

2001

State of Utah and Joann Lorraine Clark v. Mark Thomas Clark and State of Utah and Shaton O. Bowen v. Kim P. Bowen and State of Utah and Mary O. Vigil v. Alfonso M. Vigil : Reply Brief

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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IN THE

THE STATE OF UTAH

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30 MAR 1976

BRIGHAM YOUNG UNIVERSITY  
J. Reuben Clark Law School

STATE OF UTAH and JOANN :  
LORRAINE CLARK, :  
Plaintiff and Appellant, :  
-vs- :  
MARK THOMAS CLARK, :  
Defendant and Respondent. :  
and :  
STATE OF UTAH and SHARON O. BOWEN, :  
Plaintiff and Appellant. :  
-vs- :  
KIM P. BOWEN, :  
Defendant and Respondent. :  
and :  
STATE OF UTAH and MARY O. VIGIL, :  
Plaintiff and Appellant, :  
-vs- :  
ALFONSO M. VIGIL, :  
Defendant and Respondent. :

Civil Nos.

14132, 14133, 14134

REPLY BRIEF OF APPELLANTS

Appeal from the District Court of Weber County, State of Utah, the Honorable Calvin Gould, presiding.

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FILED

FEB 27 1976

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and :  
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TABLE OF CONTENTS

ARGUMENT..... 1

    POINT I:        §78-34-7 U.C.A. 1953 AS AMENDED IS  
                    TO BE USED ONLY FOR DETERMINING AMOUNTS  
                    OF FUTURE SUPPORT..... 1

    POINT II:       UNDER THE UNIFORM CIVIL LIABILITY OF  
                    SUPPORT ACT, SUPPORT LIABILITY IS  
                    DETERMINED BY THE SUPPORT LAW OF EACH  
                    STATE..... 3

    POINT III:     THE UNIFORM CIVIL LIABILITY OF SUPPORT  
                    ACT WAS ENACTED FOR THE PURPOSE OF  
                    OBTAINING SUPPORT FOR NEEDY OBLIGEEES,  
                    AND, FOR PROVIDING THE STATE OF UTAH,  
                    ACTING AS A THIRD PARTY, WITH A RIGHT  
                    TO REIMBURSEMENT FOR NECESSARIES FURNISHED. 5

CONCLUSION..... 9

CASES CITED

Baggs v. Anderson       Utah 2d       , 538 P.2d 141 (1974)..... 9

Longevin v. Hillsborough, 320 A.2d 634 (New Hampshire)..... 7

Los Angeles v. Frisbie, 19 Cal. 2d 634, 122 P.2d 526 (1942)....6,7

STATUTES CITED

Utah Code Annotated §78-45-1 et. seq. (1953).....6,7

Utah Code Annotated §78-45-3 (1953).....3,4

Utah Code Annotated §78-45-7 (1953)..... 1,2,3,4,6

Utah Code Annotated §78-45-9 (1953)..... 2,3,4,5,6,7,8,9

Utah Code Annotated §78-45-13..... 8

OTHER AUTHORITIES CITED

Brockelbank, William, Interstate Enforcement of Family  
Support, 2nd Edition..... 4

Restatement of Law of Restitution-Quasi Contracts and  
Constructive Trusts..... 7,8

Uniform Laws Annotated, Master Edition, Volume 9..... 3

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REPLY BRIEF OF APPELLANTS

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ARGUMENT

POINT I

§78-34-7 U.C.A 1953 AS AMENDED IS TO  
BE USED ONLY FOR DETERMINING AMOUNTS OF  
FUTURE SUPPORT

Respondent's Brief (Page 3) concedes that a father in the State of Utah has an absolute duty to support his wife and children, and that a prior court order of support is not a prerequisite to seeking either a prospective support order, or an order directing reimbursement for support already provided.

Respondents then turn around and argue on Page 4 that "under the

UCLSA, the determination of both prospective and retroactive support liability must be made by the District Court pursuant to the criteria set out in §78-45-7 U.C.A."

§78-45-7 U.C.A. pertains to hearings to determine prospective support only and does not apply to reimbursement. The seven factors named for consideration are all prospective in nature. That is, each factor should be considered independently and with the others in determining an amount to be paid in the future. Thus, U.C.A. §78-45-7 should be applied only in hearings for prospective support. The standard reimbursement set out in §78-45-9 U.C.A. should be used in cases of recovery for past support, (Discussion: Point III, Appellant's Brief).

