

1982

# Agnes Beckstead v. Delos Beckstead : Brief of Respondent

Utah Supreme Court

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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 BRIEF

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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**

JUN 17 1982

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Clerk, Supreme Court, Utah

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RESPONDENT'S BRIEF

STATEMENT OF NATURE OF CASE

The Plaintiff-Respondent initiated a hearing on August 28, 1981, for Modification of a Divorce Decree based upon substantial change in the Plaintiff-Respondent's circumstances.

DISPOSITION IN LOWER COURT

The hearing for Modification of Divorce Decree was held by the Honorable Larry R. Keller, District Court Judge, on January 25, 1982. An Order Modifying the Decree of Divorce was signed and entered on the 18th day of February, 1982. The Defendant-Appellant appeals from the Order Modifying the Decree of Divorce.

RELIEF SOUGHT ON APPEAL

The Plaintiff-Respondent seeks an affirmation of the Trial Court's Order Modifying the Decree of Divorce.

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.

#### ARGUMENT

The Defendant-Appellant sets forth four (4) separate arguments in his brief on appeal. The Plaintiff-Respondent will respond to Points I and II jointly and Points III and IV jointly.



## POINT I

THE PLAINTIFF-RESPONDENT PROPERLY SOUGHT A MODIFICATION OF A DECREE OF DIVORCE AND STATED SUFFICIENT GROUNDS TO PERMIT MODIFICATION.

It is difficult to follow Defendant-Appellant's argument in Point I, but the gist of his argument appears to be that because Plaintiff-Respondent never received any payment from her daughter, a modification could not be made of that portion of the award of the original Decree of Divorce. The Defendant-Appellant does not cite any case law to support his position.

If Defendant-Appellant's position is correct, most defendants in a divorce action who are ordered to pay alimony or support need only to refuse to make payments as ordered by the court to defeat any subsequent attempt to modify the alimony or support provisions of the divorce decree. To carry the absurdity further, a plaintiff who has custody of minor children need only to refuse the opposing spouse visitation privileges to defeat any attempt at modification of the decree of divorce for specific visitation privileges.

There is nothing in the record to indicate that the Plaintiff-Respondent attempted to or in fact did file any documents to set aside the Decree of Divorce under Rule 60(b) of the Utah Rules of Civil Procedure, and the only provision in the Divorce Decree sought to be modified by the Plaintiff-Respondent was the provision for alimony.

The Defendant-Appellant claims that Plaintiff-Respondent did not state sufficient grounds for Modification of the Decree of Divorce. Assuming that the Defendant-Appellant is referring to the allegations in Plaintiff-Respondent's Petition for Modification and not to the Court's authority to modify a Decree of Divorce, this Court need only review Plaintiff-Respondent's Verified Petition for Modification of Decree which clearly states that of the \$650.00 per month income which was intended as part of Plaintiff-Respondent's award, Plaintiff-Respondent lost \$308.00 as a result of the bankruptcy filed by Plaintiff-Respondent's daughter, Diana Beckstead. Certainly, a decrease in monthly support of \$308.00 out of a totally intended \$650.00 is sufficient grounds to seek a modification. The loss incurred by the Plaintiff-Respondent of \$308.00 in monthly income was due to no fault of the Plaintiff-Respondent and totally out of her control and totally binding upon her since the Bankruptcy Court discharged the obligation, pursuant to the United States Bankruptcy Law.

#### POINT II

THE EVIDENCE CLEARLY SUPPORTS THE ORDER MODIFY-  
ING THE DECREE OF DIVORCE AND THERE WAS NO ABUSE  
OF THE COURT'S DISCRETION IN MODIFYING THE DECREE.

Clearly, the evidence before the Court in the Modification Hearing was sufficient to justify the modification of the original Decree of Divorce. The evidence indicated that the Defendant-Appellant

was still receiving his retirement benefits, and that the Defendant-Appellant had approximately \$11,000.00 invested in money market certificates at between 10% to 14% interest per annum. The evidence further showed that the Defendant-Appellant was able to maintain employment if he desired to do so but hesitated to accept permanent employment because his retirement benefits would be reduced after a certain minimum income was earned by the Defendant-Appellant. It did not reflect that the Defendant-Appellant could no longer retain employment.

The finding by the Trial Court in the original divorce hearing that the Defendant-Appellant was capable of future employment was proved by the Defendant-Appellant's own testimony in the Modification Hearing.

The basis for a modification of a Divorce Decree is a change in Plaintiff's or Defendant's circumstances or a change in both of the parties' circumstances which would warrant a modification of the decree, and a Trial Court has wide discretion in making such modification. In Mitchell v. Mitchell, 527 P.2d 1359, (1974) the Supreme Court of Utah stated:

"Section 30-3-5, U.C.A. 1953, as amended 1969, provides:

"When a decree of divorce is made, the court may make such orders in relation to the children, property and parties, and the maintenance of the parties and children, as may be equitable. The court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the support and maintenance of the parties, the custody of the children and their support and maintenance, or the distribution of the property as shall be reasonable and necessary.

"(1-4) In accordance with this statute, this court has held that a proceeding to modify a divorce decree is equitable and the same authority is conferred upon the trial court to make subsequent changes as respect to support and maintenance as it could have dealt with them originally.<sup>1</sup> Under Article VIII, Section 9, Constitution of Utah, it is both the duty and prerogative of this court in an equitable action to review the law and the facts and make its own findings and substitute its judgment for that of the trial court. However, in a divorce action, the trial court has considerable latitude of discretion in adjusting financial and property interest, and its actions are indulged with a presumption of validity. The burden is upon appellant to prove that the evidence clearly preponderates against the findings as made; or there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error; or a serious inequity has resulted as to manifest a clear abuse of discretion.<sup>2</sup> "

It is clear from the precedents that the Trial Court has wide discretionary authority in modifying the divorce decree when the court finds a substantial change in circumstances.

#### CONCLUSION

Plaintiff-Respondent respectfully submits that the evidence clearly supports the Trial Court's Order Modifying the Divorce Decree and the Trial Court's judgment should be affirmed.

DATED this \_\_\_\_ day of June, 1982.

Respectfully submitted,

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CERTIFICATE OF MAILING

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

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This \_\_\_\_\_ day of June, 1982.

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