

1981

Kathie Adell Munford v. Raymond G. Munford : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Pete N. Vlanos; Vlanos, Perkins & Sharp; Attorneys for Appellant;

Gaylen S. Young, Jr.; Attorney for Respondents;

Recommended Citation

Brief of Appellant, *Munford v. Munford*, No. 18088 (Utah Supreme Court, 1981).

https://digitalcommons.law.byu.edu/uofu_sc2/2710

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE
STATE OF UTAH

KATHIE ADELL MUNFORD,

Plaintiff and
Appellant,

v.

RAYMOND G. MUNFORD,

Defendant and
Respondent.

CASE NO. 18088

BRIEF OF APPELLANT

Appeal from the Final Order of
The District Court of Morgan County
The Honorable J. Duffy Palmer

PETE N. VLAHOS
VLAHOS, PERKINS & SHARP
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401
(Attorneys for Appellant)

GAYLEN S. YOUNG, JR.
2188 Highland Drive, Suite 201
Salt Lake City, Utah 84106

(Attorney for Respondent)

FILED

DEC - 1 1981

TABLE OF CONTENTS

STATEMENT OF THE KIND OF CASE	1
DISPOSITION BY THE TRIAL COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	4
POINT I.	
THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR MODIFICATION OR RECONSIDERATION	4
CONCLUSION	7

TABLE OF AUTHORITIES

CASES CITED

<u>Chandler v. West</u> <u>610 P.2d 1299 (1980)</u>	. . . . .	7
<u>Fletcher v. Fletcher</u> <u>(1980)</u> 615 P.2d 1218	. . . . .	6
<u>Glover v. Glover</u> <u>121 Utah 362, 242 P.2d 298</u>	. . . . .	6
<u>LeBreton v. LeBreton</u> <u>604 P.2d 469 (1979)</u>	. . . . .	7
<u>Smith v. Smith</u> <u>77 Utah 60 291 P.298</u>	. . . . .	5
<u>Wooley v. Wooley</u> <u>113 Utah 391, 195 P.2d 743</u>	. . . . .	5

REFERENCES

<u>Utah Code</u> <u>§ 30-3-5</u>	2, 4
-------------------------------------	-----------	------

IN THE SUPREME COURT OF THE
STATE OF UTAH

KATHIE ADELL MUNFORD,

Plaintiff and
Appellant,

v.

RAYMOND G. MUNFORD,

Defendant and
Respondent.

CASE NO. 18088

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This is Appeal from the final Order of the Honorable J. Duffy Palmer, Judge of the District Court of Morgan County, State of Utah, denying Appellant's Motion for Reconsideration or Modification of the Decree.

DISPOSITION BY THE TRIAL COURT

On September 3, 1981, the Appellant's Motion for Modification or Reconsideration was heard and denied by the Court; which found that the matter was res judicata, even though a loan of some \$23,000.00, was made to the Respondent during the pendency of the divorce proceeding, and while the Respondent was subject to a Restraining Order as to encumbering of any property.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the District Court's Order, based on the fact that the District Court abused its discretion in denying Appellant's Motion for Reconsideration, or in the alternative, Motion for Modification of the Decree, as provided for in § 30-3-5 of the Utah Code, which provides that the Court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the distribution of the property as shall be reasonable and necessary. The \$23,000.00 loan was never taken into consideration by the District Court in its findings of fact or conclusions of law, or subsequent Decree of Divorce; and therefore, the Motion for Modification should have been granted.

STATEMENT OF FACTS

On January 14, 1981, the Appellant filed a divorce Complaint in the District Court of Morgan County, State of Utah. In her Complaint, Appellant requested that an Order be issued restraining the Respondent from selling, disposing of, or encumbering any of the assets of the marriage. (R 5)

Appellant's Petition included an Order requiring the Respondent to appear at a time and place set to there show cause, if any, why Respondent should not be restrained permanently. A temporary Order was signed by the Honorable

John F. Wahlquist, Judge of the District Court, on January 14, 1981, restraining the Respondent from any way disposing, selling, or encumbering any of the assets of this marriage. (R 8)

A hearing was held on the matter on February 5, 1981, at which time the Restraining Order was made permanent by the Court, and Respondent was restrained from disposing, selling or encumbering any of the assets of the marriage. (R 23)

At the same time, and without any knowledge on the part of the Appellant, on December 15, 1980, Respondent made application for a \$23,000.00 loan with the Ogden Railway Employees Credit Union. The loan was processed in the intervening period, and subsequently approved on January 15, 1981, at which time the Credit Union issued a check for the sum of \$16,800.00 to the Respondent. The money was subsequently disposed of by the Respondent, and there has been no satisfactory accounting for said money. The first time Appellant was made aware of such loan, was at the trial of her divorce proceeding, which was heard on May 12, 1981. The Court at that time, failed to take into consideration any of the proceeds of the loan, which Respondent had received.
(R 34, 35)

Subsequently, Appellant, on June 30, 1981, made a Motion for Modification of the Divorce Decree and Property Settlement, based on the fact that she was previously

unaware of the loan for \$23,000.00 and of the second mortgage securing it on the house previously owned by the Appellant and Respondent, jointly as husband and wife. (R 37)

Findings of Fact and Conclusions of Law, as found by the Court, was not finalized until July 17, 1981, and was signed by the Court at that time, so that Appellant's Motion for Reconsideration or Modification of the Decree was timely made. (R 42)

On September 3, 1981, the Motion was heard, and was denied by the Court, whose reason was that the issue was res judicata, even though the \$23,000.00 was apparently never taken into consideration in the Findings of Fact and Conclusions of Law, and the subsequent Decree issued by the Court in the Property Settlement. (R 53)

ARGUMENT

POINT I.

THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR MODIFICATION OR RECONSIDERATION.

The loan of \$23,000.00 was never taken into consideration, either at trial or in the subsequent Findings of Fact and Conclusions of Law, or Decree, as issued by the Court.

Section 30-3-5 of the Utah Code specifically provides that when a Decree of Divorce is made, the Court may make such orders in relation to property as may be equitable.

The section further provides that the Court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the support and maintenance of the parties, or the distribution of the property as shall be reasonable and necessary. In the case of Wooley v. Wooley, 113 Utah 391, 195 P.2d, 743, the Court held that a property division award granting a husband who obtained the divorce an amount approximating a one-third standard in making a cash settlement to his wife in lieu of alimony was unfair and unjust in denying the wife her share of any increase in value of speculative mining investments by the husband from funds jointly accumulated, so that the decree was modified on appeal, providing that sums awarded should not be paid in lieu of alimony and by directing the trial court to retain jurisdiction to make a further award in the event the husband realized his mining investment. Likewise, the Court in this instance, should have made some provision regarding the \$23,000.00 loan, which was the result of a second mortgage on the house, in which both parties had an interest. The Court abused its discretion in denying Appellant's Motion for Modification or Reconsideration.

In order that the Court may make an equitable distribution of the property owned by the parties, both parties must fully disclose to the Court what their condition was as to the property. Smith v. Smith, 77 Utah 60 291 P.298. Further, where a husband, in a divorce action, fraudulently

induces his wife to rely upon a private agreement as to the parties' property which the husband had no intention of keeping, and not to seek a distribution of the property in the Divorce Decree, the fraud was extrinsic and constituted a valid ground for the subsequent modification of the divorce decree as to the property rights of the parties. Glover v. Glover, 121 Utah 362, 242 P.2d 298.

Here the Respondent fraudulently concealed the fact of the loan having been made without the consent and knowledge of the Appellant, and did not reveal the loan until the proceeds from same were entirely expended, and while, under a Restraining Order preventing him from doing the same. Such activity on his part was a fraud on the Court, and was grounds for subsequent proceeding to modify Findings of Fact and Conclusions of Law of the Court.

Equity in a home purchased by the husband, subsequent to wife's filing for divorce and prior to termination of marriage by the Divorce Decree was a marital asset, subject to division; the marital estate is evaluated according to the existing property interest at the time the marriage is terminated by the Decree of Divorce of the Court. Fletcher v. Fletcher, (1980) 615 P.2d 1218. Therefore, the Appellant's equity in the home, which they jointly purchased was an asset of the marriage, which was subject to division by the Court, and the Court's refusal to take it into consideration during the divorce proceeding or subsequent Motion for

Modification clearly constituted an abuse of discretion, since the marital estate is to be evaluated according to the existing property interest at the time the marriage is terminated by the Decree of the Court.

Property settlements, although entitled to a greater sanctity than alimony and support payments, in proceedings to modify divorce decrees are not sacrosanct and are not beyond the power of the Court of equity to modify. Chandler v. West, 610 P.2d 1299 (1980).

In LeBreton v. LeBreton, 604 P.2d 469, (1979), the Court held that in view of the 1969 divorce decrees ambiguity as to whether the equity of the marital home should be divided according to its present value or value at the time of the divorce, a remand of the case would be ordered for an evidentiary hearing for the purpose of determining what is reasonable and necessary pursuant to the statute. Likewise, the appropriate proceeding in this case would be a remand for an evidentiary hearing, in order that the proceeds of the loan, which placed an additional lien upon the marital home can be equitably divided between the parties, which was not done in the original proceeding.

CONCLUSION

It is respectfully submitted to this Honorable Court that the District Court wrongfully denied the Appellant's Motion for Modification and abused its discretion in so

doing, in view of the fact that the loan which Respondent took out on the marital home, and which he received the proceeds from, subsequent to a Restraining Order, was never taken into consideration by the District Court, and the proceeds thereof were never divided. The District Court's finding that the matter was res judicata is contrary to the facts of this case, and does not demonstrate an appreciation of or consideration of the matter in controversy.

Wherefore, the Appellant respectfully submits that this case should be remanded for an evidentiary hearing, so that the District Court may make an equitable distribution of the money obtained by the Respondent.

RESPECTFULLY SUBMITTED this 30 day of November, 1981.

VLAHOS, PERKINS & SHARP

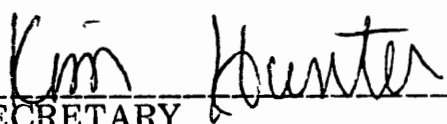

BY

PETE N. VLAHOS, Of the Firm
Attorneys for Appellant
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30 day of November, 1981, I mailed a true and correct copy of the above and foregoing Brief of Appellant, by placing same in the United States Mail, postage prepaid and addressed to the following:

GAYLEN S. YOUNG, JR.
2188 Highland Drive, Suite 201
Salt Lake City, Utah 84106
(Attorney for Respondent)



SECRETARY