

1976

Boise Cascade Corporation v. Sterling A. Meyer
And Jeanne D. Meyer Et Ux, I Reese Howell,
Escrow Agent And Title Insurance Agency : Breif of
Respondents

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

BOISE CASCADE CORPORATION,

Plaintiff and Appellant,

-vs-

STERLING A. MEYER and JEANNE
D. MEYER et ux., REECE HOWELL,
Escrow Agent, and TITLE
INSURANCE AGENCY,

Defendants and Respondents.

Case No. 14877

BRIEF OF RESPONDENTS

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Defendants and Respondents.

Case No. 14833

BRIEF OF RESPONDENTS

STATEMENT OF THE NATURE OF THE CASE

This is an appeal by the Plaintiff, Boise Cascade Corporation, from a Judgment entered on the 20th day of October, 1976, by the Honorable Marcellus K. Snow, Judge of the Third Judicial District Court, in and for Salt Lake County, State of Utah.

DISPOSITION IN LOWER COURT

Defendant's Motion for Summary Judgment dismissing Plaintiff's action was granted and an order to that effect was entered by the Third Judicial District Court in and for Salt Lake County on October 20, 1976.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks a reversal of the Summary Judgment granted in favor of the Defendants and for a Judgment in its favor as a matter of law, on the ground that the Utah statutory dower provision, Section 74-4-3 Utah Code Annotated (1953), is unconstitutional on its face or as applied. Defendants and Respondents seek to have the Order of the Third Judicial District Court, discussed herein, upheld in its entirety.

STATEMENT OF THE FACTS

Appellant's Statement of the Facts set forth in its Brief is correct and is not disputed by Respondent.

ARGUMENT

POINT 1

THE THIRD JUDICIAL DISTRICT COURT CORRECTLY INTERPRETED AND APPLIED SECTION 74-4-3, UTAH CODE ANNOTATED, WHICH CREATES AN INTEREST FOR A WIFE IN THE HUSBAND'S REAL PROPERTY.

A wife's right in real estate possessed by her husband, is set forth in Utah Code Annotated, Section 74-4-3, as amended in 1953. This provision of the Code provides as follows:

"WIFE'S INTEREST IN HUSBAND'S REAL PROPERTY.

One-third in value of all of the legal or equitable estates in real property possessed by the husband at any time during the marriage, to which the wife has made no relinquishment of her rights, shall be set apart as her property in fee simple, if she survives him; provided, that the wife shall not be entitled to any interest under the provisions of this Section in any such estate of which the husband has made a conveyance when the wife, at the time of the conveyance, was not and never had been a resident of the territory or state of Utah. Property distributed under the provisions of this Section shall be free

from all debts of the decedent except those secured by liens for work or labor done or material furnished exclusively for the improvement of the same, and except those created for the purchase thereof, and for taxes levied thereon. The value of such part of the homestead as may be set aside to the widow shall be deducted from the distributive share provided for her in this Section. In cases wherein only the heirs, devisees and legatees of the decedent are interested, the property secured to the widow by this Section may be set off by the Court in due process of administration."

This statute clearly establishes a real property interest in wives who qualify under the Statute. This statute is couched in unambiguous language and clearly sets forth the requirements which must be met before a wife can participate in the rights described in this statute. This statute sets up the equivalent of a Dower right for wives in the State of Utah.

There are several Utah cases which discuss the rights of a married woman in and to real estate possessed by her husband. The landmark case in Utah in connection with a woman's dower rights is the case of Hilton v. Thatcher et al., 31 Utah 360, 88 Pac. 20 (1906). The facts in the Hilton case are essentially the same as the facts in the present case. In Hilton a widow who had not released or joined in her husband's conveyance of some real property possessed by him, sought a court determination of her rights to share in this real property. The Court held that a wife, unless she releases her right thereto, must be provided with one third of the land of which her husband was seized at any time during the marriage. The Court concluded that the existence of this property right in a wife is entirely within the control of the Legislature.

