

2009

Greg Child v. Renee Globis : Reply Brief

Utah Court of Appeals

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COURT OF APPEALS, STATE OF UTAH

GREG CHILD,

Petitioner/Appellee,

v.

RENEE GLOBIS,

Respondent/Appellant.

**“REPLY BRIEF OF
APPELLANT”**

Appellate Case No. 20090486

Trial Court No. 0547-3

This is Appellant’s Reply Brief from the aforementioned Appellate Case No. 20090486 from the Seventh District Court, Grand County, State of Utah with Honorable Judge Lyle R. Anderson, Trial Court Case No. 0547-3. The Reply Brief is taken from the Brief of Appellee.

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Introduction

The issues under appeal at this time entertain a significant volume of questionable candor of what constitutes a Mothers' inherent rights to her child that she bore out of wedlock. The issues that are directly described in Appellant's brief and any and all additional concerns represent a child custody dispute, namely, Ariann Lucinda Child, born August 9, 2004. Appellant is objecting to the outcome of the April 2009 'Order.' Appellant has been forced to fight for her rights from the time the child was 4 months old, just to maintain her motherhood role. The following describes Appellant's cause of action.

Issues Contained in Appellant's Brief

In short format, the issues presented are directed as follows:

1. Did the Trial Court error in assuming that a substantial change of circumstances *did* occur to substantiate a change of custody?
2. Did the Trial Court error in assigning the 'best interest of the child' be granted to Petitioner in consideration of all past unjust procedures, and failure to assign the Utah State Guidelines that are foolproof for the majority of divorcing and adjudicated children of parents who were never married?
3. Did the Trial Court ignore Utah Rules of Civil Procedure and cause Respondent to suffer unexpected consequences without merit regarding loss of 'natural' parental rights'?

4. Did the trial Court error in causing torrential dramatic impact to the child by influencing Petitioner to bear ‘no responsibility’ towards facilitating the pre-existing relationship between the Respondent and the child considering that the Court noted that Petitioner could very well afford these costs?
5. Did the Trial Court error by ineffectively applying their own decrees of which distributed a losing battle for Respondent for all Attorney’s fees involved in this case from the initial ‘Verified Petition for Paternity, Custody, and Related Matters’ which has both escalated to Appellant’s appeal, and provided momentum and has caused the impact enabling this appeal?

Appellant offers to consolidate relating issues for a more effective reply to ‘Appellee’s Brief’ within this ‘Reply Brief.’ For simplification purposes issues 2, 3, and 4 should be combined, as described above.

Relevant Reply Facts and Argument

Foremost, existing in Appellee’s Reply Brief lies an argument of the Appellants,’ ‘failure to follow proper briefing requirements.’ (U.R. App. P. 24). This argument contains (6 ½) pages of Appellee’s ‘Reply Brief.’ The Court of Appeals’ initial review of Appellee’s objection was responded to on March 29, 2010. The Court of Appeals decided to proceed with the Appellant’s Appeal and deny a dismissal of Appellant’s Brief, from Appellee. This Court also recognized Appellant’s impecuniosities in relation to the additional argument noted in

‘Appellee’s Brief,’ pertaining to the transcripts that granted the continuance of the Appeal without the transcripts. These inept arguments, given the pre-existing responses from this Court, are moot contained within ‘Appellee’s Brief.’

Appellant must muster all evidence and surface them to the Court for reference and accuracy. Therefore, under the Appellees,’ ‘Statement of Facts,’ the following argumentative issues are believed to be without merit and credence, in accordance, to the authorities and case law provided as follows:

1. ‘Child had argued that Globis had not had a stable job since the order of the decree since the entry of the August 2007 ‘Order,’ and could not afford rent, etc.’
Stevens v. Collard, 863 P2d 534, 837 P.2d 593, ([8]), (Conclusions), (Ut. Ct. App. 1992).

It is recognized that Respondent was self-employed from the first and foremost ‘Verified Petition for Paternity, on January 19, 2005,’ and again on ‘October 30, 2007.’ Respondent’s income was calculated at \$883.00 per month, and Petitioner’s income was calculated at \$5000.00 per month in the October 2007 ‘Order.’ It was admitted into evidence on record of Petitioner’s loans to Respondent for rent, etc. that resulted in a \$5100.00 Judgment for Petitioner in the Oct. 30, 2007 ‘Order.’ This is not a change of circumstance from the status of Respondent’s ever fluctuating income (or debt) over a given period of time, (Ex. 14 p.3 ¶1), as compared to Petitioner’s. In question, what has been Petitioner’s

recognizable income and debt throughout this custody battle, and is it equitable to only focus on the custodial parents' debt, or wealth? (Connelle v. Connelle--- P.3d---, 2010 WL 2105190, (Ut. Ct. App. 2010). Hogge v. Hogge, 648 P.2d 5155, 638 P.2d 624, *628, (Ut. Ct. App. 2010). Particularly, given the fact that Petitioner has been awarded primary physical custody since the April, 27 2009 'Order' and there had been no prior discovery for child support in adjusting the custodial parent's income. (Utah Court of Appeals § 78B-12-102 (8), (9)), (Utah Court of Appeals § 78B-12-203 (4)(a), (5)(a-c), (7)(a, b)).

From the first trial in 2007 that proposed child support at \$509.00 per month; also, granted Petitioner a Judgment for \$5100.00 of debt from Respondent (Ex. 3, 'Findings of Halls' p.9 (21)), while refusing a plea for lack of arrearages for Respondent for the first 3 1/2 years' of the child's life with no permissions to pregnancy, or the (3) months, thereafter. (Ex. 7, p.8 8-17-07 'Trial,' "nothing to respondent in arrearages")), (U.R.C.P. 54 (b), (c)(1)), (U.R.C.P. 106). Respondent never received a check for \$509.00 as stated in the courtroom on August 17, 2007,' or \$502.00 per month as indicated in the 'Order.' (Ex. 3, 'Findings--Olsen' p.2 (7)), (Utah Court of Appeals § 78B-12-203 (5)(a), (5)(c), (7)(b), (UCA § 30-3-3 (1-3)).

The first order of deductions to child support was presented in the October 30, 2007 'Order' of \$63.50 per month that reduced child support from \$502.00, less

\$63.50 for one half health care costs. (Ex. 3, 'Findings-Halls' p.7,8 (17)), (UCA § 30-3-5 (6), (7)). Intermittently in these years to date, child support was deducted spontaneously by order's of automatic reductions of attorney's fees to be re-collected by Petitioner from the July 9, 2008 hearing (recorded date of July 10, 2009 hearing) from the May 6, 2008 'Hearing.' (Ex. 7, 'Trial' p.14 of 22, "the court will allow Mr. Childs to recover \$438 at \$50.00 per month'), (Ex. 8 'Order of Huegley' p.2 (3)). All of this caused a noteworthy impact on Respondent and permissibly caused an inconsistent amount of child support to which Respondent might be able to rely on to maintain stability from Moab to Salt Lake. These child support adjustments continued from the October 2007 'Order' to the November 18, 2008 Hearing which finally calculated child support for Petitioner at \$351.00 per month, even though Respondent was declared unemployed. Accessory information is identified in the record whereas Petitioner's income was reduced to \$43,000 annually and Respondent's was adjusted to \$3633.00 per month at the July 9, 2008 'Trial.' (Ex. 7 'Trial' p.14, last paragraph). This inconsistency and impulsive reductions in itself had exasperated Respondent in her defense of and maintenance in supporting the progress of the move. Hill v. Hill, 841 P2d 722 (Ut. Ct. App. 1992). Respondent had not held a position for even two months with the firm in Salt Lake City, whereas the Court immediately recalculated child support. Petitioner had reduced

his income from \$60,000 in August 2007 to \$43,000 in July 2008, in less than a year. Respondent raised her income from \$883.00 to \$3633.00 per month in less than a year. *Hudema v. Carpenter* 290 P.2d 49 ¶1, (Ut. Ct. App. 1989). (Utah Court of Appeals § 78B-12-108 (1), § 78-12-203 (5)(a), (Ut. R. Evi. 37 (c)(f)). None of this was equitable accordingly within the existing ‘Order’ which stated child support would be re-calculated ‘annually.’ (Ex. 3 ‘Findings-Olsen’ p.4 (15)), (Ex.3 ‘Findings-Halls’ p.6 (12)). The immediate one-sided and unfair unethical adjustment of child support created a severe impact on the child and Respondent, in less than 6 months’ time. Had the trial court judge adhered to its initial ‘Order’ indicating that child support would be adjusted annually in February; Respondent may not have endured the continual roller coaster of events, thereafter. *Kasmicki* 468 P.2d 818, (Wyo. 1970). *Doyle v. Doyle* 221 P.2d 888, (Ut. Ct. App. May 2010).

Relocation was contemplated and written into the decree and Respondent maintains it is not a valid argument, in all attempts. (Ex. 3 ‘Findings-Olsen’ p.7 (30), (Ex.3 ‘Findings-Halls’ p.10 (27)). For example, Respondent was not present in Moab, with her Child, for (3) months prior to Petitioner’s filing of his ‘Verified Petition For Paternity.’ *Doyle v. Doyle* 306, 313, (Ut. Ct. App. 2009). (Ex.14 p.1 ¶1, last sentence), (Ex. 15 ‘Findings’ p.3 (5), (U.R.C.P. 4-903 (5), (5)(c), (Utah Supreme Court ‘Memorandum’ ‘New Custody Evaluation Procedures’).

On the contrary, the most impressive change of circumstance was the change of custody from Joint Legal to Sole for Petitioner. It is predicated and accredited that a general practice for most trial court judges to allow a discretionary period of, minimally a year to pass, before altering an existing ‘Order’ in which *they* implicated. This presumes the faith and accountability of all parties involved to optimistically attain a ‘workable’ environment, based on the ‘Order.’ This allows for preservation, with respect to the trial court judge’s original assessment for an opportunity of a prospectus outcome. (UCA § UCA 30-3-10.4 (2)(c), (3). In this case, (4) months passed when another hearing/trial was scheduled, and another, and another, and another, and another. Hogge v. Hogge 649 P.2d at 5354, 738 P2d 624, *627, (Ut. Ct. App. 1982). Then we arrive at the February 20, 2009 ‘Trial’ that casted custody to the other side of the spectrum from the parents’ custodial parental position’s throughout the child’s life thus far? (Ex. 15, ‘Findings’ p.9 ¶48, p.11 (B), (C), (D)). Becker v. Becker 649 P.2d 608, (Ut. Ct. App. Dec. 10, 1984), (UCA § 30-3-10 (1)(a)(ii)(iii)(iv), (2), (4)(b), (5), (UCA § 30-3-10.3 (1), (7), (UCA § 30-3-10.4 (1)(c), (3), (5).

