

1995

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

Utah Court of Appeals

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KAREN MARIE BRADFORD

VS.

Defendant/Appellant.

COURT OF APPEALS NO. 950317-CA

PRIORITY NO. 15

APPEAL FROM "ORDER AMENDING ORDER MODIFYING JUDGMENT
AND DECREE OF DIVORCE" ISSUED BY THE HONORABLE LYNN W. DAVIS
IN THE FOURTH DISTRICT COURT OF MILLARD COUNTY

OF APPEALS

DOCUMENT NO. 950317CA

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IN THE UTAH COURT OF APPEALS

KAREN MARIE BRADFORD

Plaintiff/Appellee

vs.

WILLIAM R. BRADFORD II

Defendant/Appellant.

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COURT OF APPEALS NO. 950317-CA

PRIORITY NO. 15

STATEMENT OF JURISDICTION

This court has jurisdiction over this case pursuant to Section 78-2a-3(2)(i), Utah Code Ann. and Rule 3, Utah Rules of Appellate Procedure.

ISSUES FOR REVIEW AND STANDARD OF REVIEW

1. Did the trial court err in finding that the cost to provide medical insurance for the two minor children is the difference between the “employee plus one” dependent rate (the couple rate) and the “employee plus two or more” dependents rate (the family rate)? The standard of review for this issue is the clearly erroneous standard. Alta Indus. Ltd. v. Hurst, 846 P.2d 1282, 1286 (Utah 1993).

2. Did the trial court err in ruling that after July 1, 1994 (the effective date of Section 78-45-7.15(3), Utah Code Ann.) Mr. Bradford could only deduct one-half of the childrens’ portion of the monthly medical insurance premium from his child support payment? The standard of review for this issue is the *de novo* or correction of error standard. Saunders v.

Sharp, 806 P.2d 198, 199-200 (Utah 1991)(per curiam).

3. Did the trial court err in awarding Mrs. Bradford a judgment against Mr. Bradford for the difference between the amount of child support Mr. Bradford paid and the amount he would have been required to pay had he not falsely represented to the court at the first trial that the amount deducted from his paycheck for insurance was solely for the benefit of his two minor children? The standard of review for this issue is the *de novo* or correction of error standard. Saunders v. Sharp, supra.

DETERMINATIVE STATUTE

Section 78-45-7.15(3) Utah Code Annotated (1953 as amended);

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. (A copy of the entire §78-45-7.15 is attached hereto as Addendum 1).

STATEMENT OF FACTS

Plaintiff/Appellee Karen Marie Bradford Hogan (hereinafter referred to as "Mrs. Bradford") married defendant/appellant William R. Bradford II (hereinafter referred to as "Mr. Bradford") in 1986. At the time of the marriage, Mr. Bradford was a 33 year old electrical engineer employed by Bechtel Corporation (hereinafter referred to as "Bechtel") on the construction of the Intermountain Power Plant near Delta, Utah. Mrs. Bradford was an 18 year old high school graduate. During the marriage two daughters were born to the parties. In 1991, the parties divorced and a decree was entered pursuant to the terms of a stipulation. The Decree of Divorce awarded Mrs. Bradford custody of the minor children and ordered Mr. Bradford to pay child support in the amount of from \$600.00 to \$1,200.00 per month depending upon various

scenarios regarding Mr. Bradford's employment. Prior to the divorce, Mr. Bradford had a minimum income of \$5,000.00 per month. (Transcript, Feb. 16, 1994 p. 82) (Pages of the Feb. 16, 1994 transcript cited in this brief are attached hereto as Addendum 2.)

In 1993, Mr. Bradford filed a petition to modify the Decree of Divorce seeking to reduce his child support obligation due to a reduction of his income. Trial on the petition was held February 16, 1994. At that time, Mr. Bradford was on "holding status" with his employer and was receiving unemployment compensation. (Transcript, Feb. 16, 1994 p. 40) "Holding status" meant that Mr. Bradford maintained his position with the company and eligibility for benefits but was unemployed pending reassignment. (Transcript, Feb. 16, 1994 p. 14) The court calculated the parties' 1993 income at \$23,050.00 per year for Mr. Bradford and \$6,000.00 per year for Mrs. Bradford. The court found a material change of circumstances between the parties and modified the child support obligation based on their 1993 income. (Transcript, Feb. 16, 1994 pp. 119, 120 and 126)

A significant issue at trial was the amount of the premium Mr. Bradford was required to pay to provide health and medical insurance for the minor children. Mr. Bradford testified that the premium amount was approximately \$325.00 per month, and that the premium provided insurance solely for the two minor children. (Transcript, Feb. 16, 1994, pp. 37-39, 70) Mr. Bradford testified that his insurance was provided by his employer for "free". (Transcript, Feb. 16, 1994, pp. 37-39, 70) At the conclusion of the evidence, the court ruled that although the premium seemed excessive, Mr. Bradford could deduct the full amount of the premium from his child support payment. (Transcript, Feb. 16, 1994 p. 124-25) The result was that Mr. Bradford's

monthly child support payment was reduced to \$169.00 per month. (Order Modifying Judgment and Decree, paragraph 5) The court retained jurisdiction of the child support issues and ordered the parties within 30 days of any change in their employment status to prepare and serve an affidavit attesting to the change. The affidavit would then be submitted to the court for determination of a new child support order. (Order Modifying Judgment and Decree paragraph 3) The court issued its Order Modifying Judgment and Decree of Divorce on March 10, 1994.

Shortly after the trial, Mrs. Bradford became aware that just six days after the trial, Mr. Bradford had become reemployed by Bechtel. Mrs. Bradford also learned for the first time that Mr. Bradford had remarried in 1993 and had placed his wife on his medical insurance in July of 1993. This revelation was in stark contrast to Mr. Bradford's testimony at trial. (See Transcript February 16, 1994, pp. 37-39, 70) After learning of these facts, Mrs. Bradford on March 21, 1994 filed a Motion to Strike the Order Modifying Judgment and Decree of Divorce. Thereafter, on or about April 20, 1994 Mr. Bradford filed a belated affidavit in which he acknowledged his reemployment and the fact that his current wife had been enrolled on his insurance.

An evidentiary hearing was held on Mrs. Bradford's Motion to Strike on November 9, 1994. Not surprisingly, Mr. Bradford did not appear. He was however, represented by counsel. The parties waived any objection to any procedural deficiencies and acknowledged that the court could rule on the merits of the issues presented. (Transcript, Nov. 9, 1995 pp. 19-22) (pages of the Nov. 9, 1995 transcript cited in this brief are attached hereto as Addendum 3.) The court received documentary evidence and extensive proffers of evidence by

counsel. The central issue at the second hearing was the calculation of the amount of the insurance premium Mr. Bradford was required to pay to provide medical insurance for the minor children.

The evidence produced at the second hearing was that Mr. Bradford's employer offered insurance to its employees on a three tier premium schedule. There was one rate for an employee only, another rate for an employee with one dependent ("the couple rate") and another rate for an employee with two or more dependents ("the family rate"). (Transcript, Nov. 9, 1994 pp. 4-5) (See also Affidavit of Defendant In Re Child Support Obligation paragraph 5 and Exhibit A attached thereto attached hereto as Addendum 4.) The evidence also showed that in addition to the minor children, Mr. Bradford and his current wife were enrolled on the insurance. (Transcript, Nov. 9, 1994 pp. 4, 6, 27, 36 and 37)

At the conclusion of the evidence, the court ruled that the childrens' portion of the insurance premium was the difference between the cost of purchasing insurance at the couple rate and purchasing insurance at the family rate. Due a change in the law effective July 1, 1994 (Section 78-45-7.15(3) Utah Code Ann.), the court also ruled that after July 1, 1994 each party was responsible for one-half the cost of the children's portion of the premiums paid. The court ordered that prior to July 1, 1994, Mr. Bradford could deduct from his monthly child support payment the full amount of the difference between the cost of the couple rate and the cost of the family rate (which was \$70.00 per month)¹ and after July 1, 1994, one-half of the difference

¹ There was some dispute regarding whether the difference was \$65.20 or \$78.67. The parties eventually stipulated the amount to be \$70.00. (Transcript, Nov. 9, 1994, p.66 and Order Amending Order Modifying Judgment)

between the couple rate and the family rate (\$35.00). (Transcript, Nov. 9, 1994 pp. 48, 54, 66, 74-75)

The court also awarded Mrs. Bradford judgment against Mr. Bradford in the amount of \$2,567.00 for child support arrearages that Mr. Bradford never paid but for which he should have been ordered to pay had the court known at the February trial that Mr. Bradford's premium payment included coverage for Mr. Bradford and his current wife. (Transcript, Nov. 9, 1994 pp. 64-67, 75 and 76)

Following the November hearing, the court signed its Order Amending Order Modifying Judgment and Decree of Divorce on January 12, 1995. The Order was filed on March 20, 1995 and is the Order from which Mr. Bradford takes his appeal. In overruling Mr. Bradford's objection to the proposed order, the court, on January 19, 1995 issued a Ruling on Defendant's Objection to Proposed Order which states in pertinent part:

The court has carefully considered the proposed Order and Defendant's Objection to Proposed Order. The fact of the matter is that the second hearing in this case was necessary because of defendant's [Mr. Bradford's] material misrepresentations to the court under oath at the first hearing. Because defendant was not present at the second hearing, the court was not able to inquire and determine whether those material misrepresentations were occasioned through negligence, gross negligence, or through a flat out attempt to deceive this court. It is the position of this court that but for the misrepresentations and perhaps deceit, the post-July 1994 hearing respecting these issues would not have been necessary.

