

1976

# State of Utah and Margaret Reeves v. May Willis Reeves : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH and  
MARGARET REEVES,  
Plaintiffs and Appellants,

Case No. 14311

RAY WILLIS REEVES,  
Defendant and Respondent.

---

APPELLANT'S BRIEF

---

Appeal from the District Court of Salt Lake  
County, Utah, the Honorable Bryant H. Hargrett, Judge.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH and  
MARGARET REEVES,  
Plaintiffs and Appellants,

-v-

RAY WILLIS REEVES,  
Defendant and Respondent. :

Case No. 14511

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APPELLANT'S BRIEF

-----

STATEMENT OF THE NATURE OF THE CASE

Appellants, State of Utah, and Margaret B. Reeves, appeal in part from a judgment rendered against the Respondent on an order to show cause in re temporary support entered in the District Court of the Third Judicial District, Salt Lake County, State of Utah denying Appellant reimbursement for the total sum of assistance payments expended for co-plaintiff and awarding judgment for child support at the rate of \$55.00 per month.

DISPOSITION IN THE LOWER COURT

The lower court granted judgment to the State of Utah for child support based on the amount of \$55.00 per month less payments but held that the State of Utah could not enforce the past duty for wife support under the divorce proceedings and entered its Findings of Fact and Conclusions of Law that the

State of Utah was not entitled to collect support under the duty of support laws without a prior court order.

#### RELIEF SOUGHT ON APPEAL

Appellants seek reversal of the lower court's holding that the State of Utah cannot collect wife support funds for past support without a prior order of the court, the court's ruling that prior wife support could not be included under the divorce proceeding, and Appellants seek reversal of the court's ruling that support judgments be pro-rated on the welfare grant amounts with a request that the matter be remanded for the lower court to determine whether the \$55.00 basis is reasonable or whether the defendant was capable of paying more for the support of his child.

#### STATEMENT OF FACTS

The plaintiff, Margaret B. Reeves, following her marriage of August 16, 1974, separated from her husband Ray W. Reeves on or about the 14th of October, 1974. On December 18, 1974, plaintiff filed a verified complaint against defendant in which she sought a divorce from him. (R.1-2) Because of defendant's failure to provide support for his wife and child, plaintiff was forced to rely on public assistance payments from January, 1975 through January, 1976. (R.17-18) On June 20, 1975, a child was born to plaintiff. An assignment of collection was executed on July 15, 1975 pursuant to Utah Code

Annotated §78-45-9 by which plaintiff's rights to support were subrogated to those of the Department of Social Services. (R.12) Defendant was notified in August, 1975, that plaintiff was receiving public assistance. Other than a token payment of \$37.50 in September, 1975, paid to the Department of Social Services (R.17), defendant at no time made any attempt to discharge his financial obligations to his wife or child as far as the record involved shows.

A hearing was held on February 20, 1976, on the Utah State Department of Social Services' order to show cause in re temporary support and motion for a judgment against the defendant. Under Utah Code Annotated §78-45-9, as amended, granting the State derivative rights to seek reimbursement from obligors, the State requested judgment for the total sum of \$2,418.00 given to support defendant's wife and child. (R.19) The lower court granted judgment against defendant in favor of the Utah State Department of Social Services for the sum of \$457.50 for unpaid child support and based its finding on the amount of \$55.00 per month or the difference between a welfare grant of one person and two persons (R.16) and denied the State judgment for assistance payments given defendant's wife without prior order of the court. Based upon stipulation of all counsel a prospective temporary child support order was entered for \$50.00 per month based on defendant's



present circumstances (R.22).

Appellants appeal in part the order of the court.

## ARGUMENT

### POINT I

#### A HUSBAND'S DUTY TO SUPPORT HIS WIFE MAY BE PURSUED UNDER DIVORCE PROCEEDINGS

This present action, of which the State of Utah is involved because of welfare payments, involves a situation where the entire period of separation outside of a few days has taken place after the filing of a verified complaint for divorce. After the complaint was filed, the co-plaintiff below applied for and began receiving public assistance.

