

1992

Kim (Fazzio) Woodard v. Richard Cameron Fazzio : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



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; machine-generated OCR, may contain errors.

Larry R. Keller.

John Walsh.

Recommended Citation

Reply Brief, *Woodard v. Fazzio*, No. 920456 (Utah Court of Appeals, 1992).
https://digitalcommons.law.byu.edu/byu_ca1/3414

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 Court of Appeals Briefs 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. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BRIEF

TAH
OCUMENT
F U

D

A10

OCKET NO.

920456

IN THE UTAH COURT OF APPEALS

-----000000000000-----

KIM (FAZZJO) WOODWARD,

Plaintiff and
Appellee,

vs.

RICHARD CAMERON FAZZJO,

Defendant and
Appellant.

:

:

:

:

:

:

COURT OF APPEALS NO. 920456-CA

ARGUMENT CLASSIFICATION FOUR

-----000000000000-----

REPLY BRIEF OF THE APPELLANT

APPEAL FROM THE THIRD DISTRICT JUVENILE COURT
IN AND FOR SUMMIT COUNTY
STATE OF UTAH

JUDGE OLOF A. JOHANSSON - PRESIDING

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

JUDGE HOMER F. WILKINSON - PRESIDING

LARRY R. KELLER
ATTORNEY AT LAW
257 TOWERS SUITE 340
257 EAST 200 SOUTH - 10
SALT LAKE CITY, UTAH
84111

JOHN WALSH
ATTORNEY AT LAW
SUITE 270, 2319 FOOTHILL DR.
SALT LAKE CITY, UTAH
84109

FILED

AUG - 2 1993

COURT OF APPEALS

TABLE OF CONTENTS

TABLE OF AUTHORITIES	2
STATUTES	2
ARGUMENT ONE	3
ARGUMENT TWO	14
ARGUMENT THREE	17
ARGUMENT FOUR	20
ARGUMENT FIVE	22
CONCLUSION	23
SIGNATURE	25
CERTIFICATE OF MAILING	26
ADDENDUM	

TABLE OF AUTHORITIES

State in the Interest of M.S. vs. Salata, 806 P.2d 1216
(Utah App. 1991)

STATUTES etc.

None cited in this Brief, all references before are
set forth verbatim in the Brief of the Appellant.

ARGUMENT ONE

PLAINTIFF ORGANIZED A PLAN AND THEN ORCHESTRATED
THE SAME TO CUT THE FATHER OFF FROM HIS CHILD.

On pages 80 and 81 of the transcript, Kim Woodward, explained how she planned on cutting the Father and his family off from seeing the child.

She explained there that she had been to an attorney, Mr. Terry Christensen, about cutting them off, and he told her that there had to be a substantial period of time that there was not contact between the child and his Father.

The mother then prepares a note to the effect of "don't call me, I will call you," regarding visiting with the child.

The Paternal Grandmother testified at page 228, as follows:

Q. Okay. So from September of 1986, for, are you saying another six months from that point on?

A. I believe it started October of '86 and we saw him regularly, at first, every weekend, then every other weekend, up until Kim sent us the -- gave us the note saying we couldn't see R.A.F. any more, in October of '89. We saw him fairly regularly for three years. And during that period of time Cameron saw R.A.F. regularly.

Once the Father had received this message about no more visitation, he filed a Verified Petition to Modify Decree of Annulment, as the Decree of Annulment, allowed the Father the right to see his son, "as the parties can agree." Note Addendum.

Since the Mother had custody of the minor child, she could control exactly when and if the Father would be allowed to spend time with his child.

The termination of visitation letter is dated about October 1989, and in that exact month the Father petitioned for specific visitation.

The Mother answered the same, and stated in her Answer, in the Prayer:

WHEREFORE, Plaintiff prays for judgment against the Defendant, dismissing the instant Petition, and awarding court costs, interest, and a reasonable attorneys fee to Plaintiff as the Court may allow.

Plaintiff would have the Court note that she is filing this response within the 20 day period as required by the Utah Rules of Civil Procedure, but intends to file a Counterpetition and Order to Show Cause in this matter. Futhermore, Plaintiff and her attorney are exploring the possibility of having this case removed to Juvenile Court and filing a Petition for Termination of Parental Rights. (emphasis added)

Once the Answer was filed, the Mother took no further action, until the Father filed a Motion for an order setting forth specific visitation. Note Addendum.

Counsel for the Appellee has suggested that Cameron should have called the Mother and "just worked it out."

As noted on page 451, the Paternal Grandfather stated as follows on cross examination:

Q. Now, after you received this letter, did you ever say to Cameron, well, Kim's not going to allow us to see the children any more, Cameron, so you better call her and arrange your own visitation; did you ever suggest that to your son?

A. We talked to Cameron and we didn't say you call Kim, we've never had a phone number on Kim, we've never has --we-- Kim doesn't you call her right now and I would be very suprised, I called a

very short time ago, and she -- her number's unlisted.

Q. Well, sir, I'd like you to just answer my question. Did you suggest to your son that he personally make arrangements for visitation since Kim was now saying that you and Stephanie weren't going to be able to visit?

