

1986

Wanda Maureen Peterson v. Michael L. Peterson : Brief of Respondent

Utah Court of Appeals

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BRIEF

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DOCKET NO.

860040

IN THE SUPREME COURT FOR THE

STATE OF UTAH

WANDA MAUREEN PETERSON,

:

Plaintiff-Appellant,

:

vs.

:

MICHAEL L. PETERSON,

:

Defendant-Respondent.

:

860040-CA
Case No. 20,23

APPEAL FROM THE FOURTH JUDICIAL
DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH
HONORABLE JUDGE DAVID SAM PRESIDING

Respondent's

~~APPELLANT'S~~ BRIEF

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IN THE SUPREME COURT FOR THE
STATE OF UTAH

WANDA MAUREEN PETERSON,	:	
Plaintiff-Appellant,	:	
vs.	:	Case No. 20023
MICHAEL L. PETERSON,	:	
Defendant-Respondent.	:	

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IN THE SUPREME COURT FOR THE
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WANDA MAUREEN PETERSON,	:	
Plaintiff-Appellant,	:	
vs.	.	Case No. 20023
MICHAEL L. PETERSON,	:	
Defendant-Respondent.	:	

STATEMENT OF THE NATURE OF THE CASE

This is a civil proceeding involving the modification of a divorce decree.

DISPOSITION OF THE CASE BY THE LOWER COURT

Subsequent to the entry of a Decree of Divorce in the Fourth Judicial District Court of Utah County, defendant initiated an Order to Show Cause hearing to modify the Decree of Divorce to provide that the plaintiff pay a portion of the fair rental value of the home of the parties to the defendant. The trial court found there had been a material change in the circumstances of the parties and ordered the decree modified to require the plaintiff to pay \$70.00 per month to the defendant.

RELIEF SOUGHT ON APPEAL

Respondent seeks the affirmation of the decision of the trial Court.

FACTS

This matter came before the trial court upon defendant's Motion to Modify the Decree of Divorce, entered the 29th day of July, 1981. The defendant had previously sought to modify the decree at a hearing held on

March 31, 1983. At that time the Court declined to modify the decree to provide for the payment of any amount as defendant's portion of the fair rental value of the residence until sold as requested by defendant. However, in making his decision, Judge Sam indicated that at the time the second mortgage on the home was retired, the Court would be inclined to order the payment of the sum of \$70.00 per month from the plaintiff to the defendant based upon changes in the financial and marital status of the parties. At page 41 of the transcript of that proceeding, the Court stated:

THE COURT: Let me tell you on that home it appears to me that the fair rental value as stated is \$300.00, she is paying \$300.00. I may, in August \$140.00 there on the second mortgage, I may counsel order \$70.00 per month rent payment in August.

MR. PETERSEN: Your Honor that would be premature to speculate what to do in August. We have to look at the situation as it exists right now.

THE COURT: That is what I am doing.

MR. PETERSEN: I don't want to make any order.

THE COURT: Let me say I have heard the testimony that the second mortgage will be paid off in August. I have heard testimony that the fair rental value of the home is \$300.00 a month. She is presently paying \$300.00 a month and in my judgment there is no requirement to make any payment to Mr. Petersen based upon the present testimony, but when that second mortgage is paid it would appear to me that it would be fair and reasonable since Mr. or Mrs. Jensen is married and her husband is occupying that home, that \$70.00 per month may be fair rental value.

MR. PETERSEN: Well, I hope the court is not entering an order to do that at this time because we must look at the situation now. The fact that you are penalizing her for remarrying, he is remarried, she has the home.

THE COURT: I understand counsel and I am trying--listen, these divorce matters are the most difficult matters that this court handles of all cases and I am trying my best to make a fair and equitable order. If they are not fair and equitable, you have the five judges up on the hill to review my order. I am stating that at the present it does not appear there may be a basis to have him, since the new husband is occupying that home and the fair rental value is \$300.00, that there be a \$70.00 a month payment. Now if you want to come back in and relitigate that in August, you have that right, but I am telling you what my observation is at the present based on what I have heard.

The defendant brought his Motion to Modify after the second mortgage had been retired. The parties stipulated that the matter would be submitted to the court upon the transcript of the March 31, 1983 proceedings. The court found that there had been a material change of circumstances of the parties not contemplated at the time of the stipulation of the parties upon which the decree was based, in the remarriage of the plaintiff and the retiring of the second mortgage on the home reducing her monthly obligation.

ARGUMENT

POINT I

THE LOWER COURT'S DECISION TO MODIFY THE DECREE OF DIVORCE WAS JUSTIFIED.

