

1995

McCarvel v. Herbert : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS
IN AND FOR THE STATE OF UTAH

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<p>CAROLYN HERBERT McCARVEL, Plaintiff-Appellee, vs. BLAKE T. HERBERT, Defendant-Appellant.</p>	<p>Case No. 950552-CA Oral Argument Priority 15</p>
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BRIEF OF APPELLEE

APPEAL FROM THE FINAL DECREE OF THE FOURTH JUDICIAL COURT
OF UTAH COUNTY, THE HONORABLE RAY M. HARDING

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IN THE UTAH COURT OF APPEALS
IN AND FOR THE STATE OF UTAH

CAROLYN HERBERT McCARVEL,

Plaintiff-Appellee,

vs.

BLAKE T. HERBERT,

Defendant-Appellant.

Case No. 950552-CA

Oral Argument Priority 15

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**IN THE UTAH COURT OF APPEALS
IN AND FOR THE STATE OF UTAH**

<p>CAROLYN HERBERT McCARVEL, Plaintiff-Appellee,</p> <p>vs.</p> <p>BLAKE T. HERBERT, Defendant-Appellant.</p>	<p>Case No. 950552-CA</p> <p>Oral Argument Priority 15</p>
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BRIEF OF APPELLEE

JURISDICTION

This is an appeal from a final decree of the Fourth Judicial District Court of Utah County in a domestic relations matter. Jurisdiction is conferred on this Court by Utah Code Ann. § 78-2a-3(2)(i) (Supp. 1995).

ISSUES PRESENTED

1. Are the trial court's findings sufficient where the trial court determined that Husband's arguments were not supported by the evidence presented and that equity required a finding in favor of Wife based on the conduct of the parties and the express language of the decree of divorce? The issues presented in this appeal involve discretionary rulings by the trial court, and "findings of fact and conclusions of law will support a judgment, though they are very general, where they in most respects follow the allegation of the pleadings." Pearson v. Pearson, 561 P.2d 1080, 1082 (Utah 1977) (citing Cain v. Stewart, 152 P. 465 (Utah 1915)).

2. Did the trial court abuse its discretion in determining that Wife was not estopped from seeking one-half of the current equity in the home, where it was undisputed that the parties had agreed to some modification of the divorce decree,

Husband made improvements to the home in reliance upon his understanding that Wife did not claim any of the increased equity, and Wife did not respond to letters which confirmed that belief? This issue, presented here by the Appellant and raised in Husband's Answer (R. 61 ¶ 9) and in Husband's trial memorandum (R. 134-130), is reviewed for abuse of discretion. Trolley Square Assocs. v. Nielson, 886 P.2d 61, 65 (Utah Ct. App. 1994).

3. Did the trial court abuse its discretion in determining that Wife's claims were not barred by laches, where Wife waited over five years before bringing her claim for part of the equity in the home and where Husband had made improvements to the home in reliance on his understanding, which had been clearly communicated to Wife, that he would only be obligated to pay the remaining balance of the \$10,000.00 provided in the decree of divorce? This issue, presented here by the Appellant and raised in Husband's Answer (R. 61 ¶ 9) and in Husband's trial memorandum (R. 127-126), is reviewed for abuse of discretion. Papanikolas Brothers Enterprises v. Sugarhouse Shopping Center Associates, 535 P.2d 1256, 1260 (Utah 1975).

4. Did the trial court abuse its discretion in ordering the home equity split as of the time of sale or appraisal in order to prevent Husband from profiting from his own inaction? This issue, presented here by the Appellant and raised in Husband's trial memorandum (R. 125-123), is reviewed for abuse of discretion. Watson v. Watson, 837 P.2d 1, 5 (Utah Ct. App. 1992) (citation omitted).

DETERMINATIVE STATUTES AND RULES

Wife is not aware of any constitutional provisions, statutes, ordinances, rules or regulations which are solely determinative of the appeal or of central importance to the appeal.

