

1984

John David Schmidt v. Darlene D. Schmidt : Brief of Appellant

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IN THE SUPREME COURT OF THE
STATE OF UTAH

JOHN DAVID SCHMIDT :
Plaintiff and Respondent, : PETITION FOR
vs. : REHEARING
DARLENE D. SCHMIDT, : No. 19015
Defendant and Appellant. :

BRIEF OF APPELLANT

PETITION FOR REHEARING

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STATEMENT OF THE NATURE OF THE CASE

This is an action by the defendant and appellant, Darlene D. Schmidt, against the judgment given the plaintiff and respondent, John David Schmidt.

DISPOSITION IN THE SUPREME COURT

The case was filed at the Supreme Court on February 17, 1983 and was acted upon by the Court, per curiam, and filed December 20, 1983.

RELIEF SOUGHT ON PETITIONING FOR REHEARING 39

The Supreme Court has addressed and ruled on the issues in the respondent's brief as to their compliance to U.C.A. and Utah Constitutional law. The Court has not addressed the appellant's issues pertaining to the jurisdiction of lower Court's judgment according to U.C.A. law, Utah Constitutional law, and United States Constitutional law.

STATEMENT OF FACTS

The respondent filed a brief with these points:

1. There is substantial evidence in the record on appeal to support and justify the decision of trial court.

This was addressed by the Court, pg. 2 and affirmed on pg. 4 & 5. (also see appellant's supplement pg. 1)

2. The judgment of the trial court should be affirmed due to the defendant's failure to cite any evidence in her brief on appeal of prejudicial error on the part of the trial court.

This point was not addressed by the Court.

3. Defendant's notice of appeal is untimely.

Addressed by the Court and disaffirmed on pg. 2.

4. Plaintiff is entitled to costs and attorney's fees on appeal.

Addressed by the Court on pg. 5 and denied.

The appellant filed a brief and supplement with the following issues to be acted upon by the Supreme Court which challenge the jurisdiction of lower court's judgment in regards to U.C.A. law, Utah Constitutional law, and United States Constitutional law. The appellant wishes to softly and respectfully request this Court

to address her issues which prompted the appeal and consequent expenses; and to kindly point out that it has the duty of passing on matters material before it ¹ and the Court would ignore mere irregularities or legal errors in trial court and would limit its review to the question of whether district Court exceeded its jurisdiction or was without jurisdiction in making and entering the judgment complained of ² and that the Court could not proceed to a decision where the law forbade it.³

ARGUMENT

Citizens of every race and color shall have the same right in every state and territory of the U.S. to full and equal benefit of all laws and proceedings for the security of persons and property.²⁶

Immunities and privileges whatever they may be of citizens of the U.S. are guaranteed in every state beyond operation of state laws by the 14th Amendment in Federal Constitution.²⁵

"Civil rights" are those which have no relation to the establishment, management or support of the government and consists in the power of enjoying and acquiring property, exercising the paternal and marital powers and the like.²⁷

The term "civil rights" in its broadest sense includes those rights which are the outgrowth of civilization, and the existence and exercise of which necessarily follow from the rights that repose in the subjects of a country exercising self-government.²⁸

The natural rights of a person at common law are those of personal security in the legal enjoyment of life, limb, body, health, and reputation, the right of personal liberty, and the right of private property.²⁹

1. The appellant was deprived of her civil rights:

a. Lower Court does not possess jurisdiction to force one to relinquish her rights to her

real and personal estate acquired before marriage and to all property to which she may afterwards become entitled by purchase, gift, grant, inheritance or devise, shall be and remain the estate and property of such female, and shall not be liable for the debts, obligations or engagements of her husband, and may be conveyed, devised or bequeathed by her as if she were unmarried.^{4,5} R. 231-235, 281, 170

b. Lower Court does not possess jurisdiction to deprive one of her right to sell her talents and time, her right to own

property, and her enjoyment for herself, if she so chooses. 5, R. 245, 246, 248, 253, 256, 264, 225.

c. Lower court does not possess jurisdiction to find one in a divorce action "guilty"⁶ and punish only her by a scolding.

