

1979

Helen Startin v. Wayne L. Startin : Brief of Respondent

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Startin v. Startin*, No. 16081 (Utah Supreme Court, 1979).

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IN THE SUPREME COURT OF THE STATE OF UTAH

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

RESPONDENT'S BRIEF

CASE NO. 16081

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

HONORABLE DAVID B. DEE, PRESIDING

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FILED

MAR 14 1979

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 :
 Defendant-Respondent, :

RESPONDENT'S BRIEF

STATEMENT OF KIND OF CASE

The Plaintiff, Helen Startin filed an action in divorce. The Defendant, Wayne L. Startin, answered and Counterclaimed.

DISPOSITION IN THE LOWER COURT

The trial court awarded the Plaintiff a divorce on her Complaint and also awarded the Defendant a divorce on his Counterclaim. The court ordered that the parties' home be sold with the net equity to be divided as follows:

- a. The first \$8,000 to appellant representing the money she brought into the marriage, either individually or as a result of inheritance; and
- b. The remainder divided equally between the appellant and Respondent.

The court further ordered that if Plaintiff desired to remain in possession of the home, she could buy out Defendant's net equity in the home as long as Defendant received the proceeds

of his equity within ninety (90) days of the signing of the Decree. The court ordered that the Plaintiff-Appellant could petition the court for additional time upon a showing that after using due diligence, the home could not be sold within the ninety (90) day period set by the court.

RELIEF SOUGHT ON APPEAL

The Defendant-Respondent seeks to have this Court affirm, in its entirety, the Decree of Divorce of the trial court and asks this court to award to Defendant-Respondent attorney's fees incurred by Defendant-Respondent on this appeal.

STATEMENT OF FACTS

In order to supplement and, in some instances, to correct the Plaintiff-Appellant's Statement of Facts, Defendant-Respondent submits the following:

When Appellant was divorced from her first husband, the Appellant's home was sold pursuant to the Decree of Divorce and the equity in that home was divided equally between Appellant and her first husband (R. 282).

At the time the parties were married, Respondent had debts of \$2,034.00 at the B.Y.U. Credit Union and a \$500.00 debt at Walker Bank which Respondent paid off by using monthly payments after the parties were married, and by borrowing money from the Granite School District Credit Union. (R. 47, 226, 227, 231).

Appellant gave Respondent \$230.00 on May 9, 1969 and deposited \$2,300.00 into Respondent's checking account on June 1, 1969.

27, 1969, and on August 7, 1969, the date the parties were married, there was a balance in Respondent's checking account of \$2,241.68, which Appellant considered to be a joint account after they were married and which went to pay both parties' obligations. (R. 192, 193, 228, 285, 286, 289, 290, 300 ex. 28). With Appellants inheritance of \$5,460.00, Appellant purchased furniture to refurbish the living room, including a sofa, two chairs, a lamp table, coffee table, a dry flower arrangement and carpet for which the Respondent did not make any claim, and had one chair recovered; of the inheritance only \$200.00 or \$300.00 went into actually improving the house itself. (R. 303, 304).

Appellant, at the time of trial, had two children living at home, one of whom had reached his majority and who has received a four year grant in aid scholarship to Brigham Young and will be living in Provo during the school year and away from Appellant's residence. (R. 308, 309, 310).

Respondent had not begun living with another woman (R. 186, 316, 317, 331).

Respondent has continued to pay one-half of the house payment since the parties' separation. (R. 306, 336).

LEGAL ARGUMENT

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ORDERING THAT THE HOME OF THE PARTIES BE SOLD, OR IN THE ALTERNATIVE, THAT APPELLANT PAY DEFENDANT HIS EQUITY WITHIN NINETY (90) DAYS OR PETITION THE COURT WHEN, AFTER DUE DILIGENCE, THE HOME COULD NOT BE SOLD WITHIN THE NINETY (90) DAY PERIOD.

Appellant claims 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. The only basis for showing the trial court abused its discretion is the statement that Appellant is deprived of a home in which to live and raise her children. Appellant does not contend that the evidence clearly preponderates against the Findings of Fact and Conclusions of Law or Decree of Divorce entered by the court or that there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error. The burden Appellant has is of showing that there is such a serious inequity that has resulted from the Decree of Divorce as to manifest a clear abuse of discretion. English v. English, 565 P.2d, 409 (Utah 1977); Westenskow v. Westenskow, 562 P.2d 1256 (Utah 1977). (emphasis added).

