

1978

Sherry Harris v. Ballard L. Harris : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

SHERRY HARRIS,	/	
Plaintiff and	/	
Respondent,	/	
vs.	/	Case No. 15797
BALLARD L. HARRIS,	/	
Defendant and	/	
Appellant.	/	

BRIEF OF APPELLANT

Appeal from the Judgment of the
District Court of Box Elder County, Utah,
Honorable VeNoy Christofferson, Judge

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FILED

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Clerk, Supreme Court, Utah

TABLE OF CONTENTS

STATEMENT OF THE KIND OF CASE.....	1
DISPOSITION IN LOWER COURT.....	1
RELIEF SOUGHT ON APPEAL.....	2
STATEMENT OF FACTS.....	2
ARGUMENT.....	3
POINT I	
THE LOWER COURT ERRED IN RULING THE AGE OF MAJORITY IN DIVORCE PROCEEDINGS IS 21 YEARS OF AGE.....	3
POINT II	
THAT THE TRIAL COURT EXCEEDED ITS POWER IN EXTENDING THE AGE OF SUPPORT TO THE APPELLANT'S MINOR DAUGHTER.....	7
POINT III	
THE TRIAL COURT'S DETERMINATION THAT 21 IS THE AGE OF MAJORITY IN DIVORCE CASES COULD BE THE BASIS UPON WHICH THE COURT ENTERED ITS MODIFICATION ORDER.....	9
CONCLUSION.....	10

TABLE OF AUTHORITIES

CASE CITATIONS

<u>Childers v. Childers</u> 552 P.2d 83 (1976).....	4, 5
<u>Harmon v. Harmon</u> 491 P.2d 231 (1971).....	8
<u>Mason v. Mason</u> 507 P.2d 781 (1973).....	6
<u>Mitchell v. Mitchell</u> 527 P.2d 1359 (1974).....	8
<u>Rice v. Rice</u> 518 P.2d 477 (1974).....	5, 6
<u>Stanton v. Stanton</u> 546 P.2d 303 (1977).....	3

UNITED STATES CONSTITUTION

Fourteenth Amendment to the U.S. Constitution.....	4, 7
--	------

UTAH STATUTES

U.C.A., 15-2-1.....	3, 5, 7, 9, 10
U.C.A., 30-3-5.....	8

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Defendant and	/	
Appellant.	/	

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This is an action for modification of a Decree of Divorce brought by the Plaintiff and Respondent, Sherry Harris, against the Defendant and Appellant, Ballard L. Harris.

DISPOSITION IN LOWER COURT

Upon an evidentiary hearing held before the Honorable VeNoy Christofferson, Judge of the First District Court, the Court found a sufficient change in circumstances to increase the child support to the sum of \$75.00 per month per child for the parties' three children. (R-39) The Trial Court ordered

that the child support for the three minor children shall be until said children attain the age of 21 years or until they otherwise become self-supporting. (R-40)

RELIEF SOUGHT ON APPEAL

The Appellant seeks to reverse the Order of the Lower Court, and the specific ruling that children attain the age of majority in divorce proceedings upon attaining the age of 21 years or otherwise become self-supporting.

STATEMENT OF FACTS

The parties were divorced on the 20th day of June, 1970, upon a hearing before the Honorable VeNoy Christofferson, wherein the Defendant and Appellant was ordered to pay child support in the sum of \$60.00 per month as and for child support on the three minor children of the parties, and that such payment would be ordered until said children reached their majority or until the further order of the Court.

That the issue born of the marriage are Angela, who is 18, Troy, who is 16, and Chris, who is 12 years of age at the time the modification hearing was held on February 6, 1978.
(R-5)

The Respondent in the Lower Court at the evidentiary

hearing was permitted to testify as to the expenses of the parties' 18-year old daughter incident to said daughter's college expenses. (R-5)

ARGUMENT

POINT I

THE LOWER COURT ERRED IN RULING THE AGE OF MAJORITY IN DIVORCE PROCEEDINGS IS 21 YEARS OF AGE.

