

1988

Vickie Burrow v. Mark Vrontikis : Brief of Appellant

Utah Court of Appeals

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Thomas Arnett, Jr.; Attorney for Appellant.

Jerome H. Mooney; Mooney & Associates; Attorney for Respondent.

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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---ooo0ooo---

VICKIE BURROW,	:	
	:	FINDINGS OF FACT AND
Plaintiff,	:	CONCLUSIONS OF LAW
	:	
vs.	:	
	:	Civil No. C83-3916
MARK VRONTIKIS,	:	
	:	JUDGE: J. Dennis Frederick
Defendant.	:	
	:	

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This matter came on regularly for hearing before the Honorable J. Dennis Frederick, Judge, this 7th day of December, 1987, on remand from the Court of Appeals for consideration of the application of laches and estoppel to Plaintiff's claim for support for the period prior to the commencement of the action in this matter; Plaintiff appearing in person and through her attorney, Thomas N. Arnett, Jr., and Defendant appearing in person and through his attorney, Jerome H. Mooney. The Court having reviewed the file in this matter and taken testimony now enters its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. The Court notes that in the original trial in this matter conducted on the 13th day of August, 1984, that the Court expressed its concern with the inordinate delay of the Plaintiff in making her claim in this matter and for the impact of that delay on the Defendant.

2. That said delay extended from March of 1976 when the parties met and discussed the condition of the Plaintiff until the Plaintiff filed the instant action in May of 1983 which was prompted by support requirements from her then current husband due to a then recent separation.

3. That at the time of the original hearing this Court was bound by the Utah Supreme Court case of Zito v. Butler, which prohibited the application of laches in paternity actions. This case has now been overruled by the Utah Supreme Court in the case of Borland v. Chandler, which served as a basis for the reversal and remand in the instant case by the Court of Appeals with instructions to the application of laches and estoppel to the Plaintiff's claim.

4. Plaintiff in the instant action engaged in an unreasonable delay in making claim. Delaying said claim for seven years. This delay additionally was more than just mere silence. Plaintiff made statements to a mutual friend of the parties which statements she knew or should have known would be communicated to the Defendant and which were, in fact,

communicated to the Defendant indicating that she wanted nothing further to do with the Defendant and the Defendant was to have no contact with her or the minor child.

5. That the Defendant relied upon these representations which were relayed to him and that the Defendant's reliance was not unreasonable under the circumstances.

6. That during the period of time after 1976 and prior to 1983, the Defendant entered into a marriage and incurred debts and obligations of his own.

7. The failure of the Defendant to pay support for the minor child in this matter during the period of 1976 through 1983 is a result of the actions and inducements of the Plaintiff. To enforce the obligation for this period against the Defendant would create an injustice.

8. The obligation represented by the judgment in the amount of \$7,200.00 for the period prior to May, 1983, should be barred by the equitable doctrines of laches and/or equitable estoppel.

CONCLUSIONS OF LAW

1. Equity should be applied in actions to prevent injustices including actions for claims in paternity.

2. Claim of the Plaintiff for back support prior to the filing of the instant action should be and is barred by the doctrines of laches and/or equitable estoppel.

3. The judgment previously entered in the amount of \$7,200.00 for support prior to May of 1983 is set aside.

DATED this 5 day of JAN, 198~~7~~⁸.

BY THE COURT:

/s/ J. Dennis Frederick
J. DENNIS FREDERICK
District Court Judge

Approved as to form:

/s/ Thomas N Arnett
THOMAS N. ARNETT, JR.
Attorney for Plaintiff

DJJVRONT

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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---ooo0ooo---

VICKIE BURROW,	:	
	:	O R D E R
Plaintiff,	:	
	:	
vs.	:	
	:	Civil No. C83-3916
MARK VRONTIKIS,	:	
	:	JUDGE: J. Dennis Frederick
Defendant.	:	
	:	

---ooo0ooo---

The above-entitled action came on regularly for hearing on the 7th day of December, 1987. Plaintiff appearing in person and through her attorney, Thomas N. Arnett, Jr., and Defendant appearing in person and through his attorney, Jerome H. Mooney. The Court having heard the testimony of the parties, reviewed the file in the instant matter and heretofore made and entered its Findings of Fact and Conclusions of Law; now, therefore Orders as follows:

1. That portion of the original judgment outlined in Paragraph 6 in the amount of \$7,200.00 is set aside. The balance of the previous judgment remains in full force and effect.

DATED this 5 day of JAN, 198~~7~~⁸.

BY THE COURT:

/s/ J. Dennis Frederick
J. DENNIS FREDERICK
District Court Judge

Approved as to form:

/s/ Thomas Arnett
THOMAS N. ARNETT, JR.
Attorney for Plaintiff

DJJVRONT

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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VICKIE BURROW,)
)
) Civil No. C83-3916
Plaintiff,)
) REPORTER'S TRANSCRIPT
vs.) OF PROCEEDINGS
)
MARK VRONTIKIS,)
)
Defendant.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Before The Honorable J. Dennis Frederick on
Monday, December 7, 1987

For the Plaintiff: THOMAS N. ARNETT, JR.
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I N D E X

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1 MR. ARNETT: Yes, your Honor.