Based on the fact that neither party appeared to be moving forward in the action and that no temporary order of either wife or child support was established, the State of Utah joined as a party (R.13) to enforce the statutory duty of Utah Code Annotated §78-45-3 for both the wife and child. The recent Utah Supreme Court case of State of Utah and Margo Bartholomew v. Bartholomew \_\_\_\_ P.2d \_\_\_\_ (filed March 22, 1976) held that the State of Utah was a proper party in interest based on the fact that support was being rendered and was therefore a proper party to divorce proceedings.

Neither Utah Code Annotated §78-45-3, nor Bartholomew, id., require separate actions to enforce support duties. As in this case, jurisdiction over the parties became firm upon

service of the summons and complaint on the defendant (R.7). As such, the entire support reimbursement asked for in the action below, except for the month of January, 1975, was for a period of time after the divorce proceedings commenced.

It is the position of Appellants that once the complaint for divorce is filed and served, that the court has authority not only to enter a temporary support order under the divorce laws, and divorce proceedings, but can also enter a judgment for accrued and unpaid child support arrearages based on the statutory language cited above under the same divorce proceedings. The lower court refused to grant such a judgment and indicated in lanugage in open court that the State would have to file a separate action (T.18), while in the Court's Findings of Fact and Conclusions of Law (R.25), the court states that the defendant has no duty to reimburse the State of Utah for money expended for the woman without a prior court order. Under which action the duty is enforced seems irrevelant to the more important position that the duty to support is enforced. It appears to Appellants that if pursuing under the divorce action would simplify and "clean up" the entire process, that method should be pursued.

The duty exists by law, and it appears to be more sensible, economical, judicial, to have all support matters under one action where possible. The Appellants therefore

ask this court to permit enforcement of this statutory duty under the divorce proceedings.

## POINT II

A HUSBAND IN THE STATE OF UTAH HAS A  
DUTY TO SUPPORT HIS WIFE BOTH BY  
STATUTE AND COMMON LAW

Utah Code Annotated §78-45-3 states: "Every man shall support his wife and child." This language seems clear enough, but the lower court seems to have added the following language: "Every man shall support his wife and child when the court says so." The statute as it presently appears is not a conditional statute but is a positive command and statement of legislative intent. If at any time the "husband" does not support his "family" he is in contravention to this statutory requirement. If the legislature wanted to make this duty conditional on a court order, it seems only apparent that it would have said so. The lower court is not given the prerogative to do away with this obligation simply under the guise that no judicial determination has been made for the period claimed.

This statutory duty has been summarized in 41 Am Jur 2d §356 as follows:

"If a husband is guilty of misconduct which results in a spouse's separating, and the wife has no adequate provision for her support, the husband is liable for necessities others have furnished to her. The husband is guilty of such misconduct

where he has deserted his wife, turned her away, or treated her with such cruelty that she has been compelled to leave him."

This court has recognized the duty and responsibility to support wives and families long before the statute quoted above was enacted (1957). In the case of Snow v. Snow 13 Utah 15, 43 P.620 (1896), this court said:

"Any man attaining his majority, who voluntarily enters into the marital relation, should be willing to assume those ordinary and responsible obligations of a husband which naturally follow and attend such relation. These duties of the husband require him to provide the wife and children with a reasonable maintenance during the continuance of that relation; and, in case of separation and divorce occasioned by his own fault, he should not complain that the duties so assumed should remain a continuing obligation upon his part." (Emphasis added)

In the recent case of Baggs v. Anderson, 528 P.2d 141 (1974) the Supreme Court of Utah held that a third party's right to reimbursement for support supplied to a child from the failure of the parent to furnish support, belongs to whoever furnishes the support. The court said:

"...suppose a father (parent) fails over a period of time to furnish support of the child, and the mother, or someone else, furnishes it. That person then has the right to claim reimbursement from the parent, the same as any other past debt. This right of reimbursement belongs to whoever furnished the support; and it is subject to negotiation, settlement, satisfaction or discharge in the same manner as any other debt." (Emphasis added) at P. 143.

Here, though wife support is the point at issue, Appellants point out to the court that the statutory duty upon which this appeal is based states specifically:

"Every man shall support his wife  
and child."

It appears consistent with the above case to say:

...Suppose a husband fails over a period of time to furnish support of his wife, and someone else furnishes it. That person has the right to claim reimbursement from the husband, the same as any other past debt...

