

1988

Vickie Burrow v. Mark Vrontikis : Brief of Respondent

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Thomas Arnett, Jr.; Attorney for Appellant.

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

Recommended Citation

Brief of Respondent, *Vickie Burrow v. Mark Vrontikis*, No. 880098 (Utah Court of Appeals, 1988).
https://digitalcommons.law.byu.edu/byu_ca1/882

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 Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU

50

.A10

DOCKET NO.

880098

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

-----ooo0ooo-----

VICKIE BURROW,

Plaintiff and
Appellant,

vs.

MARK VRONTIKIS,

Defendant and
Respondent.

Case No. 88-0098CA

-----ooo0ooo-----

BRIEF OF RESPONDENT

JEROME H. MOONEY
MOONEY & ASSOCIATES
236 South 300 East
Salt Lake City, Utah 84111
Telephone: (801) 364-5635
Attorney for Respondent

THOMAS ARNETT, JR.
310 South Main Street, Suite 1309
Salt Lake City, Utah 84101
Telephone: (801) 363-4600
Attorney for Appellant

FILED

SEP 23 1988

UTAH COURT OF APPEALS

STATE OF UTAH

1
 2
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525

JEROME H. MOONEY
MOONEY & ASSOCIATES
236 South 300 East
Salt Lake City, Utah 84111
Telephone: (801) 364-5635
Attorney for Respondent

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

TABLE OF CONTENTS

	Page(s)
TABLE OF AUTHORITIES	- ii -
JURISDICTION AND NATURE OF THE PROCEEDINGS	1
ISSUES PRESENTED ON APPEAL	1
CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS	2
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
SUMMARY OF ARGUMENT	4
ARGUMENT	
POINT I	
EQUITABLE ARGUMENTS ARE AVAILABLE DEFENSES IN PATERNITY ACTIONS	5
POINT II	
THE TRIAL COURT WAS WITHIN ITS DISCRETION TO FIND A FACTUAL BASIS FOR THE APPLICATION OF THE DOCTRINES OF LACHES AND/OR ESTOPPEL	6
A. Laches	8
B. Estoppel	9
CONCLUSION	12

TABLE OF AUTHORITIES

<i>Borland v. Chandler</i> , 733 P.2d 144 (Utah 1987)	1,2,4,5,6,7
<i>Zito v. Butler</i> , 584 P.2d 868 (Utah 1978)	2,5,6
<i>Nielson ex rel. Department of Social Services v. Hansen</i> , 564 P.2d 113, 114 (Utah 1977)	6
<i>Jackson v. Jackson</i> 617 P.2d 338, 140 (Utah 1980)	7
<i>Dang v. Cox Corporation</i> , 655 P.2d 658, 660 (Utah 1982)	7
<i>McBride v. McBride</i> 581 P.2d 996, 997 (Utah 1978)	7
<i>State v. Gabaldon</i> , 735 P.2d 410 (Utah App. 1987)	7
<i>Wood v. Weenig</i> 736 P.2d 1035 (Utah App. 1987)	7
<i>Baggs v. Anderson</i> , 528 P.2d 141 (1974)	7
<i>Larsen v. Larsen</i> , 300 P.2d 596 (1956)	7
<i>Leaver v. Grose</i> , 610 P.2d 1262 (1980)	7
<i>Hunter v. Hunter</i> , 669 P.2d 430, 432 (1983)	9, 10
<i>Adams v. Adams</i> , 593 P.2d 147 (1979)	9
<i>Wasescha v. Wasescha</i> , 548 P.2d 895 (1976)	11

-----000000-----

[illegible]

-----000000-----

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

2. Is there a factual basis for the trial court's determination that the doctrines of laches and/or equitable estoppel apply in the instant action.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES,
RULES AND REGULATIONS

78-45a-1. Obligations of the father.

The father of a child which is or may be born out of wedlock is liable to the same extent as the father of a child born in wedlock, whether or not the child is born alive, for the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support and funeral expenses of the child. A child born out of wedlock includes a child born to a married woman by a man other than her husband

STATEMENT OF THE CASE

Plaintiff filed an action in paternity based upon Utah Code Ann. 878-45a-1 et. seq. Defendant admitted paternity but argued that any payments for support prior to the filing of the Complaint in the instant case were barred by the equitable doctrines of laches and/or estoppel. At the time of trial, the Court entered an Order for ongoing support for the Plaintiff and provided for back support distinguishing between that period prior to the filing of the action and that period from the filing of the action to the date of trial. The Court ruled that although the Plaintiff had engaged in conduct which may have met the definitions of laches and/or estoppel that it was barred by the then present case law from considering the effect of such conduct. A \$7,200.00 judgment thus arose in favor of the Plaintiff and against the Defendant for support prior to the filing of the paternity action.