2 THE COURT: Mr. Mooney?

3 MR. MOONEY: Yes, your Honor.

4 THE COURT: Very well. If you gentlemen, Counsel,
5 have any stipulations to present with regard to evidence
6 before this Court in the form of a transcript or prior
7 hearings, I would appreciate that at this time.

8 MR. ARNETT: Your Honor, very briefly, I believe that
9 following our discussion in chambers, apparently the
10 original transcript is not before the Court at this time.
11 I believe that Mr. Mooney and I can stipulate that certain
12 facts were placed in evidence at the time of the previous
13 trial of this matter and are contained in the transcript.
14 Basically, those facts are that the Plaintiff and Defendant
15 had a dating relationship, that in approximately February
16 or March of 1976 the Plaintiff telephoned the Defendant,
17 asked him to come to her apartment, that there they had a
18 discussion wherein she informed him that she believed that
19 she was pregnant, that both parties testified not identically
20 but I believe in a similar fashion that they discussed the
21 various options available to them. I think they both agreed
22 that the issue of marriage was discussed, not as though
23 either of them wanted to but that it was not a viable option.
24 I believe the Plaintiff testified that he -- that the
25 Defendant offered money for an abortion. I believe that the

1 Defendant denied that.

2 I believe they both testified that the Defendant could
3 make no commitment to the Plaintiff at that time and
4 therefore, there were no further discussions between the
5 Plaintiff and Defendant. In fact, I believe that the
6 Defendant's testimony was that he did not see the Plaintiff
7 again or have any contact with her until January of 1983.
8 I believe the Plaintiff testified that she saw the
9 Defendant once at a party but had no conversation with him,
10 and I believe that we want to offer maybe some of that,
11 some supporting evidence along those lines and a little
12 additional evidence concerning that issue.

13 THE COURT: Do you concur with the statement of
14 stipulation, Mr. Mooney?

15 MR. MOONEY: Largely, your Honor. I don't think the
16 subject of money was discussed with regards to abortion
17 being an option. Abortion is an option that was discussed
18 and it was determined earlier in that conversation that due
19 to religious grounds, that was not a viable option, and they
20 dismissed that as a matter of discussion.

21 Additionally, I believe the testimony previously
22 showed from and after that point-in-time Mr. Vrontikis had
23 entered into various types of indebtedness, had subsequently
24 been married and had in fact just had a new child at or
25 about the time that he was notified of the existence of her

1 claim with respect to this child and the indebtedness that
2 he had entered and those decisions he had made had all taken
3 place ~~in that hiatus at that point in time~~, but she had
4 communicated to him that she didn't want contact with him
5 and we proceeded in this matter and that was his testimony.

6 THE COURT: Do you concur in the additional statement
7 Mr. Arnett?

8 MR. ARNETT: No, I do not, your Honor. If I may
9 clarify, I said that my client testified at the previous
10 hearing about the money for the abortion, not that the
11 Defendant agreed with that.

12 I would refer to page 5 of the transcript, line 20,
13 and her answer, quote, "He offered to pay me some money to
14 go get an abortion, which I declined," unquote, so that was
15 the testimony.

16 Further, the last thing that Mr. Mooney said about
17 my client telling the Defendant that she didn't want any
18 further contact with him is not part of the evidence from
19 the previous hearing, from one to the other.

20 THE COURT: Very well, Counsel. I will accept the
21 stipulation, what you have stated up to the point that there
22 was no further contact between the parties after -- or until
23 January of '83 from the initial contact in February or
24 March of '76. Anything beyond that I will deem to be
25 disputed and you may present your evidence in that regard.

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Mr. Arnett, you may proceed.

MR. ARNETT: Thank you, your Honor.

The Plaintiff will call Vickie Burrow.

V I C K I E B U R R O W, having been duly
summoned and sworn as a witness for the Plaintiff, took the
stand and testified as follows:

DIRECT EXAMINATION

BY MR. ARNETT:

Q Would you state your name and address, please?

A Vickie Burrow, 4604 Thornwood Avenue, Salt Lake City.

Q You are the mother of a son named Chad, who I believe
was born on August 17 of 1976?

A Yes.

Q And Mark Vrontikis is the father of Chad?

A Yes.

Q You've heard the offer I made to the Court concerning
your testimony at the previous trial of this case. Was
that a correct summary of that?

A Yes.

Q Concerning this discussion you had with Mr. Vrontikis
wherein you informed him that you were pregnant, what
basically was his response to you when you told him that
news?

A He was not able to make any commitment to me or to the
child, if I were to have the child. He -- we discussed

1 because of the religious beliefs that it wouldn't work
2 out.

3 Q What wouldn't work out?

4 A The relationship between Mark and myself. He was
5 willing to offer some money for an abortion if I liked that.
6 That was about all.

7 Q How did what he told you make you feel?

8 A I felt very rejected. I was hurt. I felt that if he
9 was able to spend the time with me that we did spend with
10 one another, that it should have meant more than what it did.

