

1990

Lloyd D. Coley v. Nancy P. Coley : Brief in Opposition to Certiorari

Utah Supreme Court

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Randall J. Holmgren; Attorney for Respondent.

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UTAH COURT OF APPEALS

BRIEF

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DOCKET NO. 900446-CA IN THE SUPREME COURT OF THE STATE OF UTAH

LLOYD D. COLEY,)	
Plaintiff and Petitioner,)	Case No. 910419
vs.)	
NANCY P. COLEY,)	Case No. 900446-CA
Defendant and Respondent,)	

BRIEF OF RESPONDENT IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

RESPONSE TO PETITION FOR WRIT OF CERTIORARI
FROM THE UTAH COURT OF APPEALS' DECISION
AND OPINION DATED AUGUST 15, 1991

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FILED

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CLERK SUPREME COURT
UTAH

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COMES NOW Defendant and Respondent, by and through counsel,
and responds to Petitioner's Petition for Writ of Certiorari as
follows.

STATEMENT OF THE CASE

Nature of the Case. Defendant instituted this action by
filing a "Verified Motion for Order to Show Cause" against
Plaintiff on or about February 21, 1990 (Record at 213). In the
"Verified Motion" Defendant alleged:

- a) That numerous judgments had been entered against
Plaintiff for failure to pay child support. (Record at
213).

b) That Plaintiff had been held in contempt of court and had served 30 days in the Salt Lake County Jail for his contempt. (Record at 214).

c) That Plaintiff still demanded his visitation rights with the parties' minor daughter after his release from jail. (Record at 214).

d) That the trial court should again sentence Plaintiff to serve time in the Salt Lake County Jail for his continued failure to pay child support and his continued contempt of court. (Record at 214).

e) That the trial court should suspend Plaintiff's visitation rights with the parties' minor daughter for his continued contempt of court. (Record at 214).

Disposition in the Lower Court. A hearing was held on Defendant's Order to Show Cause on June 18, 1990 in the Third District Court. Evidence was proffered by counsel for Defendant and Plaintiff was called to testify. Judge James S. Sawaya found that Plaintiff was in contempt and ordered Plaintiff's visitation terminated until further order of the court and sentenced Plaintiff to serve thirty (30) days in the Salt Lake County Jail, however, the jail sentence was suspended. (Record at 262). An Order was signed by Judge Sawaya on July 13, 1990, (Record 268-271), and an Amended Order was entered by Judge Sawaya on January 9, 1991. On August 15, 1991 the Court of Appeals upheld the Amended Order of the trial court.

STATEMENT OF FACTS

1. The Plaintiff's "Statement of Facts" (p. 4 through 11 of Petition for Writ of Certiorari), consists of approximately 40

paragraphs that, collectively, are somewhat true but are generally misleading and slanted according to Plaintiff's pro-se and non-legal approach to his own case. Rather than challenge the truth and veracity of Plaintiff's representations of fact, Defendant elects to set forth her own version of the pertinent facts as follows.

2. Plaintiff and Defendant were divorced on September 8, 1982 in the Third Judicial District Court, Salt Lake County, State of Utah. (Decree, Record at 12-14). Plaintiff was ordered to pay child support in the amount of \$250.00 per month for the parties' minor child until said child reached age 21. (Record at 13).

3. Since the entry of the Decree, Defendant has brought numerous motions for orders to show cause against Plaintiff for child support arrearages, payment of medical expenses, for the timely payment of child support, etc..¹

¹ November 17, 1982, judgment entered in the amount of \$1,750.00. (Record at 24-25).

February 7, 1984, judgment entered in the amount of \$1,880.14. (Record at 53-55, 65-67)

April 22, 1986, judgment entered in the amount of \$5,471.00, combining all previous judgments. (Record at 95-99)

October 27, 1988, judgment entered in the amount of \$10,001.24. (Record at 173-177)

July 13, 1990, judgment entered in the amount of \$27,365.76 combining all previous judgments plus interest. (Record at 268-271)

4. On December 3, 1988, an evidentiary hearing was held before the Honorable James S. Sawaya, Third District Court, on the issue of Plaintiff's contempt of court for failing to pay court ordered child support.

5. On December 16, 1988, an Order was entered finding Plaintiff in contempt of court and sentencing Plaintiff to thirty (30) days in the Salt Lake County Jail. (Record at 188-193).

