

1954

## Doris E. Wells v. Ray A. Wells : Plaintiff-Brief of Respondents

Utah Supreme Court

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### Recommended Citation

Brief of Respondent, *Wells v. Wells*, No. 8015 (Utah Supreme Court, 1954).

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IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF UTAH**

DORIS E. WELLS,

*Plaintiff-Respondent,*

— vs. —

RAY A. WELLS,

*Defendant-Appellant.*

No. 8015

PLAINTIFF-RESPONDENT'S BRIEF

**FILED**  
MAR 5 1954

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Clerk, Supreme Court,

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PLAINTIFF-RESPONDENT'S BRIEF

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FACTS

Doris Wells and Ray Wells were married in Watertown, New York, on April 4, 1943. One child, Dorothy, was born to them. The only place they lived together as husband and wife was in the State of New York. Ray left New York State about June 25, 1949 to go to Reno, Nevada to obtain a divorce from Doris. When his bus reached Elko, Nevada, he got off the bus because he happened to think of a friend of his who lived there. After establishing a six weeks' residence he obtained a divorce. In his complaint for divorce (R. 12) he prayed for a

decree of divorce without requesting that any provision be made for the support of either his wife or his minor child, but he did pray generally "for such other and further orders as shall be meet and proper in the premises." The only service obtained on Doris Wells was in New York State (R. 16). She never made her appearance in the Nevada court. The Nevada court granted Ray Wells a decree of divorce, but in the decree also ordered Ray to pay \$35.00 per month for the support of his minor child. The decree reads as follows:

"That the bonds of matrimony now and heretofore existing between plaintiff and defendant be, and the same hereby are, forever dissolved, and the said parties be, and they hereby are, restored to the status of single persons; that the plaintiff is ordered to pay unto the defendant for the support and maintenance of the minor child the sum of \$35.00 per month, commencing on the 1st day of November, 1949, and payable on the first day of each and every month thereafter until such time as the said minor child shall reach the age of majority, or until such time as she shall marry or become self-supporting or until the further order of this Court."

This decree of divorce was entered on October 6, 1949 in Elko, Nevada. Two days later in Elko, Nevada, Ray Wells married Adeline Brown of Gouverneur, New York, whom he had known while he was residing in New York State. On October 10, 1949, he and the new Mrs. Wells came to Salt Lake City, stopping for a while in a hotel, then secured employment in Salt Lake City, and he and the new Mrs. Wells became residents of Salt Lake City, Utah.

Ray Wells did not make any payments ordered by the Nevada court for the support of his minor child. He has not paid a single installment (R. 71). The minor child Dorothy was provided for by her mother. After four years had elapsed, Doris learned of Ray Wells' whereabouts and requested counsel to bring an action to recover from Ray Wells the monies she had expended for rearing Dorothy, and asked the court to make an allowance for Dorothy's future support and also to secure alimony for herself.

On June 6, 1952, Doris Wells' counsel filed such a complaint in two causes of action (R. 1). The theory of the complaint was that while the Nevada decree might be operative to dissolve the marriage bond, no appearance having been made in the Nevada court, the decree of the Nevada court could not settle the property rights of the parties nor be an adjudication of the wife's or the child's right to alimony (R. 2, paragraphs 5 and 6). The plaintiff here pleaded what in her opinion was the legal effect of the Nevada decree.

The defendant then answered and he too pleaded what in his opinion was the legal effect of the Nevada decree.

### COURT PROCEEDINGS

Thus both parties put before the court the question of determining the legal effect of the Nevada decree.

With the pleadings in that state, there was presented to the court from the beginning the facts with respect to the Nevada decree, and the pleadings consist-

ing of the complaint and the answer required the Utah court to rule on what the effect of the Nevada decree was. This is made more apparent by a quotation from the defendants Amended Answer. The defendant's Answer pleaded the Nevada decree of divorce and then the defendant continued his amended answer and pleaded the legal effect of that decree in these words (R. 2) :

“That as a result thereof, defendant secured a Decree of Divorce from plaintiff upon good and sufficient grounds in conformance with the laws of the State of Nevada. A copy of said decree of divorce has heretofore been filed with the court in this matter and cause, and the same is hereby specifically incorporated into and by this reference made a part hereof.”

