

1978

# State of Utah v. Gayle Lee Boone : Brief of Appellant

Utah Supreme Court

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Robert B. Hansen; Craig L. Barlow; Attorneys for Respondent;

Larry R. Keller; Attorney for Appellant;

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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

Plaintiff & Respondent, :

vs. :

Case No. 15,276

ROBERT CROMPTON, :

Defendant & Appellant. :

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BRIEF OF APPELLANT

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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 \$11,220.65.

RELIEF SOUGHT ON APPEAL

Defendant-appellant claims that the decision of the trial court was erroneous in that the plaintiff-respondent had assigned her rights to the cause of action, and was not entitled to bring it or to have judgment thereon.

FACTS OF THE CASE

Plaintiff-respondent Mrs. Crompton<sup>1</sup> and defendant-appellant Robert Crompton were divorced by a decree of the

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<sup>1</sup> Mrs. Crompton has remarried and is known as Mrs. Booth, but for clarity will be referred to as Mrs. Crompton.

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Clackamas County, Oregon, Court, filed July 9, 1969. (R. 46). The decree provided for payment by Robert Crompton of \$150.00 per month child support. (R. 47).

This amount was reduced to \$100.00 per month on February 1, 1974. (Exhibit 1). Though Mr. Crompton was irregular in making payments, he paid a substantial amount, exhibited by his receipts and by a copy of a payment record kept by the Oregon Court. (Exhibits 4 and 1). Mrs. Crompton sought judicial enforcement of present support payments several times, but never sought payment of delinquencies. (T. 5:30-6:7).

During this period of time, Mrs. Crompton received welfare payments for support from the State of Oregon. (R. 7:22-26). This was apparently done under the Oregon URESA program (Uniform Reciprocal Support Act, O.R.S. Chapter 110) since Mr. Crompton was then required to make his support payments to the clerk of the county court. (See Exhibit 1). Mrs. Crompton testified that she assigned all her rights to support payments to the state of Oregon. (R. 8:8-18). This is consistent with URESA practice. See O.R.S. §110.081 and Utah Code Ann. 77-61a-8.

The defendant-appellant Robert Crompton has continuously maintained that Mrs. Crompton cannot sue to recover the obligation assigned to the State of Oregon. In his Answer, he stated:

Defendant affirmatively alleges that if,  
in fact, there is any sum of money unpaid

by the defendant to the plaintiff, that the plaintiff has duly and regularly assigned all of her right, title, and interest in and to that payment to the State of Oregon and that the plaintiff has no further right, title, or interest in and to her alleged claim. (R. 31).

In examination of Mrs. Crompton at trial, defendant pursued this theory, and elicited an admission of the assignment.

Q. [Mr. Lewis] And when did you go off receiving assistance?

A. [Mrs. Crompton] I think in January-February, because I started a work program in which I was going to college, which now I am still working under a program.

Q. January or February of this year?

A. Yes, because I have been in this school for nine months, almost.

Q. Is it safe to say then that up till that time all the rights you had have been assigned to the State of Oregon while you are receiving assistance?

A. That the support payments were, yes.

(R. 8:8-18)

Though the court found against the defendant-appellant on the effect of the assignments, defendant again raised the issue in objecting to the proposed findings of fact:

Defendant objects to the Court's Finding No. 5 upon the grounds and for the reasons that the uncontradicted testimony of the plaintiff was that she had assigned all of her interest in and to the support payments, thereby leaving her not a proper party to the herein action and having no interest therein. (R. 45).

and also in objecting to the conclusion of law:

Defendant objects to the Conclusion of Law of the Court since the Conclusions are not based upon the facts as presented to the Court, that the plaintiff, by her own testimony, stated that all of her right, title and interest has been assigned to the State of Oregon and that she is not a proper plaintiff, and that the complaint should be dismissed. (R. 46).

Nevertheless, the court found:

That the plaintiff is entitled to judgment against the defendant in the amount of \$11,220.65. (R. 28, Conclusion ¶2).

The court handled the assignment issue in the following manner:

. . . the State of Oregon may be entitled to all or a part of this judgment and if so, the State of Oregon would be entitled to an appropriate assignment from this plaintiff in that amount.

