

2004

## Lynda F. Jones v. Alan D. Jones : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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LYNDA F JONES,	)	
	)	
Plaintiff-Appellee	)	
	)	
vs	)	Docket No. 2004-0192CA
	)	
ALAN D JONES,	)	
	)	
Defendant-Appellant	)	ORAL ARGUMENT REQUESTED

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APPELLANT'S REPLY BRIEF

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

The Honorable Leslie Lewis, District Judge

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UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO. 2004-0192CA

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UTAH APPELLATE COURTS  
JAN 14 2005

IN THE UTAH COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

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LYNDA F JONES,	)	
	)	
Plaintiff-Appellee	)	APPELLANT'S REPLY BRIEF
	)	
vs	)	
	)	
ALAN D JONES,	)	Oral Argument Requested
	)	
Defendant-Appellant	)	Case No. 2004-0192CA

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**DESIGNATION OF THE PARTIES**

The Plaintiff-Appellee is Lynda F Jones, a natural person. The Defendant-Appellant is Alan D Jones, a natural person. To enable the Court to ascertain the former spousal roles of the parties, the first names of the parties will be frequently used herein: ALAN for former husband, LYNDA for former wife, so as to avoid confusion which may arise from the traditional legalistic terms applied to party-litigants, particularly in this "petition to modify" context.

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IN THE UTAH COURT OF APPEALS

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LYNDA F JONES,	)	
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Plaintiff-Appellee	)	APPELLANT'S REPLY BRIEF
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ALAN JONES [hereinafter "ALAN"] presents the following "rebuttal" and "response" arguments to those raised in LYNDA JONES' [hereinafter "LYNDA"] BRIEF.

I

LYNDA'S FINANCIAL NEEDS  
AND ALAN'S ABILITY TO PAY

LYNDA asserts [Pages 15-16 of her BRIEF] satisfactory compliance with the **Jones vs Jones**, 770 P.2d 1072 (Utah Supreme Court 1985) criteria for an alimony award. In **Jones** the Utah Supreme Court identified the three criteria of primary concern in an alimony award, thus:

This Court has described the purpose of alimony: "[T]he most important function of alimony is to provide support for the wife as nearly as possible at the standard of living she enjoyed during marriage, and to prevent the wife from becoming a public charge." **English v. English**, 565 P.2d at 411. With this purpose in mind, the Court in **English** articulated **three factors that must be considered in fixing a reasonable alimony award:**

[1] the financial conditions and needs of the wife;

[2] the ability of the wife to produce a sufficient income for herself; and

[3] the ability of the husband to provide support.

Id. at 411-12 (citations omitted). See also Gramme v. Gramme, Utah, 587 P.2d 144, 147 (1978); Fletcher v. Fletcher, Utah, 615 P.2d 1218, 1223 (1980). Nowhere in the trial court's memorandum decision, its findings of fact, or its statements made on the record at the conclusion of the hearing is there any indication that the court analyzed the circumstances of the parties in light of these three factors. And our attempt to perform this analysis through a review of the record evidence compels us to conclude that the trial court abused its discretion in fixing the alimony award.

770 P.2d at 1075. Emphasis added.

The foregoing "judicial" standards (i.e. "factors") have been legislatively incorporated into the statute applicable to alimony awards, namely Section 30-3-5(a)(7), Utah Code (which includes additional criteria, not necessarily pertinent to this appeal). [The statute avoids the gender-based "husband" and "wife" labels and standards which are facially unconstitutional.]

a. LYNDA'S financial needs.

