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The State of Utah, By And Through Utah State Department Of Social Services v. John Dick : Reply Brief of Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, by and)
through Utah State Depart-)
ment of Social Services,)

Plaintiff-Respondent,)

v.)

JOHN DICK,)

Defendant-Appellant)

Case No. 18988

REPLY BRIEF OF APPELLANT

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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REPLY BRIEF OF APPELLANT

ARGUMENT

Appellant replies to the arguments raised by Respondent in its Brief (hereafter, "Brief") as follows:

1. Respondent has argued:

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 (Brief, p. 2.)

The inference is that no substantive state law has been broken by Appellant-defendant; and, therefore, Appellant may not seek jurisdiction of the juvenile court pursuant to Section 78-3a-16(1) of the Juvenile Court Act.

Appellant replies: On the contrary, the Utah Uniform Act on Paternity specifically creates a cause of action. It is under this act that the State of Utah [Respondent] has been able to become a party to this paternity action (Section 78-45a-2, U.C.A. (1953)). Moreover, the Uniform Act on Paternity specifically establishes the father's responsibility for the costs of the mother's pregnancy and confinement (Ibid., Section 78-45a-1; Complaint, paragraph 6); for the costs of the child's education and funeral (Section 78-45a-1, U.C.A. (1953)); and, arguably, for certain or all costs incurred in bringing an action such as the present one (Ibid., Section 78-45a-9; Complaint, Prayer, paragraph 7). Thus, the state law in question is more than procedural: it is substantive. And its violation properly triggers the juvenile court's jurisdiction under Section 78-3a-16(1), U.C.A. (1953).

2. Respondent has argued: "Appellant has not been charged with violating any law or ordinance." (Brief, p. 4.)

Appellant replies: Respondent's semantics are unconvincing. For example, paragraphs 6 and 7 of the Complaint cite a number of Appellant's asserted "failures" to have complied with the requirements of Section 78-45a-1 of the Uniform Act on Paternity. Thus, Appellant has been charged with the violation of a substantive state law.

3. Respondent has argued: The present litigation concerns, not the violation of a law or ordinance, but "simply the enforcement of Appellant's moral obligation to support his child." (Brief, p. 4.)

Appellant replies: Moral obligations are not enforceable in a court of law; laws are enforceable in a court of law. But here, two laws conflict with each other. Against that context, perhaps, it may be appropriate for a court to consider the moral obligations from which, ultimately, those two laws derive. The Uniform Act on Paternity derives from the parents' obligation to nurture their offspring. The Juvenile Court Act derives from an equally basic moral imperative. It derives from the obligation of humankind to socialize its successor generations--to salvage its young, not only from neglect and abuse, but to salvage its young from the inevitable errors and deficiencies of youth itself. In his appeal, Appellant does not shy away from the issue raised by Respondent. Rather, he urges the Court to ponder the moral underpinnings of the two conflicting

laws--and to conclude that the higher moral obligation is to try to salvage a boy and that the lower moral obligation is to visit on a man protracted punishment (called "responsibility") for the senseless act of a child.

4. Alternatively, Respondent has argued that Section 78-3a-16(1) of the Juvenile Court Act establishes jurisdiction in the juvenile courts where only a criminal law has been violated. Respondent has supported its position with three observations.

(a) First, Respondent has cited Section 78-3a-39 of the Juvenile Court Act, whose "list of possible dispositions of a case within the jurisdiction of the Juvenile Court" presumably shows a statutory intent that the juvenile court deal with violations of only criminal laws and ordinances. (Brief, p. 3.)

Appellant replies: In its Brief, Respondent cited five subparagraphs of Section 78-3a-39. But other subparagraphs of the same section show that the juvenile court possesses wide latitude to guide children who have encountered all sorts of difficulties--including that particular difficulty confronting Appellant today:

(10) The court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he receive other special care

(13) In support of a decree under section 78-3a-16 the court may make an order setting forth reasonable conditions to be complied with . . . including . . . restrictions on the child's associates, occupation, and other activities, and requirements to be observed by the parents or custodian.

(17) The court may make any other reasonable orders which are for the best interest of the child or are required for the protection of the public.

(b) Secondly, Respondent has discounted Appellant's references to other states whose statutes, like Utah's, assign broad jurisdiction to the juvenile courts. Respondent has asserted that all such statutes assign jurisdiction where only a criminal law has been violated. (Brief, p. 4.)

