

1992

Karen Springer v. Jerry Springer : Reply Brief

Utah Court of Appeals

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Recommended Citation

Reply Brief, *Springer v. Springer*, No. 920361 (Utah Court of Appeals, 1992).
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UTAH COURT OF APPEALS
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DOCKET NO. 920361 IN THE COURT OF APPEALS

OF THE STATE OF UTAH

KAREN SPRINGER,	:	
Plaintiff-Appellee,	:	Case No. 920361-CA
vs.	:	Oral Argument
	:	Priority 15
JERRY SPRINGER,	:	
Defendant-Appellant.	:	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE FINAL DECREE
OF THE FOURTH JUDICIAL DISTRICT COURT
OF WASATCH COUNTY, THE HONORABLE GEORGE E. BALLIF

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MAY 18 1993

COURT OF APPEALS

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ARGUMENT

POINT I

**MRS. SPRINGER'S ASSERTION THAT MR. SPRINGER
HAS NOT ADEQUATELY MARSHALLED THE EVIDENCE
IS NOT WELL TAKEN.**

Mrs. Springer's principle contention on appeal appears to be that Mr. Springer, "did not marshal the evidence supporting the [decree] . . . and instead argued selected evidence favorable to [his] position." Ong International v. 11th Ave. Corp., 210 Utah Adv. Rep. 9, 13 (April 6, 1993). As noted in his initial brief, Mr. Springer recognizes his responsibility to marshall the evidence in support of the trial court's findings, and then show that, despite that evidence, the court abused its discretion. Brief of Appellant at 6 (citing Utah R. Civ. P. 52 and Cornish Town v. Koller, 758 P.2d 919 (Utah 1988)). A review of the points challenged on appeal, coupled with citations from Mr. Springer's initial brief, indicates that he has complied with this requirement and is entitled to the relief sought.

Mr. Springer has chosen to challenge only the alimony and attorney fee awards on appeal.¹ As previously set forth, an award of permanent alimony must be based upon "adequate findings and conclusions demonstrating that [the trial court] has considered three factors: (i) the financial condition and needs of the party seeking alimony, (ii) that party's ability to produce a sufficient income, and (iii) the ability of the party to provide support." Noble v. Noble, 761 P.2d 1369, 1372 (Utah 1988) (citations omitted).² Therefore, the trial court findings in each of these three areas must be supported by adequate evidence, or the trial court's award will be reversed.

Mr. Springer has demonstrated that the court based its alimony decision on clearly erroneous findings regarding at least two of these three factors. In response, Mrs. Springer contends that Mr. Springer bears the burden of reviewing all of the evidence presented in the case and then indicating in general why the court

¹Mrs. Springer attaches tremendous significance to Mr. Springer's decision not to pursue an appellate claim for reduction of child support. Mr. Springer specifically chose not to pursue that claim because he felt a moral obligation to support his children, and has in fact provided support in excess of the legally required levels even though the trial court's determination was incorrect. Mrs. Springer's contention that the child support decision is dispositive of the entire appeal is insupportable, particularly in light of her own Exhibit 26, in which she calculated child support at her gross pay level of \$1846/month, rather than the \$1777.91 she vigorously defends as correct.

²Mrs. Springer chooses to rely upon Jones v. Jones, 700 P.2d 1072 (Utah 1985), a case cited in Noble. The standards listed under the two cases are identical, since Noble cites Jones as controlling authority.

did not abuse its discretion. Such costly, all-inclusive review is not required. Where the trial court findings are inadequate and the alimony award thus inequitable, the inequity still exists even if other parts of the overall decree were equitable. Mr. Springer properly focused on the three areas listed in Noble. Where the trial court's findings regarding the Noble factors were not supported by the evidence, that error may be reviewed--and in appropriate circumstances, corrected--on appeal.

A. The Trial Court Abused Its Discretion In Determining Mrs. Springer's Income.

Each of the arguments made in Mr. Springer's initial brief is supported by sufficient reference to evidence in the record which would support the trial court's finding. The trial court determined that Mrs. Springer's gross monthly income was \$1,777.91. Record at 52. Contrary to Mrs. Springer's contention, Mr. Springer properly marshalled the evidence by indicating that this figure was supported by plaintiff's Exhibit "13" and Mrs. Springer's personal testimony at trial (the only evidence which would specifically support the court's erroneous ruling). Brief of Appellant at 7. Mr. Springer then reviewed that evidence and indicated why it fails to support the trial court's finding. Brief of Appellant at 7-10 (noting that the court's finding ignores Mrs. Springer's further testimony regarding her income, her counsel's comments, Dr. Jolley's letter regarding her salary, her calculation of child support and the paycheck stubs she introduced at trial). Mr.

