

1994

Zoll & Branch, P.C. v. Alan Asay : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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ZOLL & BRANCH, P.C.

Appellant,

vs.

ALAN ASAY,

Respondent.

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Case No. ~~930418~~
Priority No. 15

940012-CA

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APPELLANT'S REPLY BRIEF

Appeal from the Judgment and Order Denying Appellant's Motion to
Alter or Amend Findings, or in the Alternative Motion for New
Trial and from the Order Augmenting Attorney's Fees entered in the
Third Judicial District Court, Salt Lake County
The Honorable Michael R. Murphy

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FILED

Utah Court of Appeals

APR 13 1994

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ZOLL & BRANCH, P.C.	:	
	:	
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	:	
vs.	:	Case No. 930418
	:	Priority No. 15
ALAN ASAY,	:	
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SUMMARY OF ARGUMENTS

Counsel for Appellee has misstated and set forth an erroneous set of facts, which facts have been misapplied to the statutes in this case. The application of the statutes to said facts, as suggested by Appellee, would have a disastrous effect on employers in Utah. Appellee resorts to attacking the credibility of B. Ray Zoll, and to attacking certain procedures followed by Appellant, in order to mask the fact that the evidence in the Record simply does not support the Findings as signed by the trial court.

Moreover, the following facts, which are undisputed, require close review by this Court: (1) Appellee Asay did not meet his billable hours requirement, which was an expectation of Appellant, and a condition of Asay's employment [R 984, R 966, R 976 R 1110, R 1057, R 1065]; (2) Asay replaced the 1987 hard disk with a 1984 hard disk, the effect of which was to lessen the fair market value of the computer [R 999, R 1092, R 1098]; (3) Asay used the password, "fuckoff" to block access to the files, and although he later revealed this password to Appellant, there were additional passwords which continued to block access to important files and to attorney work product [R 941, R 1042, R 1082, R 1083];

In addition, (4) Asay filed bankruptcy after this case had begun, and abandoned his claims against Zoll & Branch, the effect of which was to cause delay [R 1029, R 1030]; (5) Asay was aware that he could have had access to the \$1175.00 amount tendered to the Court by Zoll & Branch, and admitted that he did not seek the amount as a matter of legal strategy [R 1029]; (6) Zoll & Branch suffered damages in excess of the amount purportedly owed to Asay, as the result of Asay's actions regarding the computer system [R 980, R 1116]; (7) There was no finding by the trial court that the purported withholding of payment to Asay by Zoll & Branch amounted to a willful failure to pay wages justly due to Asay; (8) There was a bona fide dispute between the parties in this case as to the

amount due to Asay, if any, and there was no finding that there was not a bona fide dispute; (9) Asay voluntarily left his employment with Zoll & Branch, and was not terminated [R 939].

It should be kept in mind throughout this appeal that Asay himself is an attorney, as well as a computer expert. Therefore, pursuant to the policy considerations behind the statutes at issue in this case, Asay does not fall into the category of an unprotected employee, who is lacking in equal bargaining power. In fact, Mr. Asay virtually held Zoll & Branch hostage with his ability to sabotage the law office's computer system, and blocked access to completed briefs and memoranda, for which there were imminent deadlines. Asay engaged in this type of behavior in order that his demands for money and equipment would be met.

This Court must consider the overall legal effect on employers in Utah, who are dealing with unscrupulous employees who have the ability to use the wage statutes, if so broadly applied as they were in this case, as a club.

ARGUMENTS

I. THE WAGE STATUTES WERE MISINTERPRETED AND MISAPPLIED

In Appellee's Brief, it is argued that the trial court properly interpreted the applicable wage statute, Utah Code Annotated §34-28-5 (1969), and that said statute should be

analyzed in accordance with a "plain meaning" standard. However, it is apparent by the plain meaning of the statute that the penalty provision is intended to apply only to subsection (1), which it directly follows, and not to subsection (2).

Section 34-28-5 provides:

(1) Whenever an employer separates an employee from his payroll, the unpaid wages shall become due immediately, and the employer shall pay such wages to the employee within 24 hours of the time of separation at the specified place of employment.

In case of failure to pay wages due an employee within 24 hours of demand therefor, the wages of such employee shall continue from the date of separation until paid, but in no event to exceed sixty days, at the same rate which the employee received at the time of separation. The employee may recover the penalty thus accruing to him in a civil action. This action must be commenced within sixty days from the date of separation. Any employee who has not made a demand for payment shall not be entitled to any such penalty under this subsection.

(2) Whenever an employee (not having a written contract for a definite period) quits or resigns his employment, the wages earned shall become due and payable not later than 72 hours thereafter, unless such employee shall have given 72 hours' previous notice of his intention to quit, in which latter case such employee shall receive his wages at the specified place of payment at the time of quitting [emphasis added].

The term "separation", which is used only in subsection (1), is set forth in the penalty provision. If the penalty provision were meant to apply to subsection (2) as well, it would be placed after both subsections.

Furthermore, the language used by the Utah Supreme Court reflects the intention that the penalty provision is meant to apply only to the situation where an employer terminates an employee. For instance, in Holley v. Sullivan, 497 P.2d 630 (Utah 1972), the Court held, in reference to this penalty provision, that it applies to "paying a person whose services have been terminated by the employer [emphasis added]".

In support of his position, Appellee cites Silver v. Tax Commission, 820 P.2d 912 (Utah 1991), in which it is held that, "In construing the statute, we follow the rule that the terms of a statute should not be interpreted in a piecemeal fashion, but as a whole." However, in that very case the Court, in interpreting the plain meaning of the term "intent to evade", examined the structure of the section, and determined that the juxtaposition of subparts was indicative of legislative intent. It follows that in the present case one must examine the placement of the penalty provision, which follows subsection (1), and mirrors the language used only in subsection (1). Therefore, pursuant to the plain meaning of this statute, the penalty provision was only intended to apply when an employee has been terminated by an employer.

Furthermore, the penalty statute applies only when there has been a willful failure to pay the employee, upon separation. Chatterley v. Omnico, Inc., 485 P.2d 667, 670 (1971). As set

forth in Appellant's Brief, there was no finding by the trial court of a willful failure to pay by Appellant. There was merely a finding that Zoll & Branch stopped payment on the checks it issued to Asay due to Zoll's purported anger at the password [Finding No. 22]. However, payment was stopped due to the concern for gaining access to important materials on the computer system [R 980, R 1114, R 1116, R 1021, R 1054, R 1055, R 1076].

