

1979

Ida U. Stoker v. Karl S. Stoker : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

IDA U. STOKER, :
Plaintiff and :
Appellant, :
vs. : Case No. 16376
KARL S. STOKER, :
Defendant and :
Respondent. :

BRIEF OF RESPONDENT

Appeal from a Summary Judgment Order of Judge Ronald O.
Hyde of the Second Judicial District Court of Weber
County, State of Utah.

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AUG 7 1979

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT
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IDA U. STOKER,	:	
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Appellant,	:	
vs.	:	Case No. 16376
KARL S. STOKER,	:	
Defendant and	:	
Respondent.	:	

BRIEF OF RESPONDENT

PRELIMINARY STATEMENT

The issue before this Court is whether Appellant may bring a personal injury lawsuit against her former spouse, Respondent, for an alleged assault which occurred during the period of their marriage, or whether such lawsuit is barred by the doctrine of interspousal tort immunity.

DISPOSITION IN LOWER COURT

On March 9, 1979, Judge Ronald O. Hyde granted Respondent's Motion for Summary Judgment based on the fact that Appellant's action was barred by the doctrine of interspousal tort immunity. Judge Hyde, ruling that a wife has no cause of action against a husband for a tort, negligent or intentional, occurring during the term of the marriage, dismissed Appellant's Complaint.

RELIEF SOUGHT ON APPEAL

Respondent asks this Court to affirm the District Court's dismissal of Appellant's Complaint on the grounds that this type of lawsuit is barred by the doctrine of interspousal tort immunity.

STATEMENT OF FACTS

Appellant and Respondent were formerly wife and husband, having been divorced in April, 1976. On December 15, 1978, Appellant filed this action seeking damages for personal injuries suffered in an alleged assault by Respondent on December 25, 1975. The alleged assault took place while the parties were still husband and wife.

On January 9, 1979, Respondent filed a Motion for Summary Judgment, alleging that, even if Appellant could prove the facts stated in her Complaint, her action would be barred as a matter of law by the doctrine of interspousal tort immunity. Respondent also argued that Appellant's action was barred by a Release she had signed in connection with the divorce settlement whereby she relinquished all claims she might have against Respondent arising out of the December 25, 1975 incident.

The lower court, while finding that material issues of fact did exist concerning the validity of Appellant's Release, nevertheless granted Respondent's Motion for Summary Judgment. Appellant's Complaint was dismissed for the reason that spouses or former spouses may not

sue one another for alleged tortious conduct which occurred during the period of the marriage.

A R G U M E N T

POINT I. THE LOWER COURT CORRECTLY RULED THAT UTAH LAW DOES NOT GIVE A PERSON A CAUSE OF ACTION AGAINST HIS OR HER FORMER SPOUSE FOR A TORT, NEGLIGENT OR INTENTIONAL, OCCURRING DURING THE TERM OF THE MARRIAGE.

At common law it was clear that husbands and wives could not sue one another for wrongful acts committed during the period of their marriage. See 41 Am.Jur. 2d Husbands & Wives §522 p. 443. The original rationale for this was based on the fact that the law regarded married persons as a single legal entity. Describing the effects of this concept, the United States Supreme Court stated:

. . . the wife was incapable of making contracts, of acquiring property or disposing of the same without her husband's consent. They could not enter into contracts with one another, nor were they liable for torts committed by one against the other. Thompson v. Thompson, 218 U.S. 611, 614, 615 (1910).

In response to the doctrine that married women had no independent legal rights, almost every state enacted some form of Married Women's Property Act in order to give wives certain additional legal rights. The question before the Court in the instant case is whether the Utah Legislature has enacted specific statutes which change the common law interfamily immunity and give a woman the right to sue her former husband for a tort committed during the period of the marriage.

The relevant Utah statutes are found in Sections 30-2-1, et. seq., Utah Code Annotated (1953) and Section 78-11-1, Utah Code Annotated (1953). The pertinent sections read as follows:

30-2-2. Contracts may be made by a wife, and liabilities incurred and enforced by or against her to the same extent and in the same manner as if she were unmarried.

