

1970

Ruth Cain Allen v. Arthur A. Allen, Jr. : Brief of Appellant

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Recommended Citation

Brief of Appellant, *Allen v. Allen*, No. 11918 (1970).
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In the Supreme Court of the State of Utah

RUTH CAIN ALLEN,

Plaintiff and Respondent,

—vs.—

ARTHUR A. ALLEN, JR.,

Defendant and Appellant.

Case No.
11918

BRIEF OF DEFENDANT AND APPELLANT

Appeal from Judgment of the Third Judicial
District Court in and for Salt Lake County, Utah
Honorable Emmett L. Brown, Presiding

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FILED

FEB 6 - 1970

Clerk, Supreme Court, Utah

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NATURE OF THE CASE

This case is an aftermath of a suit for divorce. Mr. Allen, appellant and defendant below, petitioned the court for a modification of the Decree as it pertains to alimony.

DISPOSITION IN THE LOWER CASE

The Third District Court in and for Salt Lake County, Utah, Judge Emmett L. Brown, denied the petition.

RELIEF SOUGHT ON APPEAL

Mr. Allen seeks a reversal of the order of the District Court of Salt Lake County, Utah, denying his peti-

tion and an order of this Court directing the District Court of Salt Lake County, Utah, to grant his petition according to the equity of the case.

STATEMENT OF FACTS

On October 10, 1968, Mrs. Allen obtained a Decree of Divorce by default. By the terms of that decree, she was awarded the custody of a minor child, for the support of which Mr. Allen was ordered to pay \$100 per month in addition to alimony of \$200 per month. Each was awarded an automobile; she was awarded the household furnishings, except a piano, and possession of the family home at 1215 Harvard Avenue until sold, at which time the proceeds were to be divided equally. He was to make the mortgage payments of \$155 per month for six months after which they were to be shared equally.

At the time of the hearing upon Mrs. Allen's Complaint for divorce on October 9, 1968, she was unemployed and had not been employed since she and the defendant were married in 1945. It was thought she would require six months to become productive and obtain employment (R. 72, 73).

In fact, however, Mrs. Allen obtained employment October 21, 1968, 12 days after the hearing, and has been steadily employed since that date and is now earning approximately \$75 per week (R. 40, 41).

At the time of the hearing, Mrs. Allen and the three daughters of the parties were attending school and living at the family home (R. 57). In December, 1968, the oldest, Margaret, married and left the family home and by the time of the hearing upon defendant's Petition for Modification, the middle daughter, Katherine, was employed at Holy Cross Hospital (R. 44). The youngest, Dorothy, was and now is a baby sitter.

At the time of the hearing upon plaintiff's Complaint for divorce it was contemplated that she would be required to make one-half of the mortgage payments upon the family home after six months (R. 60). However, in May, 1969, the family home was sold.

The living expenses of Mrs. Allen were basically the same as at the time of the divorce hearing (T. 9). Mr. Allen's circumstances were essentially unchanged (T. 15).

ARGUMENT

POINT I.

DEFENDANT'S PETITION FOR MODIFICATION
SHOULD HAVE BEEN GRANTED.

In his Petition for Modification, the defendant prayed that the award of alimony be discontinued because of a material change in the circumstances of the parties since the entry of the Decree.

Defendant offerd, if this Petition were granted, to continue to support Dorothy two years after she attains her majority.

Where there has been a substantial change in the material circumstances of either one or both of the parties since the decree was entered, the court should make an appropriate modification of the decree. *Sorensen v. Sorensen*, 20 Utah 2d 360, 438 P.2d 180 (1968).

Mrs. Allen's income has substantially changed. She has left the ranks of the unemployed and joined the permanently employed. She has the interest upon her share of the proceeds from the sale of the family home. Her other than personal expenses have materially lessened. Margaret is no longer living with her and Katherine is gainfully employed. Although she has rent to pay now, she does not have the financial burden of maintaining the family home and meeting one-half of the mortgage payment.

CONCLUSION

It is the position of the defendant that a substantial change in the material circumstances of Mrs. Allen has occurred since the Decree of Divorce was entered and that this court should reverse the Order of the District Court denying defendant's Petition for Modification and direct the District Court to grant his Petition as prayed or to such extent this court determines the equities of the case dictate.

Respectfully submitted,

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