A. I suggested that we do it through the legal system and get visitation spelled out in writing so there could be no question, no games, no driving around the valley or up and down the canyon.

There can be no question that the Mother fully intended on cutting the Father and his family from R.A.F., as everyone involved agreed that it required a court order for the Father to see R.A.F.

The Mother, who herself had cut off the contact, stated on page 84 of the transcript on Direct Examination, as follows:

Q. All right, And we had a hearing, do you recall that?

A. Yes, sir.

Q. And once that hearing occurred, you were ordered to provide certain visitation once a month; is that correct?

A. Can I -- well, never mind.

Q. Okay. And based upon that, have you allowed that visitation, as best you can?

A. Yes, sir.

The first opportunity that the Father has to be with his child is March, and it is in March of 1990, that the Father has Christmas with his son.

There can be no question, re: credibility, etc., about the orchestrated game of the Mother to cut the Father off from his child, and this is her testimony that she saw an attorney about cutting off the Father. He consulted with her that it would

require that there be no meaningful contact with the child for a year. The Mother then prepares a termination of visitation letter, and then absolutely refuses to allow the Father to spend time with his child, until she is forced to do so by Court order.

Christmas in March is the testimony of every witness that addressed the same, and even then on by Court order.

Hopefully this Court can sense the urgency of the visitation by the Father, when one reflects upon the very words of the Mother, testifying on Direct Examination, at page 75:

Q. You said that he came around four or five times until September of 1988; is that correct?

A. Yes, sir.

Q. To your knowledge, when was the next time he personally saw F.A.F., to your knowledge?

A. In March of 1990.

Q. In March of 1990. Okay. And how do you know he personally saw R.A.F. at that time?

A. Because we went into Court and the Court said for him to see him tomorrow. (emphasis added.)

This was not a case where the Father could take or leave visitation, or as the Court could get around to it.

Rather this was a case where the Father stands before the Court and states that he has all of the Christmas Gifts since he has been cut off since before Halloween from seeing his child, and therefore the Father wants visitation and he wants it now.

Counsel for the Appellant submits that it is hard to understand why a Mother would do this to her own child, and then

even after the Christmas is shared in March, to refuse the child the gifts from his own Father. (T. 292 and following)

From the time that the Mother cuts off the visitation in October 1989, and the Christmas in March of 1990, there is nothing that occurred to heightened the level of hostility between the Mother and Father.

There is no claimed abuse, no claimed clash between the parties, no basis to suggest that somehow the level of hostility is at a new all-time high in March of 1990.

Counsel for the Appellant submits that this level of hostility is the same level that persisted through the post annulment of the parties, as there was no contact between the Mother and the Father to change the same.

Yet, we see from the Mother's testimony alone, of how she had orchestrated a program to cut off the Father and his family, and she would not waver from that goal, until she was facing contempt of Court, for not complying with a Court order allowing the Father to be with his son.

Once the Mother can see that the Father's wishes to be with his child were going to be honored and enforced by the Court, she attempts to threaten the Father that if he does not back off, from seeing his child, and seeking Court intervention in that regard, then she will just go ahead and retaliate by seeking the termination of the parental rights of the Father.

As noted on page 544 of the transcript, the Father stated, "I was given a letter from Kim saying that if I pursued this, that they would push an action to terminate....."

Big as life, she follows through with the threat, as noted on page 103 of the Transcript, with the Court stepping in and asking the subject question:

THE COURT: The question, Ms. Woodward, that Counsel posed was if it wasn't true that the -- your action to terminate parental rights was filed after the -- your ex-husband, or Mr. Fazzio, had in fact filed the Motion for visitation.

THE WITNESS: It was not filed until then.

No one can argue that the Mother did not have a goal, and that was terminating the relationship of the child with his Father.

After the Father came home in the middle of the day and found the Mother without any clothes on, in the shower with Mr. Mark Woodward, the ability of the parties to work out their problems was over. Her hostility was such that the best way she could hurt the Father was by denying him contact with the minor child.

She had obtained a Decree of Annulment by Default that allowed her complete and unbridled control over visitation. She could merely not agree, and hence the provision that he gets time with the child, "as the parties can, agree." was without any meaning.

Her anger towards the Father was something that was not subject to enhancement, as according to her, Mr. Cameron Fazzio was off the scene, and never came around.

His alleged failure to pay child support was inconsequential to her, as she was getting the same each month, whether he paid his support or not, and frankly she received a lot more per month than he was supposed to pay.

Hence, there was nothing happening between the time of the annulment and the time that she is facing contempt, that would increase her anger and hostility towards the Father. Yet, we see by way of her own testimony what it would take for the Father to see his child, after she had set some personal goals about the termination of parental rights.

While no one can argue that she in fact set some goals regarding termination of parental rights, Counsel for the Appellee seems to spend a fair amount of time in his brief, as to the October letter terminating visitation.

Counsel argues that no where in the letter does it terminate the rights of visitation.

Appellant submits that not only does it shed mega quantities of light on the true facts of this case, but the net result of the letter was in reality as termination of visitation.

