

1984

## **Lester P. Burrell v. Joan Mary Burrell : Respondent State of Utah's Brief**

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

LESTER RAY BURRELL

Appellant

vs

JOAN MARY BURRELL,  
STATE OF UTAH

Respondents.

Case No. 19399

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RESPONDENT STATE OF UTAH'S BRIEF

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Appeal from the Third Judicial District Court  
for Salt Lake County

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Clerk, Supreme Court, Utah



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BRIEF OF RESPONDENT  
STATE OF UTAH

STATEMENT OF NATURE OF THE CASE AND DISPOSITION OF THE CASE

This case involves questions of law and fact regarding actions taken pursuant to Utah Code Annotated (1953) as amended §78-45-1 et. seq. and §78-45B-1 et. seq. The Third District Court entered judgments for child support arrearages against the Appellant and, on one occasion, found Appellant in contempt of court and imposed sanctions. Appellant, in another appeal before this Court referred to as Docket 19-037, appealed the sanctions imposed. This Court dismissed the appeal on or about August 15, 1983.

RELIEF SOUGHT ON APPEAL

Respondent requests the Supreme Court to affirm the decision of the Third District Court.

STATEMENT OF FACTS OF THE CASE

On or about April 1, 1982, Appellant separated from his wife, Joan Mary Burrell, and filed for divorce in the Third District Court. There were five children born as issue of the marriage. After separation, Mrs. Burrell obtained temporary custody of the children.

On or about April 1982, Appellant's five children began receiving public assistance from the State of Utah. Shortly thereafter, Mrs. Burrell executed an assignment of all rights to receive child support on behalf of the minor children from the Appellant. The State of Utah, Department of Social Services was joined as a party in the pending divorce action and pursuant to Utah Code Annotated §78-45-9, the Salt Lake County Attorney's office was assigned to represent the Department.

Numerous legal actions were initiated by Respondent in an attempt to collect the child support due from Appellant. Numerous judgments were taken against Appellant as a result of said actions. At the present time, Appellant has been charged with violation of §76-7-201, Utah Code Annotated, for criminal non-support. Appellant is currently a fugitive from the court and Bench Warrant has been issued.

On or about November 10, 1982 Appellant appeared before the Honorable Jay D. Banks, a judge of the Third District Court, for an Order to Show Cause to set ongoing support. After examining Appellant under oath, the Court ordered Appellant to pay to the State of Utah "one-half of any money, cash, or property of any sort received or obtained by him each and every month, not to exceed \$582.00 per month so long as Defendant's minor children receive public assistance from the State of Utah". Appellant was further ordered to appear before the Court each and every month to account for all monies or property received by him for the prior month. Appellant was ordered to appear on December 15, 1982 to give the first accounting. Appellant failed to appear at said hearing and the Court issued a Bench Warrant for his arrest.

Appellant was arrested pursuant to said Bench Warrant and appeared before the Honorable Judith M. Billings on or about March 2, 1983. After examination by the Court, the Court found the Appellant in contempt of court and sentenced the Appellant to serve 30 days in the Salt Lake County Jail.



A trial date was set in the divorce case for February 28, 1983. All parties appeared for trial and the divorce was settled upon stipulation of all matters by all parties in open court.

#### ARGUMENT

##### I

ALL PROCEDURES FOLLOWED IN THIS CASE COMPLIED WITH THE RULES OF CIVIL PROCEDURE AND THE APPLICABLE SECTIONS OF UTAH CODE ANNOTATED.

Review of Appellant's Brief leaves Respondant State of Utah questioning exactly what Appellant is appealing. Appellant apparently is appealing the order of November 10, 1982 issued by the Honorable Jay Banks.

Appellant alleges that the order issued by Judge Banks was "unlawfully obtained, confused, confusing, ambiguous and therefore void and unenforceable". Appellant, however, fails to recite the facts of the case. At the hearing, Appellant was placed under oath and testified regarding his ability and willingness to pay child support. Mrs. Burrell, the "defendant" in the divorce matter was not even present. Appellant was present when ordered and admonished by Judge Banks to comply with the conditions embodied within the order. It is ludicrous for Appellant to maintain that Mrs. Burrell was to pay the child support to the State.

