

1983

Robert Stettler v. Patsy Edwards Stettler : Brief of Plaintiff-Respondent

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IN THE SUPREME COURT OF THE STATE OF UTAH

ROBERT STETTLER,

Plaintiff-Respondent,

vs.

Case No. 19156

PATSY EDWARDS STETTLER,

Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

Appeal from an Order of the
Second Judicial District Court in and for Davis County,
Honorable J. Duffy Palmer presiding

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IN THE SUPREME COURT OF THE STATE OF UTAH

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CHRIST STETTLER,

Plaintiff-Respondent,

vs.

Case No. 19156

PATTY EDWARDS STETTLER,

Defendant-Appellant.

-----oOo-----

BRIEF OF PLAINTIFF-RESPONDENT

-----oOo-----

NATURE OF THE CASE

This is an appeal from an Order of the District Court refusing to modify the Divorce Decree as to property settlement and refusing to grant the Defendant reimbursement for money spent on the minor child in Defendant's custody prior to the Hearing date.

DISPOSITION IN LOWER COURT

Defendant brought her Order To Show Cause To Modify the Decree so as to require the Plaintiff to pay to her her equity in the home upon Plaintiff's remarriage; to obtain contribution from the Plaintiff for expenses incurred for support of the parties minor child in her custody prior to the Hearing date and for an award of child support for said minor child.

The Court found that there was no change of circumstances sufficient to justify the modification of the property settlement agreement, refused to require contribution on the

part of the Plaintiff for expenses of Defendant's minor children. Plaintiff still had custody of the parties' two youngest minor children, and moved that child support be ordered in Defendant's custody and that for the oldest child in Plaintiff's custody off-set each other and, therefore, no support be ordered for those children. The Court ruled that the child support required to be paid by the Defendant for the other minor child in Plaintiff's custody to satisfy DOLLARS (\$75.00) per month.

RELIEF SOUGHT ON APPEAL

Respondent respectfully requests the Court to affirm the decision of the lower Court in all respects.

STATEMENT OF FACTS

Plaintiff and Defendant were divorced by the District Court of Davis County after sixteen (16) years of marriage on August 26, 1981. The divorce to become final three months after date of entry (Rp.12). The parties had three (3) minor children, to-wit: ROBERT CARL STETTLER, FOUR STETTLER, and MATTHEW STETTLER, who were 15, 12 and 4 years of age, respectively, at the time the Complaint was filed (Rp.1).

At the time of the filing of the Complaint the parties had been separated for approximately six (6) months. The separation and divorce were caused as a result of Defendant's involvement with her present husband, whom she met at her place of employment and later married.

The divorce becoming final in December of 1981 (Tp.10, 30).
Following the Complaint being filed as a result of her
dissatisfaction with her present husband, the Defendant left the
home of the parties, and the Plaintiff and the minor children
continued to live in the home. At the time of the filing
of the Complaint the parties entered into a Stipulation (Rp.
5) which Defendant reviewed and understood (Tp. 10). Under
the terms of the Stipulation, Plaintiff was awarded the
custody of the children and Defendant agreed to pay ONE
HUNDRED DOLLARS (\$100.00) per month per child to assist with
their care and agreed that Plaintiff be awarded the home and
that she be paid her share of the equity upon the sale of
the home or when the youngest child reached 18 years,
whichever occurred first. Subsequently on August 26, 1981
a Decree of Divorce was entered by the Court incorporating
the terms of the Decree (Rp. 11).

At the time of the Decree, Defendant was employed at
Hill Air Force Base in a very responsible position which
required her to work with other people and carry out
significant management responsibilities (Tp. 32, 33).

In October of 1981 she quit her job and went to
California with her present husband (Tp. 33) whom she later
divorced in December of 1981 (Tp. 10, 30).

During the period from October 1981 to December 1981
Defendant fell behind in child support (Tp. 18), and as of
the date of Hearing, there remained a balance owing to the

Plaintiff of EIGHT HUNDRED SEVENTY FIVE (\$875.00) DOLLARS as stipulated by the parties (Rp. 29).

