

2000

Montague v. Montague : Brief of Appellee

Utah Court of Appeals

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Recommended Citation

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IN THE UTAH COURT OF APPEALS

MICHAEL C. MONTAGUE,

Appellee,

vs.

MOANA FAIRBANKS MONTAGUE,

Appellant.

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Appellate No. 20000155-CA

Priority No. 15

BRIEF OF APPELLEE

Appeal from the Third Judicial District Court, Salt Lake County

The Honorable William B. Bohling

Civil No. 964900839 DA

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FILED
Utah Court of Appeals

NOV 24 2000

Paulette Stagg
Clerk of the Court

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JURISDICTIONAL STATEMENT

This is a response to an appeal brief filed as a matter of right. This is a domestic relations matter. This is an appeal from proceedings in the Third District Court in and for Salt Lake County, State of Utah. This Court has jurisdiction pursuant to Utah Code Annotated Section 78-2A-3(2)(h) 1996 as amended.

THE ISSUES, AND STANDARDS OF REVIEW

1. ARE THE LOWER COURT’S FINDINGS SUFFICIENT TO SUPPORT ITS CONCLUSION THAT THERE WAS A MATERIAL CHANGE OF CIRCUMSTANCES?

Standard of Review

- A. This is a question of law reviewed for correctness. Wilde v. Wilde, 969 P.2d 438.
- B. The court should make findings on all material subordinate and ultimate factual issues. It is not necessary that a court resolve all conflicting evidentiary issues. In re Estate of Grimm, 784 P.2d 1238 (Ut. Ct. App. 1989).

2. DID THE TRIAL COURT ABUSE ITS DISCRETION IN DETERMINING THAT THERE HAD BEEN A MATERIAL CHANGE IN CIRCUMSTANCES?

Standard of Review

- A. Rule 52 Utah Rules of Civil Procedure states:

“Findings of fact, whether based on oral or documentary evidence shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Rule 52 U.R.C.P.

B. A finding is clearly erroneous if it is against the great weight of the evidence or if the court is otherwise definitely and firmly convinced that a mistake has been made. State v. Walker, 743 P.2d 191 (Utah 1987).

C. It is the appellant’s burden to cite the appellate court to all the evidence in the record that would support the determination reached, and then demonstrate why, even when viewed in the light most favorable to the court below, that said evidence is insufficient to support the finding under attack. Harker v. Condominiums Forest Glen, Inc., 740 P.2d 1361 (Ut. Ct. App. 1987).

3. ARE THE TRIAL COURT’S FINDINGS SUFFICIENT TO REDUCE MR. MONTAGUE’S ALIMONY OBLIGATION FROM \$600.00 TO \$150.00 PER MONTH?

Standard of Review

A. Findings should be made on all material subordinate and ultimate factual issues. It is not necessary however that a court resolve all conflicting evidentiary issues. In re Estate of Grimm, 784 P.2d 1238 (Ut. Ct. App. 1989).

B. The trial court’s failure to make findings on a material issue is harmless error when the evidence is clear, uncontroverted, and only capable of supporting the finding of fact in question. Kinkella v. Baugh, 660 P.2d 233 (Utah 1983).

STATEMENT OF THE CASE

A. NATURE OF THE CASE

The Appellee Mr. Michael Montague (hereinafter referred to as Mike, Mike Montague, or Mr. Montague) petitioned the Third District Court to reduce or eliminate his alimony obligation. His claim was that he had lost his job, and his income had been reduced drastically. He further claimed that he had remarried, and in connection with that, had moved out of his mother's home. Because of that, his expenses were higher than at the time of trial.

Mike Montague also claimed that his former wife, who only worked part-time at the time of the divorce, had since gone to work full-time, and was better able to meet her own financial needs.

His former wife, Moana Montague (hereinafter referred to as Moana, Moana Montague, or Mrs. Montague) claimed that it was Mike's fault that he had lost his job, and therefore, he was ineligible for relief as a matter of equity. She also claimed that she still had unmet financial needs. Mike's loss of employment, reduction in income, increase in expenses, and his former wife's change to full-time employment were undisputed facts.

B. COURSE OF THE PROCEEDINGS BELOW

A Decree of Divorce was entered between the parties on or about December 6th, 1996. The Decree provided for an alimony award to Mrs. Montague in the amount of \$600.00 per month. Twenty three months later, Mr. Mike Montague filed his Petition for Modification of the Divorce Decree asking that his alimony obligation be reduced.

These matters went to trial on Mr. Montague's Petition. The trial was held January 5th, 2000, before the Honorable Judge William B. Bohling of the third District Court in and for Salt Lake County, State of Utah.

C. DISPOSITION IN THE COURT BELOW

After taking evidence and testimony at trial, the court published its findings. Based on those findings, it ordered that Mike's alimony obligation to his former wife be reduced from \$600.00 per month to \$150.00 per month. No post-trial motions were filed. This appeal ensued.

D. STATEMENT OF THE FACTS

The facts of this as documented in the record are as follows.

Mr. and Mrs. Montague were married August 5th, 1970. They had a 26 year marriage, and were divorced in December 1996.¹ At the time of the divorce, Mr. Montague was living with his teenage minor son in his mother's home.² Mrs. Montague

¹ Transcript page 8 line 24.

² Transcript page 36, line 19.

continued to live in the parties' former marital abode.³ Mr. Montague was ordered to pay Mrs. Montague \$600.00 per month in alimony as part of the Decree of Divorce.⁴

Before the divorce was completed, in the Spring of 1996, Mr. Montague experienced an operational review at work. He was told by a supervisor named Ben Lilly that he was falling short of the performance expected by his employer.⁵ Mr. Montague testified that while he was going through the divorce, his performance at work had probably not been what it should have been.⁶ The following Fall, just before the Divorce Decree was entered, Ben Lilly met with Mr. Montague again concerning his performance.⁷ Mr. Montague was given another three months to improve his work performance.⁸ Three months later, at the follow up review, Ben Lilly, Mike's supervisor, told Mr. Montague that he had exceeded their expectations.⁹ Mr. Montague was taken off probationary status.

Later, in approximately April of 1997, a subordinate Mr. Montague was in charge of, began experiencing emotional problems at work. The subordinate's name was Jim

³ Transcript page 75, line 24.

⁴ Record page 153.

⁵ Transcript page 10, line 25.

⁶ Transcript page 10, line 22.

⁷ Transcript page 11, line 21.

⁸ Transcript page 11, line 25.

⁹ Transcript page 12, line 14.

Fox.¹⁰ Mr. Fox complained to Mr. Montague that he was not satisfied with his workplace ADA accommodations.¹¹ Mr. Montague was unable to figure out how the Americans with Disabilities Act was supposed to be applied to a man with emotional problems.¹²

Mr. Fox was not physically disabled, but wanted some kind of ADA accommodation because of emotional stress.¹³ Mr. Montague's superiors at the LDS Church wanted Mike to figure out how to handle Mr. Fox's problem.¹⁴ Mike felt unable to solve the problem because Mr. Fox would not identify what he wanted.¹⁵ Mr. Fox complained to Mr. Montague's superiors again that his problems were not being accommodated under the ADA act.¹⁶ Mr. Montague's superiors then warned Mike that if he could not figure out how to handle Mr. Fox's problem, he would again be put on probation.¹⁷

Mr. Montague did not know how to handle the problem.¹⁸ As a result, in the

¹⁰ Transcript page 13, line 6.

¹¹ Transcript page 14, line 12.

¹² Transcript page 14, line 12.

¹³ Transcript page 14, line 25.

¹⁴ Transcript page 15, line 15.

¹⁵ Transcript page 15, line 16.

¹⁶ Transcript page 15, line 21.

¹⁷ Transcript page 15, line 23.

¹⁸ Transcript page 16, line 8.