6. On January 24, 1989, Plaintiff, having failed to purge the contempt, was ordered (in court) to surrender himself to the Salt Lake County Jail on January 27, 1989 for a period of thirty (30) days. (Record at 212).

7. On January 27, 1989, Plaintiff failed to report at the jail as ordered and a bench warrant was issued against Plaintiff on February 6, 1989. (Record at 211).

8. Plaintiff left the State of Utah for several months (Hearing Transcript, June 18, 1990, pp. 10-12, 15-21) and upon his return to Utah he was arrested and served his jail sentence during November, 1989.

9. On February 21, 1990, Defendant filed a Verified Motion for Order to Show Cause, (Record at 213-215), requesting judgment for child support arrearages, for Plaintiff to be sentenced to jail for continued contempt and for Plaintiff's visitation with the parties' minor child to be suspended. On May 7, 1990, Defendant filed an Affidavit in Support of said Motion. (Record at 222-233).

10. On June 18, 1990, Defendant's Order to Show Cause was heard by Judge Sawaya. Plaintiff testified and Defendant's testimony was proffered by counsel. Based upon the evidence presented, Judge Sawaya found Plaintiff in continuing contempt of court and ordered Plaintiff to serve thirty (30) days in jail and suspended Plaintiff's visitation with the parties' minor child. (Record at 262).

11. On July 13, 1990, an Order was entered against Plaintiff for child support arrearages², for continued contempt of court, and suspending Plaintiff's visitation with the parties' minor child. (Record at 268-271).

12. On July 16, 1990, Plaintiff filed an Affidavit of Bias or Prejudice (Record at 272-284) and on July 20, 1990 Plaintiff filed a Supplemental Affidavit of Bias or Prejudice (Record at 299-304).

13. On August 1, 1990, Judge Sawaya entered a Minute Entry stating "the Court having reviewed the Affidavit of Bias or Prejudice in the above entitled matter and questions its sufficiency and orders the same referred to Judge Murphy for his determination." (Record at 313).

14. On August 1, 1990, Judge Michael R. Murphy entered an Order stating Plaintiff's Affidavit of Bias or Prejudice lacked

² Judgment was entered for \$27,365.76 (including interest and minimal attorney fees).

legal sufficiency and that Judge Sawaya would remain assigned to the case. (Record at 314-315).

15. On August 13, 1990 Plaintiff filed a Notice of Appeal of the July 13, 1990 Order of Judge Sawaya and the August 7, 1990 Order of Judge Murphy. (Record at 316).

16. On October 10, 1990, the Court of Appeals vacated the portion of the July 13, 1990 Order denying Plaintiff contact with the parties' minor child and temporarily remanded to the district court for additional findings on the issue of the best interest of the child. The Court of Appeals retained jurisdiction to review any new orders. (Record at 332-333).

17. On December 11, 1990, Findings of Fact and Conclusions of Law were signed by Judge Sawaya pertaining to the July 13, 1990 Order.

18. On January 9, 1991 an Amended Order was entered by Judge Sawaya in accordance with the Findings and Conclusions of December 11, 1990.

19. Plaintiff appealed the Amended Order to the Court of Appeals.

20. On August 14, 1991 the Court of Appeals heard oral argument pursuant to Rule 31 of the Utah Rules of Appellate Procedure.

21. On August 15 1991 the Court of Appeals upheld the January 9, 1991 Amended Order of the district court.

SUMMARY OF ARGUMENT

The Court of Appeals properly considered the constitutionality of the trial court's order suspending Plaintiff's visitation.

Judge Sawaya found that Plaintiff's non-payment of child support was willful and contumacious and that it was in the best interest of the minor child not to have visitation with Plaintiff.

The district court did not err in conditioning the restoration of visitation rights upon compliance with support orders.

U.C.A. §78-32-10 does not prevent the district court from restricting visitation privileges, if the court finds that the restriction is in the best interests of the child.

An order to show cause proceeding is proper for the purpose of suspending and/or terminating Plaintiff's visitation.

The district court can sign an order, even though objections have been filed, if the district court finds the objections have no merit.

The Court of Appeals' use of Rule 31 of the Utah Rules of Appellate Procedure was proper.

ARGUMENT

1. THE COURT OF APPEALS PROPERLY CONSIDERED THE CONSTITUTIONALITY OF THE TRIAL COURT'S ORDER SUSPENDING PLAINTIFF'S VISITATION.

