

1988

Woodard v. Woodard : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 880644 UTAH COURT OF APPEALS

OLIVE M. WOODARD,)

Plaintiff/Respondent,)

vs.)

Case No. D-79-1766

KARL WOODARD,)

Defendant/Appellant.)

880644-CA

#15

BRIEF OF APPELLANT

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
JUDGE KENNETH RIGTRUP

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FILED

MAY 3 1989

COURT OF APPEALS

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UTAH COURT OF APPEALS

OLIVE M. WOODARD,)	
Plaintiff/Respondent,)	
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Defendant/Appellant.)	

BRIEF OF APPELLANT

JURISDICTIONAL STATEMENT

The Utah Court of Appeals has jurisdiction to hear this case pursuant to Utah Code Annotated, Section 73-2(a)-(3), (2)(g), as this is an appeal from the Third Judicial District Court involving domestic relations, specifically, a divorce and property settlement.

NATURE OF PROCEEDINGS

This is an appeal from a Bench Trial for the determination of a property division in divorce proceedings, subject to an Order of the Court setting aside the previous division of property of the previous Order regarding division of property in a prior divorce proceeding. As the parties are an older couple and a Decree of Divorce was entered on February 23, 1982, in which Order, the property division provisions were set aside. The only issue before the Court relates to the property division.

STATEMENT OF ISSUES

1. Was the Court's division of the marital assets inequitable?
2. Did the Court err in providing that Defendant receive his share of the property, only upon the death of Plaintiff.

STATEMENT OF DETERMINATIVE STATUTES

This appeal is from an Order in a Divorce proceeding dividing the marital assets which is determined by U.C.A. Section 30-3-5-1, to wit:

"(1)When a decree of divorce is rendered the court may include in it equitable orders relating to children, property and parties"

STATEMENT OF THE CASE

1. Plaintiff and Defendant were married on August 1, 1933.
(Findings, 1982, p. 2.)
2. A Decree of Divorce was entered on February 23, 1982, and the provisions regarding property awarded Plaintiff's interest in two (2) payments on a contract involving Fenton Avenue Properties, and a one-half (1/2) interest in the amounts to be received from the Stratler Contract after a certain amount for temporary spousal support was paid from those payments, and to Defendant, awarded Defendant the Fruitland properties and the remaining one-half (1/2) of the Stratler Avenue Properties Contract. (Decree of Divorce, 1982.)
3. On May 25, 1984, the Court set aside said property division based on the fact that Plaintiff's interest in the

contract was lost in the Bankruptcy Court. (Transcript, p. 247.)

4. Neither of the parties did nothing to save property in bankruptcy or to protect the interest. (Transcript, p. 73.)

5. Defendant was burned February 28, 1971, and received a personal injury award in the net amount of \$64,000.00, in approximately 1972, of which he used some of the funds to purchase the Fruitland property for a cost of \$24,000.00. (Transcript, p. 81-84.)

6. Defendant acquired the Gregson property and the Bryan Avenue property in July and August of 1981, subject to existing mortgages and with very, if any, equity interest in each of the properties at that time. (Transcript, p. 119-120.)

7. At about the same time, Defendant acquired title to Claybourne property, subject to an existing mortgage, with little or no equity in said property. During the period of time Defendant has had title to the Gregson, Bryan Avenue and Claybourne properties, he has made various improvements to said properties. (Transcript, pp. 158-168.)

8. The Claybourne property was subsequently sold and their remains a contractual interest in said property in the amount of approximately \$20,000.00.

9. There exists unrecorded lien claims by one, Norma Evans, wife of Robert Evans, deceased, against the properties of Claybourne, Bryan Avenue and Gregson. (Transcript, p. 179.)

10. Both parties are currently living under the poverty level. (Transcript, p. 222.)

11. Plaintiff receives the sum of \$193.00 per month Social Security, and \$165.00 per month SSI, for a total amount of \$358.00 per month. (Transcript, p. 196-197.)

