

1967

# Juab County Department or Public Welfare v. Gean C. Summers v. Lynn Owen Newton, and Aleen Mattinson Newton, His Wife : Brief of Respondent

Utah Supreme Court

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## Recommended Citation

Brief of Respondent, *Juab County v. Summers*, No. 10584 (Utah Supreme Court, 1967).  
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# In The Supreme Court of the State of Utah

JUAB COUNTY DEPARTMENT OF  
PUBLIC WELFARE,

Plaintiff-Respondent,

-v-

DEAN C. SUMMERS,

Defendant-Appellant,

and

LYNN OWEN NEWTON, and ALEEN

MATTINSON NEWTON, his wife,

Defendants.

Case No.

10584

UNIVERSITY OF UTAH

MAY 13 1967

## BRIEF OF RESPONDENT

Appeal for the judgment of the Fifth Judicial District  
Court for Juab County, Hon. C. Nelson Day, Judge.

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FILED

APR 13 1967

Clerk, Supreme Court, Utah

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# In The Supreme Court of the State of Utah

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JUAB COUNTY DEPARTMENT OF PUBLIC WELFARE, Plaintiff-Respondent, -v- GEAN C. SUMMERS, Defendant-Appellant, and LYNN OWEN NEWTON, and ALEEN MATTINSON NEWTON, his wife,	} Defendants. Case No. 10584
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## BRIEF OF RESPONDENT

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### STATEMENT OF THE KIND OF CASE

This is an action to foreclose a public welfare lien on property located in Juab County, Utah.

### DISPOSITION IN THE LOWER COURT

The case was tried by the court and judgment was in favor of the plaintiff.

### RELIEF SOUGHT ON APPEAL

The respondent submits that the trial court's judgment be affirmed.

## STATEMENT OF FACTS

The respondent will accept the appellant's statement of facts, except that Ruben Edward Carter received public assistance from August 1955 to August 1957, and during this period his wife, Ruby Carter, also was a recipient of public assistance. In addition, Ruby Carter received public assistance in Juab County from September 1957 to June 1958 and filed an application in Utah County and received public assistance from Utah County from July 1958 to July 1959.

## ARGUMENT

## POINT I

**THE TRIAL COURT DID NOT ERR IN HOLDING THAT THE ACTION WAS NOT BARRED BY UTAH CODE ANN. § 78-12-27(4) (1953).**

There are many errors in the citations to the statutes in the appellant's brief. The Public Welfare lien liability was originally covered by Utah Laws 1947, ch. 89, § 5, but this section was amended effective April 1, 1953. Utah Laws 1953, ch. 90 § 2. The quotation of the applicable law on July 21, 1955, when the lien was signed in this case, as shown on page 12, is not correct since the provision there quoted is the unamended version of that statute. The correct citation of the law in effect on July 21, 1955, is Utah Laws, 1953, ch. 90, § 2. As far as this proceeding is concerned, the provisions of the 1953 law are practically identical with the provisions of Utah

Code Ann. § 55-15-30 (1961), effective on May 10, 1961, and for all practical purposes this section which is quoted beginning on page 6 of the appellant's brief will apply to all material matters herein. On page 5 of his brief, appellant has erroneously referred to Utah Laws **1957**, ch. 126, § 30 and then refers to Utah Code Ann. § 55-15-30 (1953). Utah Laws **1961**, ch. 126, § 30 is actually the same as Utah Code Ann. § 55-15-30. In other words, there was only one change in the law during the period involved in this case and that was in 1961 when the Public Assistance Act of 1961, Utah Code Ann. §§ 55-15-1 to -39 (1963), was enacted.

One important distinction between the version erroneously quoted on page 4 of the Appellant's brief, and the 1953 amendment is that the quoted version, in part, provided "foreclosure of the lien shall not be sought until the death of the recipient when said recipient is the **sole owner** of the property or until the death of both husband and wife when the property is held as joint tenants with full rights of survivorship," Utah Laws 1947, ch. 89, § 5, (emphasis added), whereas the amendment provides that foreclosure shall be taken "upon the death of the recipient and his or her spouse, if any." Utah Laws 1953, ch. 90, § 2, at 250.

