

1992

Ginger E. Rowe v. Norman H. Rowe : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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GINGER E. ROWE,

Plaintiff and Appellee,

v.

NORMAN H. ROWE,

Defendant and Appellant.

Case No. 920507-CA

BRIEF OF APPELLANT
NORMAN H. ROWE

APPEAL OF ORDER OF THE
FOURTH JUDICIAL DISTRICT COURT

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JURISDICTION

The specific statutory authority that confers jurisdiction on the Utah Court of Appeals is found at § 78-2-(a)-3(2)(N) of the Utah Code Annotated, 1953, as amended.

ISSUES FOR REVIEW AND STANDARD OF REVIEW

Issue No. 1: The Order on Order to Show Cause is unsupported by the facts and evidence before the Court. The standard is correction of error Carlton vs. Carlton, 84 UAR 21 (Utah App. 1988).

Issue No. 2: The findings in the Order are inadequate to support the Order and are not supported by the facts before the Court. The standard of review is "an abuse of discretion" Carlton vs. Carlton, 84 UAR 21 (Utah App. 1988).

Issue No. 3: Can the Court reject a stipulation for failure to comply with State Child Support Guidelines in 1989, and then in 1992 adopt the same stipulation without any additional evidence. The standard is correction of error. Carlton, supra.

Issue No. 4: Is the Court bound by stipulations of the parties when the Court has rejected the stipulation and dismissed the case in which the stipulation was submitted? Clawson vs. Clawson, 675 P.2d 562 (Utah 1983). Mooney vs. G.R. & Associates,

746 P.2d 1174 (Utah App. 1987). The standard is abuse of discretion.

Issue No. 5: Can one party to an alleged stipulation seek to defeat the duty of the Trial Court? Pearson vs. Pearson, 561 P.2d 1080 (Utah 1977); the standard is "abuse of discretion."

Issue No. 6: Is a stipulation which is submitted to the Court and rejected by the Court, through the inaction of the parties, and in which one of the parties seeks to change the terms of the stipulation at the time it is submitted, a binding stipulation representing an agreement between the parties? This standard is abuse of discretion. Kline vs. Kline, 544 P.2d 472 (Utah 1975).

Issue No. 7: May the Court modify a binding decree from the State of Texas without finding that there has been a material change of circumstances? The standard is the Order must be supported by findings of fact. Gale vs. Gale, 258 P.2d 986 (Utah 1953).

Issue No. 8: Has there been a meeting of the minds and mutual assent where Appellee filed a letter with the Court seeking to change the terms of the stipulation at the time of the submittal of the stipulation? The standard is correction of error. John Call Engineering Inc., vs. Manti City Corp., 743 P.2d 1205 (Utah 1987); Vassels vs. Lo Guidice, 740 P.2d 1375 (Utah App. 1987).

Issue No. 9: May the Court enforce a stipulation made 2 1/2 years previously, and not agreed to between the parties? The standard is correction of error. Guardian State Bank vs. Stanql, 778 P.2d 1 (Utah 1988).

Issue No. 10: May the Court enforce a stipulation rejected 2 1/2 year previously, where the party seeking enforcement has breached the stipulation? The standard is correction of error.

Issue No. 11: May the Court enforce a stipulation which it had rejected 2 1/2 years earlier and which due to an unforeseen event, is rendered impossible or totally impractical? Standard is correction of error. Western Properties vs. Southern Utah Aviation, Inc., 776 P.2d 656 (Utah App. 1988).

DETERMINATIVE LAW

The decision of this case depends upon the interpretation of §§ 78-45-7; 78-45-7.3, Utah Code Annotated, 1953, as amended, and Rules 4-403 and 4-504 of the Code of Judicial Administration.

STATEMENT OF CASE

The parties obtained a Decree of Divorce in Texas on or about the 19th of September, 1986 (R. Pgs. 1-18: Addendum #1), which *inter alia*, required Defendant to pay \$700.00 per month child support (R Pg. 15: Addendum #1, Pg. 4). The Defendant then moved to Virginia and the Plaintiff removed to Utah, then to Colorado.

