

1996

Jane Ann Taylor v. Mark Richard Hansen : Reply Brief

Utah Court of Appeals

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IN THE UTAH STATE COURT OF APPEALS

JANE ANN TAYLOR

Appellant,

vs.

MARK RICHARD HANSEN,

Appellee.

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CASE NO. 960774-CA

Priority No. 15

APPELLANT'S REPLY BRIEF

Appeal from the Ruling of the Honorable Michael G. Allphin, District Judge of
Second Judicial Court, Davis County, Utah

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ARGUMENT

I.

THIS COURT HAS JURISDICTION OVER THIS APPEAL

The threshold issue in this appeal is whether the trial court's ruling of October 29, 1996 ("**Ruling**") is a final order under Utah Rule of Appellate Procedure 3(a). A final order is one which determines substantial rights of the parties and thereby concludes the litigation. Cahoon v. Cahoon, 641 P.2d 140, 142 (Utah 1982); accord State in re T.D.C., 748 P.2d 201, 203 (Utah App. 1988); see also 4 Am. Jur. 2d Appellate Review § 87 ("[A] final judgment has been defined as one which disposes of all claims and all parties before the court in an action, or ends the matter or proceeding so far as the court making the decision is concerned.").

Appellee refers the Court to the following cases as support for his contention that the instant issues do not arise from final orders: (1) A party who voluntarily dismisses its complaint without prejudice generally has no right of appeal. Barton v. Utah Transit Auth., 872 P.2d 1036 (Utah 1994); (2) If a counter-claim remains pending, the order granting summary judgment is not final. Mackay Co. v. Okland Constr. Co., Inc., 817 P.2d 323 (Utah 1991); (3) The granting of a motion to set aside portions of a divorce decree is not a final order. Pearson v. Pearson, 641 P.2d 103, 104-05 (Utah 1982); (4) An order vacating a garnishment judgment is not a final order) Van Wagenen v. Walker, 597 P.2d 1327, 1328 (Utah 1979); and (5) If a cross-claim remains after a default judgment has been entered, there is no final order from which to appeal. Kennedy v. New Era Indus., Inc., 600 P.2d 534 (Utah 1979).

Appellant has no quarrel with the holdings of these cases; they are simply inapposite. This appeal does not contest the vacation or setting aside of portions of the divorce decree, nor is this a case where a cross-claim or counter-claim remains pending in the underlying action. Instead, the issues presented arise from requests for clarification, interpretation, and/or enforcement of the Divorce Decree. (R. at 129, 130). It is well established that "[t]he final judgment rule does not preclude review of post-judgment orders. Such orders are independently subject to the test of finality, according to their own substance and effect." Cahoon, 641 P.2d at 142 (emphasis added). Examination of the "substance and effect" of each of these Rulings demonstrates that each is a final order.

A. The Court's Ruling on the Motion to Compel Defendant to Sign Trust Agreement is a Final Order.

In its Ruling, the Court held that "the term of the Decree relating to trustee powers is clear, integrated and enforceable as it stands," (R. at 189.); and that "[i]t is the Court's opinion that "normal and usual" trustee powers are those enumerated in Utah Code Ann. § 75-7-402 (R. at 188.) Appellee asserts that these Rulings are not final because the Court invited further proceedings to implement or modify the Decree.

Precisely put, the Court invited the parties to submit a new Trust Agreement which followed the law set forth in the Ruling, it did not indicate that the issues of integration of the Trust Agreement and the definition of "normal and usual" trustee powers would be revisited. In fact, the Court stated just the opposite. Footnote seven of the Ruling states that "it is noteworthy that it appears that a Rule 60(b), U.R.C.P., motion would not be timely, further it appears dubious on the facts presented that Petitioner would succeed in

a petition to modify." (R. at 198.) Therefore, Appellant had no further avenues of review on these issues before the Trial Court.

Thus, although the Ruling indicates that the parties are to take further action with respect to drafting a Trust Agreement, the Court has made its final decision regarding the definition of "normal and usual" trustee powers. For these reasons, the Court's Ruling regarding the aforementioned issues is final, and properly appealed to this Court. See 4 Am. Jur. 2d Appellate Review § 87 ("Thus, although . . . directing further proceedings, a decree may so completely adjudicate the rights of the parties as to constitute a final and appealable order.") (emphasis added).

B. The Court's Ruling on the Motion for Reimbursement of Child Care Expenses is a Final Order.

The Court's Ruling regarding reimbursement of child care expenses held that the statutory requirements of "proof" and "verification" of child care expenses "connote some sort of writing by an objective third party." (R. at 200-01.) Further, the Court ruled that "Petitioner should provide Respondent with copies of actual receipts, originating from the day care provider, detailing the dates and times that child care expenses were incurred." (R. at 201.)

