

1993

Michael r. Barker (In His Proper Person) 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.

Utah Attorney General.

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DOCKET NO. 930587

IN THE UTAH COURT OF APPEALS

MICHAEL R. BARKER)	
(In His Proper Person))	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

BRIEF OF APPELLANT

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

Michael R. Barker
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

APR 6 1994

COURT OF APPEALS

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JURISDICTION OF THE COURT

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

STATEMENT OF ISSUES

1. Is Appellant's denial for demand for counsel in violation of Utah Constitution, Article 1, Sections 7, and 11?
2. Was Appellant denied due process of law when Utah State Department of Human Services failed to notice him that his children were receiving welfare assistance in violation of Utah Constitution, Article 1, Section 7 and U.C.A., 63-46b-3 requiring notification?
3. Was Appellant denied due process of law when the lower court failed to act upon a Motion for Relief of Judgment pursuant to Utah Rules of Civil Procedure, Rule 60 (b)?
4. Can Appellant be incarcerated in an attempt to punish or force him to obtain other employment in violation of Utah Constitution, Article 1, Section 1, and Article 26, Section 3 (3) and, U.C.A., 34-34-1, because his employment is not making what the Utah Department of Social Services or the Department of Human Services says is enough money?
5. Can U.C.A., 78-45-7.5 (5) (c), U.S.A., 78-45-7.5 (7) be used as the sole basis for determining that Mr. Barker is overemployed or underemployed in violation of his

rights guaranteed pursuant to Utah Constitution, Article 1, Section 1, and Article 1, Section 25, and U.C.A., 34-34-1?

6. Can the State of Utah Department of Social Services or the Department of Human Services deny Mr. Barker his right to continue in his farming occupation in violation of Utah Constitution, Article 12, Section 9 (which was law at the time)?

7. Can the State of Utah Department of Social Services or the Department of Human Services deny Mr. Barker his right to continue in his farming occupation in violation of Utah Constitution, Article 3, First?

8. Can the lower court determine that Mr. Barker is an absconding debtor without specific detailed findings by the court which would lead to that conclusion?

9. Can the lower court determine that Mr. Barker is an absconding debtor without sufficient specific facts proving intent to avoid child support payments?

10. Did the lower court disallow a material change of circumstances without specific detailed findings by the lower court which would arrive at that conclusion?

11. Can U.C.A., 78-45-7.5 (5) (c), 78-45-7.5 (7) (a) and (b) be used to impute income to Mr. Barker in violation of his rights guaranteed pursuant to Utah Constitution, Article 1, Section 1, Article 1, Section 25, Article 26, Section 3, and U.C.A., 34-34-1?

12. Can Mr. Barker be held to the same standards as an attorney licensed with the state of Utah when it results in a loss of his rights and it is not in the interest of justice?

13. Can the lower court "grandfather" Mr. Barker into the new child support

guidelines U.C.A., 78-45-7.2 through 78-45-18 in violation of his rights guaranteed pursuant to Utah Constitution, Article 1, Section 18?

14. Can the lower court require that Mr. Barker must break the law by neglecting his duty to support equally all of his children pursuant to Utah Constitution, Article 4, Section 1?

15. Can the lower court determine under U.C.A., 78-45-7.2 (5) that Mr. Barker must violate Utah Constitution, Article 4, Section 1, by neglecting his duty to support equally all of his children?

16. Can the lower court prevent Mr. Barker from honoring a contract with his present wife to provide for all of his children equally pursuant to Utah Constitution, Article 4, Section 1, in violation of Utah Constitution, Article 1, Section 18?

17. In this civil matter does U.C.A., 78-45-7.2 (5) violate Mr. Barker's rights pursuant to Utah Constitution, Article 1, Section 21 since he is being involuntarily forced to provide a higher standard of living to some of his children to the detriment of his other children?

18. Since Mr. Barker has met the threshold requirement for a material change of circumstances should his ex-wife be required to share in child support, if she is able, pursuant to U.C.A., 78-45-4?

19. Do U.C.A., 78-45-3, 78-45-4.1, and 78-45-4.3, require Mr. Barker to provide an unequal support to his non-welfare children in violation of Utah Constitution, Article 4, Section 1?

20. Does U.C.A., 78-45-7.2 (5) require Mr. Barker to provide an unequal

support to his non-welfare children in violation of Utah Constitution, Article 4, Section 1?

21. Can the lower court reverse a prior lower court finding that Mr. Barker is unable to pay child support and that he has purged a contempt charge?

22. Can the Utah Department of Social Services or the Department of Human Services cause a breach of contract between Mr. Barker and his ex-wife by providing her and the children with federal reserve notes and then disallow credit for Mr. Barker's greater tangible support substance that he has continually provided to them since they were married?

23. Can the Department of Social Services or the Department of Human Services hold Mr. Barker solely liable for a contract or instrument signed by his ex-wife over whom he has no direction or control pursuant to Uniform Commercial Code 70A-3-401 or other applicable law?

24. Can the Department of Social Services or the Department of Human Services hold Mr. Barker solely liable for a contract when pursuant to Uniform Commercial Code 70A-2-207 or other applicable law notification was given by him negating said instrument?

25. Can the Department of Social Services or the Department of Human Services impute to Mr. Barker a contract or instrument signed by his ex-wife over whom he has no direction or control and then subrogate that instrument to him? pursuant to Uniform Commercial Code 70A-3-401 or other applicable law?

26. Did Mr. Barker's ex-wife have an interest adverse to him when she

voluntarily increased her welfare benefit by selling a home for a fraction of its appraised value?

27. Did Mr. Barker's ex-wife sign a welfare contract in bad faith while she was being provided for with substance of a greater value by him in violation of U.C.A., 62A-11-101?

28. Did the lower court or the Utah Department of Social Services or the Department of Human Services cause Mr. Barker to become involuntarily insolvent pursuant to Uniform Commercial Code, 70A-1-203 (23) or other applicable law?

29. Did the Utah Department of Social Services or the Department of Human Services contribute to the increasing debt and subsequent insolvency of Mr. Barker by not allowing him credit for substance support "in kind"?

30. Is there evidence on the record of any notification to Mr. Barker by the Utah Department of Human Services that his children were receiving welfare?

31. Did the Utah Department of Social Services or the Department of Human Services fraud Mr. Barker when it held him liable for a contract without giving credit for support payments "in kind" since he was given no knowledge or opportunity to learn of the contract character or essential terms pursuant to Uniform Commercial Code 70A-3-305 or other applicable law?

32. Did the Utah Department of Social Services or the Department of Human Services loan credit or federal reserve note credit to Mr. Barker's ex-wife in violation of Utah Constitution, Article 6, Section 29?

33. Is Mr. Barker involuntarily insolvent since all of his tangible assets were

given to his ex-wife pursuant to Utah Commercial Code 70A-1-201 (23) or other applicable law?

34. Is Mr. Barker's ex-wife required to support her children, if she is able, pursuant to U.C.A., 78-45-4?

35. Did the Utah Department of Social Services or the Department of Human Services violate Utah Constitution, Article 1, Section 23 and attempt to hold Mr. Barker solely liable for a contract or instrument his ex-wife entered into while holding her immune?

36. Can the lower court abuse its discretion by finding Mr. Barker an absconding debtor without specific detailed findings on the record from which it arrived at that conclusion?

37. Can the lower court abuse its discretion and determine Mr. Barker is not a sovereign, non United States Constitution, 14th Amendment citizen without specific detailed findings on the record from which it arrived at that conclusion?

38. Can the attorneys of record violate Utah Rules of Civil Procedure, Rule 11 to the harm of Mr. Barker without sanctions being imposed when demanded?

39. Can Mr. Barker's ex-wife be considered pro se when the record proves that she enjoyed counsel by the Utah Department of Human Services attorney?

