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Walter Corbet v. Arta 0. Corbet : Brief of Appellant

In the Supreme Court of the State of Utah

WALTER CORBET,

Plaintiff and Respondent,

vs.

ARTA O. CORBET,

Defendant and Appellant.

Case No. 11910

BRIEF OF APPELLANT

Appeal from a Judgment of the Sixth District Court
Sanpete County, State of Utah
The Honorable Ferdinand Erickson, Judge

DON V. TIBBS, for:
TIBBS AND TERVORT
Manti, Utah
and
JACKSON HOWARD, for:
HOWARD AND LEWIS
120 East 300 North
Provo, Utah

Attorney for Defendant
and Appellant

GEORGE S. BALLIF, for:
BALLIF AND BALLIF
84 East 100 South
Provo, Utah

Attorneys for Plaintiff
and Respondent

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In re Capolino, 94 Cal. App. 2d 574, 210 P.2d 850(1949).

Stone v. Stone, 19 Utah 2d 378, 431 P.2d 802(1967).

Utah Code Annotated (1969 Repl. Vol.) Section 25-5-1.

Utah Constitution, Art. VIII, Sec. 9.

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NATURE OF THE CASE

This is an action for dissolution of a partnership and for a partnership accounting.

DISPOSITION IN LOWER COURT

The court below entered judgment for plaintiff, ordering dissolution of the partnership and accounting for the alleged assets of the partnership as requested by plaintiff.

RELIEF SOUGHT ON APPEAL

Appellant agrees that the partnership should be dissolved but contends that the court below erred as to the terms of the partnership agreement and requests that the judgment be reversed and the case remanded for findings and judgment consistent with the true terms of the partnership agreement.

STATEMENT OF FACTS

Plaintiff and defendant were married December 28, 1954, at Las Vegas, Nevada, both having been married previously. The parties were divorced by decree of the Sixth District Court for Sanpete County, which decree became final December 28, 1962.

Although the time of reconciliation is disputed, sometime between November, 1962, and March, 1963, the parties decided to resume the marriage relationship and for that purpose filed a petition to set aside the decree of divorce. The Sixth District Court set aside the decree on April 8, 1963, and the parties lived thereafter as husband and wife until sometime prior to July, 1968, when defendant commenced an action for divorce. The divorce action was dismissed November 21, 1968, on the ground that the order setting aside the previous divorce decree was a nullity.

It is agreed that during the period following the reconciliation until defendant filed for divorce in July, 1968, the parties regarded themselves as husband and wife and were engaged during part of that period in a partnership, the exact scope and terms of which are in dispute.

According to plaintiff, the partnership commenced with the reconciliation and extended to all of the previously separate property of plaintiff and defendant. Plaintiff's calculations as to the respective capital con-

tributions of the parties to the partnership are shown on Exhibit 3.

Defendant's calculation of the partnership capital account is shown on Exhibit 21.

It will be seen from a comparison of plaintiff's and defendant's calculations of the capital account that the chief dispute centers about whether the so-called "Sterling Ranch" and a joint account of the parties at the Manti City Bank were or were not assets of the partnership.

It is plaintiff's position that the partnership agreement was oral and was entered into at the time of reconciliation in March, 1963. (R.1)

Defendant contends that the partnership agreement was reduced to writing in April, 1965, that it related only to the trailer sales business which parties entered into in the spring of 1964 in St. George, Washington County, Utah, and that the said written agreement provided for a monthly wage of $300.00 to be paid to the defendant. (R.11) According to defendant, the $300.00 monthly wage was to be retained in the partnership as a capital contribution from defendant and appears as such on Exhibit 21.

It is the purpose of this brief to demonstrate to this Court that the trial court erred in finding that the evidence supported plaintiff's view of these disputed matters.

ARGUMENT

POINT I

THIS ACTION FOR PARTNERSHIP ACCOUNTING IS EQUITABLE IN NATURE AND APPEAL MAY BE MADE ON QUESTIONS OF FACT AS WELL AS LAW.

