

2007

Wesley O. Bayles v. Linda Caryl Bayles : Brief of Appellee

Utah Court of Appeals

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Judy Dawn Barking; Attorney for Respondent/Appellee.

Wesley O. Bayles; Pro Se.

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IN THE UTAH COURT OF APPEALS

WESLEY O. BAYLES,)	Appeals Case No. 20070334
		Second District Court No. 004702059
Petitioner/Appellant,)	
vs.)	
LINDA CARYL BAYLES,)	
Respondent/Appellee.)	

BRIEF OF APPELLEE

Appeal from an Order (Post-Divorce) Entered by the
Second Judicial District Court, State of Utah, Davis County,
Honorable Thomas L. Kay, District Court Judge

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)	
Respondent/Appellee.)	

STATEMENT OF JURISDICTION

The jurisdiction of this case is vested with the Utah Court of Appeals pursuant to Utah Code Ann. §78-2a-3(2)(h), and pursuant to Rules 3(a) and 4(a) of the Utah Rules of Appellate Procedure.

STATEMENT OF ISSUES

Issue 1. Petitioner/Appellant has failed to marshall the evidence against the trial court's findings of fact.

Issue 2. The trial court was not attempting to interpret California Residential Purchase Agreements but was determining Respondent's obligation to Petitioner when he exercised his right of first refusal. The trial court did not abuse its discretion when it refused

to order specific performance.

Issue 3. The trial court did not abuse its discretion when it ordered that each party continue to pay a portion of the cost for the survivor benefit, but awarded Mr. Bayles a parcel of property as an offset for the expense of the survivor benefit.

STANDARD OF APPELLATE REVIEW

Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. Rule 52(a), Utah Rules of Civil Procedure; *Sigg v. Sigg*, 905 P.2d 908 (Utah Ct. App. 1995). In order to overturn the District Court’s findings of fact, the appellant must “marshall the evidence in support of the findings and then demonstrate that despite this evidence, the trial court’s findings are so lacking in support as to be ‘against the clear weight of the evidence,’ thus making them ‘clearly erroneous’.” *Hagan v. Hagan*, 810 P.2d 478 (Utah Ct. App. 1991) (citations omitted).

The District Court’s legal conclusions are reviewed for an abuse of discretion. *Sigg v. Sigg*, 905 P.2d 908, 912. “ ‘A trial court has considerable discretion considering property [division] in a divorce proceeding, thus its actions enjoy a presumption of validity.’ We will disturb the trial court’s division only if there is a misunderstanding or misapplication of the law such that a manifest injustice or inequity results, indicating an abuse of discretion. *Oliekan v. Oliekan*, 2006 UT App 405, ¶16, 147 P.2d 464, quoting *Elman v. Elman*, 2002 UT App 83, ¶17, 45 P.3d 176.

“Trial courts may exercise broad discretion in adjusting the financial interests

of parties to divorce and modification proceedings, so long as the decision is within the confines of legal precedence....Where a trial court may exercise broad discretion, we presume the correctness of the court's decision absent 'manifest injustice or inequity that indicates a clear abuse of ...discretion'." *Crockett v. Crockett*, 836 P.2d 818, 819 (Utah Ct. App. 1992), quoting *Hansen v. Hansen*, 736 P.2d 1055, 1056 (Utah Ct. App. 1987).

DETERMINATIVE LAW

Utah Code Ann. §30-3-5(1) states: "When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties." Utah Code Ann. §30-3-5(3) states: "The court has **continuing jurisdiction** to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, **and for distribution of the property and obligations for debts as is reasonable and necessary.**" (Emphasis added.)

STATEMENT OF THE CASE

This appeal follows a trial held on July 3, 2006 and July 5, 2006, before the Honorable Thomas L. Kay, District Court Judge, on Petitioner's Petition to Modify Decree of Divorce and on issues certified from a prior hearing on an Order to Show Cause. The Petitioner/Appellant objects to the provisions of the Court's Findings of Fact and Conclusions of Law and Order Modifying Decree of Divorce concerning allocation of payment for Respondent's survivor benefit in Petitioner's retirement, the sale or disposition of one remaining parcel of marital property located in the State of California, and regarding

the obligations of the parties in connection with the sale of marital properties of the parties located in the State of California.

STATEMENT OF FACTS

1. The parties were divorced following a trial on October 1-2, 2002. Findings of Fact and Conclusions of Law, and a Decree of Divorce, were entered on November 25, 2002. (Record on Appeal, pages 148 et seq. and pages 167 et seq.) (See copies in the Addendum).

2. At the time of the divorce, the parties owned multiple parcels of property in Yuba County, California. The Court found in ¶24 of its Findings of Fact and Conclusions of Law: “In light of the parties’ past payment and debt history, the above-mentioned California properties should be sold as soon as possible.” (Record on Appeal, page 153).

3. The Court further found in ¶15 of its Decree of Divorce:

15. The petitioner is awarded a right of first refusal for the purchase of any and all of the California properties. Upon acceptance of any bona fide offer to purchase a California property, the petitioner shall receive written notice of the acceptance of the offer and shall have thirty (30) days from the receipt of said notice to provide written notice of his election to purchase the property on the same terms as the bona fide offer. If petitioner exercises the right of first refusal, he shall pay the respondent the amount she would receive from the sale of that parcel, said payment to be made within 30 days of the time he exercises his right of first refusal.

4. Subsequent to the divorce, an evidentiary hearing was held on November 10, 2004, and Petitioner appealed from the Order entered after that hearing. In case number 20041133, the Court of Appeals affirmed the Order of the District Court.

5. The case came before the District Court again on July 3, 2006 and July 5,

2006 as a post-divorce proceeding to modify the decree of divorce and to resolve issues certified from a hearing on an Order to Show Cause.

