1976

Beverly Larsen v. Earnest Larsen : Brief of Respondent

Utah Supreme Court

Vernon B. Romney; Stephen G. Schwendiman; Attorneys for Appellant;
Gordon Esplin; Attorney for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

BEVERLY LARSEN, and the STATE OF UTAH, by and through Utah State Department of Social Services, Plaintiff and Appellant, v. EARNEST LARSEN, Defendant and Respondent.	No. 14593

BRIEF OF RESPONDENT

Appeal from the judgment of the District Court of the Third Judicial District of Salt Lake County, Honorable Bryant H. Croft, presiding.

GORDON F. ESPLIN
Attorney at Law
Salt Lake County Bar Legal Services, Inc.
216 East Fifth South
Salt Lake City, Utah 84111

Attorney for Respondent

STEPHEN G. SCHWENDIMAN
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114

Attorney for Appellant

Cases Cited

TABLE OF CONTENTS

IN THE SUPREME COURT

OF THE STATE OF UTAH

BEVERLY LARSEN, and the
STATE OF UTAH, by and through
Utah State Department of
Social Services,

No. 14593

Plaintiff and Appellant,

vs.

EARNEST LARSEN,

Defendant and Respondent.

BRIEF OF RESPONDENT

Appeal from the judgment of the District Court of the Third Judicial District of Salt Lake County, Honorable Bryant H. Croft, presiding.

NATURE OF THE CASE

This action was initiated on March 4, 1976, by the State of Utah to determine the amount of child support owed by Respondent from April 1972 until February 1976.

DISPOSITION OF THE LOWER COURT

On May 4, 1976, Judge Bryant H. Croft of the Third District Court for Salt Lake County entered an order which held in paragraph one (1) that the amount of Respondent's liability had been established in the May 26, 1967, divorce decree entered herein; and in paragraph three (3) that

Appellant cannot modify Respondent's liability for past time periods; therefore, Appellant's motion for judgment in the amount of $6,717.00 was dismissed.

RELIEF SOUGHT ON APPEAL

Affirmation of Judge Croft's May 4, 1976, order.

STATEMENT OF FACTS

On May 26, 1967, a decree of divorce was entered in this matter which required Respondent to pay the sum of one dollar ($1.00) per year as child support because of a specific finding that he was physically disabled. (R. 24-[illegible] Niether of the Appellants have appealed the May, 1967, decree nor have they sought relief from said decree via Rule 60 of the Utah Rules of Civil Procedure.

ARGUMENT

POINT I. THE MAY 26, 1967, DIVORCE DECREE OF THE THIRD DISTRICT COURT OF SALT LAKE COUNTY IS A BAR TO FURTHER LITIGATION OF RESPONDENT'S CHILD SUPPORT LIABILITY TO APPELLANT BEVERLY LARSEN OR HER ASSIGNEE, THE STATE OF UTAH, FROM THE TIME OF ITS ENTRY UNTIL IT IS MODIFIED.

Though Appellant's brief attacks the economic and social wisdom of the May 26, 1967, decree the record is clear that

the decree has not been attacked legally via appeal or pursuant to Rule 60 of the Utah Rules of Civil Procedure. Until the May, 1967, decree is challenged, it must be assumed valid.

Therefore the amount of Respondent's liability to Beverly Larsen is res judicata since there was a valid judgment between the same parties, Beverly and Earnest Larsen, in a prior action where the identical issue was litigated. Matthews v. Matthews 102 U.428, 132 P.2d 111 (1942); Richards v. Hodson, 26 U.2d 113, 485 P.2d 1044 (1971).

The State of Utah on page 3 of its July, 1976, brief to this Court claims its right to maintain an action against Respondent is based on Beverly Larson's September 17, 1974, assignment of her right to collect support monies owed her by Respondent. Since an assignee cannot have greater rights than the assignor, the amount of Respondent's liability is also res judicata as to the State of Utah, as they "proceed on behalf of the obligee", Beverly Larson § 78-45-9, UCA, 1953.

This comports with the general rule of law that a judicial decree or order obligating a father to pay a sum certain for support of his children is the limit of his liability (see the numerous cases cited at 24 Am Jur 2d § 835 p. 946 and 7 ALR 2d 492, § 3 p. 492). The rationale

espoused by these courts is that any other rule would invite constant squabbles over alleged extra expenditures for the sup of children of divorced parties where the court has fixed a s certain and the child and custodial parent are protected sinc fixed sum may be modified to reflect changed circumstances.

POINT II. UTAH LAW PROHIBITS THE RETROSPECTIVE MODIFICATION OF SUPPORT ORDERS.

In Openshaw v. Openshaw, 102 U.22, 126 P.2d 1068, this Court held that the trial court could not modify a support money award as to installments which have already accrued and are past due because the installments became vested on their due date. Also see Myers v. Myers, 62 U.90, 218 P. 123, 30 A.L.R. 74; Cole v. Cole, 101 U.355, 122 P.2d 201; Westerfi v. Coop,, 6 U.2d 262, 311 P.2d 787; Scott v. Scott, 19 U.2d 2 430 P.2d 580.

Therefore the Utah law is well established that the Utah Court hearing evidence on April 16, 1976, could not grant Appellent's motion to modify Respondant's support obligation which had accrued between April 1972 and February 1976 becaus liability had vested.

CONCLUSION

The principles of res judicata and vesting preclude Appellants from their desired relief unless they utilize

legal methods to directly challenge the May 26, 1967, Order of the Third District Court.

Respectfully submitted this 27th day of October, 1976.

Gordon F. Esplin

GORDON F. ESPLIN
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I mailed two (2) copies of the foregoing Brief of Respondent to Mr. Stephen G. Schwendiman, Assistant Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84114, this 28th day of October, 1976.

Barbara C. Stevens