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

In the spring of 1984 the Appellant, Mr. Barker and his wife, Laura McGillivray, one of the Appellee's, agreed to a Mexican divorce decree. Further written and oral agreements were entered into stipulating disposition of property and child visitation. Mr. Barker provided Laura with considerable support substance including a five bedroom home on 3 acres with water and animal outbuildings, a dairy goat herd, several head of sheep, a car, 8 tons of food storage, a great quantity of clothing storage for his children which could be used as they got older, and over 300 dollars per month.

In January of 1985, Appellee, Laura Signed up for welfare.

The Utah Department of Social Services would not stop providing assistance to Mr. Barkers children when he promptly notified them that the children were being provided for. Instead Mr. Barker was in turn notified by the Department that he would have to pay more money since no credit would be given for his "payment in kind" ie., the house, car, clothes, food, etc.

Laura moved out of the home after about a 6 months taking all except the animals thereby voluntarily increasing her housing costs. She continued to receive over 300

dollars every month for five years from Mr. Barker.

In 1987 a new Utah divorce decree was granted. Laura was awarded custody of the couples 4 natural children and her other child who Mr. Barker had adopted. Laura was awarded the home that Mr. Barker had provided from funds prior to the couples marriage. Laura sold the home for 60% of its appraised value and spent the money within 4 months.

Sometime later Social Services condemned her rented house on the basis that it was so filthy that it became a health hazard to the children. The house was fine but the housekeeping was not.

At that time Mr. Barker initiated a modification of custody proceeding. Mr. Barker could not afford an attorney at the time and the children were allowed to stay with Laura since the judge ruled that the health hazard was hearsay, notwithstanding expert testimony from a social service professional who said that it was the worst case he had ever seen.

The children stayed with Mr. Barker for 5 months after he initiated modification proceedings since Legal Service attorneys delayed the action that long. Mr. Barker, thinking he was obeying the law kept the children to prevent their return to the former situation. Three days before the District Court appearance on modification Mr. Barker was arrested on custodial interference and arraigned in the 5th Circuit Court of Washington County, Utah.

Mr. Barker did not know how to properly defend himself by bringing evidence before the court to prove that he had no intent of breaking the law. He was found

guilty on charges that added up to 4 years in jail and a 10,000 dollar fine. The judge reduced the sentence with no fine and sentenced him to 2 weeks in jail.

At that particular time Mr. Barker was in process of completing a contract deadline which was the culmination of one year of work. As a result of the incarceration the contract was lost and Mr. Barker was not only out of work but in considerable debt.

A short time later a company bought a mining firm that had gone bankrupt for which Mr. Barker had formerly worked. Mr. Barker accepted a work contract with the new company and worked in that effort for about five months in an attempt to get out of debt, which he was for the most part able to do, until they went into a shutdown mode. At that time in 1990 due to his declining health, general economic conditions and other sundry factors, Mr. Barker started a farming operation. In March of 1991 the Utah Department of Social Services initiated its Order to Appear and Show Cause, in the 6th Judicial District Court, why he should not go to jail for failing to pay child support. Mr. Barker was allowed to purge a contempt charge by the court. Two years later the Department of Human Services, without any notification pursuant to law, charged him for non support in a different domestic relations district court.

SUMMARY OF ARGUMENTS

Mr. Barker was erroneously found to be an absconding debtor and incarcerated. After explaining to the court his legal duty to his current (second) family and children Mr. Barker was informed by the court that the first and primary obligation was to pay for the welfare debt of the first (welfare) family and that the others were secondary.

This action was brought about through the efforts of the State of Utah, Department of Human Services utilizing primarily the statutes, or sections thereof, of the "Utah Human Services Code", U.C.A., 62a-1-101 and the "Unified Civil Liability for Support Act", U.C.A., 78-45-1.

The second family is clearly being relegated to "second or third class" citizens with the first "welfare" family having first call on the financial resources of Mr. Barker. In Fact, once a pay order is initially set for the "welfare" family the second or subsequent "nonwelfare" family cannot request its rights for equal protection and support of their father; i.e., the payments to the "welfare" family can never be adjusted downward to meet the growing needs and requirements of the second family. Any additional children will forever be relegated to a second rate subservient position to the first "welfare" family.

Through these statutes Mr. Barker and his children have and are being deprived of many rights and constitutional guarantees. These statutes must be addressed and declared unconstitutional and the rights of Mr. Barker and all of his family restored.

ARGUMENTS OF CASE

POINT I

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

The trial court knowing that Appellant was indigent and a jail sentence was about to be imposed in this civil case failed to inform Appellant of his right to counsel.

In addition, when Appellant on his own motion demanded counsel it was denied.

Courts have generally upheld that debtors threatened with body execution in civil matters **MUST** be afforded right to counsel, especially if the court knows they are indigent. Robbins v Labar, Transp. Corp. (1984, ND Ill) 599 F Supp 705; Wright v Crawford, (1966, Ky) 401 SW2d 47; Grimes v Miller, (1977, MD NC) 429F Supp 1350.

The Honorable Judge Tibbs, in 1991 **DID PROVIDE APPELLANT WITH COUNSEL** because a jail sentence of contempt was possible in the civil matter; the Honorable Judge Tervort **REFUSED COUNSEL TO APPELLANT** knowing a jail sentence was possible in this matter.

Mr. Barker has been harmed by an abuse of discretion and the trial court did commit error; in that, under Utah Constitution, Article 1, Section 11 Appellant's right to defend and right to counsel has been denied. In addition, Mr. Barker has harmed by an abuse of discretion and the trial court did commit error when, without counsel present, he was held to the same standard as an attorney without having been schooled in the law.

In Hains v Herner, et al 404 U.S. 519 says in part that,

"however unartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence... the pro se compliantant,... we hold to less stringent standards than formal pleading's drafted by lawyers."

The judge stated on the record that he didn't feel the county should have to pay for Appellant's legal expenses, knowing that Mr. Barker was indigent, constituting an abuse of discretion malicious process, and malicious prosecution. Due process of law has been restricted as a result of Appellant not being able to afford an attorney in his

first appeal by right.

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.**

Appellant was not given due process of law in violation of Utah Constitution, Article 1, Section 7, which says:

"No person shall be deprived of life, liberty or property, without due process of law."

Mr. Barker was not noticed by the Utah State Department of Human Services that his children were on welfare, from 1991 to 1993, or at any other time.

The Department of Human Services and the Office of Recovery Services have violated U.C.A., 63-46b-3 which says:

"...all adjudicative proceedings shall be commenced by...a notice of agency action...."

That agency did not follow administrative due process of law, since Appellant was not notified that Appellant's children were receiving public assistance from this agency pursuant to U.C.A., 63-46b-3, and the lower court was told so on the record. There is no evidence on the record of any notice.

Appellant's due process was further hampered by the fact that the Office of Recovery Services was in violation of Utah Law. U.C.A., 62A-11-102 (1), says:

"There is created within the department the Office of Recovery Services which has the powers and duties provided by law."

That law was passed in 1988. Department is defined in U.C.A., 62A-1-104 (1)

(b), and says: "Department" means the Department of Human Services established in 1990 pursuant to U.C.A., 62A-1-102.

Further evidence of that fact is seen in U.C.A., 62A-1-105 (3) (c), which says,

"The following offices are created within the Department of Human Services: the Office of Recovery Services.",

wherein the Office of Recovery Services was created within the Utah Department of Human Services in 1993.

In effect the State of Utah Department of Human Services, which was created in 1990, created within itself, in 1988, the Office of Recovery Services. The Department could not have created within itself anything if said Department did not exist. In otherwords, at the time of this action, there did not exist an Office of Recovery Services within the Department presenting absurdity of law. Even colorable law will not tolerate absurdity of law. Perhaps that is why appellatant never received a notice.

