Brigham Young University Law School
BYU Law Digital Commons

Utah Court of Appeals Briefs

2010

Dana Henshaw v. Dee A. Henshaw : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3

Part of the Law Commons

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

David A Van Dyke; Attorney for Petitioner/Appellee.
Dee Henshaw; Respondent/Appellant.

Recommended Citation

Reply Brief, *Dana A. Henshaw v. Dee A. Henshaw*, No. 20100516 (Utah Court of Appeals, 2010).
https://digitalcommons.law.byu.edu/byu_ca3/2400

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

DANA HENSHAW Petitioner/Appellee, vs DEE A. HENSHAW, Respondent/Appellant.	Appellate No. 20100516 Civil No. 064600004

REPLY BRIEF OF APPELLANT DEE HENSHAW

FILED
UTAH APPELLATE COURT
APR 2 5 20[illegible]

David VanDyke
P.O. Box 194
Teasdale, UT 84773

Dee Henshaw
P.O. Box 1192
Washington, Utah 84780

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

IN THE UTAH COURT OF APPEALS

DANA HENSHAW Petitioner/Appellee, vs. DEE A. HENSHAW, Respondent/Appellant.	Appellate No. 2010516 Civil No. 064600004

REPLY BRIEF OF APPELLANT DEE HENSHAW

David VanDyke
P.O. Box 194
Teasdale, UT 84773

Dee Henshaw
P.O. Box 1192
Washington, Utah 84780

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES: ....

ARGUMENT: 1-23

POINT 1: I DID NOT FAIL TO MARSHAL THE EVIDENCE: 1-2

POINT 2: THE DIVORCE COURT WAS WRONG WHEN IT RULED THAT MY EX-WIFE HELPED WATER CROPS: 2

POINT 3: THE DIVORCE COURT WAS WRONG WHEN IT RULED THAT MY EX-WIFE HELPED CARED FOR MY HORSES: 2-3

POINT 4: THE DIVORCE COURT WAS WRONG WHEN IT RULED THAT MY EX-WIFE HELPED MAINTAIN BUILDINGS AND FENCES 3

POINT 5: THE DIVORCE COURT WAS WRONG WHEN IT RULED THAT MY EX-WIFE HELPED WITH CLEANING AND MAINTENANCE ON MY TWO APARTMENTS: 4-5

POINT 6: THE DIVORCE COURT WAS WRONG WHEN IT FOUND THAT MY EX-WIFE'S PARENTS LOANED US ANY MONEY: 5-6

POINT 7: THE DIVORCE COURT WAS WRONG WHEN IT FOUND THAT MY EX-WIFE USED ANY OF THE MONEY FROM HER PARENTS SHE CLAIMS THAT THEY LOANED TO US FOR FAMILY EXPENSES: 6-8

POINT 8: THE DIVORCE COURT WAS WRONG WHEN IT IMPROPERLY AND UNLAWFULLY CONCLUDED THAT MY EX-WIFE WAS ENTITLED TO HALF OF THE RANCH: 8-11

POINT 9: THE DIVORCE COURT WAS WRONG WHEN IT DECIDED THAT MY EX-WIFE DID ANYTHING THAT CONTRIBUTED TO THE PRESERVATION OF THE RANCH: 11-12

POINT 10: THE DIVORCE COURT WAS WRONG WHEN IT DECIDED THAT IT COULD AWARD HALF OF THE RANCH TO MY EX-WIFE EVEN THOUGH I HAD SOLD IT TO PINE CREEK: 12-15

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

PAGE

POINT 11: JUDGE LEE RULED THAT MY EX-WIFE HAD NO INTEREST IN THE RANCH: 16-17

POINT 12: THE DIVORCE COURT IMPROPERLY AND UNLAWFULLY ORDERED THAT THE RANCH HAD TO BE SOLD AND THE PROCEEDS DISTRIBUTED EQUALLY BETWEEN ME AND MY EX-WIFE: 17-18

POINT 13: THE DIVORCE COURT IMPROPERLY AND UNLAWFULLY ORDERED THAT I HAD TO REMOVE ALL OF MY PERSONAL PROPERTY FROM THE RANCH WITHIN THIRTY DAYS OF THE SUPPLEMENTAL DECREE OF DIVORCE: 18-19

POINT 14: MY EX-WIFE'S CLAIM THAT I FAILED TO TIMELY APPEAL JUDGE ANDERSON'S RULING REGARDING MY SUPPOSED RULE 11 SANCTIONS IS NOT TRUE. IT IS A VIOLATION OF RULE 40(a) OF THE UTAH RULES OF APPELLATE TO PROCEDURE: 19-20

POINT 15: JUDGE ANDERSON WAS WRONG WHEN HE RULED THAT I VIOLATED RULE 11 OF THE UTAH RULES OF CIVIL PROCEDURE: 20-23

POINT 16: MY EX-WIFE IS NOT ENTITLED TO ANY ATTORNEY'S FEES. . 23

CONCLUSION AND RELIEF SOUGHT: 23-24

SIGNATURE: 25

CERTIFICATE OF MAILING: 25

ADDENDUM: 26

Affidavit of Doug White: 1-5

Affidavit of Jane White: 6-10

TABLE OF AUTHORITIES

STATUTES:

Utah Code §78-40-2: 13-15

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

PAGE

RULES:

Rule 40 Utah Rules of Appellate Procedure: 19-20

Rule 11 Utah Rules of Civil Procedure: 19-21, 23-24

CASE LAW:

Bradbury v. Valencia, 5 P.3d 649 (Utah 2000): 20

Burke vs. Burke, 733 P2.d 133 (Utah 1987): 9

Hall vs. Hall, 858 P2.d 1018 (Utah App. 1993): 9

Thomas vs. Thomas, 987 P2.d 603 (Utah App. 1999): 9

Thompson vs. Thompson, 208 P.3d 539 (Utah App. 2009): 9

Henshaw v. King, Sixth District case No. 00600007 : 16

Universal C.I.T. Corp. V. Courtesy Motors, 8 Utah 2d 275, 333 P.2d 628 (Utah 1959): . 16

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

POINT 1: I DID NOT FAIL TO MARSHAL THE EVIDENCE.

I did not fail to marshal the evidence in this case, although I did not put a separate section in my brief called marshaled facts. However, I did say that the only evidence that could be considered to support the divorce court's decision is my ex-wife's testimony, and that is the truth. There was no other evidence at the trial that supports the divorce court's decision. My ex-wife admits that in her brief.

I cannot marshal evidence that does not exist. My wife did not present any evidence other than her own testimony that she watered crops, which she could not have done because Jack King shut off the irrigation water in 1993, and she was claiming she watered crops in 1995, when no crops were grow because I had no water. She did not have anyone come to court and say that she ever watered any crops or that any crops were grown after 1993. Not even her parents would go to court and lie for her.

She also she did not present any evidence, other than her own testimony, that she fed and cared for my horses, helped maintain buildings and fences, or helped with the cleaning and maintenance of my two apartments. No one other than my ex-wife testified that she did any of those things. And her parents would not even go to court and lie for her and say that she fed and cared for my horses, helped maintain buildings and fences, or helped with the cleaning and maintenance of my two apartments.

There was no evidence that my ex-wife's parents ever loaned us any money, other that my ex-wife's testimony. She did not show any documents showing that her parents ever loaned us any money. And her parents would not go to court and lie for her and say that they loaned us any money.

There was no evidence that my ex-wife ever used any money that she claimed she got from her parents for family expenses, other that my ex-wife's testimony. She did not show any

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

documents showing that she ever used any money that she claimed she got from her parents for family expenses. Even her parents would not go to court and lie for her and say that ever used any money that she claimed she got from her parents for family expenses.