The Court of Appeals properly considered the Plaintiff's constitutional arguments with respect to the suspension of Plaintiff's visitation privileges. Plaintiff states in his

Petition (p. 11) that "there is a constitutional right of a parent to maintain a personal and close relationship with their [sic] children" and cites to several cases to support his position. (Interest of Walter B., 577 P.2d 119 (Utah 1978); Meyer vs. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 626, L.Ed. 1042 (1923); and In Re J.P., 648 P.2d 1364 (Utah 1982)). All of these cases involve the termination of parental rights. Plaintiff's reliance on these cases is flawed for two reasons: first, the cases are limited in scope to permanent termination of parental rights while the case at hand is far more limited in that Judge Sawaya merely suspended Plaintiff's visitation until he exhibits behavior consistent with the best interests of his daughter and, second, Plaintiff's cases are cited out-of-context of the law governing suspension of visitation rights because there are numerous cases that empower a court to restrict or suspend visitation rights under certain fact situations.

This case is not about permanently terminating Plaintiff's parental rights; it is about a parent's responsibility to help his ex-wife raise their child. Plaintiff may think that because his ex-wife has a home and employment -- and because his daughter gets fed, clothed and cared for without him assisting -- that this is just a case of legal semantics where he can play lawyer and spend countless hours trying to legally justify why he does not financially support his daughter. However, this is a case where, as Judge Sawaya found, Plaintiff's failure to pay child support is

willful and contumacious. It does not take a legal scholar to rightly conclude that a man who willfully refuses to support his child does not have her best interest at heart or in mind.

Plaintiff argues that the Amended Order violates the Eighth Amendment of the United States Constitution as it constitutes cruel and unusual punishment. There are several cases (infra) in which visitation has been suspended or conditioned. Plaintiff's only support for his argument that suspension of visitation amounts to cruel and unusual punishment is his own subjective belief that it does.

The credibility of Plaintiff's argument, that the Amended Order destroys a loving relationship, is undermined by the fact that Plaintiff, of his own accord, willfully refuses to financially support his child and he physically had no contact with her, of his own choice, between February, 1989 until after November, 1989. (See Defendant's Statement of Fact #8).

2. JUDGE SAWAYA FOUND THAT PLAINTIFF'S NON-PAYMENT OF CHILD SUPPORT WAS WILLFUL AND CONTUMACIOUS AND THAT IT WAS IN THE BEST INTEREST OF THE PARTIES' MINOR CHILD NOT TO HAVE VISITATION WITH PLAINTIFF.

It should first be noted that Defendant's citation to the transcript of the August 14, 1991 hearing before the Court of

Appeals³ is improper because no such transcript was prepared by the Court of Appeals. Plaintiff's quote from hearing is taken out of context and should not be relied upon by this Court as it is a self-serving statement which has nothing to do with these proceedings.

Plaintiff alleges that Judge Sawaya suspended his visitation for the sole reason that Plaintiff is willfully not paying his court-ordered child support. The Findings of Fact, Conclusions of Law and Amended Order clearly takes into consideration the best interest of the child as required under Rohr vs. Rohr, 709 P.2d 382 (Utah 1985).⁴

The Lunsford, Slade, West, Soderburg, Smith, and Dana cases, cited by Plaintiff, are erroneously utilized by Plaintiff; the portions of those cases that he refers to are taken out of context. (Due to Utah Rules of Appellate Procedure Rule 50(b) limitations, a detailed discussion of these cases is included in the Appendix hereto; these pages are copies from the Defendant's Court of Appeals Response Brief).

³ "It should be noted at this point that respondent has admittedly abandoned the claim that the petitioner is unfit in anyway or degree except nonpayment of child support, (p. 23 lines 14-21 of Transcript of Oral Argument of August 14, 1991)." [See Plaintiff's Petition for Writ of Certiorari pg. 13].

⁴ ... where the noncustodial parent's refusal to pay child support is contumacious, or willful and intentional, and not due to inability to pay, visitation rights may be reduced or denied, if the welfare of the child so requires. Rohr (p.383).

In the case at hand, The Plaintiff has failed to provide support for his daughter for several years except when faced with jail. The only actions which have prompted payments by Plaintiff have been jail sentences, yet after serving the first jail sentence, Plaintiff still made no child support payments until faced with a second jail sentence. In suspending Plaintiff's visitation for a period of time, Judge Sawaya is trying to help Plaintiff realize and understand that he (Plaintiff) has a responsibility to support his daughter.

Therefore, the Amended Order did not suspend Plaintiff's visitation for the sole reason of non-payment of support.