As an appendix [pp. A-19 thru A-22 to her BRIEF], LYNDA included her financial declaration which was introduced as evidence before the District Court at the July 2003 trial. Condensed to its operative "core", the

sworn document has the following significant features:

Gross monthly income:	\$4,250.00
Less: monthly deductions:	<u>1,187.72</u>
Net Monthly Income:	\$3,062.28
Monthly expenses:	\$3,367.00

Facially, LYNDA's expenses are a mere \$305 in excess of her claimed "income". However, upon cross-examination concerning her "monthly deductions", LYNDA testified that she received a "tax refund" of approximately \$2200 [Testimony of Lynda Jones. TRANSCRIPT OF PROCEEDINGS, 14 August 2003, pp. 53-54: "\$1861" federal refund and "\$407" state, for a total of \$2268).] When that amount [\$2268] is divided by twelve (months), that's in excess of \$171 per month to be deducted from the "deductions" she's claimed, thus to be "added to" (and increasing) her "net monthly income (by that \$171+ amount), to \$3,233---almost within \$150 of her claimed "monthly expenses" [of #3,367].

During ALAN's cross-examination of LYNDA's claimed (and sworn, under oath) "monthly expenses" as contained within her "FINANCIAL DECLARATION---TRIAL EXHIBIT #9", the District Court abandoned its "neutral" role as an impartial fact-finder and became almost an advocate for LYNDA. The TRANSCRIPT of the 14 August 2003 reflects the following, beginning with the on-going "cross-

examination" questioning (by Mr Homer, counsel for ALAN):

Question (by Homer): And the . . .

THE COURT: **And you've allotted nothing for clothing; is that correct?**

Ms JONES: **No**, because when I need clothes I usually charge them and **that's why I have credit card bills**, and you know, I am a professional person. I am required to dress, you know, appropriately for that position.

THE COURT: So you do buy clothes, but you didn't put clothes in that column. What do you think you spend per month in clothing?

MS. JONES: **I'd say \$1,000 a year.**

TRANSCRIPT OF PROCEEDINGS, pages 57, line 23, through page 58, line 8. Emphasis added.

The foregoing "sworn testimony" evidence is significant, for two reasons:

First, LYNDA's "monthly" clothing "expense" is less than \$85 per month (\$1000 per year, divided by twelve months).

Secondly, the "clothing expense" is apparently "double-counted" in the \$975 per month "credit card" expense described below.

Ultimately, the COURT---departing again from its role as a neutral fact-finder hearing the testimonial evidence---again assumed the role of an advocate and raised the "clothing expense" to \$300 per month. The Court's written "finding" on this item is thus:

8. This Court finds that the Petitioner's **attested unmet financial need** of \$300.00 per month **is understated**. By taking into account the reasonable amount of expenses associated with clothing and dry-cleaning, this Court finds that the petitioner's unmet financial needs are closer to \$500.00 per month.

RECORD at pp. 282-283. FINDINGS OF FACT. Emphasis added. Not only does this evidence ignore the arithmetic calculation (to "add back in" as "income" the \$171+ excessively taken as an income tax withholding), but "double-counts" the clothing expense, which the witness testified were/had been charged against her credit cards.

The monthly expenses in the FINANCIAL DECLARATION-- EXHIBIT #9 include an amount of \$975.00, which notwithstanding the word "specify", weren't. Upon cross-examination by ALAN's counsel, LYNDA acknowledged that such payments were for "credit card payments", for indebtednesses incurred after ALAN's unemployment terminated the alimony revenue she had received.

Examined in the long-run, several observations and conclusions are warranted:

First, given the fact that LYNDIA received "advanced warning" of ALAN's economic plight--months before he had attempted to work with her to "settle out" the perpetual alimony claims, and she wouldn't---LYNDIA runs out and

runs up (claimed) a large "credit card bill" for undisclosed expenses. [See TRANSCRIPT OF PROCEEDINGS, 14 August 2003, pages 54-55, for LYNDA's testimony on this subject.] Coupled with the fact that in November 2000 she was "on notice" that the alimony award was requested by ALAN to go to zero (for "material change of circumstances" reasons resisted by LYNDA but nevertheless "found" by the Court and now conceded by LYNDA). Thus, unless she ran up the \$30,000 in the two months---September 2000 and October 2000---before she was "served" with the "modification" petition (and her testimony was not that she had done so in the two-month period, but had taken a couple years to do so), the almost \$1000 per month amount ought to be deducted from her monthly expenses. However, in the context of a permanent alimony setting, to utilize the \$975 amount would be unfair and---in the judicial vernacular---"inequitable": ALAN ought not be saddled with permanent, ongoing "monthly alimony" based upon (1) obligations so unreasonably incurred, and (2) obligations which---at \$975 per month---will be "paid off"

