

1992

Kathleen R. Barnes v. Steven Barnes : Brief of Appellee

Utah Court of Appeals

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Woodury and Kesler.

Unknown.

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Utah Court of Appeals

June 16, 1993

JUN 16 1993

Utah Court of Appeals
230 S. 500 E. #400
Salt Lake City, Utah 84102


Mary T. Noonan
Clerk of the Court

Re: Kathleen R. Barnes v. Steven Lyn Barnes
Appeal No: 920608--CA
Case No: 924900082 DA

SUPPLEMENT TO THE BRIEF OF APPELLEE KATHLEEN R. BARNES
(Oral Argument Set for June 24, 1993, 1:30 p.m.)

Dear Court of Appeals:

Pursuant to Rule 24 of the Utah Rules of Appellant Procedure, the appellee Kathleen R. Barnes supplements her brief as follows. Oral argument is scheduled on this matter for June 24, 1993, at 1:30 p.m.

The following typographical errors were found in the appellee's brief. The corrections have been noted by underlining the correction and overstriking the error. Many of these corrections are not significant. The most significant corrections, however, are found in Paragraphs G, S, and U below. Please incorporate the following corrections into the brief:

A. Page 3 Paragraph 1 Sentence 1. -- There are two misspelled words in the sentence.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interest of ~~he~~ the child, including allowing the child frequent and continuing contact ~~with~~ with the noncustodial parent as the court finds appropriate.

B. Page 8 Paragraph 1 Sentence 8.-- There is a misspelled word.

Her ~~scheduled~~ schedule allowed her to be home during the day while the youngest children were "off track" for year round school.

C. Page 8 Paragraph 4 Sentence 4 (continued on Page 9).-- there is a misspelled word.

She also continued to care ~~fore~~ for Steve and the children by performing housekeeping, including doing laundry and preparing evening meals.

D. Page 9 Paragraph 4 Sentence 1.-- The sentence requires clarification.

In January 1991, Kathy filed for divorce, ~~and~~ . Kathy remained in the house until the court temporarily awarded custody to ~~the~~ Steve along with the house.

E. Page 12 Paragraph 1 Sentence 2.-- There is a misspelled word.

Her level of involvement with the children, during even long periods when they were not living with her, is impressive and implies ~~and~~ an extraordinary level of commitment to their well-being.

F. Page 13 Paragraph 4 Sentence 1.-- There is an unnecessary plural word.

A final issue the court considered was the distribution of ~~retirements~~ retirement funds and savings each of the parties accumulated.

G. Page 16 Paragraph 1 Sentence 5.-- There is an Omission of the word "not."

Further, although Utah Code Ann. § 30-3-10 (1989) does give the trial court discretion into asking the children their preferences, it does not make such an inquiry mandatory.

H. Page 23 Paragraph 1 Sentence 5. -- The sentence requires clarification.

In addition, to numerous witnesses, the trial court appointed psychologist was aware of each party's fitness, and ability as a parent, and her and his ~~the parties'~~ past histories.

I. Page 26 Paragraph 1 Sentence 1. -- There is an omission of the word "been."

In criticizing Kathy's function as a parent, Steve Barnes implies that she should have been available at his convenience.

J. Page 28 Paragraph 2 Sentence 1. -- There is an unnecessary comma.

Despite, Steve Barnes's failure to give the names of direct relatives to Dr. Strassberg, Steve did have his mother testify and other people at the trial.

K. Page 28 Paragraph 3 Sentence 5 (continued on Page 29). -- There is an omission of the word "the."

Because Steve Barnes fails to show that the court has abused its discretion in adopting Dr. Strassberg's recommendations, the permanent custody order must stand.

L. Page 29 Paragraph 2 Sentence 5. -- There is a misspelled word and the sentence requires clarification.

Instead, he once again makes ~~an~~ a repetitive and ~~brief~~ argument about Kathy's alleged emotional instability, her finding adult male companionship outside of marriage, and the alleged inadequacies of her parental skills.

M. Page 30 Paragraph 2 Sentence 3. -- There is a misspelled word.

In addition to the parties' own testimony, the parties called supporting witness ~~witnesses~~.

N. Page 32 Paragraph 2 Sentence 3. -- There is a misspelled word.

Rather, an award of alimony will be sustained when the facts in the record are "clear, uncontroverted, and capable of supporting only a finding in favor or the ~~judgement~~ judgment."

