

1988

Joan (Olearain) Mattes, a/k/a Joan Emmer v. David Lee Olearain, Personal Representative of Andrew Olearain, deceased : Reply Brief

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 880138-CA IN THE SUPREME COURT
OF THE STATE OF UTAH

JOAN (OLEARAIN) MATTES,
a/k/a JOAN EMMER,

Plaintiff-Respondent,

vs.

DAVID LEE OLEARAIN,
PERSONAL REPRESENTATIVE OF
ANDREW OLEARAIN, DECEASED,

Defendant-Appellant.

Case No. 860393

14 B

88-0138-CA

REPLY BRIEF OF APPELLANT
Appeal from the Order and Judgment of the
Third Judicial District Court of Salt Lake County
Honorable Jay E. Banks

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Clerk, Supreme Court, Utah

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JOAN (OLEARAIN) MATTES,
a/k/a JOAN EMMER,
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Utah Code Annot. §30-1-17 (1971)	2,6

SUMMARY OF ARGUMENTS

The legal theories advanced by Plaintiff are incorrect applications of the Law as it existed at the time of trial.

There was no marriage between Plaintiff and decedent. There were no grounds established or facts alleged or proven, which would support the imposition of a constructive trust or setting aside a deed transferring real property located at 4145 Barker Road, Taylorsville, Utah (hereinafter cited as "Barker Road property") from decedent.

There was no legally recognizable relationship to base an award of any property in decedent's estate to Plaintiff.

The findings of the trial court were not supported by clear and convincing evidence.

ARGUMENT

I. NO RECOGNIZABLE RELATIONSHIP EXISTED BETWEEN DECEDENT AND PLAINTIFF TO BASE AN ORDER AWARDING PLAINTIFF AN EQUITABLE DIVISION OF PROPERTY IN DECEDENT'S ESTATE.

Plaintiff claims to be entitled to a division of property in appellant's estate and argues that such division should be governed by equitable principles. Plaintiff's theories are: (A.) Equitable property division in the marital context and, (B.) Imposition of constructive trusts. (Plaintiff's Brief at 9-12).

Plaintiff cites "U.C.A. Sec. 30-1-7.2" (sic) as the basis for a division of property in a marital setting. Presumably Utah Code Annot. §30-1-17.2 (1971) is meant as the correct section.

Utah Code Annot. §30-1-17.2 (1971) is a subsection of Utah Code Annot. §30-1-17(1971) entitled "Action to determine validity of a marriage - Judgment of validity or annulment". The first sentence states that it applies "[w]hen there is doubt as to the validity of a marriage ..." Likewise, Utah Code Annot. §30-1-17.2 concerns the accumulation of property or obligations "subsequent to the marriage...". There was no marriage in the instant case. (Transcript 5, 40, 41, hereinafter cited as "Tr.").

The cases cited by Plaintiff in support of her theory of equitable property division in a marital context are based on the existence of a marriage. The cases are all distinguishable from this action on the facts as follows:

In Maple v. Maple, 566 P.2d 1229 (Utah, 1977), this court affirmed the award of a \$1,200 settlement in an annulment of a marriage. 566 P.2d at 1230. The award was to provide money to plaintiff who was a citizen of Thailand so as to enable her to return there. Id. There is no similar need, nor was there a marriage, in the instant case.

Edgar v. Wagner, 572 P.2d 405 (Utah, 1977) was an action to partition a house and business assets. There was a marriage which was later invalidated. 572 P.2d at 406. The court below proceeded in contract rather than equity. Id. The house was purchased jointly and payment made from a business account. Plaintiff shared in the operation of the business. Id. Based on these facts, which again are not present in the instant case, this Court upheld the award to one-third interest in the house and a cash settlement to plaintiff. 572 P.2d at 407.

In Parks V. Zions First National Bank, 673 P.2d 590 (Utah, 1983), this Court upheld the imposition of a constructive trust in a factual situation in which a marital relationship existed. Speaking through Chief Justice Hall, the Court found:

[t]his evidence clearly and adequately supports the trial court's finding that plaintiff's labors and earnings were responsible for the acquisition of a substantial portion of the marital estate. It is therefore appropriate to conclude that plaintiff had an "equitable interest" in the subject property, and that the total inclusion of such property in the estate of Mrs. Parks constituted an "unjust enrichment" of her estate. Accordingly, we hold that the trial court's imposition of a constructive trust upon the estate of Mrs. Parks was justified, at

least as to that portion representing plaintiff's proven interest therein.

