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Edith Chloe Mathie v. William Truman Mathie : Brief of Appellant

Utah Supreme Court

Gustin, Richards & Mattsson; Attorneys for Plaintiff and Appellant;

Case No. 9345

IN THE SUPREME COURT
of the
STATE OF UTAH

EDITH CHLOE MATHIE,
Plaintiff and Appellant,

vs.

WILLIAM TRUMAN MATHIE,
Defendant and Respondent.

APPELLANT'S BRIEF

Appeal from the District Court of the Third Judicial District in and for Salt Lake County, State of Utah
HONORABLE JOSEPH G. JEPPSON, Judge

GUSTIN, RICHARDS
& MATTSSON,
Attorneys for Plaintiff and Appellant.

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CASES

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STATEMENT OF FACTS

Plaintiff was awarded a decree of divorce from the defendant concerning which there is no issue raised by either party. This appeal questions the findings and conclusions with respect to the allocation and disposition of property and property interests, the objections to which are substantially delineated in the motion for new trial (R. 149-150), and as hereinafter more particularly referred to.

The parties were married on February 28, 1946. The defendant is 53 years of age (R. 75), a former school teacher (R. 48) and at the time of the divorce was driv-

ing a truck for a cleaning company for a gross salary of $60.00 a week (R. 76). The plaintiff, who is 52 years of age, has a background of Civil Service employment, employment as a waitress, cook, boarding house operator and teacher (R. 37-38). At the time of the divorce plaintiff was employed by the State Liquor Commission (R. 36) at a gross salary of $260.00 a month (R. 51). Both parties have been previously married and divorced and both suffer from heart conditions (Ex. 1 and 2), the plaintiff's condition being organic since her birth (R. 36).

The only substantial property involved is a home and adjacent apartment on South 7th East Street in Salt Lake City, considered as one unit, which was purchased for the total price of $13,500.00 in 1947. The initial down payment of $4,000.00 was made by plaintiff from funds accumulated by her prior to the marriage (R. 24, 61). Defendant has never made a payment on the property (R. 91) which has a present market value of $25,000.00 (R. 104), but over the years contributed approximately $2,300.00 for remodeling (R. 142). Monthly payments on the purchase price and taxes were made by the plaintiff from her own funds or from the rent money. The last payment of $700.00 was made by plaintiff's daughter in October of 1949 (R. 25, 35, 40 and 48), whereupon plaintiff conveyed the property to her daughter (R. 35).

A previous divorce action was commenced by the plaintiff in August of 1953 (R. 5). This action terminated in December of that year and the parties executed a reconciliation agreement (Ex. 2). By the agreement of

December 5, 1953, the defendant acknowledges plaintiff's ownership in the property and the plaintiff agreed to execute a Will granting to defendant a life estate to the property in the event of her prior death. The Will was duly executed (Ex. 4).

The decree awards possession of the portion of the property occupied as a home to plaintiff and awards possession of the rental units to defendant with the right to evict the plaintiff as a tenant unless he is paid the same rental as would be required from a stranger. The home and the rental units are required to be held in trust "for equitable distribution" of expenses and income beginning as of June 23, 1960 "and the parties shall pro-rate all of the utilities, and rents due and that the income and expenses be enjoyed and borne fifty percent by each party." The decree then provides that the property can only be sold by the mutual consent of the parties (R. 147), in which event one-half of the sale price shall be divided after plaintiff has received $2,500.00 therefrom "and, in the event the said real property is not sold, then at the death of the defendant, plaintiff & defendant having used the premises for their living expenses and normal pursuits in life, the property be distributed to the plaintiff, her heirs devisees & legatees." (R. 148).

Since the decree Coy Moore, plaintiff's daughter, and her daughter's husband have reconveyed the property to plaintiff.

STATEMENTS OF POINTS

POINT I. THE FINDINGS AND DECREE OF THE COURT AWARDING TO DEFENDANT AN INTEREST IN THE APARTMENT AND HOME GREATER THAN THAT PROVIDED IN THE RECONCILIATION AGREEMENT ARE CONTRARY TO THE EVIDENCE AND THE LAW.

