

1953

## Richard A. Fife v. Fern C. Fife : Brief for Appellant

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

FILED

SEP 29 1953

RICHARD A FIFE,

Appellant

vs

FERN C. FIFE,

Respondent

Civil No. 7986

Clerk, Supreme Court, Utah

BRIEF FOR APPELLANT

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and

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## STATEMENT OF FACTS

In the 2nd day of May, 1952, in the Third Judicial District Court in Salt Lake County, State of Utah, a decree was made and entered in Case No. 95194, entitled "Farn O. Fife, Plaintiff, vs Richard A. Fife, Jr., Defendant". These parties are respectively the Respondent and Appellant in this appeal. The decree which is erroneously entitled "Interlocutory Decree" ordered and adjudged that the marriage between the Respondent and Appellant was null and void. It appeared from the proceedings (transcript of proceedings on May 2, 1952),

(1) that appellant did not contest the proceedings;

(2) that at the time of the purported marriage between Respondent and Appellant there was a prior marriage between Appellant and one Betty Jane Fife, from whom Appellant had received an interlocutory decree of divorce eighteen (18) days prior to this purported marriage.

It further appeared that no children

had been born to Appellant and Respondent while living in this status, that they had acquired an equity of Six Hundred (\$600.00) Dollars in a home and that they had purchased various articles of furniture and furnishings which were not paid for. The court in the decree awarded the equity in the home, all of the household furniture and furnishings and a 1937 DeSoto automobile to the Respondent herein. The court ordered Appellant to pay the Household Finance Company Four Hundred Eighty (\$480.00) Dollars, to pay a balance due on an electric washer of One Hundred Forty-two (\$142.00) Dollars, a balance due on a television set of One Hundred Sixty (\$160.00) Dollars, a balance due on the purchase price of storm doors and windows of Three Hundred Fifty (\$350.00) Dollars; Forty-five (\$45.00) Dollars to Standard Optical Company; Thirty-seven (\$37.00) Dollars for oil, and Fifty-six and 35/100 (\$56.35) Dollars due upon the home.

Subsequently, and on the 21st day of July, 1952, Appellant was adjudicated a bankrupt in voluntary bankruptcy proceedings in the District Court of the United States for the Central District of Utah. In his petition and schedule he listed among other debts all of the obligations hereinabove recited, and which he was required by the decree aforementioned to pay. A certificate of the filing and of the adjudication was filed with the Clerk of the Third Judicial District Court in this same case.

Thereafter, and on the 3rd day of February, 1953, Appellant appeared before the Honorable David T. Lewis pursuant to an order to show cause why he should not be found in contempt of court for failing to pay the obligations aforesaid.

It appears from the proceedings (Transcript of Proceedings of February 3, 1953), that Respondent had paid the sum of Six Hundred Forty and 35/100 (\$640.35) Dollars upon these

obligations, and had received title to the furniture and furnishings or at least a portion of them from the sellers. The court awarded Respondent judgment against the Appellant for the sum of Six Hundred Forty and 35/100 (\$640.35) Dollars, and ordered Appellant to pay that sum to Respondent in monthly installments of not less than Twenty-five (\$25.00) Dollars. It is from this order that this appeal is taken.

The points upon which the Appellant intends to rely for reversal of this judgment or order of the court are:

(1) Since Respondent paid certain obligations which were listed in Appellant's schedule in voluntary bankruptcy we contend that any claim for reimbursement from Appellant would have to be made, if at all, in the court of bankruptcy, rather than in the Third Judicial District Court.

(2) Appellant contends that the court of bankruptcy acquired original jurisdiction



of the property of Appellant and the Third Judicial District Court was as a result of the adjudication of bankruptcy and the discharge in bankruptcy without power to make a decree ordering the Appellant to pay debts discharged in bankruptcy.

### ARGUMENT

There is nothing in the law or in the facts that would place Respondent in a better position so far as collecting the obligations from Appellant than the position occupied by the original creditors of Appellant. The most that Respondent could claim would be that she was subrogated to their rights. There is nothing in the previous status of Appellant and Respondent that would give Respondent any advantage or any additional claim upon Appellant for the payment of these obligations. The court found that they had never been married, so there was no question of alimony or support. There were no children, so there is no question of child support. Respondent was a co-debtor

on a joint obligation. The court awarded all of the property except one automobile to Respondent and required Appellant to pay to the creditors the amounts still due upon the purchase price of the property. The Appellant listed all of these creditors in his bankruptcy schedule and the bankruptcy court in its regular proceedings had hearings on the bankruptcy and made its own determinations so far as payment by Appellant was concerned. Thereafter, Respondent paid the obligations of some of them and seeks in the Third Judicial District Court in the original annulment proceedings to recover from Appellant the sum of money she had paid to creditors that Appellant was no longer obligated to pay.

We are not here concerned with the propriety of the court awarding all of the property to Respondent. The court did make such an award, although it appears to Appellant that such course of action was highly irregular.

Appellant's contention is that Respondent

must seek reimbursement, if at all, through the bankruptcy court rather than through the Third Judicial District Court.

Chapter II of the creation of courts of bankruptcy confers original jurisdiction in all proceedings under the act of bankruptcy upon the court of bankruptcy. This must necessarily be so, otherwise any court could defeat the very purpose for which bankruptcy courts were created.

The law relating to this matter is clear, and the cases so holding are numerous. Three are cited:

**Matter of Cloisters Bldg. Corp.**

**79 Fed. 2nd 694**

**holding - Jurisdiction of bankruptcy court is exclusive and supercedes jurisdiction of State court with respect to all of debtor's property.**

**In re Greenburg**

**23 Fed. Supp. 836**

**holding - A State court has no power**

by any form of order to limit the operations of this act, or to restrain persons from resorting to the Bankruptcy Court.

**Putnam vs Coleman**

**277 S W 213**

State court could not render judgment on debt after bankruptcy court had acquired jurisdiction.

By weight of authority the liability of a bankrupt on a joint obligation is discharged when properly scheduled.

**Commercial Bank of Boonville vs Varnum**

**176 Mo. App 78 - 162 SW 1080**

**See Title 11, Sec. 34, Par. 16, FCA**

**Tropp vs Tropp**

**129 Cal App 62 - 18 Pac 2nd 385.**

Under agreement of bankrupt to pay specified amount to wife for maintenance and support plus Fifty Thousand (\$50,000.00) Dollars property settlement. The Fifty Thousand (\$50,000.00) Dollars was held not alimony and was discharged in bankruptcy.