

1965

Hardy Seuring v. Dennis Cook : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Seuring v. Cook*, No. 10097 (Utah Supreme Court, 1965).

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**IN THE SUPREME COURT OF THE
STATE OF UTAH**

HARDY SEURING, a minor by and
through his guardian ad litem
GERDA SEURING,
Plaintiff and Appellant,

vs.

DENNIS COOK,
Defendant and Respondent

Case No. ¹⁰⁰⁹⁷~~10027~~

APPELLANT'S BRIEF

Appeal from the Judgment of Dismissal
entered by the Third District Court of Salt Lake County
Honorable Aldon J. Anderson, Judge

UNIVERSITY OF UTAH

APR 29 1965

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**IN THE SUPREME COURT OF THE
STATE OF UTAH**

HARDY SEURING, a minor by and
through his guardian ad litem
GERDA SEURING,

Plaintiff,

vs.

DENNIS COOK,

Defendant.

Case No. 10027

APPELLANT'S BRIEF

STATEMENT OF THE KIND OF CASE

This action was filed in the District Court of the Third Judicial District at the instance of the plaintiff but with the prior consent and concurrence of the defendant in order to insure to the plaintiff his right to support until he reaches the age of majority in accordance with the duty imposed upon the defendant by the Uniform Civil Liability for Support Act, as appears in Utah Code Annotated, 1953, Title 78-45-3, which states simply:

“Every man shall support his wife and his child.”

DISPOSITION IN LOWER COURT

On February 10, 1964, the time set for hearing on an Order to Show Cause directed to the defendant to show cause why judgment for the support arrearages and an order for continuing support should not be entered, the Court, acting upon the oral motion of defendant's counsel, made in open Court without prior notice, at the time and place of the hearing on said Order to Show Cause, expressed its indignation over the fact that the plaintiff's counsel had prepared the "Answer" the defendant signed, expressed the opinion that such a practice was "inimical to advisory proceedings prescribed by our system of justice," refused to take evidence or argument on the plaintiff's Order to Show Cause, and summarily ordered the plaintiff's Complaint dismissed.

RELIEF SOUGHT ON APPEAL

The plaintiff seeks to have his Complaint and action reinstated, judgment entered for the support arrearages accruing since October 19, 1962, at the rate of \$20.00 per month, and a continuing order of support entered against the defendant, together with his costs incurred in the original action and the costs of this appeal.

STATEMENT OF FACTS

The plaintiff, Hardy Seuring, is a male infant, born October 19, 1962, in Moenchengladbach, Germany. His mother is Gerda Seuring. The defendant, Dennis Cook, a resident of the State of Utah, was stationed with the American Military forces in Germany during part of 1961 and 1962. Gerda Seuring, a resident of Moen-

chengladbach, Germany, then a girl 18 years of age (born June 9, 1943) claims to have become acquainted with the defendant, Dennis Cook, a sergeant in the United States Army, in November of 1961, in Wildflecken, Germany, and to have become engaged to him on the 27th day of December, 1961. A wedding date of February 15, 1962, was agreed upon, but the marriage never took place because of the opposition of the parents of Gerda Seuring to her proposed marriage to the defendant. Gerda Seuring claims that during the period of her engagement, that she with defendant, Dennis Cook, had her first and until after the birth of her child, Hardy Seuring, her only sexual contact and that as a result thereof she conceived and later gave birth to the minor plaintiff. (She is now married.)

Counsel for the plaintiff is also the Consul for the Federal Republic of Germany for the State of Utah. The matter was referred to his office for the purpose of obtaining from the defendant an acknowledgment of his paternity and some sort of a confession of judgment or liability which could be used to enforce by judicial proceedings the defendant's obligation to support the child, Hardy Seuring. The initial contact with the defendant made by letter dated February 2, 1963, the full contents of which are set forth as follows:

February 2, 1963

Mr. Dennis Cook
Box 444
Kaysville, Utah
Dear Mr. Cook:

The German Consulate General in San Francisco, California, has forwarded today to this office your files for further processing.

According to information contained in this file, it appears that Gerda Seuring has named you as the father of her minor child, Hardy Seuring, born October 19, 1962.

It is the desire of this office to effect a peaceful reconciliation with you. It will be required that you provide a monthly payment for the support of your minor child. It is our desire to do this without necessity of bringing a court action, if possible.