No distinction can be seen between the support of the wife or child when under the statute both may expect that support. Until a divorce decree is entered or the marriage is annulled, there exists this right of a third party to collect current support and to collect back amounts already expended.

This right of a private party to hold a husband liable for necessities furnished a wife has not only been long established, but has been extended to public authorities. Howard v. Whetstone Township, 10 Ohio 365 (1841); Hannover v. Turner, 14 Mass. 227 (1817). For example, where a woman becomes a public charge, the money required for her support can be recovered from the husband by suit of the party who had made the advances. More recently Sellman v. Sellman, 185 P.2d 846 (1947): "The husband assumes responsibility for the support of his family and upon his failure to provide such support his wife is authorized to purchase on his credit

whatever is necessary for her maintenance."

Though counsel for respondent attached some importance to the pendency of divorce and plaintiff's waiver of alimony, the fact that a husband and wife have marital difficulties "...or that one of them has filed an action for divorce does not change the marital relationship. The parties remain husband and wife until a divorce decree is granted." Fisher v. Taler, 401 P.2d 1012, 194 Kan 701 (1965).

In an early Georgia case, Mitchel v. Treanor 11 Ga. 326 (1852) the court held that a decree of divorce subsequent to a period of separation had no effect on the previously accrued liability of a husband for necessities furnished to his wife by a third party. The court said the husband was not:

"...relieved from liability by the subsequent provision made by the court and jury for past alimony, the goods having been previously delivered."

The Montana Supreme Court in Murphy v. Murphy 134 Mont. 594, 335 P.2d 296 (1959) discussed the permanence and importance of this duty of "wife-support" when a sufficient showing of need for support was made. The court stated:

"...regardless of any prior statements of claim of self-sufficiency of the wife, this could not operate as a perpetual release of the husband of the duty and responsibility under the law to care for his wife and family..."

Certainly, the fact that a woman and/or children are on public assistance gives rise to a rebuttable presumption that a woman is in need.

Thus, the duty of the husband to support his wife is not only "real", but the State of Utah is entitled to enforce that duty against a husband in absence of prior court order until the decree of divorce is final if said "wife" is drawing public assistance for her support. Though husband and wife might no longer be compatible, or desertion, or cruelty has taken place, such does not obviate the husband's obligation to furnish support when no divorce has been granted.

Since the entire time the wife was receiving public assistance is covered after the divorce complaint was filed, the State should be able to enforce this duty under the divorce number instead of suing separately. Such is only feasible since the numbers of actions are limited as well as having all matters pertaining to the divorce and separation under one case.

The duty not only exists, but the State of Utah is entitled to enforce that duty under the divorce action.

### POINT III

#### A HUSBAND'S DUTY TO SUPPORT HIS WIFE IS ENFORCEABLE INDEPENDENT OF ANY COURT ORDER.

The statutory duty and obligation discussed under Point II, above, negates any necessity for again establishing a duty of support by court order before that duty can be enforced. As defined in Utah Code Annotated §77-61a-2(f):

"'Duty of support' includes any duty of support imposed or imposable by law, or by any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise." (Emphasis added)

The duty of support, being enforceable either by law or by court order, cannot, therefore, be made contingent upon an order of the court. In the court below, there was confusion as to this very point. In Point 5 of its "Conclusions of Law", the court stated that "the defendant has no duty to reimburse the Utah State Department of Social Services for public assistance paid to the plaintiff for and on behalf of the plaintiff without a prior order of the court." Appellants claim this is contrary to the statutory provision cited immediately before which says that the duty can be enforced by law (meaning suit for back funds already expended) or by court order (meaning orders already established to govern the conduct of the parties). The court on page 18 of the transcript of the hearing said that the State could come in under a separate action for prior support. Appellants cannot see how counsel for defendant, or the court itself, could prepare and sign Conclusions of Law different than what the court actually said. It should further be pointed out that though reimbursement was denied for past payments given to the wife, because of the lack of a court order, it should be noted that despite the lack



of a prior court order, a judgment on back support was awarded in behalf of the child. This shows the confusion of the lower court. Under one portion of the statute imposing a duty of support the court grants judgment without a prior court order and turns around and denies the same relief for a wife under the other half of the statute.