(because the \$30,000 in credit card debt will be paid down to zero), and lastly (3) LYNDALYNDA has been awarded---albeit improperly---for/with a "judgment" for \$30,000+ for the "unpaid alimony" for those same expenses which she incurred when ALAN wasn't paying. In like fashion, if believed she's "going in the hole" at the rate of \$200 per month each month, most people would "cut back" somewhere: one either reduce the incurring of new expenses or one reduces the outgoing expenses. This would be particularly the case when LYNDALYNDA, by then having been so served with the "modification petition" was "on notice" the alimony might drop, and drop significantly, particularly in light of her own \$40,000 annualized income.

In similar fashion, LYNDALYNDA claims a monthly "mortgage payment" of \$1400+, which in today's "reduced interest marketplace" purchases a whole lot of house! A "new" house acquired post-divorce: LYNDALYNDA arguably not only is "doing quite well" (particularly vis-a-vis ALAN, who doesn't even have his own house), but has ostensibly "moved up", as she does not live in the former marital residence. That the

"mortgage" might be re-financed (and/or some day "paid off") has particular bearing on LYNDA's claimed "needs".

Thus, LYNDA's actual expenses---rather than being merely a couple hundred dollars "in the hole"---when properly understood are not merely a "negative \$200" compared to monthly revenues---but rather are, in the long-term, hundreds and hundreds of dollars "ahead" of her income.

b. LYNDA's ability to support herself.

LYNDA earns \$50,000 per year; ALAN earns about \$16,000-17,000. She's certainly able to support herself. She is in no danger of becoming a "public charge".

Obviously, everyone---given the opportunity---can have "needs" (actually "wants", disguised as "needs" or described as "expenses", many of which are reflective of discretionary choices). Everyone, given the opportunity, can spend as much money as they have, particularly when the spender---as the case in an alimony situation---doesn't have to "earn it".

c. ALAN's ability to provide support.

ALAN disagree's vigorously with LYNDA's and the District Court's characterization that he "voluntarily terminated" his employment (as a District Sales

Manager, with Lawson Fasteners) and the implications thereof. That he voluntarily terminated his employment IS TRUE. What is incorrect and misleading is the inference LYNDIA (and, arguably, the District Court) would draw that ALAN voluntarily quit is \$70,000 per year position. He didn't. ALAN testified that at the time he actually quit [during the spring or summer of 2000] he was facing a situation where, as a result of the corporate pay-scale re-structuring, his "earnings" would decrease from the \$60,000-to-\$70,000 range, to an annualized amount in the \$23,000-range. While the District Court didn't want to believe the \$23,000 annualized earning ALAN was anticipating, it is nevertheless the truth. And the District Court is certainly not at liberty to disregard such sworn testimony. [ALAN wouldn't have documentary evidence of that amount, because he didn't stick around with Lawson waiting to earn that significantly diminished amount.]

As noted previously in ALAN's opening BRIEF, it would have been unreasonable and unrealistic---given the fact that he had the "alimony obligation" (as it has been referred to, although not necessarily with that exact phrasing) of \$16,800 per year---that he would be expected to sustain that "alimony obligation" (District Court's frequently-utilized term) when his

entire "takehome" pay (income of \$23k, less withholding deductions for income taxes, etc.) would likely be not too much more than the \$16,800 he was expected to be paying LYNDA in alimony! Thus, it was entirely reasonable for ALAN to leave his employment with Lawson. [In similar vein, it would be interesting---hypothetically---to ascertain how the District Court would have handled ALAN's employment, at Lawson, at the \$23,000 annual earnings amount. One can safely assume that LYNDA---wanting \$16,800 per year from his \$16k earnings---would want the same amount from his \$23k annual earnings!]

