1967

Barbara Ann Farley v. Ross E. Farley : Respondent's Brief

IN THE SUPREME COURT OF THE STATE OF UTAH

BARBARA ANN FARLEY,
Plaintiff-Respondent,

v.

ROSS E. FARLEY,
Defendant-Appellant.

Civil No.
10567

RESPONDENT'S BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

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RESPONDENT'S BRIEF

STATEMENT OF FACTS

Respondent is of the opinion that the statement of facts as related by the defendant-appellant is extremely incomplete and unilateral in presentment and in order for the court to have *all the facts*, we will relate them as follows:

The parties were married at Reno, Nevada, September 9, 1947. In 1949, following a short residence in Texas where their first child was born, the parties moved to Salt Lake City, Utah, where they purchased a home and appellant engaged in business. Their second child was born in Salt Lake City in December, 1949. At the time of the divorce hearing appellant was the owner and operator of three business entities, all located in Salt Lake City, Utah. The parties lived continuously in Utah from 1949 until shortly after their divorce.

Divorce Action In Utah

On October 3, 1958, Judge Aldon J. Anderson of the Third Judicial District, State of Utah issued a divorce after finding the appellant guilty of extreme cruelty, and awarded custody rights to the respondent with visitation rights to appellant. With respect to the property and the maintenance of respondent and the children, the court found that respondent's enterprises gave him an earning capacity of $8,550.00 per year, *awarded all business assets to the appellant* and ordered him to pay $200 per month child support and $175.00 per month alimony. The proceeds of the sale of the family residence in Salt Lake City were divided equally between the parties; respondent

was award what remained of the household furniture; appellant received the family automobile. Savings in the form of insurance on appellant's life were confirmed to appellant "leaving to his discretion the beneficiaries thereof, with the admonition, nevertheless, to keep in mind his said children as said beneficiaries." *Finally the court found it fair and equitable that the land in California be divided in kind, one-half to remain the property of appellant and one-half to be conveyed by appellant to respondent, in trust, for the use and benefit of the children.*

> The original decree provided, paragraph 7 and 8 thereof, that appellant convey the south 1/2 of lots 1 and 3, block 16, of Fair Oaks tract, consisting of approximately 20 1/2 acres of certain California property to the respondent in trust for the children to cover their support and education during their minority. The respondent to convey the property or balance thereof remaining to the children when the youngest attains or would have attained the age of 18. (R. 68)

Appellant moved thereafter for modification of the divorce decree.

Following entry of the decree on October 3, 1958, appellant moved the court to modify the original decree and to substitute the *north one-half instead of the south one-half*. The result was an order under date of December 17, 1958 which modified the decree of October 3, 1958, substituting the north one-half for the south one-half. All other portions of the decree were affirmed. (R. 73, 74)

Events following the divorce decree.

1. The appellant refused to convey said California

real property as ordered by the court and was ordered to show cause why he should not be held in contempt of court. (R. 78) The appellant thereafter on the 23rd day of February, 1961 was held in contempt of Court. (R. 95)

2. The appellant refused to pay alimony and child support payments as ordered and as of the 3rd day of January 1961, past due alimony and child support totaled the sum of $5,425. (R. 81)

3. The appellant attempted to circumvent and thwart lawful court orders by purportedly disposing of his Utah business interests to one M. R. Morrison of Salt Lake City, Utah, who thereafter immediately sold said business interests to the Industrial Real Estate and Finance Co., for the amount of $61,296.73. (R. 93)

4. The appellant was held to be in contempt of the court by reason of his failure to pay alimony and support money as ordered. (R. 93)

5. A receiver was appointed by the court on February 23, 1961 to insure the respondent's receipt of alimony and support payments ordered to be paid and to receive and disburse payments from the sale of the business interests of the appellant. (R. 97)

Other important facts concerning the Utah decree.

1. The appellant was present throughout the trial and was represented by legal counsel. The appellant had an opportunity to appeal the trial court's decision but the appellant did not appeal. (R. 57)

2. The appellant following the divorce decree requested the court to substitute the north half for the

south half which was granted. Thus further substantiating the fact that it was the appellant who requested the trial court to transfer the California property in trust for his minor children .