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.**

The Appellant was denied due process of law since a Motion for Relief of Judgment and Order pursuant to Utah Rules of Civil Procedure, Rule 60 (b) was made to the lower court and has never been acted upon. Mr. Barker's Response to Objection to Defendant's Motion for Relief of Judgment and Order, dated 27 August 1993, further clarifies that Motion for Relief but, again, the lower court has refused to view, or consider the matter still before it.

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.*

Mr. Barker is being placed in the middle of a Utah Constitutional and statutory conflict between U.C.A., 78-45 and U.C.A., 34-34, and other constitutional citations as explained below.

U.C.A., 78-45-7.5 (5) (c), says:

"Historical and current earnings shall be used to determine whether an unemployment or overemployment situation exists.";

U.C.A., 78-45-7.5 (7) (a) says:

"...finding made that the parent is voluntarily unemployed or underemployed.";

and U.C.A., 78-45-7.5 (7) (b) says:

"...income shall be based upon employment potential and probable earnings as derived from work history, occupation qualifications and prevailing earnings for person of similar backgrounds in the community."

These statutes are in direct conflict and in violation of the Utah Right to Work Law, U.C.A., 34-34-1. U.C.A., 34-34-2, says:

"... 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."

U.C.A., 34-34-6 mandates that:

"...any other type of association engaging in..., or other conduct, a purpose of which is to compel or force any other person, ...to violate any provision of this chapter shall be guilty of illegal conduct contrary to

public policy...."

The court is illegally, through U.C.A., 78-45 "guidelines", attempting to force appellant into obtaining other employment simply because his farming occupation, at this point in time, 1) is not making what the State of Utah says is enough money; 2) not what the State of Utah, Department of Human Services deems appropriate for Appellant's past formal education; and 3) is coercing him from occupational change based on necessity. The State of Utah is by the very definition coercing and preventing Appellant from exercising "the right to work" free of "undue restraints and coercion" and is direct violation of U.C.A., 34-34-6.

The State of Utah is not barred from obtaining their support payments, inasmuch as the statutes provide for liens against obligers and obligor estates, so to preclude an individual of the right to work is clearly a violation of basic rights.

Incarceration to coerce Appellant to obtain other employment as defined by the State of Utah with an income defined by the State of Utah is in violation of his Utah Constitution, Article 26, Section 3 (3), which says:

"The legislature shall prohibit: ...(3) The political and commercial control of employees."

The State of Utah is trying to politically and commercially control Appellant's labor; forcing him to obtain other employment by putting him in jail, which could result in the ruin of Appellant's farming business.

If, for any reason, the State of Utah, Department of Human Services can declare Mr. Barker "underemployed" or "overemployed" it is a natural extrapolation that the State of Utah WILL NEXT ATTEMPT to decide if Mr. Barker must change his

occupation, the salary at which he may work, and even the location of his employment.

This deprives Mr. Barker of inalienable rights to decide what is best for his personal and family requirements in violation of Utah Constitution, Article 1, Section 25, which says:

"This enumeration of rights shall not be construed to impair or deny others retained by the people."

POINT V

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

Appellant's Right To Work under U.C.A., 34-34-1 has been violated. U.C.A., 34-34-2, says:

"... 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."

Imputation of income and incarceration to force appellant to obtain other work of a higher pay which is not available is against the law. Under Utah Constitution, Article 1, Section 1:

"All men have the INHERENT and INALIENABLE RIGHT to enjoy and defend their lives and liberties; to acquire, possess and protect their property...." (emphasis added).

The right to life includes the right to work and Appellant's inherent right to life has been deprived. Under Utah Constitution, Article 1, Section 4, Appellant's right to conscience has been denied. Under Utah Constitution, Article 12, Section 9, which at the time had not been repealed, Appellant's right, which says:

"Each person in Utah is free to obtain and enjoy employment whenever

possible, and a person or corporation, or their agent, servant, or employee may not maliciously interfere with any person from obtaining employment or enjoying employment already obtained from any other person or corporation.",

has been violated. Mr. Barker had been working at an egg production business long before the lower court brought action against him in 1991.

Under Utah Constitution, Article 3, First, perfect toleration of religious liberty right has been violated. This article says:

"...no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship...."

Appellant has maintained the belief for years that the federal social security number is the mark of the "beast" as spoken of in The Book of Revelations in the Holy Bible. Appellant has not used that number for many years, nor is there any law requiring him to do so. The court, however, is illegally attempting to force him into a social insurance contract by putting him in jail.

POINT VI

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

Utah Constitution, Article 1, Section 16, says:

"There shall be no imprisonment for debt except in cases of absconding debtors."

Appellant is not an absconding debtor! Several years ago a contract work agreement expired due to a corporate shutdown and Appellant was involuntarily unemployed, as shown by the record. In light of general economic conditions; i.e., 1500 applications for

one job in the area, projected future conditions for highly specialized mining, a declining health situation, religious belief along with a work ethic, a need to feed his family and to keep them off of welfare, Appellant became involved in farming. Appellant has been farming for over 4 years. Furthermore, there is absolutely no evidence that he was underemployed for the purpose of avoiding a support obligation. Certainly Utah Rules of Evidence, Rule 406, which says that:

"operation was in conformity to habit or routine practice.",
applies to Mr. Barker's established egg business which had been ongoing for over a year.

The court attempted to "grandfather" Appellant into application of guidelines after 1989 pursuant U.C.A., 78-45-7.2.

It is apparent the only determinate used by the trial court to declare Appellant an absconding debtor was the post 1989 law application of 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 situation exists."

The Attorneys for the Utah Department of Human Services and the Appellee failed to provide any offer of proof pursuant to Utah Rules of Evidence, Rule 103 that work was available in the area.

In violation of fundamental constitutional rights stated above, the lower court, without considering all the facts, arbitrarily and with abuse of discretion and abuse of process made a finding that appellant was intentionally underemployed to avoid support payments, when in fact that is not so. Also, Appellant's farm business must be

considered pursuant to U.C.A., 78-45-7.5 (4) (a), which in affect says:

"...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...."

In today's worsening economic conditions people must often obtain lesser employment in order to survive. The judge ignored the facts and with abuse of discretion falsely imprisoned appellant.

Findings are adequate only if they are:

"sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusions on each factual issue was reached ." Stevens v. Stevens, 754 P.2d 952, 958 (Utah Ct. App.1988) (quoting Action v. Deliran, 737 P.2d 996, 999 (Utah 1987); Ostler v. Ostler, 789 P.2d 713 (Utah Ct.App 1990).

The court did not include all relevant factors outlined in U.C.A., 78-45-7 (2), and U.C.A., 78-45-7 (3), i.e., responsibility of Appellant for others, in arriving at its conclusion; nor did it consider other relevant factors such as health, general economic conditions etc.

Can the court determine that appellant is intentionally underemployed when it is impossible to obtain work in the area which is of a like nature and at the same rate of pay? Rather than the judge ruling that a past work contract was in fact an unusual one of a kind overemployment situation, he ruled arbitrarily that appellant was underemployed with intent to avoid child support payments. Appellant told the judge, on the record, that he was not intentionally trying to avoid child support payments, but, without any evidence, with prejudice, and with abuse of discretion he ruled to the contrary. Findings of the court were not sufficiently detailed and did not include

enough subsidiary facts to disclose the ultimate conclusion of underemployment to avoid child support.

"Findings of fact should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusions on each factual issue was reached." Rucker v. Dalton, 598 P.2d 1336, 1338 (Utah 1979).

