1966

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

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

RESPONDENT'S BRIEF

Appeal from Judgment of the Third Judicial
District Court for Salt Lake County
State of Utah
The Honorable Stewart M. Hanson, Judge

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STATEMENT OF THE NATURE OF CASE

This is an action for divorce, filed by the husband and Respondent. Defendant contested jurisdiction or in the alternative sought a divorce on her Counterclaim.

DISPOSITION IN THE LOWER COURT

The lower court found jurisdiction and granted a divorce to the defendant-appellant, awarded her custody of the minor child of the parties, and ordered a division of the property, and granted alimony and support money to the appellant.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the Decree of Divorce entered by the trial Court in all respects affirmed.

STATEMENT OF FACTS

The Statement of Facts contained at page two of Appellant's Brief are essentially correct, and will be accepted by the Respondent except as modified in argument, and expanded by reference to the record.

The Appellant and Defendant does not contest the finding of the Court that jurisdiction over the parties existed or that the Court erred in awarding a Decree of Divorce. Under Finding IV (R. 5, 6) the Court found that "plaintiff has treated defendant in a cruel manner in that he has stated that he no longer loves the defendant; that he does not intend to live with the defendant and has refused to live with the defendant . . ." as the only basis for granting the divorce and no appeal is taken from this finding. Other references in Appellant's Brief to alleged misconduct of plaintiff are therefore immaterial. The Defendant was permitted to proceed on her Counterclaim by arrangement, and the inventory of difficulties which developed between the parties is certainly not complete from plaintiff's standpoint, nor was it intended to be. However, Appellant's reference in her Brief to the fact that the marital difficulties between the parties commenced when the Respondent, a Colonel with the United States Military Forces, was transferred to Thailand in 1962, is true. The Appellant refused to accompany him on that assignment.

ARGUMENT

POINT I

THE COURT DID NOT ABUSE ITS DISCRETION IN THE DIVISION OF PROPERTY, NOR IN FIXING THE AMOUNT OF ALIMONY.

This Court has repeatedly reiterated the principles which will govern on appeal in a divorce proceeding relative to alimony and division of property of the parties. The case of *Allen v. Allen*, 109 U.99, 105, 106, 165 P.2d 872 (1946), referred to numerous earlier cases in support of that principle:

> ". . . The Supreme Cout will not substitute its judgment in a divorce proceeding relative to alimony and division of property for that of the trial court unless the record clearly discloses that the trial court's decree in such matters is plainly arbitrary."
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> * * *
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> "We believe that the great weight of authority supports the rule that a decree of the trial court in divorce proceedings, relative to alimony and division of property, will not be modified except where the trial court has abused its discretion. Otherwise, the appellate court by its own actions, would alter the purpose for which it was created. An appellate court cannot remain a court of appeals and invite a review of every case decided by a lower tribunal where its judgment fails to satisfy one or both parties to the litigation."

See also, *Knighton v. Knighton*, 15 Ut.2d 55, 387 P.2d 91; *Michelsen v. Michelsen*, 14 Ut.2d 328,

383 P.2d 932 (1963); *McBroom v. McBroom*, 14 Utah 2d 393, 384 P.2d 961; *Tsoufakis v. Tsoufakis*, 14 U.2d 273, 382 P.2d 412 (1963); *Sorensen v. Sorensen*, 14 U.2d 24, 376 P.2d 547; *Madsen v. Madsen*, 2 Ut.2d 423, 276 P.2d 917; *Tremayne v. Tremayne*, 116 Ut. 483, 211 P.2d 452; *Anderson v. Anderson*, 104 U.104, 138 P.2d 252.

Although in an equity case the Supreme Court may review the whole decree, it has declared that it will indulge every presumption in favor of sustaining the action of the trial court, and is reluctant to interfere with its determination. *Knighton v. Knighton*, 15 Utah 2d 66, 387 P.2d 91. The trial judge is accorded "wide latitude of discretion" and his judgment will not be changed lightly or at all, unless facts are shown by the evidence that manifest inequity has resulted. *Whitehead v. Whitehead*, 16 Ut.2d 179, 397 P.2d 987.

With these principles in mind, an examination of the facts of the present case reveals that the court did not abuse its discretion but made an equitable distribution of property and fair provision for alimony and other benefits under all the circumstances.