6. At the time of trial in 2006, Petitioner was under **an order** to pay alimony to Respondent, but he had not paid alimony since May, 2005 (**almost one year** after he filed his petition to modify). (Finding of Fact ¶8 at Record on Appeal page 443; Transcript of trial July 3 & 5, 2006 page 296, lines 21-23).

7. The Court found that despite **receiving** no alimony since May, 2005, Respondent had been able to “hold her own” from May, 2005 through the date of trial, July 3, 2006. (Finding of Fact ¶8 at Record on Appeal page 443; Transcript of trial July 3 & 5, 2006 page 296, line 25 through page 297, line 10).

8. The Court found that Petitioner no longer had the ability to pay alimony; even if the Respondent needed alimony, Petitioner could not pay alimony. (Finding of Fact ¶9 at Record on Appeal page 443; Transcript of trial July 3 & 5, 2006 page 297, line 14-21; page 129, line 22 through page 130, line 24; page 185, lines 22-24; page 186, line 15 through page 187, line 8; page 190, line 23 through page 191, line 2, page 241, line 23 through page 242, line 7).

9. Petitioner retired from the IRS on a medical disability after the trial of the divorce proceeding in 2002, and Petitioner’s retirement from this employment was divided by the Court in the Decree of Divorce. Respondent receives twenty-one per cent. (21%) of Petitioner’s retirement benefit as her Woodward share. (Decree of Divorce ¶25, page 173 of record on appeal; Transcript of trial July 3 & 5, 2006 page 26, lines 10 through page 27,

line 8; page 28, line 13-16).

10. In the Decree of Divorce, Petitioner was ordered to elect a full survivor benefit for his retirement pending further order of the Court. Decree of Divorce ¶ 26 (page 173 of record on appeal)

11. At the time of divorce, the Court reserved for future determination the amount of survivor benefits to be awarded to the Respondent and the issue of which party should pay the monthly cost for the survivor benefits. (Decree of Divorce ¶26, page 173 of record on appeal).

12. The monthly cost of Respondent's survivor benefits is approximately \$272.00 per month. The cost of the survivor benefit is deducted from the retirement before it is divided pursuant to the *Woodward* formula, and before either party is paid their share of the retirement. Respondent pays a proportion of the cost of the survivor benefit by virtue of a proportional reduction of her Woodward share of the retirement benefit. The court ordered that the survivor benefit be paid as it has since Petitioner's retirement, and did not adjust the allocation of the cost of the survivor benefit. (Finding of Fact ¶11 at Record on Appeal page 443; Transcript of trial July 3 & 5, 2006 page 30, lines 11-12; page 34, lines 3-18; page 109, lines 1-4; page 197, lines 17-22; page 254, lines 14-16, page 276, line 2 through page 277, line 16).

13. In the Decree of Divorce, the parties were ordered to sell all parcels of property in California, and divide the proceeds; and each party was given a right of first refusal to purchase any of the properties. At the time of trial on the modification

proceeding, one parcel of California property remained, which the parties referred to as the “five-acre parcel”. (Transcript of trial July 3 & 5, 2006 page 85, lines 11-19).

14. The property taxes on the five-acre parcel were delinquent. (Transcript of trial July 3 & 5, 2006 page 64, lines 4-7; page 65, line 21 through page 66, line 4; page 161, lines 3-6).

15. The parties had received offers to purchase the five-acre parcel, but the property had never been sold. (Transcript of trial July 3 & 5, 2006 page 85, line 21 et seq.; page 91, line 1 through page 92, line 92; page 96, lines 2-22).

16. The Court awarded the remaining California property, the five-acre parcel, to Respondent as an offset for the allocation of the cost of the survivor benefit, to provide him a source of funds from which to pay the survivor benefit (or to recoup the cost he pays for the survivor benefit). Based on the estimated value of the five acre parcel and the cost of the survivor benefit, if Petitioner lives 20 more years, the cost of the survivor benefit to Petitioner should approximate the value of the five-acre parcel. (Finding of Fact ¶12 at Record on Appeal page 444-445 ; Transcript of trial July 3 & 5, 2006 page 97, lines 11-12; page 150, lines 5-20; page 165, lines 14-19; page 198, line 18 through page 199, line 2, lines 20-22, page 234, line 11-15; page 242, lines 1-11).

17. Respondent accepted offers to purchase several of the California parcels from third parties; those offers included standard terms and conditions for sales to third parties, including a requirement for a grant deed and title insurance. Respondent would have been obligated to pay a real estate commission to her realtor if those sales to third parties had

been consummated. (Transcript of trial July 3 & 5, 2006 page 74, lines 7-8; page 75, lines 13-18; page 76, lines 7-11; page 89, line 18 through page 90, line 8;).

18. Petitioner exercised his right of first refusal to purchase three parcels of property owned by the parties. (Transcript of trial July 3 & 5, 2006 page 74, lines 1-9; page 75, lines 13-20; page 76, lines 7-13).

19. Petitioner tendered payment to Respondent for her interest in each parcel. Respondent did not comply with all terms of the sales contracts entered with third party buyers when she accepted Petitioner's payment for his exercise of the right of first refusal. Only after tendering payment, Petitioner demanded that Respondent comply with all terms of the sales contracts as those contracts were written with third parties. Petitioner did not put Respondent on notice of his intention to require her to comply with all terms of the sales contracts until after he tendered his payments. Having failed to put Respondent on notice to perform all the terms of the contracts, Petitioner waived his right to demand performance and the Court refused to order Respondent to perform all the terms of the contracts. Respondent's only obligation was to provide Petitioner with a deed of the same quality with which the parties obtained title to the property; i.e., if the parties held title by a grant deed, Respondent should provide Petitioner with a grant deed, and if they held title by a quit claim deed, Respondent should provide Petitioner with a quit claim deed. Petitioner was not entitled to get better title than he had before purchasing the interest of Respondent in the property. (Transcript of trial July 3 & 5, 2006 page 104, line 13 through Page 107, line 7; page 141, line 2 through page 142, line 8; page 144, lines 9-25; page 245, line 2 through page

146, line 18; page 201, line 12 through page 203, line 18; page 204, lines 10-24; page 207, lines 14-25; page 208, lines 1-15; page 228, line 17 through page 229, line 12).

