1983

Gayle South Argyle v. Arthur Mitchell Argyle : Appellant's Brief

IN THE SUPREME COURT OF THE STATE OF UTAH

GAYLE SOUTH ARGYLE,	)	
Plaintiff and Respondent,	)	
vs.	)	
ARTHUR MITCHELL ARGYLE,	)	Case No. 19110
Defendant and Appellant.	)	

APPELLANT'S BRIEF

Appeal from a Judgment of the
First Judicial District Court of Rich County
Honorable VeNoy Christofferson, Judge

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NATURE OF THE CASE

This is an action for divorce.

DISPOSITION IN LOWER COURT

The trial court granted plaintiff a divorce, custody of a minor child, $350 per month for the support of the minor child, items of property then in her possession, a cash settlement of $463,000 in lieu of all other property rights, to be paid $100,000 within six months from January 6, 1983, and the balance of $363,000 to be paid over a 15-year period together with interest on the unpaid balance at the rate of 10% percent per annum, defendant to pay 15 equal annual installments of $47,738.05 each, including principal and interest and $2,000 as an attorney's fee, plus costs of court.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the judgment and remand to the trial court for a determination of the value of the assets owned by appellant and entry of a decree that is equitable.

STATEMENT OF FACTS

Plaintiff and defendant were married on September 29, 1955, and lived together as husband and wife in Randolph, Utah, until November 1982, when plaintiff moved to Evanston, Wyoming (Tr. 9). The parties had five children, all but one of whom had reached their majority at the time of trial (Tr 10).

The appellant, Arthur Argyle, had been a rancher all his life and was employed by Argyle Ranch, Inc. (Tr. 132). The ranch had been established by his father and had been operated by his father until his death in 1949. At that time, management of the ranch was taken over by Arthur's mother, Emma Ireta Argyle (Tr. 184). She operated the ranch with the help of her sons until September 1963, at which time she decided to take steps to keep the ranch in the family. She made a gift to Arthur and his brother Ralph Argyle of some property to be contributed by them to a new corporation in exchange for stock. The mother, in exchange for stock, contributed some 2,700 acres of real property, livestock, machinery, personal property and equipment.

For the real property given to Arthur and Ralph by their mother and subsequently transferred to the corporation, each of the brothers

received 10,000 shares of stock in Argyle Ranch, Inc., having a par value of $1.00 per share. At the same time, and as part of an "Agreement to Incorporate and Declaration of Gift" (Plaintiff's Exhibit 5), Arthur received 18,000 shares as a gift and Ralph received 18,000 shares as a gift. A total of 73,000 shares was issued to her. The mother agreed to sell to each of her two sons 3,000 shares per year at a par value of $1.00 per share for a total of five years, so that after that period each of them, Arthur, Ralph, and Emma Ireta, would own 43,000 shares. As a device to keep the corporation in the Argyle family, the agreement contained the following provision:

> 5. In the event that any of the parties to this agreement desire to sell their shares of stock in said corporation they shall first give notice of their intention so to do to the remaining parties, who shall have 30 days within which to exercise the option to purchase the withdrawing parties' or party's shares of stock, which shall be sold and purchased at par value. The parties agree that they will not offer stock they desire to sell to any other party until the remaining shareholders of stock have had the opportunity of exercising the option to purchase said stock. Notice of intention to sell shall be given in writing.
>
> 6. The terms of the sale shall be upon the payment of 10% of the par value of the stock sold per year, plus 3% interest, with the payments to commence 12 months from the date of the exercising of the option to purchase.
>
> 7. On the death of EMMA IRETA the remaining partners or partner, as the case may be, are hereby given an option to purchase the shares of stock held by said EMMA IRETA, at par value, in 10 annual installments, plus 3% interest, each commencing 12 months after the death of said EMMA IRETA, and on the same day of each year thereafter until said stock has been purchased at the par value thereof, and the purchaser or purchasers of the stock of said EMMA IRETA shall have the option to pay at any accelerated rate they may choose.

The agreement was signed by Emma Ireta Argyle, Arthur Mitchell Argyle, Ralph Evan Argyle, and the respondent herein, Gayle Argyle. The option was put into the agreement because of Emma's fear that someone might want to pull out or to try and hold another partner up for too much money (Tr. 185).

Emma continued active in managment of the company until about 1975, when she first became incapacitated, following which she died. Upon her death, her sons, Ralph and Arthur, enforced the buy-sell agreement as against her estate (Tr. 186). Since its execution, the agreement has not been modified in any respect (Tr. 186, 187).

