

2008

Marian C. Olson v. Bradley L. Olson : Reply Brief

Utah Court of Appeals

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Oct. 29, 2009
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IN THE UTAH COURT OF APPEALS

MARIAN C. OLSON,

Appellant,

vs.

BRADLEY L. OLSON,

Appellee.

Appellate Case No: 20080666

REPLY BRIEF OF APPELLANT
MARIAN C. OLSON

APPEAL FROM THE DECISION AND ORDER
OF THE FIRST JUDICIAL DISTRICT

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ORAL ARGUMENT REQUESTED

FILED
UTAH APPELLATE COURTS

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ARGUMENT

I. BRADLEY OLSON HAS OFFERED INSUFFICIENT LEGAL SUPPORT FOR THE TRIAL COURT'S VEIL PIERCING THEORIES. THEREFORE, BECAUSE THE TRIAL COURT IGNORED UTAH CODE ANNOTATED § 30-2-5, ITS RULING AS TO PROPERTY DIVISION SHOULD BE REVERSED.

In its ruling as to property division in this divorce matter, the trial court overlooked Utah Code Annotated § 30-2-5. This Court should correct the trial court's ruling and find that Marian Olson cannot be liable for the debts of Bradley Olson. Bradley Olson wants the court to uphold the veil piercing approach implemented by the trial court in the distribution of property, debt, etc. of the parties. In order to support his argument, he simply recites the Findings of Fact and Conclusions of Law and fails to give the court any legal justification for implementing this novel theory. The closest that Bradley Olson comes to arguing a legal theory is to show a couple of cases about how the trial court is given broad discretion in property division. However, broad discretion in division of property and debts does not give the court the right to circumvent Utah Code Annotated § 30-2-5. The trial court does not have the authority to find or make a wife personally liable for any separate debt of the husband.

It is undisputed that Bradley Olson executed a personal guaranty in favor of Cache Valley Bank and that Marian Olson did not personally guarantee such debt. Tr. 466 and 433. Bradley Olson is trying to make Marian Olson liable for that debt by introducing the novel-yet flawed-concept of piercing the corporate veil from the inside. Broad discretion of the trial court in dividing property and debts between spouses does not give

the court the authority to bypass Utah Code Annotated § 30-2-5 and to perform unauthorized veil piercing in contravention of said statute.

Appellee has made arguments pertaining to the standard of review in divorce cases. The Elman v. Elman, 45 P.3d 176 (Utah App. 2002) case helps to understand how this Court should review this case. In Elman, the court stated that the appellate court is willing to overturn the trial court's property division and valuation when "there is a misunderstanding or misapplication of the law resulting in a substantial and prejudicial error, the evidence clearly preponderates against the findings, or such a serious inequity has resulted as to manifest a clear abuse of discretion". Id. 180. The implementation of a veil piercing theory which goes contrary to Utah Code Annotated § 30-2-5 easily violates this standard of review.

Bradley Olson has further misapplied the case law of Trubetzkoy v. Trubetzkoy, 205 P.3d 891 (Utah App. 2009). In that case, the court states that "broad discretion" is given in property division situations. From this statement, Bradley Olson wants the court to believe that "broad discretion" should be given for the court to implement a corporate veil/alter ego decision simply because it is part of a divorce. However, the Trubetzkoy case does not back this up. The Trubetzkoy case does not deal with Utah Code Annotated § 30-2-5 and did not implement any veil-piercing. Moreover, that court did not render the wife liable for any debt of the husband. The Court of Appeals did mention that a \$35,000.00 difference in distribution of assets was a significant share of the \$300,000.00 value of the total assets and that the trial court could change its ruling upon remand. Id. at 898. Based upon Trubetzkoy the trial court is required to apply the law

and to achieve an equitable result. Making Marian Olson liable for corporate debt that she did not personally guarantee is not equitable. In this situation, Marian Olson came into the divorce proceeding having made one personal guarantee on a loan with one of the creditors of B&B Drywall, Inc. and with joint ownership in a home with no debt burdening her interest therein. When she left the courtroom after the divorce proceeding, the court allocated debt to her in the amount of \$326,328.00 R.673. to Cache Valley Bank.