Appellee claims that the wages were not "paid", and that there was no tender thereof, in that there was not a "bona fide, unconditional, offer of payment of the amount of money due, coupled with an actual production of the money or its equivalent," citing the requirements set forth in Zions Properties, Inc. v. Holt, 538 P.2d 1319, 1322 (Utah 1975). However, Appellant continues to maintain that the wages were not "unpaid," inasmuch as the entire amount thereof was in fact duly tendered and "paid" to the Court.

Appellee claims that Appellant gave instructions to the court clerk to hold the money until Asay "proved his entitlement" thereto, and that this precludes the validity of the tender. This instruction was never given to the Court by Appellant, and Appellant provided to the Court notification of a Tender of Payment with a copy of the Complaint [see Exhibit "A"]. Moreover, it was held in Kelley v. Leucadia Financial Corp., docket #900187

(Utah 1992), that in order to be valid, a tender must not contain an improper condition or requirement.

In the present case, all Mr. Asay would have had to do to have access to and to collect the wages was to file a motion with the Industrial Commission, or the Court itself. Instead, the Appellee took over one year to proceed through bankruptcy, have the claim abandoned as a no-value claim [R 1029, R 1030], and then reassert it in his Counterclaim. Appellee ran up \$12,000 in attorney's fees using the wage statute to leverage the Appellant into paying a non-meritorious claim, all the while knowing that he could have had access to the initial amount [R 1027, R 1029].

In addition, Zoll & Branch did not merely offer to produce the money, but in fact there was an "actual production of the money" for deposit to the court, as is required for a valid tender, and the money was *out of the control* of Zoll & Branch, and not held as a benefit to Zoll & Branch, as opposed to the situation of a controlling employer holding all the cards. Thus, there was an "actual production" of the money, as is required for a valid tender. Washington National Insurance Co. v. Sherwood Associates, 795 P.2d 665 (Utah App. 1990). Carr v. Enoch Smith Co., 781 P.2d 1292, 1294 (Utah App. 1989).

Moreover, in one of the cases cited in Appellee's own Brief, Fitzgerald v. Corbett, 793 P.2d 356 (Utah 1990), it was held that

"where the unreasonable conduct of the obligee would make an actual tender a fruitless gesture, an offer to comply with the terms of the contract by the obligor is sufficient." If Appellant paid the amount directly to Appellee, it would have been left unprotected, in light of the damages caused by Appellee. By paying the amount to Court, the Appellee was protected in knowing the money was there, in dispute and available upon his convincing a judge to release it to him.

Asay promised Appellant he would deliver work product and any property belonging to Appellant, but he did not do so. Therefore, inasmuch as Appellant claimed damages against Asay, a tender directly to Asay would have been fruitless, and would not have protected the interests of Appellant. In addition, as established above and in Appellant's Brief, it has been admitted by Asay that he elected not to make any attempt whatsoever to collect the money, due to a "legal strategy". Therefore, Appellee cannot now claim that the tender was "conditional" merely because he, knowing he had the option, chose not to collect the amount. Accordingly, the wage and penalty statutes do not apply, by reason of the fact that payment was in fact made to Appellee.

As an additional matter, Appellee cites Rule 68(a), Utah Rules of Civil Procedure, which provides that:

When in an action for the recovery of money only, the

defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which the plaintiff was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation is found to be true, the plaintiff cannot recover costs, but must pay costs to the defendant [emphasis added].

However, in the present case, the causes of action claimed by both parties include more than the recovery of money. Therefore, this Rule never was applicable or relevant in this case, and applies for the protection of Defendants. Therefore, Appellant would be the benefactor of such a statute, and not Appellee.

Additionally, there was a bona fide dispute as to whether or not the wages were "justly due" to Mr. Asay, inasmuch as he had breached his employment agreement and had otherwise caused damage to Appellant, pursuant to language in Chatterley v. Omnico, 485 P.2d 667, 670 (Utah App. 1971). Appellant has attacked the findings of fact in its Appellate Brief, and moreover, there was no finding whatsoever stating that there was not a bona fide dispute, nor was there a finding that there was a willful failure to pay. Accordingly, the wage statute does not apply.

Appellee points to the Findings of Fact, wherein it is stated that Appellant stopped payment due to the fact that Zoll was angered by Asay, and that Appellant filed suit only as a tactic to pressure Asay into abandoning his claims against Appellant. However, neither the Court transcript from the hearing nor the

evidence supports these Findings, the wording of which was created entirely by counsel for Appellee. The trial court judge merely signed the Findings of Fact and Conclusions of Law as prepared by counsel for Appellee, and entered judgment in favor of Appellee by signing a Judgment which was also prepared by counsel for Appellee.

Moreover, the fact that Appellants tendered/paid the money to the Court negates the element of a "willful failure to pay" Asay. The majority rule, as derived from both Chatterley v. Omnico, Inc., 485 P.2d 667 (Utah 1971), and from other states' case law, as cited and argued in Appellant's Brief, is that the penalty provision in such a wage statute does not apply if there is a bona fide dispute over the claimed wages. This issue was never addressed in the Findings of Fact. Therefore, the statutes in this case have been misapplied, due to the erroneous Findings of Fact, and the lower court's decision should be reversed.

II. THE ATTACK ON THE CREDIBILITY OF B. RAY ZOLL IS INEFFECTIVE

In Appellee's Brief it is alleged on numerous occasions that the testimony of B. Ray Zoll lacked credibility. In Finding No. 32, it is stated that, "During the trial of the above-entitled actions, the testimony of Mr. Asay was more credible than the

testimony of Mr. Zoll." Appellee then cites to the deposition of Gary Wilmore, and to the testimony of Michael Drake, both of whom were witnesses on his behalf.

However, at no time does Appellee mention in his Brief, nor are there any Findings of Fact as to the credibility of the testimony of Tom Branch. Branch's testimony was proffered, the substance of which was to corroborate and verify the entirety of the testimony of B. Ray Zoll, with the exception of testimony pertaining to the billing sheets [R 1117]. The testimony and credibility of Mr. Branch has never been attacked, and was not even mentioned within the Findings of Fact.

The Findings of Fact clearly do not support the record insofar as they are silent as to the credibility of, and testimony proffered by, Mr. Branch, which testimony is virtually un rebutted. Therefore, the attack on the credibility of Zoll, for which there is very little and highly disputed evidence, but which Appellee relies upon repeatedly and heavily in arguing its position in this case, is largely irrelevant, inasmuch as the proffered testimony of Branch stands un rebutted and unimpeached, verifying each fact testified to by B. Ray Zoll.

