

2000

# Kathryn Ann Johansen n/k/a Kathryn Ann Turner v. Paul Johansen : Brief of Appellant

Utah Court of Appeals

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Steven C. Russell; attorney for appellee.

Jeffrey Robinson; Robinson & Sheen; attorneys for appellant.

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## Recommended Citation

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**PARTIES TO THE PROCEEDINGS  
IN THE DISTRICT COURT**

The caption of the case on appeal contains the names of all parties to the proceedings in the district court.

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## JURISDICTION OF THE APPELLATE COURT

The Court of Appeals has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(h) (1953, as amended).

## STATEMENT OF ISSUE PRESENTED FOR REVIEW

Is defendant entitled to an adjustment in the base child support award as of September 2, 1995, when his daughter, Laura Ann Johansen (“Laura”), became 18 years of age and again on October 1, 1997 when his daughter, Lynsay Johansen (“Lynsay”), became 18 years of age pursuant to Utah Code Ann. § 78-45-7.10 (1953, as amended)?

## STANDARD OF REVIEW

The proper interpretation of a statute is a question of law which is reviewed for correctness, according no deference to the trial court’s legal conclusion. *State v. Redd*, 992 P.2d 986 (Utah 1999).

## DETERMINATIVE STATUTE

### **78-45-7.10 Adjustment when child becomes emancipated.**

(1) When a child becomes 18 years of age, or has graduated from high school during the child’s normal and expected year of graduation, whichever occurs later, the base child support award is automatically adjusted to reflect the base combined child support obligation shown in the table for the remaining number of children due child support, unless otherwise provided in the child support order.

(2) The award may not be reduced by a per child amount derived from the base child support award originally ordered.

(3) The income used for purposes of adjusting the support shall be the income of the parties at the time of the entry of the original order. If income was not listed in the findings or order and worksheets were not submitted, the parties may submit tax returns or other verification of the income.

## STATEMENT OF THE CASE

### Nature of the Case

This is an action to adjust the base child support award relating to two children, Laura and Lynsay, as of the time they became 18 years old and to obtain an adjustment of arrearages allegedly owed by defendant.

### Course of Proceedings

Defendant filed his Petition to Modify Divorce Decree on February 15, 2000. R. 111-13. Intervenor filed its answer on March 7, 2000 and plaintiff filed her answer on March 8, 2000. R. 120-24.

Defendant filed his Motion for Partial Summary Judgment on March 15, 2000. R. 125-26. A hearing on the motion was heard by the Third District Court, the Honorable Timothy R. Hansen presiding, on June 19, 2000. R. 172. The Court issued a Minute Entry on July 3, 2000 denying defendant's motion. R. 173-77. On October 24, 2000, the Court signed the "Order on Respondent's Motion for Partial Summary Judgment" denying the motion. R. 180-85.

Final judgment resolving all issues in the matter was entered November 14, 2000. R. 198-200. Defendant filed the Notice of Appeal on December 14, 2000. R. 201-02.

## STATEMENT OF UNDISPUTED FACTS

The following facts were undisputed by all parties:

1. The parties' Decree of Divorce (the "Decree") was entered on or about January 6, 1989. R. 71-76.

2. When the parties divorced, they had three minor children, Laura, Lynsay and Leisa. R. 72.
3. The parties' Decree awarded plaintiff \$545.00 per month in child support for the parties' three minor children. R. 74.
4. The Decree did not specify a per child amount of support. R. 74.
5. Although the Decree refers to the Utah State Child Support Schedule, it did not include a child support worksheet. R. 71-76.
6. The Decree did not address changes in defendant's child support obligation when the children reached the age of majority. R. 71-76.
7. Laura became 18 years of age on September 2, 1995. R. 112, 120, 127, 149.
8. Lynsay became 18 years of age on October 1, 1997. R. 112, 120, 127, 149.
9. Intervenor collected child support and sought to collect arrears from defendant after the children's eighteenth birthdays at the original child support amount without any adjustment. R. 112, 121, 129, 136-42.

