

2007

Linda Anderson v. Glenn Hunter Thompson : Brief of Appellant

Utah Court of Appeals

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(f.k.a. Linda LaRee Thompson),

Appellate Case No. 20070514

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ORAL ARGUMENT IS REQUESTED

LINDA ANDERSON,
(f.k.a. Linda LaRee Thompson),

V.

GLENN HUNTER THOMPSON,

Appellate Case No. 20070514

BRIEF OF APPELLANT

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STATEMENT OF JURISDICTION

The Court has jurisdiction pursuant to Utah Code Ann. §78-2A-3(2)(h).

STATEMENT OF ISSUES

ISSUE 1: Did the District Court err in finding the Respondent in contempt of Court for involving the minor children in the divorce proceeding by holding a family meeting and explaining divorce and child support issues?

ISSUE PRESERVED AT TRIAL: The issue of Respondent not being in contempt was preserved by the Affidavit of Glenn H. Thompson filed in opposition to Petitioner's Order to Show Cause. (R@262-272 and R@280-309). The issue was also preserved at the Order to Show Cause hearing on March 19, 2007. (R@415). Specific reference to dismissal of the Order to Show Cause is made during argument by Respondent's counsel. (R@415 P. 25). The issue of contempt was preserved throughout the evidentiary hearing. (R@416).

STANDARD OF REVIEW: The standard of review for contempt in a civil action is clear and convincing evidence. Von Hake v. Thomas, 759 P.2d 1162 (Utah 1988). The interpretation of a divorce decree is reviewed for correctness, affording the District Court no deference. Hawkins v. Peart, 37 P.3d 1062 (Utah 2001).

ISSUE 2: Did the District Court err in finding Respondent in contempt for involving the children in divorce proceedings by giving Petitioner and one of the children child support checks with denigrating language on the checks?

ISSUE PRESERVED AT TRIAL: The issue of Respondent not being in contempt was preserved by the Affidavit of Glenn H. Thompson filed in opposition to Petitioner's Order to Show Cause. (R@262-272 and R@280-309). The issue was also preserved at the Order to Show Cause hearing on March 19, 2007. (R@415). Specific reference to dismissal of the Order to Show Cause is made during argument by Respondent's counsel. (R@415 P. 25). The issue of contempt was preserved throughout the evidentiary hearing. (R@416). Specific reference to the conduct of the meeting not being contempt was argued at the end of the evidentiary hearing. (R@416 P. 74). Respondent's counsel responded to the Court's question regarding the two checks at the March 19, 2007 hearing. This response was followed by discussion of the meeting with the children. (R@415 P. 23-25).

STANDARD OF REVIEW: The standard of review for contempt in a civil action is clear and convincing evidence. Von Hake v. Thomas, 759 P.2d 1162 (Utah 1988). The interpretation of a divorce decree is reviewed for correctness, affording the District Court no deference. Hawkins v. Peart, 37 P.3d 1062 (Utah 2001).

ISSUE 3: Did the District Court err in awarding Petitioner attorney's fees?

ISSUE PRESERVED AT TRIAL: The issue of the award of attorneys' fees for the Petitioner was raised at the evidentiary hearing. Specific objection to the attorneys' fee award took place at the end of the evidentiary hearing. (R@416 P. 78-79).

STANDARD OF REVIEW: The interpretation of a divorce decree is reviewed for correctness, affording the District Court no deference. Hawkins v. Peart, 2000 Utah 94, 37 P.3d 1062 (Utah 2001).

ISSUE 4: Did the district Court err in not awarding Respondent his attorney's fees?

ISSUE PRESERVED AT TRIAL: The issue of the award of attorneys' fees for the Respondent was raised at the evidentiary hearing. Specific objection to the attorneys' fee award took place at the end of the evidentiary hearing. (R@416 P. 78-79).

STANDARD OF REVIEW: The interpretation of a divorce decree is reviewed for correctness, affording the District Court no deference. Hawkins v. Peart, 2000 Utah 94, 37 P.3d 1062 (Utah 2001).

DETERMINATIVE STATUTES

Utah Code Ann. §78-32-1

The following acts or omissions in respect to a court or proceedings therein are contempts of the authority of the Court:

(1) Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding.

(2) Breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

(3) Misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial service.

(4) Deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding.

(5) Disobedience of any lawful judgment, order or process of the court.

(6) Assuming to be an officer, attorney or counselor of a court, and acting as such without authority.

(7) Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.

(8) Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial.

(9) Any other unlawful interference with the process or proceedings of a court.

(10) Disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness.

(11) When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person, concerning the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

(12) Disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

Utah Code Ann. §30-3-10.1

(1) "Joint legal custody":

(a) means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified;

(b) may include an award of exclusive authority by the court to one parent to make specific decisions;

(c) does not affect the physical custody of the child except as specified in the order of joint legal custody;

(d) is not based on awarding equal or nearly equal periods of physical custody of and access to the child to each of the parents, as the best interest of the child often requires that a primary physical residence for the child be designated; and

(e) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

STATEMENT OF THE CASE

This case is an appeal from an Order From Hearing Held April 16, 2007 entered by the Third Judicial District Court, Tooele County, State of Utah. The Presiding Judge is Mark S. Kouris. This is the second appeal arising out of post-divorce proceedings involving the Petitioner and Respondent.

The divorce petition was originally filed in 1999. A Decree of Divorce was entered April 20, 1999. The parties proceeded forward pursuant to the Decree of Divorce and special arrangements of the parties until after Petitioner's remarriage in November, 2004.

Petitioner filed a Petition to Modify Decree of Divorce on March 2, 2005. A stipulation regarding the exchange of financial documents was placed on the record and complied with by the parties. Petitioner requested that her counsel withdraw and new counsel appeared for Petitioner. Petitioner filed an Order to Show Cause. Trial was held on October 26, 2006. The Court's Order from Trial Held October 26, 2006 and Objection Hearing Held December 18, 2006 entered January 9, 2007 is the subject of the earlier appeal in this case. The Order was also involved in this Order to Show Cause proceeding. Petitioner claimed Respondent failed to pay child support as required by this Order.

Petitioner filed an Order to Show Cause dated February 22, 2007 and entered March 2, 2007. Respondent filed an Order to Show Cause dated March 23, 2007. Argument was heard on March 19, 2007 and an evidentiary hearing was held of April 16, 2007. Findings of Fact and Conclusions of Law were entered June 15, 2007. An Order from Hearing Held April 16, 2007 was entered June 15, 2007. Respondent appeals the June 15, 2007 Order.

The District Court denied the Petitioner's claims that Respondent should be held in contempt of Court for not paying the full amount of child support ordered by the Court in the Order from Trial Held October 26, 2006 and Objection Hearing Held December 18, 2006. The Court found the Respondent in contempt of Court and awarded Petitioner her attorneys' fees and costs.

