1981

Avis A. Woolsey v. Bert A. Woolsey : Reply Brief of Plaintiff-Appellant

IN THE SUPREME COURT

OF THE STATE OF UTAH

AVIS A. WOOLSEY,

Plaintiff-Appellant

vs. Civil No. 34,476

BERT L. WOOSLEY, Appeal No. 17,112

Defendant-Respondent.

REPLY BRIEF OF PLAINTIFF-APPELLANT AVIS A. WOOLSEY

APPELLANT'S REPLY TO RESPONDENT'S BRIEF ANSWERING AN APPEAL FROM AN ORDER ISSUED BY THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH THE HONORABLE ALLEN B. SORENSEN, DISTRICT JUDGE PRESIDING

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CLARIFICATION OF FACTS

The respondent's Statement of the Facts set forth in his "Brief" is mistaken in one or two particulars:

1. Respondent claims that the appellant Avis A. Woolsey, now known as Avis Woolsey Adams, was "not the true party in interest." This is not a fact, but a disputed legal conclusion; and it has no place in a recitation of the facts before this Court.

2. Respondent also claims that no exemplified copy of the Idaho Divorce Decree was in the records of the Utah Court in 1970, "at the time of entering a Judgment against the respondent." However, a certified copy of the Divorce Decree was annexed to the Complaint filed by appellant Avis A. Woolsey in 1970

and the Utah Fourth Judicial District Court so found in its Findings of Fact and Conclusions of Law dated October 7, 19[illegible] and signed by the Honorable Allen B. Sorensen, Judge of the Fourth Judicial District Court (See Record on Appeal pages [illegible] through 11, inclusive).

3. Furthermore, respondent states in his "Brief of Respondent" on page 5, that "a Stipulation and Agreement was entered into by and between the respondent and the appellant, wherein the Utah State Department of Social Services is Trustee entered into a Stipulation and Agreement providing for the payment of the respondent in the amount of $2,118.00, rendered in favor of the State of Utah, as Trustees of the Plaintiff's cause of action." This statement, aside from being somewhat confused and ackward, is untrue. The "Stipulation and Agreement" referred to by the respondent was never entered into by Avis A. Woolsey or the State of Utah Department of Social Services. This assertion is evidenced by the fact that the copies of the alleged "Stipulation and Agreement" which appear in the Record on Appeal at pages 141 through 145 were never signed by C. J. Jaussi, attorney for the State of Utah Department of Social Services. Furthermore, the Court's Judgment and Order which were allegedly predicated on the aforesaid "Stipulation and Agreement" was likewise never signed by the Judge (See Record on Appeal, page 146). In light of this, the alleged "Stipulation and Agreement" and the "Judgment and Order" are a nullity: the fact that Bert L. Woolsey alone signed them is insignificant and, at best, self-serving.

ARGUMENT

POINT I

THE CERTIFIED COPY OF THE IDAHO DIVORCE DECREE WAS SUFFICIENT TO COMMENCE IN UTAH AN ACTION ON THE IDAHO DECREE

Rule 44(a) through (f), inclusive, sets forth the means by which official records may be evidenced in a Utah Court. These Rules apply to Judgments of sister state Courts which are being sued upon in Utah. Such out of state Judgments may be authenticated in a Utah Court by the presentation of an official publication, by the presentation of a copy attested by a custodian of record, or by the presentation of a copy to which a deputy custodian certifies that it is in the custody of the official custodian. Furthermore, this Rule states that the certificate affixed to the copy of the sister state Judgment must be made by either (1) a judge of the district where the record is kept, or (2) by a public officer having a seal of the office and having the officials duties in the district where the records are kept.

The certified copy of the Idaho Divorce Decree which was attached to the Complaint of Avis A. Woolsey, filed in 1970 and by which she sought to obtain full faith and credit for her Idaho Divorce Decree in Utah, met all the conditions of an official record as set forth in the above-stated Rule which was in force in 1970. The provisions of this Rule are identical to the provisions of Rule 68(1) of the Utah Rules of Evidence.

