

1980

# Annette K. Beardall v. Neil J. Beardall : Brief of Respondent

Utah Supreme Court

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John C. Backlund; Young, Backlund, Harris & Carter; Attorneys for Respondent;  
Utah Legal Services, Inc.; Attorney for Appellant;

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SUPREME COURT  
STATE OF UTAH

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ANNETTE K. BEARDALL,  
Respondent,

:

:

-vs-

:

Case No. 16994

NEIL J. BEARDALL,  
Appellant.

:

:

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RESPONDENT'S BRIEF

--ooo0ooo--

Appeal from the Judgment of the  
District Court of Utah County  
State of Utah  
Honorable J. Robert Bullock, Judge

--ooo0ooo--

JOHN C. BACKLUND  
YOUNG, BACKLUND, HARRIS & CARTER  
Attorneys for Respondent  
350 East Center  
Provo, UT 84601  
375-9801

UTAH LEGAL SERVICES, INC.  
By P. GARY FERRERO  
Attorney for Appellant  
105 South 100 East  
Provo, UT 84601  
374-6766

FILED

OCT 14 1980

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Clerk, Supreme Court, Utah

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STATE OF UTAH

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JOHN C. BACKLUND  
YOUNG, BACKLUND, HARRIS & CARTER  
Attorneys for Respondent  
350 East Center  
Provo, UT 84601  
375-9801

UTAH LEGAL SERVICES, INC.  
By P. GARY FERRERO  
Attorney for Appellant  
105 South 100 East  
Provo, UT 84601  
374-6766

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SUPREME COURT  
STATE OF UTAH

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ANNETTE K. BEARDALL, :  
Respondent, :  
-vs- : Case No. 16994  
NEIL J. BEARDALL, :  
Appellant. :

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RESPONDENT'S BRIEF

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STATEMENT OF THE NATURE OF THE CASE

Plaintiff and defendant in this matter are a divorced couple, and this matter arose out of an Order to Show Cause brought by the plaintiff regarding said divorce. The plaintiff requested that the defendant be required to pay certain sums of money that the plaintiff claimed were owed under the provisions of the Divorce Decree. Specifically, that defendant owed sums of money for payment of medical expenses, payment of insurance premiums and attorney's fees.

DISPOSTION IN THE LOWER COURT

The matter was tried in the Fourth Judicial District Court in Utah County, State of Utah, the Honorable J. Robert Bullock, Judge, presiding. Defendant was found to be owing certain sums of money and was ordered to pay \$285.88 for doctor bills and medical expenses, \$73.32 as reimbursement for prescription drugs, \$700 as reimbursement for insurance premiums and \$125 as attorney's fees

for a total judgment of \$1,184.20. It is from the judgment for \$700 for insurance premiums and the judgment for \$125 in attorney's fees that the defendant appeals.

#### RELIEF SOUGHT ON APPEAL

Defendant seeks a reversal of the judgment awarding \$700 as reimbursement for insurance premiums and the judgment awarding \$125 as attorney's fees.

#### STATEMENT OF FACTS

Annette Knotts, hereinafter referred to as "Respondent", and Neil J. Beardall, hereinafter referred to as "Appellant", were married at Winnemucca, State of Nevada, on May 5, 1951. The marriage was dissolved by a Decree of Divorce entered on November 22, 1968 in the Fourth Judicial District Court of Utah County, State of Utah. Respondent was awarded custody of two of the couple's four children: Lisa Ann, then age 8, and Sherri Kim, then age 3. Appellant was ordered to pay child support and medical and dental expenses for the two minor daughters.

Appellant, has on several occasions, failed or refused to pay the medical and dental expenses for the two minor daughters. In November 1975, appellant was ordered to show cause why he should not pay medical and dental bills in the amount of \$1,378.98. In a judgment dated November 19, 1975, the District Court awarded respondent judgment against appellant for unpaid medical bills and ordered appellant to make arrangements for payments of medical bills to be incurred in behalf of the daughters of the parties in the near future. Judge J. Robert Bullock also stated that: "Defendant not found responsible to provide medical insurance for

the two minor daughters of the parties." (Emphasis Added). The Court did not rule on the question of whether or not appellant should be responsible to reimburse respondent for premiums she paid for medical insurance for the two daughters. The trial judge expressed the opinion that appellant would be wise to provide such medical insurance coverage.

Because appellant refused to provide medical insurance, respondent determined that she must continue to provide such protection. Appellant did not do so with knowledge that such premium payments were not reimburseable.

