2006

Carolyn A. Olsen v. Mark K. Olsen : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

CAROLYN A. OLSEN,	:	REPLY BRIEF OF APPELLEE/ CROSS-APPELLANT
Appellant/Cross-Appellee,	:	
vs.	:	
MARK K. OLSEN,	:	Case No. 20060687
Appellee/Cross-Appellant.	:	

CROSS-APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT,
WEBER COUNTY
JUDGE SCOTT M. HADLEY

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ARGUMENT

POINT I. SECTION 15-2-1, UTAH CODE ANNOTATED, AS AMENDED, DOES NOT APPLY TO AN ALIMONY ANALYSIS, AND DOES NOT APPLY TO JUDGE HADLEY'S RULING IN THIS CASE.

In her Reply Brief, at Page 9, Carolyn argues seemingly, that Judge Hadley made an implicit finding that, as an alternative to a straight alimony-factor analysis under Section 30-3-5(8), Utah Code Annotated, as amended, Section 15-2-1, Utah Code Annotated, as amended, applies and supports Judge Hadley's Finding that the parties' standard of living included providing health insurance coverage for adult children (Findings of Fact No. 107, Carolyn's Reply Brief Addendum No. 1), and his conclusion that this is a permissible alimony criteria. There is no support in the law for this assertion, nor is it what Judge Hadley did.

Section 15-2-1 provides as follows:

> The period of minority extends in males and females to the age of eighteen years; but all minors obtain their majority by marriage. It is further provided that courts in divorce actions may order support to age 21. (emphasis added)

This section has been interpreted numerous times to be the exception, rather than the rule, requiring a specific finding by the trial court of "unusual circumstances", Ferguson v. Ferguson, 578 P.2d 1274 (Utah 1978); "special or unusual circumstances", Harris v. Harris, 585 P.2d 435 (Utah 1978); a "special

finding", Fletcher v. Fletcher, 615 P.2d 1218 (Utah 1980); Despain v. Despain, 627 P.2d 526 (Utah 1981); "necessity and special or unusual circumstances", Balls v. Hackley, 745 P.2d 836 (Utah App. 1987). Judge Hadley made no such finding, nor did he engage in such analysis.

Ferguson v. Ferguson, 578 P.2d 1274 (Utah 1978) involved facts analogous to those of the present case. The parties had a daughter who, at the time of trial, was a senior in high school, worked 27 hours per week, paid no room or board to her mother, and wanted to go to college. Mrs. Ferguson asked the trial judge to "secure continued child support for the adult daughter" 578 P.2d 1274, at 1275, which request was denied. Most instructive is the Utah Supreme Court's observation in affirming the trial court's denial:

> Ordinarily, a parent will be more than willing to aid and assist an adult child in securing a college education; however, one should not be compelled to do so by court order, except perhaps, in some unusual circumstance, not present here. If he does not have the interests of his children at heart, that is and should be a matter of his own conscience and not of the court's. 585 P.2d 1274, at 1275.

CONCLUSION

Section 15-2-1, Utah Code Annotated, as amended, does not apply to an alimony analysis under Section 30-3-5(8)(a)(i), Utah Code Annotated, as amended. The trial court did not apply such an analysis, nor could it have, as no

unusual or exceptional circumstances exist. Mark also should be awarded his costs on appeal, pursuant to Rule 34, Utah Rules of Appellate Procedure.

DATED this 5th day of July, 2007.

MARTIN W. CUSTEN
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CERTIFICATE OF MAILING

I hereby certify that on this 6th day of July, 2007, I mailed a true and correct copy of the above and foregoing Reply Brief of Appellee/Cross-Appellant, postage prepaid, to:

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