

2004

Jerry Houghton, Susan Houghton, Kendall R.
Thomas, Marlene Thomas, 1995 Thomas Family
Trust v. Glen E. Miller : Reply Brief

Utah Court of Appeals

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Douglas F. White; Counsel for Cross-Appellants.

Glen E. Miller; Pro Se.

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Reply Brief, *Houghton v. Miller*, No. 20040007 (Utah Court of Appeals, 2004).

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IN THE UTAH COURT OF APPEALS

JERRY HOUGHTON, SUSAN)
HOUGHTON, KENDALL R. THOMAS,)
MARLENE THOMAS, and the 1995)
THOMAS FAMILY TRUST,)

Cross-Appellants,)

vs.)

GLEN E. MILLER,)

Cross-Appellee.)

Case No. 20040007 CA

**UTAH COURT OF APPEALS
BRIEF**

**UTAH
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DOCKET NO. 20040007 CA

REPLY BRIEF TO BRIEF OF CROSS-APPELLEE

REPLY TO CROSS-APPELLEE'S BRIEF FROM AN ORDER OF THE THIRD JUDICIAL DISTRICT COURT, TOOELE COUNTY, JUDGE RANDALL N. SKANCHY, DECLARING THE DEFENDANT/CROSS-APPELLEE, GLEN E. MILLER, WAS ENTITLED TO A HOMESTEAD EXEMPTION IN A PARCEL OF REAL PROPERTY, EVEN THOUGH A PREJUDGMENT WRIT OF ATTACHMENT WAS PREVIOUSLY ORDERED AND RECORDED AT A TIME THAT REAL PROPERTY COULD NOT QUALIFY AS A HOMESTEAD, PURSUANT TO SECTION 78-23-3, UTAH CODE ANNOTATED.

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FILED
UTAH APPELLATE COURTS
Counsel for Cross-Appellants
JAN 21 2005

IN THE UTAH COURT OF APPEALS

JERRY HOUGHTON, SUSAN)
HOUGHTON, KENDALL R. THOMAS,)
MARLENE THOMAS, and the 1995)
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Case No. 20040007 CA

vs.)

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TABLE OF AUTHORITIES

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IN THE UTAH COURT OF APPEALS

JERRY HOUGHTON, SUSAN)
HOUGHTON, KENDALL R. THOMAS,)
MARLENE THOMAS, and the 1995)
THOMAS FAMILY TRUST,)

Cross-Appellants,)

Case No. 000301127

vs.)

GLEN E. MILLER,)

Cross-Appellee.)

REPLY BRIEF TO BRIEF OF CROSS-APPELLEE

JURISDICTIONAL STATEMENT

This Court has jurisdiction of this matter pursuant to Utah Code Annotated, Section 78-2a-3(2)(j).

STATEMENT OF THE ISSUES AND STANDARD OF REVIEW

Issue 1

MR. MILLER CONCEDES THAT HE IS NOT ENTITLED TO A \$40,000.00
HOMESTEAD EXEMPTION, BUT IS ENTITLED TO A \$10,000.00
HOMESTEAD EXEMPTION, PURSUANT TO SECTION 78-23-3(2)(a)(i),
UTAH CODE ANNOTATED

(Cross-Appellee Brief, Page 10 and 11.)

Issue 2

THE JUDGMENT OBTAINED AGAINST L.D. and B. MANAGEMENT
BY CROSS-APPELLANTS, HOUGHTON AND THOMAS, HAS
NEVER BEEN SATISFIED, WAS ISSUED IN A DIFFERENT
CASE AND IS NOT AN ISSUE ON APPEAL.

(Cross-Appellee's Brief, Page 1, Lines 18 through 26 of Annotation.)

Issue 3

THE PROCEDURE OF THE JUDGMENT FORECLOSURE IS
NOT AN ISSUE ON APPEAL.

(Cross-Appellee's Brief, Page 22, Lines 14 through 16.)

Standard of Review: The standard of review of the above stated issues is for correctness, granting no deference to the trial judge's legal determinations. Meadowbrook, LLC vs. Flower, 959 P.2d 115 (Utah 1998).

STATEMENT OF THE FACTS

1. The Third District Court originally determined that Mr. Miller was entitled to a \$40,000.00 homestead exemption on the house located at 358 North 100 East, Tooele, Utah, pursuant to Section 78-23-3(2)(a)(ii), U.C.A. (\$20,000.00 for himself and \$20,000.00 for his wife.) (Cross-Appellants' Brief, Addendum 9, Page 3.)

