

2006

Kenneth Clark Ranson v. Marianna Di Paolo : Reply Brief

Utah Court of Appeals

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Robert Devin Pusey; Attorney for Appellee.

Kenneth C. Ranson; Appellant.

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IN THE UTAH COURT OF APPEALS

KENNETH CLARK RANSON	:	
Petitioner and Appellant		
Pro Se	:	
		Appellate Case No.
vs.	:	20060449-CA
 MARIANNA DI PAOLO	 :	
Respondent and Appellee		

REPLY BRIEF OF APPELLANT

APPEAL FROM A DECREE OF DIVORCE AND OF DENIAL OF MOTION FOR NEW TRIAL, IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE JOSEPH C. FRATTO , PRESIDING

ROBERT DEVIN PUSEY(2665)
140 W. 9000 S., Suite 7
Sandy, Utah 84070-2033
801/566-9286

Attorney for Appellee

KENNETH C. RANSON
2096 E. 10095 S.
Sandy, Utah 84092
801/942-8047
kennethranson@earthlink.net

Appellant *pro se*

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2096 E. 10095 S.
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No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

<u>Utah Code 30-3-5 (8)</u>	11, 16
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(a)

The court shall consider at least the following factors in determining alimony

(vii)

whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.

(e)

If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

Constitution of Utah Article VIII Section 4

23

The Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.

REPLY BRIEF OF APPELLANT

Introduction

The Brief of Appellee in this matter (hereafter Di Paolo's brief (DB)) is almost completely unresponsive to the Brief of Appellant (hereafter Ranson's brief (RB)). Di Paolo's brief depends on deliberate misstatement of facts well within Di Paolo's knowledge, selective citation of the law when full citation tells strongly against her, argument by assertion with no evidentiary support and which deliberately ignores facts before this court, argument by implication which suggests legal theories but offers no support from the statutes or case law for such theories, and argument by unsupported twists of language and leaps of logic.

In place of rational argument Di Paolo offers a catalogue of vicious, demeaning, sexist prejudice directed at Ranson. Without any evidence to support these claims, and often in statements which are directly contradictory to one another, Ranson is represented as a "malinger, selfish, non-productive, not industrious" (DB 6-7), "not devoted to his family, self indulgent" (DB 40), and "refusing to support his family" (DB 7,40). For good measure Di Paolo claims that Ranson is attacking the local legal community (DB 26). The purpose of these totally unsupported claims is to attempt to incite sexist prejudice against Ranson in order to deny him a fair hearing on the merits of his case. Di Paolo also hopes that she can persuade the court that Ranson's case represents an attack on the Utah legal community of which the justices of this court are, of course, members.

By spreading these false arguments as widely as possible over her brief and forcing Ranson to reply in specific, Di Paolo also hopes to reduce the consideration of this appeal to the level of niggling detail and to distract this court from the larger issues at

hand. For this reason, in his Reply Brief Ranson will not attempt to reply to every false point raised, but will group the arguments of Di Paolo so that the larger issues of the case will reappear. He stresses that in doing so he will address only issues raised in Di Paolo's brief. In the numerous instances in which Di Paolo has failed to respond to well supported points in his brief, Ranson calls on the court to treat Di Paolo's failure as an admission that Ranson's position is correct. He is also confident that this court will ignore both the overt and covert attempts to sway its decision by appeal to prejudice.

Appellee's Statement of Facts

The statements offered as factual in Di Paolo's "Statement of Facts" are not facts at all but are bald assertions unsupported by any evidence. Di Paolo seeks to paint a picture of Ranson as a useless bum who for 20 years lazed around the house while she did all of the work of the marriage. But she offers no evidence to support this claim except her own unsupported testimony, given after the fact, when she is desperately seeking to avoid paying the alimony which, under Utah law, is so thoroughly required.

As referred to in his "Statement of Facts", Ranson offered at trial Petitioner's Exhibits 8-12 which demonstrate his direct involvement in Di Paolo's career. Most telling of these is Petitioner's 8, a document which includes a draft in longhand by Ranson, notes in his hand of a conversation with Di Paolo concerning it, a second draft in his hand, and then a printed copy signed by Di Paolo as her own work. Ranson introduced two file boxes of such material which showed his extensive involvement in: Di Paolo's tenure appeal, preparing Di Paolo's Year's Work forms, her 1992 job search, her research, and her demands for pay equity. Di Paolo went over these submissions

thoroughly at the time of trial and offered no evidence from them or any other source to support her claims that Ranson was not extensively involved in her career.

Many of Di Paolo's claims are directly contradictory to one another and therefore cannot both be true. As an example, Di Paolo states that Ranson is a, "malingerer who refused to financially support the family" (DB 6-7) and that, "Kenneth's decision to stay home rather than earn an income cost the family a full yearly salary compounded over many years." (DB 11). Then, 20 pages later, apparently on the assumption that this court will not be able to compare these statements, Di Paolo states that, "Kenneth had enjoyed additional passive income of at least \$18,000 per year working with the parties' joint stock account." These statements are diametrically opposed. One of them must be a deliberate falsehood. The fact that Di Paolo is willing to make deliberate misstatements of facts well within her knowledge to this court, should cause the court to view with suspicion all of the claims made by her.

In fact Ranson did earn, on average, \$18,000 per year through investments, all of which remained in the couple's joint stock accounts. Di Paolo gladly took her share of these funds at the time of divorce, and now comes before this court to claim that Ranson is a malingerer. Ranson explained thoroughly at trial why he could not make investments of this kind in his post divorce financial condition (Trial Transcript, (hereafter TT) 240-1), an explanation which was accepted by the court in its ruling when it concluded, "he has some further but small income from land and security investments but that is apparently a fairly small amount" (TT 621).

As an example of the deliberately misleading statements made by Di Paolo consider her assertion that, “Kenneth obtained his general contractor’s license, and in a later job application indicated he made \$25.00 per hour during this period” (DB 8). This creates a terrible impression, here is a licensed general contractor who has earned \$25 per hour seeking alimony. However neither of these implications is true. As Ranson pointed out in his brief, he testified that he had never been a general contractor and Di Paolo’s own witness admitted under oath that she did not know if Ranson was a general contractor or not (RB 44). Ranson also testified that no one had actually paid him \$25 per hour, he arrived at that figure as an estimate of the value of his work in building the parties home (RB44), and his earnings statement for these years (RB Addendum A-7), shows no earnings whatsoever.