The trial court failed to make findings on all material issues since, the facts on record are not clear and uncontroverted. Jefferies v. Jefferies, 752 P.2d 909 (Utah App. 1988)

It should have been obvious to Judge Tervort that Appellant was not an absconding debtor since the record shows that Mr. Barker offered to pay when he was able, and Appellant has been openly pursuing a farming occupation for a number of years and has experienced major setbacks.

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

U.C.A., 78-45-7.5 (7) (a), which says:

"Income may not be imputed to a person unless the parent stipulates to the amount imputed and a hearing is held or a finding made that the parent is VOLUNTARILY unemployed or underemployed." (emphasis added)

Nor can the state "impute" income to the obligor and harm the individual and his new family in violation Utah statutes or his or her basic right to wed and honor a contract to support a new family, simply because an involuntary underemployment situation exists, when there is no intent to defraud.

The state is not precluded from obtaining child support provided by the state since, under the law of equity, the obligee is under the same duty of support to the children, U.C.A., 78-45-4.

The judge should not have overlooked Appellant's change of circumstances since Appellant was farming for about 4 years and is supporting a new family with six dependents; and it is certain that Appellant does not have the money, at this time, to be able to pay 600 dollars per month for child support. U.C.A., 78-45-7.5 (7) (b), which says:

"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 background in the community.",

should not have been applied to Mr. Barker since a change of circumstances did, in fact, occur and he INVOLUNTARILY lost work contracts. No other factors and specific detailed findings which effected Mr. Barker's income were considered to properly arrive at a conclusion that he is "voluntarily underemployed" with the sole purpose and intent to avoid a child support obligation.

Moreover, there is nothing on the record which would overcome the fact that a highly specialized overemployment work contract had expired due to a corporate shutdown and that work of a like nature, simply, did not exist in the state of Utah. Mr. Barker is being punished for a bad Utah economy over which he has no control.

Appellant told the court that he looked for other mining work and that no similar work was available. Rather than go on welfare, unemployment, or disability, appellant sought to prudently obtain other employment.

It is also proper to consider obligation incurred since the divorce to support a "new family" including a step-child. In Wright v. Wright Utah P.2d 443 (1978) the Utah Supreme Court held that:

"the undertaking to support stepchildren does not relieve the parent of his obligation to support his own natural."

Thereafter, in 1979, the legislature enacted U.C.A., 78-45-4.1 which provides as follows:

"A step-parent shall support a step-child to the same extent that a natural or adoptive parent is required to support a child...."

Although the obligation to support a second family does not replace the obligation to support one's natural children, it is certainly a factor to be considered making a modification of a divorce decree.

The lower court ignored the fact that the threshold requirement had been met for a material change of circumstances, (notwithstanding that the attorney for the state of Utah admitted on the record that the requirement had been met). In disregard of U.C.A., 78-45-7, which allows for a change of circumstances, the judge ruled on the amount of support owing pursuant to the "guidelines". Is not the judge prevented from practicing law on the bench by the Utah Constitution?

The court and the Department of Human Services is trying to "grandfather" appellant in under new U.C.A., 78-45-7.2 through U.C.A., 78-45-18, "guidelines" in violation of basic rights in this civil matter. Income was imputed to appellant by the lower court using the "guidelines" in U.C.A., 78-45-7.5 (7) (b) based on voluntary underemployment; but the court then determined, on the record, that the support

amount would be the same as that determined by prior court order pursuant to U.C.A., 78-45-7.

Mr. Barker was harmed since he apparently did not artfully plead evidence to rebut the "guidelines". In the interest of justice, all factors in the instant matter should be considered by the lower court and Mr. Barker should not be held to the same standards as an attorney.

The court ignored evidence that use of the "guidelines" would be unjust, inappropriate, and not in the best interest of all of appellant's children, and the taxpayers of the state of Utah.

POINT VIII

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

The court arrived at its conclusion about Appellant's child support obligation without having made specific detailed findings in reaching its conclusion on the record.

Mr. Barker should not have been held to the same standards as an attorney in presenting to the court his change of circumstances which would allow a rebuttal of the "guidelines". The attorney for the Utah Department of Human Services said, on the record, that the requirement for a change of circumstances had been met. The court did not consider that application of the guidelines pursuant to U.C.A., 78-45-7.2 (3) would cause Mr. Barker, an injustice, that it was not in the best interest of several of his children, and it was inappropriate.

It was and is inappropriate to apply the guidelines since said statute conflicts

with the Utah Constitution, Utah Statutes, and prior Utah Supreme Court rulings.

U.C.A., 78-45-7.2 (5) says:

"In a proceeding to modify an existing award, a 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."

This statute places Appellant's children of his new family secondary, in their support privilege, to those children on welfare. This statute violates Mr. Barker's Utah Constitution, Article 1, Section 1 which says:

"All men have the inherent and inalienable right to enjoy and defend their lives and liberties...."

Mr. Barker is precluded from enjoying this constitutional right since he is unable to provide equal support for his new family and children to the same extent that would be the case if all the children were equally provided for under the same roof.

This statute violates Mr. Barker's Utah Constitution, Article 1, Section 18 which says:

"No bill of attainder ex post facto law, or law impairing the obligation of contracts shall be passed."

The statute violates this constitutional provision and is morally repugnant since Mr. Barker is being forced to provide for his welfare children at a fixed rate of money in a period of personal and general economic decline while his new family must go without. Mr. Barker has a right to contractually wed and support his new family.

Utah Constitution, Article 1, Section 21 says:

"Neither slavery or involuntary servitude, except as punishment for a crime, whereof the party shall have been duly convicted, shall exist within this State."

United States Constitution, 13th Amendment guarantees the same right.

U.C.A., 78-45-7.2 (5) places appellant in involuntary servitude to the benefit of the welfare children but to the detriment of the non-welfare children, being precluded by his circumstances from providing equal support to all Appellant's children at his given level of income. For example, if Mr. Barker were not divorced he would have the right to voluntarily obtain lessor employment and reduce the standard of living for his entire family. However, now that Mr. Barker is divorced and must pay child support to Department of Human Services he is prevented in his right to do so.

Moreover, Appellant is required by the lower court to provide a total support obligation to the welfare children to a greater extent than the children of his new family due to his present financial circumstances which do in fact meet the requirements for a change of circumstances.

The welfare children are enjoying a greater standard of living than they enjoyed while being under the control of appellant, even though child support awards should approximate actual need and, when possible, assure the children a standard of living comparable to that which they would have experienced if no divorce had occurred.

Ostler v. Ostler, 789 P.2d 713: 131 Utah Adv.Rep. 15, (Ut.Ct.App. 03/13/90)

U.C.A., 78-45-7 (3) (1990) states:

"(3) ...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 need of the obligee;**
- f) The age of the parties;**

g) The responsibility of the obligor for the support of others."

The courts have recognized that:

"[s]ection 78-45-7 REQUIRES the trial court to consider AT LEAST the seven factors listed...[and to] enter findings on ALL of the factors." Jefferies v. Jefferies, 752 P.2d 911 (Utah App. 1988) (emphasis added).

The judge did not consider these criteria, from U.C.A., 78-45-7, to Appellant or Appellee in reaching a judgment, nor did he consider other relevant matters such as, present state of health of the parties, or that Appellee did voluntarily increase her house payment by selling in essence a paid for home to the harm of Mr. Barker.

The record will show that Appellee testified that her health was good, she was able to work, she had received several years of college education through welfare monies and had considerable work experience.

The lower court did not consider the above in light of the said statutes and did error and abuse is discretion to the harm of Appellant. There are no specific findings as to why they were not considered, even though pursuant to Woodward v. Woodward, 709 P.2d 393 (Utah 1985), they should have been.