At this point, a review of Rohr is appropriate. The facts in Rohr and the facts in the present case are compared as follows:

1. Amount of Father's Child-Support Arrearage. At the time the issue of suspending visitation came before the district court, the amount of the father's child-support delinquency was:

a. In Rohr: \$2,400. Id. at 383.

b. In Coley: \$27,305.00 (Amended Order).

2. Number of Child-Support Judgments Against Father.

At the time the issue of suspending visitation came before the district court, the court had entered judgments for child support against the father:

a. In Rohr: Not apparent from case test.

b. In Coley: 4 previous times. (Record at 223).

3. Conditions on Restoration of Visitation. At the time the issue of suspending visitation came before the district court, the district court conditioned restoration of visitation upon:

- a. In Rohr: Payment of all arrearages of alimony, child support, attorney's fees and costs, at which time the court would determine what visitation would be appropriate. Id. at 383.
- b. In Coley: Payment of \$450 per month for 4 consecutive months (i.e. ongoing support of \$250 per month and payment of \$200 per month toward the arrearage judgment of \$27,305.00 which was accruing interest of \$273.05 per month at the rate of 12% per annum post-judgment interest.)

This Court then held that the following principles of law applied to the Rohr facts:

1. "A court may not deny the noncustodial parent visitation rights for the mere failure to pay child support, where the failure to pay is due to an inability to pay." In the present case, Judge Sawaya found that Plaintiff had the ability to earn income (Findings of Fact #6 and Conclusions of Law Re: Amended Order on Order to Show Cause) and that Plaintiff's failure to pay was willful and contumacious (Findings of Fact and Conclusions of Law #1 Re: Amended Order on Order to Show Cause).

2. "[W]here the noncustodial parent's refusal to pay child support is willful and intentional, and not due to inability to pay, visitation rights may be reduced or denied, if the welfare of the child so requires" and "the conduct of the father [sic] as it affects the child's welfare is a proper consideration of the trial court." In the present case, Judge Sawaya made the following findings with respect to the requirement "if the welfare of the child so requires" and as to "the conduct of the father as it affects the child's welfare":

- a. Plaintiff does not respect the legal system. (Findings of Fact #12).
- b. Plaintiff's attitudes and behaviors are anti-social and constitute a substantial deviation from the moral norms of society. (Findings of Fact #12).
- c. Plaintiff's behaviors and attitudes are not a proper example for his child. (Findings of Fact #12).
- d. Plaintiff lacks concern for the child's financial welfare. (Conclusions of Law).

Plaintiff's visitation was suspended to impress upon Plaintiff a sense of responsibility for the welfare of his child, and the district court found that until Plaintiff felt such a responsibility it was not in the daughter's best interest to have visitation with Plaintiff.

3. THE DISTRICT COURT DID NOT ERR IN CONDITIONING
THE RESTORATION OF VISITATION RIGHTS UPON
COMPLIANCE WITH SUPPORT ORDERS.

The Plaintiff seems to argue that Rohr prohibited Judge Sawaya from conditioning the restoration of visitation rights upon payment of child support. (Petition for Writ, p. 16-17).

The quotation that Plaintiff inserts from Rohr does not support his contention. The language Plaintiff quotes referred to the Rohr trial court requiring payment of all back alimony, child support, attorney's fees and costs before the trial court would consider a modification of the divorce decree.

In the present case, the Amended Order does not in any way restrict Plaintiff from petitioning the trial court for a modification of the divorce decree and it does not require payment of all back child support, interest and attorney fees prior to restoration of visitation. The Amended Order provides Plaintiff with a means of restoring his visitation. Rohr did not prohibit Judge Sawaya from requiring Plaintiff to pay his ongoing child support of \$250 per month and \$200 per month toward the judgment of \$27,305.00.⁵ The purpose of Judge Sawaya's ruling was to convert Plaintiff from a willful non-payer of support to a willful payer of support. The Judge's experience with Plaintiff -- which is clear from the record -- was that Plaintiff did not pay child support and his failure to pay was willful. When found in contempt

⁵ Post-judgment interest at 12% per annum was accruing on that judgment in the amount of approximately \$273.05 per month.

of court in 1989 for not paying child support, Plaintiff still did not pay. The first time he paid any support, following the 1989 hearings, was on the eve of going to jail. After serving the jail sentence, Plaintiff still did not pay until he was again brought before Judge Sawaya in 1990 and faced with the prospect of going to jail and losing his visitation. At that time, Plaintiff was again found in contempt of court and sentenced to jail, but Judge Sawaya gave Plaintiff two payment options: \$50 a week to stay out of jail or \$450 a month for four consecutive months to both stay out of jail and to have his visitation restored. Plaintiff has elected the first option and has ignored the second option. With respect to the first option, Plaintiff has seldom paid on a weekly basis. Judge Sawaya exercised proper judicial discretion in fashioning a contempt order designed to impress upon Plaintiff his responsibility to financially support his daughter, and an order that would allow him to get on with his visitation schedule in a matter of four short months.