Di Paolo never disputes these points in her brief and they should be accepted as true by this court. But here, by insinuation and unsupported, misleading statement she attempts to place in the mind of this court the idea that they are true. Within the length requirements of this brief Ranson cannot possibly reply to all of the false and misleading statements made by Di Paolo. And indeed Di Paolo has relied on this as a conscious strategy in larding her brief with such statements.

Di Paolo offered at trial, and offers here, no evidence that Ranson was not diligent in caring for their home and child, that she asked him to return to work instead of supporting her career, or that he was physically abusive to her. These completely false claims are made in an attempt to paint a picture of Ranson that depends on sexist stereotypes, which hold that the proper role of men is to support their families, that men

are not nurturing enough to raise children, that they are not good cooks or housekeepers, and that any man who stays home to support his wife's career in not being "manly" and so deserves nothing from this community. In Orr v Orr 99 S. Ct. 1102, the Supreme Court of the United States rejected all such stereotypes as a basis for denying alimony to men, as will be discussed further in Section A, *infra*.

Appellee's Point I

In this section Di Paolo almost completely fails to engage the arguments presented by Ranson in his brief. She says that the appropriate case law is Jennings v Stoker 652 P.2d 912, but fails to acknowledge that Jennings defers to Maltby v Cox Construction 598 P.2d 336 on this issue, and that Maltby was the case cited by Ranson. She cites Marchand v Marchand 147 P.2d 538 as concerns mere differences of trial strategy, but fails to address Ranson's extensive claims that his attorney was guilty of failure to investigate. She claims that the trial court adequately considered the Maltby precedent, but fails to address the fact that the trial court was influenced by Di Paolo's citation of the minority opinion of Maltby in a deliberate attempt to mislead the court, and never saw Ranson's correct citation of the majority opinion. Because Di Paolo fails to address the logic of Ranson's arguments this court should accept those arguments as proven and grant him a new trial on that basis.

Di Paolo asserts that Ranson raises issues in his brief that he did not raise before the trial court. She, however, never says what these are, making consideration of this point by this court impossible. She does offer in her addendum a copy of Ranson's Motion for New Trial, and may be arguing that his claims are limited to those stated in

the text of the motion. Included as Addendum A to this Reply Brief is a copy of Ranson's affidavit which was attached to his Motion for New Trial. It can be seen that the section labeled "Argument In Brief" covers all of the issues raised in Appellant's Brief before this court. Ranson does in fact present evidence to this court not presented below. One of his essential claims is that his attorney deliberately failed to present an adequate case on his behalf. To demonstrate this he must, of course, present some of the evidence which she failed to present at trial. This evidence should be considered by this court as supporting Ranson's appeal.

Di Paolo claims that Ranson failed to show that any evidence existed that could have been presented at trial which would have changed the decision of the court. Then in the body of her brief following, she repeatedly argues that Ranson's claims should be denied on the grounds, not that they are false or inequitable, but that the evidence, which is at hand, was not submitted to the trial court. She does this in the case of: Ranson's claim for funds for major purchases, his claim for retirement, his claim to have alimony based on the marital standard of living, and the admission of his earnings history. It is clear from Di Paolo's own brief that large portions of the extant, crucial evidence were not presented at trial.

Two other deliberate misstatements of fact deserve mention here. Di Paolo asserts that Ranson's physician refused to give, "an opinion as to whether Kenneth was malingering and in fact found him employable" and that, "Kenneth failed to present his attorney with a list of any other healthcare providers who could advance his claim" (DB 24-5). A glance at the document cited, (RB, Addendum A-5) shows that Dr. Barton was

reluctant to testify because he treated both Ranson and Di Paolo, and shows also an extensive list of medical providers sent by Ranson to his attorney.

Appellee's Point II

Ranson will deal with the question of equal protection of the law in Section A and with Di Paolo's claim for attorneys fees in Point IX, *infra*.

Appellee's Point III

Di Paolo asserts that the trial court made express findings that Ranson had additional income to pay taxes. The evidence she cites from the Findings contradicts her own claim. Item 59 states, "Upon the foregoing," that is in consideration of all of the items taken cognizance of previously, "the Court finds...that Petitioner is able to...enjoy...**gross** monthly income of \$2,666" (Emphasis added). Among the foregoing items, as cited by Di Paolo, are items 46 (b) and (c) which note a small income from land investments and a small income from security investments. The actual language of the trial court in its ruling, quoted *supra*, makes it even clearer that the trial court did not consider Ranson's investments to be a reliable source of income. It is clear then that the trial court ruled that when considering **all** of his sources of income Ranson's **gross** monthly income would be \$2,666. Di Paolo argues that Ranson fails to marshal the evidence. She fails to respond to his presentation of the exhibit of her own witness, which makes the necessary deductions from gross income to arrive at net income.

This court considered a nearly identical issue as recently as last June in Madsen v Madsen 2006 App 267. Mrs. Madsen appealed on the ground that the trial court based her ability to support herself on her imputed gross income. In Madsen this court cited Bakanowski v Bakanowski 80 P.3d 153 to the effect that, "the findings of fact must show

that the court's judgment or decree follows logically from, and is supported by the evidence" and ruled that, "There is nothing in the trial court's findings of fact regarding this discrepancy, much less the propriety or effect of basing Wife's ability to provide for herself on imputed gross income" and reversed and remanded. To be consistent with its own opinion in Madsen this court must reverse and remand on this issue.

In his brief Ranson pointed out that the expenses allowed him by the trial court do not include any amounts for major purchases such as automobiles, major appliances, and furniture. Di Paolo replies by saying that Ranson presented no specific evidence regarding these expenses. This implies that without such evidence these expenses cannot be considered. This is another deliberately misleading statement. In Davis v Davis 76 P.3d 716, this court considered an appeal by a husband who wished to reduce his alimony obligations. He cites as errors in his wife's expense statement her inclusion of a sum for retirement, and a \$355 loan payment on a farm which was awarded to him. The trial court accepted the wife's testimony that she was driving a high mileage car that would need to be replaced and allowed her to consider the \$355 as a car payment, with no further documentation. It also allowed her expenses for retirement on the ground that she had less saved than her husband. This court affirmed both decisions.

