

1997

Melvon David Turner v. Di Ann Carol Turner : Brief of Appellant

Utah Court of Appeals

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**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO. 970615-CA

IN THE UTAH COURT OF APPEALS,
STATE OF UTAH

MELVON DAVID TURNER, Plaintiff/Appellee, vs. DI ANN CAROL TURNER, Defendant/Appellant.	Appeal No. 970615-CA Priority No. 15
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BRIEF OF APPELLANT

Appeal from Supplemental Decree of Divorce,
the Fourth District Court,
Wasatch County, State of Utah
The Honorable Judge Howard Maetani, Judge, Presiding

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FILED

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS,
STATE OF UTAH

MELVON DAVID TURNER,
Plaintiff/Appellee,
vs.
DI ANN CAROL TURNER,
Defendant/Appellant.

Appeal No. 970615-CA

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II.

JURISDICTIONAL STATEMENT

This case is before the Utah Court of Appeals, following an appeal from the Fourth District Court in and for Wasatch County. The Utah Court of Appeals has jurisdiction of this matter pursuant to § 78-2a-3(2)(h).

III.
STATEMENT OF ISSUES.

A. DID THE COURT ABUSE ITS DISCRETION AND ERR IN FAILING TO MAKE ADEQUATE FINDINGS TO SUPPORT ITS ORDERS AS FOLLOWS:

1. In imputing income to the Appellant based on voluntary underemployment?

2. In its child support award for seven children?

3. In failing to award Appellant alimony?

4. In awarding Appellee the benefits of any pay-down by Appellant of the mortgage upon the marital home and the benefits of its appreciated value as of the date of pay-off by Appellant to Appellee of his equitable interest in the home.

5. In failing to require Appellee to pay the parties' entire USAA debt?

6. In failing to award Appellant her requested attorney's fees?

7. Appellant also requests attorney's fees and costs of Court for the prosecution of this appeal.

IV. STANDARD OF REVIEW

The standard of review in divorce proceedings is that the Trial Court has considerable discretion and that the Appellate Court will not disturb the Trial Court's decision unless it is clearly unjust or a clear abuse of discretion. *Smith v. Smith*, 751 P.2d, 1149 (Utah App. 1988).

To permit Appellate review, there must be adequate factual Findings. *Willey v. Willey*, 866 P.2d 547 (Utah App. 1993); *Willey v. Willey*, 914 P.2d 1149 (Utah App. 1996); *Willey v. Willey*, 333 Utah Adv. Rpt. 8 (Utah 1997).

Appellant's request that her actual income be used for assessing child support was preserved by her testimony (Transcript, P. 100, L. 19-22) and those issues reserved by the Court at the conclusion of the trial (Transcript, P. 130, L. 18).

Appellant's claim for additional attorney's fees and costs and those fees and costs on appeal was preserved in the Court's Memorandum Decision (R. 160) and her testimony (Transcript, P. 108. L. 25).

The issue of the Appellant's request for alimony was preserved by her testimony (Transcript P. 100 L. 23) and Appellant's claim regarding equity in the parties' home was also preserved by her testimony (Transcript P. 101 L. 15). The issue of the distribution of the USAA debt was preserved by the pleadings (R. P. 7) and

testimony of the parties (Transcript P. 25 L. 3) and the Memorandum Decision (R. 159) as was Appellant's claim for child support for the seven minor children (Transcript, P. 100, L. 19). Appellant also objected to Appellee's child support worksheet (R. P. 35) (Transcript, P. 28).

V.
STATUTES

1. **§ 30-3-5.**

Disposition of Property - Maintenance and health care of parties and children - Division of debts - Court to have continuing jurisdiction - Custody and visitation - Determination of alimony - Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include it in equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce;

(a) An order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) If coverage is or become available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital and dental care insurance for the dependent children.

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations or liabilities of the parties contracted incurred during marriage.

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders; and

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4)(a) In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include an order establishing a visitation schedule a provision, among other things, authorizing any peace officer to enforce a court ordered visitation schedule entered under this chapter.

(5) If a petition for modification of child custody or visitation provisions of a court order is denied, the court shall order the petitioner to pay the reasonable attorney's fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(6) If a petition alleges substantial noncompliance with a visitation order by a parent, a grandparent, or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney's fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation.

(7) (a) The court shall consider at least the following factors in determining alimony:

- (i) the financial condition and needs of the recipient spouse;
- (ii) the recipient's earning capacity or ability to produce income;
- (iii) the ability of the payor spouse to provide support; and
- (iv) the length of the marriage.

(b) The court may consider the fault of the parties in determining alimony;

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the

marriage, the court may consider the standard of living that existed at the time of the marriage.

(d) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

(e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

(g) (i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this subsection.

(A) The court may consider the subsequent spouse's financial ability to share living expenses.

(B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.

(h) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

(8) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(9) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

§78-2a-3. Court of Appeals Jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary.

(a) to carry into effect its judgments, orders, and decrees; or

(b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of information adjudicative proceeding so the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the State engineer.

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony.

(e) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony.

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity.

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter of which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

78-45-7.2 Application of guidelines - Rebuttal.

(1) The guidelines apply to any judicial or administrative order establishing or modifying an award of child support entered on or after July 1, 1989.

(2) (a) The child support guidelines shall be applied as a rebuttal presumption in establishing or modifying the amount of temporary or permanent child support.

(b) The rebuttable presumption means the provisions and considerations required by the guidelines, the award amounts resulting from the application of the guidelines, the use of worksheets consistent with these guidelines are presumed to be correct, unless rebutted under the provisions of this section.

(3) A written finding or specific finding on the record supporting the conclusion that complying with a provision of the guidelines or ordering an award amount resulting from use of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a particular case is sufficient to rebut the presumption in that case.

(4) (a) Natural or adoptive children of either parent who live in the home of that parent and are not children in common to both parties may at the option of either party be taken into account under the guidelines in setting or modifying a child support award, as provided in Subsection (5).

(b) Additional worksheets shall be prepared that compute the obligations of the respective parents for the additional children. The obligations shall then be subtracted from the appropriate parent's income before determining the award in the instant case.

(5) In a proceeding to modify an existing award, consideration of natural or adoptive children other than those in common to both parties may be applied to mitigate an increase in the award but may not be applied to justify a decrease in the award.

