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Margaret Teresa Lamberth v. Scott M. Lamberth : Brief of Respondent

Utah Supreme Court

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Vernon B Romney; Attorney General; Jack L Crellin; Assistant Attorney General; Attorney for Respondent.

Frank M Wells; Attorney for Appellant.

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BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

IN THE SUPREME COURT OF THE STATE OF UTAH

MARGARET TERESA LAMBERTH,

Plaintiff and Respondent,)

-v-

No. 14383

SCOTT M. LAMBERTH,

Defendant and Appellant.)

BRIEF OF RESPONDENT

Appeal from the judgment of the District Court
of Weber County, Honorable Ronald O. Hyde.

VERNON B. ROMNEY
Utah Attorney General

JACK L. CRELLIN
Assistant Attorney General

236 State Capitol Building
Salt Lake City, Utah 84114

Attorneys for Respondent

Frank M. Wells
550-24th Street, #304
Ogden, Utah 84401

Attorney for Appellant

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236 State Capitol Building
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Attorneys for Respondent

Frank M. Wells
550-24th Street, #304
Ogden, Utah 84401

Attorney for Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

)
MARGARET TERESA LAMBERTH,)
Plaintiff and Respondent,) No. 14383
-v-)
SCOTT M. LAMBERTH,)
Defendant and Appellant.)

BRIEF OF RESPONDENTS

STATEMENT OF THE NATURE OF THE CASE

This is an action for support under the Uniform Reciprocal Enforcement of Support Act.

DISPOSITION OF THE LOWER COURT

From an order of support for the plaintiff-respondent, the defendant-appellant appeals.

RELIEF SOUGHT ON APPEAL

Defendant-appellant seeks reversal of the order of support.

STATEMENT OF FACTS

In this appeal the defendant-appellant makes many assertions of fact which are not supportable in the record on appeal, and therefore, should be ignored as totally self-

serving and spurious. The facts as shown in the record on appeal are as follows:

The plaintiff-respondent is the former spouse of the defendant-appellant the parties having been married on or about December 13, 1949 in Baton Rouge, Louisiana, and having been divorced in the State of Texas on or about August 16, 1973 (R.4, 25-29). Prior to their divorce, the parties, while residents of the State of Virginia, entered into a property settlement agreement which provided, inter alia, as follows:

WHEREAS, the parties hereto wish to settle all matters relating to support and maintenance of WIFE, division of their property, and other related matters,

NOW, THEREFORE, in adjustment and compromise of all property rights and other related matters, and in adjustment and compromise of all matters relating to maintenance, custody, and support and personal relationship, and in consideration of the mutual promises and covenants hereinafter set forth, the parties hereto do here mutually covenant and agree, grant and convey as follows:

1. HUSBAND agrees to pay to WIFE during his lifetime, so long as the WIFE shall live and remain unremarried (but such obligation shall cease upon the occurrence of the first of any such events) the sum of Four thousand eight hundred dollars (\$4,800.00) per annum payable in monthly installments of Four hundred dollars (\$400.00) per month; provided, however, that such obligation of the HUSBAND shall be reduced by an amount equal to 20 per cent of the gross income of the wife per annum from salary, wages and bonuses from employment by the WIFE, if any. Such reduction shall be effected coincident with employment of the WIFE and further effected coincident with each increase in salary, wages, or bonuses received by the WIFE,

which shall be pro-rated upon the basis of the applicable year, month, part of a year or part of a month. The WIFE shall promptly notify the HUSBAND of each employment and of each adjustment in salary, wages, or bonuses. On or before March 15 of each year, the WIFE shall deliver to the HUSBAND a statement which reflects the actual amount of gross salary, wages, and bonuses from employment during the prior calendar year and promptly thereafter the parties shall adjust any overpayment or underpayment made during the prior calendar year by the HUSBAND to the WIFE. (R. 26-27).

The foregoing "property settlement agreement" was incorporated into the Texas divorce decree and was ordered to be made part of that judgment in accordance with the terms thereof. (R. 25-28).

The plaintiff-respondent filed her petition for support under the Uniform Reciprocal Enforcement of Support Act in the Superior Court of the State of California for the County of San Diego on January 20, 1975. (R. 4-8). The matter was thereupon referred to the District Court of Weber County, State of Utah, for enforcement. (R. 8-10). An order to show cause why the defendant-appellant should not be ordered and required to pay a reasonable amount per month for the support and maintenance of his former spouse was served upon the defendant (R. 11-13) and he filed a motion to dismiss the complaint for failure to state a claim upon which relief could be granted (R. 29). The motion to dismiss was denied on October 20, 1975 (R. 31), following which the defendant-appellant was ordered to pay the plaintiff-respondent the sum of \$150.00

per month for continuing support (R. 33-34). The defendant-appellant appeals from this order.

ARGUMENT

POINT I

THE ORDER OF SUPPORT OF THE LOWER COURT IS BASED UPON A PRE-DIVORCE "PROPERTY SETTLEMENT AGREEMENT" CREATING A SUPPORT OBLIGATION COGNIZABLE UNDER THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

The "duty of support" contemplated in the Uniform Reciprocal of Support Act "includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise." Section 77-61a-2 (f) Utah Code Annotated, 1953, as amended, underscoring supplied. Characterization of the agreement as a "property settlement agreement" has no effect on its content. It was clearly intended by the parties to provide for the support and maintenance of plaintiff-respondent. Apart from the expressed intent to provide for "support and maintenance", it was to endure for the life or until remarriage of plaintiff-respondent and vary in sums due, according to the financial circumstances of the parties. As noted by the Supreme Court of Utah in another case involving a "property settlement agreement", this agreement created an obligation "in the nature of alimony" and was really intended to supply "support and maintenance"

to plaintiff-respondent. Lyon vs. Lyon, 115 U. 466, 296 P.2d 148, 150. There being no challenge to the validity of such an agreement, the duty of defendant-appellant to render support to plaintiff-respondent according to its terms is plainly "imposed or imposable by law" and thus cognizable under the Reciprocal Enforcement of Support Act.

