1983

Roseann Catt Karren v. State Department of Social Services : Respondent's Brief

IN THE SUPREME COURT

OF THE STATE OF UTAH

ROSEANN CATT KARREN, Plaintiff/Appellant vs STATE DEPARTMENT OF SOCIAL SERVICES Defendant/Respondent.	Case No. 19215

RESPONDENT'S BRIEF

Appeal from the Judgment of the
Third District Court
For Salt Lake County
Honorable J. Dennis Frederick, Judge

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STATEMENT OF THE NATURE OF THE CASE

The case in the lower court was in the nature of a judicial review of an administratively determined child support debt in favor of the Defendant/Respondent pursuant to the Public Support of Children Act, Chapter 45b, Title 78, Utah Code Annotated (1953) as amended.

DISPOSITION IN LOWER COURT

The District Court having reviewed the certified record of the administrative proceedings and having heard argument by counsel, ordered that the Memorandum of Findings and Order previously entered by the Administrative Law Judge be affirmed. The District Court further ordered that the case be remanded for further administrative hearings pursuant to the Memorandum of Findings and Order.

RELIEF SOUGHT ON APPEAL

Plaintiff/Appellant seeks reversal of the ruling of the lower court, thus barring Defendant from claiming any past child support from Appellant, and for costs, etc.

Respondent seeks affirmation of the ruling in the District Court below, sustaining the order of the Administrative Law Judge, and thus proceeding with a determination of the amount owed to the State by Appellant.

STATEMENT OF FACTS

The Appellant, Roseann Catt Karren, and Larry D. Taber were married, having three children born of that marriage, to-wit: Michael Allen, David, and Kelsey. Pursuant to a Divorce Decree, dated October

30, 1972, the "care, custody, control and education" of Michael Allen and David were awarded to Mr. Taber and the "care, custody, control and education" of Kelsey was awarded to the Appellant. The Divorce Decree further required Mr. Taber to pay child support of Thirty Dollars ($30.00) per week to Appellant for the support of Kelsey. (Plaintiff's Exhibit 1 -Transcript of hearing).

Subsequently, Appellant had both physical and legal custody of Kelsey until 1976. However, in an administrative hearing held before the Honorable J. Steven Eklund on June 4, 1981, Appellant testified that since Mr. Taber had failed to pay child support as set forth in the Decree, Appellant relinquished physical custody of Kelsey to Mr. Taber. According to Appellant, said transfer of custody would have occurred by March of 1976.

During various months from March, 1976 through March, 1981, Mr. Taber received public assistance which included support for the parties' three minor children. The amount of such public assistance received totalled Eleven Thousand Eight Hundred Seventy One and 73/100 Dollars ($11,871.73). (Pages 3-5 of Transcript of Proceedings - Plaintiff's Exhibit 3.)

Pursuant to an assessment conference between Appellant and an investigator from the Office of Recovery Services, child support arrearages were assessed to be Thirty Five ($35.00) per child per month or a total of One Hundred Five Dollars ($105.00) per month. Based on the total number of months during which Mr. Taber actually received public assistance, the arrearage sought would be a total of Three Thousand Eight Hundred Eighty Five Dollars ($3,885.00). (Plaintiff's Exhibit 4,

Pages 5 and 6 of Transcript of Proceedings.) As of this date, Appellant has made no payment to the Office of Recovery Services in satisfaction of any obligation to provide child support for her three minor children. (Page 6 of Transcript of Proceedings.)

ARGUMENT I

PARENTS HAVE THE PRIMARY DUTY OF SUPPORT FOR THEIR CHILDREN, AND THIS DUTY IS IMPOSED EQUALLY UPON BOTH FATHER AND MOTHER.

Today, most jurisdictions either by statute or through common law, cast upon both parents, according to their ability, the duty of supporting their dependent minor children. Both the Utah courts and the state legistlature have recognized and articulated the duty of the mother as well as the father to support her minor children. In State Division of Family Services vs. Clark, 554 P2d 1310 (Utah, 1976), the Utah Supreme Court stated in pertinent part: "...one of the implied promises in the marriage contract is to support any children that may have been born into the family". In the Court's subsequent discussion of the parents' duty of support, the Court continually referred to "their" duty of support.

Furthermore, §78-45-4, Utah Code Anotated (1953) as amended, requires every woman to support her dependent children. Thus, the financial responsibility for the support of children is a joint and several obligation of both parents. As was stated in Owen vs. Owen, 579 P2d 911 (Utah, 1978):

> "[U]nder our law both the mother and the father are responsible for the support of the children. Therefore, even though in the Decree the duty of support was placed primarily and mostly upon the Defendant [who was, in that

> case, the father of the children], the trial court is not necessarily obligated to continue that burden entirely and exclusively upon him."