The Utah Constitution, Article VIII, Section 9 provides with respect to appeals from the district courts to the Supreme Court that

> "In equity cases, the appeal may be on questions of both law and fact . . ." *Cf.* Stone v. Stone, 19 Utah 2d 378, 431 P.2d 802(1967).

That an action seeking an accounting is equitable in nature is universally held and the Utah Supreme Court has expressly so recognized in Bear River State Bank v. Merrill, 101 Utah 176, 120 P.2d 325(1941). As the Court stated in that case,

> "And where it is claimed that the facts found by the trial court are not supported by the evidence, the appellants are entitled to a full review of the evidence and a determination by the Supreme Court." 120 P.2d 327.

POINT II

THE COURT ERRED IN FINDING THAT THERE WAS NO WRITTEN PARTNERSHIP AGREEMENT BETWEEN THE PARTIES.

In the spring of 1965, the parties hired one Lanny Lund to manage the trailer sales lot in St. George during the summer of that year. Defendant testified that in April of 1965, she prepared a draft of a partnership

agreement (Exhibit 1) and that from that written draft Mr. Lund prepared a typewritten agreement. She further testified that the typewritten document was signed by herself and plaintiff in the presence of a notary public, Mrs. Lillian Covington. (R.125-32)

Mr. Lund confirmed the testimony of defendant and added that he recalled specifically the provision for the payment of a monthly salary of $300.00 to defendant. (R.138)

The notary, Mrs. Covington, also confirmed the testimony of Mrs. Corbet, specifically recalling the stationary on which the agreement was typed and the circumstances under which it was brought to her for notarization. (R.154-48)

The further evidence was that the typewritten, signed and notarized agreement was placed in a metal box belonging to plaintiff and retained by him. (R.511)

Plaintiff sought to discredit the written draft of the agreement, offered in evidence by defendant pursuant to Section 78-25-16(2) Utah Code Annotated (1953), on the ground that the date of the draft was tampered with between the time of defendant's deposition and the trial. To support this argument, plaintiff introduced in evidence a faded machine copy of the draft made at the time of the deposition (Exhibit 29) which does not show the tear in the area of the date which now appears on the original. It is apparent, how-

ever, that the difference between the copy and the original is to be accounted for by the failure of the machine to reproduce any of the tears on the margin of the document.

There was also conflicting expert evidence as to the date of the document. (Exhibits 38, 40) The expert evidence is, however, inconclusive and represents mere conflicting speculations.

Thus, the only substantial evidence produced by plaintiff to deny the existence of a written partnership agreement as alleged by defendant was plaintiff's own self serving denials. When these are balanced against the strong testimony of two independent witnesses, Mr. Lund and Mrs. Covington, it is clear that the trial court acted contrary to the manifest weight of the evidence in holding for the plaintiff on this issue.

POINT III

THE COURT ERRED IN FINDING THAT SEPARATE PROPERTY OF DEFENDANT CONSTITUTED ASSETS OF THE PARTNERSHIP.

Central to plaintiff's case is the contention that the joint bank account in the Manti City Bank and defendant's ranch at Sterling constituted assets of the partnership.

A. BANK ACCOUNT — MANTI CITY BANK

As to plaintiff's contention that the Manti City Bank account was a partnership account, it is a suffic-

ient rebuttal to note, as conceded by plaintiff in his Exhibit 7, that this account was used by defendant for deposits and disbursements of monies to her children which by no stretch of the imagination could have had anything to do with an alleged partnership existing during the years 1963-64. It was defendant's testimony that plaintiff's name was added to the account in the Manti City Bank at his request over her objections. (R. 476) Defendant further testified that the understanding with respect to the account was that the funds deposited in the account should be used for their living expenses and that if and when they were able to find a location for a trailer sales lot, money would be taken from the account to commence such business. (R. 477) In fact, the sum of $1,351.64 was transferred from the Manti City Bank account to the partnership account opened in the Bank of St. George in connection with the establishment of the partnership in the spring of 1964. That the Manti account was not a partnership account is further evidenced by the fact that a separate partnership account was established in St. George.

Plaintiff's contention that the Manti City Bank account was a partnership account is thus without merit or support in the evidence.