The validity of this decree of divorce was therefore before the court with or without the plaintiff's reply to the Amended Answer (R. 19).

The case went to trial on March 9, 1953 (R. 41). The trial proceeded as was suggested by this court in the case of *Weiss v. Weiss*, 111 Utah 353, 179 Pac. 2, 1005, namely, to try the question of whether Ray Wells had established a domicile in Nevada so that the decree of the Nevada court would be considered a valid decree of divorce. The court then indicated that he would find that Ray Wells had established a valid residence in the State of Nevada and that the Nevada decree was a complete adjudication of the marriage status of the parties, and furthermore, “that the decree so entered was valid and binding upon both parties to this action.” This amounted to a

finding in favor of the defendant upholding the defendant and ascribing to the Nevada decree the same legal effect that the defendant had ascribed to it, holding that the decree was binding upon the plaintiff as to her own support and in addition as to child support.

“2. That the decree of divorce entered in the District Court of the Fourth Judicial District in and for the State of Nevada, in and for the County of Elko, on October 6, 1949, is a binding and valid decree of divorce, binding upon both parties, and that the order contained in the said decree of divorce herein set forth is valid and binding upon both parties hereto, to-wit:

“IT IS HEREBY ORDERED, ADJUDGED AND DECREED: That the bonds of matrimony now and heretofore existing between plaintiff and defendant be, and the same hereby are, restored to the status of single persons; that the plaintiff I ordered to pay unto the defendant for the support and maintenance of the minor child the sum of \$35.00 per month, commencing on the 1st day of November, 1949, and payable on the first day of each and every month thereafter until such time as the said minor child shall reach the age of majority, or until such time as she shall marry or become self-supporting, or until the further order of this court.” (R. 42, paragraph 2).

The Court having concluded that the Nevada decree was valid as set forth in Paragraph 2 of the court's order, need not have done anything more since this Paragraph 2 already set up the Nevada decree as a decree of the Utah court. However, the court was of the opinion that



some additional pleading should appear to permit the court to enter a judgment for the support money that had accrued and the court then added Paragraph 4 to this order of March 18th (R. 43) :

“4. That this court having denied the plaintiff herein the right to recover alimony or support money in an independent action for the reason that this court is of the opinion that the aforementioned decree of the Nevada court is valid and binding upon the parties to this action, not only insofar as it affects the marriage status, but also insofar as it affects the award of support money for the support of the minor child of the parties hereto, and fails to award support for the support of the plaintiff in this action, the plaintiff herein is hereby permitted to file an amended and supplemental complaint setting forth a cause of action based upon the aforementioned Nevada decree in order to recover support money for the support of the said minor child.”

## POINT 1

PLAINTIFF CONTENDS THAT THE VALIDITY OF THE NEVADA DECREE WAS IN ISSUE WITHOUT THE FILING OF THE REPLY AND THAT THE ENTRY OF THE ORDER UPHOLDING THE VALIDITY OF THE NEVADA DECREE WAS PROPER WITHOUT THE FILING OF A SUPPLEMENTAL COMPLAINT.

Both the plaintiff and the defendant referred to the Nevada decree and the defendant particularly relied upon it and invoked the judgment of this court on the question of the validity of that decree. That much was accomplished by the filing of the complaint by the plaintiff and the answer by the defendant. The only decision made

by this court is that the Nevada decree is valid not only to dissolve the marital status but also is binding upon the plaintiff on her right to receive alimony for her own support and the right to receive support money for the support of the minor child. A decision on that matter was invoked without the filing of the supplemental and amended complaint. That issue was not brought into the case by the filing of the supplemental complaint because as pointed out hereinabove, that issue was decided even before the filing of the amended and supplemental complaint. (See R. 43, paragraph 4, quoted above.)

