

2003

# Joretta Butterfield v. James Sherwood Butterfield : Reply Brief

Utah Court of Appeals

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David J. Friel; Attorney for Appellant.

David Paul White; Attorney for Appellee.

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## Recommended Citation

Reply Brief, *Butterfield v. Butterfield*, No. 20030490 (Utah Court of Appeals, 2003).

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David J Friel  
Attorney for Appellant  
2875 Decker Lake Drive, #225  
Salt Lake City, UT 84119  
Telephone: (801) 975-1122  
Facsimile: (801) 975-8611  
Bar No. 6225

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IN THE UTAH COURT OF APPEALS

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JORETTA BUTTERFIELD,

Petitioner/Appellant,

vs.

JAMES SHERWOOD BUTTERFIELD,

Respondent/Appellee.

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Appellate Case No. 20030490CA

**REPLY BRIEF OF APPELLANT**

Reply Brief of Appellant from the Second Revised Findings of Fact and Conclusions of Law and Second Revised Decree of Divorce and Revised Order Regarding Petitioner's Motion for New Trial of the Third District Court, Judge Ronald E. Nehring presiding.

David J Friel, Bar No. 6225  
Attorney for Appellant  
2875 South Decker Lake Dr., #225  
Salt Lake City, UT 84119  
Telephone: (801)975-1122

David White, Bar No. 3441  
Attorney for Appellee  
5278 South Pinehill Business Park, #A-200  
Murray, UT 84123  
Telephone: (801)266-4114

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UTAH APPELLATE COURTS  
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## REPLY TO APPELLEE'S STATEMENT OF FACTS

Appellee states numerous times in his Statement of Facts found at page no.4, last full paragraph, that the recommendations of Commissioner Michael S. Evans at the Pre-Trial Settlement Conference held July 1, 2001 were mere "suggestions." Appellee admits that Commissioner Evans stated, "The premarital agreement was unenforceable due to it's apparent deficiency in that it does not include a disclosure of assets." In other words, Appellee admits that Commissioner Evans stated that the premarital agreement was invalid on its face. Even though Commissioner Evans stated that it was Appellant's burden to prove that Appellee was able to pay alimony given his income from pension and social security, Commissioner Evans did not hint or even suggest that it was Appellant's burden to prove that the premarital agreement had apparent deficiencies and was unenforceable.

Further, Appellee admits that in the Minute Entry on a Law and Motion hearing held October 23, 2001, the Commissioner pointed out that he had previously considered the enforce ability of the Premarital Agreement and had recommended that the document was "invalid" (R. at 126).

Interestingly enough, Appellee submits no response to Appellant's citing of Rule 6-401(4), Rules of Judicial Administration wherein it states, "A recommended order of a court commissioner is the order of the court until modified by the court" (when this rule was cited in the initial brief of the Appellant filed in October 2003, the location of the cited rule was in the Rules of Judicial Administration, Rule 6-401(4). Subsequently, this rule has been transferred and is currently found in the Utah Rules of Civil Procedure, Rule 7(g)).

Additionally, Appellee claims in his Summary of the Argument at page no. 8 that, "Regardless of the existence of the Admissions, Appellant failed to meet all three elements required to prove the Premarital agreement was unenforceable as set forth in Utah Code Annotated Section 30-8-6 (1)." Appellee fails to recognize that Appellant did not need to meet the elements required to prove the Premarital Agreement was unenforceable because the Court had already ruled on that issue.

In Appellee's final paragraph under the Summary of the Argument section, Appellee states in reference to the enforceability of the Premarital Agreement that, "If either ruling had been an error, it would have been harmless error since alimony would not have been granted." Appellee elaborates further on the harmless error doctrine. In his final section under this heading Appellee states, "Even if the Court had determined that the Premarital Agreement was not enforceable, there would not

be an alimony awarded due to the circumstances of the case.” Appellee ignores Utah Code Section 30-3-5 (7)(c) wherein it states that:

As a general rule, the Court should look to the standard of the living, existing at the time of separation in determining alimony in accordance with Subsection (a). However, the Court shall consider all relevant facts and equitable principles and may in its digression, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the Court may consider the standard of living that existed at the time of the marriage.”

