

1984

Rebecca Sims Lord v. David George Lord : Reply Brief of Appellant

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

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Rebecca Sims Lord,	**	
Plaintiff-Respondent,	**	
vs.	**	Case No. 19167
David George Lord,	**	
Defendant-Appellant,	**	

-----0000000000-----

REPLY BRIEF OF APPELLANT

-----0000000000-----

On appeal from a decision in the District Court of Washington
County, State of Utah.

-----0000000000-----

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Attorney for Plaintiff-Respondent

FILED

JUL 9 1984

Clerk, Supreme Court, Utah

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Attorney for Plaintiff-Respondent

IN THE SUPREME COURT
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SUMMARY REPLY

Domestic actions are equitable in nature and the critical issues of this appeal keys on two inequitable rulings of the lower court. Which are:

1. The Honorable Maurice Jones, sitting Judge Pro-Tempore, ruled from the Bench on a Law and Motion Calendar; on a Motion for Sanctions; when said Motion was made by Plaintiff, without sufficient notice to Defendant and over Defendant's objection; made an order of form over substance; on proffers of proof; without holding an evidentiary hearing that Plaintiff's interest in the marital home had vested and could not be opposed even though a valid, duly acknowledged, properly recorded Quit Claim Deed had been given Defendant by Plaintiff in exchange for a brand new automobile.

2. Defendant has not been allowed to have his day in court and was denied a trial through no fault of his own.

The orders on these two issues are indicative of the rhythm of this case from start to finish in the Trial Court. Therefore, the Defendant respectfully request the Court to insure that the Trial Court Record in this matter be thoroughly and carefully reviewed. The equities of this domestic case have been sorely violated.

Defendant has not had his day in court even when he has been present with the exception of when the divorce was granted. Defendant has been denied his trial.

Defendant's non-appearance for trial was not due to his neglect. If there was neglect than it was excusable neglect. Defendant actually felt there was a stay in the proceedings and the Trial Court was without jurisdiction to proceed. Further the Defendant was misled by one of the witnesses as to his appearance at the trial.

The Defendant has a right to expect the Court to make minute entries in the court record as to the Court's rulings; the Defendant has a right not to be put at a disadvantage by the Court for its failure to sign and enter orders; Defendant has a right to appeal, even if the ruling is interlocutory in nature and Defendant has a right that interlocutory orders be phrased in such a manner rather than as a final order.

Defendant was placed at a disadvantage by the Court when Defendant's Motion for Change of Venue was heard in chambers on October 21, 1982. Counsel for both parties were present and the Court denied the Motion. The Court failed and refused for awhile to make an entry. See copy of attached letter as Appendix "A" incorporated herein by reference.

Also, at that hearing the Court, on its own Motion vacated the Pre-Trial Hearing date of January 19, 1983 and substituted in its place as the date for the Trial.

It took Defendant's counsel from October 21, 1982 until January 11, 1983 to get the Court to enter an order on denial of Motion for Change of Venue. See page 17 of Appellant's Brief.

Defendant wanted to appeal this ruling because of its significant impact on the outcome of the case. Defendant had previously filed a Protective Notice of Appeal. Upon the Court's entry of the Order, Defendant immediately processed his appeal to the District Court which in turn processed the Appeal to the Supreme Court on January 18, 1983.

To further protect Defendant's right, counsel motioned the Court for a continuance, pending the appeal outlining the Court's failure to make a timely Minute Order and entry of that order into the Court's records. Defendant made it clear that he wanted to appeal the Court's ruling. The Motion for Continuance was hand delivered to the Court on the morning of January 19, 1983 and also hand delivered to Plaintiff's counsel's office.

On January 18, 1983, Anthony Thurber, witness for the Plaintiff did call Defendant's counsel and inquire into the matter of the appeal. On affirmation, Anthony Thurber stated that the matters in the Trial Court should come to a stop pending the appeal. Because of that he would not

be in attendance at trial the next day.

Anthony Thurber's testimony as to notarizing the Quit Claim Deed for friends is contrary to fact. Anthony Thurber acted in the capacity of Attorney for Defendant in the matter of pre-divorce property settlement and initially represented Defendant in this divorce matter. Mr. Thurber's testimony is one of vindictiveness and conspiracy and can so be proven on remand.

