

1989

Kathryn C. Carleson v. Robert Allan Carleson : Brief of Respondent

Utah Court of Appeals

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

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BRIEF

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DOCKET NO. 89-0519 IN THE UTAH COURT OF APPEALS

OF THE STATE OF UTAH

KATHRYN C. CARLESON,	:	
	:	
Plaintiff/Appellant,	:	
	:	
vs.	:	Case No. 890519-CA
	:	Category 14(b)
	:	
ROBERT ALLAN CARLESON,	:	
	:	
Defendant/Respondent.	:	JUDGE JAMES S. SAWAYA

BRIEF OF DEFENDANT/CONTESTANT/RESPONDENT ROBERT ALLAN CARLESON

Appeal from the Third District Court, Salt Lake County

Civil No. D-83-4245

THE HONORABLE JAMES S. SAWAYA, District Court Judge

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FILED
6.10.00

Mary T. Noonan
Clerk of the Court

IN THE UTAH COURT OF APPEALS

OF THE STATE OF UTAH

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	:	
Plaintiff/Appellant,	:	
	:	
vs.	:	Case No. 890519-CA
	:	Category 14(b)
	:	
ROBERT ALLAN CARLESON,	:	
	:	JUDGE JAMES S. SAWAYA
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PARTIES TO THE PROCEEDING BELOW

In addition to the Plaintiff and the Defendant named in the caption, who were the primary contestants, Robert E. Carleson and Annabelle Carleson (Paternal Grandparents of Heather Carleson) were also contestants demanding the right of visitation in the case below. These visitation rights awarded to the grandparents were not appealed.

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STANDARD OF REVIEW

In her brief, Appellant, **Kathryn Carleson**, claims only questions of law are on appeal, which questions do not require deference from the Court. Appellant's brief, however, continually argues the inappropriateness of Judge Sawaya's Findings of Fact.

The trial court's Findings of Fact will not be set aside on appeal unless clearly erroneous. Utah R. Civ. P., 52(a); Copper State Leasing Co. v. Blacker Appl. & Furn. Co., 770 P.2d 88, 93 (Utah 1988); Western Kane Country Special Serv. Dist. No. 1 v. Jackson Cattle Co., 744 P.2d 1376, 1377 (Utah 1987). A finding is clearly erroneous only if it is without adequate evidentiary support. State v. Walker, 743 P.2d 191, 193 (Utah 1987); Accord Western Capital v. Knudsvig, 768 P.2d 989, 991 (Utah Ct. App. 1989).

This Court must begin its analysis with the trial court's Findings of Fact and not with Appellant's view of the way she thinks the facts should have been found. Ashton v. Ashton, 733 P.2d 147, 150. (Utah 1987) Kathryn Carleson must first marshall all evidence supporting the Findings (which is plentiful), and then demonstrate that these Findings are "so lacking in support as to be against the clear weight of the evidence." In Re Estate of Bartell, 105 Utah Adv. Rep. 3, 4 (1989) (quoting Walker, 743 P.2d at 193) "[A]ppellants should recognize that the

burden of overturning factual findings is a heavy one, reflective of the fact we do not sit to retry cases submitted on disputed fact." Id. at 4.

The trial court found it necessary to interpret Income Tax Records of Robert Carleson and the effect of Sub Chapter "S" Corporation of Defendant's business on his individual Income Tax Records for the basis of its findings.

If those findings are supported by substantial, competent evidence in the record, they are clearly not erroneous under Rule 52(a) Utah Rules Civil Procedure and will not be disturbed on appeal Hansen v. Green Group, 748 P.2d 1102, Utah Ct. App. (citation omitted).

Second, Kathryn Carleson, must deal with Rule 4-904, Utah Code of Judicial Administration, that states:

"The adoption of these uniform child support guidelines and any consequent impact on existing child support orders does not constitute a substantial change of circumstances to independently allow the modification of an existing order."

Finally, the Appellant must show that she proved, at time of trial, a need for increased child support with reference to contemporaneous and subsequent events supported by documentation showing increased child support expenses which constituted a material change of circumstances. Utah Code of Judicial Administration Rule 4-904, App. H(4).

CITATION TO THE RECORD

Citations to the record will be abbreviated as follows:

Record on Appeal	"R."
Trial Transcript	"T."
Exhibit	"Ex."
Findings of Fact	"F."
Conclusion of Law	"C."
Judgment	"J."

The addendum includes relevant portions of the Record and Exhibits and shall be cited to as "Add." with the page number following the Record or Exhibit citation.

JURISDICTION

The Court of Appeals has jurisdiction over this matter by virtue of Section 78-2a-3(h) Utah Code Ann.

NATURE OF PROCEEDING

This is an appeal from a final Judgment of the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable James S. Sawaya, presiding, entered June 27, 1989, denying Kathryn Carleson's petition which requested that the Court: modify the decree of divorce by eliminating certain mid-week visitation, increase child support, award Federal Tax Dependency Exemption to petitioner, injunctive relief preventing Robert Carleson from leaving minor child with grandparents or his new spouse, require Robert Carleson to pay for day-care and

private school expenses, including summer tuition.

Robert Carleson filed a cross petition for joint custody, which was denied, and was joined in a separate cross petition by his parents (the paternal grandparents of said minor child) for visitation rights with minor child which was granted by the trial court.

ISSUES PRESENTED FOR APPEAL

1. Was the trial court's finding of no change of material circumstances clearly erroneous on this record?

2. Was the trial court's refusal to increase child support clearly erroneous on this record?

3. Did the trial court err in failing to award costs and attorney fees to the Plaintiff/Appellant.

DETERMINATIVE STATUTES

Statutes which are determinative of the issues in this case are: Utah Code of Judicial Administration, Rule 4-904, Appendix H, Utah Rules of Civil Procedure, Rule 54(d), Rule 52(a).

