

1992

Brian M. Barnard v. Ann L. Wassermann, Shirley Randazzo and The Honorable Michael Murphy : Brief of Appellee

Utah Supreme Court

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Colin Winchester; Ann L. Wassermann; Littlefield and Peterson; Attorneys for Appellees.

Brian M. Barnard and John Pace; Utah Legal Clinic; Attorneys for Appellant.

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UTAH SUPREME COURT
BRIEF

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NO. _____

IN THE SUPREME COURT

POCKET NO: 920259

OF THE STATE OF UTAH

BRIAN M. BARNARD,	:	
	:	
Plaintiff/Appellant,	:	
	:	BRIEF OF APPELLEE
v.	:	
	:	
ANN L. WASSERMANN, SHIRLEY	:	
RANDAZZO & THE HONORABLE	:	
MICHAEL MURPHY, Judge of the	:	
Third District Court in and	:	
for Salt Lake County, State	:	
of Utah,	:	
	:	
Defendant/Appellees.	:	Case No. 92-0259
	:	Priority No. 16

AN APPEAL FROM ORDERS GRANTING SUMMARY JUDGMENT AND GRANTING A MOTION TO DISMISS THE HONORABLE PAT BRIAN, JUDGE PRESIDING THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY, Civil No. Below C-90-090-3227 CV

ANN L. WASSERMANN
Attorney for Appellee Randazzo
LITTLEFIELD & PETERSON
426 South 500 East
Salt Lake City, Utah 84102
(801) 531-0435

COLIN WINCHESTER
Attorneys for Defendant/Appellee Murphy
Administrative Office of the Courts
230 South 500 East, Suite 300
Salt Lake City, Utah 84102
(801) 578-3800

BRIAN M. BARNARD and JOHN PACE
Utah Legal Clinic
Attorneys for Plaintiff/Appellant
214 East 500 South
Salt Lake City, Utah 84111-3204
(801) 328-9531 or 328-9532

FILED

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UTAH

IN THE SUPREME COURT
OF THE STATE OF UTAH

BRIAN M. BARNARD,	:	
	:	
Plaintiff/Appellant,	:	
	:	BRIEF OF APPELLEE
v.	:	
	:	
ANN L. WASSERMANN, SHIRLEY	:	
RANDAZZO & THE HONORABLE	:	
MICHAEL MURPHY, Judge of the	:	
Third District Court in and	:	
for Salt Lake County, State	:	
of Utah,	:	
	:	
Defendant/Appellees.	:	Case No. 92-0259
	:	Priority No. 16

AN APPEAL FROM ORDERS GRANTING SUMMARY
JUDGMENT AND GRANTING A MOTION TO DISMISS THE
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ANN L. WASSERMANN
Attorney for Appellee Randazzo
LITTLEFIELD & PETERSON
426 South 500 East
Salt Lake City, Utah 84102
(801) 531-0435

COLIN WINCHESTER
Attorneys for Defendant/Appellee Murphy
Administrative Office of the Courts
230 South 500 East, Suite 300
Salt Lake City, Utah 84102
(801) 578-3800

BRIAN M. BARNARD and JOHN PACE
Utah Legal Clinic
Attorneys for Plaintiff/Appellant
214 East 500 South
Salt Lake City, Utah 84111-3204
(801) 328-9531 or 328-9532

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IN THE SUPREME COURT
OF THE STATE OF UTAH

BRIAN M. BARNARD,	:	
	:	
Plaintiff/Appellant,	:	BRIEF OF APPELLEE
	:	
v.	:	
	:	
ANN L. WASSERMANN, SHIRLEY	:	
RANDAZZO & THE HONORABLE	:	
MICHAEL MURPHY, Judge of the	:	
Third District Court in and	:	
for Salt Lake County, State	:	
of Utah,	:	
	:	
Defendant/Appellees.	:	Case No. 92-0259
	:	Priority No. 16

STATEMENT OF JURISDICTION

Jurisdiction in this Court is based upon §78-2-2(3)(j), Utah Code Annotated (1953 as amended).

STATEMENT OF THE ISSUES

Appellee does not disagree with Appellant's Statement of the Issues.

DETERMINATIVE PROVISIONS

This Appellee adopts in whole the Brief of Appellee Honorable Michael Murphy.

STATEMENT OF THE CASE

Appellee Randazzo adopts in whole the Statement of the Case as set forth in the brief of the Honorable Michael Murphy. Appellee Randazzo would add the following facts:

1. Appellant's only allegation against Shirley Randazzo is that she as an indispensable party to this action, has a property interest in the attorney's fees that were awarded. In fact, no such property existed, as Mr. Barnard knew, as Frank Randazzo had declared bankruptcy and his obligation to Mr. Barnard had been discharged.

2. At the time of the hearing on September 13, 1989, Mr. Barnard had not properly withdrawn as counsel, as he merely filed a Notice of Withdrawal at a time when a hearing was pending. No motion and order had been entered by Judge Murphy prior to the hearing.

SUMMARY OF THE ARGUMENT

Shirley Randazzo has absolutely no economic interest in this case, as Frank Randazzo declared bankruptcy and discharged his obligations to Mr. Barnard and to Ms. Randazzo. Even if Frank Randazzo were to reaffirm his debt to Mr. Barnard, he would not be bound by Judge Murphy's Order.

Mr. Barnard's Notice of Withdrawal of Counsel was void, as it did not comply with the requirements of Rule 4-506 of the Utah Code of Judicial Administration. Consequently, Judge Murphy had jurisdiction over him.

