

1963

Margeret C. Sartain v. Vernon C. Sartain : Brief of Plaintiff and Appellant

Utah Supreme Court

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Ronald C. Barker; Attorney for Margaret C. Sartain; B. L. Dart, Jr.; Attorney for Vernon C. Sartain;

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IN THE SUPREME COURT OF THE
STATE OF UTAH

APR 16 1964

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MARGARET C. SARTAIN,

Plaintiff and Appellant,

vs.

VERNON C. SARTAIN,

Defendant and Respondent.

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Clerk, Supreme Court, Utah

BRIEF OF PLAINTIFF AND APPELLANT

Appeal from the Judgment of the Third
Judicial District Court in and for
Salt Lake County, State of Utah
Honorable A. H. Ellett, Judge

Ronald C. Barker
2870 South State
Salt Lake City, Utah
Attorney for
Margaret C. Sartain

B. L. Dart, Jr.
411 American Oil Building
Salt Lake City, Utah'
Attorney for
Vernon C. Sartain

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IN THE SUPREME COURT OF THE
STATE OF UTAH

MARGARET C. SARTAIN,)
Plaintiff and Appellant-)
vs.) No. 9954
VERNON C. SARTAIN,)
Defendant and Respondent.)

BRIEF OF PLAINTIFF AND APPELLANT

STATEMENT OF THE KIND OF CASE
Complaint and counterclaim for
divorce.

DISPOSITION IN LOWER COURT

The lower court dismissed plaintiff's
complaint, awarded defendant a divorce on
his counterclaim on grounds of mental cruel-
ty, and denied plaintiff's motion for a
new trial.

RELIEF SOUGHT ON APPEAL

Plaintiff and Appellant seeks an order awarding her a decree of divorce and dismissing Defendant-Respondant's complaint as a matter of law, or failing that, for an order remanding the case to the District Court to receive newly discovered evidence or for a new trial.

STATMENT OF FACTS

Appellant Mrs. Sartain filed suit for divorce on grounds of mental cruelty and Respondent counterclaimed on the same grounds. The case was tried to the court setting without a jury and judgment was entered in favor of Respondent on his counterclaim.

In support of Appellant's claim for divorce evidence was adduced as

acts, omissions and misconduct by Respondent (which are discussed in detail elsewhere in this brief), including but not limited to Respondent's habitual, violent and ungovernable temper and his use of foul and abusive language toward Appellant in the presence of the minor children (see pages 12-16-26-28), his wrongful accusations of unchastity by Appellant (see pages 10-17-25-26), his failure to keep his person clean and free from odors (see pages 10-11-13-17-25-26), his commission of various acts of violence and abuse against Appellant, their children himself, and Appellant's property (see pages 10-12-13-17-18-19-20-25-26).

Appellant, Mrs. Sartain, lost interest in and declined to have sexual relations with Respondent during the last 2 1/2 months of the marriage (R.86)

because of his misconduct and general pattern of conduct (see pages 10-12-13-17-18-19-20-25-26), his body odors (see pages 10-11-13-17-25-26) accusations of unchastity (see pages 10-17-25-26).

Shortly after the trial, Appellant Mrs. Sartain, learned from her physician that her desire and ability to have sexual relations was adversely affected by a serious medical condition which required immediate surgery for the removal of her female organs. She immediately filed a motion for a new trial based upon this newly discovered evidence and by reason of the insufficiency of the evidence to support the verdict of the Court (R.43), which motion was denied by the Court (R.162). The Court apparently applied a standard of conduct applicable to the old South and Tennessee, the area where both the Judge and Respondent's parents

were raised, and where the rights of women were almost non-existent. (R.151,158).

The Court attempted to force a reconciliation, however the problems were too basic and the parties were unable to reconcile. It appears that the Court felt that Appellant was unreasonable in her refusal to reconcile and awarded judgment against her because she did not agree with him. (R.158)

POINT I

THE COURT ERRED IN AWARDING THE DIVORCE TO THE DEFENDANT

The court found little grounds for divorce by either party (R.156,L. 21-22) and attempted to force a reconciliation (R.153-155; R.156-158). The case was continued for three weeks to give the parties an opportunity to try to work out a reconciliation, however the parties failed to reconcile and the Court awarded the divorce to the husband for the apparent reason that he felt that Appellant had been "...unreasonable, arbitrary, capricious, and making no effort to agree with him" (R.158, L. 10-12) in not working out a reconciliation. It appears that the Court decided that there should not be a divorce and awarded the decree against Appellant because the Court thought that

Appellant should take Respondent as she found him, (R.158) rather than awarding the divorce on the basis of the evidence received in the case.

