

2016

**Rick J. Lindsey, Petitioner/ Appellee, vs. Karen M. Lindsey,  
Respondent/ Appellant.**

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca3](https://digitalcommons.law.byu.edu/byu_ca3)



Part of the [Law Commons](#)

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

---

**Recommended Citation**

Reply Brief, *Rick J Lindsey v Karen M Lindsey*, No. 20150769 (Utah Court of Appeals, 2016).  
[https://digitalcommons.law.byu.edu/byu\\_ca3/3601](https://digitalcommons.law.byu.edu/byu_ca3/3601)

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 (2007– ) 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 COURT OF APPEALS, STATE OF UTAH

---

RICK J. LINDSEY,

Petitioner/Appellee,

vs.

KAREN M. LINDSEY,

Respondent/Appellant.

APPELLANT'S REPLY BRIEF

Appellate Case No. 20150769

Civil Case No. 134500010

---

ON APPEAL FROM THE DECISION OF THE FOURTH DISTRICT COURT,  
UTAH COUNTY, HONORABLE FRED HOWARD, DISTRICT COURT JUDGE

---

Dean Andreasen  
Diana Telfer  
CLYDE, SNOW & SESSIONS  
One Utah Center, 13<sup>th</sup> Floor  
201 South Main Street  
Salt Lake City, Utah 84111

Troy L. Booher  
Julie J. Nelson  
ZIMMERMAN JONES BOOHER  
341 South Main Street  
Salt Lake City, Utah 84111

Attorneys for Appellee Rick J. Lindsey

Douglas B. Thayer (8109)  
Mark R. Nelson (13562)  
DURHAM JONES & PINEGAR, P.C.  
3301 N. Thanksgiving Way, Ste 400  
Lehi, Utah 84043

Attorneys for Appellant Karen M. Lindsey

---

IN THE COURT OF APPEALS, STATE OF UTAH

---

RICK J. LINDSEY,

Petitioner/Appellee,

vs.

KAREN M. LINDSEY,

Respondent/Appellant.

**APPELLANT'S REPLY BRIEF**

Appellate Case No. 20150769

Civil Case No. 134500010

---

ON APPEAL FROM THE DECISION OF THE FOURTH DISTRICT COURT,  
UTAH COUNTY, HONORABLE FRED HOWARD, DISTRICT COURT JUDGE

---

Dean Andreasen  
Diana Telfer  
CLYDE, SNOW & SESSIONS  
One Utah Center, 13<sup>th</sup> Floor  
201 South Main Street  
Salt Lake City, Utah 84111

Troy L. Booher  
Julie J. Nelson  
ZIMMERMAN JONES BOOHER  
341 South Main Street  
Salt Lake City, Utah 84111

Attorneys for Appellee Rick J. Lindsey

Douglas B. Thayer (8109)  
Mark R. Nelson (13562)  
DURHAM JONES & PINEGAR, P.C.  
3301 N. Thanksgiving Way, Ste 400  
Lehi, Utah 84043

Attorneys for Appellant Karen M. Lindsey

TABLE OF CONTENTS

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iii

ARGUMENT ..... 1

    I.    On summary judgment the trial court improperly denied Ms. Lindsey her interest in a portion of the appreciation of Mr. Lindsey’s business which she acquired through her contributions to the business and the family during the marriage ..... 2

    II.   The trial court’s ruling on summary judgment precluded an equitable division of the marital estate and misapplied legal precedent to the prejudice of Ms. Lindsey ..... 11

