

1981

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

Utah Supreme Court

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Recommended Citation

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IN THE SUPREME COURT OF THE STATE OF UTAH

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| LA VAR J. COATES, | : | |
| | : | |
| Plaintiff-Appellant, | : | |
| | : | |
| v. | : | |
| | : | |
| MARY COATES, | : | Case No. 17344 |
| | : | |
| Defendant-Respondent. | : | |

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RESPONDENT'S BRIEF

AN APPEAL FROM A DECREE OF DIVORCE
OF THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH

THE HONORABLE JAY E. BANKS, PRESIDING

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| MARY COATES, | : | |
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| Defendant-Respondent. | : | |

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RESPONDENT'S BRIEF

NATURE OF THE CASE

This is a divorce case. Appellant filed a Complaint against the Respondent seeking, among other things, an equitable distribution of the marital assets and an Order requiring each of the parties to bear their own respective attorney's fees. Respondent answered and counterclaimed seeking, among other things, an award to her of the family residence; an equitable distribution of the personal property; and an award to her of attorney's fees.

DISPOSITION IN THE LOWER COURT

This case was tried to the Honorable Jay E. Banks, and after two days of trial, the Trial Court made its Findings of Fact and Conclusions of Law and entered a Decree of Divorce which, in part awarded Respondent the marital

residence, subject to a \$27,000.00 lien in Appellant's favor; awarded Respondent alimony from Appellant for a period of one year; awarded Appellant a 1976 Buick; a residential duplex building lot, a 23 foot Sea Ray boat, trailer and accessories, a truck and camper, certain items of furniture, his tools, his own stock, credit union account and pension plan and all jewelry in his possession. Respondent was awarded the parties' residence on Thunderbird Drive, subject to the lien noted above, a 1976 Buick, her retirement account, the jewelry in her possession, and the household furniture and furnishings in her possession. The Court further divided responsibility between the parties of certain marital obligations; ordered Respondent to bear 2/3's of the 1979 income taxes and Appellant to bear the remaining 1/3 of such taxes and awarded Respondent \$1,500.00 attorney's fees. A Notice of Entry of Decree of Divorce was filed. No objections to the Findings of Fact and Conclusions of Law or Decree of Divorce were made nor was a Motion for New Trial made.

RELIEF SOUGHT ON APPEAL

Respondent seeks an affirmance of the Trial Court's Decree of Divorce in all particulars and an award of all costs incurred by her in connection with this Appeal.

STATEMENT OF FACTS

Because Appellant has made certain errors and omissions in his Statement of Facts, Respondent feels it is necessary

to make her own Statement of Facts which more accurately sets forth facts as found by the Trial Court and as are supported by the record.

The parties were married on June 26, 1969. They experienced marital problems during the marriage (R-235) and ultimately separated December 1, 1979 (R-225). Throughout the 10-year marriage, Appellant worked as an airplane mechanic for Hughes Airwest. At the time of the trial, he was grossing approximately \$21,500.00 per year in connection with his employment (R-320). Appellant, in addition to raising the parties' two children, worked throughout the marriage (R-243). For the last 13 of those years, she was employed by Abbott GM Diesel, first as a bookkeeper and then in approximately 1973, as Secretary-Treasurer of the corporation (R-244). Because of her position with the company from 1973 to 1979, she earned a substantially large salary. (Defendant's Exhibit 10) When the company was dissolved in November of 1979, Respondent was terminated. From that date Respondent was unemployed, receiving unemployment compensation in the amount of \$589.10 per month (R-35). She was unemployed at the time of trial.

Respondent is an only child (R-391) and her parents were extremely generous to her both before and during her marriage. Her father, a retired airlines worker and janitor (R-394), testified he purchased for her the home which

she brought into the marriage (R-395). He assisted her with extensive remodelling of that home (R-396). After her marriage to Appellant, he loaned the parties approximately \$13,000.00 for a down payment on the parties' present home. This loan was subsequently repaid (R-396). Respondent's father spent great amounts of time and money remodelling, and repairing the present home of the parties (R-398). In May of 1979, Respondent's parents made another \$6,000.00 loan to the parties to cover additional remodelling costs on the Thunder Drive home (R-398). They gave Respondent oil paintings, clocks, sterling silver and money for the acquisition of Respondent's jewelry (R-403, 404, 405). In addition, they gave Respondent money for furniture placed in the home (R-406). Respondent's parents were also very generous to the parties' children and gave them an organ, pool table, down payments for cars, etc. (R-402, 409). They also loaned the parties \$1,500.00 for a down payment on an undeveloped real estate lot located in Granger (R-400).

The Trial Court found, as fact, that these gifts and loans had been made (R-180). The making of these gifts and loans was admitted by Appellant (R-283, 303, 306, 307, 312, 313, 316).

