1975

Raymond C. Hansen v. Mary J. Hansen : Brief of Respondent

Utah Supreme Court

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Richard M Taylor; Attorney for Appellants .

UTAH SUPREME COURT

BRIEF

DOCKET NO. 13985

OF THE

STATE OF UTAH

RAYMOND C. HANSEN,
Plaintiff-Respondent,

vs.

MARY J. HANSEN,
Defendant-Appellant.

Case No.
13985

BRIEF OF RESPONDENT

An Appeal from a Decree of Divorce in the Fourth Judicial District Court, Utah County, State of Utah, the Honorable George E. Ballif, Judge, presiding.

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BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

An appeal by the defendant, Mary J. Hansen, from an Amended Decree of Divorce entered against her in the Fourth Judicial District Court, Utah County, State of Utah, the Honorable George E. Ballif, Judge, presiding.

DISPOSITION IN THE LOWER COURT

The lower court granted the plaintiff-respondent a Decree of Divorce against the defendant-appellant upon the grounds of great mental distress, pursuant to Section 30-3-1 (7), U. C. A. (1953), as amended.

RELIEF SOUGHT ON APPEAL

Plaintiff-respondent prays that the Amended Decree of Divorce be affirmed and that he be awarded his costs incurred herein.

STATEMENT OF THE FACTS

The plaintiff-respondent finds the defendant-appellant Statement of the Facts inconsistent with the facts in the above-entitled matter in the following particulars:

1. The testimony of psychiatrist Delbert P. Pearson, M. D., was that the acts of the defendant did cause the plaintiff mental anguish (Trial Trans. 38).

2. In addition to the award set out in Appellant's Statement of Facts, the lower court awarded the defendant-appellant a life estate in the mobile home and lot owned jointly by the parties; ordered the plaintiff to pay the premiums on the Blue Cross-Blue Shield medical insurance policy, and awarded her the beneficial interest in the life insurance policies (Tr. 50-52).

3. The uncontroverted evidence was that for the two years immediately preceding the trial the defendant had been gainfully employed and was earning approximately $2.00 per hour, 40 hours per week (Trial Trans. 42).

4. The defendant contended that her medicine bills were approximately $100.00 per month but her own evidence showed that her needs were only $70.00 per month. (Tr. 74).

5. An Amended Decree of Divorce was entered increasing the alimony to be paid by the plaintiff to the defendant from $30.00 to $70.00 per month.

ARGUMENT

POINT I.

THE DISTRICT COURT DID NOT ERR IN ITS FINDING OF FACTS TO SUPPORT A DECREE OF DIVORCE.

Plaintiff sought and was granted a Divorce Decree pursuant to Section 30-3-1 (7) U. C. A. (1953), as amended, upon the grounds of great mental distress. The Court found cruel treatment causing the plaintiff great mental distress after a Decree of Separate Maintenance was entered between the parties in August of 1972.

This Court has set down rules for review in divorce cases, providing that the actions of the trial court are presumed valid and correct unless the appellant sustains the burden of showing that the evidence clearly preponderates against the Decree of the Court.

> . . . (D)ue to the prerogatives and advantaged position of the trial court, we pursue that broad authorization under certain rules of review which are now well estabilshed: Its actions are indulged with a presumption of validity and correctness and the burden is upon the appellant to show a basis for upsetting them: either (1) that findings have been made when the evidence clearly preponderates the other way, or (2) that

> there has been a misunderstanding or misapplication of the law resulting in substantial and prejudicial error, or (3) that it appears plainly that there has been such an abuse of discretion that an inequity or injustice has resulted. *Harding* v. *Harding*, 26 Utah 2nd 277, 488 P. 2d 308, 310, (1971).

There is no evidence before this Court upon which it might find the facts preponderate against a showing of mental cruelty. The defendant, in her own testimony, stated that the parties had not had a friendly discussion in approximately two years (Trial Trans. 40).

The defendant argues that the incidents the plaintiff testified to which caused him great mental anguish, surely could not cause a retired naval officer with the plaintiff's background to be mentally distressed. The defendant-appellant further argues that the incidents testified to by the plaintiff were nothing more than the natural and usual disagreements and misunderstandings that accompany any normal marriage. No one, after reading the transcript, could reasonably say that the plaintiff and the defendant have a normal marital relationship.