Summer of 1998, he was demoted by his employer, the LDS Church, from the position of employment manager to placement specialist.¹⁹ Mr. Montague, in connection with his demotion, was transferred from the position of manager in the office where he had been working, to the position of placement officer in the Bountiful office.²⁰ Mr. Montague's new boss in the Bountiful office, was a woman named Sandy Thomas.²¹ Mr. Montague had previously worked as co-equals with Sandy Thomas for twelve years. Both of them had been working as managers in the employment services section of the welfare department of the LDS Church.²² Mr. Montague knew Sandy Thomas well.²³ Mr. Montague now found himself in the position of working as a subordinate to a person he had previously been co-equals with.²⁴

After four days of employment in the Bountiful office as a subordinate to Sandy Thomas, Mike was called to attend a meeting. Ron Garrison, the Director of Human Resources in the Department of Welfare Services of the L.D.S. Church, called Mr. Montague into his office. It was July 13th. Ron Garrison told Mike in that meeting, that

¹⁹ Transcript page 16, line 16.

²⁰ Transcript page 16, line 25.

²¹ Transcript page 17, line 7.

²² Transcript page 17, line 15.

²³ Transcript page 17, line 17.

²⁴ Transcript page 17, line 21.

the Church did not want him in their employ anymore.²⁵ He told Mike that there was no room in Church employment for Mike Montague.²⁶

At that meeting with Ron Garrison, another man who works for the Church named Dean Walker was present.²⁷ At that meeting, either Dean Walker or Ron Garrison read a letter written by Sandy Thomas complaining about Mike. The letter outlined the problems that she had with Mike. These problems had come up in the three days he had worked under her supervision.²⁸ The incidents and complaints recited in the letter of Sandy Thomas were so inconsequential as to elicit a comment from Judge Bohling at the time of trial, to the effect that the reasons given for Mr. Montague's discharge were "petty and trivial".²⁹ These incidents complained of were concerning the replacement of a light globe,³⁰ a conversation concerning a dish of candy,³¹ a difference of opinion over the quality of a Thank You note written by a secretary in the office,³² and a misunderstanding about Mr. Montague's willingness to train a subordinate. Mike made a comment about

²⁵ Transcript page 18, line 22.

²⁶ Transcript page 19, line 8.

²⁷ Transcript page 19, line 14.

²⁸ Transcript page 19, line 23 through page 20, line 1.

²⁹ Transcript page 130, line 5.

³⁰ Transcript page 20, line 8.

³¹ Transcript page 21, lines 18-19.

³² Transcript page 23, lines 9-11.

training the person. The comment was “Boy, that’s going to be a tough one.”³³

Lastly, Sandy Thomas was offended because Mr. Montague made a comment to her when she left the office on Friday to “not let the door hit her in the _____”³⁴ as she left work.³⁵

After reading this laundry list of complaints amassed by Sandy Thomas in three days, Dean Walker and Ron Garrison asked Mr. Montague to resign³⁶ his position with the Church of 24 years.³⁷

Mr. Montague had amassed between six and eight weeks of vacation time, and was told to take two weeks with pay to think about it.³⁸ At the time of the July 13th meeting, when Mr. Montague was asked to resign, he was shown a document which outlined his options.³⁹ The document stated, and it was explained to Mr. Montague at the meeting, that his options were:

1. Resign.

³³ Transcript page 24, lines 5-6.

³⁴ There is no missing word here. The Transcript is blank also.

³⁵ Transcript page 25, lines 6-7.

³⁶ Transcript page 26, lines 15-16.

³⁷ Transcript page 9, line 7.

³⁸ Transcript page 26, line 25 through page 27, line 2.

³⁹ The document was admitted in evidence as Plaintiff’s Exhibit number 1. It is also attached to this Brief as Addendum A.

2. Be terminated.
3. Take the matter up through the grievance procedure of the Church employment office.
4. Talk with a man named Gary Winters.

Mr. Montague decided to take the two weeks that had been offered him to think it over.⁴⁰ Before the two weeks was over, he came back into the Church offices and signed a resignation form which the Church had prepared for him.⁴¹

Mr. Montague did not want to leave Church employment, he did not want to leave his job of 24 years. He did not want to have to look for a new job, but feeling that the Church did not want him anymore, and not wanting to go through the grievance procedure, he signed the resignation form.⁴²

Dean Walker, who had been at the meeting where Mr. Montague was asked to resign, testified at trial. He substantiated Mr. Montague's testimony which was that he had been told that his options were to resign, be terminated, or seek redress through the grievance procedures of the Church. Mr. Walker also testified that Mike Montague was concerned about losing his employment.⁴³

⁴⁰ Transcript page 28, line 4.

⁴¹ Transcript page 47, line 8.

⁴² Transcript page 62, lines 16-24.

⁴³ Transcript page 75, lines 8-9.

Ron Garrison, who was the Director of Human Resources Department of Welfare Services for the Church,⁴⁴ also testified at trial. He testified that he was aware of the discipline action against Mike Montague at the Church.⁴⁵ He stated that he was in charge of the meeting that had taken place with Mike when he was asked to resign.⁴⁶ He testified that it had been his decision to give Mike Montague the four options outlined in Plaintiff's Exhibit #1, and as explained to Mike at the meeting.⁴⁷ It was he who asked Mike to resign his position at the meeting. He stated that resigning was Mike's alternative to being fired.⁴⁸ He further testified that Mike did not want to lose his job,⁴⁹ and that Mike felt bad about it.⁵⁰

Similarly, Bennie Lilly, who had been involved in reviewing Mike's work prior to the meeting at which he was asked to resign, testified that Mike had been an average to good employee,⁵¹ that Mike did not want to lose his job,⁵² and that Mike was unhappy

⁴⁴ Transcript page 98, line 7.

⁴⁵ Transcript page 98, line 22.

⁴⁶ Transcript page 100, line 8.

⁴⁷ Transcript page 100, line 11.

⁴⁸ Transcript page 106, line 8.

⁴⁹ Transcript page 106, line 10.

⁵⁰ Transcript page 106, line 12.

⁵¹ Transcript page 112, line 20.

⁵² Transcript page 113, line 15.

about losing his job.⁵³

Mike Montague further testified that he began immediately sending out resumes and interviewing with new employers. He approached twenty-five to thirty prospective employers⁵⁴ for a job.⁵⁵ He sent resumes,⁵⁶ he tried to get a job in the area that he had worked in for many years at the Church, as an employment specialist.⁵⁷ His experience however, as an employment specialist had been very narrow. After three months of searching, he realized he was unqualified for personnel jobs in the private sector because of lack of education.⁵⁸ Mr. Montague had a high school diploma, but no college degree. He tried to get jobs with Snowbird, ARUP, Workforce Services, and Gateway Corporation as a personnel specialist, but was unsuccessful.⁵⁹ He was granted an interview with some of the employers listed on Plaintiff's Exhibit Number 2.⁶⁰ and had

⁵³ Transcript page 113, line 17.

⁵⁴ Transcript page 29, lines 13-17.

⁵⁵ Those places, and the results of his inquiries about employment were outlined at trial on Plaintiff's Exhibit Number 2 which was admitted in evidence, and is attached to this Brief as Addendum B.

⁵⁶ Transcript page 31, line 1.

⁵⁷ Transcript page 30, lines 5-14.

⁵⁸ Transcript page 54, line 21.

⁵⁹ Transcript page 30, line 18.

⁶⁰ Transcript page 30, line 10.

weekly contact with some of them.⁶¹ He got a temporary job with the Department of Motor Vehicles.⁶² That job however, only lasted five weeks, and only paid \$8.50 per hour.⁶³

In November of 1998, some four months after he had been terminated, Mike got a permanent job with a company named Industrial Container in Salt Lake City.⁶⁴ The job started at \$8.50 per hour,⁶⁵ but had potential for growth. In February or March of 1999, after working there four to five months, Mike was promoted to the Shipping Department Manager.⁶⁶ At the time of his promotion or shortly thereafter, Mike was raised to \$25,000.00 per year, and had that same salary at the time of trial.⁶⁷ In all of his job efforts to find a new job, Mike was never offered more than the \$25,000.00 a year he was making at the time of trial.⁶⁸

By the time of trial in this case, Mr. Montague had remarried and was living with

⁶¹ Transcript page 31, line 5.

⁶² Transcript page 31, line 19.