Both parties sought divorce on the same grounds, that of mental cruelty. If in fact, as the Court stated (R.156), little grounds existed for divorce by either party, the divorce, if granted at all, should have been granted in favor of Appellant because a husband asking for divorce because of "great mental distress" caused by Spouse must present a much stronger and somewhat aggravated case in comparison with that required of a wife asking for divorce on such ground, since wife may be more easily made to suffer "great mental distress". Hyrup v. Hyrup, 66 U. 580, 245 P. 335. The Courts

usually grant a wife a decree on the ground of cruelty on much less evidence than they do the husband. Before a decree is granted to the husband on such ground, it ought to be a somewhat aggravate d case. Doe v. Doe 48 U.200, 212,158 P.781. The Court expressly foundthat Respondent had ". . . not acted in an exemplary manner. .." (R. 36, Par. 5) but attempted to excuse his conduct by stating that it ". . .appears that to a large extent the defendant's actions were in response to plaintiff's treatment of him." (R. 36, Par. 5) This finding, coupled with the statement of the Court that little grounds existed for divorce (R.156) clearly indicates that Respondent is guilty of misconduct at least as great as the

alleged misconduct of Appellant, however it is quite obvious from the record that the reverse is true and that appellants conduct toward Respondent were the result of his treatment of her. The findings of the Court with respect to the alleged acts done by Appellant causing Respondent ". . .great mental distress. . ."
(R. 36, Par. 7), which are the basis of the judgement entered, will each be discussed separately as follows:

A. ". .REFUSAL TO HAVE SEXUAL RELATIONS . . ." for several months immediately preceeding the commencement of this action (R. 36, Par. 7).

The refusal of sexual relations existed for a maximum of two and one-half (2 1/2) months before the filing of the divorce complaint (R. 142) which is not

a sufficiently long period to constitute grounds for divorce and was fully justified, particularly where her refusal was provoked by the misconduct of Respondent, his unfounded accusation of sexual relations with other men, his offensive body odors and his mistreatment of the children of the parties (discussed in detail on pages 12-13-17-18-19-26 of this brief), McDonald v. McDonald, 253 P. 2d 249, 197 or 275. It would indeed be unusual for sexual relations to continue to the date of separation where the causes of separation were continuing acts of cruelty as in this case.

It further appears that the refusal of sexual relations was largely the result of Appellant's physical condition and her need for surgery on her sexual organs (R.

43-44) and accordingly such refusal cannot constitute grounds for divorce. (see annotation at 4 ALR2d 235.)

The extent of the offensive odors about the body of Respondent is illustrated by his testimony tht on at least "three" occasions he bathed (R. 142) but that Appellant still stated that she did not want to have sexual relations with him because these isolated incidents did not remedy the problem.

B. ". . . MAKING MAJOR ECONOMIC COMMITMENTS FOR THE FAMILY WITHOUT CONSULTING THE DEFENDANT AND OBTAINING HIS CONSENT." (R. 36, Par. 7)

The record shows that in each instance the consent of the Respondent was obtained before financial obligations were incurred, (R. 136; R. 138) particularly those incurred within the last two years

to which period the court restricted the evidence, (R.133). Respondent controlled the funds as shown by fact that he signed all checks and the bank account was in his name (R.93). There simply is no evidence to support this finding and accordingly it should be set aside.

C. ". . .DEGRADING DEFENDANT IN CRITICIZING HIS IDEAS AND VIEWS AND MAKING HIM AN OBJECT OF REDICULE IN THE EYES OF THE CHILDREN . . ."(R. 36-37, Par. 7)

This finding is also unsupported by the evidence. It is doubtful if any thing that the Appellant could have done or said would have lowered the opinion of the children toward Respondent more than his own act and conduct in using foul language in their presence (R.68, 104), spitting in the face of the one child (R.94, 112-113), striking and injuring himself,

(R. 65-66, 113), inviting the children to kill him (R. 69, 94-97, 115-118), damaging the stove, walls, etc. (R. 68-69, 74, 113-115) his body odors, (R. 86, 92, 111-112) etc.

