

SOUTH AFRICA / JUDGMENT

**Schwartz v Schwartz (79/82) [1984]
ZASCA 79; [1984] 4 All SA 645 (AD) ;
1984 (4) SA 467 (A) (17 August 1984)
[1984] ZASCA 79**

COURT

Supreme Court of Appeal

BEFORE

Corbett, Kotze, Joubert

CASE / FILE NUMBER

79/82

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IN THE SUPREME COURT OF SOUTH AFRICA (APPELLATE DIVISION)

In the matter between;

SYDNEY JACOB SCHWARTZ appellant

and

GLADYS SCHWARTZ respondent

Coram: CORBETT, KOTZE et JOUBERT, JJA

DATE OF APPEAL: 21 May 1984 DATE OF JUDGMENT: 17 August 1984

J U D G M E N T CORBETT JA:

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"How happy could I be with either, Were t'other dear charmer away !"

The appellant and his wife, the respondent, were married in community of property on 1b December 1960. At the time appellant was a medical student at Pretoria University and respondent was a pharmacy student at the Johannesburg Technical College. After the marriage respondent gave up her studies in order to find employment so that she could support herself and her husband, while he continued with his medical studies. Out of her earnings she in fact partly paid for his studies. The appellant passed his final examinations in June 1967. In about 1969 he commenced private practice as a medical practitioner, on his own, in Krugersdorp, Transvaal. He and the respondent established a home there.

From the start respondent worked for appellant. She handled the financial side and general administration

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of the practice. This included keeping the books and preparing annual financial statements. The practice was in a sense a joint venture. They watched it grow together and gained much satisfaction from the fact that it prospered. The extent to which it prospered may be roughly gauged from the fact that during the divorce trial, which later ensued, respondent stated that appellant was earning about R10 000 per month from his practice. This statement was not challenged or denied.

Until about 1977 the parties appear to have been a reasonably happily married couple. They had two children, both daughters. The elder was born in February. 1967, just before the completion of appellant's medical studies. The younger was born about 2 years later. Appellant and respondent were both very devoted to their children.

Apart from the fact that they worked together

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in the practice, appellant and respondent had certain interests in common. They were both fond of music and interested in art. Over the years they together had purchased a number of paintings by South African artists, which at the time of the divorce trial were estimated by appellant to be worth about R80 000. The overall impression is one of a placidly happy and contented relationship. It subsequently transpired that marital fidelity was not appellant's strong point. He had had several affairs with nurses and nursing sisters. These were each of short duration. At the trial appellant alleged that his wife had known about these affairs. She denied this, but said that in any event —

"... those little things would not have worried me because I loved my husband very much and was prepared to forgive and forget."

In the beginning of 1977 (or it might have been at

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the end of 1976) an event occurred which was later to shake the marriage to its very foundations: the appellant met a Miss M Lintvelt. Miss Lintvelt was at the time a teacher at the school attended by appellant's daughters. She was about 20 years younger than the appellant. The circumstances of the meeting are not important. Appellant continued to meet her, send her flowers and so forth. He fell in love with her and she apparently (she did not give evidence at the trial) with him. There then commenced a liaison of a more lasting character.

Respondent became aware of the relationship between appellant and Miss Lintvelt as a result of an anonymous telephone call. She confronted the appellant with the information which she had received. He initially denied that there was such a relationship, but later she found them together at a rugby match. There was another confrontation at a hair-

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dressing salon. Not unexpectedly this liaison led to accusations, arguments and unhappiness as far as the parties were concerned.

In due course respondent instituted an action against Miss Lintvelt for damages for alienation of her husband's affections. The case came to court early in 1980, but the evidence does not reveal what the outcome of the action was. In the meanwhile and in 1978 appellant had commenced a divorce action against respondent. It does not appear upon what his cause of action was based, but it is clear that the action was brought in terms of the law relating to divorce as it was prior to the commencement (on 1 July 1979) of the Divorce Act 70 of 1979 ("the Act"). Despite the institution of this action and despite his relationship with Miss Lintvelt, the appellant continued to live in the common home until September 1979. He then left and

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went to live with Miss Lintvelt in a flat in Krugersdorp.

The divorce action instituted by appellant in 1978 does not seem to have been prosecuted with any vigour or-enthusiasm. Appellant was advised that "the chances were not so good in getting a divorce". In October 1961 Miss Lintvelt left on a holiday visit to the Far East. She did so without informing appellant of the trip. He was very upset and surprised when he discovered that she was missing. His immediate reaction was to return home to seek the comfort of his family. He slept there for two nights. He was then able to make contact with Miss Lintvelt and spoke to her (presumably by telephone) every day. He returned to his flat. Miss Lintvelt was away for about 25 days. On her return she and the appellant resumed cohabitation in the flat. Shortly after her return appellant withdrew the divorce action instituted in 1978 and commenced a fresh action, this time in terms of the Act.

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