

1956

Ruth Caffall v. Vern Caffall : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

J. Grant iverson; Attorney for Respondent;

Recommended Citation

Brief of Respondent, *Caffall v. Caffall*, No. 8447 (Utah Supreme Court, 1956).
https://digitalcommons.law.byu.edu/uofu_sc1/2492

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

RECEIVED

DEC 18 1956

LAW LIBRARY
U. of U.

In the Supreme Court
of the State of Utah

FILED

AUG 31 1956

Clerk, Supreme Court, Utah

RUTH CAFFALL,
Plaintiff and Respondent,

— vs. —

VERN CAFFALL,
Defendant and Appellant.

Case No. 8447

BRIEF OF RESPONDENT

J. GRANT IVERSON

Attorney for Respondent

INDEX

	Page
Restatement of the Case.....	1
Argument	2
POINT I.—THE TRIAL COURT HAD JURISDIC- TION OF THE SUBJECT MATTER AND THE DECREE OF DIVORCE ENTERED BY THE COURT WAS NOT VOID.....	3
POINT II.—APPELLANT SHOULD BE ESTOP- PED FROM ATTACKING THE VALIDITY OF THE DECREE OF DIVORCE.....	3-7
Conclusion	13

CASES CITED

Anderson v. Anderson, 44 N.E. (2d) 54.....	5
Arthur v. Israel, 15 Colo. 147, 25 Pac. 81.....	9
Cummings v. Huddleston, 226 P. 104, 99 Okla. 195.....	8
Demilly v. Grosrenaud, 66 N.E. 234.....	5
Garner v. Garner, 38 Ind. 130.....	9
Hutton v. Dodge, 198 P. 165.....	5
In re Christiansen, 17 Utah 412, 53 P. 1003.....	5
Johannesen v. Johannesen, 128 N.Y.S. 892, 70 Misc. 361.....	10-12
Marvin v. Foster, 61 Minn. 154, 63 N.W. 484, 52 Am. St. Rep. 586	9
Mohler v. Shank, 93 Iowa 273, 61 N. W. 981.....	9
Nelson on Divorce and Annulment, Vol. 3, page 175, Section 28.27	4
Nelson on Divorce and Annulment, (2nd Ed.) Vol. 2, page 619, Section 21.01	4
Richardson's Estate, 132 Pa. 292, 19 Atl. 82.....	9
Richeson v. Simmons, 47 No. 20.....	9
Scase v. Johnson, 130 Ill. App. 35.....	9
State ex rel. Hahn v. King, 109 La. 161, 33 South 121.....	9
Stephens v. Stephens, 51 Ind. 542.....	9

AUTHORITIES CITED

21 C.J.S. 36, paragraph 23.....	6
21 C.J.S. 44, paragraph 35 (b).....	6
27 C.J.S. 812, Sec. 169 (c).....	4
27 C.J.S. 815, Sec. 171 (b).....	8

In the Supreme Court of the State of Utah

RUTH CAFFALL,

Plaintiff and Respondent,

— vs. —

VERN CAFFALL,

Defendant and Appellant.

Case No. 8447

BRIEF OF RESPONDENT

RESTATEMENT OF THE CASE

The statement of facts as set forth by appellant is substantially correct. Respondent desires to set a few additional facts.

Appellant served upon respondent certain Interrogatories. The Interrogatories and the answers made thereto are as follows: (R. 15)

In answer to the Interrogatory: "Did you marry C. B. Bradford at Evanston, Wyoming, on the 8th day of October, 1935?", respondent answered she married C. G. Bradford at Evanston, Wyoming, on said date.

In answer to the Interrogatory: "Were you legally married to him on July 20, 1936?", respondent answered that the question called for a legal conclusion, and that to the best of her knowledge on said date she was not legally married to Mr. Bradford.

In answer to the Interrogatory: "If you were not married to Mr. Bradford on July 20, 1936, when and where were you divorced from Mr. Bradford?", respondent answered that she appeared in the District Court of Salt Lake County during approximately the last week of October, 1935, with Attorney Mathews for the purpose of obtaining an annulment, which annulment she thought she had obtained.

In answer to the Interrogatory: "Was Mr. Bradford living on July 20, 1936, and if not, when and where did he die.", respondent answered that to her best knowledge Mr. Bradford was living on July 20, 1936, and died sometime in 1939.

Appellant's Counsel stated that the decree of divorce in the cause before the Court was void because appellant was divorced in June and married in July. (R. 25) Appellant testified that he had heard rumors and was suspicious that respondent was a married woman when he married her. (R. 26) Appellant since the divorce of the parties has remarried and his present wife was in court at the time of the hearing of this matter.

