

2009

Greg Child v. Renee Globis : Brief of Appellee

Utah Court of Appeals

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Renee Globis.

Craig C. Halls.

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IN THE UTAH COURT OF APPEALS

GREG CHILD,)	
Appellee,)	
v.)	
)	Appellate Case No. 20090486
)	
)	
RENEE GLOBIS,)	
)	
Appellant.)	

BRIEF OF APPELLEE

THIS IS A DIRECT APPEAL FROM AN ORDER RE: PETITION
TO MODIFY ORDER ENTERED IN THE SEVENTH JUDICIAL
COURT IN AND FOR GRAND COUNTY, STATE OF UTAH,
THE HONORABLE, LYLE R. ANDERSON JUDGE, PRESIDING

-----o0o-----

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ORAL ARGUMENTS/ PUBLISHED OPINION NOT REQUESTED

FILED
UTAH APPELLATE COURT
JUN 17 2010

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GREG CHILD,
Petitioner/Appellee.

RENEE GLOBIS,
Respondent/Appellant.

Appeal No.: 20090486

JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS, STATEMENT OF ISSUES PRESENTED ON APPEAL, AND STANDARD OF REVIEW

STANDARD OF REVIEW: “Utah law makes clear that a determination of whether substantial and material changes have occurred is a fact-intensive legal determination that is presumed valid and is reviewed for abuse of discretion.” Doyle v. [REDACTED], 2009 UT App 306, ¶15, 221 P.3d 888; *see*, Young v. Young, 2009 UT App 3, ¶4.

201 P.3d 301, *cert denied*, 211 P.3d 986 (Utah 2009), Bolliger v. Bolliger, 2000 UT App 47, ¶10, 997 P.2d 903, and Moon v. Moon, 1999 UT App 12, ¶28, 973 P.2d 431, *cert. denied*, 982 P.2d 89 (Utah 1999).

ISSUE II: *Did the trial court err in finding that it was in the best interest of Ariann to modify the custody arrangement to sole legal custody vested with Child?*

STANDARD OF REVIEW: “A trial court’s factual findings underlying. . .a determination of the children’s best interests [in a modification based on material change of circumstances] may not be disturbed unless clearly erroneous.” Hudema v. Carpenter, 1999 UT App 290, ¶21, 989 P.2d 491, *citing* Sigg v. Sigg, 905 P.2d 908, 912 (Utah App. 1995). “A court’s legal conclusion as to whether a material change in circumstances has occurred that would warrant reconsidering [a prior custody order] is reviewed for an abuse of discretion.” *Id.* “A trial judge’s award of custody ... is also reviewed for abuse of discretion.” *Id.*

ISSUE III: *Is the issue of attorneys’ fees from the original custody order adequately before this Court in this appeal from modification proceedings when the trial court already addressed that issue during that time and no appeal was taken from that order; and is Appellant entitled to attorneys fees in this action since she is acting pro se, has not sufficiently briefed the issue on appeal, and failed to preserve the issue below?*

STANDARD OF REVIEW: “[A]n appellate court plays a ‘limited role’ in reviewing a district court’s award of attorneys’ fees and costs, and deference is given to a district court’s judgment on the matter, since the court is in a better position to assess the course of litigation and quality.” Harris Mkt. Research v. Marshall Mktg. & Communications, Inc., 948 F.2d 1518, 1527 (10th Cir.1991). *See* Gamble, Simmons & Co. v. Kerr-McGee

Corp., 175 F.3d 762 (C.A.10 (Okla.) 1999). When a notice of appeal concerning an issue is untimely, this Court lacks jurisdiction to consider the merits of it. *See, e.g., Serrato v. Utah Transit Auth.*, 2000 UT App 299, ¶ 7, 13 P.3d 616. “We have consistently declined to review issues that are not adequately briefed.” *Ball v. Pub. Serv. Comm’n (In re Questar Gas Co.)*, 2007 UT 79, ¶ 40, 175 P.3d 545. When an appellant fails to preserve an issue below and does not argue that plain error or exceptional circumstances exist to justify review of an issue, this Court has declined to consider it on appeal. *State v. Pledger*, 896 P.2d 1226, 1229 n. 5 (Utah 1995).

ISSUE IV: *Does Appellant’s failure to follow the proper briefing requirements contained in UT. R. APP. P. 24 constitute either grounds for dismissal of this appeal or assumption of the correctness and affirmation of the judgment below?*

STANDARD OF REVIEW: “When considering arguments on appeal, we look to the requirements of Rule 24 to determine whether an appellant adequately briefed the issue.” *State v. Lucero* 2002 UT App 135 ¶9 47 P.3d 107. “If a party fails to make a concise statement of the facts and citation of the pages in the record where those facts are supported, the court will assume the correctness of the judgment below.” *Fackrell v. Fackrell*, 740 P.2d 1318, 1319 (Utah 1987); *Trees v. Lewis*, 738 P.2d 612, 612-13 (Utah 1987). *See also White River Shale Oil Corp. v. Pub. Serv. Comm’n*, 700 P.2d 1088, 1089 n. 1 (Utah 1985); *State v. Tucker*, 657 P.2d 755, 756-57 (Utah 1982); *Koulis v. Standard Oil Co. of California*, 746 P.2d 1182, 1184 (Utah App.1987).

DETERMINATIVE CONSTITUTIONAL AND STATUTORY PROVISIONS

A. Ut. R. Civ. P. 7(f)(1)

- B. UT. R. CIV. P. 7(f)(2)
- C. UT. R. CIV. P. 52(a)
- D. UT. R. CIV. P. 106(b)(1)(B)

STATEMENT OF THE CASE/FACTS¹

Greg Child (“**Child**”) and Renee Globis (“**Globis**”) are the parents of Ariann Lucinda Child (“**Ariann**”) born August 9, 2004. Child and Globis were never married. R0003 at p. 1. On January 20, 2005 Child filed a *Verified Petition for Paternity, Custody and Related Matters*. R0003. On October 30, 2007 the juvenile court entered its *Order Re: Verified Petition for Paternity, Custody and Related Matters* (the “**Order**”). R0134. The Order gave Child and Globis joint legal custody of Ariann, with Globis maintaining primary physical custody. *Id.* at pp.1-2. Parent time was to be continued as the parties had done in the past, with Child having extended parent time with Ariann if he was to be out of town. *Id.* at p. 2. Globis was to have the final say in matters related to the joint legal custody of Ariann, with Child being able to turn to the court for resolution. *Id.*

The court ordered that neither party was to make disparaging remarks about the other, and parent time exchange was to be as peaceful as possible. *Id.* at p. 4. Child was to maintain health insurance on Ariann with one-half of the premium to be deducted from his monthly child support, and both parties were to pay one-half of out of pocket costs, deductibles, co-pays, etc., with each party paying one-half of daycare costs and a

¹ These sections of the brief have been combined based on the fact that the transcripts of the proceedings below were not provided in accordance with UT. R. APP. P. 11 by Appellant herein, which transcripts would contain the more precise “facts” of this matter. While counsel herein typically sets forth information taken from the pleadings in this matter under the “Statement of the Case” section of a brief, doing so would leave no further information to be included in a “Statement of the Facts” section absent a transcript. Hence, the two sections have been combined herein.

preference given to Child to allow him to care for Ariann if he was available. *Id.* at pp. 4-6. Globis was ordered to pay \$5,100.00 to Child as repayment for the loan he had given her, and Globis was awarded the tax deduction of Ariann with Child being able to claim such deduction if he paid Globis the difference towards her taxes for taking such deduction. *Id.* at p. 6.

