

1983

Dixie Roblek Lebreton v. Thomas Edward Le Breton : Appellant's Brief

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IN THE SUPREME COURT
OF THE STATE OF UTAH

DIXIE ROBLEK LeBRETON,
Plaintiff and
Respondent,

)
)
) Case No. 19085
)
)
)
)
)
)

-vs-

THOMAS EDWARD LeBRETON,
Defendant and
Appellant.

APPELLANT'S BRIEF

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Clk. Supreme Court, Utah

TABLE OF CONTENTS

	Page
STATEMENT OF NATURE OF CASE	1
DISPOSITION IN THE LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
<u>Point I</u>	
THE JUDGMENT OF THE TRIAL COURT IGNORED THE MANDATE OF THE DECREE OF DIVORCE	5
<u>Point II</u>	
THE TRIAL COURT ERRED IN ITS INTERPRETATION OF THE DECREE OF DIVORCE	6
<u>Point III</u>	
THE COURT SHOULD SUBSTITUTE ITS JUDGMENT FOR THAT OF THE TRIAL COURT AND INTERPRET THE DECREE OF DIVORCE	8
CONCLUSION	9

CASES CITED

Graziano v. Granziano, 7 Utah 2nd 187, 521 P.2d 931	8
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IN THE SUPREME COURT
OF THE STATE OF UTAH

DIXIE ROBLEK LeBRETON,)
)
 Plaintiff and)
 Respondent,) Case No. 19085
)
 -vs-)
)
 THOMAS EDWARD LeBRETON,)
)
 Defendant and)
 Appellant)
)

APPELLANT'S BRIEF

APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL
DISTRICT COURT OF SALT LAKE COUNTY
THE HONORABLE DEAN E. CONDER, DISTRICT JUDGE

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IN THE SUPREME COURT
OF THE STATE OF UTAH

DIXIE ROBLEK LeBRETON,)	
)	
Plaintiff and)	
Respondent,)	Case No. 19085
)	
-vs-)	
)	
THOMAS EDWARD LeBRETON,)	
)	
Defendant and)	
Appellant.)	
)	

APPELLANT'S BRIEF

STATEMENT OF NATURE OF CASE

This case involves a dispute as to the division of the equity, between divorced parties, in real property acquired during the marriage of the parties. The dispute between the parties centers around interpretation of the Decree of Divorce.

DISPOSITION IN THE LOWER COURT

Appellant's Order To Show Cause, seeking enforcement of Appellant's equity distribution as against Respondent, was heard in the Third Judicial District Court of Salt Lake County by the Honorable David K. Winder. Appellant's appeal to this Court from an adverse Order resulted in a remand to the Third Judicial District Court of Salt Lake County for further proceedings.

From an adverse Judgment of the Honorable Dean E. Conder against him and in favor of Respondent, Appellant prosecutes this appeal.

RELIEF SOUGHT ON APPEAL

Appellant, Thomas Edward LeBreton, seeks a reversal of the Judgment of the trial Court; an Order of this Court directing a sale of the subject real property and an equal division of the net proceeds derived from the property sale between Appellant and Respondent, after payment to Respondent of the sum of THIRTEEN THOUSAND NINE HUNDRED SIXTY-THREE and 44/100 DOLLARS (\$13,963.44); and recovery of Appellant's costs.

STATEMENT OF FACTS

Respondent and Appellant appeared in the Third Judicial District of Salt Lake County on April 29, 1969, before the Honorable Aldon J. Anderson for trial of their divorce action (R24 and 25).

At the divorce trial Appellant and Respondent entered into an oral stipulation whereby the Answer which Appellant had made to Respondent's Complaint was dismissed (R134 Exhibit D1, p 2) and Respondent was granted a Decree of Divorce incorporating the terms of the oral stipulation which has been entered into by Appellant and Respondent (R134 - Exhibit D1, p6 and 7).

Concerning the real property acquired by Appellant and Respondent during their marriage, the oral stipulation of Appellant and Respondent, as read into the record by Respondent's attorney, was as follows:

"And, also, that the plaintiff (Respondent) have the possession of the home of the parties until she remarries or until such time as the children no longer require the home, at which time it should be sold and the equity divided with the stipulation that anything that the plaintiff (Respondent) pays now on onto the principle payments would be disbursed to her before any costs of the division of the equity so that all that she pays in would come out first so she gets that all her money (R134 - Exhibit D1, p3).

The Decree Of Divorce prepared by Respondent's attorney and entered April 28, 1969, concerning the real property acquired by Appellant and Respondent during their marriage, provided as follows:

"With regard to the house, it will be sold upon her remarriage or when the home is no longer needed for the minor children, at which time the home will be sold and the equity as of the date of this divorce will be divided equally among the parties with the further stipulation that the Plaintiff shall have all of the principal payments made by her after the date of the divorce before the costs of sale and then the remaining equity will be divided equally" (R-25).

