

1978

State of Utah v. Gayle Lee Boone : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

D. John Musselman; Crow, Musselman & Watson; Attorneys for Respondent;

S. Rex Lewis; Howard, Lewis & Petersen; Attorneys for Appellant;

Recommended Citation

Brief of Respondent, *Booth v. Crompton*, No. 15276 (Utah Supreme Court, 1978).

https://digitalcommons.law.byu.edu/uofu_sc2/693

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT
OF THE STATE OF UTAH

JOANN E. BOOTH, aka JOANN
E. CROMPTON,

:

Plaintiff & Respondent,:

vs.

:

Case No. 15, 276

ROBERT CROMPTON,

:

Defendant & Appellant. :

BRIEF OF RESPONDENT

AN APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT OF
THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY,
STATE OF UTAH, HONORABLE J. ROBERT BULLOCK,
DISTRICT JUDGE, PRESIDING

D. JOHN MUSSELMAN, for:
GROW, MUSSELMAN & WATSON
1325 South 800 East, Suite 310
Orem, Utah 84057
Attorneys for Respondent

S. REX LEWIS, for:
HOWARD, LEWIS & PETERSEN
120 East 300 North
Provo, Utah 84601
Attorneys for Appellant

FILED

JAN 30 1978

Clk. Supreme Court, Utah

IN THE SUPREME COURT
OF THE STATE OF UTAH

JOANN E. BOOTH, aka JOANN :
E. CROMPTON, :

Plaintiff & Respondent, :

vs. : Case No. 15,276

ROBERT CROMPTON, :

Defendant & Appellant. :

BRIEF OF RESPONDENT

AN APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT OF
THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY,
STATE OF UTAH, HONORABLE J. ROBERT BULLOCK,
DISTRICT JUDGE, PRESIDING

D. JOHN MUSSELMAN, for:
GROW, MUSSELMAN & WATSON
1325 South 800 East, Suite 310
Orem, UT 84057
Attorneys for Respondent

S. REX LEWIS, for:
HOWARD, LEWIS & PETERSEN
120 East 300 North
Provo, UT 84601
Attorneys for Appellant

TABLE OF CONTENTS

	<u>PAGE</u>
NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT	1
STATEMENT OF THE FACTS	1
ARGUMENT	
POINT I	
THE RESPONDENT MADE ONLY A PARTIAL ASSIGNMENT OF HER RIGHTS TO RECOVER FROM THE APPELLANT TO THE STATE OF OREGON	3
POINT II	
THE RESPONDENT IS THE REAL PARTY IN INTEREST AND IS THEREFORE ENTITLED TO BRING SUIT TO RECOVER THE OBLI- GATION OWED BY THE APPELLANT	4
POINT III	
THE RIGHTS OF THE STATE OF OREGON NEED NOT BE DETERMINED BY THIS COURT AT THIS TIME	5
CONCLUSION	7

CASES CITED

<u>Archibald v. Midwest Paper Stock Company, 158 N.W.2d 739 (Iowa</u> <u>1968)</u>
<u>Hoepfner Construction Company v. United States for Use of</u> <u>Mangum, 287 F.2d 108 (C.A. Colo. 1960)</u>

Lynch v. McDonald, 12 Utah 2d 427, 367 P 2d 464 (1962)
Ridgeland Box Manufacturing Company v. Sinclair Refining
Company, 82 F.Supp 274 (D.C.S.C. 1949).

STATUTES AND ORDINANCES CITED

Oregon Revised Statutes, §416.260 (1975)
Oregon Revised Statutes, §418.042 (1975)
Utah Code Annotated, §77-61a-1 et seq. (1963).
Utah Rules of Civil Procedure 20

IN THE SUPREME COURT
OF THE STATE OF UTAH

JOANN E. BOOTH, aka JOANN
E. CROMPTON, :
Plaintiff & Respondent, :
vs. : Case No. 15,276
ROBERT CROMPTON, :
Defendant & Appellant. :

BRIEF OF RESPONDENT

NATURE OF THE CASE

This is an action on a foreign divorce decree to enforce payment of arrearages in support obligations.

DISPOSITION IN THE LOWER COURT

The trial court found the Plaintiff-Respondent entitled to judgment against the Defendant-Appellant in the amount of Eleven Thousand Two Hundred Twenty Dollars Sixty Five Cents (\$11,220.65).

STATEMENT OF THE FACTS

Respondent JoAnn Booth and Appellant Robert Crompton were divorced by a decree of the court of Clackamas County, Oregon, filed July 9, 1969. The divorce decree ordered the Appellant to make child support payments of One Hundred Fifty Dollars (\$150) each month, this amount being reduced to One Hundred Dollars (\$100) each month on February 1, 1974.

The Appellant has failed to make the majority of the required payments as ordered by the Oregon court at the time of the decree, and as a partial result thereof, Respondent was forced to seek public assistance from the State of Oregon. In accepting aid, Respondent assigned a portion of her rights against the Appellant to the State of Oregon, permitting it to recover an amount equal to that amount paid by that state to the Respondent.

The Respondent, as the real party in interest, brought suit in this state against the Appellant to recover the amount due under the divorce decree granted by the Oregon court in 1969. Under the full faith and credit clause of the United States Constitution, and under the Utah Uniform Reciprocal Enforcement Support Act, UCA 77-61a-1 et seq. (1953 as amended), the District Court below held for the Respondent, finding that she was entitled to a judgment against Appellant in the amount of \$11,220.65. '

ARGUMENT

POINT I.

