

1996

John D. Watson v. Camille K. Watson : Reply Brief

Utah Court of Appeals

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ARGUMENT

The Appellee, John Watson, argues that the Appellant, Camille Watson, has not adequately challenged the trial court's findings of fact. The Appellant devotes a substantial portion of her brief to a careful comparison of the trial court's findings to the record, citing to the record both where it supports the trial court's findings and pointing out where there is a clear conflict between the findings and the record. The Appellant focused on the trial court's "Evidence Presented at Trial" section of the findings of fact. It was this section which contained what could be characterized as pure findings of fact. In the "Findings of Fact" section, found under the heading "Analysis," the court states the general principles of law applicable to the issues before the trial court, the specific issues before the trial court, and conclusions and inferences drawn from the facts. The Appellant addressed the findings made in the "Evidence Presented at Trial" section with specificity, and addressed the statements of fact and law made in the "Findings of Fact" section more generally. The Appellant clearly challenged some of the trial court's findings made in the "Evidence Presented at Trial" section of the Findings of Fact and Conclusions of Law. The Appellant argued the trial court could not reasonably conclude from applying the facts actually found in the record to the applicable legal standards that the Appellant

and Mr. Talbot had cohabited.

While the Appellant believes that she met her burden to marshal the evidence and to challenge the court's findings with specificity, the Appellant will now clarify any ambiguity with respect to which of the enumerated findings appearing in the "Analysis - Findings of Fact" section of the trial court's Findings of Fact and Conclusions of Law she is challenging. The Appellant challenges paragraphs 7, 8, 13, 18, 19, 24.

Paragraph 7 of the Findings:

Paragraph 7 of the Findings of Fact states:

Mr. Talbot and Defendant spent a substantial amount of time together at the Pleasant Grove address. Close neighbors, personal friends, and a private investigator have seen both Mr. Talbot and Camille Watson appear to share a common abode in the home over the past two years, specifically during the period of December 1994 to November 1995.

(Underlining added.) The Appellant challenges the underlined text. First, no one but Mr. Goode, the private investigator, testified that he thought the Appellant and Mr. Talbot shared a common abode. Second, based on the record as it was presented by the Appellant in her brief and for the reasons already illustrated in the original brief, the testimony of friends and neighbors could not reasonably be found to support the finding

that the Appellant and Mr. Talbot shared a common abode.

Paragraph 8 of the Findings:

Paragraph 8 of the Findings of Fact states:

Mr. Talbot parked his car in the same place in Defendant's garage on a regular basis and appeared to have access to the home via a garaged [sic] door opener."

The Appellant challenges the finding to the extent that it states a finding that Mr. Talbot had regular access to the home via a garage door opener. The Appellant has already challenged this finding at page 12 of her original brief. The record establishes that Mr. Talbot had access to the Appellant's house on occasion via a garage door opener, but not that the access was regular.

Paragraph 13 of the Findings:

The Appellant has already challenged the trial court's finding that Mr. Goode's testimony is more credible or probative than that of some of the other witnesses at page 14 of her original brief.

Paragraph 18 of the Findings:

Paragraph 18 of the Findings of Fact reads:

The Court has considered the evidence which indicates that Mr. Talbot had unrestricted access to the home, even when Defendant was not present; assumed duties and responsibilities consistent with a resident; exercised visitation

with his children there; bought groceries and fixed meals at the home; used the home for his own convenience; brought some items of personal property into the home; and used the Pleasant Grove address as a mailing address. The Court give this evidence the greater weight in establishing that Mr. Talbot and Defendant were sharing a common residence for more than a brief period of time.

The Appellant challenges the underlined portions of Paragraph 18. The record does not support the conclusion that Mr. Talbot had unrestricted access to the home, at least not for substantial periods of time. The Appellant in her original brief marshalled the evidence bearing on this finding.

The finding that Mr. Talbot assumed duties and responsibilities consistent with a resident is a generalized and conclusory statement, and the Appellant challenges it. The Appellant in her original brief (at page 10) pointed out that there was no support in the record for the trial court's finding that Mr. Hilton observed Mr. Talbot doing yard work while Appellant was not present.

The statement in Paragraph 18 that Mr. Talbot "used the home for his own convenience" is vague and conclusory. The trial court does not specify in what ways Mr. Talbot supposedly used the home for his own convenience. The Appellant challenges this finding.

The Appellant challenges the finding that Mr. Talbot brought some items of personal property into the Appellant's home because it is too general to meaningfully pertain to the issue of residency. The Appellant pointed out in her original brief that no one observed Mr. Talbot's personal belongings in Appellant's home with the exception of a television set and some audio equipment which he had loaned or given to Appellant and her children.

