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Haroldeane M. O\'Brien v. Alvin L. Iverson and Judith N. Iverson : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

14279A

OF THE

STATE OF UTAH

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HAROLDEANE M. O'BRIEN,

Plaintiff and Appellant,

-vs-

ALVIN L. IVERSON and JUDITH N.
IVERSON, his wife,

Defendants and Respondents.

Case No. 14279

HAROLDEANE M. IVERSON O'BRIEN,

Plaintiff and Appellant,

-vs-

ALVIN L. IVERSON,

Defendant and Respondent.

BRIEF OF APPELLANT

Appeal from the Judgment of the Fifth Judicial District Court
for Washington County, Honorable J. Harlan Burns, Judge, presiding.

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

HAROLDEANE M. O'BRIEN,

Plaintiff and Appellant,

-vs-

ALVIN L. IVERSON and JUDITH N.
IVERSON, his wife,

Defendants and Respondents.

Case No. 14279

HAROLDEANE M. IVEROSN O'BRIEN,

Plaintiff and Appellant,

-vs-

ALVIN L. IVERSON,

Defendant and Respondent.

BRIEF OF APPELLANT

STATEMENT OF KIND OF CASE

This is a divorce action wherein the issue of a property settlement is before the Court.

DISPOSITION ON LOWER COURT

The Fifth Judicial District Court for Washington County, Utah, by Judgment dated July 29, 1975 and filed September 18, 1975 awarded to Defendant and Respondent all of the parties' home property located

in St. George, Utah as his sole and separate property. From this award, the Plaintiff and Appellant appeals to the above entitled Court.

RELIEF SOUGHT ON APPEAL

Plaintiff and Appellant seeks a reversal of the Lower Court and an order of the Utah Supreme Court awarding to her an equitable share of the parties' home property.

STATEMENT OF FACTS

The parties hereto intermarried at Reno, Nevada on January 16, 1945 (R.36). Subsequent to said marriage, they purchased certain real property and constructed a home through their joint efforts in St. George, Utah, (R.36, T.16, 17). During the course of the parties marriage they had three children (R. 1, T. 6). In addition, the Plaintiff and Appellant, during the course of the marriage, not only took care of her marital duties, but aided the Defendant and Respondent in his business and in earning the family's income. (T.7, 9, 10, 11, 13,). When the parties constructed their home, the Plaintiff and Appellant aided in the construction of said home. (T 10 The work the parties did to earn a living after their marriage and upon the commencement of their marital arrangement consisted of various and sundry construction work and herding sheep. (T. 7, T. 8, T. 9, T. 11.)). In this regard, the Plaintiff and Appellant, although being a woman, actually physically helped in the operation of the construction business and the herding of the sheep. As a result, she contributed certain services to the marital arrangement in excess of

those ordinarily expected of a housewife.

Subsequent to the entering into of the marital arrangement between the parties and the construction of their home, and the birth of the three children of the parties, certain difficulties developed between the parties and on August 13, 1954 a Complaint requesting among other things, a Decree of Divorce was filed by the Plaintiff and Appellant in the District Court for Washington County, Utah. (R. 37) Subsequent thereto, and by Interlocutory Decree of Divorce dated and filed the 10th day of December, 1954 the bonds of matrimony between the parties were dissolved. (R.45). In that regard, the Defendant and Appellant Alvin L. Iverson was awarded the care, custody and control of the minor children of the parties subject to reasonable visitation rights on the part of the Plaintiff and Appellant and also was awarded the use and occupancy of the home of the parties. (R.44,45) In that regard, the Court's attention is called to the fact that the District Court for Washington County, specifically retained jurisdiction over the parties and the custody of the children and the disposition of their property and the support of the Plaintiff and Appellant. (R. 45). No disposition was made in the Interlocutory Decree of Divorce regarding an award to either party of the home property although, the Defendant and Respondent was given the use of the same for purposes of raising the children (R. 45). At the time of the divorce, the home property was worth \$18,000.00 (T. 16) and there was an outstanding loan owing thereon of approximately \$3,000.00 (T. 15) leaving an equity in the property belonging to the parties of approximately \$15,000.00.

Subsequent to the entry of the Decree of Divorce, the parties separated, and the Defendant and Respondent raised the parties' children up to the age of majority (T. 19). The Plaintiff and Appellant did contribute some support and money to the children (T.19) and visited with the children (T.20), however it is admitted that the children, were in fact, raised to the age of majority by the Defendant and Respondent.

