

1990

Helen Layton v. Donald Layton : Brief of Respondent

Utah Court of Appeals

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Jane Allen; Attorney for Respondent.

Donald Layton; Appellant Pro Se.

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900019-CA

IN THE UTAH COURT OF APPEALS

HELEN LAYTON,)	
Plaintiff and Respondent,)	Court of Appeals No:
vs.	)	900019-CA
DONALD LAYTON,	)	Previous Appeal No:
Defendant and Appellant,	)	870378-CA
	)	Oral Argument Priority 14(b)

RESPONDENT'S BRIEF

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
HONORABLE DAVID S. YOUNG, DISTRICT JUDGE

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Donald Layton

FILED

JUL 11 1990

Mary T. Noonan
Clerk of Court

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TABLE OF AUTHORITIES

STATUTES:

None prohibiting the application of a constructive trust.

CASES:

Mattes vs. Olearain, 759 P.2d 1177 (Utah App. 1988)

Ashton vs. Ashton, 733 P.2d 147 (Utah 1987)

Matter of Estate of Hock, 655 P.2d 1111 (Utah 1982)

JURISDICTION OF THE COURT OF APPEALS

The Court of Appeals has jurisdiction over this matter as it is an appeal from the Third District Court of the State of Utah according to Utah Code Ann. Sec. 78-2a-3(2)(g) (1987).

NATURE OF THE PROCEEDINGS

This is an appeal from an order entered by Judge David Young of the Third District Court in December, 1989 in which the property of the parties was divided equitably, according to the terms of a constructive trust which was created between the parties.

STATEMENT OF ISSUES

1. Were the findings of fact, conclusions of law and decree of the District Court fair, equitable, and based upon the evidence presented such that the determination that the parties' assets should be divided pursuant to the terms of a constructive trust is not an abuse of discretion?

2. Was the law relating to constructive trusts correctly applied in this matter such that the judgment of the Trial Court should stand?

3. Is this appeal frivolous, given the prior decision of the Court of Appeals, which adopted no arguments presented by the appellant which would eliminate any award to the respondent, but merely indicated that a different legal theory should be used to characterize the division of those assets?

4. Should the respondent be awarded her reasonable attorney's fees and costs incurred in this matter, due to the repetitive nature of the appellant's arguments, and the frivolousness of this appeal?

ISSUES AS PRESENTED BY THE APPELLANT

5. Is the relationship between appellant and respondent best described as a constructive trust?

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

7. Can a constructive trust be claimed with limited evidence in support?

8. Can a constructive trust be dissolved, rather than created and enforced by law.

9. Is a constructive trust created to prohibit unjust enrichment?

10. Can plaintiff's admitted statement be ignored?

11. Is not the written statement an accord and satisfaction to all claims respondent may bring forth later.

12. Is not plaintiff barred by statutory time limit to attack validity of argument?

13. Now that plaintiff's common-law marriage has been rejected, is it necessary to include third parties in this action?

14. Should the plaintiff be compelled to amend her complaint to state a cause of action so the defendant may make an affirmative defense?

15. Can the respondent place all liabilities on appellant's property?

16. Did the trial court err in granting plaintiff's motion for distribution of funds after notice of appeal was filed?

17. What are the best interests of the parties' handicapped child which is not over 18?

18. Should the respondent be unjustly enriched by confusing the source and failing to keep records?

19. Should plaintiff be rewarded after filing federal statements of limited assets to receive grants?

DETERMINATIVE STATUTES

None

STATEMENT OF THE CASE

Nature of the case. This is an appeal from an order entered by Judge David Young of the Third District Court in December, 1989, which terminated the relationship of the parties and equitably divided their joint assets pursuant to the legal theory of constructive trust.

Course of the proceedings. This appeal is from a final order of Judge David Young of the Third District Court. The Plaintiff filed a complaint for divorce on October 14, 1983. The trial in this matter was held on June 9, 1987. The Plaintiff and Defendant presented witnesses and testimony of both of them was taken, and closing arguments were heard. The Trial Court determined that the parties relationship was a common-law marriage, and he equitably divided the parties' assets.

The defendant appealed, and received a decision dated July 5, 1989, which indicated that the parties' relationship was not a common-law marriage. The decision did suggest several other legal theories which might apply.

The plaintiff then filed proposed findings of fact, conclusions of law, and order dividing the parties' assets pursuant to a constructive trust, which was approved by the court in December, 1989.

The defendant then filed this appeal.

Disposition in the trial court. The Trial Court found that the parties relationship was a constructive trust, based upon the

confidential nature of the parties' relationship, and the substantial unjust enrichment which would occur if the defendant were allowed to retain all of the parties' assets.

Statement of material facts. Plaintiff, Helen Layton, hereinafter known as "Helen" and the Defendant, Donald Layton, hereinafter known as "Don" met in 1946 when Helen was fifteen (T57,L17) years old. After about two years, Helen began to work with Don cutting down trees, before and after her other job (T58,L7). In 1952, at age 20 she became pregnant, and went to California (T59,L2) for a time, but returned to Utah and lived with Don's parents until the baby (the parties' son Robert), was born on November 6, 1952 (T59,L11). Helen then lived with her parents until 1954. During this time, Helen and Don felled trees for a living. With the money they earned, she and Don bought a fire damaged house located at Banks Court in Salt Lake City (T59,L14), and worked together to make it habitable, and in 1954 Helen and young Robert moved in (T60,L19). Don moved in a short time later. Don and Helen intended to get married, and even purchased a marriage license, but they "never got around" to getting married (T61,L22).

