

1997

Laura W Caldwell, personally, and Nelda F Wall on behalf of the Estate of Hal E. Wall v. Steven D. Caldwell : Response to Petition for Rehearing

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Stephen G. Homer; Attorney for Appellant.

Delano S. Findlay; Attorneys for Appellees.

---

### Recommended Citation

Legal Brief, *Caldwell v. Caldwell*, No. 970239 (Utah Court of Appeals, 1997).  
[https://digitalcommons.law.byu.edu/byu\\_ca2/822](https://digitalcommons.law.byu.edu/byu_ca2/822)

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.



IN THE UTAH COURT OF APPEALS

STEVEN D. CALDWELL,  
APPELLANT,

vs.

LAUREL W. CALDWELL AND  
NELDA WALL,  
APPELLEES,

RESPONSE TO PETITION FOR  
REHEARING

Court of Appeals  
Docket No. 970239 - CA

Appellees respond as follows to the Order of this Court dated March 18, 1998 directing them to respond to Issues II and III of the Petition for Rehearing:

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT . . . . . 2

II. THE COURT'S DECISION DOES NOT IGNORE DEFENDANT'S ANALYSIS OF RULE 54(c) (2) ISSUES . . . . . 2

III. THE COURT'S DECISION DOES NOT IGNORE THE ISSUES RAISED BY THE *STEVENS V. COLLARD* DECISION. . . . . 5

IV. CONCLUSION . . . . . 5

TABLE OF CASES AND AUTHORITIES

*STEVENS V. COLLARD*, 837 P.2d 593, 194 UAR 60 (Ut. App. 1992) . . . . . 2,3,4,5

UTAH RULES CIVIL PROCEDURE, RULE 54(c) . . . . . 2, 5

## PRELIMINARY STATEMENT

The Court should deny appellant's Petition For Rehearing. The Complaint of appellees for renew the judgments and/or orders contained in the Decree of Divorce was not facially deficient. Further, where he has been so callous in his disregard of that Court's orders and processes in the divorce action appellant should not be allowed on the basis of his own self serving statements only to come back into the courts of this State and mount a collateral attack to an order of the court.

### II. THE COURT'S DECISION DOES NOT IGNORE DEFENDANT'S ANALYSIS OF RULE 54(c)(2) ISSUES

Appellant Steven D. Caldwell argues that this Court's decision on appeal ignores his Arguments that the order of the Court below renewing the judgment did not comply with Rule 54(c)(2) of the Utah Rules of Civil Procedure. He charges the Court's statement that he did not cite authority for his arguments is erroneous and asserts again that *Stevens v. Collard*, 837 P.2d 593, 194 UAR 60 (Utah App. 1992) is authority for his argument. However, the *Stevens* case does not deal with what appellant argues as a Rule 54(c)(2) issue. It is not about a judgment varying from that strictly prayed for in the complaint as appellant is arguing here. *Stevens v. Collard* did not even deal with the renewal of a judgment, but dealt with whether the allegations of the complaint could support a judgment that there had been a substantial change of circumstances which justified a change of custody of minor children previously awarded in a divorce action. The Court in *Stevens* held that the complaint did not set forth sufficient facts to support the change of custody by default ordered by the court

below.

In the case now before the Court the complaint clearly alleges that a decree of divorce had been entered by the Court below and sought a renewal of the judgments or orders in the decree. The facts that a judgment or order to pay money has been entered and is outstanding and is about to expire are the alleging of sufficient facts to support an order renewing the judgment. The *Stevens* case is inapposite to the issues argued by appellant. Rather appellant's argument is that the renewal of the judgment with regard to the order in the Decree that he pay a sum certain toward a second mortgage held by Hal E. Wall is different than that prayed for in the demand for judgment. However, the judgment or order renewed is the same order that he pay the same principal sum of \$10,069.00 together with accrued interest at the legal judgment rate; something he had been successful in evading since the entry of the Decree of Divorce. The only and slight variance is that the court below ordered him to pay the amount to Nelda Wall the surviving spouse and heir of Hal E. Wall since appellant had evaded payment for several years until after Hal E. Wall had deceased. The pleadings clearly alerted him that a renewal of the judgment was being sought for the estate of Hal E. Wall. Is a judgment in the name of Nelda Wall, surviving spouse and heir of Hal E. Wall really any different.

