

1967

Irene Erickson v. Oran L. Beardall : Appellant's Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

IRENE ERICKSON,
Plaintiff and Respondent,

vs.

ORAN L. BEARDALL,
Defendant and Appellant.

Case No.
10914

APPELLANT'S BRIEF

Appeal from the Judgment of the Fourth Judicial District Court
in and for Utah County
Honorable Maurice Harding, Judge

FILED

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IN THE SUPREME COURT OF THE STATE OF UTAH

IRENE ERICKSON,

Plaintiff and Respondent,

vs.

ORAN L. BEARDALL,

Defendant and Appellant.

Case No.
10914

APPELLANT'S BRIEF

STATEMENT OF THE KIND OF CASE

Respondent filed an action against the Appellant alleging that pursuant to a divorce between the parties, the Appellant and Respondent entered into a stipulation whereby Appellant agreed to pay certain obligations. That Appellant failed to pay said obligations. That thereafter, Appellant filed a voluntary petition in Bankruptcy. Respondent further alleged that the obligations set forth in the stipulation were not dis-

chargeable in bankruptcy as arising out of an alimony and maintenance provision of a divorce decree and thus not a provable debt in bankruptcy.

DISPOSITION IN LOWER COURT

The case was tried to the Court and from a verdict and judgment for the plaintiff, defendant appealed.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the judgment in his favor as a matter of law, or that failing, a new trial.

STATEMENT OF FACTS

In August, 1965, the Appellant commenced a proceeding for divorce against the Respondent. On September 2, 1965, Respondent through counsel informed the appellant's counsel of the terms under which a settlement of the divorce action could be effected. Thereafter in September, 1965 the Appellant and Respondent executed a stipulation wherein Appellant agreed to execute a promissory note to the Respondent in the amount of \$1,265.85 and agreed among other things, to pay a joint obligation to First Federal Savings and Loan Association in the amount of \$1379.83, an obligation owed to Zions First National Bank in the amount of \$2043.10 and an obligation owed to City Finance Company of Murray in the amount of \$471.64, and

to pay Respondent \$100.00 per month as alimony until her social security was reinstated.

Thereafter on the 27th day of October, 1965 the Court made and entered Findings of Fact, Conclusions of Law and a Decree awarding the Divorce Decree to the Appellant and approving the stipulation of the parties regarding alimony and property matters.

That in July 1966, Appellant was in the process of filing a voluntary petition in bankruptcy. That prior to such filing the Appellant did transfer to the Respondent a 1964 Dodge Truck in satisfaction of the promissory note set forth in the stipulation and executed in the favor of the Respondent in the amount of \$1265.85. That thereafter on the 28th day of July, 1966, the Appellant did file a voluntary petition in bankruptcy and did thereafter discontinue any payments upon the obligations set forth in the stipulation approved by the Court in the Divorce Decree, Civil No. 28806.

On August 5, 1966, the Respondent filed a complaint to collect the amount due under the promissory note and praying for judgment against the defendant for the amounts owed to First Federal Savings and Loan Association, City Finance Company of Murray, and Zions First National Bank. Appellant filed a motion for stay of proceedings asking the Court to stay the proceedings pending the completion of the bankruptcy hearings and the Court granted said stay of proceedings on the 20th day of September, 1966 al-

lowing Respondent 20 days to amend her complaint to show an avoidance of discharge in bankruptcy if she desired. Thereafter on the 7th of October, 1966, Respondent filed her amended complaint alleging that the obligations arose out of an alimony and maintenance provision of a Divorce Decree and were not dischargeable in bankruptcy and praying for judgment against the Appellant for the amounts set forth in the complaint.

STATEMENT OF POINTS

POINT I

THE EVIDENCE IN THE RECORD AND THE APPLICABLE LAW DOES NOT SUPPORT THE TRIAL COURT FINDING THAT THE OBLIGATIONS TO FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION, CITY FINANCE COMPANY OF MURRAY, AND ZIONS FIRST NATIONAL BANK ARE FOR MAINTENANCE AND SUPPORT OF THE RESPONDENT AND THEREFORE NOT DISCHARGEABLE IN BANKRUPTCY.

POINT II

THE OBLIGATIONS SUED UPON BY THE RESPONDENT WERE CONTRACTUAL IN NATURE AND THE COURT ERRED WHEN IT FOUND THAT SUCH OBLIGA-

TIONS WERE FOR SUPPORT AND MAINTENANCE OF THE RESPONDENT. THAT SUCH OBLIGATIONS WERE DISCHARGED BY THE BANKRUPTCY PROCEEDINGS.