ARGUMENT II

A DUTY OF SUPPORT CONTINUES IN A DIVORCED MOTHER EVEN WHERE THE FATHER HAS LEGAL CUSTODY OF THEIR CHILDREN.

As was pointed out under Argument I above, most jurisdictions now have passed statutes requiring that the wife contribute child support along with the husband. In order to avoid conflict with the Equal Protection Clause of the Fourteenth Amendment, statutes regarding child support must be interpreted as requiring the cost of supporting the child of divorced parents, in the father's custody, to be apportioned between the parents according to their means. (See Carter vs. Carter 397 NYS2d 88 (N.Y. APP., 1977).

The following cases have also recognized that a mother has a duty to pay child support for her children who are in the custody of a former husband proportionate to her financial ability: Kelley vs. Kelley 378 So 2d 1069, (1979, La. App.); Herman vs. Herman 310 NW 2d 911, (Mich. App, 1981); Meysenburg vs. Meysenburg 303 NW2d 783, (Neb. 1981); Coble vs. Coble 261 SE2d 34, (NC App., 1979); Straub vs. Tyahla 418 A2d 472, (Pa. Super., 1980); and Bradshaw vs. Billips 587 SW2d 61, (Tex Civ. App. 11th Dist., 1979).

The Utah Supreme Court is in accord as was evidenced by their decision in McCrary vs. McCrary 599 P2d 1248, (Utah, 1979). In McCrary (Id.) a father had been awarded custody of the minor children in a modification proceeding. He was subsequently injured and required to subsist on disability income. The Court held that the lower Court did

not abuse its discretion in modifying the original Divorce Decree to require that the former wife, who was not employed but had a substantial bank account, contribute to the suport of the minors who were in the father's custody.

In Beasley vs. Beasley 159 NW2d 449, (Iowa, 1968), the Iowa Supreme Court held that a mother had a duty to contribute to the college education of her child whose custody had been awarded to the child's father.

In re, Marriage of Muldrow, 132 Cal Rptr 48, (Cal. App., 1976), the California Appellate Court held that a trial court abused its discretion in a marriage dissolution proceeding by refusing to modify the interlocutory decree so as to require the former wife to assist the husband with the support of their four children who lived with him and who were in his custody. In Muldrow the record had established the needs of the children and that the father was hard pressed to provide the necessary amounts of food, clothing, and other items; whereas the mother had the ability to do so.

ARGUMENT III

THE ABSENCE OF A SUPPORT ORDER DOES NOT EXTINGUISH THE SUPPORT OBLIGATION OF PARENTS, PARTICULARLY WHERE A THIRD PARTY SUPPLIES THEIR CHILDREN WITH THE NECESSITIES OF LIFE.

Each parents' statutorily mandated obligation to provide child support impliedly becomes a part of every Divorce Decree involving the welfare of the children of a marriage. (See Rose vs. Rose, 576 P2d 459 (Wyoming, 1978).

It must be recognized that public assistance has been provided by the State of Utah for the support of the parties' three children. In Lizotte vs. Lizotte 551 P.2d 137 (Wash. App., 1976), it was stated that:

> "Public policy dictates that the primary obligation for support and care of a child is by those who bring a child into the world rather than on the tax payers of the state. Therefore, parents have a duty to support their children and cannot rid themselves of it by transferring the duty to someone else."

While it is true that the general rule is that the Divorce Decree fixes the obligations of the parties, Stanton vs. Stanton 517 P.2d 1010 (Utah, 1974), and that where the circumstances would so justify, the trial court may relieve a parent from the obligation to provide child support, Forbush vs. Forbush, 578 P.2d 518, (Utah, 1978), a distinction must be drawn between an express order of a District Court that a parent is under no obligation to provide support for a child of the marriage, as compared to the mere silence of a Divorce Decree as to whether any child support obligation is imposed on the non-custodial parent.

The Divorce Decree in the instant case awarded the custody of two of the parties' minor children to Mr. Taber. The Decree further awarded the custody of the third child to Appellant and, incident thereto, ordered Mr. Taber to pay child support. Based on the facts which existed at the time of the entry of the Decree, that Decree is understandably silent as to the amount of any child support obligation which would be owed by Appellant. However, events which have occurred subsequent to the entry of the Decree (ie., the Plaintiff obtaining physical custody of the third child and subsequently receiving public assistance, which included support for all three children) may properly give rise to a

possible obligation of the Defendant to reimburse the State of Utah for the public assistance which was provided for the support of her children.

