

2000

June Marlene Thomas v. Harry Edward Thomas : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF
DOCKET NO. 14503 R

Supreme Court of the State of Utah

No. 14503

JUNE MARLENE THOMAS, *Plaintiff-Respondent*

vs.

HARRY EDWARD THOMAS, *Defendant-Appellant*

BRIEF OF PLAINTIFF-RESPONDENT

APPEAL FROM JUDGMENT OF CONTEMPT OF THE
DISTRICT COURT OF SALT LAKE COUNTY, UTAH
HONORABLE BRYANT H. CROFT, JUDGE

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NATURE OF THE CASE

The Defendant-Appellant herein appeals from a finding of and sentence for contempt for his failure to comply with an original decree of divorce and with subsequent orders made and entered in this case in the District Court.

DISPOSITION IN LOWER COURT

Defendant-Appellant was found in contempt for his failure to comply with a provision of the Decree of Divorce and with subsequent orders ordering him to deliver ten (10) shares of stock of Ute Distribution Corporation to Plaintiff-Respondent.

RELIEF SOUGHT ON APPEAL

Plaintiff-Respondent seeks affirmance of the decision and sentence of the lower court.

STATEMENT OF FACTS

By virtue of a Decree of Divorce entered on April 23, 1970, Plaintiff-Respondent was awarded, *inter alia*, ten shares of stock in Ute Distribution Corporation (R. 27). She thereafter brought Defendant-Appellant before the District Court on orders to show cause dated February 25, 1974 and December 10, 1975 (R. 46, 88), alleging that Defendant-Respondent had failed to deliver the shares of stock to her pursuant to the Decree of Divorce. The first of these orders to show cause was heard on June 26, 1974, and resulted in an Order dated January 3, 1975 which ordered Defendant-Appellant to deliver the 10 shares of stock as specified in the decree (R. 70). The second Order to Show Cause was heard on January 23 and January 30, 1976 and resulted in the finding of contempt (R. 100) from which Defendant-Respondent here appeals.

ARUGMENT

POINT I

THE MEMORANDUM DECISION CONSTITUTES A SUFFICIENT FOUNDATION TO SUPPORT THE CONTEMPT CITATION.

The District Court below prepared, signed and filed a carefully considered memorandum decision on February 9, 1976 (R. 94), and therein made a specific finding of contempt on the part of Defendant-Appellant for his failure to comply with a previous order of the Court. In this memorandum decision, Judge Croft states:

“... it is apparent that he has not complied with Judge Leary’s order of January 3, 1975. . . .” (R. 100)

This specific finding, reduced to writing, signed and filed, it is a sufficient basis for the citation of Defendant-Appellant for contempt. None of the cases cited by Appellant is factually similar to the case at hand; indeed, it is clear that in the principal case upon which he relies, this Court dealt with an inconsistency between a written Judgment and statements made by a District Judge. *Powers v. Taylor*, 14 Utah 2d 118, 378 P.2d 519 (1963). No such problem exists in this case. Further, this Court is not called upon here to rule upon the validity of a minute entry to support a finding of contempt, as it was in the other principal cases cited by Defendant-Appellant. *Robison v. Fillmore Commercial Bank*, 61 Utah 398, 213 P. 790; *Lukich v. Utah Const. Co.*, 46 Utah 317, 150 P. 298. It is submitted that Judge Croft’s Memorandum Decision fulfills the requirements which this Court expressed in *Powers v. Taylor*, 14 Utah 2d 118, 378 P.2d 519 (1963):

“... in order to justify a finding and sentence for contempt the proof should be clear and satisfactory that the contemtor was in violation or defiance of the court’s order. When this is done it is necessary for the court to make written findings upon *the specific conduct found to be contemptuous. . . .*” (emphasis added)

It is perfectly clear from the record before this Court that Judge Croft based his finding of contempt on specific conduct of the Defendant-Appellant, *viz.*, that he failed to comply with the Court’s order of January 3, 1975 (R. 100).

POINT II

THE ISSUE OF DEFENDANT-APPELLANT'S ABILITY TO DELIVER THE STOCK IS *RES JUDICATA*.

The Decree of Divorce which awarded the stock in question to Plaintiff-Respondent was properly supported by findings and conclusions. From the record, it is clear that during the course of their marriage, the parties acquired 23 shares of the stock (R. 30). There is, in addition, a specific *finding* that the parties, at the time of trial, *stipulated* to the award of ten shares of this stock to Plaintiff-Respondent (R. 31). No attempt was ever made by Defendant-Appellant to strike, modify or appeal from these two specific findings. Accordingly, his ability to deliver the stock in question, if indeed it must necessarily be established, is in fact established by the record itself and this determination is *res judicata* here.

POINT III

IF THE MEMORANDUM DECISION OF THE DISTRICT COURT IS INSUFFICIENT TO SUPPORT THE CONTEMPT CITATION, THE CASE SHOULD BE REMANDED FOR THE PURPOSE OF ENTERING FINDINGS AND CONCLUSIONS.

It is submitted that if this Court deems Judge Croft's Memorandum Decision to be insufficient to support the contempt citation, the case should merely be remanded to the District Court with instructions that specific findings and conclusions be made and entered. Indeed, this case may not be properly before this Court, which has held that an appeal does not lie from a memorandum decision. *Ellinwood v. Bennion*, 73 U. 563, 276 P. 159. In any event, if the relief which Defendant-Appellant seeks on appeal is to have the contempt citation reversed, such a course is improper under the decision in *Bennion*, since that case holds the present appeal to be premature. The question which must thus be addressed by this Court is whether Judge Croft's Memorandum Decision is a "final judgment" within the meaning of Rule 72(a), Utah Rules of Civil Procedure.

CONCLUSION

If this Court deems the memorandum decision, in which specific findings and conclusions are made with respect to Defendant-Appellant's contempt, to be sufficient to support the contempt citation the judgment of the District Court should be affirmed. If the memorandum decision is here held to be insufficient, then this Court should remand the case for the entry of findings and conclusions on the basis that the memorandum decision is not a "final judgment" within the meaning of Rule 72(a), Utah Rules of Civil Procedure, and that this appeal is therefore premature.

Respectfully submitted,

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I hereby certify that I mailed three copies of the foregoing to Ronald C. Barker, Attorney for Defendant-Appellant, 2870 South State, Salt Lake City, Utah 84115, postage prepaid, this day of, 1977.