Also, during the trial, the Trial Court received, without objection, Defendant's Exhibit 10, which compared the income of Respondent and Appellant for the years

1969 through 1979. That Exhibit showed that during that period the Appellant earned \$188,170.73 while Respondent earned \$236,292.28. Because of this income disparity, especially in the last year of the marriage, the Trial Court ordered the Respondent to pay 2/3's of the 1979 Federal and State Income taxes due (R-190, Decree of Divorce).

Likewise, because of Respondent's unique employment status, the parties were afforded numerous opportunities to purchase items of personal property at reduced and discounted rates - Opportunities solely provided because Respondent was an officer of a large company. For example, the truck and camper were acquired at a discount rate through Respondent's employer (R-308). The Buick automobiles were likewise acquired in the same way at reduced rates (R-309). The boat which was brought into the marriage by Appellant was sold to an employee of Respondent and, this, in turn, allowed the parties to purchase their Sea Ray Boat (R-310).

There is also no dispute as to the facts that the Respondent brought a home into the marriage which when sold, shortly after the marriage, generated \$20,500.00 in net proceeds (R-283). These funds were used as a portion of the down payment on the Thunderbird Drive home (R-306). In addition, Respondent's father testified that after she lost her employment, he had assisted her financially in providing

her money to support her and the parties' two children (R-400).

Both parties presented to the Trial Court documentary evidence and testimony related to each and every asset which was acquired by the parties either before or during, the marriage and after separation. The Trial Court was presented with appraisals, estimates of values of the assets, and the sources from which those assets were received or acquired. Further, at the conclusion of the evidence each party presented to the Court a summary of assets together with a proposed distribution (Exhibit 44-D and 45-P). Each of those exhibits contained not only a list of the assets which were in issue but also an accompanying estimated value of each such asset.

After receipt of all the evidence, the Court, in that portion of the Findings of Fact which awarded the Appellant a \$27,000.00 lien in the family residence stated:

The amount of this lien has been determined by the Court after the Court's consideration of evidence presented to the Court by the parties of the value of the assets each party brought into the marriage, the source and value of the assets acquired during the marriage and all credits and offsets to which each party may be entitled. (R-181, Paragraph 3, Findings of Fact.)

In addition, the Court further made detailed factual findings as to the property each party brought into the marriage (R-180) and the property that was acquired during the marriage (R-179).

POINT I

UNDER THE CIRCUMSTANCES, THE TRIAL COURT PROPERLY AND EQUITABLY DISTRIBUTED THE MARITAL ASSETS

Appellant contends that the Trial Court inequitably distributed the marital assets and consequently abused the wide discretion afforded a Trial Court in making such a property distribution. Both the documentary evidence and the testimony presented to the Trial Court clearly show that this is just not the case.

In order to prevail, Appellant is required to show that the Trial Court, in making its distribution of property, misunderstood or misapplied the law; entered Findings not supported by the evidence; or caused a serious inequity so as to constitute an abuse of discretion. English v. English, 565 P.2d 409, 410 (Utah, 1977). As was clearly stated in Searle v. Searle, 522 P.2d 697, (Utah, 1974):

- Although it is both the duty and prerogative of this Court in a case of equity to review the facts as well as the law, Article VIII, § 9, Constitution of Utah, the Trial Judge has considerable latitude of discretion in adjusting the financial and property interests in a divorce case. The actions of the Trial Court are indulged with the presumption of validity, and the burden is upon Appellant to prove such a serious inequity as to manifest a clear abuse of discretion. (Footnote) There is no fixed formula for the division of property; § 30-3-5 U.C.A. 1953, provides that when a decree of divorce is made, the Court may make such orders in relation to property as may be equitable. (Footnote) Id. at 700.

Appellant's burden is not an easy one and the record, especially the Findings of Fact and Conclusions of Law, does

not show in any way an abuse of discretion by the Trial Court. As was stated in Sorenson v. Sorenson, 376 P.2d 547 (Utah, 1963):

Unless there is manifest injustice and inequity or a clear abuse of discretion, the Court will not substitute its Judgment for that of the Trial Court. Id. at 548.

In making a property distribution, the Trial Court may consider numerous factors in arriving at an equitable result. Among those are such things as the property each party brought into the marriage; the property acquired during the marriage and the efforts and contributions of each party in the acquisition of such property; gifts received during the marriage; and inheritances. Because of the foregoing, a property division need not be equal, but only equitable. See MacDonald v. MacDonald, 236 P.2d 1066 (Utah, 1951). Such was the case in Tremayne v. Tremayne, 211 P.2d 452, (Utah, 1949) where the Trial Court awarded the wife 4/5's of the marital estate and the Supreme Court affirmed that decision.

