2006

Camille Castillo Johnson v. Travis Paul Johnson : Reply Brief

Utah Court of Appeals

Samuel M. Barker; Bradley J. Schofiled; Jeffrey A. Callister; Smart, Schofield, Shorter & Lunceford; Attorneys for Respondent/Appellant.
Glen M. Richman; Barbara W. Richman; Richman & Richman; Attorneys for Appellee.

IN THE UTAH COURT OF APPEALS

CAMILLE CASTILLO JOHNSON, Petitioner/Appellee, vs. TRAVIS PAUL JOHNSON, Respondent/Appellant.	District Court No. 044907342 Appellate No. 20061003-CA

REPLY BRIEF OF APPELLANT

APPEAL FROM FINDINGS OF FACT AND CONCLUSIONS OF LAW, DECREE OF DIVORCE, AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND AMENDED DECREE OF DIVORCE
OF THE UTAH THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, THE HONORABLE LESLIE A. LEWIS PRESIDING

Glen M. Richman, Esq.
Barbara W. Richman, Esq.
RICHMAN & RICHMAN
Attorneys for Petitioner/Appellee
60 South 600 East, Suite 100
Salt Lake City, Utah 84102

Samuel M. Barker, #6073
Bradley J. Schofield, #7986
Jeffrey A. Callister, #9962
SMART, SCHOFIELD, SHORTER & LUNCEFORD
A Professional Corporation
Attorneys for Respondent/Appellant
5295 South Commerce Drive, Suite200
Murray, Utah 84107

IN THE UTAH COURT OF APPEALS

CAMILLE CASTILLO JOHNSON, Petitioner/Appellee, vs. TRAVIS PAUL JOHNSON, Respondent/Appellant.	District Court No. 044907342 Appellate No. 20061003-CA

REPLY BRIEF OF APPELLANT

APPEAL FROM FINDINGS OF FACT AND CONCLUSIONS OF LAW, DECREE OF DIVORCE, AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND AMENDED DECREE OF DIVORCE
OF THE UTAH THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, THE HONORABLE LESLIE A. LEWIS PRESIDING

Glen M. Richman, Esq.
Barbara W. Richman, Esq.
RICHMAN & RICHMAN
Attorneys for Petitioner/Appellee
60 South 600 East, Suite 100
Salt Lake City, Utah 84102

Samuel M. Barker, #6073
Bradley J. Schofield, #7986
Jeffrey A. Callister, #9962
SMART, SCHOFIELD, SHORTER & LUNCEFORD
A Professional Corporation
Attorneys for Respondent/Appellant
5295 South Commerce Drive, Suite200
Murray, Utah 84107

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

ARGUMENT

I. THE STATEMENTS MADE BY PETITIONER REGARDING RESPONDENT'S SUBSTANCE ABUSE SHOULD BE IGNORED BY THIS COURT.

Petitioner spends a significant amount of time in Petitioner's opposition brief discussing Respondent's substance abuse. Respondent's substance abuse is irrelevant to the issues present on appeal. One such statement even lacks citation to the record. Specifically, Petitioner's statement that "Respondent came to court high on drugs and reeking of alcohol" lacks any citation to the record. Petitioner's Brief at pg. 43. Clearly the marriage was damaged. Clearly it is appropriate that the parties are now divorced. However, Respondent's substance abuse does not have any bearing on the issues presented here on appeal. Respondent is arguing that the trial court failed to properly categorize the real property at issue as marital, and as a result, failed to divide it correctly. Petitioner does not appear to provide any legal basis regarding the relevance of these statements, other than how they may have impacted Respondent's credibility at the trial. As such, this Court should ignore the statements made in Petitioner's brief regarding Respondent's substance abuse to the extent that they fail to directly address the issues present on appeal.

II. RESPONDENT HAS ADEQUATELY MARSHALED THE EVIDENCE ON APPEAL REGARDING THE TRIAL COURT'S FINDING THAT ALL MORTGAGE PAYMENTS WERE MADE FROM PETITIONER'S SEPARATE FUNDS.

Petitioner argues that Respondent has failed to adequately marshal the evidence on appeal regarding the trial court's finding that all payments of the mortgage principal and

interest were made by Petitioner from her separate funds. See Petitioner's Brief at 13 and R. at 705 and 727. Petitioner gives several examples of evidence that should have purportedly been marshaled. However, the evidence Petitioner points to is irrelevant.

