

1982

Gary D. Pilcher v. State of Utah : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

GARY D. PILCHER

Appellant,

vs

Case No. 18222

STATE OF UTAH,
Department of
Social Services

Respondent.

RESPONDENT'S BRIEF

Appeal from the Third Judicial District Court
for Salt Lake County

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MAY 17 1982

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CASES CITED

Corbet vs Corbet, 472, P.2d 431 (Utah 1980)

Combined Metals vs Bastian, et. al., 71 Utah 535, 267 P. 1020
(1928)

Edgar vs Wagner, 572 P.2d 405 (Utah 1977)

Thompson Ditch Co vs Jackson, 29 Utah 2d 259, 508 P.2d 528
(1973)

State By and Through Road Commission vs Larkin, 27 Utah
2d 295, 495 P.2d 817 (1972)

STATUTES CITED

Utah Code Annotated 78-45b-1
Utah Code Annotated 78-45b-4
Utah Code Annotated 78-45b-5
Utah Code Annotated 78-45b-6(1)
Utah Code Annotated 78-45b-20
Utah Code Annotated 78-45b-1.1
Utah Code Annotated 78-45b-3

BRIEF OF RESPONDENT
STATE OF UTAH

STATEMENT OF NATURE OF THE CASE AND DISPOSITION OF THE CASE

This case involves questions of law regarding administrative procedure pursuant to Utah Code Annotated 78-45b-1 et. seq. The Third District Court modified but left standing the judgment against the Appellant and in favor of the State of Utah, Department of Social Services.

RELIEF SOUGHT ON APPEAL

Respondent requests the Supreme Court to affirm the decision of the Third District Court.

STATEMENTS OF FACTS OF THE CASE

Respondent adopts Appellant's Statement of Facts with the exception of Appellant's representation that the criminal charges filed against Appellant were dismissed after Appellant's ex-wife provided the County Attorney with an Affidavit alleging that Appellant had provided some child support. The reasons for dismissal of criminal charges in this case are of no relevance to this appeal. Since said reasons are not contained within the record, the reasons are not to be considered. Corbet vs Corbet, 472, P.2d 431 (Utah 1980).

ARGUMENT

I

THE NOTICE OF SUPPORT DEBT WAS PROPERLY AMENDED AND DID NOT ADD A NEW AND DIFFERENT CAUSE OF ACTION.

Utah Code Annotated 78-45b-4 provides that the Department of Social Services may issue a Notice of Support Debt. The chapter, however, is silent with respect to the rules for amending Notice of Support Debt. Civil pleadings may be amended without adding new or different causes of action. Combined Metals vs Bastian, et. al., 71 Utah 535, 267 P. 1020 (1928).

The Appellant mistakenly alleges that the effect of amending the Notice of Support Debt was to add a new or different cause of action. A review of the facts readily demonstrates Appellant's error in this regard. The Texas Judgment and Order which the Appellant refers to in this case is an order based on the URESA action and is not based on the principal that Texas provided any support to the Defendant's children. In fact the Defendant's children, apparently, have been in Utah on public assistance all their lives. The URESA action is an action designed to have the State where the Defendant resides (Texas) assist the State where the children are being supported (Utah) in recovering the child support which the father owes. Under Chapter 45b of Title 78 of the Utah Code the State may proceed and rely upon a Court Order ordering a Defendant to pay support or may proceed in absence of a Court Order §78-45b-4 and §78-45b-5. Further §78-45b-20 provides "if any order pursuant to this Act is or becomes in conflict with any order of the Court of competent jurisdiction, to the extent of

such conflict the Court Order shall govern". The State's original notice of support debt was amended to place before the Court both the URESA Order and Judgment from the State of Texas (which was ordered against the Appellant) and the Utah Order so that the Court would be fully advised before entering an Order against the Appellant, if any.

There is no totally different cause of action as the Appellant alleges, rather, the sole cause of action is for support of the Defendant's minor children. In support of that cause of action the Court was advised of the existing outstanding judgments and orders against the Appellant which have set child support amounts.

II

THE TWO DISMISSAL RULE IS INAPPLICABLE IN THIS CASE.

The so-called two dismissal rule is a civil remedy which is totally inapplicable to the case at bar. Rule 41 of the Rules of Civil Procedure clearly indicate that that rule has application in civil actions only. In this case, the first action filed and dismissed against Appellant was criminal in nature and was filed pursuant to Utah Code Annotated §76-7-201. Although the Appellant elects to see the initial criminal action as a disguised civil action, the facts do not change by Appellant's refusal to accept them.

The Appellant was initially charged criminally for failure to support his children who were receiving public assistance from the State of Utah. The action was brought

by the "People of the State of Utah" and the potential penalty for conviction was one year of incarceration. On the other hand, the Notice of Support Debt was brought by the Department of Social Services on behalf of the dependent children. Possible liability was limited to civil remedies only. Therefore, Appellant's argument is totally without merit.

III

THE ADMINISTRATIVE HEARING WAS PROPER IN ALL RESPECTS AND TIMELY HELD.

Appellant maintains that the administrative hearing is a nullity as it was not held within 30 days of Appellant's request. Appellant relies on Utah Code Annotated §78-45b-6(1) for authority but chooses to not give effect to the entire sentence.

