218 Va. 290

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 760647

LUCY ANN ROMEO
Appellant

v.

SALVATORE JOSEPH ROMEO
Appellee

SUPPLEMENTAL APPENDIX

JOHN J. PRENDERGAST
STEPHEN C. MARTSON, of
John J. Prendergast
117 North Fairfax Street
Alexandria, Virginia 22314

Counsel for Appellee

FRED R. SURFACE & ASSOC. INC., HERITAGE BUILDING, RICHMOND, VA. (804) 643-7789

TABLE OF CONTENTS

Exhibit

Page

Memorandum Opinion of Judge Suozzi in original New York action between Appellee and Appellant (Plaintiff's Exhibit 5 filed October 23, 1975) 33

MEMORANDUM

SUFFOLK

1

SUPREME COURT, NASSAU COUNTY — SPECIAL TERM PART V (1/7/69)

SALVATORE J. ROMEO,
Plaintiff,
vs.
LUCY ANN ROMEO,
Defendant.

BY SUOZZI, J.

DATED February 25, 1969

Index #162932

SIBEN & SIBEN, ESQS.
By HOWARD ROSENSTONE, ESQ.
Attorneys for Plaintiff
Office and Post Office Address
90 East Main Street
Bay Shore, New York 11706

JULIA L. SEIDER, ESQ.
Attorney for Defendant
Office and Post Office Address
134 Fourth Avenue
Bay Shore, New York 11706

In this action plaintiff sought an annulment on the ground that at the time the parties were married, the defendant had not been legally divorced from her first husband. The defendant as a defense alleged a Mexican divorce obtained prior to the parties' marriage, and counter-claimed for a separation on the ground of cruel and inhuman treatment. The defendant further asserted a counter-claim for conversion of her personal property of an aggregate value of $6,825.00 and a counter-claim for $625.00, representing one-half of a joint savings account.

At the trial the plaintiff discontinued his action for annulment and defendant pursued her counter-claim. The parties were married on the 31st day of July, 1964, and there are no issue of the marriage. The defendant testified that on or about the 2nd day of May, 1968, the husband caused the locks of the marital residence to be changed and

refused to permit defendant to return to the marital residence. The plaintiff, who appeared and answered and was present at the trial with an attorney, offered no evidence to deny, dispute or contradict this testimony or offer any testimony of explanation or extenuation. It is quite clear that the lockout was deliberate and premeditated and without just cause or provocation and is an indication of plaintiff's intent to be rid of the defendant. The Court finds that plaintiff's conduct was such cruel and inhuman treatment as to entitle defendant to a judgment of separation on her first counter-claim.

The testimony establishes that the plaintiff earns a gross salary of approximately $11,500.00 a year as a custodian for the Central School District No. 4, Town of Brookhaven, and an additional $3,000.00 from other part-time employment with a municipal agency. After considering the needs of the defendant and the plaintiff, the Court awards to the defendant the sum of $85.00 per week as and for her personal alimony and support commencing as of the date hereof. An additional counsel fee of $250.00 is allowed to defendant's counsel in addition to the $750.00 awarded on the motion for counsel fee pendente lite.

At the close of the trial the defendant also moved for judgment in the amount of $600.00 for unpaid alimony pursuant to the order of Mr. Justice Liff dated August 27, 1968. Defendant is entitled to enter judgment for said amount.

After trial an oral application was made to the Court by the defendant wife in the presence of plaintiff's counsel, for a direction that

plaintiff return to defendant her automobile. This application was granted on the Court's finding that the automobile involved was the property of the defendant and the direction thereby made is hereby confirmed and restated. In the event that the plaintiff has not already returned said automobile, the judgment to be entered herein may so provide.

Except as to this automobile, the second and third counterclaims are otherwise denied since in this Court's view the defendant has failed to sustain the burden of proof as to these items.

This is the decision of the Court pursuant to Section 4213(b) of the CPLR. Settle judgment on notice.

Franklin Weissman
J. S. C.

COUNTY CLERK'S OFFICE
STATE OF NEW YORK } SS.:
COUNTY OF SUFFOLK

I, LESTER M. ALBERTSON, Clerk of the County of Suffolk and the Court of Record thereof, do hereby certify that I have compared the annexed with the original Judgment Roll FILED in my office March 12, 1975 and, that the same is a true copy thereof, and of the whole of such original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said County and Court this OCT 7 1975

..... Clerk.

Form No. 236