The Defendant appealed arguing that the case of *Zito v. Butler*, 584 P.2d 868 (Utah 1978) was bad law to the extent that it denied the application of the

equitable doctrines of laches and estoppels in statutory case. After briefing and prior to argument, the Utah Supreme Court decided the case of *Borland v. Chandler*, 733 P.2d 144 (Utah 1987) specifically confirming the position asserted by the Defendant. On the basis of the *Borland* case, this Court reversed the previous judgment and remanded the matter to the Third Judicial District Court for reconsideration of the issues of equitable estoppel and laches.

Upon remand, the District Court held an evidentiary hearing at which both Plaintiff and Defendant testified and testimony was taken from a mutual friend who had interacted with both of the parties during that period. Based upon the testimony received at the hearing, the Trial Court determined that the Plaintiff's claim for support prior to the filing of the paternity action was barred by the doctrines of laches and/or equitable estoppel. (Findings of Fact, Conclusions of Law attached hereto). From that Order Plaintiffs have appealed.

STATEMENT OF FACTS

Plaintiff and Defendant dated as high school students in the early part of 1976. While neither party considered the relationship "serious" it resulted in the unanticipated and unwelcome pregnancy of the Plaintiff. (TR. 3) ¹

Plaintiff and Defendant met to discuss the dilemma. That meeting was unsatisfactory from the point of view of the Plaintiff causing her to feel "rejected" and "hurt". (TR. 7) No agreement was reached between the parties at that time and there was no further direct contact between Plaintiff and Defendant until

1. All references in the Statement of Facts are to the reporters transcript of proceeding conducted before the Honorable J. Dennis Frederick on Monday, December 7, 1987.

some seven years later when the Plaintiff filed the instant action. (TR. 4, 7)

Plaintiff determined that she would have the child and raise the child herself independent of any interaction or role on the part of the Defendant. (TR. 7, 8)

The parties had a mutual friend by the name of William Snape who testified at the hearing. The Plaintiff indicated to Mr. Snape that after her meeting with Mr. Vrontikis, she under no uncertain terms wanted anything to do with Vrontikis; did not want to see him again; and wanted to handle the matter herself. (TR. 31) The Plaintiff knew that Mr. Snape was in contact with Mr. Vrontikis and Mr. Snape believed that she anticipated and desired that he pass that information to Mr. Vrontikis so that Mr. Vrontikis would leave her alone. (TR. 32) Mr. Snape communicated this information to Mr. Vrontikis who complied.

Mr. Vrontikis, having received this information, respected her desires and went on with planning his life not participating in the raising of this child, marrying, raising a family of his own and making financial commitments. (TR. 23, 24, 25) This continued for seven years until the Plaintiff decided she needed financial assistance and commenced the instant action claiming not only future support, but reimbursement for past support. (TR. 14, 15, 16)

SUMMARY OF ARGUMENT

1. The effect of the Utah Supreme Court decision in *Borland*, supra is to allow the equitable doctrines of laches and estoppel to be applied with equal force and effect in paternity actions as in other domestic cases.

2. The Trial Court properly found that the Plaintiff's claim for back support was barred by the equitable doctrines of laches and/or estoppel. The Trial Court

findings that the Plaintiff desired that there be no contact between her and the Defendant following the birth of the child, that she would raise the child independent of any role on the part of the Defendant including his assistance, that she expressed this desire to a third party who she knew to be in communications with the Defendant. And that she knew or should have known that her statements would be communicated to the Defendant. That he reasonably relied upon those statements are sufficient for application of laches and estoppel.

ARGUMENT

POINT I

EQUITABLE ARGUMENTS ARE AVAILABLE DEFENSES IN PATERNITY ACTIONS.

Appellant argues in her second point that this Court should limit the effect of *Borland v. Chandler*, supra, overruling the earlier incorrect doctrine of *Zito v. Butler*, supra, only to the extent that a Defendant has been prejudiced at trial. Clearly, *Borland* stands for the principle of equal application of equitable doctrine, including the full effect of laches and estoppel in paternity actions, just as previously available in other domestic matter:

The principle relied upon by the Plaintiffs has its roots in the common law distinction between law and equity. At common law, an equitable defense could not be raised to a legal action, and because a statutory action was legal in nature, equitable defenses would not apply. See Am. Jur. 2d equity §154 (1966). This seems to be the theory behind *Zito*, a per curiam opinion. However, Utah long ago abolished any formal distinction between law and equity. See Utah R.Civ. P.2. It is well established that equitable defenses may be applied in actions at law and that principles of equity apply wherever necessary to prevent injustice. (Citations omitted). Therefore, it is clear that under

appropriate circumstances, laches may bar an action for paternity. Even the majority opinion in *Nielsen ex rel. Department of Social Services v. Hansen*, 564 P.2d 1113, 1114 (Utah 1977), cited by *Zito* recognizes in dictum that laches might apply in a paternity action. Therefore, we conclude that to the extent that *Zito* stands for the proposition that an equitable defense is not available, it is an incorrect statement of law and is over-ruled. (footnote omitted). *Borland v. Chandler*, 733 P.2d. Id. at 146.