Rather than examine each piece of evidence discussed by Petitioner, the undisputed evidence should be considered. It is not disputed that Petitioner made the mortgage payments from her individual account. Tr. at 153: 11-25 and 154: 1-10. Nor is it disputed that this is the same account that Respondent's personal injury settlement funds were ultimately deposited. Tr. at 153: 23-25 and 154: 1-7, Exhibit 16 and Petitioner's Brief at 25. The allegedly omitted, relevant evidence that Petitioner points to does nothing to controvert the undisputed fact that Respondent's personal injury settlement was deposited in the same account from which monthly mortgage payments were made. For example, when Petitioner closed on the home, and when the parties became separated is irrelevant, and does nothing to further the discussion of whether or not the mortgage principal and interest was paid from Petitioner's separate funds. See Petitioner's Brief at 13.

Therefore, this Court should find that Respondent has adequately marshaled the evidence.

III. THE TRIAL COURT DID MISAPPLY THE LAW IN ITS FINDINGS AND CONCLUSIONS THAT THE SUBJECT REAL PROPERTY WAS PETITIONER'S SEPARATE PROPERTY AND THAT RESPONDENT WAS NOT ENTITLED TO ONE-HALF OF THE APPRECIATION OF SAID PROPERTY.

Petitioner argues that the trial court correctly applied the law in making its findings of fact and conclusions of law that the real property acquired during the marriage was Petitioner's separate property. Petitioner's argument is simply not supported by the undisputed evidence, and is contrary to law. A trial court's property division will be modified when "there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error, the evidence clearly preponderated against the findings, or such a serious inequity has resulted as to manifest a clear abuse of discretion." Naranjo v. Naranjo, 751 P.2d 1144, 1146 (Utah Ct. App. 1988)(citing English v. English, 565 P.2d 409, 410 (Utah 1977); Eames v. Eames, 735 P.2d 395, 397 (Utah Ct. App. 1987)). Clearly that has occurred in this situation.

The law regarding property division states, "[e]ach party is presumed to be entitled to all of his or her separate property and fifty percent of the marital property." Thomas v. Thomas, 987 P.2d 603, 610 (Utah Ct. App. 1999); See also Hall v. Hall, 858 P.2d 1018, 1022 (Utah Ct. App. 1993) ("once a court makes a finding that a specific item is marital property, the law presumes that it will be shared equally between the parties"). Further, "[m]arital property is ordinarily all property acquired during marriage and it 'encompasses all of the assets of every nature possessed by the parties, whenever obtained and from whatever source derived.'" Dunn v. Dunn, 802 P.2d 1314, 1317-1318

(Utah Ct. App. 1990) (quoting Gardner v. Gardner, 748 P.2d 1076, 1079 (Utah 1988)). A trial court should award separate property back to that spouse, including "appreciation or enhancement of its value, unless (1) the other spouse has by his or her efforts or expense contributed to the enhancement, maintenance, or protection of that property, thereby acquiring an equitable interest in it . . . or (2) the property has been consumed or its identity lost through commingling or exchanges or where the acquiring spouse has made a gift of an interest therein to the other spouse." Mortensen v. Mortensen, 760 P.2d 304, 308 (Utah 1988); See also Dunn 802 P.2d at 1321 ("[p]remarital property may lose its separate distinction where the parties have inextricably commingled it into the marital estate, or where one spouse has contributed all or part of the property to the marital estate.") Any deviation from the rule that the marital estate be divided equally "is only justified when the trial court 'memorialize[s] in commendably detailed findings' the exceptional circumstances supporting the distribution." Bradford v. Bradford, 1999 UT App. 373, ¶ 27, 993 P.2d 887 (citing Thomas, 987 P.2d at 609).

Petitioner states that Respondent cannot show that his personal injury funds were applied to the mortgage payments and principle. See Petitioner's Brief at 18. Even if Petitioner is correct, and the mortgage payments were not at all made from the contribution of Respondent's personal injury settlement, it is nonconsequential. Petitioner acknowledges that Respondent's separate funds were deposited into Petitioner's separate account. See Petitioner's Brief at 25 ("[t]he single deposit of Mr. Johnson's personal injury settlement funds into the separate account of Ms. Castillo on

