

2006

# James Lewis Kimball v. Merae Kimball; Merae P. Kimball v. James L. Kimball : Consolidated Cases

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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JAMES LEWIS KIMBALL, )  
 )  
 ) Petitioner/Appellant, )  
v. )  
 ) Appellate Court No. 20060263-CA  
MERAЕ KIMBALL, )  
 ) Trial Court No. 024901659DA  
 ) Respondent/Appellee  
 ) and Cross-Appellant. )

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MERAЕ P. KIMBALL, )  
 )  
 ) Plaintiff/Appellee, )  
v. )  
 ) Appellate Court No. 20070858  
JAMES L. KIMBALL, )  
 ) Trial Court No. 030902885  
 ) Appellant/Defendant. )

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CONSOLIDATED CASES

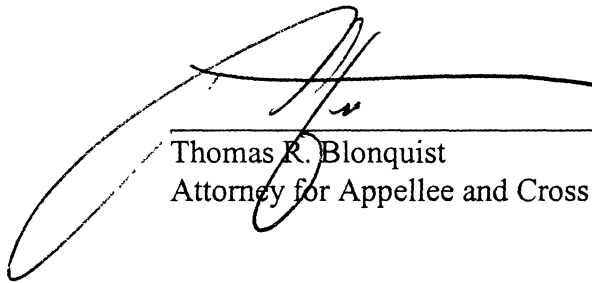
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NOTICE OF ERRATA RE: PAGES 51 AND 52 OF BRIEF OF APPELLEE and CROSS  
APPELLANT

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Notice is hereby given that due to a typographical error, the footnote at the bottom of page 51 and a portion of the text of page 52 of the Brief of Appellee and Cross Appellant, Merae Kimball, are incorrect. The corrected pages are attached hereto.

DATED this 17<sup>th</sup> day of June, 2008.

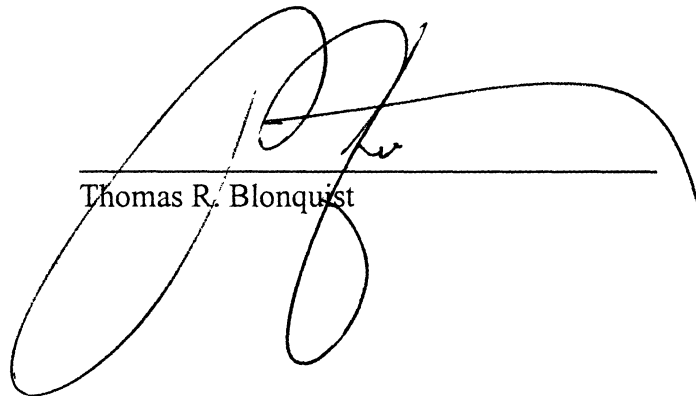


Thomas R. Blonquist  
Attorney for Appellee and Cross Appellant

MAILING CERTIFICATE

The undersigned hereby certifies that on this 17<sup>th</sup> day of June, 2008, two copies of the foregoing notice of errata were mailed, postage pre-paid, to:

Wendy Lems, Esq.  
7050 Union Park Center Suite 350  
Midvale, UT 84047



Thomas R. Blonquist

3. Did the party have a need?

In exercising its sound discretion, the trial court denied both parties' requests for their attorney's fees and costs based upon the evidence presented at the divorce trial.

The trial court determined, as to James, that:

1. He did not prevail on the main issue of the case, see Ruling Hearing P 12 L 19-23.
2. The fees sought were not reasonable or necessary, see Ruling Hearing P 12 L 5-8.
3. James did not have a need because his fees were paid for him by his parents and he is not legally bound to pay back his parents, see Ruling Hearing P 13 L 6-10.\*

The trial court determined, as to Merae, that:

1. She prevailed on the main issue of the case, see Ruling Hearing P 13 L 11-12.
2. The fees she sought were unreasonable and unnecessary because this is a case that "got out of hand." See Ruling Hearing P 12 L 12-14.
3. With the funds she was awarded, she does not have a need, see Ruling Hearing P 13 L 11-13.
4. James does not have the ability to pay Merae's costs and fees, see Ruling Hearing P 13 L 13-14.

### CONCLUSION

Based upon the foregoing reasoning, analyses, and case law, Merae urges that this

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\* James failed to produce a promissory note or any other evidence of his obligation to his parents.

appellate court enter a decision:

1. Allowing the trial court's findings in both the divorce case and the fraud case to stand because James has failed in his basic threshold duty on appeal to properly marshal the evidence.

2. Granting Merae a judgment against James in the amount of \$142,467 in the divorce case or, in the alternative, upholding her judgment against James in the fraud case.\*

3. Reversing the trial court order holding Merae in contempt of court.

4. Ruling that James' counsel violated Rule 11 of U R Civ P and remanding the issue to the trial court for determining the appropriate sanction.

DATED this 17 day of June, 2008.

TRB  
Thomas R. Blonquist  
Attorney for Merae

#### MAILING CERTIFICATE

The undersigned certifies that on this 17 day of June, 2008, two copies of the forgoing brief of appellee and cross appellant and addendum were mailed, postage pre-paid, to:

Wendy J. Lems, Esq.  
7050 South Union Park Center, Suite 350  
Midvale, Utah 84047

TRB  
Thomas R. Blonquist

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\* Merae's prayer is in the alternative because she is not entitled to both judgments.