1984

Rainer F. Huck v. Patricia Ann Huck : Respondent's Brief

IN THE SUPREME COURT OF THE STATE OF UTAH

RANIER F. HUCK,	)	
Plaintiff-Appellant,	)	
vs.	)	Case No. 19180
PATRICIA ANN HUCK,	)	
Defendant-Respondent.	)	

RESPONDENT'S BRIEF

Appeal from the Judgment of the
Third Judicial District Court in and for Salt Lake County,
Honorable James S. Sawaya

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RESPONDENT'S BRIEF

NATURE OF CASE

This is an appeal from a Decree of Divorce entered by the Third Judicial District Court in and for Salt Lake County, State of Utah.

DISPOSITION IN LOWER COURT

The lower court awarded defendant a Decree of Divorce, together with certain properties acquired during the marriage, custody of the minor child, temporary alimony, child support and attorneys' fees.

RELIEF SOUGHT ON APPEAL

Defendant-Respondent respectfully requests this Court affirm the District Court's determination as contained in the Decree of Divorce entered herein.

STATEMENT OF FACTS

Respondent is willing to accept certain of the statements of fact propounded by appellant, but not the conclusions drawn therefrom. Many additional statements of

fact are contained in the appellant's arguments which cannot be accepted by respondent. Respondent does not believe that the facts in this case are so uniquely different as to justify the application of a different set of standards governing the review of domestic cases. While every factual situation is unique to some extent, for purposes of reviewing the lower court's determination, there appears to be little difference between this marriage failure and the majority of domestic cases reviewed by this Honorable Court.

The parties were married for legitimate social and emotional reasons. Their relationship withered to a point of separation and divorce. During the course of that marriage, the parties borne a child, acquired marital properties and investments, incurred obligations, and lived and progressed as any couple may be expected to develop.

The respondent not only contributed as a mother to the parties' child and a wife to the appellant (R.632), but also contributed her earning capacity while at the same time furthering her education and career potentials. The appellant, although highly educated as a Ph.D in Physics, continued his educational interests more as a hobby than an economic pursuit, and admittedly invested substantial amounts of time managing, developing and maintaining real estate rental investments. That was his avocation and occupation. During the course of the marriage, by reason of the appellant's employment efforts and the respondent's financial contribution to offset normal family expenditures, the assets of the parties substantially

increased. Defendant's Exhibit 9 demonstrated 19 categories of family expenses maintained and paid by Patricia Huck during the course of this marriage. In addition, the defendant paid all child care and medical expenses. These contributions allowed the plaintiff to save and reinvest income in rental properties, thus increasing overall equity. Patricia's contributions to the marraige were not by "agreement", as that term is implied by the plaintiff, unless plaintiff means the agreements repeated upon the marriage vows, one to another.

During the pendency of the proceedings below, defendant moved with her child to her home state of California to secure employment and be close to her family. (R.624.) She obtaimed temporary employment as an all-night laboratory technician at a local hospital working three ten-hour shifts. Her net income was not sufficient to meet her monthly needs of $1,700.00 per month without the temporary support awarded by the court. (R.626-628.)

ARGUMENT

I. THE COURT DID NOT COMMIT ERROR BY INVALIDATING OR DISREGARDING THE PRENUPTIAL AGREEMENT.

As restated in appellant's brief, the court found (a) the prenuptial agreement was coercive and therefore invalid, and (b) even if not invalid, the prenuptial agreement had been met in all of its operational terms and conditions. The finding and conclusion of the court and its effect should be left to the sound discretion of the trial court whose discretion should not be reversed unless there is a clear

demonstration of arbitrary and capricious conduct on the part of the court. English v. English, 565 P.2d 409 (Utah 1977); Naylor v. Naylor, 563 P.2d 184 (Utah 1977).

The prenuptial agreement itself provides that if the parties should divorce during the first two years of marriage, then certain limitations to claims will be effective (paragraph 4 of plaintiff's Exhibit 1). The agreement is silent if the marriage lasts longer than two years, which this marriage did.

The agreement further provides that Patricia Huck is to provide all child support payments unless she can't afford it or is not "capable of self-support at such time". The court specifically found that during the pendency of these proceedings, defendant was in fact not capable of such self-support. This finding is supported by a finding concerning her earnings, his earnings, as well as the availability of cash and capital resources.

