1940

Gladys Wilsted v. Hugh Nation : Brief of Respondent

Utah Supreme Court

Duncan & Duncan; Attorneys for Respondent;

No. 6235

In

The Supreme Court

of the

State of Utah

GLADYS WILSTED,

Plaintiff and Respondent

vs.

HUGH NATION,

Defendant and Appellant

Appeal From the District Court of Salt Lake County, Utah.
Honorable P. C. Evans, Judge

RESPONDENT'S BRIEF

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STATEMENT

This is an action at law in which the respondent sued for damages for breach of promise of marriage. The appellant in his answer admitted that at the time of the alleged promise he and the respondent were unmarried persons. He also admitted that he had married another woman, as al-

leged in the complaint. He then denied generally all the other allegations of the complaint and set up no special defense whatever. The action was tried to a jury and the jury returned a verdict in favor of the respondent.

The appellant assigns as error that there is no substantial evidence to support the verdict and also that the court erred in denying his motions for a non-suit, directed verdict and new trial.

Before discussing the merits of appellant's contention, we will refer to some of the matters mentioned in appellant's brief. Most of his brief is made up of irrelevant observations, having no bearing on the issue now before this Court, relating not only to matters occurring at the trial and appearing in the record, but also as to matters which do not appear in the record and which exist only in the imagination or fancy of the appellant or his counsel. Statements of fact are so intermingled with flippant remarks and observations which are not true or which are so exaggerated that one becomes bewildered as to the object of the appellant and his counsel. It is impossible to tell whether in presenting the case in this manner the appellant is attempting to show that there is no substantial evidence to support the verdict, or simply to villify and slander the respondent, or to amuse the court, or is just trying to be funny. In any event much of the matter set forth is simply scurrilous and untrue, and the manner in which it is stated is entirely improper, if not unethical, in making a presentation of the case to this Court for review.

The appellant dwells at some length on the fact that these parties were married and afterwards divorced. As to this, the divorce became final and both of them were unmarried persons and

competent to enter into an engagement of marriage and contract of marriage when the promise was made. The appellant does not deny this, but states that the divorce was procured by collusion and cites authorities to the effect that a decree of divorce thus obtained is void. It appears from statements in appellant's brief that he and his counsel, Mr. Matthews were the principal actors in inducing the respondent to obtain a divorce and are responsible for any collusion, if there was collusion, and in view of this fact, this criticism comes with very poor grace from them. In effect they are condemning themselves. But all this has nothing to do with this case as now presented to this Court. It is impossible to understand what object the appellant and his counsel have in making this contention, unless it is to ask this Court to declare the divorce null and void, in which event the appellant, having in the meantime married another woman, would be a bigamist and guilty of a crime.

There is also contained in this brief a long dissertation on the attitude of appellant's family toward respondent and their objections to her marriage to appellant. The respondent is called a menial and, by other slanderous phrases and innuendoes, the appellant and his counsel seek to blacken her character and impute to her improper, mercenary and vicious motives. All this seems to us to be highly reprehensible and unethical and can in no way aid the Court in determining the question of law involved.

The appellant and his counsel have also attempted to make a great deal of the fact that during the marriage of these parties they had sexual intercourse, and with scandalous remarks and innuendoes have tried to make out that these parties continued these relations after the divorce and be-

fore the promise to remarry. This is not true. This whole insulting tirade is based on the testimony of the respondent, (Ab. 25), as follows:

> "Q. Now during the time you were married to him did you have intercourse with him?
>
> A. Yes.
>
> Q. And afterwards?
>
> A. Yes.
>
> Q. After this last engagement?
>
> A. Yes.
>
> Q. After he resumed his relations and was that because of this promise that he was going to marry you again?
>
> A. It was."

A fair and reasonable construction of this is, that while she had intercourse with him during her marriage to him, there was no resumption of these relations until after they were again engaged to be married and that it was because of this promise to marry her that she consented. This period was from April 15, 1939 to July 23, 1939, when he married another woman.

As we conceive the case the only questions involved are: Is there substantial evidence in the record to support the verdict and did the court err in denying appellant's motions for a non-suit, directed verdict and new trial.

It will be observed that there is no contention on the part of appellant that the court erred in the admission of evidence nor in instructing the jury. No requests for instructions were submitted by the appellant and no exceptions to the instructions

given by the court were taken by him or his counsel.

Therefore, we will briefly call the court's attention to the evidence, which we contend is amply sufficient to support the verdict. It is conceded that on April 15, 1939, each of these parties was unmarried and each was competent to enter into a contract to marry each other and to marry. It is also conceded that on July 23, 1939, the appellant married another woman, so that if there was a promise to marry the respondent, this marriage constituted a breach.

