

1964

Margeret C. Sartain v. Vernon C. Sartain : Brief of Respondent

Utah Supreme Court

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Recommended Citation

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IN THE SUPREME COURT
OF THE STATE OF UTAH

FEB 4 - 1964

MARGARET C. SARTAIN

Plaintiff and Appellant

— vs. —

VERNON C. SARTAIN

Defendant and Respondent

Supreme Court, Utah

Case
No. 9954

RESPONDENT'S BRIEF

Appeal from a Judgment of the Third District Court
for Salt Lake County

HONORABLE A. H. ELLETT, Judge

B. L. DART, JR.

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IN THE SUPREME COURT OF THE STATE OF UTAH

MARGARET C. SARTAIN

Plaintiff and Appellant

— vs. —

VERNON C. SARTAIN

Defendant and Respondent

} Case
No. 9954

RESPONDENT'S BRIEF

STATEMENT OF THE KIND OF CASE

Complaint and counter-claim for divorce both based on the grounds of mental cruelty.

DISPOSITION IN LOWER COURT

The trial court dismissed the plaintiff's complaint and awarded defendant a divorce on his counter-claim. The trial court further denied plaintiff's motion for a new trial.

RELIEF SOUGHT ON APPEAL

Respondent seeks an affirmance of the judgment of the trial court.

STATEMENT OF FACTS

In this brief the parties will be referred to as they appeared in the trial court. The Statement of Facts as given in the plaintiff's brief presents only that testimony which is most favorable to her position. Since the case is equitable in nature and the court has the power to review the evidence, there follows a statement and discussion of pertinent testimony necessary to complete a review of the evidence in this case.

Plaintiff and defendant were married at Rupert, Idaho on October 18, 1942 (R. 60). Four children were born as issue of this marriage and the plaintiff had another daughter from a prior marriage who was adopted by the defendant (R. 60). The parties had lived together as man and wife for almost twenty years when this action for divorce was filed by the plaintiff. Defendant counter-claimed and the trial court, sitting without a jury, granted a judgment for divorce on defendant's counter-claim and dismissed the plaintiff's complaint (R. 158).

Testimony given at the trial shows that during the course of the marriage, plaintiff had on several occasions made major economic commitments for the family without first consulting defendant or obtaining his consent. Plaintiff arranged for the purchase of a car in the fall of 1961 that did not contain the features which the defendant desired it to have (R. 135-136). This transaction was completed by the plaintiff signing the defendant's name to the contract (R. 136). Approximately a year and a half prior to the institution of this action the

plaintiff without consulting the defendant purchased a new stove (R. 136-137). The same is true of the purchase of a refrigerator by the plaintiff (R. 137). Testimony was also given to show that plaintiff had incurred several debts without defendant's knowledge (R. 101, R. 137).

Plaintiff refused to have sexual relations with the defendant for several months prior to the time this action for divorce was filed (R. 86, R. 142), and only sparingly before then (R. 86). This refusal existed even though defendant was desirous of having sexual relations and attempted to overcome plaintiff's objections to sexual relations by acquiescing to her demands (R. 112, R. 127, R. 142).

The plaintiff criticized the defendant in many ways and ridiculed his ideas (R. 143-144). Plaintiff refused to let defendant make an addition to the garage (R. 143-144), or put in a garden behind the house (R. 73, R. 87-88, R. 139). She insisted that he do the yard work even though two teenage boys were available to do this work and the defendant was working full time (R. 87-88, R. 139). Plaintiff's criticism of defendant even extended to the point of being critical of the amount of food which he ate together with claims that defendant was a glutton (R. 141).

The trial of this case took only a half day and a review of the short transcript is recommended as there exists a myriad of charges and counter charges too numerous to recite here.

ARGUMENT

POINT I

THE TRIAL COURT PROPERLY AWARDED THE DIVORCE TO DEFENDANT ON HIS COUNTER-CLAIM.

After hearing the testimony, the trial judge felt that the parties might be able to effect a reconciliation and continued the case for three weeks to see if this was possible (R. 154-155).

