1979

Shirley West Chandler v. Calvin D. West : Appellant's Brief

Utah Supreme Court

IN THE SUPREME COURT
OF THE STATE OF UTAH

SHIRLEY WEST CHANDLER,

Plaintiff and Respondent, : Case No. 16123

vs. :

CALVIN D. WEST, :

Defendant and Appellant. :

APPELLANT'S BRIEF

Appeal from the judgment of
the Third Judicial District for Salt Lake County
Honorable Maurice Harding

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STATEMENT OF NATURE OF THE CASE

This is an appeal from an Order denying Defendant's Motion to Set Aside and/or Modify a portion of the Decree of Divorce dealing with monthly payments of $176.50 made by Defendant to Plaintiff, to be applied to mortgage payments on the home.

DISPOSITION IN LOWER COURT

Judge Maurice Harding, of the Third District Court of Salt Lake County, State of Utah, refused to modify or set aside a provision of the Divorce Decree, finding that the monthly payments of $176.50 paid to Plaintiff by the Defendant were part of a property settlement (Tr 147) and the parties were bound by the decree. However, the Court lowered the amount to $122.06 per month due to the fact the previous amount included taxes and fire insurance which it held the Defendant was not obligated to pay, and ordered Defendant to continue to make said payments to the Plaintiff until such time as the total mortgage indebtedness of approximately $13,000 (Thirteen Thousand Dollars) was fully paid (Tr 115-116).

RELIEF SOUGHT ON APPEAL

1. That this Court find the monthly payments, to be applied towards the mortgage payment, were in the nature of support and terminated upon Plaintiff's remarriage and sale of the property.

2. Should this Court find said payments were part of a property settlement, that it exercise its equitable jurisdiction pursuant to Utah Code Annotated §30-3-5, and find such a material change of circumstances exists that Defendant should not be required to continue said monthly payments.

3. In the alternative, that the Court find the provisions of the Decree dealing with said monthly payments fails because it is founded upon a stipulation containing a material mistake and remand the case so that the issue of who should be held responsible for the unpaid installments of the mortgage payments may be litigated.

STATEMENT OF FACTS

Plaintiff filed a Complaint for Divorce on March 26, 1976 (Tr 2-4). Defendant answered on April 9, 1976, and asked that the Complaint be dismissed (Tr).

On January 5, 1977, the parties entered into an agreement entitled STIPULATION, WAIVER AND PROPERTY SETTLEMENT FOR DIVORCE (Tr). Defendant withdrew his Answer and consented to entry of his default consistent with the terms and conditions set forth in the Stipulation. The Stipulation provided that, inter alia, Defendant should be awarded certain real property in Florida and Plaintiff should be awarded the home and real property in Utah. The Florida property was purchased for $3,500.00 and Defendant estimated it was worth less than that at the time of the divorce (Tr), whereas, Plaintiff estimated its value had increased to $7,500.00 (Tr). Plaintiff estimated that the home and real property which she was to receive to be worth $46,000.00 with a mortgage indebedness of $13,653.46.

The Stipulation further provided that Defendant would pay $300.00 per month as alimony; that Defendant would pay to Plaintiff $176.50 each month, to be applied to the mortgage payments on the home; that Plaintiff would receive the bulk of the furniture (Tr 137); that the Defendant should assume and pay any debts incurred during the marriage, which amounted to approximately $4,000.00 (Tr 138);

that Plaintiff would receive the Mustang car and Defendant would make the car payments until the car was fully paid for; and the Defendant would receive the Volkswagon Van. Concerning the monthly payments of $176.50, both the Stipulation and the Divorce Decree were silent as to the exact nature of such payments; whether they were modifiable by either party; what effect Plaintiff's death or remarriage or Defendant's death, or sale of the home would have on them; and whether such payments were to be given in return for Plaintiff's relinquishment of any property rights.

On January 25, 1977, the matter came before the court, Plaintiff appearing in person and with counsel and Defendant not appearing. A Decree of Divorce was signed on February 9, 1977, and incorporated the terms of the Stipulation, Waiver and Property Settlement (Tr 74-77).

