

1986

Marsha Lee Starks, aka Marsha Lee Beachler v.  
State of Utah, Department of Social Services :  
Reply Brief

Utah Court of Appeals

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IN THE COURT OF APPEALS

STATE OF UTAH

DOCKET NO. 860244

MARSHA LEE STARKS, aka  
MARSHA LEE BEACHLER,

Petitioner/Appellant,

vs.

STATE OF UTAH, DEPARTMENT  
OF SOCIAL SERVICES,

Defendant/Respondent

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Case No. 860244-CA

Category 13

REPLY BRIEF OF PETITIONER/APPELLANT

ON APPEAL FROM A FINAL ORDER OF THE THIRD JUDICIAL DISTRICT  
COURT ON APPELLANT'S PETITION FOR REVIEW FROM THE ORDER OF THE  
UTAH DEPARTMENT OF SOCIAL SERVICES ADMINISTRATIVE COURT

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COURT OF APPEALS

## STATE OF UTAH

VS.

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COURT ON APPELLANT'S PETITION FOR REVIEW FROM THE ORDER OF THE  
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TABLE OF CONTENTS

	<u>Page</u>
ARGUMENT.....	1
I.    A VALID COURT ORDER EXISTS THAT DETERMINES PETITIONER'S CHILD SUPPORT OBLIGATION.....	1
II.   PETITIONER'S DIVORCE DECREE IS RES JUDICATA...	2
CONCLUSION.....	4

TABLE OF AUTHORITIES

CASES CITED

	<u>PAGE</u>
<u>Bernard v. Attebury,</u> 629 P.2d 892 (Utah 1981).....	3
<u>Karren v. Utah State Department of Social Services,</u> 716 P.2d 810 (Utah 1986).....	3
<u>Searle Bros. v. Searle,</u> 588 P.2d 689 (Utah 1978).....	2

STATUTES CITED

Utah Code Ann. §30-3-5(3).....	2
Utah Code Ann. §78-45b-1-24.....	1,3

## ARGUMENT

### I. A VALID COURT ORDER EXISTS THAT DETERMINES PETITIONER'S CHILD SUPPORT OBLIGATION.

Petitioner's Divorce Decree ordering her former spouse to pay child support should be construed as simultaneously ordering Petitioner not to pay child support. Silence in the decree as to her support obligation is an affirmative determination that she is under no court order to pay child support. The Petitioner and her former husband are entitled to rely on the finality of the child support order in determining the right to receive and the duty to pay. The Divorce Decree did not order Petitioner to pay child support to Mr. Hutchinson, but did order him to pay child support to her. In so allocating the child support obligation on Mr. Hutchinson, the Divorce Decree is a court order as to Petitioner's support obligation within the meaning of the Public Support of Children Act, Utah Code Ann. §78-45b-1 through 24.

The Respondent's claim that no court order exists as to Petitioner's support obligation is both unpersuasive and contrary to legal authority. It is the law in this state that a court order includes any judgment or order of any district court of this state ordering payment of a set or determinable amount of support money, Utah Code Ann. §78-45b-2(3). The Petitioner's Divorce Decree is such a court order that allocates and determines the rights and obligations of the parties to that divorce proceeding. Silence as to Petitioner's support obligation does not invalidate the fact that a court order exists as to her support duty, nor does it suggest that Petitioner's obligation to her children was not an issue properly addressed by the court.

Since the Divorce Decree's treatment of the parties' child support obligation is a court order for purposes of the Public Support of Children Act, it may not be disturbed without following the proper procedures provided for by law. The District Court retains continuing jurisdiction in a divorce proceeding under Utah Code Ann. §30-3-5, which provides that the court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, and the custody and support of the children. Thus the court, and not an administrative agency, has the power to modify a divorce decree.

The Petitioner simply claims that the Department of Social Services (the Department), must comply with rules governing civil procedure. She does not claim that she may never be required to provide additional support for her children. She only claims that the duty of support must be modified in a judicial, and not an administrative proceeding. The Department must follow the proper procedure and petition the District Court for a modification of the existing court order if circumstances justify a change. The Department's administrative modification of Petitioner's Divorce Decree was both improper and unlawful.

## II. PETITIONER'S DIVORCE DECREE IS RES JUDICATA

A divorce decree, like other final judgments, is conclusive as to the parties and their privies and operates as a bar to a subsequent action, Searle Bros. v. Searle, 588 P.2d 689 (Utah 1978). The doctrine of res judicata precludes the relitigation of all issues that could have been litigated, as well as those

that were, in fact, litigated in the prior action, Bernard v. Attebury, 629 P.2d 892 (Utah 1981).

The language of the Divorce Decree clearly allocates the support obligation to Mr. Hutchinson. In so allocating the duty of support, the court purposely and deliberately determined that Petitioner would not pay child support under the terms of the Divorce Decree. The court is not obligated to state, "Plaintiff is awarded custody of the children and Defendant is not awarded custody of the children; Plaintiff is ordered to pay child support and Defendant is not ordered to pay child support." The issue of child support was specifically addressed by the court in the parties' divorce decree.

The Respondent claims that the issue of child support may be redetermined by the Department because the Department was not privy to the Petitioner's divorce action. The Department is not a "real party in interest" (as the Respondent asserts), but is in privity with Mr. Hutchinson. The Department's rights are derivative and no greater than the rights of Mr. Hutchinson, Utah Code Ann. §78-45b-3; Karren v. Utah State Department of Social Services, 716 P.2d 810 (Utah 1986). The Department obviously was not a party at the time of the parties' Divorce Decree because it had no interest in the support question at that time. The Department is now barred from raising the issue of a support obligation since the issue has been addressed in the parties' Divorce Decree. A court order exists as to Petitioner's support obligation, and the issue is res judicata.



### III. CONCLUSION

For the foregoing reasons, the decision of the Department of Social Services Administrative Court should be reversed and Petitioner should be held harmless from a child support obligation owed to the Department for the time period in question.

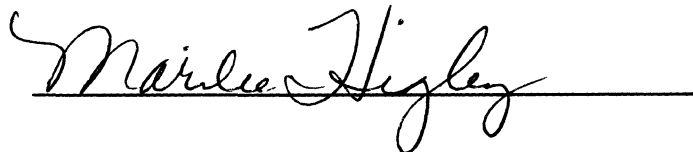
DATED this 28 day of April, 1987.

UTAH LEGAL SERVICES, INC.  
Attorneys for Petitioner/Appellant

  
BY: LOUISA L. BAKER

### CERTIFICATE OF MAILING

I HEREBY CERTIFY that 4 copies of the foregoing REPLY BRIEF was served to Blaine Ferguson, Assistant Attorney General, 236 State Capitol, Salt Lake City, Utah 84114, by mailing copies first class, or by hand-delivering said copies this 4<sup>th</sup> day of May, 1987.



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