1980

Frances E. Bernard v. John W. Attebury : Brief of Respondent

Utah Supreme Court

Wendell P. Ables; Attorney for Defendant and Appellant;
Ted Cannon; Attorneys for Plaintiff and Respondent;

IN THE SUPREME COURT

OF THE STATE OF UTAH

FRANCES E. BERNARD Plaintiff and Respondent	)	
vs	)	Case No. 16985
JOHN W. ATTEBURY Defendant and Appellant	)	

BRIEF OF RESPONDENT

Appeal from a Consolidated Order of the Third District Court in and for Salt Lake County

Honorable Raymond S. Uno, Judge

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vs	)	
JOHN W. ATTEBURY	)	
Defendant-Appellant	)	

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Respondent concurs in appellant's statement of the nature of the case.

DISPOSITION IN LOWER COURT

Respondent concurs in appellant's statement of the disposition of the case below.

RELIEF SOUGHT ON APPEAL

Respondent requests that the decision of the trial court be affirmed.

STATEMENT OF THE FACTS

Respondent and appellant were divorced on September 7, 1976, in the District Court for Sweetwater County, Wyoming. Pursuant to the divorce decree respondent was awarded the custody of the parties' two minor children. Defendant agreed to pay $500 per month, or $250 per child per month, as child support. (T. 60 line 28-30). This agreement was incorporated into the

divorce decree.

The older son, John David dropped out of school in the fall of 1976 when he was in the 9th grade. (T.94). From that time to the time of the August, 1979, hearing, he lived continuously with one of his parents, and held, intermittently, several low paying short-term jobs. Most of the time he was living with his mother he was unemployed. (T.82 lines 20-30, T. 83,84). He was unable to secure steady employment because he was still a minor. (T.94 lines 15-19, T.89 lines 23-27). When he was employed he used the money as spending money (T.91 lines 16-25) and contributed to household expenses only sporadically (T. 92 lines 1-8).

At the time of the hearing John David was seventeen years old (T. 87 lines 10-11) and engaged to be married "when he turned eighteen and could get a job." (T. 91 lines 27-30). He was working on getting his high school diploma through the GED Program. (T.76 lines 25-29).

This action was commenced on March 21, 1979, under the Uniform Reciprocal Enforcement of Support Act claiming support from January, 1979, the date the boys went to live with their mother in Wyoming. On May 31, 1979, the Third District Court entered an order temporarily reducing appellant's child support obligation to $150 a month for the support of John Joseph, the younger son, and reserving the issue of support for John David

until the Sweetwater County Attorney's Office investigated and ascertained the whereabouts of John David. After a hearing on August 22, 1979, at which appellant-respondent and John David testified and were cross-examined, the court ordered the appellant to pay $150 per month for the support of John David during the months of August, September, October, and November, 1979, at which time he reached the age of majority, and $150 per month as support for John Joseph. The court also ordered the appellant to pay to respondent $2000 in past due child support. In calculating these amounts, Judge Dee relieved appellant of his obligation to support John David during two months in which the minor was employed. The order was signed August 31, 1979, and entered on September 5, 1979.

On November 29, 1979, a new petition and order to show cause was issued against appellant. (R 24). A hearing was held on the question of whether the order of May 30, 1979, (R 11,12) was res judicata on the issue of John David's right to support. This hearing resulted in the consolidated order of January 16, 1980, signed by Judge Uno (R 40,41).

ARGUMENT

POINT I

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ORDERING SUPPORT FOR JOHN DAVID ATTEBURY UNDER THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

The Uniform Reciprocal Enforcement of Support Act gives the court of the responding state (in this case, Utah) some discretion in determining whether the obligor owes a duty of support and the extent of such duty. Two statutes bear this out. Utah Code Annotated 77-31-24 (1953 as amended 1980) states that "If the court of the responding state finds a duty of support, it may order the respondent to furnish support or reimbursement therefor and subject the property of the respondent to such order."

Utah Code Annotated 77-31-7 states:

> Duties of support applicable under this act are those imposed or imposeable under the laws of any state where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

The court has discretion and that discretion is circumscribed by Utah law, as the defendant has, at all times relevant to this action, resided in Utah.