The Court concluded that, in the event of any relocation, UTAH CODE ANN. §30-3-37 would apply. Ariann was authorized to begin traveling to Australia with Child at the age of three and a half (3.5) years, and internationally at the age of five (5). *Id.* at p. 7.

On February 29, 2008 Child filed a *Petition to Modify Custody* (“**Petition to Modify**”) based on the fact Globis had decided to relocate to Salt Lake City. R0156. In the *Petition to Modify*, Child argued that a substantial change in circumstances had occurred because Globis was moving to Salt Lake City, had not had an adequate job since the entry of the Order, and could not afford rent. R0157. She had dissipated her assets, leaving her with no means of supporting Ariann, had been evicted from her home, had no financial means of obtaining adequate housing, and was unable to care for Ariann or provide her with necessities and support. *Id.* Joint legal custody was no longer appropriate due to the distance between the parties, and Child was requesting he be awarded sole custody with reasonable visitation to Globis and child support computed according to statute. R0157-158.

On April 1, 2008 a hearing was held to address these issues. At such hearing the court ordered (temporarily) “the visitation be modified to that of the statutory schedule of parents who are separated a distance of more than 100 miles.” Child was to pay for the

travel expenses. R0173. On July 10, 2008, during the bench trial on the Petition to Modify, Child and Globis negotiated an agreement for visitation. R0238. The language of the proposed Order was disputed and a formal Order was never signed by the trial court.

On October 6, 2008, Child filed his *Motion to Set Aside Agreement of 7/11/2008, Request for Trial Setting and Request for Hearing on Temporary Orders* (“**Motion to Set Aside**”). R0252. In his Motion to Set Aside, Child argued that the information presented to the trial court by Globis at the July 10, 2008, bench trial regarding employment, living arrangements, and daycare was not entirely truthful, and requested such agreement reached by the parties at such hearing be set aside. R0254. Child supported such Motion to Set Aside by affidavit, in which he indicated that, at the April 1, 2008, hearing, Globis had given the court an inaccurate residential address. R0258. He indicated that, at the July 10, 2008, hearing, after making agreements with Globis, she refused to come to a conclusion as to the wording that should be used in the Order finalizing their agreement, and would withhold parent time unless Child gave her money for living expenses. R0259-260. It was finally learned through discussions between the parties and Globis’ counsel that much of the information she had given the court regarding her living arrangement, employment, and daycare arrangements was incorrect and untrue. R0260.

On November 18, 2008, a hearing was held in which Child asked the court to reconsider the July temporary order because such order was based upon false information provided by Globis. R0292. Child was then ordered to pay child support in the amount of \$351 a month, and each parent was temporarily ordered to provide transportation of

Ariann one way for parent time. *Id.* at pp. 1-2. Child was allowed to continue making deductions from child support for health insurance premiums. Child was to have visitation with Ariann every third week of the month, and the matter was set for trial on February 20, 2009. *Id.* at p. 2.

On February 20, 2009, a trial was held on the merits. R0322. Both parties and numerous witnesses testified. The Court asked both parties to submit written arguments. *Id.* at p. 2. Globis had once again misrepresented material facts and Child filed a motion on March 13, 2009, to re-open the proceeding pursuant to rules 59 and 60(b). R0377.

On April 7, 2009, the trial court issued its *Memorandum Decision* (the “**Decision**”) encompassing the ruling of the court on the merits and on the motions. R0472. In the Decision, the trial court discussed the history of this matter, including the fact that Child either had custody or cared for Ariann approximately forty percent (40%) of the time, that Globis was a failure at managing money, had squandered her inheritance of almost \$150,000, owed several people money in relation to housing, was an unreliable witness, and that the court was not optimistic that she would ever be able to focus and hold down a job to provide a stable and secure home for Ariann. R0472-474.

In the Decision, the trial court indicated that Child was able to manage his finances even though his income was irregular. R0474. The trial court believed he could provide a secure and stable home for Ariann, but believed Child’s weakness was whether he had the emotional flexibility for raising a five (5) year old child. R0474-475. Child had also been much more critical of Globis than the trial court considered reasonable. R0475.

In the Decision, the trial court indicated that both parents had been heavily involved in Ariann's life and that her interests were best served by having ongoing involvement with both parents. R0476-477, R0482. The trial court considered numerous factors in determining custody and parent time including: past conduct and demonstrated moral standards of each parent; which parent will act in the child's best interests; bonding between parent and child; and maturity of parents. R0481. The trial court believed that Child was better situated to provide for Ariann and accordingly awarded custody to Child. R0182.

Globis filed a *Notice of Appeal* on May 27, 2009. R0571. On or about June 10, 2009, Globis contacted the court appointed transcriber by letter and requested a copy of the transcripts from this matter. R0576. Globis also contacted the transcriber to discuss making payments over a period of time. The Court transcriber denied the payment plan proposed by Globis, and Globis did not obtain certified transcripts in this matter.

On December 4, 2009, Globis filed a *Motion for Use of Uncertified Transcripts*, which Child opposed and which was denied by this Court. On January 19, 2010, Globis submitted her *Brief of Appellant* to this Court. However, the Brief did not adhere to UT. R. APP. P. 27. Thus, Globis filed an amended brief and a *Motion for Acceptance of Appellant's Amended Brief under UT. R. APP. P. 22(b)(4)(A)(B)(C)(D), (b)(5)(B)(C)(D)* ("**Motion for Acceptance**") with this Court on February 8, 2010, and indicated that she was filing an amended brief to comply with UT. R. APP. P. 24 and 27.

SUMMARY OF THE ARGUMENT

"To succeed on a petition to modify a divorce decree, the moving party must first

show that a substantial material change of circumstances has occurred since the entry of the decree and not contemplated in the decree itself.” Nelson v. Nelson, 2004 UT App 254, ¶2, 97 P.3d 722, *citing* Bolliger v. Bolliger, 2000 UT App 47, ¶11, 997 P.2d 903 (quotations, citations and emphasis omitted). In Hudema v. Carpenter, this Court discussed the modification of child custody orders as follows:

Before modifying a custody order, the court conducts a bifurcated inquiry to determine, first, if there has been a substantial and material change in the circumstances upon which the award was based, and, if so, whether a modification is in the best interests of the child. *See* UTAH CODE ANN. §30-3-10.4 (1998); *Elmer v. Elmer*, 776 P.2d 599, 602 (Utah 1989); *Sigg v. Sigg*, 905 P.2d 908, 912 & n. 5 (Utah Ct.App.1995). The required finding of changed circumstances promotes the policies of preserving stability in the child’s relationships and preventing the burden on the parties and courts of successive adjudications. *See Elmer*, 776 P.2d at 602. Consequently, the court generally may not consider evidence of the child’s best interests until it finds changed circumstances. *See Wright v. Wright*, 941 P.2d 646, 650-51 (Utah Ct.App.1997).

Ibid., 1999 UT App 290, ¶22, 989 P.2d 491. In Moody v. Moody it states, “[T]he nonfunctioning of a joint custody arrangement is clearly a substantial change in circumstances which justifies reopening the custody issue.” *Ibid.* 715 P.2d 507, 509 (Utah 1985).

