

1992

Greg Hackford, Sherrie Hakford v. Utah Power and Light Company, a Utah Corporation, and Western Petroleum, Inc., a Utah Corporation, and Does I through X : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

GREG HACKFORD,)	
)	
Plaintiff, and)	
)	
<u>SHERRIE HACKFORD,</u>)	
)	
Plaintiff-Appellant)	
vs.)	
)	Case No. 20208
<u>UTAH POWER & LIGHT COMPANY,</u>)	
a Utah Corporation,)	
)	
Defendant-Respondent,)	
)	
WESTERN PETROLEUM, INC.,)	
a Utah Corporation,)	
)	
Defendant-Respondent and)	
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DOES I through X,)	
)	
Defendants.)	

RESPONDENT WESTERN PETROLEUM, INC.'S BRIEF

Appeal from and Order of Third Judicial
District Court of Salt Lake County
Honorable Dean E. Conder, Judge

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FILED

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Clerk, Supreme Court, Utah

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STATEMENT OF ISSUE PRESENTED FOR REVIEW

Should this Court continue the firm tradition of Utah common law that neither a husband or a wife has a derivative cause of action for loss of spousal consortium against a negligent party who has caused injury to the other spouse?

DETERMINATIVE PROVISIONS

There are no constitutional provisions, statutes, ordinances, rules or regulations, or other measures whose interpretation is determinative of the issue presented for review.

STATEMENT OF THE CASE

Nature of Case. The Appellant, Sherrie Hackford ("Wife") sought her own damages for losses consortium of her husband, the plaintiff, Greg Hackford ("Husband"), because of injuries he allegedly sustained in an electrical contact accident in Naples, Uintah County, Utah involving an electrical distribution line of the respondent Utah Power & Light Company ("Utah Power") while performing roofing services on behalf of the respondent Western Petroleum, Inc. ("Western Petroleum"). Before filing an answer, Utah Power filed a Rule 12(b) (6) motion to dismiss the claims of Sherrie Hackford. The court

granted that motion based upon this Court's decision in the case of Ellis v. Hathaway, 27 Utah 2d 143, 493 P.2d 985 (1972) and other Utah authorities.

Statement of Facts. The facts of this case are still undeveloped; however, there are enough to show the type of case the plaintiff, Sherrie Hackford claims it to be.

1. The Husband and Wife both assert that Utah Power and Light and Western Petroleum were negligent with respect to the cause of significant painful, disabling and incapacitating injuries to the Husband which occurred in Naples, Utah. (R. 3, 4, 6, 7, 8 and 9, ¶¶ 5, 11, 13, 16, 17 and 18).

2. Also, the Husband seeks damages for medical expenses, loss of earnings and earning capacity, and general damages for pain and suffering (R. 7 and 9, ¶¶ 14 and 18, Claims I and II).

3. In addition to these, the Wife, as a derivative of the plaintiff's claims, claims to have lost the cooperation, services, society, advice, counsel, companionship and conjugal affection that her Husband would otherwise have been able to provide because of the allegedly severe and permanent nature of her Husband's injuries (R. 9, ¶ 21, Claim III).

SUMMARY OF ARGUMENTS

The respondent Western Petroleum hereby adopts the summary of arguments and the arguments as set forth in the

brief of respondent Utah Power. However, Western Petroleum wishes to expand on those arguments as follows:

It is beyond dispute that Utah has never recognized the cause of action for loss of consortium. Consequently, the arguments of appellant, Sherrie Hackford, that consortium claims remain an integral part of the common law have no validity with regard to this particular case.

The Utah Married Women's Act, Utah Code Ann. §30-2-4, (1953 as amended) should be construed so as to satisfy the legislative objective of placing a husband and wife on equal footing. This Court has consistently held that this should be done by taking away from the husband his derivative cause of action for injuries sustained by his wife, rather than giving to the wife a parallel derivative cause of action for injuries sustained by the husband.

Finally, the wife's argument that Article 1, §11 and Article 1 §7 of the Utah Constitution prohibit the legislature from abolishing any common-law litigation right without the provision of a reasonable alternative has no validity. This is so because Utah has never recognized the cause of action for loss of consortium. Consequently, Article 1, §11 and Article 1, § 7 have no application to the case at hand.

