

1994

Kangas v. Kangas : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LINDA G. KANGAS,

Plaintiff and Appellee,

vs.

RALPH C. KANGAS,

Defendant and Appellant.

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Case No. 940633-CA

Priority No. 15

BRIEF OF APPELLANT

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

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FILED

MAY 15 1995

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.

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 below 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?

In this case the trial judge awarded the appellee an award of alimony in the amount of \$700.00 per month. This was a clear abuse of authority. The standard of review to be applied in this case is whether or not the trial judge abused his discretion and the trial court's decision will not be disturbed

unless such a serious inequity has resulted as to manifest a clear abuse of discretion. English v. English, 565 P.2d 409, 410 (Utah 1977); Crockett v. Crockett, supra.

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 award of alimony must be based upon a sound analyses by the trial court as set out in Jones v. Jones, 700 P.2d 1072, 1074 (Utah 1985). This analyses must follow the following steps:

- [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.

In this case 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).

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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).

This Court in Cox v. Cox, 877 P.2d 1269 (Utah Ct. App. 1994) determined that some of the factors that go into the determination of an alimony award should be:

[T]he amount and kind of property to be divided, the source of the property, the parties' health, the parties' standard of living and respective financial conditions, their needs and earning capacities, the duration of the marriage, what the parties gave up by the marriage, and the relationship the property division has with the amount of alimony awarded.

Id.

These factors are to be considered in connection with the Jones, supra factor previously enumerated. When a divorce occurs between a husband and a wife it is the duty of the Court to determine as nearly as possible what standard of living is possible and to equalize them as nearly as possible. This should occur as a part of the initial Jones analyses.

Jones enumerates three criteria to be used in determining the amount of an alimony award. Implied and inherent with in this analyses must be 1) the standard of living of the parties; and 2) the paying spouses monthly expenses. The Jones court enumerated three criteria they were:

- [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.

Step number three must, of necessity, contain a two step breakdown similar to steps 1 and 2 in this analyses. They should be the financial conditions and needs of the husband and the ability of the husband to produce sufficient income for him self.

This analyses should take place in the context of the standard of living enjoyed during the marriage and the ability of the parties joint income to maintain this same standard of living for each party, equally. In the event that this is not possible then the analysis should turn to what standard of living is appropriate for this broken marriage where the income used to sustain one home and one family must now sustain two homes and two families.

This concept was closely stated in Howell V. Howell, 806 P.2d 1209 (Utah Ct. App. 1991) when the court stated:

We believe it is consistent with the goal of equalizing the parties' post divorce status to look to the standard of living existing at or near the time of trial in determining alimony. This is consonant with the treatment of both marital property and child support and is better designed to equip both parties to go forward with their separate lives with relatively equal odds. It is further justified because any future changes in alimony are limited to instances where a material

change of circumstances has occurred. Bridenbaugh v. Bridenbaugh, 786 P.2d 241, 242 (Utah Ct. App. 1990). In so holding, we agree with the dissenting opinion that determining standard of living is a "fact-sensitive, subjective task." We disagree, however, that standard of living is determined by actual expenses alone. Those expenses may be necessarily lower than needed to maintain an appropriate standard of living for various reasons, including, possibly, lack of income. As Webster says, standard of living includes "customary or proper status" considering the parties' circumstances. Those circumstances should be evaluated at the time of trial and, contrary to the dissent, can properly address what situation would have existed if the parties had not separated earlier. In this case, the post-separation substantial increase in plaintiff's income was akin to deferred income. In light of the facts of this case, we conclude that the trial court erred in looking at the pre-separation standard of living in setting alimony, but should have instead considered the standard of living "during the marriage" up to the time of trial. In so concluding we do not intend to establish a rigid rule which must be followed in all domestic cases, but acknowledge that trial courts have discretion to determine the standard of living which existed during the marriage after consideration of all relevant facts and equitable principles. In this case, it was inequitable and an abuse of discretion to pinpoint standard of living as of the time of the parties' separation.

Id.