This appeal involves the District Court's finding the Respondent in contempt of Court for holding a family meeting with his children at which the effects of the divorce

on the Respondent and his children and Respondent's position regarding the bringing of the post-divorce proceedings were discussed. This appeal also involves the District Court's finding the Respondent in contempt of Court for a "B" that was placed (not by Respondent) on two child support checks. This appeal also involves the District Court's award of attorneys' fees of over \$5,000.00 to Petitioner, the denial of attorney's fees to Respondent, and to other related issues.

STATEMENT OF FACTS

The facts as marshaled to support the District Court's findings are stated below.

Procedural History. Petitioner and Respondent were divorced April 20, 1999. (Appendix 3, R @ 46-54). The parties are the parents of four children now ranging in age from 17 to 11. The parties proceeded through their post-divorce lives with various accommodations to meet the needs of the children and the financial needs of the children and Petitioner. (Trial Tr. @ 45-49).

Petitioner remarried in November, 2004. Petitioner's remarriage triggered an automatic adjustment of child support to an amount consistent with the guidelines set forth in the Utah Code. (Appendix C, R@49, 51).

An automatic adjustment of child support took place. Petitioner filed a Petition to Modify Decree of Divorce. (R@59-61). An Order to Show Cause related to the Petition to Modify was also filed. (R@72-73). The Order to Show Cause leading to the Order from Trial Held October 26, 2006 and Objection Hearing Held December 18, 2006 was filed December 27, 2006. (R@165-167). This Order is the subject of Appeal 20070176-CA. (R@222-223).

Petitioner filed an Order to Show Cause dated February 22, 2007. (R@247-248). Respondent filed an Order to Show Cause March 9, 2007. (R@273-274). The Orders to Show Cause were heard by the District Court on March 19, 2007 and April 16, 2007. (R@415 and 416). The Court entered its Findings of Fact and Conclusions of Law and Order from Hearing Held April 16, 2007 on June 15, 2007. (Appendices A and B, R@394-397 and 398-400). Respondent appeals from this Order.

Child Support. The Order from Trial Held October 26, 2006 and Objection Hearing Held December 18, 2006 provided that the base child support was \$2,061.00. (Appendix D, R@ 218-219). Beginning January 2007, the monthly child support obligation to Petitioner was \$2,516.08. (Appendix D, R@219). The child support was subject to adjustment based on the Respondent's gross receipts each year compared to the prior year's gross receipts. (Appendix D, R@218).

Respondent paid \$2,516.08 for January 2007. (R@245, 306). Then, Respondent provided documentation that no adjustment from the base child support amount applied in 2007. (R@304-306). Respondent paid \$2,061.00 for February and subsequent months. (R@245). Petitioner's counsel submitted his letter dated January 25, 2007. This letter states, in pertinent part:

... You can make a deduction based on the decrease from the comparison of 2005 and 2006 but the ultimate decision of increase will be based upon the gross receipts found in the corporate tax returns compared to the previous year.

(Defendant's Exhibit 7, R@41 line 19 to 43 line 20).

The Court denied Petitioner's Order to Show Cause claims that Respondent should be held in contempt for not paying the correct amount of child support and for judgment for additional child support. (Appendix B, R@ 399).

Family Meeting. Prior to Trial Held October 26, 2006, Respondent provided his children with extra money for numerous purposes. After the Trial, Respondent made the difficult decision that he could not continue to supplement his children's expenses. (R@301, 416 P. 20). Respondent wanted his children to know that he would not continue to supplement expenses. R@301, 416 P. 21). Respondent held a meeting with his four children to explain the financial changes that would take place. These changes included the supplemental expenses Respondent had paid and limitations on vacations. (R@300-301, 416 Pgs. 20, 21, 22). Respondent wanted to discuss these changes with his children, in part, to avoid the children being embarrassed by asking for money. (R@301).

Respondent told the children not to think bad of their mother. (R@416 P. 21). Respondent told the children that he did not hate their mother, that he forgave her and he did not want the children to think badly of her (R@300). Respondent stated he forgave Petitioner because he did not agree with Petitioner bringing him to Court and saying he was not paying the money he was supposed to. (R@416 P. 53-54). Respondent told the children that Respondent and his wife would not be giving the children a vacation trip for Christmas. (R@300, 416 P. 21).

Petitioner testified that the family meeting did not have any long-term impact on Petitioner's relationship with her children. (R@416 Pgs. 62-64). Petitioner testified that

Respondent has a good relationship with her children. This good relationship is before and after the family meeting. (R@416 P. 63). Petitioner did not communicate with Respondent regarding what was said to the children at the family meeting. (R@416 P. 70).

Checks With “B.” At the bottom lower left hand corner the word (B!) and (B) appear on the child support checks dated January 2, 2006 (should be 2007) and February 2, 2007. (R@242). Petitioner placed the first check on the refrigerator with a magnet under a couple of other checks. (R@416 P. 67). The second check was delivered into the house by the parties 17 year old son. (R@416 P. 70). The Petitioner didn’t say anything to Respondent about the checks having the “B”s on them or requesting a different system for paying child support. (R@416 P. 70). Respondent did not write the checks. (R@298, 416 P. 23). Respondent did not see the January check prior to its delivery. (R@416 Pgs. 23-24).

Attorneys Fees. Petitioner was awarded attorneys fees and Court costs totaling \$5,329.65. (Appendix B, R@399). The Court’s Finding of Fact 6 states the Court found that Petitioner was ultimately victorious in her motion in terms of the contempt. (Appendix B, R@395).

SUMMARY OF ARGUMENT

The District Court erred in finding Respondent in contempt of Court. Respondent was found to have committed an act of contempt of Court by involving the minor children in the divorce proceeding by holding a family meeting and explaining divorce and child support issues. The District Court does not have authority over actions of a

party to a divorce unless such actions are expressly proscribed by a written Order of the Court. The Respondent has a right to communicate with his children. This right includes the right to communicate about the divorce and the effect of the divorce on the Respondent and/or his family. A party is not obligated to make false statements to his children in explaining the status or effect of the divorce.

The District Court further erred in finding Respondent in contempt of Court for involving the children in divorce proceedings by giving Petitioner and one of the children child support checks with denigrating language on the checks. The Court does not have authority over actions of a party to a divorce unless such actions are expressly proscribed by a written Order of the Court. The Petitioner created the circumstances by which a son and a daughter of the parties saw a check with a “B” on the check.

Petitioner was not damaged by any of the actions claimed to have been acts of contempt. There is no basis for awarding Petitioner the excess amount of child support that had been paid by Respondent.

The primary issue raised by Petitioner in her Order to Show Cause was that Respondent had shorted the Petitioner certain child support monies in January, February and March, 2007. The Court found against the Petitioner finding that Respondent had paid the proper amounts of child support. Respondent was entitled to recover the excess amounts of child support paid in January 2007 in the amount of \$455.08.