ARGUMENT

POINT I

UTAH HAS NEVER RECOGNIZED A CAUSE OF ACTION FOR LOSS OF CONSORTIUM.

Only that part of English common law which was not in conflict with the laws of Utah and that was consistent with the needs of the people, was adopted under Utah Code Ann. §68-3-1; at the same time, Utah's Legislature adopted the Married Women's Act, which gave a wife the power to sue in her own name, Utah Code Ann. §30-2-4. Read together, these two sections of Utah Code Ann. have been held to deny a cause of action for loss of consortium of either a wife or a husband. Ellis v. Hathaway, 27 Utah 2d 143, 493 P.2d 95 (1972); Madison v. Deseret Livestock Co., 574 F.2d 1027 (10th Cir. 1978); Tjas v. Proctor, 591 P.2d 438 (Utah 1979).

Neither does Article I, Section 11 of the Utah Constitution establish a right to recover for loss of consortium. The Utah court interpreted this section several decades ago in Brown v. Wightman, 47 Utah 31, 151 P. 366 (Utah 1915):

The courts have, however, always considered and treated those provisions, not as creating new rights, or as giving new remedies where none otherwise are given, but as placing a limitation upon the Legislature to prevent that branch of the state government from closing the doors of the courts against any person who has a legal right which is enforceable in accordance with some known remedy. Where no right of

action is given, however, or no remedy exists, under either the common law or some statute, those constitutional provisions create none. . . .

The right and power, as well as the duty, of creating rights and to provide remedies, lies with the Legislature, and not with the courts. Courts can only protect and enforce existing rights, and they may do that only in accordance with established and known remedies.

151 P. at 366-67.

POINT II

UTAH CODE ANN. §30-2-4, SHOULD BE LIBERALLY
CONSTRUED TO EFFECTUATE THE LEGISLATIVE OBJECTIVE
OF PLACING A HUSBAND AND WIFE ON EQUAL FOOTING.

Utah's Married Women's Act is a specific derogation of the common law of England. Stoker v. Stoker, 616 P.2d 590, 591 (Utah 1980). While Stoker focuses on the doctrine of interspousal tort immunity, it is an important case for the respondent's purposes in that it interprets Utah's Married Women's Act in conjunction with Article I, Section 11 of the Utah Constitution. In validating the Utah Married Women's Act, the Utah court relied upon Utah Code Ann., §68-3-2, which reads:

The rule of common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of this state. The statutes establish the laws of the state respecting the subjects to which they relate and their provisions and all proceedings under them are to be liberally construed with a view to effect the objects of the statutes and to promote justice. Whenever there is any variance between the rules of equity and the rules of common law in reference to the same matter, the rules of equity shall prevail.

This rule of liberal construction of statutes, to effectuate the objectives of the legislature, has been consistently followed by the Utah Supreme Court. As recently as early 1983, the Court has stated:

It is also a well-established rule of statutory construction that statutes and ordinances "are endowed with a strong presumption of validity; and that they should not be declared unconstitutional if there is any reasonable basis upon which they can be found to come within the constitutional frame work (sic) . . ."

Murray City v. Hall, 663 P.2d 1314, 1317 (Utah 1983), citing Greaves v. State, 528 P.2d 805, 807 (1974) (citations omitted). Earlier, the Utah court looked at the constitutionality of the Insurance Guaranty Association Act, Utah Code Ann., §31-40-1, et seq. (1971). In two other jurisdictions having similar constitutional provisions, the courts had reached opposite conclusions as to the constitutionality of those sections. In light of that split of decisions, the Utah court stated:

This court makes every reasonable presumption in favor of constitutionality and will not nullify a legislative enactment unless it is clearly and expressly prohibited by the constitution. In seeking the correct application of statutes and constitutional provisions, this court looks to the circumstances, which brought them into being, and the purposes sought to be accomplished.

