

2001

Vanda Holman Naylor v. Melvin Charles Naylor : Reply Brief

Utah Supreme Court

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Joseph R. Howell; L. J. Barclay; Attorneys for Appellant.

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IN THE SUPREME COURT OF THE STATE OF UTAH

VANDA HOLMAN NAYLOR,

Plaintiff and Respondent,

-vs-

Case No. 14680

MELVIN CHARLES NAYLOR,

Defendant and Appellant.

REPLY TO BRIEF OF RESPONDENT

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATEMENT OF COUNSEL FOR DEFENDANT AND APPELLANT

1. Counsel for plaintiff and respondent dose not cite any Law in his Brief of 5 pages.
2. The firm of Barclay and Barclay represented the plaintiff and respondent in a divorce action which the files, minute entry and index show, filed September 17, 1956. A divorce was granted to plaintiff and respondent upon September 19, 1956, by Judge Stewart M. Hanson, Sr.
3. Neither David Barclay or L. J. Barclay represented the Defendant and Appellant at any time in the divorce action granted September 19, 1956.
4. L. J. Barclay, Attorney at Law, the surviving member of the firm of Barclay and Barclay, Attorneys and Counselors at Law, never did at any time represent the Defendant and Appellant in any legal matter until the present matter.
5. L. J. Barclay Attorney and Counselor at Law never did at any time kick or order the Plaintiff and Respondent to leave his office, and never made the statement to Plaintiff and Respondent that he was employed by the Defendant and Appellant in the divorce action.

6. There is no evidence other than the statement of the Plaintiff and Respondent that Mr. McCullough would not take her divorce case unless she could pay him a fixed sum of money. Knowing Mr. McCullough for many years I know the statements of the Plaintiff and Respondent as to Mr. McCullough are untrue and false. Question what has such a statement pertaining to Mr. McCullough have to do with the merits of this case?

7. There is no evidence, whatsoever, that Plaintiff and Respondent and the Defendant and Appellant resumed their marital status or had any sexual intercourse, whatsoever, and no one testified that they did at the time of the trial. Question what has this to do with the merits of this case?

8. True they met on various occasions to discuss the operation of the business property on South State Street, Salt Lake County, State of Utah, which they held jointly.

9. Never at any time had the Decree of Divorce of September 19, 1956 been set aside. Plaintiff and Respondent and Defendant and Appellant never remarried each other after the Decree of Divorce of September 19, 1956, at least no marriage certificate was put in evidence.

10. Counsel, L. J. Barclay, admits that he has a remarkable memory, which he has developed by extensive training. Counsel L. J. Barclay's memory was refreshed by the checking of the contents of the files in his office, the checking of the records in the County Records Office for Salt Lake County, State of Utah, as to when Plaintiff and Respondent recorder her Warranty Deed from Defendant and Appellant, and when Defendant and Appellant recorded his Warranty Deed from the Plaintiff and Respondent, also the checking of the records in the Salt Lake County Treasurers Office to see who had paid the taxes on the respective pieces of property.

11. The Salt Lake County Treasurers Office shows that Plaintiff and Respondent paid taxes on the property that was deeded to her by Warranty Deed from the Defendant and Appellant. Defendant and Appellant paid taxes on the property deeded to him by Warranty Deed from Plaintiff and Respondent.

12. The business property on South State Street, Salt Lake County, State of Utah, held jointly by Plaintiff and Respondent and Defendant and Appellant each paid one-half of the taxes personally, as per written agreement signed by both parties.

13. The statement that the Plaintiff and Respondent paid one-half of the taxes on the property deeded by Plaintiff and Respondent to Defendant and Appellant is untrue and false according to the records in the Office of the Treasurer for Salt Lake County, State of Utah.

14. Plaintiff and Respondent and Defendant and Appellant did pay the taxes and the mortgage on the acre but that was prior to the division of the property, as set out in the Warranty Deed of Plaintiff and Respondent to Defendant and Appellant, and the Warranty Deed from the Defendant and Appellant to the Plaintiff and Respondent, and the written agreement signed by Plaintiff and Respondent and Defendant and Appellant as to the management and their respective interest in the business property on South State Street, Salt Lake County, State of Utah.

15. The reason that Plaintiff and Respondent did not receive any alimony at the time of the entry of the Decree of Divorce was because she waived her alimony, because she wanted the property upon which the duplex was located, she was living in one side rent free, and renting the other side for \$140.00 per month, plus she was receiving \$175.00 a month from the business property making a total of \$315.00 a month income.

16. The only reason that my office ever got into this case was because of the repeated lies and accusations by both Plaintiff and Respondent and her Attorney and Counsel at Law, Nolan J. Olsen. The file speaks for its self. Plaintiff and Respondent aided by her Counsel have stated to many people and on many occasions that she did not sign the Warranty Deed from her to the Defendant and Appellant. That it was not notarized by Lawrence J. Barclay, and not witnessed by David Barclay that it was a forgery. That on one occasion after this action had been started Defendant and Appellant brought Plaintiff and Respondent to my office regarding the Warranty Deed signed by her to Defendant and Appellant. L. J. Barclay stated to the Plaintiff and Respondent what do you mean by telling stories that the Warranty Deed signed by you is a forgery.

To which the Plaintiff and Respondent in the presents of her 3 daughters, her son in-law, Isabel Barclay, Mr. Naylor and myself that it was not her signature and that Nolan had said it was not her signature, further if it was her signature she must have been drunk when she signed it. Counsel for Plaintiff and Respondent told Defendant and Appellant

Warranty Deed of Plaintiff and Respondent to Defendant and Appellant that it was not her signature, and could not be her signature and he made comparisons of her signature after 20 years. He also told Defendant and Appellant that according to the Divorce file he was not even divorced from the Plaintiff and Respondent. When Defendant and Respondent tried to explain the transaction by saying call Mr. L. J. Barclay because he knows all about the matter. Counsel for Plaintiff and Respondent I do not want anything to do with L. J. Barclay and took the Defendant and Appellant to the door of his office.