The Lower Court specifically held that the age of majority in divorce cases is 21 years of age pursuant to statute. (R-9 - 10)

That Utah Code Annotated, 15-2-1, concerns the period of minority as follows:

The period of minority extends in males and females to the age 18 years; but all minors obtain their majority by marriage. It is further provided that courts in divorce actions may order support to age 21. (As amended 1975)

Prior to the legislature enactment in 1975, the former statute provided that the age of majority extended in the males to the age of 21 and in females to the age of 18, but that all minors obtained their majority through marriage.

The Court previously held in Stanton v. Stanton, 564 P.2d 303 (1977), as follows:

The Amendment to Section 15-2-1 has served to further clarify the status of Utah law and establishes as a matter of public policy the age of majority for both sexes at age 18.

The Washington Court in Childers v. Childers, 552 P.2d 83 (1976), was presented with an issue very analogous to the instant matter, wherein the Defendant appealed from an order requiring him to pay support for his son until such time as the son ceased being enrolled in a university or other form of higher education and ceased to be otherwise dependent upon the parties for support.

The Washington Court in Childers v. Childers, cited supra, held that a parent owes a duty of support to his children only during their minority with the exception that a parent may have a continuing duty to care for a defective adult child.

The Washington Court in examining the Fourteenth Amendment to the U.S. Constitution set forth the basis for determining whether a denial of equal protection exists in holding:

When a statute establishes a class to receive different treatment, these constitutional provisions require that:

"classifications must meet and satisfy two requirements: (1) The legislation must apply alike to all persons within a designated class; and (2) reasonable ground must exist for making a distinction between those who fall within a class and those who do not."

The Washington Court determined that the first criteria was met, in that the statute applied equally to children of divorced parents. However, the Court held that the second criteria was not met, and stated that:

There is no reasonable ground to make a distinction between adult children of divorced parents and adult children of married parents. Of course, there is good reason for the State to take particular interest in minor children of divorce parents.*** But the distinction vanishes when the child becomes 18. There is no logical reason to require divorce parents to support their children for an indefinite period into their majority while married parents are free to bid their children a fiscal farewell at age 18.

The issue considered by the Washington Court is analogous to the instant matter under U.C.A., 15-2-1, except the Utah Statute does not apply alike to all children of divorced parents. That the Trial Court is vested with legislative authority to order support in divorce cases for the children to age 21, but is not required to order support to age 21 for majority attained at age 18.

The Washington Court in Childers v. Childers, cited supra, further held that the father's liability under a Decree of Support ceases when the child reaches his majority and that such is true where the Decree recites that such order of support continues "until the further Order of this Court", for the reason that such child upon attaining the age of majority is no longer a ward of the Court and there is no duty to support adult children.

That the Kansas Supreme Court in Rice v. Rice, 518 P.2d 477 (1974), held that a child's father is not required to make

child support payments beyond the child's minority unless an intent to the contrary is clearly expressed and that the child's support obligation terminates at the age of 18 years, even though the Decree was entered prior to the effective date of the Kansas Statute setting forth 18 years of age as the age of majority.

The Kansas Supreme Court further held in Rice v. Rice, cited supra, that a child has no vested right in future child support in a Decree of Divorce which provides that the child's father is to make child support payments until the child reaches the age of majority for the duty or obligation imposed is terminated as of the effective date of the statute amending the age of majority from 21 years to 18 years of age.

The New Mexico Court similarly in Mason v. Mason, 507 P.2d 781 (1973), held that minority is a legal status conditioned primarily upon age, and that it was the father's duty to support his children only during their minority, unless married or emancipated prior to the age at which said children reach their age of majority.

Further, the New Mexico Court held that the father's liability was to the age of 18, although the age of majority was 21 years at the time the Decree was entered where the Divorce Decree provided that the father's liability to pay support for the children would be until the children reached their

respective age of majority.

It appears clear that the Court misapplied U.C.A., 15-2-1, as amended 1975, which clearly sets 18 years of age as the age of majority in stating:

For clarification of a new statute as to when majority is reached, that shall be 21 or until they otherwise become self-supporting. Self-supporting shall be defined as the minimum wage as set by the government.

