

1980

Geneva Otero and the State of Utah, By and Through Utah State Department of Social Service v. Joe Williams : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

STEPHEN G. SCHWENDIMAN, DIANE W. WILKINS; Attorneys for Respondents; BRIAN M. BARNARD, MARY C. CORPORON; Attorneys for Defendant-Appellant;

Recommended Citation

Brief of Respondent, *Utah Dep't of Social Services v. Williams*, No. 16819 (Utah Supreme Court, 1980).
https://digitalcommons.law.byu.edu/uofu_sc2/2037

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE
STATE OF UTAH

GENEVA OTERO and the STATE OF :
UTAH, by and through Utah :
State Department of Social :
Services, :

Plaintiffs - Respondents, :

-vs- :

Case No. 16819

JOE WILLIAMS, :

Defendant - Appellant :

BRIEF OF RESPONDENT

An Appeal from the Judgment of the District
Court in and for Salt Lake County, Judge G. Hal Taylor,
Presiding

STEPHEN G. SCHWENDIMAN
Assistant Utah Attorney General
150 West North Temple
Salt Lake City, UT 84103

DIANE W. WILKINS
Deputy Salt Lake County Attorney
243 East 400 South
Salt Lake City, UT 84111

Attorneys for Respondents

BRIAN M. BARNARD
Attorney for Appellant

MARY C. CORPORON
Third Year Law Student for
Appellant
214 East 500 South
Salt Lake City UT 84111

IN THE SUPREME COURT OF THE
STATE OF UTAH

GENEVA OTERO and the STATE OF :
UTAH, by and through Utah :
State Department of Social :
Services, :

Plaintiffs - Respondents, :

-vs-

Case No. 16819

JOE WILLIAMS, :
Defendant - Appellant :

:

BRIEF OF RESPONDENT

An Appeal from the Judgment of the District
Court in and for Salt Lake County, Judge G. Hal Taylor,
Presiding

STEPHEN G. SCHWENDIMAN
Assistant Utah Attorney General
150 West North Temple
Salt Lake City, UT 84103

BRIAN M. BARNARD
Attorney for Appellant

DIANE W. WILKINS
Deputy Salt Lake County Attorney
243 East 400 South
Salt Lake City, UT 84111

MARY C. CORPORON
Third Year Law Student for
Appellant
214 East 500 South
Salt Lake City UT 84111

Attorneys for Respondents

TABLE OF CONTENTS

	Page (s)
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT	1-2
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2-4
ARGUMENT.	4-18
POINT I: THE TRIAL JUDGE DID NOT ABUSE HIS DISCRETION BY HOLDING THAT THE STATE OF UTAH SHOULD BE REIMBURSED FOR ITS EXPENSES ON THE DEFENDANT'S CHILD'S BEHALF EVEN IN LIGHT OF HIS FINANCIAL POSITION	4-8
POINT II: THE DEFENDANT SHOULD NOT BE ALLOWED TO AVOID HIS SUPPORT DUTY THROUGH HIS MISDEEDS	8-9
POINT III: THE TIME OF THE COMMENCEMENT OF THIS ACTION WAS NOT DETERMINATIVE OF THE OUTCOME OF THIS CASE, BUT WAS RELEVANT ONLY TO THE AMOUNT OF SUPPORT ARREARAGES	10-11
POINT IV: THE COURT DID NOT ABUSE ITS DISCRETION IN ORDERING THE FATHER TO BEAR THE FULL COST OF REIMBURSEMENT TO THE STATE OF UTAH.	11-15
POINT V: THE DECISION OF THE TRIAL COURT IS JUST AND REASONABLE UNDER THE CIRCUMSTANCES AND SHOULD NOT BE OVERTURNED	15-18
CONCLUSION	18-19

CASES CITED

DAY V. BROOKS, 224 N.E. 2d 561, 10 Ohio Misc. 273	12
FORBUSH v. FORBUSH, 578 P.2d 518 (Utah, 1978)	13,14
GULLEY v. GULLEY, 570 P.2d 127 (Utah, 1977)	5,10
HARMON v. HARMON, 491 P.2d 231 (Utah, 1971)	14
HARRIS v. HARRIS, 585 P.2d 435 (Utah, 1978)	5