In light of this, it is clear that there was absolutely no defect in the copy of the Idaho Divorce Decree which formed the basis of the appellant's 1970 action on the Idaho Judgment.

Furthermore, under Utah law, a copy of a Judgment certi... by the officer having custody thereof as being a full and tr... copy, may be read into evidence. See Rule 68(3) Utah Rules Evidence.

The term "official record" refers to all public writings, including judicial records. See Rule 68(4) Utah Rules of Evidence.

Furthermore, statements in public records, and presumably this includes Judgments, are prima facie evidence of the facts stated therein. See Utah Code Annotated §78-25-3 (1953).

Even if the copy of the Idaho Decree had not been proper certified, this would still not be a bar to the Utah District Courts granting that Decree full faith and credit in Utah. In the case of Anthony Doll & Company v. Hogan, 40 N.M. 55, 53 P.... 649 (1936), the plaintiff sued in an Arizona Justice of the Peace Court and obtained a Judgment there against the defendant. The plaintiff then took his Judgment to New Mexico, and there brou... an action on his Arizona Judgment in order to obtain full faith and credit for that Judgment in the New Mexico jurisdiction. The defendant appealed from the New Mexico Justice of the Peace Court to a New Mexico District Court, where the suit was dismis... because the New Mexico District Court found that the Arizona Judgment had not been certified as required by Federal and Sta... law. The plaintiff appealed to the New Mexico Supreme Court which held that the procedure for approving sister state Judg... was not made exclusively by Congress or by the State Legislat... The common-law method of proving such Judgments is also availa...

The fact that the plaintiff had proven his Arizona Judgment in the New Mexico District Court by oral testimony was good enough. (See also 22 C.J., "Evidence" §1008.)

POINT II

BERT L. WOOLSEY DID NOT SATISFY HIS OBLIGATIONS TO PAY CHILD SUPPORT UNDER THE DIVORCE DECREE WHEN HE REIMBURSED UTAH SOCIAL SERVICES FOR ASSISTANCE PAYMENTS MADE TO HIS CHILDREN

Respondent avers that he satisfied the claim of the State of Utah, Welfare Services Department, by reimbursing them for support money which they paid to his children, then in the custody of his ex-wife, the appellant Avis A. Woolsey. The respondent's reimbursements and alleged "full payment" to the State of Utah amounted to only $3,719.08. Under the Idaho Divorce Decree he was required to pay $50.00 a month for each of his minor children until they were emancipated. The full amount of the child support owed under the Decree, as set forth on pages 6, 7 and 8 of the "Brief of Plaintiff-Appellant Avis A. Woolsey", was $13,800.00. Full payment to Welfare Services obviously did not discharge respondent's obligation for child support under the Decree.

The fact that the State of Utah, Welfare Services Department was reimbursed and had no cause of action against the respondent does not mean that the appellant Avis A. Woolsey is foreclosed from proceeding against respondent Bert L. Woolsey for the unpaid child support which he still owed to her for raising his children.

The appellant Avis A. Woolsey has a right to recover the unpaid child support as is clearly set forth in the following cases:

A. Haas v. Haas, 282 Minn. 420, 165 NW2d 240 at 242-243 (1969) in which a husband had been regularly served with Summons and Complaint in a divorce action instituted against him in Idaho but the husband did not appear in person or by an attorney and a Default Judgment was entered ordering the husband to pay support money for children; the husband never asked for modification of the Judgment and he eventually left the State of Idaho to take up residence in Minnesota. There the Minnesota Court held that the Idaho Court had jurisdiction to enter the Judgment for accrued child support payments without service upon the husband and that the Idaho Judgment for the accrued child support payments was enforceable in Minnesota.

B. Hatrak v. Hatrak, 206 Miss. 239, 39 So.2d 779 at 782 (1949), in which an Indiana Divorce Decree was found to be enforceable in Mississippi under the full faith and credit clause of the United States Constitution as to past-due and unpaid installments of allowances made in such Decree for support money of a minor child. The Court held that the Court which rendered the Decree had no justification to modify it as to past due and unpaid installments.