The appellant argued that Patricia Huck would not have been entitled to temporary alimony if the prenuptial agreement were valid. Even this contention is not consistent with the terms of the prenuptial agreement:

> 6. In the event of divorce or separation, Pat specifically waives alimony or separate maintenance support provided that she is capable of self-support at such time. (Plaintiff's Exhibit 1.)

Nowhere in his argument does the plaintiff recognize defendant's expenditures, the financial burden of rearing a child, and the higher expenses made necessary by her move to California. The plaintiff simply restates in his brief that

the defendant's gross earnings should qualify her as a self-supporting person. The move to California, her home state, was made necessary to secure a stable and long-term employment opportunity. Her employment hours are consistent with full-time night laboratory work and her expenses, as testified, were within reasonable limits given the locality of her employment, schooling and the like. Accordingly, the court found she was not capable of self-support and was in need of alimony and child support.

Every aspect of the prenuptial agreement was complied with by the Court:

(1) All property brought into the marriage by each party remained the property of that party. Ranier Huck recognized in the Pretrial Order that Patricia Huck brought in a great deal more to the marriage than the mere $1,000.00 recited in the agreement (see Pretrial Order, R.261). Ranier Huck received all property listed in Exhibit "A" to the prenuptial agreement;

(2) In the event of divorce, if the parties could not agree on a division of property, the agreement provided that a court of law should divide the same, just as it did in this matter;

(3) Patricia Huck received custody of her child, even though Ranier Huck did not originally want to be bound by his agreement not to claim any custody under the prenuptial agreement. Under Utah law, such an agreement would not bind the court.

Consistent with the agreement, the court attempted to divide marital properties in an equitable manner in order to achieve a happy and useful result to all parties concerned. The court exercised its discretion without abuse and in a manner completely consistent with the prenuptial agreement. Thus, the court found that the plaintiff was not prejudiced in any manner by the court's finding that the defendant was coerced into executing the prenuptial agreement. The issue of coercion, although addressed by the court, is moot.

II. THE COURT DID NOT ABUSE ITS DISCRETION IN AWARDING DEFENDANT ATTORNEYS' FEES.

Plaintiff argues that because of a substantial marital property award to the defendant, and because defendant's net income would thus increase once she became possessed of that real property, the defendant could well afford to pay her own attorneys' fees, and thus plaintiff should not have been ordered to contribute the net amount of $2,750.00 toward payment of attorneys' fees. Plaintiff's argument is further exaggerated by recapping a long history of the defendant's "defense" of certain legal maneuvers designed to boot her out of house and home, and by an ultimately unsuccessful attempt to disqualify plaintiff's attorney from continuing to represent the plaintiff.

The court made substantial findings demonstrating the amount of monies available to each party: the fact that plaintiff had available in his possession in excess of $19,000.00 from the sale of marital property; the fact that

plaintiff had substantial liquid savings accounts under his name and in his sole possession and control; the fact that plaintiff had all income-producing properties in his name and under his control (the properties awarded defendant have still not been turned over to her as of the date of this brief); and the fact that defendant maintained herself and the minor child solely on her net income and temporary support.

The defendant, Patricia Huck, still believes that had her attempts to disqualify the plaintiff's attorney been successful, this matter would not have been litigated to the extent that it was. Indeed, the plaintiff's interests, held jointly with his attorney, were significant enough to warrant protection while at the same time cloud the judgment of both client and attorney. Although unsuccessful, Patricia Huck believes that her attempts were necessary for her own protection.

Defendant's attorney testified to the number of hours, the fee per hour, his experience in domestic trial relations, and the reasonableness of the fee. The only issue raised at trial by plaintiff concerns the number of hours and on what tasks these hours were expended. The court obviously weighed the facts in arriving at an award of attorneys' fees of approximately one-third of what had been requested. The award is clearly within the court's discretion and supported by the findings and facts in evidence and should be accordingly sustained.

III. THE LOWER COURT COMMITTED NO ERROR IN AWARDING DEFENDANT CERTAIN PROPERTIES AND AN EQUITABLE DIVISION OF MARITAL PROPERTY.

