

1979

# Nancy Schneider Logan v. Edward James Schneider : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE  
STATE OF UTAH  
-----

NANCY SCHNEIDER LOGAN, :

Plaintiff-Respondent, :

Case No. 16537

vs. :

EDWARD JAMES SCHNEIDER, :

Defendant-Appellant.  
-----

BRIEF OF APPELLANT  
-----

APPEAL FROM AN ORDER OF THE DISTRICT COURT  
IN AND FOR MILLARD COUNTY, UTAH  
THE HONORABLE J. HARLAN BURNS, PRESIDING  
-----

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FILED

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Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE  
STATE OF UTAH  
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NANCY SCHNEIDER LOGAN, :  
Plaintiff-Respondent, :  
vs. : Case No. 16557  
EDWARD JAMES SCHNEIDER, :  
Defendant-Appellant. :  
- - - - -

BRIEF OF APPELLANT  
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NANCY SCHNEIDER LOGAN,  
Plaintiff-Respondent,  
vs.  
EDWARD JAMES SCHNEIDER,  
Defendant-Appellant.

Case No. 16557

## STATEMENT OF THE NATURE OF THE CASE

This is an appeal from an Order of the Fifth Judicial District Court in and for Millard County, the Honorable J. Harlan Burns presiding, denying Appellant's Motion to Stay Entry of Judgment.

## DISPOSITION IN LOWER COURT

Appellant filed a Motion pursuant to Rule 59 U.R.C.P. to stay the entry of a summary judgment previously entered by the Court in favor of the plaintiff-respondent, and also requested that the Court hear oral argument with respect to the plaintiff's Motion for Summary Judgment and the Memorandum filed in favor and in opposition to said Motion. Said Motion to Stay

Entry of Judgment was made for the reason that the evidence was insufficient to justify the decision and was contrary to the appropriate law. The motion was orally argued to the Court. From an order of the Court denying the appellant's Motion, this appeal is taken.

#### RELIEF SOUGHT ON APPEAL

Appellant seeks to have the Supreme Court declare that the lower Court was in error in failing to grant Appellant's Motion to Stay the Entry of the Summary Judgment granted in favor of the plaintiff-respondent; and to further find that the lower Court was in error in granting the Summary Judgment in favor of the plaintiff-respondent, and direct the lower Court to dismiss the plaintiff-respondent's complaint because the defendant-appellant's basic rights of procedural due process were not observed with respect to the subject Ohio Judgments upon which the Summary Judgment was based, or dismiss said complaint because it is barred by the Utah Statute of Limitations.

#### STATEMENT OF FACTS

This case was originally brought by the plaintiff-respondent, Nancy Schneider Logan, to enforce an Ohio Judgment, requesting that the lower Court give full faith and credit to said Ohio Judgment.

The appellant and the respondent were at one time

married, which marriage ended in divorce. A Decree of Divorce was issued from the Common Pleas Court, Richland County, Ohio, on July 22, 1960. The parties had one child from their marriage, and the plaintiff-respondent was awarded child support in the amount of Fifteen Dollars per week, commencing August 18, 1961.

On December 1, 1967, Judgment was rendered against defendant-appellant and in favor of plaintiff-respondent in the sum of Four Thousand Nine Hundred Five Dollars for unpaid child support by the Common Pleas Court, Richland County, Ohio. Said Judgment was granted upon the Motion of the plaintiff-respondent stating that the defendant-appellant had failed to comply with the terms of the child support order.

On June 13, 1975, an entry was made by the Court of Common Pleas, Franklin County, Ohio, Division of Domestic Relations which found that the former Judgment, dated December 1, 1967, was unpaid and that the balance due on said Judgment as of May 8, 1975, was \$7,522.84, including interest. The Court continued interest at the rate of six percent per annum on the unpaid balance. The Court also granted an additional Judgment in favor of plaintiff-respondent in the sum of \$380.00. The above mentioned entry was based upon a Motion of plaintiff-respondent requesting an order increasing the amount of child support owing by defendant to plaintiff and



the arrearage of child support monies to a Judgment in favor of plaintiff-respondent against defendant-appellant. In response to said motion, the defendant-appellant, filed a declaration with the Ohio Court, basically stating that he had received a copy of the Motion but it did not contain sufficient information for him to respond to the claim that arrearages were due, and that he had entered into an agreement with the Orange County California District Attorneys 12 years previously as to the payment of child support and any arrearages owed.

The defendant-appellant was a resident of the State of California during the period of time that the Ohio Judgments were awarded

The plaintiff-respondent brought suit in August 1978, against the defendant-appellant in Millard County, Utah, where he now resides, requesting that the Fifth Judicial District Court give full faith and credit to the Ohio Judgments. The defendant-appellant answered the plaintiff's Complaint alleging the Ohio Judgments were void because the Ohio Courts did not obtain personal jurisdiction over him, and their enforcement was further barred in the State of Utah because of the statute of limitations. He further alleged that he had at all times kept current with his child support

payments except for a period of time from 1962-1964 when he did not know the whereabouts of the plaintiff-respondent and his child. He later learned that she had moved to the State of Hawaii without his knowledge.

