1973

Edlean Searle v. Woodey B. Searle : Brief of Respondent

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

EDLEAN SEARLE,
Plaintiff-Respondent,

vs.

WOODEY B. SEARLE,
Defendant-Appellant.

Case No. 13335

BRIEF OF RESPONDENT

An Appeal From the Judgment of the District Court of the Fourth Judicial District, The Honorable George E. Ballif, Judge.

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BRIEF OF RESPONDENT, EDLEAN SEARLE

STATEMENT OF NATURE OF CASE

This is an action for divorce in which Respondent requested that the Court make a reasonable distribution of assets between the parties.

DISPOSITION OF CASE IN LOWER COURT

The Court granted the divorce to Respondent, finding that she had been dominated by her husband, that her best interest would be served in her being independent of him, and that Respondent was entitled to an equitable distribution of the property in lieu of alimony. The Court awarded to her part of the property found to have been accumulated by the parties during the marriage. It also granted Appellant an option to purchase from Respondent certain property awarded to her.

RELIEF SOUGHT ON APPEAL

Respondent would have this Court affirm the decision of the Trial Court.

STATEMENT OF FACTS

Respondent controverts Appellant's statement of the facts and sets forth below her statement of facts.

The Respondent and Appellant have been married for more than twenty-seven years (TR. 78). This is Respondent's first marriage and Appellant's third. (TR. 80) At the time of his marriage to Respondent, Appellant leased and operated a service station. He

owned a building place with a cement floor on it in Vernal, Utah, an old warehouse in Craig, Colorado, a few animals and some furs and other items of personal property. (TR. 80-81 & 208) During the 27-plus years Respondent has been married to Appellant, she has dedicated herself to raising their four children, managing their home, and helping her husband in every way she could. (TR. 81) She worked with the livestock owned by the parties (TR. 81), worked at the motel (TR. 94, 204, 215, 216 and 239), acquired ownership of stock in the family-owned corporation (TR. 122, 123), and became a joint tenant in some of the real estate accumulated. (R. 100-102) In general, she participated with the other members of the family in the different family-owned businesses as her child rearing and homemaking responsibilities permitted.

After the parties were married, they engaged in many different businesses and acquired a considerable amount of property. Starting early in the marriage the parties operated an appliance store (TR. 104), Searle's Savings Center; later livestock and ranching businesses were added, Searle Cattle Company in 1946, (TR. 229 & 81), then a propane retailing business, Searle Gas Company in 1952 (TR. 210), a farm equipment dealership, and eventually a restaurant and a motel in 1962 (TR. 213). Appraisers called by Respondent at the trial as expert witnesses testified that the land, improvements, and houses owned by the parties were worth $1,300,000.00 (TR. 15-17 & 67, and Plaintiff's Exhibits 2 & 4). No evidence was received regarding the value of the separate businesses as going concerns, nor of the value of all businesses together.

The divorce was granted to Respondent on grounds of mental cruelty. Prior to commencing the action for divorce, and after almost thirty years of marriage, the Respondent asked the Appellant to make a choice between her and Appellant's secretary-girlfriend. Appellant chose the girlfriend, and the divorce action was commenced (TR. 80). The testimony of the only appraiser called to testify for Appellant was that each and every one of the properties owned by the parties was worth substantially less than the value placed thereon by the Respondent's M.A.I. appraiser, Respondent's local appraiser, and Respondent's other expert witnesses. For example: Respondent's M.A.I. appraiser testified that the assets of one of the family businesses, Searle Gas Company, had a fair market value of $294,700.00 (TR. 36 and Plaintiff's Exhibit 2) Appellant's sole appraiser, however, found that those same assets were only worth $79,733.15, (Defendant's Exhibit 11), a difference of $214,966.85. The parties properties located on Diamond Mountain were appraised by Respondent's local appraiser at $169,400.00, (TR. 13-18) yet Appellant's appraiser put a value of only $79,503.25 on those 2,830.28 acres of ranch land plus improvements and BLM Permits (TR. 163 & Defendant's Exhibit 11), a difference of $89,896.75. Appellant's appraiser consistently found every piece of property to be worth far less than the value placed thereon by any of the Respondent's several experts. Because of the great disparity between the testimony of the one witness called by the Appellant and those called by the Respondent with regard to the value of the specific assets acquired by the parties during the marriage, the Trial Court

