

1982

Jon E. Hales v. Stephanie L. Hales : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

JON E. HALES,

Plaintiff-Appellant,

vs.

Case No. 18049

STEPHANIE L. HALES,

Defendant-Respondent.

BRIEF OF APPELLANT

APPEAL FROM A JUDGMENT OF THE THIRD
JUDICIAL DISTRICT COURT OF SALT LAKE
COUNTY, THE HONORABLE ERNEST F. BALDWIN,
JR., PRESIDING

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KEY

Tr. = citation to trial transcript

JON E. HALES,

VS.

Defendant-Respondent.

Case No. 18049

STATEMENT OF THE NATURE OF THE CASE

DISPOSITION IN LOWER COURT

RELIEF SOUGHT ON APPEAL

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Order denying his Motion to Amend and a remand for further proceedings on the issues of paternity and annulment.

STATEMENT OF FACTS

Appellant and Respondent were married in Salt Lake City, Utah, on August 15, 1980.

In February, 1981, Appellant filed a Complaint for divorce. The original Complaint did not dispute the paternity of the child which Appellant and Respondent were expecting at that time.

In March, 1981, while the divorce was pending, the child was born to Respondent, as to which Appellant subsequently sought to deny paternity.

In July, 1981, several months prior to trial, Appellant informed his attorney and Respondent that he intended to dispute the paternity of the minor child born to Respondent in March, 1981 and to seek blood and tissue tests to confirm that he was not the father.

Counsel for Respondent communicated by letter to counsel for Appellant that Respondent had no objection to blood and tissue tests being conducted to determine paternity of the minor child.

Counsel for Appellant did not seek leave to amend Appellant's Complaint to raise the issues of paternity

and annulment nor to seek an Order regarding blood and tissue tests despite requests by Appellant to do so. Consequently, on September 3, 1981, Appellant retained his present attorney, who immediately filed a Motion to Amend requesting an annulment and alleging non-paternity.

The trial court, at a hearing on September 10, 1981, denied Appellant's Motion to Amend. At the trial held on September 15, 1981, the Court refused again to allow Appellant to raise the issue of non-paternity, and, in response to questions by counsel for Appellant regarding the paternity of the child, the Court granted Respondent's Motion to Dismiss Appellant's Complaint. (Tr., pp. 4-8)

The court then granted Respondent a divorce on her Counterclaim, finding that the minor child was Appellant's and ordering Appellant to pay \$175.00 per month as child support.

ARGUMENT

POINT I

THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO ALLOW APPELLANT TO AMEND HIS COMPLAINT TO RAISE THE ISSUE OF PATERNITY.

Rule 15(a) of the Utah Rules of Civil Procedure provides that a party may amend its pleadings once as of right before the opposing party responds or within twenty

days after service if no responsive pleading is permitted. Otherwise, amendments are permissible only by stipulation or by leave of court. The rule states with reference thereto that "leave shall be freely given when justice so requires."

The clear policy of Rule 15(a) is to allow amendments so as not to do injustice to a party by not allowing him to litigate all necessary issues.

In the present case, the court flatly refused to allow Appellant even to raise the issues of non-paternity and annulment by way of an amendment to his Complaint. The record reflects that Appellant retained his present attorney only twelve days before the trial date. Counsel immediately sought to amend the Complaint.

Appellant had previously voiced his desire to raise the paternity question more than two months prior to trial, and counsel for Respondent indicated that Respondent had no objection to the ordering of blood and tissue tests to determine paternity of the putative child of Appellant and Respondent.

Since Appellant's then-counsel-of-record took no further action regarding the paternity question, Appellant retained his present attorney, who immediately moved the Court to amend so as to include the issue of paternity.

The trial court refused to allow the issue of paternity to be raised, although no prejudice would have been suffered by Respondent if the Court had simply permitted the amendment and continued a final determination on the issue of paternity until blood and tissue tests could be performed.

