

2003

Grant Jeffrey Hall v. Mandy Lynn Hall : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

Grant Jeffrey Hall,
Petitioner & Appellant,

v.

Mandy Lynn Hall
Respondent & Appellee

APPEAL

Case no. 20030778-CA

BRIEF OF APPELLANT

Grant Jeffrey Hall appeals the decision of
Hon. J. Dennis Frederick
Third District Court, Salt Lake County

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction in this matter pursuant to UT ST § 78-2a-3(2)(h)

STATEMENT OF ISSUES PRESENTED FOR REVIEW AND STANDARDS OF REVIEW

I. Issue: Whether the District Court erred when it allowed Ms. Hall to make argument and present evidence of fraud (which she had not pleaded) when the issue pleaded, and which Mr. Hall had come prepared to address, was prospectively modifying child support thereby denying Mr. Hall his right to due process by not getting notice.

Standard of review: “Due process challenges are questions of law that we review applying a correction of error standard.” *West Valley City v. Roberts*, 1999 UT App 358, ¶6; 993 P.2d 252

Preserved for review: Transcript of Bench Trial August 14, 2003 (Transcript), page 9, Line 1; Record, at 205. Also, see Transcript, page 37, lines 6-15; Record, at 205 (where he objects that the testimony and argument is not relevant to the issues pleaded). Mr. Hall also claims exceptional circumstances: he was *pro se* at this trial, the District Court assured him that he was not on trial (Transcript, page 9,

lines 2-3; Record, at 205) thereby lulling him into inaction. Had Mr. Hall known the import of Ms. Hall's claim of fraud on the court and that the District Court was considering it, he would have asked for a continuance and sought counsel. As it was, the trial lasted a total of 1:19, including the recess the District Court took to review the exhibits and pleadings and consider the testimony elicited (Transcript, page 41, lines 9-12). Once Ms. Hall brought the new argument of fraud on the court Mr. Hall had no chance to seek competent counsel before the District Court ruled. Finally, the plain-error exception applies: the District Court knew that Mr. Hall had a right to be informed of the issues he would have to meet.

II. Issue: Whether the District Court erred when it retroactively modified a seven-year-old judgment voiding and terminating Ms. Hall's obligation to Mr. Hall.

Standard of review: Interpretation of law is a legal conclusion reviewed for correctness. *Goldberg v. Jay Timmons & Associates*, 896 P.2d 1241, 1242 (Utah App. 1995)

Preserved for review: Transcript, page 9, Line 1; Record, at 205. Also, see Transcript, page 37, lines 6-15; Record, at 205 (where he objects that the testimony and argument is not relevant to the issues pleaded). Mr. Hall also claims exceptional circumstances: he was *pro se* at this trial, the District Court assured him that he was not on trial (Transcript, page 9, Lines 2-3; Record, at 205) thereby

lulling him into inaction. Had Mr. Hall known Ms. Hall was seeking a retroactive modification of child support he was owed, and that the District Court was considering it, he would have asked for a continuance and sought counsel. As it was, the trial lasted a total of 1:19, including the recess the District Court took to review the exhibits and pleadings and consider the testimony elicited (Transcript, page 41, lines 9-12). Once Ms. Hall brought the new argument of fraud on the court Mr. Hall had no chance to seek competent counsel before the District Court ruled. Finally, the plain-error exception applies: the District Court knew that seven-year-old child support orders were not modifiable back to their original date of entry.

III. Issue: Whether the District Court erred when it concluded the conduct that Ms. Hall claimed is fraud on the court.

Standard of review: Legal conclusions are reviewed for correctness giving no deference to the district Court's legal determinations. *State v. Lusk*, 2001 UT 102, ¶10; 37 P.3d 1103

Preserved for review: Transcript, page 9, Line 1; Record, at 205. Also, see Transcript, page 37, lines 6-15; Record, at 205 (where he objects that the testimony and argument is not relevant to the issues pleaded). Mr. Hall also claims exceptional circumstances: he was *pro se* at this trial, the District Court assured

him that he was not on trial (Transcript, page 9, Lines 2-3; Record, at 205) thereby lulling him into inaction. Had Mr. Hall known the import of Ms. Hall's claim of fraud on the court and that the District Court was considering it, he would have asked for a continuance and sought counsel. As it was, the trial lasted a total of 1:19, including the recess the District Court took to review the exhibits and pleadings and consider the testimony elicited (Transcript, page 41, lines 9-12). Once Ms. Hall brought the new argument of fraud on the court Mr. Hall had no chance to seek competent counsel before the District Court ruled. Finally, the plain-error exception applies: the District Court should have known that well-established Utah law regards fraud on the court as more than fraud on a party; it is action which so tampers with the administration of justice as to suggest a wrong against the institutions set up to protect and safeguard the public.