HOLMES vs. CRIMINAL INJURIES COMPENSATION BOARD, 359 A.2d 90, 278 Md. 60.	12
IN RE ADOPTION OF DOBBS, 531 P.2d 303 (Wash. App., 1975	12,16,17
IN RE McAHREN'S ADOPTION, 331 A.2d 419 (Md, 1975)	12
McGOWEN v. STATE, 566 S.W. 2d 1958	12
REEVES v. REEVES, 556 P.2d 1267 (Utah, 1976)	6
RIDING v. RIDING, 8 Utah 2d 136, 329 P.2d 878 (1958).	5
STATE DIVISION OF FAMILY SERVICES v. CLARK, 554 P.2d 1310 (Utah, 1976).	5,9,14,16

STATUTES CITED

UTAH CODE ANNOTATED §78-45-3.	5
UTAH CODE ANNOTATED §78-45-7.	10,17
UTAH CODE ANNOTATED §78-45-7(2)	11
UTAH CODE ANNOTATED §78-45-7(3)	11
UTAH CODE ANNOTATED §78-45a-1	1,2,5
UTAH CODE ANNOTATED §78-45b-1.1	5

OTHER SOURCES CITED

59 AM JUR. 2d, Parent and Child, §55	5
--	---

IN THE SUPREME COURT OF THE

STATE OF UTAH

:
GENEVA OTERO and the
STATE OF UTAH, by and through
Utah State Department of
Social Services, :

Plaintiff-Respondents, :

CASE NO. 16819

vs. :

JOE WILLIAMS, :

Defendant-Appellant. :

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This action sought a determination of paternity, a judgment for past support paid for the minor child of the parties, and an order for future support of the child pursuant to the provisions of Utah Code Annotated §78-45a-1 et. seq. (1953 as amended).

DISPOSITION IN THE LOWER COURT

The defendant stipulated that he is the father of the child in question and allowed the court to enter an order to that effect. After this stipulation, a hearing was held on November 14, 1979 to determine the arrearages due and owing

the State of Utah for its support of the child through the welfare program and also to determine the ability of the defendant to repay said arrearage. Evidence was presented, stipulations as to Welfare amounts agreed to, and argument permitted by counsel.

A judgment was granted by the trial court and against the defendant in the sum of \$4,179.67 for support previously provided by the plaintiff, Division of Social Services, with execution upon the judgment being stayed until the defendant is placed on a work release program or is released from prison, at which time defendant's financial ability shall be reviewed. It is this judgment that is being appealed by the defendant.

RELIEF SOUGHT ON APPEAL

Plaintiffs seek that the judgment of the court below be affirmed. Plaintiffs also request that the court hold, as a matter of law, that a parent is not released from his obligation to reimburse the State for support given the minor child, simply due to the fact he is incarcerated at the State Prison.

STATEMENT OF FACTS

An action was filed in the Third Judicial District Court of Salt Lake County for the purpose of determining paternity, obtaining reimbursement of monies already expended by the State of Utah for the support of the child, and a continuing order for future support pursuant to U.C.A. §78-45a-1 et. seq. (1953 as amended).

co-plaintiff, Geneva Otero, on March 30, 1978. The defendant stipulated that he is the father of the child after commencement of the action. Defendant was, and has been at all times since the birth of the child, incarcerated in either the Salt Lake County Jail or the Utah State Prison at Draper, Utah.

Defendant, agreed that a hearing beheld on November 14, 1979 to determine defendant's obligation for support and arrearages, if any. Prior to the hearing, the child was killed in an auto-pedestrian accident, and the hearing on November 14, 1979 dealt only with the subject of past support.

At the hearing on November 14, 1979 both plaintiffs and defendant were represented by counsel. This hearing was not a summary judgment hearing, but an evidentiary hearing to determine arrearages. Defendant did not appear but presented affidavits which stated his income, the value of his possessions, and the fact that his earning potential is greatly impaired by his imprisonment at the State Penitentiary. The parties stipulated in open court to the amount of support furnished by the State Division of Social Services. The Court, per Judge G. Hal Taylor, heard oral arguments by counsel and ordered the defendant to reimburse the State for the support and medical expenses rendered the child in the amount of \$4,179.67.

