

1990

Helen Layton v. Don Layton : Brief of Appellant

Utah Court of Appeals

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Jane Allen; Attorney for Respondent.

Don Layton; Appellant .

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BRIEF

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DOCKET NO. 900019-CA IN THE UTAH COURT OF APPEALS

HELEN LAYTON,	:	
	:	Court of Appeals
PLAINTIFF and RESPONDENT,	:	
	:	No. 900019-CA
vs.	:	
	:	Previous Appeal
	:	No. 870378-CA
DON LAYTON,	:	
	:	Oral Argument
DEFENDANT and APPELLANT.	:	Priority 14(b)
	:	Article I Section 11

APPELLANT'S BRIEF

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY

HONORABLE DAVID YOUNG

District Judge

JANE ALLEN
8 East 300 South
Salt Lake City, Utah 84111

Attorney for Respondent

DON LAYTON
220 Banks Court
Salt Lake City, Utah
84102

Appellant

IN THE UTAH COURT OF APPEALS

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PLAINTIFF and RESPONDENT,	:	No. 900019-CA
	:	
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IN THE MIND'S EYE

*Pity the lost child,
especially the one
who is still at home.*

Photo and text by
David Bly
for the Deseret News

Don't blame Brown

—old Irvine

“writer

Jerry Brown has
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It was to be a trick. All the La
romeos would have been sterilized
that no offspring would result from
romances. The medfly population
would die out.

IN THE UTAH COURT OF APPEALS

* * * * *

HELEN LAYTON, :
Plaintiff and Respondent, :
: Court of Appeals
vs. :
: No. 900019-CA
DON LAYTON, :
Defendant and Appellant. :

APPELLANT'S BRIEF

STATEMENT SHOWING JURISDICTION

Jurisdiction is provided by Judicial Code 78-2a-3(2g).

STATEMENT SHOWING NATURE OF THE PROCEEDINGS

This is an appeal from a final decree of the trial court dissolving a constructive trust.

ISSUES PRESENTED FOR REVIEW

ISSUE 1. Is the relationship between plaintiff and defendant best described as a constructive trust.

ISSUE 2. Should not the relationship be best described as a joint venture falling under the partnership rules.

ISSUE 3. Can a constructive trust be claimed with limited evidence in support.

ISSUE 4. Can a constructive trust be dissolutioned rather than created and enforced by law.

ISSUE 5. Is a constructive trust created to prohibit unjust enrichment.

ISSUE 6. Can plaintiff's admitted statement be ignored.

ISSUE 7. Is not the written statement an accord and satisfaction to all claims plaintiff may bring forth later.

ISSUE 8. Is not plaintiff barred by statutory time limit to attack validity of agreement.

ISSUE 9. Now that plaintiff's gambit of marriage was rejected do 3rd parties retain the right in either being a necessary party to this action or asserting their rights in a separate action.

ISSUE 10. Should not plaintiff be compelled to amend her complaint to state a cause of action so the defendant can make an affirmative defense.

ISSUE 11. Can plaintiff place all liabilities on defendant's property.

ISSUE 12. Did trial court err in granting plaintiff's motion for Distribution of Funds after Notice of Appeal was filed.

ISSUE 13. What are the best interests of handicapped child now over the age of 18.

ISSUE 14. Should plaintiff be unjustly enriched
for confusing the source and failing to keep records.

ISSUE 15. Should plaintiff be rewarded after filing
federal statements of limited assets to receive grants.

Addendum to Brief 870378-CA

On page -iv-

STATUTES

- Article I Section 11
... which shall be administered without denial
or unnecessary delay;
- Article I Section 1
... protest against wrongs
- Article I Section 2
... equal protection
- Article I Section 7
... deprived without due process of law... .
- Article I Section 18
... no law impairing the obligation of contracts.
- Article I Section 26
... provisionsare mandatory and prohibitory.
- Article I Section 27
Frequent recurrence to fundamental principles is
essential to the security of individuals rights and
the perpetuity of free government.
- Article IV Section 1
... Both male and female... .. shall enjoy
equally all civil... .. rights and privileges.
- Section 10
All officers made elective or appointive...
before entering upon duties shall take and subscribe
the following oath... "I do solemnly swear ... I
will support, obey ... and that I will discharge
the duties of my office with fidelity."
- Article VI Section 19
... Judicial officers, ... shall be liable to
impeachment for... misdemeanors, or malfeasance in
office; The party, whether convicted or
acquitted, shall, nevertheless, be liable to
prosecution, trial, and punishment according to law.
- Article VIII Section 3
..... necessary for the supreme court's
jurisdiction or the complete determination of any
cause.