This Ruling will permanently impact Appellant's submission of requests for reimbursement of child care expenses and constitutes the final order on this subject. See Cahoon, 641 P.2d at 142 (ruling that orders enforcing the divorce decree were final orders because they determined substantial rights in disputed property and terminated the litigation on these issues). There may be additional motions for reimbursement of child care expenses, but to hold that this fact alone makes the instant ruling "non-final" would be

nonsensical. The logical result of such a ruling is that a party could never appeal a post-judgment order if there is any possibility that a similar motion could arise in the future. If that were the case, a party could rarely appeal any post-judgment order.

C. The Court's Rulings Denying Appellant's Motion for Attorneys Fees and Imposing Rule 11 Sanctions upon Appellant are Final Orders.

Appellee does not appear to contest that the issues of attorneys fees and rule 11 sanctions are properly before this Court. However, out of an abundance of caution, Appellant points out that the Trial Court's denial of Appellant's Motion for Attorneys Fees and award of Rule 11 sanctions permanently and completely settles the parties' rights and liabilities regarding these matters. No further litigation before the Court is possible regarding this issues. Accordingly, the Court's Rulings are final orders.

II.

THE COURT BELOW ERRED IN REFUSING TO IMPOSE REASONABLE CONDITIONS ON APPELLEE'S RIGHT TO ENCUMBER, SELL OR OTHERWISE DISPOSE OF THE STOCK WHICH IS THE SUBJECT OF THE TRUST AGREEMENT

The trial court and Appellee fundamentally misunderstand the nature of Appellant's Motion to Compel Appellee to Sign Trust Agreement. This Motion was not intended to amend or modify the terms of the parties' Divorce Decree pursuant to Rule 60(b), U.R.C.P., or a Petition to Modify in disguise. Instead, the Motion presented a Trust Agreement to the Court that Appellant considered consistent with the Divorce Decree, and requested that the Court order Appellee to sign it.¹ In fact, in its Ruling, the Court expressly stated "It

¹Through counsel's error, the Trust Agreement turned out to be inconsistent with the Divorce Decree in one respect--the identity of the proposed substitute Trustee in the

appears that the primary matter before the Court can essentially be characterized as a motion to request that the Court interpret the Decree to determine if the Petitioner's proposed trust agreement comports with the terms set forth in the Decree, and if the answer is in the affirmative, to compel Respondent to execute such agreement." (R. at 15.) This type of Motion is a proper post-judgment motion, and the Trial Court certainly had the jurisdiction to hear it.

The Divorce Decree provides a rough outline for the drafting of a Trust Agreement to include the "normal and usual provisions with respect to investing and preserving the assets and income of the trust for the use and benefit of the children." (R. at 57.) The trial court ruled that the Divorce Decree is "clear, integrated and enforceable" with respect to these provisions and that the "normal and usual provisions" referred to trustee powers set forth in section 75-7-402 of the Utah Code. (R. at 188-89.)

The Divorce Decree is very clear on several aspects of the proposed Trust Agreement. There can be no argument that Appellee was to be the Trustee, that the two minor children were to be the beneficiaries, that annual accountings were to be made, that certain disbursements were authorized, and that in the event of Appellee's death, Zion's Bank and Trust Company was to become the substitute Trustee. (R. at 58.) However, it is difficult to imagine drafting a more ambiguous term than the requirement that the Trust Agreement provide for the "normal and usual provisions" with respect to investing and

event of Appellee's death. However, Appellee was provided with two opportunities to correct this error, and failed to do so in both instances. (R. at 86-89.) Appellant submits that this error could have been corrected by the court, and is certainly not grounds for rejecting the entire Trust Agreement.

preserving the Trust. Essentially, this directs the parties to provide "whatever makes sense" with respect to trustee powers without any further guidance.

The trial court conceded that "[t]here has been no case law submitted by either party [regarding the meaning of "normal and usual]," nor has the Court been able to find any helpful case law on the subject." (R. at 187.) With all due respect to the Trial Court, it seems readily apparent that if the terms themselves are not clear, and if case law does not assist in resolving that lack of clarity, then ipso facto, the Divorce Decree cannot be "clear, integrated and enforceable" in all respects. See R & R Energies v. Mother Earth Indus., Inc., 936 P.2d 1068 (Utah 1997) (noting that terms are ambiguous when "their signification seems doubtful and uncertain to persons of competent skill and knowledge to understand them.") (citations omitted).

Because the Divorce Decree is not an integrated contract, and because it contains ambiguous terms, this matter should be remanded to the Trial Court for an evidentiary proceeding in which the Trial Court determines what the parties intended the term "normal and usual trustee powers" to include.

