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Van Der Stappen v. Van Der Stappen : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

WILBERT W. VAN DER STAPPEN, Plaintiff/Appellant	)	
vs.	)	
GAYLENE VAN DER STAPPEN, Defendant/Appellee	)	Appeals No. 900530-CA

BRIEF OF THE APPELLEE

APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WEBER, STATE OF UTAH

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ARGUMENT PRIORITY 16

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JURISDICTION OF UTAH COURT OF APPEALS

Jurisdiction over this matter is conferred upon the Court of Appeals by Utah Code Annotated 78-2(a)-3(2)(g) (1989). As this is a district court case involving domestic relations, specifically divorce or annulment.

This appeal is from a final order of the Second Judicial District Court, County of Weber, State of Utah, the Honorable Stanton M. Taylor made on the 25th day of September, 1990.

STATEMENT OF THE ISSUES

A. WHETHER THE TRIAL COURT DECREE IS VOID FOR LACK OF SUBJECT MATTER JURISDICTION.

Standard of review: "An error is reversible if there is reasonable likelihood that a more favorable result would have been obtained by the complaining party in the absence of the error." Harris v Utah Transit Auth., 671 P.2d 217, 222 (Utah 1983).

Supporting authority: Proctor v Ins. Co. of N. America, 714 P.2d 1156, 1158 (Utah 1986); Sanders v Indus. Comm'n., 230 P. 1026 (Utah 1924); Rice v State, 370 N.E.2d 902, 903 (Ind. 1977); Persche v Jones 387 N.W.2d 32, 37 (S.D. 1986); Utah Code Ann. 30-1-2(2) (1989).

B. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING THE DECREE.

Standard of review: Abuse of discretion. "This court will presume that the discretion of the trial court was properly exercised unless the record clearly shows the contrary." Donohue v Int. Health Care, Inc., 748 P.2d 1067, 68 (Utah 1987).

Supporting authority: Donohue v Int. Health Care, Inc., 748 P.2d 1067, 68 (Utah 1987); CJS Second, Appeal and Error, Section 1817, Page 156.

DETERMATIVE STATUTES

Utah Code Ann. 30-1-2(2) 1989).

(2) When there is a husband or wife living, from whom the person marrying has not been divorced;

Utah Code Ann. 30-1-17 (1989).

When there is doubt as to the validity of a marriage, either party may, in a court of equity in a county where either party is domiciled, demand its avoidance or affirmance, but when one of the parties was under the age of consent at the time of the marriage, the other party, being of proper age, shall have no such proceeding for that cause against the party under age. The judgement in the action shall either declare the marriage valid or annulled and shall be conclusive upon all persons concerned with the marriage.

Utah Code Ann. 30-1-17 (1) (1989).

If the parties have accumulated any property or acquired any obligations subsequent to the marriage, or there is genuine need arising from economic change of circumstances due to the marriage, or if there are children born, or expected, the court may make temporary and final orders, and subsequently modify the orders, relating to the parties, their property and obligations, the children and their custody and visitation, and the support and maintenance of the parties and children, as may be equitable.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This case is an appeal from the District Court memorandum decision denying Plaintiff/Appellant's motion to set aside Decree of Divorce. Plaintiff/Appellant is the husband of a void marriage and seeks to have the Decree of Divorce set aside.

B. COURSE OF PROCEEDINGS AND DISPOSITION IN TRIAL COURT

The husband, now the Appellant, filed a divorce Complain on May 17, 1988. Trial was heard before the Honorable Stanton M. Taylor, on the 9th day of November, 1989. The Decree of Divorce was singed December 20, 1989. A Motion to set aside Decree of Divorce was filed January 22, 1990. The trial court heard oral arguments on the Plaintiff's Motion on February 26, 1990, at 10:30 a.m.. At that time the trial court asked that the parties brief the matter and that it be reheard. The parties briefed their positions and a hearing was held on May 14, 1990, at 11:00 a.m.. The trial judge then entered his memorandum decision denying Plaintiff's Motion to Set Aside Decree of Divorce.

