1987

Patricia Jean Inabnit v. Henry Leslie Inabnit : Brief of Respondent

Utah Court of Appeals

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IN THE COURT OF APPEALS, STATE OF UTAH

ATRICIA JEAN INABNIT,	)(	
Plaintiff/Respondent	)(	Case No. 870473-CA
vs.	)(	Category 14b
IENRY LESLIE INABNIT,	)(	
Defendant/Appellant.	)(	

BRIEF OF RESPONDENT

APPEAL FROM AN ORDER OF THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR UINTAH COUNTY, STATE OF UTAH
The Honorable Dennis L. Draney, Presiding

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STATEMENT OF FACTS

1. The parties were married on June 22, 1977, in Coeur D'Alene, Idaho. One child was born as issue of the marriage, Leslie Erin Inabnit, currently age 9. (R.1)

2. Respondent worked in Appellant's business during most of their marriage. Her efforts contributed to the value of the businesses and to Appellant's ability to earn income. (TR.89,93-94)

3. During the marriage, the parties acquired certain real property from JSB in Montana and resold it to Collins on contract. The resale is referred to as the Collins contract. The contract provided that Collins would pay approximately $17,000. $12,000 remained owing to the original seller, JSB, but did not become due until JSB could furnish good title. As of the date of the trial, August 31, 1987, the title had still not been cleared and the $12,000 was not due to JSB. (TR.75 & 77)

4. When the parties moved from Montana to Vernal, Utah, the parties had no assets to speak of and considered filing for bankruptcy. (TR.46, 48) All assets that the parties now have have been maintained by payments from marital funds. The parties made good money for several years in Vernal. (TR.48)

5. On December 15, 1986, a deposit of $17,320.86 was made in an account reflecting the Collins payment. (TR.77) Of this Appellant stated a total of $12,000 went into the car business. (TR.59)

6. On January 26, 1987, $11,000 was withdrawn and investe in the mobile home lot and car business. (TR.78) On the day th Amended Verified Divorce Complaint was filed, May 28, 1987 another $4,000 was withdrawn and on May 29, 1987, another $3,00 was withdrawn and both invested in the car business and mobil home lot. (TR.78-79)

7. In March of 1987, the balance in one account was $7,52 and on April 17, 1987, the balance in another account wa $14,368.

8. Respondent worked in Vernal even after Appellant tol her that she no longer had to work because the mobile home lo was paying all of their expenses. (TR.90,93)

9. In a property proposal Appellant admitted there wa $18,000 equity in the car business. (TR.84)

10. During the marriage, the parties purchased a 1987 Dodge which Appellant agreed to pay beginning June of 1987 in lieu of additional child support. (TR.56)

11. Respondent received about $9,500 inheritance, paid $950 in tithing, $1,700 on Appellant's separate property, $1,300 on Appellant's share of taxes and the rest of the separate funds generally went into the marriage. (TR.96,98-100)

SUMMARY OF ARGUMENTS

1. The trial court did not abuse its discretion when it found the car business was worth $18,000 because, the Appellant admitted there was $18,000 equity, Appellant commingled funds he has attempted to trace, Appellant invested a recent $11,000 plus

4,000 plus $3,000 into the business, there was good will ssociated with the business, and other factors the court weighed n trying to balance the equities between the parties.

2. The trial court did not abuse its discretion when it ound the $3700 past due on sales tax was a common business xpense like many other common expenses not discussed by ppellant. The court properly refused to diminish the car usiness value by the sales tax amount.

3. The trial court did not abuse its discretion when it equired Appellant to pay for the 1987 Dodge because Appellant ad agreed to pay and the court has "considerable discretion" in djusting the equities and is not "rigidly bound to the rules of limony".

ARGUMENT

POINT I

THE TRIAL COURT PROPERLY FOUND THAT THE CAR BUSINESS WAS WORTH $18,000 AND PROPERLY AWARDED RESPONDENT ONE-HALF THAT VALUE.

The trial court is permitted considerable discretion in etting values and adjusting the financial equities of the arties. The court can consider commingling of monies, the fact hat debts are not due, the amount of money available in ifferent accounts, the amount of labor and money invested into a usiness, admissions of the parties and the parties' abilities to arn income. See Petersen v. Petersen, 737 P.2d 237 (Utah 1987); ee v. Lee, 744 P.2d 1378 (Utah App. 1987); Alexander v. lexander, 737 P.2d 221 (Utah 1987).

In Petersen, the Supreme Court stated the rule:

> Generally, the trial court is permitted considerable discretion in adjusting the financial and property interests of the parties to a divorce action, and its determinations are entitled to a presumption of validity. And although appellate courts may weigh the evidence and substitute their judgment for that of the trial court in divorce actions, as the Supreme Court stated in Turner v. Turner, 649 P.2d 6 (Utah 1982), "this court will not do so lightly and merely because its judgment may differ from that of the trial judge. A 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." (Citations omitted)

In order to disturb a ruling regarding valuation of marital assets and division of assets this court must find a "clear abuse of discretion." See Lee.

The district court found as follows:

> The court finds that ... there is $18,000 equity in the automobile business. That the $12,000 [a debt owed to JSB and not related to the car business] is not an offset against that equity, that not being connected with the car business.

