

1987

Laura Beth Barker, State of Utah, Utah State Department of Social Services v. Michael Robert Barker : Brief of Respondent

Utah Court of Appeals

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BRIEF

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DOCKET NO. 870158
IN THE UTAH COURT OF APPEALS

LAURA BETH BARKER, AND THE
STATE OF UTAH, BY AND THROUGH
UTAH STATE DEPARTMENT OF
SOCIAL SERVICES,

Plaintiffs/Respondents,

vs.

MICHAEL ROBERT BARKER,

Defendant/Appellant.

Case No. 870158-CA

BRIEF OF RESPONDENT STATE OF UTAH

ON APPEAL FROM A DECREE OF DIVORCE AND JUDGMENT OF THE SIXTH
JUDICIAL DISTRICT COURT, IN AND FOR SANPETE COUNTY, STATE OF
UTAH, HON. DON V. TIBBS, DISTRICT JUDGE, PRESIDING.

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FEB 2 91988

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LIST OF PARTIES

PLAINTIFF/RESPONDENT.....LAURA BETH BARKER (McGILLIVARY)

PLAINTIFF/RESPONDENT.....STATE OF UTAH, BY AND THROUGH
UTAH STATE DEPARTMENT OF SOCIAL
SERVICES

DEFENDANT/APPELLANT.....MICHAEL ROBERT BARKER

NON-PARTIES/RESPONDENTS.....DAVID L. WILKINSON, UTAH
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ATTORNEY;

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JIM KIDDER;

KIMBALL KRANTZ;

CINDY BROWN;

ROLEEN OLSEN;

OFFICE OF RECOVERY SERVICES;

UTAH LEGAL SERVICES, INC.;

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PROVO OFFICE, UTAH LEGAL SERVICES,
INC.;

THE HONORABLE HOWARD MAETANI,
DOMESTIC RELATIONS COMMISSIONER,
FORMERLY MANAGING ATTORNEY, PROVO
OFFICE, UTAH LEGAL SERVICES, INC.

NOTE: Ross C. Blackham, Sanpete County Attorney, appeared at
trial on behalf of the Utah State Department of Social Services,
Office of Recovery Services (the State), in connection with

matters pertaining to the divorce case and the issues of child support recovery related thereto. The Attorney General's Office represented the State in all other matters. On January 1, 1988, the Attorney General's Office took over the representation of the Utah State Department of Social Services, Office of Recovery Services on a statewide basis. Accordingly, on this appeal, the State is represented solely by the Attorney General's Office, as to all issues. Ross C. Blackham is not playing any active part in connection with this appeal.

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JURISDICTION; NATURE OF PROCEEDING

This is an appeal from a District Court judgment and order, granted in a divorce proceeding. This Court has jurisdiction over this case pursuant to Utah Code Ann. §78-2a-3(2)(g) (1953), as amended.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Does Michael Barker enjoy a special status as a "free white male citizen de jure," or any other status, such that the District Court did not have jurisdiction over him, or such that the laws of Utah do not apply to him?

2. Is Michael Barker obligated to support his children and to reimburse the State if, through the AFDC program, it does so on his behalf? In seeking such reimbursement from Michael Barker, is the State entitled to discover information regarding his income and assets?

3. In the proceedings below, did Michael Barker properly join those parties designated as "Non-Parties/Respondents" in the List of Parties above (page ii)?

4. Did the District Court properly dismiss Michael Barker's "tort-like" claims against the Non-Parties?

5. Was Michael Barker afforded due process of law in the divorce proceedings?

6. Was the Mexican divorce entitled to be recognized as valid and enforceable in Utah?

STATUTES WHOSE INTERPRETATION IS DETERMINATIVE

All of the statutes cited above have bearing in this case, but the following statutes are the most significant and determinative:

Utah Code Ann. §78-45-3 (1953), as amended:

Every man shall support his child

Utah Code Ann. §78-45-9 (1953), as amended:

. . . 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. . . .

Utah Code Ann. §78-45b-3 (1953), as amended:

(c) If assistance is furnished by the department . . . the department is the trustee of any cause of action or claims of the obligee or any minor child in that obligee's custody, to recover support due to the obligee from any person.

(d) The department may bring and maintain the action either in its own name or in the name of the obligee.

Utah Code Ann. §78-45b-2(8) (1953), as amended:

"Obligor" means any person owing a duty of support.

