

1976

State Division of Family Services and Joann Lorraine Clark et al v. Mark Thomas Clark et al : Brief of Respondents

Utah Supreme Court

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Martin W. Gusten; Weber County Legal Aid Services; Attorney for Respondents;

Vernon B. Romney; Frank V. Nelson; Attorneys for Appellants;

Recommended Citation

Brief of Respondent, *State v. Clark*, No. 14132 (Utah Supreme Court, 1976).

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE DIVISION OF FAMILY
SERVICES and JOANN LORRAINE
CLARK, et al.,

Plaintiffs and Appellants,

-vs-

MARK THOMAS CLARK, et al.,

Defendants and Respondents.)

)
) **FILED**
) **FOR REHEARING**
) **D**

OCT 7 1976

Clerk, Supreme Court, Utah

CIVIL NOS.

14132, 14133, 14134

Now the Defendants-Respondents above-named, by and through their attorney of record, and petition the Honorable Supreme Court of Utah for a rehearing, and allege as exact the following:

1. In remanding the cause to the Second Judicial Court of Weber County, the Court erred in holding that Plaintiff Division of Family Services is entitled to judgment against each defendant for the money that has been reasonably and necessarily expended in support of his children.

Wherefore, for the reasons advanced in Defendants-Respondents' brief in support of their Petition for Rehearing, Defendants-Respondents respectfully pray that this Court grant them a rehearing and then and there modify its decision to entitle Plaintiffs-Appellants to a judgment against each defendant for the amount of support owed for reimbursement determined pursuant to §78-45-7, Utah Code Annotated 1953, as amended.

DATED this 6th day of October, 1976.

Martin W. Custen
MARTIN W. CUSTEN
Attorney for Defendants-Respondents

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Petition for Rehearing to Vernon B. Romney, Attorney General, Frank V. Nelson and Stephen G. Schwendiman, Assistant Attorneys General, at 236 State Capitol, Salt Lake City, Utah (84114), this ____ day of October, 1976.

SECRETARY

ROBERT L. NEWAY
WEBER COUNTY ATTORNEY
8TH FLOOR, MUNICIPAL BUILDING
OGDEN, UTAH 84401

Exhibit A

IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH

STATE OF UTAH, by and through)
Director, Division of Family)
Services, Utah State Department)
of Social Services, and)
SHARON O. BOWEN,)
Plaintiffs,)
-vs-)
KIM R. BOWEN,)
Defendant.)

C O M P L A I N T

Civil No. 60315

Plaintiffs complain of Defendant and allege:

1. That the Defendant is a resident of the State of Utah, County of Weber.
2. That under §78-45-9 Utah Code Annotated, 1953, as amended; the State of Utah, through the Division of Family Services, Utah State Department of Social Services, is authorized to file suit for reimbursement of funds expended for public assistance.
3. That Sharon O. Bowen received public assistance from the State of Utah in the sum of \$ 616.00.
4. That the Defendant is in arrears because of his failure to provide support in the amount of \$ 616.00.
5. That demand has been made upon said Defendant but *he has willfully failed and refused to pay said amount.*

WHEREFORE, Plaintiffs pray for a judgment as follows:

1. That the State of Utah is entitled to a judgment for reimbursement and that the Defendant be ordered to reimburse the Division of Family Services in the amount of \$ 616.00.

2. For such other and further relief as the law provides.

DATED this 16th day of August, 1974.

ROBERT L. NEWBY
WEBER COUNTY ATTORNEY

By: /s/ Philip J. Williamson
Deputy County Attorney
8th Floor, Municipal Building
Ogden, Utah 84401

EXHIBIT "A"

COMPUTATION OF ARREARAGES

Case Name: State of Utah and Sharon O. Bowen

vs. Kim R. Bowen

Civil No.: 60315

Date of Divorce Decree in Weber County, Utah:

Child Support Decreed:

Alimony Decreed:

<u>MONTHS</u>	<u>AMOUNT DEBITED/RECEIVED PER MONTH</u>	<u>TOTAL AMOUNT</u>	<u>AMOUNT PAID</u>	<u>AMOUNT IN ARREARS</u>
Nov-Dec	154.00	308.00	-0-	308.00
Jan-Feb	154.00	308.00	-0-	<u>308.00</u>
				616.00

\$616.00
TOTAL
ARREARAGES

Accounts are computed from date of Divorce Decree (none)

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...ing periods of public assistance.