As noted on pages 275 and 276 of the transcript, the Paternal Grandmother testified as follows:

- Q. Okay. The last paragraph, "As you know, I'm leaving soon and am not sure when I will be back, but when both Mark and I are back, we will bring R.A.F. to see you." She says, "as you know."
- A. And she told me that she would be gone for a couple of weeks on vacation.
- Q. Did she ever get back to you as to when you could see R.A.F. after that.
- A. No. She did not.
- Q. What did you do after that?
- A. We called our Attorney.

Not only does the net effect of the letter terminate visitation, but it shows the true facts as mentioned above.

The Mother had testified that Cameron had not been seeing the child at all, yet her own letter suggests to the contrary.

Exhibit 4, set out completely and in verbatim, is as follows:

I've been meaning to say this for a long time but after yesturday's experience I think it is best that I don't bring Tony down until Mark comes back to town. I feel this way for several reasons. The first being, the way you treat me as a person. You act like I owe you the visits to Tony. Dick especially doesn't miss a chance to yell and this intimidates me and brings back the same feelings of fear that Cameron used to cause me. I don't deserve this. I have been a good mother and you don't have any right to treat me this way.

Secondly: The way Michelle was treated. She was an innocent person trying to do you a favor and you treated her very harshly. It makes me mad to hear that Dick said "She (meaning me) always does this and she should get her act together" because I have always bent over backwards to let you see Tony. Even my own parents did not have him over the weekend every other week nor do your parents get your kids every other week. I am not responsible to take Chris to Darren's parents nor am I responsible to take Tony to Cameron's parents.

I have been doing this for you out of kindness because I realize Cameron didn't bring him over.

Thirdly: I don't like the way you question other people about what I am doing. It is none of your business. I told you a while back that I would let you see Tony when I was in town and you don't need to hassel my family and friends.

As you know, I am leaving soon and I am not sure when I will be back but when both Mark and I are back we will bring Tony to see you.

Kim
/s/

Appellant submits that the letter speaks volumes not only in what is being said, but also in what is not being said.

First the letter confirms that the minor child, would leave the presence of the Mother and would spend very regular amounts of time with the Father's family. The times and places that the child went once he left his Mother was beyond her ability to observe or comment on.

Hence, the testimony by the Paternal Grandmother, Paternal Grandfather and Cameron himself, regarding times and events spent by Cameron with the Child, were beyond the challenge by the Mother, as she would not have any knowledge, as she was not there.

As to what the letter does not say, it does not say that Cameron has not been spending time with the child, rather it says that the Mother has been doing this for some time, since the Father does not bring the child over to see his own Paternal Grandparents.

Had Cameron not exercised his visitation, as she claimed elsewhere, then the letter should have read, " I am doing this since Cameron does not visit the child at all, and therefore you folks would not be able to see Tony without my efforts."

Rather she states, "I have been doing this for you out of kindness because I realize Cameron didn't bring him over."

In fact, if one contrasts paragraph #2 and #3, it appears that Kim is saying that she has been bringing Tony for some period of time, providing the everyother weekend visits with the Father's side of the family, and this she does because of the times that Cameron comes and picks up the child, he does not take the child to his own parents for visitation.

Clearly the letter speaks of an admission that Cameron

was seeing the child, contrary to the testimony by the Mother that he had not seen the child from 1988, until court ordered visitation in March of 1990.

This contact between the Father and his son, was confirmed by Mr. Jerald Alvey, who testified beginning at page 621 and following, that the Father had a most meaningful relationship with the minor child of two years of age. That the Father and his child exchanged hugs, and now the little boy would hug back. Mr. Alvey also testified of how the Mother prevented the visitation of the child.

In reference to caring for the minor child, Mr. Alvey stated on page 622:

- A. And he -- he brought him in and he had a little chocolate on his face, he was eating some chocolate, and came in and Cameron went and changed his diaper and took care of him and everything.
- Q. Did you observe an intention in Mr. Fazzio to try to get close to R.A.F.?
- A. Yes. I noticed lots of hugs.
- Q. Did you see the child responding?
- A. Yes.
- Q. Tell me what you observed. if you would please, Mr. Alvey.
- A. That the child would hug him back, it was really cute.
- Q. Did the child appear to be happy or sad -- or
- A. Very happy, yes.

As noted so many times by the Counsel for the Appellee in his Brief, that only the lower Court can test the credibility of the witnesses, and therefore this Court must defer to that vantage point.

However, there is absolutely no mention by the lower Court as why to this critical evidence would be unreliable.

The Mother herself confirms the relationship and visitation of the Father with his child.

Appellant respectfully submits that there is no evidence that the Father was not significantly involved in the life of his little boy, and the great love and affection that he had for R.A.F.

The only person to suggest to the contrary, admitted in the letter that visitation was occurring, and furthermore she confirmed for the lower Court that she had a level of hostility towards the Father that required a Court order for Cameron to see his boy.

Futhermore the Christmas of 1989, occurred in March of 1990, without any dispute, confirming the efforts of the Mother to hurt the Father at any costs, and particularly where she knew she could score the most.