The parties continued to work together, felling trees and demolishing houses for income. They began purchasing real property at tax sales, and bought a number of parcels, and one five acre parcel which was located at 3300 South and Wasatch Boulevard was purchased for the sum of \$6,666.66 which was paid in \$1,000 per year installments (T62,L25). In approximately 1961 that property

was sold for the sum of \$40,000.00 and the parties used those funds to purchase further properties.

Helen always participated in the choice of property and the negotiations for price and terms of each purchase. Over the years, some parcels have been sold or condemned by various government agencies, and the proceeds from those sales have always been used to pay expenses for the family, the properties, or to purchase further parcels.

From 1954 until 1980 the parties supported themselves from the earnings of the properties, the sale of raspberries and other fruit tended and picked by them, from tree felling, and demolition work. Neither party had regular full time employment for a third person. Helen worked alongside Don on a full time basis, even when pregnant with their three subsequent children (T63,L10). The only time she did not work an equal amount with Don was when Angie (born in 1962) and Michael (born in 1964) were very small, but as soon as they were in school she resumed roofing, painting, and otherwise managing the parties' properties. She also did all of the bookkeeping for the family, which was a considerable amount of work, during those years.

Helen and Don held themselves out to all who knew them as a married couple (T27,L18) (T20,L3) (T12,L25) (T37,L25), and the real property purchased by them reflects both of their names. The parcels which do not reflect joint ownership which Helen claims should be awarded to her are titled in Don's name alone due to an oversight. The parties had no funds which were not joint, and all

property purchased during that time should be (and most were) placed in joint names.

The parties had a joint bank account (T64,L2), in the name of Don or Helen Layton and they filed joint income tax returns each year (T63,L24). All income from their various pursuits was used to support themselves, their children, and the properties, and there is no indication that there was any division of any of the real or personal property of the parties along the lines of "yours" or "mine" during the history of the parties prior to their difficulties and final separation.

In early 1971 Danny was born afflicted with Down's Syndrome, and the parties troubles began. Helen was asked to leave the parties' residence in 1976 (T67,L1), and was gone for three months, but moved back to the family residence at Banks Court in October of that year. In early 1977 Helen again moved out (T67,L6), this time for four months, and then again moved back to Banks Court (the family residence). During this separation Helen had no outside job, and continued to do what she could to further the family business.

In November of 1979 Helen went to California (T70,L5) and did obtain employment there. She returned in April of 1980 to file a joint income tax return with Don, as the parties had done since approximately 1954. In May of that year, Don purchased the house at Villa Drive, "for Helen." (T50,L8) She returned to Utah in May and moved into the house. Helen obtained employment with Gem State Mutual Insurance Company in the Fall of 1980, and her earnings went

to pay the household expenses on the Villa Drive house (T71,L25), along with whatever else was needed. During this time she still worked to care for the properties on weekends and evenings (took her vacation to pick raspberries) and the parties still lived together and held themselves out to be husband and wife. Don lived at Banks Court for a few months after May of 1980, but eventually he moved to the Villa Drive house and the parties lived together until 1983 (T72,L7). Helen left the Villa Drive house in 1983 and filed this action.

Don has had the full management and control of all of the parties' properties, both real and personal, since the filing of this action. He has had the personal use and enjoyment of all of the income from the property, and he has had the burden of caring for the property, but he has not paid all of the property taxes and assessments which are outstanding against the real property of the parties. The income from the properties is approximately \$32,000 per year, and the property taxes are approximately \$12,000 per year, leaving a difference of \$22,000 per year for living expenses and any other expenses required for the property.

SUMMARY OF ARGUMENT

1. The findings and decree of the Trial Court are supported by the evidence and are not an abuse of discretion. The Plaintiff presented evidence that she and the Defendant had a continuous, if sometimes stormy, relationship from 1954 until 1983. Witnesses and documents presented into evidence proved that the parties' relationship was of the type contemplated by the cases regarding

constructive trust, as the defendant was holding assets which in equity and good conscience should be possessed by the plaintiff, due to their long relationship and the absence of separate funds between them.

A great injustice would occur if the defendant were allowed to retain all of the parties' assets, almost all of which are held in joint name, which represented the fruit of both parties' lifetime of work and effort.

The Defendant at trial, or since the decision of the Court of Appeals, has refused to provide any evidence or argument as to the fairness or lack thereof of the proposed property settlement, other than to allege that the Plaintiff should receive nothing. The Plaintiff produced an extensive exhibit of the properties, showing their locations, tax valuations, purchase prices, and including photographs, if relevant. The Plaintiff stated under oath that she would agree that the Defendant could receive either side of the list dividing the property prepared by her. The Defendant has never presented any evidence that the division according to that list was unfair. Accordingly, the division was equitable, and the Court did not abuse its discretion in finding that the relationship between the parties consisted of a constructive trust, which should now be dissolved. There is no need for further evidentiary hearing or amendment of pleadings, as the evidence at trial was complete, and adequately addressed the issues presented by the theory of constructive trust as well as the legal theories actually presented at trial. In any event, the defendant did not object to the

Court's determination that a constructive trust existed between the parties, and accordingly should not be allowed to do so now.

