

1992

Michael Poulsen v. Lynn Poulsen : Brief of Appellant

Utah Court of Appeals

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Renee M. Jimenez; Attorney for Appellee.

Lynn Poulsen.

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UTAH COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

---ooOoo---

MICHAEL POULSEN)
PLAINTIFF/RESPONDENT)
vs.)
LYNN POULSEN)
DEFENDANT/APPELLANT)

CASE NO. 920701-CA

STATE OF UTAH, by and through)
Department of Human Services,)
Intervenor, Appellee,)

APPELLANT'S BRIEF

Appeal from Order denying Defendant's
Motion for relief from Ex-parte Order
granting Intervenor's right to collect child support
Order issued in the Third District Court,
the Honorable David S. Young
presiding,
minute order signed September 22, 1992
Notice of Appeal filed October 22, 1992

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FILED

MAR 22 1993

COURT OF APPEALS

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TABLE OF CONTENTS

STATEMENT OF JURISDICTION	1
ISSUES PRESENTED	1
EVIDENTIARY ISSUES	1
Standard of Review	2
LEGAL ISSUES	2
Standard of Review	2
CONSTITUTIONAL ISSUES	3
Standard of Review	4
DETERMINATIVE PROVISIONS	4
CONSTITUTIONAL PROVISIONS	4
STATUTES, COURT RULES & ADMINISTRATIVE REGULATIONS	6
OTHER PROVISIONS	7
STATEMENT OF THE CASE	7
NATURE OF THE CASE	7
COURSE OF THE PROCEEDINGS	7
DISPOSITION OF LOWER COURT	8
STATEMENT OF FACTS	9
SUMMARY OF ARGUMENT	14
ARGUMENTS	15

Can the State Intervene through administrative measures that are in violation of their own procedures and in violation of constitutional requirements?

Can the Legislature deny the Appellant the use of the Court's and abrogate a personal liberty from her without a remedy of equal value?

Is the Statutes 62A-11-404 & 62A-11-414 unconstitutional, vague, over-broad, and ineffective upon it's face?

Was the Intervention of ORS and involvement of Respondent merely done by fraud and misrepresentation for the "benefit" of the minor children?

The Court erred in allowing ORS and Respondent to Intervene without any evidence offered as to Real Party In Interest.

The Court erred by not allowing the Doctrine of Contracts and the personal Liberty to either personally enter into or abstain from entering into contracts.

ADDENDUM	25
EXHIBITS	28

TABLE OF AUTHORITIES

CONSTITUTION OF THE UNITED STATES

Constitutional Provisions	4
-------------------------------------	---

UTAH STATE CONSTITUTION

Utah State Constitution, Article I, Section 1	5
Utah State Constitution, Article I, Section 4	5
Utah State Constitution, Article I, Section 7	5
Utah State Constitution, Article I, Section 11	5
Utah State Constitution, Article I, Section 14	5
Utah State Constitution, Article I, Section 18	5
Utah State Constitution, Article I, Section 21	6
Utah State Constitution, Article I, Section 22	6
Utah State Constitution, Article I, Section 24	6
Utah State Constitution, Article I, Section 25	6
Utah State Constitution, Article I, Section 26	6
Utah State Constitution, Article I, Section 27	6
Utah State Constitution, Article IV, Section 1	6
Utah State Constitution, Article V, Section 26	6

CASE LAW

State v Steward, 806 P.2d 213, Utah App. 1991	3
D.B. v Division of Occupational Professional Licensing, 776 P.2d 1145 Utah App. 1989	19
Morris v Public Service Commission 7 Utah 167, 321 P.2d 644 (1958)	20
Sun Valley Water Beds v Hughes and Sons, 782 P.2d 188, 191 Utah 1989	22
Blyth and Fargo Co. v Swenson, 15 Utah 345, 49 P. 1027 (1897)	20

UTAH STATUTES

Utah Annotated Code 62A-11-404	2, 19, 21
Utah Annotated Code 62A-11-414	5, 18
Utah Annotated Code 62A-11-101	5
Utah Annotated Code 62A-11-105	6
Utah Annotated Code 62A-11-106(3)	6

Utah Annotated Code R527-273B-1	7
Utah Annotated Code R527-300-1.2	7
Utah Annotated Code 25-6-6	7
Utah Annotated Code 63-46b-9(2)	7
Utah Annotated Code 63-466-(3)	8

COURT RULES

Utah R. App. P. 24(f).	6
URCP 24(a)	9

Pursuant to Rule 24 of the Utah Rules of Appellate Procedure, the Appellant, hereby submits the following brief.

STATEMENT OF JURISDICTION

This appeal is taken from the denial of Appellant's Motion for Relief from the Third District Court, Salt Lake City, allowing the intervention of the Office of Recovery Services into the collection of Appellant's support monies. The Decree of Divorce was rendered in Third District Court Case No. 914901255 and was appealed from, to the Utah Court of Appeals Case No. 920523-CA and was reversed on 3 March 1993. It is from the decision of the Third District Court, to allow the intervention of Office of Recovery Services of which Appellant presently appeals.

Jurisdiction of this matter is appropriate in this Court pursuant to Rules 3 & 4 of the Utah Rules of Appellate Procedure.

ISSUES PRESENTED

EVIDENTIARY ISSUES

1. The Court erred in allowing the intervention of ORS, despite clear, and uncontroverted evidence, that the Appellant needed no intervention with collection of support monies as the Appellant, by her own efforts, through the Court's, had already received her relief, and was obtaining the support obligations owed to her.
2. The Court erred in allowing the intervention of ORS without clear and convincing evidence before it that the State was indeed the Real Party In Interest, and having before the Court any evidence of monies owed to the State, by the Appellant.

STANDARD OF REVIEW

Issues 1 through 2 are issued relative to evidence that was before the lower Court and was prejudicial and affected the substantial rights of the Appellant and is grounds for reversal.

Issues 1 through 2 are issues relative to the "lack of evidence" before the lower Court and is deemed "clearly erroneous" and the Appellant can show that they are "without adequate evidentiary foundation, and they are induced by an erroneous view of the law."

Western Capital and Svcs, Inc. V Knudsvig. 768 P.2d 989 (Utah Ct. App.)

LEGAL ISSUES

3. The Court erred in denying Appellant's Motion for Relief by not allowing the Appellant the opportunity to present her issues of contract and fraudulent transfer of that contract.

4. The Court erred in denying her Motion for Relief when the ORS was allowed to Intervene by Ex-Parte Order and no notice was ever given to the Appellant.

5. The Court erred in denying Appellant's Motion for Relief by allowing ORS to Intervene as Real Party In Interest.

STANDARD OF REVIEW

Issues 3 through 5 are legal issues asking the Court to determine the correctness of the lower Court's legal determination, and this Court must therefore review these issues under the "correction of error" standard, giving no deference to the lower Court's conclusions of law.

CONSTITUTIONAL ISSUES

6. Denial of the Intervenor to give the Appellant fair notice of their intervention, with an opportunity to be heard, and have witnesses in her favor, and to cross-examine witnesses against her, violates the Appellant's due process rights, and equal protection under the law.

7. Denial of the Appellant's right to contract, and to not have that contract impaired, violates the Appellant's personal and civil rights.

8. Denial of the Appellant's right to access through the Court systems, the right to prosecute in her own behalf, and seek a remedy of her own choosing, is a violation of Appellant's personal liberty, and civil rights, and equal protection rights.

9. Denial of the Appellant's privacy in her, and her children's, personal affairs, and the right to obtain her, and her children's support monies without hinderance, and fraud, and her right to freedom of her conscience, and right to associate, or to not associate, are violations of her Constitutional rights.

10. The Statutes 62A-11-404 & 62A-11-414 are unconstitutionally vague and over-broad and unconditional, and therefore invalid.

11. The Court erred in allowing the ORS to Intervene in Appellant's collection of support monies based on a unconstitutional statute.

STANDARD OF REVIEW

Issues 6 through 11, are Constitutional issues, and the Court

must give it full review with no deference to the lower Court's ruling.

DETERMINATIVE PROVISIONS

CONSTITUTIONAL PROVISIONS

1. "No state shall ... pass any ... law impairing the obligations of contracts, or grant any title of nobility."

United States Constitution, Article I Section 10(1).

2. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." United States Constitution, Amendment IV.

3. "No person shall ... be deprived of life, liberty, or property, without due process of law." United States Constitution, Amendment V.

4. "... No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens ... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws." United States Constitution, Amendment XIV.

5. "All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to possess and protect property; to worship according to the dictates of their consciences to assemble peaceably, protest against wrongs, and petition for redress of grievances, to communicate freely their thought and opinions, being responsible for the abuse of that right." Utah

State Constitution Article I, Section 1.

6. "The rights of conscience shall never be infringed ..." Utah Constitution Article I, Section 4.

7. "No person shall be deprived of life liberty or property, without due process of law." Utah State Constitution Article I, Section 7.

8. "All courts shall be open, and to every person, for an injury done to him in person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party." Utah State Constitution Article I, Section 11.

9. "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated ... but upon probable cause..." Utah State Constitution Article I, Section 14.

10. "No ... law impairing the obligation of contracts shall be passed." Utah State Constitution Article I, Section 18.

11. "Neither slavery nor involuntary servitude, except as punishment for a crime ... shall exist within this State." Utah State Constitution Article I, Section 21.

12. "Private property shall not be taken or damaged ..." Utah State Constitution Article I, Section 22.

13. "All laws of a general nature shall have uniform operation." Utah State Constitution Article I, Section 24.

14. "This enumeration of rights shall not be construed to impair or deny others retained by the people." Utah State Constitution Article I, Section 25.