ARGUMENT

Appellant argues his case under one point: That the Court committed error in denying appellant's peti-

tion to vacate and set aside the decree of divorce. The substance of his argument is that since the marriage was void because respondent was not divorced from Bradford, the Court had no jurisdiction of the subject matter of the action because there was no marriage res or subject matter, and, therefore, the decree of divorce was void and should have been set aside.

It is the position of respondent that the Court had jurisdiction of the subject matter and the decree was not void, and that defendant should be estopped from attacking the judgment. Respondent shall, therefore, present her argument under two points as follows:

POINT I.

THE TRIAL COURT HAD JURISDICTION OF THE SUBJECT MATTER AND THE DECREE OF DIVORCE ENTERED BY THE COURT WAS NOT VOID.

POINT II.

APPELLANT SHOULD BE ESTOPPED FROM ATTACKING THE VALIDITY OF THE DECREE OF DIVORCE.

POINT I.

THE TRIAL COURT HAD JURISDICTION OF THE SUBJECT MATTER AND THE DECREE OF DIVORCE ENTERED BY THE COURT WAS NOT VOID.

The gist of appellant's brief is stated on page 8 thereof as follows:

“It seems to clearly follow that if there is in fact no marriage there would be no res or subject matter over which the court would have juris-

diction, and any action taken by the court would be without jurisdiction and void. In the case at bar the great preponderance of evidence shows that there was in fact no valid existing marriage between the parties at the time the action for divorce was commenced or at the time the divorce was entered, and for that reason, the court having no jurisdiction of the subject matter, the decree was void from the beginning.”

Appellant on this subject cites 27 *C.J.S.*, page 812, and *Nelson on Divorce and Annulment*, Vol. 3, page 175, Section 28.27.

A careful reading of the two citations mentioned will disclose that in both instances the matter under discussion is the jurisdiction of courts over the subject matter of the action. The question of what is meant by jurisdiction of subject matter in a divorce action is discussed in *Nelson on Divorce and Annulment*, (2nd Ed.), Vol. 2, page 619, Section 21.01, under the subtitle of “Jurisdiction Generally” as follows:

“Jurisdiction of divorce suits and other matrimonial actions has two facets, as in most other instances: (1) jurisdiction of subject matter and (2) jurisdiction of the person. The first of these may be divided, in turn, into two phases: (a) has the particular court power to entertain and adjudicate actions and controversies of the particular kind or type? and (b) does such residence or domicile of one or both of the parties exist within its territorial jurisdiction as to meet statutory requirements in this respect.”

The matter of jurisdictional defects is discussed in 27 *C.J.S.* 812, Section 169 (c), as follows:

“A divorce decree granted by a court without jurisdiction of the subject matter, or of the person, is void and should be set aside irrespective of the question of fraud.”

One of the cases cited in support of the text that a divorce decree granted by a court without jurisdiction of the subject matter is void, is *In re Christiansen*, 17 Utah 412; 53 P. 1003. This case points up the meaning of “jurisdiction of the subject matter.”

As the court stated in *Anderson v. Anderson*, 44 N.E. (2d) 54, in ruling that the court had jurisdiction of that divorce action:

“In the instant case the circuit court had jurisdiction of the parties and jurisdiction to grant a divorce, award alimony and maintenance and to make a property settlement.”

The court stated in *Demilly v. Grosrenaud*, 66 N.E. 234:

“The question to be decided is whether the circuit court acquired jurisdiction to render judgment. The court had jurisdiction of the parties to the suit, but it was also necessary that it should have jurisdiction of the subject matter of the suit, and it is in respect to such subject matter that its jurisdiction is disputed in this case. *Jurisdiction of the subject matter finds its source in the law creating and governing the court and it is to be exercised in the mode and to the extent prescribed by law.*” (Underscoring ours)

Appellant cites at length from *Hutton v. Dodge*, 198 P. 165, a Utah case. That case does not discuss the mat-

ter of the jurisdiction of the subject matter. However, the excerpts from the case set forth at page 10 of appellant's brief and interesting and support the position of respondent.

On the matter of jurisdiction of courts, the law as stated in *C.J.S.* 21, page 36, paragraph 23, is as follows:

“Jurisdiction of the Subject-Matter.

“Jurisdiction of the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong; the power to deal with the general subject involved in the action; and means not simply jurisdiction of the particular case then occupying the attention of the court but jurisdiction of the class of cases to which the particular case belongs, the authority to hear and determine both the class of actions to which the action before the court belongs and the particular question which it assumes to determine. ‘Jurisdiction of the subject-matter’ means the nature of the cause of action and relief sought, and such jurisdiction is conferred by the sovereign authority which organizes the court and is to be sought for in the general nature of the court’s powers or in the authority especially conferred on the court.”

