

1995

## Wisden v. Dobson : Brief of Appellant

Utah Court of Appeals

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Unknown.

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UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO. 950510

IN THE UTAH COURT OF APPEALS

JOSEPH M. WISDEN,

*Petitioner/Appellant,*

- vs -

RICHARD M. DOBSON, Washington  
County Justice of the Peace

*Respondent/Appellee.*

Case No. 950510

**APPELLANT'S BRIEF**

Priority #15

This appeal is taken from the 27 December 1994 ORDER AND JUDGMENT OF DISMISSAL pursuant to Respondent Dobson's 26 July 1994, MOTION TO DISMISS PETITION FOR WRIT OF PROHIBITION, the Honorable James L. Shumate, presiding.

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Pro Per*

**FILED**  
Utah Court of Appeals

OCT 18 1995

Marilyn M. Branch  
Clerk of the Court

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## **TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	ii
JURISDICTION .....	1
ISSUES PRESENTED ON APPEAL .....	1
VERBATIM RECITALS OF CONSTITUTIONAL PROVISIONS, STATUTES & RULES	
<i>Utah Constitution</i> , Article 1, Section 1 .....	3
<i>Utah Constitution</i> , Article 1, Section 7 .....	3
<i>Utah Constitution</i> , Article 1, Section 11 .....	3
<i>Utah Constitution</i> , Article 1, Section 14 .....	3
<i>Utah Rules of Criminal Procedure</i> , Rule 3(b) .....	3
<i>Utah Rules of Criminal Procedure</i> , Rule 6(b) .....	3
<i>Utah Rules of Criminal Procedure</i> , Rule 6(c)(3) .....	4
<i>Utah Rules of Civil Procedure</i> , Rule 4(h) .....	4
<i>Utah Rules of Civil Procedure</i> , Rule 4(k) .....	4
<i>Utah Rules of Civil Procedure</i> , Rule 12(b)(5) .....	4
STATEMENT OF THE CASE	
Nature of the Case .....	5
Course of the Proceedings and Disposition in the Court Below ....	5
Statement of the Facts .....	8
SUMMARY OF ARGUMENT .....	12
ARGUMENT	
Issue #1 .....	14
Did the District Court Err in granting Respondent's MOTION TO DISMISS?	
Issue #2 .....	15
Was Petitioner denied due process in the justice court and therefore entitled, in this case, to extraordinary relief, in the form of prohibition, from the district court, or in other words, did Petitioner state a claim on which relief may be granted?	
CONCLUSION .....	18
ADDENDUMS	
Addendum #1 — ORDER AND JUDGMENT OF DISMISSAL .....	19
CERTIFICATE OF SERVICE .....	21

## **TABLE OF AUTHORITIES**

1.	<u>ATWOOD v. COX</u> , 55 P.2d 377 (Utah 1936)	pp.	2, 16
2.	<u>BARBER v. CALDER</u> , 522 P.2d 700 (Utah 1974)	pp.	2
3.	<u>DOWNEY STATE BANK v. MAJOR-BLAKENEY CORPORATION</u> , 545 P.2d 507 (Utah 1976)	pp.	2, 17
4.	<u>DYNAPAC, INC. v. INNOVATIONS, INC.</u> , 550 P.2d 191 (Utah 1976)	pp.	2, 17
5.	<u>LANCASTER v. UTAH BOARD OF PARDONS</u> , 869 P.2d 945 (Utah 1994)	pp.	2, 5, 13, 18
6.	<u>MARTIN v. NELSON</u> , 533 P.2d 897 (Utah 1975)	pp.	2, 9, 16
7.	<u>McRAE &amp; DeLAND v. FELTCH</u> , 669 P.2d 404 (Utah 1983)	pp.	2, 17
8.	<u>MOUNTEER v. UTAH POWER &amp; LIGHT CO.</u> , 823 P.2d 1055 (Utah 1991)	pp.	1, 2, 14
9.	<u>REES v. SCOTT</u> , 329 P.2d 877 (Utah 1958)	pp.	2, 16
10.	<u>Utah State Constitution</u> , Article 1, Section 1	pp.	2, 3
11.	<u>Utah State Constitution</u> , Article 1, Section 7	pp.	2, 3
12.	<u>Utah State Constitution</u> , Article 1, Section 11	pp.	2, 3
13.	<u>Utah State Constitution</u> , Article 1, Section 14	pp.	2, 3
14.	<u>Utah Rules of Criminal Procedure</u> , Rule 3(b)	p.	2, 3, 5, 9, 16
15.	<u>Utah Rules of Criminal Procedure</u> , Rules 6(b) & 6(c)(3)	pp.	2, 3, 4, 5, 9, 16
16.	<u>Utah Rules of Civil Procedure</u> , Rules 4(h) & 4(k)	pp.	2, 4, 5, 9, 16