CONCLUSION ..... 14

**TABLE OF AUTHORITIES**

**A. Cases**

*Christian v. Christian*, 2014 UT App 283, 341 P.3d 254 ..... 12

*Dunn v. Dunn*, 802 P.2d 1314 (Utah Ct. App. 1990)..... 2, 7

*Elman v. Elman*, 2002 UT App 83, 45 P.3d 176..... 2, 3, 12, 13

*Henshaw v. Henshaw*, 2012 UT App 56, 271 P.3d 837..... 1, 12, 13

*Jensen v. Jensen*, 2009 UT App. 1, 203 P.3d 1020..... 2, 3

*Kunzler v. Kunzler*, 2008 UT App 263, 190 P.3d 497 ..... 3

*Mortensen v. Mortensen*, 760 P.2d 304 (Utah 1988) ..... 2

*Naranjo v. Naranjo*, 751 P.2d 1144 (Utah Ct. App. 1988)..... 13

*Savage v. Savage*, 658 P.2d 1201 (Utah 1983) ..... 3

**B. Statutes and Rules**

Utah R. Civ. P. 54(b)..... 1

## ARGUMENT

The trial court incorrectly granted Mr. Lindsey's motion for summary judgment awarding him not only his premarital interest in the business, but also all of the \$7,324,000 in appreciation of the business during the 19 year marriage. The trial court made this award in spite of Ms. Lindsey's contributions to the business and family life. Specifically, the trial court awarded Ms. Lindsey \$566,527 in assets, while awarding Mr. Lindsey \$10,524,138 million in assets. The trial court minimized and disregarded Ms. Lindsey's efforts and contributions, misapplied the facts on summary judgment and at trial<sup>1</sup>, depriving her of the interest she earned in the business during the marriage.

Moreover, in spite of the requirement in any property division "that the ultimate division be equitable," *Henshaw v. Henshaw*, 2012 UT App 56, ¶15, Ms. Lindsey was awarded only 5.2% of value compared to Mr. Lindsey's \$10,524,138 award. The trial court misapplied the facts to Utah law on equity, to Ms. Lindsey's prejudice.

The arguments made in Mr. Lindsey's brief do not change the fact that the trial court incorrectly applied facts to Utah law, and failed to make an equitable division of

---

<sup>1</sup> The trial court found that "no new evidence was presented at trial warranting reconsideration of the summary judgment." [R.1782.] In other words, evidence presented at trial was considered and rejected by the trial court as impacting its ruling on summary judgment. This is consistent with Rule 54 of the Utah Rules of Civil Procedure providing that "any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties, and may be changed at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." Utah R. Civ. P. 54(b). As such, evidence at trial may be considered as part of the analysis as to whether the summary judgment ruling was correct.

property.

- I. **On summary judgment the trial court improperly denied Ms. Lindsey her interest in a portion of the appreciation of Mr. Lindsey's business which she acquired through her contributions to the business and the family during the marriage.**

In his brief Mr. Lindsey correctly notes that one spouse's separate property may be properly distributed to the other, if "the other spouse has by his or her efforts contributed to the enhancement, maintenance, or protection of that property, thereby acquiring an equitable interest." *Mortensen v. Mortensen*, 760 P.2d 304, 308 (Utah 1988). However, the clarification of *Mortensen* in *Jensen* is not as clear as Mr. Lindsey argues.

Specifically, Mr. Lindsey argues that "in order to qualify under the contribution category of *Mortensen*," "active participation and contribution by the nonowner spouse" "is required." [Appellee's Brief at p. 19.] However, Mr. Lindsey omits that this Court stated that "*Mortensen*, *Dunn*, and *Elman* appear to require more active participation and contribution by the nonowner spouse [than caring for the parties' child, maintaining the household, and running her own part-time business from their home as the facts in *Jensen* state] in order to qualify under the contribution theory of *Mortensen*." *Jensen v. Jensen*, 2009 UT App. 1, ¶ 14 (underline added). If the standard were as clear as Mr. Lindsey argues, this Court would not have included the words "appear to" in its recitation and clarification of the law.

This distinction is important because it reflects this Court's intentionally loose and flexible interpretation of the contribution theory given how liberal the standard was in the

1980s<sup>2</sup> as compared to how the standard has morphed in more recent cases such as *Jensen*. In *Jensen*, the wife “did not assist in running the business or contribute in any way to its increase in equity,” and was not awarded an interest in the separate property. *Jensen v. Jensen*, 2009 UT App. 1, ¶ 16. However, in this case Ms. Lindsey contributed to the business (as discussed in greater detail below) so she exceeds the wife’s failure to contribute to the business “in any way” in *Jensen*. Similarly, Ms. Lindsey’s efforts exceed the wife’s efforts in *Kunzler* which were limited to “domestic labors enabl[ing] Husband to ranch for longer periods of time without having to, for example, return home to launder his clothes.” *Kunzler v. Kunzler*, 2008 UT App 263, ¶19.

As set forth in Ms. Lindsey’s original brief, her actions and contributions fall somewhere between the extreme contribution case of *Elman* and the solely domestic contribution case of *Kunzler*. However, the trial court improperly minimized Ms. Lindsey’s efforts and incorrectly applied the facts to Utah law on summary judgment and at trial.

