

Brigham Young University Law School  
**BYU Law Digital Commons**

---

Utah Supreme Court Briefs (2000– )

---

2016

**Jillian Scott Appellant, v Bradley Scott, Appellee.**

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc2](https://digitalcommons.law.byu.edu/byu_sc2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

---

**Recommended Citation**

Reply Brief, *Jillian Scott v Bradley Scott*, No. 20160299 (Utah Supreme Court, 2016).  
[https://digitalcommons.law.byu.edu/byu\\_sc2/3282](https://digitalcommons.law.byu.edu/byu_sc2/3282)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (2000– ) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

IN THE  
SUPREME COURT OF THE STATE OF UTAH

---

JILLIAN SCOTT,  
*Appellant,*

v.

BRADLEY SCOTT,  
*Appellee.*

---

REPLY BRIEF OF APPELLANT

---

*On Writ of Certiorari to the Utah Court of Appeals*

---

Karra J. Porter  
Kristen C. Kiburtz  
CHRISTENSEN & JENSEN, P.C.  
257 East 200 South, Suite 1100  
Salt Lake City, Utah 84111  
karra.porter@chrisjen.com  
kristen.kiburtz@chrisjen.com  
*Attorneys for Appellee Bradley Scott*

Michael D. Zimmerman (3604)  
Troy L. Booher (9419)  
Julie J. Nelson (9943)  
ZIMMERMAN JONES BOOHER  
Felt Building, Fourth Floor  
341 South Main Street  
Salt Lake City, Utah 84111  
mzimmerman@zjbappeals.com  
tbooher@zjbappeals.com  
jnelson@zjbappeals.com  
(801) 924-0200  
  
Bart J. Johnsen (7068)  
PARSONS BEHLE & LATIMER  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
bjohnsen@parsonsbehle.com  
(801) 532-1234  
*Attorneys for Appellant Jillian Scott*

---

## Table of Contents

Introduction .....	1
Argument .....	5
1.    Jillian is not challenging findings of fact .....	5
2.    The response brief does not address the finding that Okland did not consider the California house to be his principal residence or explain why this court said “domicile” but meant something other than domicile .....	6
2.1    The panel opinion conflicts with <i>Haddow, Knuteson</i> , and <i>Myers II</i> .....	8
2.2    The panel erred when it defined “domicile” differently in this context than in all other legal contexts .....	11
3.    The response brief does not explain how “temporary or brief period of time” refers to a state of mind.....	12
3.1    No other jurisdiction has terminated alimony on the basis of cohabitation that lasted 42 days .....	14
3.2    Jillian and Okland were not in the California house for “more than a temporary or brief period of time” .....	17
4.    This court should enforce the plain language of section 30-3- 5(10).....	18
4.1    Bradley incorrectly asserts that this court should not address the argument because it is not preserved.....	19
4.2    Bradley’s brief fails to confront the plain language of section 30-3-5(10) and should be disregarded under <i>Broderick</i> .....	20
4.2.1  The majority of other states also require cohabitation to be ongoing in order to justify termination of alimony .....	21

---

4.3	The three cases Bradley cites involve a boyfriend moving out to circumvent the litigation.....	24
	Conclusion.....	26

## Table of Authorities

### Cases

<i>Alexis v. Tarver</i> , 879 So. 2d 1078 (Miss. Ct. App. 2004) .....	15
<i>Am. Express Travel Related Servs. Co. v. MasterCard Int'l Inc.</i> , 776 F. Supp. 787 (S.D.N.Y. 1991).....	24
<i>Amii v. Amii</i> , 695 P.2d 1194 (Haw. Ct. App. 1985) .....	15
<i>Bagley v. Bagley</i> , 2016 UT 48, --- P.3d --- .....	4, 19, 21, 23
<i>Bisig v. Bisig</i> , 469 A.2d 1348 (N.H. 1983) .....	15
<i>Black v. Black</i> , 2008 UT App 465, 199 P.3d 371 .....	21
<i>Block v. Block</i> , 252 S.W.3d 156 (Ky. Ct. App. 2007).....	15
<i>Broderick v. Apartment Mgmt. Consultants, L.L.C.</i> , 2012 UT 17, 279 P.3d 391.....	2, 4, 20, 21
<i>Bussey v. Bussey</i> , 563 N.E.2d 37 (Ohio Ct. App. 1988) .....	15
<i>Bustamante v. Bustamante</i> , 645 P.2d 40 (Utah 1982) .....	11
<i>Cherpelis v. Cherpelis</i> , 1996-NMCA-037, 121 N.M. 500, 914 P.2d 637 .....	15
<i>Else v. Else</i> , 367 N.W.2d 701 (Neb. 1985) .....	15
<i>Foster v. Schorr</i> , 82 P.3d 845 (Idaho 2003) .....	16

<i>Gayet v. Gayet</i> , 456 A.2d 102 (N.J. 1983) .....	15
<i>Gilman v. Gilman</i> , 956 P.2d 761 (Nev. 1998) .....	15
<i>Goldman v. Goldman</i> , 543 A.2d 1304 (R.I. 1988) .....	15
<i>Gressman v. State</i> , 2013 UT 63, 323 P.3d 998 .....	19
<i>Haddow v. Haddow</i> , 707 P.2d 669 (Utah 1985) .....	passim
<i>Hammonds v. Hammonds</i> , 641 So. 2d 1211 (Miss. 1994) .....	24
<i>Ianitelli v. Ianitelli</i> , 502 N.W.2d 691 (Mich. Ct. App. 1993) .....	15
<i>In re Marriage of Bross</i> , 845 P.2d 728 (Mont. 1993) .....	15
<i>In re Marriage of Dwyer</i> , 825 P.2d 1018 (Colo. App. 1991) .....	15
<i>In re Marriage of Frasco</i> , 638 N.E.2d 655 (Ill. App. 1994) .....	25
<i>In re Marriage of Kuzanek</i> , 105 P.3d 1253 (Kan. 2005) .....	16
<i>In re Marriage of Morrison</i> , 910 P.2d 1176 (Or. Ct. App. 1996) .....	15
<i>In re Marriage of Tower</i> , 780 P.2d 863 (Wash. Ct. App. 1989) .....	15
<i>J.N. v. M.N.</i> , No. CN05-06443, 2007 WL 5361879 (Del. Fam. Ct. Aug. 23, 2007) .....	24

