1966

Donald F. Slaughter v. Marian T. Slaughter : Brief of Appellant

IN THE SUPREME
OF THE STATE

ALD F. SLAUGHTER,
Plaintiff and

—

IAN T. SLAUGHTER,
Defendant

BRIEF OF

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Authorities Cited

IN THE SUPREME COURT OF THE STATE OF UTAH

DONALD F. SLAUGHTER,
Plaintiff and Respondent,

— vs. —

MARIAN T. SLAUGHTER,
Defendant and Appellant.

Case No. 10602

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an action for divorce filed by the husband. Appellant sought to avoid a divorce on the ground that the court was without jurisdiction by reason of the lack of statutory residence of the respondent. In the alternative, if the court determined it had jurisdiction, appellant sought a divorce in her favor.

DISPOSITION IN THE LOWER COURT

The lower court determined it had jurisdiction and granted a divorce in favor of appellant, awarded to her custody of the minor son of the parties, made a division of property, and granted to appellant alimony and support money.

RELIEF SOUGHT ON APPEAL

Appellant seeks the aid of this court to obtain a property settlement, alimony and support money more favorable to her than that allowed by the lower court.

STATEMENT OF FACTS

The parties were married in Salt Lake City, Utah in 1942 (R. 80). At the time of the trial the respective ages of appellant and respondent were 48 and 50 years (R. 80, 35). Three children were born of the marriage as follows: Mary, a married daughter; Janeen, age 19, who was a student at the University of Virginia; and Donald, born in 1953. Respondent was a member of the armed forces of the United States at the time of the marriage (R. 35) and continued as such until he retired as a Colonel in August, 1965 (R. 94, 36). During the marriage, respondent was stationed in numerous places in the United States, also in Germany and Thailand. Appellant and family were with respondent while he was in Europe and most of the places in the United States (R. 98). Marital trouble which finally led to separation of the parties occurred at about the time respondent went to Thailand in 1962. Appellant complains that respondent had a plan to leave his family. Another woman was involved (R. 79, 80). In any event, respondent did leave the family home and refused to return (R. 79). At the time of the trial appellant was living in the home of the parties in Arlington, Virginia, and respondent was living in Bellevue, Washington, and was employed by the Highland College in the State of Washington. Donald, the minor son, was living with his mother in Virginia.

ARGUMENT

POINT NO. 1

THE LOWER COURT ABUSED ITS DISCRETION IN THE DIVISION OF PROPERTY AND IN THE FIXING OF THE AMOUNT OF ALIMONY AWARDED WHICH REQUIRES CORRECTION BY THIS COURT.

The following is a list of the property of the parties and the value placed thereon:

Home in Virginia (Value $26,000.00 less mortgage of $14,000.00)	$12,000.00
Home in Salt Lake City, Utah	19,000.00
Buick automobile	800.00
Volkswagon automobile	1,000.00
Savings Account in the joint names of the parties:	
Deseret Federal Savings & Loan Association, Salt Lake City, Utah	7,407.00
Arlington Fairfax Savings & Loan Association, Arlington, Virginia	9,852.00
Cumberland Valley Savings & Loan Association, Carlisle, Pa.	3,238.00
Savings Account in Arlington Fairfax Savings & Loan Association, Arlington, Virginia, in joint names of parties and Janeen Slaughter (daughter)	2,040.00
Savings Account in Arlington Fairfax Savings & Loan Association, Arlington, Virginia, in joint names of parties and Donald Slaughter (son)	182.00
23 — $100.00 United States Savings Bonds in the joint names of the parties	2,600.00

Corporate stock in joint names of parties (which was sold by respondent after divorce action commenced), Exhibit No. 1, Sale price	15,556.00
Inheritance from respondent's mother	15,000.00
Total	$88,675.00

No value was placed on the household furniture of the parties, some of which was in possession of each of the parties at the time of the trial.

In addition to the furniture in her possession, the lower court awarded to appellant the following:

Home in Virginia	$12,000.00
Buick automobile	800.00
Three Savings Accounts in the names of the parties	20,497.00
Total	$33,297.00

The lower court awarded to respondent furniture in his possession and the following:

Corporate stock sold by respondent, sale price	$15,556.00
Volkswagen automobile	1,000.00
Savings Bonds	2,600.00
Two Savings Accounts with the children	2,222.00
Home in Salt Lake City, Utah	19,000.00
Total	$40,378.00

Factors which should be considered in determining the property rights of the parties are enumerated in *Pinion* v. *Pinion*, 92 Utah 255, 67 P. 2d 265, and *MacDon-*

ald v. *MacDonald*, 120 Utah 573, 236 P. 2d 1066. Applied to the parties in this action some of said factors are:

At the time of the marriage —

He was 26 and she was 24 years of age (R. 25, 80).

