

1990

# Bruno D'Aston v. Dorothy D'Aston : Reply to Brief in Opposition

Utah Supreme Court

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TICKET NO. 100452

IN THE SUPREME COURT  
OF THE STATE OF UTAH

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BRUNO D'ASTON, :  
Plaintiff-Appellee, :  
vs. : Case No. 900452  
DOROTHY D'ASTON, et al., :  
Defendant-Appellant. :

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APPELLEE'S REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI

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APPEAL FROM THE DECREE OF DIVORCE OF THE  
FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY,  
THE HON. BOYD L. PARK, PRESIDING.

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**FILED**

DEC 31 1990

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Clerk, Supreme Court, Utah

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OBJECTION TO WIFE'S FACTUAL STATEMENTS

Bruno D'Aston ("Husband") objects to the statements made by Dorothy D'Aston ("Wife") in the "Course of Proceedings and Disposition" section of Appellant's Brief in Opposition, concerning the trial court rulings subsequent to the filing of Husband's petition for writ of certiorari. The rulings referred to by Wife occurred after the Court of Appeals issued its opinion, and should not be considered by this Court in reviewing the correctness of that opinion. In any event, the rulings confirm the fact that Wife was in contempt of the trial court during the entire time the appeal was pending before the Court of Appeals.<sup>1</sup> Wife should not have been granted relief through the judicial system while she remained in contempt of that system.

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<sup>1</sup>The fact that Wife allegedly did not have the ability to comply with the trial court's order in November, 1990, has no bearing on the question of whether she was in contempt of court. Her ability to comply was only relevant to the issue of whether coercive imprisonment should be ordered. Bradshaw v. Kershaw, 627 P.2d 528, 531 (Utah 1981).

Husband further objects to many of the statements set forth in "Statement of the Case" section of Wife's Brief on the grounds that they are unsupported by citation to the record, and in fact contrary to the record, and appear calculated to inflame and prejudice this Court.

HUSBAND DOES NOT RELY ON A  
"BARE ALLEGATION" OF THEFT.

In Point III of Appellant's Brief in Opposition, Wife states that "Bruno argues that his allegation of theft against Dorothy constitutes a unique and compelling circumstance which would justify the court in dividing Dorothy's separate property with him." (Wife's Brief, page 15.) Husband has never made such an argument, and objects to Wife's characterization of the arguments.

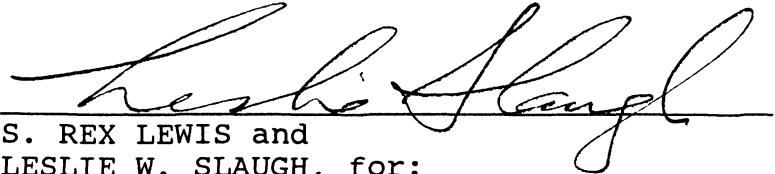
The issue of who stole from whom in this case has never been resolved by the trial court. Contrary to Wife's claim, the lack of a finding on the issue is not because of any failure of proof. Husband presented evidence which would support a finding of theft by Wife. Rather, the trial court did not decide the issue because it was not necessary in light of the trial court's decision on other issues.

Husband does not ask that this Court assume that Wife was guilty of theft. Husband asks only that the trial court be allowed to consider the evidence, and make a ruling based on the evidence. If the trial court determines that Wife stole Husband's property, the trial court should be permitted to consider that as a compelling circumstance justifying division of Wife's separate property.

Again, Husband does not claim at this point that a finding of theft will compel the trial court to divide the separate property, only that the trial court should be permitted to consider the issue.

The opinion of the Court of Appeals can be read as improperly restricting the discretion of the trial court. The opinion should be vacated. The new trial of this case ordered by the Court of Appeals should be a complete new trial, on all issues.

DATED this 27th day of December, 1990.



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**MAILING CERTIFICATE**

I hereby certify that four true and correct copies of the foregoing were mailed to the following, postage prepaid, this 27th day of December, 1990.

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