

2016

**KELLIE P. SUNDAY, (nka, KELLIE WEAVER) Petitioner/Appellee v.
ERNEST J. PEASE, Respondent/Appellant : Brief of Appellee**

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Virginia Sudbury, Alison Satterlee; attorney for appellant.

Asa E. Kelly; attorney for appellee.

Recommended Citation

Brief of Appellee, *Sunday v. Pease*, No. 20160164 (Utah Court of Appeals, 2016).

https://digitalcommons.law.byu.edu/byu_ca3/3968

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs (2007–) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

63

FILED
UTAH APPELLATE COURTS

IN THE UTAH COURT OF APPEALS

NOV 23 2016

STATE OF UTAH

| | | |
|--------------------------|---------------|---------------------|
| | —oooOooo— | |
| KELLIE P. SUNDAY, | : | |
| (nka, KELLIE WEAVER) | : | |
| | : | |
| Petitioner/Appellee | : | |
| v. | : | Appeal No. 20160164 |
| | : | |
| ERNEST J. PEASE, | : | |
| | : | |
| Respondent/Appellant | : | |
| | : | |
| | ---oooOooo--- | |

APPEAL OF SUPPLEMENTAL DECREE OF DIVORCE FROM THE THIRD JUDICIAL DISTRICT OF SALT LAKE COUNTY, UTAH, HON. PAUL G. MAUGHAN

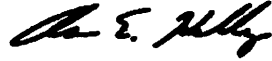
**ERRATA
(BRIEF OF APPELLEE'S TABLE OF CONTENTS)**

Appellee, Kellie Weaver (f.k.a. Kellie Sunday), by and through her counsel Asa E. Kelley, hereby files this Errata.

1. Attorney for the Appellee, hereby notifies and corrects the Table of Contents that were filed in the Brief of Appellee on November 17, 2016.
2. In the Brief of the Appellee filed with the Court of Appeals, the Table of Contents, the page references to the Authorities were missing. A corrected copy of the Table of Contents is attached.

DATED this 23rd day of November, 2016.

THE LAW OFFICE OF ASA E. KELLEY, P.C.



Asa E. Kelley
Attorney for Appellee

CERTIFICATE OF DELIVERY

I hereby certify, that on November 23, 2016, I delivered true and correct copy(s) of the foregoing **ERRATA (BRIEF OF APPELLEE'S TABLE OF CONTENTS)** to the following party(s):

Virginia Sudbury
Alison Satterlee
Attorneys for Respondent/Appellant
3440 South 1300 East
Salt Lake City, UT 84106
virginia@lovs.biz
Alison@lovs.biz

- First Class U.S. Mail, Postage Prepaid
- Facsimile Transmission
- Personal Delivery
- E-mail Transmission Attachment

/s/ Kristy Brown

TABLE OF CONTENTS

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES 3

STATEMENT OF JURISDICTION 5

STATEMENT OF ISSUES AND STANDARD OF REVIEW 5

DETERMATIVE PROVISIONS8

STATEMENT OF THE CASE

 1. NATURE OF THE CASE 8

 2. STATEMENT OF FACT9

SUMMARY OF ARGUMENT11

ARGUMENT13

 I. THE TRIAL COURT’S FINDINGS OF FACT AND CONCLUSION OF
 LAW ARE SUFFICIENT PURSUANT TO UTAH LAW AND ARE
 SUPPORTED BY THE EVIDENCE PRESENTED AT
 TRIAL.....13

 II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN
 AWARDING CUSTODY OF THE MINOR CHILD TO APPELLEE AND
 THE TRIAL COURT’S DECISION IS SUPPORTED BY THE
 EVIDENCE PRESENTED AT TRIAL..... 19

 III. THE INVITED ERROR DOCTRINE PREVENTS APPELLANT FRFROM
 PREVAILING ON THE ASSERTION THAT THE TRIAL COURT
 FAILED TO RULE ON ISSUES PRESENTED FOR TRIAL..... 27

| | |
|---|----|
| CONCLUSION | 29 |
| MAILING CERTIFICATE | 30 |
| CERTIFICATON OF COMPLIANCE | 31 |
| ADDENDUM | 32 |
| <p style="text-align: center;">TAB A FINDINGS OF FACT AND CONCLUSIONS OF LAW ENTERED BY HONORABLE JUDGE MAUGHAN DATED NOVEMBER 13, 2015</p> | |
| <p style="text-align: center;">TAB B DETERMATIVE PROVISIONS</p> | |

TABLE OF AUTHORITIES

| | |
|--|---------------|
| <i>Ashton v. Ashton</i> , 733 P.2d 147, 149-50 n. 1 (Utah 1987) | 20 |
| <i>Childs v. Childs</i> , 967 P.2d 942, 945 (Utah. Ct. App. 1998) | 17 |
| <i>Davis v. Davis</i> , 749 P.2d 647, 648 (Utah 1988) | 19 |
| <i>Hutchison v. Hutchison</i> , 649 P.2d 38, 41 (Utah 1982) | 6, 15 |
| <i>Jones v. Jones</i> , 700 P.2d 1072, 1074 (Utah 1985) | 19 |
| <i>Kerr v. Salt Lake City</i> , 322 P.3d 669 (Utah 2013) | 7, 13, 27 |
| <i>Maughan v. Maughan</i> , 770 P.2d 156, 159 (Utah. Ct. App. 1989). | 7, 12, 13, 20 |
| <i>Milne Truck Lines v. Public Serv. Comm'n.</i> , 720 P.2d 1373, 1378 (Utah 1986) | 14 |
| <i>Moody v. Moody</i> , 715 P.2d 507, 510 (Utah 1985) | 19 |
| <i>Moon v. Moon</i> , 790 P.2d 52, 54 (Utah. Ct. App. 1990) | 12, 14 |
| <i>R.B. v. L.B.</i> , 339 P.3d 137, 145 (Utah. Ct. App. 2014) | 25 |
| <i>Shioji v. Shioji</i> , 712 P.2d 197, 201 (Utah 1985) | 12, 20, 23 |
| <i>Smith v. Smith</i> , 726 P.2d 423, 426 (Utah 1986) | 19 |

| | |
|---|----------------------|
| <i>State v. Geukgeuzian</i> , 86 P.3d 742 (Utah 2004) | 7, 13, 27 |
| <i>Sukin v. Sukin</i> , 842 P.2d 922, 923 (Utah. Ct. App. 1992) | 6, 7, 12, 13, 15, 20 |
| <i>Tuckey v. Tuckey</i> , 649 P.2d 88, 91 (Utah 1982) | 24 |
| <i>Zavala v. Zavala</i> , 366 P.3d 422, 426 (Utah. Ct. App. 2016) | 7, 13, 27 |

STATUTES

| | |
|-----------------------|---------------|
| Utah Code § 30-3-10 | 6, 14, 15, 29 |
| Utah Code § 30-3-10.2 | 14, 15, 29 |
| Utah Code § 30-3-34 | 14, 15, 29 |

STATE RULES

| | |
|---------------------------------|-------|
| Utah Rule of Civil Procedure 52 | 5, 20 |
|---------------------------------|-------|