Utah Code Annotated 78-45b-6(1) provides, in part, as follows:

All hearings shall be held in the county of residence or other place convenient to such person and shall be so held within thirty days after request therefor is filed, except that the department may promulgate such rules for postponements and continuances as may be in the interest of justice.

Therefore, a rigid 30 day rule for hearings is inapposite to statutory authority.

In this case, Appellant submitted his Answer and Motions to Dismiss on January 26, 1979. A hearing on the matter was duly held on February 22, 1979. Although counsel

may have executed said pleading on November 5, 1979, said pleading was not served on the Administrative tribunal until January 26, 1979.

Certainly any delay did not prejudice Appellant as he was not providing support for his children at the time.

IV

THE DEPARTMENT OF SOCIAL SERVICES WAS A LAWFUL PROCEEDING BASED ON STATUTORY AUTHORITY.

In Point IV of Appellant's appeal brief, Appellant seeks review of an issue revised for the first time on appeal. The law in this State is clear with respect to raising issues for the first time on appeal. Utah Code Annotated §78-45b-6.1 provides for judicial review of administrative action after exhaustion of all administrative remedies. Further, this Court has undeviatingly held that a matter not raised in trial will not be considered on appeal. Edgar vs Wagner, 572 P.2d 405 (Utah 1977); Thompson Ditch Co vs Jackson, 29 Utah 2d 259, 508 P.2d 528 (1973); State By and Through Road Commission vs Larkin, 27 Utah 2d 295, 495 P.2d 817 (1972).

Appellant's contention is likewise meritless. State law does not have to be construed according to the bounds set by federal law. There is no requirement that an initiating State in a URESA action provide support for the absent parent's children. The action taken against Appellant was not jurisdictionally unsound due to Texas' lack of support for

Appellant's children. Rather, the State of Utah has elected to give full faith and credit to the decision of a Texas Court. Further, Utah Code Annotated 78-45b-4, 5, and 20 indicate that, pursuant to URESA, if a conflict arises with respect to a sister court of competent jurisdiction, the court order shall govern.

V

THE PUBLIC SUPPORT OF CHILDREN ACT DOES NOT PRECLUDE COLLECTION OF PRE-1975 CHILD SUPPORT ARREARAGES.

Appellant proffers the argument that Utah Code Annotated §78-45b is to be accorded prospective effect only. Appellant further maintains that any arrearage accrued prior to May 1975 is rendered uncollectible.

Chapter 45b of Title 78, Utah Code Annotated was enacted by the Legislature for the purpose of providing a uniform procedure for the collection support due the State when the State has provided assistance to the obligor's minor children. The Act further provided an administrative process for determination of child support obligations. As stated in Utah Code Annotated 78-45b-1.1

The State of Utah, exercising its police and sovereign power, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children shall be augmented by this act which is directed to the real and personal property resources of the responsible parents.

Although the Legislature did not specifically state that the Act should have retroactive effect, the legislative

intent is clearly discernible. Utah Code Annotated §78-45b-1.1 further provides:

In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this chapter be liberally construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving or avoiding, at least in part, the burden often borne by the general citizenry through welfare programs.

It is totally unreasonable to assume that the Legislature intended to prevent or in any way prejudice efforts to collect pre-1975 child support arrearage. The Act contains no provision indicating that the Act is applicable to child support debts accruing after the date of enactment. As stated in the chapter, the Act is intended to supplement and not supercede or overrule prior law.

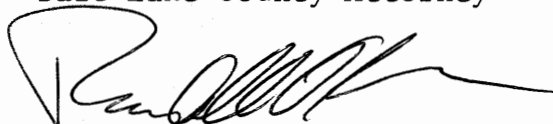
The chapter further provides for the collection of support debt pursuant to a Court Order and allows the Department of Social Services to collect this support which is due under the Court Order with no provision for it to apply only to debt from time of enactment. Pursuant to Utah Code Annotated §78-45b-3, the Appellant has the obligation to support his children. The obligation existed in the common law prior to enactment of the statute. The Act merely clothed the administrative tribunal's power to enforce the obligation.

CONCLUSION

For the foregoing reasons, the decision of the Administrative Law Judge and the Third District Court should be affirmed.

Respectfully submitted,

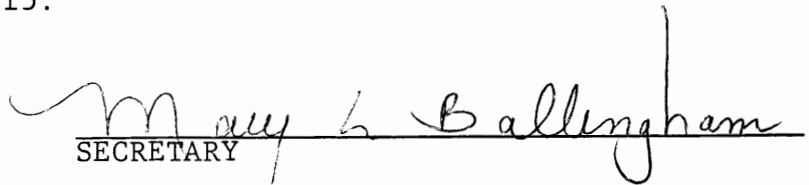
TED CANNON
Salt Lake County Attorney

A handwritten signature in black ink, appearing to read "Randall L. Skeen", is written over a horizontal line.

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MAILING CERTIFICATE

I hereby certify that on the 13 day of
May, 1982, I mailed a true and correct copy of the
foregoing Brief, postage prepaid, to Grant M. Prisbrey,
Attorney for the Appellant, at 2155 South Main Street,
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SECRETARY