

1976

Utah v. Reeves : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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DOCKET NO. **14511R**

IN THE SUPREME COURT OF THE STATE OF

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

STATE OF UTAH and
MARGARET REEVES,

Plaintiffs and Appellants,

vs

Case No. 14511

RAY WILLIS REEVES,

Defendant and Respondent.

RESPONDENT'S BRIEF

Appeal from the District Court of Salt Lake County,
State of Utah, the Honorable Bryant H. Croft, Presiding

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FILED

JUL 26 1976

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE1
DISPOSITION IN THE LOWER COURT1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS . . . . .	.2
POINT I. THE STATE OF UTAH IS AN IMPROPER PARTY TO THIS ACTION . . . . .	.3
POINT II. AN ORDER MUST ISSUE FROM THE DISTRICT COURT BEFORE THE STATE IS ENTITLED TO REIMBURSEMENT OF SUPPORT PAYMENTS . . . . .	.7
POINT III. A HUSBAND WITH MEAGER MEANS OF SUPPORT SHOULD NOT BE REQUIRED TO EXPEND ALL OF HIS RESOURCES SUPPORTING OTHERS . . . . .	.16
CONCLUSION . . . . .	.18

CASES CITED

Baggs v. Anderson (Utah, 1974) 528 P.2d 141. . . . .	.6
Bartholomew v. Bartholomew (Utah, 1976) 548 P.2d 238 . . . . .	.4,5
Cox v. Cox (Utah, 1975) 532 P.2d 994 . . . . .	.17
Los Angeles County v. Frisbee, 122 P.2d 526, 19 Cal 634 (1942) . . . . .	.12
Mallett v. Luihn, 294 P.2d 871, 206 Or. 678 (1956) . . . . .	.11
San Bernardino County v. McCall, 132 P.2d 65, 56 C.A. 2d 99 (1943) . . . . .	.7,8

STATUTES CITED

Utah Code Annotated §30-3-1 (1953) as amended. . . . .	.3
Utah Code Annotated §78-45-1 . . . . .	.9,14
Utah Code Annotated §78-45b-1. . . . .	.9,14

Utah Code Annotated §78-45-39
Utah Code Annotated §78-45b-4.10
Utah Code Annotated §78-45b-5.10
Utah Code Annotated §78-45-613
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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH and)	
MARGARET REEVES,)	
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Plaintiffs and Appellants,)	Case No. 14511
vs)	
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)	
Defendant and Respondent.)	

RESPONDENT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

The State of Utah appeals from an order against it on an Order to Show Cause in Re Temporary Support brought by the State of Utah and entered in the District Court of the Third Judicial District, Salt Lake County, State of Utah, denying the State of Utah full reimbursement for the total sum of assistance payments expended by the State.

DISPOSITION IN THE LOWER COURT

The District Court ordered that the Respondent had no duty to totally reimburse the State of Utah for public assistance payments made to Margaret B. Reeves without a prior order of the court.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the decision of the District Court affirmed.

STATEMENT OF FACTS

The plaintiff, Margaret B. Reeves, married Ray W. Reeves on or about August 16, 1974 (R. 1). Less than two months later Margaret and Ray Reeves separated, which separation occurred on or about October 14, 1974. On December 18, 1974, Margaret Reeves filed a Verified Complaint in which she sought a divorce from Ray Reeves. Margaret Reeves, in her complaint, waived her right to alimony and claimed the defendant to be the father of her then expected child (R. 1). In the answer of the defendant, Ray Reeves admitted that Margaret was not entitled to alimony and denied the paternity of the child of Margaret Reeves and any obligation of support that would follow thereafter (R.6).

In January, 1975, Margaret Reeves began receiving public assistance payments and has received such payments through January, 1976. An assignment of collection was executed on July 15, 1975, by which Margaret Reeves subrogated her rights to collection of any moneys expended by the State to the Department of Social Services (R. 12). After receiving notice in late August of 1975 from the Department of Social Services that the Department was making public assistance payments to Margaret Reeves and her child, the defendant made a payment of \$37.50 to the Department of Social Services (R. 17). Because of the financial position of

the defendant and the belief of the defendant that he was not the father of the child, the defendant paid only \$37.50 to the State and protested the amounts which his estranged wife and alleged child were receiving.