It is described throughout ‘Appellant’s Brief’ that Joint Legal Custody was unworkable under the ‘new’ circumstance of the Respondent’s move to Salt Lake City that was already written into the order. Furthermore, it is exaggerated throughout all the trial court’s ‘Order’s that Petitioner had spent up to 40% of

time with the child. (Ex. 15,' p.3 (9), p.4 (10-12)), (Ex. 14 p.2 ¶3, 'Father correctly notes that this move has made the generous parent-time schedule agreed to in August 2007 impossible to follow,' p.4 ¶2, 3rd sentence, 'Following that schedule, Father would be with Ariann about 40% of the time'). It was embellished by the court that Petitioner had participated heavily in the Child's life. It was also noted that Petitioner was not always available to care for the child and that extra discretion should be catered to him while he was away, similarly when Respondent moved to Salt lake City. Childs v. Childs 967 p.2d 967 942 (Ut. Ct. App. 1998), (Ex. 3 'Findings-Olsen' p.5 (18), 'Findings-Halls' p.7 (14)), (UCA § 30-3-33). In both trials, Respondent stipulated to Petitioner's request of additional parent time for the benefit of the Father/Daughter relationship. (Ex. 14, p. 2, p.4, ¶2, last sentence), (Ex.8 'Order' p.2 (3). A 'change in circumstances' had not occurred as much as Petitioner would like to have the Court believe that to be true. There is simply not one factor of 'change in circumstances' from Ariann's perspective, or the Mother's material life, or the Court's to necessitate a change of custody in the child's (4 1/2) years, thus far. (Hogge v. Hogge 649 P.2d at 53-54).

There *were* two significant changes that occurred when Respondent moved to Salt Lake City, such as the scheduling of excessive court dates and perpetual reductions in child support from the October 2007 'Order.' It was evident at that

time that Petitioner was not present in the child's life as the Court is so convinced. (Ex. 14, p.1 ¶2, last sentence), (Ex.15 p.3 (5), (6)), (Ex. 3 'Findings-Olsen' p.5 (10), p.7 (14). Regardless, Respondent stipulated to an equal amount of visitation for Petitioner as when Respondent had lived in Moab, and when Respondent moved to Salt Lake. Stevens v. Collard 837 P.2d 593, (Ut. Ct. App. 1992). (Ex.14,' p.6 ¶1, last two sentences). It was obvious to the Court that Petitioner could afford all transportation costs at one particular court date. (Ex.7 p.11 'Trial,' 'Ms. Globis is not to pay for the travel expenses,' 'Mr. Child is to pay for the travel expenses'). It was also obvious to the Trial Court that Petitioner could afford to pay Respondent's attorney fees in between court dates. (Ex.7 'Trial' p.12 '4-29-08 Filed: Order: Re: Verified Motion for Renee Globis for award of Attorney fees.') However, one month later the trial court judge revoked the award of attorney's fees based on Respondent's 'brand new employment' and proffered another reduction in child support, per month, in 2008. (Ex. 8 'Order-Huegely' p.2 (3)). This is just another inaccurate finding that is proved by the inconsistency as in stated in the 'Minute Entry,' 'Trial,' 'The court will allow Mr. Child's to deduct \$438 at \$50.00 per month.' Petitioner addressed the court with visitation and child support issues insistently in one years' time promoting failing progress and persecuted Respondent from moving from Moab. This eventually evolved to Petitioner's 'Order for Modification of Custody' in February 2009.

Hutchinson v. Hutchinson 849 P.2d 38, 41, (Ut. Ct. App. 1982), (Ex.7 p.13 ‘5-06-08 Hearing’).

If the Trial Court was correct in predictating a substantial change of circumstance, it is debatable whether the Trial Court made a correct assessment on the best interests of the child given the April 27, 2009 ‘Order’ from Joint Legal Custody to Sole Custody. Dunkin v. Hinich 442 N.W.2d 148, 153 (Min. 1989). Stanley v. Deborah 124 N.H. 138, 467 A.2d 249, 251, (1983). Charles v. Stenlik 744 A.3d 1255, 1257, (Pa. 2000), Same. (Ex. 14,’ p.5 ¶3, sentence 1 & sentence 3), (Ex.7 p.14 ‘7-10-08 Trial’) (Ex.14 p.11¶2, first sentence. (UCA § 30-3-10), (UCA § 30-3-10.7). In raising the concern that this case was not properly bifurcated for evaluation of the child’s best interest after assessing that there was a substantial change in circumstances. For example, that ‘Order’ was objected to for ‘Reconsideration’ by Respondent’s Attorney immediately. (Ex. 7 p.20 ‘4-28-09 Filed: Objection to Proposed Order and findings,’ ‘4-22-09 Filed: Motion for Reconsideration Re: Change of Custody and Memorandum in Support’). Both, Respondent’s Attorney and Petitioner’s Attorney failed to request a custody evaluation at that time or prior to that time, which would have been in the childs’ ultimate best interest. Resulting in failure of applications of Utah Rules Civil Procedure and Utah Code Aannotated. In and for lacking

direction for the case, in accordance to Utah State Law and Constitutional provisions. (Ut. R. App. 33).

Instead, this Appeal was filed.

2. The prolific evidence contained in the record that imposes the best interest of the child overtly caters to Respondent's care of the child and introduces harassment charges. For example, there were (7) witnesses permitted to testify on behalf of Petitioner, and zero in support for Respondent's testimony at the February 2009 trial. (UCA § 30-3-10.4 (5), (UCA § 30-3-10.3 (6), (UCA § 30-3-3 (2)). It is argued that Respondent was a failure at managing money, (Ex. 7 p.3 ¶1), but it does not argue that Respondent failed at providing adequate or unhealthy living circumstances for herself and the child. It was proved that Ariann was in a Montessori Pre-school for a period of consistently 6 months before the child was refused at the school for lack of one half of one months' payment because of the overwhelming infiltration of phone calls and letters requested of the school to provide Petitioner and/or Respondent with ammunition detrimental for the child in this case. The director of the pre-school, Irma Martinez, was not at the trial, nor on the witness list. Accepting testimony that was unchallengeable is a violation of Utah Rules of Evidence, and that was not offered for review prior to the trial for opposing counsel to comment or prepare. (Ex. 14 p.6, 7, 8). (U.R.

Evi. 43 (a), (b), 103 (a)(1), (d), 601(c)(1)(2), 602, 807(c), 902, 1002, 1003). (Ex. 14 p.3 ¶2).

At the February 2009 trial, the court permitted evidence that implicated Respondent's character by excessive questioning of material in which Respondent had no prior knowledge. (Ex. 18 'Exhibit List,' February 23, 2009). In addition to witnesses that had testimonies showing favoritism for Petitioner, there was no first hand contact that existed between Respondent and the witnesses for several months and even years prior to testifying against Respondent or for Petitioner. Which, in turn caused the court to rule in the April 27, 2009 'Order' that Respondent was 'an unreliable witness,' as convinced by estranged testimonies.' An excessive amount of time was spent gathering allegations for Appellee's case with Respondent, (U.R. Evi. 37 (c), (f), 43, 103 (a), 608, 611, 701, 806). and damaged the perception of the Mother's ability to pay. The child's future attendance at the pre-school was, then, effectively (U.R. Evi. 611) destroyed and complicated the effort of a successful and respectable relocation for making progress in life after the move to Salt Lake City. (Ex. 14 p.3 ¶1 & 2). Huish v. Monroe 191 P.3d 1242, (Ut. Ct. App. 2008), Opinion. Fontenot v. Fontenot 714 P.2d 1131. The consistency of the Child's visitation with Petitioner continued after Respondent moved to Salt Lake City. FN3 Shiugi v. Shiugi Supra. U. S. S. Ct. 893, 47 L. Ed.2d 18 (1976). Mathews v. Eldridge 924 U.S. 319, 333, 96. (Ex.

7 p.14 ‘7-10-08 Trial’), (Ex. 14 p.4 ¶2 last sentence), (Ex. 15 p.6 ¶ 25 & 28)). This was not argued; this was fact; except for the additional exaggerations of ‘time’ with the child. The previous ‘Orders’ have overwritten Petitioner’s involvement with the child from day one, and of pregnancy. (Ex. 14 p.10(3)), (Ex.15 ‘Findings’ p. 3(5)(6), p.4 (10)(11)), (UCA § 30-3-10 (1)(a)(iii)).

It was identified in the ‘Memorandum Decision’ that it may not have been wise to have the child. The decision to have a child or to have an abortion is ultimately up to the Mother. The Father had made a decision to have a sexual relationship with Respondent for well over a year before the pregnancy. (Ex. 14 p.1.¶1). Despite Petitioner’s opinion of the Respondent, as a *good or sufficient*, enough Mother to decide to have a child; a child was born. Kasmicki 468 P.2d 818, 823, (Wyo. 1970). It is clear that the Petitioner cares for the child. It is recognized that Petitioner may be abusing the Respondent for having the child. (Ex. 15 ‘Findings’ p.9 (45), p.11 (11)). There are several guidelines of the State of Utah to address two parents who were never married. Davis v. Davis 749 P2d 647, 648 (Ut. Ct. App. 1988). (USG § 30-3-3), (UCA § 30-3-5), (UCA § 30-3-10). The Trial Court has elected that those guidelines do not apply in this case for blasphemous reasons; such as: lack of a custody evaluation or expert witnesses, refusal to order a parenting plan with the Petition to Modify, no order of counseling, no order of dispute resolution, and no mediation. (Ex. 14 p.11 (4),

¶2). (UCA § 30-3-10.3 (6)(7), (UCA § 30-3-10.4, (1)(c), (2)(c), (3)).