**TABLE OF AUTHORITIES** *(continued)*

17. <u>Utah Rules of Civil Procedure</u> , Rule 12(b)(5)	
.....	pp. 1, 2, 4, 5

## **JURISDICTION**

This appeal is taken from the 27 December 1994 ORDER AND JUDGMENT OF DISMISSAL pursuant to Respondent Dobson's 26 July 1994, MOTION TO DISMISS PETITION FOR WRIT OF PROHIBITION, the Honorable James L. Shumate, presiding.

Pursuant to the granting of Respondent's pre-answer MOTION TO DISMISS PETITION FOR WRIT OF PROHIBITION from the District Court, Plaintiff appealed to the Utah Court of Appeals, which has appellate jurisdiction over this matter pursuant to the Utah Judicial Code, UCA §78-2a-3, and Article 1, Section 12, Utah State Constitution.

The Utah Court of Appeals thereafter certified this case to the Utah Supreme Court.

Pursuant to the authority vested in the Utah Supreme Court, this case was then poured-over to the Court of Appeals for disposition on 18 May 1995.

## **ISSUES PRESENTED ON APPEAL**

**POINT #1.** DID THE DISTRICT COURT ERR IN GRANTING RESPONDENT'S MOTION TO DISMISS?

### **STANDARD OF REVIEW**

The Standard of Review considered under a Rule 12(b) motion to dismiss for failure to state a claim, is that all reasonable inferences made with regard to the original complaint (*a PETITION FOR A WRIT OF PROHIBITION in this case*) are to be construed as true and in a light most favorable to the Petitioner.

1. MOUNTEER v. UTAH POWER & LIGHT COMPANY, 823 P.2d 1055 (Utah 1991)

**POINT #2. WAS PETITIONER DENIED DUE PROCESS IN THE JUSTICE COURT AND THEREFORE ENTITLED, IN THIS CASE TO EXTRAORDINARY RELIEF, IN THE FORM OF PROHIBITION, FROM THE DISTRICT COURT?**

### **STANDARD OF REVIEW**

This issue on review may appear odd at first blush, however, Appellant's case revolves on his challenge to the lack of jurisdiction of the Justice Court. Appellant's appeal to this Court is from his denial of a petition in the District Court for prohibition against said Justice Court.

1. ATWOOD v. COX, 55 P.2d 377 (Utah 1936)
2. BARBER v. CALDER, 522 P.2d 700 (Utah 1974)
3. DOWNEY STATE BANK v. MAJOR-BLAKENEY CORPORATION, 545 P.2d 507 (Utah 1976)
4. DYNAPAC, INC. v. INNOVATIONS, INC., 550 P.2d 191 (Utah 1976)
5. LANCASTER v. UTAH BOARD OF PARDONS, 869 P.2d 945 (Utah 1994)
6. MARTIN v. NELSON, 533 P.2d 897 (Utah 1975)
7. McRAE & DeLAND v. FELTCH, 669 P.2d 404 (Utah 1983)
8. REES v. SCOTT, 329 P.2d 877 (Utah 1958)
9. Utah State Constitution, Article 1, Section 1
10. Utah State Constitution, Article 1, Section 7
11. Utah State Constitution, Article 1, Section 11
12. Utah State Constitution, Article 1, Section 14
13. Utah Rules of Criminal Procedure, Rule 3(b)
14. Utah Rules of Criminal Procedure, Rules 6(b) & 6(c)(3)
15. Utah Rules of Civil Procedure, Rule 12(b)(5)
16. Utah Rules of Civil Procedure, Rules 4(h) & 4(k)



**VERBATIM RECITALS OF CONSTITUTIONAL PROVISIONS,  
STATUTES, ORDINANCES, RULES AND REGULATIONS**

**Utah Constitution**, Article 1, Section 1

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

**Utah Constitution**, Article 1, Section 7

No person shall be deprived of life, liberty or property, without due process of law.

**Utah Constitution**, Article 1, Section 11

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

**Utah Constitution**, Article 1, Section 14

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

**Utah Rules of Criminal Procedure**, Rule 3(b)

3(b) Whenever service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney, unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

**Utah Rules of Criminal Procedure**, Rule 6(b) & 6(c)(3)

6(b) If it appears to the magistrate that the accused will appear on a summons and there is no substantial danger of a breach of the peace, or injury to persons or property, or danger to the community, a summons may issue in lieu of a warrant of arrest to require the appearance of the accused. If the defendant is a corporation, a summons shall issue. A warrant of arrest may issue in cases where the defendant has failed to appear in response to a summons or citation or thereafter when required by the court. When a warrant of arrest is issued, the magistrate shall state on the warrant:

(1) the amount of bail; and

(2) if the magistrate determines that the accused must appear in court, the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.

