

1989

Marilyn J. Durfee v. Frank W. Durfee : Brief of Respondent

Utah Court of Appeals

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E. H. Fankhauser; Attorney for Respondent.

J. Franklin Allred; Attorney for Appellant.

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BRIEF

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DOCKET NO. 89-221 CA

IN THE UTAH COURT OF APPEALS

MARILYN J. DURFEE (WOLF)	*	BRIEF OF RESPONDENT
Plaintiff/Respondent	*	
vs.	*	CASE NO. 890221 - CA
FRANK W. DURFEE,	*	PRIORITY NO. 14
Defendant/Appellant.	*	

BRIEF OF RESPONDENT

Appeal from a final Judgment and Order entered in the Third
Judicial District Court, Tooele County, Honorable Pat Brian

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Plaintiff/Respondent	*	BRIEF OF RESPONDENT
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STATEMENT OF ISSUES

1. Did the court appropriately find that there had been a material change of circumstances not contemplated in the original decree of divorce?
2. Did the court appropriately apply the support guidelines then in effect at the time of trial from which this appeal is taken?
3. Was the court entitled to take judicial notice of the impact of a child's increased age on the amount of support awarded?

STATEMENT OF FACTS

The parties were divorced in 1978. (T. 62) The plaintiff/respondent was awarded custody of the only two children of that marriage, Craig and Chris, both boys who were respectively two and six years old at that time. (T. 62-63) From that time to the present both children remained in the plaintiffs custody. (T. 63) The older boy, Craig has spent the school year with his maternal Grandparents and spends summers with his mother, the plaintiff/respondent. (T. 42, 64-65) In the ensuing years following the divorce in 1978, expenses for support of the two boys have increased. Their respective ages are now 12 and 16. Increased expenses of support include clothing, food, school activities and medical expenses. (T. 67) The plaintiff/respondent has had to pay over \$300 for orthodontic care as a down payment, and an additional \$74 per month. (T. 68-69) The defendant/appellant was required under the terms of the original decree of divorce to pay \$150 per month for the support of each child. That sum, according to uncontradicted testimony given by the plaintiff/respondent, is turned over in its entirety to Craig's grandmother by mail, with whom he spends the school year. (T. 72) The plaintiff/respondent further gave uncontradicted and uncontroverted testimony that the cost of supporting

Chris was at the time of trial \$500 per month, and the cost of supporting Craig was \$600 per month. In responding to evidence elicited by counsel for the appellant, which attempted to allocate a fixed dollar amount for raising the subject children (T. 75-84) , the court stated:

The court can take judicial notice that once a kid reaches his teenage years, he is more expensive to rear than when he is a toddler. Anybody that's had teenage kids knows that. This court has had six of them. It will take judicial notice of that fact.

(T. 84) Importantly, counsel for appellant did not object to the court's taking judicial notice of increased expense in rearing teenagers versus toddlers.

The appellant/respondent attempted to skew the calculations solicited by the court based upon the then valid support guidelines by using a figure of four children when in fact all he had were both of the children in question and a third child by his second marriage. (T. 107) The 'fourth' child was a child voluntarily raised by the defendant/appellant.

With reference to its including a totality of criteria in its findings and conclusions, the court stated:

[T]he court, in its analysis today, has focused on bottom-line figures, understanding that if the cost of living has gone up in the defendant's household, and thus his disposable income may be the same or less, that cost of living has gone up in a corresponding manner in the plaintiff's household, and the disposable income would probably be subject to the same criteria.

(T. 108) The court then went on to indicate that the defendant had experienced a material, substantial change of circumstances since the 1978 divorce decree was entered. The court further found that the plaintiff/respondent was at the time of modification rearing two boys who were ten years older than at the time of the original decree, and that the defendant was making approximately \$29,000 in 1978 and made about \$45,000 at the time of modification. That was found to be an average increase of about \$1,600 per year. Furthermore, the court had no reason to believe that it would not continue to so rise in the future. The court then concluded that a modification was justified, and that the amount of increase to be paid by the defendant would be calculated by the guidelines.

