

1987

Melvyn De LaMare v. Rosalie N. Harris : Brief of Appellant

Utah Court of Appeals

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BRIEF

IN THE APPELLATE COURT
STATE OF UTAH

A10 MELVYN E. DE LAMARE,)
DOCKET NO. 870427-CA)
Plaintiff and Respondent,) No. 87-~~002~~-386-SCM
vs.)
ROSALIE N. HARRIS,)
Defendant and Appellant.)

870427-CA

APPELLANT'S BRIEF

Appeal from the Judgment of the
Fifth Circuit Court of Salt Lake County
Department, State of Utah
Hon. David A. Wilde

Argument Priority No. 13

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DECEMBER

JAN 15 1988

IN THE APPELLATE COURT
STATE OF UTAH

MELVYN E. DE LAMARE,)
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Plaintiff and Respondent,) No. 87-002 386-SCM
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vs.)
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TABLE OF CASES AND AUTHORITIES

Statutes

Rule 3(a) Utah Rules of Appellate Procedure . . . (1935)
Utah Code Annotated (1953) Section:

78-2A-3
25-5-4(3)

California Civil Code Section 1590

Cases, etc.

38 Am. Jur 2d. Gifts Section 83
46 ALR 3d 578
Albanese vs. Indelicato, 51 A2d, 110 (N.J. 1947)
Simonian vs. Donoian, (1950) 96 CA2d 259, 215 P2 119
2 ALR 2d 579
Rogue Riner v. Show (1966) 411 P2d 440, 243 Or. 54
Blacks Law Dictionary

Determinative Statutes

Utah Code annotated (1953) section 25-5-4(3)
In the following cases every agreement shall be void unless
such agreement, or some note or memorandum thereof, is in
writing subscribed by the party to be charged therewith:
(3) Every agreement, promise or undertaking made upon
consideration of marriage, except mutual promises to marry.

STATEMENT OF JURISDICTION

This appeal is authorized by Rule 3(a), Utah Rules of Appellate Procedure, which confers jurisdiction on the Utah Appellate Court to hear an appeal from a final judgment of a Circuit Court of U.C.A. Section 78-2A-3 (1953), as amended.

This appeal is from a final judgment of the Circuit Court of Salt Lake County, Murray Department, State of Utah.

A Memorandum Decision was prepared by the Judge on September 10, 1987 and a judgment was formally executed by the Judge on September 21, 1987 and served by the Clerk by mail on September 23, 1987.

NATURE OF THE CASE

The Plaintiff and Defendant had dated for some time and had lived together. They agreed to be married in February, 1986. On May 30, 1986, the parties purchased a dinner ring for \$1,599.00. The receipts that were presented at trial are attached hereto as Exhibit "A", and clearly indicate that the ring was purchased by the Defendant. The ring was appraised at \$2,950.00 on or about the 1st day of April, the parties separated and the Plaintiff left the Defendant's residence.

On April 4, 1987, the Plaintiff returned to Defendant's house and forcefully removed the dinner ring from Defendant's finger and refused to return it. The Plaintiff allegedly sold the ring. A Bill of Sale, appraisal and bond for this ring is issued by Fred Meyers in the name of Rosalie Harris. However, at the trial, the Plaintiff claimed that the dinner ring was an engagement ring. The Defendant argues it was a dinner ring that

belonged to Plaintiff. The rings were not matched, could not be worn together and the dinner ring was not an engagement ring. Further, it was not a gift given in contemplation of marriage and no facts were introduced at trial to even indicate who paid for the ring.

STATEMENT OF THE ISSUES PRESENTED BY APPEAL

1. Whether the trial court erred by refusing to permit the Defendant to present the affirmative defense that the Defendant was entitled to an offset due to the stolen dinner ring.

2. Whether the trial court erred by finding that it did not matter which party broke the engagement, but that the law should encourage rather than discourage breaking of engagements, and thereby awarded the wedding rings to the Plaintiff.

