

1988

Juanita Meyer v. Arden Bodell : Reply Brief

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

* * * * *

JUANITA MEYER, aka JUANITA M.
BODELL,

Plaintiff and Appellant,

v.

ARDEN BODELL,

Defendant and Respondent.

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}

No. 880456-CA

Priority 14(b)

* * * * *

REPLY BRIEF OF APPELLANT JUANITA MEYER

Appeal from the Order of the
Third Judicial District Court
in and for Salt Lake County
State of Utah
Hon. James S. Sawaya, Judge

* * * * *

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FILED

MAY 5 1989

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

* * * * *

JUANITA MEYER, aka JUANITA M.	}	
BODELL,	}	
	}	
Plaintiff and Appellant,	}	
	}	
v.	}	No. 880456-CA
	}	
ARDEN BODELL,	}	Priority 14(b)
	}	
Defendant and Respondent.	}	

* * * * *

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SUMMARY OF ARGUMENTS

POINT I

AN OUTSTANDING JOINT TAX OBLIGATION ARISING DURING THE COURSE OF A MARRIAGE BUT NOT ASSESSED AGAINST THE PARTIES UNTIL SEVERAL YEARS AFTER DIVORCE IS A SUBSTANTIAL CHANGE OF CIRCUMSTANCES TO JUSTIFY A MODIFICATION OF THE DECREE OF DIVORCE

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IN THE UTAH COURT OF APPEALS

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Plaintiff and Appellant,	}	
	}	
v.	}	No. 880456-CA
	}	
ARDEN BODELL,	}	
	}	
Defendant and Respondent.	}	

* * * * *

REPLY BRIEF OF APPELLANT, JUANITA MEYER

Appeal from the Order of the
Third Judicial District Court
in and for Salt Lake County
State of Utah
Hon. James S. Sawaya, Judge

* * * * *

OBJECTIONS TO DEFENDANT'S STATEMENT OF FACTS

1. Mr. Bodell states that Ms. Meyer's assets increased several million dollars during the course of the marriage. Respondent's Brief, p. 3. Mr. Bodell fails to state that his estate also increased substantially. During the nine year marriage, Mr. Bodell acquired several pieces of property, lived in Ms. Meyer's home, and was given approximately \$58,000 by Ms. Meyer to acquire various property. Index Record, p. 3, Plaintiff's Trial Exhibit #2. He also neglects to mention that Ms. Meyer's acquisition of property during the marriage was primarily from her late husband's estate.
2. Mr. Bodell is correct in stating that each party

maintained a separate checking account. Respondent's Brief, p.p. 3-4. He fails to mention, however, that Ms. Meyer paid most of the couple's living expenses. See Appellant's Brief, Exhibit E.

3. Mr. Bodell next contends that Ms. Meyer alone objected to and challenged the 1983 IRS engineering valuation report on the University of Utah Mine Property. Respondent's Brief, p. 4. Both Mr. Bodell and Ms. Meyer filed objections to the IRS Report with Mr. Bodell performing many of the calculations used in the Petition filed with United States Tax Court. See Respondent's Brief, Exhibit E. Both parties were represented by Dean Chipman.

4. Mr. Bodell next misrepresents the parties' awareness of tax liabilities at the time of divorce on December 6, 1984. Respondent's Brief, p. 6. Ms. Meyer and Mr. Bodell were aware of possible tax liability at the time of divorce. No actual audits to assess tax liability, however, were begun until late 1983 for the tax years 1979, 1980, and 1981,¹ and November 7, 1985 for the tax years 1982 and 1983. Plaintiff's Trial Exhibit

¹ The couple's obligation for tax liabilities for the years 1979, 1980, 1981 was settled in a civil action initiated by Ms. Meyer in 1986. In June 1985, the IRS determined that Ms. Meyer and Mr. Bodell were entitled to a \$7,881.00 refund plus interest of \$7,344.05. See Meyer v. Bodell, No. C86-3702 (Third Dist. Ct., Utah) (Attached to Respondent's Brief as exhibit "G"). Ms. Meyer sought contribution from Mr. Bodell for costs and expenses incurred in defending the IRS action. The parties settled the suit in October, 1984 when Mr. Bodell agreed to give certain property to Ms. Meyer. The suit was dismissed with prejudice.

#4. The actual tax liability for the years 1982 and 1983 was not assessed until December, 1986.² Therefore, Mr. Bodell's representation that Ms. Meyer was aware of 1982 and 1983 tax obligations at the time of divorce in 1984 is inaccurate. Ms. Meyer did not become aware of actual tax obligations until after both the decree of divorce was made final and the civil suit addressing 1979, 1980, and 1981 taxes was settled.

