

1995

Karen Marie Bradford v. William R. Bradford II : Brief of Appellant

Utah Court of Appeals

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Marvin D. Bagley; attorney for appellee.

Dexter L. Anderson; attorney for appellant.

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IN THE UTAH COURT OF APPEALS

Karen Marie Bradford
Plaintiff/APPELLEE

vs.

William R. Bradford II
Defendant/APPELLANT

APPELLANT'S BRIEF
Court of Appeals No. 950317-CA
Priority No. 15

Civil No. 8677

APPEAL FROM THE FOURTH DISTRICT COURT FOR MILLARD COUNTY
HONORABLE LYNN W. DAVIS' FINAL "ORDER AMENDING ORDER
MODIFYING JUDGMENT AND DECREE OF DIVORCE"

**UTAH COURT OF APPEALS
BRIEF**

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DEXTER L ANDERSON
Attorney for Appellant
S.R. Box 52
Fillmore, Utah 84631
Telephone 801-743-6522

MARVIN D. BAGLEY
Attorney for Appellee
180 North 100 East Suite F
Telephone 801-896-9090

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STATEMENT OF JURISDICTION

Jurisdiction in this Court is based on Utah Code Annotated, 1953 as amended Title 78 chapter 2a Section 3 subparagraph (2)(i).

STATEMENT OF THE ISSUES

1. Whether or not the court erred in only allowing appellant to deduct \$70.00 per month, and after July 1, 1994 only \$35.00 per month where on a pro rate bases, figuring that the insurance he paid for covered four people, the defendant, his new wife and the two minor children, it cost the defendant \$162.50 per month to cover the children and not \$70.00 or \$35.00 as ordered by the court.

2. Whether or not the court erred in ordering the appellant to only deduct one half of the court ordered cost of insurance after July 1, 1994, where the applicable child support schedules upon which the support obligation was calculated provided that they included the full cost of providing insurance for children and that the party providing the insurance would deduct the full cost from his support obligation.

3. Whether or not the court erred in granting plaintiff a retroactive judgment based on a recalculation of the cost of providing health and dental insurance on the children back to February 16, 1994.

STANDARD OF REVIEW

These issues are questions of law and the appellate court would apply a correction of error standard. "A trial court's conclusions of law are reviewed on appeal for correctness. . . ." Pasker V. Morse 254 Utah Adv. Rep.12: Saunders v. Sharp, 806 P.2d 198.

DETERMINATIVE STATUTES

1. Utah Code Annotated, 1953, as Amended Section 78-45-7.2.
2. Utah Code Annotated, 1953, as Amended Section 78-45-7.7, pre-July 1, 1994 and post-July 1, 1994 versions.
3. Utah Code Annotated, 1953, as Amended Section 78-45-7.15, pre-July 1, 1994 and post-July 1, 1994 versions.
4. Utah Code Annotated, 1953, as Amended Section 30-3-10.6.

STATEMENT OF THE CASE

A. NATURE OF THE CASE: This is a divorce case where the Appellant/Defendant petitioned the court for an order modifying the divorce decree in several particulars, but primarily because he had lost his high paying job from a layoff and needed the child support order in the decree of divorce adjusted accordingly. The court entered its order modifying the divorce decree on March 11, 1994. Shortly thereafter the Appellee/Plaintiff filed a motion to strike the March 11th order for several reasons. The court filed its order amending the March 11, 1994 order modifying Judgment and decree of divorce, on March 20, 1995. The Appellant appeals from that order amending the March 11, 1994 Order.

B. COURSE OF PROCEEDINGS: The decree of divorce was filed August 14, 1991.(R. 21). Appellant's Petition for Relief was filed May 26, 1993.(R. 25). A Reply and Counter-Petition was filed June 25, 1993 by Appellee/Plaintiff seeking alleged back unpaid child support and an order requiring Appellant/Defendant to pay half of the child care expenses. A Reply to Counter-Petition and Counterclaim to Counter-Petition was filed by Appellant/Defendant on August 17, 1993.(R. 47).

Trial was held on February 16, 1994 before the Honorable Lynn W. Davis

and the resulting Order Modifying Judgment and Decree of Divorce was filed March 11, 1994.(R. 65). Next the Appellee/Plaintiff filed her Motion to Strike the March 11th Order Modifying Judgment and Decree of Divorce on March 21, 1994.(R. 68). Even though the Appellee/Plaintiff called her pleading a Motion to Strike, the trial court considered it as though it was a Petition to Amend.(See T. 11/9 hearing page 19). The Appellant/Defendant filed his Opposing Memorandum to Plaintiff's Motion to Strike on May 12, 1994.(R. 84). The matters were set for trial on November 9, 1994. The Honorable Judge Davis entered his Order Amending Order Modifying the March 11, 1994 Order Modifying Judgment and Decree of Divorce, on March 20, 1995.(R. 110). The Appellant/Defendant appeals from this March 20, 1995 Order.

C. DISPOSITION IN TRIAL COURT: The trial court granted Appellee's Motion to strike in that the court struck its March 11th, 1994 Order that allowed the Appellant to deduct his cost of

providing insurance from his child support obligation. The court did so because the Appellant had added his new wife to the policy. The court ordered that Appellant was only allowed to deduct \$70.00 per month which was the difference between two plans offered by his Employer, an Employee Plus One Plan and an Employee Plus Two or More Plan, until July 1, 1994. And after July 1, 1994 the court ordered that Appellant only deduct \$35.00 per month for providing health and dental insurance on the children because of a change in the statutes. The court further awarded Appellee the sum of \$2,567.00 as a retroactive judgment for arrearage in child support based on these changes back to February 1994.(R. 110)