In accordance with the prenuptial agreement, the parties ultimately stipulated that each would be awarded the various properties belonging to them at the inception of this marriage. That rule was consistent with the prenuptial agreement and general domestic relations law. Preston v. Preston, 646 P.2d 705 (Utah 1982); Jesperson v. Jesperson, 610 P.2d 326 (Utah 1980). However, that rule is not, under Utah law, inviable. Workman v. Workman, 652 P.2d 931 (Utah 1982). Indeed, any increase in the value of separate property which occurs during the marriage is considered to be acquired through the joint effort of the parties under Utah law. In such cases, the spouse will be entitled to the value of assets contributed at the time of the marriage and the profits due to the increase will be divided as a marital asset. Preston v. Preston, supra; Jesperson v. Jesperson, supra. Thus, the defendant was awarded three real properties, having a combined total equity of approximately $76,000.00, which total equity included any credits for premarital properties belonging to her in the stipulated amount of $8,000.00. Compare plaintiff's award, in excess of $120,000.00 of properties, not including the premarital contributions and not including premarital properties held, stipulated to be plaintiff's separate property. It is clear that the plaintiff received by far the larger amount of property available for distribution. He has

not demonstrated, nor can he, any abuse of discretion by the lower court in its treatment and distribution of marital property. Fletcher v. Fletcher, 615 P.2d 931 (Utah 1982).

The plaintiff further contends, however, that even if the distribution of these properties was within the fair and equitable discretion of the court, the defendant should be estopped from claiming any value in the marriage whatsoever by reason of her conduct and by reason of the various statements made to the plaintiff throughout the marriage. Defendant responds, as she did at the trial, by denying these estoppel statements, which the court found in her favor, and by emphasizing the admitted irresponsibility and selfishness of the plaintiff. At page 39 of appellant's brief, appellant recites as a fact "it was agreed prior to the marriage that should the marriage end in divorce, she would make no claim as to the pre-existing properties in any way. (Tr. 462.)" This quotation leaves the Court with an impression consistent with the plaintiff's assertion that the marriage was solely a marriage of convenience and that defendant would have been willing to pay for this convenience if necessary. Reading one page further into the transcript, however, produces a more rational clarification when the trial court asked Mr. Huck his position regarding improvements made to the marital residence after the marriage:

> THE COURT: Supposing they proved to my satisfaction that that is the case, was it your [Mr. Huck] intention that you would take the full benefit of those improvements?

ANSWER [by Mr. Huck]: I don't think that would be reasonable, no. I would want to be fair.

THE COURT: I don't either. Thank you.

The plaintiff's actions in eavesdropping on defendant's telephone conversations is further evidence of plaintiff's notions of fairness. The conversation quoted at pages 44 and 45 of appellant's brief is taken out of context (bragging to a friend), and represents three separate conversations taken at different times and discussing different subjects. While the plaintiff did not deny the conversations themselves, the intent, import and meaning of these conversations were denied as not being consistent with those advanced by the plaintiff.

These conversations are the only evidence which support plaintiff's selfish arguments that only he contributed to the growth of marital property and that Mrs. Huck specifically waived any claim to such property. This contention is not even consistent with the prenuptial agreement which provides:

> 3. It is agreed by both parties that upon divorce or legal separation, a mutual agreement as to the disbursement of property acquired after the marriage shall be made by the parties themselves or, in the event that they cannot agree, that they shall allow a court of law to divide such property under the court's discretion.

That is what the court did.

The court answered plaintiff's arguments of waiver and estoppel by awarding property to the defendant, as it did. The court thus implicitly found that there was neither an

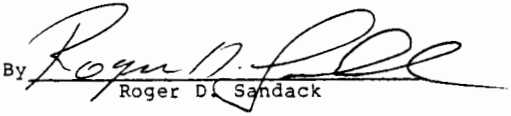
explicit or implicit waiver of a known right, either voluntarily by the defendant or by the defendant's actions and deeds. The entire estoppel argument is simply an excuse to justify plaintiff's financial greed.

CONCLUSION

Patricia Ann Huck respectfully requests this Court affirm the lower court's determinations in all respects and deny any relief requested by the plaintiff-appellant. The lower court's determinations are, in all respects, supported by the evidence in the record and are not an abuse of the court's discretion or a misapplication of law.

RESPECTFULLY SUBMITTED this 6th day of February, 1984.

GIAUQUE & WILLIAMS

By 
Roger D. Sandack

Attorney for Defendant-Respondent

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CERTIFICATE OF SERVICE

A true and correct copy of RESPONDENT'S BRIEF was placed in the United States mail, postage prepaid, to Craig S. Cook, Esq., Attorney for Plaintiff-Appellant, 3645 East 3100 South, Salt Lake City, Utah 84109, on this 6th day of February, 1984.