(6) With regard to child support orders, enactment of the guidelines and any subsequent change in the guidelines constitutes a substantial or material change of circumstances as a ground for modification or adjustment of a court order, if there is a difference of at least 25% between the existing order and the guidelines. In cases enforced under IV-D of Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., the office may request modification, in accordance, with the requirements of the Family Support Act of 1988, Public Law 100-485, no more often than once every three years.

Section 78-45-7.5. Determination of gross income - Imputed income.

- (1) As used in the guidelines, "gross income" includes:
 - (a) prospective income from any source, including nonearned sources, except under Subsection (3); and
 - (b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment compensation, disability insurance benefits, and payments from "nonmeans-tested" government programs.
- (2) Income earned from earned income sources is limited to the equivalent of one full-time 40-hour job. However, if and only if during the time prior to the original support order, the parent normally and consistently worked more than 40 hours at his job, the court may consider this extra time as a pattern in calculating the parent's ability to provide child support.
- (3) Specifically excluded from the gross income are:
 - (a) Aid to Families with Dependent Children (AFDC);
 - (b) Benefits received under a housing subsidy program, the Job Training Partnership Act, S.S.I., Medicaid, Food Stamps, or General Assistance; and
 - (c) Other similar means-tested welfare benefits received by a parent.
- (4)
 - (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.
 - (b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes.
- (5)
 - (a) When possible, gross income should first be computed on an annual basis and then recalculated to determine the average gross monthly income.
 - (b) Each parent shall provide verification of current income. Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds

the verification is not reasonably valid. Verification of income from records maintained by the Office of Employment Security may be substituted for pay stubs, employer statements, and income tax returns.

(c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists.

(6) Gross income includes income imputed to the parent under Subsection (7).

(7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed or a hearing is held and a finding made that the parent is voluntarily unemployed or underemployed.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community.

(c) If a parent has no recent work history, income shall be imputed as least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) Income may not be imputed if any of the following conditions exist:

(i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn;

(ii) if a parent is physically or mentally disabled to the extent he cannot earn minimum wage;

(iii) a parent is engaged in career or occupational training to establish basic job skills; or

(iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.

(8) (a) Gross income may not include the earnings of a child who is the subject of a child support award nor benefits to a child in the child's own right such as Supplemental Security Income.

(b) Social Security benefits received by a child due to the earnings of a parent may be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. Other unearned income of a child may be

considered as income to a parent depending upon the circumstances of each case.

§ 78-45-7.7 Calculation of obligations.

(1) The parents' child support obligation shall be divided between them in proportion to their adjusted gross incomes, unless the low income table is applicable.

(2) Except in cases of joint physical custody and split custody as defined in Section 78-45-2 and in cases where the obligor's adjusted gross income is \$1,050 or less monthly, the base child support award shall be determined as follows:

(a) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table.

(b) Calculate each parent's proportionate share of the base combined child support obligation by multiplying the combined child support obligation by each parent's percentage of combined adjusted gross income.

(3) In cases where the monthly adjusted gross income of the obligor is between \$650.00 and \$1,050, the base child support award shall be the lesser of the amount calculated in accordance with Subsection (2) and the amount calculated using the low income table.

(4) The base combined child support obligation table provides combined child support obligations for up to six children. For more than six children, additional amounts may be added to the base child support obligation shown. Unless rebutted by Subsection 78-45-7.2(3), the amount ordered shall not be less than the amount which would be ordered for up to six children.

(5) If the monthly adjusted gross income of the obligor is \$649 or less, the court or administrative agency shall determine the amount of the child support obligation on a case by case basis, but the child support award shall not be less than \$20.00.

(6) The amount shown on the table is the support amount for the total number of children, not an amount per child.

Rule 4-912. Child Support Worksheets.

Intent:

To assist judges and commissioners in applying the statutory child support guidelines to determine child support awards.

To assist the Administrative Office in collecting data regarding child support awards in compliance with 42 U.S.C. § 667.

Applicability:

This rule applies to every final order of child support, including modifications of existing awards.

Statement of the Rule:

(1) The parties shall prepare a worksheet containing information set forth in Appendix G. If the filing party is the Office of Recovery Services, the section on "child care adjustment" need not be completed.

(2) The parties shall file a completed worksheet with the court and the information thereon shall be provided to the Administrative Office of the Court.

(A) If the information on the worksheet is not electronically transferred to the Administrative Office by the filing party, that party shall file the worksheet in duplicate with the court. The clerk of court shall send one copy of the worksheet to the Administrative Office.

(B) If the information on the worksheet is electronically transferred to the Administrative Office by the filing party, the party shall so indicate on the worksheet and shall file a single copy of the worksheet with the court.

(3) The court shall not enter the final decree of divorce, final order of modification, or final decree of paternity until the completed worksheet is filed.

(4) The Administrative Office shall compile the data contained on the worksheet and shall annually provide a report to the Child Support Guidelines Advisory Committee regarding the compiled data. (Added effective April 15, 1995.)

VI.
STATEMENT OF CASE

A. NATURE AND COURSE OF PROCEEDINGS AND DISPOSITION.

The nature of this case is an appeal from a Supplemental Decree of Divorce resulting from a trial held on November 21, 1996 before the Honorable Howard Maetani at the Wasatch County Courthouse in Heber City, Utah. Following the trial, the Court ordered that the parties' counsel submit proposed Findings of Fact and Conclusions of Law as to the issues of child support, alimony, the marital residence, premarital property and attorney's fees. Thereafter, the Court made and entered its Memorandum Decision in February of 1997 and a Supplemental Decree was prepared by Appellee's counsel which was objected to. Thereafter, the Court made and entered its Supplemental Memorandum Decision on April 29, 1997, and thereafter the Court entered a Supplemental Decree of Divorce, but failed to enter adequate and sufficient Findings of Fact or a Child Support Worksheet to support its Supplemental Decree of Divorce from which Appellant herewith appeals.

B. STATEMENT OF FACTS.

1. DiAnn (Defendant and Appellant) and Melvon David Turner (Plaintiff and Appellee) were married on March 18, 1966, in Logan, Utah (Divorce Complaint, R. P. 1).

2. During their marriage, they had 12 children (Divorce Complaint, R. P. 1), seven (7) of whom were minor children at the time of trial on November 21, 1996 (Transcript, P. 96, L. 9) including one who had turned 18 on November 7, 1996, but who had not yet graduated from high school (Transcript P. 29).

