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Mary N. Thronson v. Charles A. Thronson : Reply to Brief in Opposition

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

MARY M. THRONSON)	
)	Case No. 890547-CA
Plaintiff-Appellant,)	
)	
vs.)	District Court No. 87-4904318
)	
CHARLES H. THRONSON)	
)	Category No. 7 9/10/87
Defendant-Appellee.)	

REPLY BRIEF OF APPELLEE CHARLES H. THRONSON TO
APPELLANT MARY M. THRONSON'S BRIEF IN OPPOSITION
TO THE PETITION FOR WRIT OF CERTIORARI OF APPELLEE

* * * * *

APPEAL FROM DECREE OF DIVORCE ENTERED ON
JUNE 26, 1989, IN THE THIRD JUDICIAL
DISTRICT COURT IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH, HONORABLE DAVID S. YOUNG

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COMPLIANCE WITH THE UTAH RULES OF APPELLATE PROCEDURE

The requirements of Rule 49 of the Utah Rules of Appellate Procedure, and specifically Rule 49(4) through (10), were fully complied with in the Petition for Writ of Certiorari of Appellee Charles H. Thronson, and in the interests of brevity and judicial economy, they are not repeated here, but rather are incorporated herein by reference.

STATEMENT OF RELEVANT FACTS

All supplemental statements of fact are included in the arguments set forth below.

ARGUMENTS

POINT I

THE PETITION OF APPELLEE CHARLES H. THRONSON IS IN FULL COMPLIANCE WITH RULE 46 OF THE UTAH RULES OF APPELLATE PROCEDURE.

Ms. Thronson argues in her Brief in Opposition to Mr. Thronson's Petition for Writ of Certiorari (hereinafter referred to as "Brief in Opposition") that Mr. Thronson's Petition allegedly is not in procedural compliance with the provisions of Rule 46 of the Utah Rules of Appellate Procedure. Ms. Thronson's argument is "supported" by (a) an incomplete reading of Rule 46, (b) a misapprehension of how and where Rule 46 is applied in light of the other Rules of Appellate Procedure, and (c) a misreading of Mr. Thronson's Petition. Ms. Thronson sets forth verbatim certain of the provisions of Rule 46 in her brief. (Brief in Opposition at 4-5). Curiously, however, Ms. Thronson's citation of this rule leaves out the entire second sentence, which reads as follows: "The following, while neither controlling nor wholly measuring the Supreme Court's discretion, indicate the character of reasons

that will be considered:" [Emphasis added]. It is clear that Rule 46 is not jurisdictional, but is included to give counsel guidance as to what sort of factual and/or legal issues would be likely to result in the granting of a writ of certiorari.

Moreover, the Petition expressly sets forth those special and important reasons why a writ of certiorari should be granted, in compliance with Rule 46, in language taken directly from Rule 46(a), (b) and (c), and in the location in the Petition mandated by Rule 49(a)(9) of the Utah Rules of Appellate Procedure. (See Petition at 4-5). The Petition makes it clear that the Court of Appeals' decision in the instant case is in direct conflict with not only all of the applicable prior decisions of the Court of Appeals, but also is in direct conflict with the applicable decisions of this Court. The Petition further makes it clear that the sua sponte determination of the Court of Appeals to award permanent alimony is a substantial departure from the accepted and usual course of judicial proceedings.

POINT II

THE CASES FIRST CITED BY APPELLANT IN HER BRIEF IN FACT SUPPORT APPELLEE'S PETITION.

The cases first cited in the Brief in Opposition actually add support to the Petition. For instance, much is made by Ms. Thronson of the permanent alimony award in Olson v. Olson. This Court gave the following description of the circumstances of Ms. Olson:

Married soon after graduating from high school, . . . [Ms. Olson's] primary occupation during the 20-odd year marriage, was caring for the parties' home and six children. Having worked only minor clerical jobs for two brief periods over twenty years apart, she has no reasonable expectation of obtaining employment two years hence that will enable her to support herself at a standard of living even approaching that which she had during the marriage. [Footnote omitted]. Continuing

spousal maintenance is mandated by these circumstances.

Olson v. Olson, 704 P.2d 564 at 567 (Utah 1985). Ms. Olson doubtlessly meets the Jones/Rasband/Howell permanent alimony profile, discussed in detail in Mr. Thronson's Petition.¹

In similar support of the Petition for Writ of Certiorari is Ms. Thronson's citation of Higley v. Higley, 676 P.2d 379 (Utah 1983), where this Court upheld the trial court's award of permanent alimony, remanding the case for a redetermination of the amount of alimony.²

¹ The Brief in Opposition implies that Mr. Thronson's use of the term "profile" in the Petition is a fiction or "myth" created by Mr. Thronson. However, due credit for the use of the term "profile," and for the creation of this standard, should rightfully be given to the Utah Court of Appeals, which stated, in Howell v. Howell:

Defendant [Ms. Howell] fits the profile described in . . . [Jones v. Jones] and other cases: she is approximately 50 years old, has minimal marketable job skills, and has spent most of the 30 plus years of the parties' marriage raising and caring for their five children in their home, presumably with the concurrence of . . . [Mr. Howell]. Her likelihood of achieving significant salary levels in the future is slim.

