

1993

Laura Beth Barker, and the State of Utah, Department of Human Services v. Michael Robert Barker : Brief of Appellee

Utah Court of Appeals

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Michael R. Barker; In His Proper Person.

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LAURA BETH BARKER, and
the STATE OF UTAH,
Department of Human
Services,

v.

Defendant/Appellant.

Priority No. 15

UTAH COURT OF APPEALS

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FILED
Utah Court of Appeals

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LAURA BETH BARKER, and
the STATE OF UTAH,
Department of Human
Services,

v.

Case No. 930587-CA

APPEAL FROM A FINAL JUDGMENT ENTERED ON AUGUST
19, 1993, BY THE HONORABLE LOUIS G. TREVORT,
JUDGE, SIXTH DISTRICT COURT, SANPETE COUNTY,
STATE OF UTAH.

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

LAURA BETH BARKER, and
the STATE OF UTAH,
Department of Human
Services,

Plaintiffs/Appellees,

v.

MICHAEL ROBERT BARKER,

Defendant/Appellant.

Case No. 930587-CA

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to Utah Code Ann. §§
78-2a-3(2)(h) and 78-45-10 (1993).

DETERMINATIVE STATUTES AND RULES

The text of the following statutes and rules are contained
in the Addendum:

- A. Utah Code Ann. § 34-34-2 (1993)
- B. Utah Code Ann. § 34-34-6 (1993)
- C. Utah Code Ann. § 62A-9-114(1) (Supp. 1994)
- D. Utah Code Ann. § 62A-11-106 (Supp. 1994)
- E. Utah Code Ann. § 62A-11-302 (1992)
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- G. Utah Code Ann. § 62A-11-304.2(3) (Supp. 1994)
- H. Utah Code Ann. § 63-46b-1(2)(1) (1993)
- I. Utah Code Ann. § 78-2a-3(2)(h) (Supp. 1994)
- J. Utah Code Ann. § 78-45-7 (Supp. 1994)
- K. Utah Code Ann. § 78-45-9(1)(a) (Supp. 1994)
- L. Utah Code Ann. § 78-45-10 (1993)

STATEMENT OF ISSUES AND STANDARDS OF REVIEW

Mr. Barker ("Appellant") has listed thirty-nine issues in
his brief, however, in the view of the State of Utah, Department
of Human Services ("Appellee"), a number of his enumerated issues

are either redundant or inclusive of several major issues. Therefore, Appellee has categorized Appellant's issues under three major issues.

1. Whether the lower court determination of contempt of court for Appellant's failure to pay child support and order requiring him to immediately serve thirty days in jail for this contempt violated provisions of the U.S. Constitution, the Utah Constitution and/or Utah law.

Standard of Review: This is a question of law which this court reviews for correctness, giving no deference to the trial court's determination. Carter v. Utah Power & Light Co., 800 P.2d 1095 (Utah 1990).

2. Whether the lower court findings of fact are sufficient to support its order of a judgment of child support arrearages against Appellant.

Standard of Review: Findings of fact shall not be set aside unless clearly erroneous. Utah Rule of Civil Procedure Rule 52(a). Von Hake v. Thomas, 759 P.2d 1162 (Utah 1988).

3. Whether the lower court's order of a judgment against Appellant for child support arrearages violates provisions of the U.S. Constitution, the Utah Constitution and/or Utah law.

Standard of Review: This is a question of law, which this court reviews for correctness, giving no deference to the trial court's determination. Carter v. Utah Power & Light Co., 800 P.2d 1095 (Utah 1990).

STATEMENT OF THE CASE

A Decree of Divorce and Order of Support dated June 8, 1987 and signed by the Honorable Don V. Tibbs of the District Court of Sanpete County, Sixth Judicial District awarded Laura Beth Barker ("Ms. McGillivray") a divorce from Appellant, awarded custody of the parties five children to Ms. McGillivray and ordered child support to be paid by the Appellant in the amount of \$100.00 per child. (R.341-347). The order further provided that the child support obligation would increase to \$150.00 per month for four of the children for a total of \$600.00, when the eldest child reached eighteen. (R.343). The eldest child was born April 21, 1970. (R.323).

Based upon the above-stated order of support, Appellee filed with the District Court a Motion for an Order to Show Cause dated February 3, 1993. (R.603-604). Pursuant to this Motion, the District Court in an order dated February 4, 1993, ordered Appellee to appear and show cause in pertinent part as to the following: 1) why judgment should not be entered against him in the sum of \$13,050.00 for unpaid child support from March 1, 1991 through January 31, 1993; 2) why he should not be required to pay \$600.00 per month ongoing child support commencing February 1, 1993; 3) why he should not be required to make all payments in this matter to Appellee; and 4) why he should not be held in contempt of court for failure to make child support payments as previously ordered by the court. (R.605-606).

On February 26, 1993, Appellant filed a Counterclaim for

Abuse of Process and Harassment and Petition for Change of Circumstances. (R.616-619). The Court treated these filings as a Petition to Modify. (R.788 p. 8-9).¹ Appellant alleged, in substance, that: 1) the State had no jurisdiction over him; 2) this matter had already been litigated by this court; 3) the State violated his due process rights by not notifying him that Ms. McGillivray was receiving public assistance; 4) his support payment should be modified because of a change in circumstances; and 5) the State was guilty of abuse of process and harassment. (R.616-619).

The Appellee denied Appellant's allegations and asked the court to dismiss Appellant's Petition in its Answer to Appellant's Petition to Modify filed April 6, 1993. (R.628-631). Subsequently, Appellant filed three additional Petitions to Modify in which he asserted virtually identical allegations to those set forth in his previous petition filed February 26, 1993. These petitions were filed on April 16, 1993 (R.634-640), May 26, 1993 (R.669-671), and June 9, 1993 (R.681-684).

The Appellee's Motion and Order to Show Cause and Appellant's Motions were heard by the Honorable Louis G. Trevort on June 30, 1993. (R.788 p. 3). After the hearing, the Court issued a bench ruling. (R.788 p. 122-123). The court ruled that Appellee was entitled to a \$13,050.00 judgment against Appellant

¹The lower court did not properly number the record. Specifically, the transcript is only numbered on the cover page. So, throughout Appellee's brief, when a citation is needed to the transcript, we will cite R.788 for the transcript and the specific number of the page in the transcript.

for unpaid child support for the period of March 1, 1991 through January 31, 1993. (R.788 p. 122-123). The court dismissed Appellant's Petition to Modify and found Appellant in contempt of court for failure to fulfill his support obligation, thereby ordering him to serve thirty days in the Sanpete County Jail, beginning at the time of the hearing. (R.788 p.122-123).

On July 16, 1993, the trial court entered its Findings of Fact and Conclusions of Law (R.722-728) as well as its Judgment and Order in which the court basically reiterated its bench ruling. (R.729-732).

Appellant filed a Motion for New Trial and Relief from Judgment or Order on July 13, 1993, in which Appellant claimed, in relevant part, that his due process rights were violated because he was denied court appointed counsel. (R.708-716). The Court, in a Judgment and Order entered August 19, 1993, denied Appellant's request for court appointed counsel, request for a new trial, and request for relief from the judgment and order. (R.749-751).

On September 23, 1993, Appellant filed his Notice of Appeal, appealing the lower court's judgment and order entered July 16, 1993 and its post-judgment and order entered August 19, 1993. (R.756).

STATEMENT OF FACTS

In the Decree of Divorce and Order of Support dated June 8, 1987, entered by the Honorable Don V. Tibbs, the court determined that it has and retains jurisdiction over the Appellant. (R.330-

331). Specifically, the court found that the Appellant is no different under the law than any other citizen of the State of Utah or the United States of America that might appear before the court. There is no distinction of citizen by classification, therefore the Appellant can claim no special status by reason of special citizenship classification. (R.723). Furthermore, Appellant's failure to participate in the Social Security system is not a basis for claiming special treatment or citizenship status. (R.723). The Appellant did not appeal this determination and the time for appeal has expired.

Additionally, in the Decree of Divorce and Judgment, Judge Tibbs ordered Appellant to pay \$150.00 per month child support per child, totalling \$600.00 per month. (R.343). The payments were to be made to Appellee so long as Ms. McGillivray received public assistance. (R.343). Public assistance has been provided for Appellant's minor children. (R.788 p. 33, R.600). Appellant did not make any child support payments either to Appellee or Ms. McGillivray during the period of March 1, 1991 through January 31, 1993. (R.788 p. 33).

At the time of the Decree of Divorce, the Appellant was capable of earning \$1,500.00 per month. (R.343, R.788 p. 29). At the time of the June 30, 1993 hearing, appellant had a capacity to earn in excess of \$2,000.00 per month based upon his educational training and work history. (R.788 p. 48-49). Appellant did not have any medical evidence to support any claim of medical disability. (R.788 p. 50).

The Appellant owes child support for the period March 1, 1991 through January 31, 1993 in the amount of \$13,050.00. (R.726). Based upon this failure to pay child support Appellant was immediately sentenced to thirty days in the Sanpete County Jail. (R.728).

SUMMARY OF THE ARGUMENT

Appellant makes sixteen separate arguments against the trial court and Appellee. For a majority of these arguments, the cases, statutes and constitutional provisions cited by Appellant are irrelevant and/or misinterpreted. Furthermore, an additional number of his arguments are totally unsound and frivolous in that they are not based upon any evidence or authority.

Appellant has a fundamental misunderstanding of the State child support enforcement laws and procedures. Appellee is statutorily authorized by law to enforce Appellant's child support obligation and the lower court's Findings of Fact and Order are consistent with this statutory framework.

Additionally, Appellant challenges the contempt order of the lower court on the basis that he was entitled to legal counsel and none was appointed to him prior to incarceration. The contempt order of the court was civil in nature and so the challenge of the Appellant is without merit. Furthermore, even if there is merit, the issue is now moot.

ARGUMENT

POINT I.

APPELLEE IS STATUTORILY AUTHORIZED TO DIRECTLY COLLECT FROM AN OBLIGOR MONIES EXPENDED THROUGH PUBLIC ASSISTANCE PROVIDED FOR DEPENDENT CHILDREN.

The points in Appellant's Brief clearly indicate that Appellant has a fundamental misunderstanding of the State's child support enforcement laws and procedure.

The Office of Recovery Services is statutorily authorized to obtain and enforce child support orders in support actions. Appellant claims that the Utah Department of Human Services cannot be subrogated to Ms. McGillivray's rights against Appellant on unpaid support payments. Specifically, Appellant asserts that since he never contracted with the Department of Human Services, the State is illegally attempting to force him into a welfare contract. (Appellant's Brief at 25).

This claim by Appellant that a contract with the State is a necessary prerequisite for the State to collect unpaid child support is contrary to the statutory authority which enables the Office of Recovery Services to obtain and enforce child support orders in support action. This is especially true when Aid to Families with Dependent Children ("AFDC") has been provided for the children, Utah Code Ann. § 62A-11-106 (Supp. 1994), Utah Code Ann. § 62A-11-304.2(3) (Supp. 1994), Utah Code Ann. § 78-45-9(1)(a) (Supp. 1994) provides:

The obligee may enforce his right of support against the obligor and the office may proceed...on behalf of the Department of

Human Services...to enforce the right to
recovery public assistance...

In Bartholomew v. Bartholomew, 548 P.2d 238 (Utah 1976), the court held that where a divorced wife and her four children were receiving public assistance, it was proper for the Department of Social Services to intervene on her behalf in an action to force her ex-husband to make unpaid child support payments. Id. at 241.

The policy and the law is...to simplify and expedite procedure and to avoid multiplicity of lawsuits. The right of children to support and the parental duty to provide it, supplemented by the State when necessary, gives rise to a mutual interest in [the problem of child support collection]...[i]t was [therefore] appropriate for the State to join as an intervenor in this action. Id.

If a custodial parent has received AFDC for the child, the Office of Recovery Services has another separate, statutory interest in status as a party in such proceedings, i.e. as an assignee of the custodians right to child support for operation of law through execution of an actual assignment. Utah Code Ann. § 78-45-9(1)(a), Utah Code Ann. § 62A-11-303(3) (1992).

Appellant also claimed that he and Appellee contracted to allow payment in kind and therefore the State had no authority to provide public assistance to his children in the first place, because it "forced" him into the "welfare contract." (Appellant's Brief at p. 25-26). Appellant's claim, however, rises from his misunderstanding of the purpose of the State child support enforcement laws. Utah Code Ann. §62A-9-114(1) (Supp. 1994) provides:

Aid to Families with Dependent Children may be provided to families and children in accordance with Title IV-A of the Social Security Act and applicable federal regulations.

A child who is not financially supported by his or her natural parents is instead supported by federal and state taxpayers through jointly funded public assistance programs such as AFDC. Utah Code Ann. § 62A-11-302 (1992).

Furthermore, even if Appellant and Ms. McGillivray did agree to such a contract, Utah Code Ann. § 62A-11-106(2) provides:

[n]o agreement between an obligee and an obligor, either relieving an obligation or purporting to settle past, present, or future obligations either as a settlement or prepayment, reduces or terminates the right of the office to recover from that obligor on the behalf of the Department for public assistance provided...

Given the Appellee's clear authority to recover the public assistance provided for his children, the trial court's Judgment and Order for the Appellee is clearly based in solid statutory authority.

The Appellant claims that the Appellee violated his due process rights by failing to notify him that his children were receiving public assistance. (Appellant's Brief at p. 6-7). Contrary to this claim, Appellee was under no duty to notify Appellant of this situation. Appellant cites § 63-46b-3 of the Utah Code for this alleged duty to notify. This provision of the law outlines the requirement for commencement of adjudicative proceedings for State agencies under the Administrative Procedures Act. Appellant's argument ignores the fact that there

was no adjudicative proceeding with respect to the determination of public assistance eligibility for his children and notice of this matter. Furthermore, even if there was an adjudicative proceeding this proceeding would be exempted by Utah Code Ann. § 63-46b-1(2)(1) which states:

This chapter [63-46b-1 et seq.] does not govern: the initial determination of any persons eligibility for government of public assistance benefits.