3. At trial, Mr. Turner was employed at the Utah Department of Employment Security (Transcript P. 12, L. 4), earning \$53,534.00 per year or \$4,461.00 per month and resided in St. George, Utah (Transcript P. 11, L. 19.); (Memorandum Decision, R. 155).

4. At the time of trial, DiAnn had degrees in education and nursing (Transcript, P. 78, L. 15-16), but had elected not to work full-time outside the home (Transcript, P. 80, L. 17). In 1995, her income from nursing was \$29,875 (Transcript P. 155) and, in 1996, she earned \$19,783.50 (Transcript, P. 110, L. 18) through October 12, 1996. Her gross monthly income at trial was \$1,123.00 (Transcript P. 100, L. 20) for 32 hours per week (Transcript P. 110 L. 23.).

5. During the marriage, DiAnn acquired a one-fifth (1/5) interest in Duke Farms, Inc., a farm owned by her parents (Transcript P. 82, L. 6-9). In the early 1970's, DiAnn's parents gifted to the parties one-third of an acre of raw ground in Heber, Utah (Transcript P. 84, L. 10-14). A home was built on the land by the parties valued by the Trial Court at \$199,500.00, with a

current mortgage at the time of trial in the amount of \$29,500.00. The value of the raw land was \$42,000.00 (Memorandum Decision, R. 156).

6. As a result of the parties' respective employment, Mr. Turner had a retirement plan with a cash value of \$50,300.00, as of September 30, 1996, and DiAnn had a retirement plan with a cash value of \$9,133.00 (Memorandum Decision, R. 157).

7. The Court found that in addition to the mortgage, the parties had a USAA marital debt in the amount of \$11,600.00 (Memorandum Decision R. 159).

8. At the time of trial, the parties' seven minor children, ranging in age from 6 to 18, resided in the home and in the sole custody of DiAnn who had changed her employment hours from evenings and weekends to days in order to care for the children, thereby losing a shift differential of \$5.00 per hour (Transcript, P. 96, L. 11).

9. One child threatened suicide after the parties separated and the children were in counseling (Transcript, P. 98, L. 16-17).

10. At the time of trial, DiAnn's monthly expenses totaled \$2,830.00 (Memorandum Decision, R. 154).

VII.
SUMMARY OF ARGUMENTS

DiAnn, on appeal, argues that the Trial Court abused its discretion and failed to make adequate Findings when it unjustly imputed income to her. The un rebutted plain evidence indicated that the unusual emotional and other needs of the children required her presence in the home. This required a change in her employment hours resulting in less income than she earned during the marriage when DiAnn and her husband co-parented the children.

The Court failed to make adequate Findings as to its child support award for seven (7) minor children entitled to support and failed to require the filing of a Child Support Worksheet as required by Rule 4-912 of the Code of Judicial Administration.

The Court also erred and abused its discretion when it unjustly failed to award alimony to DiAnn. The Trial Court misplaced its reliance on *Mortensen v. Mortensen*, 760 P.2d 304 (Utah 1988) without making adequate Findings regarding whether or not her gifted asset (Duke Farms) was income producing or otherwise allowed DiAnn to meet her own needs. The Court made no Findings as to the need of DiAnn for alimony, the ability of Mr. Turner to pay alimony and the ability of DiAnn to provide for her own needs (and the needs of the children), the length of the marriage, and the fault of Turner resulting in both the divorce and DiAnn's change in employment and loss of income. The Court failed to make

Findings as to the effect imputed income had on her actual need for alimony.

The Court also erred in ordering that Turner should receive the benefit of any appreciation in value of the home and the benefits of any pay down of the mortgage by DiAnn, pending payment to Turner of his equitable interest. Turner's equity was ordered to be paid upon the occurrence of the standard triggering events (death, remarriage, cohabitation, attainment of the age of majority by the youngest child). The Court failed to make Findings regarding the factors identified by the Utah Supreme Court in *Burke v. Burke*, 733 P.2d 133 (Utah 1987), regarding its property distribution.

Additionally, the Court erred in failing to make Findings regarding the ability of DiAnn to pay one-half (1/2) of the USAA debt and why it failed to award DiAnn her requested attorney's fees.

In sum, the Supplemental Decree of Divorce is not supported by either the evidence or the law, or by adequate Findings of Fact, and the Court abused its discretion in making its Orders and awards thereunder, creating an unjust result. The resultant orders were based on legally insufficient Findings or lacked any Findings at all as required by *Willey v. Willey* (333 Utah Adv. Rpt. 8 (Utah

1997). This case should be remanded to the Trial Court for appropriate Findings, *Watson v. Watson*, 561 P.2d 1072 (Utah 1977) and DiAnn should be awarded attorney's fees on appeal.

VIII.
ARGUMENT

A. Imputation of Income - Voluntary Underemployment.

The Court erred in failing to make adequate and appropriate Findings as to whether or not Appellant was voluntarily underemployed as required by § 78-45-7.5(7)(a), (d). The Trial Court must make adequate Findings of Fact to permit Appellant review. *Willey v. Willey*, 866 P.2d 547 (Utah App. 1993); *Willey v. Willey*, 914 P.2d 1149 (Utah App. 1996); *Willey v. Willey* 333 Utah Adv. Rpt 8 (Utah 1997); *Montoya v. Montoya*, 696 P.2d 1193 (Utah 1988).

Despite the unrebuted testimony of Appellant, DiAnn Turner, as to the unusual emotional and physical needs of the children requiring her presence in the home (Transcript P. 98, 99), the Court imputed income to DiAnn based upon her 1995 gross income. DiAnn testified that she changed her shifts at work from weekend and evenings to a day shift following the parties' separation (Transcript, Pgs. 96-97). The unrebuted testimony at trial was that DiAnn Turner was the sole custodial parent of seven minor children, ranging in age from 6 to 18 and that she needed to work days while her children were in school (Transcript, P. 98, L. 3). The children were suffering greatly and she had to take them to counseling and one child even threatened suicide (Transcript, P.

98, L. 15-17). DiAnn was concerned about their psychological health and a great deal of work was involved in taking care of the house and the seven children (Transcript P. 99).