This is so because of the great love and affection the Father had with his son. She had absolute control of when the Father would be allowed to see his child, and she not only used the said control she, even by her own admission, abused the same.

This case involves a question of what the Father did to destroy the relationship of the parent/child, with his child.

Appellant submits that the Mother has done everything she could do to destroy the same, notwithstanding all of the efforts by the Father.

Appellant submits that this Court reverse and remand with instructions to set out meaningful visitation with the minor child.

ARGUMENT TWO

THE MOTHER MADE NO CLAIM OF ABUSE OF THE MINOR CHILD BOTH AT THE TIME OF TRIAL AS WELL AS IN CLOSING ARGUMENT.

As noted in the Appellant's brief, the claim of abuse of the minor child is wholly without merit.

Counsel for the Mother stated at page 655 of the transcript as follows:

Later, after the child is born, there's probably no question that he took an interest in the child, but he didn't take enough of an interest, your Honor, to support the child, to work and support the child, he admits he was unemployed most of the time, his family was often times without the basic necessities of life.

And after the -- and his response to the problems that existed in that family, Judge, was abuse and violence physical and emotional, abuse of the stepson, abuse of his wife, and while he never abused the child, and we've never claimed that he did, when he was abusing his wife in front of the child, when he was abusing his wife with the child in her arms, as has been testified to, that's as close as it comes to abuse of the child himself.

According to opposing Counsel, the closest that Cameron

ever came to abusing the child was while he was abusing someone else, the child was present.

No one can challenge the integrity of Mr. Keller when he states this to the Court.

No one can say that the Mother observed any abuse nor that she claimed that there had been any, as Mr. Keller stated in open Court.

This was no slip of the tongue, as Mr. Keller not only states that it never happened, and that they never even claimed that it did, Mr. Keller goes on and states how far from the same, the actions of the Father were from abuse.

In a case, where the critical question is what did the Father do to destroy the relationship of the parent/child with his son, Mr. Keller told the absolute truth when he stated that it not only never happened but they never claimed that it did.

In a case where the credibility of the witness is so much discussed, all parties agree that Mr. Keller spoke the truth when he stated it did not happen, and it did not even come close to happening.

Such a position is totally consistent with what each of the parties testified to.

The Father stated at page 499, that it never happened, just as did Mr. Keller:

Q. Did you -- did you hurt the child?

A. No, not at all.

Q. Have you ever hurt the child, Mr. Fazzio?

A. No.

Q. You heard Kim talk about times you'd slapped or smacked her around and the child and her heads hit the wall; you heard that yesterday, did you not?

A. I heard that.

Q. Did that ever happen, Mr. Fazzio?

A. No. I did not -- I have smacked Kim, but I did not slap into the -- hit R.A.F., I have never hit his head into the wall, none of that, ever.

Not only is Mr. Keller's statement truthful about the Father's conduct towards the child, and there being no abuse, his statements are also truthful about what the Mother had testified to, regarding what the child observed about his own father.

As noted on page 30 of the transcript, the Mother stated in reference to R.A.F., that ".....he was only ten, 11 months old when we split up for the final time, so he didn't even know him."

Hence, we see that Mr. Keller's statements regarding there being no abuse, and in fact nothing close to the same, rings true both as to what the Father testified to, as well as what the Mother testified to.

As a result, should the lower Court even presume that Mr. Keller did not in fact tell the truth about there being no abuse, this Court should immediately reverse the lower Court, and remand the matter to the lower Court, with instructions to set out meaningful visitation, since Mr. Keller's statements regarding no abuse were not only truthful, they were

ARGUMENT THREE

THERE CAN BE NO BASIS TO SAY THAT THE FATHER REFUSED
TO PAY CHILD SUPPORT

No one ever testified that the Father refused to pay
child support, nor was there any evidence of the same.

At page 67, the Mother testified as follows on direct
examination:

Q. Okay. Did you ever ask respondent for money for
R.A.F.?

A. Yes, sir.

Q. And what was his response?

A. "I don't have it." "I'll get it to you ", just
nonchalant.

At page 74 and 75, the Mother further testified as follows
on direct examination:

Q. All right. And every time he would come, would
you ask him for money for child support as ordered
by the Court?

A. Yes, sir.

Q. And what was his response?

A. Just he doesn't have that or (inaudible)

On cross examination by Mr. Keller of the Paternal
Grandmother, at page 322, she testified as follows:

Q. So six of those checks, you paid for out of your
money?

A. That's right.

Q. Is that true? Why did you do that?

A. Because we felt we should do that. Cameron asked
us if we'd help him with that, we told him we could
lend him the money and at which time, when he was
able he would pay us back.

In addition to the Mother's testimony, and the Paternal Grandmother's testimony, the Paternal Grandfather testified as to the limited ability of the Father to generate income beginning at page 428 and following:

He was in -- he was in a serious automobile accident where he suffered a severe head trauma, and he -- he has some physical disability in that he's real weak, if he gets tired, his mouth droops, his one eye droops and he drags his left foot, I believe it is.

