

1994

Marita W. Muir v. Michael D. Muir : Reply Brief

Utah Court of Appeals

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Helen E. Christian, Esq.; Gustin & Christian; Attorneys for Plaintiff/Appellant.

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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MARITA W. MUIR,

Plaintiff/Appellee,

v.

MICHAEL D. MUIR,

Defendant/Appellant,

:
:
: Case No. 940081-CA
:
: Priority No. 15
:
:
: District Court 11093
:
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REPLY BRIEF OF APPELLANT

AN APPEAL FROM AN ORDER ON DEFENDANT'S
PETITION FOR MODIFICATION ON REMAND
OF THE THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY, UTAH,
THE HONORABLE HOMER F. WILKINSON, PRESIDING

UTAH COURT OF APPEALS

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Utah Court of Appeals

OCT 12 1994

Marilyn M. Branch
Court

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TABLE OF AUTHORITIES

UTAH STATUTES, RULES AND CASES CITED

None

DETERMINATIVE AUTHORITY

All determinative authority has been set forth in Appellant's Primary Brief. There is no additional determinative authority in reply.

IN THE COURT OF APPEALS OF THE STATE OF UTAH

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MARITA W. MUIR,	:	
	:	
Plaintiff/Appellee,	:	Case No. 940081-CA
	:	
v.	:	Priority No. 15
	:	
MICHAEL D. MUIR,	:	
	:	
Defendant/Appellant,	:	District Court 11093
	:	
	:	

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REPLY BRIEF OF APPELLANT

AN APPEAL FROM ORDER ON DEFENDANT'S
PETITION FOR MODIFICATION ON REMAND
THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY, UTAH,
THE HONORABLE HOMER F. WILKINSON, PRESIDING

Defendant/Appellant, MICHAEL D. MUIR, submits the following as his Reply Brief in
the above-entitled matter:

STATEMENT OF FACTS

All facts have been set forth in Appellant's Primary Brief.

ARGUMENT

POINT I

PLAINTIFF/APPELLEE MISREPRESENTS THE FACTS REGARDING THE PARTIES' RESPECTIVE POST-DIVORCE INCOMES AND STANDARDS OF LIVING

Mrs. Muir argues in her brief that the lower court "could not support a reduction of alimony" because of the "undisputed facts of Mrs. Muir's drastically diminished standard of living from the time of the divorce." Mrs. Muir then goes on to compare other "undisputed" facts of Mr. Muir's standard of living that included "many of the luxuries enjoyed by the parties ... such as country club membership, international travel, ownership of an airplane..." to name just a few. Mrs. Muir's argument fails for these reasons:

First, the facts were disputed and, while there was some evidence that Mrs. Muir's standard of living was reduced from that enjoyed by the parties while they were married, there was also ample evidence that Mr. Muir's standard of living had been reduced as well. Mr. Muir offered uncontroverted evidence as to the reduced popularity of bowling and the efforts he has made to continue to keep his gross profits at the same level, despite the fact that his necessary expenses continued to rise. He offered testimony about the amenities and luxuries that he no longer could afford to maintain, such as trading in his Porsche automobile for a Chevrolet Blazer and selling the airplane and the boat that he owned during the marriage shortly after the divorce [T.106-107]. He testified that he had sold the country club membership and that he had taken only a few trips, mostly weekend trips to visit friends [T.95-96].

Second, the facts were also disputed as to Mrs. Muir's earnings at the time of the divorce. In her own testimony, she stated that she was not working at the time of the divorce

and that her income for the first few years after the divorce was final was nominal at best [T.214]. By the time of the trial on the modification, Mrs. Muir was employed full time by the airlines, and received additional monies from several other sources. Although Mrs. Muir argues that these sources were in the nature of "speculative" income, it is a self-serving argument and not supported by the facts of the case. Similarly, there was controverted evidence as to her monthly expenses and the "loss" that she claimed on the rental home she maintained in Salt Lake City, and which she rented to friends at a substantially reduced rate.

Finally, it is difficult to accept the fact that the trial court found a substantial change of circumstances at the trial, after hearing all of the evidence, and reduced the alimony award and then, without making the findings this Court mandated it to make on remand and on the very same evidence, totally reversed its former decision.

POINT II

MR. MUIR HAS OBJECTED TO THE REASONABLENESS OF ATTORNEY'S FEES INCURRED SUBSEQUENT TO REMAND

Mrs. Muir argues that Mr. Muir has never objected to the reasonableness of the attorney's fees awarded by the trial court, as to the original modification trial, the appeal, and the hearing on remand. That is simply not the case. Mrs. Muir was awarded \$3,000 of her attorney's fees at the trial. On remand, the trial court was instructed to enter its finding as to the reasonableness of the fees. The trial court entered its order requiring Mr. Muir to pay all of Mrs. Muir's attorney's fees, from the original trial through to the appeal of the case. Mr. Muir did in fact object to an award of these fees, and his objections were set forth in his Objections to Plaintiff's Proposed Findings of Fact submitted to the trial court. [R. 244] Mr. Muir specifically objected to the reasonableness of the fees [R.251], and objected to the findings

as to Mrs. Muir's need for assistance with attorney's fees. The trial court's failure to rule on the reasonableness of the fees constitutes reversible error.

CONCLUSION

Based on the facts of this case and the law, this Court should:

1. Reverse the trial court's order that no substantial change of circumstances occurred since entry of the Decree of Divorce;
2. Reverse the trial court's award of judgment against Mr. Muir and in favor of Mrs. Muir;
3. Reverse the trial court's award of attorney's fees to Mrs. Muir; and
4. Reinstate Mr. Muir's alimony obligation of \$900 per month, retroactive to the date of the modification trial;
5. Reinstate Mr. Muir's obligation to pay \$3,000 of Mrs. Muir's attorney's fees and costs.

RESPECTFULLY SUBMITTED this 12 day of October, 1994.

GUSTIN & CHRISTIAN



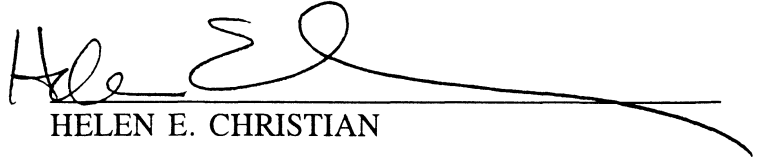
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CERTIFICATE OF DELIVERY

I hereby certify that two true and correct copies of the above and foregoing BRIEF OF APPELLANT were duly hand delivered, addressed to:

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DATED this 12 day of October, 1994.


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