Appellant, even though he requested an equitable distribution in his complaint (R-3) has now attempted in his Brief to argue that he was entitled an equal distribution. In this particular case, an equal distribution is not an equitable distribution and the Trial Court so recognized this fact.

The figures and values contained in Appellant's Brief certainly do not deal with and, in fact, omit three important

factors considered by the Trial Court - (1) the property Respondent brought into the marriage; (2) Respondent's monetary contribution during the last four years of the marriage; and (3) the gifts, loans and assistance received from Respondent's parents.

As a preliminary matter, Respondent feels it is necessary to set the record straight regarding certain claims of Appellant that the Trial Court did not properly consider the value of the property it distributed. Evidence was presented by both sides, (documents and testimony) pertaining to the value of the property in issue (the house; car; boat; truck and camper; furniture; jewelry; stocks; credit union and retirements accounts; and the real estate lot) The Court, in giving the Appellant a \$27,000.00 lien in the parties' residence (Respondent had asked that he be awarded only a \$13,000.00 lien) specifically stated in the Findings of Fact and the Decree that:

The amount of this lien has been determined by the Court after the Court's consideration of evidence presented to the Court by the parties, of the value of the assets each party brought into the marriage, the source and value of assets acquired during the marriage and all credits and offsets to which each party may be entitled. (R-181 and 187-188.)

Little more need be said as to whether the Court considered the values of the property in dividing the property as it did.

Turning now to the facts before the Trial Court, it is

not disputed that Respondent brought into the marriage a home, Appellant did not (R-280, 338). Respondent's father expended large amounts of time and money improving that home (R-306, 396). As it should have, the Trial Court awarded each party the property he or she brought into the marriage and because the equity in the home Respondent brought into the marriage had been used as a down payment on the Thunderbird Drive home, the Trial Court properly gave Respondent credit for that equity. Appellant, virtually ignores these facts in arguing that he was treated unfairly.

Secondly, Appellant makes little mention of all of the help and assistance given the parties by Respondent's parents. The record is also undisputed as to Respondent's father's generosity towards Respondent, his only child. As a retired airline worker and maintenance man, he gave continuous assistance to the parties - (remodelling of home Respondent brought into the marriage (R-396); loan for down payment for Thunderbird property (R-396); loan for the duplex lot (R-400); work and materials on Thunderbird property (R-397); numerous gifts (R-403-406)). Even Appellant reluctantly acknowledged these facts in his testimony (R-281-283) and the Trial Court specifically found these gifts and assistance to have been made (R-180; Para. 15, Findings of Fact). Because these gifts and loans were so substantial in size and frequency, the Trial Court rightly took this into account, in making its property distribution.

The third unique factor presented to the Trial Court was Respondent's very fortunate employment status as Secretary-Treasurer of a large company over the last seven years of the marriage. During that time Respondent earned an unusually large salary. This was demonstrated to the Trial Court by the income comparison offered as evidence by Respondent without objection by Appellant (Exhibit 10-D). A portion of that Exhibit is set forth below to illustrate the vast difference in contributions made by the parties over that period of time.

| <u>YEAR</u> | <u>LA VOR COATES</u> | <u>MARY COATES</u> |
|-------------|----------------------|--------------------|
| 1971 | \$11,558.66 | \$ 8,350.53 |
| 1972 | 12,698.59 | 22,564.20 |
| 1973 | 16,211.27 | 20,288.93 |
| 1974 | 18,257.88 | 22,250.00 |
| 1975 | 18,046.01 | 22,250.00 |
| 1976 | 19,415.00 | 24,800.00 |
| 1977 | 23,147.87 | 23,830.77 |
| 1978 | 24,230.45 | 30,328.61 |
| 1979 | 20,000.00 (approx.) | 49,000.00 |
| TOTALS | \$188,170.73 | \$236,292.28 |

Exhibit D-10

The Trial Court properly recognized this fact in dividing responsibility for taxes as it did - Respondent 2/3's, Appellant 1/3.

In addition, through her employment, Respondent was able to provide the parties with unique purchasing opportunities allowing the parties to acquire property at reduced and substantially discounted prices (R-308, 309, 310) - another fact Appellant conveniently overlooks in his Brief.

Finally, in spite of a specific finding to the contrary,

Appellant claims the Trial Court did not consider the value of the parties' furniture, stocks and jewelry. This is just not true, inasmuch as Appellant himself presented an exhibit listing all of what he claimed to be the personal property in issue (Exhibits 32-P and 37-P) and the values attributed to the same. The testimony of both of the parties and Respondent's father established that much of the property on those lists was: (1) the property of the children - (The Trial Court ordered that that property remain with the children (R-191)); and (2) property given to Respondent by her father near the time of separation (R-406). Further the testimony revealed that Appellant had, just subsequent to separation, been given the opportunity to select what furniture and personal property he wished to retain (R-291, 342) and he did take various items when he vacated the residence (R-342).

