

1979

Diana S. Boren v. Donald F. Boren : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

DIANA S. BOREN,)
Plaintiff and Appellant,)
vs.) No. 16191
DONALD F. BOREN,)
Defendant and Respondent)

BRIEF OF RESPONDENT

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IN THE SUPREME COURT OF THE STATE OF UTAH

DIANA S. BOREN,)
Plaintiff and Appellant,)
vs.) **BRIEF OF RESPONDENT**
DONALD F. BOREN,) **No. 16191**
Defendant and Respondent)

NATURE OF THE CASE

This is an action of divorce filed in the **Second Judicial District Court** in and for **Weber County, State of Utah**, tried by the **Honorable Calvin Gould, Judge**.

DISPOSITION MADE IN THE DISTRICT COURT

Plaintiff - Appellant was awarded:

- a. The custody of the five minor children of the parties, subject to the right of defendant to have reasonable visitation;
- b. The home of the parties on a 130 x 213 foot lot, subject to the mortgage;
- c. The household furniture and furnishings and other personal property including an automobile;
- d. \$50.00 per month per child for a total of \$250.00

per month for child support to be paid by Defendant-Respondent;

e. The right to claim two of the minor children as dependents for income tax purposes.

Defendant was awarded:

a. The balance of the real property of the parties consisting of about ten (10) acres of pasture land;

b. Farm equipment, tools, a pick-up truck and other personal property;

c. The right to claim three of the minor children as dependents for income tax purposes.

Each of the parties were required to pay his or her own attorneys fees and costs.

NATURE OF RELIEF SOUGHT ON APPEAL

Respondent seeks to have the judgment and decree affirmed.

STATEMENT OF FACTS

During the marriage, the parties and their five minor children resided in a seven room home in Weber County (R79), which had been substantially constructed by Defendant (R104). The home is subject to a Veterans Administration mortgage with a balance of about \$9,200.00 (R84) requiring monthly

payments of \$152.00 (R78). The parties also own some pasture land of about ten (10) acres located next to the home site. The property was valued at \$45,000.00, with \$30,000.00 allocated to the home and \$15,000.00 to the pasture (R59, R61).

Plaintiff wanted all of the real property awarded to her but was willing to pay to Defendant for his interest the sum of \$14,750.00 (R72). On the other hand, Defendant desired that the land be divided with Plaintiff receiving the home and Defendant receiving the pasture (R93,94).

Both parties have steady employment, the Plaintiff at Internal Revenue Service where she earns about \$9,000.00 per year gross (R78) and Defendant at Defense Depot Ogden, where he earns about \$13,000.00 per year gross (R89).

Each two weeks Defendant has \$284.00 take home pay, with \$125.00 going to the credit union on his debts and about \$18.50 into savings (R90,98,99).

Each two weeks Plaintiff has \$194.00 take home pay, with \$104.00 going to the credit union and \$7.50 for a bond (R111,112).

At the time of trial, Defendant was living in a travel trailer he purchased after the separation (R107) but desired

to borrow money to get "a place to live"(R106).

Prior to the trial, the parties had divided their personal property and there is no dispute on these items (R81,92).

The complaint was filed October 22, 1976 (R1). A supplemental complaint was filed July 29, 1977 (R6). A temporary order was entered on August 25, 1977, at a time when Defendant was not represented by counsel, based on a verbal stipulation which required each of the parties to pay certain debts and the Defendant to pay for child support, \$60.00 per month per child (R18). There was no counterclaim filed and Plaintiff's grounds for divorce that the parties argued "over a lot of things" including the house (R71), were not contested.

After the trial, Judge Gould took the matter under advisement and subsequently filed his memorandum decision on April 14, 1978 (R25). Appellant requested reconsideration and clarification of the decision (R28). After arguments and reconsideration, Judge Gould kept the original decision substantially in tact (R36,41).

APPENDIX

THE PUBLIC DOMAIN IN RELATION TO REPRODUCTION OF THE

MARITAL ESTATE AND EQUITABLE PROVISIONS FOR
CHILD SUPPORT.

30-3-5 Utah Code Annotated, 1953, As Amended, sets

the standard for orders in relation to the children, property and parties and their maintenance as may be equitable:

"30-3-5. Disposition of Property - Maintenance of Parties and Children - Court to have Continuing Jurisdiction - Custody and Visitation. - When a decree of divorce is made, the court may make such orders in relation to the children, property and parties and the maintenance of the parties and children, as may be equitable. 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. Visitation rights of parents and grandparents and other relatives shall take into consideration the welfare of the child."

MacDonald v MacDonald, 236 P.2d 1066 recites factors to be considered by the trial Judge in dividing property and awarding alimony in divorce cases.

In so far as the statute and the factors mentioned in MacDonald have application to the evidence presented here it appears that the Judge made an equitable division of property and an equitable award of child support.

The real property was divided in such a manner that Plaintiff received property of greater value than Defendant, and herein.

Regarding the child support award of \$250.00 per month, the Court considered, among other things, the gross income of the parties, their take home pay, debts, the fact that Plaintiff has a seven room home to live in and Defendant will have to obtain a suitable place to live. By awarding \$250.00 per month, the effective "take home" pay of Plaintiff was increased by about \$115.00 every two weeks, while that of the Defendant was similarly reduced.

Plaintiff cites the case of Gramme v Gramme, 527 P.2d 144. There, the Plaintiff's wife was awarded alimony and attorney fees. The evidence in Gramme established that the Plaintiff was unemployable; the Defendant had a relationship with another woman which he appeared to flaunt to his wife, that Plaintiff incurred substantial attorneys fees and was compelled to engage in extensive discovery regarding assets and Defendant's ownership thereof, which in several instances he claimed were owned by others.

In the instant case the wife has good, steady employment and her grounds for divorce are that the parties argue about a lot of things, there was no discovery required and there was a full disclosure of assets and debts. Besides that, this appeal is only on the division of the real property and the child support award and not on alimony or attorney fees.

In Searle v Searle, 522 P.2d 697, referred to by Plaintiff, the record indicated that an action was precipitated when plaintiff demanded that defendant choose between her and defendant's girl friend, and he preferred the latter. The trial court made a division of property, with the defendant receiving property of greater value, with the proviso that he equalize the difference by paying her an amount stated in monthly installments. In affirming, this court stated:

"Although it is both the duty and prerogative of this court in a case of equity to review the facts as well as the law..., the trial judge has considerable latitude of discretion in adjusting the financial and property interests in a divorce case. The actions of the trial court are indulged with a presumption of validity and the burden is upon appellant to prove such a serious inequity as to manifest a clear abuse of discretion...."

Of similar effect is English v English 565, P.2d 409, where this court said:

"The trial court, in a divorce action has considerable latitude of discretion in adjusting financial and property interests. A party appealing therefrom has the burden to prove there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error; the evidence clearly preponderated against the findings; or such a serious inequity has resulted as to manifest a clear abuse of discretion."

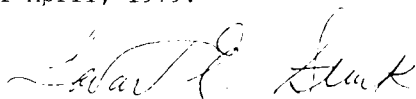
The trial court properly exercised its discretion in making an equitable distribution of the marital estate and equitable provisions for child support.

It is noted, that the relief sought by Plaintiff - Appellant in these proceedings is modification of the decree respecting child support and distribution of property. It therefore seems inappropriate for counsel for Appellant to argue that the court abused its discretion in denying the wife \$1.00 per year alimony and compelling her to pay her own attorney's fee.

CONCLUSION

The Judgment and Decree of the Trial Court should be affirmed.

SUBMITTED this 3rd day of April, 1979.



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