3. The court recalled that it was the determination of the court on October 3, 1958 the date of the original divorce decree, *to award to the respondent one-half of said California real property as her separate property and that the provision for award to the respondent was so intended.* (R. 201)

> "The court checked its memory with Mr. Gustin and Mr. Baldwin, former attorneys for the plaintiff and defendant respectively, and the court feels correct that this suggestion to award the property to the respondent in trust for the minor children did not come from the court, but came from counsel. That was a provision of the divorce decree that was reached after consultation with counsel and was not a provision reached individually by the court. *The court points out that Mr. Farley was before the court physically and concurred in the property division* and the restrictions which were placed upon the property intended to be awarded to Mrs. Farley, the plaintiff (respondent) *and were placed there at his* (appellant) *request to insure the use of the property for the benefit of the minor children."* (R. 201)

Subsequent to the issuance of the decree of October 3, 1958, both of the parties moved to the state of California. On June 18, 1959, the Respondent filed an action in the Superior Court of the state of California in and for the county of Sacramento seeking to do the following:

"For an order and decree declaring and adjudging that Plaintiff, as trustee for Ross Edward Farley, II and Barbara Susanne Farley, is the owner of said real property described in said order modifying decree dated December 17, 1958, and described in paragraph V of plaintiff's first stated Cause of Action and that Defendants, or any of them, have no right, title, estate or interest whatever in or to said real property, and that Defendants, and all of them, be forever debarred from asserting any claim whatsoever in or to said real property adverse to the Plaintiff" (Page 7 of Ex. D-5).

In effect to quiet title in herself as trustee.

On August 11, 1959, Appellant filed an action in the same California court seeking the following:

1. *To quiet title* to the same California property which is here in dispute (see page 82 Ex. D-5)

2. *To reduce alimony and child support payments* Provided by the Utah Court (see page 37 of Ex. D-5).

The California trial court confirmed the divorce decree with the exception of paragraphs 7 and 8, which provided for the trust as described above and quieted Appellant's title in the real property subject to a lien upon said real property for alimony and child support (See Ex. G). This decree was in turn appealed to the District Court of Appeal in and for the Third Appellate District for the State of California. The opinion of the California appellate court is included as EX. B in the Record and might be summarized as follows:

(a) The conveyance of the real property in trust, during the minority of the children, was properly within

the Utah Court's jurisdiction and could not be collaterally attacked in the Courts of California.

(b) The further provision in the Utah decree which provided that upon the children's reaching their majority, the property would be distributed to them, was beyond the jurisdiction of the Utah Court and was thus subject to collateral attack in the State of California. In this regard, the Court noted:

> "We conclude that the award (Judge Anderson's October, 1958 Decree) exceeds the jurisdiction of the Utah Court to the extent that it decrees transfer of property or money to the children when they reach adulthood. The lack of jurisdiction appears on the face of the Utah decree."

The final portion of the California decision concluded:

> "We conclude that the Utah decree, so far as it directed conveyance of the land, its proceeds or income, to the Defendant's children upon their reaching adulthood, exceeds the jurisdiction of the Utah court, that it is vulnerable to collateral attack in Utah and not entitled to full faith and credit in California" (See pp. 6 and 10 of Ex. D-4).

In accordance with the appellate court's decision, the California trial court, upon remand of the case, issued a modified decree and judgment which provided in essence that the Appellant must forthwith convey the real property in trust to the Respondent for the benefit of the minor children during their minority. Appellant executed such a deed on May 28, 1965 (Ex. D-11). The decree also provided that after the children had reached their majority (in December of 1967), the trust should terminate and the Respondent should reconvey the property, or its remaining proceeds to the Appellant as his sole and separate property (See Ex. D-12).

The net effect of the California litigation, therefore, was simply to grant a vested remainder in the trust property to the Appellant, after the children had reached their majority.

Subsequent Utah Litigation.

It should be noted that it was the Appellant and not the Respondent who returned to the Utah field of battle. The Appellant, Mr. Farley having wilfully refused to comply with lawful court orders issued by the Utah Court still requested on March 11, 1965 for the Utah Court to give full faith and credit to the California Courts and to reduce alimony payments from $175 to $100. (R. 156)

The Utah court, after a hearing held on March 18, 1965, gave full faith and credit to the California decree and accordingly on the 22nd day of March, 1965 reduced Appellant's alimony payments from $175 to $100. (R. 177)

The respondent in response to appellant's motion and notice requested the court also on March 11th 1965 to modify its original decree (R. 164) and to award to the respondent as her separate property the north one-half of the California property. (R. 164)

