

2006

Layne D. Hess v. Jody Johnston : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LAYNE D. HESS, an individual,

Plaintiff/Appellant and Cross-Appellee,

vs.

JODY JOHNSTON, an individual,

Defendant/Appellee and Cross-Appellant.

Appeal Case No. 20050036

Trial Court No. 050919801

**BRIEF OF APPELLANT/CROSS-APPELLEE
LAYNE D. HESS**

Appeal from the Final Order Dismissing Action with Prejudice of the Third District Court,
in and for Salt Lake County, State of Utah, Dated April 25, 2006, Honorable J. Dennis
Frederick

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**FILED
UTAH APPELLATE COURTS
AUG 24 2006**

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PARTIES

1. LAYNE D. HESS, PLAINTIFF/APPELLANT AND CROSS-APPELLEE.
2. JODY JOHNSTON, DEFENDANT/APPELLEE AND CROSS-APPELLANT.

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JURISDICTION OVER APPEAL

This Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(j).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Did the district court error in deciding as a matter of law that Plaintiff's claims for unjust enrichment, conditional gift, promissory estoppel, reasonable reliance, and breach of contract are barred by Utah's abolishment of the cause of action for breach of a contract to marry? [Record ("R.") at 34-46, 88 (Hearing Transcript pp. 8-14)].

The district court's dismissal of Plaintiff's Complaint is reviewed by this Court for correctness and in reaching its decision this Court must accept the Complaint's factual allegations as true and draw all inference's in Plaintiff's favor. See Stokes v. Wagoner, 1999 UT 94, ¶6, 987 P.2d 602.

STATEMENT OF THE CASE

This case arises from a failed engagement between Plaintiff Mr. Hess and Defendant Ms. Johnston. [R. at 2-6]. During the engagement period Mr. Hess incurred substantial expenses at Ms. Johnston's request and for her benefit, as well as, undergoing a vasectomy procedure. [R. at 2-6]. Following the termination of the engagement by Ms. Johnston, Mr. Hess filed a Complaint on November 5, 2005 in which Mr. Hess sought to recover half of the major costs incurred by Mr. Hess and for Ms. Johnston to pay for the cost of the reversal of Mr. Hess' vasectomy procedure. [R. at 1-9]. Mr. Hess'

Complaint asserted claims for unjust enrichment, conditional gift, promissory estoppel, reasonable reliance, and breach of contract. [R. at 6-9].

On January 9, 2006, Defendant filed her Motion for Sanctions and Motion for Dismissal with Prejudice along with supporting memoranda. [R. at 15-32]. Defendant's motions essentially asserted that Mr. Hess' claims were barred by the Utah Supreme Court's decision in Jackson v. Brown, 904 P.2d 685 (Utah 1995), which held that Utah's cause of action for breach of an agreement to marry was abolished. [R. at 15-32]. Plaintiff filed a memorandum in opposition to Plaintiff's motions on January 27, 2006, and Defendant filed a reply memorandum on February 9, 2006. [R. at 34-54]. Following briefing, a hearing was held before the Honorable Dennis J. Frederick on April 10, 2006. [R. at 58, 88]. By its April 11, 2006 Minute Entry, the trial court issued its decision granting Defendant's Motion to Dismiss, but denying Defendant's Motion for Sanctions. [R. at 61-63]. The trial court signed a Final Order Dismissing Action with Prejudice on April 25, 2006. [R. at 64-65].

Plaintiff filed his Notice of Appeal of the Final Order Dismissing Action with Prejudice on May 25, 2006. [R. at 70-71]. Defendant filed her Notice of Cross-Appeal on May 31, 2006, by which Defendant seeks a reversal of the trial court's denial of Defendant's Motion for Sanctions. [R. at 72].

STATEMENT OF FACTS

1. Mr. Hess is forty-four years old and has been married twice; the first time for three years and the second time for eight years. Mr. Hess has been single for

approximately the past three years. Ms. Johnston is forty-seven years old and was married once before for approximately twenty years. [R. at 2, ¶¶ 5-7].

2. Both Mr. Hess and Ms. Johnston work for Jacobsen Construction. Mr. Hess and Ms. Johnston started dating in mid-April, 2004. Although Mr. Hess initially approached Ms. Johnston, ultimately Ms. Johnston pursued the relationship with Mr. Hess. [R. at 2, ¶¶ 8-10].