D. STATEMENT OF FACTS: Mr. Bradford and Karen Bradford Hogan were married in the year 1986 and divorced in the year 1991. During their marriage they had two daughters. Mr. Bradford was about thirty three years old and Mrs. Bradford was Eighteen when they were married. Mr. Bradford is an electrical engineer and has worked for Bechtel corporation since 1981. In his work he has had to move frequently from job to job. This apparently caused stress in the marriage and in April of 1991 when Mr. Bradford came home for a visit from his temporary work site in Texas, his wife informed him she wanted a divorce. She had him go to attorney Donald Eyre's office in Nephi, where Mr. Eyre agreed to do a divorce for both of them based on a handwritten document or note the parties left with Mr. Eyre. Mr. Bradford paid Mr. Eyre

and went back to Texas. Later he received a prepared stipulation which he signed and returned. A default divorce was entered on the stipulation in August 1991 and Mr. Bradford proceeded to pay his child support as he understood it. In February 1992 he lost his per diem pay from Bechtel and he reduced his child support payments accordingly as he understood the divorce decree. He was laid off from work for part of 1992 and worked part of the year. Finally in December of 1992 Mr. Bradford was placed on holding status and started receiving unemployment compensation. In May of 1993 he was still unemployed and on holding status and he filed his Petition to modify the divorce decree on May 26, 1993, seeking a reduced child support payment and better visitation rights with his children because he lived in Texas and week-end visits and short holiday visits were not practical because of travel distances involved. Mrs. Bradford counter-petitioned demanding a contempt of court order and a judgment for arrearage based on her interpretation of the divorce decree among other demands for relief. After the trial on February 16, 1994, the court found that Mr. Bradford had correctly interpreted the divorce decree and had paid his child support in full, and that there were no arrearage owed.

The court amended the Decree to provide for a new child support amount based on the unemployment income of Mr. Bradford and the imputed income of Mrs. Bradford. The court also made an order that it cost Mr. Bradford \$325.00 per month to provide health and dental insurance on the minor children and pursuant to

U.C.A. section 78-45-7.7(b) he ordered that that sum should be subtracted from the ordered child support payable by Mr. Bradford. The court also ordered that both parties had an on going affirmative duty to file an affidavit if either parties income changed substantially and the court retained jurisdiction to amend the amount of child support ordered based on the affidavits of the parties. This was done to save time and travel expenses to all parties concerned and the trouble of having to file a Petition for modification and a court hearing each time ones employment changed. These orders and provisions were reduced to writing in the March 10, 1994 order filed herein on March 11, 1994.

After the trial on February 16, 1994 Mr. Bradford was reemployed by Bechtel on or about February 22, 1994. Pursuant to the Court's Order he filed his affidavit showing his increased income and started paying his increased child support payments less the court ordered amount it cost him to furnish health and dental insurance, the sum of \$325.00 per month. Meanwhile Mrs. Bradford filed a Motion to Strike the March 10, 1994 order because she alleged that Mr. Bradford had went back to work shortly after the February 16, 1994 trial (which was true and Mr. Bradford filed his required affidavit), and she alleged that Mr. Bradford should not be allowed to deduct the \$325.00 per month for insurance because he had added his new wife to his insurance policy at work after he had filed his May 26, 1993 Petition. Mrs. Bradford alleged that Mr. Bradford had misrepresented that fact

to the court at the February 16th trial. These issues were brought to a head at the November 9, 1994 trial. (R. 90) and the court made oral rulings and required Mrs. Bradford to prepare a proposed order consistent with his rulings.

Mr. Bradford objected to the proposed Order submitted by Mrs. Bradford (R. 99). The court ruled on the objection (R. 104) and signed the proposed Order Amending Order Modifying Judgment and Decree of Divorce. (R. 110). In the Order the court ruled that since Mr. Bradford's new wife was on the insurance plan, the Employee plus Two or More Plan, Mr. Bradford was not entitled to deduct the cost of the insurance i.e. \$325.00 as ordered in the March 10, 1994 order, but rather only the difference between the cost of the Employee Plus One Plan and the Employee Plus Two or More Plan, or the sum of \$70.00. In addition the Court ordered that child support payments would be recalculated back to February 1994 on the bases that insurance only cost Mr. Bradford \$70.00 per month for the children, and that after July 1, 1994 he was only entitled to deduct one half of that sum or \$35.00 which under the new statute represented Mrs. Bradfords obligation to pay for half of the insurance premium. the court then granted a retroactive Judgment in the sum of \$2,567.00 to Mrs. Bradford.

Mr. Bradford's affidavit filed in response to Mrs. Bradford's Motion to Strike (R. 78) States that he was reemployed by Bechtel on February 22, 1994 after returning from the February 16, 1994 hearing. He also stated when his children were added to his insurance. Kristyn was enrolled on March 31, 1987 and

Katelynn was enrolled March 21, 1989. As a result he was required to purchase the Employee Plus Two or More plan which was costing him \$325.00 per month. The attachment referred to in his affidavit (R. 77) shows that the Appellee/Defendant Mrs. Bradford was cancelled from the insurance coverage on August 31, 1991, corresponding to the divorce of the parties. But as a single man Mr. Bradford had to continue with the Employee Plus Two or More insurance plan in order to have his two daughters covered. His cost to do so regardless of whether or not his new wife Barbara was on the plan was \$325.00 per month. He filed his Petition to modify the Divorce Decree in May 1993 and later added his new wife to the plan on July 9, 1993. The hearing on the May 1993 Petition was held February 16, 1994. Mr. Bradford testified to the effect that in order to have his two daughters covered on his insurance he had to pay for the Employee Plus Two or More Plan. Mr. Bradford never testified that his new wife Barbara was not on the insurance, nor was he ever ask that question by Plaintiff's counsel, or the Court.

At the November 9th, 1994 hearing Mr. Bradford was not present in order to save his job but the court accused him of misleading the court at the February 16th trial either negligently or intentionally. The parties pro-offered evidence concerning the insurance plans available to Mr. Bradford through his work in more detail and the court received it. At this hearing or trial and from the documents entered into evidence it was determined that Bechtel paid Mr. Bradford a Flex Credit that

basically paid for his insurance but the \$325.00 per month paid for the Employee Plus Two or More Plan included the Flex Credit.(see T. 11/9 hearing page 31). In other words the \$325.00 deducted from Mr. Bradford's monthly pay for the Employee Plus Two or More Plan paid for the four people covered, i.e. Mr. Bradford and his new wife Barbara and the two children in question. Based thereon the court entered oral orders with a great deal of apparent animosity towards Mr. Bradford for his perceived misleading testimony in the court's view. (T. 11/9 hearing pages 20-21). The court's oral orders were ultimately reduced to writing in the March 20, 1995 Order. (R. 110).