STATEMENT OF THE CASE

This is an action for divorce, filed by Laura Beth Barker against Michael Robert Barker. (R. 11-21). The State was named

as a co-plaintiff because Mrs. Barker was receiving public assistance for the parties' minor children, and the State desired an order requiring Mr. Barker to reimburse it for that public assistance. (R. 16).

Mr. Barker then filed an Answer, and subsequent pleadings, in which he named various persons and entities as additional parties plaintiff. (R. 22, 24, 37, 38, 39). These are the persons designated herein as Non-Parties/Respondents. They consist of the Office of Recovery Services, various State officials, Utah Legal Services, Inc., and various persons either currently or previously working for Utah Legal Services, Inc. Mr. Barker added these Non-Parties to his pleadings without ever making a motion to join them as parties.

At trial, the court entertained motions by the State's attorney and Mrs. Barker's attorney to dismiss the action as to the Non-Parties, on the grounds that the Non-Parties had never been properly joined as parties, and that Mr. Barker had failed to state a cause of action against any of them. The court granted those motions, on those grounds. (Trial Transcript, page 33). The court did provide Mr. Barker an opportunity to present evidence at trial regarding claims he said he had against the State Department of Social Services. (Trial Transcript, page 40).

The court then heard the evidence and arguments of the parties and granted the divorce. (Trial Transcript, pages 209-217). It denied Mr. Barker's claims for relief against the Department of Social Services. (Trial Transcript, pages 215-216).

Mr. Barker then appealed the decision of the trial court.

STATEMENT OF THE FACTS

(Unless stated otherwise, all references in this brief to the Transcript are to the Trial Transcript.)

Facts relating to the divorce in general: The State incorporates herein by reference the Statement of Facts found on pages 8 through 12 of the brief of Mrs. Barker.

Facts relating to the State's collection of child support from Mr. Barker: The State incorporates herein by reference said Statement of Facts from Mrs. Barker's brief, and also submits the following additional facts.

At the time of the trial, Mrs. Barker had been on public assistance since January 1985. (Transcript, page 63). The State had claims against Mr. Barker in the amount of \$1,746.00 for reimbursement of public assistance provided for his children. (Transcript, page 134). The claims of the State against Mr. Barker, as raised in the Amended Complaint, essentially consist of the following: (1) a claim that defendant be ordered to pay ongoing support for his children, and that such payments be made through the Office of Recovery Services as long as Mrs. Barker receives public assistance for them; (2) a claim for judgment against Mr. Barker for reimbursement of past public assistance provided the children; and (3) a request for mandatory income withholding as provided by Utah statute. (R. 16, 9-10).

Prior to the judicial establishment of Mr. Barker's child support obligation by the District Court, the State Office of Recovery Services had been engaged in efforts to administratively establish the defendant's child support obligation and to collect such support from him. In connection therewith, the Office of Recovery Services had taken steps to discover financial information regarding Mr. Barker. Among other things, the State had contacted Mr. Barker's employer to verify wage information. (Transcript, pages 131-144).

SUMMARY OF ARGUMENTS

This is a divorce case in which the wife has been a recipient of State AFDC assistance for the children. The State of Utah joined as a party in order to obtain appropriate reimbursement of such assistance from the husband.

Prior to the commencement of the subject divorce proceedings, the husband obtained a Mexican divorce. (He was not a resident of Mexico, nor did he travel to Mexico to obtain the Mexican divorce.) The District Court properly held that the Mexican divorce was not entitled to be recognized in Utah.

The husband claims a special legal status which he says prevents the courts of Utah from having jurisdiction over him. He also claims special rights because of such status, and he claims that certain Utah laws do not apply to him because of such status. All of his claims of special status are without merit.

After the husband was served with the summons and complaint in this case, he filed pleadings purporting to join as parties various additional persons, including State officials, State attorneys, and his wife's attorneys. He made certain "tort-like" claims against those persons. He failed to follow proper procedures for joining any additional parties, nor did he properly state any claims against them or against the Department of Social Services. The trial judge properly dismissed those extraneous claims against those persons, and against the Department of Social Services.

The defendant was afforded due process of law in the proceedings before the District Court, and his appeal should be dismissed.

ARGUMENT

PRELIMINARY NOTE: Pursuant to Rule 24(i) of the Rules of the Utah Court of Appeals, the State incorporates herein by reference the brief of respondent Laura Barker, in its entirety.

I. Defendant/Appellant Michael R. Barker is subject to the jurisdiction of the courts of Utah, and he is also subject to the laws of Utah.

