given under

state law in any event. Johnson offered no arguable basis for disregarding these basic principles, and brought his claims solely as retaliation against those involved in prosecuting him for threatening a judge and others. The district court's determination that Johnson's claims against Bunderson were meritless was correct, and his finding that Johnson acted in bad faith was not clearly erroneous. The fee award should therefore be upheld.

ARGUMENT

APPELLANT'S CLAIMS AGAINST BUNDERSON WERE MERITLESS AND IN BAD FAITH, AND WARRANTED AN AWARD OF ATTORNEY FEES.

I. JOHNSON'S CLAIMS WERE CLEARLY BARRED BY THE UTAH GOVERNMENTAL IMMUNITY ACT.

Johnson's claims against Bunderson were based upon state law. (R.1-10). Utah Code Ann. § 63-30-11 requires a plaintiff to file with the County a written notice of any claim against a county employee arising out of the course of his or her employment. Failure to do so within one year of the conduct complained of is fatal to a plaintiff's claims:

A claim against a political subdivision, or against its employee for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the governing body of the political subdivision within one year after the claim arises, ... regardless of whether or not the function giving rise to the claim is characterized as governmental.

Utah Code Ann. § 63-30-13.

Johnson knew that his cause of action, if any, against Bunderson arose in 1988, when Bunderson prosecuted him for making the threats. Johnson filed no written notice of his claim at all, and did not even file his Complaint until June 29, 1990, well beyond one year from the date of the challenged conduct. Johnson admitted that he had not complied with the statutory notice provisions, but filed suit anyway. (Statement of Facts, supra, pages 5-6.) His only excuse, a claimed fear of retaliation from Judge Baldwin, was completely unsubstantiated and unreasonable. Johnson's complaint plainly constituted the type of inappropriate conduct contemplated by Section 78-27-56.

II. APPELLANT'S CLAIMS AGAINST BUNDERSON WERE
BARRED BY THE WELL-ESTABLISHED DOCTRINE
OF PROSECUTORIAL IMMUNITY.

All of the actions undertaken by defendant Bunderson of which Johnson complained arose out of Bunderson's performance of his duties as county prosecutor, i.e., prosecuting Johnson and eliciting testimony regarding the document on which the threats were written. It has long been established that prosecutors are absolutely immune from actions arising out of their prosecutorial duties. "A public prosecutor acting in his official capacity is absolutely privileged to initiate, institute, or continue criminal proceedings." Restatement (Second) of Torts § 656. "The privilege stated in this Section is absolute. It protects the public prosecutor against inquiry into his motives, and from liability,

even though he knows that he has no probable cause for the institution of the proceedings and initiates them for an altogether improper purpose." Id., Comment b.

In Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed. 2d 128 (1976), the U.S. Supreme Court recognized that absolute immunity for prosecutors is well settled under the common law, and explained the policies underlying the doctrine:

The common-law immunity of a prosecutor is based upon the same considerations that underlie the common law immunities of judges and grant jurors acting within the scope of their duties. These include concern that harassment by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust.

Id. at 422-23, 96 S.Ct. at 991.

Prior to the district court's order in this case, the Supreme Court reaffirmed that absolute immunity insulates prosecutors from liability in performing prosecutorial functions, including eliciting allegedly inappropriate testimony in official proceedings. Burns v. Reed, 111 S.Ct. 1934 (1991).

Throughout the litigation below, Johnson consistently complained that Bunderson elicited misleading testimony at trial, and/or elicited testimony about the allegedly privileged document on which the threats appeared. (R.137, 181, 201-02). As noted above, the law has always been clear that prosecutors are absolutely immune from such claims. Furthermore, this Court had already rejected Johnson's contentions in its affirmance of

Johnson's conviction, including rulings on the effect of Bunderson's alleged motivation and the fact that the document was not privileged. (R.007).

Appellant offered no authority to resist application of immunity, other than a Seventh Circuit case which applied the immunity doctrine in the context of giving legal advice. Burns v. Reed, 894 F.2d 949 (7th Cir. 1990). Johnson argued that, because the U.S. Supreme Court granted certiorari in the Seventh Circuit case, he "reasonably believed that absolute immunity for prosecuting attorneys would be abolished." (R.220). The Seventh Circuit, however, made clear that the only controversial legal concept at issue in Burns was its application of absolute immunity to rendering of legal advice. While appellate courts differed on that issue, there was no dispute that absolute immunity applied to traditional prosecutorial functions. Johnson's alleged reliance on the grant of certiorari was unreasonable.¹

After judgment was entered by the district court, Johnson attempted to recharacterize his claim against Bunderson to encompass rendering legal advice to the police concerning admissibility of the document in question. (R.281-82). In Burns, supra, the Supreme Court held that qualified, rather than absolute, immunity may apply to such claims.