Utah law requires that the court in determining the amount of the obligation to support take into account several factors. Utah Code Annotated 78-45-7 states:

> "(1) Prospective support shall be equal to the amount granted by the prior court order unless there has been a material change of circumstances on the part of the obligor or obligee.
>
> (2) Where no prior court order exists, or a material change in circumstances has occurred, the court in determining the amount of prospective support, shall consider all relevant factors

including but not limited to:

(a) the standard of living and the situation of the parties;
(b) the relative wealth and income of the parties;
(c) the ability of the obligor to earn;
(d) the ability of the obligee to earn;
(e) the need of the obligee;
(f) the age of the parties;
(g) the responsibility of the obligor for the support of others."

Appellant cites this statute in his brief but neglects to include subsection one which allows the court to give a great deal of deference to the existing support order unless there are changed circumstances. The court had already considered the issue of changed circumstances when it entered the order of May 31, 1979, which reduced appellant's child support obligation. However, in the hearing held before Judge Dee on August 22, 1979, the court again heard testimony which meets the requirements of U.C.A. 78-45-7 (1953 as amended).

The record reflects ample evidence of appellant's ability to earn. He testified that he was a welder and boiler-maker (T. 66 lines 6-9), a skilled tradesman, earning $12.00 per hour. At the time of the hearing he had been unemployed for three weeks, although he expected a call from his union in the next weeks or days. (T. 67 line 30, T. 68, line 1). He further testified that he ordinarily worked "a good share" of the year (T. 68 lines 2-5). Appellant's testimony as to his employment is strong evidence in support of the court's finding that he is financially able to pay child support.

While the record shows appellant to be a skilled laborer, respondent works in a bar (T. 80) and has, at times, had to resort to public assistance to maintain herself and the boys. (T.79).

The record is replete with evidence that all relevant factors were considered by the court relating to the issue of support even though the parties had already agreed to reduce the ongoing amount. Since the court's ruling is supported by ample evidence, there is no showing that the court abused its discretion in ordering support for John David, and the ruling should not be overturned on appeal.

POINT II

JOHN DAVID AND JOHN JOSEPH ARE ENTITLED TO SUPPORT FROM THEIR FATHER, AND THEIR MOTHER IS ENTITLED TO REIMBURSEMENT OF SUPPORT FROM THE CHILDREN'S FATHER.

It is well settled law in Utah that a child has a right to be supported by his or her father. This right of support cannot be waived by the child himself, Utah Fuel Co. v. Industrial Commission, 27 P.2d 434, 83 Utah 166 (1930), or bartered away by the custodial parent. Price v. Price 4 U.2d 153, 289 P.2d 1044 (1955), Riding v. Riding 8 U.2d 136, 320 P.2d 878 (1958), Gulley v. Gulley 470 P.2d 127 (1977), DeBry v. DeBry 27 U.2d 237, 496 P.2d 92 (1972), Baggs v. Anderson 528 P.2d 141 (1974). So long as the parent and child are both living, the right to support can only be extinguished by adoption (Riding, supra) or by emancipation. Stanton v. Stanton 421 US.7 (1975).

A party who provides support is entitled to reimbursement for that support. Baggs v. Anderson, supra, French v. Johnson 401 P.2d 315, 16 U.2d 360 (1965). This is true whether the party is the state, as in the case of Clark v. Department of Social Services, 554 P.2d 1320 (1976) or the stepparent and parent as in French v. Johnson.

The case of Wasescha v. Wasescha 548 P.2d 895 (Utah 1976) is distinguishable from the instant case. In Wasescha the mother specifically testified that she was not requesting reimbursement of money expended for support but that the money recovered would be placed in a trust fund for the children's education. In this case, though, the mother is asking for reimbursement of money she has expended for the boys' support. She has a right to contribution and reimbursement for the boys' support under the divorce decree dated September 7, 1976, which gave her the right to $500 per month as child support. The court in Wasescha recognized that a parent had the right to be reimbursed even though she did not have the right to collect past child support payments to put into a fund for future use by the children. That is all the mother is asking for here — reimbursement for past money already expended and aid in future support of the child who is still a minor. That the mother needed help from the father is evidenced by the fact that for a few months of the time in question the mother had to resort to public assistance to support the boys and herself (T. 79 lines 26-30, T.80 lines 1-3).

