

2006

Laurie P. Wall v. Cory R. Wall : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LAURIE P. WALL,

Petitioner/Appellee,

vs.

CORY R. WALL,

Respondent/Appellant.

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Case No. 20060312-CA

Trial Court Case: 994908054 DA

REPLY BRIEF OF APPELLANT

Appeal from an Order of the
Third Judicial District Court
Salt Lake County, State of Utah
The Honorable Sandra N. Peuler, Presiding

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ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

FILED
UTAH APPELLATE COURTS

OCT 11 2006

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PRELIMINARY STATEMENT

In this brief there are two volumes that are transcripts of proceedings in the lower court. “R. 1204/Tr1” refers to the first volume from proceedings held on November 1, 2006. “R. 1205/Tr2” refers to the second volume from proceedings held March 17, 2006. “R” refers to the record of the court and “Ex” refers to exhibit, followed by the exhibit number.

Pursuant to the provisions of Rule 24(d), Utah Rules of Appellate Procedure, the Appellant shall be designated as the “Respondent” and the Appellee shall be designated at the “Petitioner,” consistent with the parties’ designations in the lower court.

DETERMINATIVE STATUTES AND RULES

The following authorities are set forth in detail in the appendix due to their length:

1. Rule 33, Utah Rules of Appellate Procedure
2. §78-45-9.3(4) Utah Code Annotated.

ARGUMENT

POINT I

RESPONDENT HAS ADEQUATELY MARSHALED EVIDENCE WHEREVER FACTUAL FINDINGS ARE CHALLENGED

In the opening portion of her brief, Petitioner is attempting to get the court off on the wrong track by somehow characterizing Respondent's appeal as a challenge to all of the trial court's factual findings and that the evidence was insufficient to support those findings. Such is not the case. For the most part, Petitioner has no quarrel with the trial court's Findings of Fact. Of the thirty-three Findings of Fact, Respondent has no dispute with Findings 1 through 20, 22, 23, 26, 27, and 28.

The insufficiency of evidence to support Findings 21, 24, 25, and 29 through 33 is clearly addressed in Respondent's brief. Respondent has made extensive citations to the record and legal authority to demonstrate the trial court's misapplication of the law as it relates to the evidence which it considered and, in some instances, should not have considered. Respondent has also pointed out instances where the trial court substituted its own factual findings based on evidence that isn't in the record at all.

Respondent's original appellant's brief contains nearly six full pages of facts with extensive citations to the record. That is continued throughout his brief in the argument section.

Interestingly enough, Petitioner's brief contains little more than two pages of facts, most of which is consumed by a spreadsheet which purports to outline the parties' incomes and expenses some of which, interestingly, is not supported by the trial court's Findings of Fact and not contained in the record. It is clear that Petitioner's claims of Respondent's failing to marshal the evidence in this matter is nothing more than an attempt to sidetrack the court from examining the true nature of the legal issues raised by Respondent in his appeal which clearly have merit.

POINT II

THE TRIAL COURT ERRED IN FAILING TO REDUCE OR TERMINATE THE RESPONDENT'S ALIMONY OBLIGATION TO THE PETITIONER BASED UPON THE PETITIONER'S SUBSTANTIAL MATERIAL CHANGE IN CIRCUMSTANCES

Petitioner relies on Kelley v. Kelley, 9 P.3d 171 (Utah App. 2000) in support of her position that her graduation from college and eventual employment were somehow contemplated in the Decree of Divorce in this matter. In Kelley, this court was dealing with the issue of whether remarriage is foreseen or contemplated at the time of a divorce and stated:

Indeed, the **divorce decree** here **explicitly recognized** the possibility by providing that alimony would "continue for three years, or until [Sonia] *remarries*, or until terminated by statute, whichever shall occur first," (emphasis added) and section 30-3-5(8) provides that "any order of the court that a party pay alimony to a former spouse automatically terminates upon the *remarriage* or death of that

former spouse.” Utah Code Ann. § 30-3-5(8) (Supp.1999) (emphasis added). *Id.* at 179.

The holding in Kelley is actually supportive of the Respondent’s position that in order for an event or set of circumstances to be contemplated, there generally must be a provision in the decree itself. Bolliger v. Bolliger, 997 P.2d 903, 906 (Ut.App. 2000). Durfee v. Durfee, 796 P.2d 713, 716 (Utah App. 1990). Smith v. Smith, WL 1405478, Utah App. 1005 (June 16, 2005). Respondent maintains that the Petitioner experienced a substantial material change in her circumstances not contemplated in the decree of divorce. Specifically, the Petitioner, at the time of the divorce was unemployed and had no income. Since the entry of the decree, she has returned to school, obtained a degree, and is now employed.

The facts in Moore v. Moore, 872 P.2d 1054 (Utah App. 1994) cited in Petitioner’s brief are markedly different and clearly distinguishable from the facts in this case. In Moore the wife was employed part-time at the time of the divorce, earning five dollars per hour. Further, at the time of the divorce the parties had actually discussed the wife’s plan to recertify as a school teacher or to obtain a master's degree in sociology. On that basis, the husband was ordered to pay alimony. In that case this court cited the trial court’s own findings of fact which stated “[t]hat [Mrs. Moore's] income now is at or about what her income would have been at the time of the Decree of Divorce in 1980, had she been employed as a school teacher at that time.” *Id.* at 1056. As such, the court determined that there was not a substantial material change in circumstances not

contemplated within the decree. Again, the decision in Moore is actually supportive of the Respondent's position in this case.

In this case, Mrs. Wall was **not** employed at the time of the divorce and had no recent work or income history. On September 1, 2000, the parties participated in mediation at the conclusion of which they executed the Settlement Agreement, Acceptance of Service, Entry of Appearance & Consent to Entry of Default. (R. 524). Nowhere in that agreement is it stated or mentioned that the Petitioner was going to return to work or that a return to employment was contemplated. Further, the document is devoid of any reference to the Petitioner being a student. This is due to the fact that she was not a student at the time.

At trial, the Petitioner herself testified that in the fall of 2000 she enrolled at the University of Utah as a **part-time student** and did not begin as a full-time student until the fall of 2001. (R. 1204, p. 12, lines 16-25, p. 13, lines 1-3). The vague reference in the Findings of Fact and Conclusions of Law that the Petitioner was a "full time student" inserted by Petitioner's counsel almost two weeks after the mediation and settlement agreement (R. 545) is in fact, incorrect, and is certainly not contained within the Decree of Divorce. At the time of the mediation and execution of the Settlement Agreement Petitioner was not enrolled in school and when she did enroll that fall, it was not as a full time student.