Subsequent to the children obtaining the age of majority, issues were joined between the parties as to the disposition of the home property, as the same had not been previously disposed of by the Court, and the matter was tried before the Fifth Judicial District Court for Washington County, Honorable J. Harlan Burns, presiding on June 26, 1975, and subsequent to the trial, the trial Court entered its Findings of Fact and Conclusions of Law and ordered Judgment in accordance therewith decreeing the home property described as the East one-half of Lots 6 and 7, Block 20, Plat "B", St. George City Survey as beonging in full to the Defendant and Respondent with no rights in the Plaintiff and Appellant (R.22 through 29). From this Judgment, the Plaintiff and Appellant appeals.

ARGUMENT

POINT I.

THE LOWER COURT ERRED IN NOT AWARDING TO THE PLAINTIFF AND APPELLANT A PORTION OF THE PARTIES' HOME PROPERTY.

As this Court is well aware, Section 30-3-5, Utah Code Annotated, 1953 as amended is the statutory authority governing property awards between parties involved in a divorce. The test in

to fact situation before it, the Courts have been allowed "broad discretion" by the Utah Supreme Court. Watts v. Watts, (1968), 21 Utah 2d 137, 442 P. 2d 30. On the other hand, and while the Courts are allowed to look to the fact situation in making an appropriate split between the parties, a general formula has developed over the years wherein it is considered that one-third of the property involved is usually felt to be a fair proportion to be given to the wife in the absence of other circumstances. Woolley v. Woolley (1948) 113 Utah 391, 195P. 2d 743. The one-third formula is not absolute, however, and awards vary to a great extent, depending upon the fact situation of the parties. Dubois v. Dubois (1973) 29 Utah 2d 75, 504 P.2d 1380. In the Dubois case the Court allowed to the wife 60% of the estate. Dahlberg v. Dahlberg (1930) 77Utah 157, 292 P. 2d 214 the wife received 50% of the marital property. Recognizing that the Courts are faced with a problem of settling the differences between parties involved in a divorce, it appears that the best test so far developed is that of "justice and equity". Wilson v. Wilson (1956), 5 Utah 2d 79, 296 P. 2d 977.

In the case before the Court, the parties lived together for nine years and had three children as the issue of the marriage. During the time of the marriage, they accumulated a home, two cars, household furniture and fixtures, and various and sundry personal property. The home of the parties, was by far, the only property accumulated by them of any real value. The record shows that the accumulation of the home took place through the efforts of both parties, that both parties contributed financially to the marriage relationship

as well as to the construction of the home. In that regard, the Court's attention is called to the fact that the parties married immediately after the second world war, that they had financial difficulties and as a result, both parties had to contribute financially to the marriage, and that the Plaintiff and Appellant, the wife, actually physically worked to help support the family. In that regard, this work consisted of participation in heavy construction work and the herding of sheep. Certainly such activities are ordinarily considered to be above and beyond the call of duty, especially the participating in heavy construction work. There can be no doubt therefore, that the Plaintiff and Appellant did meet her marital duties and probably above and beyond the call of duty.

It is true that the Defendant and Respondent took over the responsibility of supporting and raising the three children of the parties, subsequent to the parties separation. On the other hand, this ordinarily is a father's duty and the fact that custody of the children was not awarded to the Plaintiff and Appellant does not necessarily mean that she, in any way, forsook her duties.

In addition, it is obvious from the original Decree of Divorce that the District Judge at that time did not intend to adjudicate the rights of the parties in the home property, and intended that this be adjudicated at a later date. As a result, he made no permanent award of the home property and did not award it to either party or to interest to either party.

It seems to the Plaintiff and Appellant that she is entitled to at least something out of the property that she helped accumulate

While it may be proper to base this award upon the equity the parties had in the home at the time of the divorce, and upon the values of the home at the time of the divorce, it still seems appropriate that she be given at least something.

CONCLUSION

It is respectfully submitted that the decision of the Lower Court should be reversed, and that the Plaintiff and Appellant should be awarded a fair share of the home property of the parties, at least as the equity stood at the time of the parties' divorce, and that such share should not be less than one-third of the equity of the parties.

RESPECTFULLY SUBMITTED.

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