ARGUMENT

POINT I

THE EVIDENCE IN THE RECORD AND THE APPLICABLE LAW DOES NOT SUPPORT THE TRIAL COURT FINDING THAT THE OBLIGATIONS TO FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION, CITY FINANCE COMPANY OF MURRAY, AND ZIONS FIRST NATIONAL BANK ARE FOR MAINTENANCE AND SUPPORT OF THE RESPONDENT AND THEREFORE NOT DISCHARGEABLE IN BANKRUPTCY.

In asserting her claim against Appellant, Respondent relies upon *Section 17 of the Bankruptcy Act, Title 11, Bankruptcy, Section 35, U.S.C.A.*, which provides:

“Debts not effected by a discharge. a. A discharge in bankruptcy shall release a bankrupt from all of his provable debts whether allowable in full or in part, except such as (1) . . . ; (2) . . . or for alimony due or to become due, or for maintenance or support of wife or child, . . .”

Thus, the burden of proof upon Respondent was to establish proof by a preponderance of the evidence

that the debts owed to First Federal Savings and Loan Association, Zions First National Bank and City Finance Company of Murray were the obligation of the Appellant in order to provide for the support and maintenance of the Respondent.

The record disclosed that at the time of the trial the Plaintiff-Respondent had remarried (TR p. 5, lines 1 to 3):

(Mr. Hinton) "Q You have remarried, have you not, since this complaint has been filed?"

(Irene Erickson) "A Yes. The name is Robison."

It further discloses the purpose of the parties in having the Appellant, Mr. Beardall, enter into an agreement and stipulation for the payment of certain debts to aggregate the amount of funds the Respondent had brought into the marriage. (TR p. 5, lines 19 through 26):

(Mr. Hinton) "Q Did you have any funds at the time you married Mr. Beardall?"

(Irene Erickson Robison) "A Yes."

(Mr. Hinton) "Q Can you tell the Court how much?"

(Irene Erickson Robison) "A Nearly \$5,000.00. \$4,700.00 and some odd dollars."

(Mr. Hinton) "Q And did you have any of those funds at the time of the divorce?"

(Irene Erickson Robison) "A No."

and (TR p. 26, lines 14 to 22):

(Mr. Jeffs) "Q Now, if I understood you correctly, the purpose of the stipulation and of the transfer of these various properties, and of Mr. Beardall's assuming the obligations on these three debts, was to reimburse you for funds that you had at the time that you went into the marriage?"

(Irene Erickson Robison) "A Yes."

(Mr. Jeffs) "Q To replace or in effect to replace the property that you had prior to your going into the marriage?"

(Irene Erickson Robison) "A Yes."

The fact that the assumption of the obligations set forth in the stipulation in the divorce proceedings which was received as evidence (TR p. 47, lines 25 to 30 and p. 48, lines 1 and 2) to reimburse Mrs. Robison for funds she had prior to the marriage is further established by Mr. Hinton's letter of September 2, 1965 (Exhibit 5-D):

"Mrs. Beardall had in her bank account the sum of \$4,734.36 at the time of their marriage. This has all been spent primarily on Mr. Beardall's bills and for automobiles. If we were to figure interest at four per cent on this amount without the interest being compounded for the seven months in 1963 in which they were married, all of 1964 and for the first eight months of this year, the total interest would be \$426.06. This added to the original amount would make \$5,160.42.

There are three accounts on which money is owed and which Mr. Beardall agreed that he should pay. One of these was for siding on the

house for \$1,379.83, for the 1965 Valiant automobile, \$2,043.10 and \$471.64 to City Finance. This amount totals to \$3,894.57. If that figure is subtracted from the total amount she should have coming, it would leave a balance of \$1,265.85."

The promissory note in the sum of \$1,265.85 (Exhibit 4-P) was executed to make up the difference between the sum of the three obligations assumed by Mr. Beardall and the amount claimed by Mrs. Robison together with interest as necessary to reimburse her for the funds brought to the marriage.

Respondent claims the assumption of these debts was for her support and maintenance. However, the court will note from an examination of the file in the divorce proceeding that the divorce was granted to Appellant herein. Under such circumstance, the court in the divorce matter would not be obliged to provide for the support of the offending party. In this divorce the parties resolved that matter by providing in their stipulation and agreement that Mr. Beardall should pay Mrs. Robison \$100.00 per month until her social security was reinstated, which he did. (TR p. 16, lines 17 to 20 and p. 28, lines 17 to 23).