POINT II. THE DISPOSITION OF THE PROPERTY IS SO INEQUITABLE AND UNJUST THAT IT MANIFESTS AN ABUSE OF DISCRETION BY THE TRIAL JUDGE AND SHOULD BE CORRECTED.

POINT III. THE COURT'S DECREE IS UNCERTAIN, AMBIGUOUS AND INEQUITABLE.

ARGUMENT

POINT I. THE FINDINGS AND DECREE OF THE COURT AWARDING TO DEFENDANT AN INTEREST IN THE APARTMENT AND HOME GREATER THAN THAT PROVIDED IN THE RECONCILIATION AGREEMENT ARE CONTRARY TO THE EVIDENCE AND THE LAW.

The reconciliation agreement of the 5th day of December, 1953, gives plaintiff the beneficial ownership of the property during her lifetime. The agreement is a valid and binding contract which the court cannot alter, amend or modify to the detriment of either party. Annotation, 11 *A.L.R.* 277.

In the case of *Levine v. Levine* (Ga. 1948), 4 A.L.R. 2d 1205, 49 S.E. 2d 814, plaintiff separated from defendant because of his cruel treatment and thereafter a reconciliation occurred. The defendant executed a deed for the consideration of the plaintiff, his wife, becoming rec-

onciled and returning to live with him. Subsequently plaintiff commenced a suit for divorce at which time defendant claimed that plaintiff by her present suit had elected to rescind the reconciliation contract and that the deed should be cancelled. The trial court held in favor of defendent and ordered the plaintiff as a condition of trying her case on its merits to reconvey the property to the defendant. On appeal the Supreme Court held that the plaintiff had paid and satisfied in full any consideration requiring her to become reconciled and return to her husband and that by virtue of the deed she was the owner absolute of the title conveyed. The court states:

> "It would be a novel legal principle that would compel this wife to suffer his breach or else, as a penalty for seeking redress, surrender that which he had freely given as an inducement for her return to him."

The valid and binding effect of reconciliation agreements is also recognized in the following cases: *Campbell v. Prater* (Wyo. 1948), 191 P. 2d 160; *Tyson V. Tyson* (Ariz. 1944), 149 P. 2d 674; *Bowden v. Bowden* (Cal. 1917), 167 P. 154; *Schwab v. Schwab* (Cal. 1959), 335 P.2d 174.

The trial court in the instant case, by its oral findings and again in its written findings, acknowledges the existence of the agreement and then proceeds to erroneously interpret the agreement to the prejudice of plaintiff. The agreement gives to the defendant a life estate to take effect upon the death of plaintiff. To give to the defendant a greater interest in the property than he has

under the agreement would be to compel plaintiff to suffer defendant's breach, or else, as a penalty for seeking redress, surrender that which defendent had freely given as an inducement for plaintiff returning to him. The plaintiff under the agreement became the absolute owner of the property, subject only to a life estate in the event she predeceases the defendant.

The court by awarding to defendant a present interest in the home and apartment house rewrites the agreement of the parties of December 5, 1953, contrary to the evidence and the law.

POINT II. THE DISPOSITION OF THE PROPERTY IS SO INEQUITABLE AND UNJUST THAT IT MANIFESTS AN ABUSE OF DISCRETION BY THE TRIAL JUDGE AND SHOULD BE CORRECTED.

The findings of fact and decree relating to the home and apartment house, together with the court's comments, evidence considerable vindictiveness. Upon learning of the deed given by plaintiff to her daughter for a consideration of $700.00, which conveyance is not condoned and has since been corrected, the trial Judge lost sight of the equities as is disclosed by the following quotations from the record:

> "THE COURT: Mr. Reid, I think this property ought to be conveyed back into her name, so it can be adjudicated.
>
> I think the conveyance was not honest. She apparently let it go for $700. She cannot dissipate money or property in the hands of the court to distribute.

* * *

THE COURT: You think that over between now and two. The Court would like possession of that property in order to properly decide this case." (R. 118).

" THE COURT * * *

She has a bank account at this time, and the distribution of that account is she may have that account. However, the plaintiff is restrained from now, in drawing anything from that account until the title to the real estate is cleared up, and the cloud placed upon it by the deed from the plaintiff to her daughter.

