

1975

Oma C. Strong v. Ted J. Strong : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

OMA C. STRONG,)
)
Plaintiff-Respondent,)
)
-vs-)
)
TED J. STRONG,)
)
Defendant-Appellant.)
)
)

Case No. 14182

BRIEF OF APPELLANT

TED J. STRONG

Appeal from the judgment of the Third Judicial
District Court of Salt Lake County,
Peter F. Leary, District Judge,
Presiding

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FILED

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

OMA C. STRONG,)	
)	
Plaintiff-Respondent,)	
)	
-vs-)	CASE NO. 14182
)	
TED J. STRONG,)	
)	
Defendant-Appellant)	

BRIEF OF APPELLANT
TED J. STRONG

STATEMENT OF THE NATURE OF THE CASE

This is an action brought by the plaintiff to modify a divorce decree. Defendant subsequently moved to modify the same divorce decree. Both motions were heard on May 1, 1976.

DISPOSITION IN THE LOWER COURT

The Trial Court denied both the plaintiff's and the defendant's motions to modify the divorce decree and awarded judgment against the defendant in the amount of \$1,450.00 for delinquent child support plus \$100 attorney's fees and costs and ordered the defendant to commence alimony and child support payments as per the divorce decree beginning May 1, 1975. The plaintiff was denied judgment for delinquent alimony payments.

RELIEF SOUGHT ON APPEAL

The defendant-appellant, Ted J. Strong, seeks a reversal of that part of the Judgment, Decree and Order entered on the 9th day of June, 1975, which requires the defendant to commence alimony payment as of May 1, 1975 and which denies the relief sought by the defendant to the effect that the Release executed by the plaintiff and introduced in evidence as Exhibit 2-D constituted a permanent release of defendant's obligation to pay alimony to the plaintiff.

STATEMENT OF FACTS

Plaintiff and defendant were divorced by a Divorce Decree entered on February 14, 1962. In April of 1971, plaintiff asked the defendant to advance her the sum of \$2,000 to be used as a down payment on a home in Sandy, Utah (R. 7,8). Defendant testified that the plaintiff agreed to release him from his alimony and child support for his daughter Carolyn if he would give her the \$2,000 (R. 35, 36). Plaintiff then presented a Stipulation in Support of Motion to Modify Decree of Divorce (Exhibit 1-D) providing, among other things, that in exchange for the \$2,000, defendant would only have to pay \$50 per month child support and \$50 per month alimony for a period of two years instead of \$150 per month child support and \$50 per month alimony (R. 36). Defendant refused to sign said Stipulation because it did not reflect the terms of the initial agreement (R. 36). Plaintiff then wrote and executed

a document (Exhibit 2-D) stating:

"To Whom It May Concern:

"I do hereby agree to relinquish my alimony payments and child support of one child, (Carolyn Strong) for the sum of \$1,000.00 each, respectively." (R. 18, 36).

After receiving Exhibit 2-D, defendant delivered a check for \$2,000 to plaintiff (R. 36). Plaintiff endorsed the check (R. 19).

The defendant testified directly and unequivocally concerning the agreement between the parties. He stated emphatically that he refused to sign the plaintiff's Stipulation (Exhibit 1) (R. 36). The plaintiff's testimony concerning the same agreement was vague and uncertain. She did not remember the Stipulation (Exhibit 1), but did remember signing the Release of future alimony payments (Exhibit 2) (R. 18).

During the period of time between the delivery of the \$2,000 and the filing of this Motion to Modify Decree, approximately four years, the plaintiff made no request that defendant make any alimony or support payments (R. 36).

ARGUMENT

POINT I.

AN UNCONDITIONAL RELEASE OF FUTURE ALIMONY PAYMENTS FOR CONSIDERATION IS BINDING ON THE PARTIES.

Although the Utah cases cast substantial doubt upon the rights of parents to agree between themselves as to their obligations concerning future payments of support money for

minor children, there is no similar doubt with respect to the rights of the parties to come to an agreement with respect to payments due for alimony. In Openshaw v. Openshaw, 105 Ut. 574, 144 P.(2d) 528, the Court discussed the proposition that a decree for the payment of alimony operates as a judgment lien as to all past due and unpaid installments. The Court stated that the rule would be applicable "absent any competent facts to establish release, satisfaction, offsets, estoppel or other bases for reducing the amount for which execution should issue." (Emphasis supplied). Pac. Rep. 530. In Wallis v. Wallis (1958) 9 Ut(2d) 237, 342 P.(2d) 103, Justice McDonough stated for the court:

"The power of the parties to make agreements changing the monetary terms of a divorce decree is generally upheld except where future child support is concerned, absent hardship, fraud, duress, concealment, undue influence or mutual mistake."