On Cross Examination by Mr. Keller, the Paternal Grandfather testified at page 465:

Q. You suggested, sir, that your son has a physical disability.

A. He does.

Q. Are you telling the Judge that that physical disability has prevented him from working regularly?

A. In the light of work that -- that I'm in and the line of work that he is pursuing, it's very, very hard to (inaudible)

Q. And that's not my question, sir, I'm asking you --

A. It's very restricting, okay?

Q. But he has had jobs on several occasions, has he not?

A. He has, they don't last long.

Q. He has a job for three months in Wyoming, a job a little while in Wells and a job a little in Wendover, a job in Las Vegas, and a job working for you; so, the man can work, right?

A. As a mechanic, it takes a certain period of time to evaluate any employee, you can't put them on and then 20 days later, fire them because he's not capable. You give them a period of three or four months.

Q. It is your testimony, sir --

A. From -- from what I've seen, this is the bracket that he falls in. It's about where his jobs changes.

Q. So it is your testimony then that the reasons his jobs are constantly changing is because of this physical disability he has?

A. I'm testifying that it has a very lot to do with it.

Continuing on page 467, under cross examination the Paternal Grandfather testified:

Q. Thank you. Now with regard to the lifting, you said he can lift tires and tools, but they're just heavy. That doesn't mean that he can't lift them, does it?

A. No. What I said is, there is a lot of lifting of tires and tools and torquing that's affiliated with the work we do. One of the jobs, I talked to one of his former employers, said that he's a good worker but he can't handle the work.

The Father himself, testified about making reference to some child support payments being paid and then stated on page 526, that his gross income for 1989 was \$3,600.00, and his gross income for 1988 was \$4,000.00 plus, and that he had four dependants, not including R.A.F.

Appellant submits that child support payments were made, perhaps not regularly, and perhaps not in the full amounts each time but they were made as often as was possible by the Father.

Even assuming that they were not, as claimed by the Mother, the best case that can be made is that he was unable to pay, and not that he refused to pay.

ARGUMENT FOUR

THERE IS NO BASIS TO SUGGEST THAT CAMERON CAN NOT LEARN BETTER PARENTING SKILLS

On page 45 of the Appellee's brief, Counsel makes the following assertion:

In the case of State In Interest of M.S. vs. Salata, 806 P. 2d 1216 (Utah App. 1991), the Utah Court of Appeals held that the termination of a father's parental rights was supported in by the evidence of his failure to recognize deficiencies in his lifesyle choices or parenting abilities, persistent denial of any justification for the State's intervention, rejection of all advice from professionals, and unpredictable behavior and severe mood swings.

Appellee's counsel goes on to suggest that these facts are the same as the present case.

Appellant submits that this case has absolutely nothing to do with the case at bar.

There is no claim and no evidence that the Father suffered from a "failure to recognize deficiencies in his lifestyle choices or parenting abilities." There is absolutely no evidence of any State intervention, let alone a "persistent denial of any justification for State intervention." The record is absolutely void of any "rejections of all advice (or any advice) from professionals." Lastly, there is no basis whatsoever to suggest that the Father had "unpredictable behavior and severe mood swings."

In fact the evidence was just to the contrary of these claims.

Darren Holt, the Mother's prior husband, and her witness at the time of hearing, stated, that Cameron had told him, that 'I know he was not perfect, but that he was new at being a parent

and trying to do the best that he could.

At page 161, Darren Holt testified on Cross Examination as follows:

Q. And as I understand you to say that when you challenged him and how you felt his conduct was inappropriate in reference to Chris, he says I'm new at the game, I'm trying to do the best I can?

A. Yes. And that is why I gave him a chance.

Not only did the Mother's witness testify as to the foregoing, this same witness stated that he had heard the same from the Mother herself, on page 164 of the transcript.

There is no question that this teenage parent lacked the ability to be a perfect parent.

Frankly, it is hard to imagine a perfect parent, even with those of us, that have been at for a long time.

The important inquiry however, is the parent willing to learn and improve and do the best that he can.

There can be no question that the Father was and is more than willing to work on his parenting skills, as there surely was no evidence to the contrary.

Hence, this Court should reverse and remand the matter to the lower Court with instructions to set out meaningful visitation, and should the lower Court feel that some counseling or other state intervention be appropriate, then such should be part of the instructions on remand.

ARGUMENT FIVE

APPELLEE'S BRIEF IS MISLEADING

Through the course of attempting to justify what the lower court found, where it restated the proposed Findings, etc., submitted by Mr. Keller, Counsel has taken a wealth of his testimony in his brief from testimony that his witness changed or backed away from during cross examination.

For example, the Mother testified that there had been no contact between the Father and R.A.F., no gifts, etc.

However, on cross examination, the Mother admitted that she did not know of any, and that was based upon the fact that she would have no way of knowing, because she would not be present during the visitations occurring at the home of the Paternal Grandparents.

Appellant submits that it is grossly misleading, to suggest that there is support in the record, when that support has either been totally denied by the subject witness, or substantially modified, totally changing its meaning, later in the same record.

An additional element of concern of the Appellant, is how the Appellee, has referred to certain pages that may involve a subject, as pages, for example, #27, #28, #29, #30, #31, #32, #33, #34, #35, #36, #37, #38, #39, #40, instead of merely stating that the subject information is found on pages #27 through #40, inclusive.

