

2000

Tamra Anne Chavez v. Dennis M. Chavez : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS FOR THE STATE OF UTAH

TAMRA ANNE CHAVEZ,	:	
	:	
Petitioner/Appellee/Cross	:	
Appellant	:	Court of Appeals No: 20000970CA
	:	
v.	:	
	:	3rd District Court No: 974900264DA
DENNIS M. CHAVEZ,	:	
	:	Priority No. 15
Respondent/Appellant.	:	
	:	

APPELLEE/CROSS APPELLANT'S REPLY BRIEF

AN APPEAL AND CROSS APPEAL FROM A DECREE OF DIVORCE
 ENTERED BY THE THIRD JUDICIAL DISTRICT COURT FOR SALT
 LAKE COUNTY, STATE OF UTAH, THE HONORABLE RAYMOND
 UNO PRESIDING.

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Appeals

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GENERAL RESPONSE

Throughout his Reply Brief, Dennis makes accusations and innuendos that Tamra has taken undue liberties with the record in connection with the Brief she has filed in this matter. He goes so far as to request imposition of sanctions. Tamra respectfully takes offense to those claims. Her references to the record are accurate. She has attempted to provide this Court with the information and legal authority it needs to determine whether or not the trial court committed error. She has set forth undisputed facts which this Court needs to know

in order to have an understanding of the parties', the way they conducted marriage, and the way their finances were handled. She has provided the Court with the evidence which supports the trial court's findings, conclusions and order and she has demonstrated that in one instance, there was inadequate evidence for the trial court to do what it did. It is unfortunate that Dennis does not like what Tamra has said about him, his past actions and statements, and the issues he attempts to raise on appeal. However, what she has said is accurate and supported by the record and reflects what she believes this Court needs to know when it considers the issues which have been raised on Appeal and Cross Appeal.

POINT I

TAMRA CORRECTLY MARSHALLED THE EVIDENCE TO SHOW THAT THE S CORPORATION SHOULD HAVE BEEN FOUND TO BE A MARITAL ASSET AND DIVIDED EQUALLY BETWEEN THE PARTIES

Dennis argues that Tamra failed to meet the marshalling of the evidence requirement imposed by the Utah appellate courts in connection with her claim that the trial court erred in not including the S-Corp stock as a part of the marital estate and then dividing it equally between the parties. Dennis' argument is without merit. Tamra respectfully refers this Court to pages 41 and 42 of her principal brief which clearly demonstrate that the "marshalling requirement" has been fulfilled.

Dennis first claims that Tamra failed to cite the nature of the testimony given by Dennis and his father and to state why it was insufficient to support the challenged findings. (p. 19 Dennis; Reply Brief). As was clearly stated in Tamra's brief, both Dennis and his father testified that the stock had been gifted to Dennis and had not been the subject of a purchase. (TR-201, 506, 585, 611, 614). That testimony was directly contrary to two prior sworn statements of Dennis, (R-111, 205) and two letters from Dennis' father (Ex65 & 66) stating that the stock was purchased not gifted. Certainly the foregoing describes the "nature" of that testimony and evidence.

Dennis then erroneously claims there was additional evidence to support the trial court's finding that the stock was gifted to Dennis by his father, which was not referred to by Tamra. He characterizes that evidence as follows:

Tamra's Statements about the stock being gifted:

a. Any information about this stock was provided to Tamra by Dennis before the action was filed. She had been led to believe, by Dennis, that the stock had been given to both of them by Dennis' father. After the action was filed, Dennis learned that the "gift theory" might not benefit him so he changed his position and claimed that he was purchasing the stock. As the action proceeded to trial, he again reassessed his position and concluded that a gift theory, to him alone, would be best for him to take in attempting to exclude this substantial asset from inclusion in the marital estate.

b. Tamra's own testimony that she believed the stock was gifted to both of them does nothing to support the claim that the stock was gifted to Dennis alone. Rather, it is testimony which supports the claim that the stock was an asset owned equally by each of the parties and therefore subject to an equal division between them.

c. The fact that Dennis' name only was on the stock certificates is not relevant to the issue of whether the stock had been gifted or was being purchased. The same is true of the terms of the Buy/Sell Agreement and the issuance of stock in the names of other siblings. This is evidence that simply has no relevance to the issue of whether or not Dennis had purchased this stock from his father during this marriage.

Dennis' own admissions, especially when considered in conjunction with the admissions of his father that the stock was purchased and not gifted, are the most compelling and weighty evidence on this issue. It is the quality, not necessarily the quantity of evidence which should be the deciding factor in making a finding of fact.

Tamra has properly marshalled the evidence and has demonstrated that the evidence in support of the proposition that the stock was purchased and therefore a marital asset far outweighs the self serving testimony provided by Dennis and his father at trial that the stock had been a gift to Dennis alone. Tamra respectfully requests this Court to find that the S-Corp stock is a marital asset and to order that it be divided equally between the parties. The evidence certainly supports and justifies such a finding and order.

CONCLUSION

In considering the numerous claims of error that Dennis contends were made by the trial court in this matter, Tamra believes it is extremely important for this Court to keep in mind the following:

1. During this 22 year marriage it was Dennis who controlled all of the finances and made all of the financial decisions after consulting, not with Tamra, but rather his father, Tony.

2. It was Dennis and Tony who orchestrated the transfer of stock, the payment of salaries and dividends and the characterization of what these transfers in fact were.

3. The trial court had concerns about Dennis and Tony "cutting the pattern to fit the cloth" so as to better position Dennis in the divorce action.

4. Tamra's testimony and evidence was consistent and unchanged throughout the proceedings below. That was not the case with Dennis as exemplified by the direct conflict in his sworn testimony regarding the S-Corp Stock first being purchased and then never having been purchased but rather conveniently being labeled as a "gift".

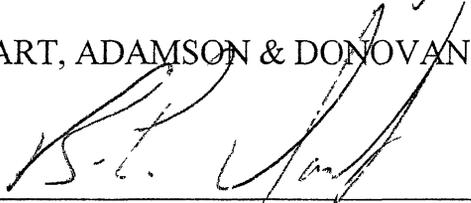
In this case, there was substantial, credible evidence to support all but one of the factual findings of the trial court. Dennis has not shown that the trial court abused its broad discretion in its award of property/debt, maintenance and attorneys fees. Dennis' requests that this Court in some way change or modify these awards should be denied.

However, the way the trial court dealt with the S-Corp stock was reversible error given the significant and credible evidence which supported Tamra's claim that this stock had been purchased by the parties during the marriage. This was a valuable marital asset which should have been divided equally between them given the substantial annual income the stock had generated in the past and was expected to generate in the future. The trial court abused its discretion in ignoring that evidence especially in light of its comment that the potential for financial manipulation by Dennis and his father in this case was certainly possible. (R-677)

Tamra respectfully requests this court to grant her the relief she has requested as itemized on pages 3 & 4 of her principal Brief.

RESPECTFULLY SUBMITTED this 21 day of January, 2002.

DART, ADAMSON & DONOVAN



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Kent M. Kasting

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MAILING CERTIFICATE

CERTIFICATE OF SERVICE

The undersigned, a representative of Dart, Adamson & Donovan, hereby certifies that on January 31, 2002, two (2) true and correct copies of the foregoing, **APPELLEE/CROSS APPELLANT'S REPLY BRIEF**, was () mailed, postage prepaid, hand delivered, to the following counsel of record:

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By: Shaaron K. Minkel