B. STERLING RANCH

As to plaintiff's contention that the Sterling Ranch was a partnership asset, it is clear that the ranch was a part of defendant's deceased husband's estate, that

the record title has always remained with her or members of her immediate family and had never been vested in plaintiff, and that defendant never had any intention of giving to plaintiff any interest in the said ranch property. Defendant's testimony and the chain of title both indicate that she regarded herself as holding the property in trust for her children. This is supported by the fact that she transferred title to the children in 1962 and received back a deed later in that year which she *did not record* until 1965 when she sold the property and gave part of the proceeds to the children. (R. 478-84, Exhibit 30) Plaintiff's declarations to the contrary are self serving, without substantial support in the evidence and clearly inconsistent with the limited scope of the partnership as evidenced by the written agreement entered into by the parties in April, 1965.

C. MORTGAGE INTEREST OF WALTER

Additional evidence that the partnership did not include the "separate properties" of the parties is found in the fact that a mortgage obligation due plaintiff from his son was released by plaintiff in 1965 unilaterally and without consulting plaintiff. (R. 274, Exhibits 41, 42). Plaintiff's position thus becomes in effect, "what's yours is mine, and what's mine is mine." That the trial court could so find is further evidence of its utter disregard of the facts.

POINT IV

PLAINTIFF'S ALLEGED ORAL AGREEMENT WITH

DEFENDANT TO TRANSFER HER REAL PROPERTY TO THE PARTNERSHIP VIOLATES THE STATUTE OF FRAUDS AND IS UNENFORCEABLE.

The Statute of Frauds, Section 25-5-1 Utah Code Annotated (1969 Repl. Vol.) provides:

> "No estate or interest in real property, other than leases for a term not exceeding one year, nor any trust or power over or concerning real property or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing."

An exception to the statute is recognized for parol grants under limited circumstances:

> "It must appear by evidence that is clear, convincing, and unequivocal: (1) that there was a parol grant or gift by a contract or agreement which must be complete and certain in its terms; (2) possession taken and improvements made by the donee pursuant to and in reliance upon such oral gift; (3) that the improvements so made are substantial, and, not as an absolute rule but as a guiding principle, that the value thereof be in excess of the rental value during the time of occupancy; and (4) strong equities in favor of the donee, so strong that it would amount to a fraud upon him to allow the statute to be interposed to defeat his claim . . . The requisite of clear conclusive and unequivical

> evidence is especially important in the case of a parol gift of land, since the fact that the parties are usually relatives tends to account for plaintiff's occupation of the land as permissive, not as the result of contract. The proof must indicate more than a vague intention to give, or a family arrangement resting upon the will of the parties." Boland v. Nihlros, 77 Utah 205, 293 P.7, 10(1930).

Clearly, however, no such unambiguous state of facts supports plaintiff's claim to the "Sterling Ranch" as a partnership asset.

POINT V

THE RECORD TITLE OF THE RANCH PROPERTY CREATES A REBUTTABLE PRESUMPTION OF OWNERSHIP WHICH PLAINTIFF FAILED TO MEET.

Furthermore, it is a proposition beyond dispute that the record title constitutes presumptive evidence of the ownership of the ranch and, in the absence of substantial evidence to the contrary, is conclusive. Hawe v. Hawe, 89 Idaho 367, 406 P.2d 106(1965); In re Capolino, 94 Cal. App.2d 574, 210 P.2d 850(1949).

> "The rule is well settled that one who would claim the ownership of property of which the legal title stands of record in another . . . must establish such claim by evidence that is clear, satisfactory and convincing." 210 P.2d 852.

The only evidence introduced by plaintiff to support his claim was his own self serving declaration that defendant agreed to convey the property to the alleged partnership. In finding the ranch to be a partnership

asset, the trial court erred both in fact and in law.

POINT VI

THE JUDGMENT OF THE TRIAL COURT IS SO VAGUE AS TO BE INCAPABLE OF IMPLEMENTATION WITHOUT FURTHER LITIGATION.

