

1976

Norma C. Pearson v. Robert Niles Pearson : Brief of Respondent

Utah Supreme Court

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Cannon and Duffin; T. Quentin Cannon; Attorney for Appellant;

Leland S. McCullough; Attorney for Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

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

RESPONDENT'S BRIEF

STATEMENT OF POINTS

1. The court made Findings of Fact and Conclusions of Law on all material issues sufficient to support the supplemental Decree and amended supplemental Decree for distribution of the property.

STATEMENT OF FACTS

The Appellant in her brief under, "Relief sought on appeal", has limited the issue on appeal to the question of whether the lower Court has made sufficient, "Findings of Fact". (See Page Eight of Appellant's Brief.)

The Appellant in her "Statement of Fact" Page 9 and 10, cites no reference to the record to support any of the statements made and said

statement is so interspersed with error that Respondent can only deny the allegations made or if they are supported by the record that they are irrelevant by reason of the Appellant having limited the appeal to the question of the sufficiency of the Findings of Fact.

This divorce action was tried in two phases, first with respect to the dissolution of the marriage and second with respect to the division of property.

In the Decree of Divorce dated April 12, 1974, the Court decreed in Paragraph 6 and 7 thereof the following: (R123)

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 setting with respect to said issue.

The trial on the second phase of this action was heard on August 19, 1974, October 1, 1974 and October 11, 1974. Both parties were sworn and testified and numerous exhibits were introduced (R-129, 136, 137, 138). The

matter was taken under advisement by the court and on December 10, 1976 the court issued its memorandum decision. (R-139.) On December 8, 1974 the court signed Supplemental Findings of Fact and Conclusions of Law and Decree as prepared by Appellant's counsel (R-140 - 146). Respondent on December 26, 1974 filed a motion for a new trial and motion to amend. (R- 147 - 148). Respondent's motions were taken under advisement by the court (R- 153). Both parties subsequent thereto, and at the request of the court submitted affidavits and memorandum and respondent submitted an appraisal of real property acquired during the marriage as requested by the court (R 192 - 194).

A casual glance at the record and transcript of testimony reveals that the court and counsel went into great detail with respect to the facts involved.

On January 31, 1976, the court issued an Amended Supplemental Decree (R 233 - 234), which Decree related solely to one piece of real property acquired by the parties during the marriage. Said property was ordered to be appraised and sold and the proceeds divided in accordance with the Amended Supplemental Decree. All other provisions of the Supplemental Decree were to remain the same. However, the Supplemental Findings of Fact and Conclusions of Law were amended to be in conformity with the Amended Decree.

The Supplemental Findings of Fact, as prepared by Appellant's counsel, specifically set forth six paragraphs pertaining to the property of the parties, listing and itemizing the same in detail. Although counsel for Appellant has prefaced each of said six paragraphs with a proviso as to how it "should be" awarded, none the less the property is itemized in great detail by Appellant's counsel in said Findings and accepted as such by the court. (R 141 - 142). Appellant took no exceptions to the Findings, as prepared by him, at any time in the lower court proceedings.

ARGUMENT

POINT 1

THE COURT MADE FINDINGS OF FACT AND CONCLUSIONS OF LAW ON ALL MATERIAL ISSUES SUFFICIENT TO SUPPORT THE SUPPLEMENTAL DECREE AND AMENDED SUPPLEMENTAL DECREE FOR DISTRIBUTION OF THE PROPERTY.

Rule 52, Utah Rules of Civil Procedure Provides:

"In all actions tried without a jury * * * * * the court shall, unless the same are waived, find the facts specifically and state separately its conclusions of law thereon and direct the entry of the appropriate judgments;"

In Gaddis Investment Company vs Morrison, 3 Ut 2d 43, 278 P2d 284, at Page 45 of the Utah Reports the court states:

"* * * * * It has frequently been held that failure of the

trial court to make Findings of Fact on all material issues is reversible error where it is prejudicial."

The material in the case at bar concerns the distribution of the parties' property in accordance with the Decree of Divorce. Although somewhat ineptly drawn the Findings of Fact effectively dispose of the property of the parties in accordance with the Decree. The fact that each item of evidence presented to the court is not specifically mentioned in the Findings of Fact is of no significance as the Findings are based upon ultimate facts ascertained by the court in conformity with the Divorce Decree, and therefore no prejudicial error exists.

See Jankele vs Texas Company, 88 Utah 325, 54 P2d 425 - at Page 332
the court stated:

"In Fuller vs Burnett, 66 Utah 507, 243 P. 790, this court said that findings of a trial court sitting without jury should be limited to ultimate facts to be ascertained, and are none the less findings of fact because drawn as conclusions from other facts. In Stephens vs Doxy, 62 Utah 241, 218 P. 965, this court held that findings ascertaining ultimate facts upon which judgment rested were sufficient though not attempting to follow the language of the pleadings. In Prows vs Hawley, 72 Utah 444, 271 P. 31, 33, the court lays down the following: "The general rule is that ultimate facts may be stated in the findings in the same way they are stated in the pleadings if there well and sufficiently stated, not by a mere reference to the pleadings, but stated in the language of the pleadings." See, also, 2 Bancroft's Code Prac. & Rem., ss 1679, 1680, pp. 2158, 2159. The findings, though not as full and complete as might be desired, sufficiently conform to the pleadings and the evidence to support the judgment."

See, also, In re Clift's Estate, 70 Ut 409, 260 P 859 at Page 431 of
the Utah Reports:

"While some of the findings are not in artistic form according
to approved models, nevertheless, they indicate clearly the
mind of the court. Such assignments are therefore without merit."

See, also, Fisk vs Patton 7 Ut 399 at page 407, 27 P 1, wherein
the court stated that "substantial compliance is sufficient."

See, also, Thomas vs Clayton Piano Company 47 Ut 91 at page 93,
151 P 543:

"The court should find the facts upon every issue, either affirmatively
or negatively, as the evidence may be, and thus give the defeated
party an opportunity to assail the findings as not being supported by
the evidence."

See, also, Cain vs Stewart 47 Ut 160, 152 P 465:

"Findings of fact and Conclusions of Law will support a judgment,
though they are very general, where they in most respects follow
equally the allegations of the Complaint."


See, also, Gunnison Irrigation Company vs Peterson 74 Ut 460; at
page 471, 280 P 715:

"The courts findings must be construed in the light of the
interpretation placed thereon by the trial court."

CONCLUSION

The judgment of the trial court should be affirmed.

Respectfully submitted,


McCULLOUGH & McCULLOUGH
Leland S. McCullough
Attorney for Respondent