

2009

Jody G. Robinson v. Everett D. Robinson : Response to Petition for Rehearing

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JODY G. ROBINSON,

Petitioner and Appellee,

vs.

EVERETT D. ROBINSON,

Respondent and Appellant.

Case No. 20090007-CA

ANSWER TO PETITION FOR REHEARING

Appeal from Judgment Granting Petitioner's Request for Protective Order

In the Fourth Judicial District Court
for Utah County, State of Utah

Honorable James R. Taylor
District Court Judge

Everett D. Robinson
Respondent/Appellant
Pro Se
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IN THE UTAH COURT OF APPEALS

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vs.

EVERETT D. ROBINSON,
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ANSWER TO THE PETITION FOR REHEARING

ARGUMENT

I. THE RESPONDENT'S PETITION FOR REHEARING SHOULD BE DENIED.

In his Petition for Rehearing, the Respondent makes three types of arguments. First, he raises new procedural objections to the actions of the trial court in issuing a protective order against him. Second, he restates arguments made previously in his Appellant's Brief and Reply Brief. Third, he argues that this Court should grant a rehearing because he would like to submit the audio recording and/or transcript from the district court hearing held February 13, 2009. None of these reasons is sufficient to justify the relief he requests, and his Petition for Rehearing should be denied.

A. Respondent's Attempt to Raise New Objections for the First Time in his Petition for Rehearing Should Be Ignored.

The Respondent begins his Petition for Rehearing by making new arguments on why the trial court erred in issuing a protective order against him. He should not be permitted to raise a substantive argument for the first time in a Petition for Rehearing. A Petition for Rehearing is intended to address points of law which the moving party alleges that this Court "overlooked or misapprehended." Utah Rules of Appellate Procedure § 35 (a) (2009).

The Respondent argues that the trial court made a procedural error by not holding an objection hearing before signing the final protective order. He attempts to cite Utah Code § 78B-7-106 in support of his argument. The statutory authority he cites refers to the initial hearing on the request for protective order, not to objection hearings; moreover, the Respondent did not file a timely Objection to the Commissioner's Recommendation. (Appellant's Br. At 25) The Respondent further argues that the Court did not properly consider his thirty-two pages of objections filed with the trial court in opposition to issuance of the protective order after his time to object to the Commissioner's Recommendation had run. Judge Taylor did grant a hearing in which the Judge addressed his objections. The Respondent objects that Judge Taylor could not possibly have addressed his objections properly during that five-minute hearing (Pet. For Rehearing at 6-7). There was no need for the Respondent to present extended oral argument on his objections; ostensibly, thirty-two pages of objections should speak for themselves.

The trial court is not required to give extensive rationale from the bench on why it is dismissing the Respondent's objections. The trial court had reviewed the objections and found that they had no merit.

B. The Respondent's Petition to Accept the District Court Transcript into the Record and Grant a Rehearing Should Be Denied.

The Respondent also requests that he be granted a rehearing so that this Court may consider an audio recording and/or transcript of the February 13, 2009 hearing before Judge Taylor. "Parties claiming error below and seeking appellate review have the duty and responsibility to support their allegations with an adequate record." State v. Wetzel, 868 P.2d 64, 67 (Utah 1993). The Respondent omitted to obtain a transcript previously, apparently because he did not think it necessary to the arguments raised in his Appellant's Brief or Reply Brief. The Respondent requested the hearing CD on March 18, 2010, after this Court issued its Memorandum Decision.

The Respondent now wishes to raise new objections to the issuance of the protective order based on the actions or omissions of the trial court at the February, 13, 2009 hearing, as stated above. If the Respondent wished to submit a transcript of the February 13, 2009 hearing, he had an opportunity to do so prior to submitting his Appellant's Brief. This Court should not permit the Respondent to bring a new appeal simply because his first grounds for appeal were unsuccessful. As stated above, raising a new objection is not the purpose of a Petition for Rehearing, which is intended to allow a party to present claims that the Court "has

overlooked or misapprehended” some point of law previously argued on appeal.

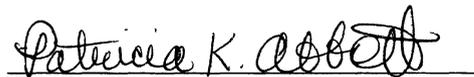
Utah Rules of Appellate Procedure § 35 (a) (2009).

C. The Respondent’s Restatement of his Arguments Raises No New Grounds Justifying a Rehearing.

Interspersed with new objections not raised in the Respondent’s Appellant’s Brief or Reply Brief, he restates the arguments he made unsuccessfully in his Appellant’s Brief and Reply Brief.

The Court has already heard the Respondent’s substantive arguments in favor of reversing the issuance of the protective order. The Court neither overlooked nor misapprehended any point of law and has rejected the Respondent’s arguments on the points of law he enunciates. There is no reason to grant the Respondent’s request for a rehearing based on arguments that have already been addressed by this Court in its Memorandum Decision.

DATED, this 26th day of April, 2010.


Patricia K. Abbott
Attorney for Petitioner/Appellee

CERTIFICATE OF SERVICE

I certify that on this 26th day of April, 2010, I served a copy of the attached Answer to Petition for Rehearing upon Everett D. Robinson, Respondent/Appellant, by mailing it to him by first class mail with sufficient postage prepaid to the following address:

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