In another deliberately false statement Di Paolo claims Ranson never testified as to his major expenses. In fact, Ranson testified that during the marriage the parties routinely paid cash for major purchases (TT 111), that at the time of the divorce they were saving to buy a new car for him (TT 130), that his expense statement contained no amounts for durable goods purchases such as clothing, appliances, or furniture (TT 151), and that the

amounts listed for car expenses were for repairs on a 13 year old vehicle (TT 171). This court has stated repeatedly in cases such as Bakanowski and Haumont v Haumont 793 P.2d 421, that it will overturn alimony awards when such a serious inequity has resulted as to manifest a clear abuse of discretion. Even without reaching the issue of standard of living it is impossible to justify an expense calculation that does not include major expenses, and this court should follow the precedent of its decision in Davis and reverse and remand on this issue.

Appellee's Point IV

Di Paolo mischaracterizes the Bakanowski decision by saying that it would be an extraordinary finding to include retirement needs in an alimony decision. She ignores the relevant language accurately cited by Ranson in his brief, "The critical question is whether funds for post-divorce...retirement accounts are necessary because contributing to such accounts was standard practice during the marriage and helped form the couple's marital standard of living" (RB 27). She completely ignores the precedent in Gardner v Gardner 748, P.2d 1076 (RB 26), in which the Utah Supreme Court overturned an alimony award because it failed to equalize the parties standards of living after retirement. In Davis, supra, this court upheld an alimony award based on the wife's need to save for retirement. In Kemp v Kemp 2001 UT App 157, this court upheld an alimony award because the parties regular savings deposits were part of the marital standard of living.

Di Paolo repeats her argument that testimony cannot be considered as evidence for expenses, which was disposed of by citation to Davis. At trial Ranson testified that he

did not have enough retirement to support himself (TT 139), that he was not eligible for social security on his own earnings, or for any other retirement benefits except for the small portion of the marital benefits he received (TT 143), and that he had made no retirement calculations because it was only on the first day of trial that he had given up his retirement benefits in the property settlement (TT 196).

Di Paolo also says that Ranson has no need for alimony because his “future was made secure” by the property settlement (DB 33). Here Di Paolo implies a new legal standard for alimony without any reference to the law. As will be demonstrated irrefutably, *infra*, the standard for alimony in Utah is to maintain the recipient spouse at the standard of living during marriage. If this court accepts the, “he/she has enough already” standard it will endanger every alimony award made in this state in the last 30 years.

Di Paolo also refers repeatedly to the \$80,000 Ranson was awarded from the stock accounts. After taxes and attorney fees Ranson has approximately \$46,000 in this account to meet his needs for education, retirement, medical expenses, and transportation. Ranson is driving a 15 year old vehicle, has no medical insurance, cannot afford all his prescription medicine, and is unable to offer any financial assistance to his son. Contrast this with Di Paolo who has \$80,000 from these accounts, over a quarter of a million dollars in retirement, and an income of \$80,000 per year.

Appellee’s Point V

The sole argument raised by Di Paolo in this section is that because Ranson’s counsel did not submit his statement of expenses during marriage to the trial court that he

is forever barred from receiving alimony sufficient to maintain the standard of living during marriage. Di Paolo makes no reply to the Gardner precedent cited by Ranson (RB 30). In Gardner, while the trial court relied on an expense statement and trial testimony which showed expenses of \$1,200 per month, our Supreme Court accepted and relied on an expense statement prepared before trial showing \$1,700 per month in expenses, and awarded Mrs. Gardner alimony on that basis. The need to base alimony on the standard of living during marriage is so fundamental to our system of family law that it can not be excused on a mere technicality. Since Di Paolo does not question or reply to the Gardner precedent, this court should either award alimony, or reverse and remand for an award by the trial court based on the accurate statement of Ranson's expenses.

Di Paolo attempts to confuse the court by conjoining two items from the findings. The first, item 47, records the court's statement in its ruling that it needed to consider the parties standard of living during the marriage. Ranson did not notice until reading Di Paolo's brief that her attorney had very cleverly removed the phrase "during marriage" from item 47 in preparing the Findings. The actual language of the trial court is quoted by Ranson in his brief (29) and is found in the Transcript (622). There the trial court mentions the need to consider standard of living during marriage, but as pointed out in Ranson's brief, does not do so. It proceeds, as stated in item 51 of the Findings, to base its decision solely on the standard of living at the time of trial. The removal of the language "during marriage" from item 47, and its conflation with item 51 in Di Paolo's brief, is another attempt to deliberately mislead this court. Utah Code 30-5-3 states that the court may base its alimony decision on standards of living at the time of trial if this is

consistent with equitable principles. In this case the court cites no such principles and gives no justification for its decision whatsoever.

Di Paolo also seeks to imply that Ranson has padded his expenses because he has prepared four expense statements, each with a higher total than the last. The first two of these statements were prepared when Ranson was being denied access to the parties financial records by Di Paolo and so could not be accurate. What Di Paolo calls the third statement is not a statement at all. It is the work product of his attorney, Romano, which she improperly provided to Di Paolo, either inadvertently or deliberately, when Romano was “scrambling” to prepare Ranson’s case. The fourth statement was that presented by Romano without Ranson’s knowledge or consent, and which lists only his expenses after separation. Di Paolo never mentions Ranson’s one accurate statement of his expenses during marriage, even though she received and relied on this statement during arbitration. It is telling that she wishes to pretend that this statement doesn’t exist.

Appellee’s Point VI

Di Paolo notes that the trial court’s power to equalize the parties post divorce standard of living is discretionary. She then asserts that this case “presents no such circumstances.” She offers no evidence and no citation to the law, she merely attempts to dismiss this issue from consideration by the baldest assertion.

In his brief Ranson set out extremely carefully the foundational cases of Utah law which establish the rationale for, and the circumstances under which, post divorce standards of living should be equalized . He also establishes the identity between his circumstances and those of the women who received alimony in these foundational cases

(27-34). He also submitted the results of a statistical study which showed that in the court in which he filed for divorce, in the time frame in which he filed, all women in marriages longer than 10 years who had asked for alimony had received it (38-40). Di Paolo makes no objection to this information and the court should accept it as established.

In response to Di Paolo's claim, Ranson has closed the gap between the foundational cases and current practice at the trial level, and researched recent cases at the appellate level. In Peterson v Peterson 2001 UT App 51, this court listed in detail and in order the steps necessary to determine an award of alimony. The second of these is, "Then it [the trial court] should find her [the wife's] reasonable monthly expenses, **taking into account the standard of living enjoyed during the marriage**" (Emphasis added). The fifth step listed is, "If his [the husband's] reasonable expenses exceed his adjusted income, he presumably should not pay alimony, other than as may be necessary **"to equalize the parties' standards of living...**{if this is a case} in which insufficient resources exist to satisfy both parties' legitimate needs." (Emphasis added. The quote is from Williamson v Williamson 983 P.2d 1103.)

