

1976

# Norma C. Pearson v. Robert Niles Pearson : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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NORMA G. PEARSON :

Plaintiff Appellant :

-vs- :

Case No. 14626

ROBERT NILES PEARSON :

Defendant Respondent :

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BRIEF OF APPELLANT

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APPEAL FROM THE ORDERS, JUDGMENTS AND DECREES  
OF THE DISTRICT COURT OF THE THIRD JUDICIAL  
DISTRICT, IN AND FOR SALT LAKE COUNTY, STATE  
OF UTAH, THE HONORABLE PETER F. LEARY, JUDGE,  
PRESIDING.

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

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NORMA A. PEARSON	:	.
Plaintiff Appellant	:	
-vs-	:	Case No. 14626
ROBERT NILES PEARSON	:	
Defendant Respondent	:	

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BRIEF OF APPELLANT

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STATEMENT OF THE NATURE OF THE CASE

The appellant, Norma G. Pearson, appeals from the judgments, orders and decrees of the lower court relative to the division of the properties of the parties upon the grounds that said judgments, decrees and orders are not in accordance with the stipulation made and entered into by the respective parties before the court on February 25, 1974, which stipulation was:

"With respect to the property which has been accumulated by the parties during the marriage, as a matter of principle, we can agree to this: That any property which the parties owned individually prior to the marriage will be awarded to them individually as their sole and separate property. Anything accumulated during the marriage, or any debts or obligations which may have been paid during the marriage which were accumulated prior to the marriage will be taken into account in determining what the equities are of property accumulated

during the marriage up to and including the time of their separation, which was May 23, 1973. And with respect to these equities, they'll be divided one half to the plaintiff and one half to the defendant." p 256

#### DISPOSITION IN LOWER COURT

On the 12th day of April, 1974, the above entitled court made and entered the Decree of Divorce in the above entitled action which reads, in part:

"3. The defendant is ordered to pay to plaintiff to assist her in the payment of counsel fees the sum of \$250.00 and judgment is entered therefor.

6. Any property which the parties owned individually prior to the marriage is awarded to them individually as their sole and separate property. Any property accumulated during the marriage, or any debts or obligations which may have been paid during the marriage which were accumulated prior to the marriage will be taken into account in determining what the equities are of the property accumulated during the marriage up to and including the time of the separation of the parties, to-wit: May 23, 1973. With respect to these equities, said equities are divided one half to the plaintiff and one half to the defendant.

7. With respect to the equities referred to in the foregoing paragraph, said issue is continued for hearing to May 15, 1974, at the hour of 2:00 p.m., or if the parties determine that prior thereto they cannot reach an agreement, either party may petition the court for an earlier trial setting with respect to said issue." p 122-123

After hearing on May 15, 1974, which was continued until August 19, 1974, the court made and entered a Supplemental Decree which set forth said paragraph 3, 6 and 7, hereinabove set forth and then continued to provide in part:

"1. Plaintiff is awarded the equity of the parties in the home located at 8875 South 1240 East, Sandy, County of Salt Lake, State of Utah, and more particularly described as follows:

Lot 13, Schneiter Subdivisions, as recorded in the office of the County Recorder of Salt Lake County, State of Utah.

subject to plaintiff assuming the indebtedness on said premises and holding defendant harmless thereon.

2. Plaintiff is awarded the household furniture purchased since the marriage with the exception of the sewing machine which is awarded to defendant.

3. Plaintiff is awarded the 1971 Dodge automobile; the Vista International stock; all her savings in the Granite Teachers Credit Union; the Cal-Western Life Insurance savings, policy and stock; the balances in the accounts bearing her name at the American Savings and Loan Association; and a sum of \$200.00 as additional attorney's fees.

4. Defendant is awarded the equity in the home located in Bountiful; the balance due and owing on the lot in Bountiful which was sold; the furniture that defendant has in his possession; the 1970 International truck; the 1971 BMW motorcycle; the 1973 Overland trailer; the camera equipment; the chain saw; the 8-man raft; the outboard motor; the M1 rifle; the 57 mag pistol; the .38 caliber pistol; the .22 caliber pistol; the power cultivator and the diamond ring.

5. Defendant is awarded the Hy-Planes stock; the American Property Investors II; the Kelly-Morrey stock; the Axe Houghton Stock; the Equity Funding stock; the International Recreation stock; the Research Cottrell stock, which was standing in the name of defendant.

