

1977

Robert Byrd v. Adrianna Byrd : Brief of Plaintiff-Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

ROBERT BYRD,)
)
 Plaintiff-Appellant,)
)
 v.) Case No. 15570
)
 ADRIEANNA BYRD,)
)
 Defendant-Appellant.)
)
 _____)

BRIEF OF PLAINTIFF-APPELLANT

Appeal from the Third Judicial District Court of
Salt Lake County, Honorable Bryant H. Croft, Judge

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PLAINTIFF-APPELLANT'S BRIEF

NATURE OF CASE

This matter is before the Supreme Court on appeal from a decision of the Third District Court of Tooele County, State of Utah, denying Plaintiff-Appellant's Petition for Modification of Divorce Decree as to alimony payments.

DISPOSITION OF CASE BY LOWER COURT

The lower court ruled that there had been no substantial change of circumstances to justify Plaintiff-Appellant's request to modify his alimony obligation.

RELIEF ON APPEAL

Appellant seeks to have this Court reverse the judgment of the lower court and to grant his request to modify the Divorce Decree or , in the alternative, remand this matter for further hearings on the record.

STATEMENT OF FACTS

The parties to this action were married on August 6, 1960. One child, a daughter, was born of the marriage. The parties separated in approximately 1973, and the marriage was terminated by a Decree of Divorce in March, 1976, in the District Court of Tooele County, State of Utah.

Pursuant to the terms of the Decree, the Respondent was awarded the custody of the parties' minor child and the family home in Salt Lake City, Utah. Appellant was ordered to pay the sum of one hundred twenty five dollars (\$125.00) per month child support and one hundred seventy five dollars (\$175.00) per month alimony. The other provisions of the decree distributing property and obligations are not pertinent to this appeal.

An Order to Show Cause was issued by the Honorable Peter Leary on the 9th day of June, 1977, requiring the Respondent to appear and show cause why the alimony obligation of the Appellant should not be eliminated due to the Respondent's substantial increase in income. The action was heard on August 8, 1977, before the Honorable Bryant H. Croft, Judge of the Third District Court. Because of a crowded court docket, this matter was heard in chambers without the benefit of a reporter. The parties and their respective counsel stipulated to the following facts:

1. The gross income of the Respondent as of August 8, 1977, was \$9,297.60 per year.

2. The gross earnings of the Appellant as of August 8, 1977, was \$15,184.00 per year.

3. That at the time of the divorce decree on February 23, 1976, the Respondent was unemployed and had no income.

4. At the time of the divorce on February 23, 1976, the Appellant had a gross income in excess of \$13,000.00 per year.

5. Since the time of the decree of divorce, Appellant has remarried.

In accordance with the stipulated facts in this matter, the court found that the Defendant's increase in salary from zero to \$9,297.60 per year did not constitute a substantial change in circumstances justifying any reduction of alimony. The Findings of Fact and Conclusions of Law, entered by Judge Croft, were received as a supplement to the record before this Court and are hereinafter referred to as "findings and conclusions". Pursuant to the Court's findings, Judge Croft denied the Appellant any modification of his alimony obligation on the 14th day of November, 1977 (R. P.5).

ARGUMENT

POINT I

THERE HAS BEEN A SUBSTANTIAL CHANGE IN THE RESPONDENT'S CIRCUMSTANCES TO REQUIRE MODIFICATION OF APPELLANT'S ALIMONY OBLIGATION.

The parties to this action were divorced March 19, 1976, after a period of separation in excess of two years. The Respondent was awarded custody of the parties' minor child and all equity in the family home, located in Salt Lake City, Utah. Appellant was ordered to pay one hundred seventy five dollars (\$175.00) per month alimony and one hundred twenty five dollars (\$125.00) per month child support. On August 8, 1977, the Appellant requested relief from the order as to the alimony obligation.

During the modification hearing in August, 1977, it was stipulated that the Respondent's income, which was non-existent at the time of the divorce, increased to \$9,297.16 per year (R. findings and conclusions). The Appellant's gross yearly income increased no more than \$2,184.00 per year or 16.8 percent (R. findings and conclusions). No evidence was presented by the Respondent as to any additional costs or expenses necessary for her maintenance. The Court found from the facts presented that there had not been a substantial change in circumstances justifying any reduction in the Appellant's alimony obligation.

The Order to Show Cause was properly before the lower court pursuant to the provisions of §30-3-5, Utah Code Annotated, (1953). The basis for the proceeding was the \$9,000.00 increase in the yearly income of the Respondent and the only evidence before Judge Croft were the stipulated facts set forth in his findings (R. findings and conclusions). The Divorce Decree awarded the Respondent the sum of \$175.00 per month alimony to maintain her and computing that allowance together with the child support, the Appellant was providing the Respondent with two thousand one hundred dollars (\$2,100.00) per year taxable alimony and one thousand five hundred dollars (\$1,500.00) per year child support for a total of three thousand six hundred dollars (\$3,600.00) per year. At the time of the divorce, this was the only disclosed source of income which the Respondent had available. At some point subsequent to the divorce, the Respondent obtained gainful employment. Her earnings from that employment are \$9,297.60 per year. She receives an additional \$2,100.00 in alimony and \$1,500.00 in child support from the Appellant bringing her total annual income to twelve thousand eight hundred ninety seven dollars and sixty cents (\$12,897.60) of which \$1,500.00 is tax free.