STATEMENT OF FACTS

Appellant's Statement of Fact is inaccurate, incomplete, unduly argumentative, ignores the record and the Findings of Fact of the District Court. Accordingly, Robert Carleson sets forth his own Statement of Facts.

1. After four (4) years of marriage and three (3) years after the birth of their only child, Robert Carleson and Kathryn

Carleson were divorced on February 16, 1984. (R.-35) (T.-7)

2. The custody of Heather, the amount of child support, and property settlement awarded Kathryn Carleson were not contested by Defendant and his default was entered based on the complaint. (R.-21)

3. The minor child of the parties suffered an illness of the digestive tract of her stomach, which required surgery and restrictive diet. (T.-52-53)

4. On May 31, 1988, Kathryn Carleson brought a motion for sanctions, modification of Defendant's rights of visitation, attorney's fees, and a restraining order, all of which were denied by the court. (R.-102)

5. The court refused to enter sanctions, restraining order, modify visitation or modify any monetary awards previously entered in the original decree of divorce and admonished Kathryn Carleson not to unilaterally change or deny visitation without court approval and to immediately reinstate Robert Carleson's visitation privileges for his upcoming wedding. (Add. Ex. A) (R.-152)

6. That Kathryn Carleson refused to allow visitation as ordered by the court for said wedding and while Robert Carleson was on his honeymoon, she trespassed into the home of Robert Carleson (accompanied by an alleged police officer) and removed medicine required for the medical treatment of the minor child Heather needed for overnight visitation. (T.-227, 230) (R.-175-176)

7. On the 8th day of August, 1988, Commissioner Peuler in response to Robert Carleson's Motion for Order to Show Cause for Contempt, granted a permanent restraining order against Kathryn Carleson and ordered that Robert Carleson be given immediate access to medical and school information of his minor daughter previously denied by Kathryn Carleson. (Add. Ex. B) (T.-229-230)

8. Kathryn Carleson replaced her attorney of record and filed another petition for modification. Robert Carleson filed a cross petition for joint custody and was joined by his parents (paternal grandparents) who petitioned the Court for visitation rights previously denied by Kathryn Carleson. (R.-188-191, 299-301, 321-323)

9. On May 2, 1989, the final hearing was held on a petition for modification of divorce decree rehashing the same request for modification of visitation previously denied by the Court in May, 1988, and for an increase in child support.

10. The court ruled in favor of Robert Carleson and denied all relief requested by Kathryn Carleson. Kathryn Carleson has now filed an appeal from the trial court's ruling. (R.-365-371)

SUMMARY OF ARGUMENT

Although Kathryn Carleson asserts a plethora of alleged errors committed by the trial court, once her motivation in filing her multitude of petitions and motions for modification is revealed, this case becomes very simple. Kathryn and Robert Carleson, although divorced, had little or no dispute until

Robert Carleson announced his intentions to re-marry and requested that his daughter not only attend the wedding, but participate in the wedding ceremony. Seizing on an unfortunate illness and serious operation required by her daughter Heather, Kathryn Carleson brought her first petition to modify the decree of divorce by eliminating visitation with Defendant until Heather regained her health, a duration that Kathryn Carleson perceived to cover a period long enough to deny Heather's attendance at her father's wedding. The court ordered that visitation (that had been previously and unilaterally terminated by Kathryn Carleson) be restored and that Heather be allowed to attend and participate in Robert Carleson's up and coming wedding. Kathryn Carleson in direct violation of the court order, spirited the child to Vernal, Utah, preventing Heather's attendance at the wedding.

While Robert Carleson and his new bride were on their honeymoon, Kathryn Carleson came to Robert Carleson's home accompanied by a police officer (so she claims) and removed all medicine required for Heather's recuperative period prescribed by her doctors.

After breaking and entering into Robert Carleson's residence, Kathryn Carleson informed all doctors, hospitals and Heather's school that no information be divulged or given to her ex-husband. (Add. Ex. C) (T-229-230)

Kathryn Carleson then hired her third (3rd) attorney to represent her in this matter and filed another petition for modification of the decree. (R.-264-268)

The true motivation behind the filing of her multitude of claims for modification by Plaintiff has been her jealousy of her ex-husband, his remarriage and the hatred of his new wife and family. There was no expert or medical witness who could substantiate Plaintiff's claim that medical illness prevented visitation of the minor child with her father. (R.-99-100) (T.-55) There has been no claim for unpaid medical bills which necessitate, or would at least substantiate, an increase of child support for unpaid medical costs. Plaintiff's claim for increased expenses was not substantiated by any bills, receipts, or memorandum of said expenses.

Kathryn Carleson's plan of attack has been simple, to keep filing claims with the court, and then replace each lawyer after they have failed, with new counsel. She then seeks the same relief through new counsel claiming a change of circumstances (5 attorneys of record as of this date).

ARGUMENT

I.

THE TRIAL COURT'S FINDING THAT PLAINTIFF DID NOT
PROVE A MATERIAL CHANGE OF CIRCUMSTANCES WAS
NOT ERRONEOUS AND MUST BE AFFIRMED

A.

Standard of Review of Modification of Divorce
Decrees and application to existing orders.

Appellant argues that the Standard of Review and its

application to existing orders is governed by Utah Code of Judicial Administration., Rule 4-904, which provides:

(4) Application to Existing Orders: The adoption of these guidelines and any consequent impact on existing child support orders does not constitute a substantial change of circumstances to independently allow modification of an existing order.

It is apparent that even though the Utah State Child Support Schedule Guidelines, which make up appendix H, in some cases, on their face require an increase of child support, the petitioner is still required to show proof of need, increased expenses, or some other showing of a material change in her circumstances before the court can order modification.

Kathryn Carleson failed to introduce any unpaid medical bills or increased costs of care for the minor child, except for a self-serving declaration of estimated costs of her total monthly bills. The trial court stated that the financial need, if any, of Kathryn Carleson could be the effect of her selling of a home given her under the decree of divorce and going into debt by purchasing a more expensive home which necessitated a mortgage. (T.-93)

The Income Tax Returns of Robert Carleson from 1984 (the year of divorce) to 1987 (the last Tax Return available at date of hearing) show no increase in gross earnings.