3. Whether the trial court erred by awarding the wedding rings to Plaintiff in that no consideration was required for a promise to marry and no consideration was required by the giving of the ring and accordingly no expectation that the donor may recover the gift if the engagement was terminated.

STATEMENT OF THE FACTS

The parties to this action had an on-again off-again "love-hate" relationship for about two years. In February of 1986, while the parties were living together at the Defendant's residence, they informally agreed for the first time to marry.

In May of 1986, the parties purchased a dinner ring for \$1,599.00. The ring was not an engagement ring and was purchased for the Defendant as all receipts (which were presented at trial) which are attached hereto as Exhibit "A" clearly indicated that the purchaser/owner was the Defendant. At the time of purchase, the dinner ring was appraised at \$2,950.00.

The parties continued to have problems and in November of 1986 the Plaintiff terminated the relationship and moved from the Defendant's residence. There was no attempt by the Plaintiff to recover the dinner ring.

In January of 1987, the parties reconciled and at that time they purchased a marriage ring set for \$552.00. The marriage ring set did not match the dinner ring and could not be worn together.

In April, 1987, serious compatibility problems arose and the Plaintiff again left the Defendant's residence and stated he would not marry the Defendant. Thereafter, on or about April 4, 1987 (after Plaintiff had vacated the premises), he returned, to talk. Following a fight, the Plaintiff forcefully removed the dinner ring from the Defendant's hand and refused to return it. The Plaintiff allegedly later sold the dinner ring.

The Defendant later sold the marriage rings to ZCMI for a \$552.00 credit.

The Plaintiff brought an action in small claims court to recover the wedding rings.

SUMMARY OF ARGUMENT AT TRIAL

As to the marriage rings, the Plaintiff argued that the wedding ring was given to the Defendant in contemplation of marriage and since there was no marriage, he should be entitled to recover the marriage rings.

The Defendant argued that the Plaintiff should not be entitled to the marriage rings because the Plaintiff terminated

the engagement and left the Defendant.

AS TO THE DINNER RING:

The Plaintiff argued that the dinner ring was owned by the Defendant that it was not given in contemplation of marriage and that the Bill of Sale, Receipt and Appraisal indicate it belonged to the Defendant. The Defendant testified that the Plaintiff forcefully removed the ring after terminating the relationship.

The Defendant further argued that even if the Plaintiff were entitled to recover the marriage rings, that she would be entitled to offset any such amounts by the value of the dinner ring.

ARGUMENT
POINT I
DONOR WHO BREAKS ENGAGEMENT
MAY NOT RECOVER ENGAGEMENT RING

The law as it relates to gifts made in contemplation of marriage is set forth generally in Am. Jr. 2d GIFTS Section 83, and 46 ALR 3d 58. In summary, these articles state that generally the law of gifts as it applies in the case of engagement rings is:

(1) If the engagement is broken by the donee, the donor may recover the ring.

(2) If the engagement is broken, unjustifiedly, by the donor, the donor may not recover the ring.

(3) In some jurisdictions, if the engagement is terminated by mutual agreement, the donor is entitled to recover the ring. Generally, where this is the situation, there is a statutory provision to that effect. (E.g., California Civil Code 1590).

The states which embrace the above rules do so on either of two bases. (1) The ring given in contemplation of marriage is an inducement to marry. (2) The ring is symbolic of the future marriage and the agreement to marry and amounts to a special variety of gift, raising it above the normal laws of gifts.

There are no Utah cases dealing with the subject. The only statutory provision that may apply to this action is U.C.A. {25-5-4(3), which provides that "Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry must be in writing or it is void." It is logical to surmise that no consideration is required for the mutual promise to marry except those mutual promises. Therefore, any gift given in contemplation of marriage is merely a gift and the only way a donor could reserve a right to recover the gift (i.e. ring), would be to make such a reservation in writing.

Even the California Statutes, CC1590 clearly provides that a gift made in contemplation of marriage is recoverable only if the donee refused to marry. If the donor refuses to marry the gift is not recoverable, Simonian vs. Donoian (1950) 96 CA2d 259, 215 P2d 119. The authority for this proposition is simply overwhelming: See also 38 Cal LRev 532; Rest. Restitution Section 58 Comment (c) and 2 ALR 2d 579.