Section 13

... (3) willful and persistent failure to perform judicial duties.

Article XIII Section 10

All ... persons within state... shall be subject to taxation... .

Section 12

.... (2) ... by reference to any provision of the laws of the United States

Article XXII Section 2

Real and personal estate of every female acquired before marriage, and all property to which she may afterwards become entitled by purchase, gift, inheritance or devise, shall be and remain the estate and property of such female, and shall not be liable for the debts, obligations or engagements of her husband, and may be conveyed, devised or bequeathed by her as if she were unmarried.

(The equal protection clause requires us to take out the words underlined and put in person, they, person, their mate, them and they.)

Utah Code Annotated Sections

1987# 59-11-2

now 59-2-1313

If on examination it is found that any officer has been guilty of defrauding the State of revenue or has neglected or refused to perform any duty relating to revenue, the attorney general shall prosecute the delinquent officer.

76-8-201 Official Misconduct- Unauthorized acts or failure of duty.

A public servant is guilty of a class B misdemeanor if, with an intent to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

78-51-26 Duties of Attorneys and Counselors

(3) To counsel or maintain no other action, proceeding or defense than that which appears to him legal and just,

(4) To employ for the purposes of maintaining the causes confided to him such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law;

78-51-31 Deceit and Collusion

An attorney and counsler who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge or a party to an action or proceeding is liable to be disbarred, and shall forfeit to the injured party treble damages to be recovered in a civil action.

STATEMENT OF THE CASE

1. Nature of the case.

This is a 2nd appeal of a case involving unmarried cohabitators.

The first appeal reversed the trial court's judgment finding a marriage existed between the parties and applying divorce statutes to divide property.

On remand the trial court found the relationship best described as a constructive trust and made no changes in the original judgment except substituting constructive trust for common law marriage.

No changes in real property possession or custody have taken place during the remand and this subsequent appeal.

2. Facts of the case.

Plaintiff and defendant began working together with others, later living together and producing children.

The business relationship floundered in approximately 1973 and later in approximately 1975 plaintiff executed a written document relinquishing her claim to property in exchange for property, freedom, and a release from obligations incurred in the acquiring of assets during the cohabitation.

Plaintiff moved to California in 1979 and returned in 1980. The love relationship never returned and plaintiff left defendant again and resided in Salt Lake County but separate from defendant. In 1983 plaintiff filed a verified complaint seeking partition or a valid common law marriage.

Before the trial began plaintiff moved to California and married her present husband in 1985 and the trial took place in 1987.

Plaintiff's attorney proceeded at trial on the theory of a common law marriage. The trial judge ruled in plaintiff's favor and a divorce was granted with a property division based on divorce statutes.

Defendant appealed and was granted a reversal of that judgment. Several theories were suggested by appellant court and on remand the trial court chose a dissolution of constructive trust to resolve the controversy, taking no further testimony or evidence in support of his findings.

Defendant once again disagrees with those findings and appeals the decree.

SUMMARY OF THE ARGUMENTS

The trial court has erred a second time in attempting to resolve a case involving unmarried cohabitators.

A constructive trust is created and enforced by law to prevent one party from benefiting from the efforts of another, to give title to one not having title and to compel one having title to surrender that holding to the rightful purchaser.

Almost all the real property, the subject of this action was duly recorded in the county recorder's office as showing both plaintiff and defendant name's together and therefore plaintiff was able at any time to sell, trade or distribute her recorded interest, subject to any action the defendant might have brought against plaintiff for fraud or theft.

A constructive trust cannot arise to benefit one who already holds title and can only arise in plaintiff's favor for property held in defendant's name alone, but then only by substantial evidence proving plaintiff's participation.

However, plaintiff did make an agreement to relinquish all her claim and ratified that agreement by recording and taking possession of the consideration given for the agreement.

An accord and satisfaction must prevail when the amount in controversy is not known. Defendant claims 3rd parties had substantial claims to the property and was

willing to assume any and all risks associated with 3rd parties by deeding property to plaintiff free and clear from any liabilities or obligations in exchange for plaintiff relinquishing claim to all other property. Plaintiff accepted by recording the consideration.

