

1986

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

Utah Court of Appeals

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~~BRIEF~~

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DOCKET NO.

IN THE SUPREME COURT OF THE STATE OF UTAH

860244

MARSHA LEE STARKS, aka  
MARSHA LEE BEACHLER,  
  
Petitioner/Appellant,

vs.

STATE OF UTAH, DEPARTMENT  
OF SOCIAL SERVICES,

Defendant/Respondent.

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*860244-CA*  
Case No. 840473

Category 13

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BRIEF OF PETITIONER/APPELLANT

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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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JAN 14 1987

COURT OF APPEALS

IN THE SUPREME COURT OF THE STATE OF UTAH

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MARSHA LEE BEACHLER,	*	
	*	
Petitioner/Appellant,	*	Case No. 840473
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vs.	*	
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## TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT OF ISSUES PRESENTED ON APPEAL.....	1
STATEMENT OF CASE.....	1
STATEMENT OF FACTS.....	1
SUMMARY OF ARGUMENT.....	3
ARGUMENT.....	3
I.    WHERE PETITIONER'S DIVORCE DECREE SPECIFICES THAT HER FORMER SPOUSE MUST PAY CHILD SUPPORT TO HER BUT DOES NOT OBLIGATE HER TO PAY SUPPORT TO HIM, THE MATTER IS RES JUDICATA AS TO THE ISSUE OF PETITIONER'S CHILD SUPPORT OBLIGATION.....	3
II.   MODIFICATION OF A COURT-ORDERED SUPPORT OBLIGATION MAY NOT BE MADE IN ADMINISTRATIVE PROCEEDINGS.....	6
III.  MODIFICATION OF AN EXISTING SUPPORT OBLIGATION MAY NOT BE IMPOSED RETROACTIVELY, BUT ONLY PROSPECTIVELY.....	7
CONCLUSION.....	8
ADDENDUM.....	10

TABLE OF AUTHORITIES

CASES CITED

	<u>PAGE</u>
<u>Bernard v. Attebury,</u> 629 P.2d 892 (Utah 1981).....	5
<u>Christensen v. Christensen,</u> 628 P.2d 1297 (Utah 1981).....	6
<u>Karren v. Utah State Department of Social Services,</u> 716 P.2d 810 (Utah 1986).....	4,6,7,8
<u>Knudson v. Utah State Department of Social Services,</u> 660 P.2d 258 (Utah 1983).....	4,5
<u>Larsen v. Larsen,</u> 561 P.2d 1077 (Utah 1977).....	7,8
<u>Mecham v. Mecham,</u> 570 P.2d 123 (Utah 1977).....	4,5,6

STATUTES CITED

Utah Code Ann. §30-3-5(3).....	6
Utah Code Ann. §78-45b-1-24.....	2,4,6

### STATEMENT OF ISSUES PRESENTED ON APPEAL

The issues on appeal are whether Petitioner's support obligation is res judicata when her Divorce Decree specifies that her former husband must pay child support to her, but does not obligate her to pay support to him; whether an increased support order may be imposed retroactively on a divorced parent who has legal custody of a child but not physical custody; and whether changes in court-ordered support obligations may be made in administrative proceedings.

### STATEMENT OF CASE

This is an appeal from a final order of the Third Judicial District Court on Petitioner's Petition for Review from the Findings and Order of the Department of Social Services Administrative Court for the State of Utah. The Order, dated November 23, 1983, required the Petitioner/Appellant, Marsha Lee Starks Beachler, to reimburse the Department of Social Services (the Department) for child support arrearages in the amount of \$125.00, and further ordered her to pay \$25.00 per month as ongoing child support to the Department as long as public assistance was provided for the minor child, Diana, to Petitioner's ex-husband, Mr. Hutchinson. (R. 36). The Third Judicial District Court, in a Memorandum Decision dated June 19, 1986, affirmed the Findings and Order of the Administrative Law Judge. (R. 82).

### STATEMENT OF FACTS

The Petitioner and John C. Hutchinson, had two children as issue to their marriage: Diana Michele Hutchinson and John

Collins Hutchinson, Jr. The Third Judicial District Court of Salt Lake County, State of Utah entered a Decree of Divorce on June 15, 1972. The decree awarded custody of the minor children to the Petitioner, and ordered Mr. Hutchinson to pay child support to the Petitioner in the amount of Sixty Dollars (\$60.00) per month per child. (R.34-35). The Decree does not obligate the Petitioner to pay any child support to Mr. Hutchinson. The decree was never judicially modified on the issues of child support or child custody.

In or about October, 1982, the Petitioner and Mr. Hutchinson agreed that the minor child, Diana, would begin residing with Mr. Hutchinson. Approximately two months later, the Petitioner and Mr. Hutchinson agreed that John Jr. would also reside with Mr. Hutchinson. John Jr. lived with Mr. Hutchinson until May, 1983, when he returned to reside with Petitioner. (R.26, 27).

Mr. Hutchinson applied for and received public assistance for the two children during June and July, 1983, and from August 1983, for an undetermined amount of time for the minor child, Diana. (R.22). Subsequently, the Office of Recovery Services assessed child support arrearages against the Petitioner. After an administrative hearing before the Department of Social Services Administrative Court, the Administrative Law Judge found Petitioner legally obligated, pursuant to the Public Support of Children Act, Utah Code Ann., 1953, §78-45b-1 to 24 (Supp. 1985) (the Act), to reimburse the Department for funds it had advanced to Petitioner's former husband for the

support of their children in the amount of \$125.00 for child support arrearages, and \$25.00 per month for ongoing child support. (R.36).

#### SUMMARY OF ARGUMENT

Utah Law provides that the District Courts retain jurisdiction to modify child support orders of Divorce Decrees. Until a Decree is properly modified, any issues already addressed are res judicata as to the rights and obligations of the parties. The State Department of Social Services may not modify an existing support order through an administrative proceeding. The Department of Social Services has the authority to collect unpaid support debts that accrue under existing court orders, and in some instances where no order exists. This authority to collect child support does not include the right to administratively redetermine a party's support obligation when a prior court order has already allocated the obligation. When a judicial modification of an existing support obligation is proper, prior case law in this jurisdiction has held that only prospective and not retroactive modification is permissible.

#### ARGUMENT

I. WHERE PETITIONER'S DIVORCE DECREE SPECIFIES THAT HER FORMER SPOUSE MUST PAY CHILD SUPPORT TO HER BUT DOES NOT OBLIGATE HER TO PAY SUPPORT TO HIM, THE MATTER IS RES JUDICATA AS TO THE ISSUE OF PETITIONER'S CHILD SUPPORT OBLIGATION.

The Petitioner's Divorce Decree does not order her to pay any child support to Mr. Hutchinson. A valid court order exists setting forth support obligations regarding Petitioner's



children. Though either party could have sought a modification of that order when physical custody of the children changed, neither attempted to modify the decree. Mr. Hutchinson is the sole party ordered to pay child support under the Divorce Decree.

The rights of the Department are derivative and no greater than the rights of Mr. Hutchinson. U.C.A., 1953 §78-45b-3 (Supp. 1985). The Divorce Decree does not give Mr. Hutchinson the right to collect child support from his former spouse. This Court has held that when a wife seeks temporary child support during a divorce proceeding but the court's order makes no provision for such support, the matter is res judicata and the Department is precluded from seeking reimbursement for that period. Mecham v. Mecham, 570 P.2d 123 (Utah 1977).

Similarly, this court has specifically held that a parental support obligation is res judicata where a Divorce Decree orders one spouse to pay child support, but does not order the other spouse to pay support. Karren v. Department of Social Services, 716 P.2d 810 (Utah 1986). In Karren, this court held that an existing court order between the parties barred the Department from seeking reimbursement from the spouse who was not ordered to pay child support.

One of the few times that the Department is not bound by existing orders is when it does not receive notice of the pending adjudication of support duties. Knudson v. Utah State Department of Social Services, 660 P.2d 258 (Utah 1983). In Knudson, this court held that the Department's subrogated

rights to child support payments required that the Department be given the necessary notice to intervene and enforce the support obligation. In both Knudson and Mecham, the Department sought recovery of assistance rendered during the pendency of the divorce proceedings. In the present case, the Department assisted Petitioner's former spouse after the Divorce Decree was entered. Unlike Knudson, the Divorce Decree adjudicating support obligations in this case was entered prior to the payment of any assistance by the Department of Social Services. The Department therefore had no interest in the support question at the time of the Petitioner's Decree, and Knudson is not controlling.