At the end of this period, it appeared that no reconciliation was possible (R. 156-157), and grounds for divorce existing, there was no reasonable alternative but to grant a divorce. *Graziano v. Graziano*, 7 Utah 2nd 187, 321 Pac. 2nd 931. The trial judge gave the defendant a divorce on his counter-claim and dismissed plaintiff's complaint (R. 158).

The trial court in awarding the defendant the divorce entered its Findings of Fact and made the following statement in paragraph 7 of these findings:

“For a substantial period of time during the marriage, particularly during the last few months thereof prior to the institution of this action, plaintiff has treated the defendant cruelly, causing him great mental distress by refusing to have sexual relations with him for several months immediately preceding the commencement of this action; making major economic commitments for the family without consulting with defendant and obtaining his consent; by constantly degrading defendant and criticizing his ideas and views and making him an object of ridicule in the eyes of the

children of the parties and has otherwise so treated the defendant that the legitimate objects of the marriage have been destroyed and defendant is entitled to a decree of divorce from plaintiff on his counter-claim." (R. 36-37)

It is clear that the findings of the trial court state grounds sufficient to satisfy the requirements of 30-3-1 (7) U.C.A. 1953, which requires a showing of cruelty to the extent of causing great mental distress.

The record shows that the plaintiff failed to obtain the consent of the defendant in the purchase of a stove (R. 136-137) and a refrigerator (R. 37). She purchased a car without defendant being present and ignored his wishes relating to certain features which he desired the car to have (R. 135-136). She overruled his wishes with respect to the purchase of the house (R. 138). There was also testimony that plaintiff incurred debts on several charge accounts without first consulting the defendant (R. 137).

The plaintiff ridiculed the defendant for taking a paper route (R. 62), and on occasion refused to give him the car keys so that he could deliver his papers (R. 82-84).

Both the plaintiff and defendant testified that the plaintiff refused to let the defendant put a garden in behind the house (R. 73, R. 87-88, R. 139). The defendant testified that the plaintiff told him if he did put in a garden she would refuse to wash his clothes (R. 139). Plaintiff criticized the defendant for not keeping up the yard

and told him that it was his duty even though he was working full time and two teenage boys were available to do this work (R. 87-88, R. 139). Plaintiff's criticism of defendant extended even to the point of refusing him the right to eat breakfast (R. 116, R. 140), and accusing him of being a glutton and eating too much (R. 141).

Probably the most humiliating aspect of plaintiff's treatment of defendant was her complete refusal to have sexual relations with him for several months prior to the time they separated and this action for divorce was instituted (R. 86, R. 142), and her general reluctance to have relations prior to this period (R. 86).

Defendant's frustration and humiliation was heightened by plaintiff's demands that he gargle, brush his teeth, and bathe before she would sleep with him followed by a refusal to sleep with him even when he had complied with these demands (R. 112, R. 127, R. 142).

Plaintiff's opinion of defendant which she expressed to him on several occasions appeared to be one of general contempt and ridicule (R. 143, R. 144).

See 27A C.J.S. Divorce § 28 (1).

The effect that this treatment had upon defendant was a welling up of frustration, humiliation, and disgust; feelings which anybody under similar circumstances would have felt.

In the case of *Stevenson v. Stevenson*, 13 Utah 2nd 153, 369 Pac. 2nd, 923, this court in describing what con-

stitutes mental cruelty, pointed out that the determination to a large extent turns on the sensibility of the party suffering the cruelty. The following wording was used:

“What constitutes mental cruelty must be ascertained from the facts of each case. Whether defendant’s conduct was cruel and whether it caused plaintiff to suffer great mental distress can only be determined in light of the sensibility of this particular plaintiff. Persons’ sensibilities may vary due to their different degrees of intelligence, refinement, delicacy of health, etc. For this reason the same conduct may constitute mental cruelty in one case and not in another. The overall answer depends not so much on defendant’s conduct but rather on the effect such conduct had upon the plaintiff.”