DETERMINATIVE LAW

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S.C.A. Const. Amend. XIV-§1

ARTICLE I. DECLARATION OF RIGHTS

§ 7 [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

UT Const. Art. 1, § 7

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Utah Rules Civ. Proc., Rule 60

(4) A child or spousal support payment under a child support order may be modified with respect to any period during which a modification is pending, but only from the date of service of the pleading on the obligee, if the obligor is the petitioner, or on the obligor, if the obligee is the petitioner. If the tribunal orders that the support should be modified, the effective date of the modification shall be the month following service on the parent whose support is affected. Once the tribunal determines that a modification is appropriate, the tribunal shall order a judgment to be entered for any difference in the original order and the modified amount for the period from the service of the pleading until the final order of modification is entered.

UT ST § 78-45-9.3(4)

STATEMENT OF THE CASE

Nature of case:

This case involves a petition to modify a previous modification (the 1995 order) of a divorce decree.

Course of proceedings:

The case was referred for trial by the commissioner. Trial was held before the Honorable J. Dennis Frederick on August 14, 2003.

Disposition at trial court:

The District Court granted Ms. Hall's petition. The District Court also voided and terminated Ms. Hall's child support obligations pursuant to the 1995 order.

Relevant facts:

1. Mr. and Ms. Hall were married on December 12, 1986 (Record, at 1, ¶3).
2. Mr. Hall filed for divorce on August 2, 1991 (Record, at 1);
3. On July 29, 1991, Ms. Hall signed, and had notarized, a Stipulation, Consent, Waiver and Final Settlement; agreeing, *inter alia*, that Ms. Hall get custody of their three children and receive \$450 per month in child support (Record, at 15-

18).

4. On November 14, 1991, Ms. Hall signed a Child Support Affidavit, attesting that parties had full disclosure of current and relevant past income (Record, at 13-14).
5. On November 15, 1991, Ms. Hall signed, in front of a Notary Public, a financial declaration listing her income as \$900 per month (Record, at 9-11).
6. On, or about December 2, 1991, Ms. Hall signed the Decree of Divorce as “approved as to form” (Record, at 27).
7. On December 2, 1991, the District Court signed the Decree of Divorce (Record, at 26).
8. In 1995, Mr. Hall became aware the Ms. Hall was using illegal drugs and not properly caring for their children (Record, at 76-77).
9. On April 26, 1995, Mr. Hall filed a Verified Petition to Modify (the 1995 petition) the divorce decree (Record, at 76).
10. In the 1995 Petition, Mr. Hall sought custody of the parties’ children and, based on his estimation of Ms. Hall’s income, \$291 in child support.
11. On May 3, 1995, Ms. Hall was personally served with the 1995 Petition and a Summons requiring Ms. Hall to answer Mr. Hall’s petition (Record, at 97).
12. On June 12, 1995 the District Court found that Ms. Hall was in default and granted Mr. Hall’s petition (the 1995 Order) (Record, at 109-110).

13. On June 12, 1995, Mr. Hall's counsel, Stephen M. Enderton,¹ mailed a Notice of Entry of Order on Petition to Modify and Withdrawal of Counsel to Ms. Hall (Record, at 111-2).
14. Ms. Hall was criminally charged with willful failure to pay support (Record, at 205; Transcript of trial held August 14, 2003 (Transcript), page 24, lines 5-6).
15. Ms. Hall pleaded guilty and was ordered by the Court to pay her current obligation and \$50 toward her arrearage (Record, at 205; Transcript, page 26, lines 7-9).
16. On June 17, 2002, Ms. Hall filed a petition to modify the 1995 order (Ms. Hall's Petition) (Record, at 122).
17. Ms. Hall's Petition asked the District Court to 1) order Mr. and Ms. Hall to pay support to Ms. Hall's mother, who was now caring for their child, Brooke; 2) That Ms. Hall be ordered to pay child support to Mr. Hall based on the low income tables; 3) That any amount Ms. Hall owes to Mr. Hall be offset for previous judgments against Mr. Hall (Record, at 125).
18. Mr. Hall counterclaimed for child support arrearages (record, at 130-131).
19. Honorable J. Dennis Frederick held a trial on Ms. Hall's Petition and Mr. Hall's counterclaim on August 14, 2003 (Trial) (Record, at 187).
20. At trial, for the first time on the record, counsel for Ms. Hall raised and argued that 1995 Order was obtained by fraud on the court, specifically Mr. Hall's estimation

¹ Mr. Hall was pro se in the original divorce proceeding and in the action now in dispute. Mr. Enderton's involvement

of Ms Hall's income in the 1995 Petition (Record, at 205; Transcript, page 3, lines 4-20).