The judge did not consider that pursuant to U.C.A., 78-45-4 that Appellee has a duty of support for her children. No specific finding was made as to why she should not share in the support obligation since, the record shows that she is able to work, and has received about 2 years training from welfare in addition to prior college training. Nor did he consider that she might be intentionally underemployed in light of the fact that she has had considerable work experience at below "minimum wage", and that she sold a home which was almost paid for which has in effect made her more intentionally

welfare dependant at a higher level of welfare income. The trial court failed to make findings on all material issues since, the facts on record are not clear and uncontroverted. Jefferies v. Jefferies, 752 P.2d 909 (Utah App. 1988)

The court did abuse its' discretion and committed error in computing gross income for support purposes, for some of Mr. Barker's children while excluding his other children living with him, by negating U.C.A., 78-45-3:

"Every father shall support his child",

U.C.A., 78-45-4.1 says:

"A stepparent shall support a stepchild to the same extent that a natural or adoptive parent is required to support a child....",

and U.C.A., 78-45-4.3 says:

"Nothing contained herein shall act to relieve the natural parent or adoptive parent of the primary obligation of support...."

The trial court's conclusions of law do not agree with said statutes.

The court apparently does not understand that a parent has the PRIMARY duty to support his NATURAL AND HIS STEPCHILDREN (U.C.A., 78-45-4.1). If his children become wards of the state he is not relieved of the above stated primary obligation of support (U.C.A., 78-45-4.3), In otherwords, a parent has the primary obligation of support for all his children and is not relieved of the obligation simply because one group of children are on welfare.

The statutes do not say that a parents' obligation to his natural and stepchildren is SECONDARY. Nor can the State of Utah force Mr. Barker to breach a contract made with his second wife. If that were so, a parent could legally let his

non-welfare children starve since, as it would be legally reasoned, the welfare children are the PRIMARY. Moreover that would violate the Utah Constitution, Article 1, Section 7 right of Mr. Barker's new family, which right says:

"No person shall be deprived of life, liberty or property, without due process of law."

The lower court cannot require that Mr. Barker violate the law by causing him to take away the right of parental support of some of his children to the exclusion of others. Nor can the lower court require Mr. Barker to violate the law by requiring him to provide an equal protection right to some of his children and deny the same right to the others pursuant to Utah Constitution, Article 4, Section 1, which says:

"...Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges."

"To fail to give effect to all provisions of a statute, or give a statute unreasonable or absurd construction, violates fundamental rules of statutory interpretation." Sherwood v Elgart 63 ALR 2D 490.

U.C.A., 78-45-7.2 (5) says:

"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."

That statute places Mr. Barker in violation of the aforementioned laws since a limited change of circumstances under this section would cause him to relegate his other natural children to third class citizens, and would force him to violate Utah Statutes, force him to deny his new family equal protection under the law, and would deny him various aforementioned substantive rights.

In addition, this would give the state the power to relegate certain classes

(non-welfare children) to third class citizens. The law will not tolerate such an absurdity. This cannot be in any way construed to be legislative intent!

"Every father must support his child", (U.C.A., 78-45-3).

An "obligor" is any person owing a duty of support (U.C.A., 78-45-2 (9)). The trial court said in it's Conclusions of Law dated 16 July 1993, however: "Defendant's obligation to support his natural children of this action, is primary to his obligation to support his natural children of subsequent common law marriage or stepchildren of the same common law marriage". And "While the Defendant may have an obligation to support stepchildren of a common law marriage, that obligation is secondary to his support obligation to his natural children."

The statutes simply do not and cannot be construed in such a manner to affirm the courts' conclusion. In fact of law the Utah Supreme Court has ruled in Openshaw v Openshaw, 639 P2d 177, that it constitutes a factor in a material change of circumstances, and the lower court has abused its' discretion in disallowing a material change of circumstances.

Support of children must consider husband's ability to meet reasonable needs of (all) children. Callister v. Callister, 261 P2d, 944.

In this instance principles of law have been arbitrarily misconstrued and misapplied. The judge did abuse his discretion.

POINT IX

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

The court abused its discretion and did err when it reversed judgement of a prior district court verdict in violation of Utah Constitution, Article 1, Section 16, which says: "There shall be no imprisonment for debt except in the case of absconding debtors" and in violation of Utah Rules of Civil Procedure, Rule 60 (b) which says: "(6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment."

The record minute entry for the Honorable Judge Tibbs, Fifth Judicial District Court, for 12 March 1991 on page 5 says:

"Jail susp. & Def. may purge this if he files a list of all his income & expenses...for 6 months."

In otherwords, Appellant was told that if a six months account of the farming operation was provided to the court that the contempt charge would be purged. Appellant did as required by the court and heard nothing further.

In a different court two years later Judge Tervort did, at the beginning of the this action, ask Mr. Barker if he had given the accounting to the prior court. Mr. Barker replied in the affirmative. Judge Tervort stated on the record: "Well, that takes care of that.", indicating that the contempt charge had been dropped. The court reporter, Joseph Lidell was repeatedly asked for the Law and Motion day transcript of

that statement by Mr. Barker but it has not been forthcoming. Mr. Lidell was first asked for it by Mr. Barker on the telephone immediately after Appellant's incarceration and in later letters requesting it but to no avail.

Judge Tervort did in a final Judgment and Order dated 3 August 1993, paragraph 4, state:

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

Therefore, not only is Judge Tervort attempting to reverse a prior order, he has also in his final Order affirmed the prior Judgment and Order of Judge Tibb's court.

Under ordinary circumstances it is improper for a judge to reverse an order of his colleague. Peterson v. Peterson, 530 P.2d 821 (Utah 1974). The court did abuse its discretion and committed error when it reversed a prior district court order.

POINT X

STATE OF UTAH ATTEMPTING ILLEGAL SUBROGATION OF WELFARE CONTRACT

The State of Utah Department of Human Services is, with threat, duress, coercion, and imprisonment trying to force upon Appellant into a quasi state- federal social contract while holding Appellee immune, in violation of Utah Constitution, Article 1, Section 18 and U.C.A., 78-45-4. Section 18 says:

"No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed".

U.C.A., 78-45-4 says:

"Every woman shall support her child...."

The constitutional law existed before other current Utah laws: laws that are

attempting to force appellant to break his current contract to support his new family and children equally and force him into other contracts. Appellant did not contract with Utah Department of Social Services, or Utah Department of Human Services. Appellant did not sign a contract pursuant to applicable law or Uniform Commercial Code, 70A-3-401 which says:

"(1) A Person is not liable on an instrument unless: (a) the person signed the instrument....",

or other applicable law. Appellant noticed Department of Social Services pursuant to applicable law and Uniform Commercial Code, 70A-2-207, which says:

"(2) (c) Notification of objection to them has already been given or is given within a reasonable time after notice of them is received."

They were told to stop paying federal reserve notes to his family since the family was being supported. In fact, the record shows that timely notification was given the Office of Recovery Services indicating Appellant was providing a home, car, food, clothing, and over 300 dollars per month in addition to numerous other substantive support payments in kind. In other words, the Office of Recovery Services was originally notified in February 1985 that Appellant was providing adequate support to his family and to terminate any welfare assistance. Notwithstanding, the Office of Recovery Services continued to alienate the affections of Mr. Barker's family from him and to cause a breach of contract between him and his former wife by providing federal reserve notes to said family. The Office of Recovery Services then claimed that all of the substance that Mr. Barker provided, as noted above, was not allowable since it was payment in kind. (See Appellant's Notice to Department of Social Services Exhibit dated

February, 1985) Moreover, at no time has Appellant failed to demand an explicit reservation of rights and remedies pursuant to applicable law or Uniform Commercial Code, 70A-1-207 which says:

"(1) A party who with explicit reservations of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved...."