In an order dated December 3, 1979, the court below gave judgment in favor of the plaintiff and against the defendant for \$4,179.67 in support arrearages paid by the State of Utah for the support of the child from her birth in March, 1978 to her death in September, 1979. The \$4,179.67 consisted of \$918.67

expended for medical expenses related to the birth of the child

and \$3,261.00 expended as support of the child from March, 1978 through September, 1979. The Court took into account the indigence of the defendant as represented by the affidavits. The Court below also issued a stay of execution on the judgment until such time as the defendant is released from prison or is on a work release program, at which time the defendant's ability would be reviewed.

ARGUMENT

POINT I

THE TRIAL JUDGE DID NOT ABUSE HIS DISCRETION BY HOLDING THAT THE STATE OF UTAH SHOULD BE REIMBURSED FOR ITS EXPENDITURES ON THE DEFENDANT'S CHILD'S BEHALF EVEN IN LIGHT OF HIS FINANCIAL POSITION.

Appellant is apparently confusing the real issues before this court. The main issue appears to be an attack on whether a father has an obligation to reimburse the State of Utah under varying economic conditions rather than whether the arrearages were calculated under the appropriate statute. Appellant is really arguing an "all or nothing" position, or in other words he should either pay "all or nothing" of the care of the child when the State of Utah is involved. Appellant attempts to hide the impact of his position by failing to analyze what if any effect there is on the custodial mother if and when she is not on Public Assistance. Respondent believes that to fail to raise the entire scope of his position, appellant is failing to adequately present the issues to the court.

The duty of the appellant to support his child came into existence at birth. This is specifically established by Utah Code Annotated 78-45-3, and Utah Code Annotated 78-45a-1 holds him "liable to the same extent as the father of a child born in wedlock." This duty means that the defendant was obligated to provide his child with the necessities of life until emancipation, or until the child was adopted. 59 AM Jur. 2d Parent and Child §55 (1971); Riding v. Riding, 8 Utah 136, 329 P. 2d 878 (1958); Harris v. Harris, 585 P.2d 435 (Utah 1978). However, defendant made no attempt to meet his duty and his child was left in need. Thus, the State rescued defendant's needy child and provided the child with the necessities of life.

Utah case law allows a "parent" to be sued when a third party furnishes the parent's child with necessities. State Division of Family Services v. Clark, 554 P.2d 1310 (Utah 1976); and in Gulley v. Gulley, 570 P.2d 127 (Utah, 1977)., the Utah Supreme Court stated the following:

"Whether by the statute hereinabove referred to, or by the common law, the just and logical consequence of the duty of parents to support their children is that if they are left in need and a third party provides them necessities, he is subrogated to the child's right and may obtain reimbursement therefor."

In the present case, the State brought this action after it had paid for the necessities of defendant's child. This action was not initiated to enforce an unreasonable or arbitrary duty but was brought so that the defendant would be responsible for his actions and financially to the extent found by the court.

Pursuant to Utah Code Annotated 78-45b-1.1, the State found

itself obligated to bring this action to ensure that the child is

maintained by the defendant's resources-to the extent found by the court to be appropriate-instead of the funds furnished by the general citizenry through the welfare program. More particularly, this obligation is found discussed and delineated in Reeves v. Reeves, 556 P.2d 1267 (1976) as follows:

"The children are unconditionally entitled to support from their parents; and the State is authorized by law and should be encouraged and aided as a matter of public policy to see that the responsibility is borne by them, both initially and in any necessary subsequent proceedings."