21. In his opening argument, counsel for Ms. Hall's wrongly informed the District Court that Ms. Hall's had "basically [] never worked in her lifetime except in the last year or so..." (Record, at 205; Transcript, page 3, lines 12-13 *cf* Child Support Affidavit *supra*, financial declaration *supra*, and Record, at 205; Transcript, page 18, line 22 – page 19, line 21).
22. The District Court granted Ms. Hall's Petition and also voided its 1995 Order as to child support owed Mr. Hall.

Summary of argument:

The District Court erred when it accepted Ms. Hall's argument that Mr. Hall had committed fraud on the court by estimating in his 1995 petition to modify that Ms. Hall earned \$1,300 per month.

There are several grounds for reversal of this ruling:

1. Mr. Hall was denied his right to due process. The issue of fraud was not pleaded and Mr. Hall was ambushed at trial, where the issue was raised for the first time on the record.
2. The District Court does not have the authority to retroactively modify a

with this case began and ended with the 1995 Petition.

seven-year-old judgment.

3. Assuming, arguendo, Ms. Hall's assertions, Mr. Hall's estimate of Ms. Hall's income was not fraud on the court.

ARGUMENT

The District Court erred when it allowed argument and evidence of an issue that Mr. Hall had no notice of, violating his right to Due Process under both the United States Constitution and the Utah Constitution. It further erred when it retroactively modified the 1995 Order seven years after it was entered. Finally, the District Court erred in concluding as a matter of law that Ms. Hall's allegations amounted to fraud on the court.

I. Mr. Hall was denied his right to due process.

The issue of fraud was not pleaded (*see generally* Petition to Modify Order Dated June 2, 1995 ("Ms. Hall's Petition"); Record, at 122-126; Respondent's Reply to Counterclaim; Record, at 132; Respondent's Income Verification; Record, at 136; Respondent's Offer of Settlement; Record, at 138-9). Mr. Hall, appearing *pro se* (Record, at 187), was ambushed at trial by Ms. Hall's counsel, where the issue was raised for the first time on the record. (Record, at 205; Transcript, at 3, line 11).

Section 1 of the fourteenth amendment to the United States Constitution provides that the State shall not "deprive any person of life, liberty , or property without due process of law..." Article 1 § 7 of Utah's state Constitution likewise says: "No person

shall be deprived of life, liberty or property, without due process of law.”

Due Process requires proper notice of the issues to be adjudicated by the court:

“To satisfy *an essential requisite* of procedural due process, a 'hearing' must be prefaced by timely notice **which adequately informs the parties of the specific issues they must prepare to meet.**” *Nelson v. Jacobsen*, 669 P.2d 1207, 1213 (Utah 1983) (quoting *State v. Gibbs*, 94 Idaho 908, 914, 500 P.2d 209, 215 (1972)(emphasis added).

Utah courts have further addressed the notice required:

The objective of [the notice pleading] rules is to require that the essential facts upon which redress is sought be set forth with simplicity, brevity, clarity and certainty so that it can be determined whether there exists a legal basis for the relief claimed; and, if so, so that there will be a clearly defined foundation upon which further proceedings by way of responsive pleading and/or trial can go forward in an orderly manner.

Heathman v. Hatch, 372 P.2d 990, 992 (Utah 1962). Utah courts have further stated that notice that is ambiguous enough to impede preparation by a party violates Due Process:

[D]ue process concerns are implicated when a hearing for one purpose serves a second purpose involving different issues. Due process requires timely notice which adequately informs the parties of the specific issues they must prepare to meet. Furthermore, parties are entitled to notice that a particular issue is being considered by a court. Adequate notice and an opportunity to be heard in a meaningful way are the very heart of procedural fairness. **Due process is not met when notice is ambiguous or insufficient to identify the issues to be considered, thus impeding a party's preparation for the proceedings.**

State ex rel. H.J., 986 P.2d 115, 126 (Utah App. 1999)(citations and internal quotation marks omitted; emphasis added). Ms. Hall filed nothing with the District Court that provided Mr. Hall with any notice that she would argue fraud on the court and seek to

void the District Court's previous order (*see generally* Petition to Modify Order Dated June 2, 1995 ("Ms. Hall's Petition"); Record, at 122-126; Respondent's Reply to Counterclaim; Record, at 132; Respondent's Income Verification; Record, at 136; Respondent's Offer of Settlement; Record, at 138-9). In fact, her prayer for relief anticipates that Mr. Hall might be due an award of money and asks that the District Court setoff against that amount certain amounts that Ms. Hall is due (Record, at 125).

The first time the record reflects Ms. Hall's claim of fraud is at the trial, and at that time, *after the District Court said it was aware of the issues*, counsel for Ms. Hall tells the District Court that this is a new claim:

Mr. Olsen [counsel for Ms. Hall] ... [W]e're claiming, if I can just state –
THE COURT: Well, I have read the file.