SUMMARY OF THE ARGUMENTS

1. The court should have ordered that the cost of insurance i.e. \$325.00 covered four people, the Appellant/Defendant, his new wife Barbara and his two children, and therefore on a per-capita basis it cost Mr. Bradford \$162.50 per month to provided health and dental insurance for his two children.

2. The court correctly determined that the Pre-July 1, 1994 schedules applied in this case and should have followed pre-July 1, 1994 law that provided that those child support guidelines included the cost of furnishing insurance for children and if a party furnished insurance otherwise then he should deduct the full cost of the children's portion of the insurance furnished from his child support obligation and not just half of the cost

of the children's portion after July 1, 1994.

3. The court should have recognized that it had no authority to retroactively change the March 10, 1994 Order, particularly where Mr. Bradford had timely made his support payments consistent with that order. The court erred in granting Appellee/Plaintiff a retroactive judgment against Mr. Bradford based on a new finding as to how much it cost to furnish insurance.

DETAIL OF THE ARGUMENT

The Court in this case erred in several respects. First it failed to recognize that both law and equity required it to determine the cost of providing medical and dental insurance on the two children at least on a per-capita basis, and not on the difference between the Employee Plus One Plan and the Employee Plus Two or More Plan. And the Court erred in only allowing Mr. Bradford to deduct one half of that difference after July 1, 1994.

Statutory law prior to July 1, 1994 provided that the cost of medical and dental insurance was included in the base combined child support tables.(see U.C.A 78-45-7.15(1), pre-July 1, 1994 version). This prior provision provided that the children's portion of medical and dental insurance paid by a parent was thus subtracted from that parent's base child support obligation if it was otherwise provided by the Obligor parent. (See U.C.A 78-45-

7.7(b), pre-July 1994 version). It follows that where Mr. Bradford provides insurance for the children through a payroll deduction, the cost of the children's portion of the insurance premium must be subtracted from the child support payments he is ordered to pay, otherwise he will be paying twice for the children's insurance. Once when the cost is deducted from his paycheck and once when he pays his child support. (See also the child support work sheet, used at that time R. 76).

On the other hand post July 1, 1994 statutory law follows a different scheme. The cost of providing health and dental insurance is not included in the child support guidelines. (See Post July 1, 1994 U.C.A 78-45-7.15). Post law provides that each party shall pay one half of the cost of insurance on the children.{78-45-7.15(3)}. Where there is an obligor parent paying child support who is also providing health insurance through payroll deduction, then the cost of insurance can be handled one of two possible ways. The obligor parent can pay his child support each month and the obligee parent can send the obligor parent a payment each month in return for one half of the cost of health and dental insurance. Or the Obligor parent can simply deduct one half of the cost from his child support payment. This later possibility gives rise to the idea that after July 1, 1994 the Obligor parent can only subtract one half of the cost of providing insurance. In reality since the schedules do not include the cost of providing insurance an Obligor parent is not really subtracting half the cost from his child support

obligation, he is really just collecting from the Obligee parent half of the cost he has in furnishing insurance which he pays in addition to child support. The Court in this case Ordered that after July 1, 1994 Mr. Bradford could only deduct one half of his cost of providing medical and dental insurance on the two children, apparently following the above reasoning.

The post July 1, 1994 schedules and statutes are not applicable to the issues. This is clear from reading the provisions of U.C.A 78-45-7,2(6), both pre and post July 1, 1994 versions. Both versions say that "With regard to child support orders, enactment of the guidelines and any subsequent change in the guidelines constitutes a substantial or material change of circumstances as a grounds for modification or adjustment of a court order, if there is a difference of at least 25% between the existing order and the guidelines....". Thus the new version of the statute in this area is not applicable until there has been a substantial or material change of circumstances AFTER the July 1, 1994 law went into effect. There was no allegation of such a change, and no evidence or claim of a change after that date. The Petition that triggered this trial was filed by Mr. Bradford on May 26, 1993, and Mrs. Bradford's Counter-Petition for alleged back child support based on her interpretation of the divorce decree was filed June 25, 1993. Her order to show cause was filed August 17, 1993 and her Motion to Strike was filed March 21, 1994 (R. 68). None of these pleadings alleged a material change in circumstances after July 1, 1994. In fact the attorney

for Mrs. Bradford conceded in open court that the Pre-July 1, 1994 child support schedules applied to the issues in this case because the change in the guidelines did not exceed the court ordered amount by at least 25%. (T. 11/9 hearing, page 56, lines 7-21).

Pre-July 1, 1994 law at U.C.A 78-45-7.15 (1) which outlines the process of filling the work sheets and figuring the amount of child support payable by an Obligor parent provides that "Only the costs of health and dental insurance premiums for children are included in the base combined child support obligation table." U.C.A. 78-45-7.7(2)(b) pre-July 1 version, provides "calculate each parents proportionate share of the base combined child support obligation . . . and SUBTRACTING from the products the children's portion of any monthly payments made directly by each parent for medical and dental insurance premiums" (Emphasis added). Thus put in other words the statutes clearly spell out that the cost of health and dental insurance was included in the child support guidelines prior to July 1, 1994, and that the parent providing the insurance would subtract the cost of the children's portion from his or her child support obligation each month before payment.

As admitted by Mrs. Bradford's attorney at the November 9, 1994 hearing, the Pre-July 1, 1994 law and schedules were applicable and the court should have continued to apply the provisions of pre-July 1, 1994 law on the subject of whether or not Mr. Bradford could deduct the cost of furnishing insurance.