III.

THE COURT BELOW ERRED IN DENYING APPELLANT'S REQUEST FOR CHILD CARE REIMBURSEMENT

The Court denied Appellant's motion for reimbursement of child care costs stating that Appellant had failed to submit "proof" and "written verification" of these costs pursuant to section 78-45-7.16, Utah Code Ann. (1996) (R. at 201.) The Court interpreted "proof" and "written verification" to require Appellant to compile actual receipts from the day care provider, an official report of her school schedule, third party verification of her work

schedule, and a statement by Appellant that she incurred these costs for work-related day care. (R. at 201-02.)

The Court's interpretation of the Divorce Decree and the relevant statute to require such onerous duties in order to obtain reimbursement from Appellee is an abuse of discretion and should be reversed by this Court. The statute merely requires that the parent incurring expenses submit proof of child care expenses and a written statement of the cost and identity of the child care provider. Utah Code Ann. § 78-45-7.16 (1996). There have been no allegations that Appellant's statement of child care costs is fraudulent, nor has there been any allegation of a course of conduct on Appellant's part which would make such duties appropriate or necessary. Rather, the imposition of such stringent requirements upon reimbursement requests for child care expenses is unreasonable and unwarranted. Such a procedure invites Respondent to at least delay, if not avoid, payment of amounts for which he is obligated. Therefore, the trial court's ruling should be reversed by this Court.

IV.

RULE 33 SANCTIONS ARE NOT APPROPRIATE IN THIS CASE

Appellee claims to be entitled to double costs and attorney fees under Rule 33 of the Utah Rules of Appellate Procedure on the grounds that this appeal was taken "either frivolous[ly] or for delay." Appellee's Br. at 40. A frivolous appeal is one in which there is no basis in law for the arguments presented, or where the evidence and the law are mischaracterized and misstated. Eames v. Eames, 735 P.2d 395 (Utah 1987); accord Backstrom Family Ltd. Partnership v. Hall, 751 P.2d 1157 (Utah App. 1988) (noting that a frivolous appeal is one having no reasonable legal or factual basis); O'Brien v. Rush, 744

P.2d 306, 310 (Utah App. 1993) (same). Sanctions for frivolous appeals are discouraged, and "should only be applied in egregious cases, lest there be an improper chilling of the right to appeal erroneous lower court decisions." Porco v. Porco, 752 P.2d 365, 369 (Utah App. 1988).

This case is not a case involving egregious abuse of the appellate process. Each issue presented is supported by carefully researched legal precedent, and/or by a good faith argument for extension or modification of the existing law. Specifically, the question of whether the issues presented in this appeal are appealable as final orders presents complex legal issues which have not been clearly resolved by precedent, and have required extensive legal analysis. The issues of attorney fees and rule 11 sanctions are raised because Appellant believes the court below clearly erred and because these errors have serious repercussions on the Appellant. The issue of whether the Divorce Decree is an integrated document is another issue where it appears the court below clearly erred in applying the law, with serious potential impact on the parties' children. Each issue presented in this appeal represents an attempt to establish substantial rights of the parties, and was not interposed in any way for delay or harassment.

V.

THE COURT BELOW ERRED IN IMPOSING RULE 11 SANCTIONS

The standards for awarding Rule 11 sanctions are fairly straightforward. It is settled that "rule 11 does not require perfect research but rather research that is 'objectively reasonable under all of the circumstances.'" Barnard v. Utah State Bar, 857 P.2d 917, 920 (Utah 1993) (quoting Barnard v. Sutliff, 846 P.2d 1229, 1236 (Utah 1992)). Further, one

"need not have reached the correct conclusion, he [or she] need only have made a reasonable inquiry." Utah State Bar, 857 P.2d at 920. Thus, if the "reading of the law as it existed was at least plausible . . . sanctions under rule 11 are not warranted." Id.

In this case, appellant was sanctioned by the trial court for bringing a motion to compel appellee's signature to the Trust Agreement on the grounds that the Trust Agreement "completely ignores and deviates from the plain, unambiguous and clear language of the stipulated Decree." (R. at 197.) However, the trial court itself conceded that it could find no case law or legal analysis regarding the meaning of "normal and usual" trustee powers. (R. at 187.) Further, the Court admitted that it is "unfortunate that the Decree did not elaborate more" on the subject of a remainder interest in the shares of stock. (R. at 191.) Finally, the Court stated that "[t]he Decree is completely silent as to any provision relating to the disposition of cash dividends." (R. at 192.)