MR. OLSEN: **Yeah. But, I've got some other.** We're claiming, as I've gone into this, when he procured the divorce in 1991, he said she was making \$900 a month and he was making \$20,000 a year, \$1,667, and he was order to pay \$450. **He knew that this was a fraud at the time.**²

(Record, at 205; Transcript, at 3, lines 4-11; emphasis added). Ms. Hall goes on to claim that Mr. Hall's estimation of her income in 1995 was "a fraud on this court." (Record, at 205; Transcript, at 3, lines 15-20).

² In addition to being a surprise claim, this is a misrepresentation of the facts. Ms. Hall swore before a notary public and signed a financial declaration in the 1991 divorce that said she was making \$900 a month (Record, at 8-11). In later testimony, at the trial now in dispute, Ms. Hall said that she was aware of the \$900 figure at the time of the divorce and that was what she was earning then (Record, at 205; Transcript, at 19, lines 1-3).

Ms. Hall did not give notice that informed Mr. Hall that he needed to be prepared to argue this issue, as Due Process required her to. This failure is particularly unacceptable because, while Ms. Hall had counsel representing her, Mr. Hall appeared *pro se* (see *Heathman v. Hatch*, 13 Utah 2d 266, 268, 372 P.2d 990 (Utah 1962) “...because of his lack of technical knowledge of law and procedure [the layman representing himself] should be accorded every consideration that may reasonably be indulged.”) Instead of protecting Mr. Hall, the District Court indulged Ms. Hall’s counsel by considering and then deciding an unpleaded issue, never warning Mr. Hall that he was being denied due process of law (see *generally* Transcript; Record at 205).

Mr. Hall’s right to due process was denied when the District Court allowed Ms. Hall to proceed on an issue that she had not given Mr. Hall notice of. The District Court’s ruling should be reversed and Mr. Hall should be given a fair opportunity to meet this issue in District Court.

II. The District Court does not have the authority to retroactively modify a seven-year-old judgment by motion.

a. The District Court erred in retroactively modifying a judgment against Ms. Hall, a judgment over seven years old, violating Rule 60(b), Utah Rules Civ. Proc., and UT ST § 18-45-9.3(4).

Rule 60(b), Utah Rules of Civil Procedure generally controls modification of

orders:

On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: ... (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; ... The motion shall be made within a reasonable time and for reasons (1), (2), or (3), **not more than 3 months after the judgment, order, or proceeding was entered or taken.** (emphasis added)

Utah law, on child support obligations, specifically forbids a retroactive modification beyond the date the petition to modify was served on respondent:

(4) A child or spousal support payment under a child support order may be modified with respect to any period during which a modification is pending, **but only from the date of service of the pleading on the obligee...**

Utah Code § 78-45-9.3 (emphasis added). Utah appellate courts have consistently held that child support cannot be retroactively modified:

In no event may the award be retroactively increased beyond the period during which the modification petition was pending. See *Karren v. Department of Social Serv.*, 716 P.2d 810, 813 (Utah 1986) (stating "only prospective modification of a support obligation is proper"); *Larsen v. Larsen*, 561 P.2d 1077, 1079 (Utah 1977) ("[A]limony and support payments ... cannot be changed or modified after the installments have become due.")

Brooks v. Brooks, 881 P.2d 955, 960 (Utah App. 1994)(alterations in original). And:

Installments of support money vest as they become due. The Court has no power to modify the decree as to these vested rights, unless it finds that each element of equitable estoppel applies.

Adams v. Adams, 593 P.2d 147, 148 (Utah 1979). And:

The only substantive limitation on the trial court's discretion to retroactively modify a support award is that the modification can run only from the date notice of the petition was given to the adverse party.

Ball v. Peterson, 912 P.2d 1006, 1012 (Utah App. 1996)(quotation marks omitted).

It is undisputed that Ms. Hall was given proper notice of the 1995 Petition (Record, at 97), that the \$291 amount of child support that the District Court ultimately awarded was stated in the 1995 Petition (Record, at 77; ¶ 6), and that Ms Hall was given full and fair notice and an opportunity to meet the allegations (Record, at 103-4&106). Furthermore, Mr. Hall's then-counsel mailed Ms. Hall a notice of entry of the District Court's order to the same address where she had been personally served previously (Record, at 112). It is likewise undisputed that Ms. Hall did *nothing* to respond (*see generally* Record, at 76-112) until *seven years* had passed, far beyond the 3 month time limit.

b. A claim of fraud on the court outside of Rule 60's time limit, such as Ms. Hall's, is only properly brought in an independent action.