ROBERT L. NEWBY
WEBER COUNTY ATTORNEY
8TH FLOOR, MUNICIPAL BUILDING
OGDEN, UTAH 84401
399-8377

Exhibit B

IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH

STATE OF UTAH, by and through)
Director, Division of Family)
Services, Utah State Department)
of Social Services, and)
SHARON O. BOWEN,)
Plaintiff,)
VS.)
KIM R. BOWEN,)
Defendant.)

AFFIDAVIT FOR AN
ORDER TO SHOW CAUSE

Civil No. 56314

Philip J. Williamson, Deputy County Attorney and
counsel for the Division of Family Services, Utah State Depart-
ment of Social Services, being first duly sworn, on oath,
deposes and says:

1. That the State of Utah is authorized to file suit
for funds expended for public assistance and continuing support.

2. That on or about February 21, 1973, the above-
named District Court made its Order directing the defendant to
pay \$65.00 per month per child as child support for Justin K.
Bowen

3. That defendant neglected to provide support for
his dependents for a period of 18 months since the above
order was entered; that Sharon O. Bowen
(has received) (is presently receiving a) public assistance
grant(s) from the Division of Family Services, Utah State Depart-

and for support in the amount of One Thousand One Hundred Forty and 98/100 Dollars (\$ 1,140.98),

as per State's Exhibit "A", a copy of which is hereto attached and incorporated by reference herein.

4. That defendant has had and currently has the ability to pay said support, but he has willfully refused and continues to do so.

DATED this 16 day of August, 1974.

/s/ Philip J. Williamson

PHILIP J. WILLIAMSON
Deputy County Attorney
Attorney for Plaintiff

STATE OF UTAH)
 : ss.
COUNTY OF WEBER)

Philip J. Williamson, having been first duly sworn by me this 16 day of August, 1974, deposes and says: That he did execute the foregoing Affidavit on behalf of and as attorney for plaintiff(s) in accordance with authority granted by said plaintiff(s) and by law, and that the matters therein stated are true and correct to the best of his knowledge and belief.

Notary Thomas
NOTIARY PUBLIC
Residing at Ogden, Utah
My Commission Expires:

October 5, 1977

EXHIBIT "A"

COMPUTATION OF ARREARAGES

Case Name: State of Utah and Sharon O. Bowen

vs. Kim R. Bowen

Civil No.: 56314

Date of Divorce Decree in Weber County, Utah: February 21, 1973

Child Support Decreed: \$65.00 per month per child (one child)

Alimony Decreed:

	MONTHS	AMOUNT DECREED/ PER MONTH	TOTAL AMOUNT	AMOUNT PAID	AMOUNT IN ARREARS
3	Mar-Apr	65.00	390.00	-0-	
	Sep-Oct	50.49	100.98	-0-	
	Nov-Dec	65.00	130.00	-0-	
					<u>620.98</u>
4	Jan-Aug	65.00	520.00	-0-	520.00

\$1,140.98
TOTAL
ARREARAGES

Amounts are computed from date of Divorce Decree (Feb 21, 1973

March 1973 through August 1974
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during periods of public assistance.

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OTHER AUTHORITIES CITED

Restatement of the Law of Restitution- Quasi Contracts
and Constructive Trusts (American Law

STATEMENT OF THE NATURE OF THE CASE

Plaintiffs-Appellants, State of Utah and three named women, appealed from identical memorandum decisions rendered in the Second Judicial District Court of Weber County, State of Utah, granting summary judgment of dismissal of their complaints under the Uniform Civil Liability for Support Act, §§78-45-1 et seq., U.C.A.1953 (pre-1975 amendment).

DISPOSITION OF THE SUPREME COURT ON APPEAL

The Supreme Court of Utah reversed the district court, holding that Plaintiffs-Appellants were entitled to judgment against the three named defendants for the money that had been reasonably and necessarily expended in support of their children.

