

1980

Geneva Otero and the State of Utah, By and
Through Utah State Department of Social Service v.
Joe Williams : Respondent'S Brief In Opposition
To Appellant'S Petition For Reconsideration

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 Plaintiff; BRIAN M. BARNARD; ATTORNEY FOR 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_sc2/2040

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.:

Case No. 16819

vs. :

JOE WILLIAMS, :

Defendant-Appellant. :

:

RESPONDENT'S BRIEF IN OPPOSITION TO
APPELLANT'S PETITION FOR RECONSIDERATION

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, Suite 234
Salt Lake City, Utah 84103

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

BRIAN M. BARNARD
Attorney for Appellant
MARY C. CORPORON
Third Year Law Student for
Appellant
214 East 500 South
Salt Lake City, Utah 84111

FILED

JUN 26 1990

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.:

Case No. 16819

vs. :

JOE WILLIAMS, :

Defendant-Appellant. :

:

RESPONDENT'S BRIEF IN OPPOSITION TO
APPELLANT'S PETITION FOR RECONSIDERATION

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, Suite 234
Salt Lake City, Utah 84103

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

BRIAN M. BARNARD
Attorney for Appellant
MARY C. CORPORON
Third Year Law Student for
Appellant
214 East 500 South
Salt Lake City, Utah 84111

TABLE OF CONTENTS

	<u>Page</u>
ARGUMENT	1
POINT I	
APPELLANT MADE NO REQUEST FOR ORAL ARGUMENT THEREFORE THIS COURT WAS CORRECT IN DECIDING THE PRESENT CASE ON THE PARTIES' BRIEFS	1
POINT II	
THIS COURT DID NOT ERR IN HOLDING THAT AN INMATE IN PRISON SHOULD HAVE TO PAY THE SUPPORT DEBT OF HIS DECEASED CHILD.	2
POINT III	
THE TRIAL JUDGE'S STAY OF EXECUTION INDICATES THAT HE HAD IN MIND THE DEFENDANT'S ABILITY TO PAY HIS SUPPORT OBLIGATION	4
POINT IV	
THE CONFLICT IN THE DICTA OF THE <u>ROBERT'S</u> AND <u>WILLIAM'S</u> OPINIONS CONCERNING <u>§78-45-7(3)</u> <u>U.C.A.</u> , HAS NO BEARING ON THE OUTCOME OF THIS CASE	5
CONCLUSION	7

CASES CITED

<u>IN RE ADOPTION OF DOBBS</u> , 531 P.2d 303 (Wash. App. 1975	3
<u>MECHAM V. MECHAM</u> , 570 P.2d 123 (1977)	5
<u>OTERO V. WILLIAMS</u> , No. 16819, Unpublished opinion (Utah, filed May 8, 1980)	4,6,7
<u>ROBERTS V. ROBERTS</u> , 592 P.2d 597(Utah 1979)	6,7
<u>STATE DIVISION OF FAMILY SERVICES V. CLARK</u> , 554 P.2d 1310 (Utah 1976)	3,5

STATUTES CITED

Utah Code Annotated, 1953, Section 78-45-7(2) 5
Utah Code Annotated, 1953, Section 78-45-7(3) 5,6

an attempt to have this court rule that oral argument is a matter of right not privilege. Such a position is absurd. This court does not grant oral argument unless a specific request is made. The Utah Supreme Court makes numerous decisions every year without oral argument. However, oral argument is granted when requested. If appellant desired oral argument in November, 1979, when the notice of appeal was submitted, he should have requested it then. If appellant had desired oral argument later on, he should have requested it later. Notice was sent to both parties indicating when the matter would be heard and that no oral argument would be granted unless requested prior to that date. Appellant failed to ask for oral argument and now a month after this court reached decision on his case, argues the materiality of his own error. The error is not with this court but with the appellant. Any basis of reconsideration from this argument must be rejected as unfounded.

POINT II

THIS COURT DID NOT ERR IN HOLDING THAT AN
INMATE IN PRISON SHOULD HAVE TO PAY THE SUPPORT
DEBT OF HIS DECEASED CHILD.

Appellant contends that this Court failed to consider the rehabilitative impact of its decision. Such is not the case! This court was aware of appellant's imprisonment and read carefully both respondent's and appellant's brief which discussed the rehabilitative impact on appellant if he avoids his support duty.

The ruling in the present case has a positive effect on the appellant's and other prisoner's rehabilitation because the inmate is required to accept the responsibility of parenthood. In State Division of Family Services v. Clark, 554 P.2d 1310, 1311 (Utah 1976), this Court stated: "the duty of parents to support their children derives from natural law. This has been recognized from the earliest times as such a proposition of such incontestable correctness that it is neither subject to doubt nor in need of explanatory justification;" When an inmate accepts his natural duty of support, he is on the road to obeying other laws of the land and becoming a productive citizen. On the other hand, if an inmate is allowed to shirk his responsibility of being a parent, due to his incarceration, then in effect he is benefiting from his own wrong. This is not the law in Utah nor should it be. In Clark, 554 P.2d at 1312, this Court stated that a parent cannot be relieved of his support duty because of his own misdeeds. See also In Re Adoption of Dobbs, 531 P.2d 303 (Wash. App. 1975).