<i>Knuteson v. Knuteson</i> , 619 P.2d 1387 (Utah 1980) .....	passim
<i>Lobaugh v. Lobaugh</i> , 753 A.2d 834 (Pa. Super. Ct. 2000) .....	16
<i>Maher v. Maher</i> , 2004 WY 62, 90 P.3d 739 (Wyo. 2004) .....	15
<i>McRae v. McRae</i> , 381 So. 2d 1052 (Miss. 1980) .....	24
<i>Miller v. Miller</i> , 2005 VT 122, 179 Vt. 147, 892 A.2d 175 .....	15
<i>Moore v. Moore</i> , 2009 S.D. 16, 763 N.W.2d 536 .....	15
<i>Musgrove v. Musgrove</i> , 821 P.2d 1366 (Alaska 1991) .....	15
<i>Myers v. Myers</i> , 560 N.E.2d 39 (Ind. 1990) .....	15
<i>Myers v. Myers (Myers II)</i> , 2011 UT 65, 266 P.3d 806 .....	passim
<i>O'Rourke v. Utah State Tax Comm'n</i> , 830 P.2d 230 (Utah 1992) .....	12
<i>Patterson v. Patterson</i> , 2011 UT 68, 266 P.3d 828 .....	2, 19
<i>Pendleton v. Pendleton</i> , 918 P.2d 159 (Utah Ct. App. 1996) .....	24
<i>Roofe v. Roofe</i> , 460 N.E.2d 784 (Ill. App. 1984) .....	16
<i>Sieber v. Sieber</i> , 258 N.W.2d 754 (Minn. 1977) .....	15

<i>Smith v. Mangum</i> , 747 P.2d 609 (Ariz. Ct. App. 1987).....	15
<i>Taake v. Taake</i> , 233 N.W.2d 449 (Wis. 1975).....	15
<i>Texas v. Florida</i> , 306 U.S. 398 (1939) .....	11
<i>Utleigh v. Mill Man Steel, Inc.</i> , 2015 UT 75, 375 P.2d 992.....	21, 23
<i>Scott v. Scott</i> , 2016 UT App 31, 368 P.3d 133.....	1
<i>Whittington v. Whittington</i> , 914 A.2d 212 (Md. Ct. Spec. App. 2007) .....	15
<u>Statutes</u>	
Ala. Code § 30-2-55 .....	16, 23
Ark. Code Ann. § 9-12-312.....	16, 23
Cal. Fam. Code § 4323.....	15
Conn. Gen. Stat. Ann. § 46b-86.....	15
Del. Code Ann. tit. 13, § 1512.....	15
Fla. Stat. Ann. § 61.14.....	15
Ga. Code Ann. § 19-6-19.....	15
750 Ill. Comp. Stat. Ann. 5/510 .....	16, 23
Iowa Code Ann. § 598.21c.....	15
La. Civ. Code Ann. Art. 115.....	16, 23
Mass. Gen. Laws Ann. ch. 208, § 49.....	15
Me. Rev. Stat. Ann. tit. 19-A § 951-A .....	16, 22
Mo. Ann. Stat. § 452.370 .....	15



N.Y. Dom. Rel. Law 248 .....	15
N.C. Gen. Stat. Ann. § 50-16.9 .....	16, 23
N.D. Cent. Code Ann. § 14-05-24.1 .....	16, 23
Okla. Stat. Ann. tit. 43, § 134 .....	15
23 Pa. Cons. Stat. Ann. § 3706 .....	16, 23
S.C. Code Ann. § 20-3-130 .....	23
Tenn. Code Ann. § 36-5-121 .....	15
Tex. Fam. Code Ann. § 8.056 .....	16, 22
Utah Code § 30-3-5 .....	19, 20
Va. Code Ann. § 20-109 .....	16, 23
W. Va. Code Ann. § 48-5-707 .....	15
<u>Rules</u>	
Utah R. App. P. 24 .....	18
Utah R. App. P. 47 .....	18
<u>Other Authorities</u>	
Berenson, Steven K., <i>Should Cohabitation Matter in Family Law?</i> , 13 J.L. & Fam. Stud. 289 (2011) .....	15

## Introduction

Most of the response brief addresses issues that are not in dispute on appeal. The issues on appeal are (i) whether Okland considered the California vacation house his principal domicile during the 42 days he spent there from February 17, 2011, to April 1, 2011; (ii) whether 42 days in a common abode is more than a “temporary or brief period of time” under the test for cohabitation; and (iii) whether the cohabitation statute requires that cohabitation be ongoing to terminate alimony. The response brief barely addresses those three issues.

Instead, the response brief devotes considerable space to describing the sexual relationship between Jillian and Okland. (Resp.Br. at 8-10, 12-14.) But as the panel noted, it is undisputed that Jillian and Okland had a “relatively permanent sexual relationship.” *Scott v. Scott*, 2016 UT App 31, ¶ 10, 368 P.3d 133 (“Op.”) Jillian did not challenge that ruling before the panel and does not challenge it here. Those sections of the response brief are beside the point.

The response brief also devotes considerable space to describing the various vacations Jillian and Okland took prior to February 17, 2011. (Resp.Br. at 8-11, 49.) But the panel reversed the trial court’s ruling that cohabitation began before February 17. (Op. ¶ 38.) Bradley did not file a cross-petition to challenge that holding. The vacations before February 17 also are beside the point.

The response brief also repeatedly accuses Jillian of challenging findings of fact, an accusation presented to and rejected by the panel. (Op. ¶ 8.) Because the

trial court did not find that Okland considered the California vacation house to be his principal residence, let alone his principal *domicile*, there is no need to challenge a finding of fact on that point. And because the trial court considered whether 144 days—not the 42 days now at issue—constitutes “more than a temporary or brief period of time,” there is no finding to challenge on that point either. The issues presented are questions of law, not questions of fact.