20. The trial court found that the terms of the sales contracts were more of a technicality than what the bargain was, and refused to order Respondent to comply specifically with the terms of the sales contracts. (Transcript of trial July 3 & 5, 2006 page 230, lines 3-21; page 259, lines 13-19; page 263, lines 17-23).

SUMMARY OF ARGUMENT

1. The Petitioner/Appellant has the burden to “marshall the evidence in support of the findings and then demonstrate that despite this evidence, the trial court’s findings are so lacking in support as to be ‘against the clear weight of the evidence,’ thus making them ‘clearly erroneous’.” *Hagan v. Hagan*, 810 P.2D 478 (Utah App. 1991). He has failed to meet this burden, and thus the Court must assume that the findings of fact of the trial court are supported by the record.

2. The trial court did not abuse its discretion in ruling that Respondent did not have to comply with the terms of sales contracts other than providing Petitioner with an appropriate deed, and refusing to find Respondent in contempt for not complying with all terms contained in the sales of the various California parcels.

3. It was not an abuse of discretion for the trial court to enter one order in which the court terminated alimony, ordered that there would be no change in the payment of the cost of the survivor benefit for Respondent on Petitioner’s retirement, and as an offset to the amount Petitioner is ordered to pay for the retirement, awarded Petitioner the entire

five-acre parcel of California property. This financial package must be looked at in its entirety, and in its entirety it is equitable. This order carried out the trial court's intention to equally divide between the parties the value of the marital properties.

ARGUMENT

I. PETITIONER/APPELLANT HAS FAILED TO MARSHALL THE EVIDENCE AGAINST THE TRIAL COURT'S FINDINGS OF FACT.

The Petitioner/Appellant fails to meet the standard of appellate review to overturn the trial court's decision. He has the burden to "marshall the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be 'against the clear weight of the evidence,' thus making them 'clearly erroneous'." *Hagan v. Hagan*, 810 P.2D 478 (Utah App. 1991).

Mr. Bayles has not, in "comprehensive and fastidious order, [marshaled] every scrap of competent evidence introduced at trial which supports the very findings [he] resists." *Moon v. Moon*, 973 P. 2d 431, 437 (Utah App. 1999) Instead of meeting his burden, Mr. Bayles simply states the facts as he wanted them to be. In cases such as this, the Court has stated that it will " . . .[assume] that the record supports the findings of the trial court and [this Court] proceeds to a review of the accuracy of the lower court's conclusions of law and the application of that law to the case." *Shepherd v. Shepherd*, 876 P.2d 429, 432 (Utah App. 1994). Even if Mr. Bayles had met the first prong of marshalling the evidence, he has failed to met the second prong, which calls for an analysis to expose any "fatal flaw in the evidence" sufficient to overturn the trial court's findings. *Moon*, 973 P.2d 431, 437.

Since Mr. Bayles has not met his burden, this court should find the trial court's findings are supported by the record.

II. THE TRIAL COURT WAS NOT ATTEMPTING TO INTERPRET CALIFORNIA RESIDENTIAL PURCHASE AGREEMENTS BUT WAS DETERMINING RESPONDENT'S OBLIGATION TO PETITIONER WHEN HE EXERCISED HIS RIGHT OF FIRST REFUSAL. THE COURT DID NOT ABUSE ITS DISCRETION WHEN IT REFUSED TO ORDER SPECIFIC PERFORMANCE.

The Petitioner is attempting to raise again the issues raised, at least in part, and determined, in the prior appeal of this case concerning Respondent's obligations to Petitioner in connection with Petitioner's exercise of a right of first refusal to purchase Respondent's interest in certain marital properties located in California. To the extent those issues are raised again here, they are res judicata.

The trial court was not asked to interpret California Residential Purchase Agreements, nor did the Court do so. The Court was asked to determine whether Respondent should be required to provide additional services or benefits to Petitioner after he exercised his right of first refusal to purchase Respondent's interest in certain marital properties located in California, after tendering his payment to Respondent for her interest.

In essence, the Court was asked to interpret its own intention as embodied in the Decree of Divorce concerning the respective rights and duties of the parties. Mr. Bayles argues that there was a contract between himself and Mrs. Bayles for each parcel of property when he exercised his right of first refusal and purchased her interest in those properties. No evidence was presented to the trial court that would create any contract between Mr. Bayles

and Mrs. Bayles concerning those properties, and no evidence is cited by Mr. Bayles other than the existence of certain contracts with third parties for the purchase of those marital properties.

The trial court made a specific finding that “if Petitioner wished to have Respondent comply with the terms of the sales contracts, then Petitioner should have done them prior to the time he sent payment.” The court further found that “Petitioner did not demand compliance with the terms of the sales contracts until after payment had been made.” Finding of Fact ¶13, Record on Appeal page 445. As Mr. Bayles has failed to marshal the evidence against these findings, they are deemed to be supported by the record; further, his own statement of facts in his brief acknowledges that he did not demand compliance prior to making payment.

Even if Mr. Bayles was entitled, under equity and under the terms of the Decree of Divorce, to insist that Mrs. Bayles perform all terms of the sales contracts with third parties when he purchased her interest, he waived his right to demand compliance with all those terms. In *Tanner v. Baadsgaard*, 612 P.2d 345 (Utah 1980), the seller (defendant in that case) was found to have waived strict compliance with the terms of the contract concerning time of payment, and specific performance was ordered. In the case at hand, Mr. Bayles waived any right to demand strict compliance (if he even had the right to demand strict compliance with the third-party contract) by tendering payment before demanding compliance. He has received title to the properties, and Mrs. Bayles has received her payment; each party has received the benefit contemplated by the Decree of Divorce. This

results in an equitable division of marital properties which lies within the sound discretion of the trial court, and which division should not be disturbed on appeal.

