

SUPREME COURT OF UTAH

Shirlene Ostermiller nka Shirlene Shaw v. Dave G. Ostermiller

233 P.3d 489 (Utah 2010) · No. No. 20080769 · Decided May 28, 2010

SUMMARY

The Utah Supreme Court reviewed cross-petitions arising from a divorce proceeding involving retroactive alimony, rental proceeds from marital property, and retroactive child support. The court held that the district court could award retroactive alimony for the period before the wife's remarriage because the issue had been expressly reserved, affirmed the refusal to award rental proceeds due to inadequate marshaling of evidence, and remanded the child-support issue for further consideration.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Nehring; Chief Justice Durham; Associate Chief Justice Durrant; Justice Parrish; Justice Wilkins
JURISDICTION	Utah
DECIDED	May 28, 2010
DOCKET	No. 20080769
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Certiorari review of the Utah Court of Appeals' decision in a divorce action. Both parties sought review of separate rulings concerning retroactive alimony, rental proceeds from marital property, and retroactive child support.
STANDARD OF REVIEW	On certiorari, the Utah Supreme Court reviews the court of appeals' decision for correctness.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Utah.
PARTIES	Shirlene Ostermiller nka Shirlene Shaw, David G. Ostermiller v. David G. Ostermiller, Shirlene Ostermiller nka Shirlene Shaw

TOPICS

- alimony
- child support
- appellate procedure
- standard of review
- statutory interpretation

PRACTICE AREAS

family law

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether the district court could award retroactive alimony for the period before Shirlene's remarriage when the alimony issue had been specifically and continually reserved throughout the divorce proceedings.
2. Whether the court of appeals properly declined to address Shirlene's challenge to the denial of her claim for a share of rental proceeds because she failed to marshal the evidence supporting the district court's factual finding.
3. Whether the court of appeals properly presumed the regularity of the proceedings and declined to reach David's retroactive-child-support claim because he did not provide a transcript of the December 17, 2003 proceeding.

HOLDINGS

1. A district court may award retroactive alimony for a period before the recipient spouse's remarriage when the alimony issue was specifically and continually reserved throughout the divorce proceedings.
2. The court of appeals properly declined to address Shirlene's challenge to the district court's factual finding concerning the use of rental proceeds because she failed to marshal the evidence supporting and undermining that finding.
3. The court of appeals erred by presuming the regularity of the proceedings and declining to reach David's retroactive-child-support claim because he did not provide a transcript of the December 17, 2003 proceeding.

KEY QUOTATIONS

"We hold that the district court could award retroactive alimony to Shirlene for the time period before her remarriage because the district court reserved the issue throughout the proceedings." (¶ 17)

"The court of appeals therefore erred when it determined that the December 17, 2003 hearing was a trial from which a transcript could be obtained, the contents of which would be relevant to resolving the issue of child support." (¶ 25)

FACTUAL BACKGROUND

Shirlene and David Ostermiller married in 1992, and Shirlene filed for divorce in 2000. The district court granted a bifurcated divorce in 2001 while reserving alimony, child support, and property issues; Shirlene remarried in October 2003 before the reserved alimony issue was resolved. After later proceedings, the district court awarded retroactive alimony for the period between the divorce and Shirlene's remarriage, denied Shirlene a share of rental proceeds from marital-property apartments, and denied David retroactive child support.

PROCEDURAL HISTORY

The district court bifurcated the divorce proceedings, entered the divorce decree, and reserved alimony, child support, and property-division issues for later determination. After subsequent proceedings, it awarded Shirlene retroactive alimony for the period before her remarriage, denied her a share of rental proceeds, and denied David retroactive child support. The court of appeals reversed the alimony award and affirmed or declined to reach the other issues in part. The Utah Supreme Court reversed the alimony ruling, affirmed the refusal to address the rental-proceeds claim, and remanded the child-support issue to the court of appeals.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Utah Court of Appeals to address David's claim that the district court inadequately addressed child support between the time David received sole custody and December 2003, including whether the district court adequately explained abandoning the sole-custody and joint-custody worksheets proposed in its prior memorandum decisions.

CASES CITED

- Magana v. Dave Roth Construction, 2009 UT 45, ¶ 19, 215 P.3d 143
- Roberts v. Roberts, 835 P.2d 193, 197-98 (Utah Ct. App. 1992)
- Paffel v. Paffel, 732 P.2d 96, 100 (Utah 1986)
- Chen v. Stewart, 2004 UT 82, ¶¶ 76, 78, 100 P.3d 1177
- Wilson Supply, Inc. v. Fradan Manufacturing Corp., 2002 UT 94, ¶ 21, 54 P.3d 1177
- Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-Day Saints, 2007 UT 42, ¶¶ 18-21, 164 P.3d 384
- State v. Miller, 718 P.2d 403, 405 (Utah 1986)
- Ostermiller v. Ostermiller, 2008 UT App 249, ¶¶ 1-8, 190 P.3d 13

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