Another case cited by Appellee is State v. Vincent, 883 P.2d 278, 282 (Utah 1991) which stands for the basic concept that the standard of review cases show two basic principles: “Findings of pure fact are uniquely within the province of the trial court...on the other hand, the legal effect of those facts, [in other words] their normative consequence is the province of the Appellate Court and no deference may be given a trial court’s resolution of such questions of law.” Id. at 282. Based upon the above case law, although the trial court has some discretion in property division, it cannot misapply the law. Thus, this Court should determine whether or not the trial court correctly applied Utah Code Annotated § 30-2-5 to this case.

In light of the above standard of review, when Utah Code Annotated § 30-2-5 is applied to the facts found by the trial court, this Court should conclude that the trial court erred. Utah Code Annotated § 30-2-5 states as follows:

(1) Neither spouse is personally liable for the separate debts, obligations, or liabilities of the other; (a) contracted or incurred before marriage; (b) contracted or incurred during marriage, except family expenses as provided in Section 30-2-9; (c) contractor or incurred after divorce or an order for separate maintenance under this title, ...; or (d) ordered by the court to be paid by the other spouse until

Section 30-3-5 or 30-4-3 and not in conflict with Section 15-4-6.5 or 15-4-6.7. (2) The wages, earnings, property, rents, or other income of one spouse may not be reached by a creditor of the other spouse to satisfy a debt, obligation, or liability of the other spouse, as described under Sub Section (1).

Appellee's Brief simply makes the conclusory allegation that § 30-2-5 has not been violated. There is no analysis in Appellee's Brief as to Utah Code Annotated § 30-2-5. It is undisputed that Marian Olson was a joint owner of the parties' marital home located in Nibley Utah. R. 668. It is further undisputed that Marian Olson was not an obligor on the obligation to Cache Valley Bank. Tr. 466. Only Bradley Olson made himself obligated to Cache Valley Bank. Tr. 466. Marian Olson did not agree to personally guarantee that debt. Thus, the personal guarantee to Cache Valley Bank was a separate debt of Bradley Olson. However, in the final analysis, the trial court rendered Marian Olson obligated for the debt to Cache Valley Bank without addressing Utah Code Annotated § 30-2-5.

The Decree of Divorce states that after Marian Olson's premarital interest of \$108,000.00 is deducted that the remaining "sum necessary to pay the balance of the Cache Valley Bank is such amount necessary to pay the balance of the Cache Valley Bank debt" shall be paid and ordered the house sold. See, Findings of Fact and Conclusions of Law page 5, R.671. Neither the trial court in its conclusions of law nor Appellee in Appellee's Brief have made any analysis of how said ruling can possibly be consistent with Utah Code Annotated § 30-2-5. There is no justification whatsoever for the trial court to bypass Utah Code Annotated § 30-2-5. Appellee states that the trial court has the discretion to equitably divide the assets of the marital estate but in no Utah

case found by Appellant's counsel has a divorce court ever implemented a veil piercing theory whereby a non-guarantor spouse suddenly became obligated for the debt of the guarantor spouse. Veil piercing is not an exception to Utah Code Annotated § 30-2-5. Such has not been made an exception by statute, and it has not been made in exception by the case law. Therefore, trial court erred in ignoring Utah Code Annotated § 30-2-5 in implementing its novel veil-piercing theories.

The terms and language of Utah Code Annotated § 30-2-5 are abundantly clear as applicable to this situation. Cache Valley Bank gave loans to B&B Drywall, Inc. Tr. 419-421. Bradley Olson personally guaranteed said loans. Tr. 433 and 466. Marian Olson did not personally guarantee said loans. Tr. 433-34 and 466. Marian and Bradley Olson jointly owned the home at Nibley, Utah. R.668. Because "neither spouse is personally liable for the separate debts, obligations, or liabilities of the other," Marian Olson cannot be responsible in any way, shape, or form for the debt of Bradley Olson to Cache Valley Bank. See, Utah Code Annotated § 30-2-5(1). This means that all of Marian Olson's property including her entire interest in the Nibley house "may not be reached by a creditor of the other spouse to satisfy a debt, obligation, or liability of the other spouse..." See, Utah Code Annotated § 30-2-5(2).