Mr. Lindsey also overreaches and misstates undisputed facts in his brief. For example, Mr. Lindsey claims Ms. Lindsey “admitted she had no involvement with [Mr. Lindsey’s] insurance business prior to or during the marriage . . . [and that] she had no

---

<sup>2</sup> See, e.g., *Savage v. Savage*, 658 P.2d 1201, 1204 (Utah 1983) (holding that the trial court’s property distribution—granting the wife forty percent of the value of the husband’s company—was within its allotted discretion, in part, “while it is true that the [wife] took no responsibility for the business, it was her assumption of domestic burdens which made possible the [husband’s] full-time participation in the business.”).

knowledge of . . . business operations . . . [and that Ms. Lindsey] admitted she was not involved in any business related discussions with [Mr. Lindsey].” [Appellee’s Brief at p. 23.] Rather, the undisputed facts are that Ms. Lindsey was involved in the business to the extent she hosted various business associates and clients, and she “had little knowledge [but not “no knowledge”] of the operations of the business . . . [and] did not speak extensively [but she did speak] with Mr. Lindsey regarding his businesses . . . .” [R.1224-27.] Ms. Lindsey was also involved in planning, building, and maintaining of the Heber residence (used to entertain business clients and associates) and involved in the acquisition of the helicopter (used for the business). [R.1881:79-80, 1882:44-45.]

More specifically with respect to hosting business associates and clients, Mr. Lindsey misstates the undisputed facts when he claims that Ms. Lindsey “entertained six of [Mr. Lindsey’s] business associates on seven occasions over the seventeen years . . . .” [Appellee’s Brief at p. 23.] Rather, the undisputed and unrefuted facts are that Ms. Lindsey claimed “she entertained business associates, clients, potential employees, and potential clients during the . . . marriage numerous times to further Mr. Lindsey’s business without being paid. She specifically testified [at the time of summary judgment] of hosting six different business associates and their families . . . .” [R.1226-27.] The unpaid hosting Ms. Lindsey could recall included:

1. Mr. Sheehey (from Lloyd’s of London) visited twice with his family of five for extended periods. Each visit Ms. Lindsey provided a hostess basket, maps, event

information, and clean sheets. The Sheeheys stayed at the Lindsey residence, as well as the business houseboat at Lake Powell. Ms. Lindsey cooked meals, cleaned up, and aided in laundry. When Mr. Lindsey was at work, Ms. Lindsey entertained the Sheehey family. Ms. Lindsey provided transportation to such events as a rodeo, concert, and sporting event. Mr. Sheehey also stayed at the parties' residence on a trip without his family on another occasion. [R.1226.]

2. Charles Smith (from Lloyd's of London) "stayed *numerous* times at both the Draper and Heber houses." Ms. Lindsey often cooked for Mr. Smith and did his laundry. Mr. Smith and his wife stayed at the Draper house and the parties took them skiing and Ms. Lindsey cooked for them. [R.1225-26 (emphasis added).]
3. Paul Daley (from Lloyd's of London) and his family of five stayed and were hosted in the Heber residence. Mr. Lindsey was not even in town during the beginning of the visit. Ms. Lindsey provided hostess baskets, cooked numerous meals, cleaned up after them, and entertained them. Ms. Lindsey's car was loaned to the Dales for a week. [R.1225.]
4. James (a river runner insurance client) stayed with his son at the Draper residence. Ms. Lindsey provided meals and other services to them. The same client was hosted another time (but not at the parties' residence). [R.1224-25.]

5. J.T. Lemon (a river runner insurance client) was hosted on at least two occasions, once at the Heber residence and another time at the Draper residence. Ms. Lindsey also entertained him. [R.1224.]
6. Frank Lukas (a river runner insurance client) was hosted at the Heber residence and Ms. Lindsey entertained. [R.1224.]
7. In addition, at trial Ms. Lindsey recollected that she had hosted Justin Tweety and he stayed at the parties' residence and she cleaned up after him and entertained him. [R.1881:80-81.]

Also at trial Ms. Lindsey's unrefuted testimony was that part of Mr. Lindsey's job was to retain clients, and part of retaining clients is entertaining them, taking care of them, and making them happy. [R.1882:77.] Ms. Lindsey's unrefuted testimony was that she facilitated and participated in that process, but she was never paid. [R.1882:77-78.]

The above is evidence Ms. Lindsey hosted, fed, entertained, and cleaned up after seven (not six) business associates/clients, plus their families (two with five family members). In addition, contrary to Mr. Lindsey's claims of only hosting seven times, the undisputed facts are that the hosting occurred on "numerous" occasions, sometimes for extended periods of time. [R.1224-27.] For example, some stays were for 10 days and over holidays. [R.1882:91.]

