1961

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

Utah Supreme Court

Joseph C. Fratto; Attorney for Defendant and Respondent;

IN THE SUPREME COURT
of the
STATE OF UTAH

EDITH CHLOE MATHIE,
Plaintiff and Appellant,

—vs.—

Case No. 9345

WILLIAM TRUMAN MATHIE,
Defendant and Respondent.

RESPONDENT'S BRIEF

JOSEPH C. FRATTO,

Attorney for Defendant and Respondent

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CASES

TEXTS

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RESPONDENT'S BRIEF

STATEMENT OF FACTS

Plaintiff's Statement of Facts summarizes the nature of the controversy between the parties. It is incomplete in many respects or it unduly emphasizes certain facts

taken out of context or draws conclusions not justified by the record. Therefore, defendant will outline the facts as he sees them.

Plaintiff was awarded a decree of divorce from defendant. However, the acts of defendant were not aggravated and thereby lost no rights to a property distribution (R. 120).

The parties were married February 28, 1946. The defendant is 53 years of age (R. 75), taught school for two years (R. 75) but most of his adult life worked at various occupations. At the time of the divorce, he was a truck driver for a cleaning company, receiving a gross salary of $60.00 per week (R. 76). The plaintiff is 52 years of age and the mother of grown daughters (R. 37-38) from prior marriages. Both parties had been previously married and divorced, the plaintiff twice and the defendant once. The plaintiff has a background of civil service employment and, at the time of the divorce, was employed by the Utah Liquor Commission (R. 36) at a gross salary of $260.00 per month (R. 51). Both parties suffer from heart conditions (Ex. 1 and 2), the defendant having suffered a heart attack prior to plaintiff filing the action and had not fully recovered to resume employment when the action was filed.

The only property involved is a unit located on Seventh East Street in Salt Lake City, Utah, consisting

of two buildings, one which is a house and one which has four apartment units, but each building is separated from the other, although the same heating plant is piped into both buildings. The house was rented for $85.00 per month (R. 63) and the parties resided in one of the apartments in the other building and rented the three remaining apartments for $45.00 per month each (R. 62). Defendant had found the property for sale which was purchased for $13,500.00 and the plaintiff advanced the initial down payment of $4,000.00 (R. 61). Defendant made improvements on the property costing approximately $2300.00, which helped to enhance the market value of the property to $25,000.00 (R. 91). The improvements were paid from defendant's own income (R .68-69), but the taxes, utilities, repairs, monthly payments, and other expenses were paid from the rents. Plaintiff always collected the rents and made the disbursements. Defendant did chores such as mowing the lawn, fixing gaskets, furnace and other odds and ends necessary. The rental units were unfurnished.

Plaintiff's complaint was filed on October 13, 1959 (R. 2) and on the same date, October 13, 1959, the plaintiff deeded the property to her daughter. Although the deed recites October 13, 1949 (R. 19), unquestionably the 1949 was typographical error. Plaintiff was employed and all the units were rented and there was no necessity for the allleged sale (R. 30).

Plaintiff had obtained record title to the property as result of a divorce action filed in August of 1953 (R. 53), which was terminated in December of the same year by the defendant conveying to the plaintiff the fee to the property as result of an agreement partly oral (R. 73) and partly written (Ex. 2) whereby the plaintiff recited she had executed a will (Ex. 1) leaving the defendant a life estate in the property. Defendant had been assured, prior to the execution of the will, by the plaintiff and her counsel, that plaintiff would be protected in the property for life (R. 73).

The decree of the Court awarded possession of the house to plaintiff (R. 147) and of the apartments to the defendant (R. 147). Both parties were awarded a life estate in the property and the plaintiff and her heirs were awarded the remainder (R. 148). The decree further provided, in the event the parties mutually agreed to sell the property, the net sales price would be distributed as follows: One-half of the net sales price plus $2,500.00 to plaintiff and one-half of the net sales price less $2,500.00 to defendant (R. 147-148), thereby giving plaintiff $5,000.00 more than defendant and not $2,500.00 more as stated in Page 3 of plaintiff's brief. Before sale, the rents and expenses were to be enjoyed and borne by each party equally (R. 147). The details of the decree in dispute will be discussed hereafter in defendant's argument of points.

STATEMENT OF POINTS

POINT I.

THE FINDINGS AND DECREE OF THE COURT AWARDED TO DEFENDANT THE INTEREST IN THE APARTMENT AND HOME AS PROVIDED IN THE ORAL AND WRITTEN RECONCILIATION AGREEMENT AND ARE ACCORDING TO THE EVIDENCE AND THE LAW.