This court found, at the post-July hearing, through extensive proffer, that the insurance arrangement of defendant with his employer was materially and substantially different than that represented in the pre-July hearing. (The Ruling is attached hereto as Addendum 5.)

SUMMARY OF ARGUMENT

The trial court correctly found that the cost to provide medical insurance for the two minor children is the difference between the cost to provide employee plus one dependent coverage and employee plus two or more dependents coverage. The court's finding was supported by the evidence and was not clearly erroneous. The trial court properly applied Section 78-45-7.15(3) to the case after its effective date of July 1, 1994. The statute stands on its own and is not dependent upon a change in the child support payment before being applicable. Moreover, the November hearing was a mere continuation of the February trial in which the court found a material change in the parties' circumstances allowing a modification of the Decree. The trial court properly awarded Mrs. Bradford judgment against Mr. Bradford for the arrearages Mr. Bradford would have been ordered to pay had he not misrepresented to the court the cost of providing insurance to the minor children. As a result of Mr. Bradford's false misrepresentations, he is estopped from receiving any relief on this appeal.

ARGUMENT

I. Mr. Bradford Has Failed To Marshall The Evidence

Section 78-45-7.15(3), Utah Code Ann. obligates the court in divorce cases to "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. Practical compliance with such an order is that the parent ordered to maintain the insurance, if also obligated to pay child support, simply deducts from his or her regular child support payments one-half the cost of the premium paid for the childrens' portion of insurance. The central issue on appeal is whether the trial court erred in

calculating the amount of the insurance premium attributable to the minor children and thus the amount Mr. Bradford could deduct from his monthly child support payment. That issue was an issue of fact on which the trial court made a finding. Order Amending Order Modifying Judgment and Decree of Divorce, Finding No. 5. The court's finding was made after the court received evidence regarding the types of medical plans offered by Mr. Bradford's employer, the costs of the various plans, the dates of coverage and the number of individuals covered on the plan.

On appeal of a trial court's finding of fact, the appellant has the obligation to marshal all evidence supporting the finding and then to demonstrate that the evidence is legally insufficient to support the finding when viewed in the light most favorable to the finding.

Gillmor v. Wright, 850 P.2d 431, 433 (Utah 1993); Alta Indus. Ltd., *supra*, 846 P.2d at 1286. If the appellant fails to meet the burden of marshaling the evidence, the trial court's decision will not be disturbed. *Id.*; Pasker v. Morse, 887 P.2d 872 (Utah App. 1994).

Mr. Bradford has neither marshaled the evidence in this case nor has he shown that viewing the evidence most favorable to the decision below the evidence is legally insufficient to support the court's finding. The trial court's decision must be affirmed. *Id.*

II. The Court's Finding Regarding The Cost Of The Childrens' Portion Of The Premium Was Correct

Mr. Bradford argues on appeal that because four people are insured on the policy the trial court should have calculated the childrens' portion of the premium to be one-half its cost. That argument may have merit if Bechtel had only one rate schedule. However, the

evidence is undisputed that Bechtel has a three tier rate schedule. The schedule itself determines the cost of the premium Mr. Bradford is required to pay for the two minor children. That amount is \$70.00. Calculation of a different amount would ignore the facts.

Moreover, any other amount would defy logic. Section 78-45-7.15(1) and (2) empowers the trial court with broad discretion in assigning which party is required to provide insurance for the minor children. Had the trial court ordered Mrs. Bradford to provide the insurance, Mr. Bradford could only reduce his premium by \$70.00 and still maintain coverage for himself and his current wife. Under every reasonable analysis, the cost to insure the minor children is \$70.00. The courts finding that the childrens' portion of the insurance premium is the difference between the couple rate and the family rate is not clearly erroneous. The court's ruling should be affirmed. Gillmor, *supra*, 850 P.2d at 433.

Section 78-45-7.15(4) Utah Code Ann. does not change the analysis. As the trial court correctly observed:

I would read that [Section 78-45-7.15(4)] specifically where you have a premium that would involve a single person, and then you would have one that involves a family situation.

Where you specifically have one that applies to a couple rate, and then you can easily calculate the difference between a couple rate and a couple plus children, then that seems to me to be in the best interest of the minor children to allow that offset as opposed to a pro rata which I think is more applicable under a situation where there's an indistinguishable amount, where there's no distinction between a couple rate and a couple plus children. (Transcript, Nov. 9, 1994, pp. 74-75)

Moreover, under Utah Law the court is required to consider the best interests of the minor children, not only in determining custody, but also in determining other obligations of

the parties. See Rosendahl v. Rosendahl, 876 P.2d 870 (Utah App. 1994). Likewise, the clear intent of Section 78-45-7.15(1) and (2) is that insurance for the minor children should be maintained by the party who can do so at the most reasonable cost. It cannot be disputed that the interests of the minor children are better served by having more of the child support payment go directly to the children rather than using the payment to purchase insurance for Mr. Bradford and his current wife. Mr. Bradford should not be entitled to use child support funds to supplement the purchase of his and his wife's insurance simply because the court ordered him rather than Mrs. Bradford to provide insurance. The court was correct when it calculated the childrens' portion of the insurance to be the difference between the couple rate and the family rate.

III. The Trial Court Properly Ruled That After July 1, 1994
Mr. Bradford Could Only Deduct From
His Child Support Payment One-Half Of The
Cost Of The Childrens' Portion Of The Insurance Premium

Section 78-45-7.15(3) Utah Code Ann., which requires divorced parties to share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of insurance, became effective July 1, 1994. Prior to the enactment of §78-45-7.15(3) the law allowed a parent to deduct from his or her child support payment the full amount of the cost to provide medical insurance for the minor children. The court ruled at the February 16, 1994 trial that Mr. Bradford could deduct the full \$325.00 premium payment from his monthly child support payment. At the November 9, 1994 hearing the court ruled that §78-45-7.15(3) now applied to the case and ordered that Mr. Bradford could only deduct one-half of the children's portion of the premium from his child support payment.

Mr. Bradford claims on appeal that Section 78-45-7.15(3) Utah Code Ann., does not govern this case because that provision is somehow inseparably connected to the Utah Child Support Guidelines which were also amended effective July 1, 1994. Mr. Bradford claims the insurance provisions of the divorce decree can only be modified when there is a simultaneous modification of the child support obligation. Because the Child Support Guidelines as amended July 1, 1994 did not justify a 25% increase in the amount of child support Mr. Bradford was required to pay, (Transcript, Nov. 9, 1995 p. 56) Mr. Bradford argues there was not a material change of circumstances between the parties. He thus claims the decree cannot be modified to reflect the new insurance requirements of Section 78-45-7.15(3).

Mr. Bradford's argument fails for two reasons. First, the Guidelines and the insurance provisions are not inseparably connected but stand on their own. Nothing in the express wording of the Uniform Civil Liability for Support Act precludes a court from enforcing Section 78-45-7.15(3) in the absence of modification of a parties child support obligation. Rather the express language of the statute requires the court to make such orders anytime the issue is presented. Under Utah Law statutes are interpreted according to their plain and ordinary meaning. Harmon v. Ogden City Civil Service Comm., 890 P.2d 4 (Utah App. 1995). The issue was presented to the court on November 9, 1994 and the court properly applied the statute.

Second, due to Mr. Bradford's false representations, the November 9, 1994 hearing was in substance a continuation of the February trial. At the February trial the court found a substantial change in the parties' circumstances and allowed modification of the original Decree of Divorce. (Transcript, Feb. 16, 1994 p. 119 and 120) The second hearing did not occur

because of a new petition to modify, but rather was required simply to rectify the mistakes of the first trial brought on solely by Mr. Bradford's false representations. Thus, even if we assume, arguendo, that §78-45-7.15(3) is only applicable when there is a material change in the parties' circumstances, the finding by the court in February of a change of circumstances satisfied that requirement. The mere fact the law was changed between the two hearings is the risk Mr. Bradford took when he chose to deceive the court.