**III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION
WHEN IT ORDERED THAT EACH PARTY CONTINUE TO PAY A PORTION
OF THE COST FOR THE SURVIVOR BENEFIT BUT AWARDED MR. BAYLES
A PARCEL OF PROPERTY AS AN OFFSET
FOR THE EXPENSE OF THE SURVIVOR BENEFIT.**

To the extent that Mr. Bayles' brief seems to challenge the underlying division of retirement in this case, it is untimely, as that initial division was made in the original Decree of Divorce and was never challenged. The issue which was actually tried before the trial court concerning retirement, and the only issue concerning retirement which can be considered here, is the allocation of the monthly cost to maintain a survivor benefit for Respondent. This brief addresses that issue.

It was not an abuse of discretion for the trial court to enter one unified order in which the court terminated alimony; ordered that there would be no change in the payment of the cost of the survivor benefit for Respondent on Petitioner's retirement; and as an offset to the amount Petitioner is ordered to pay for the retirement, awarded Petitioner the entire five-acre parcel of California property. The court crafted a composite solution to resolve several outstanding issues, and the court's order must be looked at as a whole, without isolating one or two items. Petitioner asks the court to strike down one part of this package, without addressing the five-acre parcel of property which was clearly awarded to Petitioner as an offset (emphasis added). While the trial court did not relieve Petitioner of the

responsibility to pay some (not all) of the cost of the survivor benefit which clearly will only benefit Respondent, the trial court gave Petitioner an asset with an estimated value of \$30,000. Petitioner has the ability to immediately sell that property and use the proceeds however he chooses; this includes \$15,000 which otherwise would have belonged to Respondent based on the Decree of Divorce ordering the parties to share equally the proceeds of the properties. The testimony clearly showed that Respondent was in need of the survivor benefit, but had no ability to pay directly for the survivor benefit.

Utah case law clearly favors an avoidance of continuing joint ownership in marital assets whenever possible. *Woodward v. Woodward*, 656 P.2d 431 (Utah 1982); *Parker v. Parker*, 996 P.2d 565 (Utah Ct. App. 2000). This case is a prime example of the wisdom of this policy, but not, as Mr. Bayles suggests, concerning the retirement. Rather, it is the California real estate which has generated the most problems between the parties. Therefore, an approach which allocates, once and for all, the final remaining California parcel, which remained unsold almost four years after the divorce became final, was not only within the sound discretion of the trial court, but a wise move to avoid future entanglements and disputes between the parties. As in *Parker*, the trial court's "disposition concerning this asset properly disentangled the (parties) from future acrimonious business involvement." 996 p.2d 565, 570, ¶19.

Further, despite Mr. Bayles' assertion to the contrary, this case exactly fits into the *Woodward* mold. Mr. Bayles' retirement benefit is not a liquidated fund; "...where no present value can be established and the parties are unable to reach agreement, resort must

be had to a deferred distribution based upon fixed percentages.” 656 P.2d 431, 433. That fixed percentage has also applied in this case to the amount each party pays for Respondent’s survivor benefit, due to the way the cost is calculated and paid. The case of *Motes v. Motes*, 786 P.2d 232 (Utah Ct. App. 1989) is apropos, as Mr. Motes was already retired at the time the decree of divorce was entered, and he was receiving monthly retirement benefits. As the Court stated in *Motes*, “Treatment of such benefits is less problematic than in the usual case. The present value of plaintiff’s share of the now-fixed stream of income, which the benefits have become, can be readily calculated and compensated for with distribution of other assets having an equivalent value or cashed out over a comparatively short time. That failing, provision can simply be made for plaintiff to receive her share monthly....” *Id.*, 786 P.2d 232, 234. Mrs. Bayles currently receives her share of the retirement stream of income monthly; she also pays a proportionate share of the cost for her survivor benefit monthly, which reduces her share of the monthly retirement stream. The Court exercised sound discretion in using another asset (the five-acre parcel) to compensate Mr. Bayles for the amount he pays monthly for the cost of the survivor benefit.

This case raises an issue previously addressed in *Burt v. Burt*, 799 P.2d 1166 (Utah Ct. App. 1990). In that case, Mrs. Burt also sought a share of the survivor annuity benefit incident to Mr. Burt’s government retirement benefit. At footnote 8, the court stated that “while a present settlement is preferable, the trial court may award the defendant a share of the income stream from the retirement benefits as they are paid, not in the form of alimony but as a property award not terminable upon remarriage.” The cost for the survivor annuity

benefit was treated in a similar fashion, “fixing a present value and considering that sum in the distribution scheme, or awarding the defendant an interest in the annuity to protect her right to continued payment of the retirement income.” 799 P.2d 1166, 1171. In the instant case, the trial court considered the present value of the future cost to preserve the survivor annuity benefit, and considered that present value in awarding Mr. Bayles the five-acre parcel of property but ordering that he continue to bear the burden of 79% of the cost of the survivor benefit.


The trial court in this case, in the sound exercise of its discretion, fashioned an equitable solution which not only resolved the issue of the continuing payment for the survivor benefit, but also once and for all removed as a bone of contention between the parties the final parcel of California property which remained unsold. The total award is not an abuse of discretion and should be affirmed.