It is very urgent that you contact this office and arrange an appointment with me to discuss this matter. If we fail to hear from you within 10 days from the date hereof, we shall proceed to file our action in pursuance of the provisions of title 78, chapter 45, paragraphs 3, 4, and 5 of Utah Code Annotated 1953, to obtain an order of the court against you according to the law in such cases made and provided.

Very truly yours,

John Elwood Dennett

JED:ah

cc: German Consulate, Dr. Harald Michelsen

According to the affidavit and testimony of the defendant, Dennis Cook, and his wife, Sharon Cook, one of them called the office of the plaintiff's counsel by long distance from Syracuse, Utah, and arranged with the receptionist for an appointment for the morning of February 18, 1963. The receptionist apparently failed to inform plaintiff's counsel of the appointment so that the appearance of the defendant and his wife in the office of the plaintiff's counsel of February 18, 1963, between 10:00 a.m. and 11:00 a.m. was somewhat of a surprise.

The defendant confessed freely to his paternity and offered an explanation for what had happened and his regret that Gerda's parents had opposed their marriage. He wanted to discharge his moral and legal obligation and was willing to sign any papers necessary for that purpose. His chief concern was the avoidance of any unfavorable publicity or the payment of attorney's fees.

He stated that he always had been willing, ready, and able to marry Gerda Seuring, but because of the parental opposition aforesaid, the same never took place. There was a complete absence of any hostility or adverse feelings throughout the conversation of the plaintiff's counsel, the defendant, and the defendant's wife. Even upon admitting freely to the paternity of the child the defendant's wife seemed to be sympathetic and understanding.

Plaintiff's counsel immediately dispatched a secretary to prepare the necessary papers for the defendant to sign, namely a complaint, a petition for guardian ad

litem and a confession of liability in the form of an answer.

Although the volume of typing was considerable, this turned out to be a relatively easy task. A number of previous cases similar to this had been processed through this same law office and preparing papers for the defendant in this action to sign was simply a matter of changing a few names and dates in an old file and then copying. The usual type of document executed on such an occasion is a simple confession of judgment. However, in this case such a document was fraught with complications due to two or three important facts.

1. The plaintiff's counsel, while being familiar with the confession as a device for confession of judgment for a liquidated amount or a fixed sum, had never used or seen the device employed for the purpose of establishing a judgment for a continuing support obligation.

2. Since the principal plaintiff in this action was a minor, the legal question arose as to whether a judgment could be confessed in favor of a minor for whom a guardian ad litem had not been appointed.

Rather than risk any loop holes that might ensue by the attempted use of the confession of judgment to establish a continuing liability of support and because no guardian ad litem had been appointed at the time the defendant was willing to sign a confession of judgment, it was decided to make some sort of an adaptation of

device used frequently in a divorce proceedings called an appearance and waiver. This, too, had its complications inasmuch as the petition for guardian ad litem had to be dispatched to Germany for signature before the complaint and hence, the answer could be filed. Also, the risk was present that the defendant, in signing a simple blanket admission might later claim to have intended to admit facts other than those that actually were stated in the complaint that was later filed. For this reason, it was thought advisable that the answer instead of admitting certain numbered paragraphs of a proposed plaintiff's complaint, should in addition thereto set forth completely in the answer all facts which the defendant was specifically admitting.

While the documents were being prepared, a task which took nearly an hour, the plaintiff's counsel, the defendant, and the defendant's wife engaged in pleasantries, small talk and jovial banter for the purpose of killing time for the ensuing 30-45 minutes waiting period while the documents were being typed and to alleviate the boredom of waiting. Because of the friendly and co-operative attitude, the conversation covered various areas of German geography, philosophy, religion, morality, personal and similar experiences, etc. Some of the stiff formality ordinarily accompanying proceedings such as this was dropped due to the attitude displayed by the defendant and his wife.

The conversation drifted to other cases similar to this one including several paternity cases which had ended either in the subsequent marriage of the father and the mother or the establishment of a home and a

place to rear the child. Since marriage was out of the question as far as the defendant in this case was concerned because the defendant had married in the meantime, the possibility of adopting the child was discussed. This was a favorite subject of plaintiff's counsel, since plaintiff's counsel himself has experienced the happiness of an adoption, a fact that was freely disclosed to the defendant and his wife at the time of this discussion. (Although this disclosure has been the source of some regret now that it becomes apparent how intimate information of this sort can be twisted and misused.)

