

2009

JoAnn Sellers v. Glen Ray Sellers : Addendum to Brief of Appellant

Utah Court of Appeals

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John Walsh; Attorney for Respondent/ Appellee.

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IN THE UTAH COURT OF APPEALS

Appellate Case No. 2009518-CA

JAN 1962

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IN THE UTAH COURT OF APPEALS

JOANN SELLERS,)	
)	
Petitioner/Appellant,)	
)	
vs.)	
)	Appellate Case No. 2009518-CA
GLEN RAY SELLERS,)	
)	
Respondent/Appellee.)	

ADDENDUM TO BRIEF OF APPELLANT

Appeal from the Amended Findings of Fact and Conclusions of Law and
Amended Decree of Divorce of the Third District Court, Judge Robert Faust, signed
and entered on March 23, 2009.

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APPENDIX A

MAR 23 2009

By DS SALT LAKE COUNTY
Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE CITY, STATE OF UTAH

<p>JOANN SELLERS,</p> <p>Petitioner,</p> <p>vs.</p> <p>GLEN RAY SELLERS,</p> <p>Respondent</p>	<p><i>Amended</i></p> <p>FINDINGS OF FACT AND CONCLUSIONS OF LAW</p> <p>Case No. 054902424</p> <p>Honorable Judge ROBERT FAUST</p>
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The above entitled matter came on regularly for trial before the Honorable Robert Faust, District Court Judge, on Wednesday, February 20, 2008, at the hour of 8:30 A.M.. The Petitioner, JoAnn Sellers, appeared and was represented by Diana J. Huntsman, Attorney at Law. The Respondent, Glen Ray Sellers, appeared and was represented by John Walsh, Attorney at Law. The Court heard a partial Stipulation, entered into by the parties, and approved the same. The Court then heard testimony and considered exhibits and arguments, and based thereon issued a ruling.

Subsequently, an objection was filed regarding certain issues and a subsequent hearing

was held by the Court on June 2, 2008. At that time, the Petitioner, JoAnn Sellers, appeared and was represented by Diana J. Huntsman, Attorney at Law. The Respondent was not present, but was represented by John Walsh, Attorney at Law. The Court received a partial Stipulation regarding the resolution of certain objections, and approved the same. The Court then heard the argument of counsel regarding the remaining objections and issued a ruling thereon.

BASED UPON the foregoing, the Court makes and enters the following:

FINDINGS OF FACT

1. Each of the parties is a resident of Salt Lake County, State of Utah and each has been a resident for a period of at least three months immediately prior to the filing of this action.
2. The parties were married on March 20, 1981 in Salt Lake County, State of Utah.
3. During the course of the marriage, irreconcilable differences have arisen, making the continuation of the marriage an impossibility. The parties have attempted significant marital counseling, however, they are unable to resolve their differences and by virtue of the same the Petitioner is entitled to a Decree of Divorce on the basis of irreconcilable differences.
4. There have been three (3) children born as issue of this marriage, one of whom is a minor, to wit: Cameron Alex Sellers, who was born on October 29, 1993, and is presently fifteen (15) years of age.
5. Each of the parties is a fit and proper parent to be awarded joint legal custody of the minor child, with the Petitioner being awarded primary physical custody. Parent-time shall be divided as follows:
 - A. The Court is adopting the 20/10 parent-time split proposed by the custody

evaluator. However, the Respondent may certainly have additional time, if agreed upon.

B. The Respondent shall have parent time with the minor child on every Tuesday, from the time that Cameron is out of school to and including Wednesday morning when the child goes to school.

C. The Respondent shall have every other weekend beginning from the time that Cameron is out of school on Friday to and including Monday morning when the child goes to school.

D. The parties shall be bound by §30-3-35 of Utah Code Annotated regarding the additional times that the Respondent shall have parent-time with the minor child.

6. The parties shall be bound by the provision of §30-3-33 of the Utah Code Annotated. However, the first option to provide child care will apply only if the other parent is unavailable for a period of 4 hours or more.

7. By virtue of the foregoing, the Respondent shall have a total of one hundred and twenty-two (122) over nights each year and the Petitioner shall have a total of two hundred and forty-three (243) over nights each year.

8. The parties are free to take the child out of state and out of the United States as long as each parent notifies the other parent in a timely fashion.

9. The Petitioner is regularly employed as a Special Education teacher with the granite School District, and had an income of \$48,382 on her 2007 W-2.

10. The Respondent is regularly employed at Quest, as a Manager of Network Operations. His annual income from his 2007 W-2 was \$95,044.

