

1994

# Draper v. Draper : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS

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940137

IN THE UTAH COURT OF APPEALS

PATRICIA S. DRAPER,

Plaintiff and  
Appellee,

vs.

EMMERT S. DRAPER,

Defendant and  
Appellant.

Case No. 940137-CA

APPELLEE'S BRIEF

APPEAL FROM AN ORDER OF THE SIXTH JUDICIAL DISTRICT  
COURT OF SEVIER COUNTY, THE HONORABLE LOUIS G. TERVORT

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Argument Priority: (15)  
Any matter not included  
within other categories.

FILED

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COURT OF APPEALS

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## JURISDICTION

The Utah Court of Appeals has jurisdiction over appeals from District Courts involving domestic relations cases pursuant to Section 78-2a-3(2)(i), Utah Code Annotated, as amended.

## STATEMENT OF ISSUES AND STANDARD OF APPELLATE REVIEW

The issue presented for review on appeal is whether the Trial Court erred in not awarding the Defendant any portion of IRA related accounts part of which accrued during the parties' marriage. The standard of appellate review of this issue was stated specifically in Gardner v. Gardner, 748 P.2d 1076, at 1078 (Utah 1988), as follows:

Although this Court may modify decisions of the Trial Court, its apportionment of marital property will not be disturbed unless it is clearly unjust or a clear abuse of discretion. (Citation omitted.)

## DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS

Section 30-3-5(1), Utah Code Annotated, as amended, states in pertinent part as follows:

When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties.

## STATEMENT OF THE CASE

This case involves a divorce action. A trial was held on October 22, 1993. The Findings of Fact, Conclusions of Law and

Decree of Divorce were signed and entered by the Court on February 4, 1994.

The Trial Court made a division of the parties assets. The Court determined that the marital home held in fee by Plaintiff, Plaintiff's mother, Plaintiff's daughter and Defendant was paid for primarily by Plaintiff's mother. Defendant contributed by way of inheritance to him \$2,500.00 toward purchase of the lot. The Court made specific findings regarding the IRA's in conjunction with other assets and awarded them to Plaintiff. Part of the IRA funds were acquired by Plaintiff prior to the parties marriage, part was acquired during the marriage but while the parties were separated and part was acquired during the marriage while the parties were together.

#### STATEMENT OF FACTS

1. The parties were married on May 3, 1980. (Transcript, page 13.) Defendant represented to Plaintiff prior to the marriage that he would have a home and a radio business income. (Transcript, page 17.). After the marriage Defendant had neither. Had Plaintiff known this prior to the marriage she probably would not have married him. (Transcript, page 17.)

2. Plaintiff received \$63,000.00 from the sale of a home she owned prior to the parties marriage (Transcript, page 19.) Some of the \$63,000.00 went into savings accounts which became IRA's (Transcript, page 19.).

3. Plaintiff was employed throughout the marriage except

for an approximate two year period prior to the parties divorce. (Transcript, page 16.) Defendant received social security during the parties marriage (Transcript, page 64.).

4. Plaintiff contributed to the IRA accounts prior to the parties marriage (Transcript, page 27.) Plaintiff contributed to the IRA accounts during the entire time of the parties separation from October 1983 to November 1985 (Transcript, page 15.)

5. Defendant acknowledged that the IRA accounts were the Plaintiff's (Transcript, page 62.) Defendant had no expectation to share in the IRA accounts.

6. The Court determined and found that the IRA accounts should not be considered as retirement income when taking into account the parties equities, the period of separation, the rocky marriage and the Defendant's expectation (Transcript, page 89.).

7. The Court awarded the IRA accounts to the Plaintiff.

#### SUMMARY OF ARGUMENT

The general law in Utah is well established as to the distribution of retirement funds between spouses. If the retirement fund is acquired during the marriage it is a martial asset and should be divided equally between the spouses. Hall v Hall 858 P.2d 1018 (Utah App. 1993)

However, under unusual circumstances or in order to establish equity between the parties the general rule may be overcome. Newmayer v Newmayer 745 P.2d 1276 (Utah App 1987), Burt



v Burt 799 P.2d 1166 (Utah App 1990)

After hearing the evidence the Trial Court determined that the IRA accounts at issue on appeal should not be treated as retirement funds. The Court further determined that the equities of the parties were such that to award the Defendant any of the IRA accounts would be a windfall. (Transcript, page 89.)

The Court further concluded that Defendant would be in the same position if there had been no marriage between the parties. In addition the Court states that the Defendant had no expectation as to the IRA funds, the parties were separated for a period of time during the marriage and the parties marriage was rocky from the beginning. (Transcript, page 91)

Part of the IRA accounts were acquired by the Plaintiff prior to the parties marriage, part were acquired from proceeds from the sale of Plaintiff's separate property.

The Trial Court in considering the equities and awarding of all of the IRA accounts to the Plaintiff was not an abuse of the Courts discretion.

#### ARGUMENT

#### POINT I

#### AWARDING ALL OF THE IRA ACCOUNTS TO THE PLAINTIFF WAS NOT ERROR

The Trial Court has a broad discretion in awarding assets between spouses in divorce actions pursuant to Section 30-3-5(1) Utah Code Annotated, as amended.