While in Utah, Plaintiff brought Action #88-4400078 in the Fourth Judicial District Court, to enforce child support payments from Defendant (R Pgs. 19-22: Addendum #2). In the said action, the parties were represented by their respective counsel. To settle the said case, the parties entered into a stipulation (R Pgs. 104-108: Addendum #3). This Stipulation (together with an Order, R Pgs. 123-127) was submitted to the Court, Commissioner Howard H. Maetani presiding, on the 20th of November, 1989 (R Pg. 166, Paragraph 17, Addendum #11, Pg. 5, Paragraph 17). The Commissioner requested additional fiscal information from the parties prior to approving the Stipulation and signing the Order, based upon his interpretation of the child support agreed to between the parties being in compliance with the then existing Child Support Guidelines of the State (R Pg. 165, Paragraph 19; R Pg. 166, Paragraph 18: Addendum #11, Pg. 5 Paragraph 18). Neither party provided the requested information (R Pg. 165, Paragraph 19; R Pg. 193, Paragraph 7: Addendum #11, Pg. 6, Paragraph 20). The Commissioner rejected the Stipulation and refused to sign the Order on January 8, 1990, and mailed both the Stipulation and the Order back to Defendant's attorney, Graham Dodd (R 165 Paragraph 20; R Pg. 87: Addendum #6). On March 18, 1991, the Court issued its own Order to Show Cause (R, Pg. 88) why the case should not be dismissed and when neither Plaintiff nor Defendant appeared, the Commissioner

formally dismissed the case without prejudice on April 15, 1991 for failure to prosecute (R Pg. 96: Addendum #7). By February 5, 1992, both of the parties had moved back to Utah and the Defendant, being unemployed, petitioned the Fourth Judicial District Court, Case No. 92-4400164, *pro se*, *inter alia* for a modification of the Texas Divorce Decree, with respect to child support payments based upon his material change of circumstances, *i.e.*, he had no income. This case was consolidated with the Plaintiff's action (R Pg. 199: Addendum #8). For her part, Plaintiff brought an Order to Show Cause why Defendant should not be held in contempt for failure to pay child support and to increase the child support in Case No. CV 88-4400078. The parties appeared before Commissioner Maetani on the Order to Show Cause on the 17th of March, 1992 (R Pg. 100: Addendum #9). Defendant appeared *pro-se* and Plaintiff with her counsel. At the said hearing, Plaintiff urged that the Court adopt the old Stipulation formerly rejected by the Court and enter an Order incorporating the Stipulation despite the fact that the Defendant reminded the Court that the Stipulation had been rejected by the Court for improper documentation two and one-half years previously, and the same Commissioner had dismissed the case for failure on the part of the parties to prosecute (See transcript of hearing R Pgs. 489-504: Addendum #10). But the Commissioner ruled that because Defendant's attorney had failed to file the

Stipulation, he could not penalize Plaintiff and would enforce the Stipulation *nunc-pro-tunc* (R Pg. 491). But the Commissioner gave Defendant 10 days to provide documentation and any other reason why it should not be adopted. On March 25, 1992, Defendant filed his documents with the Court which comprised an Affidavit of Graham Dodd with supporting documents (R Pgs. 121-170: Addendum #11), an Affidavit of Norman Rowe with supporting documents (R Pgs. 171-195 Addendum #12) and a Memorandum of Points and Authorities (R Pgs 113-120). Notwithstanding the filing of these documents, the Commissioner's signature was stamped on the Order on Order to Show Cause on March 30, 1992.

