

1993

Michael R. Barker v. Laura Beth (Barker)
McGillivray and the State of Utah, Department of
Human Services : Brief of Appellant

Utah Court of Appeals

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Michael R. Barker; In His Proper Person.

Paul Graf; Assistant Attorney General.

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IN THE UTAH COURT OF APPEALS

) ADDENDUM TO THE APPEAL
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)
Civil No. 930587-CA
(Civil No. 9085)
Priority No. 4

BRIEF OF APPELLANT

ON APPEAL FROM THE ENTIRE JUDGEMENT OF THE
6TH DISTRICT COURT FOR SANPETE COUNTY
STATE OF UTAH
HON. JUDGE LOUIS TERVORT

UTAH COURT OF APPEALS

DOCKET NO. 930587

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In His Proper Person
C/O P.O. Box 142
Santa Clara, Utah

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IN BEHALF OF
LAURA BETH (BARKER) MCGILLIVRAY
AND THE STATE OF UTAH,
DEPARTMENT OF HUMAN SERVICES
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FILED

JUL 22 1994

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

MICHAEL R. BARKER)	
(In His Proper Person))	ADDENDUM TO THE APPEAL
Defendant/Appellant,)	
vs.)	
Laura Beth (Barker) McGillivray)	
and the State of Utah,)	Civil No. 930587-CA
Department of Human Services)	(Civil No. 9085)
Plaintiff/Appellee)	Priority No. 4

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CONSTITUTION REFERENCES

Utah Constitution, Article 1, Section 7	1
Utah Contstitution, Article 1, Section 11	1

RULES CITED

Utah Rules of Civil Procedure, Rule 11.	2
Utah Rules of Civil Procedure, Rule 60b.. . . .	3

STATUTES CITED

U.C.A., 63-46b-3	2
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U.C.A., 78-45-7.5 (4) (a)	7
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OTHER AUTHORITIES

JURISDICTION OF THE COURT

The Utah Court of Appeals has jurisdiction under the purview of the Utah Constitution,
Article 1, Section 11.

ADDENDUM TO BRIEF OF APPELLANT

STATEMENT OF THE CASE

This is an appeal from a contempt of court and judgement of Appellant being an absconding debtor to avoid child support payments.

STATEMENT OF FACTS

This document is prepared and presented as an addendum to the original brief because at the time of preparation of the original brief the court record was not available to Mr. Barker. This document is intended to incorporate the essential court record citing into the brief.

ARGUMENTS OF CASE

POINT I

MR. BARKER WAS DENIED DUE PROCESS OF LAW WHEN THE TRIAL COURT DENIED HIS DEMAND FOR COUNSEL

A written post motion to appoint counsel per Utah Constitution, Article 1, Section 7 and Utah Contstitution, Article 1, Section 11 was provided to the lower court but denied.

In Judge Tibb's 6th Judicial District Court in 1991 counsel was appointed by the court since there was a possibility of a jail sentence resulting from a civil contempt charge against Mr. Barker. See record page 107 line 16 through page 108 line 9. Judge Tervort should have done appointed counsel but failed to do so in the instant matter, thereby violating Mr. Barker's right to counsel under Utah Constitution, Article 1, Section 11.

Mr. Barker did, after being incarcerated, motion the court for counsel in his first appeal by right and Utah Constitution, Article 1, Section 11, was cited in the paperwork but Judge Tervort refused counsel saying that he didn't believe that the county should have to pay for it. The court abused its discretion.

POINT II

MR. BARKER WAS DENIED DUE PROCESS OF LAW BY STATE OF UTAH, DEPARTMENT OF HUMAN SERVICES WHEN NOT NOTICED HIS CHILDREN WERE ON STATE WELFARE.

Mr. Barker's testimony that he was never noticed is found on page 109 line 17 through line 23.

Mr. Barker questioning state witness is found on record page 15 line 25 through page 16 line 2. "Did you notice me?" "Mr. Graf: Objection, Your Honor. This is not a question she can answer. This is a legal matter." It is, however, a question she can answer. The Office of Recovery Services is required by law to notice parents when their children are on welfare and it is standard policy of that Office to do so. Mr. Graf knew or should have known that law and policy but intentionally covered up that fact to the court and to Mr. Barker. Said action on the part of Mr. Graf to coverup the foregoing has harmed Mr. Barker resulting in the need for continued litigation, cost, and loss of income from having to defend. Under Utah Rules of Civil Procedure, Rule 11 Mr. Graf is liable.