(The possibility of adopting the child by the defendant and his wife was complicated by the fact that the infant child had lived more than three months with its natural mother and it would not be easy to separate him from her to be reared in the home of the father in a strange land and by a step-mother.) There was the further problem of finances. The defendant complained of seasonal unemployment and inquired as to the cost of an adoption proceeding. He was informed that the cost of air transportation for either having the baby brought here and the escort returned or the father going from here and bring the child back would be about \$2,000.00. An inquiry was also made regarding visas, affidavits of support, and the like for bringing the child into the United States if the natural mother would consent to such an arrangement. The defendant was advised that the plaintiff's counsel would be more than willing to help with translations, letters in the German language, affidavits, visas, passports, and the like at no cost to the defendant. The defendant was not fluent in German and plaintiff's counsel was willing to be helpful.

After discussing the aforestated legal problems in accepting a simple confession of judgment, it was explained that neither the complaint nor the petition for appointment of guardian ad litem could be filed with the court until the same had been dispatched to Germany, signed, and returned. If the defendant wanted to sign the appearance and waiver and confession of liability in the form of a very detailed answer at this time, the same would have to be held in file until such time as the complaint had been verified and the petition for guardian ad litem had been returned from Germany for filing.

The proposed complaint was then jointly read in detail aloud by the plaintiff's counsel to the defendant (it being a very short complaint consisting of only six paragraphs each having three or four lines.) Then the answer, which repeats nearly word for word the allegations of the complaint was also read. The petition for appointment for guardian ad litem was mentioned, but not read. An explanation was offered that this was a document on the basis of which the court could appoint a person of the age of maturity to represent the interest of the minor. The defendant agreed that the answer could be held and filed together with the complaint as soon as the complaint and petition were returned from Germany.

Before signing the answer, the defendant asked if he would have to pay support money to the plaintiff's mother if the proposed adoption proceedings were successful. He was informed that the child would only be entitled to be supported once and that if he was living with and receiving support from the father that there would be no duty on the part of the father to pay the

mother any sum of money for the support of the child. The answer was then signed. To insure against any possible slip-ups, the defendant was asked to initial the first page of the answer, which he filed, as well as to sign the second page thereof.

The papers were then dispatched to Germany, later returned and finally filed.

In response to the defendant's chief and only expressed concern that he would not be burdened with attorney's fees and court costs in addition to his obligation for support for the child, the plaintiff's counsel assured the defendant that the defendant would have to pay no attorney's fees connected with this proceedings and that beyond the obligations set forth in the complaint and answer to pay to the minor plaintiff the sum of \$20.00 monthly, that there would be no duty to pay any attorney's fees or court costs beyond those cost actually expended in filing the complaint which were less than \$20.00.

On July 22, 1963, immediately upon receiving the papers back from Germany, the plaintiff's counsel sent to the defendant a letter in the following words and figures:

July 22, 1963

Mr. Dennis Cook
Box 444
Kaysville, Utah
Dear Mr. Cook:

The papers finally arrived from Germany. We filed them today, and requested the Judge to sign an appropriate order. Copies for your files are enclosed herewith.

After several inquiries, Miss Seuring did not want to consider the question of adoption. However, your consideration for the welfare of the child was appreciated by all concerned.

It appears that Miss Seuring was married to Wilhelm Jungen on May 30th of this year. This will serve as added assurance that the child will be cared for.

Payments of the agreed support should be made through this office. They have been set at \$20.00 per month. You may determine for yourself what days of each month you wish to pay the same. As long as they arrive regularly, no one will bother you.

If you have any question in the matter, please feel free to call upon me.

Very truly yours,
John Elwood Dennett

JED:jl
Enclosures

The defendant's wife called shortly after July 22, 1963, acknowledging receipt of the letter referred to, stating that the defendant was still unemployed and that they now lived at a new address, namely, 229 East 2nd South, instead of Box 444, Kaysville, Utah.

Plaintiff's counsel was asked if the defendant could have an additional month in which to commence regular \$20.00 monthly payments and if the arrearage could be caught up at some future date. This was an agreeable arrangement.

In connection with the papers that were returned from Germany, Miss Seuring indicated unequivocally that she was unwilling under any circumstances to con-

sider any type of adoption arrangements. After a period of time had elapsed and the defendant had not made the payments in accordance with his agreement, it appeared expedient to explore the defendant's circumstances and the reasons for non-payment of the agreed sum of support. An Order to Show Cause was sought of the court to bring the matter to some sort of speedy conclusion.