The respondent's motion to award the disputed *one-half of the California property to hereself in fee simple* was first heard together with the appellants motion to reduce alimony on March 18, 1965 (R. 166). Respondent's motion was then continued until April 16, 1958, at which time the district court heard further argument and received memorandums from both sides. The hearing was further continued to May 12, 1965 with direction for counsel for both sides to submit further memorandums

and authorities and to examine the California transcript and records in order to determine whether the respondent's motion had been submitted to the California courts and was therefore res judicata. (R. 190) The court continued the hearing again until June 18, 1965 for further argument. The court further considered the matter at a hearing held on January 5, 1966, where counsel for both sides again presented arguments. The outcome of the January 5th 1966 hearing was an order signed by Judge Aldon J. Anderson on the 27th day of January, 1966 awarding the disputed one-half of the California property to the respondent in fee simple as her separate property following the termination of the trust. (R. 205) *The judge also concluded that as the trial judge at the time of the original hearing that was his intent and determination at that time and that he would then have so awarded the disputed property except for the appellant's request that the property be awarded in trust for his minor children.* (R.201)

DISPOSITION OF THE CASE IN THE LOWER COURT

After approximately one year, five hearings, four written memorandums (2 from each side), and several hours of oral argument Judge Aldon J. Anderson granted the one-half of the California property in dispute to the respondent in fee simple as her separate property. Order dated January 27, 1966, (R. 195, R. 200)

ARGUMENT

POINT I.

THE CALIFORNIA COURTS HAVE NEVER CON-

SIDERED A REQUEST *THAT THE DISPUTED ONE-HALF OF THE CALIFORNIA PROPERTY BE AWARDED TO THE RESPONDENT IN FEE AS HER SEPARATE PROPERTY.* THE MATTER IS NOT RES JUDICATA.

The appellant requested the California court for the following:

1. *Quiet title to the one-half of the California property in dispute.* (see page 87 D-5)
2. Reduce child support to $35.00 per month and eliminate alimony payments. (see page 31 Ex. D-5)

The respondent requested the California Court:

1. To quiet title to the one-half of the California property in dispute *in herself as trustee for the minor children.*

The Utah court considered a request that the disputed property *be awarded to the respondent in fee as her separate property.*

The appellant now by some magical and metamorphical means wants to convert a quiet title action into an *adjudication of marital property rights.*

The sole question before the California courts was the question *of the validity of the Utah decree.* At no time did it consider a request that the *disputed California property be granted* to the respondent as her separate property.

The Utah Court by its order of April 21, 1965 directed the appellant to produce evidence:

> "Whether the California courts heard evidence and considered a request from the **Plaintiff Barbara** Ann Farley, to have that portion of the California property transferred in trust . . *transferred directly to her as her separate property.*" (R. 190)

It is interesting to note that the appellant *has produced no evidence* that the California courts considered that question in either of his two memorandums submitted to Judge Anderson. (see R. 182 and R. 209) The appellant claims that mere common sense compels the conclusion that a quiet title action is an action to *litigate* marital property rights. *Common sense leads* me to the conclusion that the guilty party to a marriage, one who has consistently refused to show any good faith and who is in contempt of the *Utah court should not because of legal maneuvers retain all marital property when the wife and two children have nothing.*

The Honorable, Aldon J. Anderson, carefully considered the problem of res judicata and requested the appellant to show evidence that the matter had been considered in California. The appellant was in possession of a complete transcript of the California trial court proceedings and all other records (supplied by the respondent) and the only argument advanced then and now was the argument that a quiet title action was somehow magically a litigation of the respondent's marital property rights.

The California courts merely considered the validity of the Utah decree.

It would appear that Judge Anderson correctly concluded the matter had not been litigated in the *California court and was not therefore res judicata.*

The full faith and credit clause is therefore not an *issue and quite easily side stepped the matter entirely when courts were not disturbed by the full faith and credit issue and quite easily side steped the matter entirely when the respondent asked for enforcement of her Utah divorce decree.*

POINT II.

THE TRIAL COURT *DID NOT* ERR IN AWARDING THE REAL PROPERTY HERE IN DISPUTE TO THE PLAINTIFF.

SECTION 30-3-5. U.C.A. (1953)

DISPOSITION OF PROPERTY AND CHILDREN

> "When a decree of divorce is made the court may make such orders in relation to the children, property, and parties and the maintenance of the parties and children, as may be equitable: provided, that if any of the children have attained the age of ten years and are of sound mind, such children shall have the privilege of selecting the parent to which they will attach themselves. Such subsequent changes or new orders may be made by the court with respect to the disposal of the children or the distribution of the property as shall be reasonable and proper."