Appellee attempts to persuade the Court that the parties had similar incomes and similar monthly expenses. Appellee fails to inform the Court that there are numerous affidavits filed by the Appellant throughout the course of litigation, with very specific statements made by the Appellant in regards to Appellee’s millions of dollars. Specifically, Appellee did not dispute Appellant’s assertion that during the marriage Appellee sold land to a school district for several millions of dollars. Appellant’s affidavit is explicit and is part of the Court file which outlines not only the millions of dollars that Appellee had access to but of the standards of living the parties enjoyed during the four year marriage relationship.

#### **APPELLANT’S REPLY TO ARGUMENT OF APPELLEE**

Appellee states in his argument section at page 10, the first partial paragraph that, “Even if the fact of full disclosure had not been admitted in discovery, there still

is evidence of full disclosure and/or reasonable prior knowledge. Therefore, under Utah law, the Premarital Agreement was enforceable.” Simply put, Appellee makes bald assertions in this statement because the trial judge ruled on the enforceability of the Premarital Agreement and, the Court actually entered Summary Judgment against Appellant as was requested by the Appellee in his Motion for Summary Judgment filed in December, 2001. Appellee should not be allowed to claim on one hand that Appellant provided no evidence regarding enforceability of the Premarital Agreement and then on the other hand represent to the Court that Appellee gave a full disclosure and/or Appellant having reasonable prior knowledge regarding the extent of Appellee’s estate and assets with Appellee providing no proof of doing so. Further, Appellee claims that Utah case law states that, “Even if Appellant had been able to show some non-disclosure of assets prior to the signing of the Premarital Agreement, Appellant would have failed to show that such a non-disclosure was material.” (Appellee cites In Re Estate of Beesley, 883 P.2d 1343, 1348 (Utah 1994)). Appellant admits that Appellee has correctly stated Utah case law on the issue, but the problem with Appellee’s assertion is that the Court had already ruled on two separate occasions that the Premarital Agreement was unenforceable. After the Court ruled, Appellant did not have a responsibility to prove that any disclosure

was material or immaterial. Again, Appellant asserts that there is absolutely no evidence of full disclosure or reasonable prior knowledge that has been elicited from Appellee.

Appellee states at page no. 11, last partial paragraph of line 4 that, "Appellant asserts that the enforce ability of the Premarital Agreement, in which alimony is waived, is key to the issue of alimony and that the Premarital Agreement is all that stands between Appellant and an alimony award. This statement is absolutely contrary to Appellant's position. Appellant submits that even if the Premarital Agreement is deemed valid and enforceable, point no. 2 of Appellant's initial brief sets forth Appellant's argument that the Court should have examined the statutory factors of alimony found in the Utah Code regardless of the Court ruling concerning the enforcement of the Premarital Agreement.

Additionally, when Judge Nehring ruled that, "As a matter of law there will be no alimony awarded in the case based on the deemed admitted request for admissions" in effect granted Appellee's Motion for Summary Judgement. Judge Nehring failed to rule on the previous two court orders establishing the unenforceability of the Premarital Agreement and did not allow Appellant to have the statutory factors of alimony examined consistent with Utah Code Section 30-3-5 and Jones v. Jones, 700 P.2d 1072 (Utah 1985). Recently, the Court stated that,



“Summary Judgement is only appropriate where there is no genuine issue as to any material fact and. . . .the moving party is entitled to a judgement as a matter of law.”

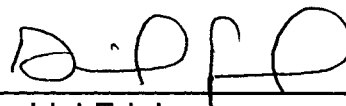
491 Utah Adv. Rep. 15, Sonnenreich, In re.

Numerous affidavits submitted by Appellant prove that there are numerous issues of fact that are clearly in dispute and summary judgement and the ruling of the trial judge was in error.

### CONCLUSION

Based upon the errors committed by the trial court, Petitioner requests that the trial court rulings be reversed.

DATED this 3 day of MARCH, 2004.



\_\_\_\_\_  
David J Friel  
Attorney for Appellant

## CERTIFICATE OF MAILING

I hereby certify that I caused to be sent by U.S. mail, first class, postage pre-paid, a true and correct copy of the foregoing document on this 3 day of March, 2004, to:

David White  
5278 South Pinehill Business Park,  
Suite A200  
Murray, UT 84123



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