In Shelton v. Shelton, 885 P.2d 807 (Utah App. 1994) the court stated the well established rule that:

A material misrepresentation or concealment of assets or financial condition as a result of which alimony or property awarded is less or more than otherwise would have been provided for is a proper ground for which the court may grant relief to the party who was offended by such misrepresentation or concealment, absent other equities such as laches or negligence.

See also Clissold v. Clissold, 519 P.2d 241, 242 (Utah 1994) and Boyce v. Boyce, 609 P.2d 928, 931 (Utah 1980).

Mr. Bradford clearly misrepresented his financial condition and as a result his child support obligation was less than it would have been had he not made such representations. Mr. Bradford has no standing to complain about a court ruling necessitated solely because of his inappropriate conduct.

IV. The Court Properly Awarded Mrs. Bradford Judgment For Child Support Arrearages

Without citing relevant authority or making logical argument Mr. Bradford also claims the judgment for arrearages was improper. Despite the attempted confusion, there is one

fact that is certain. Had Mr. Bradford not misrepresented the facts regarding his insurance at the February trial, the court would have made the proper child support order and the arrearages would not exist. Mr. Bradford cannot be heard to complain about having to make good on an obligation he should not have been able to avoid in the first instance. Id.; Glover v. Glover, 242 P.2d 298 (Utah 1952).

V. Mr. Bradford Should Be Estopped By His Wrongful
Conduct From Obtaining Any Relief On Appeal

As previously addressed, material misrepresentations of a party's financial condition in a court proceeding is proper grounds for a court to grant relief to the party offended by the misrepresentations. Id. Aside from the fact Mr. Bradford's arguments on appeal fail for lack of a legal or factual basis, Mr. Bradford's misrepresentations alone should preclude him from receiving any relief in this appeal.

At the November hearing the trial court did not have the benefit of Mr. Bradford's presence in order to determine whether Mr. Bradford's misrepresentations "were accompanied through negligence, gross negligence, or through a flat out attempt to deceive [the] court". Ruling on Defendant's Objection to Proposed Order. Neither did the court have the benefit of the transcript from the first trial in order to determine whether Mr. Bradford's misrepresentations were deliberate. As a result the court denied Mrs Bradford's claim for attorney's fees. (Transcript Nov. 9, 1994 p. 67)

With the benefit of the transcript of the February trial the record is clear that Mr. Bradford intentionally deceived the court. In response to questions posed by his counsel, Mr.

Bradford stated:

Q. Do you believe that you'll be able to continue to maintain health insurance and dental insurance on the girls?

A. You bet.

Q. How much does that cost you a month right now, do you know?

A. *Well, mine is free because I've been with the company. So what I am paying is specifically for them.* (Transcript Feb. 16, 1994, p. 37)(emphasis added)

Upon being shown Exhibit One which was a check stub from his employer, Mr.

Bradford was asked the following questions and gave the following responses to his counsel:

Q. Would you look at Exhibit No. 2 and just tell me briefly what that is?

A. This is a check stub for the pay period ending 30 January of 1994. And really what this is, is my vacation hours on 39 and-a-half being paid to me, and then deductions.

Q. Did they deduct for health insurance and dental insurance?

A. Yes, they did. For Metropolitan, \$875.42, and for dental \$60.51.

Q. *It's your testimony that these deductions then are to pay for the insurance applicable only to your daughters?*

A. *That is correct.*

Q. *Because yours is free? I mean, the company provides it as part of your benefits.*

A. *The company provides mine.* (Transcript Feb. 16, 1994 p. 39)(emphasis added)

Upon cross examination by Mrs. Bradford's counsel Mr. Bradford gave the following responses to the following questions:

Q. You've indicated that you cashed in your vacation time and paid how many months premium for health insurance?

A. Three months until April 27.

- Q. And the health and dental insurance, are you sure that's paid out of every pay check or is that paid just once a month?
- A. It's paid out of every pay check, every two week period.
- Q. *And it's not -- and you're sure that no portion of that is for you?*
- A. *I'm sure.* Bechtel policy states if you've been with the company five years or more, your insurance is paid for by them. That goes with longevity with the company. (Transcript Feb. 16, 1994 P. 70)(emphasis added)

We now know based on the evidence presented at the November hearing that: (1)

Mr. Bradford's insurance was not free; and (2) the insurance premium he paid was not solely to provide insurance for the minor children, but was also to purchase insurance for Mr. Bradford and his current wife. (Transcript, Nov. 9, 1994, pp. 4, 6, 27, 36 and 37) Because the misrepresentations are so blatant, no other conclusion can be reached than Mr. Bradford willfully lied. Such conduct should estop him from receiving any relief on this appeal.


The record is also clear that the court would have awarded Mrs. Bradford her attorney's fees in the amount of \$680.00 (Transcript Nov. 9, 1994, pp. 57, 67) had the court known that Mr. Bradford willfully lied. Because it is now clear from the transcript that Mr. Bradford did willfully lie, this court should award Mrs. Bradford her attorney's fees from the previous hearings and her attorney's fees on appeal.²

² The fact that Mrs. Bradford has not cross-appealed in this case for attorney's fees should not preclude this court from awarding her fees. Donald Eyre, her counsel in the lower court was appointed a District Court Judge and was required to withdraw as counsel. Mrs. Bradford's new counsel was not retained until June of 1995 and of course did not learn of Mr. Bradford's misrepresentations until reading the transcript in preparation of this brief. Mr. Bradford will not be prejudiced by the request for attorney's fees as he can respond to the request in his Reply Brief.

CONCLUSION

Based on the foregoing the trial courts' decision should be affirmed and plaintiff appellee Karen Marie Bradford Hogan should be awarded her costs and attorney's fees at the lower court and on appeal.

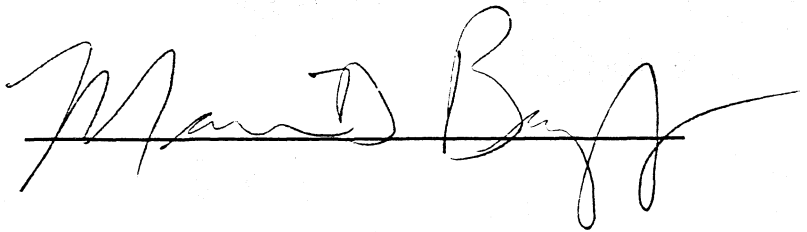
DATED this 18th day of January, 1996.


MARVIN D BAGLEY
ATTORNEY FOR PLAINTIFF/APPELLEE

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the above and foregoing Brief of Appellee to be mailed postage prepaid this 18th day of January, 1996 to the following:

Dexter L. Anderson, Esq.
Star Route Box 52
750 South Highway 99
Fillmore, UT 84631



ADDENDUM NO. 1

Monthly Combined Adj. Gross Income		Number of Children					
		1	2	3	4	5	6
From	To						
4,901	— 5,000	534	1,002	1,226	1,450	1,580	1,687
5,001	— 5,100	541	1,015	1,245	1,475	1,607	1,717
5,101	— 5,200	547	1,028	1,264	1,500	1,634	1,746
5,201	— 5,300	554	1,042	1,282	1,522	1,658	1,772
5,301	— 5,400	561	1,055	1,300	1,544	1,682	1,797
5,401	— 5,500	568	1,068	1,317	1,566	1,706	1,823
5,501	— 5,600	575	1,081	1,335	1,588	1,730	1,848
5,601	— 5,700	582	1,093	1,351	1,610	1,754	1,874
5,701	— 5,800	586	1,103	1,367	1,632	1,778	1,899
5,801	— 5,900	591	1,112	1,383	1,653	1,802	1,925
5,901	— 6,000	596	1,122	1,398	1,675	1,826	1,950
6,001	— 6,100	601	1,131	1,414	1,697	1,850	1,976
6,101	— 6,200	605	1,141	1,430	1,719	1,874	2,001
6,201	— 6,300	610	1,150	1,445	1,740	1,897	2,026
6,301	— 6,400	615	1,159	1,461	1,762	1,921	2,052
6,401	— 6,500	620	1,169	1,480	1,791	1,951	2,084
6,501	— 6,600	624	1,178	1,495	1,812	1,975	2,109
6,601	— 6,700	629	1,188	1,511	1,834	1,998	2,134
6,701	— 6,800	629	1,188	1,511	1,834	1,998	2,134
6,801	— 6,900	673	1,188	1,511	1,834	1,998	2,134
6,901	— 7,000	680	1,188	1,511	1,834	1,998	2,134
7,001	— 7,100	687	1,188	1,511	1,834	1,998	2,134
7,101	— 7,200	694	1,188	1,511	1,834	1,998	2,134
7,201	— 7,300	701	1,188	1,520	1,834	1,998	2,134
7,301	— 7,400	706	1,189	1,531	1,834	1,998	2,134
7,401	— 7,500	710	1,197	1,541	1,834	1,998	2,134
7,501	— 7,600	715	1,205	1,551	1,834	1,998	2,134
7,601	— 7,700	719	1,213	1,562	1,834	1,998	2,134
7,701	— 7,800	723	1,220	1,572	1,834	1,998	2,134
7,801	— 7,900	728	1,228	1,582	1,834	1,998	2,137
7,901	— 8,000	732	1,236	1,592	1,834	2,000	2,150
8,001	— 8,100	737	1,244	1,603	1,834	2,013	2,164
8,101	— 8,200	741	1,252	1,613	1,841	2,026	2,178
8,201	— 8,300	746	1,259	1,623	1,853	2,039	2,192
8,301	— 8,400	750	1,267	1,633	1,864	2,052	2,206
8,401	— 8,500	755	1,275	1,644	1,876	2,064	2,220
8,501	— 8,600	759	1,283	1,654	1,887	2,077	2,234
8,601	— 8,700	763	1,291	1,664	1,899	2,090	2,247
8,701	— 8,800	768	1,298	1,675	1,911	2,103	2,261
8,801	— 8,900	772	1,306	1,685	1,922	2,116	2,275
8,901	— 9,000	777	1,314	1,695	1,934	2,129	2,289
9,001	— 9,100	781	1,322	1,705	1,945	2,141	2,303
9,101	— 9,200	786	1,330	1,716	1,957	2,154	2,317
9,201	— 9,300	790	1,337	1,726	1,969	2,167	2,330
9,301	— 9,400	795	1,345	1,736	1,980	2,180	2,344
9,401	— 9,500	799	1,353	1,747	1,992	2,193	2,358
9,501	— 9,600	803	1,361	1,757	2,003	2,206	2,372
9,601	— 9,700	808	1,369	1,767	2,015	2,218	2,386
9,701	— 9,800	812	1,376	1,777	2,027	2,231	2,400
9,801	— 9,900	817	1,384	1,788	2,038	2,244	2,414
9,901	— 10,000	821	1,392	1,798	2,050	2,257	2,427
10,001	— 10,100	826	1,400	1,808	2,061	2,270	2,441