That the Department of Social Services has the right to so intervene is established by Bartholomew, supra, as well as Utah Code Annotated §78-45-9.

Section 9 makes no direct mention of a support order, because the purpose of 78-45-3, supra, is to establish an enforceable statutory duty of support. This then obviates the necessity of going to court to get an order before an obligee is able to enforce a right of support in Utah either for current or past amounts due.

This rationale is supported by Commissioners' statements about the purpose of the Uniform Civil Liability for Support Act, of which 78-45-3 and 9 are part; and also by William Brockelbank in his now famous treatise, Interstate Enforcement of Family Support, 2nd Edition. In the Commissioners' Prefatory Note to the Uniform Civil Liability for Support Act, they enunciate as a basic purpose of the act the establishment of a statutory duty of support to be used in conjunction with URESA. (U.C.A. Matr., Fam. and Health Laws 133). The famous act was passed to eliminate confusion among lawyers

who believed URESA was unenforceable without a court order declaring a duty of support. Commenting on this Brockelbank said:

".../I/t is suprising to find /such/ misconceptions. One such is that only orders of support of one state will be enforced in another under the Act. In fact it is 'all duties', and the duty, of course, may grow out of the order of support or a judgment or decree but is equally a duty if it never has received judicial attention and now is the basis of litigation for the first time under the Act." (Emphasis added)

Brockelbank and Infansto, Interstate Enforcement of Family Support, 2nd ed., 1971, p. 39. These "all duties" spoken of by Brockelbank encompasses not only court orders of support, but statutory (such as 78-45-3) and common law duties of support as well.

Thus, Utah Code Annotated §78-45-3 establishing a statutory right of support for both children and wives and §78-45-9 Utah Code Annotated (1957) gives the obligee the right to enforce this duty of support. Read together, there is no need to establish again by court order a duty of support before such duty can be enforced, but solely to determine the amount owed, if the husband has not fulfilled his duty.

California, with a support statute similar to Utah's law, in Los Angeles County v. Frisbie 122 P.2d 526, 19 Cal 634 (1942):

"As so employed, these words, referable to the recoupment of sums already paid, indicate the legislature's intention

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by this enactment to provide an ordinary cause of action for the recovery of money and negative the requirement of a judicial decree to determine the measure of the debt as the maintenance of such action." (Emphasis added)

The language of the court is too clear to be mistaken; when the support obligation is established by statute, there is no need to go into court and get a court order prior to an action for reimbursement based on the statute. The burden must be on the defendant-husband to show that the amount claimed for reimbursement is unreasonable. Hence, there is a hearing on liability either pre or post decree to determine liability. Such is not determined by arbitrary methods to "drain" the pockets of delinquent husbands/fathers.

The duty of wife support is constant whereas the liability is variable - being dependent on circumstances. As an example of the inequity of the lower court's position Appellants submit the following hypothetical:

Two sets of parents with the same number of children separate at the same time. One husband earns \$5,000.00 a year and is ordered under a separation agreement to pay \$100.00 per month support for wife and children. The second husband earns \$20,000.00 a year but that couple obtains no court ordered support arrangement. Both couples remain separated for one year before a divorce is decreed.

For this court to say that the man earning \$5,000.00 must support his family solely because of the court order

and then say that the man earning four times as much need not

support his family or reimburse what has been expended solely because there is no court order is totally inconsistent. If such a position be upheld, it is invidious discrimination against any one with enough sense to get legal counsel to protect his interests. In essence, the lower court is saying: "If you can hide from the clutches of the court, there is no duty."

