

1991

Bair v. Bair : Unknown

Utah Supreme Court

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December 11, 1986

Geoffrey Butler, Clerk
Utah Supreme Court
322 State Capitol Bldg.
Salt Lake City, Utah 84114

Re: Bair v. Bair - Case No. 19,747

Dear Mr. Butler:

The above-identified Appeal was orally argued on December 10, 1986. At that time it seemed that some members of Court may have been under the incorrect understanding that a certain issue is before them which is not. As an officer of the Court and to conserve the Court's time, I bring the following to the Court's attention:

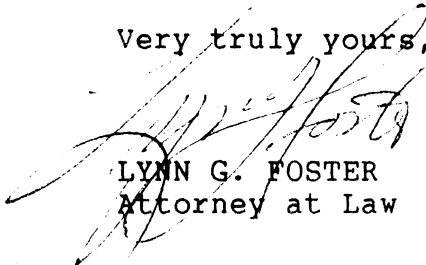
The trial court in this matter entered its Memorandum Decision (R. 300-302) holding this matter to be one of alimony squarely within 30-3-5(2) and (3), Utah Code Annotated. The trial court, however, stayed enforcement of the cited statutory provisions in the mistaken belief that Knuteson v. Knuteson, 619 P.2d 1387 (Utah, 1980), provides a judicially imposed "exceptional circumstances" exclusion to enforcement of the statutory provisions.

The Respondent has not filed a cross-appeal here. Thus, the Respondent has not preserved any issue for appeal and has not invoked the jurisdiction of this Court. The Respondent, therefore, cannot collaterally attack in this Appeal Judge Dee's decision that the Decree provision in question was alimony, as opposed to property settlement.

Furthermore, while Appellant has appealed, Appellant has not invoked the jurisdiction of this Court in respect to Judge Dee's determination that the Decree provision in question involves alimony.

It follows that Judge Dee's decision that the Decree provision at issue deals with alimony is not before the Utah Supreme Court. Instead, the "alimony" decision of Judge Dee is law of the case, or, if you prefer, res judicata.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lynn G. Foster", is written over the typed name and title.

LYNN G. FOSTER
Attorney at Law

cc: Gordon McDowell
LGF/jds