

1994

# Linda G. Kangas v. Ralph C. Kangas : Petition for Rehearing

Utah Court of Appeals

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UTAH COURT OF APPEALS  
BRIEF

940633CA

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IN THE UTAH COURT OF APPEALS

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LINDA G. KANGAS,	:	
Plaintiff and Appellee,	:	PETITION FOR REHEARING
vs.	:	
RALPH C. KANGAS,	:	Case No. 940633-CA
Defendant and Petitioner.	:	Priority No. 15
	:	

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PETITION FOR REHEARING

Appeal from Final Judgment and Decree of  
Divorce of the First Judicial District Court, County of  
Cache, State of Utah, by the Honorable Ben H. Hadfield.

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**FILED**

FEB 16 1996

COURT OF APPEALS

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**STATEMENT OF JURISDICTION**

Jurisdiction is conferred on this Court by Utah Code Ann. § 78-2a-3(i) (1994) (appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity).

**STATEMENT OF ISSUES**

WHETHER THE AWARD OF ALIMONY, IN THIS CASE, IS EXCESSIVE DUE TO THE FACT THAT APPELLEE IS ABLE TO ENJOY A HIGHER STANDARD OF LIVING THAN THE APPELLANT?

This matter was preserved for appeal based upon the presentation of evidence presented and the closing argument of counsel.

### STANDARD OF REVIEW

The trial court judge abused his discretion in his establishment of unjust alimony award.

Where a trial court may exercise broad discretion, we presume the correctness of the court's decision absent "manifest injustice or inequity that indicates a clear abuse of discretion.

Crockett v. Crockett, 836 P.2d at 819-820 (Utah Ct. App. 1992) (quoting Turner v. Turner, 649 P.2d 6,8 (Utah 1982)).

### STATUTES AND CONSTITUTIONAL PROVISIONS

Utah Code Annotated § 78-45-7.5 (1994).

Utah Code Annotated § 78-45-7.7 (1994).

Art. I, § 1, Utah State Constitution.

Art. I, § 7, Utah State Constitution.

Art. I, § 24, Utah State Constitution.

### STATEMENT OF THE CASE

#### I. Nature of the case:

This case arises from a divorce trial.

#### II. Course of proceedings:

This case went through several pretrial hearings, none of which are at issue in this appeal, the case was finally tried to the court on June 9, 1994.

#### III. Disposition in trial court:

The plaintiff was granted a Decree of Divorce.

#### IV. Statement of facts:

The parties herein were married on October 11, 1969 (TT p. 28). They have two minor children who remain at home. (TT p. 29). In the Decree of Divorce the appellee was awarded the

marital residence. (see paragraph 10 of the Decree of Divorce, hereinafter DD para. 10). The appellee was also awarded alimony in the amount of \$700.00 per month (DD para. 13). The court found that appellee had the ability to earn \$1300.00 per month. (see Findings of Fact paragraph 6, hereinafter FOF para. 6) The court further found that appellant had the ability to earn \$3,300.00 per month. (FOF para. 20). The Court further found appellee's monthly expenses to be \$2,400.00 per month. (FOF para.21). The court found the appellant's monthly expenses were \$1,700.00 (FOF para. 21).

The appellee claimed expenses of \$2,886.90 per month (TT p. 55 and 128). The appellant claimed monthly expenses of \$2,220 (TT p. 252). The trial found that appellee's monthly expense were a little high based upon the fact that some "may not be appropriate for these calculations and some others may be slightly high." (TT p. 295).

Appellee submitted exhibit 5 which was a list of her expenses (TT p. 55). In exhibit 5 appellee claims that she is paying "Donations and Contributions" in the amount of \$242.00. Appellee indicates that this amount is actually for what she referred to as a "ten percent tithe on my income, and a fast offering. I believe that"s probably \$80.00 for scouts." (TT p. 49). Appellee requests the trial court to award her \$140.00 per month as and for auto repairs and expenses. (TT p. 44). She further wants automobile payments. (TT p. 47). Appellee wants a budget for gifts in the amount of \$20.00 per month. (TT p. 49-50). These expenses appear to arbitrary and to a degree intended to be used for the sole purpose of inflating appellee's budget