The argument of appellant is that the public welfare lien agreement executed by both of the Carters is only evidence of the lien as created by statute, and that it was mandatory for the respondent to seek collection of the lien either upon the death of Ruben Edward Carter on August 20, 1957, or in

any event, on the recording of the deed from the Carters to the appellant on August 23, 1957, under the provisions of Utah Code Ann. § 55-15-30(b) (1) (1953). The appellant then concludes that all liability under the lien agreement is created by statute and that any action thereon is governed by the three year period of limitations under Utah Code Ann. § 78-12-26(4) (1953) and that the action was barred since the deed was recorded on August 23, 1957, and this action was not commenced until January 23, 1962.

Appellant takes the position that it was mandatory for the department to commence foreclosure when the deed from the recipients was recorded. This cannot be a valid argument as Ruby Carter continued to receive welfare assistance in Juab County until June 1958, when she then made application to the Utah County Department of Public Welfare and received assistance under the lien from that time until July 1959. Assuming that the applicable statute of limitation is three years, and that the statute would begin to run either on the last date when Ruby received public assistance or on the date of her death on September 12, 1961, the complaint was still filed in time on January 23, 1962. To hold that the statute began to run when the deed was recorded when Ruby Carter continued to receive assistance would be inequitable, and the appellants are estopped to assert the statute of limitations in such circumstances. See **Neff v. New York Life Ins. Co.**, 180 P.2d 900 (Cal. 1947) where it was held that a party, by reason of the fraudulent concealment of the fact upon which the existence of a



cause of action depends, may be estopped to set up the defense of the statute of limitation. See also **McLearn v. Hill**, 177 N. W. 617 (Mass. 1931), which holds that estoppel to set up the defense of limitations may rest on necessary implication. Also to be considered in this case, is the general rules that if there is doubt as to which of two statutes of limitations applies the longer rather than the shorter period of limitation is to be preferred and is generally applied. See **Payne v. Ostrus**, 50 F.2d 1039 (8th Cir. 1931); **Southern Pac. R. R. v. Gonzales**, 61 P.2d 377 (Ariz. 1936).

In support of the creation of the liability by statute, appellant cites 81 C.J.S. **Social Security and Public Welfare** § 31 at 69 for the general statement that "it is only pursuant to statutory provisions that the authorities may have a lien for assistance furnished." As authority for this editorial comment the case of **Camden County Welfare v. Federal Deposit Ins. Corp.**, 63 A. 2d 417 (N. J. 1948) is cited. This case considered only the type of lien created by an agreement to reimburse the county for assistance received, and the question of the statute of limitations was not involved in the case but only the question of priority of liens. Appellant further cites the case of **County Dept. of Pub. Welfare v. Potthoff**, 44 N.E.2d 494 (Ind. 1942). This case is concerned with the effect of an act repealing provisions of the State Welfare Act relating to granting a lien against property of old age assistance recipients and is not in point on this appeal.

Respondent appears to rely entirely on the case of **Utah Poultry and Farmers Co-op. v. Utah Ice and Storage Co.**, 187 F.2d 652 (10th Cir. 1951) for the proposition that the welfare lien agreement is covered by the three years period of limitations as a liability created by statute. The quotation from this case beginning on Page 14 of appellant's brief is actually the editorial summary of the decision in A.L.R.2d (see 23 A.L.R.2d 1461) and does not state the opinion of the court as it affects our question. The case did not concern itself with the statute of limitation as to liabilities created by statute, but was concerned with the question of whether a warehouse receipt issued under the Uniform Warehouse Receipts Act, Utah Laws 1917, § 201 constitutes a contract under the limitation for an action upon any contract, obligation or liability founded upon an instrument in writing or whether an action for injury to personal property resulting from a breach of the storage contract came under the limitations for actions for taking, detaining, or injuring personal property under Utah Code Ann. § 78-12-26(2) (1953). The court did not hold that the warehouse receipt was a liability created by statute under Utah Code Ann. § 78-12-26(3). It will be noted also that the warehouse receipt specifically limited liability to the "diligence and care required by law," and the court said, 187 F.2d at 654:

But, contrary to the contentions of appellant, the warehouse receipt pleaded here, did not create any duty beyond the legal duty imposed by statute. Rather, it specifically provides that the liability of the appellee under the storage contract is limited to the "diligence and care required by law".

