2001

Arthur A. Allen v. Ruth C. Allen : Brief of Appellant

Utah Supreme Court

Gary A. Frank; Attorney for Respondent-Plaintiff.
Arthu A. Allen, Jr.; Attorney for Appellant-Defendant.

IN THE SUPREME COURT OF THE STATE OF UTAH

ARTHUR A. ALLEN,	)	
Appellant - Defendant	)	
vs	)	Case No. 14233
RUTH C. ALLEN,	)	
Respondent - Plaintiff	)	

Petition of Appellant - DEFENDANT

for

REHEARING AND BRIEF IN SUPPORT THEREOF

This Petition and Brief are submitted with
Respect to the Decision of this Court,
Filed March 17, 1976

Arthur A. Allen, Jr.
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Defendant

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TABLE OF CASES AND AUTHORITIES

CASES CITED

IN THE SUPREME COURT OF THE STATE OF UTAH

ARTHUR A. ALLEN, Jr.	)	
Defendant-Appellant	)	
vs	)	
		Case No. 14233
RUTH C. ALLEN,	)	
Plaintiff - Respondent	)	
	)	

APPELLANT'S BRIEF

NATURE OF THE CASE

This is a petition and brief submitted in support of a rehearing from the decision filed March 17, 1976 in which the Court failed to change and affirmed Order of the Trial Court requiring the payment of the Appellant the sum of $70.00 per month alimony.

RELIEF SOUGHT ON APPEAL

The Appellant and Defendant respectfully asks this Court to permit and entertain a Rehearing affording Appellant the opportunity to make an amplified oral statement and argument to this Court in support of his position.

STATEMENT OF FACTS

ARGUMENT

I

THIS COURT FAILED SERIOUSLY TO CONSIDER THE DOCTRINE IN THE DEHM vs DEHM AND OTHER CASES STATING OR IMPLYING THAT ALIMONY IS NOT AN ANNUITY.

In the brief originally submitted to this Court by the Appellant - Defendant, several cases were cited standing for the position that alimony is not an annuity and under certain circumstances should be terminated.

The Court's attention is particularly directed to the lengthy decision in McDonald vs McDonald 236 Pac 2nd 1066 which is an exhaustive review of the points to be considered by the Court in considering the matter of the termination of alimony.

The Court's attention is also directed to Dehm vs Dehm filed January 14, 1976, which was not included in the Original Brief because it had not been decided when the Brief was filed.

This case represents an explicit recognition and statement by this Court that alimony should not be required to be paid forever, and that it is not an annuity and is subject to termination.

The Appellant-Defendant wholly subscribes to the reasoning of the Court in that case as being supportive of his position that alimony in his instance should be terminated.

ARGUMENT

II

RESPONDENT AND PLAINTIFF VOLUNTARILY ACCEPTED THE RISK TO PROVIDE HER OWN SUPPORT

It is clear that the Respondent-Plaintiff voluntarily terminated a marriage of twenty-three years by filing an action asking for its termination.

At the time of filing the action she was certainly aware of her chronological age, and cognizant of the fact that she had not been employed during the marriage of the parties.

It should be recalled to the Court's mind again she reported to the Trial Judge, the Honorable Aldon H. Anderson, that she could not obtain employment for at least six months; whereas, at the time of the Hearing seeking a divorce, she already had employment to which she could go and did go the week following the divorce action. This information was unknown to the Appellant-Defendant at the time.

ARGUMENT

III

APPELLANT SHOULD BE PERMITTED AN AMPLIFIED ORAL STATEMENT OT THE COURT RESPECTING THE CASE LAW AND FACTS SUPPORTING HIS CONTENTIONS

The Appellant-Defendant respectfully requests the opportunity

to make an amplified oral statement to the Court by reason of a number of considerations which will be here outlined which inhere in the current situation as it respects the positions of the parties, and which were not brought to the Court's attention in the original argument.

The Court should be informed that prior to the filing of the original action the Appellant-Defendant, with the assistance of the Respondent-Plaintiff's Pastor, attempted a reconciliation and a resolution of the differences which impelled the Respondent-Plaintiff to file the action.

She voluntarily disregarded the suggestions of her Pastor and the efforts of the Appellant-Defendant to save the marriage.

It should be brought to the Court's attention again that she knew how old she was and that at one point she would likely be required to provide for her own support.

It should be brought to the Court's attention that emphasis at the last hearing before Judge Harding was always on her net income (TR 11 R 78). The additional facts should be mentioned that in 1975 the Utah State employees, which included all departments, institutions and universities were given an 8.5 percent cost-of-living increase July 1; in addition their standard yearly increase of 3.5 percent was also allowed. This 12 percent increase brought the gross income to over eleven thousand dollars.

In the January, 1976 Budget Session, the Legislature again approved an 8.5 percent cost-of-living increase on July 1, 1976 and the regular standard of 3.5 percent is again allowed. She will also benefit from these increases.

There is no absolute requirement in her employment, as she contends (TR 14 R 81), that she retire at the age of 65.

It is further pointed out to the Court that after ten years of service she can retire on full State Retirement. It has been the custom and usage of the various State departments to permit employees to continue the completion of ten years in order to secure the maximum Retirement benefits.

It is further pointed out to the Court, that in the event she were required to retire at the age of 65, she would still receive a State Retirement benefit of approximately one hundred dollars a month. In addition, if she was dismissed because of the age of 65, she could apply for and receive Unemployment Compensation up to and including one hundred dollars ($100) a week for sixty-seven (67) consecutive weeks. She could also accept full-time or part-time employment when offered and this would not affect her retirement benefits nor Social Security; and she would still be eligible for continued Unemployment Compensation when that work (if she accepted it) ended.

By her own statement and testimony she has invested money which came from the real property and owned by the parties which was divided in terms of equity. She also testified she has received money from inheritances from relatives in the sum of approximately ten thousand dollars which she also invested.

A further and important consideration should be the fact that since the entry of the Original Decree, the Respondent-Plaintiff has received a sum far in excess of what would have been considered a payment in lieu of alimony. (And if the truth had been told this would have happened.)

With her interest in the equity in the real property she has received in excess of $25,000. Much of this has been in payment of alimony long after the children had attained adult status.

The Respondent had twenty-three years of financial security. She had charge accounts, her own automobile and a check book.

In addition thereto, the Appellant-Defendant maintained in the critical period of the growth of the children approximately $50,000 insurance on the life of the Appellant of which she was the beneficiary and which was paid for wholly by the Appellant.

It should be further pointed out that the Respondent-Plaintiff has no one to support but herself. The three daughters of the marriage are all married and each daughter as well as her husband is gainfully employed in high-salaried Professional positions.

It is clear from the foregoing that her financial position is considerably more secure than she has stated it to be. With State Retirement and Social Security she would receive the sum approximately equal to what she claims her net income to be, without even considering the principal as well as interest and dividends.

The Appellant believes that the situation of the Respondent-Plaintiff in terms of what will be readily available to her indicates that it would be totally unconscionable to be required to continue payment of alimony as ordered to be paid by Judge Harding.

It is, therefore, respectfully requested that this Court terminate the alimony or

set the matter for Hearing and afford the Appellant-Defendant to amplify the essential facts presented here in Brief form and which were not alluded to in the oral argument previously held before this Court before its decision filed March 17, 1976.

Respectfully submitted,

Arthur A. Allen, Jr.
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419 Kearns Building
Salt Lake City, Utah

A COPY OF THE FOREGOING BRIEF HAS BEEN RECEIVED ON THIS

_____DAY OF APRIL, 1976.

_____

GARY FRANK
Attorney for Respondent-Plaintiff