Appellant would have this court believe that because he (1) has little money, (2) is incarcerated, (3) does not have custody, (4) will not have custody when he is released, and (5) has not provided any kind of love, affection, care, etc., that he simply may acknowledge that he is the father of a child and then turn around and walk away from any and all responsibility as long as the above remain in whole or in part. Such is beyond reason, and slaps the intent of the law and basic moral responsibility that each parent has. As will be discussed in further arguments, there is more to child "rearing" than financial support. Appellant tries to make financial support the only basis for this court or any court to use in determining the liability of both parties. This is not sound, and cannot be the only criteria used. Appellant has failed to show where the lower court abused any discretion as to this determination. Without such a showing, the appellant has no complaint worthy of consideration.

The record is clear that the trial Judge reviewed the condition of the appellant. Affidavits and argument adequately presented the facts relevant to the financial condition of the appellant. The court, however, in the circumstances

in this case, the temporary incarceration could not be used as a justifiable excuse to cancel his lawful duty to support the child. After such a review, the trial court ordered that the defendant would need to satisfy the judgment when he is released from jail or able to do so.

Respondent is sure that most involved in prosecuting or defending this appeal have had expenses arise such as Doctor bills, hospital bills, etc., where at the time they have occurred, the funds are not available to repay. That, however does not change the fact that services were rendered and somewhere, sometime the money will have to be repaid. Such is the case here. Naturally, the State of Utah or any other body-even the court-cannot guarantee that the defendant will ever be in a comfortable financial position, but that cannot be the sole basis to determine whether a judgment be taken to establish the firm duty or not. If the duty is found, the State of Utah is entitled to a judgment for the amount found to reasonably and necessarily have been provided. Whether that amount is ever collected (i.e.: bad debts, etc.) is not a matter before this court. The trial judge found it appropriate to stay collection on the judgment until the temporary incarceration terminates, or upon further review of the court. This meant that the defendant would not have to pay the judgment until he is placed on a work release program or until he is released from prison and working on the outside.

The judgment against the defendant is a sum certain which can be satisfied over a period of time. The payment of the judgment will allow the defendant to fulfill his support duty and be responsible for his child. Any other outcome

from this action will set a precedent for a father to avoid his support obligation, and will undermine the very foundation of the parent-child relationship.

POINT II

THE DEFENDANT SHOULD NOT BE ALLOWED TO AVOID HIS SUPPORT DUTY THROUGH HIS MISDEEDS.

Defendant bases most of his argument on the reasoning that he should be judicially relieved from meeting his support obligation due to his poor financial position and incarceration in prison. However, defendant fails to mention that this "indigency" is a result of his own misdeeds. If defendant is allowed to avoid his support duty because of his prison confinement then in actuality defendant is benefiting financially from his wrong doings.

Because of the fact there is no ongoing support to be ordered, this case is different than others that might arise. Here, we have a sum certain which the court has found that the defendant owes. Part of a prisoners rehabilitation is accepting the responsibility of his actions. If defendant is allowed to shirk his responsibility for supporting his child through court approval, then this process is thwarted and little if any good results to anyone. Thus, defendant's duty to his child should not be abrogated merely because he committed a wrong, placing him in prison and making him unable to pay large amounts. But instead, defendant's duty should be postponed until he is financially able to meet his responsibility and satisfy the judgment.

paid, the one with the duty could request the court through appropriate hearings, to determine the amount to pay while he is in Prison. Even those in such circumstances have a responsibility to pay a portion of their earnings for child support. To rule otherwise is to say that by ones own choice of "wrong-doing," one can be relieved of that responsibility. This court said in State Division of Family Services v. Clark, supra:

"...inasmuch as the father cannot do so (avoid duty of support) by voluntary attempts, there certainly should be no reason why he should be relieved of that obligation by his misdeeds. Even if his misconduct may have worked a forfeiture of his right to custody, he should not gain any advantage from his own wrong nor should it adversely affect the right of the child to support."
[Emphasis added]

The lower court's order that the defendant satisfy the judgment when he is able to do so, will only give the defendant an advantage from his wrong doing to the extent that his duty to pay the judgment will be postponed until he is no longer indigent. This decision will not be that great of a hardship to the defendant but could be very beneficial to him in the long run because he will begin to accept responsibility for his actions and he will begin to understand the importance of a parent's duty with respect to his child. Thus, the trial judge did not err when he considered all the facts surrounding this case and held that the defendant should reimburse the State when he is able to do so for the expenses paid for his child. The fact that one is incarcerated in the County Jail or the Prison is not grounds to remove the duty of support from a parent. To rule otherwise would invite individuals to voluntary indigency (i.e.: quit work, etc.) for the purpose of avoiding the duty to support during times of little or no income. **Even an argument must be rejected.**