STATEMENT OF THE CASE

The parties were divorced by a decree entered October 21, 1987. (R. 53-51.) Paragraph five of the decree stated the following:

Defendant is ordered to pay Plaintiff her equity in the home, namely, Ten Thousand Dollars (\$10,000.00) within eighteen (18) months, namely, March 1989. In the event such amount is not paid, the parties are to sell the home and the net equity is to be divided between the parties. Each party is to sign appropriate documents to sell the home and each party agrees to fully cooperate in the selling of such home.

Furthermore, the decree ordered each party to pay his or her own debts and Wife was ordered to take Husband's name off her credit cards. By May of 1989, Husband had not paid Wife the \$10,000.00 for her equity in the home (R. 193, 220) and Wife still had outstanding credit card bills (R. 230-31, 195-96).

On May 16, 1989, Wife's attorney sent Husband's attorney a letter seeking Wife's share of the equity pursuant to the decree of divorce. (R. 119-18.) Pursuant to a subsequent telephone conversation between the parties, Husband offered to pay Wife's credit card bills and she agreed to accept such payment as offset against her share of equity in the marital home. The parties disagree as to the amount of Wife's share of the equity and when it was to be paid to her. (R. 193, 209, 220, 228-29.)

On June 5, 1989 Husband sent a letter to his attorney indicating that the parties had resolved the home equity issue, but omitting to explain the specifics of the parties' agreement. (R. 116.) On June 12, 1989 Husband's attorney sent a letter to Wife's attorney expressing his understanding that the parties had resolved the problems concerning the home equity issue; this letter also failed to delineate the terms of the agreement. (R. 114.)

On July 21, 1992 Wife sent Husband a letter asserting her claim to \$25,000.00 as her share of the equity in the house (R. 73), and Husband's attorney responded with a letter dated July 31, 1992 which stated Husband's belief that the parties' 1989 oral agreement allowed him to pay Wife's credit card bills and pay her the remainder of the \$10,000.00 amount specified in the original decree of divorce. (R. 71-70.) On September 16, 1994 Wife filed an order to show cause seeking resolution of the home equity issue.

As a result of the parties' 1989 agreement, Husband made payments of \$6,077.04 on Wife's credit cards (R. 110, 226) over a period of approximately 5 1/2 years (R. 229, 234). Husband made no attempt to sell the marital home or to pay Wife anything further for her share of the equity in the home. Husband continued paying the mortgage on the marital home and made improvements to the home in the approximate amount of \$6,000.00. (R. 223, 231.)

SUMMARY OF ARGUMENT

This Court should uphold the trial court's order in this case. Wife's failure to respond to the July 31, 1992 letter from Husband's attorney was not sufficient to deny her claim based on arguments of estoppel or laches. Husband had no reason to rely on Wife's silence alone as justification for making improvements to the home and failing to make arrangements to pay Wife's share of the equity. Furthermore, Wife has sustained injuries equal to or greater than those sustained by Husband as a result of the delay in this matter and the trial court correctly refused to compound Wife's injuries by sustaining Husband's allegations of estoppel and laches.

Given the express language of the decree of divorce, the trial court did not err in ordering the home to be valued at the time of the hearing. The decree states that, if Husband failed to pay Wife's \$10,000.00 equity as of March 1989 the home should be sold and the net equity divided between the parties.

The parties had no meeting of the minds concerning the amount of Wife's share of equity in the home against which Husband's payments of Wife's credit card debts should be made. Accordingly, the trial court did not err in ruling in accordance with the language of the decree. Furthermore, because Husband's understanding of the agreement would have been to Wife's detriment and against the express language of the decree, the trial court was both reasonable and equitable in determining that Wife was entitled to one-half the net equity in the home, less certain offsets, as of the date of sale or appraisal.

In addition, the trial court's findings of fact conform to the pleadings and the evidence in this matter and therefore form an adequate basis for its order. The decision of the lower court should be affirmed.

ARGUMENT

POINT I

THE TRIAL COURT'S DECISION IS ADEQUATELY SUPPORTED BY ITS FINDINGS OF FACT

Husband argues that the trial court failed to resolve the factual issues disputed in this matter, specifically (1) whether Husband's payment of Wife's credit card debts was to be offset against the \$10,000 equity amount specified in the decree of divorce if the equity were paid by May 1989 or against the net equity in the home should the equity be divided at some later time, as provided in the decree; and (2) when the remainder of Wife's equity would be payable to her. Husband argues that, if the trial court accepted Wife's understanding of the parties' agreement, it should have also specifically considered the effect of Wife's failure to respond to letters from Husband's attorney addressing these issues. Husband further argues that the trial court failed to state its reasons for denying Husband's claims of estoppel, laches and waiver.