When the response brief does address the issues presented, it advances arguments that ignore the panel decision and controlling precedent. Bradley asserts in two sentences that the panel should not have addressed Jillian’s argument that the statute requires cohabitation to be ongoing to terminate alimony. (Resp.Br. at 50.) Bradley does not address the panel’s explanation of why it addressed the issue and does not provide any factual or legal analysis as to why the panel erred in addressing it. Bradley has inadequately briefed the issue and this court should disregard it. *Broderick v. Apartment Mgmt. Consultants, L.L.C.*, 2012 UT 17, ¶ 11, 279 P.3d 391 (courts have “discretion to not address an inadequately briefed argument” (internal quotation marks omitted)). Bradley’s assertion is also contrary to precedent, which allows appellate courts to address a controlling statute governing the issue presented. *Patterson v. Patterson*, 2011 UT 68, ¶ 11, 266 P.3d 828 (“Our preservation rule does not prevent [an appellant] from arguing the applicability of . . . controlling authority that directly bears upon the issue . . .”).

The three issues presented in the opening brief are therefore both legal in nature and squarely presented. And each one provides a ground to reverse.

**Domicile** - To terminate alimony, the trial court had to rule that the California vacation house was the principal domicile for Jillian and Okland. But the trial court did not find that it was Okland's principal domicile, or even his principal residence. As the trial court recognized in its findings of fact, the only evidence was to the contrary: "Mr. Okland testified Rancho Santa Fe was not intended to be his primary residence and he returned to Salt Lake City on or about April 1, 2011 and broke up with [Jillian]." (R. 2255.) Because the California vacation house was never Okland's principal domicile or residence, Bradley did not satisfy the test for cohabitation.

**Brief Period of Time** - Even if there had been cohabitation, the cohabitation had to last for more than a temporary or brief period of time. Here, the panel opinion reversed the trial court's ruling that cohabitation began in December 2010 and lasted 144 days. (R. 2272; Op. ¶ 15.) The panel instead held that cohabitation began on February 17, 2011, which was 42 days before Okland ended the relationship on April 1, 2011. (Op. ¶ 15.) In all other jurisdictions, 42 days is not nearly long enough for cohabitation to terminate alimony. This court should clarify that Utah requires cohabitation to last for at least a few months to constitute a relationship capable of replacing the financial need for alimony.

**Ongoing Cohabitation** – Even if there had been cohabitation and the cohabitation had lasted for more than a temporary or brief period of time, any cohabitation ended well before Bradley filed his petition and “established” cohabitation. Jillian argued that the plain language of section 30-3-5(10) requires cohabitation to be ongoing to terminate alimony. The response brief does not argue that the language is ambiguous or that an exception to enforcing the plain language applies. Because Bradley failed to address the issue, this court may reverse on that ground. *Broderick*, 2012 UT 17, ¶ 11 (affirming because appellee failed to address appellant’s arguments).

Instead of addressing the plain language of section 30-3-5(10), Bradley mentions the cohabitation test in three other states. But a comparison to other states only provides support for enforcing the plain language. Thirty-six states require that the cohabitation change the recipient’s economic status, like a new job. Another four states terminate alimony only if the recipient cohabitates for a time period specified by statute, the shortest of which is 90 days—more than double the 42 days here. These statutes demonstrate that a rational legislator could have intended to require ongoing cohabitation to terminate alimony under section 30-3-5(10). Because Bradley has not shown how the absurdity doctrine precludes enforcing the plain language, this court should require ongoing cohabitation to terminate alimony. *Bagley v. Bagley*, 2016 UT 48, ¶ 31, --- P.3d ---.

This court can reverse on any of those three grounds.

## Argument

In what follows, Jillian first demonstrates that she is not challenging findings of fact, for the reasons recognized by the court of appeals. Jillian then replies to Bradley's arguments that address the issues presented on appeal.

### 1. Jillian is not challenging findings of fact

The opening brief and the panel addressed questions of law. (Op.Br. at 2,3,39-42).<sup>1</sup> The response brief nonetheless discusses findings of fact, most of which concern a time period no longer relevant (before February 17) and factual issues no longer in dispute (the sexual relationship). (Resp.Br. at 8-10,12-14,29-35.) Jillian is not challenging those findings because they are legally irrelevant.

As for the standard of review, *Myers II* governs. Under *Myers II*, certain challenged findings are "pure findings of fact subject to clearly erroneous review. But some of those findings [are] premised on embedded questions of law, which are reviewed for correctness." *Myers v. Myers (Myers II)*, 2011 UT 65, ¶ 34, 266 P.3d 806. *Myers II* explained that "a misconception of the governing legal standard," such as the failure to understand "[t]he impact of common residency and of a sexual relationship on the determination of cohabitation are questions of law on which no deference is due, since they do not 'call for proof' but rather for 'argument.'" *Id.* ¶ 36.

---

<sup>1</sup> At the end of the opening brief, it was important to Jillian to clarify certain facts, but she stated that those facts are immaterial: "Although *immaterial* under the correct legal standard, it is worth correcting a few factual errors in the panel opinion." (Op.Br. at 39 (emphasis added).)

As Jillian explained in her opening briefs in this court and the court of appeals, the district court misconceived the test for cohabitation. The panel agreed that the issues presented questions of law. (Op. ¶ 8.) And because the issues addressed by the panel were questions of law, and this court reviews the panel's opinion for correctness, the issues here present questions of law. Most of the response brief addresses findings of fact that are neither at issue nor relevant.

**2. The response brief does not address the finding that Okland did not consider the California house to be his principal residence or explain why this court said "domicile" but meant something other than domicile**

For over thirty years, this court's cohabitation test has been stable: two parties cohabitate "only if they establish a common abode that both parties consider their principal domicile for more than a temporary or brief period of time" and have a sexual relationship. *Myers II*, 2011 UT 65, ¶¶ 16-17 (internal quotation marks omitted). The panel changed this test. It held that this court did not mean domicile by "domicile," but instead meant residence. (Op. ¶ 18.)

But even if this court used "principal domicile" to mean principal residence, this court still should reverse because the trial court did not find that the California home was Okland's principal residence or his principal domicile. The only finding of fact that addresses the issue says the opposite: "Mr. Okland testified Rancho Santa Fe was not intended to be his primary residence and he returned to Salt Lake City on or about April 1, 2011 and broke up with [Jillian]." (R.2255.) Based upon this finding of fact, Bradley is incorrect that the trial court

was “entitled to find that [Okland’s] domicile was Rancho Santa Fe.” (Resp.Br. at 46.) The trial court did not make that finding, and in light of the findings it did make, it was not entitled to do so.

