

2005

Latu v. Latu : Brief of Appellant

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS
OF THE STATE OF UTAH**

SIONE LIMIHAI LATU)	APPELLANT BRIEF
Petitioner and)	
Appellant)	
)	
Vs.)	
)	
Vai I. Latu)	Case No. 20050866 - CA
Respondent and)	
Appellee)	

**APPEAL FROM FOURTH DISTRICT COURT, Utah County
JUDGE Anthony W. Schofield
Case number 994402757**

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ORAL ARGUMENT REQUEST

**FILED
UTAH APPELLATE COURTS
APR 10 2006**

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**APPELLANT PURSUANT TO RULE 9,
Of the Utah Rules of Appellate Procedure submits this Appellant Brief.**

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Addendum - Final Order

TABLE OF AUTHORITIES

- a. IRS 20041040 Instruction Booklet pp. 17
- b. U.C.A 78-45-7.15(6)(8)(9)

STATEMENT OF JURISDICTION

Jurisdiction is conferred on Court of Appeals by Utah Code Annotated 78-2a-3(h)

STATEMENT OF ISSUES

1. Issue Number One: Whether trial court made a reversible error when it awarded judgment for Respondent for \$2,448.39 to recover Petitioner's share of the uninsured medical/dental bills for the minor children, when Respondent provided no factual proof to establish the specific requirements for recovery as required by law, 78-45-7.15(8) Utah Code Annotated, nor did the trial court obey the specific requirements of the law for denial of request for recovery, 78-45-7.15(9). Trial court abused its discretionary and judicial powers when it refused to obey the specific requirements of the law for awarding recovery or, denying recovery, and thereby established reversible error.

2. Issue Number Two: Whether trial court committed reversible error in arbitrarily awarding Respondent judgment against Petitioner for \$8,383.50, to pay back Respondent's tax refunds legally and lawfully garnished by IRS to pay owed taxes for years when both parties filed joint tax returns, as required by Federal Law

in accordance with the IRS 20041040 Instruction Booklet, pg 17, “Joint and several tax liability.” Trial court abused its discretionary and judicial powers when without relying on any applicable law, arbitrarily over-ruled requirements by Federal Government for joint filers to pay owed taxes, by ordering Petitioner to pay back Respondent’s money legally and lawfully garnished by the IRS.

STATEMENT OF CASE

This is the case of a trial court abusing its discretion and judicial powers by willfully and intentionally rising above its authority, responsibility, and duty to enforce laws passed by the legislature regarding recovery of uninsured medical bills paid, and legal and lawful garnishment by IRS from joint filers to pay for owed taxes. The trial court ignored the laws it is given the power to enforce and instead enforced what it subjectively thinks to be better.

The facts of this case are a clear visual aid of the trial court’s ignoring the clear and specific requirements of the applicable laws regarding the issues of the trial, thereby creating reversible errors that deprived Petitioner of the equal protection and benefits of the law. And Petitioner is powerless to do anything about it since the year 2000 when Petitioner first appeared before this trial court for his divorce. Petitioner is now appealing to the higher court for help, that with the facts provided and application of the applicable laws as cited, the trial court has

committed reversible errors that this higher Court of Appeals has the authority and power to reverse and thereby achieve the purposes of the law.

RELEVANT FACTS

The following facts are relevant to the issues of this case:

1. In October 19, 2000 this same trial court granted divorce to Petitioner from Respondent. Pp. 0350
2. On July 1, 2005, Petitioner appeared without the opportunity of a lawyer, to answer and defend against Respondent's Motion for Order to Show Cause. Pp. 1002
3. Respondent sued to recover Petitioner's share of uninsured medical/dental bills for the minor children for a total amount of \$2,448.39. Pp. 0992
4. Trial court awarded Respondent judgment against Petitioner for the amount requested, citing statute 78-45-7.15(6) Utah Code saying "the law requires that both parents pay one-half of all medical and dental expenses for the minor children that are not covered by insurance, in addition to child support." Pp. 1027
5. The record of the trial is very clear that Respondent and her lawyer did never establish during trial whether or not these bills were infact

uninsured and how they became uninsured, in order to be within the requirements of the statute U.C.A. 78-45-7.15(6) Pp. 1002

6. The trial record is clear that Respondent and her lawyer failed to provide the facts required by statute for recovery on medical bills as specified by 78-45-7.15(8) Pp. 1002
7. Trial court did not obey but ignored and arbitrarily ruled against the specific requirements of the law 78-45-7.15(9) on denying recovery. Pp. 1027
8. Respondent sued Petitioner to recover her money that was legally and lawfully garnished by IRS to pay for owed taxes for years of joint filing. Pp. 0992
9. Trial court did not rely on any law or cite any legal basis but arbitrarily ordered Petitioner to pay back Respondent money legally and lawfully garnished by IRS for owed taxes by joint filers, which both parties were. Pp. 1027
10. This trial court has heard Petitioner's divorce related cases since the year 2000. Pp.0165 – 1033.