In Moore, the wife was employed at the time of the divorce and there was at least a baseline level of income from which to make a determination as to whether there had been a substantial material change in circumstances. Here, that baseline as it pertains to

the Petitioner is zero. Theoretically, any amount of income would constitute such a material change. In this instance, the Petitioner's gross monthly income of \$2,666.00 at the time of the modification hearing (R. 1100) was drastically different from where Petitioner was financially at the time of the divorce, to-wit: zero.

Further, the facts do not reveal any clear intent on the Petitioner's part to return to work. She graduated from school in August, 2003 (R. 1204, page 13, line 3) and did not obtain full time employment until December, 2004 (R. 1204, page 13, lines 14-15), almost one and a half years after graduating. A reasonable person would have contemplated that after obtaining a college degree, that person would have immediately obtained employment. Instead, she waited almost a year and a half to get a job. A reasonable person can't contemplate what Petitioner would do because Petitioner did not act as a reasonable person.

At trial, there was evidence that the Petitioner never intended to obtain employment at all after graduating from college. (R. 1204, Pages 30-32). Petitioner's own actions demonstrated the lack of any contemplation that she would obtain employment. The fact that she finally did, after Respondent filed his petition to modify and almost a year and a half after graduating, was clearly an unanticipated change in Petitioner's circumstances.

If the possibility of the Petitioner's future employment had been contemplated, there most certainly would have been some language to that effect in the Settlement Agreement and the Decree of Divorce. There are no provisions in the stipulation, findings or decree that it was expected that the Petitioner would graduate from college,

obtain employment, or have any income other than the alimony and child support she agreed to accept from the Respondent.

Respondent submits that the evidence adduced at trial on the petition to modify does not support the trial court's findings that Petitioner's graduation from college and subsequent employment was ever discussed or contemplated at the time of the divorce. Accordingly, such findings are clearly in error and are not supported by the facts.

The case of Logan, Hyde Park & Smithfield Canal Co. v. Logan City, 72 Utah 221, 269 P. 776 (1928), cited by Petitioner, is not even a divorce action and the issues addressed therein have no bearing on the case at hand. It is a case from 1928 involving issues of *res adjudicata* and whether the proceedings in a separate action involving one of the parties had any bearing or was contemplated in a completely separate lawsuit by other parties against the party involved. It has nothing at all to do with what parties to a divorce action contemplated in their divorce decree when modification proceedings are initiated.

POINT III

COURT CANNOT ISSUE OR MODIFY ALIMONY BASED ON NEEDS OF RECIPIENT SPOUSE WHICH DID NOT EXIST AT TIME OF DIVORCE

In response to the Petitioner's position on this point, the record speaks for itself. At the trial on the petition to modify, the trial court accepted Petitioner's current Financial Declaration which shows significantly higher living expenses than those claimed by Petitioner at the time of the divorce and some which did not even exist at that time. (R. 1101).

At the time of the divorce Petitioner agreed that \$800 per month in alimony was sufficient to meet her needs (R. 521; 1204, Page 94). There has been no evidence presented by the Petitioner that the \$800.00 was insufficient to meet her needs. Since that time and up to the point when she became employed, she had established that such was the case. The only significant debt she incurred during that period were student loans she obtained in order to attend schooling which she chose to do instead of obtaining employment which she was more than qualified to do. This fact alone is telling as to her needs. From the time of the divorce to the time of the modification hearing, the Petitioner was able to live on the alimony and child support which the Respondent paid to her. There is no evidence or testimony that Petitioner was not able to meet her needs during that period of time.

Petitioner's increased and additional living expenses which did not exist at the time of the divorce have been met by her with income from her employment which she did not have at the time of the divorce.

As stated in Respondent's initial brief, the consideration of these current expenses by the trial court in determining whether to maintain the current alimony award was erroneous and precluded by the provisions of Utah Code Annotated §30-3-5(8)(g)(ii) and is contrary to the holding in Van Dyke v. Van Dyke, 86 P.3d 767 (Utah App. 2004). The Petitioner's new monthly income of \$2,666.00 coupled with the ongoing alimony of \$800.00 paid by the Respondent is well in excess of the Petitioner's demonstrated needs as of the time of the divorce.

POINT IV

PETITIONER'S NEEDS AT TIME OF DIVORCE WERE AGREED TO BY STIPULATION AND CANNOT BE RE-DETERMINED IN MODIFICATION PROCEEDING

The Petitioner's position on this point is not supported by the evidence presented at the trial in this matter. While it is true that in Finding 28 (R. 1103) the trial court found there was no language in either the Settlement Agreement, Findings of Fact and Conclusions of Law or the Decree of Divorce that \$800.00 per month in alimony was sufficient to meet Petitioner's needs, by the same token, there is nothing in any of those documents which states that the \$800.00 per month was insufficient.

At trial, Mrs. Wall herself testified that she agreed to accept \$800.00 per month in alimony. (R. 1204, Page 94). As stated previously, there was no evidence presented by Petitioner that the alimony and child support she received was insufficient to meet her needs since the divorce. Rather than working, she chose to go to school during which time she did not even work part-time. She did not incur any significant debt other than her student loans. She did not file bankruptcy. She did not lose her home or any assets. Obviously, she was able to maintain her standard of living at the time of the divorce on what she received from the Respondent in the form of child support and alimony.

The trial court was correct in stating that at the time of the divorce there were no findings as to the specific needs of the Petitioner (R. 1204/Tr1., page 142, lines 21-22). In fact, there were no findings at the time of the divorce that the Petitioner's claimed living expenses were reasonable. The trial court was also correct in an earlier statement

that the “stipulations, the findings and the decree, I believe, stand on their own and are clear” in stating that it did not consider what things went into the parties’ settlement negotiations. (R. 1204/Tr1., page 140, lines 6-8).

Both the Petitioner and the trial court ignored the rulings in both Davis v. Davis, 29 P.3d 676, (Utah App. 2001) and Bennett v. Bennett, 2005 WL 3315331 (Utah App.) 2005 UT App 528, Dec. 8, 2005 which clearly hold that the parties implicitly agree with the underlying facts behind a settlement agreement and that a trial court and the parties are bound by the parties’ stipulation. The Petitioner’s demonstrated ability to maintain her standard of living on the alimony and child support is a clear reflection of the facts behind the parties’ Settlement Agreement. That is, the alimony of \$800 per month and child support of \$1,200 per month was adequate to meet her needs and living expenses.

