

1986

# Marsha Lee Starks v. State of Utah : Brief of Respondent

Utah Court of Appeals

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## Recommended Citation

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BRIEF

UTAH  
DEPARTMENT  
KFCU

IN THE UTAH COURT OF APPEALS

5

DOCKET NO. 860244

MARSHA LEE STARKS, aka  
MARSHA LEE BEACHLER,

Petitioner/Appellant,

vs.

STATE OF UTAH, DEPARTMENT  
OF SOCIAL SERVICES,

Plaintiff/Respondent

Case No. 860244-CA

Category 13

BRIEF OF RESPONDENT

ON APPEAL FROM A FINAL ORDER OF THE THIRD JUDICIAL DISTRICT  
COURT, IN AND FOR SALT LAKE COUNTY, UTAH, HON. TIMOTHY R. HANSON,  
DISTRICT JUDGE, PRESIDING, ON APPELLANT'S PETITION FOR REVIEW  
FROM THE ORDER OF THE UTAH DEPARTMENT OF SOCIAL SERVICES

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COURT OF APPEALS

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	)	
MARSHA LEE STARKS, aka	)	
MARSHA LEE BEACHLER,	)	
	)	Case No. 860244-CA
Petitioner/Appellant,	)	
	)	
vs.	)	Category 13
	)	
STATE OF UTAH, DEPARTMENT	)	
OF SOCIAL SERVICES,	)	
	)	
Plaintiff/Respondent	)	

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JURISDICTION: NATURE OF PROCEEDING

This is an appeal from a District Court review of a final order of the Department of Social Services, a State Agency. It was originally filed in the Supreme Court of the State of Utah, which later transferred the case to the Utah Court of Appeals.

This Court has jurisdiction over this case pursuant to Utah Code Ann. §78-2a-3(2)(a) (Supp. 1986).

STATEMENT OF ISSUE PRESENTED FOR REVIEW

When a decree of divorce awarding custody of the children to the mother is silent with regard to her child support obligation, and she later relinquishes custody of the children to the father without obtaining a modification of the decree to that effect, and the father receives public assistance for the children, is there a "court order" for purposes of determining whether the Department of Social Services may use administrative proceedings to assess the mother with a support obligation?

STATUTE WHOSE INTERPRETATION IS DETERMINATIVE

This case turns on the interpretation of the first six words of Utah Code Ann. §78-45b-5(1) (1953), as amended, which reads as follows in pertinent part:

In the absence of a court order, the director may issue a notice of support debt accrued or accruing based upon the furnishing of support by the department for the benefit of any dependent child. . . . (Emphasis added)

STATEMENT OF THE CASE

The State agrees with appellant's Statement of the Case, but adds the following relevant point:

1. Judge Timothy R. Hanson signed an Order on August 29, 1986, affirming the Findings of Fact and Conclusions of Law of the Administrative Law Judge, and affirming the Order of the Department of Social Services. (R. 87-88).

STATEMENT OF THE FACTS

The State agrees with appellant's Statement of Facts, except as noted below:

1. Appellant states that "The Decree does not obligate the Petitioner to pay any child support to Mr. Hutchinson." (Appellant's Brief, P. 2). This is a true statement; however, it may imply that the Decree affirmatively provided that appellant (the "mother") had no child support obligation. Such an implication would be incorrect. It is more accurate to state that the Decree was silent on the subject of the mother's child support obligation. (R. 34-35).

2. In addition to finding the mother legally obligated under the Public Support of Children Act to reimburse the Department for child support, the Administrative Law Judge found that she was also so obligated under common law principles. (R. 39-41).

SUMMARY OF ARGUMENT

The Public Support of Children Act (Utah Code Ann. §78-45b-1

to 24 (1953), as amended) provides an administrative procedure for assessing and collecting child support obligations. When applicable, it provides a relatively expeditious alternative to judicial proceedings, and it has a built-in judicial review procedure should an aggrieved party request it.

When there is an existing court order, the Act authorizes the Department of Social Services to enforce that order by collecting the child support obligation established by the order.

On the other hand, in the absence of a court order, the Department is authorized to actually establish a child support obligation (in accordance with certain specific statutory guidelines), and to enforce that obligation. The determination of the Department is subject to judicial review.