15. "The provision of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise." Utah State Constitution Article I, Section 26.

16. "Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government." Utah State Constitution Article I, Section 27.

17. "The rights of citizens of the State of Utah ... both male and female citizens of this State shall enjoy equally all civil, political, religious rights and privileges." Utah State Constitution Article IV, Section 1.

18. "No private or special law shall be enacted where a general law can be applicable." Utah State Constitution Article V, Section 26.

STATUTES, ADMINISTRATIVE RULES AND REGULATIONS

(See attached addendum at end of brief pursuant to Rule 24(f) in Utah Rules of Appellate Procedure).

OTHER PROVISIONS

1. Transcript of URESA hearing held on 19 August 1992, Commissioner Thomas Arnett presiding, all parties present.

STATEMENT OF THE CASE

NATURE OF THE CASE

On 27 March 1992, the Appellant and the Respondent were

granted a Default Divorce from the Third District Court, Honorable David S. Young, presiding. This matter is an appeal from a Rule 60(b) Motion for Relief from the Intervention of the Office of Recovery Services from collecting the Appellant's support monies through a Ex-Parte Order signed by the Honorable David S. Young on 7 August 1992.

COURSE OF PROCEEDINGS

This matter originated as a civil divorce proceeding filed with the Third District Court on 26 March 1991, Honorable David S. Young, presiding. The Respondent, Mr. Michael Poulsen and the Appellant, J. Lynn Poulsen, were granted a Default Divorce on 13 January 1992 in front of Commissioner Sandra Peuler, that was obtained by fraud and duress and was the matter of another appeal recently reversed by the Utah Court of Appeals Case No. 920523-CA on 3 March 1993.

On 30 June 1992 in an effort to obtain her support monies owed to her and her children the appellant obtained a Order to Withhold and Deliver and presented to the Respondent's place of employment.

Also, on 30 June 1992, both parties, Respondent Mike Poulsen and the Appellant, were before Commissioner Michael S. Evans on a Order to Show Cause, why Respondent was again refusing to pay his support obligations. At that time, Commissioner Michael S. Evans informed the Respondent that the Appellant had obtained a Withhold and Deliver Order that day, and his support obligation would definitely start to be received by the Appellant and her five minor children, and also cautioned Respondent against ever allowing

arrearage's to accumulate again. (See attached Exhibit A). On 23 July 1992, Assistant Attorney General Renee Jimenez filed a Ex-Parte Motion to Intervene in behalf of Office of Recovery Services for the Respondent. (See attached Exhibit B).

On 7 August 1992, Judge Young signed the Ex-Parte Order without notice or a hearing being allowed to the Appellant.

On 1 September 1992, the Appellant filed Objections and other Motions, and also filed a Motion for Relief, Utah Rules of Civil Procedure Rule 60(b), for relief from the Ex-parte Order to intervene. On 22 September, without a hearing, Honorable David S. Young denied Appellant's Motion for Relief. On 22 October 1992 the Appellant filed a notice of Appeal. (See attached Exhibit C)

DISPOSITION OF LOWER COURT

The Honorable David S. Young only signed a minute entry of which he stated that the Appellant's Motion for Relief was denied. No Findings of Fact or Conclusions of law were mentioned in the minute entry and the Assistant Attorney General's Office never filed any pleading on opposition to Appellant's Motion for Relief.

STATEMENT OF FACTS

The parties to this Divorce action were married on 10 August 1971 and there were eight children born to the parties. The parties were married for 20 years and never have had a life style of receiving State Welfare Benefits.

On 14 November 1990, the Respondent left the Appellant four months pregnant with their eighth child and finally filed for

Divorce on 26 March 1991.

A Default Divorce was entered onto record on 13 January 1992 in front of Commissioner Sandra Peuler, and signed by the Honorable David S. Young on 27 March 1993.

At no time has the Appellant, who is unemployed, ever applied for State Aid or Assistance and has constantly chosen to be responsible for her own welfare as well as that of her eight children. The Appellant only has a eleventh grade education and has never been employed outside the home.

In the Decree signed by Judge Young, it states specifically that the Appellant's support monies were to be paid to her by Voluntary Wage Assignment. The Statute 62A-11-404 was placed in the decree without the consent of the Appellant, as the Appellant does not believe nor rely on any State Assistance.

On 3 June 1992, the Appellant had an Order To Show Cause Hearing before Commission Peuler, as Respondent was in arrears \$776.00 in only two and a half short months from the time of the Decree. (See attached Exhibit D).

At that Order To Show Cause Hearing, Commissioner Peuler found Respondent in arrears in his support obligation and found judgment in favor of Appellant.

On 23 June 1992, the Appellant requested of the Honorable David S. Young, an Order to Withhold and Deliver Appellant's support monies owed her and her children. Judge Young granted Appellant's Order.

On 25 June 1992, the Appellant received a call from the

Attorney for Envirotech, a Mr. Berry, telling her that she had not worded her Withhold and Deliver properly, and what wording it needed to contain and that it was no problem to send Appellant's support monies directly to her from the Company.

On 30 June 1992, after receiving no support monies from Respondent for June, and being threatened by Respondent that he would not send her any more support money, at the 3 June 1992 Hearing, Appellant and Respondent were before Commissioner Michael S. Evans for another Order To Show Cause Hearing for arrearage's.

At that hearing, Commissioner Evans warned Respondent of being found in Contempt if he ever was to get behind in his support payments again and also told Respondent that a Order to withhold and deliver was now in place, signed by Judge Young.

On 1 July 1992, seeking to defraud Appellant of her support monies, knowing of the great delays and inconsistencies in favor of protecting "Dead-Beat Dads" and hindering support collection obligation the Respondent signed a contract with ORS to collect Appellant's support monies.

On 14 July 1992, Ranee Jimenez and a Shana Hair met with the Appellant and her friend David Jones at the Office of Recovery Services. There the Appellant informed the ORS, in writing that she did not wish, nor seek their help to collect her support monies, as she was receiving them by her own efforts. (See attached Exhibit E).

Renee Jimenez stated that the Withhold and Deliver Order of the Appellant's was illegal as it didn't have the ORS' address on

it and any action taken by ORS would be in accordance to Administrative Procedures in which Appellant would have a chance to be notified of any hearing or proceedings.

The Assistant Attorney General, Renee Jimenez, proceeded by Ex-Parte without any notice given to the Appellant as stipulated by Utah Annotated Code 63-46b-3 for adjudication of action. The Appellant filed Objections and other various motions to stop the Intervention of ORS. (See attached Exhibit F).

At all times Appellant has objected to the infringement of her conscience, to the ORS being allowed to Intervene as a matter of right and as Real Party In Interest as the State can prove no interest in justice, just a need for a statistic in which to obtain Federal Funding, as admitted to by Renee Jimenez Memorandum to the Appellate Court dated 9 October 1992.

On 24 August 1992, the Appellant filed a premature Notice of Appeal. On 9 October 1992 the state filed a Motion for Summary Disposition. It is in the Memorandum in Support that the State cited that the appellant is needed to "sustain" the statistics of ORS for further Federal Monies, in violation of appellant's Constitutionally protected rights.

This first Appeal was remitted to the lower Court because Appellant had filed an Appeal prematurely and no judgment was made on the merits.

The Appellant and her family were receiving regularly the Court Award of support monies due her for the first time since the abandonment by Respondent on 9 November 1990, and in exact amount

every two weeks. (See attached Exhibit G, check stubs from Enviorotech).

On 12 August 1992, one of the clerk's at the Third District Court informed the Appellant of another Ex-Parte URESA Hearing before Commissioner Thomas Arnett, was going to be held on 19 August 1992 at 10:00 A.M. Again, there was no notice given by ORS of this Hearing.

At that Hearing, the Appellant plead with Commissioner Thomas Arnett and told him that she never has believed in receiving welfare, had gone to great lengths to obtain only that which was rightfully hers and her children and that the Respondent was only doing this as a continuing effort to abandon his family and forego paying his support obligations.

Commissioner Thomas Arnett, knowing the problems of the Respondent's unwillingness to pay his support obligation and also the delays, hindrances and inconsistencies involved with ORS agreed with the Appellant. (attached Exhibit H, Transcript from the hearing; see Addendum).

From September to 22 October 1992, the Appellant and her children received nothing but excuses from ORS concerning her support monies. (Attached exhibits of check stubs from ORS)

In only 4 short months the Respondent has been unjustly enriched by ORS' Intervention by \$1,125 (See attached Exhibit I, Order and judgment of 16 December 1992).

At the hearing on 16 December, before Commissioner Thomas Arnett, Ms. Jimenez and the Respondent made numerous comment's that

revealed a complete invasion into the privacy of the Appellant and her children, which is unwarranted and is only for the statistical needs of ORS to obtain Federal funding, giving no deference to the constitutional violation of Appellant.

Also at the hearing on 19 August 1992, is when Appellant first learned of the Ex-Parte order to Intervene, being signed by Judge Young.

On 1 September 1992 the Appellant filed a Motion for Relief and or Set Aside of Order Granting and an Affidavit in Support of Motion for Relief and Motion for Hearing with the Third District Court. On 22 September 1992, Honorable Judge David S. Young denied Appellants Motion without a hearing by minute entry.

From the time of the States Intervention until 22 October 1992, the Appellant and her children went completely without any support monies. Finally on 22 October 1992, the Appellant went up to ORS' and talked with a man by the name of Bruce Black.

The Appellant had talked with Bruce over the phone when the Respondent first sought refuge with ORS and Bruce had suggested that the Appellant simply write up a notice to ORS stating that there was no need for involvement from ORS.