To characterize ALAN's situation as "underemployment" as the Court does---as recited by LYNDA's BRIEF, quoting the Court---evidences a judicial misunderstanding of the facts and a disregard of the legal standards governing the alimony award: arguably bordering on an "abuse of discretion". Indeed, the District Court's continuing characterization of the "voluntary quit" (undersigned's terminology) situation, while simultaneously ignoring the economic realities of the situation, and the District Court's pre-occupation with the "obligations" analysis---with its result that ALAN cannot move to Montana, because there are no sales manager jobs in that State (not that the District Court

expressly said it that way, but ALAN is nevertheless penalized for having done so, without checking beforehand). As the issue is (was) seemingly framed by the District Court, ALAN is judicially condemned if he does quit and/or judicially condemned if he doesn't (quit and look for something better). At times, the District Court was seemingly almost indignant over the concept that ALAN, having "obligations" (to pay alimony), would terminate his employment with Lawson--- which was proposing to pay him one-third of what he had been earning, but for the same quantity of work as before. [Who wouldn't, in those circumstances, likewise quit?] Indeed, it is practically impossible to avoid such a judicial "challenge" to the Court's "authority" (to order the payment of the alimony), or minimally the appearance of such a challenge, given the fact that LYNDIA had filed the several "order to show cause" proceedings for the alleged "contempt" arising from ALAN's failure to pay. Initially, the District Court--- faced with ALAN's evidence that it was physically and financially impossible for him to pay the \$1600 per month as originally ordered---allowed him to pay \$100 per month. RECORD at page 207.

And lastly, given ALAN's "personal" situation (life-threatening health condition, albeit temporary,

coupled with his advanced age---mid-50s), perhaps he ought to be able (and judicially allowed, short of actual "retirement") to "slow down" and perhaps live a little "better", if not longer. Seemingly, LYNDIA (and perhaps even the District Court) would apparently just as easily see ALAN "die in the harness" as he struggled to fulfill his economic "obligation" to pay the alimony.

In describing the foregoing, the District Court's "findings" are illuminating, to say the least. The FINDINGS provide, in relevant part:

4. This Court finds that the Respondent's current under-employment is not necessitated by any health concerns or physical impediments of the Respondent. To the contrary, the Respondent testified at trial that he was currently in good health. This Court agrees with the contention of Respondent's counsel that **the Respondent left Lawson simply because he intended to earn less money.**

5. This Court finds that while a person is free to change careers or choose to earn less money; this voluntary act does not obviate one's alimony obligation. **Therefore, this Court will impute to the Respondent the full amount of income represented by his earning history prior to his voluntary departure from Lawson Products.**

6. In contrast to the Respondent's voluntary choice to leave his previous employment to earn less money, **the Petitioner has steadily progressed in her career and now earns approximately double of what she earned at the time of the Decree of Divorce. This Court further finds it ironic that it is the fruits of the Petitioner's hard work and diligence that now provide the sole legal basis for the**

Respondent to claim a change of circumstance and seek to modify his alimony obligation.

7. This Court finds that, using the Petitioner's reasonable financial needs as a reference point, that the Petitioner is entitled to an amount of alimony that will meet her unmet financial needs.

8. This Court finds that the Petitioner's attested unmet financial need of \$300.00 per month is understated. By taking into account the reasonable amount of expenses associated with clothing and dry-cleaning, this Court finds that the petitioner's unmet financial needs are closer to \$500.00 per month.

FINDINGS OF FACT. RECORD at pp. 282-283. Emphasis added.