This statute, which has existed in substantially the same language since 1888, constitutes the entire statutory law of Utah on the subject of the powers and duties of the chancellor in rendering a divorce decree.

The leading case of *MURPHY v. MOYLE,* 17 Utah 113, 53 Pac 1010, cited by the California Appellant Court,

interpretes the above statute as a broad grant of discretion to both the trial and appellate courts of Utah to make such orders with respect to the property of the parties and their furture support as are dictated by equitable considerations. See also Matei v. Mattei, 12 Utah 2nd 116, 363 Pac. 2d 779.

Murphy v. Moyle, cited above states:

> "This statute is broad and comprehensive. Under it the Court has power to make such a decree if the circumstances may warrant, and doubtless, if there is danger of the father squandering the estate, or if, from *hostility or other cause, he is likely to refuse maintenance to his wife,* or support to his children awarded to her, and thus leave the children to be supported by the mother without the aid from his estate, the court may make such order respecting the property and the support and maintenance of the wife and children, as is just and equitable, and such order or decree may be made to continue in force after his decease; *and the court may afterwards, if occasion shall require it, make such change in any decrees as will be conducive to the best interests of all parties concerned.*"

A more recent expression of the interpretation placed upon this statute is found in the concurring opinion of Chief Justice Crocker in *Wallis v. Wallis,* 9 *Utah* 2*d* 237, 342 *Pac.* 2*d* 103.

> Page 242
>
> "In regard to these matters the court is endowed with powers over property and persons far broader than in any other type of civil action. It may make such disposition of the property and impose such controls upon their persons as it deems necessary for their welfare."

The last sentence of Section 30-3-5 —

"RETAINS JURISDICTION TO MODIFY THE DECREE, INCLUDING THE PROPERTY DIVISION ASPECT THEREOF, UPON A SHOWING OF CHANGED CIRCUMSTANCES."

See also Dixon v. Dixon, 121 *Utah* 259, 240 *Pac.* 2*d* 1211 wherein the court provided that changes could be made regarding the property division upon a showing of changed circumstances.

If circumstances warrant, to secure future support the court may impress a lien upon the husband's property (Murphy v. Moyle, supra), or require that the awarded property be held in trust, (Doe v. Doe 48 Utah 200, 213, 158 Pac. 781.)

Pursuant to the grant of jurisdiction, divorce courts in Utah customarily award the wife at least one third of the husband's estate, Griffin v. Griffin, 18 Utah 98, 109; 55 Pac. 84; Wooley v. Wooley, 113 Utah 391, 195 Pac. 2d 743.

Appellant's arguments summarize.

(a) The California property in dispute *was not part of the original property settlement* and therefore there can be no modification (page 14 appellant's brief)
(b) Section 30-3-5. UCA allows the modification of a property settlement in only *the most extreme and unusual circumstances.* (page 16 appellant's brief)

Basically the cases cited by the appellant are the same cases cited by respondent but the appellant draws different conclusions.

As to point (a) the appellant *CONTRADICTS HIMSELF* on page 11 he argues the disputed California property *was not part* of the property settlement and then he cites Callister v. Callister, 1 Utah 2d 34, 261 P. 2d 944 (1953) where he states the court was faced with an identical problem to that here: "Whether or not a property settlement incorporated in a divorce decree can be subsequently modified."

See the original decree dated October 3, 1958, (R. 65) the modifying order of the original decree dated 16th day of December, 1958. The Findings of Fact and Conclusions of law connected therewith, and the Finding of Fact and Conclusions of Law (R. 201) where in all cases the court discusses in detail the marital property and provides for distribution of the property. It would appear that the facts and pleadings clearly show the disputed property to be part of the property settlement. In all cases it is listed as part of the marital property.

