

1994

# Twyla K. Young, and Heidi Ann Hamilton v. Stephen A. Regan : Reply Brief

Utah Court of Appeals

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UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO. 940121CA

IN THE UTAH COURT OF APPEALS

TWYLA K. YOUNG, and  
HEIDI ANN HAMILTON,

:

Plaintiffs/Respondents,

:

Case No. 940121CA

vs.

:

Category No. 15

STEPHEN A. REGAN,

:

:

Defendant/Appellant.

:

REPLY BRIEF

-----  
APPEAL FROM AN ORDER OF SUPPORT DATED JANUARY 27, 1994

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**FILED**  
Utah Court of Appeals  
MAR 20 1995  
Marilyn M. Branch  
Clerk of the Court

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IN THE UTAH COURT OF APPEALS

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TWYLA K. YOUNG, and :  
HEIDI ANN HAMILTON, :  
 :  
Plaintiffs/Respondents, :  
 : Case No. 940121CA  
vs. :  
 : Category No. 15  
STEPHEN A. REGAN, :  
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REPLY BRIEF

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## **STATEMENT OF JURISDICTION**

Jurisdiction is vested in the Utah Court of Appeals pursuant to Utah Code Annotated §78-2a-3(i) (1953 as amended).

## **STATEMENT OF ISSUES ON APPEAL AND STANDARD OF REVIEW**

The statement of issues on appeal and the standard of review are set forth in Appellant's brief.

## **STATEMENT OF THE CASE**

The statement of the case is set forth in Appellant's brief.

## **STATEMENT OF THE FACTS**

The facts are adequately set forth in Appellant's brief.

## **SUMMARY OF ARGUMENT - POINT 1**

**The Statute of Limitations Bars the Support Award Beyond 4 Years.**

Utah Code Annotated §78-45a-3 (1953 as amended) establishes a four-year statute of limitations.

## **POINT 2**

**All Monies Received as Support Should Act as a Credit.**

All monies received by Hamilton in the way of support should be allowed as a credit to Regan.

## **POINT 3**

**The Trial Court Erred in Imputing Income to Determine Arrears.**

Specific findings supported by the evidence are required to impute income to the Defendant in calculating child support during the retroactive four-year period allowed by the Statute of Limitations.

**POINT 4**

**The Expenses Incurred to Maintain the Business Should  
Not Be Used in Calculating Support.**

Necessary business expenses incurred by Regan in maintaining his business should not have been imputed to him for purposes of calculating ongoing support.

**ARGUMENT**

**I. THE STATUTE OF LIMITATIONS**

**BARS THE SUPPORT AWARD BEYOND FOUR YEARS**

Utah Code Annotated §78-45a-3 (1953 as amended) limits liability to a period of four years preceding the commencement of the action. This action was commenced on March 9, 1991. Hamilton argues the limitations should tie to an earlier action which was commenced in November 1990. Hamilton readily acknowledges that the prior action was dismissed. The action in this case, the proceeding which went to trial, was filed March 9, 1991. The statute of limitations cannot extend back more than four years from that date, being the date that this action was commenced. Tying the cause of action to an earlier case, which was dismissed, would be a complete circumvention of the statute of limitations as enacted by the legislature. Such a result cannot and should not be the law.

**II. ALL MONIES RECEIVED AS SUPPORT SHOULD ACT AS A CREDIT**

There is no question that Mrs. Hamilton and the child received \$6,000.00 to \$7,500.00 in 1987 from a settlement with the State of Utah for support. Knudsen vs. Department of Social

Services, 660 P.2d 258 (Utah 1987) indicates that credit should be given for support paid, despite the form in which it is paid. Regan should therefore receive credit for monies received by Ms. Hamilton and/or the child.

**III. THE TRIAL COURT ERRED IN  
IMPUTING INCOME TO DETERMINE ARREARS**

The trial court is granted broad discretion in determining child support. However, child support should be based on the income of the parties. Failure to make specific findings is an abuse of that discretion according to this court in Hall vs. Hall, 858 P.2d 1018 (Utah App. 1993). There is no basis in the record to impute Regan's monthly income at \$1,500.00 per month between 1987 and 1991. Indeed, the records show the following income:

<u>Year</u>	<u>Annual Personal Income</u>	<u>Monthly Personal Income</u>	<u>Annual Corporate Income</u>	<u>Monthly Corporate Income</u>
1987	\$2,400 (gross) <sup>1</sup>	\$200.00	[\$14,567] <sup>2</sup>	
1988	\$8,256 (gross) <sup>3</sup>	\$688.00	\$13,514 <sup>4</sup>	\$1,126.17
1989	\$3,006 <sup>5</sup>	\$250.50	\$6,055 <sup>6</sup>	\$ 504.58
1990	\$2,870 <sup>7</sup>	\$239.17	\$6,557 <sup>8</sup>	\$ 546.42

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<sup>1</sup> Transcript p. 158  
<sup>2</sup> Transcript p. 160  
<sup>3</sup> Transcript pp. 158-159  
<sup>4</sup> Transcript p. 160  
<sup>5</sup> Transcript p. 159  
<sup>6</sup> Transcript p. 161  
<sup>7</sup> Transcript p. 159



There is no evidence or finding to impute income of \$1,500.00 per month to Regan for these years. Hamilton makes no effort to justify the figure of \$1,500.00 per month, but merely argues the court has broad discretion. Despite the court's discretion, there must be evidence to support the findings. Absent findings supported by the evidence, the court has abused its discretion.