30-2-4. A wife may receive the wages for her personal labor, maintain an action therefor in her own name and hold the same in her own right, and may prosecute and defend all actions for the preservation and protection of her rights and property as if unmarried. There shall be no right of recovery by the husband on account of personal injury or wrong to his wife, or for expenses connected therewith, but the wife may recover against a third person for such injury or wrong as if unmarried, and such recovery shall include expenses of medical treatment and other expenses paid or assumed by the husband.

78-11-1. A married woman may sue and be sued in the same manner as if she were unmarried.

If Appellant has the right to sue Respondent for an alleged tort committed during their marriage, her right must flow from these statutes, since it is clearly a right she does not possess under the common law. By examining the three cases in which this Court has previously construed the impact of these statutes on the doctrine of interspousal tort immunity, it is evident that the lower court was correct in ruling that Appellant possesses no such right.

It should be noted that the first time the Court considered this question, it concluded that the statutes

do allow a wife to sue her husband in tort. In Taylor v. Patten, 275 P.2d 696 (Utah 1954), Justice Wade ruled that a woman could sue her former husband for an assault which occurred while they were living apart during the interlocutory period of their divorce action. However, this Court later overruled the Taylor decision in Rubalcava v. Gissemann, 384 P.2d 389, 394 (Utah 1963). In Rubalcava, Justice Crockett seems to have adopted much of the reasoning set forth by Justice Henriod in his dissent in Taylor. It thus becomes helpful to consider Justice Henriod's analysis.

Justice Henriod points out that all ten of the sections of 30-2-1 through 10 deal with certain specific rights and obligations which a wife did not have at common law. He notes that, while there is no reference to tort liability of one spouse against the other, the sections specifically and clearly spell out the property rights and liabilities between spouses. This detailed enumeration of certain rights shows the legislature's intent to " . . . give a woman only those rights particularized, which she did not have at common law, and not those which were not specified." 275 P.2d at 701.

Focusing on the language of Section 30-2-2, he illustrates that it was only intended to refer to a wife's contractual rights. The word "liabilities" in that section deals only with contractual liabilities. He notes that

(i)f the section were intended to include torts and all other rights and liabilities . . . all of the other 9 sections which obviously deal with specific and particular rights, which wives did not have at common law, are composed of meaningless and wasted words. 275 P.2d at 701.

Justice Henriod also states that 30-2-4 similarly does not confer upon a wife the right to sue her husband in tort. This section is intended to give a wife the right to keep her own wages and to seek, in her own name, damages for torts committed upon her by third persons. He points out that

[n]othing is mentioned about any right against the husband. Certainly the section does not clearly and specifically give her any such right, but negatives any such right by allowing her to recover only against third persons. If the legislature had intended to give her a right against her husband, it simply could have said she could "recover against all persons" instead of against only "a third person." 275 P.2d at 701, 702. (Emphasis in original.)

The Justice concludes his opinion by pointing out that, while there may be some very good reasons for allowing a wife to sue her husband in tort, it is a matter for the legislature and not the court.

The next Utah case to consider a spouse's ability to sue the other spouse in tort was Rubalcava v. Gisseman, supra. Here the Court ruled that a wife had no right to sue her husband's estate for injuries she suffered in a car accident in which the husband had been driving. The court again analyzed Sections 30-2-1, et. seq., together with Section 78-11-1, and concluded that they

do not give a woman the right to bring a tort action against her husband. Justice Crockett, writing for the majority, stated that statutes " . . . expressly allowing actions by the wife against the husband in respect to contract and property do not compel the conclusion that tort actions should also be included." 384 P.2d at 391.

Commenting on the effect of Section 78-11-1, Justice Crockett notes that this statute

" . . . is procedural, and serves only to give the wife the privilege of suing to protect whatever rights she may have but does not purport to create for her any new or substantive cause of action. Any such right would be found in Title 30, Husband & Wife, which particularizes the rights which they possess under our law. 384 P.2d at 392.