Much of Respondent's brief involves arguments that an obligor's liability for past support should be based upon his actual current ability to provide. Appellant, primarily concerned with reimbursement for prior support when the State of Utah is forced to assume the obligation, takes issue with Respondent's position. Thus, much of the language and case citation throughout Respondents' brief attempting to distinguish between duty and liability of support, is simply inapplicable to the basic issue of retroactive reimbursement for support rendered under §78-45-9, U.C.A. The obvious injustice of following Respondent's argument is the following hypothetical. A defendant earns \$1,500.00 a month for three years of a separation with no divorce. At the time of hearing he is unemployed. To say, that the defendant's liability for back support is based on his unemployment is indeed a miscarriage

of justice. Reimbursement means reimbursement. Respondents' arguments tend to obscure the issue before the court.

## POINT II

UNDER THE UNIFORM CIVIL LIABILITY FOR  
SUPPORT ACT, SUPPORT LIABILITY IS  
DETERMINED BY THE SUPPORT LAW OF EACH  
STATE

Respondents and Appellants both recognize that under UCLSA, support liability is determined by the support law of each state. On Page 8 of their brief, Respondents quote from the Commissioner's Prefatory Note to the UCLSA, Uniform Laws Annotated, Master Edition, Vol 9 at pg. 133:

"Under these sections then the recovery by the destitute obligee is to be measured by the duty of support set out in the law of the state where the obligor is present\_\_"

Appellants submit that Utah law on duty of support, under §78-45-3 U.C.A., does not measure the amount of recovery. Rather, it provides in §78-45-7 criteria to determine prospective support owed by an obligor, and in §78-45-9, a means to recover past support supplied by the state, in an action for reimbursement against an obligor who has failed in his statutory duty to support his family. This is the state law referred to in the above quoted section.

On Page 10 of Respondent's brief, they argue that:

"Under Utah law, there need not be a prior court order of support for a court to conduct a hearing to determine liability for support already provided."

Of course there need not be a prior court order of support for a court to conduct a hearing to determine liability for support

already provided. First of all, had there already been a court order, the amount of liability would have already been set, and another hearing would be unnecessary. But, more importantly, the issue of duty and liability of support is determined statutorily under the UCLSA, and thus no such hearing is required. Rather, the obligor is under a statutory duty to support his obligees, §78-45-3, and when he fails to do so, his amount of liability has already been set statutorily under §78-45-9 for support already provided. That liability is reimbursement. His future liability for support is statutorily set by §78-45-7, and is judicially determined in a hearing. Thus, the only purpose for a hearing under §78-45-9 is to get a judgment rendered against the obligor to reimburse the state, and §78-45-7 does not apply in reimbursement cases.

On Page 9 of their brief, Respondents cite emotionally inflammatory language from Brocklebank's Interstate Enforcement of Family Support 2nd Ed. 1971. "This becomes at times a sort of sadistic cry, 'Lets soak the fleeing puppy.' But this is an unworthy objective. No law should ever 'soak' anybody." First of all, Appellants would like to point that Brocklebank's book is a treatise on the Uniform Reciprocal Enforcement of Support Act, not on the UCLSA which is the subject of the instant litigation. The UCLSA was enacted to statutorily establish duties of support, not to "soak" runaway obligors. Surely Respondents imply by quoting such language that because the State of Utah merely seeks reimbursement from obligors for support given to needy obligees,



that the UCLSA is a law designed to "soak" such obligor. If anything, it would appear that delinquent obligors are "soaking" the taxpayers of the State of Utah. To the contrary of Respondent's implications, §78-45-9 is intended to protect the rights of helpless obligees in the State of Utah, who without such legal recourse, would be subject to no hope of support, save from the state. Likewise, the State of Utah can hardly be said to be "soaking" an obligor when it forces such an individual to face up to his legal and moral support obligations.

### POINT III

THE UNIFORM CIVIL LIABILITY FOR SUPPORT ACT WAS ENACTED FOR THE PURPOSE OF OBTAINING SUPPORT FOR NEEDY OBLIGEEES, AND, FOR PROVIDING THE STATE OF UTAH, ACTING AS A THIRD PARTY, WITH A RIGHT TO REIMBURSEMENT FOR NECESSARIES FURNISHED.

Point III of Respondent's brief, Page 11, contains the following argument that the UCLSA was:

"... enacted for the purpose of obtaining support for needy obligees, not for providing the State of Utah, acting as a third party, with a right to reimbursement..."

This interpretation of the statute totally disregards the language of it. The UCLSA was enacted for the purpose of obtaining support for needy obligees from the obligors who have a duty to support, thereby relieving the State of Utah of the burden of support. Furthermore, §78-45-9 U.C.A. was expressly enacted for the very purpose of providing the State of Utah with a right to reimbursement. The language of the statute could not be any plainer:

"...for the purpose of securing reimbursement and of obtaining continuing support..."  
(Emphasis added).

