

1989

Gaydi S. Allred v. John Franklin Allred : Reply Brief of Appellant

Utah Court of Appeals

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BRIEF

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DOCKET NO. 890335-CA IN THE UTAH COURT OF APPEALS

STATE OF UTAH

GAYDI S. ALLRED,

Plaintiff-Respondent,

vs.

JOHN FRANKLIN ALLRED,

Defendant-Appellant.

Court of Appeals No. 890335-CA
Argument Priority: 146

REPLY BRIEF OF APPELLANT

An Appeal from the Third Judicial District Court
Judge Scott Daniels, Presiding

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Utah Court of Appeals
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SUMMARY OF ARGUMENT

1. The Defendant-Appellant did not agree to the child support order or waive his right to contest the child support order s contended by the Respondent.

2. There is no clear uncontroverted evidence capable of supporting the arbitrarily low child support amount in light of the fact that the court did not enter Findings which support the child support amount.

3. A party who chooses to appear Pro Se, should be held to the same standard of knowledge and practice as any qualified member of the Bar.

4. The Respondent has failed to show any legal basis for the court order requiring the child support to be paid into a trust account.

ARGUMENT

POINT I.

THE DEFENDANT-APPELLANT DID NOT AGREE TO THE
CHILD SUPPORT ORDER OR WAIVE HIS RIGHT TO
CONTEST THE CHILD SUPPORT ORDER.

The Respondent misquotes the record in this case by contending that Mr. Allred approved of the Court's award of \$100.00 per month in child support payments. At page 9 of the Brief, the Respondent has quoted out of context from the Transcript of the December 21, 1988, hearing, claiming that Mr. Allred "agree" with the token amount of support.

A review of that hearing and the full transcript will reflect that Mr. Allred consistently contended that child support should be applied based upon the guide lines and never stipulated or agreed that the child support should be \$100.00 per month. The record states that after both parties had made their arguments, the Court indicated its ruling, commencing at page 33 of the Transcript. The discussion then moved on to the off-sets which would be made because of prior orders and judgments and credits in relation to support for other children. Mr. and Mrs. Allred discussed with the judge as to when the child support of \$100.00 a month should commence in light of those credits. When Mr. Allred made the statement "perfect" (Transcript, page 36, line 12) he was referring to the court's order to take account for the credits and not the level of \$100.00 a month as child support.

The legal argument made by the Respondent that the Appellant agreed in some manner with the trial court is not supported by the record. The reliance of one word taken out of context by the Responden evidences the lack of a legal or factual basis to support the order of the trial court.

POINT II.

THERE IS NO CLEAR UNCONTROVERTED EVIDENCE
CAPABLE OF SUPPORTING THE ARBITRARILY LOW
CHILD SUPPORT AMOUNT.

The decision of Bake v. Bake, 772 P.2d 461 (Utah Appeals, 1989) requires the court to make sufficient findings of fact to support an award of child support. As set forth in the Brief of

the Appellant, the Findings of Fact in this case do not support the minimal child support of \$100.00. Instead, the findings indicated that the Court abused its discretionary powers in setting the amount of support. With proper findings, this court could defer to the trial court's setting of the level of child support lower than the guide line amount. Jefferies v. Jefferies, 752 P.2d 909 (Utah App. 1988). However, there is not findings which support the amount set by the court in this matter and in light of the lack of those findings, this court should find that the trial court abused its discretion in disregarding the child support guide lines and other evidence presented at the trial.

In the recent case of Jense v. Jense, 124 Utah Adv. Rep. 46 (Ct. App. 1989), the court held that the clear weight of the evidence was against the findings and order of the trial court. The court stated that an order modifying a decree will be overturned if the evidence clearly preponderates against the findings or the court abused its discretion citing Thompson v. Thompson, 709 P.2d 360 (Utah 1985). The order in this case is not even supported by sufficient findings and should be overturned as a clear abuse of discretion.

The trial court had clear instructions from past legal precedent to enter sufficient findings of fact detailing the basis for the award. Since those findings of fact and conclusions were never entered, this court should determine that the amount of child support constituted an abuse of discretion and should reverse the order for an entry an amount of child support consistent with

findings of fact and conclusions of law.

POINT III.