Utah Farm Bureau Ins. Co. v. Utah Ins. Guaranty Assn., 564 P.2d 751, 753-54 (Utah 1977) (citation omitted). The Utah Supreme

Court has also stated that if there is any question as to the interpretation or effect to be given a statute, or as to the preference to be given statutes of similar import, it is appropriate to look to the circumstances of their origin and their purpose, and also to what has been done in acceptance and practice as to those statutes. Cannon v. Gardner, 611 P.2d 1207, 1208-09 (Utah 1980). Recent decisions handed down by the Utah Supreme Court following the liberal rule of construction include Board of Education v. Salt Lake County, 659 P.2d 1030 (1983); State v. Casarez, 656 P.2d 1005 (1982); Christensen v. Industrial Commission, 642 P.2d 755 (1982); Parson Asphalt Products, Inc. v. Utah State Tax Commission, 617 P.2d 397 (1980); Millett v. Clark Clinic Corp., 609 P.2d 934 (1980); Curtis v. Harmon Electronics, Inc., 575 P.2d 1044 (1978).

Utah Code Ann., §30-2-4 has repeatedly been interpreted by this Court as to deny a spouse a cause of action for loss of consortium. The act did not give a wife a cause of action for negligent or intentional injuries caused to her husband. Rather, it took the action that a husband could maintain for injuries caused to his wife and gave it to the wife. Redress for loss of services to a family as a result of injuries were properly part of the primary injured person's claim only. Tjas v. Proctor, 591 P.2d 438 (Utah 1979); Ellis v. Hathaway, 493 P.2d 985 (Utah 1972). For instance, where a wife is injured and the husband seeks to recover for loss of consortium, the wife, if anybody, should recover the expenses

incurred in connection with her injuries. The reasonable value of the services which she was able to perform as a result of her injuries and which she otherwise would have performed would be part of her recovery, if any, she is entitled to. Corbridge v. Morrin & Sons, 432 P.2d 41, 42 (Utah 1967). See also, Black v. United States, 263 F.Supp. 470 (D. Utah 1967).

Therefore, under the liberal construction rule of statutory interpretation, the Married Women's Act, as it has been held consistently by the Utah Supreme Court, should be interpreted as taking away from a husband his derivative cause of action for injuries sustained by his wife, rather than giving to the wife a parallel derivative cause of action for injuries sustained by the husband.

POINT III

NO DUE PROCESS OR EQUAL PROTECTION ARGUMENT APPLIES.

The main thrust of appellant's due process argument is that the "injury redress" provision of the Utah Constitution, Article I, Section 11, along with the due process clause, Article I, Section 7, prohibits the legislature from abolishing any common-law litigation right without the provision of a reasonable alternative. The response to this argument centers upon the first point raised earlier: Utah has never recognized a cause of action for loss of consortium. When Utah adopted the common law of England, it did so only to the extent that the common law did not come in conflict with the express

statutory provisions of the Utah Code Ann. Also, as stated earlier, the Married Women's Act was adopted concurrently with the common law of England. Thus, the common-law action for loss of consortium in the husband was never adopted by Utah. Due process of law is not denied the appellant because no common-law right was abolished upon the passage of the Married Women's Act. No such right ever existed under Utah law, therefore, the legislature could not have abolished it.

Likewise, the main thrust of appellant's equal protection argument is that Article I, Section 11 of the Utah Constitution requires that the Utah Court recognize the cause of action for loss of consortium because an injury has been sustained by the spouse. The Wife contends Utah's failure to allow recovery for loss of consortium is thus a denial of redress for an injury sustained. She compares the loss of consortium suit to suits for wrongful death and alienation of affections, where Utah recognizes some of the elements of consortium in determining whether or not a party is liable for injury to such consortium rights.

Western Petroleum's response to this argument is three-fold. First, Article I, Section 11, does not create a new right in a spouse. Brown v. Wightman, 151 P. 366, 367 (Utah 1915). This provision is limited in its scope to guaranteeing the continued rights of action recognized under the law of the jurisdiction, and preventing the legislature from curtailing those recognized-rights. Article I, Section 11 provides for a

continued enjoyment of certain enumerated rights, rather than a creation of new substantive rights.

Second, appellant is not denied redress for any injuries suffered because recovery is accomplished in the primary suit brought by the injured party. Under Utah law, recovery for loss of services to a spouse is properly part of the original cause of action brought by the injured party. Morrin, Tjas, Ellis, supra. These cases recognize the intertwined nature of the primary injury and the loss of consortium. The court of appeals of Maryland, in denying a wife a separate cause of action for loss of consortium, stated:

It is because these marital interests are in reality so interdependent, because injury to these interests is so essentially incapable of separate evaluation as to the husband and wife, that the conception of the joint action seems to us a fair and practical judicial development.