The lower court said:

"...I don't think that the State Welfare Department can simply start paying her welfare and say, 'Even though a court hasn't decided what the duty of support is and even though there is no court order with respect to this, this is what the court must make him pay.'" (T.11) (Emphasis added)

The State never claimed that the court must grant judgment for the amount of money expended by welfare, but did say that the burden is on the defendant to show that the amount claimed due and owing for reimbursement is inappropriate and unjustified under the circumstances. In essence, if the defendant only earns \$200.00 net per month, and welfare expends \$300.00 per month for his dependents, it would seem unreasonable to grant judgment for the \$300.00. The order to show cause before the court was an order for the defendant to show cause why judgment for the amount claimed is not appropriate. All this would entale is taking testimony and making a record as to the husband's ability to support during the period of

time claimed. The court then determines what the "reasonable" support arrearage should be for that period of time. Appellants point out the criteria listed under Utah Code Annotated §78-45-7 whereby such a determination is made. In the instant case, the lower court not only says the defendant has no burden to show the amount claimed is unreasonable, but that there is no enforceable duty. This is gross error. A wife has a right to support. When a woman goes on public assistance, the enforcement of that right to support shifts to the State of Utah under Utah Code Annotated §78-45-9 and other provisions of §78-45b-1 et. seq. as incorporated into Title 78-45. If the man can forgo that right by simply not paying, or not allowing a court to establish an order of support by refraining from being served with process, this entire area of the law is twisted out of proportions and in essence makes the law a nullity.

This court said in Kimball v. Grantsville 19 Utah 368 (1899):

Independently of any repugnance between statute and any constitutional provision, court has no power to arrest statute's execution however unwise or unjust, in opinion of court, statute may be, or whatever motives may have led to its enactment.

In the instant case, the lower court is not only arresting the execution of the statute, but in essence does away with it in mocking gesture - until jurisdiction is obtained over the

person of the husband. For example, if a husband/father removes himself from the confines of this state and travels to another, or cannot be found to be served, there is no way to get personal jurisdiction over him to establish an order of support. Such is an inducement to anyone with sense at all to hide out - to forgo being responsible for support.

The legislature intended the duty of wife support to be established without question. To reiterate this importance, which is incorporated into Utah Code Annotated §78-45-1 et. seq., the Utah legislature enacted Utah Code Annotated §78-45b-2 which provides:

"Every obligor shall be deemed to have received notice of the rights of the department by his failure to provide and the obligee's receipt of support."

Thus, the legislature assumes, and makes its intent clear that from day one of separation, the husband (if the obligor) is on notice that he has to support his dependents and if the Department of Social Services gives out aid, the obligor owes the support to the State for reimbursement. Appellants feel the law is clear enough.

The court further infers in its statements on the record that the Department of Social Services is telling the court what has to be reimbursed, ie. what was expended by welfare. As explained under Point IV of the argument, the

legislature has established a "minimum household needs budget". Thus, there is a presumption in the law that that amount is a reasonable amount for necessary support. Such an amount is not arrived at arbitrarily or capriciously, but by intense study. The court has the authority and power to review that presumption by the rebuttal of the delinquent parent/husband. If it appears to the court that the amount claimed is reasonable under the circumstances, the legislative intent and findings should be honored. In this instant case, the court didn't even attempt to search out the circumstances and thus erred in its procedure.

As the problems of desertion and divorce multiply, it becomes increasingly important that everything possible be done to encourage the proper discharge of marital and parental duties. With the desertion or nonsupport of the male breadwinner, the State generally has no choice but that of rendering assistance. This assistance imposes a burden upon the citizenry and the welfare agencies - it is only fair that the individual responsible for bringing misery and misfortune to their families be held financially liable therefore.

#### POINT IV

THE LOWER COURT ERRED IN HOLDING  
THAT THE AMOUNT OF SUPPORT DUE AND  
OWING FOR THE CHILD OF THE PARTIES  
WAS THE DIFFERENCE BETWEEN THE  
GRANT FOR ONE AND THE GRANT

FOR TWO PEOPLE WITHOUT SOME  
FACTUAL SUBSTANTIATION THAT SAID  
AMOUNT IS REASONABLE UNDER THE  
CIRCUMSTANCES

Perhaps the statement of the trial court as found  
in the transcript of the hearing at page 16 deliniates the  
controversy here presented:

"The Court:...and I don't agree that  
when they increase it from \$144 to \$199  
because she has a child, then the  
obligation of the child support is one-  
half of the \$199 instead of the additional  
amount."

In essence, the court arbitrarily held that the child support  
claimed could not exceed the difference between the grant for  
one person (\$144) and the grant for two (\$199). With this,  
Appellants take issue.

