

1954

Lois H. White v. N. P. Mettome Co. et al : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *White v. N. P. Mettome Co.*, No. 8193 (Utah Supreme Court, 1954).
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IN THE SUPREME COURT
of the
STATE OF UTAH

LOIS H. WHITE, Widow of PAUL
WHITE, deceased,

Applicant and Appellant,

— vs. —

N. P. METTOME COMPANY,
STATE INSURANCE FUND and
INDUSTRIAL COMMISSION OF
UTAH,

Respondents.

APPELLANT'S BRIEF

C. VERNON LANGLOIS

Attorney for Appellant

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Case No. 8193

APPELLANT'S BRIEF

STATEMENT OF THE CASE

This is an action against the State Insurance Fund before the Industrial Commission of Utah by the Appellant, Lois H. White, widow of Paul White, deceased, to recover compensation as a result of the death of Paul White in the course of his employment.

The Industrial Commission heard the evidence on the 4th day of February, 1954, beginning at 10:00 A.M. The hearing was held before Robert J. Shaughnessy, Referee. The Commission entered its order on the 4th day of March, 1954, denying the claim of the Appellant. The Appellant thereafter on the 13th day of March, 1954, filed an application before the Industrial Commission for a re-hearing, which application for re-hearing was denied on April 8th, 1954.

The Appellant filed her Petition for Writ of Certiorari on the 1st day of May, 1954, and the Industrial Commission of Utah filed with this Court the record of this case on the 17th day of May, 1954.

STATEMENT OF FACTS

The facts of this case are very simple. Lois H. White, the Appellant, and Paul White, the deceased, were married on the 21st day of November, 1941, and a Decree of Divorce was awarded to Lois H. White from Paul White, Case No. 99089, in the District Court of Salt Lake County, State of Utah, on the 10th day of July, 1953.

On the 6th day of October, 1953, while Paul White was employed as an ironworker by the N. P. Mettome Company, he sustained an injury arising out of, or in the course of, his employment and died as a result of said injury two days later on October 8th, 1953. He was earning \$2.67 per hour on a 40 hour per week basis.

During the period of time between the date of the divorce and the date of the death, Mr. and Mrs. White had seen each other on a number of occasions and had communicated by telephone on numerous other occasions. At the time of and prior to the divorce Mr. White had been addicted to the excessive use of alcoholic beverages, and Mrs. White had insisted on a divorce with the hope that he would straighten up and terminate his excessive drinking; in which event, the parties had agreed that they would resume their marital relationship and have the decree set aside during that period of time.

Between the date of the divorce and the date of the death of Mr. White, Mr. White had ceased his excessive drinking and had been employed steadily, and Mr. and Mrs. White had discussed on several occasions the setting aside of the divorce and the resumption of the marriage. Just a day or two before the death of Mr. White he had talked with Mrs. White and had made a specific appointment with her for the following Sunday, at which time they planned to complete their arrangements to set aside the divorce and to go back and live together as man and wife, and she agreed with him that she would quit work and go back and take care of the house, and that he would continue working and maintain and support them after resumption of their marital status. Before this eventful Sunday arrived of course Mr. White was killed and the resumption of the marriage, of course, never took place as they had planned.

ASSIGNMENTS OF ERROR

POINT I

THE COMMISSION ERRED IN FINDING THAT LOIS H. WHITE AND PAUL WHITE WERE NOT HUSBAND AND WIFE.

POINT II

THE COMMISSION ERRED IN FINDING THAT THERE WAS NO DEPENDENCY NOR PRESUMPTION OF DEPENDENCY BY MRS. WHITE ON HER HUSBAND, PAUL WHITE.

POINT III

THE COMMISSION ERRED IN FINDING THAT THERE WAS NO AGREED DEPENDENCY OF MRS. WHITE ON HER HUSBAND, MR. WHITE.

ARGUMENT

POINT I

THE COMMISSION ERRED IN FINDING THAT LOIS H. WHITE AND PAUL WHITE WERE NOT HUSBAND AND WIFE.

The cases seem to hold almost unanimously that the death of a spouse during the interlocutory period of divorce terminates the marriage rather than the running of the interlocutory period as the following cases unequivocally indicated:

Remley v. Remley, 193 P. 604

This was an action for divorce wherein the court ordered the payment of a monthly allowance for the support of minor children, and gave a lien

to the plaintiff to secure the payment of the allowance against defendant's interest in homestead property:

(2) The interlocutory judgment in a divorce action is not a decree of divorce nor does it dissolve the marriage. It is merely a declaration that one of the spouses is entitled to a divorce (section 131, Civ. Code), and when one year has expired after the entry of such interlocutory judgment the court may enter the final judgment, granting the divorce, and such other relief as may be necessary to complete disposition of the action.

(3) In its decision the court should determine whether a divorce ought to be granted; it should designate the party entitled thereto, and if property rights are involved it should determine how the property should be disposed of or assigned when such divorce is granted.

Gould v. Superior Court, 191 P. 56.

This action was originally a divorce action brought by Frank H. Gould against his wife, Nettie Gould, and on her cross-complaint she was granted a decree and certain properties and monthly payments as permanent alimony. Frank H. Gould died one month after the interlocutory decree was entered:

(1) Under the provisions of section 132 of the Civil Code, the marital status of the parties was not affected by the interlocutory decree, further than that it established conclusively, unless set aside on appeal or in some other manner expressly provided by statute, the defendant's right to divorce upon the expiration of the statutory

period of one year, which must elapse between the entry of the interlocutory decree and the final judgment dissolving the marriage.