The Utah Court of Appeals stated as follows:

In making such orders, the Trial Court is permitted broad latitude, and its judgment is not to be lightly disturbed, so long as it exercises its discretion in accordance with the standard set by this Court.

Newmayer v Newmayer 745 P.2d 1276 at 1277 (Utah App. 1987.)

In Englert v Englert 576 P.2d 1274 (Utah 1978) referring to Section 30-3-5(i) the Court stated:

The import of our decisions implementing that statute is that proceeding in regard to the family are equitable in a high degree and that the Court may take into consideration all of the pertinent circumstances at 1276.

The Trial Court has the unique posture of hearing the evidence, seeing the demeanor of the witnesses, weighing the evidence and exercising its discretion to arrive at an equitable distribution of marital assets.

It is therefore incumbent on the appealing party to prove that the Trial Court's division violates those standards or that the Trial Court's factual findings upon which the division is grounded are clearly erroneous under Utah Rule of Civil Procedure 52(a) Newmayer at 1277.

The standards established by several Utah cases simply require a determination of assets, separate or marital. Marital assets should normally be divided equally between the spouses unless there exists unusual circumstances or equity requires otherwise. Burt v Burt 799 P.2d 1166 (Utah App. 1990) Hall v Hall 858 P.2d 1018 (Utah App. 1993) Woodward v Woodward 656 P.2d 431 (Utah 1982).

Superior to the equal asset distribution standard is the requirement that the division of property be equitable between the spouses the Court has stated:

The overriding consideration is that the ultimate division be equitable- that property be fairly divided between the parties given their contributions during the marriage and their circumstances at the time of the divorce Burt at 1167.

The Trial Court did not abuse its discretion in the instant case when applying the standards set out above.

This is a case of not only unusual circumstances but equity demands that Plaintiff should be awarded all of the IRA accounts.

At the outset Defendant represented to Plaintiff that he would have a home and would be generating some income from his radio related business. However, to the contrary during the parties marriage Defendant did not really generate any income and he did not have a house. Had Plaintiff known this prior to the marriage she probably would not have married the Defendant. Undoubtedly this was the beginning of the parties rocky marriage.

During the parties marriage not only did Plaintiff receive approximately \$63,000.00 from the sale of her separate property but was employed throughout nearly the entire marriage.

Plaintiff contributed substantially more to the marriage than did the Defendant. The IRA funds come from Plaintiff's employment and in part from the proceeds from the sale of Plaintiff's separate property.

The Plaintiff is no longer employed and likely will not be in the future. The Defendant subsequent to the divorce is in the same position as he was prior to the time the parties were married, still getting social security. On the other hand Plaintiff is not only unemployed but really only has the IRA accounts \$12,200.00 (\$18,700.00 - \$6,500.00) This is not a great deal considering her employment during the marriage and the \$63,000.00 from the sale of her separate property. While she is a third owner in the marital home it must be remembered her mother contributed most of the funds for the home.

Part of the IRA funds were acquired prior to the parties marriage. Part of the IRA funds were acquired during the parties two year separation while Plaintiff was in California and Defendant was in Utah.

The Trial Court determined that the IRA accounts should not be considered as retirement funds because of the parties equities and the unusual circumstances set forth above.

When applying the principles of Hall to the extent that the Trial Court's finding may not be sufficient any such failing is overcome when viewing the Trial Court's ruling in totality.

The Trial Court did not abuse its broad discretion in awarding the IRA funds to Plaintiff.

#### CONCLUSION

The Trial Court award of the IRA accounts to the

Plaintiff was within the Courts broad discretion and was not error.

In making the award of the IRA accounts to the Plaintiff the Court considered the parties respective contributions to the marriage. Plaintiff was employed for nearly the entire marriage. Defendant was never employed. Plaintiff received some \$63,000.00 from the sale of separate property. Some of these funds became part of the IRA's. Some of the IRA funds were acquired by Plaintiff prior to the parties marriage. Part of the IRA accounts were acquired during the parties two year separation. Given all of the circumstances the Court determined that the IRA funds shouldn't even be considered retirement funds. Equity demands the IRA funds should be awarded to Plaintiff.

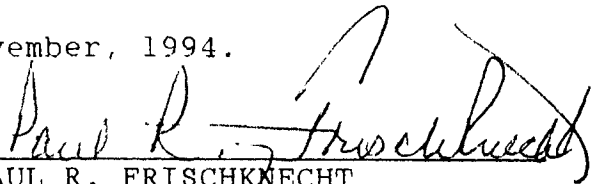
To award Defendant any portion of the IRA funds would be a windfall.

The Defendant is in the same position at the time of the divorce as he would be had the parties not married.

The total IRA funds at issue are in the approximate sum of \$12,200.00 (\$18,700.00 less \$6,500.00 which Plaintiff has already paid the Defendant). Plaintiff is no longer employed and will not likely be employed in the future.

The Trial Courts decision was not an abuse of its discretion and should be affirmed.

DATED this 16<sup>th</sup> day of November, 1994.

  
PAUL R. FRISCHKNECHT  
Attorney for Appellee

CERTIFICATE OF MAILING

I hereby certify that a full, true and correct copy of the above and foregoing BRIEF OF APPELLEE was hand delivered on the 17<sup>th</sup> day of November, 1994 to the following:

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