#### IV. THE EXPENSES INCURRED TO MAINTAIN

##### THE BUSINESS SHOULD NOT BE USED IN CALCULATING SUPPORT

The Utah Supreme Court in Jones vs. Jones, 700 P.2d 1072 (Utah 1985) set forth the standard that expenses needed to maintain a business should be properly excluded from the gross income of a parent obligated for support. In this action, the court refused to consider as necessary expenses \$3,000.00 of legal and professional expenses and half of the repair expense of \$12,000.00. However, legal and professional expenses are necessary to maintain any business. Repair expenses are crucial to remaining in business. The full amount of these deductions should have been deemed necessary business expenses and should not have been imputed to the Defendant in calculating ongoing support. Indeed, as set forth in Appellant's Brief, the Defendant's income should be \$15,573.00, plus \$2,146.00 for the "list attached" plus \$2,500.00 for travel, plus \$750.00 property and management fees, plus \$133.00 rental income for a total of \$21,102.00, per year, or \$1,742.00 per month.

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<sup>8</sup> Transcript p. 161

According to the Utah Uniform Child Support Schedules, child support would then be only \$192.00 per month.

#### V. CONCLUSION

Twyla Hamilton should have been dismissed from this action on the basis of res judicata and the matter only allowed to proceed on behalf of the child, Heidi Ann Hamilton, through her guardian ad litem. Utah Code Ann. §78-45a-3 (1953 as amended) establishes a four-year statute of limitations. Since this action was filed in March 1991, back child support can only be retroactive to March 1987. Since Ms. Hamilton received settlement funds from the State of Utah in 1987 in the way of support, Regan should receive credit for those sums. The court abused its discretion by imputing income of \$1,500.00 per month to calculate child support arrears between 1987 and 1991 without making necessary findings as to how that figure was reached. Lastly, the court erred in disallowing expenses necessary to maintain Regan's business.

The matter should be remanded to correct these errors.

DATED this 15 day of March, 1995.



\_\_\_\_\_  
S. JUNIOR BAKER,  
Attorney for Appellant

**CERTIFICATE OF MAILING**

I hereby certify that I mailed a true and correct copy of the foregoing, postage prepaid, to Stewart Ralphs, Legal Aid Society 225 S. 200 E. #230, Salt Lake City, UT 84111, Kathryn Smith Butler, Utah Legal Services, Inc., 254 W. 400 S., #200, Salt Lake City, UT 84101, and Michael G. Barker, 56 E. Broadway, Ste. 600, Salt Lake City, UT 84111 this 17 day of March 1995.

  
\_\_\_\_\_  
~~SECRETARY~~

## **ADDENDUM**

IN THE \_\_\_\_\_ DISTRICT COURT  
 \_\_\_\_\_ COUNTY, STATE OF UTAH

NYLA K. HAMILTON and HEIDI ANN HAMILTON,

vs.

STEPHEN A. REGAN,

CHILD SUPPORT OBLIGATION WORKSHEET  
 (SOLE CUSTODY)

Civil No. \_\_\_\_\_

**BASE AMOUNT CALCULATION**

	Mother	Father	Combined
Enter the number of children of this mother and father for whom support is to be awarded.	//////////	//////////	1
1. Enter the father's and mother's gross monthly income. Refer to instructions for definition of income.	\$ 819.00	\$ 1,742.00	//////////
2. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case).	- 0-	- 0-	//////////
3. Enter previously ordered child support. (Do not enter payments ordered for the child(ren) in this case).	- 0-	- 0-	//////////
4. For modification and paternity actions only: Enter the amount from Line 12 of the Present Family Worksheet for the non-custodial parent.	- 0-	- 0-	//////////
Subtract Lines 2b, 2c, and 2d from 2a. This is the Adjusted Monthly Gross for child support purposes.	\$ 819.00	\$ 1,742.00	\$ 2,561.00
Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here.	//////////	//////////	\$ 282.00
Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	32 %	68 %	//////////
Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$	\$ 191.76	//////////
Enter the child(ren)'s portion of monthly medical and dental insurance premiums paid to insurance company.	-	-	//////////

<b>8. BASE CHILD SUPPORT AMOUNT</b>	
Subtract Line 7 from Line 6 for the Obligor parent. Continue to Page 2 for Extraordinary Medical and Child Care Expenses.	

<b>9. BASE AMOUNT PER CHILD</b>	
Divide Line 8 by Line 1.	\$

**EXTENDED VISITATION**

BASE AMOUNT PER CHILD (line 9) will be reduced by 50% for each child for time periods in which specific extended visitation of that child with the non-custodial parent is ordered in the order for at least 25 of any 30 consecutive days.