

1982

Sharon M. Davis v. Charles Francis Davis : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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SHARON M. DAVIS,	:	
	:	
Plaintiff-Respondent,	:	
	:	Case No. 18077
v.	:	
	:	
CHARLES FRANCIS DAVIS,	:	
	:	
Defendant-Appellant.	:	

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BRIEF OF RESPONDENT

AN APPEAL FROM A DECREE OF DIVORCE AND
ORDER ON DEFENDANT'S OBJECTIONS OF THE
THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY, STATE OF UTAH

THE HONORABLE G. HAL TAYLOR, PRESIDING

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Charles Francis Davis

FILED

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TABLE OF CONTENTS

	<u>PAGE</u>
NATURE OF THE CASE.	1
DISPOSITION IN THE LOWER COURT.	2
RELIEF SOUGHT ON APPEAL	3
STATEMENT OF FACTS.	3
ARGUMENT.	6
POINT I.	6
THE DECISION OF A TRIAL COURT IN A DIVORCE ACTION SHOULD NOT BE DISTURBED UNLESS THERE IS A CLEAR SHOWING OF A MIS- APPLICATION OF LAW OR AN ABUSE OF DISCRETION RESULTING IN A SUBSTANTIAL ERROR OR SERIOUS INEQUITY.	
POINT II	8
THE TRIAL COURT'S AWARD OF ALIMONY WAS PROPER GIVEN THE CIRCUMSTANCES OF THE PARTIES.	
POINT III.11
THE REAL PROPERTY INTERESTS OF THE PARTIES WERE PROPERLY AND FAIRLY DISTRIBUTED.	
CONCLUSION.13

AUTHORITIES CITED

<u>CASE</u>	<u>PAGE</u>
<u>English v. English</u> , 565 P.2d 409 (Utah, 1977)7
<u>Fletcher v. Fletcher</u> , 615 P.2d 1218 (Utah, 1980)	10
<u>Gramme v. Gramme</u> , 587 P.2d 144 (Utah, 1979).9
<u>Naylor v. Naylor</u> , 563 P.2d 184 (Utah, 1977).	13
<u>Searle v. Searle</u> , 522 P.2d 697 (Utah, 1974).7
<u>Sorenson v. Sorenson</u> , 376 P.2d 547 (Utah, 1963).7

IN THE SUPREME COURT OF THE STATE OF UTAH

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SHARON M. DAVIS,	:	
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Plaintiff-Respondent,	:	
	:	Case No. 18077
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CHARLES FRANCIS DAVIS,	:	
	:	
Defendant-Appellant.	:	

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BRIEF OF RESPONDENT

NATURE OF THE CASE

This is a divorce case. Respondent filed a Complaint seeking, among other things, an award of the parties' residence; one-half of the value of certain New Mexico property; alimony; an order requiring the Respondent to assume all debts of the marriage with the exception of the first mortgage on the residence; and attorney's fees. Appellant answered and counterclaimed seeking, among other things, one-half of the equity in the home, an award of the New Mexico property, an equitable distribution of the personal property and an order requiring each party to bear their own debts, obligations and attorney's fees.

DISPOSITION IN THE LOWER COURT

This case was tried to the Honorable G. Hal Taylor and, after the evidence was received, the Court granted Respondent a Decree of Divorce. The Court took the issues of support and the distribution of the marital property under advisement and each of the parties submitted Briefs in support of their respective positions. The Trial Court then awarded Respondent the use of the marital residence subject to an \$11,500.00 lien in favor of the Appellant with Respondent to pay the first and second mortgage payments. The Court ordered the New Mexico property sold and the net proceeds divided between the parties, one-third to Respondent and two-thirds to Appellant. The Court ordered Appellant to pay to the Respondent \$420.00 per month alimony to continue until the second mortgage on the residence had been paid in full. The Court distributed the debts and personal property of the parties and awarded Respondent \$1,000.00 attorney's fees. Appellant objected to the proposed Findings of Fact and Conclusions of Law and the Court heard argument on those objections. It modified the Decree of Divorce clarifying certain conditions which would cause the Appellant's lien on the residence to become due; affirmed its Decision calling for the sale of the New Mexico property; and, reaffirmed all remaining particulars of the Memorandum Decision. No Motion for New Trial was filed.