The authority of the Department to establish a support obligation hinges on whether or not there is a "court order." The State respectfully submits that under the facts of this case, there was no court order as contemplated by Utah Code Ann. §78-45b-5(1) (1953), as amended.

In this case, the Decree of Divorce said nothing about the mother's child support obligation, and understandably so, because she had custody of both of the children. There was no need for the Decree to deal with the issue of her child support obligation, so it was totally silent on that point and made no order one way or the other on that subject.



For that reason, when the custody of the children was informally switched to the father of the children, and he began receiving public assistance, it was perfectly appropriate for the Department to proceed administratively to "fill in the gap" left in the Decree and to establish the mother's support obligation.

Appellant's brief, assuming almost without argument that there was a "court order" in this case, focuses on other points that are secondary and unnecessary for a determination of this case. Once this Court makes its decision regarding whether or not there was a "court order" in this case, appellant's arguments will become moot.

#### ARGUMENT

#### POINT ONE

THE DECISIVE ISSUE IN THIS CASE IS WHETHER OR NOT THERE WAS A "COURT ORDER" AS CONTEMPLATED BY UTAH CODE ANN. §78-45b-5(1) (1953) AS AMENDED. THE DETERMINATION OF THAT ISSUE WILL BE DISPOSITIVE OF THE APPEAL.

This appeal turns on the interpretation of Utah Code Ann. §78-45b-5(1) (1953), as amended, which provides that "in the absence of a court order," the Department of Social Services may use its administrative procedures to establish and enforce the subject parent's child support obligation. If this court determines that there was a court order in this case, then the State clearly acted incorrectly and the Order of the Department of Social Services must be set aside.

If, however, this Court sustains the reasoning of the Admini-

strative Law Judge and of the District Court, and finds that there was no court order as contemplated by Utah Code Ann. §78-45b-5 (1953), as amended, then the action of the Department of Social Services should be upheld.

Appellant gives short shrift to the question of whether or not there was a "court order." She does not even set it out as an issue in the case. Instead, her argument begs the question by making the unsupported assumption that "The Petitioner's duty of child support has been fixed, an order exists, and the issue is res judicata." (Appellant's Brief, P. 5). Using that assumed premise as a starting point, she then makes three main conclusions, which may be summarized as follows:

(1) Where there is a court order fixing a support obligation, that order is res judicata (subject, of course, to appropriate judicial modification);

(2) A court-ordered support obligation cannot be modified in administrative proceedings; and

(3) A support order cannot be modified retroactively. The State acknowledges that these three main points, as described above, are accurate statements of existing Utah law. It is inappropriate to consider those three points, however, until this Court determines the validity of appellant's initial premise that there was a "court order." If her assumption on that premise is sustained by this court, then on the basis of her

three conclusions described above, she must prevail on the appeal and the administrative action of the Department of Social Services must be set aside.

If, however, her premise fails, then her three conclusions do not apply, because the premise on which they are based (a "court order") does not exist. Her entire appeal then fails because the condition required by statute for the Department's administrative action (the "absence of a court order") was satisfied and the Department's action should be sustained.

Since it is the premise of appellant's argument, then, that is decisive of the appeal, this brief deals primarily with that premise.

#### POINT TWO

WHEN A DECREE OF DIVORCE IS SILENT WITH REGARD TO THE CHILD SUPPORT OBLIGATION OF A CUSTODIAL PARENT, THERE IS NO "COURT ORDER" AS CONTEMPLATED BY UTAH CODE ANN. §78-45b-5(1) (1953), AS AMENDED AND THE DEPARTMENT OF SOCIAL SERVICES MAY ESTABLISH THAT PARENT'S SUPPORT OBLIGATION USING ADMINISTRATIVE PROCEDURES.

There is sound reasoning for adopting the proposition that in a case like this one, there really is no "court order" as contemplated by Utah Code Ann. §78-45b-5(1) (1953), as amended, and the use of administrative procedures to establish the support obligation is proper.

The Public Support of Children Act begins by setting forth some specific "legislative intent" language. It states that:

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.

Utah Code Ann. §78-45b-1.1 (1953), as amended. In the following section, the term "Court order" is defined as:

. . . 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) (Supp.1986). It is in the "absence" of such an order that the Department of Social Services is authorized to administratively establish a parent's support obligation. Utah Code Ann. §78-45b-5(1) (1953), as amended.