Likewise, each party was given their own jewelry (R-182, 183). Appellant also fails to mention the fact that Respondent's jewelry was acquired by cash given her by her father for the specific purpose of purchasing this jewelry (R-405).

The stock which Appellant claims the Court did not consider was liquidated and used by Respondent for two purposes - a graduation gift for her son (R-336) and payment for improvement on the home (R-341). In addition, during the course of the parties' separation, the stock had already

been divided equally between the parties (R-352, 383).

Finally, Appellant's argument regarding marital misconduct is simply a non sequitur. He first cites authority standing for the proposition that a court should not "punish a party for marital misconduct and then infers that the Trial Court should have punished Respondent (Appellant's Brief, Page 10). This is yet but another attempt to "second guess" the Trial Court and secure a result which is more to Appellant's liking.

The Trial Court, throughout the trial, was conscientious and thorough in reviewing the evidence and Appellant has failed to demonstrate any abuse of discretion whatsoever in relation to its property distribution.

POINT II

THE ATTORNEY' FEES AWARDED BY THE TRIAL COURT WERE REASONABLE AND NEEDED BY THE RESPONDENT

In a divorce action, the Trial Court may in its discretion, award either party such sums as will "enable such party to prosecute or defend the action." § 30-3-3, Utah Code Ann. (1953). As in the case of a property distribution and a support award, the Trial Court is also vested with wide discretion when making an award of attorney's fees.

It would lead to intolerable instability of judgments if this Court should assume the prerogative and accept the responsibility of merely second guessing a trial judge who has done a conscientious job of attempting to make a just and equitable allocation of property and income of the parties in regard to alimony and support money, as the trial judge appears to have done here. It is due to this fact, taken into consideration with the nature of the trial judge's authority and duty, and his advantage position that in such matters he is allowed a comparatively wide latitude of discretion

which will not be disturbed in the absence of a clear abuse a circumstance which we have not found here.
(Citations) This is also true of attorney's fees which it is likewise the Trial Court's prerogative to fix.
(Citation) Bader v. Bader, 424 P.2d 150, 151 (Utah, 1967)

Such an award must rest on evidence of need and reasonable
Kerr v. Kerr, 610 P.2d 1380 (Utah, 1980). There is ample evidence of both in the record in this case.

At the time of trial, Respondent was unemployed and was receiving only \$589.19 per month unemployment compensation (R-334). Her monthly expenses and the maintenance of the home, herself and her children far exceeded her income (Exhibit 12 and R-334). Her father had been helping to maintain her during the action (R-350, 400). The Court's property distribution gave her no ready cash and no income-producing assets (R-177-185, Findings of Fact and Conclusions of Law) This evidence more than amply supported the conclusion that Respondent needed assistance to pay her attorney's fees.

The Trial Court's award of fees was also more than reasonable. Respondent's counsel requested an award of \$3,300.00 (R-411) and supported that request with a computer printout of time and costs expended on Respondent's behalf (Exhibit 18). No objection was made to this Exhibit (R-214). Likewise, Respondent's counsel testified that in his opinion the fees requested were reasonable (R-411). Also, no objection was interposed to that testimony nor did Appellant

counsel even elect to cross-examine Respondent's attorney (R-411).

After receiving that evidence, the Trial Court in accord with its broad discretion felt that Appellant should contribute \$1,500.00 to Respondent's attorney's fees - a sum less than half the amount requested by Respondent. Clearly both criteria pertaining to awards of attorney's fees were satisfied and there was no abuse of discretion in making this attorney's fees award.

CONCLUSION

There is no basis in fact or law to alter the decision of the Trial Court. The property distribution was fair and equitable given the contributions made by each party to acquire those assets and the sources of those assets. The Trial Court in its wisdom after being presented with more than ample evidence, ordered a division of the property which was equitable. That was exactly the result which Appellant requested in his initial Complaint. Appellant has shown no abuse of discretion in connection with the property distribution.

Likewise, the Trial Court's award of attorney's fees was certainly appropriate given Respondent's need and income, and the reasonableness of the fees requested.


Respondent respectfully requests this Court to affirm the Decree of Divorce in this matter in all particulars and to award Respondent her costs incurred in connection with

this Appeal.

Respectfully submitted this 28th day of April, 1981.

GUSTIN, ADAMS, KASTING & LIAPIS

By


Kent M. Kasting

CERTIFICATE OF DELIVERY

I hereby certify that two true and correct copies of the foregoing RESPONDENT'S BRIEF were placed with "The Runner Service" to be delivered to Walter R. Ellett, Esq., 5085 South State, Murray, Utah, 84107, this 28th day of April, 1981.

