

1986

Jolene Hatch v. Scott Hatch : Brief of Respondent

Utah Court of Appeals

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Clint S. Judkins; Attorney for Plaintiff-Respondent.

Dale M. Dorius; Attorney for Defendant-Appellant.

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UTAH COURT OF APPEALS
BRIEF

UTAH
DOCKET NO. 860271-CA
K. J.
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.A10
DOCKET NO. 860271-CA

IN THE COURT OF APPEALS
OF THE STATE OF UTAH

JOLENE HATCH,)	
)	
Plaintiff/Respondent,)	
)	Case No. 860271-CA
vs.)	
)	
SCOTT HATCH,)	
)	
Defendant/Appellant.)	

PLAINTIFF-RESPONDENT'S BRIEF

CLINT S. JUDKINS
Attorney for Plaintiff/Respondent
P.O. Box 277
123 East Main Street
Tremonton, Utah 84337
Telephone: (801) 257-3885

DALE M. DORIUS
Attorney for Defendant/Appellant
P.O. Box U
29 South Main Street
Brigham City, Utah 84302
Telephone: (801) 723-5219

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Attorney for Plaintiff/Respondent
P.O. Box 277
123 East Main Street
Tremonton, Utah 84337
Telephone: (801) 257-3885

DALE M. DORIUS
Attorney for Defendant/Appellant
P.O. Box U
29 South Main Street
Brigham City, Utah 84302
Telephone: (801) 723-5219

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STATEMENT OF ISSUES

1. Has the Defendant/Appellant overcome the presumption of validity of the trial court's decision not to modify the child support award in the original Decree of Divorce?

2. Did the trial court's apportionment of the parties' property work such a manifest injustice as to constitute an abuse of discretion by the trial court?

STATEMENT OF THE CASE

This case is an appeal from a decision modifying a Decree of Divorce issued by the Honorable Omer J. Call in The First Judicial District in Box Elder County on November 28, 1984. The original Decree divorced Respondent Jolene Hatch and Appellant Scott Hatch from each other, awarded custody to the Appellant during the school year and to Respondent during the summer, ordered child support to be paid by Appellant during the summer months, divided the parties' property, awarded Respondent alimony for one year, and ordered Appellant to pay certain marital debts.

Each party thereafter sought a modification of the Decree of Divorce, and on October 2, 1986, Judge Call issued a Memorandum Decision. On October 16, 1986, he issued an Order and Judgment addressing the requests for modification, and modifying the Decree with the regard to the property division.

Judge Call's modification order has been appealed by Appellant Scott Hatch to the Utah Court of Appeals.

STATEMENT OF THE FACTS

In the original Decree of Divorce, Appellant Scott Hatch was ordered to pay child support during the three summer months of each year when the Respondent has custody. Between the issuance of the Decree and the modification hearing, Appellant had failed to pay three months of support (T. 63). Appellant also failed to make any alimony payments, despite the court's order (T. 108) and despite the fact that Appellant earns \$1,962.00 gross income per month (T. 77).

Respondent Jolene Hatch's income has increased since the original Decree of Divorce. At the time of the Decree, she was earning \$654.00 net income per month (Memorandum Decision, October 2, 1986, page 2), and by the time of the modification hearing she had managed to obtain additional part-time employment at minimum wage during the winter months (T. 116). This means that during the winter months, Respondent earns approximately \$160.00 gross per month for her part-time work at Eagles (T. 115), and \$576.00 gross per month for full-time work at King's (T. 116, 146 - Respondent's salary from King's is calculated by multiplying the minimum wage of \$3.35/hour by forty hours per week and then by 4.3 weeks). Respondent's total gross income during the winter months is therefore approximately \$736.00 per month.

During the summer months, Respondent maintains her part-time job at Eagles for the \$160.00 gross income per month, and has also obtained construction work for the days during the summer when work is available. Respondent Jolene Hatch estimates that her gross monthly income in the summer is approximately \$750.00 (T. 115). Therefore, Respondent's total gross income in the summer months is approximately \$910.00 per month. This is only \$256.00 per month more than she was earning at the time of the original Decree during the summer and only \$82.00 per month more than she was earning during the winter.

It should be noted that the Appellant's brief on page 3 makes the assumption that Respondent "is still working the same amount at Eagles" as she was working at the time of the original

Decree. In fact, Respondent is only working ten hours per week at Eagles at the same \$4.00 per hour (T. 115). The assumption in Respondent's brief is not cited to the transcript, and is not supported by the evidence.