#### SUMMARY OF ARGUMENT

The trial court ruled that Section 78-45-7.10 did not apply because it became effective after the Decree was entered in this case. Newly enacted legislation applies so long as it does not affect vested rights. No one has a vested right in a child support order because the court has continuing jurisdiction to modify or vacate such an order at any time in the future. Hence, Section 78-45-7.10 applies to the Decree in this matter.



Section 78-45-7.10 requires an adjustment to an obligor parent's base child support award when the child becomes 18 years old. Based on the plain language of Section 78-45-7.10, the adjustment is automatic and applies as of the date a child becomes 18 years old. Nobody really disputes the automatic nature of the adjustment. This Court has applied the adjustment automatically and retroactively from the date of a party's petition to modify back to a child's eighteenth birthday. Termination of child support as of the childrens' eighteenth birthdays in this case is consistent with the express language of the Decree. If defendant does not receive the benefit of the adjustment as of the childrens' eighteenth birthday, then child support will have been effectively extended beyond their majority age without any finding of special or unusual circumstances. The trial court and the Intervenor were mostly concerned with the method of calculating the adjustment, but failed to apply the method proffered by the defendant and expressly provided for by Section 78-45-7.10.

## ARGUMENT

### I. UTAH CODE ANN. § 78-45-7.10 CONTROLS

The Decree was entered January 6, 1989. Section 78-45-7.10 first became effective April 24, 1989. Laws of Utah 1989, Chapter 214. The trial court ruled that Section 78-45-7.10 "applies to divorce decrees that were entered following the effective date of the statute" and that "[b]ecause the decree of divorce was entered prior to the adoption of the Guidelines, it was incumbent upon respondent, upon each child attaining the age of 18, to seek a modification of the decree so that the Court could determine

respondent's child support obligation for the remaining children." R. 183. The trial court erred in refusing to apply Section 78-45-7.10 to the Decree in this case.

In Utah, newly enacted statutes apply so long as they do not "modify vested rights or interests." *Pilcher v. State*, 663 P.2d 450, 455 (Utah 1983). Section 78-45-7.10 does not affect "vested rights." In *Wiker v. Wiker*, 600 P.2d 514 (Utah 1978), the Utah Supreme Court held that no one has any vested rights in a decree awarding child support. *Id.* at 515. The parties' divorce decree awarded support until the child reached his majority. *Id.* at 514. When the court entered the decree, the majority age was 21. Subsequently, a statutory amendment lowering the age of majority from 21 to 18 became effective. *Id.* at 515. The custodial parent argued that the newly enacted statute should not apply and that support should continue until the child became 21. *Id.* at 515-14.

The trial court refused to require support beyond the child's eighteenth birthday. *Id.* at 514. The Utah Supreme Court affirmed. *Id.* at 515-16. Among other things, the Utah Supreme Court reasoned that the trial court's action did not divest the custodial parent of any vested rights. "[N]o one has any vested rights in a support decree which statutorily may be changed from time to time by a court under its continuing jurisdiction . . . ." <sup>1</sup> *Id.* at 515. The Utah Supreme Court concluded "that the amendment . . .

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<sup>1</sup>Utah Code Ann. § 30-3-10.6(1)(a) (1953, as amended) further supports the absence of any vested rights in future child support payments. Section 30-3-10.6(1)(a) states that "[e]ach payment or installment of child . . . support is, on and after the date is due . . . a judgment with the same attributes and effect of any judgment of a district court." Hence, child support payments cannot vest until "on or after the date" the payment is due.

effectively, eliminated Mr. Wiker's obligation to support Roger after attaining his majority . . . ." *Id.* at 515-16. Because there is no vested right in child support payments, a court can modify or vacate the support order, including terminating support pursuant to Section 78-45-7.10.