Accordingly, it was error for the trial court to have considered other evidence which is contrary to the stipulation. This would include any evidence regarding the Petitioner’s claimed living expenses at the time of the divorce which were in dispute, never litigated, and never found to be valid or accurate in any way. The trial court cannot go back and re-write the agreement as it did.

POINT V

ADJUSTMENTS IN CHILD SUPPORT AND ALIMONY REQUIRED TO BE
RETROACTIVE TO COMMENCEMENT OF MODIFICATION ACTION

On this point, the Petitioner has clearly ignored the chronology of the law on this issue. While it is true that in Wilde v. Wilde, 35 P.3d 341 (Utah App. 2001) this court addressed the language contained in Utah Code Annotated §78-45-9.3(4), it was analyzing the language contained in the predecessor to the amended version of that same statute which was in effect at the time of the filing of Respondent's Petition to Modify.

Petitioner has apparently ignored that fact.

The Wilde case involved a second appeal brought by the wife concerning an alimony modification petition filed in 1994 and a request by her that an alimony modification be made retroactive to the date the petition was served. That case differed from this one in that during the course of those proceedings the legislature had modified the provisions of U.C.A. §30-3-10.6(2), which is the predecessor statute to 78-45-9.3(4) at issue here.

This case differs factually in that the current versions of §78-45-9.3(4) was in place when this Respondent filed his petition for modification.

In Wilde, when the Respondent in that case served the Petitioner with the modification petition, §30-3-10.6(2) provided:

A child or spousal support payment under a child support order may be modified with respect to any period during which a petition for modification is pending, but only from the date notice of that petition was given to the obligee, if the obligor is the Petitioner, or to the obligor, if the obligee is the Petitioner.

The court stated that it had interpreted that section to give courts discretion to determine both if and when a modified child support award should be made retroactive. *Id.* at 345. (Citing, Ball v. Peterson, 912 P.2d 1006, 1012 (Utah Ct. App. 1996), and Crockett v. Crockett, 836 P.2d 818, 820 (Utah Ct. App. 1992) P.2d 818, 820.

The provisions of section 30-3-10.6(2) were then amended and renumbered which provided:

A child or spousal support payment 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. **The tribunal shall order a judgment for the period from the service of the pleading until the final order of modification is entered for any difference in the original order and the modified amount.** Utah Code Ann. §78-45-9.3(4) (Emphasis added)

The amendment added the sentence requiring the trial court to order a judgment for the period from the service of the pleading until the final order, for any difference between the original award and the modified amount. *Id.* at 346.

Since the holding in Wilde section 78-45-9.3(4) has been amended yet again by the insertion of a new second sentence which states:

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....(Emphasis added)

With this amendment, the Wilde case is not directly on point and does not interpret the statute which is at issue in this case as the Petitioner believes.

The clear and unambiguous meaning of this amendment is a mandatory

requirement placed on the courts to retroactively apply modified support to the month following service of the petition on the affected party.

The Petitioner also attempts to place some blame on the Respondent for delaying the proceedings before the trial court and somehow use that as some basis for denying the retroactive application of the modification. The Petitioner has failed to marshal any evidence on this point as there was no finding by the trial court that there was any undue delay.

The motion to which Petitioner refers is Respondent's Motion to Quash Subpoena and for Protective Order filed with the trial court on September 24, 2004. (R. 674). From the date of the filing of Respondent's Petition to Modify in March, 2004 to September, 2004, there was constant activity in the case including both parties conducting written discovery. The purpose of Respondent's motion was to limit the scope of the deposition of Respondent's wife relative to the issues involved in this case. In response, Petitioner filed a motion to compel and a "rule 11 motion". The hearing on those motions came before the court on October 26, 2004 before Commissioner Michael S. Evans at which time it was ordered that Respondent's wife submit to a deposition but granting Respondent's request that the deposition of Respondent's new wife be limited. (R. 765-766).

The Petitioner waited almost four full months to finally take the deposition of Respondent's wife in February, 2005. At all other times, Respondent actively pursued and prosecuted this case. Equity should not allow Mrs. Wall to benefit from her delay.

Regardless, the language of Utah Code Annotated §78-45-9.3(4) is clear and unambiguous and requires the retroactive application of the child support modification and should apply to any reduction or termination of alimony which this court deems to be proper.

POINT VI

NEW TRIAL IS NECESSARY WHERE COURT'S RULING IS BASED ON INSUFFICIENT EVIDENCE

The basis for the Respondent's position on his request for a new trial is the fact that the trial court made its decision relying on evidence other than the parties' Settlement Agreement which was the basis for the original alimony award of \$800.00 per month. The court's reliance on Petitioner's Financial Declarations was improper and erroneous.

The issue of Petitioner's claimed living expenses at the time of the divorce was discussed and reduced in writing to the Settlement Agreement which reflected that Petitioner would accept and receive \$800.00 per month in alimony. The trial court also ignored the evidence that since the divorce, the Petitioner has demonstrated that the \$800 per month in alimony and the \$1,200 per month in child support was, in fact, enough to meet the Petitioner's needs.

POINT VII

PETITIONER NOT ENTITLED TO ATTORNEY'S FEES

Petitioner's characterization of the proceedings in this case are inaccurate. First, Respondent's petition was not to establish a "zero alimony award." Rather, it was a petition to modify the existing alimony award seeking either a reduction or termination of

alimony based upon the Petitioner's substantial material change in circumstances.

Second, Petitioner's defense was not an action to enforce alimony. At no time did the Respondent ever cease paying his alimony nor did he reduce it unilaterally. Petitioner did not file any action in the form of either a petition or a motion to "enforce" the alimony award. As such, she cannot use this as a basis to seek an award of attorney's fees.

The authorities cited by the Respondent on this issue in his original brief speak for themselves and Petitioner's award of attorney's fees was not supported by the applicable law.

POINT VIII

AWARD OF ATTORNEY'S FEES IS IMPROPER WITHOUT FINDINGS OF NEED AND ABILITY TO PAY

Contrary to the Petitioner's assertions, the trial court made no findings on the issue of Respondent's ability to pay Petitioner's attorney's fees. If it had, the facts clearly show that no such ability existed. The Respondent's gross monthly income was \$4,706.00 which the court correctly determined was Respondent's current ability to earn. (R. 1100). His net monthly income after the standard deductions for federal and state taxes and withholdings was \$4,183.58. (R. 1102).

The court then found that the Respondent's current monthly living expenses which he, himself, paid, were \$5,426.21 per month. (R. 1103). This results in a monthly shortfall of \$1,242.63 per month.