THE RESPONDENT MADE ONLY A PARTIAL ASSIGNMENT OF HER RIGHTS TO RECOVER FROM THE APPELLANT TO THE STATE OF OREGON.

Under the laws of the State of Oregon, where the state has made public assistance payments to any recipient, the state is authorized in attempting to recover an amount equal to that paid by the state from anyone who has an obligation to provide support for the recipient and who has failed to do so. In the case of a relative with the obligation of support, the state may seek recovery and the recipient is deemed to have consented to the attempted recovery by accepting the assistance payment. ORS § 418.042 (1975). In the case where a non-relative has incurred an obligation of support, by judicial decree or otherwise, to a person who subsequently applies for public assistance, before the state will make any assistance payments, the potential recipient must assign to the state, the right to recover from the obligor an amount equal to the amount of public assistance received by the recipient, to the extent of the obligor's obligation.

Where public assistance has been given, the state may only attempt to recover from the obligor an amount equal to the assistance payments and no more. This is evidenced by the language of the Oregon Statute which permits the recovery against the recipient's relatives: "However, by accepting such public assistance, the recipient thereof shall be deemed to consent to the recovery of an amount equal thereto from any responsible living relative by the

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services under the Library Services and Technology Act, administered by the Utah State Library.

Machine-generated OCR, may contain errors.

division elipse." ORS § 416.260 (1975) (emphasis added)

The state may recover from an obligor only an amount equal to that which was given as public assistance. Where the recipient of the assistance assigns his or her right to support to the state, that assignment does not constitute a total assignment of all rights pertaining to the support obligation; rather, the assignment is merely a partial assignment, transferring only the right to that portion of the obligation that is necessary to repay the state for its outlay to the recipient.

In the case at bar, the Respondent made such a partial assignment of her rights to support by giving the state the right to recover from the obligor an amount equal to the amount of the assistance payments received by the Respondent. The right to the excess of the obligation of support owed by the obligor, in this case, the Appellant, over the amount paid by the state of Oregon to the Respondent remains with the Respondent.

POINT II.

THE RESPONDENT IS THE REAL PARTY IN INTEREST AND IS THEREFORE ENTITLED TO BRING SUIT TO RECOVER THE OBLIGATION OWED BY THE APPELLANT.

Although the general rule is that an assignee is the real party in interest and is entitled to maintain any action relating to the assigned matter, Lynch v. McDonald, 12 Utah 2d 427, 367 P.2d 464 (1962), an exception to that principle holds that where only a part of an entire claim or debt is assigned, for the purpose of determining the real party in interest, the

cause will be treated as a single cause of action, and the assignor is the proper party to maintain the action. Hoepfner Construction Company v. United States For Use of Mangum, 287 F.2d 108 (C.A. Colo. 1960), Archibald v. Midwest Paper Stock Company, 158 N.W.2d 739 (Iowa 1968), Ridgeland Box Manufacturing Company v. Sinclair Refining Company, 82 F. Supp. 274 (D.C.S.C. 1949).

The respondent assigned only a portion of her claim against the Appellant to the State of Oregon; therefore, she is still the real party in interest and may bring suit on her own behalf against the Appellant for the total amount of the obligation.

POINT III.

THE RIGHTS OF THE STATE OF OREGON NEED NOT BE DETERMINED BY THIS COURT AT THIS TIME.

Although the Respondent is entitled to bring this action and may be awarded the entire amount of the obligation, it is clear that the State of Oregon is legally entitled to a portion of the amount recovered. However, the State of Oregon, having full knowledge of this proceeding and the action brought in the Court below, has chosen not to become a party in this case, although permitted to do so under Rule 20 of the Utah Rules of Civil Procedure, UCA (1953 as amended). That rule states that:

[A]ll persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative, in respect of or arising out of, the same transaction, occurrence or series of transactions or occurrences, and if any question of law or fact come to all of them, will arise in the action.

Since the State of Oregon is not a party to this action, it being precluded by choice, rather than by failure to receive adequate notice, this Court need not determine the rights of the State of Oregon at this time.

Notwithstanding the fact that the rights of the State of Oregon will not be determined in this proceeding, the interest of that state is adequately protected. The Respondent has informed the State of Oregon of this action which she has brought, and a just and equitable settlement is currently being worked out. In addition, the State of Oregon may at any time proceed directly against the Respondent in the courts of that state for any amount owed by the Respondent to that state. Suit in Oregon, if needed, would be more convenient for both the State of Oregon and the Respondent, and the position of that state would be in nowise weakened as a result of foregoing its right to join in this proceeding. Although the State of Oregon's right to recover is not being determined by this Court, that right is nevertheless adequately protected.

CONCLUSION

At the time the Respondent sought assistance from the State of Oregon, she assigned to that state the right to recover from the Appellant, an amount equal to any amount paid by that state to the Respondent. Since the Respondent made only a partial assignment of her rights, she is still the real party in interest and is entitled to recover from the Appellant the total obligation remaining unpaid. The State of Oregon, choosing not to become a party in this case, will settle its claims with the Respondent in another forum. Therefore, the Respondent respectfully requests that the decision of the District Court below be affirmed.

DATED this 25 day of January, 1978.

Respectfully submitted:

D. John Musselman

D. JOHN MUSSELMAN, for:
GROW, MUSSELMAN & WATSON
1325 South 800 East
Suite 310
Orem, UT 84057
Attorneys for Respondent

MAILING CERTIFICATE

I hereby certify that on the 27th day of January, 1978, I personally mailed two (2) copies of the foregoing Brief of Respondent to Mr. S. Rex Lewis, Attorney for Appellant, 120 East 300 North, Provo, Utah, 84601.

Melinda Peterson