

1978

# Deborah Kim Roberts and State of Utah v. Robert Glen Roberts : Brief of Defendant and Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](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.

Ronald R. Stanger; Attorney for Defendant-Respondent;

Noall T. Wootton; Ray L. Gammon; Attorneys for Plaintiff-Appellant;

---

## Recommended Citation

Brief of Respondent, *Roberts v. Roberts*, No. 15546 (Utah Supreme Court, 1978).

[https://digitalcommons.law.byu.edu/uofu\\_sc2/993](https://digitalcommons.law.byu.edu/uofu_sc2/993)

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](mailto:hunterlawlibrary@byu.edu).

IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

DEBORAH KIM ROBERTS, and the :  
STATE OF UTAH, by and through :  
Utah State Department of :  
Social Services, :  
 :  
Plaintiffs and Appellants, : Case No. 15546  
 :  
v. :  
 :  
ROBERT GLEN ROBERTS, :  
 :  
Defendant and Respondent. :  
 :

---

BRIEF OF DEFENDANT AND RESPONDENT

---

RONALD R. STANGER  
38 North University  
Provo, Utah 84601  
Attorney for Defendant-Respondent

NOALL T. WOOTTON  
Utah County Attorney  
RAY E. GAMMON  
Deputy Utah County Attorney  
1651 West 820 North  
Provo, Utah 84601  
Attorneys for Plaintiff-Appellant

TABLE OF CONTENTS

Nature of the Case . . . . . 1  
Disposition in Lower Court . . . . . 1  
Relief Sought on Appeal. . . . . 1  
Statement of Facts . . . . . 2  
Argument . . . . . 2

POINT I

APPELLANT IS NOT ENTITLED TO REIMBURSEMENT  
FOR ASSISTANCE PAYMENTS MADE PRIOR TO THE  
TRIAL COURT'S DETERMINATION OF THE AMOUNT  
OF CHILD SUPPORT TO BE PAID BY RESPONDENT. . . . . 2

Conclusion . . . . . 5

CASES CITED

Mecham v. Mecham, 570 P.2d 123 (Utah 1977). . . . . 2, 3, 4, 5

STATUTES CITED

Utah Code Annotated, 1953, Title 78, Chapter 45 . . . . . 3  
Utah Code Annotated, 1953, 78-45-9. . . . . 4, 5

IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

DEBORAH KIM ROBERTS, and the :  
STATE OF UTAH, by and through :  
Utah State Department of :  
Social Services, :

Plaintiffs and Appellants, :

Case No. 15546

v. :

ROBERT GLEN ROBERTS, :  
Defendant and Respondent. :

---

BRIEF OF DEFENDANT AND RESPONDENT

---

STATEMENT OF THE NATURE OF THE CASE

Appellants joined as a party Plaintiff in a divorce action to seek reimbursement for child support payments made to Plaintiff, Deborah Roberts in the interim between the filing of the divorce complaint and the entry of the Decree.

DISPOSITION IN LOWER COURT

The District Court denied reimbursement of the above-mentioned public assistance payments.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the District Court's Judgment denying reimbursement.

## STATEMENT OF FACTS

The present action for divorce was commenced on July 11, 1977. Thereafter, Plaintiff, Deborah Kim Roberts, sought and received public assistance payments for the months of August, September and October, 1977. These payments included a grant of \$166.00 per month as child support on behalf of the minor child of the Plaintiff and the Defendant. (Paragraph 3 of the Agreed Statement of Record on Appeal, hereinafter referred to as "Statement"). At the time such payments were made, the District Court had not entered any order nor judgment concerning Respondent's duty to provide child support payments or the amount of such payments. Subsequently the divorce action was heard on October 12, 1977, with the matter of child support being reserved for hearing on October 25. (Paragraph 1, Statement). The latter issue was so heard and in a Decision dated October 26, 1977, the trial judge denied reimbursement to the Appellant, State of Utah, for the August, September and October, 1977, child support payments on the basis of Mecham v. Mecham, 570 P.2d 123 (Utah 1977). (Paragraphs 4 and 5, Statement).