RELIEF SOUGHT ON REHEARING

Respondents seek modification of the judgment of the Supreme Court of Utah to entitle them to a hearing under §78-45-7 U.C.A. 1953, as amended, before the Plaintiffs-Appellants may take judgment for reimbursement.

STATEMENT OF FACTS

Respondents adopt the statement of facts that they set forth in their brief on the appeal in the first instance.

ARGUMENT

- I. THE COURT'S DISTINCTION OF THE DIFFERENCE BETWEEN THE RIGHT OF ONE WHO HAS FURNISHED SUPPORT TO A CHILD TO HAVE REIMBURSEMENT, AS DISTINGUISHED FROM AN ADJUDICATION OF THE AMOUNT A FATHER SHOULD PAY FOR THE CURRENT AND FUTURE SUPPORT OF HIS CHILDREN, SHOULD NOT APPLY TO THE STATE UNDER THE UNIFORM CIVIL LIABILITY FOR SUPPORT ACT.

Utah Code Annotated, §78-45-1 et seq. (pre-1975 amendment) is the Utah version of the Uniform Civil Liability for Support Act (hereinafter UCLSA) as issue in the instant case. §78-45-9 states:

...Whenever the state department of public welfare furnishes support to an obligee, it has the same right as the obligee to whom the support was furnished, for the purpose of securing reimbursement and of obtaining continuing support.

It is submitted that the rights conferred upon Plaintiff State Division of Family Services by the above-cited statute are unique, and render inapposite any analogy to the right of a private party, not otherwise legally responsible, who has furnished support to a child to have reimbursement therefor from the person legally responsible for support.

The normal rule for reimbursement of a person who has supplied necessities to a third party is stated in Restatement of the Law of Restitution - Quasi Contracts and Constructive Trusts, Chapter 5 - Benefits Voluntarily Conferred, §113, p.464 (American Law Institute 1937):

PERFORMANCE OF ANOTHER'S NONCONTRACTUAL
DUTY TO SUPPLY NECESSARIES TO A THIRD

PERSON.

A person who has performed the noncontractual duty of another by supplying a third person with necessaries which in violation of such duty the other had failed to supply, although acting without the other's knowledge or consent, is entitled to restitution therefor from the other if he acted unofficiously and with intent to charge therefor.

Under this Rule, it should be noted, no right to reimbursement vests in the person until he supplies the necessaries. This rule is concerned with the equities of compensating the Good Samaritan who is not otherwise under any legal duty to provide support.

What distinguishes the above-mentioned rule from that of §78-45-9 U.C.A. 1953 (pre-1975 amendment) is that under the latter (UCLSA), the State Division of Family Services is given the right to obtain a prospective support order against the obligor father "whenever the state department of public welfare furnishes support to an obligee." This distinction is indicative of the different purpose of the UCLSA from the normal rule of the Restatement of Restitution.

The UCLSA was enacted for the sole purpose of obtaining support for needy obligees. To this purpose, the State is given the statutory right to obtain a prospective support order, which the private person not otherwise legally obligated does not have. To allow the State to recover more by reimbursement, when no previous support order has been entered, than when a previous order has been

entered serves to give the State an incentive to not follow the UCLSA in immediately obtaining a prospective order, since, it is submitted, the prospective support order entered will rarely, if ever, be as great an amount as that which the needy obligee receives from the State. Why would the legislature provide the State with a means of obtaining a prospective order if it was not intended that the State avail itself of this right? And yet, if the State stands to obtain a maximum recovery by seeking reimbursement for the full amount expended, it will not attempt to obtain a prospective order for a sum certain. That the State may intervene, under the UCLSA, in a private divorce action has been established by this Court in Bartholomew v. Bartholomew, 548 P.2d 238 (Utah 1976).

