2008

Cloyd v. Cloyd : Brief of Appellant

Utah Court of Appeals

Brad C. Smith; Attorney for Appellee.
Pro Se; Attorney for Appellant.

Timothy A. Cloyd, Sr.
400 N Bruce St #40
Clearfield, UT 84015
Telephone: (801)825-5609

IN THE UTAH COURT OF APPEALS
STATE OF UTAH

TIMOTHY A CLOYD, SR

Petitioner/Appellee,

vs.

DALENE S. CLOYD

Respondent/Appellant.

Appellate Case No.: 20083577

District Ct. No. 974500042

Class [number]

Oral Argument Requested

APPELLANT'S BRIEF

APPEAL FROM THE SECOND DISTRICT COURT
MORGAN COUNTY
Honorable Judge MICHAEL G. ALLPHIN

Attorney for Appellant

Pro Se

Attorney for Appellee

Brad C. Smith

DISPOSITIONS

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400 N Bruce St #40
Clearfield, UT 84015
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TIMOTHY A CLOYD, SR.

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Respondent/Appellant.

Appellate Case No.: 20080357

District Ct. No. 974500042

Class [number]

Oral Argument Requested

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STATE OF UTAH

TIMOTHY A. CLOYD, SR. Petitioner/Appellee, vs. DALENE S. CLOYD Respondent/Appellant.	**APPELLANT'S BRIEF** Appellate Case No.: 20083571 District Ct. No. 974500042 Class [number]

STATEMENT OF JURISDICTION

This matter comes within the jurisdiction of the Court of Appeals pursuant to Utah Code Ann. §78-2a-3(2)(h) (2001). **This is an appeal in a domestic relations matter.**

STATEMENT OF THE ISSUES

Issue 1: Did the trial abuse its discretion by failing to make adequate findings of fact that would support its decisions regarding alimony, the division of marital assets and debts, and the award of attorneys' fees?

Standard of Review: "Trial courts have considerable discretion in determining alimony and property distribution in divorce cases, and will be upheld on appeal unless a clear and prejudicial abuse of discretion is demonstrated." *Howell v. Howell*, 806 P.2d 1209, 1211 (Utah Ct. App. 1991). The *Jones* factors must always be considered when awarding alimony, and when considering the *Jones* factors, the trial court must

make adequate findings of fact on all material issues—failure to do so is an abuse of discretion. *Bakanowski v. Bakanowski*, 80 P.3d 153, 155 (Utah Ct. App. 2003). "There is no fixed formula upon which to determine a division of assets or debts in a divorce action." *Rappleye v. Rappleye,* 855 P.2d 260, 263 (Utah Ct. App.1993). "To permit appellate review of the property distribution, the distribution must be based upon adequate factual findings and must be in accordance with the standards set by this state's appellate courts." *Dunn v. Dunn*, 802 P.2d 1314, 1317 (Utah Ct. App. 1990). An allocation of debts must also be based upon adequate findings of fact, which ruling is reviewed for abuse of discretion. *Rehn v. Rehn*, 974 P.2d 306, 313 (Utah Ct. App. 1999). Awards of attorneys' fees in a divorce proceedings must be based on sufficient findings of fact, and whether the findings of fact are sufficient is a question of law reviewed for correctness. *Id.*

Preservation of issues: The alimony issue, the issue regarding the division of marital debts and assets, and the issue regarding the award of attorneys' fees are all preserved on the record at R., pp..

Issue 2: Did the trial court err by failing to award a judgment for unpaid alimony?

Standard of review: Appellate courts "review a trial court's conclusions as to the legal effect of a given set of found facts for correctness." *Bradford v. Bradford,* 1999 UT App. 373 ¶ 10, 993 P.2d 887 (quoting *Jeffs v. Stubbs,* 970 P.2d 1234, 1244 (Utah 1998)). "The proper interpretation and application of a statute is a question of

law which [appellate courts] review for correctness, affording no deference to the district court's legal conclusion." *Gutierrez v. Medley*, 972 P.2d 913, 914–15 (Utah 1998).