In addition, the State of Utah Department of Human Services and respondent, Laura Beth McGillivray are illegally and improperly attempting to subrogate respondent's welfare debt by imputing the debt to appellant. It is well established that the basis for legal imputation is the "Primary's" (appellant's) control over and ability to direct the "Agent" (appellee). If the primary does not legally control and direct the agent there can be no imputing, hence no legal subrogation. It is obvious that Appellant has no control over any actions of Appellee including her fraudulent actions or fraudulent action of the Utah Department of Social Services and the Department of Human Services.

Black's Law Dictionary defines IMPUTES as follows:

"As used in legal phrases, this word means attributed vicariously; that is, an act, fact, or quality is said to be "imputed" to a person when it is ascribed or charged to him, not because he is personally cognizant of it or responsible for it, but because another person is, **over whom he has control for acts or knowledge he is responsible.**" (Emphasis added)

The doctrine of "Imputed Negligence" IS LIMITED TO CASES where there is a right to control in the relationship of a master and servant, principal and agent or a joint enterprise. Clough v. Schurtz 48 A.2d 921,922, 94 N.H. 138.

The rule that the agent's knowledge regarding business conducted by him

affecting principal is "imputed" to principal DOES NOT APPLY if in the particular transaction involved the agent has a interest which is adverse to the principal. Haep v. Bank of Arizona 110 P.2d 235, 237, 57 Ariz. 8.

It is well settled that subrogation on behalf of surety is never applied against an innocent person wronged by the principal's fraud.

U.S.Fidelity & Guaranty Co. v. First Nat. Bank in Dallas, C.A.Tex, 172 F.2d 258;
American Surety Co. of New York V. Lewis State Bank, C.C.A.FLA., 58 F.2d 559.
"His liability for necessities provided by other persons for her support rests entirely upon the ground of his neglect or default."

The record will show that Appellee was awarded a home and land valued at 25,000 dollars, that Mr. Barker had secured to himself prior to this marriage, for the support of the children but that she immediately sold it for 15,000 dollars, spent the money within a few months, and thereby voluntarily increased her housing cost significantly to the harm of Appellant. Appellee and the Utah Department of Social Services and the Department of Human Services, to the harm of Appellant, are attempting to collect a welfare debt which is significantly higher due to increased housing costs. There does not exist the element of "good faith" in the above supposed contract under the provisions of applicable law or Uniform Commercial Code, 70A-1-203, which says:

"Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement."

Appellee continued receiving and enjoying payment in kind from Appellant, i.e., a house, over 8 tons of food storage, clothing, a car, etc., and over 300 dollars per month for a period of 5 years while at the same time was receiving welfare assistance. Utah Department of Social Services did not allow Appellant credit for payment "in kind"

while continuing to loan Appellee mere federal reserve note credit instead of value or substance.

Appellee was in violation of U.C.A., 62A-11-101 which says: "It is the intent of the Legislature that the integrity of the public assistance programs of this state be maintained and that the taxpayers support only those persons in need and only as a resource of last resort. To this end, this part should be liberally construed.",

since she did "double dip" and did not really have to go on welfare.

Further, by disallowing Appellant's payment "in kind" and requiring him to repay said welfare assistance in federal reserve notes it caused him to become involuntarily insolvent as defined by applicable law and Uniform Commercial Code, 70A-1-201 (23), which says:

"A person is 'insolvent' who either ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or if he is insolvent within the meaning of the federal bankruptcy law."

By not allowing payment "in kind" which Appellant and Appellee had contracted to do, and was acted upon by both for a number of years, the Department of Social Services and now the Department of Human Services have fraudulently misrepresented the facts pursuant to applicable law and Uniform Commercial Code, 70A-3-305, which precludes the enforcement of the welfare contract based on:

- (1) (a) (ii) "duress, lack of legal capacity, or illegality of the transaction which, under other law nullifies the obligation of the obligor;"
- (iii) "fraud that induced the obligor to sign the instrument with neither knowledge or reasonable opportunity to learn of its character or its essential terms; or"
- (iv) "discharge of the obligor in insolvency proceeding;"

Appellant is harmed since, said Departments have not even under colorable law given welfare assistance credit for value or "payment in kind" taken or disallowed.

Utah Department of Social Services and Department of Human Services by providing welfare assistance in the form of federal reserve note credit and having done so to the harm of Appellant have violated provisions of Utah Constitution, Article 6, Section 29, which precludes lending public credit to a private individual.

The foregoing coercion, misrepresentation, and fraud, which should be estopped, have placed Appellant in a condition of involuntary insolvency pursuant to Uniform Commercial Code, 70A-1-201 (23), or other applicable law, and he is unable to pay his debts in the ordinary course of business as evidenced by United States Code, Title 31, Section 5118 (b) and United States Code, Title 31, Section 5119 (a).

Pursuant to United States Code, Title 12, Section 411, federal reserve notes are treasury obligations. Under United States Code, Title 31, Section 314, United States Code, Title 31, Section 821, and United States Code, Title 31, Section 822, "United States money is expressed in dollars."

Since there is no silver of a specified purity as defined by congress in the federal reserve note it is not a dollar. The term dollar is fraudulently engraved on the federal reserve note. The lower court has attempted to place Appellant in a condition of involuntary servitude which is forbidden by Utah Constitution, Article 1, Section 21, which says:

"Neither slavery or involuntary servitude, except as punishment for a crime, whereof the party shall have been duly convicted, shall exist within this State."

The lower court having incarcerated Appellant because he cannot pay federal reserve notes, after having taken away all of his substantive assets, has harmed Mr.

Barker. Moreover, the Utah Department of Human Services has frauded, misrepresented, or otherwise not fully disclosed the nature of an agreement entered into by Appellee and are trying to force said agreement or instrument upon Mr. Barker.

Moreover, because Utah Constitution, Article 1, Section 24, requires a uniform operation of the law, and under the laws of equity, law merchant, or other applicable law or principles of law including, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, Appellee is, pursuant to U.C.A., 78-45-4, required to support her children. She then, cannot become immune from her contract by subrogating a debt that she contracted for, to the harm of another.

The lower court was notified in Appellant's Affidavit dated 9 July 1993 that he explicitly reserved his rights and remedies under Uniform Commercial Code, 70A-1-207, or other applicable law.

POINT XI

APPELLEE NOT IMMUNE FROM WELFARE CONTRACT

The State of Utah, Department of Social Services and Department of Human Services have violated Utah Constitution, Article 1, Section 23 which says:

"No law shall be passed granting irrevocably any franchise, privilege or immunity."

They are attempting to make Appellant solely liable for a child support contract that Appellee signed and entered into, while holding Appellee to be privileged and immune from said contract. At no time has Appellant voluntarily entered into a contract with any department for said services.

Appellee, Laura Beth McGillivray, is liable and not immune for the instrument, as she signed it with the State of Utah, Department of Social Services, pursuant to applicable law and the Uniform Commercial Code, 70A-3-401 which says: A person is liable if:

"(1) (a) the person signed the instrument...."

Appellee accepted that agreement by continuing to be a welfare recipient under applicable law and the Uniform Commercial Code, 70A-2-208 which says:

"(1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement."

U.C.A., 78-45-4 says:

"Every woman shall support her child...."

Appellee cannot assign away the duty to support them. Nor can the State of Utah, Department of Human Services relieve or render Appellee immune from the obligation if in fact she even signed a contract with them. There is no evidence on the record that Appellee even entered a contract with that agency.

Nor can the State of Utah Department of Social Services, or the Department of Human Services legally loan its' federal reserve note credit or other credit in aid of Appellee, who is a private individual, in violation of Utah Constitution, Article 6, Section 29 which says:

"The legislature shall not authorize the State, or any county, city town, township, district or other political subdivision of the State to lend its credit...in aid of any...other private individual or corporate enterprise or undertaking."