RELIEF SOUGHT ON APPEAL

Respondent seeks an affirmance of the Decree of Divorce, Findings of Fact and Conclusions of Law, and Order on Defendant's Objections in all particulars and an award of her costs incurred in connection with this Appeal.

STATEMENT OF FACTS

Appellant has made certain omissions in his Statement of Facts and Respondent feels it is necessary to more accurately set forth the facts as found by the Trial Court and as are supported by the record.

The parties were married on March 5, 1974 and separated on May 15, 1980. (R-93) Respondent gave up a \$150.00 per month alimony award from a previous divorce when she married Appellant. (R-140) Throughout the six-year marriage, Appellant worked as a truck driver and, at the time of trial, was grossing approximately \$27,000.00 per year. (R-163) Respondent was working at the time of the marriage, but quit at the request of Appellant. (R-156) However, she did work during the marriage (R-156) and, at the time of trial, was earning \$687.38 net per month. (R-95) During the marriage, the parties worked together and jointly contributed money, time and effort to the maintenance of the household. (R-130, 146).

Respondent brought certain furniture into the marriage which Appellant directed be disposed of because of its

connection with Respondent's former husband. (R-203) She also had a 1974 Gran Torino which Appellant sold. The proceeds were then used for family purposes. (R-130) Appellant also brought some furniture into the marriage and a 1967 Oldsmobile which Respondent was allowed to use.

Respondent also brought a personal residence into the marriage subject to an \$18,210.00 mortgage. (R-22, 117) The parties used this home during the marriage. The monthly payment on the first mortgage is \$195.00 and presently has a balance of \$14,421.90. (R-94, 95) Shortly before separation, a second mortgage was taken on the home and its balance at the time of trial was \$15,876.27 with monthly payments of \$345.00. (R-94-95) Appellant had made the monthly second mortgage payments from the time the parties separated to the time of trial. (R-141, 164) There was a conflict in the testimony of the parties as to how much additional money was spent for improvements on the home. Appellant stated he spent over \$40,000.00 in improvements on the house. (R-198, L 14-22) The figures and references to the record appearing on pages 3 and 4 of Appellant's Brief are but paraphrases of Appellant's testimony and there was no documentation which would show that these monies went for improvements in the home. In addition, Appellant's overall credibility was impeached during cross examination. (R-184-185)

Appellant brought four unimproved lots into the marriage. The parties made payments on these lots from their joint accounts until they were paid for in 1978. (R-125) No independent testimony was presented as to the value of these lots, however, Appellant listed them for sale during the marriage for a total purchase price of \$29,000.00. (R-156)

Appellant further testified that many of the debts in issue were incurred by him subsequent to the parties' separation and he agreed to pay these debts. (R-172)

The Court had earlier entered an Order of Temporary Support in Respondent's favor in the amount of \$450.00 per month. (R-34) Appellant had partially complied with this Order by making the second mortgage payments of \$345.00 per month for 9 months.

At the close of the evidence, the Trial Court granted Respondent a Decree of Divorce and asked that each side submit Memoranda setting forth what each felt to be a reasonable distribution of assets and liabilities. (R-209)

During the course of the trial, and in his Memorandum, the Appellant and his counsel suggested to the Court that Respondent's residence not be sold and that Appellant pay the second mortgage payments in lieu of alimony and that Appellant share in the equity of the home when it was ultimately sold. (R-82, 165, 167, 211) Respondent asked only for alimony until

the second mortgage was paid. (R-158)

Respondent also requested an award of attorney's fees of \$1,530.00 plus \$148.00 in costs. (R-159) The Trial Court ordered Appellant to pay \$1,000.00 towards those fees. (R-103)

After the Court had entered its Memorandum Decision, Appellant objected to the proposed Findings of Fact and Conclusions of Law. (R-85-86) He did not challenge the Court's alimony award, or the base amount of Appellant's lien on the residence, but only the conditions as to when that lien would become due. (R-85) The Trial Court heard the objections and modified certain portions of its Decision (R-88-92) as requested by Appellant.