SUMMARY OF ARGUMENT

Proceedings calling for the modification of divorce decrees granting child support, pursuant to the continuing jurisdiction of Utah courts in such matters, are proceedings in equity. As such, the trial court has liberal discretion and its findings and conclusions will be disturbed only upon a clear showing of abuse of discretion on appeal. In the present appeal, the appellant has failed to make such a showing.

The court below need only find one material change to justify the modification of a support award, but in fact found two. First, the court found that the annual income of the defendant rose at an average rate of \$1,600 per year, while the plaintiff/respondent was unemployed. (T. 108) Second, the court found that, as a matter of judicial notice, both of the children of the marriage had grown from toddlers to teenagers, and with that change in age came an increase in costs associated with support. If on appeal, either of these is found to be a material change of circumstances,

then the failure of the other to be so termed is not fatal to plaintiff/respondent's cause, since such is not prejudicial error; there was under that circumstance the necessary material change of circumstances.

Once there has been a material change found, the court continues to exercise a broad and liberal discretion in determining what level of support is appropriate. The court below elected to set the support amount for Chris and Craig at that level established by the uniform guidelines.

Having found a material change of circumstances not contemplated in the Decree at the time of the original decree, the court properly modified the amount of child support paid by the defendant/appellant. Such is consistent with the laws of this state, and there is, in this course of actions, no abuse of the court's equitable discretion.

POINT I

THE COURT APPROPRIATELY FOUND THAT THERE HAD BEEN A MATERIAL CHANGE OF CIRCUMSTANCES NOT CONTEMPLATED IN THE ORIGINAL DECREE OF DIVORCE

The appellant did not set forth the proper standard of review in matters of equity in its brief. The appropriate standard was set forth in Despain v. Despain, 610 P.2d 1303 (Utah 1980). The Utah Supreme Court stated:

"Under Utah law, a divorce court sits as a court in equity so far as child custody, support payments, and the like are concerned. [citations omitted] It likewise retains continuing jurisdiction over the parties, and power to make equitable redistribution or other modification of the original decree as equity might dictate. In both the formulation of the original decree and any modifications thereof, the trial court is vested

with broad discretionary powers, which may be disturbed by an appellate court only in the presence of clear abuse thereof.

Despain at 1305-1306.

In order to exercise its discretionary powers of equity in modifying support awarded in an original decree of divorce, the trial court must find a material change of circumstance. In one of only two cases, the second of which (Hunter) seems of dubious value for the purposes of these proceedings, appellant correctly cites the rule of law governing the modification of a decree of divorce:

On a petition for a modification of a divorce decree, the threshold requirement for relief is a showing of a material change of circumstances occurring since the entry of the decree and not contemplated in the decree itself.

Stettler v. Stettler, 713 P.2d 699 (Utah 1985) at 701, see also appellant's brief at 14. The appellant, in the same spot in his brief, admits to a 2.7% increase in the defendant's annual gross income, and states that "such a modest increase in salary was not contemplated by the parties at the time of the entry of the decree of divorce." (id.) In making such a statement, appellant misapplies the rule cited above from Stettler. The material change required is not one that "was contemplated by the *parties*", but rather is one not contemplated *in the decree itself*. Appellant has made no reference to any provision of the decree contemplating whatsoever an increase in appellant's salary or annual gross income. The appellant therefore has failed to demonstrate that this 'modest' increase in gross income was contemplated in the decree. Because the decree itself made no provisions for altering the amount of child support awarded based upon

changes in the gross income of the appellant, such a change in income was not contemplated in the decree itself. (See Appendix "A", Decree of Divorce) Therefore, if the change is found to be material under the broad discretion allocated to the trial court, and if that material change was not contemplated in the decree itself, such a finding satisfies the threshold requirement stated above. That is the case in this appeal. The court made a finding that the change in income was material, and such was founded upon evidence properly received. In light of no clear abuse of discretion, the findings of the court should be upheld.

POINT II

THE COURT APPROPRIATELY APPLIED THE SUPPORT GUIDELINES IN EFFECT AT THE TIME OF TRIAL.