In this case the record clearly reflects the ridicule, humiliation, and frustration felt by the defendant as a result of plaintiff’s conduct. There should be no question but what the trial court had sufficient reason to award a divorce to the defendant on the grounds of mental cruelty.

Although the discretion of the trial court in refusing or granting a divorce is subject to revision on appeal, the general rule is that the trial court’s judgment in this respect will not be reversed unless it is clearly shown that its power has been improperly exercised. 27A C.J.S. Divorce § 194 (5); also *Curry v. Curry*, 7 Utah 2nd 198, 321 Pac. 2nd 939; *MacDonald v. MacDonald*, 120 Utah 573, 236 Pac. 2nd 1066; *Greener v. Greener*, 116 Utah 571, 212 Pac. 2nd 194.

In the *Curry* case cited above, this court stated this principle in the following language:

“The precept is well recognized that the trial court is vested with broad equitable powers in divorce matters and that its judgment will not be disturbed lightly nor at all unless the evidence clearly preponderates against his findings, or there has been a plain abuse of discretion or a manifest injustice or inequity is wrought.”

Plaintiff's reliance on the old doctrine as stated in the cases of *Doe v. Doe* (1916), 48 Utah 200, 158 Pac. 781, and *Hyrup v. Hyrup* (1926), 66 Utah 580, 245 Pac. 335, that the husband must make a stronger case than the wife in order to be entitled to a decree of divorce on the grounds of mental cruelty does not appear to be fully justified. This doctrine which comes from a more chivalrous age is based upon the theory that the woman is more sensitive than the man and that she is not so well able to take life's buffeting. *Aldredge v. Aldredge*, 119 Utah 504, 229 Pac. 2nd 681.

In the years since the *Doe v. Doe* and *Hyrup v. Hyrup* cases this court appears to have moved away from this doctrine. In the cases of *Lundgren v. Lundgren* (1947), 112 Utah 31, 184 Pac. 2nd 670, and *Wooley v. Wooley* (1948), 113 Utah 391, 195 Pac. 2nd 743, the court acknowledged the existence of the doctrine but then went on to support the decree of divorce for the husband stating that there may have been circumstances seen by the trial judge who was able to see the witnesses which may have presented a stronger case for the husband.

A more recent opinion dealing with the situation where one party sues for divorce on the grounds of mental cruelty and the other party counter-claims on the same grounds is *Hendricks v. Hendricks* (1953), 123 Utah 178, 257 Pac. 2nd 366. In this case the trial court had refused to grant a divorce to either the wife or the husband on the theory that both were guilty of cruel treatment. The Supreme Court remanded the matter to the trial court for further proceedings and in so doing used the following language:

“ . . . Our policy has been to take into consideration the practical exigencies of such situations and in cases such as the instant one, where both are at fault, approve the granting of a divorce to the one least to blame.”

Further in the opinion, the court made this statement:

“In view of the fact that neither spouse is accused of the commission of a felony, adultery, or any other heinous offense, but the reciprocal claims rest upon various acts and omissions, alleged to constitute cruelty to the other, the trial court would be performing its function in the administration of justice by determining which party was least at fault, granting a divorce and adjusting their rights giving due consideration to the applicable factors outlined in our recent opinion of *McDonald v. McDonald*.”

In the *Hendricks* case there was no mention of the doctrine that the husband has the duty of presenting a stronger case in order to be entitled to the divorce.

POINT II

THE TRIAL COURT PROPERLY REFUSED TO AWARD THE DIVORCE TO THE PLAINTIFF.

As was acknowledged in the trial court Findings of Facts (R. 36), the defendant's conduct was not always exemplary. It appears, however, that most of the conduct complained of by the plaintiff was in response to plaintiff's treatment of defendant.

Defendant's use of strong language and flares of temper were generally in response to excitement by the plaintiff. Examples of this were when she refused to give him the car keys so he could deliver his papers (R. 82-84); when she refused to let him put in a garden (R. 73-74); when she refused to have sexual relations (R. 71, R. 119); her objections to his delivering papers to supplement the family income (R. 63).