2. The Houghton's and Thomas's cross appealed this determination on the legal basis that the property located at 358 North 100 East, Tooele, Utah did not qualify for any homestead exemptions, let alone not being the primary residence of Mr. Miller. (Cross-Appellants' Brief, Issues 1 and 2.)

3. Mr. Miller now concedes that he is not entitled to a \$40,000.00 homestead exemption, but does qualify for a \$10,000.00 homestead exemption, pursuant to Section 78-23-3(2)(a)(i), U.C.A. (\$5,000.00 for himself and \$5,000.00 for his wife.) (Cross-Appellee's Brief, Pages 10 and 11.)

4. Mr. Miller raises, for the first time in the appellate process, that the unsatisfied judgments obtained by Houghton's and Thomas's in different case have some relevance to whether the prejudgment Writ of Attachment obtained on March 27, 2001 should be "characterized" as a "judicial lien" that "seized the property." (Cross-Appellee's Brief, Page 1 Annotation, Lines 23, 24 and 25.)

5. Mr. Miller raises, for the first time in the appellate process, that he has issues with the Writ of Attachment procedure used by the Sheriff, pursuant to Rule 64 C(e). (Cross-Appellee's Brief, Page 21, Lines 16 through 23; and Page 22, Lines 1 and 2.)

SUMMARY OF ARGUMENT

The Cross-Appeal only raises two (2) issues. First, did the property at 358 North 100 East, Tooele, Utah qualify for a homestead exemption on March 26, 2001, pursuant to Section 78-23-3(2)(a)(ii), U.C.A., at the time the prejudgment writ was issued? Second, what effect, if any, did the homestead declaration of March 27, 2003 have on the prejudgment Writ of Attachment of March 26, 2001?

Cross-Appellants have argued the house should not have been given any homestead exemption status on the basis that it was not the Millers' primary personal residence on March 26, 2001.

Mr. Miller now concedes, for the first time, that the house was not his primary personal residence, but now argues that the house was his non-primary personal residence, pursuant to Section

78-23-3(2)(a)(i), U.C.A., (Cross-Appellee's Brief, Page 10, Lines 8 through 11), which would entitle him to a \$10,000.00 homestead exemption, instead of a \$40,000.00 homestead exemption.

Issues 2 and 3 above are issues not raised in Cross-Appellants' brief. Furthermore, Mr. Miller failed to file any brief as to any issue raised in his appeal; and as such, any of those issues are now moot.. (See Order of Dismissal, dated September 17, 2004, Addendum 1.)

Therefore, Issues 2 and 3, as discussed in Mr. Miller's Cross-Appellee's brief for the first time, should not be addressed or considered as part of the Cross-Appellants' appeal.

ARGUMENT 1

MR. MILLER CONCEDES THAT HE IS NOT ENTITLED TO A \$40,000.00 HOMESTEAD EXEMPTION, BUT IS ENTITLED TO A \$10,000.00 HOMESTEAD EXEMPTION, PURSUANT TO SECTION 78-23-3(2)(a)(i), UTAH CODE ANNOTATED

(Cross-Appellee Brief, Page 10 and 11.)

The Cross-Appellants have appealed and argued that because the house at 358 North 100 East, Tooele, Utah was not Mr. Miller's, nor his family's, primary personal residence on March 26, 2001 when the prejudgment hearing was held, or April 17, 2001 when the prejudgment Writ of Attachment was signed, that it should be denied any homestead status. Nevertheless, if the Court finds there is any homestead status, then it must so declare it as the non-primary personal residence of Mr. Miller, according to his own admissions and concessions set forth in his Cross-Appellee brief.

Mr. Miller states:

"Just because the property located at 358 North 100 East was not the primary personal residence of Miller on April 17, 2001, does not preclude the property... from qualifying for a homestead exemption." (Cross-Appellee's Brief, Page 10, Lines 8 through 11.)

"It is an established fact that on April 17, 2001, the day the prejudgment order was signed by Judge Young, Miller's primary personal residence was located at 891 Upland Drive, Tooele, Utah." (Cross-Appellee's Brief, Page 10, Lines 9 and 10.)

"Therefore, on April 17, 2001, the property in question (358 North 100 East) qualified for a homestead exemption under the provisions of 78-23-3(2)(a)(i). . . ." (Cross-Appellee's Brief, Page 11, Lines 12 and 13.)

Utah Code, Section 78-23-3(2)(a)(i) states as follows:

"(a) An individual is entitled to a homestead exemption consisting of property in this state in an amount not exceeding:

(i) \$5,000 in value if the property consists in whole or in part of property which is not the primary personal residence of the individual. . ."