There remains the issue of whether or not Mr. Bradford should of been allowed to deduct the per-capita cost of furnishing the insurance for the children or only allowed to deduct the difference between Employee Plus One and the Employee Plus Two or More plans. Mr. Bradford attempted to introduce evidence at the November 9, 1994 hearing that the reasonable cost of providing medical and dental insurance for two children in this day and age is certainly more than \$70.00 per month. But the Court ruled that the evidence was not relevant.(T. 11/9 hearing page 38-45). Even without that evidence on the reasonable value of providing insurance for children, it is submitted that judicial notice can be taken of the fact that in today's markets for insurance it can not be provided for \$70.00 per month. And the fact that Metropolitan Insurance company provides Bechtel employees two plans, one covering the employee plus one person, and one covering the employee plus two or more, does not mean that the difference between the two is the cost of insuring two children as the lower court concluded.

The statutes in question again answer the question. Pre-July 1, 1994 version of U.C.A 78-45.7.7(b) provides that the obligor parent would deduct the children's PORTION of any monthly payments made directly for medical and dental insurance premiums. The word Portion means "share" as used. Thus in this case where four people are actually covered, the cost for two children is half of the total premium paid out by Mr. Bradford, or \$162.50 per month. Not \$70.00 per month as ordered by the

court.

A reading of the Post July 1, 1994 version of the statute U.C.A. 78-45-7.15(4) makes it clear that this is what was intended. It says "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." (Emphasis added). If this formula is followed in this case, the cost of medical and dental insurance for the two children is \$162.50 per month.

The lower court's order of March 20, 1995 also granted Appellee/Plaintiff a retroactive judgment to March 10, 1994 in the sum of \$2,567.00. This sum was based on the court's ruling that Mr. Bradford should have only been entitled to deduct \$70.00 per month from his ordered child support obligation until July 1, 1994 and only \$35.00 per month after July 1, 1994, instead of the court ordered amount of \$325.00 as ordered in the March 10, 1994 Order modifying the original decree of divorce. This retroactive judgment was based on the tabulation attached to the courts order of March 20, 1995, (R. 105). Child support awards become judgments when they become due {U.C.A. 30-3-10.6(1)}. Mr. Bradford paid his child support payments exactly as ordered by the court in the March 10, 1994 order, and the court erred in thereafter entering a retroactive judgment increasing those payments. In Whitehead vs. Whitehead, 836 P.2d 814 and Cummings

vs. Cummings, 821 P.2d 472, the Courts considered retroactive child support orders and held that child support orders become judgments and retroactive relief from child support orders is not allowed, quoting several cases.

If retroactive action is justified for any reason, the lower court still erred in only allowing Mr. Bradford to deduct \$70.00 per month for furnishing insurance until July 1, 1994, and \$35.00 per month thereafter because the per capita cost of furnishing the insurance was at least \$162.50 per month. Please see the arguments set forth above. Any retroactive child support calculations should be based on the same reasoning as prospective child support orders.

CONCLUSION AND STATEMENT OF RELIEF SOUGHT

The May 1993 Petition and Counter-Petition framed the issues of the February 16, 1994 Trial. Based on the evidence and testimony offered the court found that the Appellant/Defendant had fully paid his child support according to the Decree of Divorce. The court amended the amount of the child support according to the parties incomes at the time and ordered that the Appellant/Defendant was entitled to deduct his cost of the children's health and dental cost, and ordered that amount was \$325.00 per month. The Appellee/Plaintiff filed a motion to strike the March 10th Order and at the November 9th trial the court retroactively redid the Order based on the February 16, 1994 trial. The court ordered that the Appellant/Defendant should have only deducted \$70.00 per month for providing health

and dental insurance up to July 1, 1994 and \$35.00 per month thereafter because that was the difference between the Employee Plus one Plan and the Employee Plus Two or More Plan offered. The court awarded the Appellee/Plaintiff a retroactive deficiency judgment.

The court should have followed pre-July 1, 1994 law that provided that the child support guidelines in effect at that time included the cost of furnishing insurance for children and if a party furnished insurance otherwise then he should deduct the full cost of the insurance furnished from his child support obligation. The court should have ordered that the cost of insurance i.e. \$325.00 covered four people, the Appellant/Defendant, his new wife Barbara and his two children, and therefore on a per-capita basis it cost the Appellant/Defendant Mr. Bradford \$162.50 per month to provided health and dental insurance for his two children.

Mr. Bradford, Appellant/Defendant seeks relief from the lower courts March 20, 1995 order. He seeks an order of this Court allowing him to deduct the per capita cost of providing medical and dental insurance for his two children or \$162.50 per month, from his court ordered child support obligation. He seeks an order specifying that the order be prospective only from the date of Mrs. Bradford's Motion to Strike, which the lower court treated as a Petition to Amend. He also seeks and order of this Court reversing the lower courts retroactive judgment for \$2,567.00.

Dated this day of 1995.

Dexter L Anderson

CERTIFICATE OF MAILING

I hereby certify that I have mailed Four copies of the forgoing Appellants Brief to Marvin D. Bagley, Attorney for Appellee/Plaintiff, 180 North 100 East,, Suite F, Richfield, Utah 84701, postage prepaid this day of 1995.

Dexter L Anderson

ADDENDUM

*copy Court
Signed*

DEXTER L. ANDERSON, #0084
Attorney at Law
Star Route Box 52
750 South Highway 99
Fillmore, Utah 84631
(801) 743-6522

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR MILLARD COUNTY, STATE OF UTAH

KAREN MARIE BRADFORD,	:	ORDER MODIFYING
Plaintiff,	:	JUDGMENT AND DECREE
	:	OF DIVORCE
	:	
vs.	:	
	:	
WILLIAM RICHARD BRADFORD,	:	Civil No. 8677
Defendant.	:	

The above-entitled matter came on before the Court for non-jury trial on February 16, 1994, pursuant to the Courts notice of trial setting served on both parties. The Plaintiff was present and was represented by her attorney Donald Eyre. The Defendant was present and was represented by his attorney Dexter L. Anderson. The issues tried were raised by Defendant's Petition for Relief from Decree of Divorce or Modification, dated May 25, 1993; Plaintiff's Reply and Counter-Petition dated June 24, 1993; Defendants Reply to Counter-Petition dated August 17, 1993; and also Plaintiff's Order to Show Cause dated July 26, 1993.