LOW INCOME TABLE
(Obligor Parent Only)

Monthly Adj. Gross Income		Number of Children					
		1	2	3	4	5	6
From	To						
650	— 675	23	23	23	23	24	24
676	— 700	45	46	46	47	47	48
701	— 725	68	68	69	70	71	71
726	— 750	90	91	92	93	94	95
751	— 775	113	114	115	116	118	119
776	— 800		137	138	140	141	143
801	— 825		159	161	163	165	166
	— 850		182	184	186	188	190
851	— 875		205	207	209	212	214
876	— 900		228	230	233	235	238
901	— 925		250	253	256	259	261

Monthly Adj. Gross Income		Number of Children					
		1	2	3	4	5	6
From	To						
926	— 950			276	279	282	285
951	— 975			299	302	306	309
976	— 1,000				326	329	333
1,001	— 1,050				372	376	380

1894

78-45-7.15. Medical expenses.

(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).

1895

78-45-7.16. Child care expenses — Expenses not incurred.

(1) The child support order shall require that each parent share equally the reasonable work-related child care expenses of the parents.

(2) (a) If an actual expense for child care is incurred, a parent shall begin paying his share on a monthly basis immediately upon presentation of proof of the child care expense, but if the child care expense ceases to be incurred, that parent may suspend making monthly payment of that expense while it is not being incurred, without obtaining a modification of the child support order.

(b) (i) In the absence of a court order to the contrary, a parent who incurs child care expense shall provide written verification of the cost and identity of a child

ADDENDUM NO. 2

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

KAREN MARIE BRADFORD,

Plaintiff,

VS.

WILLIAM RICHARD BRADFORD,

Defendant,

CASE NO. 8677

HEARING TRANSCRIPT

REPORTED BY:

Vonda Bassett, CSR, RPR

February 16, 1994

750 South Highway 99

Fillmore, Utah 84631

BEFORE:

The Honorable Lynn W. Davis, Judge

APPEARANCES:

For the Plaintiff: Donald Eyre
Attorney at Law
125 North Main
Nephi, Utah 84648

For the Defendant: Dexter L. Anderson
Attorney at Law
Star Route Box 52
750 South Highway 99
Fillmore, Utah 84631

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1 Q Okay. Are you employed now?

2 A I am employed by Bechtel Corporation, but I
3 am on holding status with that company.

4 Q Would you explain that to the Court, what
5 that means.

6 A Well, holding status means that the company
7 will continue to keep your resume active in their
8 files and constantly search the projects that they
9 have, submitting you to a project engineer to get you
10 on a job.

11 Q Okay. So you don't go to work every day then
12 now?

13 A That is correct.

14 Q And I guess I need to ask you what your
15 profession is, what kind of work you do?

16 A I'm an electrical engineer.

17 Q When did you first go to work then for
18 Bechtel?

19 A I went to work -- let's see -- September
20 28th, 1981.

21 Q And they have been your employer then since
22 that time?

23 A That is correct.

24 Q And as an electrical engineer?

25 A That is correct.

1 Support Schedule would require you to pay under your
2 income status?

3 A Oh, definitely.

4 Q Whether you're unemployed or whether you are
5 employed?

6 A Definitely.

7 Q Do you believe that you'll be able to
8 continue to maintain health insurance and dental
9 insurance on the girls?

10 A You bet.

11 Q How much does that cost you a month right
12 now, do you know?

13 A Well, mine is free because I've been with the
14 company. So what I am paying is specifically for
15 them.

16 Q Let me hand you a document here so we can
17 make sure that's a matter of record.

18 MR. ANDERSON: I should have had these
19 marked, but I didn't get that done.

20 Q (BY MR. ANDERSON) Let me hand you what's
21 been marked as Defendant's Exhibit 1 and ask if you
22 can identify this for the Court.

23 A This is a check stub from Bechtel which is
24 telling all my deductions.

25 Q Okay. And that's for October of '93?

1 A That's correct. A pay period ending 24
2 October of '93.

3 Q And this basically would have been your last
4 payroll stub?

5 A That's correct.

6 Q Does that show an amount then deducted for
7 health care -- or health insurance and dental
8 insurance?

9 A Dental is \$9.06 and the Metropolitan 150 plan
10 is what I carry is 129.64. And then I also carried
11 life insurance where the girls were the
12 co-beneficiaries on this policy.

13 Q Are they still co-beneficiaries on the life
14 insurance?

15 A Oh, yes. And it was for 24.20.

16 Q Now, that pay stub then is for a two-week
17 period; is that correct?

18 A That's correct.

19 Q So your monthly cost for health insurance,
20 dental insurance, and life insurance would be
21 approximately twice that amount; is that correct?

22 A That's correct.

23 MR. EYRE: We'd offer No. 1, your Honor.

24 THE COURT: Any objection, counsel?

25 MR. EYRE: No.

1 THE COURT: It may be received.

2 (Defendant's Exhibit 1 received into
3 evidence.)

4 Q (BY MR. ANDERSON) Would you look at Exhibit
5 No. 2 and just tell me briefly what that is.

6 A This is a check stub for the pay period
7 ending 30 January of 1994. And really what this is is
8 my vacation hours on 39 and-a-half being paid to me,
9 and then deductions.

10 Q Did they deduct for health insurance and
11 dental insurance?

12 A Yes, they did. For Metropolitan, \$875.42,
13 and for dental \$60.51.

14 Q It's your testimony that these deductions
15 then are to pay for the insurance applicable only to
16 your daughters?

17 A That is correct.

18 Q Because yours is free? I mean, the company
19 provides it as part of your benefits.

20 A The company provides mine.

21 MR. ANDERSON: We'd offer Exhibit No. 2.

22 THE COURT: Counsel, do you wish to examine
23 this document?

24 MR. ANDERSON: He has a copy of it. I'm
25 sorry. I didn't show it to you.

1 MR. EYRE: No.

2 THE COURT: It may be received.

3 (Defendant's Exhibit 2 received into
4 evidence.)

5 MR. ANDERSON: What I'd like to do is mark a
6 series of four documents, your Honor, if I could at
7 this time. And it shows his unemployment income at
8 the present time.

9 Q (BY MR. ANDERSON) I hand you what's been
10 marked as Exhibit No. 3. If you'd look at them and
11 tell the Court what they are.

12 A They're receipts from the Texas Unemployment
13 Commission showing a claim date and an amount for
14 unemployment insurance.

15 Q What periods of time do these cover?

16 A From 11 -- starting with 11-21-93 and going
17 through 1-9 of '94.

18 Q And how much are they for? What's the money
19 amount that results from these unemployment checks to
20 you?

21 A Every two weeks it's \$245 -- well, \$490 every
22 two weeks, being \$980 for a four-week period.

23 Q Is that currently what you're living on,
24 Mr. Bradford?

25 A That's correct.

1 A Exactly. I am pursuing work, as I've said
2 here in court.

3 Q You've indicated that you cashed in your
4 vacation time and paid how many months premiums for
5 health insurance?

6 A Three months until April 27th.

7 Q And the health and dental insurance, are you
8 sure that's paid out of every paycheck or is that paid
9 just once a month?