Appellant cites no other authority for his argument.

Furthermore, generally regarding Appellant's due process arguments, as found by the trial court, the Appellant was afforded due process every time he was before the court. (R.724). Each time the State sought judgment against the Appellant, he was given notice of the State's claim and an opportunity to present his arguments in court. (R.788 p. 110). Therefore, Appellant's claim that he was denied due process is unfounded.

POINT II.

THE TRIAL COURT MADE SPECIFIC FINDINGS AND PROPERLY DISMISSED APPELLANT'S PETITION TO MODIFY.

The lower court considered Appellant's Counterclaim for Abuse of Process and Harassment and Petition for Change of Circumstances as a combined Petition to Modify. (R.788 p. 8-9). In this combined Petition to Modify, Appellant's arguments give rise to the issues of violation of his constitutional right to work, involuntary servitude, whether he is voluntarily underemployed, and the imputation of income to him and the

disallowance of a change in circumstances.

Appellant contends that Utah Code Ann. § 78-45-7.5 is in violation of the Utah Right to Work law, Utah State Constitution and the U.S. Constitution. In part, Appellant asserts that by using his "historical and current earnings" to determine whether he was voluntarily unemployed, the trial court violated his constitutionally protected right to work in an occupation of his choosing. (Appellant's Brief at p. 10-11), See Utah Code Ann. §§ 78-45-7.5(5)(c), (7)(a), (7)(b); Utah Code Ann. § 34-34-2, -6.

There is nothing in either the U.S. Constitution or the Utah Constitution which says that Appellant can avoid his child support obligation. Appellant has a right to work, however, he also has a child support obligation for his and Ms. McGillivray's five children. If he chooses to voluntarily quit a job or voluntarily work at a job with lesser pay, there is nothing unconstitutional about a court requiring him to support his children. None of his constitutional or state statutory citations are otherwise persuasive. Therefore, the trial court properly ruled that his constitutional arguments were unfounded.

Furthermore, the trial court correctly determined that Appellant was intentionally underemployed for the purpose of avoiding child support obligations and therefore subject to imputation of income. In computing gross income, "[h]istorical and current earnings shall be used to determine whether an underemployment or overemployment situation exists." Utah Code Ann. § 78-45-7.5(5)(c) (Supp. 1994). Based upon Appellant's

testimony concerning his educational training, work history and the discrepancy between his past and his current earnings, the trial court properly found Appellant to be voluntarily underemployed. (R.788 p. 34-50). (R.725). While Appellant argues that the trial court abused its discretion in finding Appellant to be intentionally underemployed, no support exists in the record for such an argument.

In finding the Appellant to be intentionally underemployed for the purposes of avoiding child support payments, the trial court has the statutory authority to impute income to Appellant. Utah Code Ann. § 78-45-7.5(7)(a). Pursuant to Utah Code Ann. § 78-45-7.5(7)(b),

[i]f income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from work history, occupational qualifications and prevailing earnings for persons of similar backgrounds in the community.

In applying these statutory factors to determine the amount of income to be imputed to Appellant, the trial court properly found Appellant to have an earning capacity of \$2,000.00 per month. (R.788 p. 34-50). (R.725).

In the case of Hill v. Hill, 229 Utah Adv. Rep. 46 (Utah Ct. App. 1993), the court held that the trial court did not abuse its discretion in not making specific findings of fact that ex-husband was underemployed since he had submitted at trial to imputation of income and because his job history and current employment options supported the imputation of an amount higher

than the ex-husband's current salary. In the instant case, Appellant did not submit to imputation of income, but his job history and current employment situation supports the imputation of income.

Additionally, the trial court was within its discretion to not consider Appellant's situation a material change in circumstances for purposes of downward modification of his award. Appellant did not demonstrate that a material change in circumstances had occurred since the divorce. As a matter of fact, his situation had improved. At the time of the divorce, he was earning \$1,500.00 per month (R.343, R.788 p. 29, 48-49) and the evidence at the hearing indicates he is capable of earning \$2,000.00 per month. (R.788 p. 48-49). In the case of Grover v. Grover, 839 P.2d 871, 873 (Utah Ct. App. 1992), the court held that a child support order can only be modified based upon a showing of a material change in circumstances.

As a basis for his argument that the trial court failed to make specific and detailed findings, Appellant relies upon Ostler v. Ostler, 789 P.2d 713 (Utah Ct. App. 1990). His reliance, however, is misplaced. In Ostler the court held that the failure of the trial court to enter specific findings on each of the statutory factors set forth in Utah Code Ann. § 78-45-7 for an award of prospective support after a material change of circumstances is generally reversible error. Id. at 715. In the instant case the trial court properly found no change in circumstances to justify modification of the existing support

award, Ostler was based upon a modification of a prior award after the determination that a material change of circumstances had occurred. Ostler v. Ostler, 789 P.2d at 715.

Appellant also makes an argument that he is entitled to relief from retroactively accumulated support. This argument is without merit as a Petition to Modify applies to prospective support. Utah Code Ann. § 78-45-7(2), see Grover v. Grover, 839 P.2d at 873).

Appellant makes another argument that the trial court should have granted his Petition to Modify due to his obligations to his "current" family, Specifically, Appellant argues that the trial court erred in concluding that Appellant's obligation to support his natural children of this action is primary to his obligation to support his natural children of a subsequent common law marriage. (R.726). However, Utah Code Ann. § 78-45-7.2(5) (Supp. 1994) provides:

[i]n a proceeding to modify the existing award, consideration of natural or adopted children other than those common to both parties may be applied to mitigate an increase in the award, but may not be applied to justify a decrease in the award. (emphasis added).

Again, Appellant's argument is not supported by statutory authority.

POINT III.

THE TRIAL COURT PROPERLY RULED ON AND DENIED APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT AND ORDER.

Appellant argues that his due process rights were violated because the trial court failed to rule on his Motion for Relief

from Judgment and Order. This argument ignores the fact that the trial court did issue a Judgment and Order in response to Appellant's Motion on August 19, 1993. (R.749-751). The trial court denied Appellant's request for court appointed counsel, for a new trial, and for relief from judgment and order dated July 16, 1993. (R.749-751).

POINT IV.

THE TRIAL COURT'S ORDER DOES NOT REVERSE A PRIOR 1991 ORDER.

Appellant argues that the trial court's order holding Appellant in contempt for non-payment of child support overturns the prior 1991 order in which Appellant was allowed to purge himself. The unpaid child support sought for the State in 1991 was instigated to recovery unpaid support prior to the dates set forth in the instant case before the lower court. (R.788 p. 21). The previous judgment entered on April 29, 1991 does not in any way conflict or overturn the instant judgment for unpaid support for the period March 1991 through January 1993.

POINT V.

APPELLANT'S ARGUMENT THAT THE COURT HAS NO JURISDICTION OVER HIM IS RES JUDICATA.

Appellant has continuously argued that the trial court does not have jurisdiction over him. This issue was litigated before Judge Tibbs in the divorce action and thus is now res judicata. Specifically, in the trial court's findings of fact concerning Appellant's and Ms. McGillivray's divorce decree dated June 8, 1987, Judge Tibbs specifically found that the court has

jurisdiction over Appellant in this matter. (R.330-331). Furthermore, on January 5, 1989, Judge Tibbs concluded in a ruling on a previous Order to Show Cause brought by the State that the court retains jurisdiction over Appellant in this matter. (R.532). Thus, in this case, res judicata bars Appellant from contesting the court's jurisdiction as the issue has been previously litigated and ruled upon. See State v. V.G.P., 845 P.2d 944, 946 (Utah Ct. App. 1992) holding that res judicata bars defendant from claiming non-paternity because the court had previously entered a decree of paternity.

POINT VI.

APPELLANT'S CONTEMPT WAS IN THE NATURE OF CIVIL CONTEMPT AND HE THEREFORE WAS NOT ENTITLED TO COUNSEL PRIOR TO INCARCERATION, HOWEVER, EVEN IF THIS COURT FINDS THAT HE WAS ENTITLED TO COUNSEL, THIS ISSUE IS NOW MOOT.

Appellant contends that while knowing he was indigent, the trial court both failed to inform him of his right to counsel and further, refused to grant his request for the same. (Appellant's Brief at p. 4). Contempt of court is an amorphous contempt and takes many forms and serves many purposes. Within contempt law there are two distinct forms of contempt - civil and criminal - which serve two equally distinct purposes. Further, within civil and criminal contempt there are two further refinements - direct or indirect - which greatly effect the contemnor's due process hearing rights.²

²If the contempt is direct, it is committed in the presence of the judge and may be punished summarily without the need for a hearing. However, if the contempt is indirect, it is committed

Whether it be civil or criminal, in a contempt proceeding the plaintiff must allege, that in contempt of court, the defendant wilfully disobeyed an order of the court and must make a prayer that the defendant be punished therefor. In this sense, it is not the fact of punishment, but rather its character and purpose that serves to distinguish between civil and criminal contempt. See Gompers v. Buck Stove & Range, 221 U.S. 418, 441 (1911); Von Hake v. Thomas, 759 P.2d 1162, 1168 (Utah 1988); 3 Charles Wright, Federal Practice And Procedure § 704 (1982). If it is for civil contempt, the punishment of the court is remedial and for the benefit of the complainant. Gompers, 221 U.S. at 441; Hicks ex rel. Feiock v. Feiock, 485 U.S. 624 (1988); Von Hake, 759 P.2d at 1168. But, if it is for criminal contempt, the sentence is punitive - to vindicate the court - and is limited to imprisonment for a definite period of time. Gompers at 441-442; Von Hake at 1168.

Thus, imprisonment for civil contempt is ordered not to vindicate the judge, but rather because the defendant refused to

outside the presence of the judge and due process requires that the contemnor be given a hearing and be able to present witnesses in its defense. Von Hake v. Thomas, 759 P.2d 1169-70. The due process clause of the federal constitution requires that in a prosecution for indirect contempt, "the person charged be advised of the nature of the action against him, have assistance of counsel, if requested, have the right to confront witnesses, and have the right to offer testimony on his behalf." Burgers v. Maiben, 652 P.2d 1320, 1322 (Utah 1982).

Thus, while civil nonsupport is surely indirect contempt in which the defendant must be afforded the opportunity to have counsel present, Burgers does not answer the question of whether the State must appoint counsel if the defendant is unable to obtain such on its own.

perform an affirmative act required by order of the court. Imprisonment then is not inflicted as a punishment, but is intended to be remedial and to coerce the defendant to do that which the court has ordered. Gompers, 221 U.S. at 441-442. Moreover, the decree in such cases must provide the defendant with a "purge" condition for its contemptuous behavior and must hold that the defendant stand committed unless and until it performs the affirmative act as required by the order of the court. See Feiock, 485 U.S. at 624.

In 1988, the Utah Supreme Court adopted the Feiock approach to differentiating civil and criminal contempt as a matter of state law. Von Hake, 759 P.2d at 1168 n.5. Thus, for all future cases the Utah state courts:

will follow the rule that a contempt order is criminal if the fine or sentence imposed is fixed and unconditional, but is civil if the fine or imprisonment is conditional such that the contemnor can obtain relief from the contempt order merely by doing some act as ordered by the court. Further a contempt order is civil if the order is to pay a fine to the other party rather than to the court.

Id. In the instant case, the contempt can be characterized as civil only if the order was intended to be remedial in nature and provided Appellant with the ability to purge himself.³

As a general rule, non-support contempt hearings are civil in nature, however, if the contemnor is not presented with, or

³While it is clear from the transcript that the contempt in this case began as an indirect civil contempt - based upon Appellant's failure to pay child support - it may be said that the contempt was transformed into direct contempt based upon Appellant's courtroom behavior.

does not have the ability to meet, specified purge conditions, the proceedings may become criminal and therefore subject to the due process requirements of all other criminal proceedings. Feiock at 632. As the significant and essential characteristic of civil contempt is that the penalty can be avoided by compliance with the court order, the ability to comply must exist in substance as well as in form. Murray v. Murray, 597 P.2d 1220, 1222 (Haw. 1978). If, in fact, Appellant did not have the ability to comply in substance with the order to the court, the proceeding in the instant case was criminal in nature, and pursuant to holdings of the U.S. Supreme Court, he likely was entitled to court-appointed counsel. See Argersinger v. Hamlin, 407 U.S. 25 (1972); Gideon v. Wainwright, 372 U.S. 335 (1963).

In Gideon v. Wainwright, the U.S. Supreme Court held that pursuant to the Sixth Amendment, which is made applicable to the states by the Fourteenth Amendment, "any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided to him." Gideon, 372 U.S. at 344. While in Gideon, this proclamation was made solely in the context of state felony trials, the Court later refined its position in Argersinger v. Hamlin, supra. In Argersinger, the court was faced with the question whether persons charged with only misdemeanor or other petty offense equally enjoyed the right to assistance of counsel set forth in Gideon. In holding that such right could not be limited to felony cases only the court found that no accused may be deprived of his liberty without the aid of

counsel. "[A]bsent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel." Argersinger, 407 U.S. at 37.

In civil non-support cases, "in order to justify a finding of contempt and the imposition of a jail sentence, it must appear by clear and convincing proof that: (1) the party knew what was required of him; (2) that *he had the ability to comply*; and (3) that he wilfully and knowingly failed and refused to do so." Thomas v. Thomas, 569 P.2d 1119 (Utah 1977) (emphasis added). When a divorced father falls behind in his court-ordered support payments, the court may summon the father to show cause why he should not be held in contempt for his failure to pay. When no cause is found, the court may order a jail term. Generally, in such cases, the contempt is civil in nature and the jail term is intended only to coerce the father to perform his failure to perform. See Johansen v. State, 491 P.2d 759, 766 (Alaska 1971). Imperative in these proceedings, is the father's ability to comply with the order of the court. E.g., Maggio v. Zeitz, 333 U.S. 56, 76 (1948). The father must be presented with an opportunity to purge his contempt at any time and therefore secure his immediate release. Johansen, 491 P.2d at 764; Gompers, 221 U.S. at 442.