Therefore, Cross-Appellants hereby concede to Mr. Miller's admission and argument that the house located at 358 North 100 East, Tooele, Utah does comply with Section 78-23-3(2)(a)(i), and not Section 78-23-3(2)(a)(ii). Furthermore, as a result, Mr. Miller is owed \$10,000.00 as his homestead exemption.

WHEREFORE, this case should be remanded to the trial court with instructions to find that Mr. Miller is entitled to a homestead exemption of \$10,000.00, pursuant to Section 78-23-3(2)(a)(i), Utah Code Annotated, and enter a modified judgment accordingly.

ARGUMENT 2

**THE JUDGMENT OBTAINED AGAINST L.D. and B. MANAGEMENT
BY CROSS-APPELLANTS, HOUGHTON AND THOMAS, HAS
NEVER BEEN SATISFIED, WAS ISSUED IN A DIFFERENT
CASE AND IS NOT AN ISSUE ON APPEAL.**

This issue is not part of Cross-Appellants' appeal, nor was it briefed by Mr. Miller in his appeal, and it was dismissed by the court by its September 17, 2004 Order and should not be addressed or considered in this Cross-Appeal. Nevertheless, see Addendum 2 showing that the

Satisfactions of Judgment referred to by Mr. Miller were set aside by order of the court on April 6, 2004, and have not been satisfied, making this issue moot.


ARGUMENT 3

**THE PROCEDURE OF THE JUDGMENT FORECLOSURE IS
NOT THE ISSUE ON APPEAL.**

(Cross-Appellee's Brief, Page 22, Lines 14 through 16.)

This issue is not part of Cross-Appellants' appeal, nor was it raised, preserved or briefed by Mr. Miller in his appeal and should not be addressed or considered in this Cross-Appeal.

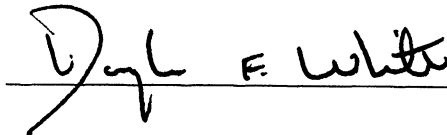
RESPECTFULLY SUBMITTED this 21st day of January, 2005.


DOUGLAS F. WHITE

CERTIFICATE OF MAILING

I hereby certify that on this 21st day of January, 2005, I mailed, postage prepaid, two (2) accurate copies of the foregoing Reply Brief to Brief of Cross-Appellee to:

Glen E. Miller, USP No. 33042
Cross-Appellee
UTAH STATE PRISON
P. O. Box 250
Draper, Utah 84020


DOUGLAS F. WHITE

Tab 1

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IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Jerry Houghton, Susan
Houghton, Kendall R. Thomas,
Marlene Thomas, and the 1995
Thomas Family Trust,

Plaintiffs, Appellees,
and Cross-appellants.

v.

Glen E. Miller,

Defendant, Appellant, and
Cross-appellee.

ORDER OF DISMISSAL


Appellate Case No. 20040007-CA

Before Judges Davis, Jackson, and Orme.

For failure of Appellant to file the Appellant's brief within the time permitted by Utah R. App. P. 26(a), which time expired on August 20, 2004, IT IS HEREBY ORDERED that the appeal is dismissed, see Utah R. App. P. 3(a); provided, however, that if the Appellant's brief is submitted within ten (10) days from the date hereof, the appeal shall be thereby reinstated without further order of the court.

Dated this 17th day of September, 2004.

FOR THE COURT:



Norman H. Jackson, Judge

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of September, 2004, a true and correct copy of the foregoing ORDER OF DISMISSAL was deposited in the United States mail to the parties listed below:

GLEN E. MILLER 33042
PO BOX 250
DRAPER UT 84020


DOUGLAS F. WHITE
ATTORNEY AT LAW
3282 S SUNSET HOLLOW DR
BOUNTIFUL UT 84010

Dated this 17th day of September, 2004.

By 
Deputy Clerk

Case No.: 20040007-CA
THIRD DISTRICT, TOOELE DEPT, #000301127

Tab 2

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a stay against the assets of L.D. & B. Management, Inc. and the appointment of a receiver.

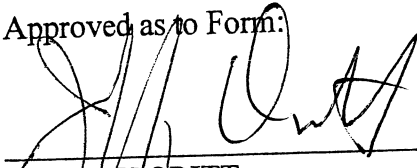
DATED this 6 day of April, 2004.