With regard to the property division, in the original Decree of Divorce issued in November 1984, Judge Call took into consideration some of the damage to the house, and determined the amount of equity to be awarded to the Respondent with those offsets, among others, in mind (Memorandum Decision, October 2, 1986, page 3). During the modification hearing, Appellant asserted that there was further damage of which he was unaware which took place between the couple's separation and the granting of the divorce, and which he only discovered after he took possession in December 1986 (T. 51).

Evidence adduced at the modification hearing shows that Appellant Scott Hatch was in fact aware of much of the damage being done to the house, particularly to the basement, both through direct communication with his wife, the Respondent Jolene Hatch (T. 133, 135, 136, 137, 220), and indirectly through his father (T. 44). The damages to the upstairs portion of the house were also known by Appellant, and some of those damages were caused by him (T. 121). Although two appraisals prior to the issuance of the original Divorce Decree reflected no serious damage to the house, evidence also showed that the appraisals had been done only from the outside (T. 103).

Judge Call, in his Memorandum Decision of October 2, 1986 (page 4), found that the Respondent should be responsible for three-fourths of the damage and that the Appellant should be

responsible for one-fourth. Judge Call after permitting all the testimony on the damage requested by the Appellant (T. 14-25, 60), gleaned out those damages that had not been considered in the original Decree and permitted Appellant an offset for them, as well as offsets for other items requested by the Appellant (Memorandum Decision, October 2, 1986, page 4).

SUMMARY OF THE ARGUMENT

Contrary to the assertion by the Appellant, the trial court ruled on the child support issue and ordered that the original Divorce Decree ordering the Appellant to pay child support remain as entered, and not be modified. The rule of judicial review of a decision regarding divorce matters on appeal requires that the appellant (1) rebut the presumption of validity of the findings and judgment of the trial court, (2) show that the trial court's findings of fact are contrary to the clear preponderance of the evidence, and (3) prove that the trial court misunderstood or misapplied the law to such an extent to result in a substantial and prejudicial error abused its discretion to the extent that a serious inequity or injustice has resulted. The Appellant in this case has not carried this burden and therefore the findings and judgment of the trial court should not be disturbed.

With regard to the apportionment of the parties property, the trial court decided to modify the original Divorce Decree and allow the Appellant an offset for damage done to the house. The Court heard all the evidence that the Appellant requested be heard, and the Court made a decision on the basis of that evidence. The Appellant has not presented sufficient proof that

the trial court's decision works such a manifest injustice as to constitute an abuse of discretion by the trial court.

ARGUMENT

I. THE APPELLANT HAS NOT CARRIED HIS BURDEN OF REBUTTING THE PRESUMPTION OF VALIDITY OF THE TRIAL COURT'S DECISION NOT TO MODIFY THE CHILD SUPPORT AWARD IN THE ORIGINAL DECREE.

Contrary to the assertion by the Appellant that Judge Call failed to rule on the child support issue, the Order and Judgment contains a paragraph stating the basis on which the Court decided not to modify the original child support order, while the Order itself states that "[t]he Decree of Divorce in this case shall remain as entered, except as specifically modified herein." Judgment and Order, October 16, 1987, page 3. Since the only things modified in the October 16, 1987 Order are the Appellant's offset for damage to the house and other offsets, the trial court ruled on the child support issue and decided that it not be modified.

Even if this Court were to find that the trial court inadvertently failed to rule on the Appellant's request to modify the original child support order, the trial court did state in its Memorandum Decision and in its Findings of Fact that there had not been a sufficient change in circumstances to warrant a modification of the child support order.

In Berger v. Berger, 713 P.2d 695, 696 (Utah 1985), the Utah Supreme Court reiterated the rules of judicial review of a decision regarding divorce matters on appeal. The Court stated that

although [a divorce] case is in equity and [the Court is] free to review both the law and the facts . . . [the Court] place[s] a presumption of validity upon the trial court's actions in divorce cases. Thus the burden is on the appellant to show error, and [the Court] will overturn the trial court's findings of fact only if they are contrary to the clear preponderance of the evidence . . . [The Court] will overturn the trial court's judgment where there has been a misunderstanding or misapplication of the law resulting in substantial and prejudicial error or where there has been such an abuse of discretion that an inequity or injustice has resulted. (Citations omitted)

The Appellant in this case has not carried the required burden and therefore this Court should not disturb the judgment of the trial court that the child support order should not be modified.

