

1993

Michael R. Barker (In His Proper Person) v. Laura  
Beth (Barker) McGillivray and the State of Utah,  
Department of Human Services : Petition for  
Rehearing

Utah Court of Appeals

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Michael R. Barker; In His Proper Person.

Utah Attorney General.

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930587

MICHAEL R. BARKER  
(In His Proper Person)  
Defendant/Appellant,

VS.

Laura Beth (Barker) McGillivray  
and the State of Utah,  
Department of Human Services  
Plaintiff/Appellee

PETITION FOR REHEARING  
INCLUDING POINTS AND  
AUTHORITIES AND  
SUGGESTION FOR  
CERTIFICATION TO THE  
UTAH SUPREME COURT

Civil No. 930587-CA  
(Civil No. 9085)  
Priority No. 4

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

UTAH ATTORNEY GENERAL  
IN BEHALF OF  
LAURA BETH (BARKER) MCGILLIVRAY  
AND THE STATE OF UTAH,  
DEPARTMENT OF HUMAN SERVICES  
C/O Paul Graff #1229  
Asst. Atty. Gen'l  
201 East 500 North  
Richfield, Utah 84701

**FILED**

JUN 09 1995

COURT OF APPEALS

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PETITION FOR REHEARING

Comes now, Michael R. Barker a Sovereign Citizen of the state of Utah, and not a 14th Amendment citizen, to Petition the court for Rehearing pursuant to Utah Rules of Appellate Procedure, Rule 35(b); and to Suggest Certification of this instant matter for immediate transfer to the Utah Supreme Court pursuant to Utah Rules of Appellate Procedure, Rule 43 and to state as follows:

The Appellate Court has not looked at:

NO JURISDICTION

1. The fact that Mr. Barker is a Sovereign Citizen and the Utah Department of Human Services has no subject matter of personal jurisdiction over Mr. Barker. U.S. v. Simpson

SUPPORT AMOUNT UNENFORCEABLE

2. Findings of Fact and Conclusions of Law which took place in Judge Tibbs court on 25 March 1987, and which are a part of the record, certified by J. Liddell, the official court reporter, clearly show that the lower court erred when it attempted to allow an automatic increase in child support outside provisions allowed by Utah statute. See Record page 11, line 24 through page 12, line 8. Former wife is required to proceed to modify support orders and demonstrate a material change of circumstances rather than proceed on an order to appear and

show cause. Utah State Department of Human Services' attempt to collect said support is unenforceable. Grover v. Grover, 839 P2d 871. Said Department is in violation of U.C.A., 78-45-7(1) and Code of Judicial Administration, Rule 6-404. The lower court erred.

#### PREPONDERANCE OF EVIDENCE

3. A preponderance of evidence exists on the record in the form of Affidavits and testimony to show the character of Mr. Barker as a responsible provider who paid support when he was able. See record page 98 line 11 through page 100 line 16. A preponderance of the evidence exists also that a substantial and material change of circumstance does, in fact, exist. Even the Utah State assistant attorney general states on the record the threshold requirement had been met. See Record page 117 line 5 through line 12.

Evidence on the record, allowed, pursuant to the Code of Judicial Administration, Rule 6-401 (2) (b), clearly shows Mr. Barker's earnings from March to September 1991 which is well within the time period being adjudicated. The fact is, Mr. Barker had been working as a farmer for nearly five years at the time this matter came before the lower court. The basis for which earning ability of Mr. Barker is determined goes beyond the most recent years Mr. Barker was employed. Moreover, facts which led to that employment and the questions demanded to be

reviewed have not been addressed. For example, Mr Barker's affidavit and testimony of health problems which led, in part, to a farming occupation. See record page 45 line 18 through page 46 line 16, and page 103 line 1 through line 17.

Beyond the reduced earning of Mr. Barker is the fact that Mr. Barker was responsible for the support of a new family. Both the judge and the attorney for the Department of Human Services admitted on the record that the law required him to support that family but then they both propound not having to follow the law. See record page 94 line 16 through page 95 line 18; and page 97 line 3 through line 8. The court erred.

#### FACTS IN CONTROVERSY NOT REVIEWED

4. The Appellate Court has violated it's own Order of Dismissal of the Motion For Dismissal of Summary Judgment by Summarily or statutorily concluding that other issues are without merit; thereby precluding the numerous substantive rights violations which have harmed Mr. Barker from being properly reviewed. Moreover, the conflict between Utah statutes and the Utah Constitution which have worked to the harm of Mr. Barker are not being properly reviewed by the Utah Court of Appeals. In addition, the facts as they relate to the Utah Department of Human Services having violated provisions of the Utah Constitution to the harm of Mr. Barker as stated in his Counterclaim have not being reviewed.

