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Amendments to the Wyoming Rules of Civil Procedure: Order

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SUPREME COURT SECTION

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A. D., 1960

In the matter of }
Rules of Civil Procedure. }

O R D E R

The Permanent Rules Committee having recommended certain amendments be made to the Rules of Civil Procedure and it appearing advisable that certain other changes in the Rules be made,

IT IS ORDERED that the following rules be amended as follows, the amending portions being in italics and deleted portions indicated by asterisks:

Rule 4 (c) (3)

"In a foreign country, by * * * *any citizen of the United States* over the age of 21 years appointed * * * *for such purpose by the clerk.*"

Rule 4 (e) (3)

"In actions in which it is sought by a provisional remedy to take, or appropriate in any way, the property of the defendant, when the defendant is a foreign corporation, or a non-resident of this state, or the defendant's place of residence * * * *cannot be ascertained*, and in actions against a corporation incorporated under the laws of this state, which has failed to elect officers, or to appoint an agent, upon whom service of summons can be made as provided by these rules and which has no place of doing business in this state;"

Rule 4 (e) (8)

"In action or proceeding under Rule 60 hereof or * * * §§ 1-325 to 1-334, W.S. 1957, or to impeach a judgment or order for fraud, or to obtain an order of satisfaction thereof, when a defendant is a non-resident of the state *or his residence cannot be ascertained;*"

Rule 4 (e) (9)

"In suits for divorce, for alimony, to affirm or declare a marriage void, or the modification of any decree therefor entered in such suit, when the defendant is a non-resident of the state, *or his residence cannot be ascertained*, or he conceals himself * * * in order to avoid service of process;"

Rule 4 (e) (10)

"In all actions or proceedings which involve or relate to the waters, or right to appropriate the waters of the natural streams, springs, lakes, or other collections of still water within the boundaries of

the state, or which involve or relate to the priority of appropriations of such waters, including appeals from the determination of the state board of control, and in all actions or proceedings which involve or relate to the ownership of means of conveying or transporting water situated wholly or partly within this state, when the defendant, or any of the defendants are non-residents of the state *or his or their residence cannot be ascertained.*"

Rule 37 (a)

"Refusal to Answer. If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in which the action is pending, *or the court in the district in which the deposition is being taken*, for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted under Rule 31 or upon the refusal of a party to answer any interrogatory submitted under Rule 33, the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the court finds that the refusal was without substantial justification the court shall require the refusing party or deponent and the party or attorney advising the refusal or either of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees."

Rule 37 (b) (1)

"Contempt. If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court * * *, the refusal may be considered a contempt of that court."

Rule 62 (d)

"Stay Upon Appeal. *The appellant, when an appeal is taken*, by giving a supersedeas bond may obtain a stay, subject to the exceptions contained in subdivision (a) of this rule *and the limitations contained in Rule 73 (d) (2)*. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court."

Rule 73 (h)

"(h) *Jurisdiction. Except as is provided in Rule 75 (j), the supreme court shall not acquire jurisdiction over the cause until the record on appeal is filed with the clerk of the supreme court.*"

Rule 75 (b)

"Transcript. If there be designated for inclusion any evidence or proceeding at a trial or hearing which was stenographically re-

ported, the appellant shall file with his designation a copy of the reporter's transcript of the evidence or proceedings included in his designation. If the designation includes only part of the reporter's transcript, the appellant shall file a copy of such additional parts thereof as the appellee may need to enable him to designate and file the parts he desires to have added, and if the appellant fails to do so the court on motion may require him to furnish the additional parts needed. The copy so filed by the appellant shall be available for the use of the other parties. In the event that a copy of the reporter's transcript or of the necessary portions thereof is already on file, the appellant shall not be required to file an additional copy. *All transcripts of testimony, evidence and proceedings shall be certified by the official court reporter to be true and correct in every particular, and when so certified shall be received as prima facie evidence of the facts, testimony, evidence, and proceedings set forth in such transcript. The reporter shall indicate at the bottom of each page of the transcript the name of the witness, the name of counsel then examining, and the type of examination there appearing.*"

Rule 75 (g) (1) .

"(g) Preparation of Record on Appeal.

"(1) Record to be Prepared by Clerk; Necessary Parts. The clerk of the district court, under his hand and the seal of the court, shall transmit to the supreme court * * * the matter designated by the parties, but shall always include, whether or not designated, * * * the following: The material pleadings without unnecessary duplication; the verdict; the master's report, if any; the judgment or final order appealed from, including all findings of fact and conclusions of law made by the district court and preserved in the record as provided in Rule 52(a); the notice of appeal with date of filing; the designations or stipulations of the parties as to matter to be included in the record; and any statement by the appellant of the points on which he intends to rely. The matter so certified and transmitted constitutes the record on appeal. The copy of the transcript filed as provided in subdivision (b) of this rule shall be certified by the clerk as a part of the record on appeal. *The papers transmitted to the supreme court by the clerk of the district court shall be fastened together in one or more volumes, with pages numbered consecutively, and with a cover page bearing the title of the case and containing the designation "Record on Appeal", followed by a complete index of all the papers therein, and the clerk shall append his certificate identifying the papers with reasonable definiteness.*"

Rule 75 (h)

"(h) Power of Court to Correct or Modify Record. It is not necessary for the record on appeal to be approved by the district court or judge thereof except as provided in Rule 76, but, if any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the district court, * * * before

* * * the record is transmitted to the supreme court, * * * may direct that the omission or misstatement be corrected. After the supreme court obtains jurisdiction, that court, on stipulation of the parties, may direct that the omission or misstatement * * * be corrected, * * * or if deemed necessary, * * * the record may be returned to the district court for examination and correction or supplement, and then recertified to the supreme court."

Rule 75 (i)

Substitute the following:

"(i) *Copies to be Transmitted Instead of Original Papers When Ordered by District Judge.* If the judge of the court from which the appeal is taken is of the opinion that it is necessary that the original record in the case be kept in the district court pending the appeal, for use in the trial of other litigation or for other valid reason, he may make an order to that effect, and thereupon it shall be the duty of the clerk of the court from which the appeal is taken to transmit to the supreme court certified copies in lieu of the original papers required to be transmitted under paragraph (g) of this rule."

Rule 75 (l)

Substitute the following:

"(l) *Return of Original Papers.* After the appeal has been disposed of, all original papers shall be returned to the custody of the district court."

IT IS FURTHER ORDERED that this ORDER be published in the next ensuing publication of the *Wyoming Law Journal*; that these changes in the Rules of Civil Procedure shall become effective sixty days after such publication; that the editors of the *Wyoming Law Journal* shall inform the court of such date of publication, and that this ORDER shall be spread at length upon the journal of this court.

Dated at Cheyenne, Wyoming, this seventh day of November, 1960.

BY THE COURT
/s/ Fred H. Blume
Chief Justice