Appellant maintains that the lower court acted against the weight of the evidence in failing to find an assignment and manifestly misapplied the law in failing to bar Mrs. Crompton from asserting claims in which she had no interest.

#### POINT I

THE SCOPE OF JUDICIAL REVIEW ENCOMPASSES BOTH FACTUAL AND LEGAL ISSUES.

In equitable actions appellate review traditionally encompasses both the law and the facts. This broad scope of review is warranted because the original trial involved no finder of fact other than a judge, so the appellate court may easily place itself in the position of the trier of

fact, which is not possible in review of jury trials. Some jurisdictions have even adopted a trial de novo review of equity cases in their supreme courts. See e.g., Smith v. Vehrs, 242 P.2d 586 (Ore. 1952).

Utah, while not providing for a trial de novo procedure in equitable proceedings, does provide for appellate review of the record on both legal and factual issues. This scope of review of equity cases is founded in the Utah Constitution.

The appeal shall be upon the record made in the court below. . . In equity cases the appeal may be on questions of both law and fact. . . (Utah Const. art. 8, §9).

Essentially the same language is found in Rule 72(a) of the Utah Rules of Civil Procedure.

In equity cases the appeal may be on questions of both law and fact.

Thus, where the decision below was bottomed in equity and where the appellant questions the findings of fact, it is the duty of the appellate court to review the accuracy of both the findings of fact and conclusions of law.

Under Article VIII, Section IX, Constitution of Utah, it is both the duty and prerogative of this court in an equitable action to review the law and the facts and make its own findings and substitute its judgment for that of the trial court. Mitchell v. Mitchell, 527 P.2d 1359, 1360 (Utah 1974)).

See also Tripp v. Bagley, 74 Utah 57, 276 P. 912, 69 A.L.R. 1416 (1928).

That this Court has such broad review power is evidenced by the customary appellate disposition of equity cases where the evidence is not found lacking. Generally, this Court has not remanded equity cases after appellate review, but rather has entered or directed judgment.

In view, therefore, that this is purely an equitable proceeding which comes to this court upon questions of both law and fact, we have the power, and it is our duty, to either make findings and render judgment in accordance with the facts and the law applicable thereto, or direct that such findings and judgment be made and entered by the court below. (Johnson v. Seagull Inv. Co., 65 Utah 424, 237 P. 945 (1925)).

See also St. George and Washington Canal Co. v. Hurricane Canal Co., 93 Utah 262, 72 P.2d 642 (1937). As was stated in a recent Oklahoma case, Matter of Reyna, 546 P.2d 622, (Okla. 1976):

In a case of equitable cognizance, the Supreme Court may weigh the evidence and enter such judgment as the trial court should have rendered. (546 P.2d at 625).

Entry of judgment by the appellate court is made following the review of equity cases because the appellate court has full power to find the facts, make conclusions of law, and enter judgment. Of course, where the court feels there is more necessary evidence available, not in the record, it may remand for further taking of evidence, either retaining the case for proceedings after the further evidence is gathered or remanding it entirely for both findings and conclusions in the lower court.

Appellant contends that the finding relating to the assignment does not reflect the testimony at trial. For this reason, review of the factual finding as well as the legal conclusion, as to the effect of the assignment is sought by the appellant.

## POINT II

### THE EVIDENCE UNEQUIVOCALLY INDICATES AN ASSIGNMENT.

The trial court refused to make an unequivocal finding as to the assignment in favor of the State of Oregon, saying only that if such an assignment existed, the State of Oregon would be entitled to an assignment in its favor.

The unequivocal, uncontradicted evidence was that such an assignment existed. In fact, the respondent herself gave this testimony. (T. 8:8-18). In the absence of any evidence to contradict the testimony of assignment, it was clearly improper to enter the equivocal finding. As stated in Corbet v. Corbet, 24 Utah 2d 378, 472 P.2d 430 (1970) this court will reverse factual findings of the trial court when those findings are clearly preponderated against the evidence in the record. Surely, where the trial court has declined to find an assignment in the face of a clear admission of an assignment, this court should reverse the lower court's finding.



### POINT III

THE COURT MANIFESTLY MISAPPLIED THE LAW TO THE FACTS OF THIS CASE.

