

1981

La Vor J. Coates v. Mary Coates : Appellant's Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

LA VOR J. COATES

Plaintiff-
Appellant

vs.

MARY COATES

Defendant-
Respondent

Case No. 17344

APPELLANT'S BRIEF

APPEAL FROM THE ORDER AND JUDGMENT
OF THE THIRD JUDICIAL DISTRICT COURT
FOR SALT LAKE COUNTY, STATE OF UTAH

HONORABLE JAY E. BANKS, JUDGE

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TABLE OF CONTENTS

	Page
STATEMENT OF NATURE OF THE CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	7
POINT I.	
THAT THE COURT ABUSED ITS DISCRETION IN THE DIVISION OF MARITAL ASSETS	7
POINT II.	
THAT THE COURT ERRED IN AWARDING ATTORNEY'S FEES TO DEFENDANT	11
CONCLUSION	14

AUTHORITIES CITED

Page

CASES:

Fletcher v. Fletcher 615 P. 2d 1218	8
Jespersion v. Jespersen 610 P. 2d 326	9
Hamilton v. Hamilton 562 P. 2d 235	9
Wilson v. Wilson 1956 Ut, 296 P. 2d 977	10
Read v. Read 1979 Ut, 594 P. 2d 871	10
Weiss v. Weiss 111 Ut. 353, 179 P. 2d 1005	13
Adams v. Adams Ut 1979, 593 P. 2d 147	13

IN THE SUPREME COURT OF THE STATE OF UTAH

* * *

LA VOR J. COATES

Plaintiff-
Appellant

vs.

MARY COATES

Defendant-
Respondent

Case No. 17344

* * *

APPELLANT'S BRIEF

STATEMENT OF NATURE OF THE CASE

Plaintiff-husband appeals the distribution of the property of the parties and an alimony award, as determined by the trial court, and set forth by the Decree of Divorce entered by the court.

DISPOSITION IN LOWER COURT

After the trial of this matter, the court entered its decree, wherein the property of the parties was distributed in accordance

with the findings of the court. In addition, the court entered an award of alimony in favor of the defendant.

RELIEF SOUGHT ON APPEAL

Plaintiff-appellant seeks to have the property disposition set aside and reversed, and the matter remanded to the district court for reconsideration of the property division.

STATEMENT OF FACTS

The parties were married on June 26, 1969, and lived as husband and wife until their separation on approximately December 3, 1975. One minor child was born as issue of the marriage.

The court found that each party had brought to the marriage certain property (R-180), the plaintiff having brought into the marriage a truck and camper shell, stock worth approximately \$630, a Credit Union account of approximately \$2,100, an investment account of approximately \$1,000, and his personal possessions. That defendant brought to the marriage a home on Bryan Avenue, Salt Lake City, Utah; \$4,000 cash; furniture; a 1966 Chevrolet automobile, and

her personal possessions.

The transcript shows that plaintiff testified that he brought into the marriage a pickup truck, a camper, a boat, a 1963 Chevrolet automobile, stock with a value of \$630. 54, a checking account with a balance of \$3, 807, a Credit Union account with a balance of \$2, 100, and a mutual fund investment of \$1, 200 (T-73, 74, 75, 76). Further, the transcript shows that the defendant brought to the marriage a 1966 Chevrolet automobile, and an interest in a home on Bryan Avenue (T-76). Plaintiff testified that the home on Bryan Avenue was later deeded by defendant's parents to both plaintiff and the defendant (T-77), and that the parties did extensive remodeling to said home (T-77), after which the house was sold, and approximately \$20, 200 applied towards the purchase of the parties home on Thunderbird Drive (T-79).

During the marriage, the parties, in addition to acquiring the home on Thunderbird Drive, traded plaintiff's pickup truck for a 1961 pickup truck (T-79), sold plaintiff's boat, and used the proceeds to purchase a Sea Ray boat (T-83), purchase a vacant lot in Granger,

Utah (T-79); purchased furniture (T-85, 86, 87, 88, 89, 90, 91); and accumulated and purchased jewelry (T-94, 95.) In addition, the parties accumulated two 1977 Buick automobiles (T-105, 133), having sold the two Chevrolet automobiles brought into the marriage (T-107.)

In addition to the accumulation of the foregoing property, the evidence established that plaintiff had a Credit Union account of approximately \$6,000 (T-116; Ex. 44-D, 45-P), and a retirement account of approximately \$3,000 (T-98; Ex. 16-D.) Defendant had acquired an IRA retirement account of \$7,500. The parties also purchased and owned some stock, part of which was sold about the time of the separation of the parties (T-121, 132.)