Mr. Black helped the Appellant obtain only \$447 of the now \$1,800 due to her and her family. This has caused the Appellant and her children to suffer irreparable damage and was intentionally inflicted on them by the very organization purported to help obligee and dependent children.

The Appellant seeks a reversal of the Order of the lower Court

granting Intervention and a determination of the unconstitutionality of the proceedings of ORS, the numerous violations of Appellant's Constitutional rights and a determination of ORS' vague over-broad and unconstitutional statute.

SUMMARY OF ARGUMENTS

In order for a party to claim right to Real Party in Interest it must prove standing in the Court. The ORS can prove no such standing and therefore no such interest.

The Appellant has certain Constitutional and statutory rights, many which have been abrogated without due process.

Neither the ORS nor the Plaintiff have Intervened into the Appellant's collection of her support monies under "good faith cause nor have a justified good faith argument that is valid" It is obvious that the Respondent sought the protection of ORS' 50% policy rule to advance his unjust enrichment and was a fraudulent transfer done with actual intent to hinder, delay and defraud the Appellant of her support monies.

ORS and Respondent have also impaired Appellant's right to privacy and her children by assigning and using Social Security numbers, of which they are identified by, without their consent, entered the Appellant into a contract, of which she is forced to associate with an agency of which she is opposed to and under terms of which neither her nor her children have agreed to. (See attached Exhibit J - Back of Check)

Denied the appellant the right to the courts for redress of a past-due claim against the Respondent and denied her equal

protection of the laws to use of the court and the right to collect her monies owed.

ARGUMENTS

I. CAN THE STATE INTERVENE THROUGH ADMINISTRATIVE MEASURES THAT ARE IN VIOLATION OF THEIR OWN PROCEDURES AND IN VIOLATION OF CONSTITUTIONAL REQUIREMENTS?

The State's claim that they have a legal right to Intervene has no merit, as neither the State, nor the Respondent, can show standing in the Court. Neither Party is the Real Party In Interest, therefore the statute 62A-11-414 is vague and over-broad and totally unconstitutional, as it provides no conditions that must be precedent, pursuant to the due process clause of both State and Federal Constitutions. "Due process of Law is secured against invasions by the Federal Government by this Amendment (Fifth) and is safeguarded against State action in identical words per the Fourteenth Amendment" (Bartlett Trust Co. v Elliott (DC-MO) 30F (2nd) 700.

"The order of an administrative body issued without notice to affected individuals violated, due process" (Morris v Public Serv. Comm'n, 7 Utah 167, 321 P.2d 644 (1958).

Judgment against Appellant, not served with process and not appearing either in person, would not be due process of law." (Blyth and Fargo Co. v Swenson, 15 Utah 345, 49P. 1027 (1827).

The State Statute provides that all adjudicated proceedings shall be commenced according to 63-46b-3. The State violated it's own due process requirements by entering into this matter by Ex-Parte and therefore should be reversed.

Also, the Appellant was denied her right to discovery, to cross examine witnesses and to compel witnesses in her favor by allowing the Ex-Parte Intervention by ORS.

The State, by being allowed to Intervene Ex-Parte through an unconstitutional statute, did not have to marshall forth any evidence as to standing, and could not be challenged by the Appellant to produce evidence of their interest, of which their is none.

Procedural due process imposes constraint's on government decision which deprive individuals of either "liberty" or "property" interests within the meaning of the Fourth and Fifteenth Amendment's to the Federal Constitution and also applies to Article I section 7 and Art I sec 14 of the State Constitution. Moreover, due process generally requires consideration of three distinct identification of specific dictates of due process factors such as

- (1) The private interests that will be affected by the agency action.

- (2) The risk of an erroneous deprivation of such interest through the procedures used to intervene.

- (3) What is the State's interest including the real legislative intent designed for the State's Intervention?

The allowance of the Intervention have only condemned the Appellant and her children to continually suffer the grievous loss of the means by which they live by, while the Respondent has no dependent children, a working full time spouse paid health benefits and can enjoy trips to Hawaii an all in the name of State

regulation. None of these aspects were ever brought before the trial Court because there was no due process or equal protection of the Appellant's right afforded to her. The Appellate Court must ask themselves, "Why would a man who truly wished to pay his support obligation's seek out and contract with ORS?" Then the Appellate Court should see the clear and convincing evidence of the attempt to defraud the Appellant of her support monies by the evidence of the facts that in only 4 short months, arrearage accumulated in the amount of \$1,125. The very people that the ORS purports to service is the very agency that merely seeks to force Appellant and her children onto welfare, against her interest or choosing.

II. CAN THE LEGISLATURE DENY THE APPELLANT THE USE OF THE COURT'S AND ABROGATE A PERSONAL LIBERTY FROM HER WITHOUT A REMEDY OF EQUAL VALUE?

The right to use of the Courts to effect a remedy "to collect past-due claim(s) in Court is (a) right guaranteed by (the) Constitution" (Karenius v Merchants Protective Ass'n, 65 Utah 183, 235 P.880).

The "right to apply to the Court for redress of wrong(s) is substantial right, and will not be waived by contract except through unequivocal language." (Bracken v Dahle, 68 Utah 486, 251 P.16, Utah).

The Appellant had obtained her right to a remedy of her own choosing through the judicial system, the Respondent also had the same right, if he truly thought his obligation was an unjust amount, by modification of the Decree. The Respondent did petition the Court for Modification of the Decree, but when the Appellant

then instituted discovery, the Respondent, then withdrew his petition.

"The purpose of Article I Section 11 is to impose a limitation on the Legislature's power to create or abrogate rules of law for the benefit of person injured since they are generally isolated in society" (Sun Valley Water Beds v Hughes & Sons, 782 P.2d 188, 191 Utah (1989)).

The statute which make it mandatory for The ORS to be the clearinghouse for all support monies violates the State's Constitution Open Court Clause and fails to pass the two-pronged test of constitutionality. First, the Open Courts Clause is satisfied if a Statute produces an injured person, an effective, and reasonable, alternative remedy by due course of law for vindication of his Constitutional interests.

III. IS THE STATUTES 62A-11-404 & 62A-11-414 UNCONSTITUTIONAL, VAGUE, OVER-BROAD, AND INEFFECTIVE UPON IT'S FACE?

(A) Effective: the Respondent is now in further arrearage than he has ever been, and is continuing to accumulate arrearage.

(B) Reasonable: The Appellant never knows when or if she will be obtaining her support monies, never knows the amount she will receive, and must be associated with an organization which injures her reputation, as it bears the stigma of a welfare agency. The backs of the ORS' checks, force the Appellant to enter into a contract (see attached exhibit) that she does not consent to and terms of which are not mutually agreed upon.

(c) Constitutional interests. The Statute that ORS Intervene's under has allowed the violation of the Appellant's right to due

process, equal protection, right to privacy, impaired her personal civil liberty right to the Courts, her right to economic freedom her right to be free of involuntary servitude, her only crime being that of a single parent with minor children and unemployed, the Appellant is merely being punished for her independence and desire to remain free of government control of her life and the lives of her children, all for the benefit of being a necessary numerical statistic for Federal funding to a governmental agency designed to "protect" her interests. Clearly the statute 62A-11-404 and 62A-11-414 eliminate no social or economic evil but merely enhance it's charge to create them. With no conditions of reasonableness applied the statute is vague and unconstitutionally sound upon its face and should be clarified to identify those who chose the conditions of this method of collection forced upon them arbitrarily.

IV. WAS THE INTERVENTION OF ORS AND INVOLVEMENT OF RESPONDENT MERELY DONE BY FRAUD AND MISREPRESENTATION FOR THE "BENEFIT" OF THE MINOR CHILDREN?

The Respondent clearly misrepresented himself as a person in need of "collection help" and obviously misrepresented the Appellant as one who wished or needed help in collection of her support monies.

The ORS also intervened under a fraudulent transfer by the Respondent as set forth in 25-6-6 Utah Annotated Code. Under said Statute the Respondent or debtor transferred his duty and obligation to collect and send Appellants support monies knowing that after he enjoined ORS the Appellant would not receive equivalent value from the ORS. Clearly from the preponderance of

the evidence marshalled the only intent of the Respondent was to hinder and delay and defraud the Appellant and her children.

V. THE COURT ERRED IN ALLOWING ORS AND RESPONDENT TO INTERVENE WITHOUT ANY EVIDENCE OFFERED AS TO REAL PARTY IN INTEREST.

The Utah Annotated Code 63-46b-09(2) sets forth the conditions upon which a person petition ORS to intervene. First, a petitioner's legal interest may be substantially affected, and second, if the interests of justice and the orderly and prompt conduct of the proceedings will not be materially impaired". (Millard County v State Tax Comm 176 Utah Adv Rep 5 (1991)). Although 63-46b-9(2) does not grant an absolute right to intervene, it does state the conditions under which intervention is possible.

Therefore both the Respondent and the ORS can provide for neither of these conditions and have proceeded fraudulently against the Appellant who is the injured party.

(A) Did the State follow proper Court Rules and Administrative Procedures in Intervening?

In Jenner v Real Estate Sevs (659 P.2d 1072, 1073-74 Utah (1983)) under Rule 24(a) of the Utah Rules of Civil Procedure allow intervention as a matter of right, four requirements must be met -

- (1) The application is timely,
- (2) The applicant has an interest in the subject matter of dispute,
- (3) That interest is or may be inadequately represented,
- (4) The applicant is or may be bound by judgment in the action.