The obvious intent has been to make it appear as though there is a ton of support in the record, when in reality, it may well be very slight, when it may be merely mentioned in passing by a witness, yet purported to be heavily significant.

CONCLUSION

A parent's relationship with a child is perhaps the most cherished of all the values that men and woman espouse.

What parent would even hesitate to give his own life itself, to spare their child.

This relationship, which is perhaps valued more than life itself is the heart of this appeal.

No greater concern, could this Court or any Court ever consider or rule upon.

Every possibility of a parent remaining with his child should be explored, and every presumption should be weighed heavily in favor of the relationship be preserved.

This Court has mandated in this case, that, "The timely assertion of such a petition by Fazzio is hardly the conduct of a disinterested parent."

Fazzio, petitioned the lower Court the very month that visitation was cut off by the Mother, pursuant to her scheme after consulting with her Attorney.

No one can argue that Fazzio, could have petitioned any sooner, as the termination of the visitation caused the same.

The whole body of the Mother's claim is an economic claim.

The whole of her case is no support, no money, etc., from the Father, yet she admits that she forced the child not to keep the Christmas gifts given in March of 1990, when the Father was allowed to see the child, but only by Court order.

The inability to contribute for the subject child is something that has to factor in, when considering the merits of this action, as it was without dispute that his gross income for the years in question, never rose above at or about \$4,000.00 a year.

This gross income was to support four (4) people.

Appellant paid what he could, as he could, but his income was perhaps as much as three times below the national poverty level.

Surely, a child should not be taken from a parent for money.

In this case the overwhelming evidence was that the Father gave the child time, and not just merely quality time, but great quantities of time.

The Father's life was filled with joyous occasions of playing and bonding with this child, and not one person could testify differently, who could observe at all.

The Mother clearly stated that she had no knowledge of the facts, only as relayed to her by her son, who she baggered on each return to challenge any feelings of the child for his father.

Appellant was without any question, less than a perfect parent.

Still he was attempting to do his best, and most willing to try to do better and improve.

The absolute void in this case, is what the father did, if anything, to destroy the parent-child relationship.

Appellant submits that all credible evidence suggests that if any destruction was caused at all, it was the Mother's destruction, not the Father.

Appellant respectfully requests that this Court reverse and remand with instructions to the lower Court to set out a meaningful visitation schedule for the Father.

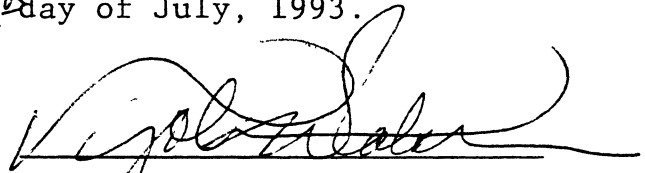
Dated this 17th day of July, 1993.

A handwritten signature in black ink, appearing to read 'John Walsh', written over a horizontal line.

JOHN WALSH
ATTORNEY AT LAW

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed (2) two true and correct copies of the foregoing: REPLY BRIEF OF THE APPELLANT, to the Plaintiff/Appellee, by mailing the same in the United States Mails, addressed to: LARRY R. KELLER, ATTORNEY AT LAW, 257 TOWERS SUITE 340, 257 EAST 200 SOUTH - 10, SALT LAKE CITY, UTAH, 84111, this 17th day of July, 1993.

A handwritten signature in black ink, appearing to read 'John Walsh', is written over a horizontal line.

JOHN WALSH
ATTORNEY AT LAW

JOHN WALSH
ATTORNEY AT LAW #3371
3865 SOUTH WASATCH BOULEVARD
SUITE 202 COVE POINT PLAZA
SALT LAKE CITY, UTAH
84109
Telephone: 272-8425

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

-----oooOooo-----

KIM FAZZIO,	:	
Plaintiff,	:	VERIFIED PETITION TO
vs.	:	MODIFY DECREE OF ANNULMENT
RICHARD CAMERON FAZZIO,	:	Case No. 87-3798
Defendant.	:	

-----oooOooo-----

Comes now the Defendant, Richard Cameron Fazzio, by and through his Attorney, John Walsh, and complains and alleges against the above named Plaintiff, Kim Fazzio, as follows:

1. Plaintiff and Defendant were married on or about November 3, 1986.

2. That the Defendant is the biological father on the minor child born of that marriage, to wit: Richard Anthony Fazzio, born September 17, 1986.

3. That on or about November 23, 1987, the Honorable Homer Wilkinson, District Court Judge, executed and entered a Decree of Annulment, declaring the marriage of the parties void ab initio.

4. That pursuant to the Decree of Annulment, the Defendant was awarded reasonable visitation with the said minor child but the same has not occurred as the Plaintiff has denied visitation with the minor child; has refused to inform the Defendant of where the child is for visitation and not cooperative in the pick up and delivery of the said minor child.

