

2003

# Joretta Butterfield v. James S. Butterfield : Brief of Appellee

Utah Court of Appeals

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David J. Friel; Attorney for Appellant.

David Paul White; Attorney for Appellee.

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## Recommended Citation

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**IN THE UTAH COURT OF APPEALS**

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JORETTA BUTTERFLIED,

Petitioner/Appellant,

v.

JAMES S. BUTTERFIELD,

Respondent/Appellee.

Appellate Case No. 20030490CA

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**BRIEF OF APPELLEE**

---

APPEAL FROM THE SECOND REVISED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND SECOND REVISED DECREE OF DIVORCE AND  
REVISED ORDER REGARDING PETITIONER'S MOTION FOR NEW TRIAL OF THE  
THIRD JUDICIAL DISTRICT COURT OF UTAH, SALT LAKE COUNTY, THE  
HONORABLE RONALD E. NEHRING PRESIDING.

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**FILED**  
Utah Court of Appeals

**DEC 31 2003**

Paulette Stagg  
Clerk of the Court

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**BRIEF OF APPELLEE**

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**STATEMENT OF JURISDICTION**

This Court has jurisdiction pursuant to UTAH CODE ANN. §78-2a-3(2)(h). Appellant appeals the trial court's Second Revised Findings of Fact and Conclusions of Law and Second Revised Decree of Divorce.

**STATEMENT OF THE ISSUES**

1. Did the trial court err in denying the Appellant's motion on the day of trial to amend her admissions?

*Standard of Review:* A trial court's decision to grant a Rule 36(b) motion is reviewed "using what might be called a 'conditional' discretionary standard. In the first step, we review the trial court's determinations as to whether amendment or withdrawal would serve the presentation of the merits and whether amendment or withdrawal would result in prejudice to the nonmoving party. In the second step, we review the trial court's discretion to grant or deny the motion." Langeland v. Monarch Motors, Inc., 952 P.2d 1058 (Utah 1998).

2. Did the trial court err in determining that the premarital agreement was enforceable?

*Standard of Review:* "[T]he effect of a given set of facts is a question of law and, therefore, one on which an appellate court owes no deference to a trial court's determination. In recognition of this fact, the standard of review for such determinations is termed one of 'correctness.'" State v. Pena, 869 P.2d 932, 936 (Utah 1994).

3. Was it harmless error to deny alimony even if, *arguendo*, the premarital agreement had been held to not be enforceable?

*Standard of Review:* "Trial courts may exercise broad discretion in divorce matters so long as the decision is within the confines of legal precedence." Childs v. Childs, 967 P.2d 942, 944 (Utah. Ct. App. 1998). "Where the trial court may exercise broad discretion, we presume the correctness of the court's decision absent 'manifest injustice or inequity that indicates a clear abuse of ... discretion.'" Id.

## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

In relevant part, Rule 36 of the UTAH RULES OF CIVIL PROCEDURE provides as follows:

(a)(2) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney....

(b) *Effect of admission.* Any matter deemed admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action of defense on the merits.

In relevant part, UTAH CODE ANNOTATED §30-8-6, provides:

(1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(a) that party did not execute the agreement voluntarily; or

(b) the agreement was fraudulent when it was executed and, before execution of the agreement, that party:

(i) was not provided a reasonable disclosure of the property or financial obligations of the other party insofar as was possible;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.



## **STATEMENT OF THE CASE**

This case is a divorce matter between the parties. Prior to the marriage, the parties entered into a premarital agreement in which any claims to alimony were waived by both parties. Appellant claimed the premarital agreement was unenforceable due to failure to disclose assets, and sought alimony from Appellee. Due to Appellant's admissions on record, the trial court found premarital agreement to be enforceable, and consequently found alimony to be waived.

## **STATEMENT OF FACTS**

As Appellant asserts, the main contested issue in the divorce action below and in this appeal involves Appellant's claim against Appellee for alimony. Accordingly, the key issue behind alimony has been the enforceability of the parties' Premarital Agreement.