In his Order on Order to Show Cause, Commissioner Maetani consolidated the case that he had previously dismissed (#88-4400078) and in which he had rejected the Stipulation based upon the parties' failure to respond to the Court's request for additional information (R Pg. 198, Paragraph 1: Addendum #13), with Case #92-4400164. Further the Order states that the Commissioner ruled the way he did because the Stipulation entered into by and between the parties on September 10, 1989, was prepared by Norman Rowe's attorney but was never filed with the Court (R. Pg. 298, Paragraph 2: Addendum #13). The documents submitted to the Court on March 25, 1991 clearly show that the Stipulation was filed with the Court by Norman Rowe's attorney, but were rejected and mailed

back (R Pg. 87, Letter of Court Clerk: Addendum #5). There was no good cause shown as to why the dismissal of the case based on the parties' joint refusal to supply the information requested by the Court and Plaintiff's failure to prosecute should be set aside, and why the case should be reopened and the Stipulation enforced, especially in light of the Defendant's objection to it. (See transcript of hearing R Pgs. 489-504: Addendum #10.) In addition, no explanation of why if the Stipulation did not comply with the law on September 10, 1989, it could suddenly comply on March 17, 1992. The Defendant objected to the Order on Order to Show Cause (R Pgs. 210-306). Judge Cullen Y. Christensen overruled the objection on the 4th of June, 1992, without making any findings (R Pg. 398: Addendum #14). Defendant filed his Notice of Appeal on July 6, 1992 (R Pgs. 449-450: Addendum #15) in which he appealed the Order of Commissioner Maetani and the ruling of Judge Christensen as they pertain to Case No. 88-4400078. Since Defendant was proceeding pro se on Case #92-44000164 to obtain modification of the child support payments as found in the Texas decree, Defendant moved for a motion to extend time on the appeal until Case No. 924400164 could be resolved at the Trial Court level. This motion was denied by the Utah Court of Appeals on October 13, 1992.

SUMMARY OF ARGUMENT

A stipulation of the parties is never binding upon a Trial Court and neither party to the stipulation can direct the authority of the Court nor seek to have the Trial Court avoid its duty of modifying a divorce decree due to changed circumstances. In addition, the parties effectively waived the Stipulation by not providing the Trial Court with satisfactory fiscal information to comply with the Child Support Guidelines of the State. In addition, the parties, although both signed the Stipulation, never had a meeting of the minds as to its contents and each signed believing the document stated something different; constituting a mutual mistake. The Trial Court rejected the Stipulation and Order and dismissed the suit under which it was filed. The Court may not now reinstate the Stipulation of the parties without the consent of the parties without showing good cause, and the Trial Court's order must reflect the facts before it. The enquiry of the Court should not have been the enforcement of the Stipulation; but the change in material circumstances of the parties. The Trial Court is obligated to follow statutory requirements and follow the Code of Judicial Administration.

ARGUMENT

I. The Stipulation of the Parties Not Binding on the Court.

The Stipulation heretofore submitted by the parties is not binding

upon the Court, and the Trial Court has complete discretion to set it aside if it so chooses. See Kline vs. Kline, 544 P.2d 472 (Utah 1975); and as the Utah Supreme Court said in Clawson vs. Clawson, 675 P.2d 562 (Utah 1983), "Stipulations of the parties to an action are only advisory to the Court and the Court is not bound by them." In addition, the Supreme Court has said:

If there is any justification in law or equity for avoiding or repudiating a stipulation and he timely does so, he is entitled to be relieved from it, otherwise not.

Kline, at Page 476.

Further, in a 1987 Utah Court of Appeals case, while acknowledging under certain conditions that courts can be bound by stipulations between the parties, the Court indicated "that they are not bound when points of law requiring judicial determination are involved." Mooney vs. G.R. and Associates, 746 P.2d 1174. (Ut. Ct. of App. 1987)

In the instant case, the Stipulation was submitted to the Court, together with a proposed Order (R Pg. 166, Paragraph 17: Addendum #11, Paragraph 17). However, the Court feeling that the Stipulation did not meet the requirements of the Child Support Guidelines Statutes of the State, requested further documentation from both parties (R Pg. 116, Paragraph 18: Addendum #11, Paragraph 18).

II. Statutory Requirement. The applicable statutes and their pertinent language are as follows:

§ 78-45-7.3(3)(a).