The State of Utah, rather than proceeding by administrative action, attempted to seek reimbursement of the moneys which it had expended in support of Margaret Reeves and her child, by bringing an order to show cause in re temporary support and motion for judgment against the defendant on or about February 20, 1976, in the Third District Court. The State requested judgment for the total of \$2,418.00, which moneys the State had paid in public assistance to Margaret Reeves and her child.

The lower court took testimony as to the financial condition of the defendant and was made aware of the question of the paternity of the child in this matter; and after such testimony awarded the Utah State Department of Social Services the sum of \$457.50 for unpaid support and denied the State judgment for assistance payments given the wife without a prior order of the court (R. 23-28).

POINT I

THE STATE OF UTAH IS AN IMPROPER PARTY TO THIS ACTION.

Margaret Reeves commenced a divorce action against Ray Reeves pursuant to Utah Code Annotated, 1953, §30-3-1 as amended. As such the only parties in interest are Ray Reeves and Margaret

Reeves. The State of Utah, in seeking reimbursement from Ray Reeves for payments paid by the State of Utah to Margaret Reeves in the form of public assistance payments, has attempted to join in that divorce proceeding by bringing an order to show cause in re temporary support; and also in that order attempted by motion to obtain a judgment against the Respondent for all sums paid by the State to or on behalf of Margaret Reeves.

There is no statutory basis or common law basis for allowing the State of Utah to enter into a divorce action prior to a final decree to allow the State to seek reimbursement for moneys it has expended in public assistance payments to an individual. The State has, however, determined itself to be a real party in interest and brought the proceedings to obtain temporary support as well as reimbursement. Such an action is unwarranted and without precedent.

As Justice Tuckett noted in his concurring opinion in Bartholomew v. Bartholomew, 548 P.2d 238 (1976), when the Utah Department of Social Services intervened in an action after the Decree of Divorce had been entered:

"I find no basis in law for such intervention. It goes without saying that the State could not have intervened in divorce proceedings filed by the plaintiff . . . there is no provision for expansion by any third person, and I find no legal basis for permitting the State to intervene after judgment." Id. at 241.

The State has attempted to intervene in a divorce proceeding filed by the plaintiff.

There has been no Decree entered nor any orders entered prior to the proceedings brought by the State of Utah in this action. There may possibly be a right for the State to intervene after a decree of divorce has been entered into, as was the case in Bartholomew, supra. However, where there is not yet a decree of divorce, they have no right to intervene in the manner in which they did in the present case. The State of Utah could not intervene by right or by permissive intervention under Rule 24 of the Utah Rules of Civil Procedure. Rule 24 provides in part:

"(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common."

There is no statutory right entitling the State to enter into a divorce action nor will the State be adversely affected by either an order for temporary support or a decree of divorce. The State is seeking a judgment against the Respondent which is an

action separate and apart from this divorce action. The State of Utah should proceed with a separate action against the defendant rather than clutter up the present divorce with the motions and proceedings which the State has brought in this case.

In Baggs v. Anderson (Utah, 1974) 528 P.2d 141, a case involving a collection of child support payments, this Court held that when a person furnished support to a child, that person then has the right to collect reimbursement from the parent, the same as any other debt. The State of Utah should proceed in an action to collect a debt, rather than intervene in a divorce proceeding as it has done in this case.

The Elizabethian Poor Laws were enacted in England in the very early Seventeenth Century, which gave an individual the right to reimbursement for payments furnished to another person's wife and/or children. The right granted to the individual who furnished the necessities to a wife and/or family when the husband failed to provide for them was an action at law independent of any other action.

There has been no right at common law to enter into a divorce proceeding between the parties, but there was an action separate and apart from the divorce proceedings to collect the moneys expended by an individual who paid the necessities of the needy wife and/or family.

The State should proceed in an action separate from the

present divorce proceeding to collect the moneys which it claims the Respondent owes to the State:

POINT II

AN ORDER MUST ISSUE FROM THE DISTRICT COURT BEFORE THE STATE IS ENTITLED TO REIMBURSEMENT OF SUPPORT PAYMENTS.

The direct issue before the Court is whether the State is entitled to reimbursement for public assistance moneys rendered to a wife and her child without a Court determination, a Court order, or an administrative proceeding.