In July, 1977, Plaintiff sold the home for $60.000.00 (Tr 136), and the mortgage indebtedness was approximately $13,000.00 (Tr 137). Plaintiff married Dr. Swithin Chandler sometime prior to August 1, 1977, (Tr 107). Beginning in August, 1977, Defendant stopped paying the $176.50 to Plaintiff each month, and Plaintiff filed an Order To Show Cause on November 14, 1977, asking that Defendant be directed to pay the unpaid mortgage payments and to pay all future mortgage payments as they accrued (Tr 104). In response, Defendant filed a Motion to Set Aside and/or Modify Decree and Affidavit in support thereof, alleging that Defendant understood and intended the monthly payments of $176.50 to be in the nature of support and that said obligation terminated on Plaintiff's remarriage and sale of the home (Tr).

A hearing was held on these matters on January 26, 1978. Although District Court Judge Maurice Harding ruled the monthly payments to be applied to the mortgage payments were not modifiable because they were part of a property settlement, he reduced the amount to $122.06 to

reflect taxes and fire insurance which had been included in the $176.50 and which he held Defendant was not required to pay. An Order was signed by the Judge on September 28, 1978 (Tr 115-116).

Defendant filed his Notice of Appeal from that Order on October 25, 1978 (Tr 117).

POINT I

THE MONTHLY PAYMENTS MADE BY DEFENDANT TO PLAINTIFF, TO BE APPLIED TO THE MORTGAGE PAYMENTS, WERE IN THE NATURE OF SUPPORT AND SHOULD HAVE TERMINATED UPON PLAINTIFF'S REMARRIAGE AND SALE OF THE PROPERTY.

Defendant's Motion to Set Aside and/or Modify Decree dealt with the following portion of the Decree which was based upon a Stipulation the parties had entered into:

> 2. That the Plaintiff be and she hereby is awarded the parties' home located at 2646 Dolphin Way, Salt Lake City, Utah, as her sole and separate property, free and clear of any claim or interest of the Defendant. Defendant be and he hereby is ordered to make all mortgage payments on said property and to pay off and satisfy any and all liens on the property, if any exist. The defendant be and he hereby is additionally ordered to pay the Plaintiff the sum of One Hundred Seventy-six Dollars and Fifty Cents ($176.50) each month, commencing immediately, to be applied to the mortgage payments on said home.

A close look at the language of the disputed provision of the Decree discloses significant omissions, the most important one being that there is no order to the effect that Defendant was to "assume and pay the entire mortgage indebtedness and hold the Plaintiff harmless therefrom"; or that he was to make the monthly mortgage payments "until such time as the mortgage indebtedness is fully paid." In paragraph 4 of the Decree it is clearly stated Defendant was to make the remaining payments of Plaintiff's vehicle by paying to her $103.05 each month, "until such time as the vehicle is fully purchased and paid for." And in paragraph 11 of the Decree, Defendant was ordered to "assume and pay and hold the Plaintiff harmless from the payment of any debts" incurred by the parties

during their marriage. These specific statements in other paragraphs that Defendant was ordered to "assume and pay" the debts and pay until the car is "fully purchased and paid for" make such omissions in paragraph 2 dealing with the mortgage payments all the more significant. There are other important omissions in paragraph 2 such as: what effect Plaintiff's remarriage, death, sale of the property or Defendant's death would have on the monthly payments; whether they were modifiable by either party upon a showing of changed circumstances; and whether they were given in consideration for Plaintiff's relinquishment of comparable property rights.

Furthermore, the paragraph is ambiguous. It states:

> Defendant be and is hereby ordered to make all mortgage payments on said property, and to pay off and satisfy any and all liens on the property, if any exist. (Emphasis added)

Since the parties and the Court were aware of the existing mortgage indebtedness, a reasonable interpretation of the above sentence is that Defendant was required to pay any tax liens, mechanics liens, or other such liens of a similar nature, if in fact any existed. It would not make sense to read it as requiring Defendant to pay off the entire mortgage encumbrance since it is obvious from the same paragraph that it clearly existed. Defendant does not dispute that he was ordered to pay $176.50 each month to Plaintiff to be applied to the mortgage payments. What is disputed is who is responsible for the outstanding mortgage indebtedness now that the property has been sold and Plaintiff has remarried. The language of the Stipulation and Decree does not specifically answer this question but is ambiguous.