He was in the armed forces; she was a school teacher (R. 35, 98).

He had an automobile; she had seven or eight hundred dollars in savings and a trousseau (R. 94).

The health of both was good.

Both were college graduates (R. 35, 93).

At the time of the divorce —

The duration of the marriage was 24 years (R. 80).

His health was good — her health was poor.

He had an income in excess of $1,400.00 per month ($736.30 take-home pay from Highland College and $642.17 army retirement pay (R. 94, 95). She had no income and was entirely dependent upon him (R. 93, 94).

He was 50 years old and had a life expectancy of approximately 23 years. She was 48 years old and had a life expectancy of approximately 29 years.

Children of the marriage consisted of one daughter who was married, one daughter who was 19 years of age and attending college, and a boy, age 12, living with his mother (R. 81).

An inheritance of $15,000.00 was acquired by respondent from his mother before the divorce action was filed (R. 95). Respondent had conrtibuted approximately $2,500.00 to his mother over a period of some seven years before her death in 1964 (R. 89).

This court said in *Wilson v. Wilson*, 5 Utah 2d 279, 296 P. 2d, 977, 979:

> "* * * The court's responsibility is to endeavor to provide a just and equitable adjustment of their economic resources so that the parties can reconstruct their lives on a happy and useful basis. In doing so it is necessary for the court to consider, in addition to the relative guilt or innocence of the parties, an appraisal of all of the attendant facts and circumstances: The duration of the marriage; the age of the parties; their social positions and standards of living; their health; considerations relative to children; the money and property they possess and how it was acquired; their capabilities and training and their present and potential incomes."

The lower court failed to provide a "just and equitable adjustment" of the resources of the parties. Such failure occurred both with respect to the division of property as well as in fixing the amount of alimony.

Excluding furniture, the value of the property awarded is $33,297.00 to appellant and $40,378.00 to respondent. Respondent received an inheritance from his mother having the value of $15,000.00 (R. 95). The lower court failed to include the inheritance as part of the resources of the parties subject to division. Such was tantamount to awarding the inheritance to respondent. The value of the property awarded to respondent, including the inheritance is $55,378.00 which is 63% of the total assets and exceeds the value of the portion of the property awarded to appellant by the sum of $22,000.00.

Admittedly most of the assets of the parties were acquired through the earnings of respondent. However, appellant was qualified as a school teacher and taught school for a portion of the time during the marriage (R. 93). Most of the Savings Accounts had been accumulated from allotment checks which went to appellant and were saved by her (R. 88). Thus the earnings of appellant and her frugality are highly significant factors which contributed materially to the resources of the parties.

The court, in *Habbeshaw* v. *Habbeshaw,* 17 Utah 2d. 295, 409 P. 2d 972, in effect approved an award to the wife of substantially one-half of the property of a value of $175,000.00. In addition she received a Cadillac automobile, $550.00 per month alimony, and protection of $150,000.00 of life insurance. The marriage was only four years longer than that in the case at bar and all of the four children were adults, three of whom were married. We submit that equity and justice require an equal division of the property between the parties in the case at bar. Yet, excluding the inheritance, the trial court would have appellant take $7,000.00 less than respondent and, with the inheritance included, the appellant comes out with $22,000.00 less than respondent. Inheritance is a factor which should have been considered by the lower court in determining the property rights of the parties. (*MacDonald* v. *MacDonald,* supra.) Exclusion of the inheritance from the resources of the parties in the division made by the lower court was an abuse of discretion. Such abuse is all the more glaring in the case at bar by the fact that the resources of the parties

were diminished in the approximate sum of $2,500.00 by contributions made by respondent to his mother.

The lower court awarded alimony and support money to appellant in amounts of $300.00 and $100.00 per month, respectively. The undisputed evidence is that the minimum needs of appellant total $492.00 per month (R. 92); that she is presently unable to pursue her career as a school teacher (R. 94); that she is entirely dependent upon respondent for support and maintenance (R. 94); and that prior to separation, respondent made an allotment to her in the sum of $800.00 per month (R. 100). The evidence also shows that respondent has an income in excess of $1,400.00 per month, consisting of $736.30 take-home pay from Highland College in the State of Washington and $642.17 per month army retirement income. It is reasonable to expect respondent's income will continue in the same or increased amounts for approximately 15 years until normal business retirement at age 65. He will have the army retirement income for life. It is also reasonable to assume appellant will have no income. The lower court would have appellant and minor son get by on $400.00 per month while respondent, after paying the alimony and support money, would still have $1,000.00 per month for himself. This is an abuse of discretion.

