

1995

Delbert F. Margie M. Astin v. Astin : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

DELBERT F. ASTIN, :
Plaintiff/Appellee, : No. 950253-CA
vs. : District Ct. No. 934402059
MARGIE M. ASTIN, : Category 15
Defendant/Appellant. :

REPLY BRIEF OF APPELLANT

AN APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF UTAH LAKE, STATE OF UTAH

THE HONORABLE BOYD L. PARK, PRESIDING

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FILED

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COURT OF APPEALS

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COMES NOW the Appellant to the above-captioned matter (hereinafter "Wife"), by and through counsel, and pursuant to Rule 24(c) of the Utah Rules of Appellate Procedure, hereby submits the following as her reply brief:

ARGUMENT

I. DEFENDANT SUFFICIENTLY PRESENTED THE ISSUES ON APPEAL, INCLUDING THE STANDARD OF REVIEW ON APPEAL AND CITATIONS TO THE RECORD.

Defendant's appeal brief presented the issues on appeal in a manner sufficient to support the requirements of the Utah Rules of Appellate Procedure. The Utah Rules of Appellate Procedure require the following to appear in appellant's briefs:

- (5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and
- (A) citation to the record showing that the issue was preserved in the trial court; or
 - (B) a statement of grounds for seeking review of an issue not preserved in the trial court.

Utah R. App. P. 24 (a) (5).

Although Defendant did not set forth a separate heading

entitled "Statement of Issues on Appeal," all of the information and required provisions were contained in Defendant's brief in an easily understandable and ascertainable form. Further, the Docketing Statement set forth in detail the issues presented on appeal. (See, Appellant's Docketing Statement pp. 8-11.)

Within the "Nature of the Proceedings" section of Wife's brief, Wife stated as follows: "In particular, Wife appeals those provisions which awarded the Wife \$600.00 per month alimony; failing to order Husband to sell the marital residence or pay out Wife's equity therein; the provisions wherein which the trial court denied the Wife's request that Husband pay one-half of uncovered medical expenses and insurance premiums upon the expiration of her health insurance COBRA coverage; the provision wherein which the trial court ordered the Husband to reimburse only one-half of the loans that Husband had taken out against Wife's whole-life insurance policy; and the award to Wife of attorney's fees in the sum of \$1,000.00, rather than more or all of those fees." (Appellant's Brief, pp. 1-2.)

"The purpose of a brief is to enlighten the court and elucidate the issues rather than confuse the court and obscure the issues." Demetropoulos v. Vreeken, 754 P.2d 960, 960 n.2, (Utah Ct. App. 1988) (reaching the merits of the case even though appellant's brief contained numerous errors). "It may be said that a brief is as effective as it is helpful in deciding the question or questions presented. Hence, the crucial importance of properly phrasing or stating the question or issue raised on the

appeal cannot be overemphasized. By a proper presentation of pertinent authority, counsel should demonstrate and persuade the court that the answer submitted in the brief is warranted, if not absolutely required, by the governing principles of law." Id. at 960, n. 1, citing Effective Legal Writing and the Appellate Brief, Case & Comment, July-Aug. 1984, at 9, 18.

Here, Wife properly stated the issues raised on appeal and presented the same in logical manner. First, each of the issues were presented in the "Nature of the Proceedings" section. Second, the facts related to each issue, together with citation to the record (including citation to the record showing the issue was preserved in the trial court), were presented in corresponding order. Finally, these issues were argued in the same order under separate headings in the argument section of the brief.

While the issues presented on appeal are not presented under separate heading, Wife clearly stated the particular provisions of the Findings of Fact and Decree of Divorce which were the subject of the appeal. Further, within the argument section of the brief each of the above issues were presented under a separate heading and given a separate and distinct argument. By simply reviewing the table of contents Husband obviously determined each of the issues presented in this appeal.

Further, although each of the issues presented on appeal are separate and distinct, they each relate to financial and property interests in divorce. Accordingly, each issue had the same standard of review. Therefore, in the interests of promoting

efficiency, the standard of review was set forth separately.

Finally, specific and substantial citations to the record were set forth in the statement of the facts. Additionally, within her argument Wife set forth these specific references to the record. This matter is quite fact-specific. Hence, citation to the record within the statement of facts is comprehensive and precise. Husband could have easily determined the citations to the record for each issue by reading this section.

In sum, Wife's brief serves the required purpose of enlightening the court and elucidating the issues. Further, Wife's Docketing Statement fully set forth the issues presented on appeal. Moreover, although Wife's brief does not set forth the issues and citations to the record in strict compliance with the Utah Rules of Appellate Procedure, the issues are presented in a logical, understandable, and efficient manner. Therefore, Wife's brief should not be rejected. Extreme and grave harm and prejudice would be done to the Wife if this court entertained this request by Husband. Husband was clearly not harmed or disadvantaged by the form of Wife's brief.