The court indicates that the time to determine the "standard of Living" is at the time of the trial in the divorce. The basis for this is because of the increases in plaintiff's income. However the court does not establish this as the rule, hard and fast. The critical point is that the Courts have the discretion to "determine the standard of living which existed during the marriage" The court further states that "We believe it is consistent with the goal of equalizing the parties' post divorce status" and then it goes on to address how to arrive at this. The court recognized that some times a persons standard of living

is not measurable in monthly expenses, because:

We disagree, however, that standard of living is determined by actual expenses alone. Those expenses may be necessarily lower than needed to maintain an appropriate standard of living for various reasons, including, possibly, lack of income. As Webster says, standard of living includes "customary or proper status" considering the parties' circumstances.

Id.

Here the court clearly indicates that the standard of living of the parties prior to the divorce is relevant and not just the amount of monthly expenses. In Munns v. Munns, 790 P.2d 116 (Utah Ct. App 1990) the court stated this principle a little clearer when it indicated that sometimes there is just not enough income to go around to suit both parties needs:

Here, the parties have approximately equal, if low, standards of living, which is not a substantial deviation from the "low, minimum" standard of living which the parties experienced during the marriage. "This is simply one of those all-too-frequent situations where the court was confronted with the impossible task of attempting to cut one blanket to cover two beds and satisfy both parties when the truth of the matter is that they cannot afford a divorce, but must have one anyway." Bader v. Bader, 18 Utah 2d 407, 424 P.2d 150, 151 (1967).

Id.

From this it is critical to understand that it is inappropriate to cover one bed with an adequate blanket and leave the other bed inadequately covered. If warmth and comfort is to be afforded to one party then that same or comparable degree of warmth and comfort should be afforded the other party. Altogether too often the thought stops with the analysis of the first two points of Jones. That is to say many a court has taken the position that we need to take care of the wife and if the husband has to suffer

therefore so be it!

What goes into a standard of living is varied and must be considered on a case by case basis. Some of the following should be considered in this case:

WORK

The appellee in this case works one job and this job is not far from her home. (TT p. 30). The appellant works at Hill Air Force Base and is on the road to go to work from two to two and one-half hours a day (TT p. 137, 242). During this time the appellant receives no extra compensation. The appellee indicated that she would refuse to get an extra job in order to assist herself after the divorce, she said "I could find a second job, but I wont because of the children". (TT p. 32 see also TT p. 137). Mr. Kangas is already working two jobs and the appellee would suggest that he is capable of getting another job:

Q. [By Mr. Jones] And does Mr. Kangas have the ability to earn more than he is now earning?

A. He definitely has the ability to earn more, yes.

Q. How is that?

A. He has skills that he's developed while we were married. I think he can do many things.

Q. Prior to working for Hill Air Force Base what did he do for a living?

A. He's done many things. He owned his own paint contracting business in California. He's just done a varied number of things.

Q. If he had time after the Guard and Hill Air

Force Base, in your opinion could he do painting?

A. Yes. And he could make a good living at it.

TT p. 112; see also TT p. 137.

Mrs. Kangas refuses to get a second job, but believes that it would be alright for Mr. Kangas to get a third job!

CHILDREN

Mrs. Kangas was awarded the two remaining children and Mr. Kangas was awarded the custody of none of the children. While this is a factor not considered often in determining the standard of living, it is probably one of the most traumatic events in a divorce. This has the potential of being traumatic to all but the spouse awarded custody of the children.

LIVING ARRANGEMENTS

The marital residence was purchased by the parties about 14 years prior to the divorce (TT p. 61-62). The residence was refinanced two years prior to the divorce (TT p. 62). Mrs. Kangas requested that Mr. Kangas pay her \$100.00 per month to fix up the home that the parties could not fix up during the marriage. (TT p. 67 and 104-106, and Exhibit 5). She has a big yard, and wants Mr. Kangas to weed and feed it and to pay for the care of the yard. (TT p. 43).

On the other hand Mr. Kangas is to start out all over again, and this is after his credit is tied up in the house awarded to the appellee. Mr. Kangas' standard of living drops. He no longer is able to claim the mortgage insurance as a tax deduction. (TT p. 240). M. Kangas does not have the ability to build an equity in real property. (TT p. 240). Mr Kangas is living in a much smaller home than when he was married. He is

now living in a one bathroom and two bedroom rented home. The home purchased and lived in during the marriage was a four bedroom spacious home. (TT p. 247).