The support guidelines in force at the time of the modification represent a conscious effort at scientific fact finding as exercised by the bar and the judiciary, assisted by sociological data. Judge Judith Billings, chair of the Utah Child Support Task Force, referring to the guidelines stated:

[The guidelines] represent a major step forward in providing predictable and uniform child support awards statewide.

(As quoted in "News -- Administrative Office of the Courts, p. 1) The amount and quality of scientific evidence incorporated into the development of the guidelines is significant. Prompted by concerns voiced by the Board of District Judges, the Task Force was organized, and was composed of judges, lawyers, legislators, economists, professors and representatives of public interest groups. (See May 1988 guidelines, p. 1)

During a course of regular hearings, the Task Force heard testimony from many parents during July 1987. The Task Force reviewed guidelines in place in many other states. The report of the task force states that "recent studies indicate that child support awards are critically deficient when measured against the economic costs of child rearing." (*id.*) A 1985 study estimated that \$27.5 billion in support would be due and owing in 1985, while a Census Bureau study indicated that only 70% of support awards is actually collected. The same study reported that the mean court-ordered support obligation in 1985 was \$199 per month for 1.8 children, while the poverty standard was \$273 per month for the same 1.8 children. Another study indicated that an order for \$191 per month for a child of a middle income family is equivalent to 25% of the average expenditures on that child. All of this data pointed to the need for the adoption of uniform guidelines.

The Task Force proceeded in developing guidelines by referring to those employed in other states and by analyzing three models employed in formulating guidelines, the cost-sharing model, the income equalization method, and the income shares model. Of the states which have adopted guidelines within the last two years, over one half have followed the income shares model, which attempts to fix an award which reflects the same proportion of parental income following the divorce that they would have received had there been no divorce. This approach has been favored because it assumes in its formulas that both parents have an obligation to support the child or children in question, and it bases the actual support awarded on the relative income available to each parent. In order to continue with this balances approach, the figures represented in the schedules formulated assume that the custodial parent receives the tax

exemptions for the children, reducing proportionally the amount of support paid by the non-custodial spouse. Such guidelines reflect serious study of the subject and an analysis of the need of Utah children, while keeping in mind the relative capacity of the parents to pay support. The appellant argues that for the judge to adopt the recommendations of the guidelines is reversible error, but fails to establish a clear abuse of discretion.

In addressing existing orders, the Task Force made two principal comments. First, that simply because the current support paid under an existing decree of divorce is less than that called for in the guidelines, such does not, of itself, constitute a material change of circumstances. Second, that existing orders should be considered on a case by case basis, by reviewing the totality of present circumstances at the time of modification to avoid working an undue hardship on the parents. The reasons for the first comments are obvious. The Task Force did not wish to create a flood of modification hearings by the stroke of a pen, in adopting and promulgating the guidelines. The reasons for the second are equally obvious. The Task Force did not want members of the judiciary to apply the guidelines to existing orders unless such was warranted by present circumstances.

The totality of present circumstances referred to in the guidelines cannot refer to a totality of all circumstances, but only of those relevant to the amount of support, if any, to be awarded. The legislature of this state, which also contributed to the promulgation of the guidelines, has established by statute certain criteria, each of which was appropriately considered by the court. Because the court received and reviewed evidence

on these points, it considered the "totality" of the "present circumstances."

The factors established by the legislature are:

- 1) The standard of living and situation of the parties;
- 2) The relative wealth and income of the parties;
- 3) The ability of the obligor to earn;
- 4) The ability of the obligee to earn;
- 5) The need of the obligee;
- 6) The age of the parties;
- 7) The responsibility of the obligor for the support of others.

(Taken from Utah Code Ann. §78-45-7(2); See also Ebbert v. Ebbert, 744 P.2d 1019 (Utah App. 1987) at 1023) These factors were present before the court as admitted evidence, and the court made specific findings on all of them but that of the age of the parties, although that fact was apparent to the court, and there is no factor of age which could be used to defeat the court's findings in any case. The court, at T. 108 - 111 entered findings which are encapsulated herein:

- 1) The plaintiff/respondent was at the time of modification unemployed. [Although one might argue that she could become income-producing in the future, such is not only speculative, but moves beyond the realm of present circumstances.]
- 2) The defendant/appellant had experienced a material change of circumstances in that his annual income had increased from about \$29,000 in 1978 to about \$45,000 at the time of the modification, representing a rather constant trend of increase amounting to an average of \$1,600 per year.