Respectively Petitioner argues that UCA § 30-3-10.4 (4) does not apply requiring a parenting plan for the request for modification, however, the mute point is that Respondent maintained full sole legal and physical custody of the child, before the August 2007 'Order' of Joint Legal Custody that was stipulated to by both parties. (Ex. 14 p.2 ¶2, 'The parties agreed that Mother would have primary physical custody.' 'The court eventually determined that joint legal custody should be awarded.'), (UCA § 30-3-10(3). Resulting in Petitioner's complete lack of providing a Parenting Plan throughout his award of 'Verified Petition for Paternity'. (UCA § 30-3-10.3 (1)(7)), (UCA § 30-3-10.4 (1)(c)(iii)), (UCA § 30-3-10.7). All of these options have been viable options for parents to work out their issues for the child's best interest. Instead, of a situation where a four and half year old girl must endure the impact of not having her Mother in her life anymore. (Ex. 15 'Order' p. 1 (2), p.2 (3), p.3 (8)). Petitioner is Australian, not a U.S. citizen, and it is the Mother's fear that her child may disappear to another country given the courts' permissions. (Ex. 3 'Findings-Halls' p. 11 (30)). It is a disturbing determination for the Trial Court to have placed this child into a situation where the Father has complete control over the Mother and Child relationship legally and physically. (Ex. 14 p.9 (4), 'The court recognizes that father could have been less critical and more supportive without abandoning his

responsibilities to Ariann.’). It is the Authority of the court is to observe the child’s best interest. *Hogge v. Hogge* 649 P.2d 51, 55, (Construing UCA § 30-3-5). Permissibly, the trial court had had 3 ½ year’s of the Childs’ life in hand, in making the assessment for the October 2007, ‘Order’ that commemorated a ‘Joint Legal Custody’ status for Respondent and Petitioner. *Pusey v. Pusey* 728 P.2d 117, 120, (Ut. Ct. App. 1986). *Prayzek v. Prayzek* 776 P.2d 78, *82. *Kramer v. Kramer* 738 P.2d 624. (Ex. 15 ‘Finding’ p.2 ¶1), ‘The parties’ agreed that Mother would have primary physical custody and that joint legal custody should be awarded.’). Then, changed their’ decision, less than a year later after several disruptive court appearances and threats of allegations to promote a ‘change in circumstance.’ (Ex. 15 ‘Findings’ p.2, ¶1, ‘The parties indicated that they had reached a settlement, but an order was never filed because shortly after the hearing, the Respondent had lost her job and her counsel refused to enter a judgment because the facts had changed’ (1), ‘The Father and Mother were joint parents of a child, Ariann, born in August 2004’), (Ex. 8 ‘Order’ p.2 ¶5), (Ex. 7 p. 14 ‘Trial’ p.15 ‘9-29-08 Filed Notice of submission of proposed order, 4-29-08 Filed: ‘Order Re: Petitioner’s Petition to Modify order’), (Ex. 14 p.5 ¶2, ‘No judgment based on the July 2008, stipulation was ever entered.’ ‘Counsel for Mother refused to prepare a judgment because the facts on which it was based

had changed.’). Explicitly, Father and Mother were, on the contrary, joint legal custody, of Ariann. (U.R.C.P. 52 (d), (U.R.C.P. 59 (a)(1), (3-7)).

In consideration of the question at hand:

- a. Did the move from Salt Lake City have a significant affect upon the child and the Maternal relationship? Her home and her school changed, but her life with her Mother and Father held the same consistency, and her time with her Father. (UCA § 30-3-10 (a)(ii). Huish v. Munro 191 P.3d 1242, (Ut. Ct. App. 2008). Hudema v. Carpenter 989 P.2d 491, 497-98, (Ut. Ct. App. 1999). Larson v. Larson 888 P.2d 719, 722, (Ut. Ct. App. 1994).
- b. Was the child’s life affected at all by the windfall, or by the loss of Respondent’s inheritance? Respondent was in debt prior to the inheritance and before the birth of the child, then Respondent paid all debts with the aid of the inheritance and supplemented her income with dedication to be a ‘stay at home Mom,’ then, debt was accumulated, again. (Ex. 14 p.3 ¶1). Respondent was ordered to pay Greg Child (Petitioner/Appellee) \$5100.00 for loans contained within the Oct. 30, 2007 ‘Order.’ (Ex. 3 ‘Order-Halls’ p. 6 (15)), (U.R.C.P. 54 (b), (UCA § 30-3-5). Respondent spent a large portion of the inheritance specifically described in the April 27, 2009 ‘Order and Findings’ on surviving in Moab with an unsupported Father. However, it is presently being overlooked that this inheritance which qualified a substantial change of circumstance was identified abstractly in the

October 30, 2007 'Order and Findings,' as well. *Hogge v. Hogge* 738 P.2d, 624, *628. In universal references, this has no substantial value on Motherhood capabilities regarding the child's welfare, or 'Best Interest.' (UCA § 30-3-34).

- c. Is it in the best interest of the child to have only one overbearing parent, instead of two that maintain a respectful relationship, or at least try, and in some cases by law, forced to try by law and 'in accordance;' except in this case. (UCA § 30-3-11.3), (UCA § 30-3-12).
- d. It is recognizable in the authorities that a child's best interests are served first with meaningful contact with both parents. (*Shiugi v. Shiugi*, *Supra.*), (UCA § 30-3-10), (UCA § 30-3-10.4). Credit is given to family, friends, schooling and community. In this case, Petitioner served minimally in the child's life, but extensively in the Court's Life of this Child, thus far; with the Respondent as primary caretaker of the child. (UCA § 30-3-10 (iii)). Neither parent is from Moab, or has ever had relatives in Moab, so that is not a consideration. *Hudema v. Carpenter*, 290, (Ut. Ct. App. 1999). (Ex.14 p.1 ¶2), Contradicting, (Ex. 15 p.2 (3), p.3 (5)(6)). The final factor of schooling, community, and financial opportunity should be recognized as a very mature choice for Respondent to have moved to Salt Lake City in effort to give the child expanded educational opportunities approaching the age of five years old, and a more convenient access

to her family in Chicago, by and through her Mother, (Respondent). (Fontenot v. Fontenot 714 P.2d 1131).

- e. It is recognized by the court that the Respondent had several places to live and several jobs, and that this was not in the child's best interest. The best interest of the child could have been protected for the Respondent and the child had the trial court relieved the Respondent of even a few Court dates and offered a time period for stability to get established. A move for any family is difficult enough given the economic and emotional stresses' enduring among our society. As the Trial Court lodged the ambush of Court appearances and litigation for Respondent in support of Petitioner's unethical and immoral allegations denying Respondent of an opportunity to make better her situation to Salt Lake City financially, it is prevelant that this instability caused by Petitioner's actions and the Court's 'Orders,' resulted in unlawful determinations that were *not* to the benefit of the Child. (UCA § 30-3-12), (UCA § 30-3-32).
- f. Was it to the child's benefit to have on-going reductions in child support in this case to an amount of \$351.00 per month, from \$502.00 per month, as indicated in the 'Record,' with the references provided in 'Appellant's Brief.' (Utah Court of Appeals § 78B-12-108, (1)).

All of these points of the child's best interest truly rely on which parent is most likely to be good, honest, hard-working, ethical, positive, dedicative,

supportive, and loving. Appellant believes a good evaluation of the child's best interest concerning the Respondent's charges (allegations) are dispositive with her attempts to approach a better life for both Respondent and Child.

Concludingly, they are conducive in showing that Petitioner evaded his respective responsibilities to the Mother/Daughter relationship. These aspirations of a promising home for Mother and Child in Salt Lake, and extended time with her Father in Moab were abandoned due to the change of custody.

With all due respect, this child, this case would not exist had Respondent decided to have an abortion. Petitioner is noted as not approving and/or wanting the Child in formative years.' However, in itself, these are formative years right now that Respondent is crying out for the permissions to participate in the Child's life. (Ex. 14 p.10 (4)). By law, the Mother is not required to provide a parenting plan in her decision to have a child. The law should not recognize the wants of the parents, but the necessities of the Child to have both parents' equitably involved, as was, supported in the 'Order' of October, 2007; though, it was never enforced. (UCA § 30-3-35).

Respondent did not give up her parental rights, or abuse them.

This case is an extreme cry for Mother's to fear. The decision a Mother holds to have a child and be granted the opportunity to the right to exist and be relevant in that child's life has become an absolute struggle beyond justifiable reasoning.

Regardless of how many jobs the Mother has retained, or places she has lived in and throughout the child's life. This decision for Respondent to have the baby may seem morose to the Father. However, Mothers are Mothers because they chose to have a child and endure all consequences at best, and under unforeseen circumstances.' The essence of this type of assumption of 'instability' is in itself oppressive to administer to a single Mother, and release custody to a father that promoted it. (Exhibit 15, 'Findings' p.3 (7), (Ex.14 p.9 (4), 'Mother was clearly not comfortable of father's monitoring of her activities in Moab.'). Respondent prays that the best interest of this child will be served considering the Respondent has pursued a better quality of life, and a more positive outlook for the child to have for her future. *Kramer v. Kramer* 738 P.2d 624. It is clear that Respondent bore the child with every intention and sacrifice of providing, nurturing, caring, loving, the child to the best of capabilities, consistently apprising the Father of a an opportunity to be involved, and always trying to correct the inadequacies of not being a perfect human being. As a race, we strive for this perfection, but if we did not endure the imperfections of our parents, how would we ever learn to grow better and surpass those imperfections, as children.

3. The Respondent's request for Attorney's fees is applicable in this case given the disproportionate amount of legal fees involved in comparison to the Respondent's loss of income, assets, and inheritance, and the Petitioner's deep pockets, given

his ability to afford all the attorney expenses while reducing his income from over \$60,000 a year to \$40,000 in 2008 and 2009, regarding the last reduction in child support. Childs v. Childs 967 P.2d 942, 945, Cert Denied, 982 P.2d 88, (Ut. Ct. App. 1998). (UCA § 30-3-10 (4)(a)), (UCA § 30-3-10.4 (5)), (Utah Court of Appeals § 78B-12-203 (4)(a), (5)(b), (7)(b))). In both instances, the Trial Court failed to recognize that this loss of income and inheritance was impressionably due to the failure of support from Petitioner. It is apparent that Respondent made all attempts given a great amount of liberty and effort to provide a stable home for the child in Moab, for Petitioner's access; but, foremost, provisions were gifted to Petitioner from Respondent for the Child. In referencing, Respondent agreed to petitioner's visitation requests, as well as, selling Respondent's land to pay attorney's and Petitioner \$5100.00. When the Respondent decided to move from Moab the Court frowned upon that move, for the sole reason of Petitioner's allegations that led exhaustible court dates to kill the effort. Respondent did not get legitimate support from the Petitioner in Moab or Salt Lake City. The child did not lose visitation or her routine with either parent in Moab or Salt Lake, under Respondent's care. This point is important because it recognizes that the Respondent was not abusing court orders or failing at providing for the child in any form quantative for the trial court to persist with court appearances. Hogge v. Hogge 649 P.2d at 53-54, (Ut. Ct. App. 1982). (Ex. 14 p.10 (1)). The Trial Court

issued a very distinct order that would consider awarding attorney fees for the prevailing party in disputes. (Utah Court of Appeals § 78A-12-103 (2)(c), (Supp. 2009), (Conclusion). Thus far, Respondent *had* prevailed at times, and the Court did not support their ‘October 30, 2007; ‘Order and Findings.’ Connell v. Connell---P.3d---, 2010 WL 2105190, (Ut Ct. App., 2010), (Utah Court of Appeals § 78B-12-102(7), (Supp.2009), Hill v. Hill 841 P.2d 722, (Ut. Ct. App. 1992), Doyle v. Doyle 221 P.2d 888 (Ut.Ct. App. May 2010). (UCA § 30-3-3). (Ex. 7 ‘Trial’ p.14 ‘Respondent asks for her attorney’s fees.’), (Ut. R. App. 30), (Ut. R. App. 33).