The fact that a contemnor - the father - may be faced with the possibility of incarceration is often cited as the reason why the accused must be given the right to have the assistance of

counsel. See 17 Am.Jur.2d Contempt § 201; Walker v. McLain, 768 F.2d 1181 (10th Cir. 1985). Accordingly, it has been held that the right to counsel must be extended to all contempt proceedings - whether civil or criminal; petty or serious - as long as the proceedings carry a risk of imprisonment as a possible penalty. This rule has been applied where non-compliance with a child support order may result in a jail or prison sentence. However, the right to counsel in these cases appear to be limited to instances of indigence. McLain, 768 F.2d at 1181.

According to this standard, a father may not be incarcerated for failure to pay court-ordered child support unless the court first determines that the contemnor has the present ability to purge himself of the contempt. In this sense, some courts have held that there is never a right to court-appointed counsel in a civil contempt proceeding for failure to pay child support "because if the parent has the ability to pay, there is no indigence, and if the parent is indigent, there is not threat of imprisonment." Bowen v. Bowen, 471 So.2d 1274 (Fla. 1985) (citing Andrews v. Walton, 428 So.2d 663, 666 (Fla. 1983).

To determine that court-appointed counsel is never necessary in civil contempt hearings, courts have relied upon the fact that, in contrast to criminal contempt proceedings, civil contempt is, by nature, remedial and coercive only. Its objective is compliance, not punishment. Sword v. Sword, 249 N.W.2d 88, 93 (Mich. 1976). While some cases may present special circumstances in which counsel may be helpful, as a general rule,

there is no constitutional mandate requiring the appointment of the same...Sword, 249 N.W.2d at 93. Such courts have held, in most cases, civil non-support hearings are not complex. Id. While cases do vary and some situations may call for the assistance of counsel, there is no general rule requiring such a measure. Id. Thus, for these courts, although the defendant does have a strong liberty interest in remaining free from bodily restraint, this interest is not as strong as it would be if the defendant were being criminally prosecuted or charged with a crime.

Similarly, in a civil contempt action, courts have found that the defendant has the power and ability to control its own destiny. Thus, courts have relied upon the fact that the defendant is only in risk of losing its liberty if it is proven: 1) the defendant has the ability to comply with the court order; and 2) that the defendant has failed to make the necessary arrangements to do so. State ex rel. Dept. of Human Services v. Rael, 642 P.2d 1099, 1102 (N.M. 1982). Conversely, however, other courts have found that where the defendant is indigent, it is quite misleading to hold that civil contempt is somehow self-inflicted. Therefore, some courts note that it is the State, and not the indigent father, who holds the keys to the contemnor's release. Duval v. Duval, 322 A.2d 1, 3 (State 1974); In re Nevitt, 117 F. 448, 461 (8th Cir. 1902). In such cases, it is the State that places the contemnor in jail for failure to pay, and it is the State that establishes the conditions for release.

Duval, 322 A.2d at 3. Thus, for an indigent father who lacks the apparent ability to comply with the court's order, an order of civil contempt is no less an application of State power than is criminal confinement.

In Walker v. McLain, 768 F.2d 1181 (10th Cir. 1985), the court found that an indigent father who was facing incarceration in a civil non-support action was entitled to have court-appointed counsel. McLain, at 1184. In so ruling, the court stated that "[i]t is the defendant's interest in personal freedom, and not simply special sixth and fourteenth amendment right to counsel in criminal cases, which triggers the right to appointed counsel." Id. at 1183 (quoting Lassiter v. Department of Social Services of Durham County, 452 U.S. 18, *reh'g denied*, 453 U.S. 927 (1981)). The court further stated that it would be absurd to distinguish criminal from civil incarceration because, from the perspective of the incarcerated individual, "the jail is just as bleak no matter which label is used." Id. Moreover, the court found that the line between civil and criminal contempt is fine and rarely as clear as the State would suggest. Thus, the right to counsel, pursuant to the due process clause of the fourteenth amendment, "turns not on whether a proceeding may be characterized as 'criminal' or 'civil,' but on whether a proceeding may result in a deprivation of liberty." Id. (citing Ridgway v. Baker, 720 F.2d 1409, 1413 (5th Cir. 1983)).

Pursuant to Matthews v. Eldridge, 424 U.S. 319, 335 (1976), the McLain court set forth the elements that must be evaluated to

determine the need for court-appointed counsel. These elements include: 1) the private interest affected by state action; 2) the risk of erroneous deprivation of that interest without the assistance of counsel; and 3) the government's interest - both fiscal and administrative - in retaining the status quo. Id. The court found that in cases involving the possible incarceration of an indigent defendant, the defendant's interest - personal liberty - is one of the most important interests protected by the Constitution. However, where the defendant's incarceration may be conditional upon compliance with the purge condition, the court noted, that the interest personal liberty is not absolute. Id. at 1184.

Thus, as the defendant's interest in personal liberty diminishes, so does its right to appointed counsel. Id. However, the court found, where the defendant is truly indigent - where he has not ability to purge himself - his liberty interest is no more conditional than a criminal defendant's. That a truly indigent defendant may ever be incarcerated for failing to comply with its court-ordered support obligations, the court held, highlights the very need for the assistance of counsel.

In such cases the assistance of counsel would greatly aid the defendant: 1) in establishing its indigence; and 2) ensuring that the defendant is not improperly incarcerated. Id. While the State has a keen interest in assuring that children are supported, the court found that this interest is in no way superior to the interest in court-appointed counsel to assist the

non-supporting parent to establish that its failure to pay was not wilful.⁴

Finally, the court held due process requires, at a minimum "that an indigent defendant threatened with incarceration for civil contempt for non-support, who can establish indigence under the normal standards for appointment of counsel in a criminal case, be appointed counsel to assist him in his defense." Id. at 1185. See Sevier v. Turner, 742 F.2d 262, 267 (6th Cir. 1984) (holding the relevant question is not whether the proceeding is civil or criminal but whether the court intends to incarcerate the non-supporting defendant); Ridgway v. Baker, 740 F.2d 1409, 1413 (5th Cir. 1983) (finding a Sixth Amendment right to counsel for an indigent father in a civil non-support case); Nordgren v. Mitchell, 716 F.2d 1335 (10th Cir. 1983) (noting, by implication, that there is a right to court-appointed counsel for indigent civil non-support defendants); Henkel v. Bradshaw, 483 F.2d 1386, 1390 (9th Cir. 1973) (sating in dictum, that no indigent father may be imprisoned unless represented by counsel). Additionally, the court cited to several other federal court decisions which have uniformly established a right to court-appointed counsel in other types of civil contempt proceedings. U.S. v. Anderson, 583 D.2d 1154 (8th Cir. 1977) (contempt for refusing to comply with a grand jury summons); In re Di Bella, 518 F.2d 955 (2d Cir. 1975)

⁴Unlike those courts which have held that matters of civil non-support are rudimentary and straightforward, the court in McLain found that the issues in a non-support proceeding are seldom straightforward and that counsel will be assistance in insuring the accuracy and fairness of the proceeding. McLain at 1184.

(grand jury summons); In re Kilgo, 484 F.2d 1215 (4th Cir. 1973) (grand jury summons); In re Grand Jury Proceedings: U.S. v. Sun Kung Kang, 468 F.2d 1368 (9th Cir. 1972) (grand jury summons).

In the instant case, the trial court specifically found that this Appellant is capable of earning up to \$2,000.00, so there was no finding of indigency and clearly a finding of Appellant's ability to pay. (R.725). The trial court also specifically found that Appellant was underemployed for purposes of avoiding his child support obligation. (R.725). Thus, the trial court's determination that Appellant be held in contempt and immediately begin his jail sentence without appointment of counsel is supported by the record. However, even if this court accepts Appellant's arguments that he should have been appointed counsel and/or allowed to purge himself the issue is now moot. Appellant is not making any claims for damages, resulting specifically from the contempt order, and the contempt order is now complete, thus there is nothing to be gained by Appellant through consideration of this issue. Osguthorpe v. Osguthorpe, 236 Utah Adv. Rep. 28 (Utah Ct. App. 1994), See also Sanders v. Sharp, 818 P.2d 574, 577 (Utah Ct. App. 1991) which holds that a case is moot when the requested relief cannot effect the rights of the litigants.

POINT VII.

APPELLANT'S ARGUMENTS REGARDING FALSIFICATION OF COURT RECORD AND RULE 11 SANCTIONS ARE TOTALLY WITHOUT MERIT AND UNSUPPORTED BY THE RECORD OR AUTHORITY.

Appellant for the first time raises claims of falsification of record and arguments regarding Rule 11 before this court in his points 13 and 14. The arguments are blatantly unmeritorious.

Appellant cites no authority for his positions or either cites authority that is totally unrelated to facts in the record. Therefore, such arguments should be summarily rejected by this court.

CONCLUSION

The lower court properly addressed and dismissed all of the claims set forth by Appellant regarding due process, violation of the provisions of the U.S. Constitution, the Utah Constitution and Utah law. The lower court also properly specifically outlined its findings of fact and conclusions of law based upon the record and the law. Thus, the August 19, 1994 order by the court should be upheld and Appellant's appeal should be dismissed.

Respectfully submitted this 22 day of August, 1994.

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BILLY L. WALKER
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ASSISTANT ATTORNEYS GENERAL

Attorneys for Appellee

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be delivered two copies of the foregoing Appellee's Brief to the Appellant, Michael R. Barker, P.O. Box 142, Santa Clara, Utah.

DATED this 22nd day of August, 1994.

Michelle B. Gunga *Michelle B. Gunga*

ADDENDUM

34-34-2. Public policy.

It is hereby declared to be the public policy of the state of Utah that the right of persons to work, whether in private employment or for the state, its counties, cities, school districts, or other political subdivisions, shall not be denied or abridged on account of membership or nonmembership in any labor union, labor organization or any other type of association; and further, that the right to live includes the right to work. The exercise of the right to work must be protected and maintained free from undue restraints and coercion.

History: C. 1953, 34-34-2, enacted by L. 1969, ch. 85, § 144.

COLLATERAL REFERENCES

Am. Jur. 2d. — 48 Am. Jur. 2d Labor and Labor Relations § 12.

C.J.S. — 51 C.J.S. Labor Relations § 22. **Key Numbers.** — Labor Relations ¶ 14.

34-34-3. "Employer" defined.

The word "employer" as used in this chapter includes all persons, firms, associations, corporations, the state, its counties, cities, school districts and other political subdivisions.

History: C. 1953, 34-34-3, enacted by L. 1969, ch. 85, § 145.

34-34-4. Agreement, understanding or practice denying right to work declared illegal.

Any express or implied agreement, understanding or practice between any employer and any labor union, labor organization or any other type of association, whereby any person not a member of such union, organization or any other type of association shall be denied the right to work for an employer, or whereby membership in such labor union, labor organization or any other type of association is made a condition of employment or continuation of employment by such employer, or whereby any such union, organization or any other type of association acquires an employment monopoly in any enterprise or industry, is hereby declared to be an illegal combination or conspiracy and against public policy.

History: C. 1953, 34-34-4, enacted by L. 1969, ch. 85, § 146.

NOTES TO DECISIONS

Construction and application.

County employees who are fired by a newly elected Republican county commissioner on the ground that they are members of the Democratic party cannot contain reinstatement under this section. *Anderson v. Utah County*, 13

Utah 2d 99, 368 P.2d 912 (1962).

The phrase "any other type of association" does not include political parties. *Anderson v. Utah County*, 13 Utah 2d 99, 368 P.2d 912 (1962).

COLLATERAL REFERENCES

Am. Jur. 2d. — 48 Am. Jur. 2d Labor and
Labor Relations § 12.

C.J.S. — 51 C.J.S. Labor Relations § 22.
Key Numbers. — Labor Relations ⇐ 44.

34-34-5. Any agreement, understanding or practice designed to violate chapter declared illegal.

Any express or implied agreement, understanding or practice which is designed to cause or require, or has the effect of causing or requiring, any employer or labor union, labor organization or any other type of association, whether or not a party thereto, to violate any provision of this chapter is hereby declared an illegal agreement, understanding, or practice and contrary to public policy.

History: C. 1953, 34-34-5, enacted by L.
1969, ch. 85, § 147.

34-34-6. Conduct forcing violation of act illegal — Peaceful and orderly solicitation excepted.

Any person, firm, association, corporation, labor union, labor organization or any other type of association engaging in lockouts, layoffs, boycotts, picketing, work stoppages, or other conduct, a purpose of which is to compel or force any other person, firm, association, corporation, labor union, labor organization or any other type of association to violate any provision of this chapter shall be guilty of illegal conduct contrary to public policy; but nothing herein contained shall be construed to prevent or make illegal the peaceful and orderly solicitation and persuasion by members of a labor union, labor organization or any other type of association of others to join a labor union, labor organization or any other type of association, unaccompanied by any intimidation, use of force, threat of use of force, reprisal, or threat of reprisal.

History: C. 1953, 34-34-6, enacted by L.
1969, ch. 85, § 148.

34-34-7. Compelling person to join or not join labor union unlawful.

It shall be unlawful for any employer, person, firm, association, corporation, employee, labor union, labor organization or any other type of association, officer or agent of such, or member of same, to compel or force, or to attempt to compel or force, any person to join or refrain from joining any labor union, labor organization or any other type of association.

History: C. 1953, 34-34-7, enacted by L.
1969, ch. 85, § 149.

Section

62A-9-131. Legal actions — Evidence —
Value of benefits.