3. Near the end of May 2004, over Memorial Day weekend, Ms. Johnston professed her love for Mr. Hess and their relationship became much more serious. In late June and early July 2004, Mr. Hess and Ms. Johnston began living with each other on weekends. [R. at 2, ¶¶ 11-12].

4. In July 2004 Mr. Hess and Ms. Johnston began serious discussions about getting married, and decided that they would get married, but would take their time in scheduling the wedding and make sure that their finances were in order before getting married. They initially planned on a wedding sometime in November 2004. [R. at 2, ¶¶ 13-14].

5. In early July 2004, they began looking at engagement rings. They went to O.C. Tanner, and she selected the engagement ring of her choice. Thereafter, they located a jeweler who could make the same ring for \$12,000, which was lower than the sale price for the ring at O.C. Tanner of \$30,000. Mr. Hess made a down payment on the ring by selling jewelry he owned to the jeweler for \$3,500. [R. at 2-3, ¶¶ 15-19].

6. Ms. Johnston told Mr. Hess that she wanted to go on certain trips prior to getting married. In July of 2004, at the request of Ms. Johnston and in furtherance of their agreement to get married, Mr. Hess and Ms. Johnston went on a seven-day cruise to Alaska. The seven-day Alaskan cruise cost \$7,800, which was paid for by Mr. Hess on his credit cards. [R. at 3, ¶¶ 20-21].

7. After the Alaskan cruise, Ms. Johnston insisted that Mr. Hess meet with each of her children and personally request their permission to marry Ms. Johnston. Mr. Hess made those visits, including a trip to California to visit with one of her children, and obtained permission from each of the children as requested. [R. at 3, ¶¶ 22-23].

8. In September of 2004, at Ms. Johnston's insistence, Mr. Hess and Ms. Johnston went on a three-week trip to France. Ms. Johnston had lived in France several years before and wanted to return to France with Mr. Hess to introduce him to her friends there prior to their marriage. The trip to France cost approximately \$17,700, which was paid for by Mr. Hess on his credit cards. [R. at 3, ¶¶ 24-26].

9. Ms. Johnston requested that Mr. Hess pay for both the Alaskan cruise and the trip to France. [R. at 3, ¶ 27].

10. The day before they left on their trip to France, Mr. Hess picked up the custom-made engagement ring and paid off the remaining balance due of \$8,500 on the ring. While in France, Mr. Hess formally proposed to Ms. Johnston. Ms. Johnston accepted Mr. Hess' proposal, and Mr. Hess gave Ms. Johnston the engagement ring. [R. at 4, ¶¶ 28-30].

11. Following the trip to France, Ms. Johnston and Mr. Hess continued to live together, with Mr. Hess staying at Ms. Johnston's house the majority of the time on weekends. Occasionally Ms. Johnston would stay at Mr. Hess' house. [R. at 4, ¶¶ 31-32].

12. At some time in or about July 2004, Ms. Johnston underwent a medical procedure that would prevent her from getting pregnant. However, since there was still a possibility that Ms. Johnston could become pregnant, she insisted that Mr. Hess get a Vasectomy. [R. at 4, ¶¶ 33-34].

13. In August 2004, prior to the trip to France, Mr. Hess complied with Ms. Johnston's request and underwent the Vasectomy procedure. Ms. Johnston herself attended the Vasectomy procedure. The doctor in charge of the procedure allowed Ms. Johnston, at her request, to participate in the Vasectomy procedure by personally cutting the vas deferens. [R. at 4, ¶¶ 35-37].

14. The Vasectomy procedure caused Mr. Hess considerable pain, which persists to this day. Mr. Hess is in the process of finding a qualified doctor to reverse the Vasectomy, but he has no guarantee that a reversal will be successful. However, Mr. Hess' insurance will not cover the cost of the surgical procedure to reverse the Vasectomy. [R. at 4-5, ¶¶ 38-40].

15. Mr. Hess would not have had the Vasectomy but for Ms. Johnston's promise to marry him and her request that he undergo the procedure. Mr. Hess relied

upon Ms. Johnston's promise to marry him in giving up the opportunity to have children. [R. at 5, ¶ 41].

16. Sometime in October or November 2004, Ms. Johnston requested that Mr. Hess help purchase a vehicle for her son. Because Mr. Hess knew that he and Ms. Johnston would be getting married and Ms. Johnston's son would soon be his step-son, Mr. Hess agreed to help pay for a used truck. Mr. Hess gave \$2,400 to Ms. Johnston, which she used to purchase a used truck for Ms. Johnston's son. [R. at 5, ¶¶ 42-44].