Preservation of issues: The issue regarding unpaid alimony is preserved on the record at R. at pp..

CONSTITUTIONAL AND STATUTORY PROVISIONS

The following constitutional and statutory provisions are set forth in full in Addenda A, B, C, and D attached to the Brief: Utah Code Ann. §30-3-3; Utah Code Ann. §30-3-5; Utah Code Ann. § 30-3-10.5; and Utah R. Civ. P. 37.

STATEMENT OF THE CASE

Nature of the Case

Appellant appeals the decisions of the trial court, as set forth in the divorce decree, concerning the amount of alimony that appellee is obligated to pay, the division of marital debts and assets between the parties, and the award of attorneys' fees. Appellant also appeals the trial court's failure to grant a judgment for unpaid alimony. The Decree and Findings of Fact are attached as Addenda A and B, respectively.

Course of the Proceedings and Disposition

Complaint for divorce and Counter Complaint were tried, before the Hon. in County, Utah. The Trial Court entered the Findings and Decree on, granting a divorce, dividing debts and assets, and awarding alimony and attorney's fees. R. at; Addenda A and B.

The formal Divorce Decree entered, awarded to $900.00 per month for alimony based on imputed monthly gross income of $1,118.00 and monthly gross income of $7,197.00. The Decree also distributed marital assets and debts and ordered to pay $618.75 of attorneys' fees. Appellant's prayer for a judgment against for unpaid alimony was denied.

Respondent filed a timely appeal.

STATEMENT OF THE FACTS

SUMMARY OF ARGUMENT

(SEE ALSO ATTACHED STATEMENT OF ISSUES / STATEMENT OF THE CASE / STATEMENT OF THE FACTS / STATEMENT OF ARGUMENT W/ REFERENCE TO RELIEF FROM JUDGMENT OR ORDER (RULE 60(a) & (b) W/ CONCLUSION)

ARGUMENT

Point I

The Trial Court Abused its Discretion by Failing to Make Sufficient Findings of Fact that Would Support its Decisions Regarding Alimony, the Division of Debts and Assets, and the Award of Attorneys' Fees

A. Alimony

When awarding alimony, "the trial court must make detailed findings on all material issues, i.e. the *Jones* factors, which '**should . . . include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached.**'" *Rehn v. Rehn*, 1999 UT App. 41 ¶ 6, 974 P.2d 306 (emphasis added and citation omitted). The *Jones* factors that must be considered include "the needs of

the recipient spouse; the earning capacity of the recipient spouse; the ability of the obligor spouse to provide support; and, the length of the marriage." *Id.* The trial court failed to make sufficiently detailed findings on important material issues when awarding alimony, which will be discussed in detail below.

1. needs and earning capacity.

2. ability to provide support.

B. Distribution of Marital Property

"Generally, in a divorce proceeding '[e]ach party is presumed to be entitled to all of his or her separate property and fifty percent of the marital property.'" *Bradford v. Bradford*, 1999 UT App. 373 ¶26, 993 P.2d 887 (citation omitted). At times, A trial court may elect to distribute marital property unequally when the circumstances and needs of the parties dictate a departure from the general rule (e.g., to enable one party to fulfill an alimony or child support obligation). *See Burke v. Burke,* 733 P.2d 133, 135 (Utah 1987) (holding **trial courts should be guided by general purpose of property division, "which is to allocate the property in a manner which best serves the needs of the parties and best permits them to pursue their separate lives**"); *Newmeyer v. Newmeyer,* 745 P.2d 1276, 1279 n. 1 (Utah 1987) ("In determining whether a certain division of property is equitable, ... the **relative abilities of the spouses to support themselves after the divorce are pertinent to an equitable . . . division of the fixed assets of the marriage.**"); *Cox v. Cox,* 877 P.2d 1262, 1269–70 (Utah Ct. App.1994) (affirming award to husband of marital home previously owned by

husband but conveyed to wife in joint tenancy just before marriage; trial court found marriage was of short duration, no children were born, and couple married later in life).

