

1982

# Agnes Beckstead v. Delos Beckstead : Respondent's Reply to Petition for Rehearing

Utah Supreme Court

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Kenneth M. Hisatake; Attorney for Plaintiff and Respondent;

Don Blackham; Blackham and Boley; Attorney for Defendant and Appellant;

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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AGNES BECKSTEAD, :

Plaintiff and Respondent, :

vs. :

DELOS BECKSTEAD, :

Case No. 18331

Defendant and Appellant. :

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RESPONDENT'S REPLY TO  
PETITION FOR REHEARING

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Appeal from the Judgment of the 3rd  
District Court for Salt Lake County  
Honorable Larry R. Keller, Judge

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FILED

APR 25 1983  
(8331)

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OF THE STATE OF UTAH

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AGNES BECKSTEAD, :  
Plaintiff and Respondent, :  
vs. :  
DELOS BECKSTEAD, : Case No. 18331  
Defendant and Appellant. :

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PETITION FOR REHEARING

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TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE NATURE OF THE CASE . . . . .	1
DISPOSITION BY THIS COURT . . . . .	1
RELIEF SOUGHT ON PETITION FOR REHEARING . . . . .	2
STATEMENT OF FACTS . . . . .	2
ARGUMENT . . . . .	5
I. THE DEFENDANT-APPELLANT'S PETITION FOR REHEARING DOES NOT SET FORTH ANY FACTS UPON WHICH A REHEARING SHOULD BE GRANTED . . .	5
CONCLUSION . . . . .	6

CASES CITED

<u>Ducheneau v. House</u> , 4 Utah 483, 11 P. 618 (1886) . . . . .	5
<u>Cummings v. Nielson</u> , 42 Utah 157, 129 P. 619 . . . . .	5

STATUTES CITED

Rule 76(e)(1), <u>Utah Rules of Civil Procedure</u> . . . . .	5
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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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AGNES BECKSTEAD,	:	
Plaintiff and Respondent :		RESPONDENT'S BRIEF IN REPLY TO PETITION FOR REHEARING
vs.	:	
DELOS BECKSTEAD,	:	Case No. 18331
Defendant and Appellant. :		

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STATEMENT OF THE NATURE OF THE CASE

This is an action for modification of a support decree entered by the Honorable Larry R. Keller on the 18th day of February, 1982.

DISPOSITION BY THIS COURT

The lower court modified the original Decree of Divorce to increase the alimony payments from \$205.00 to \$400.00 per month because the District Court, in entering its original award of alimony, contemplated that the Plaintiff-Respondent would receive the equivalent of sixty (60%) per cent of the net proceeds of the sale of the parties' residence by way of monthly payments from the parties' daughter who, immediately thereafter, was discharged in bankruptcy and relieved of further payments to the Plaintiff-Respondent. This Court

affirmed the lower court's decision to modify the Decree and to increase the alimony payments to \$400.00.

#### RELIEF SOUGHT ON PETITION FOR REHEARING

The Plaintiff-Respondent herein, Agnes Beckstead, seeks to have the Petition for Rehearing denied and the case remanded to the District Court requiring the Defendant-Appellant to abide by the modified Decree for support.

#### STATEMENT OF FACTS

The divorce was originally heard on October 2, 1979, by the Honorable Christine M. Durham, District Judge of the Third Judicial District Court in and for Salt Lake County, State of Utah.

After a full and complete hearing on the trial of the issues of divorce, and particularly the issues relating to alimony, the Court made several findings, the more pertinent of which were (1) that both the Plaintiff and Defendant were in need of \$650.00 each to maintain themselves, (2) that the Plaintiff was untrained and unskilled and was able to maintain minimal employment, such as the position of a crossing guard, (3) the Defendant was physically fit and capable of future employment, (4) Plaintiff had no retirement program and no means of future support beyond her present income of approximately \$200.00 per month, (5) Defendant was entitled to retirement benefits in the sum of \$517.00 per month.

Based upon the above findings, the Court ordered the sale of the home of the parties and awarded the Plaintiff sixty per cent (60%) of the net proceeds after the costs of sale and awarded the Defendant forty per cent (40%) of the net proceeds after the costs of sale. The home was free and clear, except for one encumbrance of approximately \$28,000.00 which was a first mortgage which the parties had permitted to be placed upon their home for a loan to one of their daughters which was to be repaid by the daughter. The sixty per cent (60%) of the net proceeds from the sale of the home of the parties which was awarded to the Plaintiff included the obligation that was owed by the daughter which was to be paid to Plaintiff-Respondent on a monthly basis at approximately \$308.00 per month. The Defendant was ordered to pay the sum of \$205.00 per month as alimony. With the \$233.00 per month (for 9 months of the year) as crossing guard employment, the \$308.00 per month payment from the daughter's obligation, and the \$205.00 per month alimony to be paid by the Defendant, the Plaintiff was to receive approximately \$650.00 income per month.