Appellant asserts that the above-quoted statutes mean that if there is any order dealing with the support obligation of any party, then the Department is barred from administratively establishing the support obligation of a parent, even if the order doesn't say anything about that parent's support obligation. (Since most divorce decrees do not make any affirmative statements regarding the support obligations, or lack thereof, of custodial parents, appellant's analysis would mean that Utah Code Ann. §78-45b-5 (1953), as amended, would probably never apply in any divorce case.) She claims that silence in the decree regarding the custodial parent's support obligation should be construed as an affirmative determination that the custodial parent does not have any child support obligation.

Although the State acknowledges that appellant's broad reading of the definition of "court order" is plausible, it submits that a more narrow reading is not only equally plausible, but better serves the stated legislative intent and accomplishes the public policies involved.

The State suggests that the better interpretation of the above-quoted statutes is as follows: In cases where the issue of the child support obligation of the subject parent has clearly come before the court, and some inference of the court's determination regarding that support obligation may be made from the court's order, then there is a court order covering the subject parent's child support obligation and the Department has no authority to take any action other than enforcement of that order. For example, if the court has specifically defined the support obligation of the subject parent, or has specifically reserved that parent's child support obligation for future judicial determination, or has given custody of a child to one parent and not assigned a child support obligation to the other parent regarding that child, then there can be no doubt but that the court was faced with the issue of the child support obligation of the non-custodial parent and dealt with it in its order.

In other cases, such as the case at hand, where the Decree is totally silent and the court has not really dealt with the subject parent's support obligation, there should be no objection

to establishing that obligation through administrative procedures. In such a case, the Department of Social Services is not encroaching on the province of the court, but is rather assisting the court by filling in a gap which the court had not previously addressed.

The Administrative Law Judge clearly had this understanding of the law when he stated in his Conclusions of Law that:

Without doubt, the defendant [the mother] 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.  
(Emphasis added)

(R. 41). The Administrative Law Judge was simply trying to make a determination, in accordance with his statutory authority, regarding something that had not even come before the trial court at the time of the divorce.

Appellant's claim that judicial silence in the Decree of Divorce in this case is tantamount to an affirmative order fixing her support obligation at zero dollars per month per child is incorrect. It is not uncommon in judicial rulings for the court not to address certain issues, either because they were not raised by the parties or because they were not necessary to a determination of the case. The silence of the court regarding such issues certainly should not be interpreted as a ruling on their merits; all it means is that it was unnecessary for the court to say anything about them.

Similarly, in the case at hand, the silence of the court in the Decree of Divorce regarding the mother's support obligation should more properly be viewed as inaction on the part of the court regarding that issue. At the time of the Decree no action was necessary regarding the mother's support obligation, so none was taken. Now, because of the informal change of custody, that absence of any specific order now needs to be filled, and that is where Utah Code Ann. §78-45b-5 (1953), as amended, comes into play, giving the Department the opportunity to expeditiously establish the mother's obligation.

A careful review of Utah Code Ann. §78-45b-5(1) (1953), as amended, and the legislative intent surrounding the enactment of the Public Support of Children Act thus provides support for interpreting that statute so as to provide maximum use of the administrative procedures of the Department of Social Services in assessing child support obligations.

In addition, as a matter of sound public policy, the use of the administrative process allows child support obligations to be established and enforced in a relatively speedy, inexpensive, and efficient manner. Since child support needs are ever-changing, it is hard for the courts to keep up with the load of such cases. It is helpful to have the administrative process available as an alternative procedure (as long, of course, as it is not used in situations where it would infringe upon jurisdiction reserved

for the courts). The Department of Social Services is staffed by trained child support specialists and is governed by strict policy guidelines to ensure fair and equitable treatment of child support obligors. And, above all, its determinations are always subject to judicial review should any aggrieved party request it. Utah Code Ann. §78-45b-6.1(2) (Supp. 1986).

The State acknowledges the recent case of Karren vs. State Department of Social Services, 716 P.2d 810 (Utah 1986), cited by appellant. That case, however, has a different factual and procedural posture from the case at hand and, for that reason, it is not controlling.