Bradley Olson merely recites to the Findings of Fact and Conclusions of Law in his Appellee Brief. Self-serving and conclusory statements contained in the Findings of Fact and Conclusions of Law are insufficient to uphold the decision of the trial court. The Appellee has pointed the court to no case law from Utah or any other state where a divorce court has implemented this veil piercing theory, where one insider attempts to

pierce the corporate veil to the detriment of another insider. Even if other jurisdictions might allow such a theory, it would still violate Utah Code Annotated § 30-2-5. The veil piercing theory was not even plead by Bradley Olson in any of his pleadings. Moreover, the Findings of Fact in and of themselves are not supported by the record. The recital of the Findings of Fact are merely an attempt to bootstrap the arguments made by Bradley Olson to the trial court. Marian Olson has shown the court how there is abundant evidence in the record to demonstrate that the corporate veil was honored by the parties and that the court simply ignored that evidence without any explanation or fundamental basis. As Marian Olson has shown the court in her Opening Brief, the actual evidence from the record does not support the Findings of Fact and Conclusions of Law and that the record does not support them. See, Opening Brief Appendix 6.¹ Rather than provide any case law to show the Court that veil piercing from the inside in a divorce situation is a valid legal approach in light of Utah Code Annotated § 30-2-5, Bradley Olson basically just recited to the Findings of Fact and Conclusions of Law stating that they are supported by the record. However, he has failed to explain the many citations to the record which Marian Olson presented to the court which are contrary to the veil-piercing conclusion as set forth in Appendix 6 of Marian Olson's Opening Brief.

As to the marshalling of the evidence which may be required by this Court, Bradley Olson has cited in his Brief some asserted evidentiary items which he alleged

¹ The appendix was used for the marshalling exercise for organizational purposes only, not to avoid a page limitation. The marshalling exercise could easily have been included in the main body of the brief. Appellant believes that the marshalling exercise is not necessary because of the trial court's misapplication of the law. However, Appellant included the marshalling exercise in the appendix in the event that the Court deems the same to be necessary.

Marian Olson failed to marshal and which he states support the trial court's findings of comingling. See, Appellee's Brief page 23. Contrary to Appellee's assertions, Appellant did cite to the fact that Marian Olson acknowledged that the home office equipment was purchased by the corporation, that some items for the parties were purchased out of corporate funds and that some personal expenses were paid by the corporation. See, Appellant's Appendix 6. Thus, items (d), (e), and (f) from Appellee's alleged items left out of the marshalling exercise are duplicative of the items in Appellant's marshalling appendix. As to item (a), the 2001 Ford Expedition was indeed depreciated on the corporate tax returns. But there was no evidence that it was only used by Marian Olson personally. In fact, she testified that she was an officer and director of the corporation and performed work for the corporation. Tr. 205, 394, and 409. The testimony that she was using it personally from page 322 of the transcript was in reference to the B&B Drywall receiver giving her the title to the Expedition and for her personal use of the vehicle after B&B Drywall, Inc. stopped doing business and after the filing of the divorce. The fact that the 2001 Ford Expedition was depreciated on the corporate tax return does not support the veil-piercing theory because such is a common and acceptable accounting practice. Moreover, Marian Olson testified that she verified to the receiver that B&B Drywall did not pay for the Expedition. Tr. 322.

As to Appellee's statement (b) on page 23 of his Brief, the testimony that the building lot was paid for by corporate funds is not sufficient. First, Appellee offered no check into evidence showing that the lot was paid for directly by B&B Drywall. The testimony was merely that the lot was paid for through B&B Drywall funds which could

easily mean that B&B Drywall was the original source of the monies from which Bradley and Marian Olson derived the personal funds to pay for the lot. The conclusory assertion that the lot was paid for through B&B Drywall funds is simply insufficient to prove that the corporate veil was ignored. Moreover, there was no explanation as to whether or not if the corporation did pay directly for the lot that this was not counted as a distribution or some type of payment to the shareholders on the tax return or if a reimbursement was made. The tax returns from the time the purchase of the lot were not admitted into evidence by Mr. Olson.

As to paragraph (c) regarding personal vacation expenses, Appellee has mischaracterized the record. Page 207 of the record clarifies that the vacations were not personal vacations but business trips. Thus, personal vacation expenses as asserted by Appellee cannot be used as an allegation to pierce the corporate veil.