12. Defendant receives Social Security in the amount of approximately \$605.00 per month. (Transcript, p. 144.)

13. Defendant has need of further medical surgery on his eyes to correct vision problems associated with his burn accident. (Transcript, p. 230.)

14. The monies due under the Stratler contract are on file with the Clerk's office, and placed in an interest bearing account in the sum of approximately \$20,667.96. (Transcript, p. 183.)

15. On a Bench Decision, the Court gave Plaintiff the authority to liquidate the Gregson, Bryan Avenue and Claybourne properties, less reasonable, demonstrable claims, the net proceeds to be placed in an account with the Stratler property monies already on file with the Clerk's office, to be held for a monthly distribution to Plaintiff in the amount of \$205.00, plus any replacement of Supplemental Security Income, if said supplemental income was lost due to this Order. The balance to be held intact, and not otherwise reimbursed without further order of the Court. (Transcript, p. 252-255.)

SUMMARY OF ARGUMENT

1. The Court's division of the martial assets was inequitable because the Court failed to take into consideration, Defendant's continued pain and suffering and need for further

medical attention in regards to his prior personal injury, his efforts and expenditures in repairing, improving and protecting various parcels of property over the eight (8) years subsequent to the initial divorce and property disbursements, and Plaintiff's failure to act in regards to marital assets.

2. The Court erred in providing that Defendant could receive his share of the marital property only upon the death of the Plaintiff, because marital property should be divided immediately unless there is a showing of the need for a necessary delay, which the Court has not shown.

ARGUMENT

I. WAS THE COURT'S DIVISION OF THE MARITAL ASSETS INEQUITABLE?

U.C.A. Section 30-3-5(1) states:

"When a decree of divorce is rendered the court may include in it equitable orders relating to children, property and parties"

The law is clear that the Trial Court should make an equitable division of the marital assets. See Woodward v. Woodward, Utah 656 P.2d 43 (1982); English v. English, Utah 656 P.2d 409 (1977); Fletcher v. Fletcher, Utah 615 P.2d 1213 (1980); Gramme v. Gramme, Utah 587 P.2d 144; Jones v. Jones, 700 P.2d 1072 (Utah 1985); Argyle v. Argyle, 688 P.2d 468 (Utah 1984); Eames v. Eames, 735 P.2d 395 (Utah App.1987); Lee v. Lee, 744 P.2d 1378 (Utah App.1987); Owen v. Owen, 734 P.2d 414 (Utah 1986); Gardner v. Gardner, 748 P.2d 1076 (Utah 1988); Pusey v. Pusey, 728 P.2d 117 Utah 1986.

The Trial Court's decision will not be disturbed unless it is clearly unjust or an abuse of discretion. Gardner v. Gardner, supra, Smith v. Smith, 751 P.2d 1149 (Utah App.1988).

In this case at bar, the Trial Court awarded control of all of the marital assets, except the Fruitland property, to Plaintiff with instructions to prudently dispose of the land and contract interest in a reasonable manner and place the receipts from said property, together with the existing cash previously filed with the court in an account. Plaintiff was entitled to withdraw a monthly amount that is necessary to provide a total monthly income to her of \$605.00, which is equal to the monthly Social Security income of Defendant. The Court, in addition, made provision for Plaintiff to receive the entire amount upon Defendant's death, but Defendant could only receive one-half (1/2) of the balance upon Plaintiff's death. The total value of these marital assets have a value of \$60,000.00 to \$80,000.00 depending upon whether you use Defendant's values or Plaintiff's values respectively. The Court further recognized the Fruitland property, value of \$26,000.00, as the pain and suffering portion of Defendant's personal injury recovery of \$65,000.00.