11. Using a 20/10 division of time, and the child support guidelines which took effect on January 1, 2008, coupled with the annual incomes of the parties, the Petitioner's child support obligation is \$393.38, and the Respondent's is \$729.26. *See* Joint Custody Child Support Worksheet, attached hereto as Exhibit A.

12. Child support shall continue until the month after the child turns 18 years of age, or until the month after the child's normal and expected date of graduation from high school, whichever occurs later.

13. The parties shall talk together to reach a decision on all major issues. If they cannot agree, they shall talk to Cameron's therapist, and accept his input. If they are still unable to resolve the issue, the therapist shall have the final say.

14. The parties shall provide medical and dental insurance for the minor child, as per the Utah Code Annotated sections regarding the same, with the parties deciding which policy has the most benefit, and the most coverage, at the best cost. The parties shall equally divide Cameron's portion of the premiums as well as all uncovered out-of-pocket medical, dental, orthodontia and eye care.

15. Mr. Sellers shall maintain life insurance sufficient to cover his child support obligation for the years remaining. At the time of trial, that amount would have been approximately \$26,000. Mr. Sellers may reduce the amount over time, so long as he carries sufficient insurance to cover the remaining child support. The child shall be listed as the beneficiary, with Ms. Sellers being listed as trustee.

16. The parties shall alternate taking the tax exemption for the minor child, with the

Petitioner being entitled to claim Cameron for odd numbered tax years, and the Respondent being entitled to claim him for even numbered tax years. The Respondent's right to claim the exemption shall be subject to his being current on child support as of December 31st of the tax year in question.

17. Also, in years when the Petitioner is entitled to the exemption, the Respondent may claim the exemption if he pays the Petitioner the difference, in advance, on state and federal taxes. If he does not pay her in advance, he will not be entitled to exercise this option.

18. After Cameron turns 18, the exemption will be determined by where Cameron resides.

19. For 2007, the parties may file jointly if they agree to do so, or Ms. Sellers is entitled to the exemption if they file separately.

20. The home of the parties, located at 2838 Stafford Circle, West Valley City, Utah, has a total value of \$290,000.00 with no mortgages on the same. It is equitable and just that the home be awarded exclusively to the Petitioner with no remaining right, title nor interest in the Respondent.

21. The Petitioner shall be solely responsible for all upkeep on the said home, as well as solely responsible for the payment of all costs associated with the same, including but not limited to all taxes, insurance, maintenance, etc.

22. Mr. Sellers shall execute a QuitClaim deed transferring the marital home to Ms. Sellers.

23. Pursuant to stipulation between the parties, they shall divide the marital personal

property in a manner and fashion that is acceptable to each. All premarital personal property, all inherited personal property and all personal property that belongs to either party by way of gift shall be awarded exclusively to the respective party.

24. The Petitioner currently has a 2002 Saturn with nothing owed on the same and the Respondent currently has a 2004 Camry with nothing owed on the same. Each of the said vehicles shall be awarded exclusively to each respective party.

25. The Petitioner is employed by the Granite School District as an Elementary Special Education Teacher. She has dramatically improved her condition through additional training and education and is expected to obtain her Master's Degree shortly.

26. The Court specifically finds that the Petitioner's financial needs do not establish that she should be awarded alimony. The Petitioner has been awarded the marital home and it is free and clear of all debts and mortgages. Her car has no debt thereon.

27. Petitioner's income, based upon her 2007 W-2 tax return is \$48,382 per year, or \$4,031.82 per month. She has demonstrated her total monthly living expenses in the approximate \$2,100 per month range, leaving her approximately \$1,000 per month for discretionary spending and investment or retirement, as she so chooses.

28. The Court declines to take into the alimony determination the Petitioner's request to have the Respondent pay her money for post-divorce savings investment or retirement account for her.

29. The Court specifically finds that the financial conditions and needs of the recipient spouse do not require alimony for the reasons set forth above. In addition, recipient's

earning capacity and ability to produce income is more than adequate to maintain her in the lifestyle to which she is accustomed. Moreover, the Petitioner will soon earn a masters degree which will also increase her income.

30. The Court finds that the Respondent would have the ability to pay some support. The Court has also taken into consideration the length of the marriage, and the fact that the parties have both worked during the marriage.

31. In short, the Court has considered all of the Jones factors, as well as the provisions of §30-3-5 of the Utah Code Annotated, regarding alimony.