POINT III

THE TIME OF THE COMMENCEMENT OF THIS ACTION WAS NOT DETERMINATIVE OF THE OUTCOME OF THIS CASE, BUT WAS RELEVANT ONLY TO THE AMOUNT OF SUPPORT ARREARAGES.

As was shown in Point I of this argument, defendant had a duty to support his child. This duty made the defendant liable for any necessities which a third party expended on behalf of his child. (See Gulley v. Gulley). Therefore, the time when this action was commenced had no effect on the outcome of this case because it was not relevant to whether the defendant had a support duty. The timing of this action was only germane to the amount of money the State expended for defendant's child. This issue concerning the amount of necessary money spent on defendant's child was clearly substantiated by the State at the trial level.

When this action came before Judge Taylor, the judge was aware of defendant's lack of income and was also aware of the fact that defendant had made no attempt to support his child. As a result, the judge could have based his decision solely on the decisions of this court which entitles a third-party to reimbursement from a parent for expenses on his child's behalf. The application of Utah Code Annotated 78-45-7, as referred to by appellant reaches the same result. To claim the court erred by not applying the appropriate section is misleading and essentially begs the question. However, even if defendant's contention were correct, the trial judge still made the proper decision.

When this case came before Judge Taylor, defendant's child was deceased. Therefore, prospective support on the

child's behalf was not an issue. Section 78-45-7(2) of the Utah Code Annotated concerns only prospective support. On the other hand, Section 78-45-7(3) of the U.C.A. is limited to back support. This section 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." (Utah Code Annotated Section 78-45-7(3).)

By applying the above criteria, the trial court's decision was a sound one. All pertinent information was reviewed and considered. As a result the court awarded the State reimbursement for the public assistance it expended for defendant's child. In reaching his decision the trial judge did not overlook the earning capacity of the defendant, because he realized that the judgment was a sum certain that could be satisfied over a period of time. Thus, Judge Taylor did not abuse his discretion in requiring the defendant to pay the judgment when he is able to do so. The financial condition of the appellant at the time this matter was instituted or heard was not dispositive of the matter as argued by appellant, and this position should be rejected.

POINT IV

THE COURT DID NOT ABUSE ITS DISGRESSION IN ORDERING THE FATHER TO BEAR THE FULL COST OF REIMBURSEMENT TO THE STATE OF UTAH.

All children have a right to be supported and nurtured by their parents. The duties of a parent are set out in the

case of In Re Adoption of Dobbs 531 P. 2d 303 (Wash. App, 1975):

"The general obligations of parenthood include these minimum standards: 1) Express love and affection for the child. 2) Express personal concern over the health, education, and general well being of the child. 3) The duty to supply the necessary food, clothing, and medical care. 4) The duty to provide an adequate domicile. 5) They duty to furnish social and religious guidance..."

As indicated, then, the support duty of a parent extends past the obligation to provide only money. In the case of In Re. McAhren's Adoption, 331 A2d, 419 (M.D. 1975), the court said, "Parenting is more than a passive state of financial obligation, rather it is an active, occupation calling for constant, affirmative demonstrations of parental love, protection, and concern."

Several other states have realized that services, as well as money, can be an element of a child's support. See McGowen v. State, 566 Southwest 2d.1958; Holmes v. Criminal Injuries Compensation Board, 359 A2d. 90, 278 M.D. 60, Day v. Brooks, 224 N.E. 2d. 561 10 Ohio Misc. 273. As can be seen in society, today, what is termed "Child Support" in the law, most often consists of what would better be termed "Child Contribution. Seldom does the money contributed by the non-custodial parent totally support a child.