The Court having heard the testimony of both Plaintiff and Defendant and having

received evidence and exhibits and having reviewed the file herein, hereby enters the following Findings of Fact and Order of Modification.

1. The Court finds that there has been a substantial change of circumstances since the decree of divorce was entered, in the parties relative circumstances.

a) Primarily the Defendant has suffered loss of his employment as an Electrical Engineer with Bechtel Corporation, and had been without employment since about December of 1992, as of the time he filed his Petition to Modify the Divorce Decree. The Defendant was put to work again during July, August, October and November of 1993 by Bechtel, but was again placed on holding status and remains on holding status. While unemployed he receives \$490.00 every two weeks unemployment benefits. With unemployment and earnings from wages he had gross earnings of \$23,050.00 in 1993.

b) The court finds that the Defendant also lost his per diem pay from Bechtel during February 1992, when his status was changed from temporary to permanent employment in Texas instead of Utah.

c) The Court finds that the Plaintiff has gained employable skills since the divorce and has been employed as a secretary earning about \$11,000.00 a year, though at the time of the trial she was unemployed, and receiving \$140.00 a week unemployment benefits.

d) The Court finds that the defendant is actively seeking work in his field as an Electrical Engineer both with Bechtel as well as with other companies in the same field, and with the Defendant's education and work experiences he should shortly be re-employed.

e) The Court finds that because of the distance between the permanent places of residence of the parties the Defendant should be granted additional and extended visitations with the parties children, particularly in light of the fact that the children are older now and there appears to be a wholesome love and affection between the Defendant and his children.

f) In addition, while there has been telephone visits between the Defendant and the children, the Court finds that the Defendant is entitled to liberal and unrestricted telephone visits with the children, and specifically that the children should be able to call their father, the Defendant at reasonable times.

g) The Court finds that based on the circumstances of the parties, each should receive the benefit of one child deduction for income tax purposes.

h) The Court finds that the Defendant should continue to provide health and dental insurance for the children through his employment, but the deductible and co-pay amounts applicable to the coverage should be paid one half by each party.

i) The Court finds that the Divorce Decree provides that in the event the Defendant's employer discontinues per diem payments, child support would be reduced to \$600.00 a month, and that this provision applied ~~ir~~ regardless of whether or not one or two *had* years had passed from the date of the Divorce Decree.

j) The Court finds that based on the above interpretation of the Divorce Decree, the loss of per diem to the Defendant during February 1992, and the payments actually

made by the Defendant to the Plaintiff for child support, there is no arrearage due Plaintiff from Defendant, and Plaintiff's claim for arrearage in her Counter Petition should be overruled and denied.

k) The Court finds that each party should bear their own cost of Court and attorney's fees.

Based on the foregoing findings, and the Court being otherwise fully advised;

IT IS HEREBY ORDERED AND DECREED that the Decree of Divorce herein shall be and is hereby modified to provide;

1. The Defendant shall have liberal reasonable visitation with the parties children including, but not limited to

a) A six week extended visitation during the summer months, during vacations from school. The Defendant shall give the Plaintiff reasonable notice as to when the visit shall take place.

b) A Christmas visit every other Christmas, beginning with Christmas 1994. He shall give Plaintiff reasonable notice of any such visit and the dates involved.

c) The Defendant shall provide the transportation necessary to facilitate the visitations both to and from the Defendant's home.

d) The Defendant is entitled to abatement of child support payments consistent with U.C.A. §78-45-7.11.

2. The Defendant shall pay child support to the Plaintiff for the support of the

parties children, consistent with the child support obligation guidelines, as follows. Initially pursuant to this order child support shall be based on an average 1993 gross income imputed to the Defendant of \$23,050.00 and an average 1993 gross income imputed to the Plaintiff of \$11,000.00, with the Defendant furnishing health and dental insurance for the children costing \$138.70 every two weeks or \$300.00 every month. The Defendant shall pay Plaintiff the sum of \$169.00 a month for both children, plus providing said health and dental insurance. Said obligation shall be retroactive to the date of filing this petition, to wit; May 1993, and shall continue in said sums until modified.

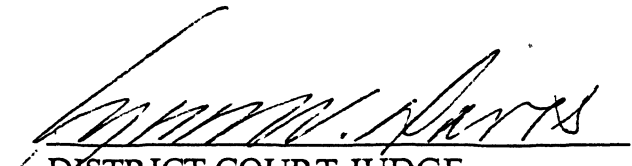
3. This Court retains continuing jurisdiction concerning child support obligations as follows: Defendant's support obligation shall change consistent with the child support guidelines whenever the Plaintiff's or the Defendant's employment changes from current status for a period of time over 30 days by re-employment or new employment. Within thirty days after there has been a change of employment status, that party shall report the same to their respective counsel and cause an affidavit attesting to the facts to be prepared. Said affidavit shall be served on opposing counsel, and that party may respond by affidavit within ten days. Both parties shall also submit their calculation on a new child support obligation worksheet and this matter shall be submitted to the Court for determination of a new order of support based on the change(s) in employment status, without the necessity of a petition for modification or for a hearing requiring extensive travel on the part of any party.

4. Each party shall pay one half of any child care expense actually incurred by the

Plaintiff as may be necessary to enable her to maintain full time employment. Said child care expense must be incurred at a licensed or certified day care center or person, and Defendant's one half share shall be paid by the Defendant upon presentment of invoices prepared by such a center or person providing the child care.

IT IS FURTHER HEREBY ORDERED AND DECREED that the Plaintiff's Counterpetition and Order To Show Cause is overruled and denied. Each party is to bear his or her own Court cost and attorney's fees incurred herein.

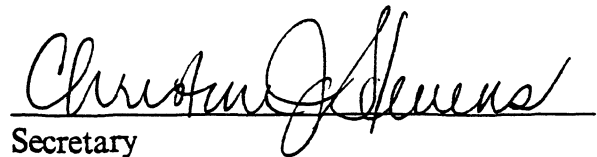
All other provisions of the Divorce Decree shall remain the same unless otherwise changed or modified by this order.