Even though the proceedings in divorce cases are equitable, and this Court may review the evidence, considerable deference is given to the trial court's findings and judgment because of his prerogatives and advantaged position. Eastman v. Eastman, 558 P.2d 514 (Utah 1976).

Since the trial Judge has considerable latitude of discretion in the disposition of property, his judgment should not be changed lightly, and in fact not at all, unless it works such a manifest injustice or inequity as to indicate a clear abuse of discretion. Pearson v. Pearson, 561 P.2d 1080 (Utah 1977).

After hearing the evidence, the trial court found that Appellant was entitled to \$8,000.00 more of the equity of the home than Respondent. This accounted for money which Appellant had brought into the marriage and had inherited during the course of the parties' marriage. Appellant does not dispute the amount of equity awarded to her nor does she dispute the fact that Respondent is entitled to his share of the equity in the home. The argument that if the home is sold, Appellant is deprived of the home applies equally to Respondent. Since the parties' separation, Respondent has not had the benefit of residing in the parties' home and yet has been obligated to pay one-half of the house payment during the pendency of this action. By allowing both parties to receive the equity from the home the court has fulfilled its responsibility of endeavoring to provide a just and equitable adjustment of the economic resources so that the parties might reconstruct their lives on a happy and useful basis. Searle v. Searle, 522 P.2d 697 (Utah 1974). By freezing Respondent's equity for a period of five years, Respondent would be precluded from reconstructing his life on a happy and useful basis.

In Humphreys v. Humphreys, 520 P.2d 193 (Utah 1974), a case which had a fact situation very similar to the present case, the parties, during their marriage each contributed their entire efforts and income to the family enterprise and accumulation of certain property. The home was purchased by the parties in 1968, and Plaintiff-Appellant claimed that she paid the down payment

\$3,400.00 from the sale of a previously owned home. The trial court ordered that the home should be sold and the proceeds be applied first toward the payment of the mortgage and liens, then to the judgments against the parties, then \$400.00 to the attorneys for each party, and then toward payment of the debts and then finally, any amount remaining to be divided equally between the parties. This Court modified the Decree and allowed the Plaintiff-Appellant an additional \$3,400.00 of the equity to compensate the Plaintiff-Appellant for the down payment that was used to purchase the family home. In the present case, the trial court has already made allowance for the monies that the Plaintiff-Appellant contends she brought into the marriage and acquired by inheritance during the marriage. Respondent believes that the Court's decision in the Humphreys matter should sustain the decision of the trial court in this matter and that no abuse of discretion exists.

RESPONDENT SHOULD BE AWARDED ATTORNEY'S
FEES FOR THIS APPEAL.

Although the trial court ordered that each party was to bear his/her own costs and attorney's fees, it is discretionary with this Court that attorney's fees on appeal may be awarded. See Swain v. Salt Lake Real Estate and Investment Co., 3 Utah 2d 279 P.2d 709 (1955), Ehninger v. Ehninger, 569 P.2d 1104 (Utah 1977). Since Appellant in her argument has stated no substantial reason or showing that the trial court clearly abused its discretion,

Respondent believes that Appellant's appeal is without merit.

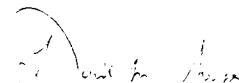
therefore Respondent is justified in being awarded attorney's fees for this appeal.

CONCLUSION

For the reason set forth above and because of Appellant's failure to meet her burden in showing a clear abuse of discretion by the trial court, the Decree of Divorce should be affirmed in all respects, and Appellant should be required to comply with the Decree of Divorce. In addition, Respondent should be awarded his attorney's fees and costs for this appeal.

DATED this 13th day of March, 1979.

Respectively submitted,



DAVID M. SWOPE
Attorney for Defendant-Respondent

CERTIFICATE OF DELIVERY

I hereby certify that I served a copy of the foregoing Respondent's Brief by hand delivering the same to Mr. Thomas R. Blonquist, 431 South Third East, Metropolitan Law Building, Salt Lake City, Utah 84111, this 14th day of March, 1979.