As a general rule, the burdens of support fall heavier on the custodial parent than the non-custodial parent. It is the custodial parent who provides a home, prepares the meals, and clothes the child, often using his or her own income to supplement whatever child support is being received. The earning potential of a custodial parent may be impaired by the necessity

of always being on call as a parent. The finances of a custodial parent, particularly one with other children, or with little training, may be so strained as to make it impossible for the parent to hire a caretaker for the child while he or she works. A custodial parent bears the responsibility for the day to day care, training, discipline and medical care of the child. The judge has discretion to take these responsibilities into consideration when deciding who should be required to seek gainful employment to support the child. The court may require either parent to relieve the other where there has been a hearing and it is found that the circumstances warrant relief. Forbush v. Forbush, 578 P.2d 518 (Utah, 1978).

In this particular case we have a child born out of wedlock. Here the mother has borne full responsibility for the care, training, discipline, and physical needs for the child since her birth. The child's father did not contribute anything to the child's maintenance, nor was he able to contribute anything to the child except in the form of financial support. An appropriate hearing was held in which it was found that both the child and mother were in such necessitous circumstances as to require support by the State from the time of the child's birth until her death. The Court took into consideration the financial situation of the father and found him liable to the State of Utah, Department of Social Services, in the sum of \$4,179.67. This amount represented the sums expended by the State for the child's birth and maintenance until her death. The Court took notice of the fact that the father was in prison, and temporarily unable to satisfy the judgment, and stayed the judgment until he was

It was within the court's discretion to order the father to reimburse the State for money it had expended in the past for the support of the child. (See State Department of Social Services v. Clark, Supra). It is also within the court's discretion to stay an order of child support until such time as the father can pay it. Harmon v. Harmon, 491 P2d. 231 (Utah 1971).

The Appellant's Brief makes several assumptions about the situation of the plaintiff-mother which are not warranted by the record. Appellant claims that the mother had shirked her responsibility as a parent. However, the record is devoid of any evidence to support this conclusion. The Appellant also assumes that the mother was more capable of obtaining employment than the father, but there is no evidence to support this conclusion in the record. We do not know how many other children the mother had to care for or their ages. We do not know her age or how healthy she was. We do not know whether she had any marketable skills which would enable her to earn enough money to support herself and her family and pay for substitute care for the child(ren). The burdens of finding employment for a young woman with several children, poor health, and little or no training could render her no more capable of earning a living than a prisoner. The court had the opportunity to observe the circumstances of the plaintiff and to weigh the relative burdens of support on the parties. It was within the court's discretion to relieve either parent of the financial obligations of support if it felt the circumstances and the welfare of the child warranted it. Forbush supra.

of the child, Geneva Otero, of responsibilities to help care for the child. Appellant equates a court ordered amount of money as the only criteria of what constitutes "support." Respondent believes that from the discussion here presented, it is obvious that there is more than a direct court ordered contribution. For Appellant to say that Geneva Otero contributed nothing, and that he is being "stuck with the entire amount" is a naive approach and misunderstanding of the entire circumstances.

The equal protection argument suggested by Appellant was not raised at the time of hearing and so the Appellant is precluded from raising it on appeal. Even if it could be considered here, it would have to be considered without merit as per the analysis, heretofore made.

The Court heard the matter below and the judgments rendered are within the court's prerogative, there is no evidence of abuse in such a ruling. They should not be disturbed upon appeal.

POINT V

THE DECISION OF THE TRIAL COURT IS JUST AND REASONABLE UNDER THE CIRCUMSTANCES AND SHOULD NOT BE OVERTURNED.

Appellant's brief posits a hypothetical situation in which the Appellant feels a result contrary to his position in the instant case would provide a poor precedent according to Appellant, an affirmance of the trial court's ruling would be precedent for requiring a disabled mother to reimburse the State many years after the fact for money expended in the support of

her indigent child. The Appellants hypothetical is not the case before the court, but even if it were, the instant case would not mandate such a result.

First of all, the defendant in this case is not disabled. He is incarcerated at the State prison because of a conviction for robbery. (See record) His inability to earn a living is only temporary and will cease when he is released from prison. His inability to earn a living is not something beyond his control such as illness or handicap, but is the result of his own wrong doing, the commission of a felony. A father (or mother) cannot be relieved of the support of a child because of his or her own wrong doing. Clark supra and In Re Adoption of Dobbs 531 P.2d 303 (Wash. App. 1975).

