



Missouri Court of Appeals  
Southern District

Division One

In re the Marriage of:	)	
Gerald A. Hillis and	)	
Elizabeth M. Hillis.	)	
	)	
GERALD A. HILLIS,	)	
	)	
Petitioner - Appellant,	)	No. SD29268
	)	
vs.	)	Opinion filed:
	)	September 11, 2009
ELIZABETH M. HILLIS,	)	
	)	
Respondent - Respondent.	)	

APPEAL FROM THE CIRCUIT COURT OF BUTLER COUNTY

Honorable Paul McGhee, Senior Judge

**DISMISSED**

Gerald Hillis ("Husband") appeals a portion of the judgment dissolving his marriage to Elizabeth Hillis ("Wife") that awarded Wife the sum of \$100,000 as her marital contribution toward the increase in value of a corporation that was Husband's separate property. Because Husband's failure to follow the requirements of Rule 84.04 substantially impairs our ability to review his claim on the merits, we dismiss his appeal.

## **I. Factual and Procedural Background**

The parties had been married for just under six years when their marriage was dissolved on June 24, 2008. There were no children born of the marriage. When the parties married, Husband owned 90% of the shares of Fitch-Hillis Funeral Home, Incorporated ("Funeral Home"). In addition to owning Funeral Home, Husband also worked as its embalmer and funeral director. Wife was also employed by Funeral Home. Wife's job responsibilities primarily concerned managing the payroll and other financial aspects of Funeral Home, for which Wife was paid a salary.

Wife also took trips to other funeral homes to get ideas about new products and services that Funeral Home could adopt to better serve its customers. Examples of Wife's ideas included: 1) creating a website, which included a "genealogy" section where funeral home records were made available; 2) offering video tributes -- where Funeral Home would use a software program to "scan in pictures that the family [brought] in and put [them] to music"; and 3) offering personalized candles -- where the family of the deceased is given a candle with a picture scanned onto it along with a selected background. Wife also co-signed a bank loan taken out by Funeral Home.

During the course of the marriage, the value of Funeral Home increased by approximately \$415,000. Wife concedes in her brief that approximately \$205,000 of this increase in value was attributable to a reduction of corporate debt that occurred when proceeds from a sale of real estate owned by Husband's mother was applied toward it.<sup>1</sup>

The trial court first found that Husband was the sole owner of Funeral Home and, therefore, classified it as Husband's non-marital property. The trial court also found,

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<sup>1</sup> At some point, Husband's mother, who owned the other 10% of Funeral Home's shares, conveyed all of her shares to Husband, thereby making him Funeral Home's sole shareholder.

however, that Wife "made a contribution of substantial services to the corporation during the marriage." The trial court further stated that Wife was "entitled to share in the increase in the value of the corporation that is marital property" because Wife "was not adequately compensated for her services to the corporation" and "[t]here [was] a direct correlation between her services and the increase in value of the corporation by reduction of the corporate indebtedness." The trial court then determined that the total increase in corporate value that constituted marital property was \$200,000 and awarded Wife a \$100,000 judgment against Husband as her "just share" of that increase.

## II. Analysis

Husband's point relied on states, *in toto*:

The trial court erred by awarding wife a money judgment in the amount of \$100,000.00 as her share in the increase in value of the corporation, as the evidence showed that wife was adequately compensated for her services to the corporation; moreover, there was no direct correlation between wife's services and the reduction of the corporate debt.

Rule 84.04(d)<sup>2</sup> sets forth the requirements for points relied on and requires a party to "(A) identify the trial court ruling or action that the appellant challenges; (B) state concisely the legal reasons for the appellant's claim of reversible error; and (C) explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error."

These requirements allow appellate courts to maintain their proper role, which is to provide a forum for redress from trial court error "which is of such a nature that the complaining party is entitled to a new trial or outright reversal or some modification of the judgment entered." *Thummel v. King*, 570 S.W.2d 679, 686 (Mo. banc 1978). A properly stated point relied on is essential to ensure the proper operation of the appellate

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<sup>2</sup> All references to rules are to Missouri Court Rules (2009).

process by: 1) giving the respondent notice of "the precise matters which must be contended with and answered"; 2) giving notice to the court to allow "for clarification by meaningful questions to the issues" raised and to prevent a waste of judicial resources which may occur "[i]f the appellate court is left to search the argument portion of the brief (or even worse, to search the record on appeal)"; and 3) avoiding a situation where the court or the respondent misinterprets the thrust of the appellant's argument. *Id.*

Husband's point relied on is fatally deficient in that it does not state the legal grounds for Husband's claim of error or explain in summary fashion why they require a reversal in the context of this case. "A point relied on which cannot be comprehended without referring to other portions of the brief preserves nothing for review." *Carden v. Missouri Intergovernmental Risk Mgmt. Ass'n*, 258 S.W.3d 547, 556 (Mo. App. S.D. 2008). However, technical deficiencies in complying with Rule 84.04 may not require dismissal of an appeal if "the essence of [an appellant's] complaints of trial court error" can be discerned. *Moran v. Mason*, 236 S.W.3d 137, 139-40 (Mo. App. S.D. 2007).

In an attempt to discern the essence of Husband's complaint, we look next to the argument section of his brief. Though the argument section of Husband's brief first correctly states that "[t]he appellate court must affirm the judgment of the trial court unless there is no substantial evidence to support it, unless it is against the weight of the evidence, or unless it erroneously declares or applies the law[.]" it does not acknowledge until its next-to-last page that in doing so "[w]e review the evidence and inferences in the light most favorable to the trial court's decision and disregard all contrary evidence and inferences." *In re Marriage of Thomas*, 199 S.W.3d 847, 851 (Mo. App. S.D. 2006). Perhaps as a result, the vast majority of Husband's argument simply cites testimony that,

if believed, would have been favorable to him and ignores evidence that was favorable to the judgment. In doing so, this court is deprived of an argument that "show[s] how the principles of law and the facts of the case [-- deemed to be those favorable to the judgment --] interact[.]" *Carroll v. AAA Bail Bonds*, 6 S.W.3d 215, 218 (Mo. App. S.D. 1999). As a result, we are unable to review Husband's complaint on its merits without supplying an argument he has not actually presented. This we cannot do. *See Thummel*, 570 S.W.2d at 686. Husband's appeal is dismissed.

Don E. Burrell, Judge

Bates, P.J. - Concur

Barney, J. - Concur

Attorney for Appellant - Amy Bonifield Galloway, Poplar Bluff, MO

Attorney for Respondent - Benjamin E. Thompson, Piedmont, MO

Division I