Utah law prohibits the setting aside of a trial court's findings of fact unless they are determined to be clearly erroneous. Rule 52(a) of the Utah Rules of Civil Procedure states that "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." The Utah Supreme Court has previously held that, in order to successfully challenge the correctness of a trial court's findings, "an appellant must first marshal all the evidence supporting the finding and then demonstrate that the evidence is legally insufficient to support the findings even in viewing it in the light most favorable to the court below." Reid v. Mutual of Omaha Ins. Co., 776 P.2d 896, 899 (Utah 1989)

(citations omitted). The Reid court then went on to hold that "[a] finding attacked as lacking adequate evidentiary support is deemed 'clearly erroneous' only if we conclude that the finding is against the clear weight of the evidence." Id. at 899-900 (citations omitted).

The Utah Supreme Court has held that substantial compliance with Rule 52(a) is sufficient to establish the sufficiency of a court's findings of fact and conclusions of law. In an earlier case in which the parties to a divorce disputed the lower court's division of property, the Utah Supreme Court held that "[f]indings should be limited to the ultimate facts and if they ascertain ultimate facts, and sufficiently conform to the pleadings and the evidence to support the judgment, they will be regarded as sufficient, though not as full and as complete as might be desired. Pearson v. Pearson, 561 P.2d 1080, 1082 (Utah 1977) (citations omitted). The Pearson court went on to hold that "[t]he fact that the Findings are not absolutely comprehensive is not of such significance as would warrant reversal." Id.

The Utah Supreme Court has further held that, "[a]lthough findings should be made on all material subordinate and ultimate factual issues, it is not necessary that a court resolve all conflicting evidentiary issues." Sorenson v. Beers, 614 P.2d 159, 160 (Utah 1980) (citations omitted). In Sorenson, the issue on appeal was the sufficiency of the trial court's findings and conclusions holding that an attorney-client relationship had not existed between the parties. The trial court's findings on this issue stated that "[i]t is the opinion of the court, after review and consideration of the evidence that the claim of plaintiff of the relationship of attorney client is not supported by the weight of credible evidence and the court finds said issue in favor of defendant and against plaintiff." Id. The Utah Supreme Court determined that, "[t]he trial court's finding, although conclusory in nature on the material issue of the existence of an attorney-client relationship, is sufficient. Although more detailed factual findings would have been appropriate, thereby making explicit that which is necessarily implicit in the court's findings, such additional findings . . . were not mandatory." Id.

As to Husband's argument here that the trial court's findings of fact are insufficient for failing to state reasons for denying Husband's claims of estoppel, laches and waiver, the Utah Supreme Court has previously determined that "[s]ubstantial compliance with Rule 52(a) does not . . . require that the trial court negative every allegation contained in the pleadings; rather, the Rule is satisfied if, from the findings it (the trial court) makes, there can be no reasonable inference other than that it must have found against such allegations." Parks v. Zions First Nat. Bank, 673 P.2d 590, 601 (Utah 1983) (citation omitted).

In the case now before this Court, the trial court's findings substantially comply with the requirements of Rule 52(a). The findings reflect the trial court's evaluation of Husband's understanding of the parties' oral agreement to be contrary to the express language of the decree of divorce as well as being inequitable and against Wife's best interests, thereby making it an unreasonable and unlikely agreement for Wife to have made. Based on these findings set forth by the trial court, it is clear that the trial court found against Husband's allegations of estoppel, waiver and laches and no reasonable inference can be made otherwise.

Although the trial court's findings may have been less explicit than this court might wish, the findings clearly conform to the parties' pleadings and the evidence and do not mandate reversal or remand.

