

1986

Spears v. Sartori : Brief of Respondent

Utah Court of Appeals

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Harry Caston; McKay, Burton & Thurman; attorney for appellant.

Suzanne Marelius; Littlefield & Peterson; attorney for respondent.

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UTAH COURT OF APPEALS
BRIEF

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K. J.
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IN THE COURT OF APPEALS

DUCKET NO. 860230-CA IN AND FOR THE STATE OF UTAH

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JERI H. SARTORI SPEARS,)	
)	RESPONDENT'S BRIEF
Plaintiff-Respondent,)	
)	
vs.)	
)	
HENRY EARL SARTORI,)	No. 860230-CA
)	#7
Defendant-Appellant.)	

-----oo0oo-----

On Appeal from the Third Judicial District Court
of Salt Lake County, State of Utah
Honorable John A. Rokich, District Court Judge
Civil No. D79-2541

HARRY CASTON - 4009
Attorney for Defendant-Appellant
MCKAY, BURTON & THURMAN
Kennecott Bldg., #1200
10 East South Temple
Salt Lake City, Utah 84133
Telephone: (801) 521-4135

SUZANNE MARELIUS - 2081
Attorney for Plaintiff-Respondent
LITTLEFIELD & PETERSON
426 South 500 East
Salt Lake City, Utah 84102
Telephone: (801) 531-0435

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COURT OF APPEALS

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HARRY CASTON - 4009
Attorney for Defendant-Appellant
McKAY, BURTON & THURMAN
Kennecott Bldg., #1200
10 East South Temple
Salt Lake City, Utah 84133
Telephone: (801) 521-4135

SUZANNE MARELIUS - 2081
Attorney for Plaintiff-Respondent
LITTLEFIELD & PETERSON
426 South 500 East
Salt Lake City, Utah 84102
Telephone: (801) 531-0435

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COUNTERSTATEMENT OF FACTS

A. Overview; Statement of the Case.

After eight years of marriage, the parties to this action were divorced by order of the Third District Court on March 17, 1976. Plaintiff/Respondent, Mrs. Spears, was awarded custody of the parties' two minor children who were ages three and seven at the time of the divorce and Defendant/Appellant, Mr. Sartori, was ordered to pay One Hundred and No/100 Dollars (\$100.00) per month per child as child support. (Decree of Divorce appears in record, hereinafter "R", at page 22).

The Decree of Divorce contains a provision for payment of medical obligations which appears as follows:

"8. The Defendant is ordered to pay, in addition to the child support, all medical obligations of the minor children." (R. 23)

Plaintiff's Divorce Complaint had requested that Defendant pay "all of the medical and dental obligations of the minor children" (paragraph 10, Plaintiff's Complaint, R. 4). The record also contains a comprehensive Stipulation between the parties, to wit:

"10. That Defendant shall pay all of the medical obligations of the minor children." (R. 18)

There are no other references in either the Complaint or the parties' Stipulation allocating the responsibility for payment of medical or dental expenses. Moreover, the Findings of Fact, Conclusions of Law, and the Decree of Divorce itself contain no reference to dental expenses and the only provision for the health

care of the minor children is the directive in the Decree that Defendant "shall pay all of the medical obligations of the minor children." (R. 18).

In August, 1985, Respondent Jeri H. Sartori Spears filed a Verified Petition for Modification of Decree of Divorce which requested the following relief:

(a) An increase in child support for the parties' minor children who were then age thirteen (13) and sixteen (16);

(b) An extension of the child support obligation for the parties' eldest child, Henry Sartori, Jr., to continue until he reached the age of 19 when he would graduate from high school; and for,

(c) Reimbursement from Mr. Sartori for amounts expended on behalf of the minor children, representing medical and dental obligations from 1977 until the date of filing, which totaled over \$6,000.00. (Respondent's Verified Petition appears at R. 24).

A hearing was held on this Petition to Modify before Domestic Relations Commissioner Sandra N. Peuler on December 9, 1985. At that time the Commissioner requested that both parties submit documentary evidence in support of their position on the medical expense issue. Mrs. Spears submitted an itemized summary of amounts expended by her for prescriptions, general medical expenses, and orthodontic work for the minor children from 1977 through 1985. (R. 59-62). Mr. Sartori submitted copies of

checks, receipts, and check registers, of which only two were directly related to medical reimbursement during the time for which Mrs. Spears was seeking reimbursement, and these totaled \$33.50. (R. 66-72). Mrs. Spears Financial Declaration showed her only income to be child support in the sum of \$200.00 per month. (R. 82-84). Mr. Sartori's Financial Declaration showed significant rental income from his ownership of rental properties, and salaried income, which together totaled \$44,544.00 annual income. (R. 85-93).