No Motion for New Trial was made and the final Decree of Divorce and Findings of Fact and Conclusions of Law were approved by Appellant's counsel. (R-99, 104)

ARGUMENT

POINT I

THE DECISION OF A TRIAL COURT
IN A DIVORCE ACTION SHOULD
NOT BE DISTURBED UNLESS THERE IS
A CLEAR SHOWING OF A MISAPPLICATION
OF LAW OR AN ABUSE OF DISCRETION
RESULTING IN A SUBSTANTIAL ERROR OR
SERIOUS INEQUITY.

Appellant contends that the Trial Court erred in its award of alimony and inequitably distributed the marital assets and, consequently, abused the wide discretion afforded a Trial Court

in making such property distributions and support awards. The evidence presented to the Trial Court clearly shows that this is just not the case.

In order to prevail on this Appeal, Appellant is required to show that the Trial Court, in making its support award or 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 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.

The Memorandum Decision (R-66) and the Order on Defendant's Objection (R-90) reveal that the Trial Court carefully considered all of the evidence before it, reviewed the suggested positions regarding support and property and reached a solution which would not unjustly burden either party. In so doing, it fashioned a remedy which provided Respondent with sufficient sums to make certain she could keep the house she brought into the marriage; gave Appellant a substantial increasing interest in that home; and made certain that the parties' interest in the New Mexico property would be fairly determined and distributed.

POINT II

THE TRIAL COURT'S ALIMONY AWARD WAS PROPER GIVEN THE CIRCUMSTANCES OF THE PARTIES

In making its award of alimony, the Trial Court had before it the following facts: This was a six-year marriage. (R-93) Respondent had been receiving \$150.00 per month alimony when she married Appellant. (R-141) At the request of Appellant, Respondent worked only a short time during the marriage. (R-156) At the time of trial, Respondent was employed and netting \$687.00 per month and Appellant was netting \$1,451.67 per month. (R-95) A second mortgage on the Respondent's home had been taken out just prior to separation with monthly payments of \$345.00. (R-94-95) Appellant had been making that

second payment for the nine months the parties had been separated; Respondent had requested an award of alimony until the second mortgage was paid (R-158); and, Appellant, during the trial, suggested on several occasions that he be allowed to make the second mortgage payment in lieu of alimony. (R-82, 167 and 211)

With these facts before it, the Trial Court, realizing it would be unfair to require Respondent and her three children to find a new residence with much higher monthly payments, considered the disparity in earnings of the parties and ordered Appellant to pay \$420.00 per month alimony until the second mortgage was paid. In so doing, it followed the guidelines set forth in Gramme v. Gramme, 587 P.2d 144 (Utah, 1979):

The purpose of alimony is to provide post-marital support; it is intended neither as a penalty imposed on the husband nor as a reward to the wife. Its function is to provide support for the wife as nearly as possible at the standard of living she enjoyed during the marriage and to prevent her from becoming a public charge. Important criteria in determining a reasonable award for support and maintenance are the financial conditions and needs of the wife, considering her station in life; her ability to produce sufficient income for herself; and the ability of the husband to provide support. Id. at 147 (Emphasis added, footnote omitted.)

In this case, the Trial Court recognized the needs of Respondent in having sums sufficient to pay the second mortgage so that she could continue as best as possible to enjoy at least the standard of living she had before and during her

marriage to Appellant. It further noted that Appellant earned more than twice as much as Respondent, but also that, given the circumstances, his obligation to pay alimony should not continue indefinitely.

Appellant contends in Point I of his Brief that if he is required to make the second mortgage payment as a part of his alimony obligation, he should receive a reimbursement for the amounts which reduce the second mortgage when the home is ultimately sold. In essence, Appellant is arguing for the concept of "reimbursable alimony."

In so doing, Appellant has confused and merged the issues of alimony and property distribution. Contrary to Appellant's claim, an alimony award is separate and distinct from a property settlement. As was stated in Fletcher v. Fletcher, 615 P.2d 1218 (Utah, 1980):

. . . There is a distinction between the division of assets accumulated during marriage, which are distributed upon an equitable basis, and the post-marital duty of support and maintenance . . . Id. at 1223.