I would like to address each of these issues separately and in detail;

(1) I received my Withhold and Deliver Order from Judge Young on 30 June 1992. The Respondent, ran for shelter on 1 July 1992 and Ms. Jimenez filed Ex-Parte Orders to Intervene 23 July 1992. The ORS intervention should have been barred by the doctrine of res judicata as the judgment of the Divorce Decree was final as well as the fact that the Appellant had already received the right to have a Withhold and Deliver order signed previously by Judge Young.

"If intervention is permitted after judgment, it should be only on a strong showing after taking into consideration all circumstances..." (Jenner v Real Estate Svs. 659 P.2d 1072 Utah (1983)).

(2) Applicant has an interest in the subject matter of dispute. This simply cannot be claimed. The Appellant and her children are receiving no benefits from the State of Utah in any form, the Appellant's children are privately tutored and educated at home and does not even receive public education.

(3) That the interest is or may be inadequately represented. Neither the Respondent nor the State has an interest in the Appellant's child support collection. The Appellant had adequately from the start sought judgment and redress of the money debts owed to her and her children. The State may claim that if they are not allowed to Intervene, that the State cannot enforce their own laws. Statutes that are so vague and invalid and arbitrary are insufficient on their face and therefore unconstitutional and the State bureaucracy must have some checks and balances or the citizens must resign themselves to being victims to the State,

whether "guilty or not".

VI. THE COURT ERRED BY NOT ALLOWING THE DOCTRINE OF CONTRACTS AND THE PERSONAL LIBERTY TO EITHER PERSONALLY ENTER INTO OR ABSTAIN FROM ENTERING INTO CONTRACTS.

In the Decree of Divorce dated 27 March 1992 it clearly designates that the Appellant's support monies are to be paid by "wage assignment". Wage assignment's are contractual and are not "garnishments" (Western v Hodgson C.A.W. VA 1974, 494 F2d 379). Although the decree states that these support obligations are to be wage assignments of "Voluntary" nature, the conduct of the parties shows that both parties mutually agreed to contract between each other with no interference by the State. The Decree also clearly states that neither party is receiving any benefits of public assistance from the State. So clearly by express contract by and by implied contract the parties mutually agreed to a wage assignments, and not a garnishment. The terms of the contract are certain and definite in relationship to all essential elements:

1. A identity of Respondent.
2. Subject matter.
3. Consideration to be paid.
4. Nature of work for services performed.

It is obvious that the Appellant had a valid contract, privately with the Respondent and that the ORS violated the Appellant's right to contract by procedural requirement as well as substantial requirements.

(a) In R527-273 Administrative Process, Non-AFDC Service Code section B-1. States "The bureau may limit future Non-AFDC services

to enforcement of current support only, or Terminate the contract when the obligee:

1. Objects to the results of the assessment.."

The obligee, the Appellant has continually objected to what has been collected and modified by the ORS.

(b)1 "R527-300-1.2. iii ... to orders issued after 13 October 1990, which had a finding that a written agreement between the Non-AFDC parties was sufficient and immediate withholding was not needed."

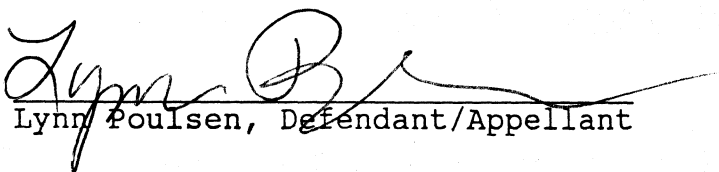
CONCLUSION

The Appellant has a right to have a remedy through the Court's and choose to use that remedy. The people whom this State has duty to protect and see that their rights are not violated are the very one's who are being harmed in this case.

This is a case of first impression through the Court's and the Appellant's moves the Court to overturn the lower Court's ruling, done without the Constitutional protection of due process and allow the Appellant the right to obtain her support monies by and through the Court system. The Appellant is religiously opposed to Welfare Assistance in any form and pleads with this court to overturn this decision.

Dated this day 20 March 1993.

Respectfully submitted,

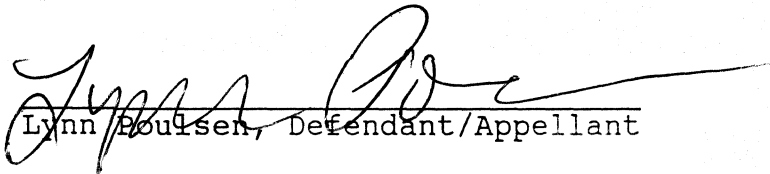

Lynn Poulsen, Defendant/Appellant

CERTIFICATE OF MAILING

I hereby certify that 20 March 1993, I mailed a true and correct copy of the foregoing Appellant's Brief was served upon the opposing counsel via U.S. Mail, first class postage prepaid and addressed to:

RENEE M. JIMENEZ
Attorney for Appellee
120 North 200 West, 4th Floor
P.O. Box 1980
Salt Lake City, Utah 84110-1980

Michael Poulsen
5235 South Glendon Street W-1
Murray, Utah 84123


Lynn Poulsen, Defendant/Appellant

ADDENDUM

62A-11-404. Procedure For Obligee Seeking Income Withholding.

(1) An obligee may apply for income withholding services by the offices under Title IV-D of the Social Security Act, or seek income withholding in a District Court of competent jurisdiction, when a delinquency occurs under a child support order which includes authorization of income withholding, in order to proceed with civil action the obligee shall petition the court for a determination of delinquency and for implementation of income withholding procedures.

2. When an obligee proceeds with a civil action under this section, the Court shall;

(a) make an initial, ex-parte determination of delinquency, as defined in this chapter;

(b) Proceed with notice to the obligor, an opportunity for hearing, and income withholding procedures similar to those required for the office under this part;

(c) Order that, when a payor is notified, a duplicate notice be served on the office, and order the payor to submit all withheld income to the office. The office shall promptly distribute those payments to the obligee; and

(d) Designate the circumstances under which an obligor may petition the court for termination of income withholding procedures.

3. If the obligee's child support order does not contain provision authorizing income withholding, the obligee shall petition the court for an amendment of the order to include that authorization before commencing a civil action under this section.

62A-11-105. Adjudicative Proceedings.

The office and the department shall comply with the procedures and requirements of chapter 46b, Title 63, in their adjudicative proceedings. 1988.

62A-11-106 (3).

(3) Any court order that includes a money judgement for support to be paid to an obligee by any person is considered to be in favor of the office to the extent of the amount of the office's right to recover public assistance from the judgement debtor. 1989

63-46b-9(2) Procedures For Formal Adjudicative Proceedings - Intervention.

(2) The presiding officer shall grant a petition for intervention if he determines that:

(a) the petitioner's legal interests maybe substantially affected by the formal adjudication proceedings and:

(b) the interests of justice and the orderly and prompt

conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

62A-11-414 Income Withholding Upon Obligor's Request.

Whether or not a delinquency has occurred, an obligor may request that the office implement income withholding procedures under this part for payment of his child support obligations. 1988.

62A-11-101. Legislative Intent - Liberal Construction.

It is the intent of the Legislature that the integrity of the public assistance programs of this state be maintained and that the taxpayers support only those persons in need and only as a resource of last resort. To this end, this part should be liberally construed. 1988.

63-46b-3. Commencement Of Adjudicative Proceedings.

Except as otherwise permitted by section 63-46b-20, all adjudicative proceedings shall be commenced by either;

(a) a notice of agency action, if proceedings are commenced by the agency; or

(b) A request for agency action, if proceedings are commenced by a persons other than the agency.

(2) A notice of agency action shall be filed and served according to the following requirements;

(IX) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

25-6-6. Fraudulent Transfer - Claim Arising Before Transfer.

1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if;

(a) The debtor made the transfer or incurred the obligation without receiving a receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(b) The debtor was insolvent at the time or became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made, if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable to cause to believe that the debtor was insolvent (1989).

R527-273b-1. Administrative Process, Non-AFDC Services.

B. The bureau may limit future non-AFDC services to enforcement of current support only, or terminate the contract when obligee;

1- Objects to the results of the assessment; or

R527-300-1. Income Withholding.

1. Income withholding is defined as withholding child support from an obligor's income. The payor of income forwards the amount withheld to the Offices of Recovery Services (ORS).

2. Income withholding is divided into two categories:

 a. immediate income withholding applies to all orders issued or modified after October 13, 1990, which do not provide that immediate withholding will not occur.

 (b) Initiated income withholding applies to:

 i. Orders issued prior to October 13, 1990, which have not been modified since October 13, 1990, and

 ii. To those orders issued after October 13, 1990, which had a finding of good cause not to require immediate withholding, or

 iii. To orders issued after October 13, 1990, which had a finding that a written agreement between the non AFDC parties was sufficient and immediate withholding was not needed.

EXHIBIT A

JUN 30 1992

SALT LAKE COUNTY

Lynn Poulsen
3353 South Main #227
Salt Lake City, UTAH 84115

By _____ Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT, SALT LAKE COUNTY, STATE OF UTAH

MICHAEL POULSEN
PLAINTIFF

vs.

LYNN POULSEN
DEFENDANT

)
) ORDER TO WITHHOLD AND DELIVER
)
) CASE NO. 914901255
)
) JUDGE YOUNG
)
)

Defendants Ex-parte Motion To Withhold and Deliver, having been heard on the 23rd of June 1992, before the Honorable David S. Young, is hereby granted.

It is so Ordered by this Court that Envirotech Molding Products, employer of Michael Poulsen, Withhold and Deliver by check payable to Lynn Poulsen at 3353 South Main #227, Salt Lake City, Utah 84115, the sum of \$450.00 every two weeks or every pay period, a sum totalling \$900.00 per month for Child Support and Alimony until further Orders of this Court.