THE PLAINTIFF-RESPONDENT, A PARTY WHO CHOSE TO REPRESENT HERSELF, SHOULD BE HELD TO THE SAME STANDARD OF KNOWLEDGE AND PRACTICE AS ANY QUALIFIED MEMBER OF THE BAR.

The Respondent contends that the procedural defects which took place in this case should be ignored because the Respondent was a layman acting as her own attorney. The Supreme Court in the case of Nelson v. Jacobsen, 69 P.2d 1207 (Utah 1983), cited by the respondent, clearly states that a lay person, if they elect to proceed as their own attorney, will be held to the same standard of knowledge and practice as any qualified member of the Bar. That decisions indicates that the court should allow to lay persons without technical knowledge consideration in the presentation of the case. However, the Nelson v. Jacobsen case states that reasonable consideration does not require the court to explain legal rules or otherwise attempt to redress the ongoing consequences of the party's decision to function in the capacity for which he was not trained.

In this case the Respondent attempted to use the procedural vehicle of an untimely objection to findings of fact and conclusions of law to modify a previous order of the court. The cases throughout the United States are consistent that a litigant who presents his own case and acts as his own attorney is bound by the same rules in relation to procedure and orders as members of the Bar. Loomis v. Seely, 677 P.2d 400 (Colo. App. 1983) State

v. Harrold, 750 P.2d 959 (Id. App. 1988) and Newsome v. Farer, 708 P.2d 327 (N.M. 1985)

The exhibits which the Respondent has attached to her brief support the rule requiring Pro Se litigants to follow the rules of procedure. The Respondent bombarded the court with hand written letters not in correct procedural form and containing irrelevant information intended only to prejudice the court against the Defendant-Appellant. The Respondent is asking this court to rule that Pro Se litigants may ignore the Code of Judicial Administration, the Rules of Civil Procedure, and write ex parte, irrelevant letters to the court. Granting such a drastic privilege to persons who act as their own attorneys, will create two sets of procedural rules, one for attorneys, another for Pro Se litigants.

POINT IV.

THE RESPONDENT HAS FAILED TO SHOW ANY LEGAL BASIS FOR WHICH THE COURT ORDER REQUIRING THE CHILD SUPPORT TO BE PAID INTO A TRUST ACCOUNT CAN BE BASED.

As acknowledged by the Respondent, the court clearly stated on the record at the December 21st hearing that the \$100.00 per month child support was to be required for Cory only until Cory reached his 18th birthday. (See page 9 of the Respondent's Transcript). However, in an attempt to justify the unique ruling to pay child support into trust and not to be used for the immediate needs of the child, the Respondent has been forced to argue that this order can be supported by this court finding that the court intended that the child support be paid past age 18. (See

page 20 of Respondent's Brief). The Respondent's theory to support the ruling is inconsistent with the statements of the Court from the bench.

The Respondent fails to describe any statute or rule which allows the court to create an estate for the child's benefit and to disallow child support to the custodial parent. There is not basis under law to justify the trial court's untimely granting of the Respondent's "request" to avoid child support payments and create a trust as the recipient of the child support.

CONCLUSION OF RELIEF SOUGHT

The Trial court did not enter adequate findings justifying either the Order setting the support or the order transferring the support to the adult child by means of the trust. The Court also lacked jurisdiction and did not have any available procedure to amend the order on the basis of the Plaintiff's untimely "request".

Therefore, this court should reverse the order entered May 5, 1989, which finally adopted the amendment made by interlineation at the hearing made on March 10, 1989, allowing the payment of child support into a trust fund and setting child support at \$100.00 per month. The Court should then remand the matter to the trial Court to enter child support consistent with the child support guidelines. This Court should instruct the lower court not to permit diversion of the child support to a trust fund rather than paying the support directly to the appellant for current support of the minor child.

Respectfully submitted,

RANDALL GAITHER
Attorney for Defendant-Appellant

PROOF OF SERVICE

Counsel of the Defendant-Appellant hereby certifies that four copies of this brief were served upon the Counsel for the Plaintiff-Respondent, Vicki Rinne by mailing the copies to the address on file with the Court of 9963 North Meadow Lane, Highland, Utah 84003 on this ____ day of January, 1990.

DATED this ____ day of January, 1990.

RANDALL GAITHER
Attorney for Defendant-Appellant