⁶³ Transcript page 31, line 23, and page 32, line 5.

⁶⁴ Transcript page 32, line 13.

⁶⁵ Transcript page 32, line 18.

⁶⁶ Transcript page 33, line 4.

⁶⁷ Transcript page 33, lines 11-13.

⁶⁸ Transcript page 33, line 25.

his new wife named Jurelle Montague.⁶⁹ At the time of his divorce, Mr. Montague was paying only \$250.00 per month in rent to his mother.⁷⁰ At the time of trial, he had moved into a condominium with his new wife, and had rent of \$584.00 per month.⁷¹ Mr. Montague's current wife Jurelle testified that she works for Discover Card, and has net pay of \$1,045.78 per month.⁷² She also testified that she contributed about \$500.00 per month of that income to family expenses.⁷³ She testified she paid another \$500.00 per month of her net income to pay off premarital debt which she had incurred prior to marrying Mr. Montague.⁷⁴

On the other hand, Mr. Montague's expenses had increased slightly because of his remarriage and moving from his mother's home.⁷⁵

Mr. Montague testified that he had no ability to assist his former wife in paying alimony, or very little ability. He testified that he was going further into debt each month even without paying his former wife the full amount of alimony.⁷⁶

⁶⁹ Transcript page 35, line 24.

⁷⁰ Financial Declaration of Mr. Montague at the time of the divorce. Record page 110.

⁷¹ Transcript page 35, line 21, Addendum D.

⁷² Transcript page 66, line 23.

⁷³ Transcript page 43, line 2.

⁷⁴ Transcript page 60, line 20.

⁷⁵ See Plaintiff's Exhibit #3 admitted at trial, attached as Addendum D.

⁷⁶ Transcript page 43, line 7.

Moana Fairbanks Montague, the appellant, also testified at the trial. She testified that she worked full-time at the time of trial for the LDS Church as a secretary.⁷⁷ She also testified and identified her then most recent Financial Declaration filled out prior to the trial.⁷⁸

Her gross pay had gone from \$1,026.00 at the time of her divorce,⁷⁹ to \$2,127.00 gross per month at the time of trial.⁸⁰ She admitted that there had been an increase in her income as shown on the documents.⁸¹ She admitted that her income had gone up because she had gone to work full-time.⁸² Moana Montague further said that she had left her former job working in a dental office part-time because she did not have any benefits there. As a single mother, she wanted the insurance and other benefits of working full-time for the Church.⁸³ She also stated that she made \$282.00 per month from a second job working as a hostess at a wedding reception center.⁸⁴ Moana Montague also testified that at the time of the divorce, she assumed that she would have to work full-time in the

⁷⁷ Transcript page 76, lines 2-4.

⁷⁸ Plaintiff's Exhibit #9, attached to this Brief as Addendum C.

⁷⁹ Addendum E.

⁸⁰ Addendum C.

⁸¹ Transcript page 78, line 2.

⁸² Transcript page 78, line 11.

⁸³ Transcript page 86, lines 1-4.

⁸⁴ Transcript page 87, line 3, and page 86, line 12.

future.⁸⁵

She admitted that her Financial Declaration showed that \$313.00 of her claimed deductions from gross income was deducted at her direction and election, and that she put this amount into her retirement savings plan per month.⁸⁶ She also admitted that if she chose to take the \$313.00 per month instead, her real gross would be \$2,440.00 per month.⁸⁷ Moana claimed expenses at the time of trial admitted as Plaintiff's Exhibit 9 of \$1,568.00 per month.⁸⁸

SUMMARY OF ARGUMENT

Issue Number 1

Judge Bohling's findings are more than sufficient to support his conclusion that there had been a material change of circumstances. He found that since the entry of the Decree, Mike had lost his job of twenty plus years with the LDS Church and that because of that, his income had decreased substantially. He found that Mike did not want or

⁸⁵ Transcript page 90, line 19.

⁸⁶ Transcript page 78, line 20.

⁸⁷ Transcript page 79, line 14.

⁸⁸ Her Financial Declaration admitted as Plaintiff's Exhibit 9 at trial, Addendum C.

intend to be terminated from his employment. He also found that Mike's expenses had gone up in connection with moving out of his mother's house at the time of his remarriage. He also found that Mike's former wife Moana had gone from part-time employment at the time of the Decree to full-time employment at the time of trial.

The Court found that Mike's ability to assist his former wife in paying alimony was substantially reduced, and that her need for alimony, although continuing, was also substantially reduced. Mrs. Montague admitted there had been an economic change of circumstances. Judge Bohling also found that Mike had been terminated, and that he lost his job involuntarily. He also found that Mike was not underemployed.

These are exactly the kinds of subordinate findings the court needs to make in order to make the ultimate finding of a "material and substantial change of circumstances".

Issue Number 2

Moana Montague is woefully and dramatically short of establishing via her brief on appeal that Judge Bohling abused his discretion. She does not demonstrate that the Judge's findings on changed circumstances are clearly erroneous or flagrantly unjust. She claims that the findings are so inadequate that they cannot be meaningfully challenged, or that the evidence supported the opposite finding. She claims that she should be relieved

of her burden of marshaling the evidence in a light most favorable to the court below, and in that light demonstrating the fatal flaw. She then fails to demonstrate that the evidence was uncontroverted. She fails to explain why the findings cannot be meaningfully reviewed.

The clear weight of the evidence shows that although the issue was hotly disputed, Mike involuntarily lost his job, and did everything he could to get the best replacement job he could. The Judge's findings so state.

Moana Montague does not even attempt to meet her burden of marshaling all the evidence to show otherwise.

Issue Number 3

Mrs. Montague lastly argues that Judge Bohling did not provide adequate findings to support the reduction in alimony from \$600.00 per month to \$150.00 per month.

The Court found that her need for financial support was reduced because her income was up, and her expenses were the same as at trial. The court also found that Mike's ability to pay her was reduced. Therefore, the alimony was reduced. The evidence on the parties' incomes and expenses was absolutely uncontroverted.

The lower court was not required to publish as part of its findings, its calculations. Judge Bohling's calculations are explained in the transcript.

The uncontroverted evidence demonstrated that a reduction in alimony of the magnitude granted was warranted.

ARGUMENT

Issue #1

THERE ARE SUFFICIENT FINDINGS TO SUPPORT JUDGE BOHLING'S CONCLUSION THAT THERE HAD BEEN A MATERIAL CHANGE OF CIRCUMSTANCES WARRANTING A REVIEW OF THE ALIMONY QUESTION.

Whether or not the findings are adequate, is an issue of law, which is reviewed for correctness. In reviewing whether or not the findings are adequate as a matter of law, we must determine what Judge Bohling found, and compare it to what findings he needed to make.

The District Court has continuing jurisdiction to modify Decrees of Divorce, including alimony obligations.⁸⁹ The case law outlines what kinds of things need to be shown to demonstrate there has been a substantial material change of circumstances.

Case law requires that:

A. The findings should indicate why the modification was found to be

⁸⁹ U.C.A. Section 30-3-5(7)(g) which states:

“The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on substantiated material changes in circumstances. . .”

appropriate.⁹⁰

B. Findings should be made on all material subordinate and ultimate factual issues.⁹¹

C. It is not necessary for the court to resolve all conflicting evidentiary issues.⁹²

It was undisputed at trial that Mr. Montague had lost his job, and that his income had decreased. It was also undisputed that his expenses were up incident to his marriage and moving out of his mother's home. It was also undisputed that his former wife's income had increased.

These factors, i.e. the incomes and expenses of the parties, are the very heart of an alimony consideration either in an original divorce, or on modification.⁹³ It cannot be said then that the court did not make appropriate findings on the important facts surrounding alimony. The lower court's findings were:

- "1. There has been a material change of circumstances since the entry of the Decree of Divorce. These include, among other things, the following:
 - A. Mr. Montague lost his job of twenty plus years with the LDS Church.
 - B. His income has decreased substantially.

⁹⁰ Christensen v. Christensen, 629 P.2d 1297 (Utah 1981).

⁹¹ In re Estate of Grimm, 784 P.2d 1238 (Ut. Ct. App. 1989).