The Honorable Judge Aldon J. Anderson signed an Order to Show Cause on the 29th day of January, 1964, ordering the defendant to be and appear before him on Monday, the 10th day of February, 1964, at the hour of 10:30 a.m. to show cause, if any, why judgement should not be rendered against him for the arrearages of \$300.00 and the costs of court of \$17.00 and why he should not be ordered to pay the sum of \$20.00 per month for the support and maintenance of the plaintiff.

At the time and place of the hearing as aforesaid, the defendant appeared together with Alfred Van Wageningen who without prior warning or notice, moved the court for an order of dismissal basing the argument somewhat upon the fact that the appearance and waiver and confession of liability in the form of an answer was not filed until after the return of the complaint from Germany, during the pendency of which there was action pending. He more specifically argued that counsel's procedure involved here violated Canons 5 and 8 of the Code of Legal Ethics in that the answer which the defendant had signed had been prepared for his signature by the plaintiff's counsel and that such proceedings were "inimical to the adversary proceedings prescribed by our

system of justice.”

The Court, upon hearing argument, seemed to brush aside the first proposition. Being apparently incensed over the fact that the answer which the defendant had signed was in fact typed for his signature by the plaintiff's counsel, the court directed one single question to the plaintiff's counsel to the effect “Mr. Dennett is it true that you prepared the Answer which the defendant signed which has been filed in this action?” To which plaintiff's counsel replied affirmatively. Whereupon, the court adopting the language of the argument of the defendant's counsel, said “I don't need to hear any more. This is inimical to adversary proceedings prescribed by our system of justice. The plaintiff's complaint is dismissed.”

ARGUMENT

POINT I: *There was nothing improper or irregular in the proceedings held or the conduct of counsel.*

A certain amount of mind reading would be helpful in trying to ascertain the acts and omission of which the trial judge so strongly disapproved which motivated him to dismiss the complaint. The thoughts, feelings, and judgments of the trial judge must be inferred from his statement that the actions of plaintiff's counsel were “inimical to the adversary proceedings prescribed by our system of justice.”

This thinking apparently reflects the broad rule that attorneys shall not represent conflicting interests.

This is obviously a good rule. *Corpus Juris Secundum* states it this way: (Attorney and Client, Topic 47 of Volume 7, Page 823)

“An attorney is by virtue of his office disqualified from representing interests which are adverse in the sense that they are hostile, antagonistic, or in conflict with each other.”

Common sense dictates that there can be no quarrel with such a proposition. This isn't the problem. It's a question simply of whether plaintiff's counsel's conduct constituted representation of the defendant; and even if it did, if the parties didn't consent thereto on full disclosure of the facts. It is further a question of whether the defendant has any standing to object thereto, and even if he did have, whether there exist any grounds for dismissing the plaintiff's complaint by reason thereof.

The first question as to whether there was any representation is a question of fact. On the second question (of consent and waiver), we read from *Corpus Juris Secundum* (Vol. 7, Attorney and Client, Page 826)

“An attorney may properly represent adverse interest where the persons represented expressly authorize him to do so or consent to the representation. Or where notwithstanding the existence of conflicting interests, the parties concerned on full disclosure of the facts by the attorney's direct him to continue.”

This, of course, is the rule where there are conflicting interests and where there is in fact a representation arrangement. The few minor helps offered to the defendant in writing letters, obtaining visas, etc., hardly

seem hostile or adverse to the basic question of paternity, about which there seemed to be no question at the time.

Corpus Juris Secundum (Ibid. Page 825) says:

“However, it is not inconsistent with the status or office of an attorney that he would represent different interests which are not actually adverse in the sense that they conflict or are hostile. The possibility that different interests represented by an attorney might develop a conflict does not sufficiently disqualify him. Nor is an attorney to be disqualified merely by reason of conduct with respect to a party not amounting to impropriety under the circumstances of a particular case and where the parties represented by an attorney were actually benefited rather than adversely effected by attorney’s conduct.”

On the question of the defendant’s standing to object to the plaintiff’s counsel’s offer to help him in matters of visas, etc., while representing the plaintiff’s paternity claim against him, *Corpus Juris* further states (Ibid. Page 826)

“The objection that an attorney is disqualified by reason of his representing adverse interests is available only to those as to whom the attorney in question sustains the relationship of attorney and client.”