The plaintiff-respondent filed a Motion for Summary Judgment which Motion was granted by the lower Court and Judgement was awarded in the amount of \$7,522.84, plus interest compounded annually at six percent per annum from May 8, 1975, until paid, and for the additional sum of \$380.00, plus interest compounded annually at six percent per annum from December 8, 1967, until paid.

The defendant-appellant filed a Motion to Stay the Entry of Said Judgment. The denial of that Motion is the basis for the appeal herein.

#### ARGUMENT

POINT I: GIVING FULL FAITH AND CREDIT TO THE JUDGMENT OF A SISTER STATE DOES NOT PRECLUDE INQUIRY INTO JURISDICTION OF COURT, OR A REGULARITY OF PROCEDURE WHICH DUE PROCESS REQUIRES.

The United States Constitution, Article IV, Section 1, requires "Full faith and credit shall be given in each State to the public acts, records, and juridicial proceedings of every other state,"

This Court has held that said section of the U.S. Constitution precludes any defense to a foreign judgment on its merits, but does not preclude a challenge to the jurisdiction of the Court which entered it. See Conn.v. Whitmore., 9 Utah 2d 250, 342 P. 2d 871 (1959).

This Court also held in the case of Transamerican Title Insurance Co. v. United Resources Inc., 24 Utah 2d 346, 471 P 2d 165 (1970), that lack of jurisdiction of the foreign Court over the parties and irregularity of procedure not constituting due process may be asserted as defenses in an action on a foreign Judgment, if they are properly raised.

Also, the mere recital in a foreign Judgment that the rendering Court had jurisdiction over the defendant-appellant is not binding on Utah Courts. See Van Kleeck Creamery Inc. v. Western Frozen Products Co. Inc. 24 Utah 2d 63, 465 P.2d 544 (1970).

Therefore, if the defendant-appellant can establish that the Ohio Courts did not have jurisdiction over him, or his rights to procedural due process were violated in the issuance of the subject judgments, the lower Court should not have awarded Summary Judgment to the plaintiff-respondent based upon the Ohio Judgments.

POINT II. THE OHIO JUDGMENTS DATED DECEMBER 1, 1967 AND MAY 15, 1975, ARE UNENFORCEABLE AGAINST THE

DEFENDANT-APPELLANT BECAUSE THE OHIO COURTS LACKED JURISDICTION OVER HIM AND HIS RIGHTS TO PROCEDURAL DUE PROCESS WERE VIOLATED.

Both the Utah Constitution, Article 1, Section 7, and the United States Constitution, 14th Amendment, require that "no person shall be deprived of life, liberty or property; without due process of law." This Court in the case of Christiansen v. Harris, 109 Utah 1, 163 P.2d 314 (1945) set forth the essentials of "due process of law" in depriving a person of life or liberty as: (a) the existence of a competent person, body, or agency authorized by law to determine the questions; (b) an inquiry into the merits of the question by such person, body, or agency; (c) notice to the person of the inauguration and purpose of the inquiry and the time at which such person should appear if he wishes to be heard; (d) right to appear in person or by counsel; (e) fair opportunity to submit evidence, examine and cross-examine witnesses; (f) judgment to be rendered upon the record thus made. A close examination of the record herein will show that the defendant-appellant was denied these essentials of due process in the awarding of the subject Ohio Judgments, particularly those essentials of notice and hearing in (c) above.

The plaintiff-respondent relied upon exhibits one

through fourteen attached to her Memorandum In Support of Motion For Summary Judgment, contained in the record herein, to establish the validity of the subject Ohio Judgments. An examination of Exhibits seven and eight attached to the above described memorandum will show that they are defective as to void the Judgment (Exhibit 9) based thereon. The Motion marked Exhibit seven is not verified in any manner, either by the plaintiff-respondent or her attorney. The motion merely makes conclusionary statements, failing to give any time frame over which the arrearages are alleged to be in default, thereby providing inadequate notice for anyone wishing to defend against it. The motion also fails to provide due process to the defendant in that no where within it does it set a date for a hearing when is to be heard by the Court, or does it give notice of a time frame in which the defendant was to respond to the motion. 16 Am Jur. 2d Constitutional Law Sec. 562 describes the character of notice which is necessary for due process, it states:

"To meet the requirements of due process, the notice must be reasonable and adequate for the purpose, due regard being had to the nature of the proceedings and the character of the rights which may be affected by it. It must give sufficient notice of the pendency of the action or proceeding, and a reasonable opportunity to a defendant to appear and assert his rights before a tribunal legally constituted to adjudicate such rights."