The Court's FINDING #4 (last sentence) is misleading and a "play on words": of course ALAN left Lawson, and arguably with the result that he might earn less money. But ALAN wasn't going to continue to work for Lawson (at \$23k per year, gross earnings), doing the same job for which he was formerly paid in the \$60s and 70s (thousands) for previously! Particularly when he had the \$16,800 "alimony obligation" (District Court's terminology) facing him. Secondly, why shouldn't he be able to choose to earn less? LYNDA---at then \$40,000 per year---was certainly supporting herself adequately.

The Court's FINDING #6 (Court "finds it ironic" that Lynda's earnings . . .) "misses the mark". The District Court's analysis---LYNDA's "hard work and

diligence"---misses the point: she, for reasons of her own choosing, perhaps skill, luck, good fortune, smarts, whatever, is capable of earning \$50,000. And does so! [LYNDA isn't earning \$50k working day-and-night, at three jobs, to make ends meet; she does so at a single job with salaried position.] So the judicial inquiry ought to be focused upon the judicial/statutory phrasing: "the ability of the recipient spouse to provide adequate income herself" (or wording to that effect).

In light of the foregoing evidence and arguments which can be raised (i.e. failure to realistically analyze the parties' individualized situations, regardless of the perceived causes of those situation), the District Court's "Findings" border on being insufficient. See, for example, **Hall vs Hall**, 858 P.2d 1018 (Utah App 1993) [trial court abuses its discretion in determining financial interests of divorced parties when it fails to enter specific, detailed findings supporting its financial determinations; findings are adequate only if they are sufficiently detailed and include enough subsidiary facts to disclose steps by which ultimate conclusion on each factual issue was reached]; **Williamson vs Williamson**, 1999 UT App 219, 983 P.2d 1103 (1999) [trial court must make findings of

fact based on factors enumerated in statute governing proceeding to modify divorce decree]; and **Willey vs Willey**, 866 P.2d 547 (Utah App 1993) [trial court must make sufficiently detailed findings on each of the governing factors to enable reviewing court to insure the trial court's discretionary determination was rationally based upon those factors].

In the foregoing, the District Court---whether or not ALAN stayed with Lawson (at \$23k annually) or not--made no "finding" as to the effect upon ALAN (i.e. his "ability to provide support"). As noted in ALAN's opening BRIEF, the "equitable" comparison of the two parties' relative incomes would nevertheless prove to be "inequitable", even visibly so: ALAN at \$23k, LYNDA at \$50k, and he's expected ("obligated") to give her \$6k (or \$16k), with the resultant disparity (even if he gives her only \$6k):

LYNDA has \$56k in annualized "income", including alimony.

ALAN has \$17k in annualized---albeit "imputed"---"income", because the Court ignored the unrebutted testimony: ALAN earns what he earns, regardless of the "subjective" reasons therefor.

## II

### TRIAL COURT'S REFUSAL TO RENDER JUDGMENT (I.E. MODIFICATION OF ALIMONY) RETROACTIVELY CONSTITUTES AN ABUSE OF DISCRETION

Ex-wife LYNDA advances [see Page 20 et seq of her

BRIEF] a disingenuous and improperly-analyzed argument with respect to the "retroactivity" of the alimony modification. LYNDIA claims that the trial court has "discretion" to render the award "retroactive" (to time of filing) or not. This analysis contradicts the statutory principles---which LYNDIA purports to analyze, albeit incorrectly---applicable to the situation.

Section 78-45-9.4(4), Utah Code, provides in relevant part:

(4) A child or **spousal support payment** made 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 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.

Emphasis added.

That the foregoing provisions are applicable--- notwithstanding LYNDIA's assertions to the contrary---to the situation at hand (i.e. ALAN's petition for modification) arises from several factors:

1. First, the statute utilizes the phrase "spousal support", and that is exactly what we

have here. [To follow LYNDIA's arguments, the Court would have to ignore the legislatively-selected term and, essentially, "write the term out" of the statute. The judicial branch has neither that responsibility nor the power to do so. Judges must interpret the law as written. In construing statutes, it is presumed that the Legislature chose the specific wording advisedly, and intended meaning and effect be given to each word selected.