Furthermore, if this court were to hold against the plaintiff on all of these issues, the only remedy is against the plaintiff's attorney for damages. The absence of any grounds for dismissal is treated in the next section of this brief. *Corpus Juris Secundum*, Section 151, at Page 986, Volume 7 (headnote) says:

"An attorney representing an adverse interest may be liable to one of the parties for loss due to the attorney's failure to disclose material facts."

The text treatment of the headnote is as brief as the headnote itself:

"In accordance with the Rule that attorneys are by virtue of their office disqualified from representing adverse interests in the sense that they are in conflict, an attorney who without the consent of the interested party represents such adverse interests may be liable for loss sustained by one of such parties due to the attorney's failure to disclose this material fact."

This makes the issue here very simple:

- (a) Did the plaintiff's counsel ever represent the defendant? If so, what were the terms and scope of the employment?
- (b) If so, what payment or promise of payment was made for the services?

(c) Did the defendant consent to the plaintiff's counsel doing what he did?

(d) Did the defendant have a full disclosure that the plaintiff's counsel was representing the plaintiff?

(e) Are offers to help with foreign language problems, foreign correspondence, visas, passports, etc., hostile, antagonistic, in conflict or incompatible with obtaining a simple confession of liability of paternity?

(f) What was the nature of the impropriety involved in preparing for the defendant his confession of liability which he signed?

(g) Did the defendant consent to being helped (represented is not the word)?

(h) Does the defendant have any standing to object to the representation?

Statements in the defendant's affidavit which imply that plaintiff's counsel was representing the defendant are flatly belied by the defendant's testimony and may be disregarded. Also his statement to the effect that he was signing a confession of liability so that the matter could be later tried, tested, and fought, the result of which would have been exactly contrary to the liability which he confessed, stretches one's credulity too far, especially when done by a man of at least average intelligence who can read and write the English language and who is a sergeant in the United States Armed Forces. The offers to be helpful in writing letters to the appropriate German authorities to the plaintiff with re-

spect to the question of adoption were merely helpful gestures in view of the German language problem. Likewise, the offers to be helpful in the matter of passports and visas were friendly gestures which cannot be tortured into being legal representation even by the most twisted views. The defendant never paid nor offered to pay the plaintiff's attorney for these gratuitous helps. Where is this relationship of attorney and client between the plaintiff's attorney and the defendant which seems to be causing so much consternation?

Furthermore, the plaintiff would be the party having grounds to object to this conduct; not the defendant. If the plaintiff were to have an objection that the plaintiff's counsel should not offer to be helpful to defendant in the writing of foreign language letters, obtaining passports and visas, and assisting in other matters relating thereto, it would be the prerogative of the plaintiff and not the defendant to object thereto.

Were this court to uphold such a bizarre rule and all of its implications it would mean the following:

1. That a plaintiff who represents a creditor and brings a suit upon a debt against a debtor could never accept payment, accept a promise of payment, agree upon an arrangement for payment, accept or prepare a promissory note or prepare any instrument or evidence of indebtedness for the debtor to sign, a practice engaged in nearly every day by practicing attorneys.

Also an attorney representing parties in a divorce proceeding could not prepare an appearance and waiver

for the defendant to sign, a stipulation of property settlement agreement, or an answer for the defendant without violating the rule against representing parties having an adverse interest.

It would also mean that counsel representing the prospective adopting parents: Could not visit or talk with the natural mother, prepare the consent for adoption, appear in court with the natural mother, or have any contact or conversation with the natural mother which, of course, would be abused under prevailing procedures.

It is not urged that in this case any fine lines need be drawn to determine any respective rights of the parties. It is simply a matter of applying common sense and good judgment to the facts and circumstances that exist in this case.

POINT II. Even if the conduct of plaintiff's counsel were found to be improper, this is not grounds to dismiss plaintiff's complaint.

Grounds for involuntary dismissal are covered in Rules 12 and 37 of the Utah Rules of Civil Procedure.

Rules 12 (b) states that involuntary dismissal may be effected for:

(1) Lack of jurisdiction of the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief

can be granted, and (7) failure to join an indispensable party.

Rule 37 and other rules also provide that an action may be involuntarily dismissed for failure to obey a court order.