While Mr. Lindsey "stated that he alone would entertain clients at locations other than the marital residence and at his ranch in Uintah County," [R.1224], it is undisputed

and unrefuted that Ms. Lindsey also entertained outside of the home. For example, she hosted the Sheeheys in Lake Powell and at other events, like a rodeo, concert, and sporting event, outside of the home. She also went skiing with the Smiths away from the residence. [R.1225-26.]

Ms. Lindsey's "numerous" hosting of various business clients and associates is evidence of providing services to the business without pay. Mr. Lindsey tries to minimize her efforts, but the undisputed facts speak for themselves. The law does not require a non-owner spouse to be formally employed by the other spouse's business in order to prove the non-owner spouse has "augmented" or "enhanced" business interests. For example, the wife in *Dunn* performed unpaid services for the business but was found to have an interest in the business. *Dunn v. Dunn*, 802 P.2d 1314, 1318 (Utah Ct. App. 1990).

Mr. Lindsey argues there was no evidence Ms. Lindsey took on any "unusual" or extraordinary responsibilities in the marriage that enhanced the value of the parties' marital assets. However, during trial Mr. Lindsey testified regarding Ms. Lindsey's significant influence and contributions. In addition to hosting business associates and clients on "numerous" occasions, Mr. Lindsey testified at trial<sup>3</sup> that he and Ms. Lindsey were jointly involved in discussions and decisions related to acquiring the land and

---

<sup>3</sup> Again, the parties' trial testimony made after the summary judgment ruling are relevant to this appeal as the trial court found that "no new evidence was presented at trial warranting reconsideration of the summary judgment." [R.1782.]

building the Heber residence. [R.1881:78-79.] Mr. Lindsey testified that he preferred a different lot in Wallsburg, but Ms. Lindsey liked the Heber lot better. [R.1881:79.] Mr. Lindsey testified that Ms. Lindsey was involved in the construction process, she reviewed building plans and made changes to them, and they had “all kinds of discussions.” [R.1881:79-80.] The home took just under two years to build (this was not the typical modest or uncomplicated residence—the home has thirteen air conditioners, for example). [R.1881:80-81, 1223-24.]

The parties spent nearly \$7,000,000 to build the residence. [R.1881:83.] The home is large (15,000 square feet—5,000 square feet is the helicopter hangar and garage), and has a guest house, outdoor pool, game room, theater room, and many other rooms.

[R.1881:88-89.] Ms. Lindsey had complete control over designing and decorating the guest house (which, in addition to the main residence, was used to host and entertain

business associates). [R.1882:115-16.] Ms. Lindsey assisted in maintaining the property and made sure repairs were done and deliveries were made. [R. at 590-591, 1223-24.]

Ms. Lindsey’s assistance with the building, furnishing, and maintaining the home, which was used to host business associates and clients as well as family, was “unusual,” and contributed to enhancing, maintaining, and protecting the business and the marital assets.

Ms. Lindsey also contributed to the business and marriage in other ways. Mr. Lindsey conceded at trial that Ms. Lindsey accompanied him on business trips both domestic and international. [R.1881:97-100, 1816.] Mr. Lindsey testified at trial that Ms.

Lindsey was involved in his helicopter acquisition, knew where Mr. Lindsey went with regard to the helicopter and what he was doing, and supported him buying it. [R.1882:44-45.] The helicopter had a marketing contract with Mr. Lindsey's premarital business. [R.1824; 1881:62.] Ms. Lindsey also spent every other weekend for ten years at the parties' ranch while the ranch buildings and improvements were being made during the marriage. [R.1882:73; 1881:61.] Mr. Lindsey testified that he used the family ranch to take business associates in the helicopter to fish or otherwise entertain. [R.1881:61-62.] Ms. Lindsey also testified she provided \$54,000 of her separate money to Mr. Lindsey for "his work" and "work related use." [R.1881:75-76.] Ms. Lindsey's stated intent with the \$54,000 was that it go towards the business, although at trial Mr. Lindsey claimed the \$54,000 was used for marital expenses (he testified "I know that they were spent on marital expenses"), but shortly after he conceded there was "no document or recollection or specific evidence" that led him "to know for any degree of surety" "what happened to the funds." [R.1882:249-50.]

