

1995

Joseph M. Wisden v. Richard M. Dobson : Brief of Respondent

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Eric A. Ludlow, O. Brenton Rowe, Tony C. Baird; attorneys for appellee.

Joseph M. Wisden; Petitioner/Appellant.

Recommended Citation

Brief of Respondent, *Joseph M. Wisden v. Richard M. Dobson*, No. 950510 (Utah Court of Appeals, 1995).
https://digitalcommons.law.byu.edu/byu_ca1/6794

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

Red 2

IN THE COURT OF APPEALS OF THE STATE OF UTAH

JOSEPH M. WISDEN,

Petitioner/Appellant,

vs.

RICHARD M. DOBSON, Washington
County Justice of the Peace

Respondent/Appellee.

Case No. ~~950055-CA~~

950510-CA

Argument Priority
Classification No. 15

APPEAL FROM THE ORDER OF THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR WASHINGTON COUNTY
HONORABLE JAMES L. SHUMATE PRESIDING

BRIEF OF RESPONDENT/APPELLEE RICHARD M. DOBSON

ERIC A. LUDLOW #5104
Washington County Attorney
O. BRENTON ROWE #2815
TONY C. BAIRD #7030
Attorneys for
Respondent/Appellee
178 North 200 East
St. George, Utah 84770
Telephone: (801) 634-5723

JOSEPH M. WISDEN
Petitioner/Appellant
465 South Bluff Street #160
St. George, UT 84770
Telephone: (801) 674-0378

FILED
Utah Court
NOV 1
Marilyn M. Estens
Clerk of the Court

IN THE COURT OF APPEALS OF THE STATE OF UTAH

JOSEPH M. WISDEN,

Petitioner/Appellant,

vs.

RICHARD M. DOBSON, Washington
County Justice of the Peace

Respondent/Appellee.

Case No. 950055-CA

Argument Priority
Classification No. 15

APPEAL FROM THE ORDER OF THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR WASHINGTON COUNTY
HONORABLE JAMES L. SHUMATE PRESIDING

BRIEF OF RESPONDENT/APPELLEE RICHARD M. DOBSON

ERIC A. LUDLOW #5104
Washington County Attorney
O. BRENTON ROWE #2815
TONY C. BAIRD #7030
Attorneys for
Respondent/Appellee
178 North 200 East
St. George, Utah 84770
Telephone: (801) 634-5723

JOSEPH M. WISDEN
Petitioner/Appellant
465 South Bluff Street #160
St. George, UT 84770
Telephone: (801) 674-0378

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
STATEMENT OF JURISDICTION	1
STATEMENT OF THE ISSUES PRESENTED AND STANDARD OF REVIEW .	1

STATEMENT OF ISSUES PRESENTED:

1. Whether Petitioner's failure to move for stay of proceedings in the Justice Court, his plea of no contest to the charge of expired registration and his sentencing by the Respondent has rendered the issues pending in this appeal moot.

2. Whether a Petition for Extraordinary Relief under Rule 65B of the Utah Rule of Civil Procedure is an appropriate remedy to treat Petitioner's claim that the Justice Court lacked personal jurisdiction because of improper service of process when other adequate remedies exist to address Petitioner's claim.

3. Whether the trial court properly dismissed Petitioner's Petition for Extraordinary Relief for failure to state a claim upon which relief may be granted.

STANDARD OF APPELLATE REVIEW	1, 2
STATEMENT OF THE CASE	2
NATURE OF THE CASE	2
COURSE OF PROCEEDINGS AND DISPOSITION BELOW	2
STATEMENT OF THE FACTS	3
SUMMARY OF THE ARGUMENT	6

ARGUMENT:

POINT I: Petitioner's failure to move for stay of proceedings in the Justice Court, his plea of no contest to the charge of expired registration and his sentencing by the Respondent has rendered the issues pending in this appeal moot.	7
--	---