In Karren, the trial court had ordered that custody of the three children be split between the mother and the father, with the father having two of the children. Under such facts, the court at the time of the divorce was clearly presented with the question of what obligation, if any, the mother should have for the children not in her custody. The court determined that the father should pay the mother \$30.00 per week for the support of the child in her custody, and did not obligate her to pay support for the two children in his custody. Later, the court modified its order and abated the father's duty to pay child support to the mother. No support obligation was imposed on the mother. Even though the orders may have been silent regarding the mother's support obligation, the circumstances of the case



placed the issue of her support obligation squarely before the court. Subsequent to the entry of the decree and the order modifying the decree, the Department of Social Services entered an administrative order establishing a support obligation on the part of the mother.

Under those facts, the Supreme Court held that there was a previous court order regarding the mother's support obligation, leaving the Department without authority to take such administrative action. The court held: "Thus, DSS [Department of Social Services] may not redetermine plaintiff's support obligation through an administrative proceeding." Karren, at p. 813.

The present case is distinguishable from Karren. No split custody arrangement was before the court. It was a simple "Mother gets the kids, Father pays child support" situation. The mother's support obligation was not even an issue. It is an exaggeration to say that the court made any determination regarding her support obligation--that issue simply was not dealt with, and the basis for the holding in the Karren case does not exist here.

It is appropriate for the State to discuss the case of Stettler v. Stettler, 713 P.2d 699 (Utah 1985), which was not cited by appellant, but was referred in the Karren case. Stettler is also factually and procedurally distinguishable from the present case.

In Stettler, the Supreme Court was faced with a case involving private parties only. The State was not a party, as it is in the present case. At issue was the interpretation of Utah Code Ann. §78-45-7(3) (Supp. 1984), which establishes the method to be applied by courts in assessing child support arrearages "when no prior court order exists." That statute does not apply in the present case, which involves agency action, not court action.

In Stettler, the father was initially awarded custody of all three children, and the mother was required to pay him child support. Later, pursuant to stipulation of the parties, the court ordered a change of custody, awarding the mother custody of one of the children, but not requiring the father to pay any support to the mother.

A few months later the mother petitioned the court for a further modification, awarding her ongoing child support plus arrearages from the time she obtained custody of the one child. The Supreme Court held that the mother was barred from collecting arrearages because there was a prior court order dealing with the support obligation for that child. The Supreme Court appears to have been strongly influenced by the fact that the mother had entered into an express stipulation and modified the divorce decree to provide for a change of custody, and had omitted any change in the child support provisions. The Court stated that:

This Court will not now remake the parties' agreement and require respondent [the father] to contribute to Robyn's support for the contested period, when the parties themselves, in their stipulation, did not see fit to include it.

Stettler, at p. 703.

In the present case, not only is the court faced with the interpretation of a different statute than that involved in Stettler, but a third party (the State of Utah) is involved which was not privy to the earlier divorce proceedings between the father and mother. Although it may have been fair and equitable for the Supreme Court to bind Mrs. Stettler to the modification order which she had been a party to and had even stipulated to, and to find that there was a sufficient court order to bar her from receiving arrearages under Utah Code Ann. §78-45-7(3), (Supp. 1984), the interpretation of that statute in the Stettler case does not control the interpretation of Utah Code Annotated §78-45b-5(1) (1953), as amended, in this case. The latter statute clearly gives the state rights to reimbursement of child support which are independent of any rights belonging to the parent receiving the public support. It provides that the state may serve a notice of support debt which 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 demand for immediate payment of the support debt or in the alternative for a written answer . . . setting forth any claimed defenses . . . 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. . . .  
(Emphasis added)

Utah Code Ann. §78-45b-5 (1953), as amended. The focus of the above-quoted statute is on obtaining reimbursement of public assistance paid by the State when there is no "court order," and the State's rights in this case are not dependent on those of appellant's ex-husband. The State is a real party in interest acting in its own behalf. Utah Code Ann. §78-45b-3(2) (Supp. 1986).

The State submits that until there was a court order clearly dealing with the mother's support obligation in one way or another, she had a general duty to support her children. Utah Code Ann. §78-45-4 (1953), as amended, provides that "Every woman shall support her child. . . ." The case of In re C.J.U., 660 P.2d 237 (Utah 1983) holds that parents are "duty bound" to support their children and that such duty of support is general in nature unless and until it becomes circumscribed by a more specific duty imposed by the court. Since there was no such court order in this case, the Department of Social Services was authorized to administratively define that support obligation and to require appellant to reimburse the taxpayers of Utah, at least in part, for the public support given to her children, and to thereby accomplish the intent of the legislature in adopting the Public Support of Children Act.