The enforceability of the Premarital Agreement was first addressed at the Pre-trial Settlement Conference held on July 1, 2001, wherein the Commissioner suggested that the "premarital agreement was unenforceable due to apparent deficiencies" in that it "does not include a disclosure of assets." (R. at 77). This suggestion was made without the court taking any evidence or testimony regarding the disclosure of assets at the signing of the Premarital Agreement. The Commissioner also stated that it was Appellant's burden to prove that Appellee was able to pay alimony given his income from pension and social security. (R. at 77).

In the Minute Entry on a law and motion hearing held October 23, 2001, the Commissioner pointed out that he had previously considered the enforceability of the Premarital Agreement and had recommended that it was unenforceable. (R. at 126). In the resulting Order Denying Respondent's [Appellee's] Motion to Bifurcate and Petitioner's [Appellant's] Counter-Motion for Temporary Alimony, Etc., entered on November 27, 2001, the Court found no evidence before the court showing Appellee's income is more than Appellant's, and therefore there was no basis for her claim for alimony. (R. at 133-135).

Appellee retained new counsel, who filed a Notice of Substitution of Counsel on or about November 15, 2001. (R. at 127). To further the case, Appellee's new counsel served Appellant with Interrogatories, Request for Production of Documents, and Request for Admissions on or about November 20, 2001. (R. at 129).

Appellant failed to respond to the request for admissions or to obtain an extension of time with which to respond within the requisite 30 days. Consequently, on December 27, 2001, Appellee filed a Motion for Summary Judgment or in the Alternative Request for Pre-Trial. (R. at 136). On December 31, 2001, Appellant belatedly filed a Certificate of Service of her Answers to Request for Admissions. (R. at 143). Notice to Submit for Decision on the Motion for Summary Judgment was filed on January 11, 2003. (R. at 148). Apparently due to the judge's illness, the first trial date was stricken and rescheduled (R. at 185) and the Notice to Submit was not addressed before the trial on May 1, 2002.

Prior to the trial, both parties filed Financial Declarations. Appellant reported a net monthly income of \$1,173 and monthly expenses of \$2,003. (R. at 116-121).

Appellee reported a net monthly income of \$2,969.41 and monthly expenses of \$3,123.98. (R. at 199-204).

Appellant makes issue that a contradictory Minute Entry was entered on May 6, 2001, after the trial, in which the Judge states that the admissions do not preclude Appellant's claim for alimony. (Brief of Appellant at 11). This Minute Entry was entered pursuant to a clerical error by the Court, and counsel for both parties were instructed to shred the document. (R. at 219).

At the trial and after discussions in chambers, the judge denied Appellant's last-minute motion to amend the admissions. (R. at 460, page 3). The judge further stated,

“[I]t has been brought to my attention that the prenuptial agreement, the enforceability of which has been deemed admitted, includes a waiver of alimony. And it's my expectation that that will be offered today, and so as a matter of law, I am ruling that no alimony will be awarded in this case.”

(R. at 460 page 4). Appellant asked when the admissions were deemed admitted. (R. at 460, page 8). The judge responded that the matters were deemed admitted on day 31, that pursuant to the rule, they are deemed admitted when they are late. (R. at 460, page 8). The judge related the conversation in chambers and clarified exactly the reasons for his rulings regarding the admissions:

“And my remarks in chambers were to the best of my recollection as follows: Mr. Friel [Appellant's counsel] asked me when I believed it would have been appropriate for him to have been alerted that there was a problem concerning request for admissions. I selected the date as being the date that he received the papers from Ms. Colton [Appellee's counsel] raising this issue, which according to what I was told in chambers, was December 26<sup>th</sup> or 27<sup>th</sup> or something like that.

Because to use the term I think I used in chambers, that's when the light bulb goes on that there is a problem here concerning request for admissions.