Mr. Graf states that Ms. Roleen Olson cannot answer this question, it is a legal matter. However, according to Department of Human Service Policy and U.C.A., 63-46b-3 it is a question she can answer. In fact, it is her specific duty to have notified Mr.

Barker that his children were on welfare. Ms. Olson, with the Office of Recovery Services, the Department of Human Services, or the State of Utah made NO such notification.

Mr. Barker was held to the same rules and standards of an Attorney at Law to prevent his addressing the real issue, i.e., that there has been a breach of the law in not notifying Mr. Barker his children were on welfare. An attempt is being made to hide this using court rules and smoke screens; claiming it is too late to object. When in fact, the action brought against Mr. Barker in 1991 was NOT brought by the Utah Department of Human Services but rather was brought by the Utah Department of Social Services. In other words, the action currently before the court is a separate action from the one in 1991, therefore time for objection is both proper and timely.

POINT III

MR. BARKER WAS DENIED DUE PROCESS OF LAW WHEN THE TRIAL COURT REFUSED AND CONTINUES TO REFUSE TO ACT UPON A MOTION FOR RELIEF OF JUDGEMENT.

Motion for Relief of Judgement dated 24 July 1993 and Objection to Motion for Relief of Judgment and Order dated 27 August 1993 further clarifies that the Motion For Relief has not been acted on by the lower court. This lack of action by the lower courts violated Utah Rules of Civil Procedure, Rule 60b. If the motion has been acted upon, Mr. Barker was not notified of the same during his incarceration or at any time thereafter.

POINT IV

**MR. BARKER WAS INCARCERATED ON 30 JUNE 1993
BY THE STATE OF UTAH IN VIOLATION OF UTAH
CONSTITUTIONAL AND STATUTORY RIGHTS AND
PRIVILEGES WHICH CONFLICT WITH THE UNIFORM
CIVIL LIABILITIES FOR SUPPORT ACT, U.C.A., 78-45
ET SEQ.**

This point stands as stated. See lower court Order and Findings.

POINT V

**THE TRIAL COURT AND THE STATE OF UTAH,
DEPARTMENT OF HUMAN SERVICE HAS VIOLATED
MR. BARKER'S CONSTITUTIONAL RIGHT TO WORK**

This point stands as stated. Mr. Barker was involved in an egg production farm operation prior to 1991. See record page 41 line 2 through line 16 and record page 36 line 21 through page 37 line 20.

POINT VI

**THE TRIAL COURT FAILED TO MAKE SPECIFIC
FINDINGS OF FACT IN SUPPORT OF ITS CONCLUSION
THAT MR. BARKER WAS AN ABSCONDING DEBTOR**

Record page 21 , line 21 through line page 22, line 2 indicated that Mr. Barker was unable to pay.

The record minute entry of Judge Tibb's, Fifth Judicial District Court, for 12 March 1991, page 5 says: "Jail susp. & Def. may purge this if he files a list of all his income & expenses...for 6 months." Now this six month time period extended into 1991 and Judge Tibb's's court did, in fact, purge the contempt charge from the record.

Judge Tervort's court has placed Mr. Barker in double jeopardy since Mr. Barker was incarcerated for, at least in part, the 1991 time period for which he accounted for and

for which Judge Tibb's's purged the contempt charge.

The facts do not show that Mr. Barker intended to avoid child support payments by being intentionally underemployed. Mr. Barker's circumstances changed, in that he remarried and had additional dependents to support and that prior to 1991 Mr. Barker involuntarily lost employment. See record page 40 line 4 through page 43 line 12. Prior to that the Appellee and the State of Utah caused Mr. Barker to involuntarily loose employment and go into considerable debt. See record page 49 line 5 through page 50 line 2.

Judge Tervort, rather than ruling that Mr. Barker involuntarily lost a work contract at Hecla which was an overemployment situation due to the mine being a one of a kind pilot research project, ruled that Mr. Barker was intentionally under employed to avoid child support payments. Mr. Barker testified that he sought other employment in the area but was not hired. See record page 120 line 3 through 19.

In an affidavit for a post motion request for relief of judgment dated 9 July 1993, (Supplemental Index no. 180) Mr. Barker clarifies his that employment situation was as a result of an expiration of a contract and further indicates the conditions of employment in his area. There are no facts to rebut this testimony on the record.