10 A It's paid out of every paycheck, every
11 two-week period.

12 Q And it's not -- and you're sure that no
13 portion of that is for you?

14 A I'm sure. Bechtel policy states if you've
15 been with the company five years or more, your
16 insurance is paid for by them. That goes with
17 longevity with the company.

18 Q Your wife has at no time prevented you from
19 visiting with your children; is that correct?

20 A Oh, not at all.

21 Q She permits you to have telephone visits
22 regularly; is that correct?

23 A As long as I initiate them.

24 Q And --

25 A She has not let my -- she has not -- my

1 Q Had you discussed the possibility of divorce
2 prior to that time?

3 A Yes.

4 Q He's testified that when he came home for
5 Easter break that year that you informed him of your
6 desire to have a divorce; is that correct?

7 A Yes.

8 Q Did he agree to that?

9 A At first he wanted to go -- he wanted to
10 fight it. And then I talked to him and told him I
11 wanted to go uncontested, and he agreed.

12 Q Did the two of you work out terms for that
13 divorce?

14 A Yes.

15 Q At that point in time were you handling the
16 finances for the family?

17 A Yes.

18 Q Approximately how much was Mr. Bradford's
19 take-home on a monthly basis prior to that time?

20 A A minimum of 5,000 a month.

21 Q And was some income for you -- was that a
22 concern for you at that time?

23 A Yeah.

24 Q And did the two of you discuss how much it
25 was going to require for you to live on and support

1 counsel or to this Court on a yearly basis their
2 earnings for that particular year and issues of child
3 care, if that is necessary, with some reasonable
4 expectation that there would be an indication at that
5 point in time rather than drawing them back from
6 Oregon or Nevada or Texas to recompute or reconsider?

7 MR. EYRE: That's what I would prefer, your
8 Honor.

9 THE COURT: I would prefer that, too. I
10 don't want these parties back in this court every six
11 months every time their employment is modified, as
12 long as it can be reasonably substantiated for a
13 reasonable period of time. We ought to be able to sit
14 down with the child support obligation worksheet and
15 make a determination what the obligations are.

16 I'm assuming that the defendant is going to
17 to become employed. I hope. And he hopes, I think,
18 too.

19 MR. BRADFORD: Amen.

20 THE COURT: Certainly, the children do, and
21 his ex-wife wants him to be employed. We have at
22 least four or five different scenarios here because --
23 is there a change of circumstances since the date of
24 the decree? Certainly there is. There's a remarriage
25 on the part of the plaintiff. There's unemployment

1 now as it relates to the part of the defendant.

2 There's some substantial period of time where
3 the plaintiff cohabited with another individual. And
4 if a portion of this was to be imputed as alimony,
5 then the Court might take that into consideration
6 since August of 1992 through August of '93 when she
7 did remarry.

8 There are factors involved in this particular
9 case that are significant. We need to make a
10 determination whether we're going to proceed as of May
11 of 1993 with the reasonable expectation that that will
12 be periodically reviewed automatically by the Court
13 upon presentment of child support obligation
14 worksheets from the parties.

15 Whether that's every six months or it's once
16 a year, whenever it may be done, so it can be modified
17 without the necessity of travel, attorneys' fees,
18 costs, and all of those things.

19 MR. ANDERSON: We certainly agree with that.
20 There has to be some kind of a vehicle, but there is
21 no problem with that.

22 THE COURT: I think that can work. I think
23 that through counsel that we can do that without
24 extreme expense. It can be supported either by
25 affidavit and any work or employment paycheck stubs or

1 MR. EYRE: Uh-huh.

2 THE COURT: Plus 4 times \$3,665.

3 MR. EYRE: Uh-huh.

4 THE COURT: Take a moment, counsel, and let's
5 see whether we can reach -- find out what that is.

6 MR. EYRE: \$23,024 total divided by 12.

7 THE COURT: I show 23,084, so we're within
8 \$50 of each other. I'm going to call his income
9 \$23,050. Her income of \$11,000 minus child care
10 obligations for ten months making it \$6,000 for her
11 income for 1993.

12 We can calculate then based upon the child
13 support obligation worksheet what obligation he has
14 from May of '93 through the balance of '93. That then
15 would be offset by his obligations on the insurance
16 that he has faithfully paid.

17 And those obligations are severe in my
18 estimation. There must be a way to reduce --

19 MR. EYRE: Normally those are taken out on,
20 you know, just one time a month.

21 THE COURT: Well, I want that to be verified
22 too because it is generally paid once a month as
23 opposed to every two weeks. And they seem high to me.

24 MR. EYRE: And clearly we are not obligated
25 to pay his life insurance expense.

1 MR. ANDERSON: We haven't figured that in at
2 all, your Honor.

3 THE COURT: But as to the health and the
4 dental, he may have an offset. But isn't there any
5 way to reduce those premiums? There must be a way.
6 At 100 or whatever it was, 139 every two weeks --

7 MR. ANDERSON: One hundred and twenty-nine
8 something.

9 THE COURT: -- that seems excessive to me.
10 There must be a way, and I'm going to order him to
11 explore that and advise his counsel, and through his
12 counsel opposing counsel of the means by which he can
13 either increase the deductible or make legitimate
14 attempts to reduce the premium. Maybe he's explored
15 that already. I don't know, but I want him to.

16 MR. ANDERSON: That's probably possible if
17 it's okay to reduce the quality, I guess, of the
18 insurance, in other words, the deductible.

19 THE COURT: But at least through 1993 and to
20 date I'm going to allow the offsets upon verification
21 that's it's paid every two weeks. And, counsel, you
22 can secure that easily, I think, those offsets of
23 those premiums towards whatever obligation it works
24 out on the child support obligation worksheet. Now,
25 are we with each other so far?

1 MR. ANDERSON: Agreed, your Honor.

2 THE COURT: Okay. We've reached some terms
3 that you're both going to have to write down.
4 \$23,050, and \$6,000 for her. We are on common basis
5 as it relates to the amount of the premium payments
6 which can be offset. Working all of that through, we
7 will know what his obligations were from May of 1993
8 to date.

9 Now, next, visitation. I'll allow six weeks
10 visitation in the summertime. I truly anticipate that
11 the defendant is going to be able to upon reemployment
12 as electrical engineer, who is college graduated,
13 secure employment and bear the costs associated with
14 those six weeks.

15 I'll allow every other Christmas. You can
16 work out the general schedule as it relates to that,
17 counsel.

18 I'll allow liberal visitation, liberal
19 telephonic visitation. You can both work out the
20 details of that, what may be the best time each week
21 to call and with some reasonable anticipation that the
22 children can generate those calls, also, if they
23 choose to do so for whatever purpose, and to otherwise
24 keep the parties apprised of the development of their
25 children within the community, within school, within

ADDENDUM NO. 3

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

KAREN MARIE BRADFORD,

Plaintiff,

VS.

WILLIAM RICHARD BRADFORD,

Defendant,

CASE NO. 8677

HEARING TRANSCRIPT

REPORTED BY:

Vonda Bassett, CSR, RPR

November 9, 1994

750 South Highway 99

Fillmore, Utah 84631

BEFORE:

The Honorable Lynn W. Davis, Judge

APPEARANCES:

For the Plaintiff: Donald Eyre
Attorney at Law
125 North Main
Nephi, Utah 84648

For the Defendant: Dexter L. Anderson
Attorney at Law
Star Route Box 52
750 South Highway 99
Fillmore, Utah 84631

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1 of this year. It was with respect to certain matters
2 concerning child support, visitation questions, and
3 those type of matters. That resulted in an order
4 modifying judgment and decree of divorce that
5 Mr. Anderson prepared pursuant to the ruling of the
6 Court at that time.

7 Shortly after that particular hearing in
8 February, the plaintiff, Karen Hogan learned that
9 there were certain inaccuracies in the testimony of
10 Mr. Bradford at that time. Those inaccuracies were
11 such to the effect that he did not have a job at that
12 time. In fact, he flew directly from Fillmore -- from
13 Salt Lake to Maryland, and he had a job. He testified
14 to the fact that the only individuals listed on his
15 insurance were his children other than himself which
16 was also an untruth. He was married at the time and
17 had listed his current wife as a party on that
18 insurance.

19 Upon learning of those facts and receiving
20 Mr. Anderson's proposed order, I called him and
21 informed him of those facts and told him that based
22 upon that information we should modify that order to
23 reflect that the deduction for health insurance should
24 show the difference between an employee plus one
25 policy and an employee plus two policy since he had

1 listed his wife on the insurance, which was a
2 substantial difference.