The State in this matter contends that a husband must reimburse the State for all moneys that it paid in public assistance payments to a wife and/or child, whether or not the husband can afford to make such payments to the State; and before a husband has ever been afforded his due process rights to a notice and hearing. Such a holding would mean that any amount that the State has paid to a person's spouse and family must be paid back to the State without any determination as to whether or not the spouse should be held accountable for such sums.

Such a holding would not facilitate equity in any proceeding against the husband in such circumstances. In the case of San Bernardino County v. McCall, 132 P.2d 65, 56 C.A. 2d 99 (1973), in a proceeding whereby the County attempted to compel the defendant to reimburse the County for aid which the County had furnished to the defendant's parents and for an order further requiring the defendant to

contribute to the support of his parents in the future, the Court held that it was the body to determine what amounts, if any, the State would be reimbursed for the aid which it had given. The County in that action had a statutory scale set up for guidance set by the Board of Supervisors in fixing liability of responsible relatives. The Court determined that the amount of liability of a person was a question of fact for the trial court to determine rather than having a set fee established with no variances whatsoever. The Court further held in that case where the individual did not have the ability to contribute to his parents' support, that individual did not have to reimburse the State for moneys which it expended in the support of his parents.

The Respondent in this matter has very minimal resources, as was noted to the Trial Court and the other counsel in this action. The defendant has either had low-paying jobs or has been without work for extended periods of time throughout the past few years.

The State in this matter has attempted to set mandatory reimbursement requirements upon the defendant, as was also attempted in San Bernardino County v. McCall, supra, without any consideration as to defendant's ability to pay support payments. The Trial Court, as the determinor of fact in such proceedings as this, determines what amounts were due to the State in this action. The Court in this matter was made aware of the status and situation of the Respondent before it made its determination as to the amount of responsibility of the Respondent. Being cognizant of these facts, the Court acted correctly in making its award to the State and the Court did not act arbitrarily in its decision.

A husband has the duty to support his wife and child as defined in 78-45-3, Utah Code Annotated. However, the District Court has jurisdiction of all proceedings under the Uniform Civil Liability for Support Act, which is contained in 78-45-1, Utah Code Annotated, et seq. Though there is a duty of support, no amount may be due or owing to be reimbursed to any individual for another party until an order is issued by the Court.

The Court determines what amount is to be paid as support by considering the factors enumerated in 78-45-7, Utah Code Annotated, plus any other relevant factors that the Court deems necessary. After such a determination an order is issued by the Court for the obligor to pay the support owing. The State of Utah in this case is attempting to obviate any court action and have all the moneys which it dispenses to a mother and her child as moneys which the husband must reimburse to the State. Such an action is inconsistent with the statutory language in 78-45-1, Utah Code Annotated, et seq. and 78-45b-1, et seq.

Utah Code Annotated, §78-45-1 through 8, places all of the responsibilities as to support in the hands of the District Court for its determination. 78-45-9, Utah Code Annotated, provides that the obligee may enforce his right under Chapter 45b of Title 78, Utah Code Annotated, but upon reading that section which pertains directly with the support of children, it is easily determined that an order must issue from the District Court as to

what amounts the obligor must pay. 78-45b-4, Utah Code Annotated, reads in part as follows:

" . . . department may issue a notice of a support debt accrued or accruing based upon any court order."

Under that provision the Court order must first have been issued before the State can attempt reimbursement. Even when examining 78-45b-5, Utah Code Annotated, which states:

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

no ability is given to the director to assess what amounts an individual owes, just that moneys are being expended on that individual's behalf.

The director, in such a circumstance, may give notice that a debt is accruing. However, it is the Trial Court that determines what amount of reimbursement the State shall be entitled to. Nowhere in any of these sections does it state that an individual is to pay the State for all moneys the State spends. Total reimbursement to the State by one who is a pauper works an injustice upon that individual who has no ability to even furnish the necessities of life to himself, much less to any one else.

The State would have this Court hold that when it serves notice to an individual that public assistance payments are being made for and on behalf of that individual, that that individual would then become liable for all moneys expended by the State.