As DiAnn testified at trial, "I go to work at 6:30. I generally get up at 5:00 o'clock in the morning. The washing machine never stops. I do 6 to 8 loads a day. I try not to wash on Sunday. If I am home, I scrub the floors every day. I bake from scratch. I make homemade breads and pies. I have a, (sic) my children are supposed to help in the house. They all have an assigned room, but since their father left, they said that they are not going to help. I am getting very little help from the children, so I am basically being the maid for 7 people." (Transcript. P. 99, L. 6-15.)

The Court failed to make Findings as to whether or not the co-parenting efforts of the parties prior to separation enabled DiAnn Turner to work weekends and evenings, whereby she could obtain a higher rate of pay and was available and capable to work more hours. (Transcript P. 96, L. 7-12.)

DiAnn testified at trial in response to the question: "Let me ask you what is the reason you have found it necessary to cut back on your employment from the types of hours you had in 1994, when you were taking all of the overtime." DiAnn replied: "At that time, I was working mainly weekends and graveyards and it was

because my husband was available to tend the eight children that were at home. With him gone, I have to work days and it gives a decrease in hourly wage of \$5.00 an hour." (Transcript. P. 96, L. 3-11).

When the parties lived together, Mr. Turner worked a normal work week, Monday through Friday during the day, and each party was available in the home when the other one wasn't there to take care of the children. (Transcript, P. 96, L. 23-25, P. 97 L. 1.) He has only visited the children twice since he moved to St. George. (Transcript P. 97, L. 19-25) His lack of assistance in parenting the children and visiting with them has made it impossible for DiAnn to work the hours she had before (Transcript. P. 98, L. 1-3). The Court erred and abused its discretion when its sole finding was that "Defendant is employable, and able to work at a level above which she is currently employed." (Memorandum Decision, R. 157.)

Section 78-45-7.5(7)(a) requires that a hearing must be held and a finding made that a parent is voluntarily underemployed and § 78-45-7.5(7)(d)(iv) provides that income may not be imputed if the unusual emotional or physical needs of a child require the custodial parent's presence in the home. Here, the fact that Mr. Turner resides some 300 miles from the seven remaining minor children in the home who have been in counseling and one of whom has threatened suicide required the Court to make Findings as to

its basis for imputing income to DiAnn other than "she is able to work at a level above which she is currently employed." (R. 157.) The Supplemental Decree of Divorce, Memorandum Decision (R. 154), and Supplemental Memorandum Decision (R. 189) are insufficient to allow imputation of income to DiAnn Turner and create an unjust and illegal result.

Even if the Court were to establish child support based upon Findings sufficient to impute income to DiAnn, the Court pursuant to § 78-45-7.2(3), should have considered the evidence and made Findings as to whether or not the application of the guidelines would be unjust, inappropriate or not in the best interests of a child in this particular case. The guidelines are rebuttable and, given the evidence before the Court of the work involved in meeting the needs of the seven children without alimony or cooperation from Turner, application of the guidelines under such circumstances is unjust and inappropriate. It would be in the best interests of the children under these circumstances for the Court to rebut the presumption of the application of the guidelines, given the fact that their father's co-parenting no longer existed and no alimony was awarded.

The issue of a voluntary reduction of income has recently been thoroughly analyzed by Professor Louis Becker. In Becker's Connecticut Law Review article, "Spousal and Child Support and the

`Voluntary Reduction of Income Doctrine'" (Connecticut Law Review, Vol. 29, # 2, Winter 1997), Becker describes three tests used by various jurisdictions in analyzing the voluntary reduction of income for child support purposes. Some Courts apply a strict rule and place the sole priority on the support obligation. Professor Becker opines that the "strict test" is too inflexible and is fatally flawed in that it disregards all facts other than the support obligation and fails to consider any other interest of the beneficiary of the support order. The Turner children, beneficiaries of DiAnn's support obligation, also benefit from DiAnn's homemaking skills and parenting. Application of a strict test does not allow a balancing of interests sufficient to determine what is in the best interests the Turner children. Are the children's best interests served by imputing additional income to DiAnn in order to reduce Mr. Turner's support obligation or are their best interest's served by increasing Mr. Turner's share of the support obligation in order to allow DiAnn to care for the children during the difficult days following separation of their parents and thereafter? The Trial Court allowed Turner to escape his parenting and financial responsibilities when it unjustly punished DiAnn by imputing income to her and not awarding alimony to her.

The second test, "good faith," used by some other courts gives less weight to the support obligation and more to the motivation of the obligor. Under that test, the facts of this case would allow DiAnn to voluntarily reduce her income based on her good faith efforts to supplant the lack of co-parenting by Mr. Turner following the parties' separation. Should this Court choose to apply the good faith test, it is clear that DiAnn's motivation in reducing her income and changing her shifts from evenings and weekends to a day shift so that she can work when the children are at school is in good faith and no income would be imputed to her.

The "intermediate test" advocated by Becker balances support obligations with the best interests of the children and allows flexibility. Becker's article asserts that there is an increasing trend in the adoption of an intermediate approach in the context of employment related decisions. Becker proposes that the intermediate test be comprised of the reasons for underemployment asserted by the party whose conduct is at issue, the impact upon the obligee in considering the actual earnings of the obligor and whether the party complaining of the voluntary reduction in income acquiesced in the conduct of the other party, and finally, the timing of the action in question in relation to the entering of a Decree.

The evidence at trial was that DiAnn Turner was forced to cut back on her hours and readjust her schedule because Mr. Turner moved to St. George and was unable to fulfill his share of the parenting duties of the parties' seven children (Transcript P. 96, L. 7-11). Had the Court awarded alimony to DiAnn, Mr. Turner might have an argument against any increase in his child support obligation as a result of DiAnn's underemployment. The evidence at trial demonstrated that prior to separation, both parties arranged their work schedules so that someone could be in the home with the children when the other was at work (Transcript Pgs. 96-97). Because of Turner's acquiescence to that situation, he should be estopped from claiming that DiAnn should be assessed a percentage of child support based on an income she was no longer able to earn after their separation while she fulfilled his parenting duties.

Some jurisdictions have held that the court need not consider a parent's earning capacity if the voluntary underemployment is in the best interests of the children; *Olsen v. Olsen*, 620 N.W.2d (N.D. 1994). Some courts have held that a downward modification of a child support order is appropriate if it allows a parent to exercise visitation rights. *Mullin v. Mullin*, 634 N.E.2d 1340 (Ind. App. 1994). This Court should consider adopting a flexible approach to balance earning ability with the parenting needs of the children in order to serve the best interests of the beneficiaries

of the support award. Such an approach is consistent with the policy considerations raised by §§ 78-45-7.2(3) and 78-45-7.5(7)(d).