Nor can the State of Utah Department of Social Services, or Department of Human Services loan monies for welfare unless said monies are obtained from loans specifically for that purpose pursuant to Utah Constitution, Article 14, Section 1 which

says: "To meet casual deficits or failures in revenue, and for necessary expenditures for public purposes...and for the payment of all Territorial indebtedness assumed by the state, the State may contract debts...and all monies arising from loans herein authorized, shall be applied solely to the purpose for which they were obtained."

The aforementioned Departments have not only harmed Appellant by a violation of those laws but have harmed the general citizenry of the entire State of Utah.

Inasmuch as the element of fraud on the part of Appellee has been evidenced on the record in Judge Tibb's court in 1991, as evidenced by the statement of attorney Gammon for the Utah Department of Social Services wherein he declared to the Judge that "It looks like we have a case of welfare fraud", along with the use of welfare which was not obtained as a means "of last resort" as discussed in Point X above, Appellee should not be held immune from her contracts with the Utah Department of Social Services and the Department of Human Services.

POINT XII

APPELLANT UNABLE AND MAY NOT BE LIABLE TO PAY WELFARE MONIES

The court has by putting Appellant in jail, prevented him from a duty of support for Appellant's current family which is in violation of U.C.A., 78-45-4.1 and U.C.A., 78-45-3, since he is not intentionally underemployed to avoid support payments.

Appellant simply does not have the money at this time nor is it available to him.

This cannot be construed to mean, nor should any attempt be made to attach any implication, that appellant is attempting to avoid child support payments.

The court has by putting him in jail, prevented him from his primary duty of support, i.e., providing for Appellant's his new family consisting of a wife and 5 children. If appellant is not able to recover from the damage done to his family, or if he is prevented from providing primary support to them, it will result in 6 people going on welfare. A colloquial "catch 22" situation. The intent to be "liberally construed", of U.C.A., 62A-11-302 is

"... 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."

By placing Appellant in jail and preventing him from providing his duty of support to his immediate family, the court has violated his Utah Constitution, Article 1, Section 1, right to enjoy and defend his life and liberty, and to protect property.

When the court fails to enter adequate findings on each relevant factor, it is REVERSIBLE ERROR unless the undisputed evidence clearly establishes the factor or factors on which the findings are missing. Ostler v. Ostler, 789 P.2d 715 (Utah Ct.App. 1988).

Findings are adequate only if they are

"sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusions on each factual issue was reached ." Stevens v. Stevens, 754 P.2d 952, 958 (Utah Ct. App.1988) (quoting Action v. Deliran, 737 P.2d 996, 999 (Utah 1987))

Utah statutes draw no distinction in terms of support duty between custodial and

non-custodial parents nor between fathers and mothers. The duty of both is the same;

"Every man shall support his child..., " U.C.A., 78-45-3; "Every woman shall support her child..." U.C.A., 78-45-4.

In a court appearance in 1991 Appellant tendered an offer for alleged support debt owing even though it would impose on him an extreme and unreasonable hardship. He tried to stipulate that half of what he earned he would apply to his child support obligation. Judge Tibb's tried to encourage all parties to stipulate to that since it was obvious to him that Mr. Barker could not pay the full amount. The Judge in his Findings of Fact and Conclusions of Law found that Mr. Barker was unable to pay. The attorneys for the plaintiff would not stipulate to that. That written record meets the requirements of U.C.A., 78-27-1 and is evidence that Mr. Barker is not an absconding debtor. The lower court was told about this but refused to consider it.

The Appellate Court should, in the interest of justice, require that this along with other matters mentioned in Point VI above be reconsidered in determining that Mr. Barker is not an absconding debtor.

Ordinarily, the trial court has considerable discretion in adjusting the financial interests of divorced parties and, thus the court's:

"actions are entitled to a presumption of validity." Hansen v. Hansen, 736 P.2d 1055, 1056 (Utah Ct.App. 1987).

However, where the court has abused its discretion in apportioning those financial responsibilities, the determination cannot be affirmed. See also Ostler v. Ostler, 789 P.2d 713, 715 (Utah Ct.App. 1990). One such abuse that has been recognized in the area of the law is the failure to enter specific, detailed findings

supporting each of the factors which must be considered when making a child support award Stevens v. Stevens, 754 P.2d 952, 958-59 (Utah Ct. App.1988); Jefferies v. Jefferies, 752 P.2d 909 (Utah App. 1988). The court failed to make specific findings in arriving at its' conclusion.

Since the element of fraud, which was perpetrated by Appellee, as mentioned in Point X and Point XII above, does in fact exist, Mr. Barker should not be held liable for the full extent of Appellee's contract.

POINT XIII

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

The State of Utah Department of Human Services, Office of Recovery Services is guilty of "stuffing" the official record with documents.

After appellant discovered in the lower court clerk's office fifteen minutes before the beginning of the instant 1993 matter he made it a matter of record in the court. However, the documents were, upon his later examination, after the trial removed from the record. There was not time to review said documents since the clerk had to present the record to the judge. Appellant hereby reserves the right to review the record in light of documents having been added and then taken away from the record without any notification having been given to him. It is apparent that the lower court has degraded to allowing illegal action circumventing due process of law.

POINT XIV

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

The lower court in it's Judgment and Order dated 30 June 1993 paragraph 4 stated that all previous orders be upheld is error. The Department of Social Services action to collect alleged prior monies owing, contained in Order in Supplemental Proceedings in this instant matter with the Utah Department of Human Services was, in the hearing of the lower court withdrawn by attorney Graf. Said Order was dated 3 August 1992 but was not served until 8 February 1993, well beyond the 120 days allowed for timely service. Therefore pursuant to Utah Rules of Civil Procedure, Rule 4 (b), that specific matter is to be dismissed without prejudice, and therefore the lower court is precluded from adjudicating that matter.

However, since the court has ruled on the matters Appellant has included those matters relating to the Utah Department of Social Services elsewhere in this brief.

POINT XV

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

Mr. Barker has no contract, agreement, license, or other nexus with the United States of America that would place him within the Jurisdiction of a legislative tribunal as authorized by United States Constitution, Article 1, Section 8, Clause 17. Mr. Barker does not use a federal or state social security number or other number nor is he involved in any transactions involving federal debt. Mr. Barker is not a United States Constitution, 14th Amendment citizen.

The lower court did not make specific detailed findings as to why it arrived at the conclusion that it had jurisdiction over the person Mr. Barker. Mr. Barker

maintains that the lower court has no jurisdiction over his person.

POINT XVI

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

Appellee's Action did and does not have personal jurisdiction and said action is an abuse of process under color of law; and is fraudulent by the claims and acts of the Appellee.

The Attorneys of Record for the Appellee did not and has not investigated the facts, or proved the facts of this case to this court(s) on questions of Jurisdiction over the Appellant.

Under Utah Rules of Civil Procedure, Rule 11 the Attorneys of Record for the Plaintiffs did not and has not conducted a reasonable inquiry into the applicable law and the facts of the case. Plaintiff's Attorneys of Record have not or have refused to continue in the investigation and inquiry into the truthfulness of the case as told to him/her by his client.

"The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, or to cause unnecessary delay or needless increase in the cost of litigation." Nakash v United States Dept of Justice (1988, SD NY) 708 FSupp 1354.

Under Utah Rules of Civil Procedure, Rule 11 the signature of an attorney is certificate to the court that the signer has read the pleading, motion, or other papers; that to the best of the signer's knowledge, information, and belief formed after

reasonable inquiry it is well grounded in fact.... This has not occurred! The requirement of Rule 11:

"merely adds an ethical responsibility to the conception that a claim that is baseless should not survive." Levy v Seation 358 F Supp 1.