September 11, 2004 is not disputed.") Nor is it disputed that mortgage payments came from that account. Tr. at 153: 11-25 and 154: 1-10. It is not disputed that after Respondent's personal injury funds were deposited into Petitioner's personal account, the landscaping was paid for from that account. Tr. at 167: 14-25; 168: 1-9 and Exhibit 15. At the close of proceedings, the trial court stated in regard to the $24,635.37 that constituted a portion of Respondent's personal injury settlement, "[i]t appears that the $24,000 or whatever that was put into her account was used in part for landscaping." Tr. at 209:8-9; See also, Petitioner's Brief at pg. 20, ("[a]n analysis of the separate bank account activity, Addenda 3 and 4, during September and October, 2004, in the light most favorable to the findings, shows that Mr. Johnson's personal injury settlement proceeds were applied towards payment of the amounts associated with the landscaping bid proposal.") Landscaping is an important aspect of real property and contributed to the value of the real property at issue in this matter. Therefore, how Respondent's personal injury funds were spent is irrelevant. The decisive factor is whether or not those funds contributed to the value of the real property. See Mortensen, 760 P.2d at 308 ("the other spouse has by his or her efforts or expense contributed to the enhancement, maintenance, or protection of that property, thereby acquiring an equitable interest in it.") Where the trial court made statements that at the very least Respondent's financial contributions should be attributed to landscaping, there has been "enhancement." Id.

It is also unimportant that Respondent's financial contributions were smaller than Petitioner's. As was stated in Respondent's initial brief, factors in property division "do

not include a consideration of which partner was the more economically productive during the marriage." Dunn, 802 P.2d at 1322. Any such analysis would be flawed because it "ignores contributions of love, encouragement, and companionship, which elude monetary valuation . . . [and] gives short shrift to spouses who contribute homemaking skills and child care." Id. Initially, it should be noted that this was real property purchased after the marriage, and was the place where the parties raised their minor child. R. at 48 ¶ 21(a) and 56 ¶ 1; R. at 2 and 35 & Tr. at 14-20. Further, Newmeyer v. Newmeyer, 745 P.2d 1276 (Utah 1987), which was not dealt with directly by Petitioner, should be considered. In that case there was a marked disparity in the financial contributions of the parties. Id. at 1277-1278. The trial court determined that the plaintiff was entitled to the amounts she had contributed towards the homes, but that the equity was marital property and should be divided equally. Id. at 1277. The Utah Supreme Court determined that the trial court had acted appropriately when it awarded Jeddy Newmeyer "an equal share in the appreciation of the value of the homes despite his much lower contribution," despite the differentiation in financial contribution. Id. at 1278. Respondent should not be penalized because of his smaller financial contribution. However, the amount Respondent contributed, roughly $24,000.00, is significant under any standard.

In this case, the real property should have then been categorized as marital. See Hall, 858 P.2d at 1022. At that point, the appreciation to the real property should have been divided equally, after encumbrances for the property were paid, expenses for the

sale were paid, and each party was given back what financial contributions had been made. See Newmeyer, 745 P.2d at 1278; Thomas, 987 P.2d at 610. Clearly there has been a "misunderstanding or misapplication of the law resulting in substantial and prejudicial error," with "the evidence clearly preponderated against the findings," and a "serious inequity has resulted as to manifest a clear abuse of discretion." Naranjo, 751 P.2d at 1146 (citing English, 565 P.2d at 410; Eames, 735 P.2d at 397.) The trial court's determination should be reversed.

IV. EXCEPTIONAL CIRCUMSTANCES DO NOT EXIST THAT WOULD JUSTIFY AN UNEQUAL DISTRIBUTION OF THE MARITAL PROPERTY.

In Utah, "[e]ach party is presumed to be entitled to all of his or her separate property and fifty percent of the marital property." Thomas, 987 P.2d at 610. Further, an unequal distribution of marital property by a trial court "is only justified when the trial court 'memorialize[s] in commendably detailed findings' the exceptional circumstances supporting the distribution." Bradford, 1999 UT App. at ¶ 27; (citing Thomas, 987 P.2d at 609.) This Court should ignore Petitioner's arguments regarding special circumstances.

Petitioner argues that Respondent failed to show any special circumstances at trial that would justify giving him any of Petitioner's separate property. Respondent's Brief at 23. Petitioner misses the point of Respondent's argument. Respondent argues that the real property's appreciation is marital property and therefore should be divided equally. Thomas, 987 P.2d at 610. Then, if the marital property is not divided equally the trial court must find special circumstances to warrant the unequal distribution. Bradford, 1999

UT App. at ¶ 27. Respondent need not show exceptional circumstances, as Petitioner argues, because he did not ask for more than half of the marital property.

Petitioner argued that her special circumstances are a need for future surgeries. Petitioner's Brief at 44. However, Petitioner failed to present evidence regarding the cost of future surgeries and whether Petitioner's trust, which was designed to cover such surgeries, would be insufficient without an unequal distribution of the appreciation of the marital home. Nor did the trial court make adequate findings in this regard.

