

1989

UT Dept. of Human Services and Karen Adams v. Howard H. Adams : Petition for Rehearing

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Scot W. Holt; Attorney for Appellee.

R. Paul Van Dam; Attorney General; Blaine R. Ferguson; Assistant Attorney General; Attorneys for Appellant; Karen Adams (Hill); Plaintiff pro se.

Recommended Citation

Legal Brief, *UT Dept. of Human Services and Adams v. Adams*, No. 890690 (Utah Court of Appeals, 1989).
https://digitalcommons.law.byu.edu/byu_ca1/2353

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BRIEF

UTAH
DOCUMENT
FU

0
110
CKET NO. 890690-CA IN THE COURT OF APPEALS
OF THE STATE OF UTAH

UTAH DEPARTMENT OF HUMAN
SERVICES, and KAREN ADAMS,

Plaintiff and
Appellant,

v.

HOWARD H. ADAMS,

Defendant and
Appellee

:

:

:

:

:

:

No. 890690-CA

Priority No. 16

PETITION FOR REHEARING

ON APPEAL FROM A JUDGMENT AND DECREE FROM THE SECOND JUDICIAL
DISTRICT, IN AND FOR DAVIS COUNTY, STATE OF UTAH, HON. DOUGLAS L.
CORNABY, DISTRICT COURT JUDGE.

R. PAUL VAN DAM (3312)
UTAH ATTORNEY GENERAL
LINDA LUINSTRA (2012)
Assistant Attorney General
Division Chief
Human Services Division
Assistant Attorney General
120 North 200 West, 4th Floor
P.O. Box 45011
Salt Lake City, Utah 84145

Attorneys for Petitioner

SCOTT W. HOLT
44 North Main
Layton, Utah 84041

Attorney for Appellee

KAREN ADAMS (HILL)
977 North 600 West
Orem, Utah 84057

Plaintiff (Pro Se)

FILED

FEB 4 1991

COURT OF APPEALS

IN THE COURT OF APPEALS

OF THE STATE OF UTAH

UTAH DEPARTMENT OF HUMAN
SERVICES, and KAREN ADAMS,

:

Plaintiff and
Appellant,

:

v.

:

No. 890690-CA

HOWARD H. ADAMS,

:

Priority No. 16

Defendant and
Appellee

:

:

PETITION FOR REHEARING

ON APPEAL FROM A JUDGMENT AND DECREE FROM THE SECOND JUDICIAL
DISTRICT, IN AND FOR DAVIS COUNTY, STATE OF UTAH, HON. DOUGLAS L.
CORNABY, DISTRICT COURT JUDGE.

R. PAUL VAN DAM (3312)
UTAH ATTORNEY GENERAL
LINDA LUINSTRA (2012)
Assistant Attorney General
Division Chief
Human Services Division
Assistant Attorney General
120 North 200 West, 4th Floor
P.O. Box 45011
Salt Lake City, Utah 84145

Attorneys for Petitioner

SCOTT W. HOLT
44 North Main
Layton, Utah 84041

KAREN ADAMS (HILL)
977 North 600 West
Orem, Utah 84057

Attorney for Appellee

Plaintiff (Pro Se)

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.	ii
BACKGROUND	2
POINTS OF LAW WHICH THIS COURT HAS OVERLOOKED AND MISAPPREHENDED	3
I. THE STATE DEPARTMENT OF HUMAN SERVICES, OFFICE OF RECOVERY SERVICES, HAS A FEDERAL OBLIGATION TO ENFORCE THE MANDATES OF THE AFDC PROGRAM IN CONFORMITY WITH FEDERAL AND STATE REQUIREMENTS	3
II. THIS COURT HAS PREMISED ITS DECISION ON THE MISAPPREHENSION THAT THE ARRANGEMENT ENTERED INTO BY MR. AND MRS. ADAMS WAS A "WORKABLE AND WORKING ARRANGEMENT WHICH BENEFITTED ALL CONCERNED, INCLUDING THE DEPARTMENT AND THE TAXPAYERS IT SERVES." (OPINION AT PAGE 5.) IT IS CLEAR FROM THE COURT'S OPINION THAT ITS UNDERSTANDING OF THE OPERATION OF THE AFDC PROGRAM IS FUNDAMENTALLY FLAWED.	5
III. AN AWARD OF ATTORNEYS'S FEES AGAINST THE OFFICE IS CLEARLY IMPROPER IN LIGHT OF THE FOREGOING FEDERAL AND STATE STATUTORY MANDATES BEING FOLLOWED BY THE OFFICE IN THIS CASE	11
CONCLUSION	13