POINT VII

STATE OF UTAH ABUSED DISCRETION AND COMMITTED ERROR IN COMPUTING OR IMPUTING INCOME TO MR. BARKER AND NOT ALLOWING A CHANGE OF CIRCUMSTANCES

Mr. Barker's health had changed for the worse. See record page 45 line 10 through page 47 line 21. A chiropractors statement of Mr. Barker's condition is entered into the

record. See record page 56 line 12 through page 57 line 19. Mr. Barker testifies that his health prevents him from obtaining mining employment. See record page 58 line 8 through page 59 line 10. Nothing on the record rebuts this testimony.

Appellee Laura McGillivray also had a change of circumstances in that she had received considerable college credits, training and on the job work experience. See record page 24 line 17 through page 25 line 6. See also Appellee's interrogatory response showing near continuous employment from 1987 through May of 1992.

Mr. Barker testified that he had change of circumstances requiring him to support a new wife and 5 children found on record page 32 line 7 through page 33 line 3. Judge Tervort erred by not allowing for said change. (Appellant, Mr. Barker, at this time corrects his statement on the record on record page 96 line 3 and 4. inasmuch as the 3 stepchildren have never been on public assistance). Judge Tervort erred by not allowing for said change.

Judge Tervort does not know the law, nor does he see the requirement to follow the law in reference to Appellant's support obligation to a new family. See record page 94 line 22 through page 95 line 18, and record page 95 line 24 through page 98 line 22.

Appellee attorney Graf does know the law in reference to Mr. Barker's change of circumstances and his support obligation to his new and former family but argues on the record that it is not necessary to practice it in force. See record page 95 line 14 through 18. Attorney Graf is in violation of Utah Rules of Civil Procedure, Rule 11 in that he is attempting to knowingly and with full intent disregard the law in favor of his client, the State of Utah Department of Human Services and Co-Plaintiff/Appellee Laura

McGillivray to the harm of Appellant Mr. Barker. Said blatant disregard for the law on the record has resulted in considerable increase in the cost of litigation, and loss of income to Mr. Barker and has tied up the court with needless litigation therefore sanctions against the same should be imposed.

Appellee attorney states on the record that the monetary requirement for a change of circumstances had been met. See record page 117 line 5 through line 12 and record Page 118 line 3 through line 6.

POINT VIII

THE TRIAL COURT FAILED TO MAKE SPECIFIC FINDINGS OF FACT IN SUPPORT OF ITS CONCLUSION ON CHILD SUPPORT OBLIGATION

Mr. Barker's testimony on change of circumstances is found in POINT VII above but the lower court without any evidence to the contrary this was denied by the court notwithstanding that Mr. Barker met all the statutory requirements for a change of circumstances.

Appellee, attorney Graf, knew that Mr. Barker was engaged in an egg production operation and the knew or should have known that Mr. Barker's gross income pursuant to U.C.A., 78-45-7.5 (4) (a) should have been calculated by subtracting necessary expenses for business operation; however Mr. Graf tried to hoodwink the court into thinking Mr. Barker's gross income was the amount before expenses. See record page 43 line 13 through line 24. (A typing error is found on record page 43 line 23, the dollar amount should read 20,000 instead of 10,000).

There was sufficient evidence to rebut the guidelines and the lower court did

conclude that the former court order should stand, however the court did not apply U.C.A., 78-45-7 which requires the judge to make specific findings such as ages of the obligee and obligor, the responsibility of the obligor and obligee for the support of others the standard of living and situation of the parties, etc., and other pertinent factors. The court did not enter specific findings. The court order and findings are found on page 122 line 8 through page 128.

U.C.A., 78-45-7.5 (5) (c) which says: "Historical and current earnings shall be used to determine whether an underemployment or overemployment exists.", is to be applied with use of the guidelines. As already pointed out the guidelines do not apply in this case, therefore all the other factors should have been considered as stated above. Moreover, U.C.A. 78-45-7.5 (5) (c) is unconstitutional and violates the specific rights as argued in appellant's brief.

POINT IX

THE TRIAL COURT REVERSED A PRIOR DISTRICT COURT JUDGEMENT ALLOWING PURGING OF CONTEMPT

Judge Tervort was not empowered by the Judicial Council to hear this issue for the time period of 1991 to 1992. See record page 68 line 8 through line 16. Even if he was empowered to do so it has placed Appellant, Mr. Barker in double jeopardy since in Judge Tibb's's court an accounting of Mr. Barker's egg production business was allowed to purge a contempt charge. Mr. Barker's situation and circumstances has not changed appreciably since then. The only thing that has changed is the time period, not the situation that has allowed the purging of contempt.