ARGUMENT

POINT I

AN OUTSTANDING JOINT TAX OBLIGATION ARISING DURING THE COURSE OF A MARRIAGE BUT NOT ASSESSED AGAINST THE PARTIES UNTIL SEVERAL YEARS AFTER DIVORCE IS A SUBSTANTIAL CHANGE OF CIRCUMSTANCES TO JUSTIFY A MODIFICATION OF THE DECREE OF DIVORCE

Mr. Bodell contends that joint tax obligations for the years 1982 and 1983 were known to the parties at the time of the

² Ms. Meyer received the 1982 tax deficiency notice on December 29, 1986; the 1983 tax deficiency notice was dated February 9, 1987. Plaintiff's Trial exhibit #1. Ms. Meyer made the 1982 & 1983 audit adjustment payments as follows:

Date	Check#	Endorsee	Tax	Interest	Total
12/29/86	3814	IRS	\$10,000	\$44,845.55	\$54,845.55
12/29/86	3815	**	8,435.74	3,636.42	12,042.16
12/31/86	3832	IRS		3,433.48	3,433.48
01/06/87	3839	IRS			38,344.00
08/26/87	4079				1,131.95
04/09/87	432087*	IRS			<u>\$77,753.59</u>
				TOTAL	\$187,550.73

*cashier's check **Utah State Tax Commission

The plaintiff paid a total of \$187,550.73, not \$423,681.07 as originally stated in Appellant's Brief, P. 9, Par. 11.

divorce in 1984. The IRS notice assessing joint tax liability, however, was not mailed to the parties until late December 1986, over two years after entry of the decree of divorce. The Petition filed with the tax court relating to alleged tax deficiencies for 1979, 1980, and 1981 has no bearing on 1982 and 1983 taxes. The first group of tax obligations (1979, 1980, and 1981) and the subsequent civil suit were the result of a tax audit begun in 1983. The subsequent tax obligations (1982 and 1983), arose out of a second audit initiated in late 1985.

Although Ms. Meyer may have been aware of possible tax liability in 1984, the exact amount of that liability remained unknown until late 1986. Indeed, both Ms. Meyer and Mr. Bodell questioned the appropriateness of both IRS audits and believed in good faith that no additional taxes were owed. Later, however, in 1986, the IRS determined that joint tax obligations were owed for 1982 and 1983. The IRS and Utah State Tax Notices listed both Ms. Meyer and Mr. Bodell as jointly liable. Ms. Meyer paid the entire deficiency because the IRS was prepared to sell property she owned to satisfy the deficiency. Ms. Meyer later requested contribution from Mr. Bodell; Mr. Bodell refused to contribute.

Mr. Bodell correctly states that a modification of a divorce decree is appropriate, if the moving party can establish that a substantial change of circumstances occurred "which was not

within the original contemplation of the parties or the court at the time the original decree was rendered." Throckmorton v. Throckmorton, 767 P.2d 121, 123 (Utah App. 1988); Thompson v. Thompson, 709 P.2d 360, 362 (Utah 1985). A joint tax obligation, which accrued during the course of a marriage but was not assessed and charged against the parties until several years after the marriage terminated, could not be contemplated by the parties at the time of divorce. There was nothing to contemplate until two years after the divorce when the IRS sent its deficiency notice to Ms. Meyer and Mr. Bodell. Indeed Ms. Meyer and Mr. Bodell believed that 1982 and 1983 tax liability was unwarranted but found out after the divorce was final that additional joint tax liability existed.

POINT II

RES JUDICATA CANNOT BAR MR. BODELL'S LEGAL OBLIGATION TO PAY ONE-HALF OF JOINT OUTSTANDING TAX OBLIGATIONS NOT KNOWN TO THE PARTIES AT THE TIME OF DIVORCE AND NOT CONTEMPLATED IN THE ORIGINAL DECREE OF DIVORCE.

The doctrine of res judicata applies in divorce proceedings. Throckmorton v. Throckmorton, 767 P.2d at 123. Its application, however, "is unique in divorce actions because of the equitable doctrine which allows courts to reopen alimony, support, or property distributions if the moving party can demonstrate a substantial change of circumstances since the matter was previously considered by the court." Id. 767 P.2d at 123

(emphasis added), see also Thompson, 709 P.2d at 363.

In the instant case, res judicata is inappropriate to relieve Mr. Bodell of his joint tax obligation because a substantial change of circumstances (tax deficiencies for years 1982 and 1983) arose since the entry of the initial decree of divorce. In addition, res judicata is only applicable to those issues which a party had "a fair opportunity to present and have determined in the other proceeding." Throckmorton, 767 P.2d at 123. Ms. Meyer could not have fairly presented and the court could not have determined 1982 and 1983 tax obligations because the actual amount owed for those years was not known until 1986.

