

2016

**Paul R. Sauer, li, Petitioner and Appellant, vs. Pauline L. Sauer,
Respondent and Appellee**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

PAUL R. SAUER, II,

Petitioner and Appellant,

vs.

PAULINE L. SAUER,

Respondent and Appellee.

REPLY BRIEF OF APPELLANT

Case No. 20150952

Appeal from a Judgment of the Third District Court,
Salt Lake County, State of Utah, The Honorable Su Chon

Pauline L. Sauer
8486 S. Solar Way,
Sandy, UT 84070
Tel: 801 809-9661
punky3@live.com

Pro Se Appellee

David Maddox, #2044
1234 W. South Jordan Pkwy, Suite C2
South Jordan, UT 84095
Telephone: (801) 446-3788
Fax: (801) 365-7215
drm@maddoxlegal.com

Counsel for Appellant

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UTAH APPELLATE COURTS

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Tel: 801 809-9661
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Pro Se Appellee

David Maddox, #2044
1234 W. South Jordan Pkwy, Suite C2
South Jordan, UT 84095
Telephone: (801) 446-3788
Fax: (801) 365-7215
drm@maddoxlegal.com

Counsel for Appellant

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Utah Rule of Appellate Civil Procedure 24(a)(9)

(a)(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

Utah Rule of Evidence 401

Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.

STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction to hear this appeal pursuant to Utah Code Ann. §78A-4-103.

INTRODUCTION

The issues on appeal before this court are threefold. First, the lower court's abuse of discretion when it concluded that the Petitioner failed to meet the burden of proof. Second, the court's abuse of discretion when it awarded alimony when the Respondent demonstrated no need. Third, the court's abuse of discretion when it made conclusions not supported by evidence. While the Appellee recites a statement of facts in her brief, she does not address the issues before this court, nor has she argued or addressed any of the issues being appealed in her argument as there is no argument section to the brief. Therefore, the brief of the Appellee has no probative value in this case and should not affect the decision of this court.

The Appellee appears to make an attempt at a cross-appeal by arguing that the two financial declarations of the Appellant are different. But the cross-claim should be stricken, as the hand-written financial declaration, Exhibit A of the Appellee's brief was never filed with the lower court. Therefore the attempted cross claim is based on documents not in evidence and should be stricken.

ARGUMENT

I. The Appellee's Brief Fails to Comply with the Rules of Appellate Civil Procedure Thus it Should Not Influence the Decision of this Court.

The Appellee's Brief should be disregarded by the Court as it does not comport with the rules of Appellate Procedure. Rule of Appellate Civil Procedure 24 explains the required parts of a brief. It explains that both parties' briefs should contain an argument section. *Rule of Appellate Civil Procedure 24(a)(9)*. The argument section of a brief sets out not only the reasons for the appeal, but the laws being relied on. In an appellee's brief it is an opportunity to rebut the arguments of the appellant and make cross-arguments.

The Appellee's brief lacks any argument section at all. The brief simply contains a statement of the facts, exhibits, including exhibits not part of the record, and a conclusion. With no other sections, the brief of the Appellant lacks any rebuttal argument, giving the court no new relevant information or argument. Because of the inability to follow the rules of Appellate Civil Procedure, the Appellee's Brief is severely lacking in any information to help the court make its determination on the issues before it and thus should be have no influence on the court's decision regarding the issues on appeal in this case.

II. The Appellee's Brief Fails to Address the Issues on Appeal Before this Court and Should Be Disregarded as Irrelevant.

The Appellee's Brief fails to address the issues on appeal as it does not contain an argument section. The recitation of facts found in the document also fails to address the issues on appeal; because of this, the court should disregard the Brief as irrelevant. Utah Rule of Evidence 401 states, "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." *Utah Rule of Evidence 401(a) and (b)*. In the Appellee's brief, it recites new evidence in the form of a Statement of Facts. It recites facts about what led to the divorce of the parties, the time line of the separation of the parties, statements about the children, and accuses the Appellant of mentally and physically abusing the Appellee. (*See Statement of Facts, Brief of the Appellee.*)

While the Appellee has the right to include a statement of facts contrary to that provided by the Appellant, it should be disregarded in this case because the facts are not in the record of the lower court and are irrelevant to the issues on appeal. The statement of facts provided by the Appellee is irrelevant because it does not have any tendency to make a fact, relevant to this appeal, more or less probable than it would be without the evidence support. While the facts provided may be probative to the grounds for divorce, that is not an issue

before this court. The facts recited by the Appellee do not address any of the three issues on appeal or the court proceeding at all; thus, they cannot be seen as making any of the facts stated by the Appellant more or less probable. Because the Appellee's brief cannot be considered relevant, it is inadmissible and should be stricken by this court.