Section

62A-9-134. County attorney and attorney
general responsibilities.

62A-9-101. Legislative purpose.

It is the purpose of this chapter to provide assistance under appropriate programs to any person in this state who is in need as defined by relevant federal law, by this chapter, or by rules enacted by the department under this chapter. A person is in need and entitled to assistance only if there are not sufficient resources available for his use, within the limitations set forth in this chapter, and if he otherwise qualifies. Applicants and recipients under this chapter shall be encouraged and assisted to achieve economic independence and self-sufficiency.

History: C. 1953, 62A-9-101, enacted by L. 1988, ch. 1, § 218; 1994, ch. 12, § 76.

Amendment Notes. — The 1994 amend-

ment, effective May 2, 1994, made a stylistic change.

62A-9-104. Office — Creation — Powers and responsibilities.

Sunset Act. — Section 63-55-262 provides that the Office of Family Support is repealed July 1, 1999.

62A-9-114. General assistance — Public Assistance.

(1) Aid to Families with Dependent Children may be provided to families and children in accordance with Title IV-A of the Social Security Act and applicable federal regulations.

(2) (a) General Assistance may be provided to individuals who are not receiving direct money grants as Aid to Families with Dependent Children, or Supplemental Security Income, and who are unemployable according to standards promulgated by the department.

(b) General Assistance may be provided by payment in cash or in kind. The office may, by rule, limit the grants that are made to General Assistance recipients. Those limitations may be made in frequency and duration of payments, or by providing an amount less than the existing payment level for an otherwise similarly situated recipient of Aid to Families with Dependent Children.

(c) The office shall establish asset limitations for General Assistance recipients, similar in kind to the limitations described in Section 62A-9-117, but which may differ as to quantity, amount, or value.

(d) General Assistance may be granted to meet special nonrecurrent needs of recipients of Aid to Families with Dependent Children and to applicants for the federal Supplemental Security Income program, if they agree to reimburse the department for assistance advanced while awaiting the determination of eligibility by the Social Security Administration. Other than for the optional state supplementation made under the Social Security Act, no General Assistance payments may be made to current recipients of Aid to Families with Dependent Children or Supplemental Security Income.

(e) Public assistance may include payment for the reasonable cost of burial for recipients, if heirs or relatives are not financially able to assume this expense, and the county is determined not to be liable for the expense under Section 17-5-250. However, if the bodies of these persons are unclaimed, Section 53B-17-301 is applicable thereto. The office shall fix the costs of a reasonable burial and conditions under which burial expenditures may be made.

(3) Assistance may be provided to persons in need who are transients. That assistance may be designated under any of the foregoing public assistance programs for which they would otherwise qualify.

(4) The office may cooperate with any governmental unit or agency, or any private nonprofit agency in establishing work projects to provide employment for employable persons.

History: C. 1953, 62A-9-114, enacted by L. 1988, ch. 1, § 231; 1988, ch. 242, § 22; 1994, ch. 147, § 98.

ment, effective May 2, 1994, substituted "Section 17-5-250" for "Section 17-5-57" in Subsection (2)(e).

Amendment Notes. — The 1994 amend-

62A-9-121. Assignment of support.

(1) (a) The department shall obtain an assignment of support from each applicant or recipient regardless of whether the payment is court ordered.

(b) Any right to support from any other person that has accrued at the time the assignment is executed or, if none is executed, at the time of application for assistance, passes to the department upon the receipt of assistance, even if the recipient has not executed and delivered an assignment to the department.

(c) The right to support described in Subsection (b) includes a right to support in the applicant's or recipient's own behalf or in behalf of any family member for whom the applicant or recipient is applying for or receiving assistance.

(2) An assignment of support or a passing of rights by operation of law includes payments ordered, decreed, or adjudged by any court within this state, any other state, or territory of the United States and is not in lieu of, and shall not supersede or alter, any other court order, decree, or judgment.

(3) When an assignment is executed or the right to support passes to the department by operation of law, the applicant or recipient is entitled to regular monthly assistance and the support paid the department is a refund.

(4) All sums refunded, except any amount which is required to be credited to the federal government, shall be retained by the department for use in the administration of this section and for other authorized activities. Under this section authorized activity includes, but is not limited to, the use of refunded sums to obtain legal services where deemed necessary by the department, to enforce this section, Title 78, Chapters 45 and 45a, as well as any other statutes designated by the department.

History: C. 1953, 62A-9-121, enacted by L. 1988, ch. 1, § 238; 1988, ch. 22, § 40; 1994, ch. 140, § 1.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, rewrote Subsec-

tion (1) to clarify the provision as to the right to support; inserted "or the right to support passes to the department by operation of law" in Subsection (3); and made stylistic changes.

62A-11-104.1. Disclosure of information regarding employees.

(1) Upon request by the office, for purposes of an official investigation made in connection with its duties under Section 62A-11-104, the following disclosures shall be made to the office:

(a) a public or private employer shall disclose an employee's name, address, date of birth, income, social security number, and health insurance information pertaining to the employee and his dependents;

(b) an insurance organization subject to Title 31A, Insurance Code, or the insurance administrators of a self-insured employer shall disclose health insurance information pertaining to an insured or an insured's dependents, if known; and

(c) a financial institution subject to Title 7, Financial Institutions Act of 1981, shall disclose financial record information of a customer named in the request.

(2) The office shall specify by rule the type of health insurance and financial record information required to be disclosed under this section.

(3) All information received under this section is subject to Title 63, Chapter 2, Government Records Access and Management Act.

(4) An employer, financial institution, or insurance organization, or its agent or employee, is not civilly or criminally liable for providing information to the office in accordance with this section, whether the information is provided pursuant to oral or written request.

History: C. 1953, 62A-11-104.1, enacted by L. 1994, ch. 140, § 2.

Effective Dates. — Laws 1994, ch. 140

became effective on May 2, 1994, pursuant to Utah Const., Art. VI, Sec. 25.

62A-11-106. Office may file as real party in interest — Written consent to payment agreements — Money judgment in favor of obligee considered to be in favor of office to extent of right to recover.

(1) The office may file judicial proceedings as a real party in interest to establish, modify, and enforce a support order in the name of the state, any department of the state, the office, or an obligee.

(2) No agreement between an obligee and an obligor as to past, present, or future obligations, reduces or terminates the right of the office to recover from that obligor on behalf of the department for public assistance provided, unless the department has consented to the agreement in writing.

(3) Any court order that includes a money judgment 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 judgment debtor.

History: C. 1953, 62A-11-106, enacted by L. 1988, ch. 1, § 269; 1989, ch. 62, § 3; 1994, ch. 140, § 3.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, substituted "as to

past, present, or future obligations" for "either relieving an obligation or purporting to settle past, present, or future obligations, either as settlement or prepayment" in Subsection (2) and made a stylistic change in Subsection (1).

PART 3
PUBLIC SUPPORT OF CHILDREN

62A-11-301. Short title.

This part shall be known as the "Public Support of Children Act."

History: C. 1953, 62A-11-301, enacted by L. 1988, ch. 1, § 286. Uniform Reciprocal Enforcement of Support Act, § 77-31-1 et seq.

Cross-References. — Uniform Civil Liability for Support Act, § 78-45-1 et seq.

62A-11-302. Common-law and statutory remedies augmented — Public policy.

The state of Utah, exercising its police and sovereign power, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children shall be augmented by this part, which is directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies provided in this part are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this part be liberally construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving or avoiding, at least in part, the burden often borne by the general citizenry through public assistance programs.

History: C. 1953, 62A-11-302, enacted by L. 1988, ch. 1, § 287.

COLLATERAL REFERENCES

Utah Law Review. — Recent Developments in Utah Law — Judicial Decisions — Family Law, 1989 Utah L. Rev. 270.

62A-11-303. Definitions.

As used in this part:

(1) "Adjudicative proceeding" means an action or proceeding of the office conducted in accordance with Section 63-46b-1.

(2) "Administrative order" means an order that involves payment or collection of support that has been issued by the office, the department, or an administrative agency of another state or other comparable jurisdiction with similar authority to that of the office.

(3) "Assistance" or "public assistance" means assistance for Aid to Families with Dependent Children, public funds expended for the reasonable and necessary health and dental care of a dependent child, and public resources used for the benefit of a person, whether specified as financial aid, services, or otherwise.

PART 3
PUBLIC SUPPORT OF CHILDREN

62A-11-304.2. Issuance and modification of administrative order — Compliance with court order — Authority of office — Stipulated agreements — Interest — Notification requirements.

(1) Through an adjudicative proceeding the office may issue or modify an administrative order, based on the criteria outlined in Section 62A-11-304.3, that:

- (a) determines whether an obligor owes support;
- (b) requires an obligor to pay a specific or determinable amount of present and future support;
- (c) determines the amount of past due support; and
- (d) renews an administrative judgment. The office shall commence an adjudicative proceeding to renew a judgment by serving notice of agency action on the obligor before the judgment is barred by the applicable statute of limitations.

(2) If a court order has been issued, the office may not issue an order under Subsection (1) that is not based on the court order.

(3) The office may proceed under this section in the name of the state, any department of the state, the office, or the obligee.

(4) The office may accept voluntary acknowledgment of a support obligation and enter into stipulated agreements providing for the issuance of an administrative order under this part.

(5) The office may act in the name of the obligee in endorsing and cashing any drafts, checks, money orders, or other negotiable instruments received by the office for support.

(6) The office may assess interest not to exceed 1% per month on any unpaid support if notice of the assessment of interest has been provided to the obligor in a notice of agency action.

(7) The obligor shall, after a notice of agency action has been served on him under this part, keep the office informed of:

- (a) his current address;
- (b) the name and address of current payors of income;
- (c) availability of or access to health insurance coverage; and
- (d) applicable health insurance policy information.

History: C. 1953, 62A-11-304.2, enacted by L. 1989, ch. 62, § 10; 1994, ch. 140, § 5.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, deleted provisions in Subsection (2) setting forth conditions required for issuance by the office of an order

under Subsection (1) that is not based on a court order and rewrote Subsection (7), which read "The obligor shall notify the office of any change of address or employment that occurs after a notice of agency action has been properly served on him under this part."

62A-11-304.3. Administrative order — Basis.

(1) If a court order does not exist, the office shall base its administrative order on support guidelines established in accordance with the Family Support Act of 1988, 42 U.S.C. Section 1305 et seq.

(2) All funds appropriated or collected for publishing the division's publications shall be nonlapsing.

History: C. 1953, 63-46a-10, enacted by L. 1985, ch. 158, § 1; 1987, ch. 241, § 10; 1991, ch. 177, § 3; 1992, ch. 146, § 2; 1993, ch. 282, § 9; 1994, ch. 24, § 1.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, deleted former

Subsection (1)(e), which read: "publish court rules and proposals for court rules as defined in Section 36-20-1 when they are made available to members of the bar and the public for public comment," and redesignated the subsequent subsections accordingly

CHAPTER 46b

ADMINISTRATIVE PROCEDURES ACT

Section
63-46b-1.

Scope and applicability of chapter.

Section
63-46b-15.

Judicial review — Informal adjudicative proceedings.

63-46b-1. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

- (a) all state agency actions that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and
- (b) judicial review of these actions.

(2) This chapter does not govern:

- (a) the procedures for making agency rules, or the judicial review of those procedures or rules;
- (b) the issuance of any notice of a deficiency in the payment of a tax, the decision to waive penalties or interest on taxes, the imposition of and penalties or interest on taxes, or the issuance of any tax assessment, except that this chapter governs any agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of those actions;
- (c) state agency actions relating to extradition, to the granting of pardons or parole, commutations or terminations of sentences, or to the rescission, termination, or revocation of parole or probation, to actions and decisions of the Psychiatric Security Review Board relating to discharge, conditional release, or retention of persons under its jurisdiction, to the discipline of, resolution of grievances of, supervision of, confinement of, or the treatment of inmates or residents of any correctional facility, the Utah State Hospital, the Utah State Developmental Center, or persons in the custody or jurisdiction of the Division of Mental Health, or persons on probation or parole, or judicial review of those actions;
- (d) state agency actions to evaluate, discipline, employ, transfer, reassign, or promote students or teachers in any school or educational institution, or judicial review of those actions;

- (e) applications for employment and internal personnel actions within an agency concerning its own employees, or judicial review of those actions;
 - (f) the issuance of any citation or assessment under Title 35, Chapter 9, Utah Occupational Safety and Health Act, and Title 58, Chapter 55, Utah Construction Trades Licensing Act, except that this chapter governs any agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;
 - (g) state agency actions relating to management of state funds, the management and disposal of school and institutional trust land assets, except that this chapter governs any agency's final action commenced by any person pursuant to Section 65A-1-7, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of those actions;
 - (h) state agency actions under Title 7, Chapter 1, Article 3, Powers and Duties of Commissioner of Financial Institutions; and Title 7, Chapter 2, Possession of Depository Institution by Commissioner; Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies; and Title 63, Chapter 30, Utah Governmental Immunity Act, or judicial review of those actions;
 - (i) the initial determination of any person's eligibility for unemployment benefits, the initial determination of any person's eligibility for benefits under Title 35, Chapter 1, Workers' Compensation, and Title 35, Chapter 2, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;
 - (j) state agency actions relating to the distribution or award of monetary grants to or between governmental units, or for research, development, or the arts, or judicial review of those actions;
 - (k) the issuance of any notice of violation or order under Title 26, Chapter 8, Utah Emergency Medical Services System Act; Title 19, Chapter 2, Air Conservation Act; Title 19, Chapter 4, Safe Drinking Water Act; Title 19, Chapter 5, Water Quality Act; Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act; Title 19, Chapter 6, Part 4, Underground Storage Tank Act; or Title 19, Chapter 6, Part 7, Used Oil Management Act, except that this chapter governs any agency action commenced by any person authorized by law to contest the validity or correctness of the notice or order;
 - (l) state agency actions, to the extent required by federal statute or regulation to be conducted according to federal procedures;
 - (m) the initial determination of any person's eligibility for government or public assistance benefits;
 - (n) state agency actions relating to wildlife licenses, permits, tags, and certificates of registration;
 - (o) licenses for use of state recreational facilities; and
 - (p) state agency actions under Title 63, Chapter 2, Government Records Access and Management Act, except as provided in Section 63-2-603.
- (3) This chapter does not affect any legal remedies otherwise available to:
- (a) compel an agency to take action; or
 - (b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering conferences with parties and interested persons to:

- (i) encourage settlement;
- (ii) clarify the issues;
- (iii) simplify the evidence;
- (iv) facilitate discovery; or
- (v) expedite the proceedings; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56, respectively, of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5) (a) Declaratory proceedings authorized by Section 63-46b-21 are not governed by this chapter, except as explicitly provided in that section.

