

1999

# Loralee M. Montoya v. Joseph Anthony Montoya : Reply Brief

Utah Court of Appeals

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Brian C. Harrison; attorney for appellee.

J. Bruce Reading, William G. Wilson; Scalley and Reading; attorneys for appellant.

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## Recommended Citation

Reply Brief, *Montoya v. Montoya*, No. 994401129 (Utah Court of Appeals, 1999).  
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LORALEE M. MONTOYA,

**vs.**

Respondent/Appellant.

Case No.

District Court No. 994401129

**Paulette Stagg**

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IN THE UTAH COURT OF APPEALS

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LORALEE M. MONTOYA,

Petitioner/Appellee,

vs.

JOSEPH ANTHONY MONTOYA,

Respondent/Appellant.

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Case No.

District Court No. 994401129

REPLY BRIEF OF THE RESPONDENT/APPELLANT

Appeal from the Fourth District Court, Utah County, Judge James R. Taylor

Brian C. Harrison (#1388)  
**BRIAN C. HARRISON, P.C.**  
3651 North 100 East, Suite 300  
Provo, Utah 84604  
Telephone: (801) 375-7700  
Attorney for Petitioner/Appellee

J. Bruce Reading (#2700)  
William G. Wilson (#8787)  
**SCALLEY & READING, P.C.**  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 531-7870  
Facsimile: (801) 531-7968  
Attorneys for Respondent/Appellant

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## ARGUMENT

In her Brief, Ms. Montoya erroneously contends that the trial court “carefully considered . . . the [parties’] standard of living prior to separation and the respective standards of living after the divorce.” Appellee’s Brief at 11. However, the trial court’s alimony award gives Ms. Montoya more than she needs to support her demonstrated standard of living. The decision below should therefore be reversed or remanded for additional findings and instructions regarding the calculation of an appropriate award. Moreover, the trial court’s award was improper because in calculating alimony, it merely divided the parties’ aggregate pre-separation income and allocated half of it to Ms. Montoya instead of making detailed findings on her actual needs.

**I. Even if Appellee’s Proposed Corrections to the Findings of Fact Are Considered, the Alimony Award is Excessive Under the Jones Factors**

“[T]he spouse’s demonstrated need must, under *Jones*, constitute the maximum permissible alimony award.” *Bingham v. Bingham*, 872 P.2d 1065, 1068 (Utah Ct. App. 1994). Even accepting the corrections to the trial court’s findings on Ms. Montoya’s income urged in Appellee’s brief, the trial court’s retroactive and prospective alimony awards in this case exceed the maximum permissible alimony award established by *Bingham*.

Given the corrected figures, Ms. Montoya’s income was \$328.50 per month above her demonstrated needs from January 2000, when she began living in an apartment, to the time she moved back into the marital home. *See* Appellee’s Brief at pg. 16, ¶ 3. It follows that under the *Jones* test, she was not entitled to alimony during that period. Yet the trial court awarded her \$500.00 per month in alimony for this time period. (R. 127, ¶ 12.)

Once Ms. Montoya moved back into the marital home, she was only \$111.50 short of her demonstrated needs. *See* Appellee’s Brief at 16, ¶ 3. Accordingly, under the *Jones* test, she should have received an alimony award of only \$115.50 from the time she moved back into the home. Instead, the trial court awarded her \$500.00 regardless of her financial circumstances. (R. 127, ¶ 12.)

Because the trial court’s alimony award for both periods exceeds the maximum permissible alimony award, the trial court’s decision should be reversed.

**II. Because the *Jones* Test is the Only Means Provided by Case Law or Statute for Determining the Standard of Living, the Trial Court Erred In Applying An Income-Splitting Test**

Ms. Montoya erroneously asserts that a standard of living determination requires an inquiry apart from the elements of the test in *Jones v. Jones*, 700 P.2d 1072 (Utah 1985). However, as explained in Mr. Montoya’s original Brief, the purpose of the *Jones* test is to determine an alimony recipient’s standard of living. Therefore, “the spouse’s demonstrated need must, under *Jones*, constitute the maximum permissible alimony award.” *Bingham v. Bingham*, 872 P.2d 1065,1068 (Utah Ct. App. 1994).

That an alimony calculation under the *Jones* test is meant to determine the recipient spouse’s standard of living is supported by the test’s statutory analog, found at Utah Code Ann. § 30-3-5(7)(a)(i)–(iii). Subsections (i)–(iii) list verbatim the alimony factors related in *Jones*. Utah Code Ann. § 30-3-5(7)(c) further specifies that, in determining alimony under subsection (a), “the court should look to the standard of living, existing at the time of separation . . . and shall consider all relevant facts and equitable principles . . . .”

The statute thus puts an affirmative duty on the spouse seeking alimony to present relevant facts regarding his or her standard of living at the time of separation. However, apart from her Financial Declaration (*see* Addenda to Appellant's Brief, Exhibit "C"), Ms. Montoya failed to present relevant facts at trial which could establish her standard of living at the time of separation. The trial court's alimony determination is therefore merely speculative.

The *Howell* decision, cited by Ms. Montoya, describes the standard of living inquiry under the *Jones* test as a "fact sensitive" task. *Howell v. Howell*, 806 P.2d 1209, 1211 (Utah Ct. App. 1991).

