

1991

# Karen Anderson Stucki v. Franklin S. Stucki : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc1](https://digitalcommons.law.byu.edu/byu_sc1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Michael W. Park; Attorney for Respondent.

Patrick H. Fenton; Attorney for Appellant.

---

## Recommended Citation

Brief of Appellant, *Stucki v. Stucki*, No. 914563.00 (Utah Supreme Court, 1991).

[https://digitalcommons.law.byu.edu/byu\\_sc1/3842](https://digitalcommons.law.byu.edu/byu_sc1/3842)

This Brief of Appellant 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 by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

UTAH  
DOCUMENT  
KFU  
45.9  
ISS  
DOCKET NO. 14563A

UTAH SUPREME COURT  
BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

---

KAREN ANDERSON STUCKI,	)	
Plaintiff and Appellant,	)	
vs.	)	Case No. 14563
FRANKLIN S. STUCKI,	)	
Defendant and Respondent.	)	

---

APPELLANT'S BRIEF

---

ON APPEAL FROM THE DISTRICT COURT OF THE FIFTH  
JUDICIAL DISTRICT OF THE STATE OF UTAH,  
IN AND FOR IRON COUNTY

HONORABLE J. HARLAN BURNS, Judge

PATRICK H. FENTON  
13 West Hoover Avenue  
Cedar City, Utah 84720  
Attorney for Plaintiff  
and Appellant

MICHAEL W. PARK  
110 North Main, Suite F  
Cedar City, Utah 84720  
Attorney for Defendant  
and Respondent

## TABLE OF CONTENTS

	PAGE
STATEMENT OF THE KIND OF CASE . . . . .	1
DISPOSITION IN THE LOWER COURT. . . . .	1
RELIEF SOUGHT ON APPEAL . . . . .	3
STATEMENT OF FACTS. . . . .	4
ARGUMENT. . . . .	5
POINT I. THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO GRANT ADDITIONAL ALIMONY AND EXTEND ALIMONY BEYOND THE \$12,000.00 LIMITATION OF THE DECREE . . . . .	5
CONCLUSION. . . . .	8

## CASES CITED

Ridge v. Ridge, 542 P.2d 189. . . . .	7
---------------------------------------	---

## STATUTES CITED

Section 30-3-5, Utah Code Annotated (1953). . . . .	5, 7
---	------

IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

KAREN ANDERSON STUCKI,	)	
Plaintiff and Appellant,	)	
vs.	)	Case No. 14563
FRANKLIN S. STUCKI,	)	
Defendant and Respondent.	)	

---

APPELLANT'S BRIEF

---

STATEMENT OF THE KIND OF CASE

This case arose on a divorce, Motion for Modification of Interlocutory Decree of Divorce and the failure of the Court to grant same.

DISPOSITION IN THE LOWER COURT

On 22 May, 1973, the District Court of Iron County, Utah, granted a divorce between the parties. There were no children to consider. The parties had been married on the 15th of May, 1965. While the defendant had several children from the issue of a former marriage, all had attained their majority at the time of divorce. The defendant was steadily

employed at the time of divorce with the Utah State Department of Employment Security. The plaintiff had had failing health prior to the marriage, during the marriage and at the time of the divorce. There was a counterclaim of the defendant. Each of the parties was represented at the time of divorce and gave testimony in support of their position. Alimony was awarded in the sum of \$300.00 per month until the sum of \$12,000.00 had been paid, with the express language that same was in lieu of all property settlements and all other items, with exception of attorney fees, court costs and plaintiff's personal belongings. The Decree was dated the 21st of June, 1973, and filed thereafter. The Findings of Fact contained a finding in paragraph 4 that plaintiff suffers from heart ailment of a considerable extent, and it is obvious to the Court that her health is impaired. In addition, there is a finding that the defendant in addition to being steadily employed, received a monthly check from the Veterans Administration as a pension. There is an express finding that the plaintiff should be awarded alimony in the sum of \$300.00 per month and terminated when \$12,000.00 has been paid. A Motion for Modification of Interlocutory Decree of Divorce claiming a change in circumstances of the plaintiff, to-wit, further deterioration of her health, and in addition, continued illness of the plain-

tiff's father and his death after a long-term terminal illness, the continued illness of the plaintiff's mother, and that the improbability of inheriting anything from the plaintiff's father as a result of the long-term illness had become non-existent. This was dated the 13th day of February, 1976, and was filed prior to the time that the \$300.00 per month payments terminated upon the payment of \$12,000.00, and was duly filed on or about the 17th day of February, 1976, or shortly thereafter. That the Court denied same, and on a Motion of Reconsideration on or about the 18th of March, 1976, a judgment without a hearing on or about the 19th of March, 1976, which was filed the 24th of March, 1976. A second Order Denying Plaintiff's Motion for Reconsideration of Plaintiff's Motion for Modification of Interlocutory Decree of Divorce was dated the 1st of April, 1976, and was filed thereafter.