(b) Judicial review of declaratory proceedings authorized by Section 63-46b-21 are governed by this chapter.

(6) This chapter does not preclude an agency from enacting rules affecting or governing adjudicative proceedings or from following any of those rules, if the rules are enacted according to the procedures outlined in Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and if the rules conform to the requirements of this chapter.

(7) (a) If the attorney general issues a written determination that any provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of those provisions to that agency shall be suspended to the extent necessary to prevent the denial.

(b) The attorney general shall report the suspension to the Legislature at its next session.

(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening any time period prescribed in this chapter, except those time periods established for judicial review

History: C. 1953, 63-46b-1, enacted by L. 1987, ch. 161, § 257; 1988, ch. 72, § 15; 1990, ch. 306, § 2; 1991, ch. 207, § 39; 1991, ch. 212, § 5; 1991, ch. 259, § 51; 1992, ch. 30, § 128; 1992, ch. 280, § 57; 1992, ch. 303, § 12; 1993, ch. 91, § 1; 1994, ch. 40, § 4; 1994, ch. 200, § 86; 1994, ch. 297, § 13.

Amendment Notes. — The 1994 amendment by ch. 40, effective May 2, 1994, substituted "Utah Occupational Disease Act" for "Utah Occupational Disability Law" in Subsection (2)(i); substituted "Title 19, Chapter 2, Air Conservation Act" for "Title 19, Chapter 5, Water Quality Act" and "Title 19, Chapter 5, Water Quality Act" for "Title 19, Chapter 2, Air Conservation Act, or" and inserted "or Title 19, Chapter 6, Part 7, Used Oil Management Act"

in Subsection (2)(k); and made stylistic and punctuation changes throughout the section.

The 1994 amendment by ch. 200, effective June 1, 1994, deleted "Title 7, Chapter 8a, Utah Industrial Loan Corporation Guaranty Act," near the middle of Subsection (2)(h) and made stylistic changes.

The 1994 amendment by ch. 297, effective July 1, 1994, made stylistic and punctuation changes in Subsections (2)(f), (h), (i), and (k) and inserted "or Title 19, Chapter 6, Part 4, Underground Storage Tank Act" in Subsection (2)(k).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

tion, because jurisdiction attached under the statute in effect when the petition for review was filed. *National Parks & Conservation Ass'n v Board of State Lands*, 869 P.2d 909 (Utah 1993).

—**Formal adjudicative proceedings.**

Subdivision (3)(e)(iii) confers jurisdiction in the Supreme Court only over final orders and decrees that originate in formal adjudicative proceedings in agency actions. *Southern Utah Wilderness Alliance v. Board of State Lands & Forestry*, 830 P.2d 233 (Utah 1992).

Certiorari.

When exercising certiorari jurisdiction granted by this section, the Supreme Court reviews the decision of the Court of Appeals, not of the trial court; therefore, the briefs of the parties should address the decision of the Court of Appeals, not the decision of the trial court. *Butterfield v. Okubo*, 831 P.2d 97 (Utah 1992).

Cited in *State v. Humphrey*, 823 P.2d 464 (Utah 1991).

CHAPTER 2a

COURT OF APPEALS

Section

78-2a-3. Court of Appeals jurisdiction.

78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, Board of State Lands, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

- (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
- (ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) appeals from the circuit courts, except those from the small claims department of a circuit court;

(e) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(f) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;

(g) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(h) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

COLLATERAL REFERENCES

A.L.R. — Sexual partner's tort liability to other partner for fraudulent misrepresentation regarding sterility or use of birth control resulting in pregnancy, 2 A L R 5th 301

Parent's child support liability as affected by other parent's fraudulent misrepresentation regarding sterility or use of birth control, or refusal to abort pregnancy, 2 A.L.R.5th 337.

78-45-7. Determination of amount of support — Rebuttable guidelines.

- (1) (a) Prospective support shall be equal to the amount granted by prior court order unless there has been a material change of circumstance on the part of the obligor or obligee.
 - (b) If the prior court order contains a stipulated provision for the automatic adjustment for prospective support, the prospective support shall be the amount as stated in the order, without a showing of a material change of circumstances, if the stipulated provision:
 - (i) is clear and unambiguous;
 - (ii) is self-executing;
 - (iii) provides for support which equals or exceeds the base child support award required by the guidelines; and
 - (iv) does not allow a decrease in support as a result of the obligor's voluntary reduction of income.
- (2) If no prior court order exists, or a material change in circumstances has occurred, the court determining the amount of prospective support shall require each party to file a proposed award of child support using the guidelines before an order awarding child support or modifying an existing award may be granted.
- (3) If the court finds sufficient evidence to rebut the guidelines, the court shall establish support after considering all relevant factors, including but not limited to:
 - (a) the standard of living and situation of the parties;
 - (b) the relative wealth and income of the parties;
 - (c) the ability of the obligor to earn;
 - (d) the ability of the obligee to earn;
 - (e) the needs of the obligee, the obligor, and the child;
 - (f) the ages of the parties; and
 - (g) the responsibilities of the obligor and the obligee for the support of others.
- (4) When no prior court order exists, the court shall determine and assess all arrearages based upon the Uniform Child Support Guidelines described in this chapter.

History: L. 1957, ch. 110, § 7; 1977, ch. 145, § 10; 1984, ch. 13, § 2; 1989, ch. 214, § 3; 1990, ch. 100, § 2; 1994, ch. 118, § 2; 1994, ch. 140, § 14.

Amendment Notes. — The 1994 amendment by ch. 140, effective May 2, 1994, substituted "the Uniform Child Support Guidelines described in this chapter" for "but not limited to: (a) the amount of public assistance received by the obligee, if any; and (b) the funds that

have been reasonably and necessarily expended in support of spouse and children" at the end of Subsection (4).

The 1994 amendment by ch. 118, effective July 1, 1994, designated former Subsection (1) as Subsection (1)(a) and added Subsection (1)(b).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

NOTES TO DECISIONS

ANALYSIS

Modification of support.
Application of guidelines.
Divorce decree.
Cited.

Modification of support.**Application of guidelines.**

The trial court committed reversible error when it failed to apply the presumptive guidelines set forth in this chapter and determined child support outside the guidelines without finding there were special circumstances that justified deviation. *Hill v. Hill*, 841 P.2d 722 (Utah Ct. App. 1992).

—Divorce decree.

Plaintiff was required to file a petition to modify her divorce decree under Rule 6-404 of the Utah Code of Judicial Administration when she sought to enforce, by order to show cause, a provision in the decree that provided that future child support would be automatically adjusted to reflect changes in income. Such a provision violates Subsection (1) of this section, which provides that a child support order can only be modified based upon a showing of a material change in circumstances. *Grover v. Grover*, 839 P.2d 871 (Utah Ct. App. 1992).

Cited in *Baker v. Baker*, 226 Utah Adv. Rep. 27 (Utah Ct. App. 1993).

78-45-7.1. Medical expenses of dependent children — Assigning responsibility for payment — Insurance coverage — Income withholding.

The court shall include the following in its order:

- (1) a provision assigning responsibility for the payment of reasonable and necessary medical expenses for the dependent children;
- (2) a provision requiring the purchase and maintenance of appropriate insurance for the medical expenses of dependent children, if coverage is or becomes available at a reasonable cost;
- (3) provisions for income withholding, in accordance with Title 62A, Chapter 11, Parts 4 and 5; and
- (4) with regard to child support orders issued or modified on or after January 1, 1994, that are subject to income withholding, an order assessing against the obligor an additional \$7 per month check processing fee to be included in the amount withheld and paid to the Office of Recovery Services within the Department of Human Services for the purposes of income withholding in accordance with Title 62A, Chapter 11, Parts 4 and 5.

History: C. 1953, 78-45-7.1, enacted by L. 1984, ch. 13, § 3; 1990, ch. 166, § 3; 1993, ch. 261, § 12; 1994, ch. 118, § 3.

Amendment Notes. — The 1993 amendment, effective January 1, 1994, rewrote the undesignated introductory paragraph, which read "When no prior court order exists or the prior court order makes no specific provision for the payment of medical and dental expenses for

dependent children, the court in its order"; made several stylistic changes in Subsections (1) and (2); and added Subsections (3) and (4).

The 1994 amendment, effective July 1, 1994, deleted "and dental" after "medical" in Subsection (1) and deleted "health, hospital, and dental care" after "appropriate" and inserted "medical expenses" in Subsection (2).

78-45-7.2. Application of guidelines — Rebuttal.

- (1) The guidelines apply to any judicial or administrative order establishing or modifying an award of child support entered on or after July 1, 1989.
- (2) (a) The child support guidelines shall be applied as a rebuttable presumption in establishing or modifying the amount of temporary or permanent child support.

(b) The rebuttable presumption means the provisions and considerations required by the guidelines, the award amounts resulting from the application of the guidelines, and the use of worksheets consistent with these guidelines are presumed to be correct, unless rebutted under the provisions of this section.

(3) A written finding or specific finding on the record supporting the conclusion that complying with a provision of the guidelines or ordering an award amount resulting from use of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a particular case is sufficient to rebut the presumption in that case.

(4) (a) Natural or adoptive children of either parent who live in the home of that parent and are not children in common to both parties may at the option of either party be taken into account under the guidelines in setting or modifying a child support award, as provided in Subsection (5).

(b) Additional worksheets shall be prepared that compute the obligations of the respective parents for the additional children. The obligations shall then be subtracted from the appropriate parent's income before determining the award in the instant case.

(5) In a proceeding to modify an existing award, consideration of natural or adoptive children other than those in common to both parties may be applied to mitigate an increase in the award but may not be applied to justify a decrease in the award.

(6) With regard to child support orders, enactment of the guidelines and any subsequent change in the guidelines constitutes a substantial or material change of circumstances as a ground for modification or adjustment of a court order, if there is a difference of at least 25% between the existing order and the guidelines. In cases enforced under IV-D of Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., the office may request modification, in accordance with the requirements of the Family Support Act of 1988, Public Law 100-485, no more often than once every three years.

History: C. 1953, 78-45-7.2, enacted by L. 1989, ch. 214, § 4; 1990, ch. 100, § 3; 1990, ch. 275, § 2; 1994, ch. 118, § 4.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, inserted “and the use of worksheets consistent with these guidelines” in Subsection (2)(b); in Subsection (6), inserted “or adjustment” in the first sentence and substituted “In cases enforced under IV-D

of Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq.” for “With regard to IV-D cases” at the beginning of the second sentence; and made stylistic changes.

Federal Law. — The Family Support Act of 1988, Public Law 100-485, cited in Subsection (6), amended various sections throughout Title IV of the Social Security Act, 42 U.S.C. § 601 et seq.

NOTES TO DECISIONS

Modification of award.

The trial court committed reversible error when it failed to apply the presumptive guidelines set forth in this chapter and determined

child support outside the guidelines without finding there were special circumstances that justified deviation. *Hill v. Hill*, 841 P.2d 722 (Utah Ct. App. 1992).

78-45-7.3. Procedure — Documentation — Stipulation.

- (1) In a default or uncontested proceeding, the moving party shall submit:
 - (a) a completed child support worksheet;
 - (b) the financial verification required by Subsection 78-45-7.5(5); and

- (c) a written statement indicating whether or not the amount of child support requested is consistent with the guidelines.
- (2) (a) If the documentation of income required under Subsection (1) is not available, a verified representation of the defaulting party's income by the moving party, based on the best evidence available, may be submitted.
- (b) The evidence shall be in affidavit form and may only be offered after a copy has been provided to the defaulting party in accordance with Utah Rules of Civil Procedure or Title 63, Chapter 46b, Administrative Procedures Act, in an administrative proceeding.
- (3) (a) In a stipulated proceeding, one of the moving parties shall submit:
- (i) a completed child support worksheet;
 - (ii) the financial verification required by Subsection 78-45-7.5(5); and
 - (iii) a written statement indicating whether or not the amount of child support requested is consistent with the guidelines.
- (b) A hearing is not required, but the guidelines shall be used to review the adequacy of a child support order negotiated by the parents.
- (c) A stipulated amount for child support or combined child support and alimony is adequate under the guidelines if the stipulated child support amount or combined amount equals or exceeds the base child support award required by the guidelines.

History: C. 1953, 78-45-7.3, enacted by L. 1989, ch. 214, § 5; 1990, ch. 100, § 4; 1994, ch. 118, § 5.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, in Subsection (3)(c), substituted "equals or exceeds the base"

for "exceeds the total" and deleted the former second sentence which read "When the stipulated amount exceeds the guidelines, it may be awarded without a finding under Section 78-45-7 2."

78-45-7.4. Obligation — Adjusted gross income used.

Adjusted gross income shall be used in calculating each parent's share of the base combined child support obligation. Only income of the natural or adoptive parents of the child may be used to determine the award under these guidelines.

History: C. 1953, 78-45-7.4, enacted by L. 1989, ch. 214, § 6; 1994, ch. 118, § 6.

Amendment Notes. — The 1994 amend-

ment, effective July 1, 1994, substituted "base combined child support obligation" for "child support award"

78-45-7.5. Determination of gross income — Imputed income.