The Hilton, supra, case is interesting in that it provides an excellent historical analysis of a woman's rights to real property in the State of Utah. As the Court in Hilton points out, the common law dower right was abrogated in the State of Utah when the Congress of the United States enacted a law in 1887, providing that:

"A widow shall be endowed of a third part of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage unless she shall have lawfully released her right thereto." (P. 2)

(Comp. Laws Utah 1888, 1919).

In 1898 when Utah entered into the Union as a State, LAWS OF UTAH were enacted which gave essentially the same rights to a widow. Section 2826 of the Revised Statutes of Utah provided as follows:

"One third in value of all the legal or equitable estates in real property possessed by the husband at any time during marriage, and to which the wife had made no relinquishment of her rights, shall be set apart as her property in fee simple, if she survive him."

The modern-day equivalent of this statute is Section 74-4-3 of the Utah Code Annotated, referred to earlier in this Brief. This brief historical analysis makes it clear that the long-standing intent of the lawmakers in the State of Utah has been to provide a wife with real property rights in her husband's estate.

Thus, a widow's right to an interest in the lands of her husband has been continuous from 1887 to the present time in the State of Utah. The long history of this law makes it obvious that the citizens of the State of Utah are cognizant of this law, recognize the importance of it and, further, that Utahns take this law into account when they plan their lives.

Another Utah case, Hatch v. Hatch, 148 Pac. 1096 (1915), also discussed the equitable rights of a married woman in her husband's real property. In this case the administrator of a wife's estate sued to recover from the executor of her husband's property, alleged to have been the wife's separate estate, that share which should have been the wife's. The Utah Supreme Court in this case also discussed the historical development of a woman's real property rights in the State of Utah. A reading of this case is helpful in understanding the equitable approach toward women and their property rights in the State of Utah. The Court in Hatch v. Hatch, supra, refers to the case of Hilton v. Thatcher, discussed herein, and makes the following observation in connection with the dower law in Utah:

"The people of the territory (Utah) tacitly agreed upon maxims and principles of the common law suited to their condition and consistent with the constitution and laws of the United States." (P. 1099)

Clearly, one of the principles of the common law which the Legislature of the State of Utah has deemed to be suited to the conditions and needs of the State of Utah, and consistent with the Constitution is Section 74-4-3 of the Utah Code Annotated (1953). Section 74-4-3, earlier cited, is the modern day equivalent and outgrowth of the common law principle which the Legislature for the State of Utah adopted early in the State's history and has consistently included in Utah law ever since that time.

The Court in Hatch v. Hatch, supra, points out that under the old English Common Law and the early Roman Law, the marital power of the husband was absolute, and the wife had no legal existence apart from that of her

husband. Under these legal systems a wife could neither acquire nor hold property and was incapable of doing anything as a "feme sole". The husband, at the time of the marriage, became the possessor of the wife's property and had the right to sell said property without her consent. In return, he was made liable for her debts, torts, misdemeanors, and some crimes. These archaic legal systems have long since been specifically abolished, and in their stead a concept of the husband and wife as "partners" has developed. This is the attitude which is reflected by the Utah Code Annotated, Section 74-4-3.

The Utah State Supreme Court in Hatch v. Hatch, decided in 1915 that the "dower" right was vital for the equitable treatment of women.

In the case before the Court, Jeanne D. Meyer meets the requirements of Section 74-4-3 of the Utah Code Annotated for participation in the "dower" rights discussed herein. Jeanne D. Meyer made no relinquishment of her rights in this property, she was married to Sterling A. Meyer at the time the property was acquired and possessed by him and she is now and has been a resident of Utah for many years.

Further, the property which is the subject of this action, is not subject to any materialman's lien.