My ex-wife did not even try to show how anything she claimed she did increased the value of the Ranch. My ex-wife did not even try to show how much she claims she spent to maintain the Ranch or to improve the value of the Ranch. My ex-wife did not even try to show how much she claims the Ranch's value was increased because of any of the things she claimed she did.

The only evidence there was at trial that supported any of my ex-wife's claims was her own testimony, and I said so in my first brief. I cannot marshal any evidence to support the divorce court's decision other than my ex-wife's own testimony when there is no other evidence to marshal.

POINT 2: THE DIVORCE COURT WAS WRONG WHEN IT RULED THAT MY EX-WIFE HELPED WATER CROPS.

My ex-wife claimed that she helped water crops in 1995. That statement is a lie. We had no crops to water in 1995, and we had no water to water any crops in 1995. See the testimony of Charles Schultz, (pages 160-186) of the transcript of the divorce proceeding). The divorce court could not legally or reasonably find that my ex-wife watered any crops in 2005, when we had no crops and no water with which to water any crops with. The divorce court could not find that my ex-wife watered any cops after 2003, when Jack King cut off my irrigation water to the Ranch.

POINT 3: THE DIVORCE COURT WAS WRONG WHEN IT RULED THAT MY EX-WIFE HELPED CARED FOR MY HORSES.

The only evidence that my ex-wife helped care for my horses is her testimony. She did

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

not show any other evidence that she helped care for my horses. No one would go to court and lie for her and say that she helped care for my horses. Not even her parents would go to court and lie for her and say that she helped care for my horses.

The divorce court may have the right to believe who it will believe and believe what it chooses to believe, but it has to have some basis for believing what it believes, and it cannot just ignore contradictory evidence. If my ex-wife had really helped to care for my horses, she could have surely found someone who would be willing to go to court and say that she did. The fact that no one would go to court and say that my ex-wife helped care for my horses, shows that the divorce court was wrong when it decided that my ex-wife helped care for my horses.

POINT 4: THE DIVORCE COURT WAS WRONG WHEN IT RULED THAT MY EX-WIFE HELPED MAINTAIN BUILDINGS AND FENCES.

The only evidence that my ex-wife helped maintain buildings and fences is her testimony. She did not show any other evidence that she helped maintain buildings and fences. No one would go to court and lie for her and say that she helped maintain buildings and fences. Not even her parents would go to court and lie for her and say that she helped maintain buildings and fences.

The divorce court may have the right to believe who it will believe and believe what it chooses to believe, but it has to have some basis for believing what it believes, and it cannot just ignore contradictory evidence. If my ex-wife had really helped maintain buildings and fences, she could have surely found someone who would be willing to go to court and say that she did. The fact that no one would go to court and say that my ex-wife helped maintain buildings and fences, shows that the divorce court was wrong when it decided that my ex-wife helped maintain buildings and fences.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

POINT 5: THE DIVORCE COURT WAS WRONG WHEN IT RULED THAT MY EX-WIFE HELPED WITH CLEANING AND MAINTENANCE ON MY TWO APARTMENTS.

The only evidence that my ex-wife helped with cleaning and maintenance on my two apartments is her testimony. She did not show any other evidence that she helped with cleaning and maintenance on my two apartments. No one would go to court and lie for her and say that she helped with cleaning and maintenance on my two apartments. Not even her parents would go to court and lie for her and say that she helped with cleaning and maintenance on my two apartments.

The divorce court may have the right to believe who it will believe and believe what it chooses to believe, but it has to have some basis for believing what it believes, and it cannot just ignore contradictory evidence. If my ex-wife had really helped with cleaning and maintenance on my two apartments, she could have surely found someone who would be willing to go to court and say that she did. The fact that no one would go to court and say that my ex-wife helped with cleaning and maintenance on my two apartments, shows that the divorce court was wrong when it decided that my ex-wife helped with cleaning and maintenance on my two apartments.

My ex-wife had the obligation to prove that she helped water crops, that she helped care for my horses, that she helped maintain buildings and fences, and that she helped with cleaning and maintenance of my two apartments. She did not prove that she did. The divorce court was not entitled to disregard all of the evidence contradicting my ex-wife's testimony that she helped water crops, that she helped care for my horses, that she helped maintain buildings and fences, and that she helped with cleaning and maintenance of my two apartments, and only believe her testimony. The divorce court could not legally or reasonably find that my ex-wife helped water crops, helped care for my horses, helped maintain buildings and fences, and

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

helped with cleaning and maintenance of my two apartments, when my ex-wife offered no evidence of any kind that she did any of those things.

The divorce court's findings that me my ex-wife helped water crops, helped care for my horses, helped maintain buildings and fences, and helped with cleaning and maintenance of my two apartments is clearly wrong and this Court should find that it is.

POINT 6: THE DIVORCE COURT WAS WRONG WHEN IT FOUND THAT MY EX-WIFE'S PARENTS LOANED US ANY MONEY.

My ex-wife claims that I did not marshal the evidence supporting her claim that her parents loaned us money. That assertion is false. I stated that the only evidence that my wife presented to the divorce court to support her claim that her parents loaned us any money was her own testimony. That statement is true, and my ex-wife even admits that it is on page 16 of her brief.

If my ex-wife's parents had really loaned us any money, they would have gone to court and testified that they did. They did not do so because they were not willing to go into court and lie. If they had gone to court and said that they loaned us money, they would have had to show some kind of evidence that they did. They had no evidence that they did, because they did not lend us any money, and that is why they did not go to court and say that they loaned us any money.

The divorce court may have the right to believe who it will believe and believe what it chooses to believe, but it has to have some basis for believing what it believes, and it cannot just ignore contradictory evidence and believe anything my ex-wife says when she has no evidence to prove what she is saying. If my ex-wife's parents had really loaned us any money, they would have gone to court and testified that they did. The fact that they did not is proof that they did not do so.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

My ex-wife had the obligation to prove that her parents had loaned us any money. She did not prove that they did. The divorce court was not entitled to disregard all of the evidence contradicting my ex-wife's testimony that her parents had loaned us any money, and only believe her testimony. The divorce court could not legally or reasonably find that her parents had loaned us any money, when my ex-wife offered no evidence of any kind that they did, especially when her parents would not even go into court and claim that they did.

The divorce court's finding that her parents had loaned us any money is clearly wrong and this Court should find that it is.

<u>POINT 7</u>: THE DIVORCE COURT WAS WRONG WHEN IT FOUND THAT MY EX-WIFE USED ANY OF THE MONEY FROM HER PARENTS SHE CLAIMS THAT THEY LOANED TO US FOR FAMILY EXPENSES.

My ex-wife again claims that I did not marshal the evidence supporting her claim that she spent the money she falsely claims her parents loaned us on family expenses. That assertion is false. I stated that the only evidence that my wife presented to the divorce court to support her claim that she spent the money she falsely claims her parents loaned us on family expenses was her own testimony. That statement is true, and my ex-wife even admits that it is on page 16 and 17 of her brief.

As I said in Point 6 of this Brief, if my ex-wife's parents had really loaned us any money, they would have gone to court and testified that they did. They did not do so because they were not willing to go into court and lie. If they had gone to court and said that they loaned us money, they would have had to show some kind of evidence that they did. They had no evidence that they did, because they did not lend us any money, and that is why they did not go to court and say that they loaned us any money.

Because my ex-wife did not prove that her parents ever loaned us any money, the

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

divorce court could not legally or reasonably find that my ex-wife spent the money she falsely claims her parents loaned us on family expenses.

The divorce court may have the right to believe who it will believe and believe what it chooses to believe, but it has to have some basis for believing what it believes, and it cannot just ignore contradictory evidence and believe anything my ex-wife says when she has no evidence to prove what she is saying. My ex-wife did not present any evidence showing that she spent the money she falsely claims her parents loaned us on family expenses, other than her own testimony.

