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Montague v. Montague : Brief of Appellant

Utah Court of Appeals

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MICHAEL C. MONTAGUE,

VS.

Appellant.

Paulette Stagg

IN THE UTAH COURT OF APPEALS

MICHAEL C. MONTAGUE,

Appellee,

vs.

MOANA FAIRBANKS MONTAGUE,

Appellant.

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Appellate No. 20000155-CA

BRIEF OF APPELLANT

Appeal from the Third Judicial District Court, Salt Lake County,

The Honorable William B. Bohling

Civil No. 964900839 DA

Argument Priority No. 15

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Oral Argument and Published Decision Requested

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JURISDICTIONAL STATEMENT

This is a direct appeal as of right in a domestic relations proceeding in the Third Judicial District Court, in and for Salt Lake County. This Court has jurisdiction over this appeal pursuant to Rule 3, Utah Rules of Appellate Procedure.

ISSUES, STANDARD OF REVIEW, AND PRESERVATION

I. ARE THE TRIAL COURT'S FINDINGS SUFFICIENT TO SUPPORT ITS CONCLUSION THAT THERE OCCURRED A SUBSTANTIAL AND MATERIAL CHANGE IN CIRCUMSTANCES WHICH JUSTIFIES MODIFICATION?

The sufficiency of a trial court's findings of fact is a question of law which should be reviewed for correctness. Wilde v. Wilde, 969 P.2d 438 (Utah Ct. App. 1998); Wells v. Wells, 871 P.2d 1036 (Utah App. 1994). Preservation of the issue at trial is not applicable. State v. Larsen, 999 P.2d 1252 (Utah Ct. App. 2000); ProMax Dev. Corp. v. Mattson, 943 P.2d 247 (Utah. App. 1997).

II. DID THE TRIAL COURT ABUSE ITS DISCRETION IN DETERMINING THAT A SUBSTANTIAL AND MATERIAL CHANGE IN CIRCUMSTANCES OCCURRED WHICH JUSTIFIES MODIFICATION?

The trial court's findings should be overturned only if they are clearly erroneous, and only where the trial court's judgment is so flagrantly unjust as to constitute an abuse of discretion. Thomas v. Thomas, 987 P.2d 603 (Utah Ct. App. 1999). However, if the findings are so inadequate that they cannot be meaningfully challenged as factual determinations, the appellant should be relieved of her burden to marshal the evidence. Woodward v. Fazzio, 823 P.2d 474, 477 (Utah Ct. App. 1991). Preservation of the issue at trial is not applicable. Larsen, 999 P.2d 1252 (Utah Ct. App. 2000); ProMax, 943 P.2d 247 (Utah. App. 1997).

III. ARE THE TRIAL COURT'S FINDINGS OF FACT SUFFICIENT TO SUPPORT THE ORDER REDUCING MR. MONTAGUE'S ALIMONY OBLIGATION FROM \$600.00 PER MONTH TO \$150.00 PER MONTH?

The sufficiency of a trial court's findings of fact is a question of law which should be reviewed for correctness. Wilde, 969 P.2d 438 (Utah Ct. App. 1998); Wells, 871 P.2d 1036 (Utah App. 1994). Preservation of the issue at trial is not applicable. Larsen, 999 P.2d 1252 (Utah Ct. App. 2000); ProMax, 943 P.2d 247 (Utah. App. 1997).

STATEMENT OF THE CASE

1. NATURE OF THE CASE.

This is an alimony modification case which arises as a result of Mr. Montague's cessation of employment from his longtime employer, the LDS Church, and his corresponding obtainment of new employment at a substantially lower wage than his historical earnings.

2. COURSE OF THE PROCEEDINGS.

A decree of divorce between the parties was entered on or about December 5, 1996. The decree was the result of a negotiated settlement agreement between the parties, the terms of which, *inter alia*, provided an award of alimony to Ms. Montague in the amount of \$600.00 per month. On October 14, 1998, after experiencing the loss of his long-term employment and a significant reduction in income, Mr. Montague filed a Petition for Modification of Decree of Divorce alleging a substantial and material change in circumstances occurred which warranted downward modification of his alimony obligation. Trial on Mr. Montague's Petition was held on January 5, 2000.

3. DISPOSITION BELOW.

After taking evidence and testimony at the January 5, 2000 trial, the trial Court ordered that Mr. Montague's alimony obligation to Ms. Montague be reduced from \$600.00 per month to \$150.00 per month. No post-trial motions were filed. This appeal ensued.

4. STATEMENT OF FACTS.

At the time of entry of the Decree of Divorce Mr. Montague was employed full time with the LDS Church (the Church) employment office as Supervisor of the Church's Granger Employment Office, and earned a gross income of \$3726.00 per month. (Exhibit 5, Addendum 2). He had been employed by the Church for over twenty years. (R. 10).

On June 26, 1998 Mr. Montague was placed on disciplinary probation, was demoted to the position of employment specialist, and was transferred from the Granger Employment Center to its Bountiful Employment office for reasons relating to poor work performance. (Exhibits 21, 22, Addendum 8, 9). Mr. Montague did not deny the allegations leading up to his disciplinary probation, demotion and transfer. (Id.). Subsequent to his demotion and transfer, and while still on disciplinary probation, issues concerning Mr. Montague's on-the-job conduct and work performance persisted. (R. 99, Exhibit 1, Addendum 1).

Ultimately, on July 13, 1998, a meeting occurred between Mr. Montague and Church human resources personnel, namely Ron Garrison and Dean Walker (Exhibit 1, Addendum 1). At this meeting Mr. Montague was informed that he would not be able to return to the Bountiful office, and was provided with four options: (1) resign from employment, (2) be terminated due to inappropriate conduct and lack of performance, (3) follow the grievance policy of the Church,

or (4) meet with Gary Winters on Friday, July 17, 1998 to discuss his concerns. Mr. Montague was afforded two weeks leave to think about what he wanted to do. (Id.).