In Batty v Batty 2006 UT App 506 this court states that, "Her [wife's] needs are not simply those things needed for survival" and cites Frank v Frank 585 P.2d 453. This court goes on to say, "Instead Wife's needs **'are assessed in the light of the standard of living {the parties} had during the marriage'** quoting Martinez v Martinez 818 P.2d 538 (Emphasis added). This court concludes, "if Wife is not able to meet her own needs, the trial court should have determined the ability of Husband to fill the gap...with an eye

toward equalizing the parties' standard of living only if there is not enough combined ability to maintain both parties at the standard of living they enjoyed during the marriage,” and cites Gardner (emphasis added). Frank, Martinez, and Gardner were, of course, also cited by Ranson in his brief.

In Davis, *supra*, this court affirmed a verdict in which the trial court reasoned that, “Wife had enjoyed a higher standard of living during marriage and that alimony was needed to mitigate this disparity.” In Kemp, *supra*, this court stated that, “trial courts have been **instructed** to attempt to maintain the recipient spouse’s marital standard of living” (emphasis added). And went on to say, “we agree that an alimony award should, whenever possible, be used to equalize the parties standards of living.” In Christiansen v Christiansen 2003 UT App 348, this court affirmed an award of alimony based on the fact that the wife’s standard of living during marriage was much higher than at the time of trial. This court made nearly identical rulings on the same grounds in Charlton v Charlton 2001 UT App 114, Starley v Starley 1999 UT App 46, and Bakanowski, *supra*.

It is then undisputed that in Utah the needs of the recipient spouse include those items necessary to allow him or her to maintain the standard of living during marriage. It is also clear that if adequate funds are not available to permit this, then the post divorce standards of living of the parties should be equalized. These principles are fundamental to the administration of family law in Utah. In his brief Ranson demonstrated that he had prepared a statement of his expenses during marriage and that his attorney used it during mediation. He reproduced an email in which, before trial, he asked his attorney specifically if she intended to use this information and to pursue a claim for alimony to

allow him to maintain the standard of living during marriage, and mentioned many of the same precedents cited above. She replied in a way which assured him that she would. Then at trial she deliberately withheld this information from the court, a fact Ranson could not realize until the entire trial was over.

If this sort of slight of hand by his own attorney can succeed in depriving Ranson of his right to equal treatment, it does violence to the principle of equal protection under the law as will be discussed, *infra*. However the Gardner precedent allows this court to address this situation without reaching the equal protection issue. Consistent with its decisions *supra*, this court should either award alimony or reverse and remand in language that requires the trial court to consider, Ranson's statement of expenses during marriage, and an award of alimony that will allow him to maintain the standard of living during the marriage after divorce.

Di Paolo claims that Ranson is arguing for income equalization. She offers no evidence to support this claim. Throughout his brief Ranson argues only for maintaining the standard of living during marriage and equal standards of living. In his alimony example Ranson does show equal incomes but points out in his brief that, "equalizing incomes does not in fact equalize the parties' standards of living" due to the benefits Di Paolo receives from her employment (34).

Di Paolo's claims again that Ranson needs are limited to his expense statement. This has been dealt with twice, *supra*.

Appellee's Point VII

Di Paolo attempts to convert Ranson's argument that he contributed to the enhancement of her earning capacity during marriage, to an argument that he did not help her obtain her education. Ranson was of substantial help to Di Paolo in completing her dissertation and obtaining her Ph.D and the parties repaid her student loans out of marital funds. However, while assistance in obtaining an education is one specific form of advancing the career of a spouse, it is dealt with in Utah Code 30-3-59(8)(a)(vii) while Ranson and Di Paolo both cite Utah Code 30-3-5(8)(e) in their briefs. This second section makes no specific mention of education but only earning capacity.

Di Paolo makes no reply to Ranson's statement that her salary went from \$17,000 to \$78,000 during the marriage. This is because this is an established fact and no reply would avail. Instead Di Paolo attempts to distract this court from the truth with a repetition of the vituperative sexist arguments previewed in her Statement of Facts.

During the marriage Ranson built and paid for a home so that the parties could afford to remain in Utah when Di Paolo's salary would not support her, much less both of them. He was of crucial help in her career, cared for their child, maintained their house, cooked and cleaned, sang in the church choir, volunteered in Sean's schools, coached his soccer teams, earned money in the stock market which significantly increased the parties savings, and in every respect played a full and productive role in the life of his family. No evidence is offered to support any of Di Paolo's claims that he did not. She comes forward now, after the fact, and declares herself unsatisfied with his work, and offers that for this reason she should be excused from her legal obligation to pay alimony.

The most common cause of appeal to this court in divorce cases is from men seeking to reduce or eliminate their alimony obligations. This court almost always refuses to end those obligations even under the most exigent circumstances. In Jones v Jones 2005 UT App 287, Mr. Jones appealed from an award of alimony on the grounds that his wife was an attorney who earned \$50,000 per year and whose expenses included large dry cleaning bills and a golf club membership. His appeal was denied, though this court used its discretionary powers to modify the alimony award. In Ring v Ring 511 P.2d 155 the husband appealed to have alimony terminated on the grounds that he now earned \$8 per hour while his wife earned \$50,000 per year. His appeal was denied. Imagine how Messrs. Jones and Ring would have felt if they had known that they could have avoided paying alimony entirely if they had, at the time of divorce, and with no evidence but their own sworn testimony, accused their wives of being lazy slatterns.

If this court accepts Di Paolo's arguments in this matter it will endanger every alimony award already in place and will compromise, if not destroy, the ability of our courts to award alimony to needy spouses in the future. In the alternative it will be creating a sexist system of alimony in which men can only pay but not receive support. The violence this would do to equal protection will be discussed in Section A, *infra*.

Appellee's Point VIII

Di Paolo claims that Ranson failed to fully marshal the evidence. In his brief Ranson quoted in full the ruling of the court (20). As can be seen, this is extremely brief and fails to meet the requirements for findings of fact by trial courts, "findings must be sufficiently detailed and include enough subsidiary facts to disclose the steps by which

the ultimate conclusion was reached on each factual issue.” Cox v Cox 877 P.2d 1262.

While the trial court made no attempt to balance the contradictions in Farnsworth’s testimony, Ranson nonetheless attempted to determine for himself what points the court had relied on and listed those (RB 40). Di Paolo seeks to have this court dismiss consideration of this issue because Ranson did not, in this section, list the Findings but placed them in an addendum.