B.

The Trial Court never made a finding of Robert Carleson's "net" disposable earnings.

Although Kathryn Carleson never reached a position in her case by proving a material change of circumstances, the trial court allowed the introduction of Robert Carleson's Income Tax Return Records between 1984-1987, together with the Utah State Franchise Tax Reports of Carleson Cadillac into evidence. An expert C.P.A. witness was allowed to testify as to the result of his independent audit of Robert Carleson's Tax Returns and advised the court of the effect of Sub Chapter "S" filing on the Robert Carleson individual returns. (T.-183-187) Copies of Defendant's monthly payroll checks were also furnished to the court.

While Kathryn Carleson's income had increased, it was noted that Robert Carleson's financial position had diminished due to the unfortunate decline in automobile sales over the past five (5) years (T.-188) resulting in no substantial change in Robert Carleson's income. Robert Carleson's dealership, in reality, had suffered a \$27,000.00 first quarter loss in 1989. (T-232 C.-21) Such a finding is almost identical to the finding of no change of circumstances in financial position affirmed by this court in Porcos v. Porcos, 79 Ut. Adv. Rep. 35, (Utah 1988). In that case the court made the following finding:

"The record amply supports the trial court's finding that there has been no material change in the parties' circumstances. Although Plaintiff's and Defendant's income have increased, their expenses have increased

proportionately, resulting in no substantial change in their relative circumstances."

The Guidelines contained in Rule 4-904 are promulgated for and appear to work well in cases where the parties are employed and receive a monthly paycheck. In cases where there is self-employment or where one of the parties owns the control of a closely held corporation the Guidelines provide:

A. Income

(b) Self-Employment: In general income, and expense for self-employment, or operation of a business shall be carefully reviewed to determine the appropriate level of gross income available Specifically, only those expenses necessary to allow the business to operate at a reasonable level should be deducted from gross receipts.

Add. Exhibit D, clearly shows that Defendant's gross income was adjusted to reflect the directive of Rule 4-904, only subtracting expenses necessary for the continuation of the business. The court in Add. Ex. E, (T.-179) clearly stated that said Exhibit was admitted only as an indication of gross income for the purpose of determining child support.

II.

THE TRIAL COURT MUST ADJUST GROSS INCOME
UNDER RULE 4-904 CODE OF
JUDICIAL ADMINISTRATION

It must be remembered that in order to increase child support, there must first be made a showing of a material change of circumstances. Kathryn Carleson failed to prove this in her case against her ex-husband. Without such proof, the court

didn't need to consider the financial condition of Robert Carleson under Rule 4-904. In other words, Kathryn Carleson must reach first base before she could advance to second. But, in this case, the trial court did receive evidence and make an extensive inquiry of Robert Carleson's financial condition.

The trial record is clear. The trial court received in evidence the following documents:

1. Tax Returns of Robert Carleson, 1984-1987
(Def. Ex. 2,3,4,5)
2. Utah State Tax Returns of Carleson
Cadillac, 1984-1988 (Plaintiff Ex. 33-41)
3. Wage statement from employer and copies
of Robert Carleson's payroll checks. (Def.
Ex. 13)
4. Agreement to establish minimum working
capital of \$521,000.00 (Def. Ex. 6)
5. Promissory Note in favor of GMAC in the
sum of \$350,000.00. (Def. Ex. 8)

which not only gave the trial court a true picture of Robert Carleson's gross income, but also gave the court the evidence it needed to determine what deductions were required to be made from Robert Carleson's gross income to keep the business going.

Robert Carleson testified that he was forced to sign an agreement with General Motors Company to increase his net capital to \$521,000.00 or lose his Cadillac Dealer Franchise. (Add. Ex. F) (T.-170) In order to increase capitalization, the Board of

Directors of Carleson Cadillac Co., passed a resolution to disburse only enough corporate earnings to pay the "Sub Chapter S Taxes" placed on the personal income tax of the shareholders of the corporation, (Def. Ex. 12). This additional capital became not an asset of the Defendant's corporation, but a fixture and inventory required to be maintained in order to secure General Motor's continued supply of new automobiles.

Rule 4-904 A(1)b provides:

1. Gross monthly income.

(b) "Gross monthly income from self-employed or operation of a business is defined as gross receipts minus minimum necessary expenses required for business operation..... Specifically, only those expenses necessary to allow the business to operate at a reasonable level should be deducted from gross receipts."

Expenditures to pay corporate taxes and increase capitalization of a business under threat of losing its automobile franchise because of under capitalization are certainly such necessary expenses under the aforementioned section.

Plaintiff's argument that Defendant failed to supplement his answers to interrogatories with the name of his expert C.P.A. witness is without merit, due to the fact Plaintiff never submitted any such interrogatory. Actually, all witnesses names and all trial exhibits were furnished to Plaintiff's counsel before trial. (Add. Ex. J.)

III.

THE PLAINTIFF FAILED TO PROVE A MATERIAL CHANGE OF
CIRCUMSTANCES DUE TO HER CHILD'S MEDICAL NEEDS,
AGE, OR INFLATION.

Kathryn Carleson's self supporting declaration of increased expenses (Pl. Ex. 26) was not supported by any contemporaneous documentation or evidence. Kathryn Carleson, in her deposition taken the 7th day of February, 1989, (Add. Ex. G), stated:

Q. Do you have any expenses (Mrs. Carleson) as far as care for Heather?

A. For Heather's Health Care?

Q. Yes.

A. No, Bob takes care of that all medical needs.

Doctor Charles Ralston, an expert witness from the University of Utah Medical School, refuted the argument of increased medical and food costs claimed by Plaintiff by stating that the need for medicine and increased food intake will decrease as Heather matures and self regulates herself. (T.-56) (T.-58)

Health care, medical and dental insurance are all provided by Robert Carleson under the original decree. (R.-33)

The trial record is completely devoid of any evidence or claim of unpaid school health, medical bills or expenses not covered or reimbursed by Robert Carleson.

