1983

Shannon L. Tanner v. Wayne R. Tanner : Appellant's Reply Brief

IN THE SUPREME COURT OF THE STATE OF UTAH

SHARON L. TANNER,	:	
Plaintiff,	:	
vs.	:	CASE NO. 19155
WAYNE R. TANNER,	:	
Defendant.	:	

APPELLANT'S REPLY BRIEF

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

HONORABLE CALVIN GOULD
DISTRICT COURT JUDGE

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[illegible] APPELLANT

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IN THE SUPREME COURT OF THE STATE OF UTAH

Edward L. PANNER,	:	
Plaintiff and Appellant	:	
vs.	:	CASE No. 19155
WAYNE R. PANNER,	:	
Defendant and Respondent.	:	

NATURE OF THE CASE

This is a divorce action.

DISPOSITION IN THE LOWER COURT

Plaintiff-Appellant commenced this action in the lower court to obtain a Decree of Divorce. Trial was held and a judgment rendered on March 2, 1982. The court entered its Findings of Fact and Conclusions of Law and Decree of Divorce. Both parties were granted a divorce and Plaintiff was granted custody of the couples one child; however, the court ruled that the Respondent's 1/8 interest in a family partnership was irrelevant to the marital estate. Consequently, pursuant to Rule 59 of the Rules of Civil Procedure, a motion was made to amend the decree but it was denied on March 25,1983. Appellant appeals all aspects of lower court's order concerning the divisin of property. The divorce itself is not appealed.

RELIEF SOUGHT ON APPEAL

The Appellant seeks reversal of the District court in

its failure to take [illegible] marital estate [illegible] respondent himself at $2,050,301 which he inherited [illegible] during the course of the 29 year marriage. The divorce itself is not appealed.

REBUTTAL ARGUMENT

RESPONDENT'S OVERSIGHT OF THE FACTS ON RECORD HAS A PROFOUND IMPACT ON THE ANALYSIS OF THE CASE AT BAR

Page two of the Respondent's brief summarizes the fact on record as stating that the husband owned a 1/8 interest in a Ranch inherited prior to marriage. The record is specific in showing that the parties were married in June of 1953, (R-123) and that in 1963 the Respondent and several relatives inherited a Ranch from Respondent's father. (R. 38, 39, 102) The parties were divorced in 1982; thus, the respondent's inheritance was received after ten years of marriage andnineteen years before divorce. This has an important impact on the case in the following summary of the Utah law.

In Utah, once all of the assets and liabilities have been identified, a determination of those assets subject to division must be made. This Court has stated as a proposition that property subject to [illegible] assets of every nature possessed by the parties, [illegible] obtained and from whatever source derived. Englert

[illegible], 76 P.2d 1274, 1276 (Utah 1978). Although this [illegible] a wide range of property subject to division, [illegible] possible exception are noted below.

Property which was acquired by a spouse before marriage and brought into the marriage is generally not subject to division by the courts. Cosgriff v. Murphy, 535 P.2d 1141, 1142 (Utah 1974) where dissolution of a marriage between spouses who brought substantial assets into the marriage resulted in a division order wherein each party was awarded his own separate assets. However, where the separate property has been improved or used to accumulate more wealth through the joint efforts of the husband and wife, this Court, while recognizing the separate title, stated it may award one-half of the value of the wealth accumulated or the improvements made to the other spouse. Searle v. Searle, 522 P.2d 697 (Utah 1974) where the husband's separate property which he brought into the marriage was not divided by the court but the balance of the real and personal property accumulated during marriage was equally divided.

Respondent cites on page four of his brief Gaskie v. Gaskie 534 P.2d 629 a Colorado case where a Ranch inherited [illegible] wife eleven years prior to marriage was separate property and not subject to division. Plaintiff-appellant [illegible] that like the Cosgriff v. Murphy, 535 P.2d 1141 (Utah 1974) and the Searle v. Searle, 522 P.2d 697 (Utah 1974) [illegible], Utah law would support generally that property

received prior to marriage would not be subject to division; however, the facts on [illegible] this case the Respondent received the interest in the real ten years after marriage. (R.38, 39, 102) This, the Colorado case of Gaskie v. Gaskie, 534 P.2d 629 relied upon by the respondent is not on point.

Utah law continues to support that property which a spouse acquires during marriage is generally subject to division. This Court has approved the division of property acquired by the husband during marriage in which the wife had no legal interest. Hamilton v. Hamilton, 562 P.2d 238 (Utah 1977) where real property was received during marriage by gift from the husband's father with only title in the husband's name.

Although the Court has the authority to make whatever division it deems equitable, in practice the majority of divisions are controlled by agreements which spouses enter into and the Court adopts. These agreements, stipulations, or contracts between the couple are not binding on the Court but are usually given great weight. Pearson v. Pearson, 561 P.2d 1080 (Utah 1977) and Strong v. Strong, 548 P.2d [illegible] (Utah 1976) The Respondent's brief on page five indicates that "the parties themselves believed the [illegible] separate property" and that "Mrs. Palmer [illegible] the parties considered the husband's [illegible]"

[illegible] separate property. Plaintiff-Appellant fails to [illegible] any manifest intent or testimony in the record [illegible].

CONCLUSION

In conclusion, Plaintiff-Appellant respectfully requests this Court that in order to better achieve equity and fairness to reverse the District Court to the extent that it did not consider as part of the marital estate, Respondent's 1/8 interest in the Ranch valued at $2,050,361.00which he inherited from his father in 1963 during the course of the parties twenty-nine year marriage. (R 38,39, 102)

In theevent this Court chooses not to set aside the District Court's order awarding 1/2 of Appellant's retirement annunity to the respondent, this Court should at least amend that order to ensure that Respondent will have to pay the taxes thereupon rather than the Appellant.

Respectfully submitted this 6 day of October, 1983.

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I HEREBY [illegible]

I mailed two true and [illegible]

foregoing Reply Brief of Appellant, [illegible]

the United States Mail, postage prepaid and addressed to the

following: PETE N. [illegible], [illegible], [illegible] and

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Secretary