Dated: 30th June 1992.

I CERTIFY THAT THIS IS A TRUE COPY OF AN
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY,
STATE OF UTAH.

DATE: June 30 1992

(Richard Linder)
DEPUTY COURT CLERK

(David S. Young)
Judge David S. Young

EXHIBIT B

COPY

R. PAUL VAN DAM #3312
Attorney General
BY: Renee M. Jimenez
Assistant Attorney General
Attorneys for State of Utah
120 North 200 West, 4th Floor
P.O. Box 1980
Salt Lake City, Utah 84110-1980
Telephone: 538-4660

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MICHAEL POULSEN,)	
	)	STATE OF UTAH'S EX PARTE
Plaintiff,	)	MOTION TO INTERVENE
)	
vs.)	
	)	Civil No. 914901225
LYNN POULSEN,)	
	)	Judge DAVID S. YOUNG
Defendant.)	
)	

THE STATE OF UTAH, Department of Human Services (the "Department"), through its counsel Renee M. Jimenez, Assistant Attorney General, hereby moves the Court, ex parte, for an order:

- A. Joining the Department as an intervenor in this action;
- B. Permitting the Department to file a request for relief herein and to proceed in furtherance of that request for relief.

This motion is based on Rule 24(a) of the Utah Rules of Civil Procedure, and is supported by the following grounds:

1. The Department has an interest in certain of the property and transactions which are the subject of this action, because:

(a) The Department is obligated to provide child support enforcement services under 42 U.S.C. §§654(6) or 657(c) and related federal laws.

2. Pursuant to the statutes mentioned above, particularly Utah Code Ann. §62A-11-106(1), and other applicable law, the Department is entitled to intervene in this action as a real party in interest to establish, modify, and/or enforce a child support order.

DATED this 21st day of July, 1992.

R. PAUL VAN DAM
ATTORNEY GENERAL

Renee M. Jimenez
Renee M. Jimenez
Assistant Attorney General

R. PAUL VAN DAM #3312
Attorney General
BY: Renee M. Jimenez
Assistant Attorney General
Attorneys for State of Utah
120 North 200 West, 4th Floor
P. O. Box 1980
Salt Lake City, Utah 84110-1980
Telephone: (801) 538-4660

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MICHAEL POULSEN,)	
)	
Plaintiff,)	
	)	ORDER GRANTING STATE'S
vs.	)	MOTION TO INTERVENE
)	
LYNN POULSEN,)	
)	
Defendant.	)	Civil No. 914901255
)	
	)	Judge DAVID S. YOUNG
STATE OF UTAH, by and through)	
Department of Human Services,)	
Intervenor.)	

THIS MATTER having come before the Court this day on the State of Utah's ex parte Motion to Intervene, and the Court having duly considered the same, and being fully advised, now, therefore:

It is hereby ORDERED as follows:

1. The State of Utah, Department of Human Services (the "Department") is joined as an intervenor in this action.
2. The Department may file a request for relief herein and

may proceed in furtherance of that request for relief.

DATED this _____ day of _____, 1992.

BY THE COURT:

DAVID S. YOUNG
DISTRICT COURT JUDGE

EXHIBIT C

FILED
DISTRICT COURT

JUL 23 12 15 PM '92

BY CP CLERK

R. PAUL VAN DAM #3312
Attorney General
BY: RENEE M. JIMENEZ #5974
Assistant Attorney General
Attorneys for State of Utah
120 North 200 West, 4th Floor
P. O. Box 1980
Salt Lake City, Utah 84110-1980
Telephone: (801) 538-4660 — *Attorney of R.*
538-1015 - Van Dam

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MICHAEL POULSEN,

Plaintiff,

vs.

LYNN POULSEN,

Defendant.

MOTION TO SET ASIDE ORDER
TO WITHHOLD AND DELIVER

Civil No. 914901255

Judge DAVID S. YOUNG

STATE OF UTAH, by and through
Department of Human Services,
Intervenor.

The State of Utah, by and through Renee M. Jimenez,
Assistant Attorney General, respectfully moves this court to set
aside the defendant's Order to Withhold and Deliver entered on
June 30, 1992. Said motion is made pursuant to Rule 60 (b) (5) [?]
and 60 (b) (7) of the Utah Rules of Civil Procedure, for the
reason that the Order to Withhold and Deliver does not conform to
the requirements of Utah Code §62A-11-404.

Additionally, the plaintiff, the obligor in this matter, has applied for services with the Office of Recovery Services and the defendant's order to Withhold and Deliver is deficient for such collection services. The State requests the defendant's order to Withhold and Deliver be set aside so the Office of Recovery Services may act in accordance with Utah Code 62A-11-404.5. In support of its Motion, the State of Utah incorporates the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 21st day of July, 1992.

R. PAUL VAN DAM
ATTORNEY GENERAL

Renee M. Jimenez
RENEE M. JIMENEZ
ASSISTANT ATTORNEY GENERAL

R. PAUL VAN DAM #3312
Attorney General
BY: RENEE M. JIMENEZ #5974
Assistant Attorney General
Attorneys for State of Utah
120 North 200 West, 4th Floor
P. O. Box 1980
Salt Lake City, Utah 84110-1980
Telephone: (801) 538-4660

SALT LAKE COUNTY
JUL 23 12 15 PM '92
CLERK

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MICHAEL POULSEN,)	
)	
Plaintiff,	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT OF
vs.	)	MOTION TO SET ASIDE ORDER
	)	TO WITHHOLD AND DELIVER
LYNN POULSEN,)	
	)	Civil No. 914901255
Defendant.)	
	)	Judge DAVID S. YOUNG
STATE OF UTAH, by and through)	
Department of Human Services,)	
Intervenor.)	

The State of Utah, Department of Human Services through its attorney, Renee M. Jimenez, Assistant Attorney General submits the following Memorandum of Points and Authorities in support of its Motion to Set Aside Order to Withhold and Deliver:

FACTS

1. The parties to this action were divorced pursuant to a Decree of Divorce entered on or about March 27, 1992.

2. The Decree orders the plaintiff to pay \$700.00 per month as child support and \$200.00 per month as alimony.

3. The decree also provides that income withholding, pursuant to Utah Code §62A-11-404, is authorized as a means of collecting said child support. *But not the only means*

4. On June 30, 1992, the court granted the defendant's motion for an order to Withhold and Deliver.

5. On July, 1, 1992 the plaintiff applied for child support collection services through the Office of Recovery Services.

ARGUMENT

Point I: A Valid Order To Withhold Income Under Utah Code §62A-11-404 Must Include Certain Provisions.

Utah Code §62A-11-404, permits an obligee to obtain an order of income withholding as a means of collecting delinquent child support. However, there are several restrictions associated with obtaining such an order. Section 62A-11-403 specifically directs that all withheld income shall be submitted to the Office of Recovery Services. This requirement is restated in Utah Code §62-A-11-404(c). On June 30, 1992, the court granted the defendant's motion for a order to withhold and deliver. Said order directs the plaintiff's current employer to withhold and deliver to the defendant the sum of \$900.00 per month. Allowing *shall means may*


withheld monies to be paid directly to an obligee is in violation of the income withholding provisions.

Utah Code §62A-11-404 ~~*(c)~~ also mandates that the court shall order that when the payor is notified of a withhold order, a copy of the order shall be served upon the office. The defendant's order to Withhold and Deliver contains no such provision nor was a copy of the defendant's order served upon the Office of Recovery Services. Finally, the defendant's order is invalid for failing to meet the requirement as stated in Utah Code §62A-11-404(d). The defendant's order to Withhold and Deliver should indicate the circumstances under which the plaintiff may terminate the withhold order.

For the above reasons and because the plaintiff has applied for collection services through the Office of Recovery Services the State requests that its motion be granted.

RESPECTFULLY SUBMITTED this 21st day of July, 1992.

R. PAUL VAN DAM
ATTORNEY GENERAL


RENEE M. JIMENEZ
ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF MAILING

I hereby certify that on 23rd day of July, 1992, I mailed a true and exact copy of the foregoing Motion to Set Aside, postage prepaid, to the following addresses:

Lynn Poulsen
3353 South Main Street, #227
Salt Lake City, Utah 84115

Michael Poulsen
5235 Glendon Street. #W1
Murray, Utah 84123

DATED this 23rd day of July, 1992.

Kathleen Waterhouse
KATHLEEN N. WATERHOUSE
SECRETARY



Norman H. Bangerter
Governor

Norman G. Angus
Executive Director

John P. Abbott
Office Director

State of Utah
DEPARTMENT OF HUMAN SERVICES
OFFICE OF RECOVERY SERVICES

538-4425-

120 North 200 West
P.O. Box 45011
Salt Lake City, Utah 84145
(801) 538-4400

19 October 1992

Lynn Poulsen
3353 South Main #227
Salt Lake City, Utah 84115

Subject: Status Request Response

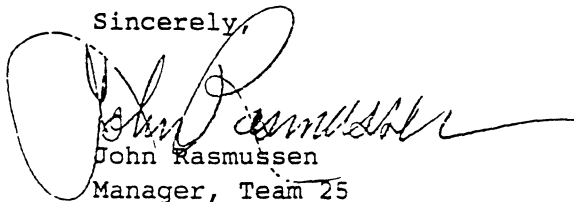
Dear Ms Poulsen;

According to Office of Recovery Service's policy (Vol II, CS 319), either the custodial or non-custodial parent may make application for our services. Mr. Michael D. Poulsen made application with our office on 1 July 1992 to collect his child support payments and pass them on to you.