3 Presently pursuant to Mr. Anderson's present
4 order, he is deducting \$325 each month for insurance
5 which is the difference between a single and an
6 employee plus two. If the deduction was for the
7 difference between an employee plus one and employee
8 plus two, the difference is only \$78.67.

9 I pointed that out to Mr. Anderson. We had a
10 discussion. And I don't think he disagreed with the
11 fact that Mr. Bradford had listed his wife on the
12 insurance, but there was some disagreement. I also
13 wrote him a letter as a follow-up to our telephone
14 conversation.

15 I thereafter learned that he had submitted
16 that order to the Court and the Court has signed that
17 order. Subsequently, he did submit an affidavit
18 indicating that, yes, he did have a job now and what
19 his income was and submitted a child support worksheet
20 pursuant to that new income. And that shows a child
21 support obligation of Mr. Bradford of \$673.

22 It's our position that he should receive a
23 deduction for his insurance premium only between the
24 plan for employee plus one and employee plus two, and
25 we agree that is \$78.68.

1 THE COURT: Can you advise me -- or,
2 Mr. Anderson, can you advise the Court when his
3 current wife was placed on that policy?

4 MR. ANDERSON: Yes. I think that's reflected
5 in the file, and it's reflected in the affidavit that
6 he filed, your Honor.

7 THE COURT: I know it's subsequent to the
8 time -- at least from the affidavit it was subsequent
9 to the time that the two children were placed upon the
10 policy, but I can't recall the date.

11 MR. ANDERSON: His present wife, Barbara
12 Bradford, was placed on the policy on July 19th of
13 1993, which was subsequent to him purchasing employee
14 plus two insurance plan after his two children were
15 enrolled. Kristen, I think the way it said, was
16 enrolled on March 31st of '87, and Catelyn Bradford
17 was enrolled March 21st of '89.

18 THE COURT: Okay. Mr. Eyre, you may proceed.

19 MR. EYRE: Okay. It's our position that
20 Mrs. Bradford should be reimbursed retroactively for
21 child support based upon those amounts. And we've
22 prepared a schedule which we indicate would be the
23 amount that she should be reimbursed.

24 THE COURT: Is that the newest schedule that
25 this Court is obligated to follow, counsel, as of --

1 Court's -- or the divorce decree should be changed.

2 THE COURT: Well, what if I agree with you,
3 counsel, as it relates to the procedure but indicate
4 to you that my understanding of the law, and certainly
5 I would have some discretion as it relates to that, is
6 that I signed an order dated March the 10th of 1994
7 when I did not have full facts.

8 It was either not disclosed to me or
9 intentionally misrepresented or your client was
10 confused as it related to that or he simply didn't
11 tell the whole truth because he didn't deem that he
12 should tell the whole truth or he didn't think that it
13 had any bearing -- substantive bearing upon the
14 decision of the Court.

15 Now, I can do a couple of things, I suspect,
16 as it relates to procedure. If you make your motion
17 that this is not properly before the Court, I can
18 agree to that and strike it from the calendar today,
19 but it's going to be back.

20 If you want it back, you've got it back. But
21 there's going to be a motion or a petition for a
22 modification. It's going to be squarely back before
23 the Court.

24 What is in the best interest of these parties
25 as it relates to costs, attorneys' fees, cost of your

1 client to fly out from wherever he is now? Is he in
2 Texas or is he in the midwest or where is he?

3 MR. ANDERSON: He's in Maryland.

4 THE COURT: He can assume also all of those
5 costs.

6 I'll tell you what I'm going to do. I signed
7 an order without all of the facts coming before me.
8 And I don't know whether your client was confused, but
9 at least there was not a representation of all of the
10 facts before me.

11 I signed an order based upon the fact that
12 two children were placed upon the insurance policy.
13 He was entitled at that point in time to have that
14 offset against child support. When you talk about who
15 may gain from this, it isn't Mrs. Hogan. It happens
16 to be the children involved.

17 And this Court happens to have the duty as it
18 relates to the best interest of the minor children.
19 It doesn't become a windfall to Mrs. Hogan. It
20 becomes what is legitimately owed to the minor
21 children.

22 You can come back -- we can either stipulate
23 as it relates to the issues before the Court, and we
24 can proceed and have an order; or we can come back
25 with a petition to modify. But I signed that order

1 without all of the facts. I don't know whether it was
2 deliberate or not as it relates to your client.

3 But I may call him back here to make that
4 determination to see whether he deliberately misled
5 the Court or whether he was confused or he simply
6 didn't tell the whole story. And then I can do that
7 on my own, and that may cost him a significant amount
8 to fly out here on the Court's own motion to determine
9 whether he's in contempt of court on a very, very
10 critical and crucial issue before the Court.

11 MR. ANDERSON: Well, my client --

12 THE COURT: The best scenario is that he did
13 not tell the whole story. That's the best scenario
14 you can paint for your client because he may have been
15 misleading. He may have been confused. I don't know
16 that.

17 But where do we go procedurally? If I grant
18 your motion as it relates to the fact that are
19 procedurally before the Court, it may be defective,
20 but we're going to be right back here in about two
21 months.

22 MR. ANDERSON: I don't disagree with that,
23 and maybe the Court misunderstood me. And my client
24 certainly wants to get it resolved today if it can be
25 done. And I'm not attempting to side track the

1 issues -- the real issues in the matter by bringing
2 that procedural point up with the Court.

3 What I'm trying to do is focus in on the
4 question that the Court answered at the very first,
5 and that is what are the issues before the Court.

6 THE COURT: Sure.

7 MR. ANDERSON: And I thought that was
8 important that we understand just why we're hear today
9 particularly in light of Mr. Eyre asking for increased
10 child support based on facts that have occurred that
11 are really not raised in his petition. His petition
12 is simply one to set aside the March 10th order.

13 And I want to talk just a minute about the
14 telephone call we had because I think that's
15 important. Again, we're talking about a lot of fluid
16 facts that come flowing along in a situation that kind
17 of confused it. At least it's confused me.

18 But the issue of the phone call, as I recall
19 it, was that somewhere along in here Mrs. Hogan's
20 husband was employed down in the St. George area, and
21 he had insurance available to him that would cover the
22 children through his employment. And it was going to
23 cost a lot less money than what Mr. Bradford was
24 deducting from his child support. Right or wrong, but
25 it was less money. So they had requested --

1 It finally made a big circle. And hopefully I'm
2 trying to bring the Court up to date as to what had
3 happened.

4 Now, Mr. Bradford does not object to the
5 Court understanding and taking into consideration
6 today that his wife Barbara is listed on his employee
7 plus two insurance policy through his employment
8 because she is. As I said, she was put on there in
9 July of 1993.

10 Mr. Bradford's position is that that doesn't
11 matter because that's just a feature, that's just the
12 character of the program that's offered to him. He
13 can put as many on there as he wants to.

14 THE COURT: Counsel, let's explore that
15 reasoning.

16 MR. EYRE: Could I just comment on that, your
17 Honor?

18 THE COURT: It seems to me if that is the
19 position of your client, it's well articulated. But
20 what you have is two minor children paying for the
21 insurance of their father's new wife.

22 MR. ANDERSON: And it just comes back to the
23 question of who is entitled to that windfall, I guess.

24 THE COURT: And if you can --

25 MR. EYRE: The children should be.

1 he was required to make an election between other
2 plans.

3 It added in place of \$150 deductible plan
4 what he calls probably -- oh, it's the Aetna managed
5 plan. And this is an HMO type plan where there is no
6 deductible. And this is the plan that he advised the
7 plaintiff and counsel that he intends to elect for the
8 children this coming year, going into effect January
9 first.

10 It, again, would be an expensive plan.
11 Although, as the Court can see from some of the other
12 exhibits, it's quite a lot less than it was last year.
13 It's just an HMO, but there is no deductible which is
14 an advantage to the plaintiff. There is a \$10 a visit
15 co-pay, and that's all. Otherwise, everything else is
16 covered. And that's a significant point in the 1995
17 update. Again, it describes what the benefits are.

18 THE COURT: Any objection, counsel, the Court
19 receiving Defendant's Exhibit No. 3?

20 MR. EYRE: To the extent that this is going
21 to be an ongoing order, I think the rates for that
22 particular plan selected for 1995 are similar.
23 There's employee, employee plus one, employee plus two
24 plan. It would still be our position that based upon
25 those rates, the difference in those ought to be the

1 difference between the employee plus one and employee
2 plus two.

3 MR. ANDERSON: Exhibit No. 4 --

4 THE COURT: Okay. The record ought to
5 reflect that I've received it with that objection. It
6 may be received.

7 (Defendant's Exhibit 3 received into
8 evidence.)

9 MR. ANDERSON: Exhibit No. 4 is
10 Mr. Bradford's action plan they call it. It's his
11 update of his insurance coverage or his requested
12 insurance coverage.