Exhibit seven is not reasonable and adequate for the purpose desired by the plaintiff-respondent, and no where therein is the defendant-appellant given notice of a hearing wherein he could have appeared and defended against the claim.

The plaintiff-respondent also did not follow the statutory law then in effect in Ohio as to notices. Revised Code Ohio Section 2309.67 states:

"When notice of a motion is required, it must be in writing and contain the names of the parties to the action or proceedings in which it is made, the name of the court or judge before whom it is to be made, the place where and the day on which it will be heard, and the nature and terms of the order to be applied for. If affidavits are to be used on the hearing that fact shall be stated. The notice shall be served a reasonable time before the hearing.

Exhibit seven clearly does not conform to the then existing law in the State of Utah.

Exhibit eight, upon which the plaintiff alleges the Ohio Court obtained jurisdiction over the defendant to enter the 1967 judgment, is also defective in certain respects. No where upon Exhibit eight does it state specifically what was allegedly served upon the defendant-appellant. This Court has nothing before it to establish if even the defective Exhibit seven was served upon the defendant-appellant.

The Motion before the Court of Common Pleas of Franklin County, Ohio, Division of Domestic Relations, Exhibit ten, upon which the Entry, Exhibit 13 is based,

has many of the same due process defects that are associated with the 1967 judgment described herein above. In Exhibit ten, the plaintiff-respondent moved the Ohio Court for an order reducing the current amount on the arrearage of child support monies to judgment. There is no specific mention of the amount of arrearage or for what period they are concerned with, again the defendant is not given proper notice as to what he should defend against. The defendant raises that point in paragraph two of his Declaration, Exhibit 12. The defects are not as great as in the 1967 judgment because Notice of a Hearing date is provided, Exhibit 11. Although we have no proof that the defendant-appellant received a copy of Exhibit 11, he only acknowledges receipt of the motion in his declaration.

Since the 1975 Entry by the Ohio Court, Exhibit 13, is merely a computation of what is owed under the 1967 judgment, and not a new claim for arrearages owed (except the \$380.00 amount), if the 1967 judgment is found to be defective because of a lack of jurisdiction over the defendant-appellant or his due process rights were violated, then any attempt to collect in 1975 for child support arrearages which occurred in 1962-64 would be barred by the Ohio Statute of Limitations. See Revised Code Ohio Section 2305.07

which would appear to establish a six year statute of limitations on child support arrearages, although not directly stated.

POINT III: THE ENFORCEMENT OF THE OHIO JUDGMENT IS BARRED BY SECTION 78-12-22 U.C.A. 1953 AS AMENDED.

The Entry of the Court of Common Pleas, Franklin County, Ohio, Division of Domestic Relations, Exhibit 13, is merely a calculation of what was then presently owed on the December 1, 1967 judgment, Exhibit 9, and not a renewal of that judgment as argued by the plaintiff-respondent in her Memorandum in Support of Motion for Summary Judgment. The Motion, Exhibit 10, upon which the Entry is based, in no place moves for a renewal of that judgment, but merely moves the Court for an order reducing the current amount on the arrearage of child support monies to a judgment. The Entry in no place grants a new judgment based on the original judgment, it does award a new judgment of \$380.00 for those new arrearages since 1967.

Since the Ohio judgment which the plaintiff-respondent was attempting to enforce in the lower court herein was awarded in 1967 (other than the \$380.00 judgment which was awarded in 1975), it is barred by the Utah Statute of Limitations with respect to foreign judgments, section



78-12-22 U.C.A. 1953 as amended, which states:

An action upon a judgment or decree of any Court of the United States or any state or territory within the United States, must be brought within eight years.

The 1967 judgment is clearly barred by the applicable Utah Statute of Limitations.

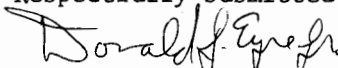
### CONCLUSION

The lower court was not precluded from inquiring into the jurisdiction of the Ohio Court herein, or determining whether the defendant- appellant's rights to due process were violated, before it gave full faith and credit to the Ohio judgments. It should be clear to this Court from the above discussion that the defendant- appellant's essential rights to notice and hearing were not observed as to the 1967 judgment, nor is there sufficient evidence that the Ohio Court had jurisdiction over him. There are also procedural defects as to the 1975 Entry, but since it is merely a calculation of what was owed under the 1967 judgment, if the 1967 judgment is found to be void the 1975 is therefore also unenforceable.

Even if the 1967 Ohio judgment is found not to be procedurally defective, its enforcement in Utah is barred by the statute of limitations as to foreign judgments. The lower court therefore erred in granting plaintiff-respondent's motion for summary judgement and denying

defendant-appellant's motion to stay the entry of the judgment. This court should direct the lower court to dismiss the complaint of the plaintiff-respondent for the reasons stated herein.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Donald J. Eyre, Jr.", written in a cursive style.

Donald J. Eyre, Jr.  
Attorney for the  
Appellant-Defendant.