A Notice To Withhold was completed and sent to Mr. Poulsen's Employer on 26 August 1992. The first money from the employer was received by our office about 2 October 1992. Difficulty in getting the account file opened caused a delay in the posting and distribution of this money. The account file is now open and all money received should post and be forwarded to you without delay.

The case is currently at the Attorney General's Office on a Motion for Summary Disposition. Any questions regarding this action on the case should be directed through your attorney to the Attorney General's Office. If you have any other questions please call Gaye Holt at 538-4605.

Sincerely,



John Rasmussen
Manager, Team 25

CC: John Abbott, ORS Director
Maurice Wells, BCSS Associate Director

538-4414

EXHIBIT D

Lynn Poulsen
3353 South Main #227
Salt Lake City, UTAH 84115

IN THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT, SALT LAKE COUNTY, STATE OF UTAH

MICHAEL POULSEN	)EX-PARTE MOTION FOR TEMPORARY
PLAINTIFF	)RESTRAINING ORDER TO
	)PREVENT STATE'S INTERVENTION
vs.	)CASE NO. 914901255
)
LYNN POULSEN	)JUDGE YOUNG
DEFENDANT)

COMES NOW the Defendant pursuant to RCP - 65A to request of
this court a Temporary Restraining Order against The State of
Utah intervening into this Divorce Action for the following:

1. Utah Code 62A-11-306.1 is the correct statute for intervention of the Office of Recovery Services as Defendant is not now on Public Assistance and does not plan in the future to be on public assistance.
2. 62A-11-306.1 the "office may proceed to issue ... an order ...if the office provides support collection services in accordance with:
 - (a) "a contract with an Obligee". In this action this would be the Defendant, "the one to whom duty or support is owed". It would not be the Plaintiff, the Obligor. It is the Obligor who just wishes to postpone Defendant's means of collection.

8. The State of Utah, or Office of Recovery Services, Utah Code 62A-11-106, states that the office "may" file as a real party interest to "establish, modify, or enforce a Court Order".

(a) There is no need to "establish" a Child Support Order; the Decree provides Child Support.

(b) There is no need to "modify" Divorce Decree as Child Support complies with State Statutes.

(c) There is no need to "enforce" Divorce Decree as Defendant has sought her rightful access through the Court System and her Constitutionally guaranteed right through Article I. Section 11 of the Utah State Constitution and has received relief and remedy.

9. In the Divorce Decree signed on 27 March 1992, the State justifies their intervention by citing 62A-11-404 as a "means" of collecting Child Support. This cite of 62A-11-404 does not state that it is the only means of collecting Child Support and Utah Code 62A-11-404 is authorization only for "Obligee". The Defendant Objects forcefully to the State's involvement whatsoever!

10. The State of Utah is clearly in violation also of the Legislative Intent, Utah code 62A-11-101 which states: "it is the intent of the Legislature... that the taxpayers support only those persons in need and only as a resource of last resort".

11. Plaintiff is in violation of Decree and not a person in need of taxpayers support.

12. This is not the only "resource of last resort". Defendant seeks to use her Constitutionally guaranteed right to remedy through the Court System and NOT the State of Utah.

13. State of Utah asks to intervene in this matter, without proper authorization from "Obligee", the Defendant and also asks the Court to be party to the State's violation of Defendant's State Constitutional Right to remedy as the "injured party" through Court of Competant Jurisdiction.
14. The Divorce Decree nowhere authorizes Utah Code 62A-11-414, the "Obligor's" request.
15. Defendant has handled all matters of her financial affairs through her own efforts and thzough her Constitutionally guaranteed right of the use of the Courts. The State of Utah under "Bad Faith" pretenses seeks to violate Defendants's State Constitutional Rights under Article I Section 11. which states:
"all Courts shall be open and every person for an injury done to him in his person, property, or reputation, shall have remedy by due course of law...".
Therefore the State of Utah and Obligor, the Plaintiff have no "GOOD FAITH" standing in the Court to intervene.

Wherefore, Defendant PRAYS this Honorable Court place a Temporary Restraining Order upon the State of Utah until further Order of this Court.

Lynn Poulsen
In Propria Persona

EXHIBIT E

Lynn Poulsen
3353 South Main #227
Salt Lake City, UTAH 84115
Telephone (801) 250-0718

IN THE UTAH COURT OF APPEALS

---ooooo---

MICHAEL POULSEN)
PLAINTIFF/RESPONDENT)

vs.)

CASE NO. 920701-CA

LYNN POULSEN)
DEFENDANT/APPELLANT,)

STATE OF UTAH, by and through)
Department of Human Services,)
Intervenor, Appellee,)

AFFIDAVIT OF DAVID JONES

I, David Jones do depose and state:

1. I have personal knowledge of the facts contained herein.
 2. I am an adult of age over 21 years.
 3. On 14 July 1992 I was present at the informal meeting where Lynn Poulsen and Shana Hair and Renee Jimenez discussed the ORS' involvement in this case.
 4. I heard Ms. Jimenez say that Lynn Poulsen would be notified of any hearings regarding her case.
 5. I also heard Ms. Jimenez say that there would be no changes in Lynn Poulsen's support payments or time delays.
- Dated this day 20 March 1992.

David Jones, Affiant

NOTARY PUBLIC

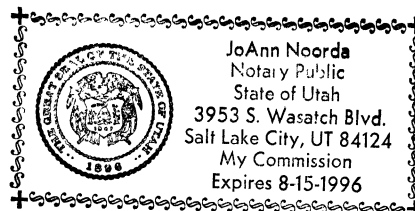


EXHIBIT F

Lynn Poulsen
3353 South Main #227
Salt Lake City, UTAH 84115

IN THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT, SALT LAKE COUNTY, STATE OF UTAH

MICHAEL POULSEN
PLAINTIFF

vs.

LYNN POULSEN
DEFENDANT

)MOTION FOR RELIEF FROM
)ORDER GRANTING STATE'S
)RIGHT TO INTERVENE AND OR
)SET ASIDE STATE'S MOTION
)TO SET ASIDE WITHOLD AND
)DELIVER
)
)CASE NO. 914901255
)JUDGE YOUNG

COMES NOW the Defendant pursuant to URCP 60(b) to motion
this court for Relief of Order Granting State's Motion to Set
Aside Withold and Deliver for the following reasons:

1. The Defendant and the minor children are not now, nor have
they been on Public Assistance.
2. The Plaintiff is not now, nor has he been on Public
Assistance.
3. The State has not provided any evidence of "good faith" for
standing in the Court.
4. The State can show no right or reason to interfere into this
matter with the exception of a \$25.00 application fee.
5. The State did not serve it's Motion on Defendant as
necessary in RCP - 4.
6. The State received an Order Granting Intervention Ex-parte
which can be vacated or modified for not serving personally
the opposing party as required RCP Rule 7 (b)(2).

7. The State is relying on a Legislative Statute that would pertain to most people who receive some kind of benefit from the State.
8. The Defendant and her minor children have received no benefits from the State of Utah, nor can the State provide proof of any "benefits" to Defendant and the minor children, therefore the statute does not apply to Defendant.
9. The Defendant is a bona fide citizen of the State of Utah and therefore has certain rights guaranteed to her by the Utah State Constitution which include Article I Section 11 "ALL courts shall be open to, and every person, for an injury done to him in his person, property or reputation shall have remedy by due course of law, which shall be administered without denial..."
10. The State's Motion to Set Aside was never sent or served on Defendant and therefore she has been denied due process.
11. The Defendant was never given Notice of Hearing for "right to intervene" and therefore asks for relief from such intervention until the State can prove an "interest and an injury" into Defendant's affairs.
12. The Defendant has the right to privacy, therefore the State has no right to intervene into Defendant's lawfully obtained Support Obligations
13. The Defendant has a right to the enjoyment of her conscience and the Defendant has a religious conviction against participation in any Public Assistance Programs.

THEREFORE the Defendant PRAYS this Honorable Court to relieve Defendant of Order Granting State's intervention and also relief from Order Granting States Motion to Set Aside the Withhold and Deliver of her choice and her own remedy through the Courts and Grants Defendant the right to have the Withhold and Deliver dated 30 June 1992 by Judge Young to stay in place.

Dated this 1st day of September 1992.

Respectfully,

CERTIFICATE OF MAILING

I hereby certify that on 1 September 1992, I mailed a true and exact copy, by first class mail, postage pre-paid, of the foregoing Motion for Hearing, Motion for Relief, and Affidavit in Support to: Michael Poulsen, 5335 Glendon Street W-1, Murray, Utah 84123 and Attorneys for State of Utah, P.O. Box 1980, Salt Lake City, Utah 84110-1980.

EXHIBIT G

R. PAUL VAN DAM #3312
Attorney General
BY: RENEE M. JIMENEZ #5974
Assistant Attorney General
Attorneys for State of Utah
120 North 200 West, 4th Floor
P.O. Box 1980
Salt Lake City, Utah 84110-1980
Telephone: (801) 538-4660

COPY

IN THE COURT OF APPEALS OF THE STATE OF UTAH

MICHAEL POULSEN,)	
)	
Plaintiff,	)	MEMORANDUM IN SUPPORT
	)	OF THE STATE'S MOTION
vs.	)	FOR SUMMARY DISPOSITION
)	
LYNN POULSEN,	)	Case No. 920593-CA
)	
Defendant-Appellant,)	
	)	Court of Appeals No.
STATE OF UTAH, by and through	)	920523
Department of Human Services,)	
)	
Intervenor-Respondent.)	

The Intervenor-Respondent, State of Utah, submits the following Memorandum of Points and Authorities in support of its Motion for Summary Disposition.