17. During the latter part of 2004, Ms. Johnston and Mr. Hess decided that they should move the wedding date from November 2004 to May 5, 2005, which date was later changed to July 9, 2005 to accommodate their schedules. [R. at 5, ¶ 45].

18. In late April 2005, without any forewarning or explanation, Ms. Johnson broke off the engagement with Mr. Hess. That is, on April 23, 2005, Ms. Johnston informed Mr. Hess that she would not be his wife, and terminated the engagement. [R. at 5, ¶ 46].

19. Mr. Hess was shocked and completely surprised by Ms. Johnston's termination of their engagement. Despite Mr. Hess' numerous requests for an explanation, Ms. Johnston has been unwilling to offer any meaningful explanation of her reasons for breaking off the engagement. [R. at 5, ¶¶ 47-48].

20. If Mr. Hess had known that Ms. Johnston did not wish to marry him, he would not have incurred the expenses of the Alaskan cruise, the trip to France, the vasectomy requested by Ms. Johnston, the purchase of the engagement ring, and

providing money to Ms. Johnston for her purchase of a vehicle for Ms. Johnston's son.

[R. at 6, ¶ 49].

21. Mr. Hess has tried unsuccessfully to sell the custom-made engagement ring.

[R. at 6, ¶ 50].

SUMMARY OF ARGUMENTS

The trial court erred in deciding that Mr. Hess' claims were barred by the Utah Supreme Court's decision in Jackson in which the court abolished the cause of action for breach of promise to marry. The holding in Jackson is narrow and does not operate to abolish all claims that may arise from a failed engagement as it was so interpreted by the trial court. The Utah Supreme Court in Jackson expressly recognized that no injury to a plaintiff would go unremedied and no fundamental remedy would be lost by its abolishment of the breach of contract to marry cause of action. Accordingly, Mr. Hess' claims should not have been dismissed on the basis of Jackson's abolishment of the breach of contract to marry cause of action.

Furthermore, if the Jackson decision does not bar Mr. Hess' claims, Ms. Johnston's assertion that the claims fail to state a claim upon which relief can be granted, should be rejected by this Court. Accepting the facts alleged by Mr. Hess as true, Mr. Hess' Complaint states claims upon which relief can be granted and Mr. Hess should be allowed to proceed with his claims against Ms. Johnston.

ARGUMENT

I. UTAH’S ABOLISHMENT OF THE CAUSE OF ACTION FOR BREACH OF PROMISE TO MARRY DOES NOT BAR MR. HESS’ CLAIMS FOR RESTITUTION OF EXPENSES INCURRED OR TO BE INCURRED.

The trial court erred in holding that the abolishment of the cause of action for breach of a promise to marry by the Utah Supreme Court in Jackson v. Brown, 904 P.2d 685 (Utah 1995), bars Mr. Hess’ claims for restitution of the expenses and losses he has incurred or will incur as a result of his courtship of Ms. Johnston. In Utah, prior to the Jackson case, a cause of action existed for breach of a promise to marry, which allowed a plaintiff to “recover such amounts as will compensate [plaintiff] for the benefits lost or detriments suffered because of the breach, and the distress, mortification, mental suffering, and injury to [plaintiff’s] affections which she has undergone in consequence thereof.” Arbon v. Blyth, 179 P. 979, 979 (Utah 1919) (rejecting challenge to jury instruction describing the damages plaintiff was entitled to if the jury found that the defendant had breach his promise to marry). Furthermore, under the breach of promise to marry cause of action the successful plaintiff was “entitled to such a sum as would place [plaintiff] in as good a position presumably as [plaintiff] would have been in” had plaintiff married. Id. at 979-80. It is that cause of action that the Court in *Jackson* understandably rejected as being outdated, contrary to public policy and not the proper vehicle to redress emotional loss. Jackson, 904 P.2d at 687.