The case of named defendant-respondent Kim Bowen is instructive. The State seeks reimbursement for the full amount it expended from November of 1972 through February of 1973. See attached copy of Complaint and Computation of Arrearages in State of Utah and Sharon Bowen v. Kim Bowen, Second Judicial District Court of Weber County, Civil No. 60315 (Respondents' Exhibit A). In late February of 1973 the Bowens were divorced, and a child support order was entered. Sharon Bowen continued to receive a grant from the State, and the State brought an action under the UCLSA to recover the arrearage. See attached copy of Affidavit for an Order to Show Cause and Computation of Arrearages

in State of Utah and Sharon Bowen vs. Kim Bowen, Second Judicial District Court of Weber County, Civil No. 56314 (Respondents' Exhibit B). Note that as soon as the support order of \$65 per month was entered, the State was bound by that amount in determining its recovery from the obligor. The only difference between the former case (Civil No. 60315) and the latter (Civil No. 56314) is the subsequent court order of support. To say that this can lead to different results, when the State, unlike the Good Samaritan, could have obtained a support order under the UCLSA in November of 1972, is, as Mr. Justice Maughan stated in his dissent, "to state a distinction without a difference."

Another indication that analogy of the common law view of restitution to the State's right to reimbursement under the UCLSA is inapposite, was accurately noted by Mr. Justice Henriod in his concurring opinion in the instant case, that "if a parent is destitute and as a consequence, so is his son, the State equally has an historical and legal duty to support such a child," State Division of Family Services, et al. v. Clark, et al., (Utah Supreme Court, Slip Opinion at pp.3-4, Sept. 17, 1976). See also Duncan v. Smith, 262 S.W.2d 373 (Ky. 1953); People ex rel. Heydenreich v. Lyons, 374 Ill. 557, 30 N.E.2d 46 (1940). This legal duty does not bind the kindly neighbor, aunt, grandparent, or other person who may provide support. At most, they are under a moral duty to provide. Furthermore, in Utah, the

State also has a statutory duty to provide support to destitute mothers and children. See §§55-15A-1 et seq., U.C.A. 1953, as amended. Finally, most if not all of the cases dealing with reimbursement of the State, County or City, including Stafford v. Field, 70 Idaho 331, 218 P.2d 338 (1950), cited by the majority at p.1, n.2 of its opinion, base the amount of reimbursement on, inter alia, the obligor's ability to pay. See also Condon v. Pomeroy-Grace, 73 Conn. 607, 48 A.756 (1901); People to the Use of Peoria County v. Hill, 163 Ill. 186, 46 N.E. 796 (1896); Inhabitants of Freeman v. Dodge, 98 Me. 531, 57 A.884 (1904).

It is again submitted that the basic purpose of the UCLSA is to provide needy spouses and children with an efficient means of obtaining support and support orders. §78-45-1 sets forth the criteria for determining the amount of support, and it takes account of the obligor's ability to pay. This is consonant with Utah's position that support orders are based on ability to provide support. Hulse v. Hulse, III Utah 193, 176 P.2d 875 (1947); Rockwood v. Rockwood, 65 Utah 261, 236 P.457 (1925); Cooke v. Cooke, 248 P.83 (Utah 1926); Anderson v. Anderson, 110 Utah 300, 172 P.2d 132 (1946); Ottley v. Hill, 21 Utah 2d 396, 446 P.2d 301 (1968). Respondents do not contend that if they are indigent, at the time the State files for reimbursement, that they are not liable therefor, Respondents contend only that, in determining the amount of reimbursement to which the State is entitled,

that the trial court be allowed to consider all of the criteria advanced under §78-45-7 U.C.A. 1953, as amended.

CONCLUSION .

From the above and foregoing authorities, Respondents submit that the UCLSA is meant to deal with matters of support; that the act confers rights upon the State Division of Family Services which a third party, not otherwise legally obligated, does not have in terms of seeking reimbursement for support already provided; and that for these reasons, the State should be entitled to judgment for reimbursement only after the obligor from whom reimbursement is sought has had an opportunity to have the amount of reimbursement determined at a hearing pursuant to §78-45-7 U.C.A 1953, as amended.

Respectfully submitted,

Martin W. Custen
MARTIN W. CUSTEN

Attorney for Respondents

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a copy of the foregoing Brief of Respondent to the Attorney General for the State of Utah, and to Frank V. Nelson and Stephen G. Schwendiman, Assistant Attorneys General, 236 State Capitol, Salt Lake City, Utah 84114, this 7th day of October, 1976.

A handwritten signature in cursive script, reading "Peggy Egan", is written over a solid horizontal line.