- (1) As used in the guidelines, "gross income" includes:
- (a) prospective income from any source, including nonearned sources, except under Subsection (3); and
 - (b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment compensation, disability insurance benefits, and payments from "nonmeans-tested" government programs.

(2) Income from earned income sources is limited to the equivalent of one full-time job.

(3) Specifically excluded from gross income are:

- (a) Aid to Families with Dependent Children (AFDC);
- (b) benefits received under a housing subsidy program, the Job Training Partnership Act, S.S.I., Medicaid, Food Stamps, or General Assistance; and
- (c) other similar means-tested welfare benefits received by a parent.

(4) (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.

(b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes.

(5) (a) When possible, gross income should first be computed on an annual basis and then recalculated to determine the average gross monthly income.

(b) Each parent shall provide verification of current income. Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds the verification is not reasonably available. Verification of income from records maintained by the Office of Employment Security may be substituted for pay stubs, employer statements, and income tax returns.

(c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists.

(6) Gross income includes income imputed to the parent under Subsection (7).

(7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed or a hearing is held and a finding made that the parent is voluntarily unemployed or underemployed.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community.

(c) If a parent has no recent work history, income shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) Income may not be imputed if any of the following conditions exist:

- (i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn;
- (ii) a parent is physically or mentally disabled to the extent he cannot earn minimum wage;
- (iii) a parent is engaged in career or occupational training to establish basic job skills; or

- (iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.
- (8) (a) Gross income may not include the earnings of a child who is the subject of a child support award nor benefits to a child in the child's own right such as Supplemental Security Income.
- (b) Social Security benefits received by a child due to the earnings of a parent may be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. Other unearned income of a child may be considered as income to a parent depending upon the circumstances of each case.

History: C. 1953, 78-45-7.5, enacted by L. 1989, ch. 214, § 7; 1990, ch. 100, § 5; 1994, ch. 118, § 7.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, rewrote Subsection (5)(b).

NOTES TO DECISIONS

ANALYSIS

Findings by court.
Imputed income.
Cited.

Findings by court.

Although a trial court entered findings required by Subsection 7(b), since the trial court failed to enter any findings required under Subsection (7)(a), the findings on the whole were insufficient. *Hall v. Hall*, 858 P.2d 1018 (Utah Ct. App. 1993).

Imputed income.

Even though the court's findings of fact did

not include a specific finding that ex-husband was underemployed, because he had acquiesced to the imputation of income at the trial level and because his job history and current employment options inarguably supported this imputation, the trial court did not abuse its discretion in imputing income in an amount greater than the ex-husband's current salary. *Hill v. Hill*, 229 Utah Adv. Rep. 46 (Utah Ct. App. 1993).

Cited in *Cummings v. Cummings*, 821 P.2d 472 (Utah Ct. App. 1991).

78-45-7.7. Calculation of obligations.

(1) The parents' child support obligation shall be divided between them in proportion to their adjusted gross incomes, unless the low income table is applicable.

(2) Except in cases of joint physical custody and split custody as defined in Section 78-45-2 and in cases where the obligor's adjusted gross income is \$1,050 or less monthly, the base child support award shall be determined as follows:

(a) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table.

(b) Calculate each parent's proportionate share of the base combined child support obligation by multiplying the combined child support obligation by each parent's percentage of combined adjusted gross income.

(3) In cases where the monthly adjusted gross income of the obligor is between \$650 and \$1,050, the base child support award shall be the lesser of the amount calculated in accordance with Subsection (2) and the amount calculated using the low income table.

(4) The base combined child support obligation table provides combined child support obligations for up to six children. For more than six children, additional amounts may be added to the base child support obligation shown.

Unless rebutted by Subsection 78-45-7.2(3), the amount ordered shall not be less than the amount which would be ordered for up to six children.

(5) If the monthly adjusted gross income of the obligor is \$649 or less, the court or administrative agency shall determine the amount of the child support obligation on a case-by-case basis, but the base child support award shall not be less than \$20.

(6) The amount shown on the table is the support amount for the total number of children, not an amount per child.

History: C. 1953, 78-45-7.7, enacted by L. 1989, ch. 214, § 9; 1990, ch. 100, § 6; 1994, ch. 118, § 8.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, added “unless the low income table is applicable” at the end of Subsection (1); inserted “and in cases where the obligor’s adjusted gross income is \$1,050 or less monthly” and substituted “base” for “total” in the introductory language of Subsection (2); inserted “combined” the second time the word appears in Subsection (2)(a); deleted “and subtracting from the products the children’s por-

tion of any monthly payments made directly by each parent for medical and dental insurance premiums” at the end of Subsection (2)(b); deleted former Subsections (2)(c) and (2)(d) relating to the calculation of the child support award; added present Subsections (3) and (5) and redesignated the subsections accordingly; in present Subsection (4), substituted “six children” for “ten children” in two places, substituted “may” for “shall” in the second sentence and added the third sentence; and made stylistic changes.

NOTES TO DECISIONS

Cited in *Watson v. Watson*, 837 P.2d 1 (Utah Ct. App. 1992).

78-45-7.8. Split custody — Obligation calculations.

In cases of split custody, the base child support award shall be determined as follows:

(1) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table. Allocate a portion of the calculated amount between the parents in proportion to the number of children for whom each parent has physical custody. The amounts so calculated are a tentative base child support obligation due each parent from the other parent for support of the child or children for whom each parent has physical custody.

(2) Multiply the tentative base child support obligation due each parent by the percentage that the other parent’s adjusted gross income bears to the total combined adjusted gross income of both parents.

(3) Subtract the lesser amount in Subsection (2) from the larger amount to determine the base child support award to be paid by the parent with the greater financial obligation.

History: C. 1953, 78-45-7.8, enacted by L. 1989, ch. 214, § 10; 1990, ch. 100, § 7; 1994, ch. 118, § 9.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, substituted “base” for “total” in the introductory language; inserted “combined” the second time the word appears in the first sentence of Subsection (1);

deleted former Subsection (3) relating to subtraction of payments for medical and dental insurance premiums; redesignated former Subsection (4) as Subsection (3); deleted former Subsections (5) and (6) relating to allocation of combined monthly work related child care costs and calculation of the total child support award; and made stylistic changes.

78-45-7.9. Joint physical custody — Obligation calculations.

In cases of joint physical custody, the base child support award shall be determined as follows.

(1) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table.

(2) Calculate each parent's proportionate share of the base combined child support obligation by multiplying the base combined child support obligation by each parent's percentage of combined adjusted gross income. The amounts so calculated are a tentative base child support obligation due from each parent for support of the children.

(3) Multiply each parent's tentative base child support obligation by the percentage of time the children spend with the other parent to determine each parent's tentative obligation to the other parent.

(4) Calculate the base child support award to be paid by the obligor by subtracting the lesser amount calculated in Subsection (3) from the larger amount.

(5) The parent determined to be the obligor in Subsection (4) shall pay the amount calculated in Subsection (4) when the obligee has physical custody.

History: C. 1953, 78-45-7.9, enacted by L. 1989, ch. 214, § 11; 1990, ch. 100, § 8; 1994, ch. 118, § 10.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, substituted "base" for "total" in the introductory language; inserted "combined" the second time the word appears in Subsection (1), inserted "base" the second time the word appears in the first sentence of Subsection (2), deleted former Subsection (4) relating to subtraction of payments

made for medical and dental insurance premiums; redesignated former Subsection (5) as Subsection (4), deleted former Subsection (6) relating to allocation of the combined work related child care cost of the parents; redesignated former Subsection (7) as Subsection (5) and rewrote the provision; deleted former Subsection (8) which read "Include the amounts determined in Subsections (7)(a) and (b) and the two total child support awards in the child support order"; and made stylistic changes.

78-45-7.10. Reduction when child becomes 18.

(1) When a child becomes 18 years of age, or has graduated from high school during the child's normal and expected year of graduation, whichever occurs later, the base child support award is automatically reduced to reflect the lower base combined child support obligation shown in the table for the remaining number of children due child support, unless otherwise provided in the child support order.

(2) The award may not be reduced by a per child amount derived from the base child support award originally ordered.

History: C. 1953, 78-45-7.10, enacted by L. 1989, ch. 214, § 12; 1994, ch. 118, § 11.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, inserted "or has

graduated from high school during the child's normal and expected year of graduation, whichever occurs later" and deleted "combined" before "child support award" in Subsection (1).

78-45-7.11. Reduction for extended visitation.

(1) The child support order shall provide that the base child support award be reduced by 50% for each child for time periods during which the child is with the noncustodial parent by order of the court or by written agreement of the parties for at least 25 of any 30 consecutive days. If the dependent child is a recipient of Aid to Families with Dependent Children, any agreement by the parties for reduction of child support during extended visitation shall be approved by the administrative agency. However, normal visitation and holiday visits to the custodial parent shall not be considered an interruption of the consecutive day requirement.

(2) For purposes of this section the per child amount to which the abatement applies shall be calculated by dividing the base child support award by the number of children included in the award.

History: C. 1953, 78-45-7.11, enacted by L. 1989, ch. 214, § 13; 1990, ch. 100, § 9; 1994, ch. 118, § 12.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, in Subsection (1), substituted the language beginning "which the child is" for "which the order grants specific extended visitation for that child for at least 25

of any 30 consecutive days" at the end of the first sentence and substituted the second and third sentences for "Only the base child support award is affected by the 50% abatement. The amount to be paid for work related child care costs may be suspended if the costs are not incurred during the extended visitation."

78-45-7.12. Income in excess of tables.

If the combined adjusted gross income exceeds the highest level specified in the table, an appropriate and just child support amount shall be ordered on a case-by-case basis, but the amount ordered may not be less than the highest level specified in the table for the number of children due support.

History: C. 1953, 78-45-7.12, enacted by L. 1989, ch. 214, § 14; 1994, ch. 118, § 13.

Amendment Notes. — The 1994 amend-

ment, effective July 1, 1994, substituted "shall" for "may" and inserted "on a case-by-case basis."

NOTES TO DECISIONS

Cited in *Baker v. Baker*, 226 Utah Adv. Rep. 27 (Utah Ct. App. 1993).

78-45-7.13. Advisory committee — Membership and functions.

(1) On or before March 1, 1995, and every fourth year subsequently, the governor shall appoint an advisory committee consisting of:

(a) two representatives recommended by the Office of Recovery Services;

(b) two representatives recommended by the Judicial Council;

(c) two representatives recommended by the Utah State Bar Association; and

(d) an uneven number of additional persons, not to exceed five, who represent diverse interests related to child support issues, as the governor may consider appropriate. However, none of the individuals appointed under this subsection may be members of the Utah State Bar Association.

(2) (a) The advisory committee shall review the child support guidelines to ensure their application results in the determination of appropriate child support award amounts.

(b) The committee shall report to the Legislative Judiciary Interim Committee on or before October 1 in 1989 and 1991, and then on or before October 1 of every fourth year subsequently.

(c) The committee's report shall include recommendations of the majority of the committee, as well as specific recommendations of individual members of the committee.

(3) The committee members serve without compensation. Staff for the committee shall be provided from the existing budgets of the Department of Human Services and the Judicial Council. The committee ceases to exist no later than the date the subsequent committee under this section is appointed.

History: C. 1953, 78-45-7.13, enacted by L. 1989, ch. 214, § 15; 1990, ch. 183, § 58; 1994, ch. 118, § 14.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, substituted

"March 1, 1995" for "May 1, 1989 and May 1, 1991" and deleted "then on or before May 1 of" before "every fourth year" in the introductory language of Subsection (1).

78-45-7.14. Base combined child support obligation table and low income table.

The following includes the Base Combined Child Support Obligation Table and the Low Income Table:

BASE COMBINED CHILD SUPPORT OBLIGATION TABLE
(Both Parents)

Monthly Combined Adj. Gross Income		Number of Children					
		1	2	3	4	5	6
From	To						
650	— 675	99	184	191	198	200	201
676	— 700	103	190	198	205	207	209
701	— 725	106	197	205	212	214	216
726	— 750	110	204	212	220	221	223
751	— 775	113	211	219	227	229	231
776	— 800	117	218	226	234	236	238
801	— 825	121	224	243	261	263	265
826	— 850	124	231	253	275	277	279
851	— 875	128	238	263	289	291	294
876	— 900	132	245	274	303	305	308
901	— 925	135	251	284	316	319	322
926	— 950	139	258	294	330	333	336
951	— 975	143	265	305	344	347	350
976	— 1,000	146	272	315	358	361	364
1,001	— 1,050	154	285	335	385	389	393
1,051	— 1,100	161	299	356	413	417	421
1,101	— 1,150	168	313	377	441	444	449

