

1983

# Agnes Beckstead v. Delos Beckstead : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

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

Kenneth M. Hisatake; Attorney for Plaintiff and Respondent;

---

## Recommended Citation

Brief of Appellant, *Beckstead v. Beckstead*, No. 18331 (Utah Supreme Court, 1983).

[https://digitalcommons.law.byu.edu/uofu\\_sc2/3027](https://digitalcommons.law.byu.edu/uofu_sc2/3027)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).



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

\*\*\*\*\*

DON BLACKHAM  
BLACKHAM AND BOLEY  
Attorney for Defendant  
and Appellant  
3535 South 3200 West Street  
West Valley City, Utah 84119

Kenneth M. Hisatake  
Attorney for Plaintiff  
and Respondent  
1825 South Seventh East Street  
Salt Lake City, Utah 84105

TABLE OF CONTENTS

	Page
STATEMENT OF NATURE OF CASE . . . . .	1
DISPOSITION IN THE LOWER COURT . . . . .	1
RELIEF SOUGHT ON APPEAL . . . . .	1
STATEMENT OF FACTS . . . . .	2
ARGUMENT	
<u>Point I</u>	
THE RESPONDENT SEEKS TO SET ASIDE A DECREE OF DIVORCE RATHER THAN MODIFY A DECREE OF DIVORCE . . . . .	4
<u>Point II</u>	
RESPONDENT'S VERIFIED PETITION FOR MODIFICATION OF DECREE DOES NOT SET FORTH GROUNDS FOR MODIFICATION OF THE DECREE OF DIVORCE . . . . .	5
<u>Point III</u>	
THE ORDER MODIFYING DECREE OF DIVORCE IS NOT SUPPORTED BY THE EVIDENCE . . . . .	6
<u>Point IV</u>	
THE TRIAL COURT ABUSED ITS DISCRETION IN MODIFYING THE AMENDED DECREE OF DIVORCE BY INCREASING APPELLANT'S PAYMENT OF ALIMONY TO RESPONDENT . . . . .	7
CONCLUSION . . . . .	8

CASES CITED

Hampton v. Hampton, 86 Utah 570, 47 Pa 2d 419 . . . . .	6
---	---

IN THE SUPREME COURT  
OF THE STATE OF UTAH

AGNES BECKSTEAD,

Plaintiff and  
Respondent

-vs-

DELOS BECKSTEAD,

Defendant and  
Appellant

)  
)  
) Case No. 18331  
)  
)  
)  
)

APPELLANT'S BRIEF

\*\*\*\*\*

APPEAL FROM A JUDGMENT OF THE  
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
THE HONORABLE LARRY R. KELLER, DISTRICT JUDGE

DON BLACKHAM  
BLACKHAM AND BOLEY  
Attorney for Defendant  
and Appellant  
3535 South 3200 West Street  
West Valley City, Utah 84119

KENNETH M. HISATAKE  
Attorney for Plaintiff  
and Repondent  
1825 South Seventh East Street  
Salt Lake City, Utah 84105

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

Respondent, by Verified Petition For Modification Of Decree, sought modification of the Amended Decree Of Divorce by which Respondent and Appellant were divorced from each other.

DISPOSITION IN THE LOWER COURT

Hearing was had in the Third Judicial District Court of Salt Lake County, State of Utah upon Respondent's Verified Petition For Modification Of Decree before the Honorable Larry R. Keller, District Court Judge, sitting without a jury. From entry of an adverse Order Modifying Decree Of Divorce, Appellant prosecutes this appeal.

RELIEF SOUGHT ON APPEAL

Appellant, Delos Beckstead, seeks a reversal of the Order Modifying Decree Of Divorce entered by the trial court and recovery of Appellant's costs.

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 a 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).

Upon trial of Respondent's Petition For Modification Of Decree, the Honorable Larry R. Keller entered an Order Modifying Decree Of Divorce whereby Appellant's monthly alimony payment to Respondent was increased from TWO HUNDRED FIVE and NO/100 DOLLARS (\$205.00) to FOUR HUNDRED and NO/100 DOLLARS (\$400.00) (R-96).

#### ARGUMENT

##### Point I

THE RESPONDENT SEEKS TO  
SET ASIDE A DECREE OF DIVORCE  
RATHER THAN MODIFY A DECREE  
OF DIVORCE.

Respondent's petition sounds in terms of modification of a Divorce Decree; however, in actuality what Respondent complains of was the discharge of an obligation to Respondent in the bankruptcy of Respondent's daughter. In Paragraph 8 of Respondent's petition, Respondent alleges loss of monthly support in the approximate sum of THREE HUNDRED EIGHT and NO/100 DOLLARS

(\$308.00) in installment payments from Respondent's daughter, Diana Beckstead (R-84). But, as a matter of fact, Respondent received no installment payment of any sort from Respondent's daughter from the date of the divorce trial conducted by the Honorable Christine M. Durham to the modification hearing before the Honorable Larry R. Keller some twenty-eight (28) months later (R-106,110 and 116). It is hard for this writer to understand how Respondent can claim a loss of support which Respondent never received and because of this, it would seem Respondent is in fact attempting to set aside a Decree of Divorce under the guise of a modification.