Again, in the same volume 21, *C.J.S.*, at page 44 paragraph 35 (b), the law is stated as follows:

“Jurisdiction of the subject matter is defined supra section 23 as the power to hear and determine cases of the general class to which the proceedings in question belong, and, as used in the constitutions and statutes, the word ‘jurisdiction’ means as to subject matter only, unless an exception arises by reason of its employment in a

broader sense. Thus a court has jurisdiction of the subject matter when it has the right to try the kind of proceeding, whether it be an action or suit; when it has jurisdiction of the person and the cause is the kind of cause triable in such court; when the matter is one over which the court's general power extends, and such power is regularly called into action by the application or act of the parties concerned.

“Jurisdiction of the subject matter is essential in every case. Such jurisdiction the court acquires by the act of its creation, and possesses inherently by its constitution; and it is not dependent on the existence of a good cause of action in plaintiff in a cause pending before the court; nor upon the sufficiency of the bill or complaint, the validity of the demand set forth in the complaint, or plaintiff's right to the relief demanded, the regularity of the proceedings, or the correctness of the decision rendered.”

In the case at bar there is no dispute on the matter of jurisdiction of the persons. Thus it appears that the Court had jurisdiction of the action for divorce brought by respondent and the decree of divorce is not void for want of jurisdiction.

POINT II.

APPELLANT SHOULD BE ESTOPPED FROM ATTACKING THE VALIDITY OF THE DECREE OF DIVORCE.

Appellant knew at the time he entered into the marriage with respondent that he was still married to another woman as stated by his attorney. (R. 25) Relying

upon the divorce, he has remarried and is now living with another woman. He was also on notice when he married respondent that she might then be married to another man. (R. 26)

For these reasons appellant should be estopped to set up the invalidity of the decree of divorce. In addition, appellant has failed to prove that respondent was, in fact, married to another man at the time of the marriage.

The law of estoppel in divorce matters is stated in 27 *C.J.S.* 815, *Section 171 (b)*, as follows:

“As in the case of judgments generally, a person may waive his right to have a judgment or decree of divorce set aside or vacated, or may be estopped by his conduct to ask for such relief.
* * * Similarly, a party who has accepted the benefits of a decree, or who has acted in reliance on its validity with full knowledge of its effect, cannot, after a lapse of time, and especially after the death of the other party, have it set aside because it was obtained by fraud or without due notice.”

In the case at bar the decree of divorce was entered in October, 1945. Appellant was cognizant of all the material facts at that time. It was not until July of 1954, nearly nine years later, that appellant filed his petition to set aside the decree.

In the case of *Cummings v. Huddleston*, 226 P. 104, 99 Okla, 195, the court said:

“Conceding that plaintiff’s contention that the judgment in the divorce action was void for want of jurisdiction of his person, do the facts

shown by the record in this case entitle the plaintiff to any relief from that decree? After being fully advised and informed as to the existence of the decree, he made no objection to its validity, but availed himself of the privilege thereby conferred and contracted a second marriage within about nine months after learning that the decree had been entered. After contracting this second marriage, he continued to live with his second wife, raising no question as to the validity of the decree until after the death of his first wife, and then comes in with a petition to vacate the decree in order that he may inherit a half interest with his minor child in the allotment of the dead woman.

“If there were no established rule of estoppel in such cases, this would be a most excellent proceeding in which to establish one. However, the rule is well and generally settled that one who accepts the benefits and privileges of a divorce decree by a remarriage, even though the decree be void for want of jurisdiction, is estopped from thereafter assailing such decree. *Garner v. Garner*, 38 Ind. 130; *Stephens v. Stephens*, 51 Ind. 542; *Scase v. Johnson*, 130 Ill. App. 35; *State ex rel. Hahn v. King*, 109 La. 161, 33 South. 121; *Marvin v. Foster*, 61 Minn. 154; 63 N.W. 484, 52 Am. St. Rep. 586; *Mohler v. Shank*, 93 Iowa, 273, 61 N.W. 981; *Richeson v. Simmons*, 47 Mo. 20; *Arthur v. Israel*, 15 Colo. 147, 25 Pac. 81, and *Richardson’s Estate*, 132 Pa. 292, 19 Atl. 82. And the reason for this rule is obvious. Society at large is interested in the maintenance of the marriage relation and in the faithful discharge of the duties and obligations incident thereto. But after those relations have been severed by judicial decree, and that decree fully acquiesced in by the

immediate parties with full knowledge thereof, society has no further interest in the property rights of the parties.”