Bradley also asserts, without citation to the record, that Okland “represented that he lived with Ms. Scott on a full time permanent basis.” (*Id.* at 46.) That was not Okland’s testimony. And if Bradley bases that assertion on Okland’s application for membership at a golf course in California, in which he indicated that Ms. Scott should have “family status” privileges, that fact has nothing to do with whether the California house was Okland’s principal domicile or residence. There is no record basis for finding that the California house was Okland’s principal domicile, which is why that finding is absent.

Otherwise, Bradley asserts that Okland transported personal items and possessions to the California house. (*Id.* at 46.) But this not only finds scant support in the record, it also, as explained on pages 39-41 of the opening brief, does not show that Okland intended the California house to be his principal domicile or residence, especially in light of the finding of fact that says that the California house “was not intended to be his primary residence.” (R.2255.)

For those reasons, even if the panel were correct that this court used the word “domicile” to mean residence, the record and findings indicate that the California house was not Okland’s principal residence. This court can reverse on that ground alone without clarifying whether “domicile” means domicile.



But this court should clarify that “domicile” means domicile in the test for cohabitation, which is its meaning in every other legal context. In doing so, this court should reject how Bradley and the panel read its prior cases.

## **2.1 The panel opinion conflicts with *Haddow*, *Knuteson*, and *Myers II***

Bradley ignores the language used by this court for decades and characterizes Jillian’s argument concerning domicile as “Ms. Scott’s ‘domicile’ test,” (Resp.Br. at 45) and “the ‘one-domicile’ formulation that Ms. Scott proposes.” (*Id.* at 43.) But Jillian is not asking this court to begin using the word “domicile” in its cohabitation test. This court has used the word for decades, in *Haddow v. Haddow*, 707 P.2d 669 (Utah 1985), *Knuteson v. Knuteson*, 619 P.2d 1387 (Utah 1980), and *Myers II*.

At times recognizing the problem, Bradley states that the test is intended to be “flexible.” (Resp.Br. at 43.) While the overall test is flexible, the element that requires domicile is no more or less flexible than it is in other legal contexts. To conclude otherwise, Bradley, like the panel, misreads this court’s decisions in *Haddow*, *Knuteson*, and *Myers II*.

Bradley describes *Haddow* as follows: “In *Haddow*, for example—where the couple each maintained a separate home—this Court did not engage in a formulistic test to determine which of the two homes the couple’s true domicile was and then determine whether the couple shared that home. Rather, this Court focused on whether the couple lived together in either one or both of the two

homes in a marriage-like arrangement.” (Resp.Br. at 42-43.) This is not accurate. In *Haddow*, only the ex-wife’s house was in question. 707 P.2d at 670-71. There was no dispute that it was her domicile. *Id.* at 670. The only question was whether it was also the boyfriend’s domicile. *Id.* at 671-72. This court held that “the common residency element of cohabitation has not been established” because neither the ex-wife nor the boyfriend considered the home to be the boyfriend’s “principal residence.” *Id.* at 674. The court therefore held that the couple was not cohabitating. *Id.*

Bradley also misreads *Knuteson*. Bradley describes *Knuteson* as “another case where two homes were involved, [and] this Court did not employ Ms. Scott’s ‘one-home’ analysis. Rather, the question was whether the couple’s living arrangements were akin to a marriage.” (Resp.Br. at 43.) This also is not accurate. In *Knuteson*, the court determined that the couple was not cohabitating because “Mrs. Knuteson was not a ‘resident’ in [her boyfriend’s] home in the statutory sense.” 619 P.2d at 1389. That sentence not only demonstrates that this court concluded Mrs. Knuteson was not a resident, it confirms that the court intends the words to be used “in their statutory sense,” and not in a vague and “flexible” way that parties cannot predict or apply to their circumstances without litigation.

Bradley also misreads *Myers II*. He describes it as holding “that the ‘common residency’ element was not met because the couple’s living arrangements did not resemble those of a married couple – for example,

Ms. Myers slept on the couch while M.H. had a separate room, they shared no common household duties or expenses, and the nature of their sexual relationship was likewise not permanent.” (Resp.Br. at 44.) But in *Myers II*, the divorced woman was living with her parents, who were housing a foster teen. 2011 UT 65, ¶ 1. The two may have had a sexual relationship. *Id.* ¶ 4. And because they also lived in the same house, this court assumed the two threshold elements of the test (common residency and sexual relationship) were satisfied. *Id.* ¶ 22. This court concluded the parties were not cohabiting. The court wrote that “[e]ven if Ms. Myers and [the foster teen] had a sexual relationship and lived together under the same roof, their relationship had almost none of the other hallmarks of a marriage.” *Id.* ¶ 39 (emphasis added). In other words, *Myers II* did not conclude, as Bradley asserts, that “the couple’s living arrangements did not resemble those of a married couple.” (Resp.Br. at 44.) It assumed that the living arrangements *did* resemble that of a married couple but still held that the relationship was not like that of a married couple.

In short, Bradley’s statement that the test for cohabitation is flexible, while certainly correct in general, does not entail that this court’s use of the term “domicile” means something other than domicile or is more flexible than it is in other legal contexts. The term does not refer to the nature of the parties’ sexual relationship. It means domicile, just as it does in all other legal contexts. And this court’s case law does not hold otherwise.

## 2.2 The panel erred when it defined “domicile” differently in this context than in all other legal contexts

Bradley also asserts that “domicile” means something different in the test for cohabitation than in every other legal context. (Resp.Br. at 43.) But the case law confirms that the traditional domicile requirement remains part of the test.

*Myers II* refers to the “notion of ‘common residency’” in *Bustamante v. Bustamante*, 645 P.2d 40, 43 (Utah 1982). *Myers II*, 2011 UT 65, ¶ 35 & n.7. In *Bustamante*, the court defined the term “residency” in the divorce context with reference to the following factors: “voting, owning property, paying taxes, having family in the area, maintaining a mailing address, being born or raised in the area, working or operating a business, and having children attend school in the forum.” 645 P.2d at 41. This is not a special test for the divorce context.