> **An unequal division of marital property, however, is only justified when the trial court "memorialize[s] in commendably detailed findings" the exceptional circumstances supporting the distribution**. *Thomas v. Thomas,* 1999 UT App. 239 ¶ 23, 987 P.2d 603.

Id. ¶¶ 26–27 (emphasis added and some citations omitted).

C. Attorney Fees

This Court has held,

> A trial court has the power to award attorney fees in divorce proceedings pursuant to Utah Code Ann. § 30-3-3 (1998). **Such an award must be based on sufficient findings addressing the financial need of the recipient spouse; the ability of the other spouse to pay; and the reasonableness of the fees**. *See Schaumberg v. Schaumberg,* 875 P.2d 598, 604 (Utah Ct. App.1994); *Bell v. Bell,* 810 P.2d 489, 493 (Utah Ct. App.1991) (remanding for redetermination of attorney fees when court failed to address wife's need or husband's ability to pay fees).

Rehn v. Rehn, 1999 UT App 41 ¶22, 974 P.2d 306.

Point II

The Trial Court Erred by Failing to Grant a Judgment for Unpaid Alimony

A trial court's conclusions as to the legal effect of a given set of facts are reviewed for correctness. *Bradford v. Bradford*, 1999 UT App. 373 ¶ 10, 993 P.2d 887 (quoting *Jeffs v. Stubbs,* 970 P.2d 1234, 1244 (Utah 1998)). And when those conclusions involve the interpretation and application of a statute, no deference is given

to the district court's legal conclusions. *Gutierrez v. Medley*, 972 P.2d 913, 914–15 (Utah 1998).

CONCLUSION

The trial court abused its discretion by failing to make sufficient findings of fact that would support its conclusions in this divorce case. The trial court also erred by failing to award a judgment for unpaid alimony. In each instance, the trial court committed reversible error that prejudiced Appellant, and this case should be remanded to the trial court for further findings of fact and proper application of the law.

DATED this 8TH day of February 2009.

Timothy A. Cloyd, Sr.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPELLANT'S BRIEF** was mailed via first class U.S. mail, postage prepaid, on the 8th day of February, 2009 to the following: (SEE ATTACHED

Timothy A. Cloyd, Sr.

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2009, a true and correct copy of the foregoing ORDER was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

TIMOTHY A. CLOYD, SR.
400 N BRUCE ST # 40
CLEARFIELD UT 84015

MARTHA PIERCE
OFFICE OF THE GUARDIAN AD LITEM
450 S STATE ST 2ND FL
PO BOX 140403
SALT LAKE CITY UT 84114-0403

BRAD C SMITH
STEVENSON & SMITH PC
3986 WASHINGTON BLVD
OGDEN UT 84403

ANNINA M MITCHELL
UTAH SOLICITOR GENERAL
160 E 300 S 5TH FLR
PO BOX 140858
SALT LAKE CITY UT 84114-0858

ROGER F BARON
OFFICE OF THE GUARDIAN AD LITEM
135 N 100 W
LOGAN UT 84321

Dated this February 8, 2009.

By Timothy A. Cloyd, Sr.
TIMOTHY A. CLOYD

Case No. 20080357
District Court No. 974500042

STATEMENT OF ISSUES / STATEMENT OF THE CASE / STATEMENT OF THE FACTS / SUMMARY OF ARGUMENT W/ REFERENCE TO RELIEF FROM JUDGEMENT OR ORDER (RULE 60(b) 4(b)) & CONCLUSION