In light of the clear testimony of an assignment, it was manifestly improper for the trial court to allow judgment for the plaintiff-respondent in the amount of all the arrearages, including claims assigned to the State of Oregon.

A. An Assignor is not entitled to sue on assigned claims.

The Utah Rules of Civil Procedure require that actions be "prosecuted in the name of the real party in interest". U.R.C.P. 17(a). This requirement has a long history in Utah law. In Wilson v. Kiesel, 9 Utah 377, 35 P. 488 (1894) this court noted that Utah statutes required "that every action must be prosecuted in the name of the real party in interest". 35 P.2d at 491, citing 2 Comp. Laws of Utah 1888 §3169. That case held that an assignor had no right to prosecute an action on an assigned claim.

That the assignee of a claim is the proper party to bring suit is affirmed in Lynch v. MacDonald, 12 Utah 2d 427, 367 P.2d 464 (1962). The reason for this rule is that an assignor has no further interest in the claim, and having received a valuable consideration for making the assignment, would be unjustly enriched if permitted to recover on a claim after having assigned it. The policy of the rule is especially applicable in this present case, where Mrs. Crompton has received support payments from the State of

Oregon in return for her assignment, and now seeks to recover arrearages for which the State of Oregon has made compensation. The State of Oregon has the right to those claims.

For an example of a case in which courts have barred assignors from suit, see Acme Blackshop Paving Co. v. Brown & Matthews, Inc., 31 A.D.2d 1042, 294 N.Y.S.2d 826 (1968).

Clearly, an assignor is not entitled to maintain an action on a claim in which the assignor has no interest.

B. Respondent assigned her rights to support prior to January, 1976, to the State of Oregon.

Respondent, by her own testimony, assigned her rights to support payments prior to January, 1976, to the State of Oregon, in return for state assistance payments. (R. 8:8-18) The right assigned was founded on the divorce decree filed July 9, 1969, and as modified February 1, 1974. Under the decree, periodic payments were to be made to the respondent Mrs. Crompton. In such a continuing obligation the right is not to be a lump sum but to the recurrent installments. The obligation can best be viewed as several obligations, with due dates falling monthly, one after another. While Mrs. Crompton is entitled to payments not assigned, she is not entitled to payments assigned, during her receipt of state payments. By her own admission she assigned all payments prior to January, 1976.

In a similar case, where there was an assignment of

assignor, this Court has adhered to the rule that the assignee is the proper party to sue on the assigned claims, Chesney v. District Court of Salt Lake County, 99 Utah 513, 108 P.2d 514 (1941). That rule should apply in this case.

C. Respondent is not entitled to amounts accrued prior to January, 1976.

Clearly in light of the admission of assignment, and in light of the law stating that an assignor has no right to bring an action on an assigned claim, it is manifestly apparent that the lower court misapplied the law to these facts. Where such is the case, this Court may correct the judgment below. See Elton v. Utah State Retirement Board, 28 Utah 2d 368, 503 P.2d 137 (1972) for a statement of this rule.

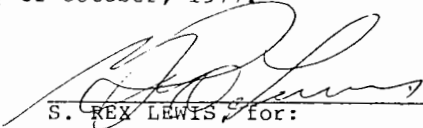
Appellant urges a correction of the findings to reflect the admitted assignments in favor of the State of Oregon, and a correction of the judgment to include the net amount accrued since January, 1976.

#### CONCLUSION

The evidence at trial could not have been more cogent in establishing an assignment of support payments in favor of the State of Oregon. Appellant raised his objection to respondent's assertion of assigned claims at all appropriate times. The equities certainly do not favor an award to Mrs. Crompton of a claim which she has transferred to the State of Oregon and for which she has received compensation.

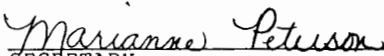
Reversal or amendment of the judgment to include only the amounts accrued since January 1976, less payments made, is respectfully requested.

DATED this 6th day of October, 1977.

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

MAILING CERTIFICATE

I hereby certify that on the 6th day of October, 1977, I personally mailed two (2) copies of the foregoing Brief of Appellant to Mr. D. John Musselman, Attorney for Respondent, 1325 South 800 East, Suite 310, Orem, Utah 84057.

  
SECRETARY