6(c)(3) The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request shall show the warrant to the defendant as soon as practicable. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that the warrant has been issued. The summons shall be served as in civil actions, or by mailing it to the defendant's last known address.

Utah Rules of Civil Procedure, Rules 4(h) & 4(k)

**4(h) Manner of proof.** In a case commenced under Rule 3(a)(1), the party serving the process shall file proof of service with the court promptly, and in any event within the time during which the person served must respond to the process, and proof of service must be made within ten days after such service. Failure to file proof of service does not affect the validity of the service. In all cases commenced under Rule 3(a)(1) or Rule 3(a)(2), the proof of service shall be made as follows:

- (1) If served by a sheriff, constable, United States Marshal, or the deputy of any of them, by certificate with a statement as to the date, place, and manner of service;
- (2) If served by any other person, by affidavit with a statement as to the date, place, and manner of service, together with the affiant's age at the time of service.

**4(k) Date of service to be endorsed on copy.** At the time of service, the person making such service shall endorse upon the copy of the summons left for the person being served, the date upon which the same was served, and shall sign his or her name thereto, and, if an officer, add his or her official title.

Utah Rules of Civil Procedure, Rule 12(b)(5)

**12(b) How presented.** Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over 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, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion or by further pleading after the denial of such motion or objection. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

## **STATEMENT OF THE CASE**

### **Nature of the Case**

Plaintiff sought extraordinary relief pursuant to Rule 65B(e), Utah Rules of Civil Procedure. Utah's governmental immunity is not applicable in this case as a tort remedy is not being sought.

### **Course of the Proceedings and Disposition in the Court Below**

1. On 5 July 1994, Petitioner/Appellant caused to be filed his PETITION FOR WRIT OF PROHIBITION (*Record, page 1*)
2. Respondent/Appellee was served the SUMMONS and PETITION on 6 July 1994, by one (1) Gary Stubbs, a local process server. (*Record, page 27*)
3. The RETURN OF SERVICE was filed with the Fifth Judicial District Court on 11 July 1994. (*Record, page 28*)
4. On or about 26 July 1994, Respondent caused to be filed MOTION TO DISMISS PETITION FOR WRIT OF PROHIBITION, arguing that Lancaster v. Utah Bd. of Pardons, 869 P.2d 945 (Utah 1994) held that "trial court can dismiss writ of prohibition that fails to state a claim upon which relief may be granted despite lack of express authority to dismiss frivolous petitions under subsection (e) of Rule 65B." Respondent claimed "Petitioner [had] not alleged facts showing that the justice court 'violated some portion of [Rule 65B].'" (*Record, page 29*)
5. On 1 August 1994, Petitioner filed his OPPOSITION TO RESPONDENT'S MOTION TO DISMISS PETITION FOR WRIT OF PROHIBITION AND MOTION FOR RULE 11 SANCTIONS. Petitioner argued that his Respondent's motion was off point. The issue was not improprieties of the lower Justice Court pursuant to Rule 65B, but that the Justice Court lacked jurisdiction pursuant to Rules 3 & 6 of the Utah Rules of Criminal Procedure and Rules 3 & 4 of the Utah Rules of Civil Procedure. (*Record, page 31*)

6. On 15 August 1994, Plaintiff filed a NOTICE TO SUBMIT FOR HEARING on Respondent's MOTION TO DISMISS. (**Record, page 34**)

7. On 10 August 1994, Judge James L. Shumate set a hearing on Petitioner's IMPECUNIOUS LITIGANT AFFIDAVIT, and a hearing was convened on Wednesday, 17 August 1994, strictly for the purpose of establishing Petitioner's impecuniosity.. (**Record, page 37, ¶ #8**)

8. At the hearing referred to in ¶ #7 immediately above, Judge Shumate prefaced his calling the hearing because of rumors he had allegedly heard regarding a "jackpot" winnings in excess of \$5,000, by the Petitioner, "sometime" previous to that date. (**Record, page 37, ¶ #9**)

9. At the 17 August 1994, hearing, Judge Shumate refused to allow Petitioner to testify, based on his firmly held religious belief to not swear to the limiting provision to "tell the truth," and Judge Shumate dismissed Petitioner's PETITION in this case. (**Record, page 39, ¶¶ #20 through #24**)

