

2004

Michael Anthony Morris v. Karen Lee Morris : Reply Brief

Utah Court of Appeals

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**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO. 20040342

**IN THE COURT OF APPEALS
OF THE STATE OF UTAH**

MICHAEL ANTHONY MORRIS,

Respondent/Appellant,

vs.

KAREN LEE MORRIS,

Petitioner/Appellee.

Appellate No. 20040342

Argument Priority No.

District Court 024500415

REPLY BRIEF OF APPELLANT

Appeal from the Judgment and Orders of the District Court
of the Fifth Judicial District, State of Utah
the Honorable James L. Shumate, Presiding.

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**UTAH APPELLATE COURTS
JUN 16 2005**

IN THE COURT OF APPEALS
OF THE STATE OF UTAH

<p>MICHAEL ANTHONY MORRIS,</p> <p>Respondent/Appellant,</p> <p>vs.</p> <p>KAREN LEE MORRIS,</p> <p>Petitioner/Appellee.</p>	<p>Appellate No. 20040342</p> <p>Argument Priority No.</p> <p>District Court 024500415</p>
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ARGUMENTS

I. The Respondent met the Marshalling Requirement with Respects to Property Distribution

Rule 24(a)(9) of the Utah Rules of Appellate Procedure states in relevant part, “A party challenging a fact finding must first marshal all record evidence that supports the challenged finding.”. However, *Woodward v. Fazzio* also states in relevant part:

The process of marshaling the evidence serves the important function of reminding litigants and appellate courts of the broad deference owed to the fact finder at trial. . . . However, we will only grant this deference when the findings of fact are sufficiently detailed to disclose the evidentiary basis for the court’s decision. . . . There is, in effect, no need for an appellant to marshal the evidence when the findings are so inadequate that they cannot be meaningfully challenged as factual determinations. In other words, the way to attack finding which appear to be complete and which are sufficiently detailed is to marshal the supporting evidence and then demonstrate the evidence is inadequate to sustain such findings. But where the findings are not of that caliber, appellant need not go through a futile marshaling exercise. Rather, appellant can simply argue the legal insufficiency of the court’s findings as framed.

Woodward v. Fazzio, 823 P.d 474, 477, 78 (Utah 1991).

The Respondent did marshal all of the evidence that support the findings. (See Appellate’s Brief, p. 12, 13, 14 and Appendix A). However, it is difficult to determine how the court rationalized its findings when it failed to place values on significant items

of property and made awards that were inconsistent with the testimony at trial. The trial court's findings are inadequate and therefore should be remanded for further findings.

II. The Respondent's Appendix A is not a Supplement to the Record

Rule 11(h) of the Utah Rules of Appellate Procedure states:

If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated, the parties by stipulation, the trial court or the appellate court, either before or after the record is transmitted, may direct that the omission or misstatement be corrected and if necessary that a supplemental record be certified and transmitted. The moving party, or the court if is acting on its own initiative, shall serve on the parties a statement of the proposed changes. Within 10 days after service, any party may serve objections to the proposed changes. All other questions as to the form and content of the record shall be presented to the appellate court.

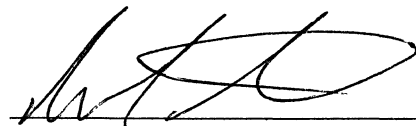
The Respondent did not change the record or attempt to correct the record. The Respondent made a summary of several trial exhibits for ease and convenience for the court and in an effort to marshal all of the evidence.

CONCLUSION

The Respondent did met the marshaling requirements as contemplated by Rule 24(a)(9) of the Utah Rules of Appellate Procedure. The Respondent marshaled all of the available evidence, but the evidence is inadequate on its face to determine how exactly

the trial court came up with the findings it did. The Trial Court left many items unvalued and treated items that were admitted gifts as part of the marital estate. The Respondent's Appendix A does not alter not attempt to alter the record, but is simply provided as part of the marshaling requirement and as a convenience to the court.

DATED this 16 day of June, 2005.



Reed R. Braithwaite
Attorneys for Respondent/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of June 2005, I caused to be mailed a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT, to the following:

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