Furthermore Appellee, in attacking the credibility of Mr. Zoll, and attempting to paint a picture of disrespect on the part of Zoll, refers to the August 2, 1993 hearing on augmentation of

attorney's fees, wherein Zoll exited the courtroom. Appellee claims that Appellant waived its right to cross-examination by failing to offer an argument in support of its position at that hearing, and by refraining from cross-examination.

However, Appellant duly filed a Memorandum with the Court prior to that hearing, objecting to the attorney's fees and stating why said fees should not be awarded or augmented. Said fees were rebutted prior to Zoll's departure from the court room, and in fact in his opening statement to the Court, Zoll stated that the fees were exorbitant [see excerpt from Transcript of August 2, 1993 hearing attached hereto as Exhibit "B"].

In addition, at the original hearing, the Third Judicial District Court expressly stated that Zoll & Branch would be entitled to cross-examine counsel for Appellee as to attorney fees, which opportunity they were never given. Therefore, if any opportunity for cross-examination was waived by the walking out of Mr. Zoll, it would have only been in regards to the claim for augmented fees, which was at issue at that hearing.

As a final note, Appellant wishes to make the record clear relative to Zoll's reasons for departing the court room, and to represent the frustration felt in attempting to deal with the lower court judge and his staff. In 16 years, counsel has never had such a problem with trying to get a hearing on his motions,

with locating files lost by the Court, and with the Court's allowing the supersedeas bond to be improperly cashed. Appellant could only get hearings before Judge Rokich on these matters.

Counsel for Appellant knew that the case would be appealed, and argued that at the time the Notice of Appeal was filed the lower court was divested of jurisdiction. Therefore, in order to avoid further conflict with the lower court, counsel for Appellant felt it better to proffer his argument, and to make his exit. Counsel for Appellant never expected an ex parte motion for cashing the supersedeas bond, subsequent to said departure.

Appellant's Affidavit of Recusal of this trial court judge were subsequently filed. However, since the date when counsel for Appellant exited the courtroom, he has reappeared before this trial court judge without incident, acting professionally, which behavior will continue. Appellant prefers that this unfortunate but harmless incident be forgotten. However, this is not possible when counsel for Appellee continues to exploit it.

III. THE FINDINGS OF FACT ARE NOT SUPPORTED BY THE RECORD

Appellee argues that Appellant has failed to marshal the evidence in support of the Findings of Fact, and that Appellant's appeal procedure is technically deficient. However, Appellant did cite to the record, to the only possible evidence which could

support these Findings. In Appellant's Brief, it properly attacks the Findings of Fact, and shows that many of the facts which Appellant attempted to marshal by Appellant were un rebutted.

Appellee is clearly attempting to ride on the coattails of the Court of Appeals' decision pertaining to a marshaling of the evidence in Commercial Union Assoc. v. Clayton, 863 P.2d 29 (Utah App. 1993), a case in which counsel for Appellant was involved. However, in the present case, Appellant has in fact gone through the exercise of citing each and every place in the Record which Appellant believes is relevant, in support of each factual finding, prior to citing to the record to evidence which controverts the factual findings focused upon. Therefore, the Court's decision in Clayton is irrelevant for the purposes of the present case, and the Appellee's citation thereto is included only for purposes of masking the real issues in this case.

Moreover, Appellee's attempts to divert this Court's attention from the real issues in this case by making the argument that the Appellant's procedure for appeal is deficient, inasmuch as Appellant supposedly did not appeal the underlying judgment, but "only appeals the denial of a Motion for New Trial or Motion to Reconsider." However, in its Notice of Appeal, Appellant stated that it "appeals the judgment entered in the above-captioned case . . .[emphasis added]". By appealing the Order

Releasing the Bond and Augmenting Attorney's fees and the Order denying Motion for New Trial or in the Alternative, Motion for Alter or Amend Findings, in effect Appellant has appealed the underlying judgment. This is a frivolous argument by Appellee, and yet one more attempt to mask the real issues in this case.

The truth is, in the present case there is very little if no evidence to support many of the Third District Court's factual findings. The findings, which were drafted entirely by and in the exact words of counsel for Appellee, took purported evidence out of context, creatively extrapolated from the record, and in sum did not represent the true nature of the evidence presented at the time of trial. These Findings of Fact were erroneously and summarily signed by Judge Michael Murphy, without providing the Appellant the opportunity for a hearing thereon.

There are numerous examples of such mischaracterization which make the trial court's approval of the Findings of Fact clearly erroneous. The Appellee leads this Court to believe that when the password "fuckoff" was provided to Zoll & Branch, access to all of the files could be had in a matter of seconds. This is not the case, and Appellant believes the lower court clearly did not hear the testimony of Van Valkenberg, Appellant's computer expert, who stated that there were other vulgar passwords, in addition to the initial password, which blocked access [R 1082, R 1083]:

- Q: (Zoll) Were there *other* passwords that you didn't have, you discovered [emphasis added]?
- A: (Van Valkenburg) Yes. There were--There was not absolutely just the one password used. There were *several* passwords used [emphasis added].

Moreover, even after the initial password had been given, Gary Willmore had to keep calling Asay to get his assistance in gaining access to the files [R 988].

Appellee claims, in reference to Finding of Fact #5, that there was evidence in the Record of mistrust of Zoll on the part of Appellee. However, the only evidence of said "mistrust" is at R 941, wherein Asay himself admitted his motivations, stating that he locked up the system as a "way of exercising leverage" in the negotiations with Zoll & Branch [R 941 at line 20]. Moreover, in Finding of Fact #8, it is stated that the time billed by Asay was fair and consistent with his employment obligations. However, Asay himself admitted that the agreement and expectation was that he would bill 7 - 8 hours per day [R 966, 976], even though he had only billed 4 hours per day [R 984].

In Finding of Fact #11, it is stated that Zoll & Branch agreed to pay \$1030.00 to Asay, which represented the fair market value of the computer system, and that Asay had represented all material facts relative thereto. However, Appellant's expert, Van Valkenburg, testified that since the 1987 hard disk had been replaced with a 1984 hard disk, which fact was not disclosed to

Zoll & Branch, the effect would be to lessen the fair market value of the system [R 1092, R 1098, R 1104].