CONCLUSION

Appellant, hereby, respects and requests the Court of Appeals to reconsider the trial courts’ determination in favor of Appellant for all the considerations unjust presented. The parental bond and nature of the child’s relationship with her Mother has suffered emotional, psychological, physical and financial destruction through legal berating causing severe financial impacts that have inhibited the on-going healthy relationship that Respondent had maintained with the child. Ariann should not be a ping-pong in her parents’ struggle with the distribution of parental rights.’ Stability is first recognized with the parent who outweighs the bond with the child. The trial court failed to make an assertion which parent the child has spent the most time or better suited in maturity by


offering no expert witnesses, instead contradictory findings. Presumably the goal for the child's best interest to be recognized by factual findings contained within the record, it should be obvious to the court that Ariann has spent the majority of her life with her Mother. The factual basis of Ariann's relationship with her Mother had not changed from August 2007 to February 2009. Respondent's financial condition changed somewhat, Respondent's home changed, and Respondent's relationship in parenting with the Petitioner worsened. The avenue that the court directed for Petitioner and Respondent by disallowing negotiation of their differences about the move to Salt Lake have encouraged a shocking outcome for the child to be abandoned by her Mother.

Appellant, hereby, prays the Court of Appeals to adhere to the failures of justice described within this case for the sake of the Mother/Daughter relationship and the child's best interest. In addition, in preserving the strength of the State of Utah Rules and Regulations for a Mother to have and maintain equal rights' to her child with a paternal Father, albeit the imbalance of power contained within this case. Appellant requests the following resolutions for posturing the 5 year old child to have a future of maintaining the security of both parents participating heavily in her life.

1. Primary physical custody to be returned to Respondent. Joint legal custody to be re-instated.

2. Mediation (dispute resolution), counseling, and a parenting plan to be ordered to negotiate parent time, child support, and other relevant issues.
3. Appellant's attorney fees to be awarded for the dishonor of the failure of appropriate and fair justifications in this case, and for the suffering that Appellant has had to endure in result.

Dated this 10th day of August 2010



Renee Globis, Pro Se Appellant

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PRO SE Appellant

GREG CHILD, Petitioner, vs. RENEE GLOBIS, Respondent.	CERTIFICATE OF SERVICE Appellate Case No. 20090486 Court of Appeals
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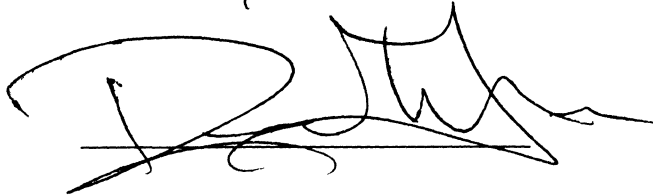
I hereby certify that a true and correct copy of the foregoing '**Appellants' Reply Brief**' was hand delivered to the Utah Court of Appeals Clerk, and mailed to Appellee's counsel, as follows;

Court of Appeals
450 South State Street, Fifth Floor
Salt Lake City, Utah, 84111

P.O. Box 140230
Salt Lake City, Utah 84114

Craig Halls, Esq.
333 South Main
Blanding, Utah 84511

DATED this 10th day of August, 2010.



Renee Globis, Appellant

AUTHORITIES & CASELAW

TABLE OF AUTHORITIES & CASELAW

Utah Court of Appeals - Judicial Code

Utah Judicial Code § 78A-4-103 (2)(c)

Utah Judicial Code § 78B-12-102 (8), (9)

Utah Judicial Code § 78B-12-108 (1)

Utah Judicial Code § 78B-12-203 (4)(a), (5)(a-c), (7)(a, b)

Utah Rules Appellate Procedure

Ut. R. App. 30

Ut. R. App. 33

Ut. R. App. 106

Utah Rules of Civil Procedure

U.R.C.P. 4-903 (5), (5)(C)

U.R.C.P. 52 (d)

U.R.C.P. 54 (b), (c)(1)

U.R.C.P. 59 (a)(1), (a)(3-7)

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U.R.Evi. 37 (c), (f)

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U.R.Evi. 103 (a)(1), (d)

U.R. Evi. 601 (c)(1), (2)

U.R.Evi. 602

U.R.Evi. 608

U.R.Evi. 611

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U.R.Evi. 801 (d)(1)(2)

U.R.Evi. 806

U.R.Evi. 807 (c)

U.R.Evi. 902 (12)(d)

U.R.Evi. 1002

U.R.Evi. 1003

Statutes

UCA § 30-3-3 (1-3)

UCA § 30-3-5 (6), (7)
UCA § 30-3-10
UCA § 30-3-10.1
UCA § 30-3-10.3 (1)(7)
UCA § 30-3-10.4 (1)(c)(iii), (2-5)
UCA § 30-3-10.7
UCA § 30-3-11.3
UCA § 30-3-12
UCA § 30-3-32
UCA § 30-3-33
UCA § 30-3-34
UCA § 30-3-35

Utah Judicial Code

Utah Judicial Code § 78A-12-103 (2)(c)

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

(c) appeals from juvenile courts.

Utah Judicial Code § 78B-12-102 (8), (9)

(8) "Child support" means a base child support award, or a monthly financial award for uninsured medical expenses, ordered by a tribunal for the support of a child, including current periodic payments, all arrearages which accrue under an order for current periodic payments, and sum certain judgments awarded for arrearages, medical expenses, and child care costs.

(9) "Child support order" or "support order" means a judgment, decree, or order of a tribunal whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or otherwise which:

(a) establishes or modifies child support;

(b) reduces child support arrearages to judgment; or

Utah Judicial Code § 78B-12-108 (1), (B)

(1) Obligations ordered for child support and medical expenses are for the use and benefit of the child and shall follow the child.

Utah Judicial Code § 78B-12-203 (4)(a), (5)(a-c), (7)(a)(b)

(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.

(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 available. Verification of income from records maintained by the Department of Workforce Services 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.

(7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed, the parent defaults, or, in contested cases, a hearing is held and the judge in a judicial proceeding or the presiding officer in an administrative proceeding enters findings of fact as to the evidentiary basis for the imputation.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from employment opportunities, work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community, or the median earning for persons in the same occupation in the same geographical area as found in the statistics maintained by the Bureau of Labor Statistics.

Utah Rules of Appellate Procedure

Ut. R. App. 30

(a) Decision in civil cases. The court may reverse, affirm, modify, or otherwise dispose of any order or judgment appealed from. If the findings of fact in a case are incomplete, the court may order the trial court or agency to supplement, modify, or complete the findings to make them conform to the issues presented and the facts as found from the evidence and may direct the trial court or agency to enter judgment in accordance with the findings as revised. The court may also order a new trial or further proceedings to be conducted. If a new trial is granted, the court may pass upon and determine all questions of law involved in the case presented upon the appeal and necessary to the final determination of the case.

(b) Decision in criminal cases. If a judgment of conviction is reversed, a new trial shall be held unless otherwise specified by the court. If a judgment of conviction or other order is affirmed or modified, the judgment or order affirmed or modified shall be executed.

(c) Decision and opinion in writing; entry of decision. When a judgment, decree, or order is reversed, modified, or affirmed, the reasons shall be stated concisely in writing and filed with the clerk. Any justice or judge concurring or dissenting may likewise give reasons in writing and file the same with the clerk. The entry by the clerk in the records of the court shall constitute the entry of the judgment of the court.

(d) Decision without opinion. If, after oral argument, the court concludes that a case satisfies the criteria set forth in Rule 31(b), it may dispose of the case by order without written opinion. The decision shall have only such effect as precedent as is provided for by Rule 31(f).

(e) Notice of decision. Immediately upon the entry of the decision, the clerk shall give notice to the respective parties and make the decision public in accordance with the direction of the court.

(f) Citation of decisions. Published decisions of the Supreme Court and the Court of Appeals, and unpublished decisions of the Court of Appeals issued on or after October 1, 1998, may be cited as precedent in all courts of the State. Other unpublished decisions may also be cited, so long as all parties and the court are supplied with accurate copies at the time all such decisions are first cited.

Ut. R. App. 33

(a) Damages for delay or frivolous appeal. Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as defined in

Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the damages be paid by the party or by the party's attorney.

(b) Definitions. For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief, or other paper interposed for the purpose of delay is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other paper.

(c) Procedures. (1) The court may award damages upon request of any party or upon its own motion. A party may request damages under this rule only as part of the appellee's motion for summary disposition under Rule 10, as part of the appellee's brief, or as part of a party's response to a motion or other paper. (2) If the award of damages is upon the motion of the court, the court shall issue to the party or the party's attorney or both an order to show cause why such damages should not be awarded. The order to show cause shall set forth the allegations which form the basis of the damages and permit at least ten days in which to respond unless otherwise ordered for good cause shown. The order to show cause may be part of the notice of oral argument. (3) If requested by a party against whom damages may be awarded, the court shall grant a hearing.

Utah Rules of Civil Procedure

U.R.C.P. 4-903 (5), (5)(C)

(5) The purpose of the custody evaluation will be to provide the court with information it can use to make decisions regarding custody and parenting time arrangements that are in the child's best interest. When one of the prospective custodians resides outside of the jurisdiction of the court, two individual evaluators may be appointed. In cases in which two evaluators are appointed, the court will designate a primary evaluator. The evaluators must confer prior to the commencement of the evaluation to establish appropriate guidelines and criteria for the evaluation and shall submit only one joint report to the court.