The Court in the instant action held contrary and stated that the "policy of the law in Utah" does not relate to who broke off the engagement but is to roster breaking off of engagements that were unwisely entered into. There is simply no authority in Utah that would support such a statement of the policy of Utah.

In fact U.C.A. {25-5-4(3) requires all promises except promises to marry to be in writing.

The Court further ruled that neither party presented sufficient evidence as to which party was at fault and broke off the engagement. Since the Plaintiff had the burden of proof in proving he did not break the engagement, the Court was obligated to find that claims were established on that point and accordingly must rule that the Defendant broke off the engagement. The law then clearly prevents the Plaintiff from recovering the engagement ring.

This Court should so rule but as a minimum should remand with instructions to determine who broke off the engagement.

Lastly, the Utah Courts have not accepted the symbolic or inducement approaches to the giving of an engagement ring. Therefore, since no consideration is required for mutual marriage promises and no consideration is required for a gift absolute, there is no rational expectation that the donor may recover the engagement ring if the engagement is terminated.

POINT II
OWNERSHIP OF THE DINNER RING
IS AN ISSUE IN THIS ACTION

The Court flat out ruled that the Plaintiff was entitled to possession of the dinner ring and that his ownership was not in issue in this action, because the Plaintiff has already taken possession of the dinner ring. Such is an improper ruling.

Although the "symbolic meaning" of an engagement ring may exist, that same meaning does not exist for other gifts. Interestingly, the case of Albanese vs. Indelicato cited by the

Small Claims Judge may hold against his own opinion and ruling thereon. In that case, the court awarded the engagement ring back to the donor, but held that a dinner ring and money given to the donee were not recoverable. The court stated:

The giving of the dinner ring is an entirely different proposition. True, it was given after the parties became engaged. No doubt plaintiff would not have given the ring to defendant if they had not been engaged. The dinner ring though has no symbolic meaning and is only a token of the love and affection which plaintiff bore for the defendant. Many gifts are made for reasons that sour with the passage of time. Under the law though, there is no consideration required for a gift and it is absolute once made unless a condition imposed.

Conversely, if a condition were imposed, it would appear that the statute of frauds would apply.

POINT III
THE COURT SHOULD HAVE
AWARDED AN OFFSET

In the instant action, the Defendant has characterized the first ring given her as a dinner ring while the Plaintiff states it was an engagement ring. The rings were not matched, and could not be worn together. Further, it was never meant to be an engagement ring, it was a dinner ring. (The Court, however, made no ruling on this fact).

The Defendant offered to prove an affirmative defense at the time of trial, namely that if the Plaintiff prevailed as to the wedding rings, that the Defendant should at least be entitled to an offset in an amount equal to the dinner ring. The testimony

at trial indicates that the dinner ring was purchased in May of 1986. The parties, however, had agreed in February of 1986 to marry but no wedding rings (engagement) were purchased until January of 1987, when the engagement was formalized.

The Court found the Plaintiff had possession of the dinner ring and that ring was not relevant to this action. Such is improper, for reasons previously stated. The Court refused to permit the Defendant to defend on the grounds of offset. Such was improper.

The Defendant could clearly have field a Counterclaim to offset the Plaintiff's claim, but chose to defend affirmatively. The Defendant draws the Court's attention to Rogue River vs. Shaw (1966) 411 P2d 440 243 Or. 54, where the Court stated"

" . . . a set-off is a money demand by Defendant against Plaintiff, arising upon contract and constituting a debt independent of and unconnected with the Cause of Action set forth in the Complaint, and may be used to offset Plaintiff's claim but not to recover affirmatively."

See also Black Law Dictionary, 4th Edition, pg. 1538 Set-Off.

The Court improperly refused to permit the Defendant from proving a set-off as to the dinner ring. This action should be at least remanded with instructions.