“Rule 60(b) authorizes the trial court on motion to relieve a party from a final judgment or decree procured by fraud, but **only if the motion is made within three months after judgment**. However, this does not limit the power of the court to entertain an independent action.” *Despain v. Despain*, 682 P.2d 849, 852 (Utah 1984)(emphasis added). “We believe and hold that where 'fraud upon the court' is the gravamen of the proceeding, such proceeding must be pursued in an independent action by filing a separate suit...” *Shaw v. Pilcher* 341 P.2d 949, 950 (Utah 1959). “We have previously held that **the bringing of an independent action is a prerequisite to relief based upon**

a claim of fraud upon a court.” *Mascaro v. Davis*, 741 P.2d 938, 947 (footnote 25)(Utah 1987)(emphasis added). “We hold that a claim of fraud, in almost every instance, is not properly addressed in a petition to modify a divorce decree.” *Bayles v. Bayles*, 1999 UT App 128, ¶20; 981 P.2d 403.

In a case similar to this one, where the ex-spouse claimed property settlement in divorce decree was obtained by fraud, the Utah Court of Appeals said: “Actionable torts between married persons should not be litigated in a divorce proceeding. Thus, the trial court correctly dismissed the fraud claim as being improperly raised in the petition for modification of the divorce decree...” *Masters v. Worsley*, 777 P.2d 499, 503 (Utah App. 1989).

Ms. Hall’s Petition claim for relief from the 1995 order was untimely under Rule 60, Utah Rules of Civil Procedure and, this not being an independent action, therefore not properly before the District Court. Even if it were properly before the District Court, it cannot be considered timely given that it was instituted seven years after she received notice. The District Court exceeded its authority and its order should be vacated.

III. The conduct that Ms. Hall claims does not amount to fraud on the court.

Even if we assume *arguendo* that Ms. Hall is correct (i.e. Mr. Hall declared her income as \$1,300 knowing that it was \$0), and even if Ms. Had given Mr. Hall proper notice, and even if this were an independent proceeding, Ms. Hall does not state a claim

of fraud on the court because it did not prevent her from a full and fair hearing on the issue *seven years ago* and she has not exercised due diligence in contesting the matter.

Addressing fraud on the court, the Utah Court of Appeals said:

The better reasoned analyses of the issue [of fraud on the court] make a clear distinction between fraud on the court *and other fraud or misrepresentation which may occur in the context of a proceeding.*

The term **fraud on the court** as used in obtaining relief from judgment must be **narrowly construed to embrace only that type of conduct which defiles the court itself, or fraud which is perpetrated by officers of the court so as to prevent the judicial system from functioning in the customary manner of deciding the cases presented in an impartial manner.** Examples of fraud on the court justifying relief from judgment would include such egregious misconduct as bribery of a judge or jury, or fabrication of evidence by counsel, *or the prevention of an opposing party from fairly presenting his case.* (Fraud upon the court will be found only in the presence of such tampering with the administration of justice as to suggest a wrong against the institutions set up to protect and safeguard the public.)

Kelley v. Kelley, 2000 UT App 236, fn10; 9 P.3d 171 (citations and quotation marks omitted, emphasis added, final emphasis in original). Ms. Hall has not alleged that Mr. Hall in any way prevented from making her defense in 1995. Furthermore, Ms. Hall's rejection of her responsibility to answer Mr. Hall's 1995 Petition should bar her from challenging the District Court's action seven years later. As our Supreme Court said long ago:

Failure of a party to have used due diligence in presenting all the facts to the court, or in failing to meet any perjured testimony, is not such fraud on the court as will be redressed in suit directly attacking the judgment.

Wright v. W.E. Callahan Const. Co., 156 P.2d 710,711 (Utah 1945). Even if this was an independent action, and Mr. Hall had knowingly misstated Ms. Hall's income, it is not


fraud on the court because Ms. Hall had opportunity to address the issue properly and defaulted, it is her default that led to the 1995 Order, and waiting seven years before attending to this problem is not due diligence. The District Court's order should be vacated.

CONCLUSION

The District Court improperly allowed argument and evidence of an issue that Mr. Hall had not notice of, violating his right to due Process under both the United States Constitution and the Utah Constitution. It further erred when it retroactively modified the 1995 Order seven years after it was entered. Finally, the District Court erred in concluding as a matter of law that Ms. Hall's allegations amounted to fraud on the court.

Mr. Hall asks this court to vacate the District Court's order, as it relates to child support owed to Mr. Hall.

DATED this 25 day of March, 2004.