After being provided with the four options mentioned above, Mr. Montague made no efforts whatsoever to retain his employment with the Church. (R. 46-48). Instead, on July 27, 1998 Mr. Montague submitted a letter indicating that he was resigning his employment with the Church. (Exhibit 16, Addendum 4, R. 47). At no time after his resignation did Mr. Montague contest or challenge the actions of his employer or the circumstances leading to his resignation. (R. 27). Mr. Montague accepted new employment at a substantially lower salary, approximately \$2083.00 per month. (Exhibits 3, 5, Addendum 2, 3).

SUMMARY OF ARGUMENT

I. THE TRIAL COURT'S FINDINGS OF FACT ARE INADEQUATE TO ALLOW FOR MEANINGFUL REVIEW.

The trial court's findings of fact are conclusory and so insufficiently detailed that they cannot be viewed as legally sufficient. The absence of adequate findings is reversible error and this Court cannot sustain them as supportive of the conclusions of law or the ultimate ruling.

II. THE TRIAL COURT ABUSED ITS DISCRETION BY DETERMINING THAT A CHANGE OF CIRCUMSTANCES OCCURRED WHICH JUSTIFIES MODIFICATION.

Even if the findings of fact are inadequate, the evidence is uncontroverted that (1) Mr. Montague had successfully retained employment with the Church for over twenty years, (2) his own misconduct played a key role in the loss of his employment, (3) he made no attempt to retain his employment even though presented with opportunity to do so, and (4) he never challenged his loss of employment as wrongful. In sum, even marshaling all evidence in favor of the trial

court's ruling, the overwhelming weight of the evidence is such that the trial court abused its discretion in determining that Mr. Montague was terminated by the Church, that "the degree of culpability that would need to be attributed to him in connection with the loss of his job, to deny him the relief he seeks, does not exist", and that a material change in circumstances occurred justifying modification.

III. THE TRIAL COURT FAILED TO ARTICULATE ITS ANALYSIS IN REDUCING ALIMONY FROM \$600.00 TO \$150.00 PER MONTH.

Even if this court were to determine that the trial court did not err in determining that there occurred a substantial and material change in circumstances justifying modification, the trial court still did not adequately articulate its decision to reduce alimony to the specific amount of \$150.00 per month. While testimony and evidence were presented relating to the respective incomes and expenses of the parties, the court made no findings whatsoever relating to the factors it must pursuant to Utah Code Ann. §30-3-5(7).

ARGUMENT

I. THE TRIAL COURT'S FINDINGS OF FACT ARE INSUFFICIENT TO ALLOW FOR MEANINGFUL REVIEW.

A trial court must make findings on all material issues, and its failure to delineate what circumstances have changed and why these changes support the modification made in the prior divorce decree constitutes reversible error unless the facts in the record are clear and uncontroverted and only support the judgment. Muir v. Muir, 841 P.2d 736, 739 (Utah Ct. App. 1992) (quoting Whitehouse v. Whitehouse, 790 P.2d 57, 61 (Utah Ct. App. 1990)). The findings should be more than cursory statements; they must be sufficiently detailed and include enough

subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached. Id. (quoting Acton v. J.B. Deliran, 737 P.2d 996, 999 (Utah 1987)). The absence of adequate findings of fact "ordinarily requires remand for more detailed findings by the trial court." Woodward 823 P.2d 474, 478 (Utah Ct. App. 1991).

In this case, the trial court concluded that there had occurred a material change in circumstances and then reduced Mr. Montague's alimony obligation from \$600.00 per month to \$150.00 per month. The findings, however, are conclusory almost in their entirety. They are woefully deficient and cannot be said to adequately support either the conclusions of law or ultimate ruling.

Firstly, there is no dispute that Mr. Montague's job loss constitutes a change in circumstances. What is disputed is whether the change in circumstances justifies modification. See, Bridenbaugh v. Bridenbaugh, 786 P.2d 241 (Utah Ct. App, 1990); Paffel v. Paffel, 732 P.2d 96, 103 (Utah 1986); Maughan v. Maughan, 770 P.2d 156, 161 (Utah Ct. App. 1989). In order to determine whether the change in circumstances justifies modification, the voluntariness of Mr. Montague's cessation of employment with the LDS Church is critical. It would be manifestly unjust and constitute bad public policy for the trial court to grant Mr. Montague an alimony reduction if he voluntary left his higher paying job. However, the only findings relating to Mr. Montague's job loss are:

1. "Mr. Montague lost his job of twenty plus years with the LDS Church."

(Findings of Fact and Order, p. 2); and

2. "...Mr Montague's actions did have something to do with the fact that he was terminatedbut he did not intend or want to be terminated from employment. The degree of culpability that would need to be attributed to him in connection with the loss of his job, to deny him the relief he seeks, does not exist." (Id.).

The first finding is not helpful because the wording "lost his job" could be applied to either a voluntary or involuntary cessation of employment. Likewise, the second finding is of no use because it is conclusory. There are no other detailed findings that give this Court any guidance in determining how the trial court reached the conclusion that the "degree of culpability" attributable to Mr. Montague "does not exist" or whether modification was justified as a threshold matter.

II. THE TRIAL COURT ABUSED ITS DISCRETION BY DETERMINING THAT A CHANGE OF CIRCUMSTANCES OCCURRED WHICH JUSTIFIES MODIFICATION.