POINT II: A Petition for Extraordinary Relief under Rule 65B of the Utah Rule of Civil Procedure is not the appropriate remedy to treat Petitioner's claim that the Justice Court lacked personal jurisdiction because of improper service of process. 9

A. Rule 65B Petition for Extraordinary Relief is an appropriate remedy only where another plain, speedy or adequate remedy does not exist. 9

B. Rule 65B Petition for Extraordinary Relief is not appropriate remedy in the present case because other adequate remedies exist to address Petitioner's claim. 11

POINT III: The trial court properly dismissed Petitioner's Petition for Extraordinary Relief for failure to state a claim upon which relief may be granted. . . . 12

CONCLUSION 16

MAILING CERTIFICATE 17

APPENDIX I

1. Determinative Statutory Provisions and Rules
2. Certified Copy of Docket Entries and Notice of Appeal

TABLE OF AUTHORITIES

CASES:

<u>Steele v. Breinholt</u> , 747 P.2d 333, 334-35 (Utah App. 1987)	1, 2
<u>St. Benedict's Dev. Co. v. St. Benedict's Hosp.</u> , 811 P.2d 194 (Utah 1991)	2, 13
<u>Spain v. Stewart</u> , 639 P.2d 166 at P.168 (1981)	8
<u>Boss v. Benson</u> , 592 P.2d 536 (1979)	8
<u>Olson v. District Court, Second Judicial Dist., In and for Davis County</u> , 147 P.2d 471, 472-73 (Utah 1944)	9
<u>State ex. rel. O'Brien v. Police Court of Seattle</u> , 128 P.2d 332 (Wash. 1942)	9
<u>Van Cott v. Turner</u> , 56 P.2d 16, 20 (Utah 1936)	9
<u>Anderson v. Baker</u> , 296 P.2d 283 (Utah 1956)	10
<u>Police Court of Seattle</u> , 128 P.2d at 336	11
<u>Kansas City Hdwe. Co. v. Neilson</u> , 36 P. 131 (Utah 1898)	11
<u>Manwill v. Oyler</u> , 361 P.2d 177 (Utah 1961)	12
<u>Lancaster v. Utah Bd. of Pardons</u> , 869 P.2d 945 (Utah 1994)	13

RULES:

Rule 65B(e) of the Utah Rule of Civil Procedure	13
Rule 62 of the Utah Rules of Civil Procedure	7
Rule 27 of the Utah Rules of Criminal Procedure	7
Rule 8 of the Utah Rules of Appellate Procedure	7
Rule 26 of the Utah Rules of Criminal Procedure	12
Rules 3 and 4 of the Utah Rules of Appellate Procedure	12

Rule 5 of the Utah Rules of Appellate Procedure . . .	12
Rule 12(b)(6) of the Utah Rules of Civil Procedure .	13
Rule 4(k) of the Utah Rules of Civil Procedure . . .	14
Rule 6 of the Utah Rules of Criminal Procedure . . .	15
Rule 3 of the Utah Rules of Criminal Procedure . . .	15
Rule 4 of the Utah Rules of Criminal Procedure . . .	15

CONSTITUTIONS AND STATUTES:

63A Am. Jur. 2d Prohibition §§ 1, <u>et. seq.</u> , (1984 and Supp. 1995)	9
63A Am. Jur. 2d Prohibition § 2 (1984)	9
Section 78-5-120 of the Utah Code Annotated (1982) .	11
Section 77-7-20 of the Utah Code Annotated (1982) . .	14

STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction to hear this appeal pursuant to Title 78, Chapter 2a, Section 3 of the Utah Code Annotated of 1953, as amended.

STATEMENT OF THE ISSUES PRESENTED AND STANDARD OF REVIEW

STATEMENT OF THE ISSUES PRESENTED:

1. Whether Petitioner's failure to move for stay of proceedings in the Justice Court, his plea of no contest to the charge of expired registration and his sentencing by the Respondent has rendered the issues of the Justice Court's jurisdiction over Petitioner's person moot.