In June of 1982 the parties' minor daughter went to visit the Defendant (Tp. 12) and subsequently the parties agreed that the best interest of the daughter would be served by her permanent custody being transferred to the Defendant. A Stipulation was signed transferring custody in November of 1982 (Rp. 14) and the Order was signed by the Court on December 3, 1982 (Rp. 16).

Since the date of separation until June 1982, Plaintiff had the care and custody of the three (3) minor children and acted as both father and mother to them. He still retains custody of the two (2) boys of the parties, age 12 and 17 (Tp. 25, 45).

On February 15, 1983 Defendant filed an Order To Show Cause requesting that the Decree of Divorce previously entered be modified (Rp. 19). She requested that she be awarded child support for the minor child in her custody; that Plaintiff be required to reimburse her for certain monies which she had expended on the child in her custody prior to the date of the Hearing and that the Decree be modified to require the Plaintiff to pay to Defendant her equity in the family home upon his remarriage. The Plaintiff filed a Counter Affidavit asking for a judgment for arrears in child support and an increase of support for the two minor children in his custody (Rp. 25).

The matter came on for Hearing on the 11th day of March 1983 and the Court, after hearing the testimony of the parties, ordered that the Plaintiff be granted Judgment for back child support in the amount of EIGHT HUNDRED SEVENTY FIVE (\$875.00) DOLLARS; that the cost of care of the child in Defendant's custody and the oldest son in Plaintiff's custody off-set each other and, therefore, cancelled each other out; reduced the support required to be paid by the Defendant for the other minor child in Plaintiff's custody to SEVENTY FIVE (\$75.00) DOLLARS per month and further ruled that there was no change in circumstances sufficient to cause a change in the Decree relating to payment of equity in the home to the Defendant (Rp. 31 - 36).

From the Court's Order the Appellant took this Appeal.

ISSUES PRESENTED

1. Whether the Court abused its discretion in finding that there were no substantial and material change in circumstances sufficient to modify the property settlement agreement.
2. Whether the Court abused its discretion in refusing to require Plaintiff to reimburse Defendant for the expenses of child care she incurred while the minor child was in her custody prior to Hearing.

ARGUMENT

I.

THE COURT DID NOT ABUSE ITS DISCRETION IN RULING THAT THERE WAS NO CHANGE IN CIRCUMSTANCES SUFFICIENT TO JUSTIFY A MODIFICATION OF THE PROPERTY SETTLEMENT AS INCORPORATED IN THE DECREE.

At the outset, it should be noted that the burden is on the Appellant to prove that evidence clearly preponderates against the findings as made, and that there was a misunderstanding or misapplication of law resulting in substantial prejudicial error, or that serious inequity has resulted so as to manifest a clear abuse of discretion. Mitchell vs. Mitchell, Utah, 527 P2d 1359 (1974). The Mitchell Court went on to say that in divorce actions, the trial Court has considerable latitude of discretion in adjusting financial property interests, and its actions are indulged with a presumption of validity; and that the Court's determination, based on the Courts review of the facts and circumstances, should not be overturned unless it results in such manifest injustice or inequity as to indicate a clear abuse of discretion. Mitchell vs. Mitchell, supra, at page 1360.

In Despain vs. Despain, Utah, 610 P2d 1303 (April 11, 1980), the Supreme Court stated as follows:

That in both the formulation of a Divorce Decree and any modifications thereof, the Trial Court is vested with broad discretionary powers which may be disturbed by the appellate Court only in the presence of a clear abuse thereof. Page 1305

The Court went on to say that in the absence of compelling equitable considerations, the terms of a property

settlement are not be abrogated. Despain vs. Despain, supra, at page 1306.

There is no question that under State Law the Court has continuing jurisdiction to make such subsequent changes or new orders with respect to the distribution of property as shall be reasonable and necessary. UCA, 1953, Section 30-3-5.