¹ The U.S. Supreme Court has also admonished that the disposition of writs of certiorari has no precedential effect. Hopfmann v. Connolly, 471 U.S. 459, 461 (1985). Johnson's claimed reliance was thus unreasonable on this ground as well.

Johnson's attempt was inappropriate for several reasons, however. First, Johnson did not raise the contention before the district court, and therefore this Court should not consider it on appeal. Olson v. Park-Craig-Olson, Inc., 815 P.2d 1356, 1358 (Utah App. 1991). Second, Johnson offered no support for his new claim except for a brief quotation from the trial transcript in which Bunderson elicited testimony that the witness had turned the application form over to the police. (R.281). From that quote, Johnson argued that "Mr. Bunderson should have advised the police that federal regulations prohibited disclosure of federally funded public assistance [records]." (R.281).

This belated argument exemplifies Johnson's willingness to assert indiscriminate claims against Bunderson, regardless of whether he has any factual or legal basis for the claim. Johnson did not allege that Bunderson did give advice to the police, possibly implicating Burns, but only that he should have. In addition to the speculative nature of Johnson's claim, and its improper desire to dictate how prosecutors should perform, the argument also ignores this Court's previous holding that the document was not privileged. (R.007).²

² The undisputed facts of this case make clear that qualified immunity would bar Johnson's claims against Bunderson in any event. To defeat application of the doctrine, Johnson would have to show that Bunderson violated a clearly established right of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982). Johnson obviously could not show that eliciting testimony about the application form violated such a clearly established right, when

Johnson never offered any arguable factual or legal basis for any of his claims against Bunderson. He simply sought to retaliate against all those who were involved in his prosecution. Johnson's personal animosity against Bunderson was perhaps best expressed in one of Johnson's numerous district court pleadings, in which he wrote: "It is difficult to understand why Mr. Bunderson prosecuted plaintiff for calling Mrs. Miller a bitch over the telephone and ignored Michael L. Miller's perjury. But when Mr. Bunderson was being considered for District Court Judge, he was prosecuting everybody that had a 'Wiener dog' and smoked heavily." (R.184). The district court's conclusion that Johnson acted in bad faith is not clearly erroneous.

The law was clear that Bunderson was immune from suit, and that Johnson's claims were barred by his admitted non-compliance with the Governmental Immunity Act. The conclusion that Johnson's claims were without merit was therefore correct. The district court's second conclusion, that Johnson's claims were asserted in bad faith, was also supported by the circumstances of the case. Under Utah Code Ann. § 78-27-56, an award of fees was mandatory:

(1) In civil actions, the court shall award reasonable attorney's fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith, except under Subsection (2).

this Court has held that the document was not privileged.

(2) The court, in its discretion, may award no fees or limited fees against a party under Subsection (1), but only if the court:

(a) Finds the party has filed an affidavit of impecuniosity in the action before the court; or

(b) The court enters in the record the reason for not awarding fees under the provision of Subsection (1).

(Emphasis added.)

The district court had before it sworn testimony as to the amount and reasonableness of time and costs expended in defending Bunderson. (R.266-73). The court also had before it appellant's objections (R.278-79), but found the amount claimed reasonable. (R.276).

An attorney fee award was particularly appropriate in this case. The primary consideration underlying prosecutorial immunity is the avoidance of retaliatory lawsuits intended to waste public resources and influence the performance of public responsibilities. If disgruntled litigants are allowed to file such lawsuits without risk of sanction, those long-established policy aims will be undermined. The appellant was required to undertake a reasonable investigation of the law and facts prior to filing an action, U.R.Civ.P. 11,³ an obligation which he plainly disregarded in this

³ Pro se litigants are not relieved from the obligations imposed upon licensed attorneys in litigating actions. Further, although plaintiff is proceeding pro se, he is familiar with the judicial process. See, e.g., State v. Johnson, Case No. 880586-CA, June 5, 1989; Miller v. Johnson, Case No. 880324-CA (Utah Court of Appeals, March 31, 1989).

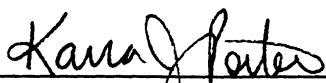
case. The district court's award of fees was appropriate, and should be affirmed.

CONCLUSION

For the reasons set forth above, respondent Bunderson requests the Court to affirm the award of attorney fees entered by the district court. Bunderson further requests the Court to award it damages, including attorney fees, pursuant to U.R.A.P. 33 and costs pursuant to U.R.A.P. 34.