POINT II

WIFE IS NOT ESTOPPED FROM CLAIMING HALF OF THE APPRECIATED VALUE OF THE HOME

Husband argues that Wife should be estopped from claiming half of the appreciated value of the home as her share of the equity pursuant to the decree of divorce because of Wife's failure to dispute Husband's understanding of the party's 1989 oral agreement as communicated to her through Husband's attorney. Husband argues that Wife had a duty to respond and refute the claims Husband's attorney communicated to Wife, and that Husband acted in reliance on Wife's silence and was subsequently injured by her inaction.

Utah case law regarding estoppel states that equitable estoppel is a highly fact-dependent question which cannot be reviewed de novo in every case because the reviewing court cannot hope to work out a coherent statement of law through a course of such decisions. Trolley Square Assocs. v. Nielson, 886 P.2d 61, 65 (Utah Ct. App. 1994) (quoting State v. Pena, 869 P.2d 932, 938 (Utah 1994)). Furthermore, Utah case law clearly holds that more than mere silence is needed to justify another party's reliance.

In State v. Irizarry, 893 P.2d 1107 (Utah Ct. App. 1995), cited by Husband, the Utah Court of Appeals held that a mother was estopped from seeking reimbursement for back child support when the mother had not only failed to take any overt action to require the father to pay child support but had also communicated to a mutual friend that she did not want the father's assistance in raising the child and that friend then communicated that information to the father. A similar situation was found in Burrow v. Vrontikas, 788 P.2d 1046 (Utah Ct. App. 1990). In Burrow, the Utah Court of Appeals found that, because a mother delayed filing a paternity action for seven years and communicated to a mutual friend that she wanted nothing to do with the father and would raise the child herself, and that information was then communicated to the father, the doctrine of laches and/or estoppel applied to preclude the mother from recovering child support. In Brixen & Christopher, Architects v. Elton, 777 P.2d 1039 (Utah Ct. App. 1989), the Utah Court of Appeals held that developers were estopped from denying that architects' services were authorized when the developers (a) orally approved the architects' plans; (b) failed to object to the architects' work; and (c) admitted periodically that the work was good and money was owing to the architects for their services.

In the present case, Wife's failure to respond to the July 31, 1992 letter from Husband's attorney, which was the first communication to Wife expressing Husband's understanding of their oral agreement, was not sufficient to justify Husband's subsequent conduct. Wife's understanding of the parties' agreement was that, because Husband had not paid her \$10,000.00 as her share of the equity due by March 1989, her share of the equity would be one-half of the net equity in the home,

as provided in the decree of divorce. At no time did Wife communicate to Husband or any other person that she believed any differently.

Husband further argues that he acted to his detriment based on Wife's silence, and that Wife's claims should therefore be estopped. In Baggs v. Anderson, 528 P.2d 141 (Utah 1974), a father claimed that, by purchasing an expensive car and moving to an expensive apartment, he substantially changed his position due to his reliance on the mother's agreement to release him from support obligations. The Utah Supreme Court held:

Neither is there any satisfactory showing that the defendant made any substantial change in his position because of reliance on the facts he claims constituted the estoppel. This requirement is not satisfied by the mere fact that he indulged in the pleasant and euphoric assumption that he would not have to meet his obligations and that he bought a more expensive car and moved to a more expensive apartment. Likewise, the mere passage of time, or the failure of a creditor (plaintiff) to bedevil the debtor for payment does not create an estoppel.

Id. at 144 (citation omitted).

Husband's understanding of the parties' oral agreement was contrary to the express language of the decree, and it was his responsibility to ensure clarification of any agreement with terms contrary to the decree. Husband held an unjustified assumption that the parties' oral agreement, without more, was sufficient to relieve him of his obligations under the decree of divorce. Husband failed to put his understanding of the agreement in writing and secure Wife's affirmative acceptance of that agreement, nor did Husband seek a modification of the decree of divorce changing the terms of the original decree. Accordingly, Husband had no legal basis for believing the parties' oral agreement should take precedence over the terms of the decree itself.

POINT III

WIFE'S CLAIMS WERE NOT BARRED BY LACHES

Husband argues that his obligation to pay Wife her portion of the equity matured in March, 1989 and that Wife's failure to enforce that claim for over five years should result the barring of her claim via Husband's allegation of laches. Husband argues that Wife exercised a lack of diligence in pursuing her claim.