The intent of the legislature is expressed in  
U.C.A. 55-15a-18. The language refers to grants to "assistance  
households". By reference to "assistance households", the  
legislation makes clear that the needs of the family as a  
whole are to be examined as opposed to those of individual  
members. While it is true that assistance is awarded on a  
prorated basis according to the number of individuals within  
a family, this is but a means of complying with strict budgetary  
requirements in insuring that a "family unit" has a grant  
conducive to the needs of all members of the unit.

The aforementioned Utah Code Section clearly sets forth  
the constraints under which assistance is granted:



"Assistance grants for or in behalf of any one household in any one month shall be determined as follows:

(1) The office shall develop a standard budget which reflects the minimum needs of assistance households. The standard budget shall be adjusted annually to reflect changes upward or downward in the costs of living and filed with the governor and with the legislative appropriations committee annually. The standard budget is the basis for determination of monthly assistance grants to recipient households for each fiscal year the legislature appropriates funds." (Emphasis added)

This amount for "households" is established by the Utah legislature as part of its budget. That budget is based on grants for the size of "units" which in turn is based on the number within the unit. The legislative enactment of the present "needs budget" is found in the Laws of Utah, 1975, Chapter 216, Item 159, page 1069:

"a. That Public Assistance grants for fiscal year 1976 be set at a level not to exceed 77 percent of the Summer 1974 Needs Budget."

Thus, the Department of Social Services is to look to the whole family in making its determination of need. By focusing on the family, the legislature has recognized the essential equality of each family member. In effect, what the lower court has done is to make a value judgment as to the worth of the child as compared to the mother. It is arbitrary

and discriminatory to hold that one member is worth \$144.00, the second worth \$55.00, and the third still less because of proportioning. Though pro-rated, all members are none-the-less equal - the total assistance rendered is given for the use of all family members. The lower court's holding thus removes emphasis from the family and discriminates as to amounts to be given each individual.

Since welfare payments provide for "minimum needs" only, the amount ordered to be paid by the court seems all the more unreasonable. Welfare payments, as contrasted to child support payments, are frequently the only means of support available to a family. To further reduce this amount that family members could receive, might well result in payments which fall below the "minimum needs" standard. When determining the needs of children, as in the instant case, the policy of the law is not that of taking as much away from them as possible, but to render all assistance which the law allows.

The pro-rated "Needs Budget" is based on the presumption that no matter how large the family, there are certain "necessary expenses" such as rent, lights, gas, etc., which are needed for one person as well as 10 people. The per person expense on such costs is generally less as the family gets larger, bringing about less need for money to provide a minimum standard as purported by the statute previously cited.

There is no evidence in the record, or transcript of the hearing that anything was presented to the court to affirm its position that the amount of support for the child was \$55.00. Appellants claim that for a grant \$199.00, both the mother and child benefited equally raising the presumption that he owes \$99.50 or one half of the grant amount. The fact that a current child support order was stipulated to in the amount of \$50.00 is irrelevant to the question here raised as to whether the defendant-respondent was capable during the pre hearing period of paying one-half of the grant amount which is the child's share of the "household's needs". In fact there might be circumstances where a child receives much more benefit than the mother. Who is to say that the mother is the first person on the grant and the child is second. If there are two children on the grant with the mother not receiving aid, does that mean the one child is worth \$144.00 and the other child is only worth \$55.00. The Appellants say no.

Because minimum needs only are allowed for, there should be no reduction of the sums provided for destitute children unless a close examination of the circumstances clearly shows that the full amount available was not necessary. The lower court erred in determining the amount owed for the child. This case should therefore be remanded for a hearing to determine whether the respondent-father was capable of paying more - up to one-half the welfare grant - for the child's support during the separation period.

### CONCLUSION

Both the law and reason prescribe Appellant's position that prior court orders are not needed before the duty of "wife-support" is enforceable. Further, the lower court's position to pro-rate the worth of family members is inappropriate when the welfare of family units is concerned.

Therefore, Appellants urge this court to sustain Appellant's position and remand this case to the lower court for enforcement and judgment for monies owed the wife under the divorce proceedings, and to review the ability of the defendant-respondent to reimburse for child support.

Respectfully submitted,

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