11 Q Did you make any agreement with Mr. Vrontikis at
12 that time?

13 A No agreements.

14 Q Did you make any promise to him?

15 A No.

16 Q Following that discussion with him, did you make any
17 decisions concerning your future?

18 A Not with him. With my parents and myself I did.

19 Q And what was that decision?

20 A I decided to have the child and I had as much
21 support as I could from my parents. I worked myself to
22 support Chad and myself clear through the entire time,
23 until I married my present husband.

24 Q Until you married your present husband, who supported
25 Chad then?

1 A I did.

2 Q And after you married your present husband, who
3 supported Chad then?

4 A My husband and me.

5 Q Did you have other children as a result of that
6 marriage to your present husband?

7 A Yes.

8 Q How many?

9 A Three.

10 Q Did you and your husband encounter any financial
11 difficulties?

12 A When I got married to Alan, I had outstanding bills
13 and within a matter of time, he wasn't able to keep our
14 budget going and we filed bankruptcy.

15 Q At the time that you filed bankruptcy, did you make
16 any requests to Mr. Vrontikis for money or support for
17 your son Chad?

18 A No.

19 Q Did you and your present husband ever separate?

20 A Yes.

21 Q Do you recall approximately when that occurred?

22 A In June '83.

23 Q 1983? Did that separation result in a filing for
24 divorce from your husband?

25 A Yes, it did.

1 Q As part of that divorce filing, was there any kind of
2 temporary order that the Court entered concerning your
3 husband and support?

4 A Yes, he had to pay child support on each of the
5 children. He had to pay any outstanding bills.

6 Q That did not include Chad, did it?

7 A No, it did not.

8 Q At that time, or is it at that time that you began
9 this proceeding against Mr. Vrontikis?

10 A Yes, it is.

11 Q Why did you begin it at that time?

12 A The Court suggested that I do.

13 Q Prior to the time that you consulted a lawyer about
14 filing the action against Mr. Vrontikis, were you aware of
15 specifically what your rights were against him?

16 A No, I wasn't.

17 Q You've already testified that you did not have any
18 further discussions with Mr. Vrontikis following this
19 meeting in March of 1976, correct?

20 A Yes.

21 Q Did you ever ask anyone to contact Mr. Vrontikis on
22 your behalf and relay any messages?

23 A No.

24 Q Through any intermediary did you ever make any
25 promise or agreement with Mr. Vrontikis?

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A No.

MR. ARNETT: That's all I have, your Honor.

THE COURT: You may cross-examine.

MR. MOONEY: Thank you.

CROSS-EXAMINATION

BY MR. MOONEY:

Q Ms. Burrow, do you know Mr. Snape?

A Yes, I do.

Q And do you recognize him in the courtroom here today?

A Yes.

Q And you knew him during this period of time?

A Yes.

~~Q He was a friend of both yours and Mr. Vrontikis?~~

A Yes.

Q And his wife was a close friend of yours?

A Yes.

Q And you were over at his house quite a bit of time during this period, were you not?

A Yes.

Q You don't recall asking him to tell Mr. Vrontikis to stay away from you, stay out of your life?

A I did not. ~~We talked about Mark, but I never gave him any instructions to give to Mark.~~

Q You didn't or you don't remember doing that?

A There was no reason for me to tell Mark to stay away.

1 Q So it's your testimony that you didn't do that, not
2 just that you --

3 A I did not tell Bill to give him any messages.

4 Q You previously stated in your testimony in the first
5 proceeding that you did not want Mr. Vrontikis in your life;
6 is that true?

7 A Well, I had no choice. He didn't want to be there
8 so --

9 Q You had one meeting with Mr. Vrontikis in March of
10 1976?

11 A Yes.

12 Q You called him up, you said, "I need to talk to you"?

13 A Yes.

14 Q You didn't call him up and say, "I'm pregnant, I
15 need to talk to you." You said, "I need to talk to you,"
16 right?

17 A Yes.

18 Q So he came over to your place, not knowing what it was
19 that you were going to talk to him about?

20 A Yes.

21 Q And at that meeting you dropped the bombshell on him
22 that you believed that you were pregnant?

23 A Yes.

24 Q And at that point in time said, "What are we going
25 to do about it"?

1 A I said that?

2 Q Or suggested that the two of you needed to talk about
3 what was going to be done about it?

4 A Yes.

5 Q And the two of you talked about options, did you not?

6 A Uh-huh, yes.

7 Q One of the options was abortion; you said that was not
8 an option?

9 A Yes.

10 Q Because of religious purposes or reasons, right?

11 A Yes.

12 Q Okay. You talked about marriage and the two of you
13 decided that was not an option, didn't you?

14 A Yes.

15 Q And you talked about putting the child up for
16 adoption or having the child and keeping him?

17 A Yes.

18 Q ~~And you told Mr. Vrontikis you'd decided what you~~
19 ~~wanted to do with the child at that point?~~

20 A Yes.

21 Q This whole meeting took about how long?

22 A I don't recall.

23 Q Half an hour?

24 A I do not know.

25 Q An hour?

1 A I do not know.

2 Q Not all afternoon, certainly.

3 A No, it was an evening meeting.

4 Q So not all evening even?

5 A No. He left.

6 Q He didn't exactly have a long time to think about
7 what you were going to talk about before you got there,
8 did he?