3) The court found that the factors affecting disposable or discretionary income in the defendant/appellant's household were substantially the same as those affecting the plaintiff/respondent's household.

4) The court order the calculation of the amount under the guidelines to be based upon a three-child calculation.¹

Thus, the court considered specifically those relevant factors established by the legislature. Importantly, the court used a three child calculation, since it was not the legal responsibility of the defendant/appellant to support the alleged fourth child. Thus, the court below made a thorough investigation of the situation of the parties and the children, and modified the award amount based upon its review of the totality of present circumstances.

Contrary to what appellant argues, discretionary income, considered alone, is not proof of either hardship, or of a failure to consider this case on a "case by case" basis in view of the totality of present circumstances.

Appellant should note that the guidelines specify that the court modifying existing orders should consider the totality of present circumstances of the parties and not only of the obligor. The court did so, finding that their discretionary incomes were equally impacted by similar if not identical external factors.

The court below, having found a material change of circumstances by viewing the totality of present circumstances under the guidelines

¹ Appellant claims that there should be a fourth child employed in the calculation. However, this "child" is not a "child" as defined by appropriate statute and case law. The appellant voluntarily assumed responsibility for the support of this fourth "child". As stated in Wright v. Wright, 586 P.2d 443 (Utah 1978), even stepchildren cannot defeat a parents obligation to support a child pursuant to a decree of divorce, for "the undertaking to support stepchildren does not relieve the parent of his obligation to support his own natural children." (Wright at 445)

themselves and the dictates of case law and statute, concluded that the application of the guidelines to the present situation was appropriate. For the judge below to have moved against the scientific evidence marshalled in the formulation of the guidelines without some important reason not to have followed the guidelines would indeed have constituted a clear abuse of discretion. The fact that the court did follow the guidelines given the evidence presented is likewise indicative of the court's proper acknowledgement of the extensive data and fact-finding incorporated into the guidelines.

Appellant urges an abuse of discretion due to the failure of the court to base the award not upon the gross annual income of the appellant, but upon the discretionary income of the appellant. Appellant fails to cite even one case which applied discretionary income as the appropriate measure of comparison between the parents in determining support awards. Respondent has reviewed the available case law and has failed to find even one case, which appellant could cite to support his argument. The guidelines themselves specify the gross income is the appropriate measure for a determination of an award pursuant to the guidelines. In so doing, the judge acted in keeping with the mandates of the community as represented on the Task Force and at its hearings, in conformity with case law, and in conformity with the law of this state. Appellant's argument on this point is without merit.

POINT III

THE COURT WAS ENTITLED TO TAKE JUDICIAL NOTICE OF THE IMPACT OF A CHILD'S INCREASED AGE ON THE AMOUNT OF SUPPORT AWARDED, AND

EVEN IF SUCH WERE ERROR, IT IS HARMLESS DUE TO THE AVAILABILITY OF
SUPPORTIVE UNCONTESTED EVIDENCE.

In his brief, appellant misstates the appropriate test of law for judicial notice according to the facts of the present case. Appellant cites the legal test applicable to adjudicative facts, not the test for the judicial notice of legislative facts. The fundamental difference between the two is quite simple: adjudicative facts refer to specifics, such as the location of Salt Lake City, or of Sugarhouse, whereas Legislative facts refer to statistical sorts of conclusion, such as a legislature or task force might make following a series of hearings and studies on a particular subject, much like the effort which went into the formulation of the support guidelines. Before proceeding to a discussion of the propriety of judicially noticing a legislative fact, we should note that the court did not base its determination of a material change of circumstances exclusively on the judicially noticed fact of the increased expense of supporting the children due to their growth into teenagers, but based its finding of a material change upon the obvious and substantial increase in the defendant's income as well. Taken individually or separately, there was nevertheless a material change of circumstances not contemplated in the decree of divorce itself.