Because § 78-45-7.2 provides that the child support guidelines may be rebutted in the event they appear to be unjust, inappropriate or not in the best interests of the child, DiAnn submits that this Court should apply an intermediate test and balance the difference between DiAnn's actual income and her historical income against the benefits of her working when the children are in school and being home when they are not in order to meet their needs to determine what is in the best interests of the children, thereby rebutting the Guidelines. The Court failed to make Findings in response to DiAnn's claims regarding the childrens' needs and the plain evidence at trial and, therefore, this case should be remanded for adequate Findings. *Montoya v. Montoya*, 696 P.2d 1193 (Utah 1988), *Watson v. Watson*, 561 P.2d 1072 (Utah 1977).

B. Child Support Award for More than Six Children.

The Trial Court awarded DiAnn the sum of \$1,452.80 for child support (Memorandum Decision R. 157). The Court made no Findings of Fact supporting its award of child support other than the award was based on the income of the parties. Despite the fact that Rule

4-912 of the Code of Judicial Administration mandates that " . . . the Court shall not enter the final decree of divorce, . . . until the completed [child support] worksheet is filed", no child support worksheet has been filed in connection with the Supplemental Decree of Divorce.

The base combined child support obligation table (§ 78-45-7.14) provides combined child support obligations for up to six children. Section 78-45-7.7(4) provides that "[F]or more than six children, additional amounts may be added to the base support obligation shown. Unless rebutted by § 78-45-7.2(3), the amount ordered shall not be less than the amount which shall be ordered for up to six children." Because there is no child support worksheet or additional findings to support the Court's child support award of \$1,452.80, appellate review of the Court's child support award is impossible. The child support obligation for the combined gross income of the parties as found by the Trial Court for six children is \$2,134.00. Assuming *arguendo*, that Mr. Turner's share of the total child support obligation for six children would have been \$1,387.10, the Trial Court abused its discretion when it awarded an additional \$65.70 to DiAnn for the one (1) additional child not contemplated by the child support obligation tables (*Woodward v. Woodward*, 709 P.2d 393 (Utah 1985)). An extrapolation of the child support obligation for seven children

from the figures used in the tables for six children would result in a child support award of \$1,578.00, using DiAnn's imputed income of \$2,490.00. Using DiAnn's actual income of \$1,123.00 per month would result in an extrapolated child support award of \$1,725.00.

While extrapolation may not be the appropriate way to determine a child support obligation for income in excess of the tables¹, the Trial Court should be required to make Findings as to any additional amounts it awards when there are more than six children. The extrapolated child support worksheets are attached to this Brief as Addenda "A" and "B."

At trial, Turner offered a 7-child worksheet (R. P. 35), whereby he "took the difference between 5 and 6 and added the same amount to make up for the next column" (Transcript P. 29, L. 18). The fallacy in this approach to determine the correct support amount for children in excess of 6 is that the per child progressive increase varies for each additional child. Using the Turners' income, the difference between 5 and 6 children is \$136.00. The difference between 4 and 5 children is \$164.00, 3 and

¹*Ball v. Peterson*, 912 P.2d (Utah App. 1996). The public policy concerns that a linear extrapolation of a support obligation for income in excess of the tables could vastly exceed any reasonable need for support are distinguishable from an extrapolation of the number of children in excess of the table. Each additional child still has a need for support. The per child amount of support using DiAnn's actual income is \$308.00 and the base combined support obligation is \$2,156.00 after being extrapolated to 7 children (Addenda "B") and \$355.00 per child using DiAnn's imputed income (Addenda "A"), clearly a reasonable amount of child support for each child's need. DiAnn recognizes that on remand the issue of extrapolation for 7 children will be moot as the seventh will have graduated from high school.

4 is \$323.00, 2 and 3 is \$323.00 and 1 and 2 is \$508.00. Why should the first additional child need \$508.00 of support and the 7th only \$134.00? The Court made no Findings as to Turner's worksheet objected to by Di Ann (Transcript P. 28, L. 11).

C. The Court Abused its Discretion and Erred in Failing to Award Alimony to Appellant and for Failing to Render Appropriate Findings.

The Trial Court, apparently hanging its hat on *Mortensen v. Mortensen*, 760 P.2d 304 (Utah 1988), failed to award to the Plaintiff alimony. (R. 155.)

Section 30-3-5(7) sets forth the considerations for the Court in determining alimony. The law is well-settled that for the court to award or not to award alimony to a party, it must make adequate and appropriate Findings. (*Haumont v. Haumont*, 793 P.2d 421 (Utah App. 1990.)) (*Willey v. Willey*) (*supra*). Those Findings must address the need of the recipient for alimony, the ability of the payor to pay alimony and the recipient's ability to provide for her own support. (*Haumont v. Haumont*, 793 P.2d 421 (Utah App. 1990); *Rudman v. Rudman*, 812 P.2d 73 (Utah App. 1991)). Without making any Findings regarding whether or not the family farm known as Duke Farms provided an income to DiAnn, the Court determined that the mere fact that it awarded to DiAnn her gifted interest in Duke Farms is a sufficient reason not to award alimony to her

(Memorandum Decision R. 158). *Mortensen, supra*, requires Findings as to whether the separate property is income producing. 760 P.2d at 308. The Court also failed to analyze the pertinent circumstances as required by *Burke v. Burke*, 733 P.2d 133 (Utah 1987). No Findings were made as to the parties' standard of living, their health, financial condition, duration of the marriage, the children, the relationship between property division and the amount of alimony and child support awarded. 733 P.2d at 135.

The Court failed to make any Findings as to whether or not DiAnn, given the fact that she had to change her employment shift work from weekends and evenings to a day shift, thereby reducing her hourly income by \$5.00 per hour, had the ability to provide for her own needs without considering the best interest of the children and her "voluntary underemployment." Additionally, by imputing income to her at a higher rate than she actually earned, the Court further abused its discretion resulting in an unjust order regarding alimony. As a result of DiAnn's assuming Turner's share of the child rearing responsibility and a larger percentage of the child support obligation, the Court doubly punished DiAnn: no alimony and less child support.