I also noted that in these matters I have no discretion based on Lanquin vs. Monarch Motors [sic], and that the Utah Supreme Court has articulated a means by which parties seeking to withdraw matters deemed admitted can seek the leave of court to have those matters withdrawn. That didn't happen here, and that led to the rulings that I've made today with respect to those matters deemed admitted."

(R. at 460, pages 8-9).

### **SUMMARY OF THE ARGUMENT**

The trial court did not err in its determination that the premarital agreement entered into by the parties prior to their marriage was enforceable, and thus any claim to alimony had been waived by both parties. The sole issue regarding the enforceability of the premarital agreement is the question of whether there was full disclosure of assets by Appellee prior to the execution of the agreement.

Appellant was served with Requests for Admission on or about November 20, 2001. Appellant failed to timely respond to the Requests for Admission, and, pursuant to Rule 36 of the UTAH RULES OF CIVIL PROCEDURE, the admissions were automatically deemed admitted on December 27, 2001, the day they were past due. One of the admissions deemed admitted was that full disclosure of Appellee's property had been made prior to the execution of the premarital agreement.

Appellant failed to take the appropriate steps to withdraw or amend her admissions. According to Rule 36, the court would have discretion to grant a motion to amend admissions only when doing so would serve the presentation of the merits and would not result in prejudice to the nonmoving party.

Appellant sought to amend her admissions four months after they were deemed admitted, on the day of the trial. The trial judge denied her motion, finding that amending the admissions on the day of the trial would be unduly prejudicial to the party who has to refigure his or her case in order to accommodate the withdrawal. Appellant had not satisfied the preliminary conditions of Rule 36(b), which are required before the judge has the discretion to grant a motion to amend the admissions. Nor had Appellant satisfied the two-part test to show that the presentation of the merits would be served by amending her admissions, as set forth in Langeland v. Monarch Motors, 952 P.2d 1058, 1061 (Utah 1998). Therefore, the trial court properly denied Appellant's motion to amend her admissions; the trial court did not have the discretion to grant the motion.

Regardless of the existence of the admissions, Appellant failed to meet all three elements required to prove the premarital agreement was unenforceable, as set forth in UTAH CODE ANNOTATED §30-8-6(1). In the admissions, Appellant admitted she received full disclosure of Appellant's property prior to signing the premarital agreement. Furthermore, regardless of the admissions, Appellant was given full disclosure at the time of the execution of the premarital agreement. Even absent this disclosure, Appellant was part of Appellee's family for many years before their marriage and had knowledge of Appellee's property, property which had been in the family for over 60 years. Therefore, the premarital agreement is enforceable and alimony is waived.

Even if the premarital agreement had not been enforceable, and the statutory factors for determining alimony<sup>1</sup> had been applied, alimony would not have been awarded to either party. Appellant may have shown need, with her expenses exceeding her income, however Appellee's expenses also exceed his income and he has no capacity or ability to pay. The court had previously stated that it saw no basis for alimony, as there was no disparity in income. Appellee is 86 years old and retired, while Appellant is 61 years old and employed. The marriage lasted a mere two and one-half years before separation. Alimony would not have been awarded in this case.

In sum, the trial court did not err in its determination that the premarital agreement was enforceable. The trial court did not have the discretion to grant Appellant's motion to amend her admissions, therefore the trial court's denial of the motion was not in error. Regardless of the admissions, the premarital agreement was enforceable. Furthermore, if either ruling had been an error, it would have been harmless error since alimony would not have been granted.

## **ARGUMENT**

### **I. THE COURT DID NOT ERR IN ITS DETERMINATION THAT THE PREMARITAL AGREEMENT IS ENFORCEABLE AND CONSEQUENTLY ALIMONY WAS WAIVED.**

The Court did not err in determining that the premarital agreement signed by the parties a week prior to their marriage was enforceable. The sole issue set forth regarding the enforceability of the premarital agreement centered on whether there was full

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<sup>1</sup> UTAH CODE ANN. §30-3-5(8)(a).

property disclosure prior to signing. Appellant admitted in admissions that there was in fact full disclosure, thus ending any question of fact with regard to the enforcement of the premarital agreement. Even if the fact of full disclosure had not been admitted in discovery, there still is evidence of full disclosure and/or reasonable prior knowledge. Therefore, under Utah law, the premarital agreement was enforceable.

