

2001

Sean Porter v. Natalie Streeter Porter : Petition for Rehearing

Utah Court of Appeals

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Franklin Richard Brussow; Attorney for Petitioner.

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STATE OF UTAH
IN THE COURT OF APPEALS

SEAN PORTER,

Petitioner/Appellant,

V

NATALIE STREETER PORTER,

Respondent/Appellee.

PETITION FOR REHEARING

Appellate No. **20010179**

Dist Case No. 99 4600017 DA
3rd DISTRICT JUDGE A. L. DEVER

APPELLANT'S PETITION FOR REHEARING

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FILED
Utah Court of Appeals

JUL 12 2002

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CERTIFICATE OF SERVICE

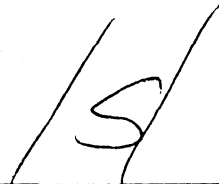
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DISTRICT JUDGE A. L. DEVER

CERTIFICATE OF SERVICE

I hereby certify that on 11 July 2002 I served a true and correct copy of the Petition for Rehearing on attorney for Appellee, Christina Miller by First Class U.S. Mail postage pre-paid, to P O B 3390, Park City, Ut 84060-3390.

11 July 2002



FRANKLIN RICHARD BRUSSOW,
Attorney for Petitioner

PETITION FOR REHEARING

Petitioner says:

1. On or about 27 June 2002 the appellate court rendered its decision in the above encaptioned appeal.
2. The basis of the denial of the appeal and for declining a decision on the substantive merits of the issues on appeal, some of which were important to the jurisprudence of the State, was:
 - a. The indigent appellant had filed no transcript,
 - b. The appellant's statement of facts was unsatisfactory, and
 - c. The district court had unbridled discretion in dividing property in a divorce.
3. Prior to the decision on appeal the appellant had motioned the Court of Appeals to allow him to cite to the videotape of the trial by date, hour, minute and second, since appellant was indigent and could not afford a transcript to enjoy the appeal of right.
4. The motion was denied and appellant was ordered to submit a statement of facts to the district court according to the rules, Rule 11(g).
5. Appellant reviewed the videotapes of the two day trial to assure the accuracy of the facts upon the videotape record as submitted and filed a statement of facts with the district court according to the rules.
6. Appellee untimely filed, contrary to the rule, an objection to appellant's factual submission to the district court, however the objection contained no substantive objection to any fact stated by appellant, nor could appellee so object in good faith as those facts were derived accurately from the videotape of the trial proceedings.
7. The facts as presented to the district court were included in Appellant's Brief.

8. Various of the issues and arguments in Appellant's Brief were not premised upon any dispute as to fact finding by the district court, but were principally grounded upon the court's unwillingness to base various divisions of property upon existing statutes and other precedent.

9. While it is unequivocal that precedent regarding divorce holds that the district judge has broad discretion in dividing marital property since the action is in equity, fundamental equal protection must be afforded litigants and, since the maxim is that equity follows the law, the district court cannot ignore statutes and case law to divide property upon a bias of the judge for a party.

10. The seminal principle of two issues on appeal was not dependant upon contested factual issues, but was grounded upon legal errors regarding which the Court of Appeals is not required to extend deference to the lower court and upon appellee's own trial exhibits, which exhibits were provided to the appellate court.

11. One such non-factual, legal issue was whether a spouse is entitled to half of real property which the other spouse purchased during the marriage and gifted to the other spouse in a deed as a joint tenant with right of survivorship as husband and wife. (Boulder, Utah property, App Brief p 17). The judge ignored the law and gave this agricultural property entirely to the wife.

12. Likewise, the parties separated in 1999, but legally filed a joint income tax as married for 1998. The district judge gave almost all of the \$ 50,000.00 refund to the wife, a trust fund beneficiary. App Brief, p 22.

13. Deciding these legal issues is essential to the jurisprudence of the State to enable married persons in Utah to prudently delimit their expectations and accurately estimate their interests.

14. There has never been a stay of judgment regarding this appeal and this petition is presented in good faith and not for delay.

WHEREFORE, having been denied oral argument to clarify the misapprehension of the court as to the basis of its procedural decision, appellant requests rehearing of the appeal based upon the above-stated circumstances so that at least some of the legal issues presented may be substantively decided.

APPLICABLE LAW

This Petition is grounded upon URAP 35. PETITION FOR REHEARING which states in pertinent part:

(a) Time for Filing; Contents; Answer; Oral Argument Not Permitted. A rehearing will not be granted in the absence of a petition for rehearing. A petition for rehearing may be filed with the clerk within 14 days after the entry of the decision of the court, unless the time is shortened or enlarged by order. The petition shall state with particularity the points of law or fact which the petitioner claims the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires. Counsel for petitioner must certify that the petition is presented in good faith and not for delay. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court. The answer to the petition for rehearing shall be filed within 14 days after the entry of the order requesting the answer, unless otherwise ordered by the court. A petition for rehearing will not be granted in the absence of a request for an answer.

(b) – (d)

11 July 2002



FRANKLIN RICHARD BRUSSOW,
Attorney for Petitioner/Appellant

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