As to paragraph (g) Appellee asserts that Marian Olson's testimony was impeached by the CPA's testimony. The only thing that the accountant testified to was that B&B Drywall was reconciling its own bank accounts and that the accountant did not need to perform that task any further. This does not amount to impeachment and does not rise to the level of piercing the corporate veil.

As to paragraph (h) of Appellee's asserted omissions in the marshalling exercise, the transcripts upon which Appellee relies for this statement comes from closing arguments of Appellee's attorney at the trial. Certainly, a statement made in closing argument does not constitute sufficient factual basis from the record to give any further merit towards discussion of that item.

The items for which Bradley Olson asserts that veil-piercing should be conducted are common business expenses deducted under the internal revenue code. Business trips, business vehicles, home office equipment used in the business, woodworking tools related to a drywall business were all expenses that appear to have been validly deducted by the corporation in the normal course of its operations.

In summary, Appellee's alleged errors in the marshalling exercise are all either duplicative, explained, or refuted. Appellant had previously cited to the same parts of the record and/or made similar statements in the marshalling exercise. Other statements are inaccurate, mischaracterized, stretched or even cited to a section of the closing arguments. This does not show a deficiency in Appellant's marshalling at all. Moreover, Appellee has not refuted any of the marshalling exercise which goes contrary to a finding of piercing the veil. Finally, Utah Code Annotated § 30-2-5 is paramount law which has been completely ignored both by the trial court and by the Appellee.

II. THE ALIMONY AWARDED TO MARIAN OLSON WAS INSUFFICIENT AND UNREASONABLY CONDITIONED ON THE SALE OF THE HOME.

Appellee has raised the question of the standard of review of a trial court's alimony award. Appellant agrees that the standard of review of a trial court's award of alimony is that of abuse of discretion. See, Baum v. Hayes, 196 P.3d 612 (Utah App. 2008). In the Baum v. Hayes case, the wife had sought \$4,941.00 in alimony and instead the court awarded her \$1,200.00 per month in alimony. In the Baum case, the court found that the trial court is required to make an express finding as to the wife's financial

needs. See, Utah Code Annotated § 30-3-5(8)(a). Thus, the trial court is required to analyze all of Marian Olson's needs in making an award of alimony. Findings of Fact paragraph 30 found on page 27 of Appellee's brief shows that the court only analyzed Marian Olson's need for a home and her need for a replacement vehicle and reduced her needs to \$4,200.00 per month even though she had submitted a budget showing more than \$6,000.00 per month as a need. At trial the financial needs of Marian Olson were not sufficiently refuted by Bradley Olson. While the court purported to look at Marian Olson's needs, the conclusion of the trial court was result-oriented rather than truly based upon her needs. Incidentally, one of the court's findings regarding wife's needs was that she was unlikely to be in jeopardy of losing her employment. See, Findings of Fact No. 29. Marian Olson has in fact recently been laid off as a result of a reduction in workforce at Utah State University. Now with the loss of her employment, her needs have been increased significantly because she does not have the \$3,967.00 per month that she was previously earning. Appellant acknowledges that the trial court has not yet addressed the loss of her employment.

The trial court's award of alimony should also be modified as to retroactive application. While the award of \$1,000.00 per month has been made, it is illusory because it was conditioned upon Marian Olson acquiescing into the sale of the home to Cache Valley Bank. Instead of ruling that alimony would commence immediately after the trial, the court ruled that the alimony should commence 30 days after the closing of the sale of the Nibley home. R.694 ¶15. Because the Nibley home has not sold, she has not received any alimony payments. The trial court should not have conditioned the

commencement of alimony upon the sale of the house. Utah Code Annotated § 30-3-5 does not allow for the court to condition the alimony award on the sale of the home. In fact, the needs of Marian Olson were set forth as evidence at trial as being current needs, not needs that relied upon the sale of the home. Marian Olson's budget shows many expenses which she has but which are not linked to any mortgage or lease expenses. The trial court over-stepped its discretion by conditioning the alimony on the sale of the home. We believe that the forced sale of the home violates the law as set forth in the opening section of this brief, and therefore Appellant should not be coerced into accepting the alimony award as a condition of the sale of the home. Moreover, the alimony award should be retroactive to the date of the divorce decree, not to the trial date.