*See also, Dowling v. Dowling*, 679 P.2d 480, 482 (Alaska 1984)("Since a child support order is modifiable after judgment upon a showing of substantial change in circumstances, a child's right to future, unaccrued installments of child support is not a vested right."); *Kocherov v. Kocherov*, 775 S.W.2d 539, 539-40 (Mo. Ct. App. 1989)(A judgment for child support may be modified to terminate support after passage of a statute which provides that the obligation to make support payments shall terminate when a child reaches 18.); *Stanley v. Stanley*, 541 P.2d 382, 383 (Ariz. 1975)(statute lowering age of majority was neither prospective nor retrospective because it affected all minors). *Jungjohann v. Jungjohann*, 516 P.2d 904, 907-09 (Kan. 1973)(A statute lowering the age of majority to 18 only terminated child support prospectively.); *Beaudry v. Beaudry*, 312 A.2d 922, 925 (Vt. 1973)(No rights vested in a child support judgment and hence, no rights were divested when the age of majority was changed.); *Schmitz v. Schmitz*, 236 N.W.2d 657, 662 (Wis. 1975)("To call child support payments a vested right misconceives their nature.").

Based on the foregoing, Section 78-45-7.10 applies to the Decree in this case even though that statute did not become effective until after entry of the Decree.

## II. SECTION 78-45-7.10's ADJUSTMENT IS AUTOMATIC

It is undisputed that when Section 78-45-7.10 applies, the obligor parent is not required to file a petition to receive the benefit of the child support adjustment. Section 78-45-7.10 states, in pertinent part: "When a child becomes 18 years of age . . . the base child support award is automatically adjusted . . . ." In deciding questions of statutory interpretation, the Court should look "first to the plain language of a statute." *Biddle v. Washington Terrace City*, 993 P.2d 875, 879 (Utah 1999). In addition, the Court should assume "that each term was used advisedly by the legislature." *Id.* Finally, the Court should "give effect to each term according to its ordinary and accepted meaning." *Arredondo v. Avis Rent A Car System, Inc.*, 418 Utah Adv. Rep. 3 (Utah 2001). The operative term in Section 78-45-7.10 is that the adjustment occurs "automatically" when the child becomes 18 years of age. "Automatic" means "acting or operating in a manner essentially independent of external influence or control. . . . Self regulating. . . . Without volition or conscious control." *The American Heritage Dictionary*, 143 (2d College Ed. 1982). If defendant were required to file a petition to effectuate the "automatic" adjustment prior to the children's eighteenth birthdays the adjustment would not be "automatic."

### A. This Court Terminated Child Support Pursuant To Section 78-45-7.10 Even Though A Petition To Modify Was Filed Several Months After Children Became 18

In *Ball v. Peterson*, 912 P.2d 1006 (Utah Ct. App. 1996), one child turned 18 in February or March 1992. *Id.* at 1008. Another child turned 18 in September 1993. The

obligor parent did not file a petition to modify until December 1993, nearly two years after the first child turned 18 and three months after the second child turned 18. The Utah Court of Appeals remanded the case "for the court to impose this automatic change when [the first child] turned 18 years of age. We also reverse and remand the court's order for the purpose of making the necessary change to reflect the automatic decrease in Mr. Peterson's support obligation when [the second child] turned 18 years of age . . . ." *Id.* at 1015. Based on *Ball v. Peterson*, defendant is entitled to automatic adjustment of the child support as of the dates Laura and Lynsay turned 18.

#### B. Nobody Really Disputed The Automatic Nature Of The Adjustment

Neither the plaintiff, the Intervenor nor the trial court seemed to contest the automatic nature of the adjustment in those cases where Section 78-45-7.10 applies. The plaintiff never challenged the automatic nature of Section 78-45-7.10's adjustment. R. 149-50, 212 (Transcript, at 19-23, 27-28).<sup>2</sup> During oral argument, the Intervenor conceded the automatic nature of the adjustment: "Mr. Robinson argued that the State's position was that a petition has to be filed every time a child emancipates. That is not true. ORS automatically reduces child support regularly, and would've adjusted Mr. Johansen's . . . ." R. 212 (Transcript, at 17). "[T]he issue in this case is not whether the **automatic child support reduction feature of 78-45-7** applies in this case. The State

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<sup>2</sup>Plaintiff's sole argument was that the Decree was entered before Section 78-45-7.10 became effective and therefore, that Section's automatic adjustment did not apply. R. 212 (Transcript, at 19-23, 27-28).

concedes that it would apply if the Decree of Divorce provided a basis for recalculation support.” R. 212 (Transcript, at 12)(emphasis added). The trial court’s order states:

“[Section 78-45-7.10][,] **that provides for an automatic reduction of child support when a child reaches age 18[,]** clearly applies to divorce decrees that were entered following the effective date of the statute.” R. 183 (emphasis and punctuation added).