POINT THREE

THE MATTER OF APPELLANT'S CHILD SUPPORT OBLIGATION IS NOT RES JUDICATA.

For the reasons stated above, the State submits that prior to the administrative action taken in this case, there was no court order in existence regarding appellant's support obligation. The principle of res judicata is therefore inapplicable, and the Department of Social Services acted properly in taking administrative action to assess appellant's child support obligation. The arguments set out in Point I of appellant's brief are all premised on the assumption that there was a court order regarding her support obligation, so no further response to them is required in light of the State's position on this point.

POINT FOUR

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

The State agrees with appellant on this point. The State disagrees with appellant's contention, however, that there is a court-ordered support obligation in this case.

POINT FIVE

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


The State agrees with appellant on this point. The State disagrees with appellant's contention, however, that there is a court-ordered support obligation in this case.

CONCLUSION

Based on the foregoing arguments, the State asks the Court to affirm the Order of the District Court. If this court determines that the District Court's Order should be reversed, then the administrative action taken herein by the Department of Social Services should be set aside and the Department should be allowed to proceed in the courts for any relief it seeks, using any available legal theory.

DATED this 19 day of March, 1987.

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Attorney General

  
BLAINE R. FERGUSON  
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that I hand-delivered four copies of this Brief to Utah Legal Services, Inc., c/o Louisa L. Baker, Attorney for Petitioner/Appellant, at 124 South 400 East, Salt Lake City, Utah 84111, this 19 day of March, 1987.



ADDENDUM

EXHIBIT

UNIFORM CIVIL LIABILITY FOR SUPPORT ACT  
Utah Code Ann. §78-45-1 to 13  
(1953), as amended . . . . . A

MARSHA LEE HUTCHINSON VS. JOHN COLLINS  
HUTCHINSON, Decree of Divorce, Third  
District Court, State of Utah,  
June 15, 1972 . . . . . B

ORDER  
Third District Court, State of Utah  
August 29, 1986 . . . . . C

(Respondent also relies on the documents contained  
in the Addendum to appellant's brief.)

(Please Note: The Decree of Divorce (Exhibit "B") is  
also contained in the Addendum to appellant's brief.  
However, it is included here because appellant's copy  
inadvertently cuts off the bottom line on the first  
page.)

## Chapter 45. Uniform Civil Liability for Support Act

- 78-45-1. Short title.
- 78-45-2. Definitions.
- 78-45-3. Duty of man.
- 78-45-4. Duty of woman.
  - 78-45-4.1 Duty of stepparent to support stepchild - Effect of termination of marriage or common law relationship.
  - 78-45-4.2. Natural or adoptive parent has primary obligation of support - Right of stepparent to recover support.
  - 78-45-4.3. Ward of state - Primary obligation to support.
- 78-45-5. Duty of obligor regardless of presence or residence of obligee.
- 78-45-6. District court jurisdiction.
- 78-45-7. Determination of amount of support - Assessment formula for temporary support.
  - 78-45-7.1. Medical and dental expenses of dependent children - Assigning responsibility for payment - Insurance coverage.
- 78-45-8. Continuing jurisdiction.
- 78-45-9. Enforcement of right of support.
  - 78-45-9.1. Repealed.
  - 78-45-9.2. County attorney to assist obligee.
- 78-45-10. Appeals.
- 78-45-11. Husband and wife privileged communication inapplicable - Competency of spouses.
- 78-45-12. Rights are in addition to those presently existing.
- 78-45-13. Interpretation and construction.



**78-45-1. Short title.**

This act may be cited as the Uniform Civil Liability for Support Act. 1957

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

As used in this act:

(1) "State" includes any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

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

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

(4) "Child" means a son or daughter under the age of 18 years and a son or daughter of whatever age who is incapacitated from earning a living and without sufficient means.

(5) "Parent" includes a natural parent, an adoptive parent, or a stepparent.

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

(7) "Stepchild" means any child with a stepparent.

(8) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically include periodic payment pursuant to pension or retirement programs, or insurance policies of any type. 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. 1982

**78-45-3. Duty of man.**

Every man shall support his child; and he shall support his wife when she is in need. 1977

**78-45-4. Duty of woman.**

Every woman shall support her child; and she shall support her husband when he is in need. 1957

**78-45-4.1 Duty of stepparent to support stepchild**

- Effect of termination of marriage or common law relationship.