Appellant Michael R. Barker claims that he enjoys a special status which he describes as a "free, white sovereign citizen (de jure) of the State of Utah." He alleges that, because of his

alleged special status, the District Court lacked jurisdiction over him.

At trial, Mr. Barker claimed that the legal authorities cited by the plaintiffs in arguments before the court "do not apply" to him, because he claims to be a "sovereign status person." (Transcript, page 25). He claimed that he is de jure person, and that the judge and the opposing parties are de facto persons. (Transcript, page 27). He said that Mrs. Barker has "civil rights under the 14th Amendment," whereas he has "sovereign rights." (Transcript, page 26). He stated that "on the basis of maritime equity," he is not an "obligor," and he tried to use this as a defense to the State's claims for reimbursement of public assistance provided for his children. (Transcript, page 25.)

Mr. Barker's claim that he has a special status which somehow excuses him from being subject to the jurisdiction of the District Court is wholly without merit. The Utah Supreme Court summarily rejected similar "special status" arguments in City of Salina v. Wisden, 737 P.2d 981 (Utah 1987). In that case, the court stated:

In order for our scheme of ordered liberties to succeed, we must all obey valid laws, even those with which we do not agree; a man cannot exempt himself from the operation of a law simply by declaring that he does not consent to have it apply to him.
City of Salina v. Wisden, at p. 983.

Mr. Barker's belief that he is a "free white sovereign citizen de jure" does not prevent the Courts of Utah, including the Sixth District Court, from exercising jurisdiction over him and

granting the orders which were rendered below. Nor does his said belief prevent the laws of Utah from applying to him, including those laws which hold him responsible for the support of his children. The trial court acted properly in determining that the defendant has no special rights, above and beyond those of any other citizen. (Findings of Fact and Conclusions of Law, page 18).

II. Defendant/Appellant Michael Barker has an obligation to support his children and to reimburse the State for public assistance provided for those children. The State is entitled to discover financial information pertaining to the defendant in connection with the establishment and enforcement of his support obligations.

Utah statutes and case law make it abundantly clear that every man has an obligation to support his children. §78-45-3, Utah Code Annotated, 1953, as amended; Rees v. Archibald, 311 P.2d 788 (Utah 1957). (All statutory citations herein are to Utah Code Annotated, 1953, as amended, unless otherwise stated.) Mr. Barker is the undisputed father of the children in this case. Therefore, he has a legal duty to support them. Because he has a duty to support these children, he is, by definition, an "obligor" under both the Uniform Civil Liability for Support Act (§78-45-2(2)) and the Public Support of Children Act (§78-45b-2(8)). A parent does not have to behind in his child support payments to be an "obligor." As long as he has children to support, he is an obligor.

Utah law also makes it clear that when the State, from public funds, provides aid to families with dependent children (AFDC), the State is entitled to seek reimbursement of that aid from parents ("obligors") having support obligations respecting those children. §78-45-9; §78-45b-1.1; §78-45b-3. When a court order is in effect establishing the amount of the obligor's child support obligation, then that order governs. §78-45-7(1); §78-45b-4; Larsen v. Larsen, 561 P.2d 1077 (Utah 1977).

When no court order is in effect (as was the case here prior to the entry of the orders below) the law requires that various circumstances be taken into consideration in determining the appropriate amount of reimbursement for prior periods, and prospective support for future periods. §78-45-7; §78-45b-6(2). In determining the appropriate amount of reimbursement for prior periods, the courts must consider, among other things, "the amount of public assistance received by the obligee." §78-45-7(3).

The legislature has commissioned the Office of Recovery Services (ORS) with the responsibility for collecting such reimbursement of public moneys from child support obligors. §55-15c-4. In the fulfillment of its duties, ORS is entitled to discover information regarding the income and employment of obligors. Such information is extremely relevant to the determination of a child support obligation, and constitutes important evidence which ORS is entitled to discover. §78-45b-3(8).

Appellant Michael Barker claims that the ORS violated his privacy when it contacted his employer to verify employment and to obtain wage information pertaining to him. He also states that one of his reasons for claiming that such contact with the employer was improper is that "there was no default judgment against Defendant. . . ." (Appellant's Brief, page 17). He claims that ORS's attempts to discover financial information about him did not constitute an "official investigation" under §78-27-50, and that the contact with his employer was improper. Mr. Barker essentially seems to be saying that the Office of Recovery Services must, without independent inquiry, accept as truthful the representations of child support obligors regarding their financial situation. These contentions are without merit.