In this jurisdiction, the doctrine of res judicata renders a final judgment, on the merits, by a court of competent jurisdiction, conclusive upon the parties and is a bar to subsequent litigation of the same issues. Bernard v. Attebury, 629 P.2d 892 (Utah 1981). In the present case, the court has allocated child support and the Petitioner was not ordered to pay it. The Petitioner's duty of child support has been fixed, an order exists, and the issue is res judicata. In so allocating child support, the court is not obligated to add that support from the other party is not ordered. It is sufficient that child support was a material issue that was actually adjudicated, and that the Petitioner was not ordered to pay it.

II. MODIFICATION OF A COURT-ORDERED  
SUPPORT OBLIGATION MAY NOT BE MADE IN  
ADMINISTRATIVE PROCEEDINGS.

A modification of a support obligation must be made through a court rather than an administrative proceeding. U.C.A., 1953, §30-3-5(3) (Supp. 1985). Utah law grants to the District Court the power to enter child custody and support decrees, and also provides the court with continuing jurisdiction to make subsequent changes or new orders for custody or support of the children:

The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property as is reasonable and necessary. U.C.A., 1953, §30-3-5(3) (Supp. 1985).

This section provides the District Court the exclusive jurisdiction to modify a support decree later on if circumstances change. Christensen v. Christensen, 628 P.2d 1297 (Utah 1981).

Under the Act, the Department is given the power to collect unpaid support debts that accrue under existing court orders, and in some instances where no order exists. U.C.A., 1953 §78-45b-4 and -5 (Supp. 1985). However, neither the Act Section 30-3-5(3) grants the power to the Department to modify an already existing support order in an administrative action. The power to modify a decree is exclusively retained by the courts under U.C.A., 1953, §30-3-5 (Supp. 1985). Thus, the Department may not redetermine Petitioner's support obligation through an administrative proceeding. Karren, 716 P.2d at 812; Mecham, 576 P.2d at 125.

This court has held that an action based on the Public Support of Children Act is not the proper procedure to modify a Divorce Decree. Karren, 716 P.2d at 812. The Petitioner does not claim that she may never be required to provide additional support for her children. She merely claims that in order for that duty of support to be changed, the existing court order must be properly modified.

While acknowledging that in some cases the duty of support and an appropriate amount of support may be determined in an administrative proceeding, the Karren court held that the Department could not seek reimbursement when there had been a decree of divorce previously entered fixing the amount of support and/or alimony to be paid. The court determined that the Department may not unilaterally determine the amount of support and then enforce the right of reimbursement under the Act. The same principle applies to Petitioner in the instant case: the Department may not unilaterally determine that the Petitioner is obligated to provide child support when a court order providing otherwise exists.

III. MODIFICATION OF AN EXISTING SUPPORT  
SUPPORT OBLIGATION MAY NOT BE IMPOSED  
RETROACTIVELY, BUT ONLY PROSPECTIVELY.

The law of this state only allows an existing support obligation to be modified prospectively and not retroactively. Karren, 716 P.2d at 812; Larsen v. Larsen, 561 P.2d 1077 (Utah 1977). Alimony and support payments become unalterable debts as they accrue. A periodic installment cannot be changed or modified after installments have become due. Karren, 716 P.2d

at 812. In Larsen the Department sought a judgment for child support funds that the Department had already provided up to that point. This court rejected the argument for retroactive support, holding that a modification could not apply to periods of time in the past, regardless of the circumstances, since the Divorce Decree. Thus, only prospective modification of a support obligation is proper. Karren, 716 P.2d at 812.

#### CONCLUSION

The Petitioner's obligation to pay child support has been adjudicated by a court of competent jurisdiction, and she was not ordered to make support payments. The issue of a support obligation is thus res judicata as to the Department's claim of reimbursement against the Petitioner, and the Petitioner has the right to rely on the finality and enforceability of that judgment.

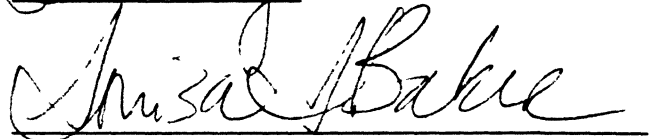
The law of this state does not allow the Department of Social Services to modify a Divorce Decree through an administrative proceeding. If circumstances justify a modification, the Department must follow the proper procedure and petition the court for a modification. The Department's unilateral modification of an existing court order was both improper and unlawful.

If circumstances change and the existing order is modified, the law in this jurisdiction only provides for prospective, and not retroactive, modification.

Therefore, 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 13 day of January, 1987.

  
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LOUISA L. BAKER  
Attorney for Petitioner/Appellant

ADDENDUM

EXHIBIT

PUBLIC SUPPORT OF CHILDREN ACT	
Utah Code Ann., 1953 §78-45b-1-24.....	A
<u>MARSHA LEE HUTCHINSON V. JOHN COLLINS HUTCHINSON</u>	
Decree of Divorce, Third District Court	
State of Utah, June 15, 1972.....	B
MEMORANDUM OF FINDINGS AND ORDER OF THE	
UTAH STATE DEPARTMENT OF SOCIAL SERVICES	
ADMINISTRATIVE COURT, NOVEMBER 23, 1983.....	C
MEMORANDUM DECISION	
Third District Court, State of Utah	
June 19, 1986.....	D

## Chapter 45b. Public Support of Children

- 78-45b-1. Short title.
- 78-45b-1.1. Common-law and statutory remedies augmented by act - Public policy.
- 78-45b-2. Definitions.
- 78-45b-3. Applicant's right to support from other party assigned to department - Enforcement.
- 78-45b-3.5. Collection of support debt upon request of agency of another state.
- 78-45b-4. Notice of support debt - Court order.
- 78-45b-5. Notice of support debt - Absent court order.
- 78-45b-6. Person aggrieved by action of department - Hearing - Request in writing - Time - Location of hearing - Hearing examiner determination and record - Alleged responsible parent failing to appear.
- 78-45b-6.1. Findings and order by department - Judicial review.
- 78-45b-7. Liens authorized - Probable cause and procedure.
- 78-45b-8. Show cause order - Procedure - Hearing.
- 78-45b-9. Filing and docketing of final orders - Liens - Execution.
- 78-45b-9.5. Docketing of final order - Issuance of writ of execution or garnishment.
- 78-45b-10. Effect of lien.
- 78-45b-11. Collection of support debt in lien - Procedure - Alternative remedy.
- 78-45b-12. Executed lien - Rights of persons owning property.
- 78-45b-13. Requirement to honor voluntary assignment of earnings - Discharge of employee prohibited - Liability for discharge - Earnings subject to support lien or garnishment.
- 78-45b-14. Recovery against obligor - Disbursement.
- 78-45b-15. Attorney general - Power to grant immunity - Privileged testimony - Person refusing to answer questions or produce evidence - Procedure for attorney general - Procedure for court - Effect on witness.
- 78-45b-16. Department release.
- 78-45b-17. Power of department over schedule of payments.
- 78-45b-17.1. Posting of bond or security for payment of support debt.
- 78-45b-18. Extensions of time for good cause authorized - Service of documents.
- 78-45b-19. Actions involving orders prohibited unless plaintiff applies to department for hearing.
- 78-45b-20. Conflict of orders.
- 78-45b-21. Charge off of uncollectible support debts.
- 78-45b-22. Repealed.
- 78-45b-23. Medical and dental expenses of dependent children - Assigning responsibility for payment - Insurance coverage provision in order.
- 78-45b-24. Provision of support debt information to consumer reporting agency.

### 78-45b-1. Short title.

This act shall be known and may be cited as the "Public Support of Children Act."

### 78-45b-1.1. Common-law and statutory remedies augmented by act - Public policy.

The State of Utah, exercising its police and sovereign power, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children shall be augmented by this act which is directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this chapter be liberally construed and administered to the end that children shall be



parents, thereby relieving or avoiding, at least in part, the burden often borne by the general citizenry through welfare programs. 1977

**78-45b-2. Definitions.**

As used in this chapter:

(1) "Department" means the State Department of Social Services.