A Washington case Wyman v. Wallace, 615 P.2d 452 (Washington 1980), explains the nature and role of judicially noticed legislative facts:

trial courts and appellate courts can take notice of "legislative facts" -- social, economic and scientific facts that "simply supply premises in the process of legal reasoning." [citations omitted] Under this doctrine a court can take notice of scholarly works, scientific studies, and social

facts. [citations omitted] This legislative fact doctrine is expressly recognized by both the state [Washington] and federal rules of evidence. in establishing strict requirements for judicial notice of "adjudicative facts", the state and federal rules carefully ensure that their requirements will not also restrict notice of "legislative facts".

Wyman at 454. Evidence of such legislative facts was before the court in the form of the uniform guidelines, to which the court made frequent reference and of which the court displayed a working knowledge. The plaintiff/respondent now invites this court to look at the three children guidelines as contained in Appendix "B". For each an every one of the income levels displayed at the far left hand side of both columns of the page, there are three corresponding figures, each of which refers to the age of the child in question. The age groups are "0-6", "7-15" and "16-18". If the court will direct its attention to each income entry on this page, it will note that the amount of support for each income level increases as the child's age increases from category to category. For example, If the income amount were "3000", a child between the years of "0-6" would receive \$212, a child between the years of "7-15" would receive \$258 and a child between "16-18" would receive \$300. The consistency of this trend, together with the broad and substantial scientific, economic and sociological base of the studies and fact-finding that went into the formulation of the guidelines, supports the conclusion that the guidelines are "legislative facts", appropriate subjects for judicial notice free of the restraints of that called for when addressing adjudicative facts. The court did not abuse its discretion in judicially noticing such facts.

Assuming, arguendo, that the court should have treated the fact of increased support expense commensurate with increased age as an

"adjudicative fact", there is ample case law that supports the court's findings on this subject. In Wright v Wright, 586 P.2d 443 (Utah 1978), the Utah court stated:

We have previously held that such [material changes] have occurred when there is an increase in the father's ability to support his children, or where the children grow older and require additional support to properly maintain them.

Wright at 445, (citations omitted). In the case of Craven v. Craven, 229 P.2d 301 (Utah 1951) the court found the age of the child in question to be a significant factor:

After a careful examination of the petition and the evidence, we conclude that the modification of the lower court must be sustained. In her petition the respondent alleged (1) that the child of the parties had grown from infancy to the age of five years and four months with the result that he requires "much more" food, clothing and medical care; (2) that since the entry of the original decree in April, 1945, the price of food, clothing, housing accommodations and all other items which are necessary for the proper care and support of the child had "greatly increased".

Craven at 302, emphasis added. The court went on to confirm the allegations mentioned above.

In addition to case law which supports the proposition that the cost of supporting a child increases as the child's age increases, the plaintiff/respondent offered uncontroverted testimony that such was the actual case with reference to the subject children. As was mentioned in the statement of facts, the costs of providing food, clothing, activities and

medical care to Chris and Craig have increased during the past ten years. When asked if the boys ate more than they did as toddlers, the plaintiff/respondent replied "definitely". (T. 67)

In arguing against the fact that, pursuant to the rules of evidence governing judicial notice of adjudicative facts, the determination that the expense of supporting children increases as they age is unreasonable, respondent asserts that perhaps appellant has never dined regularly with a teenager or perhaps never was one. As the court correctly found, teenagers simply are more expensive to raise.

The court appropriately found this to be a proper subject of judicial notice, as a "legislative fact", or in the alternative, as a "adjudicative fact", and in any case, there was independent, uncontroverted evidence supporting the finding independent of considerations of judicial notice.

COMMENTARY ON APPELLANT'S BRIEF

Appellant raises points in his brief, irrelevant to the issues herein raised and not supported by the evidence admitted below, to which respondent objects as being offensive. At page 15 of his brief, appellant states:

It may be that greater funds are generally committed to older children, but it may also be that those funds do not fall within the realm of "reasonable and necessary", but fall within the realm of discretionary, or helpful, and reflect a refusal of the parent to require and encourage the child to provide for itself and be a productive part of the family unit. In addition, it is only the current popular lax attitude of parents that does not rigorously demand a contribution both in

services and economics to the maintenance of a
household and a living environment.