In addition, in Finding of Fact #15, it is stated that there was no sabotage of the computer system by Asay. However, Asay himself admits that he locked up the computer, using a vulgar password [R 941, R 1042]. There is evidence in the Record, from the testimony of Appellant's computer expert, that the system was indeed locked up even after Asay provided the initial password [R 1082, R 1083, R 988]. Furthermore, in Finding of Fact #16, it is stated that any problems had by Zoll & Branch with the computer was due to their own lack of training. However, Appellant's own computer expert, Van Valkenburg, could still not get access to the files [R 1082, R 1083], nor could Gary Wilmore [R 988].

Furthermore, in Finding of Fact #17, it is stated that none of Asay's actions regarding the computer system were improper. However, he has admitted to locking up the system, which was owned by Zoll & Branch, upon which Zoll & Branch was making payments [R 941, R 1042]. As established above, even after the initial password was provided, access to the system was still blocked. In addition, Appellant's computer expert stated that he thought Asay's actions regarding the computer were abnormal [R 1104].

In Finding of Fact #19, it is stated that Asay properly left behind his work product and time sheets. However, it was

testified to by Zoll and would have also been testified to by Steve Branch [R 1113] that the sheets were not properly submitted. In Finding of Fact #22, it is stated in part that the sole reason Zoll & Branch stopped payment on the check was because they were angered by the password "fuckoff". However, it was testified to by both Zoll, and proffered by Tom Branch, that there was a great concern for getting access to critical files and attorney work product in the computer system. Payment was stopped on the check for this reason [R 980, R 1116], as well as for the reason that Asay had otherwise violated his employment agreement with Zoll & Branch, as supported herein by the Record. There is no evidence of "anger" in the record on the part of Zoll. Finally, in reference to Findings of Fact # 25 - 38, Appellant refers the Court to its initial Brief, wherein these are addressed.

IV. IN ACCORDANCE WITH POLICY CONSIDERATIONS BEHIND THE WAGE STATUTES, THE PENALTY PROVISION AND ATTORNEY'S FEES CLAUSE SHOULD NOT APPLY

In the case of Chatterly, cited supra, it is apparent that the legislative intent for, and policy behind, Utah Code Annotated §34-28-5 is to impose sanctions only where there has been a willful failure to pay by an employer, in the absence of any bona fide dispute over the payment of the wages. This statute represents a legislative effort to protect employees, who

historically have had less bargaining power than employers.

However, in this case Appellant continues to maintain that it is the employee who has wronged the employer. The employee is an attorney himself, and furthermore has extensive knowledge of computers. In any event, Plaintiff's tender/payment of the disputed amount to the Court and the presence of a bona fide dispute over the wages serves to negate the element of a willful failure to pay an employee. As established in the Record, Appellee was aware of the fact that he could easily have access to the wages, and voluntarily chose not to gain access thereto. There are no findings by the Court that there was a willful failure to pay, or as to whether or not there was a bona fide dispute pertaining to whether the wages were due.

Appellant concedes that, in many instances the rights of employees need to be protected, due to the unequal bargaining power inherent in many employer-employee relationships, and that the legislative intent behind the applicable wage statutes is that this protection be given. However, the legislature clearly did not intend to protect those employees with equal or greater bargaining power, who use the statute as a device to gain their improper ends. Asay is also an attorney, and had a far greater knowledge of computers than those working at Zoll & Branch, as has been admitted by Asay. Mr. Asay is a disgruntled former employee

who did not even come close to meeting the required standard for his employment agreement with Appellant Zoll & Branch.

In addition, Mr. Asay sabotaged Appellant's property, and otherwise caused damage in time and money to Appellant and damage to clients, whose briefs and work product were not completed on time, and but for the staff of Appellant working nights, said damage would have been extensive [R 980, R 1116]. Asay even sued Zoll & Branch regarding the criminal claim of a bounced check, and cited the case as a felony that Zoll & Branch had to defend throughout the litigation process, only to see that part of the case dropped and dismissed on the morning of the trial [R 936, R 1134 at line 25].

This Court should not reward this behavior, and extend blanket protection to Asay due solely to the fact that he was the "employee" in this situation, while failing to protect the employer, Zoll & Branch. Nor should this Court award attorney's fees based upon any purported wrongful behavior of Appellant as the employer in this situation, or as a result of Appellee's claims that Appellant has delayed the litigation process. In fact, when this case was before Judge Palmer in the Third Circuit Court, Asay's request for attorney's fees pursuant to a Motion to Compel Discovery was denied [see copy of Order attached hereto as Exhibit "C"], and Appellee is again attempting to recover fees

based upon the argument that Appellant has caused said delay.

Finally, all that is needed to be shown in order for the Appellant to prevail is the fact that Asay caused damages to Zoll & Branch of over \$1175.00, which claim by Appellant has not been rebutted by Appellee. In that case, there is a set-off of this amount against the amount purportedly owed to Asay, and no attorney's fees would be allowed, nor would the penalty statute be applicable, in that the wages were not "justly due". There is no evidence rebutting the expenses of Zoll & Branch, in correcting the damage caused by Asay.

V. THE AMOUNT CLAIMED FOR ATTORNEY'S FEES IS NOT REASONABLE

In addition, attorney's fees in the amount claimed by Appellee should not be awarded, inasmuch as they are clearly excessive and unreasonable. Appellee alleged that the attorney's fees claimed are "reasonable," in accordance with the guidelines set forth in Dixie State Bank v. Bracken, 764 P.2d 985 (1985). The law pertaining to establishing a reasonable attorney's fee is well established in Utah. The Utah Supreme Court, in Dixie, set forth four practical guidelines for making this determination:

1. A court must first look to what legal work was actually *performed*. Padded and duplicative time is not work that

has been *performed*, and therefore is not recoverable, and that the amount of time actually spent is not necessarily the amount of time reasonably spent. Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983). In the case of Wicat Securities Litigation, 726 F.Supp 671, 735-736 (Utah 1987), it was further held that, "The word 'review' seems to be a catch-all category with great versatility in counsels' application. It is also a signal for the padding of hours." In counsel's Affidavit in support of augmenting attorney's fees, the "review/revision" of pleadings, memoranda or strategies appears in thirty-four of the 74 entries [see copy of billing sheets, attached hereto as Exhibit "D"].

2. Second, a court must determine how much of the work performed was *reasonably necessary* to adequately prosecute the matter. In making this determination, the court must exclude work which was duplicative, excessive, and the result of which did not merit the fees. Ramos, supra. In the present case, there are instances of duplicative and excessive work [see Exhibit "D"].