The Courts in interpreting State Law have stated that in order to provide some stability to decrees, and to prevent an inundation of the Courts with Petitions For Modification, a party seeking a modification must demonstrate a substantial change of circumstances and that the change in circumstances required to justify a modification of a Divorce Decree varies with the type of modification sought. Haslam vs. Haslam, Utah, 657 P2d 757, (1982); Christensen vs. Christensen, Utah, 628 P2d 1297 (1981).

As here, in the case of modification of a Decree involving real property, the Court should be reluctant to grant modification of the provisions of the Divorce Decree which dispose of real property and grant such modifications only upon a showing of compelling reasons arriving from substantial and material changes in circumstances. Foulger vs. Foulger, Utah, 626 P2d 412 (1981); (emphasis supplied).

The Court has also said that property settlements, when incorporated into the Decree of Divorce, are entitled to a greater sanctity than alimony and support payments in

proceedings to modify Decrees; and that there abrogation should only be resorted to with great reluctance and for compelling reasons. Land vs. Land, Utah, 605 P2d 1248, (1980).

In the matter here before the Court the evidence shows that the Defendant entered into the Property Settlement Agreement knowingly, that she read it and apparently understood it (Tp. 9). The records showed that she worked at Hill Air Force Base for four (4) years prior to the divorce as an audit manager and dealt with people and was in charge of certain responsibilities (Tp. 33). She was used to dealing with people and handling her own affairs. At no time did she allege that she had been misled or did not understand the provisions of the Settlement Agreement.

The only question to be decided by the Court was whether the fact that her daughter had come to live with her and her remarriage and that of the Plaintiff were such as to constitute a substantial and material change in circumstances such as to justify a modification of Decree.

The record points out that the Defendant voluntarily left her husband and her children and her stable home to continue a relationship which started at her work and ended in her marriage to the individual who is her present husband (Tp. 30, 31).

Plaintiff remained with the parties' children and continued to provide them with a stable home and home life.

and still has custody of two (2) of the parties' three (3) children (Tp. 45). All of the circumstances upon which the defendant relies to justify a modification of the Decree were to a large extent created by the Defendant, of her own choice, and one which could be easily contemplated by her at the time the Agreement was made.

In a recent case decided by this Court, the Court refused to modify a Decree with terms very similar to those before the Court where the equity from the home was to be distributed to the Defendant upon sale. Defendant requested modification of the Decree to provide for payment upon remarriage. The Defendant argued if she had been represented by counsel, the Decree would have provided for equity distribution on remarriage of the Plaintiff. The Supreme Court, in upholding the lower Court's decision not to modify the Decree, stated that the threshold requirement for relief is a showing of a substantial change in circumstances of the parties occurring since the entry of the Decree and not contemplated by the parties. Lea vs. Bowers, Utah, 658 P2d, 1213, (1983).

In the matter here before the Court, the Court ruled that there was no showing of a substantial change of circumstances and that since there is no such showing, the issue is res judicata (Rp. 33).

The Court was justified in ruling that the question of modification of Decree in regards to property settlement was

res judicata based on its findings that there were no changed circumstances. McLane vs. McLane, Utah, 570 P2d 692, (1976); Smith vs. Smith, Utah, 564 P2d 307, (1977).

Based upon the foregoing and the circumstances of this case, there is no substantial and material change in the circumstances such as to justify the modification of the Decree as to property settlement and the Court in so ruling did not abuse its discretion.

ARGUMENT

II.

THE COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO REQUIRE THE PLAINTIFF TO REIMBURSE THE DEFENDANT FOR EXPENSES OF CHILD CARE SHE INCURRED WHILE THE MINOR WAS IN HER CUSTODY PRIOR TO HEARING

Again it should be pointed out that the Judgment of the Trial Court in determining the question of child support should be given considerable deference due to the Trial Court's advantaged position and should not be disturbed unless the evidence clearly preponderates to the contrary, or the Trial Court abuses its discretion or misapplies the principals of law. Christensen vs. Christensen, Utah, 629 P2d 1297, (1981); Fletcher vs. Fletcher, Utah, 615 P2d 1213 (1980).