- Case is 12 years old.
- Case arose from filing of falsely sworn protective order by Mrs. Cloyd, which remained in place for 10 years (Oct 3, 1996 ~ July 2006).
- Mrs. Cloyd panicked and sought effective subterfuge to hide behind to keep from receiving the psychological help she admitted she needed – protective order served that purpose.
- Child support was granted.
- Protective order interfered with Mr. Cloyd's ability to maintain steady, lucrative employment.
- Attempting to keep his family together and get Mrs. Cloyd the psychological counseling she agreed she needed, Mr. and Mrs. Cloyd were not divorced until March 2001.
- Mr. Cloyd filed Motion to Have All Motions Heard As One by Domestic Relations Commissioner, Scott M. Hadley on or about December 22, 2002 – which included Motion to Set Aside, Dismiss or Strike Modify Child Support Arrearage Amounts (Post Decree).
- Mr. Cloyd's Motion was never heard to date.
- Mr. Cloyd filed Official Letter of Complaint against Evelyn Giles, Morgan County Clerk for tampering with court documents and other improper practices involved in his case. (Utah Rule 60 (a) or (b) of Civil Procedure can be used to overturn cases involving clerical error/mistake and/or Fraud.)
- Mr. Cloyd's case went to trial on January 29, 2008.
- Several procedural errors occurred during trial. Mr. Cloyd had given subpoena to psychologist who had psychologically evaluated Mrs. Cloyd because testing done by her was in direct disobedience to previous order of court, dated January 31, 2007. Order was made in paragraph 7: "7. Each of the parents and the minor child shall undergo a full and complete mental health evaluation, through the same evaluator, and follow any treatment recommendation made as a result thereof." And, in paragraph 8: "8. The parents and minor child are to undergo family mediation and counseling sessions, through the same treating professional visited in paragraph 7." This witness failed to comply with subpoena. Judge did not address this issue of contempt of order or subpoena but instead merely gave Mr. Cloyd a copy of Mrs. Cloyd's psychological evaluation from Brain-Behavior Asssociates, PC, dated November 18, 2007.
- Mr. Cloyd had also subpoenaed a Morgan County detective to testify regarding Child Abuse against Mrs. Cloyd, which had occurred while the falsely sworn protective order remained in place for 10 years.
- Mrs. Cloyd had also subpoenaed Colin Winchester of the Judicial Conduct Commission to testify. Mr. Winchester had knowledge that the previous Morgan County attorney failed or refused to prosecute Mrs. Cloyd because of a conflict of interest the case and that the new Morgan County attorney could not prosecute Mrs. Cloyd either, because the new Morgan County attorney had represented Mr. Cloyd twice in the case before he because the new Morgan County attorney.
- (1-1/2 hours of the trial was not recorded on videotape because the clerk had failed to turn on the machine, so the testimonies of early witnesses in the trial are missing from the record, completely.) DALENE CLOYD VS. TIMOTHY CLOYD, ET AL CASE NUMBER 974500042, JANUARY 29, 2008 JUDGE MICHAEL G. ALPHIN: VIDEOTAPE

- Mr. Cloyd was placed on the witness stand for several hours. While left on the witness stand to research case files at attorney's request and judge's instruction (while everyone else went to lunch), Mr. Cloyd discovered that key court documents were missing from the case file.
- When Court resumed, Mr. Cloyd indicated to Court that "Something was amiss," that, "At best, some of his court files had been 'misplaced'".
- Mrs. Cloyd's attorney, Mr. Smith, had Mr. Cloyd read from the stand a prior ruling made by Judge Lyon in 2004-2005 that indicated Mr. Cloyd "needed to file something to modify his child support." (Mr. Cloyd had already filed that "something," which predated Judge Lyon's order, and, felt that his Motion to Have All Motions Heard as One would be heard, including the Motion to Set Aside, Dismiss or Strike Modify Child Support Arrearage Amounts (Post Decree).
- Despite complaint made in open court regarding missing court documents, trial continued.
- Mr. Cloyd attempted to submit into evidence an Order he had filed in juvenile court when the district court had transferred the case there. That Order disputed the child support arrearages and included a statement made by an ORS attorney that Mr. Cloyd could go back to December 22, 2002 to modify his child support because his motion to modify had not been heard from the date it had been filed.
- Judge instructed Mr. Cloyd to pass this Order to Mr. Smith, who took at cursory look at it and indicated that "the Order was already in the court file." The judge never looked at the Order but instead allowed Mr. Smith to look at the file. The Order was not submitted into evidence, as requested.
- Mrs. Cloyd feels that an abuse of judicial discretion occurred giving rise to a deprivation of constitutional rights without due process of law.
- Judge went ahead and granted Mrs. Cloyd and her attorney what they sought in the case. There was a rush to judgment by the trial court judge.
- Judge granted Mrs. Cloyd's attorney fees totaling over $8,000.00.
- Mr. Cloyd appealed.
- Child support arrearages have amounted to $41,000.00 to date.
- Based upon Order originally filed in juvenile court, Mr. Cloyd' child support must be computed from the Low Income Table for Child Support. Mrs. Cloyd received Mr. Cloyd's income tax intercepts (while Mr. Cloyd's Motion regarding child support modification was never heard). She now owes Mr. Cloyd $6,305.06 (per 2007 submitted Order) + $1,352.00 + $600 (Economic Stimulus Payment) = $8,257.06.
- When viewed correctly, Child Support arrearages netted against Mr. Cloyd's Low Income Table amounts for child support, plus income tax intercepts received by Mrs. Cloyd over the years equals a overall net "wash."
- Since Mr. Cloyd's appeal, he went to Sylvester Daniels II, Trial Court Executive to make official complaint that key court documents were missing from his case file, as partially discovered during trial. Mr. Cloyd made request for official investigation from Mr. Daniel's office.
- Instead, Mr. Daniels directed Mr. Cloyd to conduct his own investigation into the matter first.