III. THE COURT'S CONCLUSION AS TO THE VALUE OF THE HOME WAS IN ERROR.

The trial court's finding as to value of the Nibley home should be overturned under the clearly erroneous standard. The trial court's acceptance of general statements about the increase in value of the Cache Valley real estate market is not sufficient under the clearly erroneous standard of review. No bank or participant in the real estate market would reasonably accept such statements as a basis for valuation of property. Yet the trial court made a finding as to the value of the property consistent with Bradley Olson's assertions, even when Bradley Olson had violated the court's order pertaining to obtaining an appraisal.

The most competent evidence at trial regarding value was the testimony of the appraiser Dustin Singleton who testified that it was worth \$480,000.00 (TR. page 37,

lines 1 through 16 and TR. page 65, lines 20 through 25) subject to repair of a water leak and subsequent damage of the foundation. TR. page 39, lines 18 through 22. Additional evidence was admitted that there was a leak in the foundation and which would require a repair in the \$25,000.00 to \$35,000.00 range. TR. page 25, lines 17 through 25. Bradley Olson testified that the home was worth \$550,000.00. TR. 215. Singleton had inspected the property in August of 2007 and saw that the mold and damage was worse than when he did the earlier appraisal. TR. page 40, lines 21 through 25. In evaluating how that would affect the property's value, he stated that he would request that a professional inspector estimate repair costs. TR. page 41, lines 13 through 20. He further testified that the appraised value would be reduced by the cost of the damage. TR. page 42, lines 1 through 6. As to the general market, Mr. Singleton testified that higher priced homes did not increase in value over that same period of time as much as lower priced homes. TR. page 47, lines 3 through 7. His statement that the market went up generally in 2006 and 2007 was not a statement as it relates to the Nibely home of the parties; it was rather a statement as to the general market conditions in Cache Valley, not a statement as to the Nibley home.

Thus, the court erred in applying the general market increase in value to achieve a \$550,000.00 value on the Nibely home when there was significant damage to the foundation and when the appraiser did not testify that that market appreciation was applicable to the Nibley house. Moreover, Mr. Singleton testified that, "A home like this right now...would be very difficult to sell with mold in it because no bank will touch that." TR. page 57, lines 18 through 20. When Dustin Singleton was asked whether or

not he could give a more updated value to this home other than the appraisal that he had previously conducted, he declined stating that he could not give a current value of the property even in light of the questions concerning an increase in the market because he would have to perform a comparable sales approach and that his best estimate of value was the appraisal admitted into evidence. TR. page 65, lines 5 through 24. As to Appellant's use of the \$550,000.00 figure in requesting a supersedes bond, she felt compelled to use that figure because of the trial court's ruling, not because of her acquiescence in the \$550,000.00 as being the accurate value of the property.

In any event, the trial court should not have used a general market appreciation approach to support Bradley Olson's estimate of value. Bradley Olson had failed to cooperate with an appraisal that had been order by the court, yet the trial court seemed to automatically accepted Bradley Olson's statement of value in light of an appraiser's opinion of value which was much less. As to the issue of potential marshalling of the evidence on this issue, Appellant has not ignored any evidence as to the valuation. The Appellant has shown this Court how the trial court arrived at the value by using a general appreciation in the market value for the general market. This was in light of an appraiser's statement of the value of the property and that his best estimate based upon his appraisal was \$480,000.00 minus the cost of repair of the foundation damage. The court ignored the appraiser's valuation and increased it to \$550,000.00 even though there was no appraiser's testimony to support that valuation for this specific home. The general market increase at the time is insufficient evidence upon which to base a ruling

on value under any standard of review. Thus, the value of the home should have been designated at \$450,000.00.

IV. SEVERAL OTHER ISSUES RAISED BY MARIAN OLSON'S OPENING BRIEF WERE NOT SUFFICIENTLY REBUTTED BY APPELLEE.

Cumulatively, based upon all of the errors pointed out by Marian Olson in her opening brief, the trial court gave favor to Bradley Olson prejudicial to Marian Olson on a majority of the rulings made. This section of the reply brief addresses those additional errors including personal guarantees of other corporate debts, disallowance of testimony of Jack Peterson, inappropriate dismissal of the protective order; disqualification of Judge Willmore, Appellees' selling of assets in violation of the Court order, and attorney's fees.