SUMMARY OF THE ARGUMENT

Since the year 2000 when Petitioner first appeared before this trial court on Petitioner's request for divorce from Respondent, up to the present case being appealed, not once has Petitioner ever won in all the divorce related cases (which were many) heard by trial court. Even at times when finances allowed, Petitioner had the opportunity to have legal representation but the result is the same, Petitioner has never won in this trial court – as one would imagine the many contempt orders against Petitioner since the year 2000. As a matter of fact, this trial court has barred Petitioner from court since the year 2002. Pp. 0727 and only Respondent enjoyed the legal rights to seek and received the help of the trial court.

This is the case of a trial court's willful and intentional abusing its discretion and judicial powers by arbitrarily ignoring the clear and specific requirements of the laws regarding recovery of paid uninsured medical bills¹; and legal and lawful garnishment by IRS of joint filers' money to pay for owed taxes².

The facts of this case are a clear visual aid of the trial court rising above its responsibility and duty to enforce laws passed by the State Legislature regarding recovery of uninsured medical bills paid, and Congress authorizing IRS to legally and lawfully garnish joint filers money to pay for owed taxes. The trial court

¹ U.C.A 1953 78-45-7.15(6)(8)(9)

² IRS 20041040 INSTRUCTIONS BOOKLET, Married Filing Jointly "Joint and several tax liability, p17.

ignored the laws it is given the power to enforce and instead, enforced what it subjectively thinks to be better.

Such errors committed by the trial court have obstructed justice and deprived Petitioner of the protection and benefits of the law thereby creating much financial, health, and emotional hardship for Petitioner and his children, and the facts of this case being appealed are the clear visual aid of the trial court's reversible errors. Such sufferings and legal deprivation cannot be the intentions of the lawmakers, nor are they the values such highly civilized societies as we are deem worthy of legal protection by laws that courts are hugely empowered to enforce.

Petitioner is powerless to do anything about our sufferings at the reversible orders of the trial court, but to stay committed to the cause of providing the guidance and support that have enabled my children to become contributing citizens to our society—in a major way. Petitioner appeals to this higher Utah Court of Appeals for fair, equitable, and protection by the law and reverse the errors of the trial court as established by the facts of this trial and requirements of the applicable laws cited. Please do not send the case back to the trial court.

DETAIL OF ARGUMENT

Our society has progressed to great heights of collective goodness because all citizens are required to live by the rule of law; enjoy the legal rights

protected by the law; and are benefited from the values that laws are passed by lawmakers to protect. This equality makes us the civilized society that we are, and no one individual is more powerful than the law.

In this case, the law is clear in its requirement that “A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment”³ This is the legal requirement for recovery. Respondent did not do this 30 day notice as required by the statute, and the record of the trial contains no record of Respondent providing proof she has met this requirement. Pp. 102. The law is also specific and clear that “a parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent’s share of the expenses if that parent fails to comply with Subsections ... (8)” as cited above.⁴ And the trial court ignored this requirement of the law, and arbitrarily awarded Respondent her request to recover Petitioner’s share of the dental expenses she alleged to have paid.

³ U.C.A. 1953, 78-45-7.15(8)

⁴ U.C.A. 1953, 78-45-7.15(9)

On the issue of the taxes, the Federal Government – IRS, is clear on its instruction for tax obligations of joint filers: “If you file a joint return, both you and your spouse are generally responsible for the tax ... due on the return.”⁵

Without citing any applicable law or explanation of legal basis, trial court again ignored the authority and powers of the Federal Government – IRS, to legally and lawfully garnish Respondent’s account just as it has garnished Petitioner’s paychecks and tax refunds, to pay for the taxes owed for the years of the joint filing.

The facts contained in the records of the trial that is now before the Utah Court of Appeals as discussed in Petitioner’s Brief, are the clear visual aids of the trial court’s willful deviation from the plain and clear requirements of the applicable laws cited. Such judicial deviation is a mockery to the provision of the law, establishing the reversible errors Petitioner is now asking the Utah Court of Appeals for reversal of the trial court’s errors.

CONCLUSION

The facts presented in this Brief as supported by the records of the trial, bring to light before this Utah Court of Appeals the trial court’s abuses of its

⁵ IRS 20041040 INSTRUCTIONS BOOKLET, Married Filing Jointly “Joint and several tax liability, p17.

discretionary and judicial powers, creating reversible errors that obstruct justice, deny the benefits of the law and the legal rights of Petitioner. Such abuses by the trial court encourage and allow lawyers in our case an unequal preference, to continue in their corrupting of the justice system by blindfolding judges with false evidence that sound good but not meeting the requirements of the law. In such a legal environment, good is punished as being bad and bad is rewarded as being good, perpetuating the painful unfairness, depriving inequity, and much financial ruins to Petitioner and his children.

