

2008

Valerie J. Connell v. Harold G. Connell : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



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.

Clark R. Nielsen, Kathryn J. Steffey; Smith Hartvigsen PLLC; attorneys for appellant.

Harold G. Connell; pro se .

Recommended Citation

Reply Brief, *Connell v. Connell*, No. 20080619 (Utah Court of Appeals, 2008).

https://digitalcommons.law.byu.edu/byu_ca3/1057

This Reply 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. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

VALERIE J. CONNELL,

Petitioner/Appellant,

v.

HAROLD G. CONNELL,

Respondent/Appellee.

**Reply Brief of Appellant
Valerie J. Connell**

Appellate Case No. 20080619-CA

District Court Case No. 024400765

Appeal from the Fourth Judicial District Court, Utah County, Utah
The Honorable Claudia Laycock, District Court Judge

Harold G. Connell
1537 Nuttall Drive
Lehi, Utah 84043
Pro Se

Clark R. Nielsen
Kathryn J. Steffey
SMITH HARTVIGSEN, PLLC
215 S. State Street, Suite 600
Salt Lake City, UT 84111
*Attorneys for Petitioner/Appellant
Valerie J. Connell*

FILED
UTAH APPELLATE COURTS

NOV 16 2009

IN THE UTAH COURT OF APPEALS

VALERIE J. CONNELL,

Petitioner/Appellant,

v.

HAROLD G. CONNELL,

Respondent/Appellee.

**Reply Brief of Appellant
Valerie J. Connell**

Appellate Case No. 20080619-CA

District Court Case No. 024400765

Appeal from the Fourth Judicial District Court, Utah County, Utah
The Honorable Claudia Laycock, District Court Judge

Harold G. Connell
1537 Nuttall Drive
Lehi, Utah 84043
Pro Se

Clark R. Nielsen
Kathryn J. Steffey
SMITH HARTVIGSEN, PLLC
215 S. State Street, Suite 600
Salt Lake City, UT 84111
*Attorneys for Petitioner/Appellant
Valerie J. Connell*

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
ARGUMENT	1
1. Alimony	1
2. Valerie’s Attorney Fee Award	2
3. Child Care Expenses	3
4. Valerie’s Contribution to the Marital Home’s Mortgage	4
5. Retroactive Support	4
CONCLUSION	5

ARGUMENT

Although Appellee Harold Connell (“Harold”) filed a brief in this case, seemingly in opposition to the appeal of Appellant Valerie J. Connell (“Valerie”), Harold’s brief is filled with irrelevant, immaterial, and scandalous allegations that should be disregarded by this Court. Indeed, because Harold’s brief contains only false, unfounded, and baseless allegations against Valerie that were never raised before Valerie filed her appeal in this case, such allegations are irrelevant to the issues discussed in Appellant’s brief and now before the Court. Furthermore, because the allegations are baseless, defamatory, and offensive to both Valerie and this Court, the brief should be stricken pursuant to Rule 24(k).¹

Tellingly, although Harold’s brief is filled with baseless personal attacks against Valerie, the brief does not address, much less challenge, any of the errors established by Valerie in her Brief of Appellant.

1. Alimony

For example, with respect to Valerie’s first issue on appeal, Harold provides no just rationale for the trial court’s failure to consider each of the *Jones* factors and to conduct an in-depth review of Harold’s ability to pay alimony. (*See* R. 2178-83 (failing to consider Harold’s living expenses, other than to declare that the \$2,252.00 Harold claimed he paid to his new wife for her mortgage and living expenses was not “unreasonable”).) Nor does Harold try to defend the trial court’s failure to enforce its

¹ Valerie has separately filed with this Court a Motion to Strike Appellee’s Brief.

order and preclude Harold, due to his contemptuous and evasive conduct, from claiming that his new wife was unable to work and contribute to his living expenses. (*See* R. 2261:45 (ordering one week before trial that, due to Harold's evasive and contemptuous conduct, "[i]f it turns out that we get to trial and [Valerie] is unable to present the necessary evidence based on [Harold's] failure to provide the necessary evidence through the discovery, [the court is] going to make the ruling that [Harold] will be precluded from defending on that issue").) Harold also fails to dispute that he is indeed able to earn the income he received from Novell, a position from which he voluntarily resigned just four months prior to the parties' final separation. (R. 2183 (finding that Harold "voluntarily left his employment at Novell for a lower paying job" due to fears of possible layoffs).)

Because, as demonstrated in Valerie's opening brief, the record clearly establishes that the trial court's consideration of alimony failed to comply with the requirements established by this Court, the trial court's alimony award should be reversed and remanded with instructions that the trial court properly consider evidence regarding the parties' income, assets, and debts.