Where an ambiguity exists in a property settlement agreement approved by the court, the agreement must be considered in light of all the circumstances surrounding its execution. Where one construction would make the contract

unreasonable and irrational, and another equally consistent with its language would make it reasonable, the court should interpret it so as to lead to a rational result. Smith v. Smith, 351 P. 2d 142 (Wash 1960) It would be an irrational result for the court to interpret the provision as an agreement that Defendant would assume responsibility for the entire mortgage indebtedness of approximately $13,000.00 even if Plaintiff sold the property and remarried. He had already agreed Plaintiff should have property estimated at $46,000.00 at the time, and in return he received property worth either $3,500.00 or $7,500.00. The mortgage indebtedness alone is two or three times more than the entire property received by Defendant. Since the parties' equity in the home at the time of the divorce was more than sufficient to pay off the mortgage, a more reasonable interpretation is that Defendant agreed to pay the monthly payments as support so that Plaintiff could remain living in the home so long as she desired to live there, and that upon sale of the home, Plaintiff would pay off the mortgage indebtedness from the sales price.

It is Defendant's position that the executory payments of $176.50 each month were in the nature of support and should have terminated upon Plaintiff's remarriage and sale of the property. The court retains equitable jurisdiction to modify a divorce decree for alimony upon a showing of changed circumstances, regardless of whether the decree was based upon an agreement of the parties. Callister v. Callister, 261 P. 2d 944 (Utah 1953).

The agreement entered into by the parties entitled"Stipulation, Waiver and Property Settlement for Divorce"settled claims for alimony and support and also settled the parties' property rights by giving Plaintiff the home and real property in Utah and giving Defendant the

land in Florida. The general rule in the majority of jurisdictions in such a case is that if the provisons for support are an integral and inseparable part of the property settlement, as where the support payments are in consideration for a transfer of property, the decree based on the agreement cannot be modified with respect to the support payments. However, where the support provisions are separable from the property provisons, the court can alter the support provisons but cannot alter the property provisions 61 ALR 3d §19 (a) p. 590. Defendant contends that by statute, Utah Courts are given broader power than other jurisdictions and can modify even property settlements (Point II). However, the trial court held the monthly payments were part of a property settlement and non-modifiable. A discussion of cases which have dealt with the issue of whether a divorce agreement was an integrated property settlement or whether the support provisons were severable and therefore modifiable, is useful in the instant case in interpreting the meaning of Plaintiff's and Defendant's agreement.

This Court is not bound by the trial court's interpretation of the agreement, but must make an independent determination. Egan v. Egan, 59 Cal. Pptr. 705 (Cal. App. 1967).

The designation by the parties of the payments as "alimony" or as constituting a "property settlment" is not controlling. Egan, supra. ". . . no magic exists in the mere mention of the words alimony, property settlement, or child support." Dreyer v. Dreyer, 519 P. 2d 12, 13 (Wash. App. 1974). Rather, the courts look at all of the provisions of the agreement to determine if the payments have the indica of support payments or whether the payments were given in consideration for a relinquishment of the other party's property rights. Prime v. Prime, 139 P.2d 550 (Ore. 1943).

In Becket v. Becket, 77 Cal Rptr. 134 (Cal. App. 1969) the parties agreed and the court ordered that the defendant would receive more than half of the community property, almost half of the joint tenancy property, some real estate from Plaintiff's separate property and monthly payments of $1,200.00 for 10 years. The Court found the monthly payments were not reciprocal provisions for the property settlement and therefore terminated upon Defendant's remarriage. The court stated the general rule that:

> The receipt of a disproportionate amount of property and benefits by the defendant results in an implication of intent that the monthly payments were not a reciprocal consideration for those provisions relating to a division of property.
>
> 77 Cal Rptr. 134,140

The court also noted significant omissions in the agreement and decree which are also omitted in the present case. There are no provisions in the two cases: (1) dealing with the effect of remarriage; (2) expressi stating whether the monthly payments constitute reciprocal consideration for the property division; or (3) concerning modification of the payments.

A case similar to the present one is Barrong vs. Barrong, 549 P. 2d 530, 532 (Ore. App. 1976). There the agreement the parties entered into and which was made a part of the divorce decree provided that the wife should have the parties' residence and:

> ". . .There is presently an unpaid balance due on the mortgage of the dwelling . . . and the husband agrees to make said payments. . ."

The court held that even though spousal support was not mentioned, it could be inferred that both parties really intended the mortgage payments to be in the nature of support rather than a division of property and therefore said sums were modifiable. The agreement was silent as to the effect of sale of the home, and remarriage of the wife.

The court held that the sale of the home did not terminate the payments. Relevant in its determination was the fact that the wife only received $199.00 from the sale of the home and had to commence renting a home for herself and the children. The Court also modified the prior order by setting a termination date for the monthly payments for the wife at age 62 or remarriage.

