

1964

Maxfield C. Whitehead v. Anna Shaw Whitehead : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT

of the
STATE OF UTAH

FILED
MAY 22 1964

MAXFIELD C. WHITEHEAD,
Plaintiff-Appellant,

vs.

ANNA SHAW WHITEHEAD,
Defendant-Respondent.

Clerk, Supreme Court, Utah

Case No.
10064

APPELLANT'S BRIEF

Appeal from the Judgment of the Third
District Court for Salt Lake County, Utah
Hon. Merrill C. Faux, Judge

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IN THE SUPREME COURT
of the
STATE OF UTAH

MAXFIELD C. WHITEHEAD,
Plaintiff-Appellant,

vs.

ANNA SHAW WHITEHEAD,
Defendant-Respondent.

} Case No.
10064

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This is an action for divorce. Defendant counterclaimed seeking a divorce and alimony.

DISPOSITION IN LOWER COURT

The case was tried to the court. From a judgment for the Defendant Plaintiff appeals.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the lower court judgment awarding to the Defendant the sum of Ten Thousand Dollars (\$10,000.00) as full settlement of all property rights and alimony, and a judgment in his favor awarding no property rights or alimony to the Defendant.

STATEMENT OF FACTS

Plaintiff and Defendant were married on December 27, 1957, the second marriage for each of them. Defendant was 32 years of age at time of marriage and 36 years at time of divorce. (R-86) Plaintiff was 43 at time of divorce. (R-96) Plaintiff had children he was supporting by a former marriage. (R-37) Defendant had no children by either marriage.

The Plaintiff prior to the marriage, was an independent contractor and had accumulated several parcels of real property, including various homes and home contracts and vacant property. In addition thereto the Plaintiff had various stocks and stock interests in corporations with which he was involved both at the time of marriage and for a period of time thereafter. All of Plaintiff's assets were either those brought into the marriage, or were accumulated by the sale or transfer of assets accumulated prior to the marriage. (R-14, 15, 16, 17)

Prior to the marriage and during the marriage, the Defendant was employed by the Salt Lake City Board of Education as a school teacher and the wages earned by her during the years of marriage increased \$1800.00 by reason of her added experience and time in profession as a teacher. (R-91) The Defendant's assets at the time of marriage were a 1953 Mercury automobile and various personal effects. During the marriage the 1953 Mercury was

sold and Defendant given the use of Plaintiff's 1955 Mercury, which car the Plaintiff offered to give to Defendant; All of Defendant's household effects and personal items were returned to her and are now in her possession. (R-25, 26)

All of the property owned by each of the parties was accumulated prior to the marriage of the parties with the exception of some furniture items and an accumulated equity in the home occupied by the parties during the marriage, which home was owned by the Plaintiff prior to the marriage. During the marriage there was accumulated approximately an equity of \$1500.00 in this home, (R-27, 28) however, Plaintiff made all of the mortgage payments upon said home.

During 1958 and 1959 Plaintiff continued in the construction field and in addition traded and sold several properties acquired prior to this marriage. During 1960 the Plaintiff was unable to continue in the contracting business and as a result he became employed by the Utah Power and Light Company earning approximately the sum of \$3,600.00 per year. Plaintiff has attempted to maintain the contracts and real property accumulated by him prior to the marriage and to satisfy the obligations that were incurred by him prior to and during the marriage for said property contracts, (R-19, 20, 21) and other living expenses. (R-24, 25) Further that Plaintiff has been and is obligated to support his children by a previous marriage. (R-37)

As to the Defendant, here earnings increased yearly and she earned, at the time of this action, in excess of \$5,000.00 per year. Further that she left the marriage with no obligations, and her financial condition was better than it was when she entered the marriage, by reason of accumulated savings (R-80). Defendant admitted that she gave up nothing but an unmarried status by her marriage to the Plaintiff. (R-95)

At the time of the marriage the parties agreed to maintain separate bank accounts and to maintain their own funds and incomes (R-22, 79). Plaintiff was to maintain house payments and maintenance, and pay for automobile, upkeep and operation. Defendant was to pay home utilities and purchase of groceries. (R-23)

The parties maintained their separate lives during the marriage, taking separate trips, maintaining separate professional and social interests, and apparently living in two separate worlds. The fact that they were unable to live happily together was indicated by the testimony of both parties that the marriage was a business like arrangement from its beginning, and by the fact that divorce was contemplated by the parties in 1960. (R-83) As a result the parties separated and this action was commenced.

At time of trial it was agreed the Defendant could establish grounds and be awarded the divorce

without opposition from Plaintiff but without prejudice to the property rights of the Plaintiff.