Arthur had been vice-president of the corporation, but upon the death of his mother six years ago, he became acting president. He then owned 43,000 shares and Ralph owned 43,000 shares of the total of 129,000 shares outstanding (Tr. 133).

As with the herders and other employees of the ranch, Arthur has been furnished with a home, board, utilities, and a vehicle to be used in connection with ranching operations. At the time of trial, he was drawing a salary of $200 to $300 per month, and the ranching company was paying $1,100 a month to Gayle to help Arthur meet the obligations of a temporary order (Tr. 146). There was no evidence as to the basis for this advance by the ranching company, i.e., whether it was to be repaid as a loan, or whether there was to be some adjustment made in the relative shareholdings of Ralph and Arthur. Except for the shares he owns in the corporation, Arthur's only assets are a few things in the house (Tr. 147).

Although Gayle signed a deed in 1963 by which the property of Arthur and Ralph was conveyed to the corporation, the property had been conveyed in the first instance by Emma Ireta to Arthur and Ralph, not to Gayle (Tr. 60). During the years of the marriage, Gayle did work on the ranch, worked in a restaurant, and performed duties as a housewife. When her father died in 1976, Gayle signed papers so that her mother would receive all of his holdings, Gayle giving up any right she had in the estate (Tr. 55). One of the properties that came down from her father was a timber company, for which she was working at the time of the trial (Tr. 56).

Mark Crystal, an appraiser, was employed by Gayle to determine the market value of the assets owned by Argyle Ranch, Inc. (Tr. 68). Over objection to his testimony on the ground that it did not relate to the value of the shares owned by Arthur, Crystal testified that the market value of the ranch was $3,489,249, but this did not take the company's debt into account (Tr. 130). He admitted that the values given would be more useful for liquidation of the corporation over a period of years (Tr. 118), the valuation having been based upon the valuation of the various pieces of property that comprised the ranch, by a comparable sales method, and the valuations of items of equipment, and livestock (Tr. 74-113). Mr. Crystal made no attempt to appraise the value of the stock. This was out of his field (Tr. 131).

Using a different method of valuation, Richard T. Huffman, a real estate broker, land use consultant, and appraiser valued the ranch at $2,235,500 (Tr. 208), less the amount of the indebtedness, which was approximately $1,300,000 (Tr. 169).

Financial statements prepared by Argyle Ranch, Inc., for the Production Credit Administration were admitted in evidence as plaintiff's Exhibit 6, and defendant's Exhibits 6, 7, 8, and 9. The most recent, dated December 2, 1982, showed total assets of $2,992,855 and total liabilities of $1,030,847, leaving a net worth of $1,962,008 (defendant's Exhibit 6), but there was testimony that additional debt had been incurred since the date of the statement.

The court ignored the testimony of both of the experts and found the value of the assets of the corporation to be $1,962,008.00, the exact sum set out in financial statment of December 2, 1982. Although there was no finding, as such, with respect to value, in its Conclusion of Law No. 4 the court stated:

> That plaintiff shall be awarded a cash settlement in lieu of all other property rights except as set forth in paragraphs 2 and 3 hereof, in the sum of Four Hundred Sixty Three Thousand Dollars ($463,000), representing one-half of the value in the defendant's stock in the Argyle Ranch, Inc., this sum being based upon the assets of Argyle Ranch, Inc., which form the basis for the value of the stock in Argyle Ranch, Inc., the net value of said assets being $1,962,008.00, from which is deducted the sum of $109,000, representing a gift of land received from defendant's mother; the balance of this then being divided by one-half, which is the defendant's interest in Argyle Ranch, Inc. This balance is then divided in half, representing plantiff's interest in the property accumulated and included in the marital estate. The sum of One Hundred Thousand Dollars ($100,000) being payable to plaintiff from defendant within six (6) months from January 6, 1983, with the balance of said sum of $363,000.00 being payable to plaintiff from defendant over a fifteen (15) year period, together with interest on the unpaid balance of $363,000.00 from August 6, 1983, payable as follows:
>
> > The sum of $363,000.00, together with interest on the unpaid balance thereof at the rate of ten percent (10%) per annum, said interest beginning on August 6, 1983, shall be paid in 15 equal annual

> installments of $47,738.05 each, including principal and interest, and the first of said payments shall be due and payable on or before August 6, 1984, and a like payment of $47,738.05 shall be due on the 6th day of August each and every consecutive year thereafter until the entire amount of $363,000.00, together with accrued interest thereon, shall be paid in full. All payments shall apply first to interest and second to the reduction of principal.