Standard of Review. The trial court's conclusions of law should not be provided any particular deference and should be reviewed for correctness. The court of appeals is free to render its own independent interpretation of legislative intent and statutory applications on matters of law. (Steele v. Breinholt, 747 P.2d 333, 334-35 (Utah App. 1987)).

2. Whether a petition for extraordinary relief under Rule 65B of the Utah Rules of Civil Procedure is an appropriate remedy to treat Petitioner's claim that the Justice Court lacked personal jurisdiction because of improper service of process when other adequate remedies exist to address Petitioner's claim.

Standard of Review. The trial court's conclusions of law should not be provided any particular deference and should be

reviewed for correctness. The court of appeals is free to render its own independent interpretation of legislative intent and statutory applications on matters of law. (Steele v. Breinholt, 747 P.2d 333, 334-35 (Utah App. 1987)).

3. Whether the trial court properly dismissed Petitioner's Petition for Extraordinary Relief for failure to state a claim upon which relief may be granted.

Standard of Review. The trial court's conclusions of law should not be provided any particular deference and should be reviewed for correctness. The court of appeals is free to render its own independent interpretation of legislative intent and statutory applications on matters of law. (St. Benedict's Dev. Co. v. St. Benedict's Hosp., 811 P.2d 194 (Utah 1991); Steele v. Breinholt, 747 P.2d 333, 334-35 (Utah App. 1987)).

STATEMENT OF THE CASE

NATURE OF THE CASE

This is an appeal from the Order and Judgment of Dismissal of Petitioner's Petition for Extraordinary Relief dated the 21st of December 1994. (Record at 79).

COURSE OF PROCEEDINGS AND DISPOSITION BELOW

Petitioner, Joseph M. Wisden, filed an ex-parte "Petition for Writ of Prohibition" (Petition for Extraordinary Relief) pursuant to Rule 65B(e) of the Utah Rules of Civil Procedure on the 5th of July, 1994, with the Fifth Judicial District Court,

Washington County, Utah. (Record at 1). Petitioner's claim was that the Washington County Justice Court (hereinafter, "Justice Court") lacked jurisdiction over his person because of improper service of process. Petitioner prayed that the original summons and any warrants of arrest be ordered quashed and further proceedings in the Justice Court terminated. Respondent, Richard M. Dobson, Washington County Justice of the Peace, moved on the 26th of July, 1994, to dismiss the petition for failure to state a claim upon which relief may be granted. (Record at 29). After a hearing, the trial court granted Respondent Dobson's motion for dismissal on grounds that the Petition failed to state a claim upon which relief may be granted and that the Petitioner's claim was frivolous on its face because ordinary remedies exist to address Petitioner's claim. (Record at 79). Petitioner now appeals the trial court's order.

STATEMENT OF THE FACTS

1. On the 3rd of May, 1994, Petitioner, Mr. Wisden was issued a Uniform Citation or Information and Notice to Appear for expired registration, an infraction. (Record at 8 and 9). Petitioner signed and agreed to abide by the terms of the Uniform Citation. (Record at 8 and 9).

2. On the 13th of May, 1995, Petitioner delivered a letter to the Clerk of the Washington County Justice Court entitled, "Entry of Appearance." (Record at 10). In that letter, Petitioner contested the charge against him and challenged the jurisdiction of the Justice Court, stating that the Uniform

Citation or Information and Notice to Appear was "not proper [summons] and [complaint] pursuant to the Utah Code governing Civil or Criminal procedures in [the State of Utah]." (Record at 3 and 10).

3. On the 6th of June, 1994, Eric A. Ludlow, a St. George City Prosecutor, authorized and filed a formal Information charging the Petitioner with the expired registration violation of May 3, 1994. (Record at 3 and 11).

4. On the 9th of June, 1994, the Respondent, Judge Dobson, issued a summons, in two originals (one to be personally served upon the Petitioner and one to be sent by certified mail), requiring that the Petitioner appear before the Justice Court on June 30th, 1994. (Record at 3 and 12).

