

1954

Lois H. White v. N. P. Mettome Co. et al : Defendants' Brief

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *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 Plaintiff,

vs.

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

Defendants

Case No.
8193

FILED

SEP 16 1954

Clerk, Supreme Court, Utah

DEFENDANTS' BRIEF

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DEFENDANTS' BRIEF

STATEMENT OF THE CASE

This case involves an application before the Industrial Commission of Utah by Lois H. White for benefits under the Workmen's Compensation Law on account of the fatal industrial accident suffered by Paul White on October 6, 1953. After a hearing, the Industrial Commission rendered its decision denying her claim upon its finding that she was not a dependent of the deceased employee. She and her attorney have brought the case to this Court for review.

STATEMENT OF FACTS

We agree with the facts stated by Plaintiff's attorney on page 2 of his brief, that Lois H. White and Paul White were married in 1941 and that Paul White was killed in the course of his employment on October 6, 1953. The State Insurance Fund carried the compensation insurance liability of his employer. We also agree with the statement that there was a decree of divorce awarded to Lois H. White from Paul White on July 10, 1953. But we think that Plaintiff's attorney has added some of his own inferences and conclusions to the facts which he has stated on page 3 of his brief.

With respect to the evidence on the subject of Paul White's "quitting drinking", Mrs. White testified (Tr. 6 and 7) :

"A. Well, I told him that if he'd quit drinking, why, then I'd drop the divorce proceedings. And he said he'd try. But he didn't for awhile."

(and at Tr. 8) :

"A. Well, once or twice after we got the decree I talked to him about it. * * * he said he was quitting drinking, he was doing better about it, and asked me if I'd reconsider. And I told him that I would if he, if he could show me that he was quitting drinking. And he said that he wanted to start coming down and see me again, to show me that he was quitting, and that. And I told him it was all right with me, if he could show me that he was turning over a new leaf, as it were, so we could go back together."

With respect to the time she met him on the street and they agreed he would come and see her the following Sunday, she testified (Tr. 9) :

“A. Well, we wanted to get it squared away as to whether we would go back together or not.”

In other words, her testimony was that if the fatal accident had not happened, they were going to meet together the following Sunday and discuss whether they might be able to go back living together.

ARGUMENT

POINT 1.

THE INDUSTRIAL COMMISSION WAS CORRECT IN DENYING LOIS H. WHITE'S CLAIM BECAUSE SHE WAS NOT A DEPENDENT OF THE DECEASED EMPLOYEE.

On July 10, 1953, Lois White, the applicant and plaintiff in this case, filed in the Salt Lake County Clerk's office a divorce action against her husband, Paul White, on the grounds of mental cruelty. In her complaint she stated that they owned an equity in a duplex at 1540 South 11th East, Salt Lake City, Utah, and that they also owned furnishings and furniture at that location. She requested that she be granted that equity and those furnishings and furniture, and also an automobile which was her own personal property. Her husband, Paul White, signed an appearance and waiver before a notary public, and this was also filed in the Salt Lake County Clerk's office the same day, July 10, 1953. District Judge D. T. Lewis granted the divorce

as prayed for by the plaintiff the same day the complaint was filed. The decree granted her the property which she had requested. In her complaint Lois White had specifically waived any right to alimony or support money. Accordingly the decree did not grant her any alimony or support money. Lois White and Paul White did not ever live together after the decree was granted. He was killed three months later.

The question which was before the Industrial Commission in this case, and is now before the Supreme Court for determination, is not so much whether Lois H. White was the wife of Paul White on October 6, 1953, when he received his fatal accident. The question is not what property rights she might have in a probate proceeding relating to his estate. The question is whether she comes within the statutory provision of the Workmen's Compensation Law relating to death cases. Section 35-1-71, U. C. A. 1953, specifies:

“The following persons shall be presumed to be wholly dependent for support upon a deceased employee:

“(1) A wife upon a husband with whom she lives at the time of his death.

“(2) Children under the age of eighteen years or over such age, if physically or mentally incapacitated, upon the parent, with whom they are living at the time of the death of such parent, or who is legally bound for their support.

“In all other cases, the question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of

such employee, but no person shall be considered as dependent unless he is a member of the family of the deceased employee, or bears to him the relation of husband or wife, lineal descendant, ancestor, or brother or sister. The word 'child' as used in this title shall include a posthumous child, and a child legally adopted prior to the injury. Half brothers and sisters shall be included in the words 'brother or sister' as above used."

Lois White was not living with Paul White at the time of his death (Tr. 13). Consequently, the only other basis upon which she might claim compensation benefits must be found in the category of "all other cases", where the question of dependency must be determined in accordance with the facts. The undisputed fact is that Paul White did not support Lois White after July 10, 1953. She did not receive any money from him after the divorce decree. She was not dependent upon him for any of her support, in fact or in law, at the time he received his fatal accident.