The highlighted portion of the trial court’s ruling acknowledges the “automatic” nature of Section 78-45-7.10's adjustment. The only real dispute below was whether or not Section 78-45-7.10 applied to the Decree because it became effective after the Decree was entered. As established previously, it does apply to the Decree in this case. Therefore, defendant is entitled to the Section’s automatic adjustment.

#### C. An Automatic Adjustment Is Consistent With The Language Of The Decree

An automatic adjustment as of the children’s eighteenth birthdays is consistent with the language of the Decree. The Decree states: “Plaintiff is in need of monies for the support of the **minor** children of the parties.” R. 74 (emphasis added). Children reach majority age at 18. Utah Code Ann. § 15-2-1 (1953, as amended). The trial court acknowledged that that language of the Decree required termination of child support when the children became eighteen years old.

Ms. Nicholas:       The Decree does not state when child support should terminate, as I recall the Decree.

The Court:    Oh, but it does.

Ms. Nicholas:       Oh.

The Court: ‘Plaintiff is in need of monies for the support of the minor children of the parties.’ And it doesn’t take a big leap to say, when the child reaches their majority, then they don’t—then they aren’t in need of any support.

R. 212 (Transcript, at 15-16). Applying Section 78-45-7.10 as of the children’s eighteenth birthdays would not contradict the express language of the decree.

D. Support Cannot Extend Beyond Age 18 Absent Special Circumstances

The Utah Supreme Court has held that child support cannot be ordered to extend beyond a child’s eighteenth birthday in the absence of a finding of special or unusual circumstances. *Ferguson v. Ferguson*, 578 P.2d 1274, 1275 (Utah 1978). *See also*, *Carlson v. Carlson*, 584 P.2d 864, 866, (Utah 1978)(In the absence of a finding of special or unusual circumstances, child support cannot be ordered to extend beyond 18.); *Harris v. Harris*, 585 P.2d 435, 437 (Utah 1978)(It was an abuse of discretion to order child support to age 21 where the trial court made no findings of any special or unusual circumstances.). The trial court acknowledged that a parent is not required to support a child who reaches majority age. “[Y]ou only have to support your children as long they’re minors, and I think that’s been the law for a long time—long before the adoption of the guidelines . . . .” R. 212 (Transcript, at 16). The trial court also recognized that the Decree provided no basis for extending support beyond the children’s eighteenth birthdays. “Is it fair that [defendant] pays child support for children that have reached their majority? This Decree didn’t contemplate that.” R. 212 (Transcript, at 15). At no time has the plaintiff or the Intervenor sought a finding of special or unusual circumstances to require payment of child support beyond the children’s eighteenth

birthdays. If defendant does not receive the benefit of Section 78-45-7.10's automatic adjustment as of Laura's and Lynsay's eighteenth birthdays, then defendant's child support obligation will have been effectively extended in violation of the Utah Supreme Court's rulings in *Carlson*, *Ferguson* and *Harris*.<sup>3</sup>

#### E. Calculating The Adjustment

The trial court's and the Intervenor's primary concern seemed to be the absence of a basis in the Decree to calculate the adjustment as of the children's 18<sup>th</sup> birthdays. "The State concedes that [Section 78-45-7.10] would apply if the Decree of Divorce **provided a basis for recalculation support.**" R. 212 (Transcript, at 12)(emphasis added).

"Without a basis for recalculation, ORS cannot automatically reduce . . . ." R. 212

(Transcript, at 14). The trial court's conclusions of law were based on the absence of a recalculation basis:

5. While the decree refers to the 'Utah State Child Support Schedule', there was no child support worksheet supplied with the divorce decree.

6. The findings of fact and conclusions of law do not set forth the amount of child support to be paid for each child.

7. The decree does not specify the respective incomes of the parties which would enable the Court to calculate child support for three children based on income.