The calculations upon which the trial court based its judgment as to the distribution of the alleged partnership assets are identical with those of plaintiff's settlement proposal. (Exhibit 19) First, the judgment adds the current value of the alleged assets ($82,850.32), including the proceeds of the sale by defendant of her separately owned ranch property. The alleged contributions of the parties ($63,030.54) are then deducted to give a net profit figure ($19,819.78). One half ($9,909.89) of the net profit is then added to the parties' respective contributions (Walter, $34,128.14; Arta $28,902.40) to arrive at their respective distributive shares (Walter, $44,038.03; Arta, $38,812.29). But from Arta's distributive share the judgment subtracts the proceeds from the sale of the ranch and an alleged overpayment from the drawing account. The judgment then proceeds to decree distribution "in accordance with" this calculation, declaring a "balance due" plaintiff and defendant of $44,038.03 and $1,862.29 respectively.

Wholly apart from the manifest disregard of the facts shown by this calculation, it shows a total indifference to the practical problems of settling the affairs of the partnership. Although the judgment calls for a

distribution of assets having a value of approximately $46,000.00 it provides no method to determine the respective interest of the parties in the several properties..

For example, it is agreed that the St. George sales lot was an asset of the partnership. That business consisted primarily of a leasehold interest in the land upon which the business was conducted, an option to buy said land and inventory. (R.45) The option is the subject of litigation between the parties to this lawsuit as plaintiffs and the optionor as defendant (Corbett v. Cox, Case No. 3877, Fifth District Court, Washington County). The judgment includes "St. George business and lot subject to $5,000.00 option and expense of lawsuit on same" as an asset of the partnership with a value of $32,000.00. It should be noted that the judgment is in error in speaking of a "lot" as a partnership asset, since the parties hold only a leasehold interest. But more importantly the judgment makes no provision for distribution of the said assets. Is the trailer sales business to be liquidated and the proceeds distributed pro rata in proportion to the "balance due" each party? Or is plaintiff to receive the entire business including the greatly appreciated value of the option, the substantial good will and going concern value of the business (one of which is included in the Court's valuation) by simply paying defendant her "balance due" of $1,862.29? Conversely, can defendant claim the business by paying

plaintiff his $44,038.03 "distributive share"? The judgment simply fails to consider the crucial problem of how this property is to be divided.

Another example of the practical impossibility of implementing the judgment relates to the so-called Peacock House. This house was purchased by defendant with separate funds which she regarded as belonging to her children. Title to the property was taken in the names of Walter and the two daughters of Arta, each having an undivided one-third interest. Defendant testified that one-third interest was given to Walter because she thought the parties were married. There was no intention to make the property a partnership asset. (R.497-99). The judgment of the trial court includes the entire property as an asset of the partnership and completely disregards the means by which the interest of the two daughters is to be determined or partitioned and their claims upon the property discharged.

It is plain from the foregoing that the judgment is incapable of implementation in its present form and that to hold the parties to its terms is inevitably to invite further litigation.

CONCLUSION

The foregoing does not purport to be a discussion of all the complex facts or even of all those facts which are in dispute. Defendant will, however, spare this Court extensive reference to the voluminous record.

It is apparent that the trial court committed sub-

stantial error with respect to those issues discussed above. The overwhelming weight of the evidence supports the position of defendant on all these disputed issues. In particular, the evidence shows that there was a written partnership agreement pursuant to which defendant was to have been paid $300.00 per month for her services in the St. George sales lot and which limited the activities of the partnership to that business. Further, the sole assets of the partnership were those contributions made by the parties directly to the St. George trailer sales business and did not include the "Sterling Ranch" or the Manti City Bank account except for the $1,351.64 transferred to the St. George account.

Defendant respectfully requests that in light of the foregoing, the Court set aside the judgment of the court below and remand this case for findings of fact and conclusions of law in conformity with the evidence.

Respectfully submitted,

Jackson Howard, for:
HOWARD AND LEWIS
120 East 300 North
Provo, Utah

and

TIBBS AND TERVORT
Manti, Utah
Attorneys for Defendant and Appellant