The Defendant, on the other hand, had income of \$517.00 per month from his retirement, and the Court deemed that he was capable of future employment and was able to invest the lump-sum award of forty per cent (40%) of the net sales proceeds (approximately \$27,000.00) from the sale of the home to have sufficient resources to obtain the \$650.00 per month which the Court deemed he needed for his support.

The Plaintiff never did receive the monthly payments from her daughter apparently due to antagonism between the daughter and the Plaintiff-Respondent and the daughter eventually filed for bankruptcy and was discharged in bankruptcy whereby the \$28,000.00 obligation was totally nullified and rendered unenforceable. The mortgage to the bank had been paid upon the sale of the home and the unsecured debt from the daughter to the Plaintiff-Respondent was to be paid at approximately \$308.00 per month. Furthermore, the Defendant-Appellant had assured the Plaintiff-Respondent and the court that he would assure Plaintiff-Respondent that the daughter would provide other property as collateral for the obligation, but the Defendant-Appellant failed or refused to perform. Because of the bankruptcy, Plaintiff-Respondent lost the benefit of the \$308.00 per month leaving the Plaintiff-Respondent with her income as a crossing guard of \$233.00 per month for nine months of the year (or \$174.00 per month for 12 months) and the \$205.00 per month for alimony which is a total of \$379.00 per month for 12 months.

The Plaintiff-Respondent, therefore, initiated an action for Modification of the Divorce Decree to increase the alimony payments to \$400.00 per month to provide her with the income necessary to sustain her minimum standard of living. Plaintiff-Respondent was granted the increased support and the Defendant-Appellant appealed. This Court affirmed the lower Court's decision.

ARGUMENT

POINT I

THE DEFENDANT-APPELLANT'S PETITION FOR REHEARING DOES NOT SET FORTH ANY FACTS UPON WHICH A REHEARING SHOULD BE GRANTED.

The Defendant-Appellant states that the court failed to balance the existing balance between the Appellant and Respondent. The issues relating to the modification were heard both by the Honorable Larry R. Keller on the trial level and by this Court on appeal, and this court has affirmed the trial court's decision to modify the Decree. The Defendant, in essence, states that he disagrees with the Court's decision and with the Court's determination of the "existing equities" between the parties.

Although a Petition for Rehearing is normally viewed as a matter of right, pursuant to Rule 76(e)(1), Utah Rules of Civil Procedure, the cases make it clear that no rehearing would be granted where the moving party presents nothing new and important for consideration by the court. Ducheneau v. House, 4 Utah 483, 11 P. 618 (1886). See also Cummings v. Nielson, 42 Utah 157, 129 P. 619.

In this case both the trial court and this court reviewed all of the issues presented by the Defendant-Appellant and have rendered its decision in favor of the Plaintiff-Respondent based upon all of the facts relating to the case.

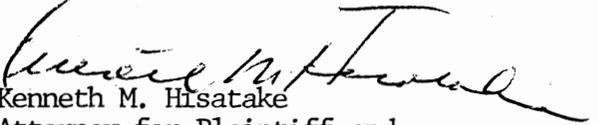
There is nothing new presented by the Defendant-Appellant for rehearing and Defendant-Appellant's only contention is that he does not agree with the decision of the trial Court and of this Court.

CONCLUSION

The Plaintiff-Respondent respectfully submits that the Defendant-Appellant's Petition for Rehearing should be denied and the case remanded to the District Court.

DATED this 25<sup>th</sup> day of April, 1983.

Respectfully submitted,

  
Kenneth M. Hisatake  
Attorney for Plaintiff and  
Respondent

CERTIFICATE OF MAILING

I hereby certify that I mailed two (2) copies of the foregoing Respondent's Reply to Petition for Rehearing, postage prepaid, to:

Don Blackham, Esq.  
BLACKHAM AND BOLEY  
3535 South 3200 West Street  
West Valley City, Utah 84119  
Attorney for Defendant and Appellant

this 15<sup>th</sup> day of April, 1983.