CONCLUSION

Mr. Bayles has failed in his initial burden of marshalling the evidence in support of the findings of the trial Court, and therefore the Court on appeal should not reach the merits of his case. However, to the extent that he had the right to demand that Mrs. Bayles comply with the terms of contracts entered into with third parties, he waived the right to demand compliance when he tendered payment before making such demands. The trial court admirably met its burden of equitably dividing the marital properties of the parties when it preserved the existing payment structure for the cost of Mrs. Bayles’ survivor benefit, but awarded Mr. Bayles the five-acre parcel as an offset to cost he pays. The

allocation of payment for the survivor benefit cannot be considered in a vacuum, but only in context of the entire order, and the trial court did not abuse its discretion in entering that order. The Order Modifying Decree of Divorce should be affirmed.

DATED this 8 day of October, 2007.



JUDY DAWN BARKING
Attorney for the Respondent-Appellee
Linda Caryl Bayles

CERTIFICATE OF SERVICE

I, Judy Dawn Barking, certify that on the 9 day of October, 2007, I served a copy of the attached Brief of the Respondent/Appellee upon Wesley O. Bayles, Petitioner/Appellant pro se in this matter, by mailing to him by first class mail with sufficient postage prepaid to the following address:

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ADDENDUM

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Divorce Decree



004702059

VD10820269

BAYLES, LINDA CAF^{CD}

IN THE SECOND JUDICIAL DISTRICT COURT,
IN AND FOR DAVIS COUNTY, STATE OF UTAH

WESLEY O. BAYLES,

Petitioner,

vs.

LINDA CARYL BAYLES,

Respondent.

DECREE OF DIVORCE

Civil No. 004702059 DA

Judge Thomas L. Kay

The above-entitled matter was heard before the Honorable Thomas L. Kay, Judge of the above-entitled court, pursuant to a trial held on October 1 and October 2, 2002. The Court, having reviewed the documents and pleadings on file herein, having heard argument and testimony, and being fully advised as to both the evidence and law pertaining thereto, and having previously entered its Findings of Fact and Conclusions of Law, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. The parties are subject to the jurisdiction of this Court as set forth above in the Court's Findings of Fact.

2. The petitioner should be granted a Decree of Divorce from the respondent on the grounds of irreconcilable differences effective October 2, 2002.

Children of the Parties

3. The petitioner is not obligated to pay child support to the respondent in regards to Andrew Vincent Salazar and BreAnna Rosa Flores Salazar.

Health Insurance

4. Each party shall maintain their own health, accident, hospitalization and dental insurance. The petitioner shall provide any necessary cooperation in respondent's obtaining for her benefit continued health, accident, hospitalization and dental insurance coverage under the federal C.O.B.R.A. legislation, at the sole cost of the respondent.

5. The respondent shall be entitled to receive the insurance check in the amount of \$1,636.03 in satisfaction of the \$1,312.50 owing pursuant to the Commissioner's earlier recommendation. The check has already been delivered to the respondent as satisfaction of said obligation.

Debts and Obligations

6. The respondent is required to pay and hold petitioner harmless on the debts owing on the Provident Card, the Citibank card, the Chase/Walmart Card, and the MBNA card.

7. The petitioner is required to pay and hold the respondent harmless on the debts owing on the America First Credit Union Visa card, the line of credit at America First Credit Union, and the Firestone account.

8. Since the separation of the parties, the petitioner has paid approximately \$61,000 toward the marital debt obligations that existed at the time of separation. The petitioner shall not

receive any credit or offset in the marital settlement for such payments.

Real Property

9. The Bountiful Residence is awarded to the petitioner subject to the debt thereon. The respondent shall execute a quitclaim deed in favor of the petitioner or other documents necessary to relinquish her interest in the Bountiful Residence.

10. The petitioner is permitted to sell the Bountiful Residence, with the respondent having no further claim or interest therein. The petitioner shall be permitted to retain any profit or be responsible for any loss associated with any sale thereof. Respondent shall cooperate in executing any documents and taking any steps necessary to allow the petitioner to proceed with the sale and transfer of the Residence.

11. The respondent is not responsible for payment of the first and second mortgage on the Bountiful Residence for the period she resided in the Residence from the date of separation through the time she moved to Oklahoma in August 2001.

12. The parties jointly hold certain other real property, namely (a) Parcel 1 of land and associated improvements located at 10692 Forbestown Road, Yuba County, California; (b) Parcel 13 of land and associated improvements located at 10747 Forbestown Road, Yuba County, California; (c) Parcel 15 of land and associated improvements located at 10695 Forbestown Road, Yuba County, California; (d) Parcel 16 of land and associated improvements located at 10691 Forbestown Road, Yuba County, California; (e) Parcels 8 and 10 of land located in Yuba County,

California, also known as the Beehive Mine; and (f) Parcel 2 of land located in Yuba County, California, also known as Parcels 22 & 23.

13. The above-mentioned California properties shall be sold as soon as possible.

14. The petitioner is hereinafter entitled to retain the rental income from Parcels 1 and 15 and is obligated to maintain the monthly payments on the mortgages for said parcels through the date of sale of said properties.

15. The petitioner is awarded a right of first refusal for the purchase of any and all of the California properties. Upon acceptance of any bona fide offer to purchase a California property, the petitioner shall receive written notice of the acceptance of the offer and shall have thirty (30) days from the receipt of said notice to provide written notice of his election to purchase the property on the same terms as the bona fide offer. If petitioner exercises the right of first refusal, he shall pay the respondent the amount she would receive from the sale of that parcel, said payment to be made within 30 days of the time he exercises his right of first refusal.

16. The respondent is awarded a secondary right of first refusal. In the event that the petitioner fails to exercise his right of first refusal within thirty (30) days following his receipt of notice of acceptance of a bona fide offer, the respondent shall thereafter have thirty (30) days to provide written notice of her election to purchase the property on the same terms as the bona fide offer. If respondent exercises her

right of first refusal, she shall pay the petitioner the amount he would receive from the sale of that parcel, said payment to be made within 30 days of the time she exercises her right of first refusal.