(2) "Dependent child" means any person under the age of 18 who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(3) "Court order" means any judgment or order of any district court of this state or of any court of comparable jurisdiction of another state ordering payment of a set or determinable amount of support money.

(4) "Order" means an order issued in any proceeding under this chapter by an administrative law judge after a hearing and a determination of both the ability of the obligor to pay and the need of the dependent child or children, which orders payment of a set or determinable amount of support money.

(5) "Support debt" means:

(a) the debt created by nonpayment of child support, maintenance, health, or dental care under the laws of this state or the decree of any court of appropriate jurisdiction ordering a sum to be paid as child support, maintenance, health, or dental care; and

(b) The debt created by nonpayment of an obligation for the support of a spouse or former spouse with whom the debtor's child resides, if that obligation is ordered by a court of competent jurisdiction or an administrative body under state law, and if the debtor also owes a support obligation to the spouse's child, which is being enforced by the state.

(6) "Need" means the necessary costs of food, clothing, shelter, and medical attendance for the support of any dependent child.

(7) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of all amounts required by law to be withheld.

(8) "Assistance" means assistance for aid to families with dependent children, and public funds expended for the reasonable and necessary health and dental care of a dependent child.

(9) "Person" includes any natural person, firm, corporation, association, political subdivision, or department.

(10) "Responsible parent" means the natural parent, adoptive parent, or stepparent of a dependent child.

(11) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payment pursuant to pension or retirement programs, or insurance policies of any type, including unemployment compensation insurance benefit payments. Earnings shall specifically include all gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital assets.

(12) "Stepparent" means a person ceremonially married to a child's natural or adoptive parent who is not the child's natural or adoptive parent or one living with the natural or adoptive parent as a common law spouse, whose common law marriage was entered into in a state which recognizes the

(13) "Obligor" means any person owing a duty of support.

(14) "Obligee" means any person to whom a duty of support is owed.

**78-45b-3. Applicant's right to support from other party assigned to department Enforcement.**

(1)(a) As a condition of eligibility for assistance an applicant for or recipient of assistance is considered to have assigned to the state all right support from any other person which have accrued at the time the assignment is executed or (if not executed) at the time of application for assistance and which the applicant or recipient may have in or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance. Any right support which an applicant or recipient of public assistance has or claims, passes to the state at the assignment, or by operation of law upon receipt of assistance by the recipient even if the recipient does not execute an assignment. If assistance is furnished by the department or if the department has contracted to collect support, the department shall become trustee of any cause of action claims of the obligee or any minor child in obligee's custody, to recover support due to obligee from any person and may bring and maintain the action either in its own name or in the name of the obligee.

(b) The department shall have the power to employ an attorney to act in the name of any recipient in enforcing and cashing any and all drafts, checks, money orders or other negotiable instruments issued by the department and representing support payments for children in whose behalf assistance has been previously paid.

(2) In any action filed under this chapter the department shall be deemed a real party in interest upon the payment of any support. Every obligor shall be deemed to have received notice of the action of the department by his failure to provide for the obligee's receipt of support.

(3) All obligees, upon request of the department shall execute and deliver such instruments, papers and do whatever else is necessary in connection with such cause of action. No obligee shall do anything, after the receipt of assistance from the department, to prejudice those rights.

(4) No agreement between any obligee and obligor either relieving an obligor of any duty of support or responsibility therefor or purporting to settle past, present, or future support obligations either as settlement or prepayment shall nullify, reduce or terminate any rights of the department to recover from that obligor for support provided unless the department has consented to the agreement in writing.

(5) Any court order embodying a money judgment for support to be paid to an obligee by any person shall be deemed in favor of the department to the extent of the amount of the department's right to recover from the judgment debtor. This transferee interest shall be applicable to court orders including but not limited to, temporary spouse support or family maintenance orders, or alimony orders the benefit of a dependent child but allocated to the benefit of that child on the basis of providing necessities to the person in whose custody that dependent child resides.

(6) The department shall have the right to pay

ADDITIONAL TO DO SO.

(7) The department is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this chapter, including but not limited to rules for narrowing issues and simplifying the methods of proof at hearings, such rules and regulations shall include procedures for notice and the manner of serving the same on all orders of support debt or any hearings requested regarding contested decisions. Such rules may be changed from time to time at the department's discretion.

(8) The department for the purposes mentioned in this title, through its director or his authorized representatives, shall have power to administer oaths to certify to official acts, issue subpoenas, compel witnesses and the production of books, accounts, documents, and evidence.

(9) In enforcing this title, and notwithstanding other provisions to the contrary, the department shall have the power to assess interest not to exceed 1% per month on any amounts due and not paid within one month. All notices and bills issued by the department to obligors shall advise the obligor of the department's power to assess interest and the amount thereof, if assessed. Such amount shall be added to and accrued as arrearages until paid. 1984

#### **78-45b-3.5. Collection of support debt upon request of agency of another state.**

(1) The department may proceed under Section 78-45b-3 to collect a support debt from an obligor who is located in or is a resident of this state regardless of the presence or residence of the obligee, if that action is requested by an agency of another state which is operating under Title IV-D of the Social Security Act.

(2) If the department proceeds against an obligor under Subsection (1), it shall seek enforcement of the liability imposed by the laws of the state where the obligor was located during the period for which support is sought. The obligor is presumed to have been present in this state during that period until otherwise shown.

(3) If an obligee is absent from this state and the obligor presents evidence which constitutes a defense, the administrative hearing examiner shall continue the case for further hearing and submission of evidence by both parties.

(4) The remedies provided by this section are additional to those remedies provided by the Uniform Reciprocal Enforcement of Support Act, Chapter 31, Title 77. 1985

#### **78-45b-4. Notice of support debt - Court order.**

(1) The department may issue a notice of a support debt accrued or accruing based upon any court order and shall include a demand for immediate payment of the support debt or in the alternative for a written answer from that person to the department setting forth any claimed defenses to liability, and requesting a hearing thereon, and a statement that if neither answer nor full payment are received within 20 days from the date of service the department may assess and determine that support debt according to the terms of the court order and that, subsequent thereto, the property of that person shall be subject to appropriate collection action including, but not limited to, execution upon liens, wage assignments, attachment, and garnishment. This notice shall be served upon the person subject to that court order demanding payment

outlined by the rules of the department or in accordance with Rule 4 of Utah Rules of Civil Procedure.

(2) If a written answer is received by the department, a hearing shall be set in the manner provided under section 78-45b-6 and reasonable notice of that hearing shall be forwarded to the alleged responsible parent in the manner prescribed under subsection (1).

(3) If payment is not received as demanded under subsection (1) and no written answer is filed within 20 days from the date of service, the department may proceed to assess and determine that support debt according to the terms of the court order and, at any time thereafter, may proceed with appropriate collection actions as provided in subsection (1).

(4) If a determination of financial responsibility is made by the department, an order in that regard shall be entered by the department specifying the amount determined to be owing, the support debt accrued or accruing and, where appropriate, the amount to be paid thereon each month, the name of the recipient or custodian, the name of the child for whom assistance is being paid or is to be paid, and a statement of the amount of periodic future support payments that obligor shall be responsible for. Notice of that order shall be given in the same manner provided for notices under subsection (1). That order shall automatically become final unless a hearing is requested within the time and in the manner provided under section 78-45b-6 and the order shall so state.

(5) When a notice of support debt is properly served upon an obligor pursuant to this act, the obligor shall be responsible for notifying the department by certified mail, return receipt requested, of any change of address or employment. 1977

#### **78-45b-5. Notice of support debt - Absent court order.**

(1) In the absence of a court order, the director may issue a notice of a support debt accrued or accruing based upon the furnishing of support by the department for the benefit of any dependent child. That notice shall include a statement of the support debt accrued or accruing, computable on the basis of the amount of assistance paid or to be paid, a statement of the name of the recipient and the name of the minor child for whom assistance is being provided, a demand for immediate payment of the support debt or in the alternative for a written answer from that person to the department setting forth any claimed defenses to liability, and requesting a hearing thereon, and a statement that if neither answer nor full payment are received within twenty days from the date of service the department may assess and determine that support debt and that, subsequent thereto, the property of that person shall be subject to appropriate collection action including, but not limited to, execution upon liens, wage assignments, attachment, and garnishment. This notice shall be served upon the alleged responsible parent in the manner prescribed for service of notices under section 78-45b-4.