POINT II.

THE DISTRIBUTION OF THE PROPERTY IS EQUITABLE AND JUST.

POINT III.

THE COURT'S DECREE IS NOT UNCERTAIN, NOR AMBIGUOUS, NOR INEQUITABLE.

ARGUMENT

POINT I.

THE FINDINGS AND DECREE OF THE COURT AWARDED TO DEFENDANT THE INTEREST IN THE APARTMENT AND HOME AS PROVIDED IN THE ORAL AND WRITTEN RECONCILIATION AGREEMENT AND ARE ACCORDING TO THE EVIDENCE AND THE LAW.

Plaintiff cites authorities to support her argument. None of the cases have a fact situation similar to the one at bar. The cases discuss the general law as applied in the particular jurisdiction to reconciliation agreements and the respective courts hold such agreements valid or invalid depending on the facts as developed in each case.

Defendant agrees many jurisdictions uphold reconciliation agreements when not tainted in some way. Other jurisdictions look upon such agreements with disfavor. We need not concern ourselves with the latter cases for the decree of the trial court fully conforms to the law as discussed in the cases cited by plaintiff and to the law interpreting contracts.

Defendant did not intend to give plaintiff an unencumbered fee of the property when he signed the agreement (Ex. 2).

Prior to the execution of the agreement, the plaintiff and defendant discussed the matter of an agreement (R. 73). The defendant was asked as follows:

> Q. When was there a conversation about the agreement?
>
> A. Well, it wasn't too long after that until my wife said we could make it, she would be willing to come back and live with me if I would sign the deed over to her, that she would make an agreement wherein I would be protected. That's exactly the words she told me. I said "That is all right, it is okeh with me."

The agreement (Ex. 2) was prepared by plaintiff's attorney (R. 73). This is what took place in his office:

> A. . . . We went down to her attorney and made out the agreement first and I asked just exactly what it meant. He told me in these exact words, "The deed is in your wife's name." She was the owner of the property but that "You would have a place to stay as long as you live," and I signed the agreement and then the deed was put over into my wife's name.

The plaintiff wanted the property in her own name. There can be no dispute about this. She told him he would be "protected." Her lawyer drew the agreement; the defendant wanted to know what it meant. The lawyer gave assurance it meant defendant would have a place to stay for life.

Paragraph 2 of the agreement (Ex. 2) supports defendant. It reads as follows:

> "That Edith Chloe Mathie has this day executed her last will and testament leaving said property to her two daughters, subject to a life estate granted to her husband, William Truman Mathie."

This clause is only an assertion of what plaintiff did as a fact. The agreement is silent as to why she executed it.

Only one conclusion can be drawn from her act — that the will was a part of the protection for life the defendant retained in the property.

The trial court did not make a new contract for the parties. It is permissable to supply the things which were omitted in the agreement if the part omitted is not inconsistent with the writing but independent of and in addition to it. (12 Am. Juris. 78, Par. 235, 92 A.L.R. 240. Harvey v. Richmond, F. & P. R. Com. 162 Va. 49, 173 SE 351, 92 A.L.R. 240.)

The finding of the trial court is not inconsistent but simply supplied a very material omission from the written agreement which the parties had intended and discussed orally (R. 73).

Defendant wanted protection during all of his life, not simply in the contingency of surviving plaintiff. Ownership of the fee is what the plaintiff desired and got, but neither party intended to preclude the defendant from enjoying a beneficial interest in the property while alive. Plaintiff recognized defendant's beneficial interest for life since the will (Ex. 1) granting him a life interest is not limited to the contingency the parties were still married at the time of plaintiff's demise.

After the reconciliation, the conduct of the parties towards the property was the same as before the recon-

ciliation. Plaintiff continued to collect the rents, make payments on the purchase price and other expenses from the rents received. Defendant mowed the lawn, fixed gaskets, worked on the furnace and did the odds and ends in and about the property (R. 66, 67).

The other provisions in the decree pertaining to the property give effect to the decree. Defendant's life estate entitles him to a portion of the net rents, but should the parties mutually agree to sell the property, his life estate would terminate, so he would be entitled to be compensated for his interest.

Defendant did not breach the agreement. However, there was a breach of the agreement in the case at bar by plaintiff. Plaintiff deliberately conveyed the property to her daughters with the intent to defeat defendant's interest in the property. Plaintiff, by the conveyance, would have been unable to perform one of the provisions of the agreement leaving defendant a life estate in the property by will.