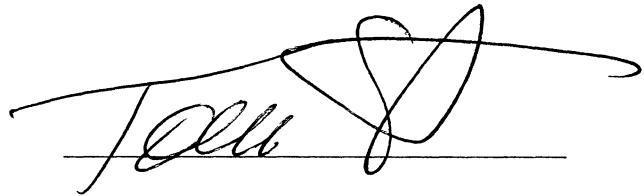


Steven Russell
Attorney for Mr. Hall

CERTIFICATE OF MAILING

I certify that on the 26 day of March, 2004, I did deliver
a true and correct copy of the foregoing to the following persons, postage prepaid:

Nolan J. Olsen
8142 S. State Street
Midvale, Utah 84047



Addendum #1

NOLAN J. OLSEN
Utah State Bar No. 2464
Attorney for Respondent
8142 South State Street
Midvale, Utah 84047
Telephone: 255-7176

FILED DISTRICT COURT
Third Judicial District

AUG 26 2003

SALT LAKE COUNTY

By Deputy Clerk

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

GRANT JEFFREY HALL,

Petitioner,

vs.

MANDY LYNN HALL,

Respondent.

:
: **FINDINGS OF FACT AND**
: **CONCLUSIONS OF LAW**
:
:
: Civil No. 914903150 DA
:
:
: Honorable J. Dennis Frederick

THE ABOVE-ENTITLED MATTER having come before the Court for trial on the 14th day of August, 2003, The Honorable J. Dennis Frederick, Judge presiding; Petitioner appearing pro se and having represented himself, and Respondent appearing in person and being represented by her attorney, Nolan J. Olsen; Petitioner and Respondent having presented testimony to the Court and having filed Exhibits; and the Court being fully advised in the premises makes the following:

FINDINGS OF FACT

1. That Petitioner was granted a Decree of Divorce from Respondent on or about December 2, 1991.

2. That pursuant to said Decree of Divorce, Respondent was awarded the care, custody and control of three minor children.

3. That on or about August 22, 1994, the State of Utah, by and through the Attorney General's Office, procured an Order of Contempt as against Petitioner finding that Petitioner was in arrears as to his child support obligation in the sum of \$9,900.00

4. That prior to March 25, 1995, Petitioner was aware that Respondent was on welfare assistance from the State of Utah and that she was evicted from her apartment, and Petitioner assisted Respondent in moving her furniture to his warehouse.

5. That on or about March 25, 1995, Petitioner filed an affidavit and motion alleging that he should be awarded the care, custody and control of the three minor children.

6. That pursuant to the affidavit and motion, Petitioner further alleged that Respondent was earning \$1,300.00 per month and that Petitioner earned \$1,667.00 per month.

7. That based on Petitioner's fraudulent allegations, on June 12, 1995, the above-entitled Court issued an Order Modifying Decree of Divorce requiring Respondent to pay child support in the sum of \$291.00 per month.

8. That Respondent did not have an attorney at the time of the divorce or at the time the Decree of Divorce was modified.

9. That Respondent never received any documents from Petitioner as to the child support amount which Respondent was ordered to pay.

10. That Petitioner had knowledge that Respondent was homeless, unemployed, and that she had no income during 1995.

11. That Respondent has a hearing disability and had basically no income between June 12, 1995, the date of the modification, until June of 2002, at which time she commenced earning \$350.00 per month cleaning houses.

12. That Respondent commenced earning gross income of \$700.00 per month as of August 1, 2003.

13. That Respondent subpoenaed Petitioner ordering him to bring with him to the trial in this matter certain income verification, i.e., tax returns, bank statements, and a list of assets and liabilities.

14. That Petitioner failed to provide said documents to Respondent's counsel or to the Court.

15. That Petitioner testified that he has real property and personal property worth several hundred thousands of dollars.

16. That Petitioner testified that he is paying obligations on real property, automobiles, boats, etc., totaling \$3,700.00 per month, and in addition to said obligations, Petitioner has other normal monthly living expenses, including but not restricted to food, utilities, clothing, insurance, etc.

17. That Respondent testified that she owns no automobile and no real property, and the only asset she owns is the furniture, furnishings and personal items which Petitioner placed in his warehouse in 1995 and which he has refused to return to Respondent for a period of approximately eight years, despite repeated requests by Respondent.

18. That Petitioner should be ordered to return Respondent's furniture, furnishings, and personal property to Respondent on or before the 25th day of August, 2003.

19. That the minor child, Brook Lynn Hall, born July 1, 1987, has been in the care, custody and control of Respondent's parents. Ralph Crabb and Donna Crabb, since June of 2002, and Petitioner and Respondent agreed that Ralph Crabb and Donna Crabb shall continue to maintain the custody of said minor child until further Order of the Court, and that each party shall pay Ralph Crabb and Donna Crabb child support pursuant to the Child Support Schedule of the State of Utah.

20. That it is fair and reasonable that Respondent be awarded judgment against Petitioner pursuant to Rule 4-501 of the Utah Code of Judicial Administration for her attorney fees and costs incurred herein, and that an affidavit be filed with the Court pursuant to Rule 4-505 of the Utah Code of Judicial Administration.