The courts have held or recognized that one purpose of Rule 11 sanctions is to streamline the litigation process by discouraging the attorney from signing dilatory or abusive tactics, such as the filing of frivolous claims or defenses or the use of pleading to harass or delay. Golden Eagle Distributing Corp. v Burroughs Corp. (1986 CA9 Cal) 801 F2d 1531; Greenberg v Sala (1987), CA9 Nev, 822 F2d 882; Hurd v Ralphs Grocery Co (1987, CA9 CAL) 824 F2d 882; Hudson v Moore Business Forms (1987 CA9 CAL) 827 F2d 450.

The standard for imposing sanction under Rule 11 is an objective determination whether a sanctioned party's conduct was reasonable under the circumstances, explained the court in Brown v Fereation of States Medical Bds. (1987 CA7 Ill) 830 F2d 1429; stating that subjective bad faith is no longer the crucial inquiry. Noting that Rule 11 contains two grounds for sanctions, the first grounds is the "frivolous clause" and is composed of two subparts; 1) whether the party of attorney made a reasonable inquiry into the facts, and 2) whether the attorney made a reasonable inquiry into the law. The court held that a violation of either subpart of the frivolous clause constitutes a violation of Rule 11.

To determine whether an attorney made a reasonable inquiry into the facts of a case, the courts have said that the court consider; 1) whether the signer of the documents had sufficient time for investigation; 2) the extent to which the attorney had

to rely on his/her client for the factual foundation underlying the pleading, motion, or other paper; 3) the complexity of the facts and attorney's ability to do a sufficient pre-filing investigation; and 4) whether discovery would have been beneficial to the development of the underlying facts.

The other prong of Rule 11, the "improper purpose clause", provides that a motion, pleading, or other document may not be interposed for the purposes of delay, harassment, or increase of cost of litigation. It should be noted that subjective bad faith is relevant in situations involving malicious prosecution of claims, although not in situations where a party has repeatedly pursued implausible claims.

The Plaintiff's attorneys have violated Utah Rules of Civil Procedure, Rule 11 in trying to confuse this case with unfounded facts, escalate the cost of defending this action beyond Appellant's ability to pay for his defense, to clog the court docket and pervert justice; as evidenced on the record by the action of the Appellate Court's own Motion for Summary Disposition. The Appellate Court and the assistant attorney general of record have harassed Appellant through malicious process inasmuch as the Appellate Court did on its motion seek to have a summary disposition of this case on the basis of no new Notice of Appeal having been filed by Appellant after post Judgment and Orders. The facts prove otherwise. All parties were noticed and a certification to that effect was also served upon all parties, including the Appellate Court. Appellees action caused an escalation of court cost and time, loss of income and was frivolous, malicious process and harmed Mr. Barker.

The Plaintiff's Attorneys of Record knew or should have known that there were

no jobs, of a like nature, in the area and that other mining work opportunities did in fact not exist and that Appellant was involuntarily unemployed. That Appellant has made a good faith effort to support his dependents (all of them) and has not intentionally avoided child support payments.

The Attorneys of Record knew or should have known that Utah State Statutes CONFLICTS WITH OTHER STATE STATUTES and Utah State Constitution as it relates to the rights of Appellant. The trial court also was aware or should have been aware of these conflicting statutes, yet arbitrarily used those statutes that favor Appellee over Appellant; while totally ignoring those statutes which might favor Appellant's position.

The Attorneys of Record knew or should have known THE EXACT STATUTORY PROCEDURE FOR DETERMINING AND EXERCISING SUBJECT MATTER JURISDICTION under Utah Statutes instead attempting to "grandfather" Appellant into new statutes designed to enhance and benefit Appellee to the harm of Appellant, yet, again, arbitrarily picked and chose those statutes and law that favored Appellee over Appellant; without giving the trial court the "full" statutory overview.

The Plaintiff's Attorneys of Record knew or should have known the instant action was "STATUTE SHOPPING" FOR FINANCIAL GAIN in favor of Plaintiff's and Appellee Laura McGillivray to the detriment and exclusion of Appellant's second family of seven dependents. This is a blatant attempt by the State of Utah to establish, set and continue legal precedence in favor of the Appellee (female/mother) over the legal rights of the Appellant (male/father). It is a nation wide trial court trend found in many states

to attempt to eliminate and shove to the background the rights of the "other non welfare family" to give precedent and privilege to "welfare families". It has been very successful in such feminist welfare states as Wisconsin, Nevada, and Oregon. This is clear discrimination against an entire class of children (non-welfare) and families. There can be only one logical but unexpressed private agenda for this course; to promote the bureaucratic mushrooming of the Department(s) of Human Services (nation wide as well as Utah) turning them into a growth industry at the expense of the taxpayers and destroying male/fathers lives and raping their financial abilities even to support the non-welfare families.

This situation has resulted in senseless and needless court litigation in the Appellate Court resulting in unreasonable increases in litigation cost.

The lower court found erroneously that the Appellee, Laura McGillivray was pro se. The facts on the record prove otherwise. The assistant attorney general Graf did plead for appellee, matters pertaining to personal property disposition which were found to be res judicata by the judge. Mr. Barker was denied equal protection under the law and was not even afforded counsel when demanded. Appellee had the benefit of legal counsel beyond the legal bounds set by statute. An attempt was made by the Asst. Attorney General near the conclusion of the proceeding to say that appellee Laura McGillivray was pro se but the record proves otherwise.

The actions of the Attorneys of Record have inflicted financial devastation, severe physical, psychological, and emotional distress on Appellant and his family. It is currently and will continue to increase the cost of litigation, further complicating the

legal process. The Attorneys of Record for the Plaintiffs knew or should have known this fact.

This court under Utah Rules of Civil Procedure, Rule 11 has inherent power to impose monetary sanctions on Appellees's legal counsel, contempt of court; award Appellant costs, and damages and to vacate/dismiss the trial court action.

CONCLUSION AND RELIEF SOUGHT

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

1. To estop the Utah Department of Social Services and the Department of Human Services action by vacating and voiding it as being fraudulent and in want of personal jurisdiction since Appellant is not a United States Constitution, 14th Amendment citizen;
2. To reverse judgment against said Departments since Appellant is not an absconding debtor, and to cause said Departments to pay Mr. Barker damages and punitive damages for loss of good name, severe physical and psychological stress for denying his support substance to his family and alienation of affections of his children and for necessary court costs and legal expenses, and loss of farm income from having to defend, in the amount of 100,000 dollars;
3. To hold Appellant to be free of subrogation of Appellee's fraudulently entered Utah welfare contract which resulted in debt and insolvency and other harm to Appellant;
4. 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: (A) A Motion for Summary Disposition which was frivolous and which increased litigation cost and otherwise delayed and harassed Mr. Barker and, (B) Other matters falsely claiming Mr. Barker to be an absconding debtor and intentionally avoiding child support resulting in a loss of good name, severe physical and psychological distress, etc. For which Mr. Barker claims damages in the amount of 800,000 dollars;

5. To reverse judgment of the lower court and allow for a material change of circumstances, and to declare him not an absconding debtor;

6. To find U.C.A., 78-45-7.2 (5), 78-45-7.5 (5) (c), and 78-45-7.5 (7) (a) and (b) unconstitutional;

7. That the Court for extra ordinary cause shown i.e., Appellant has been unable to obtain a copy of the transcript, by any means known to him, in preparation of this brief due to his poverty, should invoke Utah Rules of Civil Procedure, Rule 2 in the interest of justice and should review the transcript, which is on file with the Appellate Court, to substantiate the facts of the arguments above;

8. For court costs and legal expenses and such other and further relief that the court deems proper on these premises.

Dated this 5th day of April, 1994.

Signed Michael R. Barker

CERTIFICATE OF MAILING

I, Michael R. Barker, certify that 8 copies, 4 copies, and 2 copies of Appellant's Brief 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 6th day of April 1993.

Signed Michael R Barker