Clearly the post standard of living has not been equalized as between these two parties. Mrs. Kangas has had to make little if any adjustments to her standard of living and Mr. Kangas has had to take a tremendous drop in his standard of living just to get by.

MONTHLY EXPENSES

Mrs. Kangas testified that her monthly needs were (based upon her budget) \$2,886.90. The court found that her reasonable expenses were \$2,400.00 without explaining the departure from her claim. The court found that Mr. Kangas' monthly expenses were \$1,700.00 per month.

In testimony there was clear evidence that Mrs. Kangas consistently got by on less than \$2,400.00 per month. Exhibit 21 showed that Mrs. Kangas had spent \$2,030.56 (including \$1,000.00 for attorney's fees) In February 1993. In March of 1993 she spent \$910.85. In April 1993 she spent \$1,944.41. In May 1993 she spent \$1,745.44. In June 1993 she spent \$2,056.64. In July 1993 she spent \$2,104.89. (See TT p. 151-154 and Exhibit 21). At no point does appellee's monthly expenses approach the level of what she claimed she would need on a monthly basis nor the amount the court found reasonable. Mrs. Kangas indicated that this was reflective of her average cost of living (TT p. 154). During this time period Mrs. Kangas continued to pay her tithing (contributions) the Mormon Church. (TT p. 49). Mrs. Kangas' actual cost of living was much less than she represented to the

court. Mrs. Kangas has sufficient money available to her to live in a reasonable fashion and still donate money each month to the church and scouts. Mrs. Kangas was in a position to borrow money and to go on a trip with the boys. She borrowed \$1,000.00 she wasn't sure if she would need \$500.00 or more but this was to go on a trip. Mrs. Kangas has been able to save about \$200.00 in the period between January and August 1993 (TT p. 151-154).

In contrast, Mr. Kangas has not been able to save any money. (TT p. 215). Mr. Kangas has not been able to pay tithing (contributions to the church) (TT p. 234). Mr. Kangas has no funds to buy clothing routinely (TT p. 236). Mr. Kangas has taken from his gross pay about \$1,000.00 per month (TT p. 239). Mr. Kangas can not afford to go on any vacations (TT p. 249). During the marriage, Mr. Kangas used to participate in sport races, but now he does not have the money to pay the entry fees (TT p. 250). Mr. Kangas wished he had a washer and dryer, Mrs Kangas does (TT p. 250).

OPINION OF STANDARD OF LIVING

Mrs. Kangas does not feel that equality is a factor to be considered in this matter. She testified that:

Q. [By Mr. Oliver] You would like to take 34
[this is after she testified that the joint income
of the parties was \$49,000.00] and leave Ralph
[Mr. Kangas] with 15, is that correct?

A. That's the way it works out. That's what I
need.

Q. Uh-huh. Now, You think that it's appropriate
that your standard of living be higher than Mr.

Kangas's after the divorce?

A. Umm, I believe he's capable where I'm not. I have no other income, none. (See TT. p. 141-142).

Mr. Kangas on the other hand testified to how nice it would be to be able to live so high on the hog, when he testified that:

Q. [By Mr. Oliver] Are you living anywhere close to the standard of living you were living in prior to your separation from Linda [Mrs. Kangas]?

A. No absolutely not.

Q. Would you right now trade places with Linda, right even-Steven with the way things are, as far as standards of living goes?

A. Absolutely. (see TT page 251).

The post divorce standard of living of the parties should be proportionate. One party should not be given an inherently better standard of living than the other party. This court in Howell, supra stated:

The alimony award, however, need not be large enough to maintain the receiving spouse at the standard of living enjoyed during the marriage if that amount of alimony would lower the standard of living of the paying spouse below that of the receiving spouse. Alimony may only raise the standard of living of the receiving spouse until it is roughly equal to that of the paying spouse. It is in this sense that alimony should seek "to the extent possible, [to] equalize the parties' respective post-divorce living standards." Rasband v. Rasband, 752 P.2d 1331, 1333 (Utah Ct. App. 1988).