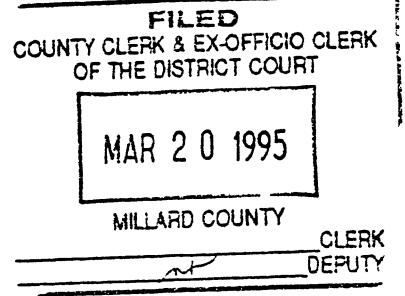

DISTRICT COURT JUDGE
10 March 1994

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing ORDER MODIFYING JUDGMENT AND DECREE OF DIVORCE on the 2nd day of March, 1994, postage prepaid, United States Mail, to the following:

DONALD J. EYRE JR.
Attorney at Law
125 North Main Street
Nephi, Utah 84648


Secretary



Donald J. Eyre Jr., No. 1021
Attorney for Plaintiff
125 North Main Street
Nephi, Utah 84648
Telephone: 623-1141

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
MILLARD COUNTY, STATE OF UTAH

KAREN MARIE BRADFORD,	:	
	:	
Plaintiff,	:	ORDER AMENDING ORDER
	:	MODIFYING JUDGMENT AND
vs.	:	DECREE OF DIVORCE
	:	
WILLIAM RICHARD BRADFORD II,	:	Civil No. 8677
	:	
Defendant.	:	

The above entitled matter came before the Court on the plaintiff's Motion to Strike Order Modifying Judgment and Decree of Divorce on November 9, 1994 before the Honorable Lynn Davis, District Court Judge.

The plaintiff was present and represented by her attorney, Donald J. Eyre Jr., and the defendant was not present but was represented by his attorney, Dexter L. Anderson.

The Court having heard the proffers of testimony of both plaintiff and defendant and arguments of counsel and having reviewed the exhibit proffered by both the plaintiff and the

defendant hereby finds as follows:

1. Any Order entered by the Court should attempt to benefit to the fullest the two minor children of the parties herein.

2. The defendant presently works and lives in Maryland and based upon an affidavit filed by him presently has a gross monthly earning capacity of \$3,795.00. The plaintiff presently lives in Nevada and at the time of the hearing had an imputed gross income of \$916.00 monthly. Since the hearing date, the plaintiff has obtained a new job with a gross monthly income of \$2,000.00.

3. If at the time of the hearing of February 16, 1994 the Court would have known that the defendant's current wife was covered under his insurance, it would not have attributed the full amount of the insurance premium to the children, and permitted the defendant to deduct the full amount of the premium from his child support obligation, as was set forth in the Order Modifying Judgment and Decree of Divorce dated March 10, 1994.

4. The Court didn't have before it all the relevant facts on February 16, 1994 and therefore said Order should be modified retroactively back to the date of the hearing.

5. The defendant should only be permitted to deduct the difference between the premium for Employee Plus One Plan and the premium for Employee Plus Two Plan as set forth in the defendant's medical and dental insurance policies as provided by his employer,

from his child support obligation.

6. Since the hearing in February, 1994 the Utah Legislature has modified the applicable statute with respect to the deduction of insurance premiums as set forth in Section 78-45-7.15 U.C.A. 1953 as amended, which permits the deduction of only one-half of the insurance premium from the child support obligation and therefore from July 1, 1994 the defendant may only deduct one-half of the insurance premium attributable to the children as set forth herein above.

7. The plaintiff is entitled to a deficiency judgment against the defendant for the difference between what the defendant should have paid in child support and what he did pay. Said amounts are set forth in Schedule "A" attached hereto and by this reference made a part hereof.

Based upon the above findings it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Based upon the incomes of the parties, the base child support amount through November 19, 1994 should be \$673.00 with a deduction for the insurance premium attributed to the children of \$70.00, which amount is stipulated by the parties, for any adjusted base child support of \$603.00 through July, 1, 1994 and \$638.00 thereafter based upon the deduction of one-half of the insurance premium attributable to the children.

2. From November, 1994 forward, based upon the new income of the plaintiff of \$2,000.00 per month, the base child support awarded is \$642.00 minus the \$35.00 for an adjusted base child support amount of \$607.00, which shall be the amount that shall be paid from this date forward until further modified.

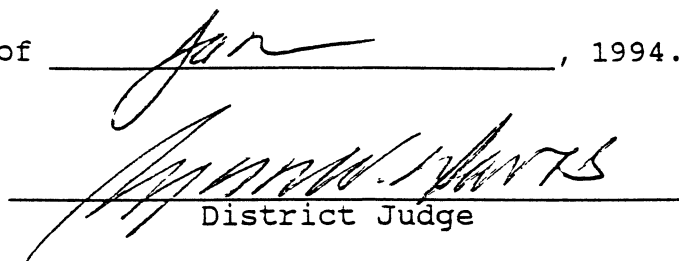
3. The plaintiff is awarded judgment for arrearage in the amount of \$2,567.00, which amount shall be paid by the defendant within the next 12 months.

4. Each party is ordered to assume and be responsible for their own attorney's fees.

5. Any provision of the Order dated March 10, 1994 not otherwise modified or amended herein is in full force and effect.

6. Based upon the stipulation of the parties, it is further ORDERED that the plaintiff may have access to any and all insurance records involving the children. Each party is urged and ordered not to speak disparagingly of the other party before the children and the plaintiff is ordered to use the Bradford surname in all records involving the children.

Dated this 12 day of Jan, 1994.


District Judge

I hereby certify that I mailed a copy of the foregoing Order Amending Order Modifying Judgment and Decree of Divorce to Dexter L. Anderson, Attorney for Defendant, Star Route Box 52, 750 South Highway 99, Fillmore, Utah 84631 on this 18th day of November, 1994.