⁹² Id.

⁹³ Section 30-3-5(7)(a) Utah Code Annotated (1998 as amended).

- C. He has remarried and moved out of his mother's home.
- D. His former wife, the Respondent, now works full-time."⁹⁴

In closing argument, Mr. Minas did not argue on Mrs. Montague's behalf that there had not been a change of circumstances. They admitted that there had been an economic change of circumstances.⁹⁵ Her position was that under the circumstances, Mike Montague should not be relieved of his alimony obligation because it was his fault that he lost his job, i.e. that he gave his job up voluntarily, and that he was voluntarily underemployed.

Voluntary underemployment was a legitimate issue for trial. Judge Bohling however did not fail to make the requisite finding on this issue. His finding clearly is stated on page 2 of the Findings of Fact. paragraph 2 thereof, and states:

“The Court finds that Mr. Montague's actions did have something to do with the fact that he was terminated with his former employer, the LDS Church, but that 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.”

This finding is a summary of the broader statement made by Judge Bohling at the time of his ruling. In announcing his ruling, Judge Bohling said:

⁹⁴ Record page 418. Addendum F.

⁹⁵ Transcript page 122, line 22. In Closing argument Mr. Minas states:
“You're not going to get an argument from me that there hasn't been a change of circumstances because there has.”

“THE COURT: Thank you. Counsel, as to the first issue which I’ll state the issue as precisely as I can, whether there’s a material change of circumstances which justifies a change in the alimony arrangement, I find in favor of Mr. Montague that there was such a material change in circumstance. As Mr. Minas said there’s no real dispute that there was a change economically.

“I find that he was terminated by the Church. . . the notes and the evidence makes it clear even on the date that he took his two week leave of absence it was reported in the minutes that he cleaned out his desk and left.

“It seemed to me that it was pretty much of a foregone conclusion that his career was over with the church. That that was what the church was really in effect demanding. . . I don’t find it to be unreasonable or disqualifying . . . that he didn’t pursue a grievance procedure for what he may well reasonably have concluded was a foregone conclusion that he was going to lose his job.

“The issue of what degree was he culpable and to what degree should that culpability for his losing his job bear on his right to claim a change of circumstances is a difficult question. . .

“It seems to me that Mr. Montague did not wish to lose his job. It was undoubtedly, from the evidence in the case, a very traumatic, a very painful experience for him. I find that the degree of voluntariness the court thinks is necessary to disqualify a person for a claim of change of circumstances on the basis it was voluntarily under employment just were not met here and the standard that is required to that is not available to the defendant to defeat the claim that was being asserted by Mr. Montague.

“And I find that he made a reasonable effort, an effort that’s consistent with what is required under the law to find substantive employment. I find it not difficult to accept the proposition that after searching very hard he found only employment for a far lesser wage. I think that’s -- that’s what would be expected under the circumstances without a better education, without a more precise kind of skill that could be sold to other employers.” [Emphasis added]⁹⁶

⁹⁶ Transcript page 128, line 25 and continuing through page 131.

Mrs. Montague's assertion that the findings are inadequate as a matter of law, is simply wrong. The court not only made findings on all the material subordinate and ultimate factual issues, but stated them with specificity.

The economic change of circumstances was admitted. The Judge's reasoning behind his finding as to the involuntary nature of Mr. Montague's discharge are clear. Judge Bohling also explained Mike's efforts to find a new job were all that could be expected he also explained why it was reasonable to expect him to become re-employed at a lower wage. Judge Bohling's finding on this issue as cited above is a good summary, and legally adequate.

Issue #2

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT A CHANGE OF CIRCUMSTANCES WARRANTING REVIEW HAD OCCURRED.

Rule 52 of the Utah Rules of Civil Procedure says, with regard to findings of fact, that:

“... Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses. . .”

Judge Bohling had the opportunity to assess the credibility of witnesses at trial.

Mrs. Montague claims that Judge Bohling's finding that there was a change of circumstances, is clearly erroneous, an abuse of his discretion, and/or not supported by the weight of the credible evidence. She must assume, and meet the burdens associated with making that claim. Mrs. Montague's burden is to marshal all the evidence from trial to support the finding, and then demonstrate, that despite the evidence, that the trial court's findings are so lacking in support as to be against the clear weight of the evidence, thus making them clearly erroneous. Mrs. Montague's burden is colorfully outlined in the case of West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Ut. Ct. App. 1991) in which this Court states:

“The marshaling process is not unlike becoming the devil's advocate. Counsel from extricate himself or herself from the client's shoes, and fully assume the adversary's position. In order to properly discharge the duty of marshaling the evidence, the challenger must present in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists. After constructing this magnificent array of supporting evidence, the challenger must ferret out the fatal flaw in the evidence. The gravity of this flaw must be sufficient to convince the appellate court that the court's finding rests upon evidence that is clearly erroneous.”

When an appellant fails to meet that “heavy burden” of marshaling the evidence, we “assume that the record supports the finding of the court.”⁹⁷

Mrs. Montague concedes that there was an economic change in circumstances.

What she claims is that Judge Bohling incorrectly concluded that Mr. Montague's loss of

⁹⁷ Wade v. Stangl, 869 P.2d 9, 12 (Ut. Ct. App. 1994).

employment was not voluntary. She believes the court should have found Mr. Montague to be voluntarily under employed.

Judge Bohling's specific finding on this point was:

"The Court finds that Mr. Montague's actions did have something to do with the fact that he was terminated with his employer, the LDS church, but that he did not want or intend 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." [Emphasis added]⁹⁸

Again, quoting more broadly from Judge Bohling's ruling made at the time of trial, explaining his findings Judge Bohling said:

"THE COURT: Thank you. Counsel, as to the first issue which I'll state the issue as precisely as I can, whether there's a material change of circumstances which justifies a change in the alimony arrangement, I find in favor of Mr. Montague that there was such a material change in circumstance. As Mr. Minas said there's no real dispute that there was a change economically.

"I find that he was terminated by the church. That the procedure that was followed was certainly a procedure that allowed certain kinds of actions to question the termination, but the notes and the evidence makes it clear even on the date that he took his two week leave of absence it was reported in the minutes that he cleaned out his desk and left.

"It seemed to me that it was pretty much of a foregone conclusion that his career was over with the church. That that was what the church was really in effect demanding. He had some legal rights to pursue, that I don't find it to be unreasonable or disqualifying of the conclusion were reached the fact that he didn't pursue a grievance procedure for what he may well reasonably have concluded was a foregone conclusion that he was going to lose his job.

⁹⁸ Findings of Fact, paragraph 2. Record 418. Addendum F.

“The issue of what degree was he culpable and to what degree should that culpability for his losing his job bear on his right to claim a change of circumstances is a difficult question. We certainly did not have the same level of attention to this termination that would happen in a had a suit been brought challenging the church’s action.

“There’s undisputed evidence that Ms. Sandy Thomas his supervisor, his former colleague, acted in a way which seems to be petty and trivial in all the evidence that the court has before it but, again, the court would note that it doesn’t have the full facts. Ms. Thomas didn’t testify. Certainly [the court] would not attempt to make any conclusions on issue of that go to the merits of the termination other than just the observation from what evidence was presented to this court.

“It seems to me that Mr. Montague did not wish to lose his job. It was undoubtedly, from the evidence in the case, a very traumatic, a very painful experience for him. I find that the degree of voluntariness the court thinks is necessary to disqualify a person for a claim of change of circumstances on the basis it was voluntarily under employment just were not met here and the standard that is required to that is not available to the defendant to defeat the claim that was being asserted by Mr. Montague.

“And I find that he made a reasonable effort, an effort that’s consistent with what is required under the law to find substantive employment. I find it not difficult to accept the proposition that after searching very hard he found only employment for a far lesser wage. I think that’s -- that’s what would be expected under the circumstances without a better education, without a more precise kind of skill that could be sold to other employers.” [Emphasis added]⁹⁹

Judge Bohling found that Mr. Montague “did not intend or want to be terminated from employment”.¹⁰⁰ Judge Bohling further said, “I find that he was terminated by the

⁹⁹ Transcript page 128, line 25 and continuing through page 131.