A stepparent shall support a stepchild to the same extent that a natural or adoptive parent is required to support a child. Provided, however, that upon the termination of the marriage or common law relationship between the stepparent and the child's natural or adoptive parent the support obligation shall terminate. 1980

**78-45-4.2. Natural or adoptive parent has primary obligation of support - Right of stepparent to recover support.**

Nothing contained herein shall act to relieve the natural parent or adoptive parent of the primary obligation of support; furthermore, a stepparent has the same right to recover support for a stepchild from the natural or adoptive parent as any other obligee. 1979

**78-45-4.3. Ward of state - Primary obligation to support.**

Notwithstanding section 78-45-2, a natural or an adoptive parent or stepparent whose minor child has become a ward of the state is not relieved of the primary obligation to support that child until he reaches the age of majority. 1983

**78-45-5. Duty of obligor regardless of presence or residence of obligee.**

An obligor present or resident in this state has the duty of support as defined in this act regardless of

the presence or residence of the obligee. 1957

**78-45-6. District court jurisdiction.**

The district court shall have jurisdiction of all proceedings brought under this act. 1957

**78-45-7. Determination of amount of support -**

Assessment formula for temporary support.

(1) Prospective support shall be equal to the amount granted by prior court order unless there has been a material change of circumstance on the part of the obligor or obligee.

(2) When no prior court order exists, or a material change in circumstances has occurred, the court in determining the amount of prospective support, shall consider all relevant factors including but not limited to:

(a) the standard of living and situation of the parties;

(b) the relative wealth and income of the parties;

(c) the ability of the obligor to earn;

(d) the ability of the obligee to earn;

(e) the need of the obligee;

(f) the age of the parties;

(g) the responsibility of the obligor for the support of others.

(3) When no prior court order exists, the court shall determine and assess all arrearages based upon, but not limited to:

(a) the amount of public assistance received by the obligee, if any;

(b) the funds that have been reasonably and necessarily expended in support of spouse and children.

(4) In determining the amount of prospective support on an ex parte or other motion for temporary support, the court shall use a uniform statewide assessment formula, adjusted for regional differences, prior to rendering the support order. The formula shall provide for all relevant factors which can be readily identified and shall allow for reasonable deductions from the obligor's earnings for taxes, work related expenses, and living expenses. The assessment formula shall be established by the Department of Social Services and periodically reviewed by the Judicial Council under Subsection 78-3-21(3). 1984

**78-45-7.1. Medical and dental expenses of dependent children - Assigning responsibility for payment - Insurance coverage.**

When no prior court order exists or the prior court order makes no specific provision for the payment of medical and dental expenses for dependent children, the court shall include in its order a provision assigning responsibility for the payment of reasonable and necessary medical and dental expenses for the dependent children. If coverage is available at a reasonable cost, the court may also include a provision requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for those children. 1984

**78-45-8. Continuing jurisdiction.**

The court shall retain jurisdiction to modify or vacate the order of support where justice requires. 1957

**78-45-9. Enforcement of right of support.**

(1) The obligee may enforce his right of support against the obligor and the state department of social services may proceed pursuant to this act or any other applicable statute, either on its own behalf or on behalf of the obligee, to enforce the obligee's right of support against the obligor. Whenever any court action is commenced by the state department

of social services to enforce payment of the obligor's support obligation, it shall be the duty of the attorney general or the county attorney, of the county of residence of the obligee, to represent that department.

(2) No obligee shall commence any action to recover support due or owing that obligee whether under this act or any other applicable statute without first filing an affidavit with the court at the time the action is commenced stating whether that obligee has received public assistance from any source. If the obligee has received public assistance, the obligee shall join the department of social services as a party plaintiff in the action. The department of social services shall be represented as provided in subsection (1) of this section.

1982

78-45-9.1. Repealed.

1984

78-45-9.2. County attorney to assist obligee.

The county attorney's office shall provide assistance to an obligee desiring to proceed under this act in the following manner:

(1) Provide forms, approved by the judicial council of Utah, for an order of wage assignment if the obligee is not represented by legal counsel;

(2) The county attorney's office may charge a fee not to exceed \$25 for providing assistance to an obligee under subsection (1).