17. At the time of closing on the sale of each California property, proceeds from the sale shall first be applied to pay any and all closing costs, real estate commissions or fees, and any existing mortgage obligations owing, including any tax and/or debt delinquencies owed in relation to the property. After such costs have been paid, the petitioner shall be entitled to receive one-half of the total amount of payments he has made toward delinquent and current taxes on the property and, as applicable, one-half of the total amount he has paid toward the mortgage obligations in the property commencing with the month of October 2002 through the date of sale. Any and all remaining proceeds from the sale of the property shall be split equally between the parties.

18. The real property and improvements located at (a) 1441 Michigan Avenue, Salt Lake City, Utah, and (b) Blanding, Utah, are the separate, inherited property of the petitioner.

Personal Property

19. The respondent is awarded those personal heirlooms located at the California properties, namely plates, platters, clocks, and lamps. The ski pole in the possession of the petitioner is a family heirloom of the respondent and respondent is awarded the ski pole. Petitioner is permitted to make a model of the ski pole and shall deliver possession of the ski pole to

the respondent within 90 days of entry of this Decree at her place of residence and at the expense of the petitioner.

20. The remainder of the personal property is awarded to the parties as currently divided.

21. The \$15,000 previously paid to the respondent shall be considered an offset for the additional value of personal property received by the petitioner.

Alimony

22. The petitioner has made monthly payments to the respondent from the date of separation, including the total amount of \$8,337 in monthly payments during the period from February 14, 2002 through the month of October 2002. These payments shall be considered temporary alimony.

23. Commencing with the month of November 2002, the petitioner is hereinafter obligated to pay alimony to the respondent in the monthly amount of \$1,000, payable one-half on the 5th of the month and one-half on the 20th of each month, to continue until alimony is reviewed at the time of petitioner's retirement. Alimony shall terminate as determined by the Court or upon the marriage or cohabitation of the respondent, the death of either party, or upon the occurrence of any event, which, under Utah law, shall cause alimony to cease.

24. The alimony award shall be reviewed at the time of petitioner's retirement. Based upon the current circumstances of the parties, petitioner's retirement shall be considered to be a sufficient basis to permit a review of alimony. At the time of review, the Court shall make determinations as to whether the

monthly alimony payments will be modified or discontinued. Such review shall be made in conjunction with review of the issues related to payment of the retirement and survivor benefits set forth in the following section.

Pensions and Retirement Benefits

25. The petitioner has acquired pension and retirement funds prior to and during the term of the marriage of the parties. The respondent is entitled to receive one-half (1/2) of the petitioner's pension and retirement funds which were accrued during the term of the marriage pursuant to the Woodward formula and a Qualified Domestic Relations Order shall issue in association therewith.

26. The petitioner's retirement plan includes an option to elect either full or partial survivor benefits. The Court finds that election of a survivor benefit will decrease the total monthly benefit payment under petitioner's pension and retirement plan in an amount that cannot be calculated to an exact amount at this time. The Court reserves for future determination the issue of the amount of survivor benefits to be awarded to the respondent and the issue of which party shall pay the monthly cost. Such determination shall be made at the time of petitioner's retirement, subject to the provision of the following paragraph.

27. In order to avoid forfeiture of the ability to elect a full survivor benefit, the petitioner shall not elect a reduced survivor benefit prior to the Court's determination pursuant to the provision in paragraph 26, above.

Life Insurance

28. The respondent shall be listed as a one-half-interest beneficiary on the currently existing life insurance policy on petitioner's life.

Attorney's Fees

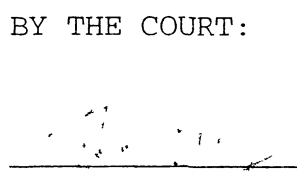
29. The petitioner shall pay \$1,500 toward respondent's attorney's fees by December 2, 2002. The respondent is ordered to assume and pay the remainder of her own costs and attorney's fees incurred herein. The petitioner is ordered to assume and pay his own costs and attorney's fees incurred herein.

Miscellaneous Provisions

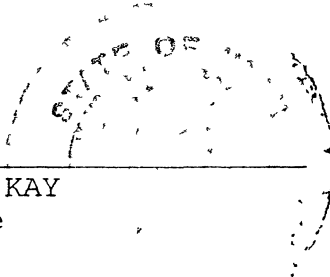
30. Each party is ordered to execute and deliver to the other party any documents required to implement or support the provisions of this Decree.

MADE AND ENTERED this ____ day of November, 2002.

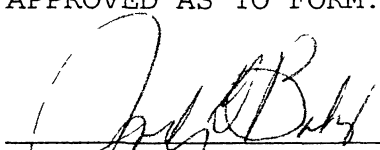
BY THE COURT:



HONORABLE THOMAS L. KAY
District Court Judge

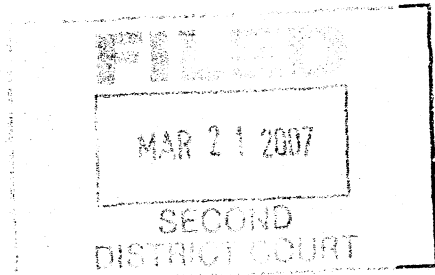


APPROVED AS TO FORM:



JUDY DAWN BARKING
Attorney for Respondent

Michael D. Murphy (#5115)
Attorney for Petitioner
13 North Main
P.O. Box 15
Kaysville, Utah 84037
(801) 547-9274



IN THE SECOND JUDICIAL DISTRICT COURT
DAVIS COUNTY, STATE OF UTAH

WESLEY O. BAYLES,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
Petitioner)	
)	
vs.)	
)	
LINDA CARYL BAYLES,)	Civil No. 004702059
)	
Respondent.)	Judge Thomas L. Kay

This matter came on regularly scheduled before this Court for trial on July 3, 2006, the Honorable Thomas L. Kay, District Court Judge, presiding. Petitioner was present and represented by his attorney, Michael D. Murphy, and the Respondent was present and represented by her attorney, Judy Dawn Barking. The Court, after hearing argument and testimony and having reviewed the parties' exhibits, and being fully advised in the premises, now makes and enters on July 5, 2006 the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The court finds that the issues in this case is whether or not Petitioner should continue to pay alimony to the Respondent and what, if any, money that Petitioner has paid Respondent since June of 2004 should be paid back.

