

1993

Joyce K. Jacobsen v. Shirley F. Jacobsen : Petition for Rehearing

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JOYCE K. JACOBSEN (Kalanquin),
Plaintiff and Appellant

vs.

SHIRLEY F. JACOBSEN,
Defendant and Appellee.

PETITION FOR REHEARING

Appellate Court No. 930496-CA

A request to the Court of Appeals to review its decision of March 28, 1995, which upheld the decision of June 30, 1993 of the First District Court, Cache County, State of Utah, Judge Gordon J. Low presiding, denying the Plaintiff-Appellant's MOTION TO SET ASIDE DIVORCE DECREE AND FOR NEW TRIAL ON ISSUES OF PROPERTY SETTLEMENT.

Argument Priority Classification is 15.

UTAH COURT OF APPEALS
BRIEF

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FILED

APR 07 1995

Summary of The Argument

This Petition For Rehearing is submitted by the Plaintiff-Appellant (hereinafter Mrs. Kalanquin) pursuant to Rule 35, Utah Rules of Appellate Procedure. Following are points of law or fact which the Court of Appeals has overlooked or misapprehended and petitioner's arguments thereon. Mrs. Kalanquin's claims are fourfold: (1) the Court applied the incorrect standard of review of the trial court's interpretation of the term "disclosure"; (2) the Court misapprehended the fundamental issue and position which Mrs. Kalanquin was arguing; (3) the Court overlooked and failed to address pivotal points of argument in Mrs. Kalanquin's brief pertaining to interpretation of the term "disclosure"; and (4) the Court overlooked and failed to address Mrs. Kalanquin's alternative argument that a meeting of the minds had not occurred.

Point 1

The Court of Appeals appears to have misapprehended the standard of review regarding the trial court's interpretation of the term "disclosure".

In the Court's Memorandum Decision (hereinafter decision) of April 28, 1995, it discusses the issue of disclosure of property at Page 3. The court there states: "We do not find the court's interpretation of 'disclosure' unwarranted." The court further states that the district court's interpretation of the term

"disclosure" is consistent with the definition of that term in Black's Law Dictionary.

The Court, however, seems to have failed to recognize that the standard of review is not whether the district court's interpretation is warranted or reasonable or consistent; the standard of review is whether the district court's interpretation is correct. [See Brief of Mrs. Kalanquin at Page 2; Stacey Properties v. Wixen, 766 P2d 1080 (Utah App. 1988); Faulkner v. Farnsworth, 714 P2d 1149, 1150 (Utah 1986); and In Re: The Estate of Leone Southwick v. Leone, 222 Utah Advance Reports 60 (Utah App. 1993).]

Under the cases cited, the appeals court is required to review the trial court's interpretation of the term "disclosure" for correctness and to render its independent interpretation of that term. It does not appear that the court of appeals did this. Rather, it appears that the trial court's interpretation was simply upheld as "not ... unwarranted" and as "consistent with" other accepted definitions. [Memorandum Decision, page 3.]

Point 2

The Court of Appeals appears to have misapprehended what Mrs. Kalanquin was challenging in the trial court's decision.

The Court of Appeals appears to have misunderstood what Mrs. Kalanquin was arguing. On page 1 of its decision it states that Mrs. Kalanquin is "challenging the trial court's finding that she had knowledge of all of her [sic] Jacobsen's property". This is

incorrect. Mrs. Kalanquin is challenging the trial court's finding that there was a "disclosure" of all of the Defendant-Appellee's (hereinafter Mr. Jacobsen) property. [See Statement of the Issues in Mrs. Kalanquin's brief at page 1.] Under the correct interpretation of "disclosure", asserted by Mrs. Kalanquin, any knowledge she may have had of Mr. Jacobsen's property is irrelevant.

Point 3

The Court of Appeals overlooked and failed to address the points of argument raised by Mrs. Kalanquin as to how the term "disclosure" should be interpreted.

In her brief, under Detail of The Argument, numbers 1 through 5 (pages 10-15) and number 9 (pages 25-26), Mrs. Kalanquin sets forth the requisite rules, supported by legal authority, by which interpretation of the term "disclosure" should be done. The brief of Mr. Jacobsen completely failed to address Mrs. Kalanquin's arguments regarding these. This is understandable. There is simply nothing in the trial record indicating that the trial court observed these requirements of interpretation. However, the Court of Appeals, in its decision, is likewise devoid of such observance. Although such rules of interpretation are quite elementary it is this very fundamental nature that makes them most deserving of a response.

The trial court's interpretation of the meaning of "disclosure" made it nearly a synonym for "discovered". While

this may be warranted by and consistent with Mr. Black's definition (which shows variant meanings), it still does not reveal what the correct definition is, in the context of the Stipulation of August 27, 1987, as determined by the rules of interpretation by which the courts should be bound.

The single, overriding issue which Mrs. Kalanquin argued in her brief regards the interpretation of the term "disclosure". This issue colors all others. The Court appears to have the misapprehension that Mrs. Kalanquin is trying to relieve herself "from a stipulation negotiated and entered into with the advice of counsel." [Memorandum Decision at page 3.] On the contrary, Mrs. Kalanquin is seeking to enforce the terms of the Stipulation, which Mr. Jacobsen also negotiated and entered into with the advice of counsel. What Mrs. Kalanquin is trying to relieve herself of is the trial court's incorrect interpretation of a term of that Stipulation. If the trial court's interpretation of "disclosure" is incorrect then this case must be remanded to determine whether disclosure took place and if so, whether such disclosure was full and complete, as required under the Stipulation.

Point 4

The Court of Appeals overlooked and failed to address the alternative argument of Mrs. Kalanquin that a meeting of the minds had not occurred.

In her brief, at page 26, Mrs. Kalanquin argued that if the meaning of the term "disclosure" was found to be ambiguous and the interpretations by Plaintiff-Appellant and Defendant-Appellee are equally reasonable, there was not a meeting of the minds sufficient to form a contract. In that event, the Stipulation of August 27, 1987, and the Order which derived therefrom would be void and the parties must find themselves at the point prior to Stipulation.

It does not appear that the Court of Appeals considered this argument.

Conclusion

From the Memorandum Decision of the Court of Appeals it appears that the Court overlooked or misapprehended several facts, arguments, or points of law which would be determinative of this appeal. Mrs. Kalanquin humbly petitions the Court to consider again the above noted points, review her brief in this appeal and grant the relief requested therein.

We the undersigned, Attorneys for the Petitioner, certify that this Petition For Rehearing is presented in good faith and not for delay.

Respectfully submitted this 6th Day of April, 1995.


MICHAEL W. ISBELL


RAYMOND N. MALOUF

CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of April, 1994,
two (2) true and correct copies of the foregoing, PETITION FOR
REHEARING, were hand delivered to the following:

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