The statute of limitations has long run for plaintiff to attack its authority. Defendant is not now bringing forth the writing to benefit himself, as the court claims, for plaintiff has not participated in any business with defendant since the agreement was made and admits she has had no relief and now is hoping to plead on the mercy of the court for accepting "a horse, a horse, my kingdom for a horse."

When an accord is accepted, the courts should not overturn the agreement later for the court cannot place itself into the heat of battle to ascertain the condition of the participants and their desire for peace. Yet now when peace has been restored by defendant, plaintiff attempts to benefit herself by claiming she now is equitably entitled to an equal division of property.

ARGUMENT

I

THE COURT ERRED IN FINDING THE BEST WAY TO
CLASSIFY THE RELATIONSHIP BETWEEN PLAINTIFF AND DEFENDANT
WAS A CONSTRUCTIVE TRUST

The trial court made its determination of the
remand of this case creating a new legal term
dissolution of a constructive trust.

An involuntary trust is created and enforced not
dissolved or broken up.

It is well established that a constructive trust is
created by law to compel one who holds property alone,
purchased by another, to convey the title to the rightful
purchaser. Also a constructive trust cannot be created by
mere conjecture and surmise but must be proved by evidence
which is clear, convincing, and practically free from doubt.

Most of the property in question was recorded in both
plaintiff and defendant's name and therefor a constructive
trust is not applicable to those properties.

It is plaintiff's burden to prove the existence of
a trust by clear, unequivocal and decisive evidence.

So any property in whose title rests with defendant
alone must be retained by him for plaintiff has offered
no proof as to how the purchase involved plaintiff and
what if any interest she may have.

II

TRIAL COURT ERRED IN NOT RECOGNIZING AGREEMENT MADE BY PLAINTIFF AND RATIFIED BY CONSIDERATION

When this relationship began it was a business venture with defendant as founder and plaintiff as helper. When plaintiff began to become a liability rather than an asset, defendant chose to end the business relationship and did make an agreement with plaintiff (Ex.13) Plaintiff has conveniently claimed the consideration (Ex.16) the 7th East home, deeded to plaintiff by defendant was inherited by plaintiff alone. Evidence shows otherwise.

Plaintiff has fraudently hidden an asset valued more than \$40,000.

Plaintiff was given great latitude in rejecting the agreement by refusing to take absolute possession of the property, but plaintiff recorded the deed, took possession and stopped defendant from having any control over the property.

When parties make an accord and satisfaction and each takes control of their share, the courts will not look into the equitability of that division.

Plaintiff received a large home, freedom to have "fun, fun, fun, no obligations or libilities and peace of mind.

The Statute of limitations U.C.A. 78-12-23 states any action to void any writing must commence within 6 years of its insepction.

The time for objecting to the agreement has long passed for the statement was written on the back of a dated and signed deed. That date being May 8, 1975. Defendant has claimed the statement was written approximately at the same time.

Plaintiff is attempting to have her cake and eat it too.

III

THIRD PARTIES ARE NOW INDESPENSIBLE TO THE DIVISION OF PROPERTY

Defendant has always claimed 3rd parties were needed to have a complete and final judgment.

Now plaintiff's claim of marriage has been rejected, the subject of this action is only to divide property. 3rd parties are now needed to obtain jurisdiction over the property.

Evidence shows there was great involvement of time, money and labor of other persons in the acquiring and maintenance of the property involved.

If plaintiff can defeat the accord and satisfaction, the statute of limitations and undecisive evidence of a constructive trust, then there is not the needed parties present in this action to avoid other suits or to get a one final judgment and complete relief.

IV

PLAINTIFF MUST NOT PREVAIL AND

HOLD DEFENDANT LIABLE FOR ALL

DEBTS INCURRED BY PROPERTY

Due to plaintiff's original verified complaint and subsequent trial, plaintiff chose to proceed on a marriage theory and a legal division of property based on divorce law and an equal split of "marital assets".

Trial court refused to take notice of plaintiff's disinterest, her unwillingness to participate and her absence, ruling that because she was "married" she was not required to participate in anyway in order to share in the assets.

That ruling has been rejected, but trial court still finds plaintiff can share in the profits yet find defendant liable for all expenses incurred by property awarded to plaintiff by placing a lien on defendant's home leaving him virtually equity free.