In the instant matter, a substantial change in circumstances has occurred and the trial court awarded sole custody of Ariann to Child. Globis moved from Moab to Salt Lake City, which caused the joint custody arrangement the parties had been using to become nonfunctioning. Globis could not obtain stable employment or housing and was bouncing around from house to house, thus, not providing a stable environment for Ariann or providing for her best interests. Since the circumstances had changed, the trial

court was correct in awarding custody to Child.

Under Tucker v. Tucker, 910 P.2d 1209, 1215 (Utah 1996), the Utah Supreme Court set forth several factors to be considered with respect to a best interests determination on a modification of a custody order. These factors included bonding between the child and the parents, the ability of the parents to financially support the child, the possibility of continuity of the prior custody order, and other matters. However, this Court noted that, “[w]hen maintaining one parent’s primary physical custody will not truly preserve stability and continuity in the child’s life, the court may find less compelling circumstance are sufficient to modify the custody order.” Hudema v. Carpenter, 1999 UT App 290, ¶26, 989 P.2d 491. The trial court appropriately determined that the presumption for continuity of placement was adequately rebutted by Globis’ lack of stability in employment and housing, together with her determination to relocate her and Ariann to Salt Lake City without any adequate plan for an ability to viably support the two of them. Child’s bond with Ariann, continuing financial support, and stability in employment and housing all supported a finding that her best interests were more appropriately dealt with in a modification from joint custody to sole custody with Child.

“In civil actions, the court shall award reasonable attorney’s fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith....” In re Discipline of Sonnenreich, 2004 UT 3, ¶45, 86 P.3d 712. In this matter, Globis has requested attorney’s fees and costs for the separate and distinct proceedings dealing with the initial paternity petition not properly

before this Court, in addition to attorneys fees surrounding this appeal from the new modification proceedings. Not only did the trial court adequately address the issue in the paternity action by ordering that the parties pay their own attorneys' fees and costs, but she is significantly outside the time for requesting such fees from that separate action. Additionally, she has not adequately briefed her request for these modification proceedings, and failed to preserve the issue in the trial court below.

UT. R. APP P. 24(a) mandates that all briefs shall contain the following pertinent parts:

(a)(4) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and (a) (5) citation to the record showing that the issue was preserved in the trial court or a statement of grounds for seeking review of an issue not preserved in the trial court.

...

(a)(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(a)(10) A short conclusion stating the precise relief sought.

In the instant matter, Globis has failed to meet the requirements for briefs as set forth in UT. R. APP P. 24(a). More specifically, (1) the issue section of her brief does not have the appropriate standard of review or authority, (2) her issues are inadequately briefed in the argument portion of her brief and are unsupported by any citation to relevant authority, and (3) her conclusion is not short, precise, or concise but instead

appears to be what should likely have been included in the argument section of her brief. Thus, as Globis' brief is not in conformance with UT. R. APP P. 24(a) and her appeal should either be dismissed or this Court should presume the correctness of the judgment below and affirm the trial court's Decision at issue herein.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN FINDING THAT A SUBSTANTIAL CHANGE OF CIRCUMSTANCES HAD OCCURRED.

"To succeed on a petition to modify a divorce decree, the moving party must first show that a substantial material change of circumstances has occurred since the entry of the decree and not contemplated in the decree itself." Nelson v. Nelson, 2004 UT App 254, ¶2, 97 P.3d 722, *citing* Bolliger v. Bolliger, 2000 UT App 47, ¶11, 997 P.2d 903 (quotations, citations and emphasis omitted). In its analysis of change of custody and child support, this Court has determined the following:

[T]he court must determine first whether there is sufficient evidence of a substantial change in circumstances to justify relitigation of the custody question and, then, the trial court must consider the changes in circumstances along with all other evidence relevant to the welfare or best interests of the child and modify, or refuse to modify, the decree accordingly[.]

Hogge v. Hogge, 649 P.2d 51 (Utah 1982). "[T]he party seeking modification must demonstrate (1) that since the time of the previous decree, there have been changes in the circumstances upon which the previous award was based; and (2) that those changes are sufficiently substantial and material to justify reopening the question of custody." *Id.* UTAH CODE ANN. §30-3-10.4 addresses the modification of court orders with regards to

child custody as follows:

The court may, after a hearing, modify an order that established custody if (a) the circumstances *of the child or one or both of the custodians* have materially and substantially changed since the entry of the order to be modified; and (b) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the child. . . (emphasis added.)

In Hudema v. Carpenter, this Court discussed the modification of child custody orders as follows:

Before modifying a custody order, the court conducts a bifurcated inquiry to determine, first, if there has been a substantial and material change in the circumstances upon which the award was based, and, if so, whether a modification is in the best interests of the child. *See* UTAH CODE ANN. §30-3-10.4 (1998); *Elmer v. Elmer*, 776 P.2d 599, 602 (Utah 1989); *Sigg v. Sigg*, 905 P.2d 908, 912 & n. 5 (Utah Ct.App.1995). The required finding of changed circumstances promotes the policies of preserving stability in the child's relationships and preventing the burden on the parties and courts of successive adjudications. *See Elmer*, 776 P.2d at 602. Consequently, the court generally may not consider evidence of the child's best interests until it finds changed circumstances. *See Wright v. Wright*, 941 P.2d 646, 650-51 (Utah Ct.App.1997).

Ibid., 1999 UT App 290, ¶22, 989 P.2d 491. In Moody v. Moody it states, “[T]he nonfunctioning of a joint custody arrangement is clearly a substantial change in circumstances which justifies reopening the custody issue.” *Ibid.* 715 P.2d 507, 509 (Utah 1985).

In Doyle v. Doyle, this Court indicated that this issue is “a fact-intensive determination that is presumed valid and is reviewed for abuse of discretion.” *Ibid.*, 2009 UT App 306, ¶15, 221 P.3d 888. This Court further noted as follows:

Also, in making such a determination, trial courts must be mindful of two guiding principles: (1) the inquiry must ‘ordinarily ... focus exclusively on the parenting ability of the custodial parent and the functioning of the

established custodial relationship,” *Kramer v. Kramer*, 738 P.2d 624, 626 (Utah 1987); and (2) the changed circumstances allegedly justifying the modification must be material, that is, they must ‘be the kind of circumstances on which [the] earlier custody decision was based,” *Becker [v. Becker]*, 694 P.2d [608,] 610 [(Utah 1984)].

Id.

In the current case, the original custody arrangement was based in large part on the fact that both parents resided in Moab. “The parties [were] living approximately 20 to 30 miles apart and the geographical proximity of the homes [was] adequate for joint custody.” R0126. Since that hearing, however, Globis moved with Ariann to Salt Lake City, creating approximately 250 miles in one-way distance between them and Child. As the trial court stated, “[t]hough this primarily affects the relationship between Ariann and Father, this change does reflect that Mother has substantially less regard for that relationship than the court originally expected.” R0479. This distance made it impossible to enforce and maintain the custody and visitation arrangements that were in place and caused them to become nonfunctioning. Moody at 509.