Findings of Fact and Conclusions of law



2. The Court finds that the second issue the Court is considering is who should pay for the survivor benefits and if Respondent should reimburse the Petitioner for the survivor benefits that he paid since the filing of the Petition to Modify on June, 2004.

3. The third issue is the parcels of property and whether or not the Respondent should strictly comply with the terms and conditions which accompanied the various post divorce sales of the various parcels of property.

4. The fourth issue is what should be done with the remaining unsold five-acre parcel.

5. The fifth issue is who should be ordered to pay attorney fees in this matter.

6. The sixth issue is who should be responsible for transportation costs and costs of trial.

7. The remaining issue of whether or not Petitioner should continue to maintain the Respondent as a beneficiary on his life insurance policy has been stipulated and the parties stipulate that Petitioner should no longer be obligated to carry Respondent as a beneficiary on his life insurance policy.

8. In regards to alimony, the Court finds that Petitioner was, at the time of October 2002, employed full time at the Internal Revenue Service. Petitioner had not had his disability rating from IRS prior to the trial and was earning almost twice per month at the time of the entry of the Decree of

Divorce than he is earning now. The Court further finds that Petitioner filed the Petition to Modify in June of 2004 and that he was current in his monthly alimony through May of 2005. The Court further finds that from May of 2005, Respondent has been able to hold her own.

9. The Court finds that Petitioner no longer has the ability to pay alimony. Petitioner is disabled and alimony should terminate. The Court finds that the parties' incomes are substantially similar and there is no way that alimony can be justified. Even if the Respondent needs alimony, Petitioner cannot pay alimony.

10. The Court finds that \$12,000 of alimony has been paid from the time of the motion to modify in June of 2004 through May of 2005. The Court finds that what alimony has been paid has been paid. The Court further finds that it is not appropriate under the circumstances of this case to order that the alimony that was paid has to be repaid. Both parties shall go forward with no on-going alimony, or with no alimony to be refunded or no alimony due.

11. In regard to the survivor benefits, the Court finds that the cost of the survivor benefits is approximately \$272.00 per month and the issue is who should pay for those survivor benefits. Respondent already pays a proportion of the cost of the Survivor Benefit by virtue of a proportional reduction of her Woodward share of the retirement benefit. Respondent will benefit by those survivor benefits. She currently receives \$599.00 per

month and that amount will be increased annually pursuant to cost of living increases. If Petitioner dies prior to the Respondent, Respondent's survivor benefits would triple. The Court sees arguments of the parties both ways in determining who should be obligated to pay for the survivor benefits and finds an argument can be made for splitting it down the middle. The Court finds that the survivor benefit has been chosen and has to continue and that Petitioner should be ordered to pay for it just as it has been in the past. Respondent will have no obligation to pay any back survivor benefit payments. Respondent currently receives \$599.00 per month as her Woodward share of the retirement and that amount will be increased annually pursuant to annual cost of living increases.

12. As an off-set of the survivor benefits being paid as they currently are, Petitioner shall receive the five acre parcel of property, free and clear of any claim by the Respondent, subject to any debt thereon. Petitioner will have full authority ~~to sell the five acre~~ parcel and receive all monies from that sale. The Court finds that if Petitioner lives 20 more years, the cost of the five acre parcel gets roughly close to what it would cost him to pay for the survivor benefit. The Court finds that is fair. The Court further finds that everybody agrees that there may be a title problem on this five acres and that Petitioner may get less than what he's going to have to pay over the time, but finds that's the best the Court can do. It is equitable to give Respondent survivor benefit, but appropriate to

give Petitioner a source of funds with which to pay the survivor benefit.

13. In regards as to whether Respondent should comply with all terms of the sales for the various parcels of properties since the entry of the Decree of Divorce, the court finds that the position of Petitioner is that Respondent accepted offers that included terms of a grant deed, title insurance, and other items, and that these were bona fide offers.

The Court finds that things like title insurance and things like these other issues, normally in a closing on a sale, all these things are deducted, including real estate commissions or whatever they are, as closing costs. The Court further finds that's what would have happened if the closing of these sales contracts would have been sent to a third party.

The Court finds that if Petitioner wished to have Respondent comply with the terms of the sales contracts, then Petitioner should have done them prior to the time he sent payment.

The Court finds Petitioner can argue that Respondent should have been put on notice of the terms of the contracts because they were in the contracts.

The Court finds that Respondent had not complied with the terms of the sales contracts, but that Petitioner did not demand compliance with the terms of the sales contracts until after payment had been made.

The Court further finds the terms of the sales contracts were more of a technicality than what the bargain was.

Thus the Court is not going to order that Respondent is going to have to comply with any of the terms of the sales contracts. Consequently, Respondent shall not be held in contempt for not complying any of the terms contained in the sales contracts of the various parcels of real property.

Respondent was not put on notice to perform all the terms of the contracts before the checks for payment were sent; therefore, the Court will not order additional performance other than requiring Respondent to provide Petitioner with a grant deed on property held by the parties by a grant deed and with a quit claim deed on properties held by the parties on a quit claim deed.

As co-owner of the property by quit claim deed, Petitioner cannot complain of not getting a warranty deed from Respondent. Petitioner should not get better title than he had before; he takes the property like it was when he had it prior to adding Respondent to the title. Respondent's only obligation is to provide Petitioner with the deed.