(2) If a written answer is received by the department, a hearing shall be set in the manner provided under section 78-45b-6 and reasonable notice of that hearing shall be forwarded to the alleged responsible parent in the manner prescribed under section 78-45b-4.

(3) If payment is not received as demanded under

ment may proceed to assess and determine that support debt and, at any time thereafter, may proceed with appropriate collection actions as provided in that subsection.

(4) If a determination of financial responsibility is made by the department, an order in that regard shall be entered by the department specifying the amount determined to be owing, the support debt accrued or accruing and, where appropriate, the amount to be paid thereon each month, the name of the recipient or custodian, the name of the child for whom assistance is being paid or is to be paid, and a statement of the amount of periodic future support payments the obligor shall be responsible for. Notice of that order shall be given in the same manner provided for notices under section 78-45b-4. That order shall automatically become final unless a hearing is requested within the time and in the manner provided under section 78-45b-6 and the order shall so state.

1975

**78-45b-6. Person aggrieved by action of**

**department - Hearing - Request in writing**

**Time - Location of hearing - Hearing examiner determination and record - Alleged responsible parent failing to appear.**

(1) Any person aggrieved regarding notice of support debt or other issue of fact shall be afforded an opportunity for a hearing upon request in writing filed with the director not more than twenty days after notification of the adverse action. The hearings provided shall be conducted by administrative hearing examiners designated by the department. All hearings shall be held in the county of residence or other place convenient to such person and shall be so held within thirty days after request therefor is filed, except that the department may promulgate such rules for postponements and continuances as may be in the interest of justice.

(2) The administrative hearing examiner, after full and fair hearing, conducted in accordance with the rules and regulations of the department shall make specific findings regarding the liability and responsibility, if any, of the alleged responsible parent and the amount of such liability computable on the basis of the amount of assistance paid or to be paid. In making these findings, the hearing officer shall include in his deliberations the necessities and requirements of the child, exclusive of any income of the custodian of said child, the amount of the support debt claimed, the amount of assistance paid or to be paid, the abilities and resources of the responsible parent, and the public policy and intent of the legislature to require that children be maintained from the resources of responsible parents thereby relieving to the greatest extent possible the burden upon the general citizenry through welfare programs. An official record of the hearing shall be made and maintained by the department. The hearing officer shall file his findings with the department, not more than twenty days after the conclusion of the hearing.

(3) If the alleged responsible parent fails to appear at the time and place set for hearing, upon a showing of proper notice to that parent, the hearing examiner shall enter his findings in accordance with the provisions of the notice of support payment unless he shall determine that no good cause therefor exists.

1977

(1) Upon receipt of the administrative hearing officer's report of findings on the issues designated for hearing, the department may accept the report of findings as the basis for a final order or upon filing a statement of the legal or substantial factual basis in the record therefor, it may:

(a) Reject all or any portion of the findings and remand for further hearing and findings on specified issues;

(b) Disregard any portion of the findings and proceed to enter a final order based upon the remainder of the findings;

(c) Substitute alternative or additional findings of act on the issues designated for hearing, if the substituted findings are supported by a preponderance of the evidence in the record. The department shall then cause its findings and order to be served upon the responsible parent.

(2) When findings and an order have been entered by the department subsequent to a hearing, judicial review of those findings and order may be secured by any person adversely affected thereby by filing a petition in the district court of the county where the hearing was conducted within 30 days after receipt of notice of that order. The petition shall state the grounds upon which review is sought. At the time of the filing of the petition, a copy thereof shall be served upon the department, which service may be accomplished by mailing to the department or to the legal counsel who represented the department at the hearing. The petitioner and the department shall in all cases be deemed original parties to the judicial review. With its answer, the department shall certify and file with the court all documents, exhibits, papers and a transcript of all testimony taken in the matter, together with its findings and order.

(3) Within 20 days after the filing of the answer, the petitioner shall file and serve a memorandum of points and authorities, supporting in detail the grounds set forth in the petition for judicial review. If the petitioner relies upon the transcript, he shall cite in the memorandum the pages and the lines in the transcript upon which he relies.

(4) Within 20 days after the filing of the memorandum by the petitioner, the department shall file and serve a memorandum of answering points and authorities. If the department relies upon the transcript, the department shall cite in its memorandum the pages and the lines in the transcript upon which it relies.

(5) Upon expiration of the time permitted for filing of the memorandum of answering points and authorities or upon the filing of the memorandum, either party may notify the clerk to submit the matter for decision, which shall be made without oral argument unless oral argument is requested by either party or the court.

1983

**78-45b-7. Liens authorized - Probable cause and procedure.**

[(1)] If the department has probable cause for being justly apprehensive of losing property which could become subject to a collection action to satisfy the support debt due to the fact that the alleged responsible parent is not a resident of this state, that he has assigned, disposed of or concealed, or is about to assign, dispose of or conceal, any of his property with intent to defraud the department, or that he has departed or is about to depart from the state to the injury of the department, the department may file and serve liens pur-

provided under section 78-45b-4, of, during the fair hearing or thereafter, whether or not appealed.

(2) In cases where action is taken pending a fair hearing the department shall file in the record of the hearing an affidavit stating the reasons for such action. If the alleged debtor shall furnish bond with sufficient sureties, satisfactory to the department in an amount double the amount claimed by the department during the pendency of the hearing or thereafter, in which case those liens shall be released. If the decision of the hearing officer shall be in favor of the debtor, all liens shall be released.

(3) No execution upon liens may be instituted pursuant to this act, however, unless the requirements of providing notice for payment have been first met by the department. 1975

#### **78-45b-8. Show cause order - Procedure - Hearing.**

In addition to, or in lieu of, any other action provided for under this act, in the absence of a court order, the department may, upon petition by the responsible parent, or otherwise, issue an order, based on a material change in circumstances and good cause, requiring the other party to show cause why the order previously entered should not be prospectively modified. That order to show cause, together with a copy of any affidavit upon which it is based, shall be served on the other party in the manner of a summons in a civil action. A hearing thereon shall then be provided in the same manner, and determinations shall be based on the same considerations, as provided under section 78-45b-6, but no modification shall be ordered except upon a showing of good cause and a material change of circumstances. 1975

#### **78-45b-9. Filing and docketing of final orders - Liens - Execution.**

(1) An abstract of any final order of a support debt may be filed with the clerk of any district court in the state, and shall be docketed in the judgment docket of that court. The time of receipt of the abstract shall be noted on the abstract and entered in the docket.

(2)(a) When an abstract has been filed and docketed, it constitutes a lien from the time of that docketing upon the real and personal property of the obligor situated in that county, for a period of eight years from the date of the award, unless previously satisfied.

(b) Execution of this lien shall be in the same manner and with the same effect as an execution on a lien which results from a judgment of the district court.

(c) This lien is in addition to any other lien provided by law.

(3) If the obligor or obligee has filed an action for divorce, a copy of the abstract shall also be filed in that action. 1985

#### **78-45b-9.5. Docketing of final order - Issuance of writ of execution or garnishment.**

(1) Any final order issued by the department shall be docketed with the department's administrative docket clerk. A writ of garnishment or execution may be issued on the order within the same period, in the same manner, and with the same effect as if the writ were issued on a judgment of a district court. This remedy shall be in addition to any other remedies provided by law for collecting on judgments.

(2)(a) The department may at any time after

the garnishment or execution upon any person, business, employer, political subdivision, or department of the state possessing earnings, or deposits or balances held in any bank account, or otherwise, of any nature, which are due, owing, or belonging to the obligor.

(b) A writ of garnishment or execution issued under this section shall be signed by the director or his designee, and shall be delivered by certified mail, return receipt requested, or as prescribed by Rule 4 of the Utah Rules of Civil Procedure. 1984

#### **78-45b-10. Effect of lien.**

After receipt of notice of the filing of any support lien under this act by the department, no person in possession of any property which may be subject to that lien shall pay over, release, sell, transfer, encumber, or convey such property to any person other than the department, unless he first receives a release or waiver thereof from the department, or a court order ordering release of the lien on the basis that the debt does not exist or has been satisfied.