On January 14, 1986, the Commissioner ruled that Plaintiff should be granted an increase in child support for her youngest child, Shanell, from \$100.00 to \$250.00 per month beginning February, 1986. The Commissioner also awarded Plaintiff judgment for unreimbursed medical, dental, and orthodontic bills upon both counsel comparing their evidence of payment and achieving an exact dollar amount. (R. 94-95).

Mr. Sartori objected to the Commissioner's recommendations and the matter was set for trial.

On May 5, 1986, a trial was held before the Honorable John A. Rokich, whose order upheld the recommendation of the Domestic Relations Commissioner and awarded Mrs. Spears judgment for unreimbursed medical, dental, and orthodontic expenses in the amount of \$5,971.32; the amount of \$1,000.00 in attorney's fees and costs; and an increase in child support for the minor child, Shanell, to \$250.00 per month as of February, 1986. (R. 103, 115-117).

The Court found that a substantial change of circumstances had been established as Mr. Sartori's income had increased significantly from the "\$800.00 per month net wages" set forth in the Divorce Decree to his current income of over \$40,000.00 gross annual income, and further found that the expenses of raising the minor children had also increased for Mrs. Spears.

B. Facts on Medical-Dental Reimbursement Issue.

At the outset of the trial, the Court informed the parties and counsel that it had reviewed the pleadings and Commissioner's recommendations and was prepared to find that as a matter of law, the divorce Decree provision that Mr. Sartori pay "all the medical obligations of the minor children" included all of the medical and dental expenses for the minor children. The Court referred to the Complaint, Stipulation, and Divorce Decree in making this statement. (Trial Transcript, at R. 145-146). The Court then phrased the medical expense issue for trial as a determination of which amounts were still owed to Mrs. Spears which had not already been paid by insurance or reimbursed by Mr. Sartori (R. 146). During trial, Respondent, Mrs. Spears, presented evidence including checks and insurance records from 1977 through 1985, showing her payments to physicians, dentists, and orthodontists for her children's health care needs. Respondent's records showed these payments had not been reimbursed by the Appellant or any insurance provider. Appellant, Henry Sartori,

also presented testimony and evidence to establish some reimbursement of medical payments during this time period. At the end of this testimony the Court determined that it would order reimbursement to Respondent of at least \$3,700.00 paid for orthodontic work on behalf of the minor children, but could not determine, on the evidence before it, what portion of the remaining \$2,500.00 of general medical expenses requested by Respondent should be paid, if any. The Court provided counsel a week within which to meet outside of Court to exchange evidence on this point and determine a mutually acceptable amount for reimbursement. This was done, and judgment was ultimately awarded to Respondent for \$5,791.00, representing unreimbursed expenses for medical, dental and orthodontic expenses.

C. Facts on Child Support Increase.

Based on a review of the pleadings, the Court file and evidence presented, the Court determined that Defendant's net wages at the time of the divorce in 1975 was \$800.00 per month and that Appellant had a present gross annual income of over \$30,000.00. These figures were both agreed to by counsel in open Court. (R. 175). Respondent, Jeri H. Sartori Spears, testified that she was employed at the time of the divorce in 1975 as a waitress and last worked, at this same occupation, in about 1978. (R. 175). She also testified that she would like to work but felt she had a "full time job taking care of my children". (R. 195). Respondent further testified that it had been a financial

hardship for her to pay the medical and dental bills for the minor children without any assistance from Appellant. (R. 176-195).

SUMMARY OF ARGUMENTS

I

Appellant contends that the Trial Court prohibited him from presenting evidence on the parties' Stipulation as to payment of medical and dental expenses, and further, that he was prohibited from cross-examining Plaintiff as regards her current employment and financial situation. As a review of the record reveals, there was no prohibition, limitation, or other restriction on Appellant's counsel presenting his case or questioning witnesses. Rather, counsel made no objection during trial to any such limitations and has thus lost the right to raise these matters on appeal. Further, the Court's ruling to interpret the language of the parties' Divorce Decree referring to payment of medical obligations, which the Court determined as a matter of law also included dental and orthodontic expenses, is within the sound discretion of the Trial Court and was based on competent evidence and supported by law.