Plaintiff cannot prevail and also place liens upon defendant's property. Plaintiff is the one who assessed and divided the property and chose one side for herself, claiming she kept good records, yet unaware of liens and taxes due on parcels she chose wanting defendant held liable for her expenses.

Defendant refused to participate in negotiations with plaintiff as he stands on her accord and satisfaction and

will not compromise that stand and reward plaintiff now for willful wrongdoing and monkey-wrenching in the past.

Plaintiff had her chance to stay with the business relationship, but in 1975 she chose her freedom.

V

TRIAL COURT LOST JURISDICTION TO GRANT MOTION
OF PLAINTIFF AFTER NOTICE OF APPEAL WAS FILED

After the 1st appeal was filed (R.240), plaintiff filed a motion with the trial court for a distribution of funds (R.246-247). Despite numerous objections the trial court granted that motion.

All that is required to transfer jurisdiction from the trial court to the appellate court is the notice of appeal and the payment of the fees required.

Defendant's notice of appeal was filed before plaintiff's motion and therefore trial court erred in ordering funds distributed to plaintiff when an end to the case was not yet reached.

Defendant filed a lis pendens in the recorder's office, yet plaintiff has alleged to have sold the property without defendant's agreement and has had possession of the monies from that sale.

The trial court has completely abused its authority and has become an accessory to the fraudulent disposing of property not yet the sole possession of plaintiff.

Justice from the courts of Utah will not be a reality when judges hide behind their robes of immunity and compromise the truth in order to reward one party whom they feel might have been treated harshly by prohibiting defendant from properly mounting a defense and demanding

damages for plaintiff's conduct in prohibiting defendant from growing and progressing in the real estate market, in refinancing his home at a lower interest rate, in enjoying his canyon property (which plaintiff deeded to defendant (EX. 13), yet later testified at trial No, 222264 that she was still the owner) and enjoying in the education and companionship of the handicapped son.

VI

TRIAL COURT BECOMES A CO-CONSPIRATOR TO FRAUD THE FEDERAL GOVERNMENT BY AWARDING PLAINTIFF PROPERTY

Plaintiff filed a request for student grants to enable 2 children to receive money to attend college declaring limited assets (R-250-256), but now, with the blessings of the court, plaintiff now has assets valued over \$200,000.

Plaintiff either had the assets at the time of wanting student grants and is guilty of filing false federal claims or the court has erred in awarding plaintiff property she had no interest in.

Plaintiff knew she had made an agreement with defendant and was completely honest in declaring her total assets, yet now, after the student grants have been awarded, her children have been educated at taxpayer's expense and the time has passed, plaintiff and the trial court sweep the issue under the rug and reward plaintiff for fraud and dishonesty.

VII

TRIAL COURT HAS ERRED IN DETERMINING BEST INTEREST OF HANDICAPPED CHILD

There is no evidence before the court to protect the child. Is the child incapacitated? What's his abilities, could he hold a job, support himself or live by himself?

Down's Syndrome affects children in varying degrees, some unable to function, some able to be television and movie stars. (Life Goes On and The Seventh Sign).

Society is recognizing more and more that children with Down's syndrome can lead very normal lives, have civil rights too and the time of hiding a handicapped child in the basement or in an institution is not the only solution.

Therefore any order requiring defendant to pay child support to plaintiff for a child now past 18 years old, without any evidence as to his capacity to exist on his own and to choose where to live of his own free will must be vacated.

CONCLUSION

Plaintiff has failed to prove she is entitled to any relief.

A constructive trust is not the best way to classify this relationship and to divide assets and the trial court's ruling must be reversed.

Plaintiff must prove by decisive evidence that she is the verified purchaser for each piece of property awarded her.

A ratified accord and satisfaction should not be disturbed by the courts especially so long after the agreement and defendant should prevail and be awarded all property now held by plaintiff subject to all claims that may arise from 3rd parties not party to this action.

By the trial court's ruling, plaintiff becomes guilty of fraud and theft of government services, for the trial court has given plaintiff more assets than she declared on the applications for student grants.

Plaintiff cannot hold defendant liable for all expenses incurred by property awarded to plaintiff.

Plaintiff should take nothing from defendant and damages should be assessed against plaintiff for her willful conduct in this case. And all deeds made by the court should be vacated.

No child support should be awarded plaintiff.