9 A No.

10 Q Did you expect Mr. Vrontikis to walk in and say,
11 "Let's get married"?

12 A No, I didn't.

13 Q And you decided on that occasion that you didn't
14 want anything more to do with Mr. Vrontikis?

15 A No, not at that time.

16 Q At some later time you decided you didn't want
17 anything to do with Mr. Vrontikis?

18 A When he left the house, he told me he was -- did not
19 want -- was not willing to make any commitments for me or
20 the child.

21 Q At that point?

22 A At that point.

23 Q And you never talked to him again?

24 A Yes, I seen him one other time. I was about five
25 months pregnant and he was coming into Mr. Snape's house

1 and -- as I was leaving Mr. Snape's house, and we saw each
2 other briefly, how are you, and that was all.

3 Q You didn't talk?

4 A Very briefly.

5 Q Hello?

6 A Yes.

7 Q You didn't mention that contact in the previous
8 hearing.

9 A I believe I did.

10 Q Is that the party you referred to?

11 A There was never a party.

12 Q Other than that, after that, you didn't see him again?

13 A Correct.

14 Q Until these court proceedings.

15 Now, you did in fact support the child after the child
16 was born; you decided to keep the child, didn't you?

17 A Yes.

18 Q And the child was cared for during that period of time?

19 A Yes.

20 Q When you accumulated some of these debts, did you ever
21 call Mr. Vrontikis up and say, "I need some money for some
22 of my debts"?

23 A No.

24 Q Did you ever call him up or send anybody over to see
25 him and say, "I need some help with this child"?

1 A No.

2 Q Did you ever send him any pictures of the child?

3 A No.

4 Q Ever say, "You ought to come see your child"?

5 A I never had any contact with him.

6 Q No contact at all?

7 A No.

8 Q And so when you had debts, you just paid the debts?

9 A Yes.

10 Q Or ultimately filed a bankruptcy proceeding to remove

11 the debts?

12 A Well, I still paid on them. It wasn't a full

13 bankruptcy.

14 Q It was a Chapter 13, right?

15 A Yes.

16 Q So you paid a percentage of the debts?

17 A Yes.

18 Q What percentage did you pay of the debts?

19 A I don't -- ten percent on the dollar? I'm not sure

20 what it was.

21 Q Something like that?

22 A Something.

23 Q And that's all completed and finished and done,

24 isn't it?

25 A Yes.

1 Q Now, this time that you separated from your husband
2 in June of 1983, that's the point in time that you actually
3 filed the proceedings because you desired support; is that
4 correct?

5 A I don't know when I started the proceedings. It's
6 been a long time ago.

7 Q But it was June of 1983 when you decided that you
8 needed to have support from Mr. Vrontikis?

9 A Yes. Well, when it was brought to my attention from
10 all the officials I was dealing with at that time that I
11 had another child that needed help also.

12 Q And so that's when you decided to institute this
13 proceeding?

14 A Uh-huh (affirmative).

15 MR. MOONEY: No more questions.

16 THE COURT: Anything further, Mr. Arnett?

17 MR. ARNETT: Yes, your Honor.

18 REDIRECT EXAMINATION

19 BY MR. ARNETT:

20 Q Concerning Counsel's question to you about your
21 conversations with Mr. Snape, did you in fact meet with he
22 and his wife following the meeting with Mr. Vrontikis?

23 A We continued to see each other.

24 Q Would there have been occasions where what occurred
25 with Mr. Vrontikis would have been discussed?

1 A Yes.

2 Q Would there have been occasions where you discussed
3 your decision about what you were going to do with Mr.
4 Snape and his wife?

5 A Yes.

6 Q But did you ever ask Mr. Snape to specifically
7 go to Mr. Vrontikis and convey a message?

8 A No.

9 MR. ARNETT: Thank you. That's all I have.

10 MR. MOONEY: No more questions.

11 THE COURT: You may step down, Ms. Burrow.

12 MR. ARNETT: Your Honor, the Plaintiff would call
13 Mark Vrontikis.

14 THE COURT: All right.

15 M A R K V R O N T I K I S, having been duly
16 summoned and sworn as a witness for the Plaintiff, took the
17 stand and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ARNETT:

20 Q Would you state your name and address, please?

21 A Mark Vrontikis, 2071 Worchester Drive, Salt Lake City.

22 Q Mr. Vrontikis, is it correct that you have
23 previously agreed or stipulated in this court that you are
24 the father of the minor child Chad, Vickie Burrow's son?

25 A I believe I did in the testimony, yes.

1 Q You've been here during this hearing today; is that
2 correct?

3 A Yes, I have.

4 Q And you've heard what's been said by both myself
5 and Mr. Mooney and Vickie Burrow about what happened back
6 when she found out she was pregnant; is that correct?

7 A That's correct.

8 Q Is it correct that there was such a discussion
9 between Ms. Burrow and yourself in early 1976 about her
10 being pregnant?