Defendant testified that her father had assisted the parties financially during the years of the marriage, and that there was \$7,500 owed to him (T-142.) This amount represented \$1,500 used to purchase the vacant lot in Granger, and \$6,000 borrowed to remodel the Thunderbird Drive home.

The court, after presentation of the evidence, found that the home on Thunderbird Drive was valued at \$148,000 (R-179), with no outstanding encumbrances; that plaintiff's pension plan with Hughes Airwest had an approximate value of \$3,300; that defendant's IRA account was approximately \$7,000 (R-180); and that certain bills existed, including \$7,500 to defendant's father; however, according to the exhibits presented (44-D and 45-P), the total property accumulated by the parties consisted of additional properties not considered by the court in its Findings of Fact. Values of these properties, as shown by the exhibits, are:

<u>ITEM</u>	<u>VALUE BY PLAINTIFF</u>	<u>VALUE BY DEFENDANT</u>
Home - 2759 Thunderbird	\$ 170,000.00	\$ 148,100.00
Building lot - Granger	15,000.00	22,500.00
Boat	10,900.00	13,000.00
Pickup and camper	2,000.00	2,700.00
Furniture and personal property	37,822.00	None
Jewelry of defendant	16,000.00 to 25,000.00	None

<u>ITEM</u>	<u>VALUE BY PLAINTIFF</u>	<u>VALUE BY DEFENDANT</u>
Jewelry of plaintiff	\$ 300.00 to 500.00	\$ 500.00
Stock owned and/or sold	855.00	3,084.00
Stocks in possession	1,500.00 to 3,000.00	1,712.00
Retirement accounts	3,000.00	7,200.00
Savings or Credit Union accounts	<u>6,000.00</u>	<u>None</u>
TOTALS (Smallest claimed)	\$ 263,277.00	\$ 187,096.00

Notwithstanding the amounts claimed by the parties, the court in its Conclusions of Law and in the Decree of Divorce made a disposition of the property. It is from this property disposition that plaintiff appeals.

POINTS ON APPEAL

- POINT I. THAT THE COURT ABUSED ITS DISCRETION IN THE DIVISION OF MARITAL ASSETS.
- POINT II. THAT THE COURT ERRED IN AWARDED ATTORNEY'S FEES TO DEFENDANT.

ARGUMENT

POINT I

THAT THE COURT ABUSED ITS DISCRETION IN THE DIVISION OF MARITAL ASSETS.

In its Findings of Fact, the court did not find a value of all or the property of the parties, but found a value for only the home on Thunderbird Drive. In making the division of property, the court did not consider the defendant's own testimony that she felt that a 60/40 division of the house would be fair (T-139). Considering the values as established by the testimony and exhibits, and applying defendant's values, the decree awards the property, as follows:

TO PLAINTIFF:

Home lien	\$ 27,000.00
Building lot (value less \$1,500.00 to defendant's father)	21,000.00
Boat	13,000.00
Truck/camper	2,700.00

TO DEFENDANT:

Home	\$ 115,100.00
(\$148,100.00, less lien, and less \$6,000.00 to defendant's father)	

TO PLAINTIFF:

Pension plan \$ 3,200.00

Credit Union 6,000.00

Stock proceeds 855.00

Jewelry 500.00

\$ 68,655.00

TO DEFENDANT:

\$ 7,000.00

\$ 122,100.00

Thus, it can be seen that the court, without considering the value of defendant's household furniture, jewelry and stock, awarded the defendant 64% of the assets of the marriage. Had the court considered that the furniture had the value placed by plaintiff at \$37,722.00; the plaintiff's jewelry at \$16,000.00; and her stock at \$4,796.08, the amount she was awarded would then be \$180,618.08, and the ratio would then be: plaintiff - 27%, and defendant - 73%.

While it is recognized that no fixed formula exists by which the court is required to distribute the assets of a marriage, the disposition should be fair, equitable, and necessary for the parties.

Fletcher v. Fletcher, 615 P.2d 1218.

Since the marital estate is evaluated according to the existing property interests at the time the matter is heard by the court, appellant contends that the court should have considered the value of all of the marital assets, including furniture, jewelry and stock values. See Jespersion v. Jespersen, 610 P.2d 326; Hamilton v. Hamilton, 562 P.2d 235. The court, in making its division, did not consider these items, although they constituted a very substantial part of the assets accumulated during the marriage.