In the instant case, the trial court and this court were aware of appellant's incarceration and present inability to earn a living. For this reason execution was stayed until such time as the appellant was capable of earning a living. This may be somewhat of a hardship on appellant when he is working again, however, court decisions are rendered daily that have a difficult impact on parties. Almost any decision in favor of a plaintiff

means that the defendant will be required to pay a sum certain. It is no different for prison inmates who are defendants. Inmates often have judgments outstanding against them and have the executions stayed until they are working again. Therefore, this court did not err in holding that appellant should have to pay the support debt of his deceased child.

POINT III

THE TRIAL JUDGE'S STAY OF EXECUTION ON THE JUDGMENT INDICATES THAT HE HAD IN MIND THE DEFENDANT'S ABILITY TO PAY HIS SUPPORT OBLIGATION.

In its opinion of the present case this Court stated the following:

"The state of the record is such that we do not know what considerations the trial judge considered in arriving at the judgment. The fact that he ordered the defendant to repay the full amount does not necessarily indicate that he did not consider the financial condition of the defendant. The fact that he granted the stay of execution on the judgment until the defendant received some income indicates that the trial judge specifically had in mind the state of the defendant's income." (Emphasis added)

Otero v. Williams, No. 16819, Unpublished op. at 2 (Utah, filed May 8, 1980).

This statement by the court is very logical and clear, and needs no further explanation. The stay of execution on the judgment shows that the trial judge considered appellant's earning ability. To conclude otherwise is to completely ignore the stay of execution.

In addition, the trial judge's ruling was not excessive. Appellant's child was deceased and thus child support would no longer be accruing. The judgment was for a sum certain and was

to be satisfied when defendant had the means and ability to do so. Therefore, this court's ruling in affirming the trial court's decision was correct.

POINT IV

THE CONFLICT IN THE DICTA OF THE ROBERT'S AND WILLIAMS'S OPINIONS CONCERNING §78-45-7 (3) U.C.A, HAS NO BEARING ON THE OUTCOME OF THIS CASE.

The present case concerns a determination of support arrearages when no prior court order exists and is not to be confused with a determination of prospective support. This court (in contrast to appellant's brief) has never said that an obligor's earning ability should not be considered in determining prospective support. On the contrary, this court and the legislature have emphasized that an obligor's earning ability should be one of the factors considered in determining prospective support. See Utah Code Ann. §78-45-7(2); Mecham v. Mecham, 570 P.2d 123 (1977); State Division of Family Services v. Clark, 554 P.2d 1310 (Utah 1976). However, it is clear that the present case is not dealing with prospective support. This case concerns support arrearages when no prior court order exists. Thus, the present case fits squarely within §78-45-7(3) U.C.A. which states as follows:

"(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."

The conflict in the present case arises from dicta in Roberts v. Roberts, 592 P.2d 597 (Utah 1979), and dicta in Williams, supra, explaining §78-45-7(3) U.C.A. In Roberts, this Court said that a trial judge should consider an obligor's earning ability when determining support arrearages under §78-45-7(3) U.C.A. Roberts 592 P.2d at 599. However, in Williams this Court said that the trial judge does not necessarily have to consider an obligor's earning ability in assessing support arrearages. (Williams unpublished op. at 2). Indeed there is a conflict, but the conflict is only in the dicta of these two cases. The holdings of both cases were determined on other factors and the dicta only came about because this Court was expounding in areas that may later be in question.

In the present case, this Court (as appellant concedes in his brief) concluded in its opinion that the trial judge considered appellant's capacity to earn. As a result, under the narrower dicta of Roberts, supra, the outcome of this case would not change. Therefore appellant's petition for reconsideration should be denied.

However, if this court grants the petition for reconsideration, it should be for the purpose of resolving the conflict in dicta between Roberts, and Williams only. The outcome of this case will not change, since the court has already held that the trial court took the factors into consideration that appellant is now arguing should be taken into consideration. Williams is consistent with Roberts. It is only the one paragraph of "dicta" in Williams that seems to bother the appellant. None-the-less, the

outcome of the decision will not change, even if this Court wants to rehear this matter as such, Respondents feel that the apparent conflict in dicta can be resolved at later times under more appropriate circumstances, since the outcome in this case will not change. As such, the petition for rehearing should be denied.

CONCLUSION

This Court has already determined that appellant's earning ability was considered by the trial judge in assessing support arrearages. Therefore, the holding of this case will not change even if this Court grants appellant's petition for reconsideration.

However, appellant's petition for reconsideration should be denied because: (1) Appellant had ample opportunity before this Court rendered its decision, to request oral argument (2) This Court has already considered the rehabilitative impact of its decision on appellant. (3) This is not the proper time for the Court to resolve the conflicting dicta in Roberts and Williams since the outcome will not change. For these reasons, respondent urges this Court to sustain its previous holding and deny appellant's petition for reconsideration.

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 26th day of June, 1980.


STEPHEN G. SCHWENDIMAN
Assistant Attorney General