Similarly, the judgment of the district court as to the effect of the Nevada decree was invoked by the plaintiff when she filed her complaint, and also by the defendant when he filed his answer. In that state of the pleadings the judgment of the court was required as to the effect of the Nevada judgment or whether it had any effect at all. The reply filed by the plaintiff only gave notice to the defendant that the plaintiff would contend that the Nevada decree was not entitled to be given any effect on account of the wife's claim that the husband had not established a bona fide residence in Nevada. The reply only gave the defendant notice of a specific point of law on which plaintiff would rely. When plaintiff filed the reply, it was plaintiff's view that the filing of the reply would put the defendant on definite notice that one of the reasons for denying any effect to the Nevada decree would be that the husband had not established a bona fide domicile in Nevada. Instead of objecting to this notice, the defendant should have appreciated the

fact that specific notice was given to him of a law point that would be raised.

Accordingly, the reply did not change the theory of the original complaint nor did the amended complaint change the theory of the original complaint. Indeed, it might be said that the amended and supplemental complaint was surplusage.

## POINT 2

SINCE THE NEVADA DECREE HAS BEEN UPHOLD AS A JUDGMENT OF THIS COURT, PLAINTIFF YIELDS TO THE JUDGMENT OF THE LOWER COURT AND DOES NOT SEEK FURTHER RELIEF.

While counsel for the plaintiff is of the opinion that an independent action for alimony is permissible where the wife has not had her day in court, plaintiff now asks this court to sustain the judgment already entered. This gives the plaintiff but "half a loaf" but plaintiff is content with that judgment rather than further litigate the question as to whether plaintiff is entitled to recover alimony and support money in an independent action. In the interests of the needs of the plaintiff, counsel for the plaintiff is praying for this court's affirmance of the judgment already entered. Many issues were brought into this case in the lower court that tended to obscure the single fact that a child of tender years was seeking nominal support money from a father who had traveled 2500 miles to avoid his paternal duty. While success upon the cross-appeal might enable this child and perhaps her mother to secure better support at this late date, we shall be content with the affirmance of the judgment of the lower

court. To bring a bigger judgment to a person in need, but to bring it a year or more later, is but little comfort to that person in need. While the plaintiff relied upon the Utah case of *Hutton v. Dodge*, 58 Utah 228, 198 Pac. 165, to give the wife her day in court to secure an adjudication upon her right to alimony and an independent judgment on the amount of support money to be paid for the support of the minor child, plaintiff is content to abandon that position in this action. Counsel for the plaintiff privately retains the opinion that the better reasoned cases allowing a wife who has not been before the court which granted the divorce an independent cause of action, and counsel hopes that that matter might be ruled upon by this court in some other case in which the question might be raised.

### POINT 3

DEFENDANT SEEKS TO AVOID THIS JUDGMENT BY STATING THAT PLAINTIFF HAD AN ALTERNATIVE REMEDY UNDER THE "UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT."

Defendant's counsel consistently urged the district court to require the wife to reply upon the Uniform Reciprocal Enforcement of Support Act. The plain answer is that the act states that that remedy is not an exclusive remedy to the wife or child who has been abandoned by her husband. Section 77-61-3, Utah Code Annotated, 1953 reads:

"Remedies cumulative. The remedies herein provided are in addition to and not in substitution for any remedies now existing, and shall in no way effect or impair any other remedy, civil or criminal, under the laws of this state."

## CONCLUSION

Plaintiff urges the court to affirm the judgment entered so that the defendant will be compelled to contribute nominally to the support of his minor child, now about ten years of age, to whose support he has not contributed for more than five years. All that the lower court has done is to give full faith and credit to the judgment of the Nevada court and held that the Nevada decree adjudicates all of the matters of property, and not only the question of marital status. The defendant in effect is asking this court to deny full faith and credit to a judgment of a sister state, which judgment was entered in an ex parte proceeding brought by the defendant and in which proceedings the defendant was the moving party in bringing about the entry of the judgment.

Respectfully submitted,

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