If these stated grounds are by implication the only grounds for dismissal, there is no cause for dismissal in this case.

Text authorities citing grounds of dismissal follow the same list of reasons as our Utah rules of civil procedure do. They are digested in our particular jurisdiction under "Dismissal and Non-suit, Involuntary." Significant sub-sections are as follows:

- 46. Actions or proceedings which may be dismissed.
- 49. Rights to dismissal or non-suit in general.
- 52. Discretion of the court.
- 53. Grounds
 - (1) In general
 - (2) Vexations or fictitious suits
 - (3) Stale demand
 - (4) Res judicata
 - (5) Want of authority to bring suit
- 55. Want of jurisdiction
- 56. Defects and objections as to parties
- 58. Defects and objections as to pleadings
 - (1) In general
 - (2) Filing or service delayed or omitted

(3) Insufficiency

(4) Variance

81. Setting aside a reinstatement of cause.

Researching the cases cited in the various sub-topics, the only conclusion that can be reached by this counsel is that there is no precedent, and are no cases in point, and no authority which would sustain an order of dismissal under the facts of this case. The digest on many pertinent points simply makes reference to *Corpus Juris Secundum*, and *American Jurisprudence*, both of which give similar treatment to the subject of Dismissal and Non-suit.

The numbers of the captions are slightly different in the text authorities. The subject is treated in Vol. 27, Dismissal and Non-Suit Topics 45 through 65. The introduction states flatly that "a motion to dismiss suit should be founded on some defect apparent on the face record caused by the plaintiff's act or neglect and should not be based on matter of defense or matters relating to the merits." (*Corpus Juris Secundum*, Dismissal and Non-suit, Section 55, headnote.)

The various grounds stated in the text authority are as follows:

1. Moot or academic question
2. Premature bringing of the action
3. Vexations or fictitious suit
4. Res Judicata

5. Pendency of another suit
6. Want of authority to bring suit
7. Error as to nature or form of remedy
8. Misjoinder
9. Disobedience of Order of Court
10. Want of jurisdiction
11. Irregularity of proceedings generally
12. Delay in issue of service and return of process
13. Want of capacity to sue
14. Misnomer
15. Non-joinder of parties
16. Misjoinder of parties
17. Death, disability or withdrawal of a party
18. Variance in pleadings
19. Want of prosecution

This same list is covered with slightly different wording in American Jurisprudence. If the text authorities can be presumed to have made a comprehensive, thorough, and exhaustive study and list of all possible grounds for granting a dismissal or non-suit, it is submitted that none of the foregoing grounds are present in the instant case.

If the defendant was entitled to any remedy or relief from his acts, it would perhaps be for leave to withdraw his former answer and file an amended answer to

obtain relief from its effect if he can sustain the burden of proof that it was obtained under certain representations, duress, menace or undue influence.

Under no circumstances can any authorities be found or cited which support the proposition that the facts and circumstances if the defendant's version of them were to be deemed to be true, would support an order of dismissal of the plaintiff's complaint.

The text authorities universally hold that dismissal is a harsh remedy and should not be invoked because of the reason of certain technicalities. Certainly the deprivation of the plaintiff's right to be supported is too harsh for the facts brought to light in this case. An order of dismissal would adversely effect the life of an innocent infant for the next 21 years, punishment far too severe for an alleged indiscretion of his attorney whom he in fact has never met.

CONCLUSION

It is submitted that the procedures taken in the case involved were entirely proper in accordance with established rules and procedures and were correct and circumspect in every respect. Even if this court should find the same not to be the case, an order of dismissal is an improper remedy and should not be invoked. If the defendant is entitled to any relief from his acts and omission, the relief would have to be different than that relief granted by the trial court of dismissing the plaintiff's complaint against him.

It is respectfully submitted that the plaintiff is entitled to reinstatement of his cause of action, entry of

judgment for the monthly arrearages accruing after October 19, 1962, costs of court incurred in the District Court, and the costs of this Appeal.

/s/ JOHN ELWOOD DENNETT,
Attorney for Appellant
1243 East 2100 South,
Salt Lake City, Utah

CERTIFICATE OF MAILING

Mailed two copies of the foregoing Appellant's Brief to Mr. Alfred C. Van Wagenen, Attorney for Defendant, 201 Linwood Drive, Clearfield, Utah, this 8th day of September, 1964.

/s/ JOHN ELWOOD DENNETT,