Springer has indicated to the court the relevant evidence on the issue and shown why an abuse of discretion occurred. The purposes of the marshalling requirement have thus been fulfilled.

A second area of income--the year end bonus--was not specifically addressed by the trial court, precluding meaningful review. Despite the lack of an adequate record, Mr. Springer's appeal proceeded on the reasonable assumption that the trial court felt the money was too speculative to consider. The only support for such a finding³ is Mrs. Springer's personal testimony, which Mr. Springer marshalled and showed to be wanting. Brief of Appellant at 11-12.

Mrs. Springer also argues on appeal that the career ladder bonus monies were found to be speculative in general. She thus ignores and fails to address the trial court's misunderstandings regarding the various types of career ladder incentives. Instead, Mrs. Springer extrapolates the trial court's comments about Mrs. Springer's tumbling activities to the entire spectrum of "career money." She then attempts to argue general principles in support of the trial court's finding of her income. She indicates no specific piece of evidence which Mr. Springer failed to marshall

³Superintendent Jolley wrote a letter (introduced at trial as Plaintiff's Exhibit 9) which indicated the bonuses would be lower in 1992 than in past years. Mr. Springer does not dispute that the amount might be less than before, but review of the letter shows it clearly implies that some money would be received: "it will be likely . . . that our averages will be lower this year than in previous years." The letter does not support a finding that no bonus would be received at all, and therefore is not marshalled to that end. See Brief of Appellant at ¶ 11.

which would indicate the trial court considered the correct income information as required by Noble. Instead, she reargues her version of the facts and refuses to address the specific matter at hand.

In short, Mr. Springer has marshalled the relevant evidence in support of the Judge's finding regarding Mrs. Springer's income, and has further shown how that evidence does not justify the court's award. The trial court abused its discretion, and the award should be overturned. The extensive, general commentary in Mrs. Springer's brief regarding a wide gamut of facts is not an adequate substitute for a specific, supportable finding on her income, and is therefore not material to the question at hand.

B. The Trial Court's Findings Regarding Mr. Springer's Expenses Were Clearly An Abuse Of Discretion.

Even a cursory review of the court's findings regarding Mr. Springer's expenses reveals reversible error. Of principle concern is the trial court's failure to include the \$657.00 child support payment within the expenses Mr. Springer is required to pay each month. (R. 61.) Mr. Springer has marshalled no evidence in favor of this decision because no supporting evidence exists. See Brief of Appellant at 14-16. Mrs. Springer makes no attempt whatsoever in her 33 page brief to address this issue, a decision which was probably because she agrees that the trial court clearly abused its discretion. Proper consideration of the \$657.00 indicates that Mr. Springer has no means to pay alimony, even using the court's own

figures. See Brief of Appellant at 16-18. The alimony should therefore be reversed on appeal because there is no evidence which supports the alimony award.⁴

C. Alimony May Not Be Used To Equalize The Burden Of Supporting Minor Children.

Mrs. Springer also fails to address the court's error in using alimony to "tend to equalize the burden that the plaintiff has in maintaining the home for the three children" (R. 62), and apparently concedes that the trial court erred on this issue.

POINT II

**MR. SPRINGER DID NOT CONSENT TO AN AWARD
OF ATTORNEY FEES TO MRS. SPRINGER.**

Mrs. Springer responds to Mr. Springer's attorney fee arguments by first claiming that "Appellant failed to object to the award of any attorney fees at trial." (Mrs. Springer's brief p. 30.) Not only is this claim false, it is irrelevant. The parties resolved many issues by stipulation prior to trial, but one of the issues they could not resolve, and which was reserved for trial, was the issue of attorney fees. (Tr. p. 9.) Mrs. Springer concurred by testifying that the parties has no disagreement on the marital debts except for the attorney fees. (Tr. p. 22.) Mr. Springer testified that his attorney fees were similar to those

⁴In the alternative, the court's failure to make any specific finding of the exact amount of Mr. Springer's reasonable expenses precludes review and requires a remand for more detailed findings as required by Noble.

incurred by Mrs. Springer, thereby implicitly claiming that she was not entitled to any award of fees. (Tr. p. 82.) In light of this evidence, Mr. Springer fails to understand how Mrs. Springer can claim that he failed to object to the award of attorney fees. Although Mr. Springer chose to not dispute the reasonableness of the requested fees, it does not follow that he agreed to pay them.

Even if Mr. Springer has failed to object to the attorney fees, the failure would not preclude his right of appeal. Mrs. Springer has cited to no case which holds that Mr. Springer had any obligation to object, where Mrs. Springer had the burden of proof on that issue.