Secondly, this is an action for arrearages for support already paid, not an action to determine support. Under the holding of the Clark case, the father is obligated to reimburse the State for actual amounts of support which the State has already expended for his child.

Thirdly, a hearing was held and the financial condition of the father was reviewed. It was determined that he owed \$4,179.67 in past support and medical expenses. It was also determined that he was unable to pay this amount at present because of his inability to earn a living and execution was stayed until such time as the defendant-appellant is capable of earning a living again. At the hearing, it was determined that:

1. The father was in prison and temporarily unable to earn a living.

earn a living.

3. The father had no other support obligation.
(See Record)

These findings meet the requirements of U.C.A. Section 78-45-7 (1953 as amended) in that they take into account,

"the standard of living and situation of the parties, the relative income and wealth of the parties, the ability of the obligor to earn, the ability of the obligee to earn, the need of the obligee, the age of the parties, and the responsibility of the obligor for the support of others".

A reversal of the trial court would provide a much more dangerous precedent than the hypothetical the Appellant raises. If the court rules that Appellant is not liable for support, it will set a precedent which would release all prisoners from their obligations to support their dependents. Under this type of ruling, the habitual criminal or escaped felon could get a woman pregnant while he was out of prison and pass the entire obligation of the support and care of the child off to the woman and/or the State without ever carrying any of the responsibilities for the child, so long as the father remained in prison. If the father was an itinerant hobo, he would not be relieved of his obligation to support because of his indigency. No parent should be relieved of his obligation of support because his own fault has rendered him temporarily impecunious. See: In Re Adoption of Dobbs, 531 P.2d 303 (Wash. App. 1975). It is the policy of this State that a parent not be relieved of his obligation to support because of his misdeeds.

Clark, supra. Upholding the decision of the trial court furthers

this policy.

CONCLUSION

The plaintiffs have obtained a judgment requiring the defendant to reimburse the State of Utah for \$4,179.67 paid by the State for the support of his impecunious child. This judgment should be upheld. That a parent is not relieved of his obligation to support his offspring because of his imprisonment, is the policy of this state and should continue to be so. The Court should therefore sustain the judgment of the court that the State of Utah is entitled to reimbursement for money actually expended by the State for support of a prisoner's dependent child while he or she is incarcerated. This judgment is mandated by the following considerations:

1. The duty to support one's child attaches as soon as the child is born. Parents cannot contract away that obligation or void the obligation by their misdeeds.

2. When the State must step in to rescue an impoverished child, the State is entitled to reimbursement from the child's parent; and in this case the father where he is living and capable of earning a living or contributing to the care.

3. If, at a hearing the father is found to be unable to provide support because of a temporary incapacity, the court has the authority to stay execution of a support obligation until he regains his ability to earn a living.

4. In an action for reimbursement of monies paid by the State for support, the State is entitled to the full amount expended for the child's support.

5. It is within the court's discretion, after looking at the evidence, to order one parent and to relieve the other parent of the burden of support, particularly where the parent charged with support payments is the non-custodial parent.

6. The Court did not abuse its discretion requiring a defendant to pay past support, and in the absence of the abuse of discretion, the ruling should be allowed to stand.

Therefore, pursuant to these considerations, and the analysis of the positions here presented, the judgment of the trial court should be sustained.


Respectfully submitted,

ROBERT B. HANSEN
Utah Attorney General
STEPHEN G. SCHWENDIMAN
Assistant Utah Attorney General

TED CANNON
Salt Lake County Attorney
DIANE W. WILKINS
Deputy Salt Lake County Attorney

MAILING CERTIFICATE

This is to certify that I mailed a true and exact two copies to the Appellant's attorney, Brian M. Barnard, 214 East 500 South, Salt Lake City, Utah, 84111, on this 28th day of February, 1980.


STEPHEN G. SCHWENDIMAN
Assistant Attorney General