R. 182-83. Based on those findings, the trial court concluded:

2. Because the parties' decree neither specifies a per-child amount of child support nor the incomes of the parties at the time the decree was entered, it is impossible for the Court to evaluate retroactively what child support should have

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<sup>3</sup>In Laura's case, support will have been extended from 18 to 22½ years old and in Lynsay's case, support will have been extended from 18 to a little more than 20 years old.



been when the first child reached age 18 or when the second child reached age 18. R. 183. The Intervenor conceded it would adjust defendant's support obligation if it had guidance from the legislature. "If ORS had guidance from the legislature . . . as to how to reduce that child support automatically, ORS would reduce it." R. 212 (Transcript, at 16). Section 78-45-7.10 expressly provided the basis for recalculating defendant's support obligation. Section 78-45-7.10(3) states:

The income used for purposes of adjusting the support shall be the income of the parties at the time of the entry of the original order. If income was not listed in the findings or order and worksheets were not submitted, the parties may submit tax returns or other verification of the income.

*Id.* Defendant presented the trial court with that method of determining the adjustment:

The Court: . . . what's the reduction going to be to?

Mr. Robinson: Well . . . I think the argument would be this, that we'd go back to the 1988 period and we would take the initial guidelines that were enacted and would look at the incomes at that period of time and apply the reduction, based on those incomes. And I think that's the way we would go about doing it.

R. 212 (Transcript, at 5). The trial court seemed to reject defendant's proffer during oral argument, *Id.*, and expressly rejected it in its order. R. 183. The trial court erred when it failed to implement the method for calculating the automatic adjustment as proffered by defendant and expressly required by Section 78-45-7.10(3).

### CONCLUSION

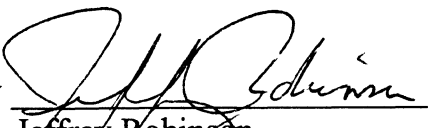
The trial court's decision to deny defendant's motion for summary judgment was incorrect. The trial court erred in refusing to apply the automatic child support

adjustment in Section 78-45-7.10 to the parties' Decree. Defendant was entitled as a matter of law to an automatic adjustment as of September 2, 1995, when Laura became 18 and again as of October 1, 1997 when Lynsay became 18. Defendant was further entitled as a matter of law to an order compelling the Intervenor to adjust the arrearages owed by defendant and an order prohibiting Intervenor from withholding any further arrearages from defendant's wages pending a readjustment of defendant's arrearages consistent with the automatic adjustment required by Section 78-45-710.

Defendant requests that (1) the trial court's decision be reversed, (2) defendant's child support be recalculated and adjusted as of September 2, 1995, when Laura became 18 and again as of October 1, 1997 when Lynsay became 18, (3) Intervenor be required to adjust any arrearages owed by defendant as a result of the automatic adjustment, and (4) Intervenor be prohibited from collecting any further arrearages from defendant until child support has been recalculated and adjusted and defendant's arrearages have been adjusted consistent with that recalculation and adjustment.

DATED: April 30, 2001

ROBINSON & SHEEN, L.L.C.

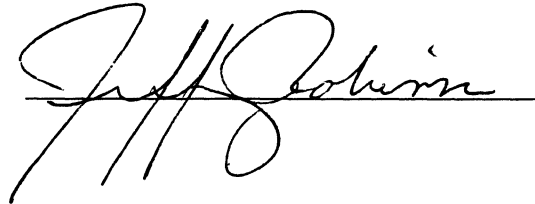
By   
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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2001, two copies of this Brief of Appellant were  
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A handwritten signature in black ink, appearing to read "Jeffery S. Robinson", is written over a horizontal line.

# ADDENDUM A

JUL 03 2000

SALT LAKE COUNTY

Sy. \_\_\_\_\_  
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----

KATHRYN ANN JOHANSEN, nka	:	MINUTE ENTRY
KATHRYN ANN TURNER,	:	
	:	
Petitioner,	:	CASE NO. 874904472
	:	
vs.	:	
	:	
PAUL R. JOHANSEN,	:	
	:	
Respondent.	:	
	:	
STATE OF UTAH, Division of	:	
Human Services, Office of	:	
Recovery Services,	:	
	:	
Intervenor.	:	

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This matter was before the Court on June 19, 2000 for argument on respondent's Motion for Partial Summary Judgment. The parties were present and/or represented by counsel. The Court heard counsel's argument on the respondent's Motion for Partial Summary Judgment, and thereafter took the matter under advisement to further consider the written submissions of the parties, and to consider the statutory references referred to during the course of oral argument. The Court has had an opportunity to once again review the written submissions of the parties, consider the oral argument of counsel, review the applicable statutes, and being fully advised is satisfied that the respondent's Motion for Summary Judgment must be denied.