BY Annette Lowell

Retro-Active Child Support

November 13, 1994

Dates	Child Support Owed	Child Support Sent	Child Support Difference
FEB. 22 (ins. \$70.00)	\$ 301.50	\$ 128.00	\$ 173.50
MARCH 5	\$ 301.50	\$ 84.50	\$ 217.00
MARCH 20	\$ 301.50	\$ 84.50	\$ 217.00
APRIL 5	\$ 301.50	\$ 84.50	\$ 217.00
APRIL 20	\$ 301.50	\$ 174.00	\$ 127.50
MAY 5	\$ 301.50	\$ 174.00	\$ 127.50
MAY 20	\$ 301.50	\$ 174.00	\$ 127.50
JUNE 5	\$ 150.75	\$ 87.00	\$ 63.75
JUNE 20	\$ 150.75	\$ 87.00	\$ 63.75
JULY 5 (ins. 35.00)	\$ 159.50	\$ 87.00	\$ 72.50
JULY 20	\$ 319.00	\$ 174.00	\$ 145.00
AUGUST 5	\$ 319.00	\$ 174.00	\$ 145.00
AUGUST 20	\$ 319.00	\$ 174.00	\$ 145.00
SEPTEMBER 5	\$ 319.00	\$ 174.00	\$ 145.00
SEPTEMBER 20	\$ 319.00	\$ 174.00	\$ 145.00
OCTOBER 5	\$ 319.00	\$ 174.00	\$ 145.00
OCTOBER 20	\$ 319.00	\$ 174.00	\$ 145.00
NOVEMBER 5	\$ 319.00	\$ 174.00	\$ 145.00
TOTAL	\$ 5,123.50	\$ 2,556.50	\$ 2,567.00

673.00 monthly

-70.00 insurance (as per Judges Decision)

603.00 TOTAL monthly (from Feb. 22 to July 1)

301.50 Bi-Weekly

673.00 monthly

-35.00 insurance (from July 5 on)

638.00 TOTAL monthly (from July 5 to November 19)

319.00 Bi-Weekly

s3B30-3-10.6. Payment under child support order - Judgment.sOB

(1) Each payment or installment of child or spousal support under any child support order, as defined by Subsection 62A-11-401(3), 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 (2);

(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 (2).

(2) 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.

(3) 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.

(4) The judgment provided for in Subsection (1)(a), to be effective and enforceable as a lien against the real property interest of any third party relying on the public record, shall be docketed in the district court in accordance with Sections 78-22-1 and 62A-11-311.

s3BHistory: C. 1953, 30-3-10.6, enacted by L. 1987, ch. 117, 1;sOB
s3B1988, ch. 1, 3; 1988, ch. 203, 1; 1989, ch. 62, 1; ch. 115,sOB
s3B 1.sOB

s3B

NOTES TO DECISIONSsOB

s3BAnalysisissOB

Retroactive modification.
Cited.

s3BRetroactive modification.sOB

The general rule is to prohibit retroactive modification of family support obligations; thus temporary support orders may not be retroactively modified. *Whitehead v. Whitehead*, 836 P.2d 814 (Utah Ct. App. 1992).

s3BCited sOBin *McReynolds v. McReynolds*, 787 P.2d 530 (Utah Ct. App. 1990); *Adelman v. Adelman*, 815 P.2d 741 (Utah Ct. App. 1991); *Crockett v. Crockett*, 836 P.2d 818 (Utah Ct. App. 1992);

Thornblad v. Thornblad, 849 P.2d 1197 (Utah Ct. App. 1993);
Nunley v. Brooks, 881 P.2d 955 (Utah Ct. App. 1994).

s3B

COLLATERAL REFERENCESs0B

s3BA.L.R.s0B - Spouse's right to set off debt owed by other spouse
against accrued spousal or child support payments, 11 A.L.R.5th
259.

s3B78-45-7.2. Application of guidelines - Rebuttal.sOB

(1) The guidelines apply to any judicial or administrative order establishing or modifying an award of child support entered on or after July 1, 1989.

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

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

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

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

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

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

(6) With regard to child support orders, enactment of the guidelines and any subsequent change in the guidelines constitutes a substantial or material change of circumstances as a ground for modification or adjustment of a court order, if there is a difference of at least 25% between the existing order and the guidelines. In cases enforced under IV-D of Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., the office may request modification, in accordance with the requirements of the Family Support Act of 1988, Public Law 100-485, no more often than once every three years.

s3BHistory: C. 1953, 78-45-7.2, enacted by L. 1989, ch. 214, 4;sOB
s3B1990, ch. 100, 3; 1990, ch. 275, 2; 1994, ch. 118, 4.sOB

s3BAdministrative Rules. sOB- This section is implemented by, interpreted by, or cited as authority for the following

administrative rule(s): R495-879, R527-231.

s3BAAmendment Notes.s0B - The 1990 amendment by ch. 100, effective April 23, 1990, rewrote Subsection (4), which had read "(a) A noncustodial parent's obligation to provide child support for natural born or adopted children of a second family arising subsequent to entry of an existing child support order may not be considered to lower the child support awarded to the first family in the existing order.

"(b) If the custodial parent of the first family petitions to increase child support, all natural born and adopted children of the noncustodial parent may be considered in determining whether to increase the award," and added Subsection (5).

The 1990 amendment by ch. 275, effective October 13, 1990, in Subsection (1) deleted the designation (a) and deleted former Subsection (b), which read "Neither the enactment of the guidelines or any consequent impact of the guidelines on existing child support orders constitute a substantial or material change of circumstances as a ground for modification of a court order existing prior to July 1, 1989. However, if the court finds a material change of circumstances independent of the guidelines, the guidelines may be applied to modify a court order existing prior to July 1, 1989," and added Subsection (5).

The 1994 amendment, effective July 1, 1994, inserted "and the use of worksheets consistent with these guidelines" in Subsection (2)(b); in Subsection (6), inserted "or adjustment" in the first sentence and substituted "In cases enforced under IV-D of Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq." for "With regard to IV-D cases" at the beginning of the second sentence; and made stylistic changes.

s3BFederal Law.s0B - The Family Support Act of 1988, Public Law 100-485, cited in Subsection (6), amended various sections throughout Title IV of the Social Security Act, 42 U.S.C. 601 et seq.

s3BEffective Dates.s0B - Laws 1989, ch. 214 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

s3B

NOTES TO DECISIONSs0B

s3BAnalysiss0B

Modification of award.

- Change in circumstances.

