

1979

Carole Minkevitch Proudfit v. Robert Lee Proudfit, Iii Helen F. Proudfit, Applicant For Intervention : Brief of Appellant

Utah Supreme Court

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STATEMENT OF FACTS

The parties to this action were married on September 8, 1964. They have two children born of this marriage, one which is eleven years of age and one which is eight years of age. The respondent is employed as an air traffic controller working at the Salt Lake City airport. His gross income per year is approximately \$25,000. (Def. Ex. 2, Pl. Ex. 6 & 11) His after tax income is approximately \$20,000. (Pl. Ex. 6) The appellant is unemployed.

The parties own various personal and real property acquired during their marriage. At the time of the divorce the parties owned the following property with the given values:

| | |
|------------------------------|-------------|
| 1967 Ford and camper | \$ 5,000.00 |
| 1971 Volkswagen | \$ 1,100.00 |
| 1960 Volkswagen custom car | \$ 1,500.00 |
| stamp and coin collection | \$ 1,500.00 |
| air boat (one-half interest) | \$ 750.00 |
| 1971 Reinell 25 foot boat | \$ |
| 1968 Cadillac | \$ 500.00 |

(Def. Ex. 11)

The parties owned a home located at 1360 Capitol Avenue, investment property consisting of a rental unit at 1273 Capitol Avenue and other real property which the respondent owned in partnership with other business associates. The respondent's equity in the partnership property was \$10,000.00. (R.33) The

equity in the home located at 1360 Capitol Avenue is approximately \$29,000.00. (R.25) The property located at 1273 Capitol Avenue was evaluated at \$13,500.00 leaving an equity of approximately \$6,158.00. The respondent had an accumulated retirement balance at his place of employment in the sum of \$9,244.62. (Def. Ex. 1) The debts and obligations owed by the parties, not including those obligations directly related to personal and real property which have already been deducted in order to reach the equities set forth above, amounted to approximately \$3,000.00. (Def. Ex. 4)

The court in its findings of facts and judgment awarded to the respondent his retirement benefits, the \$10,000.00 equity in the partnership property, the approximately \$6,158.00 equity in the property located at 1360 Capitol Avenue, a \$10,000.00 lien against the home awarded to the appellant, the stamp and coin collection, the truck and camper, both boats, the 1971 Volkswagen and one-half of the mexican items. The appellant was awarded the approximately \$19,000.00 worth of equity in the home, a 1968 Cadillac and the furniture and furnishings. The appellant was also awarded \$1,000.00 out of the proceeds of the sale of the property located at 1273 Capitol Avenue. An additional \$1,000.00 of this sum was to be used to pay attorney's fees. The respondent was ordered to pay child support in the sum of \$150.00 per month per child for a total of \$300.00 per month child support and \$220.00 per month alimony for a period of three years. (R. 32-35)

ARGUMENT

THE COURT COMMITTED ERROR IN FAILING TO MAKE A FAIR AND
EQUITABLE DISTRIBUTION OF THE PROPERTY BELONGING TO THE PARTIES.

The appellant contends that the court did not make a proper distribution of the assets acquired by the parties during the marriage. The appellant was awarded the furniture in the home plus approximately \$20,500.00 worth of the assets accumulated during the marriage. They consisted of \$19,000.00 interest in the home, \$1,000.00 which was paid to her at the sale of 1273 Capitol Avenue and \$500.00 value in a 1968 Cadillac automobile. The respondent was awarded approximately \$43,000.00 worth of said assets. They consisted of a \$10,000.00 interest in the partnership real estate property, a \$10,000.00 lien against the home awarded to the appellant, a \$4,458.00 interest in the property located at 1273 Capitol Avenue, \$5,000.00 interest in the truck and camper, \$1,100.00 interest in the Volkswagen, \$1,500.00 interest in the Volkswagen custom car, \$1,500.00 in the stamp and coin collection, a \$750.00 interest in the air boat and approximately \$9,000.00 in the retirement.

As indicated in the Statement of Facts, the parties have been married for fourteen years and have two children ages eleven and eight. During the marriage the appellant was unemployed and spent her time taking care of her family and home. By reason of this divorce, the appellant will have to re-educate and prepare herself to support the children and to take

care of her own needs. The \$150.00 child support which the respondent is required to pay will not adequately care for the children and probably will not even constitute one-half of the costs involved in housing, feeding, educating and raising the children. An additional burden has been placed upon the appellant by reason of the fact that she did not receive a fair distribution of the assets acquired by the parties during the fourteen-year marriage. The appellant contends that she should have been awarded the equity in the home free and clear of any lien to the respondent. If this had been done, the appellant would have approximately \$30,500.00 in assets and the respondent, after paying the bills would have approximately \$30,000.00 in assets.

It is the appellant's position that the law in the state of Utah pertaining to property distribution is as set out in the case of Englert vs. Englert, 576 P.2d 1274 (UT 1978). In that case the court referred to Section 30-3-5 of the Utah Code Annotated and stated:

It is to be particularly noted that that language is in general terms and contains no hint of limitation. The import of our decisions implementing that statute is that proceedings in regard to the family are equitable in a high degree; and that the court make take into consideration all of the pertinent circumstances. It is our opinion that the correct view under our law is that this encompasses all of the assets of every nature possessed by the parties, whenever obtained and from whatever source derived; and that this includes any such pension fund or insurance.

These should be given due consideration along with all other assets, income and the earnings and the potential earning capacity of the parties, in determining what is the most practical, just and equitable way to serve the best interests and welfare of the parties and their children.

It is the position of the appellant that it would be equitable to award a home in which the wife and children resided to the wife even if such an order would result in the husband receiving less than one-half of the assets acquired by the parties. In this case the home can be awarded to the appellant and the respondent would still receive one-half of the assets. The appellant has the financial responsibility of providing a house for the children to live in for another seven to ten years. In addition, she has very little training that would qualify her to make a living. Certainly, the appellant should receive the security of knowing she has a home free and clear of any claims by the respondent. The appellant should not be required to take less than one-half of the assets in light of the duration of the marriage and the responsibilities she has in raising the children.

CONCLUSION

The appellant contends that the property distribution as awarded by the lower court is inequitable and that it should be modified so that the appellant retains any and all equity or interest in the home acquired by the parties during their marriage.

WHEREFORE, the appellant prays for the court to modify the lower court's order so as to award to the appellant the total equity in the parties' home located at 1360 Capitol Avenue.

DATED this _____ day of January, 1979.

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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Brief to Attorney for the Respondent Brian Florence, 818 - 26th Street, Ogden, UT 84401, on this the ___ day of January, 1979.

JEANNINE C. DAMEWORTH