32. The Respondent is employed as a Manager of Network Operations at Qwest and made \$95,044, in 2007, according to his W-2.

33. At the time of separation, April, 2005, there was no marital debt except approximately \$6,000.00 owed on the Petitioner's vehicle. This debt was paid off in full by the Petitioner prior to trial.

34. At the time of trial, the Petitioner had accumulated approximately \$18,000.00 as post separation debt.

35. The Petitioner is required to pay all debts she accumulated during the three years of separation from the Respondent, except for those debts which can be substantiated as relating to repairs, maintenance or upgrades of the marital home, Respondent shall pay and reimburse Petitioner one-half of those documented home expenses.

36. With the exception of the home expenses as outlined above, each party shall be solely responsible for any and all debt accumulated by the respective parties since the date of

separation.

37. Each of the parties shall be awarded what they have been able to save during the time of separation.

38. The parties purchased the marital home in October, 1980 and have made substantial improvements and upgrades since then.

39. Respondent made the down payment of approximately \$4,164.00 from premarital funds on the total purchase price of approximately \$79,000.00.

40. Additionally, in approximately 1991, the Respondent paid another \$10,000.00, which was applied completely against principle. This \$10,000.00 was monies inherited from the Respondent's Father, of which the Petitioner makes no claim of contribution.

41. Mr. Sellers shall be allowed an offset for these amounts, without appreciation.

42. The parties have a Merrill Lynch IRA of approximately \$20,000.00, an Ameriprise IRA of approximately \$8,000.00, the Petitioner has a retirement program through her work and the Respondent has a 401 (k) along with a Retirement package.

43. The parties are ordered to exchange information reflecting valuations closest to the date of trial, February 20, 2008, of their 401(k) retirements; pensions; and IRAs.

44. Each of these retirement investments are to be divided equally, valued as of their valuation closest to the date of trial, subject to the Respondent receiving \$143,857.35, to offset the home Ms. Sellers is receiving.

45. The \$143,857.35 amount is calculated as follows:

Value of home \$290,000

Less repayment to Mr. Sellers' of his premarital investment	-\$4,164
Less repayment to Mr. Sellers' of his inheritance pd. to home	<u>-\$10,000</u>
Net marital value of home, to be divided equally	\$275,836 / 2
 Each party's half of remaining marital value	 \$137,918

Offsets for amounts the Court indicated were to be paid from Mr. Sellers' equity to Ms. Sellers:

Mr. Seller's half of the real estate taxes paid by Ms. Sellers (\$4,569.31) during separation	-\$2,284.65
Mr. Sellers' half of the insurance costs paid by Ms. Sellers (\$3,130) during separation	-\$1,565
One-half of the difference between the values of the parties' respective vehicles (\$8,750)	-\$4,375

The net amount of these figures is:

Mr. Sellers	\$143,857.35
$\$137,918 + *\$14,164 - \$2,284.65 - \$1,565 - \$4,375$	
Ms. Sellers	\$146,142.65
$\$137,918 + \$2,284.65 + \$1,565 + \$4,375$	

46. The Franklin Templeton Investment account, in the approximate amount of \$7,000, shall be awarded to the parties' son, Weston, based upon the parties' agreement.

47. The Court approves the parties' agreement that the stock reflected in Petitioner's Exhibits 18 and 19 were Mr. Sellers' separate pre-marital property, and finds that they shall be awarded to him.

48. The parties shall cooperate to offset their respective retirement programs to minimize the number of QDRO's required.

49. Each side shall pay their own costs and attorney fees associated with this action as it appears that much of the litigation that has occurred has been asserted by the Petitioner against the Respondent in regards to allegations of child abuse. The Court has determined, and it was

determined by the experts, that no abuse ever occurred.

From the foregoing *Findings of Fact*, the Court now for good cause appearing, does hereby make and adopt its,

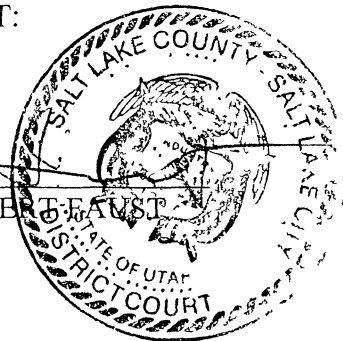
CONCLUSIONS OF LAW

1. The Court has both personal and subject matter jurisdiction in this matter.
2. The Petitioner shall be granted a Decree of Divorce on the grounds of irreconcilable differences, with the same to be final and absolute on entry, all consistent with the terms and conditions as set forth in the foregoing *Findings of Fact*.