2. The law relating to constructive trusts was correctly applied in this matter such that the judgment of the Trial Court should stand. The theory of constructive trust requires a confidential relationship between the parties, and an inequity which would result if one of the parties were allowed to retain assets as a result of the confidential relationship, to the detriment of the other party. Such a relationship existed here, and accordingly, the law was correctly applied.

3. This appeal is frivolous, given the prior decision of the Court of Appeals, which adopted none of the arguments presented by the appellant other than to indicate that an incorrect legal theory had been applied. The appellant failed to object to the legal theory adopted by the Trial Court, and cannot now find fault with it. In his own brief filed herein, he does not present any new arguments resulting from the choice of legal theory, and he merely rehashes the same arguments he made in his prior appeal.

4. The respondent should be awarded her reasonable attorney's fees and costs incurred in this matter, due to the repetitive nature of the appellant's arguments, and the frivolousness of this appeal. The appellant failed to file a supersedeas bond in this matter, yet the mere existence of this appeal has prevented the respondent from selling any of the property awarded to her to raise badly needed cash. To compound that injury, she has been forced to expend her meager funds to pay

attorney's fees to respond to yet another appeal in this matter.

ARGUMENT

1. THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF THE DISTRICT COURT ARE FAIR, EQUITABLE, AND BASED UPON THE EVIDENCE PRESENTED AT TRIAL SUCH THAT THIS JUDGMENT IS NOT AN ABUSE OF DISCRETION.

Don and Helen have lived together for 19 years, raised four children, and amassed a sizeable estate of real and personal property. They held themselves out to be married, and lived as though they were. The property of the parties represents their life's work, and neither of them had any other. With rare exception, the assets held by them were in their joint names. This conduct has created a constructive trust between them, due to their confidential relationship. Don offered to be a husband and father, and Helen accepted by being a wife and mother and both expected to share equally in the profits of their life's work. At no time did Helen intend to transfer all of her assets to Don for his benefit alone. Now the constructive trust can no longer continue due to the parties' inability to work together and Don's attempted appropriation of all of them. The assets acquired by the parties have been divided using the equitable principles created by a constructive trust, and Don should not be allowed to appropriate all of the parties' assets for himself for the sole reason that the parties were not legally married.

In Ashton vs. Ashton, 733 P.2d 147 (Utah 1987), The Utah Supreme Court found that a confidential relationship existed

between the parties when one party conveyed his interest in real property to his brother, with the oral agreement that grantee would reconvey the property when grantor's marital problems were resolved. When grantee refused to reconvey the property, the lawsuit ensued. The Court created a constructive trust, and ordered reconveyance of the property.

In this matter, Helen has placed almost all of her assets in joint name with Don, based upon their confidential relationship, without which she would not have done so. Don has produced no evidence that he had any separate funds during the time the property was acquired, and Helen has not asked for any assets acquired by Don after this matter was filed. Now Don seeks to have all of the assets for himself, and the Trial Court has refused to allow him to retain those assets, and has equitably divided them between the parties.

Without the Court's aid, Helen would receive nothing from a lifetime of work, and Don would receive all of this property, even though it was not acquired by his efforts alone. At no time during the course of this action has Helen claimed that Don is not entitled to an equitable division of approximately one-half of the parties' assets.

The Court should ratify the parties' 19 year constructive trust, and should let stand the decision of the Trial Court.

2. THE LAW RELATING TO CONSTRUCTIVE TRUSTS WAS CORRECTLY APPLIED IN THIS MATTER SUCH THAT THE JUDGMENT OF THE TRIAL COURT SHOULD STAND.

The legal theory of constructive trust requires the following:

1. A confidential relationship between the parties, and,
2. Unjust enrichment which would result if one of the parties were allowed to retain assets as a result of the confidential relationship, to the detriment of the other party, Matter of Estate of Hock, 655 P.2d 1111 (Utah 1982).

In Mattes vs. Olearain, 759 P.2d 1177 (Utah App. 1988), the Utah Court of Appeals overturned a trial court finding of common-law marriage and a constructive trust. That case differs from this matter in several respects.

First, the parties in Mattes lived together for only two years. In this matter they lived together for 19 years.

Second, the parties in Mattes had their own separate sources of income, where in this matter for 19 years the parties only sources of income were their own joint labor in their joint enterprises.

Third, in Mattes, the "wife" was seeking to overturn her execution of a valid deed granting title to the "husband" in his name alone. In this matter, Helen is seeking an equitable division of a great deal of real and personal property, almost all of which is already held in joint name, and all of which was obtained by joint funds, so that the validity of her claim is much more clear than in Mattes.

Fourth, Judge Orme in his concurring opinion in Mattes, indicates that the "wife" could have retained the property on the

theory of a resulting trust rather than a constructive trust. He states that a resulting trust arises from the failure of an express trust, with full performance of an express trust, and payment of the purchase price for property by one, but put in the name of another. This theory could also apply to this matter, if the Appeals Court should so determine.

The Utah Supreme Court has required that the doctrine of confidential relationship requires an inequality between the parties. In this matter, the parties lived as equal partners for most of their 19 years together, but there was evidence presented at trial which indicates that, toward the end, Don did exercise domination over Helen, and that he at one time shot at her with a gun. However, it is his refusal to give her any of the income from the properties, or allow her to sell or otherwise share in them after the separation of the parties, which creates his position of superiority which, by the time he began to exercise it, made it impossible for Helen to get out of this relationship with any of her assets.