17. Counsel for Plaintiff and Respondent has on many occasions stated to Joseph R. Howell that his client was old, senile for forgetfull. He also has made the same statement to L. J. Barclay and Isabel Barclay that his client was old, senile and forgetfull. I am interest in upholding the integrity of myself, my office and that of my deceased brother, David Barclary. My deceased brother, David Barclay, who managed the office of Barclay and Barclay prepared all of the papers in this matter. He was present on all occasions including the time when Plaintiff and Respondent received \$1,000.00 for her interest in the back property which she sold to the Defendant and Appellant. He was also present when Plaintiff and Respondent received the sum of \$147.75 the difference in the value of the personal property that each party to the divorce action received, making a total of \$1,147.75 paid to Plaintiff and Respondent upon the 15th day of August, 1956. I say once more as I have often said during this case, and I also said it to Judge Stewart M. Hanson, Sr., if only my deceased brother could come back and talk and explain the situation. The Plaintiff and Respondent at one time denied that she ever received the sum of \$1,147.75 from the office of Barclay and Barclay, her Attorneys and Counselors at law.

18. The letter of August 31, 1957 was mailed to the Plaintiff and Respondent pertaining to her question as to the business property on South State Street, Salt lake County, State of Utah, was more than 2 months after the signing and the recording of the 2 Warranty Deeds, one from Plaintiff and Respondent to the Defendant and Appellant and one from Defendant and Appellant to the Plaintiff and Respondent.

19. As to the actions of Judge Stewart M. Hanson, Sr., I am at a loss to understand why that he was so anxious to exclude me from the Court room. Why that he continually told Isabel Barclay to get me out of the Court room, take me to dinner or back to the

office, but get me out of the Courts Building. Why he objected to me being a witness for the Defendant and Appellant. I am told that his health has been impaired both physical and mental for the past 2 years, and that he was tired and weary of his work because of being over loaded with work. I have also heard of 2 other reasons.

20. Counsel Joseph R. Howell requested L. J. Barclay to aid him in the trial of this matter, and to be a witness as to the real facts in the matter, stating to L. J. Barclay that he knew all about the case. At the time of the trial Counsel Joseph R. Howell was recovering from a heart attack, plus he had a sore foot. His physical condition was apparent to the Court because Judge Stewart M. Hanson, Sr. told Counsel that he could sit down to try the case.

21. All during these proceedings prior to the time of the trial the Plaintiff and Respondent and her Counsel, Nolan J. Olsen, contended that the Warranty Deed from Plaintiff and Respondent to Defendant and Appellant was a forgery. Counsel, Joseph R. Howell, was taken by surprise when Plaintiff and Respondent and her Counsel, Nolan J. Olsen, admitted under oath that she had signed the Deed. Plaintiff and Respondent and her Counsel, Nolan J. Olsen then stated and introduced P. 10, which was a list of personal property, which Plaintiff and Respondent and her Counsel, Nolan J. Olsen contended was for the \$1,147.75 by her from her than Attorneys and Counselors at Law, Barclay and Barclay, by L. J. Barclay.

21. Counsel, Joseph R. Howell, was taken by surprise when Judge Stewart M. Hanson, Sr. took the bench and waived the original Divorce files stating I know all about the case. Next when Judge Stewart M. Hanson, Sr. said to L. J. Barclay what are you doing here, to which L. J. Barclay responded I am here to protect my integrity, the integrity of my office and that of my deceased brother and partner, David Barclay. To which Judge Stewart M. Hanson said we will exclude witness L. J. Barclay. Then Counsel, Nolan J. Olsen, moved to the exclusion of the witness to--wit L. J. Barclay, Attorney and Counselor at Law.

22. P. 10 The list of personal property introduced at the time of the trial never at any time existed until the time of the trial. Plaintiff and Respondent and her Counsel, Nolan J. Olsen, were well aware of this fact. Many of the articles were not in existence and were purchased after the Decree of Divorce signed September 19th 1956. The contents of the

alleged P. 10 is contrary to 5 B of the complaint in the Divorce action, (b. That the parties hereto have to their mutual satisfaction made divisions between themselves of all personal property owned by them,) and 5 B of the Findings of Fact, (5 b. That the parties hereto have to their mutual satisfaction made division between themselves of all personal property owned by them) together with the Bill of Sale from Plaintiff and Respondent to Defendant and Appellant signed upon the 26th day of June, 1957, and the Bill of Sale signed by the Defendant and Appellant to the Plaintiff and Respondent upon the 26th day of June 1957.

23. As a conclusion both Counsel for Defendant and Appellant are unable to understand the tactics of Plaintiff and Respondent and her Attorney and Counselor at Law, Nolan J. Olsen, in face of 2 Warranty Deeds made, executed and delivered to the respective parties upon the 26th day of June, 1957, and recorded by each party in the office of the County Recorder for Salt Lake County, State of Utah, almost 20 years ago, 2 Bills of Sale made, executed and delivered upon the 26th day of June, 1957, covering the personal property that each party was to receive, the agreement signed by both parties signed upon June 26th 1957, as to the management of the business property on South State Street, Salt Lake County, State of Utah.

Respectfully submitted

Joseph R. Howell

and

L. J. Barclay

Attorneys for Defendant
and Appellant
Melvin Charles Naylor