During final argument, the court conceded that the buy-sell agreement between Ralph and Arthur was valid (Tr. 296), but there was no finding as to the effect of the agreement upon the valuation of the stock owned by Arthur, indeed there was no finding as to the valuation of his stock except as set out in the above conclusion.

The corporate tax returns of Argyle Ranch, Inc., show that its taxable income for 1977 was $3,702.95 (defendant's Exhibit 10), for 1978 was $21,157.49 (defendant's Exhibit 11), for 1979 was $32,019.03 (defendant's Exhibit 12), and for 1980 was $25,702 (defendant's Exhibit 13).

The tax returns of Arthur and Gayle Argyle show that they had a taxable income in 1977 of $6,575.40 (defendant's Exhibit 14), in 1978 of $10,793 (defendant's Exhibit 15), in 1979 of $9,354.80 and in 1980 $11,024.76 (defendant's Exhibit 17).

ARGUMENT

I

THERE WAS NO EVIDENCE TO SUPPORT A MONEY JUDGMENT AGAINST ARTHUR ARGYLE IN THE AMOUNT OF $463,000, OR ANY OTHER AMOUNT.

There was testimony from three experts, Mark Crystal, Richard T Huffman, and Blaine Davis Hales, and from Gayle Argyle and from Ralph Argyle concerning the values of the assets held by Argyle Ranch, Inc. There were also financial statements indicating the net worth of the corporation from 1978 through 1982. None of the witnesses, however, testified as to the value of the stock owned by Arthur Argyle in Argyle Ranch, Inc., and it was not shown by any of the exhibits.

It is undisputed that Argyle Ranch, Inc., is a corporation, that the stock is held equally by Ralph Argyle and Arthur Argyle, that each of them owns 43,000 shares of stock in the corporation, that they are presently purchasing from the estate of Emma Ireta Argyle an additional 21,500 shares each, and that approximately $20,000 is still owed to the estate for the stock.

Faced with some complex but insufficient evidence, the court took the easy way out. It looked at the most recent financial statement of the corporation (defendant's Exhibit 9) fixed its gaze on the "net worth" line, interpreted the net worth as the value of the corporation assets, and decided that the value of the corporation was $1,962,008. It deducted from this sum $109,000 representing the value fixed on the property conveyed to the corporation in 1963 by Emma Ireta Argyle, apparently taking the view that this property was not marital property because it was a gift to the husband, but giving to the wife credit for 20 years appreciation. After deduction of the $109,000 the value of the corporation's assets was fixed at $1,853,008, and the value of Arthur

Argyle's interest in the corporation at $926,504. The court divided this amount equally and entered a money judgment in favor of the wife for $463,252.

The only virtue in this ruling was its simplicity. The court assumed, without any evidence, that the value of Arthur Argyle's stock in Argyle Ranch, Inc., was equal to one-half of the value of the underlying assets, less the debt. It was not asked to, and did not indicate that it intended to, take judicial notice that the value of stock in a closely held family corporation is equal to the value of the properties held by the corporation less the indebtedness owed by the corporation. Moreover, even if the court had been asked to take judicial notice of such a fact, it would not have been permitted to do so. How the stock of a particular corporation in a particular setting at a particular year is to be valued is not a matter of common knowledge, and it is not a specific fact or proposition of generalized knowledge which is capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy. See Rule 9, Utah Rules of Evidence.

Not only did the court fix a value of the stock without any evidence of its value, it gave no consideration to the fact that Arthur Argyle's stock was subject to an option exercisable by Ralph Argyle to purchase the stock for $1.00 per share for Arthur's 62,500 shares, if Arthur wanted to sell it.

The agreement was entered into long before any dispute arose between the parties in this case. The architect of the agreement was

Emma Ireta Argyle, the mother of Ralph and Arthur Argyle The plaintiff, Gayle Argyle, was completely aware of the agreement at the time it was entered into. Indeed, she participated in it by signing off any interest she might have had in the property being contributed by Arthur, and by signing the agreement herself.

Such agreements, particularly when entered into under the circumstances that this agreement was entered into, are held to be valid and binding.

