

1978

Dixie Roblek LeBreton v. Thomas Edward LeBreton : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

DIXIE ROBLEK LeBRETON,)
)
 Plaintiff and)
 Respondent,)
) Case No. 15923
 -vs-)
)
 THOMAS EDWARD LeBRETON,)
)
 Defendant and)
 Appellant.)

APPELLANT'S BRIEF

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FILED

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IN THE SUPREME COURT
OF THE STATE OF UTAH

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)
Plaintiff and
Respondent)

-vs-

)
Case No. 15923
)

THOMAS EDWARD LeBRETON,

)
Defendant and
Appellant)
)

APPELLANT'S BRIEF

APPEAL FROM A JUDGMENT OF THE
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
THE HONORABLE DAVID K. WINDER, DISTRICT JUDGE

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IN THE SUPREME COURT
OF THE STATE OF UTAH

DIXIE ROBLEK LeBRETON,)
 Plaintiff and)
 Respondent,)
)
-vs-) Case No. 15923
)
THOMAS EDWARD LeBRETON,)
)
 Defendant and)
 Appellant.)
)
)

APPELLANT'S BRIEF

STATEMENT OF NATURE OF CASE

Appellant brought Order To Show Cause against Respondent to enforce sale of real property and divide proceeds derived from the sale of the real property pursuant to the terms of a Decree of Divorce in which Respondent and Appellant were parties.

DISPOSITION IN THE LOWER COURT

The appellant's Order To Show Cause was heard in the Third Judicial District Court of Salt Lake County by the Honorable David K. Winder. From an adverse Order entered against him in favor of the Plaintiff and Respondent, the Defendant and Appellant prosecutes this appeal.

RELIEF SOUGHT ON APPEAL

Appellant, Thomas Edward LeBreton, seeks a reversal of the Order entered by the trial court, an Order directing a sale of the subject real property, payment of appellant's equity and recovery of costs.

STATEMENT OF FACTS

On April 28, 1969, the Respondent and Appellant appeared in the Third Judicial District Court of Salt Lake County for trial of their divorce action before the Honorable Aldon J. Anderson.

At the divorce trial, Appellant dismissed the Answer and Counterclaim which he had filed (H.D.R-2) and Appellant and Respondent resolved the remaining issues between them concerning child custody, child support, alimony and disposition of their real property by oral stipulation into the record of the divorce trial (D.H.R.-2 and 3). Respondent was granted a divorce from Appellant incorporating the terms of the oral stipulation of Respondent and Appellant into the Decree of Divorce (D.H.R-6 and 7).

Concerning the real property of the Respondent and Appellant, consisting of a home located at 6723 South 2445 East, Salt Lake City, Utah, the Decree of Divorce stated as follows:

"With regard to the house, it will be sold upon her remarriage or when the home is no longer needed for the minor children, at which time the home will be sold and the equity as of the date of this divorce will be divided equally among the parties with the further stipulation that the Plaintiff shall have all of the principal payments made by her after the date of the divorce before the costs of sale and then the remaining equity will be divided equally."

In February, 1976, Appellant filed his Affidavit In Support Of Order To Show Cause seeking to have the real property at 6723 South 2445 East, Salt Lake City, Utah sold and one-half ($\frac{1}{2}$) of the sale proceeds distributed to him (Appellant) after first deducting the amount of principal payments made by Respondent since the entry of the Decree of Divorce and costs of the sale. Sale of the subject real property was not effected by the Order To Show Cause hearing based upon Appellant's Affidavit filed as aforesaid in February, 1976.

In June, 1977, Appellant again filed his Affidavit In Support Of Order To Show Cause seeking to have the real property at 6723 South 2445 East, Salt Lake City, Utah sold and one-half ($\frac{1}{2}$) of the sale proceeds distributed to him (Appellant) after first deducting the amounts of the principal payments made by Respondent since the entry of the Decree of Divorce and costs of the sale. An Order To Show Cause hearing was held April 14, 1978 pursuant to Appellant's Affidavit In Support Of Order To Show Cause filed in June, 1977.

ARGUMENT

Point I

THE TRIAL COURT FAILED
TO INTERPRET THE LANGUAGE
OF THE DECREE OF DIVORCE AS
WAS INTENDED BY THE PARTIES.

The interpretation of the following language of the Decree of Divorce is clearly the focal point in deciding the case at bar:

- "the home will be sold and the equity as of the date of this divorce will be divided equally among the parties with the further stipulation that the Plaintiff shall have all of the principal payments made by her after the date of the divorce before the costs of sale and then the remaining equity will be divided equally."

At the Order To Show Cause hearing before the Honorable David K. Winder, the Respondent indicated that her understanding at the time of the divorce was that the foregoing language meant that the equity in the subject real property would be divided between her and Appellant as of the date of the Decree of Divorce, after payment to her (Respondent) the amount she had paid upon the principal to the date of sale (R-4,5,6,7 and 8). On the other hand, the Appellant indicated that his understanding at the time of the divorce was that the equity in the property would be divided between him (Respondent) and Appellant as of the time of the sale of the property, after payment to Respondent of that sum which she had paid upon the principal since entry of the Decree of Divorce (R-4,5,6,7 and 8).

Now, it is the rule in divorce proceedings, which proceedings are in equity, that this Court will review the facts and weigh the evidence and may substitute its judgment for that of the trial court. Graziano v. Graziano, 7 Utah 2d 187, 321 Pa 2d 931. But, the facts and evidence before the trial court as presented by the Respondent and the Appellant was diametrically opposite of each other. It would seem, then, that this Court, in the exercise of its equity powers in divorce matters, might well resolve the conflict of facts and evidence which Respondent and Appellant presented to the trial Court. And, might that conflict be best resolved by a review of the transcript of the Divorce Hearing before the Honorable Aldon J. Anderson?

In stating the stipulation of Respondent and Appellant into the record at the Divorce Hearing before the Honorable Aldon J. Anderson, Respondent's counsel stated, "and, also, that the Plaintiff have the possession of the home of the parties until she remarries or until such time as the children no longer require the home, at which time it should be sold and the equity divided with the stipulation that anything that the Plaintiff pays from now on onto the principle (sic) payments would be disbursed to her before any costs of the division of the equity so that anything she pays in would come out first so she gets that all back." (D.H.-3).

CONCLUSION

This Court should Order that the real property of Respondent and Appellant located at 6723 South 2445 East, Salt Lake City, Utah be sold and after payment of the costs of the sale and return to Respondent of the sum by which she has reduced the principal amount owing upon the subject property from the time of entry of the Decree of Divorce to the time of sale, the proceeds of the sale be divided equally between Respondent and Appellant, in keeping with the real intent of the parties. Costs should be awarded to Appellant.

Respectfully submitted,



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MAILING CERTIFICATE

The undersigned, Don Blackham, does hereby certify that two (2) true and correct copies of the foregoing Appellant's Brief was mailed, this 6th day of September, 1978, postage prepaid, and addressed to Respondent's counsel as follows:

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