

1983

## **The State of Utah, By And Through Utah State Department Of Social Services v. John Dick : Brief of Respondent**

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### **Recommended Citation**

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IN THE SUPREME COURT OF THE STATE OF UTAH

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THE STATE OF UTAH, BY AND )  
THROUGH UTAH STATE DEPARTMENT )  
OF SOCIAL SERVICES, )

Plaintiff-Respondent, )

Case No. 18988

Vs. )

JOHN DICK, )

Defendant-Appellant. )

---

BRIEF OF RESPONDENT

INTERLOCUTORY APPEAL FROM AN ORDER OF THE THIRD  
DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH  
HONORABLE TIMOTHY R. HANSON, JUDGE

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FILED

JUN 14 1988

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Clerk, Supreme Court, Utah

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BRIEF OF RESPONDENT

STATEMENT OF NATURE OF CASE

This is an appeal to determine the appropriate forum for enforcement of a child's right for care and support from its father, pursuant to U.C.A. §78-45a-1 et seq., when the father is under 18 years of age.

DISPOSITION IN THE DISTRICT COURT

The State of Utah, Department of Social Services, filed suit against Defendant-Appellant in Third District Court in and for Salt Lake County, State of Utah. Defendant-Appellant filed a Motion for an Order Releasing Jurisdiction to the Juvenile Court. Said Motion was denied by Order of the Third District Court Judge, Timothy R. Hanson.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the Third District Court's ruling and Order.

STATEMENT OF FACTS

Respondent agrees with the Statement of Facts recited by Appellant in Part A and B of his Statement with the exception that the Complaint does not, nor has Respondent ever, alleged that Appellant has "violated" the Utah Uniform Act on Paternity.

ARGUMENT

THIS ACTION DOES NOT FALL WITHIN THE JURISDICTION OF THE JUVENILE COURT, BUT IS PROPERLY BROUGHT IN THE DISTRICT COURT.

The present action against Appellant is a civil proceeding pursuant to U.C.A. §78-45a-1, et seq., the Uniform Act on Paternity

It is not a criminal action nor a quasi-criminal action that corresponded to U.C.A. §77-60-1 et seq., Bastardy Act (repealed 1980). This Court has consistently recognized that paternity suits are civil in nature; even when brought pursuant to the now repealed Bastardy Act. See eg, Brown v. Marrelli, 527 P.2d 230. It is to be noted that the Uniform Act on Paternity does not create a new cause of action that did not exist previously, it merely establishes a procedural mechanism for the enforcement of a child's long recognized right of care and support from its father; see eg. Rees v. Archibald, 311 P.2d 788 (1957) ("This court has invariably emphasized the father's obligation to support his children based upon the elementary principal that the law imposes upon those who bring children into the world the duty to care for and support them during their minority and dependency." id. at 789).

Appellant argues that because he was under the age of eighteen when this action was filed, the action should be brought in Juvenile

Court by mandate of U.C.A. § 78-3a-16(1), the Juvenile Court Act

Appellant contends that the statutory language is clear. Respondent agrees that the statutory language is clear; §78-3a-16 does read in pertinent part:

"Except as otherwise provided by law, the [Juvenile] Court shall have exclusive original jurisdiction in proceedings: (1) concerning any child who has violated any federal, state or local law or municipal ordinance, ..."

It is clear from the Juvenile Court Act that the legislature, in enacting this provision, intended for the Juvenile Court to deal with violations of criminal laws and ordinances. This is clearly shown by the list of possible dispositions of a case within the jurisdiction of the Juvenile Court. §78-3a-39 reads in pertinent part:

"When a child is found to come within the provisions of section 78-3a-16, the [Juvenile] Court shall so adjudicate, and make a finding of the facts upon which it basis its jurisdiction over the child provided, however, that in cases found to be within the provisions of section 78-3a-16(1), findings of fact shall not be necessary. Upon such adjudication, the court may make the following disposition by court order:

- (1) The Court may place the child on probation or under protective supervision...
- (2) The court may place the child in the legal custody of a relative or other suitable person, ...
- (3) The court may vest legal custody of the child in the state division of family services or other public agency, department, or institution, or in a child placement agency...
- (4) The court may commit the child to the state youth development center or other similar institution...
- (5) The court may commit ... the child to temporary custody of the state youth correction agency..."