There has been no evidence presented that Don did more work or provided more funds than Helen. There are no citations to the record by Don to indicate that such evidence was presented at trial, or that the Trial Court refused to accept that evidence. Don has provided no compelling argument to indicate any argument which would justify awarding him all of the parties' assets.

A clearly gross inequity would result if Don was allowed to retain all of the parties' assets merely because they were not

legally married. Helen would never had pooled her labor and assets with Don if she had believed that Don would ultimately be the sole owner of all of those assets, while she received nothing. It was this reliance, and Don's appropriation of those assets for himself, which created the confidential relationship between them. Their joint efforts obtained those assets, and if they can no longer work together, those assets should be equitably divided between them so they can go their separate ways. The Trial Court did exactly that, and the assets have been equitably divided between the parties.

3. THIS APPEAL IS FRIVOLOUS, GIVEN THE PRIOR DECISION OF THE COURT OF APPEALS.

In the prior decision in this matter, the Court of Appeals adopted none of the arguments presented by the appellant other than to indicate that an incorrect legal theory had been applied. The appellant failed to object to the legal theory adopted by the Trial Court, and cannot now find fault with it. In his own brief filed herein, he does not present any new arguments resulting from the choice of legal theory, and he merely rehashes the same arguments he made in his prior appeal.

4. THE RESPONDENT SHOULD BE AWARDED HER REASONABLE ATTORNEY'S FEES AND COSTS INCURRED IN THIS MATTER.

The respondent should be awarded her reasonable attorney's fees and costs incurred in this matter, due to the repetitive nature of the appellant's arguments, and the frivolousness of this appeal. The appellant failed to file a supersedeas bond in this matter, yet the mere existence of this appeal has prevented the

respondent from selling any of the property awarded to her to raise badly needed cash. To compound that injury, she has been forced to expend her meager funds to pay attorney's fees to respond to yet another appeal in this matter. Appellant has expended no funds for his attorney, as he is representing himself, and his part of the assets are not in dispute, so he is free to transfer them as he sees fit. During the pendency of this appeal, the appellant has paid none of the funds ordered by the Trial Court to the respondent, including the child support ordered. In light of all of these factors, the respondent should be awarded her reasonable attorneys fees and costs as set forth in the affidavit attached hereto.

5. RESPONSE TO APPELLANT'S ISSUES PRESENTED IN HIS BRIEF, WHICH RESPONDENT FEELS ARE EITHER NOT RELEVANT, OR WERE ALREADY PRESENTED IN THE PRIOR APPEAL AND FOUND TO BE WITHOUT MERIT:

5. Is the relationship between appellant and respondent best described as a constructive trust?

This issue has been addressed above.

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

Don does not present any argument regarding this issue, but it would appear that if this were a partnership, that the result would be the same, with the most relevant feature being that Don would not retain all of the parties' assets, and those assets would be divided between the parties as part of the partnership dissolution.

7. Can a constructive trust be claimed with limited evidence in support?

No, but in this matter, there is ample evidence in the record to support the finding that the parties' relationship was governed by a constructive trust, and that the assets of the parties were correctly and equitably divided.

8. Can a constructive trust be dissolved, rather than created and enforced by law.

Yes. The constructive trust is created by the relationship of the parties, and if the relationship deteriorates such that one party is attempting to appropriate all of the assets for himself, then the Court can find that the trust exists, and then dissolve it, equitably dividing the assets contained therein.

9. Is a constructive trust created to prohibit unjust enrichment?

Yes. Don is attempting to unjustly enrich himself at Helen's expense, and the constructive trust is created to prevent that unjust enrichment.

10. Can plaintiff's admitted statement be ignored?

See next issue.

11. Is not the written statement an accord and satisfaction to all claims respondent may bring forth later.

Don has presented to the Court on numerous occasions, and did present at the trial in this matter, a copy of a handwritten statement which Helen admits she wrote, which states that "I hereby relinquish all claim to all property in the name of Don and Helen

Layton."

Don claims that this is a binding contract, and that it eliminates all claims Helen has to any of the parties' real or personal property.

This statement was found to be invalid by the Trial Court for a number of reasons. It is only written by Helen Layton, not signed by her. It does not have a date. Most importantly, it does not describe the property in question. It is not clear whether she contemplated transferring the rights to a TV set, a car, or all of these many parcels of real property. At the time this statement was made, Helen was an experienced buyer of real estate and had executed many deeds and other contracts. She knew that real and personal property could not be transferred by such a statement, and that to effect this statement she would have to sign quit-claim deeds to all of the jointly held property. Helen knew that to transfer title to automobiles that her signature on the title would be necessary. Most of all, she knew that if she was coerced into making the statement, that along with these other problems, the statement would have no legal significance whatsoever.

This statement was written sometime in the 1970's, during which time the parties continued to live together, and although their personal relationship was deteriorating, their business relationship did not materially change during this time. At no time did they behave as though this statement was a binding agreement by executing quit-claim deeds, automobile titles, or other bills of sale.

