

1979

Sheila Penrose Larsen Land v. William Dennis Land : Appellant's Brief

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

Sheila Penrose Larsen Land,)
Plaintiff and Respondent,)
v.)
William Dennis Land,)
Defendant and Appellant.)

APPELLANT'S BRIEF

Appeal from the Judgment of
District Court of Salt Lake
Hon. Christine M. Durbin

Neils E. Mortenson
900 Boston Building
Salt Lake City, Utah 84111

Attorney for Respondent

FILE

MAY

Clerk, Supreme

IN THE SUPREME COURT
OF THE STATE OF UTAH

Sheila Penrose Larsen Land,)	
Plaintiff and Respondent,)	
v.)	No. 16238
William Dennis Land,)	
Defendant and Appellant.)	
)	

APPELLANT'S BRIEF

Appeal from the Judgment of the 3rd
District Court of Salt Lake County
Hon. Christine M. Durham, Judge

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IN THE SUPREME COURT
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Sheila Penrose Larsen Land,)	
Plaintiff and Respondent,)	
v.)	No. 16238
William Dennis Land,)	
Defendant and Appellant.)	
)	

APPELLANT'S BRIEF

STATEMENT OF THE KIND OF CASE

This is an action based upon an Order modifying a Decree of Divorce previously entered between plaintiff and defendant.

DISPOSITION IN LOWER COURT

The case was tried to the court. From an order in favor of plaintiff modifying the Decree of Divorce, the defendant appeals.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the order of modification in favor of the plaintiff and the entry of an order in his favor as a matter of equity, or that failing, a new hearing.

STATEMENT OF FACTS

Plaintiff was granted a Decree of Divorce from the defendant on November 29, 1974, wherein it was provided, among other things:

"8. Plaintiff is awarded the home and real property of the parties located at 5171 South 2870 East, Salt Lake City, Utah subject to an interest of Defendant who is awarded a 50 percent interest in the present equity in the home which value shall be determined by independent appraisers selected by the parties and shall be fixed not later than January 1, 1975 . . ."

"9. The plaintiff shall assume as her sole obligation the first mortgage on the home and shall make the required payments on that mortgage. The defendant shall assume as his sole obligation the second mortgage on the home and shall make the required payments on this mortgage until paid in full." (R-24)

The defendant was further ordered to assume and pay all of the debts and obligations incurred by the parties up to the time that the divorce action was filed, except for the mortgage that the plaintiff was ordered to assume and pay. (R-24)

The Decree also fixed the amount of child support which the defendant was ordered to pay which was to increase in amount to \$133.33 per month for each of the three minor children when the second mortgage that the defendant was ordered to pay was paid in full. (R-23)

This Decree was based upon a property stipulation that the parties had executed. (R-16 to 18)

At the time of the entry of the Decree of Divorce the defendant had numerous tax liens and judgments against him

arising out of a business that he was awarded under the Decree, the business being known as the "Eat'n House". These liens and judgments by operation of law became liens on the real property which had been awarded to the plaintiff, but subject to the 50% interest of the defendant. The amount of these encumbrances being in the approximate sum of \$27,000.00. (R-77)

Following the entry of the Decree neither party did anything to have the house and property appraised as dictated by the Decree.

The defendant set about the task of paying off the tax liens and judgments against him -- something that he is still working on, having paid some \$9,000.00. (R-82) Defendant also paid in full the second mortgage on the real property which he had been ordered to pay.

In August, 1978, the defendant filed a motion with the Court for the modification of the Decree to reduce child support payments from \$133.00 per month to \$100.00 per month, based upon a change of circumstances in his business which reduced his monthly income therefrom. (R-29, 30) The child support had been automatically raised with the payment in full of the second mortgage.

Plaintiff countered and demanded an increase in child support and asserted that the defendant should quit-claim the real property to plaintiff as the defendant had no interest in the property by reason of the tax liens and judgments

which had been liens against the property at the time of the entry of the Decree had exceeded the value of his 50% interest. (R-34)

The matter was heard by the Court on the 16th of November, 1978, before the Honorable Christine M. Durham; and at the conclusion of the hearing the Court entered its Minute Entry wherein it ruled that the liens and judgment liens against the home at the time of the Decree of Divorce were to be taken into account in determining the equity, if any, of the defendant.