13 It's significant because it shows that the
14 people listed on his insurance now is his two
15 daughters, Catelyn and Kristen and his wife Barbara.

16 They did have -- they had Catelyn listed
17 twice. And that's what he's done is amended that and
18 turned it in.

19 THE COURT: Any objection to the Court
20 receiving Defendant's proposed Exhibit No. 4

21 MR. EYRE: No.

22 THE COURT: It may be received.

23 (Defendant's Exhibit 4 received into
24 evidence.)

25 MR. ANDERSON: Exhibit No. 5 is the price or

1 percent?

2 MR. EYRE: Not with respect to health
3 insurance deductions.

4 THE COURT: And that's my thinking also,
5 counsel, is that health deductions may in fact be
6 automatic at any time the matter is properly before
7 the Court, that the Court has an affirmative duty when
8 a matter is properly before the Court to take it into
9 account and must take it into account, and no new
10 order or modify decree can go into effect unless that
11 provision has been provided for within the proposed
12 order.

13 That's my understanding of it. Now, you can
14 clarify that for me.

15 MR. ANDERSON: Well, I understand what the
16 Court is saying.

17 THE COURT: I think the legislature says the
18 Court has the affirmative duty, and no decree in fact
19 will enter until that has been complied with. And
20 there's an affidavit in the file that indicates that's
21 been complied with.

22 MR. ANDERSON: The problem that I have with
23 that is that the medical expense statute 78-45-17.15
24 is intertwined and inseparable from the new child
25 support schedules. Because if you read that, and

1 THE COURT: Whatever the amount is she would
2 have an -- whatever this Court determines is the
3 legitimate amount for him to offset on a monthly
4 basis, she has a one-half obligation of that. And if
5 it's several hundred dollars a month, she has one-half
6 of that obligation. And if it's \$78.67 per month, she
7 has one-half of that obligation.

8 MR. ANDERSON: If the new statute is
9 applicable.

10 THE COURT: Okay. Let's see. Do you have
11 any other exhibits?

12 MR. EYRE: Plaintiff's Exhibits 12 and 13
13 just show the wife was on the policy as of the date of
14 our hearing. And Exhibit 14 shows what the premiums
15 are currently for the Met Life 150 plan.

16 THE COURT: Mr. Anderson, do you have any
17 objection to the Court receiving Plaintiff's Exhibit
18 No. 12, No. 13 and No. 14?

19 MR. ANDERSON: I wasn't paying that much
20 attention.

21 THE COURT: Take a look at those and see if
22 you have a question regarding the relevancy.

23 MR. ANDERSON: I don't have any objection. I
24 think that some of them are outdated, for example, the
25 one showing Catelyn twice.

1 He didn't even know she was on there. And
2 the one action plan sheet that I handed the Court,
3 Exhibit No -- I can't remember -- that's listing who
4 is on there now. She's not listed because he made
5 sure that her name was taken off the record even
6 though she wasn't illegible for insurance anyway.

7 THE COURT: Counsel, tell me if I were to
8 adopt the position of Mr. Eyre that as of July 1 of
9 1994 that the defendant and the plaintiff are to
10 assume -- each to assume one-half of the costs, that
11 really doesn't effect the child support obligation.
12 It simply would indicate an obligation that your
13 client may have back to the defendant and what he can
14 legitimately offset against his child support
15 obligation; right?

16 MR. EYRE: That's correct. We reviewed the
17 statute with respect to possible use of new
18 guidelines. Under the new guidelines his child
19 support obligation would be \$789 based upon his
20 current income rather than the 673. And my
21 calculation is that's not quite 25 percent.

22 THE COURT: Okay. Anything further because
23 I'm going to take a short recess and review these
24 documents in chambers and then rule from the bench.

25 It seems to me, counsel, this has been

1 somewhat of a different kind hearing because the
2 defendant is not present and Mr. Anderson has had to
3 reply to the questions of the Court, and there hasn't
4 been any opportunity for cross-examination by
5 Mr. Eyre.

6 And so we've approached it that way rather
7 than continue it at tremendous costs to all of the
8 parties. We simply want to get all the matters before
9 the Court, the facts before the Court, your arguments
10 as it relates to the law, and for this Court to make a
11 decision.

12 MR. EYRE: The only additional evidence we
13 would proffer is just as to attorney's fees as to this
14 matter.

15 THE COURT: Okay. You may be heard as it
16 relates to that.

17 MR. EYRE: Your Honor, since our hearing in
18 February, I've expended eight hours on this particular
19 case. My regular hourly rate is \$85, and we're
20 requesting attorney's fees of \$680.

21 THE COURT: Mr. Anderson, do you wish to
22 address that? That appears to me to be a reasonable
23 in terms of the number of hours and reasonable as it
24 relates to the hourly wage. Whether he's entitled to
25 it is an issue of law -- and you've addressed that

1 With that background -- and I don't know
2 whether a motion to strike is the appropriate document
3 to get all of the matters or issues before the Court,
4 but it appears to me that it's as satisfactory as any.
5 The other is simply a petition to modify based upon
6 new evidence.

7 This Court in its previous hearing simply
8 would never have ruled that the defendant is entitled
9 to an offset of his entire premium of insurance
10 against his obligations for child support had this
11 Court been aware that the defendant also had his wife,
12 his new wife, on that policy.

13 I don't know from the hearing how that fact
14 got away from us. It was either the fact that the
15 Court was misled deliberately or misled negligently or
16 the defendant was confused or he misinterpreted or he
17 was mistaken or he did not tell the whole truth or
18 there was simply a failur to disclose or he wasn't
19 asked the appropriate questions that would have
20 resulted in his response to that question.

21 I don't know the answer to that question.
22 But this Court ultimately did not make an order having
23 before it all of the facts, regardless.

24 I think that any time the Court has before it
25 directly an issue that deals with the appropriate

1 offset of medical and dental premiums, then it can
2 under the new legislation that went into effect as of
3 July 1 of 1994 incorporate any ruling and rely upon
4 that statute. Clearly the issue before this Court is
5 the appropriateness of the offset of the amounts
6 involved.

7 I think I indicated at the pretrial, which
8 was a conference call, that I believe that the
9 defendant was entitled to offset the difference
10 between the employee number one, the couple rate, and
11 the employee number two, which is the couple plus the
12 children, and that I would reserve my judgment until
13 hearing -- until I had all of the facts before me and
14 could review policies and the best arguments before
15 the Court.

16 I've done that. And I don't think there's
17 anything that would indicate that I ought to depart
18 from that judgment. What I'm going to do is modify
19 the decree or modify the order of March the 10th so
20 it's an amended order that would reflect that he's
21 entitled -- the defendant is entitled to an offset of
22 the difference between what is now employee number
23 one, the couple rate, and the employee number two or
24 plus two which is the couple plus children rate.

25 I don't know what that difference is, but it

1 ranges somewhere between \$65.20 and \$78.67. And I
2 think the defendant is prepared to stipulate at least
3 in closing argument that it is \$65.20.

4 Now, next what to do as it relates to the new
5 statute. I believe it ought to apply. What's clearly
6 before the Court is what is appropriately offset
7 against the child support obligations, and that's
8 clearly the intent here of the statute once there's a
9 reconsideration of that.

10 And I'll exercise my discretion and pronounce
11 it that I believe that he is then entitled as of July
12 1 of 1994 to an offset of one-half of the difference
13 between the employee number one and employee number
14 two premium payments which I would think would be
15 one-half of \$65.20.

16 By stating that I also obligate the plaintiff
17 in a monthly basis of one-half of that amount.
18 One-half of \$65.20 is owed on a monthly basis or
19 whatever amount that may be between a couple rate and
20 a couple plus children rate.

21 Now, I'm not persuaded that a pro rata
22 fashion is in the best interest of justice, nor am I
23 persuaded that these children ought to in any form or
24 fashion pay the obligations or premiums of their
25 father nor, heaven forbid, the obligations or premiums

1 of his new wife. I could never reach that conclusion.

2 Now, what the delinquencies are, counsel,
3 will be based upon this ruling together with
4 Plaintiff's Exhibit No. 11. And I'm not prepared to
5 make those calculations from the bench, but I think
6 those calculations can be made based upon this Court's
7 order today.

8 I'm not going to find him in contempt of
9 court because that issue is not before the Court, but
10 the oversight or the failure to disclose has caused
11 the very fact that we are back here today.

12 If I found that to be deliberate, then I
13 would find him in contempt of court, assess all costs,
14 and perhaps have him held in the Millard County Jail
15 to remind him that he has the obligations. But I
16 can't reach that. I don't know what his motives were.

17 So in light of the fact that I'm not able to
18 assess motives and he's not present today for the
19 Court to make some enquiry relative to that, the
20 parties will each assume their own attorney's fees
21 relative to this matter.