In a stipulated proceeding, one of the moving parties shall submit:

- (i) a completed child support worksheet;
- (ii) the financial verification required by Subsection 78-45-7.5(5); and
- (iii) a written statement indicating whether or not the amount of child support requested is consistent with the guidelines.

The record in this case is devoid of any child support worksheets, financial verification or written statements indicating that the child support in the Stipulation was consistent with the Guidelines. Clearly, in signing the Order the Trial Court violated this statute. Further, the Court failed to follow Rule 4-504 of the Code of Judicial Administration. In subparagraph (8) of that Rule it states:

No orders, judgments, or decrees based upon stipulation shall be signed or entered unless the stipulation is in writing, signed by the attorneys of record for the respective parties and filed with the clerk or the stipulation was made on the record.

A careful review of the record indicates that the Stipulation was neither signed by respective counsel, nor read into the record. Thus, by adopting it, the Court violated this rule, and renders its Order unenforceable.

In 1989, when the documentation was not forthcoming, the Court quite correctly rejected both the Stipulation and the proposed Order, and both documents were returned by the Court through its Clerk to the Defendant's attorney, who had mailed them to the Court (R Pg. 165, Paragraph 20; R Pg. 87: Addendum #5).

Further, based upon the failure of either party to provide the necessary documentation, the Court on its own motion, dismissed the case on April 15, 1991 (R Pg. 96: Addendum #7). But Defendant submits that once having following the statute in 1989, it could not arbitrarily violate it in 1992 without additional facts to bring the Stipulation within the purview of the statute.

In the second hearing, on the same case on March 17, 1992, that hearing was clearly governed by § 78-45-7 Utah Code Annotated, 1953, as amended, which states in its applicable parts:

(1) Prospective support shall be equal to the amount granted by prior court order unless there has been a material change of circumstances on the part of the obligor or obligee.

What the Court had before it was a joint request for modification of the Texas Decree based upon changed circumstances. Instead of investigating the parties alleged changes in their circumstances, as required by statute, the Court committed error by adopting a stipulation which did not meet the requirements of § 78-45-7.3(3)(a) when it was submitted in 1989, and still did not when it was resubmitted in 1992. There is no evidence in the record to

show compliance with either § 78-45-7.3(3)(a) or § 78-45-7 and therefore Defendant submits because the parties were given the opportunity to render the Stipulation enforceable by providing the necessary documentation to bring it into compliance with statute, but failed to do so on two separate occasions, that it cannot and should not be enforced.

III. Findings of the Order Not Supported by Facts:

(a) In Paragraph 2 of the Order, it states that the parties entered into a Stipulation on September 10, 1989, prepared by Norman Rowe's attorney, and that the Stipulation was never filed by his attorney. This statement in the Order is manifestly incorrect since the documents and Affidavits filed with the Court on March 25, 1992, clearly indicate that the Stipulation was filed with the Court, and was rejected. (See Affidavit of Graham Dodd and accompanying documents from the Clerk of the Court returning the Stipulation and Order, Addendum #'s 5 and 11). That the Court committed error, there can be no doubt; for in the transcript of the hearing held on March 17, 1991, the Commissioner concluded in ten (10) different places that the Stipulation was never filed. (R Pgs. 492, 495, 496, 497, 498, 499, 501, and 502: Addendum #10) This could have been avoided had he read the file before him and his own clerk's letter (R Pg. 87: Addendum #5).

(b) The above Affidavit and accompanying documents, together with the Affidavit of Norman Rowe (R Pg. 193-195: Addendum #12), clearly indicate that the Court rejected the Stipulation based on the parties' joint failure to supply additional information to the Court (R Pgs. 113-195), thus rendering the Stipulation not in compliance with the Child Support Guidelines of the State, as enumerated above, which required fiscal disclosure by the parties. The record does not show any additional disclosure to the Court on or before March 17, which would render the Stipulation in compliance with the Guidelines. If it was rejected by the Trial Court in 1989 due to failure to comply with statute, then it should also have been rejected in 1992.