Finally, it is important to note that the Utah Statute, 74-4-3 refers to the property in which the wife shares, as a "homestead". The use of this word is a clear indication of the fact that the Utah Legislature saw this property as a "home" for a wife, and possibly for her children as well. A woman's "place" in society has changed radically in the last decade, but, it is still accurate to state that more often than not women outlive men, and then need to

make or maintain a home for themselves or themselves and their children, without the support of their husbands. It is also still a fact that men still make many or most of the business decisions for their families; business decisions which might result in the loss of family property.

Courts have taken these facts into account in the drafting of dower and dower-like statutes.

In the case at hand the Defendant, Sterling A. Meyer, did make some business decisions which resulted in the incurring of debt. The Plaintiff and Appellant sued him on such a debt and is now seeking to enforce its judgment against all of the real property in question. This situation is the very situation the Utah Legislature foresaw and attempted to prevent with Section 74-4-3 of the Utah Code Annotated. The District Court saw this and correctly interpreted and applied this statute in this case.

POINT II

APPELLANT HAS FAILED TO SHOW THAT SECTION 74-4-3 OF THE UTAH CODE ANNOTATED IS UNCONSTITUTION EITHER AS A DENIAL OF EQUAL PROTECTION OR AS A DENIAL OF DUE PROCESS.

The law is well settled that a distinction for purposes of legislative classification, based on sex, does not necessarily constitute a denial of Equal Protection where the classification bears some reasonable or rational relation to the object sought to be accomplished by the Legislature. This rule was established in the case of Anderson v. St. Paul, 226 Minn. 186, 32 Northwest 2d 538. It is a further well established legal conclusion that the Equal Protection clause of the Constitution does not require absolute equality. This

rule is set forth in the case of Breedlove v. Suttles, 302 U.S. 277, 82 L. Ed 252, 58 S. Ct. 205 (1937).

Breedlove v. Suttles dealt with the question of the constitutionality of a poll tax which applied unequally as between men and women. The law in question provided that in the case of women, registration for voting was permitted without payment of taxes for previous years, whereas in the case of men, registration was not permitted without the payment of taxes. The Court in this case held that:

"Women may be exempted (from the payment of poll taxes) on the basis of special considerations to which they are naturally entitled. In view of burdens necessarily borne by them for the preservation of the race, the State reasonably may exempt them from the taxes." (82 L. Ed., P. 255)

The statute in this case is similar to the statute in our case. Both statutes treat women and establish what are allegedly reverse discrimination laws. In Breedlove, the Supreme Court found that there was no denial of Equal Protection and the Court stated that the Equal Protection clause of the Constitution does not require absolute equality.

The right to have a roof over one's head or a "homestead" seems to be an even more vital interest, deserving the Legislature's recognition and the State's protection, than the right to vote. Therefore, one can conclude that it is unlikely that the Supreme Court would find a denial of Equal Protection in our situation.

Appellant cites the Supreme Court case of Kahn v. Shevin, 416 U.S. 351, 40 L. Ed. 2d 189, 94 S. Ct. 1734 (1974) as support for their position that the Utah dower statute is unconstitutional. Kahn v. Shevin is improperly cited as

support for this position. In point of fact, Kahn v. Shevin supports Respondent's contention that the statute in question is constitutional.

Kahn v. Shevin, supra, involves a Florida statute which grants widows, but not widowers, an annual \$500 property tax exemption. The statute allegedly set up reverse discrimination, a situation not unlike the Utah Statute in question. In Kahn v. Shevin, the Supreme Court ruled that the statute did not violate the Equal Protection clause of the Fourteenth Amendment because the State's differential treatment of widows and widowers had a rational basis and had fair and substantial relation to the object of the legislation. That is to say, that the statute accomplished the reasonable objective of cushioning the financial impact of the loss of a spouse upon the sex for whom that loss imposes a disproportionately heavy burden. The Court in this case stated that, "there can be no dispute that the financial difficulties confronting the lone woman in Florida or in any other state exceed those facing the lone man," (90 L. Ed. 2d at p. 192). The Supreme Court in this case referred to the "disparity between the economic capabilities of a man and a woman". This same disparity exists in Utah and forms part of the rational basis for Section 74-4-3, Utah Code Annotated. Also, a desire by the Utah Legislature to alleviate economic hardship for widows in Utah was the object of enacting this statute.