¹⁰⁰ Findings of Fact, Record page 418. Addendum F.

church”.¹⁰¹ Judge Bohling stated;

“It seemed to me that it was pretty much a foregone conclusion that his career was over with the Church. That was what the church was really in effect demanding.”

In support of this conclusion by the trial court, Judge Bohling said that some of the complaints expressed against Mike Montague were “petty and trivial”.¹⁰² Mr. Montague’s supervisors, who asked him to resign, admitted that he was being fired. Ron Garrison, the director of human resources, who explained Mike’s options to him, said resigning was Mike’s alternative to being fired.¹⁰³ With regard to the claim that Mike should have pursued a grievance procedure trying to hang on to his job, Judge Bohling said:

“It seemed to me that it was pretty much of a foregone conclusion that his career was over with the church. That that was what the church was really in effect demanding. He had some legal rights to pursue, that I don’t find it to be unreasonable or disqualifying of the conclusion were reached the fact that he didn’t pursue a grievance procedure for what he may well reasonably have concluded was a foregone conclusion that he was going to lose his job.”¹⁰⁴

Mrs. Montague then quotes unemployment cases argued before the Industrial Commission, and talks about who has the burden of proof in establishing eligibility for benefits. This is irrelevant. This case does not involve a claim for benefits before the

¹⁰¹ Transcript page 129, line 7.

¹⁰² Transcript page 130, line 5.

¹⁰³ Transcript page 106, line 8.

¹⁰⁴ Transcript page 129, line 14.

Industrial Commission. Judge Bohling found, based on very good evidence that although Mr. Montague signed a resignation form prepared by the church, in fact he had no choice and was terminated. Judge Bohling found that he did not want to be terminated, and that he had done very thing he could, under the circumstances, to replace his income. Judge Bohling explained that with his educational background, Mr. Montague could not be reasonably expected to get a better replacement employment. Judge Bohling found that Mr. Montague was not underemployed. The evidence showed that it was a foregone conclusion that Mike's employment with the church was over. The grievance procedure was meaningless. There is no point in trying to enforce the right to an odious work relationship.

Mrs. Montague claims that she should be relieved of her burden of marshaling the facts in a light most favorable to the lower court, and then show the fatal flaws. She then proceeds to recite the few facts, and directs the court's attention to a few documents favorable to her if looked at alone, without the surrounding and contrary evidence.

Mrs. Montague misguidedly cites this court to Levitz v. Warrington, 877 P.2d 1245 (Ut. Ct. App. 1994) and State v. Loveglen, 798 P.2d 767 (Ut. Ct. App. 1990) for the proposition that remand for particular findings on an issue are unnecessary if the evidence concerning the issue is undisputed. These cases may stand for the proposition cited, but the facts of this case are so dissimilar so as to make that case law inapplicable.

First, the issues surrounding Mr. Montague's termination as to whether it was

voluntary or not, were hotly disputed, not uncontested. Secondly, the out of context statements and documents referred to by Mrs. Montague cannot be considered alone. They must be considered against all the other evidence that supported Judge Bohling's finding that Mike was not voluntarily underemployed.

Mrs. Montague does not, because she cannot, marshal all the evidence and show that if taken in a light most favorable to the court below that the finding on Mike's loss of his job is unsupported by the greater weight of the credible evidence.

Mrs. Montague's arguments of flagrant injustice are not about flagrant injustice, but rather general equity arguments that Judge Bohling should have forced Mike through the grievance procedure, to try and hang on to a job with an employer who did not want him anymore.

Because Judge Bohling did find that Mike's job loss was involuntary, the argument that such a finding is a prerequisite to revisiting the alimony issue is also irrelevant.

Mike Montague was involuntarily terminated, and he found the best replacement employment he could.

Issue #3

THE TRIAL COURT'S FINDINGS AS TO THE ALIMONY AMOUNT WERE
ADEQUATE.

In Moana Montague's third point of argument on appeal, she claims the trial court

failed to articulate its analysis in reducing alimony from \$600.00 to \$150.00 per month.

This objection again is to the adequacy of the findings, and is not an objection that the findings are not supported by the weight of the credible evidence. The findings the Judge made on this issue were based on the uncontroverted testimony of the parties and the admission of Moana Montague that there had been an economic change of circumstances.

The court's findings again were:

- "A. Mr. Montague Lost his job of twenty plus years with the LDS Church.
- B. His income has decreased substantially.
- C. He has remarried and moved out of his mother's house.
- D. His former wife, the Respondent, now works full-time."¹⁰⁵

With regard to the clear economic change of circumstances, the court could not have articulated better the elements considered in an alimony consideration.

In saying Moana Montague made more money, he found that the financial condition of Moana Montague had improved. He also found that Moana's earning ability had gone from part-time to full-time. He also found that Mr. Montague had increased expenses and decreased income, which speaks to the ability of the payor spouse to provide support.

The length of the marriage was not an issue, and in this case, the recipient spouse did not have custody of any minor children.

When it comes to the court's actual finding about the amount of the reduction, the

¹⁰⁵ Record page 418, Addendum F.

court published a finding which states that:

“The Court finds that the Petitioner Mr. Montague, has an ability to assist his former wife in paying alimony, however, said ability is substantially reduced since the time of trial. The Court also finds that the Respondent, Mr. Montague’s former wife, continues to have a need for alimony, but that her need is substantially reduced since the time of trial. The Court further finds that Mrs. Montague now needs, and Mr. Montague now has the ability to pay \$150.00 per month as alimony.”¹⁰⁶

The case law does not require that the court publish its calculations, only that the underlying evidence support the finding, and the outcome. Even if there was no finding by the court as to why there should have been a reduction or what it should have been, it would not be prejudicial error as long as “the evidence was clear and uncontroverted and not susceptible to another interpretation.”¹⁰⁷

Judge Bohling explained his calculations in his ruling. He said that he was making certain adjustments to the income and expenses that were claimed by the parties on their exhibits. Their respective exhibits on income and expenses were undisputed. The parties agreed on this information.

Please look at the Financial Declarations the parties identified at trial as fairly

¹⁰⁶ Record page 418, Addendum F.

¹⁰⁷ Kinkella v. Baugh, 660 P.2d 233 (Utah 1983) which states:

“a finding on that issue should have been made. Nevertheless, the court’s failure to do so in this case was not reversible error because the facts in the record as to licensure are clear, uncontroverted, and capable of supporting only a finding in favor of the judgment. Therefore, the failure of the trial court to make that finding is harmless error.”

reflecting their incomes and expenses. Neither party attacked the claimed figures offered by the other. The income and expenses outlined on the Financial Declarations of the parties at trial¹⁰⁸ are summarized below.

	Mike's	Moana's
<u>Monthly Income</u>		
Salary/Wages	\$2,083.33	\$1,845.00
Second Job		\$282.00
-----	-----	-----
Total Monthly Income	\$2,083.33	\$2,127.00
 <u>Deductions from Income</u>		
State and Federal Taxes	\$279.83	\$288.00
Social Security	\$153.34	\$138.00
Insurance	\$79.02	\$186.00
Retirement	\$0.00	\$313.00
-----	-----	-----
Total Monthly Deductions	\$512.19	\$925.00
 <u>Net Monthly Income</u>	<u>\$1,571.14</u>	<u>\$1,202.00</u>
 <u>Monthly Expenses</u>		
Rent or Mortgage	\$584.00	\$483.00
Real Property Taxes	\$0.00	Incl. in Mort.
Real Property Insurance	\$0.00	Incl. In Mort.
Maintenance	\$25.00	\$100.00
Food and household supplies	\$250.00	\$200.00
Utilities	\$80.00	\$125.00
Telephone	\$90.00	\$75.00
Laundry and Cleaning	\$5.00	\$20.00
Clothing	\$25.00	\$50.00
Medical	\$100.00	\$10.00
Dental	\$0.00	\$10.00
Insurance	\$100.00 (auto)	\$0.00
Child Care	\$0.00	\$0.00

¹⁰⁸ Addendum C and D.