In re Estate of Mather, 410 Pa. 361, 189 A.2d 586 (1963), involved an agreement containing the following provision:

> 2. That in the event of the death of Gilbert Mather, or in the event of his offering his stock for sale during his life, he, for himself, his heirs, executors and administrators, agrees to sell, and Victor C. Mather and Charles E. Mather, II agree to buy, in equal proportions, at One Dollar ($1.00) per share, any or all of the common stock holdings of the said Gilbert Mather.
>
> 4. That as to any or all of the above three provisions, the survivors or survivor among the class of purchasers in each case shall be entitled to the entire rights given the purchasers in each case.

When Victor C. Mather died his executor sold his stock to Gilbert and Charles Mather for $1.00 per share. When Gilbert died in 1959, Charles II tendered $501 to his estate for the purchase of his 501 shares of stock in the company. At the time of the tender, the stock of Mather and Company was carried on the books at $444.92 and its actual value was not less than $1,060 per share. The tender was refused and action was brought to enforce the agreement, which the court did.

After quoting from a prior Pennsylvania case to the effect that such agreements are not contrary to any overruling public policy, the Supreme Court of Pennsylvania said:

> The aforesaid written agreements, including the one in suit, were made between mature members of a close family and it is conceded that there was no overreaching or fraud or deceit. The facts and the lawfulness of the purpose were admitted by appellants. However, appellants argue that the agreement was an invalid restraint on alienation because the price was clearly very unfair and unchangeable. The contention that a stock option or purchase price must be flexible is unrealistic and utterly devoid of merit, even if we overlook the fact that the price was not unchangeable since in 1939 the parties entered into the present written agreement changing the price on the option purchases and sales from $50.00 to $1.00. Moreover, we repeat, the agreement clearly and expressly set forth the intention of all the parties -- they wanted to keep the family business in the Mather family and to give each other and their personal representatives the options, rights and obligations hereinabove recited. * * * In this free land of ours where even a state cannot impair the obligations of a contract, we cannot understand how it can be seriously contended that this written family agreement -- and family agreements are always favored in the law -- when made by adult businessmen without any overreaching or fraud, is "a scrap of paper." [Emphasis by court.] 189 A.2d at 590.

Another buy-sell agreement was involved in Jones v. Harris, 63 Wash.2d 559, 388 P.2d 539, 541-42 (1964), in which there was an obligation to sell stock at a price substantially less than its value. Repulsing an attack on the agreement, the Supreme Court of Washington said:

> * * * The contract cannot be said to have been unfair or inequitable when it was made, and now it is too clear to admit of interpretation to include and emphasize equities, non-existent at the inception of the contract, but which have evolved and now seem persuasive. Many close corporations have similar buy-out provisions, and the courts would do a disservice to business practice by substituting an "appraisal"

> or "market value" formula when hindsight shows that "book value," as originally conceived, has become unrealistic with the passing of time.

Other cases upholding similar agreements are Georesearch, Inc. v. Morriss, 193 F.Supp. 163, 173 (W.D. La. 1961); Cutter Laboratories, Inc. v. Twining, 221 Cal.App.2d 302, 34 Cal.Rptr. 317, 325 (1963); and Arentsen v. Sherman Towel Service Corporation, et al., 352 Ill. 327, 185 N.E. 822 (1933).

The validity of the Argyle buy-sell agreement was upheld by the District Court of Rich County in The Matter of the Estate of Emma Ireta Mitchell Argyle, also known as Emma Ireta Argyle, Deceased (Probate No. 433), of which the court took judicial notice.

Appellant is not arguing that the court is bound to value the stock at $62,500 (less the $10,000 still owed), but he does argue, rightfully, that the court was required to take the stock purchase agreement into consideration.

Suther v. Suther, 28 Wash.App. 838, 627 P.2d 110 (1981), involved the valuation of corporate stock in a marriage dissolution proceeding. The court pointed out that valuation of shares of a closely held corporation presents a difficult problem calling for the weighing of relevant facts and ultimate exercise of reasoned judgment. Then it quoted the following from Lavene v. Lavene, 162 N.J.Super. 187, 392 A.2d 621, 623-24 (1978):