Because of these defects in the statement, and the actions of the parties in failing to ratify or act as though the statement was a valid contract, or an accord and satisfaction, and the statement is exactly that and no more. It is not a contract, and it does not transfer any property from one party to the other.

12. Is not plaintiff barred by statutory time limit to attack validity of agreement?

No, because the agreement was not valid, and thus was not governed by the statute of limitations. Also, this argument was not made at trial, and is now barred.

13. Now that plaintiff's common-law marriage has been rejected, is it necessary to include third parties in this action?

No. The defendant has orally complained of the failure of the court to include third parties to this action. However, Helen included the only other person whose name was contained on the titles of the property in question. She knew of no other person who was a partner, who had shared in profits, or who had an interest in these assets. Accordingly, she did not need to name third parties. Don could have made a motion to include the third parties anytime during the four years it took to get this matter to trial, but he failed to do so, and it is far too late for him to attempt to do so now.

14. Should the plaintiff be compelled to amend her complaint to state a cause of action so the defendant may make an affirmative defense?

No. The defenses to a claim of constructive trust are exactly

the same as the defenses which either were presented, or should have been presented if Don were a better attorney. Don has had an ample opportunity to have his position heard, and there is no need for an amended complaint or new trial in this matter when all of the relevant evidence is already on the record herein.

15. Can the respondent place all liabilities on appellant's property?

Yes. The trial court required Don to pay the property taxes and assessments which accrued during the time he along was managing the property, because Don received all of the income from the properties during the same time period, and this was correct.

16. Did the trial court err in granting plaintiff's motion for distribution of funds after notice of appeal was filed?

No. Don failed to file a motion for stay or a supersedeas bond in this matter, and accordingly, he cannot prevent the sale of any property or asset pending appeal.

17. What are the best interests of the parties' handicapped child which is not over 18?

Child custody was not an issue in the original trial, and now that the child is over 18, his care is a new issue, which should be dealt with in an appropriate forum, which is not this appeal.

18. Should the respondent be unjustly enriched by confusing the source and failing to keep records?

No. However, Helen did keep good records. The only party who has failed to keep records is Don, who appeared at court with a shoe box containing the records from the time of his sole

management of the property, and it is Don who refused to respond to discovery sent by Helen. All of the records Don attempted to admit at trial were objected to by Helen on the grounds that Don had not produced those records pursuant to discovery, and accordingly could not produce them at trial. None of those records indicated that any other person had an interest in the property, or that Don had purchased any of the property with joint funds.

19. Should plaintiff be rewarded after filing federal statements of limited assets to receive grants?

At trial Don presented an application filled out by Helen for college aid for the parties' daughter. In that application, Helen indicated that she did not have substantial assets. The application was filled out while the matter was pending, and Don was claiming to be the sole owner of those assets. Helen, having no guarantee she would ever receive any asset out of this matter, did not feel she could claim ownership of those assets at that time, since their ownership was in dispute.

The application was merely a statement of the facts at that time, and was not found by the Trial Court to be relevant or determinative of any of the issues between the parties.

ARGUMENTS ADDRESSED IN BODY OF APPELLANT'S BRIEF WHICH ARE NOT SET FORTH ABOVE:

20. Did the Trial Court err in refusing to recognize agreement made by respondent?

No. See issue 11 above.

21. Is the Trial Court a co-conspirator to defraud the federal

government by awarding the respondent assets in this matter?

No. See issue 19 above.

22. Can plaintiff's admitted statement be ignored?

Yes. See issue 11 and issue 19 above.

CONCLUSION

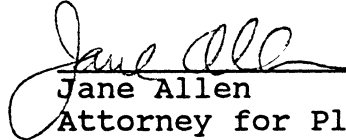
The parties had a 19 year relationship, during which time they raised four children and pooled all of their assets. Don has attempted to appropriate those assets for himself, and the Trial Court has refused to allow him to do so. Instead, the Trial Court has imposed a constructive trust upon the parties and their assets, and has equitably divided them between the parties.

Don, by this appeal, has asked the Court of Appeals to overturn the judgment of the Trial Court and award all of the property to him. He has not cited the record once in his brief. He has cited no statute nor any relevant case law to support any of his arguments. He has presented no argument at trial, (despite the entreaties of the Trial Court to do so) and no compelling argument here that the division of the property is inequitable, and that some other division would be more fair. He just wants it all.

Don's position is inherently unfair, and in fact, shocking. Helen would be deprived of her share of her life's work, and the Trial Court correctly imposed this constructive trust to equitably divide the parties' assets to prevent the unjust enrichment which would result if Don were allowed to appropriate all of the property for himself. The division of the parties' assets by the Trial Court should stand, and Helen should be awarded her attorney's fees

incurred in this appeal.

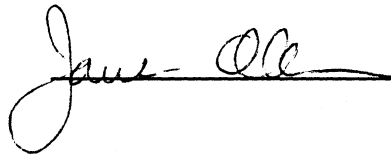
DATED this 10 day of July, 1990.



Jane Allen
Attorney for Plaintiff/Respondent
Helen Layton

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing
Respondent's Brief to the Appellant, Don Layton, 220 Banks Court
Salt Lake City, Utah 83102 this 11 day of July, 1990.