(c) Further, Paragraph 2 states that the parties in reliance on the Stipulation, executed a Satisfaction of Judgment and Mr. Rowe paid to Mrs. Rowe the sum of \$12,600.00. The Affidavits before the Court, indicate that the \$12,600.00 was paid to satisfy back child support (\$1,600.00) and \$11,000.00 to satisfy an administrative default judgment obtained by the State of Utah for and in behalf of Mrs. Rowe. Mrs. Rowe accepted the offer of the money and in exchange thereof executed the Satisfaction. Therefore, Mrs. Rowe

received full consideration for executing the Satisfaction of Judgment.

(d) The Affidavits before the Court indicate that Mrs. Rowe, at the last minute in a written letter to the Court, attempted to change the terms and conditions of the Stipulation (R Pg. 103). This, together with the failure of the parties to supply the information to the Court as requested by the Court, indicates their unwillingness to abide by the Stipulation at the time when it was submitted by Graham Dodd, Mr. Norman Rowe's attorney. In addition, Mr. Rowe's letter of September 10, 1990 (R Pg. 191: Addendum #12) together with his Affidavit (R Pg. 194, Paragraph 6: Addendum #12) clearly indicates his belief that since the Court had rejected the Stipulation, it was null and void. Thereby clearly voiding the Court's finding in its Order that the parties relied on the Stipulation. (See Paragraph 2 of Order on Order to Show Cause (R Pgs. 297-298: Addendum #13.))

IV. Plaintiff Cannot Direct the Authority of the Court. The Plaintiff is now attempting to enforce a stipulation which was submitted to the Court, refused by the Court, and the case dismissed, based upon failure to comply with statutes and failure to prosecute. Our Supreme Court has held that the parties to an

action may not seek to defeat the authority or duty of the Trial Court through a stipulation. Pearson vs. Pearson, 561 P.2d (Utah 1977). Defendant submits that this Court is not bound by the alleged Stipulation filed with the parties' signatures on it, and this has been the law in the State of Utah for many years. See Johnson vs. Johnson, 439 P.2d 843, 21 Utah 2d 23 (1968), where the Supreme Court held:

Trial Court does not have to pay any attention to written stipulation of the parties inter se when making division of property in divorce actions.

Since the Court is not bound by the Stipulation, and once having correctly rejected it, must disclose some compelling reason to adopt it and to cure its statutory defects, which it has failed to do, must follow that its Order is void. The facts, the statutes, the rules and the law are manifestly contrary to the action taken by the Trial Court.

V. Parties Effectively Waive Stipulation Through Non-Action and Plaintiff is Now Estopped From Asserting It. The parties were advised that the Court had rejected the Stipulation and the Order, subject to the parties providing additional information to the Court (R Pg. 165, Paragraph 19: Addendum #11; R Pg.193, Paragraph 7: Addendum #12, see letter of Defendant to Plaintiff (R Pg. 191: Addendum #12)). Neither party acted upon the request of the Court and it was not until the Defendant became unemployed and ceased to

make child support payments that the Plaintiff brought her Order to Show Cause, invoking the non-complying Stipulation on a case which had effectively been dismissed 2 1/2 years previously for sound statutory reasons. The inaction of the Plaintiff between 1989 when the Stipulation was rejected and February of 1992 when she tried to enforce it, is just too long a period of time to remain inactive. Defendant has submitted a record of child support payments through December of 1991 (R Pgs. 189-173: Addendum #12). If calculated correctly, those show payments of almost \$700.00 per month, in compliance with the Texas Decree and Plaintiff's apparent acceptance of the lesser amount. Defendant reminded Plaintiff that he was only paying the amount ordered by the Texas Decree and that the Stipulation had been rejected (R Pgs. 190-191: Addendum #12). Therefore, it was an error of the Court to enforce the Stipulation *nunc-pro-tunc* and fail to consider the current circumstances of the parties and past payments. Defendants submits that even if the Stipulation had been enforceable in 1989, the child support was still subject to review due to material change of circumstances per § 78-45-7 Utah Code Annotated, 1953, as amended. The parties had effectively waived their rights to enforce the Stipulation by inaction. The Supreme Court has said that, "A waiver is the intentional relinquishment of a known right." Plateau Mining Co. vs. Utah Division of Lands & Forestry, 802 P.2d 770 (Utah 1990).