ARGUMENT

**POINT I - SHIRLEY RANDAZZO DOES NOT HAVE A
PROPERTY INTEREST IN THIS MATTER.**

Appellant does not dispute that Frank Randazzo declared bankruptcy and discharged any obligations that he may have had to Mr. Barnard. His discharge in bankruptcy similarly relieved him of any obligation to pay attorneys' fees to Shirley Randazzo. The imposition of monetary sanctions on Mr. Barnard has absolutely no economic consequent to him. Mr. Barnard was not ordered to pay attorney's fees to Ms. Randazzo, and he is in exactly the same economic position as he would have been in the absence of Judge Murphy's Order. Even if Mr. Randazzo were to affirm his debt to Mr. Barnard after his bankruptcy, his obligation to pay attorney's fees to Ms. Randazzo would remain discharged in bankruptcy, and he would be under no obligation whatsoever to pay money to counsel for Ms. Randazzo as opposed to paying money to Mr. Barnard.

**POINT II - MR. BARNARD'S WITHDRAWAL AS COUNSEL
WAS IMPROPER.**

On August 30, 1989, counsel for Shirley Randazzo sent a Notice of Hearing to Mr. Barnard that the hearing on the issue of his client's contempt, which had been continued by Judge Murphy at the divorce trial, would come on for hearing on September 13, 1989. Mr. Barnard was counsel of record on August 30, 1989. Despite the fact that a hearing on Plaintiff's Motion for Contempt was pending,

Mr. Barnard merely filed a Notice of Withdrawal on September 6, 1989.

Rule 4-506 provides that an attorney may withdraw from a case when a motion is pending only upon the attorney's motion and order of the Court. Mr. Barnard never filed such a motion, nor did Judge Murphy ever sign an order granting his motion withdraw. As a consequence, Mr. Barnard remained as counsel for Mr. Randazzo on September 13, 1989, at which time Judge Murphy entered the order that is the subject of this litigation. As a consequence, all of Mr. Barnard's arguments with respect to the indirect contempt are irrelevant.

CONCLUSION

For the foregoing reasons, and for the reasons as set forth in the Brief filed on behalf of the Honorable Michael Murphy, a dismissal of the Complaint as against Shirley Randazzo should be affirmed.

DATED this 2 day of October, 1992.



ANN I. WASSERMANN
Attorney for Appellee Randazzo

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CERTIFICATE OF DELIVERY

I hereby certify that I caused to be hand delivered, four true and correct copies of the foregoing, BRIEF OF APPELLEE RANDAZZO, this 2 day of October, 1992, to:

Mr. Brian M. Barnard
Mr. John Pace
Utah Legal Clinic
214 East Fifth South State
Salt Lake City, Utah 84111-3204
Attorney for Appellant

Mr. Colin Winchester
Administrative Office of the Courts
230 South 500 East
Salt Lake City, Utah 84102
Attorney for Appellee Murphy



ANN L. WASSERMANN

APPENDIX

1. Rule 4-506, Utah Code of Judicial Administration

(5) Attorneys' fees awarded pursuant to this rule may be augmented after judgment pursuant to Rule 4-505. When the court considers a motion for augmentation of attorneys' fees awarded pursuant to this rule, it shall consider the attorneys' time spent prior to the entry of judgment, the amount of attorneys' fees included in the judgment, and the statements contained in the affidavit supporting the motion for augmentation.

(6) Prior to entry of a judgment which grants attorneys' fees pursuant to this rule, any party may move the court to depart from the fees allowed by paragraph (1) of this rule. Such application shall be made pursuant to Rule 4-505.

(7) If a contract or other document provides for an award of attorneys' fees, an original or copy of the document shall be made a part of the file before attorneys' fees may be awarded pursuant to this rule.

(8) No affidavit for attorneys' fees need be filed in order to receive an award of attorneys' fees pursuant to this rule.
(Added effective March 31, 1992.)

Rule 4-506. Withdrawal of counsel in civil cases.

Intent:

To establish a uniform procedure and criteria for withdrawal of counsel in civil cases.

Applicability:

This rule shall apply to all counsel in civil proceedings in trial courts of record except guardians ad litem and court-appointed counsel.

Statement of the Rule:

(1) Consistent with the Rules of Professional Conduct, an attorney may withdraw as counsel of record without the approval of the court except when (a) a motion has been filed and is pending before the court or (b) a certificate of readiness for trial has been filed. Under these circumstances, an attorney may not withdraw except upon motion and order of the court.

(2) When an attorney withdraws as counsel of record, written notice of the withdrawal must be served upon the client of the withdrawing attorney and upon all other parties not in default and a certificate of service must be filed with the court. If a trial date has been set, the notice of withdrawal served upon the client shall include a notification of the trial date.

(3) When an attorney dies or is removed or suspended or withdraws from the case or ceases to act as an attorney, opposing counsel must notify, in writing, the unrepresented client of his/her responsibility to retain another attorney or appear in person before opposing counsel can initiate further proceedings against the client. A copy of the written notice shall be filed with the court and no further proceedings shall be held in the matter until 20 days have elapsed from the date of filing.

(Amended effective January 15, 1990; April 15, 1991.)

Amendment Notes. — The 1990 amendment added "Consistent with the Rules of Professional Conduct" to Subdivision (1) and, in Subdivision (3), inserted "in writing" in the first sentence and added the second sentence. The 1991 amendment, in the Applicability