11 A Yes, it is correct.

12 Q Do you recall what your response was when she
13 informed you that she was pregnant?

14 A Yes. At the time I was extremely astonished and at
15 that point I, you know, I think Mr. Mooney used the term
16 bombshell, and it was pretty difficult for me to react at
17 that point because I had no time to consider various
18 possibilities.

19 Q Were in fact various possibilities discussed between
20 you and Ms. Burrow?

21 A Yes, they were.

22 Q For example?

23 A They were discussed casually, you know, it isn't as
24 though that we were talking in any way, shape or form of
25 making any kind of decision because at that time she was not

1 even -- she was not even -- did not even receive confir-
2 mation from the doctor that she was pregnant at that time.
3 Apparently she had a couple of -- one test that came out
4 positive and another test that came out negative, or
5 something like that. She seemed to be fairly certain that
6 she was. However, there was not conclusive evidence from
7 her doctor at that time that she even was pregnant, nor
8 at that time was I convinced that I was the father, so
9 certainly because we were not meeting on a regular basis,
10 there was no agreement between she and I, that I wasn't
11 seeing other people or that she wasn't seeing other people,
12 and there was no relationship there that had perpetuated
13 such that I would be willing to make any kind of commitments
14 as to what was going to happen at that point.

15 Q Concerning the options that you've told us were
16 discussed between you however casually, was an abortion one
17 of those options?

18 A It was mentioned, yes.

19 Q Was marriage one of those options?

20 A It was mentioned by her, but it would not have been
21 an option that I would have, you know, would have enter-
22 tained at any point there. It was mentioned, yes.

23 Q Was the possible option of Ms. Burrow having the child
24 or giving it up for adoption discussed?

25 A All three of them were discussed, as I say, casually.

1 It isn't as though, you know, were for -- for the reasons
2 that I mentioned to you, that there was any reason to come
3 to any conclusion or perpetuate the conversation because
4 we weren't even sure she was pregnant.

5 Q Was the option of Ms. Burrow having the child and
6 keeping the child discussed?

7 A All the options you mentioned were discussed. I
8 don't recall to what degree or how long one versus another.

9 Q You've already stated and I just want to clarify
10 this, that you were not in a position to make any commit-
11 ment to Ms. Burrow or the child; is that correct?

12 A Based upon the fact that, as I say, there was not -- how
13 could I make a commitment to a child at that time when I
14 didn't even know she was pregnant, nor was I even concerned
15 or -- I mean, convinced that even if she was, that I was
16 the father. There's no way that I would be in a position
17 to make any kind of commitment.

18 Q Did you in fact make any commitments to her at that
19 time?

20 A I wasn't asked to.

21 Q Did you make any?

22 A No.

23 Q Did she make any commitment to you?

24 A I was -- the only thing that she told me was is that
25 her parents told her when she was talking about, you know,

1 she said that she had discussed with her parents the
2 option. She says, "And my parents told me that -- not to
3 marry you," and in subsequent conversations that I had
4 later with Mr. Snape --

5 Q Wait a minute. Before you get to that, I just want
6 to know about this conversation with Ms. Burrow. That's
7 the only thing she said then, that her parents had
8 advised her not to marry you?

9 A As I recall. This is a conversation of quite some
10 years ago.

11 Q I understand.

12 A But I don't -- that's the best of my recollection.

13 Q Following this discussion with Ms. Burrow, did you
14 leave her apartment?

15 A Yes.

16 Q And did you ever see her again until January 1983?

17 A No, I did not.

18 Q Did you ever have any conversations with her until
19 January 1983?

20 A Not that I can remember at all.

21 Q Did you make any attempts to have any conversations
22 with her?

23 A I had no reason to.

24 Q If you had wanted to locate her and have a conver-
25 sation with her, could you have done so?

1 A I don't know. I don't know if she was listed in the
2 book or if she was in town or what the, you know, what
3 the situation is. She was married or single or -- I never
4 really thought about it. Whether I had been able to or
5 not, I don't know.

6 MR. ARNETT: That's all I have at this time, your
7 Honor.

8 THE COURT: Mr. Mooney?

9 CROSS-EXAMINATION

10 BY MR. MOONEY:

11 Q Mr. Vrontikis, did you keep tabs on what happened
12 with regard to Ms. Burrow after that occasion?

13 A There again, no, because I'd -- for all I knew, I
14 wasn't the father of the child, or whatever happened, so
15 I had no reason to contact her.

16 Q So you did not know whose child it was?

17 A That's correct.

18 Q Now, you did have a mutual friend?

19 A Yes, I did.

20 Q And that was whom?

21 A Bill Snape.

22 Q And did you have some communications through Mr.
23 Snape?

24 A Yes, I did.

25 Q And what communications were those?

1 A He communicated with me after he and her discussed --
2 as I say, Bill's previous wife was a very good friend of
3 Vickie's. Bill informed me that she wanted to have nothing
4 to do with me. She didn't want anything from me. She
5 never wanted to see me again.

6 Q Did you rely upon that communication?

7 A Certainly. They were -- his ex-wife and Vickie were
8 very, very, very -- they were best of friends, and so
9 after hearing that, I did not contact or have any reason to
10 contact or do anything beyond that point.

