

1989

Deanna Hansen v. Ted Hansen : Appellant's Brief

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 50

IN THE UTAH COURT OF APPEALS
STATE OF UTAH

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DEANNA HANSEN,

Plaintiff/Appellant,

vs.

TED HANSEN,

Defendant/Respondent.

)
APPELLANT'S BRIEF

Case No. 890637-CA

--oooOooo--

APPELLANT'S BRIEF

STATEMENT OF THE CASE

This is a civil action arising from a petition by the plaintiff for divorce from the defendant. The action was heard in the Fourth Judicial District Court, Judge Ray Harding presiding. An appeal was initiated by the plaintiff. No cross appeals have been initiated by the defendant.

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Priority Number 16

IN THE UTAH COURT OF APPEALS
STATE OF UTAH

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DEANNA HANSEN,)	
)	APPELLANT'S BRIEF
Plaintiff/Appellant,)	
)	
vs.)	
)	Case No. 890637-CA
TED HANSEN,)	
)	
Defendant/Respondent.)	

--oooOooo--

APPELLANT'S BRIEF

STATEMENT OF THE CASE

This is a civil action arising from a petition by the plaintiff for divorce from the defendant. The action was heard in the Fourth Judicial District Court, Judge Ray Harding presiding. An appeal was initiated by the plaintiff. No cross appeals have been initiated by the defendant.

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Priority Number

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JURISDICTIONAL STATEMENT

The Court of Appeals has jurisdiction in the above matter based upon the provisions of Rule 3, Rules of the Utah Court of Appeals and also Utah Code Annotated Section 78-2a - 3(h).

STATEMENT OF ISSUES

Plaintiff has rights and entitlement to the increase in farm equipment, livestock and other properties, although the original property was gifted to the defendant. Said increase constitutes a marital asset requiring the division by the court and the award thereof in portion to the plaintiff.

CONSTITUTIONAL PROVISIONS AND STATUTES

Utah Code Annotated 30-3-5(1) when a Decree of Divorce is rendered, the court may include in it equitable orders relating to children, property and parties.

IN THE UTAH COURT OF APPEALS
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Plaintiff/Appellant,)	
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vs.)	
)	Case No. 890637-CA
TED HANSEN,)	
)	
Defendant/Respondent.)	

--00000000--

APPELLANT'S BRIEF

STATEMENT OF THE CASE

This is a civil action arising from a petition by the plaintiff for divorce from the defendant. The action was heard in the Fourth Judicial District Court, Judge Ray Harding presiding. An appeal was initiated by the plaintiff. No cross appeals have been initiated by the defendant.

STATEMENT OF FACTS

Plaintiff and defendant were married on August 25, 1962, in the State of Utah. One child was born as issue of the marriage, however, said child is beyond the age of eighteen.

During the course of the marriage, the parties have acquired real and personal property.

Pursuant to provisions of the Findings of Fact, finding 6, each party should retain ownership of the property which

they had inherited. The defendant did not inherit property, but property had been gifted to him by his parents.

Defendant had been gifted a small herd of cattle, farm ground and equipment by his parents. However, since the date of the gift, said herd of cattle, horses and farm equipment has increased in value at an approximated increase of \$40,000.00 of value.

(The court reporter has failed to file a transcript in this matter although numerous requests have been made by plaintiff's counsel. Plaintiff shall further endure to obtain a copy of that transcript. Upon the transcript being made available, shall produce the original to the appellate court.)

SUMMARY OF THE ARGUMENT

The plaintiff wife herein through her efforts and her expenses, contributed to the enhancement, maintenance and protection of the defendant's gifted property. Pursuant thereto, she acquires an equitable interest in said increase or enhancement of the gifted property.

ARGUMENT

Plaintiff asserts and submits that she should be entitled to an equitable portion thereof; not of the original gift, but one-half of the increase. The increase being due in part to the plaintiff's contribution to the family in

general and due to her financial assistance rendered to the family so that the defendant may divert family income to the purchase and acquisition of said additional property.

Some jurisdictions have disagreed on the wording of property and increase or appreciation during the marriage. Some jurisdictions award the property and its appreciation to the gifted spouse. Other jurisdictions award portions of the appreciation to the other spouse.