The plain language of the decree of divorce states that, "[i]n the event [the \$10,000.00] is not paid [by March 1989], the parties are to sell the home and the net equity is to be divided between the parties." The clear meaning of this provision is that Wife is entitled to one-half of any appreciated value of the home accrued between March 1989 and the date the home is sold. The decree of divorce does not state a specific time after March 1989 within which the net equity should be divided between the parties. By delaying payment to Wife of her share of the equity, either by buying out her equity or by selling the home, Husband took the risk of having to pay Wife a greater amount as her share of the equity due to appreciation over time.

Husband cannot argue that paying Wife's high-interest credit card debts over a lengthy period of five years is an acceptable way to pay her a portion of her equity in the home and simultaneously argue that Wife should be prevented from seeking the additional equity due her under the decree of divorce which results from that same delay. As Husband points out, "[l]aches is not mere delay, but delay that works a disadvantage to another. To constitute laches, two elements must be established: (1) The lack of diligence on the part of [one party]; (2) An injury to [the other party] owing to such lack of diligence." Papanikolas Bros. Ent. v. Sugarhouse Shopping Ctr. Assocs., 535 P.2d 1256, 1260 (Utah 1975).

In the case now before this Court, which party was be more injured by the other's delay? Does not Husband's lack of diligence in paying Wife her share of the equity in the home result in significant injury to Wife? The trial court clearly found that Husband was receiving the benefit of the home and the benefit of the use of Wife's \$10,000.00 while only making payments on Wife's high-interest credit cards. If

the trial court had held Wife to only \$10,000.00 equity, there would have been no benefit to Wife whatsoever by virtue of the parties' agreement.

It is apparent that the trial court adequately addressed the issue of laches and determined that Wife had been more injured than Husband by the delay in dividing the equity, and that following the express language of the decree of divorce was the only way to provide an equitable resolution to this dispute.

POINT IV

THE TRIAL COURT DID NOT ERR IN ORDERING THE HOME TO BE VALUED AT THE TIME OF THE HEARING

Husband argues that Wife's inaction in seeking enforcement of the decree of divorce has unfairly rewarded her by granting Wife the full benefit of all appreciation in the home valued at the time of sale or appraisal. Husband argues that the equity in the home should be split as of March 1989 or, at a minimum, as of July 31, 1992, the date of the letter from Husband's attorney to Wife detailing Husband's understanding of the parties' oral agreement.

The arguments set forth above illustrate that Wife was not solely at fault in failing to seek enforcement or modification of the divorce decree and that the delay in dividing the equity has injured Wife as much, if not more, than Husband. Husband negotiated with Wife to make her credit card payments as offset against the equity rather than paying Wife a lump sum at the time the \$10,000.00 became due and payable to Wife; Husband took no action at that time to pay Wife the difference between the \$10,000.00 amount and the amount owing on the credit cards; and Husband failed to seek a modification of the decree of divorce clarifying the parties' oral agreement. His actions throughout have indicated a reluctance to sell the home and an ongoing refusal or inability to pay Wife her share of the equity, even at the lower amount of \$10,000.00, and Husband's delaying tactics have been to Wife's detriment.

The plain meaning of the divorce decree is that the net equity is to be divided between the parties when the home is sold. Husband was aware of this

provision in the decree and, given his own inaction in this matter, has no legal basis for now arguing that Wife should be held to a lesser portion of the equity than that existing at the time of sale or appraisal, as ordered by the trial court.

POINT V

THE TRIAL COURT'S FINDINGS OF FACT ARE BASED ON THE PLAIN LANGUAGE OF THE DECREE OF DIVORCE

The decree of divorce clearly states that, if by March 1989 Husband fails to pay Wife \$10,000.00 as her share of the equity in the home, the home shall be sold and the net equity divided between the parties. The decree does not state that Wife's share of the equity shall be fixed at \$10,000.00 regardless of when Husband chooses to pay Wife; rather, any delay in paying Wife the \$10,000.00 equity determined as of the date of the decree entitled Wife to increased equity in accordance with the home's increase in value over time.

