

1980

# Sandra St. Pierre v. Stanley W. Edmond : Respondent's Brief

Utah Supreme Court

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TABLE OF CONTENTS

	<u>Page Number</u>
STATEMENT OF NATURE OF CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	1
STATEMENT OF FACTS	2
ARGUMENT	3
POINT I: THE TRIAL COURT DID NOT ERR IN GRANTING THE MOTION TO DISMISS	3

AUTHORITIES CITED

Section 30-3-5, Utah Code Annotated, 1953	1,3,4
Rule 60(b), Utah Rules of Civil Procedure	3, 4,5

IN THE SUPREME COURT OF THE STATE OF UTAH

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SANDRA ST. PIERRE, )  
Plaintiff & Appellant, )  
-vs- ) Case No. 17075  
STANLEY W. EDMONDS, )  
Defendant & Respondent. )

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RESPONDENT'S BRIEF

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STATEMENT OF THE KIND OF CASE

This was an action brought by a former wife separate and apart from the devorce action against the former husband. Defendant and Respondent, in reading the Plaintiff and Appellant's Amended Complaint, cannot tell what theory that party is alleging and basing her cause of action on.

DISPOSITION IN LOWER COURT

The Defendant and Respondent filed a Motion to Dismiss the Amended Complaint and the Court dismissed the same based upon the theory that if the Appellant wanted to amend the divorce decree, she should have proceeded in the original divorce action as contemplated in Section 30-3-5, Utah Code annotated 1953 as amended.

RELIEF SOUGHT ON APPEAL

Defendant and Respondent seeks affirmance of the lower Court's decision dismissing the Amended Complaint.

## STATEMENT OF FACTS

The Appellant and Respondent at one time were husband and wife. On March 23, 1978 the Appellant filed in Fifth District Court for Washington County a Complaint against the Respondent requesting, among other things, a divorce and settlement of the parties' rights and responsibilities. Thereafter a property settlement between the parties was filed by the attorney for the Appellant on March 23, 1978 and an Addendum to the same was filed on March 23, 1978. A Default Certificate was filed April 11, 1978 wherein the Defendant was defaulted. On April 11, 1978 a minute entry of the Court shows that testimony was taken from the Plaintiff on the divorce however on April 13, 1978 the attorney for the Plaintiff (Appellant) filed his withdrawal of attorney

On April 21, 1978 Phillip L. Foremaster appeared as attorney for the Respondent (Defendant) and filed a withdrawal of Respondent's consent to default. Also notice was served upon the Appellant, pursuant to 78-51-36, Utah Code Annotated 1953 as amended to appoint a new attorney. Thereafter on April 21, 1978 an Answer and Counterclaim was filed for the Respondent for the Respondent. In addition, on April 21, 1978 a Stipulation and Agreement executed by the parties was filed settling the parties' respective rights. On May 10, 1978 Defendant appeared before the District Court to get the divorce and present his testimony. The Court granted the divorce in accordance with the Stipulation and Agreement of the parties and on May 13, 1978 Findings of

executed by the Court and filed with the Clerk of the Court on May 25, 1978.

On January 14, 1980 the Appellant filed the action that is presently before this Court in the case of Sandra St. Pierre Plaintiff, vs Stanley W. Edmonds, Defendant, Civil No. 7444, Fifth District Court for Washington County, Utah. This action asked for an order vacating the original divorce judgment, for a new award to the Appellant of property involved in the divorce, for the imposition of a constructive trust, for damages against Respondent in the amount of \$150,000.00 and for an adjustment of the parties' property rights in the divorce action. A Motion to Dismiss was filed by the Respondent (Defendant) based upon the allegation that the Complaint failed to state a cause of action. The Court ordered the Amended Complaint dismissed upon the basis that the Appellant was bound by the provisions of Section 30-3-5, Utah Code Annotated, 1953 as amended, and therefore the allegations should be heard in the original divorce action. From this order of dismissal the Appellant appeals.

#### ARGUMENT

POINT 1: THE TRIAL COURT DID NOT ERR IN GRANTING THE MOTION TO DISMISS.

The Appellant is attempting to modify a judgment of the Court previously entered. The attempt to modify the judgment occurred one and one-half years after the decree and judgment was entered. Rule 60 (b), Utah Rules of Civil Procedure sets forth the methods, grounds and time limitations in which decrees and judgments can be modified.

Assuming the Appellant is alleging fraud, either intrinsic or extrinsic, action to set aside a judgment for that reason must be taken within 3 months after the judgment is entered. IN this case such action was not taken within that time. Counsel can see no difference whether such action is taken either in the original action or by a separate action such as was taken in this case.

When a divorce decree is to be modified and assuming a proper change has taken place to allow it, that action must be taken in the original divorce action. 30-3-5, Utah Code Annotated, 1953 as amended. Such action was not taken.

It is true that Rule 60 (b) in part provides that the Court is not limited by the time limitations and other limitations contained in the rule if a fraud has been practiced of the Appellant's Amended Complaint will show that no allegation is contained therein that a fraud was practiced on the Court. As counsel for Respondent reads it, it merely alleges undue influence, if it alleges anything.

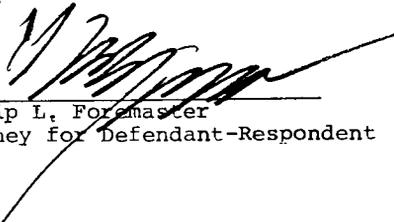
In point 111 of her brief Appellant refers to a so called "Third Cause of Action". An examination of the Amended Complaint will show that there is no third cause of action. Counsel for Respondent will therefore assume Appellant is referring to the Second Cause of Action.

The law in Utah is that you must allege and prove a change of circumstances before the Court will modify a divorce decree. A change of circumstances has not been alleged. As a result the Second Cause of Action fails to

state a cause of action against the Respondent.

It is respectfully submitted that the Order of Dismissal issued and entered by the lower Court should stand. The Appellant has neither conformed to the requirements of Rule 60 (b), Utah Rules of Civil Procedure nor has she alleged any change of circumstances which would authorize a change of the divorce decree previously entered.

RESPECTFULLY SUBMITTED.



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Attorney for Defendant-Respondent