Di Paolo again appeals to sexual prejudice. She claims that Ranson was “chronically unemployed.” Women who stay home and care for their families are never represented before Utah courts as unemployed or somehow engaged in a shameful activity.

Di Paolo responds to none of the information raised by Ranson in his brief. She simply reasserts her claims from trial. She says that Farnsworth “accepted his statements” (DB 43) to disguise the fact that Farnsworth received no information from Ranson (RB 40). Di Paolo claims that Farnsworth found that Ranson was a licensed general contractor. She ignores the fact that Farnsworth admitted under oath that she did not know if Ranson was a general contractor or not (RB 44). Di Paolo admits that Farnsworth believed that Ranson had earned \$25 an hour when, as has been established *supra*, he earned no such amount, ever. Di Paolo claims that Farnsworth found that Ranson could work as a construction manager and earn \$45,000 per year, when Farnsworth admitted under oath that Ranson is not qualified to be a construction manager (RB 42). Di Paolo says that Ranson’s medical conditions were “fully discounted” by the court and so should not have been considered by Farnsworth (DB 44). Since these

conditions were not “discounted” until after the court received the testimony of a supposed expert witness who had never heard of them, this argument represents circular reasoning at its worst.

Di Paolo says that Ranson claimed he could not work and claimed a disability. Neither of these is true. Ranson claimed no disability and stipulated that he could work. He claims that it is not safe for him to work in the uncontrolled environment of a construction site. Construction is one of the “Big Four”. Along with nuclear power, coal mining, and transportation , it is one of the four industries which are far and away the most dangerous in the nation. A person can be well enough to work in all of the other walks of life and still not be able to work in these industries.

Di Paolo says that Ranson’s addenda A-7 and F-1 were “not admitted at trial”. This is another deliberate attempt to mislead this court. A version of F-1, using a different earning level for Ranson, was admitted as Petitioner’s Exhibit 20. A-7 was, of course, never presented to the court but should be considered under the Gardner precedent.

Appellee’s Point IX

Di Paolo’s claims for attorneys fees are chimerical and are designed solely to frighten and oppress Ranson because he is a pro se litigant. In Mitchell v Mitchell 2002 UT App 403, this court found that “the sanction for filing a frivolous appeal applies only in egregious cases with no reasonable legal or factual basis” and states as the standard, “we cannot say that this is an egregious case where all competent counsel would recognize that the arguments made...are without merit.”

Di Paolo cites the estate of Scheller v Pessetto 783 P.2d 70 as justifying unequal treatment of men and women in alimony determinations. She cites none of the facts of this case because they would refute her own argument. In Scheller this court found that unwed mothers and unwed fathers were differently situated because the mother physically bore the child and so could not deny parentage, as an unwed father can. As Ranson has demonstrated repeatedly, there is no difference between his situation and that of the women who receive alimony.

Di Paolo completely ignores and fails to respond to the results of a study of 297 cases submitted by Ranson to support his argument and then claims that, “Kenneth’s argument is based merely on speculation” (DB 46).

The evidence shows that illegal sexual discrimination is at the heart of this case and affects every aspect of it. Ranson has now reviewed between 500 and 600 Utah divorce cases. In every case of a marriage of long duration in which a woman has sought it, she has been awarded alimony sufficient to maintain the standard of living during the marriage. No man has ever been awarded such alimony and the only man to seek it, Ranson, was awarded no alimony at all.

Ranson contacted 19 Utah family law attorneys and all of them refused to represent him if he sought alimony. Finally one of their number did agree to represent him, however, as abundantly demonstrated in Ranson’s brief, she completely failed to present an affirmative case on his behalf, deliberately misled him, refused to subpoena witnesses at all or until it was too late, and, when necessary to insure that he would lose his case, deliberately withheld crucial pieces of information from the court.

The findings of the trial court concerning Ranson's earnings ability are further evidence of sexual prejudice. In none of the over 500 cases consulted was a wife who had been out of the workforce for a significant period found not to have suffered any impairment in her earnings ability. The example of Gardner was given in Ranson's brief. In Davis, Mrs. Davis, who had worked outside the home for 12 years of a 35 year marriage, was found to have low employment prospects. In Wall v Wall 2007 UT App 61, a wife who had just graduated from college was found to still require \$800 per month alimony. In Christiansen, *supra.*, a wife who had not completed college was awarded \$3,000 per month for seven years so as to complete a masters degree.

In this case it was found that after 20 years of marriage and 17 out of the workforce, Ranson's earnings abilities had increased ten fold. This represents the sexist idea enunciated by Di Paolo in her brief when she says, "male individuals generally have better jobs and make more money." As shown in the citations to the case law, *infra*, it violates the constitutional guarantee of equal protection to treat a litigant as a member of a class rather than evaluating their needs based on their individual circumstances. Most men do not experience a 17 year break in their careers. Ranson is entitled to have his earnings potential evaluated in comparison with people who have experienced such a break, and those are the women who have been found to need alimony.

Sexual discrimination is evidenced by the virulently sexist language and sexist assumptions in Di Paolo's brief. That a man is supposed to support his family, that a man who supports his wife's career is lazy, a malingerer, not productive. All of these claims have been rejected by the U.S. Supreme Court in Orr v Orr as cited, *infra*.

Section A-New Trial and Equal Protection of the Law

In her Points 1 and 2 Di Paolo raises the issue of new trial and equal protection of the laws. In the interest of clarity and brevity Ranson has combined these issues for reply here.

American courts have repeatedly held that the basic premise of the doctrine of equal protection of the laws, applied to the states by the 14th Amendment, is that no person or class shall be denied the same protection of the laws as other persons or classes in like circumstances. And that the heart of this command is that the government must treat citizens as individuals rather than as components of racial, national, or sexual classes. Hooper v Bernalillo County Assessor 105 S. Ct. 2862.

In Orr v Orr, the U.S. Supreme Court considered whether a state could deny alimony to men by statute. It ruled that a state could not and the reasons for its decision are telling for this case. It held that, “the old notion that generally it is the man’s primary responsibility to provide a home and its essentials” can no longer justify gender discrimination. It went on to recognize the disparity of economic condition caused by the long history of discrimination against women, but rejected the idea of using sex as a proxy for need, or of denying alimony to men to compensate for discrimination in marriage. The court wisely noted that such denial gave advantages only to women whose husbands were in need. These, the court reasoned, were precisely the women who were least likely to have been victims of discrimination.