Child or Spousal Support	\$600.00	\$0.00
School	\$0.00	\$0.00
Entertainment	\$25.00	\$100.00
Incidentals	\$250.00	\$25.00
Transportation	\$0.00	\$0.00
Auto Expense	\$75.00	\$150.00
Auto Payments	\$0.00	\$0.00
Installment payments	\$0.00	\$0.00
Other		\$220.00 (tithing)
-Condo Association Fee	\$100.00	
-Attorney's Fees	\$550.00	
-Storage Fees	\$69.00	
-----	-----	-----
Total Monthly Expenses	\$2,928.00	\$1,568.00

Judge Bohling made adjustments to those claimed figures as referred to above.

The court stated that:

"I've listened carefully to the testimony and to the argument. It's my -- it's my sense that if I make adjustments to Mr. Montague's income and adjustments I'm referring to would be to remove the 600 dollar child spousal support as looking for a base line to determine his ability to do anything, the \$550 in attorney's fees, not that there isn't an amount to be paid, but at least a reduction in the amount he's actually paying and recognizing there should be an amount, if not the same amount, but attorney's fees amount and the defendants. And then adding \$500 it seems to me that there is a -- there is resources available for the payment of alimony.

"And if I look at Mrs. -- but not great resources. If I look at Mrs. Montague's financial statement, I believe the argument that there's a requirement for working a second job, I think that the court should give some -- some weight to the argument that that imposes a heavy burden on her as I'm sure it does Mr. Montague.

"Also the fact that she has now her own retirement to consider and without some opportunity to contribute to that she puts herself in a financially difficult position.

"What it adds up to me is that there is a -- there's a need for some alimony but a reduced amount based on both the ability to pay and the amount that they're going to need. What I'm going to do is

reduce -- is reduce the amount to \$150 a month alimony.”¹⁰⁹

In getting to base-line figures, Judge Bohling disallowed Mike's claimed expenses of \$600.00 for Child/Spousal support and \$550.00 in attorney's fees. This dropped his total expenses to \$1,778.00 per month. Then Judge Bohling explained that he deducted another \$500.00 from Mike's claimed expenses because the uncontroverted testimony was that his new wife contributed \$500.00 from her paycheck towards those expenses. Leaving Mike with actual expenses, according to Judge Bohling, of \$1,278.00.

Mike's Financial Declaration showed net income of \$1,571.14. Mike therefore had income of \$1,571.14, and expenses of \$1,278.00. Mike had \$293.14 with which he could pay alimony. Hence, the court's statement that “there are resources available for the payment of alimony.”

On the other hand, Judge Bohling allowed Moana most of her claimed deductions from gross pay, even part of her claimed deduction of \$313.00 per month, which was obviously discretionary. She was choosing to put this money aside for her retirement. Judge Bohling, apparently wanted her to have some ability to set aside money for her own retirement and allowed her half of that discretionary amount as a deduction from gross pay. Judge Bohling stated that:

“Also the fact that she now has her own retirement to consider and without some opportunity to contribute to that, she puts herself in a financially difficult position.”

¹⁰⁹ Transcript page 152, line 19, continuing through page 153.

Moana had expenses of \$1,568.00 which the Judge allowed, and income of \$1,202.00. He added into her income two thirds of the \$313.00 she admitted she was voluntarily putting into her retirement plan, giving her total income of \$1,402.00. Leaving her a net shortfall of \$166.00. The court allowed this even though Moana had already received one half of Mr. Montague's retirement benefits accumulated during 27 years of marriage from the LDS Church as part of the divorce settlement just a few years earlier.

Mr. Montague had a little bit of money with which he could pay alimony, and Mrs. Montague had a small need for alimony. Certainly the \$150.00 figure he decided to reduce alimony to was within the ballpark. It was within \$16.00 per month of Mrs. Montague's demonstrated need.

In giving her this alimony, the Judge was allowing Mrs. Montague to set aside \$113.00 per month in a retirement account for her future even after getting one half of Mike's retirement from the divorce. Mike also received half of his retirement as part of the Divorce Decree. Mike however, was not allowed any similar prospective contribution toward his future as a deduction from gross income on his Financial Declaration.

The evidence on this point was uncontroverted and could not lead to any other conclusion. Even if Judge Bohling had not made a finding on this, it would not be prejudicial error because the facts warrant the outcome. He did however, make a finding, and a more detailed explanation of his calculations than are contained in the transcript are

simply not required as a matter of law.

CONCLUSION

Moana Montague claims that the lower court did not make adequate findings to support its conclusion that there had been a change of circumstances, but the lower court did make the appropriate findings on all the material subordinate and ultimate factual issues.


Moana also claims that Judge Bohling abused his discretion in making his finding that there had been a material change of circumstances, because to so find was against the weight of the credible evidence. In the alternative, she says the findings are so conclusory that they are not susceptible to attack and cannot be meaningfully reviewed. Lastly, she claims the evidence was undisputed and supported the opposite conclusion.

She does not marshal the facts either favorable to the judgment, or to her own position so as to demonstrate any of these claims. The opposite is true. The facts cited in the facts and argument portions of this brief, demonstrate otherwise. Because the economic change of circumstances was admitted, Judge Bohling's finding that Mr. Montague was not "culpable" in the loss of his job, is exactly the finding that was needed.

The exhibits in the form of Financial Declarations, along with the testimony of the parties, clearly showed that Mr. Montague had about \$300.00 per month he could pay

alimony with, but that his former wife only needed \$150.00 per month. Judge Bohling explained his calculations as part of his ruling. The evidence was clear and uncontroverted and only capable of supporting the judgment reducing alimony from \$600.00 per month to \$150.00 per month.

RESPECTFULLY SUBMITTED this 24th day of November, 2000.


David A. McPhie
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that I mailed two (2) true and correct copies of the foregoing Brief of Appellee to the following, postage prepaid this 27th Day of November, 2000:

Russell Y. Minas
Attorney for Appellant
261 East Broadway, Suite 300
Salt Lake City, Utah 84111

A handwritten signature in black ink, appearing to read "Russell Y. Minas", is written over a horizontal line.

ADDENDUM

Introduction

The Contents of this Addendum duplicate the Addendum of the Appellant to a great extent, which is not required under Rule 24(b)(2) of the Utah Rules of Appellate Procedure. They are included here again for two reasons.

1. These materials in the Addendum to this Brief contain the original exhibit stickers affixed to the exhibits at the time of trial.
2. They allow the reader to check the citations into the Addendum without referring to another brief.

Tab A

PLAINTIFF'S EXHIBIT	
EXHIBIT NO.	<u>1</u>
CASE NO.	
DATE REC'D IN EVIDENCE	
CLERK	<u>96490037</u>

Meeting with Mike Montague

July 13, 1998

CONFIDENTIAL

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 B

EXHIBIT NO.	
CASE NO.	
DATE REC'D	
IN EVIDENCE	
CLERK	76490039

MIKE MONTAGUE EMPLOYMENT SEARCH

Employer	Date Contacted	Position Sought
ZCMI	July 1998	Position in Human Resources
Next Link Management	August 18, 1998	Customer Service
Snowbird Ski Resort	August 1998	Housekeeping Manager
Snowbird Ski Resort	August 1998	Personnel Assistant
Merit Medical	August 1998	Human Resource Assistant
Primary Children's Hospital	August 1998 (and thereafter)	Supply Clerk
Primary Children's Hospital	August 1998 (and thereafter)	Food Services
Salt Lake City Job Service	August 1998 (weekly thereafter)	Job Interviewer
Park City Job Service	August 1998 (weekly thereafter)	Job Interviewer
AARUP at U of U Research Park	August 1998 (weekly thereafter)	Delivery and Pick Up
Salt Lake City Corporation	August 1998 (weekly thereafter)	Shuttle Driver at the Airport
Dept. of Workforce Services (Park City)	August 20, 1998	Employer Interviewer
Med One Financial	Fall of 1998	Customer Service
Gateway Computer	September 1, 1998	Electronics Assembly
Appliance Service Center	September 3, 1998	Parts Manager
Dept. of Workforce Services (SLC)	September 14, 1998	Claims Examiner
AVCO Financial Center	September 14, 1998	Sales Agent
Simmons Mattress Co.	September 16, 1998	Customer Service
LDS Employment Center (Provo)	September 1998	Human Resources, Customer Service, or Sales
Source Service	October 5, 1998	Interviewer
Convergies	October 1998	Customer Service
Cookie Tree	October 1998	Customer Service Manager
Key Corporation	October 1998	Human Resource Generalist
Premier Vending	October 1998	Route Driver
University of Utah	October 1998	Personnel Assistant
County Sheriff's Department	October 1998	Photo and Records Clerk
City Police Department	October 1998	Records Clerk
Department of Motor Vehicles	October 1998 to Mid-November 1998	worked temporary job as mail clerk.
American Stores	November 18, 1998	Benefits Clerk
Apple One Employment Service	November 18, 1998	Personnel Manager
Bekins	November 18, 1998	Laborer
Shipping Connection	November 18, 1998	Manager Trainee
Gateway Computer	November 1998	Training Representative