The res judicata case cited by Mr. Bodell simply states that legal recognition of a new category of property rights (retirement benefits) after a divorce decree has been entered is insufficient to establish a substantial change of circumstances to support modification of the original decree. Throckmorton, 767 P.2d at 124. In the instant case, however, there is no retroactive application problem. Mr. Bodell was and continues to remain jointly and severally liable for joint tax liabilities accrued during his marriage. The tax liability was merely determined several years after the marriage ended. There is no legal recognition of a new category of property rights. The 1982 and 1983 tax notices, sent to both Mr. Bodell and Ms. Meyer in 1986, is a substantial change of circumstances justifying a

modification of the decree of divorce. The doctrine of res judicata simply does not apply to this type of joint marital obligation.

POINT III

THE ANTENUPTIAL AGREEMENT EXECUTED PRIOR TO THE PARTIES' MARRIAGE DOES NOT PURPORT TO SETTLE JOINT MARITAL OBLIGATIONS WHICH AROSE DURING THE COURSE OF THE MARRIAGE

The Antenuptial Agreement executed on April 16, 1975, prior to the marriage between Ms. Meyer and Mr. Bodell, does not purport to settle joint marital obligations. Mr. Bodell contends in Point III of his brief that the Antenuptial Agreement somehow controls joint tax liability which accrued during the marriage. The Antenuptial Agreement was merely executed to insure that property belonging to each party prior to marriage remained his or her separate property after the marriage.

Mr. Bodell submits that the couple's practice of maintaining separate accounts read along with the Antenuptial Agreement's premarital property arrangements gives rise to an estoppel theory making Ms. Meyer solely liable for joint marital taxes. Mr. Bodell bases this contention on a presumption that Ms. Meyer would have paid the outstanding tax obligations if the couple had remained married. This theory is plainly inconsistent with the intent and language of the Antenuptial Agreement and the practice

of the couple during the marriage.

First, the Antenuptial Agreement simply does not purport to settle joint marital debts. Second, Ms. Meyer always expected Mr. Bodell to pay a proportionate share of outstanding tax obligations. The couple always shared refunds equally, both intended to benefit from charitable donations of land, and both filed a joint tax return simply because it resulted in a lower tax rate for each. Indeed the primary reason for the couple's divorce was Mr. Bodell's refusal to pay his fair share of joint marital obligations. Furthermore, Ms. Meyer paid the full amount of the 1982 and 1983 deficiencies because the IRS threatened to put a lien on her property and bank accounts. She has repeatedly sought contribution from Mr. Bodell and always expected him to share jointly in any outstanding liability.

CONCLUSION

In summary, it was improper for the trial court to deny Ms. Meyer's Petition for Modification of Decree of Divorce. A joint tax obligation, which arose during the course of a marriage, but was not assessed against the parties until two years after the divorce would appear to be the kind of substantial change of circumstances contemplated by the Supreme Court in Thompson. Similarly, res judicata cannot apply in divorce proceedings where

the moving party sufficiently demonstrates that the issue in question constitutes a substantial change of circumstances. Finally, the Antenuptial Agreement does not purport to settle joint marital debts. Instead, Mr. Bodell was fully expected to contribute his fair share and remains jointly and severally liable by the operation of section 6013(d) of the Internal Revenue Service Code.

DATED: April 28, 1989

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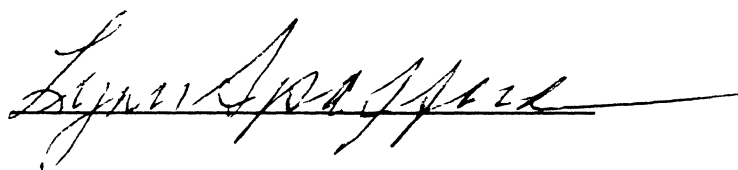
By: 

Earl S. Spafford
L. Charles Spafford
Attorneys for Appellant
Juanita Meyer

CERTIFICATE OF SERVICE

I certify that on this 29 day of April, 1989, four (4) copies of the foregoing BRIEF OF APPELLANT JUANITA MEYER were mailed, postage prepaid, to the offices of counsel for the respondent:

OLSEN & OLSEN
Nolan J. Olsen
8138 South State Street
Midvale, Utah 84047-7176
Attorneys for Respondent

A handwritten signature in cursive script, appearing to read "Lynn Applegate", is written over a horizontal line.