Globis’ stability pertaining to employment and housing significantly changed since the original custody arrangement. Globis’ employment and housing in 2007 was stable and heavily considered at that time when she was awarded primary physical custody in the joint legal custody arrangement. However, since the original custody arrangement, Globis “has moved Ariann from home to home in the Salt Lake area, without having a realistic plan to pay for the selected housing.” R0479. “She consistently selects housing far above what her income would support, even when she is employed.” R0474. Since the original custody order was entered, Globis “has not

managed to hold a job for more than two months at a time.” R0474. Since moving from Moab, Globis has moved from job to job, “. . . without establishing herself as a desirable employee for any of her employers. The court believe[d] it is unlikely that [Globis] will be able to find a viable niche for herself in the Salt Lake City area which will match her talents to a prospective employer’s needs and provide for the life style she apparently considers necessary.” R0479. “From watching her testify, the court recognizes that she is scattered and unfocused. The court is not optimistic that she will ever be able to muster the focus necessary to hold down a job and provide a stable, secure home for Ariann.” R0474. She has been unable to maintain a job and provide stable living arrangements for her and Ariann. “[T]he court is persuaded that the circumstances affecting [Globis’] role as primary physical custodian of Ariann are so different from what the court believed to be true at the time of the original trial, that a change in custody must be considered.” R0480.

The trial court also considered the following factors in deciding to modify custody and what was in the best interest of Ariann:

1. Past Conduct and Demonstrated Moral Standards of Each Parent. “There is no appreciable difference in the moral standards of Mother and Father. However, Father has been more financially responsible than Mother and somewhat less vindictive in dealing with those who oppose him.” R0481.
2. Which Parent Will Act in the Child’s Best Interests. “[T]he court believes Father is more likely to provide for the food, shelter, clothing, and education of Ariann in a responsible way. He is also somewhat more likely to promote frequent and continuing contact with the other parent.” *Id.*
3. Bonding Between Parent and Child. “Though little evidence was presented on the bond between Ariann and each parent, the court believes that she has a strong bond with Mother, simply because she has recently spent substantially more time with Mother. However, the relationship between Ariann and Father is healthy and good.” *Id.*

4. Maturity of Parents. “Father is more emotionally mature than Mother. However, both parents show signs of immaturity.” *Id.*

Having taken these factors into consideration, the trial court noted as follows:

In view of all of those factors, the court believes Father is best able to provide the necessities of life for Ariann and help her grow into a healthy adult. The court accordingly awards custody to Father. However, the court emphasizes that Ariann especially needs the influence of both parents in her life because of the severe and complimentary strengths and weakness of Mother and Father. It is therefore essential that Mother have liberal parent time with Ariann.

R0482. Because a parenting plan was not submitted by either parent, and the relationship between the parties has been filled with conflict, joint legal custody was not approved.

Id. The parties were encouraged to negotiate a liberal parent-time schedule, and if they fail to agree, then the statutory schedule was to be imposed. *Id.* The court was correct in granting sole physical and legal custody to the father based on the facts and considering the numerous other factors.

Although, no parenting plan was presented as Globis raises in her brief, (*see Brief of Appellant* at p. 19) it does not appear one is required. UTAH CODE ANN. §30-3-10.8, states as follows:

(1) In any proceeding under this chapter, including actions for paternity, any party requesting joint custody, joint legal or physical custody, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan at the time of the filing of their original petition or at the time of filing their answer or counterclaim. (2) In proceedings for a modification of custody provisions or modification of a parenting plan, a proposed parenting plan shall be filed and served with the petition to modify, or the answer or counterclaim to the petition to modify.

This statute, however, **only** governs a modification of custody arrangements contained in a parenting plan², **not** a modification from joint to sole legal custody as was at issue herein, which is separately governed by the provisions of UTAH CODE ANN. §30-3-10.4.³ Hence, a parenting plan was not requisite under the petition filed by Child herein for a modification of the custody order from joint legal custody to sole legal custody.

Globis also raises the issue of an unfiled and incomplete petition for paternity that Child's prior attorney was in the process of completing when the attorney unexpectedly passed away. Hand written additions had been added to such petition and Globis' attorney at the time of trial attempted to show that Child had made the additions. *See Appellant's Brief* at p. 34. It appears that by this allegation, Globis is attempting to attack Child's credibility. In Pitt v. Taron this Court stated that, "[a]s the trier of fact in a bench trial, the trial court 'is in the best position to' weigh conflicting evidence and the credibility of witnesses. *Ibid.*, 2009 UT App 113, ¶2, 210 P.3d 962, *citing Homer v. Smith*, 866 P.2d 622, 627 (Utah Ct.App.1993). In D'Aston v. Aston, this Court further states as follows:

Credibility determinations are within the sound discretion of the trial court. *See Utah R. Civ. P. 52(a); Riche v. Riche*, 784 P.2d 465, 467 (Utah App.1989). "Because the trial court alone can assess the demeanor and relative credibility of the witnesses [and] is charged with the fact finding function ... we accord its actions broad deference." *Jackman v. Jackman*, 696 P.2d 1191, 1192 (Utah 1985).

² UTAH CODE ANN. §30-3-10.8 is titled "Parenting Plan—Filing—Modifications."

³ In fact, UTAH CODE ANN. §30-3-10.4(4) specifically states that a parenting plan is only required when altering custody **from** a sole legal custody arrangement **to** a joint legal custody arrangement.

Ibid., 844 P.2d 345, 355, (Utah App.,1992.) It is inappropriate for Globis to be challenging the trial court's determination of Child's credibility below. The trial court is the best position to decide his credibility and deference is given to them. Taron at ¶2, and Aston at 355. Globis never challenged the petition for paternity, and Child was awarded custody, so it appears this issue is moot and does not require review by this Court.

Globis also argues in her *Brief of Appellant* that "[t]he potential move from Moab by Renee was contemplated early in these parties' relationship and, thus, was acknowledged in the findings and the Order." *Brief of Appellant* pp. 34-35. Globis makes this argument in an attempt to show that no substantial change in circumstances occurred. However, she is mistaken in this argument. With regards to any potential move, the findings and Order states, "***if in the event*** that either party relocates, U.C.A. §30-3-37 shall apply." (Emphasis added). UTAH CODE ANN. §30-3-37 as amended by the Utah Legislature in 2010 reads as follows:

- (1) For purposes of this section, "relocation" means moving ~~from the state~~ or 150 miles or more from the residence specified in the court's decree.
- (2) The relocating parent shall provide, if possible, 60 days advance written notice of the intended relocation to the other parent. The written notice of relocation shall contain statements affirming the following:
 - (a) the parent-time provisions in Subsection (5) or a schedule approved by both parties will be followed; and
 - (b) neither parent will interfere with the other's parental rights pursuant to court ordered parent-time arrangements, or the schedule approved by both parties.
- (3) The court may, upon motion of any party or upon the court's own motion, schedule a hearing with notice to review the notice of relocation and parent-time schedule as provided in Section 30-3-35 and make appropriate orders regarding the parent-time and costs for parent-time transportation.
- (4) In determining the parent-time schedule and allocating the transportation costs, the court shall consider:

- (a) the reason for the parent's relocation;
 - (b) the additional costs or difficulty to both parents in exercising parent-time;
 - (c) the economic resources of both parents; and
 - (d) other factors the court considers necessary and relevant.
- (5) Unless otherwise ordered by the court, upon the relocation, as defined in Subsection (1), of one of the parties the following schedule shall be the minimum requirements for parent-time with a school-age child:
- ...
- (7) The custodial parent is entitled to all parent-time not specifically allocated to the noncustodial parent.
- ~~(6)~~ (8) In the event finances and distance preclude the exercise of minimum parent-time for the noncustodial parent during the school year, the court should consider awarding more time for the noncustodial parent during the summer time if it is in the best interests of the children.
- ~~(7)~~ (9) Upon the motion of any party, the court may order uninterrupted parent-time with the noncustodial parent for a minimum of 30 days during extended parent-time, unless the court finds it is not in the best interests of the child. If the court orders uninterrupted parent-time during a period not covered by this section, it shall specify in its order which parent is responsible for the child's travel expenses.
- ~~(8)~~ (10) Unless otherwise ordered by the court the relocating party shall be responsible for all the child's travel expenses relating to Subsections (5)(a) and (b) and 1/2 of the child's travel expenses relating to Subsection (5)(c), provided the noncustodial parent is current on all support obligations. If the noncustodial parent has been found in contempt for not being current on all support obligations, the noncustodial parent shall be responsible for all of the child's travel expenses under Subsection (5), unless the court rules otherwise. Reimbursement by either responsible party to the other for the child's travel expenses shall be made within 30 days of receipt of documents detailing those expenses.
- ~~(9)~~ (11) The court may apply this provision to any preexisting decree of divorce.
- ~~(10)~~ (12) Any action under this section may be set for an expedited hearing.
- ~~(11)~~ (13) A parent who fails to comply with the notice of relocation in Subsection (2) shall be in contempt of the court's order.

Although UTAH CODE ANN. §30-3-37 does apply, the court followed that guideline in its determination that a change of circumstances had occurred. This statute gives the court guidelines in determining parent-time as well as giving it authority to “make appropriate

orders regarding the parent-time and costs for parent-time transportation” as well as allowing the court to consider factors necessary and relevant (including the economic resources of both parents) when determining parent-time. As the court was considering all the factors to determine parent-time, several issues were brought to light and it became apparent that a change of circumstances had occurred, which resulted in the need to award sole custody to Child. The change of circumstances was not based solely on Globis’ relocation to Salt Lake. It was also based on her inability to hold a job, unstable housing arrangements, immaturity, etc. Thus, even if the original custody order addressed contemplated moves by the parties, such statement was made in general terms rather than addressing a specific contemplated move at the time. Additionally, the court still would have found that there had been a change of circumstances on the other factors. Therefore, Globis argument is thus flawed.

Thus, based upon Globis’ unstable employment and housing and her relocation to Salt Lake City, which considerably changed the joint custody arrangement of the parties, a substantial change in circumstances did occur and the trial court’s award of custody to Child was warranted. While Globis argues throughout her brief that she is no less of a parent to Ariann because she has moved to Salt Lake City, Globis’ relocation, together with her failure to obtain stable employment and housing has led to a substantial change of circumstances in this matter. *Brief of Appellant* beginning at p. 22. First, Globis’ move to Salt Lake City significantly affected the joint custody arrangement the parties had been exercising, rendering it nonfunctional and thus causing a substantial change in material circumstances. Moody at 509.

Furthermore the fact that Globis had not held a job and had bounced around from house to house since her relocation shows that leaving the child in her care was not in the best interests of the child since Globis was failing to provide a stable environment in which to reside with Ariann. The trial court found that, based upon the circumstances, it was clearly in Ariann's best interests to be placed in the sole custody of Child since he maintained the housing and employment necessary to provide her with a stable environment. Globis further provided instability for Ariann having gone from job to job since her move, which was clearly not in the best interests of Ariann. Thus, the trial court decided that a substantial change in circumstances had occurred based upon Globis' move and instability and thus awarded sole custody to Child. A substantial change in circumstances had occurred and therefore, the trial court's decision was correct.

II. CHANGE OF CUSTODY FROM JOINT LEGAL CUSTODY TO SOLE LEGAL CUSTODY WAS IN THE CHILD'S BEST INTERESTS.

Several factors are considered in a determination as to whether a custody change is in the best interest of a particular child. Under Tucker v. Tucker, the Utah Supreme Court indicated the following factors pertaining to the child's feelings and needs:

...the preference of the child; keeping siblings together; the relative strength of the child's bond with one or both of the prospective custodians; and, in appropriate cases, the general interest in continuing previously determined custody arrangements where the child is happy and well adjusted.

Ibid., 910 P.2d 1209, 1215 (Utah 1996)(quoting Hutchison v. Hutchison, 649 P.2d 38, 41 (Utah 1982). Tucker further sets forth factors to be examined respecting the parents' character and capacity, as follows:

...moral character and emotional stability; duration and depth of desire for custody; ability to provide personal rather than surrogate care; significant impairment of ability to function as a parent through drug abuse, excessive drinking, **or other cause**; reasons for having relinquished custody in the past; religious compatibility with the child; kinship, including, in extraordinary circumstances, stepparent status; **and financial condition**.

Id., citing Hutchison at 41. It is important to note that the Utah Supreme Court's holdings in Tucker mimic those outlined in UTAH CODE JUD. ADMIN. R4-903(5) as it pertains to uniformity in custody evaluations.

This Court more recently addressed how factors pertaining to a change in custody based on a material change in circumstances should be weighed, as follows:

Although the court considers many factors, each is not on equal footing. Generally, it is within the trial court's discretion to determine, based on the facts before it and within the confines set by the appellate courts, where a particular factor falls within the spectrum of relative importance and to accord each factor its appropriate weight.

Hudema v. Carpenter, 1999 UT App 290, ¶26, 989 P.2d 491; *see*, Davis v. Davis, 749 P.2d 647, 648 (Utah 1988); Childs v. Childs, 967 P.2d 942, 945 (Utah App 1998), *cert denied*, 982 P.2d 88 (Utah 1999). This Court pointed out that the myriad of factors in such a determination range from "possibly relevant to the critically important," noting that continuity of placement is considered critically important "when a child is thriving, happy, and well-adjusted." *Id.*

However, not all continuity is alike. A heavy emphasis on preserving stability presupposes that the prior arrangement is not only satisfactory, but will in fact continue. As the trial court recognized in this case, there are variations in the degree of continuity that can be afforded. **When maintaining one parent's primary physical custody will not truly preserve stability and continuity in the child's life, the court may find less compelling circumstance are sufficient to modify the custody order.** In this case, Hudema diminished the extent of possible continuity,

and thus the weight properly to be accorded this factor, when she changed the interpersonal dynamics of her household by remarrying and by moving from Jackson's lifelong Layton home to a new home in another state. *See Larson v. Larson*, 888 P.2d 719, 723 n. 4 (Utah Ct.App.1994)("To an extent, of course, uprooting children from their present schools and neighborhood and moving them to a different state is inimical to continuity in their lives.").

Id. at ¶27 (emphasis added). This Court concluded in Hudema that modification was based on sufficient change of circumstances and that, ". . .continuing Hudema's custody would do less to preserve overall stability in Jackson's life than is usual." *Id.* at ¶44.

In the Decision in the instant matter, the trial court found that Child either had custody or cared for Ariann approximately forty percent (40%) of the time. It further found that Globis was a failure at managing money, had squandered her inheritance of almost \$150,000, owed several people money in relation to housing, was an unreliable witness, and that the court was not optimistic that she would ever be able to focus and hold down a job to provide a stable and secure home for Ariann. R0472-474. The trial court indicated that Child was able to manage his finances even though his income was irregular, and the trial court believed Child could provide a secure and stable home for Ariann. R0474-475.