The children and their mother had a right under the divorce decree to receive $250 per month per child as support from appellant. He initially agreed to pay this amount (T.60 line 28). If the father felt this was an unreasonable amount he could have gone to court at any time to request a modification of the child support provisions on grounds of changed circumstances. However, once the amounts became due, they became unalterable and could not be modified. Larson v. Larson, 561 P.2d 1077 (1977 Utah). As to past due amounts, then, respondent is entitled to full reimbursement.

The minor children of the parties will not receive double support as a result of the trial court's ruling. They will only receive what is the right of any child, the support of both its father and mother. U.C.A. 78-45-3, U.C.A. 78-45-4.

POINT III

THE APPELLANT IS NOT RELIEVED OF HIS OBLIGATION TO SUPPORT HIS SONS BECAUSE THEIR STEPFATHER IS CONTRIBUTING TO THEIR SUPPORT.

The obligation of a stepparent to support a stepchild was established by legislation in Utah in 1979. Until U.C.A. 78-45-4.1 and U.C.A. 78-45-4.2 were enacted there was no statutory duty on the part of a stepparent to support his stepchild. Appellant has not offered any evidence that Wyoming law places any obligation on Mr. Bernard to support his stepchildren. Utah law is not applicable in determining the obligation of Mr. Bernard to support his stepsons because the choice

of law provisions of U.C.A. 77-31-7 (1953 as amended 1980) apply to the duty of the obligor to support, not some third party who has never been within the jurisdiction of Utah courts. It is doubtful that the statute would apply to Mr. Bernard anyway since much of his conduct as a stepfather antedated the 1979 statute.

Even assuming that the Utah law does apply to Mr. Bernard, it would not relieve appellant of the duty to support his offspring. The statutes relied upon by appellant are part of a larger section of the code concerning the public support of children, U.C.A. 78 sections 45, 45a, and 45b. Repeatedly throughout the sections the legislature expresses the intent that children should be supported by their natural parents in an effort to alleviate the burden borne by the general citizenry through welfare. U.C.A. 78-45b-1.1. It seems faily clear that the intent of the legislature in enacting U.C.A. 78-45-4.1 and U.C.A. 78-45-4.2 was to clear up a loophole that existed in these statutes. This loophole allowed stepparents to shift the burden of supporting their stepchildren off onto the state.

The statutes cited by the appellant do not have the effect of shifting the duty of support to a stepparent. They simply denominate an additional person to whom the state can turn to to enforce the child's right of support. The statute does not say that the stepparent is responsible for support to the

exclusion of the natural parent. In fact, the legislature added U.C.A. 78-45-4.2 to insure that U.C.A. 78-45-4.1 not be interpreted so as to reach that result. It states:

> "Nothing contained herein shall act to relieve the natural or adoptive parent of the primary obligation of support: Furthermore, a stepparent has the same right to recover support for a step-child from a natural or adoptive parent as any other obligee." (Emphasis added).

Furthermore, the parents' obligation to support a child exists until the child reaches majority or until the parents' rights are ended by adoption. Riding v. Riding, 8 U.2d 136, 320 P.2d 828 (1958). A stepparent's obligation, on the other hand, extends only until the relationship with the child's natural or adoptive parent is terminated by divorce U.C.A. 78-45-4.1.

It is clear that appellant's reliance on U.C.A. 78-45-4.1 is misguided and that the enactment of this statute did not relieve appellant of the primary obligation to support his sons.

POINT IV

JOHN DAVID WAS NOT EMANCIPATED UNTIL HE REACHED THE AGE OF 18 AND WAS, THEREFORE, ENTITLED TO SUPPORT UNTIL HIS 18TH BIRTHDAY.

The appellant claims several factors that he says led to a conclusion that John David was emancipated. These factors are that John David was not attending school, that he was employed occasionally when able to find work, that he owned three cars, and that he was engaged to be married. On the other hand, there are several factors which militate against a

finding of emancipation. During the entire period in question he lived with either the respondent or the appellant (T.87 lines 21-24, T. 76 lines 4-28). He received support from either his mother or his stepfather during most of this time (T.76 lines 4-28, T. 86 lines 10-22, T. 91 lines 16-26,T.92 lines 1-11) and was only 17 years old at the time of the hearing. (T. 87 lines 10-11). There was no formal or informal agreement to emancipate him; further, he was not married or in the military. (T.91 lines 27-30).

