

2005

James Sweet v. Melanie Sweet : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JAMES SWEET,

Petitioner/Appellee,

vs.

MELANIE SWEET,

Respondent/Appellant.

Appeal No. 20050034

RESPONSE OF THE APPELLANT

ON APPEAL FROM THE THIRD DISTRICT COURT OF SALT LAKE

COUNTY, STATE OF UTAH,

THE HONORABLE ANTHONY B. QUINN, DISTRICT COURT JUDGE

PRESIDING.

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I. Introduction

1. While we have obvious disagreements with the Statement of the facts as set forth in the Brief of the Appellee, it is the Appellant's belief that her initial brief is sufficient to address any factual concerns on the pre-trial level. The Appellee raised a couple of points in his brief that were not made reference to in our initial brief and, therefore, justify a response. The Appellant refutes the

Appellee's belief that the issues raised in our appellate brief should not be considered by this court and she will address the specific reasoning in the following sections. As for the merits of the claims, the Appellant feels her initial brief to be adequate.

II. Issue of Rule 60(b)

The Appellee contends that the Appellant's arguments in reliance on Rule 60(b) of the Utah Rules of Civil Procedure, specifically arguments stemming from subsection 6 of the rule, are new on appeal and should not be considered. The Appellant offers two reasons why this is not new on appeal and should be considered. The first is that Rule 60(b) is and should be considered as a single entity without respect to its subsections except in the cases of timing under subsections 1-3. Second, even if subsections are to be considered independently, the fact that the motion listed several of the subsections does not preclude consideration of subsection 6 since it is the substance, rather than the form, of the motion that controls.

a. Rule 60(b) should be considered as a whole.

When a party makes a motion under Rule 60(b), they are asking a judge to set aside a judicial decree for any of the reasons listed within the rule. When referred to in cases, the courts refer to any justification as falling under Rule 60(b)¹.

“[N]omenclature is unimportant, moving papers that are mislabeled in other ways may be treated as motions under Rule 60(b) when relief would be proper under that

rule.” Kunzler v. O’Dell, 855 P.2d 270, 273 (Utah Ct. App. 1993). It becomes important to use subsections of Rule 60(b) only when timeliness of the motion is at issue under subsections 1-3, which it is not in this case. Since the motion was made under Rule 60(b), the court should feel free to use any justification under that rule to provide for relief. Courts have previously allowed relief under the broad Rule 60(b) umbrella. “[B]ecause the parties’ objections to the judgment were the “functional equivalent,” to a Rule 60(b) motion, the court used Rule 60(b) to vacate its judgment. Id. at 274. The court in Kunzler did not require the motion to apply to a particular subsection of Rule 60(b), rather it was enough for the motion to bring it under Rule 60(b)’s domain. It is also worthy to note that the court in a similar case, State v. Parker, did not limit the availability of relief for the failure of a motion to note a subsection of Rule 60(b). Rather, once they found Rule 60(b) applicable, they justified relief under Rule 60(b)(6) as one alternatives available to the court. 872 P.2d 1041, 1045 (Utah Ct. App. 1994).

It is therefore legitimate for the Appellant to make arguments justifying relief under any reason in the rule that would support such a position.

b. It is the Substance, not the Form that controls the motion.

The inequity of the divorce decree has been the heart of the Appellant’s position since the original motion. The motion to set aside the divorce decree mentioned several of the sections under Rule 60(b) that could be used to grant relief,

but the failure to specifically enumerate the other subsections does not limit the Court's ability to grant relief under those sections. "The title of a motion is not dispositive as to whether a court can grant relief under the motion." Kunzler at 273. Furthermore, a motion having the spirit of a Rule 60(b) motion could justify relief under subsection 6 (noted as subsection 7 at the time). "Although not properly labeled, the motion was in substance a Rule 60(b) motion . . . therefore, defendant's motion was sufficient to invoke Rule 60(b)(7) relief, and the trial court could have alternatively considered it on that ground." Parker at 1045².

Having both the spirit of a Rule 60(b) motion, and an actual motion evoking relief under the rule, the Appellant confidently asserts her ability to raise these issues on appeal.

III. Misapplication of Contract Standards

The brief for the Appellee asks this Court to ignore the proper application of contract law as an "issue not raised at trial." This is not a per se "issue" or an argumentative device, rather it is merely seeking the correct application of the law. The District Court applied the standards of arms-length contract law to a marriage situation. It is clearly the role of the Court of Appeals to look at the District Court's application of the law and review it, de novo, for correctness. Young Elec. Sign Co.

² Please note, in reference to our first argument, the court did NOT state that a motion having the spirit of a Rule 60(b)(6) motion could justify relief under subsection 6. It was enough that it had the spirit of Rule 60(b). Once it crossed that threshold, subsection 6 was found applicable.

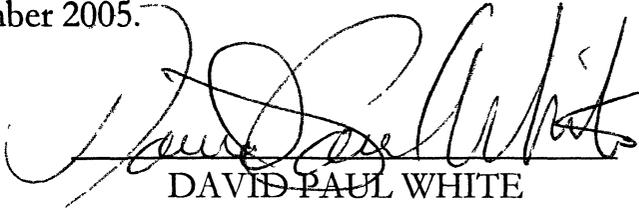
v. State, 110 P.3d 1118, 1119 (Utah Ct. App. 2005). Furthermore, the Court of Appeals, when reviewing said application, is not required to afford any deference to the legal conclusions of the District Court. Id. Since the Appellant is challenging the correctness of a legal conclusion, it falls within the reach of this Court to review the law and its correct application.

In addition, the legal conclusions relying on arms-length contract law were not reached until the hearing where the decision was handed down. This is the first chance the Appellant has had to challenge the correctness of this application. The appellate process is the first opportunity for the Appellant to address the misapplication. Presumably the Appellee would have us address the standard in a pre-trial motion, but to require parties to anticipate all potential misapplications of the law prior to a hearing would be overly burdensome before trial and severely limiting to the right of appeal after trial.

IV. Conclusion and Prayer

Therefore, the Appellant prays this court to apply her original brief, as amended, to the factual arguments presented in the Appellee's brief and also asks that the court examine all legal issues presented in her brief as the issues were either (1) ones that were addressed, in fact and in spirit, at the trial level or (2) being questions of legal conclusion that can be addressed only by appeal.

DATED THIS 21st day of November 2005.

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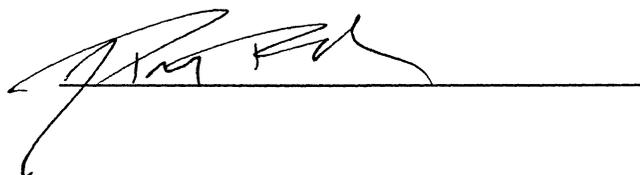
DAVID PAUL WHITE

Attorney for the Appellant

MAILING CERTIFICATE

I hereby certify that on the 22nd day of November 2005, I mailed two (2) true and correct copies of the foregoing **RESPONSE OF APPELLANT**, postage prepaid, to the following:

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A handwritten signature in black ink, appearing to read "S. Tycksen", is written over a solid horizontal line.