POINT X

**STATE OF UTAH ATTEMPTING ILLEGAL
SUBROGATION OF WELFARE CONTRACT**

Money that the Utah Department of Human Services says is owing is, in part, due to fraudulent action of Appellee McGillivray when she voluntarily became more welfare dependant by selling a nearly paid for home, after squandering the proceeds from the sale. She left Mr. Barker of her own aggression and choice entering into the welfare contract of her own volition and against the expressed desire and choice of Mr. Barker. At all times a home has been provided and available to her which she has refused. This has harmed Mr. Barker and the taxpayers of the State of Utah. The lower court specifically awarded the home so that the children would have a place to stay. See transcript record of the Utah divorce proceeding of 1987 beginning with page 212. The exact quote of the specific housing award is quoted in the instant record page 87 line 19 through 23. Additional welfare monies to provide for Appellee's housing has placed Mr. Barker in double jeopardy for the same.

POINT XI

APPELLEE NOT IMMUNE FROM WELFARE CONTRACT

Judge interrupts Mr. Barker preventing him from making clear on the record that the contract Mr. Barker and Laura entered into was prior to a new 1987 Utah divorce decree. She fraudulently broke that contract while being adequately provided for and signed up for welfare. See record page 75 line 18 through 21

POINT XII

APPELLANT UNABLE AND MAY NOT BE LIABLE TO PAY WELFARE MONIES

Mr. Barker testifies that he is unable to pay. See record page 100 line 5 through 16 and page 102 line 21 through page 103 line 17.

Utah Department of Human Services refuses to provide an monthly accounting as to specific monies allegedly paid to Appellee McGillivray. See record page 19 line 2 through page 20 line 22. In otherwords there is no proof that any monies were paid to McGillivray.

Appellee McGillivray is being provided with a state attorney to recover monies allegedly owed to her in a divorce decree in violation of Mr. Barker's equal protection right under the law. See record page 19 line 19 through 25.

Mr. Barker is prevented from proving welfare fraud by the court. See record page 23 line 14 through 16. and page 24 line 7 through 10.

POINT XIII

STATE OF UTAH DEPARTMENT OF HUMAN SERVICES GUILTY OF FALSIFYING COURT RECORD

Stands as written.

POINT XIV

TRIAL COURT ERRONEOUSLY ADJUDICATED MATTERS NOT BEFORE IT WITHOUT FACTS OF LAW

Judge Tervort was not empowered by the Judicial Council to hear this issue for the time period of 1991 to 1992. See record page 68 line 8 through line 16. Even if he was empowered to do so it has placed Appellant, Mr. Barker in double jeopardy since in

Judge Tibb's's court an accounting of Mr. Barker's egg production business was allowed to purge a contempt charge. Mr. Barker's situation and circumstances has not changed appreciably since then. The only thing that has changed is the time period, not the situation that has allowed the purging of contempt.

POINT XV

TRIAL COURT DID NOT MAKE SPECIFIC DETAILED FINDINGS TO ARRIVE AT THE CONCLUSION THAT MR. BARKER IS NOT A SOVEREIGN

Judge Tervort does not know what a natural person is. See record page 61 line 4 through 14. Mr. Barker is not a 14th Amendment citizen. See record page 8 line 8 through 18. This is, and has always, been the heart of this action before the court. Mr Barker contends there is no jurisdictional nexus; the State of Utah, Department of Human Services has NO jurisdiction over him as a non-constitutional sovereign citizen..

It is clearly established that jurisdiction can be challenged at any time, and once challenged MUST be answered on the record, substantially, materially, and timely. The State of Utah has, over the years, attempted to sweep this issue away . It will not go away and MUST be addressed squarely.

Judge Tervort shows his incompetency and lack of understanding of the legal issues involved (page 61 lines 8 thru 10). Yet a few moments later (page 61 line 22 thru 24) rules against Mr. Barker's sovereignty, notwithstanding his admitted ignorance of the subject.

The Utah Department of Human Services has frauded Mr. Barker in an attempt to obtain jurisdiction over his person. See record page 72 line 4 through 24.

The fact that the state of Utah has constructively frauded Mr. Barker in reference to requirements of a marriage license does not now give them jurisdiction over his person. See record page 79 line 23 through page 82 line 7.

Mr. Barker was never provided a commissioner judge in the 1987 Utah divorce which violates the separation of powers doctrine and therefore the court does not have jurisdiction over his person. See record page 68 line 1 through line 16.