10. On 18 August 1994, Petitioner filed his MOTION TO RECONSIDER DISMISSAL. (**Record, page 45**)

11. On 22 August 1994, Judge Shumate caused to be filed a MEMORANDUM DECISION AND JUDGMENT OF DISMISSAL based on Petitioner's firmly held religious belief to not swear to the limiting provision to "tell the truth." (**Record, page 55**)

12. On 6 September 1994, Petitioner caused to be filed a NOTICE TO SUBMIT FOR DECISION, on Petitioner's MOTION TO RECONSIDER DISMISSAL (**Record, page 57**)

13. On 8 September 1994, Judge Shumate caused to be filed a MEMORANDUM DECISION which contained an Order staying his previous 22 August 1994, dismissal of this case, until 10 October 1994, for Petitioner to pay the filing fee. (**Record, page 59**)

14 On or about 19 September 1994, the filing fee was paid. (**Not paginated to the Record**)

15 On 20 September 1994, Petitioner caused a NOTICE TO RESUBMIT FOR HEARING to be filed for Respondent's MOTION TO DISMISS PETITION FOR WRIT OF PROHIBITION. (**Record, page 61**)

16. On 22 September 1994, Judge Shumate caused to be entered into the court docket the following note: "MOTION TO DISMISS WRIT OF PROHIBITION IS GRANTED. BRENT ROWE TO SUBMIT ORDER AND JUDGMENT.' MR. ROWE NOTIFIED BY TELEPHONE.". (**Record, page 67**)

17. On 13 October 1994, not having received any advisory from the Court with regards to Respondent's MOTION TO DISMISS, Petitioner filed a MOTION FOR AN ORDER FROM WHICH TO APPEAL (**Record, page 64**)

18. On or about 25 October 1994, counsel for the Respondent, O. Brenton Rowe, caused to be filed an AFFIDAVIT OF PROBABLE CAUSE, averting that he received no telephonic notice or request from the court or Judge Shumate, to prepare an "Order and Judgment." (**Record, page 68**)

19. On 27 October 1994, Petitioner caused a NOTICE TO SUBMIT FOR DECISION to be filed for Petitioner's MOTION FOR AN ORDER FROM WHICH TO APPEAL. (**Record, page 71**)

20. On 1 November 1994, a NOTICE was sent to all parties advising them of a hearing scheduled for 22 November 1994.. (**Record, page 74**)

21. On or about 28 October 1994, Respondent caused to be filed a REQUEST FOR HEARING (**Record, page 73**)

22. On 22 November 1994, a hearing was held on Petitioner's MOTION FOR AN ORDER FROM WHICH TO APPEAL. (**Record, page 76**)

23. On or about 22 December 1994, Respondent caused to be filed a proposed Order and Judgment of Dismissal. (**Record, page 79**)

24. On 27 December 1994, the Court caused to be entered an ORDER AND JUDGMENT OF DISMISSAL, broadly stating "Justice Courts have been granted jurisdiction to issue process by statute (**Record, page 79**)

27. On 23 January 1995, Plaintiff filed his NOTICE OF APPEAL with the Court below. (**Record, page 81**)

### **Statement of the Facts**

1. On or about 5 - 3 -, 94 (3 May, 1994?), Petitioner/Appellant was handed a St. George Police Department UNIFORM CITATION OR INFORMATION AND NOTICE TO APPEAR. (**Record pp. 3 ¶ #1** [PETITION FOR WRIT OF PROHIBITION], **& 8** [PETITION FOR WRIT OF PROHIBITION — Exhibit A])

2. Said UNIFORM CITATION OR INFORMATION AND NOTICE TO APPEAR stated on the back that “This citation is not an information and will not be used as an information without your consent.” (**Record pp. 3 ¶ #2** [PETITION FOR WRIT OF PROHIBITION], **& 9** [PETITION FOR WRIT OF PROHIBITION — Exhibit B])

3. Petitioner did not consent to the use of the above referenced UNIFORM CITATION OR INFORMATION AND NOTICE TO APPEAR and thereafter entered his appearance pursuant to the UNIFORM CITATION OR INFORMATION AND NOTICE TO APPEAR by letter on or about 13 May 1994. (**Record pp. 3 ¶ #3** [PETITION FOR WRIT OF PROHIBITION], **& 10** [PETITION FOR WRIT OF PROHIBITION — Exhibit C])

4. Apparently as a consequence to Petitioner’s 13 May letter, referenced in ¶ #3 immediately above, the Washington County Attorney, Eric Ludlow, authorized the issuance of an INFORMATION, signed and dated June 6, 1994. (**Record pp. 3 ¶ #4** [PETITION FOR WRIT OF PROHIBITION], **& 11** [PETITION FOR WRIT OF PROHIBITION — Exhibit D])