The applicant's attorney has argued that this divorced couple might have become reconciled and gone back to living together before the end of the six months interlocutory period. That argument is based upon conjecture. Applicant testified that her husband was "quitting" drinking. But she did not testify that she was convinced and satisfied that he had "quit". She testified that it was her "hope and expectation" that Paul White would "quit drinking and tend to his business", and that they could go back to living together again (Tr. 10). In other words, she hoped that he would change his drinking habits and reform. She intended to resume the marriage relationship with him only when she was satisfied that he had done so. Whether that

would have ever been the situation prior to the end of the six months interlocutory period is problematical and conjectural. If her hopes had been realized, the proper legal procedure would have been to apply to the District Court which had granted the interlocutory decree for an order vacating the decree and dismissing the divorce action. An affirmative legal action on her part would have been necessary in order to change her legal status.

Applicant's situation with respect to hopes of a possible reconciliation placed her in a position somewhat similar to that of a woman who is engaged to be married. If her fiance is killed in an industrial accident prior to the performance of the marriage ceremony, she is not a "dependent" under the provisions of the Workmen's Compensation Law. They may have had their future marriage plans all arranged and agreed upon. They may have even rented a house or an apartment and purchased household furnishings in contemplation of their intended marriage. But no matter how near they had come to becoming husband and wife, she is not his "dependent" under the Workmen's Compensation Law, because Section 35-1-71 provides that:

“* * * the question of dependency * * * shall be determined in accordance with the *facts* * * * *existing at the time of the injury* resulting in the death of such employee, * * *.”

One of the cases cited on page 7 of Plaintiff's brief was *Salt Lake City vs. Industrial Commission*, 22 Pac. (2nd) 1046, 82 Utah 179. In that case the Industrial Commission awarded compensation to Mrs. Alicia Poate as the

widow of Frank Poate, an employee of Salt Lake City, who was fatally drowned July 28, 1932, in the course of his employment. The only question involved in the case was whether she was his lawful wife at the time of his death. She had sued and obtained an interlocutory decree of divorce from him on Dec. 14, 1927. On May 14, 1928, the District Court made an order to the effect that it had been brought to the attention of the Court that there was a possibility of a reconciliation between plaintiff and defendant. The Court, upon its own motion, ordered that the interlocutory decree should not become final until Dec. 13, 1928. On Sept. 25, 1928, the same Judge who granted the decree and made the previous order, made the following order:

“On application of the above named parties personally appearing in open court, it is ordered that the judgment heretofore entered in the above entitled case and the default of the defendant herein be and the same is hereby set aside and the case dismissed.”

The parties thereafter resumed marital relations until the death of Poate as aforesaid. Under the foregoing facts Salt Lake City contended that the Court was without power or right to extend the time for the divorce to become final, and that in any event it was without power to set aside the decree of divorce and dismiss the action by its subsequent order of Sept. 25, 1928, as the decree had become final and after the end of the term in which the decree was entered. (It was stipulated that the term of Court in which the decree was entered, had ended at the time said order was made.)

The Supreme Court held that the order of the District Court, setting aside the decree and dismissing the action, was not void on its face and was valid for the purpose of the proceeding in question; that each of the parties to the divorce action would have been estopped to question the validity of the order; therefore, the employer was not in any better position to question it. The order of the Commission awarding compensation was affirmed.

That case was considerably different from the situation of Mrs. White in our present case. In the Salt Lake City case Mrs. Poate had obtained a dismissal of the divorce action and was living with Mr. Poate and being supported by him for four years prior to his fatal accident.

A recent case in which the Supreme Court of Utah ruled upon our present question was *Loretta Earley, for herself and on behalf of Joanne L. McIntyre, Sharon McIntyre and Carol McIntyre, minor children of Jack L. McIntyre, deceased, vs. The Industrial Commission of Utah*, 265 Pac. (2nd) 390. (Decision dated Dec. 30, 1953.)

The greater part of the Supreme Court's opinion in this case deals with the rights of the minor children of the deceased employee, Jack L. McIntyre, to compensation benefits on account of his accidental death. But there was also involved in this case the question of whether the employee's widow was entitled to compensation benefits. She had lived with him for 15 years prior to May 1, 1951. He had been the sole support of her and their children until December, 1950, when she started to work as a psychiatric technician. After Mr. McIntyre left her and the children on May 1, 1951, they received no assistance from him. A

month after his departure Mrs. McIntyre filed a divorce action. She had not been able to obtain personal service of summons upon him, and before she could have summons published Mr. McIntyre was killed in an automobile accident in the course of his employment on September 29, 1951. About two weeks later Mrs. McIntyre married Mr. Early. Thereafter she filed with the Industrial Commission of Utah a claim on behalf of herself and the McIntyre children. The Industrial Commission denied compensation to both her and the children.

The Supreme Court of Utah held that the children were entitled to compensation on account of the death of their father. But the Court also held that the Industrial Commission was correct in denying compensation to Mr. McIntyre's widow. The Court's opinion in effect held that inasmuch as she was not living with him at the time of his fatal accident there was no legal presumption that she was dependent upon him, and that the facts in the case did not justify a finding that she was dependent upon him.