5. On the 17th of June, 1994, a return of service was filed with the Justice Court. (Record at 3 and 13).

6. On the 22nd of June, 1994, Petitioner filed a Motion to Dismiss and Motion to Quash. (Record at 14).

7. On or about the 27th of June 1994, the clerk of Justice Court mailed the second original summons to the Petitioner by certified mail. (Record at 22); see Certified Copy of Docket Entries and Notice of Appeal (hereinafter, "Certified Docket Entries"), Appendix.

8. Also, on the 27th of June, 1994, Respondent denied both Petitioner's Motion to Dismiss and Motion to Quash. Certified Docket Entries, Appendix.

9. On the 29th of June, 1994, the Justice Court received a return of Domestic Return Receipt as proof of Summons served by certified mail and signed as received by Petitioner, Joseph M. Wisden. Certified Docket Entries, Appendix.

10. On the 30th of June, Petitioner failed to appear for his arraignment. Respondent ordered a bench warrant for his arrest with bail set at two-hundred and fifty dollars (\$250.00). (Record at 5).

11. On or about the 5th of July, 1994, Petitioner filed a Petition for Writ of Prohibition pursuant to Rule 65B(e) of the Utah Rules of Civil Procedure with the Fifth Judicial District Court, Washington County, Utah. (Record at 1). Petitioner alleged that the Justice Court lacked jurisdiction over his person because of improper service of process. Petitioner prayed that the original summons and any warrants of arrest be ordered quashed and further proceedings in the Justice Court terminated. (Record at 6).

12. On the 26th of July, 1994, Respondent moved to dismiss the petition for failure to state a claim upon which relief may be granted. (Record at 29).

13. On the 27th of December, 1994, after a hearing, the trial court granted Respondent Dobson's motion for dismissal on grounds that the Petition failed to state a claim upon which relief may be granted and that the Petitioner's claim was frivolous on its face because ordinary remedies exist to address Petitioner's claim. (Record at 79).

14. On the 29th of August, 1995, Officer Barry Golding of the St. George City Police Department arrested Petitioner on the bench warrant ordered by Respondent. Certified Docket Entries, Appendix. Petitioner appeared before the Respondent, the bench warrant was recalled and Petitioner plead "no contest" to the expired registration charge. The Respondent sentenced the Petitioner to a forty dollar (\$40.00) fine but suspended the fine upon Petitioner's proof of present compliance of registration.

SUMMARY OF THE ARGUMENT

POINT I: Respondent argues that the issues raised in Petitioner's appeal before this Court are moot because Petitioner has appeared before the Justice Court, and entered a plea of no contest to the charge in the Information filed in that court.

POINT II: Respondent argues that a Petition for Extraordinary Relief is not an appropriate remedy to address Petitioner's claim of lack of personal jurisdiction because other plain, speedy and adequate remedies exist.

POINT III: Respondent argues that the trial court properly dismissed Petitioner's Petition for Extraordinary Relief for failure to state a claim upon which relief may be granted. First, other plain, speedy and adequate remedies exist to treat Petitioner's claim, and, second, the record, even interpreted in a light most favorable to Petitioner, establishes that the Justice Court obtained jurisdiction over Petitioner's person.

ARGUMENT

POINT I.

Petitioner's failure to move for stay of proceedings in the Justice Court, his plea of no contest to the charge of expired registration and his sentencing by the Respondent has rendered the issues pending in this appeal moot.

The facts asserted by Petitioner, as supplemented in Respondent's Brief, establish that Petitioner, by petitioning for extraordinary relief in the Fifth District Court, sought to prevent Respondent from proceeding with the charges pending in the Justice Court on grounds that the Justice Court lacked personal jurisdiction over the Petitioner. When the Petition for extraordinary relief was denied by the Honorable James L. Shumate, Petitioner could have sought a Stay of Proceedings in the Fifth District Court, the Utah Supreme Court, or the Utah Court of Appeals. The record before this Court on appeal, however, is devoid of any request by Petitioner for a Stay of Proceedings in the Justice Court as required by Utah Rules of Procedure. See Rule 62, Utah Rules of Civil Procedure; Rule 27, Utah Rules of Criminal Procedure; Rule 8, Utah Rules of Appellate Procedure.