R. 170, 280, 171, 276, 270-287, 260-262.

d. Lower court does not possess jurisdiction to deprive a wife of her right to be supported by her husband.⁷

It is still the law in this state, despite changes in law respecting statuses of married women, that husband is under a duty to support his wife. Nor does this duty terminate when the marriage is dissolved.⁷ R. 248, 254, 256, 246, 253, 264, 245, 282, 267, 142-147, 259, 243, 244, 174.

e. Lower court does not possess the jurisdiction to deprive one of her monetary accruments deprived from the sale of her talents and time in order to provide for the family. 8, 5, 7, 31 R. 246, 248, 245, 253, 254, 256.

f. Lower court does not possess the jurisdiction to deprive one in personal injury her right to recover the costs. 9, 12, 13 The court had been made aware months before this injury of its probability. R. 27-28, 142-147, 249, 250, 281.

The defendant was awarded her personal injury settlement in the sum of \$8,700.00, but the trial court specifically did not include this as part of the division of marital property. 32 R. 249, 250, 281.

g. Lower court does not possess the jurisdiction to limit the candidates for remarriage for this appellant nor to deprive the natural father of his responsibility for providing shelter for HIS children nor to force a new husband to provide shelter for another father's children nor to crease conditions for a new marriage to fail because of unfair terms for the sale of the residence given to the children . 10, 33, 34 R. Divorce Decree and order on order to show cause.

h. Lower court does not possess jurisdiction to accept fraud ³³

as facts.¹¹ r.218,250,251,221,142-147.

but should be generally indulgent toward permitting full inquiry and knowledge of disputes so they can be settled advisedly and in conformity with law and justice. 14

Perjury is ground for attack on the judgment or order of the court. 15,16,17

1. Lower court does not possess the jurisdiction to act on an issue that has not been placed before it.^{37,30} R. 142-147, McKay's Objections to the Decree and Order on show cause.

Failure of the plaintiff to deposit a copy of the complaint for the defendant with all issues not jurisdictional. 35,36

2. The purpose of the 13th Amendment was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the U.S. 18

The 13th Amendment not only prohibits governmental action supporting slavery or involuntary servitude but operates as absolute prohibition of slavery or involuntary servitude in U.S. 19

The purpose of 13th Amendment was to abolish all practices involving enforced subjection akin to slavery or compulsion by states or private individuals. 20

Congressional legislation effecting the 13th Amendment express prohibitions of slavery and involuntary servitude applies to all groups and not just to racial minorities. 21

The appellant was forced into slavery by lower court's judgment. Lower court does not possess jurisdiction to force the appellant to forgo her monetary accruments and become a slave whose purpose is to provide for the respondent, plaintiff. 40,41 R. 267, 248,254,256,249, briefs and supplements.

CONCLUSION

The evidence shows that lower court proceeded to a decision where the law--U.C.A., Utah Constitution, and U.S. Constitution forbade it in a civil action. 40, 41

Both male and female citizens of this State shall enjoy equally all civil rights...and priviledges.⁸

Denied rights to accrued monies again forced the appellant into salvery.⁴¹

Neither slavery nor involuntary servitude, except as a punishment⁶ for a crime, where of the party shall have been duly convicted, shall exist within the state. ⁴²

Victim of an unconstitutional act is entitled to be restored to that which he lost. ²²

An act of discrimination in violation of a statute is a "wrongful act intentionally done". ²³

Discretion: 3 b. the latitude of decision within which a court or judge decides questions arising in a particular case not expressly controlled by fixed rules of law. ³⁸

It is evident that the discretion invested in lower court has been abused to the prejudice of appellant in some respect. ^{24, 43, 44, 45, 46, 47, 48, 49}

DATED this _____ day of January, 1984.

Darlene D. Schmidt
Pro se