The trial court's findings should be overturned only if they are clearly erroneous, and only where the trial court's judgment is so flagrantly unjust as to constitute an abuse of discretion. Thomas, 987 P.2d 603 (Utah Ct. App. 1999). Remand for adequate findings on a particular factual issue is unnecessary if the evidence concerning the issue is undisputed. Id.; Levitz v. Warrington, 877 P.2d 1245 (Utah Ct. App. 1994); State v. Lovegren, 798 P.2d 767 (Utah Ct. App. 1990). In this case the relevant facts are essentially undisputed. There is no dispute that Mr. Montague no longer holds his employment with the Church or that he now earns an income substantially less than that which he earned while employed with the LDS Church. There also is no dispute that at the July 13, 1998 meeting Mr. Montague was presented with four options and

that he later submitted a letter of resignation. What is at issue is proper application of the facts. At trial Mr. Montague argued that he resigned because he believed that going through the grievance procedure would be for naught, and because he was told and believed he would have lost his retirement benefits if he went through the Church's grievance procedure and lost. Appellant asserts that Mr. Montague's beliefs are irrelevant – that what is relevant is limited to Mr. Montague's act of resignation without even attempting to avail himself of the opportunity to keep his job.

A. CLEAR ERROR AND MANIFEST INJUSTICE.

The trial court's findings should be overturned only if they are clearly erroneous, and only where the trial court's judgment is so flagrantly unjust as to constitute an abuse of discretion. Thomas, 987 P.2d 603 (Utah Ct. App. 1999).

1. CLEAR ERROR.

In this case the trial court determined that Mr. Montague was terminated by the Church (R. 129). However, such a determination is clearly erroneous. Rulings in unemployment cases offer guidance as to whether Mr. Montague initiated the separation or whether it was initiated by the Church. In Lanier v. Industrial Commission, 694 P.2d 625 (Utah 1985), the Utah Supreme Court determined that the burden of proof in unemployment compensation proceedings falls upon the claimant to establish eligibility for benefits. Such a burden requires that a claimant show he did not leave work voluntarily, defining "voluntarily" as meaning "at the volition of the employee, in contrast to a firing or other termination at the behest of the employer." (Id). In Lanier, the Supreme Court also found relevant the fact, as is the case here, that the claimant "failed to protest

his termination through hospital grievance procedures with which he was familiar" as corroborative of an intent to voluntarily leave his employment. In SOS Staffing Services, Inc., v. Workforce Appeals Board, 983 P.2d 581, (Utah App 1999), this Court determined that in the context of an unemployment benefits claim the test for voluntariness in leaving employment is not the willingness of the employer that the employee continue working, but rather the willingness of the employee to continue. Thus, under this standard whether the LDS Church desired the employment relationship to end or continue is irrelevant. "Voluntarily leaving work means that the employee severed the employment relationship as contrasted to a separation initiated by the employer. This is true regardless of how compelling the claimant's reasons were for making the decision to leave the work." (citing Utah Code Admin. P. R994-405-101 (Supp. 1997)).

At trial Mr. Montague argued that at the July 13, 1998 meeting he was put into a situation where he was told either to resign or that he would be terminated. Marshaling the evidence in favor of the trial court's determination that Mr. Montague was terminated by the Church, the entire facts contained in the record in support thereof are minimal:

1. Mr. Montague did not want to lose his job with the Church. (R. 62);
2. Mr. Montague submitted a letter of resignation because he was told and believed that he was not wanted in Church employment any longer. (R. 18, 27-8, 45-6);
3. Mr. Montague submitted a letter of resignation because he was told and believed that if he went through the Church's grievance procedure and lost, he would lose his vested retirement benefits. (R. 26);

4. Two of the four options presented to Mr. Montague at the July 13, 1998 meeting were for him to resign or be terminated. (Exhibit 1, Addendum 1).

Appellant can find no other evidence which supports the conclusion that Mr. Montague was terminated. By contrast, the overwhelming weight of evidence points to the conclusion that Mr. Montague voluntarily resigned. At the July 13, 1998 meeting, two of the four options presented to Mr. Montague did not involve separation – following the grievance policy of the Church, and meeting with Gary Winters on Friday, July 17, 1998 to discuss his concerns. (Id.). After being presented with these options Mr. Montague was given two weeks of leave to think about his decision (Id.). The decision was placed squarely in Mr. Montague's hands as to what option he would elect. Mr. Montague then opted to sign a letter of resignation (R. 47, Exhibit 16, Addendum 4). He also signed an exit interview form wherein he acknowledged he had "decided to look for new employment." (Exhibit 17, Addendum 5). The Termination Worksheet in Mr. Montague's personnel file corroborated this action, indicating "resignation during probation" (Exhibit 19, Addendum 7). Further corroboration of voluntary resignation came from Mr. Montague's own testimony at trial:

"....I had a decision to make. Could I go on with my life and be happy or do I want to fight and be contentious and argumentative, and I'm tired of that. I don't want that anymore. **So I made a decision I'll just go on with my life, get another job where someone wanted me to work there.**" (R. 28 (Emphasis added)).

".... I had determined fairly quickly after that [July 13, 1998] meeting that I was simply going to go on with my life and try to do something better..." (R. 46).

Finally, Mr. Montague acknowledged that he gave no thought whatsoever to his alimony obligation to Ms. Montague in making his decision whether to resign or attempt to keep his employment. (R. 48-49).

The weight of the evidence also renders implausible Mr. Montague's self-serving assertion that he was told that if he went through the grievance procedure and lost, he would lose his vested retirement benefits. Firstly, Mr. Montague admitted that despite being given two weeks to make a decision, he made no investigation to determine the veracity of his claim that he was told if he went through the grievance procedure and lost that he would lose his vested benefits (R.46). Further, the grievance policy itself makes no reference to a loss of vested retirement benefits. (Exhibit 18, Addendum 6). Also, Dean Walker, then employed in the LDS Church's Human Resources department, and present at the July 13, 1998 meeting, testified that Exhibit 1, Addendum 1 was an accurate representation of his notes of the July 13, 1998 meeting, which also makes no reference to loss of vested retirement if going through the grievance procedure. (R. 72-73). Finally, Ron Garrison, then Director of Human Services for the Welfare Department for the Church, also present at the July 13, 1998 meeting, testified that he did not tell Mr. Montague that he would lose his retirement benefits if he were to go through the grievance procedure (R. 103). Mr. Garrison testified that Mr. Montague might even be considered for rehire if he were to apply (Exhibit 19, Addendum 7, R. 104-105).