Certainly these results cannot be the intention of the laws created to protect the values our society is seeking to enjoy. These are the fruits of the trial court's decision not to enforce the laws enacted by the lawmakers but what the trial judge subjectively thinks should be.

Respondent did not meet the requirements of the cited applicable laws:

- (1) A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment has not been met.⁶
- (2) A parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's

⁶ U.C.A 1953, 78-45-7.15 (8)

share of the expenses if that parent fails to comply with

Subsections ... and (8).⁷

- (3) If you file a joint return, both you and your spouse are generally responsible for the tax and any interest or penalties due on the return.⁸

The court record of the trial on this case is before the Honorable Justices of the Utah Appellate Court of Appeals, testifying that Respondent did not meet the requirements of the cited applicable laws and instructions that would support the Orders of the trial court being appealed.

Petitioner sincerely petitions the Honorable Justices of the Utah Court of Appeals to intervene and reverse the Orders of the trial court and please not sent the case back to the trial court. Because the trial court made a reversible error in its Order, the award for Respondent's attorney fees should be dropped and Petitioner's request for lost wages be granted

Petitioner also request published decision and oral argument.

Respectfully Submitted this 10th day of April, 2006.


Sione Limihai Latu

Appellant (Pro Se)

⁷ U.C.A 1953, 78-45-7.15(9)

⁸ IRS 20041040 INSTRUCTIONS BOOKLET, Married Filing Jointly "Joint and several tax liability, p17.

EXHIBITS

U.C.A 1953 78-45-7.15 Medical expenses

- (6) The order shall require each parent to share equally all reasonable and necessary uninsured medical expenses, including deductibles and copayments, incurred for the dependent children.
- (8) A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment.
- (9) In addition to any other sanctions provided by the court, a parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with Subsections (7) and (8).

IRS 20041040 Instructions Booklet, "Joint and several tax liability." P. 17.

If you file a joint return, both you and your spouse are generally responsible for the tax and any interest or penalties due on the return. This means that if one spouse does not pay the tax due, the other may have to.

MAILING CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was delivered by mail this 10TH day of April, 2006 to:

Lorie D. Fowlke
Attorney for Respondent/Appellee
2696 North University Avenue Suite #220.
Provo, Utah 84604

FILED
Fourth Judicial District Court
of Utah County, State of Utah
10.55 8/17/05
Deputy

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

SIONE LIMIHAI LATU,

Petitioner,

vs.

VAI I. LATU,

Respondent.

**ORDER ON ORDER TO SHOW
CAUSE AND JUDGMENT
(July 1, 2005)**

Civil No. 994402757
Judge Anthony W. Schofield
Division 8

This matter came before the Court on July 1, 2005 pursuant to Respondent's Motion for Order to Show Cause. Petitioner was present and represented himself. Respondent was present and represented by Lorie D. Fowlke of Scribner & McCandless, P.C. Having received testimony and argument, and being otherwise advised in the premises, the Court hereby finds and orders as follows:

1. The court finds that, based upon the statute in §78-45-7.15(8) Utah Code (2005) the law requires that both parents pay one-half of all medical and dental expenses for the minor children that are not covered by insurance. in addition to child support. The record is clear regarding the amount owed and Respondent is awarded **judgment** against the Petitioner for **\$2,448.39**, which represents \$1,592.32 for unpaid orthodontic expenses and \$856.07 for dental expenses for the minor children.

2. The court awards the Respondent **judgment** against the Petitioner for **\$8,383.50**, which represents funds garnished from Respondent's tax refund in 2000 and 2002 for taxes due in the years 1990 and 1991 (\$3,847. \$385, and \$578.50 in 2002; and \$3,564 in 2000). This judgment is subject to confirmation, to be provided to the court within fifteen (15) days, that the funds garnished were for the taxes during the time of the parties' marriage.

3. Respondent, having prevailed on her claims, is awarded **judgment** against the Petitioner for **\$837.44** in attorneys' fees, based upon counsel's Affidavit of Attorneys' fees filed herewith.

DATED and signed this 15 day of ~~July~~^{August} 2005.

BY THE COURT:

Anthony M. Schiflett
DISTRICT COURT JUDGE

NOTICE OF INTENT TO SUBMIT FOR SIGNATURE

TO: LIMIHAI LATU, PETITIONER:

You will please take notice that the undersigned attorney for Respondent will submit the above and foregoing Order on Order to Show Cause and Judgment to the Honorable Anthony W. Schofield for his signature upon the expiration of five (5) days from the date of this notice, plus three (3) days for mailing, unless written objection is filed prior to that time pursuant to Rule 7 of the Utah Rules of Civil Procedure.

Dated and signed this 13 day of July 2005



LORIE D. FOWLKE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing, postage prepaid, on this
13 day of July, 2005, to the following:

Limhi Latu
2274 North 390 East
Provo, UT 84604

Nicole Fryer
Secretary