Based upon the facts and evidence the trial court determined that the Defendant was entitled to the sum of Ten Thousand Dollars (\$10,000.00) as alimony and property settlement, and entered its Supplemental Findings of Fact, Conclusions of Law and Decree. Plaintiff moved for a new trial which motion was denied, Plaintiff appeals.

ARGUMENTS

POINT I

THE TRIAL COURT ERRED IN ENTERING ITS SUPPLEMENTAL FINDINGS OF FACT AND IN DENYING PLAINTIFF'S MOTION FOR A NEW TRIAL.

At the trial of this case, Plaintiff introduced his financial statement of December 31, 1957 and of December 31, 1961 for the purpose of showing that his financial condition has been considerably reduced during the four years of marriage. Defendant attempted to show that Plaintiff was misrepresenting his assets to the court by reason of the fact that he failed to list 28,000 shares of King Oil Stock on his 1961 statement. Defendant further argued that this failure indicated an attempt by the Plaintiff to mislead and confuse the court. When the trial court entered its Supplemental Findings of Fact and Conclusions of Law it became apparent that the court was confused, however the confusion resulted from the Defendant's illogical arguments and not from the facts.

Plaintiff testified that most of the King Oil Stock was purchased in the early part of 1962, the time when the parties separated and this action was commenced. (R-12) He further testified that the purchase of this stock was made from funds received from the sale of assets previously accumulated. It was thereafter determined and presented to Defendant that Plaintiff owned 30,000 shares of stock in King Oil Company, 28,000 shares having been purchased after the preparation of Plaintiff's financial statement of December 31, 1962, and having been purchased by the sale of properties set forth in that financial statement.

The trial court therefore erred in fact in entering its Supplemental Findings of Fact, and erred in not granting Plaintiff's motion for a new trial.

POINT II

THE TRIAL COURT ERRED IN AWARDING TO THE DEFENDANT AS ALIMONY AND PROPERTY SETTLEMENT THE SUM OF \$10,000.00.

At the beginning of the trial in this action, the parties agreed that for the purpose of the divorce Defendant should establish the grounds without prejudice as to property rights. (R-1, 2) By reason of this the element of fault should not be considered in determining distribution, if any. This, together with the fact that the parties were married only 4 years, and were without children, places the elements to be considered well within the general formula set forth by this court in the case of *Pinion*

vs. Pinion, 92 Utah 255, 65 P2d 265. See also *Mac Donald vs. Mac Donald*, Utah 1951, 236 P2d 1066.

By its ruling in the *Pinion* case, the court set out the following elements to be considered in determining the necessity of property settlement, which elements Appellant claims should have been considered by the trial court:

(1) The amount and kind of property owned by each of the parties;

(2) Whether the property was accumulated before coverture or accumulated jointly;

(3) The ability and opportunity of each to earn money;

(4) The financial condition and necessities of each party;

(5) The health of the parties;

(6) The standard of living of the parties;

(7) Duration of marriage;

(8) What, if anything, did parties give up by marriage;

(9) Age at which parties were married.

Reviewing the facts and testimony presented herein it would appear that this case falls directly in line with the ruling in the case of *Pinion vs. Pinion* (supra) which case has been referred to by the Supreme Court on many occasions. The facts of

the two cases are similar in that the marriage was of relatively short duration; the parties terminated the marriage under similar circumstances; the main difference being the fact that in the present case the Defendant was employed and had her independent income prior to, during and after the marriage. The Supreme Court in the Pinion case stated as follows:

“That the fact that she (the Defendant, wife and counterclaimant) was married four years should ordinarily entitle her to a substantial share of his property if the interruption of her former career by marriage left her materially worse off in opportunity as compared to where she might have been had it not been for the interruption, or the opportunity or ability for readjustment had materially suffered. Otherwise, four years out of one’s life well supported with a return to singleness cannot necessarily be counted as a detriment. Of course, the ultimate of her happiness or unhappiness during the interruption is purposely omitted in summarizing this case.”

The Court further stated as follows:

“As a general rule, a young couple married a short time, who break up with no children, would call it a misadventure in matrimony and unless the wife has suffered more than the ordinary wear and tear of matrimony or stands by the divorce to lose substantial material benefits in economic status or loss of inheritance, no alimony ordinarily will be given.”

From the facts of the present case, it would appear that all of the property, presently owned by the Plaintiff was accumulated prior to his adventure into this marriage, either directly or by subsequent sale or trade. It would further appear that the ability and opportunity to each of them for earning money has changed only to the advantage of the Defendant in that she is earning more now than she had been earning at the time or prior to the marriage, while Plaintiff is now employed at a salary of \$3,600.00 per year. Further, that the Defendant has at no time ceased to earn her money in the same manner as she had prior to the marriage and in fact has not in any way altered or changed her way of life. It would further seem that the financial condition and the necessities of the Defendant remained approximately the same, while the Plaintiff was, and is required to support minor children by his previous marriage, and pay and discharge the obligation of the real property contracted for which contracts are presently delinquent and in jeopardy of loss, together with other expenses existing. The Defendant is only required to support and maintain herself and is earning more money with which to perform this task than she was prior to or during the marriage. The Court should also consider that the Defendant gave up nothing by the marriage and that the economic status was not altered by it. The evidence seems to point to the fact that she is now better off economically than she was prior to her marriage.