Under these facts, it was clear error for the trial court to conclude that Mr. Montague was "terminated by the church." The trial court's statement that "it was pretty much a foregone conclusion that [Mr. Montague's] career was over with the Church" is purely speculative. If the

Church intended to terminate Mr. Montague it would have done so outright or presented Mr. Montague with only the first two options. It did not. The fact remains that Mr. Montague was provided with the opportunity to defend the allegations against him, and to argue a case for keeping his job. He elected not to do so and did not avail himself of either of the two options which might have prevented his job loss. It is unknown what would have occurred had he availed himself of either of those options. Mr. Montague voluntarily resigned and as such is not entitled to relief. Proctor v. Proctor, 773 P.2d 1389 (Utah Ct. App. 1989). "We agree with the trial court that an able-bodied person who stops working, as an exercise of personal preference . . . nonetheless retains the ability to earn and the duty to support . . ."

2. FLAGRANT INJUSTICE.

In this case the flagrant injustice flows from the trial court's erroneous determination that Mr. Montague was terminated by the Church. Mr. Montague's cessation of employment was voluntary. It is unjust to require Ms. Montague to bear the financial burden of Mr. Montague's voluntary actions. Mr. Montague was charged with an alimony obligation arising from a twenty four year marriage wherein he held full time employment with the LDS Church for equal duration. Then, less than two years after being ordered to pay alimony, he resigned from his career employment, making no attempt to retain his job even though presented with such opportunity. It is bad policy to relieve obligors such as Mr. Montague from the ongoing responsibility of attempting to maintain employment, to the extent possible, at or near his historical earning capacity, so as to fulfill his court-ordered obligation. Making such a ruling, the trial court essentially sends the message to obligors that one has no duty to attempt to retain

higher paying employment, and that quitting one's job is sufficient grounds for alimony reduction or termination. While Mr. Montague may have not orchestrated or may not have wanted to lose his job, the undisputed facts remain that he resigned while not availing himself of options which might have allowed him to retain his employment, and without regard for the financial impact upon Ms. Montague. Even the scant findings which do exist state that Mr. Montague's own misconduct had something to do with his loss of employment. Under such circumstances it is unjust to require Ms. Montague to pay for Mr. Montague's actions, which leaves her in a position of having to work two jobs to maintain the lifestyle she enjoyed during the twenty four year marriage, in which she only worked part-time throughout (R. 84), and in which Mr. Montague clearly could afford to provide support but for resigning from his employment. Exacerbating the injustice is that after the divorce Ms. Montague paid to Mr. Montague his full share of equity in the marital residence by borrowing from her parents (R. 89), an obligation to which she is now responsible. Had Mr. Montague's job loss occurred prior to the same, his failure to pay alimony could have resulted in an reduction in his equitable lien on the marital residence, in a manner akin to what this court permitted in Proctor, 773 P.2d 1389 (Utah Ct. App. 1989).

B. INVOLUNTARY JOB LOSS AS A PREREQUISITE TO REVISITING THE ISSUE OF ALIMONY.

For the reasons stated above, as a threshold matter to revisiting the original alimony award for review, Mr. Montague first should have been required to bear the burden of proving by a preponderance of the evidence that his cessation of employment was involuntary and the result of no fault of his own. Williamson v. Williamson, 983 P.2d 1103 (Utah Ct. App 1999); citing Jense v. Jense, 784 P.2d 1249, 1252 (Utah Ct. App. 1989). ("The loss of a job . . . may go to [a

payor spouse's] ability to pay the judgment, but it is not a proper basis upon which to change the amount of the original award.")

Ultimately, while distinguishable, this case is most analogous to Hill v. Hill, 869 P.2d 963 (Utah Ct. App. 1993), in which this court affirmed the trial court's imputation of income and finding of voluntary underemployment where the obligor left his employment at Morton Thiokol and obtained new employment at much lower pay without regard for the financial impact on his spouse. While the facts are similar, this is a modification proceeding whereas Hill was one setting an initial award. If this action were a proceeding setting an initial support award, a finding of voluntary underemployment and income imputation would be warranted under the facts. In this modification action, however, the trial court simply should have denied the petition as not justifying modification under the same factual scenario.

C. THE TRIAL COURT FAILED TO HOLD MR. MONTAGUE TO HIS BURDEN OF PROOF.

Finally, the record reflects that the trial court did not even hold Mr. Montague to the proper burden of proof that the change in circumstances justified modification. In making its ruling, the trial court stated:

"I find that the degree of voluntariness the court thinks is necessary to disqualify a person for a change of circumstances on the basis it was voluntary underemployment just were not met here and the standard that is required for that is not available to [Ms. Montague] to defeat the claim that was being asserted by Mr. Montague."

The trial court's position directly contravenes Bridenbaugh, Paffel and Maughan. As the party seeking modification, Mr. Montague should have been charged with the burden of proving that his job loss was involuntary, and that what occurred justified modification. Instead, the trial court

improperly charged Ms. Montague with the burden of proving that Mr. Montague's job loss was voluntary, and that the change did not warrant modification. Thus, in addition to abusing its discretion by reaching a conclusion in contravention of the weight of the evidence, the trial court did not even hold Mr. Montague to the proper burden of proof.

III. THE TRIAL COURT FAILED TO ARTICULATE ITS ANALYSIS IN REDUCING ALIMONY FROM \$600.00 TO \$150.00 PER MONTH.

Even if this court were to determine that the trial court did not err in determining that there occurred a substantial and material change in circumstances, and that it was proper for the court to reopen the question of alimony, the trial court still did not adequately articulate its decision to reduce alimony to the amount of \$150.00 per month. Testimony and evidence were presented as to the respective current incomes and expenses of the parties, but the trial court, while commencing an analysis as to need and ability to pay, never finished the same and offered no explanation as to why it was reducing alimony to the specific amount of \$150.00 per month. Utah Code Ann, §30-3-5(7) states in relevant part:

(7) (a) The court shall consider at least the following factors in determining alimony:

- (i) the financial condition and needs of the recipient spouse;
- (ii) the recipient's earning capacity or ability to produce income;
- (iii) the ability of the payor spouse to provide support;
- (iv) the length of the marriage;
- (v) whether the recipient spouse has custody of minor children requiring support;

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

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

Not only are the scant findings insufficient to justify the award pursuant to case law, the trial court's setting of a new alimony award without addressing the statutory factors ruling also renders the ruling unsustainable. Williamson, 983 P.2d 1103 (Utah Ct. App. 1998).