Thus, the Divorce Decree was anything but "plain, unambiguous and clear." Appellant made a good faith and legally supportable attempt to flesh out the terms of the Trust Agreement based upon the Decree. Appellant sent this draft to Appellee, repeatedly asked for specific examples of text that contradicted the Decree, and was met with complete silence. (R. at 86-89.) In an effort to get beyond this impasse, all negotiations having failed, Appellant sought the assistance of the trial court.

Upon Appellee's request, the Court was willing to clarify and add substance to the Decree's language regarding reimbursement for child care costs. In fact, the Court was willing to interpret the Decree and the relevant statutes so as to create a detailed and complex set of prerequisites for Appellant to meet in order to be reimbursed for child care

costs. However, when Appellant asked for the Court to add substance to the Divorce Decree's description of the Trust Agreement, the Court responded that Appellant had "couch[ed] an obvious petition to modify, or even a Rule 60(b) motion, as a Motion to Compel" and awarded sanctions. The Court's ruling was blatantly inequitable and an abuse of discretion. Both parties were seeking precisely the same remedy--interpretation of the Divorce Decree particularly in relation to the required trust agreement.

Appellant's Motion to Compel was a reasonable post-judgment motion requesting enforcement or interpretation of the Divorce Decree. Although the Trial Court may have disagreed with Appellant's conclusions, Appellant's positions were legally supportable and, as such, should not have been sanctioned. Appellant asks that this Court reverse the Trial Court's award of rule 11 sanctions.

VI.

THE COURT BELOW ERRED IN DENYING APPELLANT'S MOTIONS FOR ATTORNEY FEES

The trial court denied Appellant's request for attorneys fees incurred in connection with the Motion to Compel on the grounds that Appellant's motion "is wholly without any merit whatsoever in law or in fact" and awarded rule 11 sanctions to Appellee. (R. at 197.)

In addition, the Court summarily denied all other motions brought by Appellant for attorney fees. (R. at 198, 202.)

The Court's Rulings with respect to the aforementioned motions for attorney fees are legally insufficient in a number of different ways. To begin with, as discussed above, the Court erred in granting rule 11 sanctions. Appellant's Motion to Compel was a reasonable, legally supportable, and good faith attempt to enforce the Divorce Decree or obtain

clarification of the Decree. This is exactly what the trial court did. Accordingly, the question of whether attorney fees may be awarded pursuant to Utah Code Ann. § 30-3-3 has yet to be ruled upon, and this matter must be remanded to the District Court for a redetermination of whether Appellant is entitled to fees.

Further, the Court denied Appellant all fees in connection with the Motion to Compel, despite the fact that the Court only found one issue to have been frivolous. Thus, the Court failed to rule upon whether Appellant is entitled to fees in connection with her motion regarding waiver of the right to deduct insurance premiums, and in connection with her motion to order Appellee to send support payments through ordinary mail. Finally, the Court denied Appellant's motion for fees in connection with the motion for reimbursement of child care costs without any legal rationale.

In order to make the foregoing determinations regarding fees, the Court was required to consider the respective need and ability to pay for attorney fees, not whether Appellant prevailed in her motions. See Morgan v. Morgan, 854 P.2d 559, 568 (Utah App. 1993) ("The award [under 30-3-3] . . . must be based on evidence of the receiving spouses's financial need for attorney fees, the ability of the other spouse to pay, and the reasonableness of the requested award."); Peterson v. Peterson, 818 P.2d 1305, 1309-10 (Utah App. 1991) (noting that section 30-3-3 requires that "fees and costs are awarded according to need and ability to pay and not according to who prevailed").

The Court's failure to make any findings whatsoever regarding these factors is ground for remand. Rappleye v. Rappleye, 855 P.2d 260, 265 (Utah App. 1993) (vacating the trial court's denial of costs under section 30-3-3 and remanding the matter because the court


"made no findings regarding Mrs. Rappleye's need for such reimbursement nor either parties' ability to pay the same"). Accordingly, Appellant asks that this Court remand the matter of attorneys fees to the Trial Court for application of the appropriate legal tests.

VII.

CONCLUSION

The court below erred in several respects. The Court erred in concluding that the Divorce Decree was an integrated document with unambiguous terms. The Court erred in failing to determine the parties' respective need and ability to pay in deciding whether to award attorney fees, and the Court erred in awarding rule 11 sanctions. The Court erred in imposing onerous requirements on Appellant's right to reimbursement of child care expenses. Appellant respectfully asks that the Court's Ruling be reversed in these respects.

DATED this 18th day of September, 1997.



AL HOWARD LUNDGREN
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CERTIFICATE OF MAILING

I hereby certify that two true and correct copies of the foregoing were mailed, by first class postage prepaid, on this 18th day of September, 1997, to:

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