(6 & 7) The death of the husband terminated the marital relationship. — — — Upon the death of the husband, the rights of the wife under the laws of succession, if he died intestate, were fixed, unless those rights had theretofore been changed by contract with the husband.

(8 & 9) Since the marriage was not dissolved by the entry of the final decree, but by the death of the husband — — — it would appear — — — that the entry of the final decree accomplished nothing.

Gloyd v. Superior Court, 185 P. 995.

This was a case where Albert M. Gloyd was granted an interlocutory decree against his wife. Shortly thereafter and during the interlocutory period he died and she claims his estate as his widow. The court held that the death terminated the marriage and not the divorce, and stated as follows:

(3) That relation and status having been dissolved by death, the petitioner, Malette S. Gloyd, forthwith became the surviving wife of Albert M. Gloyd, with the vested right to be recognized as his widow and with such further vested rights of property as may result from the fact that she was his wife at the time of his death.

The Court in this same case quoted from the estate of Walker, 168 P. 689, in which case the court stated:

“The marriage relation existing between the husband and wife was not dissolved by the interlocutory decree of divorce, but by the death of the husband on November 20, 1913.”

The following cases all hold specifically that an interlocutory decree of divorce does not terminate the marriage and that the marriage is not terminated until the expiration of the interlocutory period, and that a marriage contracted during the interlocutory period is void ab initio because of the prior existing marriage and that a death which occurs during the interlocutory period terminates the marriage and not the death:

Sanders v. Industrial Commission (230 P. 1026); Salt Lake City v. Industrial Commission (22 P. 2d 1046); Klebora v. Klebora (5 P 2d 965) Re: Johnson's Estate—Johnson v. Johnson (35 P. 2d 305).

POINT II

THE COMMISSION ERRED IN FINDING THAT THERE WAS NO DEPENDENCY NOR PRESUMPTION OF DEPENDENCY BY MRS. WHITE ON HER HUSBAND, PAUL WHITE.

The courts hold with reference to Point II that the lack of actual support by the husband does not of itself negative dependency, which theory is borne out in the following as well as in many other cases:

Diaz vs. Industrial Commission of Utah, 13 P. 2d 307.

In this case the wife and children had been separated from the husband for approximately two years, but the separation did not eliminate the husband's obligation to support, nor did it termi-

nate the dependency of the wife on the husband. There are numerous cases cited in this case upholding the same doctrine.

McGarry vs. Industrial Commission, 222 P. 592.

This court stated that "we know of no authority which holds that the furnishing of support during the life of the deceased is absolutely essential to the establishment of actual dependency",

Merrill vs. Penasco Lumber Company, 204 P. 72.

The court said "That just as the existance of the marital status does not of itself prove dependency, so the lack of actual support by the husband does not of itself negative dependency".

POINT III

THE COMMISSION ERRED IN FINDING THAT THERE WAS NO AGREED DEPENDENCY OF MRS. WHITE ON HER HUSBAND, MR. WHITE.

With reference to Point III, this court has laid down the law on this point very clearly as set forth in the case of, *Utah Galena Corporation et al vs. Industrial Commission et al*, 5P. 2d 242:

This is a case involving the question of dependency.

Judge Folland in his opinion in this case quotes as follows from 28 R.C.L. pages 770 and 771, as being the law in the State of Utah:

(a) "As a very general proposition it may be said that a dependent is one who looked to or

relied on the decedent for support and maintenance. Reliance must have been placed upon the deceased employee to provide the applicant for compensation, in some measure or to some extent, with his or her *future* living expenses.

* * * The purpose of the statute is to provide the workman's dependent in *future* with something in substitution for what has been lost by the workman's death, and consequently, to establish dependency the applicant for compensation must show that he or *she had reasonable grounds to anticipate future support from the decedent. This reasonable expectation of continuing or future support and maintenance seems to be the true criterion as to who are dependents.*"

Judge Folland in the same opinion quotes from 28 R.C.L. at page 771, the following as being the law of the State of Utah:

"A person may be a dependent, according to this view, although able to maintain himself without any assistance from the decedent. And so the mere ability to earn a livelihood will not prevent one from being a dependent."

In the instant case Mrs. White had been supporting herself of necessity after the Decree of Divorce, but she certainly had anticipated being able to quit her job and stay home while her husband worked and earned a livelihood for both of them, in fact, it was more than a mere anticipation, it was a specific agreement. The parties had specifically agreed that when Mr. White quit drinking (and the fact is uncontroverted that he had quit drinking) they would resume their marital relation and

she would quit work and he would support her. This specific agreement was not necessary as he had the obligation by law to do so even without the agreement.

CONCLUSION

In conclusion it is important to note that all of the facts herein stated and all of the evidence of Mrs. White is uncontroverted; therefore, we can but conclude (1) that the marriage of Mr. and Mrs. White was terminated by the death of Mr. White, and was not therefore effected by the running of the interlocutory period, and (2) that although Mrs. White was not only employed during the period of time from the date of divorce to the date of the death of Mr. White but she was employed prior to the divorce also, nevertheless she was a dependant by law both before the divorce and after the divorce; and, that although she did not receive her actual support from him at the time of his death she did have a reasonable future anticipation of dependency, and under the law previously stated by this court, that is sufficient to establish dependency to justify an award, and the Appellant therefore respectfully submits that this case should be reversed and an award made to the Appellant in the amount provided for by statute for the death of her husband while in the course of his employment.

Respectfully submitted,

C. VERNON LANGLOIS

Attorney for Appellant