

1982

# Jana C. Christiansen v. Kent Christiansen : Reply Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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JANA C. CHRISTIANSEN,	:	
Plaintiff/Respondent,	:	
vs.	:	
KENT CHRISTIANSEN,	:	Case No. 18,132
Defendant/Appellant.	:	

- - - - -

REPLY BRIEF OF APPELLANT

- - - - -

APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT OF  
THE FOURTH JUDICIAL DISTRICT FOR UTAH COUNTY,  
STATE OF UTAH, HONORABLE GEORGE E. BALLIF, JUDGE

- - - - -

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Clerk, Supreme Court, Utah

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REPLY BRIEF OF APPELLANT

STATEMENT OF FACTS

Defendant-Appellant, Kent Christiansen (hereinafter defendant) will rely on the Statement of Facts set forth in his initial brief unless otherwise noted herein.

Following the filing of defendant's initial brief on appeal, defendant has discovered the additional cases of Stoddard v. Stoddard, 642 P.2d 743 (Utah 1982 Supreme Court Opinion #17588 filed March 1, 1982) and Sullivan v. Sullivan, 639 P.2d 435 (Idaho 1981), both of which address issues presented by the defendants appeal in this matter.

## ARGUMENT

### POINT I.

#### INFLATION IN AND OF ITSELF IS NOT SUFFICIENT TO DEMONSTRATE A SHOWING OF A MATERIAL CHANGE IN CIRCUMSTANCES

As mentioned in the appellant's earlier brief, the trial court found that the expenses of the plaintiff-respondent, Jana C. Christiansen (hereinafter plaintiff), in rearing the minor children had increased by reason of inflation since the time of the entry of the Decree of Divorce on January 17, 1979. (See Appendix A attached to defendant's original brief) The recent Utah Supreme Court decision in Stoddard v. Stoddard, 642 P.2d 743 (Utah 1982 - Supreme Court Opinion #17558 filed March 1, 1982) incorporated and cited with approval a recent Idaho Supreme Court decision regarding the effect of inflation and increased cost of living generally on modification of child support payments. The Utah Supreme Court in Stoddard, cited with approval the Idaho Supreme Court's holding in Sullivan v. Sullivan, 639 P. 2d 435 (Idaho 1981). The Utah Supreme Court held that:

" . . . general findings of inflation and increases in the cost of living are not sufficient, standing alone, to justify a modification in an award of alimony or child support, absent a showing of the specific effect of these changes on the actual income and expenses of the parties, together with any other substantial and material changes in their needs and abilities." (Emphasis added.)

See Stoddard, at 743.

The facts in Sullivan are similar to those in the instant case. In 1977, Mrs. Sullivan petitioned for a modification of



the 1969 Divorce Decree awarding her alimony and child support in accordance with the written Stipulation that the parties entered into prior to the entry of the Decree of Divorce. At the time of the modification proceedings Mrs. Sullivan alleged a substantial and material change in circumstances. Following the presentation of evidence, the Idaho Trial Court then held that Mrs. Sullivan had met her burden for an increase in alimony based solely upon the effect of inflation upon her allowance. She had not met her burden of proof so as to justify an increase in alimony because of any loss of her former standard of living by factors other than inflation. The Idaho trial court then increased her alimony from \$850.00 to \$1,500.00 per month. The Idaho Supreme Court then reversed the increased alimony award.

In the present case the trial court correctly pointed out that the expenses of the minor children were not established by the Findings of Fact or Stipulations on file at the time the Decree was entered. The only increases in living expenses other than inflation were either contemplated by the parties at the time of the entry of the Decree of Divorce and therefore not appropriate in the discussion regarding modification, or were expenses relating to Mrs. Christiansen's employment. These latter expenses are clearly offset by earnings received by Mrs. Christiansen as a result of her employment; although the trial court refused to consider Mrs. Christiansen's increased earnings as bearing on the issue of reducing alimony or support.