Jane Allen, Bar #45
Attorney for Plaintiff
8 East 300 South, Suite 735
Salt Lake City, Utah 84111
(801) 355-1300

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HELEN LAYTON,	)	FINDINGS OF FACT
Plaintiff,	)	AND CONCLUSIONS OF LAW
vs.)	
DONALD LAYTON,	)	Civil No. D83-3977
Defendant.	)	Judge David Young

This matter was decided by the Utah Court of Appeals on July 9, 1989. The Court remanded this matter to the trial court for further findings of fact and conclusions of law in accordance with the evidence presented at trial. The Appeals Court ruled that the parties' relationship was not covered by the statute regarding common law marriage, but a number of other legal theories were suggested. The Plaintiff proposed her findings, and the Defendant responded. After considering the arguments of both parties, the court ordered that the theory of constructive trust be applied to this matter, and based upon the record herein and good cause appearing therefor, the Court makes the following:

FINDINGS OF FACT

1. The parties herein began living together in 1954, and lived together almost continuously until 1983, when this action was filed.

2. The parties filed joint income taxes from 1954 until 1983.

3. The parties pooled all of their income, which was exclusively from joint business endeavors, which were buying and selling real property, felling trees, demolition of buildings, sale of raspberries each summer.

4. The parties owned no real property at the time their relationship began, and all real and personal property owned by them at the time of trial was purchased during the time they lived together and was purchased with joint funds. The relationship of the parties could be described as similar to a marriage, with the relationship being confidential, and with each party dependent upon the other for various services and emotional support during the time the relationship existed.

5. The equitable distribution as rendered by the Court is supported by the principles of the parties' conduct, which created a constructive trust.

6. A constructive trust is arises to prevent manifest injustice and can be applied to almost any circumstances, as set forth in CJS, Sec.142 as follows:

Generally, any transaction may be the basis for creating a constructive trust where for any reason the defendant holds funds which in equity and good consience should be possessed by the plaintiff, and the forms and varieties of constructive trusts are practically without limit.

7. In this matter, the parties lived as though they were married, and had considerable joint assets. A great injustice would occur if the defendant were allowed to retain all of the

parties' assets, which represented the fruit of both parties' lifetime of work and effort.

8. Accordingly, a constructive trust may be imposed in this matter, not necessarily because of the intention of the parties, but because the person holding title to the property would be unjuustly enriched if he were permitted to keep the property. (See Doing vs. Riley, CA Fla., 176 F. 2d 449; Potter vs. Lindsay, 60 N. W. 2d 133, 337 Mich. 404; Miller vs. Buecker, Comm. Pl., 63 York Leg. Rec. 53; Copenhaver vs. Duncan, Comm. Pl., 60 York Leg. Rec. 105; McConnel vs. Dixon, 233 P. 2d 877, 68 Wyo. 301.)

9. Utah has recognized the concept of constructive trusts, and has no statutes barring the application of this theory in this matter.

10. Their relationship and the divisions of the assets accumulated therein are governed by said trust whether in individual names or joint names.

11. The Court further finds that matters related to property distribution are unchanged hereby. The Court followed equitable principles in dividing the property and orders that those findings and that distribution be set forth herein.

12. From 1983 until June of 1987 the Defendant had complete control of the parties' assets and he received all income thereon, and accordingly he should be responsible for all indebtedness, property taxes, and assessments which were levied on the property during that time that have not been paid by him.

13. The parties raised four children, one of whom is handicapped and is in need of support beyond age 18. Danny, said

child, is presently residing with the Plaintiff, and she is in need of support for his care and support in the sum of \$200.00 per month until such time as he no longer resides with her.

14. The Plaintiff did make the writing which states that "I hereby relinquish all claims to all property in the name of Don Layton and Helen Layton."

15. The writing was made sometime in the 1970's, and an exact date is impossible to determine, as the writing is not dated and the parties' testimony differs as to the approximate date.

16. There is no evidence of consideration for the writing, and the property mentioned therein is not identified with enough particularity for the court to determine what property, if any, was being transferred.

17. The parties did not later ratify the writing by transferring all of the jointly held real or personal property into the name of the Defendant in reliance thereon, or otherwise behaving as though the writing had validity. Instead, they continued their relationship as they had in the past.

18. The Court finds the note signed by the Plaintiff stating, "I hereby relinquish all claim to all property in the name of Don Layton and Helen Layton" to be unsupported by consideration and further to have been ignored by the parties until the Defendant attempted to use it to his advantage in these proceedings. Thus, this Court finds the note to be a nullity and ignores its content.

19. At the time of the filing of this action the parties' property, both real and personal, was essentially intact, and had, except for small sales, not been transferred to others or

encumbered by either of them.

Having made the foregoing Findings of Fact, the Court now makes the following:

CONCLUSIONS OF LAW

1. The parties confidential relationship is best characterized as a constructive trust.

2. All property acquired by the parties, whether in joint or separate name, has been equitably divided in an approximately equal division according to value, as set forth below.

3. The parties to this action were the only beneficiaries of the constructive trust, and have been duly notified of this action, and sufficient evidence was obtained at trial to indicate a need to equitably divide the assets of the trust.

4. The writing produced by the Defendant does not transfer any trust property to him, and is invalid, as it is not supported by consideration nor has it been later ratified by the parties.

