

1999

Jody Greaves v. Jerry Baker : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JODY GREAVES,

Petitioner/Appellee,

vs.

JERRY D. BAKER,

Respondent/Appellant.

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Case No. 990689-CA

Priority 10

REPLY BRIEF OF APPELLANT

Appeal from two Orders of the Third District Court, Salt Lake County, denying
Respondent/Appellant's Motions to Dismiss Petitioner/Appellee's Common Law Marriage Cause
of Action.

Honorable Leslie Lewis, Judge.

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FILED

Utah Court of Appeals

MAR 15 2000

Julia D'Alessandro
Clerk of the Court

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IN THE UTAH COURT OF APPEALS

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Petitioner/Appellee,

vs.

JERRY D. BAKER,

Respondent/Appellant.

Case No. 990689-CA

REPLY BRIEF OF APPELLANT

Appellant hereby submits his Reply Brief to Point I, pages 5 and 6, of the Brief of Appellee.

ARGUMENT

POINT I

THE COURT OF APPEALS HAS JURISDICTION TO HEAR AND DECIDE THIS CASE.

Utah Code Ann. § 78-2a-3-(2)(h) provides as follows:

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over: ***

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;

Thus, the Court of Appeals has jurisdiction over this domestic relations interlocutory appeal involving two non-final orders.

Appellee relies on Utah Supreme Court jurisdiction based on Utah Code Ann. § 78-2-2(3)(g) which provides as follows:

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over: ***

(g) *a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution; (emphasis added)*

The orders before this Court on an interlocutory appeal are not final orders.

The Common Law Marriage Statute, Utah Code Ann. § 30-1-4.5 (1987) has been held unconstitutional insofar as the adjudicatory time limit requirement of the statute is concerned, but the Common Law Marriage Statute has not been held "unconstitutional on its face." The terms "unconstitutional on its face" and "facially unconstitutional" are synonymous insofar as my research has revealed.

The Case of *People v. Rodriguez*, 77 Cal.Rptr.2d 676 (Cal.App. 2 Dist. 1998) states the rule as follows:

As a general rule, a statute is "facially unconstitutional" if it conflicts so directly with a constitutional provision that the statute is completely invalid and unenforceable in all circumstances.

The court below has held the adjudicatory time limit requirement to be a violation of Article I, Section 11 (Open Courts Provision) of the Utah Constitution, but the balance of the statute is still being enforced against Appellant. Appellant contends that the Common Law Marriage Statute is constitutional in its entirety and, if not, then the balance of the statute being enforced against Appellant is not severable and the entire statute as applied to Appellant is invalid, although the Common Law Marriage Statute certainly could be valid as to other factual circumstances.

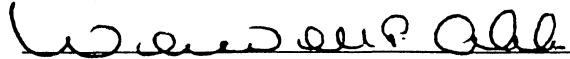
CONCLUSION

The Court of Appeals is vested with jurisdiction to hear and decide this interlocutory appeal and the Utah Supreme Court lacks jurisdiction because the orders appealed

are not final and the Common Law Marriage Statute has not been held "unconstitutional on its face" or "facially unconstitutional."

Dated this 15th day of March, 2000.

Respectfully submitted,



Wendell P. Ables

Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of March, 2000, two true and correct copies of the foregoing **Relief Brief of Appellant** were mailed, postage prepaid, to the following:

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