Whenever any such person has in his possession earnings, deposits, accounts, or balances in excess of \$100 more than the amount of the debt claimed by the department, that person may, without liability under this act, release such excess to the debtor. 1975

#### **78-45b-11. Collection of support debt in lien - Procedure - Alternative remedy.**

Whenever a support lien has been filed pursuant to this act, the department may collect the support debt stated in said lien by the execution upon and sale of the property subject to said lien. The department shall give notice to the debtor and any person known to have or claim an interest therein of the general description of the property to be sold and the time and place of sale of said property. Said notice shall be given to such persons by service in a civil action. A notice specifying the property to be sold shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall not be less than ten nor more than twenty days from the date of posting of such notices. Said sale shall be conducted by the department which shall proceed to sell such property by parcel or by lot at a public auction, and which may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the price so fixed, the department may declare such property to be purchased by the department for such price, or may conduct another sale of such property pursuant to the provisions of this section. Property as herein prescribed may be sold by the director at public or private sale, and the amount realized shall be placed in the state general fund to the credit of the department. In all cases of such sale, the director shall issue a bill of sale or deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the director to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the debtor in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the department, shall be first applied by the director to reimbursement of the costs of sale, including reasonable attorneys' fees and, thereafter, in satisfaction of the delinquent account. Any excess which shall thereafter remain in the hands of the director

shall be returned to the debtor. The debt, costs and reasonable attorney fees, at any time before sale, shall satisfy the lien and terminate further procedures. Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the department shall have judgment over for any deficiency remaining unsatisfied and further levy and sales upon other property of the judgment debtor may be made under the same execution. In all sales contemplated under this section, advertising of notice shall only be necessary for two weeks in a newspaper published in the county where said property is located, and if there be no newspaper therein, then in the most convenient newspaper having a circulation in such county. Remedies provided for herein are alternatives to remedies provided for in other sections of this chapter. 1977

**78-45b-12. Executed lien - Rights of persons owning property.**

Any person owning real property, or any interest in real property, against which a support lien has been executed upon pursuant to section 78-45b-11, shall have the right, prior to sale, to pay the amount due, together with expenses of the proceedings and reasonable attorneys' fees, to the department and upon such payment the department shall restore that property to him and all further execution proceedings shall cease. Any such person shall also have the right, within ninety days after sale of such property under section 78-45b-11 to redeem said property by making payment to the purchaser of the amount paid by the purchaser plus interest thereon at the rate of 6% per annum. 1975

**78-45b-13. Requirement to honor voluntary assignment of earnings - Discharge of employee prohibited - Liability for discharge - Earnings subject to support lien or garnishment.**

(1) Every person, firm, corporation, association, political subdivision, or department of the state shall honor according to its terms, a duly executed voluntary assignment of earnings which is presented by the department as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself shall be applicable whether said earnings are to be paid presently or in the future and shall continue in effect until released in writing by the department. Payment of moneys pursuant to an assignment of earnings presented by the department shall serve as full acquittance under any contract of employment, and the state shall defend the employer and hold him harmless for any action taken pursuant to the assignment of earnings. The department shall be released from liability for improper receipt of moneys under an assignment of earnings upon return of any moneys so received.

(2) No employer may discharge or prejudice any employee by reason of the fact that his earnings have been subjected to support lien, wage assignment, or garnishment for any indebtedness under contract.

(3) Should any person discharge an employee in violation of Subsection (2), that person shall be liable to the employee for such damages as he may suffer, and, additionally, to the department in an amount equal to the debt which is the basis of the assignment plus costs, interest, and attorneys' fees, or a maximum of \$1,000, whichever is less.

(4) The maximum part of the aggregate disposable earnings of an individual for any work pay period which may be subjected to a support lien or garnishment to enforce payment of a judgment arising

not exceed 50% of his disposable earnings for the work pay period.

(5) Whenever a support lien or garnishment is served upon any person, asserting a support debt against earnings and there is in the possession of such person any such earnings, 50% of the disposable earnings shall be disbursed to the debtor whether such earnings are paid, or are to be paid weekly, monthly, or at other regular intervals and whether there be due the debtor earnings for one week or for a longer period. The support lien or garnishment shall continue to operate and require said person to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until released in writing from the department. 1964

**78-45b-14. Recovery against obligor - Disbursement.**

If any recovery is obtained against an obligor, pursuant to this act, it shall be disbursed as follows:

(1) The reasonable expense of the action, including attorneys' fees, shall be paid and charged proportionately against the parties as their interests may appear. No attorneys' fees chargeable to the department may exceed 15% of any such recovery. Such fee is to be a credit upon any fee payable by the obligee for any recovery had against an obligor. Before proceeding against an obligor, an obligee shall give written notice of such intention to the department, in order to give that department a reasonable opportunity to enter an appearance in the proceeding.

(2) The department shall be reimbursed in full for all payments made less the proportionate share of costs and attorneys' fees as provided in subsection (1).

(3) The balance of any such recovery, after payment of those items provided in subsections (1) and (2), shall be paid to the obligee. 1975

**78-45b-15. Attorney general - Power to grant immunity - Privileged testimony - Person refusing to answer questions or produce evidence - Procedure for attorney general - Procedure for court - Effect on witness.**

In any investigation or prosecution of any proceeding against an obligor seeking adjudication of support rights of an obligee or dependent child, whether by way of paternity proceedings, divorce proceedings, orders to show cause, temporary support proceedings, family maintenance proceedings, or other similar proceedings, the attorney general shall have the power to grant immunity from prosecution to any obligor, putative father, mother of a child born out of wedlock or determined not to be the issue of a marriage, or any other person who is called or intended to be called, as a witness whenever he deems that the testimony of such person is necessary to the proper determination of that proceeding. No prosecution shall be instituted against the person for any crime disclosed by his testimony which is privileged under this action; however, should that person testify falsely, nothing herein contained shall be construed to prevent prosecution for perjury.

If, during the investigation or prosecution, a person refuses to answer questions or produce evidence of any kind on the ground that he may be incriminated thereby, the attorney general may file a request in writing with the district court in which the examination is being conducted for an order requiring that person to answer the question or produce

for hearing and order the person to appear before the court to show cause, if any he has, why the question should not be answered or the evidence produced, and the court shall order the question answered or the evidence produced unless it finds that to do so would be clearly contrary to the public interest, or could subject the witness to a criminal prosecution in another jurisdiction. If the witness still refuses to answer or produce the evidence, he shall be guilty of contempt of court and punished accordingly. If the witness complies with the order and he would have been privileged to withhold the answer given or the evidence produced by him except for this section, that person shall not be prosecuted or subjected to penalty or forfeiture on account of any fact or act concerning which he was ordered to answer or produce evidence except he may nevertheless be prosecuted or subjected to penalty for any perjury, false swearing or contempt committed in answering, failing to answer, or for producing or failing to produce any evidence in accordance with the order. 1975

**78-45b-16. Department release.**

The department may at any time release a support lien, wage assignment, attachment or garnishment, on all or part of the property of the debtor, or return seized property without liability, if assurance of payment is deemed adequate by the department or if said action will facilitate the collection of the debt, but said release or return shall not operate to prevent future action to collect from the same or other property. The department may also waive any provisions providing for the collection of interest on accounts due, if such waiver would facilitate the collection of the debt. 1975

**78-45b-17. Power of department over schedule of payments.**

The department may at any time consistent with the income, earning capacity and resources of the debtor, set or reset a level and schedule of payments to be paid upon the debt and may cancel such schedule of payments and demand payment in full at any time he is justly apprehensive, as set forth in section 78-45b-7, of losing property which could become subject to a collection action to satisfy the support debt. 1975

**78-45b-17.1. Posting of bond or security for payment of support debt.**

(1)(a) The department shall, or an obligee may, petition the court for an order requiring an obligor to post a bond or provide other security for the payment of a support debt, when the department or an obligee determines that action is appropriate. If the payments are more than 90 days delinquent. The department shall establish rules for determining when it shall seek an order for security.

(b) For purposes of this section, "support debt" includes court ordered obligations for the support of a spouse or former spouse with whom the child resides, if that support is collected with the child support.

(2) When the department or an obligee petitions the court under this section, it shall give written notice to the obligor, stating:

- (a) the amount of support debt;
- (b) that it has petitioned the court for an order requiring the obligor to post security; and
- (c) that the obligor has the right to appear before the court and contest the department's or obligee's petition.

other security to be deposited upon the department's or obligee's showing of a support debt and of a reasonable basis for the security. 1985

**78-45b-18. Extensions of time for good cause authorized - Service of documents.**

(1) Whenever, for good cause, it appears that an extension of time should be given in relation to any proceedings under this act, the same shall be granted.

