

1970

## **Geraldine Green Maskil v. John Lawrence Green : Brief of Respondent**

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IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF UTAH**

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GERALDINE GREEN MASKIL,  
*Plaintiff-Appellant.*

vs.

JOHN LAWRENCE GREEN,  
*Defendant-Respondent.*

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Case No.  
12109

**BRIEF OF RESPONDENT**

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An Appeal from the Judgment of the Fourth Judicial  
District Court, Hon. Allen B. Sorensen, Judge

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PAUL J. MERRILL  
30 North Main Street  
Spanish Fork, Utah  
*Attorney for Respondent*

VERNON B. ROMNEY  
Attorney General

FRANK V. NELSON  
Assistant Attorney General

RONALD J. GREENHALGH  
Assistant Attorney General  
236 State Capitol  
Salt Lake City, Utah 84114  
*Attorneys for Appellant*

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## TABLE OF CONTENTS

	Page
NATURE OF CASE -----	1
DISPOSITION OF LOWER COURT-----	1
RELIEF SOUGHT ON APPEAL-----	2
STATEMENT OF FACTS -----	2
ARGUMENT -----	2
POINT I. THE FOURTH JUDICIAL DISTRICT PRO- PERLY GRANTED RESPONDENT'S MOTION TO DISMISS BASED ON THE PENDING DIV- ORCE ACTION IN THAT JURISDICTION -----	2
POINT II. THE DECISION BY THE COURT DOES NOT PLACE AN UNDUE BURDEN ON APPEL- LANT IN LIGHT OF THE UNIFORM RECIPRO- CAL ENFORCEMENT OF SUPPORT ACT-----	3
CONCLUSION -----	4

### CASES CITED

Anderson v. Anderson, 13, Utah 2d 36, 368 P. 2d 285 (1962)-----	3
Chaffee v. Chaffee, 63 Utah 261, 225 P. 76 (1924)---	3
Escalante Co. V. Kent et al 79 U26 7P. 2d 276 (1932)---	3
Gale v. Gale, 123 Utah 277, 258 P. 2d 986 (1953)---	3
Gohdes v. Gohdes, 134 Cal. App. 2d 819, 286 P. 2d 539 (1955) -----	3
Keene v. Toth, 335 Mass. 591, 141 N. E. 2d 509 (1957) ---	3
Shannon v. Sterling, 248 Minn. 266, 80 N. W. 2d 13 ---	3
(1956) -----	3
Terry v. Terry, 80 N. M. 185, 453 P. 2d 206 (1969)---	4

**STATUTES CITED**

**Utah Code Ann. § 30-3-5 (1953) -----**

**Utah Code Ann. § 77-61a-7**

IN THE  
**SUPREME COURT**  
OF THE  
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GERALDINE GREEN MASKIL,  
*Plaintiff-Appellant,*

vs.

JOHN LAWRENCE GREEN,  
*Defendant-Respondent.*

---

} Case No.  
12109

**BRIEF OF RESPONDENT**

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**NATURE OF CASE**

The Fourth Judicial District Court, the Honorable Allen B. Sorensen presiding, dismissed appellant Geraldine Green Maskil's petition for support made under the Uniform Reciprocal Enforcement of Support Act. This is an appeal from order.

**DISPOSITION IN LOWER COURT**

Petitioner filed her petition December 23, 1969, in San Diego Superior Court of the State of California and said petition was forwarded and filed in Fourth Judicial District Court of the State of Utah on April 23, 1970, pursuant to the Uniform Reciprocal Enforcement of Support Act, Utah Code Ann. § 77-61a-18 (1953). On April 27, 1969, an order to show cause was issued to respondent requesting his appearance. Following the hearing on the matter on May 8, 1970, the Court granted defendant's motion to dismiss the petition on the grounds that another case was pending in the jurisdiction between the parties concerning their divorce.