II

Appellant further argues that the Trial Court abused its discretion in raising Appellant's child support obligation to \$250.00 per month "without any evidence other than Defendant-Respondent's increased income". There was in fact ample and sub-

stantial evidence in the record of Respondent's lack of income and greater child-rearing expenses to support the increase in child support as directed by the Court. A significant body of case law supports the Court's action which was also guided by concepts of equity and fairness.

ARGUMENT

POINT I

THE COURT DID NOT ABUSE ITS DISCRETION IN RULING THAT DIVORCE DECREE PROVISIONS REFERRING TO "MEDICAL EXPENSES" ALSO INCLUDED DENTAL AND ORTHODONTIC EXPENSES IN THIS CASE.

A. The Court Had Significant Evidence and Equitable Power to Support its Ruling.

The long-recognized standard of appellate review permits reversal of a Trial Court only when the evidence clearly preponderates to the contrary or where the trial Court has abused its discretion or misapplied principles of law. Gill v. Gill, 719 P.2d 779 (Utah 1986); Wiese v. Wiese, 699 P.2d 700 (Utah 1985); Fletcher v. Fletcher, 615 P.2d 1218 (Utah 1980). All of the available facts and evidence on the issue of whether these parties' intended the phrase "medical obligations" in the Divorce Decree to also include dental, orthodontic and similar obligations was before the Court. The Court explicitly referred to this evidence both at the beginning and close of the trial stating that it had read the Complaint, Decree and Stipulation of the parties and was of the opinion that both medical and dental expenses were meant to be included as health care costs and were

directed to be paid by Defendant-Appellant Henry Earl Sartori. (R. 145, 225). There was also directly conflicting testimony elicited by both parties as to what was intended by the phrase "medical obligations". (R. 147, 212). Appellant's counsel called no other witnesses on the interpretation of this point and the Court thus had before it all factual evidence on the parties' intent. Accordingly, the Court was in a position to then apply its equitable powers and rules of construction to interpret the Divorce Decree. The Court ruled that both medical and dental expenses were included as health care to be paid by Appellant on behalf of the minor children.

The Court's reasoning is expressed as follows:

"I am of the opinion that I heretofore stated that the medical and dental is included as health care and it is not conceivable that a parent would be required to pay the medical expenses out of the \$100.00 per month and try to raise children on that amount....but from 1975 to 1986, 11 years, [child support] has not increased. So, it appears to be only fair that the medical will be paid, and particularly the orthodontic will be paid by you, Mr. Sartori. I feel very strongly about that. That is a health care problem that they had..." (R. 225-226).

This is a strong and clear articulation by the Trial Court that in the Court's view, the child support level was too low to be intended to include payment by Mrs. Spears of the minor children's health care expenses. A clear sense of manifest injustice at the situation of Appellant's inadequate contribution to his children's needs is also apparent and important to this ruling.

B. Appellant Failed to Timely Object or Proffer

Evidence at Trial. In his Brief, Appellant argues that the trial court limited his case presentation on the issue of medical/dental reimbursement. A careful examination of the trial transcript reveals no attempts by Appellant's counsel to proffer evidence on this point or to present relevant witnesses. Instead, Appellant makes bold statements in his Brief that the evidence on this point "would have included a comparison between the divorce Complaint, the Stipulation, Defendant's testimony and also the testimony of Defendant's divorce attorney". Without an appropriate and timely objection or proffer at the trial, Appellant cannot be allowed to accuse the Court of an abuse of discretion and of limiting his presentation when he in fact made no efforts to present other evidence or preserve his client's rights.

Appellant also tries to make us believe that he had some secret explanation for why he is only obligated to pay the medical expenses of the children and not the dental. A careful review of Appellant's Brief still preserves this secret as no basis, either factual or legal, is presented to argue against the trial court's ruling. The testimony on this point was in direct conflict and the documents which this Court and the Trial Court have to review shed no light on who, other than Mr. Sartori, Defendant-Appellant herein, is to be responsible for dental and other health care expenses of the children. Appellant cannot be

allowed to lay blame on the trial court for its own failure to present a case. Rather, the Court had before it all available evidence on the interpretation of the divorce Decree as to medical and dental expenditures and ruled in accordance with the law and equitable principles.