Plaintiff had a known right to enforce the Stipulation in 1989, when it was before the Court, but when she refused to act, after notice, she waived that right. The Supreme Court in Beckstead vs. Deseret Roofing Company, Inc., 831 P.2d 130 (Utah 1992) said:

Failure to adhere to precise terms of the contract, combined with the absence of notice of a party's intention to insist on strict compliance, is enough evidence to support a finding of waiver (at Page 133).

By not insisting on the adoption of the Stipulation, by not providing the documentation requested by the Court, and by accepting the \$700.00 per month as per the Texas Decree, and by doing nothing after notice, the Plaintiff waived enforcement of the Stipulation. Even at the second hearing, the Plaintiff failed to bring the Stipulation within the statutes and Rule as above cited.

Plaintiff is now estopped from enforcing the Stipulation, according to CECO vs. Concrete Specialists, Inc., 772 P.2d 967 (Utah 1989). In that case, the Utah Supreme Court said, estoppel requires proof of three elements: (1) . . . failure to act by one party inconsistent with a claim later asserted; (ii) reasonable action or inaction by the other party taken or not taken on basis of first party's failure to act; and (iii) injury to the second party that would result from allowing the first party to contradict or repudiate such . . . failure to act (at Page 969). By not acting to enforce the Stipulation and by accepting the lesser child support payments as per the Texas Decree and by not responding to

Defendant's letters, Plaintiff is now estopped from enforcing the Stipulation. Mr. Rowe's letter of September 10, 1990 clearly states that he advised Mrs. Rowe of his belief as follows: *inter alia*, In January of 1990, he stopped sending \$300.00 per child for the children because the Judge had refused to sign the Order submitted with the Stipulation. He further stated, "You must be aware-by now-that the only monies required of me, is the \$700.00 ordered in the Texas Decree . . ." (R Pg. 191: Addendum #12).

It was not until May 4, 1992 that the Court obtained financial statements from Defendant (R 365) which showed he had no income, no assets and expenses of \$540.00 per month. This should have been the thrust of the Court's inquiry on March 17, 1992 at its Order to Show Cause hearing, not the enforcement of the invalid and statutorily unacceptable Stipulation.

VI. Stipulation Does Not Represent a Meeting of the Minds Between the Parties. Based upon the Plaintiff's letter to the Court (R Pg. 103: Addendum #3), the Plaintiff did not understand the terms and conditions of the Stipulation, although she signed it. In her letter to the Court, the Plaintiff indicates that the Defendant had agreed to pay all court costs and recording fees. Mr. Rowe indicates that he did not agree to those arrangements; but Plaintiff's letter indicates she thought he had; thus changing the intent of the Stipulation to include Mr. Rowe paying attorney fees

and court costs (R Pg. 194, Paragraph 5: Addendum #12). The Stipulation itself does not mention recording fees but indicates that the court costs and attorneys' fees would be the responsibility of each respective party (R Pg. 105, Paragraph 9: Addendum #3). The Defendant's Affidavit indicates his belief was that each party would be responsible for their own attorney's fees and he never at any time agreed to be responsible for and pay all attorneys' fees and costs (R Pgs. 192-195: Addendum #12). Therefore, the actions of the Plaintiff indicate that there was never any full meeting of the minds even though she signed the Stipulation. In Mooney vs. G. P. & Associates, 746 P.2d 1174, at page 1178, this Court stated, "It is well settled that a contract is voidable if there is a mutual mistake of material fact." Further, the Defendant, upon receipt of a copy of the Plaintiff's letter to the Court, realized that there was no agreement between the parties and therefore the Stipulation, even though signed, did not really represent a meeting of the minds as between the parties, and since the Court had indicated that it was not going to approve the Stipulation and sign the Order, that the Stipulation was of no force and effect (See Defendant's letter to Plaintiff R Pg. 191: Addendum #12). It is clear from the documents before the Court that the Defendant believed that the Stipulation was not binding. In his correspondence to the Plaintiff of September 10, 1990, he