Respondents next argue on Page 14 of their brief "that 'reimbursement', as used in §78-45-9, U.C.A. means reimbursement of support, not reimbursement of necessities furnished by a third party." Appellants submit that this is indeed a subtle distinction. Traditionally "support" has been used in family law to mean providing necessities, whereas alimony has always been variable based on many factors. The instant cases deal with support, and reimbursement for support under statutory duties to the children and wives before the divorce. Respondent's authorities dealing with alimony do not apply.

Respondents on Page 15 of their brief cite numerous authorities pertaining to divorce and divorce modification to support Respondent's position that §78-45-7 should be used to determine retroactive amounts due in reimbursement cases. These authorities merely cloud and confuse the real issue, rather than explicate the statute in question. We are not dealing with divorce cases here. The support obligations provided for in §78-45-1 et. seq. are not alimony and child support declared pursuant to a divorce decree. There is no sum certain as per a divorce decree, to modify an overdue installment. Rather, the statute imposes a statutory obligation to support wives and children. Failure to do so provides the State of Utah with an action for reimbursement for the support it was forced to render.

Respondents attempt to distinguish in Los Angeles vs.

Frisbie, 19 Cal. 2d 634, 122 P.2d 526 (1942), the statutes

in question as "quite different from the UCLSA." This is a matter of degree for the court to decide. Appellants will only note that for statutes that are "quite different", they are strikingly similar in purpose and intent. The Frisbie case, id, statute is further attacked by Respondents: That it "clearly and unequivocally states that the obligor shall reimburse the county, a far cry from §78-45-9's conferring of a right to seek reimbursement." Appellants fail to see the seemingly great distinction between the statutes involved. Respondents merely assert such differences exist but do not point them out. In essence, they argue their conclusion. Respondents further use the same tactic in summarily dismissing Longevin v. Hillsborough County, 320 A.2d 635, where the distinction appears to be a "direct right (New Hampshire) vs. a subrogated right (Utah)." Such a distinction seems miniscule. Respondents cite Restatement of the Law of Restitution-Quasi Contracts and Constructive Trusts, which has no bearing on the instant case. They then argue that the State of Utah has an "affirmative duty to provide assistance to 'persons in need', [and therefore] cannot be deemed to be acting 'unofficially and with intent to charge therefor' within the meaning of the Restatement of Restitution, supra."

First of all, the persons with the affirmative duty to support "persons in need", i.e. obligees, are the obligors, not the State of Utah. The very intent of §78-45-1 et. seq. is to protect the State of Utah from incurring such a support

burden. Secondly, the issue here is not how the State of Utah's conduct measures up according to the language in the Restatement of the Law of Restitution. Rather, the issue is the meaning of the statutory language found in §78-45-9 U.C.A.

Respondent's last two sentences on Page 19 of their brief, without any support, authority, or even logic, state that since the obligees in the instant cases did not furnish their own support, the State of Utah has no independent third party right to reimbursement. Such an interpretation of §78-45-9 U.C.A. is a total misreading of the statute. If the obligees had in fact furnished the support, the State of Utah would not have been required to do so and thus would not be involved at all. More importantly, Respondents would have the Court believe that the obligees have a right to enforce the duty of support against the obligor only when the obligees themselves have provided such support. This is not the intent, purpose or meaning of the UCLSA. As indicated by Appellants arguments, the general purpose of this entire area of Utah law is to provide means whereby collection of delinquent support is made easier. U.C.A. §78-45-13 requires interpretation to effectuate and implement those procedures. Thus, the obligee need not furnish his own support before enforcing that right against an obligor. Likewise, §78-45-9 states:

"Whenever the State department of public welfare furnishes support to an obligee, it has the same right as the obligee to whom the support was furnished for the purpose of securing reimbursement..."  
(Emphasis added).

Thus, if the obligee has a statutory right to enforce,

the State of Utah by subrogation has the same statutory right. Any different reading of the above statute than that here expressed strains the meaning of it and renders an improper construction.

Respondents' conclusion indicating that a separate hearing need be held prior to the State of Utah filing an action against them, is misleading. The law suit as here involved contains all the elements necessary for the hearing. Otherwise, Respondents are seeking two separate hearings to determine the same thing. At trial or in discovery, the Respondents have the opportunity to present their defenses, if any, and at that time, the Court makes a determination of the amount owing for back support as well as establishing prospective support orders. Contrary to what the Respondents claim, the burden of Utah taxpayers would be greatly increased instead of reduced if the district court was sustained.

#### CONCLUSION

Appellants submit this reply brief for the purpose of clarifying issues Appellants feel have been intentionally confused by Respondents. Baggs vs. Anderson, Utah 2d, 538 P.2d 141 (1974), as well as Utah Code Annotated §78-45-9 permit the State of Utah to prevail in this action and therefore Appellant

requests this court to reverse the decision of the Weber  
County District Court.

Respectfully submitted,

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