3. Third, a court must determine whether the billing rate is consistent with the rates customarily charged in the locality for similar services, and evidence of this is part of the burden of proof which the party *seeking fees* must meet.

4. Fourth, a court must determine whether there are circumstances which require consideration of additional factors,

listed in CPR Rule 1.5, as set forth in Appellant's Brief.

In addition to the requirement that the amount being claimed be a "reasonable" amount, it has been held that the attorney claiming an amount for attorney's fees must present evidence, including records sufficiently detailed to determine the criteria of Dixie, supra. It was held in Ramos, supra, that attorneys in this situation must "keep meticulous contemporaneous time records to present to the court upon request." These records must provide a specific break down of hours allotted to specific tasks.

Therefore, compound time entries, listing and lumping several tasks together, do not meet this requirement. Moreover, Utah courts have held that this level of meticulous timekeeping is required. Cottonwood Mall v. Sine, 830 P.2d 266 (Utah 1992). In the present case, there are numerous examples of compound time entries, and lumping of several tasks together. It is clear that the entries in Appellee's billing sheets are not sufficiently documented and sufficiently broken down to meet the burden of proof meriting award of attorney's fees [see Exhibit "D"].

CONCLUSION

There was a bona fide dispute as to the initial amount of wages purportedly due to Asay, which amount was only \$1176.75. and which was paid by Zoll & Branch to the Court. The Appellant

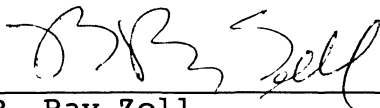
itself suffered losses as the result of correcting the damage caused by Appellee, namely as the result of having to hire experts to fix the sabotaged computer system, having to redo critical legal work hidden on the computer, and resulting from the loss of value of the computer. These losses clearly and easily exceeded the disputed wage amount of \$1176.75, which Appellant continues to maintain was not justly due to Asay.

In addition, Appellant has tendered and paid the amount to Court, the methods for which constituted a valid tender, in light of the circumstances of this case. Appellant did not have control over this amount, and Appellee has admitted that he could have easily retrieved the amount and that he knowingly chose not to do so. Therefore, the wages which were not "justly due" in the first place were in effect paid in this case and the wage statutes providing for penalties and attorney's fees do not apply.

In any event the penalty should not have accrued, inasmuch as there was a bona fide dispute over the wage amount, the amount was not willfully withheld upon separation of the employee, and the amount claimed for attorney's fees is clearly excessive. The factors of a "willful" withholding of wages, the reasonableness of fees, and the credibility of Tom Branch, among other crucial matters, were never even taken into account by the trial court, nor were they made a part of the Findings of Fact.

The Court should reverse the lower court's judgment and remand the case for a redetermination. There are critical and undisputed facts, with which the trial court's judgment and Findings of Fact is inconsistent. This case must be clarified and given a full opportunity for trial, in order to avoid a miscarriage of justice to Appellant and to employers throughout Utah.

DATED this 13th day of April, 1994.




B. Ray Zoll
Attorney for Appellant

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing, with postage prepaid thereon, on this 13th day of April, 1994, to the following:

Michael N. Zundel
David E. Smoot
Jeffrey J. Devashrayee
JARDINE, LINEBAUGH, BROWN & DUNN
370 East South Temple, Suite 400
Salt Lake City, Utah 84111
Attorneys for Appellee



B. Ray Zoll (3997)
Tom D. Branch (3997)
Attorneys for Defendants
360 West 5300 South, Suite 360
Salt Lake City, Utah 84123
Telephone (801)262-1500

IN THE THIRD JUDICIAL CIRCUIT COURT OF SALT LAKE COUNTY
STATE OF UTAH

ZOLL & BRANCH,
Plaintiff

v.

ALAN ASAY,
Defendant.

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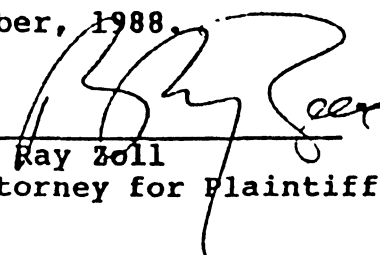
TENDER OF PAYMENT

Civil No.

Judge

COMES NOW Zoll & Branch, Plaintiff in the above-entitled case, and submits to the Court the sum of \$1176.75. This sum represents the amount claimed by the Defendant to be owed to him by Plaintiff for wages. Plaintiff requests that the Court hold these funds pending resolution of the above-entitled matter.

Dated this 17th day of December, 1988.



B. Ray Zoll
Attorney for Plaintiff

1 THE COURT: GO AHEAD.

2 MR. ZOLL: AS YOU RECALL, JUDGE, THIS IS A
3 CASE OF \$1,176.65. IT WAS A WAGE DISPUTE IN WHICH THE
4 MONEY WAS TENDERED OR PAID INTO THE COURT. AND THEN A
5 BANKRUPTCY WAS FILED, AND THERE WERE COUNTER-CLAIMS. OUT
6 POSITION IS, THIS IS A CASE WHERE THE COURT SAID THAT
7 THIS CASE SHOULD STAY AT CIRCUIT COURT, IT WASN'T EVEN
8 WORTHY OF OF THE TIME OF THIS COURT. AND THE CASE WAS
9 SUBMITTED, IN TWO AND A-HALF HOURS, AS I UNDERSTAND IT,
10 FOR EACH SIDE TO PRESENT THEIR CASE.

11 UNBEKNOWN TO US, WAS THERE SOME \$12,000 OF
12 ATTORNEY'S FEES THAT HAD BEEN RACKED UP IN THE CASE,
13 WHICH WAS OUT OF CONTROL BEFORE WE ACTUALLY HAD THE
14 OPPORTUNITY TO GO TO TRIAL.

15 WE THEN HAD THIS TWO HOURS, THE OPPORTUNITY TO
16 GO THE TWO AND A-HALF HOURS.

17 WE LEFT WITNESSES STANDING IN THE HALL, AND HAD
18 A FIVE MINUTE CLOSING ARGUMENT, AND NO CROSS-EXAMINATION
19 ON THE INITIAL FEES.