ordered the parties each to prepare and submit, without specifying which of the lists the party submitting them would prefer to have awarded to him or her, two lists of properties which were in the opinion of the Parties equal in value. After receiving this and additional aid from the Parties and considering the Appellant's position with regard to the inter-relationships of the various different businesses operated by the parties, the Court issued it's memorandum decision and instructed Respondent's counsel to prepare Findings of Fact and Conclusions of Law and Decree of Divorce awarding part of the properties acquired during the marriage to the Respondent and part to the Appellant. There being a difference of over $200,000.00 between the value placed on one of the family businesses, the Searle Gas Company, by the appraisers of the parties, the Court left the parties co-owners of the stock of that company, a corporation, as well as joint owners of the remaining properties which were not specifically awarded to either party.

After the entry of the Court's memorandum decision indicating the Court's decision on the matter of distribution of property, several hearings were had at the request of Appellant. Appellant first objected to the awarding to Respondent a part of the Diamond Mountain property and the property known as Brush Creek Ranch. Later he objected to the memorandum decision because it allowed the Respondent to remain a stockholder in Searle Gas Company as she had been since the organization of the corporation. After having studied and lived with the case and having had the parties and counsel before it numerous times for a

period of twenty months, the Trial Court issued another memorandum decision granting to Appellant an option to purchase the Brush Creek and Diamond Mountain property awarded to Respondent. (R. 172)

Still dissatisfied, the Appellant requested a new trial. Finally, after repeated hearings on Appellant's motions, and after passage of eight months from the date of the Trial Court's memorandum decision instructing the Respondent to prepare and submit to the Court Findings of Fact, Conclusions of Law, and a Decree, Respondent, in an effort to bring the matter to an end, and indicating that her primary concern was to be independent of her husband, proposed that the Decree be amended and that the Appellant be awarded the property the Court had earlier decided would remain in co-ownership. This property consisted of the stock in the Searle Gas Company, the $294,000.00 hub of all Searle enterprises; Searle Savings Center, an appliance store; Valley Tractor Company, an International Harvester Farm Equipment Dealership; Searle Cattle Company with it's livestock and equipment includng a large cattle truck, pickup trucks, horse trailers, snowmobiles, and other equipment, and the accounts receivable of all these enterprises. Respondent agreed to take for all that property only one half of the amount which the Appellant's own appraiser had testified that these properties were worth. (Partial Transcript of Hearing, April 20, 1973) Respondent, at the same hearing, stipulated to the amendment of the Decree to award Appellant all of the $50,000.00 worth of horses owned by the parties except for the five which had been registered in her name. The Court incorporated part

of Respondent's concession into the final memorandum decision and awarded all of the above referred to properties to Appellant and provided that Appellant pay to Respondent for property valued by Respondent's appraisers at more than $335,000.00, a mere $47,500.00, and provided that such sum be paid at the rate of $750.00 a month with interest at the rate of 5% per annum. It is from the Decree prepared after those proceedings that Appellant has appealed.

The Decree from which the Appellant has appealed gives him a credit of $50,000.00 for pre-marital property. It awards to Appellant the parties' interest in the Diamond Hills Motel and the Diamond Hills Cafe, two businesses with combined value of nearly $400,000.00, the large commercial building on Vernal's Main Street valued by the Court at $73,000.00, a 1,843-acre ranch on Diamond Mountain near Vernal, Searle Gas Company, the hub and primary business of the Searle family appraised at $294,000.00, Searle Savings Center, a business engaged in retailing of appliances, Valley Tractor Company, a farm equipment dealership, Searle Cattle Company with livestock, trucks, and other equipment, two residences, personal belongings, automobiles, and the largest and most expensive of two paintings of the family's prize horse, Holey Sox, $50,000.00 worth of horses, and all of the other livestock of the parties with the exception of five horses registered in the Respondent's name. Against this vast amount of business and other property, there is outstanding less than $14,000.00 in debt, a mortgage against one of the residences. Appellant is also granted an option to purchase the 151-acre Brush Creek Ranch awarded to

Respondent and the property on Diamond Mountain which she was also awarded and in which she had been a joint tenant.