Deems v. Western Maryland Railway Co., 231 A.2d 514 (Md. 1967). In Deems, the court required the wife to be joined as a party in the original suit brought by the husband in order for her to recover. Failure to be joined in such action, precluded the wife from bringing any subsequent action. Of the equal protection cases cited by appellant, beginning with Hitauffer v. Argonne Co., Inc., 183 F.2d 811 (D.C. App. 1950), and continuing with Olin v. Illinois Banking Corp., 260 F.Supp. 820 (D.C. Mich. 1966), Karczuwski v. Baltimore & Ohio R.R.Co., 274 F.Supp. 169 (D.C. Ill. 1967), Leffler v. Wiley, 239 N.E.2d 235

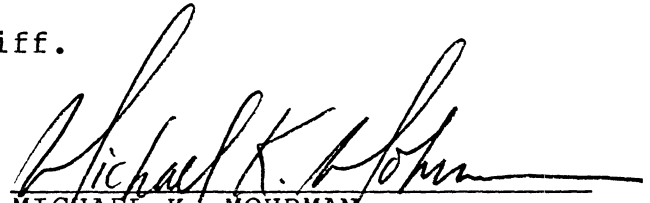
(Ohio 1968), and Witney v. Fisher, 417 A.2d 934 (Vermont 1980), the right to sue for loss of consortium was extended to a wife basically because such right was already recognized in a husband. Denial of the right to sue for loss of consortium was considered an unreasonable abridgment of a justiciable right to obtain redress for injuries caused by wrongful acts of another. A wife's right to recover for injuries suffered was considered as cut off completely. Utah, however, cuts off the action for loss of consortium in both the husband and wife because recovery is considered as already accomplished in a suit by the primarily-injured party.

Finally, the derivative nature of the loss of consortium suit is distinguishable from other actions which recognize consortium rights. Article I, Section 24 of the Utah Constitution incorporates the same basic general fundamental principles as are incorporated in the equal protection clause of the Federal Constitution. Under the Utah provision, whether a statute meets equal protection standards depends in the first instance upon the objectives of the statute and upon whether the classifications established provide a reasonable basis for promoting those objectives. The classification must rest upon some difference, which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. In the immediate instance, the objective of the statute in question was to place husbands and wives on equal footing in

pursuing their respective litigation rights. The classification here would be those spouses suing for loss of consortium, as compared to spouses suing for wrongful death or alienation of affection. Such classification is reasonable because the action for loss of consortium is a derivative suit; whereas, the actions for wrongful death and alienation of affections are primary suits in and of themselves. The individual who is wrongfully deprived of life cannot bring his or her own suit. However, a surviving spouse can bring an action for wrongful death. Recovery of compensatory damages in a wrongful death action is designed to compensate the spouse and heirs of the deceased, rather than to compensate the deceased. Behrans v. Raleigh Hills Hospital, Inc., 675 P.2d 1179, 1185 (Utah 1983). In a suit for alienation of affections, the suing spouse has suffered an alleged injury; however, the other spouse has no injury. In comparison, the spouse suing for loss of consortium must prove a tort by the defendant committed against the primarily-injured spouse. Recovery is derivative and contingent upon the primary suit. Thus, the test under Article I, Section 24 of the Utah Constitution is met: The object of the Married Women's Act is reasonable, and the classification established by the act is reasonable and bears a just and reasonable relation to the act in respect to which the classification is proposed. See Malan v. Lewis, No. 17606 (Utah May 1, 1984).

CONCLUSION

Western Petroleum respectfully requests that the order of Judge Conder be affirmed on the basis that Utah does not recognize such a derivative cause of action on behalf of the spouse of an injured plaintiff.


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Date: January 7, 1985

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APPENDICES

APPENDIX A

Utah Constitution, Article I, Section 7

No person shall be deprived of life, liberty or
property, without due process of law.

APPENDIX B

Utah Constitution, Article I, Section 11

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel any civil cause to which he is a party.

APPENDIX C

Utah Constitution, Article I, Section 24

All laws of a general nature have uniform operation.