In Mortensen v. Mortensen, (Utah 1988) 760 P.2d, the Supreme Court concluded as follows:

We conclude that in Utah, trial courts making "equitable" property divisions pursuant to Section 30-3-5 should, in accordance with the rule prevailing in most other jurisdictions and with the division made in many of our own cases, generally award property acquired by one spouse by gift and inheritance during the marriage (or property acquired in exchange thereof) to that spouse, together with any appreciation or enhancement of its value, unless (1) the other spouse has by his or her efforts or expense contributed to the enhancement, maintenance or protection of that property, thereby acquiring an equitable interest in it. Dubois v. Dubois, supra, or (2) the property has been consumed or its identity lost to the commingling or exchanges or where the acquiring spouse has made a gift of an interest therein to the other spouse. Cf Jespersion v. Jespersen, 610 P.2d 326 (Utah 1980).

An exception to this rule would be where part or all of the gift or inheritance is awarded to the nondonee or nonheir spouse in lieu of alimony as was done in Weaver v. Weaver,

supra. The remaining property should be divided equitably between the parties as in other divorce cases, but not necessarily with strict mathematical equality.

The defendant herein acquired farm land. Plaintiff does not assert any claim to said farm land. However, the defendant was also gifted livestock and farm equipment. The livestock has increased immensely since the date of the gift.

Additional farm equipment has been purchased by the defendant since the date of the original gift. Plaintiff asserts that she has rights and entitlements and an equitable interest therein based upon the following:

1. The defendant took on the responsibility of farming and raising livestock as a second job. The increase in the livestock was due to his efforts of this second employment. Although the plaintiff did not actively participate in the farming and ranching, she is entitled to a portion of that increase due to her sacrifices and efforts in this joint enterprise by the plaintiff and defendant and the appreciation of the livestock.

2. Plaintiff and defendant were both employed. Both brought home paychecks. Both made contributions to the family venture or cost. By the application of plaintiff's funds toward the family's needs, she allowed the defendant to

divert his income to assist and enhance the appreciation in both the livestock and the farm equipment.

3. The family's expenses must have been met.

Both the plaintiff and defendant made and contributed income toward the family's needs. The defendant made a conscious choice to provide and pay for expenses of feed, grazing, veterinarian and other associated costs with livestock. This diverted from the family's pool of income, thereby denying to the plaintiff and her child certain benefits. Although the sacrifices were made consciously by the plaintiff, it is through those sacrifices that the enhancement or appreciation occurred in livestock and farm equipment.

4. The farm equipment was purchased in part from family income. Both plaintiff and defendant worked and contributed to the cost and expenses of the family. Monies of which were diverted for the purchase of farm equipment imposed upon the plaintiff more of a responsibility in the contribution of her income toward the family expenses. Basically, if the farm equipment had not been purchased nor the livestock cared for, the plaintiff would have had an easier time at home and not such a large majority of her income would have been required for the family expenses.

Consequently, the plaintiff falls within the provisions of the exception as mentioned in Mortensen. The plaintiff

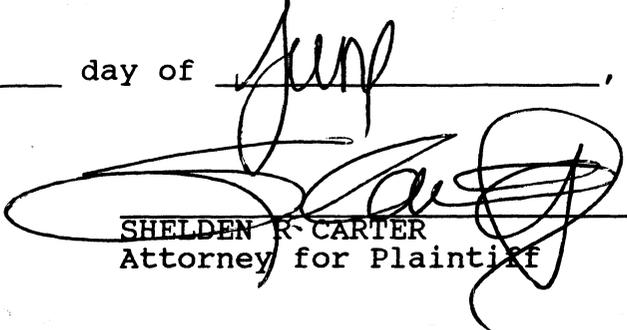
has by her efforts and her expense contributed to the enhancement, maintenance and protection of that gifted property. Thereby she acquires an equitable interest therein.

CONCLUSION

The statute U.C.A. 30-3-5 imposed upon the court to make an equitable division of the property of the marriage. The defendant acquired by gift farm land of which the plaintiff does not seek a portion. However, through the efforts of the plaintiff wife, she has contributed to the enhancement, maintenance and the protection of that gifted property. She has been a partner or a joint venture in the appreciation of that gifted property, and she should be entitled to an equitable interest therein of one-half.

The appellate court should enter an order granting unto the plaintiff one-half ownership of said increase or appreciation.

DATED this 11 day of June, 1990.



SHELDEN R. CARTER
Attorney for Plaintiff

MAILING CERTIFICATE

I HEREBY CERTIFY that I personally mailed a true and correct copy of the foregoing on this 11 day of June, 1990, by first-class, U.S. Mail, postage prepaid to the following:

Mr. Wilford N. Hansen
Christensen & Hansen
201 East 100 North
P.O. Box 67
Payson, UT 84651-0067


Secretary