If my ex-wife's parents had really loaned us any money, they would have gone to court and testified that they did. The fact that they did not do so is proof that they did not do so. If my ex-wife's parents did not lend us any money, my ex-wife could not spend the money she falsely claims her parents loaned us on family expenses.

My ex-wife had the obligation to prove that her parents had loaned us money and that she spent the money she falsely claims her parents loaned us on family expenses. She did not prove that they did. The divorce court was not entitled to disregard all of the evidence contradicting my ex-wife's testimony that her parents had loaned us any money and that she spent the money that she falsely claims her parents loaned us on family expenses, and only believe her testimony. The divorce court could not legally or reasonably find that her parents had loaned us any money, when my ex-wife offered no evidence of any kind that they did, and especially when her parents would not even go into court and claim that they did. And because the divorce court could not legally or reasonably find that her parents and loaned us any money, when my ex-wife offered no evidence of any kind that they did, when her parents would not even go into court and claim that they did, the divorce court could not legally or

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

reasonably find that my ex-wife spent the money she falsely claims her parents loaned us on family expenses.

The divorce court's findings that my ex-wife spent the money she falsely claims her parents loaned us on family expenses is clearly wrong and this Court should find that it is.

POINT 8: THE DIVORCE COURT WAS WRONG WHEN IT IMPROPERLY AND UNLAWFULLY CONCLUDED THAT MY EX-WIFE WAS ENTITLED TO HALF OF THE RANCH.

Even if all of my ex-wife's lies are true and if this Court assumes that she actually helped run the Ranch, helped take care of my horses, helped maintain buildings and fences, helped to clean and maintain my two apartments, that her parents actually loaned us money, and that she used any of the money she claims her parents loaned to us for family expenses, she is still not entitled to half of the Ranch. At most she would only be entitled to half of the value of the eight acres I purchased from the Division of Wildlife Resources, and she is not even entitled to an interest in that part of the Ranch.

In section D of her brief, my ex-wife argues that because the divorce court found that there are exceptional circumstances in this case, she is entitled to half of the Ranch. That assertion is a deliberate false representation of the law in Utah.

Even if there were exceptional circumstances in this case that entitled the divorce court to award my ex-wife some interest in my premarital property, Utah law only allows a court to award someone an interest in premarital property if they can show that they did something that increased the value of the premarital property. They must also prove the value of the contribution they made to the premarital property that increased the property's value. And they must prove how much their contribution increased the value of the premarital property. They are not entitled to any increase in the value of the premarital property if the increase in the

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

value of the premarital property had nothing to do with what they did. See Burke vs. Burke, 733 P2.d 133 (Utah 1987), where the plaintiff owned separate property which increased in value sevenfold during the marriage, and the court ruled that the increase in value was not marital because the increase in the value of the property had nothing to do with anything the party claiming an interest in the property had done.

In Hall vs. Hall, 858 P2.d 1018 (Utah App. 1993) this court held that allocation of property must be done in a fair and systematic fashion wherein the divorce court should first classify property as separate or marital, then award the party the value of their separate contribution dividing only the marital portion equally. See also, Thomas vs. Thomas, 987 P2.d 603 (Utah App. 1999), where the husband had a premarital interest in the family home, and even though the home was transferred to both parties jointly after the marriage this Court still held that the husband was still entitled to his premarital interest.

In Thompson vs. Thompson, 208 P.3d 539 (Utah App. 2009) this Court again upheld the principle that generally each party is entitled to all of that parties' separate property, including its appreciation during the marriage. This Court held that after the separate property of each spouse is identified and backed out of the estate, then marital property is typically awarded so that each spouse receives roughly an equal share.

Even if my ex-wife is entitled to some interest in the Ranch, she is only entitled to the amount that anything she did actually increased the value of the Ranch. She is not entitled to half of the Ranch. However, because my ex-wife did not present any evidence showing how much she claims value of anything she did at the Ranch was worth or how much anything she claims she did increased the value of the Ranch, she is not entitled to any of the Ranch, that was my premarital property.

Because my ex-wife did not present any evidence showing how much she claims value

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

of anything she did at the Ranch was worth or how much anything she claims she did increased the value of the Ranch, the divorce court was not legally entitled to give her any interest in the Ranch that was my premarital property. Because the divorce court did not make detailed findings specifying the value of anything my ex-wife claims she did to increase the value of the Ranch, or to protect its value, and because the divorce court did not make any detailed findings showing how it determined how much any of the things my ex-wife claims she did to protect to increase the value of the Ranch, the divorce court was not entitled to give her any interest in the Ranch that was my premarital property.

The divorce court was also not entitled to find that the part of the Ranch that I purchased from the Division of Wildlife Resources was marital property. In making its finding that the property I purchased from the Division of Wildlife Resources was marital property the divorce court stated:

> *The parties acquired, as marital property, eight acres from the Division of Wildlife Resources on September 19, 2005. Dee used money received from his mother to purchase the DWR property. However, it is clear that Dana worked the entire marriage and contributed all of her income toward the marriage, and worked to maintain the Ranch, including the property acquired from the DWR, and the apartments and also allowed Dee to apply the gifted money toward the DRW property. The parties not only received loans from Mrs. Henshaw, but also from Dana's parents to help them make ends meed. Dana did not use any of her parents' loans to purchase separate property of any kind for herself, but applied all those proceeds to the family's needs. The court finds that it was Dana's efforts that allowed Dee to apply use the money received from his mother for the acquisition of the DWR property, and therefore concludes that the property is marital property.*

That conclusion is absolute nonsense. Dana did not allow me to use the money I received from my Mother to purchase the property from the Division of Wildlife resources. She had no ability to *"allow"* me to do anything with the money. The money was given to me by my mother, and Dana had no legal right to say what I could do with the money.

The divorce court's statement that:

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

> *Dana worked the entire marriage and contributed all of her income toward the marriage, and worked to maintain the Ranch, including the property acquired from the DWR, and the apartments and also allowed Dee to apply the gifted money toward the DRW property,*

is also absolute nonsense. The money was given to me by my Mother specifically so I could buy the property from the Division of Wildlife resources. My Mother did not give me some money to use as I wanted, or as my ex-wife would permit me to use. The money was specifically given to me to purchase the property from the Division of Wildlife Resources, and if I was not going to buy the property from the Division of Wildlife Resources, my Mother never would have given me the money. Even if my ex-wife *"worked the entire marriage and contributed all of her income toward the marriage, and worked to maintain the Ranch, including the property acquired from the DWR, and the apartments,* as the divorce court falsely concluded, those things had nothing to do with my Mother giving me the money to buy the property from the Division of Wildlife Resources, and there is no testimony or evidence at trial that shows that the money given to me by my Mother to purchase the property from the Division of Wildlife Resources, was give to me for any other reason other than to by the property from the Division of Wildlife Resources, or that my Mother would have given me the money if I was not going to buy the property from the Division of Wildlife Resources. The divorce court's conclusion that I was able to purchase the property from the Division of Wildlife Resources because of anything my ex-wife claims she did is wrong, and it is not supported by any evidence at all.

<u>POINT 9</u>: THE DIVORCE COURT WAS WRONG WHEN IT DECIDED THAT MY EX-WIFE DID ANYTHING THAT CONTRIBUTED TO THE PRESERVATION OF THE RANCH.

My ex-wife again claims that I did not marshal the evidence to support her claims that

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

she did anything to contribute to the preservation of the Ranch. But again, the only evidence there was is her testimony. No one else testified that she did anything that contributed to the preservation of the Ranch. Not even her parents would come into court and lie for her and say that she did anything that contributed to the preservation of the Ranch.