At times recognizing the problem with his position, Bradley also asserts that the word “domicile” itself is problematic, even though it has operated in legal contexts for centuries. (Resp.Br. at 43.) His support is a dissenting opinion written by Justice Frankfurter in 1939, which observes that the term “domicile” is problematic when applied to the wealthy. (*Id.* at 45 (citing *Texas v. Florida*, 306 U.S. 398, 429 (1939))). But the majority disagreed, and pointed out that every person can have only one domicile that, once established, remains that person’s domicile until affirmatively changed. *Texas*, 306 U.S. at 424-25. It is not clear how the dissenting opinion in a United States Supreme Court case decided nearly 70

years ago is relevant to what this court means by the term “domicile” in its test for cohabitation.<sup>2</sup>

In short, Bradley provides no reason, either in this court’s case law or in the dissenting opinions of other courts, to conclude that this court used the term “domicile” to mean anything other than domicile. Even though there is no evidence, or finding, that Okland considered the California home to be his principal domicile or principal residence, this court should clarify that “domicile” means domicile, not residence. Either way, this court should reverse.

**3. The response brief does not explain how “temporary or brief period of time” refers to a state of mind**

The phrase “temporary or brief period of time” concerns the duration of cohabitation, not the state of mind of those cohabitating. Bradley and the panel assert otherwise and obscure the test. (Op. ¶ 22.)

In response, Bradley does not address whether 42 days is more than a temporary or brief period of time. Instead, he characterizes Jillian’s position as follows: “couples should be given a trial-period to determine whether their

---

<sup>2</sup> In a footnote, Bradley raises various concerns about using the definition of “domicile” in the cohabitation context. He refers to it as an “artificial ‘one-home-maximum’ test,” and cites concerns that “a couple who traveled for a living, or who transferred frequently, or who were in the military, or who do not have a steady home, could never qualify as ‘cohabitating.’” (Resp.Br. at 45 & n.11.) These concerns are a mirage. They are the same concerns that arise in any other context involving domicile and can be resolved in the same way: a multi-factor test in which domicile changes only when the person abandons their old domicile, establishes a new one, and demonstrates an intent to remain. *O’Rourke v. Utah State Tax Comm’n*, 830 P.2d 230, 232 n.1 (Utah 1992). Applying the traditional test for domicile is no more difficult or troublesome in this context than in any other legal context.

marriage-like-living arrangement will work.” (Resp.Br. at 46.) But that is demonstrably correct under the current test. Living in the common abode for only a temporary or brief period of time is not sufficient under the test. It takes *more than* a temporary or brief period of time for cohabitation. The question is what constitutes more than a temporary or brief period of time, and Bradley’s observation that parties have a trial period unless a single day is enough to terminate alimony does not address the issue.

And this court already has explained how to answer this question. This court has long maintained that “[c]ohabitation is not a sojourn, nor a habit of visiting, nor even remaining with for a time; the term implies continuity.” *Myers II*, 2011 UT 65, ¶ 26 (quoting *Haddow*, 707 P.2d at 673). And while Bradley is correct that *Knuteson* and *Haddow* address the issue further, he is incorrect that those cases refer to a state of mind rather than a period of time.

As to *Knuteson*, Bradley relies on the same incorrect interpretation set forth by the panel. (Resp.Br. at 47; Op. ¶ 23.) He states that the court in *Knuteson* “found it significant that neither the ex-wife nor neighbor ‘consider[ed]’ the neighbors’ [sic] home to be the ex-wife’s ‘principle [sic] domicile for more than a temporary or brief period of time.’” (Resp.Br. at 47.) But Mrs. Knuteson was not a “‘resident’ . . . in the statutory sense,” confirming that the ordinary meanings of words should be applied. *Knuteson*, 619 P.2d at 1389. This court *also* held “that

the wording of the statute does not appear to cover a temporary stay at another's home." *Id.* Bradley's characterization is incorrect.

Bradley also incorrectly reads *Haddow*. He states that *Haddow* "asked whether an alimony recipient's time spent in boyfriend's home amounted to cohabitation." (Resp.Br. at 48.) But *Haddow* held that the boyfriend was never a "resident" in the ex-wife's home. 707 P.2d at 673. The question was not *how long* he was a resident. The case law does not support Bradley's novel test.

### **3.1 No other jurisdiction has terminated alimony on the basis of cohabitation that lasted 42 days**

Bradley at times suggests that allowing couples a "trial period" would be absurd. (Resp.Br. at 46.) He states, "[a]ccording to [Jillian], couples should be given a trial-period to determine whether their marriage-like-living arrangement will work." (*Id.* at 46.) He turns to South Carolina's statute, which expressly states that alimony may be terminated if the couple lives together for "'ninety or more consecutive days.'" (*Id.* at 47.) It is worth noting that South Carolina gives couples a "trial period" of eighty-nine days—more than twice as long as the period here. Even more revealing, however, is what all the states Bradley omits say about how long a couple must cohabitate to terminate alimony.

The clear majority of states—thirty-six—do not consider cohabitation to be an event that automatically terminates alimony. Twelve states by statute allow the modification or termination of alimony based on cohabitation, but only if the

recipient's financial circumstances have changed, much like getting a new job.<sup>3</sup>

Twenty-four states have the same rule, but the rule developed in the case law.<sup>4</sup>

What these thirty-six states have in common is an appreciation that alimony is an economic arrangement that changes only if the recipient's economic status has changed. Steven K. Berenson, *Should Cohabitation Matter in Family Law?*, 13 J.L. & Fam. Stud. 289 (2011) (reviewing various approaches to cohabitation in a variety of settings).

---

<sup>3</sup> Cal. Fam. Code § 4323(a)(1); Conn. Gen. Stat. Ann. § 46b-86(b); Del. Code Ann. tit. 13, § 1512; Fla. Stat. Ann. § 61.14(b)(1); Ga. Code Ann. § 19-6-19(b); Iowa Code Ann. § 598.21c(1); Mass. Gen. Laws Ann. ch. 208, § 49(d); Mo. Ann. Stat. § 452.370(1); N.Y. Dom. Rel. Law 248; Okla. Stat. Ann. tit. 43, § 134(C); Tenn. Code Ann. § 36-5-121(f)(2)(B); W. Va. Code Ann. § 48-5-707(a)(1).