Other children.

s3BModification of award.s0B

When the parties had agreed to the amount of child support before the effective date of the child support guidelines, the trial court erred in modifying child support when no petition to modify had been filed and in modifying the support amount without finding that a material change of circumstances had occurred since the previous order had been entered. *Bailey v. Adams*, 798 P.2d 1142 (Utah Ct. App. 1990) ??? (applying Subsection (1)(b) of this section prior to 1990 amendment regarding impact of guidelines on existing support orders).

The trial court committed reversible error when it failed to apply the presumptive guidelines set forth in this chapter and determined child support outside the guidelines without finding there were special circumstances that justified deviation. *Hill v. Hill*, 841 P.2d 722 (Utah Ct. App. 1992).

s3B- Change in circumstances.s0B

Factors other than a change in relative income affecting the child support calculation can constitute a material change in circumstances allowing the court, on a modification petition, to reach the issue of whether a deviation from the guidelines is now appropriate. Significant changes in the factual circumstances of the child, such as special education or health needs, which, if in existence at the time of the original decree, would have permitted an upward deviation from the guidelines in a modification proceeding. *Nunley v. Brooks*, 881 P.2d 955 (Utah Ct. App. 1994).

s3B0ther children.s0B

This section does not mandate that the trial court give credit for children living in the obligee's current home; rather, the trial court has the ability to determine whether or not other children will be considered in determining the amount of support. *Jensen v. Bowcut*, 261 Utah Adv. Rep. 16 (Utah Ct. App. 1995).

s3B

COLLATERAL REFERENCESs0B

s3B0Utah Law Review.s0B - From Guesswork to Guidelines - The Adoption of Uniform Child Support Guidelines in Utah, 1989 Utah L. Rev. 859.

s3B78-45-7.7. Calculation of obligations.s0B

(1) The parents' child support obligation shall be divided between them in proportion to their adjusted gross incomes, unless the low income table is applicable.

(2) Except in cases of joint physical custody and split custody as defined in Section 78-45-2 and in cases where the obligor's adjusted gross income is \$1,050 or less monthly, the base child support award shall be determined as follows:

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

(b) Calculate each parent's proportionate share of the base combined child support obligation by multiplying the combined child support obligation by each parent's percentage of combined adjusted gross income.

(3) In cases where the monthly adjusted gross income of the obligor is between \$650 and \$1,050, the base child support award shall be the lesser of the amount calculated in accordance with Subsection (2) and the amount calculated using the low income table.

(4) The base combined child support obligation table provides combined child support obligations for up to six children. For more than six children, additional amounts may be added to the base child support obligation shown. Unless rebutted by Subsection 78-45-7.2(3), the amount ordered shall not be less than the amount which would be ordered for up to six children.

(5) If the monthly adjusted gross income of the obligor is \$649 or less, the court or administrative agency shall determine the amount of the child support obligation on a case-by-case basis, but the base child support award shall not be less than \$20.

(6) The amount shown on the table is the support amount for the total number of children, not an amount per child.

s3BHistory: C. 1953, 78-45-7.7, enacted by L. 1989, ch. 214, 9;s0B s3B1990, ch. 100, 6; 1994, ch. 118, 8.s0B

s3BAmdendment Notes.s0B - The 1990 amendment, effective April 23, 1990, deleted former Subsection (2)(c), which read "allocate any known uninsured extraordinary medical expenses to be incurred on behalf of the children equally to each parent," and redesignated the following subsections accordingly; deleted "after subtracting federal tax credits" from the beginning of Subsection (2)(c); substituted "amount allocated in Subsection (2)(c)" for "two amounts allocated in Subsections (2)(c) and (d)" and "both" for "all three" in Subsection (2)(d); substituted "ten" for "six" in the first and second sentences in Subsection (3); and made minor stylistic changes throughout.

The 1994 amendment, effective July 1, 1994, added "unless the

low income table is applicable" at the end of Subsection (1); inserted "and in cases where the obligor's adjusted gross income is \$1,050 or less monthly" and substituted "base" for "total" in the introductory language of Subsection (2); inserted "combined" the second time the word appears in Subsection (2)(a); deleted "and subtracting from the products the children's portion of any monthly payments made directly by each parent for medical and dental insurance premiums" at the end of Subsection (2)(b); deleted former Subsections (2)(c) and (2)(d) relating to the calculation of the child support award; added present Subsections (3) and (5) and redesignated the subsections accordingly; in present Subsection (4), substituted "six children" for "ten children" in two places, substituted "may" for "shall" in the second sentence and added the third sentence; and made stylistic changes.

s3BEffective Dates.s0B - Laws 1989, ch. 214 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

s3B

NOTES TO DECISIONSs0B

s3BCited s0Bin Watson v. Watson, 837 P.2d 1 (Utah Ct. App. 1992).

s3B78-45-7.15. Medical expenses.s0B

(1) The court shall order that insurance for the medical expenses of the minor children be provided by a parent if it is available at a reasonable cost.

(2) In determining which parent shall be ordered to maintain insurance for medical expenses, the court or administrative agency may consider the:

- (a) reasonableness of the cost;
- (b) availability of a group insurance policy;
- (c) coverage of the policy; and
- (d) preference of the custodial parent.

(3) The order shall require 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.

(4) 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.

(5) The order shall require each parent to share equally all reasonable and necessary uninsured medical expenses, including deductibles and copayments, incurred for the dependent children.

(6) The parent ordered to maintain insurance shall provide verification of coverage to the other parent, or to the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., 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, or the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., 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.

(7) 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.

(8) In addition to any other sanctions provided by the court, 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 (6) and (7).

s3BHistory: C. 1953, 78-45-7.15, enacted by L. 1994, ch. 118, s0B s3B16; 1995, ch. 258, 14.s0B

s3BAdministrative Rules. s0B- This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R527-201.

s3BRepeals and Reenactments.s0B - Laws 1994, ch. 118, 16 repeals

former 78-45-7.15, as last amended by Laws 1990, ch. 100, 11, relating to medical expenses, and enacts the present section, effective July 1, 1994.

s3BAmdendment Notes.s08 - The 1995 amendment, effective May 1, 1995, deleted "and actually paid by the parents" after "children" at the end of Subsection (5).