Petitioner was not entitled to recover attorneys’ fees because Respondent was not in contempt of Court, Respondent prevailed on the principal issue(s) raised by Petitioner,

no allocation of fees to the issues and the prevailing parties was made and/or no basis for recovery of fees existed.

ARGUMENT

POINT I

RESPONDENT DID NOT VIOLATE ANY ORDER OF COURT THAT COULD FORM THE BASIS FOR FINDING RESPONDENT IN CONTEMPT OF COURT.

Civil contempt can only be found within a specific framework of statutory and factual requirements. Statutorily, Utah Code Ann. §78-32-1 provides the acts and omissions constituting contempt. Disobedience of any lawful judgment, Order or process of the Court is a basis for a finding of contempt. Disobedience of a lawful Order is the basis used by the trial Court to find Respondent in contempt. (R@ 394-397).

In order to find contempt, the Court must find that the person knew of the requirements, had the capacity to comply and intentionally failed or refused to do so. VonHake v. Thomas, 759 P.2d 1162, 1172 (Utah 1988). The first element, knowledge of the requirements, is missing in this case. This element is missing because there is no requirement and no knowledge of the requirement.

Petitioner's Motion for Order to Show Cause asserts that Respondent should be held in contempt for willful violation of not paying the full amount of child support. (R@235). A willful violation of child support provisions of an Order would violate a Court order establishing the amount of child support. The Court found Respondent had paid the correct amount of child support and had not violated any Order.

Petitioner then asserts Respondent should be held in contempt of Court for a willful violation of including the minor children in the divorce proceedings and causing several emotional abuses of Petitioner and minor children. No Order is referenced that Petitioner asserts is violated. (R@234).

Petitioner then asserts that Respondent should be held in contempt of Court for willful disobedience and noncompliance with the Decree of Divorce entered in 1999 at paragraph no. 3 that states, “the parties shall work together to solve issues involving the children...” (R@234). When the trial Court asked Petitioner’s counsel to identify the basis for the contempt charge, the following exchange took place:

THE COURT: Okay. Mr. Friel, what are you pointing to, exactly, to give you the basis for this contempt charge?

MR. FRIEL: I think we outlined it in the motion, your Honor, or the affidavit. Let me see if I can point to it.

THE COURT: The—your motion here that I have is Paragraph 3 that indicates—

MR. FRIEL: That’s correct, your Honor.

THE COURT: Is that the one that says—

MR. FRIEL: Yes.

THE COURT: --the parties shall work together to solve issues involving the children?

MR. FRIEL: I think that is—that is what we cited. I think you have to have a literal interpretation of that, of the parties working together to resolve. So, then you look at that language and say, okay, has one of these parents

not worked together to resolve issues involving children and then we—we look at the actions of both parties at that point.

THE COURT: Okay.

MR. FRIEL: Now, I would argue that actually, if we pull the transcript from October hearing, trial hearing before your Honor, your Honor probably said you will not involve children, but I will admit, that did not get in the order.

THE COURT: Okay. All right. Fair enough. If that's the case then, I'm ready to—to proceed. ... (R@146 Pgs. 74-75).

The interpretation of a Divorce Decree is reviewed for correctness, affording the District Court no deference. Hawkins v. Peart, 37 P.3d 1062 (Utah 2001). The provision of the Decree of Divorce relied upon by the Court in finding Respondent in contempt is one phrase in a longer sentence in a longer paragraph having to do with joint legal custody. Specifically, paragraph 3 of the Decree of Divorce states:

That the parties are both fit and proper persons to be awarded the care, custody and control of the minor children and therefore the parties should be awarded joint legal custody with the Petitioner being granted primary physical custody. The parties shall work together to resolve issues involving the children, however the Petitioner as custodial parent shall make the final decision. (R@53).

Utah has provided for joint legal custody since 1988. Joint legal custody is defined by Utah Code Ann. §30-3-10.1 as follows:

(1) "Joint legal custody":

(a) means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified;

(b) may include an award of exclusive authority by the court to one parent to make specific decisions;

(c) does not affect the physical custody of the child except as specified in the order of joint legal custody;

(d) is not based on awarding equal or nearly equal periods of physical custody of and access to the child to each of the parents, as the best interest of the child often requires that a primary physical residence for the child be designated; and

(e) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

Paragraph 3 of the Decree of Divorce relates to the joint legal custody exercised by the parties. This provision of the Decree of Divorce relates to the circumstances of joint legal custody in which after communication about decisions about the children take place, one party is given final decision-making authority. In this case, Petitioner was given the final authority to make decisions about the children subject to the limitation of the parties working together to resolve issues involving the children. Rather than proscribing actions by the Respondent, this phrase conditions the Petitioner's authority. This phrase is part of the decision-making process.

The entire sentence and the entire paragraph must be given meaning. When the entire sentence and the paragraph are given meaning, this phrase is simply part of the

joint custody arrangements. It does not proscribe any actions by the Respondent. The fallacy of claiming this paragraph proscribes action by the Respondent is exemplified by considering other joint custody provisions. For example, if the Respondent did not have the right to work together to resolve issues involving the children, (the phrase was omitted), would Petitioner face contempt charges? Alternatively, if the Decree included only the phrase about working together, what would be the basis for making decisions?

A person must have knowledge of the requirement of Utah Code Ann. §78-32-1. This knowledge is subject to due process requirements.

In Chen v. Stewart, 123 P.3d 416 (Utah 2005), the Supreme Court discussed that contempt authority is limited by constitutional and statutory restraints regarding due process. Due process requires that a person be able to determine what is required. The Court, in pertinent part, stated:

A court's authority to sanction contemptuous conduct is both statutory and inherent. *Utah Code Ann.* §§ 78-32-1 to -17 (2002). ... This inherent authority, however, is not without limitation. A court's authority to hold any person in contempt, whether a party to a case before that court or a non-party, is subject to constitutional and statutory restraints regarding the process due to any person so accused. (Case citations omitted).

123 P.3d @ 427-428.

Respondent did not have notice that because he had joint legal custody that he could not hold a family meeting to discuss financial matters affected by the divorce

proceedings. Due process requires more than a provision intended to implement joint custody be used to proscribe activity that is not otherwise improper.

The family meeting is not an event that is inherently wrong. Consider the same family meeting being held in a family that was strained not by divorce but by addiction, criminal behavior, financial reverses or health problems. Such a family meeting could even involve anger, despair or frustration toward another parent. However, there would be nothing illegal about the meeting.

With respect to the checks, the payment of child support does not relate to the parties working together. Respondent had no basis to consider the joint custody provision impacted his payment of child support. Respondent had no notice that his joint custody rights proscribed the issuance of checks by Mrs. Thompson with a derogatory “B.”

While the expression of anger or frustration may at times exhibit itself in improper actions, the Court does not necessarily police such actions. Consider the same checks being delivered to a landlord or creditor. This action would not be illegal. An act that may not be mannerly or inappropriate in general social settings does not become contempt because a divorced party is involved.