A. PERSONAL GUARANTEES OF OTHER CORPORATE DEBTS.

As to this issue regarding personal guarantees of corporate debts, Marian Olson did personally guarantee a debt to LKL Building Supply but did not personally guarantee a debt to Capitol Building Supply. Tr. 182, 187. The court ordered Marian Olson to assume the entire indebtedness to LKL and Bradley Olson to assume the entire debt to Capitol Building Supply. R.694 paragraph 16. Marian Olson had only the LKL debt as a separate debt prior to entering the courtroom. Bradley Olson owed the Capitol Building Supply debt, the LKL debt, and the Cache Valley debt. After he left the courtroom he had shifted half of his Cache Valley Bank debt and half of the other debt to Marian Olson, even though she was not an obligor on all those accounts. Marian was also left with the LKL debt to bear all by herself. The arguments concerning this issue are largely identical to the corporate veil-piercing arguments and property distribution arguments in

light of Utah Code Annotated § 30-2-5. The court should not have made Marian Olson liable for the debt to Capitol Building Supply given the fact that she did not personally guarantee that debt and it was a corporate debt. Bradley Olson does not mention the LKL debt or the Capitol Building Supply debt in his responsive brief. Therefore, Appellant's arguments should be accepted on this issue.

B. DISALLOWANCE OF TESTIMONY OF JACK PETERSON.

Bradley Olson asserts that Jack Peterson was called as an expert witness. On the contrary he was called as a fact witness for a limited purpose. The anticipated testimony from Mr. Peterson was to show a factual analysis of Bradley Olson's earnings during the marriage as he had conducted that analysis in relation to Bradley Olson's prior marriage. Because Mr. Peterson was offered as a factual witness and not as an expert witness, his testimony should have been allowed.

C. INAPPROPRIATE DISMISSAL OF THE PROTECTIVE ORDER.

With regard to the protective order dismissal, the trial court mentioned in its ruling on its bench trial in the presence of both parties that the protective order would be immediately dismissed. Tr. 722. The ruling on this issue was at the height of the emotions between the parties. The court did not make any findings about potential violations of the protective order or as to the need of the protective order. The court simply dismissed the protective order. Tr. 722. Moreover, notice had not been given both in the divorce and protective order proceedings.

Basically, Appellee's Brief supports the grounds for Marian Olson's appeal of the protective order portion of the court's divorce decree. Utah Code Annotated § 78B-7-

115(5) requires notice to be given in both the divorce and protective order actions. When the court vacated the protective order at the time of its ruling on April 16, 2008 the court had not given notice in either the divorce proceeding or in the protective order proceeding. Therefore, the procedure employed by the court to purportedly vacate the protective order at that time was in error. See, Transcript page 722, lines 14 through 16. In other words, the court orally vacated the protective order in the divorce proceeding in contravention of the applicable statute. Because the trial court failed to implement the proper procedure, it should not have vacated the protective order at the time of the ruling.

D. DISQUALIFICATION OF JUDGE WILLMORE.

The appearance of impartiality is of paramount importance to the justice system. Marian Olson has set forth sufficient reasons to disqualify Judge Willmore. Even if Judge Willmore is unbiased, the appearance that he may not be unbiased is sufficient to disqualify him. Whether or not Appellee's counsel has had any conversations with Judge Willmore concerning this case is not the issue, nor has it been alleged. It is the appearance of impartiality that exists and which should be addressed by this Court.

During post-trial proceedings, Judge Judkins recused himself from presiding over this case and Judge Willmore was then appointed. However, when it came to the attention of Appellant that Judge Willmore had conducted a marriage ceremony for opposing counsel's daughter to the attorney for Cache Valley Bank, the impartiality of Judge Willmore was reasonably brought into question and a motion filed. While Judge Jones concluded that disqualification was unnecessary, Marian Olson asserts that this ruling was in error. In the responsive brief, Appellee has indicated no reasonable basis to

continue to support said ruling. It is agreed by all that the impartiality of the tribunal is of upmost importance. The fact that Judge Willmore conducted a marriage ceremony for persons closely connected to this case, suggests the real possibility of a lack of impartiality relating to rulings in this matter. Appellant has never stated that she believes that Judge Willmore discussed this case with any individuals improperly. However, the judicial canon is clear that a judge shall enter a disqualification in a proceeding in which the judge's impartiality might reasonably be questioned. Marian Olson questions the impartiality of Judge Willmore based upon the wedding ceremony preformed by him where the bride in the ceremony was the daughter of counsel for Bradley Olson and where the groom is an attorney for Cache Valley Bank. The performance of a marriage ceremony intrinsically infers a social connection. According to the newspaper article, it was a publicized ceremony to which many people attended. Thus, it appears that a social connection exists between Judge Willmore and counsel for Bradley Olson and/or counsel for Cache Valley Bank. This given rise to reasonably questioning Judge Willmore's impartiality in the case and is grounds for his disqualification.