In Barrett vs. Barrett 39 P.2d 621, (Ariz., 1934), the Court stated that the provisions in the Divorce Decree awarding the custody of the children to the mother and placing the duty of support exclusively on her were binding, as between the father and the mother, until, by a direct proceeding modified, but they did not extend to the minor children; the Court further held that the third person's knowledge of the Decree of Divorce and its terms concerning the property rights and the custody of the children could not deprive him, if the other facts justified his giving support to the minors, of the right to maintain the action; and that his knowledge, at most, was that the terms of such Decree were binding upon the parents and did not in any manner dispense with their natural, moral, or legal duties to the children.

In Stech vs. Holmes 230 NW 326, (Iowa, 1930), the Court held that notwithstanding that the parents of a minor child were divorced and the custody of the minor child had been given to one of the parents, the other parent was liable to a stranger for the reasonable value of necessities furnished to the child.

Utah law is in accord with the above jurisdictions. In Reese vs. Archibald 311 P.2d 788, (Utah 1957), a suit against the father of a child for hospital services rendered to the child, whose custody had been awarded to the Defendant's former wife by an Idaho Divorce Decree which did not provide for support for the children, the Court, after pointing that the great weight of authority is that a father's obliga-

tion [and likewise a mother's via statutory mandate] to support his minor children is not changed by a Divorce Decree which gives the custody of the children to the wife [or the father] but does not mention their support, stated that the law is well settled that a father is liable [as would be a mother], even in the absence of an expressed contract, to a third person furnishing necessities to his [her] child.

And more recently, in State Division of Family Services vs. Clark 554 P.2d 1310, (Utah , 1976), the Utah Supreme Court held that the absence of any prior adjudications as to the amount(s) fathers should pay for support of their children did not preclude the State Division of Family Services from obtaining judgments against such fathers for the amount of support which it had furnished to such children.

Thus, the right of the State of Utah reimbursement for the public assistance which it has provided in this case is separate and apart from any alleged right of Mr. Taber to receive child support from Appellant for the benefit of the minor children in this matter.

ARGUMENT IV

THE FAILURE OF THE MICHIGAN COURT TO AWARD ANY ORDER OF SUPPORT IS NOT RES JUDICATA TO BAR ROSEANN CATT KARREN'S LIABILITY TO THE STATE FOR REIMBURSEMENT OF PUBLIC ASSISTANCE.

It has long been the law in many jurisdictions that a Divorce Decree is not res judicata concerning an award of support with regard to third parties who had no notice of the original Decree. Indeed, in Parks vs. Parks 272 SW 419, (Ky., 1925), the Kentucky Supreme Court held that a Divorce Decree which gave custody to a wife but did not provide for the support of a minor child was res judicata as between the husband

and wife, but did not affect the rights of third parties against the father. The Court went further to explain that it had not overlooked the fact that the judgment was res judicata only to parties and privies; however, infant children were neither parties nor privies, nor the subject of barter.

The Utah Supreme Court has just recently recognized this general principle in Knudson vs. Knudson, 660 P.2d 258 (Utah, 1983), the Court modified its prior ruling in Mecham vs. Mecham 570 P.2d 123, (Utah, 1977) which denied the State reimbursement for funds provided. The Court in Mecham (id.) ruled that where the wife had sought temporary child support in the divorce proceeding and the Court's Decree made no provision for such support, the matter was res judicata since the Department's rights were derived through the wife. However, the Court in Knudson (id.) specifically overruled Mecham and provided that where the State had no notice of the original proceeding a claim by the State was not barred by the doctrine of res judicata.

The Court in Knudson held that where the Department of Social Services was not a party to the divorce action, the Divorce Decree was not res judicata to bar the divorced husband's liability to the Department for reimbursement of public assistance for child support paid to the divorced wife during the pendency of a divorce, notwithstanding that the Divorce Decree made no mention of temporary alimony, child support, or arrearages of either.

CONCLUSION

Clearly, Appellant has both a common law and a statutory obligation to support her children, which, for the purposes of this

proceeding, is neither reduced nor eliminated by whatever may be implied from the language of the parties' Divorce Decree. Appellant is a "responsible parent", within the meaning of §78-45-b-2 Utah Code Annotated (1953) as amended, which defines that term as "the natural or adopive parent of a dependent child". Further, as stated in §78-45b-1.1:

> "It is declared to be the public policy of this state that this chapter be liberally construed and administered that children shall be maintained from the resources of responsible parents, thereby relieving or avoiding, at least in part, the burden often born by the general citizenry through welfare programs."

For the above stated reasons and pursuant to the authorities cited, Respondent respectfully submits this Brief in support of its prayer that the ruling in the District Court below be sustained.

Respectfully submitted this 3rd day of October, 1983

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MAILING CERTIFICATE

The foregoing Respondent's Brief was mailed to Lynn P. Heward, attorney for Appellant, at 1174 East 2700 South, Salt Lake City, Utah 84106 on this _____ day of November 1983.

_____
SECRETARY