The dischargeability of debts and obligations of parties to a divorce under a property settlement agreement or a support and maintenance agreement is discussed by various texts and treatises as well as in the case law.

An annotation in 104 *A.L.R.* at p. 722 collects

and groups the cases construing and applying the provision of the Bankruptcy Act excepting debts for maintenance or support of wife and child from discharge. Therein the annotator cites several cases holding that agreements entered into prior to divorce wherein the husband agrees to pay payments to the wife which will continue after the divorce are held to be support matters and not dischargeable under the Bankruptcy Act. However, the annotator goes on to say at page 724:

“The exception of the Bankruptcy Act under consideration does not, however, extend to all claims for maintenance or support.”

Under this portion of the annotation the annotator is quoted as follows:

“In *Re Ostrander* (1905; D. C.) 139 F. 592, Am. Bankr. Rep. 96, it was held that the provision of the Bankruptcy Act exempting from discharge liabilities for maintenance or support of wife or child did not include a debt incurred by the husband for the services of a physician to attend the wife while she was in a normal relationship to her husband. The court said: “If so, a person supplying goods for a wife or child, or rendering a service necessary for support or maintenance, at the request of the husband, without delinquency on his part, would be beyond the scope of the act. The grocer, the marketman, clothiers of all description, physicians, dentists,—in fact all who, by service or sale, contribute to the support of the family and whereby to the support of a wife or child,—would have claims not dischargeable under the act.”

"In *Loman v. Locke* (1921) 240 Mass. 551, 134 N.E. 343, 48 Am. Bankr. Rep. 198, it was held that a judgment for board, clothing, and medicine furnished the defendant's wife and child was a claim provable in bankruptcy, and not within the provision of the Bankruptcy Act exempting from the effect of discharge liabilities for maintenance and support of life and minor children."

"In *Schellenberg v. Mullaney* (1906) 112 App. Div. 384, 98 N.Y.S. 432, 16 Am. Bankr. Rep. 542, it was held that § 17 of the Act of 1905, excepting "liabilities for alimony due to or to become due or for maintenance or support of wife and child" from discharge, referred only to the involuntary liability under the common law for support of wife and children, and to anyone who relieved their wants, but that it did not refer to liability for goods purchased by a husband or parent and used by wife or child, and that a debt for such goods was discharged by a discharge in bankruptcy."

In the comprehensive 10 volume work *Collier on Bankruptcy*, 14th Edition, Volume 1, page 1646, the particular matters involved in the case now before the court have been discussed:

"The above quoted portion of clause (2) applies to the common law liability involuntarily imposed upon the parent for support of wife or child.³"

"It was intended to include liability where a parent had failed or refused to make a provision for maintenance and such was furnished by another.⁴"

“It does not include contracted liabilities for goods purchased (although these be necessities)⁵ medical attendance furnished,⁶ or board supplied⁷ by a parent for the use and benefit of the wife or child.⁸”

Also in the more recent publication of *Collier Bankruptcy Manual*, 2nd Edition, under Section 17, page 212:

“With respect to maintenance or support, the statute applies to the common-law liability involuntarily imposed upon the parent for the support of wife or child. “It was intended to include liability where a parent had failed or refused to make provision for maintenance and such was furnished by another.”⁴ It does not include contracted liabilities for goods purchased (although these be necessities), medical attendance furnished, or board supplied, by a parent for the use and benefit of the wife or child.⁵”

This is further corroborated in 9 Am Jur 2d 793:

“It must be observed that this statutory exception to operation of a discharge applies only to direct liabilities based upon, or substituted for, legal support obligations. It does not refer to, or include, liability for goods purchased by a husband or parent and used by the wife or child, and such liabilities remain dischargeable in the bankruptcy of the husband or parent.³ . . .”

“In a number of cases it has been held or recognized that a property settlement agreement between spouses is dischargeable in bankruptcy, at least where it is truly or substantially a property settlement agreement, and not an agreement for alimony, support, or maintenance.⁵”

Many of the cases dealing with the question are not in point. The principal case relied upon at trial by Plaintiff-Respondent is *Lyon vs. Lyon* (1949) 115 Utah 466, 206 P.2d 148.

