

2016

MORIAH LEE CHESLEY, Petitioner/Appellee, vs. BENJAMIN WADE CHESLEY, Respondent/Appellant. : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MORIAH LEE CHESLEY,
Petitioner/Appellee,
vs.
BENJAMIN WADE CHESLEY,
Respondent/Appellant.

REPLY BRIEF OF APPELLANT

Case No. 20160193
Lower Case No. 144300327

REPLY BRIEF OF APPELLANT

Appeal from the Decree of Divorce in the Third Judicial District Court in and for Tooele
County, Judge Robert Adkins

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Oral Argument Requested

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UTAH APPELLATE COURTS

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ARGUMENT

Appellee in her Brief argues the Court did not abuse its discretion in awarding alimony to the Appellee. The Appellee argues:

First, the trial court found that Appellee's financial condition supported an alimony award, because she was using government assistance to support herself and the parties' children. Second, that court determined that an alimony award was proper because Appellee's earning capacity was substantially less than that of Appellant, and she would be unable to work while going to school to increase her earning capacity. Finally, the lower court concluded that alimony was proper because Appellant had a substantial ability to pay alimony, and alimony would work towards equalizing the financial circumstances of the parties.

See Appellate Brief Page 5.

First, the Court never made a finding that the Appellee was receiving public assistance. The Court specifically found that the Appellee had the ability to earn \$13 per hour with a gross monthly income of \$2253 per month. See Record Page 1251 Lines 6-9. In addition, the Appellee would receive child support for a child from a prior relationship in the amount of \$318 per month, plus the Appellant's obligation of child support in the amount of \$1019 for a total monthly income of \$3590 per month. As a result, the Court made no finding that the Appellee would be receiving public assistance.

Second, while Court may have found that the Appellant would be unable to work while going to school, there was no finding that the Appellee needed to continue to go to school in order to receive alimony, Furthermore, the Court never made specific findings

as to how much it would cost the Appellee to go back to school, and/or the amount her income would be reduced while attending school. The Court found as follows:

The amount I've attributed to her working full time, I'm not sure she can do that and continue in school to get that higher earning capacity, so I believe it is appropriate to award continuing alimony at the sum of \$900 per month to -- and this isn't even going to equalize their income.

See Record Page 1254 Lines 6-10.

In determining whether to award alimony and the amount of alimony, Utah Code section 30-3-5(8)(a) requires trial courts to consider "at least" certain named factors, including, in part: "(i) the financial condition and needs of the recipient spouse." "Accordingly, the trial court must make sufficiently detailed findings of fact on each factor to enable a reviewing court to ensure that the trial court's discretionary determination was rationally based upon these three factors." *Bell v. Bell*, 810 P.2d 489, 492 (Utah Ct. App. 1991). The Trial Court failed to make Findings as to the needs of the Appellee in this matter as required by Utah Code Ann 30-3-35(8)(a). The Court made no findings as to the costs and expenses of the Appellee attending school, and/or the Appellee's earning capacity while attending the school. The court must support its decision with adequate findings and conclusions. *Kidd v. Kidd*, 2014 UT App 26, ¶ 13, 321 P.3d 200.

Third, the Court did find that Appellant had a substantial ability to pay alimony. However, prior to Ordering the Appellant to pay alimony, the Court must find that the Appellee had a specific need for alimony. Based upon the Appellee's Financial

Declaration, Appellee's monthly expenses are \$3933 per month. However, Appellee's monthly expenses include \$1200 per month in child care expenses of which the Appellee testified that the State of Utah was paying. See Record Page 1052 Lines 17-20. If any child care expenses remained, the Appellant was ordered to pay one-half. See Record Page 770 ¶7. Thus Appellee's monthly expenses should have been reduced to \$2733 per month or \$3333 if the \$1200 was an actual expense based upon the Order of the Trial Court, which is less than her income of \$3590. The Appellee failed to demonstrate to the Trial Court her need of alimony.

Since the Appellee failed to demonstrate a need for alimony at trial, the Trial Court abused its discretion in awarding alimony to the Appellee. "[T]he spouse's demonstrated need must . . . constitute the maximum permissible alimony award." *Bingham v. Bingham*, 872 P.2d 1065, 1068 (Utah Ct. App. 1994). The Trial Court was prohibited by law in awarding alimony in this matter. Therefore, Appellant appeals the Trial Court awarding alimony to the Appellee and requests this alimony be terminated as the Appellee's income exceed her month expenses.

What is apparent in the Trial Court's Findings, the Trial Court focused on the ability of the Appellant to pay alimony, instead of focusing on the needs of the Appellee. It is clear from the record that the Appellee's income exceeds her demonstrated need at trial. As a result, Appellee failed to demonstrate a need for alimony and any award of alimony exceeded her need as demonstrated at trial. "An alimony award in excess of the recipient's need is a basis for remand even when the payor spouse has the ability to pay."

Barrani v. Barrani, 2014 UT App 204 ¶30. As a result, this Court must reverse and remand this case back to the Trial Court for awarding alimony in this matter.

CONCLUSION

The Trial Court failed to make specific and detailed Findings as to the need of the Appellee to receive alimony. Based upon statutory and case law, the Trial Court was required to make specific findings as to the need and the amount of alimony to be awarded. According to the Trial Court's own Findings, the Appellee's income exceeded her need demonstrated as trial. As a result, it was an abuse of discretion and error for the Trial Court to award alimony in this matter. Based upon the foregoing, the Trial Court's decision to award alimony in this matter should be reversed.

DATED this 20th day of September 2016.



DAVID A. PEDRAZAS
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2016, a true and correct copy of the foregoing was sent via US Mail the following:

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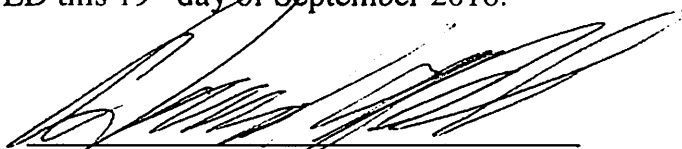
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DATED this 19th day of September 2016.



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