(5)(C) the relative strength of the child's bond with one or both of the prospective custodians;

U.R.C.P. 37 (c), (f)

U.R.C.P. 52 (d)

(d) Correction of the Record. If anything material is omitted from or misstated in the transcript of an audio or video record of a hearing or trial, or if a disagreement arises as to whether the record accurately discloses what occurred in the proceeding, a party may move to correct⁶ the record. The motion must be filed within ten days after the transcript of the hearing is filed, unless good cause is shown. The omission, misstatement, or disagreement shall be resolved by the court and the record made to accurately reflect the proceeding.

U.R.C.P. 54 (b), (c)(1)

(b) Judgment upon multiple claims and/or involving multiple parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, and/or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination by the court that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject

to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c)(1) Generally. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. It may be given for or against one or more of several claimants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between or among themselves.

U.R.C.P. 59 (a)(1), (a)(3-7)

(a)(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial. (a)(3) Accident or surprise, which ordinary prudence could not have guarded against. (a)(4) Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial. (a)(5) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice. (a)(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law. (a)(7) Error in law.

U.R.C.P. 106

(a) Commencement; service; answer. Except as provided in Utah Code Section 30-3-37, proceedings to modify a divorce decree or other final domestic relations order shall be commenced by filing a petition to modify. Service of the petition, or motion under Section 30-3-37, and summons upon the opposing party shall be in accordance with Rule 4. The responding party shall serve the answer within the time permitted by Rule 12.

(b) Temporary orders. (b)(1) The judgment, order or decree sought to be modified remains in effect during the pendency of the petition. The court may make the modification retroactive to the date on which the petition was served. During the pendency of a petition to modify, the court:(b)(1)(A) may order a temporary modification of child support as part of a temporary modification of custody or parent-time; and(b)(1)(B) may order a temporary modification of custody or parent-time to address an immediate and irreparable harm or to ratify changes made by the parties, provided that the modification serves the best interests of the child.

‘Memorandum,’ New Custody Evaluation Procedures’

‘I. Introduction

Noting that custody evaluations are of varying quality, that high quality evaluations can be costly, and that waiting for evaluations stalls the legal process, the Judicial Council charged the Standing Committee on Children and Family Law to “improve the quality and timeliness of custody evaluations.” Having studied the issue in depth, the Standing Committee now presents substantial revisions to Rule 4-903, “Custody Evaluations” of the Code of Judicial Administration, as well as these accompanying forms. This memo explains the process envisioned by the forms, and details the changes made to the rules.

II. Contemplated Custody Evaluation Process

Custody Evaluation forms have been approved by the Supreme Court and Judicial Council to reduce the need for extensive, formally-prepared evaluations, and to make custody considerations more accessible to the commissioner or judge on the bench. **Any custody evaluation submitted to the court must address the topics noted on these forms.**

The settlement conference procedure is designed to (1) reduce the time and expense of preparing a written report in cases where this might not be needed, (2) disclose the custody evaluation findings in such a way that is less adversarial and less damaging to family relationships, and (3) allow the parties a final opportunity to participate in the fashioning of an

agreement. It allows the parties to benefit from the insights of the evaluator while still experiencing a sense of control over the decisions made about their children. Through greater participation of the parties, it is hoped that future conflict will be reduced. If no settlement is reached at or soon after this conference, a written evaluation would be prepared and a court date set. The "Settlement Conference Report" form sets forth the topics to be addressed at the settlement conference. Toward the end of the settlement conference, and depending on the wishes of the commissioner or judge, the evaluator may issue verbal custody recommendations.”

Utah Rules of Evidence

U. R. Evi. 37 (c), (f)

(c) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the party requesting the admissions may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(f) Failure to disclose. If a party fails to disclose a witness, document or other material as required by Rule 26(a) or Rule 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), that party shall not be permitted to use the witness, document or other material at any hearing unless the failure to disclose is harmless or the party shows good cause for the failure to disclose. In addition to or in lieu of this sanction, the court on motion may take any action authorized by Subdivision (b)(2).

U. R. Evi. 43 (a), (b)

(a) Form. In all trials, the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules, the Utah Rules of Evidence, or a statute of this state. All evidence shall be admitted which is admissible under the Utah Rules of Evidence or other rules adopted by the Supreme Court.

(b) Evidence on motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

U. R. Evi. 103 (a)(1), (d)

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

Objection. In case of one admitting evidence, a timely objection or motion to strike appears of record, stating the specific grounds of objection, if the specific ground was not apparent from the context; or

(d) Plain error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

U. R. Evi. 601 (c)(1), (2)

U. R. Evi. 602

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

U. R. Evi. 608

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' character for truthfulness, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.

(c) Evidence of bias. Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.

U. R. Evi. 611

(a) Control by the court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment. (b) Scope of cross-examination. Cross examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination. (c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

U. R. Evi. 701

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

U. R. Evi. 801

(d) Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is (A) inconsistent with the declarant's testimony or the witness denies having made the statement or has forgotten, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by party opponent. The statement is offered against a party and is (A) a party's own statement in either an individual or a representative capacity, or (B) a statement in which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning the matter within the scope of the agency or employment, made during the existence of the

relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

U. R. Evi. 806

When a hearsay statement, or a statement defined in Rule 801 (d)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement, or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If a party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross examination.

U. R. Evi. 807

A statement not specifically covered by Rule 803 or Rule 804 but having equivalent circumstantial guarantees of trustworthiness is not excluded by the hearsay rule if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purpose of these rules and the interest of justice will be best served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and particulars of it, including the name and address of the declarant.

U. R. Evi. 902

(12) Certified foreign records of regularly conducted activity – In a civil case, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by an affidavit or a written declaration by its custodian or other qualified person certifying that:

(D) the person certifying the records does so under penalty or making a false statement in an official proceeding.

The affidavit or declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws where the declaration was signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

U. R. Evi. 1002

To prove a content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by other rules adopted by the Supreme Court of this State or by Statute.

U. R. Evi. 1003

A duplicate is admissible to the same extent as an original unless (1) a question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Utah Code Annotated

UCA § 30-3-3 (1-3)

(1) In any action filed under Title 30, Chapter 3, Divorce, Chapter 4, Separate Maintenance, or Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, and in any action to establish an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.

(2) In any action to enforce an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party is impecunious or enters in the record the reason for not awarding fees.

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

UCA § 30-3-5 (6), (7), (8)

(6) If a petition for modification of child custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' 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.

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

(8) (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;

(iv) the length of the marriage;

(v) whether the recipient spouse has custody of minor children requiring support;

(vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and

(vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during 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 (8)(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.

UCA § 30-3-10

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate.

(a) In determining any form of custody, the court shall consider the best interests of the child and, among other factors the court finds relevant, the following:

(i) the past conduct and demonstrated moral standards of each of the parties;

(ii) which parent is most likely to act in the best interest of the child, including allowing the child frequent and continuing contact with the noncustodial parent;

(iii) the extent of bonding between the parent and child, meaning the depth, quality, and nature of the relationship between a parent and child; and

(iv) those factors outlined in Section **30-3-10.2**.

(b) The court shall, in every case, consider joint custody but may award any form of custody which is determined to be in the best interest of the child.

(c) The children may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the children be heard and there is no other reasonable method to present their testimony.

(d) The court may inquire of the children and take into consideration the children's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the children's custody or parent-time otherwise. The desires of a child 16 years of age or older shall be given added weight, but is not the single controlling factor.

(e) If interviews with the children are conducted by the court pursuant to Subsection (1)(d), they shall be conducted by the judge in camera. The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with the children is the only method to ascertain the child's desires regarding custody.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(3) If the court finds that one parent does not desire custody of the child, the court shall take that evidence into consideration in determining whether to award custody to the other parent.

(4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a parent due to a disability, as defined in Section **57-21-2**, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a disability may rebut any evidence, presumption, or inference arising from the disability by showing that:

(i) the disability does not significantly or substantially inhibit the parent's ability to provide for the physical and emotional needs of the child at issue; or

(ii) the parent with a disability has sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the

child at issue.

(c) Nothing in this section may be construed to apply to adoption proceedings under Title 78B, Chapter 6, Part 1, Utah Adoption Act.

(5) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

UCA § 30-3-10.1

As used in this chapter:

(1) "Joint legal custody":

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

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

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

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

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

(2) "Joint physical custody":

(a) means the child stays with each parent overnight for more than 30% of the year, and both parents contribute to the expenses of the child in addition to paying child support;

(b) can mean equal or nearly equal periods of physical custody of and access to the child by each of the parents, as required to meet the best interest of the child;

(c) may require that a primary physical residence for the child be designated; and

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

UCA § 30-3-10.3 (1), (7)

(1) Unless the court orders otherwise, before a final order of joint legal custody or joint physical custody is entered both parties shall attend the mandatory course for divorcing parents, as provided in Section **30-3-11.3**, and present a certificate of completion from the course to the court.

(7) An order of joint legal or physical custody shall require a parenting plan incorporating a dispute resolution procedure the parties agree to use before seeking enforcement or modification of the terms and conditions of the order of joint legal or physical custody through litigation, except in emergency situations requiring ex parte orders to protect the child.

UCA § 30-3-10.4 (1)(c)(iii), (2-5)

(1) On the petition of one or both of the parents, or the joint legal or physical custodians if they are not the parents, the court may, after a hearing, modify or terminate an order that established joint legal or physical custody if:

(c) (i) both parents have complied in good faith with the dispute resolution procedure in accordance with Subsection **30-3-10.3(7)**; or

(ii) if no dispute resolution procedure is contained in the order that established joint legal or physical custody, the court orders the parents to participate in a dispute resolution procedure in accordance with Subsection **30-3-10.2(5)** unless the parents certify that, in good faith, they have utilized a dispute resolution procedure to resolve their dispute.

(2) (a) In determining whether the best interest of a child will be served by either modifying or terminating the joint legal or physical custody order, the court shall, in addition to other factors the court considers relevant, consider the factors outlined in Section **30-3-10** and Subsection **30-3-10.2(2)**.

- (b) The court shall make specific written findings on each of the factors relied upon stating:
 - (i) a material and substantial change of circumstance has occurred; and
 - (ii) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the child.
- (c) The court shall give substantial weight to the existing joint legal or physical custody order when the child is thriving, happy, and well-adjusted.
- (3) The court shall, in every case regarding a petition for termination of a joint legal or physical custody order, consider reasonable alternatives to preserve the existing order in accordance with Subsection **30-3-10(1)(b)**. The court may modify the terms and conditions of the existing order in accordance with Subsection **30-3-10(5)** and may order the parents to file a parenting plan in accordance with this chapter.
- (4) A parent requesting a modification from sole custody to joint legal custody or joint physical custody or both, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan with the petition to modify in accordance with Section **30-3-10.8**.
- (5) If the court finds that an action under this section is filed or answered frivolously and in a manner designed to harass the other party, the court shall assess attorney fees as costs against the offending party.