By the casual dealing with this case, defendant cannot properly file his income tax forms for himself nor his deceased mother's estate to account for the loss of property awarded to plaintiff.

Respectfully submitted this 8th day of June 1990

Don Layton

I hereby certify that I delivered four copies of the foregoing Appellant's Brief to Jane Allen 8 East Broadway, Salt Lake City, Utah 84111 on the 11th day of June 1990

Don Layton

Libya?

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few comments

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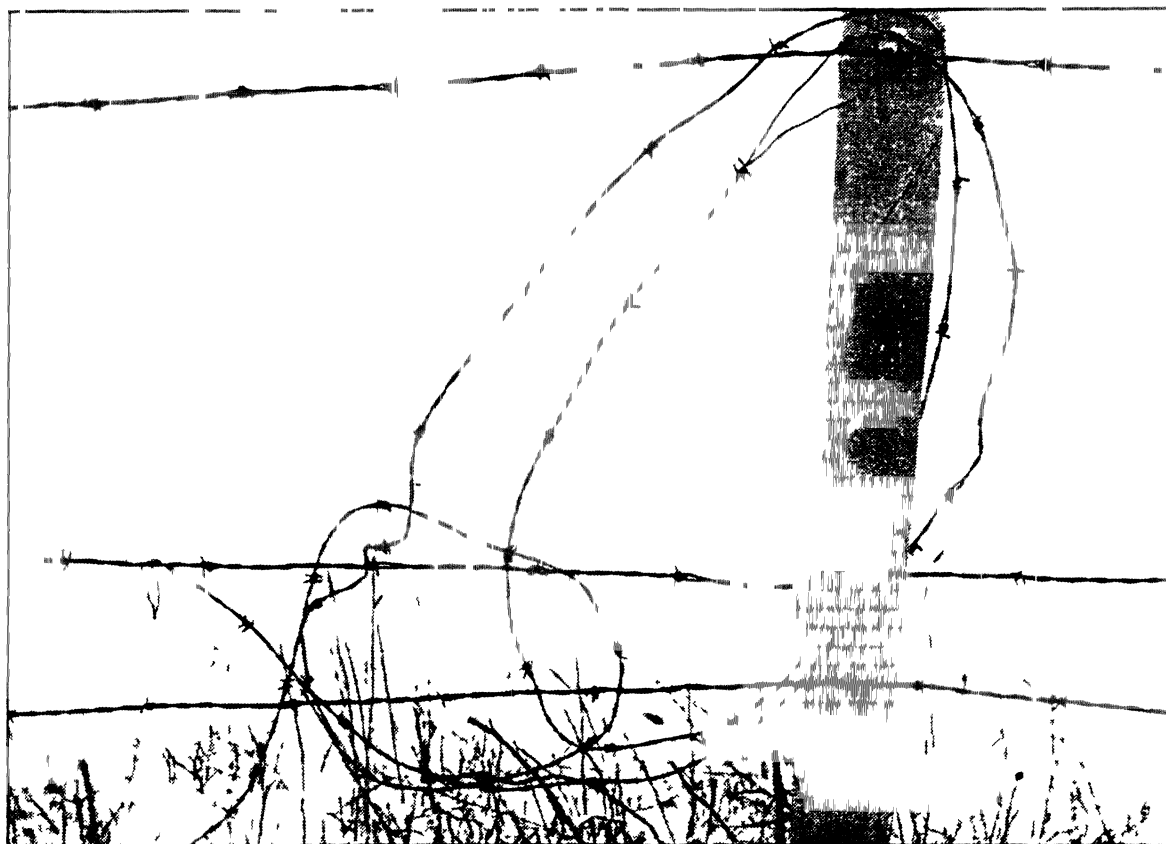
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The Mind's Eye

PHOTO AND TEXT BY DAVID BLY

*Tangled laws,
like tangled fences,
offer little protection.*

Reagan legacy: humor, optimism

By Jack Nelson
Los Angeles Times

WASHINGTON — The slow, relentless eye of history will give his presidency mixed reviews at best. But when Ronald Reagan leaves the Oval Office for the last time next week, the nation — and especially the nation's can-

ly described his family's path to success, but the kind of government programs Reagan so frequently criticized also had played a vital role in his family's success. The man who saved Reagan's life got his medical education through low-interest government loans.

Just as many Americans do, Giordano likes Reagan personally, but finds much less to like in his