Parks, 673 P.2d at 600.

In our case, Plaintiff was not, through her labors or earnings, responsible for a "substantial portion of the marital estate." Further, there was no marriage, and no "marital" estate to be divided.

Plaintiff's reliance upon this first theory (marital relationship) is misplaced. As discussed, Utah Code Annot. §30-1-17.2 (1971) is inapplicable as are the cases cited. The award of property by the trial court, imposition of a constructive trust, and setting aside the deed conveying the Barker Road property was error.

The several arguments propounded by Plaintiff regarding the existence of a confidential relationship and grounds for the imposition of a constructive trust are discussed in the Brief of Appellant. A recent case which has come to Defendant's attention is Hiltsley v. Ryder, 59 Utah Adv. Rep. 35(1987). It concerns the imposition of a constructive trust in a marital relationship. While the majority did not reach the merits of the trust imposition, Justice Zimmerman in his concurring opinion discusses the law of constructive trusts and the application of Section 160 of the Restatement of Restitution.

Justice Zimmerman stated that the burden of proof required of the proponent of a constructive trust "cannot be met by simply

showing that there was a transaction between the parties apparently to the benefit of one and that they had a close family relationship." Hiltsley, 59 Utah Adv. Rep. at 37. He cited Matter of Estate of Coffin, 137 Ariz. 480, 671 P. 2d 921 (Ariz. Ct. App., 1983) for the proposition that

[i]n order to impose a constructive trust, in addition to the family relationship, there must be shown [the grantor's] age and infirmity on the one hand, actual dominance on the part of the grantee, and established course of management of the grantor's affairs by the grantee, or other similar facts making it inequitable to allow the grantee to prevail.

Matter of Estate of Coffin, 137 Ariz. at 482, 671 P2d at 923.

Justice Zimmerman found nothing in the record of Hiltsley to support a finding of constructive trust particularly in light of the clear and convincing evidentiary standard required. 59 Utah Adv. Rep. at 37. He also concluded that the "imposition of a constructive trust was based on nothing more than conjecture" and advised the trial court that "it erred in finding a constructive trust on the state of the facts before it." Id.

The case at bar is likewise devoid of evidence to support a constructive trust. There was no finding of a confidential relationship, nor could there have been. The trial record is replete with evidence contrary to that required by Hiltsley. Particularly the Barker Street property transaction which was admitted by Plaintiff to be of her own free will. (Tr. 9, 10, 42). The trial court erred in setting aside the deed and imposing a constructive trust.

II. THE FINDINGS OF THE TRIAL COURT WERE NOT BASED ON CLEAR AND CONVINCING EVIDENCE.

Plaintiff argues that all of the evidence presented by her was uncontroverted and the findings of the trial court were based on clear and convincing evidence. This assertion is incorrect. An example of how erroneous Plaintiff's argument is, is evidenced by the finding of a relationship creating a common-law marriage when it was not recognized in Utah.

The trial judge refused to hear testimony of a competent witness concerning decedent's views of the relationship and intentions concerning the property. (Tr. 61-65). This testimony would have directly contradicted Plaintiff's testimony on all points. Id. As discussed in Appellant's brief, this testimony was admissible and should have been heard. It was error of the court to exclude it.

Plaintiff, in further support of her position, cites a number of cases and one statute, Utah Code Annot. §30-1-17 (1971). She does not discuss the elements which satisfy this evidentiary standard, such as fraud, duress or undue influence.

The cases cited by Plaintiff and the statute again all deal with legally recognized marital relationships. Parks, Maple, Edgar and Utah Code Annot. §30-1-17.2 (1971) have already been distinguished on the facts and application from this case.

Plaintiff cites Burke v. Burke, 733 P.2d 133 (Utah, 1987) in

support of her position that she is entitled to a share of Decedent's estate. Burke was a divorce action where the parties had been married for approximately thirteen years. 733 P.2d at 134. In Burke, Defendant claimed the court committed error in not awarding him an interest in property that had been inherited by his wife during their marriage. Without agreeing that Burke applies, the only value it appears to have, in an examination of our facts, is the court's discussion of equitable property division in a divorce setting. That court stated that

[t]he factors generally to be considered are the amount and kind of property to be divided; whether the property was acquired before or during the marriage; the source of the property; the health of the parties; the parties' standard of living, respective financial conditions, needs and earning capacities; the duration of the marriage; the children of the marriage; the parties' ages at time of marriage and of divorce; what the parties gave up by the marriage; and the necessary relationship the property division has with the amount of alimony and child support to be awarded. Of particular concern in a case such as this is whether one spouse has made any contribution toward the growth of the separate assets of the other spouse and whether the assets were accumulated or enhanced by the joint efforts of the parties.

