1995

Tamara Lee Coulon v. Mark Fletcher Coulon : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

TAMARA LEE COULON, :

Plaintiff/Appellant, : 950358
Case No. 950358-CA

v. :

Priority No. 15

MARK FLETCHER COULON, :

Defendant/Appellee. :

BRIEF OF APPELLEE

Appeal from a Ruling and Order entered by
the Honorable Frank G. Noel, Judge of the
Third District Court, Salt Lake County, State of Utah

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IN THE UTAH COURT OF APPEALS

TAMARA LEE COULON,	:	
Plaintiff/Appellant,	:	Case No. 9503858-CA
v.	:	Priority No. 15
MARK FLETCHER COULON,	:	
Defendant/Appellee.	:	

BRIEF OF APPELLEE

Appeal from a Ruling and Order entered by
the Honorable Frank G. Noel, Judge of the
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appellee's children due to appellee's disability. If the SSI payments are credited, then the Court also needed to determine the amount of the offset for such payments. Finally, any amount of arrearage would then be deducted from the equity in the house owed to Mr. Coulon.

B. Course of the Proceedings Below

On June 24, 1994, respondent Mark Coulon filed an Order to Show Cause in the district court to collect from appellant, Tamara Coulon, respondent's share of the equity in the family home. On July 21, 1994, appellant filed a Counter-Order to Show Cause seeking an order of contempt against respondent for failing to pay child support, and seeking an offset against respondent's share of the equity in the home in the amount of the arrearage.

After hearing oral argument on the matter, Commissioner Judith S. H. Atherton issued a Recommendation in the case by way of Minute Entry. See Minute Entry, Sept. 14, 1994. She recommended that the district court find that respondent was in arrears in the amount of twenty-eight thousand eight hundred dollars in his child support obligation, but that he was entitled to a credit of thirty-two thousand six hundred and twelve dollars toward that arrearage, for Supplemental Security Income payments

equity in the home.

On September 19, 1994, appellant filed an Objection/Rejection to the Commissioner's Recommendation, and the court scheduled oral argument. After hearing argument, Judge Frank G. Noel of the Third District Court issued his ruling in a Minute Entry dated April 6, 1995. In that ruling, Judge Noel agreed with the Commissioner's recommendation with regard to the amount respondent was currently in arrears, and additionally found that respondent had been four thousand eight hundred dollars in arrears during a period outside the statute of limitations. Judge Noel then adopted the Commissioner's recommendation regarding the credit for S.S.I. payments, finding that this offset all but nine hundred eighty-eight dollars of respondent's *total* arrearage. Over respondent's objection, Judge Noel then offset this amount against respondent's claimed share of equity in the family home, and awarded respondent the difference of two thousand eight hundred and twelve dollars. Tamara Coulon then brought this appeal.

C. Statement of Facts Relevant to This Appeal

Mark and Tamara Coulon were divorced on January 13, 1983. R. 19-21. On March 4, 1985, Mark Coulon's equity in the family home was reduced to three thousand eight hundred dollars. R. 66-67. Shortly thereafter, on April 10, 1986, Mark Coulon became disabled and qualified for Social Security disability benefits in

October, 1986.

Unable to meet his support obligation because of his disability, Mark applied and was approved for S.S.I. disability payments for his minor children, which they began receiving in November, 1987, From November, 1987 through June, 1994, Tamara Coulon received thirty-two thousand six hundred and twelve dollars to provide for the children's needs.

From March, 1985 through June, 1986 (the date of statutory limitation in this case to collect a child support arrearage), Mark Coulon was obligated to pay four thousand eight hundred dollars in child support. From June, 1986 to the date of appellant's Counter-Order to Show Cause, Mark Coulon was obligated to pay twenty-eight thousand eight hundred dollars in child support.

Summary of the Argument

The district court judge was within his discretion in crediting Mark Coulon's child support arrearage in the amount of the Supplemental Security Income payments the children received based on Mark Coulon's disability. Although it is true that child support payments cannot generally be modified after they become due, the district court judge did not modify the payments, but instead granted Mark Coulon a credit toward that debt. This court has allowed such credits in other similar cases.

Moreover, the purpose of Supplemental Security Income

payments to children of a disabled person is to provide for the children during a period in which the wage earner, by definition, is unable to so provide. The Utah Legislature and Utah courts recognize that a parent is not always able to provide for children after a divorce, and thus predicate child support payments not only on the children's needs, but also on the parent's ability to pay. This case is accordingly distinguishable from cases involving other types of public assistance, in that the payments to Mark Coulon's children through S.S.I. were *intended to take the place* of his salary during the period in which he could not provide for his children.

In addition, Tamara Coulon, Mark's ex-wife, accepted the disability payments and did not pursue the child support arrearage. Since she is not seeking reimbursement for expenses she wrongfully incurred, nor is she claiming that the children were not adequately provided for (since the disability payments in fact *exceeded* Mark Coulon's monthly child support obligation), Utah precedent makes clear that she should be estopped from claiming the child support arrearage.

