1956

Earl W. Sadleir v. Melvin G. Knapton : Petition of Defendant and Appellant for Rehearing

Utah Supreme Court

Gustin, Richards, Mattsson & Evans; Attorneys for Defendant and Appellant;

Case No. 8374

IN THE SUPREME COURT
of the
STATE OF UTAH

EARL W. SADLEIR,
Plaintiff and Respondent,

—vs.—

MELVIN G. KNAPTON,
Defendant and Appellant.

PETITION OF DEFENDANT AND APPELLANT FOR REHEARING

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TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF THE STATE OF UTAH:

The defendant and appellant above named respectfully petitions this Court for a rehearing on its opinion issued in the above entitled cause on the 16th day of April, 1956. This petition is based upon the following grounds:

1. The record warrants a more precise statement of the facts.

2. A fraud upon the Court should not be condoned.

3. The decision ignores the clear meaning of the Statute.

The attorneys for the defendant and appellant hereby certify that this petition for rehearing is made in good faith and not for the purpose of delay.

Respectfully submitted,

GUSTIN, RICHARDS,
MATTSSON & EVANS
Attorneys for Defendant and Appellant

ARGUMENT

It is recognized by the decision that the above case is one of first impression with this Court on the construction of the controlling Statute, Section 30-3-9, *Utah Code Annotated* 1953. We believe it significant that the jury's verdict was six to two and that the decision of this Court is three to two. The thin line between what is right and what is wrong, both on the fact and on the law, warrants, we believe, a closer scrutiny of the record and of the law. The Iowa case of *Hamilton v. McNeill,* 150 Iowa 470, 129 N.W. 480, Ann. Cas. 1912D, 604, covers practically every phase of this kind of litigation, including legislative intent. Certainly some of the language of the Iowa Court merits specific rejection or approval.

POINT I.

THE RECORD WARRANTS A MORE PRECISE STATEMENT OF THE FACTS.

The opinion states that in December of 1953 plaintiff's wife revealed to him that she was "moody" *for defendant.* It is respectfully submitted that the record does not support the statement. Sadleir testified that his wife "was a little mopy at times, but, then, that was the same as she always had been." (R. 26). And that between Christmas and the 8th of January, 1954, his wife "got real moody there for a little while." (R. 27). But there is no direct statement in the record that plaintiff's wife "revealed to him that she was 'moody' for defendant." As a matter of fact Sadleir does not purport to quote his former wife on any feeling that she might have had for the defendant and the record is silent in that regard. From the testimony of Mrs. Sadleir in the divorce proceedings it appears that there were no affections to alienate.

The opinion turns a unilateral statement of defendant into an *agreement* to support plaintiff's former wife until she could obtain a divorce and to pay for the divorce and then to marry her when the divorce was final.

Nowhere in the record is it shown that anyone agreed to anything. It was a conversation between the two men. The inference that Knapton supported the plaintiff's wife or paid for the divorce is not supported by the record, nor is the statement: "Thereupon Mrs. Sadleir left plaintiff's home and discontinued living with him, taking the

children with her, and *immediately thereafter* commenced divorce proceedings." (Emphasis added). Sadleir's testimony, the only testimony on this point, is that Mrs. Sadleir took the children to Mr. Sadleir's mother's home to tell her that she was leaving; that Sadleir in turn went to his mother's place and then took Mrs. Sadleir, Mrs. Sadleir's sister and the children to the latter's home a couple of blocks away, and that the next morning Mrs. Sadleir's parents came in from Wendover "and she went out there for a week or so with them." (R. 31). It is reasonable to suppose that Mrs. Sadleir counseled with her parents and that they intervened, but, in any event, it cannot be said that the divorce action followed *immediately* upon the heels of the conversation between the two men.

A stranger to the record would read from the opinion a factual setting by far more prejudicial to the defendant than is justified. In a case where the expression "illict suitor" is coined, it is respectfully submitted that the record should be strictly adhered to and that circumstances, conduct and unilateral expression should not be placed in an unfair light.

POINT II.

A FRAUD UPON THE COURT SHOULD NOT BE CONDONED.