5. Accordingly, the personal and real property of the parties shall be equitably divided between them as follows:

PERSONAL PROPERTY:

6. The parties, along with their personal effects, owned, at the time of the parties' separation the following items all of which are presently in the possession of the Defendant:

- four motorcycles
- three pianos
- Yamaha Organ
- 600 ounces of silver
- Train collection (est. value \$10,000.00)
- Mechanics tools
- Carpenters tools
- Tree cutting tools
- Caterpillar tractor
- Road grader

Dump truck
Three pickup trucks
Camper
1959 Corvette
Saab Automobile
Gun collection
Substantial miscellaneous personal property

7. The Plaintiff shall retain the personal property in her possession, and the Defendant shall awarded the personal property in his possession, with the party retaining an item to be responsible for all indebtedness thereon. However, there is a substantial inequity in this division, and the Plaintiff shall be awarded the parcels of real property numbered 23-873-1 and 23-874, page number 64 and 59 of Exhibit A as her sole and separate property, subject to no claim by the Defendant.

8. The Plaintiff shall be awarded all personal property and fixtures which is inside or on the real property awarded to her.

REAL PROPERTY:

9. The real property of the parties is extensive, and it is divided as set forth in exhibit A, which is attached hereto.

PAST DUE PROPERTY TAXES, SEWER ASSESSMENTS, AND WATER BILLS:

10. The Defendant shall be responsible for all property taxes, sewer assessments, and water bills and any other unpaid expenses for the property awarded to the Plaintiff until it was transferred to the Plaintiff's name alone, which occurred in July of 1987, and those debts should be paid by Helen being awarded a lien against parcel no.17-4963, page 50 of Exhibit A. The amount of said lien remains to be determined, and if the parties cannot agree as to the amount, either party may move the court for a determination of the

amount of said lien. Said lien shall be paid whenever the property is sold, or the Plaintiff may foreclose upon her lien if she so desires.

CHILD SUPPORT:

11. The Defendant shall pay child support to the Plaintiff in the sum of \$200.00 per month for so long as he resides with the Plaintiff.

12. Both parties shall maintain health and accident insurance for Daniel so long as it is available through his or her employment, and they shall share equally any medical, dental, orthodontic or optical expenses incurred by him which are not covered by insurance.

13. The Plaintiff shall be awarded the custody of Daniel, subject to the Defendant's reasonable rights of visitation.

SIGN ALL PAPERS:

14. The Defendant shall sign a quit-claim deed for each parcel awarded to the Plaintiff, and she shall do the same, within two weeks of the decision of this Court. If the Defendant should fail to do so, the Plaintiff may petition the Court and have the Court execute the documents, and the Defendant shall be responsible for her attorney's fees required in doing so.

ATTORNEY'S FEES:

15. Each party should be responsible for his or her own attorney's fees and costs. Should the Defendant again appeal this matter, he should be responsible for the Plaintiff's reasonable attorney's fees and costs incurred on said appeal, should the Plaintiff be successful.

RESTRAINING ORDER:

16. The Defendant shall be permanently restrained from harassing, threatening, or bothering the Plaintiff or her tenants.

DATED this ____ day of _____, 1989.

BY THE COURT:

David Young
District Court Judge

Approved by:

Donald W. Layton
Defendant

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Decree of Divorce to Donald W. Layton, 3801 Villa Drive, Salt Lake City, Utah, 84109, and 220 Banks Court, Salt Lake City, Utah 84102 postage prepaid this 1 day of December, 1989.

Jane Allen

Jane Allen, Bar #45
Attorney for Plaintiff
8 East 300 South, Suite 735
Salt Lake City, Utah 84111
(801) 355-1300

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

HELEN LAYTON,	)	ORDER OF DISSOLUTION OF
Plaintiff,	)	CONSTRUCTIVE TRUST
vs.)	
DONALD LAYTON,	)	Civil No. D83-3977
Defendant.	)	Judge David Young

This matter was decided by the Utah Court of Appeals on July 9, 1989. The Court remanded this matter to the trial court for further findings of fact and conclusions of law in accordance with the evidence presented at trial. The Appeals Court ruled that the parties' relationship was not covered by the statute regarding common law marriage, but a number of other legal theories were suggested. The Plaintiff proposed her findings, and the Defendant responded. After considering the arguments of both parties the Court has determined that the theory of constructive trust applies to this matter, and based upon the record herein and good cause appearing therefor, and having made and entered its findings of fact and conclusions of law, it is hereby ordered, adjudged, and decreed:

DECREE OF DISSOLUTION

1. The confidential relationship of the parties is hereby

characterized as a constructive trust, and said constructive trust created by the parties is hereby dissolved.

2. All property acquired by the parties, whether in joint or separate name, has been equitably divided in an approximately equal division according to value, as set forth herein.

3. The parties to this action were the only beneficiaries of the "constructive trust," and have been duly notified of this action, and sufficient evidence was obtained at trial to indicate a need to equitably divide the assets of the trust.

4. The writing produced by the Defendant does not transfer any trust property to him, and is invalid, as it is not supported by consideration nor has it been later ratified by the parties.