In the case of Mallett v. Luihn, 294 P.2d 871, 206 Or. 678 (1956), a case involving an action by the Welfare Commission against a relative of the needy person, whereby the Commission sought to recover its moneys which it had expended to provide for the needy relative in that case, the Court stated that after notice is sent to an individual to add to his responsibility to care for a needy relative, that individual denies liability, and a hearing is set by the Commission, the Commission after determining liability of the individual of the needy relative, that individual may then apply to the District Court for a trial court determination as to what moneys it is responsible to the Commission for its support of the needy relative.

In the case before the Court, the defendant was notified in late August, 1975, that the State was making public assistance payments to the estranged wife of the defendant. After such notification the defendant denied any liability to the State for the payments which it had made to defendant's wife. The State then set the hearing before the Third District Court by bringing an order to show cause in re temporary support for and in behalf of the plaintiff, Margaret B. Reeves.

As in the Oregon case, a determination was made on the merits by the Judge, after which the Judge awarded the State \$495.00 less previous payments made by the defendant. The Court further ordered that the defendant pay \$50.00 per month as child support.

Such acts of the Court were within its discretion. The Court had jurisdiction in this matter which the State had placed itself under when it brought the action for the temporary support payments and its motion for payments to reimburse the State for the public assistance payments made to the plaintiff.

Appellant, in its brief, cites Los Angeles County v. Frisbie, 122 P.2d 526, 19 Cal. 634 (1942) as standing for the proposition that there is no need to go into Court for reimbursement based on the statute. In the above cited case the County was seeking reimbursement from a relative of a pauper to whom the County had furnished aid. The Court in interpreting the Welfare and Institutions Code of California, noted that reimbursement was to be accomplished in one of two ways -- both of which dictated that the County bring an action in Court after which the Court, not the County, would determine the amount of liability of the indigent's relatives. The Court was to determine liability and financial ability in the proceedings brought by the Court.

The California Code gave the County the right to proceed against the indigent's relative in one section and the jurisdiction of the Court in another. The Utah Code gives the State the right to proceed against the non-supporting party in one section and gives the Court jurisdiction in another in a similar concept as the California Code. The County, in Los Angeles County v. Frisbie, supra, attempted to have the Court grant it judgment for all

moneys it had given to the indigent in that case against the relative, but the Court stated that when it was given jurisdiction by statute, as the Utah Court is given, it is the body to determine what the liability is of the relative, and not the County.

In the action before this Court, the Appellant would have the State Department of Social Services determine the amount of liability of an individual regardless of any Court order or administrative procedure or of the individual's financial ability. In Family Law by C. Clinton Clod, Harry W. Halstead and Donald W. Crocker (1964), American Law Institute, 3rd Ed., it states that an action for support between a husband and wife ". . . could be brought in any Civil Court", at 109. As noted in that text, an action for support is an in persona action or sometimes, in rem. Nowhere in the text does it suggest that the action is solely an administrative determination without a hearing as the Appellant would ask this Court to so hold.

Two other points are made by the authors of Family Law:

- (1) The obligation to support may be enforced in favor of a spouse in any Court and state that has jurisdiction over the defendant, which is also established in 78-45-6, Utah Code Annotated; and
- (2) It is up to the Court to fix the amount of support.

The State in this matter would seek to circumvent both of the established requirements. The State, after paying public

assistance is attempting to declare such payments as a judgment, rather than a debt, and then ask the Court to enforce its judgment, rather than have the Court fix the amount of support. Such is not the law in this State. The statutory language of Utah Code Annotated, 78-45-7, as previously noted, gives the Court the ability to determine what amounts are due or should be paid by a husband to support his wife and children. Even the treatise of William J. Brockbank and Felix Infausto, Interstate Enforcement of Family Support (the Runaway Pappy Act), 2nd Ed., notes that there is a duty to support one's spouse but that the amount of obligation arises only upon litigation. (Id. pages 32-42)

The Respondent does not deny that there is a duty to support one's wife and children. Such a duty was first established by the Elizabethian Poor Laws and in this State by statute. However, a person or party who furnishes support to a husband's wife and children must bring an action at law or in equity to seek reimbursement and only after the Court has been presented with the facts before it can the Court then issue an order for reimbursement and/or future obligations. The District Court, after being presented with a question of a debt for which the state was seeking reimbursement, determined what amount the defendant was to reimburse the State. Such a determination was not an arbitrary or capricious determination, but one determined on a reasonable basis.

