

1979

Victoria L. Buyers v. Danny G. Buyers : Brief of Plaintiff-Respondent

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

VICTORIA L. BUYERS,)
Plaintiff-Respondent,)
-vs-) Case No. 16160
DANNY G. BUYERS,)
Defendant-Appellant.)

BRIEF OF PLAINTIFF-RESPONDENT

Appeal from an Order of the Third District Court
of Salt Lake County, State of Utah, H. Maurice
Harding, Judge presiding.

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BRIEF OF PLAINTIFF-RESPONDENT

NATURE OF THE CASE

Plaintiff-respondent, Victoria L. Buyers, accepts the defendant-appellant's Statement of the nature of the case.

DISPOSITION ON APPEAL

The Court determined the date on which the appellants obligation to pay \$100.00 per month as child support matured.

RELIEF SOUGHT ON APPEAL

Plaintiff-respondent seeks an affirmance of the lower courts decision.

STATEMENT OF FACTS

1. Plaintiff-respondent accepts paragraph 1 and 2 of defendant-appellant's statement of facts except that part wherein it is stated that Mr. Buyers was unrepresented by counsel because of a lack of funds. There was no evidence of a lack of funds.

2. Plaintiff-respondent accepts paragraph 3 and 4 of the statement of facts.

3. The decree provided in paragraph 3 that the defendant-appellant would pay \$86.36 on the balance due on the Toyota automobile until payment for the car was completed. It was estimated that it would be three and one-half years (3 1/2) before the automobile would be paid off. The Decree provided that as soon as that event occurred the child support obligation would be \$100.00, \$6.36 less than the defendant has been paying.

In paragraph 6 the defendant-appellant was ordered in addition to the obligation of paying off the Toyota automobile, which the evidence showed was financed by the Salt Lake City Fireman's Credit Union, to pay "those obligations to the Salt Lake Fireman's Credit Union."

The evidence adduced at the hearing from Clinton Barker, manager of the Salt Lake City Fireman's Credit Union (R-3,4) showed that on March 17, 1975 the defendant-appellant borrowed \$2,587.65 from the credit union, said amount being added to a previous balance of \$1,509.81. Barker further testified that the \$2,587.65 borrowed to finance the purchase of the 1975 Toyota automobile, (-4) Barker testified that, using the figure of \$86.36, on a monthly basis since the loan for the Toyota automobile was incurred, that on June 17, 1976 the balance on the Toyota automobile was \$1,620.67. Mr. Barker then testified that using the same \$86.36 amount, and through the use of an amortization table that Toyota automobile loan would have been paid off on March 17, 1978.

Mr. Barker testified that on April 9, 1976, when the decree was granted, that the defendant-appellant was paying \$185.00 per month on the Fireman's Credit Union obligation. (R-8)

Mr. Barker also testified that since the obligation for the car had been incurred, the defendant-appellant had borrowed several other sums, the largest being \$1,624.08, to the balance. It should be noted that all of the sums so added by the defendant-appellant were done so after October 2, 1975, the date set where he was no longer responsible for plaintiff-respondents debts. (R8,9)

ARGUMENT

Addressing first defendant-appellants Point II that there was no material change of circumstances shown for a modification of the decree. (1) as the amended order reflects, plaintiff-respondent at the hearing abandoned her effort in seeking an increase in child support, but instead asked the Court only to determine when the Toyota automobile was paid off and to give her a judgement for any back support. As the record shows defendant-appellant made no objection to this procedure. (2) there was no modification of the decree, only a determination of when the defendant-appellant should have begun to pay \$100.00 per month as support.

The Court at R-9 correctly framed the issue before it:

The Court. "We want to find out how much was owing on the Toyota on the 9th of April, 1976. That is all we want to know."

The amount borrowed on March 17, 1975 for purchase of the Toyota automobile was \$2,587.65. That sum was added to a balance of \$1,509.81. The decree provided that as of April 19, 1976 the defendant-appellant was responsible for all obligations owing the credit union (Fireman's). The amount defendant-appellant and plaintiff-respondent paid on the total balance between March 17, 1975 and July 1976 must be pro-rated between the two sums. Using the \$86.36 figure established by the Court as payment on the automobile balance, defendant-appellant was credited that amount each month from March 17, 1975 until April 9, 1976 on the Toyota automobile balance. The testimony indicated that as of April 9, 1975 defendant-appellant was paying \$185.00 per month as the total balance. Had the \$185.00 per month been applied in proportion to the two amounts, (i.e. the original balance and the automobile loan) it is obvious that much more than \$86.36 would have been applied to the Toyota automobile loan.

Defendant-appellant's theory is that the original amount borrowed would have to be paid off in full prior to any money being applied to the Toyota automobile balance. Since defendant-appellant was made responsible for the entire debt, the Court decided upon a sum that approximated 36 equal payments from March 17, 1975 until March 17, 1978.

CONCLUSION

The judgement of the District Court should be affirmed and the plaintiff-respondent should be awarded costs and a sum of

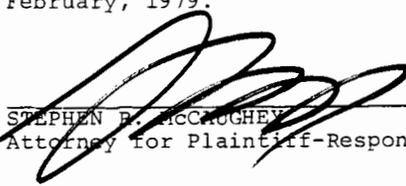
\$350.00 as attorneys fees on this appeal.

Respectfully submitted,

Stephen R. McCaughey, Attorney
for Plaintiff-Respondent

MAILING CERTIFICATE

I hereby certify that two copies of the foregoing Brief was mailed, postage prepaid, to Roger Cutler, Attorney for Defendant-Appellant, at 602 East Third South, Salt Lake City, Utah 84102 on this 22 day of February, 1979.



STEPHEN R. McCAUGHEY
Attorney for Plaintiff-Respondent