The accusations of unchastity by defendant were only bitter insults incited by plaintiff's refusal to have sexual relations with him and his frustration flowing from this refusal (R. 119). This is shown in one instance by plaintiff's own testimony on pages 70-71 of the record.

“Q. Immediately before we filed the complaint in June of 1962, were there any incidents — excuse me — that caused any particular difficulty between you and your husband?

A. Yes.

Q. What?

A. He says, ‘Why won’t you be my wife?’

Q. When was this, and where was this?

A. This was on numerous occasions in the bedroom.

Q. All right. Let's take a specific instance when he made that statement. Then what was said beyond that?

A. He said, 'You must be getting it from somebody else because you won't give it to me.' "

It is possibly true that defendant did not bathe as often as plaintiff desired but there is evidence to show that he had never bathed more often than once a week (R. 111).

The plaintiff has in Point III of her brief under Sections D and E listed several charges against the defendant some of which are true but many of which are not or deserve amplification.

The radio referred to by plaintiff was used by the defendant to awaken him for his paper route (R. 81). (Appellant's brief, Point III, D-1.)

There was no showing that the paper route did not make a profit only the plaintiff's assertion that she never saw the money (R. 84). (Appellant's Brief, Point III, D-4.)

Defendant did not refuse to buy the furniture desired by plaintiff, but only insisted that he would like to save his money so that he could pay cash (R. 75). The record reflects that the defendant did supply the household necessities (R. 75). (Appellant's Brief, Point III, D-5.)

The incidents where defendant struck his son were both accidents (R. 100, R. 117, R. 118). (Appellant's Brief, Point III, E-4.)

The effect on plaintiff of defendant's actions warrants some attention, particularly in light of the definition of mental cruelty set out in the case of *Stevenson v. Stevenson*, 13 Utah 2nd 153, 369 Pac. 2nd 923. During the incident where defendant drove a paring knife into a wall and damaged the stove in a demonstration of anger (R. 68), plaintiff's response was not one of horror or shock as would be expected, but only concern for the loss of the knife as seen in this excerpt of testimony on page 68 of the record:

“Q. Then what?

A. Then he walked into the — he was standing in the doorway, and then he turned around and grabbed a knife off the table and slammed it into the wall and broke the blade. I think he may have cut his hand. I don't know. So I went into the front room because I didn't want to listen to him any longer, and then he come into the doorway between the front room and the kitchen, and I said, 'You are going to have to buy me a new paring knife. That cost thirty-nine cents. Tax makes it forty-one.' I says, 'I need a paring knife for all-around purposes, and I am just fed up,' and he sat down to the kitchen table and started using foul and abusive language.”

Plaintiff has not shown that the trial court abused its discretion in refusing to grant her a divorce on the

grounds of mental cruelty. The extent of the trial court's discretion is shown in this statement taken from 27A C.J.S. Divorce Section 194 (7):

“Unless the decree is palpably wrong or manifestly against the weight of the evidence or unless the evidence in support of the decree is so slight as to indicate an abuse of discretion a decree granting or refusing a divorce will not, as a rule be disturbed where the record amply supports the decree, where the judgment is sustained by competent evidence, or where the evidence is conflicting.”

POINT III

THE TRIAL COURT PROPERLY REFUSED TO GRANT APPELLANT'S MOTION FOR A NEW TRIAL.

After the judgment was entered plaintiff moved for a new trial (R. 43-44). This motion was based on the grounds that the evidence was insufficient to justify the judgment of the trial court, Rule 59 (a) (6), U.R.C.P., and also that new evidence had been discovered which warranted a new trial. Rule 59 (a) (4) U.R.C.P.

