

1979

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

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

CAROLE MINKEVITCH PROUDFIT)
Plaintiff-Appellant,)
vs.)
ROBERT LEE PROUDFIT, III,)
Defendant-Respondent.) Case No.
69246
HELEN F. PROUDFIT, Applicant)
for Intervention.)

BRIEF OF RESPONDENT

STATEMENT OF THE KIND OF CASE

This is an appeal from a judgment in a divorce action heard by Judge Ronald O. Hyde on the 6th day of October, 1978.

DISPOSITION IN LOWER COURT

The lower court entered a judgment granting a divorce to the plaintiff awarding child support, alimony and partitioning the assets and debts of the parties.

RELIEF SOUGHT ON APPEAL

The respondent requests this Court to affirm the

Decree of the trial court in all respects.

STATEMENT OF FACTS

The respondent agrees with appellant's statement of facts with some exceptions and additions.

Appellant claims in her statement of facts that the debts and obligations owed by the parties and outlined in defendant's Exhibit 4 amount to approximately \$3,000.00 after deducting those debts already considered to arrive at the equity in the real and personal property. This is not correct. None of the equity of the real or personal property referred to by the appellant was arrived at by deducting any of the obligations referred to on defendant's Exhibit 4. These were all debts owed by the respondent over and above the obligations which were considered in arriving at the net equity. Therefore, the debts and obligations required to be assumed by the respondent amount to \$15,300.00.

It should also be noted that the court awarded the appellant three years' alimony at the rate of \$220.00 per month when, in fact, she was only requesting two years' alimony. This is an additional \$2,640.00 interest award to the appellant which she had not requested.

ARGUMENT

THE COURT MADE A FAIR AND EQUITABLE DISTRIBUTION

OF THE ASSETS AND OBLIGATIONS OF THE PARTIES.

This Court has frequently considered the burden of the appellant who seeks modification of a trial court's determination of a property and support settlement in a divorce. In Searle v. Searle, 522 P. 2d 697 (1974), this Court stated that the "actions of the trial court are indulged with a presumption of validity and the burden is upon appellant to prove such a serious inequity as to manifest a clear abuse of discretion". In Mitchell v. Mitchell, 527 P. 2d 1359 (1974), the Court stated "the burden is upon appellant to prove that the evidence clearly preponderates against the findings as made; or there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error". See also Cox v. Cox, 532 P. 2d 994 (1975); Westenskow v. Westenskow, 562 P. 2d 1256 (1977); and Frank v. Frank, 585 P. 2d 453 (1978).

The appellant has chosen not to include a transcript of the trial in her appeal and in effect is asking this Court to substitute its own judgment for the judgment of the trial court without the benefit of the testimony which occurred during the trial.

The appellant has correctly stated the approximate worth of the assets awarded to her in the divorce. There

is no evidence as to the value of the furniture awarded to the appellant, however, but it is obvious that some value is there. Additionally, the appellant was awarded an extra year's alimony which she did not request to her benefit in the sum of \$2,640.00. It is submitted, therefore, that appellant's award amounted to over \$23,000.00 plus the unknown value of the furniture.

It is true that the respondent was awarded approximately \$43,000.00 worth of assets. Since no transcript of the trail is provided, it would be impossible for this Court to know the source of all of these assets or their history, but even assuming all of the assets were acquired during the marriage, it is submitted that, in fact, this is not a true net asset award to the respondent.

Defendant's Exhibit 4 is a list of indebtedness amounting to \$15,300.00 which respondent submits was not deducted from the items of real and personal property in arriving at their value. Therefore, on that basis alone, his net asset award would be \$27,700.00.

Of this amount, \$9,000.00 is represented by respondent's interest in his retirement program. A close examination of defendant's Exhibits 1 and 2 shows the contribution to respondent's retirement program is

the only form of retirement he is accruing in his present employment. There are no deductions for FICA or other social security programs. By including this \$9,000.00 amount as part of respondent's assets, the appellant is in effect claiming an interest in respondent's social security. Without the benefit of the transcript, this Court could only guess as to the circumstances and time when respondent would be entitled to any of that retirement fund. If this amount were deducted from respondent's net asset award, he only received \$18,700.00.

Respondent complains of the alimony and child support awarded. It has already been indicated that the court awarded appellant a year more alimony than she was requesting, and without the benefit of a transcript this Court is asked to again substitute its judgment for the judgment of the trial court who heard the evidence concerning respondent's work history, capabilities of employment, education and future plans.

The appellant has requested this Court to modify the trial court's order, awarding to her the total equity in the parties' home located at 1360 Capitol Avenue, Ogden. If this were done, the appellant would receive a total asset award capable of immediate liquidation amounting to \$32,500.00 which consists of the \$31,000.00

interest in the home, \$1,000.00 paid to her from the sale of the 1273 Capitol property and the \$500.00 value of the automobile, plus, of course, the unknown value of the furniture. The respondent, however, would only receive a net equity award capable of immediate liquidation amounting to \$9,008.00. This consisting of the \$10,000.00 interest in the partnership real estate property, the \$4,458.00 interest in the 1273 Capitol property and the \$9,850.00 interest in the personal property, less the \$15,300.00 obligations of the respondent.

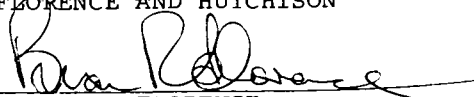
CONCLUSION

Respondent submits that the property distribution awarded by the trial court was fair and within the discretionary power granted to the trial court and that there is no evidence presented by appellant which would show that any serious inequity has resulted or any reason to overturn the presumption of validity of the trial court's order.

DATED this 5th day of February, 1979.

Respectfully submitted,

FLORENCE AND HUTCHISON


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MAILING CERTIFICATE

I hereby certify that mailed two true and correct copies of the foregoing Brief of Respondent, postage prepaid, to Robert A. Echard, attorney for plaintiff-appellant, 427-27th Street, Ogden, UT 84401, on this 6th day of February, 1979.


EILEEN CHRISTENSEN, Secretary