Defendant found no case similar to that at bar, nor one where the plaintiff who benefited by the reconciliation agreement later breached a provision thereof. The court, however, having equity powers in this type of action, can require the breach to be repaired, if at all possible. Plaintiff now has the property in her name again and has repaired the breach so that the decree of the court distributing the property can be enforced.

POINT II.

THE DISTRIBUTION OF THE PROPERTY IS EQUITABLE AND JUST.

Plaintiff contends the Findings of Fact and Decree relating to the home and apartment house, together with the court's comments, evidence considerable vindictiveness.

Counsel for plaintiff admits the conveyance by plaintiff to her daughter for a consideration of $700.00 could not be condoned and was ill advised. He states the matter has been corrected. We presume he means plaintiff now has the property back in her name. Then he contends that, as a result of the uncondoned and ill-advised conveyance, the trial judge became vindictive and distributed the property inequitably and unjustly. The comments of the trial judge were pertinent and to the point but we need not concern ourselves with them for the distribution itself is the best evidence of his fairness.

The real complaint of the plaintiff is not the vindictiveness of the trial judge but that she did not receive all of the property. The defendant found the property and it was purchased for $13,500.00. True, the plaintiff made the down payment of $4,000.00, but the defendant, with his own funds totaling $2300.00, exclusive of his own

labor, made improvements which helped to enhance its value. The market value of the property is now $25,-000.00. The payments on the purchase, after the initial down payment and other expenses, were paid from rents. The defendant did the odd jobs around the property while, except for the initial payment, plaintiff's contribution to help enhance the value of the property consisted in spending some of the money received from rents. The court recognized the direct payment of the plaintiff and the improvements made by the defendant by giving the plaintiff $5,000.00 more in the event the property is sold. Both parties benefited by living on the premises. Taking into consideration that the defendant had been joint owner with the plaintiff from the time of purchase to 1953, to say such distribution is inequitable and vindicatve is a shocking and unconscienable statement.

POINT III.

THE COURT'S DECREE IS NOT UNCERTAIN, NOR AMBIGUOUS, NOR INEQUITABLE.

We cannot follow plantiff's argument on Pages 10, 11 and 12 of her brief. The Decree unequivocably gave the defendant possession of the apartment and to the plaintiff the house (R. 147) but, in the event the property was not sold while defendant was alive, having used the

premises for living and their normal pursuits of life, the fee was to be distributed to plaintiff, her heirs, devisees and legatees (R. 148).

The plaintiff could live in the house (R. 147). Nothing was said about defendant living in the apartment house, but, since he was given possession thereof, (R. 147), there is no reason why he could not do so. There is no dispute that each party was given possession of their respective units. The only question is how the rents and expenses were to be determined. Plaintiff claims certain ambiguities on this point. These alleged ambiguities the trial judge found were not grounds for a new trial but he was willing to clarify whatever was shown to be necessary (R. 136). He invited respective counsel to get together and stipulate to any points needing clarification and recommend how best to accomplish the same within the intention of the Court (R. 136). The court was not delegating the task to the attorneys. He just wanted the attorneys to agree on the points upon which his action, if any, was desired, and suggest the necessary language which, if within the intention of the court, he could incorporate in the Decree or not as he saw fit. Such procedure is not unusual but desirable. It not only saves time but the points in question would be delineated for orderly argument.

Counsel for defendant does not believe the Decree is ambiguous, although several details need clarification and the trial judge was willing to clarify them. Plaintiff's counsel refused to give the trial judge the courtesy of doing so and now complains of ambiguity.

Defendant realizes the Decree raises certain administrative problems which can be simplified. Certain suggestions were made to plaintiff's counsel prior to argument on the motion for new trial and the same would have been suggested to the trial judge, had the opportunity arisen. Defendant's counsel received the impression during the argument on the motion for a new trial that counsel were to discuss various matters and return to the court, at which time the suggestions would have been presented, but, since counsel for plaintiff refused to discuss the matter further with the trial judge, the suggestions were not presented. We believe the following suggestions are within the intention of the Decree and would clarify all alleged ambiguities. We submit them for your consideration. That each of the parties have sole possession of their respective units as set forth in the Decree; that plaintiff reside in the house which has a rental value of $85.00, if she desires, or rent the same, keep the rents and pay the expenses thereon whether she lives therein or not; that defendant may occupy one of

the apartment units, which has a rental value of $45.00, chosen by him in the apartments rent free; that he collect the rents at the apartment house, pay the expenses of maintaining the apartments, and the net rents from the apartments be divided between the plaintiff and defendant.

CONCLUSION

The property rights of the parties are vital to each of them. The record in every way justifies the award made to the defendant and the Decree is just and equitable.

Respectfully submitted,

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