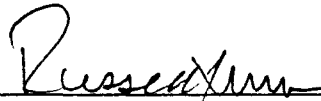
CONCLUSION

The trial court's findings of fact are so devoid of specificity that they cannot be sustained as supportive of the conclusions of law and ruling. The findings offer no insight as to the analysis, steps or procedure that the trial court utilized in making its ruling. Remand for more detailed findings therefore is necessary unless this court can determine from the record that the facts essentially are undisputed. In such case this court could substitute its judgment for that of the trial court. Ms. Montague asserts that the relevant facts essentially are undisputed as to the threshold question of whether the change in circumstances warrants modification. The actual dispute is proper application of those facts to the law, and that the overwhelming weight of the evidence points to the only logical conclusion that Mr. Montague voluntarily resigned his employment with the LDS Church. Under such circumstances it was an abuse of discretion for the trial court to determine that Mr. Montague was terminated by the Church, and correspondingly that the change in circumstances justified modification. It is patently unjust for

the trial court to require Ms. Montague to shoulder the burden of Mr. Montague's misconduct and voluntary decision to seek new employment.

In the alternative, even if there occurred a substantial and material change in circumstances warranting modification, the trial court nevertheless abused its discretion in reducing the alimony award to \$150.00 per month without making sufficiently detailed findings as to how it arrived at that specific amount. If modification is justified then remand for more detailed findings is the only proper action.

DATED this 25 day of September, 2000.



RUSSELL Y. MINAS
Attorney for Appellant

IN THE UTAH COURT OF APPEALS

MICHAEL C. MONTAGUE,

Appellee,

vs.

MOANA FAIRBANKS MONTAGUE,

Appellant.

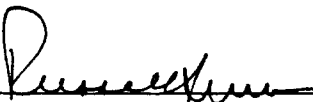
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Appellate No. 20000155-CA

CERTIFICATE OF SERVICE

On this 26 day of September, 2000, I deposited in the United States Mail, postage prepaid, a true and correct copy of the foregoing Brief of Appellant to the following:

David A. McPhie
Attorney for Appellee
2105 E. Murray-Holladay Road
Salt Lake City, UT 84117



ADDENDUM

Tab 1

CONFIDENTIAL

Meeting with Mike Montague

July 13, 1998

Present: Ron Garrison, Dean Walker, and Mike Montague

Purpose: To discuss Mike Montague's performance in the Bountiful Employment office since being transferred from the Granger office and being placed on probation

Discussion: Ron Garrison discussed with Mike the concerns that Sandy Thomas has with his performance since he has been transferred to Bountiful. Ron indicated that things are not going well and that the LDS Employment Headquarters Staff are concerned with his performance.

Ron said that he understood that it was difficult to supervise Jim Fox, but Mike's performance was below standard in Granger- even to the point where termination was discussed. It was indicated that a decision was made to put him in Bountiful to give him an opportunity to continue his employment.

Because of concerns noted by Sandy Thomas, Ron indicated, that Mike would not be able to return to the Bountiful Employment office. The following are concerns that Sandy Thomas outlined:

1. Mike tried to intervene on a concern Sandy had regarding a contractor to repair lighting in the unit. He questioned the way Sandy handled the situation. This was none of his business.
2. Mike used vulgarity to a parking attendant during a luncheon at the Olive Garden this past week. This is totally inappropriate.
3. Mike did not agree to the way that Sandy wanted him to work with an executive. He had difficulty in confronting this individual and redirecting him.
4. Since Sue Looney has been out in the Granger office it is apparent that the unit is in bad shape. It was pointed out to Mike that he had not managed the office well.
5. Mike interrupted a phone call that Sandy was having to inform her that his chair was tipping and that he wanted his old chair back. He had claimed that this was an emergency. He did not apologize.
6. The secretary in Bountiful was applying for employment and needed Mike to look at a letter she had written. He responded and said that it was not grammatically correct. Sandy proofed it and it

was fine. Mike responded in regard to the secretary leaving- "Good, she is stubborn." This inappropriate, since she needed encouragement not undue criticism.

7. Mike made comments to Sandy, "We both need to loose weight." This was offensive to Sandy Thomas.
8. On Friday evening Sandy told Mike to have a nice weekend. He responded by saying, "Okay, don't let the door hit you in the ____ (made a rude notice) on the way out. Sandy said "Mike!" He said "well, I didn't say it did I?" The secretary witnessed this inappropriate remark.

Conclusion: Ron reminded Mike that he had been given a warning letter earlier in the year and now was on probation due to a lack of performance in the Granger office. Ron told Mike that the concerns now in Bountiful make it difficult for him to continue his employment and he would not be able to return to the Bountiful office.

The following options were given to Mike Montague:

1. Resign from his employment and seek new employment.
2. Be terminated due to inappropriate conduct and lack of performance.
3. Follow the grievance policy of the Church.
4. Meet with Gary Winters on Friday July 17, 1998 to discuss his concerns.

Ron gave Mike the next two weeks to decide what he is going to do. Mike will use his annual leave instead of having his employment suspended. He will call Dean Walker to inform him of his decision.

Following the discussion Dean Walker went out to the Bountiful office while Mike cleaned out his desk. The keys to the facility have been turned in and returned to Sandy Thomas.