POINT II

RESPONDENT CANNOT BE HELD IN
CONTEMPT WITHOUT KNOWING HIS
OBLIGATION TO COMPLY.

The second element for a finding of contempt of Court is the ability to comply.

Finding of Fact 3 states alternatives considered by the District Court to the factual discussion conducted at the family meeting. Finding of Fact 3 states:

3. The Court finds that the Respondent had several options in terms of not giving the children money and involving them in the finances. The Respondent could have stated to the children of the parties that his business had tailed off a bit or that Respondent was saving for retirement, etc. The Court stated that Respondent could have also told the children that he chose not to follow the original Divorce Decree for a number of years and this impacted his finances. The Court further stated that the Respondent could have asked the children to forgive him for shorting their mom all of these years, asking for forgiveness, hoping Petitioner would forgive Respondent, or that Respondent was not going to be able to pay Petitioner any longer. The Court is upset that Respondent told the children to forgive their mother. The Court states that the Petitioner has done nothing wrong and was enforcing an issue that was due to her. (R@395).

The District Court states that in discussing family finances as affected by the post-divorce proceedings and judgment, Respondent should make false statements to the children. Stating that Respondent's business had tailed off a bit is false and is not the reason for the change in family finances. Stating that Respondent was saving for retirement is false and is not the reason for the change in family finances.

There is nothing wrong with a party being frustrated by or believing that a result in litigation has been incorrect or unjust. Consequently, Respondent's explanation of his position did not violate any Order. Forgiveness is a personal character trait practiced by

many. Respondent's expression of forgiveness did not violate any court Order. This expression of forgiveness can be a character trait taught to the children by Respondent's example.

Assuming arguendo that Respondent knew that he was prohibited from conducting the family meeting leads to a problem with Respondent's ability to comply. By not conducting the meeting, the children faced frustration and embarrassment because supplemental financial support and family activities would change without explanation. If the District Court's alternatives were used, Respondent would be making false statements and not expressing his true feelings.

POINT III

RESPONDENT DID NOT WILLFULLY AND KNOWINGLY FAIL AND REFUSE TO FOLLOW ANY COURT ORDER.

The third element required for a finding of contempt of Court is a willful and knowing failure and refusal to follow a Court Order. The Court's Findings of Fact state that the Respondent was aware of the Decree. (R@396 P.2). No testimony or other evidence was presented to demonstrate that Respondent knew he was prohibited from conducting a family meeting.

In Kelly v. Kelly, 9 P. 3d 171 (Utah App. 2000), the Court addressed the level of proof required for a finding of contempt. There must be clear and convincing proof of all three elements of contempt. This Court stated:

The decision to hold a party in contempt of court rests within the sound discretion of the trial court and will not be disturbed on appeal

unless the trial court's action is so unreasonable as to be classified as capricious and arbitrary, or a clear abuse of discretion. To find contempt, the court must find from clear and convincing proof that the contemnor knew what was required, had the ability to comply, and willfully and knowingly failed and refused to do so. (Citations omitted).

9 P. 3d @ 181.

Without clear and convincing evidence that Respondent knew what was proscribed and acted willfully and knowingly to violate the Order, there is no basis for contempt. The Court's finding that Respondent was aware of the Decree is not sufficient to show Respondent willfully violated the Decree by holding the family meeting.

The interpretation of Paragraph 3 of the Divorce Decree Respondent was held responsible for began with a phrase from the Decree cited by Petitioner's counsel in the Motion for Order to Show Cause. This interpretation then involved discussion between the Court and counsel for the Petitioner. This interpretation was decided at the April 16, 2007 evidentiary hearing long after the family meeting. Left out of this process was the person who was to be held responsible. There is no willful violation of the Court Order.

POINT IV

RESPONDENT CANNOT BE HELD
RESPONSIBLE FOR STATEMENTS BY
THE COURT NOT CONTAINED IN ANY
ORDER.

As described above in Point III, Petitioner's counsel claimed Respondent was responsible for statements by the Court that were not in any Order. These statements do not meet the requirements of Utah Code Ann. §78-32-1, the contempt statute. This

statute does not include statements by the Court as a basis for contempt. Consequently, the Court's finding that Respondent was in contempt for bringing the children into the divorce proceedings doesn't meet the legal threshold of being an act of contempt.

The Court statement from the trial was not identified in the pleadings or in the Findings of Fact. Indicative of the difficulty Respondent faced in knowing that he was responsible for complying with a statement from an earlier hearing is Petitioner's counsel's explanation:

MR. FRIEL: Now, I would argue that actually, if we pull the transcript from October hearing, trial hearing before your Honor, your Honor probably said you will not involve children, but I will admit, that did not get in the order.
(R@146 P. 75).

Respondent is to be held responsible for this unidentified statement described as one the Court probably made. Respondent is to conclude that this statement is an Order that prohibits him from conducting the family meeting or delivering a check with a "B." This does not meet the standard for knowing the requirement or having notice of it.

POINT V

THE COURTS HAVE LIMITED
AUTHORITY WITH RESPECT TO THE
REGULATION OF THE LIVES OF
DIVORCED PERSONS. THE TRIAL COURT
EXCEEDED ITS AUTHORITY IN FINDING
RESPONDENT IN CONTEMPT.

Utah Code Ann. §30-3-5(1) provides that a Court may include in a Decree of Divorce equitable Orders relating to the children, property, debts or obligations, and parties. This statute then identifies specific requirements for items that are mandated in a

Decree of Divorce. This statute does not provide for continuing authority of a Court to regulate the interaction of the parties.

If Petitioner believed specific requirements for the Respondent to communicate with his children or wanted specific methods to be used for delivery of checks, Petitioner should have discussed these matters with the Respondent. Petitioner testified that she did not have any such discussions with Respondent. (R@146 P. 70).

Presuming Petitioner was unable or unwilling to discuss these matters with Respondent, these matters involved modifications to the Decree of Divorce. The proper procedure was to file a Petition for Modification, not an Order to Show Cause.

Petitioner's request for direct payment of child support resulted in Respondent directly depositing the checks. Ironically, Petitioner didn't even know this was part of her request.

The District Court exceeded its authority in finding Respondent in contempt. As discussed earlier, actions that are part of ordinary life were found to be illegal.

POINT VI

THE DISTRICT COURT RULED FOR
RESPONDENT ON THE KEY ISSUE OF
CHILD SUPPORT. THE COURT ERRED IN
NOT ORDERING A REFUND.

The Court's Order states: "Respondent is not in contempt of Court for shorting Petitioner certain child support monies in January, February and March, 2007."

(R@399). The Findings of Fact stated that "Respondent is not in contempt of Court for

non-compliance with reducing the child support amount. Respondent made his January 2007 of 2,500 plus..." (R@396-297).