20 THIS WAS A CASE, JUDGE, WHERE THEN WE WERE
21 DENIED OUR OBJECTIONS, OUR NEW TRIAL, AND OUR BOND.
22 THERE WAS NO HEARING--

23 THE COURT: WHAT DOES THIS HAVE TO DO WITH
24 ATTORNEY'S FEES?

25 A. THIS HAS TO DO-- SO THAT YOU CAN PUT IT ALL

EXHIBIT B

B. RAY ZOLL (2607)
ZOLL & BRANCH
Attorney for Plaintiff
5300 South 360 West
Suite 200
Salt Lake City, Utah 84123
Telephone: (801) 262-1500

IN THE THIRD CIRCUIT COURT OF SALT LAKE COUNTY
SALT LAKE DEPARTMENT, STATE OF UTAH

ZOLL & BRANCH,)	DISCOVERY ORDER
)	AND DENIAL OF MOTIONS
Plaintiff,)	
)	
vs.)	
)	
ALAN ASAY,)	Civil No. 883013765
)	JUDGE PALMER
Defendant.)	

The parties Zoll & Branch by and through its attorney B. Ray Zoll and Alan Asay by and through his attorney Michael Zundel appeared before this Honorable Court to argue the following Motions:

1. Plaintiff's Motion to Compel the taking of the deposition of Defendant Alan Asay.

2. Defendant's Motion for Protective Order to prevent the taking of the deposition of Alan Asay.

3. Defendant's Motion for Sanctions.

Upon hearing oral argument of the parties through their respective counsel and upon the Court being otherwise fully apprised in the premises, by review of the file, Memorandum, and Affidavits included in said file, hereby enters the following ORDER:

1. All Motions shall be denied.

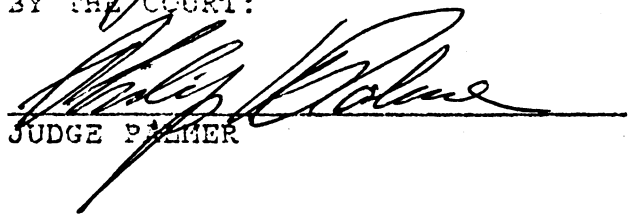
2. Discovery shall be completed within 30 days from the execution of this Order.

3. In the depositions to be scheduled by the parties, each party shall have four hours each for purposes of taking and conducting the examination of B. Ray Zoll and Alan Asay.

4. ~~No sanctions or fees are awarded; however, the Court will award sanctions in the event of failure to attend these depositions scheduled pursuant to the mutual scheduling of counsel.~~

DATED this 21 day of July 1989.

BY THE COURT:


JUDGE PALMER

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy
of the foregoing, postage prepaid, on this 17th day of
July, 1989, to:

Michael Zundel
270 East South Temple
Suite 400
Salt Lake City, UT 84111

Mary E. Kimball

EXHIBIT "A"

LEGAL SERVICES EXHIBIT

A summary of legal services rendered and costs advanced on behalf of Alan B. Asay against Zoll & Branch incurred in connection with post-judgment motions:

SUMMARY

TIMEKEEPER	HOURS	RATE/HR.	AMOUNT
Attorneys			
William G. Marsden - WGM	0.30	\$145.00	\$43.50
Michael N. Zundel - MNZ	0.50	130.00	65.00
Michael N. Zundel - MNZ	16.10	140.00	2,254.00
David E. Smoot - DES	2.00	100.00	200.00
Jeffrey J. Devashrayee - JJD	1.40	85.00	119.00
Jeffrey J. Devashrayee - JJD	14.30	90.00	1,287.00
Kent W. Hansen - KWH	46.00	75.00	3,450.00
Paralegal			
Carol A. Lynn - CAL	14.00	60.00	840.00
TOTAL FEES	94.60		\$8,258.50
TOTAL COSTS			\$514.49
TOTAL FEES AND COSTS			\$8,772.99

ATTORNEY FEES

7 Branch out

DATE	ATTY_	DESCRIPTION	HOURS	AMOUNT
06/10/93	JJD	Review billing files and judgment executed in case; draft Motion to Augment Award of Costs and Attorneys' Fees and affidavit in support thereof.	.80	68.00
06/11/93	JJD	Review pleadings and other materials in case file in preparation for drafting Motion to Augment Award of Costs and Attorneys' Fees and affidavit in support thereof; review Ex Parte Motion of Zoll & Branch to Stay Execution Pending Location of File.	.40	34.00
06/14/93	JJD	Complete revisions to Motion to Augment Award of Costs and Attorneys' Fees and affidavit in support thereof and submit to M. Zundel for review.	.20	17.00
06/14/93	MNZ	Review and revise motion to augment attorneys' fees.	.50	65.00
07/19/93	JJD	Review Supplemental Brief in Support of Motion for New Trial or in the Alternative Motion to Alter or Amend Judgment; review case law cited by Zoll & Branch in supplemental brief; review trial brief and other pleadings and materials in case file; draft Memorandum in Opposition to Supplemental Brief.	1.70	153.00
07/20/93	JJD	Complete revisions to Memorandum in Opposition to Supplemental Brief in Support of Motion for New Trial or in the Alternative to Alter or Amend Judgment.	1.00	90.00
07/20/93	MNZ	Review and approve Memorandum in Opposition to Zoll & Branch's Motion for New Trial.	.20	28.00
07/22/93	MNZ	Conference call from court clerk and Ray Zoll's secretary re: scheduling of hearing.	.20	28.00
07/29/93	MNZ	Conference call to court re: Mr. Zoll's request to schedule hearing on Asay's motion to augment judgment for additional fees incurred.	.20	28.00

DATE	ATTY	DESCRIPTION	HOURS	AMOUNT
08/02/93	MNZ	Prepare for hearing on motion to augment fees and appear at hearing; obtain judgment augmenting fees and vacating stay and ordering transfer of bond money to Alan Asay; conference with court clerk re: transfer of bond proceeds; conference call to American Investment Bank with clerk; travel to bank and cash certificate of deposit; travel to court and obtain court clerk's endorsement on check.	3.30	462.00
08/03/93	JJD	Conference with M. Zundel re: status of case and assignment to draft Partial Satisfaction of Judgment.	.20	18.00
08/05/93	JJD	Review pleadings in case file; calculate interest accrued on judgment amount and determine balance of principal and interest owed to A. Asay; draft Partial Satisfaction of Judgment.	1.90	171.00
08/06/93	JJD	Begin revising Partial Satisfaction of Judgment.	.20	18.00
08/09/93	JJD	Review Utah Code to determine change in statutory judgment rate and whether such change is retroactive; review pleadings in case file; complete revisions to Partial Satisfaction of Judgment and submit to M. Zundel for review.	1.10	99.00
08/11/93	JJD	Further revise Partial Satisfaction of Judgment; review Notice of Appeal and other attached documents received from Zoll & Branch; travel to Third District Court and review case file to determine whether supersedeas bond has been approved.	(1.90)	171.00
08/12/93	JJD	Finalize Partial Satisfaction of Judgment and file with Court.	.30	27.00
08/30/93	JJD	Conference with M. Zundel re: response to Zoll & Branch's Motion to Restore Supersedeas Bond; review motion.	.40	36.00
08/30/93	MNZ	Review Zoll's motion to re-instate supersedeas bond and conference with J. Devashrayee re: same.	.20	28.00