From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. That Petitioner, Grant Jeffrey Hall, committed a fraud upon the Court in 1995, and the Order Modifying Decree of Divorce dated June 12, 1995, as to the provision that Respondent pay child support of \$291.00 per month is determined void and terminated and no child support is owed by Respondent from the date of the modification through June 17, 2002.

2. That the child support amount based on said Order should be removed by the State of Utah Office of Recovery Services, and any claimed child support due from Respondent to Petitioner between June 12, 1995, and June 17, 2002, the date the Petition to Modify Decree

of Divorce was filed, is void and forever terminated, there being no sums due from Respondent to Petitioner during said period.

3. That the Court determined that Petitioner's income from June 17, 2002, through July 31, 2003, is the sum of \$5,000.00 per month.

4. That the Court determined that Respondent's income from June, 1995, through July 31, 2003, is the sum of \$350.00 per month.

5. That pursuant to the Child Support Obligation Worksheet attached hereto, marked Exhibit "A", Petitioner is awarded judgment against Respondent from June 17, 2002, through July 31, 2003, in the sum of \$57.00 per month, a total of \$765.51, less any sums that Respondent paid during the period June 17, 2002, through the present date.

6. That the Court determined that Petitioner's income as of August 1, 2003, is the sum of \$5,000.00 per month.

7. That the Court determined that Respondent's income as of August 1, 2003, is the sum of \$700.00 per month.

8. That pursuant to the Child Support Obligation Worksheet attached hereto, marked Exhibit "B", commencing August 1, 2003, Respondent should be ordered to pay to Petitioner child support in the sum of \$111.00 per month for the support of the two minor children, Daniel Vernon Hall, born June 1, 1989; and Andrew Nathan Hall, born January 5, 1991.

9. That based on Exhibit "B", Respondent should be ordered to pay to Ralph Crabb and Donna Crabb child support in the sum of \$27.00 per month, a total of \$376.00, for the support of said minor child, Brook Lynn Hall, between June 17, 2002, and July 31, 2003.

10. That commencing August 1, 2003. Respondent should be ordered to pay to Ralph Crabb and Donna Crabb child support in the sum of \$55.00 per month for the support of the minor child, Brook Lynn Hall.

11. That Petitioner should be ordered to pay to Ralph Crabb and Donna Crab child support in the sum of \$405.00 per month for the period June 17, 2002, through July 31, 2003, a total sum of \$5.439.00.

12. That commencing August 1, 2003. Petitioner should be ordered to pay to Ralph Crabb and Donna Crabb child support in the sum of \$395.00 per month, commencing August 1, 2003.

13. That Petitioner should be ordered to return to Respondent all of her furniture, furnishings. and personal belongings which he stored for Respondent in approximately March of 1995. and which he has refused to return. on or before August 25, 2003.

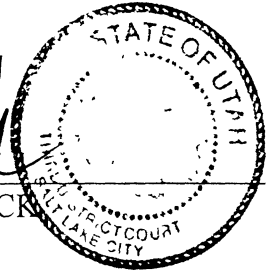
14. That Petitioner should be ordered to pay to Nolan J. Olsen, attorney for Respondent. attorney fees and costs in the sum of \$3.335.70 pursuant to the Rule 4-501 of the Utah Code of Judicial Administration, and pursuant to Rule 4-505 of the Utah Code of Judicial Administration and the Affidavit of Nolan J. Olsen filed herein, subject to Petitioner having the opportunity to object to said Affidavit by and through the Court, as provided by Rule 4-501 and Rule 4-505.

DATED this 26th day of August, 2003.

BY THE COURT

By:

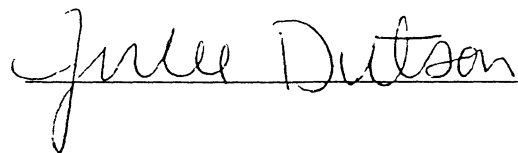

J. DENNIS FREDERICK
District Court Judge



CERTIFICATE OF MAILING

I hereby certify that on the 19 day of August, 2003, I mailed a true and correct copy of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW**, postage prepaid thereon, to the following:

Grant Jeffrey Hall
Petitioner Pro Se
2241 Castle Hill Avenue
Salt Lake City, Utah 84121


Julie Dutton

Addendum #2

IMAGED

FILED DISTRICT COURT
Third Judicial District

NOLAN J. OLSEN
Utah State Bar No. 2464
Attorney for Respondent
8142 South State Street
Midvale, Utah 84047
Telephone: 255-7176

AUG 26 2003

SALT LAKE COUNTY

By [Signature] Deputy Clerk

ENTERED IN REGISTRY
OF JUDGMENTS

DATE 08/26/03

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

GRANT JEFFREY HALL.	:	<u>2170397</u>
	:	ORDER MODIFYING DECREE
	:	OF DIVORCE
Petitioner,	:	
	:	
vs.	:	Civil No. 914903150 DA
	:	
MANDY LYNN HALL,	:	
	:	
Respondent.	:	Honorable J. Dennis Frederick