<sup>4</sup> *Smith v. Mangum*, 747 P.2d 609, 611 (Ariz. Ct. App. 1987) (stating majority rule that "courts modify the amount of spousal maintenance received by the cohabiting ex-spouse only if the spouse's support needs have changed"); *see also Musgrove v. Musgrove*, 821 P.2d 1366, 1370 (Alaska 1991); *In re Marriage of Dwyer*, 825 P.2d 1018, 1019 (Colo. App. 1991); *Amii v. Amii*, 695 P.2d 1194, 1199 (Haw. Ct. App. 1985); *Myers v. Myers*, 560 N.E.2d 39, 43 (Ind. 1990); *Block v. Block*, 252 S.W.3d 156, 161 (Ky. Ct. App. 2007); *Whittington v. Whittington*, 914 A.2d 212, 226 (Md. Ct. Spec. App. 2007); *Ianitelli v. Ianitelli*, 502 N.W.2d 691, 693 (Mich. Ct. App. 1993); *Sieber v. Sieber*, 258 N.W.2d 754, 757 (Minn. 1977); *Alexis v. Tarver*, 879 So. 2d 1078, 1080 (Miss. Ct. App. 2004); *In re Marriage of Bross*, 845 P.2d 728, 731-32 (Mont. 1993); *Else v. Else*, 367 N.W.2d 701, 704 (Neb. 1985); *Gilman v. Gilman*, 956 P.2d 761, 764 (Nev. 1998); *Bisig v. Bisig*, 469 A.2d 1348, 1350 (N.H. 1983); *Gayet v. Gayet*, 456 A.2d 102, 104 (N.J. 1983); *Cherpelis v. Cherpelis*, 1996-NMCA-037, 121 N.M. 500, ¶ 6, 914 P.2d 637, 638; *Bussey v. Bussey*, 563 N.E.2d 37, 39 (Ohio Ct. App. 1988); *In re Marriage of Morrison*, 910 P.2d 1176, 1179 (Or. Ct. App. 1996); *Goldman v. Goldman*, 543 A.2d 1304, 1306-07 (R.I. 1988); *Moore v. Moore*, 2009 S.D. 16, ¶ 22, 763 N.W.2d 536; *Miller v. Miller*, 2005 VT 122, ¶ 18, 179 Vt. 147, 892 A.2d 175; *In re Marriage of Tower*, 780 P.2d 863, 867 (Wash. Ct. App. 1989); *Taake v. Taake*, 233 N.W.2d 449, 453 (Wis. 1975); *Maher v. Maher*, 2004 WY 62, ¶ 8, 90 P.3d 739 (Wyo. 2004).



Only twelve states terminate alimony if the recipient cohabitates, regardless of whether her economic status has changed.<sup>5</sup> Of those, four states specify by statute the length of cohabitation required. As Bradley indicated, South Carolina is such a state, requiring cohabitation for at least ninety days. The other three states require that cohabitation last *more than a year* to terminate alimony. Me. Rev. Stat. Ann. tit. 19-A § 951-A(12) (requiring cohabitation to have existed for at least 12 months out of 18 consecutive months); N.D. Cent. Code Ann. § 14-05-24.1(3) (one year); Va. Code Ann. § 20-109(A) (one year).

The statutes in Utah and seven other states allow the courts to define what constitutes a sufficient length of time for cohabitation to terminate alimony. Ala. Code § 30-2-55; Ark. Code Ann. § 9-12-312(a)(2); 750 Ill. Comp. Stat. Ann. 5/510(c); La. Civ. Code Ann. Art. 115; N.C. Gen. Stat. Ann. § 50-16.9(b); 23 Pa. Cons. Stat. Ann. § 3706; Tex. Fam. Code Ann. § 8.056(b). In those states, Jillian has found no case terminating alimony based upon cohabitation that lasted 42 days or fewer, except a few cases more than three decades old where the cohabitation was stable and continuing. *See, e.g., Roofe v. Roofe*, 460 N.E.2d 784, 785 (Ill. App. 1984).

The shortest period Jillian has found is nine weeks — fifty percent longer than the 42 days at issue here. *Lobaugh v. Lobaugh*, 753 A.2d 834, 837 (Pa. Super.

---

<sup>5</sup> Two other states, Idaho and Kansas, rely primarily on a contract between the parties. *Foster v. Schorr*, 82 P.3d 845 (Idaho 2003); *In re Marriage of Kuzanek*, 105 P.3d 1253 (Kan. 2005).

Ct. 2000). Most states require cohabitation for many months, which is consistent with this court's holding in *Knuteson* that two months and ten days was "a temporary stay." 619 P.2d at 1389; *Haddow*, 707 P.2d at 672 (describing *Knuteson* as holding that "a stay of two months and ten days did not establish a 'settled abode'").

In other words, far from being absurd, giving couples a "trial period to determine whether their marriage-like-living arrangement will work" is the rational position adopted by every state. It is consistent with the policy underlying alimony, which concerns the recipient's economic needs. It is consistent with a policy of encouraging recipients to pursue new romantic relationships without fear of financial repercussions. This court should reverse the panel's decision, which appears to be the only decision in the country terminating alimony where cohabitation had ended and lasted only 42 days.

### **3.2 Jillian and Okland were not in the California house for "more than a temporary or brief period of time"**

Rather than addressing the 42 days of cohabitation found by the panel, Bradley asserts that the cohabitation lasted longer. Bradley states that Jillian lived in the California house for approximately eighty-seven days and that this is the relevant time period. (Resp.Br. at 49.) But whenever the time period began, it ended on April 1, when Okland ended the relationship. (Op.Br. at 36.) It is difficult to understand how parties can continue to satisfy the test for

cohabitation after one party — here, Okland — ends their relationship and no longer lives in the same state, let alone the same house. Bradley never explains.

Bradley instead suggests that the panel “erred in limiting the time of cohabitation to six weeks,” but should have looked to the relationship *before* that time. (Resp.Br. at 49.) In essence, Bradley assumes that the trial court was correct in ruling that cohabitation began in December 2010, the very ruling reversed by the panel in its opinion when it held that cohabitation could not have begun until February 17, 2011. (Op. ¶ 15.) Bradley could have cross-petitioned to challenge the holding by the panel, but did not. Utah R. App. P. 47. It is therefore not before this court. Bradley’s challenge to the panel’s decision is also inadequately briefed and insufficient to overturn the panel decision. Utah R. App. P. 24(a)(9).