In the case at bar the object of appellant in filing the action to set aside the decree is solely for the purpose of avoiding his obligation to pay the amounts which have accrued under the decree for the support of his children.

A case very much in point is that of *Johannesen v. Johannesen*, 128 N.Y.S. 892, 70 Misc. 361, a decision of the Supreme Court of New York. In that case the facts were that in 1897 plaintiff married and lived for some years as husband and wife with one Sandin. One day she found a letter purportedly written by a woman in Sweden, who claimed to be Sandin's wife. On being confronted with the letter Sandin admitted he had a wife living in Sweden. They agreed to separate and went to a Justice of the Peace in New Jersey. Sandin admitted to him he had a wife living when he married plaintiff. The Justice advised that Sandin's marriage to plaintiff was void, and that it was not necessary to procure an annulment. A paper called an "Agreement of Separation" was drawn up, signed and acknowledged by the Justice of the Peace in which they recited that they had agreed to live separate and apart. Three years later plaintiff was employed by defendant as a housekeeper for him and his four children. He proposed marriage to plaintiff. She disclosed all of the foregoing facts, and together they went to the Justice of the Peace, and defendant was told by the Justice of the Peace that Sandin's

marriage to plaintiff was void, and that he and plaintiff were free to marry. They married and lived together for several years. Plaintiff brought an action for divorce and defendant entered a plea that the wife was still married to Sandin. The court in denying the defense of defendant stated:

“Another feature is presented: under the circumstances can defendant be heard in stultification of his own act? Can he be permitted to invoke the judgment of the court declaring his marriage to be invalid when he, possessed of the knowledge of all of the facts, induced plaintiff to contract the marriage with him and for over seven years recognized its validity?”

The court also held that defendant had failed to establish that the marriage of Sandin and plaintiff was a valid marriage, and, therefore, that the marriage of plaintiff and defendant was invalid. The court said:

“Apart from the question of ill treatment, the issue tendered by the complaint was the marriage of the parties. This was admitted, but a new issue was raised when defendant pleaded a previous marriage. This cast upon him the burden of proving validity of the first marriage and of overcoming the presumption that the second marriage was valid. While this presumption may be rebutted by evidence and facts invalidating the marriage, such evidence must be strong, satisfactory and conclusive, although it involves proving a negative. *Senge v. Senge*, 106 Ill. App. 140. When a marriage has been shown, says Mr. Bishop, ‘the law raises a strong presumption of its legality — not only casting the burden of proof on the party objecting, but requiring him through-

out in every particular to make plain against the constant pressure of this presumption the truth of the law and fact that it is illegal and void.' I Bishop, Marriage, Divorce and Separation, Section 956.

"It is not sufficient to prove the illegality of the second marriage to show that at the time the husband of the first marriage was still living. McKibben v. McKibben, 139 Cal. 448, 73 Pac. 143. It must be proven that not only was the first marriage valid, but that it was subsisting. Before the marriage of the parties would be annulled, it would have to be proven that the former husband was living and also that the marriage was then in force. This would involve proving a negative, that is, that the former marriage had not been either dissolved or annulled by a court of competent jurisdiction. The defendant has failed to make such proof, *nor has he proven the validity of the Sandin marriage.*"

In the case at bar respondent in answer to the Interrogatories informed appellant "to the best of my knowledge on July 26, 1936, I was not legally married to Mr. Bradford." She also informed appellant that she had attempted through Attorney Mathews to obtain an annulment within two or three weeks after the purported marriage to Mr. Bradford. The very fact that she informed appellant that she sought an annulment indicated her belief that the marriage to Bradford in the first place was invalid. Appellant has failed to prove its validity. As the court held in *Johannsen v. Johannsen, supra*, defendant had failed to prove the validity of the marriage of Sandin and the plaintiff. Since the appellant has

failed to prove the validity of respondent's marriage to Bradford, the presumption of the validity of his marriage to respondent would stand — except for appellant's admission that he was married to another woman when he married respondent.

CONCLUSION

Respondent submits that the court had jurisdiction of the subject matter of the divorce, and, therefore, the Decree of Divorce was valid. Appellant has failed to establish that the marriage of respondent and Bradford was a valid and subsisting marriage at the time of the marriage of the parties to this action, and appellant knowing that he was married to another woman at the time of the marriage, and having remarried, and having used the benefits of the Decree of Divorce, cannot nine years later attack the same solely for the purpose of avoiding his obligation to pay for the support of his minor children as ordered by the court.

The appeal of appellant should, therefore, be dismissed.

Respectfully submitted,

J. GRANT IVERSON,
Attorney for Respondent