First, the constitutional provisions cited by Mr. Barker in Point 5, pages 17 to 21 of his brief, are those which bar unreasonable searches and seizures, and the deprivation of life, liberty or property without due process of law. The State submits that the contacting of Mr. Barker's employer to obtain important, relevant information was totally reasonable, consistent with the Constitution and permissible under Utah statutes.

Second, as mentioned above, ORS is entitled, under §78-45b-3(8), to gather such evidence. That section gives ORS general authorization to gather information in the performance of its duties under the Public Support of Children Act. It is not necessary that the inquiry be part of an official investigation. When the State is proceeding under §78-27-50, which deals with

discovering information from financial institutions, the statute makes it clear than any official investigation by ORS is exempt from the requirements of financial information privacy. The State submits that when the Office of Recovery Services, as part of its statutory mandate, is attempting to obtain relevant information necessary to establish and enforce child support obligations owed by an absent parent, it is involved in an official investigation. Whichever statute ORS was proceeding under in this case, its contact with Mr. Barker's employer was appropriate and reasonable.

Third, Mr. Barker's apparent claim that the State was not entitled to contact his employer because there was no default judgment against him, makes no sense. The statutes cited above clearly allow ORS to discover such evidence, and there is no requirement that a default judgment be in place before such evidence may be discovered.

Finally, the testimony at the trial provides an excellent illustration of one of the main reasons why it was necessary for the legislature to allow ORS to discover such financial information about child support obligors. Waine Riches, Mrs. Barker's attorney, was examining Mr. Barker regarding his employment and income:

Q Are you currently employed?

A I object to the question. It violates my right to privacy.

THE COURT Your objection is overruled.
Answer the question.

MR. BARKER Your Honor, I am objecting.

THE COURT I said your objection is overruled. Answer the question.

MR. BARKER Sir, I don't want to argue.

THE COURT Well, I don't want to put you in jail. I've just instructed you to answer the question. The question was: "Are you employed?" That's a very simple question.

MR. BARKER Again, I am basing my rights issue on the fact that I am not a juristic person, that I am de jures status.

THE COURT And I am telling you I don't care whether you are or you aren't a person like you are saying. I am saying you will answer the question or I'll hold you in contempt. . . . I don't want to argue with you. I'm just saying answer the question.

MR. BARKER What was the question?

MR. RICHES Are you presently employed?

A Yes

Q Where?

A St. George Mining

. . .

Q What is your gross pay per month?

A Why do you want to know that information?

THE COURT He is asking you a question. You answer the question. You don't ask him.

MR. BARKER Your Honor, I think I'm going to have to go to jail.

THE COURT Then you might be. . . . Will you please answer the question, what the gross pay is.

A I am not sure what the gross pay is. I would have to look at the records. (Transcript, pages 121 to 122).

The testimony continues with obvious evasions on the part of the witness to conceal his true income. His statements to the

effect that he could not say what his income was without "looking at his records," are simply not credible. Obviously, relying on such testimony of a child support obligor, without being able to independently verify his income, would hamstring the State in its attempts to pursue reimbursement of AFDC funds expended on behalf of the obligor's children.

The State was and is entitled to look to Mr. Barker for reimbursement of public moneys provided for his children, and to obtain independent verification of his employment and income. The order of the court respecting the Mr. Barker's child support obligations took all proper factors into consideration and was fair and reasonable, and is entitled to be affirmed.

III. The "Non-Parties/Respondents" were not properly joined in this case, and the District Court acted properly in dismissing Appellant's claims against them.

When a party defendant, such as Mr. Barker, desires to litigate claims of his own in the lawsuit, he has four possible options. First, if he has claims against an existing plaintiff, he may file a counterclaim, following the procedures set forth in Rule 13, Utah Rules of Civil Procedure. Second, if he has claims against another existing defendant, he may file a cross-claim, pursuant to the same rule. (In this case, the Mr. Barker is the sole defendant.) Third, if he feels that some third party would be liable for the things that the plaintiff is asserting against him, then he may file a third-party complaint, following the procedures set forth in Rule 14, Utah Rules of Civil Procedure.

Finally, if the defendant feels that he has some claims which ought to be litigated in the original proceeding, but which cannot be brought as a counterclaim, cross-claim, or third-party complaint, then he must make a proper motion for joinder and obtain leave of court to bring the additional parties in. Rule 21, Utah Rules of Civil Procedure.