In short, this court should reject the panel’s holding that 42 days of cohabitation is sufficient to terminate alimony. This court should clarify that cohabitation must last at least ninety days — the shortest period that terminates alimony in other states. This court should reverse the order terminating Jillian’s alimony and order the trial court to reinstate alimony and order back pay.

**4. This court should enforce the plain language of section 30-3-5(10)**

This court also should reverse because cohabitation was not ongoing, a requirement under the plain language of the statute. The cohabitation statute uses the present tense verb: “Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that

the former spouse *is cohabitating* with another person.” Utah Code § 30-3-5(10) (emphasis added). In the opening brief, Jillian argued that the plain language of the statute required cohabitation to be ongoing and did not violate the absurdity doctrine. In response, Bradley ignores both.

#### **4.1 Bradley incorrectly asserts that this court should not address the argument because it is not preserved**

In one sentence, Bradley asserts that the argument concerning the plain language of the statute was not preserved and the panel should not have addressed it. (Resp.Br. at 50.) He has not adequately briefed the issue; nor could he. “*Issues* must be preserved, not arguments for or against a particular ruling on an issue raised below.” *Gressman v. State*, 2013 UT 63, ¶ 45, 323 P.3d 998 (emphasis in original); *see also Bagley v. Bagley*, 2016 UT 48, ¶ 26 n. 23, --- P.3d ---. The issue of cohabitation was preserved.

Moreover, the panel addressed the question, having determined it was essential to interpretation of the statute. (Op. ¶ 27 n. 8.) The panel’s approach adheres to *Patterson v. Patterson*, in which this court held it would not disregard an unpreserved but controlling statutory argument. 2011 UT 68, ¶ 20, 266 P.3d 828. This court reviews the panel decision for correctness. Here, the panel decision is contrary to the plain language of the statute. This court should review that decision and enforce the plain language.

#### 4.2 Bradley's brief fails to confront the plain language of section 30-3-5(10) and should be disregarded under *Broderick*

Bradley fails to address the plain language of section 30-3-5(10) and the issues presented in the opening brief. An appellee's brief must address the issues presented in the opening brief. *Broderick v. Apartment Mgmt. Consultants, L.L.C.*, 2012 UT 17, ¶ 10, 279 P.3d 391. If it "fail[s] to address or refute [the appellant's] points," it may be disregarded. *Id.* ¶ 14.

Bradley paraphrases the statutory language and, in doing so, changes its meaning, a move that acknowledges he loses under the plain language. Bradley asserts that the statute says, "cohabitation automatically terminates alimony upon a finding of cohabitation regardless of whether the couple eventually separates or terminates their cohabitation." (Resp.Br. at 51.) The language actually says, "Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse *is cohabitating* with another person." Utah Code § 30-3-5(10) (emphasis added). Bradley does not argue that the language is ambiguous, because it is not ambiguous.<sup>6</sup> The plain language therefore governs.

---

<sup>6</sup> Oddly, Bradley quotes legislative history that confirms the plain-language interpretation that requires ongoing cohabitation: "'If someone really is cohabitating, they are living with another person in that companionship relationship that is at least commensurate with marriage, then alimony ought to stop. . . . If they are in a substitute marriage relationship, alimony ought to end.'" (Resp.Br. at 36 (quoting 51st Legislature, Utah House of Representative, Floor Debate, Tape No. 1 (January 23, 1995 morning session).)

The opening brief also explained that the plain language governs unless, under the absurdity doctrine, “no rational legislator could have intended” the statute to mean what it says. *Utley v. Mill Man Steel, Inc.*, 2015 UT 75, ¶ 46, 375 P.2d 992. This court confirmed that approach in *Bagley v. Bagley*, and concluded that “[a]bsent an overwhelmingly absurd result, we will not modify the statutes.” 2016 UT 48, ¶¶ 27-29, 31. Jillian explained that a rational legislator could have intended the statute to require ongoing cohabitation to replace the need for alimony before alimony can be terminated. (Op.Br. at 18.) She addressed supportive and relevant policy considerations under the absurdity doctrine. (*Id.*)

Bradley does not mention the absurdity doctrine. He instead cites to a court of appeals case, *Black v. Black*, that does not squarely address the issue (Resp.Br. at 50, citing *Black*, 2008 UT App 465, ¶ 8, 199 P.3d 371.) He also cites a theoretical consequence of reading the statute according to its plain language (i.e. that “one half of a couple could simply move out”). (Resp.Br. at 52-53.) Bradley’s brief fails to confront this issue.

This court should reverse. Bradley not only does not address the arguments in the opening brief, he also has not shown that an exception to enforcing plain language applies. *Broderick*, 2012 UT 17, ¶ 10.

#### **4.2.1 The majority of other states also require cohabitation to be ongoing in order to justify termination of alimony**

Instead of addressing the plain language of Utah’s statute, Bradley cites statutes in Connecticut, Florida, and Oklahoma for the unremarkable proposition

that some states have different statutes that operate differently. (Resp.Br. at 50-51.) Bradley avoids mentioning states that interpret their statutes to require ongoing cohabitation. It is worth understanding why.

A survey of other states sheds light on how rational legislators can address the termination of alimony. As explained above, thirty-six states allow for alimony to be adjusted on the basis of cohabitation only where the recipient's economic circumstances have changed as a result of the cohabitation. In these states, cohabitation is one of many other "changes in circumstances" that may justify a modification of alimony. In these states, a relationship that had ended would not support a modification of alimony because the recipient's economic circumstances would not have changed. And if alimony is terminated, but economic circumstances change again, a former recipient can petition to have alimony restored. The fact that Utah allows alimony to be restored only after a *remarriage* that is annulled suggests that it should be more difficult, not less difficult, to terminate alimony based upon *cohabitation* in the first instance.<sup>7</sup>

The statutes in other states are also revealing, as they disclose various approaches to terminating alimony based upon cohabitation.

---

<sup>7</sup> Oddly, Bradley asserts that the fact that alimony can be restored after the annulment of a marriage means it should be easier to terminate alimony based upon cohabitation. (Resp.Br. at 51-52.) Bradley never explains this counterintuitive assertion so Jillian does not address it further.