A. The Requested Admissions Were Automatically Deemed Admitted And Petitioner Did Not Take The Appropriate Steps To Amend Them.

In a Request for Admissions served upon Appellant on or about November 19, 2003, Admission Number 12 stated: “Admit that you were advised of all property owned by the Respondent prior to signing the pre-nuptial agreement.” (R. at 140). Appellant was fully informed that, pursuant to Rule 36 of the UTAH RULES OF CIVIL PROCEDURE, the matters of which admission is requested shall be deemed admitted unless said request is responded to within 30 days after service of the request. (R. at 137-138).

According to the Rule 36, the requested admissions were automatically deemed admitted once Appellant failed to deny or object to them within the 30-day period. UTAH R. CIV. P. 36(b). This penalty provided in Rule 36 is intentionally harsh. Langeland v. Monarch Motors, Inc., 952 P.2d 1058, 1061 (Utah 1998). “Requests for admission must be taken seriously, and answers or objections must be served promptly.... [P]arties who fail to comply with the procedural requirements of rule 36 should not lightly escape the consequences of the rule.” Id. As such, once the admissions have been deemed admitted

against a party, more than a bare denial is required to convince the court that the admissions should be withdrawn or amended. Langeland, 952 P.2d at 1062.

According to Rule 36(b), the court is given discretion to grant a motion to withdraw or amend the admissions only when withdrawal or amendment would serve the presentation of the merits and would not result in prejudice to the nonmoving party. Langeland, 952 P.2d at 1060. The trial court does not have discretion to unilaterally disregard the admissions. Id.

Utah courts have established a two-part test to show that a presentation of the merits would be served by amendment or withdrawal of an admission. Pursuant to the test, “the party seeking amendment or withdrawal must (1) show that the matters deemed admitted against it are relevant to the merits of the underlying cause of action, and (2) introduce some evidence by affidavit or otherwise of specific facts indicating that the matters deemed admitted against it are in fact untrue.” Langeland, 952 P.2d at 1062.

We first address the question of relevance of the admissions to the merits of the case. Admission Number 12 asked Petitioner to admit “that you were advised of all property owned by the Respondent prior to signing the pre-nuptial agreement.” (R. at 140). Appellant asserts that the enforceability of the premarital agreement, in which alimony is waived, is key to the issue of alimony and that the premarital agreement is all that stands between Appellant and an alimony award. Appellant is incorrect on this point. As will be more fully examined in Section II of this document, even without the premarital agreement, alimony would not be appropriate in this case. For instance, the marriage was of a short duration, all of Appellee’s property constituted pre-marital assets,



both parties had similar income to expenses after separation, Appellee does not have the ability or capacity to pay alimony, among the other factors state herein. Alimony should not have been awarded regardless of the premarital agreement or regardless of the admissions. As such, the admissions have little relevance on the merits of this case.

The second part of the test regarding the preservation of merits requires some evidence indicating that the matters deemed admitted are in fact untrue. Appellant asserts that her motion to amend her answers to admissions was accompanied by a supporting affidavit. Neither the motion to amend nor the affidavit are contained in the court record, and as such cannot be considered by this Court. State v. Pliego, 974 P.2d 279 (Utah 1999) (quoting Wilderness Bldg. Sys., Inc. v. Chapman, 699 P.2d 766, 768 (Utah 1985)). An Appellant's addendum may not consist of evidence that is outside the record on appeal, therefore the Court should "strike this extraneous evidence and [] not consider it for purposes of this appeal." Id. According to the trial transcript, the trial judge did entertain a motion to amend, however, the documents included in Appellant's brief are not part of the record and cannot be considered. Therefore, there is not evidence that the admissions are in fact untrue.