Mental cruelty causing great mental anguish "must be ascertained from the facts of each case, individually, in light of the sensibilities of the particular person; hence, the ultimate question is not so much the conduct of the defendant, but the effect of such conduct on the plaintiff." *Stevenson* v. *Stevenson*, 13 Utah 2d 153, 369 P. 2d 923 (1962). The trial court had the opportunity to

see the witnesses and evaluate their demeanor and credibility.

This is simply not a case where this Court can say that the evidence clearly preponderates against the Decree of the district court. The trial judge was able to evaluate the demeanor of those who testified to the individual sensibilities of the plaintiff, and therefore, should have been able to accurately determine if the particular incidents, in this particular case, constituted mental cruelty toward the plaintiff.

The trial court found that there was substantial and satisfactory evidence upon which to grant the plaintiff a divorce. This Court has stated that "when the promotion of happiness, welfare, health, and morality of the parties and their children are not at stake in a divorce, then there is no public interest in the preservation of the marriage." *Stevenson*, supra, at 924.

It appears that the only reason the defendant does not want a divorce is a purely financial one, the loss of the Champus insurance benefits, and therefore, there being no other circumstances which would justify denying this particular divorce, it should be affirmed.

POINT II.

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN THE AMOUNT OF ALIMONY AWARDED.

Very recently this Court, in the case of *Mitchell* v.

Mitchell, ... Utah 2d ....., 527 P. 2d 1359 (1974), stated that

> . . . (I)n a divorce action, the trial court has considerable latitude of discretion in adjusting financial and property interests, and its actions are indulged with a presumption of validity. The burden is upon the appellant to prove that . . . a serious inequitay has resulted as to manifest a clear abuse of discretion. *Id.* at 1360.

The record reveals that the trial court considered and reconsidered the economic and medical condition of the parties, the fact that they were both self-supporting, that they had not lived together for some time, the fact that the defendant was awarded practically all of the property, and income property that was accumulated during the marriage, and the fact that the plaintiff had arranged to provide for the defendant's medical needs as best he could, in arriving at its final Decree.

There is no showing of any abuse of discretion by the trial court. Moreover, the record indicates that the Court reconsidered its original alimony award and increased the award from $30.00 to $70.00 a month (Tr. 75-77), a figure which approximates the medication needs of the defendant (Tr. 74).

The circumstances in this case are similar to the facts in the Utah case of *Ghost* v. *Ghost*, 28 Utah 2d 398, 490 P. 2d 339 (1971), where due to the divorce of the parties the defendant lost her right to retirement income of approximately $80.00 per month. The Court held that

the loss to the defendant of the $80.00 and the trial court's failure to award alimony did not constitute an abuse of discretion. 490 P. 2d at 340. In view of the circumstances, it was certainly not an abuse of the trial court's discretion to fail to award $30.00 more in alimony. In *Christensen* v. *Christensen*, 21 Utah 2d 263, 444 P. 2d 511 (1968), this Court stated:

> . . . (W)hether we as individual judges would or would not have arrived at the exact same formula as to what the most practical and just treatment of the economic expects (sic) of the situation is not the question on . . . appeal. Even though it is the established rule that divorce cases being in equity, it is the duty of this court to review and weigh the evidence, it is equally true that we have invariably recognized the advantaged position of the trial judge and given deference to his findings and judgment, declaring that they should not be upset unless the evidence clearly preponderates against them, or unless the decree works such an injustice that the equity and good conscience demand that it be revised. 444 P. 2d at 512, 513.

The defendant-appellant has failed to show any inequity, injustice or abuse of discretion in the Amended Decree of Divorce.

CONCLUSION

The record clearly preponderates in favor, not against the plaintiff in this action. The plaintiff established, by substantial and satisfactory evedence, that he

should be granted a divorce. The trial court, taking into consideration all of the pertinent factors, made what it considered to be an equitable alimony award and property settlement. This matter should be affirmed with costs.

Respectfully submitted,

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Plaintiff-Respondent