5. Apparently as a consequence to the INFORMATION referred to in ¶ #4 immediately above, Respondent Dobson, Washington County Justice of the Peace, issued a SUMMONS on 6.9.94 (9 June 1994?), pursuant to the aforesaid INFORMATION. (**Record pp. 3 ¶ #5** [PETITION FOR WRIT OF PROHIBITION], **& 12** [PETITION FOR WRIT OF PROHIBITION — Exhibit E])

6. On or about 17 June 1994, the above referenced INFORMATION and SUMMONS were delivered to one (1) Don Wisden, the brother of the Petitioner in this cause of action. (**Record pp. 3 ¶ #6** [PETITION FOR WRIT OF PROHIBITION], **11 & 12** [PETITION FOR WRIT OF PROHIBITION — Exhibits D & E])

7. The SUMMONS, delivered to the Petitioner's brother was not endorsed pursuant to *Rule 4(k), Utah Rules of Civil Procedure*<sup>1</sup>. (**Record pp. 4 ¶ #7** [PETITION FOR WRIT OF PROHIBITION], **& 12** [PETITION FOR WRIT OF PROHIBITION — Exhibit E])

8. On or about 18 June 1994, a police officer, identified only as P015, filed a RETURN OF SERVICE with the Respondent, Justice Court. (*Exhibit F to original PETITION*) (**Record pp. 4 ¶ #8** [PETITION FOR WRIT OF PROHIBITION], **& 13** [PETITION FOR WRIT OF PROHIBITION — Exhibit F])

9. The RETURN OF SERVICE, filed with the Respondent, Justice Court, does not contain a statement as to endorsement, date, place and manner of service<sup>2</sup> showing the officer complied with the rules governing service of process.<sup>3</sup> (**Record pp. 4 ¶ #9** [PETITION FOR WRIT OF PROHIBITION], **& 13** [PETITION FOR WRIT OF PROHIBITION — Exhibit F])

10. On or about 22 June 1994, Petitioner caused to be filed with the Respondent, Justice Court, a MOTION TO QUASH SUMMONS and a MOTION TO DISMISS, for improper service of process of the original SUMMONS and INFORMATION, filing of a fraudulent RETURN OF SERVICE by the police officer identified only as P015, and lack of personal jurisdiction to the Respondent, Justice Court, for insufficiency of process. (**Record pp. 4 ¶ #10** [PETITION FOR WRIT OF PROHIBITION], **14, 15 & 13** [PETITION FOR WRIT OF PROHIBITION — Exhibits G, H, & F])

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<sup>1</sup> *Utah Rules of Criminal Procedure, Rule 3(b)* — "Service upon the attorney or upon a party shall be made in the manner provided in civil actions."

<sup>2</sup> *Utah Rules of Criminal Procedure, Rule 6(c)(3)* — "The summons shall be served as in civil actions ....."

<sup>3</sup> *Utah Rules of Civil Procedure, Rule 4(g)* — "..... with a statement as to date, place and manner of service."  
<sup>3</sup> "There was no jurisdiction over ['Petitioner'] where peace officer falsely stated in return of service that date, place of address of service and signature had been endorsed on summons." *Martin - vs - Nelson*, 533 P.2d 897 (Utah 1975)

11. Respondent Richard M. Dobson, Justice of the Peace, did not allow the appropriate time to pass for response by the opposing party to Petitioner's motions in the justice court, pursuant to the Rules of Procedure regarding filing and response to motions. **(Record p. 4 ¶ #11 [PETITION FOR WRIT OF PROHIBITION])**

12. On or about 27 June 1994, Respondent Dobson caused to be mailed a copy of another document, another SUMMONS which was apparently filed with the Respondent, Justice Court, at the same time the RETURN OF SERVICE was filed with the Respondent, Justice Court. **(Record pp. 5 ¶ #12 [PETITION FOR WRIT OF PROHIBITION], & 21 [PETITION FOR WRIT OF PROHIBITION — Exhibit I])**

13. The SUMMONS, *Exhibit E to the original PETITION* in this matter, is not the same document as the SUMMONS, *Exhibit I to the original PETITION*. **(Record pp. 5 ¶ #13 [PETITION FOR WRIT OF PROHIBITION], 12 & 21 [PETITION FOR WRIT OF PROHIBITION — Exhibits E & I])**