Argument

I. IT WAS WITHIN THE DISTRICT COURT JUDGE'S DISCRETION TO CREDIT THE COULON CHILDREN'S SUPPLEMENTAL DISABILITY PAYMENTS TOWARD MARK COULON'S CHILD SUPPORT ARREARAGE.

This Court should affirm the trial judges's decision to grant Mark Coulon a credit toward his child support arrearage

because that decision is adequately supported by precedent in Utah and was thus within the trial judge's discretion. Appellant misconstrues the nature of the trial judge's ruling by characterizing it as a "modification" of the divorce decree. See, e.g., Brief of Appellant at 11.

What the trial judge in fact did was recognize Mark Coulon's obligation for his child support arrearage, and then grant him a credit toward that debt in the amount of the S.S.I. disability payments made to his children in his behalf. See Minute Entry of Judge Frank G. Noel, April 6, 1995 (establishing child support debt, and then granting "credit" against that debt). This is more than a semantic difference, and it is a difference that has been recognized in controlling Utah cases.

For example, in Cummings v. Cummings, 821 P.2d 472 (Utah Ct. App. 1991), this Court held that a father could not obtain relief from a child support arrearage for periods in which the children had lived with him, observing that "retroactive relief from child support obligations is generally not allowed." Id. at 480. Nevertheless, the court went on to observe that the mother "also contends that the trial court erred in reducing [the father's] child support arrearage by the amount he paid for medical expenses and insurance premiums for the children. *We affirm this deduction* . . . ." Id. at 481 (emphasis added).

Similarly, in Utah Department of Social Services v. Adams, 806 P.2d 1193 (Utah Ct. App. 1991), the state challenged a

father's claim to have satisfied his child support obligation by providing rent-free housing to his ex-wife and children. Id. at 1195. Holding that the father had satisfied his child support obligation by providing housing, the court observed that "[n]o modification of substantive obligations under the divorce decree occurred. Defendant [the father] was relieved of no support obligations; no support arrearage or future obligation was compromised." Id. at 1196. As in the aforementioned cases, Mark Coulon was simply granted a credit toward an admitted arrearage for amounts paid in his behalf and used to satisfy the needs of his children.

In comparison, this case is easily distinguishable from those involving attempts by a father to offset an arrearage by unilaterally making expenditures in his children's behalf. For example, in Ross v. Ross, 592 P.2d 600 (Utah 1979), the supreme court held that a father was not entitled to a credit against his arrearage for amounts he claimed to have given to his parents to expend on his children's behalf. Id. at 603-04. The court's rationale was that to allow a father to make such unilateral decisions would be to "permit [the father] to vary the terms of the decree and to usurp from [the mother] the right to determine the manner in which the money should be spent. Id. at 603.

This case does not present the same difficulty. Tamara Coulon received a cash payment in Mark Coulon's behalf through the Social Security Administration. She was free to spend it as

she saw fit to provide for her children's needs. In fact, she received an even *larger* payment on a monthly basis than she would have if Mark Coulon had been able to pay his obligation directly. Hence, the present case is analogous to the holding of the Court in Adams. See Adams, 806 P.2d at 1196. Tamara Coulon is, in effect, arguing that she would rather have had Mark Coulon pay his child support payment than accept an even larger S.S.I. payment made on his behalf due to his inability to work.

Mark's inability to work, and the nature of the S.S.I. payments further suggest the propriety of the district court ruling. As this Court noted in Brooks:

> Social security dependent disability benefits *replace support the child loses upon the disability of the wage earner responsible for the child's support*, and such benefits substitute for a parent's loss of earning power and obligation to support his dependents. Thus, *the source and purpose of social security dependent benefits are identical to the source and purpose of child support—both come from a noncustodial parent's wages or assets* and both provide for the needs of the dependent child and, for our purposes, "*no princip[led] distinction exists between social security benefits and child support payments*."

Brooks, 881 P.2d at 962 (quoting In re Marriage of Henry, 622 N.E.2d 803, 809 (Ill. 1993) (further citation omitted) (emphasis added); see Frank S. Bloch, Federal Disability Law and Practice § 3.1 at 71 (John Wiley & Sons 1984) ("The overriding purpose of these provisions for secondary benefits is to provide a source of income to those people most likely to have relied on the wage earner for support.")

Thus, supplemental disability payments are different than other types of public assistance, at least in the context of child support. For example, in Kiesel v. Kiesel, 619 P.2d 1374 (Utah 1980), the court held that a father was not entitled to have his support obligation prospectively reduced based on the fact that his child was receiving social security payments for her *own* disability. The court observed that the father "should not be permitted to avoid support obligations simply because a government agency has been filling them." Id. at 1377. In Kiesel, unlike this case, the father was fully capable of meeting his support obligation, but petitioned the court to reduce that obligation because his child was receiving public assistance wholly unrelated to the father's situation. Thus, Kiesel and other cases involving general public assistance payments are not relevant to the situation before this Court.

Nor has this situation been before this Court in the past. Although, as this court noted in Brooks, some courts have been reluctant to credit social security payments toward a child support arrearage, see Brooks, 881 P.2d at 961-62, that question was not before this Court in Brooks. Nevertheless, the rationale adopted in Brooks to justify crediting supplemental disability payments toward a prospective support obligation applies with equal force to Mark Coulon's situation: the S.S.I. payments to his children were intended to replace his support during the period of his disability. In fact, only the motivation to punish

Mark Coulon for failing to seek prospective relief could justify treating Mark Coulon differently from the father in Brooks.