In this case the respondent sought a judicial determination as a matter of law that his child support obligation should have been automatically adjusted when his two oldest children reached age 18 on September 1, 1995 and October 1, 1997. Respondent relies on Section 78-45-7.10 of the Utah Code Ann., 1953 as amended, which proscribes, "When a child becomes 18 years of age...the base child support award is automatically reduced to reflect the lower base combined child support obligation shown in the table for the remaining number of children due child support...."

Respondent asserts that his child support should have been automatically reduced and that the efforts of the intervenor, State of Utah, to collect child support in the full amount ordered under the divorce Decree is inappropriate. The respondent seeks retroactive application of his Motion back to the time the two children turned age 18.

This is a divorce Decree that was entered prior to the effective date of the child support guidelines as promulgated by the Utah legislature. The effective date of the guidelines and the effective provisions, the above-referenced statute included therein, was July 1, 1989. The divorce Decree was entered on January 6, 1989, pursuant to stipulation between the parties. In paragraph 5 of that divorce Decree, the Court, pursuant to stipulation, ordered child support in the amount of \$545. It was

for three children. While the Decree refers to Utah state child support schedule, there was no child support worksheet supplied with the divorce Decree, and the Findings of Fact and Conclusions of Law do not set forth the amount of child support being paid for each child, nor is there any indication as to the respective income of the parties which would allow the Court to make some type of determination as to what child support ought to be for three children based on the income of the parties, even though the child support guidelines were not yet effective.

The statutory provision above-referenced that provides for an automatic reduction of child support when a child reaches age 18 clearly applies to divorce Decrees that were entered following the effective date of the child support guideline statutes' effective date. The references in Section 78-45-7.10 clearly make reference to child support guidelines. Because of the nature of the Decree, it is impossible for the Court to evaluate retroactively what child support may have been when the first child reached age 18 or when the second child reached age 18.

Because the Decree of Divorce was in place prior to the inception of the child support guidelines, it was incumbent upon the respondent, upon each child reaching age 18, to seek a modification of the Court's Order, for a redetermination of what child support would properly be for the remaining children. The

respondent did not undertake such action, and can now not claim a retroactive application beyond the date of filing the Petition to Modify, filed February 15, 2000.

For the foregoing reasons and those set forth by the intervenor and the petitioner, the Motion for Partial Summary Judgment is denied. Counsel for the intervenor is to prepare an appropriate Order showing that the Motion for Partial Summary Judgment is denied, and submit the same to the Court in accordance with the Code of Judicial Administration.

By way of suggestion but not by way of Order, the parties may wish to determine the respective incomes of the petitioner and the respondent, apply the child support guidelines as they currently exist, so as to determine the ongoing child support amounts that would be due the petitioner from the respondent for the last remaining minor child. The respondent is clearly entitled to a reduction based upon the oldest two children reaching their majority, the question is merely the amount of child support that should be ongoing.

Dated this 3 day of July, 2000.

  
TIMOTHY R. HANSON  
DISTRICT COURT JUDGE



**MAILING CERTIFICATE**

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, to the following, this 3 day of June, 2000:

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# ADDENDUM B

FILED DISTRICT COURT  
Third Judicial District

OCT 24 2000

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SALT LAKE COUNTY  
By E. Thompson  
Deputy Clerk

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

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KATHRYN ANN JOHANSEN (AKA TURNER),	)	
	)	
Petitioner,	)	
	)	
vs.	)	ORDER ON RESPONDENT'S
	)	MOTION FOR PARTIAL
	)	SUMMARY JUDGMENT
	)	
PAUL R. JOHANSEN,	)	Civil No. D87-4472
	)	
Respondent.	)	Judge TIMOTHY R. HANSON
	)	Comm
STATE OF UTAH, Office of	)	
Recovery Services,	)	
	)	
Intervenor.	)	