He then illustrates, as did Justice Henriod, that the specific rights given to married women in 30-2-1, et. seq. do not include the authority for a wife to sue her husband in tort. "Had the legislature intended that she have the right; it would have been set forth with the rest; and its omission fairly implies that no such right was intended." 384 P.2d at 393.

This Court again examined the doctrine of interspousal tort immunity in Hull v. Silver, 577 P.2d 103 (Utah 1978). The Court ruled that the doctrine did not bar a wrongful death action brought against the husband's estate by the heirs of the wife. However, the holding was not based on an abrogation of the immunity rule,

but was based on an interpretation of Utah's wrongful death statute. Finding that this statute created in the heirs a new, rather than a derivative, cause of action, the Court found that the action would lie despite the fact that the wife herself would have been barred by the immunity doctrine from bringing such an action.

Justices Hall and Crockett, dissenting from the majority opinion because of their disagreement with its interpretation of the wrongful death statute, note that "[t]he Utah law is settled that a wife cannot maintain a tort action against her husband on his estate." 577 P.2d at 107. The majority opinion in Hull would apparently also agree with this statement, for in the end of that opinion, despite its finding that a wife's estate can maintain such an action, Justice Maughan states that the decision makes no change in the interspousal immunity rule. This fact was noted by Judge Hyde in the instant case, where in his Ruling on Defendant's Motion for Summary Judgment, he stated that the "overall effect of the Hull case seems to reinforce the rule set out in Rubalcava."

POINT II. JURISDICTIONS ANALYZING STATUTES SIMILAR TO UTAH'S AGREE THAT THEY DO NOT ESTABLISH THE RIGHT TO BRING A TORT ACTION AGAINST ONE'S SPOUSE.

In 1910 the United States Supreme Court interpreted a District of Columbia statute which stated that "(m)arried women shall have power to . . . sue separately

. . . for torts committed against them, as fully and freely as if they were unmarried" Thompson, supra, at 617. The Court found that this language did not allow a woman to sue her husband in tort, but was intended to allow her to bring tort actions in her own name, thus taking away the common law requirement that such actions be brought in the joint names of herself and her husband.

The Supreme Court recognized there are debatable policy arguments as to the wisdom of the interspousal immunity rule, but said that any change in the rule must come from the legislature. Had Congress intended to abrogate the doctrine, it could have written the District of Columbia statute in such a way as to express " . . . that intent in terms of irresistible clearness." 218 U.S. at 613. Because it did not, the Court was unwilling to read into the statute such a far-reaching change in the substantive law.

In Paiewonsky v. Paiewonsky, 446 F.2d 178 (3rd Cir. 1971), cert. denied 405 U.S. 919, a case in which a woman sued her husband for an intentional tort, the Third Circuit Court of Appeals interpreted a statute almost identical to Section 30-2-2, Utah Code Annotated (1953). The statute read "(c)ontracts may be made by a wife, liabilities incurred, and the same enforced by or against her in the same manner as if she were unmarried." 446 F.2d at 180. The court found

that this statute did not give the woman the right to maintain a tort action against her husband. Noting that the legislature enacted this statute against the background of common law tort immunity, the court reasoned that if the legislature had intended to do away with immunity, it would have stated it clearly.

On similar grounds, the Montana Supreme Court ruled that a suit brought by a woman's heirs against her husband's estate was barred by the interfamily immunity doctrine. In State Farm Mutual Automobile Ins. Co. v. Leary, 544 P.2d 444 (Mont. 1975), the court dismissed the action despite the existence of a Montana statute giving a married woman the "right to sue or be sued as though she were single." Quoting from an earlier decision, the court stated that these statutes " . . . are procedural and create no new rights, but only remove the common law disability of married women to enforce their rights otherwise created and existing." 544 P.2d at 447, citing Dutton v. Hightower & Lubrecht Construction Co., 214 F. Supp. 298, 300 (D.C. Mont. 1963).