11 Q You respected what you believed to be her choice?

12 A Yes.

13 Q And during that period of time, were you making a lot
14 of money?

15 A Not a lot of money. I was making some money, but I
16 wasn't making a lot of money.

17 Q And did you subsequently decide to get married?

18 A Yes.

19 Q When did you decide to get married?

20 A I got married in 1979, November of 1979.

21 Q So several years after this?

22 A Yes.

23 Q And did you operate on a budget?

24 A Certainly.

25 Q Planned out that budget?

1 A Uh-huh (affirmative).

2 Q Did you have debts and obligations?

3 A Not only personal but also business obligations.

4 Q Did you pay those obligations?

5 A I'd have to in order to stay in business.

6 Q And budgeted your contribution to those based upon
7 what you had available?

8 A Certainly.

9 Q Built up any big savings during this period of time?

10 A No, no, I didn't because of my obligations, not only
11 personal but also in business. I didn't have any kind of
12 savings that would be of any consequence.

13 Q So you didn't budget any \$100 a month or \$150 a month
14 or \$200 a month or any amount toward caring for any child
15 because you didn't know whether it was yours or not?

16 A Not only didn't I, but had I have thought that some-
17 thing like that was lurking in the background, I could have
18 changed my personal and business plans to be able to deal
19 with that, and then all of a sudden when I planned my
20 financial future accordingly and then something like this
21 happens, it would have altered several of the decisions that
22 I would have made, you know, from 1976 to 1983 certainly.

23 Q Would it present a hardship to you to suddenly come up
24 with a lump sum of \$7200 plus interest?

25 A I don't think there's anyone that wouldn't say that

1 it wouldn't present a hardship.

2 Q You'd have to borrow that money someplace?

3 A Certainly.

4 Q And that would be difficult?

5 A Yes, it would.

6 MR. MOONEY: That's all I have.

7 THE COURT: All right. Anything further, Mr. Arnett?

8 MR. ARNETT: Yes, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. ARNETT:

11 Q You said you did not know if you were the father of
12 this child back then; is that correct, Mr. Vrontikis?

13 A That's correct.

14 Q What did Ms. Burrow claim?

15 A She claimed that I was.

16 Q Okay. Mr. Snape and yourself have remained friends
17 since the times that you've been discussing, all the way
18 through the present; is that correct?

19 A That's correct.

20 Q And how long was he married to his former wife?

21 A You know, I -- I don't, to be honest with you.
22 What date they were -- that they separated, I don't know.
23 I can't tell you.

24 Q When Mr. Snape indicated to you that he understood
25 that Vickie Burrow wanted no contact with you, didn't want

1 you in her life, did he tell you that she had asked him to
2 relay that message to you?

3 A As a matter of fact, she did not even want him to
4 tell me -- at one time I was with Bill and I could tell that
5 he had some information that he so badly wanted to tell me,
6 yet he was asked not to and, you know, I kept pumping him,
7 you know, "What are you trying to tell me? What are you
8 trying to tell me?" And he -- I assumed that he may
9 have -- Vickie may have mentioned something to him, but I
10 assumed that Bill felt it was her position to tell me rather
11 than his and I didn't even -- I had no idea even from that
12 conversation. The last thing that I would have thought,
13 that this is what it -- that this is what it pertains to.

14 Q You talked about decisions you made from 1976 through
15 1983 --

16 A Yes.

17 Q -- concerning your finances; is that correct?

18 A Yes.

19 Q Did you buy a home during that time?

20 A I purchased a home in 1979, yes.

21 Q And did you subsequently sell that one and buy
22 another home?

23 A No.

24 Q Okay, so you're still in that same home?

25 A Yes.

1 Q And did you buy a boat during that time period?

2 A Yes, I did.

3 Q Did you take vacations during that time period?

4 A I took vacations during that time period. However, the
5 vacations were -- a lot of them were incentives that I
6 received through people that we deal with. They weren't
7 ones that I had to come up with a whole lot of cash on.
8 They were ones that we would receive as incentives from
9 various manufacturers or vendors or something.

10 Q Did you buy and sell automobiles during that time
11 period for your personal use?

12 A From -- I think that from 1970 -- from what year to
13 what year now?

14 Q '76 through '83.

15 A I purchased a vehicle in -- I think during that time
16 period, I would have purchased a vehicle, yeah.

17 Q And did you thereafter have a company vehicle?

18 A Did I thereafter have a company vehicle?

19 Q Company car. Were you provided with an automobile
20 from your employment?

21 A No.

22 MR. ARNETT: May I have one moment, your Honor?

23 THE COURT: You may.

24 MR. ARNETT: Thank you.

25 Q (By Mr. Arnett:) You testified that you married in

1 1979 --

2 A Yes.

3 Q -- is that correct?

4 A Yes.

5 Q Is your wife presently employed?

6 A Yes, she is.

7 Q And where does she work?

8 A She works part-time for Pete Vrontikis & Son.

9 Q What does she do for them?

10 A She works in sales. Because we have a family, of
11 course, she works limited hours.

12 MR. ARNETT: That's all I have.

13 RE-CROSS-EXAMINATION

14 BY MR. MOONEY:

15 Q Mr. Vrontikis, when you went on these vacations or
16 these promotional trips, you spent money, didn't you?

17 A Yes, but very little. They were -- I did spend money
18 for them. The trips were, you know, incentive trips, but
19 I did have to spend incidental expenses while I was there.