(2) The manner provided for service of any documents under this act shall be in addition to other manners of service provided by law. 1975

**78-45b-19. Actions involving orders prohibited unless plaintiff applies to department for hearing.**

No action, proceeding, or suit to set aside, vacate, or amend an order issued under this chapter, may be brought unless the plaintiff first applies to the department for a hearing on every issue to be presented in the action, proceeding, or suit. 1984

**78-45b-20. Conflict of orders.**

If any order pursuant to this act is, or becomes, in conflict with any order of a court of competent jurisdiction, to the extent of such conflict the court order shall govern. 1975

**78-45b-21. Charge off of uncollectible support debts.**

The department may charge off as uncollectible any support debt upon which it finds there is no available, practical and lawful means by which that debt may be collected and may transfer those accounts from accounts receivable to a suspense account and cease to account for them as assets. 1975

**78-45b-22. Repealed.** 1985

**78-45b-23. Medical and dental expenses of dependent children - Assigning responsibility for payment - Insurance coverage provision in order.**

In any action under this chapter the department or the administrative hearing examiner shall include in its order a provision assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children. If coverage is available at a reasonable cost, the department or the examiner may also include a provision requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for those children. 1984

**78-45b-24. Provision of support debt information to consumer reporting agency.**

(1) As used in this section, "consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information bearing on credit worthiness, standing or capacity, for the purpose of furnishing consumer credit reports to third parties.

(2) The department shall supply information regarding a support debt in excess of \$1,000 to any consumer reporting agency only upon its request.

(3) The department may supply information regarding a support debt of \$1,000 or less to a consumer reporting agency only upon its request.

(4) Before it supplies any information to a consumer reporting agency under this section, the department shall give written notice to the obligor, specifying the information which will be disclosed to the consumer reporting agency and providing the obligor with a reasonable opportunity to contest the accuracy of the information in an administrative

hearing.

(5) The department shall establish rules implementing this section.

(6) The department may charge the consumer reporting agency a fee for furnishing information under this section. That fee may not exceed the department's actual cost of providing the information.

(7) The notice provisions of this section do not apply to a support debt which has been reduced to judgment and is public information.

1985



LELAND K. WIMMER  
Attorney for Plaintiff  
600 Utah Savings Building  
Salt Lake City, Utah 84111  
Telephone: 364-3625

J 1312

W. Brown  
J. Lee  
C. Brown

\*\*\*\*\*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT,  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----  
MARSHA LEE HUTCHINSON, : *B# 121 NO. 2666*  
                                  : *6-20-72 - 9:38 A.M.*  
                                  : *plai.tiff,*  
                                  : DECREE OF DIVORCE  
                                  : *-vs-*  
                                  : *JOHN COLLINS HUTCHINSON,*  
                                  : *defendant.*  
                                  : Civil No. D-6455  
\*\*\*\*\*

This cause having come on regularly for hearing on the 9th day of June 1972 before the honorable Emmett L. Brown with plaintiff being present and represented by counsel, defendant not present nor represented by counsel, the Court taking notice of more than 90 days elapsed since filing of plaintiff's complaint and defendant's being duly served with process having failed to respond to this action in the time allowed by law, defendant's default was duly entered. Plaintiff being sworn and from her testimony adduced the Court being fully advised in the premises having made and entered its Findings of Facts and Conclusions of Law; now on motion of Leland K. Wimmer, it is hereby ORDERED, ADJUDGED and DECREED:

1. That plaintiff be and she is awarded divorce from defendant and each of the parties is restored to the status of an unmarried person freed from their bonds of matrimony, provided however, that this decree shall not become final and absolute until the expiration of three months from date of signing by judge and entry hereof, provided further, that this decree shall become final and absolute upon said expiration of three months unless the appeal is pending or the Court upon its own motion or application of any other person, whether interested or not, otherwise orders.
2. Plaintiff be and she is awarded the sole CARE, CUSTODY and CONTROL of Diana Michele Hutchinson, born January 2, 1967, and John Collins Hutchinson, born April 29, 1969, subject to rights of defendant to visit said children at reasonable times and places in accordance with their ages and his facilities.
3. Plaintiff is awarded judgment against defendant who is ordered to pay to

Exhibit B



the sum of \$100.00 per month as alimony for the plaintiff for a total of \$220.00 each month payable through the office of the Salt Lake County Clerk, Support and Alimony division, at the rate of \$110.00 on the 20th day of June 1972, \$110.00 on the 5th day of July, \$110.00 on the 20th day of July 1972 and similar amounts on the 5th and 20th of each month thereafter.

4. Plaintiff be and she is awarded as her sole and separate property the 1961 Ford Falcon, all furniture, appliances, furnishings and effects which are, in her personal possession and control.

5. Defendant be and he is awarded as his sole and separate property the 1945 Dodge Pickup, his fishing and hunting equipment and his personal effects.

6. Plaintiff be and she is awarded against defendant an additional judgment in the sum of \$250.00 as attorney fees for the use and benefit of her attorney herein together with judgment in the sum of \$6.60 for costs of Court and specifically reserving the judgment of \$75.00 as temporary attorneys fees for the Order To Show Cause hearing.

7. Plaintiff is awarded against defendant further judgment in the amount of \$300.00 as arrears of temporary child support and alimony in this matter.

8. Defendant is ordered to pay and discharge and hold harmless the plaintiff from all such obligations and indebtedness of the family incurred during the marriage including by not limited to Granite Furniture Company, Sugarhouse Appliance Co., AETNA loan Company and Lincoln Loan Company.

Dated this 15th day of June A.D. 1972.

ATTEST  
W. STERLING EVANS  
CLERK

BY [Signature]  
Deputy Clerk

By the Court,

[Signature]  
DISTRICT JUDGE

I hereby certify that I mailed a true and correct copy of the foregoing Decree OF UTAH ) of Divorce to defendant, John Collins Hutchinson, 1249 Garnette Street, Salt Lake OF SALT LAKE ) City, Utah 84116, this 15th day of June 1972.  
UNDERSIGNED, CLERK OF THE DISTRICT OF SALT LAKE COUNTY, UTAH, DO HEREBY THAT THE ANNEXED AND FOREGOING IS AND FULL COPY OF AN ORIGINAL DOCUMENT FILE IN MY OFFICE AS SUCH CLERK.  
SS MY HAND AND SEAL OF SAID COURT  
DAY OF June 1972  
HINDLEY, CLERK  
DEPUTY

STATE OF UTAH  
DEPARTMENT OF SOCIAL SERVICES

---

STATE OF UTAH	:	
Department of Social Services,	:	
Plaintiff,	:	MEMORANDUM OF FINDINGS AND ORDER
-v-	:	Case No. 90099582R1 T-12
MARSHA LEE STARKS,	:	
Defendant.	:	

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The above-entitled matter came for hearing on the 21st day of October, 1983, before J. Steven Eklund, Administrative Law Judge, with the State of Utah represented by Paul D. Vernieu, Deputy Weber County Attorney, and the defendant appearing personally and represented through counsel, Leland K. Wimmer.

Thereafter, based upon evidence proffered by counsel for both parties, the Administrative Law Judge now enters his Statement of Facts.

STATEMENT OF FACTS

John C. Hutchison and the defendant were married, having two children born as issue of that marriage, to wit: Diana Michele and John Collins, Jr. Pursuant to a Divorce Decree, dated June 15, 1972, custody of the just-named children was awarded to the defendant and Mr. Hutchison was ordered to pay child support of Sixty dollars (\$60.00) per month per child.

•  
• Exhibit C  
•

Based upon a subsequent agreement between Mr. Hutchison and the defendant, Diana Michele ceased residing with the defendant sometime in October, 1982. Two months later, again pursuant to an agreement between Mr. Hutchison and the defendant, John Collins ceased residing with the defendant and commenced living with Mr. Hutchison.

During the period of time under review, which consists of June, 1983 through October, 1983, Diana Michele has continuously resided with Mr. Hutchison. Based on the believable evidence which was presented during the hearing in question, John Collins ceased residing with Mr. Hutchison in mid-May, 1983 and has resided with the defendant since that time.