There is no case law in Utah on what constitutes emancipation. There is, however, a fair amount of case law in other jurisdictions giving standards for emancipation.

It seems fairly clear from the start that the child's acts alone cannot constitute emancipation. Utah Fuel Company, supra, Neisen v. Neisen 38 Wis.2d 599, 157 NW.2d 660, 32 ALR 3d 1047 (1968). The parent must emancipate the child through actions that evidence an intent to emancipate the child, Tencza v. Aetna Casualty and Surety Co. 527 P.2d 97, 111 Ariz. 226 (1974). The party wishing to prove emancipation has the burden of proof. Holmes v. Raffo 374 P.2d 536, 60 Wash. 2d 421 (1962).

Among the elements to be considered in determining whether a child is emancipated are:

(1) Whether the child lived with his parents or lived alone, Tencza v. Aetna Casualty & Surety, supra.

(2) Whether the parent provided support for the child. Tencza, supra; Fevig v. Fevig 559 P.2d 841 (N.M. 1977).

(3) The age of the minor. Fevig, supra.

(4) The intention and agreement of the parties Teneza, supra.

(5) The ability of the minor to be self-supporting. Fevig, supra.

(6) Whether the parent claiming emancipation has enough control over the child to emancipate him. Bates v. Bates 310 NYS 2d 26 (1970).

(7) Whether the child is married or entering military service. 58 ALR 2d 355, ALR 2d 1414, Sanders v. Levine 384 NYS 2d 636 (1976).

The authorities are virtually unanimous in declaring that marriage will emancipate a minor. Sanders v. Levine 384 NYS 2d 636 (1976), 58 ALR 2d 355 annotation. There are strong policy reasons for requiring a child who takes upon himself the adult obligations of marriage and a family to give up the protections of childhood. However, these same policy considerations do not exist where the child is only contemplating marriage. Because of the minor's youth and inexperience, society encourages a child to think very seriously about marriage before entering into it. We don't want to penalize teenagers who are contemplating marriage by taking away all parental obligations the minute they announce an engagement. Nor do we wish to permanently deprive them of support thereafter even if they back out of their marriage plans. Therefore, this court should not find that

an engagement to marry is enough to constitute emancipation.

The residence of a child is important in determining whether a child has been emancipated because it goes to the issue of parental support and control. It is much more likely that a child is emancipated if he is living away from home, because his parents have less opportunity to control him or provide him with sustenance. The residence of a minor is also important evidence of the intent of the parties, where there is no formal agreement as to whether the child is emancipated.

John David has lived with one parent or the other continuously. (T.87 lines 21-24). Although this is not conclusive evidence of lack of emancipation it weighs very heavily against emancipation. Because he was living with his mother and/or father they had opportunity to control his actions or behavior. The fact that his mother supported him so readily and let him live at home is also strong evidence that she lacked the requisite intent to emancipate the child. The fact that he lived with his father is evidence that his father lacked the intent to emancipate him, as well.

The fact that his mother supported him is not only evidence of lack of intent to emancipate but also evidence of John David's own inability to support himself. (T.77 lines 1-17). If the parent did support the child it is a pretty good indicator that the child was not really able to fend for himself.

The age of the minor is critical as well. Not only does John David's age, 17, give a clue as to his mental and ph[illegible] emotional maturity, it also indicates

a handicap in his ability to support himself. Many job opportunities are not available to persons under the age of 18 or 21 (T.89 lines 23-27, T.94 lines 18-19, T.76 lines 21-24). Even more job opportunities are foreclosed by a lack of education and experience. Without the right to parental support he will have a difficult time making up for his deficiencies in education or training including the GED he intends to complete (T. 76 lines 26-30).

Even if a minor is emancipated from a parent's control the parent may still be required to support him if he is in need or the person who is supporting him requests reimbursement. Fevig, supra, Neisen, supra. Most courts look with strong disfavor on a parent who tries to shift the burden of supporting his child off onto another person or the public by claiming emancipation. Public policy requires a strong showing of a child's ability to fend for himself without aid before releasing his parents from the obligation of support. John David was clearly having problems supporting himself at such a young age and with so little education, because he was out of work most of the time (T.96,97).