#### RELIEF SOUGHT ON APPEAL

The reversal of the Judgment dated the 19th day of March, 1976, denying the Motion for Modification of Interlocutory Decree of Divorce and reversal of the Order Denying Plaintiff's Motion for Reconsideration of Plaintiff's Motion for Modification of Interlocutory Decree of Divorce.

## STATEMENT OF FACTS

As indicated above, this arose out of an earlier Decree of Divorce. At the time of divorce, the defendant was making \$13,973.08 a year or \$750.00 a month take home pay, and \$43.40 per month from the Veterans Administration on a pension. The plaintiff had been sick for many years and had been treated by Dr. R. G. Williams, a local physician, plaintiff being a heart patient. Treatment had been in excess of 20 years at the time of divorce. There had been heart surgery as a child, approximately 5 years of age. Plaintiff had been advised before marriage not to have any children because of constitutional weakness and at that time her employment was most limited, although at that time she was employable for a few hours a day on properly oriented jobs. At the time of the Motion for Modification of the Decree of Divorce, conditions had changed. The plaintiff's father had died, who had been a dentist, with a reputation around the community for some material means and a long-term illness had exhausted these items. In addition, plaintiff's mother was ill and there is now no probability of inheritance, although at the time of divorce there had been. Plaintiff's health had deteriorated to the point where she was now not

employable. Defendant had retired and had been drawing \$15,000.00 to \$16,000.00 a year and was retiring on that basis from State employment. The exact amount of retirement had not been considered. He was now not supporting a daughter from a former marriage, which he had been supporting at the time of the divorce on a voluntary basis helping her through school and spending approximately \$150.00 a month on her. That what had been referred to as school money was on occasion being used to pay costs of the child of the former marriage on a mission at the time of the divorce. These items are no longer in existence.

#### ARGUMENT

##### POINT I.

THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO GRANT ADDITIONAL ALIMONY AND EXTEND ALIMONY BEYOND THE \$12,000.00 LIMITATION OF THE DECREE.

This particular action comes under the provisions of Title 30, Section 5, Chapter 3, Utah Code Annotated, 1953, as amended. There is no question this is a discretionary item with the trial court. The same judge presided at the divorce as at the Petition for Modification.



There had been a material change in circumstances. At the time of divorce, although a heart patient, plaintiff was employable and was living with her parents, was an only child and had considerable probability of inheritance. At the time of Petition for Modification, plaintiff's father had become deceased after a long terminal illness and exhausted the funds of the family, and there was no possibility of inheritance. Plaintiff's mother was ill and to some extent plaintiff was caring for her. Plaintiff had become unemployable. See the reporter's transcript of the hearing of 22 May, 1973, the testimony of R. G. Williams, M. D., beginning at page 2 through page 7, and specifically page 3, commencing at line 18 to line 30, page 6, shows very definitely a limited employment capacity.

Mr. Stucki was steadily employed. See transcript of 22 May, 1973, page 32, line 24, in which the defendant testified \$13,973.08 and thereafter take home pay \$750.00 a month and a pension of \$43.40 per month, see page 33, line 9, without debts, see page 33, line 27.

There is no question of material change of circumstances. See the transcript of the hearing 1 March, 1976, which show that the plaintiff is at the later date completely unemployable, page 4, line 27, which showed that plaintiff

was not to work at all. Other changes in the plaintiff's condition are shown on page 4, line 29 through page 5, line 16. The defendant was on retirement. His V.A. Compensation had risen to \$57.40 a month, see page 7, line 11, and he had not made application for retirement, but was still drawing the full amount, although he was at retirement age and had taken an early retirement, see page 7, line 21. He had no obligations, was no longer paying for a daughter on a mission and the entire amount was available to the defendant. The trial court took the attitude that the language of the award in the Decree cut off any possibility of modification and as such abused its discretion, page 3, line 20 of the transcript of 1 March, 1976.

There is no question that this is a discretionary item and should have received consideration from the trial court due to the material change of circumstances. In support of this, one looks at the case of Ridge v. Ridge, 542 P.2d 189, Section 30-3-5, Utah Code Annotated, 1953, as reiterated in the Ridge case provides for continuing jurisdiction in the courts to make such subsequent orders and change of alimony and support payments, which shall be reasonable and necessary.

There is no question in the instant case that a modification was reasonable and necessary. Alimony was cut off at the \$12,000.00 point, which had not been reached at the time the Petition for Modification was filed. Thereafter, there was a definite showing that at the time of Petition for Modification the plaintiff was unemployable, no income, no money whatsoever, no possibility of inheritance. At the time of divorce, there was a probability of inheritance and the plaintiff was partially employable. Defendant's income had increased to \$15,000.00 per year and he was in the process of retiring. His pension had more than doubled. His expenditures that had been being made voluntarily at the time of divorce for the benefit of the daughter on a mission and in school had been terminated.

#### CONCLUSION

The trial court erred in refusing to modify the Decree of Divorce and same should be done.

Respectfully submitted,

PATRICK H. FENTON  
Attorney for Plaintiff  
and Appellant