1983

Shannon L. Tanner v. Wayne R. Tanner : Brief of Respondent

IN THE SUPREME COURT OF THE STATE OF UTAH

SHARON L. TANNER,

Plaintiff and Appellant,

v.

WAYNE R. TANNER,

Defendant and Respondent.

Case No. 19155

BRIEF OF RESPONDENT

Appeal from the final Judgment of the Second Judicial District Court of Weber County, State of Utah

HONORABLE CALVIN GOULD
DISTRICT COURT JUDGE

PETE N. VLAHOS
VLAHOS, PERKINS & SHARP
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401

(Attorney for Defendant-Respondent)

JAMES D. VILOS
Bank of Utah Building
Suite 300
[illegible] Washington Boulevard
Ogden, Utah 84401

(Attorney for Plaintiff-Appellant)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASE CITATIONS

STATUTES

IN THE SUPREME COURT OF THE STATE OF UTAH

SHARON L. TANNER,	)	
Plaintiff and Appellant,	)	
	)	CASE NO. 19155
v.	)	
WAYNE R. TANNER,	)	
Defendant and Respondent.	)	

STATEMENT OF THE KIND OF CASE

This appeal is made from the final Order of the Honorable Calvin Gould, Judge of the District Court, in and for the Second Judicial District, Weber County, State of Utah, granting the respective parties a divorce and division of property.

DISPOSITION IN THE LOWER COURT

The Court granted a divorce to each of the parties and divided the property equitably between the parties.

RELIEF SOUGHT ON APPEAL

The Respondent seeks that the Judgment of the Lower Court be upheld, and that the Judgment and Decree of Divorce awarding equally the property of the parties do not be altered.

STATEMENT OF THE FACTS

The parties were married for approximately twenty-nine (29) years prior to the Courts granting a divorce. Both parties subsequent to marriage spent some time in acquiring their education and professional skills in establishing themselves as professionals in the area of Social Work. At the time of the divorce, the Appellant testified that she then had a retirement plan, which was worth $34,200.00. (R. 132).

At the same time, there was also testimony that both parties had some type of interest in inheritance, the husband being in a partnership, he being a 1/8 partner in a Ranch owned in the Northwestern corner of the State as part of an inheritance received prior to marriage.

The evidence showed that the ranch had declined substantially in value, had little or no value, at the time of the divorce proceeding, and that no contribution had been made by the parties during the course of the marriage. (R. 132, 141, 142, 143, 144, 153, 181).

At the time of trial, the Court would not allow questioning of the plaintiff with regard to her possible inheritance of the Farm of her parents, which would go to

[illegible] and a sister. (R. 146). In addition, the testimony [illegible] that the parties made little or no contribution to the husbands inheritance interest and received some benefits in the way of meat and other items but at the same time, they were consistently taking large losses on their tax returns because of that operation. (R. 142, 143). In addition, the evidence clearly established that there was a substantial indebtedness owed by the partnership in the area of $500,000-$600,000. (R. 174). Both Mr. Tanner and his brother testified that the property had declined substantially in value and was almost totally unmarketable with likely not clearing the existing debt, most of which was overdue at that date. (R. 174).

ARGUMENT

POINT I.

THE DISTRICT COURT WAS JUSTIFIED IN REFUSING TO TAKE INTO CONSIDERATION DEFENDANT'S INHERITANCE IN THE DIVISION OF THE MARITAL ESTATE, IN ESSENCE, THE COURT AT THE SAME TIME, DID NOT TAKE INTO CONSIDERATION THE LIKE OR EQUAL INTEREST EXISTING IN THE PLAINTIFF.

Section 30-3-5, governs the Court in the division of property and the fashioning of the Decree of Divorce and specifically provides:

> "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."

In this case, the Court apparently came to the conclusion that the prospective inheritances of the parties were too speculative or remote to place any specific value upon them in the division of property. In fact, the Court at one point, specifically denied further questioning of the Plaintiff with regard to her possible inheritance and the Court, in fact, specifically recites inheritances are separate estates under Utah law. (R. 146).

