1981

George W. Preston v. Lorna A. Preston : Brief of Respondent

Utah Supreme Court

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CITATIONS

IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE W. PRESTON)

Plaintiff and Appellant)

vs. No. 17597

LORNA A. PRESTON)

Defendant and Respondent)

BRIEF OF RESPONDENT

NATURE OF THE CASE

This is an appeal from the property settlement portion of a divorce.

DISPOSITION BELOW

The trial on this matter was bifurcated. A decree of divorce was entered by the Honorable Calvin Gould for the First Judicial District on March 27, 1980. All questions of property settlement were reserved until a trial on the merits.

On December 23, 1980 the property issues were tried before the Honorable John F. Wahlquist. The court awarded each party the property they held prior to marriage and to assume the debts on such property. Defendant - Respondent, Lorna A. Preston (hereinafter referred to as "Respondent")

was awarded all the property acquired during the marriage which she had inherited from her father's estate. The court also granted Respondent a lien in the amount of seventeen thousand dollars, representing one half interest, in a cabin constructed during the marriage upon land owned by Plaintiff - Appellant. The court attempted to equitably divide the personal property of the parties.

RELIEF SOUGHT ON APPEAL

Respondent requests this Court to affirm the judgment below on the grounds that it was a proper settlement of the property within the discretion of the trial court and further that Appellant pay Respondent's attorney's fees required for this appeal.

STATEMENT OF THE CASE

The "Statement of Facts" offered by Appellant in his brief is merely the standard jeremiad always proffered by whichever party in a divorce action feels that he or she has been wronged. All that it shows is that an intentionally biased editing of self-serving transcript can make any trial court's decision seem a horrible injustice.

Respondent will not deluge this Court with recitation of transcript to rebut or refute each and every argument made by Appellant. It sufficies to say that a fair reading of the totality of the testimony offers, as may be expected, support for two different viewpoints.

Some facts are clear however. Appellant was a practicing attorney (T. 48) who had been married before and knew what divorces were all about (T. 52). Further, Appellant knew of Respondent's prior marriages, her children, her status as unemployed (T. 48) the fact that she was receiving child support from a prior marriage (T. 49) and the fact that Respondent was keeping certain assets from her prior marriage for the use and benefit of her children (T. 74, 75, 76, 79). Indeed, marriage was proposed by Appellant on more than one occasion and refused by Respondent for the very reason of economic hardships (T. 73).

During the course of the marriage Respondent performed, without explicit compensation, all the wifely services of a marriage including cooking, cleaning, etc. (T. 58, 59). These services were not only performed for Appellant but also for his children on the occasions when they visited from their custodial parent (T. 60). From funds acquired by Respondent from her prior marriage she contributed to purchasing her children's clothing and meeting their school needs (T. 119) even though she had no income of her own during the marriage. In fact, she was requested by Appellant to not go to work (T. 83).

Respondent testified that she expended approximately five thousand dollars ($5,000.00) of her premarital assets

on refurbishing the home occupied during the course of the marriage (T. 80) and that almost all work done on the Bear Lake Cabin was done jointly and paid for jointly, a little at a time (T. 88, 90).

The above facts, though admittedly written with some bias for Respondent's view, attempt to show the overall circumstances of the marriage. The specifics of the court's finding with regard to each of the appealled portions of the property settlement will be set out within the body of the argument.

ARGUMENT

THE TRIAL COURT'S DIVISION OF THE PROPERTY AMONG THE PARTIES DID NOT CONSTITUTE AN ABUSE OF ITS DISCRETION

Even though the division of property in a divorce action is a question of equity this Court has stated ad infitum, using various formulations, that the findings of the trial judge are accorded broad discretion and will not be disturbed unless they constitute a clear abuse of that discretion. Fletcher v. Fletcher, 615 P. 2d 1218 (Utah 1980); Kerr v. Kerr, 610 P. 2d 1380 (Utah 1980); Jesperson v. Jesperson, 610 P. 2d 326 (Utah 1980). Viewed from this perspective and with a fair reading of the transcript as a whole it is impossible to say that the court below abused it's discretion in this case.