The Court further found that there was not a sufficient change of circumstances as to merit a reduction in the child support and further ordered the defendant to pay 50% of the costs of a medical and dental insurance policy. (R-41, 42)

An Order was entered upon prepared Findings of Fact and Conclusions of Law and from that Order the defendant filed his Notice of Appeal. (R-51)

No transcript of the original divorce proceedings was available as a court reporter was not present when the divorce was granted.

ARGUMENT

POINT ONE

THE COURT ERRED IN RULING THAT THE EQUITY OF THE DEFENDANT IN THE REAL PROPERTY WOULD BE REDUCED BY ALL LIENS, JUDGMENTS AND OTHER ENCUMBRANCES AS OF THE DATE OF THE DECREE

It is the contention of the defendant that as he was ordered to pay and discharge all of the liens, debts and

judgments against the parties up to the time of the filing of the action for divorce, as well as the second mortgage on the real property, the equity in the real property to which he was entitled, in the amount of 50%, would be the appraised value, less the amount of the first and second mortgages only.

The Court ruled that the equity was determined by taking the appraised value of the property and subtracting not only the first and second mortgages, but the liens, judgments and other encumbrances as well.

The testimony of the parties was that the amount of the liens and judgments exceeded the sum of \$27,000.00 as of the date of the Decree of Divorce. This was in addition to the amount of the first and second mortgages, which totaled the approximate sum of \$25,000.00.

Defendant claims that he has paid off about \$9,000.00 of the liens and judgments.

The Property Stipulation, Findings of Fact and Conclusions of Law and the Decree are silent as to just what was meant by the parties for the calculation of the equity in the real property.

There being nothing upon which the Court could base a determination of what the measure was to be, the Court applied its own standard; and that is what the defendant appeals from, as it is his contention that the Court did not do equity in this matter.

The law of Utah is clear that in all aspects of proceedings in divorce matters equity shall be applied. Iverson v. Iverson, (Utah, 1974) 526 P. 2d 1126.

Because divorce proceedings are in equity, the Supreme Court can review questions of both law and fact. King v. King, 25 U. 2d 163, 478 P. 2d 495.

It is true that the parties in this matter entered into a stipulation and would normally be bound thereby. However, the Court has the right to see that equity is done between the parties. Klein v. Klein, (Utah, 1975) 544 P. 2d 472. The difficulty is, that the stipulation does not fully set forth all of the information necessary to interpret what was meant by the Decree.

As there is no stenographic record, the Court must now look to what is reasonable and just under the circumstances.

Plaintiff was to be awarded the real property subject to an interest of 50% in the equity being awarded to the defendant. As the property was heavily encumbered by liens and judgment liens arising out of the defendant's business, it would have been a meaningless gesture on the part of the Trial Court to award a 50% interest in the real property but then direct the defendant to pay and discharge all of the liens, judgment liens and the second mortgage covering the property in question, but then not allow a credit for the payment and discharge of those encumbrances, save and except the second mortgage.

It is submitted that equity would dictate that the equity in the home was to be determined as the value as of January 1, 1975, less the amount of the first and second mortgages. Of that resulting equity value, the defendant was entitled to 50% interest, payable as set forth in the Decree of Divorce.

It is submitted that the interpretation given to the Decree by the Trial Court was in error, as the Trial Court held that the equity in the real property was the value of the property less all liens, judgment liens, encumbrances of all kinds and additionally, all mortgages.

CONCLUSION

It is respectfully submitted that on principles of justice and equity the defendant's contention on how the Decree should be interpreted is just and proper and that the Court should render its decision so holding and remand this matter for entry of a Decree in conformity therewith.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

This is to certify that on the 15th day of May, 1979, the undersigned served upon Respondent's counsel, Neils E. Mortenson, Esq., 900 Boston Building, Salt Lake City, Utah 84111, two copies of the foregoing Brief of Appellant by depositing the same in the United States Mails, postage pre-paid.


Attorney for Appellant