The parties purchased some real estate sometime in 1977-198 from JSB (TR.75), this property was resold to Collins. Whe Collins paid, $17,000 was deposited in the bank on December 15 1986. On January 26, 1987, $11,000 from the same account wa withdrawn and put into the car business and mobile home lot. O May 28, 1987, the same date the Amended Verified Divorc Complaint was filed, the Appellant withdrew another $4,000 whic was put into the business. Again on May 29, 1987, $3,000 wa withdrawn and put into the car business. In March of 1987 on account had $7,528 and another $14,368. Although there wer enough funds around, none of these funds were used to pay off th

ebt owing to JSB on the Collins property and in fact the emaining balance on the property had not fallen due as the title ad not been cleared up.

The funds went into the mobile home lot and the car usiness, yet the Appellant has argued that the entire debt be educted only from the equity in the car business. Appellant ries to keep separate money that was commingled into two usinesses and not maintained separate and apart for payment of a pecific debt. Appellant has tried to pick and choose debts to educt and pick and choose assets from which to deduct debts.

The court had other facts upon which it could base its uling. The court considered evidence before it of income from he business, debts, assets, receivables, donated work by ppellant and Respondent, and other factors. The Appellant tated he made "good money" for several years in Vernal. (TR.48) here was evidence that the mobile home park was meeting all of he parties expenses and that Respondent did not have to work. TR.91 & 93)

The Appellant admitted that the car business had "good ill". (TR.42) On a "property proposal", the Appellant admitted hat he had $18,000 equity in the car business. (TR.84)

Appellant was able to make more income than Respondent. espondent had no skills in the car business. The court balanced ll of the different values, assets, receivables, debts, bilities to earn, and other factors brought out in the trial and ashioned a fair and proper award which balanced the equities as

best the court could. The trial court's apportionment should nc be disturbed "unless it works such a manifest injustice c inequity as to indicate a clear abuse of discretion."

The Appellant should not be allowed to select one healt debt unrelated to the car business and argue that it decreas the value of the car business. This is especially so when t expense is not yet due because title to property has not be cleared.

In Alexander, the husband argued that the court should ha decreased the value of the husband's profit-sharing plan account for income tax liability that could be imposed in t future. The court held that it would not disturb the tri court's valuation and the decision was within the court discretion. The court cited Gilbert v. Gilbert, 628 P.2d 1((Mont. 1981).

POINT II

THE TRIAL COURT WAS PROPER IN NOT DEDUCTING THE AMOUNT OF PAST DUE SALES TAXES BECAUSE THE DEBT WAS A COMMON BUSINESS EXPENSE.

The common business expense of sales taxes is more unrela than the $12,000 debt to JSB discussed above. The same argume apply. The sales tax expense should have no greater significa to the judge than any other continuing business expense. If were to continue with Appellant's argument, we would have allow a year of business expenses allowed on Appellant's inc tax return.

POINT III

THE TRIAL COURT WAS PROPER IN AWARDING PERMANENT ALIMONY AS A PART OF THE PROPERTY SETTLEMENT.

The court ordered the Appellant to pay a debt of the arriage. Although, the court called this payment of the debt limony, it has all of the markings of an adjustment in the roperty division. The court specifically considered whether or ot to terminate the monthly car payments upon remarriage. The ranscript provides:

> The plaintiff is awarded alimony in the amount of the balance due on the automobile contract, which apparently is about twenty-eight or twenty-nine payments of $200.42 each.
>
> ....
>
> MR. MCRAE: Terminable on death or remarriage?
>
> THE COURT: No. That is due on that automobile. He is ordered as alimony to pay off that automobile.

The court has broad discretion in fashioning a division of property and alimony. See Lord v. Shaw, 682 P.2d 853 (Utah 1984); Clausen v. Clausen, 675 P.2d 562 (Utah); Petersen, cited above; Alexander, cited above.

In Petersen, the wife worked during husband's schooling in order to put husband through school. The court gave the wife an award based upon her contribution to the husband's advanced degree. The trial court characterized the husband's advanced degree as property instead of alimony in order to avoid the termination of an award upon the wife's remarriage.

The court analyzed different approaches to awarding a spouse a portion of the value of an advanced degree and held that the

"criteria for an award of support in Utah are not so rigid" as to cause a harsh result. The Supreme Court found that the trial "court chose to balance the inequalities between the parties partly with the alimony award." The Court sustained a finding of alimony which did not terminate upon remarriage and which worked to rehabilitate the wife or reimburse the wife for her contribution.

The Supreme Court in Petersen further justified its decision:

> There is no fixed formula upon which to determine a division of properties, it is a prerogative of the [trial] court to make whatever disposition of property as it deems fair, equitable, and necessary for the protection and welfare of the parties. (p.242)

The court in Alexander, awarded no alimony, but ordered the husband to pay the couple's outstanding debts in lieu of alimony. Whether the court orders the husband to pay a debt and calls it permanent alimony or whether the court orders the husband to pay a debt and calls it part of the property division makes little difference. The court is adjusting the "inequalities between the parties."

CONCLUSION

The trial court is allowed considerable discretion in fashioning out support and a property division that fairly meets the equities of the parties. The trial court is present to view and observe the demeanor of witnesses and to best determine the

ıcts and the equities that must be adjusted.

The Respondent respectfully requests this Court uphold the ward of the trial court.

Dated this 6th day of April, 1988.

LARRY A. STEELE
Attorney for Respondent

CERTIFICATE OF DELIVERY

I do hereby certify that I caused to be hand-delivered four 4) true and correct copies of the foregoing Brief of Respondent o Harry H. Souvall and Robert M. McRae, of McRae & DeLand, ttorneys for Appellant, 209 East 100 North, Vernal, Utah 84078.

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