The Court in Jackson, however, did not abolish all possible causes of actions arising from a cancelled engagement. In fact, the Court in Jackson expressly stated that,

despite abolishing the breach of promise to marry cause of action, “no injury to a plaintiff, upon proper showing, goes unremedied” and that “no fundamental remedy is lost to this or any other plaintiff by our decision that breach of a promise to marry no longer exists.” *Id.* at 687 (emphasis added). Justice Durham’s statement that “any losses suffered because of [plaintiff’s] reasonable reliance upon [defendant’s] promise to marry her (such as normal expenses attendant to a wedding) may be recoverable under a theory of reasonable reliance or breach of contract,” simply suggests the types of causes of action that remain viable. *Id.* at 687. Associate Chief Justice Stewart’s concurring opinion only objects to that last sentence of Justice Durham’s opinion by stating that the “issue should be addressed, in my view, only when it is properly presented to this Court and properly argued by the parties.” *Id.* at 688 (A.C.J. Stewart concurring). Justice Stewart does not reject Justice Durham’s statement, but simply would leave the issue to be decided “when it is properly presented to this Court.” *Id.*

Significantly, the court in Jackson affirmed the lower court’s refusal to dismiss the plaintiff’s intentional infliction of emotional distress cause of action, which arose from the defendant’s cancellation of their engagement. *Id.* at 687-88. In doing so, the Jackson court expressly rejected the very argument made by Ms. Johnston in her Motion to Dismiss:

[Defendant] argues that because [plaintiff’s] claim of intentional infliction of emotional distress is based upon the same alleged acts as her claim of breach of promise to marry, “as one fails, so must the other.” We disagree.

Id. at 688 (emphasis added); see also Piccininni v. Hajus, 429 A.2d 886, 889-90 (Conn. 1980) (holding that the Connecticut statute prohibiting breach of promise to marry action did not prohibit action for restitution of specific property or money transferred in reliance on various false and fraudulent representation). By allowing the Plaintiff to proceed with its intentional infliction of emotional distress case, the Jackson court, contrary to the trial court's interpretation, was not limiting recovery to only causes of action for intentional infliction of emotional distress or fraud. The Piccininni court wisely recognized that "[a] proceeding may still be maintained which although occasioned by a breach of contract to marry, and in a sense based upon the breach, is not brought to recover for the breach itself." 429 A.2d at 889.

Mr. Hess is not trying to get around the abolishment of the breach of promise to marry cause of action by seeking the same results under a different a name. Courts in other jurisdictions have recognized that the type of relief that Mr. Hess is seeking is separate and distinct from a breach of promise to marry cause of action. See, e.g., Fanning v. Iversen, 535 N.W.2d 770, 773-774 (S.D. 1995) (affirming trial court's holding that plaintiff's action to quiet title and for return of loaned money under theory of conditional gifts was not barred by statute that prohibited breach of promise to marry cause of action); Wilson v. Dabo, 461 N.E.2d 8, 9 (Ohio Ct. App. 1983) (holding that plaintiff's claim for unjust enrichment seeking the return of property and money was not barred by Ohio's statute prohibiting breach of promise to marry claims). As the court in Fanning stated:

There exists a distinction, however, between such “heart-balm” actions and recovery of conditional gifts. . . . [Plaintiff] is not asking for damages for loss of marriage, or humiliation. Rather, he seeks to assert his equitable common-law right to recover property for which he paid and solely owns because the condition precedent to him gifting an interest to [defendant] was not fulfilled.

535 N.W.2d at 774. Likewise, the court in Piccininni stated:

The predominant view is that Heart Balm statutes should be applied no further than to bar actions for damages suffered from loss of marriage, humiliation, and other direct consequences of the breach, and should not affect the rights and duties determinable by common law principles.

Piccininni, 429 A.2d at 888. Accordingly, this Court should hold that Utah’s abolishment of the cause of action for breach of promise to marry does not preclude the causes of action asserted by Mr. Hess.

II. MR. HESS HAS ALLEGED FACTS UPON WHICH RELIEF CAN BE GRANTED UNDER THE CAUSES OF ACTION ASSERTED.

Accepting the allegations of Mr. Hess’ Complaint as true, as must be done at this point, Mr. Hess has stated claims upon which relief can be granted. Mr. Hess first cause of action is for unjust enrichment, which requires that “(1) the defendant receive a benefit; (2) an appreciation or knowledge by the defendant of the benefit; and (3) under circumstances that would make it unjust for the defendant to retain the benefit without paying for it.” Davies v. Olson, 746 P.2d 264, 269 (Utah Ct. App. 1987). Here, as alleged in the Complaint, Ms. Johnston received the benefit of the trips to Alaska and France paid for by Mr. Hess, as well as, the money that Mr. Hess provided to Ms. Johnston to help her purchase a truck for her son. Given the obvious cost of the benefits received, it can’t be disputed that Ms. Johnston had an appreciation or knowledge of the

benefit bestowed upon her by Mr. Hess. Finally, the facts of this case support a finding that by refusing to compensate Mr. Hess for her share of the expenses for the trips and the money provided for her son's truck, Ms. Johnston has unjustly retained those benefits. Accordingly, Mr. Hess should be entitled to recover from Ms. Johnston her share of the trip costs, the money provided to her for her son's car, and the cost of the procedure to reverse the vasectomy.

Mr. Hess second cause of action is for return of conditional gifts bestowed upon Ms. Johnston, which included the cost of taking her on the trips she requested they take and the money given to Ms. Johnston to help her pay for her son's car. It is well recognized that gifts given during the engagement period of a relationship are generally considered to be conditional. See, e.g., McLain v. Gilliam, 389 S.W.2d 131, 131-32 (Tex. Civ. App. 1965) (holding that plaintiff's gift of \$4,200 during engagement to help defendant pay debts was conditional and can be recovered by plaintiff upon termination of engagement); Fanning, 535 N.W.2d at 773-74 ("The majority rule is that a gift made in contemplation of marriage is conditional and should be returned if that condition is not fulfilled"); Picininni, 429 A.2d at 888 ("[T]he majority rule appears to be that a gift made in contemplation of marriage is conditional upon a subsequent ceremonial marriage. . . ."). Furthermore, a conditional gift is not limited to an engagement ring or other presents, but also includes such things as gifts of money to help for financial obligations or for gifts of an ownership in property. See McLain, 389 S.W.2d at 131-32; Fanning, 535 N.W.2d at 774.

The third cause of action raised in Mr. Hess' Complaint is for promissory estoppel or reasonable reliance. The necessary elements of a promissory estoppel claim are: "(1) a promise reasonably expected to induce reliance; (2) reasonable reliance inducing action or forbearance on the part of the promisee or a third person; and (3) detriment to the promisee or third person." Weese v. Davis County Comm'n, 834 P.2d 1, 4 n. 17 (Utah 1992). Here, Mr. Hess and Ms. Johnston had agreed to get married and in reliance on that promise, Mr. Hess incurred a number of expenses, including paying for two trips, loaning money for a car purchase, and purchasing an expensive engagement ring, and underwent a surgical procedure, none of which he would have done had they not agreed to get married. Mr. Hess is entitled to be reimbursed for Ms. Johnston's share of those expenses, the loss in value of the ring, and the cost of reversing the vasectomy. The fact that Mr. Hess received some benefit from the expenses incurred in reliance on the promise, as asserted by Defendants, does not prohibit Mr. Hess' recovery. See Andreason v. Aetna Casualty & Surety Co., 848 P.2d 171, 174-75 (Utah Ct. App. 1993) (upholding award of promissory estoppel damages despite benefit received by plaintiff due to the equitable nature of promissory estoppel).

Mr. Hess' fourth cause of action is a relatively straightforward claim for breach of an agreement by which Mr. Hess seeks to be restored as nearly as possible to his original position prior to Ms. Johnston's breach of the agreement. As set forth above, Mr. Hess seeks to be restored to his financial position prior to the engagement, which includes having Ms. Johnston pay for the reversal of his vasectomy, to be compensated for the loss

of value of the engagement ring, which Mr. Hess will most likely have to sell at a price significantly lower than its approximately \$12,000 purchase price, to be compensated for half the cost of the trips, and to have the money he gave to Ms. Johnston for her son's truck returned.

CONCLUSION

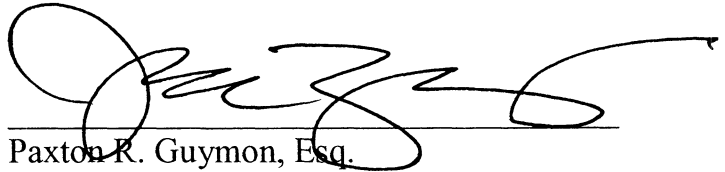
For the foregoing reasons, this Court should reverse the lower Court's granting of Defendant's Motion to Dismiss and remand the case for further proceedings.

ADDENDUM

Attached hereto as an addendum is the trial court's April 11, 2006 Minute Entry.

DATED this 24th day of August, 2006.

MILLER GUYMON, P.C.

A handwritten signature in black ink, appearing to read 'Paxton R. Guymon', written over a horizontal line.

Paxton R. Guymon, Esq.

