

SUPREME COURT OF OKLAHOMA

Deal v. Deal, 135 Okla. 87

274 P. 19 (1928) · Decided July 17, 1928

SUMMARY

The Oklahoma Supreme Court reviewed a divorce decree awarding the wife custody, permanent alimony, and attorney's fees. The court upheld the findings of gross neglect of duty and extreme cruelty, but held that the alimony and attorney's-fee awards were excessive. It modified the decree to award \$20,000 in permanent alimony and \$2,500 in attorney's fees, and affirmed it as modified.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Diffendaffer; Teehee; Bennett; Leach; Herr
JURISDICTION	Oklahoma
DECIDED	July 17, 1928
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed a divorce decree awarding the plaintiff custody of their minor child, \$48,000 in permanent alimony, and attorney's fees. The Supreme Court reviewed the challenged assignments of error and modified the monetary awards.
STANDARD OF REVIEW	Whether the judgment and decree were clearly against the weight of the evidence; the amount of alimony and attorney's fees was reviewed under the trial court's discretionary principles and the circumstances shown by the record.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; precedential.
PARTIES	Deal v. Deal

TOPICS

- divorce
- alimony
- family law procedure
- appellate procedure
- indian affairs

PRACTICE AREAS

- family law
- divorce
- alimony
- appellate procedure
- indian affairs

QUESTIONS PRESENTED

1. Whether the defendant could obtain appellate review of the order overruling his demurrer when he had answered on the merits but had not included the demurrer ruling in his motion for new trial.
2. Whether the evidence supported the trial court's findings of gross neglect of duty and extreme cruelty as grounds for divorce.
3. Whether the award of permanent alimony was permissible and reasonable in light of the defendant's status as an Osage Indian without a certificate of competency and the federal restrictions on his property and funds.
4. Whether the \$48,000 permanent-alimony award was excessive.
5. Whether the attorney's-fee award was excessive after the permanent-alimony award was reduced.

HOLDINGS

1. An order overruling a demurrer to a petition will not be reviewed on appeal when the defendant answered further and failed to present the demurrer ruling in a motion for new trial.
2. The trial court's findings that the defendant committed gross neglect of duty and extreme cruelty were supported by the clear weight of the evidence.
3. The federal restrictions cited by the defendant did not require reversal of the divorce decree or establish that the trial court lacked jurisdiction to enter the alimony judgment, because the decree did not award the plaintiff specific restricted real or personal property and the court was not then enforcing the award.
4. The \$48,000 permanent-alimony award was excessive and had to be reduced to \$20,000.
5. The attorney's-fee award was excessive and had to be reduced from \$5,000 to \$2,500.

KEY QUOTATIONS

“Extreme cruelty does not mean that the defendant should strike or maim the plaintiff, but any conduct on the part of the defendant that would destroy the happiness and health of the plaintiff and defeat the very purposes of matrimony would be extreme cruelty.” (135 Okla. at 89)

FACTUAL BACKGROUND

The plaintiff and defendant married after the defendant's divorce from a former wife, and the plaintiff became pregnant. During the pregnancy and childbirth, the defendant provided little financial support, companionship, or care, left the plaintiff primarily in the care of relatives, and did not establish a home for her despite her requests. The defendant's conduct led to separate-maintenance proceedings and temporary support payments. The trial court found gross neglect of duty and extreme cruelty, granted the plaintiff a divorce and custody of the child, and awarded permanent alimony and attorney's fees.

PROCEDURAL HISTORY

The plaintiff sued for divorce, custody, and permanent alimony in the District Court of Oklahoma County. The trial court overruled the defendant's demurrer, tried the case, granted a divorce and custody to the plaintiff, and awarded \$48,000 in permanent alimony. On appeal, the Supreme Court declined to review the demurrer because

it was not raised in the motion for new trial, upheld the divorce decree as supported by the evidence, reduced permanent alimony to \$20,000 and attorney's fees to \$2,500, and affirmed the judgment as modified.

DISPOSITION

affirmed

CASES CITED

- Commercial Investment Trust v. Ferguson, 96 Okla. 163, 220 P. 925
- Aultman Taylor Machinery Co. v. Fuss, 86 Okla. 168, 107 P. 308
- Sharum v. Sharum, 121 Okla. 53, 247 P. 97
- Shafer Oil Refining Co. v. Thomas, 120 Okla. 253, 252 P. 41
- Finnell v. Finnell, 113 Okla. 164, 240 P. 62

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