

1992

Julie Bradford v. Jay Bradford : Brief of Respondent

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 920095

IN THE COURT OF APPEALS OF THE STATE OF UTAH

JULIE BRADFORD)

Plaintiff and Appellant)

VS.)

JAY BRADFORD)

Defendant and Respondent.)

Case No. 920095-CA

Priority No. 16

BRIEF OF RESPONDENT

AN APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT OF THE STATE
OF UTAH, COUNTY OF BOX ELDER, THE HONORABLE ROBERT W.
DAINES, PRESIDING

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FILED

AUG 19 1992

COURT OF APPEALS

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JULIE BRADFORD

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Case No. 920095-CA

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STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction over appeals in domestic cases by way of Utah Code Annot. Section 78-2a-3(h) (1991).

STATEMENT OF ISSUES

1. Whether the trial Court erred in offsetting the debts owed each other by the parties.

DETERMINATIVE STATUTES AND RULES

Utah Code Annot. Sections 25-5-4(1), and 25-5-4(2) (1989):

The following agreements are void unless the agreement, or some note or memorandum of the agreement, is in writing, signed by the party to be charged with the agreement:

- (1) every agreement that by its terms is not to be performed within one year from the making of the agreement;
- (2) every promise to answer for the debt, default, or miscarriage of another;

Utah Code Annot. Section 25-5-5 (1953):

To charge a person upon a representation as to the credit of a third person, such representation, or some memorandum thereof, must be in writing subscribed by the party to be charged therewith.

STATEMENT OF THE CASE

Nature of the Case

This is an Appeal from a civil judgment and Order signed by the Honorable R. W. Daines, acting District Judge in the First Judicial District Court of Box Elder County, State of Utah.

Course of the Proceedings and Disposition at the trial Court

This is a case where Plaintiff filed an Order to Show Cause, seeking to hold the Defendant in Contempt of Court for his failure to make child support payments. The Defendant sought additional relief in gaining visitation with the children. Defendant further sought an offset against back child support for debts he arranged to be paid that the divorce decree required be paid by the Plaintiff.

Credit was given to the Defendant for child support he had paid through Recovery Services in Utah and in Montana. Defendant was also given credit for debts that should have been paid by the Plaintiff. The parties were each awarded a portion of a real estate contract. Defendant was given credit for the portion of the contract wrongfully retained by the Plaintiff. A judgment was entered for the balance owed by the Defendant. The Plaintiff filed her Notice of Appeal on February 5, 1992.

STATE OF RELEVANT FACTS

1. Plaintiff is a resident of Box Elder County, State of Utah. Defendant is a resident of the State of Montana.
2. Plaintiff obtained a divorce from the Defendant in May, 1988, in Box Elder County, State of Utah, and Plaintiff was awarded custody of the two minor children.
3. Defendant was ordered to pay child support in the sum of \$150.00 per month, per child.
4. Each of the parties were ordered to pay certain specified debts. Each party was awarded an interest in the proceeds of a

real estate contract. All of the proceeds were retained by the Plaintiff.

5. Defendant arranged for the payment, through his father of certain debts ordered to be paid by the Plaintiff including the family residence awarded to the Plaintiff.

SUMMARY OF THE ARGUMENT

The trial court did not error when it offset the debts owed by the parties to each other.

The court balanced the debt Defendant owed the Plaintiff against the debt Plaintiff owed the Defendant and correctly awarded the difference as a judgement.

The court correctly determined that the trailer was not the property of the parties and that the debts paid by the Plaintiff's parents were her debts.

ARGUMENT I

**THE TRIAL COURT DID NOT ERROR WHEN IT OFFSET
CHILD SUPPORT ARREARAGE AGAINST DEBTS OWED BY
THE PLAINTIFF.**

The Plaintiff makes much to do about the case law that reaches the conclusion that a retroactive change in child support is not allowed. {*Harris v Harris*, 377 P.2d 1007 (1963); *Hills v Hills*, 638 P.2d 516 (Utah 1981); *Larsen v Larsen*, 561 P.2d 1077 (Utah 1977); *Ross v Ross*, 592 P.2d 600 (Utah 1979); *Stanton v Stanton*, 517 P.2d 1011 (Utah 1974); *Utah Dept. of Social Services v Adams*, 806 P.2d

1195 (Utah App. 1991)}

She misses the point. She is entitled to her full due of child support. The problem is that she is also liable for the debts and obligations assigned her in the divorce decree including the debt on the family residence she received in the property settlement.