The trial court found that both parents had been heavily involved in Ariann's life and that her interests were best served by having ongoing involvement with both parents. R0476-477, R0482. The trial court indicated that it considered numerous factors in determining custody and parent time including: past conduct and demonstrated moral standards of each parent; which parent will act in the child's best interests; bonding between parent and child; and maturity of parents. R0481. The trial court believed that

Child was better situated to provide for Ariann and accordingly awarded custody to Child. R0182.

Clearly the trial court in this matter took into consideration the factors set forth in Tucker, *supra*, weighing each factor appropriately in accordance with the spectrum set forth in Hudema, *supra*, from “possibly relevant to the critically important.” While continuity of placement with Globis would have typically been weighed as “critically important,” such presumption was rebutted by the fact that Globis evidenced an inability to maintain stability for either herself or Ariann based on her sporadic employment history and inability to provide financially for her or Ariann’s needs. When combined with the fact that Globis uprooted Ariann from the area in which her father lived—someone Ariann spent forty percent (40%) of her day-to-day life with—it is clear that the determination of best interests in this matter was correctly rendered by the trial court’s grant of custody to Child. *See, Hudema, supra.*

In Hudema, *supra*, this Court opined that the presumption that continuity of placement was in the child’s best interest was rebutted by the relocation of the parent away from other kinship and family members, noting later in its decision that Hudema somewhat minimized the negative impact on the child by only relocating from one location to another rather than several. In the instant matter, Globis has relocated several times and owes several individuals money in relation to housing. Further, Globis’ financial circumstances are exacerbated by the fact that she is unable to maintain employment, the court itself indicating that it was not optimistic that she would ever be

able to focus and hold down a job to provide a stable and secure home for Ariann.⁴
R0472-474.

“When maintaining one parent’s primary physical custody will not truly preserve stability and continuity in the child’s life, the court may find less compelling circumstance are sufficient to modify the custody order.” Hudema at ¶27. Globis argues that Ariann was happy in her placement with Globis and that no evidence supported the need for a change of custody; however, this ignores her own responsibilities in maintaining the stability and continuity by obtaining employment and stable housing for herself and Ariann. The circumstances in which Globis uprooted Ariann to Salt Lake City from Moab, away from the secondary caretaker who maintained custody and care for approximately forty percent (40%) of the time weighed in favor of change of custody to “truly preserve stability and continuity in the child’s life.”

Further, the trial court determined that Globis was an unreliable witness. In the *Brief of Appellant*, Globis argues that the trial court reopened the issue of her untruthfulness regarding Ariann be dismissed from the Montessori preschool due to Globis’ failure to pay her one half of the tuition. *Brief of Appellant* at p. 45. Letters from the preschool were submitted to the trial court indicating that Ariann was dismissed for lack of payment. However, Globis previously testified that Ariann could still attend even though she had not paid in full. Although Child did request that the court reconsider testimony on this issue that was given at the hearing in February of 2009, the trial court

⁴ Although Child objects to the use of any non-certified transcripts in the briefing in this matter, as argued further below, Globis’ own inappropriate references cited to in her brief evidence her reliance on Child for money to maintain stability for Ariann, with Child having paid over \$5000 ahead in child support and another \$2000 for Globis to obtain a safe car to transport their daughter.

denied Child's request to reopen it. *See Findings of Fact* at p. 7.

Both parents have been heavily involved in Ariann's life and the trial court determined that it was in her best interests to grant sole custody to the parent who evidenced a sincere desire for custody and who clearly desired to take on the responsibilities of ensuring that Ariann's physical and emotional needs were all met. The trial court believed Child could provide the secure and stable home for Ariann that had been absent with Globis's exercise of custody. R0474-475. This Court should affirm the trial court's determination that it was in Ariann's best interests to have sole legal custody granted to Child.

III. GLOBIS IS NOT ENTITLED TO ATTORNEY'S FEES AND COSTS.

"It is the general rule that pro se litigants should not recover attorney fees for successful litigation." *See, e.g., Bone v. Hibernia Bank*, 354 F.Supp. 310, 311 (N.D.Cal.1973); *O'Neil v. Schuckardt*, 112 Idaho 472, 480, 733 P.2d 693, 706 (1986). *Cf. Alaska Fed. Sav. & Loan Ass'n of Juneau v. Bernhardt*, 794 P.2d 579, 581-82 (Alaska 1990); *O'Neil v. Lumber Co. v. Nickelodeon Cos.*, 190 Mont. 25, 28, 617 P.2d 1291, 1293 (1980). *Smith v. Batchelor*, 832 P.2d 467, 473, (Utah,1992). Furthermore, "[i]n civil actions, the court shall award reasonable attorney's fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith...." *In re Discipline of Sonnenreich*, 2004 UT 3, ¶45, 86 P.3d 712. "A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award." UT. R. APP. P. 24(a)(9). "We have consistently declined to review issues that are not adequately

briefed.” Ball v. Pub. Serv. Comm’n (In re Questar Gas Co.), 2007 UT 79, ¶ 40, 175 P.3d 545.

“[I]n order to preserve an issue for appeal the issue must be presented to the trial court in such a way that the trial court has an opportunity to rule on that issue.” Brookside Mobile Home Park, Ltd. v. Peebles, 2002 UT 48, ¶14, 48 P.3d 968. To determine whether the trial court had such an opportunity, we consider three factors: “(1) the issue must be raised in a timely fashion; (2) the issue must be specifically raised; and (3) a party must introduce supporting evidence or relevant legal authority.” *Id.* State v. Maese 2010 UT App 106, ¶13. When an appellant fails to preserve an issue below and does not argue that plain error or exceptional circumstances exist to justify review of an issue, this Court has declined to consider it on appeal. State v. Pledger, 896 P.2d 1226, 1229 n. 5 (Utah 1995).

“[A]n appellate court plays a ‘limited role’ in reviewing a district court’s award of attorneys’ fees and costs, and deference is given to a district court’s judgment on the matter, since the court is in a better position to assess the course of litigation and quality.” Harris Mkt. Research v. Marshall Mktg. & Communications, Inc., 948 F.2d 1518, 1527 (10th Cir.1991). *See* Gamble, Simmons & Co. v. Kerr-McGee Corp., 175 F.3d 762 (C.A.10 (Okla.) 1999). When a notice of appeal concerning an issue is untimely, this Court lacks jurisdiction to consider the merits of it. *See, e.g.*, Serrato v. Utah Transit Auth., 2000 UT App 299, ¶ 7, 13 P.3d 616.

In the instant matter, Globis is seeking “an award of all of Appellant’s fees and costs incurred in defending Appellant from Appellees’ [sic] initial Verified Petition for

Paternity, Custody, and Related Matters that has now escalated to Appellant's appeal." Globis is not entitled to fees and costs for several reasons. First, the time allowed for Globis to seek attorney fees for the initial paternity petition is past. Even if the time allowed was not past, the Findings of Fact and Conclusions of Law, and the Order from the initial paternity petition proceedings all specifically states that each party will pay his or her own attorney's fees and court costs, only allowing for any further costs and attorney fees incurred in enforcing the terms of the judgment should one party violate it.⁵ R0009, R0132, R0139-140. Thus, Globis is not entitled to attorneys fees because Child did not fail to perform his obligation, but only sought on meritorious grounds to modify the original grant of joint custody.

