

1989

# Kathryn C. Carleson v. Robert Allan Carleson : Reply Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Allan M. Metos; attorney for respondent.

Craig M. Peterson, E. Paul Wood; Littlefield & Peterson; attorneys for appellant.

---

## Recommended Citation

Reply Brief, *Kathryn C. Carleson v. Robert Allan Carleson*, No. 890519 (Utah Court of Appeals, 1989).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/2141](https://digitalcommons.law.byu.edu/byu_ca1/2141)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

UTAH COURT OF APPEALS  
BRIEF

UTAH  
DOCUMENT  
KFU  
50

.A10

DOCKET NO. 89-0519

IN THE UTAH COURT OF APPEALS

IN AND FOR THE STATE OF UTAH

KATHRYN C. CARLESON,

Plaintiff/ Appellant,

v.

ROBERT ALLAN CARLESON,

Defendant/Respondent.

REPLY BRIEF OF APPELLANT

Case No: 890519-CA

Category: 14(b)

Appeal From an Order in the Third Judicial District Court,  
in and for Salt Lake County, State of Utah,  
Honorable James S. Sawaya

Attorney for Respondent:

Allan M. Metos  
623 East 100 South  
Salt Lake City, Utah 84102  
Telephone: (801) 363-9645

Attorney for Appellant:

Craig M. Peterson  
E. Paul Wood  
LITTLEFIELD & PETERSON  
426 South 500 East  
Salt Lake City, Utah 84102  
Telephone: (801) 531-0435

FILE

NOV 14 1989

CLERK OF COURT  
UTAH COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

IN AND FOR THE STATE OF UTAH

KATHRYN C. CARLESON,  Plaintiff/ Appellant,  v.  ROBERT ALLAN CARLESON,  Defendant/Respondent.	REPLY BRIEF OF APPELLANT  Case No: 890519-CA Category: 14(b)
--	---

Appeal From an Order in the Third Judicial District Court,  
in and for Salt Lake County, State of Utah,  
Honorable James S. Sawaya

Attorney for Respondent:

Allan M. Metos  
623 East 100 South  
Salt Lake City, Utah 84102  
Telephone: (801) 363-9645

Attorney for Appellant:

Craig M. Peterson  
E. Paul Wood  
LITTLEFIELD & PETERSON  
426 South 500 East  
Salt Lake City, Utah 84102  
Telephone: (801) 531-0435

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	1
I. <u>THE "STATEMENT OF FACTS" IS IRRELEVANT AND NEEDLESSLY INFLAMATORY.....</u>	1
II. <u>RESPONDENT'S "SUMMARY OF ARGUMENT" FAILS TO MEET THE REQUIREMENT OF RULE 24(a)(8) AND SHOULD BE STRICKEN.....</u>	2
III. <u>THE TRIAL COURT ERRORED UNDER RULE 4-904, APPENDIX H, WHEN ADJUDICATING MR. CARLESON'S INCOME AS "REAL DISPOSABLE INCOME".....</u>	3
IV. <u>THE "SUBSTANTIAL CHANGE IN CIRCUMSTANCES" RELATES TO THE PRIMARY NEEDS OF THE CHILD.....</u>	4
V. <u>MR. CARLESON'S REQUEST FOR SANCTIONS IN THIS APPEAL ARE WHOLLY WITHOUT MERIT.....</u>	6
CERTIFICATE OF SERVICE.....	8

TABLE OF AUTHORITIES

<u>CASES:</u>	<u>Page</u>
<u>Lord v. Shaw</u> , 682 P.2d 853, 856 (Utah 1984).....	5
<u>Martinez v. Martinez</u> , 748 P.2d 593, 595 (Utah 1988)....	5
<u>Race v. Race</u> , 740 P.2d 253, 255 (Utah App. 1988).....	5

STATUTES:

Rule 24(b), <u>Rules of the Utah Court of Appeals</u> .....	2
Rule 4-904, <u>Utah Code of Judicial Administration</u> .....	3

IN THE UTAH COURT OF APPEALS  
IN AND FOR THE STATE OF UTAH

---

KATHRYN C. CARLESON,  
Plaintiff/Appellant,  
v.  
ROBERT ALLAN CARLESON,  
Defendant/Respondent.