CONCLUSION

From the foregoing it is clear that the trial court committed several errors, namely it failed to: consider any evidence submitted by the defendant regarding the affirmative defense and offset relating to ownership of the dinner ring; properly

consider and apply the laws of the State of Utah in that it applied a public policy to encourage the breaking of engagements without the prospect of recovering the engagement ring regardless of fault; and, failed to find that either the Plaintiff(donor) or the Defendant(donee) was the party who refused to complete the marriage. This court should reverse the lower courts ruling or remand it back to the trial court with appropriate instructions.

RESPECTFULLY SUBMITTED,

/s/

DENNIS L. MANGRUM
Attorney for Defendant

1/12/88

MAILING CERTIFICATE

I HEREBY CERTIFY that on this 13 day of January, 1988, I mailed a true and correct copy of the foregoing APPELLANT'S BRIEF to the following, by depositing the same, postage prepaid, with the United States Postal Service:

Melvyn E. De Lamare
6121 South 900 East
Salt Lake City, Utah 84121
Respondent, Pro Se

14
DENNIS L. MANGRUM
Attorney for Appellant

Fred Meyer
JEWELERS

JEWELRY APPRAISAL

To Whom It May Concern:

I have this day examined the jewelry items described below, the property of

Name Rosalie Harris
Address 604 East Fair Oaks Way Sandy, Ut

DESCRIPTION

(Include kind of stone(s) i.e., diamond, ruby, etc.)

3 ☐ Engagement Ring ☐ Wedding Ring ☐ Man's Ring ☒ Cocktail Ring ☐ Other ☐
3 E-OTY DC 2 CT TW Lds. Waterfall style

Cut Brilliant
Weight 2 carat Total Weight Cluster

MOUNTING ☐ 10K Gold ☒ 14K Gold ☐ 18K Gold
☐ Yellow ☐ White ☐ Pink
☐ Platinum ☐ Palladium ☐ Other

TOTAL VALUE 2950⁰⁰

We assume no liability with respect to any action that may be taken
on the basis of this appraisal. Weight of stones is approximate unless otherwise indicated

(Jeweler) Fred Meyer Sandy, Utah
(Date) 5-30-86 (By) Leslie Hill

DIAMOND BOND

1599⁰⁰ Reg. 2950⁰⁰

Amount \$
Description 2 Carat Cocktail
Stock Number 3005074 DC

Rosalie Harris

has this day purchased the jewelry described above. We certify that the precious metals used in this jewelry meet the standards established by the United States Government Stamping Act for Karat Gold or Platinum. Fred Meyer will allow the full purchase price stated above (which is exclusive of taxes) in trade, on the purchase of any diamond jewelry two hundred dollars or more of greater value. In addition, Fred Meyer Jewelers will inspect and clean the diamond mounting whenever requested by the original purchaser or recipient, free of charge.
Caution. Although diamond is the hardest natural substance, it is not unbreakable. Protect your diamond and your investment by shielding it against concussions which may cause chipping or breaking.

May 30, 1986
(Date)

Leslie Hill
(Manager)

Fred Meyer
JEWELERS

IN THE FIFTH CIRCUIT COURT, MURRAY DEPARMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MELVYN E DE LA MARE

Plaintiff,

vs.

ROSALIE N. HARRIS,

Defendant.

)
)
)
)
)
)
)
)
)
)

JUDGMENT

Civil No. 874002386 SCM

FACTS

Plaintiff and Defendant were engaged to be married and in contemplation of the consummation of this marriage, Plaintiff gave Defendant an ~~engagement ring and matched wedding band~~²⁶. The engagement ring has already been recovered by Plaintiff and is not at issue in this case. However, Defendant retained the ~~wedding band~~ and has since traded them to a jeweler as down payment on a new ring for herself. Plaintiff now seeks recovery of the value of the ring, which he alleges to be \$552.50.

LEGAL STANDARDS

The general rule in cases of this kind is that a donor (in this case Plaintiff) may recover from a donee (in this case Defendant) gifts given in contemplation of marriage, but only if the donor has not unjustifiably broken the engagement. (38 Am. Jur. 2d 885-887, Gifts, §83-84.)