TABLE OF AUTHORITIES

<u>CASES:</u>	<u>Page</u>
<u>State of Utah v. Toledo</u> , 699 P. 2d 710 (Utah 1985) . . .	11
 <u>STATUTES AND RULES:</u>	
Administrative Regulations R810-213-306.1(14).	7
45 C.F.R. § 205.44	3
45 C.F.R § 302.51.	9
45 C.F.R. § 232.11.	7
45 C.F.R. § 233.20	4, 6
42 U.S.C. § 602(a)	3
42 U.S.C. § 602(b)	3
42 U.S.C. § 604.	3
Utah Code Ann. § 62A-9-114(1) (1988)	6
Utah Code Ann. § 62A-9-121	8
Utah Code Ann. § 62A-9-119(1) (1988)	6
Utah Code Ann. § 62A-9-121(1)(1988).	7
Utah Code Ann. §62A-11-307.2	8

IN THE COURT OF APPEALS
OF THE STATE OF UTAH

UTAH DEPARTMENT OF HUMAN SERVICES, and KAREN ADAMS,	:	PETITION FOR REHEARING
Plaintiff and	:	
Appellant,	:	No. 890690-CA
v.	:	
HOWARD H. ADAMS,	:	
Defendant and	:	
Appellee	:	

Pursuant to Rule 35 of the Utah Rules of Appellate Procedure, the Department of Human Services, by and through its counsel, Linda Luinstra, Assistant Attorney General, hereby submits this Petition for Rehearing.

This case is on appeal to this Court from an Order of the Second District Court which Order agreed with the Defendant-Appellee's position that he be allowed to provide in-kind child support in the form of a rental home, rather than cash, to the custodial parent on behalf of his children who were at the time receiving public assistance in the form of Aid to Families with Dependent Children (hereinafter AFDC).

BACKGROUND

The Appellee, Mr. Adams, was divorced from his wife in 1979. He and his wife had two children from that marriage. The divorce decree ordered the Defendant to pay \$200 per month (\$100 per child) to his ex-wife for the benefit of his children. In 1988, by agreement between Mr. and Mrs. Adams, Mrs. Adams began living "rent free" in a home owned by Mr. Adams, which home had a fair rental value of \$350/month.¹ This "agreement" was never adopted by the Court as a modification to the existing court Order until after the Department of Human Services, by and through its Office of Recovery Services, indicated to Mr. Adams that such "in-kind" child support payments were unallowed by state and federal law when the custodial parent and children are an "assistance unit" under the AFDC program. Mr. Adams' counsel subsequently scheduled an order to show cause hearing on the issue. The matter was heard by both the commissioner and district court judge for the Second District. The district court's Judgement was signed in October, 1989 and an appeal to this Court was taken by the Office of Recovery Services.

¹ Obviously, Mrs. Adams did not receive the home "rent-free" inasmuch as she was obligated by her agreement with Mr. Adams to forego her right to child support on behalf of the children in her custody.

**POINTS OF LAW WHICH THIS COURT HAS OVERLOOKED
AND MISAPPREHENDED**

I. The State Department of Human Services, Office of Recovery Services, has a federal obligation to enforce the mandates of the AFDC program in conformity with federal and state requirements.