Even in her testimony, my ex-wife did not say how anything she did supposedly contributed to the preservation of the Ranch. She did not provide any documentation showing that she paid for any supplies or materials to help preserve the Ranch. She did not say how any of the things she claims she did preserved the Ranch, and she did not dispute the testimony of Mr. Schultz who testified that the ranch had only deteriorated since he had been going to the Ranch.

Mr. Schultz' testimony that the Ranch had only deteriorated during the time he had been going to the Ranch was not disputed by my ex-wife. So if the Ranch had only deteriorated since 1993, when Mr. Schultz first began going to the Ranch, how could anything my ex-wife claims she did have preserved the Ranch?

The divorce court may have the right to believe who it will believe and believe what it chooses to believe, but it has to have some basis for believing what it believes, and it cannot just ignore contradictory evidence. The divorce court cannot simply ignore Mr. Schultz's uncontradicted testimony that the Ranch had only deteriorated since 1993, and rule that the things my ex-wife claimed she did somehow helped preserve the Ranch. The divorce court was wrong when it decided that anything my ex-wife did helped to preserve the Ranch.

POINT 10: THE DIVORCE COURT WAS WRONG WHEN IT DECIDED THAT IT COULD AWARD HALF OF THE RANCH TO MY EX-WIFE EVEN THOUGH I HAD SOLD IT TO PINE CREEK.

On page 6, my ex-wife states that the divorce court issued an order on August 27, 2007,

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

saying that I could not sell any property during the marriage. That statement is true, but I sold the Ranch to Pine Creek in March of 2007, so the August 2007 order could not keep me from selling the Ranch to Pine Creek. I had already sold it, and when I sold it, there was no order saying I could not sell my own property.

The Notice of Lis Pendens my ex-wife attached to her brief was never filed with the divorce court. It does not have a page number on it like all of the other things in the divorce court's file. So she should not be allowed to file it now because it is not a part of the record. But just in case the Court is going to consider it, I am going to respond to it.

My ex-wife falsely claims that the Notice of Lis Pendens she filed gave Pine Creek notice of our divorce proceeding. The Notice of Lis Pendens she filed did not give Pine Creek notice of our divorce proceeding because the Notice does not contain the information required by Utah Code §78-40-2, the lis pendens statute in effect at the time she filed her notice of interest and lis pendens. Utah Code §78-40-2, in effect at the time my ex-wife filed her notice of interest and lis pendens states:

> *Lis pendens.*
> *In any action affecting the title to, or the right of possession of, real property the plaintiff at the time of filing the complaint or thereafter, and the defendant at the time of filing his answer when affirmative relief is claimed in such answer, or at any time afterward, may file for record with the recorder of the county in which the property or some part thereof is situated a <u>notice of the pendency of the action, containing the names of the parties, the object of the action or defense, and a description of the property in that county affected thereby</u>. From the time of filing such notice for record only shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, <u>and only of its pendency against parties designated by their real names</u>.* (Emphasis added).

The notice of interest and lis pendens does not state that the case identified in her lis pendens involves me. I am not mentioned in the notice of interest and lis pendens. So, the

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

notice of interest and lis pendens does not comply with the provisions of UCA §78-40-2, and it is defective. Because the notice of interest does not comply with the provisions of the provisions of UCA §78-40-2, and does not identify me, it cannot be construed to give Pine Creek the notice required by UCA §78-40-2, to hold that the notice gave Pine Creek notice of any claim of my ex-wife to the Ranch, that was undeniably my separate and personal property at the time she filed the notice.

Also, the notice of interest and lis pendens does not state that the case identified in her lis pendens is a divorce case. The notice of interest and lis pendens does not identify what type of claim my ex-wife is asserting against the Ranch. The notice of interest and lis pendens does not even attempt to specify or identify what type of claim she is asserting in the Ranch. Therefore, the notice of interest and lis pendens does not comply with the provisions of UCA §78-40-2, and it is defective.

Pine Creek is not required to guess what type of claim my ex-wife is asserting in her notice of lis pendens. UCA §78-40-2 requires her to specify the nature of her claim(s) against the Ranch in her notice of interest and lis pendens. Her failure to do so makes her notice of interest and lis pendens invalid.

Because the notice of interest does not comply with the provisions of UCA §78-40-2, as a matter of law, it cannot provide Pine Creek with the notice required by UCA §78-40-2, to hold that the notice of interest and lis pendens gave Pine Creek notice of any claim of my ex-wife to the Ranch that was undeniably my separate and personal property at the time she filed her notice of interest and lis pendens.

My ex-wife's notice of interest and lis pendens does not state that she is claiming any type of ownership interest in the Ranch. The notice of interest does not even give a clue that she is asserting an ownership interest in the Ranch.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

Again, Pine Creek is not required to guess what type of claim ex-wife is asserting in her notice of lis pendens. UCA §78-40-2 requires her to specify the nature of her claim(s) against the Ranch in her notice of interest. Her failure to do so makes her notice of interest and lis pendens invalid.

If my ex-wife was asserting an ownership interest in the Ranch she was required to say so in her notice of interest and lis pendens. She did not do so. Therefore, as a matter of law, her notice of interest and lis pendens is defective and did not give Pine Creek notice that she was asserting any type of ownership interest in the Ranch.

Furthermore, the notice of interest and lis pendens cannot be found to give Pine Creek notice that my ex-wife was claiming an interest in the Ranch because her former attorney sent her mother a letter stating the divorce proceeding was over and that he was refunding the money she had paid for the divorce. See Exhibit 1 in the addendum to this Brief. See also, the Affidavits of Dough White and Jane White that are included in the Addendum as Exhibits 2 and 3. My ex-wife cannot claim that the notice of interest and lis pendens gave Pine Creek notice that she was claiming an interest in the Ranch through a divorce proceeding when her former attorney said the divorce proceeding was over, and the Whites had a copy of that letter at the time Pine Creek bought the Ranch.

Because the notice of interest and lis pendens filed by my ex-wife does not comply with the provisions of UCA §78-40-2, and because my ex-wife's former attorney sent a letter stating that the divorce case was over, my ex-wife cannot now claim that the notice of interest and lis pendens gave Pine Creek notice that she was claiming an interest in the Ranch in a divorce proceeding. So the divorce court was wrong in deciding it could give half of the Ranch to my ex-wife when I did not own it.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

POINT 11: JUDGE LEE RULED THAT MY EX-WIFE HAD NO INTEREST IN THE RANCH.

My ex-wife's claim that Judge Lee did not rule that she had no interest in the Ranch is false. Judge Lee ruled that she had no interest in the Ranch, legal or equitable.

As I stated in my first brief, on April 18, 2005 in case No. 00600007 Henshaw v. King, Judge Lee ruled that my ex-wife had no interest in the Ranch and dismissed her as a plaintiff in the case because he concluded that she was not a proper party. Judge Lee ruled that my ex-wife had no interest of any type in the Ranch, not only that she had no legal interest, but also that she had no equitable or other interest in the Ranch.

If my ex-wife had an equitable interest in the Ranch, she would have been a proper party to the case and she could not have been dismissed from the case. A person or entity with an equitable interest in property is a proper party to an action. See Universal C.I.T. Corp. V. Courtesy Motors, 8 Utah 2d 275, 333 P.2d 628 (Utah 1959), where the Utah Supreme Court ruled that Universal, was a proper party to an action against Courtesy based on Universal's claim that Courtesy had improperly converted Universal's equitable interest in an automobile.