> Valuation of stock in a closely held company is an attempt to determine the fair market value of an asset which by definition does not have a fair market value, since a market wherein a willing buyer will meet a willing seller, neither under a compulsion, generally does not exist. The stock of a closely held corporation is as a rule offered for sale only under unusual circumstances. The number of prospects is usually extremely limited. [Tierney, "A New Approach to the Valuation of Common Stock of Closely Held Companies," Journal of Taxation 14 (July 1962).]
>
> As a result, the valuation of the stock of a closely held corporation requires an entirely different approach than the valuation of any other asset. The valuation process has been described as a "matter of judgment and opinion rather than mathematics." Banks, "Present Value and the Close Corporation", 49 TAXES -- The Tax Magazine, 33, 35 (January 1971). Each case presents a unique factual question, the solution to which is not within the ambit of any exact science. The reasonableness of any valuation depends upon the judgment and experience of the appraiser and the completeness of the information upon which his conclusions are based. Lawinger, "Appraising Closely Held Stock -- Valuation Methods and Concepts," 110 Trusts and Estates 816 (October 1971). Suther, 627 P.2d at 112-113.

After reviewing a number of cases dealing with the question, the Washington court concluded that although a buy-sell agreement is not necessarily determinative of a stock's value, a buy-sell agreement is a factor to be considered.

In re Marriage of Rosan, 24 Cal.App.3d 885, 101 Cal.Rptr. 295, 299 (1972), the trial court determined stock value by applying a formula in a buy-sell agreement and on appeal this was upheld, the appellate court observing that such conditions on disposition of the stock and its resulting illiquidity are factors which substantially affect its value. The right of Ralph Argyle to purchase the shares of Arthur Argyle for $1.00 per share is certainly a factor that would effect the liquidity of

the asset of Arthur Argyle and would affect the value of his stock in Argyle Ranch, Inc.

A divorce proceeding is equitable in nature and this court may review both the law and the facts. Article VIII, Section 9, Utah Constitution; Read v. Read, 594 P.2d 871, 872-873 (Utah 1979). And where the evidence is insufficient to support a trial court's valuation of a husband's interest in a corporation, the finding must be reversed. Rieger v. Christensen, 529 P.2d 1362, 1366 (Colo.App. 1974).

II

ENTRY OF A MONEY JUDGMENT FOR $463,000, WITH $100,000 PAYABLE WITHIN SIX MONTHS, AND THE BALANCE TO DRAW INTEREST AT TEN PERCENT PER ANNUM WAS AN ABUSE OF THE TRIAL COURT'S DISCRETION.

The evidence in this case was that the corporation's equity/debt ratio was about one to one or at most two to one, and that financial institutions, in considering whether to lend money to corporations generally require an equity/debt ratio of four or five to one. The evidence was also to the effect that Argyle Ranch, Inc., has a heavy burden in servicing its present debt and that its borrowing capacity beyond that necessary for maintenance of the ranching operations is limited. Disposition of assets with corresponding liabilities would be disastrous.

The evidence is also to the effect that except for his housing and food and utilities and transportion, Arthur Argyle draws very little from the corporation, $200 to $300 a month in addition to the $1,100 per

month he has had to obtain during the pendency of the action to pay to his wife. Given the financial condition of the corporation and the financial condition of Arthur Argyle, one cannot help but wonder how the trial court would expect him to be able to meet the terms of the judgment unless he were able to convince the other shareholder, Ralph Argyle, that the corporation should be liquidated and its assets distributed.

In Phillips v. Phillips, 171 Colo. 127, 464 P.2d 876 (1970), the husband's assets consisted of interests in partnerships, stock in nine local corporations, and some solely owned property. The trial court, in lieu of a property division, awarded the wife cash in the amount of $400,000, of which $100,000 was to be payable within one month of the date of the decree and the balance in installments of $12,000 every three months, with interest payable quarterly at the rate of 5% per annum upon the deferred balance; $1,050 per month for the support of three children; $250 alimony plus another $250 for any month that the husband might be delinquent, payment by the husband of all unpaid family accounts, and payment of the fees of attorneys, appraisers and accountants.

On appeal the court found that the testimony of appraisers justified the award of $400,000 and the $1,050 per month child support and the $250 per month alimony, but it reversed the trial court because of the method required for payment of the award. The Supreme Court suggested that the trial court had an obligation to toil with the problems presented by the rather studied expressions by competent

appraisers and certified public accountants relating to the values of the marital property. In disapproving the court's requirement as to the methods of payment of the cash award, the court said:

> The nature of a substantial part of the solely owned property of Mr. Phillips was such that it could not be liquidated quickly. The court found as follows:
>
> > "[Mr. Phillips'] interest in the corporations and partnerships * * * cannot by reason of the nature of those businesses be immediately liquidated. Any attempt at an immediate liquidation would seriously impair [Mr. Phillips'] valued interest in the same."
>
> We have been unable to find anything in the record disputing Mr. Phillips' testimony that, if he were compelled to sell or liquidate a substantial portion of his interests, he would be bankrupt. We have already noted the aggregate indebtedness of $6,370,000. It appeared that the enterprises in which Mr. Phillips had fractional interests had inadequate working capital. This, combined with the tremendous liabilities, place Mr. Phillips in a position in which it would be difficult to borrow and disastrous to have forced liquidations. We are in agreement with his position that the order requiring payment of $100,000 within a month and $12,500 each quarter upon the remaining sum of $300,000 was confiscatory and an abuse of discretion. 464 P.2d at 879-80.

