

2006

## Layne D. Hess v. Jody Johnston : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

Layne D. Hess,

Appellant and Cross-Appellee,

-vs-

Jody Johnston,

Appellee and Cross-Appellant.

Case No. 20060497-CA

Third District Court No. 050919801

REPLY BRIEF OF CROSS-APPELLANT AND APPELLEE

APPEAL FROM THE FINAL ORDER OF THE HONORABLE J. DENNIS FREDERICK,  
DATED APRIL 25, 2006, DISMISSING ACTION, WITH PREJUDICE

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## ARGUMENT

In the Brief of Cross-Appellee and Reply Brief of Appellant ("Cross-Appellee's Brief"), Hess argues that his complaint in this case against Johnston complied with the requirements of UTAH R. CIV. P. 11: "Mr. Hess' claims are warranted under existing law, or, at the very least, by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Cross-Appellee's Brief at 2-3. Although Hess concedes that *Jackson v. Brown*, 904 P.2d 685, 687 (Utah 1995) abolished any cause of action for breach of a promise to marry, he argues: "The Court in *Jackson* however, did not abolish all possible causes of actions arising from a cancelled engagement." Cross-Appellee's Brief at 5. Hess points to dicta in *Jackson* that was not adopted by the majority to support his argument. Cross-Appellee's Brief, at 5.

What Hess did in his complaint, however, was to assert the very type of claim that was clearly and explicitly abolished in *Jackson*, not any type of claim that even the dicta in *Jackson* suggests might exist. By asserting that type of claim, regardless of what he calls it, Hess engaged in the very conduct this Court sought to prevent in *Jackson*: "[I]f we were to uphold the action, any time an engaged party were to cancel wedding plans for any reason, the other party would have a prima facie case for breach of promise to marry." *Id.*, 904 P.2d at 687. "Such an action would be highly susceptible to abuse by persons whose feelings are damaged by a former fiancée's decision to cancel a wedding. In

*Norton*, we held that actions so manipulable and vulnerable to this type of abuse are 'counterproductive' to the good of the state." *Id.* The instant action represents just such an abusive effort, by a jilted boyfriend. Indeed, the complaint contains no allegation of any expense incurred in wedding preparations.

Hess' argument to justify the filing of this action hinges on his assertion that, because an intentional infliction of emotional distress claim survived the abolition of breach of promise in *Jackson*, that he was objectively justified in arguing for the claims he asserted, either as existing law or reasonable extensions of existing law. Cross-Appellant's Brief at 6. This argument holds no water, however, because damaged feelings may well result from a canceled wedding, as *Jackson* points out, *ibid.*, but there is no claim. *Id.* The separate tort of intentional infliction of emotional distress requires "outrageous and intolerable conduct" that "offend[s] against the generally accepted standards of decency and morality." *Id.* at 687-88. Accepting gifts during courtship, which is all the complaint pleads, could not reasonably be construed to be outrageous or intolerable or against the standards of society.

In contrast, the *Jackson* complaint alleged fraudulent misrepresentations that were made to induce the plaintiff to enter into a romantic relationship in the first instance and then to proceed toward engagement. *Id.*, 904 P.2d at 688. The gravamen of the intentional infliction of emotional distress claim was defendant's

allegedly extreme and outrageous conduct of lying about being unmarried, and therefore available for marriage, then carrying on a romantic relationship under that false pretense until only hours before a scheduled wedding. It is that conduct -- fraudulently inducing and continuing an intimate relationship until such a dramatic and emotional moment -- that might have been found to be extreme and outrageous conduct, not the breach of an unenforceable promise to marry. See *id.* The elements of the intentional infliction of emotional distress claim in *Jackson* were plainly independent of the breach of promise that occurred and *Jackson* thus plainly held there could be no claim for breach of promise.

No such facts exist in this case, in which, as was pointed out in the Cross-Appellant's Opening Brief, there are no allegations of fraud. Even if the dicta concerning economic expenditures could be extended to gifts, the complaint does not plead a single wedding-related expense that could be sustainable under a conditional gift theory.

In the light of the plain language of *Jackson*, especially about avoiding potential abuse and the utter absence of any fraud allegations or wedding expense allegations, all that Hess seeks is recovery of courtship expenses and his hurt feelings do not justify the making of such a legally-abolished claim. Hess' assertion that his error as to the existence of a cause of action was reasonable, even if wrong, cannot pass an objective review of the law and the pleaded facts.

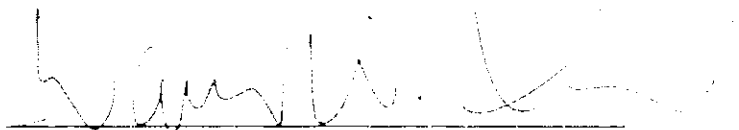


**CONCLUSION**

Rule 11 sanctions should be awarded against Hess and Johnston should recover her reasonable attorneys fees, costs and expenses incurred in defending against this action, which was brought without any legally or factually sustainable basis. Courtship expenses are not recoverable for simple breach of promise.

**RESPECTFULLY SUBMITTED** this 26th day of January, 2007.

**PETERS SCOFIELD PRICE**  
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Appellee and Cross-Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two true and correct copies of the above and foregoing Cross-Appellant's Reply Brief were mailed, postage prepaid, this 21<sup>st</sup> day of January, 2007, to the following:

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A handwritten signature in cursive script, appearing to read "David W. Scofield", is written over a horizontal line.

David W. Scofield