In support of this statement regarding economic ability, data supplied by the U. S. Department of Labor, showing the median earnings for men and women for the years from 1955 to 1972 was set out in the Supreme Court's decision in Kahn. The tables of data are set forth herein, since they are clearly relevant

to the Utah statute, and they lend support for Respondents' contention that there is a rational basis for the differential treatment of widows and widowers in connection with real property interests in the State of Utah.

"The Women's Bureau provides the following data:

Year	Median earnings		Women's median earnings as percent of men's
	Women	Men	
1972	\$5,903	\$10,202	57.9
1971	5,593	9,399	59.5
1970	5,323	8,966	59.4
1969	4,977	8,227	60.5
1968	4,457	7,664	58.2
1967	4,150	7,182	57.8
1966	3,973	6,848	58.0
1965	3,823	6,375	60.0
1964	3,690	6,195	59.6
1963	3,561	5,978	59.6
1962	3,446	5,794	59.4
1961	3,351	5,664	59.4
1960	3,293	5,417	60.8
1959	3,193	5,209	61.3
1958	3,102	4,927	63.0
1957	3,008	4,713	63.8
1956	2,827	4,466	63.3
1955	2,719	4,252	63.9

Note.--Data for 1962-72 are not strictly comparable with those for prior years, which are for wages and salary income only and do not include earnings of self-employed persons.

Source: Table prepared by Women's Bureau, Employment Standards Administration, U.S. Department of Labor, from data published by Bureau of the Census, U.S. Department of Commerce." (As set out in Kahn v. Shevin, 40 L. Ed., at P. 192)

In Appellant's Brief the case of Geduldig v. Aiello, 417 U.S. 484, 41 L. Ed. 2d 256, 94 S. Ct. 2458 (1974), is also cited in support of their position. This case, like the Kahn v. Shevin case, is improperly cited as being supportive of Appellant's position. The Court in Geduldig v. Aiello upheld the constitutionality of a pregnancy exclusion from coverage under the California disability

insurance system that pays benefits to those privately employed who are temporarily unable to work because of disability not covered by workmen's compensation. The Supreme Court held that the coverage exclusion did not amount to an invidious discrimination under the Equal Protection clause of the Fourteenth Amendment.

The Supreme Court in both the Kahn and Aiello cases held that there was no denial of Equal Protection and, thus, no discrimination where a statute which differentially treated the sexes could be supported by a rational basis test. The rule is that if a State Legislature has a valid, rational objective in mind when a statute is drafted and if the statute, in fact, effects this reasonable objective, the Supreme Court will uphold the statute. In our case it appears clear from the Utah case law that an attitude exists in the State of Utah which was acknowledged by the State Legislature in drafting the Utah dower statute. This statute takes into account the sociological conditions in the State of Utah. The conditions are such that women, despite great advances made in the area of equal pay, etc., are still in an inferior economic position, and therefore in greater need of certain protections. Utah Courts must follow the logical analysis of the Supreme Court. As the Supreme Court noted, in the case of Quong Wing v. Kirkendahl, 223 U.S. 59, 56 L. Ed. 350, 32 S. Ct. 192 (1912), a case dealing with a Montana statute which differentially imposed a certain license tax on men and women in the laundry business:

"If Montana deemed it advisable to put a lighter burden upon women than upon men with regard to employment... the Fourteenth Amendment does not interfere by creating a fictitious equality where there is a real difference." (56 L. Ed., at P. 352)

It is Respondents' position that in the State of Utah there is a real difference between men and women in their ability to acquire and hold property. This attitude, which has been acknowledged by the Legislature in drafting Section 74-4-3 of Utah Code Annotated, is not based on any fictitious stereotype of woman as a weaker member of the species, but rather upon a realistic appraisal of the present economic conditions faced by the two sexes in the State of Utah. In the case at hand we have a clear example of the very situation the Legislature had in mind when this statute was drafted. The statute was drafted to protect women from, among other things, those debts of their spouses which they had had no part in creating, which operated to deprive them, and possibly their children, of important, vital rights in property.