III. The Appellee's attempt at a Cross-Claim contained in her Brief Relies on an Exhibit not in Evidence and Should be Stricken by this Court.

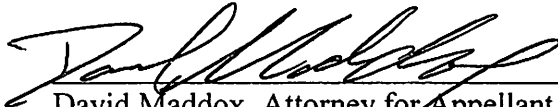
The Appellee's Brief contained one section that could be considered a cross-claim in which she states that the Appellant's two Financial Declarations do not match and she then questions the difference. The Appellee's cross-claim should not be considered by this court because it relies on exhibits not contained in evidence on the record of the lower court. Exhibit A of the Appellee's Brief was never filed with the district court and cannot be considered evidence at this time. A close look at the record of the district court shows that the Financial Declaration that the Appellee is relying on for Exhibit A was never filed with the court. At this point, the Appellant is not sure where the Appellee obtained Exhibit A, but it is not from the court records. Beyond the exhibit not in evidence, the counterclaim lacks an argument. In the Appellee's brief she simply states "Where did the money go" in regards to the discrepancies between the two exhibits. This does not address any of the issues on appeal and does not establish a viable new argument for the court to address. Therefore, it

cannot be considered an appropriate counterclaim. Because Exhibit A it is not a piece of evidence that was ever submitted to the court during the divorce proceedings and because it lacks a sufficient supporting argument, the exhibits, as well as the possible counterclaim should be stricken by this court and it should have no affect on the outcome of the appeal.

CONCLUSION

The Appellee's Brief should be found to have no probative value in this case and should not affect the decision of this court for several reasons. First, it does not comply with the Appellate Rules of Civil Procedure in that it lacks many of the necessary elements of an appellate brief, most importantly an argument. Secondly, the Brief is essentially a reciting of facts that are irrelevant to the three issues on appeal before this Court and are not facts in evidence. Third, the attempt to counterclaim with evidence never presented to the lower court should be completely stricken. For these three reasons, this court should find that the Brief of the Appellee has no probative value in this case and should not affect the court's decision while addressing the three issues of abuse of the lower court's discretion that is at the center of this appeal.

Dated August 4, 2016.


David Maddox, Attorney for Appellant

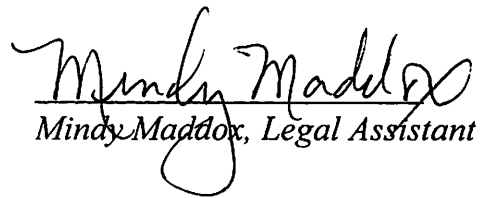
CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was served as indicated below, August 4, 2016, to the following:

Pauline L. Sauer

Email: punky3@live.com

Dated August 4, 2016.


Mindy Maddox, Legal Assistant

IN THE UTAH COURT OF APPEALS

PAUL R. SAUER, II,
Petitioner and Appellant,
vs.
PAULINE L. SAUER,
Respondent and Appellee.

**CERTIFICATE OF COMPLIANCE
WITH RULE 24(f)(1)**

Case No. 20150952

Appellant's Reply Brief re: Appeal from a Judgement of the Third District Court,
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Pauline L. Sauer
8486 S. Solar Way,
Sandy, UT 84070
Tel: 801 809-9661
punky3@live.com

Pro Se Appellee

David Maddox, #2044
1234 W. South Jordan Pkwy, Suite C2
South Jordan, UT 84095
Telephone: (801) 446-3788
Fax: (801) 365-7215
drm@maddoxlegal.com

Counsel for Appellant

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Dated August 4, 2016.


David Maddox, Attorney for Appellant

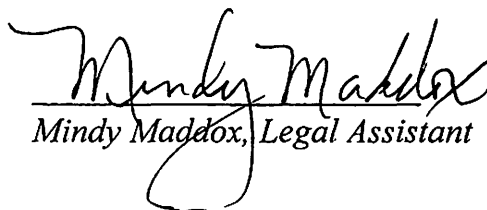
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