The Court cited the following cases: McKinney v. McKinney, 152 Kan. 372, 103 P.2d 793; Hill v. Hill, 103 Colo. 492, 107 P.2d. 597; Schmelzel v. Schmelzel, 286 N.Y. 21, 38 N.E. 2d. 114; Goldman v. Goldman, 282 N. Y. 296, 26 NE 2d. 265; Apfelbaum v. Apfelbaum, 111 N. J. Eq. 529, 162 A.543, 84 ALR 298; Higgins v. Higgins, Sup., 119 N.Y.S.2d 103; Cavanaugh v. Cavanaugh, 106 Ill. App. 209. Thus it appears that Utah follows the general rule insofar as alimony obligations are concerned, namely, that the parties themselves can come to an agreement in the nature of a release.

There is no claim in the instant case, nor is there any

basis for a claim in the nature of hardship, fraud, duress, concealment, undue influence or mutual mistake.

Appellant respectfully suggests that the special rule applicable to agreements concerning future child support is not applicable to releases for future alimony payments. The same public policy questions are not applicable to alimony as to child support. It is well settled, for example, that if a divorced woman remarries, the obligation of the former husband to pay alimony ceases. The obligation of a father to support his minor child continues, however, regardless of such a remarriage.

There is no legal or public policy consideration which prevents a wife from releasing a former husband's obligation to make future alimony payments and the Court should determine that in the instant case, insofar as plaintiff's claim to alimony is concerned, the unconditional release received in evidence as Exhibit D-2 binds the plaintiff in accordance with its terms.

POINT II.

IT IS CLEAR FROM THE TRIAL RECORD THAT THE PARTIES' INTENTION WAS TO BE BOUND BY THE UNCONDITIONAL RELEASE OF FUTURE ALIMONY PAYMENTS.

A brief review of the communications between plaintiff and defendant and their actions prior and subsequent to the execution of the Release identified as Exhibit 2-D clearly demonstrates that both the plaintiff and the defendant understood the terms of the Release, voluntarily entered into the

agreement and fully intended to be bound by the terms of the Release.

Sometime in 1971, the plaintiff approached the defendant with a proposal whereunder the defendant would advance the plaintiff the sum of \$2,000 to be used as a down payment on a house, and in consideration therefor the plaintiff would unconditionally release the defendant from his obligation to pay alimony to the plaintiff and child support for Carolyn Strong (R. 7, 8, 35, 36). The defendant agreed to the terms of the proposal (R. 35, 36). Thereafter, plaintiff presented the defendant a Stipulation in Support of Motion to Modify Decree of Divorce (Exhibit 1-D) which contained substantially different terms than the initial agreement (R. 36). The Stipulation provided that the defendant would pay the plaintiff \$2,000 cash to be used as a down payment on a home and would also pay all dental bills of the three children in custody of the plaintiff. In exchange for these payments the defendant would be released from child support payments in the amount of \$100 per month for two years. Thus, in exchange for a Release from \$2500 of child support, defendant would have had to secure a loan in the amount of \$2,000, pay interest on the money borrowed and additionally pay all dental bills for three children. The defendant refused to sign the Stipulation because its terms were opposite those agreed to previously (R. 36). Plaintiff then wrote and executed the Release identified as Exhibit 2-D which stated that for \$1,000 the plaintiff would unconditionally relinquish her alimony payments from defendant and for another \$1,000 she would unconditionally relinquish child support for

Carolyn. Plaintiff signed the Release and gave it to defendant in exchange for \$2,000 (R. 36).

It appears that the parties initially entered into a verbal agreement. The plaintiff later attempted to change the terms of the agreement by presenting the Stipulation (Exhibit 1-D) to defendant for signature. However, the Stipulation was never executed. The plaintiff then drafted and executed a Release (Exhibit 2-D). She drafted or typed the document so she was familiar with its contents (R. 36). The Release, which by its terms was an unconditional release, was then voluntarily exchanged for the \$2,000. At that point in time there was a meeting of the minds of the parties. Both parties understood the terms of the agreement and both parties performed their part of the agreement. For the next four years the parties indicated by their actions that they were bound by the Release. The plaintiff made no requests for alimony or child support payments (R. 36), even though she testified that she had incurred substantial debt during that period (R. 9, 10, 11). The defendant remarried in reliance upon the Release incurring additional financial responsibilities. (Defendant's Affidavit dated March 28, 1975). Both the plaintiff and defendant performed the terms of the agreement from 1971 to 1975 and should continue to do so.

CONCLUSION

Plaintiff and defendant knowingly and voluntarily entered into an agreement whereby the defendant would pay to

the plaintiff the sum of \$2,000 in exchange for an unconditional release from his obligation to pay alimony to plaintiff and child support for the parties' daughter, Carolyn. The child support portion of the agreement is not at issue. The agreement was made concerning future alimony. The defendant has performed his part of the agreement; the plaintiff has received the benefit of the agreement. The defendant has remarried and incurred increased financial responsibilities in reliance upon the agreement, and the parties should be bound by the agreement. Furthermore, the Utah courts have recognized the right of a spouse to release the other spouse from alimony payments.

It is respectfully submitted that the agreement between the parties was entered into fairly and voluntarily, is not against public policy, and should be enforced releasing defendant from all future alimony payments to the plaintiff.

RESPECTFULLY SUBMITTED this 19th day of September, 1975.

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