II. WIFE PROPERLY MARSHALED THE EVIDENCE SUPPORTING THE TRIAL COURT'S FINDINGS.

Wife adequately marshaled the evidence supporting the trial court's findings, as well as the evidence supporting Wife's argument on appeal. "In order to challenge a trial court's findings of fact, a party "must marshal the evidence in support of the findings and then demonstrate that despite this evidence, the

trial court's findings are so lacking in support as to be "against the clear weight of the evidence", thus making them "clearly erroneous." " Mountain States Broadcasting Co. v. Neale, 783 P.2d 551, 553 (Utah Ct. App. 1989) (citing In re Bartell, 776 P.2d 885, 886 (Utah 1989) (stating that the parties had done an admirable job of marshaling the evidence).

Husband's brief fails to specifically state how the Wife failed to marshal the evidence in her brief. Husband merely states that "Ms. Astin made no effort to recite the evidence that supports the trial court's findings." (Appellee's Brief, p. 10). This allegation is not correct. Further, this conclusory statement fails to explain the specific evidence that Husband claims is lacking in Wife's brief.

This is an appeal from a divorce. Therefore, it is the duty of the trial court to make "**equitable** orders relating to the children, property, debts or obligations, and parties." Utah Code Ann. § 30-3-5(1) (1953, as amended) (emphasis added).

Wife has made specific arguments and references to the record and transcripts which point out to this court and underline the trial court's error and abuse of discretion in its findings. For example, Wife has pointed out that the trial court found that Husband had \$726.64 net disposable remaining after he paid expenses (Findings of Fact and Conclusions of Law, ¶ 10, Index 108, Memorandum Decision, ¶ 17, Index 92), that Wife's income was \$429.00 from social security (Findings of Fact and Conclusions of Law, ¶ 8, Index 110), and yet found that \$600.00 per month was a

reasonable monthly alimony. (Findings of Fact and Conclusions of Law, ¶ 12, Index 107) (See, Appellant's Brief, pp. 6-7 and 14-15).

This court has held that "[w]here a party challenges a finding and adequately marshals the evidence, we draw the facts from the marshalled evidence and from the record." Cox v. Cox, 877 P.2d 1262, 1264 (Utah Ct. App. 1994) (finding that the appellant had adequately marshaled the evidence and therefore drawing the facts from both the marshalled evidence and the record). After setting forth the evidence relied upon by the trial court in making its findings of fact, Wife then stressed the evidence which showed that, despite the evidence upon which the trial court's findings were based, the findings were lacking in support, were inequitable, and therefore clearly erroneous.

Consequently, Wife did not fail to marshal the evidence in her brief as to each issue raised on appeal.

CONCLUSION

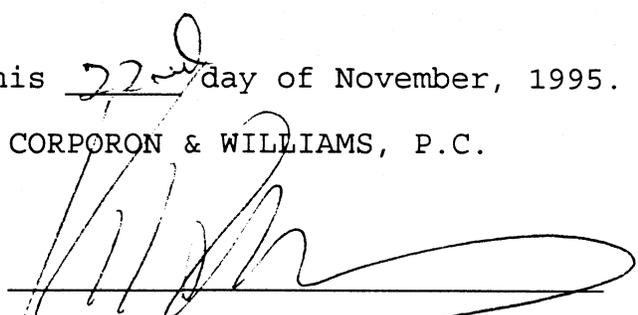
Wife clearly set forth the issues on appeal, together with the standard of review and citation to the record. Although the issues were not presented under a separate heading, they were set forth clearly in the nature of the proceedings, standard of review, statement of the case, statement of the facts, and docketing statement. Further, each issue was set forth in the argument section under separate heading. In addition, citations to the record showing that each issue was preserved on appeal were clearly set forth in the statement of facts section, in the same order in

which the issues were previously set forth. Accordingly, Wife's brief should not be rejected.

Wife has marshalled the evidence which indicates a clear abuse of discretion on the part of the trial court. Within the statement of facts section and argument Wife specifically presented the evidence relied upon by the trial court in rendering its findings of fact. Husband's bare assertions are not supported by specific references on argument, whereas, Wife has pointed out specific errors made by the trial court. Wife requests the relief set forth in her appellate brief.

RESPECTFULLY SUBMITTED this 22nd day of November, 1995.

CORPORON & WILLIAMS, P.C.



KELLIE F. WILLIAMS

Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

I hereby certify that two (2) true and correct copies of the foregoing REPLY BRIEF OF APPELLANT were mailed, first class, postage prepaid, to:

ROBERT L. MOODY
Attorney for Appellee
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2525 North Canyon Road
Provo, Utah 84604

on this 23rd day of November, 1995.

A handwritten signature in black ink, appearing to read "R. L. Moody", is written over a horizontal line. The signature is stylized and cursive.