While Kathryn Carleson in Exhibit 26 (Ex. G. Appellant's Brief) claimed expenses of \$150.00 per month for tuition, she

produced no proof or evidence of payment of the same. The record clearly showed Robert Carleson paid the regular school year tuition, including school lunch fees. (T.-72)

While Kathryn Carleson in the same Exhibit claimed \$133.50 per month in unreimbursed child care expenses, claimed only \$188.00 for the total year in her last tax return filed with the court. (T.-91) (Add. Ex. H.)

The trial court record is equally devoid of any testimony or evidence of the effect of inflation on child support. Rule 4-904 App. H) requires that a request for child support increase be substantiated by supporting financial verification.

IV.

THE TRIAL COURT'S AWARD OF \$500.00 FOR ATTORNEY FEES,
WAS MORE THAT REASONABLE CONSIDERING THE
CIRCUMSTANCES AND EQUITY

"Statute awarding attorney fees in divorce-related action was first passed 1889, and remains substantially the same today. The Statute vests discretion in the trial court to determine if fees may be awarded in original divorce action, in divorce appeals, and in actions to modify decrees. Fees may be awarded to either the prevailing or non-prevailing party.

In deciding whether to award attorney's fees in divorce action, the Utah Courts consider the financial situation of the parties and the equities of that particular case." Utah Law Review, Vol 1984, No. 3, also see Grammer v. Grammer, 587 P.2d

144-149, (Utah 1987).

Kathryn Carleson is not broke. She is a highly paid paralegal employed by a large Salt Lake City law firm. Her salary has increased over 40% from the time of the divorce. (T.-89)

Financial need was not presented to the trial court, but Judge Sawaya determined the "equity" required an attorney's fee of \$500.00.

Considering the complete disregard of previous court orders of the trial court, the multitude of frivolous petitions and motions filed by Kathryn Carleson, and her complete lack of success in court, the court plainly saw "little or no equity" in her legal position.

The transcript of trial and the record are without supporting testimony or evidence of attorney's fees incurred by the Plaintiff.

V.

SANCTION FOR FRIVOLOUS APPEAL

Plaintiff Kathryn Carleson has continuously harassed the Defendant Robert Carleson through the repeated threat of civil actions, violation of court orders, denial of visitation, forcing her way into his residence and showing a complete disregard of the Law of this State.

Her appeal in this matter is without merit and taken with no

reasonable likelihood of prevailing.

This court in the case of Porcos v. Porcos, 79 Ut. Adv. Rep. 35 (Utah 1988) has recognized the merit of sanction in similar cases, and Defendant respectfully requests the court to consider such sanctions.

CONCLUSION

At some point in time, Plaintiff should understand that her emotional involvement in this case completely distorts the factual merits of her arguments. Robert Carleson's financial condition has worsened due to added requirements of additional business capital and lackluster automobile sales. Robert Carleson has faithfully paid his child support since his divorce, he has paid an exorbitant amount of medical, hospital and health care bills, together with private school tuition at Rowland Hall. His contribution to child support exceeds the Child Support Guidelines of Rule 4-904. (Add. Ex. I) A message must be delivered by this court to Kathryn Carleson and the five (5) previous counsels she has employed, that further efforts to harass and prevent Defendant from seeing his daughter will not be tolerated.

It is respectfully requested that Kathryn Carleson's appeal be dismissed and Defendant awarded all costs and attorney's fees as sanctions.

DATED this 26th day of January, 1990.

ALLAN M. METOS
Attorney for the Defendant/
Respondent

By 
ALLAN M. METOS

CERTIFICATE OF MAILING

I hereby certify that I caused four true and correct copies
of the foregoing RESPONDENTS' BRIEF, to be mailed, postage
prepaid, on this 26th day of January, 1990, to the following:

Craig M. Peterson
E. Paul Wood
LITTLEFIELD & PETERSON
426 South 500 East
Salt Lake City, Utah 84102



ADDENDUM

Tab A

6/15-
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623 East First South
Salt Lake City, Utah 84102
Telephone: (801) 363-5796

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

KATHRYN C. CARLESON,)	
)	
Plaintiff,)	
)	O R D E R
vs.)	
)	
ROBERT ALLAN CARLESON,)	
)	Civil No. D83-4245
Defendant.)	Judge James S. Sawaya

This matter having come on regularly for hearing the 31st day of May, 1988, on Plaintiff's Motion for Temporary Restraining Order, Sanctions, Order requiring Defendant to sign Plaintiff's proposed Stipulation, and on Defendant's Motion for Order finding the Plaintiff in contempt of Court, before the Honorable James S. Sawaya, one of the judges of the above-entitled Court, Plaintiff appeared in person and was represented by Penny Heal Trask, Defendant appeared in person and was represented by counsel Allan M. Metos, the Court being fully advised in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED:

1. That Plaintiff's Motion for (A) Sanctions; (B) Temporary Restraining Order; (C) Modification of Visitation Rights; (D) Order requiring Defendant to sign a Stipulation modifying visitation rights, and (E) For an award of attorney's

fees, be and the same are hereby denied.

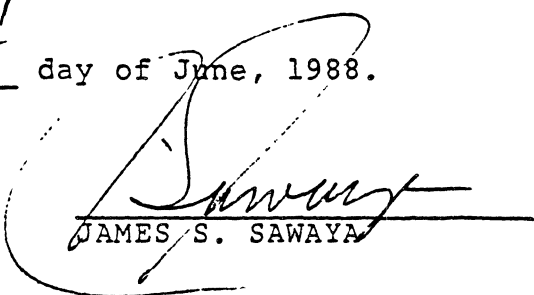
2. That Defendant's Motion for Contempt Order against Plaintiff be and the same is hereby denied.