The court in its Conclusions of Law indicated that the division of the home was made after a consideration of the credits and offsets to which each party may be entitled. Assuming that the court considered as an offset, in favor of defendant, the work performed by her father, all of which was done during the marriage, it would appear that this claim has no more validity than did the defendant's claim for labor performed by him in the case of Jespersion v. Jespersen, supra. Thus, considering the

value of the home, the fact that it was unencumbered, and the fact that the parties had both worked toward its acquisition, it appears that the disposition by the court was neither fair, equitable or necessary for the parties, and was an abuse of the court's discretion.

Appellant further contends that the court abused its discretion in its division of property, by not considering the marital misconduct of the defendant. It is acknowledged that the settlement of property should not impose a punishment on either party; however, marital misconduct often is considered by the court in making an equitable division of property. See Wilson v. Wilson, 1956 Ut, 296 P.2d 977.

In the matter of Read v. Read, 1979 Ut, 594 P.2d 371, this court said:

It is well established that the trial court has considerable discretion in the allocation of the property and financial resources of the parties. Nevertheless, this discretion is not entirely without limit.

In the case before us, it appears that the trial court's property award may reflect a degree of

punishment against the defendant for his extra-marital conduct and relative "guilt" in bringing about the dissolution of the marriage. A trial court must consider many factors in making a property settlement in a divorce proceeding, but the purpose of the settlement should not be to impose punishment upon either party.

It appears, notwithstanding the fact that defendant's conduct caused the marriage to fail, that the court did not consider this and, in fact, by its distribution of the property, effectively punished the appellant. An equal distribution of all of the assets would have more realistically and more equitably solved the problems faced by the court.

Considering the facts of this case, appellant submits that it is reasonable for this court to exercise its own prerogative and modify the Decree of Divorce to provide for a distribution of assets that will more reasonably serve the desired objective of making the best possible allocation of the property to allow the parties to readjust their lives.

POINT II

THAT THE COURT ERRED IN AWARDING ATTORNEY'S FEES TO DEFENDANT.

Appellant recognizes that the amount, if any, of attorney's fees awarded to a wife in a divorce case, rests in the sound discretion of the trial court; however, it is submitted that such an award must be based both upon the financial need of the wife and upon the ability of the husband to pay. It is also recognized that the wife is not entitled to free litigation, and that the court should consider this fact.

Here, the defendant wife was awarded a substantial portion of the assets of the marriage and, in addition, was awarded alimony in the sum of \$400 per month for a period of one year. This award was made, although defendant was receiving unemployment compensation of \$137 per week (T-130), and had been working at a salary of \$2, 500 per month (T-152, 178). There was neither a showing by the defendant or a finding by the court that defendant-wife was in need of assistance for the payment of attorney's fees, nor was there a showing by the defendant or a finding by the court that the wife was financially unable to pay her

own attorney's fees. From the facts, it is also obvious that the financial resources of the appellant husband would be severely burdened by the court's award of attorney's fees.

This court addressed this question in the case of Weiss v. Weiss, 111 Ut. 353, 179 P.2d 1005, wherein the court said:

... that awards of attorney's fees and expenses of suit may be made by the trial court ..., providing the necessity for such awards is found to exist. (Emphasis mine.)

Again, the court in Adams v. Adams, Ut 1979, 593 P.2d 147, said:

An award of attorney's fees is largely discretionary with this court, and as the record shows that plaintiff is working and earning money, and does not disclose any necessity on the part of the plaintiff for such award or her inability to pay her own attorney's fees ... (Emphasis mine.)

There is nothing before the court that would indicate defendant-wife's inability to pay her own fees, or a necessity requiring the husband to pay them; on the contrary, the wife not only had assets, but also had income sufficient to pay these

expenses. Accordingly, it is submitted that the trial court abused its discretion in awarding the wife attorney's fees of \$1,500.

CONCLUSION

A review of the disposition of assets made by the court, together with the award of attorney's fees, seems to show that the trial court did not fully consider the contributions of the parties to the accumulation of marital assets, nor did the court consider the facts underlying the divorce.

It is respectfully submitted that this court should review and revise the division of property so that a more reasonable and realistic distribution will exist. Appellant believes that the most applicable method would be to increase his interest in the home to an amount that would reflect an equitable distribution of all of the marital assets.

Further, it is submitted that the court should reverse the lower court's award of attorney's fees to the defendant, based upon the facts which clearly show the lack of her need

for such award, and also show her absolute ability to pay these fees.

Respectfully submitted this 27th day of
March 1981.

WALTER R. ELLETT

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Mailed three (3) copies of the foregoing Appellant's Brief to
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Building, 9 Exchange Place, Salt Lake City, Utah 84111, this
27th day of March 1981.