UCA § 30-3-10.7

- (1) "Domestic violence" means the same as in Section **77-36-1**.
- (2) "Parenting plan" means a plan for parenting a child, including allocation of parenting functions, which is incorporated in any final decree or decree of modification including an action for dissolution of marriage, annulment, legal separation, or paternity.
- (3) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:
 - (a) maintaining a loving, stable, consistent, and nurturing relationship with the child;
 - (b) attending to the daily needs of the child, such as feeding, clothing, physical care, grooming, supervision, health care, day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;
 - (c) attending to adequate education for the child, including remedial or other education essential to the best interest of the child;
 - (d) assisting the child in developing and maintaining appropriate interpersonal relationships;
 - (e) exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and family social and economic circumstances; and
 - (f) providing for the financial support of the child.

UCA § 30-3-11.3

- (1) There is established a mandatory course for divorcing parents as a pilot program in the third and fourth judicial districts to be administered by the Administrative Office of the Courts from July 1, 1992, to June 30, 1994. On July 1, 1994, an approved course shall be implemented in all judicial districts. The mandatory course is designed to educate and sensitize divorcing parties to their children's needs both during and after the divorce process.
- (2) The Judicial Council shall adopt rules to implement and administer this program.
- (3) As a prerequisite to receiving a divorce decree, both parties are required to attend a mandatory course on their children's needs after filing a complaint for divorce and receiving a docket number, unless waived under Section **30-3-4**. If that requirement is waived, the court may permit the divorce action to proceed.

- (4) The court may require unmarried parents to attend this educational course when those parents are involved in a visitation or custody proceeding before the court.
- (5) The mandatory course shall instruct both parties:
- (a) about divorce and its impacts on:
 - (i) their child or children;
 - (ii) their family relationship; and
 - (iii) their financial responsibilities for their child or children; and
 - (b) that domestic violence has a harmful effect on children and family relationships.
- (6) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter 6, Utah Procurement Code, through private or public contracts and organize the program in each of Utah's judicial districts. The contracts shall provide for the recoupment of administrative expenses through the costs charged to individual parties, pursuant to Subsection (8).
- (7) A certificate of completion constitutes evidence to the court of course completion by the parties.
- (8) (a) Each party shall pay the costs of the course to the independent contractor providing the course at the time and place of the course. A fee of \$8 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account, described in Section **51-9-408**.
- (b) Each party who is unable to pay the costs of the course may attend the course without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed in the district court. In those situations, the independent contractor shall be reimbursed for its costs from the appropriation to the Administrative Office of the Courts for "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce may be entered, the court shall make a final review and determination of impecuniosity and may order the payment of the costs if so determined.
- (9) Appropriations from the General Fund to the Administrative Office of the Courts for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay the costs of an indigent parent who makes a showing as provided in Subsection (8)(b).
- (10) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided annually to the Judiciary Interim Committee.

UCA § 30-3-12

Each district court of the respective judicial districts, while sitting in matters of divorce, annulment, separate maintenance, child custody, alimony and support in connection therewith, child custody in habeas corpus proceedings, and adoptions, shall exercise the family counseling powers conferred by this act.

UCA § 30-3-32

- (1) It is the intent of the Legislature to promote parent-time at a level consistent with all parties' interests.
- (2) (a) A court shall consider as primary the safety and well-being of the child and the parent who is the victim of domestic or family violence.
- (b) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the child:
- (i) it is in the best interests of the child of divorcing, divorced, or adjudicated parents to have frequent, meaningful, and continuing access to each parent following separation or divorce;
 - (ii) each divorcing, separating, or adjudicated parent is entitled to and responsible for frequent, meaningful, and continuing access with his child consistent with the child's best interests; and
 - (iii) it is in the best interests of the child to have both parents actively involved in parenting the child.
- (c) An order issued by a court pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act shall be considered evidence of real harm or substantiated potential harm to the child.

(3) For purposes of Sections **30-3-32** through **30-3-37**:

(a) "Child" means the child or children of divorcing, separating, or adjudicated parents.

(b) "Christmas school vacation" means the time period beginning on the evening the child gets out of school for the Christmas or winter school break until the evening before the child returns to school.

(c) "Extended parent-time" means a period of parent-time other than a weekend, holiday as provided in Subsections **30-3-35**(2)(f) and (2)(g), religious holidays as provided in Subsections **30-3-33**(3) and (17), and "Christmas school vacation."

(d) "Surrogate care" means care by any individual other than the parent of the child.

(e) "Uninterrupted time" means parent-time exercised by one parent without interruption at any time by the presence of the other parent.

(f) "Virtual parent-time" means parent-time facilitated by tools such as telephone, email, instant messaging, video conferencing, and other wired or wireless technologies over the Internet or other communication media to supplement in-person visits between a noncustodial parent and a child or between a child and the custodial parent when the child is staying with the noncustodial parent. Virtual parent-time is designed to supplement, not replace, in-person parent-time.

(4) If a parent relocates because of an act of domestic violence or family violence by the other parent, the court shall make specific findings and orders with regards to the application of Section **30-3-37**.

UCA § 30-3-33

In addition to the parent-time schedules provided in Sections **30-3-35** and **30-3-35.5**, the following advisory guidelines are suggested to govern all parent-time arrangements between parents.

(1) Parent-time schedules mutually agreed upon by both parents are preferable to a court-imposed solution.

(2) The parent-time schedule shall be utilized to maximize the continuity and stability of the child's life.

(3) Special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the parent-time schedule.

(4) The responsibility for the pick up, delivery, and return of the child shall be determined by the court when the parent-time order is entered, and may be changed at any time a subsequent modification is made to the parent-time order.

(5) If the noncustodial parent will be providing transportation, the custodial parent shall have the child ready for parent-time at the time the child is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time the child is returned.

(6) If the custodial parent will be transporting the child, the noncustodial parent shall be at the appointed place at the time the noncustodial parent is to receive the child, and have the child ready to be picked up at the appointed time and place, or have made reasonable alternate arrangements for the custodial parent to pick up the child.

(7) Regular school hours may not be interrupted for a school-age child for the exercise of parent-time by either parent.

(8) The court may make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents and may increase the parent-time allowed to the noncustodial parent but shall not diminish the standardized parent-time provided in Sections **30-3-35** and **30-3-35.5**.

(9) The court may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time.

(10) Neither parent-time nor child support is to be withheld due to either parent's failure to comply with a court-ordered parent-time schedule.

(11) The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being

honored, and the noncustodial parent shall be entitled to attend and participate fully.

(12) The noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency.

(13) Each parent shall provide the other with his current address and telephone number, email address, and other virtual parent-time access information within 24 hours of any change.

(14) Each parent shall permit and encourage, during reasonable hours, reasonable and uncensored communications with the child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(a) the best interests of the child;

(b) each parent's ability to handle any additional expenses for virtual parent-time; and

(c) any other factors the court considers material.

(15) Parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able to transport the children, to provide the child care. Child care arrangements existing during the marriage are preferred as are child care arrangements with nominal or no charge.

(16) Each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise.

(17) Each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

(18) If the child is on a different parent-time schedule than a sibling, based on Sections **30-3-35** and **30-3-35.5**, the parents should consider if an upward deviation for parent-time with all the minor children so that parent-time is uniform between school aged and nonschool aged children, is appropriate.

UCA § 30-3-34

(1) If the parties are unable to agree on a parent-time schedule, the court may establish a parent-time schedule consistent with the best interests of the child.

(2) The advisory guidelines as provided in Section **30-3-33** and the parent-time schedule as provided in Sections **30-3-35** and **30-3-35.5** shall be presumed to be in the best interests of the child. The parent-time schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled unless a parent can establish otherwise by a preponderance of the evidence that more or less parent-time should be awarded based upon any of the following criteria:

(a) parent-time would endanger the child's physical health or significantly impair the child's emotional development;

(b) the distance between the residency of the child and the noncustodial parent;

(c) a substantiated or unfounded allegation of child abuse has been made;

(d) the lack of demonstrated parenting skills without safeguards to ensure the child's well-being during parent-time;

(e) the financial inability of the noncustodial parent to provide adequate food and shelter for the child during periods of parent-time;

(f) the preference of the child if the court determines the child to be of sufficient maturity;

(g) the incarceration of the noncustodial parent in a county jail, secure youth corrections facility, or an adult corrections facility;

(h) shared interests between the child and the noncustodial parent;

- (i) the involvement or lack of involvement of the noncustodial parent in the school, community, religious, or other related activities of the child;
 - (j) the availability of the noncustodial parent to care for the child when the custodial parent is unavailable to do so because of work or other circumstances;
 - (k) a substantial and chronic pattern of missing, canceling, or denying regularly scheduled parent-time;
 - (l) the minimal duration of and lack of significant bonding in the parents' relationship prior to the conception of the child;
 - (m) the parent-time schedule of siblings;
 - (n) the lack of reasonable alternatives to the needs of a nursing child; and
 - (o) any other criteria the court determines relevant to the best interests of the child.
- (3) The court shall enter the reasons underlying its order for parent-time that:
- (a) incorporates a parent-time schedule provided in Section **30-3-35** or **30-3-35.5**; or
 - (b) provides more or less parent-time than a parent-time schedule provided in Section **30-3-35** or **30-3-35.5**.
- (4) Once the parent-time schedule has been established, the parties may not alter the schedule except by mutual consent of the parties or a court order.

UCA § 30-3-35 ‘Minimum Schedule for Parent-Time for Childrens 5 to 18 Years of Age.’

Caselaw

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Hudema v. Carpenter, 290, 989 P.2d 491, 497-98 (Utah App. 1999).....

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Childs v. Childs, 967 P.2d 942, 945 (Ut. Ct. app. 1998) cert denied, 982 P.2d 88 (Utah App. 1994).....

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Case Law

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. See *Young v. Young*, 2009 UT App 3, ¶ 4, 201 P.3d 301.

Doyle v. Doyle, 2009 UT App 306, 313

¶ 22 Huish also argues that the trial court failed to address certain factors set forth in rule 4-903 of the Code of Judicial Administration, including the duration of the initial physical custody arrangement and child-parent bonding, in determining that a change in physical custody was warranted. In its Finding 11, the trial court stated: "The Court has considered several factors, including the factors set forth in [rule 4-903], in determining custody. Where no findings are made with respect to a particular factor, the Court finds that the factor is not significant or weighty in this case."