14. On or about 30 June 1994, Respondent Dobson summarily denied Petitioner's motions to the Justice Court, claimed he possessed jurisdiction over the person and the subject matter regarding the Petitioner in his court, and proceeded with the arraignment scheduled on the date of the SUMMONS, even though jurisdiction had been challenged that Petitioner had not received proper summons or service or process. **(Record p. 5 ¶ #14 [PETITION FOR WRIT OF PROHIBITION])**

15. Standing Petitioner's 13 May 1994, appearance by letter, and 22 June 1994 appearance by MOTION TO DISMISS on their head, by challenging the Justice Court's jurisdiction over his person, Respondent Dobson committed fraud by declaring Petitioner had failed to appear and declared Petitioner was in violation of some "official misconduct-misdemeanor," and ordered a bench warrant to be issued against the Petitioner, with a bail set at \$250. **(Record p. 5 ¶ #15 [PETITION FOR WRIT OF PROHIBITION])**



16. Petitioner was advised of the order of Respondent Dobson's warrant against him by telephone by Respondent Dobson's secretary on 1 July 1994. (**Record p. 5 ¶ #16** [PETITION FOR WRIT OF PROHIBITION])

17. Petitioner proceeded with this case in the District Court, there being no other remedy available to him to prevent an obvious effort by the Respondent to violate his rights and deprive him of his liberty in a manifest absence of jurisdiction. (**Record**)

18. Subsequent to the filing of this appeal, Respondent Dobson issued a BENCH WARRANT, and Petitioner was arrested on 29 August 1995. (**Not in Record**)

19. The Petitioner/Appellant also filed an AFFIDAVIT OF PREJUDICE to recuse Judge Shumate on the basis of manifest bias. Such attempt at recusal was denied Petitioner in the Court Below. (**Record p. 36** [AFFIDAVIT OF PREJUDICE])

## **SUMMARY OF ARGUMENTS**

**POINT 1.** Plaintiff argues that the District Court below did not properly apply the appropriate standard of review for a MOTION TO DISMISS. Respondent incorrectly argued an issue that was simply off point to Petitioner's cause of action.

The District Court below accepted no argument from the parties and offered no insight in its ORDER AND JUDGMENT OF DISMISSAL which broadly stated, "The Petition fails to state a claim upon which the relief sought may be granted."

The District Court below went on to state that Petitioner's "[C]laim is frivolous on its face because other ordinary remedies such as appeal exist ....."

**POINT 2.** Plaintiff argues that his PETITION FOR WRIT OF

PROHIBITION succinctly stated a claim for which relief may be granted.

Respondent argues that Lancaster v. Utah Board of Pardons, 869 P.2d 945, grants the Justice of the Peace, broad discretion in assuming jurisdiction where no other court in the land possess such authority.

The District Court below stands the facts of this case on their head and completely disregards their application to Petitioner's cause of action.

Petitioner argues that Lancaster is not even applicable to the facts of this case, and that various other Utah appellate decisions support his allegations and grievances of non-action in the Justice Court; and, usurpation of jurisdiction and abuse of judicial authority by the Respondent Dobson.

## **ARGUMENT**

### **POINT 1. DID THE DISTRICT COURT ERR IN GRANTING RESPONDENTS MOTION TO DISMISS**

The standard of review is well established where it comes to motions to dismiss. MOUNTEER v. UTAH POWER & LIGHT CO., 823 P.2d 1055 (Utah 1991) Petitioner is entitled to all inferences made, with regards to his PETITION FOR A WRIT OF PROHIBITION, to be construed in his favor, and his facts alleged to be accepted as true by the reviewing court.

Petitioner sought extraordinary relief in the District Court below because there was no other available and speedy remedy to prevent the Justice Court from exercising unlawful jurisdiction and depriving Petitioner of his liberty, where it had **not** first obtained jurisdiction over the Petitioner's person by proper service, or subject matter jurisdiction by properly authorized INFORMATION, where Petitioner appeared and specifically objected to prosecution by a citation.

On the other hand, the District Court below bent over backwards to prevent Petitioner from a speedy remedy. Examples abound in this case to demonstrate how the Court bumbled about to prevent Petitioner a speedy remedy before it finally provided Petitioner the appropriate opportunity to proceed to this appeal.

Petitioner, likewise, stated a claim on which relief may be granted, which will be more fully explored in **POINT 2** of this Argument.

**POINT 2.** WAS PETITIONER DENIED DUE PROCESS IN THE JUSTICE COURT AND THEREFORE ENTITLED, IN THIS CASE, TO EXTRAORDINARY RELIEF, IN THE FORM OF PROHIBITION, FROM THE DISTRICT COURT, OR IN OTHER WORDS, DID PETITIONER STATE A CLAIM ON WHICH RELIEF MAY BE GRANTED?