14. Each party shall pay for their own attorney fees.

15. The court further finds that each party shall pay for their own costs and expenses. Petitioner's attorney shall reimburse the Respondent, as agreed, \$120.00. This \$120.00 is the cost that Respondent incurred for Petitioner's attorney making a motion for continuing the June 2006 trial based upon the death of Petitioner's attorney's aunt.

16. The Court finds that in regards to Petitioner obtaining title to the various properties, Respondent shall convey to Petitioner titles to the various properties as follows: If the parties acquired title to a parcel of property by a grant deed, then Petitioner shall receive a grant deed from Respondent. If the parties acquired title to a parcel of property by a quit claim deed, then Petitioner shall receive a quit claim deed from Respondent. Respondent shall have three months from the date of this ruling, July 5, 2006, to convey title to Petitioner for the unconveyed titles of property.

CONCLUSIONS OF LAW

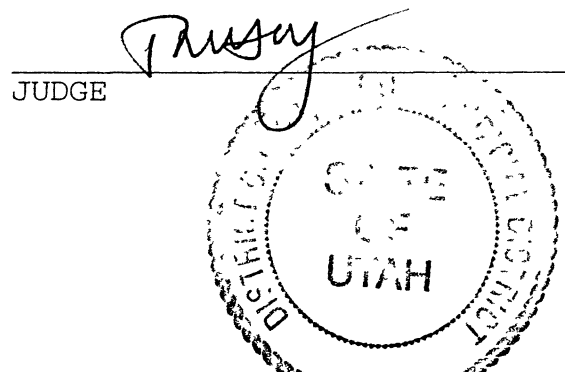
1. The Court concludes that the parties are subject to the jurisdiction of the Court as set out above under the Court's Findings of Fact, that the Petitioner is entitled to an Order Modifying Decree of Divorce, the same to become final upon entry herein.

2. The Court concludes that all other issues of dispute have been resolved with the Court pursuant to the above Findings of Fact.

SIGNED and DATED this 19th day of March, 2007.

BY THE COURT

JUDGE



CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Findings of Fact and Conclusions of Law, postage prepaid, this 22 day of March, 2007, to:

Judy Dawn Barking
Attorney for Respondent
427 27th Street
Ogden, UT 84401

Valerie Olmstead
Secretary

Michael D. Murphy (#5115)
Attorney for Petitioner
13 North Main
P.O. Box 15
Kaysville, Utah 84037
(801) 547-9274

IN THE SECOND JUDICIAL DISTRICT COURT
DAVIS COUNTY, STATE OF UTAH

WESLEY O. BAYLES,)	ORDER MODIFYING
)	DECREE OF DIVORCE
Petitioner)	
)	
vs.)	
)	
LINDA CARYL BAYLES,)	Civil No. 004702059
)	
Respondent.)	Judge Thomas L. Kay

This matter came on regularly scheduled before this Court for trial on July 3, 2006, the Honorable Thomas L. Kay, District Court Judge, presiding. Petitioner was present and represented by his attorney, Michael D. Murphy, and the Respondent was present and represented by her attorney, Judy Dawn Barking. The Court, after hearing argument and testimony and having reviewed the parties' exhibits, and being fully advised in the premises, and having previously entered on July 5, 2006 its Findings of Fact and Conclusions of Law, now makes and enters the following Order.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Pursuant to the parties' stipulation, the Petitioner shall no longer be obligated to carry Respondent as a beneficiary on his life insurance policy.

Order modifying decree of divorce



2. Pursuant to the Court's findings that Petitioner no longer has the ability to pay alimony, petitioner is disabled, and the parties' incomes are substantially similar and there is no way alimony can be justified. Even if the Respondent needs alimony, Petitioner cannot pay alimony, and the Court orders that alimony shall terminate.

3. The \$12,000 in alimony payments made since 2004 shall not be refunded. What alimony has been paid has been paid and the alimony that was paid shall not be repaid. Both parties shall go forward with no on-going alimony, or with no alimony to be refunded or with no alimony due.

4. The survivor retirement benefits shall continue to be paid as they have been and Petitioner shall continue to pay for it just as it has been in the past. Respondent shall have no obligation to pay any back survivor benefit payments.

5. As an off-set of the survivor benefits being paid as they currently are, Petitioner shall receive the five acre parcel of property, free and clear of any claim by the Respondent, subject to any debt thereon. Petitioner shall have full authority to sell the five acre parcel and receive all monies from that sale.

6. Respondent shall not have to comply with any of the terms of the sales contracts other than Respondent shall provide Petitioner with a grant deed on property held by the parties by a grant deed and with a quit claim deed on properties held by the parties on a quit claim deed. Respondent shall not be held in contempt for not complying with all the terms contained in the sale of the various parcels of real property.

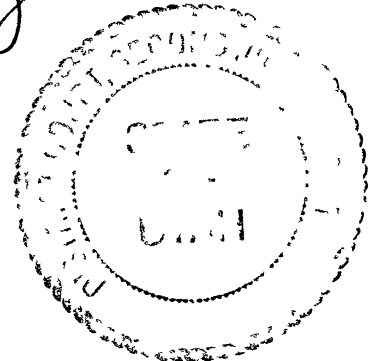
8. Each party shall pay for their own costs and expenses.

9. Respondent shall convey to the Petitioner titles to the various properties as follows: If the parties acquired title to a parcel of property by a grant deed, then Petitioner shall receive a grant deed from Respondent. If the parties acquired title to a parcel of property by a quit claim deed, then Petitioner shall receive a quit claim deed from Respondent. Respondent shall have three months from the date of this ruling, July 5, 2006, to convey title to Petitioner for the unconveyed titled of property.

SIGNED and DATED this 19th day of March, 2007.

BY THE COURT

JUDGE



CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Order Modifying Decree, postage prepaid, this 2 day of March, 2007, to:

Judy Dawn Barking
Attorney for Respondent
427 27th Street
Ogden, UT 84401

Kathleen M. McKee
Secretary