From June, 1983 through October, 1983, Mr. Hutchison has received public assistance totaling Seven hundred forty-five dollars (\$745.00), which had been provided for the support of the above-named two children. Specifically, said assistance was provided for both children during June, 1983 and July, 1983. Since August, 1983, public assistance has only been provided for the support of one dependent child. The amount of monthly assistance so provided has been reduced from a full one or two-person grant, inasmuch as Mr. Hutchison has had some income from employment during the five months under review.

The child support arrearages allegedly owed by the defendant for the public assistance which has been provided have been computed at the rate of Sixty dollars (\$60.00) per month per child, or a total of Four hundred twenty dollars (\$420.00). The claimed child support arrearages have been computed on the basis of that amount of monthly

child support which Mr. Hutchison was ordered to pay, as set forth in the parties' Divorce Decree. The defendant has made no payments toward the satisfaction of any alleged obligation to have provided child support for either and/or both of the children in question during the period of time under review.

The defendant was unemployed during the five months in question. Specifically, the defendant has been so unemployed since May, 1982, at which time her employment was terminated due to a reduction in force. At the time of her termination from employment, the defendant earned Five dollars and forty cents (\$5.40) per hour. During the hearing, the defendant testified that she does not anticipate being reemployed for possibly one to two years.

The defendant's present household consists of herself, her husband, John Collins, Jr., and another child from a previous marriage. The defendant is pregnant, it being expected that said child will be born in January, 1984.

From the foregoing, the Administrative Law Judge now makes his Conclusions of Law.

#### CONCLUSIONS OF LAW

The defendant asserts that the existing Divorce Decree has never been modified to require payment by her in satisfaction of any obligation to support the two children in question. Thus, the defendant asserts that the instant matter should be dismissed and she not be required to provide any reimbursement to the State of Utah for the public assistance which has been provided for the support of those

two children. In that respect, the defendant contends that Mr. Hutchison failed to make payment of his child support obligation during prior periods of time that the two children resided with her and that, although she anticipates that one of those children (John Collins, Jr.) will continue to reside with her, she cannot afford to also have physical custody of the other child absent the payment of support for those children by Mr. Hutchison. Rather, the defendant asserts that Mr. Hutchison is physically able to work and it is he who should provide support for the children in question.

Section 78-45b-3(1), Utah Code Annotated, 1953, as amended, provides:

"In the event that assistance is furnished by the department..., the department shall become trustee of any cause of action of the obligee or any minor child in that obligee's custody, to recover support due to that obligee from any person and may bring and maintain the action either in its own name or in the name of the obligee."

Section 78-45b-3(2) further provides:

"For purposes of prosecuting any action pursuant to this act, the department shall be deemed a real party in interest upon the payment of any support...."

Section 78-45-4 requires every woman to support her dependent children. In State Division of Family Services v. Clark, Utah, 554 P.2d 1310 (1976), the Utah Supreme Court stated:

"The universally recognized rule is that according to the common consent and customs of mankind one of the implied promises in the marriage contract is to support any children that may have been born into the family. Even more fundamentally, the duty of parents to support their children derives from natural law. This is been recognized

from the earliest times as a proposition of such incontestable correctness that it is neither subject to doubt nor in need of explanatory justification...."

Importantly, the Court also stated:

"A necessary concomitant of the continuing and inalienable duty of parents to support their children is that if a child is left in need and a third person comes to the rescue and furnishes support, the latter is subrogated to the child's right and may obtain reimbursement therefor."

See also Gulley v. Gulley, Utah, 570 P.2d 127 (1977).

Clearly, based on the provisions of §78-45-3, which requires every man to support his dependent children, and §78-45-4, quoted above, the financial responsibility for the support of children is a joint and several obligation of both parents. As was stated in Owen v. Owen, Utah, 579 P.2d 911 (1978):

"[U]nder our law both the mother and the father are responsible for the support of the children. Therefore, even though in the decree the duty of support was placed primarily and mostly upon the defendant [who was, in that case, the father of the children], the trial court is not necessarily obligated to continue that burden entirely and exclusively upon him."

It should be further recognized is that each parent's statutorily mandated obligation to provide child support impliedly becomes a part of every divorce decree involving the welfare of the children of a marriage. See Rose v. Rose, Wyo., 576 P.2d 459 (1978).

While it is true that the general rule is that the divorce decree fixes the obligations of the parties, Stanton v. Stanton, 30 Utah 2d 315, 517 P.2d 1010 (1974), and that where the circumstances would so justify, the trial court may relieve a parent from the

obligation to provide child support, Forbush v. Forbush, Utah, 578 P.2d 518 (1978), a distinction must be drawn between an express order of a District Court that a parent is under no obligation to provide support for a child of the marriage, as compared to the mere silence of a divorce decree as to whether any child support obligation is imposed on the non-custodial parent.

The Divorce Decree in the instant case awarded the custody of the two dependent children to the defendant and ordered Mr. Hutchison to make payment of a monthly child support obligation in the amount of Sixty dollars (\$60.00) per month per child. Based on the facts which existed at the time of the entry of the Decree, that Decree is understandably silent as to the amount of any child support obligation which would be owed by the defendant. However, events which have occurred subsequent to the entry of the Decree (i.e., Mr. Hutchison obtaining physical custody of both children, based upon an agreement between himself and the defendant, and subsequently receiving public assistance which was provided as support for those children), may properly give rise to a possible obligation of the defendant to reimburse the State of Utah for the public assistance which was provided for the support of her children.

Without doubt, the defendant has both a common law and statutory obligation to support her children which, for the purposes of this proceeding, is neither reduced nor eliminated by whatever may be implied from the language of the parties' Divorce Decree. The defendant is a "responsible parent" within the meaning of §78-45b-2(9).

which defines that term as "the natural parent, adoptive parent, or stepparent of a dependent child." Further, as stated in §78-45b-1.1:

"It is declared to be the public policy of this state that this chapter be liberally construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving or avoiding, at least in part, the burden often borne by the general citizenry through welfare programs."

In essence, the existence of an obligation to provide child support in this matter and the amount of reimbursement owed by the defendant to the State of Utah may properly be determined in administrative proceedings initiated pursuant to §78-45b-1 et seq. Further, any subsequent order requiring the defendant to provide such reimbursement would not conflict with any specific language of the previously entered Divorce Decree.

Administrative proceedings initiated pursuant to §78-45b-1 et seq., are intended to assess whatever child support obligation may exist and to set forth that amount of reimbursement to be paid to the State of Utah, relative to public assistance which has been provided for the support of dependent children. Said proceedings are not intended to assess whether recipients of public assistance were entitled to receive such assistance. Notwithstanding the defendant's assertion that Mr. Hutchison is physically able to work, there was no sufficient evidence presented during the instant hearing which would justify a stay of execution on any judgment entered against the defendant pending an investigation into the eligibility of Mr. Hutchison to have received the public assistance



which was so provided for the support of the two children in question. However, should a referral for such an investigation be made to the Assistance Payments Administration Office and a determination subsequently made that Mr. Hutchison was ineligible to have received public assistance during any and/or all of the period of time for which a child support obligation is hereby imposed upon the defendant, the judgment herein will be modified accordingly.

Regarding the amount properly owed by the defendant, §78-45b-6(2) provides:

"The administrative hearing examiner, after full and fair hearing, conducted in accordance with the rules and regulations of the department shall make specific findings regarding the liability and responsibility, if any, of the alleged responsible parent and the amount of such liability computable on the basis of the amount of assistance paid or to be paid. In making these findings, the hearing officer shall include in his deliberations the necessities and requirements of the child, exclusive of any income of the custodian of said child, the amount of the support debt claimed, the amount of assistance paid or to be paid, the abilities and resources of the responsible parent and the public policy and intent of the legislature to require that children be maintained from the resources of responsible parents thereby relieving to the greatest extent possible the burden upon the general citizenry through welfare programs."

Although the defendant was not employed during the period of time under review and, thus, had no monthly income during the five months in question, the defendant should nevertheless be obligated to provide some reimbursement to the State of Utah for the public assistance which has been provided for the support of that child who resided with Mr. Hutchison and for whom public assistance was

provided. Given her lack of employment and available monthly income, a reasonably nominal assessment which should be imposed upon the defendant in that regard is Twenty-five dollars (\$25.00) per month, or a total of One hundred twenty-five dollars (\$125.00).

Inasmuch as it appears that public assistance will continue to be provided for the support of one of the two children in question, the defendant's on-going obligation to provide some reimbursement to the State of Utah in that regard should also be computed at the rate of Twenty-five dollars (\$25.00) per month.