clearly states that he is only bound by the Texas Decree (R Pg. 191: Addendum #16). Therefore, to grant Plaintiff's motion would be to enforce a stipulation that was once correctly rejected by the Court upon which the parties never really had a meeting of the minds, in a case that has already been dismissed due to lack of prosecution and noncompliance with statute. In addition, since both parties had brought actions to modify the Texas Decree, Mr. Rowe, based upon his drastic and material change in circumstances, and Mrs. Rowe based upon his failure to pay and her increased expenses, the question of material change of circumstances was plainly before the Court. The Court's proper direction should have been the investigation of the changed circumstances, which it failed to do.

VII. Improper Execution. Defendant submits that the Trial Court committed one last error in its determination of this case. The Order on Order to Show Cause (R Pg. 296: Addendum #13) has not been properly signed by the Court. The stamped reproduction of the Commissioner's signature does not validate the Order. The Defendant in this action knows of no rule or statute which would allow the clerk to stamp the signature of the Commissioner on an order to make it valid. The closest rule we have found is in the Judicial Code. The applicable Rule is found at 4-403 of the Code of Judicial Administration, which states in its pertinent parts:

- (1) The clerk of the court may, upon prior judicial approval, use a "Signature Stamp" in lieu of obtaining the judge's signature on the following:

(d) Orders to Show Cause

- (2) When a clerk is authorized to use a signature stamped as provided in paragraph (a), the clerk shall sign his or her name on the order or minute entry directly beneath the stamped imprint of the judge's name.
- (3) All other orders shall be personally signed by the judge.

Even if the Order on Order to Show Cause meets this Rule, which Defendant does not admit, it is clear that whoever stamped the Order should not have done so without signing the same in compliance with the above Rule. A quick review of the Order on Order to Show Cause (R Pg. 296: Addendum #13) shows that this was not done. By not complying with this rule, Defendant submits that the Order on Order to Show Cause is invalid and should not be upheld.

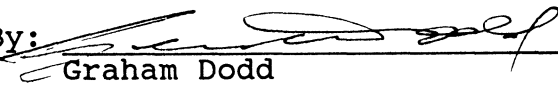
CONCLUSION

At the time when the parties submitted the Stipulation and Order to the above entitled Court, neither one was living within the State. The Stipulation was negotiated between them, and their respective counsel, and was submitted to the Court, together with an Order, for the Commissioner's signature. However, the Court rejected the Order and the Stipulation and requested additional information to comply with the Utah Statutes regulating Child

Support Guidelines. When the parties failed to come forth with the requested documentation, the Court correctly on its own motion, dismissed the case. The dismissal of the case rendered the Stipulation null and void. In addition, the letter from the Plaintiff indicating a different understanding of the Stipulation from that expressed in the Stipulation, indicates that she did not fully understand the Stipulation and that a meeting of the minds had not occurred. In addition, the inaction of the Plaintiff after notice and her acceptance of the Texas Decree child support amount constitutes waiver and estoppel. Further, the Court below erred in not bringing the Stipulation within the requirements of the Child Support Statutes and not directing its inquiry into the material change of circumstances alleged by the parties. The Court failed to comply with §§ 78-45-7, 78-45-7.3; Rule 4-504 and Rule 4-403. Therefore, Defendant respectfully requests that the case be remanded back to the Fourth Judicial District Court for further proceedings and that the Order on Order to Show Cause be stricken and the Stipulation of September 10, 1989 be declared null and void.

DATED on this the 25th day of February, 1993.

KIRTON, McCONKIE & POELMAN

By: 
Graham Dodd
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of February, 1993, I mailed a true and correct copy of the foregoing **BRIEF OF APPELLANT NORMAN H. ROWE** first class postage prepaid to the following:

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