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This matter came before the court on June 19, 2000, the Honorable Timothy R. Hanson presiding, pursuant to respondent's motion for partial summary judgment in connection with his petition to modify the parties' decree of divorce. Petitioner Kathryn Ann Johansen, nka Kathryn Ann Turner, was present with her counsel, Steven Russell. Respondent Paul R. Johansen was present with his counsel, Jeffrey Robinson. The State of Utah,

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Office of Recovery Services, was represented by Assistant Attorney General Lynn Nicholas.

#### **ISSUES BEFORE THE COURT**

Respondent sought a judicial determination as a matter of law that his child support obligation should have been automatically adjusted when his two oldest children reached age 18 on September 1, 1995 and October 1, 1997, respectively. Respondent relied on Utah Code Ann. § 78-45-7.10 which provides: "When a child becomes 18 years of age...the base child support award is automatically reduced to reflect the lower base combined child support obligation shown in the table for the remaining number of children due child support...."

Respondent asserted that his child support should have been automatically reduced and that the Office of Recovery Services' continued collection of child support in the full amount ordered under the divorce decree was inappropriate. Respondent sought retroactive modification of the decree to the time each of the two oldest children attained the age of majority.

The Court, having heard the arguments of counsel, having taken the matter under advisement, having considered the written submissions of the parties and the statutory references, being fully advised and good cause appearing, now enters the following:

FINDINGS OF FACT (~~UNDISPUTED~~) <sup>W</sup>

1. The parties' divorce decree was entered prior to the adoption of child support guidelines ("Guidelines") by the Utah State Legislature.

2. The divorce decree was entered on January 6, 1989, pursuant to stipulation between the parties.

3. The effective date of the statute in which the Guidelines were initially promulgated was July 1, 1989.

4. In paragraph 5 of the divorce decree, the Court, pursuant to stipulation, ordered child support in the amount of \$545.00 for the parties' three children.

5. While the decree refers to the "Utah State Child Support Schedule", there was no child support worksheet supplied with the divorce decree.

6. The findings of fact and conclusions of law do not set forth the amount of child support to be paid for each child.

7. The decree does not specify the respective incomes of the parties which would enable the Court to calculate child support for three children based on income.

#### CONCLUSIONS OF LAW

1. The above-referenced statutory provision that provides for an automatic reduction of child support when a child reaches age 18 clearly applies to divorce decrees that were entered following the effective date of the statute.

2. Because the parties' decree neither specifies a per-child amount of child support nor the incomes of the parties at the time the decree was entered, it is impossible for the Court to evaluate retroactively what child support should have been when the first child reached age 18 or when the second child reached age 18.

3. Because the decree of divorce was entered prior to the adoption of the Guidelines, it was incumbent upon respondent, upon each child attaining the age of 18, to seek a modification of the decree so that the Court could determine respondent's child support obligation for the remaining children.

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4. The respondent did not undertake such action and cannot now claim a retroactive application of the statute beyond the date of filing his petition to modify on February 15, 2000.

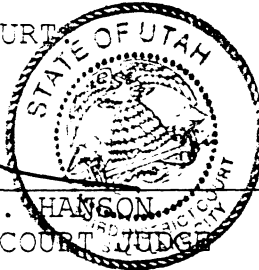
ORDER

For the foregoing reasons and those set forth by the intervenor and the petitioner, respondent's motion for partial summary judgment is denied.

10/24/2000

BY THE COURT

  
TIMOTHY R. HANSON  
DISTRICT COURT JUDGE



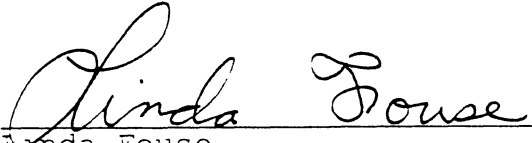
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MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of  
the foregoing Order to the following this 20<sup>th</sup> day of July  
2000.

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Linda Fouse  
Secretary