

1980

Margaret Fletcher v. William I. Fletcher : Appellant's Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

* * * * *

MARGARET FLETCHER

Plaintiff and Respondent,

v.

No. 16407

WILLIAM I. FLETCHER

Defendant and Appellant.

* * * * *

APPELLANT'S REPLY BRIEF

* * * * *

APPEAL FROM THE JUDGMENT OF THE 1st
DISTRICT COURT FOR CACHE COUNTY
HON. TED S. PERRY, JUDGE PRO TEM

* * * * *

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IN THE SUPREME COURT OF THE
STATE OF UTAH

* * * * *

MARGARET FLETCHER)	
)	
Plaintiff and Appellee,)	
)	
v.)	No. 16407
)	
WILLIAM I. FLETCHER)	
)	
Defendant and Appellant.)	

* * * * *

APPELLANT'S REPLY BRIEF

* * * * *

PURPOSE OF THIS BRIEF

This brief is to present on behalf of the Appellant, William I. Fletcher, to reply to certain statements and legal arguments presented by Margaret Fletcher, the Respondent, in her brief. Appellant shall not reply to each factual averment or legal argument presented by Respondent in her brief because to respond to each difference is felt to be an unnecessary duplication. By responding to only limited areas where the Appellant believes the Respondent's statements or legal arguments are perhaps misleading or incorrect, the Appellant is not conceding the other areas of dispute and difference in the briefs and the record.

I

APPELLANT'S RETIREMENT FUND

Appellant concedes that the Court may consider the retirement funds in dividing property rights in a divorce decree but disputes the value placed on it by the Trial Court as part of the order. Neither the English (576 P.2d

1274) and the Englert (565 P.2d 409) cases cited by Respondent hold that the full future value of these funds should be credited to the party receiving them in a division of assets. The evidence presented by the Appellant at trial (see testimony of Clark England) proved it had no present value. It is submitted that the Trial Court misconstrued the law with this finding and created a precedent not previously allowed in the First District by the rulings of Judge Christoffersen and therefore should either be specifically affirmed or reversed for proper guidance to the Court and attorneys in similar cases.

II

INHERITED PROPERTY

The current value of the \$17,160.00 inherited from Appellant's aunt and used to remodel the parties' home in River Heights is hard to assess but the family heirloom of guns is clear. In the DuBois case (29 Utah 2d 75, 504 P.2d 1380) the Court noted the husband had carefully and prudently invested his wife's property received from her family and still only awarded him 40% of the appreciated value. It should be noted that for 4 years prior to this divorce, the Appellant has supported the family including the Respondent and handled the expenditures of the family funds leaving the Respondent to spend her own money how she wanted without any restraint or accountability even to the extent Respondent filed her own separate income tax returns. Still from all the assets accumulated by the parties the Court listed to be divided only the car valued at \$3,525.00 is traced to her efforts. She is certainly not an incompetent but a skilled

professional person (see testimony of Mary McArthur, supervisor of nurses at Logan L.D.S. Hospital) An heirloom gun handed down from father to son is not the same as cash in the bank for a Court to divide or credit and the Trial Court erred in its inclusion.

III

STOCK FUNDS PURCHASED FOR THE CHILDREN

The parties acknowledged the SNI stock was purchased for the children to guarantee their education or mission expenses. They were not put in the names of the children because of their ages. It would be no more fair to award them to the wife as credit on her share of the family property but better to impose a trust on the funds for the children's benefit and exclude their value in the division.

IV

CUSTODY OF CHILDREN

The real tragedy of this case is the impact on the lives of the six (6) children. The Court certainly cannot change what both parents have done either on purpose or unknowingly over the years but it is respectfully submitted that the Court in this case compounded the problem in the future by awarding the children piece meal like prizes to the victor. One must be impressed with the candor and effort of the court appointed social worker, Mr. Robert Wangarin. He related very carefully and thoughtfully the time and effort spent in trying to help the children and the family. The Trial Court failed to take into consideration the best interests of the children by ignoring this effort

and failing to continue this treatment in a meaningful way as part of his order.

All the professional witnesses who worked with the children agreed they should be kept together. The Court chose to ignore this and in fact heightened the problem by failing 1) to properly set forth visiting times. (The two week notice requirement is not supported on the record.) 2) to continue close supervision by Family Services to help the children, especially the three older to become reunited with the Respondent and 3) to award the divorce to one party and not both when the Court was aware of the neighborhood pressure on the children against the Defendant by the neighbors who asked these little children who they want to live with and the letter to the Judge during trial (Record p. 381). Such action by the Judge can only heighten the neighbors pressure on the three littlest children who remain there against their father.

V

ALIMONY

It is apparent from Judge Perry's decision that the alimony is set as an attempted redivision of assets and not on any need of the Respondent. There is no basis in Judge Perry's decision for establishing what would constitute a change in circumstances. The evidence at trial is certainly not clear on the income of the parties. If the Appellant finds employment with higher wages, as he must to comply with this order, he is subject to a modification order to raise the alimony based on a greater ability to pay.

Alimony should not be awarded in this case where both parties are employable and in good health. Judge Perry's attempt to equate the property by having Appellant pay from his wages an amount equal to what he believed to be awarding the Appellant is like taking one-half from the Appellant's two-third total and giving it to Respondent and calling it equal when that leaves Appellant one-third and Respondent two-thirds.

VI

ATTORNEY FEES

Respondent fails to acknowledge that Appellant must pay his own attorney fees in addition to those ordered paid to Respondent. The record shows Appellant's attorney fees are higher than the amount awarded to Respondent. The Trial Court failed to properly consider this impact in the attempt to divide everything equally and adjust the income flow.

CONCLUSION

This case represents a tragedy of high proportions. No one is a winner, but the Court clearly made the Appellant and the children far greater losers than was necessary or prudent in his zest to protect the "enslaved and unappreciated" woman. To reverse the Trial Court and set an order with the adjustments sought in Appellant's original brief will establish a far better basis for the future rehabilitation of the parties and the children as it should be clear from the record that this case is not over and the less ties between the parties the better except as it relates to the children. It is submitted that to unite the children with either parent under continued supervision of an independent qualified

agency will result in the best long term solution to the children and the parties. The property should be then divided more equitably based on the basis of how and why the property was acquired. By giving the Respondent the property and debt awarded her by Judge Perry without attorney fees and alimony is more than equitable based on their position four years before the divorce was granted when for all practical purposes the parties divorced each other.

Respectfully submitted,

HILLYARD, LOW & ANDERSON

BY Lyle W. Hillyard
Lyle W. Hillyard

MAILING CERTIFICATE

I certify that I mailed postage prepaid two copies of the foregoing Reply Brief to B. L. Dart, DART & STEGALL, Suite 430, Ten Broadway Building, 10 West 300 South, Salt Lake City, Utah 84101, and two copies to Bruce L. Jorgensen, OLSON, HOGGAN & SORENSON, 56 West Center, Logan, Utah 84321, this _____ day of January, 1980.

Roxie Bassett