After consideration of the preservation of merits, the court then considers any resulting prejudice to the nonmoving party if the admissions are withdrawn or amended. In this case, even though the first step regarding merits was not fulfilled, the issue of prejudice is important to discuss. Appellant's motion to amend was brought forth on the day of trial, four months after the admissions had been automatically deemed admitted.

This is highly prejudicial to Appellee, the nonmoving party. As Judge Nehring explained:

“[W]hen matters have been deemed admitted, the lawyers structure their case around what they have to prove and don’t have to prove. And when an attempt is made to withdraw the matters deemed admission [sic] literally on the day of trial, it is unduly prejudicial to the party who would have to reconfigure his or her case in order to accommodate the withdrawal of admissions.”

(R. at 460, p. 3). Appellant had four months with which to address the admissions that had been deemed admitted. As the judge pointed out at trial, she had further notice of the problem with the admissions through Appellee’s resulting Motion for Summary Judgment, which was filed on December 27, 2001. Yet no motion to amend was filed until the day of the trial. Appellee appeared on the day of trial prepared to proceed with his case with the included admissions, but was not prepared to prove issues previously admitted. To allow an amendment or withdrawal of admissions under these circumstances would have been extremely prejudicial to Appellee.

In sum, as detailed above, Appellant did not respond to the requested admissions within the required 30-day period. Appellant attempted on the day of trial to amend her admissions, however, she did not satisfy the preliminary conditions of Rule 36(b), which are required before a judge has the discretion to grant a motion to amend the admissions. Consequently, the trial judge appropriately denied the Appellant’s motion to amend admissions.

B. The Premarital Agreement Is Enforceable, Therefore, Any Claim To Alimony Is Waived.

After taking into account all the facts, with or without those facts deemed admitted by Appellant, the premarital agreement is enforceable, and therefore alimony is waived.

A premarital agreement is not enforceable if a party did not execute the document voluntarily or if the agreement was fraudulent. UTAH CODE ANN. §30-8-6(1). That the premarital agreement in the present case was signed voluntarily has never been at issue, therefore the focus turns to the second prong. A premarital agreement is not enforceable if the party against whom enforcement proves that:

(b) the agreement was fraudulent when it was executed and, before execution of the agreement, that party:

- (i) was not provided a reasonable disclosure of the property or financial obligations of the other party insofar as was possible;
- (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
- (iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

UTAH CODE ANN. §30-8-6(1)(b), emphasis added.

Appellant has failed to prove all three of the above required elements. Appellant, through her admissions, admitted that she was given a reasonable disclosure of the property or financial obligations of Appellee. Even if the admissions were not deemed admitted, Appellant did have, or reasonably could have had, an adequate knowledge of the property of Appellee. Appellant had been part of Appellee's extended family for many years prior to their marriage; she was married to Appellee's prior wife's nephew for approximately seventeen years before she married Appellant. As part of the family,

she knew of Appellee's real property, a family farm which had been in the family since 1941. Nothing was hidden or undisclosed at the time the parties signed the premarital agreement.

It is important to also note that, even if Appellant had been able to show some nondisclosure of assets prior to the signing of the premarital agreement, Appellant would have failed to show that such a nondisclosure was material. "[F]ailure to disclose each and every asset and liability will not automatically invalidate a premarital agreement. Instead, a court must first ascertain whether a party failed to disclose, and if so, it must then determine whether that failure was "material." In re Estate of Beesley, 883 P.2d 1343, 1348 (Utah 1994). The division of property has never been at issue in this case. Consequently, even if it had been necessary for the trial court to determine whether there had been proper disclosure, any possible nondisclosure would have been immaterial. As such, the premarital agreement would still have been held to be valid and enforceable.