POINT II

THE SUBSEQUENT DIVORCE OF THE PARTIES DID NOT TERMINATE APPELLANT'S OBLIGATION TO THE RESPONDENT UNDER THE AGREEMENT.

As a general rule, provisions for spousal support in a separation agreement are not abrogated by a subsequent divorce, absent more. 24 Am. Jur. 2d, Divorce and Separation §917; 42 C. J. S., Husband and Wife, §602; Campbell vs. Campbell, (Md. C.A. 1938) 198 A. 414, 116 A.L.R. 939, 947; Gunter vs. Gunter (Mass. App. 1975) 334 A.2d 437. In Texas, where the instant divorce was obtained, notwithstanding an anti-alimony public policy, the practice of incorporating "property settlement" agreements with built-in support provisions in divorce decrees has been countenanced. Shortly before the instant divorce was adjudged, the Texas Court of Civil Appeals

ruled that an agreement remarkably similar to that here in issue which had been incorporated into a Texas decree of divorce was enforceable in an action at law, though perhaps not with aid of the contempt power because of Texas public policy. Miller vs. Miller, (C. A. Tex. 1971) 463 S.W. 2d 477.

Being mindful that plaintiff here is not seeking to enforce a Texas judgment but rather an obligation for support arising from the former relationship of the parties and a bona fide agreement between them, the law of Texas and the force of the Texas divorce decree are not decisive, if material at all. In this connection it should be noted that under the Reciprocal Enforcement of Support Act the law of the State of residence of the obligor, i.e., Utah in this case, is applicable. Section 77-61a-7 Utah Code Annotated 1953, as amended. But, assuming arguendo that the law of Texas is material and was as represented by defendant, plaintiff, would nonetheless be entitled to be heard on her petition for support since, by his actions, defendant is estopped from denying the obligations undertaken in his "property settlement" agreement. Watton vs. Watton, Calif. C. A. 1946) 173 P.2d 867. Applying familiar rules of equity to a situation similar to the present case in which a foreign decree of divorce was claimed to cut off a former wife's right to support under a separation agreement, the California

Court of Appeals observed at Page 869 of 173 P.2d

Reporter:

"Defendant's agreement and the arrangement to have the terms of it carried into the decree no doubt furnished inducement to plaintiff to allow defendant to procure a divorce by default. Having obtained the decree, it would be most unfair and a legal fraud upon the plaintiff for defendant to retain the advantage of the decree and to escape his obligation by denying the jurisdiction of the court to award plaintiff support."

POINT III

FULL FAITH AND CREDIT REQUIRES THIS STATE TO RECOGNIZE THE DIVORCE DECREE GRANTED TO THE PARTIES IN TEXAS.

The defendant-appellant's only argument on appeal is that this court should declare a portion of the Texas divorce decree which he himself obtained as invalid upon the grounds that full faith and credit requires the property settlement agreement of the parties to be stricken therefrom under Texas law as enunciated in other cases. He misconceives the constitutional obligation of this court. The Utah Supreme Court is not empowered to sit as an appellate court to overturn the judgment of a Texas District Court long after the defendant-appellant's right to appeal that judgment in the proper Texas forum has expired.

Article 4, §1 of the United States Constitution provides that:

"Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state."

Even if this action were dependent upon the divorce decree of the Texas District Court, which it is not as hereinabove pointed out under Points I and II, the only "judicial proceedings" to which the Utah courts must extend full faith and credit in the instant case are those culminating in the divorce judgment of the District Court of San Patricio County, Texas incorporating the property settlement agreement between the parties hereto. Thus full faith and credit would require this court to sustain the judgment of the Texas District Court--not to overrule it. This case is not unlike Intermountain Association of Credit Men vs. Watterson, 19 U. 2d 212, 429 P. 2d 818 (1967), in which this court held as follows:

"Idaho was the forum chosen by the assignors. Their assignee cannot change that forum, or the subject matter in order to seek a new forum and a different theory of action to serve its own ends.

The assignee sued on an Idaho judgment. By conceding its invalidity, after it asserted its validity, it cannot now say I didn't mean what I said. After conceding the invalidity of the Idaho judgment, which it cannot do unless the Idaho courts agree, this court will recognize the Idaho judgment, and in our opinion, Intermountain best should go back to Idaho and pursue its remedies there.

...We prefer to respect the judgment of our sister state and not the stipulations of counsel who, having sought her jurisdiction, conveniently now are willing to attest to her illegitimacy."

As stated in the foregoing case, this court should now respect the judgment of our sister state, Texas, and not

the argument of a subsequently dissatisfied litigant who, having sought her jurisdiction, is now conveniently willing to attest to her illegitimacy.

CONCLUSION

The order of support of the lower court is valid and should be affirmed.

Respectfully submitted:

VERNON B. ROMNEY
Attorney General for the State of
Utah

JACK L. CRELLIN
Assistant Attorney General for
the State of Utah

Attorneys for Plaintiffs

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