3. That each party bear their own costs and attorney's fees incurred in this matter.

4. That Defendant's every-other weekend visitations be reinstated to commence on Friday, June 3, 1988, and that Defendant's mid-week visitation be reinstated to commence June 8, 1988.

5. That no medical reason exists at the present time for the modification or denial of Defendant's visitation. That in the event the minor child's health diminishes due to medical reasons or Defendant fails to follow said minor child's medical or diet program, the Court on Motion of Plaintiff would reconsider a Motion for modification of Defendant's visitation rights.

DATED this 12th day of June, 1988.


JAMES S. SAWAYA

CERTIFICATE OF HAND-DELIVERY

I HEREBY CERTIFY that on the 12th day of June, 1988 a true and correct copy of the foregoing ORDER was hand-delivered to Penny Heal Trask, Attorney for Plaintiff, 350 East 500 South, Suite 201, Salt Lake City, Utah 84111.



Tab B

TITLE: (✓ PARTIES PRESENT)

COUNSEL: (✓ COUNSEL PRESENT)

KATHRYN C. CARLESON

: JUDITH WOLBACH

- vs -

ROBERT ALLAN CARLESON

: ALLAN METOS

CLERK

HON. COMM. SANDRA PEULER

JUDGE

REPORTER

DATE: 8/8/88

BAILIFF

Plaintiff's and defendant's motions having been argued, the commissioner recommends as follows:

1. That defendant's motion for finding of contempt against plaintiff be denied.

2. That both parties be enjoined from harassing, threatening, or annoying the other.

3. That plaintiff be ordered not to interfere with defendant's right of reasonable access to the minor child's medical and school records, and that plaintiff be ordered to rescind her instructions regarding lack of access to records and information to those providers.

4. That no attorneys fees be awarded.

Sandra Peuler
JUDGE

Tab C

June 9, 1988

Recd.
6/17/88

Parkview Nursery
1321 South 500 East
Salt Lake City, Utah 84105

Re: Heather Anne Carleson

Dear Clara and Staff:

As custodial parent of Heather Anne Carleson, YOU ARE HEREBY DIRECTED NOT TO RELEASE HEATHER TO ANYONE OTHER THAN MYSELF WITHOUT WRITTEN PERMISSION FROM ME. Therefore, she must not be released to her father, Robert A. Carleson, her grandparents, Bob and Jean Carleson, or anyone else without my written permission.

Should anyone attempt to pick her up without my written consent, please ask them to leave and call me. If they refuse to leave, show them this letter and call the police to escort them from the premises.

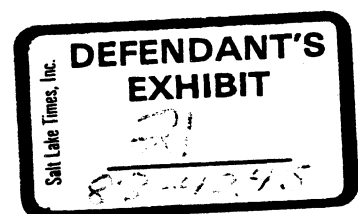
I sincerely appreciate your cooperation.

Very truly yours,

Kathryn M. Carleson

KATHRYN M. CARLESON
1591 East 8685 South
Sandy, Utah 84093
Home: 255-2170
Work: 532-1234

cc: Robert A. Carleson
Mr. and Mrs. Robert E. Carleson
Penny H. Trask, Esq.



recd
6/17/88

June 6, 1988

Joseph G. Lambert, M.D.
850 East 300 South
Salt Lake City, Utah 84102

Re: Heather Anne Carleson

Dear Dr. Lambert:

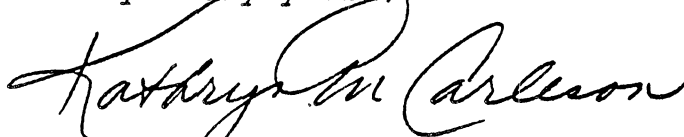
As custodial parent of Heather Anne Carleson, please be advised that you are no longer authorized to communicate in any way Heather's present, past or future mental or physical condition with her father, Robert A. Carleson, his attorney or any member of his family. My attorney and I were previously misled by Mr. Carleson and his attorney to the belief that there would be an order entered by the Court requiring me to give you such authorization. No such order was entered; therefore, my authorization is hereby withdrawn.

Should you be contacted by either Mr. Carleson, any member of his family, or someone representing to be his attorney, do not speak with them but refer them to either myself or my attorney, Penny H. Trask (363-1155). However, should Mr. Carleson request medical care for Heather during her visitation with him, please call me immediately and provide such care to her.

This letter applies to yourself and any staff member having access to Heather's files.

Your cooperation, past, present and future, is greatly appreciated.

Very truly yours,



Kathryn M. Carleson
1591 East 8685 South
Sandy, Utah 84093
Home: 255-2170
Work: 532-1234

cc: Penny H. Trask, Esq.
Robert A. Carleson

June 6, 1988

Dale G. Johnson, M.D.
320 - 12th Avenue
Salt Lake City, Utah 84103

Re: Heather Anne Carleson

Dear Dr. Johnson:

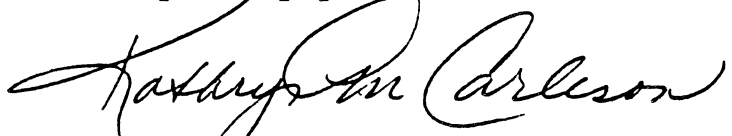
As custodial parent of Heather Anne Carleson, please be advised that you are NOT, nor have you ever been, authorized to communicate in any way Heather's present, past or future mental or physical condition with her father, Robert A. Carleson, his attorney or any member of his family. My attorney and I were previously misled by Mr. Carleson and his attorney to the belief that there would be an order entered by the Court requiring me to give you such authorization. No such order was entered; therefore, my authorization is hereby withdrawn.

Should you be contacted by either Mr. Carleson, any member of his family, or someone representing to be his attorney, do not speak with them but refer them to either myself or my attorney, Penny H. Trask (363-1155). However, should Mr. Carleson request medical care for Heather during her visitation with him, please call me immediately and provide such care to her.