The Decree awards to Respondent, on the other hand, the option price on her brush Creek and Diamond Mountain properties, the family home where she has raised her family and lived for twenty years, and the pastures and corrals surrounding it which were built to be used in connection with the home, (TR. 43), in addition being the only place where Respondent could keep the horses which have been awarded to her or a cow or sheep if she should choose. (TR. 84) The remainder of her award consists of three rental units in Vernal valued by the Court at $14,500.00, $14,000.00, and $8,000.00, and a $2,000.00 interest in another; two undeveloped lots in Vernal, and one in St. George, the rental property known as the Westerner Lounge valued by the Court at $16,000.00, four and a half acres of undeveloped property, five horses, and her personal items and payments of $750.00 per month representing payment of the amount she agreed to take for her interest in Searle Gas Company, Searle Savings Center, Valley Tractor Company, Searle Cattle Company, $50,000.00 worth of horses, and other livestock securities, etc.

Under the Trial Court's decision, Appellant remains enormously wealthy. The Court has awarded to the Appellant the family businesses which he may continue to operate and manage and through the operation of which a vast amount of property has been accumulated over the years by the parties. Respondent on the other hand has contented herself with an award of the family home and the few odds

and ends of property found by Appellant to be the least attractive of all the properties owned by the parties.

ARGUMENT

I.

THE TRIAL COURT ARRIVED AT A FAIR, JUST, EQUITABLE AND PROPER DIVISION OF PROPERTIES UNDER THE FACTS OF THIS CASE.

Section 30-3-5 UTAH CODE ANN. (1953) as amended, provides in pertinent part that, "The Court may make such orders in relation to the . . .property. . . and the maintenance of the parties . . . as may be equitable." This Court has stated that there is no announced rule or formula for division of property except that wide discretion is granted to the trial judge. *Weaver v. Weaver* 21, Utah 2d, 166, 442 P.2d 928, (1968) at 929. Awards under this statute should be based upon the needs of the parties and the equities of the situation. *Martinett v. Martinett,* 8 Utah 2d 202, 331 P.2d 821 (1958). Property settlements or lump sum settlements in lieu of alimony are within the discretion of the Trial Court. *Whitehead v. Whitehead* 16 Utah 2d 179, 397 P.2d 987 (1965).

A. THE TRIAL COURT PROPERLY CONSIDERED THE RELEVANT FACTORS IN

CONCLUDING UPON THE DECREED DISTRIBUTION OF PROPERTY.

The following items may be taken into consideration by the Court in governing it's discretion and arriving at an equitable property settlement.

(a) The amount and kind of property owned by the parties.

(b) Whether the property was accumulated during the marriage.

(c) The ability and opportunity of each to earn money.

(d) The financial conditions and necessities of the parties.

(e) The standard of living of the parties.

(f) Health of the parties.

(g) Duration of the marriage.

(h) What the wife gave up by way of marriage.

(i) Age of the parties.

Pinion v. Pinion 92 Utah 255, 67 P.2d 265 (1937).

An examination of the facts of this case in light of these considerations reveals that:

(a) The parties own property appraised as being worth one million three hundred thousand dollars ($1,300,000.00).

(b) Substantially all of it was accumulated through the joint efforts of the parties during the marriage.

(c) The Appellant is very able and adept at acquiring and accumulating property, and the Decree leaves Appellant a very wealthy man and in ownership and control of the family businesses.

(d) The parties have enjoyed a standard of living commensurate with the size of their estate.

(e) No health problems are indicated by the record.

(f) The parties have been married over twenty-seven years.

(g) The Respondent has given up her entire adult life to the marriage dedicating herself to rearing the parties' children and helping Appellant accumulate wealth.

(h) That the Respondent was 49 and Appellant 53 years of age at the commencement of this action.