C. Trujillo v. Trujillo, 75 Ariz. 146, 252 P.2d 1071 at 1071 to 73 (1953), in which a wife obtained a 1932 Divorce New Mexico. The Decree stated that the husband should pay $15.00 per month child support. Nine years later the defendant husband

moved to Tucson, Arizona. In 1949, an Order to Show Cause issued by the New Mexico Court was served on the defendant in Arizona. The defendant did not appear and Judgment was entered in the New Mexico Court for the sum of $2,500.00 (plus 6% interest) in arrearages. On appeal to the Arizona Supreme Court, it was held that the New Mexico District Court had continuing jurisdiction over the divorce matter from 1932 to 1949 and that its Order and Judgment were valid. The Judgment was final as to any accrued payments. The Supreme Court also held that no Statute of Limitation questions could be raised in Arizona by the defendant with regard to the original 1949 modification of the New Mexico Court. All questions regarding Statute of Limitation should have been raised in the original defense, not in the action on the Judgment. The Court held that the Judgment was entitled to full faith and credit in Arizona.

D. Shilbey v. Shilbey, 181 Wash. 166, 42 P.2d 446 at 448-49 (1935), in which the wife was held to be entitled to have a final Decree of Divorce of the Court of another state, which ordered payment of alimony, established as a forum Judgment in Washington State and to be enforced there in equity by contempt proceedings in the same manner as the original award of alimony could be by a Court of the forum state. (See also Boyer v. Andrews, 143 Fla. 462, 196 So. 825 (1940); and Ladd et al v. Martineau, 205 Minn. 129, 285 N.W. 281 (1939). (See also Sistare v. Sistare, 218 U.S.8 (1910).)

CONCLUSIONS

From the facts and law cited in both the Appeal Brief & Reply Brief of the plaintiff-appellant, as well as in the Memoranda of Law which appear in the Record on Appeals, it is clear that when Judge Sorensen granted to Avis A. Woolsey a Judgment against Bert L. Woolsey in her 1970 action on the Idaho Decree, Judge Sorensen automatically gave to the Idaho Decree full faith and credit in Utah.

It is also clear that once that Decree was given full faith and credit in Utah, Avis A. Woolsey had the option to proceed against Bert L. Woolsey for any child support payments that became past-due under the Decree. These remedies she had in addition to her right to collect the past-due child support in the amount of $2,333.20 which Judge Sorensen awarded to Avis A. Woolsey back in 1970.

Furthermore, it is clear that Avis A. Woolsey did not waive her right to child support under the Idaho Decree simply because she accepted assistance payments from the Utah State Welfare Services Department. She had a right to collect from her ex-husband the child support payments due her under the Decree minus, of course, any amounts which her ex-husband had paid to her directly or had paid, by way of reimbursement, to the State of Utah, Welfare Services Department.

The bottom line of this case is: Bert L. Woolsey was ordered by an Idaho Court having jurisdiction to pay to his ex-wife the sum of $13,800.00 in child support. He got away with paying

only $5,469.80. He still owes Avis A. Woolsey $8,330.20 under the Idaho Divorce Decree. That Divorce Decree was given full faith and credit back in 1970 when it was recognized by a Utah District Judge as a valid Judgment in Idaho and in Utah and when that same Judge, on the basis of said Decree, awarded to Avis A. Woolsey back child support payments, then in arrears, in the amount of $2,333.80.

In September of 1978, prior to the time of the expiration of Judge Sorensen's 1970 Judgment, or of the expiration of the Decree, which had been given full faith and credit in Utah in October of 1970, plaintiff-appellant Avis A. Woolsey instituted an action in the Fourth Judicial District Court before the same Allen B. Sorensen, for the purpose of renewing the expiring Judgment and Decree so that she sould have additional time in which to enforce her rights thereunder.

This appeal is brought to secure those rights and to obtain from this Court the determination set forth in paragraphs 1 through 6 conclusive of the Conclusions of the Brief of the Plaintiff-Appellant Avis A. Woolsey filed herein.

DATED this 13 day of April, 1981.

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MAILING CERTIFICATE

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postage prepaid this 13 day of April, 1981.