The Court heard testimony at trial that Mr. Turner had no expenses for housing and that his monthly income was \$4,661.00

(Transcript P. 42, L. 12-14). The Court failed to make any Findings as to whether or not Mr. Turner had the ability to pay alimony to DiAnn. Based upon DiAnn's actual income as testified to at trial in the amount of \$1,123.00 per month (Transcript P. 96), the Court abused its discretion by failing to make Findings as to DiAnn's need for alimony, Turner's ability to pay or DiAnn's ability to meet her own needs. Imputed income is not real income nor does it help DiAnn meet her own needs. DiAnn's monthly expenses at trial were found to be \$2,830 (R. 158). Her income was \$1,123 (Tr. P. 100, L. 22), and she was awarded \$1,452.00 in child support, leaving her with a shortfall of \$255.00 per month.

The Court gave lip service to the length of the parties' marriage (R. 158), but failed to consider it when making Findings as to whether or not the length of the marriage (30 years) impacted on the Court's decision not to award alimony to DiAnn as required by § 30-3-5(7). The Court also failed to consider the fault of Mr. Turner in the break-up of the marriage as a factor in considering alimony and failed to enter Findings as to whether or not Turner's decision to move to St. George and not help DiAnn co-parent the children, was a fault-based factor relative to an alimony award. (U.C.A. § 30-3-5(7)(b); *Noble v. Noble*, 761 P.2d 1369 (Utah 1988).)

When the Court imputed income to DiAnn, the imputed income is not money that DiAnn earns and therefore could not be used towards

meeting her own needs for the purposes of alimony. When the Court entered a Finding that she was voluntarily underemployed, it needed to make additional Findings whether or not that factor precluded her from receiving alimony. In fact, by ordering child support based on imputed income, the Court created a requirement for a specific finding that her voluntary underemployment to provide for the children prevented her from being awarded alimony.

The Court failed to make adequate Findings as to the parties' standard of living during the marriage. Their combined 1995 gross monthly income was \$6,951.00 per month. How DiAnn could maintain a similar standard of living on an actual income of \$1,123.00 per month or why it was not a factor in declining to award alimony requires a specific Finding by the Court which is lacking in the Court's ruling. (Memorandum Decision, R. 158.)

D. The Court Abused Its Discretion in Awarding to Appellee any Benefit or Increase in Equity Resulting from the Pay down of the Mortgage by Appellant or the Appreciation in Value of the Marital Home Prior to Payment by Appellant of Appellee's Equity.

As was previously discussed above, the Court awarded no alimony to DiAnn Turner. However, the Court ordered that she pay to Mr. Turner one-half of the equity in the marital home based upon the total amount of equity at the time Mr. Turner's equity is paid to him (Supplemental Memorandum Decision, R. 190). The Court also prevented DiAnn from obtaining a new or second mortgage or

collateralizing the home in order to pay to him his equity so that he would not receive the benefit of her pay down of the mortgage or the appreciation of the home pending occurrence of one of the triggering events described in the Supplemental Divorce Decree (attaining of majority by the parties' youngest child, remarriage, cohabitation, death of DiAnn, or sale of the home). (Supplemental Decree, R. 197, 198.)

By preventing DiAnn from refinancing the home in order to pay Turner's equity and by not providing her with the ability to otherwise pay the equity by awarding alimony to her or reducing her share of the child support obligation, the Court unjustly allowed Mr. Turner to obtain the benefit of a pay down by DiAnn of the mortgage and deprived her of the benefit of any appreciation in value of the home pending payment of Mr. Turner's equity.

The parties' youngest child is 6 years of age (R. P. 2), and should DiAnn choose not to sell the home until the youngest child attains its majority, she may pay on the mortgage for at least the next twelve years. It is unfair and inequitable for Turner to benefit from DiAnn's efforts in maintaining the mortgage for the next twelve years when he receives the benefit of DiAnn's imputed income and pays no alimony. The Trial Court erred when it failed to make Findings as to DiAnn's ability to refinance the home or otherwise obtain Mr. Turner's share of the equity independent of

the ultimate sale of the home to prevent him from unjustly benefitting from her efforts. The Trial Court also failed to make any findings as to why DiAnn was prohibited from mortgaging the marital home (R. 197). *Burke v. Burke, supra*.

When the Court found that DiAnn, by having use of the home as she raises the seven (7) children, receives a benefit to her that must be shared with Turner who does not contribute to the child-raising chore or payment of the mortgage without making Findings, it further abused its discretion (Supplemental Memorandum Decision, R. 190).

In paragraph 2 of the Supplemental Memorandum Decision (R. 190), the Court ruled that "If Defendant wishes to prevent Plaintiff from benefitting from Defendant's pay down of the mortgage, Defendant can choose to buy-out Plaintiff's interest in the home." The Court failed to make adequate Findings as to how she could buy it out or whether she even had the ability to do so. *Willey v. Willey*, 866 P.2d 547 (Utah App. 1993); (*Burke v. Burke*) *supra*.

E. The USAA Debt.

The Court erred in failing to require Mr. Turner to pay the USAA debt in its entirety. Mr. Turner's Divorce Complaint alleged that he should pay the debt and hold DiAnn harmless from it (R. P. 7). The Court failed to make any Findings as to either party's ability to pay that debt, the source of the debt or any other factor relative to the debt except that it was a "marital debt" (Memorandum Decision, R. 159). Without awarding sufficient child support or alimony to DiAnn, specific and detailed Findings should have been made to justify what appears to be an unjust order regarding the debt.

F. Attorney's Fees.

The Court failed to make sufficient Findings regarding DiAnn's need for attorney's fees or Mr. Turner's ability to pay her fees. (*Willey v. Willey*, Utah 1997.) The Court failed to make adequate Findings as to why DiAnn's requested attorney's fees of \$4,736.00 (R. 118) were not awarded or why it awarded \$1,650.00 (R. 191). DiAnn requests additional attorney's fees and costs on appeal. *Dahlberg v. Dahlberg*, 292 P.214 (Utah 1930); *Peterson v. Peterson*, 189 P.2d 961 (Utah 1948).

IX.
CONCLUSION.

The Court made insufficient or no Findings whatsoever regarding its determination that DiAnn was voluntarily underemployed, that application of the Child Support Guidelines would be unjust, inappropriate or not in the best interests of the children, or whether or not the unusual emotional or physical needs of the children required DiAnn's presence in the home. The Court failed to support its child support award with a worksheet or make Findings as to its child support award. The Court, in refusing to award alimony, made no Findings as to whether or not DiAnn had the ability to meet her own needs or needed support from Mr. Turner, whether or not Mr. Turner had the ability to support DiAnn, and whether or not the length of the marriage, the parties' prior standard of living, or the fault of Mr. Turner should be considered by the Court in making a determination regarding alimony.