The trial court's reason for denying the Appellant the opportunity to litigate paternity was the Lord Mansfield Rule, as set forth in Holder v. Holder, 9 Utah 2d 163, 340 P.2d 761 (1959) and Lopes v. Lopes, 30 Utah 2d 393, 518 P.2d 687 (1974). Appellant was aware of the rule excluding any testimony by Appellant concerning non-paternity as to the minor child born to Respondent, inasmuch as that child was born during the marriage of Appellant and Respondent.

However, the Lord Mansfield Rule and the above-cited cases do not exclude proof of paternity from sources other than the putative parents, nor do they operate to preclude a party from raising the issue of non-paternity in his pleadings.

The Utah Supreme Court stated in the Lopes case:

It is those he looks to as parents, who should provide the love, nurture, and protection from the otherwise sufficient vicissitudes of life. If they do not have the sense of propriety and decency to restrain themselves from visiting their own difficulties and maladjustments upon the child, and thus pass them on to yet another generation, the law in its concern for the

broader interests of society, and in its sense of justice in protecting the interests of the child, has wisely provided that restraint upon the parents in the Lord Mansfield Rule, leaving the proof of such facts where necessary to come from other sources.⁵
518 P.2d at 689

The foregoing quotation, coupled with further comments by the Court in footnote 5 of the Lopes case recognizes the right of a party to dispute paternity by competent evidence such as blood and tissue tests.

In the present case, the trial court arbitrarily refused to permit Appellant even to raise the issue of paternity, having misapplied the Lord Mansfield Rule, and placed Appellant in an untenable position at trial. The Court's refusal to permit the amendments or to continue the issue for a later hearing constituted an abuse of discretion. The Court further abused its authority by summarily dismissing Appellant's Complaint and awarding Respondent a divorce on her Counterclaim.

Appellant is entitled to his day in court on the issue of paternity of the minor child born to Respondent and should be granted a hearing in the District Court for that purpose.

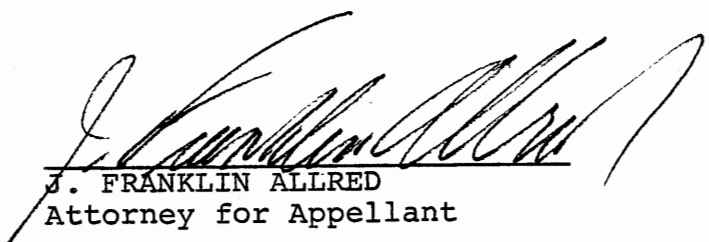
CONCLUSION

Based on the foregoing, Appellant requests this Court to vacate the Orders denying Appellant's Motion to

Amend and dismissing Appellant's Complaint and ordering Appellant to pay support and to remand the case to the District Court for further proceedings on the issues of paternity and annulment.

DATED this 19th day of January, 1982.

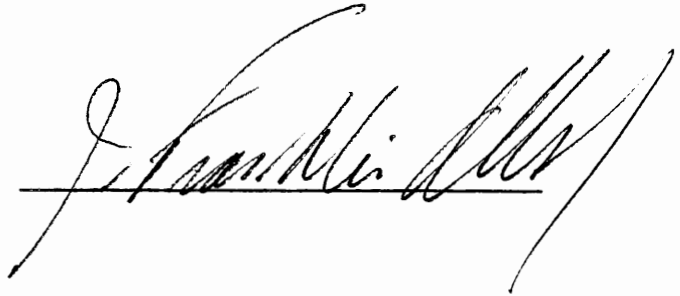
Respectfully submitted,



J. FRANKLIN ALLRED
Attorney for Appellant

MAILING CERTIFICATE

I hereby certify that I have mailed, postage prepaid, two copies of the foregoing Brief of Appellant to Harold R. Stephens, Attorney for Respondent, 320 South 300 East, Suite 3, Salt Lake City, Utah 84111, this 20th day of January, 1982.

A handwritten signature in black ink, appearing to read "J. Franklin Miller", is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping underline that extends to the right.