POINT II

THE COURT ERRED IN APPLYING A STANDARD OF CONDUCT APPLICABLE TO THE OLD SOUTH.

The court indicated that the trouble in this case was that Respondent had characteristics common to people from Tennessee and that Appellant just would not accept him as he was (R. 158); that the Court also had such characteristics, including stubbornness if he thought that he was right (R.151) and that he understood how Respondent reasoned.

Respondent's conduct should be measured by current conditions, standards of conduct and social customs common to this area, not by standards applicable to an area or era where women did not enjoy full rights and equality with men. If the argument that Respondent should be accepted as he is were carried to its logical conclusion, we would

thereby apply a subjective test to his conduct and all misconduct by Respondent would be excused since she would have to accept that conduct as a part of Respondent. Obviously, such a premise is absurd.

POINT III

THE COURT ERRED IN FAILING TO AWARD THE DIVORCE TO THE APPELLANT.

Appellant has numerous grounds for divorce against Respondent and is entitled to a divorce as a matter of law. Some off the grounds which exist in favor of Appellant are as follows:

A. Respondent regularly and habitually used foul and abusive language toward Appellant in the presence of the minor children of the parties, and exhibited a habitual violent and ungovernable temper to the extent that it rendered Appellant's life an oppressive and intolerable burden and made it impracticable to perform her marital duties. (R.10-11, 17-18, 20-21, 27-28, 68, 63,72,73,80, 103,104,115) 17 Am. Jur. Divorce & Separation 61, 198; Anno: 12 LRA NS 820; 12 Am. St. Rep. 699;

Rothwell v. Rothwell, 219 Or. 221, 347,
P. 2d 63.

B. Respondent wrongfully accused Appellant of going out with and having sexual relations with other men (R. 64, 71, 80, 85, 119, 120) 17 Am. Jur. Divorce & Separation 67, 194; 143 ALR 625, 653; Stevenson v. Stevenson, 13 U. 2d 153, 369 P. 2d 923.

C. Respondent has failed to keep his person clean and free of odors (R. 86, 92, 111-112) and refused to bathe regularly because of the cost of water (R. 86-87)

D. Respondent has made various false accusations against Appellant, and has otherwise conducted himself in such a manner as to make continuance of the marriage unbearable, including but not limited to the following:

(1) Wakened the entire family at 2:30 a.m. by loud radio (R. 62)

(2) Accused Appellant of being against him (R.63)

(3) Accused Appellant of marrying him for his money, although he had little money at any time during the marriage (R.64)

(4) Insisted upon keeping paper route although poor collections left little money for food after bill for papers was paid. (R. 63, 68,84)

(5) Refused to purchase furniture and household necessities and accordingly it was necessary for her to take baby sitting jobs to earn money to purchase such items (R. 89-90)

E. Respondent has committed various acts of abuse and violence against Appellant, the children of the parties, himself and has damaged or destroyed Appellant's property, including but not limited to the following:

(1) Spit in daughter's face at

at least three time (R. 94, 112-113).

(2) Ordered daughter out of the house (R. 94, 113)

(3) Struck daughter (R. 94, 113)

(4) Struck son with chair and telephone (R. 65,98,100,117)

(5) Handed sharp knives to Appellant and their minor children, who were as young as 8 years old, and asked them to cut his throat or to kill him (R. 20-21, 69, 94-97, 115-118)

(6) Bent Appellant's glasses and caused her nose to bleed, restraining her from going baby sitting to earn money for household expenses (R. 74, 75, 87, 89)

(7) Injured himself by striking himself on the head with pancake turner and with pan (R. 27-28, 65, 66, 113)

(8) Broke in the front door and door casing to enter house in violation of restraining order. (R. 10-11; 17-18

98-99, 104-105)

(9) Broke pan and damaged stove by striking stove with pan (R. 27, 69, 113, 115)

(10) Rammed his fist into the wall and thru windows in fits of anger (R. 74)

(11) Drove knife into wall and broke knife in fit of anger (R. 27-28, 68-69, 114-115)

Some of the above mentioned acts occurred after the Complaint was filed, but evidence of said acts was properly admitted by the Court as a part of an overall pattern of conduct and indicative of what might happen in the future. (R.66)

Anno: 25 ALR 1047, 61 ALR 1268, Vrontikis v. Vrontikis 11 U. (2d) 305, 358, P2d 632, and to ascertain the weight and color to be given to the conduct alleged as a grounds for divorce. 17 Am. Jur. Divorce & Separation 401; Jackson v. Jackson, 201

Oklahoma 292, 205 P. 2d 297, 7 ALR
2d 1410

POINT IV

THE COURT ERRED IN REFUSING TO GRANT APPELLANT'S MOTION FOR A NEW TRIAL.