The custody of the children or the fitness of the plaintiff as their custodial parent and mother was not at issue. There are no facts supporting such accusations. Appellant did not assert at trial that respondent did not adequately care for or instruct the children in family rules, or did not teach the children to be "productive" members of the family unit. Such moralization has no proper place in these proceedings.

The appellant failed, and has failed to make a material showing of "undue hardship", and therefore his assertion that the application of the guidelines was reversible error is unfounded and unsubstantiated by the record or by appellant's brief. Appellant has the burden of marshalling all of the facts to support his appeal, and has failed to do so.

In addition to bearing the burden of marshalling facts, the appellant must bring forth applicable law to establish a standard of both review by the appellate court and the standards by which the trial court was to proceed below. Appellant has cited no standard of review and cited only the Stettler case in establishing the rule that modification be granted upon a showing of a material change of circumstances not contemplated in the decree itself. The so-called "rule of the Hunter case" is not only an invention, but fails to state a workable rule of law that can be established by this court. (See appellant's brief at 12, and Hunter v. Hunter, 669 P.2d 430 (Utah 1983)) In direct contravention to the "rule of the Hunter case", respondent cites Wiker v. Wiker, 600 P.2d 514 (Utah 1978) which states:

[N]o one has any vested rights in a support decree
which statutorily may be changed from time to

time by a court under its continuing jurisdiction in such matters.

Wiker at 515. While there may be a general notion that a child has a right to claim support from its parent, such is not the issue here. The issues is: does a child, or anyone else, have a vested right to support which is founded only upon the decree of divorce itself? The answer, as supplied in Wiker, is "no". This does not mean that child support rights cannot flow out from a decree of divorce, but simply means that such support rights in the child are not found in the decree itself. As stated in Coleman v. Coleman, 664 P.2d 1155 (Utah 1983):

Installments of support payments ordered in a divorce decree become vested in the recipient when the become due.

Coleman at 1157. In short, although the subject children have a general right to support from their parents, they have no rights to such pursuant to a decree of divorce. The general right of a child to support is independent of a decree of divorce. It would be no excuse for a parent to raise that it failed to support a child when it had the means to, simply because the other parent, who was obligated under a decree of divorce to pay for the support of the children, had failed to do so. The general right is independent of a decree of divorce. In contrast, there are no vested rights to a fixed amount of support pursuant to decree of divorce until the payment of such becomes due, and then the right is one of collection of a past due debt, not a right to support. Appellant is misguided when he argues that Craig can enforce the decree of divorce, or that his grandparents may do so. The decree is between the parties and can be enforced by them alone. Not only did the defendant/appellant fail to request that the court require the

payment of support directly to the grandparents or to Craig himself, but such would not be in harmony with the rules of law just stated.

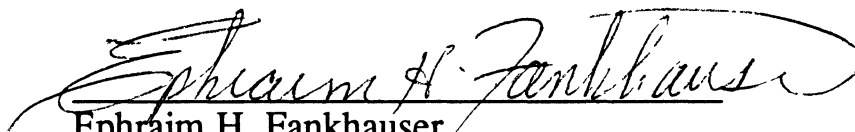
CONCLUSIONS

The court appropriately found that there had been a material change of circumstances not contemplated in the original decree of divorce. According to the rules governing the modification of an award of support, the court properly proceeded to modify the same. Furthermore, the court properly elected to employ the uniform guidelines in formulating the increase in support. The court had heard evidence as required by statute, case law and the guidelines themselves, representing a totality of present circumstances to the court. The court properly took judicial notice of the fact that the cost of supporting children increases as they age. Such was a societal fact, a legislative fact, not governed by the strict rules of judicial notice of adjudicative facts. Even if the facts in question are found to be adjudicative rather than legislative, they nevertheless met the legal test supplied for adjudicative facts. Finally, the finding could be made, and perhaps was made, independently, upon the testimony of the plaintiff/respondent. As such, there was not error. The appellant has failed to meet the burden of proving clear abuse of discretion, and as such is not entitled to relief by this court.