The order further states that "That Defendant is ordered to appear...and account for all monies or properties received or obtained by him" and "That Defendant is ordered to appear ...to give a full and complete accounting of any monies and properties received or obtained by

him". It is clear that the intent of the Court was to order Appellant to provide support for his children. Although the Court ordered Appellant to support his children, Appellant is also required to support his children pursuant to §78-45-1 Utah Code Annotated (1953) as amended.

Appellant raised the issue of whether or not the order was ambiguous before Judge Billings at the hearing held in March, 1983. Judge Billings denied Appellant's motion and upheld the order as issued from Judge Banks. Further, Judge Billings agreed to modify the caption of the order, due to a scrivener's error to provide that Appellant would be known as Plaintiff in the case. It is clear that Appellant wilfully failed and refused to follow the order of Judge Banks. Subsequently, Appellant attempted to twist and turn the order so as to excuse himself from non-compliance. The actions of both Judge Banks and Judge Billings should be upheld.

Respondant is unaware as to whether Appellant wishes to appeal the results of the divorce trial. In as much as this appeal was filed shortly after said trial was held, Appellant may be seeking to appeal the results of said trial. At trial, all issues relating to the parties' divorce were raised and stipulated to by the parties. Appellant seeks now to raise issue within the divorce that were stipulated to. This Court has consistently held that a matter not raised in trial cannot be raised on appeal. See Edgar v. Wagner, 572 P2d 405 (1977), and State by and through Road Commission v. Larkin, 495 P2d 817 (1972). Therefore, if Appellant is seeking relief from the matters stipulated during the divorce trial, it is clear that no appellate relief is available.

## POINT II

APPELLANT WAS NOT ENTITLED TO APPOINTED COUNSEL BEFORE BEING HELD IN CONTEMPT BY THE DISTRICT COURT.

Neither the United States Constitution nor the Utah State Constitution require appointment of counsel in a civil contempt proceeding.

It is clear that the District Court, pursuant to §78-32-1(1) and (5) Utah Code Annotated (1953) as amended, had the ability to find Appellant in contempt of court and apply sanctions therefor. Said finding of contempt complied precisely with all the requirements as embodied within §78-32-1 et. seq. Utah Code Annotated (1953) as amended. Furthermore, the court gave Appellant an opportunity to purge himself of the contempt citation. However, Appellant refused to avail himself of this opportunity. It is folly for Appellant now to challenge the contempt citation.

## POINT III

APPELLANT SEEKS RELIEF THAT THIS COURT IS UNABLE TO GRANT.

A further reading of Appellant's brief demonstrates Appellant's opposition to the monetary system of the United States of America. Appellant claims that he is unable to pay child support in "lawful money". In essence Appellant seeks to overturn the monetary policy of the United States of America. This Court is unable to grant the relief Appellant seeks.

The relief Appellant seeks, to-wit, a return of the United States to the gold standard should be sought in Federal Court. The question of legality of the federal monetary system could be interjected in any and

all litigation pending in state court. The effect of raising this issue in all actions would create a complete breakdown of the judicial system. Respondant is unable to address this issue and requests that this court affirm the action taken in this case.

CONCLUSION

For the foregoing reasons, the decision of the Third District Court should be upheld.

Respectfully submitted this 18 day of September, 1984.



RANDALL L. SKEEN  
Special Assistant Attorney General  
Attorney for Respondant  
State of Utah

MAILING CERTIFICATE

I hereby certify that on the 18 day of September, 1984, I mailed a true and correct copy of the foregoing Brief, postage prepaid, to Lester R. Burrell, at his last known address which is 24 "M" Street, #3, Salt Lake City, Utah 84103.

  
SECRETARY