for the purpose of being awarded alimony. Appellee appears to be taking the position that she is entitled to maintain the customs and traditions she had while married to appellant. (see TT p. 49 and 50) Here she attempts to show that the payment of "tithing" was traditional in the marriage and then to show that the giving of gifts was traditional. This is a burden she chooses to have Mr. Kangas absorb for her by paying an increased alimony. She further testified that the amount of money she was claiming to need was based upon the life style that was enjoyed during the marriage and when said life style consisted of both parties incomes. (TT p. 54) She went on to say that her budget was a little high, because of the household maintenance. (TT p. 54). She then attempts to make her own financial situation appear to worse than it was by deducting from her income \$229.45 per month for child support (TT p. 56). She would claim all of the expenses associated with raising the children to justify child support and alimony (Trial Exhibit 5). And ask for more money by deducting out said support. Appellee would not even want to include appellant's child support payments in her budget.

Appellant, as a result of the break down of the marital relationship and this action, moved from the marital residence. (TT p. 202) He had one of his minor children, April, living with him. (TT p. 241). Appellant testified that he thought it would be appropriate to sell the house to pay off debts and free up substantial income (TT p. 226). Appellant testified that he lived in a small house, and that if he had the chance he would like to live in a home comparable with the marital residence of the parties (TT p. 247).

## SUMMARY OF THE ARGUMENT

At the time of trial the trial judge awarded the plaintiff/appellee alimony in the amount of \$700.00. It is clear from the testimony of the parties that this was a clear abuse of discretion by the trial judge. The parties testified that they had been married for 24 years. (Trial Transcript Page 28, hereinafter TT p. 28). They further testified that they had owned the marital residence for a period of 14 years (TT p. 61-2). There was testimony about the actual money spent for living expenses by the appellee (TT p. 151-154). This amount was substantially less than what the trial judge found to be reasonable living expenses. The appellant lost a substantial portion of his standard of living after the parties separated. The trial court appeared to be more concerned about the wife's standard of living and not nearly so concerned about the husband's standard of living. There appeared to be no attempt to equalize the parties post divorce standard of living.

## ARGUMENT

### POINT I.

#### WHETHER THE AWARD OF ALIMONY, IN THIS CASE, IS EXCESSIVE DUE TO THE FACT THAT APPELLEE IS ABLE TO ENJOY A HIGHER STANDARD OF LIVING THAN THE APPELLANT?

##### A. Introduction.

This case is petitioned for review based upon this Court's ruling that this case has been filed as a frivolous appeal. Appellant strongly urges this Court to review its decision and find this case in favor of the appellant. This

Court in its opinion stated that action has not been filed "on a good faith argument to extend, modify, or reverse existing law." Appellant exclaims that this case is a good faith petition to extend or modify existing law.

Based on the trial court's findings under the Jones factors, the trial court determined that the Husband earned \$2,900 per month and Wife earned \$1,300 per month. The trial court also determined that the Husband had reasonable monthly expenses of \$1,700 and the Wife had reasonable monthly expenses of \$2,400. Therefore, based on these calculations the Wife's expenses exceed her income by \$1,100 and the Husband has an ability to pay her the \$700 in which was awarded to the Wife.

It is Appellant's position that the alimony award is excessive under the Jones factors and demonstrates a disparate treatment of Husbands in divorce situations. This Court has defined the purpose of alimony. This general purpose, "is to prevent the receiving spouse, [husband or wife,] from becoming a public charge and, to the extent possible, to maintain the standard of living enjoyed during the marriage. Howell v. Howell, 806 P.2d 1209, 1212 (Utah App.) cert. denied, 817 P.2d 327 (Utah 1991).

Appellant interprets this definition in two parts, (1) to prevent either spouse from becoming a public charge and (2) to equalize the parties ability to maintain the standard of living. In this case, the parties were married for 24 years. At the time of divorce, both parties were not enjoying the same standard of living that they enjoyed during the course of the marriage. Since the point of separation, the parties standard of living

were dramatically different. Appellant in his brief attempted to demonstrate the disparity between the parties both during their post separation and post divorce. Apparently, by this Court's opinion Appellant failed to make his argument clear, so he shall attempt it again.