With regard to the question of inheritances being separate estates, Respondent has not been able to find any specific case law in the State of Utah, but is aware of several decisions in neighboring states. The Supreme Court of the State of Colorado in the case of Gaskie v. Gaskie, 534 P. 2nd 629, recognizes that a ranch which was inherited by the wife 11 years prior to marriage had not lost its identity, as the a separate property of the wife. Particularly where the rentention of the ranch was not aided in any manner by the husband's efforts in any capacity. Further, the Court held that the ranch property and its improvements would not be included in the marital estate for its division by the trial Court. The Court in that case recognized the fact that inherited property is not properly excluded from consideration in division of marital property.

but that the party claiming an interest must show that by his efforts, together with the other spouse, he either built up or kept the family worth intact or in some manner contributed to the value of the property. The Court also specifically found that the spouse claiming an interest had provided little or no management or supervision over the property which is the subject of the inheritance. In addition, as in the present case, the parties themselves believed the ranch to be the separate property of the spouse who inherited it.

In the present case, Mrs. Tanner has testified that the parties considered the husband's 1/8 interest in T & T Enterprises, which operated the ranch to be a separate property, and that they had received nothing from the ranch other than occasional meat or other small items. The Memorandum Decision rendered in this case states specifically:

> "The separate estate of the defendant, which came to him by inheritance is therefore, irrelevant to a decision in this case, as is an expectancy or trust in which plaintiff may be named a beneficiary."

The Court then went on to decide that the respective retirements of the parties, would also off-set each other and did not award a portion to either one, but did divide the annuity which had been purchased by the wife on a

monthly basis, while the husband continued to contribute toward the necessities of life, for both.

Other Courts that have specifically considered the question of a parties' interest in inheritance have declined to award any property settlement from that inheritance, Whitney v. Whitney, 330 P.2nd 947. The fact, many Courts recognize inheritance as being identified with separate property concepts in States which have enacted community property statutes. In the case of Peterson v. Peterson, 484 P.2nd 736, the Court held that property which has been given to the husband alone in the form of an inheritance, would remain his alone, unless specifically necessary for alimony or support for the wife or minor children. In the case of Palmer v. Palmer, 465 P.2nd 156, (decided by the Supreme Court of Oklahoma), the Court once again denied any interest in a sum of money which would come to the wife as her inheritance and which the Court specifically found had not been enhanced through any efforts of the husband.

The cases cited by the Appellant, all seemed to deal with a gift, not in contemplation of death, by parents or other members of the family, which apparently were to be used by the parties during the marriage, or were to otherwise limited in any manner. It would not appear that these cases would be applicable to the present case at

[illegible] interest of the Respondent is dubious at best. A recent decision of this Court, which is made in light of the Englert v. Englert decision 576 P.2nd 1274, is the case of Bennett v. Bennett, 607 P.2nd 839, which found that no present value could be assigned to the portion of the party's retirement fund which had been contributed by the U.S. Government and that it was error for the Court to consider that contribution in making an award. The Court states:

> "Because the testimony and findings in this case clearly establishes that that portion of the Plaintiff's retirement fund contributed by the U.S. Government has no present value-and may not have any value in the future-we hold that it was error for the District Court to consider this matter as one of the assets of the parties, thereby using it as one of the significant predicates of the Courts determination of the property division between the parties provided for in the Decree."

In the Englert case, previously mentioned, the Courts specifically mentions that the basis for property settlement, and support awards, is the pertinent circumstances of the parties, and the determination of the most equitable way to serve the best interests and welfare of the parties and their children.

In this case the wife is at present earning substantially more than the husband and has her own separate interest in relation to a large annuity which she has

contributed to monthly over the course of the marriage, in addition to a substantial inheritance which she would become entitled to upon the death of her parents. In the case of Fletcher v. Fletcher, 615 P.2nd 1218, this Court once again recognizes the well established doctrine:

> "In a divorce case, even though the proceedings are equitable, this Court may review the evidence, this Court, accords considerable defference to the Findings and Judgment of the Trial Court due to its advantageous position. In an appeal this Court will not disturb the action of the Trial Court unless the evidence clearly preponderates to the contrary, or the Trial Court has abused its discretion, or misapplied principles of law."