The Trial Court expressly considered each of the above listed criteria in concluding upon the distribution of properties now appealed from.

B. THE TRIAL COURT CONSIDERED APPELLANT'S MANY REQUESTS REGARDING THE MANNER OF DIVIDING THE PROPERTIES AND MOST ARE REFLECTED IN THE DECREE.

The Court also considered Appellant's many requests regarding the manner of dividing the properties and most are reflected in the final Decree. Appellant contended that some of the businesses were inter-related and should not be divided and urged the Court to allow him to retain control of those businesses. Contrary to Appellant's position, the record clearly shows that the property here dealt with consists of many separate businesses and other properties rather than one giant enterprise. For example, it was shown that the Diamond Mountain Ranch, which was awarded to Appellant was owned and operated successfully by the parties for as long as seven or eight years before the Brush Creek property was acquired. (TR. 81-82) It was further shown that

Appellant is in business with two of his sons who own ranches or farms which produce winter feed (TR. 204, 253 & 254) and that Appellant has in the past rented winter pasture for his livestock (TR. 254) which the record shows to consist of approximately one dozen sheep, six head of cattle, and the horses. (TR. 68-71) Appellant's own accountant testified that there is no connection or relationship between the Brush Creek property and the Searle Gas Company, nor between the other separate businesses, (TR. 126-130), except for the fact that Appellant, his two sons, his secretary, and one other employee sometimes divide their time between the various businesses. (TR. 250-251) Appellant himself testified that he had tried to spread out and diversify and not put all of his "eggs in one basket". (TR 227) The evidence reveals that the Appellant and his sons with whom he is partners in the motel and cafe businesses, own three homes adjacent to the motel property providing property upon which any needed expansion of the motel could and logically would be made. (TR. 225) In addition to being unsupported by the evidence, Appellant's position that the property here involved is made up of interdependent businesses has no relevance under the Trial Court's decree since Appellant has been awarded full ownership and managerial control over each and every business.

Retaining all of the businesses and all of the income therefrom, Appellant is certainly in a position to provide Respondent with the $750.00 per month plus interest at 5% to pay Respondent the $47,500.00 the Court awarded her for her interest in the several businesses. This arrangement complys with another of

Appellant's requests that he be allowed to pay cash in the amount of $59,041,02 in lieu of property. (R. 85) The payment of this amount will not place an undue hardship on Appellant in lieu of his average adjusted gross income in excess of $23,000.00 over the last seven years, and especially since the record made clear that a large share of the wealth of the parties was accumulated not from savings from income earned in operating the vaious businesses, but rather from trading, buying and selling properties. (TR. 108 & 125). The evidence also indicates that this average adjusted gross income, an income tax term, would be much higher except for Appellant's ability to show losses in the cattle company and ranch operations and offset those losses against other income. (TR. 131) Furthermore, Appellant was given his choice by the option on the Brush Creek and Diamond Mountain property whether he would have Respondent receive property or cash; he chose cash. (See Undertaking and Supersedeas Bond) The use of an option to aid in arriving at a proper division of the properties of divorcing parties has received the approval of this Court. *Lawlor v. Lawlor* 121 Utah 201, 240 P.2d 271 (1952).

The Trial Court also observed Appellant's strenuous arguments that the fact that some property was held in joint tenancy should be taken into account and where possible joint tenancy property be awarded to Respondent so as to avoid the imposition of heavy taxes on either or both parties. (R. 102-106) The Court made every other effort to accommodate the Appellant and still decide the case fairly. This Court should reject Appellant's appeal to change the very

provisions which the Trial Court incorporated in the Decree as an accommodation to him.

C. THE TRIAL COURTS AWARD PROPERTLY COMPENSATES RESPONDENT FOR HAVING GIVEN HER ENTIRE ADULT LIFE TO THE MARRIAGE AND HELPING APPELLANT ACCUMULATE WEALTH.