Appellant's contention that Section 74-4-3 of the Utah Code Annotated (1953), is unconstitutional as a denial of Due Process is very weak. Most of the case law cited by Appellant is in support of the denial of Equal Protection assertion.

The Utah case of Turner v. Department of Employment Security, 423 U.S. 44, 96 S. Ct. 249, 46 L. Ed. 2d 181 (1975), is cited in support of Appellant's claim that the Utah Statute constitutes a denial of Due Process.

This case involved a Utah statute which made pregnant women ineligible for unemployment benefits for a period of twelve weeks before expected childbirth up through six weeks after childbirth. The Utah Supreme Court held that the statute violated no constitutional guarantee. The United States Supreme Court held that the statute violated the Due Process clause of the Fourteenth Amendment. It is clear that the facts in this case are easily

distinguishable from the facts in our case. The Turner, supra, statute deprived the Appellant of a "basic human liberty". There is no deprivation or "taking" of any basic right in the case before the Court. On the contrary, Respondents are seeking to have a right, created by statute, enforced as to a woman who qualifies for said right.

Appellants have failed to prove that either a denial of Equal Protection or of Due Process exists in the suit before the Court.

The Legislatures and Courts of this Country have been quite insistent in correcting inequalities in our society. There are many "Affirmative Action Programs" adopted by the Courts and the Legislatures to improve the lot of disadvantaged persons. Examples of these are many fold including the school busing program, veteran's program, minority training employment program, etc. Consent to Court decrees in cases such as the American Telephone and Telegraph case, Bank of America case, etc. requires special action and expenditures to improve the portion of the lot of women and minorities and require artificial stimulus to employment and payment practices to assist these disadvantaged groups. From the history of the statutory dower section, it is obvious that the Courts and Legislatures considered women, as they related to landholdings, to be a disadvantaged group; and the Utah laws recognizing dower rights in women in creating the statutory dower are historical attempts to recognize the difference between the sexes and create affirmative action programs to protect these people. It would seem ridiculous to strike down a proven and effective affirmative action program with historical roots on one hand, while Courts and Legislatures are insisting that the citizenry adopt and enforce similar programs.

POINT III

SECTION 74-4-3 OF THE UTAH CODE ANNOTATED IS CONSTITUTIONAL AS APPLIED TO THE CASE AT HAND.

Appellants assert, that Section 74-4-3 of the Utah Code Annotated, as amended in 1953, is unconstitutional as applied to Respondents. It is Appellant's contention that Jeanne D. Meyer sold her dower right, and by so doing relinquished any and all rights she had to the property in question. Appellant further contends that since Respondent, Sterling A. Meyer, is still alive Jeanne D. Meyer is precluded from taking her dower right.

Section 74-4-3 of the Utah Code Annotated, provides that a wife must meet certain qualifications before she can claim her dower interest which were discussed herein in Point I of Respondents' Brief. Since her husband acquired the real estate during coverture and Jeanne D. Meyer has not released her rights therein she met all of the requirements under the statute necessary to claim her legal interest in the real estate. Jeanne D. Meyer, along with her husband, Sterling A. Meyer, contracted to sell the subject property to a third party. Appellant contends that this is a relinquishment of her dower rights. Since Jeanne Meyer is to be paid for her dower right, pursuant to the above described sale, there can be little doubt that she is relinquishing her dower right as to purchaser. Further, in being compensated for selling the property, she is being compensated for her dower right, and her dower right is being recognized in the sale to the third party. The Appellant is attempting to take her dower right without Mrs. Meyer's consent and without compensation and the Court should not condone such conduct.

The case law cited by Appellant with respect to this argument does not apply to this case.