20 Q And you had to eat and you went out to restaurants
21 and --

22 A That's correct.

23 Q This was money that you no longer had after you
24 spent it?

25 A Certainly.

1 Q Money that you benefitted from at that time?
2 A Yes.
3 Q And you got some enjoyment from it?
4 A Uh-huh (affirmative).
5 Q But that was money that you figured was disposable
6 and you didn't have to use for your debts and obligations;
7 isn't that correct?
8 A That's correct.
9 Q And in fact, there were probably a lot of expenditures
10 that you might have made that could have been used for
11 other purposes had you known you had other obligations.
12 A Certainly.
13 MR. MOONEY: No more questions.
14 MR. ARNETT: Nothing further.
15 THE COURT: All right, you may step down, Mr.
16 Vrontikis.
17 MR. ARNETT: Your Honor, the Plaintiff would rest.
18 THE COURT: All right.
19 MR. MOONEY: We would call Mr. Snape.
20 THE COURT: All right.
21 W I L L I A M R O B E R T S N A P E , J U N I O R,
22 having been duly summoned and sworn as a witness for the
23 Defendant, took the stand and testified as follows:
24 ---
25 ---

1 A Oh, that's a long time ago. I don't remember the
2 year. I really don't.

3 Q Do you recall whether it would have been within one
4 year or two years of the birth of the child?

5 A That I talked to her after?

6 Q After the birth of the child.

7 A Oh, after the birth I talked to her quite regularly
8 every -- all the time, probably on a monthly basis up until
9 I was divorced.

10 Q Was there a conversation that dealt with the child
11 and Mr. Vrontikis?

12 A Many.

13 Q And was your ex-wife usually present at those?

14 A Yes.

15 Q Anybody else usually there?

16 A No, Vickie usually just came over to our house.

17 Q Did she indicate what her desires were with respect
18 to Mr. Vrontikis?

19 A Yes.

20 Q What did she tell you?

21 A Well, under no uncertain terms did she want -- after
22 they had had their discussion, under no uncertain terms
23 did she want to have anything to do with him or see him
24 again. She wanted to handle it herself.

25 Q Did she ever ask you to communicate that to Mr.

1 Vrontikis?

2 A I don't know if she asked me to do a direct communi-
3 cation. It was kind of a -- tell him, tell him I don't
4 want to see him again, you know.

5 Q So she did not tell you what to say specifically?

6 A No, I just relayed the fact that she didn't want to
7 see or talk to him any further.

8 Q Now, when she had these communications with you, did
9 she know you were in communications with Mr. Vrontikis?

10 A Sure, yes.

11 Q She knew you were still a friend of his?

12 A Yes.

13 Q And in fact, did that create some logistical problems
14 around your household?

15 A It did. Vickie came over, she traveled to Idaho
16 with us, I remember, while she was pregnant, with my
17 ex-wife. That's where her folks lived and yet, I was still
18 friends with Mark. I was in the middle.

19 Q Did she have any desires with respect to Mark coming
20 over to your house while she was there?

21 A No.

22 Q Do you ever recall an occasion when they were both
23 there at the same time?

24 A I don't. She says there was a party where they crossed
25 as one came in and one went out, but I don't remember that.

1 Q Did you communicate to Mr. Vrontikis Ms. Burrow's
2 desires?

3 A Yes, I did.

4 Q What did you tell Mr. Vrontikis?

5 A That Vickie had said she no longer wanted to see
6 him, talk to him, that she was going to do this on her own
7 and didn't want him around.

8 Q And that's what you told him?

9 A Correct.

10 Q What did Mr. Vrontikis tell you?

11 A Fine. I mean, what can he say?

12 Q Did he tell you to tell anything to her?

13 A No.

14 Q Did he say he'd respect her wishes?

15 A Yes.

16 MR. MOONEY: No more questions.

17 THE COURT: All right. Mr. Arnett?

18 MR. ARNETT: Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY MR. ARNETT:

21 Q Mr. Snape, you've testified that Vickie would come
22 over and visit you and your wife; is that correct?

23 A Correct.

24 Q And occasionally there were discussions that
25 included comments about Mr. Vrontikis?

1 A Uh-huh (affirmative).

2 Q Did she relate the discussion she had with Mr. Vrontikis
3 to you and your wife?

4 A Yes.

5 Q Was it your impression that she had a fairly strong
6 reaction about that discussion?

7 A Yes.

8 Q And that was her reason for not wanting to see Mr.
9 Vrontikis?

10 A I don't know what her reasons would have been, but
11 after that, she no longer wanted to see him.

12 Q Okay. Did she feel pretty strongly about it?

13 A Definitely.

14 Q And she told you and your wife this?

15 A Yes.

16 Q And you've already testified that she had not
17 specifically asked you to convey a certain message to Mr.
18 Vrontikis?