Appellant replies: Admittedly, certain states, by statute, limit the jurisdiction of their juvenile courts to violations of only criminal laws. But there are other states--including Utah--whose statutes extend that jurisdiction to instances where any state law has been broken. These two basically contrasting sets of statutes exist among the states. It is reasonable, therefore, where any one of these statutes is to be interpreted, that it be interpreted to mean precisely what it says--and not to mean what the opposite set says. This is all the more true because Utah has foregone an eighteen-year opportunity (since the passage of its Juvenile Court Act in 1965) to amend its statute to restrict the jurisdiction of its juvenile courts.

(c) Thirdly, to test the aptness of Appellant's broad reading of Section 78-3a-16(1) (i.e., that it refers to violations of all laws, civil as well as criminal), Respondent would apply Appellant's [mis]interpretation to circumstances where a child has breached other non-criminal statutes, such as unlawful detainer, wrongful death, or products liability. (Brief, p. 5.) As argued by Respondent, Appellant fails the test.

Appellant replies: Essentially, Appellant's reading of

the statute creates no problems. But wherever his interpretation may lead to an absurdity, his interpretation should not be followed in that particular application. (The single instance among the cited examples would be the wrongful death statute.) On the other hand, where his interpretation of the statute does not lead to an absurdity, it should be followed; because his interpretation is closest to the literal meaning of the statute and closest, also, to the spirit of the statute.

(d) Fourthly, Respondent has cited State v. Dung Jo, 585 P.2d 464 (Utah, 1978), to support its contention that violations of only a criminal law may trigger juvenile court jurisdiction.

Appellant replies: In Dung Jo this Court held that, at the relevant time, there existed no Utah law prohibiting a child from running away from home. Thus, as Respondent itself has admitted, "the actions of the minor child were violations of no law . . ." and jurisdiction of the juvenile court was properly denied. (Brief, p. 5.) In the case at bar, however, Appellant's asserted siring of a child whom he has failed to support clearly does violate the Utah Uniform Act on Paternity. Therefore--and consistently--, jurisdiction should now be exercised by the juvenile court.

5. Lastly, Respondent has argued: In setting a parent's support obligation dollar-amounts, the district court, pursuant to Section 78-45-7(2), U.C.A. (1953), "must consider all relevant factors." (Brief, p. 6.) The inference is that a juvenile court can exercise no more flexibility than the district court; and, therefore, the instant appeal for transfer to the juvenile court

is futile.

Appellant replies: The relevant factors set forth in Section 78-45-7(2) and intended to guide the district court in a case such as this are all, save one, framed in financial terms.¹ In any event, the relevant factors of Section 78-45-7 do not envision the age, immaturity or emotional problems of the parent at the time the parent engendered the offspring. Nor do they embrace the likely psychological and social repercussions upon a child-parent when faced with prospective liability continuing for eighteen years [minimum]. On the other hand, the juvenile court is free to consider these very factors. Unlike the district court, the juvenile court is mandated by law to devise a resolution, not only that will serve the best interests of the

1. Factor (f) refers to the "age of the parties." In context the reference appears to be to the age of the obligee or child.

In further rebuttal to Respondent's citing of Section 78-45-7, Appellant respectfully refers the Court to Subsection 78-45-7(3), which requires the district court to "determine and assess all arrearages based upon, but not limited to: (a) the amount of public assistance received by the obligee, if any; (b) the funds that have been reasonably and necessarily expended in support of spouse and children."

Appellant asks: Does this not mean that, while Appellant remains an unemancipated child and/or student supported by his family, the mother of the offspring will continue to draw public assistance as she already has done (Complaint, paragraphs 2, 9, 10, 11); and, finally, when Appellant does become self-supporting, the court must back-assess him for all previous welfare expenditures, in addition to requiring him to make ongoing support payments? Is this the sort of equitable, humane and relevant judicial determination that the respondent State of Utah would hold out to the Court in defense of its position?

state, but that will serve the welfare of this child-Appellant, as well.²

CONCLUSION

For the above reasons, Appellant urges this Court to reverse the district court's Order and to transfer jurisdiction in the instant matter to the appropriate juvenile court.

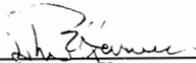
RESPECTFULLY SUBMITTED, this 23 day of June, 1983.



JOHN E. HARVEY
Attorney for Defendant-
Appellant

CERTIFICATE OF SERVICE

I certify that I caused to be delivered two copies of the above pleading to Sandy Mooy, Esq., Attorney for Plaintiff-Respondent, c/o Salt Lake County Attorney, 231 East 4th South, Suite 400, Salt Lake City, Utah 84111, this 23 day of June, 1983.



John E. Harvey

2. Paraphrasing in part Section 78-3a-1, U.C.A. (1953), which section sets forth the purposes of the Juvenile Court Act.