

1988

Ted Sherill Whitehouse v. Kathleen Shields Whitehouse : Reply Brief

Utah Court of Appeals

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THE UTAH COURT OF APPEALS

TED SHERILL WHITTHOUSE, :

Plaintiff/Respondent :

vs.

KATHLEEN SHIELDS WHITTHOUSE, :

Defendant/Appellant

Case No. 880491-CA

Category No. 14b

BRIEF OF APPELLANT

APPEAL FROM AN ORDER MODIFYING DECREE OF DIVORCE, IN THE THIRD
JUDICIAL DISTRICT COURT IN AND FOR TOOELE COUNTY, STATE OF UTAH,
THE HONORABLE JENNIS FREDERICK, JUDGE, PRESIDING.

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IN THE UTAH COURT OF APPEALS

TED SHERILL WHITEHOUSE,	:	
Plaintiff/Respondent	:	
vs.	:	
KATHLEEN SHIELDS WHITEHOUSE,	:	Case No. 880491-CA
Defendant/Appellant	:	Category No. 14b

REPLY BRIEF OF APPELLANT

Statement of Facts

In his brief, Respondent indicates that Appellant's counsel contacted Respondent's counsel and requested a deed from Respondent. This was to have been done at the time of the original divorce but was never accomplished by Respondent. Respondent fails to indicate that the deed was necessary so that Appellant could borrow money on the house and make urgent and necessary repairs to the roof. Respondent's counsel, after requests by Appellant's counsel for the deed and considerable delay, advised Appellant's counsel that Respondent would sign a deed if the deed was prepared by Appellant's counsel and only if a reservation of the lien interest awarded by Judge Frederick was

included in the deed. Accordingly, Appellant's counsel prepared the deed as requested by Respondent's counsel and forwarded the deed and cover letter which are included as Appendix A & B of Respondent's brief.

Reply to Point II of Respondent's Brief

Respondent argues that because of the deed and lien reservation the issue is moot. This is ludicrous for Respondent to make this argument inasmuch as the lien reservation was at the request of Respondent. Furthermore, the letter from Appellant's counsel clearly indicates that an appeal of Judge Frederick's ruling would be taken and that Appellant did not consider the matter resolved.

As was indicated in the Statement of Facts, the basis for the deed was to allow Appellant to obtain a loan to protect the value of the home by repairing the roof.

The doctrine of mootness was developed to prevent courts deciding issues that were simply hypothetical in nature, not to prevent courts from denying parties access to appellate proceedings as Respondent would argue in this case.

Conclusion

Respondent's argument regarding mootness should be disregarded by the Court inasmuch as the reservation of the lien

interest was at the request of Respondent and Appellant's counsel clearly indicated in his letter to Respondent's counsel that he did not consider the matter resolved prior to the appeal being decided.

Respectfully submitted this _____ day of January, 1989.

FRANK T. MOHLMAN
Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

I, FRANK T. MOHLMAN, hereby certify that four copies of the foregoing Appellant's Brief will be delivered to E.H. Fankhauser, Attorney for Plaintiff/Respondent, 243 East 400 South, Suite 200, Salt Lake City, Utah 84111, this _____ day of January, 1989.

FRANK T. MOHLMAN
Attorney for Defendant/Appellant

DELIVERED by _____ this
_____ day of January, 1989.