IN THE UTAH COURT OF APPEALS

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Julie Marie Cline nka Julie Marie Camp, Petitioner and Appellee, v. Earl Lavere Cline II, Respondent and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20041050-CA F I L E D (June 22, 2006) 2006 UT App 264

Third District, Salt Lake Department, 024902228
The Honorable Robert K. Hilder

Attorneys: Earl Lavere Cline II, Salt Lake City, Appellant Pro Se
Steven B. Wall, Salt Lake City, for Appellee

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

Earl Lavere Cline II (Husband) appeals from an amended decree of divorce in a bifurcated divorce proceeding.

Husband filed an affidavit of impecuniosity with his notice of appeal and was not charged a filing fee. He later filed a copy of a letter addressed to the managing court reporter for the Third District Court stating that he had "been declared impecunious by affidavit" and would "be preparing the transcripts on his own by the best means available." On December 27, 2004, the clerk of this court responded with a letter incorporating the content of rule 11(g) of the Utah Rules of Appellate Procedure, which allows an indigent appellant to use a statement of evidence in lieu of a transcript on appeal. The letter advised Husband to file a statement of evidence in the trial court for approval, with service on the Appellee, within thirty days. In January 2005, Husband filed a request for an enlargement of time in which he stated: "On December 27, 2004, I was assigned to prepare and file a transcript." In a second letter, dated January 28, 2005,

the clerk of this court advised him that only a transcript prepared by an Official Court Transcriber could be accepted by the trial court; therefore, any transcript that he prepared would not be accepted for filing. This letter reiterated the requirements of rule 11(g), including the requirement to obtain the trial court's approval of the statement of the evidence. In February 2005, Husband filed and served a 228-page document captioned "Statement of Case," which purported to be a verbatim transcript of portions of the testimony presented at a March 1, 2004 trial and a summary of other proceedings.

Appellee Julie Cline objected to the statement on grounds that (1) its reliability could not be determined and (2) Husband was not entitled to file a statement of the evidence because he was not impecunious. On June 3, 2005, the district court set an evidentiary hearing for August 1 to consider the objections and the challenge to Husband's impecuniosity. On June 10, the district court entered an order reiterating that a hearing would be held on August 1 and ordering Husband to produce income information within twenty days. On June 27, Husband moved to strike the objections to his statement of the case, contending that the district court lacked jurisdiction "to overrule an appellate court order." He claimed that he was authorized to file a statement under rule 11(g), relying upon the December 27, 2004 letter from the clerk of court. On July 5, the district court entered another order stating that the objections to the statement of the case would be heard on August 1, and ordering Husband to provide specific items to verify his income. However, on July 21, 2005, the district court continued the August 1 hearing "without date pending completion of discovery on [the] income issue." The district court certified a record index to this court on August 29, 2005, and this court set briefing. Husband's brief includes citations to his proposed statement of the case, which was not settled and approved by the trial court.

Rule 11(e)(2) of the Utah Rules of Appellate Procedure states that an appellant who "intends to urge on appeal that a finding or conclusion is unsupported or is contrary to the evidence . . . shall include in the record a transcript of all evidence relevant to such finding or conclusion." Utah R. App. P. 11(e)(2). In contrast, rule 11(g) allows an appellant to utilize a statement of the evidence or proceeding under the limited circumstances specified in that rule. See Utah R. App. P. 11(g). Husband claimed that he was impecunious and unable to afford a transcript. An impecunious appellant "may prepare a statement of the evidence or proceedings from the best available means, including recollection." Id. The statement must be served on the appellee, who may serve objections or propose

amendments within ten days after service. See id. Finally, "[t]he statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval, and as settled and approved, shall be included by the clerk of the trial court in the record on appeal." Id.

Husband has the burden to demonstrate impecuniosity and entitlement to proceed under rule 11(g). Furthermore, although the proposed statement of the case was indexed by the district court clerk, it was not made a part of the record on appeal. See Utah R. App. P. 11(g) ("The statement and any objections or proposed amended shall be submitted to the trial court for settlement and approval and, as settled and approved, shall be included by the clerk of the trial court in the record on appeal." (emphasis added)). This court twice advised Husband of the requirements of rule 11(g), each time providing a copy of the rule. The district court scheduled an evidentiary hearing to satisfy the requirements of rule 11(g). Despite being repeatedly informed of the requirements of rule 11(g), Husband argued that the district court lacked jurisdiction to consider objections to the statement. His refusal to comply with discovery on the income issue caused the August 1, 2005 hearing to be continued without date. Finally, he failed to inform this court that the proposed statement of the case had never been approved by the district court, and he cited it in his brief, knowing that it had not been approved by the trial court.

"If an appellant intends to urge on appeal that a finding or conclusion is unsupported by or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion." Utah R. App. P. 11(e)(2). To invoke the limited exception under rule 11(g), Husband was required to comply with the very specific requirements of that rule. Instead, he consistently disregarded the rule's requirements, and resisted the efforts of both this court and the district court to guide him in complying with it. Based upon Husband's failure to provide an adequate record to allow consideration of his claims on appeal, we must presume that the evidence supports the district court's decision. See Bevan v. J.H. Constr. Co., 669 P.2d 442, 443 (Utah 1983) ("[W]e assume that the proceedings at the trial were regular and that the judgment was supported by competent and sufficient evidence."); see also State v. Rawlings, 829 P.2d 150, 152-53 (Utah Ct. App. 1992), overruled on other grounds by State v. Gordon, 913 P.2d 350 (Utah 1996) ("In the absence of an adequate record on appeal,

we cannot address the issues raised and presume the correctness of the disposition.").

We affirm.

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Judith M. Billings, Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge