

SUPREME COURT OF WYOMING

McCulloh v. Drake

24 P.3d 1162 (Wyo. 2001) · No. Nos. 99-316, 99-317 · Decided June 15, 2001

SUMMARY

The Wyoming Supreme Court reviewed cross-appeals arising from a divorce proceeding involving child custody, support, property division, tort claims, and punitive damages. The court affirmed the property distribution, held that intentional infliction of emotional distress may be actionable between spouses subject to a high threshold, and concluded that tort claims were improperly joined with the divorce action and should be determined by a jury in a separate proceeding. The case was affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Lehman, Chief Justice; Lehman, C.J.; Thomas, J.; Macy, J.; Golden, J.; Hill, J.
JURISDICTION	Wyoming
DECIDED	June 15, 2001
DOCKET	Nos. 99-316, 99-317
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Cross-appeals from a divorce judgment involving child custody, child support, property division, alimony, tort claims, punitive damages, and attorney and guardian ad litem fees.
STANDARD OF REVIEW	Property division and allocation of costs are reviewed for abuse of discretion; an abuse exists when the disposition shocks the conscience and is so unfair and inequitable that reasonable persons could not abide it. Discovery rulings are reviewed under the applicable discovery rules and the relevance and proportionality limits of W.R.C.P. 26.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential
PARTIES	Gerri E. McCulloh, f/k/a Gerri E. Drake, John W. Drake v. John W. Drake, Gerri E. McCulloh, f/k/a Gerri E. Drake

TOPICS

family law procedure

divorce

intentional infliction of emotional distress

torts

discovery dispute

PRACTICE AREAS

family law

torts

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether the trial court's property division and allocation of fees and costs constituted an abuse of discretion.
2. Whether Wyoming recognizes an independent cause of action for intentional infliction of emotional distress between spouses.
3. Whether tort claims may be joined with a divorce action and tried without a jury.
4. Whether separating tort claims from a divorce action triggers res judicata.
5. Whether the statute of limitations for civil sexual assault is four years rather than one year.
6. Whether the husband was entitled to discovery of the wife's complete relevant pre-marriage mental-health records.
7. Whether the custody issue should be decided in light of changed circumstances and a subsequently modified custody order.

HOLDINGS

1. Wyoming recognizes an independent cause of action for intentional infliction of emotional distress between spouses, but the plaintiff must satisfy a high threshold of extreme and outrageous conduct resulting in severe emotional distress.
2. Tort claims should not be joined with marital dissolution claims because divorce proceedings are equitable while tort claims are actions at law that may carry a right to jury trial.
3. Separating tort claims from divorce claims does not trigger res judicata because the two actions do not involve identical subject matter or the same claim.
4. The statute of limitations for a civil sexual-assault action is four years; the one-year period for assault or battery expressly excludes sexual assault.
5. The husband was entitled to discovery of the wife's complete relevant mental-health records, including records predating the marriage, because those records were relevant to her mental health, custody allegations, and claimed severe emotional distress.
6. The trial court did not abuse its discretion in awarding the husband property acquired or increased through gifts and inheritance and in allocating fees and costs as it did.

KEY QUOTATIONS

"We are convinced that extreme and outrageous conduct by one spouse which results in severe emotional distress to the other spouse should not be ignored by virtue of the marriage of the victim to the aggressor and

hold that such behavior can create an independent cause of action for intentional infliction of emotional distress.” (24 P.3d at 1170)

“The wife's tort claims were improperly joined with the divorce action. We reverse the trial court's decision to join the causes of action together in one proceeding and remand for a determination by a jury.” (24 P.3d at 1171)

“Following the statute's plain language, we conclude that the statute of limitations for civil sexual assault is four years.” (24 P.3d at 1172)

“We conclude that a mental health expert should be given a complete record of relevant facts to be able to adequately evaluate the issues and make an intelligent decision.” (24 P.3d at 1173)

FACTUAL BACKGROUND

Gerri E. McCulloh and John W. Drake married on March 5, 1994, had one child together, and separated in October 1997 after McCulloh alleged a pattern of physical and sexual abuse, including an incident in which Drake briefly held a pillow over her face. The parties' divorce involved custody, support, property division, alimony, and tort claims. The trial court found that the pillow incident constituted a tort causing emotional distress and awarded \$4,250 in damages and \$750 in punitive damages, while rejecting or limiting other claims.

PROCEDURAL HISTORY

The trial court denied the wife's request for a jury trial on tort claims and tried the divorce and tort issues together. It awarded shared physical custody, gave the husband primary decision-making authority on medical and educational matters, awarded child support and property, denied future alimony, and awarded the wife damages and punitive damages for the September 1997 pillow incident. Both parties appealed. During the appeal, the trial court modified custody, and that modification was separately appealed; the Supreme Court reserved discussion of the custody issue for that later case.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Separate the tort claims from the divorce action and submit the tort issues to a jury; determine the civil sexual-assault claim under the four-year limitations period; permit discovery of the complete relevant version of the wife's mental-health records; and address the requested deposition of the wife's oldest son in the first instance. The property division and related fee and cost rulings were affirmed. The custody issue was reserved for a later opinion concerning the subsequent custody-modification order.

CASES CITED

- Tader v. Tader, 737 P.2d 1065 (Wyo. 1987)
- Leithead v. American Colloid Co., 721 P.2d 1059 (Wyo. 1986)

- Anderson v. Solvay Minerals, Inc., 3 P.3d 236 (Wyo. 2000)
- Henriksen v. Cameron, 622 A.2d 1135 (Me. 1993)
- France v. France, 902 P.2d 701 (Wyo. 1995)
- Neuman v. Neuman, 842 P.2d 575 (Wyo. 1992)
- Kennedy v. Kennedy, 456 P.2d 243 (Wyo. 1969)
- Carlton v. Carlton, 997 P.2d 1028 (Wyo. 2000)
- Mann v. Mann, 979 P.2d 497 (Wyo. 1999)
- Carlson v. Carlson, 888 P.2d 210 (Wyo. 1995)
- Sellers v. Sellers, 775 P.2d 1029 (Wyo. 1989)
- Simmons v. Simmons, 773 P.2d 602 (Colo. Ct. App. 1988)
- Lord v. Shaw, 665 P.2d 1288 (Utah 1983)
- Stuart v. Stuart, 421 N.W.2d 505 (Wis. 1988)
- Stuart v. Stuart, 410 N.W.2d 632 (Wis. Ct. App. 1987)
- Heacock v. Heacock, 520 N.E.2d 151 (Mass. 1988)
- RKS v. SDM by TY (Paternity of SDM), 882 P.2d 1217 (Wyo. 1994)
- Newell v. Trumper, 765 P.2d 1353 (Wyo. 1988)
- Swasso v. State ex rel. Wyoming Worker's Compensation Division, 751 P.2d 887 (Wyo. 1988)
- Osborn v. Painter, 909 P.2d 960 (Wyo. 1996)
- State, Department of Family Services v. PAJ, 934 P.2d 1257 (Wyo. 1997)