4. U.C.A §78-32-10 DOES NOT PREVENT THE DISTRICT COURT FROM RESTRICTING A PARENT'S VISITATION PRIVILEGES IF THE COURT FINDS THAT THE RESTRICTION IS IN THE BEST INTERESTS OF THE CHILD.

Judge Sawaya found Plaintiff in contempt for failing to pay the court ordered child support and sentenced Plaintiff to thirty (30) days in the Salt Lake County Jail. That sentence was

suspended with the condition that Plaintiff make \$50.00 per week installment payments.

Plaintiff's visitation rights were also suspended because the trial court found it was not in the best interest of the child to have visitation with her father at this time. Plaintiff's visitation was also suspended based on the trial court believing, based on the history of the case, that it would take more than a jail sentence to bring home to Plaintiff a sense of responsibility for the welfare of his child.

The Arizona Court of Appeals in Reardon vs. Reardon, 415 P.2d 571, 574 (Ariz. App. 1966) stated:

Support payments, however, are provided for the benefit of the minor children and when considering the history of the matter, the age of the children, the past conduct of the non-custodial parent in exercising rights of visitation, and the possible ineffectiveness of the court contempt power, the trial court could properly find that the children will benefit by conditioning visitation privileges upon payment of support (emphasis added).

In the case at hand, Plaintiff was sentenced to thirty (30) days in the Salt Lake County Jail in early 1989 and served that sentence in approximately November of 1989. Between that time (November, 1989) and the filing of Defendant's Order to Show Cause in April 1990, Plaintiff made no efforts to pay ongoing child support nor did he make any attempt to reduce the arrearages. Judge Sawaya knowing this, not only found Plaintiff in contempt again but, based on the history of the case and the nominal effect

the last jail term had on Plaintiff, also decided that further measures were needed to bring home to Plaintiff a sense of responsibility for his daughter's welfare. (See Reardon at 574).

The Arizona Court in Reardon further stated:

Nothing we say herein should be construed by parties litigant that they may assume the burden upon themselves of denying rights of visitation conditioned on payment of support monies without a court order. This is a power that the court only may have and it is basic that the parties themselves do not have the authority to so modify the orders of the court. (Id at 574).

Trial courts have the authority to suspend visitation. In the case at hand, Judge Sawaya did not abuse any of the powers which have been vested in him by the State of Utah. Judge Sawaya was simply fashioning an order to try and bring home to Plaintiff a sense of responsibility for the welfare of his daughter -- knowing that if he can convince Plaintiff that Plaintiff has that responsibility, and that if Plaintiff will perform that responsibility, the overall long-term relationship between that father and child will be enhanced and strengthened.

5. AN ORDER TO SHOW CAUSE PROCEEDING IS PROPER FOR THE PURPOSE OF SUSPENDING AND/OR TERMINATING PLAINTIFF'S VISITATION.

Plaintiff argues that the district court erred in "denying visitation" in the absence of a petition for modification. The trial court's power includes the power to suspend and/or terminate Plaintiff's visitation rights without modifying the divorce decree.

The trial court can impose restrictions upon existing rights if the trial court determines that such is necessary to compel a party's performance of an obligation. Plaintiff's reliance on Rohr is misplaced because, in that case, the wife petitioned to modify the decree permanently. In the present case, Defendant's Order to Show Cause was not intended to permanently deprive Plaintiff of visitation. The intention of the Order to Show Cause, and the resulting Amended Order, was to temporarily suspend Plaintiff's visitation in order to impress upon him his responsibility for his daughter's care, support and welfare, and the resulting Amended Order gave Plaintiff an avenue whereby he could quickly re-instate his decree-awarded visitation rights.