Inexplicably the Court made Finding of Fact Number 7 that states:

Regarding the issue of refunding \$455.08 from Petitioner to Respondent concerning the difference in the January child support payment is ruled in favor of Petitioner. Therefore, Petitioner has no need to refund those monies. (R@395 ¶ 7.)

An extended discussion involving the Court and Petitioner's counsel took place during the evidentiary hearing regarding the adjustment to the child support. The Court reviewed Exhibit 7, a letter from Petitioner's counsel to Respondent's counsel. The letter stated that an adjustment to the child support could be made based on information provided by the Respondent. Should a different conclusion result based upon subsequently prepared tax returns, a separate adjustment would be required. The Court concluded Respondent had paid the correct amount. (R@146 Pgs. 41-43).

There is no factual basis for ruling in favor of Petitioner regarding the difference in child support. Respondent overpaid the child support and should recover this excess.

POINT VII

PETITIONER IS NOT ENTITLED TO
RECOVERY OF ATTORNEY'S FEES
BASED ON THE TRIAL COURT'S FINDING
OF CONTEMPT OR ON ANY STATUTORY
BASIS.

Utah Code Ann. §30-3-2 provides for a discretionary award of attorney's fees in an action to enforce a divorce action. Specifically, this statute states:

In any action to enforce an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense.

Utah Code Ann. § 30-3-3(2) (Supp. 2005).

The Decree of Divorce has a provision related to attorney fees. This provision provides that attorney's fees are awarded if the Court finds a party in contempt of court. Specifically, Paragraph 34 of the Decree of Divorce states:

If any party should be found to be in contempt of any provisions of any Order of this Court, that party shall be responsible for paying reasonable attorney's fees and costs for the enforcement thereof. (Appendix C, R@46).

Here, Petitioner brought this Order to Show Cause primarily to recover more child support. This conclusion is bolstered by the claims of the Petitioner in the Order to Show Cause that Respondent had failed to pay the proper amount, Petitioner's Affidavit that she wanted the Court to Order more child support to be paid, the lack of any prior effort by the Petitioner to arrange different payment methods for payment of child support and the lack of any damages by the asserted misconduct of Respondent. The Respondent successfully defended against these allegations and consequently should recover attorney's fees.

As set forth throughout this Brief, Respondent should not be held in contempt of Court. The basis for the award of fees does not exist.

Assuming arguendo that Respondent was in contempt of Court, Petitioner is not entitled to an award of all her attorney's fees. The fees must be allocated to the issues on which Petitioner prevailed.

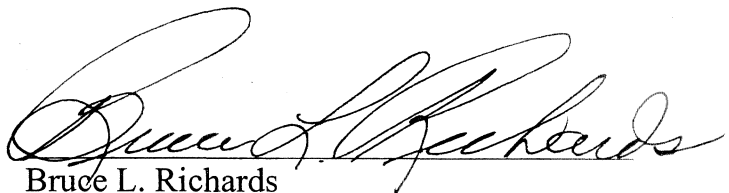
Respondent is entitled to an award of attorney's fees as the prevailing party. Even if Petitioner were found to have prevailed on some issues, Respondent is entitled to recover his fees for the issues Respondent prevailed on. This includes the child support issue. Respondent is also entitled to this attorney's fees and costs of appeal.

CONCLUSION

Respondent requests that this Court reverse Paragraphs 2, 3 and 4 of the Order from Hearing Held April 16, 2007. Respondent should recover the excess \$455.08 in child support paid in January 2007. Respondent should recover his attorney's fees and costs. For purposes of determining Respondent's attorney's fees and costs, the case should be remanded to the District Court.

Dated this 16th day of November, 2007.

BRUCE L. RICHARDS & ASSOCIATES

A handwritten signature in cursive script, appearing to read "Bruce L. Richards", written over a horizontal line.

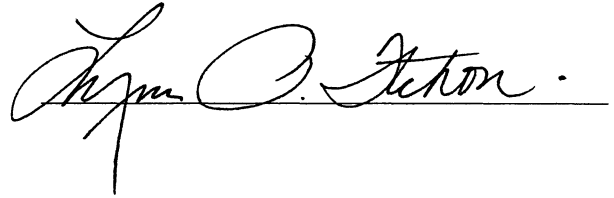
Bruce L. Richards
Attorney for Respondent

MAILING CERTIFICATE

I hereby certify that on the 16th day of November, 2007, a copy of Appellant's

Brief was mailed via First Class Mail, postage-prepaid to:

David J. Friel
Attorney for Petitioner
2875 South Decker Lake Dr. #225
Salt Lake City, UT 84119

A handwritten signature in cursive script, reading "Lynn D. Stetson", is written over a horizontal line.

Appendix A

Findings of Fact and Conclusions of Law
Entered June 15, 2007

David J Friel
Attorney for Petitioner
2875 S. Decker Lake Drive, #225
Salt Lake City, UT 84119
Telephone: (801) 975-1122
Facsimile: (801) 975-8611
Bar No. 6225

FILED DISTRICT COURT
Third Judicial District

JUN 15 2007

TOOELE COUNTY

By _____ Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
OF TOOELE COUNTY, STATE OF UTAH

LINDA ANDERSON,
(f.k.a. Linda LaRee Thompson),
Petitioner,

vs.

GLENN HUNTER THOMPSON,
Respondent.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Civil No. 994300102DA

Judge: Mark S. Kouris

An Order to Show Cause hearing was held before Judge Mark S. Kouris of the Third District Court on April 16, 2007. Both parties had filed respective Motions for Order to Show Cause. Petitioner, Linda Anderson, was present and represented by counsel, David J Friel. Respondent, Glenn Thompson, was present and represented by counsel, Bruce Richards. Based upon the testimony of witnesses and the exhibits received by the Court and the argument of counsel, the Court entered the following:

FINDINGS OF FACT

1. The Court finds that Respondent is not in contempt of Court for non-compliance with reducing the child support amount. Respondent made his January, 2007

payment of \$2,500 plus. Respondent received from Petitioner's attorney correspondence indicating that another adjustment could be made and would be looked at later after the tax form was completed. Therefore, the Court doesn't find contempt on that charge.

2. The Court finds that the Respondent is in contempt of Court for bringing the children of the parties into the divorce proceedings. In the Decree of Divorce it stated that the parties shall work together to solve issues involving the children. The Court previously stated that the children of the parties are not to be involved. The Court finds that the Respondent was aware of the Decree and certainly had the capacity to follow the decree and could have taken responsibility for the financial situation. The Court finds that the Respondent's actions of calling a family meeting with the children is deplorable for involving the children of the parties. The Respondent further exacerbated the situation when he told the minor children to forgive their mother. The Court finds that Respondent's statements to the children of "I can't buy you a big Christmas anymore" or "I can't take you on trips any more because of your Mom" are harmful to the children. The Court can't imagine a child or an adult not taking those statement the wrong way.