“That testimony was to the effect that prior to the divorce the parties had jointly owned an equity in a home in Indiana, but before the divorce that home was placed in the wife’s name alone; that at the time the written stipulation was signed; it was understood between the parties that the \$5,000 was for her support and maintenance, and the payments on the house mortgage were for the same purpose, and that the insurance was to assure her at least \$5,000 for the same purpose . . . All obligations “for maintenance or support of wife or child,” whether denominated alimony by the state statute or note, are such as are not dischargeable in bankruptcy. It follows, therefore, that the real issue in this case is not, as the parties have argued, whether the award of the divorce decree was alimony or a property settlement, but rather whether the “property settlement” was really an award for the support and maintenance of the defendant’s wife . . . Thus, looking behind the decree and the stipulation, the conclusion seems inescapable under the authorities cited that much of the property awarded, without regard to the order for payment of the mortgage upon the home, or the judgment for \$5000, or the order for maintenance of the insurance protection, was ‘in the nature of alimony,’ and designed and contemplated by the parties to be for the support and maintenance of the plaintiff.

“Such a conclusion is further supported by

consideration of the years that the parties maintained the domestic relationship, by the fact that she was a stenographer and self-sustaining before marriage, that she is now 56 years old and thus practically unemployable in her profession, and by her positive testimony that in the attorney's office at the time of drawing the stipulation the payments of money were referred to as being for her support and maintenance, and by the defendant's admission that support and maintenance of the plaintiff was discussed there." . . . The fact that the husband was to pay off the mortgage on the home, that he was to pay the alimony in gross in monthly installments of \$50, that he was to carry insurance on his own life with his former wife as beneficiary, and that she received nearly all of the household furniture, all point to the idea of support. The evidence adequately supports the findings and holdings of the trial court . . .

The court in this case relied heavily upon the fact that there had been 22 years of marriage, that the award was made to pay \$5,000 in installments directly to the wife, that life insurance was to be carried on the life of the defendant with the plaintiff as beneficiary and the award of 15/16ths of the property directly to the plaintiff wife.

The present case can be distinguished from the *Lyon* case on numerous grounds.

(a) Divorce granted to Appellant against the Respondent imposing no automatic legal duty of support,

(b) Marriage for just over two years,

(c) Testimony of Respondent that payments were to reimburse her for funds she had at the time of marriage (TR p. 26(lines 14 to 22),

(d) Payments to be made to creditors not to Respondent,

(e) Was not a payment for support, but agreement to hold harmless,

(f) The nature of the obligations; siding, (TR p. 23, lines 19 to 28), Encyclopedia and color television (TR p. 24, lines 20 to 28), and an automobile (TR p. 25, lines 20 to 28).

Since Respondent has claimed that these obligations were to reimburse her for funds brought into the marriage and loaned to or used in behalf of Appellant, the 1950 cases of *LaRue vs. LaRue*, 341 Ill. App. 411, 93 N.E.2d 823, is almost directly in point. Sarah LaRue brought a proceeding for a rule to show cause why William LaRue should not be punished for contempt of Court in neglecting and refusing to comply with an order in a divorce decree to pay plaintiff an amount loaned by her to defendant. The trial court found the defendant guilty in contempt and committed him to jail until he purged himself thereof. The appeal court reversed, saying:

“It is well settled that upon adjudication in bankruptcy, title to all the bankrupt’s property vests in the trustee in bankruptcy as of the date of the filing of the bankruptcy petition, and the bankruptcy court has exclusive jurisdiction, pos-

session and control of the estate of the bankrupt which cannot be affected by proceedings in the State Court . . . Furthermore, where the jurisdiction of a bankruptcy court has intervened, no state court can proceed with a pending suit to recover a dischargeable debt except by permission of the bankruptcy court Ordinary money payments directed to be made by judgments or decrees are civil debts and dischargeable in bankruptcy . . . A decree for alimony is not an ordinary money decree and is not regarded as a debt owing from a husband to his wife, but rests on the natural and legal duty of the husband to support his wife and is not discharged by an order of the bankruptcy court . . . In the instant case, the original divorce decree found that appellant was indebted to appellee for \$1300 for money loaned by appellee to appellant and ordered appellant to pay that sum to appellee and created a lien upon any real estate owned by appellant within this State and directed a money judgment to be entered for that amount. The payment so directed was for money loaned and did not arise as a result of the marital relation of the parties. The obligation was a civil debt and not alimony and was dischargeable in bankruptcy . . . Inasmuch, however, as appellant had been adjudicated a bankrupt prior to the time the instant petition seeking to adjudge him in contempt was filed, the contempt order issued by the City Court was not proper. The order appealed from is therefore reversed.

