

2006

# Kynda Kay Richardson v. Kenneth Andrew Richardson : Reply Brief

Utah Court of Appeals

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Scott L. Wiggins; Arnold and Wiggins, P.C.; Joseph Lee Nemelka; Attorneys for Appellee.  
J. Bruce Reading, Johnathan H. Rupp; Scalley, Reading, Bates, Hansen and Rasmussen, P.C.; Attorneys for Appellant.

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**IN THE SUPREME COURT OF THE STATE OF UTAH**

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KYNDA KAY RICHARDSON,

Respondent / Appellee,

vs.

KENNETH ANDREW RICHARDSON,

Petitioner / Appellant,

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Case No. 20070578-SC  
20060575-CA

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**APPELLANT'S REPLY BRIEF**

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Joseph Lee Nemelka (6620)  
JOSEPH LEE NEMELKA, P.C.  
Co-counsel for Appellee  
6806 South 1300 East  
Salt Lake City, Utah 84121  
Telephone: (801) 568-0654  
Facsimile: (801) 568-9196

Scott L. Wiggins (5820)  
ARNOLD & WIGGINS, P.C.  
Co-counsel for Appellee  
American Plaza II, Suite 105  
57 West 200 South  
Salt Lake City, Utah 84101  
Telephone: (801) 328-4333  
Facsimile: (801) 328-2405

J. Bruce Reading (2700)  
Jonathan H. Rupp (11463)  
Attorneys for Appellant  
SCALLEY READING BA  
HANSEN & RASMUSSEN, P.C.  
15 West South Temple, Suite 600  
Salt Lake City, Utah 84101  
Telephone: (801) 568-0654  
Facsimile: (801) 568-9196

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Joseph Lee Nemelka (6620)  
JOSEPH LEE NEMELKA, P.C.  
Co-counsel for Appellee  
6806 South 1300 East  
Salt Lake City, Utah 84121  
Telephone: (801) 568-0654  
Facsimile: (801) 568-9196

Scott L. Wiggins (5820)  
ARNOLD & WIGGINS, P.C.  
Co-counsel for Appellee  
American Plaza II, Suite 105  
57 West 200 South  
Salt Lake City, Utah 84101  
Telephone: (801) 328-4333  
Facsimile: (801) 328-2405

J. Bruce Reading (2700)  
Jonathan H. Rupp (11463)  
Attorneys for Appellant  
SCALLEY READING BA  
HANSEN & RASMUSSEN, P.C.  
15 West South Temple, Suite 600  
Salt Lake City, Utah 84101  
Telephone: (801) 568-0654  
Facsimile: (801) 568-9196

**TABLE OF CONTENTS**

ARGUMENT.....1

I. The Court of Appeals Was Incorrect When It Affirmed An Order That Requires Mr. Richardson to Provide Support for His Adult Children .....1

II. The Court of Appeals Was Incorrect When It Affirmed An Order of Future Adjusting Alimony .....2

III. The Decision of the Court of Appeals Creates Inconsistent Tax Results.....2

CONCLUSION.....4

**TABLE OF AUTHORITIES**

**CASES:**

*MacLean v. MacLean*, 523 P.2d 862 (Utah 1974).....4  
*Race v. Race*, 740 P.2d 253 (Utah 1987).....2  
*Westenskow v. Westenskow*, 562 P.2d 1256 (Utah 1977).....3

**STATUTES:**

Utah Code Ann. § 30-3-5(8)(g)(ii).....3, 4  
Utah Code Ann. §§ 78-45-1 through §§ 78-45-13.....2, 4

## ARGUMENT

### 1. The Court of Appeals Was Incorrect When It Affirmed An Order That Requires Mr. Richardson to Provide Support for His Adult Children.

It was an abuse of discretion for the trial court to grant future alimony adjustments based upon the minor children reaching the age of majority and the subsequent termination of child support payments. Mrs. Richardson argues that Mr. Richardson failed to adequately marshal the evidence. *See Appellee's Brief*, at pp. 14-15. However, Mr. Richardson is not challenging a finding of fact, but rather the law that the trial judge applied to the facts before him.

Mrs. Richardson further states that Mr. Richardson mischaracterizes the trial court's alimony award. *See Appellee's Brief*, at pp. 15. There has been no mischaracterization. The trial court's award that increased alimony upon the termination of child support makes sense under only two scenarios. Both scenarios constitute an abuse of discretion. First, the court expected that Mrs. Richardson would use some child support funds to maintain her own standard of living and then when child support stopped, she would need an increase in alimony to continue under the same standard. This expectation by the court was evidenced when it stated:

While a significant amount of [Mrs. Richardson's] expenses can now be attributed to minor children in the home, a good part of the income needed by [Mrs. Richardson] to maintain the appropriate standard of living is also attributable to child support payments from [Mr. Richardson]. *See R.* at 229

Second, the court expected that Mrs. Richardson would continue to support the children for a time after they reached eighteen, and the court did not want Mrs. Richardson to bear the full financial burden of providing such support. This expectation by the court was evidenced when it stated:

[R]easonable expenses associated for a time with older children will not necessarily diminish to zero as they reach eighteen. *See R.* at 228-229.

If the first scenario was the basis for the court's award, the award was improper because "[c]ourt ordered child support is an obligation imposed for the benefit of the children, not the divorcing spouse." *Race v. Race*, 740 P.2d 253,256 (Utah 1987).

If the second scenario was the basis for the court's award the award was improper because it forced Mr. Richardson to continue to provide support for his adult children, albeit by funding Mrs. Richardson, who was in turn supporting the adult children. Neither the legislature, nor other courts have seen fit to impose a responsibility to support able-bodied adult children past age eighteen, or the graduation from high school. It was an abuse of discretion for the trial court to require such in this case.