3. The Court finds that the Respondent had several options in terms of not giving the children money and involving them in the finances. The Respondent could have stated to the children of the parties that his business had tailed off a bit or that Respondent was saving for retirement, etc. The Court stated that Respondent could have also told the children that he chose to not follow the original Divorce Decree for a number of years and this impacted his finances. The Court further stated that the Respondent

could have asked for the children to forgive him for shorting their mom all of these years, asking for forgiveness, hoping Petitioner would forgive Respondent, or that Respondent was not going to be able to pay Petitioner any longer. The Court is upset that Respondent told the children to forgive their mother. The Court states that the Petitioner has done nothing wrong and was enforcing an issue that was due to her.

4. The Court further finds Respondent in contempt of Court regarding the two checks that were written to Petitioner for child support that had disparaging remarks written on the checks.

5. This issue showing contempt and once again showing the Respondent's wilful involvement to bring the children into the divorce by the writing of "B" for "bitch" on two checks. The Court was appalled with the knowledge that the second check was handed personally to the parties' oldest child directly from Respondent. The Court therefore finds Respondent in contempt of Court regarding this issue as well.

6. The Court finds that Petitioner was ultimately victorious in her motion in terms of the contempt. The Court awards attorney fees and costs to Petitioner from Respondent.

7. Regarding the issue of refunding \$455.08 from Petitioner to Respondent concerning the difference in the January child support payment is ruled in favor of Petitioner. Therefore, Petitioner has no need to refund those monies.

8. The Court denies Respondent's Motion for Contempt.

CONCLUSIONS OF LAW

1. The Court concludes that on the first issue Respondent is not found in contempt of Court.

2. The Court concludes that Petitioner is victorious in her motion in terms of the two other contempts and Respondent is responsible for attorney fees and Court costs associated with this action.

DATED this 15 day of JUNE, 2007.

BY THE COURT:



Judge Mark S. Kouris
Third District Court

Approved as to form:

Bruce Richards
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that I caused to be sent by U.S. Mail, a true and correct copy of the foregoing document on this 23 day of MAY, 2007, to:

Bruce L. Richards, Esquire
P.O. Box 25786
Salt Lake City, UT 84125



Appendix B

Order from Hearing held April 16, 2007
Entered June 15, 2007

~~TOOELE COUNTY~~

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
OF TOOELE COUNTY, STATE OF UTAH

Judge: Mark S. Kouris

The Court previously entered Findings of Fact and Conclusions of Law in the matter.
Based upon those Findings and Conclusions the Court hereby enters the following:

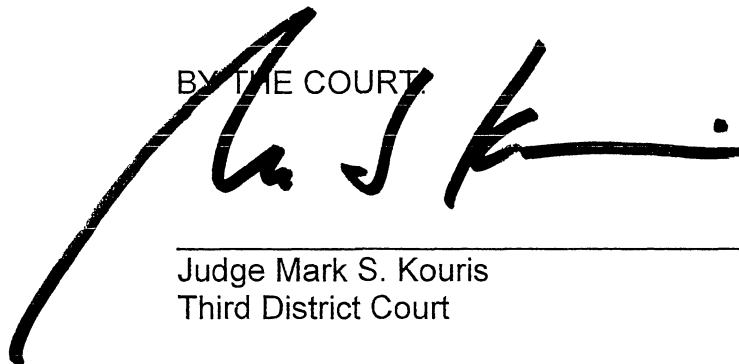
ORDER

1. Respondent is not in contempt of Court for shorting Petitioner certain child support monies in January, February, and March, 2007.
2. Respondent is in contempt of the Court's orders for involving the minor children in the divorce proceeding by holding a family meeting and explaining divorce and child support issues.
3. Additionally, Respondent is in contempt for involving the children in divorce proceedings by giving Petitioner and one of the children child support checks with denigrating language on the checks.

4. Petitioner is awarded attorney fees and Court costs totaling \$5,329.65.

DATED this 15 day of June, 2007.

BY THE COURT:

A large, bold, handwritten signature in black ink, appearing to read 'M. S. Kouris', is written over the 'BY THE COURT:' text and extends across the signature line.

Judge Mark S. Kouris
Third District Court

Approved as to form:

Bruce Richards
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that I caused to be sent by U.S. Mail, a true and correct copy of the foregoing document on this 23 day of May, 2007, to:

Bruce L. Richards, Esquire
P.O. Box 25786
Salt Lake City, UT 84125

C.AndersonL.ord7



Appendix C
Decree of Divorce

FILED
3RD DISTRICT COURT TOOELE
99 APR 20 PM 12:29
FILED BY [Signature]

MICHELLE CLAIRE TACK (#6044)
Attorney for Petitioner
10150 South Centennial Parkway
Suite #400
Sandy, Utah 84070
Telephone: (801) 572-8892

IN THE THIRD JUDICIAL DISTRICT COURT
OF TOOELE COUNTY, STATE OF UTAH

LINDA LaREE THOMPSON,	---	oo0oo---)	
	:		:	DECREE OF DIVORCE
Petitioner,)		:	
	:		:	
vs.)		:	
	:		:	Civil No. <u>994300102</u>
GLENN HUNTER THOMPSON,)		:	Judge:
	:		:	
Respondent.)		:	
	---	oo0oo---		

This matter having been submitted to the Court on the basis of a stipulation and property settlement signed by both parties, and the Court having made its Findings of Fact and Conclusions of Law, it is therefor:

ORDERED, ADJUDGED AND DECREED

1. That the Petitioner is hereby awarded a Decree of Divorce from the Respondent, dissolving the bonds of matrimony heretofore existing between the parties, and said Decree to

become final, and absolute and irrevocable upon being signed by the Court and entered by the clerk.

2. There are four minor children born as issue of this marriage, to wit: TRAVIS GLENN THOMPSON (d.o.b. 1/13/90), DARCIIE LINDA THOMPSON (d.o.b. 7/29/92), LYNDIE LaREE THOMPSON (d.o.b. 7/27/94), and COLE HUNTER THOMPSON (d.o.b. 3/6/96).

3. That the parties are both fit and proper persons to be awarded the care, custody and control of the minor children and therefore the parties should be awarded joint legal custody with the Petitioner being granted primary physical custody. The parties shall work together to resolve issues involving the children, however the Petitioner as custodial parent shall make the final decision.

4. The Respondent shall be granted reasonable and liberal visitation with the minor children, with the minimum to be as detailed in §30-3-35 of the Utah Code. The Respondent shall be awarded visitation on alternate weekends with at least one additional contact midweek.

5. The Respondent shall be awarded holiday visitation in odd numbered years for Memorial Day, July 24th, and Thanksgiving and in even numbered years for Easter, July 4th, and Labor Day. The Christmas holiday shall be divided in such a way as to allow the children to be at home with the Petitioner overnight on Christmas Eve until they are of an age when Santa Claus is no longer a major factor. In odd numbered years, the Petitioner shall have the children Christmas Eve day through Christmas Day at 5:00 p.m. and the Respondent shall have the children on Christmas Day from 5:00 p.m. In even numbered years, the Respondent shall have the children on

Christmas Eve from 5:00 p.m. until 10:00 p.m. and again on Christmas Day from 12:00 noon, with the Petitioner having the children from 10:00 p.m. Christmas Eve until Christmas Day at 12:00 noon.