Thus, the argument advanced by Appellants herein is inconsistent with the clear intent of the Court. The principles of *Zito* were incorrect at the time the per curiam decision was announced. It was only a matter of time until the Court corrected the problem and restated the basic principle of law. Equitable defenses are available and may be raised by Defendants in all actions where they apply whether the action arises at common law or as a creature of statute.

Additionally, Appellant should be barred from challenging the effect of *Borland* in this case, at this time, in that this Court has already relied upon the decision in *Borland v. Chandler* to reverse and remand for consideration of the defenses of laches and estoppel which set the stage for the Trial Court ruling with which Appellant now takes issue. Plaintiff/Appellant took no exception to this Courts ruling at that time and is now bound by that position. The Trial Court properly followed the mandate of this Court and considered equitable defenses in this action.

POINT II

THE TRIAL COURT WAS WITHIN ITS DISCRETION TO FIND A FACTUAL BASIS FOR THE APPLICATION OF THE DOCTRINES OF LACHES AND/OR ESTOPPEL.

Appellants primary point is not founded in law but rather disputes the Findings of Fact issued by the Trial Court. It is a well settled standard of

appellate review that the trial court's determination of facts is entitled to considerable deference and should be disturbed only when necessary to prevent manifest injustice. *Jackson v. Jackson*, 617 P.2d 338, 140 (Utah 1980). The standard for review is that the Court should not disturb the Findings of Fact made below unless they appear to be clearly erroneous or against the weight of the evidence. *Dang v. Cox Corporation*, 655 P.2d 658, 660 (Utah, 1982); *McBride v. McBride*, 581 P.2d 996, 997 (Utah 1978). See also *State v. Gabaldon*, 735 P.2d 410 (Utah App. 1987); *Wood v. Weenig*, 736 P.2d 1035 (Utah App. 1987).

There is a distinction between current and future support due a child and a parents claim for reimbursement for past support provided. *Baggs v. Anderson*, 528 P.2d 141 (1974). Thus th claim for reimbursement of support is open to challenge based upon the conduct of the party making the claim. *Larsen v. Larsen*, 300 P.2d 596 (1956). These claims may be raised in equity and turn on the facts as decided by the fact finder. *Borland v. Chandler*, supra.

Defendant raised two defenses in equity, laches and estoppel. While these are similar and are often confused, the elements are somewhat different. Utah Supreme Court discussed the differences and the elements for each in *Leaver v. Grose*, 610 P.2d 1262 (1980) as follows:

The availability of the defense of laches is contingent upon th establishment of two elements: (1) the lack of diligence on the part of the Plaintiff; and (2) an injury to Defendant owing to such lack of diligence (footnote omitted).

The doctrine of estoppel has application when one, by his acts, representations, or conduct or by his silence when he ought to speak, induces another to believe certain facts exist and such other relies thereon to his

detriment. (footnote omitted) Id. at 1264.

The Trial Court found from the evidence that these doctrines were applicable in the instant case.

A. Laches.

The Plaintiff in the instant matter had a potential remedy at law available for financial assistance from the father of her child. That cause of action would allow for determination of paternity and establishment of a obligation for support at a sum certain. Utah Code Ann. §78-45a-1 et. seq. The Plaintiff decided not to pursue that cause of action and not to attempt to avail herself of that potential remedy for a period of seven years. This clearly constitutes a lack of diligence but is further aggravated in this case because it was motivated by a willingness to forgo the potential benefit in order to avoid what would come with that benefit, i.e. the involvement of the father in the life of his child and accordingly in the life of the Plaintiff and the Defendant by this action was injured. Seven years passed before he knew for sure that he had a child; a child who had never seen him nor had any opportunity to interact with him, creating substantial damage to any potential relationship. Having no knowledge of the obligation, he did not plan in any way to provide care for this unknown child during that period but rather committed his resources and made his financial planning based upon those factors known and at hand. ¹

1. In obligation founded upon a decree of divorce, a clearly defined legal obligation exists. The Defendant knows both the amount and the nature of the obligation, there is nothing uncertain in its scope. If based upon hearing nothing from the Plaintiff in such a case he decides to take no action, he places himself at some peril. In a case of a potential claim in paternity, the Defendant has much more limited rights with respect to the child and until some claim is asserted may not even know if he is the father of the child. Accordingly, there may be no duty or there may be a duty in an amount yet to be ascertained.