Point (b) A property settlement may be modified only in the most extreme and unusual circumstances and the appellant concludes they do not exist here. (appellant's brief page 16)

The record shows:

(A) The appellant was the guilty party in the marriage. (R. 65)

(B) Held in contempt of court for failing to pay alimony and child support. At times the amount in arrears exceeded $5,000 dollars. (R. 93) (R. 81)

(C) Attempted to dispose of his business interests for an amount in excess of $61,000 in such a way as to avoid child support and alimony payments (R. 93)

(D) Held in contempt of court for refusing to convey the disputed one-half of the California property to respondent in trust. (R. 93)

(E) Appellant physically in court throughout the divorce proceedings and represented by counsel. *The appellant requested the court to award one-half of the California property to the respondent in trust for the minor children.* (R. 57) (R. 201)

(F) The appellant has displayed throughout a complete disregard for lawful court orders and contempt for the court. (R. 93)

(G) The respondent and her two children have shared *in no marital property* except approximately $1,756 from the sale of the personal residence (R. 60) and the household furniture. (R. 60)

(H) Appellant has attempted to eleminate alimony payments and reduce child support payments to $35 *per child.*

(I) The appellant went *"shopping"* to the California courts for a better decision after requesting the Utah courts to do what it did. (R. 201) (page 87 D-5)

(J) The California property consisting of 41 acres at Fair Oakes, Sacramento, is believed to have a value of approximately $5,000 per acre, total approximate value $200,000 (minimum).

To summarize: the guilty party to the marriage *by legal maneuvers and court shopping* has managed to receive all of the marital property, while displaying a contempt and a wilful intent to refuse to pay alimony and support payments. *What future financial protection will this family have or receive from the appellant?*

The respondent believes *that extreme and unusual circumstances exist here* and that the Utah courts have been thwarted in their attempt to provide for a fair, equitable, just settlement of marital property by the appellant's contemptuous conduct and "court shopping" tactics.

POINT III.

CALIFORNIA LAW SHOULD NOT BE FOLLOWED BY UTAH IN PROVIDING FOR A MARITAL PROPERTY SETTLEMENT OR MODIFICATION THEREOF.

Even the California Courts would not agree with appellants argument (appellant's brief page 26) that the conflicts of law rule provides that the situs of the real property must be followed *even in divorce actions.*

The opinion of the District Court of Appeal of the State of California, in and for the Third Appellant District, (Ex. D-4 page 4, 5) states:

> "In the present case both husband and wife were bona fide residents of Utah and both fully participated in the Utah action. Thus the courts of that state had fundamental jurisdiction over the parties' martial status and their persons. (Sherrer V. Sherrer, supra, 334 U.S. at pp. 350-351, Williams v. North Carolina, 325 U.S. 226, 229-230; Crouch v. Crouch, 28 Cal 2nd 243, 249 - 250; Rest., Conflicts of Laws, sec. 110; Rest., Judgments, secs. 16, 33.) *The husband cannot now question Utah's jurisdiction over the subject matter and parties.*

"Utah is not a community property state. *In dividing assets between a divorcing husband and wife, Utah courts may award property acquired before converture.* (Pinion v. Pinion, 92 Utah 255 (67 P. 2d 265, 267). *Section* 30-3-5, *Utah Code Annotated,* 1953, empowers a divorce court to "make such orders in relation to the children, property and parties, and the maintenance of the parties and children, as may be equitable." Utah statutes characterize this statute as broad and comprehensive, authorizing such decree as the circumstances may warrant, including provisions for the support of children during their minority. (*Murphy v. Moyle,* 17 *Utah* 113 (53 *Pac.* 1010, 1012) ; see also Callister v. Callister, 1 Utah 2nd 34 (261 p. 2d 944.) The Murphy decision specifically *upholds a decree directing sale of the husband's land and deposit of the proceeds with the court clerk with directions to pay the wife a fixed monthly sum for support of the minor children.* In order to insure payment of future alimony (and inferentially to secure support of minor children), a husband may be enjoined from disposing of his property. (*Anderson v. Anderson,* 54 Utah 309 (181 Pac. 168.)

The California Court would permit Utah to apply Utah law in divorce actions as the above shows assuming Utah to have jurisdiction over the parties. In Utah the law provides for continuing jurisdiction in divorce actions. *It should also be remembered that the appellant returned to the Utah field of battle in order to have alimony reduced from* $175 *per month to* $100 *per month.* In response to that petition the respondent requested that the disputed one-half of the California real property be awarded to her as her separate property.

The broad conflict of law rule cited by the appellant does not here apply. Utah has jurisdiction over the parties and subject matter and may apply Utah law in divorce matters or subsequent modifications.

POINT IV.

THE COURT MAY TAKE JUDICIAL NOTICE OF SUBSEQUENT LEGAL PROCEEDINGS IN THE STATE OF CALIFORNIA, IN ORDER TO PROVIDE FOR MODIFICATION OF THE ORIGINAL DIVORCE DECREE.

