

1982

Richard A. Christenson v. Commonwealth Land Title Insurance Company : Reply Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

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

APPELLANT'S BRIEF

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FILED

APR 6 1983
18331

Clk. Supreme Court, Utah

IN THE SUPREME COURT
OF THE STATE OF UTAH

AGNES BECKSTEAD,)
)
 Plaintiff and)
 Respondent,)
) PETITION FOR REHEARING
 -vs-)
)
 DELOS BECKSTEAD,) Case No. 18331
)
 Defendant and)
 Appellant.)
)

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF UTAH:

Delos Beckstead, Defendant and Appellant, presents this Petition For Rehearing of the above-entitled cause and, in support thereof, respectfully shows:

1. On March 18, 1983, this Court filed its Per Curiam decision in favor of the Plaintiff and Respondent and against the Defendant and Appellant, affirming the Judgment of the trial Court.

2. Defendant and Appellant seeks a rehearing upon the following grounds:

(a) This Court failed to balance the existing equities between Defendant/Appellant and Plaintiff/Respondent.

For the foregoing reason, it is urged that the Petition For Rehearing of Defendant and Appellant be granted.

DATED this 6th day of April, 1983.


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MAILING CERTIFICATE

The undersigned, Don Blackham, does hereby certify that a true and correct copy of the foregoing Petition For Rehearing was mailed, postage prepaid this 6th day of April, 1983, addressed as follows:

Kenneth M. Hisatake, Esquire
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A handwritten signature in cursive script, reading "Don Blackham", written over a horizontal line.

DON BLACKHAM

IN THE SUPREME COURT
OF THE STATE OF UTAH

AGNES BECKSTEAD,)
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 Plaintiff and)
 Respondent,)
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 -vs-)
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 DELOS BECKSTEAD,)
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 Defendant and)
 Appellant.)
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APPELLANT'S BRIEF

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IN THE SUPREME COURT
OF THE STATE OF UTAH

AGNES BECKSTEAD,)
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 Plaintiff and) Case No. 18331
 Respondent)
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 -vs-)
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 DELOS BECKSTEAD,)
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 Defendant and)
 Appellant)
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APPELLANT'S BRIEF

MOTION FOR REHEARING BRIEF

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IN THE SUPREME COURT
OF THE STATE OF UTAH

AGNES BECKSTEAD,

Plaintiff and
Respondent,

Case No. 18331

-vs-

DELOS BECKSTEAD,

Defendant and
Appellant.

APPELLANT'S BRIEF

STATEMENT OF NATURE OF CASE

Delos Beckstead, Defendant and Appellant, appealed from an Order Modifying Decree of Divorce of the Honorable Larry R. Keller, one of the Judges of the Third District Court of Salt Lake County, State of Utah. In a Per Curiam opinion, this Court affirmed the Judgment of the trial Court.

RELIEF SOUGHT

Defendant and Appellant, seeks a rehearing by this Court of the Per Curiam opinion affirming the Judgment of the trial Court.

STATEMENT OF FACTS

On October 2, 1979, Respondent and Appellant herein appeared in the Third Judicial District Court of Salt Lake County, State of Utah for trial of their divorce action before the Honorable Christine M. Durham, one of the Judges thereof, sitting without a jury.

At the divorce trial, Appellant and Respondent were each awarded a Decree of Divorce (T-39). Pursuant to the terms of the Amended Decree Of Divorce, Respondent herein was awarded monthly alimony from Appellant herein in the sum of TWO HUNDRED FIVE and NO/100 DOLLARS (\$205.00) commencing immediately upon receipt of Appellant's retirement benefits (R-59).

In its Amended Findings Of Fact, the trial court found that the Respondent herein was employed as a crossing guard and earned approximately TWO HUNDRED THIRTY-THREE and NO/100 DOLLARS (\$233.00) per month during nine (9) months of the year (R-61). Appellant herein had taken an early retirement from his employment at the Jordan School District and expected to receive retirement benefits of approximately FIVE HUNDRED SEVENTEEN and NO/100 DOLLARS (\$517.00) per month (R-61). The trial court, in its Amended Findings of Fact, also found that Respondent and Appellant each needed approximately SIX HUNDRED FIFTY and NO/100 DOLLARS (\$650.00) per month to maintain themselves (R-61).

Respondent and Appellant, during their marriage, had acquired one (1) substantial marital asset, their family residence located at 9582 South State Street, Sandy, Utah (R-3). Pursuant to the Amended Decree Of Divorce entered by the trial court, Respondent and Appellant were ordered to sell the family residence, pay certain joint obligations, and divide the net proceeds derived from the sale of the residence on the basis of sixty percent (60%) of the net proceeds of said sale to Respondent and forty percent (40%) of the net proceeds of said sale to Appellant (R-57, 58 and 59). Respondent and Appellant had mortgaged the family residence for the purpose of obtaining money for a daughter. At the time of the divorce trial, there was a mortgage balance of TWENTY SIX

THOUSAND and NO/100 DOLLARS (\$26,000.00) to TWENTY-EIGHT THOUSAND and NO/100 DOLLARS (\$28,000.00) (T-22). The daughter of Respondent and Appellant was making the monthly mortgage payments of TWO HUNDRED TWENTY-SEVEN and NO/100 DOLLARS (\$227.00) (T-36).