Courts in other jurisdictions have been very reluctant to relieve a divorced father of child support payments because he claims the child is emancipated. Neisen, supra; Bates, supra. This is especially true where the father does not have custody of the child. The court in Bates even went so far as to say that a non-custodial parent lacked the ability to emancipate the child on

his own because the non-custodial parent had nothing to lose and everything to gain from the emancipation. The Bates court said that the father did not have any control over his son to relinquish and so he could not intend that his son be emancipated. Practically speaking, this makes good sense. If parents could unilaterally emancipate their children there would be millions of disgrunted non-custodial parents around the country who would declare their children emancipated and be free of the obligation to provide child support.

The bottom line in the issue of emancipation is the intent of parents to emancipate the child, and the burden of proving that intent is on the person asserting emancipation. Holmes v. Raffo, Tencza v. Aetna Casualty & Surety Co., Fevig v. Fevig. The fact that John David lived at home, received support from his family, was only 17, was single , and was unable to provide for his own needs continuously suggest very strongly that there was no emancipation. The fact that John David's father, the appellant, has so much to gain by a finding of emancipation is a suspicious circumstance indeed, and his contention of emancipation should be very carefully scrutinized. The fact that the trial court felt he did not meet his burden of proof is very significant and this court should not overturn its decision in light of the substantial evidence which supports its finding.

POINT V

THE TRIAL COURT WAS NOT PRECLUDED BY RES JUDICATA FROM CONSIDERING THE ISSUES OF ONGOING SUPPORT AND ARREARAGES IN SUPPORT AT SEPARATE TIMES.

Before an issue or a cause of action can be precluded by res judicata the following elements must exist. There must be a prior adjudication, which goes to a final judgment on the issue in question. The claims in both cases must be identical and in some instances, the parties must be identical , as well.

The purpose of res judicata is to force parties to litigate all parts of their cause of action in the same suit. This cuts down on the waste of the court's time and assures that the matter is totally settled between the parties. If the court finds that an issue or cause of action has been litigated between the parties previously, the parties are barred from raising the issue or cause of action in a new suit. East Mill Creek Water Co. v. Salt Lake City 159 P.2d 863 (1945).

The final element, that of a prior suit, is missing in this fact situation. All of the actions taken and orders made in this case have occurred in just one lawsuit brought under the Uniform Reciprocal Enforcement of Support Act. Defendant argues that because arrearages were not brought up in the initial hearing the plaintiff is estopped to raise the issue now. However, a recent Utah Supreme Court decision has held that even where there was more than one suit between the parties, if an important issue which could have been litigated was not actually litigated, the court may hear the issue and reach a decision on it. Commercial Security Bank v. Corporation

Nine P.2d 1000 (1979). In the instant case there was only one suit and an important issue was not litigated. As in the Commercial Security case there was no final judgment reached between the parties on this critical issue and it would be inequitable to deny the parties the right to litigate the issue.

In the case of Ray v. Consolidated Freightways 289 P.2d 196 (1955) the court allowed a suit between two tort-feasors for damage to equipment even though in the original suit against both defendants, the court had found only one of the defendants liable to the plaintiff. The cross-claim between the two defendants could have been brought in the original suit, but was not. The court held that the new claim was not barred by the doctrine of res judicata. Quoting Justice Field in Cromwell v. Sacramento County 94 US. 351 (1877) the court said.

> Where there is a different claim or demand, judgment in a prior action operates as an estoppel only to those matters in issue, or controversy upon the determination of which the finding or verdict was rendered. Inquiry must always be as to the point or question actually litigated or determined in the original action, not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action. 289 P.2d 196,199.

This is especially so in child support cases. The general custom in the community among attorneys is to discuss current and ongoing support rights in one hearing and arrearages in another hearing. The main reason for this bifurcation is the immediate need to provide for the child as those needs manifest

themselves. Another reason is the desire of the plaintiff's counsel not to overburden the father at the outset with arrearages and thus lose the cooperation of the father from the start.

These are legitimate reasons for having two separate hearings for the separate issues. The Utah Supreme Court in Harmon v. Harmon 491 P.2d 231 (1971) recognized that a divorce is an equitable proceeding and as such, the courts had power to issue stays of execution on arrearages in child support payments where it is necessary to allow the father to earn a living or to gain his cooperation in the long run. If the courts have the power to issue stays of executions in child support cases, the court must surely have the power to divide up the proceedings so as to insure the greatest cooperation from the father. The court said in Harmon:

> In order to carry out the important responsibility of safeguarding the interests and welfare of children it has always been deemed that courts have broad equitable powers. To accept the plaintiff's contention that an adjudged arrearage is tantamont to a judgment in law would, in the long run, tend to impair rather than enhance the abilities of both the plaintiff and the court to accomplish the desired objective . . . For the foregoing reasons decrees and orders in divorce proceedings are of a different and higher character than judgments in suits as law . . . . 491 P.2d 231, 232.