During the marriage, the parties lived in a 3 bedroom home. The wife was awarded the home and custody of the parties' children. In doing so, the husband was ordered to pay child support. The child support award was \$517.18 with a deduction of \$55.84 for a monthly medical insurance premium. Therefore, once the Husband has paid the Wife the monthly child support the Husband has available \$738.66 and the Wife has a need of \$638.66. The trial court ordered an alimony award of \$700.00. Once the child support is removed from the Husband's income/debt he is left with \$38.66 and the Wife's income/debt is increased to \$61.34.

However closely fair this Jones demonstration may indicate there is a disparate treatment of the Husband. When you take this Jones demonstration and view it under the totality of the circumstance the disparity becomes more clear. The Jones factors must be modified to include "in light of the totality of the circumstance."

The parties were married for 24 years. The Wife prior to divorce enjoyed living in a three bedroom home and the income that met all her needs. Post separation and post divorce the Wife still has that luxury. In contrast, the Husband enjoyed the very same standard of living prior to the parties' separation. Since the parties' separation and to date the Husband has not and

cannot enjoy the same luxury of enjoying the same standard of living. His standard of living has dramatically dropped. As a result of the Jones factors and the disparate application of the Jones factors the Husband must live in a basement apartment. This is just one example of how the Jones factors creates disparate treatment of husbands and wives or in other words men and women. The Jones factors must be viewed in light of the totality of circumstances in order to end this disparity.

**B. the Jones factors are unconstitutional as a matter of law.**

The Utah State Constitution clearly states in Article I, Section 24:

All laws of a general nature shall have uniform operation.

Id. This is interpreted as guaranteeing that a law must apply equally to all persons within a class and that statutory classification must have a reasonable tendency to further the objectives of the statute. See Malan, 693 P.2d at 670; Greenwood, 817 P.2d at 816; State v. Pharris, 846 P.2d 454, 467 (Utah Ct. App. 1993). See also Zissi v. State Tax Com'n of Utah, 842 P.2d 848, 855 (Utah 1992).

The Jones factors as current law states, are: (1) the financial conditions and needs of the receiving spouse; (2) the ability of the receiving spouse to provide for him and herself; and (3) the ability of the payor spouse to provide the support. See, Chambers v. Chambers, 840 P.2d 841, 843 (Utah App. 1992). The factors should include a review of the parties before Divorce and after Divorce to assure fairness in the Divorce and further,

to determine whether the alimony award is fair and just under the totality of the circumstances.

Appellant reiterates that the purpose of alimony is (1) to prevent the receiving spouse from becoming a public charge, and (2) to maintain the standard of living enjoyed during the marriage. In this case, the Wife is the receiving spouse. She is not a public charge, neither is the Husband. In equity, it would be completely without reason to create the Husband as a public charge at the expense of preventing the Wife from becoming a public charge. But Part (1) of the purpose is not at issue. At issue is Part (2). It is not the court's purpose to secure the Standard of Living for just one party. The courts have an obligation to remain neutral in all cases. However, as this case indicates there is not a neutrality when it comes to divorces. The courts typically award alimony to women and not men. Consequently, this is determined exclusively in reliance on the Jones factors and does not take into account the parties standards of living, both prior and post divorce.

#### CONCLUSION

In light of the foregoing, there is a disparate treatment of men and women in the courts when determining alimony awards under the current Jones factors which would be eliminated if the courts considered the Jones factors under the totality of the circumstances. Comparatively , the current Jones factors are unconstitutional insofar as the Husband has a substandard of living that is still currently enjoyed by the Wife. Hence, Appellant respectfully requests this Court to reconsider its order and rehear this matter to include that arguments stated

hereinabove and in his argument previously submitted in his Brief of Appellant.

RESPECTFULLY SUBMITTED this 16 day of February, 1996.



D. BRUCE OLIVER  
Attorney for Defendant and Appellant

CERTIFICATE OF MAILING

I hereby certify, in good faith, that I mailed a true and correct copy of the foregoing BRIEF OF APPELLANT postage prepaid to: Larry E. Jones, HILLYARD, ANDERSON & OLSEN, 175 East First North, Logan, Utah 84321.

Dated this 16 day of February, 1996.



D. BRUCE OLIVER