Mark Coulon does not merit such censure. Faced with a disability which prevented him from working and providing for his children, he saw to it that his children were provided for in conjunction with his disability benefit. He actually secured for them a *larger* payment than they would have been entitled to if Mark had been working.

In fact, Mark's disability would have been an adequate ground to have his obligation formally modified had he sought such relief. Despite the paramount concern for the needs of the children, a court is also bound to consider a parent's *ability to pay* when making a child support determination. See Utah Code Ann. § 78-45-7(3)(c) (1995) (requiring court to consider "ability of the obligor to earn" when setting support outside guidelines); Cox v. Cox, 877 P.2d 1262, 1267-68 (Utah Ct. App. 1994) (finding that where father was disabled, income should not be imputed to him under child support guidelines). Hence, the question before this court is whether, in an *equitable* proceeding, it would be fair to allow Tamara Coulon to recover nearly thirty thousand dollars from Mark Coulon after receiving more than that amount in Mark's behalf, and all to punish Mark for failing to petition the court for a modification of his decree. The answer to that question is, of course, that it would be grossly inequitable to suggest such a result. This court should hold that the district

court judge was within his discretion to grant Mark Coulon the credit against his arrearage.

II. TAMARA COULON SHOULD BE ESTOPPED FROM CLAIMING THE CHILD SUPPORT ARREARAGE AND THAT ESTOPPEL IS AN ADEQUATE BASIS FOR AFFIRMING THE TRIAL COURT'S DECISION.

Since Tamara Coulon accepted the disability payments and is **not** now asking to be reimbursed for expenses she was wrongfully forced to bear, **nor** claiming that the children were not provided for, she should be estopped from claiming Mark Coulon's child support arrearage. In Wasecha v. Wasecha, 548 P.2d 895 (Utah 1976), a mother petitioned to recover a child support arrearage, alleging that she wanted to recover the money to "place[] in trust for the benefit of the children to help them with further education or living, whatever their needs may be." Id. at 896 (italics omitted). The children had been supported by the mother and her second husband during the period in which the arrearage accumulated, but the mother explicitly disavowed that she was seeking reimbursement. Id. at 895-96. The Utah Supreme Court held that the mother was estopped from recovering the arrearage, observing that:

> There is no prayer for reimbursement for past support under such conditions, but there seems to be an admission that the children's right to support amply was supplied by someone, which would eliminate their claim for support or, if you please, double support, and which admission would seem to be an abandonment of a parent's claim for reimbursement, and certainly an estoppel to assert am antithetical claim for past child support . . . .

Id. at 896. Summarizing, the Wasecha Court announced that if a claim for support "has been satisfied by one not claiming reimbursement nor by one claiming the children were denied the right, it is no longer subject to double sale by double talk or flight from equity." Id.

The Wasecha holding applies with even greater force here than it did to its own facts. In Wasecha, the mother herself had provided for the children during the period in which the father failed to make payments. Here, in contrast, Tamara Coulon has not simply foregone a claim for reimbursement, she *cannot* claim reimbursement because she has not suffered any loss. Moreover, the father in Wasecha did not have even a tenuous connection to the support provided his children during the period in which the arrearage accumulated. Here, Mark Coulon's children were provided for precisely because Mark could not do so himself, and it was Mark Coulon who saw to it that the support was provided. Accordingly, this Court should hold that Tamara Coulon is estopped from claiming the child support arrearage. Since there is an adequate legal basis for the trial court's ruling, this Court must affirm the trial court's ruling even though estoppel was not argued below.

Conclusion

Utah precedent recognizes that credits may be granted against child support arrearage under appropriate circumstances,

and this case is an example of a situation in which a credit was appropriately granted. Mark Coulon became disabled and was thus unable to meet his support obligation. He petitioned for disability benefits not only for himself, but for his children as well. The children were provided for in Mark's behalf, and the trial judge was accordingly within his discretion in allowing the credit. This court should not disturb that exercise of discretion.

Additionally, Tamara Coulon should be estopped from claiming the arrearage. She is not claiming that she is entitled to reimbursement, nor is she claiming that the children's needs were not provided. Thus, Utah precedent is clear that her claim for the arrearage cannot be sustained, and this alone is sufficient to require this Court to affirm the ruling below.

DATED this 19 day of September, 1995.

HASKINS & ASSOCIATES

JAMES C. HASKINS
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CERTIFICATE OF SERVICE

I hereby certify that I caused to be hand delivered a true and correct copy of the foregoing this 19th day of September, 1995, to the following:

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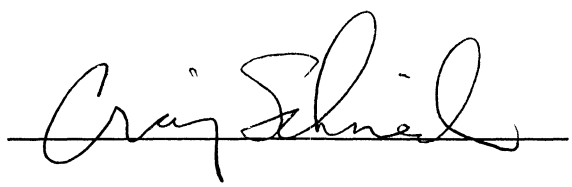

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