Petitioner's representations of the testimony of Respondent's wife are also

inaccurate. On direct examination, Deanna Wall testified that the characterization by Petitioner's counsel that Respondent only paid the mortgage, gas, electric and phone was a "pretty big summary" and being "very, very broad." (R. 1204, Page 69). She also testified on direct examination that Respondent pays the property taxes. (R. 1204, Page 69). On cross examination, Deanna Wall testified that Respondent also pays for his medical and dental expenses, clothing, health insurance, homeowners insurance, life insurance, school expenses for the parties' children, entertainment, gifts, and automobile expenses. She testified further that Respondent pays all of the expenses listed in his Financial Declaration which was used by the court in making its Finding of Fact on that issue. (R. 1204, Pages 70-72).

Petitioner has clearly mischaracterized the evidence and testimony adduced at trial on this issue and failed, herself, to marshal the evidence to support her position.

After meeting all of his reasonable monthly living expenses which he, himself pays without the assistance of anyone else, the Respondent has absolutely no discretionary income with which to pay the Petitioner's attorney's fees award and in fact has no ability to pay the ongoing alimony obligation.

POINT IX

PETITIONER’S MOTION UNDER RULE 33, UTAH RULES OF
APPELLATE PROCEDURE IS WITHOUT MERIT AND
SHOULD BE DENIED

The provisions of Rule 33, Utah Rules of Appellate Procedure set forth the basis or grounds upon which the relief thereunder may be granted. Rule 33(a) provides in pertinent part:

- (a) *Damages for delay or frivolous appeal.* Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as defined in Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the damages be paid by the party or by the party’s attorney.

In defining what constitutes delay or frivolous appeal, Rule 33(b) provides:

- (b) *Definitions.* For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief or other paper interposed for the purpose of delay is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other paper.

In this case, none of the conditions or grounds set forth in Rule 33 are present.

The grounds for Respondent’s appeal are based on genuine legal issues which are clearly addressed in his original appellant’s brief as well as this Reply Brief. Every point raised by Respondent in his appeal contains good faith legal and factual arguments based upon the evidence presented at the time of trial and cites controlling legal authority which support his positions and, in the case of the issue involving the retroactive application of

the child support modification, seeks a clear interpretation of the controlling statute.

Such cannot be deemed to be frivolous in nature.

The purpose of Respondent's appeal is to address legitimate claims that the trial court misapplied the existing law to the facts which were before it and in making erroneous factual findings on other issues. His appeal has not been brought for any improper purpose. This appeal certainly has not been brought for the purpose of delay. The rights of the Petitioner have not been prejudiced in any way by the filing of this appeal. Respondent has always paid, and continues to pay his child support and alimony obligations to the Petitioner and she has not been adversely affected by this appeal.

As the Respondent's appeal has not been brought for any improper purpose, it would be improper to award the costs and fees under Rule 33 being requested by the Petitioner, *See, Charlton v. Charlton*, Not Reported in P.3d, 2001 WL 361721 (Utah App.), 2001 UT App 114, and her motion should be denied.

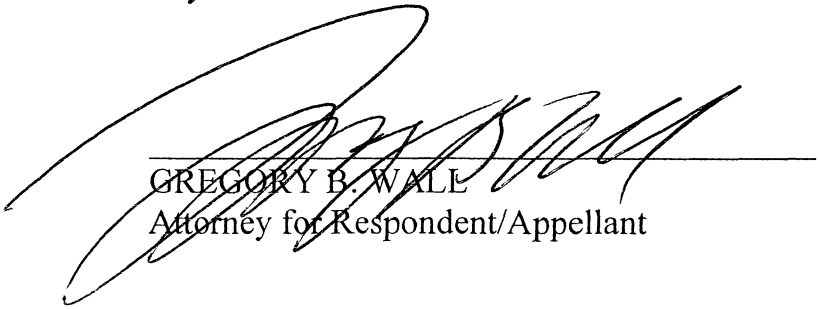
CONCLUSION

The Petitioner's position that Respondent has somehow failed to marshal the evidence to sufficiently challenge the trial court's factual findings is without merit. The Respondent has set forth in both his original appellant's brief as well as this Reply Brief a clear outline of references to the record to demonstrate the insufficiency of the evidence to support the trial court's findings in those instances where they are, in fact, being challenged. The core of Respondent's appeal is to challenge the trial court's legal

conclusions and its misapplication of controlling law on the issues raised both in Respondent's Petition to Modify as well as in this appeal.

The Petitioner fails to cite any legal authority that controverts the Respondent's issues on appeal. Accordingly, Respondent again submits that his alimony obligation to the Petitioner should be terminated based upon her substantial material change in circumstances by now earning an income which is more than three times the original alimony award. Further, the child support modification should be made retroactive and the trial court's award of attorney's fees should be reversed.

RESPECTFULLY SUBMITTED this 17th day of October, 2006.

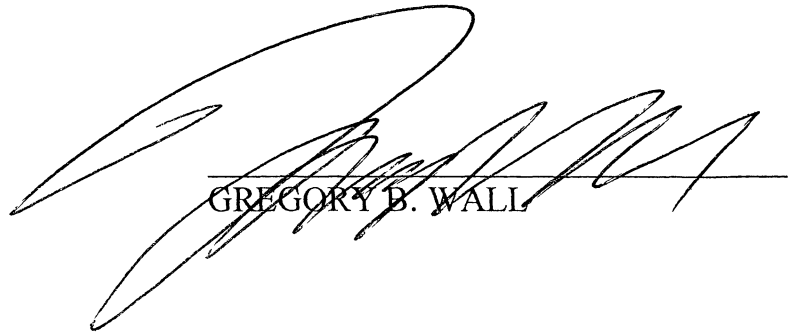


GREGORY B. WALL
Attorney for Respondent/Appellant

CERTIFICATE OF SERVICE

This is to certify that on the 1st day of October, 2006, two (2) true and correct copies of the Respondent's Reply Brief were hand delivered to the following:

Robert H. Wilde, Esq.
Attorney for Appellee
935 E. South Union Avenue, Suite D-102
Midvale, Utah 84047

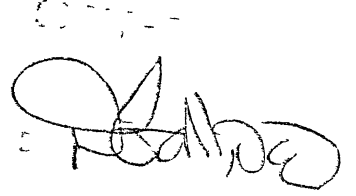


GREGORY B. WALL

APPENDIX:

1. Original Settlement Agreement
2. Findings of Fact and Conclusions of Law (January 9, 2006)
3. Rule 33, Utah Rules of Appellate Procedure
4. §78-45-9.3(4) Utah Code Annotated

ROBERT H. WILDE, USB #3466
ROBERT H. WILDE, ATTORNEY AT LAW, P.C.
Attorneys for Petitioner
935 East South Union Avenue, Suite D-102
Midvale, Utah 84047
Telephone: (801) 255-4774



IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----
LAURIE P. WALL,)
) SETTLEMENT AGREEMENT,
) ACCEPTANCE OF SERVICE, ENTRY
Petitioner,) OF APPEARANCE & CONSENT TO
) ENTRY OF DEFAULT
vs.) Case No. 994908054
) Judge Sandra Peuler
CORY R. WALL,) Commissioner Michael Evans
)
Respondent.)
-----oo0oo-----

The parties in the above-entitled action hereby agree and stipulate as follows:

INTRODUCTION, PURPOSE & CONSENT

1. That the provisions of this agreement supplant all allegations of the Complaint in this matter, any answer filed in response thereto, and any response to any discovery submitted herein and are true and correct.
2. This Agreement is executed in contemplation of continuing and permanent separation and divorce.
3. The Respondent specifically stipulates and acknowledges:
 - a. That personal service of process has been made upon

said Respondent, and that said Respondent has received a copy of the Complaint, Summons and this Settlement Agreement in this action;

b. That Respondent understands that there exists a right to contest the allegations of the Complaint, but that right and all right to contest any allegations in this matter are hereby waived. If an answer has been filed, the answer is hereby withdrawn, and the Respondent consents to the entry of a default decree of divorce upon the terms set out in this Agreement;

c. That Respondent understands that the Court may waive the ninety-day (90) waiting period provided for by Section Utah Code Ann. 30-3-18, and immediately hold a hearing upon the Complaint and enter judgment against the Respondent without further notice. The Respondent consents to the entry of a default decree and believes such waiver to be in the best interest of the parties, and hereby requests the Court to waive the waiting period;

d. The Respondent understands that Utah Code Ann. 30-3-4(1)(d) authorizes the entry of a decree upon the submission of a default affidavit to the court and acknowledges that the default in this matter may proceed under that statute.

e. The Respondent understands that the law firm of Robert H. Wilde, Attorney at Law P.C. and its attorneys are and have been the attorneys for Petitioner and represent only the Petitioner in this matter and do not represent and have not represented the Respondent

for any purpose.

f. That the acknowledgments and stipulations herein are dependent upon and made in contemplation of the parties agreeing to and executing this Settlement Agreement and the Agreement being approved by the Court.

4. This Agreement shall not be deemed a condonation, by either party, of the act or acts claimed by either party to have caused the differences leading to the parties' separation.

5. No modification or waiver of any of the terms of this Agreement shall be valid unless in writing and signed by the party charged. No waiver of any subsequent breach or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

6. Each party hereby specifically agrees to cooperate with the other, through counsel or otherwise, to effect changes in titles to property affected hereby, to change the names and responsibilities for payment upon the debts allocated herein, and to cooperate, in each and every way necessary or proper, to insure that the Agreement entered into is carried out in every detail including providing information for any Qualified Domestic Relations Orders which may be contemplated or necessary. The Respondent shall pay all administrative fees imposed by any plan for the processing of a Qualified Domestic Relations Order.

7. In the event either party to this Agreement defaults in the performance of any obligations hereunder, the party in default shall be liable to the other party for all reasonable expenses, including attorney's fees, costs, and expenses incurred in the enforcement of the obligations created by this Agreement.

8. The parties agree that this Agreement is a complete settlement of all rights either party may have in the other's property, whether presently existing or hereafter acquired. The parties have completely disclosed to each other all property or assets in which either of them have any interest of any nature whatsoever.

9. In the event the court fails to approve any provision of this agreement the entire agreement shall be void unenforceable unless the parties shall agree otherwise in writing.

10. The parties agree that if they have disputes relative to the terms of the Stipulation or Divorce Decree, other than the collection of unpaid financial obligations, they will mediate their differences through a mutually agreeable mediator, with the parties to share the cost of the mediation in proportion to their income prior to filing any pleadings with the court.

CHILD CUSTODY, VISITATION AND SUPPORT

11. That parties shall have joint legal custody of the minor children with the Petitioner having physical care custody and control of the minor children, subject to reasonable rights of visitation in

the Respondent pursuant to Utah Code Anno. 30-3-33, 35.

12. Respondent shall pay \$1200.00 per month to Petitioner as child support. At the time the children reach the age of 18, or graduate with their respective graduating classes the child support obligation shall automatically be modified to reflect payment of support under the then existing statutory tables based upon the incomes of the parties at that time. Child support shall be paid in two equal payments on the 5th and 20th of each month.

13. Pursuant to Utah Code Anno. 78-45-7.15; Each parent to share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of insurance. To that end; a) The children's portion of the premium is a per capita share of the premium actually paid. The premium expense for the children shall be calculated by dividing the premium amount by the number of persons covered under the policy and multiplying the result by the number of children in the instant case. b) Each parent to share equally all reasonable and necessary uninsured medical expenses, including deductibles and copayments, incurred for the dependent children and actually paid by the parents. c) The parent ordered to maintain insurance shall provide verification of coverage to the other parent, upon initial enrollment of the dependent children, and thereafter on or before January 2 of each calendar year. The parent shall notify the other parent, of any change of insurance carrier, premium, or benefits

within 30 calendar days of the date he first knew or should have known of the change. d) A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment. e) A parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with Subsections c) and d) above.

14. Pursuant to Utah Code Anno. 78-45-7.16; (1) The noncustodial parent is ordered to pay one half for pre-school and reasonable work-related child care costs actually incurred on behalf of the dependent children. If an actual expense for child care is incurred, a parent shall begin paying his share on a monthly basis immediately upon presentation of proof of the child care expense, but if the child care expense ceases to be incurred, that parent may suspend making monthly payment of that expense while it is not being incurred, without obtaining a modification of the child support order. A parent who incurs child care expense shall provide written verification of the cost and identity of a child care provider to the other parent upon initial engagement of a provider and thereafter on the request of the other parent. The parent shall notify the other parent of any change of child care provider or the monthly expense of child care within 30 calendar days of the date of the change. In addition to any other sanctions provided by the court, a parent incurring child care

expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with the notice provisions of this paragraph.