According to the record and Plaintiff's brief, the trial held on January 19, 1983 was solely for the purpose of marital property division. The divorce had been granted in a previous trial on May 28, 1982. The Defendant was granted a divorce from the Plaintiff on the grounds of adultery and the Plaintiff was granted a divorce from the Defendant on the grounds of Mental Cruelty. Plaintiff was five (5) months pregnant at the time of the Divorce Trial. The Court may also want to note that Plaintiff and her paramour were married on the afternoon of May 28, 1982.

It is apparant by the record that Plaintiff's counsel and witness, Anthony Thurber embarked upon an assassination of the Defendant at the January 19, 1983 trial. Why else would Plaintiff's exhibits P-8 through P-21 be sealed by the Court.

Domestic matters are equitable in and where the evidence at the Trial Court clearly preponderates against the Findings of Facts, the Supreme Court can reverse those findings.

How can the Trial Court find that Defendant's business generates \$35,000.00 annually without Defendant's business records? The Plaintiff certainly was not competent to testify. Defendant and Plaintiff had been separated for a period of fifteen months at the time of trial and had been separated on ten pervious occasions. Plaintiff's brief states that she was employed full time from the start of the marriage outside of Defendant's business.

How can a Trial Court find that Plaintiff is entitled to attorney's fees when she is carrying another man's child and had granted the Defendant a divorce on the grounds of adultery? In fact, Plaintiff's counsel told Defendant's counsel that he was not going to get a penny for his fees unless he was able to get the marital home for the Plaintiff. See copy of letter attached hereto as Annex "B" and incorporated herein by reference.

How can the Trial Court find that Plaintiff has a one-half equitable interest in the marital home when the Recording Statutes states that recordings on real property speak for themselves? Particularly, when Plaintiff did not plead in her complaint fraud, duress, misrepresentation in particularity as required by the Rules of Civil Procedure. Also, in light of the fact that Plaintiff had been given a brand new car, registered in her name only and paid for by the Defendant totally. The giving of this car made the marriage a three car family. The Defendant had one car and the Plaintiff had two cars.

How can the Trial Court find that Plaintiff was entitled to the sum of \$5,023.75 to be returned to her for an alleged investment in the Defendant's business when there was no evidence of a promise to repay or a signed contract to take the agreement out of The Statute of Frauds.

Plaintiff in her brief tends to argue the merits of the case to justify her position as to her factual interpretations of the marriage and thereby causes a wide disparity in the interpretation of the facts between the parties. Plaintiff would argue that her side is without fault in the pursuit of justice for her. But the record plainly shows to the contrary.

Defendant has had to defend himself in a jurisdiction three hundred miles away; object to motions that were not timely made and have the Court say we will hear the motion anyway; deal with Motions to Compel without the Court ever hearing his Motion for a Protective Order and suffer from the Court findings of contempt with a jail term twice as long as the law allows; and to have his case heard before four different judges on Law and Motion Days with a crowded court calendar and a voluminous record where it is a foregone conclusion the judges sitting pro-tem did not acquaint themselves with the record and to have counsel for the Plaintiff to manipulate all this to the point knowing that short notices for motions would result in Defendant not being able to travel three hundred miles to defend himself. Then have Plaintiff's counsel never submit orders for approval as to form pursuant to Rule 2.9 of The Rules of Practice in the District Courts and Circuit Courts of the State of Utah.

Plaintiff argues that Defendant has never ordered complete records of the Trial Courts proceedings to have findings overturned. See Annex "C" attached hereto and incorporated herein by reference to contra that.

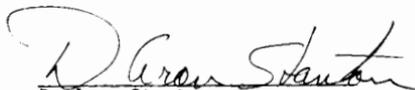
It is Defendant's position that a remand is the only process through which justice in this matter may be fully and finally be done. That the overturning of the Trial Courts findings since divorces are one of equity and are not designed to punish husbands by unfaithful wives.