6. Defendant is awarded the balance in the following accounts:

- a. Layton First National Bank - accounts 0 132 460 730 and 1 132 460 720.
- b. American Savings and Loan Association - accounts 200873, 209110 and 206526."

p 145-146

A Motion for New Trial and Motion to Amend was filed by defendant claiming:

- "1. There is insufficient evidence to justify the supplemental Findings of Fact, Conclusions of Law and Decree, and said supplemental Findings of Fact Conclusions of Law, and Decree as rendered by the court is contrary to law.
2. The court did err in the application of the law and made error in law.
3. That in the alternative, the defendant moves the court to amend the Supplemental Findings of Fact, Conclusions of Law and Decree by granting to the defendant one half of the equity in the home located at 8877 South 1240 East, Sandy, County of Salt Lake, State of Utah.
4. That the court vacate that portion of the supplemental Findings of Fact, Conclusions of Law, and Decree wherein the court grants to plaintiff additional attorney's fees in the sum of \$200.00.
5. That pursuant to the Decree of Divorce entered in this matter on the 19th day of August, 1974, the following provision was set forth therein:  
  
    '(6) Any property which the parties owned individually prior to the marriage is awarded to them individually to their sole and separate property. Any property accumulated during the marriage, or any debts or obligations which may have been paid during the marriage which were accumulated prior to the marriage will be taken into account in determining what the equities are of the property accumulated during the marriage up to and including the time of the separation of the parties, to-wit: May 23, 1973. With respect to these equities, said equities are divided one half of the plaintiff and one half to the defendant.'
6. The court in its Supplemental Findings of Fact, Conclusions of Law, and Decree rather than dividing the property accumulated during the marriage, one half to the plaintiff and one half to the defendant, has awarded everything accumulated during the marriage to the plaintiff. Further, the property which the court in its Supplemental

Findings of Fact, Conclusions of Law, and Decree awarded to the defendant, under the undisputed facts of both plaintiff or defendant, belong to the defendant prior to the marriage to-wit: the home and lot in Bountiful, Utah, or was accumulated by the defendant during the marriage with funds from the sale of said real property, or accumulated subsequent to May 23, 1973.

7. That the court has totally disregarded the Decree of this court dated August 19, 1974, which decree is re judicate and which decree cannot be changed by this court with respect to those items ad judicated therein."  
p 147-148

On January 15, 1975, the court made and entered the following minute entry:

"Deft' motion for a New Trial is heard and taken under advisement by the court (Counsel to submit an affidavit outlining what was acquired during marriage by respective parties & appraisal of home." p 153

On December 30, 1975, counsel for the defendant filed with the clerk of the court a Memorandum in response to said Minute Entry. p 185-190. In addition, counsel for the defendant filed with the clerk of the court an Amended Supplemental Decree and Amended Supplemental Findings of Fact and Conclusions of Law which were never signed by the court. p 172-179.

On said December 30, 1975, counsel for the plaintiff filed with the clerk of the court in response to said Minute Entry an Answer to Memorandum of Defendant which sets forth in detail the Income and Earnings of each party during marriage, An Answer to Schedule I of said Memorandum of defendant setting forth in detail as to each item of contention of plaintiff and of the defendant (Plaintiff's contentions being underscored and Defendant's not being underscored so the

court could see the contentions of the parties side by side. It included many items skipped by Defendant in Defendant's Memorandum). p 156-160. Said Answer set forth in detail a "COMPILATION OF WHAT EACH BROUGHT INTO THE MARRIAGE, WHICH WAS USED UP DURING, OR IS STILL AVAILABLE FOR DIVISION", in answer to Schedule I of Defendant. p 160. It contains properties listed by defendant and not listed by defendant and the contentions of each of the parties side by side. p 160-161. Said Answer contained a Schedule II which set forth in detail "Debts of Plaintiff and Defendant at time of marriage May 29, 1969", with the contention of each party side by side so the court could easily make findings. p 162-164. Said Answer contains Schedule III which sets forth in detail "Property accumulated during the marriage by the parties, either jointly, or separately to date of separation (May 23, 1973) and in possession of each as follows: (For purposes of this memorandum, gifts claimed by both parties are disregarded. Each is charged with what they took.) Each and every item is set forth and the claim of the plaintiff and the defendant relative thereto. Each is set forth side by side so the court could make findings as to each. p 164-168. Said Answer contains Schedule IV which "refers to properties which were not included in the Memorandum of the defendant and indicates the page in which said items was referred to in the record but which was not included in the defendant's Memorandum. Said Answer contains Schedules III and Schedules IV which are com-