Monthly Combined Adj. Gross Income		Number of Children					
		1	2	3	4	5	6
From	To						
1,151	— 1,200	176	326	387	449	454	460
1,201	— 1,250	183	340	403	465	475	484
1,251	— 1,300	190	353	418	482	496	508
1,301	— 1,350	198	367	433	499	516	532
1,351	— 1,400	205	381	448	515	537	556
1,401	— 1,450	212	394	463	532	558	580
1,451	— 1,500	220	408	478	549	579	605
1,501	— 1,550	227	421	493	565	600	629
1,551	— 1,600	234	435	509	582	620	653
1,601	— 1,650	242	449	524	599	641	677
1,651	— 1,700	249	462	539	615	662	701
1,701	— 1,750	256	476	554	632	683	725
1,751	— 1,800	264	489	569	649	704	749
1,801	— 1,850	271	503	584	664	723	771
1,851	— 1,900	278	517	597	677	736	786
1,901	— 1,950	286	530	610	690	750	800
1,951	— 2,000	293	544	622	700	752	813
2,001	— 2,100	308	571	643	716	779	833
2,101	— 2,200	319	592	666	741	807	862
2,201	— 2,300	328	608	687	766	835	891
2,301	— 2,400	336	625	708	791	862	921
2,401	— 2,500	345	641	725	809	882	942
2,501	— 2,600	354	658	746	834	909	972
2,601	— 2,700	362	674	767	859	937	1,001
2,701	— 2,800	371	691	788	885	964	1,031
2,801	— 2,900	380	707	809	910	992	1,060
2,901	— 3,000	388	724	830	936	1,020	1,090
3,001	— 3,100	397	740	851	962	1,048	1,120
3,101	— 3,200	406	756	872	987	1,076	1,149
3,201	— 3,300	414	773	893	1,013	1,103	1,179
3,301	— 3,400	423	789	914	1,039	1,131	1,208
3,401	— 3,500	431	804	934	1,064	1,159	1,238
3,501	— 3,600	438	817	953	1,090	1,187	1,268
3,601	— 3,700	444	830	973	1,116	1,215	1,297
3,701	— 3,800	451	843	992	1,141	1,243	1,327
3,801	— 3,900	458	856	1,012	1,167	1,270	1,356
3,901	— 4,000	465	870	1,031	1,192	1,297	1,386
4,001	— 4,100	472	883	1,050	1,217	1,325	1,415
4,101	— 4,200	479	896	1,069	1,242	1,352	1,444
4,201	— 4,300	486	909	1,088	1,267	1,379	1,474
4,301	— 4,400	493	923	1,107	1,292	1,407	1,503
4,401	— 4,500	499	936	1,131	1,326	1,443	1,541
4,501	— 4,600	506	949	1,150	1,350	1,470	1,570
4,601	— 4,700	513	962	1,169	1,375	1,498	1,600
4,701	— 4,800	520	975	1,188	1,400	1,525	1,629

UNIFORM CIVIL LIABILITY FOR SUPPORT ACT

78-45-7.14

Monthly Combined Adj. Gross Income		Number of Children					
		1	2	3	4	5	6
From	To						
4,801	— 4,900	527	989	1,207	1,425	1,552	1,658
4,901	— 5,000	534	1,002	1,226	1,450	1,580	1,687
5,001	— 5,100	541	1,015	1,245	1,475	1,607	1,717
5,101	— 5,200	547	1,028	1,264	1,500	1,634	1,746
5,201	— 5,300	554	1,042	1,282	1,522	1,658	1,772
5,301	— 5,400	561	1,055	1,300	1,544	1,682	1,797
5,401	— 5,500	568	1,068	1,317	1,566	1,706	1,823
5,501	— 5,600	575	1,081	1,335	1,588	1,730	1,848
5,601	— 5,700	582	1,093	1,351	1,610	1,754	1,874
5,701	— 5,800	586	1,103	1,367	1,632	1,778	1,899
5,801	— 5,900	591	1,112	1,383	1,653	1,802	1,925
5,901	— 6,000	596	1,122	1,398	1,675	1,826	1,950
6,001	— 6,100	601	1,131	1,414	1,697	1,850	1,976
6,101	— 6,200	605	1,141	1,430	1,719	1,874	2,001
6,201	— 6,300	610	1,150	1,445	1,740	1,897	2,026
6,301	— 6,400	615	1,159	1,461	1,762	1,921	2,052
6,401	— 6,500	620	1,169	1,480	1,791	1,951	2,084
6,501	— 6,600	624	1,178	1,495	1,812	1,975	2,109
6,601	— 6,700	629	1,188	1,511	1,834	1,998	2,134
6,701	— 6,800	629	1,188	1,511	1,834	1,998	2,134
6,801	— 6,900	673	1,188	1,511	1,834	1,998	2,134
6,901	— 7,000	680	1,188	1,511	1,834	1,998	2,134
7,001	— 7,100	687	1,188	1,511	1,834	1,998	2,134
7,101	— 7,200	694	1,188	1,511	1,834	1,998	2,134
7,201	— 7,300	701	1,188	1,520	1,834	1,998	2,134
7,301	— 7,400	706	1,189	1,531	1,834	1,998	2,134
7,401	— 7,500	710	1,197	1,541	1,834	1,998	2,134
7,501	— 7,600	715	1,205	1,551	1,834	1,998	2,134
7,601	— 7,700	719	1,213	1,562	1,834	1,998	2,134
7,701	— 7,800	723	1,220	1,572	1,834	1,998	2,134
7,801	— 7,900	728	1,228	1,582	1,834	1,998	2,137
7,901	— 8,000	732	1,236	1,592	1,834	2,000	2,150
8,001	— 8,100	737	1,244	1,603	1,834	2,013	2,164
8,101	— 8,200	741	1,252	1,613	1,841	2,026	2,178
8,201	— 8,300	746	1,259	1,623	1,853	2,039	2,192
8,301	— 8,400	750	1,267	1,633	1,864	2,052	2,206
8,401	— 8,500	755	1,275	1,644	1,876	2,064	2,220
8,501	— 8,600	759	1,283	1,654	1,887	2,077	2,234
8,601	— 8,700	763	1,291	1,664	1,899	2,090	2,247
8,701	— 8,800	768	1,298	1,675	1,911	2,103	2,261
8,801	— 8,900	772	1,306	1,685	1,922	2,116	2,275
8,901	— 9,000	777	1,314	1,695	1,934	2,129	2,289
9,001	— 9,100	781	1,322	1,705	1,945	2,141	2,303
9,101	— 9,200	786	1,330	1,716	1,957	2,154	2,317
9,201	— 9,300	790	1,337	1,726	1,969	2,167	2,330

Monthly Combined Adj. Gross Income		Number of Children					
		1	2	3	4	5	6
From	To						
9,301	— 9,400	795	1,345	1,736	1,980	2,180	2,344
9,401	— 9,500	799	1,353	1,747	1,992	2,193	2,358
9,501	— 9,600	803	1,361	1,757	2,003	2,206	2,372
9,601	— 9,700	808	1,369	1,767	2,015	2,218	2,386
9,701	— 9,800	812	1,376	1,777	2,027	2,231	2,400
9,801	— 9,900	817	1,384	1,788	2,038	2,244	2,414
9,901	— 10,000	821	1,392	1,798	2,050	2,257	2,427
10,001	— 10,100	826	1,400	1,808	2,061	2,270	2,441

LOW INCOME TABLE

(Obligor Parent Only)

Monthly Adj. Gross Income		Number of Children					
		1	2	3	4	5	6
From	To						
650	— 675	23	23	23	23	24	24
676	— 700	45	46	46	47	47	48
701	— 725	68	68	69	70	71	71
726	— 750	90	91	92	93	94	95
751	— 775	113	114	115	116	118	119
776	— 800		137	138	140	141	143
801	— 825		159	161	163	165	166
826	— 850		182	184	186	188	190
851	— 875		205	207	209	212	214
876	— 900		228	230	233	235	238
901	— 925		250	253	256	259	261
926	— 950			276	279	282	285
951	— 975			299	302	306	309
976	— 1,000				326	329	333
1,001	— 1,050				372	376	380

History: C. 1953, 78-45-7.14, enacted by L. 1994, ch. 118, § 15.

Repeals and Reenactments. — Laws 1994, ch. 118, § 15 repeals former § 78-45-

7 14, as last amended by Laws 1990, ch. 100, § 10, containing the "Base Combined Child Support Obligation Table," and enacts the present section, effective July 1, 1994.

NOTES TO DECISIONS

Cited in Baker v. Baker, 226 Utah Adv. Rep. 27 (Utah Ct. App. 1993).

78-45-7.15. Medical expenses.

(1) The court shall order that insurance for the medical expenses of the minor children be provided by a parent if it is available at a reasonable cost.

(2) In determining which parent shall be ordered to maintain insurance for medical expenses, the court or administrative agency may consider the:

- (a) reasonableness of the cost;
- (b) availability of a group insurance policy;
- (c) coverage of the policy; and
- (d) preference of the custodial parent.

(3) The order shall require each parent to share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of insurance.

(4) The children's portion of the premium is a per capita share of the premium actually paid. The premium expense for the children shall be calculated by dividing the premium amount by the number of persons covered under the policy and multiplying the result by the number of children in the instant case.

(5) The order shall require each parent to share equally all reasonable and necessary uninsured medical expenses, including deductibles and copayments, incurred for the dependent children and actually paid by the parents.

(6) The parent ordered to maintain insurance shall provide verification of coverage to the other parent, or to the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., upon initial enrollment of the dependent children, and thereafter on or before January 2 of each calendar year. The parent shall notify the other parent, or the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., of any change of insurance carrier, premium, or benefits within 30 calendar days of the date he first knew or should have known of the change.

(7) A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment.

(8) In addition to any other sanctions provided by the court, a parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with Subsections (6) and (7).

History: C. 1953, 78-45-7.15, enacted by L. 1994, ch. 118, § 16.

Repeals and Reenactments. — Laws 1994, ch. 118, § 16 repeals former § 78-45-

7 15, as last amended by Laws 1990, ch. 100, § 11, relating to medical expenses, and enacts the present section, effective July 1, 1994.

78-45-7.16. Child care expenses — Expenses not incurred.

(1) The child support order shall require that each parent share equally the reasonable work-related child care expenses of the parents.

(2) (a) If an actual expense for child care is incurred, a parent shall begin paying his share on a monthly basis immediately upon presentation of proof of the child care expense, but if the child care expense ceases to be incurred, that parent may suspend making monthly payment of that expense while it is not being incurred, without obtaining a modification of the child support order.

(b) (i) In the absence of a court order to the contrary, a parent who incurs child care expense shall provide written verification of the cost and identity of a child care provider to the other parent upon initial engagement of a provider and thereafter on the request of the other parent.

(ii) In the absence of a court order to the contrary, the parent shall notify the other parent of any change of child care provider or the monthly expense of child care within 30 calendar days of the date of the change.

(3) In addition to any other sanctions provided by the court, a parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with Subsection (2)(b).

History: C. 1953, 78-45-7.16, enacted by L. 1989, ch. 214, § 18; 1990, ch. 100, § 12; 1994, ch. 118, § 17.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, rewrote this section which read "(1) The monthly amount to be paid for reasonable work related child care costs actually incurred on behalf of the depen-

dent children of the parents shall be specified as a separate monthly amount in the order.

"(2) If an actual expense included in an amount specified in the order ceases to be incurred, the obligor may suspend making monthly payment of that expense while it is not being incurred, without obtaining a modification of the child support order."

78-45-7.17. Child care costs.

(1) The need to include child care costs in the child support order is presumed, if the custodial parent or the noncustodial parent, during extended visitation, is working and actually incurring the child care costs.

(2) The need to include child care costs is not presumed, but may be awarded on a case-by-case basis, if the costs are related to the career or occupational training of the custodial parent, or if otherwise ordered by the court in the interest of justice.

History: C. 1953, 78-45-7.17, enacted by L. 1989, ch. 214, § 19; 1994, ch. 118, § 18.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, inserted "or the noncustodial parent, during extended visita-

tion" in Subsection (1); added "or if otherwise ordered by the court in the interest of justice" at the end of Subsection (2); and made stylistic changes.

78-45-7.18. Limitation on amount of support ordered.

(1) There is no maximum limit on the base child support award that may be ordered using the base combined child support obligation table, using the low income table, or awarding medical expenses except under Subsection (2).

(2) If amounts under either table as provided in Section 78-45-7.14 in combination with the award of medical expenses exceeds 50% of the obligor's adjusted gross income, or by adding the child care costs, total child support would exceed 50% of the obligor's adjusted gross income, the presumption under Section 78-45-7.17 is rebutted.

History: C. 1953, 78-45-7.18, enacted by L. 1989, ch. 214, § 20; 1990, ch. 100, § 13; 1994, ch. 118, § 19.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, substituted "using

the low income table, or awarding" for "or for the award of uninsured" in Subsection (1); substituted "If amounts under either table as provided in Section 78-45-7.14 in combination with the award of medical expenses" for "If the

combination of the two amounts under Subsection (1)" at the beginning of Subsection (2); and made stylistic changes.

78-45-7.19. Determination of parental liability.

(1) The district court or administrative agency may issue an order determining the amount of a parent's liability for medical expenses of a dependent child when the parent:

(a) is required by a prior court or administrative order to:

(i) share those expenses with the other parent of the dependent child; or

(ii) obtain insurance for medical expenses but fails to do so; or

(b) receives direct payment from an insurer under insurance coverage obtained after the prior court or administrative order was issued.

(2) If the prior court or administrative order does not specify what proportions of the expenses are to be shared, the district court may determine the amount of liability as may be reasonable and necessary.

(3) This section applies to an order without regard to when it was issued.

History: C. 1953, 78-45-7.19, enacted by L. 1990, ch. 166, § 4; 1994, ch. 118, § 20.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, inserted "or administrative agency" and substituted "medical expenses" for "uninsured medical, hospital, and

dental expenses" in the introductory language of Subsection (1); substituted "insurance for medical expenses" for "medical, hospital, or dental care insurance" in Subsection (1)(a)(ii); and made a stylistic change.

78-45-7.20. Accountability of support provided to benefit child — Accounting.

(1) The court or administrative agency which issues the initial or modified order for child support may, upon the petition of the obligor, order prospectively the obligee to furnish an accounting of amounts provided for the child's benefit to the obligor, including an accounting or receipts.

(2) The court or administrative agency may prescribe the frequency and the form of the accounting which shall include receipts and an accounting.

(3) The obligor may petition for the accounting only if current on all child support that has been ordered.

History: C. 1953, 78-45-7.20, enacted by L. 1994, ch. 118, § 21.

Effective Dates. — Laws 1994, ch. 118, § 23 makes the act effective on July 1, 1994.

78-45-7.21. Award of tax exemption for dependent children.

(1) No presumption exists as to which parent should be awarded the right to claim a child or children as exemptions for federal and state income tax purposes. Unless the parties otherwise stipulate in writing, the court or administrative agency shall award in any final order the exemption on a case-by-case basis.