Therefore, when the Petitioner appeared in the Justice Court on August 29, 1995, entered a plea of no contest and was sentenced, he rendered the relief sought on the appeal before this Court moot. The proceedings Petitioner sought to prohibit by means of the Petition have been conducted and concluded. Certified Docket Entries, Appendix.

The Utah Supreme Court has stated: "Where the requested judicial relief can no longer affect the rights of the litigants, the case is moot and a court will normally refrain from adjudicating it on the merits." Spain v. Stewart, 639 P.2d 166 at P.168 (1981) (emphasis added). In Spain, the Petitioner had sought a Writ of Habeas Corpus because he had been held without prompt judicial review of his incarceration. The Utah Supreme Court ruled that when the Petitioner had been taken before a magistrate it mooted his request for relief and the District Court was correct in dismissing the petition for a Writ. Cf. Boss v. Benson, 592 P.2d 536 (Ok. 1979) (Court of Criminal Appeals determined that the filing of any action to prohibit a judge from conducting further proceedings in a criminal case was made moot by the subsequent filing of a properly verified information).

Respondent could not raise this issue sooner because Petitioner did not enter his plea until August 29, 1995. See Respondent's Suggestion of Mootness Motion for Order of Dismissal; Certified Docket Entries, Appendix.

In the case before this Court, Petitioner's failure to seek a stay of proceedings, together with his participation in and conclusion of the proceeding in the Justice Court, render the issue raised in this appeal moot and Respondent respectfully requests that this court affirm the trial court's order of dismissal.

POINT II.

A Petition for Extraordinary Relief under Rule 65B of the Utah Rules of Civil Procedure is not the appropriate remedy to treat Petitioner's claim that the Justice Court lacked personal jurisdiction because of improper service of process.

A. Rule 65B Petition for Extraordinary Relief is an appropriate remedy only where another plain, speedy or adequate remedy does not exist.

The form of petition provided under Rule 65B(e) of the Utah Rules of Civil Procedure stems from the common law petition for writ of prohibition. See generally 63A Am. Jur. 2d Prohibition §§ 1, et. seq., (1984 and Supp. 1995). In the common law, this writ was used to prevent an inferior tribunal, judicial or quasi-judicial, from "exercising jurisdiction over matters not within its cognisance or exceeding its jurisdiction in matters of which it has cognisance." 63A Am. Jur. 2d Prohibition § 2 (1984). It was not a remedy for "general review" and was used with "great caution and forbearance for the furtherance of justice . . . where no other regular or ordinary remedy" existed. Olson v. District Court, Second Judicial Dist., In and for Davis County, 147 P.2d 471, 472-73 (Utah 1944); State ex. rel. O'Brien v. Police Court of Seattle, 128 P.2d 332 (Wash. 1942) (discussing nature of writ of prohibition); Van Cott v. Turner, 56 P.2d 16, 20 (Utah 1936) ("The Writ of Prohibition is a prerogative writ, the most extraordinary of all writs, to be used with caution and forbearance;" "A writ of prohibition will lie only in cases of manifest necessity . . . "). In Olson v. District Court, Second Judicial Dist., In and for Davis County, the Utah Supreme Court

explained the cautionary attitude behind this remedy. The court stated:

It requires but a moment's reflection to reveal that for the rule to be otherwise would make any lawsuit potentially a series of prohibition proceedings. Every act of the court from the initiation of the litigation to its conclusion could be made a separate prohibition proceeding. The proper and orderly procedure requires that when a court has jurisdiction of the suit, it should go ahead and complete the litigation. When this is accomplished, an appeal can be taken so that the appellate court may then review all alleged errors in one proceeding. This orderly process should not be interfered with, unless it is urgently necessary to prevent some palpable and irreparable injustice.