The trial court awarded \$110.00 per month child support to commence November 15, 1977, (see Decision, dated October 26, 1977, attached to Statement and referred to in Paragraph 5 of Statement).

There is no dispute between the parties as to any material fact.

## ARGUMENT

### POINT I

APPELLANT IS NOT ENTITLED TO REIMBURSEMENT FOR ASSISTANCE PAYMENTS MADE PRIOR TO THE TRIAL COURT'S DETERMINATION OF THE AMOUNT OF

CHILD SUPPORT TO BE PAID BY RESPONDENT.

Appellant, State of Utah, would be entitled only to reimbursement for support payments made subsequent to the entry of the court order setting the amount of child support to be paid by the Respondent. In the present case, such liability for reimbursement would extend only to payments made on or after November 15, 1977, (The date the Court ordered child support payments to commence). Reimbursement for support payments made during the months of August, September and October, 1977, would be improper because said payments were made prior to the time that the amount of child support had been fixed in a court proceeding under Chapter 45, Title 78, Utah Code Annotated, 1953 as amended.

The Utah Supreme Court has addressed this issue in Mecham v. Mecham, 570 P.2d 123 (Utah 1977). In Mecham the Department of Social Services sought reimbursement for child assistance payments made to the mother and divorce complaintant during pendency of the divorce action. Such payments were made prior to the time a judicial determination had been made as to the amount of such support. The Court pointed out that the mother also had a duty to support the child during this period. Note was also taken of the fact that she had not sought in the Divorce Decree any sums for reimbursement for the money she had expended for child support during pendency of the action. In Mecham the Court upheld the trial court's ruling that the Department of Social Services cannot "proceed to get a judgment against one owing a duty of support for welfare handout, when there has been no prior determination of the amount of support to be paid". (Mecham Infra)

The facts of the present case are similar to the Mecham facts in that:

1. Reimbursement is sought for child support payments made in the interim between the filing of the divorce complaint and the entry of the Decree.

2. No provision was made in the present Divorce Decree for any sum expended for the support of the child during the pendency of the divorce action.

3. The mother also had a duty to support the child.

Such clearly paralleled facts require application of the Mecham holding that reimbursement for child support payments made prior to judicial determination of the amount of support to be paid should be denied.

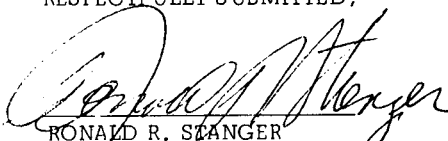
The rights of the Department of Social Services are derived through and limited to those of Plaintiff, Deborah Kim Roberts. Such rights can therefore be no greater than those to which Deborah Roberts is entitled. Section 78-45-9 Utah Code Annotated, 1953 as amended, clearly limits the Department of Social Services role to enforcing the obligee's (Deborah Roberts) right of support. The amount of support due the obligee from the obligor (Robert Roberts) arose from a finding and order of the Court entered subsequent to the time that the August, September and October, 1977, public assistance payments. Since Plaintiff Roberts had no such right to create or enforce a retrospective duty in Respondent (Mr. Roberts) the Department of Social Services cannot seek to create and enforce such a right.

As in Mecham the Department of Social Services is here again seeking to unilaterally create a duty of support, set the amount of support and enforce such duty of support without resort to court proceedings and without basing such duty on any enforceable right of the Plaintiff, Deborah Roberts. Such activity was specifically stricken down by the holding in Mecham.

#### CONCLUSION

Section 78-45-9 Utah Code Annotated and the holding in the Mecham case require that the trial court's Judgment denying Appellant's claim for reimbursement be affirmed.

RESPECTFULLY SUBMITTED,



RONALD R. STANGER

Attorney for Defendant-Respondent