Mr. Schultz who was my attorney in the King case argued that my ex-wife had an equitable interest in the Ranch because of her marriage to me, but Judge Lee ruled that she did not. Mr. Schultz believed that Judge Lee's ruling was wrong. However, he now believes that Judge Lee's decision was correct, after I showed him the case law Mr. Cook gave me proving that the Ranch is premarital property, and that my ex-wife would only be entitled to a portion of the increase in the value of the Ranch, if she could prove that she contributed to an increase in the value of the Ranch, the value of anything she did to increase the value of the Ranch, and how much the value of the Ranch increased because of anything she claims she did to increase the value of the Ranch.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

But whether or not Judge Lee's ruling was right or wrong, it was a valid ruling, and it was still in force at the time Judge Harmond ruled that my ex-wife was entitled to half of the Ranch that I sold to Pine Creek.

Because Judge Lee's ruling that my ex-wife has no legal or equitable interest in the Ranch is a valid ruling, it prevents the divorce court from ruling that she could have any interest in the Ranch at the time of the trial in this case. Judge Lee's ruling is collateral estoppel, and it prevents the divorce court from giving my ex-wife any interest in the Ranch.

Judge Harmond could not overrule Judge Lee and rule that my ex-wife could have an interest in the Ranch when Judge Lee ruled she did not. One district judge cannot overrule another district judge.

<u>POINT 12</u>: THE DIVORCE COURT IMPROPERLY AND UNLAWFULLY ORDERED THAT THE RANCH HAD TO BE SOLD AND THE PROCEEDS DISTRIBUTED EQUALLY BETWEEN ME AND MY EX-WIFE.

Because the divorce court did not have the right to give my ex-wife half of the Ranch, it does not have the right to order that the Ranch has to be sold and the proceeds from the sale be equally distributed between me and my ex-wife.

As I showed in Point Eight of this Brief, even if all of my ex-wife's lies are true and if this Court assumes that she actually helped run the Ranch, helped take care of my horses, helped maintain buildings and fences, helped to clean and maintain my two apartments, that her parents actually loaned us money, and that she used any of the money she claims her parents loaned to us for family expenses, she is still not entitled to half of the Ranch. At most she would only be entitled to half of the value of the eight acres I purchased from the Division of Wildlife Resources, and she is not even entitled to an interest in that part of the Ranch.

Because my ex-wife did not present any evidence showing how much claims value of

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

anything she did at the Ranch was worth or how much anything she claims she did increased the value of the Ranch, the divorce court was not legally entitled to give her any interest in the Ranch that was my premarital property. Because the divorce court did not make detailed findings specifying the value of anything my ex-wife claims she did to increase the value of the Ranch, or to protect its value, and because the divorce court did not make any detailed findings showing how it determined how much any of the things my ex-wife claims she did to protect to increase the value of the Ranch, the divorce court was not entitled to give her any interest in the Ranch that was my premarital property. And because the divorce court was not entitled to give her any interest in the Ranch that was my premarital property, the divorce court could not order that the Ranch had to be sold.

POINT 13: THE DIVORCE COURT IMPROPERLY AND UNLAWFULLY ORDERED THAT I HAD TO REMOVE ALL OF MY PERSONAL PROPERTY FROM THE RANCH WITHIN THIRTY DAYS OF THE SUPPLEMENTAL DECREE OF DIVORCE.

Because the divorce court did not have the right to give my ex-wife half of the Ranch, it does not have the right to order that I had to remove all of my personal property from the Ranch within thirty days of the supplemental divorce decree.

As I showed in Point Eight of this Brief, even if all of my ex-wife's lies are true and if this Court assumes that she actually helped run the Ranch, helped take care of my horses, helped maintain buildings and fences, helped to clean and maintain my two apartments, that her parents actually loaned us money, and that she used any of the money she claims her parents loaned to us for family expenses, she is still not entitled to half of the Ranch. At most she would only be entitled to half of the value of the eight acres I purchased from the Division of Wildlife Resources, and she is not even entitled to an interest in that part of the Ranch.

Because my ex-wife did not present any evidence showing how much claims value of

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

anything she did at the Ranch was worth or how much anything she claims she did increased the value of the Ranch, the divorce court was not legally entitled to give her any interest in the Ranch that was my premarital property. Because the divorce court did not make detailed findings specifying the value of anything my ex-wife claims she did to increase the value of the Ranch, or to protect its value, and because the divorce court did not make any detailed findings showing how in determined how much any of the things my ex-wife claims she did to protect to increase the value of the Ranch, the divorce court was not entitled to give her any interest in the Ranch that was my premarital property. And because the divorce court was not entitled to give her any interest in the Ranch that was my premarital property, the divorce court could not order that I had to remove all of my property from the Ranch within thirty days of the supplemental decree of divorce.

<u>POINT 14</u>: MY EX-WIFE'S CLAIM THAT I FAILED TO TIMELY APPEAL JUDGE ANDERSON'S RULING REGARDING MY SUPPOSED RULE 11 SANCTIONS IS NOT TRUE. IT IS A VIOLATION OF RULE 40(a) OF THE UTAH RULES OF APPELLATE TO PROCEDURE.

Rule 40(a) of the Utah Rules of Appellate Procedure states:

> *(a) Attorney's or party's certificate. Every motion, brief, and other paper of a party represented by an attorney shall be signed by at least one attorney of record who is an active member in good standing of the Bar of this state. The attorney shall sign his or her individual name and give his or her business address, telephone number, and Utah State Bar number. A party who is not represented by an attorney shall sign any motion, brief, or other paper and state the party's address and telephone number. Except when otherwise specifically provided by rule or statute, motions, briefs, or other papers need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate that the attorney or party has read the motion, brief, or other paper; that to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, it is not frivolous or interposed for the purpose of delay as defined in Rule 33. If a motion, brief, or other paper is not signed as required by this rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the attorney or party. If a motion, brief, or other paper is signed in violation of this rule, the authority and the procedures of the court provided by Rule 33 shall apply.*

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

My ex-wife's claim that I failed to timely appeal Judge Anderson's Rule 11 Ruling and that this Court does not have jurisdiction to hear my appeal of that ruling is a violation of Rule 40.

Judge Anderson's Rule 11 Ruling was not a final order. It did not dispose of all claims and all issues. Until the divorce court ruled on my Objections to my ex-wife's proposed supplemental findings of facts and conclusions of law and proposed supplemental decree of divorce, and entered the supplemental findings of fact and conclusions of law and supplemental decree of divorce, a final order in this case had not been entered.

> *For an order or judgment to be final, it "'must dispose of the case as to all the parties, and finally dispose of the subject-matter of the litigation on the merits of the case.'" Kennedy v. New Era Indus., Inc., 600 P.2d 534, 536 (Utah 1979) (citations omitted). In other words, a judgment is final when it "ends the controversy between the parties litigant." Id.*

Bradbury v. Valencia, 5 P.3d 649 (Utah 2000). Because Judge Anderson's Rule 11 Ruling did not finally dispose of the subject-matter of this case on the merits, it is not a final order, and I could not appeal it until the divorce court ruled on my Objections to my ex-wife's proposed supplemental findings of facts and conclusions of law and my Objections to the proposed supplemental decree of divorce, and actually entered the supplemental findings of fact and conclusions of law and supplemental decree of divorce.

My ex-wife's claim that I failed to timely file an appeal of Judge Anderson's Rule 11 Ruling is a violation of Rule 40, because it is frivolous and a deliberate misrepresentation of controlling case law that defines what a final order is. So, it is my ex-wife and her attorney that should be sanctioned according to Rules 40 and 33 of the Utah Rules of Appellate Procedure.

POINT 15: JUDGE ANDERSON WAS WRONG WHEN HE RULED THAT I VIOLATED RULE 11 OF THE UTAH RULES OF CIVIL PROCEDURE.