The fact that this particular family had a history of children remaining in the home past eighteen is no justification for requiring Mr. Richardson to supplement Mrs. Richardson's income so that she can continue to support the adult children. Either parent may elect to assist adult children. It should be the choice of the parent – not the order of the court that dictates such assistance. It is not proper for the court to order Mr. Richardson to increase alimony because Mrs. Richardson *chose* to support adult children.

The holding of the trial court and the Court of Appeals opens the door for any court to ignore the Uniform Civil Liability Act at Utah Code Ann. § 78-45-1 *et seq.* by requiring a parent to continue to support their adult children through the guise of alimony, any time the court sees fit. While, a practical matter, parents typically support their children into adulthood, the law

makes no requirement past age eighteen. If a parent wishes, they have the legal right to completely cut off a child upon its eighteenth birthday. This rarely happens because parents have love and compassion for their children that continues past age eighteen, but as far as the law is concerned, the parent has met their legal responsibility as soon as that child turns eighteen or graduates from high school. To require more is an abuse of discretion.

2. The Court of Appeals Was Incorrect When It Affirmed An Order of Future Adjusting Alimony.

Not only was it an abuse of discretion to require Mr. Richardson to provide support for his adult children, but it was also an abuse for the court to make future alimony adjustments based on speculative events. The general rule governing future adjustments to alimony is set forth by Utah Code Ann § 30-3-5(8)(g)(ii). It states:

The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

There are no such extenuating circumstances in this case. Mr. Richardson recognizes that courts have, on rare occasions, found extenuating circumstances justifying deviation from the general rule. However, such cases deviate from the well established standard and are easily distinguishable from our case. In *Westenskow v. Westenskow*, 562 P.2d 1256 (Utah 1977), the court allowed a future adjustment of alimony because it found that the party paying the alimony was likely to have a significant increase in income. In that case, after granting future alimony increases, the court said that if the party's income was seriously and permanently decreased he could at that point prove the necessity for a modification. *Id.* at 1257. There, the party paying



the alimony would know that they needed to petition for a modification. In our case the alimony increases are based, not on an increase in Mr. Richardson's income, but in a decrease in the child support payments Mrs. Richardson is receiving.

At the time when alimony adjusts in the future, Mrs. Richardson's income (hence her ability to meet her needs) is now not known; her marital circumstances (hence, contribution to joint living expenses) is now not known; and the physical ability for the Parties to be able to work is now not known. Under *Westenskow*, the future knowledge of the circumstances is with the person paying the alimony, not the person receiving it.

This Court stated well the rule of law that governs this case, “[w]e deem it best that the changes in alimony either downward or upward should be left to future determinations by the court under its continuing jurisdiction.” *McLean v. McLean*, 523 P.2d 862, 863 (Utah 1974). The parties have not made an agreement that they will support the children past age eighteen and the minor children have not stated that they intend to reside with Mrs. Richardson after they turn eighteen. Therefore, the determination of the need for alimony should be left until such time as it becomes necessary. If Mrs. Richardson finds that as the children reach eighteen and the child support payments stop that she is unable to maintain her standard of living then, and only then, will it be proper for her to petition the court for an increase in alimony. As it stands, the trial court's award runs contrary to the Uniform Civil Liability for Support Act found at Utah Code Ann. §§ 78-45-1 through 78-45-13, the statute governing future alimony adjustments found at Utah Code Ann. § 30-3-5, and the rule set forth in multiple cases cited in this reply and the

appeal brief. Therefore, the trial court's award granting future alimony increases is an abuse of discretion and must be reversed.

3. The Decision of the Court of Appeals Creates Inconsistent Tax Results.

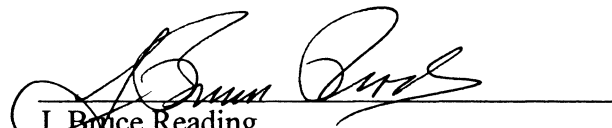
As stated in the Appellant's Brief, the Decision of the Court of Appeals sets a precedent that will likely create inconsistent tax consequences. While this issue may not have been properly preserved for appeal, it is still proper for this Court to review the public policy concerns raised by the precedent created by the Court of Appeals.

**CONCLUSION**

For the foregoing reasons, Kenneth Richardson requests a reversal of the decision of the Court of Appeals.

DATED this 20 day of February, 2008.

SCALLEY READING BATES  
HANSEN & RASMUSSEN, P.C.

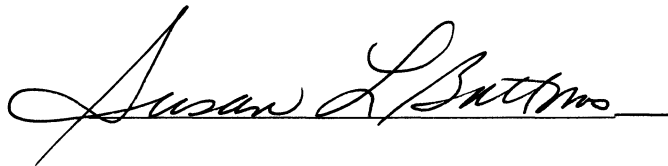
  
\_\_\_\_\_  
J. Bruce Reading  
Jonathan H. Rupp  
*Attorneys for Appellant*

**MAILING CERTIFICATE**

I hereby certify that I had delivered, postage prepaid, a true and exact copy of the foregoing **APPELLANT'S REPLY BRIEF** to the following party on the 22 day of February 2008:

Joseph Lee Nemelka  
Attorney at Law  
6806 South 1300 East  
Salt Lake City, Utah 84121

Scott L. Wiggins  
Arnold & Wiggins, P.C.  
Attorneys at Law  
American Plaza II, Suite 105  
57 West 200 South  
Salt Lake City, Utah 84101

A handwritten signature in black ink, reading "Susan L. Battino", written over a horizontal line.