

1982

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

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

MARVIN L. WOODWARD,

Plaintiff and Appellant,

vs.

MILDRED L. WOODWARD,

Defendant and Respondent.

CASE NO.

18089

BRIEF OF APPELLANT

APPEAL FROM A DECREE OF DIVORCE ENTERED IN THE
DISTRICT COURT, FIRST JUDICIAL DISTRICT,
HONORABLE VENOY CHRISTOFFERSON PRESIDING.

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IN THE SUPREME COURT
OF THE STATE OF UTAH

MARVIN L. WOODWARD,

Plaintiff and Appellant,

vs.

MILDRED L. WOODWARD,

Defendant and Respondent.

CASE NO.

18089

STATEMENT OF THE NATURE OF CASE

Appeal from a portion of the Decree of Divorce awarding respondent non-vested retirement benefits of the appellant.

DISPOSITION IN LOWER COURT

The parties were divorced on October 9, 1981. Among other things, the Court, Honorable VeNoy Christofferson presiding, awarded to the respondent one-fourth of all proceeds which the appellant will receive upon his retirement from Civil Service, including the non-vested contribution of the Government.

RELIEF SOUGHT ON APPEAL

The appellant respectfully requests this Court

to set aside the award to respondent of that portion of appellant's retirement benefits which are not vested and which may be accrued in the future.

STATEMENT OF FACTS

The parties' divorce trial was heard on October 9, 1981 with the Honorable VeNoy Christofferson, District Judge, presiding. The Court entered its decision awarding the divorce to appellant as well as the custody of four minor children. The appellant was awarded the real estate and home which the Court determined to have an equity of \$40,000.00 after deducting the costs of sale. (R-70)

The appellant was also awarded two vehicles and the respondent one. The difference in their equity was in respondent's favor in the sum of \$2,000.00. The Court granted appellant one-half of this sum and deducted it from the real estate equity, leaving a net equity in the real estate of \$39,000.00. (R-71) Of this amount, the respondent received an equity lien against the real estate of \$19,500.00, payable to her upon sale of the home, the appellant's remarriage or when the youngest child reached majority, whichever occurred first. (T-52)

The only other asset of the parties was appellant's Civil Service retirement. Appellant had worked for Civil Service for fifteen years, approximately the same length of time as his marriage to respondent. (T-52) The Court reasoned that since he would have to work another fifteen years to obtain full retirement benefits, the respondent would be entitled to one-fourth of his ultimate benefits, in other words, one-half of the amount accumulated by appellant during his marriage. (R-72) The Court included, however, the share to be contributed by the Government upon appellant's retirement, a sum which has not yet vested in the appellant. (T-75) Also included by this award would be the increase that appellant would earn in future years by reason of promotions and other increased pay benefits.

ARGUMENT

THE COURT ERRED IN AWARDING RESPONDENT RETIREMENT BENEFITS OF APPELLANT NOT YET EARNED OR VESTED.

In answers to interrogatories, appellant attached a copy of his retirement plan for Civil Service. (R 28-31) From his plan it can be seen that:

1. Given appellant's age, he cannot generally retire until thirty years minimum service. (See I)

2. His retirement annuity amount depends on the highest salary obtainable by averaging his salary for the highest five years of service. (See III(1))

3. Appellant contributes to the Fund at the rate of 6-1/2% of his basic salary. The Government also contributes to the Fund. (See preamble to Plan)

4. If appellant terminates his employment prior to retirement eligibility, only his contributions are refunded to him. (See IX)

At trial, appellant testified that he had approximately \$17,500.00 in his retirement account, all of which represented his own contributions. (T-34)

At the conclusion of the trial, the Court awarded the divorce to appellant and gave him custody of the four minor children. The appellant was also awarded the home subject to an equity lien in the respondent for \$19,500.00 which represents one-half of the equity of all the assets of the marriage, excluding the retirement fund. (R-71)

When awarding respondent one-fourth of appellant's retirement pay, the following discussion occurred:

THE COURT: As to the retirement, as I read this chart on the options, he's been working fifteen years

and has been married substantially for that period of time, and under these is where you can discontinue service after twenty-five, but you earn your full equity after thirty years minimum service apparently, at any age, no matter how old you are after you've had thirty years. So he can work his thirty years. At this point, I would assume he has vested interest in at least half of that or fifteen of it. So that the equity he has in his retirement up to this point is one-half, his equity. One-half of that one-half would be one-fourth, and this one-fourth then, I'd grant an equity to the defendant for one-fourth of the retirement as it is received. Do you understand what I mean by that.

MR. FLORENCE: I understand what you mean by the bottom, by the conclusion. Are you taking the amount that he has contributed to his retirement at the present time and giving her one-fourth of that payable as it is received by him?