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DATE	ATTY	DESCRIPTION	HOURS	AMOUNT
08/31/93	JJD	Review pleadings in case file and begin to draft Memorandum in Opposition to Motion to Restore Supersedeas Bond.	.70	63.00
09/02/93	JJD	Review pleadings in case file; complete draft of memorandum in opposition to motion to restore supersedeas bond and begin revising same.	1.30	117.00
09/03/93	CAL	Calculate accrued interest between 8/2/93 and 9/3/93; prepare garnishment papers for West One and American Investment banks.	1.80	108.00
09/03/93	JJD	Review pleadings in case; complete revisions to memorandum in opposition to motion to restore supersedeas bond and submit to M. Zundel for review.	1.20	108.00
09/06/93	JJD	Review files in preparation for drafting memorandum in opposition to motion to restore supersedeas bond to be filed in Supreme Court.	.10	9.00
09/06/93	MNZ	Review and revise memorandum in opposition to Zoll's motion to restore bond.	.20	28.00
09/07/93	JJD	Conduct research re filing of motion to stay proceedings and execution of judgment in proper court; begin drafting memorandum in opposition to restore supersedeas bond to be filed in Supreme Court.	.80	72.00
09/08/93	JJD	Complete draft of memorandum in opposition to motion to restore supersedeas bond to be filed in Supreme Court and begin revising same.	.60	54.00
09/09/93	CAL	Telephone conference with Chuck Johnson, Third District Court clerk, re issuance of Writs of Garnishment and review of pleadings filed with the Court.	.30	18.00
09/09/93	JJD	Complete revisions to memorandum in opposition to motion to restore supersedeas bond to be filed in Supreme Court and submit to M. Zundel for review.	.50	45.00
09/10/93	MNZ	Call from Judge Murphy's clerk re: scheduling of hearing motion to restore bond.	.20	28.00

DATE	ATTY	DESCRIPTION	HOURS	AMOUNT
09/13/93	CAL	Telephone conference with Chuck, Third District Court; prepare cover letters to Constable Collins' office with issued Writs of Garnishment for West One and American Investment Banks; telephone conference with Jack, Constable Collins' office re service of Writs.	.60	36.00
09/13/93	MNZ	Prepare for and attend hearing on Zoll's motion to restore bond; conference with W. Marsden re: advisability of requesting contempt sanctions against Mr. Zoll for falsifying court records. <i>Writs from Zoll</i>	1.80	252.00
09/13/93	WGM	Office conference [MNZ] re execution issues and alternatives.	.30	43.50
09/14/93	JJD	Telephone call from American Investment Bank re Zoll & Branch garnishment.	.10	9.00
09/16/93	CAL	Review WestOne's response to Interrogatories to garnishee.	.10	6.00
09/17/93	CAL	Telephone conference with Gayle Campbell re transcript of hearing on 8/2/93; telephone conference with Cheryl Watkins, American Investment Bank re Zoll & Branch CD; telephone conference with Carolyn Palmer, WestOne Bank, re status of accounts; telephone conference with Rhonda Harwood and Claudia Parsons, WestOne Bank Legal Processes, re date account was closed.	.80	48.00
09/17/93	JJD	Review reply of Zoll & Branch to motion to restore supersedeas bond. <i>all in way forward</i>	.10	9.00
09/20/93	CAL	Draft Writ of Execution and Praecipe and prepare required notices; telephone conference with MNZ and Deputy Kimble re service; telephone calls to DMV and Salt Lake County Recorder and Tax Assessor re property held by Zoll & Branch; file maintenance.	2.30	138.00
09/20/93	MNZ	Prepare for and appear at hearing before the Supreme Court and argue in opposition to Zoll's motion to restore bond.	1.40	196.00

DATE	ATTY	DESCRIPTION	HOURS	AMOUNT
09/21/93	CAL	Review Findings of Fact and Conclusions of Law dated 2/17/93, verify judgment calculations and prepare exhibit to Writ of Execution.	1.20	72.00
09/21/93	MNZ	Conference with paralegal re: collection of judgment.	.20	28.00
09/21/93	KWH	Legal research re: response to docketing statement; draft Motion for Summary Disposition.	3.25	243.75
09/22/93	KWH	Draft Motion for Summary Disposition.	4.90	367.50
09/23/93	KWH	Draft Memorandum in Support of Motion for Summary Disposition.	.75	56.25
09/24/93	CAL	Draft cover letter to sheriff's department re service of Writ of Execution; assist KWH and DES with final preparations of Motion for Summary Disposition.	.90	54.00
09/24/93	JJD	Conference with K. Hansen re strategy for drafting motion for summary decision.	.20	18.00
09/24/93	MNZ	Review and revise execution on the Praecipe and letter to Sheriff re: collection of judgment amount.	.30	42.00
09/24/93	DES	Review memoranda and finalize document for filing.	2.00	200.00
09/24/93	KWH	Draft Memorandum in Support of Motion for Summary Disposition.	5.60	420.00
10/11/93	KWH	Review Appellant's Memorandum in Opposition to Motion for Summary Disposition. Draft Reply Memorandum.	3.30	247.50
10/11/93	MNZ	Prepare letter to Alan Asay.	.20	28.00
10/12/93	CAL	Research records at county assessor's and county recorder's offices re real property currently owned or recently sold by Zoll & Branch PC and obtain copies of pertinent documents.	.80	48.00
10/12/93	KWH	Draft Reply Memorandum. Edit changes to Reply Memorandum.	2.40	180.00