Mr. Justice Henriod, in his dissenting opinion, uses strong language relative to the conduct of Sadleir and states that he has been "found guilty of bamboozling and perpetrating a fraud upon the court, concealing facts

and then conveniently producing what he contends are true, but unfound facts." The dissenting opinion charges the main opinion with having condoned "a deliberate fraud upon a divorce court." In these expressions we most emphatically concur, but for the benefit of the Bench and Bar we earnestly submit that more of the record should be revealed so as to disclose the fraud actually practiced upon the divorce court.

Sadleir was represented by counsel in the divorce case and permitted his default to be entered. He was "legally told to be quiet" during the proceedings (R. 36). Sadleir heard his wife testify and criticize the marriage and heard her say "His folks have been in on everything we did, everything we bought; we had to get their approval on practically everything we did." (R. 37). He heard her testify that she had requested him "on numerous occasions during the marriage to seek another residence" away from his parents, and that she was fearful in the interests of the children (R. 38). Sadlier heard his wife testify that "he doesn't seem to be much of a man to get out on his own and try and make us a living and a home." And she answered "Yes" to the question: "And, as a result, Mrs. Sadleir, have you lost all respect for your husband?" (R. 39-40). All this was without protest from Sadleir in the forum where it was his duty to speak if he denied the fact. The trial judge unwittingly became a part and parcel to the suit for alienation of affections which followed the divorce decree by thirty days.

Mr. Justice Crockett states in his opinion: "It would be very unusual, if not inconceivable, that a husband would sue for alienation of affections while still married to his wife." The fact of the divorce was injected into the instant case by plaintiff's testimony on direct examination (R. 31). Undoubtedly it was recognized as part of plaintiff's prima facie case. If his testimony is true in the instant case, then the divorce court was led into error by plaintiff's silence.

Sadleir's mother and Sadleir's brother were in the divorce court at the time of Mrs. Sadleir's divorce as onlookers (R. 70). Sadleir's parents, as the testimony in the divorce proceeding discloses, had been "in on everything we did, everything we bought, we had to get their approval on practically everything we did. Where we went they went. We very seldom went on a trip or anywhere where we went by ourselves." (P. 4 Ex. 2-P). Plaintiff's home was straight across the street from that of his parents, and on numerous occasions Mrs. Sadleir asked her husband to seek another residence. As a result of Sadleir's conduct his wife lost all respect for him. (P. 4 Ex. 2-P).

True to form the Sadleir family took their seats in the arena, the arena where one of the members of this Court states that a fraud on the trial court occurred. But we ask: Why not set those facts out at least as a warning to others that some day a majority court might recognize such conduct as constituting a fraud upon the court?

In the instant matter one's idea of the integrity of judicial proceedings cannot help but be jolted. In fairness to the litigants and to the case as a precedent we respectfully submit that the presence of Sadleir in the divorce court and his attitude concerning the proceedings, coming from his own lips as a witness in the alienation case, warrants specific reference.

POINT III.

THE DECISION IGNORES THE CLEAR MEANING OF THE STATUTE.

The decision as written by Mr. Justice Wade expressly recognizes that the right against alienation could not exist if there had been no marriage, but *ipse dixit* states that the plaintiff's right is not "acquired by marriage." Mr. Justice Crockett asserts the "illicit suitor" analogy and then goes on to say: "It seems to me unquestionable that it (the statute) is to be considered in context with the other statutes in the title on Husband and Wife and that it relates solely to their *rights inter se.*" (Emphasis ours). The fallacy of both statements is most ably pointed out by Mr. Justice Henriod and concurred in by Mr. Justice Worthen.

If the doctrine of stare decisis has any place whatsoever in our philosophy, it seems to us appropriate that the issue be raised whenever a court would seem to indicate an attitude of disdain for the Legislative intent and for judicial precedents as well.