Pursuant to Utah law, the abilities of divorcing parties to resolve issues related to the divorce by private contract shall be subject to court approval:

The marriage itself and the obligations inherent in it are matters which it has always been recognized cannot be left entirely to private contract. This applies also to the property rights of the parties because their welfare, and to some degree the public welfare, is involved. That is one of the reasons that public sanction, through the court, must be obtained for what is done.

The parties cannot by contract completely defeat the authority expressly conferred upon the court by . . . statute . . . , in cases of divorce, to "make such orders in relation to . . . property . . . as may be equitable." Under it there can be no doubt of the court's prerogative to make whatever disposition of the property, including the rights in such a contract, as it deems fair, equitable and necessary for the protection and welfare of the parties.

Mathie v. Mathie, 363 P.2d 779, 784 (Utah 1961).

Wife's conduct over the years has been in complete accordance with the plain language of the decree, and the trial court's findings indicate that it agreed with

Wife's understanding of the decree. Husband's conduct has been contrary to the plain language of the decree and, without having modified the decree or having clear evidence as to Wife's intention to accept less than she was entitled to under the terms of the decree, he should not at this late date be able to avoid the consequences of his own inaction. The decision of the trial court, made in accordance with the terms of the original decree, should be affirmed.

POINT VI

THERE WAS NO MEETING OF MINDS BETWEEN THE PARTIES CONCERNING THE AMOUNT OF WIFE'S EQUITY IN THE HOME

Contradictory evidence was presented to the trial court concerning the amount of equity to which the parties believed Wife was entitled. Husband testified that he understood the parties' oral agreement allowed him to pay Wife's credit card debts and offset those payments against the \$10,000.00 equity specified in the decree if Wife's equity were paid by March 1989. Wife testified that she understood that Husband's credit card payments would be offset against whatever net equity was due her, since her share of the equity had not been paid out by March 1989.

Because there was no evidence before the trial court to show the parties ever had a meeting of the minds as to the amount of equity due to Wife, the trial court was correct in following the language of the decree of divorce and this decision should be upheld on appeal.

POINT VII

UNDER THE CIRCUMSTANCES, IT IS UNREASONABLE FOR HUSBAND TO MAINTAIN THAT WIFE AGREED TO ACCEPT ONLY \$10,000.00 OF EQUITY FROM THE HOME AND SHOULD BE HELD TO THAT AMOUNT

Reason dictates that Wife would not have knowingly made the agreement as understood by Husband. The decree provided for a greater amount of equity to be payable to Wife if Husband failed to pay Wife \$10,000.00 by March 1989 and if the

Wife's share of the net equity received from the subsequent sale of the home exceeded \$10,000.00. Wife could have paid her own credit card debts in one payment if Husband had paid her the \$10,000.00 by March 1989, thereby retaining the amount Husband paid in interest over a period of five years.

It is unreasonable for Husband to argue that Wife willingly agreed to deduct the amount of interest on her credit card debts from the \$10,000.00 amount. Not only would Wife have lost the amount of the interest paid on the credit card debts, but she would have lost the amount of interest she could have accumulated on the \$10,000.00 during that same five-year period. The only reasonable explanation for Wife's willingness to accept Husband's offer to pay her credit card debts is that Wife believed she would ultimately be entitled to a greater amount of equity as compensation. Even when Husband's understanding of the parties' agreement was communicated to Wife through the July 31, 1992 letter from Husband's attorney, Wife had no reason to believe that Husband's mistaken understanding would prevail over the express language of the decree.

Under the circumstances of this case, the lower court's decision was reasonable and equitable and should be upheld.

CONCLUSION

The evidence in this case shows that the parties attempted to modify, by oral agreement, certain provisions of the decree of divorce. However, the evidence further shows that the parties never had a meeting of the minds as to certain material elements of that agreement, and the trial court correctly resolved this dispute by following the express language of the decree and providing that Husband be allowed to take certain offsets against the amount of equity owed to Wife. This Court should affirm the decision of the trial court.

Dated this 28th day of May, 1996.



DANA D. BURROWS
Attorney for Appellee

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Brief of Appellee was mailed to the following, postage prepaid, this 29th day of May, 1996.

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