"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. Given the nearly equal parenting time enjoyed by the parties over the child's life and expert testimony establishing that the parties were equally involved in raising the child, we agree with the trial court that, in this case, the factors that Huish claims are of pivotal significance — the duration of the original physical custody decree and child-parent bonding — are not dispositive.

Huish v. Munro, 2008 UT App 283, 191 P.3d 1242

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.

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See Utah Code Ann. § 30-3-10.4

(1998);[fn6] 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). However, when a custody order is entered pursuant to a stipulated agreement, rather than a prior adjudication of the child's best interests, "the res judicata policy underlying the changed-circumstances rule is at a particularly low ebb." Elmer, 776 P.2d at 603. See id. at 605.

¶ 23 In this case, the trial court ruled there was a substantial and material change of circumstances concerning Jackson, Hudema, and Carpenter. The court based this determination on various factual findings, including that, subsequent to the original custody order, both parents had remarried and moved to new communities separated by a distance that prohibited Jackson's daily contact with both parents, and Jackson had begun school, making extended periods of visitation unworkable during most of the year. In light of these facts, we conclude the court did not abuse its discretion

in finding changed circumstances.

Hudema v. Carpenter, 1999 UT App 290, 989 P.2d 491, 497-98
We will uphold a trial court's decision to modify a divorce decree if it is within the range of sound discretion.[fn1] See *Crouse v. Crouse*, 817 P.2d 836, 838 (Utah App. 1991). The trial court determined that the children should be removed from the custody of their mother and placed in their father's custody if — but only if — Alicia were to move beyond the boundaries of Summit County, Utah.[fn2] The focus of the trial court's analysis and decision, then, was not on the parties' respective parenting skills.[fn3] Instead, the court's order can only be taken to mean that the trial court believed that the children's domicile in Summit County is so essential to their well-being that removal from that community would be more detrimental to them than separating them from their custodial parent — the person who has been primarily responsible for their day-to-day care for the entirety of their lives. While such a conclusion is not inherently impossible, a factor of considerable importance in determining the best interest of children is the maintenance of continuity in their lives, and removing children from their existing custodial placement

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undercuts that policy.[fn4] See, e.g., *Hirsch v. Hirsch*, 725 P.2d 1320, 1323 (Utah 1986) (Zimmerman, J., concurring); *Hutchison v. Hutchison*, 649 P.2d 38, 41 (Utah 1982); *Nielsen v. Nielsen*, 620 P.2d 511, 512 (Utah 1980); *In re Cooper*, 17 Utah 2d 296, 298-99, 410 P.2d 475, 476 (1966); *In re Application of Conde*, 10 Utah 2d 25, 29, 347 P.2d 859, 861 (1959); *Rosendahl v. Rosendahl*, 876 P.2d 870, 873 (Utah App.), cert. denied, 883 P.2d 1359 (Utah 1994); *Cummings v. Cummings*, 821 P.2d 472, 478-79 (Utah App. 1991); *Moon v. Moon*, 790 P.2d 52, 54 (Utah App. 1990). Therefore, unless there were compelling evidence that residing in Summit County, Utah, would be better for the children than allowing them to continue to reside with their life-long primary caregiver, we would conclude that the trial court exceeded the exercise of sound discretion in entering the order before us.

Larson v. Larson, 888 P.2d 719, 722 (Utah App. 1994)

In Larson, this court reversed a trial court's custody modification, concluding that allowing children to remain in their life-long community and maintain a relationship with their extended family is insufficient justification for removing children from the custody of their primary caregiver. See *id.* at 722, 725-26. Notably, in Larson there was no evidence of interference with visitation; in fact, the custodial parent had "been extremely flexible in coordinating [the noncustodial parent's] visitation." *Id.* at 725. This case is therefore distinguishable from Larson because the trial court here, as in Sigg, "arrange[d] custody in a way that fosters a relationship with both parents." See Sigg, 905 P.2d at 917. *HANSON v. HANSON*, 2009 UT App 365, 368

Stevens v. Collard 863 P.2d 534 (Ut. Ct. App.; 1992)

11) "The former husband's default permitted the trial court to accept the former wife's allegations as true, for purposes of establishing the threshold issue of a change of circumstances, and (2) the former husband had become unemployed and that he had been, by circumstances to move with the child into his Parents' home, were sufficient to warrant modification, absent any showing of the effect those changes had on the former husband's parenting ability."

"The case was remanded to the Court of Appeals with instructions to amend its 'Order' to the trial court. The Court of Appeals should instruct the trial court to take evidence on all four factors: unemployment, Plaintiff's move to his Parents' home, child visitation, and Plaintiff's changed physical circumstances, so as to establish whether Plaintiff's changed circumstances are legally sufficient to reconsider the custody issue. As, so modified, the Court of Appeals ruling stands."

Stevens V. Collard 837 P.2d 593 Utah Court of Appeals 1992

[8] "A trial court's decision concerning modification of a divorce decree will not be disturbed absent an abuse of discretion." Crouse, 817 P.2d 838. When, as have, the party seeking modification has failed to establish any change that would justify re-examination of the presently existing custody arrangement, we hold that modification of that arrangement, constitutes an abuse of discretion."

Conclusion

“However, even under the relaxed evidentiary standards are legally insufficient to justify re-opening the question of custody.”

Becker v. Becker 694 P.2d 608 Ut. Ct. App. Dec. 10, 1984, (No. 19798))

“Accordingly, it is not merely to allege a change which, although otherwise, does not exist essentially affect the custodial relationship.” *Id.*, 649 P.2d at 54

“In other words, if the circumstances that have changed do not appear on their face to be the kind of circumstances on which the earlier custody decision was based, there is no valid reason to reconsider that decision. The rationale is that custody placements, once made, should be as stable as possible unless the factual basis for them has completely changed.”

“We do not find that’s an abuse of discretion as the evidence does not indicate that the custody circumstances of the child or the parenting capabilities of the Respondent will be affected by the move.”

“Therefore, in the absence of a material change in circumstances, it is not sufficient merely to allege that a child might be better attended in the petitioning parents’ custody.”

Stevens v. Collard 837 P.2d 593 (Ut. Ct. App. 1992).

[4] “A party must show, in addition, to the existence and extent of the change, that the change is significant in relation to the modification sought. The asserted change must, therefore, have some maternal relationship to and substantial effect on parenting ability or the functioning of the presently existing custodial relationship...Accordingly, it is not merely to allege a change which, although, otherwise substantial, does not affect the custodial relationship.”

“This case was remanded from the Utah Supreme Court to the Court of appeals and asserted the Court of appeals decision.”

“Disproved *Watkins v. Nelson* 163 N.J. 235, 748 A.2d 558 (779 P.2d 1195, 1197 (Alaska 1989). Requiring unfitness or that parental custody would be clearly detrimental to the child.

Hutchinson v. Hutchinson, 649 P.2d 38, 41 (Ut. Ct. App. 1982)

“Requiring that unfitness or that no strong mutual bond exists, that the parent has not demonstrated a willingness to sacrifice his or her own interest and welfare for the child,’ and that the parent lacks the sympathy for and understanding of the child that is characteristic of parents’ generally.”

Dunkin v. Hinich, 44 Z.N.W.2d 148, 153 (Min. 1989)

“(Noting presumption exists, unless parent is unfit, or “grave and weighty” reasons exist that custody otherwise would not be in the best welfare and interest of the child.)”

Stanley v. Deborah ., 124 N.H. 138, 467 A.2d 249, 251 (1983)

“Recognizing parental presumption, but making ultimate determination depend on child’s best interests.”

Charles v. Stehlik, 744 A.3d 1255, 1257 (Pa. 2000)

(Same)

In Re: Kasmicki, 468 P.2d 818, 823 (Wyo. 1970)

“Recognizing unfitness of best interest of child, but number 252 in proceedings including children of tender years it is only in very exceptional circumstances that a Mother should be deprived of the care and custody of her children.”

“One overwhelming majority of states do not apply simply the child’s best interests standard, or the ubiquitous, amorphous standard, urged by the dissenters, if fear “that is taken to its logical conclusion,” application of {that} standard ‘could lead to a redistribution of the entire minor population among the worthier members of the community.”

Hudema v. Carpenter, 1991 Ut. Ct. App. 290, ¶1, 989 P.2d 491

“Mother, who had sole physical custody of child with shared joint legal with father, moved to increase child support after father moved to another city to accept new job at higher salary. Father moved to modify custody based on changed circumstances. The Second District Court awarded sole physical custody father with structured visitation.”

“Trial Court did not err in ruling that there was a sufficient change of circumstances to warrant a modification of custody. (3)The trial court abused its discretion in determining that religious compatibility and comparison of moral character favored awarding custody to Father. (4)It was the court’s discretion to rule that child’s interests were best served by awarding custody to

father because child's strong bond with his father and the increased kinship ties near father's home."

Davis v. Davis 749 P.2d 647, 648 (Ut. Ct. App. 1988)

¶1 "At the time of divorce the parties had been married nearly 13 years and had one child, JZ.

¶2 "At the hearing, the parties agreed that James would have custody of JZ. So the child could remain in the family home."

"The Supreme Court stated that in a custody dispute between fit parents, "considerable weight" should be given to the identity of the primary caretaker. *Id* at 648.

Pusey v. Pusey, 728 P.2d 117, 120 (Ut. Ct. App. 1986)

"Identity of parent with whom child has spent most time pending divorce is factor to consider in custody decision. Here, because the trial court specifically found that neither parent has been Drew's primary caretaker during the pendency of the divorce, and because the balance of factors did not otherwise tip in favor of the custodial status quo, the holdings in *Davis* and *Praysek* are inapplicable."

Childs v. Childs 967 P.2d 942, 945 (Ut. Ct. app. 1998) *cert denied*, 982 P.2d 88 (Ut. Ct. App 1994)

¶1 "(4) Award of \$1000 to mother for attorney's fees was not unreasonable."

Childs v. Childs 967 P.2d 967 P.2d 942 (Ut. Ct. App. 1998)

¶1 "Brad and Heather were married and had three children. ¶3A custody evaluation recommended joint legal custody, but suggested Brad not be awarded primary physical custody, 944, of all three children. ¶Brad's desire for custody has been continual and deep in that he adjusted his work schedule so he could be available for the children. Moreover, Brad has maintained regular employment and is better able to provide for the children and, with assistance from his extended family, can provide quality personal; and surrogate care for his children."