FACTS

On March 27, 1992, Domestic Relations Commissioner Sandra Peuler of the Third District Court entered a Decree of Divorce between Mr. and Mrs. Poulsen. Attached as Exhibit "A." Mr. Poulsen was ordered to pay \$700.00 as child support and \$200.00 as alimony. The divorce decree allows payment of the support

obligations by voluntary wage assignment. If a voluntary wage assignment is not obtained, the Decree also authorizes income withholding pursuant to Utah Code Annotated §62A-11-404.

In an effort to collect the child and spousal support owed to her, appellant petitioned the District court for an Order to Withhold and Deliver. Said order was granted by Judge David S. Young on June 30, 1992. Attached as Exhibit "B." On July 1, 1992, Mr. Poulsen contracted with the Office Of Recovery Services for support collection services. Specifically, Mr. Poulsen asked the Office of Recovery Services to review the Order to Withhold and Deliver for correctness and to collect the child support he owes to appellant.

On July 21, 1992, the State of Utah filed with the Third District Court an Ex Parte Motion to Intervene. Attached as Exhibit "C." Judge David S. Young signed the Order granting State's Motion to Intervene on August 7, 1992. Attached as Exhibit "D." The State also filed a Motion to Set Aside the Order to Withhold and Deliver and a Memorandum of Points and Authorities in support of its motion. Attached as Exhibits "E" and "F" respectively.

The State's Motion to Set Aside the Order to Withhold and Deliver came to hearing on May 19, 1992, before Domestic Relations Commissioner Thomas N. Arnett, Jr. Mr. and Mrs. Poulsen attended the hearing and presented argument. Commissioner Arnett granted the State's motion and ordered the Office of Recovery Services to prepare an income withholding order in accordance with Utah Code Annotated §62A-11-401 et. seq. Judge David S. Young signed the

Order granting the State's Motion on September 3, 1992 See
Exhibit "G."

On August 24, 1992, prior to the entry of the Order Granting the State's Motion to Set Aside, appellant filed a Notice of Appeal, Petition for Stay and or Injunction Pending Appeal and an Affidavit in support thereof with the Third District Court and with the Utah Court of Appeals. It should be noted that only the Notice of Appeal, without a certificate of mailing, is present in the Appellate court's file.

Following the filing of the Notice of Appeal, counsel for the State of Utah received no documentation of any kind from any source regarding this appeal, until September 29, ~~1992~~. The State's counsel contacted the office of the clerk of this court on September 29, 1992, and learned for the first time that since the Notice of Appeal was filed in this court, appellant has filed at least 3 other documents herein. Specifically, the appellant has filed a Docketing Statement, an Affidavit of Impecuniosity, and a Notice Regarding Transcripts. The State has not received all documents filed by appellant although appellant is aware of the correct mailing address for counsel for the State.

The State appeared personally at the clerk's office on September 29, 1992, and made it's own copy of appellant's Docketing Statement, Affidavit of Impecuniosity and Notice Regarding Transcripts.

LEGAL ARGUMENT

I. This Appeal Should Be Dismissed For The Appellant's Failure To Comply With The Utah Rules Of Appellate Procedure.

Most of the steps appellant has taken since filing her notice of appeal have not complied with the Utah Rules of Appellate Procedure. For example, appellant's Notice of Appeal~~s~~ does not correctly specify the parties to this appeal. Although this action purports to appeal an order granting the State's intervention and an order granting the State's Motion to Set Aside, the appellant does not include the State as a party to this appeal.

In addition, appellant's Docketing Statement does not comply with the provisions of Rule 9 of the Utah Rules of Appellate Procedure. The Docketing Statement fails to state the rule or statutory authority that confers jurisdiction on this court to decide this appeal. The Docketing Statement does not contain a concise statement of facts that are material to the questions presented. In fact, the petitioner's statement of facts contains a lengthy listing of legal terms and principles and factual irrelevancies. As a result, the document is incomprehensible and meaningless as a matter of law.

The Docketing Statement does not contain an understandable statement of issues to be determined. Petitioner's statement of the issues is filled with needless detail and general conclusions. Most importantly, the Docketing Statement does not

state the applicable standard of review, for each issue or any supporting authority as required by Rule 9^d.

Finally, Rule 9(d) requires the attachment of the order or judgment to be reviewed and the notice of appeal. Petitioner has failed to provide these required attachments. The rules regarding the content of a docketing statement are clear. Specifically outlined are the requirements of form, content, supporting authority and necessary attachments.

The petitioner has repeatedly violated the applicable requirements. Rule 9(g) allows for the dismissal of the appeal. In Brooks v. Department of Emp. Sec., 736 P. 2d 241 (Utah 1987), the Court held that docketing statements not in compliance with the rules will result in dismissal of the appeal, particularly when the court requests a docketing statement be properly amended. The repeated failures of the appellant to comply with the applicable rules justifies dismissal of the appeal on procedural grounds.

II. The Petitioner's Appeal Should Be Dismissed
On The Basis The Grounds For Appeal Are Insubstantial
And Do Not Merit Further Consideration By The Appellate Court.

Not only do procedural grounds mandate the dismissal of the appeal, but the complete lack of merit of the points attempted to be raised by appellant in her docketing statement point to the same conclusion.

Although most of appellant's argument is not sufficiently coherent and understandable to allow a response, there are two main issues raised by this appeal. First, the appellant

challenges the State's right to intervene in the parties' divorce proceeding. Along with this challenge, the appellant also raises a due process argument. The State of Utah, Office of Recovery Services is a IV-D, agency. Being so categorized, the State is obligated to provide child support collection services to remain eligible for federal public assistance monies.

The Federal government also places regulations over the administration of the State's support collection efforts. One regulation provides that the support collection services established under the Office of Recovery Services shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State including the former spouse with whom the absent parent's child is living. See 42 U.S.C. §654 (6). In addition, Federal regulations require that collection services must be made available to any individual not receiving assistance under the Aid to Families with Dependant Children (AFDC) program who files an application for the services with the IV-D agency. See 45 C.F.R. §302.33. These regulations assure that the State does not discriminate between the obligee and an obligor of a support obligation when providing its collection services. *neither can prove interest in monies*

Accordingly, if an application is filed with the Office of Recovery Services by the obligor, the State must provide collection services to that individual. In addition, State statute allows an obligor to request that the Office of Recovery Services implement income withholding procedures for the payment of his child support obligation. See 62A-11-414. In this case,

Mr. Poulsen applied for collection services through the Office of Recovery Services and also requested the Office of Recovery Services to collect his obligation by income withholding.

To successfully accomplish its collection duties, the Office of Recovery Services is designated as a real party in interest under Utah Code Ann. §62A-11-106 (1). This statutory section provides that the ". . . office may file judicial proceedings as a real party in interest to enforce a court order in the name of . . . the office" The State, by these regulations and laws, is granted the right to intervene in an action where child support collection is an issue. This is especially true where one of the parties to the obligation applies for collection services with the Office of Recovery Services.

Because the State may intervene as a matter of right, neither a hearing nor personal service is needed on the State's Motion to Intervene. The Utah Rules of Civil Procedure support this conclusion. Rule 24 of the Utah Rules of Civil Procedure requires that a motion for intervention shall be served upon the parties in accordance with Rule 5. Rule 5 states that every motion, except those that may be heard ex parte, shall be served upon each of the parties. Since the State may intervene as a party in interest and as a matter of right, the issue may be heard ex parte and the rules regarding service are not applicable.

The State has a right to intervene in an action to perform its collection services. Also, the State may properly intervene

by an ex parte motion. The authority cited above supports these conclusions and justify a dismissal of this appeal. This Court should dismiss this appeal and the decision of the District Court should be affirmed.

The second issue raised by this appeal is the District Court's decision to grant the State's Motion to Set Aside Order to Withhold and Deliver. The Office of Recovery Services was requested by Mr. Poulsen to collect his support obligation. The State confirmed that appellant had obtained an Withhold and Deliver Order on June 30, 1992. Appellant's order, directed Mr. Poulsen's employer to forward the withheld monies directly to the appellant. The statute controlling income withholding, however, requires all withheld monies to be sent to the Office of Recovery Services. See Utah Code Ann. §62A-11-404. Appellant's order was in violation of State law.

If appellant had followed the statutory provision regarding income withholding the State would not have had to intervene into the divorce action. Because the appellant's order to Withhold and Deliver was improper, the State in accordance with its collection duties was obligated to intervene and correct the improper withholding order.

Appellant has tried to convert what is basically a ~~procedural error~~ on her part to into a forum for her to assert that she is not bound by our established laws and procedures because she claims a unique status giving her special rights* above and beyond those of other members of our society. Appellant claims the benefits of our laws when she so chooses,

EXHIBIT H

Lynn Poulsen
3353 South Main #227
Salt Lake City, UTAH 84115

IN THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT, SALT LAKE COUNTY, STATE OF UTAH

MICHAEL POULSEN	) ORDER
PLAINTIFF)
OFFICE OF RECOVERY SERVICES)
INTERVENOR)
	) CASE NO. 914901255
vs.)
)
LYNN POULSEN)
DEFENDANT	) JUDGE DAVID S. YOUNG

The above-entitled action came on for hearing 16 December 1992, before the Honorable Commissioner Thomas Arnett of the above entitled court. Both parties were present and Renee Jimenez, Assistant Attorney General was present to represent the Office of Recovery Services.

The Commissioner then heard testimony of the Defendant's evidence in support of Defendant's Order to Show Cause, and based upon the testimony of Defendant, the pleadings on file, proffers of proof and documentary Evidence as to the issues on which argument was had, and the record herein, and now the court, being fully advised in the premises, having heretofore entered the Commissioners Recommendations.