DATED this 12th day of March, 1992.

CHRISTENSEN, JENSEN & POWELL, P.C.



Dale J. Lambert
Karra J. Porter
Attorneys for Defendant/Respondent
Bunderson

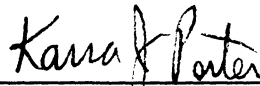
CERTIFICATE OF SERVICE

This is to certify that on the 12th day of March, 1992, four true and correct copies of the foregoing BRIEF OF RESPONDENT BUNDERSON were mailed, postage prepaid to:

Gordon E. Johnson
216 West 100 North
Brigham City, Utah 84302
Pro se Appellant

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20 South Main Street
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Attorney for Respondent Carolyn Smith



Dale J. Lambert
Karra J. Porter
Attorneys for Defendant/Respondent
Bunderson

ADDENDUM

EXHIBIT 1

Memorandum Decision, September 16, 1991.

MICROFILMED
 Dec. 10 3/91 Roll No. 09

JOHNSON vs.
SMITH, BEAR RIVER SOCIAL
SERVICES, MILLER and
BUNDERSON
900000339
Page 2

orders entered by the Court dismissing any of the other Defendant's are hereby **AFFIRMED** by the Court and Motions to Vacate by the Plaintiff are **DENIED**. This action, as it relates to any remaining defendants, is hereby **DISMISSED WITH PREJUDICE**.

Counsel for Defendant Jon Bunderson to prepare an Order in conformance with this opinion as it relates to all Defendants.

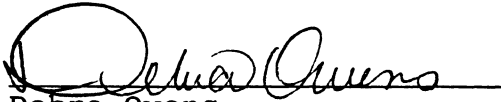
DATED this 16 day of September, 1991.


F.L. GUNNELL
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing MEMORANDUM DECISION, postage prepaid to the following: Dale J. Lambert, Karra J. Porter, Attorneys at Law, 175 S West Temple Suite 510, Salt Lake City UT 84101; Michael L. Miller, 75 E 300 N #3, St. George UT 84770; and Gordon E. Johnson, 216 W 100 N, Brigham City UT 84302.

DATED this 23 day of September, 1991.


Debra Owens
Deputy Clerk

ADDENDUM

EXHIBIT 2

Order, September 30, 1991.

BRIGHAM DISTRICT

SEP 27 11 57 AM '91

Dale J. Lambert, 1871
Karra J. Porter, 5223
CHRISTENSEN, JENSEN & POWELL, P.C.
Attorneys for Defendant Jon J. Bunderson
175 South West Temple, Suite 510
Salt Lake City, Utah 84101
Telephone: (801) 355-3431

IN THE FIRST JUDICIAL DISTRICT COURT FOR BOX ELDER COUNTY
STATE OF UTAH

GORDON E. JOHNSON,)	
)	
Plaintiff,)	
)	ORDER
v.)	
)	
CAROLYN SMITH, BEAR RIVER)	
SOCIAL SERVICES, MARY MILLER,)	
DOUGLAS MILLER, MICHAEL L.)	
MILLER, and JON J. BUNDERSON,)	Civil No. 900000339
)	
Defendants.)	

The Court, having reviewed the material on file in this matter,
and good cause appearing therefore, hereby

ORDERS, ADJUDGES AND DECREES that plaintiff's claims against all
defendants are dismissed with prejudice. Pursuant to Utah Code Ann.
§ 78-27-56, the Court finds plaintiff's claims against defendant Jon
Bunderson were without merit and not brought in good faith.
Accordingly, defendant Bunderson is awarded reasonable attorney fees
and costs incurred in defending plaintiff's claims against him. The
Court finds that \$1725.50 in fees and \$101.41 in costs have
reasonably been expended in defending Bunderson against plaintiff's

Case No. 900000339

SEP 30 1991

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SEP 27 1991

claims, and hereby enters judgment in favor of Bunderson and against plaintiff in the amount of \$1826.91.

DATED this 30 day of September, 1991.

BY THE COURT:

 J. L. Hunsell

CERTIFICATE OF SERVICE

This is to certify that on the 26th day of September, 1991, a true and correct copy of the foregoing **ORDER OF DISMISSAL** was mailed, postage prepaid to:

Gordon E. Johnson
216 West 100 North
Brigham City, Utah 84302
Pro se plaintiff

Michael L. Miller
20 South Main Street
P.O. Box 399
Brigham City, Utah 84302
Attorney for Defendant Mary Miller

 Marilyn Smyth