

1994

Coelho v. Coelho : Reply Brief

Utah Court of Appeals

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B. L. Dart; Dart, Adamson & Donovan; Attorneys for Appellee.

Helen E. Christian; Gustin & Christian; Attorneys for Appellant.

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DOCKET NO. 940666-CA

IN THE COURT OF APPEALS OF THE STATE OF UTAH

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MARY COELHO,	:	
	:	
Plaintiff/Appellant,	:	Case No. 940666-CA
	:	
v.	:	Priority No. 15
	:	
ALCIDES J. COELHO,	:	
	:	District Court 11093
Defendant/Appellee,	:	

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APPELLANT'S REPLY BRIEF

AN APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER ON PLAINTIFF'S MOTION TO REVIEW THE ALIMONY AWARD
PURSUANT TO THE DECREE OF DIVORCE ENTERED IN
THE THIRD JUDICIAL DISTRICT COURT, SUMMIT COUNTY, UTAH,
THE HONORABLE DAVID S. YOUNG, PRESIDING

B. L. DART, ESQ. (5678)
DART, ADAMSON & DONOVAN
310 South Main, Suite 1330
Salt Lake City, Utah 84101
Telephone: (801) 521-6383

Attorneys for Defendant/
Appellee

HELEN E. CHRISTIAN, ESQ. (2247)
GUSTIN & CHRISTIAN
Suite 722, Boston Building
9 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 531-7444

Attorneys for Plaintiff/
Appellant



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B. L. DART, ESQ. (5678)
DART, ADAMSON & DONOVAN
310 South Main, Suite 1330
Salt Lake City, Utah 84101
Telephone: (801) 521-6383

Attorneys for Defendant/
Appellee

HELEN E. CHRISTIAN, ESQ. (2247)
GUSTIN & CHRISTIAN
Suite 722, Boston Building
9 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 531-7444

Attorneys for Plaintiff/
Appellant

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TABLE OF AUTHORITIES

DETERMINATIVE AUTHORITY

All determinative authority has been set forth in Exhibit "A" to 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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STATEMENT OF FACTS

Appellant, Mary Coelho (hereinafter "Mrs. Coelho") refers the Court to the Statement of Facts contained in her primary brief, except to emphasize the fact that she derived no income from selling real estate for more than five years before the first trial and that her license expired in 1992. By the time of the second trial, over two years later, the court still held her to an income standard she had not achieved for more than seven years.

ARGUMENT I

THE ALIMONY AWARD SHOULD BE REVERSED AND THIS COURT SHOULD ENTER ITS OWN ALIMONY AWARD OF \$1,000 PER MONTH OR, IN THE ALTERNATIVE, REMAND TO THE LOWER COURT FOR AN APPROPRIATE AWARD OF ALIMONY TO MRS. COELHO

The lower court's alimony award was an abuse of discretion and should be reversed by this Court for several reasons. First of all, the Court failed to make adequate findings as to Mrs. Coelho's needs. Such findings are critical to a determination of whether Mrs. Coelho has the ability to meet her needs without any alimony from Mr. Coelho.

Second, Mr. Coelho argues in his brief that Mrs. Coelho failed to focus on his ability to pay alimony, which he claims has been compromised since the time of the first trial. There was controverted evidence before the lower court regarding Mr. Coelho's purportedly reduced earnings, and only Mr. Coelho's testimony to support his claims that he had "borrowed" from his business partners to pay his obligations. There was no documentary evidence of these alleged loans, and the monies deposited into Mr. Coelho's checking account clearly exceeded the amounts he claimed to earn through his business. Further, Mr. Coelho's own monthly expenses exceeded what he claimed to earn and the amounts he claimed to have borrowed! Finally, Mr. Coelho's tax return reflects that his actual income from the operation of his business was \$48,226, or more than \$4,000 per month. There is no credible evidence in the record to support the arbitrary \$3,000 income amount found by the trial court.

It is clear that the lower court abused its discretion in denying Mrs. Coelho's motion to continue alimony. This is a sixteen year marriage. Mr. Coelho's earning capacity greatly exceeds Mrs. Coelho's capacity to earn under any reasonable scenario, and the lower court's award of alimony should be reversed.

ARGUMENT II

MRS. COELHO'S SHARE OF THE EQUITY SHOULD NOT BE REDUCED BY REIMBURSEMENT TO MR. COELHO FOR MORTGAGE PAYMENTS MADE BY HIM

The lower court correctly found that Mrs. Coelho had insufficient funds to pay the mortgage payment on the home. The reason she had insufficient funds, however, is because her alimony award had been terminated by the time of the second trial. Rather than making an award of alimony that would assist her in the payment of the mortgage, the lower court ordered Mr. Coelho to pay the mortgage payment until the house was sold, with the provision that he would be reimbursed for such payments from Mrs. Coelho's share of the home equity.

This decision requires Mrs. Coelho to deplete the only marital asset in which she has an interest. She is forced to do so because of the lower court's incredible position that, seven years later, Mrs. Coelho is not only able to get back into the real estate field, but immediately get back to the earning capacity she had years before.

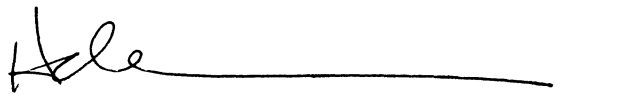
Contrary to Mr. Coelho's assertions, this decision neither "treats both of the parties fairly" nor does it "make the best of a bad situation." Rather, it is a bad decision and an abuse of the lower court's position. As such, it should be reversed and the mortgage payments made by Mr. Coelho should be considered alimony and he should not be entitled to reimbursement.

CONCLUSION

The lower court abused its discretion in denying Mrs. Coelho's Motion to Continue Alimony in light of the court's recognition that she had insufficient financial means to meet her monthly expenses. Further, it compounded that abuse of discretion by ordering that Mr. Coelho be reimbursed from Mrs. Coelho's portion of the equity in the home for amounts paid by him on the mortgage. This court should reverse the lower court's order and enter its own order, awarding Mrs. Coelho \$1,000 per month in alimony from January 1, 1994, until she remarries, cohabits, dies, or until further order of the court and characterizing the mortgage payments made by Mr. Coelho since January 1, 1994 as alimony for which he is not entitled to reimbursement. In the alternative, this case should be remanded for sufficient findings and an order awarding Mrs. Coelho an appropriate amount of alimony.

RESPECTFULLY SUBMITTED this 15th day of March, 1996.

GUSTIN & CHRISTIAN



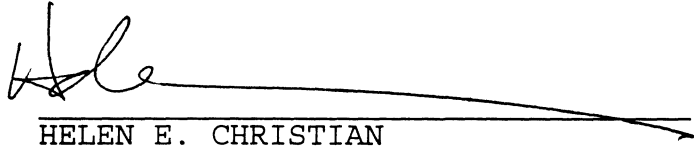
HELEN E. CHRISTIAN
Attorneys for
Plaintiff/Appellant.

CERTIFICATE OF DELIVERY

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

B. L. Dart, Esq.
DART, ADAMSON & DONOVAN
310 South Main Street, Suite 1330
Salt Lake City, UT 84101

DATED this 15th day of March, 1996.


HELEN E. CHRISTIAN