Therefore, it is submitted that the age of majority being a legal status rather than a vested right and the Utah Legislature having set the age of majority as 18 years of age, requiring a divorced parent to provide child support beyond the age of majority when a father who is not divorced is not required to support his child after said child reaches the age of majority violates the Appellant's constitutional right to equal protection under the law pursuant to the Fourteenth Amendment to the United States Constitution.

POINT II

THAT THE TRIAL COURT EXCEEDED ITS POWER IN EXTENDING THE AGE OF SUPPORT TO THE APPELLANT'S MINOR DAUGHTER.

That at the time the Decree of Divorce was awarded on or about June 16, 1970, U.C.A., 15-2-1, provided that:

The period of minority extends in males to the age of 21 years and in females to that of 18 years; but all minors obtain their majority by marriage.

That the Supreme Court of Utah in Harmon v. Harmon,
491 P.2d 231 (1971), held by referring to U.C.A., 30-3-5:

In the language of the statute, and as stated numerous times by the decisions of this Court, these propositions are firmly established: (1) That such proceedings are equitable; and (2) that under the authority conferred "to make subsequent changes or new orders with respect to *** the custody of the children and their support and maintenance ***", the Court retains jurisdiction to deal with such matters in supplemental proceedings with the same authority and in the same manner as it could deal with them originally.

That the Utah Supreme Court in Mitchell v. Mitchell,
527 P.2d 1359 (1974), it was reiterated that the Trial Court has the power to make such subsequent changes in respect to support and maintenance as such Trial Court could have dealt with originally.

Therefore, the Trial Court in entering a Decree of Divorce in June, 1970, was limited to ordering child support as to females to the age of 18 years, and by ordering the Appellant to provide child support until Appellant's 18-year old daughter reaches the age of 21 years upon the Respondent's request for modification, the Trial Court has entered an order that said Trial Court was prohibited from ordering at the time the Decree of Divorce was granted to Respondent and is clearly beyond the authority conferred upon the Lower Court.

POINT III

THE TRIAL COURT'S DETERMINATION THAT 21 IS THE AGE OF MAJORITY IN DIVORCE CASES COULD BE THE BASIS UPON WHICH THE COURT ENTERED ITS MODIFICATION ORDER.

It is clear from the Court pronouncement, that the age of 21 or until the child becomes self-supporting shall be the age of majority. (R-40) is contrary to U.C.A., 15-2-1, which specifically provides that the age of minority extends only to the age of 18 years and not to the age of 21 years.

Therefore, it appears that the Lower Court Order requiring the Appellant to provide child support to the age of 21 years or until the children become self-supporting based upon the Court's determination that the period of minority is 21 years in matters of divorce being an erroneous application of U.C.A., 15-2-1, it is necessary that the instant matter be remanded for proper consideration of U.C.A., 15-2-1.

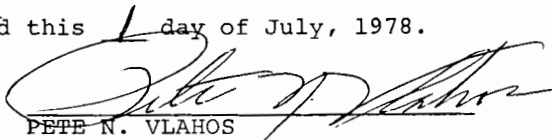
CONCLUSION

It is respectfully submitted to this Honorable Court, that the imposition and requiring of child support to the age of 21 years is in denial of the Appellant's right to equal protection under the law, in that the father who has not become divorced from his spouse has no obligation to provide support to the child and can give such child a fiscal farewell upon such child attaining the age of majority.

It is further submitted, that the age of majority in the State of Utah by virtue of U.C.A., 15-2-1 and the Court's Decision in the 1977 Stanton case is 18 years of age.

It is further submitted that the Lower Court exceeded its power of modifying the Decree of Divorce entered prior to the legislative change of U.C.A., 15-2-1 in 1975, in that the Lower Court could not have ordered the Defendant to provide child support for the parties' daughter, Angela, now at the age of 18 years.

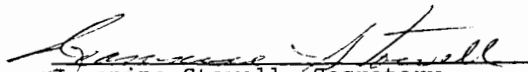
Respectfully submitted this 1 day of July, 1978.



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CERTIFICATE OF MAILING

A copy of the above and foregoing Brief of Appellant was posted in the U.S. mail postage prepaid and addressed to the Attorney for the Respondent, I. Gordon Huggins, First Security Bank Building, Ogden, Utah 84401, on this / day of July, 1978.


Jeannine Stowell, Secretary