- Two states, Louisiana and Pennsylvania, allow for alimony to be terminated if the recipient “has cohabited.” LSA-C.C. Art. 115; 23 Pa. C.S.A. § 3706.
- Five other states use the present tense in their cohabitation tests. Ala. Code 1975 § 30-2-55 (requiring termination if recipient “is living openly or cohabiting”); Ark. Code Ann. § 9-12-312(a)(2)(D)(Supp. 2013) (requiring termination upon “living full time with another person in an intimate, cohabitating relationship”); 750 Ill. Comp. Stat. Ann. 5/510 (requiring termination “if the party receiving maintenance cohabits with another person on a resident, continuing conjugal basis”); N.C. Gen. Stat. Ann. § 50-16.9 (requiring termination if a party cohabitates, which “means the act of two adults dwelling together continuously and habitually”); Tex. Fam. Code Ann. § 8.056(b) (requiring termination if recipient “cohabits with another person with whom the obligee has a dating or romantic relationship in a permanent place of abode on a continuing basis”).
- And four other states specify the duration of cohabitation to terminate alimony. Me. Rev. Stat. Ann. Tit. 19-A § 951-A(12) (2013); N.D. Cent. Code Ann. § 14-05-24.1; S.C. Code Ann. § 20-3-130; Va. Code Ann. § 20-109.

In those states with statutes that contemplate cohabitation will be ongoing, rational legislators intended that result.

Regardless of what other states do, because a rational legislator *could* have intended the Utah statute to be read according to its plain language, this court should enforce the plain language. *Utley*, 2015 UT 75, ¶¶ 29, 46. As this court recently reaffirmed, “[a]bsent an overwhelmingly absurd result, [this court] will not modify the statutes.” *Bagley*, 2016 UT 48, ¶ 31.

Bradley does not argue that no rational legislator could have intended that cohabitation be ongoing, but instead provides reasons why a rational legislator might disagree with that position, something that describes the possible



legislative options, but does not show the plain language here is absurd. Bradley asserts that “[i]f ‘current cohabitation’ were the test under the statute, then one half of a couple could simply move out any time a petition for termination is filed.” (Resp.Br. at 52-53.) But there is no evidence this is a problem in any state. Courts are free to deny relief “when the offending conduct ceases and the court finds that there is no reasonable expectation that it will resume.” *Am. Express Travel Related Servs. Co. v. MasterCard Int’l Inc.*, 776 F. Supp. 787, 790 (S.D.N.Y. 1991) (internal quotation marks omitted). Where the offending conduct is likely to resume, perhaps courts could terminate alimony, as the court of appeals did in *Pendleton v. Pendleton*, 918 P.2d 159, 160-61 (Utah Ct. App. 1996).

Regardless, Bradley has not shown what he must—that no rational legislator could have intended to require ongoing cohabitation with the plain language of section 30-3-5(10). This court should reverse.

#### **4.3 The three cases Bradley cites involve a boyfriend moving out to circumvent the litigation**

The three cases from other jurisdictions that Bradley cites in the response brief are also inapposite. (Resp. Br. at 52.) One case has been overturned, and the other two cases involved current boyfriends.

Bradley first cites *McRae v. McRae*, 381 So. 2d 1052 (Miss. 1980). Bradley does not mention that the Mississippi Supreme Court revisited that decision in 1994 and held that it improperly reflected “a moral judgment that a divorced

woman should not engage in sexual relations.” *Hammonds v. Hammonds*, 641 So. 2d 1211, 1216 (Miss. 1994). *McRae* is not good law.

Bradley next cites, *J.N. v. M.N.*, an unpublished decision of the Family Court in Delaware. No. CN05-06443, 2007 WL 5361879 (Del. Fam. Ct. Aug. 23, 2007). In that case, the alimony recipient claimed that she was not cohabitating. *Id.* at \*3. The trial court concluded she was cohabitating at the time the petition to terminate was filed. *Id.* at \*8. After that, her boyfriend moved out, but the court appears to have found that was pretextual, as it was in *Pendleton*, 918 P.2d at 161.

Finally, Bradley cites *In re Marriage of Frasco*, 638 N.E.2d 655 (Ill. App. 1994). In that case, the court held that the “totality of the evidence evinces a resident, conjugal relationship . . . . The fact that [the boyfriend] moved from the [ex-wife’s] residence . . . has little bearing on the continuing nature of the relationship. [The boyfriend] testified that he did so solely in response to the instant litigation. . . . [I]t is reasonable to presume he will resume coresidency when this litigation is terminated.” *Id.* at 660. *Frasco* also is beside the point.

There is no allegation, let alone evidence or a finding, that Okland ended the relationship on April 1 as a pretext to prevent the termination of Bradley’s alimony obligation. This court should reject any assertions to the contrary, enforce the plain language of the statute, and reverse on the ground that cohabitation ended long before Bradley either filed his petition or established cohabitation, assuming there was ever cohabitation under the Utah test.


### Conclusion

This court should reverse the panel opinion affirming the district court's termination of alimony. Jillian and Okland did not cohabit under Utah law. The only finding is that Okland did not consider the California vacation house to be his principal domicile or even his principal residence. Even if he had, Jillian and Okland stayed *together* in the California house for only 42 days, which is not more than a "temporary or brief period of time." Finally, even if Jillian and Okland had cohabited, their relationship ended months before Bradley filed his petition to terminate alimony and "established" cohabitation. Under the plain language of section 30-3-5(10) of the Utah Code, the district court erred in terminating alimony where cohabitation was not ongoing.

On any one of these grounds, this court should reverse and remand to allow Jillian to request her attorney fees once she becomes the prevailing party in these proceedings.

DATED this 31st day of October, 2016.

ZIMMERMAN JONES BOOHER



---

Michael D. Zimmerman  
Troy L. Booher  
Julie J. Nelson  
*Attorneys for Appellant Jillian Scott*

**Certificate of Compliance With Rule 24(f)(1)**

I hereby certify that:

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because this brief contains 6,910 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

2. This brief complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 13 point Book Antiqua.

DATED this 31st day of October, 2016.

  
A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line and a small flourish.

### **Certificate of Service**

This is to certify that on the 31st day of October, 2016, I caused two true and correct copies of the Reply Brief of Appellant to be served on the following via first-class mail, postage prepaid:

Karra J. Porter  
Kristen C. Kiburtz  
Christensen & Jensen, P.C.  
257 East 200 South, Suite 1100  
Salt Lake City, UT 84111



---