The individual federal income tax returns of the parties for the years 1957, 1958, 1959, 1960 and 1961 indicated that the Plaintiff had numerous business losses and business deductions or depreciation and other deductions, all of which showed as reduced earnings by the Plaintiff. The Defendant placed great stress on the fact that she was earning in excess of \$4,000.00 for each of the years involved, and that the Plaintiff's income was far below this figure. She further attempted to show that for this reason the Court should presume that she was in fact supporting the Plaintiff during those years. However, a review of these matters shows that the gross income of Plaintiff was considerably more than the net income ultimately shown by this tax return, and that much of the reduced income was due to the carry-over losses from previous years and to depreciation and other nonpaid expenses that were permitted for tax purposes. The true picture indicates that the true spendable income of Plaintiff was considerably more than indicated by the tax returns, and was in fact equal to and in excess of income of the Defendant.

The Defendant had her own money and her own bank account and used those funds exclusively for her own use. The Plaintiff does not deny that the Defendant purchased groceries for the home or paid certain home bills, but equally did the Plaintiff participate in the maintenance of the home and the payment of bills, including the furnishings of

gas and oil for the benefit of the Defendant's use and pleasure.

The Defendant should not be permitted to participate in the assets that the Plaintiff brought into the marriage nor should she now complain because the Plaintiff was able to furnish certain tax deductions during the marriage which permitted the parties to obtain larger tax refunds than could have been obtained had the Defendant filed her income tax separately.

During the marriage the parties each enjoyed good health with no medical problems encountered, and this condition continued during the approximate 7 months that the action was pending in the lower court.

From the evidence presented to the court, it is apparent that the parties herein leave this marriage in substantially the same condition they were at the time of the marriage, except for one fact and that fact being that the Plaintiff is earning less money than he was making at the time of the marriage from the gross earnings standpoint, and that the Defendant is in fact earning substantially more than she was earning at the time of the marriage. The Defendant has not materially altered her position nor has she suffered any material detriment or change in her life as a result of the marriage, and that therefore she should not be permitted to participate or demand from the Plaintiff alimony.

From all of the facts it is apparent that the

Defendant has not lost any material benefits in economic status, loss of income, loss of inheritance, a loss of any possible income by reason of the marriage. It is also apparent that Plaintiff has suffered financial losses and is thus in a worse financial condition than he was when he embarked upon this sea of matrimony.

The Court should also consider what, if any, readjustment is required as a result of the marriage and divorce. The facts plainly show that the parties basically did not change their pattern or standard of living by the marriage nor was any readjustment required by the divorce, in fact, the parties continued in exactly the same educational, social and economic circles they enjoyed prior to marriage. The Defendant continued to take her own trips, she continued her professional advancement and enjoyed her same friends and associates.

The Plaintiff contends that the amount of the award of alimony and manner of making property settlement, if any, should be made only after complete consideration by the court of the condition, situation, and standing of the parties, financially and otherwise amount and value of estate of the husband and the source from which it came and how far the wife contributed thereto. See *McKee vs. McKee*, 96 N W 489, *Zimmerman vs. Zimmerman*, 80 N W 643, *Wandell vs. Wandell*, (Mont.) 248 P. 864, *Openshaw vs. Openshaw*, 80 Ut. 9, 12 P2 364, *Hampton vs. Hampton* (N.M.) 47 P2 419.

Appellant recognizes that no general rule can be laid down as to how and when alimony should be paid and property divided, and that each case must be determined by its own facts. However, where the trial courts determination appears to be inequitable and unjust, as the facts herein indicate, then this court should enter such decree as it finds to be just and equitable, considering as stated in the Hampton case (*supra*) :

“The amount of the award of alimony is to be determined, not by the portion of the husband’s estate, but by the equities of the case having due regard to the financial condition and necessities of the parties.”

CONCLUSION

The decision of the lower court that the Defendant is entitled to an alimony and property settlement award of \$10,000.00 completely disregards the elements that should be considered under the ruling in the Pinion case (*supra*) and seemingly creates a penalty for unsuccessful marriage. It would seem that to allow these parties to leave the vessel of matrimony in the same social, educational and economic condition as when they embarked would be the just and equitable method of release. Each party should leave as they came being enriched only by the experience of an attempt to bridge two educationally and socially different worlds by marriage.

Respectfully submitted,

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