In *Hamilton v. McNeill,* supra, it is said:

> "We think it must be said that plaintiff's right, if any, to maintain this action, is necessarily a right 'acquired by the marriage.' The cause of action is one which could arise only out of and by virtue of the marriage relation. On the face of the statute, therefore, the plaintiff, having been adjudged in the divorce decree to be the guilty party, forfeited 'all rights acquired by the marriage.' Levins v. Sleator, 2 G. Greene, 604; Lucas v. Sawyer, 17 Iowa, 517; Maynard v. Hill, 125 U.S. 190, 8 Sup. Ct. 723, 31 L. Ed. 654; Nolin v. Pearson, 191 Mass. 283, 77 N. E. 890, 4 L.R.A. (N.S.) 643, 114 Am. St. Rep. 605."

Furthermore, the Iowa court points out that the forfeiture which the legislature deemed to be in the public interest could not be avoided by a showing that such forfeiture would operate to the benefit "in a negative sense of an undeserving person." This reasoning we point to upon well documented authority as dissipating the illusory "illicit suitor" expression of Mr. Justice Crockett. We deem it not to lie in the mouth of any Judge or any Court to question the propriety of a clear and unequivocal expression of the legislature, except upon basic principles of constitutionality. The expression of public policy is voiced in the instant matter by the legislature and, as Mr. Justice Henriod points out, by the legislatures of fourteen states, including Colorado, Nevada and Wyoming. It is not enough to say that this is not the "kind of a right" which the statute contemplates. A mere assertion of the Judge or Court should not prevail over the plain language of the statute.

Mr. Justice Crockett goes further and says that the statute must be considered "in context" with the other statutes in the title on Husband and Wife and that it relates "solely to their rights inter se." Does the Learned Judge mean that divorce and all of its consequences, and of marriage and its relationship, are related "solely to" the man and the woman? If so, there has been discarded the entire concept of marriage and divorce. We have been given to believe from the writings of the past that the State legislates as to both marriage and divorce in the public interest and that the relation of husband and wife, while formed by contract, derives both its rights and duties from a source higher than any contract of which the parties are capable.

The parties cannot contract marriage in this State without the sanction of the State, nor can they amend, modify, restrict, enlarge or release without similar sanction. "It is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress." Furthermore: "We are not at liberty to inquire into the wisdom of our existing law on this subject, nor into the expediency of such frequent interference by the Legislature. We can only inquire into the constitutionality of the Act under consideration." The quotations in this paragraph, as well as the philosophy of marriage and divorce under Legislative edict, are found in *Maynard v. Hill,* 125 U.S. 190, 8 Sup. Ct. 723, 31 L. Ed. 654, cited by the Iowa court in *Hamilton v. McNeill,* supra.

A rehearing in this case should be granted if for no other reason than to emasculate the reference to the Court's "illicit suitor" and the concept that the statutes under the title Husband and Wife relate "solely to their rights inter se."

CONCLUSION

The opinion as it now stands charts a course for those who would conspire to prey upon human emotions. We are more impressed with the blue print that the malingering litigant can follow than with the "illicit suitor" hypothesis. It is significant that before the case of *Wilson v. Oldroyd,* 1 Utah 2d 362, 267 P. 2d 759, suits for alienation of affections were practically unheard of in this State. We cannot close our eyes to the fact that several such actions now pend in our District Courts. The fact that fourteen States, particularly neighboring States, abandon this type of litigation is significant as an expression of public policy. The Iowa Court tells us that Utah has relegated this type of litigation to the ash heap as far back as 1852. The dearth of such actions prior to the *Oldroyd* case would seem to us to mean that others have interpreted Section 30-3-9 as we have. The *Oldroyd* case did not have the "guilty party" element, nor was there such a plain fraud practiced upon the divorce court.

In the interest of rationalization a rehearing should be granted where this Court will have the opportunity to take exception to the reasoning of the Iowa Court in a manner that will impress the reader with the logic of

statutory interpretation. A rehearing should be had on both the fact and the law. In a case of first impression it should be pointed out the purpose, if any, served by Section 30-3-9. This State, as in Iowa, has other statutory provisions on questions of alimony, the custody of children, the termination of property rights vested and inchoate in the event of divorce. Our "guilty party" statute must serve some purpose and, unless it is given effect under the circumstances of the instant matter, it would appear that this Court holds that the statute has no purpose. A rehearing should be granted to point out the purpose and effect of the statute.

Respectfully submitted,

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