155 Utah Adv. Rep. 18 at 21 (1991) [emphasis added].

² This Court described the relevant facts of this case as follows:

In the present case, . . . [Ms. Higley] has no present or prospective permanent income other than the \$100 per month permanent alimony award, whereas her living expenses exceed \$800 per month. She is a 47-year old woman in very poor health, who has spent most of the last 30 years of her life as a full-time homemaker and caretaker of five children. . . . It is highly unlikely that . . . [Ms. Higley] will be able to produce sufficient income for herself. She has no employment training or experience other than a few sporadic, seasonal, unskilled jobs. Given her health problems, it is questionable whether she will be able to obtain and maintain full-time employment. Even if she does find work, her earning potential is very low. . . .

Id. at 380-381.

the citation to Read v. Read, 594 P.2d 871 (Utah 1979) essentially is inapposite to the issue of transitional versus permanent alimony presented by the instant case. Finally, the Martinez decision likewise involves a case of little education, apparently minimal work experience and a 17-year marriage--a situation this Court found similar to that in Thronson, supra. Martinez v. Martinez, 754 P.2d 69, 74 (Utah App. 1988).

In summary, none of the cases cited by Ms. Thronson support the decision of the Court of Appeals in the instant case. Rather, the citations do just the opposite, supporting instead a grant of Mr. Thronson's Petition.

POINT III

LENGTH OF MARRIAGE IS AN APPROPRIATE FACTOR WHEN DETERMINING WHETHER OR NOT TO AWARD PERMANENT ALIMONY.

The Brief in Opposition is correct in observing that the Petition has placed importance upon, inter alia, the relatively brief duration of this marriage, along with the fact of Ms. Thronson's advanced academic degrees, professional licensure and continuous work experience. That is because length of marriage is a legitimate criterion regarding the award of, and duration of, alimony. In Boyle v. Boyle, 735 P.2d 669 (Utah App. 1987), the Court of Appeals discussed the criteria set forth in English v. English, 565 P.2d 409 (Utah 1977), and this Court's utilization of those criteria in Jones v. Jones, 700 P.2d 1072 (Utah 1985). The Court of Appeals in Boyle then stated:

In Jones, the [Utah Supreme] Court examined the record for an analysis of the criteria, and considered, among other things, the length of the marriage and the recipient spouse's education and employability. The Jones analysis process made it clear that the three pronged criterion does not preclude considering factors such as the length of the marriage in awarding alimony.

Id. at 671 [emphasis added]. The relatively short duration of the relationship in the instant case is an important criterion that was ignored by the Court of Appeals in its decision. However, to the extent the English decision may be in conflict, if at all, with the Boyle decision, that would merely provide an additional reason for this Court to grant the Petition.

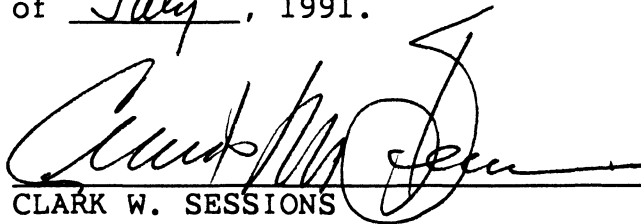
CONCLUSION

The Petition is in full compliance with all of the prerequisites and considerations set forth in the Utah Rules of Appellate Procedure. Further, the cases first cited by Ms. Thronson in her Brief in Opposition serve only to accentuate the error of the decision of the Court of Appeals in the instant case.

Finally, the Court of Appeals either improperly failed to consider the short duration of the relationship between the parties here, militating against an award of permanent alimony, or there is a conflict between decisions of this Court and of the Court of Appeals. Both positions support a grant of this Petition.

For the foregoing reasons, petitioner requests this Court to grant this Petition for Writ of Certiorari.

DATED this 30th day of July, 1991.


A handwritten signature in black ink, appearing to read "Clark W. Sessions", is written over a horizontal line.

CLARK W. SESSIONS
DEAN C. ANDREASEN
CAMPBELL, MAACK & SESSIONS
Attorneys for Defendant

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid,
true and correct copy of the foregoing REPLY BRIEF OF APPELLEE
HARLES H. THRONSON TO APPELLANT MARY M. THRONSON'S BRIEF IN OPPOSITION
O THE PETITION FOR WRIT OF CERTIORARI OF APPELLEE to the following on
his 30th day of July, 1991:

Frederick N. Green
GREEN & BERRY
10 Exchange Place, #528
Salt Lake City, UT 84111

A handwritten signature in black ink, appearing to read "Fred N. Green", is written over a horizontal line.

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