Another reason that arrearages were not discussed in the first hearing was that the facts were not completely capable of ascertainment at that time. Therefore, the court

delayed findings on the issue until it could be ascertained where John David was living and how he was being supported. Order of May 31, 1979. This was to the defendant's benefit as well as the plaintiff's, and the defendant should not be allowed to complain about the division in hearings under these circumstances. The order of May 31, 1979, specifically states that it is temporary. It also states that the County Attorney's Office in Green River, Wyoming, was ordered to investigate the whereabouts of John David because the court did not know where he was at that time. The amended stipulation of July 2, 1979, is even more emphatic that there are additional facts which need to be ascertained. It is true that these facts were necessary mainly for determining ongoing support of John David, but they are also relevant to the issue of arrearages. Thus, the orders given could not be final because important issues were left to be determined.

In Kiepe v. Le Cheminant 22 U.2d 334, 453 P.2d 140 (1969) the trial court entered a judgment after trial which stated that "all disputes which now exist or shall arise (between the partners in the business) are subject to the jurisdiction of the court." One of the partners later sued and the other partner defended on the grounds that the previous judgment was res judicata. The Supreme Court held that the judgment was conditional because it looked forward to the ascertainment of further information and further resolution of disputes between the parties. Because the judgment was conditional it could not be res judicata as to further matters.

The "judgment" in this case is even more conditional than the judgment in Kiepe. The judgment in this case unmistakeably looks forward to the ascertainment of further information. It definitely looks forward to the resolution of further disputes because, by its own terms, it is only temporary.

Because the issue of arrearages was not and could not be litigated at the time of the May, 1979, order, because the order was only conditional, because all actions have taken place in one lawsuit, and because policy considerations dictate a need for special flexibility in the timing of arrearages and ongoing support hearings, this court should hold that the trial court was correct in dismissing appellant's res judicata defense.

CONCLUSION

Children have a right to be supported by their parents. Parents cannot avoid that obligation simply because the child's stepparent or the child himself is contributing toward the child's support. The primary duty of support lies with the parent, and persons who step in and provide support are entitled to reimbursement. U.C.A. 78-45-4.2, French v. Johnson, Baggs v. Anderson.

The child's right to support exists until he is adopted, reaches majority, or is emancipated. Riding v. Riding, Stanton v. Stanton. Whether a child is emancipated is an issue of fact, but courts should be cautious as to find emancipation only where the person claiming emancipation has proved the emancipation. Holmes v. Raffo. This is especially true where, as here, a father is claiming emancipation of a child whom he has a duty to support,

but over whom he has no control or custody.

In all cases, but particularly so in divorce cases, important issues which were not actually litigated should not be precluded by res judicata. Commercial Security Bank v. Corporation Nine. This is especially true here, where the issue of arrearages was dependent on information which was not available and could not be obtained at the time of the first hearing. The order which resulted from the first hearing was conditional on its face and therefore, cannot act as res judicata in further proceedings Kiepe v. Le Cheminant.

Therefore, respondents pray that the judgment of the trial court be affirmed and that the court rule that the appellant is not relieved of his duty to support his sons. Specifically, the respondents pray that the court find that custodial parents and stepparents have a right to reimbursement for monies expended in the support of a non-custodial parent's child. The court should also find that a child is not emancipated simply because he holds intermittent jobs or is engaged to be married. Finally, the court should hold that plaintiffs are not precluded from raising the issue of arrearages because, for good cause, they failed to raise the issue in a hearing to determine ongoing support.

Respectfully submitted,

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BY: Sandra N. Peuler
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Attorneys for Plaintiff-Respondent

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of September, 1980, I mailed a true and correct copy of the foregoing Brief, postage prepaid, to Wendell P. Ables, Attorney at Law, Attorney For Defendant-Appellant, Suite 14, Intrade Building, 1399 South Seventh East, Salt Lake City, Utah 84105.

_____