Tab 2

David A. McPhie (2216)
Attorney at Law
2105 East Murray-Holladay Road
Salt Lake City, Utah 84117
(801) 278-3700

Attorney for Plaintiff

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

MICHAEL CHARLES MONTAGUE,

Plaintiff.

-vs-

MOANA FAIRBANKS MONTAGUE,
nka MOANA FAIRBANKS.

Defendant.

FINANCIAL DECLARATION

Civil No. 964900839 DA

Judge William B. Bohling
Commissioner Michael S. Evans

Plaintiff: Michael Charles Montague

Address: 2760 South Centerbrook Drive
West Valley City, Utah 84119

SSN: 529-62-4122

Occupation: Shipping Supervisor

Employer: Industrial Container & Supply

Birthdate: 10/15/47

NOTE: This declaration must be filed with the domestic calendar clerk 5 days prior to the pre-trial hearing. Failure by either party to complete, present, and file this form as required will authorize the court to accept the statement of the other party as the basis for its decision.

**ANY FALSE STATEMENT MADE HEREON SHALL SUBJECT YOU TO THE
PENALTY FOR PERJURY AND MAY BE CONSIDERED FRAUD UPON THE COURT.**

STATEMENT OF INCOME, EXPENSES, ASSETS AND LIABILITIES

1. GROSS MONTHLY INCOME:

Salary/Wages	\$2,083.33	2583
Pension/Retirement	\$	
Social Security	\$	
Disability Insurance	\$	
Unemployment Insurance	\$	
Public Assistance	\$	
Child Support from prior marriage	\$	
Dividends/Interest	\$	
Rents	\$	
Other	\$	

TOTAL MONTHLY INCOME: \$2,083.33 + 150⁰⁰ 2

2. ITEMIZE MONTHLY DEDUCTIONS FROM GROSS INCOME:

State and Federal Income Taxes	\$279.83
Number of Exemptions Taken	M(1)
Social Security	\$153.34
Medical or Other Insurance	\$79.02
Union or Other Dues	\$
Retirement or Pension Fund	\$
Disability	\$
Savings Plan	\$
Credit Union	\$
Other (specify)	\$

TOTAL MONTHLY DEDUCTIONS: \$512.19

3. NET MONTHLY INCOME \$1,571.14

4. DEBTS AND OBLIGATIONS:

<u>Creditor's Name</u>	<u>For</u>	<u>Balance</u>	<u>Monthly Payment</u>
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TOTAL: \$ \$

5. ALL PROPERTY OF THE PARTIES KNOWN TO ME OWNED INDIVIDUALLY OR JOINTLY: (Indicate who holds or how title is held.)

	<u>Value</u>	<u>Owed Thereon</u>
a. Household furnishings, Furniture, appliances and equipment:	\$	\$
b. Automobiles (Year, Make):	\$	\$
c. Securities, Stocks, Bonds:	\$	\$
d. Cash and Deposit Accounts:		
Checking	\$	
Savings	\$	
e. Life Insurance		
<u>Name of Company</u>	<u>Policy No.</u>	<u>Face Amount</u>
	\$	<u>Cash Value</u>
		\$
f. Profit Sharing or Retirement Accounts		
<u>Name</u>	<u>Value of Interest and amount presently vested</u>	
g. Other Personal Property and Assets (specify)		
h. Real Estate:		
Address:		
Type of Property:		
Date of Acquisition:		
Original Cost: \$		
Cost of Additions: \$		
Total Cost: \$		
Total Present Value: \$		
Basis of Valuation:		
Mortgage Balance: \$		
Other Liens: \$		
Equity: \$		
Monthly Amortization:		
And to Whom:		
Taxes: \$		
Individual Contributions:		

- i. Business Interest (indicate name, share, type of business, value less indebtedness):
- j. Other Assets (specify):
6. **TOTAL MONTHLY EXPENSES:** *(Specify which party is the custodial parent and list name and relationship of all members of the household whose expenses are included.)

* Self, Jeri (wife) Hyrum (son)

2231

Rent or Mortgage Payments	\$584.00	
Real Property Taxes	\$	
Real Property Insurance	\$	
Maintenance	\$25.00	
Food and Household Supplies	\$250.00	for himself
Utilities (Water, electricity, gas and heat)	\$80.00	
Telephone	\$90.00	
Laundry and Cleaning	\$5.00	
Clothing	\$25.00	
Medical	\$100.00	for whom
Dental	\$	
Insurance (life, accident, disability, etc) (Exclude payroll deducted)	\$100.00 (Auto)	
Child Care	\$	
Payment of Child/Spousal Support (RE: Prior Marriage)	\$600.00	
School	\$	
Entertainment (Clubs, social obligations, travel, recreation, etc.)	\$25.00	
Incidentals (grooming, tobacco, alcohol, gifts and donations)	\$250.00	smoke? drink?
Transportation (other than automobile)	\$	
Auto Expense (gas, oil, repair, insurance)	\$75.00	
Auto Payments	\$	
Installment Payment(s)	\$	
Other Expenses	\$	
Condo Association Fee	\$100.00	
Attorney's Fees	\$550.00	115-02
Storage Fees	\$69.00	total amount owing? 12
TOTAL EXPENSES	\$2,928.00	1893

-435
-6000

STATE OF UTAH)
)
) :SS
COUNTY OF SALT LAKE)

I swear that the matters stated herein are true and correct.

DATED this 9th day of July, 1999.

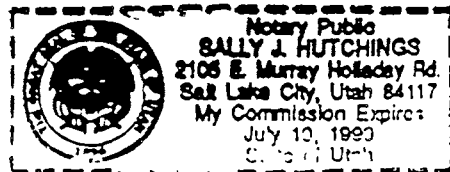
Michael C. Montague
Michael C. Montague

SUBSCRIBED AND SWORN to before me this 9th day of July, 1999.