(2) In awarding the exemption, the court or administrative agency shall consider:

(a) as the primary factor, the relative contribution of each parent to the cost of raising the child; and

(b) among other factors, the relative tax benefit to each parent.

(3) Notwithstanding Subsection (2), the court or administrative agency may not award any exemption to the noncustodial parent if that parent is not current in his child support obligation, in which case the court or administrative agency may award an exemption to the custodial parent.

(4) An exemption may not be awarded to a parent unless the award will result in a tax benefit to that parent.

History: C. 1953, 78-45-7.21, enacted by L. 1994, ch. 118, § 22.

Effective Dates. — Laws 1994, ch. 118, § 23 makes the act effective on July 1, 1994.

78-45-9. Enforcement of right of support.

(1) (a) The obligee may enforce his right of support against the obligor, and the office may proceed pursuant to this chapter or any other applicable statute, either on behalf of the Department of Human Services or any other department or agency of this state that provides public assistance, as defined by Subsection 62A-11-303(3), to enforce the right to recover public assistance, or on behalf of the obligee, to enforce the obligee's right of support against the obligor.

(b) Whenever any court action is commenced by the office to enforce payment of the obligor's support obligation, it shall be the duty of the attorney general or the county attorney of the county of residence of the obligee to represent the office.

(2) (a) A person may not commence an action, file a pleading, or submit a written stipulation to the court, without complying with Subsection (2)(b), if the purpose or effect of the action, pleading, or stipulation is to:

- (i) establish paternity;
- (ii) establish or modify a support obligation;
- (iii) change the court-ordered manner of payment of support; or
- (iv) recover support due or owing.

(b) When taking an action described in Subsection (2)(a), a person must file an affidavit with the court at the time the action is commenced, the pleading is filed, or the stipulation submitted stating whether public assistance has been or is being provided on behalf of a child who is a subject of the action, pleading, or stipulation. If public assistance has been or is being provided, the person shall mail a copy of the affidavit and a copy of the pleading or stipulation to the office.

(c) If public assistance has been or is being provided, that person shall join the office as a party to the action or mail or deliver a written request to the office asking it to join as a party to the action. A copy of that request, along with proof of service, shall be filed with the court. The office shall be represented as provided in Subsection (1)(b).

(3) Neither the attorney general nor the county attorney represents or has an attorney-client relationship with the obligee or the obligor in carrying out the duties arising under this chapter.

History: L. 1957, ch. 110, § 9; 1975, ch. 96, § 23; 1977, ch. 145, § 11; 1982, ch. 63, § 2; 1989, ch. 62, § 23; 1990, ch. 183, § 59; 1994, ch. 140, § 15.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, rewrote Subsection (2)(a) which read “A person may not commence any action or file a pleading to establish or modify a support obligation or to recover support due or owing, whether under this chapter or any other applicable statute, without filing an affidavit with the court at the time the action is commenced or the pleading is filed stating whether public assistance has been or is being provided on behalf of a dependent child of the person commencing the action or filing the

pleading’, added the designation for Subsection (2)(b) and the second sentence in the subsection; redesignated former Subsection (2)(b) as Subsection (2)(c) and added the language beginning “or mail or deliver” at the end of the first sentence and inserted the second sentence therein; deleted former Subsection (3) which read “As used in this section ‘office’ means the Office of Recovery Services within the Department of Human Services”; and added Subsection (3)

CHAPTER 45a

UNIFORM ACT ON PATERNITY

Section		Section	
78-45a-2.	Determination of paternity —	78-45a-7	Authority for genetic testing.
	Effect — Enforcement.	78-45a-10	Effect of genetic test results.
78-45a-5.	Remedies.	78-45a-10.5	Visitation rights of father.

78-45a-2. Determination of paternity — Effect — Enforcement.

(1) Paternity may be determined upon:

(a) the petition of the mother, child, putative father, or the public authority chargeable by law with the support of the child; or

(b) a voluntary declaration of paternity executed in accordance with Chapter 45e, Voluntary Declaration of Paternity Act.

(2) If paternity has been determined or has been acknowledged according to the laws of this state or any other state, the liabilities of the father may be enforced in the same or other proceedings by:

(a) the mother, child, or the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, necessary support, or funeral expenses; and

(b) other persons including private agencies to the extent that they have furnished the reasonable expenses of pregnancy, confinement, education, necessary support, or funeral expenses.

History: L. 1965, ch. 158, § 2; 1990, ch. 245, § 23; 1994, ch. 127, § 2.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, designated the first sentence as Subsection (1), adding Subsec-

tion (1)(b), and designated the second sentence as Subsection (2), making related stylistic changes and inserting “or any other state” in the introductory language.

78-45a-5. Remedies.

(1) The district court has jurisdiction of an action to establish paternity. All remedies for enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, necessary support, or funeral expenses for legitimate children shall apply. The court has continuing jurisdiction to modify or revoke a judgment for future education and necessary support. All remedies under Title 77, Chapter 31, Uniform Reciprocal Enforcement of Support Act, are available for enforcement of duties of support under this act.

- (4) advise the obligee of the available methods for service of process;
and
(5) assist the obligee in expeditiously scheduling a hearing before the court.

History: C. 1953, 78-45-9.2, enacted by L. 1983, ch. 119, § 1.

Meaning of "this act." — The term "this act," in the introductory language, means Laws 1983, ch. 119, which enacted this section.

Cross-References. — Creation of Judicial Council, Utah Const., Art. VIII, Sec. 12; § 78-3-21.

General duties of county attorney, § 17-18-1.
Service of process, Rules 4, 5, U.R.C.P.

78-45-10. Appeals.

Appeals may be taken from orders and judgments under this act as in other civil actions.

History: L. 1957, ch. 110, § 10.

Meaning of "this act." — See note under same catchline following § 78-45-1.

Cross-References. — Appeals generally, Rules 3 to 13, U.R.A.P.

78-45-11. Husband and wife privileged communication inapplicable — Competency of spouses.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable under this act. Spouses are competent witnesses to testify to any relevant matter, including marriage and parentage.

History: L. 1957, ch. 110, § 11.

Meaning of "this act." — See note under same catchline following § 78-45-1.

Cross-References. — Marital privilege in

civil actions generally, § 78-24-8; Rule 502, U.R.E.

Reciprocal Enforcement of Support Act, marital privilege inapplicable to, § 77-31-22.

COLLATERAL REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d Witnesses § 148 et seq.

C.J.S. — 97 C.J.S. Witnesses § 266 et seq.
Key Numbers. — Witnesses ⇐ 187 et seq.

78-45-12. Rights are in addition to those presently existing.

The rights herein created are in addition to and not in substitution to any other rights.

History: L. 1957, ch. 110, § 12.

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Attorney General
PAUL F. GRAF #1229
Assistant Attorney General
Attorneys for State of Utah
201 East 500 North
Richfield, UT 84701
(801) 896-6142

Estimate

IN THE SIXTH JUDICIAL DISTRICT COURT OF SANPETE COUNTY
STATE OF UTAH

LAURA BETH BARKER, and the STATE	:	
OF UTAH, Department of Human	:	JUDGMENT AND ORDER
Services,	:	
Plaintiff,	:	
vs.	:	Civil No. 9085
MICHAEL ROBERT BARKER,	:	
Defendant.	:	Judge Louis G. Tervort

JUDGMENT ENTERED
JUDGMENT DOCKET

No. 8 Page 13

THE ABOVE ENTITLED MATTER having come on before the court for trial on the 30th day of June, 1993, on the State's Order to Show Cause, and the State being represented by Paul F. Graf, Assistant Attorney General, and the Plaintiff being present and not being represented, and the Defendant being present and not being represented; and the matters before the court being the State's Order To Show Cause, the State's Order in Supplemental Proceedings, and the Defendant's various pleadings, being treated by the court

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LAURA BETH BARKER & STATE OF UTAH v.
MICHAEL ROBERT BARKER
JUDGMENT AND ORDER
Civil No. 9085

as a Petition to Modify; and witness having been called, namely, Roleen Olsen, Investigator for the Office of Recovery Services; Laura Beth Barker [McGillivray], Co-Plaintiff, and Michael Robert Barker, Defendant, and arguments being presented by the Defendant, Michael Robert Barker, and Paul F. Graf, Attorney for Co-Plaintiff, State of Utah, and the matter being submitted to the court based upon the evidence presented, and the court, having considered the matter, now enters the following:

JUDGMENT

1. Judgment is hereby entered in favor of the State of Utah and against Defendant for unpaid child support arrears in the sum of \$13,050.00 for the period from March 1, 1991, through January 31, 1993.

2. Defendant is adjudged in contempt of court for failure to make the child support payments for the period from March 1, 1991, through January 31, 1993, as ordered.

ORDER

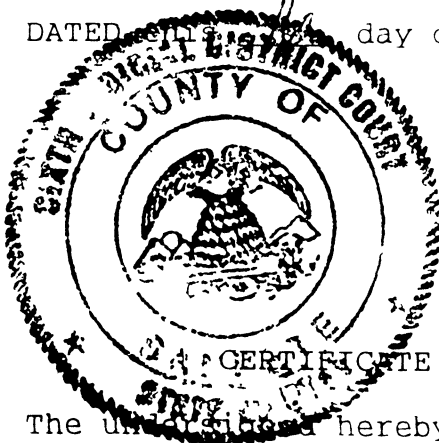
3. Defendant shall serve 30 days in the Sanpete County jail as penalty for his judgment of contempt, said 30 days began

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MICHAEL & RT BARKER
JUDGMENT AND ORDER
Civil No. 85

immediately at the time of the hearing on the 30th day of June, 1993, Defendant having been remanded to the custody of the sheriff by oral order of the court at the conclusion of the trial.

4. All other prior orders and judgments in this matter shall remain in full force and effect.

DATED this 9th day of July, 1993.




District Court Judge

CERTIFICATE OF DELIVERY AND MAILING

The undersigned hereby certifies to the court that a copy of the foregoing Judgment and Order, mailed to the Michael Barker, c/o Sanpete County Jail, 160 North Main, Mantu, UT 84642, on the 9th day of July, 1993; and, on the same date, a copy was also mailed to Laura Beth Barker McGillivray, at her last known address.

Note: The original of said Order will be submitted to the Court for signing 10 days after the last mentioned date, pursuant to the agreement of the parties at trial.

FILED
SANPETE COUNTY, UTAH
JUL 19 1993

Paul F. Graf
Paul F. Graf

JAN GRAHAM #1231
Attorney General
PAUL F. GRAF #1229
Assistant Attorney General
Attorneys for State of Utah
201 East 500 North
Richfield, UT 84701
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IN THE SIXTH JUDICIAL DISTRICT COURT OF SANPETE COUNTY
STATE OF UTAH

LAURA BETH BARKER, and the STATE	:	
OF UTAH, Department of Human	:	JUDGMENT AND ORDER
Services,	:	
Plaintiff,	:	
vs.	:	Civil No. 9085
MICHAEL ROBERT BARKER,	:	
Defendant.	:	Judge Louis G. Tervort

THE ABOVE ENTITLED MATTER having come on before the court for trial on the 16th day of July, 1993, on the Defendant's Motion for Court Appointed Counsel and the Defendant's Motion for New Trial and Relief From Judgment or Order, and the State being represented by Paul F. Graf, Assistant Attorney General, and the Plaintiff being present and not being represented, and the Defendant being present and not being represented; and the matters before the court being the Defendant's Motion for Court Appointed Counsel and the

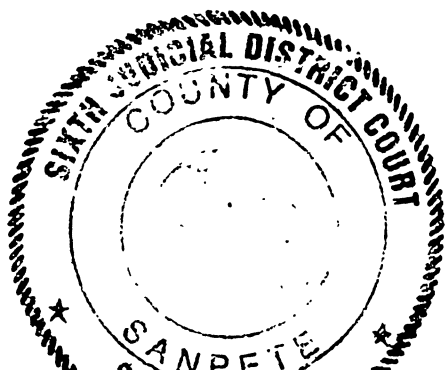
LAURA BETH BARKER & STATE OF UTAH v.
MICHAEL ROBERT BARKER
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Civil No. 9085

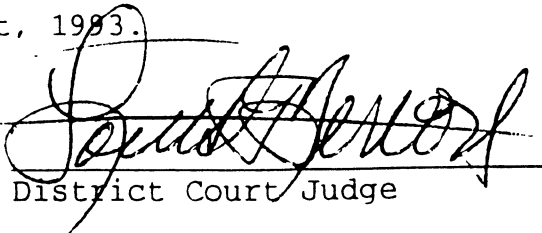
Defendant's Motion for New Trial and Relief from Judgment or Order, and arguments being presented by the Defendant, Michael Robert Barker, and Paul F. Graf, Attorney for Co-Plaintiff, State of Utah, and the matter being submitted to the court based upon the evidence presented, and the court, having considered the matter, now makes the following:

ORDER

1. Defendant's request for court appointed counsel is hereby denied.
2. Defendant's request for a new trial is hereby denied.
3. Defendant's request for relief from the judgment and order is hereby denied.
4. The Defendant is remanded to the Sanpete County Jail to serve the remainder of his 30 day sentence.
5. All other prior orders and judgments in this matter shall remain in full force and effect.

DATED this 19th day of August, 1993.




District Court Judge

LAURA BETH BARKER & STATE OF UTAH v.
MICHAEL ROBERT BARKER
JUDGMENT AND ORDER
CIVIL No. 9085

CERTIFICATE OF DELIVERY AND MAILING

The undersigned hereby certifies to the court that a copy of the foregoing Judgment and Order, mailed to the Michael Barker, Box 142, Santa Clara, UT, on the 30 day of August, 1993; and, on the same date, a copy was also mailed to Laura Beth Barker McGillivray, at her last known address.

Kelly McCoy
Very satisfied man
(as per telephone conf. call-
9-7-93)