

2003

## Julie D. Blain v. Dennis Blain : Reply Brief

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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JULIE D. BLAIN (HORROCKS),

Petitioner/Appellee,

v.

DENNIS BLAIN,

Civil No. 20030864

Respondent/Appellant.

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**REPLY BRIEF**

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**AN APPEAL FROM THE THIRD DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH THE  
HONORABLE WILLIAM BOHLING, PRESIDING**

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## **INTRODUCTION**

The Appellant, Blain, took the proper path in filing a Verified Petition to Modify and is entitled to a ruling from the trial court. He argued in the trial court that such modification was necessary due to various changes in circumstances on both his and the Appellee's, Horrocks, circumstances. The underlying thrust of Horrocks' argument is that the supplemental decree reflects an agreement between the parties and because of that agreement Blain is prohibited from modifying the decree. This is either an argument of accord and satisfaction or estoppel and must be plead as an affirmative defense under Rule 8(c) of the Utah Rule of Civil Procedure.

## **ARGUMENT**

### **A. Appellant appropriately petitioned the Court to modify the Divorce Decree and also argued a change of circumstances before the Trial Court.**

Blain filed a Verified Petition to Modify that specifically requested a change in the child support and the tax exemption status of the children. The tax exemption status was requested once again at trial, and an argument for a substantial change in circumstances was made. Horrocks claims that the Court was incapable of ruling on the issue, because it was neither petitioned nor was a change of circumstances asserted. Horrocks provides no statutory or case law basis for her argument, but merely states that the petition was improper. Utah Code §30-3-5(3) states that:

The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance,

health, and dental care, and the distribution of the property and obligations for debts as is reasonable and necessary.

Blain properly followed the procedure outlined in Rule 6-404 of the Rules of Judicial Administration. The tax exemption status is allowed to be awarded pursuant to Utah Code §78-45-7.21 and the trial court should have made a finding on the use of the child for tax purposes. Furthermore, Blain has provided evidence that such changes in circumstances has occurred, not only for the tax exemption but also as to the child support.

**B. Appellee's fundamental argument goes not merely on the differing interpretations of contractual language, but is one of accord and satisfaction, res judicata, or estoppel which is an affirmative defense and must be plead.**

Rule 8(c) of the Utah Rules of Civil Procedure requires the pleading of any affirmative defenses if they are to be used in trial. *Hintze v. Seaich*, 437 P.2d 202 (Utah, 1968). Examples of affirmative defenses include accord and satisfaction, *res judicata*, and estoppel. An affirmative defense raises issues that lie outside the parameters of the plaintiff's prima facie case. *General Ins. Co. v. Carnicero Dynasty Corp.*, 545 P.2d 502, 504 (Utah, 1976). The Rule 8(c) list is not exclusive and any other matter constituting an avoidance or affirmative defense must also be pleaded. *Id.* An affirmative defense extrinsically attacks an argument as opposed to merely controverting the prima facie case of the plaintiff. *Prince v. Bear River Mutual Insurance Co.*, 56 P.3d 524 (Utah 2002) at 534.

Horrocks argues that a pleading was not necessary because at issue here is two

differing interpretations of the child support agreement rather than an argument that fell outside the pleading. In her brief she contends “at the time the answer was given until such time as the Court changed the meaning of the child support obligation, Horrocks admitted the document spoke for itself and that it stated that which she clearly understood to be that *the child support would continue unabated to compensate her for waving arrears.*” (Emphasis added). At some level this is a disagreement based on the interpretation of a contract, but underlying Horrocks’ interpretation of the supplemental decree is that Blaine is fundamentally prohibited from modifying the Amended Order on Stipulation due to the language of the contract. Blain has petitioned the Court to modify the divorce decree and Horrocks argues that this is an impossibility due to the language of the supplemental order. Ultimately, this must be an argument of accord and satisfaction, *res judicata*, or estoppel.

Horrocks should not be allowed to use an ambiguous refutation of Blain’s interpretation of the Amended Order on Stipulation. Her interpretation of the contract, at its heart, is that the Amended Order prohibits Blain from bringing his Petition to Modify which falls under the umbrella of Rule 8(c) and must be plead in advance.

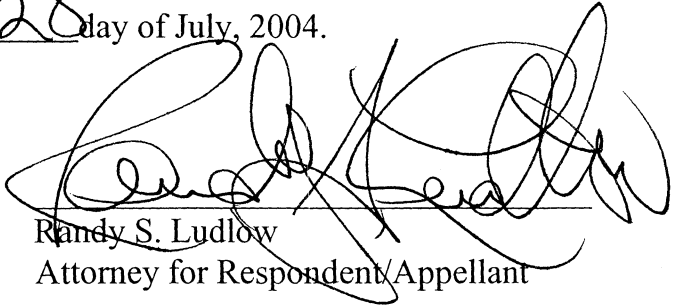
### **CONCLUSION**

U.C.A. §30-3-5(3) allows an individual to petition the Court to modify a divorce decree. Blain has followed this process and provided evidence that a change of circumstances has occurred that supports this requests. Horrocks claims that the supplemental decree asserts that the child support would continue unabated to



compensate her for waiving arrears. This argument is either accord and satisfaction, *res judicata*, or estoppel, and consequently falls under Rule 8(c) of Utah Rules of Civil Procedure which requires a pleading of any affirmative defense.

RESPECTFULLY SUBMITTED this 28 day of July, 2004.




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**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of July, 2004, I caused to be mailed by deposit in the United States Mail, two (2) true and correct copies of the foregoing

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