Statute of Support the court would have to modify its original decree. The documents furnished by the State of California do not purport to modify said decree. The Utah Supreme Court has held that where two cases filed in court have concurrent jurisdiction the second case should be stayed. Escallante Co. V. Kent et al 79U26 7P. 2d 276 (1932). The courts have uniformly held that on cases arising under the Reciprocal Support Act that the original decree of divorce determines that the duty of support exists and that the only fact to be determined under the Reciprocal Support Act is the amount of support and using their individual laws as the measure of the amount of said support to be paid. The courts have further held that where custody is awarded to other than the person seeking redress that a modification must be made in a court having jurisdiction to so modify the decree. See: Shannon V. Sterling, 248 Minn. 266, 80 N. W. 2d 13 (1956); Keene V. Toth, 335 Mass. 591, 141 N. E. 2d 509 (1957); Gohdes V. Gohdes, 134 Cal. App. 2d 819, 286 P. 2d 539 (1955).

The court in the instant case had no right to proceed to determine the support when it had ruled that the respondent was entitled to the care and custody of the child. For the court to allow the appellant to proceed would be in effect an appeal from their original Divorce Decree. Until the court has so modified its original Divorce Decree as to custody, the support requirement could not be adjudicated. I agree that the Fourth Judicial Court of Utah has a right to modify a divorce decree pursuant to Utah Code Ann. § 30-3-5 (1953). See: Chaffee V. Chaffee, 63 Utah 261, 225 P. 76 (1924); Gale V. Gale, 123 Utah 277, 258 P. 2d 986 (1953); Anderson V. Anderson, 13 Utah 2d 36, 368 P. 2d 286 (1962).

## POINT II

THE DECISION BY THE COURT DOES NOT PLACE AN UNDUE BURDEN ON APPELLANT IN LIGHT OF THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

**RELIEF SOUGHT ON APPEAL**

Respondent seeks the affirmation of the Fourth Judicial Court order.

**STATEMENT OF FACTS**

Appellant and respondent were married in Elko, Nevada, in 1949. In December 1958, said parties were divorced in the jurisdiction of the Fourth Judicial District Court. The decree of divorce provided that respondent have custody of the minor child. In June, 1969, the appellant received no court order or modification of said decree and illegally took the child to California. The said appellant was to return the said child. Appellant made no demand upon respondent for support. Appellant upon the face of the documents show that appellant is entitled to no support from respondent. On May 8, 1970, defendant and counsel appeared before the Fourth Judicial District Court, defending moving for dismissal on the ground that there was a pending divorce action between the parties in the same jurisdiction. Appellant's attorney objected to the motion pointing to the wording of Utah Code Ann. § 77-61a-29. The Court granted defendant's motion dismissing the petition.

**ARGUMENT****POINT I****THE FOURTH JUDICIAL DISTRICT COURT PROPERLY GRANTED DEFENDANT'S MOTION TO DISMISS BASED ON THE PENDING DIVORCE ACTION IN THAT JURISDICTION.**

In the Fourth Judicial Court of Utah County, State of Utah there is pending the original divorce case in which the decree awarded the custody of the minor child to the respondent. The appellant has brought a separate suit under The Uniform Reciprocal Enforcement of Support Act (codified at § 77-61a-1 et seq. and hereafter referred to as the Reciprocal Support Act). This leads us to the proposition that in order to accomplish the purpose of the State

The requiring of the appellant to proceed under the original divorce decree does not place any additional burden upon said appellant. Whether the Utah State Welfare or any other institution seeks to represent the appellant should be disregarded. It is the appellant's case and no one else's. The same papers may be executed and filed for modification of the divorce decree. The evidence could be reduced to writing by the taking of depositions and other means of discovery. The appellant would not necessarily need to come to the State of Utah in order to modify the decree. Through the use of depositions or interrogatories, adequate resolution of the support controversy can be attained in the most convenient manner for all parties without a denial of due process and equal protection under the law. Terry V. Terry, 80 N. M. 185, 453 P. 2d 206 (1969). By allowing the appellant to use the Reciprocal Support Act on the narrow ground of support and not allowing the respondent to obtain jurisdiction over the appellant would place the respondent in an unfair position which should not be tolerated. In the instant case the appellant illegally obtained possession of the minor child and this should be determined under the original suit which cannot be done in the Reciprocal Support Act.

#### CONCLUSION

Judge Sorensen's Order dismissing appellant's petition on the ground that another case was pending in Utah County should be affirmed.

Respectfully submitted,

PAUL J. MERRILL  
Attorney for Respondent