In her brief claiming that Judge Anderson was correct in finding that I violated Rule 11,

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

my ex-wife say several things that are lies. On page 32 paragraph 10 my ex-wife falsely says that Mr. Neeley withdrew because of preparing for trial on short notice. That statement is a lie. Mr. Neeley never withdrew. He offered to, but Judge Harmond told him that he did not need to do so, and even though Judge Anderson claims in his Ruling on Rule 11 Sanctions, the transcript of the hearing on Mr. Neeley's Motion for a Continuance show he did not.

On page 33 paragraph 22 my ex-wife says that I had previously filed a motion to recuse Judge Bagley. I did not file any motion to recuse Judge Bagley or anyone else. A judge has to recuse himself. I cannot file a motion to recuse a judge.

On page 34 my ex-wife claims that I falsely said that Mr. Cook gave no reason for his withdrawal as my counsel. Mr. Cook did say that ethical issues had arisen, but he did not say what those issues were, and he never told me about any ethical issues. He did not even tell me that he was going to withdraw. I did not know that he was going to withdraw until after he did it. And he never said anything about ethical issues to me.

On page 35 of her brief my ex-wife says.

> *Judge Anderson's facts clearly demonstrate that Respondent's main objective in filing the motion to disqualify Judge Harmond was to cause a delay so that his new attorney, Mr. McNeeley could have more time to prepare for trial.*

That claim is false. Judge Harmond permitted Mr. Cook to withdraw as my attorney less than 20 days before trial. But he never signed or entered the order letting him withdraw. I did not ask Mr. Cook to withdraw. I did not fire Mr. Cook. Mr. Cook simply asked to withdraw, and he never told me that he was going to withdraw before he did it.

I filed my motion to disqualify Judge Harmond because he was so prejudice against me, that I knew I could never get a fair trial if he was the judge, and what he did during the trial and the rulings he made proved that I was right. He should have been disqualified. No reasonable person could ever believe that a judge who told an attorney that he did not have to go to trial,

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

but told his client that he had to go without his attorney would ever give the client a fair trial.

When I filed my Motion to Disqualify Judge Harmond, I did not know that Mr. Cook had filed a motion to disqualify Judge Bagley. I never received a copy of the motion to disqualify Judge Bagley. I knew that Judge Bagley had recused himself in case No. 081800005. My attorney in case No. 081800005 told Mr. Cook that Judge Bagley had disqualified himself in that case and so there was no need for Mr. Cook to file a motion to disqualify Judge Bagley in this case. So I thought that Mr. Cook had not filed a motion to disqualify Judge Bagley because there was no need to do so. I admit that did not check to see if Mr. Cook had filed any motions to disqualify any judges, because I knew that Judge Lee and Judge Lyman had recused themselves, and Judge Bagley had recused himself in case No. 081800005, so I thought he would recuse himself in this case too.

Mr. Cook also asked Judge Harmond to continue the trial when Judge Harmond let him withdraw, but Jude Harmond would not do it. When I was able to hire Mr. Neeley to represent me, Mr. Neeley filed a motion for a continuance of the trial date so that he could get-up-to-speed in this case. However, Judge Harmond again refused to continue the trial although he did excuse Mr. Neeley from attending the trial. Judge Harmond just said that I would have to go to trial without an attorney. Mr. Neeley could not attend the trial on the day it was scheduled because he was going to be at Lake Powell on vacation, and he could not change it.

When Judge Harmond allowed Mr. Cook to withdraw so close to the scheduled trial, refused to allow me a reasonable time to find a new attorney, denied Mr. Cook's and Mr. Neeley's motions to continue the trial and excused Mr. Neeley from attending at the trial, and still requiring me to go to the trial without him, he proved that he was so biased and prejudiced against me, I had no option but to file a motion to disqualify him.

I did not file my Motion to Disqualify Judge Harmond for any improper purpose. I only

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

filed so I could get a fair trial before an impartial and unbiased judge.

When Judge Harmond required me to go to court without an attorney and showed how biased and prejudiced he is against me I had nothing else I could do to get a fair trial, so I filed my Motion to Disqualify Judge Harmond, it was the only thing I could do to possibly get a fair and unbiased trial. Trying to get a fair and unbiased trial cannot be a violation of Rule 11. No reasonable person could ever think that trying to get a fair and unbiased trial is wrong or a violation of any rule. Aren't people entitled to fair and unbiased trials in Utah anymore?

POINT 16: MY EX-WIFE IS NOT ENTITLED TO ANY ATTORNEY'S FEES.

My Appeal is not frivolous. My appeal is based on the truth and the decisions of this Court. My ex-wife's opposition to my appeal is frivolous. The divorce court had absolutely no right to give my ex-wife half of the Ranch. I should be awarded attorney's fees for the costs I have had to pay for help with the law and to write this appeal as permitted in Rules 33 and 40 of the Utah Rules of Appellate Procedure.

CONCLUSION AND RELIEF SOUGHT

The divorce court was wrong when it ruled that my ex-wife helped in running my Ranch, watering crops, feeding and caring for my horses, building and maintaining fences, and cleaning and doing maintenance on my two apartments, when it ruled that my ex-wife's parents loaned us any money, wrong when it ruled that if my ex-wife got any money from her parents she used it for anything to do with family expenses, wrong when it ruled that my ex-wife did anything to keep the Ranch from deteriorating, wrong when it ruled that it could give my ex-wife half of the Ranch when neither one of us owned it, wrong when it decided my ex-wife had some claim to the Ranch after Judge Lee already ruled that she did not, wrong when it ruled

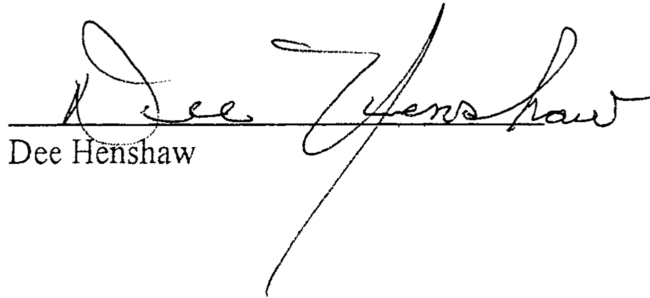
Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

that the Ranch must be sold when the Ranch is not owned by either me or my ex-wife, wrong when it signed and entered the supplemental divorce decree that required me to remove all of my personal property from the Ranch within 30 days wrong, when it ruled that there are any exceptional circumstances in this case that entitles my ex-wife to any interest in the Ranch, and was wrong when it ruled that I violated Rule 11 by filing my motion to disqualify Judge Harmond, when I did not know that Mr. Cook had filed a motion to disqualify Judge Bagley, and I only filed the motion to disqualify him so I could get a fair trial before a fair and unbiased judge. However, even if everything my ex-wife lied about at trial is true, the divorce court is still not entitled to give her any interest in the Ranch, because she did not produce any evidence showing the value of any of the things she falsely claims she did to protect or preserve the Ranch, and because she did not produce any evidence showing how much any of the things she falsely claimed she did increased the value of the Ranch. My ex-wife is also not entitled to any interest in the eight acres I purchased from the Division of Wildlife Resources because I purchased the property with money that my mother gave me for the purchase of the property. My mother did not give me the money so that I could use it anyway I wanted. The money was only for the purchase of the property, and she would not have given me the money if the Division of Wildlife Resources was not going to sell me the property. The purchase of the property was also a part of a settlement with the Division of Wildlife Resources to relocate a right of way across my property.

I request that this Court issue an order reversing the divorce court's ruling and rule that the Ranch is my separate premarital property, that my ex-wife doesn't have any interest in the Ranch, that I legally sold the Ranch to Pine Creek, that the Ranch does not have to be sold, that I do not have to move any of my personal property off of the Ranch, and that the Rule 11 sanctions against me are wrong and must be reversed.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

Dated this 22 day of April 2011.

