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Victoria L. Buyers v. Danny G. Buyers : Brief of Defendant-Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

VICTORIA L. BUYERS,)	
)	
Plaintiff-Respondent,)	
)	
-vs-)	Case No. 16160
)	
DANNY G. BUYERS,)	
)	
Defendant-Appellant.)	

BRIEF OF DEFENDANT-APPELLANT

Appeal from an Order of the Third District Court
of Salt Lake County, State of Utah, H. Maurice
Harding, Judge presiding.

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BRIEF OF DEFENDANT-APPELLANT

NATURE OF THE CASE

The plaintiff-respondent, Victoria L. Buyers, filed a Verified Petition to Modify a Divorce Decree. The defendant-appellant, Danny G. Buyers, filed an Answer to that Petition and filed a Motion to Set Visitation Privileges with the parties' minor child. The issues thus joined were heard by the Court's Domestic Relations Division.

DISPOSITION IN THE LOWER COURT

The Court defined Mr. Buyers' visitation privileges, which issues are not on appeal. It also modified, or by respondent's view interpreted, a divorce decree to accelerate by approximately one year a stipulated Court Order to increase child support, without an allegation or showing of a material

change of circumstance. The Court also retroactively applied this ruling and awarded a Judgment for back support.

RELIEF SOUGHT ON APPEAL

The defendant-appellant seeks reversal of the Order of the Lower Court amending the Decree of Divorce and the Judgment for "delinquent support," based on the retroactive application of that Amendment to the Decree of Divorce.

STATEMENT OF FACTS

In viewing the facts in a light most favorable for the prevailing party below, they demonstrate the following:

1. The parties to this litigation were heretofore intermarried, but divorced pursuant to a Decree of Divorce dated April 9, 1976. (R-16).

2. The aforestated Decree of Divorce was entered into pursuant to a Property Settlement Agreement, Stipulation and Waiver prepared by the plaintiff-respondent's (Mrs. Buyers') attorney. (R-10-12). This Stipulation was executed by the defendant-appellant, Danny G. Buyers on or about March 9, 1976, while he was unrepresented by counsel. The Stipulation was entered into without the advice of counsel by Mr. Buyers because of his lack of funds and because he and his wife had reached an agreement as to an equitable division of their meager assets. (R-10-12; R-70).

3. With reference to the matters in controversy, the Stipulation provided that Mr. Buyers would pay \$50.00 per month as child support through the month of July, 1976.

Thereafter, he would pay the sum of \$20.00 per month cash as child support, plus make the payments of approximately \$86.36 due on a 1975 Toyota automobile, which vehicle was awarded to Mrs. Buyers. In addition thereto, the defendant was also required to keep in full force and effect automobile insurance for the estimated three and one-half years it would take to liquidate the loan. (R-10, 11; cf. Decree of Divorce at R-20).

4. The defendant-appellant was also required to assume and pay all the outstanding debts and obligations incurred by the parties to the date of the filing of the Complaint, including the debts of the Salt Lake City Firemen's Credit Union, the Salt Lake City Employment Credit Union and others. (See Stipulation, R-11 and Decree of Divorce R-20).

5. The defendant-appellant, Mr. Buyers, maintained the insurance policy on the car as per the Stipulation and Decree. In addition, he kept current the obligation on the automobile loan which was scheduled for final liquidation approximately in May 1979. This final payoff date was approximately three years and one month after the entry of the Decree of Divorce and three years, two months from the date the Stipulation was executed by Mr. Buyers. (R-70, 74, 75; cf. Decree of Divorce and Stipulation at R-10, 12).

6. The Court entered an Order modifying the Decree of Divorce and awarded the plaintiff-respondent, Mrs. Buyers, a back judgment of \$400.00 by ruling that the car had been

paid off on May 1, 1978. It also ruled that to the date of the Hearing, the defendant-respondent owed an increased sum of support. (R-30). The Court, further, ordered the defendant to pay, subsequent to the hearing, the sum of \$100.00 per month. (R-30).