Koepfel vs. E. I. Dupont De Nemours & Company, 194 Atl. 847, was a Delaware case in which the claimant was the widow of John Koepfel, who was fatally injured on March 15, 1935, in the course of his employment. There were no minor children. Claimant had married the employee in 1903. They lived together until May, 1924, when they separated. Thereafter they never resumed cohabitation. For about six years following their separation the deceased paid to the claimant \$10.00 per week under a voluntary arrangement. For the next four years and ten months the only payment he made to her was \$1.00 just

prior to Christmas, 1934, at which time he stated he would give her additional sums later on. No civil or criminal proceedings were ever instituted by her against her husband to compel him to support her. The Court held she was not entitled to compensation, because the Delaware Workmen's Compensation Law provided that:

"No compensation shall be payable under this section to a widow, unless she was living with her deceased husband at the time of his death or was then actually dependent upon him for support."

Plaintiff's attorney has cited several cases in his brief relating to the subject of divorce decrees, but most of these cases are not in point in our present discussion because they do not involve facts having any similarity to the factual situation existing in the case at bar. On page 4 of Plaintiff's brief is cited the case of *Remley vs. Remley*, 193 Pac. 604. On page 5 of Plaintiff's brief is cited *Gould vs. Superior Court*, 191 Pac. 56. On page 6 of Plaintiff's brief is cited *Gloyd vs. Superior Court*, 185 Pac. 995. On page 7 of Plaintiff's brief is cited *Klebora vs. Klebora*, 5 Pac. (2nd) 965. All four of these cases are California decisions involving questions relating to property rights after an interlocutory divorce decree had been entered, but the final decree had not yet been entered as is necessary under the California procedure. None of these cases involved any provision of the Workmen's Compensation Law, and none of them involved any question of "dependency" upon a deceased employee. That was also the situation in the Utah case of *Johnson's Estate—Johnson vs. Johnson*,

35 Pac. (2nd) 305, 84 Utah 168, which was cited on page 7 of Plaintiff's brief.

In the case of *McGarry vs. Ind. Comm.*, 222 Pac. 592, 63 Utah 81, which was cited on page 8 of Plaintiff's brief, the deceased employee, Delos Bradley had married his wife in 1914, and they had a child in 1915. Bradley lived with his wife and child until the early part of 1916 and supported them. Between then and November, 1919, he deserted them and assumed the name of "Jack Wilson". His wife obtained a divorce from him in Idaho on November 11, 1919. After Bradley was killed in an industrial accident in Utah in October, 1922, his former wife applied for compensation benefits for their son. The Industrial Commission of Utah granted an award for him, apparently upon the theory that he was presumed to be dependent because he was legally entitled to support from his father. (That was before the statute had been amended to so provide.)

The Supreme Court of Utah annulled the award because the facts showed that the boy was not living with the father at the time of the fatal accident. Also, the Commission had not made any findings of actual dependency. There was no discussion in the Court's opinion as to whether the divorced wife was entitled to any compensation benefits for herself; she had not applied for any such benefits.

In the case of *Diaz vs. Ind. Comm.*, 13 Pac. (2nd) 307, 80 Utah 77, which is cited on page 7 of Plaintiff's brief, there was no divorce action involved. All that was con-

tained in the opinion written by Justice Straup relating to the matter of dependency of the wife and grandchild was obiter dicta. He was the only one of the five justices who discussed the matter of dependency. Each of the other four justices held that the evidence before the Industrial Commission was such as to require a finding that Mr. Diaz' death did not result from an industrial accident. Therefore, nobody would be entitled to compensation as a dependent, no matter what their relationship was to the deceased employee. In that case there was evidence that Diaz had supplied some support to his wife and her granddaughter during the period he had lived separately from them.

In the case of *Utah Galena Corp. vs. Ind. Comm.*, 5 Pac. (2nd) 242, 78 Utah 495, which is cited on page 8 of Plaintiff's brief, one sentence in the Court's opinion shows that there is no similarity to the question involved in that case and the question involved in the case at bar. At 78 Utah page 497 is found the following:

"The only question presented by this appeal is whether * * * the Industrial Commission may under any circumstances award compensation on account of dependency to a male child over the age of 16 at the time of the death of the parent, and who is not physically or mentally incapacitated from earning."

Point One of Plaintiff's brief states that the Industrial Commission erred in finding that Lois H. White and Paul White were not husband and wife. We have carefully examined the Referee's recommendations and the Industrial Commission's decision in this case, and we do not see any

finding that Lois H. White and Paul White were not husband and wife at the time of his accident. Whether they were husband and wife at the time is not a controlling factor in this case. Even though it be conceded for the purpose of argument that she was still his wife when he was fatally injured, that would not entitle her to compensation benefits unless she met the statutory requirements of either living with him or being supported by him. The Industrial Commission's findings and decision on those latter two points were soundly based on undisputed evidence.

Inasmuch as Paul White was killed in the course of his employment and did not leave any dependents, the State Insurance Fund is required to pay his funeral expenses and also to pay \$1,800.00 into the Combined Injury Benefit Fund, as provided by Section 35-1-68, subsection 1, U. C. A. 1953.

CONCLUSION

The Industrial Commission's order, denying compensation benefits to Lois H. White, should be sustained.

Respectfully submitted,

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