On February 6, 1980, a hearing was held before the Honorable J. Robert Bullock of the Fourth Judicial District Court on an Order requiring appellant to show cause why he had not paid respondent \$3,395.24 for medical, hospital and dental expenses for the parties' two daughters. The parties were both present and represented by counsel. The parties stipulated that respondent had paid \$285.88 for doctor bills and \$73.32 for prescription drugs beyond amounts covered by the medical insurance paid for by respondent. The trial judgment granted respondent judgment for the above amounts.

Respondent also sought reimbursement for insurance premiums paid, relying on the language of the original Decree. In regard to these insurance premiums, Judge Bullock stated: ". . . technically I could not award her a Judgment for the insurance premiums that she has paid under the terms of this Decree or as it was amended, could I?" (T.15).

However, after considering the matter, the trial judge also

granted respondent judgment against appellant in the sum of \$700 as reimbursement for insurance premiums paid. Respondent was also granted judgment in the sum of \$125 for attorney's fees.

Appellant claims he is inpecunious. Appellant filed a Financial Declaration with the trial court wherein appellant admits ownership of a home and real estate valued at \$95,000.

Appellant has appealed from the Judgment awarding \$700 for reimbursement of insurance premiums and \$125 for attorney's fees.

#### ARGUMENT

#### POINT I

THE TRIAL COURT DID NOT COMMIT ERROR IN REQUIRING APPELLANT TO REIMBURSE RESPONDENT FOR MEDICAL INSURANCE PREMIUMS PAID IN ACCORDANCE WITH THE DECREE OF DIVORCE.

In the present case, a Decree of Divorce was entered on the 22nd day of November, 1968, wherein appellant was "ordered to pay all medical and dental expense incurred for medical and dental care to the minor daughters of the parties." (Emphasis added). The trial court judge, in his discretion, ordered appellant to reimburse respondent for medical insurance premiums paid as a medical expense.

This Court should not overturn the judgment unless it appears that the trial judge abused his discretion. In the case of Watts vs. Watts, 21 Utah 2d 137, 138, 442 P.2d 30, 31 (1968), in reviewing an award of alimony and property, this Court stated:

"This judgment should not be upset unless it appears that it works such an inequity or injustice, or places one of the parties in such an impractical situation that equity and good conscience demand that it be revised."



In the present case, appellant consistently refused to pay medical or dental expenses. He also refused to provide medical insurance coverage for the daughters. Respondent had no choice but to provide such coverage which incidentally resulted in a substantial savings to appellant.

Applying the standard set forth in the Watts case, the trial judge clearly did not abuse his discretion and the judgment regarding reimbursement for insurance premiums paid should not be reversed.

That the duty of support includes the care and treatment was established by this Court in Ottley vs. Hill, 21 Utah 2d 396, 446 P.2d 301 (1968). The high cost of medical and dental care mandates a sensible insurance program. Respondent should not be penalized for acting prudently to protect her children and to save respondent from unnecessary expense.

## POINT II

THE AWARD OF ATTORNEY'S FEES TO RESPONDENT WAS WITHIN THE SOUND DISCRETION OF THE TRIAL COURT AND SHOULD NOT BE REVERSED.

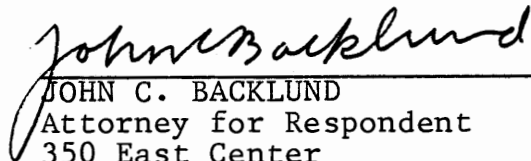
The Utah Rules of Civil Procedure, Rule 54(d)(1), and UCA §30-3-5 (1953) allow an award of attorney's fees and costs in domestic relations actions.

This Court in the case of Adams vs. Adams, 593 P.2d 147 (Utah 1979), held that the award of attorney's fees in a show cause matter or divorce proceeding is within the sound discretion of the trial court. In this case, respondent's need to recover her attorney's fees is apparent. She was obligated to have appellant ordered to appear and show cause why he had not paid for the

medical expenses of the parties' daughters on several occasions. Moreover, appellant on his own financial declaration, admitted ownership of a home and real estate valued at \$95,000.

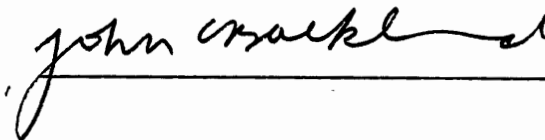
This Court should not overturn the award of attorney's fees in this matter because it is clear that no abuse of discretion was committed by the trial judge.

RESPECTFULLY SUBMITTED this 14<sup>TH</sup> day of October, 1980.

  
\_\_\_\_\_  
JOHN C. BACKLUND  
Attorney for Respondent  
350 East Center  
Provo, Utah 84601  
375-9801

#### MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing to P. Gary Ferrero, Attorney for Appellant, 105 South 100 East, Provo, Utah, 84601, postage prepaid this 14<sup>TH</sup> day of October, 1980.

  
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