E. APPELLEE'S SELLING OF ASSETS IN VIOLATION OF COURT ORDER.

With regard to Bradley Olson's sale of assets in violation of a temporary court order, Mr. Olson does not deny having sold assets in violation of the court order. Mr. Olson seems to have been given a free pass by the trial court and the court did not address that issue whatsoever. Bradley Olson suffered no consequences for violating the court order and the court should have entered some sanction in order to reprimand the violation

of this order. As to statements that Marian Olson engaged in more egregious conduct, this simply is not true. She provided an accounting of everything that was requested of her. Any money spent was spent towards marital debt no towards personal living expenses.

F. ATTORNEY'S FEES AT TRIAL.

The analysis as to attorney's fees at trial incorporates the analysis as to alimony issues because it involves an analysis of the needs of the parties and their ability to pay. Marian Olson believes that she meets the standard for an award of attorney's fees and admitted evidence of her attorney's fees to the court. There was no evidence that the attorney's fees were not reasonable and her financial need was set forth in the budget. Moreover, the ability of Mr. Olson to pay those attorney's fees was set forth in the fact that he is setting aside significant funds for his own personal retirement (Tr. 530) and because he makes so much more money than Marian Olson. Given all of these factors, Marian Olson asserts that attorney's fees should have been awarded to her at least in some amount at the trial court level. The ability of Bradley Olson to pay for attorney's fees is analyzed in his ability to pay for alimony contained in this brief and in the prior brief. Clearly, Marian Olson had the greater need for attorney's fees as analyzed in the alimony section in the prior brief as well.

V. THIS APPEAL IS NOT FRIVOLOUS AND DOES NOT MERIT ATTORNEY'S FEES.

Marian Olson has brought a legitimate issue to this Court relating to the way that she was treated by the trial court regarding property distribution. She was in the midst of

being forced to sell the property when this court intervened to stay that sale by way of its order dated September 15, 2008 wherein this Court stated. "IT IS HEREBY ORDERED that the order compelling the sale of the house is stayed pending appeal." See, Appendix 1 hereto. She is asking to be assisted once again by this Court. Instead, Bradley Olson will have the court believe that Marian Olson is frivolously appealing this matter. Yet, Bradley Olson has not cited any legal authority which gives the trial court the authority to pierce the corporate veil from the inside and share debts in violation of Utah Code Annotated § 30-2-5. He does not state why the result in this case does not violate the statute but merely sets out a conclusory, self-serving allegation that it does not. Marian Olson is simply bringing forward to this court an appealable issue in good faith. The attempt to paint it as frivolous and meriting an award of attorney's fees is inappropriate and this court should not award attorney's fees in favor of Bradley Olson on this appeal.

Rule 33 of the Utah Rules of Appellate Procedure allows this Court to make a determination that if an appeal was taken for purposes of delay or frivolously, it should award damages and/or reasonable attorney's fees. "For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief, or other paper interposed for the purpose of delay, is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other paper." Utah Rules of Appellate Procedure, Rule 33(b). Appellee has not shown the court how Appellant's arguments allegedly do not meet this

standard. Marian Olson has made a good faith argument that Utah Code Annotated § 30-2-5 was ignored and bypassed by the trial court. No analysis by the trial court of that statute was provided. Moreover, even in Appellee's Brief, no reasonable analysis of that statute has been provided. No explanation as to how that statute can be bypassed has been provided. Marian Olson believes that her appeal is warranted by existing law and based upon her good faith efforts, she believes that her position was ignored by the trial court and merely seeks to exercise her right to appeal which is allowed under the Utah Rules of Appellate Procedure. Because her rights have significantly been impaired where she was not the obligor on a loan for which she now, according to the trial court, must pay, she is reasonably asserting her position. Therefore, despite the conclusory allegations to the contrary made by Appellee, Marian Olson's appeal is not frivolous.