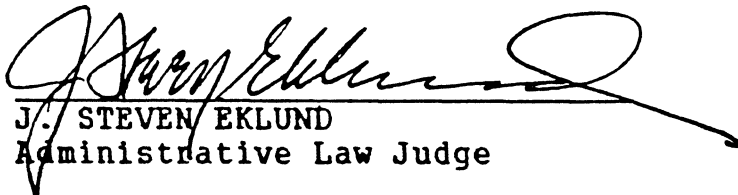
One further matter should be addressed. Section 78-45b-17 provides:

"The department may consistent with the income, earning capacity and resources of the debtor, set or reset a level and schedule of payments to be paid upon the debt...."

Although the child support arrearage which is owed by the defendant represents an outstanding indebtedness which is due and owing in full, pursuant to the just-quoted statute, the defendant may be afforded the opportunity to commence repayment in satisfaction of that indebtedness over an extended period of time. Given the defendant's current lack of employment and monthly income, she should not be presently required to commence repayment in satisfaction of the indebtedness which exists. Further, she should not be required to make payment in satisfaction of any on-going child support obligation which may exist, relative to public assistance which may be provided for the support of the one child who still lives with Mr. Hutchison. Rather, an investigator from the Office of Recovery Services should

periodically monitor the defendant's financial circumstances. As may be appropriate, the defendant should be required to attend an assessment conference with said investigator, whereby some determination be initially made as to whatever rate of repayment would be properly required of the defendant, relative to the eventual satisfaction of whatever child support arrearage may subsequently exist.

Dated this 8<sup>th</sup> day of November, 1983.

  
J. STEVEN EKLUND  
Administrative Law Judge

#### ORDER

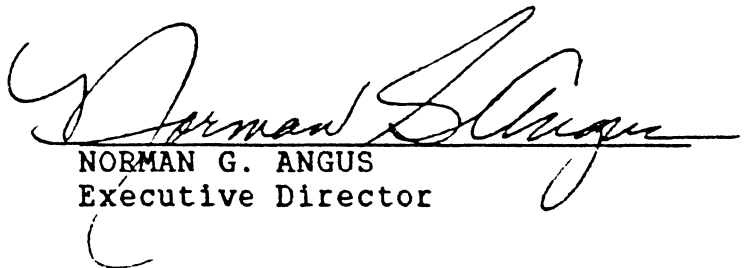
Based on the foregoing, it is hereby ordered, adjudged and decreed that judgment in the sum of One hundred twenty-five dollars (\$125.00) be entered against the defendant. Said judgment represents reimbursement properly owed to the State of Utah for public assistance which was provided to John Collins Hutchison from June 1, 1983 through October, 1983, relative to the support of either and/or both of the defendant's dependent children, to wit: Diana Michele and John Collins, Jr.

It is further ordered that, so long as public assistance is provided for the support of that child (i.e., Diana Michele) who presently resides with Mr. Hutchison, the defendant's on-going child support obligation in that regard shall be at the rate of Twenty-five dollars (\$25.00) per month.

It is further ordered that, pursuant to §78-45b-17, an investigator from the Office of Recovery Services shall periodically monitor the defendant's employment and financial circumstances. As may be subsequently warranted, the defendant shall be required to attend an assessment conference with said investigator, wherein a determination shall be initially made as to whatever rate of repayment shall be required of the defendant toward the satisfaction of the judgment set forth herein and any unpaid child support arrearages which may accrue in the interim.

Judicial review of these Findings and Order may be obtained by filing a Petition and Twenty-five dollars (\$25.00) with the District Court within twenty days after receipt of the Findings and Order herein. Said Petition shall be served upon the Department and shall state the grounds upon which review in this matter is sought.

Dated this 23<sup>rd</sup> day of November, 1983.

  
NORMAN G. ANGUS  
Executive Director

#### MAILING CERTIFICATE

This is to certify that I have mailed a true and exact copy of the foregoing Memorandum of Findings and Order to Paul D. Vernieu, Deputy Weber County Attorney, to Recovery Services Team #12, to John

C. Hutchison, to Marsha Lee Starks, and to her attorney, Leland K. Wimmer, on this the 29<sup>th</sup> day of November, 1983.

Shauna Snyder  
SECRETARY

P21 7828804  
RECEIPT FOR CERTIFIED MAIL  
NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

SENT TO		
Ms. Marsha Lee Starks		
STREET AND NO		
2780 Liberty		
PO STATE AND ZIP CODE		
Ogden, Utah 84403		
POSTAGE	\$	
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE	c
	SPECIAL DELIVERY	c
	RESTRICTED DELIVERY	c
	OPTIONAL SERVICES	
	RETURN RECEIPT SERVICE	
	SHOW TO WHOM AND DATE DELIVERED	c
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY	c
	SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	c
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	c
TOTAL POSTAGE AND FEES		\$
POSTMARK OR DATE		

PS Form 3800, Apr 1976

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.		
1. The following service is requested (check one.) <input checked="" type="checkbox"/> Show to whom and date delivered..... <input type="checkbox"/> Show to whom, date and address of delivery..... <input type="checkbox"/> RESTRICTED DELIVERY Show to whom and date delivered..... <input type="checkbox"/> RESTRICTED DELIVERY. Show to whom, date, and address of delivery..... (CONSULT POSTMASTER FOR FEES)		
2. ARTICLE ADDRESSED TO: Ms. Marsha Lee Starks 2780 Liberty Ogden, Utah 84403		
3. ARTICLE DESCRIPTION: REGISTERED NO. CERTIFIED NO. INSURED NO. P21 7828804 (Always obtain signature of addressee or agent)		
I have received the article described above. SIGNATURE <input type="checkbox"/> Addressee <input type="checkbox"/> Authorized agent <u>Marsha Lee Starks</u>		
4. DATE OF DELIVERY 11-30-83		
5. ADDRESS (Complete only if requested)		
6. UNABLE TO DELIVER BECAUSE:		CLERK'S INITIALS

☆ GPO : 1978-288-348

Salt Lake County Utah

JUN 19 1986

H. Dixon Hindley, Clerk 3rd Dist. Court

By \_\_\_\_\_ Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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MARSHA LEE STARKS, aka	:	MEMORANDUM DECISION
MARSHA LEE BEACHLER,	:	
Petitioner/Defendant,	:	CIVIL NO. C-83-8696
vs.	:	
STATE OF UTAH, Department of	:	
Social Services,	:	
Respondent/Plaintiff.	:	

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Before the Court is the petitioner's Petition for Review wherein she seeks to have this Court, pursuant to Section 78-45b-6.1 of the Utah Code Ann., 1953 as amended, review the Findings and Order of the Department of Social Services for the State of Utah. While the matter has been on file for some period of time and brought to a head by the Court's Order to Show Cause directed to the parties, requiring them to appear and show cause why the matter should not be dismissed for failure to prosecute the briefs as required by the aforementioned Section have now been filed, and the matter is ready for decision.

Upon reviewing the matters in the Court's official file, the Petition, the transcript of evidence taken before the Administrative Law Judge, the Findings, Conclusions and Order entered by the Administrative Law Judge, as well as the Memorandum of Points and Authorities submitted by both the petitioner and

the respondent, the Court finds that the Findings of Fact, Conclusions of Law, and the Order as entered by the Department of Social Services through its Administrative Law Judge are supported by the facts, well-founded in the law, and should otherwise be affirmed.

Therefore, the Court affirms the Findings of Fact, Conclusions of Law, and the Order entered by the Administrative Law Judge for the Department of Social Services, and denies the Petition of the petitioner Marsha Lee Starks wherein she seeks to be relieved of the obligations imposed on her by the Administrative Order.

Counsel for the Department of Social Services is to prepare an appropriate Order in accordance with this Memorandum Decision, and submit the same to the Court for signature and review in accordance with the Local Rules of Practice.

Dated this 19 day of June, 1986.

TS/  
TIMOTHY R. HANSON  
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that 4 copies of the foregoing Brief was served to Blaine Ferguson, Assistant Attorney General, 236 State Capitol, Salt Lake City, Utah 84114, by mailing said Brief by first-class mail, postage prepaid, or by hand-delivering said copies this \_\_\_\_ day of \_\_\_\_\_, 1987.

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llb/beachler.bri