773 P 2d. at 135.

Implicit in the court's analysis is, of course, the fact that a marital relationship existed. Assuming arguendo that such a relationship did exist, an examination of the relevant factors illustrates the inequity of the lower court's order in awarding Plaintiff an interest in the West Leisure property. First of all, the parties' relationship was of a relatively short duration.

The residence on West Leisure was acquired by the Decedent during his first marriage. It was there where he raised his children, his heirs at law. Plaintiff made no contribution toward the purchase, growth in value or enhancement in value of the West Leisure residence. Our action does not deal with a divorce and is distinguishable from Burke on the facts, application of law and holding.

Burnham v. Burnham, 716 P.2d 781(Utah, 1986), also relied upon by Defendant again deals with a divorce and property settlement pursuant to a decree of divorce. In that case, the parties were married for fifty-one years. 716 P. 2d at 781. The facts of the instant case are not similar to those in Burnham. There was no marriage, nor was there a long-term relationship approaching that found in Burnham.

The Burnham case cited by Plaintiff is helpful in that it accurately states the burden placed on Defendant in appealing a property division as follows:

[a] party appealing from a property division has the burden to prove that there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error; or the evidence clearly preponderated against the finding; or such a serious inequity has resulted as to manifest a clear abuse of discretion.

716 P.2d at 782.

Defendant is confident that this burden has been met. The record clearly reflects there was at least a misunderstanding or misapplication of the law, if not a clear abuse of discretion,

when the lower court found and relied on a common law marriage to support an order setting aside a deed and dividing property of decedent's estate. The trial court erred when it set aside that deed and imposed a constructive trust on the West Leisure and other property held by the estate of decedent without finding any elements required to impose such a trust.

III. THE ORDER OF THE TRIAL COURT DOES NOT DISTRIBUTE THE PROPERTY IN DECEDENT'S ESTATE EQUITABLY BETWEEN THE PARTIES.

Plaintiff believes that the order of the trial court was a fair and reasonable distribution of the assets in which she and decedent had an interest. Yet she admits she held no right, title or interest in the Barker Road property after she transferred it to decedent, (Tr. 10, 42, 45) or in the West Leisure Circle property (Tr. 42-44).

Plaintiff cites her own uncontroverted testimony and Burke to support her position. Burke has already been distinguished from the instant case in section II of this brief. The reason Plaintiff's testimony was uncontroverted was because the trial court erroneously refused to hear evidence which would have contradicted it. This issue is discussed in the Brief of Appellant.

CONCLUSION

Plaintiff's argument and the lower court order are contrary to the law of this State. There was no marriage nor were there any findings to support an order setting aside the Barker Road

deed or the imposing a constructive trust on property of decedent's estate. The deed transferring the Barker Road property to decedent must be reinstated and the constructive trust lifted from the property of the estate of decedent.

DATED this _____ day of August, 1987.

JERRALD D. CONDER
Attorney for Appellant

IN THE SUPREME COURT
OF THE STATE OF UTAH

JOAN (OLEARAIN) MATTES,)	CERTIFICATE OF SERVICE
a/k/a JOAN EMMER,)	
)	
Plaintiff-Respondent,)	Case No. 860393
)	
vs.)	14 B
)	
DAVID LEE OLEARAIN,)	
PERSONAL REPRESENTATIVE OF)	
ANDREW OLEARAIN, DECEASED,)	
)	
Defendant-Appellant.)	

On this_____ day of August, 1987, the Reply Brief of Appellant was served upon the following party by delivering four true and correct copies thereof by hand to Dwight L. King, Attorney for Respondent, at Suite 205, Sentinel Building, 2121 South State Street, Salt Lake City, Utah 84115.

A D D E N D U M

eding \$1,000 or be both so fined and imprisoned.

1953

30-1-16. Misconduct of county clerk - Penalty.

Every clerk or deputy clerk who knowingly issues a license for any prohibited marriage shall be punished by confinement in the state prison for a term not exceeding two years, or by fine in any sum not exceeding \$1,000, or by both such fine and imprisonment, and upon conviction shall be removed from his office by the judgment of the court before which his conviction is had; and if he willfully issues a license contrary to his duty as herein prescribed, he shall be fined not exceeding \$1,000.

1953

30-1-17. Action to determine validity of marriage

- Judgment of validity or annulment.