Dated this 23 day of March 2009.

BY THE COURT:


Hon. Judge ROBERT T. FAUST



APPROVED AS TO FORM AND CONTENT

JOHN WALSH
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of January, 2009, a true and correct copy of the foregoing document was sent via first class mail, postage prepaid, to the following:

JOHN WALSH
2319 FOOTHILL DRIVE, SUITE 270
SALT LAKE CITY, UTAH 84109

A handwritten signature, likely of John Walsh, is written over a horizontal line. The signature is stylized and appears to be "JW".

APPENDIX B

MAR 20 2009

By 81 SALT LAKE COUNTY
Deputy Clerk

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Telephone 801.747.0822
Facsimile 801.747.0826

Attorneys for Petitioner

Amended Decree of Divorce @J



JD28396946

pages: 8

054902424 SELLERS, GLEN RAY

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE CITY, STATE OF UTAH

JOANN SELLERS,

Petitioner,

vs.

GLEN RAY SELLERS,

Respondent

Amended

DECREE OF DIVORCE

Case No. 054902424

Hon. Judge ROBERT FAUST
Hon. Comm. MICHELLE BLOMQUIST

THE ABOVE ENTITLED MATTER came on regularly for trial before the Honorable Robert Faust, District Court Judge, on Wednesday, February 20, 2008, at the hour of 8:30 A.M.. The Petitioner, JoAnn Sellers, appeared and was represented by Diana J. Huntsman, Attorney at Law. The Respondent, Glen Ray Sellers, appeared and was represented by John Walsh, Attorney at Law. The Court heard a partial Stipulation, entered into by the parties, and approved the same. The Court then heard testimony and considered exhibits and arguments, and based thereon issued a ruling.

Subsequently, an objection was filed regarding certain issues and a subsequent hearing

was held by the Court on June 2, 2008. At that time, the Petitioner, JoAnn Sellers, appeared and was represented by Diana J. Huntsman, Attorney at Law. The Respondent was not present, but was represented by John Walsh, Attorney at Law. The Court received a partial Stipulation regarding the resolution of certain objections, and approved the same. The Court then heard the argument of counsel regarding the remaining objections and issued a ruling thereon.

BASED THEREON, *Findings of Fact and Conclusion of Law* have been entered, from which, the Court now

ORDERS, ADJUDGES and DECREES

1. The Petitioner, JoAnn Sellers, is hereby granted a Decree of Divorce on the basis of irreconcilable differences with the same to become absolute and final upon entry.
2. Each of the parties is hereby awarded joint legal custody of their minor child, Cameron, with the Petitioner to be designated primary custodial parent.
3. Parent-time shall be divided as follows:
 - A. The Court hereby adopts the 20/10 parent-time split proposed by the custody evaluator. However, the Respondent may certainly have additional time, if agreed upon.
 - B. The Respondent shall have parent time with the minor child on every Tuesday, from the time that Cameron is out of school to and including Wednesday morning when the child goes to school.
 - C. The Respondent shall have every other weekend beginning from the time that Cameron is out of school on Friday to and including Monday morning when the

child goes to school.

D. The parties shall be bound by §30-3-35 of Utah Code Annotated regarding the additional times that the Respondent shall have parent-time with the minor child.

4. By virtue of the foregoing, the Respondent shall have a total of one hundred and twenty-two (122) over nights each year and the Petitioner shall have a total of two hundred and forty-three (243) over nights each year.

5. The parties shall be bound by the provision of §30-3-33, Utah Code Annotated. However, the first option to provide child care shall apply only if the other parent is unavailable for a period of 4 hours or more.

6. The parties shall each be free to take the minor child out of state and out of the United States, as long as each parent notifies the other parent in a timely fashion.

7. The Respondent shall pay to the Petitioner child support in the amount of \$729.26 per month.

8. Said child support shall continue until the month after the child turns 18 years of age, or until the month after the child's normal and expected date of graduation from high school, whichever occurs later.

9. The parties shall talk together to reach a decision on all major issues. If they cannot agree, they shall talk to Cameron's therapist, and accept his input. If they are still unable to resolve the issue, the therapist shall have the final say.

10. The parties shall provide medical and dental insurance for the minor child, as per the Utah Code Annotated sections regarding the same, with the parties deciding which policy has

the most benefit, and the most coverage, at the best cost. The parties shall equally divide Cameron's portion of the premiums as well as all uncovered out-of-pocket medical, dental, orthodontia and eye care, as provided in the Utah Code Annotated regarding the same.