Utah Code Annotated, 30-3-5(1) provides:

When a decree of divorce is made, the court may make such orders in relation to the children, property and parties, and the maintenance of the parties and children, as may be equitable. The court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the support and maintenance of the parties, the custody of the children and their support and maintenance, or the distribution of the property as shall be reasonable and necessary. Visitation right of parents, grandparents and other relatives shall take into consideration the welfare of the child. (Emphasis added)

It is clear that the trial court has the statutory authority under the provisions of the above-cited statute to make subsequent changes or modifications in the property division where the court deems such a modification to be reasonable and necessary. Appellant cites several cases to establish the proposition that in cases of interests in real property, there is a greater showing of change of circumstances to justify a modification of the decree in reference to said property. Appellant relies upon this court's decision in Foulger vs. Foulger, 626 P.2d 412 (1981) stating Foulger to be "very much similar" to the present case. In fact, Foulger is very different from the facts of the present case. In the Foulger case, the lower court modified the parties equity interest in real property. In the present case, the modification made by the trial court did not alter the parties' respective equity in the real property. The modification in the present case is more similar to modification of a support matter rather than that of a property right. The court did not give the respondent any interest in the real property divided by the decree, but did order payment to the respondent based upon his previously awarded interest in the property. This is apparent from reading Judge Sam's reasoning from the transcript of the March 31, 1983 hearing. The \$70.00 figure is based upon the fifty percent equity interest of the

respondent in the real property.

Further, the only circumstances set forth by the respondent in Foulger to justify modification were that she had paid the payments, taxes, made improvements and that she had changed her mind about leaving the United States to move to Germany. In the present case, the remarriage of the appellant and retirement of the second mortgage on the residence, resulting in a reduction of appellant's monthly expense for the use of the home until sold, constitute material changes of circumstances which justify the action of the court in this matter.

The facts of the present case are more akin to those found in Chandler vs. West, 610 P.2d 1299 (1980) which dealt with modification of an order for a monthly mortgage payment. This court stated at page 1300:

Land vs. Land, Utah, 605 P.2d 1248 (1980), held that property settlements are entitled to a greater sanctity than alimony and support payments in proceedings to modify divorce decrees. However, property settlements are not sacrosanct and are not beyond the power of a court of equity to modify. In this case we are not dealing with the typical distribution of specific assets pursuant to a property settlement, but with an order for the payment of a monthly mortgage obligation. Clearly it was within the power of the trial court to modify or eliminate the obligation to make those payments if the obviously changed circumstances under traditional equity standards so required.

Just as the court in Chandler distinguished Land vs. Land (also cited by appellant in appellant's brief) from the circumstances of that case, the Land case can also be distinguished from the type of modification made by the trial court in the present case.

POINT II

THE JUDGMENT OF THE TRIAL COURT SHOULD BE UPHELD UNLESS
THERE IS A SHOWING OF AN ABUSE OF DISCRETION.

The determination of the trial court in finding a change of circumstances sufficient to require modification of a decree is granted substantial validity by this court, absent a clear showing or error or abuse of discretion by the lower court. In Mitchell vs. Mitchell, 527 P.2d 1359, at 1361, the court stated:

"The determination of the trial court that there has been a substantial change of circumstances, which justified the increase of support and maintenance, is presumed valid.

This position was also stated in Christiansen vs. Christiansen, 667 P.2d 592 (1983) wherein the court stated at page 594:

"In our review of divorce and child support proceedings, this Court accords substantial deference to the trial court's findings of fact, and accords it considerable latitude in fashioning appropriate relief.

In the present case, the findings of the lower court set forth the decision of the court stated specific changes which the court determined to be material changes justifying the modification made. Those findings should be presumed valid as the appellant had not demonstrated the findings to be an abuse of discretion by the lower court. The modification made by the lower court is consistent with the ownership and equity interest of the parties in the real property and the lower court should also be given latitude in that area to equitably adjust the interests of the parties to reflect the circumstances which presently exist. See LeBreton vs. LeBreton, 604 P.2d 469.


CONCLUSION

The decision of the lower court to modify the Decree of Divorce in the manner and fashion done in the present case was well within the authority granted the court under the provisions of the statutes of the State of Utah governing powers of the court to retain jurisdiction to modify property distribution and support matters as well as being within the restrictions of the case law relevant in this matter.

Further, the record of the proceedings demonstrates the court acted within its discretion and its findings should be given deference and be considered valid. The decision to modify the decree in the manner in which the court did was within the latitude which the trial court should be afforded in its attempts to adjust the equities of divorce matters.

It is respectfully submitted that the decision of the trial court should be affirmed.

DATED this 26th day of October, 1984.


MICHAEL D. ESPLIN
Attorney for Defendant-Respondent

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing Brief of Respondent to Don R. Petersen, attorney for plaintiff-appellant, at 120 East 300 North, Provo, Utah 84601 this ____ day of October, 1984.