My Commission Expires:

July 19, 1999

Sally J. Hutchings
NOTARY PUBLIC, in and for
Salt Lake County, Utah



Tab 3

Financial Declaration Comparison

MICHAEL MONTAGUE

Income

	SEPT. 1996	JUL. 1999
Income	\$3726.00	\$2083.33
Net income	\$2422.13	\$1571.14

Expenses

Rent/Mortgage	\$250.00	\$584.00
Maintenance	-----	\$25.00
Food & household supplies	\$250.00	\$250.00
Utilities	-----	\$80.00
Telephone	-----	\$90.00
Laundry & cleaning	-----	\$5.00
Clothing	\$100.00	\$25.00
Medical	\$100.00	\$100.00
Auto insurance	-----	\$100.00
Child/Spousal support	\$735.00	\$600.00
Entertainment	\$150.00	\$25.00
Incidentals	\$425.00 (incl. tithing)	\$250.00
Auto expenses	\$150.00	\$75.00
Auto payments	\$335.00	-----
Installment payments	\$100.00	-----
Condo association fees	-----	\$100.00
Attorney's fees	-----	\$550.00
Storage fees	-----	\$69.00
<hr/>		
TOTAL(EXPENSES)	\$2595.00	\$2928.00

Tab 4

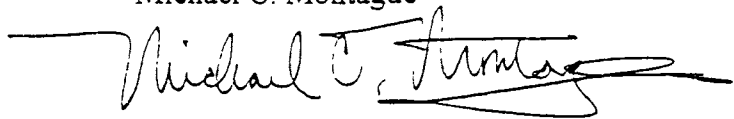
16.

Monday, July 27, 1998

To Whom It May Concern,

On this day, Monday, August 3, 1998, I do hereby resign my employment with the Employment Resource Services Department of The Church of Jesus Christ of Latter-Day Saints.

Michael C. Montague

A handwritten signature in black ink, appearing to read "Michael C. Montague", with a long horizontal flourish extending to the right.

Tab 5

Date July 27, 1998 Name Michael C. Montague

Thank you for filling out the following survey. Your candid feedback is important to us. Your responses will be reviewed by a member of management who is at least one level above your supervisor. Please complete the following items and circle the appropriate number on the scale. Add written comments below (use the back of this sheet if necessary). Please return the completed form to your personnel director/coordinator.

This information will be reviewed by the interviewer before your exit interview, which will be conducted as follows:

Time _____ Date _____ Name of interviewer _____

1. My reason for leaving (use the back of this sheet if necessary):

Decided to look for new employment

Questionnaire	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
2. My supervisor and I regularly reviewed my progress toward established goals and reset them when appropriate	1	2	3	4	5
3. I saw a strong link between my performance and my pay.	1	2	3	4	5
4. I was well trained by the Church to do my job	1	2	3	4	5
5. I felt that my job contributed to the missions of the Church	1	2	3	4	5
6. My achievements were recognized	1	2	3	4	5
7. My department management kept me advised of my career path opportunities	1	2	3	4	5
8. I was fairly compensated for my experience, skills, and level of responsibility	1	2	3	4	5
9. I was satisfied with the Church benefit plans	1	2	3	4	5
10. There was a sense of teamwork in my work group	1	2	3	4	5
11. My supervisor understood the work I did	1	2	3	4	5
12. My supervisor was fair and consistent in his/her behavior with subordinates	1	2	3	4	5
13. I felt that I was treated like a valued employee	1	2	3	4	5

Comments (use the back of this sheet if necessary):

Employee signature Michael C. Montague

Date July 27, 1998

Tab 6

PHILOSOPHY

The Church seeks to create a work environment that encourages effective communication and working relationships between employees and management.

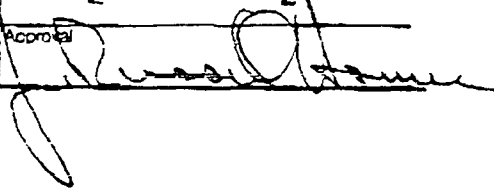
POLICY

There is an orderly, approved procedure that allows employees to discuss work-related concerns through proper management channels.

PROCEDURE

- Step 1 The employee should try to resolve work-related concerns with the immediate supervisor. The department's Human Resource representative is available to assist if the supervisor or employee so desires. Employees who feel that their immediate supervisor is part of the concern may go directly to the second level supervisor.
- Step 2 If the concern is not resolved in step 1, the employee may request a review of the concern with the highest non-General Authority level of management in the department. (In the case of field employees, Area Presidencies or temple presidents will normally become directly involved in the review process as a part of step 4.) The review discussion can be held with or without the presence of other department supervisors. The department's Human Resource representative or a senior administrator of the Human Resource Department may be invited to be present during the discussions with the employee.
- Step 3 If the concern is not resolved in step 2, the employee may request a review of the concern with the managing director of the Human Resource Department. This review can be held with or without the presence of a supervisor from the employee's department. The department's Human Resource representative may be present during appropriate discussions.

Subject
Employee Treatment

Page 2 of 21
Approval 

Date of origin
March 1, 1985

Date of revision
January 20, 1998

Step 4

If the concern is not resolved in step 3, the employee may request a review of the concern by the General Authority(ies) responsible for the employee's department. Before any meetings are set, the managing director of the Human Resource Department will explain the situation in detail to the General Authority. Where an Area Presidency or a temple president, and a headquarters General Authority are both involved in the management of a function, both should be involved in the review process. The final response will be made by the headquarters General Authority responsible for the employee's department. He may or may not meet with the concerned employee.

After each step of the appeal process the appropriate level of management should give the employee a written response advising the employee of the decision.

The department Human Resource representative may be asked to provide counsel or help in resolving the concern at any time during the review process.

Tab 7

Person Initiating Action:

Date: 7-27-98

Name: Mel Gardner

Telephone Number: 6700

Employee Information:

005212

EMPLOYEE NAME: Michael C. Montague

Position Number (FTE): 5315 Unit: Granger LDS Employment

Last Work Day: 8-3-98 Termination code: * O TE

Voluntary ☒

Involuntary ☐

Reason for Termination: Resignation During Probation.