These four options are the only ways a defendant can bring additional parties into the lawsuit. Unless he proceeds under one of those options he may not accomplish a joinder by simply typing the names of additional parties in the caption of the complaint and sending pleadings to them. To permit such a procedure would deny those additional parties the due process of law.

Appellant Michael Barker never properly joined the Non-Parties in this action, and the record so shows. Instead, without proper authority, he added the names of numerous other persons--State officials, opposing attorneys, and so forth--that he felt had done things he didn't like, and raised claims against them as part of these divorce proceedings.

The District Judge properly dismissed Mr. Barker's claims against the Non-Parties on the grounds that they were not properly joined. (Transcript, page 33).

IV. Appellant's "tort-like" claims against the "Non-Parties/Respondents" and against the State Department of Social Services were properly dismissed because they were not proper to raise in a divorce proceeding, and because they failed to state a claim upon which relief could be granted.

Even if appellant Michael Barker had properly joined the Non-Parties, he failed to state claims against them upon which the District Court could grant relief, and the court properly dismissed his claims against them on that ground as well. The same applies to his claims against the Department of Social Services.

First, Mr. Barker's claims against the Non-Parties and the Department of Social Services were in the nature of tort claims and were not properly raised in these divorce proceedings. The State incorporates herein by reference Point III on pages 18 and 19 of Mrs. Barker's brief, which covers that point.

Second, Mr. Barker's claims against the Non-Parties and the Department of Social Services arise out the activities they regularly and properly engage in as part of their employment, which activities are not actionable, no matter how much Mr. Barker doesn't like them. For example, he claims that the State is involved in trying to collect child support from him. This is true, but it is not actionable. To the contrary, it is something which Utah law requires be done. Mr. Barker may not like it, and he may think that he has a special status which exempts him from the application of laws that apply to society in general. But that does not give him a cause of action on that point.

Another example is Mr. Barker's claim that Ross Blackham, the County Attorney, did not file criminal charges against Mrs. Barker as the result of an incident in which Mrs. Barker allegedly assaulted Mr. Barker. When Mr. Barker learned that the

County Attorney had decided not to charge his wife, he then asked the Attorney General's Office to intercede. The Attorney General's Office, after reviewing the matter, decided not to override the discretion which the County Attorney had exercised. Mr. Barker complains of these things. Even if true, however, these facts do not give Mr. Barker a cause of action against any Non-Party or against the Department of Social Services. It is well established that prosecuting authorities have discretion to file criminal charges, or not to file charges, as they deem appropriate after reviewing the facts. State v. Hoffman, 558 P.2d 602 (Utah 1976). The County Attorney and the Attorney General were in the proper fulfillment of their duties in dealing with Mr. Barker's criminal complaint as they did.

The myriad other matters raised by Mr. Barker against the Non-Parties and the Department of Social Services are of a similar vein, and they all fail to state a claim upon which relief may be granted. The District Court acted properly in dismissing them.

V. Michael Barker was afforded due process of law in the proceedings before the District Court.

Mr. Barker's brief makes repeated assertions that he was denied due process in the trial of this matter. Those assertions are wholly without merit.

In plain terms, and with all due respect to Mr. Barker, the situation is this: Mr. Barker is not trained in the law.

Although he has submitted voluminous paperwork to the court and the other parties which has contained many legal-sounding terms, he does not know enough about the law, and legal procedures, to evaluate whether or not a particular point has legal merit. He seems to have the idea that if he disagrees with a particular action, such action is wrong and violates his due process rights and various other rights. However, as was stated above in the language quoted from City of Salina v. Wisden, it is the duty of every person to obey the law--even those laws with which they disagree.

Accordingly, the fact that Mr. Barker may not like what has happened in these proceedings does not render them erroneous. Obviously he has been frustrated in his "game plan." He has done every imaginable thing to avoid submitting this divorce proceeding to the District Court for a proper determination--probably because he wants to avoid the child support and other obligations that the court would impose. For instance, he obtained a Mexican divorce, which, coincidentally, does not require Mr. Barker to pay child support for his children. He has also "rescinded [his] marriage contract to eliminate a nexus between [himself] and the State" in an attempt to say that Utah laws do not apply to him. (Transcript, page 172). He apparently feels that because the District Court found that those steps did not dissolve his marriage to Mrs. Barker, the court denied him due process of law.