On June 15, 1977, an Order To Show Cause was issued by the Third Judicial District Court of Salt Lake County (R38 and 39), based upon Appellant's Affidavit In Support Of Order To Show Cause (R36 and 37). The Order To Show Cause, which Appellant caused to be issued, sought enforcement of the Decree Of Divorce by having the home and real property located at 6723 South 2445 East, Salt Lake City Utah sold; and division of the proceeds of the sale equally between Appellant and Respondent, after first deducting Respondent's principal payments upon the mortgage obligation from April 28, 1969 and the expenses involved in the sale (R38).

Hearing was held April 14, 1978, upon Appellant's Order To Show Cause before the Honorable David K. Winder (R51 and 52) who found that, although ambiguous, the meaning of the decree is that the equity as the date of the divorce would be the value to be divided among the parties (R57). The Court further found the value of the home as of the date of divorce was \$35,000.00 (R57).

By Order made May 30, 1978, the Honorable David K. Winder ordered the equity in the home to be divided among the parties by sale or buy-out,

placing a \$35,000.00 value upon the home, less any amounts due and principal mortgage as of April 28, 1969 (R62). Further, it was ordered by the trial Court that \$2,184.00 was to be subtracted from Appellant's award for child support delinquency payments and that Appellant was entitled to \$200.00 attorney's fees (R62 and 63). It was established that \$13,900.00 was the amount of the principal balance owing upon the subject real property as of the date of divorce or April 28, 1969 (R55).

Appellant's Notice Of Appeal to this Court of the Order of the Honorable David K. Winder was filed June 26, 1978 (R64) and the judgment of the District Court was reversed and the case remanded for further proceedings by this Court (R75).

Hearing was held, January 12, 1983 in the Third District Court of Salt Lake County before the Honorable Dean E. Conder, of this case pursuant to the reversal of judgment and remand by this Court.

The trial Court made the following Findings of Fact:

- "3. Finding #6 of the Divorce Decree in this matter is ambiguous and the Decree as it relates to the equity in the home is equally ambiguous; consequently, the Court is unable to determine the original intent of the parties regarding distribution of their respective equities in said home.
- "4. The Court finds that said residence had a value of \$50,000.00 as of 1976 based upon expert testimony at a prior hearing."
- "5. The Court finds that the current value of the home is \$85,000.00."
- "6. The original cost of the home was \$21,200.00, and at the time of the divorce there existed an unpaid balance of \$14,000.00."
- "7. Plaintiff has paid the unpaid balance of \$14,000.00 solely through her efforts, and the home is now unencumbered."

- "8. The Court finds that the date of 1976 should be the date used as the time when all of the children of the parties have been emancipated, and that the defendant is entitled to his equity as of that date."
- "9. The equity of the parties in said residence as of 1976 is as follows: The total equity in the residence at the time of the divorce, without adjustment for appreciation, was \$21,200.00 minus \$14,000.00, or \$7,200.00. If we divide the equity equally between the parties, they each have a \$3,600.00 interest. In addition to this interest, plaintiff is entitled to \$14,000.00 she has paid after the divorce, for a total interest of \$17,600.00. The percentage of defendant's interest divided by the total cost of the residence, or \$3,600.00 divided by \$21,200.00, is .169 or 16.9 percent, of the cost of the home. By multiplying that percentage with the 1976 value of the residence, the defendant's equity is fixed at \$8,490.00. The plaintiff's equity would have been \$41,510.00."
- "11. The Court finds that the defendant is indebted to plaintiff for unpaid child support payments in the amount of \$2,184.00 based upon the stipulation of the parties at a prior hearing."
- "12. Plaintiff is entitled to offset that sum together with interest at 8 percent from March 15, 1975 to July 1, 1976." (R93 and 94).

Judgment was entered on February 15, 1983 in favor of Appellant in the sum of \$6,078.15 with interest at the rate of eight (8) percent from July 1, 1976 until May 13, 1981 and at the rate of twelve (12%) percent from May 14, 1981 until the present (R101 and 102). It is from this Judgment of the Honorable Dean E. Conder, one of the Judges of the Third Judicial District Court, that Appellant prosecutes his appeal to this Court.

ARGUMENT

Point I

THE JUDGMENT OF THE TRIAL COURT IGNORED
THE MANDATE OF THE DECREE OF DIVORCE

The Decree of Divorce provides as follows:

"With regard to the house, it will be sold (Emphasis added) upon her remarriage or when the home is no longer needed for the minor children, at which time the home will be sold (Emphasis added) and the equity as of the date of this divorce will be divided equally among the parties with the further stipulation that the Plaintiff shall have all of the principal payments made by her after the date of divorce before the costs of sale and then the remaining equity will be divided equally" (R25).

