

1992

James R. Debry and Joan Debry v. Fidelity National Title Insurance Company: Brief in Opposition to Certiorari

Utah Supreme Court

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IN THE UTAH SUPREME COURT

ROBERT J. DEBRY and JOAN DEBRY,

Plaintiffs/Appellants,

vs.

FIDELITY NATIONAL TITLE INS. CO.,

Defendant/Appellee.

REPLY TO BRIEF IN
OPPOSITION TO APPELLANTS'
PETITION FOR WRITS
OF CERTIORARI

Case No. 920293

Case No. 920415

(Consolidated Proceedings)

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FILED

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CLERK SUPREME COURT
UTAH

ROBERT J. DEBRY and JOAN DEBRY,)	
)	
Plaintiffs/Appellants,)	
)	
vs.)	
)	
FIDELITY NATIONAL TITLE INS. CO.,)	
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ARGUMENT

POINT I

THERE ARE SPECIAL AND IMPORTANT REASONS FOR
GRANTING CERTIORARI IN THIS CASE

Defendant/Appellee, Fidelity National Title Insurance Company (hereinafter "Fidelity") argues Certiorari should not be granted because the Utah Supreme Court is not interested in whether the Utah Court of Appeals has ruled correctly, but rather only rules on issues of importance. See Appellee's Brief at p. 10.

Even if we assume, arguendo, that this Court has no concern with whether or not the Court of Appeals has ruled correctly, this case does raise at least one issue of importance to litigants. That question is whether the rules of practice adopted by this Court as article 5, Chapter 4 of the Utah Code of Judicial Administration are binding on the trial courts and on litigants. See Appellant's Opening Brief at Point I.

A major underpinning to the opinion of the Court of Appeals was their ruling that the rules of practice are not binding and cannot be relied upon by the parties. Unpublished opinion, July 29, 1992 at 3. The question of whether the practice rules are mandatory, and if so, whether due process considerations come into play if the rules are not followed, has never been decided by this Court.

Clearly if this Court went to the trouble of formulating and adopting the rules, they should be binding on litigants and the courts. Litigants should be able to rely on the rules being followed. Procedural rules have no value if they are not binding. The question of whether due process allows a litigant to rely on published procedural rules and to claim prejudice if they are not followed is an important issue worthy of this Court's attention.

The question of whether the procedural rules set forth in the Code of Judicial Administration are binding or advisory and whether litigants can properly rely on their application has far reaching significance and is a question of such importance that Certiorari should be granted.

POINT II

THERE WERE VIOLATIONS OF THE PROCEDURAL RULES WHICH PREJUDICED DEBRYS

Fidelity, at pp. 21-31 of their opposition brief, argues that there were no procedural rules violations, or if there were, they have no bearing on the issues.

However, a close examination of the record will show that had the trial court and Fidelity complied with Rules 4-501 and 4-504 of the Utah Code of Judicial Administration, the appeal in this case would not have been subject to dismissal on jurisdictional grounds and DeBrys' claims against Fidelity could have been heard

on their merits in the Court of Appeals. See generally Point II, Petition for Writ of Certiorari.

A close look at the procedural history shows that the whole problem of whether a Rule 52(b) motion was filed or intended and the problems of the subsequent order submitted in violation of Rule 4-504 arose because the trial court signed the original Order granting Summary Judgment before expiration of the time allowed for objections by Rule 4-504.

Had the Court waited the amount of time required by Rule 4-504, the Summary Judgment would have been signed after plaintiffs filed their Rule 4-504 objections and the whole issue of Rule 52(b) would never have arisen.

Following the Court's premature signing of the original Summary Judgment Order, had Fidelity complied with the requirements of Rules 4-501 and 4-504, the plaintiff would have had two additional opportunities to respond to the order submitted six months later, without a ruling by the trial court, and the inadvertent failure of counsel to see the proposed order filed six months late, when it was delivered and responded thereto would not have occurred. Had Rules 4-501 and 4-504 been followed, this appeal would have been decided on its merits, not on a jurisdictional technicality. Since decisions on the merits are favored, a strict application of the rules should be encouraged.

Thus the applicability of the Rules set out in the Code of Judicial Administration and the question of whether or not they are binding on the courts needs to be determined by this Court together with the due process issues raised by plaintiffs' reliance on the said rules. See Point I, Petition for Writ of Certiorari.

IV.

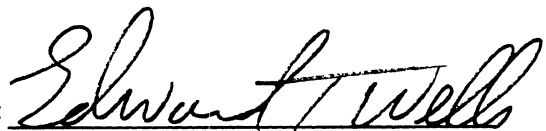
CONCLUSION

Whether the Rules of Practice contained in the Code of Judicial Administration are binding, and whether parties have a due process right to rely on said rules, are special and important questions which justify granting Appellants' Petition for Writ of Certiorari.

For the reasons set forth herein and in Appellants' Petition for Writ of Certiorari, this Court should grant Certiorari in this case.

Respectfully submitted this 21st day of April, 1993.

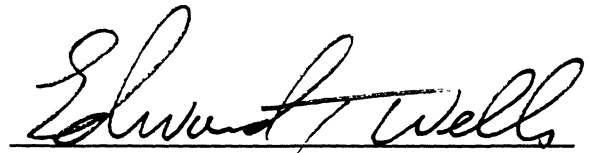
ROBERT J. DEBRY & ASSOCIATES

By: 
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Counsel for Appellants

CERTIFICATE OF MAILING

I certify that four (4) true and correct copies of the foregoing REPLY TO BRIEF IN OPPOSITION TO APPELLANTS' PETITIONS FOR WRITS OF CERTIORARI, (DeBry v. Fidelity) were mailed, postage prepaid, on the 21st day of April, 1993, to the following:

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A handwritten signature in cursive script, reading "Edward H. Wells", is written over a horizontal line.

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