

1991

karen Anderson Stucki v. Franklin Stucki : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT
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DOCKET NO. 14563 *R*

IN THE SUPREME COURT OF THE STATE OF UTAH

KAREN ANDERSON STUCKI,)

Plaintiff and Appellant,)

vs.)

FRANKLIN S. STUCKI,)

Defendant and Respondent.)

Case No. 14563

RESPONDENTS BRIEF

Appeal from the Judgment of the Fifth Judicial District Court
for Iron County, Honorable J. Harlan Burns, Judge, Presiding.

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FILED

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Clerk, Supreme Court, Utah

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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.)

BRIEF OF RESPONDENT

STATEMENT OF THE KIND OF CASE

Respondent and appellant were divorced in Iron County on the 22nd day of May, 1973. Thereafter on the 19th day of March, 1976, Appellant filed a Motion for Modification of Interlocutory Decree of Divorce. Said Motion was denied.

DISPOSITION IN LOWER COURT

The lower Court denied the Motion of Appellant for Modification of the Interlocutory Decree of Divorce.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the decision of the lower Court affirmed.

STATEMENT OF FACTS

The parties were divorced by the Honorable J. Harlan Burns and Findings of Fact and Conclusions of Law and Interlocutory Decree of Divorce were signed on May, 22, 1973.

At that time the Court found that the Appellant suffered from a heart ailment of considerable extent and had impaired health. (Findings of Fact and Conclusions of Law, para. 7).

The duration of the marriage was eight years; no children were born as issue of said marriage and the property awarded to the defendant was accumulated by him prior to the time of the marriage.

Plaintiff was awarded the sum of \$12,000.00, payable at the rate of \$300.00 per month in lieu of a property settlement. (Conclusions of Law, para. 2).

Defendant made the \$300.00 payments regularly and on time and at the conclusion of the payments, plaintiff made her motion to extend the payments alleging a change of circumstances.

At the time of the divorce the defendant was working for the Department of Employment Security, earning \$750.00 per month take home pay. (TR. 32). At the time of the Hearing for modification the defendant was retired and was earning only \$57.40 per month V.A. compensation and defendant was not receiving retirement. (Court Proceeding 7). If defendant chose to receive retirement from the state he would have received approximately

one-third (1/3) less than the amount he was receiving at the time of his divorce. (Court Proceeding 8).

At the time of the divorce, plaintiff was not working and the doctor testified that she might not even be able to hold down a part-time job. (TR. 7). Only after cross-examination did the doctor say that a part-time job might be a possibility (TR. 9) and the entire testimony of the doctor lends itself to the opinion that the plaintiff was not suited for work at the time of the divorce. The plaintiff responded to questions on pages 20 and 21 of the transcript as follows:

Q. Did you hear the doctor testify that if you had a job that you didn't exercise yourself too much you could work it maybe three or four hours a day?

A. I feel like a person themselves have to judge the capacity to which they can go to and I feel like I can't do anything.

Q. You don't want to work, do you?

A. No.

At the time of the Modification Hearing plaintiff was not working.

At the time of the divorce, plaintiff did not have income in addition to that provided by defendant and at the time of the modification hearing, plaintiff did not have additional income.

ARGUMENT

POINT I.

THE TRIAL COURT DID NOT ERR IN DENYING
DEFENDANTS MOTION FOR MODIFICATION OF
DECREE OF DIVORCE.

In the absence of changed conditions or circumstances, the district court cannot modify a decree of divorce. Hamilton v. Hamilton, 89 U. 554, 58 P.2d 11 (1936). There must be a change in the circumstances or condition of a party since the entry of the original decree. Dixon v. Dixon, 121 U. 259, 240 P.2d 1211 (1952). The change in circumstances must be substantial. Gale v. Gale, 123 U. 277, 258 P.2d 986 (1953).

The Appellant must plead and prove a substantial change in circumstances in order to prevail. Plaintiff was not working at the time of the divorce or at the time the motion for modification was made. Plaintiff had the same income at the time of the divorce as she did at the time of the motion for modification. Defendant was working at the time of the divorce and was retired at the time of the motion for modification, making substantially less income.

The defendant has less income with which to pay and the plaintiff does not need any more than she needed at the time of the divorce.

Plaintiff points to the fact that she may not inherit. There was no evidence in the transcript that she would inherit at the time of the divorce.

Plaintiff states that the doctor stated she could work at the time of the divorce and cannot now work. The doctor did not testify when the motion for modification hearing took place and his previous testimony at time of trial leads one to the conclusion that he was of the opinion that she could not work at the time of the divorce.

These two items did not lead the district court to the

conclusion that a substantial change of circumstances existed. The attorney for the appellant affirmatively states that there is no question that it is a discretionary item for the trial court to determine whether a material change of circumstances has taken place. The case cited by the attorney for Plaintiff, Ridge v. Ridge, 542 P.2d 189 (1975), also concludes that the Supreme Court will not disturb the decision of the trial judge unless there has been a clear abuse of discretion.

CONCLUSION

The appellant did not sustain its burden of showing a material change of circumstances as required by decisions pronounced by this Court. The Trial Judge followed those decisions and a clear abuse of the discretion of that ruling has not been shown.

RESPECTFULLY SUBMITTED,

MICHAEL W. PARK
Attorney for Respondent