The global misunderstandings of everyone involved with traffic citations stands proper and appropriate procedures meant to safeguard the innocent, on their head, and denies due process to those innocent and accused. Notwithstanding the statutorial schemes which generally grants Justice Courts a jurisdiction to hear traffic citations; various appellate decisions lend a different perspective to the assumption that a justice court is automatically and universally endowed with complete and global jurisdiction simply because a myopic bully, commonly referred to a a police officer, gets a wild hair up his ass to write a ticket.

In light of recent exposure of many police departments around the country, it cannot be assumed by the courts that police officers will tell the truth about any conduct or operation they engage in.

Any court, including a Justice of the Peace, must first obtain jurisdiction to hear a matter in controversy. By obtaining jurisdiction it then is competent to try a case before it. Without jurisdiction, it is defunct and impotent in every sense of the word.

In discussing jurisdiction of a judicial forum, three (3) indicia must be present. Those indicia are:

- 1) Territorial jurisdiction
- 2) Subject matter jurisdiction
- 3) Personal jurisdiction

These indicia are too axiomatic for Petitioner to waste this Court's time to elaborate.

In the case of Atwood v. Cox, 55 P.2d 377 (Utah 1936), the Utah Supreme Court tells the Petitioner that, “Jurisdiction can never depend upon the merits of a case brought before the court, but only upon its right to hear and decide at all.”

The Atwood case discusses jurisdiction at length and then delves into prohibition as the exact remedy available to the Petitioner, based on the facts of this case. “The writ of prohibition is an extraordinary judicial writ, issuing out of a court of superior jurisdiction and directed to an inferior tribunal properly and technically denominated such,.....” and “The legitimate scope and purpose of the writ is to keep inferior courts within the limits of their own jurisdiction.”

As Petitioner’s facts reveal, the Respondent did not obtain personal jurisdiction over his person, in addition to the INFORMATION being faulty according to Criminal Rules regarding sworn affidavits to support criminal complaints.

But does the Petitioner state a claim on which relief can be granted. Was the Justice Court absent jurisdiction over the person of the Petitioner?

Criminal Rules 3(b) and 6(c)(3) tells the Petitioner that SUMMONSES for criminal actions must be served as in civil actions. Civil Rule 4(h) delineates the manner and proof of service, and Civil Rule 4(k) mandates how process is served, including endorsements required by the process server, placed on the SUMMONS. Petitioner’s facts clearly demonstrate the above requirements were not complied with, thereby denying the Justice Court jurisdiction over the person of the Petitioner.

In 1958, the Utah Supreme Court told the Petitioner in Rees v. Scott, 329 P.2d 877 (Utah 1958), the reasons for endorsement on the SUMMONS. In Martin v. Nelson, 533 P.2d 897 (Utah 1975), the Utah Supreme Court explained that “[S]ervice is jurisdictional.” The Martin court also explained, “Defendant, as was his right, appeared specially and raised the point [of fraudulent RETURN OF SERVICE].

In the instant case, Petitioner appeared specially in the Justice Court to challenge that court's jurisdiction over his person. Petitioner challenged the SUMMONS on its fact, the RETURN OF SERVICE, and the manner and proof of service. The Justice Court ignored Petitioner's special appearance, and so did the District Court below.

In Dynapac, Inc. v. Innovations, Inc., 550 P.2d 191 (Utah 1976), the Utah Supreme Court said that "Failure to comply with rule, which provides that 'At the time of service, the person making such service shall endorse upon the copy of the summons left for the person being served, the date upon which the same was served, and shall sign his name thereto, and, if an officer, add his official title,' is fatal defect when the defendant appears timely and specially to quash the service. Rules of Civil Procedure, rule 4(j)." Petitioner exactly complied with these provisions. He appeared specially and timely to quash the service of the SUMMONS issued by the Respondent Justice Court.

Finally, Petitioner also relied on what the Utah Supreme Court told him in Downey State Bank v. Major-Blakeney Corporation, 545 P.2d 507 (Utah 1976), wherein he is told that, "A party may make a special appearance to contest a court's jurisdiction over him with submitting himself to it." This the Petitioner did by his challenges on paper. Petitioner feared that physical appearance in court would work to grant the court personal jurisdiction.

The Respondent Justice Court and the District Court below assumed Petitioner's special appearance and challenge to its jurisdiction constituted a non-appearance.

In addition, the District Court below asserts that Petitioner has some other remedy available to him. Not so, according to McRae & DeLand v. Felch, 669 P.2d 404 (Utah 1983). "Appropriate procedure with respect to claim that justice of the peace lacked jurisdiction to try cases involving driving under influence of intoxicants was not declaratory action, but rather petition for extraordinary writ. Rules Civ. Proc., Rule 65B(b)(2).