(3) Inform the obligee of the right to file impecuniously if the obligee is unable to bear the expenses of the action and assist the obligee with such filing;

(4) Advise the obligee of the available methods for service of process; and

(5) Assist the obligee in expeditiously scheduling a hearing before the court.

1983

78-45-10. Appeals.

Appeals may be taken from orders and judgments under this act as in other civil actions.

1957

78-45-11. Husband and wife privileged

communication inapplicable - Competency of spouses.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable under this act. Spouses are competent witnesses to testify to any relevant matter, including marriage and parentage.

1957

78-45-12. Rights are in addition to those presently existing.

The rights herein created are in addition to and not in substitution to any other rights.

1957

78-45-13. Interpretation and construction.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

1957

W. R. G. [Signature] [Illegible]  
[Illegible]

**IN THE DISTRICT COURT OF THE THIPD JUDICAL DISTRICT,  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

\*\*\*\*\*

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.

3. Plaintiff is awarded judgment against defendant who is ordered to pay to

~~plaintiff as would support the sum of \$60.00 per month per child together with~~

the sum of \$110.00 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 W. Sterling Evans  
Deputy Clerk

By the Court,

Emmett L. Brown  
DISTRICT JUDGE

I hereby certify that I mailed a true and correct copy of the foregoing Decree of Divorce to defendant, John Collins Hutchinson, 1249 Garnette Street, Salt Lake City, Utah 84116, this 15th day of June 1972.

THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT  
ON 21st DAY OF June 1972  
DOUGLAS MINDEY, CLERK  
Douglas Mindey DEPUTY

100125

**FILMED**

DAVID L. WILKINSON  
Attorney General  
BLAINE R. FERGUSON  
Assistant Attorney General  
3195 South Main Street  
Salt Lake City, Utah 84115  
Telephone: 483-6333

FILED IN CLERK'S OFFICE  
Salt Lake County Utah

AUG 29 1986

H. Dixon Hindley, Clerk 3rd Dist. Court

By Emlyn L. Hindley Deputy Clerk

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

---

MARSHA LEE STARKS, aka	:	
MARSHA LEE BEACHLER,	:	
	:	ORDER
Petitioner/Defendant	:	
	:	
vs:	:	
	:	
STATE OF UTAH, DEPARTMENT	:	
OF SOCIAL SERVICES,	:	Civil No. C83-8696
	:	
Respondent/Plaintiff.	:	Judge Hanson

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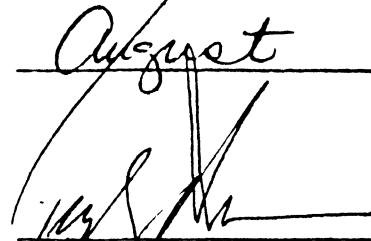
The above matter came before this court pursuant to a Petition for Review filed by the Petitioner/Defendant herein, Marsha Lee Starks, in which, under Section 78-45b-6.1, Utah Code Annotated, 1953, as amended, she sought judicial review of the Findings and Order of the Department of Social Services for the State of Utah in case #90099582R1. The parties having filed memoranda in support of their respective positions in the matter and having filed the record and all other papers necessary and proper in the premises, and the court having carefully reviewed the same and being fully advised, and good cause appearing, now, therefore:

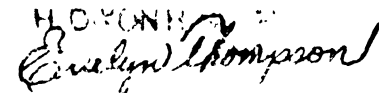
IT IS HEREBY ORDERED that the Findings of Fact and Conclusions of Law of the Administrative Law Judge dated November 8, 1983 and the Order of the Department of Social Services dated November 23, 1983, which Order is represented by an abstract of

EXHIBIT "C"

award dated December 6, 1983 (Civil Case No. 201-709), are affirmed in every respect, and the parties are ordered to comply with the same.

DATED this 29 day of August, 1986.

  
TIMOTHY R. HANSON  
District Court Judge

ATTEST  
HONORABLE  
  
by \_\_\_\_\_  
Deputy Clerk

#### MAILING CERTIFICATE

I certify that I mailed a copy of the foregoing Order to the following persons at the following addresses, postage prepaid, this 28<sup>th</sup> day of July, 1986:

Leland K. Wimmer  
Attorney for Petitioner/Defendant  
604 Judge Building  
Salt Lake City, Utah 84111

  
SECRETARY