The basis and reason for allowing alimony to a wife is to repay her for the years spent in caring for the household, and helping the husband in building up their property, and to enable her to live, after the support of the husband is taken away from her. *Anderson v. Anderson* 104 Utah 104, 138 P.2d 252 (1943) The evidence in this case shows that Respondent spent many years, more than twenty-seven, in caring for the household, rearing children, working with livestock, and in other businesses. The efforts of the parties in accumulating wealth have been very successful. Respondent should be granted an award which will enable her to live and enjoy the benefits of her labors and to be compensated for her many years of work. Respondent's inheritance as Appellant's widow would amount to considerably more than she has been awarded by the Trial Court even if Appellant chose to disinherit her and she were left only her statutory share and her joint tenancy property. Having given up her entire adult life to the marriage, the Respondent should enjoy the benefits of her work during her later years of life. Respondent's opportunities are much more limited than they were

twenty seven years ago, and this must be considered. The evidence shows and the Trial Court found that to enjoy the future and make a life for herself, the Respondent must be independent from her husband and free to be a whole person without Appellant controlling her purse strings.

D. ALTHOUGH RESPONDENT HAS NOT BEEN AWARDED AN EQUAL SHARE OF THE PROPERTY ACCUMULATED BY THE PARTIES DURING THE MARRIAGE, THE TRIAL JUDGE DID NOT ABUSE HIS DISCRETION IN CONCLUDING THAT A FAIRLY EQUAL DIVISION OF THOSE PROPERTIES IS PROPER.

In starting from the premise that the property accumulated by the parties during the marriage should be divided equally the Trial Court was well within the bounds approved by the Court on many previous occassions. In *Tremayne v. Tremayne*, 116 Utah 483, 211 P.2d 452 (1949), the Court approved the awarding to the wife of approximately four-fifths of the property accumulated by the parties during marriage. In *Weaver v. Weaver*, 21 Utah 2d 166, 442 P.2d 928 (1968), (assets of $750,000.00 built up by Defendant), *Slaughter vs. Slaughter*, 18 Utah 2d 274, 421 P.2d 503 (1966), (involving $90,000.00 worth of property), and *Sorensen v. Sorensen*, 14 Utah 2d 24, 376 P.2d 547 (1963), (involving a very large estate), the Court approved an equal division of property between the spouses and in the ***Slaughter*** **and** ***Sorensen*** cases awarded $400.00 and $1,250.00 per month

respectively as alimony in addition to the equal division of the property. After the Court incorporated Respondent's concession to have the Appellant awarded Searle Gas Company, Searle Savings Center, Searle Cattle Company, Valley Tractor Company, the horses and other items, she is actually awarded much less than an equal share of the properties accumulated during the marriage.

E. THE USE OF LIENS WHERE NECESSARY FOR THE PROTECTION OF THE PARTIES IS PROPER.

The use of liens and mortgages where necessary for the protection of the parties has been approved by this Court. *Sorensen v. Sorensen*, 14 Utah 2d 24, 376 P.2d 547, (1963), *Tsoufakis v. Tsoufakis*, 14 Utah 2d 273, 382 P.2d 412, (1963).

II.

THE DECISION OF THE COURT BELOW SHOULD BE GIVEN A STRONG PRESUMPTION OF VALIDITY AND CORRECTNESS IN IT'S FAVOR IN VIEW OF THE TRIAL COURT'S FAMILIARITY WITH THE FACTS OF THE CASE AND WITH THE PARTIES.

There are numerous decisions of this Court holding that the Supreme Court will not substitute it's judgment for that of the Trial Court in a divorce proceeding relative to alimony and division of property unless the record clearly discloses that the

Trial Court's decree in such matters is plainly arbitrary, that there has been abuse of discretion and the award not legally sound. *Christensen v. Christensen*, 21 Utah 2d 263, 444 P.2d 511 (1968), *Peters v. Peters*, 15 Utah 2d 413, 394 P.2d 71 (1964). *Melville v. Melville*, 15 Utah 2d 26, 386 P.2d 726 (1963).

It has been held repeatedly that in divorce proceedings the problem of alimony and division of property must rest upon the particular facts and circumstances of each case. *Wilson v. Wilson* 5 Utah 2d 29, 296 P.2d 977 (1956), *Rackham V. Rackham*, 119 Utah 593, 230 P.2d 566, (1951), *Tremayne v. Tremayne*, 116 Utah 483, 211 P.2d 452 (1949).