THE ABOVE-ENTITLED MATTER having come before the Court for trial on the 14th day of August, 2003, The Honorable J. Dennis Frederick, Judge presiding; Petitioner appearing pro se and having represented himself, and Respondent appearing in person and being represented by her attorney, Nolan J. Olsen; Petitioner and Respondent having presented testimony to the Court and having filed Exhibits; the Court having heretofore made and entered its Findings of Fact and Conclusions of Law; the Court being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That the Decree of Divorce entered herein be and the same is hereby modified as follows:

- a. That the minor child, Brook Lynn Hall, born July 1, 1987, has been in the care, custody and control of Respondent's parents, Ralph Crabb and Donna Crabb, since June of 2002, and Ralph Crabb and Donna Crabb be and they are hereby ordered to continue to maintain the custody of said minor child, until further Order of the Court.
- b. That pursuant to the Child Support Obligation Worksheet attached hereto, marked Exhibit "A", Petitioner be and he is hereby awarded judgment against Respondent from June 17, 2002, through July 31, 2003, in the sum of \$57.00 per month, a total of \$765.51, less any sums that Respondent paid during the period June 17, 2002, through the present date.
- c. That pursuant to the Child Support Obligation Worksheet attached hereto, marked Exhibit "B", commencing August 1, 2003, Respondent be and she is hereby ordered to pay to Petitioner child support in the sum of \$111.00 per month for the support of the two minor children, Daniel Vernon Hall, born June 1, 1989; and Andrew Nathan Hall, born January 5, 1991.
- d. That pursuant to Exhibit "A", Respondent be and she is hereby ordered to pay to Ralph Crabb and Donna Crabb child support in the sum of \$27.00 per month, a total of \$376.00, for the support of the minor child, Brook Lynn Hall, for the period between June 17, 2002, and July 31, 2003.
- e. That pursuant to Exhibit "B", commencing August 1, 2003, Respondent be and she is hereby ordered to pay to Ralph Crabb and Donna Crabb child

support in the sum of \$55.00 per month for the support of the minor child, Brook Lynn Hall.

- f. That pursuant to Exhibit "A", Petitioner be and he is hereby ordered to pay to Ralph Crabb and Donna Crab child support in the sum of \$405.00 per month for the period June 17, 2002, through July 31, 2003, a total sum of \$5,439.00.
- g. That pursuant to Exhibit "B", commencing August 1, 2003, Petitioner be and he is hereby ordered to pay to Ralph Crabb and Donna Crabb child support in the sum of \$395.00 per month for the support of the minor child, Brook Lynn Hall.

2. That Petitioner be and he is hereby ordered to return to Respondent all of her furniture, furnishings, and personal belongings which he stored for Respondent in approximately March of 1995, on or before August 25, 2003.

3. That the provision requiring Respondent to pay child support in the sum of \$291.00 per month pursuant to the Order Modifying Decree of Divorce dated June 12, 1995, is determined to be void and terminated and no child support is owed by Respondent to Petitioner from June 12, 1995, the date of the modification, through June 17, 2002.

4. That the State of Utah Office of Recovery Services be and it is hereby ordered to remove the judgment due and owing from Respondent to Petitioner which accrued between June 12, 1995, and June 17, 2002 (the date of filing of the Petition to Modify Decree), and said judgment be and the same is hereby set aside and forever terminated, there being no sums due from Respondent to Petitioner during said period.

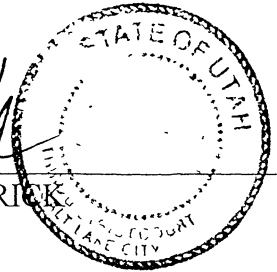
- 5. That Petitioner be and he is hereby ordered to pay to Nolan J. Olsen, attorney for Respondent, attorney fees and costs in the sum of \$3,335.70 pursuant to the Rule 4-501 of the Utah Code of Judicial Administration, and pursuant to Rule 4-505 of the Utah Code of Judicial Administration and the Affidavit of Nolan J. Olsen filed herein, subject to Petitioner having the opportunity to object to said Affidavit by and through the Court, as provided by Rule 4-501 and Rule 4-505.

DATED this 16th day of August, 2003.

BY THE COURT:

By:

J. DENNIS FREDERICK
District Court Judge



CERTIFICATE OF MAILING

I hereby certify that on the 19 day of August, 2003, I mailed a true and correct copy of the foregoing **ORDER MODIFYING DECREE OF DIVORCE**, postage prepaid thereon, to the following:

Grant Jeffrey Hall
Petitioner Pro Se
2241 Castle Hill Avenue
Salt Lake City, Utah 84121

Julie Dutsen