2. Secondly, that the provisions of Section 78-45-9.4(4), Utah Code, apply to the situation at hand ("modification" of "spousal support") arises and flows from the definition of "child support order", as "defined" in Section 78-45-2(8), Utah Code, thus:

(8) "Child support order" or "support order" means a judgment, **decree**, or order of a tribunal whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a **proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or otherwise which:**

(a) establishes or modifies child support; .

Emphasis added. From the foregoing text, the

following analysis is pertinent:

First, the original [1992] Divorce Decree provided for "child support", thus bringing the parties' situation within the ambit of the phrasing "child support order" and the application of Section 78-45-9.4(4). That the situation is more extensive than merely "child support" is confirmed not only by the phrase "spousal support" as utilized in Section 78-45-9.4(4), Utah Code, as described above, as well as the selected statutory terms describing "divorce, judicial or legal separation, [and] separate maintenance" which apply to spouse or ex-spouse (or soon-to-be ex-spouse) situations.

Secondly, the District Court not only "found" the pertinent "material change of circumstances" (which LYNDA now, finally, acknowledges), but actually "ordered" the judicial "modification" of the alimony award. The essential statutory criteria are each

individually satisfied.

Factually, ALAN filed his petition for modification in October 2000; the petition was "served" upon LYNDIA in November 2000. Thus, under the provisions of Section 78-45-9.4(4), the petition for "modification", when ultimately granted, should have been retroactive to December 2000---the month immediately following the month in which LYNDIA was served with the "petition for modification". Thus, from December 2000 forward, the "alimony" award should have been the \$500 per month the Court ultimately ordered.<sup>1</sup> Thus, the District Court's award of the \$30,000 or so "judgment" [May 2003; RECORD at 181] against ALAN and arising from and/or within the "order to show cause proceedings" which the Court entertained simultaneously with the "modification" proceeding is, for these reasons alone, invalid as being in conflict with the statute, and must be set aside. The District Court, on this narrow issue, has NO "discretion", because the statute gives the judge no discretion: that statute says "shall", and that term is consistently recognized to be MANDATORY!

---

<sup>1</sup>That ALAN asserts in this paragraph "the alimony should have been the \$500 amount" ultimately decreed by the District Court (in 2003) should not be improvidently construed to be an abandonment of ALAN's global position that the alimony should be even less, perhaps zero, based upon LYNDIA's "needs" (or non-needs, as the situation actually is).

In similar fashion, the "retroactivity" of the entitlement is premised upon widespread judicial acceptance that such "petitions for modification" are effective "retroactively" (i.e. to the date of "filing"---or more accurately, the date of service upon the responding ex-spouse); that judicial acceptance arises from the correct interpretation and application of Section 78-45-9.4(4), Utah Code, as analyzed above.

Likewise, the specific "facts" material to the District Court's determination [i.e. "material change of circumstance" pertinent to ALAN's diminished income (i.e. "ability of payor spouse to provide alimony support") as well as LYNDIA's claimed "need" for continuing alimony support] were essentially unchanged during the entirety of the "modification" proceeding. With respect to ALAN's income, his "income" was essentially reduced to the \$8.00 per hour (approximately \$16,000 per year) range---and that doesn't reflect those periods of time when he was hospitalized with a bleeding esophagus, in a comatose condition for days, and "under doctor's order" to refrain from working for a year following discharge from the hospital---which "doctor's orders" he was obligated, notwithstanding the continuing jeopardization of his health, to disregard. [See RECORD

at 196: physician's written "No work for 12 months" directive. Emphasis in original document.] If the "modification" of the alimony amount is justified--- which it certainly is---prospectively (from 2003 forward), by reason of ALAN's inability to provide support at the former amount, then the "inability" should likewise extend "retroactively" back to the date of the service of the "petition to modify" upon LYNDIA: November 2000, as the statute provides.

LYNDIA also argues [pp. 21-22 of her BRIEF] that the duration of time that the "modification" proceeding took should be held against ALAN, as the moving party. LYNDIA's observations and arguments on this point are disingenuous and misleading, for a number of reasons.