The Aid to Families with Dependent Children program is governed by Title IV-A and IV-D of the Social Security Act, 42 U.S.C. §§ 601-676. The AFDC program is jointly funded by the federal government and participating states. As a condition of state participation in the AFDC program, the State is required to administer the program according to a plan approved by the United States Department of Health and Human Services (HHS), the federal agency charged with regulating the program. 42 U.S.C. § 602(b). The state plan must conform to federal requirements. 42 U.S.C. § 602(a). A State's failure to comply with mandatory federal requirements would place the State's AFDC program in financial jeopardy. Under 42 U.S.C. § 604, HHS may disapprove the State's AFDC plan and withdraw federal financial participation from the State. HHS may also count AFDC payments made to families in violation of federal law and regulations in the State's payment error rate and impose heavy fiscal sanctions if the error rate exceeds federal standards. 45 C.F.R. § 205.44.

When a noncustodial parent attempts to provide child support in a manner which interferes with the operation of the federal-state AFDC program mandates, the State Office of Recovery

Services has no alternative except to support, through whatever legal means are available, the laws enacted by Congress, the laws promulgated by HHS, and the state plan which has been accepted by the appropriate federal authorities. For the State ORS to do otherwise would seriously jeopardize the State's continued AFDC funding and risk significant federal sanctions.

Because the Office of Recovery Services has obligations to the federal government to support the implementing laws for the AFDC program, it is extremely unfair for the Court to suggest that the Office has the luxury to decide in what cases it will pursue a "fundamental position [which] is sound." (Opinion, footnote 4, page 4.) Similarly, the Office of Recovery Services does not have the right, under current federal mandates, to decide in which instances it will "vindicate its] bureaucratic urges for uniformity and adherence to 'the rules'." (Opinion, page 4.) Federal law and implementing regulations require that the state agency maintain its uniformity and adherence to the law with respect to all welfare applicants and recipients and does not allow for the agency to make exceptions. See infra 45 C.F.R. § 233.20. The Fourteenth Amendment to the United States Constitution in its equal protection and due process clauses also demands that the government agency charged with implementing a federal entitlements program do so in a manner which strictly complies with the guarantees of uniformity, equality, and adherence to the federal statutory requirements.

II. This Court has premised its decision on the misapprehension that the arrangement entered into by Mr. and Mrs. Adams was a "workable and working arrangement which benefitted all concerned, including the Department and the taxpayers it serves." (Opinion at page 5.) It is clear from the Court's opinion that its understanding of the operation of the AFDC program is fundamentally flawed.

In support of the proposition espoused by the Court in its holding, the Court offers footnote 5 which cites to the eligibility standards of the AFDC program as well as its implementing state law. The Court is of the mistaken impression, clearly unfounded by any state or federal law, that "[a]s Mrs. Adam's need increased due to an elevated rental payment, either because she lost the opportunity to occupy defendant's home at a substantial discount from its fair rental value or was required to secure a comparable dwelling on the open market, her eligibility would increase, resulting in higher levels of public assistance." (Opinion, footnote 5 at page 5.) The Court's belief that a welfare applicant's grant increases depending upon her needs for rent, food, etc. is absolutely inaccurate and without any foundation in law. A welfare applicant's grant increases only when the assistance unit increases in size (i.e., another child is born). The grant does not increase when one's rent goes up or one's clothing costs increase.

Federal regulations which implement the AFDC program provide in pertinent part:

A State Plan for . . . AFDC. . . must, as specified below:

(1) *General.* (i) Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way except where otherwise specifically authorized by Federal statute. . .

(2) *Standards of assistance.* (i) Specify a statewide standard, expressed in money amounts, to be used in determining (a) the need of applicants and recipients and (b) the amount of the assistance payment. . .

(iii) Provide that the standard will be uniformly applied throughout the State except as provided under § 239.54 [which allows for a differential need standard if the recipient is appropriate to participate in a work incentive program]

(iv) Include the method used in determining need and the amount of the assistance payment. . . .

See 45 C.F.R. § 233.20.

Based upon the foregoing federal law, the State of Utah has enacted legislation which states that AFDC may be provided to families and children in accordance with Title IV-A of the Social Security Act and the applicable federal regulations. See Utah Code Ann. § 62A-9-114(1) (1988). AFDC for any one household in any one month is determined by development of a standard needs budget which reflects the minimum needs of low-income households. The standard needs budget is the basis for determination of monthly assistance grants to recipient households for each fiscal year. See Utah Code Ann. § 62A-9-119(1) (1988).