Rehire:

Yes ☐ No ☐ Review ☒

Exit Interview Conducted:

Yes ☒ No ☐

Exit Interview Questionnaire Completed:

Yes ☒ No ☐

Senior Human Resource Representative

☐ ASSURE PAID
REGULAR PAY FOR
8/3/98

☐ ASSURE PAID ALL
EARNED BUT
UNUSED ANNUAL
LEAVE

MSN Mission Service
OTE Resigning for Other Employer
PAR Parenting
PAY Dissatisfied with Pay
POL Dissatisfied with Policies
REF Refused Transfer
RIF Reduction in Force
RTR Retirement
SLA Spouse Leaving Area
SUP Dissatisfied with Supervisor
TAF Transfer to Affiliate
TMP End Temporary Employment
UNS Unsatisfactory Work
WOR Dissatisfied with Working

Tab 8

JESUS CHRIST
OF LATTER-DAY SAINTS

21

WELFARE SERVICES
Seventh Floor
50 East North Temple Street
Salt Lake City, Utah 84150

26 June 1998

Michael Montague
LDS Employment Services
3648 South 7200 West
Magna, UT 84044

Dear Mike:

This letter is to notify you that you are being demoted from Supervisor- Employment Office to the position of Employment Specialist and you are being placed on probation, because of unsatisfactory work performance.

Specific areas of concern include:

1. Failure to appropriately supervise staff Supervision requires that the manager motivate staff and work with them to meet productivity standards and minimum job requirements. Such supervision requires that goals, expectations and work assignments are communicated adequately. These were not adequately communicated.

2. Failure to follow instructions from your supervisor In a meeting held with Jim Holm and myself on May 20, you were instructed to hold regular weekly meetings with your staff to review goals, expectations, and work assignments for the coming week. You failed to hold these meetings as instructed.

3. Failure to address the challenges that existed between you and your employment specialist In this same meeting you were instructed to work closely with the employment specialist to help resolve issues that caused him anxiety and physical illness. You avoided addressing the issues, causing the employment specialist further anxiety.

In order to remain in your new position, it is expected that you will:

1. Meet service plan key indicator performance expectations Your new supervisor, Sandi Thomas, will establish with you specific performance expectations regarding the number of job ready, job preparation and job creation placements you should accomplish, to help the center achieve its service plan.

2. Follow instructions given to you by your new supervisor Your supervisor will give you instructions to perform duties apart from the key indicators, in areas such as ecclesiastical

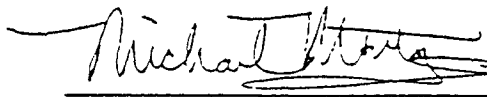

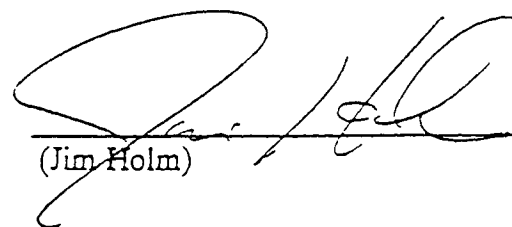
training, interagency coordination, and volunteer supervision. You will be expected to follow these instructions.

3. Meet regularly with your supervisor to review performance. Your supervisor will establish a schedule of regular meetings in which she will review your performance against key indicators and this probationary plan.

Effective today, you are on probation for up to ninety (90) calendar days. Failure to comply with the terms of this probation, **both during and after the probationary period**, will result in termination of your employment. Your performance rating has been reduced to 4.0.

If you have questions regarding this letter, or what changes are expected of you, please visit with me or your supervisor, Sandi Thomas, to receive clarification. Sister Thomas and I are desirous to see corrections made that will enable you to become the employee you desire to be and to prevent further disciplinary action from occurring.

I have read and understood this letter of probation.

	6 26 98		6/26/98
(Michael Montague)	(Date)	(Bennie Lilly)	(Date)
			
		(Jim Holm)	(Date)

Tab 9

NOTES OF CONVERSATION WITH MIKE MONTAGUE
June 26, 1998

Jim Holm, Dean Walker and I (Bennie Lilly) met with Mike Montague in my office. After greetings and a brief prayer, I reviewed with Mike the letter (attached) which was prepared announcing his demotion from Supervisor-Employment Office to Employment Specialist. It also contains the provisions of his probation.

While he was obviously not pleased, he did not deny any of the allegations. He did apologize for putting us in the position where we had to take these steps. He felt disappointed that we had to "come up with" these areas of concerns in order to bring about the demotion.

I indicated that he would be asked to train the new employment specialist, Sue Looney, on Monday, June 29, and Tuesday, June 30. Then he would be asked to report to the Bountiful Center on Wednesday, July 1, with Sandi Thomas as his new manager. She would meet with him and prepare a performance plan with specific goals, and then report to me on his progress.

We all indicated our desire for him to succeed in his new assignment. We consider him a valuable employee, lacking managerial skills, but with well developed skills in helping job seekers one on one. If he lacked such skills, we might not be offering this opportunity for him to continue employment. He indicated that he felt he could make Sandi "look good" with his performance.

I also indicated to him that in his new position, he would be working with a member of the opposite sex, a different association for him than that of the past several years. It would be important for him to conduct himself in a professional manner, remembering the special sensitivities and courtesies that need to be shown to any member of the opposite sex. For example, he would not be able to ride in a car alone with Sandi. I indicated that I had been in a similar situation working with a female (Julie Poole) as the only two employees in a center myself in the past. He would need to adjust to this new arrangement.

Mike was then asked to sign the letter as an indication that he had read and understood it. Jim and I also signed the letter as witnesses. Jim and Dean were given the opportunity to share any additional comments, which were limited to expressions of hope for success. Mike was given the chance to ask any additional questions, which he did not, and the meeting ended with him departing, shaking hands with each of us.