The Court construes this as a method of trying to conceal the property and get it out of the reach of the court, and it is improper conduct on the part of the plaintiff and her daughter in making this transaction.

As part of the security to protect the defendant in getting the title cleared up, this bank account that has been described in the sum of about $50.00 is ordered left intact, so that if the defendant needs to, he may levy upon it and use it for the purpose of clearing the title to the property.

* * *

The Court awards to the plaintiff attorneys fees. The attorneys fees have been described as being worth $500, and they may be. The Court does not have to pass on that subject, but IT IS ORDERED that the defendant pay his own fees, that he also pay to the plaintiff $300 to assist the plaintiff in paying her fees. The defendant need not make this payment of $300 until after the title to the property is cleared up from the cloud that the court has heretofore referred to.

* * *

The Court is of the opinion that the deed to the daughter is a nullity, except that it amounts to a cloud that has to be cleared up either by the consent of the plaintiff, which may be done without cost, or by the action of Court, at her expense." (R. 121-122)

"IT IS FURTHER ORDERED that the expenses of the defendant that will be incurred and necessary in quieting title to this property from the cloud in the nature of a deed given by the plaintiff to her daughter, should be borne by the plaintiff; that includes court costs, attorneys's fees, abstracting, and any necessary expense toward the clearing of that title." (R. 123.)

"THE COURT I am going to leave that with a life interest. She tried to steal that from him." (R. 133).

From reading the foregoing statements of the trial court it becomes apparent that the court was following a course of conduct similar to that condemned in the case of *Foreman v. Foreman,* 111 Utah 72, 176 P.2d 144, wherein it was said that the trial court in part attempted to compensate the plaintiff for "her suffering of the pangs of unrequited love — heart balm — and teach Mr. Foreman a lesson in marriage. Neither task is properly within the issues of a divorce case such as this." This court in the *Foreman* case stated:

"In the case at bar the reasons the judge recited in open court for his decision are not consistent with his findings of fact, conclusions of law and decree. They cast doubt upon the foundation for those determinations. It is a simple mat-

> ter to recite or write sufficient facts to support a decision once the decision is made, but the trial court's process of determination to be a proper exercise of judgment for founding a question upon the merits should show an attempt to decide the issues of the case as presented, and should not be founded upon extraneous matters."

In the case of *Wilson v. Wilson,* 5 Utah 2d 79, 296 P.2d 977, this court comments on punitive measures in a divorce judgment and states as follows:

> "We recognize that there is no authority in our law for administering punitive measures in a divorce judgment, and that to do so would be improper, * * *."

In the instant matter the court imposes vindictive punishment upon plaintiff because of the ill-advised conveyance given by plaintiff to her daughter. Such conduct is not properly within the issues of this case. The reasons of the Judge cited in open court for his decision cast doubt upon the foundation for his determination. The trial court's process of determination, to be a proper exercise of judgment for deciding a question upon the merits, should show an attempt to decide the issues of the case as presented and not upon extraneous matters. *Foreman v. Foreman,* supra.

Since divorce proceedings are equitable actions, the parties are entitled to the judgment of this court as well as that of the trial court. *Dahlberg v. Dahlberg,* 77 Utah 157, 292 P. 214. Where there exists an unjust distribution of the property as exists in this matter, the Supreme

Court should review the evidence and substitute its judgment for that of the trial court. *Martinette v. Martinette,* 8 Utah 2d 202, 331 P.2d 821.

Within the guideposts set out in *MacDonald v. MacDonald,* 120 Utah 573, 236 P.2d 1066, the plaintiff should have been awarded the entire interest in the home and rental units, assuming that the court will not, as a matter of public policy, adopt the rule applied in other jurisdictions to the reconciliation agreement. In the instant case there has been no community of interest, each party living substantially on their respective earnings. The real estate was acquired by the separate property of the plaintiff and the contributions that the defendant has made for remodeling, totaling some $2,300.00 over a period of approximately thirteen years, is less than the equivalent of rental for his occupancy.