From the foregoing language of the Decree Of Divorce, there can be no question that the home was ordered to be sold. But the Judgment of the trial Court ignores the Decree of Divorce by failing to order a sale of the home as a prerequisite to the determination and distribution of the equity to which Appellant and Respondent is each entitled (R101 and 102).

Point II

THE TRIAL COURT ERRED IN ITS INTERPRETATION OF THE DECREE OF DIVORCE

In its Findings of Fact, the trial Court found that "Finding 7 of the Divorce Decree in this case is ambiguous and the Decree as it relates to the equity in the home is equally ambiguous; consequently, the Court is unable to determine the original intent of the parties regarding distribution of their respective equities in said home " (R93). The language expressed in the Decree Of Divorce, "With regard to the house, it will be sold upon her remarriage or when the home is no longer needed for the minor children, at which time the home will be sold and the equity as of the date of this divorce will be divided equally among the parties with the further stipulation that the Plaintiff shall have all of the principal payments made by her after the date of the divorce before the costs of sale and then the remaining equity will be divided equally" (R25), perhaps, is not the most artful expression

t the English language, but, broken down, isn't the expression clear that upon the sale of the home the following sequence will be followed? First, the equity of Appellant and Respondent, as of the date of divorce, will be divided equally between the parties. Second, principal payments made by Respondent from the date of the divorce to date of sale be paid to her. Third, costs of the sale be paid. Fourth, the remaining equity will then be equally divided between the Appellant and Respondent.

And, further, in light of the transcript of the divorce hearing before the Honorable Aldon J. Anderson, which the trial Court admitted into evidence (R134, Exhibit D1, p3) and presumably considered in rendering its Judgment, is not the intent of Appellant and Respondent with respect to the distribution of equity in the real property clearly expressed in the following language, "And, also, that the plaintiff have the possession of the home of the parties until she remarries or until such time as the children no longer require the home, at which time it should be sold and the equity divided with the stipulation that anything the plaintiff pays from now on onto the principle payments would be disbursed to her before any costs of the division of the equity so that anything she pays in would come out first so she gets it all back" (R134, Exhibit D1, p3)? The trial Court incorporated the foregoing language of the stipulation concerning division of the equity of the marital real property into the Decree of Divorce (R134, Exhibit D1, p6 and 7).

The Honorable Dean E. Conder found the current value of the home to be \$85,000.00 (R93); the residence had a value of \$50,000.00 as of 1976 (R93); and that based upon the 1976 valuation of the residence, Appellant's equity

was \$8,490.00 and Respondent's equity was \$41,510.00. Not only did the Court completely ignore the "sale" order of the Decree Of Divorce (R25), assuming a division of a \$50,000.00 equity between Appellant and Respondent, the trial Court further ignored the Decree of Divorce by coming upon with a mystical percentage formula in determining Appellant's equity to be \$8,490.00 compared to Respondent's equity of \$41,510.00, when the Decree of Divorce provided that Respondent would recover her principal payments (R25), determined to be \$13,963.44 (R55), and the remaining equity will be divided equally (R25). Thus, Appellant should have been adjudged to have an equity of at least \$18,018.28.

Point III

THIS COURT SHOULD SUBSTITUTE ITS JUDGMENT
FOR THAT OF THE TRIAL COURT AND INTERPRET
THE DECREE OF DIVORCE.

In Graziano v. Graziano, 7 Utah 2d 187, 321 Pa2d 931, this Court recognized the rule that "in divorce proceedings which are in equity, this Court will review the facts and weigh the evidence and may substitute its judgment for that of the trial Court."

By a review of the language of the Decree of Divorce as it relates to the distribution of the equity in the home between Appellant and Respondent, coupled with the oral stipulation of the parties as expressed in the original divorce hearing before the Honorable Aldon J. Anderson (R134, Exhibit 2, p2 and 3), there cannot be much doubt that the Decree of Divorce provided that Appellant and Respondent intended, that one day the real property would be sold and the proceeds derived from the sale would be distributed in the following manner:


1. An amount equal to the principal payments made by Respondent

- from April 28, 1969 to date of sale to be paid to Respondent.
2. Costs of the sale.
 3. Division equally between Appellant and Respondent of any remaining funds after deducting the amounts set forth in 1 and 2 above.

CONCLUSION

This Court should employ its equity powers and resolve this long pending dispute between Appellant and Respondent by Ordering a sale of the subject real property; and, from the proceeds derived from the sale of the real property, direct that Respondent be paid \$13,963.44, the costs of sale be paid, the remaining proceeds from the sale be divided equally between Appellant and Respondent, and from Appellant's share of the sale proceeds, the sum of \$2,184.00 be paid to Respondent for child support arrearages. Costs should be awarded to Appellant.

Respectfully submitted,


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CERTIFICATE OF DELIVERY

I hereby certify that I personally delivered two (2) true and correct copies of Appellant's Brief this 6th day of June, 1983, to the following:

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