It is appropriate to briefly treat some specific items which Mr. Barker apparently feels denied him due process:

A. Mr. Barker claims he was denied a right to trial by jury. It is clear that under Utah law, a divorce action is equitable in nature and that there is no right to a jury trial. 24 Am Jur 2d 410, Divorce & Separation §342; §30-3-4, Utah Code Ann. (1953), as amended; Lord v. Shaw, 665 P.2d 1288 (Utah 1983).

B. Mr. Barker claims he was denied the right to counsel of his choice. This is incorrect. At the pretrial hearing on January 2, 1987, the court told Mr. Barker that he could have counsel of choice--but the court also made it abundantly clear that such counsel would have to be an attorney. (Transcript of Pretrial Hearing, page 5, lines 15-17, and pages 6-7). Then, at trial, Mr. Barker attempted to have a non-lawyer act as his lawyer. (Trial Transcript, pages 5-6. The judge properly directed such non-lawyer to take his seat behind the bar, and not to act as Mr. Barker's attorney. §78-51-25.

C. Mr. Barker claims the District Court was not properly set. His argument on this point is not clear, but it appears he claims that it was a violation of the separation of powers doctrine for the District Court to hear the divorce case, when one of his theories was that he had rescinded his marriage license. Contrary to what Mr. Barker alleges in his brief, the court did allow him to explain his separation of powers argument. (Transcript, pages 37-38). The court simply disagreed with Mr. Barker, and found that it did in fact have jurisdiction in the case and that it was properly sitting. (Transcript, pages 37-38). It is well established that the District Courts are courts of general jurisdiction, and that they are authorized to hear

divorce matters. Utah Constitution, Article VIII, Section 5; §78-3-4. The fact that Mr. Barker was proceeding under the theory that he had "rescinded" his Utah marriage license did not in any way detract from the authority of the District Court to resolve that issue.

D. Mr. Barker claims the court erred in threatening him with incarceration when he refused to answer questions about his finances. This was not error; a court has the power to hold a witness in contempt for failing to answer lawful questions (which these were) after being ordered to do so, and to incarcerate the witness in connection with that contempt. §78-32-1; §78-32-3; §78-32-10.

E. Mr. Barker claims the court erred in denying him the right to ask certain questions of witnesses. Any limitations placed on the scope of Mr. Barker's questions or testimony were essentially on grounds of irrelevancy. For example, Mr. Barker tried to ask the County Attorney why he did not file criminal charges against Mrs. Barker for assault and battery. That question was objected to on grounds of irrelevancy, and the objection was sustained, and properly so, since the question of the County Attorney's handling of Mr. Barker's assault and battery claim was not in issue and had nothing to do with the divorce proceedings pending before the court. (Transcript, page 157). A litigant is not entitled to use the courts as a forum to ask questions of parties which are irrelevant to the matters at hand, and it is not a denial of due process for the court to so order.

F. Mr. Barker claims the court erred in "giving him legal advice." All the judge did was recommend that Mr. Barker retain an attorney to represent him. This was good advice and there was nothing wrong with the judge giving it.

G. Mr. Barker claims the court was a party to a conspiracy because it failed to accept his claims that he, Mr. Barker, was the victim of a conspiracy. Such a claim is an affront to the court, and is totally ridiculous. It is well established that a trial judge is responsible for weighing the evidence presented at trial, and assigning such weight to different items of evidence as he deems appropriate, taking into consideration such things as the credibility of witnesses. The court was not obliged to accept Mr. Barker's claims of conspiracy and, by not accepting those claims, did not become a party to a conspiracy.

VI. The court properly ruled that the Mexican Divorce was not entitled to be recognized as valid and enforceable in Utah.

The State incorporates herein the arguments in Mrs. Barker's brief which deal with this issue. It also points out that the court did receive evidence that neither Mr. or Mrs. Barker had been to Mexico during the five years preceding the trial. (Transcript, page 104). The court properly found that the Mexican divorce should not be recognized in Utah.

CONCLUSION

The State respectfully asks that appellant Michael Barker's appeal be dismissed in its entirety and that he take nothing thereby.

Pursuant to Rule 33(a) of the Rules of the Utah Court of Appeals, the State also asks for an award of reasonable attorney's fees and double costs against Michael Barker. This appeal, at least with regard to those issues involving the State, is totally frivolous.

DATED this 29th day of February, 1988.

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C E R T I F I C A T E O F S E R V I C E

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I further certify that on this 29th day of February, 1988, I mailed a courtesy copy of this Brief to the following person at the following address, postage prepaid:

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