The overwhelming weight of the evidence is contrary to the decision of the Court and a new trial should have been granted by reason thereof. *Moore v. James*, 297 P.2d 221, 5 U. 2d 91, Rule 59 (a) (6), URCP.

The motion for a new trial was filed also on the basis of newly discovered evidence as to Appellant's physical condition (R. 43) which affected her desire and ability to have sexual relations. The Court should have reopened the case to admit such newly discovered evidence or granted a new trial to permit Appellant to present such evidence. *Crellin v. Thomas*, 247 P. 2d 264, 122 U. 122 Rule 59 (a)(4) URCP; *Klopenstine v. Hays*, 20 U. 45, 57 P. 712; *Jensen v. Logan City*, 89 U.

347, 380, 57 P. 2d 708; Uptown Appliance and Repair v. Flint, 249, P. 2d 826, 122 U. 298.

The newly discovered evidence is of such a nature that it could not have been discovered with reasonable diligence, it was discovered after the trial and it is of such a nature that it is extremely probable that a different result would have been reached if said evidence had been presented since the Court's finding of cruelty (R. 36-37, Par. 7) was based primarily upon Appellant's failure to submit to sexual relations. 39 Am. Jur. New Trial 158, 164, 165, 174; Crellin v. Thomas, 122 U. 122, 247, P. 2d 264, Uptown Appliance and Repair Co. v. Flint, 122 U. 298, 249 P. 2d 826.

The Appellant's physical condition amounts to impotency occurring after mar-

raige which is not grounds for divorce.
Johnson v. Johnson, 107 U. 147, 152 P. 2d
426; 65 ALR 2d 776; 17 Am. Jur. Divorce
and Separation 164; 30-3-1(1), UCA, 1953.

CONCLUSION

The vile temper, acts of violence, wrongful accusation of unchastity and other unfounded accusations, uncleanness of body and general conduct and demeanor of Respondent clearly made married life with Respondent unbearable and destroyed the legitimate objects of the marriage. Certainly appellant's refusal of sexual relations during the last 2 1/2 months of the marriage was justified in view of the treatment she had been receiving from Respondent. The findings of the Court to the effect that Appellant made major economic commitments without consulting Respondent are untrue since the record clearly shows that in each instance he was consulted and his permission obtained. The finding of the Court to the

to the effect that Appellant degraded the Respondent and made him an object of ridicule in the eyes of the children is not supported by the evidence, and if in fact he was so regarded by the children, their opinions obviously resulted from his misconduct in their presence.

On the other hand, numerous grounds for divorce exist in favor of Appellant, including use of vulgar language toward Appellant in presence of children, exhibiting habitual violent and ungovernable temper, various acts of violence, false accusations of unchastity by Appellant, uncleanness about his body and various unfounded accusations concerning Appellant.

The only finding made by the Court which could possibly support the judgment is the refusal of sexual relations for the

2 1/2 month period, however that period is too short to constitute cruelty justifying divorce, and that situation was a direct and proximate result of Appellant's physical condition. Shortly after the motion for a new trial on grounds of newly discovered evidence as to her physical condition was denied, Appellant submitted to a hysterectomy to correct this condition. This is the very type of newly discovered evidence contemplated by Rule 59(a)(4), URCP, and the case should be ordered reopened to admit this evidence, or a new trial should be ordered to permit Appellant to produce this evidence.

The evidence in the record is so overwhelming in favor of Appellant that the judgment of the District Court should be reversed and a decree of divorce

entered in favor of Appellant as a matter of law. It should be observed that the wife need not present as much evidence of great mental distress as the husband because the wife is more easily made to suffer great mental distress. Hyrup v. Hyrup, 66 U. 580, 245 P. 335. It is obvious from the language used by the Respondent and his violent conduct that it would be very difficult to cause him to suffer great mental distress.

Respectfully submitted,

Ronald C. Barker
Attorney for Appellant
2870 South State Street
Salt Lake City, Utah