Tab C

EXHIBIT NO.	9
CASE NO.	
DATE REC'D IN EVIDENCE	
CLERK	964900839

In the Third Judicial District Court Salt Lake County State of Utah

MICHAEL CHARLES MONTAGUE

Petitioner,

Financial Declaration

vs.

Case No. 964900839 DA

MOANA FAIRBANKS MONTAGUE

Respondent.

Dated: 7/20/99
October 18, 1996

Wife: Moana Fairbanks Montague
Address: 2750 East 3185 South
Salt Lake City, UT 84109
Soc. Sec. No.: 575-62-6979
Occupation: Division Secretary
Employer: LDS Church
Birthdate: 07-14-52

COPY

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 REQUESTED 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 A FRAUD UPON THE COURT.

STATEMENT OF INCOME, EXPENSES, ASSETS AND LIABILITIES

1. Gross monthly income from salary and wages, including commissions, bonuses, allowances and overtime (Primary Job). \$1845
 - Pensions and retirement
 - Social Security
 - Disability and Unemployment Insurance
 - Public Assistance (welfare, AFDC payment, etc.)
 - Child support from any prior marriage
 - Dividends and Interest
 - Rents
 - All other sources (Second Job) 282
 - TOTAL MONTHLY GROSS INCOME \$2127**

2. Itemize monthly deductions from gross income:
 - State and Federal income taxes \$288
 - Number of exemptions taken S-0
 - Social Security 138
 - Medical or other insurance (describe fully) 186
 - Union or other dues
 - Retirement or pension fund 313
 - Savings plan
 - Credit union
 - Other (specify)
 - TOTAL MONTHLY DEDUCTIONS \$925**

3. Net Monthly Income -Take Home Pay \$1202

new

4. Debts and Obligations:

<u>Creditor's Name</u>	<u>For</u>	<u>Balance</u>	<u>Monthly Payment</u>
PNC Mortgage	Mortgage	\$42,000	\$483
Ortho & Myrna Fairbanks	Equity Payoff tp Petitioner	61,000	-0-
<u>TOTAL</u>		<u>\$103,000</u>	<u>\$483</u>

5. All property of the parties known to me owned individually or jointly (indicate who hold or how title held:
(H) = Husband, (W) = Wife, (J) = Jointly.

(a) Household furnishings, furniture, appliances and equipment	Value	Owed Thereon
	\$	\$

(b) Automobile (year and make)

(c) Securities - Stocks, Bonds

(d) Cash and Deposit Accounts (banks, savings & loans, credit union, savings and checking.

(e) Life insurance:

Name of Company	Policy No.	Face Amount	Cash Value
-----------------	------------	-------------	------------

(f) Profit Sharing or Retirement Accounts	Value of interest and amount vested
---	-------------------------------------

(g) Other personal property and assets (specify)

(h) Real estate (Where more than one parcel of real estate is owned, attach sheet with identical information for all property.

Address:

Original Cost	\$	Taxes
Cost of Additions		Individual Contributions
Total Cost		Type of Property: Single Family
Mtg. Balance		Date of Acquisition:
Other Liens		Total Present Value
Equity		Basis of Valuation:
Monthly Amortization		

(i) Business Interest (indicate name, share, type of business value less indebtedness)

(j) Other Assets (Specify)

new

6. Total Monthly Expenses: (Specify which party is the custodial parent and list the name and relationship of all members of the household whose expenses are included.

Rent or mortgage payments (residence)	\$483
Real Property Taxes (residence)	Incl. in Mort.
Real Property Insurance (residence)	Incl. in Mort.
Maintenance (residence)	100
Food and household supplies	200
Utilities (including water, electricity, gas and heat)	125
Telephone	75
Laundry and Cleaning	20
Clothing	50
Medical	10
Dental	10
Insurance (life, accident, liability, disability) Exclude Payroll Deducted	
Child Care	
Child or Spousal Support re: Prior Marriage	
School	
Entertainment (includes social obligations, travel, recreation)	100
Incidentals (grooming, tobacco, alcohol, gifts and donations)	25
Transportation (other than automobile)	
Auto Expense (gas, oil, repair, insurance)(including property tax + registration fees)	150
Auto Payments	
Installment payments (attach itemized schedule if not done so above)	
Other (specify on attached schedule) (tithing)	220

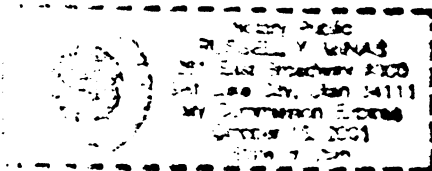
TOTAL EXPENSES \$1568

STATE OF UTAH)
: ss.
County of Salt Lake)

MOANA MONTAGUE being first duly sworn upon oath deposes and states that she has read the foregoing Financial Declaration, understands the contents thereof, and the same is true of his/her own information and belief.

Moana Montague
MOANA MONTAGUE
Respondent

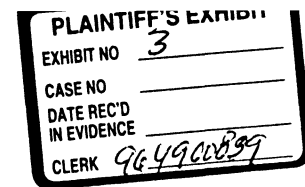
SUBSCRIBED AND SWORN to before me this 20 day of July, 1999.



[Signature]
NOTARY PUBLIC

My Commission Expires:

Tab D



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,	:	FINANCIAL DECLARATION
	:	
Plaintiff,	:	
	:	
-vs-	:	
	:	Civil No. 964900839 DA
MOANA FAIRBANKS MONTAGUE,	:	
nka MOANA FAIRBANKS,	:	
	:	Judge William B. Bohling
Defendant.	:	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
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

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>
------------------------	------------	----------------	------------------------

<u>TOTAL:</u>	\$	\$
----------------------	-----------	-----------

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)

Rent or Mortgage Payments	\$584.00
Real Property Taxes	\$
Real Property Insurance	\$
Maintenance	\$25.00
Food and Household Supplies	\$250.00
Utilities (Water, electricity, gas and heat)	\$80.00
Telephone	\$90.00
Laundry and Cleaning	\$5.00
Clothing	\$25.00
Medical	\$100.00
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
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
Storage Fees	\$69.00
TOTAL EXPENSES	\$2,928.00

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.

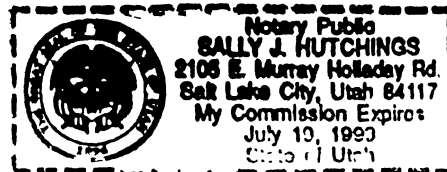
Michael C. Montague
Michael C. Montague

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 E

IN THE UNITED STATES DISTRICT COURT

DATE 9/6/96 900839

ration

99 DA

, 1996

[Handwritten signature]

[Handwritten signature]

Financial Declaration

Case No. 964900839 DA

Dated: October 18, 1996

Wife: Moana Fairbanks Montague
Address: 2750 East 3185 South
 Salt Lake City, UT 84109
Soc. Sec. No.: 575-62-6979
Occupation: Orthodontic Assistant
Employer: Mark J. McDonough, DDS, MSD
Birthdate: 07-14-52

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 REQUESTED 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 A FRAUD UPON THE COURT.