7. The said Order was made without there being any allegation in the Petition for the Hearing that there had been a material change of circumstance or any factual demonstration that there had been such a material change of circumstance to justify the modification of the previous Stipulation and Decree of Divorce. (R-1 through 82).

ARGUMENT

POINT I

THERE EXISTS NO CREDIBLE EVIDENCE FOR THE COURT TO ENTER A FINDING THAT THE INTENT OF THE DECREE OF DIVORCE WAS TO HAVE THE CAR LOAN AMMORTIZED OVER A PERIOD OF TWO YEARS, CONTRARY TO ITS EXPRESS PROVISIONS. FURTHER, THERE WERE NO CREDIBLE FACTS TO SUPPORT THE COURT'S FINDING THAT THE LOAN OBLIGATIONS HAD BEEN PAID AS OF MAY 1978.

The facts are undisputed that these parties entered into a Stipulation concerning support and a division of their assets. (See Findings of Fact 2 and 3). Further, it is not in dispute that Mr. Buyers did not obtain the services of an attorney; rather, he relied on the draftsmanship of Mrs. Buyers' attorney because of his poverty. The un-rebutted testimony concerning this point is as follows:

"(Buyers) It's just that simple. I went to her lawyer's office with her and we discussed several things, and this is the last I heard of it. I didn't have a lawyer so I didn't go."

"Q. (Cutler) But your understanding when you talked to the lawyer was that you were going to pay off the full debt on the Toyota?

"A. (Buyers) That's right.

"Q. (Cutler) Is that correct?

"A. (Buyers) That is what it says in the Decree, yes, Sir. I would pay off, and then at that time, at the end of the pay off time, then the child support would be \$100.00 per month, which I agreed to.

"Q. (Cutler) And which you assumed would be the pay-out of that loan, about three and one-half years later, is that correct?

"A. (Buyers) Right. And since that time, like it says in the record, I have only added (to the car loan) \$100.00. So I figured that would be a month. So I would be more than happy to pay (the increased child support payments at the end of the car loan). A month before it (the loan ammortization date) expired.

"Q. (Cutler) When will this loan be paid off by your computation?

"A. (Buyers) May 1979 according to the record. (R-70).

Thus, it is clear that it was the plaintiff-respondent, Mrs. Buyers' lawyer who prepared the Stipulation, Findings of Fact and Decree of Divorce. It was her lawyer that computed the approximately three and one-half year pay-out on the car loan mentioned in that Agreement and Decree.

That Decree specifically provides that Mr. Buyers would pay \$50.00 per month as child support through the month of July 1976. Thereafter the defendant was to pay the plaintiff's automobile insurance, pay the sum of \$86.36 on the

1975 Toyota automobile awarded Mrs. Buyers and keep the insurance in effect during that period. In addition, he was to pay \$20.00 cash per month child support. The Decree adopted by the Court, pursuant to the Stipulation prepared by Mrs. Buyers' attorney, specifically provided:

"The defendant is ordered to pay to the plaintiff the sum of \$50.00 per month child support through and including the month of July 1976, and thereafter to pay to the plaintiff the sum of \$20.00 per month as child support, and is further ordered to make payments in the approximate sum of \$86.36 on the 1975 Toyota automobile, and to keep in full force and effect the automobile insurance now in force on said vehicle until payment for said vehilce [sic] is completed, which is estimated to be approximately 3 1/2 years. Further, after the defendant has completed the payment on said vehicle, then he is ordered to pay the plaintiff the sum of \$100.00 per month as child support." (Decree of Divorce R-17 cf. Stipulation, R-10, 11). (Emphasis added).

Mrs. Buyers attempted at the Hearing subject of this appeal, to establish that the 1975 Toyota automobile had been paid off in April 1978, approximately two years after the entry of the Decree. It was not alleged that there was a lump sum payment. Rather, an attempt was made to limit the outstanding automobile principal loan balance at the date of the Decree, to the \$2,587.65. Thus, by amortizing only approximately 60% of the debt at the rate of \$86.36 per month, the pay-out date was advanced by one year.