The Trial Court's ruling to include both medical and dental expenses in the Divorce Decree language which uses the general phrase "medical obligations" is supported by substantial evidence and legal precedent. In the case of Naylor v. Naylor, 700 P.2d 707 (Utah 1985), the Utah Supreme Court clarifies the extent of a Trial Court's broad equitable discretion, stating that it has the power to even "disregard stipulations or agreement of the parties in the first instance...and to thereafter modify such judgments when change of circumstances justifies it, regardless of attempts of the parties to control the matter by contract." 700 P.2d at 710. Thus, even if this Court had been convinced that the parties intended to stipulate differently, it still had the authority to override that stipulation in the interests of justice. An example of the Court's power in the area of medical expenses and insurance is presented in the case of Beardall v. Beardall, 629 P.2d 425 (Utah 1981). In that case, the Utah Supreme Court interpreted a Divorce Decree provision providing for Defendant's payment of medical and dental expenses of minor children whose custody was awarded to plaintiff. Plaintiff brought a proceeding to enforce this provision and also

requested reimbursement for the medical insurance premiums expended by her over the years on behalf of the minor children in her custody. The Utah Supreme Court affirmed the Trial Court's reimbursement of these premiums stating that the premiums were actually a necessary medical expense incurred for the children. Similarly, the Court here has found that the orthodontic expenditures were medically necessary procedures and thus could conceivably be awarded under the explicit provision in the Divorce Decree that medical expenses be reimbursed by Appellant.

C. The Orthodontic Expense Was Medically Necessary.

It was also established at trial that the minor children's orthodontic work was medically necessary and thus unquestionably a payment Appellant should pay under the Decree. During the 11 years of divorce Mrs. Spears was essentially paying all of the health care costs of the minor children which included payment of \$3,700.00 for orthodontic bills. Mrs. Spears testified that these orthodontic expenses were for both of the minor children and were in fact medically necessary procedures. She testified that it was the childrens' pediatrician who referred them for orthodontic work and described the extreme dental condition of both children prior to this corrective work. She testified her son Henry could not close his mouth or chew his food and was the object of frequent teasing as a result of his prominent teeth. She further testified that her son would gag at the dinner table because he could not chew properly and that it

also impaired his breathing. These conditions also existed with her daughter, Shannell, who had a distorted jawbone structure which prevented her chewing and breathing properly. (R. 165-168). Photographs and a statement from the orthodontist confirmed that these orthodontic expenses were not cosmetic procedures but, rather, were medically necessary and directly related to the childrens' health and well-being. The Court also made this finding. (R. 226.)

POINT II

IT WAS NOT AN ABUSE OF DISCRETION FOR THE TRIAL COURT TO AWARD AN INCREASE IN CHILD SUPPORT ON THE BASIS OF A CHANGE OF CIRCUMSTANCES.

The law is clear that a party seeking a modification of a Divorce Decree carries the burden of showing a substantial change in circumstances. Christensen v. Christensen, 628 P.2d 1297 (Utah 1981). This Court has further emphasized that in matters concerning child custody and the support of children, because of their highly equitable nature, that it is appropriate for the Trial Court to take into consideration the entire circumstances of the case and make "any adjustment" which the Trial Court "may think fair and justified using equitable powers". Lord v. Shaw, 682 P.2d 853 (Utah 1984).

It is unclear whether Appellant is arguing that the threshold burden of changed circumstances has or has not been established herein. Rather, there is only a generalized statement in Appellant's Brief that the Court was "without sufficient

information of the parties' circumstances upon which to base a modification of the Decree." (Appellant's Brief, page 8). Nevertheless, Appellant's main argument appears to again be a belief that the trial court restricted his case presentation and questioning of Plaintiff's circumstances. Once again, a thorough examination of the record fails to show any point where Appellant's attorney was "prohibited" from questioning or where a proffer of evidence or additional witnesses was made. It is accurate that at one point Respondent's counsel's objection to questioning was sustained by the Court where Mrs. Spears was being questioned on purchases her present husband made. (R. 196). The Court explained its ruling indicating that it was the parties he was concerned with and their change of circumstances, not their spouses. This ruling has a firm basis in Utah law and was dealt with by the Supreme Court in the matter of Kiesel v. Kiesel, 619 P.2d 1374 (Utah 1980). In that appeal the Court faced the issue of whether income earned by a party's new spouse was properly considered in a modification proceeding. The Court stated as follows:

"While it is true that a stranger to a divorce action should not be constrained, by reason of marriage, to lend financial support to his or her spouse's children by a prior marriage, the Court is not precluded from taking such circumstances into consideration in determining the ability of one who does have the legal obligation of support."