11. Mr. Sellers shall maintain life insurance sufficient to cover his child support obligation for the years remaining. At the time of trial, that amount was approximately \$26,000. Mr. Sellers may reduce the amount over time, so long as he carries sufficient insurance to cover the remaining child support. The child shall be listed as the beneficiary, with Ms. Sellers being listed as trustee.

12. The parties shall alternate taking the tax exemption for the minor child, with the Petitioner being entitled to claim Cameron for odd numbered tax years, and the Respondent being entitled to claim him for even numbered tax years. The Respondent's right to claim the exemption shall be subject to his being current on child support as of December 31st of the tax year in question.

13. Also, in years when the Petitioner is entitled to the exemption, the Respondent may claim the exemption if he pays the Petitioner the difference, in advance, on state and federal taxes. If he does not pay her in advance, he will not be entitled to exercise this option.

14. After Cameron turns 18, the exemption will be determined by where Cameron resides.

15. For 2007, the parties may file jointly if they agree to do so, or Ms. Sellers shall be entitled to the exemption if they file separately.

16. The Petitioner, JoAnn Sellers, is hereby awarded all of the parties' right, title and

interest in the marital home located at 2838 Stafford Circle, West Valley City, Utah. The Petitioner shall be solely responsible for all upkeep on the home, as well as solely responsible for the payment of all costs associated with the same, including but not limited to all taxes, insurance, maintenance, etc.

17. Mr. Sellers shall execute a QuitClaim deed transferring the marital home to Ms. Sellers.

18. The parties shall divide the marital personal property in a manner and fashion that is acceptable to each. All premarital personal property, all inherited personal property and all personal property and all personal property that belongs to either party by way of gift shall be awarded exclusively to the respective party.

19. The Petitioner is hereby awarded the 2002 Saturn free and clear of any interest in the Respondent; and the Respondent is hereby awarded the 2004 Camry free and clear of any interest in the Petitioner.

20. Neither party is awarded any alimony from the other, either now or in the future.

21. The Petitioner shall pay debt she accumulated during the three years of separation from the Respondent, except for those debts which can be substantiated as relating to repairs, maintenance or upgrades of the marital home. Respondent shall pay and reimburse Petitioner one-half of those documented home expenses. Petitioner shall submit in writing one-half of those documented home expenses within (90) days of entry of this Decree, and any expense that she does not designate within said ninety (90) days shall be her sole expense and obligation.

22. With the exception of the home expenses outlined above, each party shall be

solely responsible for any and all debt accumulated by him or her since the date of separation.

23. Each of the parties shall be awarded what they have been able to save during the time of separation.

24. The parties own a Merrill Lynch IRA of approximately \$20,000.00; an Ameriprise IRA of approximately \$8,000.00; the Petitioner has a retirement program through her work; and the Respondent has a 401 (k) along with a Retirement package.

25. The parties are ordered to exchange information reflecting valuations closest to the date of trial, February 20, 2008, of all their 401(k) retirements; pensions; and IRAs.

26. Each of these shall be divided between the parties as per Woodward, valued as of the date of trial, February 20, 2008, subject to the Respondent receiving an offset of \$143,857.35, for his equitable interest in the home offset by various credits outlined in the Court's *Findings of Fact and Conclusions of Law*.

27. The parties shall cooperate to offset their respective retirement programs to minimize the number of QDRO's required.

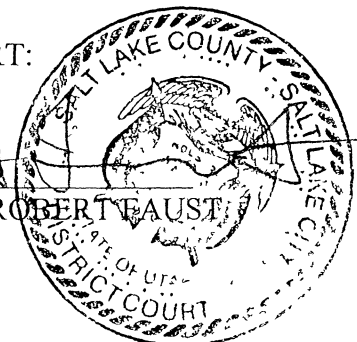
28. Each side shall pay their own costs and attorney fees associated with this action.

29. Each of the parties shall cooperate to sign whatever papers or to take any other action to implement the terms and conditions of this Decree of Divorce.

Dated this 23 ^{March} day of March, 2009.

BY THE COURT:


HON. JUDGE ROBERT FAUST



APPROVED AS TO FORM AND CONTENT

JOHN WALSH
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of January, 2009, a true and correct copy of the foregoing document was sent via first class mail, postage prepaid, to the following:

JOHN WALSH
2319 FOOTHILL DRIVE, SUITE 270
SALT LAKE CITY, UTAH 84109