C. RELEVANT FACTS

The parties herein were married to each other on June 15, 1984, in Teton County, State of Wyoming. (See Findings of Fact and Conclusions of Law, signed December 20, 1989). Gaylene Van

Der Stappen ("Appellee") had been previously been married to Richard Paul Opheikens. At the time the parties herein were married, Appellee was not yet divorced from Richard Paul Opheikens. (See Exhibit B attatcched to Affidavit of Plaintiff dated January 19, 1990). Wilbert Van Der STappen ("Appellant") was aware that Appellee's previous divorce had not been finalized. (See Findings of Fact and Conclusions of Law and Decree of Divorce signed December 20, 1989). After Appellee's previous marriage was finally dissolved, the parties continued to live together until sometime before the divorce action was filed. After the Decree of Divorce was entered, Appellant, having been made aware of the impediment of the marriage, sought to have the Decree of Divorce set aside pursuant to Rule 60 of the Utah Rules of Civil Procedure to have a Decree of Annulment entered.

SUMMARY OF THE ARGUMENT

Appellee does not dispute that the marriage to the Appellant in this case was not a valid marriage as recognized under current Utah Law. Nor does Appellee now dispute that a common law marriage between the parties did not exist due to the timing and requirements of the Utah State Law.

What Appellee does dispute is Appellant's argument that the decree issued by the trial court herein is void as a matter of

law. The trial court, based on the evidence pleadings and arguments before it made a finding that the Appellant was well aware of the defect in the Appellee's prior divorce. Therefore, having not raised the matter of lack of subject matter jurisdiction, the Appellant is not estopped from raising it at this time. The initial finder of fact did not abuse its discretion or in its Findings of Fact and its awards of support. This law is clear, that the trial court finder of fact is given wide discretion in its findings absent a clear abuse of that discretion. In conclusion, the Decree of Divorce, heretofore, entered in this matter and its awards therein is valid and was not an abuse of discretion on the trial courts part.

ARGUMENT

A. THE DECREE OF DIVORCE ENTERED BY DISTRICT COURT IS NOT VOID FOR LACK OF SUBJECT MATTER JURISDICTION

The issue as to whether the decree entered by the trial court is void for lack of subject matter jurisdiction is more properly viewed in terms of whether the Appellant has waived his defense of lack of subject matter jurisdiction at the trial court level. Indicated in the trial court's findings, the Appellant was well aware of the impedient to the marriage to the Appellee and therefore, was aware of subject matter jurisdictional problem with the trial court issuing a Decree of Divorce as opposed to

annulment.

Several cases exist where the Courts have held that a party in the position of the Appellant in the instant case has been estopped from setting aside that Decree of Divorce on the grounds of estoppel.

In the case of Reinhart v Reinhart, 83 P.2d 628 (Kansas 1938) the Court held that the husband was estopped from setting aside the Decree of Divorce the courts rational in this case, the wife petitioned the Court to set aside a Decree of Divorce on the grounds that the Court in that instant lacked subject matter jurisdiction, the Court held that where she had received the benefits of the Decree of Divorce dissolving the bonds of matrimony, she could not later be permitted to repudiate the Court's jurisdiction. The Court, in citing earlier cases, stated that where the party in whose favor the Decree had been granted could not later be allowed to vacate the Decree on the grounds of no subject matter jurisdiction.

The facts in those cases are extremely similar to the case at hand. The plaintiff, knowing of the impedient to the marriage to the Appellee herein chose to file his Complaint for divorce only. The Decree entered herein was awarded in the Plaintiff's favor for the exact relief for which he prayed.

In a practical indistinguishable case, the Utah Supreme Court

in the case of Caffal v Caffal 5 Utah 2d 407, 303 P.2d 386 (1956), stated that where one had estopped the jurisdiction of a court for a divorce only, knowing that their exists a lack of subject matter jurisdiction, that party will later be allowed to vacate the Decree and deny its validity.