pilations of "Properties Each Took or Did not Account for out of Marriage and Properties not listed in Schedule III" which plaintiff contends should have been listed. p 170-171. Said Answer shows that Plaintiff took from the marriage \$25,235.57 after having brought into the marriage \$18,504.92, indicated that plaintiff after having been awarded the entire equity in the home took out of said marriage an increase of \$6,730.65. It further shows that defendant took from marriage \$22,223.38, after having brought into the marriage \$6,312.00, with a net increase to defendant of \$15,911.38, and said sum does not include the stocks, his home and lot in Bountiful, which are considered as having been brought into the marriage and taken out by defendant. p 170-171.

This Answer to the Memorandum of Defendant was never contradicted or challeged by defendant at any time.

On January 31, 1976, the court entered an Amended Supplemental Decree which cited the provisions of said paragraph 6 which was the stipulation of counsel relative to the disposition of the property and therein stated.

"... based upon the courts overlooking the provisions of paragraph 6, of the Decree of Divorce made and entered on April 12, 1974, now orders that this Amended Supplemental Decree be entered" p 233

and then proceeds to order the home sold and the proceeds divided between the parties with the provision:

"4. All other provisions of the Decree of Divorce are to remain the same; however, the supplemental Findings of Fact and Conclusions of Law are amended so as to be in conformity with this amended Decree." p 234.

## RELIEF SOUGHT ON APPEAL

Appellant petitions that the court make and enter an order remanding this cause to the District Court with the instructions that full and complete findings and:

a. Directing the District Court to make findings as to the properties and value of each property each of the parties brought into the marriage.

b. Directing the District Court to make findings as to the value of properties brought into the marriage which were comingled with the properties accumulated by the parties during said marriage.

c. Directing the District Court to make findings as to all properties and the value of all properties accumulated during said marriage.

d. Directing the District Court to make findings as to the debts and obligations each accumulated prior to the marriage which were satisfied during the marriage and that the same be taken into account in determining what the equities are of property accumulated during the marriage and taken from the marriage.

e. Directing the District Court to make findings of the properties taken from the marriage and the value of the properties each took out of the marriage in determining what the equities of the parties are of the property to be divided.

f. Directing the District Court to disregard the award of \$250.00 which defendant was to pay plaintiff to apply to-

ward her attorney's fees and make findings as to what a fair and reasonable sum would be that defendant should be required to pay plaintiff toward her attorney's fees.

g. Direct the District Court to make and enter conclusions of law and a decree in accordance with such findings.

#### STATEMENT OF FACTS

Mr. Pearson was purchasing property in Davis County, Utah. Payments were made on the properties during the marriage. Prior to the sale of the same, money was expended in preparing them for sale. Mr. Pearson dealt in stock and was active in the market. He bought and sold in his own name and the name of his wife. Mrs. Pearson gave him money or made money available to him to invest for her. Which money went into which stocks is not determined by the court though the question was raised. Mr. Pearson worked during the marriage and had an income slightly in excess of \$10,000.00 per annum. Mr. Pearson had one child living with them and she was married during marriage and costs of a wedding were had. Automobiles, trailers, motorcycles, campers were bought and sold by Mr. Pearson.

Mrs. Pearson worked as a school teacher and had an income slightly in excess of \$7,000.00 per annum. She had three minor children living with them. One of the sons of Mrs. Pearson went on a mission during the marriage and there were costs. When her previous husband died, the family was left a considerable sum of money through the Otto Buehner & Company employees protection plan. Mrs. Pearson sold the home in which she

and her previous husband owned just prior to the marriage and this was some of the money which was invested. Automobiles were sold and purchased. Some of the stocks purchased and sold in her name were unknown to her. One company, Vista International stock is still held by Mr. Pearson. The company has gone bankrupt. The stock was never turned over to Mrs. Pearson though it was promised.