If it be decided that Respondent is in fact attempting to set aside a Decree Of Divorce, Respondent's attempt is untimely in that there has been no compliance with Rule 60(b), Utah Rules Of Civil Procedure.

#### POINT II

RESPONDENT'S VERIFIED PETITION  
FOR MODIFICATION OF DECREE  
DOES NOT SET FORTH GROUNDS  
FOR MODIFICATION OF THE DECREE  
OF DIVORCE.

In her petition for modification of the Divorce Decree, Respondent, in Paragraph 8 states, "The Plaintiff is receiving the sum of \$205.00 per month from the Defendant and has lost monthly support in the sum of approximately \$308.00 in installment payments from Diana Beckstead." (R-84). Then in Paragraph 9 of her petition for modification of the Decree Of Divorce, Respondent goes on to state, "Due to the bankruptcy of Diana M. Beckstead, the Plaintiff's and Defendant's circumstances have substantially changed, and

the Plaintiff is in need of a modification of her Decree to increase the alimony received by the Plaintiff from \$205.00 per month to \$400.00 per month". (R-84).

But, from Respondent's Verified Petition For Modification Of Decree, Respondent does not allege receipt of any amount from Diana Beckstead; and, at the trial of the modification issue before the Honorable Larry R. Keller, the evidence was undisputed that Respondent had received no payment whatsoever from Diana Beckstead since entry of the Decree Of Divorce (R-106, 110 and 116). Further, other than the naked allegation that the bankruptcy of Diana M. Beckstead had substantially changed Defendant's (Appellant's) circumstances, no elaboration as to how this substantial change had been effected was made; and the record is devoid of any proof of Appellant's changed circumstances.

In the State of Utah, it is well settled that in order to secure a change in a Decree of Divorce for alimony, the moving party must allege and prove changed conditions arising since the entry of the Decree Of Divorce which require, under rules of equity and justice, a change in the Decree Of Divorce. Hampton v. Hampton, 86 Utah 570, 47 Pa2d 419. Respondent simply failed to allege and prove the required changed conditions.

### POINT III

THE ORDER MODIFYING DECREE OF DIVORCE  
IS NOT SUPPORTED BY THE EVIDENCE.

The evidence produced at the trial of the modification issue before the Honorable Larry R. Keller showed Respondent had never received, in over two (2) years any payment from Diana Beckstead (R-106, 110 and 116) and that

Appellant had invested ELEVEN THOUSAND and NO/100 DOLLARS (\$11,000.00) instead of TWENTY-FOUR THOUSAND and NO/100 DOLLARS (\$24,000.00) (R-131).

It would thus seem that the circumstances of both Respondent and Appellant was essentially the same at the time of the entry of the Amended Decree Of Divorce and at the time of the modification trial. Thus, if an award of alimony "is measured by a wife's needs and requirements considering her station in life and upon the husband's ability to pay" as expoused by this Court in the case of Hampton v. Hampton, supra, no increase of alimony payment to Respondent by Appellant should have been ordered by the Honorable Larry R. Keller.

#### POINT IV

THE TRIAL COURT ABUSED ITS  
DISCRETION IN MODIFYING THE  
AMENDED DECREE OF DIVORCE BY  
INCREASING APPELLANT'S PAYMENT  
OF ALIMONY TO RESPONDENT.

At the modification trial before the Honorable Larry R. Keller, Appellant's monthly retirement income was shown to be FIVE HUNDRED FIFTY-SEVEN and 80/100 DOLLARS (\$557.80) (R-123). The only other income which Appellant has is derived from the interest earned from the investment of ELEVEN THOUSAND and NO/100 DOLLARS (\$11,000.00), derived from the funds received by Appellant from the sale of the family residence, in money market certificates in an approximate sum of FIFTEEN HUNDRED and NO/100 DOLLARS (\$1,500.00) per year or ONE HUNDRED TWENTY-FIVE and NO/100 DOLLARS (\$125.00) per month (R-122 and 131). By reducing Appellant's total monthly disposable income of SIX HUNDRED EIGHTY-TWO and 50/100 DOLLARS (\$682.50) by ordering a FOUR HUNDRED and NO/100 DOLLARS (\$400.00) monthly alimony payment to Respondent, the trial Court, in Ordering the modification of the Amended Decree Of

Divorce, has effectively reduced Appellant to pauper status and saddled Appellant with an alimony payment with which Appellant is unable to live.

CONCLUSION

This Court should order Appellant's monthly alimony payment to stand at TWO HUNDRED FIVE and NO/100 DOLLARS (\$205.00); reverse the Order of the trial Court modifying the Amended Decree Of Divorce; and award costs to Appellant.

Respectfully submitted,



Don Blackham  
BLACKHAM & BOLEY  
Attorney for Appellant  
3535 South 3200 West Street  
West Valley City, Utah 84119

MAILING CERTIFICATE

The undersigned, Don Blackham, does hereby certify that two (2) true and correct copies of the foregoing Appellant's Brief was mailed this 28th day of May, 1982, postage prepaid, and addressed to Respondent's counsel as follows:

Kenneth M. Hisatake, Esquire  
Attorney at Law  
1825 South Seventh East Street  
Salt Lake City, Utah 84104



Don Blackham