The paternity petition action is also not at issue in this appeal as Globis claims, and thus she is not entitled to attorney's fees for that action. The modification is a separate and distinct action from the initial paternity petition. The modification is not connected with the paternity petition action. Globis appealed only from the modification proceeding, not the initial paternity proceeding. Thus, this Court lacks jurisdiction to address the issue. *See, Serrato, supra*.

Globis is likewise not entitled to attorney's fees as a result of the modification since no attorney's fees were requested or awarded during the proceedings below and thus such issue was not properly preserved for appeal. *Maese* at ¶13. Accordingly, this Court should decline to reach the merits of such argument. *Pledger, supra*. Globis was

⁵ Child paid one of Globis' counsel \$2,000 in fees and then was to be repaid by Globis. Child has never been repaid by Globis an such issue was never further discussed by the trial court.

also not the prevailing party in the modification proceeding and thus, is not entitled to attorney's fees. Sonnenreich at ¶45. Globis is also representing herself on appeal and is not entitled to any attorney's fees on appeal. Batchelor at 473.

Finally, Globis is in violation of UT. R. APP. P. 24(a)(9) as she has not properly briefed her request for attorney's fees and costs. Globis has not explicitly set forth the legal basis for such award and thus has not properly briefed such claim. Since Globis did not preserve the issue of attorney's fees and is now representing herself, the modification was a separate action from the paternity action, and the modification is the action which has led to this appeal, Globis is not entitled to any of the requested attorney's fees and this Court should decline to address the issue.

IV. APPELLANT HAS FAILED TO FOLLOW PROPER BRIEFING REQUIREMENTS, THUS THIS APPEAL SHOULD BE DISMISSED.

A. Globis' Brief Does Not Conform With UT. R. APP. P. 24(a)

UT. R. APP P. 24(a) mandates that all briefs shall contain the following pertinent parts:

(a)(4) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and (a) (5) citation to the record showing that the issue was preserved in the trial court or a statement of grounds for seeking review of an issue not preserved in the trial court.

...

(a)(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(a)(10) A short conclusion stating the precise relief sought.

In State v. Lucero, this Court determined the following with regards to the failure to brief as set forth in UT. R. APP P. 24:

Defendant's appellate brief failed to comply with the rules of appellate procedure, and thus the Court of Appeals was not required to address defendant's appellate arguments, where defendant failed to cite where in the record issues were preserved for review, he failed to set forth the proper standard of review, and his argument section failed to include any relevant citations, authority, or legal analysis that would support his allegations.

Ibid., 2002 UT App 135 ¶10 47 P.3d 107. This Court further stated, “[w]hen considering arguments on appeal, we look to the requirements of Rule 24 to determine whether an appellant adequately briefed the issue.” *Id.* at ¶9. Rule 24 requires “[a] statement of the issues presented for review, including for each issue; [t]he standard of appellate review with supporting authority; and a citation to the record showing that the issue was preserved in the trial court.” *Id.* “It is well established that a reviewing court will not address arguments that are not adequately briefed.” State v. Parra, 972 P.2d 924, 926 (Utah Ct. App. 1998); *see also* Burns v. Summerhays, 927 P.2d 197, 199-200 (Utah Ct. App. 1996)(citing cases where this court has declined to reach merits of claims because appellants’ briefs failed to comply with Rule 24.) “This court noted that the requirements of the rule [24] serve to “focus the briefs, thus promoting more accuracy and efficiency in the processing of appeals.” Christensen v. Munns 812 P. 2d 69 (Utah Ct. App. 1991) (specifically referring to standard of review requirement).

In the instant matter, Globis filed an Amended Brief on February 8, 2010, and indicated that such Brief was in compliance with UT. R. APP. P. 24(a). However, the

Brief does not conform to Rule 24. First, Globis is not in compliance with UT. R. APP. P. 24 (a)(5). While she has set forth the issues she wishes to have reviewed, she has not cited the appropriate appellate review or supporting authority. In fact, it does not appear that she even briefed the issues set forth in the argument section. Globis appears to have intended to argue the issues of (1) whether a substantial change of circumstances has occurred, (2) whether the trial court erred by not applying statutory procedure when it terminated the joint custody arrangement, (3) whether the trial court violated her due process rights by not equitably using the Utah Rules of Civil Procedure and Rules of Evidence between the parties, (4) whether the trial court erred in finding she should bear the cost of transportation for parent time, and (5) whether she was entitled to attorney's fees on appeal. However, not only does she cite no standard of review or supporting authority for these issues, she fails to present them or adequately present them under the argument section of her brief. Her failure to present the standard of review and supportive authority for the issues in her brief is a violation of UT. R. APP P.24 (a)(5) and thus should not be reviewed by this Court.

Next, Globis is in violation of UT. R. APP P. 24(a)(9) as she has failed to present and argument that has supportive authority or that relates to the issues presented. While she sets forth a section entitled case law at the beginning of her brief, no case law is present in the argument section of her brief to show how her argument is supported. *Brief of Appellant* at p. xxviii. In fact, the majority of Globis' argument is colloquies from the trial regarding her housing and financial issues that have not been transcribed, although she "swears" such colloquies are true and correct this Court is without transcripts to know

if such colloquies are accurate depictions of what occurred at the trial in this matter. Furthermore, she either does not address the issues set forth in her brief or fails to adequately address them. She has also cited no supportive authority for her argument as set forth in her brief. This is a direct violation of UT. R. APP P. 24(a)(9) and therefore, this Court should decline to hear such arguments.

Finally, Globis has violated UT. R. APP P. 24(a)(10) in that her conclusion is not short and concise and does not cite the precise relief sought. Instead it is five and a half (5 ½) pages of how the trial court erred and why it is in the best interest of the child to remain with her. This section would have more appropriately fit in the argument section of the brief and as it is not a precise, short, and concise version of the relief sought, this court should not review it.

This court has noted that the requirements of the rule [24] serve to “focus the briefs thus promoting more accuracy and efficiency in the processing of appeals.” Christensen at 69. Globis’ brief fails to conform with the UT. R. APP P. 24(a)(4), (5), (9), and (10) and thus such brief should be stricken in its entirety and not reviewed by this Court.

B. Globis Has Failed to Provide Certified Transcripts or Marshal the Evidence, Both Requisite to a Challenge to Any Findings by the District Court.

UT. R. APP. P 24(a)(9) in pertinent part states, “[a] party challenging a fact finding must first marshal all record evidence that supports the challenged finding.” “Appellants cannot discharge their duty to marshal all evidence supporting challenged factual finding by simply providing an exhaustive review of all evidence presented at

trial.” United Park City Mines Co. v. Stichting Mayflower Mountain Fonds 2006 UT 35, 140 P.3d 1200. “In order to establish that a particular finding of fact is clearly erroneous, “[a]n appellant must marshal the evidence in support of the findings and then demonstrate that despite this evidence, the trial court’s findings are so lacking in support as to be against the clear weight of the evidence.” Chen v. Stewart, 2004 UT 82 ¶19, 100 P.3d 1177, (Utah, 2004.), *citing* In re Estate of Bartell, 776 P.2d 885, 886 (Utah 1989) (internal quotations omitted). In Horton v. Gem State Mut. of Utah, this Court stated as follows:

Because Gem State has failed to provide us with a transcript of the proceedings, we are unable to review the evidence and, thus, are unable to ascertain whether the trial court’s findings were based upon sufficient evidence. Absent the trial transcript, appellant’s claim of error is “merely an unsupported, unilateral allegation which we cannot resolve.” *Mark VII Fin. Consultants Co., [v. Smedley]* 792 P.2d [130,]134 [(UT. Ct. App. 1990)]. Without all the relevant evidence bearing on the issues raised on appeal, as required by Utah R.App.P. 11(e)(2), “we can only presume that the judgment was supported by sufficient evidence.” *State v. Nine Thousand One Hundred Ninety-Nine Dollars*, 791 P.2d 213, 217 (Utah Ct.App.1990). However, even aside from not including the transcript in the record, Gem State still failed to meet its obligation to marshal the evidence by persistently arguing its own position without regard for the evidence supporting the trial court’s findings, and failing to demonstrate that the findings were against the clear weight of the evidence and, thus, clearly erroneous.