19 A I don't remember her specifically saying, "Tell him
20 this."

21 Q Okay, but you felt that Mr. Vrontikis deserved to
22 know?

23 A He deserved to know and the way that she put it
24 across to me it was like, I want you to tell him, but not a
25 specific -- I mean, I wouldn't want to repeat -- I can

1 remember pretty much her exact words but --

2 Q But she didn't ask you to go to Mark?

3 A No, she ~~did not~~ come out and say, "Go to him and
4 say this."

5 Q You assumed that?

6 A Right.

7 MR. ARNETT: All right. Thank you. That's all I
8 have.

9 REDIRECT EXAMINATION

10 BY MR. MOONEY:

11 Q Mr. Snape, what were those words, the best you
12 remember?

13 A "I'd like to tell the son of a bitch I don't want
14 to see him ever again."

15 Q And was it your impression that she wanted him to
16 have no role in the raising of this child?

17 A Yes. She asked -- I remember when -- when the baby
18 was born, I was going to tell Mark and my wife insisted
19 that ~~I didn't~~ because supposedly Vickie had told her she
20 didn't want Mark to know he'd been born.

21 Q So you passed on no information about what was
22 happening with this child?

23 A No, I felt it better that I did not. If she wanted
24 him to know or he wanted to find out, that was up to them.

25 MR. MOONEY: Thank you. Nothing further.

1 MR. ARNETT: Nothing further.

2 THE COURT: You may step down, Mr. Snape.

3 MR. MOONEY: Nothing further, your Honor.

4 THE COURT: Anything further, Counsel?

5 Mr. ARnett?

6 MR. ARNETT: No, your Honor. I'd prefer a chance to

7 argue it.

8 THE COURT: You may. Do you wish the Reporter or do

9 you waive the Reporter for purposes of the argument?

10 MR. ARNETT: I would waive.

11 MR MOONEY We would waive, your Honor.

12 THE COURT: Very well.

13 (Whereupon, arguments were heard.)

14 THE COURT: Counsel, the Court having now heard

15 arguments, as well as the evidence in this matter, I'm

16 prepared to rule.

17 I think it is appropriate to observe that when the

18 matter was originally tried, I was quite concerned about the

19 inordinate time delay between the Plaintiff's observation

20 that she was pregnant and her filing of this action, the

21 discussion that the parties had regarding the alternatives

22 available to them in March or February of 1976, the child

23 having been born thereafter, sometime approximately in

24 August of '76. The instant case was not filed until March

25 24th of 1983, admittedly by the Plaintiff, as a result of

1 some difficulty in terms of receiving support from her
2 then husband, pursuant to her separation at that time.

3 At the time that we tried the matter, I stated on the
4 record my serious concern that over six years had elapsed
5 since the child was born at least until the case was filed
6 before any serious claim was made with regard to support for
7 this child. While at the time the case was tried there
8 existed a case in Utah that bound this Court, the Zito
9 case, which allowed for no evidence regarding laches and
10 estoppel in statutory actions such as paternity, that case,
11 as good fortune for the defense would have it, was
12 reversed by the Supreme Court while this case was on appeal.
13 The case that reversed the Zito case, Borland versus
14 Chandler, provides that equity is to apply in all actions,
15 whether they're legal, statutory or equitable, to prevent
16 an injustice from occurring.

17 In this instance, it seems to me that the unreasonable
18 delay in the filing of the action did result in an injustice
19 to the Defendant. We have here more than just delay. We
20 have here more than mere silence. We have here an
21 affirmative statement or statements regarding the
22 Plaintiff's desires to have nothing further whatsoever
23 to do with the Defendant, which either advertently or
24 inadvertently were communicated to the Defendant, upon
25 which he relied, in my view, not unjustifiably.

1 At the time that the Plaintiff made the statement
2 that she did, either to or in the presence of Mr. Snape,
3 she knew or should have known that that would be communi-
4 cated to the Defendant, and I am of the view that the
5 Defendant's becoming privy to those statements did not
6 unreasonably rely upon them in planning his own life
7 accordingly.

8 The Defendant in the interim married, incurred debts
9 and obligations on his own, some four years prior to the
10 time this action was ever filed.

11 The failure, therefore, of the Defendant to pay, in
12 my judgment, was based upon inducements or actions of the
13 Plaintiff which to now require enforcement would result
14 in an undue prejudice on the part of the Defendant.

15 I therefore am of the view that laches and/or equitable
16 estoppel bar the claim for prior support obligations in the
17 amount of the \$7200 and that portion of the judgment
18 heretofore granted is set aside.

19 Mr. Mooney, I will ask you to do the Findings and
20 Conclusions and Judgment in accordance with this ruling,
21 submit them to Mr. Arnett for his approval as to form.

22 MR. MOONEY: I will do so.

23 THE COURT: Very well. Thank you, Counsel.

24 MR. ARNETT: Thank you, your Honor.

25 THE COURT: Court will be in recess.

* * *