Appellant requests this Court remand this matter to the Trial Court for adequate and appropriate Findings relative to the issue of voluntary underemployment, special or unusual needs of the children, and their best interests. The failure of the Trial Court to award DiAnn alimony was clearly an abuse of discretion creating an unjust result.

The Court failed to make adequate and appropriate orders regarding disposition of the marital home and payment of Turner's equity and DiAnn's ability or lack of ability to obtain a source to pay to Mr. Turner his one-half of the equity. No Findings were made regarding the parties' ability to pay the USAA debt or the reasons why the Trial Court awarded less than the amount of attorney's fees requested by DiAnn.

DATED this 19 day of February, 1998.

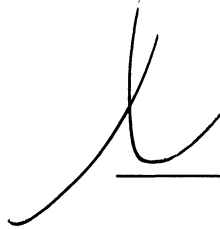
Respectfully submitted,

Steven Kuhnhausen
Joseph F. Orifici

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, postage prepaid,
on this the 19 day of February, 1998, a true and accurate copy of
the foregoing to:

Terry L. Christiansen
1920 Prospector Square
P.O. Box 680284
Park City, Utah 84068



Addendum A

Steven Kuhnhausen (1861)

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

Melvon David Turner,
Plaintiff/Appellee,

v.

DiAnn Carol Turner,
Defendant/Appellant.

CHILD SUPPORT
OBLIGATION WORKSHEET
(Sole Custody and Paternity)

Civil No. *DA

	MOTHER	FATHER	COMBINED
1. Enter the # of natural and adopted children of this mother and father for whom support is to be awarded.			7
2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definitions of income.	\$ 2,490.00	\$ 4,461.00	
2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case.)	-0-	-0-	
2c. Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1.)	-0-	-0-	
2d. OPTIONAL: Enter the amount from Line 12 of the Children in Present Home Worksheet for either parent.	-	-	
3. Subtract Lines 2b, 2c, and 2d from 2a. This is the Adjusted Gross Income for child support purposes.	\$ 2,490.00	\$ 4,461.00	\$ 6,951.00
4. Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here.			\$ 2,489.00
5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	35%	65%	
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 996.00	\$ 1,578.00	

7. BASE CHILD SUPPORT AWARD: Bring down the amount in Line 6 for the Obligor Parent or enter the amount from the Low Income Table.	\$ 1,578.00
--	-------------

8. Which parent is the obligor? () Mother (X) Father
9. Is the support award the same as the guideline amount in Line 7? () Yes (X) No
If NO, enter the amount ordered: \$ _____, and answer number 10.
10. What were the reasons stated by the Court for the deviation?
() property settlement
() excessive debts of the marriage
() absence of need of the custodial parent
(X) other: extrapolated from six to seven children

() Electronic filing () Manual filing

Addendum B

Steven Kuhnhausen (1861)

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

Melvon David Turner,
Plaintiff/Appellee,

v.

DiAnn Carol Turner,
Defendant/Appellant.

CHILD SUPPORT
OBLIGATION WORKSHEET
(Sole Custody and Paternity)

Civil No. *DA

	MOTHER	FATHER	COMBINED
1. Enter the # of natural and adopted children of this mother and father for whom support is to be awarded.			7
2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definitions of income.	\$ 1,123.00	\$ 4,461.00	
2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case.)	-0-	-0-	
2c. Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1.)	-0-	-0-	
2d. OPTIONAL: Enter the amount from Line 12 of the Children in Present Home Worksheet for either parent.	-	-	
3. Subtract Lines 2b, 2c, and 2d from 2a. This is the Adjusted Gross Income for child support purposes.	\$ 1,123.00	\$ 4,461.00	\$ 5,584.00
4. Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here.			\$ 2,156.00
5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	20%	80%	
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 431.00	\$ 1,725.00	

7. BASE CHILD SUPPORT AWARD: Bring down the amount in Line 6 for the Obligor Parent or enter the amount from the Low Income Table.

\$ 1,725.00

8. Which parent is the obligor? () Mother (X) Father

9. Is the support award the same as the guideline amount in Line 7 ? () Yes (X) No
If NO, enter the amount ordered: \$ _____, and answer number 10.

10. What were the reasons stated by the Court for the deviation?
() property settlement
() excessive debts of the marriage
() absence of need of the custodial parent
(X) other: extrapolated from six to seven children

() Electronic filing () Manual filing

Addendum C

**78-45-7.14. Base combined child support obligation table
and low income table.**

The following includes the Base Combined Child Support Obligation Table
and the Low Income Table:

BASE COMBINED CHILD SUPPORT OBLIGATION TABLE
(Both Parents)

Monthly Combined Adj. Gross Income	Number of Children					
	1	2	3	4	5	6
From To						
650 — 675	99	184	191	198	200	201
676 — 700	103	190	198	205	207	209
701 — 725	106	197	205	212	214	216
726 — 750	110	204	212	220	221	223
751 — 775	113	211	219	227	229	231
776 — 800	117	218	226	234	236	238
801 — 825	121	224	243	261	263	265
826 — 850	124	231	253	275	277	279
851 — 875	128	238	263	289	291	294
876 — 900	132	245	274	303	305	308
901 — 925	135	251	284	316	319	322
926 — 950	139	258	294	330	333	336
951 — 975	143	265	305	344	347	350
976 — 1,000	146	272	315	358	361	364
1,001 — 1,050	154	285	335	385	389	393
1,051 — 1,100	161	299	356	413	417	421
1,101 — 1,150	168	313	377	441	444	449
1,151 — 1,200	176	326	387	449	454	460
1,201 — 1,250	183	340	403	465	475	484
1,251 — 1,300	190	353	418	482	496	508
1,301 — 1,350	198	367	433	499	516	532
1,351 — 1,400	205	381	448	515	537	556
1,401 — 1,450	212	394	463	532	558	580
1,451 — 1,500	220	408	478	549	579	605
1,501 — 1,550	227	421	493	565	600	629
1,551 — 1,600	234	435	509	582	620	653
1,601 — 1,650	242	449	524	599	641	677
1,651 — 1,700	249	462	539	615	662	701
1,701 — 1,750	256	476	554	632	683	725
1,751 — 1,800	264	489	569	649	704	749
1,801 — 1,850	271	503	584	664	723	771
1,851 — 1,900	278	517	597	677	736	786
1,901 — 1,950	286	530	610	690	750	800
1,951 — 2,000	293	544	622	700	752	813
2,001 — 2,100	308	571	643	716	779	833
2,101 — 2,200	319	592	666	741	807	862