Ms. Lindsey also undertook "unusual" responsibilities in the family. Ms. Lindsey's unrefuted testimony was that she served Mr. Lindsey a home cooked meal every night that was waiting for him when he got home, and she had all of his clothes laid out every morning from the shirt to the socks. [R.1882:74.] She cared for the parties' son, was always his primary caregiver, attended parent teacher conferences and doctor's visits, did the laundry, assisted in student government campaigns, supported their son's

religious choices, bought groceries, and so on. [R.1882:69-75.] She also cared for Mr. Lindsey's two children from his prior marriage, "loved them like [her] own," and facilitated visitation every other weekend and every Wednesday, and even allowed the children to live with the parties full time when they were 16 years old and were having disputes with their mother. [R.1882:71-72.] Ms. Lindsey provided unrefuted testimony that she provided "[e]very ounce of the parenting" for her son and Mr. Lindsey's children from his prior marriage, for all of the parties' son's life and when Mr. Lindsey's sons were four and six and continuing until the children became adults. [R.1882:71-72.]

Ms. Lindsey also supported Mr. Lindsey during an extremely stressful time in his life when the Heber residence was being built and there was difficulty with financing the building of the home. [R.1881:83-89.] Mr. Lindsey testified at trial that due to the financing difficulties, his "world was falling apart" and caused Mr. Lindsey "physical ailment."<sup>4</sup> [R.1881:88.] In fact, Mr. Lindsey was so emotional in recounting the event from years prior that the trial court allowed a recess for him to "collect" himself. [R.1881:87.] Ms. Lindsey supported Mr. Lindsey during this "unusual" time, which benefitted the business and the family.

All of Ms. Lindsey's above "unusual" efforts augmented the value of the marital assets, and Mr. Lindsey's business. She enabled him to spend time away from home to

---

<sup>4</sup> Mr. Lindsey's physical ailment was serious enough it was made part of the successful lawsuit against Countrywide. [R.1881:88.] The lawsuit resulted in a \$1,038,225 judgment against Countrywide. [R.1776.]

focus on business through her excellent homemaking. She entertained and hosted clients. She assisted in decisions regarding extremely expensive acquisitions such as the helicopter and Heber residence, both of which were used in part by the business. For perspective, Mr. Lindsey's entire income during the marriage was \$11,749,297, and the parties spent \$7,000,000 on building the residence. [R.1221, 1881:83.] The residence was unusual, as were Ms. Lindsey's contributions. Ms. Lindsey intended \$54,000 of her separate money to go towards the business. She was the primary caregiver for the parties' son and Mr. Lindsey's two children from his previous marriage. And Ms. Lindsey cared for Mr. Lindsey when his "world was falling apart" and suffering physically due to stress. Ms. Lindsey contributed to the business sufficient to satisfy the contribution theory as her actions show an "active participation with or contribution to" the growth of Mr. Lindsey's business. Ms. Lindsey went to great lengths to enhance, maintain, and protect the business and the marital assets, many of which were intertwined (the business used and benefited from the parties' residence, ranch, and helicopter). Ms. Lindsey's actions entitle her to an equitable claim against a portion of the business, including appreciation. Summary judgment should be reversed.

**II. The trial court's ruling on summary judgment precluded an equitable division of the marital estate and misapplied legal precedent to the prejudice of Ms. Lindsey.**

It is undisputed that in any property division, "[t]he overriding consideration is that the *ultimate division be equitable*—that property be fairly divided between the

parties, given their contributions during the marriage and their circumstances at the time of the divorce.” *Henshaw v. Henshaw*, 2012 UT App 56, ¶15 (emphasis added). [R. at 1222.] It is also undisputed that “[t]he court must consider whether there are any extraordinary circumstances that warrant a departure from the presumptive rule.” *Id.* [R. at 1222.]

Regardless of whether Ms. Lindsey met the contribution standard (which she did), the final balance of the property division (in a case with no prenuptial agreement or similar contract protecting separate assets or corresponding appreciation) resulted in a drastic imbalance of equities. While it is correct that an equitable distribution “does not need to be divided with strict mathematical equality,” *Christian v. Christian*, 2014 UT App 283, ¶12, 341 P.3d 254, the final distribution was not even close to mathematical equality. Ms. Lindsey was awarded only 5.2% of the value of Mr. Lindsey’s \$10,524,138 award.

The trial court and Mr. Lindsey focus on *Elman* for the position that a spouse should be entitled to a reasonable rate of return on a premarital business before quantifying or concluding that an increase in value during the marriage is marital. However, *Elman* does not require that in every case a party should have a return on a premarital asset, much less a 10% return. Rather, this Court merely found based on the unique facts, that the trial court equitably subtracted a reasonable rate of return to

appropriately account for appreciation due to inflation. *Elman v. Elman*, 2002 UT App 83, ¶¶20, 29, 45 P.3d 176.

