

1967

Alice Mae Buck v. Edwin Holt Buck : Brief In Answer

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Recommended Citation

Reply Brief, *Buck v. Buck*, No. 10595 (1967).
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IN THE SUPREME COURT OF THE STATE OF UTAH

ALICE MAE BUCK,)

Plaintiff - Appellant,)

vs.)

Case No. 30985

EDWIN HOLT BUCK,)

Defendant - Respondent
and Cross Appellant.)

BRIEF IN ANSWER

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FILED

JUN 30 1967

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

ALICE MAE BUCK)
Plaintiff - Appellant,)

vs.) Case No. 10595

EDWIN HOLT BUCK,
Defendant - Respondent
and Cross - Appellant,)

BRIEF IN ANSWER

NATURE OF THE CASE

Petition for Rehearing to modify the decision of the Supreme Court in the above entitled matter, filed May 25, 1967.

STATEMENTS OF FACTS

The Supreme Court held that the Plaintiff, Appellant, should be treated equitably by the lower court in making a distribution of property acquired by the parties during 19 years of cohabitation where the Defendant, Respondent, concealed the invalidity of the marriage from the Plaintiff, Appellant. The Plaintiff, Appellant, requests the Supreme Court make a distribution based on the proposed accounting heretofore submitted.

STATEMENT OF POINTS

POINT I. COURT DID NOT ERR IN ITS DECISION CHARGING DEFENDANT, RESPONDENT, WITH WILLFUL DECEIT.

POINT II. THERE IS NOTHING IN THE FINDINGS OR CONCLUSIONS WHICH WOULD INDICATE THAT THE TRIAL COURT CONCLUDED THAT PLAINTIFF, APPELLANT, KNEW OF THE INVALIDITY OF THE MARRIAGE.

POINT III. THE SUPREME COURT SHOULD RENDER AN ACCOUNTING IN ACCORDANCE WITH THE PROPOSAL AS SET OUT IN PLAINTIFF, APPELLANT'S BRIEF.

POINT I. COURT DID NOT ERR IN ITS DECISION CHARGING DEFENDANT, RESPONDENT, WITH WILLFUL DECEIT.

In reply to Defendant, Respondent's Statement of Points in Defendant's Brief in Support of Petition for Rehearing, Plaintiff, Respondent, respectfully submits the following. We bring to the Court's attention that starting on the last line on page 392 and continuing on 393 of the transcript, the Plaintiff testified that the defendant had informed her that in the event he obtained a divorce in Mexico, the marriage then would be valid even though his interlocutory time had not expired on his previous divorce and that Mrs. Buck fairly and honestly believed that the marriage was valid until last year when the action was filed by Mr. Buck for an annulment. Mr. Buck never denied that he had so stated and had lead Mrs. Buck into this belief.

POINT II. THERE IS NOTHING IN THE FINDINGS OR CONCLUSIONS WHICH WOULD INDICATE THAT THE TRIAL COURT CONCLUDED THAT PLAINTIFF, APPELLANT, KNEW OF THE INVALIDITY OF THE MARRIAGE.

We would like to bring to the attention of the Court that on page 393 of the transcript Mrs. Buck indicates that Mr. Buck was the one who informed her the marriage would be good if he first obtained a Mexican divorce and that she believed him, and relying upon this entered into the new marriage. Nowhere does Mr. Buck deny that he had so informed Mrs. Buck.

Nowhere in the transcript is there any testimony to indicate that Mrs. Buck ever knew that the marriage to Mr. Buck was illegal, but Mr. Buck did know of this. The transcript, on page 123 and 124, shows Mr. Buck was informed by his friend and neighbor, Attorney Alan H. Bishop, that the Mexican divorce and marriage were questionable and advised the Defendant that they should be remarried; but in spite of this advice and information, Mr. Buck did nothing. He did not inform the Plaintiff of the advise of the attorney nor did he do anything to make the marriage legal.

The Defendant would have the Court believe that although it was his divorce that was not final, although it was upon his advice and counsel and persuasion that they went to Mexico to have a divorce before they were married, it was upon his advice and counsel that such a marriage would be valid, although he had been notified by a competent attorney that they should be remarried, although he failed to pass this information on to his wife but determined after such counsel to do nothing about it, although his wife by the testimony of all of the witnesses was an exceptionally fine wife who not only did all of the things

that were customary and usual but in addition to that performed services in the business as well, yet after 19 years of marriage to the plaintiff and with the plaintiff now beyond the age of being able to be employed defendant wants to say that he wishes to take advantage of all these instances of wrong doing to his great pecuniary advantage. There is nothing in the record or in the findings of the Court to indicate that in anyway Mrs. Buck did not feel that the marriage was valid. To allow Mr. Buck to be rewarded by the fruits of his nondisclosure and deceit and by his acts of leading Mrs. Buck into what she thought was a valid marriage would be contrary to every principal of equity. The Supreme Court, upon the testimony and upon the facts of the case, certainly was correct in holding that Mr. Buck was guilty of deceit, of nondisclosure of the truth and Mrs. Buck should be awarded the consideration she would have received had she been legally married throughout the 19 years of cohabitation as she thought she was.

POINT III. THE SUPREME COURT SHOULD RENDER AN ACCOUNTING IN ACCORDANCE WITH THE PROPOSAL AS SET OUT IN PLAINTIFF, APPELLANT'S BRIEF.

The Plaintiff, Appellant, feels that the Supreme Court was correct in its decision, except the Plaintiff, Appellant, feels the Supreme Court did not go far enough and should have made distribution of the property as set forth in the Plaintiff's accounting as set out on page 21, 22 of Appellant's Appeal Brief. The Plaintiff, Appellant, has pointed out to the Supreme Court that the Plaintiff feels the Trial Judge was in error on the accounting that the Court made and the amount set out by the Trial Court as to values were not complete or correct; therefore, the Plaintiff, Appellant, respectfully petitions said Supreme Court

to make a distribution of the property as requested in Plaintiff, Appellant's original Appeal Brief.

CONCLUSION

The Supreme Court did not err in its decision of May 25, 1967, but should make the actual distribution as set forth in Plaintiff, Appellant's Brief.

Respectfully submitted,

BROWNING, HANDY AND
JUDD

Attorneys for Appellant