Id. at 473 (emphasis added).

Similar to the common law writ of prohibition, a Rule 65B(e) petition for extraordinary relief is not a remedy for general review. See Anderson v. Baker, 296 P.2d 283 (Utah 1956) (a [petition for extraordinary relief] is not a proceeding for general review and cannot be used as such). Rule 65B(e) procedures are reserved for situations where "no other plain, speedy and adequate remedy is available" to the petitioner and any of the following grounds exist:

(A) an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion;

(B) an inferior court, administrative agency, corporation or person has failed to perform an act

required by law as a duty of office, trust or station;
or

(C) an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled. U.R.C.P 65(a) and (e).

"The question as to what constitutes a plain, speedy, and adequate remedy is not dependent upon any general rule, but upon the facts of each particular case" Police Court of Seattle, 128 P.2d at 336 (emphasis added).

A remedy is not inadequate merely because it is attended with delay, expense, annoyance, or even some hardship. There must be something in the nature of the action or proceeding that makes it apparent to this court that it will not be able to protect the rights of the litigants or afford them adequate redress otherwise than through the [writ of prohibition]."

Id (citations omitted) (emphasis added).

B. Rule 65B Petition for Extraordinary Relief is not appropriate remedy in the present case because other adequate remedies exist to address Petitioner's claim.

In the present case, a Rule 65B(e) petition for extraordinary relief is not an appropriate remedy because other adequate remedies exist to address Petitioner's claim. First, Petitioner could have pursued a trial de novo in the circuit court, U.C.A. § 78-5-120 (1992), and challenged the Justice Court's jurisdiction. See, e.g., Kansas City Hdwe. Co. v. Neilson, 36 P. 131 (Utah 1898) (district court was required to

reverse if justices' court had no jurisdiction because wrong venue was shown).

Second, Petitioner could have pursued a standard appeal in the proper appellate court. See Rule 26, Utah Rules of Criminal Procedure and Rules 3 and 4 of the Utah Rules of Appellate Procedure.

Third, Petitioner could have sought an interlocutory review of the Justice Court's ruling. See Rule 5 of the Utah Rules of Appellate Procedure; Manwill v. Oyler, 361 P.2d 177 (Utah 1961) (if it appears essential to adjudicate principles of law or procedure in advance as a necessary foundation upon which the trial may proceed, or if there is a high likelihood that the litigation can be finally disposed of on such an appeal, an interlocutory appeal is an appropriate procedure).

The Respondent argues that any one of these remedies are adequate to address the Petitioner's claim and, at a minimum, should have been pursued and exhausted before seeking a Rule 65B(e) Petition for Extraordinary Relief. On this basis, therefore, the Respondent moves the court to affirm the trial court's order of dismissal.

POINT III.

The trial court properly dismissed Petitioner's Petition for Extraordinary Relief for failure to state a claim upon which relief may be granted.

The Petitioner contends that the trial court improperly dismissed his Petition for Extraordinary Relief for failing to

state a claim upon which relief may be granted. The Respondent refutes this contention and, again, moves the court to affirm the trial court's ruling of dismissal.

Under Rule 65B(e), a party may petition the appropriate appellate court for extraordinary relief in the form of prohibition. To receive such relief, a petitioner must show that "no other plain, speedy and adequate remedy is available," and that "an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion . . . or . . . has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled." Ut.R.C.P. 65B(e)(1)(A),(C).

Pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure, a petition for extraordinary relief that fails to state a claim upon which relief may be granted may properly be dismissed. See Lancaster v. Utah Bd. of Pardons, 869 P.2d 945 (Utah 1994) (court affirmed trial court's summary dismissal of petition for extraordinary relief stating, "[a] petition of any nature which fails to state a claim may be dismissed.").