When there is doubt as to the validity of a marriage, either party may, in a court of equity in a county where either party is domiciled, demand its avoidance or affirmance, but when one of the parties was under the age of consent at the time of the marriage, the other party, being of proper age, shall have no such proceeding for that cause against the party under age. The judgment in the action shall either declare the marriage valid or annulled and shall be conclusive upon all persons concerned with the marriage.

1971

30-1-17.1. Annulment - Grounds for.

A marriage may be annulled for any of the following causes existing at the time of marriage:

(1) when the marriage is prohibited or void under chapter 1 of Title 30.

(2) upon grounds existing at common law.

1971

30-1-17.2. Action to determine validity of marriage - Orders relating to parties, property and children - Legitimacy of children.

If the parties have accumulated any property or acquired any obligations subsequent to the marriage, or there is a genuine need arising from economic change of circumstances due to the marriage, or if there are children born, or expected, the court may make temporary and final orders, and subsequently modify the orders, relating to the parties, their property and obligations, the children and their custody and visitation, and the support and maintenance of the parties and children, as may be equitable. The children born to the parties after the date of the marriage, shall be deemed the legitimate children of both of the parties for all purposes.

1971

30-1-17.3. Age as basis of action to determine validity of marriage - Refusal to grant annulment.

If an action to determine the validity of a marriage is commenced upon the ground that one or both of the parties were prohibited from marriage because of their age, in addition to all of the foregoing provisions, the following shall apply: The provisions of this code regarding marriage by a person or persons under the age of consent to the contrary notwithstanding, the court may, in its discretion, refuse to grant an annulment if it finds that it is in the best interest of the parties or their children, to refuse the annulment. The refusal shall make the marriage valid and subsisting for all purposes.

1971

30-1-17.4. Action for annulment or divorce as alternative relief.

Nothing herein shall be construed to prevent the filing of an action requesting an annulment or a divorce as alternative relief.

1971

30-1-18 through 30-1-25. Repealed.

1953

As used in this act, the word "obligor" shall mean a person who is obligated to support a minor child or children under a temporary or permanent order or judgment of any court or administrative body.

1971

Note: Sections 30-1-26 through 30-1-29 were declared unconstitutional by the Third Judicial District Court, Salt Lake County, and are not enforced pursuant to Utah Attorney General's opinion letter dated May 22, 1978.

30-1-27. Marriage by person under prior support obligation - Unlawful to apply for license without complying with act.

It shall be unlawful for an obligor to marry or apply for a marriage license in this state or, if the obligor is domiciled in this state, to marry or apply for a marriage license in another state, without first complying with Section 30-1-28.

1969

30-1-28. Marriage by person under prior support obligation - Verified statements - Court order required if delinquent in payments.

(1) At the time of filing the marriage license application, the obligor shall file with the clerk a verified statement, signed by the person whom the obligor proposes to marry, stating that he or she understands the nature of the support obligation of the obligor and any additional information prescribed by the district judges.

(2) At the time of filing the marriage license application, the obligor shall file with the clerk a verified statement signed by the person, agency, institution or other entity having custody of the minor children, stating that the obligor is not then in default in the support obligation and any additional information prescribed by the district judges, or

(3) If the obligor is unable to file the statement prescribed under Subsection (2), the obligor shall file a certified copy of a court order authorizing the issuance of a marriage license to the obligor. A petition for the order shall be upon forms prescribed by the district court judges and furnished by the clerk of the court and shall be filed with the district court in the county where (a) the court order or judgment of support was rendered, if in Utah; or (b) the minor children are domiciled, if in Utah; or (c) the obligor is domiciled, if in Utah; or (d) if none of the foregoing is applicable, the county where the obligor is making application for a marriage license.

The court shall order a hearing upon the petition and the clerk shall cause a copy of the petition to be personally served upon the person, agency, institution or other entity having custody of the minor children unless the court, for good cause, shall waive service.

The court shall consider factors relating to the petitioner's past performance and future ability to comply with the prior court order in approving or denying the petition.

(4) A refusal of the district court to issue an order authorizing the issuance of a marriage license to the obligor shall be an appealable order. A prior refusal shall not prejudice the right of the obligor to file subsequent petitions showing that the circumstances of the obligor have changed and the obligor is able to meet the support obligation.

1969

30-1-29. Marriage by person under prior support obligation - Leaving state to marry a misdemeanor.

Any domiciliary of this state to whom the provisions of this section apply shall be guilty of a