The argument that Respondent, Jeanne D. Meyer, has no interest since she is not a widow is ridiculous. Respondent is not asserting that Jeanne D. Meyer is a widow, but that she has an inchoate interest in the real property. Although the interest does not vest until the death of the husband, it clearly exists at this time. Appellant cites the case of In Re Madsen's Estate, 259 Pac. 2d 595, this case is cited for the proposition that where a woman joins in a contract for the sale of land owned by her husband she thereby relinquishes her inchoate right of dower in the real property covered by the contract. This Court in Madsen notes that the right of dower or its statutory equivalent has always been highly favored in the law and the purpose of the dower statute is to assure an interest in the property and support to the widow after the death of the husband and the Court points out:

"...the Court cannot preserve and hold for a widow some thing that she has voluntarily sold or disposed of. Dower cannot be revived at the cost of a wife's liberty to contract. The Court cannot arbitrarily vitiate a sale that has been voluntarily made..." (603)

It is clear that the Court in Madsen, ruled as it did because the wife was seeking to assert her dower right to invalidate a contract in which she had intelligently and willingly entered. This situation is obviously different from the case before the Court where the Appellant seeks to take Mrs. Meyer's interest without consent or compensation.

Appellant's final contention is that the wife's dower interest is in the real property itself and not in the proceeds from any sale or other disposition of the real property. Appellant cites the case of In Re Park's, 31 Utah 255, 87 Pac. 900 (1906).

Appellant has not understood and has improperly reported the Park's case. In the Park case, the widow had the election of claim-
int her interest in the real estate, or the proceeds thereof, or making a claim against her husband's estate for the value that he had received. The Court accurately stated that her interest was in the land not against her husband's estate. The Court stated, page 903, "...her right is against the land against which it constitutes a vested and enforceable interest and encumbrance in her favor." In this case, Mrs. Meyer is claiming her interest in the land. She refused to release her dower interest to the Appellant and insisted that she be paid therefor. Mrs. Meyer has not relinquished her interest in the real estate to the Appellant, but has only stated that she would release her interest to a buyer upon the payment of an amount she determined to be reasonable value of her inchoate interest.

The only matter decided in the Park estate was that the wife's interest was in the land and equal to "one-third of the value of all legal or equitable estates in the real property possessed by the husband at any time during the marriage" (page 902). Mrs. Meyer had an interest in the real estate and consented to the sale of that inchoate interest conditioned only that she be paid therefor. The Appellant seeks to take her consideration which is her portion of the real estate and, as stated in the statute "one-third of the value".

CONCLUSION

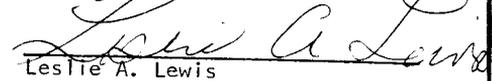
The constitutionality of Section 74-4-3 of the Utah Code Annotated seems clear after an analysis of Utah case law and the recent Supreme Court decisions in the area of Equal Protection and Due Process. Appellants have contended that this statute is unconstitutional as a denial of Equal Protection and Due Process unsupported by any "compelling State interest". The discussion herein of case law, public policy, constitutional authority, statutory law, etc. makes it clear that there is a compelling State interest for the dower provision in the State of Utah. This law which has essentially been in effect throughout the history of Utah, is based on a recognition by the Legislature of the existing sociological conditions in this State. It isn't up to individuals in the State or to the State's Court to determine what is reasonable and what laws fairly comply with the existing sociological conditions in the State. It is within the preview of the State's Legislature to determine what is reasonable and what is in the best interest of the State, as long as this is in keeping with the Constitution.

For generations, the citizenry has accommodated its actions to account for the protection afforded wives by the dower statutes and no pressing need for revolution is indicated.

This action is not brought by a husband or wife claiming unfair or unequal treatment; but by an outsider attempting to benefit at the expense of the marital union.

The Appeal should be dismissed thereby confirming the wife's statutory dower interest as provided by the Statutes of the State of Utah.

Respectfully submitted,


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