POINT XVI

PLAINTIFF/APPELLEE'S ATTORNEYS VIOLATED UTAH RULES OF CIVIL PROCEDURE, RULE 11

This action against Mr. Barker by the Department of Human Services for child support when no Notice, which is required by law, was given. An attempt was made on the part of attorney Graf to indicate that the Office of Recovery Services could not know of a notification requirement since it was a legal matter. That argument is frivolous, malicious and in bad faith and has resulted in increased litigation cost and otherwise delayed and harassed Mr. Barker..

Mr. Barker's testimony that he was never noticed is found on page 109 line 17 through line 23.

Mr. Barker questioning state witness is found on record page 15 line 25 through page 16 line 2. "Did you notice me?" "Mr. Graf: Objection, Your Honor. This is not a question she can answer. This is a legal matter." It is, however, a question she can answer.

Attorney Mr. Graf knew the law requires that a change of circumstances be allowed in reference to Mr. Barker's obligation to support a new family including

stepchildren but blatantly argued on the record that the law did not have to be followed by the court. See record page 95, line 14 thru 18. The resultant increase in the cost of litigation, loss of income, physical and psychological stress resulting in a loss of health, and a recent divorce in part due to Mr. Barker's incarceration has greatly harmed Mr. Barker. Additionally the increase of volume of litigation in the state courts has been the direct result of the state attorney knowingly violating the provision of Rule 11 and sanctions against said attorney is demanded.

Attorney Graf knew or should have known that gross income in a business operation is calculated by standard business accounting practice as well as by Utah statute. In an attempt to litigate in favor of Appellee's Mr. Graf attempted to sway the court into thinking that Mr. Barker's gross income from his business was to be calculated before deducting operating expenses in violation of Rule 11. See record page 43, line 13 thru 24. The resultant increase in the cost of litigation, loss of income, physical and psychological stress resulting in a loss of health, and a recent divorce in part due to Mr. Barker's incarceration has greatly harmed Mr. Barker.

CONCLUSION AND RELIEF SOUGHT

WHEREFORE APPELLANT PRAYS FOR RELIEF against the Appellee's and the Attorneys of Record as follows:

9. For sanctions against the Attorneys of Record for damages and, punitive damages, as a result of loss of farm income and legal expenses incurred defending against: This action against Mr. Barker by the Department of Human Services for child support when no Notice, which is required by law, was given. An attempt was made on

the part of attorney Graf to indicate that the Office of Recovery Services could not know of a notification requirement since it was a legal matter. That argument is frivolous, malicious and in bad faith and has resulted in increased litigation cost and otherwise delayed and harassed Mr. Barker..

10. Attorney Mr. Graf knew the law requires that a change of circumstances be allowed in reference to Mr. Barker's obligation to support a new family including stepchildren but blatantly argued on the record that the law did not have to be followed by the court. The resultant increase in the cost of litigation, loss of income, physical and psychological stress resulting in a loss of health, and a recent divorce in part due to Mr. Barker's incarceration has greatly harmed Mr. Barker. Additionally the increase of volume of litigation in the state courts has been the direct result of the state attorney knowingly violating the provision of Rule 11 and sanctions against said attorney is demanded.

11. Attorney Graf knew or should have known that gross income in a business operation is calculated by standard business accounting practice as well as by Utah statute. In an attempt to litigate in favor of Appellee's Mr. Graf attempted to sway the court into thinking that Mr. Barker's gross income from his business was to be calculated before deducting operating expenses in violation of Rule 11. The resultant increase in the cost of litigation, loss of income, physical and psychological stress resulting in a loss of health, and a recent divorce in part due to Mr. Barker's incarceration has greatly harmed Mr. Barker. Additionally the increase of volume of litigation in the state courts has been the direct result of the state attorney knowingly violating the provision of Rule

11 and sanctions against said attorney is demanded.

Appellants brief contains a typing error. The date of signing and the date of certification should be corrected to read 1994.

Dated this 22nd day of July 1994.. Signed Michael R. Barker

I, Michael R. Barker, certify that 8 copies, 4 copies, and 2 copies of Appellant's Brief Addendum were mailed respectfully, postage prepaid, to: Utah Court of Appeals 400 Midtown Plaza 230 S. 500 E. Suite 400 Salt Lake City, Utah, Utah Attorney General C/O Paul Graf #1229, 201 E. 500 N. Richfield, Utah, 84701, and Laura McGillivray P. O. Box 4263 Wales, Utah (her last known address) on the 22nd day of July 1994.
Signed Michael R. Barker