1954

Dale Berkeley Wilson v. Dr. Merrill L. Oldroyd : Reply Brief on Appellant's Petition for Rehearing

Utah Supreme Court

George W. Worthen; Arnold Roylance; Pugsley, Hayes & Rampton; Attorneys for Defendant and Appellant;

IN THE SUPREME COURT
OF THE STATE OF UTAH

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DALE BERKELEY WILSON, :

Plaintiff and Respondent;

vs. : No. 7969

DR. MERRILL L. OLDROYD, :

Defendant and Appellant.:

- - - - -

REPLY BRIEF ON APPELLANT'S PETITION FOR REHEARING

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This short memorandum is submitted to the Court in answer to certain allegations made in the respondent's answering brief to the Petition for Rehearing now on file.

POINT ONE

The plaintiff attacks the statements made by the defendant as to the valuation of his property at the time of the trial and at the present time. On page 12 of the Reply Brief the plaintiff lists what he refers to as "the probable minimum value" of each of the assets which he claims Dr. Oldroyd possesses

[illegible] and to go through the list and argue each item at this time, however, if the plaintiff is really sincere in his statements as to values and is not merely trying to mislead the Court, it appears that this matter can be settled very readily here and now. The greatest value assigned to any of the defendant's assets by the plaintiff is assigned to 2700 head of sheep. The valuation which he places on the sheep is typical of the valuations which he places on the other items. In our Brief we stated that the 2700 head of sheep are worth $27,000. The plaintiff states that they are worth $81,000.00.

While the defendant feels that the amount of $27,000 is excessive, in view of the present state of the record, he would naturally be pleased to satisfy the judgment for the sum of $27,000.00. An offer is hereby made, therefore, to turn over to the plaintiff in full satisfaction of the judgment in this case the 2700 head of sheep owned by the defendant. If the plaintiff and his counsel are sincere in their statement that these sheep are worth $81,000.00, they should be highly

released [illegible] 00 in value in satisfaction of the $55,000.00 judgment. If they reject this proposal, it is almost conclusive evidence that their statements as to value are not only inaccurate, but are made with the knowledge that they are inaccurate. As stated above, this same distortion of value that was applied to the sheep is applied throughout their statement of probable minimum values.

POINT TWO

In reply to the statement contained in the Brief in Support of the Petition for Rehearing to the effect that this court and the jury had ignored certain admissions of the plaintiff as to the strained relationship between himself and his wife, plaintiff's counsel states that the Dr. Steele affair resulted in some way from the fact that Dr. Oldroyd had previously weakened the "bond of affection" between the Wilsons. This is typical of the groundless innuendo used by the plaintiff throughout this case. The evidence is clear that the Dr. Steele affair occurred in July of 1950, while the first evidence of any conduct between Dr. Oldroyd and Mrs. Wilson of which any complaint could be made was some five months later

Brief the plaintiff states that the defendant was holding out inducements to Mrs. Wilson to leave her husband. This appears to be in line with the misconceptions of the Court when it says in its opinion that he held out "financial" inducements. This is totally unsustained by the evidence. There is no evidence in the record to the effect that Dr. Oldroyd ever held out a financial inducement to Mrs. Wilson or ever gave or promised her any money, except a $20.00 Christmas gift, which he also gave to the other nurses at the hospital. It is true that he told his own wife - the wife with whom he is still living - that he would like to help Mrs. Wilson. However, there is no implication anywhere that such help as he intended was financial, nor is there any evidence in the record that he conveyed such intention to Mrs. Wilson at any time.

POINT THREE

In attempting to distinguish the case of Collins v. Hughes and Riddle, 278 N.W. 889, the plaintiff states that it is "in conflict with the long line of Utah cases." Defendant submits

tnat there is no Utah case in conflict with the case of Collins v. Hughes and Riddle. So far as defendant is aware neither this court nor any other court has ever cut a judgment 80% and still left the balance to stand as they have done in regard to the punitive damages in this case. The Collins v. Hughes and Riddle case stands for the proposition that if it is necessary to cut a judgment that much to bring it in line with reaso it should be set aside entirely and the case re-tried. The only case anywhere that we can find opposed to that proposition, is the opinion in this case in which we are seeking a rehearing.

POINT IV

In his answering brief the plaintiff once again stresses, as he has in his earlier briefs, the position that Instruction No. 6 merely amounts to a statement that a man may not with impunity alienate the affections of another man's wife, if any there be, even though the relationship of the other couple may be somewhat strained. With this second part of this instruction we agree, but again we say that neither in this instruction nor in any of

[redacted] which present the defendant's theory of the case is the damage undone which results from the instruction of the Judge that the law presumes the possibility of a reconciliation between a husband and wife, even though they may be estranged. This has nothing to do with the defendant's theory of the case. This has nothing to do with substantive law. This is an instruction to the jury on a procedural matter

The Court in its opinion states that there is nothing in the record to which it can tie which affirmatively shows passion or prejudice. Certainly this instruction alone places an entirely false weight upon the evidence. It takes from the jury the right to find from the evidence, and the evidence alone, whether or not Mrs. Wilson would have returned to her husband. It states affirmatively that regardless of the evidence in the case, the law presumes that she would so return.

Once again we say that it is not an instruction on the defendant's theory of the case or on the plaintiff's theory of the case. It is a procedural instruction which is in error and which this court held to be in error in the

Buel - - cited previously so many times.

CONCLUSION

This is clearly a case that calls for re-examination by this Court. The reluctance with which Justice Henroid ooncurred indicates some dissatisfaction on his part with the decision as reached. The decision, right within itself, is inconsistent in that it reduces punitive damages 80% and compensatory damages not at all. As we have pointed out above, punitive damages five times the amount properly recoverable could have resulted only from passion and prejudice, and on that basis, if on no other, a new trial would be warranted.

Counsel urges that because of the issues involved here; because of the importance of the precedence established by this case, a re-hearing should be granted and a thorough re-examination of the record and the Briefs be given by all members of the Court.

Respectfully submitted,

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