78-45-1 and 78-45b-1, Utah Code Annotated, et seq, set

two separate and distinct standards -- one which directly applies to a wife and child, and the latter section directly with child support. The District Court noted the distinction in the proceedings brought by the State and after due deliberation and testimony awarded the State the moneys for which it should be reimbursed.

The Trial Court acted reasonably in determining what amounts the State was entitled to. The Trial Court further acted properly in determining that it was the trier in the case and not the Utah State Department of Social Services; and that as the trier, only after it had made its determination and decree would the defendant be liable for support of his wife and alleged child. Only after an order has issued from the District Court who has determined the liability of a father in such a case is the State entitled to reimbursement of payment which it has made to a husband's wife and children. The District Court properly made such a determination in this matter and denied the State the relief sought.

Notice and hearing are due process requirements which must be met by this State before it can impose any obligation upon the defendant in this matter. The State chose to proceed before the District Court, who did impose certain liabilities and responsibilities upon the defendant. The obligations which the District Court imposed were proper under the circumstances.

POINT III

A HUSBAND WITH MEAGER MEANS OF SUPPORT SHOULD NOT BE REQUIRED TO EXPEND ALL OF HIS RESOURCES SUPPORTING OTHERS.

The Respondent was receiving approximately a gross income of \$300.00 per month (T.2) at the time of the hearing. The Respondent has had no training nor skill in any trade or profession and is in a low employability classification (T.2). He is very often unemployed because of his lack of skill and training and at the present time he is unemployed, having been dismissed from his past job. Nonetheless, the State would ask that this individual reimburse the State for the public assistance payments which it has paid to his wife and alleged child, when the Respondent is hardly in any position to meet the temporary support payments ordered by the District Court, as well as his own monthly expenses. To saddle a person with an obligation that is minimal to many people but to the Respondent, whose means are very minimal, is too great a burden.

In Family Law, Id., which was published in 1964, the authors noted that a household that was existing on \$350.00 per month under one roof would need not less than \$450.00 to \$475.00 per month when living apart. The authors' solution in the matter was for the wife to get a job, otherwise the State would have a husband on welfare as well as the wife.

The statute 78-45-7, Utah Code Annotated, states that the Court must determine what amount should be paid an individual as

support. The Court uses equity to make its determination and equity should be used in the present case. In Selected Problems in Family Law and Poverty, 2nd Ed. (1973) by Conrad Polson, the author states that:

"The assumption of both our welfare law and alimony law that upon marriage a husband is saddled with a life-long duty to support a wife or exwife who does not remarry is most questionable in any age when women clamored for more and achieved equality. The present assumption makes women more equal than equal. Even if the husband's obligations conditioned upon the actual need and ability to pay, the assumed obligation is questionable. It is an instant of status, rather than a contract." At 443.

The author further notes.

"In the case of the more prosperous, the husband's duty to support or to pay alimony may be an unpleasant but tolerable burden, but where a poor or low-income husband, even a minimal offer may constitute a great hardship or impossible burden. . . . Often forced the man into defiance of the law to prevent him from living in dignity." At 443.

The Respondent is without means to reimburse the State and to force him in such a situation would create a great hardship upon him. The Court has stated that what it attempts to do in a divorce proceeding is to set the parties in a position where they can start again, in a fresh and new beginning, ". . . So that the parties can reconstruct their lives in the most happy and useful manner". Cox v. Cox (Utah, 1975) 532 P.2d 994.

To place the burden which the State is attempting to put upon the Respondent would prevent him from starting a fresh, new life. Equity would dictate that he should not be saddled with such a burden in his present situation.

CONCLUSION

The Respondent is an individual of minimal resources. The State should not be allowed to completely exhaust what small amounts of income this Respondent has by allowing an "automatic" judgment against the Respondent for funds expended by the State in payments to the Respondent's wife and alleged child. Clearly this is not the intent of the Legislature in enacting the statutes.

The State of Utah should proceed in an action at law to collect what monies it may be entitled to for its expenditures to the Respondent's estranged wife and alleged child. The State should be precluded from entering into the divorce action of the parties and the State should only be awarded judgment or be entitled to any monies only by order and award of the Trial Court.

Respectfully submitted,

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