6. The Respondent shall be granted visitation for each child's birthday from 5:00 p.m. on the actual birthday if said day is a weekday. If the birthday is a weekend day during the Respondent's regular scheduled visitation, then he shall have the entire weekend subject to the Petitioner having visitation on the actual birthday from 5:00 p.m. If the birthday is a weekend day and is not during the Respondent's regular scheduled visitation, then he shall have visitation on the actual birthday from 5:00 p.m. The party exercising birthday visitation shall have the option to also include the parties' other children in said birthday visitation.

7. Both parties shall have reasonable blocks of visitation time during the summer vacation period and shall have the option to travel with the children with reasonable notice to the ~~other party~~. With the exception of vacation and travel time the parties shall continue to follow the regular visitation schedule as detailed herein.

8. Should either party need child care during their respective periods of time with the children they shall give the other party the first option to provide such care. Neither party shall, however, be required to adjust their individual plans in order to accommodate the other party's schedule and should either party fail to provide such care after agreeing to do so they shall be responsible for the actual costs incurred for substitute care.

9. The Respondent shall pay child support for the parties' minor children in the amount of \$1,000.00 per month. The parties' recognize that said amount is less than as provided by the guidelines set forth in the Utah Code and have agreed on said amount based upon the entire divorce settlement. Upon the termination of alimony the base child support amount shall be automatically adjusted to an amount consistent with the guidelines set forth in the Utah Code. The Respondent's monthly child support obligation shall be automatically increased each year by .7% (.007) of the Respondent's gross business receipts in excess of the previous year's gross business receipts (1998 gross business receipts determined to be \$300,000.00) in order to preserve the ratio of monthly child support to Respondent's yearly gross business receipts.

10. The Respondent shall make the following payments to the Petitioner for the benefit of the children in addition to child support:

a. One thousand dollars (\$1,000.00) yearly by December 1st for Christmas with this sum to be matched by the Petitioner.

b. Seven hundred fifty dollars (\$750.00) yearly by August 1st for school clothing and supplies with this sum to be matched by the Petitioner. Said funds may be maintained in a separate account and spent over the course of the year.

c. Five hundred dollars (\$500.00) yearly by May 1st for Spring and Summer clothing with this sum to be matched by the Petitioner. Again, said funds may be maintained and budgeted over the course of the year.

d. All costs for non-school extra-curricular activities and lessons for the minor children (baseball, softball, basketball, soccer, golf, music, swimming, etc..) along with costs of all equipment, apparel and travel associated with participation therein.

e. One-half of the costs for an agreed-upon birthday party for each child yearly.

11. Respondent shall be responsible for expenses for the children's missions and reasonable college education with some contribution from each respective child.

12. The Respondent shall not be subject to Universal Income Withholding pursuant to §62A-11-403 of the Utah Code unless he should become delinquent in his obligations under this agreement.

13. The parties shall exchange income information and verification no later than June 1st of each year. The Petitioner will also provide Respondent with documentation of her matching funds pursuant to the provisions of paragraph 15 above no later than June 1st each year.

14. The Respondent shall be allowed to claim the minor children as dependents for tax purposes with this division of exemptions to be re-evaluated whenever child support is re-evaluated or modified.

15. The Petitioner shall continue to provide the children's medical insurance and shall pay the premiums thereon.

16. The parties shall each pay one-half (1/2) of any and all routine medical, optical and/or dental expenses incurred for the benefit of the parties' minor children which are not covered by

insurance, including deductibles and co-pays. Financial responsibility for any catastrophic expenses which might be incurred for the benefit of the minor children shall be determined based on the parties' respective financial positions at that point in time.

17. That should work and/or training related child care be required at any point, the parties agree to divide this expense equally.

18. The Respondent shall be required to pay the premiums thereon and maintain in effect at least \$800,000.00 of life insurance for the benefit of the parties' minor children with the Petitioner named as Trustee of all proceeds of said policy. Further, the Respondent shall be required, should he be able to obtain even limited disability insurance, to maintain disability insurance for the benefit of the minor children and the Petitioner as long as he is subject to an alimony and/or child support obligation.

19. The Respondent shall pay the Petitioner \$3,100.00 monthly as and for spousal support for a period of twelve years following the entry of the Decree of Divorce in this matter. The Respondent's support obligation is based upon the assumption of the parties that the Petitioner will remarry within this twelve year period and therefore a continuation of alimony beyond this twelve year period shall be considered should the Petitioner not be re-married at the termination of said period. The Respondent's spousal support obligation shall terminate upon the Petitioner's death, remarriage, or cohabitation and such a termination shall automatically trigger a recalculation of the Respondent's child support obligation.

20. The Respondent shall also pay the Petitioner a reasonable annual “cost of living” increase in alimony which shall consist of one percent (1%) of Respondent’s gross business receipts for the previous year over \$300,000.00. This additional amount of alimony shall be paid in one lump sum no later than June 1st of each year.

21. That the Petitioner shall be awarded the parties’ marital residence located at 638 Country Club, Stansbury Park, Utah, and shall assume and pay all expenses related thereto, including the mortgage, taxes, and utilities, and shall hold the Respondent harmless thereon.

22. The Respondent shall execute a quit-claim deed transferring any and all interest he may have in the marital residence to the Petitioner.

23. That the Respondent shall be awarded the business TOOELE VALLEY SPINE CENTER along with all property associated therewith as well as the commercial real property purchased for said business, and he shall assume and pay all expenses related thereto and shall hold the Petitioner harmless thereon.

24. The Petitioner shall if needed execute a quit-claim deed transferring any and all interest she may have in the business and business property to the Respondent.

25. That the Respondent shall be awarded fifty percent (50%) -- approximately \$5,000 -- of the parties’ cumulative IRA accounts, fifty percent (50%) -- approximately \$4,200 -- of the parties’ cumulative savings, and his personal effects and property.

26. That the Petitioner shall be awarded fifty percent (50%) -- approximately \$5,000 --

of the parties' cumulative IRA accounts, fifty percent (50%) -- approximately \$4,200 -- of the parties' cumulative savings, her personal effects and property, and the balance of the marital property in/at the marital residence.

27. That the Respondent shall be awarded the Bobcat automobile and shall assume and pay all expenses related thereto including insurance and shall hold the Petitioner harmless thereon.

28. That the Petitioner shall be awarded the 1994 Suburban and shall assume and pay all expenses related thereto including insurance and shall hold the Respondent harmless thereon. However, the Respondent shall be awarded the right to the reasonable use of said vehicle during his visitation periods until he has obtained reliable transportation and the Petitioner shall be granted the use of his vehicle during said visitation periods.