However, at least one court has held that a donor may recover gifts given in contemplation of marriage even though the donor was the party at fault in breaking the engagement. (Albanese v. Indelicato, 51 A.2d 110 [New Jersey].) Neither party presented any case law from Utah on this issue and this Judge has not been able in his own research to discover any Utah cases considering this issue.

APPLICATION OF LAW TO EFFECTS

Indelicato
~~Neither party presented evidence as to which party was at fault in the break up of this engagement.~~ However, it was obvious at the time the parties appeared before the court that both parties were in agreement that the engagement should be discontinued and have no desires to renew their plans to marry. Furthermore, ~~even assuming that the donor was the party who decided to break off the engagement,~~ it does not seem to be wise public policy to discourage a party from ~~breaking off an engagement~~ because he may not be able to recover substantial sums of money spent on engagement and/or wedding rings. If a party realizes that an engagement has been unwisely entered into, and the marriage is not likely to succeed, the law should encourage rather than discourage the breaking off of the engagement. Therefore, judgment is hereby entered in favor of Plaintiff in the amount of \$552.50. No costs are awarded.

DATED this 10 day of September, 1987.

BY THE COURT:

David A. Wilde
David A. Wilde,
Small Claims Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of
the foregoing JUDGMENT was mailed, postage prepaid, on the
____ day of September, 1987, to the following:

Circuit Court, State of Utah

SALT LAKE COUNTY, MURRAY DEPARTMENT

MELVYN E DE LA MARE

~~6121 South 900 East~~

Salt Lake City UT 84121

Plaintiff

vs

ROSALIE N HARRIS

~~605 Fairbrooks Way~~

Sandy UT 84070

Defendant

SMALL CLAIMS

JUDGMENT

Case No. 874002386 SC

This matter came before the court for hearing on the affidavit of plaintiff, and the defendant has been served with the affidavit of plaintiff and order to defendant, and return of service has been made. The following parties appeared at the hearing:

- ☐ Plaintiff Only. The defendant failed to appear.
- ☐ Defendant Only. The plaintiff failed to appear.
- ☒ Both plaintiff and defendant appeared and presented evidence.

Court orders judgment as follows: ☒ for plaintiff ☐ for defendant.

\$ ~~1000.00~~ ^{552.50} Principal

\$ ~~38.00~~ Court costs, and

\$ ~~1038.00~~ ^{552.50} TOTAL JUDGMENT

- ☐ No cause of action.
- ☐ Dismissed with/without prejudice.

DATED September 4-21, 19 87

with interest on the total judgment at 12% per annum from the date of this judgment until paid.

David Alan Wilde
JUDGE

☐ Both Plaintiff and Defendant received copies of the Judgment at Hearing

Clerk

TO THE DEFENDANT ONLY:

If the above judgment was granted in favor of the plaintiff, you now have a judgment against you in the Circuit Court in the amount specified above. If you are dissatisfied with this judgment, you have FIVE (5) days from receipt of this notice to appeal the case to the District Court.

TO THE PLAINTIFF:

You should mail a copy of this notice of judgment to the defendant IMMEDIATELY. The defendant has five days from receipt of the notice to appeal the case. You must complete the mailing certificate and file the original of this judgment with the court before you can proceed with any further court action.

I hereby certify that I mailed a copy of this judgment, postage prepaid, addressed to the above named defendant(s) at _____

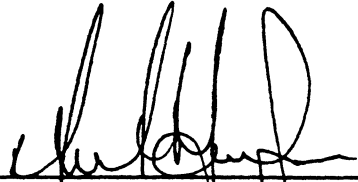
Address & Zip Code

Dated _____

MAILING CERTIFICATE

I HEREBY CERTIFY that on this 12 day of January, 1988, I mailed a true and correct copy of the foregoing APPELLANT'S BRIEF to the following, by depositing the same, postage prepaid, with the United States Postal Service:

Melvyn E. De Lamare
6121 South 900 East
Salt Lake City, Utah 84121
Respondent, Pro Se



DENNIS L. MANGERUM
Attorney for Appellant