In 1978, the Tennessee Supreme Court, in Childress v. Childress, 569 S.W.2d 816 (Tenn. 1978) observed that it did not believe state statutes gave spouses the right to sue one another for torts occurring during the marriage. It is interesting to note that the language of the Tennessee statute is even broader than the Utah statutes, and the court still did not interpret it to abolish the

immunity doctrine. That statute reads

. . . every woman now married, or hereafter to be married, shall have the same capacity to acquire, hold, manage, control, use, enjoy and dispose of all property, real and personal, in possession, and to make any contract in reference to it, and to bind herself personally, and to sue and be sued with all the rights and incidents thereof, as if she were not married. 569 S.W.2d at 818.

The Childress court did allow a woman to bring a tort action against her husband, but only because the tort occurred before they were married. Stating the cause of action had already been established prior to the marriage, the court limited its holding to that type of situation, and reaffirmed the fact that an action would not lie for a tort occurring during the marriage.

Another case affirming a woman's inability to sue her husband in tort is Ebel v. Ferguson, 478 S.W.2d 334 (Mo. 1972). Here a woman sued her ex-husband for injuries received in an auto accident which occurred during the marriage. The court dismissed the action, holding that a former wife could not recover damages, after the divorce, from her former husband for a wrongful act committed during the marriage. See also Short Line, Inc. of Penn. v. Perez, 238 A.2d 341 (Del. 1968).

The Ebel case is consistent with the general policy that, if the action could not be brought during the marriage because of the immunity doctrine, the mere fact that the parties were divorced before the action was actually filed does not alter the fact that the suit is

barred. As stated in 41 Am.Jur.2d Husbands and Wives
§527 p.448:

Where husband and wife are not liable to each other for torts committed by one against the other during coverture, they do not, on being divorced, become liable to each other for torts committed before the divorce. . . .

Appellant cites a number of cases in her brief in which wives have been allowed to maintain tort actions against their husbands. However, the courts in these cases were not faced with the same statutory language which faces this Court. For example, in Coffindaffer v. Coffindaffer, 244 S.E.2d 338 (W.Va. 1978), the court based its abolition of interspousal immunity on the following statute:

A married woman may sue and be sued without joining her husband in the following cases:
. . . II. Where the action is between herself and her husband. 244 S.E.2d. at 339, 340.

Moreover, in Coffindaffer the parties had separated and a divorce action was pending prior to the husband's tortious conduct.

Again in Lusby v. Lusby, 390 A.2d 77 (Md. 1978), another case relied on by Appellant, the court abolished the immunity doctrine by relying on specific statutory language which is not present in Utah law. In ruling that a woman could seek damages occasioned by her husband's intentional tort, the court utilized a Maryland statute which said "(m)arried women shall have the power to . . . sue . . . for torts committed against

them, as fully as if they were unmarried." 390 A.2d at 79.

Nowhere in the Utah statutes is there such a specific reference to a woman's ability to sue in tort. Section 30-2-4, Utah Code Annotated (1953) mentions the ability of a wife to bring tort actions when it states " . . . the wife may recover against a third person for such injury or wrong as if unmarried. . . ." (Emphasis added.) As noted by Justice Crockett in Rubalcava, supra, the plain import of this language is that a wife does not have the ability to sue her husband in tort. He stated that ". . . the authorization to sue a third person clearly manifests that this section was formulated in an awareness that no right to sue the husband existed." 384 P.2d at 393 (Emphasis in the original.)

POINT III. IF THE DOCTRINE OF INTERSPOUSAL IMMUNITY IS TO BE ABROGATED IN UTAH, SUCH CHANGE MUST COME FROM THE LEGISLATURE, NOT THE JUDICIAL SYSTEM.