**6. THE DISTRICT COURT CAN SIGN AN ORDER EVEN
THOUGH OBJECTIONS HAVE BEEN FILED IF THE
DISTRICT COURT FINDS THE OBJECTIONS HAVE NO
MERIT.**

Nothing in Rule 4-504(2) of the Utah Code of Judicial Administration, which is cited in Plaintiff's Brief, indicates that even though objections to an order have been filed that the judge cannot go ahead and sign the order over the objections. The Rule only states that a party must file their objections within five (5) days after receiving the proposed order. Further, Plaintiff cites no evidence that Judge Sawaya failed to review Plaintiff's objections before signing the July 13, 1990 Order. Assuming that Plaintiff's objections were received by Judge Sawaya on July 11,

1990, as Plaintiff says, Judge Sawaya had three days, before he signed the July 13, 1990 Order, to review Plaintiff's objections.

Plaintiff has failed to support his position that the trial court erred by signing the Order over his objections.

7. THE COURT OF APPEALS USE OF RULE 31 OF THE UTAH RULES OF APPELLATE PROCEDURE WAS PROPER.

The Court of Appeals use of Rule 31 was proper in that the whole basis of Plaintiff's claim that the trial court erred was that its reliance upon Rohr was improper. The Court of Appeals found that the trial court abided by the guidelines set forth in Rohr and that a written decision on this matter would not add anything to the current law.

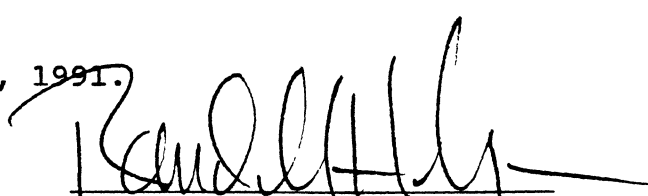
If a decision truly adds nothing to the law, it should be disposed of from the bench or by a short written order that may be informative to the parties but to no one else. Paffel vs. Paffel, 732 P.2d 96, 104 (Utah 1986).

There was nothing improper in the use of Rule 31 by the Court of Appeals.

CONCLUSION

Plaintiff has failed in his Petition to produce any authority for his positions. Therefore, this Court should deny certiorari in this matter.

DATED this 11 day of October, 1991.


Randall J. Holmgren
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that I personally caused to be mailed a true and correct copy of the foregoing Brief of Respondent in Opposition to Petition for Writ of Certiorari, postage prepaid, to the following, on Oct. 11, 1991.

Laura L. Hoins
Laura L. Hoins

APPENDIX

In Lunsford vs. Waldrip, 493 P.2d 789 at 792 (Wash. App. 1972), the Washington Court of Appeals stated:

The paramount concern in such matters [suspending visitation] is the welfare of the child, and the conduct of the father as it affects the child's welfare is a proper consideration for the trial court.

How can it be in the best interest of any child to be raised by a parent who refuses, unless faced with jail or suspension of visitation, to pay any support to help provide food, clothing, shelter, etc. for that child? In the present case, the district court found that Plaintiff was educated, healthy and able to provide the ordered support and that Plaintiff had not given the district court any reason whatsoever as to why Plaintiff had not paid the support as ordered.

Slade vs. Slade, 594 P.2d 898 (Utah 1979), was an action by a father to establish visitation rights with his child who was born out of wedlock and the Utah Supreme Court found that "visitation is a matter addressed to the district court's sound discretion". (Slade at 901).

In West vs. West, 487 P.2d 96 (Or. App. 1971), the case involved an order by the trial court conditioning the father's visitation upon the father paying the court ordered child support. The Oregon Court of Appeals stated that "the right of visitation cannot be made dependent upon the payment of support for children". However, the court upheld the trial court's order:

[T]he order was set for the purpose of bringing home to the defendant a sense of responsibility for the child. (West at 98)

Soderburg vs. Soderburg, 299 P.2d 479 (Idaho 1956), is a case where the father petitioned the trial court for a restraining order so that the children's mother could not transport the children out of the court's jurisdiction.

Plaintiff's reliance on Smith vs. Smith, 135 Utah Adv. Rep. 33 (Utah App. 1990) is inappropriate because the language quoted by Plaintiff refers to a situation where a party sought a change in custody because the other party had interfered with visitation rights.

Plaintiff's reliance on Dana vs. Dana, 131 Utah Adv. Rep. 76 (Utah App. 1990) is similarly mistaken because the visitation issue in that case focused on the mother's complaint that the father did not exercise visitation and she wanted him to be ordered to comply with the visitation schedule or be ordered to pay additional child support to offset her babysitting expenses.