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Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

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J. Reuben C[illegible]

IN THE SUPREME COURT OF THE STATE OF UTAH

DAWNA EASTMAN, :

Plaintiff-Respondent, :

-vs- : CASE NO. 14394

GLENN W. EASTMAN, :

Defendant-Appellant, :

BRIEF OF APPELLANT

Appeal from a Judgment of the District Court
of Salt Lake County

Honorable Stewart M. Hanson, Sr., Judge

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FILED

JUL 27 1976

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

DAWNA EASTMAN,	:	
Plaintiff-Respondent,	:	
-vs-	:	CASE NO. 14394
GLENN W. EASTMAN,	:	
Defendant-Appellant,	:	

BRIEF OF APPELLANT

NATURE OF THE CASE

This case was an action for property settlement, support and alimony, after a divorce had been granted.

DISPOSITION IN LOWER COURT

The Court ruled for Plaintiff with a division of the property favoring the Plaintiff.

RELIEF SOUGHT ON APPEAL

Defendant-Appellant seeks a reversal of judgment and remand with directions to enter judgment of an equal distribution of the property of the parties, no alimony for Plaintiff-Respondent and a termination of support to 19 year old Jerry.

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STATEMENT OF FACTS

The parties were married at Evanston, Wyoming on April 29, 1950, and subsequently were divorced and then cancelled it. A new divorce was filed by Plaintiff-Respondent. The parties now have two minor children, Jerry, 19 years of age, and Gary. A decree of divorce was entered on July 7, 1972 and by stipulation the parties agreed that the question of alimony, support and property settlement should be reviewed before Judge Jeppesen at a later time.

A hearing was scheduled and Judge Jeppesen suggested an appraisal of the properties be made. Judge Jeppeson then retired and the matter was continued and finally heard by Stewart M. Hanson, Sr., on November 12, 1975.

The property appraisals were submitted showing the value of the properties to be substantially different. The parties had a house free and clear in Magna, Utah, having a value of $27,000.00 and a duplex in Salt Lake City, Utah having a value of $7,500.00.

The parties also had accumulated the following savings accounts:

Cyprus Credit - $2,000.00 in Appellant's name

American Savings - $2,200.00 in both names

First Federal - $833.00 in both names

Cyprus Credit - $1,000.00 in Respondent's name

Cash left in home - $1,200.00

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The Respondent received almost all of the above, although all had been saved from Appellant's earnings. The parties had also accumulated certain savings bonds in the names of the children. These were to be held by the Defendant-Appellant for the benefit of the children.

The Appellant was further ordered to maintain health insurance for the minor children, which he agrees should be done.

Respondent was awarded the care of the minor children of the parties and the Court ordered the Appellant to pay $100.00 per month for Gary and $75.00 per month for Jerry, even though Jerry had reached 19 years of age, and is working full time.

The Court further ordered the Appellant to pay alimony to Respondent of $25.00 per month. Plaintiff-Respondent is working full time making a substantial income. The Defendant-Appellant is working for Kennecott Copper, but he had received a reduction in pay and position to that of a Janitor and clearly was unable to pay amounts claimed by Plaintiff-Respondent. Appellant further is under a doctor's care for heart problems and clearly would be unable to maintain the amounts ordered as to alimony.

ARGUMENT

THE COURT ERRED IN MAKING AN UNEQUAL DIVISION OF PROPERTY AND SUPPORT.

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I

The Appellant appeals from that judgment of alimony the Court made, and that the Respondent should be awarded the home in Magna and he should receive the duplex. Defendant-Appellant submits, equity would and should determine that the properties be held by the parties until no longer needed for the minor children and then sold and the proceeds divided equally. Testimony of the Defendant-Appellant was that the values of the properties of the parties are widely divergent, the Magna property being valued almost three times that of the Salt Lake property. It should be noted that the evidence was clear that the payments for both properties were made by the Appellant and that during the course of the marriage they had been completely paid off. To award the Plaintiff-Respondent the Magna property is grossly unjust, unreasonable and unfair. The lifetime labors of the Appellant are arbitrarilly awarded to Respondent for no just or apparent reason other than convenience. There was no showing that the Respondent had a need or right to a greater share of the property, but the testimony was clear that Appellant paid for all property by hard work and thrift.