An unfaithful wife should not be allowed to tap a meager stream of future earnings, thereby assassinating any hope of a "fresh start" by the Defendant in todays economy. Nor should she be allowed to go back on her bargain of selling her interest in the marital property.

No, a Court must consider all the pertinent facts without bias, prejudice or disadvantage to one party in making its decision.

It is Defendant's position that the Trial Courts handling of the case is sufficient for the remand and a change of venue.

Respectfully submitted this 9th day of July, 1984.

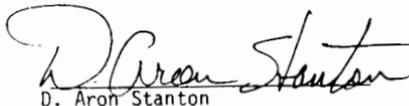


D. Aron Stanton
Attorney for Defendant-Appellant
255 East 400 South, #101
Salt Lake City, Utah 84111

CERTIFICATE OF MAILING

I certify that I mailed two true copies of the foregoing Reply to Respondent Brief via U.S. Mail, postage pre-paid this 9th day of July, 1984 to the following:

THOMPSON, HUGHES, & REBER
Michael D. Hughes
Attorney at Law
148 East Tabernacle
St. George, Utah 84770
Attorney for Respondent



D. Aron Stanton

DANIEL A. STANTON

ATTORNEY AT LAW

421 SOUTH 200 EAST, SUITE 410

SALT LAKE CITY, UTAH 84111

TELEPHONE (801) 533-1440

Tuesday, January 4, 1983

Washington County Hall of Justice
205 North 200 East
St. George, UT 84770

Re: Motion For Change of Venue

Attention: J. Harlan Burns
District Judge

Dear Judge Burns:

Please find enclosed copies of the following documents:

1. Motion For Change Of Venue;
2. Affidavit In Support Of Defendants Motion For Change of Venue;
3. Notice of Hearing;
4. Findings of Fact & Conclusions of Law;
5. Order.

If you recall this motion was argued before you in your chambers on the 21st say of October 1982 at 10:00 a.m.. You denied this motion and upon my return to Salt Lake this office prepared the Findings of Fact & Conclusions of Law and Order and submitted them to opposing counsel, Mr. Hughes for approval of content pursuant to Rule 2.9 of the Rules of Practice in the District Courts and Circuits of the State of Utah. Mr. Hughes did not return the original documents to me signed approved as to form nor did he have any subsequent correspondence with me in relation to this matter.

I furthermore checked the minute entry of the court for the motions that were heard in your chambers in the above referenced matter for that day and nothing is mentioned therein of your ruling as to the Motion For Change of Venue.

You have set trial in this matter to be heard on Wednesday, January 19, 1983 @10:00 a.m. thereby ruling against our Motion For Change Of Venue.

If you feel that you did not make a formal ruling upon our Motion For Change Of Venue then please notify this office immediately so that we may reschedule a hearing on our Motion. This office does want the motion to be heard or if it is your belief and fact that you did make a formal fuling against our Motion For Change of Venue then please sign the enclosed documents. Also enclosed is one (1) extra copy of the necessary documents with a self-addressed, stamped envelope for their return to me.

Very Truly Yours,

Daniel A. Stanton
Attorney at Law

cc: File
Client
Michael D. Hughes

DAS/rds

DANIEL A. STANTON
ATTORNEY AT LAW
431 SOUTH 200 EAST SUITE 410
SALT LAKE CITY, UTAH 84111
TELEPHONE (801) 366-8240

November 8, 1982

Mr. Michael Hughes
Attorney at Law
148 East Tabernacle
St. George, Utah 84770

Re: Lord vs Lord

Dear Mr. Hughes:

This letter will serve as a memorandum of a conversation which took place at the Washington County Court House, on October 21, 1982 at 11:00 a.m., after the hearing just outside the courtroom. Present at that time were the undersigned yourself, and you indicated at that time as follows:

"I'm not going to be able to get a penny out of this in attorney's fees unless she gets the house".

Such a statement causes me concern since under the provisions of the Utah State Bar Rules a lawyer cannot have a pecuniary interest in the outcome of a case.

It would appear as though your actions in this case and other considerations might be dictated by your obvious concern about payment of your fee and thus we wish to make a record of your comments.

I have enclosed herein the relevant provisions of the Revised Rules of Professional Conduct of the Utah State Bar which concern me. Perhaps you might consider withdrawing.