Id.

In this case the inequities are obvious. In this case the trial court abused his discretion in the amount of alimony awarded to the appellee. This abuse of discretion is clear and

creates a substantial injustice and prejudice. Mr. Kangas should be able to enjoy the same post divorce standard of living as does Mrs. Kangas or there should be a re-evaluation of the alimony in this case.

In the case of Bingham v. Bingham, 872 P.2d 1065 (Utah Ct App 1994) the court considered the issue of an alimony award which exceeded the receiving parties established need and ruled as follows:

Where the trial court has offered no explanation for such a discrepancy, we agree with defendant that the court should not have awarded plaintiff more than her established needs required, regardless of defendant's ability to pay this excess amount.

Id.

That the amount of alimony awarded was in excess of appellee's monthly needs is evidenced by Exhibit 21. This is clearly an abuse of discretion and is clearly prejudicial to the appellant.

CONCLUSION

This case should be remanded back to the trial court with instructions that the court should equalize the post divorce standard of living of the parties, after the analyses is completed involving the Jones factors. This court should further expand the Jones factors so that a clear picture is established for the parties, the attorneys and the trial judge, so that equitable resolutions occur through proper application of the law. Dated this 15 day of May, 1995.



D. BRUCE OLIVER
Attorney for Defendant/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 15 day of May, 1995.



D. BRUCE OLIVER

ADDENDUM

a successor is appointed and qualified. The presiding judge of the Court of Appeals shall receive as additional compensation \$1,000 per annum or fraction thereof for the period served.

(2) The Court of Appeals shall sit and render judgment in panels of three judges. Assignment to panels shall be by random rotation of all judges of the Court of Appeals. The Court of Appeals by rule shall provide for the selection of a chair for each panel. The Court of Appeals may not sit en banc.

(3) The judges of the Court of Appeals shall elect a presiding judge from among the members of the court by majority vote of all judges. The term of office of the presiding judge is two years and until a successor is elected. A presiding judge of the Court of Appeals may serve in that office no more than two successive terms. The Court of Appeals may by rule provide for an acting presiding judge to serve in the absence or incapacity of the presiding judge.

(4) The presiding judge may be removed from the office of presiding judge by majority vote of all judges of the Court of Appeals. In addition to the duties of a judge of the Court of Appeals, the presiding judge shall:

- (a) administer the rotation and scheduling of panels;
- (b) act as liaison with the Supreme Court;
- (c) call and preside over the meetings of the Court of Appeals; and
- (d) carry out duties prescribed by the Supreme Court and the Judicial Council.

(5) Filing fees for the Court of Appeals are the same as for the Supreme Court. 1988

78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, Board of State Lands, Board of Oil, Gas, and Mining, and the state engineer;
- (b) appeals from the district court review of:
 - (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
 - (ii) a challenge to agency action under Section 63-46a-12.1;
- (c) appeals from the juvenile courts;
- (d) appeals from the circuit courts, except those from the small claims department of a circuit court;
- (e) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;
- (f) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;
- (g) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(h) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons except in cases involving a first degree or capital felony;

(i) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;

(j) appeals from the Utah Military Court; and

(k) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, in its review of agency adjudicative proceedings. 1992

78-2a-4. Review of actions by Supreme Court.

Review of the judgments, orders, and decrees of the Court of Appeals shall be by petition for writ of certiorari to the Supreme Court. 1986

78-2a-5. Location of Court of Appeals.

The Court of Appeals has its principal location in Salt Lake City. The Court of Appeals may perform any of its functions in any location within the state. 1986

CHAPTER 3

DISTRICT COURTS

Section

78-3-1 to 78-3-2. Repealed.

78-3-3. Term of judges — Vacancy.

78-3-4. Jurisdiction — Transfer of cases to circuit court — Appeals — Jurisdiction when circuit and district court merged.

78-3-5. Repealed.

78-3-6. Terms — Minimum of once quarterly.

78-3-7 to 78-3-11. Repealed.

78-3-11.5. State District Court Administrative System.