This letter applies to yourself and any staff member having access to Heather's files.

Your cooperation, past, present and future, is greatly appreciated.

Very truly yours,

A handwritten signature in cursive script, reading "Kathryn M. Carleson". The signature is fluid and elegant, with the first name "Kathryn" and last name "Carleson" clearly distinguishable.

Kathryn M. Carleson
1591 East 8685 South
Sandy, Utah 84093
Home: 255-2170
Work: 532-1234

cc: Penny H. Trask, Esq.
Robert A. Carleson

June 6, 1988

Linda S. Book, M.D.
320 - 12th Avenue
Salt Lake City, Utah 84103

Re: Heather Anne Carleson

Dear Dr. Book:

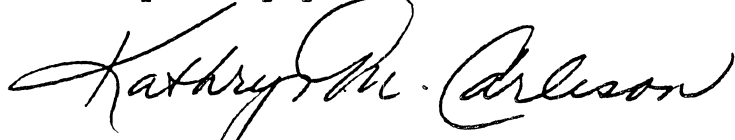
As custodial parent of Heather Anne Carleson, please be advised that you are no longer authorized to communicate in any way Heather's present, past or future mental or physical condition with her father, Robert A. Carleson, his attorney or any member of his family. My attorney and I were previously misled by Mr. Carleson and his attorney to the belief that there would be an order entered by the Court requiring me to give you such authorization. No such order was entered; therefore, my authorization is hereby withdrawn.

Should you be contacted by either Mr. Carleson, any member of his family, or someone representing to be his attorney, do not speak with them but refer them to either myself or my attorney, Penny H. Trask (363-1155). However, should Mr. Carleson request medical care for Heather during her visitation with him, please call me immediately and provide such care to her.

This letter applies to yourself and any staff member having access to Heather's files.

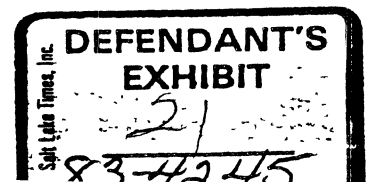
Your cooperation, past, present and future, is greatly appreciated.

Very truly yours,



Kathryn M. Carleson
1591 East 8685 South
Sandy, Utah 84093
Home: 255-2170
Work: 532-1234

cc: Penny H. Trask, Esq.
Robert A. Carleson



June 6, 1988

Tamara Bradley, M.S.W.
320 - 12th Avenue
Salt Lake City, Utah 84103

Re: Heather Anne Carleson

Dear Tammy:

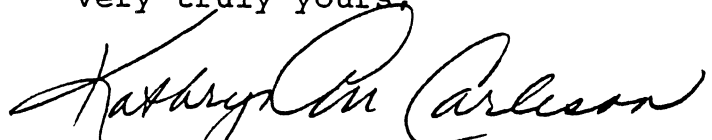
As custodial parent of Heather Anne Carleson, please be advised that you are no longer authorized to communicate in any way Heather's present, past or future mental or physical condition with her father, Robert A. Carleson, his attorney or any member of his family. My attorney and I were previously misled by Mr. Carleson and his attorney to the belief that there would be an order entered by the Court requiring me to give you such authorization. No such order was entered; therefore, my authorization is hereby withdrawn.

Should you be contacted by either Mr. Carleson, any member of his family, or someone representing to be his attorney, do not speak with them but refer them to either myself or my attorney, Penny H. Trask (363-1155). However, should Mr. Carleson request medical care for Heather during her visitation with him, please call me immediately and provide such care to her.

This letter applies to yourself and any staff member having access to Heather's files.

Your cooperation, past, present and future, is greatly appreciated.

Very truly yours,

A handwritten signature in black ink, reading "Kathryn M. Carleson". The signature is fluid and cursive, with the first name "Kathryn" and last name "Carleson" clearly legible.

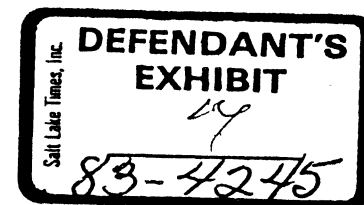
Kathryn M. Carleson
1591 East 8685 South
Sandy, Utah 84093
Home: 255-2170
Work: 532-1234

cc: Penny H. Trask, Esq.
Robert A. Carleson

Tab D

	<u>Taxable Income</u>	+	<u>Personal Exemptions</u>	-	<u>FIT Withheld</u>	-	<u>K-1 From S Corporation</u>	=	<u>Disposable Income</u>
1984	215,388	+	2,000	-	21,725	-	81,245	=	114,418
1985	110,557	+	2,080	-	18,337	-	40,505	=	53,795
1986	73,428	+	2,160	-	5,707	-	38,086	=	31,795
1987	198,563	+	3,800	-	8,003	-	168,526	=	25,834
1988	115,003 *	+	5,850	-	48,390	-	52,710	=	19,753

* Reduced by spouse's contribution



Tab E

1 might explain that we haven't introduced all the tax
2 returns because they have already been introduced, I think
3 the pertinent returns of the corporation. It would be
4 duplication on our part.

5 In looking at the tax returns, I believe it is
6 probably best to look at the Plaintiff's exhibits, because
7 I think they were introduced inclusively, the corporate
8 returns and individual returns.

9 MS. WOLBACH: I object to Exhibits 14 and 15 for
10 the reason that they are illustrative of testimony with
11 respect to disposable income, which seems to me, your Honor,
12 to be primarily irrelevant to this action since the child
13 support schedules are based not on the disposable income
14 or net income or usable income, but on gross income.

15 THE COURT: Well, there is some indication of
16 gross income. I think we will probably get to what his
17 gross income is for purposes of the child support
18 schedules.

19 MR. METOS: I think they are intermixed. We
20 have stuff on all our exhibits from '82 on up. I don't care
21 if he looks at the '82 return. We can take it off.