It is Hereby Ordered, Adjudged, and Decreed:

1. That judgment in the amount of \$1,125.89 be awarded in favor of the Defendant. The matter of Office of Recovery Services being

held in reserved judgment.

2. That contempt charges be certified against the Plaintiff for allowing arrearages to accumulate in his Court Ordered Child Support and Alimony payments.

3. That Contempt charges be certified against the Plaintiff for not signing a Quit-Claim Deed for Defendant and returning to her within a reasonable amount of time after the Divorce Decree.

4. The matter of Plaintiff being allowed to use the Defendant's custodial children as tax deduction is pre-mature as Plaintiff can use them if and only he becomes current on his child Support and Alimony before the year's up.

5. The matter of Office of Recovery Services collecting Defendant's arrearages in Support is denied as Defendant has no contracts with ORS to collect said arrearages.

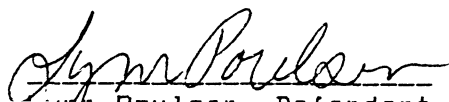
Dated this day 22 December 1992.

By the Court,

Honorable David S. Young

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on 22 December 1992, I mailed a true and exact copy by first class mail, postage pre-paid, of the Order to: Renee M. Jimenez, Assistant Attorney General, 120 North 200 West, 4th Floor, Salt Lake City, Utah 84110, and Michael Poulsen, 5235 South Glendon Street #W-1, Murray, Utah 84123.



Michael Poulsen, Defendant

EXHIBIT I

071092	07	10	92		450.00	00	450.00
				TOTALS	450.00	00	450.00



EIMCO

668 West 2nd South
Post Office Box 300
Salt Lake City, Utah 84110
Telephone 801 / 526 2000

Process
Equipment
Company

07/17/92

The Northern Trust Company
Chicago, IL 60610
Payable Through
Northern Trust Bank - Dodge
City Branch - IL

No. 191290 191290

70 2382,719

*****450 DOLLARS & 00 ** CENTS ***

\$450.00 ***

AMOUNTS OVER \$5,000.00 REQUIRE TWO SIGNATURES

LYNN POULSEN
3353 SOUTH MAIN #227

SALT LAKE CITY UT 84115

⑈191290⑈ ⑆071923828⑆030198531⑈

072392	07	23	92		450.00	.00	450.00
				TOTALS	450.00	.00	450.00

PROCESS EQUIPMENT COMPANY 669 WEST 2ND SOUTH SALT LAKE CITY UTAH 84110

ITEM NO	INVOICE NO	INVOICE DATE	DESCRIPTION	GROSS	DISCOUNT	NET AMT
	080792	08/07/92		450.00	.00	450.00
TOTALS				450.00	.00	450.00

IMCO PROCESS EQUIPMENT COMPANY 669 WEST 2ND SOUTH SALT LAKE CITY UTAH 84110

IMCO PROCESS EQUIPMENT COMPANY				669 WEST 2ND SOUTH SALT LAKE CITY UTAH 84110			
CHECKER NO	ITEM NO	INVOICE NO	INVOICE DATE	DESCRIPTION	GROSS	DISCOUNT	NET
0564		082192	08-21-92		450.00	.00	450.00

No. R 699061
699061

UTAH STATE DEPARTMENT OF HUMAN SERVICES
TO THE TREASURER OF THE STATE OF UTAH
SALT LAKE CITY, UTAH

03 09 93
MO DAY YR

AMOUNT ***73 AND 00

***73 00
AMOUNT
VOID 90 DAYS FROM DATE

SEVENTY THREE DOLLARS AND 00 CENTS

82280-197R2

CASE NUMBER

PAY TO THE ORDER OF:

LYNN J POULSEN
3353 S MAIN ST
NO 227
SALT LAKE CITY UT 84115

WEST ONE BANK OF UTAH
SALT LAKE CITY, UTAH
OFFICE OF RECOVERY SERVICES
31-4/1240

DIVISION OF FINANCE

699061 1240000411 00 13 06 11

IF THE PAYMENT WAS BY CHECK AND THERE WERE INSUFFICIENT FUNDS TO COVER IT, OR THE PAYMENT WAS RECEIVED FROM ANOTHER PARTY WHO TAKES IT BACK. THIS WARRANT MUST BE ENDORSED IN INK OR IN INDELIBLE PENCIL ON THE LINE BELOW BY THE PERSON IN WHOSE FAVOR IT IS DRAWN AND THE NAME MUST BE SPELLED EXACTLY THE SAME AS IT IS ON THE FACE OF THE WARRANT

IF THE ENDORSEMENT IS MADE BY MARK (X) IT MUST BE WITNESSED BY TWO PERSONS WHO CAN WRITE, GIVING THEIR PLACE OF RESIDENCE IN FULL.

(SIGN ON THIS LINE)

IDENTIFICATION PROCEDURE

WHEN CASHING THIS WARRANT FOR THE INDIVIDUAL PAYEE, YOU SHOULD

THE ATTACHED CHECK REPRESENTS CHILD SUPPORT
COLLECTED ON YOUR BEHALF

PAYMENT AMOUNT	\$100.00
CHECK PROCESSING CHARGE	\$.00
CHECK AMOUNT	\$100.00

PLEASE RETAIN THIS STUB FOR FUTURE REFERENCE.
10/22/92 #988208 \$100.00 82280197R2

MICHAEL DAVID POULSEN

|||||



State of Utah
DEPARTMENT OF HUMAN SERVICES

UTAH STATE DEPARTMENT OF HUMAN SERVICES

THE ATTACHED CHECK REPRESENTS CHILD SUPPORT
COLLECTED ON YOUR BEHALF

PAYMENT AMOUNT	\$350.00 -
CHECK PROCESSING CHARGE	\$.00
CHECK AMOUNT	\$250.00

PLEASE RETAIN THIS STUB FOR FUTURE REFERENCE.
10/22/92 #988207 \$250.00 82280197R1

MICHAEL DAVID POULSEN

COLLECTED ON YOUR BEHALF

PLEASE RETAIN THIS STUB FOR FUTURE REFERENCE.
10/21/92 #987948 \$2.50 82280197R1

MICHAEL DAVID POULSEN

EXHIBIT J

--oOo--

POULSEN vs. POULSEN

--oOo--

Case No. 914901255

August 19, 1992

--oOo--

Transcription of Decision

--oOo--

1 POULSEN VS. POULSEN, CASE NO. 914901255

2 --oOo--

3 P-R-O-C-E-E-D-I-N-G-S

4 (Partial transcription)

5 THE COURT: I understand that, Ms. Poulsen.
6 Let me proceed as follows: Both Mr. and Ms. Poulsen have
7 made the choice to represent themselves in this matter.
8 They are not well trained. I am going to make some
9 preliminary comments on procedure, so hopefully everyone
10 present today will understand the basis for my
11 recommendation and what is before me and what is not.

12 As to the Notice requirements, my file, the
13 Court's file, does not contain any Notice from the State
14 to Mr. or Ms. Poulsen about today's hearing, so I'm not
15 quite sure how everybody knew. Nonetheless, Miss
16 Gimenez (phonetic) is correct that if a party chooses to
17 appear and argue the case on merits, they've waived any
18 defect as to Notice; and that will be my finding as far
19 as any objection to Notice.

20 Secondly, the joinder by the State has
21 already occurred, and there is nothing before me today
22 on that issue. In other words, the defendant has filed
23 an objection to the State being joined but has not
24 properly served Notice and provided that today; and
25 they've already been doing it. It needs now to be a

1 motion to set aside.

2 Third, on the conflict of interest issue,
3 again Miss Gimenez is correct. The State is here
4 representing its agency, the Office of Recovery
5 Services, and not Mr. Poulsen. So there should be no
6 conflict.

7 As to the merits of the State's motion, I
8 agree with Ms. Poulsen absolutely and completely. I see
9 no reason whatsoever why payment should not be made
10 directly from the plaintiff's employer to the defendant.
11 There is not reason for the State of Utah to be involved
12 in the case where the obligee is neither receiving the
13 FDC nor has requested the State's assistance in
14 collecting child support.

15 However, the Utah Legislature has determined
16 otherwise. It has passed a law which forces this court
17 to order the payments go through the Office of Recovery
18 Services. The statute is Section 62A-11-404,
19 subparagraph 2-C. It reads as follows:

20 "When an obligee proceeds with a civil
21 action under this section, and that's Ms.
22 Poulsen is the obligee, the Court shall,
23 it's mandatory, order that when a payor is
24 notified a duplicate Notice be served on the
25 office, and that's the Office of Recovery

1 Services, and order the payor to submit all
2 withheld income to the office. And finally
3 it must designate the circumstances under
4 which an obligor may petition the Court for
5 termination of income withhold of
6 procedures."

7 It's ironic that the newspaper this morning
8 reported that Ms. Poulsen's legislator saw fit to write
9 to the office requesting some assistance for Ms.
10 Poulsen, when in fact it's the legislature that has made
11 this mandatory and given the Court no choice.

12 Therefore, I have no choice but to grant the
13 State's motion to set aside the Court's previous order
14 entered on June 30, 1992.

15 However, I'm going to go a step further.
16 The decree does contain a provision authorizing income
17 withholding. It is unfair and inequitable to simply
18 grant the State's motion and leave the defendant in
19 limbo without a remedy to collect the child support
20 alimony that is due her and the Court has found is
21 rightfully due her. Therefore, I will further recommend
22 that the State prepare to submit a new income
23 withholding order that complies with all the statutory
24 requirements that are imposed on this court by the
25 legislature.

1 That will be my recommendation, Miss
2 Gimenez. I ask that you prepare that order.

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