78-3-12. Repealed.

78-3-12.5. Costs of system.

78-3-13. Repealed.

78-3-13.4. Counties joining court system — Procedure — Facilities — Salaries.

78-3-13.5, 78-3-14. Repealed.

78-3-14.5. Allocation of district court fees and fines.

78-3-15 to 78-3-17. Repealed.

78-3-17.5. Application of savings accruing to counties.

78-3-18. Judicial Administration Act — Short title.

78-3-19. Purpose of act.

78-3-20. Definitions.

78-3-21. Judicial Council — Creation — Members — Terms and election — Responsibilities — Reports.

78-3-21.5. Data bases for judicial boards.

78-3-22. Presiding officer — Compensation — Duties.

78-3-23. Administrator of the courts — Appointment — Qualifications — Salary.

78-3-24. Court administrator — Powers, duties, and responsibilities.

578-3900



native order establishing or modifying an award of child support entered on or after July 1, 1989.

(2) (a) The child support guidelines shall be applied as a rebuttable presumption in establishing or modifying the amount of temporary or permanent child support.

(b) The rebuttable presumption means the provisions and considerations required by the guidelines and the award amounts resulting from the application of the guidelines are presumed to be correct, unless rebutted under the provisions of this section.

(3) A written finding or specific finding on the record supporting the conclusion that complying with a provision of the guidelines or ordering an award amount resulting from use of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a particular case is sufficient to rebut the presumption in that case.

(4) (a) Natural or adoptive children of either parent who live in the home of that parent and are not children in common to both parties may at the option of either party be taken into account under the guidelines in setting or modifying a child support award, as provided in Subsection (5).

(b) Additional worksheets shall be prepared that compute the obligations of the respective parents for the additional children. The obligations shall then be subtracted from the appropriate parent's income before determining the award in the instant case.

(5) In a proceeding to modify an existing award, consideration of natural or adoptive children other than those in common to both parties may be applied to mitigate an increase in the award, but may not be applied to justify a decrease in the award.

(6) With regard to child support orders, enactment of the guidelines and any subsequent change in the guidelines constitutes a substantial or material change of circumstances as a ground for modification of a court order, if there is a difference of at least 25% between the existing order and the guidelines. With regard to IV-D cases, the office may request modification, in accordance with the requirements of the Family Support Act of 1988, Public Law 100-485, no more often than once every three years.

1990

78-45-7.3. Procedure — Documentation — Stipulation.

(1) In a default or uncontested proceeding, the moving party shall submit:

(a) a completed child support worksheet;

(b) the financial verification required by Subsection 78-45-7.5(5); and

(c) a written statement indicating whether or not the amount of child support requested is consistent with the guidelines.

(2) (a) If the documentation of income required under Subsection (1) is not available, a verified representation of the defaulting party's income by the moving party, based on the best evidence available, may be submitted.

(b) The evidence shall be in affidavit form and may only be offered after a copy has been provided to the defaulting party in accordance with Utah Rules of Civil Procedure or Title 63, Chapter 46b, the Administrative Procedures Act, in an administrative proceeding.

(i) a completed child support worksheet;
(ii) the financial verification required by Subsection 78-45-7.5(5); and

(iii) a written statement indicating whether or not the amount of child support requested is consistent with the guidelines.

(b) A hearing is not required, but the guidelines shall be used to review the adequacy of a child support order negotiated by the parents.

(c) A stipulated amount for child support or combined child support and alimony is adequate under the guidelines if the stipulated child support amount or combined amount exceeds the total child support award required by the guidelines. When the stipulated amount exceeds the guidelines, it may be awarded without a finding under Section 78-45-7.2.

1990

78-45-7.4. Obligation — Adjusted gross income used.

Adjusted gross income shall be used in calculating each parent's share of the child support award. Only income of the natural or adoptive parents of the child may be used to determine the award under these guidelines.

1989

78-45-7.5. Determination of gross income — Imputed income.

(1) As used in the guidelines "gross income" includes:

(a) prospective income from any source, including nonearned sources, except under Subsection (3); and

(b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment compensation, disability insurance benefits, and payments from "nonmeans-tested" government programs.