In its division, the Court fails to recognize Defendant's efforts in preserving and improving the property and the obligations he incurred in the process. At trial, Defendant testified concerning, and the Court inquired into the three (3) parcels of property known as Gregson, Bryan Avenue, and Claybourne, all of which were acquired after separation but prior

to the divorce decree being entered, and were acquired with outstanding mortgages against them and all needed repairs which Defendant was responsible for. Defendant testified as to certain unrecorded promissory notes and obligation he had to or a private individual one Robert Evans, deceased, and his wife, Norma, for money he borrowed to pay off the mortgages on the three (3) properties and to make repairs. Said obligations were secured by the three (3) properties although unrecorded.

The Court, in addition, did not make any provision for Defendant's future medical expenses associated with his personal injury accident. Nor did the Court address the issue of the failure of the parties, especially the Plaintiff who had control of the Fenton Avenue property contract, to not actively pursue the matter in the Bankruptcy Court, to protect that marital asset.

The Court's division of the property deprives the Defendant of any of the marital property with a value of \$60,000.00 to \$80,000.00, and makes no recognition of Defendant's efforts expended and obligations incurred in protecting the marital assets.

II. DID THE COURT ERR IN PROVIDING THAT DEFENDANT RECEIVE HIS SHARE OF THE PROPERTY ONLY UPON THE DEATH OF THE PLAINTIFF?

In Owen v. Owen, 734 P.2d 414, (Utah 1986), the Trial Court required the equity in the marital home to be paid when the Defendant cohabitated, remarried, sold the residence or when youngest child attains the age of majority, although the

Defendant was not the custodial parent. The Utah Supreme Court considered that to be an abuse of discretion of the Trial Court, indicating that the division of equity in the marital property should be immediate, unless there is a showing of a need to the contrary.

In this case, apart from the Fruitland property which the Court designated as representing the Defendant's pain and suffering award, the Defendant does not receive any of the marital assets unless Plaintiff predeceases the Defendant. If the Defendant predeceases the Plaintiff, the Defendant is deprived of his entire interest in the marital property. The result of the Court's decision is to effectively deprive the Defendant of his share of the marital assets.

"While the determination of the trial court are given deference and not disturbed lightly, changes should be made if that seems essential to the accomplishment of the desired objectives of the decree: That is to make such an arrangement of the property and economic resources of the parties that they will have the best possible opportunity to reconstruct their lives on a happy and useful basis for themselves . . ." DeRose v. DeRose, 426 P.2d 221, 222 (Utah 1967); Dogu v. Dogu, 652 P.2d 1308 (Utah 1982).

The property division in this case should be changed to permit the immediate division of the marital assets to allow both parties to reconstruct their lives. This was not an amicable marriage or divorce and to maintain this property division will perpetuate the feelings of animosity the parties have toward each other. In view of no showing of need to delay the division of equity, the animosity between the parties, and the Defendant's


inability to receive any share of the marital property unless Plaintiff predeceases Defendant, the division of equity in this case was an abuse of the Trial Court's discretion and the division of marital assets should be immediate.

CONCLUSION

This Court should find an abuse of discretion and an inequitable result in this present division of the marital assets because of no showing of necessity for such a division, and consideration of Defendant's efforts expended and obligations incurred in protecting the marital assets. This would be in keeping with case law in regards to equitable division of the property.

DATED this 28th day of April, 1989.

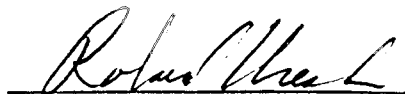
ATTORNEYS FOR DEFENDANT/APPELLANT:


Roland Uresk


Machele Fitzgerald

CERTIFICATE OF MAILING

I do hereby certify that on the 28th day of April, 1989, I mailed a true and correct copy of the foregoing BRIEF OF APPELLANT, postage prepaid, to David K. Smith, Attorney for Defendant/Appellant, 6925 Union Park Center, Suite 300, Midvale, Utah 84047, by depositing the same in the United States Post Office at Roosevelt, Utah.


Attorney