The AFDC grant amounts, effective as of July 1, 1989, are clearly set forth at state law found in Code of Administrative Regulations R810-213-306.1(14). For example, in the case of Mrs. Adams, her standard grant base after July 1, 1989 would have been \$387, assuming that her assistance unit was comprised of only three individuals, Mrs. Adams and her two children. (In fact, Mrs. Adams' assistance unit may have been greater than three.) This grant base is a maximum amount and includes a standard financial component for housing; the grant base does not increase as the assistance unit's needs increase.

When a public assistance recipient is receiving child support, that public assistance recipient is also bound by the provisions of Title IV-D of the Social Security Act. Federal regulations implementing Title IV-A and IV-D of the Social Security Act require that the State of Utah have in effect a plan which specifies that

[A]s a condition of eligibility for assistance, each applicant or recipient of AFDC shall assign to the State any rights to support from any other person as such applicant or recipient may have: (i) In his own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance; and (ii) Which have accrued at the time such assignment is executed."

45 C.F.R. § 232.11. See also: Utah Code Ann. § 62A-9-121(1)(1988) [Effective date, January 19, 1988, Laws of Utah 1988, ch. 1, § 408.]

Based upon the foregoing regulation, when Mrs. Adams became an applicant of AFDC assistance in 1988, she legally assigned to the Department her court-ordered right to receive \$200/month in child support assistance from her husband, Mr. Adams. If Mr. Adams had been able to support his children in a manner which did not compel them to seek public assistance to maintain a subsistence standard of living, he may have been able to agree, with court approval, to an in-kind child support arrangement with his ex-wife. However, as a result of accepting the benefits of public assistance, Mrs. Adams, her children, and her ex-husband (through Mrs. Adams' assignment of support) also became subject to the burdens imposed by that federal entitlement, including the requirement to forward the court-ordered child support obligation to the State of Utah. The Department's rights to collect child support from Mr. Adams is not limited to those support rights which Mrs. Adams herself possessed at the time she applied for AFDC. Utah law makes it clear that the Department's right to collect support from an obligor whose children are receiving public assistance is not affected by an agreement between the parents to settle or relieve any duty of support. Utah Code Ann. §§ 62A-9-121, 62A-11-307.2. The Department has independent rights and standing to recover support from the responsible parents of children receiving AFDC.

The arrangement entered into by Mr. Adams and Mrs. Adams, contrary to the Court's opinion, benefits Mr. Adams and Mrs. Adams but damages the State and its taxpaying citizens. Mr.

Adams' check for \$200 should have been forwarded to the State of Utah. If he paid his support in a timely fashion, the State would have sent to Mrs. Adams a \$50 pass-through check as an incentive for Mr. Adams to timely pay his support. Because the amount of her grant exceeded her current child support court order, the State would retain the remainder of the \$150 child support check and forward to Mrs. Adams a check for her grant amount of \$387, leaving her a total of \$437 to live on for the month at issue. See generally 45 C.F.R § 302.51. Mrs. Adams could then forward to Mr. Adams a check for \$200--leaving him in the same position he was in before (except he would have to report rental income on his tax return) and leaving Mrs. Adams a total of \$237 to provide her children with the other necessities of life for that month.²

The lower court proposed that the State reduce Mrs. Adam's grant amount by \$200. However, as already pointed out in the State's Brief, federal and state laws do not allow for such an alternative. (Brief, page 29-31) See also 45 C.F.R § 302.51. Under the Court of Appeals' opinion, Mrs. Adams is entitled to maintain a rental dwelling with a fair market value of \$350/month as well as retain her AFDC grant of \$387, leaving her with a clear windfall. This arrangement also leaves the State of Utah

² The State has no interest in the amount of rent that Mrs. Adams pays to her ex-husband for the rental unit she occupies. The parties would be free to make whatever rental agreement they chose. The IRS may have an interest in the specifics of their arrangement, but the Office of Recovery Services would have none.