Contrary to Appellee's assertions, Appellant has developed all of her arguments sufficiently. Appellant's briefs both set forth significant legal analysis and citations to the record. The briefs are sufficient to demonstrate appropriate legal argument and have not been intended to deposit the issues with the Court of Appeals abandoning the work of backing up the arguments. On the contrary, Appellant has shown the Court the basis of her legal arguments as well as the factual assertions supporting those legal arguments and has provided sufficient research supporting her arguments.

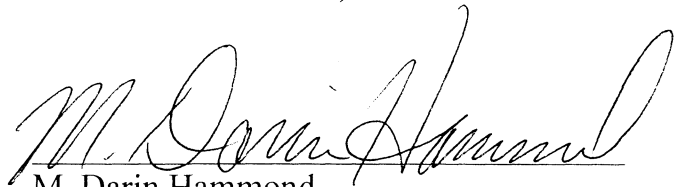
The Appellee's request for attorney's fees on appeal should be denied by this court.

CONCLUSION

Based upon the above, Marian Olson respectfully requests that this Court reverse and remand the trial court's rulings. The main issue of this appeal is whether or not the trial court can ignore Utah Code Annotated § 30-2-5 and render Marian Olson liable for corporate debts. Appellee has not provided sufficient legal basis to support the trial court's ruling on that issue. Because this involves the most significant asset of the parties, the Nibley home, this Court should reverse the ruling and remand it to the trial court to properly determine a property distribution between the parties as well as alimony and the other remaining issues. Therefore, Marian Olson respectfully requests that this Court give her relief from the Findings of Fact and Decree of Divorce entered by the trial court.

DATED this 13 day of August, 2009.

SMITH KNOWLES, P.C.

A handwritten signature in cursive script, appearing to read "M. Darin Hammond", written over a horizontal line.

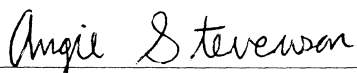
M. Darin Hammond

Attorneys for Appellant Marian Olson

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing **REPLY BRIEF OF APPELLANT** were mailed by first-class mail with postage fully prepaid this 13th day of August, 2009, to each of the following:

Joseph M. Chambers
HARRIS, PRESTON & CHAMBERS PC
31 Federal Avenue
Logan, UT 84321



Legal Assistant

Appendix 1

FILED
UTAH APPELLATE COURTS
SEP 15 2008

IN THE UTAH COURT OF APPEALS

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Marian C. Olson,

)

ORDER

Petitioner and Appellant,

)

Case No. 20080666-CA

v.

)

Bradley L. Olson,

)

Respondent and Appellee

)

Before Judges Greenwood, Billings, and McHugh.

This matter is before the court on Appellant's motion for an injunction pending appeal and to set a supersedeas bond.

IT IS HEREBY ORDERED that the order compelling the sale of the home is stayed pending appeal. IT IS FURTHER ORDERED that this matter is remanded to the trial court for the limited purpose of determining a supersedeas bond. The appeal will not be stayed during this remand.

Dated this 15 day of September, 2008

FOR THE COURT:


Pamela T. Greenwood,
Presiding Judge

CERTIFICATE OF SERVICE

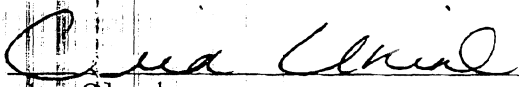
I hereby certify that on September 15, 2008, a true and correct copy of the foregoing ORDER was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

JOSEPH M CHAMBERS
HARRIS PRESTON & CHAMBERS PC
31 FEDERAL AVE
LOGAN UT 84321

M. DARIN HAMMOND
KENYON L DOVE
SMITH KNOWLES PC
4723 HARRISON BLVD STE 200
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FIRST DISTRICT, LOGAN DEPT
ATTN: JUDI FORNEFELD
CACHE COUNTY HALL OF JUSTICE
135 N 100 W
LOGAN UT 84321

Dated this September 15, 2008.

By 
Deputy Clerk

Case No. 20080666
FIRST DISTRICT, LOGAN DEPT, 054100358