If this Court determines that it will review the facts in this case to determine whether the trial court's findings are contrary to the clear preponderance of the evidence, the Court, upon reviewing the transcript, will discover that the Respondent's income has increased slightly (\$256.00 per month in the winter months and \$82.00 in the summer months), bringing her monthly gross income to \$736.00 in the winter and \$910.00 in the summer (Memorandum Decision, October 2, 1986, T. 115, 116, 146). The Appellant's monthly income has also increased approximately \$.83 per hour (Order and Judgment, October 16, 1986, page 2), bringing his monthly gross income to \$1962.00 (T. 77). Respondent's slight increase in income does not constitute a substantial change in circumstances.

Once this Court reviews the evidence, if it deems such a review necessary under the Berger rules of appellate review cited above, it will be required to determine if there has been a substantial change of circumstances. Woodward v. Woodward, 709 P.2d 393, 394 (Utah 1985). Unless this Court finds an abuse of

discretion on the part of the trial court, it must affirm the trial court's refusal to find any substantial change in circumstances of the parties that would warrant the imposition of support payments by the Respondent. Id.

II. THE TRIAL COURT'S APPORTIONMENT OF THE PARTIES' PROPERTY DOES NOT WORK SUCH A MANIFEST INJUSTICE AS TO CONSTITUTE AN ABUSE OF DISCRETION BY THE TRIAL COURT.

The standard for review of property apportionment in divorce cases was set out in Pusey v. Pusey, 728 P.2d 117, 119 (Utah 1986), as follows:

This Court endows the trial court's adjustment of financial interests of the parties with a presumption of validity and does not review their values absent a clear abuse of discretion . . . We do not lightly disturb property divisions made by the trial court and uphold its decision except where to do so would work a manifest injustice or inequity.

This standard was reiterated most recently in Rayburn v. Rayburn, 59 UAR 42, 44 (5/29/87), in which this Court stated that "[o]n appellate review, that trial court's apportionment of property will not be disturbed unless it works such a manifest injustice or inequity as to indicate a clear abuse of discretion."

In Berger v. Berger, supra at 698, the defendant contended that certain pieces of real property which were awarded to the plaintiff were undervalued. The Utah Supreme Court in that case stated that it had examined the valuations and decided to refrain from disturbing any of them since they were all based on competent evidence. The Court also stated that their value was in issue at the trial, and the trial court, within its rightful discretion, made the valuation decision it saw fit.

The trial court in this case, after hearing and considering

all the evidence requested by the Appellant, determined that Appellant is entitled to a greater offset than was initially determined in the original Decree of Divorce. It is the Respondent's view that Judge Call was more than fair in hearing the evidence and in apportioning the fault for the damage to the house. A certain portion of the damage and some of the offsets were considered when the original Decree was issued, and the remainder thereof were judiciously weighed when the requests for modification of the Decree was heard.

The Appellant has not carried his burden of proving that Judge Call abused his discretion or committed substantial and prejudicial error that deprived the Appellant of a full and fair presentation of his case. Redevelopment Agency of Salt Lake City v. Mitsui Investment Inc., 522 P.2d 1370, 1374 (Utah 1974). Nor has the Appellant proved that the findings of the trial court would work a manifest injustice or inequity. In the absence of such proof, the findings and judgment of the trial court should not be disturbed.

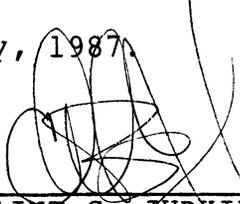
CONCLUSION

The findings and judgment of the trial court in the modification order should be upheld. The Appellant has not carried his burden of rebutting the presumption of validity of those findings and judgment. After a full and fair hearing, Judge Call found that there was not a sufficient change of circumstances to warrant imposition of child support payments upon the Respondent. He also found that the original Decree of Divorce was required to be modified to take into account offsets and damage that had not been considered at the original trial.

Rather than be seen as an abuse of discretion, the trial court's indulgence and careful consideration of the facts should be applauded.

Respondent Jolene Hatch respectfully submits that the findings and decision of the trial court be affirmed.

DATED this 16 day of July, 1987.



CLINT S. JUDKINS
Attorney for Plaintiff/Respondent
P.O. Box 277
123 East Main
Tremonton, Utah 84337

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing document to Dale M. Dorius, Attorney for Defendant/Appellant, P.O. Box "U", 29 South Main, Brigham City, Utah 84302, this 20 day of July, 1987.