- Mr. Cloyd conducted his own investigation and published his findings as Morgan County Court File Investigation Performed 9/19/2008 by Timothy A. Cloyd, Investigation Overseen by Stacey LaFitte, Morgan County Clerk/Auditor.
- 612 pages of Mr. Cloyd case documents were discovered missing, including his Motion to Set Aside, Dismiss or Strike Modify Child Support Arrearage Amounts (Post Decree), which is key to his case on appeal.
- Mr. Cloyd firmly believes that case on appeal can be overturned based upon Rule 60 (a) or (b) since (1) same court clerk that Mr. Cloyd had officially complained of previously for tampering with court documents has allegedly tampered with his court documents again in the amount of 612 pages missing from court files after his investigation. (SEE ATTACHED)
- Mr. Cloyd also firmly believes that the same Rule 60 (a) or (b) will apply for abuse of discretion by Judge in not allowing Mr. Cloyd's requested evidence to be allowed into court, that is, Judge not looking at evidence and instead allowing opposing counsel to direct him (the Judge) what to do with the evidence in question. This judicial error influenced the outcome of the lower court trial and caused an unfair lower court trial judgment.
- Based upon the irregularities and procedural errors and abuse of discretion, the trial court erred in rendering its judgment.
- The allegedly missing documents matter because they establish the fact that Mr. Cloyd filed his Motion to Set Aside, Dismiss or Strike Modify Child Support Arrearage Amounts (Post Decree) on or about December 22, 2002 as he claims.
- *Chamberlain v. City of Albuquerque, No. 92-2089. United States Court of Appeals, Tenth Circuit. March 29, 1993* states that "All well-pleaded facts, as distinguished from conclusory allegation, must be taken as true" and that "a ... clam brought by a pro se plaintiff ... should not be dismissed unless it appears beyond a doubt that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief."
- Mr. Cloyd has physical evidence to support his claim that he filed his Motion to Set Aside, Dismiss or Strike Modify Child Support Arrearage Amounts (Post Decree).(< 12/22/08: MOTIONS FILED BY TIM CLOYD DISCRETE)
- One of the issues on appeal is child support and allegedly missing documents are relevant and support Mr. Cloyd's claim that he filed motion to modify child support but was never heard to date upon his motion.
- Mr. Cloyd should win this appeal because of how his case applied to Rule 60 (a) or (b), that 1-1/2 hours of trial videotape record is missing, that key documents are missing in his case (through no fault of his own), and that Judge erred when rendering lower court decision overlooking evidence he should have looked at himself.
- When Mr. Cloyd requested evidence into evidence, it was not permitted, and, when missing evidence was claimed it was not considered.
- Judge ruled in error. Case should be overturned.

Rule 60. Relief from judgment or order.

(a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), or (3),not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Advisory Committee Notes