Paragraph 19 of the Findings:

The Appellant challenges the trial court's finding that the Appellant and Mr. Talbot were sharing a common abode for more than a temporary stay, and in particular the finding that "close neighbors, personal acquaintances, and professional investigators have seen and documented Mr. Talbot and Defendant residing together." This is a mischaracterization of the evidence, and is in error. First, none of the witnesses other than Mr. Goode, the private investigator hired by the appellant, including neighbors and friends who frequently observed the appellant's residence, testified that Mr. Talbot resided with the appellant. Mr. Hilton, a neighbor of Appellant, testified only that he saw Mr. Talbot leaving from Appellant's residence in the morning once or twice in the last couple of years (original brief at page 8), and that Mr. Talbot appeared to stay at appellant's house for up to three days at a time and would then leave for several days. Mr. Hilton testified that Mr. Talbot appeared to be living at appel-

lant's house when he stayed for the three-day periods, but obviously Mr. Hilton is not qualified to give an opinion as to the legal standard for residency under Utah law. Appellant addressed Mr. Hilton's testimony at pages 8 through 10 of her original brief. Another witness, Shauna Farnsworth, testified that while she and Camille Watson go jogging about three to four times per week (T.99 1.22), she had only seen Mr. Talbot in the home about six times in a two-year span (T.101 1.2-3) (this is addressed at pages 11 and 12 of the original brief). The only witness that testified that Mr. Talbot appeared to reside at the Appellant's house was Mr. Goode, and much of his testimony was impeached on cross-examination (see original brief at pages 4 and 5). So it is clear that "close neighbors, personal acquaintances, and professional investigators" had not "seen and documented Mr. Talbot and Defendant residing together," but that of all the witnesses, only one, a paid investigator, had given testimony which could have reasonably supported the trial court finding that the appellant and Mr. Talbot resided together.

Paragraph 24 of the Findings:

The Appellant challenges the trial court's finding that "Mr. Goode and Mr. Hilton's testimony indicated that Mr. Talbot and Defendant had spent the night at Defendant's residence on a routine basis during the period of December 1994 and November 1995." Much of the same reasons cited by the appellant in the

preceding paragraph apply here. Mr. Hilton's testimony did not include any statements that Mr. Talbot had stayed at the appellant's house on a "routine basis," nor did Mr. Hilton testify to that effect, even though he lived across the street from the Appellant and had the opportunity to observe Camille's house on a regular basis. Again, the only testimony which strongly corroborates a finding that Mr. Talbot stayed at Camille's on a routine basis was that of Mr. Goode, a private detective paid by Mr. Watson.

Paragraph 27 of the Findings:

The Appellant challenges the trial court's finding that Mrs. Watson and Mr. Talbot cohabited within the meaning of Utah Code Ann. § 30-3-5(9) (1995 Supp.). This is really a conclusion of law, and was addressed by the appellant in the argument section of her brief.

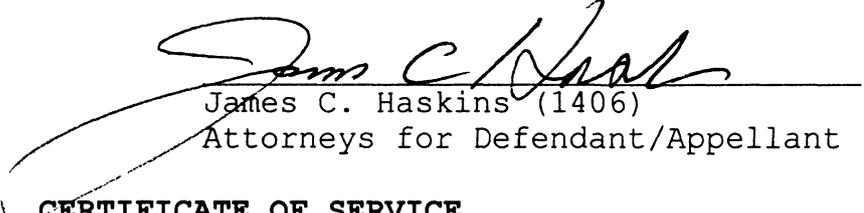
CONCLUSION

The appellant addressed all of the points dealt with in this brief in her original brief, and so does not raise new issues herein. However, in response to the appellee's brief and to clarify precisely which of the findings in the trial court's "Findings of Fact" section the appellant challenges, the appellant has specifically addressed the trial court's findings of fact. It is even more clear now that the trial court erred in concluding that the appellant and Mr. Talbot had cohabited within

the meaning of Haddow v. Haddow, and in terminating alimony and ordering the appellant's house sold. The trial court's order should be overturned and the appellant should be awarded her costs and attorney fees incurred in defending against John Watson's order to show cause and incurred in this appeal.

DATED this 3 day of Jan, 1997.

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CERTIFICATE OF SERVICE

I hereby certify that two (2) true and correct copies of the foregoing Appellant's Reply Brief was sent by first class mail, postage prepaid, this 47 day of January, 1997, to:
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