Ibid., 794 P.2d 847, 849 (Utah App. 1990). In Mark VII Fin. Consultants Corp. v. Smedley, this Court discussed Appellant’s burden to provide this Court with an adequate record on appeal as follows:

[I]nsurer’s failure to provide Court of Appeals with transcript of proceedings rendered Court unable to review evidence and thus unable to ascertain whether trial court’s findings were based upon sufficient evidence, and insurer failed to meets its obligation to marshal evidence.

Appellant has burden of providing Court of Appeals with adequate record to preserve its arguments for review, and must also marshal all evidence that supports findings and demonstrates that, despite such evidence, findings are so lacking in support as to be against clear weight of evidence and thus clearly erroneous. RULE APP. PROC. RULE 11(e)(2). The Appellant has the burden of providing us with an adequate record to preserve its arguments for review.

Ibid., 792 P.2d 130, 134 (Utah Ct. App. 1990).

UT. R. APP. P. 11(e)(2) states, “[t]ranscript required of all evidence regarding challenged finding or conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Neither the court nor the appellee is obligated to correct appellant’s deficiencies in providing the relevant portions of the transcript.” In In re Estate of Bartell, it was noted by the Utah Supreme Court that marshaling is required on challenges to the sufficiency of the evidence because, it is “reflective of the fact that we do not sit to retry cases submitted on disputed facts.” *Ibid.*, 776 P.2d. 885, 886 (Utah 1989).

In the instant matter, Globis failed to provide the Court with transcripts from the trial court hearings, having been denied a payment arrangement by the transcriber and denied submission by this Court of an uncertified copy she personally prepared. In Horton this Court determined that, without transcripts, this Court is unable to review the evidence and “ascertain whether the trial court’s findings were based upon sufficient evidence.” No transcripts have been made part of the record on appeal in this matter, and in her brief Globis has relied solely on colloquy from the trial court hearings dealing with her financial issues and lack of money, her lack of employment, her credibility as a

witness, and her relationship with Ariann, attempting to use such colloquy to show that no substantial change in circumstances exists to warrant a change in custody. However, Globis' failure to provide transcripts further emphasizes that this Court has no choice but to presume the regularity of the proceedings below. Globis "swears" that the colloquies upon which she relies in her brief are "word for word." *Brief of Appellant* at p. 21. However, as this Court has not reviewed the hearings and has no transcripts before it to review, it is impossible to know if the colloquies are word for word as Globis claims.

Globis has not and clearly cannot meet the marshaling requirement respecting all the necessary evidence in this matter. While she has the pleadings located in the record upon which she could rely, these pleadings constitute only a minute amount of the evidence that was presented, excluding all testimony from the hearings upon which the trial court relied in rendering its decision. Globis is "unable to marshal all evidence supporting challenged factual finding by simply providing an exhaustive review of all evidence presented at trial." Without such evidence, this Court cannot determine whether the trial court made an erroneous decision in its finding that a substantial change in circumstances existed.

Globis failed to marshal the evidence, failed to present the transcripts relating to such evidence, failed to provide standard of review for her issues, failed to provide any legal authority or citations for her argument, and failed to enter a short, concise, precise conclusion. UT. R. APP. P. 24(a). Having been provided substantial opportunity by this Court to correct these issues, Globis' Brief should thus be stricken.

CONCLUSION

WHEREFORE, based upon the foregoing, Appellant respectfully requests this Court to dismiss the appeal and affirm the trial court in this matter.

DATED this ____ day of _____, 2010.

Craig C. Halls
Attorney for Appellee

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy, postage pre-paid, of the foregoing *Brief of Appellee* on this _____ day of _____, 2010 to the following:

Renee Gobis
Pro Se Respondent/Appellant
12118 South Pond Ridge
Draper, UT 84020

Addendum ~A~

SEVENTH DISTRICT COURT
Grand County

FILED APR 27 2009

CLERK OF THE COURT
BY Deputy

CRAIG C. HALLS #1317
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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT

IN AND FOR GRAND COUNTY, STATE OF UTAH

GREG CHILD,

Petitioner,

vs.

RENEE GLOBIS,

Respondent.

ORDER RE: PETITION TO
MODIFY ORDER

Civil No. 0547-3
Judge Lyle R. Anderson

Pursuant to the Memorandum Decision entered in this matter
on April 7, 2009, and pursuant to the Findings of Fact entered
herewith,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The joint legal custody of the parties and primary
physical custody of the Respondent as to the minor child, Ariann,
is hereby terminated pursuant to U.C.A. §30-3-10.4(3).

2. Sole legal and physical custody of the minor child,
Ariann, is hereby awarded to Petitioner, Greg Child pursuant to
U.C.A. §30-3-10.

ORDER RE: PETITION TO MODIFY ORDER



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pages. 3

3. Respondent is entitled to liberal parent time with Ariann. If the parties are unable to negotiate a liberal parent time schedule, the relocation statute found at §30-3-37 shall be imposed if Respondent lives more than 150 miles from the child's domicile in Moab, Utah; the statutory schedule found at §30-3-35 shall apply if the parties live closer than 150 miles apart. This order may be supplemented with an order that deals with the visitation at such time as the parties can agree and submit a stipulated schedule to the court.

4. Respondent is obligated to pay child support at such time as she establishes gainful employment in accordance with the Uniform Child Support Guidelines. The Court reserves the issue of child support until Respondent has steady employment.

5. The parties are ordered to provide medical, dental and optical insurance for the minor child if available through employment at a reasonable cost and each shall pay one-half of all out-of-pocket expenses, including co-pays, deductibles and premiums. The party incurring the expense shall notify the other within 30 days of an obligation being incurred. Petitioner currently carries such insurance and is entitled to a contribution for one-half of such costs by Respondent.

6. Respondent shall be responsible for payment of one-half of any work-related day care costs incurred by Petitioner. Notice of such obligation shall be sent within 30 days of incurring the expense.

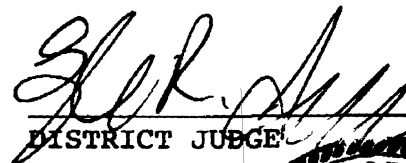
7. Costs of visitation with the child shall be born by Respondent.

8. Respondent is ordered to execute any document and cooperate in any way requested in the obtaining of a passport or any other travel document to allow Ariann to travel out of the United States.

9. The remaining provisions of the August, 2007, order shall remain in full force and effect.

DATED this 27th day of April, 2009.

BY THE COURT:


DISTRICT JUDGE