In *Bader v. Bader*, 18 Utah 2d 407, 424 P.2d 150 (1967) this Court recognized that it would lead to intolerable instability of judgments if this Court should assume the perogative and accept the responsibility of merely second guessing a trial judge who has done a conscientious job of attempting to make a just and equitable allocation of the property and income of the parties.

Due to the perogatives reposed in him under the law and to his advantaged position, the trial judge must be allowed a wide latitude of discretion in such matters, and his judgment should not be changed lightly, nor at all unless under the facts shown by the evidence it works a manifest inequity or injustice. *Weaver v. Weaver* 21 Utah 2d 166, 442 P.2d 928 (1968), *Slaughter v. Slaughter* 18 Utah 2d 274, 421 P. 2d 503 (1966), *Sorensen v. Sorensen*, 14 Utah 2d 24, 376 P.2d 547 (1963).

In the much cited case of *Pinion v. Pinion*, 92 Utah 255, 67 P.2d 265 (1937) Justice Wolfe writing for the

Court made the following statement which is relevant here:

> "The writer believes that every intendment should be in favor of the Trial Court, for not only does he in a divorce case have the parties before him, enabling him to test credibility by demeanor, but the conduct and manner of the parties in the Courtroom sometimes gives much aid in solving who is really at fault. Moreover, a trial judge may 'live with' a divorce proceeding in it's preliminary stages and know it from angles which the record does not disclose. In any event, the solutions of these domestic problems are difficult and largely not capable of a satisfactory solution either to the parties or the Court. The Court is often compelled to use every ingenuity in order to stimulate human nature to do it's duty or it's utmost toward fulfillment of the duty."

The Trial Court below has had months of association with this case, from pre-trial conference, through the trial, the issuance of several orders to show cause and hearings thereon, several post trial hearings including motions to amend the Decree and for a new trial. The Trial Court has "lived" with this case for two and one half years and has had the opportunity to become fully acquainted with the parties, their positions on the various issues, and with the properties involved. The actions of the Court below should be indulged with a very strong presumption of validity and correctness in view of the Trial Court's familiarity with the case and it's problems. ***Harding v. Harding*** 26 Utah 2d 277, 488 P.2d 308 (1971), ***Martinett v. Martinett,*** Utah 2d 202, 331 P.2d 821 (1958).

III.

THE COURT SHOULD HELP END A LONG AND BITTER STRUGGLE BY AFFIRMING THE TRIAL COURT'S DECREE.

The complaint in this matter was filed in July of 1971. Now, two and one half years later Respondent is still struggling for her freedom and independence from Appellant who has chosen his secretary-girl-friend over his wife of more than twenty-seven years. During that two and one half years, Appellant has enjoyed the entire income, use and benefit of this $1,300,000.00 estate with the exception of the home in which Respondent has resided, the $400.00 per month temporary alimony payments which were raised to $650.00 for a short time, and which Appellant ceased to pay upon the entry of the Trial Court's decree. The matter has been before three different judges of the Fourth Judicial District Court. A two-day trial and no less than seven additional separate hearings have been held in attempting to resolve the problems between the parties. If Respondent were required to depend upon Appellant for alimony, or as long as this case is prolonged by further hearings, by new trials, by adjusting and shuffling property between the parties, Respondent will not be free and independent of Appellant's dominance. One objective of the Court should be to bring an end to the conflict of the parties as swiftly as justice will allow so that they can reconstruct their lives on a happy and useful basis. This objective can best be accomplished by this Court's affirmance of the Trial Court's decree. So long

as Appellant can prolong the finality of this matter, he prevails in his determination to dominate Respondent.

CONCLUSION

For reasons stated in this brief, the Decree below should be affirmed, since the Trial Court arrived at a proper, equitable and just division of the property of the parties, this Court should not substitute its judgment, but rather bring this case of long duration to an end enabling the parties to commence to reconstruct their lives.

Respectfully Submitted,

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