In St. Benedict's Development Co. v. St. Benedict's Hosp., 811 P.2d 194 (Utah 1991), the Utah Supreme Court explained the nature and standard of the Rule 12(b)(6) motion to dismiss. The court stated:

A rule 12(b)(6) motion to dismiss admits the facts alleged in the complaint but challenges the plaintiff's right to relief based on those facts. When determining whether a trial court properly granted a rule 12(b)(6)

motion to dismiss, we accept the factual allegations in the complaint as true and consider them and all reasonable inferences to be drawn from them in light most favorable to the plaintiff.

Id. at 196.

The Respondent argues that even under this liberal standard Petitioner fails to state a claim upon which relief may be granted. First, as explained above, in Point II, other plain, speedy and adequate remedies are available to address Petitioner's claim. Therefore, on this ground alone, the trial court properly dismissed the Petition for Extraordinary Relief.

There is also a second reason the trial court properly dismissed the Petition. This is apparent from reviewing the record. Petitioner claims that the Summons served upon him at his brother's residence was not properly endorsed according to Rule 4(k) of the Utah Rules of Civil Procedure and, therefore, service was improper. For this reason, the Petitioner argues that the Justice Court failed to obtain jurisdiction over his person. Even assuming, *arguendo*, the correctness of this claim, the Respondent maintains that the undisputed facts establish that the Justice Court obtained jurisdiction over the Petitioner's person, for either of two reasons.

First, the Respondent argues, the Justice Court acquired jurisdiction over the Petitioner by means of the Uniform Citation and Notice to Appear issued to the Petitioner on the 3rd of May, 1994. (Record at 8 and 9); see U.C.A. § 77-7-20, "Service of citation on defendant -- Filing in court -- Contents of

citation," (1992). By acknowledging and agreeing to its terms, the Petitioner subjected himself to the jurisdiction of the Justice Court. The Petitioner received notice of the charge against him and agreed to appear. The fact that the Petitioner requested a formal information be filed against him, and that a formal information was filed, did not change the jurisdiction of the Justice Court.

Second, the Respondent argues, the Justice Court acquired jurisdiction over the Petitioner's person by means of the Summons served upon the Petitioner by certified mail on or about the 29th of June, 1994. (Record at 19); Certified Docket Entries, Appendix; see Ut.R.Cr.P. 6 ("The summons shall be served as in civil actions, or by mailing it to the defendant's last known address."); Ut.R.Cr.P. 3 ("Service upon the attorney or upon a party shall be made in the manner provided in civil actions."); and, Ut.R.C.P. 4.

On these two grounds, one, that other plain, speedy and adequate remedies exist to address Petitioner's claim, and two, that the Justice court acquired jurisdiction over the Petitioner's person by either the Citation and Notice to Appear or the Summons served upon the Petitioner by certified mail, the trial court, properly dismissed the Petition for Extraordinary Relief for failing to state a claim upon which relief may be granted. The Respondent, therefore, respectfully moves this court to affirm the trial court's ruling.

CONCLUSION

On the grounds explained in **Points I, II and III**, above, the Respondent respectfully moves this court to affirm the trial court's order of dismissal.

Dated this 16th day of November, 1995.


O. BRENTON ROWE


TONY C. BAIRD

MAILING CERTIFICATE

I do hereby certify that on this 16th day of November, 1995, I caused to be mailed, postage prepaid, two (2) true and correct copies of the above and foregoing Brief of Respondent/Appellee Richard M. Dobson to Joseph M. Wisden, 465 South Bluff Street #160, St. George, Utah 84770.

Sandy Hunter

APPENDIX

DETERMINATIVE STATUTORY PROVISIONS AND RULES

Rule 12(b)(6), Utah Rules of Civil Procedure:

(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.

Rule 65B(e), Utah Rules of Civil Procedure:

(e) Wrongful use of judicial authority or failure to comply with duty.

(1) Who may petition. A person aggrieved or whose interests are threatened by any of the acts enumerated in this paragraph (e) may petition the court for relief.