The question is whether he is paying a different judgment? He is not. Or whether he is ordered to pay more than the amount of the judgment? He is not. It is the same. As noted in the Court's order, appellant cites no authority that opposing the Court's decision on appeal. His only authority is his own construction of the

provisions of Rule 54(c). He argues that it varies in kind from that prayed in the complaint. It does not. Does the judgment order him to pay a debt that he was not lawfully ordered to pay in the Decree? It does not. Does the order renewing the judgment or order of the Decree change the character of the order in the Decree? It does not. He is still ordered to pay the sum of \$10,069.00 toward the second mortgage held in the name of Hal E. Wall, but is now ordered to pay it to Nelda Wall because Hal is deceased.

Appellant argues that Nelda Wall was not a party to the divorce action. That is true, but neither was Hal E. Wall. Yet the Decree ordered him to pay the amount specified on the mortgage to Hal E. Wall just as many divorce decrees orders one of more of the parties to pay indebtedness to creditors. It did not order him to pay it to the plaintiff, Laurel Caldwell. Further Laurel Caldwell was a party to the renewal action and contrary to the contentions of the appellant is a party to this appeal. She has an interest in his paying the mortgage because she is jointly liable on the mortgage. If Nelda Wall is improperly listed as a party it does not defeat the renewal of the judgment because Laurel Caldwell, the plaintiff, was and is a party.

As a practical matter, should the heir to the estate of Hal E Wall have to go to considerable additional expense, in addition to costs of collection, just to collect the debt the defendant was ordered to pay and has been successful in avoiding for several years even until after the death of Mr. Wall? Does the broad purpose and application of Rule 54(c)(2) allow for such practicalities where the judgment debtor is not prejudiced and is not required to pay anything but what he was required to pay from

the original order? Appellees submit that it does.

How then is the appellant prejudiced? Where is his standing to complain? He is only being required to pay what the Decree initially ordered him to pay and nothing more. Further, he did not come to Court when he was served. He was absent when he should have been there to contest the proceedings. His self serving contention that he did not get notice is of no avail and is unbelievable. He complains that Nelda Wall is not a party to the divorce proceedings. However, the complaint for renewal of the judgments in the Decree clearly has Nelda Wall as a Party. He could have appeared and objected to it before an order was issued, but he did not. From his complete indifference to the Court's orders in the divorce action after he moved out of the state, the court below was well justified to infer that he chose to stay away. It was the same pattern of conduct as his conduct in the divorce case.

### **III THE COURT'S DECISION DOES NOT IGNORE THE ISSUES RAISED BY THE *STEVENS V. COLLARD* DECISION**

Appellant's third argument in his motion for rehearing is answered by the previous arguments of appellees. *Stevens v. Collard*, goes to the issue of whether the allegations of the complaint are adequate upon which to base the default judgment. In this case appellant had adequate notice and the complaint clearly alleged that the appellees were seeking to renew the judgment or or Order in the Decree that the appellant pay the ordered amount toward the second mortgage. If *Stevens v. Collard* is applicable at all, the order below does not offend its holding.

### **CONCLUSION**

The Court should reject and deny appellant's motion for rehearing or for reconsideration. He did not come to Court and complain about the form of the complaint or the relief sought in a timely manner. He ignored the processes of the court below until he was caught with enforcement of its order. The Court should not give any more deference now to his requests than he gave to the processes of the Court at the time of the service of process.

In the alternative if the Court determines the issuance of the renewal in the name of Nelda Wall is inappropriate, the Court should remand the case to the court below to reform the judgment. Finally should the Court determine that the complaint did not properly plead the renewal of the Decree, the case should be remanded to the court below to consider the appellees' motion to amend the complaint. Now that the Court finally has the attention of the appellant, it would not be a just or proper remedy to simply vacate the order of the Court below with nothing more as appellant asks this Court to do.

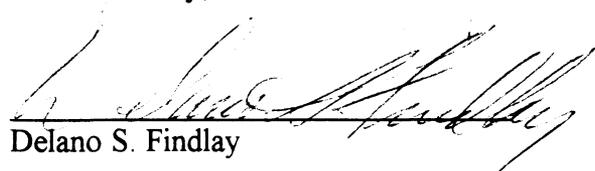
Respectfully submitted this 5<sup>th</sup> day of April, 1998.

  
Delano S. Findlay

CERTIFICATE OF SERVICE

I certify that I  delivered,  mailed first class, postage prepaid, two true and correct copy of the forgoing Response To Petition for Rehearing to the following this 12 day of April, 1998:

Stephen G. Homer  
Attorney At law  
9225 South Redwood Road  
Salt Lake City, UT 84088

  
Delano S. Findlay