

1995

Shawn F. Reeves and Julie N. Reeves v. Thad B. Steinfeldt : Reply Brief

Utah Court of Appeals

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William M. Jeffs; Jeffs & Jeffs; Attorneys for Appellant.

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BRIEF

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IN THE UTAH COURT OF APPEALS 950132-CA - 8 1996

OF THE STATE OF UTAH

COURT OF APPEALS

SHAWN F. REEVES and
JULIE N. REEVES,

Plaintiffs-
Appellants,

vs.

THAD B. STEINFELDT dba
STEINFELDT CONSTRUCTION,

Defendant-Appellee.

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:
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Case No. 950132-CA

Oral Argument
Priority 15

REPLY TO STEINFELDT'S ANSWER TO REEVES' PETITION FOR REHEARING

Appeal from the Judgment of the Fourth Judicial
District Court, Utah County, State of Utah,
The Honorable Ray M. Harding

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ATTORNEYS FOR Appellee

IN THE UTAH COURT OF APPEALS
OF THE STATE OF UTAH

SHAWN F. REEVES and	:	
JULIE N. REEVES,	:	
	:	Case No. 950132-CA
Plaintiffs-	:	
Appellants,	:	
	:	
vs.	:	Oral Argument
	:	Priority 15
THAD B. STEINFELDT dba	:	
STEINFELDT CONSTRUCTION,	:	
	:	
Defendant-Appellee.	:	

REPLY TO STEINFELDT'S ANSWER TO REEVES' PETITION FOR REHEARING

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ATTORNEYS FOR Appellee

ARGUMENT

REEVES AFFIRMATIVELY REQUESTED ATTORNEY FEES IN THEIR MOTION FOR SUMMARY DISPOSITION, DISPOSITION OF WHICH WAS DEFERRED BY THE COURT, AND THUS MADE A PROPER REQUEST FOR ATTORNEY FEES.


Steinfeldt has argued that Reeves never affirmatively requested attorney fees in their motion to dismiss. This is correct. However, Reeves *did* request attorney fees when requesting *summary disposition*. See Memorandum Supporting Reeves' Motion for Summary Disposition (January 30, 1995) at 10 ("His appeal should be dismissed, and Reeves should be further awarded those fees he has expended in defending this appeal as provided by Utah Code Ann. § 38-1-18 and Richards v. Security Pacific Nat'l bank, 849 P.2d 606 (Utah Ct. App.), cert. denied, 859 P.2d 585 (Utah 1993)."). Reeves' counsel mistakenly referred to their motion to dismiss when stating that they had requested fees. Reeves apologize for any inconvenience this may have caused the Court.

Reeves' oversight, however, has no substantive effect: it matters not whether Reeves requested attorney fees in their motion to dismiss or their motion for summary disposition, *since the court reserved ruling on the issues in the motion for summary disposition until after plenary consideration*. See Order of March 8, 1995 ("[T]he motion is denied, and a ruling on the issues raised is deferred until plenary presentation and consideration of the case. Utah R. App. P. 10(f)."). *Deferral* is the operative word in Rule 10(f). Thus, contrary to Steinfeldt's argument, an affirmative request for fees had been deferred by the Order of March 8, 1995,

was pending before the Court when it ruled, and was disposed of in the Court's opinion.

Attorney fees should be granted.

DATED this 5th day of April, 1996.



PHILLIP E. LOWRY, for:
HOWARD, LEWIS & PETERSEN
Attorneys for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that two true and correct copies of the foregoing were mailed, postage prepaid, to the following this 8th day of April, 1998.

William M. Jeffs, Esq.
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ATTORNEY

FILED

IN THE UTAH COURT OF APPEALS

MAR - 8 1995

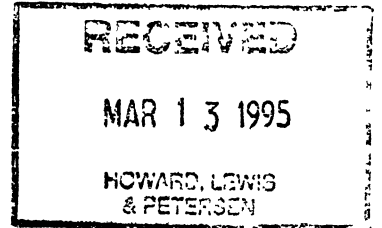
Marlene M. Francis
COURT OF APPEALS

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Shawn F. Reeves, and Julie N.)
 Reeves,)
)
 Plaintiffs, Appellees, and)
 Cross-Appellants,)
)
 v.)
)
 Thad B. Steinfeldt dba)
 Steinfeldt Construction,)
)
 Defendant, Appellant, and)
 Cross-Appellee.)

ORDER

Case No. 950132-CA



This matter is before the court on appellees' motion for summary disposition.

IT IS HEREBY ORDERED that the motion is denied, and a ruling on the issues raised is deferred until plenary presentation and consideration of the case. Utah R. App. P. 10(f).

Dated this 8th day of March, 1995.

BY THE COURT:



 Michael J. Wilkins, Judge

CERTIFICATE OF MAILING

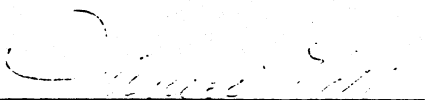
I hereby certify that on the 8th day of March, 1995, a true and correct copy of the foregoing SUA SPONTE MOTION FOR SUMMARY DISPOSITION was deposited in the United States mail to the parties listed below:

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Dated this 8th day of March, 1995.

By



Deputy Clerk