BY THE COURT:

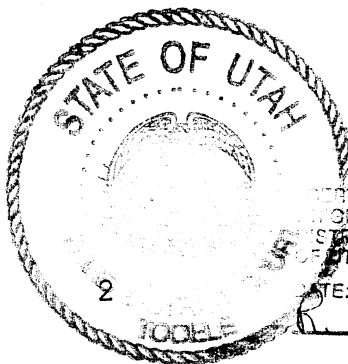


RANDALL N. SKANCHY, Judge
Third District Court

Approved as to Form:



JEFFREY ORITT
Federal Court Receiver for LD+B Management,
Inc.



CERTIFY THAT THIS IS A TRUE COPY OF AN
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, TOOELE COUNTY, STATE
OF UTAH.
DATE: April 6, 2004
R. Leila Halstead
DEPUTY COURT CLERK

DOUGLAS F. WHITE, #3443
Attorney for Plaintiffs
3282 So. Sunset Hollow Drive
Bountiful, Utah 84010
Telephone: (801) 898-4758
FAX: (801) 296-1754

IN THE THIRD JUDICIAL DISTRICT COURT

TOOELE COUNTY, STATE OF UTAH

JERRY HOUGHTON and SUSAN)	
HOUGHTON,)	STIPULATION
)	
Plaintiffs,)	
)	
vs.)	
)	
LORI L. MILLER, individually, and)	Civil No. 990300712
L.D. & B. MANAGEMENT, INC.,)	Judge Randall N. Skanchy
)	
Defendants.)	

COME NOW the Plaintiffs, by and through their attorney, Douglas F. White, and Jeffrey Oritt, Federal Court Receiver of the above-entitled case, and stipulate as follows:

1. On or about the 21st day of January, 2000, Jeffrey Oritt was appointed as a Federal Court Receiver of all of the assets of L.D. & B. Management, Inc., pursuant to Case No. 2:99 CV-383K in the United States District Court for the District of Utah Central Division.
2. On or about the 1st day of September, 2001, by agreement of the undersigned parties,

a "Satisfaction of Judgment" was filed to stop the Plaintiffs' from executing on the judgment they had obtained against L.D. & B. Management, Inc. on the 13th day of March, 2000.

3. The reason the Satisfaction of Judgment was filed by Plaintiffs was in recognition of the Federal Court's stay against enforcing any judgments against any assets of L.D. & B. Management, Inc. because of the receivership.

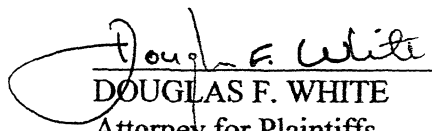
4. The Satisfaction of Judgment did not, and does not, represent that L.D. & B. Management, Inc. paid the judgment. L.D. & B. Management, Inc. has not paid any portion of the Plaintiffs' judgment obtained in this case.

5. The parties are requesting the Court to set aside the Satisfaction of Judgment in lieu of the Court ordering that the judgments obtained by Plaintiffs are stayed from execution in order to make the record more accurate as to the agreement of the undersigned parties.

DATED this 1st day of April, 2004.


JEFFREY ORITT
Receiver

for L.D. & B. Management, Inc.


DOUGLAS F. WHITE
Attorney for Plaintiffs

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Bountiful, Utah 84010
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IN THE THIRD JUDICIAL DISTRICT COURT

TOOELE COUNTY, STATE OF UTAH

JERRY HOUGHTON and SUSAN
HOUGHTON,

Plaintiffs,

vs.

LORI L. MILLER, individually, and
L.D. & B. MANAGEMENT, INC.,

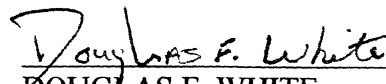
Defendants.

**MOTION TO SET ASIDE SATISFACTION
OF JUDGMENT**

Civil No. 990300712
Judge Randall N. Skanchy

COME NOW, the Douglas F. White, Attorney for the Plaintiffs, and hereby moves the Court for an order setting aside the Satisfaction of Judgment filed in the above-entitled matter on the 1st day of September, 2001, for good cause as set forth in the Stipulation of the parties.

DATED this 29 day of March, 2004.


DOUGLAS F. WHITE
Attorney for Plaintiffs

CERTIFICATE OF MAILING AND/OR HAND DELIVERY

I hereby certify that I mailed and/or hand delivered a true and correct copy of the foregoing
MOTION TO SET ASIDE SATISFACTION OF JUDGMENT, postage prepaid, this 5th day of
April, 2004, to the following person(s):

Jeffrey Oritt
COHNE, RAPPAPORT & SEGAL
Attorney for Federal Court Receivership
525 East First South, 5th Floor
Salt Lake City, Utah 84102

Lori L. Miller
Defendant
358 North 100 East
Tooele, Utah 84074