22 MS. WOLBACH: Mark this as a separate exhibit.

23 MR. METOS: It's been slipped in by mistake.
24 They have been received?

25 THE COURT: They may be received.

Tab F

**CAPITAL STANDARD ADDENDUM
TO
GENERAL MOTORS CORPORATION
Dealer Sales and Service Agreement**

This Capital Standard Addendum is executed effective as of October 1, 1983 pursuant to Section F of Article II of the Dealer Sales and Service Agreement in effect between General Motors and Dealer.

An explanation of the purposes and objectives of the General Motors Dealers Capital Standard Program is provided on the reverse side of this form.

Dealer and General Motors hereby agree as follows:

- (1) The actual dealer net working capital to be compared to the standard is defined on the reverse side.
- (2) General Motors has determined that the minimum net working capital required by Dealer to properly conduct complete Dealership Operations is \$ 452,000.
- (3) Dealer has established, or will, within a reasonable time, establish and maintain actual dealer net working capital in an amount not less than the minimum amount specified in Paragraph (2) above.

RECEIVED
SEP 27 1983
CADILLAC
DENVER

CARLESON CADILLAC COMPANY, INC.

Dealer Firm Name

SALT LAKE CITY, UTAH

City

State

By

[Signature]
Signature and Title

By

Signature and Title

By

Signature and Title

GENERAL MOTORS CORPORATION

By

[Signature]

DENVER ZONE

Manager

CADILLAC MOTOR CAR

Division

APPENDIX A

Loan Application and Agreement

It is understood that GMAC will rely on the net worth set forth below in determining whether to enter into the proposed loan transaction and under the governing terms of the LOAN APPLICATION AND AGREEMENT the applicant will be in default if the net worth of the applicant, the dealership or any guarantor declines below the minimum net worth to be maintained as set forth herein.

The undersigned guarantor(s) hereby agree(s) to furnish itemized statements of net worth to GMAC at reasonable intervals. *currently*

	<u>Net Worth as of Application Date</u>	<u>Minimum Net Worth to be Maintained</u>
<u>Applicant</u>		
<u>Carleson Cadillac Co., Inc.</u> s <u>669,008.00</u>	s <u>501,756.00</u>	
<u>After stock purchase</u>	<u>165,907.00</u>	<u>124,430.00</u>
<u>Dealership</u>		
<u>(if not the Applicant)</u>		
_____	\$ _____	\$ _____
<u>Guarantor</u>		
Name <u>Robert A. Carleson</u>	s <u>264,769.00</u>	s <u>198,576.00</u>
Address <u>2777 So. Claybourne</u>		
<u>Salt Lake City, UT</u>		
Name <u>Cheryl A. Carleson</u>	s <u>143,000.00</u>	s <u>107,250.00</u>
Address <u>2163 Wellington</u>		

Name _____	\$ _____	\$ _____
Address _____		

Name _____	\$ _____	\$ _____
Address _____		

_____ 19 _____

Carleson Cadillac Co., Inc.

Applicant

By _____

(if Applicant is a Corporation)

Robert A. Carleson

Guarantor

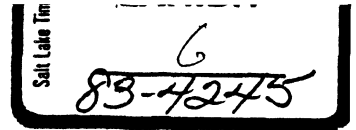
By _____

(if Guarantor is a Corporation)

Cheryl A. Carleson

Guarantor

Cheryl A. Carleson
Guarantor



CAPITAL STANDARD ADDENDUM TO GENERAL MOTORS CORPORATION Dealer Sales and Service Agreement

This Capital Standard Addendum is executed effective as of December 1, 1988 pursuant to Article 2.6 of the Dealer Sales and Service Agreement in effect between General Motors and Dealer.

An explanation of the purposes and objectives of the General Motors Dealers Capital Standard Program is provided on the reverse side of this form.

Dealer and General Motors hereby agree as follows:

- (1) The actual dealer net working capital to be compared to the standard is defined on the reverse side.
- (2) General Motors has determined that the minimum net working capital required by Dealer to properly conduct complete Dealership Operations is \$ 521,000.
- (3) Dealer has established, or will, within a reasonable time, establish and maintain actual dealer net working capital in an amount not less than the minimum amount specified in Paragraph (2) above.

Carleson Cadillac Company, Inc.
Dealer Firm Name

Salt Lake City Utah
City State

By [Signature] Pres.
Signature and Title

By _____
Signature and Title

By _____
Signature and Title

GENERAL MOTORS CORPORATION

By [Signature]

Northwest Zone Manager

Cadillac Motor Car Division

Tab G

1 Q Do you have a mortgage payment that you make
2 on that home?

3 A Yes, I do.

4 Q How much is that mortgage payment?

5 A That went up this January. It is, I believe,
6 \$580.

7 Q Per month?

8 A Per month.

9 Q Does that include your taxes and insurance on
10 that payment?

11 A No, it does not.

12 Q So those are added things on top of that?

13 A Yes, included in that.

14 Q Do you have any expenses as far as health care
15 for Heather during the last year? I thought you said you
16 had some insurance, and I know the Defendant has some
17 insurance and he is expected to pay some of these health
18 care bills she's had. Is there anything that comes out
19 of your pocket yearly?

20 A For Heather's health care?

21 Q Yes.

22 A No, that's--Bob takes care of that under the
23 decree.

24 Q Do you have any other related expenses in--I
25 don't mean this to be facetious--but is there a

Tab H

1 A 21,201.

2 Q Is that correct?

3 A I will take your word for it.

4 Q Well, that's your word on there.

5 A Well, if this is an accurate copy of my return

6 then, yes.

7 Q Okay. Do you believe it is an accurate copy?

8 A Yes, if that is what I provided you.

9 Q Turn to the second page on there and look under

10 child care.

11 A Okay.

12 Q And what did you write off in 1987 on your last

13 return as child care?

14 A \$188.

15 Q So that represented your child care costs for the

16 year; is that correct?

