

1978

Helen Startin v. Wayne L. Startin : Appeal Brief of Plaintiff-Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

HELEN STARTIN,)
)
Plaintiff-Appellant,)
)
v.)
)
WAYNE L. STARTIN,)
)
Defendant-Respondent.)

APPEAL BRIEF OF PLAINTIFF-APPELLANT

CASE NO. 16081

ON APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE HONORABLE DAVID B. DEE, PRESIDING

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TABLE OF CONTENTS

	<u>PAGE NO.</u>
NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT	1
NATURE OF RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
LEGAL ARGUMENT	4
THE TRIAL COURT BAUSED ITS DISCRETION BY ORDERING THAT THE HOME OF THE PARTIES BE SOLD WITHIN NINETY (90) DAYS AFTER THE DECREE OF DIVORCE	
CONCLUSION	5

IN THE SUPREME COURT OF THE STATE OF UTAH

HELEN STARTIN,)	
)	
Plaintiff-Appellant,)	
)	
v.)	Court No. 16081
)	
WAYNE L. STARTIN,)	
)	
Defendant-Respondent.)	

BRIEF OF PLAINTIFF-APPELLANT

NATURE OF THE CASE

This is an action for divorce.

DISPOSITION IN THE LOWER COURT

The court granted each party a decree of divorce and ordered that the home of the parties be sold within ninety (90) days after the entry of the decree of divorce and the net equity divided as follows:

- a. The first \$8,000 to appellant representing the money she brought into the marriage; and
- b. The remainder divided equally between appellant and respondent.

NATURE OF RELIEF SOUGHT ON APPEAL

Appellant seeks a ruling that she is entitled to reside in the home for a period of five (5) years to allow her time to accumulate such funds as are required to pay respondent his share of the equity. This period of time will allow appellant to live in the home with her children whereas the present order forces her to sell the home. It is appellant's position that the trial court's failure so to do constitutes an abuse of judicial discretion.

STATEMENT OF FACTS

Appellant and respondent were married August 7, 1969. At that time, appellant had custody of four (4) children from her former marriage and resided in Orem, Utah. Appellant and respondent had no children during their marriage.

Respondent did not want to live in Orem and felt it would be better if the parties sold appellant's home and used the money to purchase another home. The home in Orem was sold, and the net proceeds therefrom were used by the parties before another home was purchased. (R. 272)

Appellant contributed to the marriage her share of the equity in her home in Orem (\$4,000) and \$5,461 which appellant received from her mother's estate. In addition,

appellant gave respondent \$3,500 before the parties were married. (R. 27, Ex. 25, Ex. 35)

For one year after the parties were married, appellant was completing her college education and did not hold down gainful employment. During that one year period, she received \$200 per month as child support and had no other source of income. (R. 300)

During all other years that appellant and respondent were married, both parties were gainfully employed as school teachers. Their respective incomes are shown in Exhibits 11 through 18, a summary of which is as follows:

<u>YEAR</u>	<u>EARNINGS</u>	
1976	\$16,727 - Respondent 12,218 - Appellant	Exhibit 11
1975	13,564 - Respondent 10,087 - Appellant	Exhibit 12
1974	13,657 - Respondent 8,704 - Appellant	Exhibit 13
1973	11,704 - Respondent 8,000 - Appellant	Exhibit 14
1972	11,183 - Respondent 7,267 - Appellant	Exhibit 15
1971	10,967 - Respondent 6,315 - Appellant	Exhibit 16
1970	9,440 - Respondent 2,161 - Appellant	Exhibit 17

<u>YEAR</u>	<u>EARNINGS</u>	
1969	10,816 - Respondent	
	3,601 - Appellant	Exhibit 18

The \$4,000 appellant received from the sale of her home in Orem was used to pay off respondent's debts from his first marriage and to live on for the one year that appellant was in college. (Ex. 35)

During the eight (8) year marriage of the parties, respondent caused appellant to suffer mental and physical anguish in that he severely beat her and, on one occasion, choked her to the point that she fell unconscious.
(R. 264)

This action for divorce was commenced by appellant on November 23, 1977, and by May of 1978, respondent had established a relationship and began living with another woman. (R. 320 through 331)

LEGAL ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION
BY ORDERING THAT THE HOME OF THE PARTIES
BE SOLD WITHIN NINETY (90) DAYS AFTER
THE DECREE OF DIVORCE

The appellant claims in this appeal that the trial court abused its discretion by ordering that the home of the parties be sold within ninety (90) days following the entry of the decree of divorce. By so doing, appellant is deprived

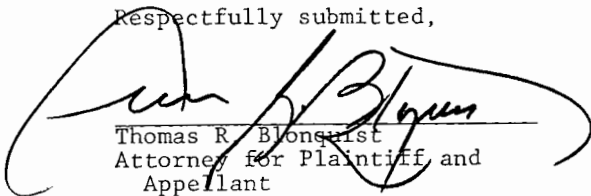
of a home in which to live and to raise her children. To allow appellant five (5) years with which to save sufficient money to pay respondent his equity is fair in view of the fact that appellant had a home when she married the respondent. There is no jeopardy to the respondent inasmuch as his financial interest in said home is secure.

CONCLUSION

For the reasons set forth above, the decree of divorce herein should be modified to allow appellant a period of five (5) years to accumulate such funds as are required to pay respondent his share of the equity of the home as awarded by the trial court. In the event appellant remarries prior to the five (5) year period, she should be ordered to pay respondent his share of the equity forthwith.

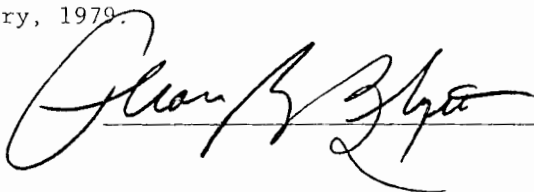
Dated this 30th day of January, 1979.

Respectfully submitted,



Thomas R. Blomquist
Attorney for Plaintiff and
Appellant

The undersigned declares that he caused to be delivered two copies of the foregoing brief to David M. Swope at 336 South Third East, Salt Lake City, UT 84111, this 30th day of January, 1979.

A handwritten signature in cursive script, appearing to read "Glen B. Swope", written over a horizontal line.

m/2