15. Respondent shall maintain a policy of life insurance on the Respondent's life in an amount not less than \$150,000.00 through August 31, 2005, naming the Petitioner beneficiary and \$100,000.00 thereafter until the child support obligation ceases. Proof of compliance with the provisions of this paragraph shall be provided annually not later than January 15.

16. That in the event Respondent shall become 30 days in arrears in the payment of child support appropriate income withholding procedures under the Utah Code shall apply to any and all of Respondent's existing and future payors, as defined in the Utah Code and all withheld income shall be submitted to the Office of Recovery Services.

17. The tax deduction for the minor child Emily is awarded to Respondent and the deductions for the other children are awarded to the Petitioner. Not later than the 15th of March each year, Petitioner shall provide to Respondent her tax returns for the preceding year calculated two ways: one reflecting her claiming the exemptions for the two children and one in which she does not claim the exemptions for the two children. If after reviewing Petitioner'

tax returns, it would be to Respondent's financial benefit to purchase the deductions from Petitioner, he may do so by paying Petitioner the amount she would have benefitted by claiming the deductions and Respondent may then claim the deductions. Respondent shall notify Petitioner in writing within 15 days of his receipt of Petitioner' tax returns of his intent to purchase the exemption as reflected in this paragraph.

ALIMONY

18. That Respondent shall pay \$800.00 alimony per month to the Petitioner. Alimony shall terminate upon the death of either party or the remarriage or cohabitation of Petitioner. Alimony shall be paid in two equal payments on the 5th and 20th of each month.

PROPERTY ALLOCATION

19. That the Petitioner shall be awarded the personal property currently in the Petitioner's possession the 1996 Ford Windstar van and the other personal property not listed in the next paragraph.

20. That the Respondent shall be awarded the personal property currently in the Respondent's possession and master bedroom set, living room couches(2) and one chair, kitchen table, twin bed, oak desk, five lamps and leather chair together with his personal effects still in the residence. Said property may remain at the residence until Respondent wishes to remove it however Petitioner shall not be liable for any damage to the property while it remains in the

residence.

21. That the Petitioner shall be awarded the real property located at 3277 Pinon Place, Salt Lake City, Utah, and otherwise known as lot 238 Nutree #2 Subdivision, according to the official plat thereof on file in the office of the Salt Lake County Recorder, subject to an equitable lien interest in the Respondent in the amount of \$21,000.00 to be paid Respondent at the time said residence is sold, Petitioner remarries or cohabitates, the Petitioner no longer lives in the residence, or the last of the parties' children turns eighteen (18) years of age. Respondent shall pay the real property taxes and home owners insurance on the residence through August 31, 2003.

22. The parties each have 401K accounts which have been netted and the Respondent's interest charged against the equity in the residence.

23. The Petitioner shall be awarded the following financial assets: the contents of the Merrill Lynch account less the amount in the next paragraph.

24. The Respondent shall be awarded the following financial assets: \$15,000.00 from the Merrill Lynch account in Petitioner's name.

DEBT ALLOCATION

25. That the Petitioner shall pay the following debts and

obligations: all credit card and overdraft debt charged by Petitioner.

26. That the Respondent shall pay the following debts and obligations, all debt he has incurred since separation and all household debt through August 31, 2000.

27. That the Petitioner shall be authorized to notify the parties' creditors of the existence of this order and the allocation of the obligations hereunder pursuant to Utah Code Annotated 15-4-6.5.

ATTORNEY FEES AND COSTS

28. The parties shall each bear their own costs and attorneys fees.

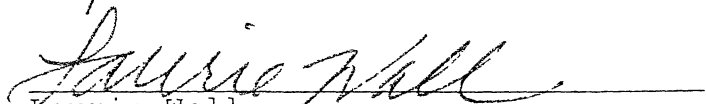
MUTUAL RESTRAINING ORDER

29. A mutual restraining order shall be entered restraining the parties from harassing, disparaging, defaming, or otherwise maligning the other at any place, at any time, to any person.

MEDIATION OF DISPUTES

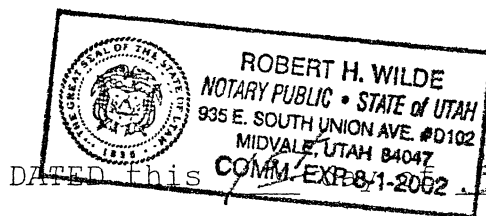
30. The parties agree that any disputes arising under this agreement or under the decree of divorce which is to follow, other than the non-payment of any financial obligation, shall be mediated before the assistance of the court is sought.

DATED this 1st day of September 2000.


Laurie Wall
Petitioner

STATE OF UTAH)
 :SS.
COUNTY OF SALT LAKE)

Appeared before me, this 18 day of October, 2000, the above-named Petitioner, Laurie Wall, and after having been duly sworn on oath and after reading the provisions and terms of the foregoing Settlement Agreement, acknowledged to me that the same was understood and signed as Petitioner's own free act and desire, without fraud, duress, or undue influence.



[Signature]
Notary Public

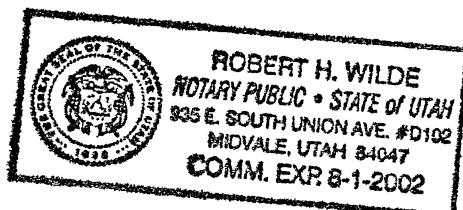
DATED this 18 September, 2000.

[Signature]
Cory Wall
Respondent

STATE OF UTAH)
 :SS.
COUNTY OF SALT LAKE)

Appeared before me, this 18 day of October, 2000, the above-named Respondent, Cory Wall, and after having been duly sworn on oath and after reading the provisions and terms of the foregoing Settlement Agreement, acknowledged to me that the same was understood and signed as Respondent's own free act and desire, without fraud, duress, or undue influence.

[Signature]
Notary Public



GREGORY B. WALL, NO. 3365

WALL & WALL, a.p.c.
Attorney for Respondent
2168 E. Fort Union Blvd.
Salt Lake City, Utah 84121
Telephone: (801) 274-3100
Facsimile: (801) 365-8223

JAN 10 2006

SALT LAKE COUNTY
By [Signature]
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

LAURIE P. WALL,

Petitioner,

vs.

CORY R. WALL,

Respondent.