Much of Appellant's brief focuses on public policy reasons for doing away with the doctrine of interspousal immunity. These arguments are misdirected, for the actual merits or demerits of the immunity principle are not a proper subject of consideration in the instant forum. Justice Henriod aptly stated this in his dissent to Taylor v. Patten, supra, at 703:

Everyone sympathizes with the beaten wife and abhors the wife-beater who almost invariably assumes not only the role mentioned, but that of a coward. If what plaintiff alleges be true, a bread and water diet

at an appropriate place for an extended period of time would be all too good for him. Concededly there seems to be little or no logical reason why a wife should be able to recover against her husband for a broken promise but not for a broken arm. However, it is for the legislature, not us, to give such a right. . . . [N]o end of rhetoric or argument about public policy, archaic principles, protected property rights, obsolete fictions, historical sex equality, destruction of the purpose of marriage, and the like, can change the basic. . . (conclusion) . . . that our statutes have given a wife no clear, specific right to sue her husband in tort, and that we must resort, therefore, to the common law, which denied her such right.

The fact that change must come from the legislature was re-asserted by Justice Crockett in the majority opinion of Rubalcava v. Gisseman, supra, at 393, where he stated that ". . . any change . . . should be made by the legislature, plainly so declaring, so that all may be advised what the change is and when it will be effective." Similarly, in Hull v. Silver, supra, at 107, Justice Hall wrote that "[i]f any change is to be made in the law it should be by legislative enactment rather than by judicial fiat."

A recent Ohio case similarly refused to judicially overturn the immunity doctrine. In Varholla v. Varholla, 383 N.E.2d 888 (Ohio 1978), the court stated there are valid policy reasons for continuing the immunity doctrine. It promotes marital harmony by discouraging otherwise litigious spouses from pursuing real or fanciful claims to the detriment of the family unit. Additionally, it prevents fraud and collusion at the expense of tactical

disadvantaged insurance companies. Because the doctrine involves a matter of public policy, "... changes in this area must emanate from the General Assembly, not the courts." 383 N.E.2d at 889.

Additional support for the continuing validity of interspousal tort immunity, and the concept that any change must come from the legislature, can be found in the following cases: DiGirolamo v. Apanavage, 312 A.2d 382 (Pa. 1973); Orefice v. Albert, 237 So.2d 142 (Fla. 1970); Horton v. Unigard Ins. Co., 355 So.2d 154,155 (Fla.App. 1978).

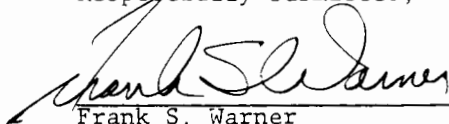
One final comment should be made on the arguments advanced in Appellant's brief. On p.18 she points to the Utah Legislature's failure to ratify the Equal Rights Amendment as evidence of its belief that women are already fully emancipated in this state. Apparently, Appellant wants us to draw from this the conclusion that the legislature believes women already have the right to bring tort actions against their husbands. However, Appellant's argument is erroneous, for neither the proposed federal Equal Rights Amendment, nor the existing state equal rights provision (Utah Const. art. IV §1) have anything to do with the doctrine of interspousal tort immunity. This doctrine applies equally to men and women, for while wives cannot sue their husbands for torts committed in the marriage, neither can husbands sue their wives for tortious conduct during the course of the marriage.

C O N C L U S I O N

At common law, spouses clearly did not have the right to bring tort actions against one another for wrongful acts occurring during the course of the marriage. Because the Utah Legislature has never enacted a statute which confers such a right upon husbands and wives, such actions are still prohibited by the doctrine of interspousal tort immunity. The legislature itself must make such a change before actions such as the one Appellant seeks to bring can be maintained in Utah. The lower court was correct in granting Respondent's Motion for Summary Judgment, and Respondent respectfully asks this Court to affirm the dismissal of Appellant's Complaint.

DATED this 6th day of August, 1979.

Respectfully submitted,



Frank S. Warner
Attorney for Respondent

C E R T I F I C A T E

I hereby certify that on this 6 day of August, 1979, I mailed a copy of the foregoing brief, postage prepaid to Pete N. Vlahos, attorney for Plaintiff/Appellant, 2447 Kiesel Avenue, Ogden, Utah.



Tori H. Thurston, Secretary