A

BEAR LAKE CABIN

The essence of Appellant's contention regarding the Bear Lake Cabin is that Appellant should have been credited with his alleged contribution of fifty percent of the construction costs from funds he held prior to the marriage. Appellant apparently wishes to require that the trial court trace each and every fungible dollar of the parties and to give, with a wisdom that would make King Solomon envious, each party their exact returns.

In the light of the totality of the evidence it is not clearly an abuse of discretion for the court to find, as it did, that:

> During the marriage, acting as a family, and drawing on their earnings, and daily funds of all, the family consturcted a cabin on the plaintiff's land.
> (Conclusions of Law No. 4; R.84.)

The trial court was clearly not required to believe, in its entirety, self-serving Exhibit No. 7 prepared by and for Appellant. There is more than ample evidence in the transcript to support the findings of the trial court in reaching its conclusions stated above that the property was built as a family project using everyone's funds. (T. 88, l. 23-p. 90, l. 17.)

B

RESPONDENT'S INHERITANCE

Appellant's second argument, that Appellant should have been awarded a half interest in Respondent's inheritance, is clearly offered in a tit-for-tat fashion. Appellant is merely claiming that since Respondent got part of "his" Bear Lake Cabin he should be entitled to part of "her" inheritance. In support of this proposition Appellant cites various cases from across the country holding that it is not per se impermissable to consider an inheritance when dividing the property of the marriage.

The first weakness in Appellant's argument is a common logical fallacy reasoning that because something is not per se impermissable it is per se mandatory. None of the cases cited follow the rule of illogic advocated by Appellant and neither should this Court. Indeed, the trial court did not hold, as a matter of law, that the inheritance of Respondent was inviolable. Instead, the trial court, reviewing the totality of the evidence and situation of the parties left Respondent with her own inheritance as a part of the equitable distribution of the property.

As shown in the Statement of the Case, supra, Respondent entered the marriage without employment, without a reliable source of income, with children and without anything to fall back on should the marriage end, as it did, in divorce.

Appellant, on the other hand, entered the marriage with a career, a retirement fund, an interest in a law partnership, substantial resort property and with his eyes wide open.

Respondent left the marriage with essentially only her inheritance and the support from her prior marriage left to her name. In this light it is clearly not an abuse of the trial court's discretion to give her inheritance to her. 1/

C

PERSONAL PROPERTY

As Appellant admits, his appeal on the personal property issue is de minimus. (Appellant's Brief p. 19.) Not only is it de minimus, it is absolutely impossible to tell from Appellant's brief what he specifically alleges as an error and what he would specifically seek returned to him. Rather, Appellant's contention seems to rely on an inverted reading of the "clean hands" doctrine. That is, since Respondent was found to have violated the restraining order she should get nothing.

Respondent's position here is the same as it is above. A fair reading of the transcript in its totality shows that the trial court not only did not clearly abuse its discretion but instead rendered a fair and equitable distribution of the property of the parties.

1/ In addition to the above argument Appellant specifically disavowed any interest in receiving a share of Respondent's inheritance. (T. 148).

CONCLUSION

Divorce is almost always an unpleasant event for the parties. Moreover, one party almost always feels that he or she has been wronged by the decision of the trial court; be it in alimony, child custody, child support or property division. That party frequently appeals and buttresses its appeal by exclusively citing self-serving testimony from the transcript; usually their own testimony or prepared exhibits.

Having faced this problem an incalculable number of times this Court has wisely granted a broad discretion to the trial judge in these matters due to his intimate familiarity with the issues, parties and situations. This Court's decision only interfere with the trial court's distribution of the property if there has been a clear abuse of discretion.

Viewed as a totality, Respondent submits that the decision of the trial court was a fair and equitable distribution of the parties properties in yet another of these unpleasant cases. The fair distribution of the trial court was not a clear abuse of discretion and thus should be affirmed by this Court.

RESPECTFULLY SUBMITTED this 13th day of July, 1981.

FINDLEY P. GRIDLEY
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that two copies of the foregoing BRIEF OF RESPONDENT has been mailed to Plaintiff's Attorney, Robert W. Gutke, 31 Federal Avenue, Logan, Utah, 84321 on this 13th day of July, 1981.

Secretary