All of these possible dispositions show the intent of the legislature to provide an alternative form for rehabilitation of minors charged with criminal violations. This is also reflected in the exception contained in the section cited, that no findings of fact are necessary if jurisdiction is pursuant to §78-3a-16(1) and the Juvenile Court's practice of not making such findings in cases where the minor has been charged with criminal violations. Nothing is added to Appellant's argument through reference to other jurisdictions in that the purpose of their statutes is the same as Utah's purpose in passing the Juvenile Court Act: alternative rehabilitation of juveniles who have violated criminal ordinances/laws.

Appellant has consistently stated in his argument that the Juvenile Court has "exclusive, original jurisdiction where a child has violated any state law" and posits that Appellant has "violated" Utah law simply because his child's right to care and support is being enforced pursuant to the Uniform Act on Paternity, U.C.A. §78-45a-1 et seq., and that the Juvenile Court Act does not provide concurrent or alternative jurisdiction in some other court for such "violation". Appellant's entire argument misses the mark. Appellant has not been charged with violating any law or ordinance. The allegations of the Complaint filed herein are essentially that Appellant is the father of a child born out of wedlock and that Appellant has a duty to assist, within Appellant's ability, in the support of the child. As noted previously, this is simply the enforcement of Appellant's moral obligation to support his child. The fallacy of Appellant's argument is shown by its application to other

circumstances where a defendant is under the age of 18 when his actions give rise to legal suit: 1. Should an individual, under the age of 18, stay upon or in property and, thus, to use Appellant's argument, "violate" the Unlawful Deatiner Act, U.C.A. §78-36-1, et seq., legal action to evict such an individual would have to be brought in Juvenile Court. 2. The under 18 year old, who gets a summer job as a laborer on a construction site and who, through his negligence, causes injury or death to an individual on the construction site and, thus to use Appellant's argument, "violates" the Wrongful Death Act, U.C.A. §78-11-12 et seq., would have to be sued in Juvenile Court for his liability for the injuries caused by his acts. 3. The individual who is injured by a product made or designed by the enterprising, bright high-school "WIZ KID" would have to bring suit in Juvenile Court, since to use Appellant's argument, the high schooler has "violated" the Product Liability Act, U.C.A. §78-15-1 et seq. Respondent could continue the list, e.g., claims for personal injury and property damage arising from traffic accidents being filed in Juvenile Court of one if the drivers were under 18 years of age, but believes its point has been made; jurisdiction of the Juvenile Court, under U.C.A. §78-3a-16(1), occurs when a person under the age of 18 is charged with a criminal violation. Analogous reasoning was done by this Court in State v. Dung Hung Jo, 585 P.2d 464. There, this Court noted that the actions of the minor child were violations of no law and the asserted jurisdiction over the Defendant was not within the purview of the Juvenile Court Acts' jurisdictional sections.

Appellant himself glosses over the Juvenile Court Act's specific language found in §78-3a-16 which states: "except as otherwise provided by law, ..." The Uniform Act on Paternity states specifically, at U.C.A. §78-45a-5(1), "The district court has jurisdiction of an action under this act..." Within the language of the Juvenile Court Act and the Uniform Act on Paternity, this action is within the jurisdiction of the District Court, not the Juvenile Court.

Appellant attempts to buttress his argument by stating that the action of the District Court will be "mechanistic and unyielding the Court will not"refer to the age, status or background of the parents." This may be due to the fact that Appellant is unable to follow the sections of the Uniform Act on Paternity which indicate that provisions of the other "child support" acts are available for use in actions brought under the Uniform Act on Paternity. By following these inclusionary provisions, one finds that the District Court must, in setting Appellant's support obligation,

"consider all relevant factors including but not limited to:

- (a) the standard of living and the situation of the parties;
- (b) the relative wealth and income of the parties;
- (c) the ability of the obligor to earn;
- (d) the ability of the obligee to earn;
- (e) the need of the obligee;
- (f) the age of the parties;
- (g) the responsibility of the obligor for the support of others."

U.C.A. §78-45-7(2) (Uniform Civil Liability for Support Act).

CONCLUSION

The statutory language of each relevant act and the legislative purpose and intent in enacting these acts clearly show that an action to have the father of a child provide care and support, within that father's ability, for his child is to be brought in the District Court, even if the father is under 18 years of age.

RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of June, 1983.

TED CANNON, Salt Lake County Attorney

By: \_\_\_\_\_

SANDY MOOY,  
Deputy County Attorney

I hereby certify that I mailed two copies of the foregoing Brief of Respondent, to John E. Harvey, Attorney for Defendant-Appellant, at 175 South West Temple, Suite 500, Salt Lake City, Utah 84101 this \_\_\_\_\_ day of June, 1983.

\_\_\_\_\_