STATEMENT OF INCOME, EXPENSES, ASSETS AND LIABILITIES

- | | | |
|----|---|--------|
| 1. | Gross monthly income from salary and wages, including commissions,
bonuses, allowances and overtime..... | \$1126 |
| | Pensions and retirement | |
| | Social Security | |
| | Disability and Unemployment Insurance | |
| | Public Assistance (welfare, AFDC payment, etc.) | |
| | Child support from any prior marriage | |
| | Dividends and Interest | |
| | Rents | |
| | All other sources (specify) | |
| | TOTAL MONTHLY GROSS INCOME | \$1126 |
| 2. | Itemize monthly deductions from gross income: | |
| | State and Federal income taxes | \$206 |
| | Number of exemptions taken | 1 |
| | Social Security | 90 |
| | Medical or other insurance (describe fully) | |
| | Union or other dues | |
| | Retirement or pension fund | |
| | Savings plan | |
| | Credit union | |
| | Other (specify) | |
| | TOTAL MONTHLY DEDUCTIONS | \$296 |
| 3. | Net Monthly Income -Take Home Pay | \$830 |

sid

4. Debts and Obligations:

Creditor's Name	For	Date payable	Balance	Monthly Payment
TOTAL				

5. All property of the parties known to me owned individually or jointly (indicate who hold or how title held: (H) = Husband, (W) = Wife, (J) = Jointly.

(a) Household furnishings, furniture, appliances and equipment	Value \$	Owed Thereon \$
(b) Automobile (year and make) 1992 Toyota Corolla	\$5000	0
(c) Securities - Stocks, Bonds		
(d) Cash and Deposit Accounts (banks, savings & loans, credit union, savings and checking.		
(e) Life insurance:		
Name of Company	Policy No.	Face Amount Cash Value
(f) Profit Sharing or Retirement Accounts		Value of interest and amount vested
Name		
(g) Other personal property and assets (specify)		
(h) Real estate (Where more than one parcel of real estate is owned, attach sheet with identical information for all property.		
Address: 2750 E. 3185 S.		
Original Cost	\$	Taxes
Cost of Additions		Individual Contributions
Total Cost		Type of Property: Single Family
Mtg. Balance	\$42,000	Date of Acquisition:
Other Liens		Total Present Value
Equity	\$100,000	Basis of Valuation:
Monthly Amortization		
(i) Business Interest (Indicate name, share, type of business value less indebtedness)		
(j) Other Assets (Specify)		

old

6. Total Monthly Expenses: (Specify which party is the custodial parent and list the name and relationship of all members of the household whose expenses are included.)

Rent or mortgage payments (residence)	\$532
Real Property Taxes (residence)	Incl. in Mort.
Real Property Insurance (residence)	Incl. in Mort.
Maintenance (residence)	100
Food and household supplies	200
Utilities (including water, electricity, gas and heat)	125
Telephone	45
Laundry and Cleaning	20
Clothing	50
Medical	25
Dental	
Insurance (life, accident, liability, disability) Exclude Payroll Deducted	160*
Child Care	
Child or Spousal Support re: Prior Marriage	
School	
Entertainment (includes social obligations, travel, recreation)	150
Incidentals (grooming, tobacco, alcohol, gifts and donations)	50
Transportation (other than automobile)	
Auto Expense (gas, oil, repair, insurance)(including property tax + registration fees)	120
Auto Payments	
Installment payments (attach itemized schedule if not done so above)	
Other (specify on attached schedule) (misc. expenses)	100
TOTAL EXPENSES	\$1677

* anticipated health insurance premiums after entry of Decree of Divorce.

Tab F

DAVID A. McPHIE (2216)
Attorney at Law
2105 E. Murray-Holladay Rd.
Salt Lake City, Utah 84117
(801) 278-3700

Attorney for Petitioner

FILED DISTRICT COURT
Third Judicial District

JAN 26 2000

SALT LAKE COUNTY

Deputy Clerk

IMAGED

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

---oo0oo---

2211982

MICHAEL CHARLES MONTAGUE,

Petitioner,

vs.

MOANA FAIRBANKS MONTAGUE,

Respondent.

: FINDINGS OF FACT AND ORDER

: Civil No. 964900839 DA

: Judge William B. Bohling

: Comm: Michael S. Evans

---oo0oo--

1 THIS CASE came to trial on Wednesday, the 5th day of January, 2000. The trial was
2 held before the Honorable Judge William B. Bohling in his courtroom located at 450 South State
3 Street, Salt Lake City, Utah. The trial commenced at the hour of 9:30 o'clock a.m.

4 Mr. Montague, the Petitioner, appeared personally as did his attorney of record, David A.
5 McPhie. Mrs. Montague, the Respondent, appeared personally as well, as did her attorney of
6 record Russell Y. Minas.

7 The Court heard testimony from witnesses and considered and received documents in
8 evidence. Having heard the matter fully, and good cause appearing therefore, the Court now

Findings of Fact and Order 2211982 @



964900839 JD1119282 MONTAGUE, MOAN Jy

1 makes the following:

2 FINDINGS OF FACT

3 1. There has been a material change of circumstances since the entry of the Decree
4 of Divorce. These include, among other things, the following:

5 A. Mr. Montague lost his job of twenty plus years with the LDS Church.

6 B. His income has decreased substantially.

7 C. He has remarried and moved out of his mother's home.

8 D. His former wife, the Respondent, now works full-time.

9 2. The Court finds that Mr. Montague's actions did have something to do with the
10 fact that he was terminated with his former employer, the LDS Church, but that he did not intend
11 or want to be terminated from employment. The degree of culpability that would need to be
12 attributed to him in connection with the loss of his job, to deny him the relief he seeks, does not
13 exist.

14 3. The Court finds that the Petitioner Mr. Montague, has an ability to assist his
15 former wife in paying alimony, however, said ability is substantially reduced since the time of
16 trial. The Court also finds that the Respondent, Mr. Montague's former wife, continues to have a
17 need for alimony, but that her need is substantially reduced since the time of trial. The Court
18 further finds that Mrs. Montague now needs, and Mr. Montague now has the ability to pay
19 \$150.00 per month as alimony.

4. The Court finds that it is appropriate to grant Mr. Montague a retroactive application of this reduction in his alimony obligation back to the date his Petition for Modification was first filed.

5. The Court finds that Mr. Montague has paid, except for two months, \$200.00 a month to his former wife as alimony since November 1st, 1998.

6. Rather than do an accounting as to whether or not Mr. Montague, or his former wife, is owed any money from the other by way of judgment for the period between November 1, 1998, and January 1, 2000, the Court rather finds that the parties should simply treat alimony as fully paid for that period, award a judgment to neither one, and start fresh on January 1, 2000. Mr. Montague's alimony obligation commencing January 1, 2000, should be \$150.00 per month.

7. This has been a good faith dispute. Neither party can afford to assist the other with attorney's fees.

Based on these Findings of Fact, the Court now makes the following:

ORDER

1. Mr. Montague's alimony obligation to his former wife, Mrs. Montague, is hereby reduced effective January 1, 2000, to the sum of \$150.00 per month.


2. Neither party is awarded judgment against the other for overpayment or underpayment of alimony for the time period between the entry of the Decree of Divorce, and

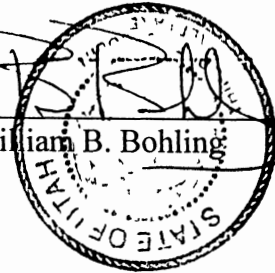
1 January 1, 2000.

2 3. Each of the parties shall bear their own costs of court and attorney's fees incurred
3 in bringing and maintaining their respective positions in this matter.

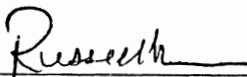
4 DATED this 25 day of January, 2000.

5 BY THE COURT.

6 
7 Honorable Judge William B. Bohling



8 Approved as to form:

9 

10 Russell Y. Minas
11 Attorney for Respondent

12 D:\WP61\CLIENTS\MONTAGUE\FIND&ORD PET