29. That the Respondent shall assume and pay his student loans and also the debt to his parents in the approximate amount of \$20,000.00 and shall hold the Petitioner harmless thereon.

30. That the Petitioner shall assume and pay the debt to her parents in the approximate amount of \$18,000.00 and shall hold the Respondent harmless thereon.

31. In the event that any outstanding debt or obligation of any kind has been incurred by either party other than the debts and obligations set forth and intended above, the party actually incurring the debt or obligation shall assume and be solely responsible for paying it and shall hold the other party harmless from all claims, obligations, and expenses with respect to said debt.

32. If this matter is uncontested, the parties' shall each be responsible for one-half of the

attorney's fees and costs associated with this action.

33. Each party should be ordered to execute and deliver to the other party any documents necessary to implement the provisions to the Decree of Divorce entered by the Court.

34. If any party should be found to be in contempt of any provisions of any Order of this Court, that party shall be responsible for paying reasonable attorney's fees and costs for the enforcement thereof.

DATED this ~~29~~ day of April, 1999.

BY THE COURT:



DISTRICT COURT JUDGE

Approved as to form:



GLENN HUNTER THOMPSON
Respondent

Appendix D

Order from Trial Held October 26, 2006
and Objection Hearing Held December 18, 2006

THIRD DISTRICT COURT-TOOELE

2007 JAN -9 AM 11:31

FILED BY _____

David J Friel
Attorney for Petitioner
2875 S. Decker Lake Drive, #225
Salt Lake City, UT 84119
Telephone: (801) 975-1122
Facsimile: (801) 975-8611
Bar No. 6225

IN THE THIRD JUDICIAL DISTRICT COURT
OF TOOELE COUNTY, STATE OF UTAH

LINDA ANDERSON,
(f.k.a. Linda LaRee Thompson),

Petitioner,

vs.

GLENN HUNTER THOMPSON,

Respondent.

)
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)
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)
**ORDER FROM TRIAL HELD
OCTOBER 26, 2006 AND OBJECTION
HEARING HELD DECEMBER 18, 2006**

)
)
)
)

Civil No. 994300102DA

Judge: Mark S. Kouris

A bench trial was held in the above-entitled matter on October 26, 2006 before Judge Mark S. Kouris and an Objection hearing was also held on December 18, 2006. Petitioner, Linda Anderson, was present and represented by counsel, David J. Friel. Respondent, Glenn Thompson, was present and represented by counsel, Bruce Richards. Based upon the Findings of Fact and Conclusions of Law previously entered in the matter, the Court now enters the following:

ORDER

1. The Court previously found that the parties' actions created a substantial and material change in circumstances and it is ordered that both parties be responsible one-half each for the non-school extracurricular activities of the minor children.

2. The Court orders that Respondent will claim the second and fourth oldest children on his taxes and Petitioner will claim the oldest and third oldest children on her taxes.

3. Respondent is given no credit for his payments on the voluntary insurance that he is providing and covering the children with since the Decree ordered Petitioner to keep insurance on the children.

4. The Court previously found that Respondent is in contempt of Court for not following the Decree of Divorce at paragraph No's 9, 10, and 20. Therefore, the Court enters total judgments against the Respondent in the amount of \$44,311.00.

5. Breaking down into specific categories the \$44,311.00 judgment, the Petitioner is awarded a judgment against the Respondent in the amount of \$2,480.00 for the 2004 taxes that Respondent should have paid of Petitioner's.

6. The Petitioner is awarded judgment against the Respondent in the amount of \$1,726.50 for the non-school extracurricular activities that should have been paid by the Respondent after October, 2004. All non-school extracurricular activities proportionate one-half (½) payments have been made by Respondent prior to October, 2004.

7. Petitioner is awarded judgment in the amount of \$4,300.00 against the Respondent due to his non compliance with paragraph No. 10 in the Decree of Divorce.

8. Petitioner is awarded judgment in the amount of \$3,808.00 against the Respondent due to his non compliance with paragraph No. 20 in the Decree of Divorce.

9. Petitioner is awarded judgment against Respondent in the amount \$31,997.11 for non compliance of paragraph No. 9 of the Decree of Divorce regarding the automatic adjustment of child support based on the gross receipts of the Respondent per the Decree of Divorce.

10. Attorney fees are justified and necessary and reasonable and Petitioner is awarded attorney fees of \$7,652.97 against the Respondent. Petitioner's counsel will

prepare an affidavit of attorney fees incurred by the Petitioner.

11. Respondent has been found in contempt of Court and if found in contempt again the Court will consider jail time. Respondent must understand that he has been found in contempt of Court and jail or a fine could be imposed and the Court expects the Respondent to follow the orders of the Court.

12. Beginning January, 2007 Respondent's monthly child support obligation to Petitioner will be \$2,516.08 based upon the automatic adjustment of child support as per the Decree of Divorce. This is based on Respondent's 2004 and 2005 gross receipts.

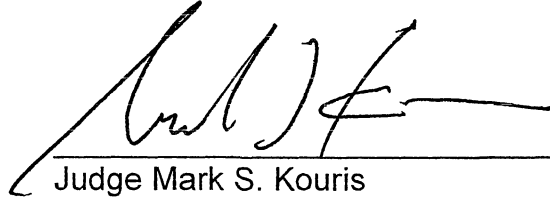
Beginning 2007 Respondent will provide his 2006 gross receipts compared to 2005 gross receipts so the parties may calculate if there needs to be an adjustment increase to the base child support amount. The base child support amount is \$2,061.00. The gross receipts from Respondent will be given to Petitioner for 2006 (and each year thereafter) so Petitioner can calculate the child support adjustment in accordance with paragraph 9 of the parties' Decree of Divorce. Petitioner will have fifteen (15) days to calculate the adjustment, if any. Respondent will have fifteen (15) days to respond to Petitioner's figures. If the parties agree, the figures may be adjusted automatically with the increase or decrease. If the parties do not agree, no adjustment can be made without a Court hearing. The monthly child support amount due from Respondent to Petitioner will not be

adjusted below \$2,061.00. If Respondent has paid less than the adjusted amount, Respondent shall pay the underpayment with the next month's child support payment. If Respondent has paid more than the adjusted amount, the Respondent shall subtract the over-payment from the next month's child support payment. If any judgment amount remains enforceable, the overpayment may be subtracted from the judgment amount.

13. All provisions of the Decree of Divorce not expressed changed or modified in the action will remain in full force and effect.


DATED this 8 day of January, 2006.

BY THE COURT:



Judge Mark S. Kouris
Third District Court

Approved as to form ~~and content~~:



Bruce L. Richards
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that I caused to be sent by U.S. Mail, a true and correct copy of the foregoing document on this 20 day of DECEMBER, 2006, to:

Bruce L. Richards, Esq.
P.O. Box 25786
Salt Lake City, UT 84125