It is further noted that the testimony was clear that the Salt Lake property was in need of many repairs and in fact the only real value for the future would be the land itself as

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the cost of repair and upkeep would be prohibitive. The Appellant described the duplex in detail and the finding of the Court thereto was toally without reason.

With regard to the savings accounts of the parties, the Court was aware that all bank books were in the possession of the Respondent and the award made by the Court was again unjust. When the parties separated, the Respondent removed most the the money, used it without consent or knowledge of the Appellant and during the course of the delay and then got one-half of all that was left. The Plaintiff-Respondent showed absolutely no evidence that any of the savings were put there by her, but all savings were the result of the Appellant's efforts. It was error to divide this unequally. The division should have been one-half of the accounts as of the separation. Courts are recognizing that a husband should be on an equal basis with his wife on property division and the old concepts of giving the women everything is unfair.

The Court further errored in awarding $75.00 support to Jerry Eastman as the testimony indicated that he was not in school, but was working full time. The testimony was that the Appellant would be glad to assist Jerry in obtaining an education as he had suffered an accident, but it was clear that the boy was 18 and almost 19, had dropped out of school and was self sustaining. The Appellant agreed with the Court that

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Jerry should receive help with school, but there was no finding that he was in school or that he was in need of help.

Further the award of alimony is inconsistent with the ability of Appellant to pay and the needs of the Respondent. Respondent works full time, and showed no need other than possible future need, but in fact she showed only a desire to have alimony. It is noted that alimony is not a right, but must depend on the need of Respondent and ability of Appellant to pay.

This Court has consistently held that it will not disturb the divorce property settlement unless, "evidence clearly preponderates against the finding of the trial Court, or where there has been a plain abuse of discretion, or where a manifest injustice or inequity is wrought." MacDonald vs. MacDonald, 236 P2d 1066.

The Court has added in dicta in Wilson vs. Wilson, 5 Utah 2nd 70, 1956:

> "The Court's responsibility is to endeavor to provide a just and equitable adjustment of their economic resources so that the parties can reconstruct their lives on a happy and useful basis. In doing so it is necessary for the Court to consider, in addition to the relative guilt or innocence of the parties, an appraisal of all of the attendant facts and circumstances: the duration of the marriage; the ages of the parties; their social positions and standards of living; their health; considerations relative to children; the money and property they possess and how it was acquired; their capabilities and training and their present potential incomes."

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It is clear from the facts of the instant case that an equitable and just division was not had as the facts showed great divergence in the values of the homes, the division of the cash assets and other property. The Respondent was fully employed, the children are almost raised, the Defendant-Appellant had a change in his income.

It is noted further that the assets were acquired during a long marriage by the thrift and industry of the Appellant. Both homes were free and clear of debt, the parties had no debts and were in better circumstance than comparable couples of like age. It is time we recognize that it is not equitable or just to punish a husband on the mere difference in sex, but he should be given as much consideration as the wife in property settlement so he too can pick up the pieces and start a new life benefitting equally with his former wife in the fruit of his labors. We should not look to punish, but to assist in rebuilding. This point of view was upheld by the Court in DeRose vs. DeRose, 19 Utah 2d 77, 1967, 426 P2d 221:

> "We remain cognizant of the prerogative of the trial Court and the latitude of discretion it is properly allowed in divorce cases, but this discretion is not without limit, nor immune from correction on review, if that is warranted. Due to the seriousness of such proceedings the vital effect they have upon people's lives, it is also the responsibility of this Court to carefully survey what is done, and while the determinations 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

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> 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 and their children. An important consideration in this regard is the elimination or minimizing of potential frictions o[illegible] difficulties in the future."

It is therefore respectfully urged that the decree should be ammended to award the Respondent and Appellant of an equal interest in the property of the parties, ordering a sale of the homes after the last child has moved from the home, dividing the proceeds equally; also dividing the savings accounts equally. Further the Court ordered the Appellant to support the oldest child until he is 21, no evidence was adduced to show he is still in school or in need. He is gainfully employed and self sustaining and the order of support should have been terminated.

CONCLUSION

The Plaintiff-Respondent was not entitled to an inequitable division of the property, but the property, including saving accounts, should have been divided equally

Further, the judgment should be reversed and the cause remanded to the Court for entry of judgment awarding an equal one-half division of the property, savings accounts and further a termination of alimony. The award of support for the 19 year old Jerry should be denied.

Respectfully submitted,

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