Sincerely yours, /

Daniel A. Stanton
Attorney at Law

DAS/ks

Enclosure:

cc: Client

REVISED RULES OF

Professional Conduct of the Utah State Bar

Adopted May 28, 1936, and Approved by the Supreme Court
of the State of Utah March 1, 1937

CANON 5

A Lawyer Should Exercise
Independent Professional
Judgment on Behalf of a Client

ETHICAL CONSIDERATIONS

EC 5-8. A financial interest in the outcome of litigation also results if monetary advances are made by the lawyer to his client. Although this assistance generally is not encouraged, there are instances when it is not improper to make loans to a client. For example, the advancing or guaranteeing of payment of the costs and expenses of litigation by a lawyer may be the only way a client can enforce his cause of action, but the ultimate liability for such costs and expenses must be that of the client.

DISCIPLINARY RULES

DR 5-103 Avoiding Acquisition of Interest in Litigation

- (A) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation he is conducting for a client, except that he may:
- (1) Acquire a lien granted by law to secure a fee or expenses;
 - (2) Contract with a client for a reasonable contingent fee in a civil case;
- (B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses. Emphasis Added.

DANIEL A. STANTON
Attorney for Defendant
243 East 400 south, #100
Salt Lake City, Utah 84111
Telephone: (801) 531-0523

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT IN
AND FOR WASHINGTON COUNTY, STATE OF UTAH

REBECCA SIMS LORD,
Plaintiff,
vs.
DAVID GEORGE LORD,
Defendant.

RECORD ON APPEAL
Civil No. 8042

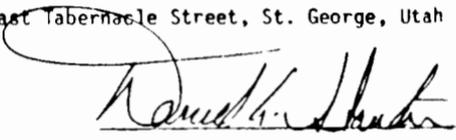
COMES NOW, the above-named Defendant/Appellant, David George Lord, by and through his attorney of record, Daniel A. Stanton, and pursuant to the Utah Rules of Procedure, hereby designates the record to be included in the Record on Appeal in this action to be all pleadings, original papers, and exhibits filed with the District Court, as well as transcripts of all proceedings heard in ~~this~~ action.

DATED this 21 day of April, 1983.


DANIEL A. STANTON
Attorney for Defendant/Appellant

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing RECORD ON APPEAL was mailed via United States Mail, postage prepaid, first class to Michael D. Hughes, Attorney for Plaintiff/Respondent on the 21 day of April, 1983 addressed at 148 East Tabernacle Street, St. George, Utah 84770.



DANIEL A. STANTON
Attorney for Defendant
243 East 400 south, #100
Salt Lake City, Utah 84111
Telephone: (801) 531-0523

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT IN
AND FOR WASHINGTON COUNTY, STATE OF UTAH

REBECCA SIMS LORD,
 Plaintiff,
 vs.
DAVID GEORGE LORD,
 Defendant.

}
CERTIFICATION THAT TRANSCRIPT
HAS BEEN ORDERED

Civil No. 8042

COMES NOW, the Defendant/Appellant, by and through his Attorney of Record, Daniel A. Stanton, and pursuant to the provisions of Rule 75(a) of the Utah Rules of Civil Procedure, hereby certifies that transcripts of the District Court Hearings held on September 9, 1981; October 14, 1981; February 9, 1982; March 8, 1982; April 13, 1982; April 26, 1982; May 10, 1982; May 28, 1982; September 8, 1982; October 12, 1982; October 27, 1982; January 11, 1983; January 19, 1983; February 8, 1983; and March 8, 1983 in the above-entitled action have been ordered from the court reporter.

DATED this 21st day of April 1983.


DANIEL A. STANTON
Attorney for Plaintiff

CERTIFICATE OF MAILING

I do hereby certify that on the 21st day of April, 1983, I mailed a true and correct copy of the above and foregoing CERTIFICATE THAT TRANSCRIPT HAS BEEN ORDERED to Michael D. Hughes, Attorney for Plaintiff/ Respondent, 148 East Tebernacle, St. George, Utah 84770, postage prepaid.