Moreover, in *Acton v. Deliran*, 737 P.2d 996, 999 (Utah 1987), the court stated:

The findings of fact must show that the court's judgment or decree "follows logically from, and is supported by, the evidence." *Smith v. Smith*, 726 P.2d 423, 426 (Utah 1986). The findings "should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached."

(Citations omitted.)

However, rather than engaging in a "fact sensitive" determination of Ms. Montoya's historical needs to arrive at an appropriate alimony award, the trial court merely divided the total pre-separation income of the parties in half and presumed that this was the amount required to maintain Ms. Montoya's standard of living. The trial court found that the parties' pre-separation income and benefits amounted to approximately \$7,033 per month, and then awarded Ms. Montoya alimony sufficient to bring her income from all sources up to \$3,663.40, or approximately 52% of \$7,033. (R. 111–110. *Note:* the record is paginated backwards.)

In rendering this award, the trial court failed to rely on facts regarding the actual need for alimony, and instead relied on abstract mathematical speculation. No findings were made regarding



how the family income was allocated between the parties or their children at the time of separation.<sup>1</sup> Instead, the trial court offered only a talismanic mantra, stating that this amount placed the parties “as close to the pre-separation standard of living as possible . . . .” (R. 109, ¶ 42.)

The trial court’s equalization of the parties’ income was improper. Equalization of incomes should only be the goal “in those cases in which insufficient resources exist to satisfy both parties’ legitimate needs.” See *Williamson v. Williamson*, 983 P.2d 1103, 1106 (Utah Ct. App. 1999) (holding that an alimony modification based only upon income figures is insufficient and that detailed factual findings regarding the parties’ financial circumstances and needs are required); *Gardner v. Gardner*, 748 P.2d 1076, 1081 (Utah 1988) (holding that the equalization of the parties’ standards of living is appropriate when one spouse has been a full time homemaker for many years and, due to age and inexperience, has poor prospects of gainful employment); *Higley v. Higley*, 676 P.2d 379 (Utah 1983) (same).

This is not a case where resources were insufficient to meet the parties’ demonstrated needs, as in *Williamson*. Neither is it a case where the party seeking alimony was found to have little or no prospect of providing for herself, as in *Gardner* or *Higley*. Thus, an equal splitting of the parties’ pre-separation income to arrive at an alimony award was improper in the absence of any factual findings that this amount was necessary to support Ms. Montoya’s actual standard of living.

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<sup>1</sup>It should be noted at this point that Ms. Montoya unfairly characterizes Mr. Montoya’s financial situation at the time of separation in stating “[h]usband paid no child support or alimony from the time of separation until the Amended Decree was entered.” See Appellee’s Brief at 10. However, the trial court’s initial Decree of August 2, 1999 provided for joint custody of the parties’ minor child and permission to jointly occupy the marital home. When Ms. Montoya later moved to an apartment, she never paid Mr. Montoya child support even though their child remained with him. The record is void of any suggestion that Mr. Montoya failed to support his minor child or owed child support to Ms. Montoya.

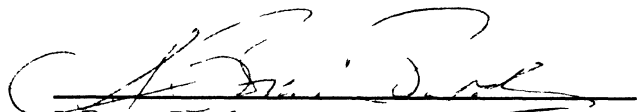
## CONCLUSION

The trial court's prospective and retrospective alimony awards give Ms. Montoya more than her actual needs according to the standard of living she demonstrated at trial. The retrospective award, for the period during which she lived in an apartment, is \$328.50 above her demonstrated standard of living for that period, even accepting the corrections to the record urged by Ms Montoya in her Brief. The prospective award provides her with alimony of \$500.00 per month, despite a shortfall in Ms. Montoya's income of only \$115.50 below her demonstrated needs. Appellant therefore respectfully requests that alimony be set at \$115.50 for the prospective period, and that no alimony should be permitted for the retrospective period during which Ms. Montoya lived in an apartment and had lower expenses.

Moreover, the trial court's alimony award to Ms. Montoya was improper because it was rendered through an equal splitting of the parties' aggregate pre-separation income, rather than through findings regarding her actual needs. Thus, as an alternative to adjusting the alimony award as requested above, Appellant suggests that trial court's decision should be remanded for additional findings regarding Ms. Montoya's standard of living, with instructions on the proper legal standard for determining an appropriate award.

DATED this 19 day of March, 2002.

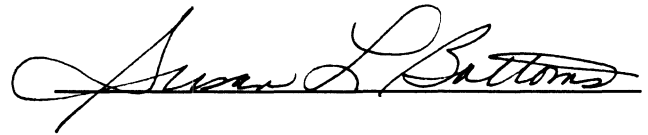
**SCALLEY & READING, P.C.**

  
J. Bruce Reading  
Attorney for Respondent/Appellant

CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, a true and exact copy of the foregoing document to the following party on the 19<sup>th</sup> day of March, 2002.

Brian C. Harrison  
**BRIAN C. HARRISON, P.C.**  
3651 North 100 East, Suite 300  
Provo, Utah 84604

A handwritten signature in cursive script, reading "Susan L. Bottoms", written over a horizontal line.