B. Estoppel.

The doctrine of estoppel is also applicable in this matter. Estoppel differs from laches in that it is not just the lack of due diligence resulting in injury but "is a doctrine which precludes parties from asserting their rights where their actions or conduct render it inequitable to allow them to assert those rights." *Hunter v. Hunter* 669 P.2d 430, 432 (1983).

Plaintiff has relied upon the case of *Adams v. Adams*, 593 P.2d 147 (1979) for the principle that "mere silence on the part of the Plaintiff is not sufficient to raise an estoppel". *Id.* at 148. This principle of course, is correct where there is no duty to speak. The finding in the instant case, of course, was not based upon mere silence but included specifically a finding that representations Plaintiff made to Mr. Snape were relayed to the Defendant and that he reasonably relied upon those communications. In *Adams*, the Court specifically found that there was no showing of a representation either "explicit" or "implicit" upon which the Defendant in that case relied. In fact, *Adams* knew that he had a duty of support, it had been established by decree. He claimed estoppel merely because Mrs. Adams had taken no action during a five and one-half year period to enforce her Court Ordered rights..¹ Accordingly, in *Adams* there is no act, representation, or conduct that could be relied upon by the Defendant to support his claim of equitable estoppel and the *Adams* Court properly rejected estoppel.

1. *Adams* did not raise and does not consider whether laches would have applied under the facts circumstances of that case. It is probable however, that the Defendant in *Adams* would have run afoul of the second principle of laches as the Court found that he had not "changed his position to his detriment" *Adams v. Adams*, 593 P.2d at 148.

There is no requirement at law that the act, representation or conduct be made in the presence of, or directly to the party relying upon it, merely that said act be done in a fashion reasonably likely to result in its communication to the third party and the resulting harm.

In the instant case, the Plaintiff told Mr. Snape that she wanted no involvement with the Defendant, that she did not want him to participate in any fashion with the raising of the child. This in fact was her posture and position as stated during her own testimony, one which she did not change until the filing of the action. ¹

The second case relied upon by Plaintiffs is *Hunter v. Hunter*, supra. *Hunter* also examines a defense founded in estoppel and finds it wanting. In *Hunter*, the Plaintiff went into hiding with the child and concealed her whereabouts from the Defendant. The Defendant claimed that this was sufficient action to justify the application of the doctrine. He further stated that he had some misunderstandings partially derived from communications with his probation officer and the Department of Social Services that he would not be required to pay child support. *Id.* at 432. It is significant in *Hunter* that the Court disregarded the communications Mr. Hunter had with his probation officer and the Department of Social Services because they did not "involve actions or

1. As noted in her testimony, her motivation in bringing the action in June of 1983 was that she was then separated from her current husband and had a present desire for financial support for the child. This present and future desire was fully met. (TR. 16) The trial court found that as a result of the statements and acts communicated to Mr. Vrontikis by Mr. Snape, he directed his financial affairs and his life in reliance upon not having a financial obligation to the Plaintiff. And clearly as found by the trial court he would be injured if now forced to go back and borrow money to pay the Plaintiff for the period of time for which she had no desire to have financial assistance and for which he made no plan.

conduct by the appellant". *Id.* at 432. The Court also found that the Plaintiff's actions in going into hiding were justified by her fear of the Defendant and on the basis of previous violent experiences with him. *Id.* at 433. Thus, a party may not rely upon the statements of third parties to support his claim for equitable estoppel unless he can show that those statements are based upon and related to acts, representations or conduct of the party against whom the estoppel will be applied. In the instant case it is the acts and representations of the Plaintiff which are communicated to the Defendant through Mr. Snape and upon which he relies to his detriment that the Trial Court relied upon to establish the factual basis for the application of the doctrine of estoppel.

Implicit in the statements of the Plaintiff that she desired to be left alone and did not want any contact or involvement with the Defendant is the message that she is not looking to him for any assistance either as a father or financial supporter of the child in question. In *Wasescha v. Wasescha*, 548 P.2d 895 (1976) the Court found the Plaintiff communication to the Defendant that he was "to leave her and her family situation alone for the time being" sufficient conduct to serve as the basis for estoppel with respect to past obligations of support. *Id.* at 896. The Defendant conformed his financial planning for these seven years to his understanding that he had no role and no obligation with respect to this child. To suddenly have to come up with four years of support payments that were never budgeted, planned for or known about presents a clear hardship much greater than would have an ongoing obligation.

CONCLUSION

The Trial Court was clearly within its discretion to determine that the delay of the Plaintiff, her actions reasonably led to a reliance by the Defendant to his detriment and in applying the equitable doctrines to this instant case.

RESPECTFULLY SUBMITTED this 27 day of September, 1988.



JEROME H. MOONEY
Attorney for Defendant/Respondent