Respondent uses the case of Lancaster v. Utah Board of Pardons, 869 P.2d 945 (Utah 1994) to advance the argument that Petitioner fails to state a claim. Respondent's argument is off-point and stands the facts of this case on their head. This misconstruance of the facts, by the District Court below, is the error Petition raises to this court. Lancaster does not contemplate the facts Petitioner raises in the District Court below, and Petitioner's remedy for extraordinary relief is properly sought.

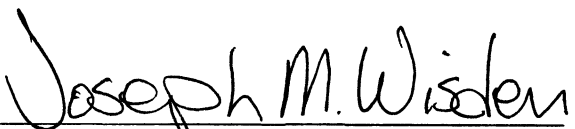
### **CONCLUSION**

Petitioner specifically and timely, appeared specially in the Justice Court to challenge jurisdiction, and then specifically and timely sought extraordinary relief in the District Court below, to prohibit the Justice Court from further usurpation of jurisdiction and wrongful exercise of its judicial power. Petitioner has clearly stated a claim on which his relief can be granted.

WHEREFORE: Plaintiff prays for relief in the following:

1. Reverse the decision of the District Court below.
2. Remand the case back to the District Court for further proceedings consistent with this Court's opinion, granting the Plaintiff a WRIT OF PROHIBITION.
3. Award costs and fees to the Plaintiff, on appeal.
4. Award any other remedies this Court deems just and appropriate.

DATED THIS 16<sup>th</sup> day of October, 1995.

  
Joseph M. Wisden



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WASHINGTON COUNTY

BY                     

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Washington County Attorney  
O. Brenton Rowe #2815  
Deputy Washington County Attorney  
178 North 200 East  
St. George, Utah 84770  
(801) 634-5723

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FIFTH JUDICIAL DISTRICT COURT  
WASHINGTON COUNTY, STATE OF UTAH

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JOSEPH M. WISDEN,	)	
Petitioner,	)	ORDER AND JUDGMENT
	)	OF DISMISSAL
-VS-	)	
RICHARD M. DOBSON, WASHINGTON	)	CASE NO. 940501110 WR
COUNTY JUSTICE OF THE PEACE,	)	
Respondent.	)	JUDGE JAMES L. SHUMATE

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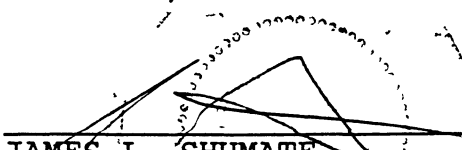
The Court having reviewed the pleadings and court file herein and Petitioners Motion for an Order From Which To Appeal:

IT IS HEREBY ORDERED that the Petition For Writ of Prohibition filed herein is dismissed on the following grounds:

1. The Petition fails to state a claim upon which the relief sought may be granted. Utah Rules of Civil Procedure 12(b)(6), and
2. The claim is frivolous on its face because other ordinary remedies such as appeal exist and Justice Courts have been granted jurisdiction to issue process by statute. Utah Rules of Civil Procedure 65B(e); Lancaster v. Utah Board of Pardons 869 P.2d 945

(Utah 1994); 78-5-101 et seq, Utah Code Annotated 1953 (as amended).

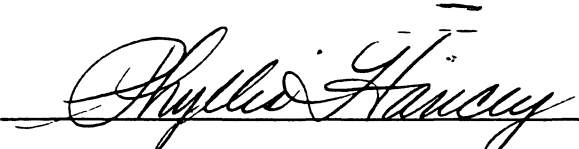
Dated this 27 day of December, 1994.

  
JAMES L. SHUMATE  
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 21 day of December, 1994, I mailed a copy of the foregoing ORDER AND JUDGMENT OF DISMISSAL by depositing a copy in the U.S. Mail, postage prepaid, addressed to:

JOSEPH M. WISDEN  
465 South Bluff Street #160  
St. George, Utah 84770



## **CERTIFICATE OF SERVICE**

I, Joseph M. Wisden, do hereby certify that I mailed or hand delivered true and correct original copies of the foregoing APPELLANT'S BRIEF, by personal delivery, or by depositing same with the United States Postal Service, first class postage prepaid, this 16th day of October, 1995, to the following:


1 original & 7 copies

CLERK OF THE COURT  
Utah Court of Appeals  
230 So. 500 East • Suite #400  
Salt Lake City, Utah 84102  
(801)

2 copies

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\_\_\_\_\_  
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