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FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Civil No. 994908054 DA

Judge Sandra Peuler

Commissioner Michael S. Evans

The above-entitled matter came on for trial on the 1st day of November, 2005, on Respondent's Verified Petition to Modify Decree of Divorce, the Honorable Sandra N. Peuler, District Court Judge, presiding and sitting without a jury. The Petitioner was present and represented by her counsel of record, Robert H. Wilde. The Respondent was present and represented by his counsel of record, Gregory B. Wall. Witnesses were sworn and testified concerning the issues involved herein, and the court received into evidence certain exhibits submitted by the parties. Based upon the testimony and evidence received, and the Court being fully advised in the premises and the law does

herewith make and enter the following:

FINDINGS OF FACT

1. The parties were married on June 10, 1981, in Salt Lake County, State of Utah and divorced by way of a Decree of Divorce signed by the court on November 2, 2000 and entered by the clerk of the court on November 7, 2000.

2. That three children were born as issue of the marriage, to-wit: Jennifer Laurie Wall, born November 14, 2005 (now 18 years of age); Natalie Ann Wall, born April 21, 1993 (now 12 years of age); and, Emily Corinne Wall, born September 19, 1995 (now 10 years of age).

3. That on or about September 1, 2000, the parties entered into and executed a Settlement Agreement, the terms of which were incorporated into the Decree of Divorce which was subsequently entered by the Court as set forth hereinabove.

4. That pursuant to the terms and conditions of the Settlement Agreement and Decree of Divorce, the parties were awarded the joint legal custody of the parties' three minor children with the Petitioner being awarded the primary physical custody of the children subject to the Respondent's parent-time rights.

5. Pursuant to the terms and conditions of the Settlement Agreement and Decree of Divorce, the Respondent was ordered to pay child support to the Petitioner in the amount of \$1,200.00 per month and alimony in the amount of \$800.00 per month.

6. At the time of the divorce, the Respondent's most current and accurate income

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information consisted of his year 1999 income tax returns which reflected a gross annual income of \$56,808.00 which equated to a gross monthly income of \$4,734.00.

7. At the time of the divorce, the Petitioner was unemployed but had a monthly investment income of \$124.00.

8. The child support originally awarded to the Petitioner in the amount of \$1,200.00 exceeded the Child Support Guidelines by approximately \$30.00 per month.

9. On March 3, 2004, the Respondent filed his Verified Petition to Modify Decree of Divorce wherein he sought to reduce or eliminate his alimony obligation and reduce his child support obligation alleging that the Petitioner had experienced a substantial material change in circumstances as a result of her having attended and completed college and having become capable of becoming employed to earn an income with which to support herself and to assist in the support of the minor children.

10. That since the initiation of these proceedings, the Petitioner has worked as an independent consultant and has become employed with two different employers.

11. That from December, 2004 through approximately July, 2005, the Petitioner was fully and gainfully employed with Financial Freedom, located in Orem, Utah, earning an annual salary of \$38,000.00, or a gross monthly income of \$3,167.00.

12. That in July, 2005, the Petitioner lost her employment with Financial Freedom and subsequently obtained new employment in September, 2005 with The Local Book, located in Midway, Utah where she is currently employed.

13. Currently, the Petitioner's annual salary is \$32,000.00 which equates to a gross monthly income of \$2,666.00, which amount is reflective of the Petitioner's current ability to earn.

14. The Respondent is self-employed as an attorney and his current gross annual income, after deducting reasonable business expenses, is \$56,472.00 which equates to a gross monthly income of \$4,706.00, which amount is reflective of the Respondent's current ability to earn.

15. That more than three years have elapsed since the last child support order.

16. Based upon the parties' current respective gross monthly incomes and utilizing the Base Combined Child Support Obligation Table as set forth in Utah Code Annotated §378-45-7.14, the current child support calculation results in an obligation in the amount of \$977.00 per month.

17. There is a difference of 10% or more between the existing child support order and the amount using said current incomes.

18. The difference in the child support amount is not of a temporary nature.

19. That the Respondent has met his burden of proof showing a substantial change in circumstance relative to the issue of child support.

20. The child support amount under the child support guidelines are presumptive and the Petitioner has failed to meet her burden to overcome that presumption.

21. That implementation of the retroactivity provisions of Utah Code Annotated

§78-45-9.3(4) would adversely affect the children as the Petitioner does not have the ability to pay back to the Respondent the retroactive amount of approximately \$4,000.00.

22. That, as set forth in the Petitioner's October 11, 2005, Financial Declaration, the Petitioner's gross monthly income from her employment is \$2,666.66. The withholdings made by her employer consist of federal income tax (\$98.00); state income tax (\$93.34); and FICA (\$165.24). Accordingly, the Petitioner's net monthly income is \$2,310.00 per month.

23. The Petitioner's current monthly living expenses are reasonable and consist of: a) Mortgage (including taxes and insurance) \$765.00; b) Maintenance of residence, \$250.00; c) Food and household supplies, \$660.00; d) Utilities, \$262; e) Telephone, \$270.00; f) Laundry and dry cleaning, \$29.00; g) Clothing, \$275.00; h) Medical, \$150.00; i) Dental, \$125.00; j) Insurance, \$83.00; k) School, \$250.00; l) Entertainment, \$280.00; m) Gifts, \$50.00; n) Donations, \$400.00; o) Travel, \$50.00; p) Auto expense, \$415.00; q) Installment payments, \$235.00; r) Medical insurance, cable, "incidentals", \$473.00.

24. At the time of the divorce, no findings were made relative to the Petitioner's monthly expenses. However, at the modification trial, the Court received, as an exhibit, the Petitioner's Financial Declaration filed at or shortly before the divorce. The Court finds those expenses to be reasonable and representative of the Petitioner's then-needs.

25. The Petitioner's monthly living expenses as set forth in her Financial

Declaration filed at or near the time of the divorce were reasonable and consisted of the following: (a) Mortgage payment including taxes and insurance: \$773.00; (b) Maintenance of residence: \$31.00; (c) Food and household supplies: \$645.00; (d) Utilities: \$175.00; (e) Telephone: \$102.00; (f) Laundry: \$23.00; (g) Clothing: \$335.00; (h) Medical: \$392.00; (i) Dental: \$54.00; (j) Insurance: \$116.00; (k) Child care: \$212.00; (l) School: \$570.00; (m) Entertainment: \$171.00; (n) Transportation: \$10.00; (o) Auto expense: \$159.00; (p) Other expenses consisting of cable tv \$33.00, dance classes \$90.00, and books, music, toys \$46.00.

26. That as set forth in his May 12, 2005 Financial Declaration, the Respondent's gross monthly income is \$4,706.58. His monthly withholdings consist of federal income tax (\$100.00); state income tax (\$117.00); FICA (248.00); and medicare tax (\$58.00). Accordingly, the Respondent's net monthly income is \$4,183.58 per month.