Joel T. Zenger, Esq.

Attorneys for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law firm of MILLER GUYMON, P.C.,
165 Regent Street, Salt Lake City, Utah 84111, and that pursuant to Rule 26(a), Utah
Rules of Appellate Procedure, a true and correct copy of the foregoing **BRIEF OF
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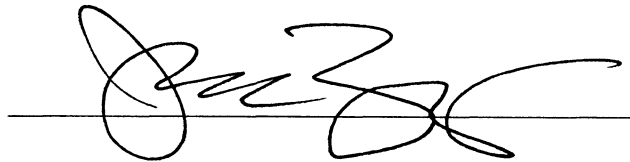
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ADDENDUM

TABLE OF CONTENTS

1. APRIL 11, 2006 MINUTE ENTRY

APR 10 2006

SALT LAKE COUNTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

CH
Deputy Clerk

LAYNE D. HESS,

Plaintiff,

vs.

JODY JOHNSTON,

Defendant.

MINUTE ENTRY

Case No. 050919801

Hon. J. DENNIS FREDERICK

April 11, 2006

The above-entitled matter comes before the Court pursuant to Defendant's Motion to Dismiss with Prejudice and for Sanctions. The Court heard oral argument with respect to the motion on April 10, 2006. Following the hearing, the matter was taken under advisement.

The Court having considered the motion and memoranda and for the good cause shown, hereby enters the following ruling.

In Jackson v. Brown, 904 P.2d 685 (Utah 1995), the Utah Supreme Court stated the following:

[W]e see no benefit in discouraging or penalizing persons who realize, before making these vows, that for whatever reason, they are unprepared to take such an important step. Plaintiff in this case concedes that if we were to uphold the action, any time an engaged party were to cancel wedding plans for any reason, the other party would have a prima facie case for breach of promise to marry. Such an action would be highly susceptible to abuse by persons whose feelings are damaged by a former fiancée's decision to cancel a wedding. In Norton, we held that actions so manipulable and vulnerable to this type of abuse are "counterproductive" to the good of the state. An action which would accrue any time a person, for whatever reason, cancels or indefinitely postpones wedding plans is

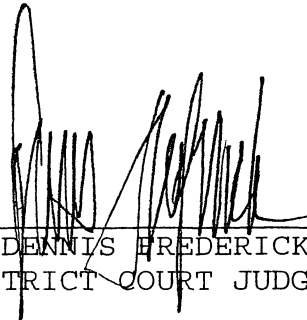
contrary to the public policy of this state. Not only would such an action be readily amenable to abuse, but it would discourage individuals with legitimate doubts or concerns about a planned wedding from cancelling the event. Encouraging people to marry out of fear of a lawsuit furthers no legitimate purpose and would undoubtedly cause many problems.

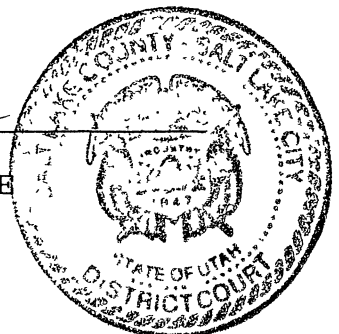
Id. at 687. (Internal citations omitted).

In the instant, Plaintiff has made no allegations of intentional infliction of emotional distress or fraud and although he has attempted to plead around *Jackson*, when the subject matter of the pleadings is considered¹, it is clear Plaintiff's Complaint is based upon or arises out of a breach of a contract to marry-a cause of action which has been expressly abolished in Utah.

In light of the forgoing, Defendant's Motion to Dismiss with Prejudice is granted. With respect to sanctions, the Court is not persuaded Plaintiff's claims were brought frivolously, consequently, Defendant's request for sanctions of costs, fees and expenses is, respectfully, denied.

DATED this 10th day of April, 2006.


J. DENNIS FREDERICK
DISTRICT COURT JUDGE



¹Construed in the light most favorable to Plaintiff and indulging all reasonable inferences therefrom, as required when ruling on a motion to dismiss. *Mounteer v. Utah Power & Light Co.* 823 P.2d 1055 (Utah 1991).

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 050919801 by the method and on the date specified.

METHOD	NAME
Mail	PAXTON R GUYMON ATTORNEY PLA 165 SOUTH REGENT ST SALT LAKE CITY, UT 84111
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Dated this 11th day of April, 2006.

C. Bawley
Deputy Court Clerk