The Trial Court recognized that distinction and ordered a \$420.00 per month alimony payment, the same to end when the second mortgage has been paid. That payment is to be made directly to Respondent as alimony not as Appellant's contribution towards the second mortgage. This is further supported by the fact that the Court required the Respondent to

assume and pay the second mortgage payment. (R-101) The Court then dealt with the property distribution issue and allowed Appellant an \$11,500.00 lien in the property, plus one-half of any increases in the value of the property due to inflation. Clearly, then the amount and duration of the alimony award and the determination of Appellant's equity interest in the home are separate and distinct from one another and not the least bit unreasonable, especially in light of the fact that Appellant himself had suggested his amenability to such an approach numerous times during the proceedings. (R-82, 167, 211)

POINT III

THE REAL PROPERTY INTERESTS OF THE PARTIES WERE PROPERLY AND FAIRLY DISTRIBUTED

It is undisputed that both parties brought property into the marriage. Respondent - a home with a mortgage on it, and Appellant - 4 real estate lots subject to an unpaid contract balance. During the marriage, each of the parties worked together and jointly contributed their time, efforts, and money in an attempt to make a successful marriage. (R-125, 130, 146, 148 and 156) That attempt failed as is evidenced by this action. However, over the course of the marriage, the values of this property changed because of payments made, mortgage reduction and inflation. Consequently, it is admitted that

Appellant has some interest in the residence, while Respondent has some interest in the lots.

The job of the Trial Court was to determine what that interest should be, based upon the evidence presented to it. A review of the record shows a definite lack of solid evidence of the costs of improvements claimed to have been made by Appellant on the residence and little evidence other than the listing prices on the value of the lots.

This being the case, the Trial Court did the only reasonable thing possible: It looked at the fair market value of the home, both at the time of the marriage and at the time of trial (Exhibit 1-P), the mortgage balances and the testimony of the parties as to improvements and concluded that Appellant, indeed, had an interest in the home and that that interest was \$11,500.00. It is important to note that even though Appellant has claimed large contributions towards improvements in this home, he provided the Trial Court with nothing (no checks, bank statements or receipts) which in any way document and support his claim. Further the Trial Court recognized the fact that in all fairness, Respondent had a greater interest because she brought this asset into the marriage.

The same analysis was used in the handling of the real estate lots. Because Appellant brought this property into the marriage, the Court determined he would receive a greater

interest (Appellant two-thirds and Respondent one-third). Appellant claims the Trial Court shouldn't have ordered these lots sold, but Appellant did not provide the Court with an appraisal. Further, given the fact that Respondent, indeed, had acquired an interest in this property, the Trial Court had no other choice than to require the lots to be sold in the market place and thereby give each party his or her just portion of the proceeds. The considerable latitude of discretion afforded the Trial Court in divorce actions includes the power to require the sale of assets to effectuate an equitable distribution of the property between the parties. Naylor v. Naylor, 563 P.2d 184 (Utah, 1977). Appellant has simply not shown an abuse of discretion in the way the home and lots were disposed of by the Trial Court. Accordingly, its decision should be affirmed.

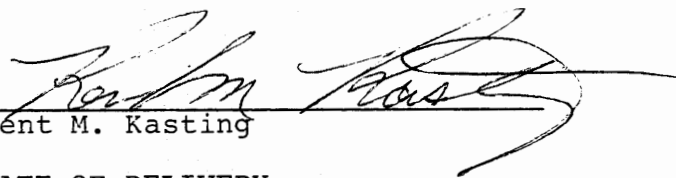
CONCLUSION

The Trial Court's award of alimony was not unfair given the length of the marriage, the contribution of each of the parties and their respective earning capabilities. Simply because Respondent uses a portion of the alimony award to pay the second mortgage, does not entitle Appellant to any reimbursement of the alimony he is required to pay. The property distribution giving Respondent a larger interest in the home she brought into the marriage, and the Appellant a

larger interest in the lots he brought into the marriage was most fair. Appellant has failed to show any abuse of discretion or manifest injustice on the part of the Trial Court in either the support award or the property distribution.

Respectfully submitted this 17 day of March, 1982.

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 Henry S. Nygaard, Esq., BEASLIN, NYGAARD, COKE & VINCENT, 1100 Boston Building, Salt Lake City, Utah, 84111, this 18 day of March, 1982.

