

1993

# Larsen v. Larsen : Reply Brief

Utah Court of Appeals

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DOCKET NO. 930240 ~~IN THE UTAH COURT OF APPEALS~~

BELINDA LARSEN,	)	APPELLANT'S REPLY BRIEF
	)	
Plaintiff/Appellant,	)	
	)	
vs.	)	
	)	Case No. 930240-CA
RICHARD C. LARSEN,	)	
	)	Priority No. 15
Defendant/Appellee.	)	

APPEAL FROM A DECREE OF DIVORCE OF THE FIFTH  
JUDICIAL DISTRICT COURT IN AND FOR IRON COUNTY,  
STATE OF UTAH

THE HONORABLE ROBERT T. BRAITHWAITE, DISTRICT JUDGE

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~~COURT OF APPEALS~~

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Rule 11(a), Utah Rules of Appellate Procedure:

The original papers and exhibits filed in the trial court, the transcript of proceedings, if any, the index prepared by the clerk of the trial court, and where available the docket sheet, shall constitute the record on appeal in all cases. A copy of the record certified by the clerk of the trial court to conform to the original may be substituted for the original as the record on appeal. Only those papers prescribed under paragraph (d) of this rule shall be transmitted to the appellate court.

**CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES,  
RULES, AND REGULATIONS**

None.

## ARGUMENT

### I. PLAINTIFF HAS ADEQUATELY MARSHALLED THE EVIDENCE

Defendant's broad argument, that Plaintiff has failed to marshal the evidence in favor of the Court's findings, is completely unfounded. A full review of Plaintiff's Brief plainly reveals that Plaintiff, on each of the key factual issues of contention, has more than adequately cited to the record, marshalled evidence in favor of the court's findings, and demonstrated why the evidence does not support the court's decision.

### II. PLAINTIFF DID NOT CITE TO INAPPROPRIATE AND IRRELEVANT MATERIALS OUTSIDE THE RECORD

Rule 11, Utah Rules of Appellate Procedure provides, in part, that "[t]he original papers and exhibits filed in the trial court, the transcript of proceedings, if any, the index prepared by the clerk of the trial court, and where available the docket sheet, shall constitute the record on appeal in all cases." Based on Rule 11, the material to which Defendant objects, contained in addenda A-4, A-5, A-6, and A-7, is all part of the record. It is true that the illustrative materials were never marked as exhibits and that Plaintiff used the materials during closing arguments. However, as is evident from the trial transcript (Tr.243-254) and from a statement by Defendant's Counsel (Tr.256), the documents in the addenda were given to the trial judge and discussion regarding the documents was considerable. Defendant did not object to the

submission of the documents to the trial court and, therefore, they became part of the record.

Plaintiff's references to the sale of a family horse are likewise appropriate. As Plaintiff described on page 7 of her Brief, Counsel for Plaintiff and Defendant met with the trial judge in chambers post trial where they discussed the facts surrounding the sale of the horse. Without those facts, this Court would be left wondering how the equity award in the house came about. A reduction in the amount of equity awarded Defendant in the family house resulted from that "in chambers" meeting with the Trial Court. Consequently, the facts relating to the sale of the horse should be considered part of the record.

**III. PLAINTIFF'S CLAIM IS MERITORIOUS AND DEFENDANT'S CLAIM FOR ATTORNEY'S FEES IS COMPLETELY UNWARRANTED.**

There is no basis in law or in fact to support Defendant's claim for attorney's fee and his assertion that Plaintiff's appeal is "frivolous, without merit, inaccurate, misleading and burdensome." Plaintiff has set forth in her Brief specific, detailed, and good faith arguments which establish that the trial court's findings are clearly erroneous. The case law and legal standards cited in Plaintiff's brief make it clear that in this case there is substantial room to question the reasonableness of a trial court's alimony award and failure to award attorney's fees.

**CONCLUSION**

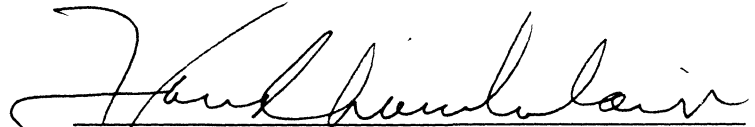
Defendant's argument's that Plaintiff has not marshalled the evidence, that Plaintiff relied on information outside the record,

and that Defendant is entitled to attorney's fees are baseless. As Plaintiff requested in its Brief, this Court should award Plaintiff permanent alimony of \$700.00 per month and order the Defendant to pay Plaintiff's attorney fees on either a (1) monthly basis; (2) by ordering Defendant to sell the lot and shed and pay the attorney fees; or (3) further reducing the equity lien against the family home in favor of Defendant. Attorney's fees incurred by Plaintiff on appeal should likewise be awarded, together with costs.

DATED this 30th day of September, 1993.

Respectfully submitted,


CHAMBERLAIN & HIGBEE

  
Hans Q. Chamberlain  
Attorney for Plaintiff and Appellant

**CERTIFICATE OF MAILING**

I hereby certify that on the 30th day of September, 1993, I caused to be mailed two (2) true and exact copies of the within and foregoing **APPELLANT'S REPLY BRIEF** to the following, first-class postage prepaid:

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Secretary