

1981

George W. Preston v. Lorna A. Preston : Reply To Respondent's Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE W. PRESTON

*

Plaintiff and
Appellant

*

*

vs.

REPLY TO RESPONDENT'S BRIEF

*

LORNA A. PRESTON

No. 17597

*

Defendant and
Respondent

*

REPLY TO RESPONDENT'S BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

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REPLY TO RESPONDENT'S BRIEF

ARGUMENT

The trial court, in fact, constituted an abuse of discretion.

It is conceded that trial courts have broad discretion but that discretion is predicated upon a fair equitable division necessary for the protection of the parties, Berry v. Berry filed July 30, 1981, No. 17165.

Bear Lake Cabin

The Defendant's Brief ignores the undisputed testimony and Exhibit #7 regarding Plaintiff's contribution to the cabin of \$9,310.93. This unchallenged evidence should be given credence by any trial court without requiring the court to exercise the "wisdom of King Solomon", especially in view of the fact that

the same trier of fact was reversed by this court in the recent case of Humphreys v. Humphreys, 520 P.2d 193, dated March 12, 1974. This court required the same trial court to give credit for prior owned property in a case similar to this case. Plaintiff asks not for the wisdom of Solomon but only for equal and fair administration of justice. The trial court awarded each party the property they owned prior to marriage but only applied the rule to the Defendant. The trial court divided the property acquired through the husband's efforts with the wife but then failed to divide the wife's acquired property with the husband. These acts are not merely on an oversight, but constitute a clear abuse of discretion.

Farm Property

Respondent refers to the argument of Plaintiff as "tit-for-tat" logic that Plaintiff should have one-half of the farm. Defendant, in effect is saying that the female in a divorce is entitled to concessions not available to the male. The recently decided case of Berry v. Berry filed July 30, 1981 approved the award to the wife of a 50% interest in the husband's farm partnership but reversed upon other grounds. Certainly the reverse of this award to a husband cannot be an unreasonable proposition.

During the marriage Plaintiff supported the Defendant and her children to a large degree. He performed legal services for her and was instrumental in Defendant acquiring the farm and also the acquisition of a share in excess of her inheritance. He worked on the land improving it and raising the cattle located thereon. The trial court awarded the Defendant all property she had before marriage or that was inherited during marriage. No distinction was drawn between the two classes of property. That failure by the court resulted in an award to the Defendant of between \$204,000 to \$305,000 and a division between the parties of about 9% to the Plaintiff and 91% to the Defendant, wife. Such inequity can hardly be termed a tit-for-tat argument.

Personal Property. A fair reading of the transcript reveals that the Defendant, in obvious violation of the order of Judge Gould, removed all the property acquired by the parties during marriage from the house of the Plaintiff.

The trial court found her in contempt then awarded the property to her, with a few exceptions. The message to the bar and public is obvious: Violation of a court's order benefits the violator. This decision would prompt the bar and parties to act in willful disregard of a court order as it bestows a gain to

the party with no penalty. It seems only logical to assume that the law would not intend this result.

CONCLUSION

The Respondent's Brief fails to address the issues presented, It ignores the inequities of the trial court's decisions by the statement to the effect that the record sustains the Judge's findings and the Judge should not be required to exercise the wisdom of Solomon. The record does not support the findings of the Court which are inconsistent with each other. The trial court announced a provision then applied it differently to each party. The trial Court was not expected to have the wisdom of Solomon, but it was expected to have abided by this court's prior decisions, to have exercised sound discretion, and to have applied the law fairly to both parties.

DATED this 26 day of August, 1981.

HARRIS, PRESTON & GUTKE

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