(2) Income from earned income sources is limited to the equivalent of one full-time job.

(3) Specifically excluded from gross income are:

(a) Aid to Families with Dependent Children (AFDC);

(b) benefits received under a housing subsidy program, the Job Training Partnership Act, S.S.I., Medicaid, Food Stamps, or General Assistance; and

(c) other similar means-tested welfare benefits received by a parent.

(4) (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.

(b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes.

(5) (a) When possible, gross income should first be computed on an annual basis and then recalculated.

lated to determine the average gross monthly income.

(b) Each parent shall provide suitable documentation of current earnings, including year-to-date pay stubs or employer statements. Each parent shall supplement documentation of current earnings with copies of tax returns from at least the most recent year to provide verification of earnings over time and shall document income from nonearned sources according to the source. Verification of income from records maintained by the Office of Employment Security may be substituted for employer statements and income tax returns.

(c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists.

(6) Gross income includes income imputed to the parent under Subsection (7).

(7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed or a hearing is held and a finding made that the parent is voluntarily unemployed or underemployed.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community.

(c) If a parent has no recent work history, income shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) Income may not be imputed if any of the following conditions exist:

(i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn;

(ii) a parent is physically or mentally disabled to the extent he cannot earn minimum wage;

(iii) a parent is engaged in career or occupational training to establish basic job skills; or

(iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.

(8) (a) Gross income may not include the earnings of a child who is the subject of a child support award, nor benefits to a child in the child's own right, such as Supplemental Security Income.

(b) Social Security benefits received by a child due to the earnings of a parent may be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. Other unearned income of a child may be considered as income to a parent depending upon the circumstances of each case.

1990

78-45-7.6. Adjusted gross income.

(1) As used in the guidelines, "adjusted gross income" is the amount calculated by subtracting from gross income alimony previously ordered and paid and child support previously ordered.

(2) The guidelines do not reduce the total child support award by adjusting the gross incomes of the

parents for alimony ordered in the pending proceeding. In establishing alimony, the court shall consider that in determining the child support, the guidelines do not provide a deduction from gross income for alimony.

1989

78-45-7.7. Calculation of obligations.

(1) The parents' child support obligation shall be divided between them in proportion to their adjusted gross incomes.

(2) Except in cases of joint physical custody and split custody as defined in Section 78-45-2, the total child support award shall be determined as follows:

(a) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base child support obligation table.

(b) Calculate each parent's proportionate share of the base combined child support obligation by multiplying the combined child support obligation by each parent's percentage of combined adjusted gross income, and subtracting from the products the children's portion of any monthly payments made directly by each parent for medical and dental insurance premiums.

(c) Allocate monthly work-related child care costs equally to each parent.

(d) Calculate the total child support award by adding the noncustodial parent's share of the base child support obligation calculated in Subsection (2)(b) and the amount allocated in Subsection (2)(c). Include in the order both amounts and the total child support award.

(3) The base combined child support obligation table provides combined child support obligations for up to ten children. For more than ten children, additional amounts shall be added to the base child support obligation shown. The amount shown on the table is the support amount for the total number of children, not an amount per child.

1990

78-45-7.8. Split custody — Obligation calculations.

In cases of split custody, the total child support award shall be determined as follows:

(1) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base child support obligation table. Allocate a portion of the calculated amount between the parents in proportion to the number of children for whom each parent has physical custody. The amounts so calculated are a tentative base child support obligation due each parent from the other parent for support of the child or children for whom each parent has physical custody.

(2) Multiply the tentative base child support obligation due each parent by the percentage that the other parent's adjusted gross income bears to the total combined adjusted gross income of both parents.

(3) Subtract from the products in Subsection (2) the children's portion of any monthly payments made directly by each parent for medical and dental insurance premiums.

(4) Subtract the lesser amount in Subsection (3) from the larger amount to determine the base child support award to be paid by the parent with the greater financial obligation.

(5) Allocate combined monthly work-related child care costs equally to each parent.

ARTICLE I. DECLARATION OF RIGHTS

Sec. 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

1896

Sec. 7. [Due process of law.]

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

1896