Monies and properties which had been accumulated by each and both before their marriage to one another was used to obtain properties which were accumulated during their marriage.

The debts and obligations were not computed and determined as to the amount of each and deducted from the share of the respective parties who had the debts and obligations.

#### ARGUMENT

The stipulation reads as follows:

"With respect to the property which has been accumulated by the parties during the marriage, as a matter of principle, we can agree to this: That any property which the parties owned individually prior to the marriage will be awarded to them individually as their sole and separate property. Anything accumulated during the marriage, or any debts or obligations which may have been paid during the marriage which were accumulated prior to the marriage will be taken into account in determining what the equities are of property accumulated during the marriage up to and including the time of their separation, which was May 23, 1973. And with respect to these equities, they'll be divided one half to the plaintiff and one half to the defendant." p 256.

In order for the stipulation to be carried out, the following findings must be made:

1. What property each party owned individually prior to the marriage and that property should be awarded to that individual as their sole and separate property.

2. Anything accumulated during the marriage, or any debts or obligations, by either party which was paid during the marriage must be taken into account in determining what the equities of each party are in the property accumulated during the marriage up to and including the time of their separation, which was May 23, 1973.

3. With respect to these equities, (what properties are in the parties' hands after each has been returned that which each brought into the marriage) they'll (the remaining properties) be divided one half to the plaintiff and one half to the defendant. Provided, however, that the debts and obligations which each party brought into the marriage which were satisfied during the marriage shall be deducted from the share to be received by the debtor.

The court made absolutely no findings as to any of the three points and therefore the stipulation was never carried out by the court. The court did divide the properties, as would Solomon of old, but not in accordance with the stipulation. Good, poor, equitable, just or unjust as the division may be, IT WAS NOT IN ACCORDANCE WITH THE STIPULATION.

For this reason, the matter must be returned to the District Court and each and all findings necessary to carry out the stipulation must be made. It is not a question of

equity, justice, injustice or any other basis, it must be in accordance with the stipulation and all of the factors that go to make up the properties at each of the three states must be found, what each brought into the marriage, what was accumulated during the marriage, and what each took out of the marriage, and that should be divided equally. It is an accounting problem and the court made no accounting but only an award.

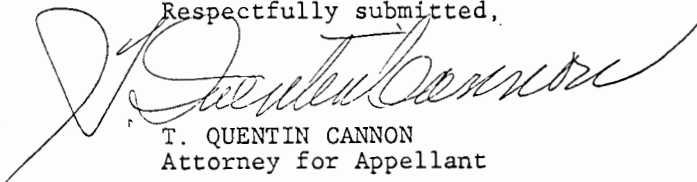
As to attorney fees, in the original stipulation, counsel for the plaintiff did stipulate that plaintiff would be satisfied with a \$250.00 contribution toward her attorney's fees. A pig was bought in a poke. The court found the injustice and awarded an additional \$200.00 attorney's fee to the plaintiff. The court later took the additional attorney's fees awarded away from the plaintiff. Now, the matter has had many subsequent hearings and arguments and an appeal to the Supreme Court. Plaintiff contends that plaintiff is entitled to a fair and just contribution based on the work and services rendered by counsel. The determination of the attorney's fee should be determined by the lower court upon the remanding at which time testimony should be taken as to the service rendered by counsel and a fair and reasonable sum fixed.

#### CONCLUSIONS

It is difficult to cite cases on what was not done. It is difficult to find fault with findings which were not found. The only argument that can be made is that the stipulation cannot become effective until the findings required to satisfy the stipulation are made. There are differences of opinion and evidence as to what each brought into the marriage. There are

differences of opinion and evidence as to what was accumulated during the marriage. There are differences of opinion and evidence as to the debts and obligations which were brought into the marriage which were paid for out of the family funds. There are differences of opinion and evidence as to the value of the motorcycle brought into the marriage and the one taken out, the automobile brought in and the one taken out, the camper brought in and the one taken out. This is the reason this matter was submitted to the court. There is no finding as to any of these matters as well as many more. The case should be remanded for full hearing and for complete findings necessary to implement the stipulation of the parties.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "T. Quentin Cannon", written in dark ink. The signature is fluid and stylized, with a large initial "T" and a long, sweeping underline.

T. QUENTIN CANNON  
Attorney for Appellant

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