1. LYNDIA's arguments ignore the fact that given the obvious "material change of circumstance", she has resisted even up to the date of trial before the District Court, any "modification" whatsoever. Notwithstanding her \$50,000 annual salary, good health, no dependents, and similar factors arguably pertinent to an "alimony" analysis on "her side" of the alimony equation and disregarding ALAN's hospitalization, diminished earning capacity, inability to find employment

commensurate with his skills, and so forth, LYNDA continued "hold out" for the entire \$16,800 annual amount originally decreed when ALAN's income (and/or "earning capacity") was significantly many times what it presently is.

2. Not only did LYNDA procedurally resist the "modification" and assumed a hard-line, stonewall stance vis-a-vis the "modification" and now-conceded (by her, but only after the District Court has so "found") "material change of circumstances", but in her obviously superior economic and health position, she filed numerous "show cause" petitions for "orders to show cause" for judgments for unpaid alimony. Such had the effect of diverting what precious little resources ALAN did have for the litigation effort from the main proceeding of his choosing; LYNDA is in no position to complain as to the length of time the "modification" proceeding actually took. Likewise, any perceived "delay" in the proceedings arguably worked in favor of LYNDA: over time, ALAN's continuing efforts to better his financial position by seeking employment (albeit in Montana) which was more

commensurate and rewarding economically with his skills may have been successful, and she would arguably have reaped the benefit thereof. Similarly, she has been unable to identify any economic or legal detriment sustained by reason of such claimed "delay".

3. Thirdly, the length of time is actually immaterial to LYNDA's interests. If, for example, the case were instantaneously adjudicated---in snapshot fashion---by the District Court in December 2000 based upon the evidence ultimately available to the District Court<sup>2</sup>, the alimony award would still have been reduced to the \$500 monthly amount. That prospective "judgment" (i.e. "modification") would effectively operate to deprive her of any "post-judgment" amounts (i.e. the difference from the \$1600 per month originally). Thus, LYNDA shouldn't have any basis for complaint; how long the "modification" proceeding actually took to litigate---with or without any pauses or breaks, explained or not---is immaterial to her

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<sup>2</sup>ALAN's original BRIEF identifies the potential dangers in proceeding too quickly in haste to arrive at a judicial determination.

interests.


### CONCLUSION

The District Court's award of \$500 monthly alimony was improperly adjudicated against ALAN: not upon the statutory criteria (her "needs" as contrasted with her "wants" and/or as described as her "expenses"; her presently-manifested her ability to provide for her own support; and his own inability to provide support, particularly in the inequitably-excessive amounts dictated by the Court), but rather from the Court's misanalysis of the situation at hand. Not only did the District Court "abuse its discretion" in effecting the award (by ignoring those criteria and/or by overlooking the evidence, in the Court's zeal to concentrate upon the "obligation"), but the Court has implemented a truly "inequitable" result which is readily apparent.

The District Court's continuing, myopic focus upon ALAN's "obligation"---which is not the issue before the Court---to the seeming exclusion of examining LYNDIA's economic situation (i.e. actual need, ability to support self, and so forth), including the lack of any specific findings and analysis the specific impact upon the parties themselves, is an abuse of discretion and cannot support the inequitable alimony award. The \$500 per month is facially "inequitable", given the evidence

before the Court.

Respectfully submitted this 14th day of January,  
2005.

  
STEPHEN C. HOMER  
Attorney for Appellant  
ALAN D JONES

**CERTIFICATE OF DELIVERY**

I certify that I caused two copies of the foregoing  
REPLY BRIEF OF APPELLANT to be hand-delivered or  
mailed, first-class postage prepaid, to Ms Amy E Hayes,  
Attorney at Law, Dart, Adamson & Donovan, 370 East  
South Temple Street, Suite #400, Salt Lake City, Utah  
84111, this 14th day of January, 2005.