A factual situation similar to this action was before this Court in the matter of Dubois v. Dubois, 29 Utah 2d 75, 504 P.2d 1380 (1973). The estate in that action was considerably

larger than the one in this action but it is apparent, as it was in the Dubois case, that Respondent's assets are currently more than adequate to maintain her in the manner to which she was accustomed without further periodic payments from the Appellant. The review of the evidence before the trial court, as suggested by the Dubois case, clearly demonstrates that the need for the Appellant to assist his ex-wife, financially, excluding child support, has disappeared.

This Court, in reviewing the findings of the trial court, concededly reviews the evidence most favorable to the findings of the lower court. However, in the instant case, the review of the facts demonstrates that the evidence clearly preponderates against the findings. Stucki v. Stucki, 562 P.2d 240 (Utah 1977). Not only does the evidence demonstrate a material alteration in the financial status of the Respondent since the time of the divorce but that the alteration has been substantial. The word "substantial" is defined as "of real worth and importance; of considerable value; valuable", Black's Law Dictionary p.1597 (4th ed. 1951). There can be no dispute that the increase in yearly income of over \$9,000.00 per year since the divorce in 1976, falls within this definition. It is, therefore, proper for the Appellant to now request the modification since;

*** changes in alimony either downward or upward should be left to future determination by the court under its continuing jurisdiction. MacLean v. MacLean 524 P.2d 863 (Utah 1974).

In the case of King v. King, 25 Utah 2d 163, 478 P.2d 492 (1970) the Court addressed a situation somewhat analogous to this action. The parties in the King matter were divorced after sixteen years of marriage. The wife received a \$12,000.00 to \$14,000.00 equity in the family home as well as the furniture located at that residence. Each of the parties received one of the automobiles and the husband satisfied the bills and obligations of the parties. At the time of the divorce, the husband was ordered to pay \$250.00 per month alimony until the house obligation was satisfied and \$200.00 per month thereafter. Upon the petition for a reduction in the alimony, the trial court found the husband had approximately the same income as during the divorce four years earlier and he was remarried to a woman with four children who supposedly had some income to support those children. It was conceded by all parties that the husband's primary obligation was to his first family but note was made of his remarriage, as it was by Judge Croft in this matter. At the time of the divorce, the woman was suffering from a nervous disorder and her doctor had stated that she was unable to work. Subsequently,

in 1969, she was capable of maintaining employment except performing heavy lifting work. There was reference to a proposed stipulation reducing the amount of alimony payable by the husband but no order to that effect was ever signed. This Court found, upon the review of the law and facts in that matter, that the Court's obligation was to reverse the judgment of the trial court to rectify any errors or when the evidence did not support the findings or clearly preponderated against them. The Court remanded the King matter for further hearing at which time the district court eliminated the alimony obligation of the husband. The subsequent order of the district court was affirmed and modified to include nominal alimony in the sum of one dollar (\$1.00), King v. King, 27 Utah 2d 305 (1972).


In the King case, the decision of this Court noted that the findings in the district court did not rely upon an actual income but determined that the ability to earn an income or the refusal to attempt to obtain work was sufficient grounds to reduce the alimony obligations of the husband. In this matter, Mrs. Byrd had much more than the ability to earn a substantial income. She has, in fact, undertaken employment which pays her a handsome salary which she did not have at the time of the divorce (R. findings and conclusions).

CONCLUSION

Plaintiff-Appellant petitions this Court to reverse the lower court's decision determining that there has not been a substantial change of circumstances since the divorce in 1976. Appellant has dutifully paid his child support and requests no modification as to that obligation. However, the Respondent's income has risen in excess of \$9,000.00 per year and she has not experienced other material, financial needs since that time. At the time of the divorce the Respondent was in need of financial assistance, which the Appellant provided. At the present time, however, the Respondent earns an ample income to provide for her needs. The Appellant has remarried and is entitled to relief from his alimony obligation and the right to re-establish his own life and security, having provided for the Respondent during her time of unemployment.

It is respectfully submitted the law and facts before this Court requires the matter be remanded to the district court with directions that its order issue eliminating the Appellant's alimony obligation or, in the alternative, that obligation be reduced to one dollar (\$1.00) per year.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I served the foregoing Brief of Appellant, by delivering two copies thereof, personally, to the office of Edward Guyon, Attorney for Respondent at 1010 Kearns Building, Salt Lake City, Utah 84101, this 24th day of March, 1978.