In Garnett v. Garnett, 526 P. 2d 549 (Ore. 1974), the parties entered into a settlement which was incorporated into the decree and provided that the wife was awarded the home and the husband would pay the insurance, taxes, all household utilities and maintain the premises in a liveable condition so long as the wife lived in the home. Despite a provision in the agreement and decree that remarriage of the wife would not terminate the husband's obligations, the court held that the executory monthly payments were in the nature of support and separable from the property division, noting that the division of property was substantially equal. The court modified the payments by terminating them because of the wife's remarriage.

Even in cases where the parties have explicitly agreed the decree was non-modifiable or that remarriage would not effect the payments, the courts have looked behind such language to determine if the agreement to pay monthly payments was given as consideration for relinquishment of property rights of similar value. If the court finds the payments were not part of a settlement of property rights, it will modify the payments upon a showing of substantial change of circumstances, despite language in the decree to the contrary. Feves v. Feves, 254 P. 2d 694 (Ore. 1953); Prime v. Prime, 139 P.2d 550 (Ore. 1943); and Wright v. Wright, 498 P.2d 80 (Kan. 1972).

The courts do not concern themselves that much with the form of the payments made by one party, whether they are made in a lump sum, or as monthly payments for a definite period or indefinite period, or in the form of monthly mortgage payments. Nor is the determinative element the designation made by the parties as "alimony" or "property settlement". The critical element in determining whether such payments were part of an integrated property settlement, and therefore non-modifiabl in the majority of jurisdictions, is whether the agreement to make such payments was made in return for a relinquishment of property rights of similar value by the other party.

In the present case, Plaintiff relinquished her rights in property worth $3,500.00 or $7,500.00 in return for property valued at $46,000.00 subject to a mortgage indebtedness of $13,653.46. The greatly disproportio share of property received by Plaintiff is a strong indication the monthly payments of $176.50 were in the nature of support, to enable Plaintiff to remain in the home so long as she desired and did not remarry, and were not part of an integrated property settlement.

POINT II

THE COURT RETAINS JURISDICTION TO MODIFY PROPERTY SETTLEMENTS WHERE THERE HAS BEEN A MATERIAL CHANGE OF CIRCUMSTANCES.

Should this Court find that the monthly payments of $176.50 made by Defendant were not in the nature of support payments but were part of a distribution of the parties' property rights, it is still within the power of a Utah Court to modify such provisions upon a proper showing of change of circumstances.

Section 30-3-5 of the Utah Code Annotated provides that:

> The court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the support and maintenance of the parties, the custody of the children and their support and maintenance, or the distribution of the property as shall be reasonable and necessary.

This section has been construed "to confer jurisdiction upon the court to make such changes in those cases only where there has been a change in the circumstance or condition of a party since the entry of the original decree." Dixon v. Dixon, 240 P.2d 1211, 1214 (Utah 1952). In Dixon, the divorce decree awarded respondent the business property but allowed appellant to pay off the indebtedness and receive the entire business property should respondent default on the payments. Despite appellant's argument that the court had no authority to modify the decree, since the original decree was final and fixed the property rights, the court exercised its powers, considered the equities in the case, and modified the decree concerning the property division upon respondent's default in payments.

The Utah Court again dealt with this question in Iverson v. Iverson 526 P.2d 1126, 1127 (Utah 1974). It cited Section 30-3-5 of the Utah Code Annotated and stated that this includes "the power to take property from one spouse and to award it to another where the interests of justice so require". The court also stated all aspects of divorce proceedings are equitable and the continuing jurisdiction of the court is equitable.

The facts for the Court's consideration are as follows:

Defendant was ordered to pay $300.00 per month alimony and Plaintiff was awarded all of the parties' interest in the home and real property. She sold the home in July, 1977 for $60,000.00. The outstanding mortgage

indebtedness at that time, and presently, is approximately $13,000.00. Should Plaintiff be required to pay the mortgage indebtedness, she will still have received property from the marriage with a value of $47,000.00. Defendant received property from the marriage with a value of $3,500.00 or $7,500.00.

Since Plaintiff has married Dr. Chandler and sold the home for a substantial amount, she is no longer in need of monthly payments from Defendant to pay the mortgage payments. To require Defendant to pay the outstanding mortgage indebtedness, which is two or three times more than the entire property he received, and which would give Plaintiff property from the marriage worth $60,000.00 and place Defendant in the position of having a deficit of $9,500.00 or $5,500.00 (depending on the correct value of the Florida property) after contributing to the acquisition of the marital property for 30 years would be unequitable. Therefore, this Court should exercise its equitable jurisdiction and find that Plaintiff's remarriage and sale of the home, and receipt of substantially all of the marital property, relieves the Defendant of any obligation of paying the unpaid mortgage installments.