The Court states further:

> "There is no fixed formula upon which to determine a division of properties, it is prerogative of the Court to make whatever disposition of the property as it deems fair, equitable, necessary for the protection and welfare of the parties. In the division of marital property, the Trial Judge has wide discretion, and his Findings will not be disturbed unless the record indicates an abuse thereof."

With regard to the contentions of Appellant that the property was worth some 2 million dollars in December of 1981, this contention is once again answered by the Court. In the case of Fletcher v. Fletcher, which states"

> "The marital estate is evaluated according to the existing property interest at the time the marriage was terminated by the Decree of the Court."

The sole testimony and evidence, with regard to the current value of the ranch in which the Respondent had a 1/8 inheritance interest was that there was little, if any value in the property and it was almost impossible to mark it at that point. In the case of Hamilton v. Hamilton, 562 P.2nd 235, this Court recognized that property held solely in the name of one party, which had been acquired as a gift from his father, would be treated as separate property of that party and the Court refused to Decree any type of interest in that property to the wife, even though the same had been conveyed by the husband during the pendency of the divorce proceedings, subsequent to trial, but prior to the time the final Decree was entered.

Thus it appears, that the division of property in the instant case, was done equitably and in accordance with current principals of law, the Court considering any possible inheritance interest of the parties to be irrelevant, either because there was no value in them or because they were the separate property of the relative parties.

POINT II.

THE COURT IN AWARDING 1/2 SHARE OF APPELLANT'S RETIREMENT ANNUITY WAS ATTEMPTING TO FIX DEFENDANT'S INTEREST AS OF THE DATE OF THE DIVORCE AND TO PRECLUDE ANY DIMUNITION OR CHANGE OF THAT INTEREST SUBSEQUENTLY BY THE PLAINTIFF.

As stated in Appellant's Brief, it is impossible to predict what the tax laws will state, when the Appellant

retires 10 years hence, or the relative value of the annuity, therefore, the Court in this case sought to fix the Respondent's interest in that annuity as being $17,150.00 not subject to dimunition, off-sets, or otherwise at subsequent date.

This attempt to equitably divide property which in essence was jointly acquired through the monthly contributions of the wife, while the husband paid the living expenses, is once again within the Courts discretion and should not be overturned as previously mentioned in Fletcher v. Fletcher. As far as the possible tax consequences, this case is unlike Savage v. Savage, cited by the Appellant, in that the Trial Court has not retained jurisdiction to specifically determine any tax questions as was done in the Savage case, and such action was incumbent upon the Appellant if they wish to preserve any such protection and to request the same from the Court.

CONCLUSION

The Court acted properly in dividing the assets of the parties, first based on the fact that it excluded evidence with regard to the inheritance which plaintiff was due to receive and secondly, with regard to the fact that very little, if any, value could be proven as far as the Respondent's interest in inheritance with T & T Enterprises.

further, that the Court was justified in the case law, defining any such inheritance which has not been contributed to by the parties during the course of the marriage to be a separate property of the party so holding. With regard to the division of the annuity, the Court attempted to place a present value on that annuity at the time of trial so that there would be no further or future disputes between the parties regarding the same. No effort was made on the part of the Appellant to attempt to reserve any ruling on tax consequences, if there was in fact any bona fide concern over those consequences.

RESPECTFULLY SUBMITTED this 6 day of September, 1983.

VLAHOS, PERKINS & SHARP

PETE N. VLAHOS
Attorney for Defendant-
Respondent
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401
Telephone: 621-2464

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Brief of Defendant- Respondent to James D. Vilos, Attorney for Plaintiff-Appellant, Bank of Utah Building, Suite 300, 2605 Washington Blvd., Ogden, Utah 84401, by placing same in the U.S. Mail, postage prepaid this 6 day of September, 1983.

Secretary