Huish v. Monroe 191 P.3d 1242 (Ut. Ct. App., 2008)

Opinion

"Huish assigns fifteen errors, which for convenience we restate as four: (1) that her due process rights were violated, (2) that *res judicata* and issue preclusion bar the parties' from relitigating custody, (3) that the trial court erred in allowing a witness to testify about the best interests' of the child without first

explicitly determining whether there existed a substantial change in circumstances warranting a material change in custody; and (4) that the trial court's 'Findings of Fact' are unsupported by the evidence and its legal conclusions are erroneous."

"(5) Trial court could hear evidence of changed circumstances and the child's best interests simultaneously provided that it kept its analysis appropriately bifurcated; and (6) Factors of duration of original physical custody decree and child-parent bonding were not dispositive."

Mathews v. Eldridge, 424 U.S. 319, 333, 96

"Huish's case in chief (citation omitted). [2][2]¶1" The fundamental requirement of due process is the opportunity to be heard 'at meaningful time and in a meaningful manner.'"

U.S. S. Ct. 893, 47 L. Ed.2d 18 (1976)

"In the context of parental right, '[Due process requires that as parent be given a meaningful opportunity to be heard by submitting testimony herself and any witnesses.]' In re: S.H., 2007 (Ut. Ct. App. 8, ¶ 21, 155 P.3d 109 (alteration in original))(citation omitted).

Paryzek v. Prayzak 776 P.2d 78, *82

"[In considering competing claims between to custody between fit parents under the best interests of the child 'standard,' considerable weight should be given to which parent has been the child's "primary caretaker" prior to divorce. Davis 749 P.2d 648 (emphasis added) [4][5]. ¶4, Sentence 4. Therefore, insofar as the trial court in this case failed to factor in Martin's need for stability and his two and one-half years' in Vladimir's custody prior to trial in its determination of Martin's best interests, the court erred.]"*83 Further in reviewing the trial court's actions, "[W]e will not substitute our judgment for that of the trial court" if substantial evidence supports the factual findings and there was a proper application of the legal standards. *Bake v. Bake* 772 P.2d 461 (Ut. Ct. App. 1989).

Kramer v. Kramer 738 P.2d 624

"Initial custody was based on the best interests of the children, Utah Code anno. § 30-3-10(1984). Custody changes must also be made on the same basis, § 30-3-5.

Hogge v. Hogge 649 P.2d 51, 55 (*Construing* § 30-3-5)

“...but a legal Judge in a change of custody proceeding must necessarily take into account, in determining the best interests’ of the child that proposition that a child should not be uprooted from an established well-functioning relationship, except for strong and good reasons.”

738 P.2d 624, *628

(last paragraph)

“Focusing only on the alleged change of circumstances of one or the other of the parents may result in great harm to the child. Second and more important, the requirement is intended to ensure sufficient stability in children’s lives to enable them to develop relationships and a sense of familiarity with their surroundings that enhance their sense of security and self-identity, enabling them to find appropriate role models after which to pattern their lives and to develop the ability to give and receive love, a necessary requirement for achieving potential as human beings.”

738 P.2d 624, *627

FN3.”Of course, even if the decree was essentially conditional and a change in the non-custodial parents’ circumstances does justify re-opening of the custody question, events during the intervening custody period may have solidified the child’s relationship with the custodial parent, that the second prong of the Hogge test cannot be satisfied. “It is entirely proper, in applying the second prong of Hogge to consider the events and developments which have occurred in the intervening period of time and “to determine de novo which custody arrangement will serve the welfare or best interests of the child.” Hogge v. Hogge 649 P.2d at 54. This includes, of course, “the advantage of stability in custody arrangements that will always weigh against changes in the party awarded custody.” *Id.* See Moody v. Moody 715 P.2d at 510 N.1.

Fontenot v. Fontenot 714 P.2d 1131

“Although both children enjoyed positive a relationship with each parent, the bond between the children and their Mother was stronger. The court appointed expert who evaluated the child custody verified that although both parties’ were capable and loving parents, the plaintiff had functioned in the role of primary parent and security figure to the children. Warm emotional ties between children and Mother had bonded and were very important to the childrens physical and emotional well-being.” 714 P.2d 1131, *1133.

FN3 *Shiugi v. Shiugi*, *Supra*.

Although, the conduct of both parents has been less than exemplary, there is substantial evidence to support the trial court's determination that the interests of the children are best served by maintaining their strong bond with the Plaintiff. By awarding custody to the Mother, both parents are able to maintain and strengthen their relationships with the children. An award of custody to the Defendant would result in the disruption of the present close and special relationship between the Mother and the children. See Hafen 'The Constitutional Status of Marriage, Kinship, and Sexual Privacy-Balancing the Individual and Social Interests 81, Mich. Rev. 463.

Hogge v. Hogge 649 P.2d at 53-54

FN1 "The "Change of Circumstances" threshold is high to discourage frequent petition for modification of custody decrees. The test was designed to "Protect the custodial parent from harassment by repeated litigation and [to] protect the child from 'ping-pong' custody awards." *Id.* "

"The rational is that custody placements, once made, should be as stable as possible unless the factual basis for them has completely changed."

"The trial court was also particularly mindful of the unique role usually played by the Mother in caring for her children in tender years." *Boels v. Boels* (Ut. Ct. App. 1191 (1983).

"Principles of *res judicata* applies to custody modification proceedings."

Connell v. Connell---P.3d---, 2010 WL 2105190 (Ut. Ct. App., 2010)

"The proper interpretation of a statute is a question of law."

"The Court of Appeals reviews a trial courts' decision regarding attorney fees in a divorce proceeding for an abuse of discretion."

"A trial courts failure to provide adequate factual findings as to husbands' needs, earning capacity, and ability to pay alimony, in support of alimony award, during divorce proceeding, the trial court found that husband had a monthly income of \$5996, a monthly rent of \$752, monthly living expenses for himself and second wife of \$1500, child care costs of \$380 per month, the court referenced husband's declaration, and it attempted to estimate husbands' net monthly income to the penny after subtracting all expenses. West's UCA § 30-3-5."

"A trial court's failure to provide adequate findings regarding the statutory factors for determining alimony is reversible error when the facts that logically support the findings are not clear from the record. West's 30-3-35"

UCA § 30-3-5 (8)(g)(iii)(A)

"Remand for reconsideration of attorney's fees award to wife was warranted in divorce proceeding: if the trial court in its discretion ordered payment of

reasonable attorney's fees pursuant to statutory subsection governing the establishment of orders, its order should be supported by findings related to wives' need and husband's ability to pay, and the reasonableness of the fees, whereas, if the trial court in its discretion ordered payment of reasonable attorney fees pursuant to statutory subsection governing enforcement orders, its order should be supported by a finding that wife substantially prevailed on the motions for which she sought attorney fees. West's UCA § 30-3-3.

"A court may impute income to an underemployed spouse for purposes of calculating alimony."

"Failure of the trial court to make findings on all material issues is reversible error unless the facts in the record are clear, uncontroverted, and capable of supporting only a finding in favor of the judgment."

Remand was required to allow the trial court to rule on wives' claim for retroactive child support for the period October 2001, the date the parties' permanently separated to April 2002. The date husband's support obligations began pursuant to the court's order, where the wife raised the issue in her complaint for divorce, the court ordered husband's child support obligation to begin April 2002 and stated that wife "reserves the right to argue retroactivity of support," and wife adduced evidence of the trial regarding husband's failure to pay any support during that time period."

*2[5] ¶7"Third, wife's contends that the trial court erred by denying retroactive child support and nanny care costs. We review a trial courts' child support order for an abuse of discretion. See *Hill v. Hill* 841 P2d 722, 724 (Ut Ct. App. 1992).

"If a trial court considers these factors in setting an award of alimony (child support, we will not disturb its award absent a showing that such a serious equity has resulted as to manifest a clear abuse of discretion." *Bakanowski*, 2003 Ut. Ct. App. 357 ¶10, 80 P.3d 153 (Internal quotation marks omitted).

"Wife contends that the trial court failed to make adequate factual findings regarding the third mandatory factor set forth in UCA § 30-3-5, Husband's ability to provide support. See UCA § 30-3-5(8)(a)(iii).

"In addition, an adequate analysis of the factor regarding ability to pay "must do more than simply state the payor spouses income." *Young v. Young* 2009 Ut Ct. App. 3 ¶19, 201 P.3d 301 (Citation omitted) (Cert. denied 211 P.3d 986 (Ut. Ct. App. 2009). Wife contends that the trial court erred by failing to enforce its own prior ruling that would have barred husband from claiming the second wife was unable to work and contribute to his living expenses.

"Remand was required to allow the trial court to reconsider wife's request for reimbursement of one-half of the child care costs she incurred for years before all children were in school full-time, proceeding when the trial court relied

primarily on the ages and corresponding needs of the children at the time the court issued its decree, when all the children were in school full-time, but wife's request covered the years of 2003-06, and, in 2003, the parties' youngest children were two and four year's old West's UCA § 78B-12-214(1). While the Court of Appeals affords the trial court broad discretion in fashioning support awards, its findings of fact must show that the court's Judgment of decree follows logically from, and is supported by the evidence."

Utah Court of Appeals § 78B-12-102(7) (Supp.2009)

Conclusion

¶48 "However, the trial court erred in applying a unitary analysis to attorney fees incurred in establishing court orders and attorney fees incurred in enforcing court orders."

Hill v. Hill 841 P.2d 722 (Ut. Ct. App. 1992)

"Child support order will not be disturbed unless there has been an abuse of discretion; however, failure of trial court to consider and make findings on statutorily mandated factors is itself an abuse of discretion. Failure to consider statutory guidelines when ruling on father's motion for downward modification of child support obligation was reversible error. UCA 1953, § 78-45-7, 19. We therefore, reverse the modification of child support and remand for calculation pursuant to the guidelines or for findings that justify deviation from them. UCA § 78-45-7

Doyle v. Doyle 221 P.2d 888 (Ut. Ct. App. May 2010)

"Determination of a trial court in a proceeding to modify child custody that there has or has not been substantial change in circumstances is presumed valid, and an appellate court reviews the ruling under an abuse of discretion standard." West's UCA § 30-3-10.4.

"An appellate court reviews a trial court's legal determinations regarding a parent's entitlement to child support modification for correctness. West's UCA § 78B-12-10(8)(1), and 78B-12-301.

"An argument is inadequately briefed, and thus an appellate court will decline to consider it, if it wholly lacks legal analysis and authority to support it."

"Law of the case does not go so far to prohibit a judge from catching a mistake and fixing it."