In that case, the husband petitioned the Court to vacate the Decree of Divorce on the grounds that since no legal marital status exist, the Court did not have subject matter jurisdiction. Although, the husband knew he was not legally able to marry, the parties proceeded with the second marriage anyway. Later, the husband failed to respond to the wife's petition for divorce only. The husband thereafter, allowed his default to be entered and the Decree was awarded to the wife.

In affirming the trial courts dismissal of husbands' petition stated that "It is quite apparent in this case that (husband's) only reason for assailing the Decree of Divorce was to save himself from the obligation for support money provided for in the Decree", Caffal v Caffal, supra, at 287.

In addition, the Court also stated that the husband also committed a fraud upon the Court where knowing his wife's allegations in her Complaint were untrue in that the marriage was void, the husband, in permitting his default to be entered, in the decree to issue without challenging the wife's allegation or

the subject matter jurisdiction. The singular difference between that case and the case at bar is that the fraud perpetrated by the Appellant herein, is perhaps irreprehensible. This is due to the fact that it is the Appellant who had initiated the lawsuit with untrue and perhaps fraudulent allegations in his Complaint. Appellant argues that Caffal v Caffal, supra is distinguishable in that the husband there did not know of the impudent to the second marriage. The finder of fact at the trial court level explicitly found the opposite to be true. Therefore, Caffal v Caffal, supra should be dispositive of the case at bar.

B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ITS FINDINGS OR ITS ENTRY OF A DECREE OF DIVORCE HEREIN

The standard in determining whether the trial court abused its discretion is that proper discretion will be presumed by a higher court unless the record clearly shows contrary. Donohue v Int. Health Care, Inc., 748 P.2d 1067, 68 (Utah 1987). Further, a "ruling... will not be disturbed on appeal except when there is a clear and manifest abuse of discretion". Amoss v Bennion, 30 Utah 2d 312, 517 P.2d 1008, (1973).

The rational for this rule is based on sound judicial administration. The finder of fact at the trial court level is in the best position to observe the demeanor of the witnesses testifying and accordingly judge their relative credibility. The

testimony in this matter was heard by the trial court judge on November 9, 1989, at the time of the actual divorce hearing.

"In determining whether as a matter of law there is any evidence to sustain the judgment of the trial court, the higher court must assume that the evidence supports not only the express finding...but also any omitted findings which are necessary to support the judgment and the higher court must view the evidence in the light most favorable to support the judgment and the findings of the trial court." CJS Second Appeal and Error, Section 1817, Page 156.

Appellant's reasons for appealing the trial courts decision are clearly set forth in the Brief for the Apellant (Page 15). Appellant, just as in Caffal v Caffal, supra, is attempting to avoid the obligation of alimony to the defendant herein. As a general rule alimony will not be awarded in an annulment. That is, however, "(i)n in the absence of statutory authority..." 4 aj2d Annulment of Marriage, Section 102, Page 513. Section 30-1-17.2 UCA, clearly provides that authority to the trial court in the court's ability to make final orders in an annulment with regards to the support of the parties.

CONCLUSION

In the case before this Court, the marriage involved was clearly invalid under Utah State Law. It could not be

subsequently ratified nor can it be revived under the theory of common law marriage. However, the trial court did have jurisdiction to enter its order due to the failure of the Appellant to raise the issue of lack of subject matter jurisdiction. Appellant should now be estopped to raise that issue. This Court should therefore, affirm the trial court's Findings and Decree entered thereon. Respectfully submitted this 25 day of February, 1991.

J. D. POORMAN,
Attorney for Appellee

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Brief of Appellee was mailed to Jean Babilis, attorney for Appellant, 4185 Harrison Blvd., #300, Ogden, UT 84403, on this 25th day of February, 1991.

Secretary