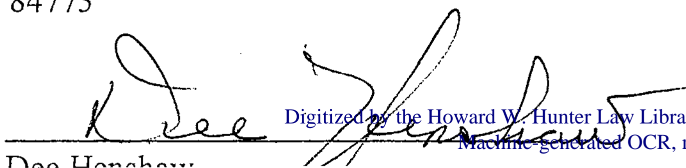


Dee Henshaw

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of April, 2011, I mailed two copies of this Reply Brief to:

David VanDyke
P.O. Box 194
Teasdale, Utah
84773



Dee Henshaw

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

ADDENDUM

PAGE

Affidavit of Doug White: 1-5

Affidavit of Jane White: 6-10

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

AFFIDAVIT

STATE OF UTAH }
.ss
COUNTY OF SALT LAKE}

Doug White, being first sworn upon his oath, deposes and states as follows:

1. I, Doug White, have personal knowledge of the facts set forth in this Affidavit.

2. I have read the Amended Declaration of Dana Fenton, filed in case No. 100600010, in the Sixth District Court of Wayne County, and many of her statements in that Declaration are outright lies.

3. Mrs. Fenton's claim, in paragraph 5 of her Declaration, stating that I have known her since 1997 is a lie. I only met her once, and that was in the summer of 1999. I have not had any contact with her since that time.

4. Mrs. Fenton's claim, in paragraph 6 of her Declaration, stating that I have known Dee since high school is a lie. Dee is twelve years older than I am. Dee graduated from high school in 1969. I graduated in 1977. I first met Dee in 1975 when I worked for him at a car wash business he owned.

5. Mrs. Fenton's claim, in paragraph 7 of her Declaration, stating that my wife, Jane, has known her since my wife and I were married is a lie. My wife first met Mrs. Fenton in 1999, when she accompanied me on a brief visit to Dee's ranch in the summer of 1999. I have no recollection of them having any contact since then.

6. Mrs. Fenton's claim, in paragraph 8 of her Declaration, stating that my wife and I own a cabin in the Panguich Lake area, is a lie. Neither my wife nor I have ever owned a cabin in the Panguich area. Mrs. Fenton's clam that my wife and/or I took trips with either

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

Dee, her, or both of them is also a lie. Neither my wife nor I have ever taken any trips with Dee and/or Dana when they were married or any other time.

7. Mrs. Fenton's claim, in paragraph 9 of her Declaration, stating that my wife and I attended a fish convention with Dee and her is a lie. Mrs. Fenton's claim that my wife and I were planning on going into business with Dee is also a lie.

8. Mrs. Fenton's claim, in paragraph 10 of her Declaration, stating that Dee would bring Skyler and Ty to our cabin in the Panguich area every couple of months, after Dee and Mrs. Fenton separated is a lie. Dee and the boys have been to our cabin on a few occasions, only two times overnight, and the cabin is not in the Panguich area.

9. Mrs. Fenton's claims, in paragraph 13 of her Declaration are lies. My wife and I were completely unaware there was a divorce action, of any kind, pending at the time Pine Creek Ranch purchased the Ranch from Dee. We were aware that there had been a divorce case filed, but to our knowledge it had been dismissed. Therefore, we had no reason to believe that Dee and Mrs. Fenton's differences hadn't been reconciled. We based our understanding from what Dee told us and on the letter from Mrs. Fenton's attorney to Dee, stating he had filed a motion to dismiss the divorce action. Our understanding was also based on the letter Mrs. Fenton's attorney wrote to Mrs. Fenton's mother telling her the case was over and that he was refunding her money. A copy of that letter is attached to this Affidavit as Exhibit 1.

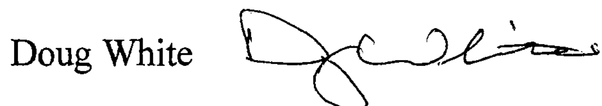
10. Mrs. Fenton's claims, in paragraph 14 of her Declaration, are lies. Pine Creek Ranch purchased the ranch from Dee because my wife and I thought that it would be a good investment at that time, and that we could keep Dee on as a manager, because he knew all the ins and outs of the property.

11. Because we have been unable to access the property since Pine Creek Ranch bought it, we are uncertain about what the condition is, what is physically present there

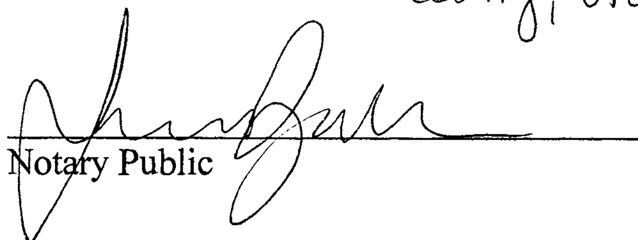
Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

and what has been sold or destroyed. We do know that Pine Creek Ranch has lost a lot of it's investment due to the lack of receiving and income on it for rents and improvements. We are still very apprehensive about going on the ranch to check on its conditions or to make repairs and perform maintenance on the ranch, even though the Court has granted the right to do so. There have been threats to Dee, and we don't want to get involved with the feud between Dee and Mrs. Fenton.

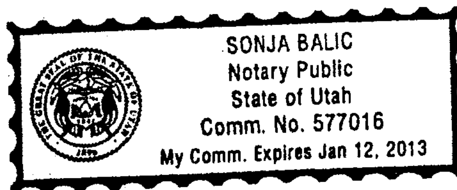
Dated this 7 day of April 2011.

Doug White 

Subscribed to this 7th day of April 2011.
Salt Lake County, Utah



Notary Public



Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

HADLEY•DODD

LAWYERS
CENTURY PARK PLAZA, SUITE 260
2696 NORTH UNIVERSITY AVENUE
PROVO, UTAH 84604

GREGORY B. HADLEY*
PAUL D. DODD

*ALSO MEMBER CALIFORNIA BAR

TELEPHONE (801) 377-4403
FACSIMILE (801) 377-4411
E-MAIL: hadlaw@mstar.net

June 12, 2006

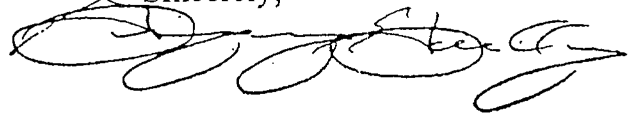
Delia Stewart
PO Box 125
Teasdale, UT 84773

RE: Dana's Case

Dear Delia:

As this matter is now concluded, I am enclosing for your reference a final bill along with a check for the balance due to be refunded to you. You are very loyal and a faithful mother and I strongly feel that what you have done for Dana has been appropriate. We can only hope at this point that they will be able to work things out. Should she not be able to do that, please call as I feel very strongly she should not be left destitute in the event Dee determines to make life difficult for her.

Sincerely,



Gregory B. Hadley

GBH/dds
Enclosures

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

Gregory B. Hadley
Suite 260 Century Park Plaza
2696 North University Avenue
Provo, UT 84604

Invoice submitted to:
Delia Stewart
PO Box 125
Teasdale UT 84773

June 12, 2006

Invoice #11123

Professional Services

			Hrs/Rate	Amount
6/5/2006	GBH	Talk with Twani and Delia, Consult with Dana	0.80 200.00/hr	160.00
6/6/2006	GBH	Talk with Marsha Lang's Office, Call Court Clerk, Draft Request, Order. and letter	0.40 200.00/hr	80.00
6/7/2006	GBH	Talk with Tawni and Masha's Office, Revise letter, request, and Motion	0.50 200.00/hr	100.00
		For professional services rendered	1.70	$340.00
		Previous balance		($861.88)
/12/2006		Refund		$521.88
		Total payments and adjustments		$521.88
		Balance due		$0.00

TAL BILLING AMOUNT IS DUE UPON RECEIPT. ALL AMOUNTS NOT RECEIVED WITHIN 15 DAYS OF DATE BILLING WILL BE CHARGED 18% INTEREST FROM DATE OF BILLING.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

AFFIDAVIT

STATE OF UTAH }
.ss
COUNTY OF SALT LAKE}

Jane White, being first sworn upon her oath, deposes and states as follows:

1. I, Jane White, have personal knowledge of the facts set forth in this Affidavit.

2. I have read the Amended Declaration of Dana Fenton, filed in case No. 100600010, in the Sixth District Court of Wayne County, and many of her statements in that Declaration are outright lies.