(2) Grounds for relief. Appropriate relief may be granted: (A) where an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; (B) where an inferior court, administrative agency, corporation or person has failed to perform an act required by law as a duty of office, trust or station; or (C) where an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled.

(3) Proceedings on the petition. On the filing of a petition, the court may require that notice be given to adverse parties before issuing a hearing order, or may issue a hearing order requiring the adverse party to appear at the hearing on the merits. the court may direct the inferior court, administrative agency, officer, corporation or other person named as respondent to deliver to the court a transcript or other record of the

proceedings. The court may also grant temporary relief in accordance with the terms of Rule 65A.

FILED
JUL 10 1963
3 PM 2 59

Q55500139 TC

- | | |
|---------|--|
| 5-3-95 | Citation C272671 issued by Officer Craig Harding of St. George Police Department charging defendant with expired registration. |
| 5-20-94 | Received letter from Defendant. Summons to be issued with date to appear for arraignment. |
| 6-9-94 | Formal Information filed and Summons signed by court. Arraignment date set at 6-30-94 at 4:30 p.m. |
| 6-16-94 | Return of service of summons filed with court. |
| 6-22-94 | Defendant filed motion to dismiss and motion to quash summons. |
| 6-27-94 | Court denies motion to dismiss and motion to quash. |
| 6-29-95 | Court received return of Domestic Return Receipt as proof of Summons served by certified mail and signed as received by Joseph Wisden. |
| 6-30-95 | Arraignment was held. Defendant did not appear. Court states defendant was served and failed to appear. Bench warrant was ordered with bail set at \$250.00. |
| 7-1-95 | Defendant called clerk who advised him return of service of summons was filed, arraignment was held and bench warrant was ordered for non-appearance. |
| 7-3-95 | Defendant submits letter requesting pagination and copy of index of record on appeal and notifies court of Appeal on Petition for Writ of Prohibition. |
| 7-7-95 | Bench warrant was typed but not signed by court. |

8-18-95 Court signed bench warrant for non-appearance at arraignment, bail set at \$250.00. Clerk mailed computer court docket to defendant, as Justice Court does not paginate or do an index of court records.

8-29-95 Officer Barry Golding arrests defendant on Bench Warrant and brings him before the court. Court recalls warrant and proceeds with hearing and arraignment on charge of expired registration and failure to appear. Defendant pleads no contest to charges and provides proof of compliance on registration of 79 Mercury. Court suspends \$40.00 fine for expired registration and suspends bench warrant service charge of \$75.00.

Clerk sends request to City of St. George attorney's office to recall bench warrant.

8-31-95 Recall of Bench Warrant filed by City.

Received copy of letter from O. Brenton Rowe of Washington County Attorney's office with attachments of correspondence from Joseph Wisden.

9-1-95 Received G.R.A.M.A. Request for Records from Defendant. The document was forwarded from District Court.

9-28-95 Clerk prepared letter in response to defendant's request for records.

Defendant filed Notice of Appeal.

10-3-95 Clerk ^{hand-delivered} ~~mailed~~ letter and copy of recalled bench warrant to defendant. Certified Copy of Docket Entries and Notice of Appeal prepared and delivered with original papers filed in the case to District Court.

I, Richard M. Dobson, Justice Court Judge in and for the St. George West Precinct, County of Washington, State of Utah, do hereby certify that the above is a full, true and correct copy of the record of the proceedings in the above case as it appears on the docket of this court, and that the papers attached hereto are all the papers filed in this court in said case.

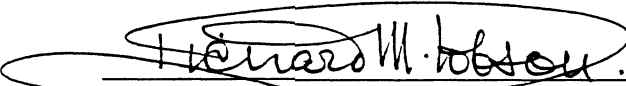
Dated: 10.3.95

STATE OF UTAH)

COUNTY OF WASHINGTON)

Certify that this document or record, is a full,
and correct copy of the original, on file in
office.

Nov 15, 1995
C. Stube
Deputy Court Clerk


Richard M. Dobson, Justice Court Judge