The court also disapproved of the allowing of interest on the unpaid portions of the $400,000 and the $250 penalty for late payment of alimony.

In Matter of Babb and Babb, 30 Ore.App. 581, 567 P.2d 599, 602 (1977), the court, among other things, awarded the wife a lump sum of $30,000 at 7% interest. In disallowing the interest, the appellate court said:

> We agree that the interest provision will place an undue financial burden on the husband and should be removed. It is true, as the wife argues, the payment schedule provides

> for minimum payments and husband may reduce the interest liability by making larger payments. However, the assets of the parties are largely non-liquid and husband would either have to borrow money to pay a substantial payment and incur additional interest expense or utilize a large portion of his monthly income in order to reduce the interest obligation.

In the instant case, the court is requiring a payment of $100,000 within six months of its announcement from the bench of its decision, and the payment over 15 years of $363,000 at 10% interest. There was nothing in the evidence which would justify a conclusion by the trial court that the husband in this case would have any way of coming up with $100,000 in six months or that he would be able to pay the sum of $363,000, or that he would even be able to meet the interest burden. At 10% per annum, the interest on $363,000 is $36,300 a year or $3,025 per month. The principal payments, if not amortized, would amount to $24,200 per year for the 15-year period provided in the decree. By the terms of the decree the amount that the husband will have to pay over the 15-year period comes out at $716,070.75.

Instead of seeking an easy (for the court) solution, the court should have grappled with the problems presented by the illiquidity of Argyle Ranch, Inc., by the corporate debt, and the profitability or unprofitability of the corporation, by the buy-sell agreement, and by the equal division of control of the corporation.

The court also abused its discretion in not taking into account the full value of the property conveyed to the corporation, as a gift to her sons, by Emma Ireta Argyle. It took only the value of the assets contributed at the time of incorporation, and at their ascribed 1963

values. It did not consider the 18,000 shares given to Arthur by his mother. This was true even though the wife, who had some inheritance (though she didn't know how much) had voluntarily relinquished her rights so that all of her father's property could go to her mother. The court, of course, can take into consideration property owned by the husband even when its acquired by a gift, but under the circumstances here, the award to the wife was excessive.

CONCLUSION

The wife had the burden of proving the value of the husband's assets to be included in the marital estate. His assets consisted primarily of 43,000 shares of stock in Argyle Ranch, Inc., and the right to acquire an additional 21,500 shares upon payment of an additional $10,000, his rights in the stock being subject to an agreement entered into in 1963 giving to him and his brother Ralph the right to buy the shares of the other, if sold, at a price of $1.00 per share.

The wife failed to put on any evidence as to the value of the shares. Her only evidence was as to the value of the underlying assets, considered piecemeal. The financial statements of Argyle Ranch, Inc., relied upon by the trial court, do not reflect the value of the stock owned by Arthur Argyle.

In arriving at the value of the stock the court should have taken into consideration the effect of the buy-sell agreement.

Even assuming that the court's valuation is correct, which is a difficult assumption, the cash award as made by the court was unfair and confiscatory, well beyond the ability of the husband to pay. On the evidence before the court the only way that he would be able to pay it would be to have the corporation dissolved and its assets sold, and he cannot force that. The corporation's borrowing capacity is not sufficient to assist the husband as a shareholder in this regard, and neither are its profits.

The court having made a finding not supported by the evidence and having abused its discretion in the method of making a cash award, the case should be reversed and remanded to the trial court for further proceedings, to determine the value of the stock and to arrive at a just and equitable method for awarding to the wife a fair share of the property acquired through the joint efforts of the couple.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of June, 1983, I served the foregoing Appellant's Brief upon Dennis Lancaster and John Thomas,

attorneys for respondent, by depositing two copies thereof in the United States mails, postage prepaid, addressed as follows:

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