Generally speaking, a motion for a new trial is addressed to the sound discretion of the trial court and the court may exercise considerable discretion in passing on the application. *Greco v. Gentile*, 88 Utah 255, 53 Pac. 2d 1155; *McMaster v. Salt Lake Transportation Company*, 108 Utah 207, 159 Pac. 2d 121; *Fuller v. First Security Bank of Utah*, 12 Utah 2d 350, 366 Pac. 2d 701. See also 66 C.J.S. New Trial § 201 p. 484, et seq.

With respect to the allegations that the evidence of the trial was insufficient to justify the verdict, the general rule is that a verdict will not be set aside on this ground if the evidence substantially supports it. *People v. Swasey*, 6 Utah 93, 21 Pac. 400; *Weber Basin Water Conservancy District v. Skeen*, 8 Utah 2d 79, 328 Pac. 2d 730. The discussion of the facts in Point I in this brief adequately shows that the trial court did not abuse its discretion in refusing to award a new trial on the grounds of insufficiency of the evidence.

Rule 59 (a)(4) U.R.C.P. specifies that in order to be entitled to a new trial by reason of newly discovered evidence, the new evidence must be material and which with reasonable diligence could not have been discovered and produced at the trial.

It is plaintiff's position that a physical condition discovered by her following the trial in April, 1963, affected her desire and ability to have sexual relations with the defendant. For this new evidence to be relevant, it must be assumed that this condition substantially affected plaintiff's desire and ability for sexual relations during the period of her refusal which existed for several months prior to this action being filed in early June, 1962 (R. 86). It must also be assumed that this condition could not have been discovered and produced at the trial.

There is nowhere in the record evidence to support either of these assumptions. If it was a physical condition which caused plaintiff's refusal to have sexual relations with the defendant, then surely she would have been aware at the time that something was wrong. Yet, a year

later at the trial, she testified that she refused to have sexual relations with the defendant because he smelled "like a goat" and she "just wasn't interested" (R. 86). Defendant testified that plaintiff gave him no reason except that he needed a bath, a condition which he corrected but to no avail (R. 142). The position taken by plaintiff that this condition could not have been discovered with due diligence during the intervening year before the trial is without support in the record.

Even if it is assumed that plaintiff's refusal to have sexual relations was due to this condition and the condition could not be discovered before the trial, there is ample evidence other than plaintiff's refusal to have sexual relations which supports the divorce for defendant. It is submitted that admission of this new evidence would not affect the trial court's judgment, and for this reason it is not material.

When the trial court is faced with either granting or denying a new trial by reason of newly discovered evidence, the following rule found in 66 C.J.S. New Trial § 201 (8) p. 500, et seq., is applicable:

"A motion for a new trial on the ground of newly discovered evidence is addressed to the sound discretion of the trial court and the granting or denying of a new trial applied for on this ground is largely discretionary. The mere fact that a new trial might have been granted does not mean that the court abuses the discretion in denying it."

See also *Walker Bank & Trust Company v. New York Terminal Warehouse Company*, 10 Utah 2d 210, 350 Pac. 2d 626, and *Fuller v. First Security Bank of Utah*, supra.

CONCLUSION

In reading the transcript of this case there is one note which rises above the welter of recriminatory charges and counter-charges. This is the feeling of despair and frustration felt by the defendant; feelings provoked by plaintiff's treatment which included rejection in her refusal to sleep with defendant; humiliation through ridicule of his ideas and feelings; and disregard for his desires.

It is true that out of this despair and frustration, the defendant sometimes exploded in a burst of anger and disgust. It is from these incidents plaintiff has taken most of the charges upon which her case is based.

There is adequate evidence to support the trial court's judgment of divorce to defendant and the dismissal of plaintiff's complaint. For this reason, there exists no abuse of discretion and the judgment should not be changed.

Plaintiff's motion for a new trial rests on the discovery of a physical condition which it is contended explains her refusal to have sexual relations with defendant over a year earlier. It is submitted that this condition should have been discovered during the year prior to trial if it did affect her ability as contended.

The trial court's refusal to grant a new trial is within its sound discretion and should not be overturned by this court.

There was no abuse of discretion by the trial court
and its findings should be affirmed.

Respectfully submitted,

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