17 A That is the portion that I wrote off or was

18 deducted, yes. That isn't how much I necessarily spent

19 for it.

20 MR. METOS: We would offer 29 and 30 at this

21 time, your Honor.

22 MS. WOLBACH: No objection.

23 THE COURT: Received.

24 Q (By Mr. Metos) Your attorney previously handed

25 you an expense statement where you have sort of a breakdown

Tab I

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

<u>CARLESON</u> , <div style="text-align: right;">Plaintiff,</div>)	CHILD SUPPORT OBLIGATION WORKSHEET (SOLE CUSTODY)
vs.)	
<u>CARLESON</u> , <div style="text-align: right;">Defendant.</div>)	Civil No. <u>D-83-4245</u> Judge: _____

AVAILABLE INCOME	<u>Plaintiff</u>	<u>Defendant</u>	<u>Combined</u>
Gross Monthly Income	1a <u>2,000</u>	1b <u>4,058.00</u>	
Pre-Existing Alimony or Child Support Orders You Have Paid	2a <u>-</u>	2b <u>-</u>	
Adjusted Gross Income (#1a - #2a = #3a, #1b - #2b = #3b, #3a + #3b = #3c)	3a <u>2,000.00</u>	3b <u>4,058.00</u>	3c <u>6,058.00</u>
Proportionate Share of Combined Income (#3a ÷ #3c = #4a, #3b ÷ #3c = #4b)	4a <u>33 %</u>	4b <u>67 %</u>	

CHILD SUPPORT NEED

Age Group	<u>0 - 6</u>	<u>7 - 15</u>	<u>16 - 18</u>	<u>Total</u>
Number of Children per Age Group (#5a + #5b + #5c = #5d)	5a <u>-</u>	5b <u>1</u>	5c <u>-</u>	5d <u>-</u>

Schedule Amount per Child 6a - 6b 789.00 6c -

(Use the combined adjusted gross income from #3c and the schedule appropriate to the total number of children in #5d. If combined income is more than \$10,000 per month, schedule does not apply. Proceed to lines 8, 14, 15a, 15b, 16a-22)

Total Amount	7a <u>-</u>	7b <u>789.00</u>	7c <u>-</u>	7d <u>789.00</u>
(#5a x #6a = #7a, #5b x #6b = #7b, #5c x #6c = #7c, #7a + #7b + #7c = #7d)				

Health and Dental Insurance Premiums For Children 8 185.90

Total Support Need 9 974.90
(#7d + #8 = #9)

CHILD SUPPORT OBLIGATION	<u>Plaintiff</u>	<u>Defendant</u>	<u>Combined</u>
Share of Obligation (#4a x #9 = #10a, #4b x #9 = #10b)	10a <u>312.72</u>	10b <u>653.18</u>	

Credit for Actual Payments in #8	11a <u>-</u>	11b <u>185.90</u>
----------------------------------	--------------	-------------------

Parent's Total Child Support Obligation (#10a - #11a = #12a, #10b - #11b = #12b)	12a <u>321.72</u>	12b <u>467.28</u>
---	-------------------	-------------------

EXTENDED VISITATIONPlaintiffDefendantCombined

The extended visitation amount applies only to the non-custodial parent and to those months in which the order specifies that the child spend at least 25 of 30 consecutive days with that parent.

Amount Paid During Extended Visitation
(#12a x .75 = #13a, #12b x .75 = #13b)

13a _____

13b 350.46**CHILD CARE COSTS****Work Related Child Care Costs**14 **See attached sheet

Parent's Share of Child Care Costs
(#4a x #14 = #15a, #4b x #14 = #15b)

15a **15b ****EVALUATION INFORMATION**

Is this a temporary order,
an original final order,
or a modification?

16a _____

16b _____

16c X

If it is a modification, enter the
amount of the prior order,
the date of its entry,
and the state in which it was entered.

17 485.00 Includes \$85/no insurance on Heather18 2-15-8419 Utah

Is this a contested action,
a stipulated award,
or a default?

20a X

20b _____

20c _____

Is this the plaintiff's,
the defendant's,
the commissioner's
or the court's worksheet?

21a _____

21b X

21c _____

21d _____

Enter the amount of the claim or award.

22 _____

Is this the amount specified by the
guideline?

23 Yes

If not, why not?

24 _____

SCHOOLING & CHILD CARE

THE PLAINTIFF & DEFENDANT AGREED TO PAY THE FOLLOWING
EDUCATIONAL & CHILD CARE COSTS

DEFENDANT AGREED TO MAKE ADDITIONAL PAYMENTS FOR:

During the school year:

Tuition to Rolland Hall	\$3,199.68	9/mo	=	\$355.52/mo
Hot Lunches	144.00	9/mo	=	\$ 16.00/mo

TOTAL A MONTH				<u>\$371.52/mo</u>
---------------	--	--	--	--------------------

During the summer time:

School Tuition combination Day Care				
for 2 months	=	\$440.00/2mo	=	\$220.00/mo

TOTAL ADDITIONAL PAYMENTS			=	<u>\$591.52/mo</u>
---------------------------	--	--	---	--------------------

Tab J

Attorney At Law
623 East First South
P.O. Box 11643
Salt Lake City, Utah 84147
Tel (801) 363-5796
Fax (801) 531-6340

April 20, 1989

Ms. Judith Wolbach
50 West Broadway, Suite 900
Salt Lake City, Utah 84101

RE: Carleson v. Carleson

Dear Ms. Wolbach:

I will call the following individuals as witnesses for the Defendant:

Dr. Charles Ralston
Dr. Dale Johnson
Dr. Joseph G. Lambert
Robert E. Carleson
Robert A. Carleson
Annabelle Carleson
Judith Carleson
Steven Smith
Mary L. Hatch

I believe I have furnished most of the exhibits previously, but I am attaching copies of all exhibits I intend to introduce at the hearing.

Very truly yours,



Allan M. Metos

AMM:jmm
Enclosures

bwp\letcrln