619 P.2d at 1376.

In this passage, the Supreme Court is expressing the traditional "deference to the judgment of the trial court due to its advan-

taged position". Openshaw v. Openshaw, 639 P.2d at 178 (Utah 1981).

In facing issues presented by modification petitions, the Courts have wide latitude to review all the circumstances of the parties to determine whether sufficient changes have occurred warranting modification and also to determine what precise modification should be made. There is no dogmatic checklist for Courts to follow to assess the circumstances in every case. In the case of Owen v. Owen, 579 P.2d 911 (Utah 1978), this Court approved the Trial Court's emphasis on the needs of the children rather than the manner and standard of living desired by a parent as being the proper focus of an inquiry requesting increased child support. In the case of Wiker v. Wiker, 600 P.2d 514 (Utah 1978), this Court reviewed an increase in support in a situation of continued illness of the custodial mother, salary increases of the noncustodial father, and also cited the factors of inflationary trends and the lapse of time between awards as sufficient to uphold a Trial Court's increase in support. The Kiesel case presented very similar facts to the case at bar, namely, an increased income for the noncustodial father and increased medical expenses for the minor children which this Court found was sufficient evidence to support an increased support award. Similar facts to Respondents are also seen in Christiansen v. Christiansen, 667 P.2d 592 (Utah, 1983), where an increased support award was affirmed on a trial record showing only a non-

custodial father's increased income and increased expenses for the minor children's child care. Interestingly, Appellant quotes from this case to the effect that an increase in a husband's income does not "automatically" justify an increase in child support. No such "automatic" view is urged by Respondent, rather the facts of her situation present several well-established grounds to justify the child-support increase awarded by the court below.

In the instant case, Mr. Sartori admits that there was evidence of his substantially increased income from \$800.00 per month at the time of the divorce in 1975 to a gross annual income of over \$30,000.00 per year at the time of trial 11 years later. (R. 175.) Appellant also admits in his Brief that there was no evidence of any increased income for Mrs. Spears. (Appellant's Brief, page 8, line 16). There was also unquestionably evidence before the Court as to Mrs. Spears' increased expenses regarding the medical, dental and health care expenses of the minor children. These alone approximated \$6,000.00 during a nine-year period. She also testified to substantial extra costs for her son, Henry's special diet needs, and extra expenses (R. 163, 164, 176). An important factor in Respondent's situation, too, is the mere passage of time where 11 years of inflation has undercut the value of her 1975 \$100.00 per child support level. Respondent's unemployment and the prolonged financial hardship caused by meeting the burden of her children's substantial medical and den-

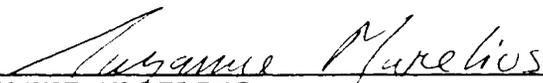
tal expenses alone should also be considered. These circumstances not only pass the threshold test to allow modification herein but also provide substantial support for the amount of the increase awarded.

The Trial Court was in fact quite explicit in explaining its increased support award herein and appeared to view the situation as patently unfair for far too long to Plaintiff-Respondent. Considering Mr. Sartori's \$45,000.00 annual income and the \$100.00 per child support level, the Court was clearly offended by the notion that Mrs. Spears was entitled to no increase.

CONCLUSION

The Trial Court did not abuse its discretion in either interpreting the divorce Decree, awarding increased child support, in handling the trial, or in making rulings of law as set forth above. Appellant has failed to establish any error and, as shown, the trial court's decision is supported by ample evidence and equitable principles, and should be affirmed.

DATED this 16 day of March, 1987.

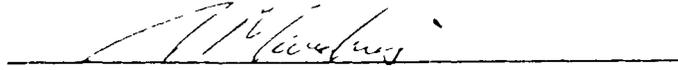


SUZANNE MARELIUS
Attorney for Plaintiff-Respondent

CERTIFICATE OF SERVICE

I hereby certify that I caused to be delivered four copies of the foregoing Brief of Respondent to Harry Caston, Attorney for Defendant/Appellant, MCKAY, BURTON & THURMAN, Kennecott

Bldg., #1200, 10 East South Temple, Salt Lake City, Utah 84133,
Salt Lake City, Utah 84133, this 16 day of March, 1987.

A handwritten signature in cursive script, appearing to read "M. [unclear]", is written above a solid horizontal line.