

1985

Kenton W. Stephens v. Sharon S. Stephens : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

IN THE SUPREME COURT OF THE
STATE OF UTAH

1985 20437

KENTON W. STEPHENS,)
Plaintiff-Appellant,)
vs.) Case No. 20437
SHARON S. STEPHENS,)
Defendant-Respondent.)

BRIEF OF RESPONDENT

Appeal from the Judgment of the District Court
in and for the County of Box Elder, State of Utah
THE HONORABLE OMER J. CALL
DISTRICT COURT JUDGE

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Clerk, Supreme Court, Utah

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SUMMARY OF ARGUMENTS

1. The Defendant-Respondent both requested and prayed for alimony in the proceeding herein and taking into consideration the current status of the law with respect to alimony awards, if there is any abuse of discretion with respect to the award herein of the \$ 400.00 per month alimony, that discretion was abused in failing to give Defendant-Respondent a greater award.

2. Respondent requested that the award of alimony continue until she receives her proportionate share of Appellant's pension as ordered by the Court which order of the Court is clearly within its discretion and supported by the facts.

3. Viewing the award of one-half of the equity in the home and requiring Appellant to pay one-half of capital improvements is clearly supported by the evidence favorable to the Defendant-Respondent and is within the discretion of the Court and not an abuse thereof.

4. The refusal of the trial court to award the Plaintiff-Appellant interest on his equity in the home was an appropriate conclusion of law on the part of the Court and not an abuse of discretion.

ARGUMENT

ISSUE ONE: WHETHER THE AWARD OF A PORTION OF THE RETIREMENT WAS AN ABUSE OF DISCRETION ON THE PART OF THE COURT.

Plaintiff-Appellant misconstrues the decision of the court in its award of alimony and a proportionate share of the retirement of the Plaintiff upon his retirement from Morton Thiokol Corporation. The intent of the decree and findings of the court was that the \$ 400.00 per month alimony be terminated upon Defendant-Respondent's receiving her proportionate share of the retirement awarded by the court.

Defendant-Respondent would suggest to the Court that the award as stated by the Court is in conformance with Woodward v. Woodward, 656 P 2nd 431 (Utah, 1982).

Therefore, Defendant-Respondent urges the Court to allow the proportion of the Plaintiff-Appellant's retirement awarded to Defendant-Respondent to stand.

ISSUE TWO: WHETHER THE \$ 400.00 PER MONTH ALIMONY AWARD TO DEFENDANT-RESPONDENT WAS AN ABUSE OF DISCRETION.

Under the most recent decision of the Utah Supreme Court, Jones v. Jones, decided in April of this year as Case No. 18733, three standards are to be utilized in determining an alimony award. First, the financial conditions and needs of the wife are to be considered.

Secondly, the ability of the wife to produce a sufficient income for herself is to be considered. Thirdly, the capacity of the husband to provide support is to be taken into consideration. Based upon these criteria, it would appear that the abuse of discretion of the Court if any was in failing to award a greater monthly amount as and for alimony, therefore, it would not seem inappropriate that the award should be terminated only upon the death of a party or the remarriage of the Defendant-Respondent.

By way of comparison, the Utah Supreme Court in Ridge v. Ridge, 542 P 2nd 189 (1975) determined that a \$ 625.00 per month alimony was not inappropriate on a \$ 32,000.00 per year income nor that a \$ 500.00 per month alimony was not inappropriate for a \$ 20,000.00 per year income.

A review of the record as a whole reflects the short time period within which the Defendant-Respondent has been employed by Morton Thiokol which to this point in time is less than two years total. It further should be noted that the employment occurred only after a dismissal of a prior divorce action filed by the Defendant-Respondent as the Plaintiff which dismissal was based upon representations by the husband that he would pursue marital counseling in

order to obtain a reconciliation of the marriage. However, the Plaintiff-Appellant herein demanded that the Defendant-Respondent obtain employment whereby she undertook her present employment having had little or no marketable skills for any type of promising job progression. Thereafter, the Plaintiff-Appellant filed the action herein seeking a dissolution of the marriage of the parties. In light of the relative position of the parties it is apparent that Plaintiff-Appellant got off rather lightly with respect to the alimony award and if anything the Court herein should increase the alimony award.

ISSUE THREE: WHETHER THE APPELLANT PAYING CAPITAL IMPROVEMENTS AT THE RATE OF ONE-HALF OF THOSE INCURRED IS AN ABUSE OF DISCRETION BY THE COURT.

Again, a review of the record as a whole, would reflect that the Defendant-Respondent is in a position of very marginal existence which is accomplished only by virtue of her having obtained employment prior to initiation of the divorce action herein by the Plaintiff-Appellant. Based upon the marginal assets available for the Defendant-Respondent to maintain the home it is fitting and proper that the court impose the requirement that the Plaintiff-Appellant contribute to any capital improvements. Failure to do otherwise would result in a deterioration of the home and the Plaintiff-

Appellant's equity in the home as well as that of the Defendant-Respondent.

A review of the circumstances in total as to this issue clearly indicates that there was no abuse of discretion on the part of the Court in making its award herein.

ISSUE FOUR: WHETHER THE FAILURE OF THE COURT TO AWARD INTEREST ON THE EQUITY IN THE HOME IS AN ABUSE OF DISCRETION OF THE COURT.

The \$ 8,500.00 deduction to the Defendant-Respondent upon obtaining proceeds from the sale of the marital home is based simply upon the contributions of the parties to the marital assets. In the event that the Plaintiff-Appellant would wish to pay \$ 8,500.00 outright to the Defendant-Respondent and split the proceeds of the house equity at the time of its sale such certainly would be amenable to the Defendant-Respondent. As an observation, it would seem that the Court in its consistency awarded no interest to the Defendant-Respondent on her \$ 8,500.00 contribution award.

There is nothing contained in the record to substantiate any abuse of discretion on the part of the Court in making its determination as to the distribution the equities and responsibilities of the respective parties.

CONCLUSION

The decision of the District Court should be allowed to stand as is with the only consideration to be given by the Supreme Court as to whether or not the alimony award is adequate under the circumstances. Defendant-Respondent submits that the award is proper although somewhat less than might otherwise be anticipated. Picking up on the Plaintiff-Appellant's request that the Court make such modifications as are conscionable and equitable, Defendant-Respondent suggests that an increase in the alimony award would be appropriate and the Defendant-Respondent's costs and attorney's fees herein be awarded.

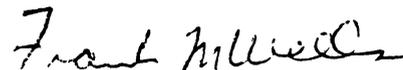
RESPECTFULLY SUBMITTED this 15th day of May, 1985.



FRANK M. WELLS
Attorney for Defendant-
Respondent

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed Fifteen (15) true and correct copies of the foregoing Defendant-Respondent's Brief to the Utah Supreme Court, 332 State Capitol, State Capitol, Salt Lake City, Utah 84114 and also Four (4) true and correct copies of the foregoing Defendant-Respondent's Brief to the Plaintiff-Appellant's attorney, Pete N. Vlahos, located at 2447 Kiesel Ave., Ogden, Utah 84401 on this day of 15th day of May, 1985.



FRANK M. WELLS
Attorney for Defendant-
Respondent