

1958

# Nita Martinett v. Cecil J. Martinett : Brief of Respondent

Utah Supreme Court

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Richards, Alsup & Richards; Attorneys for Plaintiff and Respondent;

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JUL 21 1958

Clerk, Supreme Court, Utah

In the  
**Supreme Court of the State of Utah**

\_\_\_\_\_  
NITA S. MARTINETT,  
*Plaintiff and Respondent,*

vs.

\_\_\_\_\_  
CECIL J. MARTINETT,  
*Defendant and Appellant.*

} Case No.  
8820

\_\_\_\_\_  
**RESPONDENT'S BRIEF**  
\_\_\_\_\_

RICHARDS, ALSUP & RICHARDS  
*Attorneys for Plaintiff and  
Respondent*

## I N D E X

	Page
PRELIMINARY STATEMENT .....	1
STATEMENT OF FACTS .....	2
ARGUMENT .....	4
AUTHORITIES CITED .....	None

**In the**  
**Supreme Court of the State of Utah**

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NITA S. MARTINETT,  
*Plaintiff and Respondent,*

vs.

CECIL J. MARTINETT,  
*Defendant and Appellant.*

Case No.

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**RESPONDENT'S BRIEF**

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PRELIMINARY STATEMENT

Respondent accepts Appellant's statement of the question presented in this Appeal. Respondent also accepts the cases cited in Appellant's Brief as being the controlling law. The problem is applying the law to the facts to determine if the evidence clearly preponderates against the findings of the trial Court, or if the Decree is manifestly inequitable or unjust, or if the trial Court abused its discretion.

## STATEMENT OF FACTS

Appellant's statement of the pertinent facts is substantially accurate. We believe, however, it might assist our analysis if the facts are stated in more detail and are presented categorically under the various headings suggested in the Wilson case, which is cited in Appellant's brief. The references are to the pages in the transcript. Hereafter the parties will be referred to as plaintiff and defendant.

### *The Assets of the Parties*

1. A farm in South Weber, Utah, worth a maximum of Eighteen Thousand (\$18,000.00) Dollars. (7, 89).

2. Home in South Ogden, Utah, worth from Five Thousand (\$5,000.00) Dollars to Eight Thousand (\$8,000.00) Dollars (89).

3. Two 1952 automobiles (8).

4. Household furniture.

5. A Five Hundred Dollar insurance policy (26).

6. Plaintiff's job, at which she earns about \$215.00 per month. (20).

7. Defendant's two life pensions totaling \$153.63 per month (73).

8. Tax refund check in the amount of \$414.00.

9. Lifetime medical and hospital care available to defendant.

10. Though not strictly an asset now, the one-third in-

terest in property worth One Hundred Thousand Dollars, which defendant four or five years ago gave to his sisters to keep the plaintiff from getting. (76, 77, 78, 79, 80).

### *The Liabilities of the Parties*

At the time the parties separated they owed about \$1,800.00 which plaintiff assumed and is paying (18, 53). Other liabilities are the health of the parties (defendant's health is not good, (31), and the plaintiff's is all right except for eye difficulty and a rupture (26) ) and the ages of the parties. Defendant is age sixty-seven and plaintiff is fifty-two.

### *How the Property Was Acquired*

The property was acquired by their joint efforts. However, it seems fair to say that the plaintiff has made and paid for more than her share of the improvements. (15, 17, 18, 19, 20).

### *The Capabilities of the Parties*

Plaintiff's sole security is her job. She is eight years away from a small retirement (26). The farm gives her an additional measure of security. Defendant could have given plaintiff a little additional security at the time he took the pensions, but he chose not to do so (27). She has no one and nothing to fall back upon in case of adversity.

Defendant has a life income of \$153.63. It isn't a lot, but he can live on it. He has medical care and two sisters who are financially independent (partly through his largesse) and who would be the greatest of ingrates if they ever permitted him to do without.

### *The Guilt or Innocence of the Parties*

We doubt if the trial Court gave much consideration to this factor, and we pass it without comment.

### *The Decision Made by the Court*

Plaintiff received:

1. The farm and furnishings.
2. One-half the home in Ogden.
3. One-half the tax refund check.
4. One of the automobiles.

Defendant received:

1. One-half the Ogden property.
2. One-half the tax refund check.
3. The two pensions clear of any claim by plaintiff.
4. One of the automobiles.
5. The insurance policy and a potential interest in property worth One Hundred Thousand (\$100,000.00) Dollars.

## ARGUMENT

We can't divine the thinking process which led the Court to its decision. We have somewhat of a guide, however, in the final remarks made by the trial Judge. We can be certain that there was no vindictiveness in the Court's reasoning. The decision was obviously not motivated by any passion or prejudice or similar influence. This trial was not characterized

at all by bitterness. It was fairly tried, we believe, by both attorneys, by the Court and by the litigants themselves. The Court obviously sympathized with both parties. It considered their ages and it realized the parties were both at the ages where security is of prime importance. The Court sought to equalize in some measurement the security available to them. It felt the defendant had a fair measure of security with his pensions and medical care, but he needed a little money for emergencies. It felt the farm would give plaintiff a bit of security. Who can say this is not the equity process.

We cannot state as a certitude that the Court has done equity in this case. There is no slide-rule solution available. Perhaps another Court might have arrived at a different decision. Possibly another Court might have given plaintiff all the property or might have given the defendant more of the property. Also, possibly another attorney might have insisted that plaintiff fight for a fair share of defendant's inheritance property. There is always room for subjective criticism in these cases. That, however, is not our issue. The issue is whether or not there has been manifest injustice, or whether or not the evidence clearly preponderates against the findings or the Court abused its discretion.

The truth of the matter is the plaintiff, who at least in recent years has been the workhorse of the family, comes out of this marriage with less than the defendant. Who is there among us that would not gladly exchange this unproductive farm with a cinderblock dwelling thereon and no barn or other outhouses for a guaranteed life income of One Hundred Fifty Dollars per month. There can be no question but what the pensions are as much an asset of this marriage as is the farm and it was properly considered by the Court as a joint asset

just as the pension was considered in the Wilson case.

We feel that little is accomplished by any argument supporting the Court's decision. We feel this way because we were impressed at the time and are now impressed with the Court's reasoning, and we feel the decision can well pass the closest scrutiny and needs no argumentative support.

We, therefore, respectfully submit the matter.

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