An extension of the trial court's and Mr. Lindsey's overly broad logic would have this Court find that *Elman* requires a party with separate property to be entitled to no less than a 10% return before any consideration of equitable division of the asset. Notably, the 10% rate in *Elman* was based on "[e]vidence . . . presented that California real property values were increasing at 10% a year." *Id.* at ¶34. Mr. Lindsey's logic places excessive weight on the fact that his business was his separate property originally, while it nearly quadrupled in value during the 19 year marriage.

Mr. Lindsey's argument (i.e., that his right for a return automatically trumps any of Ms. Lindsey's right to a return on the parties' largest asset) is not equity. While rate of return is one factor to be considered in balancing equity, it cannot be the only factor to consider. Mr. Lindsey argues that the *Naranjo* factors (i.e., the parties' health, their standard of living and respective financial conditions, their needs and earning capacities, the duration of the marriage, what the parties gave up by the marriage, and the relationship the property division has with the amount of alimony awarded) do not need to be considered. *Naranjo v. Naranjo*, 751 P.2d 1144, 1147-48 (Utah Ct. App. 1988). The *Naranjo* factors are the type of factors that can inform the equities as to "whether there are any extraordinary circumstances that warrant a departure from the presumptive rule." *Henshaw*, 2012 UT App 56, ¶15.

Moreover and most importantly, all of the factors discussed in Section I above showing Ms. Lindsey contributed to the business, also cut in favor of a more balanced division of property. Ms. Lindsey's extraordinary contributions, as well as the extraordinary facts of the case, justify the equity exception.

Finally, under the equity exception, Mr. Lindsey argues that Ms. Lindsey's "small contributions, at best" would have done Ms. Lindsey "no good in the end." [Appellee's Brief at p.30.] Mr. Lindsey's labels of "small contributions" encompasses all the reasons discussed in Section 1, as well as the \$54,000 (which at the time of trial would have been worth \$129,029 [R.1882:186-87]) and the value of the 57 shares (which issue was foreclosed at summary judgment [R.1229-30]). It is easy for Mr. Lindsey to minimize Ms. Lindsey's financial and physical contributions to the business and marriage when he was awarded \$10,524,138 in assets. However, simply taking into account Ms. Lindsey's \$54,000 at the appreciated value would have increased the value of the assets awarded to her by over 20%. The trial court should have applied the equity exception in order to do justice.

### CONCLUSION

Therefore, in light of the foregoing reasons and those contained in the Appellant's original brief, Ms. Lindsey respectfully requests that the Court reverse the District Court's granting of summary judgment, find that Ms. Lindsey is entitled to a portion of the augmentation of Mr. Lindsey's business interest during the marriage, and remand to

the District Court for a new trial wherein the amount of the business Ms. Lindsey is awarded can be ascertained and where all other equities may be rebalanced in light of this Court's ruling.

DATED this 16th day of May 2016.

DURHAM JONES & PINEGAR, P.C.



---

Douglas B. Thayer

Mark R. Nelson

*Attorneys for Appellant*

Certificate of Compliance with Rule 24(f)(1)

1. This brief complied with the type-volume limitation of Utah R. App. P. 24(f)(1) because it contains 4,190 words, in total.
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 for Windows 2010, Times New Roman, Font Size 13.

DATED this 16th day of May 2016.

DURHAM JONES & PINEGAR



---

Douglas B. Thayer

Mark R. Nelson

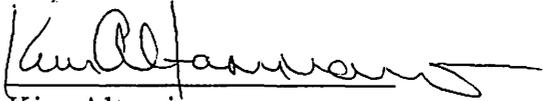
*Attorneys for Appellant*

**PROOF OF SERVICE**

I hereby certify that, on the 16th day of May, 2016, two true and correct copies of the foregoing **APPELLANT'S REPLY BRIEF** were mailed, postage prepaid, to the following:

Dean Andreasen  
Diana Telfer  
CLYDE, SNOW & SESSIONS  
One Utah Center, 13<sup>th</sup> Floor  
201 South Main Street  
Salt Lake City, Utah 84111  
dca@clydesnow.com  
dlt@clydesnow.com

Troy L. Booher  
Julie J. Nelson  
ZIMMERMAN JONES BOOHER  
341 South Main Street  
Salt Lake City, Utah 84111  
tbooher@zjappeals.com  
jnelson@zjappeals.com

  
Kim Altamirano