This slight of hand trick was premised on the assumption by a loan officer that a portion of the loan balance was

the unrebutted testimony of Mr. Buyers was that the entire loan balance was for the Toyota purchase. His unrebutted testimony was as follows:

"(Buyers) In April, I believe, 1975 we purchased a 1975 Toyota Corolla. At that time we had in our possession a 1974 Dodge Colt station wagon, which was financed by the Salt Lake City Firemen's Credit Union. There was a balance owing on the 1974 Dodge Colt station wagon. We traded the Dodge Colt station wagon in on the Toyota, the 1975 Toyota. We went to the Credit Union to get the loan. They loaned us the \$2,500.00 for the Toyota, plus they added on the balance owing for the 1974 Dodge Colt. The purchase price of the Toyota Corolla was more than \$2,500.00. It was in fact \$3,500.00.

"Q. (Cutler) So how much did you owe on this Toyota, including the debt you had on the Dodge Colt trade-in that you retained and consolidated in this, as well as the purchase price, as it was shown, of \$2,500.00 on the Toyota?"

...

"(Buyers) It seems to me that the total loan was \$4,000.00, at least \$4,000.00, because the purchase price of the car was \$3,500.00 for the 1975 Toyota."

"Q. (Cutler) And with the interest do you think it was around \$4,000.00?"

"A. (Buyers) Yes, sir." (R-68, 69; see also R-71). (Emphasis added).

Thereafter, Mr. Clinton Barker, the manager of the Salt Lake City Firemen's Credit Union, was called to the stand by Mr. Buyers' counsel to examine his earlier testimony in light of Mr. Buyers' statement. He then admitted that in his computation of a two year pay-out figure on the automobile that

he had not used the total purchase price of the Toyota automobile. Rather, he had only included the supplemental loan figure of \$2,500.00. Under examination he admitted that he was in error and should have used both figures, stating:

"Q. (Cutler) So the total amount that would have been owed on the Toyota would have been the 25 (\$2,500) plus the 15 (\$1,500), right, on the car?

...

(Mr. Barker) " -- the loan was covered by his shares and his signature and the Toyota.

"Q. (Cutler) Right. But the total amount then was 25 plus the 15, right, on the car?

"A. (Barker) Right." (R-74) (Emphasis added).

Mr. Barker then, under examination, admitted that amortizing the loan at approximately \$86 per month for the purchase price of the car would take at least three and one-half years. He stated:

"Q. (Cutler) So that if you applied both of them (the \$1,500 loan for the Dodge trade-in on the Toyota and the supplemental loan for the purchase price of the remaining balance on the Toyota) at \$86.00, that would take it out about three-and-a-half years to pay them both off at \$86 per month, isn't that correct?

"A. (Barker) Probably longer." (R-75)

Thus, the record is absolutely clear that the appellant, Mr. Buyers, stipulated and agreed to pay to the plaintiff as support: (a) \$86.00 on an automobile awarded to Mrs. Buyers; (b) keep the insurance on that automobile; (c) pay

\$20.00 per month cash as support, for approximately three and one-half years it would take to amortize the \$4,000 loan for the purchase of that automobile (including the debt remaining on the "trade-in" used as a down payment on the Toyota vehicle), and (d) pay sundry debts of the parties. That Stipulation and Decree embodying that understanding was prepared by the respondent's, Mrs. Buyers' own attorney. Also, the loan officer testified that it would take at least three and one-half years at that rate of payment to amortize the loan.

Therefore, there can be no confusion or ambiguity upon which the Court could possibly find to interpret the previous Decree to provide for a two (2) year pay-out rather than the 3 1/2 years agreed between the parties.

