

2001

Jeanny Louise Davis v. Johnny Mack Davis : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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)	
JEANNY LOUISE DAVIS,)	
)	
Petitioner/appellee,)	REPLY BRIEF
)	OF APPELLANT
vs.)	
)	
JOHNNY MACK DAVIS,)	Appellate No. 20010226
)	
Respondent/appellant.)	
)	

REPLY BRIEF OF APPELLANT

On Appeal from Decree of Divorce
entered in the Eighth Judicial District Court
of Uintah County, Utah
Judge John R. Anderson

FILED
Utah Court of Appeals
JUN 11 2001
Paulette Stagg
Clerk of the Court

)	
JEANNY LOUISE DAVIS,)	
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Petitioner/appellee,)	REPLY BRIEF
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TABLE OF AUTHORITIES

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ARGUMENT

1. Alimony. Appellee's suggestion that the Court was attempting to equalize the parties' postmarital standard of living is without merit; there were no findings that support such a claim, and the equalization of income approach is appropriate only when there is insufficient income available to meet the receiving spouse's reasonable needs. Williamson v. Williamson, 983 P.2d 1103 (Utah App. 1999).

2. Retirement assets. "It is well settled that the present value ... of retirement accounts accrued during the marriage are marital assets and, whenever possible, should be valued at the time of the divorce." Dunn v. Dunn, 802 P.2d 1314, 1319 (Utah App. 1990). Even considering the account that Johnny "cashed out" prior to the divorce, Jeanny was awarded over four times what Johnny received, without any consideration for the \$17,501 that Jeanny admittedly removed from a mutual fund account in November 1998 by forging Johnny's name to the checks (Tr. 56, Exh. 10). This was a clear abuse of discretion on the part of the trial court.


3. Attorney's fees. An award of attorney's fees is based on the financial need of the receiving spouse, not the income of the paying spouse. Jeanny had no need for two reasons; (1) she had already paid her fees by the time of trial, and (2) she had at least \$13,000 in cash at the time of trial, representing Johnny's half of the \$26,000 she received when she sold Johnny's farm equipment. The trial court, in

its exercise of discretion, allowed Jeanny to keep this money. There was no basis to then order Johnny to reimburse Jeanny for her attorney's fees.

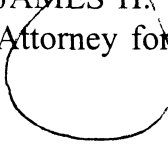
CONCLUSION

The trial court failed to correctly apply the law, and the findings are inadequate for a number of reasons. This matter should be reversed on the issues of alimony, division of retirement accounts, and attorney's fees.

DATED this 22 day of June 2001.



JAMES H. WOODALL
Attorney for appellant



CERTIFICATE OF DELIVERY

I certify that I caused two copies of the foregoing **REPLY BRIEF OF APPELLANT** to be delivered to the following on June 22, 2001:

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