It is interesting to note that no other expense factors

were given more than minimal consideration by Judge Ballif in arriving at the increases in child support in Christiansen.

(See Appendix A attached to defendant's original brief)

It seems clear that the only pertinent expense factor considered by the trial court was that of inflationary increases in the plaintiff, Jana Christiansen's budget. There was no showing of any specific effect of inflationary changes on the actual income and expenses of the parties. The trial court failed to look at the plaintiff's substantially increased income and ability to work since the entry of the Decree of Divorce as a material change in circumstances. The trial court did look at the defendant's change and ability to increase his income but failed to look at the corresponding expenses of paying increased taxes, employee's salaries, equipment costs, leases, support payments and the defendant's own living expenses.

## POINT II.

THE TRIAL COURTS FAILURE TO ENTER SPECIFIC  
FINDINGS OF FACT AND CONCLUSIONS OF LAW  
IN THIS CASE CONSTITUTES REVERSIBLE ERROR

In Stoddard, supra, the court held that:

"Written findings and conclusions setting out the basis upon which a court's decision rests, are vital to the proper information of the parties and to the proper functioning of the courts."

See Stoddard, Supra, at 744. See also Romrell v. Zions First National Bank, 611 P.2d 392 at 395 (Utah 1980).



Furthermore, findings of fact and conclusions of law aid the appellate court in the exercise of the discretion it enjoys to review and if necessary, to adjust the financial and property interests of the parties. See also, Utah Code Annotated 1953 as amended § 30-3-5.

The District Court in Stoddard had declined appellant's request that it enter specific Findings of Fact and Conclusions of Law in support of its Order concerning increased child support based upon inflation and defendant's increased income.

The Stoddard opinion also refers to a recent decision in Chandler v. West, 610 P.2d 1299 (Utah 1980) where the Utah Supreme Court reversed a District Court decision because it (the trial court) failed to give an explanation for its refusal to modify a stipulated property settlement incorporated in the decree of divorce but gave no explanation for its refusal, and made no findings of fact. In Chandler, the Court remanded the case to the trial court with the following statement:

"When a party, as in the instant case, presents a prima facie case of changed circumstances which basically raises a serious question as to the fairness and equity of continuing the financial obligations of one party, the court's determination that modification of a decree is nevertheless inappropriate, should be based on written findings and conclusions."

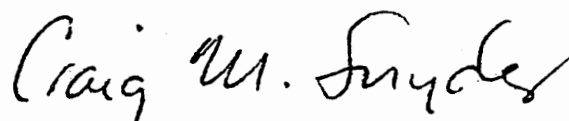
It is defendant's position that written Findings and Conclusions are just and necessary in the modification of child support and that the findings made at the modification hearing

should be made in light of the Findings of Fact and Conclusions of Law entered at the time of the Decree of Divorce. For example, the "net income findings" referred to in the trial court's original Findings of Fact and Conclusions of Law entered at the time of the Decree of Divorce, should be compared with findings of defendant's "net income" at the time of the modification hearing. In this case, the trial court has made an oblique reference to payment of salary not being indicative of the real earnings of the defendant and that the defendant has had an increase of approximately \$19,000.00 in his gross earnings during the 1980 - 1981 period. These matters are certainly not reflective of increases in the defendant's net income. (See Appendix A attached to appellants original brief).

#### CONCLUSION

It is respectfully submitted that the cases of Stoddard v. Stoddard and Sullivan v. Sullivan provide substantial additional support to the arguments previously made in the defendant's original brief on appeal. The decision of the trial court in this matter should be reversed in accordance with the relief originally sought on appeal by the defendant.

RESPECTFULLY SUBMITTED on this 6th day of May, 1982.



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MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Reply Brief, to Allen K. Young, of Young, Backlund, Harris & Carter, at 350 East Center St., Provo, Utah 84601, postage prepaid on this 6th day of May, 1982.

  
SECRETARY