There being no ambiguity in the intent of the parties and the intent of the Court in rendering its Decree of Divorce Order concerning support, the Lower Court's obligation was to review whether the defendant was in default under the terms of that Order. There was no allegation of a default and no facts presented to support such an assertion. Mr. Buyers was fully current on his obligation which by the only evidence in the record would be paid off in May 1979.

It is respectfully submitted that the Lower Court erred and abused its discretion in finding that the car loan was, in fact, paid off in two years and that the defendant owed

months from the date of the hearing. Such an Order, in substance, modified the Decree of Divorce and imposed an additional obligation of \$80.00 per month for a one year period. Thus the decision should be overturned.

POINT II

THERE WAS NO ALLEGATION AND NO EVIDENCE TO SUPPORT AN ASSERTION THAT THERE WAS A MATERIAL CHANGE OF CIRCUMSTANCE; THUS, THE COURT ERRED IN MODIFYING THE DECREE OF DIVORCE.

As more fully discussed in Point I above, the decision of the Court constituted an Amendment of the Decree of Divorce. The Amendment, in substance, provided that Mr. Buyers would be required to pay off the debt owed on the car awarded to Mrs. Buyers; however, it added the provision that after two years he would, in addition, be required to pay \$100.00 per month for support, instead of the previous Order of \$20.00 per month.

The laws are so abundantly clear, it hardly requires recitation. However, the following cites are given for the Court's convenient reference which clearly hold that one District Judge may not overrule another District Judge; rather, those matters must be appealed. State v. Morgan, 527 P2d. 525 (Utah 1974); Peterson v. Peterson, 530 P2d. 821 (Utah 1974); In Re Mecham, 537 P2d. 312.

Further, with reference to Domestic Relations matters, one Judge may not alter the decision of another, until there has been demonstrated a substantial material change of circumstance. This Court has clearly stated:

that the loan would be paid out in two, rather than three and one-half years. This delay was obviously done with the full knowledge that the total loan would not be ammortized until approximately May 1979.

The law is clear that any ambiguities in a contract should be resolved against the party drafting it, particularly where the drafting party is represented by an attorney and the other is a lay person. Guinand v. Walton, 22 Ut.2d. 196, 450 P2d. 467. Skousen v. Smith, 27 Ut.2d. 169, 493 P2d. 1003 (1972).

Further, it is respectfully submitted that the law is equally clear that one should not be able to reap the benefits of a bargain and allow the other party to detrimentally rely on his agreement and understanding for an excess of two years and then seek to retroactively modify that agreement and subject the defendant to substantially increase financial obligations. See Morgan v. Board of State Lands, 549 P2d. 695 (Utah 1976). Hanson v. Beehive Security Co., 14 Ut.2d. 157, 380 P2d. 66, 67 (Ut.1963); Migliaccio v. Davis, 232 P2d. 195, 198 (Ut. 1951).

It is respectfully submitted that any ambiguities in the agreement or understanding between these parties should be resolved against the respondent, Mrs. Buyers. She should be estopped to deny the pay-out of this loan and the increased child support should commence in May 1979, not in May 1978. Thus, the Lower Court's decision should be reversed.

CONCLUSION

There has been no material change of circumstance since the entry of the Decree. As such, it cannot be modified by the Lower Court.

Further, the agreement and Stipulation between the parties, which was prepared by respondent's attorney and upon which the appellant, (Mr. Buyers) relied, provided that he would be given a reduced cash obligation, provided he paid off an existing loan obligation on a vehicle awarded to Mrs. Buyers. The respondent should be estopped to deny the validity of that agreement. Further, any ambiguities regarding the agreement and Order should be strictly construed against Mrs. Buyers, in that it was prepared by her counsel.

Thus, the Lower Court's decision modifying the Decree of Divorce should be reversed and the defendant-appellant, Mr. Buyers, should be awarded his costs and attorney's fees in prosecuting this appeal.

Respectfully submitted,

Roger F. Cutler, Attorney for
Defendant-Appellant