Therefore, this Court should hold that the trial court failed to properly categorize the property and failed to memorialize in detail findings Petitioner's special circumstances to warrant an unequal distribution of the marital property.

V. THIS COURT SHOULD HOLD THAT REIMBURSEMENT FOR MEDICAL EXPENSES SHOULD BE REMANDED TO DETERMINE WHETHER THE PAYMENT WAS MADE BEFORE OR DURING THE MARRIAGE.

The trial court reimbursed Petitioner $10,000.00 for a surgery that she paid for regarding Respondent's back. R. at 705 and 727-728. Respondent argues that the trial court did not have sufficient facts to determine that the payment was subject to reimbursement because the date of the surgery was not determined, therefore requiring a remand. Respondent's Brief at 36-38, Naranjo, 751 P.2d at 1148. Petitioner responds to this argument by stating that the trial court is in the best position to judge the credibility of the witness and their testimony. Petitioner's Brief at 46. Credibility of the witness has nothing to do with the determination at issue here. Clearly from the transcript, neither party could recall the date which is essential for that determination. Tr. 153: 1-6.

The Utah Court of Appeals has stated "[b]ecause of the personal nature of special damages, amounts received as compensation for pain, suffering, disfigurement, disability, or other personal debilitation are generally found to be the personal property of the injured spouse in divorce actions." Naranjo, 751 P.2d at 1148. Further, "money realized as compensation for lost wages and medical expenses, which diminish the marital estate, are considered to be marital property." Id. Petitioner argues that the burden switches to the Respondent to persuade the trial court regarding the disposition of his personal injury. Petitioner's Brief at 46. However, Petitioner fails to cite to any authority for this legal conclusion. Moreover, it was Petitioner who was asking the trial court to award her money from Respondent's potentially separate funds.

Therefore, this Court should hold that the issue of reimbursement for medical expenses should be remanded to determine whether the payment was made before or during the marriage.

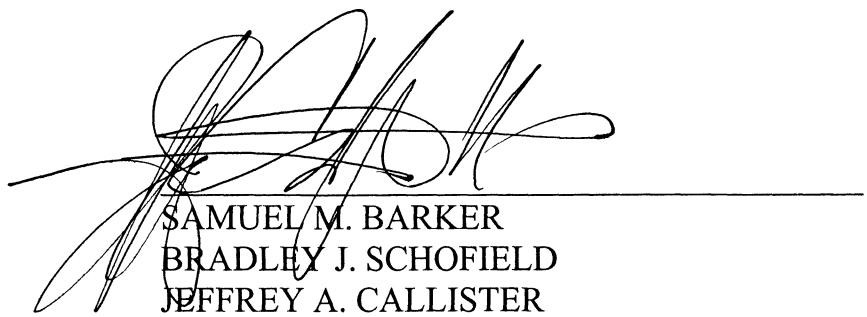
CONCLUSION

Based on the foregoing, Appellant respectfully submits that the trial court be reversed, or in the alternative that the case be remanded so that adequate findings can be made in regard to the cost of future surgeries for Petitioner, whether Petitioner can pay

for those surgeries from her personal injury settlement, and/or the exact date of Respondent's surgery and when that surgery was paid for.

RESPECTFULLY SUBMITTED this 20th day of June 2007.

SMART, SCHOFIELD, SHORTER & LUNCEFORD
A Professional Corporation

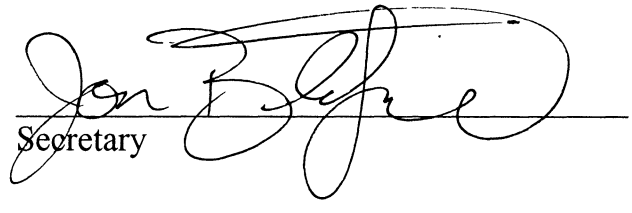


SAMUEL M. BARKER
BRADLEY J. SCHOFIELD
JEFFREY A. CALLISTER
Attorneys for Appellant

CERTIFICATE OF MAILING

On this 20 day of June, 2007, I deposited in the United States Mail, postage prepaid, and hand delivered a true and correct copy of the foregoing **REPLY BRIEF OF APPELLANT** to:

Glen M. Richman, Esq.
Barbara W. Richman, Esq.
60 South 600 East, Suite 100
Salt Lake City, Utah 84102



Secretary