The *Lyon* case was decided in 1949 and thereafter this court was faced with the more specific question involved in the case now before the court, that is, whether

the decree of a trial court ordering the husband to pay obligations incurred during marriage is dischargeable in bankruptcy.

612 *Fife vs. Fife* (1954) 1 Utah 2nd 281, 265 P.2d 662, wherein the court said,

“The parties married in 1944 during the interlocutory period of defendant’s previous divorce. Early in 1952, plaintiff was granted an annulment of the marriage and was awarded certain jointly-acquired property. At the same time, defendant was ordered to pay designated creditors having claims against the property. He failed to pay and was cited to show cause why he should not be held in contempt. On the day before hearing, he filed bankruptcy schedules, listing, among other, the debts he had been ordered to pay. Next day he was adjudicated a bankrupt and made proof of such fact by certificate. Six months later on plaintiff’s petition which prayed only punishment for contempt, he was again cited. He was not found in contempt, but the court entered judgment against him and in favor of the plaintiff for the amount she had been forced to pay the creditors in the meantime.”

“Defendant contends that his adjudication gave the bankruptcy court jurisdiction over his assets and liabilities; that any claim by plaintiff necessarily was adjudicable there, and that the state court had no authority to enter the judgment, subject to this appeal. Plaintiff reasons otherwise, urging that to deny such authority would emasculate a state court’s power to grant equitable relief simply by seeking sanctuary in bankruptcy; . . . It follows, and we

hold, that the judgment entered after the adjudication evidenced a provable claim in bankruptcy,³ that it was "in esse" prior to the adjudication, not within the "exception to discharge" language of Sec. 17 of the Act, 11 U.S.C.A. § 35,⁴ and not a claim of such nature as not to be provable in bankruptcy,⁵ and consequently the state court was without authority to enter such judgment . . . Without deciding the point, we can say that bankrupts frequently and generally are relieved of obligations imposed by state courts . . . Plaintiff had a remedy, for what it might be worth, by resort to defendant's assets in the bankruptcy proceeding, along with other creditors. To declare a preference for her under the facts of this case, where a judgment came after, instead of before, and when it could have come before, instead of after the adjudication, — when it would have been dischargeable, — would seem unrealistic, unfair and circumventive of the unburdening purpose of the bankruptcy act."

The court held that the obligation to pay creditors was dischargeable in bankruptcy.

The annotation in 74 *ALR* 2d 758 reviews the dischargeability of property settlement agreements between spouses. It sets forth the general rule that property settlement agreements are dischargeable unless such agreement is held to be in the nature of support as in the *Lyon* case.

Cited therein in support of the general rule is *Tropp vs. Tropp* (1933) 129 Ca. App. 62, 18 P.2d 385, wherein a case similar to the case now before the

court, an agreement was entered into for the payment of \$250.00 per month for support and maintenance until remarriage and a \$50,000.00 property settlement to be made in monthly payments. The court held that though the support payments were non dischargeable in bankruptcy, the \$50,000.00 payment constituted a debt incurred in effecting a property settlement and was dischargeable. This is to be analogized to the case now before the court where support payments were established by the agreement of the parties at \$100.00 per month pending the reinstatement of social security payments and the obligation of the payment of the three named creditors was to reimburse the Defendant-Respondent for money she brought into the marriage.

Also in *Goggans vs. Osborn* (1956, CA9 Alaska) 237 F2d 186, where the court held a property settlement dischargeable in bankruptcy, and the principal case on which the annotation is founded, *Smalley vs. Smalley* (1959) 176 Cal App 2d (Adv 402), 1 Cal Rptr 440, 74 ALR 2d 756, wherein the court held that the parties agreement to settle property rights in lieu of alimony, and where alimony had been waived in consideration of the agreement for the property settlement was nevertheless dischargeable in bankruptcy.

Also the annotator draws reference to *Fernandes vs. Pitta* (1941) 47 Cal App. 2d 248, 117 P.2d 728, where a wife had obtained a judgment on four unpaid notes and the court therein said that though the subject of maintenance and support was incidentally mentioned in the contract, that the notes were given for the pur-

pose of settling the rights of property and support between the parties and were held to be dischargeable in bankruptcy, distinguishing the case of *Remondino vs. Remondino* case cited for the proposition that certain support obligations are not dischargeable.