DATE	ATTY	DESCRIPTION	HOURS	AMOUNT
10/12/93	MNZ	Review rebuttal brief in support of motion for summary disposition.	.30	42.00
10/13/93	KWH	Draft response to "Affidavit of Recusal." Review file at Third District Court.	6.30	472.50
10/13/93	MNZ	Review Affidavit of Prejudice filed by Mr. Zoll; conference with K. Hansen re: preparation of response to affidavit.	.90	126.00
10/14/93	KWH	Edit Memorandum in Response to Plaintiff/Counterclaimant's Affidavit of Recusal. Draft motion for supersedeas bond.	5.00	375.00
10/14/93	MNZ	Review and revise response to Zoll's motion to restore supersedeas bond.	.50	70.00
10/28/93	MNZ	Review Zoll's memorandum in rebuttal and in support of recusal.	.20	28.00
12/13/93	MNZ	Appear at hearing on Ray Zoll's motion for determination amount of supersedeas bond.	2.00	280.00
12/13/93	KWH	Attend at hearing on Motion to Restore Bond.	2.00	150.00
12/21/93	CAL	Telephone conferences with MNZ and Deputy Kimble re service of Writ of Execution.	.50	30.00
12/23/93	CAL	Recalculate interest on judgment and prepare Writ of Execution, Praecipe and required notices.	1.00	60.00
12/23/93	MNZ	Review Zoll's proposed supersedeas bond and dictate letter to Ray Zoll.	.60	84.00
12/23/93	KWH	Office conference with MNZ re: response to "Objection to Bond" and "Corporate Supersedeas Bond."	.20	15.00
12/27/93	CAL	Prepare final documents for service of Writ of Execution; telephone call to Third District Court re papers filed by Zoll & Branch; draft cover letter for MNZ to Deputy Kimble.	1.20	72.00
12/27/93	MNZ	Dictate order on supersedeas bond; call to clerk of court re: issuance of writ of execution and dictate praecipe.	1.50	210.00

DATE	ATTY	DESCRIPTION	HOURS	AMOUNT
12/27/93	KWH	Draft Objection to Sufficiency of Supersedeas Bond; Deliver Writs of Execution to court clerk and sheriff's offices.	4.00	300.00
12/28/93	CAL	Conference with Sgt. Peterson re lockout on Zoll & Branch; telephone conference with Deputy Rook re execution on Zoll & Branch property; telephone calls to moving companies to arrange for moving company to assist with execution on property; telephone conference with Deputy Kimble re execution; travel to Zoll & Branch's offices, meet deputies and movers in preparation for execution.	2.50	150.00
12/28/93	MNZ	Call to attorney Jay Stone re: sheriff's procedure in executing on property and Zoll & Branch; conference with paralegal re: arrangement for movers to be at Zoll & Branch's offices; call moving company; call attorney Jay Stone re: sheriff's willingness to levy execution.	1.20	168.00
12/28/93	KWH	Draft Objection to Sufficiency of Supersedeas Bond. Attorney conference with MNZ re: same. Attorney conference with MNZ re: Motion to Augment.	4.00	300.00
12/29/93	MNZ	Review and revise objection to sufficiency of supersedeas bond.	.50	70.00
12/29/93	KWH	Draft Objection to Sufficiency of Supersedeas Bond; Draft response to Objection to Bond.	2.20	165.00
12/30/93	KWH	Edit final changes and print Objection to Sufficiency of Supersedeas Bond.	.60	45.00
12/31/93	KWH	Draft Memorandum in Response to Zoll & Branch's Objection to Bond.	1.50	112.50
TOTAL			94.60	8,258.50

UNBILLED COSTS ADVANCED

07/01/93	Postage charge	\$.52
07/12/93	Courier fee	5.00
07/20/93	Postage charge	.52
07/21/93	Courier fee	5.00
07/21/93	Postage charge	.52
07/21/93	Photocopy charge	.30
07/22/93	Courier fee	5.00
07/26/93	Photocopy charge	.45
07/27/93	Courier fee	8.00
07/27/93	Postage charge	.29
07/31/93	Photocopy charge	3.00
08/11/93	Courier fee	5.00
08/12/93	Photocopy charge	.30
08/12/93	Postage charge	.29
08/12/93	Postage charge	.29
08/17/93	Court copies	3.50
08/23/93	Third Judicial District Court	1.00
	Copy of Order Augmenting Judgement and	
	Releasing Cash Bond	
08/24/93	Courier fee	5.00
08/31/93	Photocopy charge	1.95
09/03/93	American Investment Bank	10.00
	Interrogatories	
09/03/93	Third Judicial District Court	5.00
	Issue Writ of Garnishment	
09/03/93	Westone Bank	10.00
	Interrogatories	
09/03/93	Third Judicial District Court	5.00
	Issue Writ of Garnishment: Westone Bank	
09/03/93	Postage charge	1.16
09/08/93	Courier fee	5.00
09/08/93	Postage charge	.52
09/10/93	Courier fee	5.00
09/10/93	Courier fee	9.00
09/13/93	Courier fee	7.00
09/13/93	Courier fee	5.00
09/13/93	Photocopy charge	3.15
09/13/93	Postage charge	.52
09/13/93	Postage charge	.52
09/17/93	Courier fee	5.00
09/17/93	Constable Office, Inc.	34.00
09/20/93	Courier fee	5.00
09/20/93	Courier fee	8.00
09/21/93	Postage charge	.29

09/24/93	Courier fee	5.00
09/24/93	Third Judicial District Court	5.00
	Issue Writ of Execution	
09/24/93	Salt Lake County Sheriff	100.00
	Service of Writ of Execution	
09/24/93	Postage charge	2.59
09/27/93	Courier fee	5.00
09/27/93	Postage charge	.29
09/30/93	Photocopy charge	64.65
09/30/93	Photocopy charge	44.10
09/30/93	Photocopy charge	2.70
09/30/93	Photocopy charge	18.45
10/01/93	Postage charge	2.90
10/11/93	Postage charge	1.21
10/12/93	Long distance phone charges	.36
10/12/93	Postage charge	.52
10/13/93	Gayle B. Campbell	37.00
	Transcript in hearing of 08/01/93.	
10/13/93	Courier fee	5.00
10/13/93	Postage charge	1.67
10/14/93	Courier fee	5.00
10/14/93	Postage charge	1.96
10/15/93	Courier fee	5.00
10/18/93	Postage charge	.75
10/30/93	Photocopy charge	14.55
10/30/93	Photocopy charge	19.80
11/22/93	Telefax charge	.50
11/22/93	Telefax charge	1.50
11/30/93	Postage charge	.75
11/30/93	Photocopy charge	3.15
	Total Unbilled Costs Advanced:	\$514.49

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