The appellant (appellant's brief page 23) argues that the trial court must modify a previous decree only *upon a showing of change in circumstances.*

The appellant by this argument hopes to provide for "*judicial blindness*" and to preclude the Utah Courts from giving judicial recognition to actions by the California Courts nullifying the decree of the Utah Courts.

Nothing is taken from the appellant and nothing has been changed. The appellant agreed and in fact requested the Utah Court to award the one-half of the California property to the respondent in trust for the minor children, (R. 201) *then fled to California to shop for a better forum and title to the property has been in dispute ever since.*

As the California Court so effectively argues (D-4) page 9)

> "Under the particular facts here defendent's failure to appel (in Utah) does not bar him. (In California). *Mrs. Farley suffered no change of position as a result of that failure.*" (page 9 D-4)

Title to the one-half portion of the California property has always been in dispute. The modification order in no way changes the amount to be distributed to Mr. Farley under the terms of the divorce decree. (R. 65)

The modification order merely does what was originally intended to be done and to permit a equitable, fair, settlement of marital property. (R. 65, R. 201) Mr. Farley under the terms of the original decree received one-half of all marital real property in addition he was awarded as his *separate property his business and life insurance policies. The modification decree does not decrease the amount Mr. Farley was to receive under the terms of the original decree in any way.*

The modification order merely carries out the intent of the trial judge to make a fair equitable settlement of marital property.

Mr. Farley's position has not been changed his share of marital property has not been reduced.

POINT V.

THE TRIAL COURT DID NOT ERR AND RESPONDENT'S MOTION *SHOULD NOT BE DISMISSED* ON THE GROUND OF FORUM NON CONVENIENS.

The appellant, Mr. Farley, *voluntarily* returned to the Utah battle field. He *voluntarily* filed on March 11th 1965 a motion to reduce alimony payments from $175 dollars per month to $100 per month. (R. 155) A hearing was held on March 18th, 1965 and an order signed by the Court on March 22, 1965 *wherein alimony was reduced*

from $175 dollars per month to $100 dollars per month. (R. 177)

The respondent properly noticed and motioned, the Court in response to appellants motion that the one-half portion of the California property in dispute be awarded to her as her separate property. The first hearing on respondent's motion was held on March 18, 1965, *the same date as appellant's motion to reduce alimony.* (R. 166) The respondent's motion was finally decided in her favor on January 22, 1966.

The respondent respectfully points out to the Court that the appellant returned to the Utah battle field *voluntarily as a result of his own motion and having succeeded in striking his blow dances around the ring and cries forum non conveniens.*

I can but you can't
For me it's convenient
For you — forum non conveniens.

Certainly the State of Utah and its judiciary should be concerned with this action, in order to prevent *a grave miscarriage of justice.* Utah attempted to provide a fair, equitable settlement of marital property, yet by legal maneuvers, wilful disregard and contemptuous conduct the appellant, the guilty party to the marriage, retained all marital property, while the respondent and her two minor children fought to obtain alimony and child support.

CONCLUSION

The appellant relies heavily on the case of Smith v. Smith, 77 Utah 60, 68, 291 Pac. 298 (1930). It is cited on page 9, 10, 12 and 20 (appellant's brief) and also in his conclusion. The Smith case involves a North Dakota divorce

where the property rights were completely litigated in North Dakota.

The present case involves a *Utah divorce frustrated by the appellant* and a voluntary return to Utah by both parties to request Utah, the jurisdiction of the divorce, to provide for a fair, equitable, just, division of marital property as the Court originally intended. *The two cases clearly are not similar* and the Smith case should not support appellant's arguments.

The respondent respectfully requests this court to affirm carefully considered opinion of Judge Anderson and to permit a fair equitable division of marital property.

If for any reason that cannot be accomplished respondent respectfully requests the court to affirm paragraph 9 of the order dated January 27, 1966 (R. 204) wherein it is provided:

> "If for any reason the conveyance of the North half of Lots 1 and 3, Block 16, Fair Oaks Tract, according to the official plat thereof filed in the office of the Recorder of Sacramento County, California, to the plaintiff is not permitted by the California Courts, then the defendent is hereby ordered to pay to the plaintiff a sum of money equal to the appraised value of the north one-half of said property, as of the date of October 3, 1958, the date of the original decree. If the parties cannot agree on an appraised value then the court shall appoint a competent real estate appraiser to determine the value of said property as of the 3rd day of October, 1958" (R. 204)

Respectfully submitted,

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