POINT III

A DECREE, FOUNDED UPON A STIPULATION CONTAINING A MATERIAL MISTAKE AND MISUNDERSTANDING, FAILS IN THE SAME MANNER AS A CONTRACT.

The issues of support and property division were never litigated. Rather, the Court based its decree upon the Stipulation the parties had entered into. The Stipulation contained a material mistake in that the parties failed to designate exactly what they were agreeing to when they agreed that Defendant would pay to Plaintiff $176.50 per month to be applied to the mortgage payments. The Stipulation was silent as to whether the monthly payments were in the nature of support or were in consideration

for Plaintiff's relinquishment of her property rights; how remarriage, the death of Defendant, the death of Plaintiff or sale of the home would affect them; and whether or not they were modifiable by either party upon a change of circumstances. There was not true "meeting of the minds" concerning the above-mentioned contingencies and therefore no binding agreement.

Plaintiff contends the parties intended the payments to continue until the full mortgage indebtedness was paid, regardless of her remarriage or sale of the property. However, this was never specifically stated. Defendant, however, intended them to be in the nature of support and that they would terminate upon Plaintiff's remarriage or sale of the property. This too was not specifically stated.

According to Corbin on Contracts, a common form of mistake in the making of contracts is a mistake as to the meaning of the words and expressions used. Both parties may know with accuracy the words used, but understand them differently. If there is more than one reasonable meaning under the existing circumstances and neither party had reason to know of the other's meaning, the contract may be recindable. As was stated by Corbin:

> "But if the parties had materially different meanings, and neither on knew or had reason to know the meaning of the other, there is no contract."
>
> Corbin on Contracts, Vol I, §104

As was stated by the court in Buol Machine Co. v. Buckens, 153 A.2d 826, 827; (Conn. 1959):

> "Recission of a contract on the ground of mutual mistake may be granted in a proper case where the mistake is common to both parties and by reason of it each had done what neither intended."

If either party was negligent in this case the two parties were equally negligent in failing to state precisely what they intended in their Stipulation. There is no reason for penalizing one for the benefit of the other where there has been a mutual mistake and the parties are equally responsible for the mistake. Therefore, this Court should recind that provision of the Stipulation concerning the monthly payments to be applied to the mortgage payments and hold the same provision in the decree as being unenforcable and remand the case so that the matter can be litigated.

CONCLUSION

That portion of the Decree of Divorce dealing with monthly payments of $176.50, to be applied to the mortgage payments, and the parties' Stipulation upon which the Decree was based, were ambiguous and contained critical omissions. Defendant was not specifically ordered to assume and pay the entire unpaid mortgage installments despite Plaintiff's remarriage and/or sale of the home.

The Decree and Agreement did not state such payments were in consideration for Plaintiff's relinquishment of her property rights. In fact, Plaintiff only relinquished her rights in property having a minimal value co to the property rights Defendant relinquished. Plaintiff's receipt of such a disproportionate share of the property strongly indicates the monthly payme of $176.50 were not part of an integrated property settlement but were in the nature of support and severable from the property settlement provisions.

The material omissions and ambiguity in the Stipulation demonstrate that there was no "meeting of the minds" as to critical matters. A decree founded upon a recindable contract should not be held enforceable.

Whether this Court finds the payments were in the nature of support and severable from the property settlement, or whether it finds such payments were part of an integrated property settlement, it should exercise its equitable power in reviewing the case, and modify the disputed provision of the Decree. Considering the material change of circumstances, it would be unequitable to require Defendant to continue making the payments. Plaintiff has no need of continuing monthly payments to enable her to live in the home since her remarriage and the profit from the sale of the home is more than adequate to pay off the existing mortgage indebtedness, and in addition leave Plaintiff with approximately $47,000.00.

DATED this 20th day of February, 1979.

RESPECTFULLY SUBMITTED,

JoAnn Blackburn

JOANN BLACKBURN
MOONEY, JORGENSEN & NAKAMURA

HAND DELIVERY CERTIFICATE

I do hereby certify that a copy of the foregoing Brief was hand delivered to Hal N. Swenson, Fabian & Clendenin, Eighth Floor, Continental Bank Building, Salt Lake City, Utah 84101, on this 20th day of February, 1979.