Attention is also drawn to the case *Stoutenberg vs. Stoutenberg*, 285 Mich. 505, 281 N.W. 305, wherein a decree ordering the husband to clear the obligation on the mortgage on a home was held to be dischargeable in bankruptcy.

The testimony of the Plaintiff-Respondent that the obligations assumed were to provide reimbursement to her of funds held prior to marriage, the nature of the particular debts involved, and the fact that the divorce was awarded to the Appellant hereunder, viewed in the light of the case and textual citations set forth herein all amply demonstrate that the payments were not for the support and maintenance of the Respondent and was a dischargeable debt under the Bankruptcy Act.

POINT II

THE OBLIGATIONS SUED UPON BY THE RESPONDENT WERE CONTRACTUAL IN NATURE AND THE COURT ERRED WHEN IT FOUND THAT SUCH OBLIGATIONS WERE FOR SUPPORT AND MAINTENANCE OF THE RESPONDENT. THAT SUCH OBLIGATIONS WERE DISCHARGED BY THE BANKRUPTCY PROCEEDINGS.

Examination of the file in Civil No. 28806 received in evidence (TR 47, lines 25 to 30 and p. 48 lines 1 and 2) discloses that your Appellant herein was awarded the decree of divorce from Respondent. The Court founded the grounds upon cruelty of the Respondent. The court then found the stipulation of the parties to be reasonable and approved the same. The court did not make an order with respect to the matters set forth in the stipulation but merely approved it.

It is also drawn to the court's attention that this action was not brought under the contempt powers of the court in the divorce matter but was commenced as a separate matter pleading the stipulation and agreement of the parties and asking for a money judgment. The Respondent herself by her proceeding considered this to be in the nature of a contractual obligation.

A similar circumstance was presented to the court in *Wintrobe vs. Connors* (1941) 67 Ohio App. 106, 46 Am. B.R. (N.S.) 751, 35 N.E. 2d 1018.

This was an action founded on a contract between the plaintiff and the defendant whereby the plaintiff agreed to furnish support and care for the minor child of the defendant at the rate of \$1.00 per day. Thereafter, defendant filed a voluntary petition in bankruptcy and plaintiff brought suit upon the claim. In handing down its ruling the court said at page 1020:

“(1) It is significant that since the amendment of the Bankruptcy Act in 1903, the courts have, without deviation or dissent, interpreted

that part of the section referred to in this case as including only such liability as is imposed by law and not such as is created by contract. In this we think the legislative intent and purpose in passing the amendment has been correctly interpreted. Contract liabilities have always been discharged in bankruptcy, while it has always been the policy of the Bankruptcy Act to refuse the right of discharge from debts created through certain actionable wrongs."

The court thereupon went on to rule that the finding of the lower court that the debt upon which the action was founded in the case before the court was discharged in bankruptcy was correct as being founded upon the contractual agreement of the parties.

The question here is not whether Appellant has complied with an order of the equity court in the divorce matter, but whether his agreement entered into in conjunction with a divorce proceeding is dischargeable under the applicable provisions of the Bankruptcy Act.

Under the discretionary powers of the equity court, where as here the Decree of Divorce was awarded to Appellant upon a finding against the Respondent, the court was not obliged to make any award for support.

The stipulation was a contractual agreement between the parties. It recited that the Appellant would pay the obligation to First Federal Savings and Loan Association for siding placed upon the residence of Respondent (TR p. 23), lines 19 to 28): the obligation to City Finance Company of Murray, for an encyclo-

pedia and color television (TR p. 24, lines 20 to 28); and the obligation to Zions First National Bank on a Valiant automobile (TR p. 25, lines 20 to 28) all for items not in the nature of support, but only as testified to by Respondent and as itemized in the letter of September 2, 1965 (Exhibit 5-D) for reimbursement of funds of the Respondent prior to her marriage to Appellant.

CONCLUSION

Appellant asserts to the court that in the circumstances presented by this case, i.e., a divorce granted to the husband, agreement and stipulation of the parties that the husband will pay certain obligations to creditors as a return of funds the wife brought to the marriage, stipulation providing for payment of support of \$100.00 per month until reinstatement of social security, only two years of marriage, and the nature of the obligations assumed by the husband; the claim of the wife was a debt dischargeable in bankruptcy. Appellant respectfully urges that the judgment of the trial court should be reversed.

Respectfully submitted,

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