27. The Respondent's current monthly living expenses actually incurred and paid by him consist of: (a) Mortgage, \$1,149.00; (b) Property tax, \$272.75; (c) Property insurance, \$62.00; (d) Maintenance of residence, \$100.00; (e) Food and household supplies, \$175.00; (f) Utilities, \$286.53; (g) Telephone, \$107.33; (h) Laundry and dry cleaning, \$50.00; (I) Clothing, \$125.00; (j) Medical, \$50.00; (k) Dental, \$35.00; (l) Life insurance, \$93.60; (m) Child support and alimony (pre-petition), \$2,000.00; (n) School, \$45.00; (o) Entertainment, \$200.00; (p) Gifts, \$50.00; (q) Donations, \$150.00; (r) Travel, \$100.00; (s) Auto expense, \$125.00; (t) Installment payments, \$250.00, for a

total of \$5,426.21.

28. There is no language in either the Settlement Agreement, Findings of Fact, Conclusions of Law or Decree of Divorce that the sum of \$800.00 per month in alimony was sufficient to meet the Petitioner's needs.

29. The \$800.00 per month in alimony and \$1,200.00 per month in child support at the time of the Decree of Divorce did not meet all of the Petitioner's stated needs.

30. That at the time of the Decree of Divorce, there was no contemplation by the parties that the alimony and child support amounts were going to fully meet the Petitioner's needs.

31. That based upon the language in the Findings of Fact and Conclusions of Law that the Petitioner was a full-time student with limited recent work experience, either the completion of her degree, or getting a job, or both was contemplated at the time of the decree.

32. Completion of schooling by the Petitioner in and of itself, by itself, does not constitute a substantial material change in circumstances.

33. Petitioner's income may be a substantial material change in circumstances, but it is not now. In addition to the amount she is earning, and taking into consideration her recent work history and length of employment, the Petitioner does not have sufficient financial stability that puts her at a point where she is able to meet her needs.

The Court having made the foregoing Findings of Fact now makes and enters the

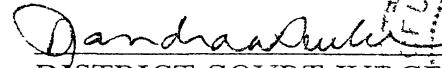
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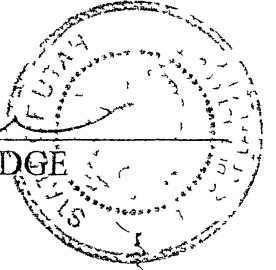
CONCLUSIONS OF LAW

1. That the Court has jurisdiction in this matter.
2. That the statutory requirements for modifying the child support award have been met and the Court should recalculate the child support obligation of the Respondent based upon the parties current gross monthly incomes.
3. The child support obligation should be modified to provide that the Respondent pay to the Petitioner child support in the amount of \$977.00 per month, subject to the automatic modification provisions found in the Decree of Divorce which will apply when the obligation for child support ceases for the individual children.
4. The modified child support obligation should be effective December 1, 2005.
5. There has been no substantial material change in circumstances regarding the Respondent's alimony obligation and the same should remain unchanged.
6. The Petitioner is awarded attorney's fees including paralegal's fees in the amount of \$3,972.50 consistent with this Court's Minute Entry Re: Attorney's Fees dated November 21, 2005.

DATED this 9 day of January, 2006.

BY THE COURT:


DISTRICT COURT JUDGE



CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Findings of Fact and Conclusions of Law was mailed, postage prepaid, and sent via facsimile, to Robert H. Wilde, 935 E. South Union Avenue, Suite D-102, Midvale, Utah 84047, FAX (801) 255-4846 this 30th day of December, 2005.


GREGORY B. WALL

Westlaw.

Page 1

Rules App.Proc., Rule 33

C

West's Utah Court Rules Annotated Currentness

State Court Rules

Utah Rules of Appellate Procedure (Refs & Annos)

Title V. General Provisions

→RULE 33. DAMAGES FOR DELAY OR FRIVOLOUS APPEAL; RECOVERY OF ATTORNEY'S FEES

(a) Damages for Delay or Frivolous Appeal. Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as defined in Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the damages be paid by the party or by the party's attorney.

(b) Definitions. For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief, or other paper interposed for the purpose of delay is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other paper.

(c) Procedures.

(1) The court may award damages upon request of any party or upon its own motion. A party may request damages under this rule only as part of the appellee's motion for summary disposition under Rule 10, as part of the appellee's brief, or as part of a party's response to a motion or other paper.

(2) If the award of damages is upon the motion of the court, the court shall issue to the party or the party's attorney or both an order to show cause why such damages should not be awarded. The order to show cause shall set forth the allegations which form the basis of the damages and permit at least ten days in which to respond unless otherwise ordered for good cause shown. The order to show cause may be part of the notice of oral argument.

(3) If requested by a party against whom damages may be awarded, the court shall grant a hearing.

ADVISORY COMMITTEE NOTE

Rule 33 is substantially redrafted to provide definitions and procedures for assessing penalties for delays and frivolous appeals.

If an appeal is found to be frivolous, the court must award damages. This is in

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Westlaw.

Page 1

U.C.A. 1953 § 78-45-9.3

C

West's Utah Code Annotated Currentness

Title 78. Judicial Code

Part IV. Particular Proceedings

Chapter 45. Uniform Civil Liability for Support Act (Refs & Annos)

→§ 78-45-9.3. Payment under child support order--Judgment

(1) All monthly payments of child support shall be due on the 1st day of each month for purposes of child support services pursuant to Title 62A, Chapter 11, Part 3, income withholding services pursuant to Part 4, and income withholding procedures pursuant to Part 5.

(2) For purposes of child support services and income withholding pursuant to Title 62A, Chapter 11, Part 3 and Part 4, child support is not considered past due until the 1st day of the following month. For purposes other than those specified in Subsection (1) support shall be payable 1/2 by the 5th day of each month and 1/2 by the 20th day of that month, unless the order or decree provides for a different time for payment.

(3) Each payment or installment of child or spousal support under any child support order, as defined by Section 78-45-2, is, on and after the date it is due:

(a) a judgment with the same attributes and effect of any judgment of a district court, except as provided in Subsection (4);

(b) entitled, as a judgment, to full faith and credit in this and in any other jurisdiction; and

(c) not subject to retroactive modification by this or any other jurisdiction, except as provided in Subsection (4).

(4) A child or spousal support payment 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 to 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.

(5) For purposes of this section, "jurisdiction" means a state or political subdivision, a territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, Native American Tribe, or other

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