ALL QUESTIONS OF FACT AND LAW NOT REVIEWED AND ANSWERED

5. It is demanded that the Utah Court of Appeals or the Utah Supreme Court look at not only the law but also the facts in controversy; and answer all of the questions presented in Mr. Barker's Brief, and his Response to Appellee's Brief and address and answer the foregoing.

PRAYER FOR RELIEF

That the Utah Court of Appeals or the Utah Supreme Court order relief prayed for as follows:

1. All relief as stated in Appellant's Brief and Response to Appellee's Brief.

2. Answer all questions as stated in 5 above and to avoid further bias and prejudice towards Mr. Barker.

3. That the reviewing Court will review the facts in controversy as well as all laws and statutes that have worked to the harm of Mr. Barker and denied him his God given rights.

4. That the reviewing court place a restraining order upon the State of Utah Department of Human Services to prevent said agency from doing further economic, psychological, and physical harm to Mr. Barker.

5. That the reviewing court find the Utah State Department of Human Services in violation of the laws as stated in Mr. Barker's Brief and Response to Appellee's Brief.

6. That the State of Utah did constructively fraud Mr.

Barker as alleged on record page 79 line 22 through page 81 line 16.

Dated 29 May 1995

Signed Michael R. Barker

#### VERIFICATION

I, Michael R. Barker do affirm and say that the forgoing is true and correct to the best of my knowledge, information, and belief, and is not for the purpose of evasion or delay and is done so in good faith.

Date: 29 May 1995

Signed Michael R. Barker

The above affiant, known to us, did state the above in our presence in Washington County, State of Utah.

Date: 29 May 1995

Witness Charles J. [Signature]

Date: 29 May 1995

Witness Lynn V. Duesch

#### SUGGESTION FOR CERTIFICATION TO THE UTAH SUPREME COURT

It is apparent that this case should be decided by the Utah Supreme Court since:

1. The Appellate court is in want of jurisdiction and is attempting to force its' jurisdiction on Mr. Barker by reviewing selected law only and not the facts in controversy which has violated its' own Order to Dismiss Summary Judgment. Numerous jurisdictional question as raised on page 3 of Mr. Barker's Response to Appellee's Brief remain unanswered since the Department of Human Services and the Appellate Court are in want of jurisdiction. See also the jurisdictional statement on page



ii of the same Response.

2. Questions have been decided differently than were decided by the same Utah Court of Appeals in reference to the basis for a substantial change of circumstances and unenforceable child support orders as determined in Grover v. Grover, 839 P2d 871.

3. The Supervision of the Supreme Court is demanded as a matter of Right to protect Mr. Barker's substantial Rights which have been violated. The Utah Court of Appeals will not review facts which are in controversy and does not have jurisdiction over Appellant.

4. The Utah Court of Appeals has tentatively decided important questions of state and federal law which should have, but have not been, decided by the Utah Supreme Court

5. The Utah Supreme Court should decide the facts and the law concerning numerous other substantial rights violations and illegal activities affecting Mr. Barker's rights.

6. This case when properly reviewed would have wide applicability to a number of other cases.

7. The Utah Court of Appeals cites certain Utah statutes to support its' position while ignoring other statutes which conflict with the Utah Constitution to the harm of Mr. Barker.

8. The Utah Court of Appeals violated Utah Rules of Appellate Procedure, Rule 26 (a) and (c) when it allowed

Appellee's to file a Brief after The time period thereby allowing additional bias and prejudice. Further bias and prejudice is blatantly manifest by the Court invoking Code of Judicial Administration, Rule 4-605, to prevent issues of fact in controversy from being adjudicated.

Dated 29 May 1995

Signed Michael R. Benton

CERTIFICATION

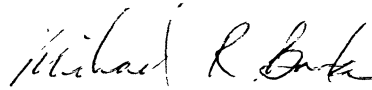
I, MICHAEL R. BARKER, certify that a true and correct copy of the foregoing PETITION FOR REHEARING INCLUDING POINTS AND AUTHORITIES AND SUGGESTION FOR CERTIFICATION TO THE UTAH SUPREME COURT was mailed, postage prepaid, or hand delivered to the following:

UTAH ATTORNEY GENERAL  
IN BEHALF OF  
LAURA BETH (BARKER) MCGILLIVRAY  
AND THE STATE OF UTAH,  
DEPARTMENT OF HUMAN SERVICES  
C/O Paul Graff #1229  
Asst. Atty. Gen'l  
201 East 500 North  
Richfield, Utah 84701

Court Clerk, Utah Court of Appeals  
400 Midtown Plaza  
230 South 500 East Suite 400  
Salt Lake City, Utah 84102

on 30 May 1995.

Signed

A handwritten signature in cursive script, reading "Michael R. Barker", is written over a horizontal line.