THE RESPONDENT CONTENDS THAT THE MUTUAL PROMISE TO MARRY BETWEEN HER AND THE APPELLANT, AS ALLEGED IN HER COMPLAINT, IS PROVED, NOT ONLY BY A PREPONDERANCE OF THE EVIDENCE, BUT BEYOND ALL REASONABLE DOUBT.

The respondent testified, (Ab. 16):

> "About April 15, 1939, we were both unmarried. He (the appellant) said he loved me and wanted me to marry him. . . . I promised I would marry him, but no date was set."

This was a proposal and an acceptance and a mutual promise to marry. The fact that no date was set, makes no difference. The law on that question is briefly set forth in

> 11 Corpus Juris Secundus, p. 776, Sec. 9, as follows:
>
> "While the promise may of course be to marry at a fixed time, it is not necessary

> to the validity of the contract that any specific time for performance be agreed on as the law will imply, where no time is fixed by the parties, that the contract is to perform within a reasonable time; and a promise to marry within a reasonable time is sufficiently definite as to time of performance to support an action for its breach." Cases cited.

The appellant in his answer denied that there was a promise. In giving his testimony, however, he admitted that there was a promise by him to marry the respondent, but at first said it was conditioned upon the removal of the objections of his family, and then afterwards admitted that it was not so conditioned, but was an absolute promise, substantially as stated by respondent. His testimony on this point is as follows:

> (Ab. 28) "There was a promise of marriage if the objections could be overcome.
>
> (Ab. 29) Q. Did you state that you were not going to let any objections they had stand in your way?
>
> A. If I could have overstepped them.
>
> Q. And then you said you were going to marry her (respondent) anyhow didn't you?
>
> A. Yes.
>
> Q. And when I asked you if the objections of your children had been removed, you said you were not going to let those things stand in the way of your happiness, didn't you?
>
> A. Yes."

The appellant here admits the promise and while at first he says it was conditional, he afterwards says that notwithstanding the objections which his children had to his marriage he was going to marry the respondent.

On the question of whether the promise was conditional, the respondent testified, (Ab. 25):

> "As I understood Mr. Nation's proposal, the objections of his family were not to stand in the way at all.
>
> Q. That is, you understood that he was not going to let the family stand in the way?
>
> A. Yes."
>
> . . . We were going to be married anyway regardless of whether his family still objected or not."

This is also corroborated by the testimony of the appellant relating to his efforts to have the divorce set aside. (Ab. 29). This is also corroborated by the letters of the appellant to respondent. All these letters contain words of endearment and affection and no one can read them and not be convinced beyond all doubt that the appellant promised to marry the respondent, without any condition, and that he intended to carry out the promise.

The promise of marriage was in express words, as shown by this testimony and other evidence, but even if it were not so, it would not change the matter. A promise to marry need not be in express or formal words. All that is necessary is that the minds of the parties have met and

that there is a mutual understanding between them that they are to be married to each other.

4 R.C.L., p. 145.

THE RESPONDENT ALSO CONTENDS THAT APPELLANT'S MOTIONS FOR A NON-SUIT, DIRECTED VERDICT AND NEW TRIAL, WERE PROPERLY DENIED BY THE COURT.

The motions for a non-suit and for a directed verdict were both based on the insufficiency of the evidence to justify submission of the case to the jury. It seems to us that from what we have already said on that question, it is unnecessary to go into the matter further. There certainly was sufficient evidence, as shown by the record, to which we have referred, to justify the court in submitting the case to the jury.

As to the motion for a new trial, while all grounds were stated in the notice of intention, the only ground relied on or presented was that of newly discovered evidence. This was based on the affidavits of Della May Nielsen and Edith Willis, found at pages 29 and 30 respectively, of the Transcript. The most casual glance at these affidavits will convince the Court that there was absolutely nothing stated in either of them that could in any way be considered as a ground for a new trial. Even counsel for the appellant seems to be of the same opinion as he does not mention this matter in his brief.

THE RESPONDENT CONTENDS THAT AS THIS IS AN ACTION AT LAW THE MATTERS OF THE WEIGHT OF THE EVIDENCE AND THE CREDIBILITY OF THE WITNESSES ARE NOT BEFORE THE COURT; AND THAT IF THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE VERDICT, THERE BEING NO ERRORS AT LAW PRESENTED, THE JUDGMENT SHOULD BE AFFIRMED.

There are many decisions of this Court on this subject. This Court has uniformly held that in actions at law if there is substantial evidence to support the judgment it will not interfere. This rule is so well established that citations seem unnecessary.

There is ample evidence, as shown by the record, to sustain the verdict and judgment in this case and there are no errors of law mentioned or presented. Therefore we submit that the judgment should be affirmed.

Respectfully,

DUNCAN & DUNCAN,
Attorneys for Respondent.