POINT III. THE COURT'S DECREE IS UNCERTAIN, AMBIGUOUS AND INEQUITABLE.

An examination of the record in the instant matter discloses that the trial court intended to give defendant no more than he acquired under the agreement of December 5, 1953 (Ex. 2). In the court's oral findings the court states:

> "The Court is mindful of the agreement the parties entered into when they reunited after their last complaint was filed in the previous case. The defendant has not lost any rights that he may have acquired or had in that agreement." (R. 120).

The court did not intend to grant to the defendant a permanent interest in the home and apartment house, but intended to create only a semblance of control until such time as plaintiff secured a deed of conveyance reconveying the property from plaintiff's daughter. During the argument on the motion for a new trial attention was called to the fact that there was nothing in the findings with respect to an obligation to pay rent for the use of the home as distinguished from the rental units (R. 127), and yet in paragraph 9 of the decree (R. 147) the home and the rental units are "in trust" for an equitable distribution of income. As to this the court said:

> "I cannot remember that provision, but reading it now, it looks like it was merely an arrangement so they could get together on what you might call 'a closing statement for a real estate sale.'
>
> They have some expenses and income to pro rate. For example, a tenant may have paid her the rent in June for the period which was awarded to him, and she may have paid some expenses in advance, so they would have to pro rate it.
>
> All it would take is for somebody to get together and say, 'As of this date you owe the pro rata expenses' and that ought to settle any liability on the property, save that settlement. The effort was to hold a string on the property until they made a clean separation as of the date specified, June 23rd." (R. 127).

Attention was then called to the retention of the use of the bank account, the restraint on the payment of attorneys' fees until plaintiff had cleared the title to the property

and the right of the defendant to evict the plaintiff from the rental units. The court then made the comment: "The house was awarded to her." (R. 128).

Paragraph 9 of the decree was again called to the court's attention and the court made the observation: "That is just to make a settlement." (R. 128).

To compound the confusion the court attributed to the decree the intention to give plaintiff the home free and clear after unspecified and undetermined reimbursements had been made as of June 23, 1960 (R. 129).

The fact of the matter is that the decree remains ambiguous and uncertain and, as pointed out above, makes an inequitable allocation and distribution of the property. The lip service on the subject of sale is unrealistic and unworkable, requiring two estranged people to join therein and, in the absence of their mutual consent, permits the defendant to dissipate all substantial rental for upkeep and repairs at his sole election. The plaintiff, notwithstanding her grievances against the defendant justifying a divorce in her favor, has, to all intents and purposes, been deprived of the beneficial use and enjoyment of property acquired by her sole and separate means. At pretrial her right to alimony was waived (R. 11), thus making her reliance upon her own resources and accumulations of controlling importance. The inequities are apparent.

The transcript of the argument on the motion for a new trial (R. 124-136) reveals the confusion on the part

of the court not only as to the record but, what is more important, as to the meaning and the intent of the decree and the findings to support it, the guideposts by which the parties are to be directed. After the court had attempted to correct certain facets of the decree by interlineation and had resolved the remaining objections against plaintiff and after the matter was effectively brought to an end short of an appeal by the denial of the motion for new trial, the court said:

> "The Court asks counsel to get together and just discuss it, and if an ambiguity, to see if you can work it out, and stipulate to cure it, *within the intention of the Court.*" (R. 136).

While there is much to be said in favor of the innovations afforded by our Rules of Civil Procedure to expedite and terminate litigation, we respectfully suggest that our procedures are not yet mellowed to the point where a court can effectively delegate to the attorneys in adversary proceedings the task indicated above. We submit that it is still the function of the court to resolve the issue and not to leave to the partisan views of counsel the impossible task of determining what might be "within the intention of the Court," particularly after the Judge has terminated his role and turned his attention to other matters.

CONCLUSION

The property rights are of extreme importance to the parties in the instant case. There is nothing in the record that justifies a property award to the defendant.

The decree should be corrected by this Court, or the judgment should be reversed and the cause remanded with such instructions as to this Court may seem agreeable to the equitable considerations of the position of the respective parties.

Respectfully submitted,

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