

1983

Howard Hitchings Walther v. Celeste J. Walther : Respondent's Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

HOWARD HITCHINGS WALTHER,)	
)	
Plaintiff and Appellant)	
)	
vs.)	No. 19018
)	
CELESTE J. WALTHER,)	
)	
Defendant and Respondant)	

RESPONDANT'S BRIEF

Appeal from the Order of the Third Judicial District
Court for Salt Lake County, State of Utah
Hon. Larry C. Keller, Judge

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Authorities Cited

Anderson vs. Anderson, 138 P2nd 252 (Utah, 1943)
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Boudwin vs. Boudwin, 298 P 37 (Washington)
Bradley vs. Superior Court 310 P2nd 634; 71 ALR 723;
127 ALR 742

Statutes Cited

Utah Code Annotated Section 30-3-5, (1953, as amended)

STATEMENT OF KIND OF CASE

This is an action in equity pursuant to Utah Code Annotated (1953) Section 30-3-1 et seq. to obtain a divorce and property settlement.

DISPOSITION IN LOWER COURT

Plaintiff-Appellant's Complaint for Divorce and Defendant-Respondant's Counterclaim for divorce were heard before the Honorable Larry C. Keller, District Court Judge Pro Tempore in the Third Judicial District Court in and for Salt Lake County, State of Utah. Judge Keller granted a divorce and issued a memorandum decision which made provision, among other things, for settlement of property, a lump sum award from Plaintiff-Appellant to Defendant-Respondant of \$284.00 to reimburse Defendant for medical expenses, a lump sum from Plaintiff-Appellant to Defendant-Respondant of \$5,000 to compensate for pain and suffering and future medical expenses, and an award from Plaintiff-Appellant to Defendant-Respondant of \$2,000 for partial restitution of her costs and attorney's fees.

RELIEF SOUGHT ON APPEAL

Defendant-Respondant seeks a ruling by the Utah Supreme Court that the District Court, sitting in equity, made no errors in its award of \$5,000 compensation for pain and suffering and future medical expenses nor any error

in awarding Defendant-Respondant's medical costs and attorney's fees, as both awards are set forth within the discretion of the trial court.

STATEMENT OF FACTS

Defendant-Respondant, for purposes of the appeal herein, adopts the Statement of Facts of Plaintiff-Appellant with the additional facts that Plaintiff was a student at the time of the marriage, being solely supported by his parents and his lifestyle was very high as exhibited by the \$20,000 down payment for the home and the payment of the mortgage by Plaintiff-Appellant's parents. (Memorandum decision).

STATEMENT OF POINTS

POINT I

THE TRIAL COURT WAS WELL WITHIN ITS DISCRETION TO AWARD A LUMP SUM OF \$5,000 TO DEFENDANT-RESPONDANT AS AN AWARD IN THE NATURE OF ALIMONY BY REASON OF INJURIES SUFFERED AT THE HAND OF THE PLAINTIFF-APPELLANT DURING THE MARRIAGE.

A. THE AWARD FOR PAIN AND SUFFERING ALTHOUGH CLEARLY TORTIOUS CONDUCT OR PERSONAL INJURY BUT NEVERTHELESS IS APPROPRIATE FOR CONSIDERATION IN AN ACTION FOR DIVORCE.

POINT II

THE TRIAL COURT WAS WITHIN ITS DISCRETION AND DID NOT ERR IN ITS DECISION TO AWARD THE DEFENDANT-RESPONDANT ATTORNEY'S FEES IN THE AMOUNT OF \$2,000.

ARGUMENT

POINT I

THE TRIAL COURT WAS WELL WITHIN ITS DISCRETION TO AWARD A LUMP SUM OF \$5,000 TO DEFENDANT-RESPONDANT AS AN AWARD IN THE NATURE OF ALIMONY BY REASON OF INJURIES SUFFERED AT THE HAND OF THE PLAINTIFF-APPELLANT DURING THE MARRIAGE.

A. THE AWARD FOR PAIN AND SUFFERING ALTHOUGH CLEARLY TORTIOUS CONDUCT OR PERSONAL INJURY BUT NEVERTHELESS IS APPROPRIATE FOR CONSIDERATION IN AN ACTION FOR DIVORCE.

Defendant-Respondant acknowledges that the treatment received was indeed tortious conduct. However, as set forth in Anderson vs. Anderson, 138 P2nd 252 (Utah, 1943), among the purposes for alimony is compensation to a wife as far as material compensation will do so for injuries or abuse to her person or impairment of health brought on by conduct or cruelty of the husband during coverture. A trial court in its memorandum decision clearly delineated the \$5,000 award as a result of personal injuries suffered by Defendant-Respondant as a consequence of Plaintiff-Appellant's physical abuse. The court then went on to award \$5,000 as compensation for her pain, suffering and future medical expenses as a fair and reasonable award. (Memorandum decision, July 30, 1982, page 3).

Notwithstanding the assertion by Plaintiff-Appellant in his brief denying the allegations of physical injury, the trial court's determination should not be overturned, as there is certainly adequate evidence in the

record to sustain the findings of the court, and the court was within its discretion to so find and in making such an award. Anderson vs. Anderson, supra; McDonald vs. McDonald, 236 P2nd 1066 (Utah, 1951).

Anderson vs. Anderson, supra is dispositive as to the award of recompense for injuries or physical abuse and is in the nature of alimony, thereby falling within the equity jurisdiction of the court pursuant to Utah Code Annotated Section 30-3-5, (1953, as amended). Therefore, notwithstanding the assertion the right to jury trial, such assertion is unfounded based upon the court's equity jurisdiction.

Further, the primary signification of the word "alimony" is that of a provision for the support of the wife in the nature of food, clothing, habitation, and necessaries. Boudwin vs. Boudwin 298 P 37 (Washington); Bradley vs. Superior Court 310 P2nd 634(); 71 ALR 723; 127 ALR 742. Certainly an award for pain and suffering and future medical expense would be in the nature of necessities as contemplated by the derivations of alimony.

POINT 11

THE TRIAL COURT WAS WITHIN ITS DISCRETION AND DID NOT ERR IN ITS DECISION TO AWARD THE DEFENDANT-RESPONDANT ATTORNEY'S FEES IN THE AMOUNT OF \$2,000.

The trial court in awarding attorney's fees clearly kept in mind the lifestyle of the Plaintiff and the likelihood of his ability to participate in the sizable attorney fees of Defendant-Respondant. The trial court recited in its memorandum decision a sizeable down payment and ongoing mortgage being satisfied by Plaintiff's parents. (Memorandum decision July 30, 1982, Pages 1 and 2). In light of the Plaintiff-Appellant's high lifestyle, the court did not abuse its discretion in requiring the participation by Plaintiff-Appellant in Defendant-Respondant's sizeable attorney's fee. Such awards shall not be disturbed unless the evidence clearly preponderates against the finding of the trial court, or there has been a plain abuse of discretion, or where a manifest injustice or inequity is wrought. Anderson vs. Anderson, supra; McDonald vs. McDonald, supra. The record amply supports the decision and discretion of the trial court in the matter and such favorable award for Defendant-Respondant must be sustained.

CONCLUSION

The trial court was well within its discretion in awarding damages for the physical abuse and a participation by Plaintiff-Appellant in Defendant-Respondant's attorney's fees. These awards should be sustained.

Respectfully submitted this 20th day of August, 1941.

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