2. Valerie's Attorney Fee Award

Harold's brief also fails to address in any way Valerie's second issue on appeal. Specifically, Valerie's brief clearly established that her attorney fees were increased substantially because Harold's contemptuous and evasive conduct and his inconsistent positions on unsupervised visitation forced her to seek court intervention on numerous occasions. Indeed, the trial court itself made such a finding in its Amended Decree of Divorce. (*See* R. 2160 (finding that "[Harold] has displayed a distinct pattern of

withholding, evading and avoiding discovery and that he has repeatedly failed to comply with court orders.... [T]he court believes that [Harold's] intentional efforts to thwart discovery have increased [Valerie's] attorney's fees substantially") And Harold provides no argument as to why this finding of the trial court is not inconsistent with the trial court's conclusion that Valerie's legal fees were unreasonable. Therefore, because the record clearly establishes that the trial court abused its discretion in awarding Valerie only a portion of the fees she was compelled to incur to address Harold's contemptuous conduct, this Court should reverse the trial court's award and remand for redetermination. This Court should also award Valerie the attorney fees she incurred in this appeal.

3. Child Care Expenses

Harold's brief similarly fails to address in any way Valerie's third issue on appeal. Indeed, Harold does not cite to any evidence to contradict Valerie's demonstration that the trial court's finding that her child care expenses were unreasonable was so lacking in support as to be against the clear weight of the evidence. The record clearly establishes that Valerie's unique situation, in which she was required to be away from her five children, four of whom were under the age 10, for three to six days and nights each month for mandatory business trips, required something more than teenage babysitters and daycare. (*See, e.g.*, R. 2262:127-28 (testimony from Valerie that "[v]ery few people want to leave their own family to come and take care of [her] children for three to five days"); R. 2262:128 (testimony from Valerie that, when she did not have a nanny working for her, she had to rely on family members "or young teenage girls who [were] available, which doesn't necessarily represent the best child care"); R. 2262:129

(testimony from Valerie explaining that the individual looking after her children needed to be “responsible enough to make sure [Valerie’s children] take their medication at the appropriate times”).) Therefore, this Court should reverse the trial court’s finding and remand for redetermination.

4. Valerie’s Contribution to the Marital Home’s Mortgage

Harold also fails to address in any way the fourth issue on appeal, which concerns the trial court’s error in refusing to reimburse Valerie for at least one half of the payments paid to the parties’ home mortgage when the evidence clearly established that Valerie, alone, contributed over \$64,000 to the first mortgage and that the trial court was unable to equitably divide the equity in the home to account for such a contribution given the fact that Harold filed for bankruptcy approximately one year prior to the trial. (*See* R. 2206 (“Due to [Harold’s] pending bankruptcy, this court does not have jurisdiction to award either party equity in the marital home.”); R. 2205 (“[Valerie] testified that she has spent approximately \$64,700 on principal and interest payments from the time the parties separated until the time of trial.”).) Because Valerie is entitled to the value of her contributions to the marital residence, made for three years after the parties separated and for more than one year after Harold petitioned for and was granted a bifurcated decree of divorce, (R. 2216), this Court should hold that the trial court erred in refusing to award Valerie at least one-half of the \$64,000 paid to the marital home’s first mortgage.

5. Retroactive Support

Finally, Harold’s brief lacks any argument to contradict Valerie’s clear showing that the trial court erred when it found that Valerie failed to raise and/or preserve her right

to argue the issue of retroactive support. Indeed, Harold does not, nor can he, challenge the fact that the record clearly establishes that Valerie requested retroactive support in her Complaint and that the trial court reserved the issue of retroactive support for trial. (R. 4, 86.) Thus, this Court should hold that the trial court erred in denying Valerie retroactive support, and remand for a determination of the amount of that support.

CONCLUSION

Although Harold's brief is filled with six pages of vituperous and slanderous attacks on Valerie's character, Harold fails to address any of the issues now before this Court on appeal. As clearly detailed in Valerie's opening brief, the trial court erred when it (1) refused to award Valerie alimony, (2) awarded Valerie less than 15% of her attorney fees even though the trial court clearly found that Harold had engaged in a consistent and repeated pattern of contempt, (3) found that, despite the undisputed evidence that Valerie was required to spend three to six days and nights away from her five young children, Valerie's request for child care was unreasonable, (4) refused to award Valerie any of the contributions she made to the marital home's equity after the parties separated and after Harold was granted a bifurcated decree of divorce but before his bankruptcy, and (5) found that Valerie had not raised and/or reserved for argument the issue of retroactive support.

Accordingly, this Court should reverse the trial court's findings and remand the issues for reconsideration and redetermination.

Dated this 16th day of November, 2009,

SMITH HARTVIGSEN, PLLC



Clark R. Nielsen
Kathryn J. Steffey
Attorneys for Appellant/Petitioner Valerie Connell

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2009, I caused to be served, via first-class U.S. mail, postage prepaid, two true and correct copies of the **REPLY BRIEF OF APPELLANT VALERIE J. CONNELL** addressed as follows:

Harold G. Connell
1537 Nuttall Dr.
Lehi, Utah 84043