There is no problem in this case of trying to cut "one blanket to cover two beds" as stated by the court in *MacDonald* v. *MacDonald,* supra. Fortunately, respondent's income is sufficient to permit appellant to be sustained in a manner somewhat comparable to that which she has

been accustomed without injury to respondent. The standard of living to which appellant has been accustomed is reflected somewhat by the allotment of $800.00 per month made for her by respondent prior to separation. For the trial court to limit appellant to alimony in the sum of $300.00 per month is an abuse of discretion. The trial court would deny appellant the privilege of living by her accustomed standard although the income is sufficient to permit this to be done without prejudice to respondent. The trial court would permit respondent to retain for his living expenses more than three times the amount allowed to appellant therefor. The inequity of the decree of the trial court is further magnified by the fact that respondent gets a tax deduction for alimony paid while the already meager award to appellant is reduced by the tax she is required to pay.

All that has been urged heretofore has been without consideration as to the guilt or innocence of the parties. This court indicated in *Wilson* v. *Wilson,* supra, that punitive measures have no place in a divorce decree. However, the court observed in the *Wilson* case "that the court may, and as a practical matter invariably does, consider the relative loyalty or disloyalty of the parties to their marriage vows, and their relative guilt or innocence in causing the breakup of the marriage * * *." The record is brief but clear and undisputed that respondent is responsible for the "break up of the marriage." He left appellant; refused to live with her; refused to return; worked out a plan to leave his family; disturbed another family and became involved with another woman (R. 79, 80). Regardless of the foregoing, appellant was willing

to take him back (R. 70) and made clear to the court her true feelings were that she did not desire a divorce (R. 116). In the *Wilson* case the husband had fallen in love with another woman. The trial court awarded the wife almost all of the property and alimony in the sum of $5,000.00. The husband complained that the trial court had penalized him for falling in love with another woman. This court upheld the award to the wife of almost all the property but modified the decree with respect to alimony from $5,000.00 to $2,400.00 By way of contrast, in the case at bar it would appear that the trial court would penalize the innocent party who is willing to forgive and forget and who had attempted to preserve the marriage and that it would reward the philanderer who has "walked away" from the marriage and wants "out."

The function of the appellate court in a divorce action has been stated in two recent cases as follows:

Martinett v. *Martinett*, 8 Utah 2d 202, 331 P. 2d 821:

> "We are in accord with the postulate advocated by the defendant that divorce proceedings being in equity, this court will review the evidence and may substitute its judgment for that of the trial court if circumstances warrant doing so. Nevertheless, it is firmly established in our law that the trial judge will be indulged considerable latitude of discretion in adjusting the financial and property interests of the parties; conversely, however, if there is such serious inequity as to manifest a clear abuse of discretion, this court will make the modification necessary to bring about a just result. * * *"

Graziano v. *Graziano*, 7 Utah 2d 187, 321 P. 2d 931:

> "* * * Termination of the marriage being inevitable, the object to be desired was to fashion a decree which would be just and equitable under the circumstances and, insofar as possible, minimize the animosity which had developed; and to provide the best possible basis for the parties to reconstruct their lives in a happy and useful manner, with primary concern for the welfare of their child. We remain mindful of the propriety of indulging deference to the judgment of the trial court in that regard and of not lightly disturbing it. Yet under the broad powers of review in equity with which this court is endowed, when a divorce decree is under attack, it has always been regarded as an attack upon the whole decree, and when it appears that there is an abuse of discretion so that an inequity or injustice is wrought, the court has proceeded to make such adjustments as it deemed necessary to do justice between the parties and to give effect to the purpose just mentioned above."

We respectfully submit that equity and justice require a modification of the decree to award to appellant at least one-half of the property and alimony commensurate with her minimum needs according to her undisputed testimony.

CONCLUSION

Appellant sought to resist the divorce on jurdisdictional grounds. The trial court summarily resolved the jurisdictional question (R. 77) and indicated that he was obligated by reason of the law in this state to grant a divorce (R. 116). The true feeling of appellant is clear that she does not desire a divorce (R. 116). If the law is such that a divorce must be forced upon her against her will at least she should not be penalized by being deprived of her rightful share of the accumulated property and of sufficient funds to permit a comfortable living. Proper application to the case at bar of the factors used to determine the property rights of the parties leads to but one conclusion that "serious inequity" and "abuse of discretion" in the decree of the trial court require modification and adjustment by this court in order to accomplish justice and equity in behalf of appellant.

Respectfully submitted,

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