(and the federal government) unreimbursed for \$150/month (\$200 child support minus the \$50 pass-through for a timely support payment). This Court is remiss in believing that such an arrangement works a benefit to the State or to the taxpayers of this State who help to fund the AFDC program through their state and federal tax obligations.

The Court in its decision in this case sends a message to welfare applicants and to noncustodial parents to use "in-kind" support as a means to circumvent the stringent laws established by Congress and HHS and to, in some unusual circumstances, thereby bolster the AFDC recipients' subsistence level. The consequence of this Court's opinion is that the Adams assistance unit is not forced to live on a subsistence-level AFDC grant (as are all other recipients who do not have an "in-kind" agreement). Such an arrangement may effectively encourage an AFDC recipient not to seek self-sufficiency and not to make an effort to become a taxpaying, non-welfare-dependent citizen of this State. The Adams' agreement works a clear benefit to the noncustodial parent by allowing him to maintain his equity in a rental unit, pay no out-of-pocket child support, and pay no taxes to the government for his rental income on that unit. There is no doubt that Mr. Adams is a winner in this arrangement and the government and taxpayers are the clear losers. Mrs. Adams also benefits from the Court's decision, but to the detriment of similarly situated welfare recipients who have a right to be

treated equally and fairly.³

A cursory reading of the federal and state laws implementing the AFDC program will demonstrate to the Court the complexity of the program. The volume and complexity of federal statutory and regulatory mandates does not grant a court the right to ignore those laws and substitute its own opinion of a more workable arrangement--a position taken by the court below. (Transcript of trial, September 14, 1989, pages 63-64). AFDC is not an easily administered program and human error is naturally a part of the program. However, in the United States, the AFDC program provides the only financial assistance available to many needy adults and children and it is the system which the State must administer and which the courts of this State must enforce.

III. An award of attorneys's fees against the Office is clearly improper in light of the foregoing federal and state statutory mandates being followed by the Office in this case.

This Court recognizes that the power to modify a divorce decree is one vested solely in the courts. (Opinion, page 3.) Until the commissioner and the judge in the lower court

³ The Office of Recovery Services does not "act on behalf of Mrs. Adams" or have the obligation to protect the interest of Mrs. Adams and her children. (See Opinion, footnote 1, page 1; Opinion, page 4.) The Office has the responsibility to proceed on its own behalf, pursuant to federal and state statutory authority. The Office and the custodial parent do not share a joint interest. State of Utah v. Toledo, 699 P. 2d 710 (Utah 1985). Similarly the Office of the Attorney General has no right to proceed on behalf of a private citizen, such as Mrs. Adams, but performs its constitutional and statutory responsibilities on behalf of its state agency clients, in this case, the Office of Recovery Services.

issued their orders in 1989, the support order in place since 1979 had not been modified. In accordance with state and federal law, the only order which the Office could enforce was the 1979 order which Mrs. Adams had assigned to the Office upon her application for public assistance in 1988. While the tax intercept notice which was mailed during the course of the court proceedings was perhaps untimely, the due process requirements of the United States Constitution and implementing federal regulations specify that individuals affected by a government actions (such as tax intercepts and mandatory withholdings) be afforded formal notice of those actions in writing. "[P]olite letter[s] and phone call[s] suggesting different approach[es]" do not meet constitutional guarantees of procedural due process. (Opinion, page 5.)

Attorney's fees in this case are a relatively minor issue. However, if the Court withdraws its opinion and allows a rehearing, then clearly the imposition of fees is inappropriate and should be withdrawn.

CONCLUSION

The Office of Recovery Services requests that this Court withdraw its decision dated January 28, 1991 and schedule a rehearing on this case.

DATED this 4th day of February, 1991.



LINDA LUINSTRA
Assistant Attorney General
Division Chief, Human Services
Division

Mailing Certificate

I hereby certify that on the 4th day of February, 1991,
I caused to be mailed, postage prepaid, a copy of the foregoing
Petition for Rehearing to the following:

Scott Holt
Attorney for Defendant/Appellee
44 North Main
Layton, Utah 84041