It is also important to consider that the decision in the **Utah Poultry** case indicates that the statute of limitations and the liability of the warehousemen would have been the same if no warehouse receipt had been issued. In other words, the warehousemen's act is self executing, and the warehousemen's liability is limited by statute unless there is an agreement for any further liability. In the instant case, however, the welfare lien law involved is not self executing and Utah Laws 1953, ch. 90, § 5 specifically, in part, provides:

Effective as of July 1, 1947, all old age assistance recipients and all those subsequently applying for assistance who are not exempt as hereinbefore provided, shall be required to enter into agreements to reimburse as hereinabove provided as a condition precedent to receiving any assistance under this act.

The instrument is designated as an "agreement" in the statute and the instrument executed by the recipients is designated as "Public Welfare Lien Agreement" (Exhibit P-1). Both applicable statutes also provide that the recording of said lien agreement shall have the same effect as a lien by judgment, and that all such real property, including but not limited to joint tenancy interest, shall from the time of recording of such agreement be and become charged with a lien for all assistance received by the recipient or his or her spouse or dependents. Therefore, this is an action upon a contract, obligation or liability founded upon an instrument in writing and is governed by the six year limitation under Utah Code Ann. § 78-12-23(2) (1953). It is also pointed

out, that our statutes set forth the effect of a warranty deed and a mortgage in statutory form, and it would not be contended that a warranty deed or mortgage is not a contract based upon an instrument in writing. Likewise, it cannot be contended that a welfare lien agreement is simply evidence of the obligation and liability fixed by statute as in the case of the warehouse receipt in the **Utah Poultry** case. There is no liability under a warranty deed and a mortgage until it is executed, and there is no liability under the welfare lien statute until an agreement is executed. By the great weight of authority a liability created by statute is one which the law creates in the **absence of an agreement** and which would not exist but for the statute. See **Baldwin v. Fenimore**, 149 Kan. 825, 89 P.2d 883 (1939).

## POINT II

THE COURT DID NOT ERR IN HOLDING THAT THE EVIDENCE WAS SUFFICIENT TO SHOW THAT RECIPIENTS RECEIVED ASSISTANCE FROM THE JUAB COUNTY DEPARTMENT OF PUBLIC WELFARE WHICH WAS SUBJECT TO INTEREST, AS ALLOWED IN THE JUDGMENT OF THE COURT.

The appellant contends that no funds were paid out by the Juab County Department of Public Welfare except as were paid out of Federal and State funds. The fact remains that the lien agreement itself (Exhibit P-1) recites as follows:

I, or we, the undersigned, having applied for public assistance from the Juab County Department of Public Welfare and in order to secure the reimbursement of any sums advanced to me, or us, or paid in my, or

our behalf by the said county welfare department, do hereby grant and lien . . . .

In the case of **Boone County Old Age Assistance Bd. v. Myhre**, 149 Neb. 669, 32 N.W. 2d 262 (1948), which was an action for collection of a welfare lien by the county treasurer, the court held that the county treasurer was the real party in interest even though any recovery would be paid to the State and Federal Governments who were not parties to the action, citing 42 U.S.C.A. § 303.

As to the question of sufficiency of the evidence as to the amount paid, there can be little question that the evidence is sufficient to support the payment of \$3,448.00 to the recipients from the Juab County Welfare Department (Exhibit P-7, Tr. 44). As to the matter of 6% interest, it was not necessary for the court to refer to a regulation of the Utah State Welfare Department. The statutes in effect at the time the lien was executed, Utah Code Ann. § 55-2-5 (1953), as amended by Utah Laws 1953, ch. 90 § 2, and at the time the complaint was filed, Utah Code Ann. § 55-15-30(2)c (1963), provided that interest at the rate of 6% per annum shall be chargeable beginning 90 days after the lien becomes due and payable when a lump sum settlement of the lien is not paid.

If the court should hold that the evidence is not sufficient to show the payment of the amount allowed in the judgment, then the matter should be returned to the trial court for additional evidence

including evidence as to the payments made by the Utah County Department of Public Welfare in the amount of \$807.90 as alleged in the complaint.

### CONCLUSION

An analysis of appellant's argument and authorities clearly shows there is no merit to his contentions. The public welfare lien agreement is an agreement on which the six year statute of limitation applies and comes under Utah Code Ann. § 78-12-23(2) (1953). The Juab County Department of Public Welfare is the real party in interest in this matter and may recover funds in behalf of the state and federal governments.

This court should affirm.

Respectfully submitted,

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