Mrs. Springer also claims that Mr. Springer failed to object at trial to the evidence that Mrs. Springer had a need for assistance in paying attorney fees and that Mr. Springer had the ability to assist. (Mrs. Springer's brief p. 31.) This argument is likewise without merit. One of the primary focuses of the whole trial was the issue of whether Mrs. Springer needed assistance from Mr. Springer in meeting her obligations. Mr. Springer's objections on the issue could not have been more apparent even if he had worn a sign proclaiming his objection. Mrs. Springer's defense to this issue on appeal is frivolous.

POINT III

MRS. SPRINGER IS NOT ENTITLED TO AN AWARD OF ATTORNEY FEES ON APPEAL.

Mrs. Springer was awarded one-half of her attorney fees at trial. Although citing to cases which hold that a party who is

awarded attorney fees at trial is generally also awarded fees on appeal, i.e., that the attorney fee award on appeal is the same as the award at trial, Mrs. Springer now claims that she should be awarded her full attorney fees incurred on appeal.

This Court should reverse the existing attorney fee award, and should not award Mrs. Springer any fees for the appeal. If the Court nonetheless determines to authorize an award of attorney fees, the matter should be remanded for evidence on need and reasonableness. Mrs. Springer has not claimed that her need is the same as at trial, and the evidence will show that she in fact has no need for assistance. The trial court determined that the extent of Mrs. Springer's need was \$2,064.00. Those fees have been paid, and Mr. Springer has complied with the decree to discharge sizeable additional obligations owed by Mrs. Springer. The evidence will show that Mrs. Springer has no further need of assistance, and any award of fees would be improper.

CONCLUSION

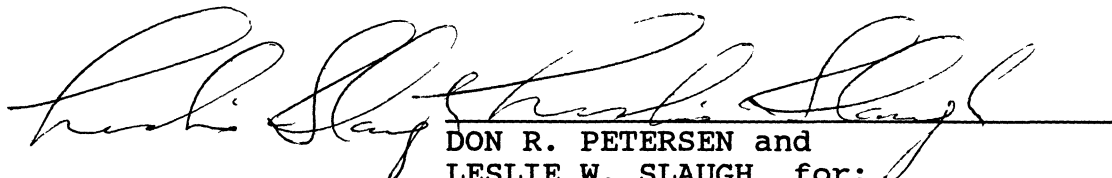
Mr. Springer has raised and supported several contestable issues on appeal, many of which Mrs. Springer fails to address. She makes no attempt to indicate why the trial court's failure to consider the child support payments as an expense was not a reversible abuse of discretion. She mentions no specific evidence not marshalled by Mr. Springer which would support the trial court's findings regarding income and expenses. Nowhere does she argue that the use of alimony to equalize the burden of child

support was not an abuse of discretion. Finally, she fails to address the clear inequity of allowing her a generous surplus above her reasonable needs while Mr. Springer's income does not meet even his needs as determined by the trial court. Her attorney fee contentions are similarly without merit.

Mrs. Springer's attempt to avoid the specific inequities of the decree by copious citations to inconsequential facts is an argument "full of sound and fury, signifying nothing." Mrs. Springer does quote more of the evidence than does Mr. Springer, but the additional evidence was not relevant to any of the issues raised on appeal.

Mr. Springer respectfully requests that this Court reverse the grant of permanent alimony, reverse the attorney fee award, and deny the request for fees on appeal.

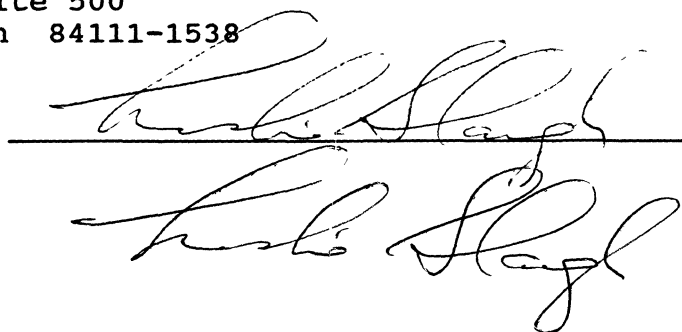
DATED this 4th day of January, 1993.


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MAILING CERTIFICATE

I hereby certify that ^{two}~~four~~ true and correct copies of the foregoing were mailed to the following, postage prepaid, this 4th day of January, 1993.

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INSERT TO REPLY BRIEF OF APPELLANT

DETERMINATIVE PROVISIONS

Appellant is not aware of any constitutional provisions, statutes, ordinances, rules, or regulations whose interpretation is determinative of the issues raised.

DATED this 10th day of May, 1993.



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MAILING CERTIFICATE

I certify that two true and correct copies of the foregoing were mailed May 10, 1993, to:

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