1957

Virginia Rees v. George Archibald : Brief of Respondent

Utah Supreme Court

George E. Bridwell; Attorney for Respondent;

IN THE SUPREME COURT

OF THE

STATE OF UTAH

VIRGINIA REES,

Plaintiff & Respondent

-vs-

GEORGE ARCHIBALD

Defendant & Appellant

CASE No. 8619

BRIEF OF RESPONDENT

GEORGE E. BRIDWELL,
Attorney for Respondent

TABLE OF CONTENTS

INDEX OF AUTHORITIES

CASES

TREATISES

STATUTES

IN THE SUPREME COURT

OF THE

STATE OF UTAH

VIRGINIA REES,	)	
	)	
Plaintiff & Respondent	)	
	)	
-vs-	)	CASE No. 8619
	)	
GEORGE ARCHIBALD	)	
	)	
Defendant & Appellant	)	
	)	

BRIEF OF RESPONDENT

I.

STATEMENT OF FACTS:

Respondent agrees with Appellant's statement of facts as set forth.

II.

RESPONDENT'S ANSWER TO APPELLANT'S Point (1)

The evidence is clear that the son was in an automobile accident; That he was taken to Madison Memorial Hospital. (Appellant's Statement of Facts.)

It is clear that he was hospitalized there from November 18, 1954 to February 25, 1955. (Exhibit P-1 and Plaintiff's interrogatory No. IV., defendant's Answer No. 4.)

Examination of Exhibit P-1, should demonstrate to this Court that the trial Court did not abuse its discretion in finding that the hospital care was requisite for the health and well-being of the child. Examination of Exhibit P-1 reveals:

"1/13/55 ..... $20.00 ..... Blood
"1/16/55 ..... $10.00 ..... Blood
"1/14/55 ..... $55.00 ..... Surgery
"11/19/54 ..... $22.50 ..... Surgery
"1/14/55 ..... $18.00 ..... Cast
"1/19/55 ..... $ 8.00 ..... Cast,

and there are many charges for X-Rays and dressings.

It is submitted that all of the foregoing adequately demonstrates that the child needed the care he received. As a matter of law, the foregoing at least shifts the burden of going forward with the evidence to defendant to support his claim that said treatment was not necessary, and it is clear that Defendant-

Respondent did not so go forward.

As to Appellant's contention that there was no showing that no part of the hospital bill was paid and therefore, Defendant-Appellant should not have to pay it, it is respectfully urged as elemental that the defense of payment is an affirmative one.

Defendant admits he paid nothing. See Page 4 of Appellant's brief: "Appellant does not here contend that he had paid on the account . . ."

That is all Plaintiff ever alleged claiming the full amount due from Defendant. Plaintiff claimed the account was all due from Defendant and Exhibit P-1 shows it all due. If Defendant claims payment on account by someone else, it is his burden to show payment by an affirmative allegation and proof. There is no such affirmative defense pleaded.

Rule 8 (c), U. R. C. P. provides that payment as a defense must be affirmatively pleaded.

Plaintiff alleged Defendant didn't pay. Defendant admits he didn't pay. If he claims someone else paid, he must allege and prove it. Defendant-Appellant did neither.

III.

RESPONDENT'S ANSWER TO APPELLANT'S POINTS (2), (3), and (4).

The questions as to reasonableness of treatment have been discussed by Respondent

in its Paragraph 11, hereof, and it is suggested that Appellant's approach to that problem is one borne of desperation, with an abdication of decency in that it is obvious from Exhibit P-1 that Appellant's son was seriously and critically injured, not taking into consideration that the father had personal knowledge of that because of his visit to the hospital. See Transcript, Page 4, Line 24, et seq.

The next point for consideration would be this precept:

IS A FATHER RELIEVED OF HIS DUTY TO SUPPORT HIS MINOR NATURAL CHILD MERELY BECAUSE A DIVORCE DECREE AWARDING CUSTODY TO HIS WIFE IS SILENT AS TO PROVISIONS FOR SUPPORT OF THE MINOR CHILD?

Respondent claims that the jurisdictions answering the above query in the affirmative are in the minority.

Respondent claims that reason and humanity demand that such question be answered against Defendant-Appellant.

At 15, A. L. R. 569, this language is found:

"II. MAJORITY RULE
(a) Rule Stated"

"The rule supported by the weight of authority is that a father is not released from his obligation to support or contribute to the support of his infant children by reason of the fact that the mother has been granted an absolute decree of divorce from him, and has been

awarded the custody of the children by a decree making no provision for their maintenance."

There follows this statement a great number of cases, supra.

At 15, ALR, 574, it is stated that the minority doctrine appears to be the law in California, but that such result is a creature of statute, the Court in the case of Selfridge-vs-Paxton, 145 Cal. 713; 79 Pac. 427, saying:

> "Whatever may be thought as to how the law should be on this subject, we must take it to be as written in the Code."

There is no statute in Utah or Idaho thus exonerating a father from supporting his minor children, and certainly no precept permitting a father to refuse to pay for medical attention and care that undoubtedly was not only reasonable, but probably saved the child's life.

The Annotation in 15, A. L. R., 574 is further supplemented at 81 A. L. R., 888, wherein is contained a great number of more recent cases adhering to the so-called majority rule, in support of Plaintiff-Respondent's position.

The precise question above referred to has not subsequently been Annotated in A. L. R. However, at 7 A. L. R. 2nd. 491, the position of plaintiff-respondent is again stated as being the rule of "weight of authority."

The case of Dodge-vs-Keller, cited by Appellant at Page 8 of its brief, Annotated at 7 A. L. R. 2nd. 494, stands for the proposi-

tion that a decree providing for stated support payments puts a ceiling on or limits a father's liability for support.

The Dodge case furnishes no precedent to support Appellant's theory.

Appellant at Page 8 of his brief presents views from one of the jurisdictions adhering to the so-called "minority rule." See 15, A. L. R. 573, and 81 A. L. R. 894, wherein it is announced in both volumes that New York follows the minority rule.

The same minority views are represented by Judson-vs-Judson, 171 Mich. 195; 137 N. W. 103; and Burritt-vs-Burritt, 29 Barb. N. Y. 124, both being cited at Page 6 of Appellant's brief.

ARGUMENT

It is submitted that Appellant's arguments upon reasonable necessity of services rendered is specious, if not unmoral, in view of item designations listed in Exhibit P-1.

Further Exhibit P-1, at the least, shifts the burden of going forward with the evidence to Appellant, who has not overcome the prima facie case thus presented by Respondent.

The inference that there was payment on the account should not be considered because Appellant admits he didn't pay it, as Respondent alleged, and the affirmative de-

fense of payment as required by our Rules was not pleaded.

CONCLUSION

Appellant should be required to furnish the necessaries received by his minor child, such requirement, in kind or in money being recognized in all societies since time immemorial.

The decision of the trial Court should be sustained, aligning Utah with the majority of jurisdictions requiring a father to care for his children even if a decree of divorce happens to be silent pertaining thereto, which omissions could possibly be results of threats or inept counsel.

Respectfully submitted,

GEORGE E. BRIDWELL
Attorney for Plaintiff-Respondent

Received (2) true copies hereof this _____ day of March, 1957.

_____
Attorneys for Appellant