5. That by virtue of the foregoing, the Defendant desires to have the following visitation with the minor child:

a. Every other weekend, beginning at 5:00 P.M., on Friday, to and including Sunday, at 8:00 P.M.

b. Rotating and alternating National Holidays, including the 24th day of July, of each year, so that whatever holidays that the Plaintiff had on odd numbered years, the Defendant would have on even numbered years.

c. In reference to Thanksgiving, the party that does not have the set weekend for the minor child, would have the child for Thanksgiving Day and the Friday to follow.

d. In reference to the Christmas vacation, that on odd numbered years the Plaintiff would have the minor child for December 24th, to and including December 27th, at 6:00 P.M., and the Defendant would have the minor child December 27th, at 6:00 P.M. to and including January 2, at 6:00 P.M. and the parties would rotate the said arrangement so that whatever the Plaintiff had on odd numbered years the Defendant would have on even numbered years.

e. Plaintiff would always have Mother's Day and the Defendant would always have Father's Day.

f. Plaintiff would always have the minor child on her birthday, and the Defendant would always have the minor child on his birthday.

g. In reference to the birthday of the minor child, i.e.: September 17, 1986, the Defendant shall have minor child for three (3) hours for one of the days during the week of the same, as the parties can work out.

h. That the Defendant be awarded three months during the summer, with the Plaintiff having every other weekend, as set out above.

6. That the parents of the Defendant shall have the right to have the minor child during all of the above stated times, both so the Defendant can visit the minor child at his parent's residence, and so the grandparents can have a meaningful relationship with the minor child as well.

7. That the Plaintiff inform the Defendant of the whereabouts of the minor child, at any time that she moves or relocates for a period of 2 weeks or more.

8. That for visitation the Defendant or his parents, pick up the minor child from the Plaintiff, and the Plaintiff pick up the minor child from the Defendant, or his parents, and each bear the respective costs for the same.

WHEREFORE, the Defendant prays for judgment against the above named Plaintiff as follows:

9. For a Modified Decree of Annulment, setting for the specific times for visitation for the Defendant, as set out above.

10. For an order requiring the Plaintiff to inform the Defendant and/or his parents to the whereabouts of the minor child, should the Plaintiff move or relocate for a period of two weeks or more.

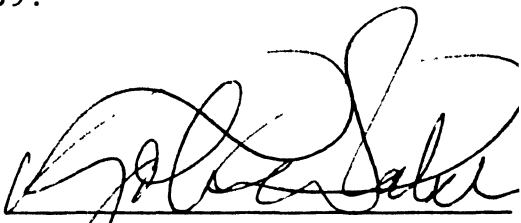
11. For an order requiring the party who is having the child come to their home, for visitation, bear the expense for the same.

12. For an order establishing the said visitation for the grandparents of the minor child, as the same for the Defendant, should the Defendant be out of town.

13. For court costs, interest, and a reasonable attorneys fee.

14. For such other and additional relief as the Court finds fit and proper under the premises.

Dated this 30th day of October, 1989.


JOHN WALSH
ATTORNEY AT LAW

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)


RICHARD CAMERON FAZZIO, being first duly sworn on his oath deposes and says that he is the Defendant in the above entitled action, and therefore has first hand knowledge of the facts and circumstances that are contained in the foregoing

VERIFIED PETITION TO MODIFY DECREE OF ANNULMENT, and attests
to the fact that the same is true and correct to the best
of his knowledge, information, and belief.

Dated this 30th day of October, 1989.


RICHARD CANERON FAZZIO

SUBSCRIBED AND SWORN to before me this 30th day of October, 1989.


Notary Public

Residing in: Salt Lake County, Utah

Commission expires: April 17, 1990

LARRY R. KELLER, #1785
Attorney for Plaintiff
257 Tower, Suite 340
257 East 200 South - 10
Salt Lake City, Utah 84111
Telephone: (801) 532-7282

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----

KIM FAZZIO,	:	
Plaintiff,	:	ANSWER TO VERIFIED
	:	PETITION TO MODIFY
	:	DECREE OF ANNULMENT
v.	:	
RICHARD CAMERON FAZZIO,	:	Case No. 87-3798
Defendant.	:	

-----oo0oo-----

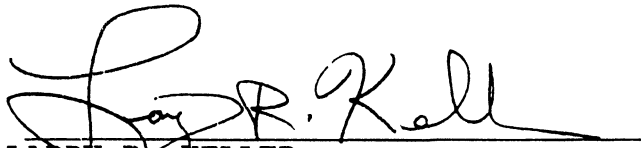
COMES NOW Plaintiff, Kim Fazzio, and responds to Defendant's
Verified Petition to Modify Decree of Annulment as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied.
5. Denied.
6. Denied.
7. Denied.
8. Denied.

WHEREFORE, Plaintiff prays for judgment against the Defendant, dismissing the instant Petition, and awarding court costs, interest, and a reasonable attorney's fee to Plaintiff as the court may allow.