The law is clear that both parents have an obligation to support their children, UCA Section 78-45-3 and 78-45-4; however, it is equally clear that enforcement of the support obligation in domestic relations matters raised

the context of a Motion To Modify A Decree are governed by Section 30-3-5, UCA, and not by the provision of the Uniform Civil Liability For Support Act set forth in Chapter 45 of Title 78, UCA. Mecham vs. Mecham, Utah, 570 P2d 123, (1977).

All of the cases cited by the Defendant in regards to the obligation of a parent to support his or her child arose in the context of the State seeking reimbursement for funds expended on behalf of a child of the parent. Not as here, in the context of a parent having custody of one child seeking reimbursment from a parent who had custody of the parties' other two (2) children.

The Defendant readily admitted that the cost of supporting each of the two (2) children in Plaintiff's custody greatly exceeded her ONE HUNDRED DOLLAR (\$100.00) per month per child contribution (Tp. 35).

Defendant admitted that she expended considerable sums of money for clothing (Tp. 32), hair care (Tp. 23), allowance (Tp. 24) and other activities for the daughter in her care, totaling approximately FIFTEEN to SIXTEEN HUNDRED DOLLARS (\$1,500.00 to \$1,600.00) (Tp. 25). Plaintiff stated that he could not afford those kinds of expenditures for the child (Tp. 46, 47) and that his income had gone down some since the Decree was entered (Tp. 43), and that his take-home was TWELVE HUNDRED TWENTY TWO DOLLARS (\$1,222.00) per month (Tp. 13).

He testified that the two (2) boys who continue to

reside with him were now 11 years old and 17 years old respectively and the expenditures to raise them had increased steadily as they had grown older (Tp. 46). He testified that he had remarried and that his wife made approximately SEVENTEEN THOUSAND DOLLARS (\$17,000.00) per year (Tp. 51).

The record further shows that the Defendant was fully employed with a regular income (Tp. 18) and that her present husband has an annual income of approximately THIRTY FOUR THOUSAND DOLLARS (\$34,000.00) and that there was only one (1) child in their home, that being the daughter of the parties' (Tp. 52).

The facts presented show that Defendant did spend approximately FIFTEEN HUNDRED DOLLARS (\$1,500.00) (Rp. 32) on her daughter over a nine (9) month period. The same daughter who, along with her two sons and husband, she had left for her present husband in 1981.

The monies she expended on the child, to sooth her own conscience or for whatever purpose, were not alone for necessities and were greatly in excess of what would have been spent had the daughter remained with her father (Tp. 46).

It is important to note that the Decree specifically provided that the Defendant pay support for her daughter the amount of ONE HUNDRED DOLLARS (\$100.00) per month (Rp. 11 - 13). This Order had not been modified or changed by the Court and, therefore, was still in effect. This was

a case where no support order had been entered as stated by the Defendant so as to invoke the provision of Section 78-45-7 UCA.

The record shows that Plaintiff continues to have custody and care for the two (2) minor sons of the parties' and expenses have continued to increase (Tp. 46) and that he continues to pay debts and obligations remaining from the marriage of the parties (Tp. 51) on an income which has diminished somewhat since the time of the Decree (Tp. 43).

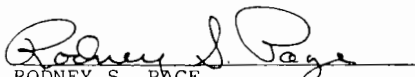
From the foregoing it is clear that the Court in light of the circumstances did not abuse its discretion or misapply any principal of law in refusing to require the Plaintiff to reimburse Defendant for monies spent on the child in her custody prior to the time of Hearing.

CONCLUSION

The decision of the Court in refusing to modify the Property Settlement Agreement incorporated into the Decree and refusing to order Plaintiff to reimburse Defendant for money spent on the child in her custody up to the day of Hearing was supported by the evidence and should be upheld.

Respectfully submitted this 9th day of September, A.D., 1983.

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CERTIFICATE OF MAILING

I hereby certify that I mailed two (2) true and correct copies of the above and foregoing Brief of Plaintiff-Respondent to Edward B. Havas, Attorney for Defendant-Appellant, 3293 Harrison Blvd., Ogden, Utah 84403 postage prepaid this 9th day of September, A.D., 1983.

Geneel De Pierro
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Secretary