---

REPLY BRIEF OF APPELLANT

Case No: 890519-CA  
Category: 14(b)

---

INTRODUCTION

Appellant Kathryn C. Carleson's Reply Brief addresses the points of Respondent Robert Allan Carleson in the order in which they are raised in the Brief of Respondent.

I.

THE "STATEMENT OF FACTS" IS IRRELEVANT AND  
NEEDLESSLY INFLAMMATORY.

The Respondent's view of an appropriate "Statement of Facts" for an Appeal Brief is apparently geared towards engendering some personal enmity towards Mrs. Carleson in the mind of the Appeals' Court rather than directing attention more appropriately towards the relevant facts which should be considered on appeal. Mr. Carleson's "Statement of Facts", paragraphs 4, 5, 6, 7, 8 and 9, present no facts regarding the

pertinent topic of appeal, i.e., Mr. and Mrs. Carleson's incomes, and the increased costs of raising their daughter, Heather, experienced by the custodial parent, Mrs. Carleson. For this reason, this Court should rely only on Appellant's "Statement of Facts" and ignore the irrelevant meanderings contained in Mr. Carleson's "Statement of Facts".

## II.

### RESPONDENT'S "SUMMARY OF ARGUMENT" FAILS TO MEET THE REQUIREMENT OF RULE 24(a)(8) AND SHOULD BE STRICKEN

Rule 24 (a)(8) made applicable to the Respondent's Brief by Rule 24 (b) of the Rules of the Utah Court of Appeals requires that the "Summary of Arguments", " . . . shall be a succinct condensation of the arguments actually made in the body of the Brief." In a fashion similar to Mr. Carleson's "Statement of Facts", his "Summary of Argument" is nothing more than a vituperative outburst which has no relationship to the Counter-Argument made in Respondent's Brief. Mr. Carleson's ignoring this Court's rules and requirements for Briefs is perhaps indicative of his approach at trial. This Court's appropriate response should be to strike Respondent's "Summary of Argument" as not being responsive to this Court's rules.



III.

THE TRIAL COURT ERRORED UNDER RULE 4-904,  
APPENDIX H, WHEN ADJUDICATING MR. CARLESON'S  
INCOME AS "REAL DISPOSABLE INCOME".

The trial court erroneously relied on Defendant's "real disposable income" when considering the issue of Respondent's income for purposes of child support. Finding of Facts No. 1 states:

"That the Defendant's real disposable income has not increased since the entry of the Divorce Decree but has decreased due to the lack of automobile sales of his business." (R.365-66: Ex.D, Appellant's Brief).

Over Appellant's counsel's objection, the trial court admitted "Exhibit D-14" which shows Mr. Carleson's "disposable income" for the years 1984 through 1988 and is based upon calculations which do not relate to Rule 4-904, Appendix H. (R.334; Ex.F, Appellant's Brief)

The point of this exercise is to demonstrate that Mr. Carleson's reliance upon Appendix H, Section II, A.1.(b.), is totally misplaced, and the Court's acceptance of this position is an error at law. Mr. Carleson's "Exhibit D-14", which was submitted to prove the amount of Mr. Carleson's income for child support calculations, contains none of the data required by Subsection 1.(b.), Appendix H. The pertinent portion of Subsection 1.(b.) states:

"Gross income from self-employment or operation of a business is defined as: Gross receipts minus minimum necessary expenses requires for self-employment or business operation."

Mr. Carleson failed to show gross receipts or actual expenses in the business to arrive at the required "Gross Income" figure. Mr. Carleson's statement at page 11 of his Brief "that 'Exhibit D' clearly shows Defendant's gross income was adjusted to reflect the directive of Rule 4-904" is incorrect. The calculation does not come close to meeting the standards required by Subsection (b).

The next problem with Mr. Carleson's position vis a vis, Rule 4-904, is that he is an employee of a subchapter S corporation who receives a W-2 upon which gross income is based. Appendix H, Section II, A.1.(a), requires a significantly different calculation of gross income for employees upon which the Court should have relied rather than "real disposable income". Under either Subsection 1.(a.) or 1.(b.), "real disposable income" is not the correct income determination upon which the trial court was required to base its child support deliberation. The trial court's accepting "real disposable income" as the measure of income for child support calculation is an error at law.