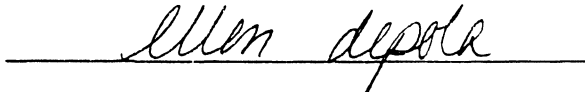
Plaintiff would have the Court note that she is filing this response within the 20-day period as required by the Utah Rules of Civil Procedure, but intends to file a Counterpetition and Order to Show Cause in this matter. Furthermore, Plaintiff and her attorney are exploring the possibility of having this case removed to Juvenile Court and filing a Petition for Termination of Parental Rights.

DATED this 27 day of December, 1989.


LARRY R. KELLER,
Attorney for Plaintiff

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing, by first class postage prepaid, this 27th day of December, 1989, to: John Walsh, Attorney for Defendant, 3865 S. Wasatch Blvd., #202 Cove Point Plaza, Salt Lake City, Utah 84109.



JOHN WALSH
ATTORNEY AT LAW #3371
3865 SOUTH WASATCH BOULEVARD
SUITE 202 COVE POINT PLAZA
SALT LAKE CITY, UTAH
84109
Telephone: 272-3425

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

-----oooOooo-----

KIM FAZZIO,	:	
Plaintiff,	:	MOTION
vs.	:	
RICHARD CAMERON FAZZIO,	:	Case No. 87-3798
Defendant.	:	

-----oooOooo-----

Comes now the Defendant, Richard Cameron Fazzio, by and through his Attorney, John Walsh, and moves the above entitled Court for an order regarding temporary visitation rights with the minor child, as follows:

A. Every other weekend, beginning at 5:00 P.M. on Friday, to and including Sunday, at 8:00 P.M.

B. Rotating and alternating National Holidays, including the 24th day of July, of each year, so that whatever holidays that the Plaintiff had on odd numbered years, the Defendant would have on even numbered years.

C. In reference to Thanksgiving, the party that does not have the set weekend for the minor child, would have the child for Thanksgiving Day and the Friday to follow.

D. In reference to the Christmas vacation, that on odd numbered years the Plaintiff would have the minor child for December 24th to and including December 27th, at 6:00 P.M., and the Defendant would have the minor child December 27th, at 6:00 P.M. to and including January 2, at 6:00 P.M., and the parties would rotate the said arrangement so that whatever the Plaintiff had on odd numbered years, the Defendant would have on even numbered years.

E. Plaintiff would always have Mother's Day and the Defendant would always have Father's Day.

F. Plaintiff would always have the minor child on her birthday, and the Defendant would always have the minor child on his birthday.

G. In reference to the birthday of the minor child, i.e.: September 17, 1936, the Defendant shall have minor child for three (3) hours for one of the days during the week of the same, as the parties can work out.

H. That the Defendant be awarded three months during the summer, with the Plaintiff having every other weekend, as set out above.

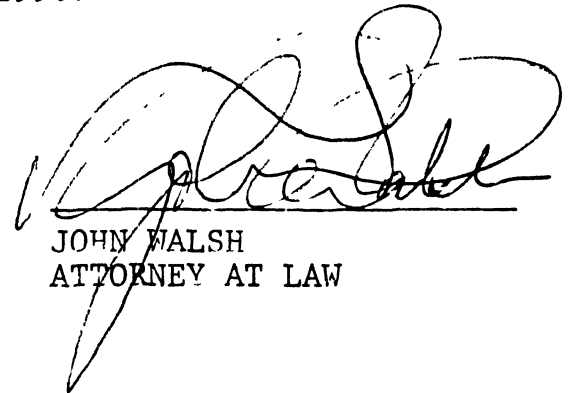
I. That the parents of the Defendant shall have the right to have the minor child during all of the above stated times, both so the Defendant can visit the minor child at

his parent's residence, and so the grandparents can have a meaningful relationship with the minor child as well.

J. That the Plaintiff inform the Defendant of the whereabouts of the minor child, at any time that she moves or relocates for a period of two weeks or more.

K. That for visitation the Defendant or his parents, pick up the minor child from the Plaintiff, and the Plaintiff pick up the minor child from the Defendant or his parents, and each bear the respective costs for the same.

Dated this 3rd day of January, 1990.

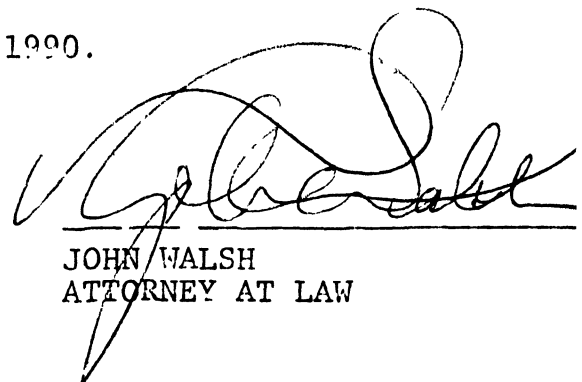


JOHN WALSH
ATTORNEY AT LAW

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of the foregoing MOTION, to the Plaintiff, by mailing the same, postage prepaid, addressed to: LARRY KELLER, ATTORNEY AT LAW, 257 TOWER, SUITE 340, 257 EAST 200 SOUTH - 10, SALT LAKE CITY, UTAH, 84111.

Dated this 3rd day of January, 1990.



JOHN WALSH
ATTORNEY AT LAW