THE STATE OF SOUTH CAROLINA
in The Supreme Court

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MAY 23 2019
S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
In the Family Court

George M. McFaddin, Jr., Family Court Judge

Civil Action No. 2014-DR-40-3574

Ivery M. Chestnut, ... Appellant,

v.

Mashell Chestnut, ... Respondent.

REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI

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Argument

1. Wife's alleged value as a caregiver to Husband's children is not a basis to award her alimony

At page four of Wife's return she alleges she has a value of $15-20,000 as a caregiver to Husband's children during the marriage. However Wife cites nothing in the record to justify this figure. She further cites nothing in the record demonstrating that she was actually the primary caregiver for Husband's children during the marriage.

Further the record reflects that Husband also did some caregiving for the children Wife brought into the marriage. Wife acknowledges that Husband was good to her four children during the marriage, paying as much attention to her children's homework as he paid to his own children's homework. R. 88-89; TT, p. 120, line 19-p. 121, line 6. The record reflects both parties were caregivers for the other's children.

Further, Wife is now relieved of any caregiving responsibility for Husband's children. Thus she is able to obtain full time employment and any "hindrance" her caregiving for Husband's children entailed is not longer a basis to award her alimony.

2. That Wife contributed 90% of her income to paying household expenses should be irrelevant to awarding her alimony

Wife cites the contribution of 90% of her income to household expenses as a basis to award her alimony. Return p. 4. Wife fails to note that these household expenses included her own three minor children–which Husband was under no obligation to support. It is doubtful Wife's contribution of 90% of her income to household expenses covered her own three children's expenses, as her children constituted three of the eight members of this household. R. 3. Wife's financial contributions during the marriage did not benefit Husband so much as herself and her own children

3. Husband does not suggest that Wife should be left in the same financial position she enjoyed prior to the marriage

Wife's return claims that Husband's argument regarding alimony would leave Wife in the same financial position as she enjoyed prior to the marriage. Return, p. 6. This is not Husband's

argument. Rather it is that Wife entered the marriage with three dependant children and exited the marriage with no dependant children (while some of Husband's children remain dependant). Wife entered the marriage with limited ability to work full time and exits the marriage with complete freedom to work full time. It is noteworthy that in the parties separated in June 2013 (R. 2) but at the time of the January 2016 trial (R. 1) Wife still was not working full time. Any argument by Wife that Husband somehow prevented her from obtaining full time employment is belied by her unwillingness to obtain full time employment in the 2 ½ years after the parties' separation.

This was not a traditional marriage in which Wife foreswore employment and career opportunities to take care of the parties' children while enabling Husband to develop his career. Rather, both these parties entered this marriage with their own children and own careers and continued to live their lives essentially as they had before they married. The typical rationales justifying alimony do not exist in this case. Wife, by no longer having dependant children and being able to work full time, has the ability to live substantially better than she did prior to the marriage even without an award of alimony. Her unwillingness to obtain full time employment during the parties' separation demonstrates how unnecessary any award of alimony is. "Alimony should not serve as a disincentive for spouses to improve their employment potential or to dissuade them from providing, to the extent possible, for their own support." *Myers v. Myers*, 391 S.C. 308, 705 S.E.2d 86, 89 (Ct.App. 2011).

Wife would not return to her pre-marital lifestyle if she received no alimony. Prior to the marriage wife supported four people on part time employment. Now she simply needs to support herself and can (but refuses to) work full time. Given that Wife did not limit her career or employment opportunities during the marriage, entered the marriage with more dependants than she exits it, and did not prove any fault by Husband in the breakup of the marriage, any award of permanent periodic alimony is unjustified.

4. Where Husband clearly demonstrated that some of the household furniture was premarital and was used by his own children, the finding of transmutation cannot be sustained

Wife's return at pages 6-7 suggests that Husband's furniture was transmuted because both

parties came into the marriage with household furniture. However, at trial, Husband demonstrated that the furniture at issue came from premarital insurance proceeds and was mostly used by his children.

Wife acknowledged that the furniture Husband purchased prior to the marriage from the proceeds of the house fire were paid for by Husband. R. 87-88; TT, p. 119, line 11-p. 120, line 13. Of the $5,600.00 in personal property, $4,400.00 was for a "Living room and dining room furniture bedroom furniture for one adult and one child." R. 112; Defendant's Exhibit 3, p. 4. Further Husband noted that this property was "the same furniture we had at Fort Stewart." R. 64;TT, p. 47, lines 4-13. Such property was premarital. Clearly the furniture of Husband's adult child had not been transmuted into marital property. Further, Wife's mere use of Husband's household furnishings is insufficient to support a finding of transmutation.

5. Wife's income was not used to pay the martial mortgage

Wife's return, at page 9, claims her contribution to household expenses was used to pay the marital mortgage. This is not substantiated by the record, which shows Husband solely paid the mortgage. Neither of the two cases cited in Wife's return[1] for the proposition that contributing to household expenses somehow causes a marital residence to be transmuted actually support, or even address, that proposition.

Wife's own return cites little evidence supporting the proposition that the marital home was transmuted. Further, even if it was, the family court relied upon inappropriate considerations in awarding Wife 50% of the equity therein. Wife's own, self-serving, testimony demonstrated her limited contributions to the marital home. The family court's erred in accessing those contributions. Even if a finding of transmutation was appropriate, remand should be required to address Wife's entitlement to the equity therein.

Conclusion

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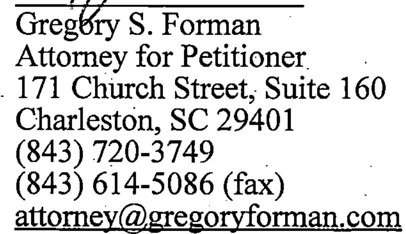
[1] *Hamiter v. Hamiter*, 290 S.C. 508, 509, 351 S.E.2d 581, 582 (Ct. App. 1986) and *Taylor-Cracraft v. Cracraft*, 417 S.C. 570, 576, 790 S.E.2d 423, 426 (Ct. App. 2016)

For all of the foregoing reasons, this Court should grant Petitioner a Writ of Certiorari.

Respectfully submitted,

May 20, 2019



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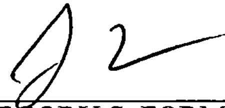
PROOF OF SERVICE

I hereby certified that on May 20, 2019, I served Petitioner's Reply to Return to Petition for a Writ of Certiorari by depositing a copy in the United States mail, postage prepaid, addressed to her attorney of Record, Mr. Daniel K. Felker, Hucks & Felker, LLC, 9610 Two Notch Road, Ste. 5, Columbia SC 29223-1601.



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