

1999

Charles Young Warner v. Patsy Evelyn Warner : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

CHARLES YOUNG WARNER,)	
)	
Petitioner/Appellee,)	
)	Civil No. 991031CA
v.)	
)	
PATSY EVELYN WARNER,)	
)	Priority No.: 15
Respondent/Appellant,)	

REPLY BRIEF OF APPELLANT

Appeal from Judgment of the
Fourth Judicial District Court of Utah County,
State of Utah
The Honorable Ray M. Harding, Jr.
Third District Court Judge

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Julia D'Alesandro
Clerk of the Court

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Respondent/Appellant replies to the brief of Appellee to address a point not discussed in her initial brief as follows:

APPELLEE INCORRECTLY ASSERTS APPELLANT HAS NOT MARSHALED

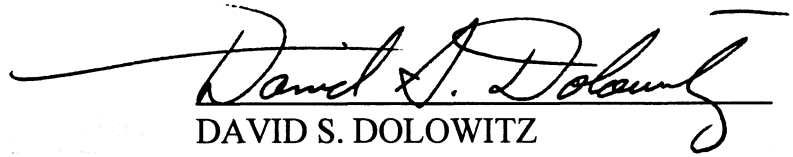
THE EVIDENCE IN HER BEHALF

Appellee incorrectly asserts Appellant has failed to marshal the evidence in her challenge to the rulings of the trial court. The Appellant did not have to marshal the evidence because the court found each of her assertions to be true, she challenged the conclusions of the court. The requirement of marshaling the evidence is imposed on appeal of the factual findings of the trial court Child v. Gondie, 972 P.2d 425, 433-434 (Utah 1998). In this case the trial court determined all of the factual assertions of Appellant were correct. (R. 291-290). She asserted there were five (5) significant factors in which effected a change in circumstance. The court in its memorandum opinion, as pointed out by Appellant in her brief, found all of them to be true (R. 290), then concluded that those findings failed to “constitute a substantial material change of circumstances not foreseeable at the time of the divorce, as required by the statute.” (R. 290). It is that conclusion not the findings which are challenged by Appellant in her appeal to this Court.

Appellant would agree with Respondent that should the Court have rejected her contentions and not determined in its findings that each of her contentions was true, she would have the obligation of marshaling the evidence to show that those factual

determinations were incorrect, however, the trial court did not make a determination that her assertions regarding findings were incorrect. In fact, it found all of her assertions were established (R. 291-290), it then concluded that even though those were all true, no substantial change in circumstances had been demonstrated (R. 290). It is that conclusion which is appealed to this court.

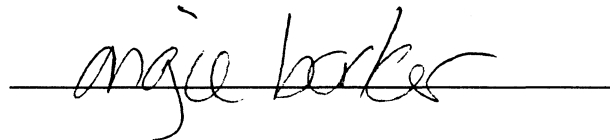
RESPECTFULLY SUBMITTED this 10 day of July, 2000.


DAVID S. DOLOWITZ
Attorney for Respondent/Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am a member of and/or employed by the law firm of
COHNE, RAPPAPORT & SEGAL, P.C., 525 East 100 South, Suite 500, Salt Lake City,
Utah 84102, and that on the 10th day of July, 2000, I caused two true and correct
copies of the foregoing **REPLY BRIEF OF APPELLANT** to be hand-delivered to:

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A handwritten signature in cursive script, reading "Angie Barker", is written over a horizontal line.