Mr. Carleson has chosen to ignore the point made in Appellant's Brief that the court should have considered the

\$50,000.00 which Mr. Carleson voluntarily returns to the corporation annually as a showing of additional increased income. As a result, this Court should accept the position taken by the Appellant in her Brief.

IV.

THE "SUBSTANTIAL CHANGE IN CIRCUMSTANCES"  
RELATES TO THE "PRIMARY NEEDS OF THE CHILD".

The first point to be made is that Findings of Fact No. 2 is clearly erroneous. Findings of Fact No. 2 states:

"That there was no evidence adduced to support the increase of child support."

The Court should refer to the Appellant's Brief, "Statement of Facts", paragraph 13, 14, 15, 16 and 17, which shows several different increased costs for Heather since entry of the original Decree in 1984. Additionally, Exhibit "P-26" shows a significant increase in costs related to Heather's upbringing. The significant increase in costs is obvious and remains significant after subtracting the amounts which Respondent Mr. Carleson claims are disputed in the amount of \$133.50 for unreimbursed child care expenses.

Mr. Carleson has simply missed the primary point that the requirement to support Heather Carleson has significantly increased from five years ago when the Divorce Decree was entered. Mrs. Carleson does not claim that there are unpaid

healthcare, medical and dental insurance payments or unpaid school, health or medical bills as stated in Mr. Carleson's Brief. The point is that Heather's needs in attending Rowland Hall have placed a significantly greater financial burden on Mrs. Carleson and while Mr. Carleson's gross income during the four year period from 1984 through 1988 did not significantly change, under Utah law, child support must address the primary needs of the child as an obligation of both parents. Lord v. Shaw, 682 P.2d 853, 856 (Utah 1984); Race v. Race, 740 P.2d 253, 255 (Utah 1988); Martinez v. Martinez, 748 P.2d 593, 595 (Utah App. 1988). This overriding principle was simply missed by the trial court and not addressed by Mr. Carleson in his Brief.

There is substantial evidence in the record supporting a "substantial change in circumstances" warranting an increase in child support from the amount currently required under the Divorce Decree of \$400.00 per month to a level which is commensurate for a man who grosses in excess of \$200,000.00 per year.

V.

MR. CARLESON'S REQUEST FOR SANCTIONS IN THIS APPEAL  
ARE WHOLLY WITHOUT MERIT.

Without resorting to the ad hominem attacks replete throughout Mr. Carleson's Brief, it is sufficient to state that the trial court record shows the following:

1. Mr. Carleson is a wealthy business man who annually grosses in excess of \$200,000.00 per year and voluntarily returns to his business \$50,000.00 per year.

2. Mrs. Carleson is a well employed paralegal grossing \$24,000.00 per year.

3. Heather Carleson has experienced a rather severe operation in February, 1988, which has resulted in increased food requirements and has resulted in her receiving counseling.

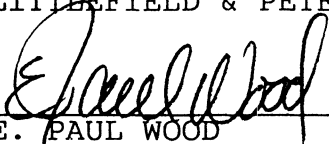
4. In the five years since the Carlesons were divorced, the un rebutted evidence shows a significant increase in the cost of providing food, clothing, shelter, and for all the primary needs of the child.

5. The trial court failed to properly apply the child support guideline Rule in effect at the time of the trial to determine Mr. Carleson's gross income for purposes of child support.

6. Mr. Carleson, who grosses over \$200,000.00 per year annually, is content with meeting his joint financial obligation for the upbringing of his daughter, Heather, with a \$400.00 per month child support payment, and further, will fight tooth and nail to prevent any increase.

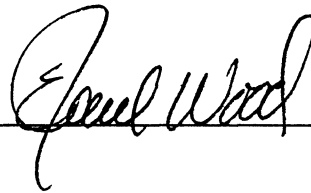
DATED this 21 day of February, 1990.

LITTLEFIELD & PETERSON

  
\_\_\_\_\_  
E. PAUL WOOD  
Attorneys for Appellant  
Kathryn C. Carleson

CERTIFICATE OF SERVICE

I hereby certify that I caused to be hand-delivered four true and correct copy of the foregoing REPLY BRIEF OF APPELLANT to ALLAN M. METOS, Attorney for Respondent, 623 East 100 South, Salt Lake City, Utah 84102, this 21 day of February, 1990.

  
\_\_\_\_\_

42477-42478