From the sale of the family residence, Appellant received the sum of TWENTY-SEVEN THOUSAND ONE HUNDRED EIGHTY-NINE and 76/100 DOLLARS (\$27,189.76) (R-121 and 122) as his forty percent (40%) share of the distributive net proceeds ordered by the trial Court at the divorce trial (T 32 and 33). Respondent's sixty percent (60%) share of the distributive net proceeds from the sale of the family residence amounted to ELEVEN THOUSAND and NO/100 DOLLARS (\$11,000.00) or FIFTEEN THOUSAND NINE HUNDRED THIRTY-TWO and NO/100 DOLLARS (\$15,932.00), depending upon which of Respondent's versions is accepted, her testimony at the modification hearing (R-119) or that appearing in Respondent's Verified Petition For Modification of Decree (R-83).

It did not come to pass that the daughter of Respondent and Appellant made monthly payments of TWO HUNDRED TWENTY-SEVEN and NO/100 DOLLARS (\$227.00) to Respondent, after the sale of the family residence, as the daughter had done in making mortgage payments to discharge the mortgage obligation incurred by Appellant and Respondent for the purpose of obtaining money for the daughter (R-116). And on February 5, 1981, the daughter filed a petition to be declared bankrupt, listing the obligation of TWENTY-SIX THOUSAND and NO/100 DOLLARS (\$26,000.00) to THIRTY-ONE THOUSAND SIX HUNDRED SIXTY-EIGHT and 48/100 DOLLARS (\$31,668.48) (T-22 and R-83) which was part of the sixty percent (60%) share of the net proceeds Respondent was awarded pursuant to the terms of the Amended Decree of Divorce (R-58).

On August 28, 1981, Respondent herein filed her Verified Petition For Modification Of Decree seeking an increase of alimony from TWO HUNDRED FIVE and NO/100 DOLLARS (\$205.00) per month to FOUR HUNDRED and NO/100 DOLLARS (\$400.00) per month. (R-83 and 84).

At the time of the hearing of Plaintiff and Respondent's Petition For Modification Of Decree, Plaintiff and Respondent had a net monthly income, on a nine (9) month basis, of TWO HUNDRED and FORTY-EIGHT and NO/100 DOLLARS (\$248.00). (T-10); and Defendant and Appellant had a gross monthly income of FIVE HUNDRED FIFTY-SEVEN and 80/100 DOLLARS (\$557.80) retirement income (T-20 and 21), together with interest income from ELEVEN THOUSAND and NO/100 DOLLARS (\$11,000.00) received from the divorce settlement (T-20 and 28).

ARGUMENT

POINT I

THIS COURT FAILED TO BALANCE
THE EXISTING EQUITIES BETWEEN
DEFENDANT/APPELLANT AND PLAINTIFF/RESPONDENT.

This Court in its Per Curiam opinion recognized that in order to secure a change in alimony, the moving party must allege and prove changed conditions arising since the entry of the original Decree. Hampton v. Hampton, 86 Utah 570, 47 Pa2d 419. The only real income change between Defendant and Appellant and Plaintiff and Respondent from the time of divorce to time of modification hearing was the interest income of Defendant and Appellant, since Plaintiff and Respondent maintained her same employment and Defendant and Appellant had his same retirement income. From the amount of his investment and the interest rate thereon (T-19 and 28), one could conclude that Defendant and Appellant had an

additional ONE HUNDRED and NO/100 DOLLARS (\$100.00) per month income at the time of the Modification hearing, which he did not have at the time of the entry of the divorce trial.

This Court further recognized the considerable latitude of discretion in modifying a decree of divorce. Mitchell v. Mitchell, 527 Pa2d 1359. But, it is impossible for this writer to understand how it cannot be that the trial Court did not abuse its discretion in increasing an alimony award to Plaintiff and Respondent in the sum of ONE HUNDRED NINETY-FIVE and NO/100 DOLLARS (\$195.00) per month out of an income increase of Defendant and Appellant of only ONE HUNDRED and NO/100 DOLLARS (\$100.00) per month.


In an equity case, such as the case now before this Court, upon appeal, this Court may review the facts and review the evidence presented to the trial Court and then substitute its judgment for that of the trial Court. Graziano v. Graziano, 7 Utah 2d 187, 321 Pa2d 931.

By upholding the Judgment of the trial Court, this Court places Defendant and Appellant in the impossible position of compliance with a Court order, paying alimony in the sum of FOUR HUNDRED and NO/100 DOLLARS (\$400.00) per month and paying his own living expenses from an income of approximately SIX HUNDRED SIXTY and NO/100 DOLLARS (\$660.00) per month.

CONCLUSION

This Court should reverse the Per Curiam opinion filed herein and reverse the Order of the Trial Court in modifying the Decree of Divorce.

Respectfully submitted,



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MAILING CERTIFICATE

The undersigned, Don Blackham, does hereby certify that two (2) true and correct copies of the foregoing Appellant's Brief were mailed this 6th day of April, 1983, postage prepaid, and addressed to Respondent's counsel as follows:

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