O. Page 34 Paragraph 2 Sentence 3. -- There is an unnecessary word.

Evidence was presented that if he were to pay child support on a sole custody basis, he would pay approximately \$565.00, and the court ordered him to pay this ~~is~~ uncontroverted amount.

P. Page 34 Paragraph 2 Sentence 3. -- There is an omitted word.

(The trial court used this worksheet to calculate child support.)

Q. Page 35 Paragraph 3 Sentence 1. -- There is an omit word.

Because the facts regarding Kathy's financial condition, ~~and~~ financial needs, and ability to produce income were clear and uncontroverted by any credible evidence, and because Steve's ability to pay was clear and uncontroverted by any credible fact, the trial judge did not error in making a concise finding and conclusions that alimony should be awarded to Kathy in the amount of \$500.00 per month.

R. Page 38 Paragraph 1 Sentence 2. -- There is a misspelled word.

But because Steve ~~Barnes's~~ Barnes consistently refused to support the expenses with authenticating documents, Kathy is unwilling to accept all of the expenses as legitimate.

S. Page 41 Paragraph 1 Financial Calculation and Paragraph 1 Sentence 1. -- There is an error in the financial calculation on page 41. Please note under the deductions column that "half of Kathy's retirement funds" should read \$159.17, not \$318.35. Therefore, the net pre-interest amount Steve Barnes should pay Kathy totals \$3,128.89, not \$2,969.71. Similarly, on Page 45, the new total should read \$3,128.89, not \$2,969.71.

Kathy's share of Steve's retirement fund	\$3,982.06
Less deductions	
Half of Kathy's retirement funds	\$318.35
	<u>\$159.17</u>
Half of the sales proceeds from the camp trailer	350.00
The full amount of the insurance check	<u>344.00</u>
Total deductions	1,012.35
	<u>853.17</u>
The net pre-interest amount Steve Barnes should pay Kathy	\$29,69.71
	<u>\$3,128.89</u>

Accordingly, Kathy should receive ~~\$2,969.71~~
\$3,128.89, plus prejudgment interest of 10 percent per
annum and post judgment interest of 12 percent per annum.

T. Page 44 Paragraph 1 Sentence 3. -- There is a misspelled
word.

That affidavit is merely an outline of the arguments
Steve Barnes's Barnes makes in his appellate brief.

U. Page 45 Paragraph 3 Sentence 2. -- The net amount of
retirement funds owing Kathy Barnes from Steve Barnes's retirement
fund needs to be corrected in light of the correction to the
calculation noted above.

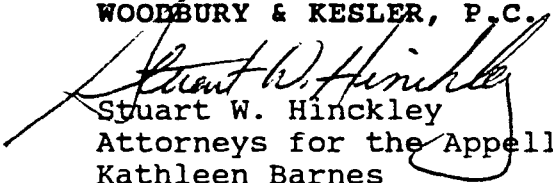
On this subject, the Court of Appeals should make its own
finding that there was \$10,836.17 in Steve Barnes's
retirement fund as of the date of the final separation,
and after deducting verified and un-objectional
deductions he should pay Kathy Barnes ~~\$2,696.71~~ \$3,128.89
plus pre-judgment interest at 10 percent and post
judgment interest at 12 percent.

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Thank you for your attention to these corrections.

Yours very truly,

WOODBURY & KESLER, P.C.

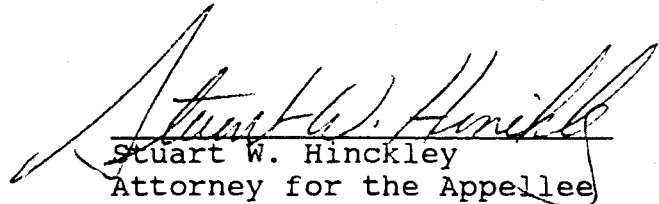

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CERTIFICATE OF SERVICE

I do hereby certify that I caused to be served by U. S. Postal
Serve (first class postage prepaid) a true and correct copy of the
foregoing SUPPLEMENT TO THE BRIEF OF APPELLEE KATHLEEN R. BARNES on
this 16~~th~~ day of June 1993 to the following:

CAROLYN DRISCOLL
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Salt Lake City, Utah 84102


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Q:\SWH\BARNES.36\LETTER.COURT.616