3. Mrs. Fenton's claim, in paragraph 5 of her Declaration, stating that I have known her since 1997 is a lie. I only met her once, and that was in the summer of 1999. I have not had any contact with her since that time.

4. Mrs. Fenton's claim, in paragraph 6 of her Declaration, stating that Doug has known Dee since high school is a lie. Dee is twelve years older than Doug is. Dee graduated from high school in 1969. Doug graduated in 1977. Doug first met Dee in 1975 when he worked for Dee at a car wash Dee owned.

5. Mrs. Fenton's claim, in paragraph 7 of her Declaration, stating that I have known Dee since I married Doug is a lie. I have only known Dee since 1999, when I accompanied Doug on a brief visit to Dee's ranch in the summer of 1999.

6. Mrs. Fenton's claim, in paragraph 8 of her Declaration, stating that Doug and I own a cabin in the Panguich Lake area, is a lie. Neither Doug nor I have ever owned a cabin in the Panguich area. Mrs. Fenton's claim that we took trips with either Dee, her, or

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

both of them is also a lie. Neither Doug nor I have ever taken any trips with Dee and/or Dana when they were married.

7. Mrs. Fenton's claim, in paragraph 9 of her Declaration, stating that Doug and I attended a fish convention with Dee is a lie. Mrs. Fenton's claim that Doug and I were planning on going into business with Dee is also a lie.

8. Mrs. Fenton's claim, in paragraph 10 of her Declaration, stating that Dee would bring Skyler and Ty to our cabin in the Panguich area every couple of months, after Dee and Mrs. Fenton separated is a lie. Dee and the boys have been to our cabin on a few occasions, only two times overnight, and the cabin is not in the Panguich area.

9. Mrs. Fenton's claims, in paragraph 13 of her Declaration are lies. Doug and I were completely unaware there was a divorce action of any kind, at the time Pine Creek Ranch purchased the ranch from Dee. We knew that a divorce case was filed, but it was our understanding that it had been dismissed. We had no reason to believe that Dee and Mrs. Fenton's differences hadn't been reconciled. We based our understanding on what Dee told us, and on the letter from Mrs. Fenton's attorney to Dee, stating he had filed a motion to dismiss the divorce action, and upon a letter Mrs. Fenton's attorney wrote to Mrs. Fenton's mother telling her the case was over and that he was refunding her money. A copy of that letter is attached to this Affidavit as Exhibit 1.

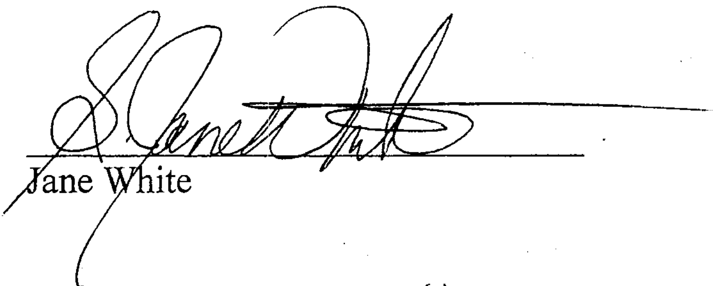
10. Mrs. Fenton's claims, in paragraph 14 of her Declaration, are lies. Pine Creek Ranch purchased the ranch from Dee because Doug and I thought that it would be a good investment at that time, and that we could keep Dee on as a manager, because he knew all the ins and outs of the property.

11. Because we have been unable to access the property since Pine Creek Ranch bought it, we are uncertain about what the condition is, what is physically present there

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

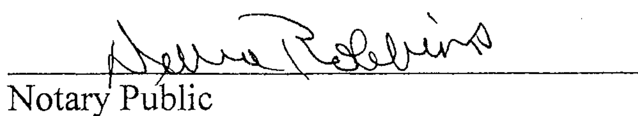
and what has been sold or destroyed. We do know that Pine Creek Ranch has lost a lot of it's investment due to the lack of receiving and income on it for rents and improvements. We are still very apprehensive about going on the ranch to check on its conditions or to make repairs and perform maintenance on the ranch, even though the Court has granted the right to do so. There have been threats to Dee, and we don't want to get involved with the feud between Dee and Mrs. Fenton.

Dated this 1st day of April 2011.

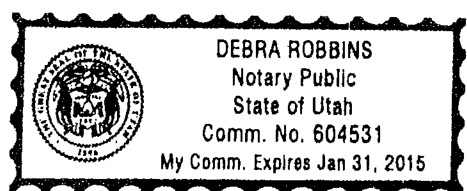


Jane White

Subscribed to this 5th day of April 2011.



Notary Public



Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

HADLEY•DODD

LAWYERS
CENTURY PARK PLAZA, SUITE 260
2696 NORTH UNIVERSITY AVENUE
PROVO, UTAH 84604

GREGORY B. HADLEY*
PAUL D. DODD

*ALSO MEMBER CALIFORNIA BAR

TELEPHONE (801) 377-4403
FACSIMILE (801) 377-4411
E-MAIL: hadlaw@mstar.net

June 12, 2006

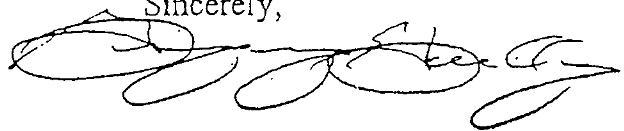
Delia Stewart
PO Box 125
Teasdale, UT 84773

RE: Dana's Case

Dear Delia:

As this matter is now concluded, I am enclosing for your reference a final bill along with a check for the balance due to be refunded to you. You are very loyal and a faithful mother and I strongly feel that what you have done for Dana has been appropriate. We can only hope at this point that they will be able to work things out. Should she not be able to do that, please call as I feel very strongly she should not be left destitute in the event Dee determines to make life difficult for her.

Sincerely,



Gregory B. Hadley

GBH/dds
Enclosures

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

Gregory B. Hadley
Suite 260 Century Park Plaza
2696 North University Avenue
Provo, UT 84604

Invoice submitted to:
Delia Stewart
PO Box 125
Teasdale UT 84773

June 12, 2006

Invoice #11123

Professional Services

Date	Atty	Description	Hrs/Rate	Amount
6/5/2006	GBH	Talk with Twani and Delia, Consult with Dana	0.80 200.00/hr	160.00
6/6/2006	GBH	Talk with Marsha Lang's Office, Call Court Clerk, Draft Request, Order. and letter	0.40 200.00/hr	80.00
6/7/2006	GBH	Talk with Tawni and Masha's Office, Revise letter, request, and Motion	0.50 200.00/hr	100.00
		For professional services rendered	1.70	$340.00
		Previous balance		($861.88)
6/12/2006		Refund		$521.88
		Total payments and adjustments		$521.88
		Balance due		$0.00

TOTAL BILLING AMOUNT IS DUE UPON RECEIPT. ALL AMOUNTS NOT RECEIVED WITHIN 15 DAYS OF DATE OF BILLING WILL BE CHARGED 18% INTEREST FROM DATE OF BILLING.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.