It is clear then that Utah cannot deny alimony to men by statute. It is equally clear, however, that Utah is denying alimony to men by practice, since no woman in

Ranson's condition has ever been denied alimony and no man has ever been granted it. This also violates the 14th Amendment, since the courts have found that equal protection is violated by discrimination not only by the express terms of a statute, but also by its improper execution, Edward Valves v. Wake County 471 S.E. 2d 342. Further, the U.S. Supreme Court has found that discriminatory intent need not be proved by direct evidence but may be inferred from the totality of relevant facts, Rogers v Lodge 102 S. Ct. 3272.

The excuse offered for denying Ranson alimony is that his attorney failed to present his case and that there is no legal principle by which he can be awarded a new trial. In general the 14th Amendment does not apply to private actors, but private actors become state actors when they exercise a state function, or when the state has become significantly involved in, or state action significantly aggravates, private discrimination.

In Edmonson v Leesville Concrete 111 S. Ct. 2077, the Supreme Court found that the use of peremptory challenges to exclude jurors on the basis of race by a private litigant violated equal protection. It reasoned that because there was statutory authority for the challenges exercised, and the claimed constitutional deprivation had its source in state authority, then in all fairness the private litigant must be viewed as a state actor. In this case, when Article VIII, Section 4 of the Utah Constitution requires the Utah Supreme Court to govern the practice of law, and when the Rules of Judicial Conduct, Part II, do in fact govern admission to the bar, conduct, and discipline of attorneys, the right Ranson claims as violated must also be considered to have its source in state authority, and Romano must be taken as a state actor.

However, even if we assume, *in arguendo*, that attorneys are private actors, the state has clearly become so involved in and so aggravated the private discrimination as to make it state action. The U.S. Supreme Court has ruled that: the impetus for forbidden discrimination need not originate with the state if it is state action that enforces privately originated discrimination, Moose Lodge v Irvis 92 S. Ct. 1965; conduct that is formally private may become so entwined with governmental policies as to become subject to the constitutional limitations placed on state action, Evans v Newton 86 S. Ct. 486; the action of a state court taken to enforce private discriminatory agreements is state action, Shelley v Kramer, 63 S. Ct. 836; and a court must assess the potential impact of official action in determining if a state has significantly involved itself in invidious discrimination, Reitman v Mulkey 87 S. Ct. 1627. In this case, where the state of Utah is prohibited from denying alimony on the basis of sex by statute or judicial practice, it arrives at the same result by relying on refusal, due to sexual prejudice, of Ranson's attorney to present his case. A clearer example of private conduct becoming state action can hardly be imagined, since the state relies on the private conduct to practice discrimination it is clearly prohibited from practicing in any other way. This violates the constitution and relevant authority.

The Supreme Court has also found that the proper remedy for a violation of equal protection is to eliminate discriminatory effects and to bar like discrimination in the future, U.S. v Virginia 116 S. Ct. 2264. The only way to achieve those ends in this case is for this court to order a new trial, so that Ranson's entire case can be placed in the

record, and so that a precedent can be created which will bar such discrimination in the future.

In his brief Ranson presented the authority and the argument for the foregoing. He did not however present the citations and he is now aware that this might constitute a flaw in briefing, as it might affect Di Paolo's opportunity to respond. If the court finds this to be the case the appropriate remedy is to allow supplementary briefing. There is no reason Ranson should be denied a fundamental constitutional right from a cause that can be so easily cured under the rules.


Conclusion

In order not to do violence to the equal protection clause of the 14th amendment this court must reverse and remand this case for new trial.

If the court fails to reverse on that ground, to be consistent with its own rulings in Peterson, Batty, and the catalogue of cases listed, the court must reverse and remand for the trial court's failure to consider the statutorily required elements of standard of living during marriage, standard of living post divorce, and increase in the earnings of one party, and the precedentially required need to consider funds for retirement. It should remand as well for consideration of the effects of prejudice and misleading information in its determination of Ranson's earning ability, and the inequity of a finding of needs that does not include major purchases.

In order to be consistent with its recent ruling in Madsen the court must reverse and remand for findings on the propriety of basing the need for alimony on Ranson's gross income.

DATED this 11th day of June, 2007.



Kenneth Clark Ranson

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of June, 2007, I caused to be delivered by first class mail, two true and correct copies of the foregoing corrected copy of the REPLY BRIEF OF APPELLANT to the following:

Robert Devin Pusey
140 West 9000 South, #7
Sandy, UT 84070



Kenneth Clark Ranson

ADDENDUM A

Kenneth C. Ranson
2096 E. 10095 S.
Sandy, Utah 84092
801/942-8047
kennethranson@earthlink.net

**IN THE THIRD DISTRICT COURT FOR THE STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT**

KENNETH CLARK RANSON	:	AFFIDAVIT OF KENNETH CLARK RANSON IN SUPPORT OF MOTION FOR NEW TRIAL ON THE GROUNDS OF INCOMPETANCE OF COUNSEL
Petitioner,	:	
vs	:	Civil No. 044900818
MARIANNA DI PAOLO	:	Judge Joseph C. Fratto Jr. Comm. T. Patrick Casey
Respondent	:	

PETITIONER, KENNETH CLARK RANSON, having been first duly sworn under oath hereby submits the following affidavit in support of his Motion for a New Trial on the grounds of ineffective representation of counsel.

Argument in Brief

Ms. Romano's behavior in this case meets, more than abundantly, the requirements set out in Utah case law for granting a new trial based on incompetence of counsel.

In *Maltby v. Cox Construction*, Utah 598 P,2d 336 (1979) then chief justice Crockett writing for a majority of the Utah Supreme Court, rejected the idea that incompetence of counsel was grounds for reversal only in criminal cases saying, "The purpose of all court proceedings is, of course, to do justice. If

the process has so clearly gone awry that an injustice has resulted, the court in charge of the trial, or this court on review, should rectify such an unfortunate occurrence, whether the proceeding is criminal or civil.”

In *State v. Lopez* 886 P.2d 1105, 1113 (1994) Justice Howe writing for a unanimous Utah Supreme Court accepts in determining effective assistance of counsel the two pronged test advanced in *Strickland v. Washington* 466 U.S.668 (1984). “The first prong of the test requires the defendant to show that counsel’s performance fell below an objective standard of reasonable professional judgment.” “The second prong requires the defendant to show that counsel’s performance prejudiced the defendant.”

The facts of this case show clearly that my counsel Ms. Bridget Romano, of the law firm of Kruse, Landa, Maycock, and Ricks, failed utterly to prepare and document an affirmative case on my behalf.