5. Accordingly, the personal and real property of the parties shall be equitably divided between them as follows:

PERSONAL PROPERTY:

6. The parties, along with their personal effects, owned, at the time of the parties' separation the following items all of which are presently in the possession of the Defendant:

- four motorcycles
- three pianos
- Yamaha Organ
- 600 ounces of silver
- Train collection (est. value \$10,000.00)
- Mechanics tools
- Carpenters tools
- Tree cutting tools
- Caterpillar tractor
- Road grader
- Dump truck
- Three pickup trucks
- Camper
- 1959 Corvette
- Saab Automobile
- Gun collection
- Substantial miscellaneous personal property

7. The Plaintiff shall retain the personal property in her possession, and the Defendant shall awarded the personal property in his possession, with the party retaining an item to be responsible for all indebtedness thereon. However, there is a substantial inequity in this division, and the Plaintiff shall be awarded the parcels of real property numbered 23-873-1 and 23-874, page number 64 and 59 of Exhibit A as her sole and separate property, subject to no claim by the Defendant.

8. The Plaintiff shall be awarded all personal property and fixtures which is inside or on the real property awarded to her.

REAL PROPERTY:

9. The real property of the parties is extensive, and it is divided as set forth in exhibit A, which is attached hereto.

PAST DUE PROPERTY TAXES, SEWER ASSESSMENTS, AND WATER BILLS:

10. The Defendant shall be responsible for all property taxes, sewer assessments, and water bills and any other unpaid expenses for the property awarded to the Plaintiff until it was transferred to the Plaintiff's name alone, which occurred in July of 1987, and those debts should be paid by Helen being awarded a lien against parcel no.17-4963, page 50 of Exhibit A. The amount of said lien remains to be determined, and if the parties cannot agree as to the amount, either party may move the court for a determination of the amount of said lien. Said lien shall be paid whenever the property is sold, or the Plaintiff may foreclose upon her lien if she so desires.

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11. The Defendant shall pay child support to the Plaintiff in the sum of \$200.00 per month for so long as he resides with the Plaintiff.

12. Both parties shall maintain health and accident insurance for Daniel so long as it is available through his or her employment, and they shall share equally any medical, dental, orthodontic or optical expenses incurred by him which are not covered by insurance.

13. The Plaintiff shall be awarded the custody of Daniel, subject to the Defendant's reasonable rights of visitation.

SIGN ALL PAPERS:

14. The Defendant shall sign a quit-claim deed for each parcel awarded to the Plaintiff, and she shall do the same, within two weeks of the decision of this Court. If the Defendant should fail to do so, the Plaintiff may petition the Court and have the Court execute the documents, and the Defendant shall be responsible for her attorney's fees required in doing so.

ATTORNEY'S FEES:

15. Each party should be responsible for his or her own attorney's fees and costs. Should the Defendant again appeal this matter, he should be responsible for the Plaintiff's reasonable attorney's fees and costs incurred on said appeal, should the Plaintiff be successful.

RESTRAINING ORDER:

16. The Defendant shall be permanently restrained from harassing, threatening, or bothering the Plaintiff or her tenants.

DATED this ____ day of _____, 1989.

BY THE COURT:

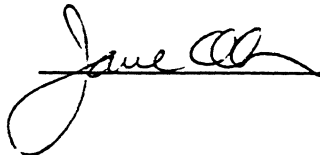
David Young
District Court Judge

Approved by:

Donald W. Layton
Defendant

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Proposed Findings of Fact and Conclusions of Law to Donald W. Layton, 3801 Villa Drive, Salt Lake City, Utah, 84109, and 220 Banks Court, Salt Lake City, Utah 84102 postage prepaid this 1 day of December, 1989.

 _____

Jane Allen, Bar #45
8 E. 300 S., Suite 735
Salt Lake City, Utah 84111
(801)355-1300

IN THE UTAH COURT OF APPEALS

HELEN LAYTON,)	
Plaintiff and Respondent,	)	Court of Appeals No:
vs.	)	900019-CA
DONALD LAYTON,	)	Previous Appeal No:
Defendant and Appellant,	)	870378-CA
	)	Oral Argument Priority 14(b)

RESPONDENT'S AFFIDAVIT OF ATTORNEY'S FEES

STATE OF UTAH)
 :SS.
COUNTY OF SALT LAKE)

Comes now Jane Allen, attorney for Respondent, after being duly sworn on oath, who deposes and states as follows:

1. I am the attorney for Helen Layton, Respondent in this matter.

2. I have performed the following services in responding to the Appellant's brief at my normal hourly rate of \$75.00 per hour:

Research of case law: 3 hours

Writing brief: 10 hours

Preparing for and making oral argument (in the future):

3 hours

Total: 16 hours at \$75.00 per hour = \$1200.00

Copies: \$45.76

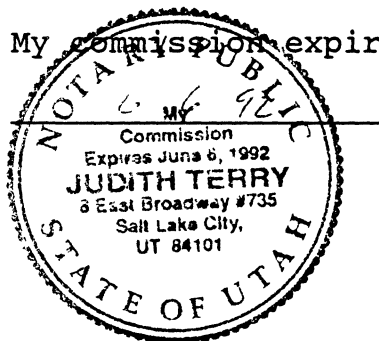
Grand total: \$1245.76

DATED this 10 day of July, 1990.

Jane Allen
Jane Allen
Attorney for Respondent

Subscribed and sworn to before me this 10th day of July, 1990.

My commission expires:



Jane Allen
Notary Public
Residing in: Salt Lake County

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Affidavit to the Appellant, Don Layton, 220 Banks Court Salt Lake City, Utah 83102 this 11 day of July, 1990.

Jane Allen