THE COURT: No. I don't know what he will receive. I don't know what options he'll take. His option may be to take money, get out quicker. His option may be to go more time and get more. But whatever it is that he takes, at this time I'm saying that her equity is one-fourth of

that. Suppose at such time as he does elect to retire and take his retirement pay and say at that time -- I don't know, say it's \$1,200.00 a month. He would pay her \$300.00 of it. That one-fourth of it.

MR. FLORENCE: If he works to the age of fifty five and elects then to retire at that time, you are awarding her a fourth of his retirement?

THE COURT: His pay, uh-huh. Personal property --

MR. FLORENCE: Your honor, so I'm not -- so there's no misunderstanding on that, you are not then awarding her a specific dollar amount in the retirement, you are giving her a one-fourth interest in it, whatever it may be?

THE COURT: Whatever it may be as he receives and it's paid to him.

MR. FLORENCE: And that is in the form of a cash settlement despite her condition at that time or her position in life or her status?

THE COURT: Well, yeah. This isn't based on an actual award of property.

MR. FLORENCE: I appreciate that, but basically what it appears to me is happening is that you are awarding her a fourth interest in funds that he will

receive and accumulate and work for in the next twenty years.

THE COURT: No, that's why I took half of it off. She's not getting anything for the next half of what he earns.

MR. HADFIELD: He's saying a fourth of thirty years is a half of fifteen years.

THE COURT: See, I'm just giving her the ones that he's accrued up to now. He gets three quarters of it and she gets one quarter. What I'm saying is that half of it he's going to earn after they're divorced. So he's entitled to all of that. But I'm saying that she has acquired an interest simply as a property interest in what he's acquired so far, which is one-half of what it will be, and her equity in that one-half is --

MR. FLORENCE: As I understand it, the Government contributes to this only upon his retirement. That's only going to come in one paycheck, so if -- in other words, when the amounts that appear in the exhibit, the exhibit one are amounts that only he has contributed. The Government matches that, so that when he ultimately retires, they put in an equal amount that he has contributed for the purposes of his retirement. Now

is she to get only one-fourth of his part of his contributions --

THE COURT: No, I don't care whether you call it matching by the Government or what, this is still income to him and they're still matching what he has already -- his income to him, whether they pay it direct to him or pay it in the form of retirement.

MR. FLORENCE: Well, I don't want to belabor this, Judge, but I think it's important now that we have it clear on the record. If Mr. Woodward were capable of retiring today, the \$17,503.00, assuming that that was the amount, would actually be matched by the Government of an equal amount. They would set up an annuity for him totaling that \$35,000.00.

THE COURT: Uh-huh.

MR. FLORENCE: Now by your order then you are entitling her to one-fourth of that that he will receive, which includes the Government's participatory share?

THE COURT: Yes. (T 71-75)

It is clear from the Court's order that respondent is to receive one-fourth of appellant's retirement pay which will include a matched share by

the Government which is not yet vested in appellant. Presumably over the next fifteen years, appellant will continue to receive promotions and step increases in pay so that his ultimate retirement pay (the highest five years consecutive salary) will depend on his employment at a time when he is not even married to respondent.

Appellant has no objections to an award to respondent of one-half of his presently vested retirement amount. That is the amount appellant would receive if he terminated his government service now, or \$17,500.00. Therefore, respondent would have a right to \$8,750.00.

Under the Court's plan, however, assuming that appellant receives no further pay increases and accumulates an identical amount through his own contributions as have been accumulated in the last fifteen years, he would have \$35,000.00 accumulated upon his retirement eligibility age. This is then matched by the Government so that appellant would have a minimum of \$70,000.00 from which an annuity could be determined. Respondent would receive one-fourth of this or at least \$17,500.00, the full amount of

appellant's presently vested benefits.

This does not even take into account that appellant's actual annuity amount is most likely going to be determined by his work effort over the next fifteen years when he is not married to appellant, and yet she will share in those benefits.

In Bennett v. Bennett, 607 P. 2d 839 (1980), this Court clearly held that it was error for the District Court to consider any portion of plaintiff's retirement fund contributed by the U.S. Government, which had no present value, in making a property division in a divorce. (At 840)

It is submitted that Judge Christofferson, in making the award to respondent, has allowed her to share in an amount which has no present value and which will include contribution of the Government.

CONCLUSION

The Court erred in awarding respondent a portion of appellant's retirement benefits which are not yet vested or earned.

DATED this 12th day of January, 1982.

Respectfully submitted,

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MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Appellant, postage prepaid, to Ben H. Hadfield, Attorney for Respondent, 35 First Security Bank Building, Brigham City, UT 84302, on this 12th day of January, 1982.


EILEEN CHRISTENSEN, Secretary