She failed to present expert witnesses concerning my employability and earnings capacity after I had been out of the workforce for 19 years, in spite of the fact that she knew this would be a crucial issue in this case, that she had assured me for ten months that she would prepare such evidence, and that she knew that adverse counsel expected to present an expert witness on the same subject.

She failed to present testimony by my medical advisors and to enter into evidence my medical records, which document serious long term illnesses which place limitations on my activity and which require continuing medical care of the highest quality and substantial expense, in spite of the fact that for ten months she had assured me she would do so.

She did not review my testimony with me in spite of requests from me to do so. She did not show me in advance the exhibits she intended to present at trial or even tell me in full what issues she intended to address. She made no effort to prepare me for questions which I might be asked by adverse counsel. She did not explain to me how my need for alimony and current earning ability would be determined by the court, leading me to believe that my earnings from 25 years ago were not material and that my needs would be established from my expenses during marriage, in accordance with information she had presented at mediation. As a result I was completely surprised while on the witness stand by a question by adverse counsel as to what my earnings had been in the 1970s. I answered that I thought I had

earned as much as \$25,000 per year. In fact the most I ever earned in any one year is slightly over \$8,000. Had the court had this information it is very unlikely that it would have found that I can now earn \$32,000, or four times my maximum earnings in any previous year.

She delivered to adverse counsel confidential information which I had provided her to prepare my case. She never told me she had done this. Adverse counsel then surprised me with this information while I was on the witness stand and used it to impeach my testimony.

She refused to present my claim, as separate property, to my college money, which I used to construct my home, and which I had always accounted for separately. This claim is well supported in case law and I provided her citations. Romano had always told me that she would pursue it, then three days before trial she insisted that I abandon it. Since she had previously threatened to withdraw from representation and leave me without counsel at trial I had no choice but to comply. The abandonment of this claim led to the loss of this money and also allowed adverse counsel to represent that I had made scant financial contribution to the marriage. Romano's behavior violated the requirement at law that she consult with me and that I have the advantage of her counsel.

Ms. Romano did all of the above in spite of having ten months to prepare for trial, having been paid large fees to prepare, and having assured me many times that she would so prepare and that we were in agreement on the structure and requirements of my case. Ms. Romano is a competent attorney who currently works in the Utah Attorney General's office and the fact that she did not prepare my case under these circumstances is evidence that she did so willfully, and that her motivation was illegal sexual prejudice.

That the lack of the evidence she failed to present prejudiced my case to the extent that the proceedings cannot not be relied upon is indisputable, being established by the words of this court in making its ruling. In that ruling the court said that it needed to take its finding on a preponderance of the evidence presented at the trial. And that it based its ruling on the testimony and evidence of the witness Farnsworth, the employment counselor called by respondent. The court relied on Farnsworth's opinion to the exclusion of petitioner's in matters of employment and earning capacity. The court also relied on Farnsworth's opinion to the exclusions of petitioner's in matters of his health saying, "I quite frankly don't have much competent evidence to

that". In these words the court specifically notes the crucial lack of evidence that Romano willfully refused to provide I spite or my entreaties that she do so.

Argument in Specific and Supporting Evidence

Four times during the period I employed Ms. Romano to represent me I briefed her extensively on my case, provided a theory of my case with legal citations to support it, provided her with documentary evidence necessary to the case, offered to provide such other evidence as she thought necessary, and paid her large legal fees for her work. At the end of each of these periods Ms. Romano declared herself fully prepared to move forward with some affirmative aspect of my case. This was in every case a deliberate misstatement of the facts. Every time we would reach the point where Ms. Romano would have to admit that there was nothing more for me to do and it was time for her to prepare an affirmative case on my behalf, she would immediately drop all consideration of my case and frequently completely forget all of the information I had paid her large sums of money to familiarize herself with.

The first of these events occurred in October, 2004. I retained Ms. Romano to represent me in this matter on September 1, 2004. While charging me substantial fees she did nothing to advance my case, so that on October 26, 2004 when adverse counsel filed a certification of readiness for trial she was forced to object, unsuccessfully, on the grounds that, as she admits in her Objection, she had done nothing to advance my case. A copy of the Objection is included as exhibit A1

In November, 2004 Ms. Romano continued to charge me substantial fees for her work. On November 29, 2004 we met and I presented her with an outline of my case. At that time I asked her to subpoena my medical records and testimony about my medical condition from my primary care physician Dr. Lewis J. Barton and provided her with his contact information. I also asked her if I needed to see an employment counselor. Copies of the memoranda I gave her at that meeting are enclosed and marked Exhibits A2 and A3 respectively.

In spite of our meetings and her promises to do so Ms. Romano never prepared a formal response to a settlement proposal put forward by the

Respondent. As a result we were unprepared for a pretrial hearing which adverse counsel requested and which was ordered by Commissioner Casey. I therefore asked Ms. Romano to postpone the hearing until she was prepared. She did inquire of adverse counsel if the hearing could be postponed. When he did not agree the hearing took place without adequate preparation on the part of Ms. Romano. A copy of an email of December 1, 2004 from Ms. Romano to me in which she admits to not preparing a settlement offer is enclosed as Exhibit A4. A copy of an email from me to Ms. Romano of the same date in which I remind her that I have delivered to her the memo (of Exhibit A2) and ask her to now move forward with my case, is enclosed as Exhibit A5.

At the pre-trial conference which was held on December 2, 2004 the parties were ordered to engage in mediation. At that time Ms. Romano told me that she would actively work to obtain a mediator and prepare for mediation. This was a deliberate misstatement of fact. She in fact did nothing to prepare for mediation, to respond to respondents settlement offer, or to prepare an affirmative case on my behalf. On January 20, 2005 I received an email from Ms. Romano in which she informed me that adverse counsel had unilaterally chosen the mediator and had arranged for the Respondent to pre-interview the mediator and so establish a relationship with her. A copy of this email is enclosed as exhibit A6. When I complained to Ms. Romano that it was injurious to my interests that this matter be mediated by someone who was already working with the Respondent, she told me there was nothing wrong with this. A copy of this email is enclosed marked Exhibit A7.

On April 5, 2005 Ms. Romano suggested to me in an email that she and I should prepare a written settlement response. A copy of this email is included as Exhibit A8. I had, as shown above, agreed to this idea the previous fall and had already paid her thousands of dollars and devoted dozens of hours of my time in attempting to have such a document prepared. In spite of all this Ms. Romano had never prepared any such proposal.

