2019

Michael Stevens, Appellant, v. Mary Ellen Robertson, Appellee : Brief of Appellee

Utah Court of Appeals

Ben W. Lieberman (Utah Bar #11456)
LIEBERMAN SIEBERS, LLC
1105 East 900 South, Suite 200
Salt Lake City, Utah 84105
Telephone: (801) 433-0695
E-mail: ben@9thSouthLaw.com

Attorney for Appellee

IN THE UTAH COURT OF APPEALS

MICHAEL STEVENS, Appellant, v. MARY ELLEN ROBERTSON, Appellee.	**APPELLEE'S SUPPLEMENTAL BRIEF RE: JURISDICTION** App. Ct. No. 20170415

INTRODUCTION

In this Supplemental Brief, Appellee Mary Ellen Robertson ("Appellee") responds to the Court's question of whether a district court has continuing jurisdiction to modify or expand a stipulated, non-child-related non-disparagement clause contained in a final decree of divorce. For the reasons set forth below, Appellee submits that a district court does not have such continuing jurisdiction.

ARGUMENT

I. NO JURISDICTION EXISTS TO MODIFY THE NON-DISPARAGEMENT CLAUSE BECAUSE IT DOES NOT FALL WITHIN A CLASS OF ISSUES FOR WHICH CONTINUING JURISDICTION IS AVAILABLE.

Article VIII of the Utah Constitution creates and enumerates the powers of Utah's state courts and the scope of their jurisdiction. Article VIII, Section 1 creates, "a trial court of general jurisdiction known as the district court." Article VIII, Section 5 defines the scope of the district court's original and appellate jurisdiction. The concept of continuing jurisdiction is not specifically addressed in Article VIII.

While divorce cases certainly fall within the original jurisdiction of the district courts, principles of res judicata apply to judgments in such cases as any other. *See Throckmorton v. Throckmorton*, 767 P.2d 121, 123 (Utah Ct. App. 1988) ("The doctrine of res judicata applies in divorce actions."); Utah Code Ann. § 30-3-7 (defining when decree becomes "absolute").[1] Thus, as in any case, escape from res judicata for the modification of a final judgment requires a legal basis—whether constitutional, statutory or judicially-recognized.

In divorce matters, the legislature has opened certain limited doors for modification of final judgments—essentially, matters that directly relate to the parties' status as husband, wife, father or mother. *See, e.g.,* Utah Code Ann. § 30-3-5(3). Importantly, the legislature has not granted an unlimited jurisdictional scope that allows for modification of any matter contained in a final judgment. In this regard, the various

[1] Appellee refers to and incorporates by reference, but for the sake of brevity will not restate, the detailed authority set forth in the Court's Supplemental Order Briefing.

change-in-circumstances standards for modification of these final judgments apply only to the portions of those judgments to which limited continuing jurisdiction has been granted to address. The issue presented in this appeal does not fall within the scope of the district court's continuing jurisdiction.

Finally, Appellee's research uncovered no case allowing modification of an order outside of the scope of Utah Code Ann. § 30-3-5(3). Under the laws of other jurisdictions, continuing jurisdiction is similarly limited absent a specific reservation of jurisdiction contained in the decree itself. *See, e.g., Lewis v. Lewis*, 603 P.2d 650, 652 (Kan. 1979) ("As a general rule, a court has no continuing jurisdiction or power of modification over a division of property after entering an original divorce decree.");[2] *Anderson v. Anderson*, 468 N.E.2d 784, 787 (Ohio App. Dist. 2 1984) ("[Ohio law] does not confer jurisdiction upon a court of common pleas to modify periodic alimony payments provided for in a separation agreement incorporated in a decree of dissolution of marriage, at least in the absence of a provision in the separation agreement for such modification.").[3]

---

[2] In an opposite statement of continuing jurisdiction, Kansas law specifically disclaims all continuing jurisdiction besides custody and child support, as opposed to Utah's silence on collateral matters. *See* K.S.A. § 23-2712(b) ("Matters settled by an agreement incorporated in the decree, other than matters pertaining to the legal custody, residency, visitation, parenting time, support or education of the minor children, shall not be subject to subsequent modification by the court except: (1) As prescribed by the agreement; or (2) as subsequently consented to by the parties.").

[3] Similar to Utah law, Ohio law is silent on modification of collateral issues beyond custody, support and property division. *See* O.R.C. § 3105.65(B) (outlining ways a court may modify custody, child support, spousal support and property division but remaining silent on modification of other issues).

II. DOMESTIC LITIGANTS—BUT NOT APPELLANT—MAY STILL OBTAIN RELIEF UNDER RULE 60 IN APPROPRIATE CIRCUMSTANCES.

Absent another basis for modification of a final judgment, divorce litigants are left with the same tools as any other civil litigant—those set forth in Utah Rule of Civil Procedure 60.[4] Under Rule 60(a), clerical errors may be corrected, and under Rules 60(b) and (d), ***relief from an order*** may be obtained. In divorce cases, the most likely basis for such relief could be Rule 60(b)(5), which would allow a party to be relieved from a judgment where "it is no longer equitable that the judgment should have prospective application." However, neither Rule 60(b)(5), nor any other portion or Rule 60, grants the district courts power to ***enter new orders*** like the order that was requested by Appellant in this case. Should a party desire a new order against his or her ex-spouse not within the scope of Utah Code Ann. § 30-3-5(3) or some other applicable law granting continuing jurisdiction, he or she may do so by filing a new action and as provided by the laws applying to ordinary, unrelated parties; he or she may not use the divorce case as a vehicle to police post-divorce conduct not directly related to the parties' status as husband, wife, father or mother.[5] The decree of divorce severed the special relationship these parties had.

---

[4] Appellant never filed a Rule 60 motion, so this brief analysis of Rule 60 is primarily an academic exercise.

[5] This rationale is precisely what Appellee has argued to this Court and to the district court regarding speech issues. Appellant could, and did, file a separate defamation action against Appellee, just as he could any other person he claimed was publishing false statements about him. The divorce case is not the proper vehicle to enter new orders on matters that do not directly relate to the parties' status as

REQUESTED RESULT

This Court should find that a district court lacks continuing jurisdiction to modify provisions of a divorce decree except as within the scope of Utah Code Ann. § 30-3-5(3). Should a party in a divorce proceeding require relief from an onerous provision in a divorce decree not within the scope of Utah Code Ann. § 30-3-5(3), Rule 60(a), (b) or (d) could allow for such relief depending on the circumstances of that case. But because Rule 60 does not allow for entry of new orders, Rule 60 does not provide a jurisdictional basis for the relief requested by Appellant in this case.

Dated this 21st day of October, 2019.

LIEBERMAN SIEBERS, LLC,

By: 
[Electronically Signed]
Ben W. Lieberman

Attorney for Appellee

husband, wife, father or mother.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 8th day of November, 2019, I filed and served the foregoing via electronic mail pursuant to Utah Supreme Court Standing Order No. 11.

Attorneys for Appellee:

David Read
david@davidreadlaw.com

[Electronically Signed]