Plaintiff was ready to lose the house because of her failure to meet an obligation required of her by the divorce decree. The lending institution was threatening to sue both parties for the deficiency. Defendant arranged for his father to bail out the loan and save the parties from suit and save the house for the Plaintiff. This is a payment that would not have been required if the Plaintiff had obeyed the order and paid her required debts.

What Defendant asked the court to do was to determine the child support due and then determine the amount owed him by the Plaintiff for her failure to pay her bills. The essence of what Judge Daines did was to offset one judgment against the other.

The Defendant did not ask the court to modify the amount of child support he was due or to give an in kind credit. He merely asked the court to consider the offsetting obligations and balance them. The court did just that.

ARGUMENT II

THE COURT BALANCED THE DEBT DEFENDANT OWED THE PLAINTIFF AGAINST THE DEBT PLAINTIFF OWED THE DEFENDANT AND CORRECTLY AWARDED THE DIFFERENCE AS A JUDGEMENT.

The Statute of Frauds Utah Code Annotated 25-5-4 does not apply. The plaintiff is not being asked to answer for the debt of another. The defendant arranged for debts of the plaintiff to be paid. These were her obligations under the divorce decree. It is not through altruism that the debts were paid. They were paid to avoid suit against the defendant. Even though they were plaintiff's obligation under the divorce decree they were joint marital debts that the creditor could pursue either party.

The fact that defendant had to obtain financing through his father does not change the fact of payment. The parties were fortunate that defendant was able to call on his family for financing. The home of the plaintiff was saved and the parties avoided judgments and the difficulty of debt collection.

This is a case where the defendant did not initially pursue reimbursement for paying debts of the plaintiff as required by the divorce decree. The defendant merely asserted an offsetting judgment against the child support judgment of the plaintiff. In *Brown v Brown*, 744 P.2d 333 (Utah App. 1987) the conclusion is reached that silence and acquiescence do not constitute a stipulation. There is no such claim in the present case.

The simple claim of the defendant is that he is entitled to judgment against the plaintiff for her failure to pay bills required by the divorce decree.

The present case goes one step further. There was a real estate contract that the parties were to divide the proceeds from. The plaintiff retained all of the payments there from. Judge

Daines gave defendant credit for his share of the contract.

ARGUMENT III

THE COURT CORRECTLY DETERMINED THAT THE TRAILER WAS NOT THE PROPERTY OF THE PARTIES AND THAT THE DEBTS PAID BY THE PLAINTIFF'S PARENTS WERE HER DEBTS.

The trial court reached the conclusion that the trailer was the property of the defendant's father and not the property of the parties. Nothing in the decree could terminate his right to his property.

The attorney's fees in the divorce decree are already an order against the defendant and need not have further effect here.

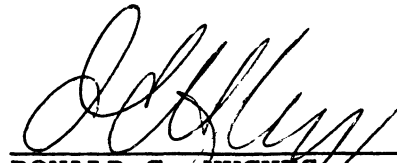
The plaintiff claimed that her parents also contributed to the payment of her debts (Tr. at 28-30). These were not debts that were obligations under the decree of the defendant and could not be charged against him.

CONCLUSION

The trial court correctly took extensive evidence as to the obligations of the parties. There is no question that defendant had a child support obligation to the plaintiff. That amount was determined. There is no question that plaintiff failed to pay debts required of her and that she appropriated the proceeds of the real estate contract that defendant was entitled to receive.

The trial court simply found what each party owed the other under the terms of the decree and offset the judgments awarding the difference to the plaintiff as a judgment.

DATED this 15 day of August, 1992.

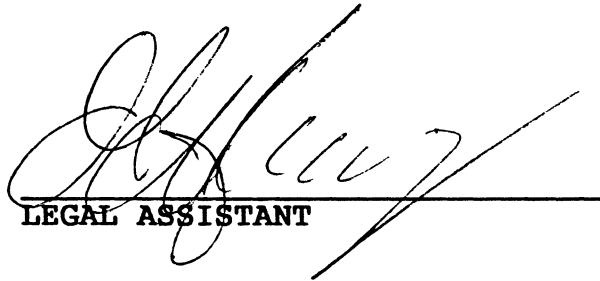


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Attorney for Defendant/Respondent

MAILING CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES, that they have caused a true and correct copy of the foregoing document to be served upon the following person(s), by placing same in the United States Postal Service, postage pre-paid, August 15, 1992:

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LEGAL ASSISTANT