In response to her suggestion in the months of April and May, 2005 I spent dozens more hours preparing and providing information to Ms. Romano and paid her, and members of her staff, many more thousands of dollars in fees so that she would prepare a written settlement offer. By the end of May I had provided Ms. Romano with all of the information she had requested. I communicated the last of this to her on May 24, 2005, a copy of this email is

enclosed marked Exhibit A9, and then waited to hear from her that she had prepared the long awaited written settlement proposal.

I next heard from Ms. Romano on July 18, 2005. A copy of this memo marked Exhibit A10 is enclosed. She had not prepared a written settlement proposal nor would she ever prepare one in spite of having promised to do so, and having suggested herself that she should do so, repeatedly.

This email and two emails of July 21, 2005 marked Exhibits A11 and A12, respectively, show further that Ms. Romano had completely forgotten about my case and about all of the information which her responsibilities as counsel required her to review and advise me about.

At this point Ms. Romano had represented me for over ten months. I had presented her with outlines of my case and asked her to take steps to prepare it at least as early as November 29, 2004 as shown in the memos marked Exhibits A2 and A3, and repeated those requests throughout her representation of me as shown by a memo of February 8, 2005, marked Exhibit A13. I had repeatedly asked her to subpoena my physician, refer me to an employment counselor, and subpoena other information we would need to prove my case. Ms. Romano had never suggested that she would not take these steps but had always assured me that she would.

On July 18 there were 13 days left to issue subpoenas and prepare a witness list for trial. Had Ms. Romano moved expeditiously to do so there was still time for her to contact physicians so as to insure my medical records would be entered into evidence and refer me to an employment counselor. She did not do either of these things. On July 28, 2005 I sent her two emails, copies of which are enclosed, marked Exhibits A14 and A15 respectively, saying that I was not satisfied to react to the case of adverse counsel, that we needed to present an affirmative case, and asking her to speak to my physicians and to an employment counselor.

I discovered at this time that instead of working on my case as she had indicated she would do in a meeting on July 26, 2005, that Ms. Romano had gone on vacation with her family. When her legal assistant Jody Jenson conveyed my emails to Ms. Romano, Ms. Romano announced her intention to withdraw from my case and advised me to obtain other counsel. A copy of Ms. Jenson's email containing Ms. Romano's response is enclosed,

marked Exhibit A 16. The deadline for preparing a case was now the next business day and the date of trial was now 12 business days distant.

It is true that in this email Ms. Romano conveys to me for the first time the name of an employment counselor. But notice that she tells me that if I consult this counselor I will do so completely on my own. Since it was then 10AM on a Friday and since the deadline for submitting the witness list was 5PM of the next Monday I did not see how I could obtain an appointment with this counselor unless Ms. Romano used her influence to get me one. Since Ms. Romano never offered to add the counselor to the witness list and indicated that I would be acting totally on my own, the provision of a name alone does not constitute effective assistance of counsel.

It is also true that on August 3, 2005 Ms. Romano finally, only 11 months after I first asked her to, spoke to my primary care physician Lewis J. Barton. She found that Dr. Barton's testimony would not help my case. I then asked her to contact any of the other physicians who had treated me over the last 6 years for serious health problems so that my medical records could be introduced at trial. On August 4, 2005 she sent me an email refusing to do this on the grounds that it was now too late to add names to the witness list. A copy of this email is included as Exhibit A17. She then argued instead, and for the first time in her now 11 month representation of me, that my medical records were not necessary to a fair trial. Note that at this point adverse counsel had still not delivered to Ms. Romano a copy of employment counselor Farnsworth's report. This report was later admitted by the court after the normal evidentiary deadlines. If Ms. Romano had been similarly active in representing my interests it seems likely that my medical records and an employment counselor's report on my behalf could also have been admitted.

If at this point Ms. Romano had gone to the court, confessed her failure to prepare my case, and offered to withdraw, as she had already threatened to withdraw to intimidate me, it seems likely that the court would have granted me a continuance. Instead Ms. Romano insisted on proceeding with my case knowing full well that she had prevented the presentation of crucial evidence necessary to the success of the case.

Ms. Romano continued to weaken my case with incompetent lack of preparation. For several crucial days she stopped all preparation for trial in order to prepare for other cases and to discuss a settlement with adverse

counsel. As a result she did not consult with me on the structure of the case she intended to present. I never saw and have still never seen the exhibits she presented in court except for such of them as were handed to me on the witness stand. Ms. Romano made no effort whatsoever to prepare my testimony in spite of repeated requests from me to do so. Her only advice was to, "be careful", which is hardly adequate preparation. Ms. Romano also delivered to adverse counsel confidential information from the files of my case which he used to surprise me on the witness stand. An email of August 12, 2005 in which Ms. Romano admits that she is scrambling, only at that moment, to prepare the exhibits because she had put case preparation on hold is enclosed as Exhibit A18

I had been asking Ms. Romano to contact physicians so that my medical history could be submitted in evidence for over ten months. I had been asking her to refer me to an employment counselor for the same period of time. She had never indicated that she would not. I had provided her with whatever information she asked for completely and promptly, setting aside other duties to give first priority to this matter. I had paid her whatever fees she thought to charge. I had then done everything it was possible for me to do to have my case presented to this court. That Ms. Romano failed to present these crucial aspects of my case was not a tactical decision. It was, instead, a completely incompetent and apparently entirely deliberate act on her part.

Her willful actions deprived me of the effective assistance of counsel and denied me the right to a fair trial.

The only way in which justice can be done in this matter is for the court to order a new trial at which I will be allowed to present the testimony of an expert witness to counter that of Farnsworth, to present the testimony of one of my physicians and to have my medical records, which contain evidence of serious long term illness, entered into evidence before the court, to testify to the actual amount of my past earnings, to see and participate in the presentation of exhibits, and to have my case presented without confidential attorney client communications being presented to adverse counsel.

For all the foregoing reasons, I respectfully request the Court to grant a new trial in this matter.

DATED this 24th day of
February, 2006.

Kenneth Clark Ranson

STATE OF UTAH)

:ss.

COUNTY OF SALT LAKE)

On the 24th day of February, 2006, personally appeared before me Kenneth Clark Ranson, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 2006, I hand delivered, a true and correct copy of the foregoing AFFIDAVIT IN SUPPORT OF PETITIONER'S MOTION FOR NEW TRIAL to the following:

Robert Devin Pusey
140 West 9000 South, #7
Sandy, UT 84070

Kenneth Clark Ranson