2015

ROBBEN ANN OLDROYD, Petitioner/Appellant, v. FARRELL LYNN OLDROYD, Respondent/Appellee. : Reply Brief of Appellant and Brief of Cross Appellee

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

ROBBEN ANN OLDROYD, Petitioner/Appellant, v. FARRELL LYNN OLDROYD, Respondent/Appellee.	Case No.: 20150451-CA

Reply Brief of Appellant and Brief of Cross-Appellee

Appeal from Judgment Entered by the Second Judicial District Court,
Honorable Noel S. Hyde

Brian E. Arnold ARNOLD & WADSWORTH 298 24th Street, #230 Ogden, UT 84401 *Counsel for Appellee and Cross-Appellant*	Brent D. Wride Bryant McConkie RAY QUINNEY & NEBEKER P.C. 36 South State Street, Suite 1400 Salt Lake City, UT 84111 *Counsel for Appellant and Cross-Appellee*

IN THE UTAH COURT OF APPEALS

ROBBEN ANN OLDROYD, Petitioner/Appellant, v. FARRELL LYNN OLDROYD, Respondent/Appellee.	Case No.: 20150451-CA

Reply Brief of Appellant and Brief of Cross-Appellee

Appeal from Judgment Entered by the Second Judicial District Court,
Honorable Noel S. Hyde

Brian E. Arnold ARNOLD & WADSWORTH 298 24th Street, #230 Ogden, UT 84401 *Counsel for Appellee and Cross-Appellant*	Brent D. Wride Bryant McConkie RAY QUINNEY & NEBEKER P.C. 36 South State Street, Suite 1400 Salt Lake City, UT 84111 *Counsel for Appellant and Cross-Appellee*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

ARGUMENT

I. The District Court Erred in Ruling that Farrell Acquired a "Premarital Interest" in the House.

The appellee ("**Farrell**") does not dispute that the appellant ("**Ann**") paid all of the expenses for a home that was built prior to the parties' marriage. Nor does he dispute that while he was working on the house Ann paid him a sum commensurate with his previous wages. Farrell does not dispute that the house was completed before the parties were married, and that it was titled solely in Ann's name. Furthermore, the house was not acquired by the parties during their marriage. The district court never specifically held that the house was marital property, and, in any event, any such finding would be clearly erroneous.

The proper analysis in this case consists of two separate steps. The parties are in agreement that under Utah law the *first* determination that a district court must make is whether property is "marital or separate." *Kelley v. Kelley*, 2000 UT App 236, ¶ 24, 9 P.3d 171. Farrell states in his brief that "'the court should *first* properly categorize the parties' property as part of the marital estate or as the separate property of one or the other." Brief of Appellee and Cross-Appellant ("**Brief of Appellee**") at 16 (emphasis in original) (quoting *Burt v. Burt*, 799 P.2d 1166, 1172 (Utah Ct. App. 1990)).

As Farrell points out, once the district court has made the initial determination of whether property is marital, the court can "next" determine

"whether there are exceptional circumstances that overcome the general presumption that marital property be divided equally between the parties." Brief of Appellee at 16.

The problem with Farrell's argument (and with the district court's ruling) is that the argument conflates the two steps of the analysis. The court does not even reach the question of exceptional circumstances unless and until the court first determines that the property is marital. And the exceptional-circumstances test is not part of the analysis of whether the property is separate or marital.

Under Utah law "[m]arital property is ordinarily all property acquired *during marriage*." *Dunn v. Dunn*, 802 P.2d 1314, 1317-18 (Utah Ct. App. 1990) (emphasis added). There is no question that the house was acquired *prior* to marriage, not "during marriage." It is undisputed that the house was built and an occupancy permit was obtained before the parties were married. It therefore cannot be said that Farrell acquired a marital interest in the home—the parties simply were not married.

Farrell argues—and the district court ruled—that Farrell obtained a *premarital* interest in the house. A "premarital interest" is by definition not a marital interest, and it must be based on legal principles other that those announced in *Dunn* and other cases regarding the equal division of marital property. Farrell did not argue below that he was entitled to an interest in the house under such legal

theories as unjust enrichment, promissory estoppel, constructive contract, etc. And there was no finding or determination by the district court that any of these theories entitled Farrell to a share of the house. Any so-called "premarital" interest must be based upon legal principles. Here the district court did not explain what a "premarital interest" is or under what legal doctrine such an interest was or can be acquired. Farrell argues that adopting Ann's position would "create a new way to entice and steal from someone." Brief of Appellee at 11. However, the district court did not find any conduct even approaching the requirements for a determination of theft in this case. Accordingly, this Court should reverse the district court's ruling that Farrell acquired a "premarital" interest in the house.

II. The District Court Did Not Err in Relying on Farrell's Own Evaluation of the Value of Oldroyd Custom Woodworks.

Unlike the house, which was acquired prior to marriage, a business called "Oldroyd Custom Woodworks" was formed and developed *during* the marriage. R. 619. Farrell argues that the district court erred in relying on Farrell's own sworn statement in valuing the business. Brief of Appellant at 17-18. This is wrong. It was not erroneous for the district court to accept Farrell's own statements under oath about the value of the business.

III. The Alleged Minor Mathematical Error Regarding the Honda Civic Is Not Reversible Error.

Assuming that the district court was attempting to equalize the relationship between the parties with respect to (and only with respect to) a Honda Civic and a Harley Davidson, Farrell appears to be correct in arguing that the district court made a minor mathematical error. However, it is not clear that this assumption is correct. Furthermore, even if an error was committed, the error should be viewed in the overall context of the district court's decision regarding the parties' vehicles. For instance, as noted by the district court, "the parties agreed that the Chrysler would not be sold by either party." R. 621. And "the court entered an order in October 2013 that prohibited the sale or disposition of the Chrysler 300." *Id.* However, Farrell sold the Chrysler in September 2013. *Id.* The district court noted that "there were statements that the Chrysler 300 was sold to a relative for less than its worth." *Id.* In the context of the foregoing, the district court's $4,000 possible mathematical error with respect to the Honda Civic is not reversible error. It is possible that the district court was considering broader issues related to the parties' vehicles.

Furthermore, counsel for Farrell approved the form of the district court's findings. R. 624. Any purely mathematical errors should have been called to the attention of the district court so that the district court could correct them. Where it is possible that the district court fully intended to make an $8,000 adjustment in

Ann's favor with respect to the vehicles, any objection to the form of the order has been waived.

CONCLUSION

Based on the foregoing reasons, this Court should reverse the judgment of the district court with respect to the house, and it should affirm the judgment with respect to the business and the vehicles.

DATED this 11th day of May, 2016.

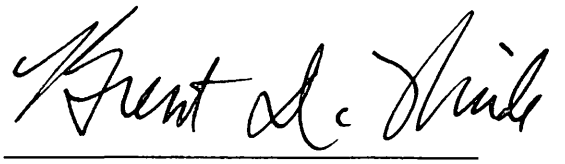
RAY QUINNEY & NEBEKER P.C.

Brent D. Wride
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2016, two true and correct copies of the foregoing **Reply Brief of Appellant and Brief of Cross-Appellee** were served upon the following by United States Mail:

Brian E. Arnold
ARNOLD & WADSWORTH
298 24th Street, #230
Ogden, UT 84401
Counsel for Appellee



1372902