Appellant, in failing to establish the appropriate standard of review in his appeal, and in failing to marshal law supportive of his appeal, has worked a hardship upon the plaintiff/respondent that has increased her costs in this appeal. For this reason, plaintiff/respondent not only moves that this appeal be vacated, but that she further receive the sum of \$1500 in reasonable costs and fees of appeal, incurred by the appellant's failure to

carry the affirmative burdens of establishing the scope and nature of his appeal, as required by case law.

Respectfully submitted this 5 day of October, 1989.


Ephraim H. Fankhauser
Attorney for Plaintiff/Respondent

CERTIFICATE OF MAILING

I certify that 4 true and correct copies of the foregoing
RESPONDENT'S BRIEF were mailed, postage prepaid, this 6 day of
October, 1989 to:

J. FRANKLIN ALLRED
321 South 600 East
Salt Lake City, Utah 84102
Attorney for Defendant/Appellant

A handwritten signature in cursive script, appearing to read "J. Franklin Allred", written in dark ink.

APPENDIX A
DECREE OF DIVORCE

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

---ooOoo---

MARILYN J. DURFEE,	:	
Plaintiff,	:	<u>D E C R E E O F</u>
vs.	:	<u>D I V O R C E</u>
FRANK W. DURFEE,	:	
Defendant.	:	Civil No. 9429

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This matter came on regularly for hearing before the Honorable Ernest F. Baldwin on the 13th day of November, 1978. The Stipulation of the parties was accepted and the default of the defendant was entered. More than three months have expired since the filing of the Complaint. The Plaintiff appeared in person and was represented by her attorney, Morris D. Young. Pursuant to the foregoing and the Plaintiff having presented testimony in open court in support of her complaint and the Court having heretofore made and entered its Findings of Fact and Conclusions of Law, it is

ORDERED, ADJUDGED, AND DECREED

1. That the bonds of matrimony heretofore existing, between MARILYN J. DURFEE, Plaintiff, and FRANK W. DURFEE, Defendant, be and the same are hereby dissolved provided that this decree shall not become final until three months from the date of the filing of said decree during which time neither of the parties are to remarry, which decree will become final without further proceedings unless either of the parties hereto or the Court on its motion institutes further proceedings herein.

2. The care, custody, and control of the minor children of the parties is awarded to the plaintiff subject to rights of visitation at all reasonable times and places in the defendant.

3. Defendant is required to pay plaintiff \$150.00 per month per child for the support of the two minor children of the parties and \$1.00 per year as alimony.

4. Defendant is required to pay plaintiff \$500.00 to help her to secure reliable transportation to enable her to seek employment and to go back and forth to work after she does obtain employment.

5. The home of the parties located at 310 South Cooley Street, Grantsville, Utah, is to be sold and the following obligations of the parties are to be paid from the proceeds of the sale of said real property:

- a. The balance owing to Morris D. Young as attorney fees.
- b. Zions Mortgage Company, approximately \$25,000.00.
- c. Rolfe Assay for the down payment, approximately \$1,200.00.
- d. Blazer Finance Company for the furniture of the parties, approximately \$1,800.00.
- e. First Security Bank Visa Card, \$500.00.

6. In addition, the following obligations of the defendant are to be paid from the proceeds of the sale of the real property of the parties:

- a. Commercial Security Bank Mastercharge, \$500.00.
- b. Commercial Security Bank Checkard, \$500.00.
- c. Bryner Clinic, \$20.00.
- d. Dr. Kirk, \$20.00.
- e. Salt Lake Clinic, about \$100.00.
- f. Tooele Clinic, about \$50.00.
- g. Dr. A. Jay DeLaMare, about \$350.00.
- h. Any miscellaneous small bill or obligation that may have been incurred as a family expense.

7. Any remaining equity derived from the sale of the home of the parties is to then be divided equally, half to each of the parties herein.

8. Defendant is required to pay the following obligation from his separate funds:

a. Laury Miller Pontiac, about \$7,000.00.

