

1978

Deborah Kim Roberts and State of Utah v. Robert Glen Roberts : Brief of Plaintiff and Appellant

Utah Supreme Court

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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 PLAINTIFF AND APPELLANT

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BRIEF OF PLAINTIFF AND APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an action brought by the plaintiff, State of Utah, by and through the Utah State Department of Social Services to collect child support from the defendant for the period of time preceding the Divorce Decree.

DISPOSITION IN LOWER COURT

From an Order denying plaintiff the right of reimbursement for child support paid prior to the Divorce Decree, plaintiff appeals.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of said Order and that the

Court declare plaintiff is entitled to reimbursement for welfare payments paid prior to the Decree of Divorce.

STATEMENT OF FACTS

The Court heard the matter of the divorce on October 12, 1977, reserving, however, the matter of child support for further hearing on October 25, 1977. (Paragraph 1 of the Agreed Statement of Record on Appeal, hereinafter referred to as "Statement"). The State of Utah, by and through Utah State Department of Social Services (hereinafter referred to as "the Department"), was joined as a party plaintiff and appeared at the hearing on October 25, 1977. (Paragraph 2 of the Statement). The Department's claim was predicated on Section 78-45-9, Utah Code Annotated, 1953 as amended, 1975. (Paragraph 2 of Statement).

At the hearing on October 25, 1977, it was shown that the plaintiff, Deborah Kim Roberts, received public assistance for the months of August, September, and October, 1977, receiving a grant of \$166.00 per month on behalf of the minor child of the said plaintiff and the defendant. (Paragraph 3 of Statement). At this hearing, the Department and the defendant stipulated that in the event the Court awarded reimbursement, which the defendant denied that the Court may legally do, that the amount per month to be fixed by the Court as prospective child support would be the amount per month to which the Department would be entitled by way of reimbursement for the months of August, September, and October, 1977. (Paragraph 3 of 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). The trial court, however, denied reimbursement to the Department on the basis of Mecham v. Mecham, 570 P.2d 123 (Utah 1977). (Paragraph 5 of Statement).

ARGUMENT

POINT I

THAT MECHAM V. MECHAM, SUPRA, ENTITLES THE DEPARTMENT TO REIMBURSEMENT FOR THE PUBLIC ASSISTANCE RENDERED PRIOR TO THE ENTRY OF THE DIVORCE DECREE.

In Mecham v. Mecham, supra, an action for divorce was commenced in July 1973. One month later, Mrs. Mecham began receiving welfare payments for herself and the child, which continued through September 1974. A decree of divorce was entered in March 1974, denying alimony, both past, present and future. One year later the Department filed an independent action to recover for the welfare payments made to Mrs. Mecham. The trial court ruled that the Department was not entitled to reimbursement. The Department appealed.

The Utah Supreme Court ruled that where the wife had been denied temporary and future alimony, the Court may not later on its own determine that the former husband owes his wife the amount of support which the Department had paid to her, and the Court concluded that once the judgment of divorce sets the amount of alimony, the former husband's duty is fixed and the matter is res judicata until modified in a subsequent action. Specifically, at page 125 the Court said:

"As to reimbursement for the support furnished to Maxine Mecham, the department's rights are derivative and

no greater than Maxine's rights. In her complaint, Maxine pleaded for temporary alimony. In the decree, she was denied past and present alimony; defendant's duty of support was determined, and the matter is res judicata. The department cannot file a complaint one year after a court has determined the amount of support [in this case nothing], and demand reimbursement under Chapter 45."

It would appear from the foregoing, that the Court was limiting its application to reimbursement of alimony or support rendered to a former wife. However, in the next sentence of the Mecham case, it is stated: "The same principle applies to the child support which accumulated prior to the date of the decree, March 15, 1974." The Court noted on page 125:

"Maxine did not seek in the decree any sum for reimbursement for the money she had expended for the support of the child, although she had put the matter in issue in her pleading. The rights of the department are derived through Maxine -- the matter is res judicata."

In the instant case, several distinctions should be noted. The Department appeared in the divorce action and made its claim before the matter of child support had been ruled upon by the trial court. This was not a claim for reimbursement of spousal support, but was a claim for reimbursement of child support only. Having made welfare payments for the support of the child, the Department became a real party in interest and certainly had the right to so proceed. It is provided in Section 78-75-9(1), Utah Code Annotated, 1953 as amended:

"The obligee may enforce his right of support against the obligor and the state department of social services may proceed pursuant to this act or any other applicable statute, either on its own behalf or on behalf of the obligee, to enforce the obligee's right of support against the obligor"

In the case of Bartholomew v. Bartholomew, 548 P.2d 238 (Utah 1976), it was held that it is appropriate and justifiable for the Department of Social Services to join as an intervener in a divorce action to obtain a judgment for reimbursement of money which the Department of Social Services had expended to support the minor children. The Court in Bartholomew, held that the policy of the law is and should be to simplify and expedite the procedures and to avoid a multiplicity of law suits. The right of children to support and the parental duty to provide it, supplemented by the State when necessary, gives rise to a mutual interest in that problem quite apart from any interspousal rights in the divorce action.

Next, it should be noted that the Utah State Legislature has deemed it proper that the Department recover funds expended for child support. Recent amendments in Chapter 45 of Title 78, Utah Code Annotated, 1953 as amended, evidence this intent. First, Section 78-45-9(2), Utah Code Annotated, 1953 as amended provides:

"No obligee shall commence any action to recover support due or owing that obligee whether under this act or any other applicable statute without first filing an affidavit with the court stating whether that obligee has received public assistance from any source and if the obligee has received public assistance, that the obligee has notified the department of social services in writing of the pending action."

Second, Section 78-45-7(3), Utah Code Annotated, 1953 as amended, states:

"(3) When no prior court order exists, the court shall determine and assess all arrearages based upon, but not limited to:

(a) The amount of public assistance received by the obligee, if any;

(b) The funds that have been reasonably and necessarily expended in support of spouse and children."

These amendments made by the 1977 legislature indicate an intent that the Department be allowed and aided in recovering money expended to support children prior to a Court order. Now, an obligee shall notify the Department in writing whenever a divorce action, order to show cause or other action is filed for the purpose of recovering support due or owing. Further, these amendments suggest that the Department's rights shall not be compromised by the other parties. Moreover, they suggest that the Department has a right separate and apart from those of the obligee. Finally, reference should be made to Section 78-45b-1-1, Utah Code Annotated, 1953 as amended, which speaks exclusively to the duty of parents to support their children, and augments the State's ability to recover support and thereby relieve the burden so often borne by the general citizenry through welfare programs.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that the Department is entitled to reimbursement for public assistance rendered prior to the entry of the divorce decree, particularly where the Department made such claim in the divorce action before the matter of child support was adjudicated. Therefore, the Department requests that the matter

be reversed and that the Department be granted reimbursement for the sum of \$330.00 for the months of August, September, and October, 1977.

Respectfully requested,

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