The record indicates that the property acquired by the parties as a result of their joint efforts during the period of their marriage may be summarized as follows:

Home in Virginia (Value $26,000.00, less Mortgage of $14,000.00) (R. 9, 29, 57)	$12,000.00

Home in Salt Lake City, Utah (R. 87)	19,000.00
Buick automobile (R. 57)	800.00
Volkswagon automobile (R. 57)	1,000.00
Savings Account in the joint names of the parties (R. 85, 86, 57, 58):	
Deseret Federal Savings & Loan 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 and Loan Association, Arlington, Virginia, in joint names of parties and Janeen Slaughter (daughter)	2,040.00
Savings Account in Arlington Fairfax Savings and Loan Association, Arlington, Virginia, in joint names of parties and and Donald Slaughter (son)	182.00
23 $100.00 United States Savings Bonds in the joint names of parties (R. 95, 58) approx. value	2,600.00
Corporate stock in joint names of parties Sales Price (Plaintiff's Exhibit 1, R. 86)	15,556.00
Checking account, Bank of America (R. 108)	2,600.00
Furniture (R. 103)	5,500.00
TOTAL	$81,775.00

The trial court awarded the Appellant the following property:

Home in Virginia	$12,000.00
Buick automobile	800.00
Three Savings Accounts in the names of the parties (Balance indicated were 1965 figures, and interest would increase the amount of this cash award)	20,497.00
Checking account in Bank of America, which had been transferred to other accounts were utilized by Appellant	$ 2,600.00
Furniture (R. 29)	4,500.00
TOTAL	$ 40,397.00

The trial court awarded the Respondent the following:

The Corporate stock sold by Respondent, sale price	$15,556.00
Volkswagon automobile	1,000.00
Savings Bonds	2,600.00
Two savings accounts held jointly with children	2,222.00
Home in Salt Lake City, Utah	19,000.00
Furniture	1,000.00
TOTAL	$41,378.00

The Respondent was also required to pay $1,500.00 for the use and benefit of the Appellant's attorney; a capital-gain tax of approximately $800.00 had accrued by reason of the sale and re-

investment of capital stock which he must pay (R. 104) and the defendant had paid approximately $1,300.00 toward the college education of their second child during the previous year, and that expense will continue (R. 107). As noted above, $2,222.00 was included in the property values awarded to the Respondent, which are accounts maintained in the joint names of the two younger children of the parties. The value of properties awarded Respondent should properly be reduced by this amount. He is required to keep in full force all life insurance, totalling $49,000.00, on his life, and the defendant is the named principal beneficiary (R. 58). The plaintiff was required to become indebted in connection with the purchase of another home to maintain himself in connection with his new employment as an instructor at Highland College in Washington (R. 94, 109, 110).

The defendant is a graduate of the University of Utah, and is a qualified teacher. If she were to resume her teaching career, she would have to return to school presumably to reinstate her teaching certificate, which she permitted to expire (R. 93, 94). She did substitute teaching while living in Germany with her husband. There is no reason why she cannot continue her teaching profession if she desires. This is a factor the trial court was entitled to consider in making a division of the property. See *Allen v. Allen,* 109 Ut.99, 107, 165 P.2d 872.

The plaintiff was given a fair settlement in

excess of $40,000.00 in value, together with an alimony award of $300.00 per month, and insurance protection on the life of the plaintiff in the sum of $49,000.00. The property of the parties has been accumulated through extensive efforts on behalf of the plaintiff who rose to the rank of a Colonel in the United States Military Service and the frugality of both. There is no reason to expect that her frugality and industry will not continue in her own behalf. Additionally, she still has an election to return to her teaching profession, if she determines it would be in her best interests to do so.

The plaintiff received an inheritance from his mother of approximately $15,000.00. The inheritance was not accumulated through the joint efforts of the parties. The Appellant never had any interest in it, nor was it accumulated as a result of her cooperative effort. The trial court properly permitted this inheritance to remain the property of respondent.

Although the Appellant listed her monthly needs at $492.00 for the support of herself and minor child, review of her itemization will indicate that they were estimates at best, and in some instances the items included cannot in fairness be claimed as essential to her proper maintenance and care (R. 92). The court awarded a total of $400.00 for herself and the child. Additionally, interest income will accrue on savings accounts, in excess of $20,000.00, awarded to her by the Court.

The Appellant argues in her Brief at Page Ten that her "true feelings" were that she did not desire a divorce. The fact is that she filed and proceeded to trial on her Counterclaim. The Appellant infers that because she was awarded a divorce, that the plaintiff must be solely responsible, and that she should therefore be compensated. This is certainly not a factor which should influence the division of property between parties in cases of this kind. Both parties sought relief for the alleged misconduct of the other.

It is submitted that the trial court did not abuse the considerable latitude of discretion which it is given in making an equitable adjustment of the property interests between parties. It is evident that the Court attempted to make an approximate fifty-fifty division of the jointly accumulated property of the parties, and then required the plaintiff to provide additional protection in the form of insurance, and other benefits, to insure even greater security to the Appellant. In view of these facts, the Appellant is certainly in no position to seriously urge that she is being "penalized" by being deprived of her rightful share of the accumulated property and of sufficient funds to permit a comfortable living.

CONCLUSION

The Court acted within its permissible discretion in making a division of the property between the parties and in making provision for alimony, support and other benefits by the Respondent.

Respectfully submitted,

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