UNIFORM CIVIL LIABILITY FOR SUPPORT ACT 78-45-7.14

Monthly Combined Adj. Gross Income		Number of Children				
From	To	1	2	3	4	5
2,201	2,300	328	608	687	766	835
2,301	2,400	336	625	708	791	862
2,401	2,500	345	641	725	809	882
2,501	2,600	354	658	746	834	909
2,601	2,700	362	674	767	859	937
2,701	2,800	371	691	788	885	964
2,801	2,900	380	707	809	910	992
2,901	3,000	388	724	830	936	1,020
3,001	3,100	397	740	851	962	1,048
3,101	3,200	406	756	872	987	1,076
3,201	3,300	414	773	893	1,013	1,103
3,301	3,400	423	789	914	1,039	1,131
3,401	3,500	431	804	934	1,064	1,159
3,501	3,600	438	817	953	1,090	1,187
3,601	3,700	444	830	973	1,116	1,215
3,701	3,800	451	843	992	1,141	1,243
3,801	3,900	458	856	1,012	1,167	1,270
3,901	4,000	465	870	1,031	1,192	1,297
4,001	4,100	472	883	1,050	1,217	1,325
4,101	4,200	479	896	1,069	1,242	1,352
4,201	4,300	486	909	1,088	1,267	1,379
4,301	4,400	493	923	1,107	1,292	1,407
4,401	4,500	499	936	1,131	1,326	1,443
4,501	4,600	506	949	1,150	1,350	1,470
4,601	4,700	513	962	1,169	1,375	1,498
4,701	4,800	520	975	1,188	1,400	1,525
4,801	4,900	527	989	1,207	1,425	1,552
4,901	5,000	534	1,002	1,226	1,450	1,580
5,001	5,100	541	1,015	1,245	1,475	1,607
5,101	5,200	547	1,028	1,264	1,500	1,634
5,201	5,300	554	1,042	1,282	1,522	1,658
5,301	5,400	561	1,055	1,300	1,544	1,682
5,401	5,500	568	1,068	1,317	1,566	1,706
5,501	5,600	575	1,081	1,335	1,588	1,730
5,601	5,700	582	1,093	1,351	1,610	1,754
5,701	5,800	586	1,103	1,367	1,632	1,778
5,801	5,900	591	1,112	1,383	1,653	1,802
5,901	6,000	596	1,122	1,398	1,675	1,826
6,001	6,100	601	1,131	1,414	1,697	1,850
6,101	6,200	605	1,141	1,430	1,719	1,874
6,201	6,300	610	1,150	1,445	1,740	1,897
6,301	6,400	615	1,159	1,461	1,762	1,921
6,401	6,500	620	1,169	1,480	1,791	1,951
6,501	6,600	624	1,178	1,495	1,812	1,975
6,601	6,700	629	1,188	1,511	1,834	1,998

Monthly Combined
Adj. Gross Income

Number of Children

		1	2	3	4	5	6
From	To						
6,701	— 6,800	629	1,188	1,511	1,834	1,998	2,134
6,801	— 6,900	673	1,188	1,511	1,834	1,998	2,134
6,901	— 7,000	680	1,188	1,511	1,834	1,998	2,134
7,001	— 7,100	687	1,188	1,511	1,834	1,998	2,134
7,101	— 7,200	694	1,188	1,511	1,834	1,998	2,134
7,201	— 7,300	701	1,188	1,520	1,834	1,998	2,134
7,301	— 7,400	706	1,189	1,531	1,834	1,998	2,134
7,401	— 7,500	710	1,197	1,541	1,834	1,998	2,134
7,501	— 7,600	715	1,205	1,551	1,834	1,998	2,134
7,601	— 7,700	719	1,213	1,562	1,834	1,998	2,134
7,701	— 7,800	723	1,220	1,572	1,834	1,998	2,134
7,801	— 7,900	728	1,228	1,582	1,834	1,998	2,137
7,901	— 8,000	732	1,236	1,592	1,834	2,000	2,150
8,001	— 8,100	737	1,244	1,603	1,834	2,013	2,164
8,101	— 8,200	741	1,252	1,613	1,841	2,026	2,178
8,201	— 8,300	746	1,259	1,623	1,853	2,039	2,192
8,301	— 8,400	750	1,267	1,633	1,864	2,052	2,206
8,401	— 8,500	755	1,275	1,644	1,876	2,064	2,220
8,501	— 8,600	759	1,283	1,654	1,887	2,077	2,234
8,601	— 8,700	763	1,291	1,664	1,899	2,090	2,247
8,701	— 8,800	768	1,298	1,675	1,911	2,103	2,261
8,801	— 8,900	772	1,306	1,685	1,922	2,116	2,275
8,901	— 9,000	777	1,314	1,695	1,934	2,129	2,289
9,001	— 9,100	781	1,322	1,705	1,945	2,141	2,303
9,101	— 9,200	786	1,330	1,716	1,957	2,154	2,317
9,201	— 9,300	790	1,337	1,726	1,969	2,167	2,330
9,301	— 9,400	795	1,345	1,736	1,980	2,180	2,344
9,401	— 9,500	799	1,353	1,747	1,992	2,193	2,358
9,501	— 9,600	803	1,361	1,757	2,003	2,206	2,372
9,601	— 9,700	808	1,369	1,767	2,015	2,218	2,386
9,701	— 9,800	812	1,376	1,777	2,027	2,231	2,400
9,801	— 9,900	817	1,384	1,788	2,038	2,244	2,414
9,901	— 10,000	821	1,392	1,798	2,050	2,257	2,427
10,001	— 10,100	826	1,400	1,808	2,061	2,270	2,441

LOW INCOME TABLE
(Obligor Parent Only)Monthly Adj.
Gross Income

Number of Children

		1	2	3	4	5	6
From	To						
650	— 675	23	23	23	23	24	24
676	— 700	45	46	46	47	47	48