

1953

Richard A. Fife v. Fern C. Fife : Brief of Respondents

Utah Supreme Court

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Horace C. Beck; Attorney for Respondent;

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IN THE SUPREME COURT
OF THE STATE OF UTAH

RICHARD A. FIFE

Appellant

-vs-

FERN C. FIFE

Respondent

Civil No. 7986

RESPONDENT'S BRIEF

HORACE C. BECK

ATTORNEY FOR RESPONDENT

FILED

OCT 20 1953

Clerk, Supreme Court, Utah

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Respondent substantially accepts appellant's statement of facts and they are adopted herein	1

Points of law at issue:

Whether the appellant can be re- lieved from paying certain joint obli- gations by a discharge in bankruptcy where he has been ordered by the court to pay them to relieve the respondent from their payment in the furtherance of an equitable settlement of the prop- erty accumulated during a void marriage.	2
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CASES

6 AJ 1004	2
Jenkins -vs- Jenkins	153 Pac2nd 262 2
Tropp -vs- Tropp	18 Pac2nd 385 3
Schnieder -vs- Schneider	11 ALR 1386 2

Respondent accepts appellant's statement of fact as being substantially correct.

The court ordered the appellant to pay certain joint obligations, tr 37. He refused to pay them and respondent had the appellant brought before the court on an order to show cause why he should not be punished for contempt for failing to pay them. It was at this hearing that the appellant set-up his discharge in bankruptcy, tr 10, and after the court having found that the respondent had been forced to pay some of these obligations the court gave her a judgment in the sum of \$640.35, payable \$25.00 per month until fully paid. The appellant filed his notice or appeal together with an appeal bond, but because the appellant did not file a supersedeas bond the respondent resorted to another order to show cause to aid the respondent in forcing the collection of the judgment because of appellant's failure to pay said judgment as ordered by the court, but the court refused to find the appellant in contempt pending appeal, leaving the respondent to collect the judgment by garnishment or

execution or in any other way except through contempt proceedings.

As I said these were joint obligations and a discharge of one spouse does not affect the personal liability of the other spouse on a debt for which both were originally liable, although the spouse who was discharged in bankruptcy could not be sued thereon, 6 AJ 1004.

The court has the power to make an equitable distribution of the personal and real property accumulated during a void marriage , Jenkins -vs- Jenkins, 153 Pac2nd 262, Schneider -vs- Schneider, 11 ALR 1386, and that was what the court was attempting to do in this case by ordering the appellant to pay certain joint bills and obligations created during the said marriage and by granting a judgment in the sum of \$640.35 after appellant's discharge in bankruptcy.

Being joint obligations the discharge in bankruptcy relieved the appellant from paying them but it did not relieve the respondent and it was to relieve the respondent of these obligations that the court originally ordered the appellant to pay them, thus making an equitable settlement of the differences of the

appeal.

I agree that appellant's discharge in bankruptcy relieved him from paying his creditors and made it impossible for them to sue him but did such discharge relieve him from obeying the order of the court to pay them for and behalf of the respondent in the interest of doing equity, or to subsequently enter a judgment for the said sum of \$640.35?? I think not for no other reason that it would defeat the court in granting equitable relief in many instances. I am inclined to think that if the court should grant a judgment for a sum certain that it could be discharged in bankruptcy, as in the case of Tropp -vs- Tropp, 18 Pac2nd 385, cited in appellant's brief, providing the consideration was not for the support and maintenance of any alleged minor children but in this case the judgment for a sum certain was entered after the discharge in bankruptcy.

All the proceeding in bankruptcy did was to relieve the appellant from paying the joint bills and obligations that he was already legally bound to pay and they were duly and

right.

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that I mean that they were not made appellant's by virtue of any court order, but the problem here is, as I see it, whether the said court order operated to excuse the appellant under the said discharge from paying respondent's obligations?? I think not for the reason already given.

I have not been able to find any citations on this point to assist me or the court and I feel that I have been rather diligent in my search. However, I have never been complimented on my ability or talent for being a legal ferret or bookworm and it is possible and very probable that there are some authorities and cases on the problem somewhere.