9. The following personal property is awarded to the plaintiff:

a. Four rooms of miscellaneous furniture and household equipment including the portable air conditioner.

b. Plaintiff's own personal belongings and effects.

c. The personal belongings and effects of the children of the parties.

10. The following personal property is awarded to the defendant:

a. 1978 Pontiac automobile.

b. Pool table and fish aquarium.

c. The downstairs miscellaneous furniture.

d. Miscellaneous guns and sporting equipment.

e. Defendant's own personal belongings and effects.

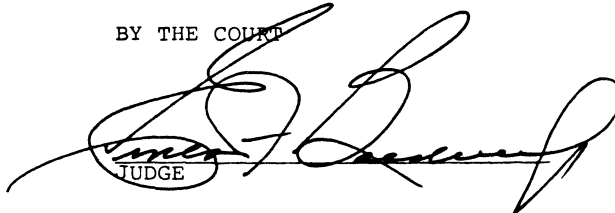
11. Defendant is ordered to keep his health and accident insurance in full force and effect and to maintain the medical coverage on the children of the parties.

12. The state and federal income tax refunds that the parties have coming are to be divided equally between the parties.

13. Plaintiff is awarded judgment against this defendant in the sum of \$300.00 for attorney fees and costs of court incurred herein for the prosecution of this matter.

Dated this 27 day of November, 1978.

BY THE COURT



JUDGE

Filed this day of November, 1978.

APPENDIX B
SELECTIONS FROM APPLICABLE UNIFORM CHILD SUPPORT GUIDELINES

3 Children

State of Utah

5/12/88

Combined Adjusted Gross Income (\$)	Support Amount (\$ per Child) Age Group			Combined Adjusted Gross Income (\$)	Support Amount (\$ per Child) Age Group		
	0-6	7-15	16-18		0-6	7-15	16-18
0-50	7	8	9	3100	219	266	310
100	13	15	17	3200	226	274	319
150	18	21	24	3300	233	282	329
200	23	27	31	3400	239	290	338
250	27	33	38	3500	246	299	347
300	31	37	43	3600	253	307	356
350	34	41	47	3700	260	315	366
400	36	44	52	3800	266	323	375
450	39	48	56	3900	273	330	384
500	42	51	61	4000	278	337	392
550	44	55	65	4100	284	344	400
600	47	58	69	4200	290	351	408
650	50	62	73	4300	296	358	417
700	52	65	77	4400	302	366	425
750	55	69	82	4500	309	374	434
800	59	74	88	4600	315	382	443
850	63	79	93	4700	322	389	452
900	68	84	99	4800	328	397	461
950	72	89	104	4900	335	405	470
1000	76	93	110	5000	341	412	479
1050	80	98	115	5100	347	420	488
1100	84	103	121	5200	354	428	496
1150	87	107	126	5300	360	435	505
1200	91	112	131	5400	367	443	514
1250	95	117	137	5500	373	451	523
1300	99	121	142	5600	379	458	531
1350	103	126	147	5700	386	466	540
1400	107	131	153	5800	392	473	549
1450	111	135	158	5900	398	481	557
1500	114	140	163	6000	405	488	566
1550	118	144	168	6200	417	503	583
1600	122	149	173	6400	430	518	600
1650	126	153	178	6600	442	533	618
1700	129	158	184	6800	455	548	635
1750	133	162	188	7000	467	563	651
1800	136	165	192	7200	479	577	668
1850	138	168	196	7400	492	592	685
1900	141	172	200	7600	504	607	702
1950	143	175	204	7800	516	621	719
2000	146	178	208	8000	528	636	735
2100	151	185	216	8200	540	650	752
2200	156	191	224	8400	552	664	768
2300	163	199	233	8600	564	679	785
2400	170	208	243	8800	578	694	803
2500	177	216	253	9000	591	710	821
2600	184	225	262	9200	604	725	838
2700	191	233	272	9400	616	740	854
2800	198	241	281	9600	628	754	870
2900	205	250	291	9800	640	768	887
3000	212	258	300	10000	652	782	903

These schedules are to be used with the Child Support Obligation Worksheet. Award amounts have been adjusted to