Appellant attempts to make issue of a Minute Entry supposedly entered on May 6, 2001, five days after the trial, in which the judge states that the admissions do not preclude Appellant's claim for alimony. This Minute Entry, however, was entered due to a clerical error of the Court, and counsel for both parties were instructed to shred the document. (R. at 219). Appellant says in her brief that the Minute Entry makes no sense, which is obvious given the clerical mistake. Appellant also makes issue of a prior recommendation by the Commissioner that the premarital agreement is not enforceable. This recommendation was made prior to the completion of discovery. Once discovery

was completed, the facts and issues before the court changed, thus requiring a different ruling by the trial judge.

In sum, the premarital agreement between the parties is enforceable. Appellant failed to meet all three elements required to prove a premarital agreement was fraudulent and therefore unenforceable. Regardless of the existence of the admissions, Appellant has failed to prove the premarital agreement is unenforceable. Furthermore, the premarital agreement includes a provision that each party waives any claim of alimony from the other. As such, Appellant's claim to alimony has been waived.

II. EVEN IF THE COURT HAD DETERMINED THAT THE PREMARITAL AGREEMENT WAS NOT ENFORCEABLE, THERE WOULD NOT BE AN ALIMONY AWARD IN THE CIRCUMSTANCES OF THIS CASE.

Arguendo, even if the premarital agreement had not been enforceable, and thus alimony not waived, and the court had gone forward to determine whether alimony should be granted, it would be harmless error<sup>2</sup> because alimony still would not have been awarded to either party.

According to statute, the court shall consider at least the following factors in determining alimony:

- (i) the financial condition and needs of the recipient spouse;
- (ii) the recipient's earning capacity or ability to produce income;
- (iii) the ability of the payor spouse to provide support;
- (iv) the length of the marriage;
- (v) whether the recipient spouse has custody of the minor children requiring support;

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<sup>2</sup> See UTAH R. CIV. P. Rule 61.

- (vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and
- (vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.

UTAH CODE ANNOTATED §30-3-5(8)(a).

In considering these factors, it is extremely unlikely that a trial court would grant Appellant alimony in view of the specific facts of this case. According to the Financial Declarations filed by both parties, Appellant has a net income of \$1,173 per month, with monthly expenses of \$2,003. Appellee has a net income of \$2,969.41 per month or less, with monthly expenses of \$3,123.98. Appellant may have some need, with expenses exceeding her income, however Appellee has no capacity or ability to pay. Appellee is 86 years old and living on social security, retirement, and small interest payments from an LLC. Appellant is 61 years old and employed. The marriage lasted a mere two and one-half years before the parties separated. There are no children, business, or education issues in this case. These are not circumstances in which a court will even possibly grant alimony.

Appellant claims the trial court abused its discretion by not considering the Jones<sup>3</sup> factors for determining alimony and by failing to issue specific findings of fact. It is important to note, however, that the trial court found that both parties waived any claims to alimony in the premarital agreement. Due to this waiver of alimony, the facts of the record are in fact “clear, uncontroverted, and capable of supporting only a finding in favor of judgment,” Howell v. Howell, 806 P.2d 1209, 1213 (Utah Ct. App. 1991)

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<sup>3</sup> Jones v. Jones, 700 P.2d 1072 (Utah 1985).

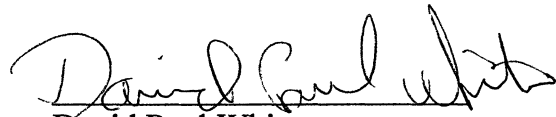
(citations omitted), therefore consideration of the Jones factors and specific findings of fact were unnecessary.

Consequently, even if Appellant were to succeed in her appeal, have the lower court overturned, and the case remanded for findings with regard to alimony, it would be harmless error; an alimony award for Appellant would not result.

### CONCLUSION

Based on the foregoing, Appellee respectfully requests that this Court affirm the trial court's judgment in this case. Appellee also requests that the Court strike the extraneous evidence contained in Appellant's Addendum.

DATED this 31 day of December 2003.

  
David Paul White  
Attorney for Respondent/Appellee

### CERTIFICATE OF MAILING

I hereby certify that two true and correct copies of foregoing Appellee's Brief was mailed on December 31, 200 3, postage fully prepaid, to the following:

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