22 Now, in addition, the parties have stipulated
23 that the plaintiff is entitled through whatever
24 insurance company the defendant may employ to be
25 provided with documentation regarding issues of

1 says, "The premium expense for the children shall be
2 calculated by dividing the premium amount by the
3 number of persons covered under the policy and
4 multiplying the results by the number of children in
5 the instance case."

6 That's a pro rata. And if if we're going to
7 follow and use the new statute, then we need to follow
8 that formula which is pro rata. And which is entirely
9 different than just using the difference between
10 employee plus one and employee plus two. It makes a
11 significant difference in dollars.

12 THE COURT: It does. But, counsel, I would
13 read that specifically where you have a premium that
14 would involve a single person, and then you would have
15 one that involves a family situation.

16 Where you specifically have one that applies
17 to a couple rate, and then you can easily calculate
18 the difference between a couple rate and a couple plus
19 children, then that seems to me to be in the best
20 interest of the minor children to allow that offset as
21 opposed to a pro rata which I think is more applicable
22 under a situation where there's an indistinguishable
23 amount, where there's no distinction between a couple
24 rate and a couple plus children.

25 I think that that legitimately applies where

1 you have a single rate and then you have a family
2 rate. And if the wife or other children are under
3 that second premium, then you prorate it because you
4 don't have any basis upon which you could otherwise
5 determine it.

6 But where you have the ability to make a
7 specific calculation between a couple rate and a
8 couple plus children, then it seems to me that it's
9 reasonable to apply that formula, the difference
10 between the two rates.

11 Okay. Anything further from Plaintiff's
12 perspective, counselor, at all?

13 MR. EYRE: No.

14 THE COURT: Anything further from the
15 defendant's perspective, counsel?

16 MR. ANDERSON: If there's going to be a
17 deficiency owed, can we address the issue of how
18 that's paid, or is that just sudden death as far as
19 the defendant is concerned, or what?

20 THE COURT: Well, if there is a calculated
21 deficiency under the order of the Court, how do you
22 wish to address that, counsel?

23 MR. EYRE: We would indicate that our desire
24 would be that it be paid within 60 days. If it's not
25 paid within 60 days, that a judgment be entered and we

1 have the ability to execute on that judgment.

2 THE COURT: I think in light of the
3 application of the law here, that 60 days is certainly
4 not enough time to pay that. I don't know what the
5 anticipated deficiency would be under the order of the
6 Court.

7 MR. EYRE: A little over 2,000.

8 THE COURT: Pardon me?

9 MR. EYRE: A little over \$2,000.

10 THE COURT: I'll give him twelve months to
11 pay that, counsel.

12 MR. ANDERSON: I keep -- that's fine, your
13 Honor. And I hate to keep bringing up additional
14 questions.

15 THE COURT: We might as well resolve all of
16 this. That's what our discussion is about.

17 MR. ANDERSON: I guess I'm just trying to
18 clarify it in my mind. The March 10th order required
19 him to pay -- provide the insurance -- well, I guess
20 I'd have to get my -- there was a certain amount set
21 out in the order for child support. Let's see if we
22 can find the order.

23 THE COURT: I have it before me. Actually it
24 was recorded on March the 11th of 1994.

25 MR. ANDERSON: And the order was that he pay

ADDENDUM NO. 4

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,	:	AFFIDAVIT OF DEFENDANT
Plaintiff,	:	<i>IN RE</i> CHILD SUPPORT
	:	OBLIGATION MODIFICATION
	:	
vs.	:	
	:	
WILLIAM RICHARD BRADFORD,	:	Civil No. 8677
Defendant.	:	

STATE OF TEXAS)
) ss.
County of _____)

I, William R. Bradford, II, being first duly sworn depose and say that I am the Defendant in the above-entitled matter, that I am competent to testify herein if called, and that the following matters are within my personal knowledge or belief.

1. I am submitting this affidavit pursuant to the order of this Court dated March 10, 1994, modifying Judgment and Decree of Divorce.
2. Following the hearing in this case on February 16, 1994, I was re-employed by

Bechtel on or about February 22, 1994, on a temporary assignment.

3. Based on my first week's pay ending February 27, 1994, I received gross pay totaling \$875.76. Out of that gross pay \$70.28 was deducted for health insurance and \$4.80 was deducted for dental insurance.

4. Monthly gross pay equals \$3,794.96 and monthly health and dental cost for Kristyn and Katelynn Bradford is therefore \$325.35 per month.

5. I have investigated health and dental plans available through my employment with Bechtel since the hearing in this case, and I have determined the following facts;

a) Bechtel offer a three tier premium schedule which charges a set premium for;

i) Employee only

ii) Employee plus one dependent.

iii) Employee plus two or more dependents. (Family Coverage)

(See exhibit A attached hereto)


6. In order to provide insurance for Kristyn and Katelynn Bradford, my two daughters herein, I am required to enroll under the third option above. Bechtel provides the insurance on myself as employee, and in order to have Kristyn, added March 31, 1987, and Katelynn, added March 21, 1989, to my insurance plan, I am required to have the employee plus two plan that results in the deduction from my gross pay recited above. According to the rules of the plan it matters not how many over two are also listed on the plan. Therefore, I

added my wife Barbara Bradford to the family plan on July 9, 1993. An adult child of mine by a previous marriage, Ricki Bradford, is apparently still listed but she is not eligible for any benefits under the insurance because of her age.

DATED this 14th day of April, 1994.


WILLIAM R. BRADFORD, II

Subscribed and sworn to before me this 14th day of April, 1994.


Notary Public
LINDA H. STANISLO
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires November 30, 1997

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing AFFIDAVIT OF DEFENDANT *IN RE* CHILD SUPPORT OBLIGATION MODIFICATION, postage prepaid, United States Mail, on the 20th day of April, 1994, to the following:

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

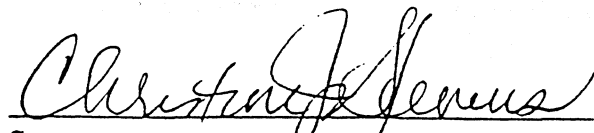

Secretary

Exhibit A

SENT BY: BECHTEL

; 3-21-94 ; 18:14 ;

GARO/HR-

14102802373;# 1/ 1

Bechtel

8801 Washington Boulevard
Gaithersburg, Maryland 20878-8356
(301) 417-3000

March 21, 1994

Mr. William R. Bradford, II
609 Jacia Court
Burleson, TX 76028

Dear Mr. Bradford,

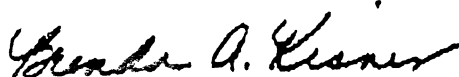
This is to confirm our conversation regarding the exact dates of medical plan enrollments of your dependents. The enrollment dates are as follows:

Ricki L. Bradford	Enrolled 09-12-86	Still listed on plan
Kristyn M. Bradford	Enrolled 03-31-87	Still listed on plan
Katelynn Bradford	Enrolled 03-21-89	Still listed on plan
Karen M. Bradford	Enrolled 05-08-86	Cancelled 08-31-91
Barbara A. Bradford	Enrolled 07-19-93	Still listed on plan

You have had family coverage (this means employee plus two or more dependents) continuously since dependant, Ricki, was added in September of 1986. Bechtel's medical plan has a three tier premium schedule which charges a set premium for "employee only", "employee plus one dependent", or "employee plus two or more dependents".

If you should need more information regarding coverage for your dependents, please let me know.

Very truly yours,



Brenda A. Kisner
Human Resources Administrator

ADDENDUM NO. 5

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

KAREN M. BRADFORD Plaintiff,	Ruling on Defendant's Objection to Proposed Order CASE NO. 8677
vs. WILLIAM R. BRADFORD II, Defendant.	JUDGE: LYNN W. DAVIS

Counsel for plaintiff submitted an Order Amending Order Modifying Judgment and Decree of Divorce based upon this court's ruling at a hearing conducted on November 9, 1994. Counsel for defendant filed "Defendant's Objection to Proposed Order".

**I
Discussion**

The court has carefully considered the proposed Order and Defendant's Objection to Proposed Order. The fact of the matter is that the second hearing in this case was necessary because of defendant's material misrepresentations to the court under oath at the first hearing. Because defendant was not present at the second hearing, the court was not able to inquire and determine whether those material misrepresentations were occasioned through negligence, gross negligence, or through a flat out attempt to deceive this court. It is the position of this court that but for the misrepresentation and perhaps deceit, the post July 1994 hearing respecting these issues would not have been necessary.

This court found, at the post July hearing, through extensive proffer, that the insurance arrangement of defendant with his employer was materially and substantially different than that represented in the pre-July hearing.

Ruling


1. The argument contained in defendant's objection to paragraph 6 of the proposed order is rejected.

2. Defendant's argument in his paragraph No. 2 is rejected. This argument was exhausted at hearing.

3. Defendant's argument in paragraph No. 3 was exhausted and rejected at hearing. Accordingly, the court will execute the proposed order as tendered by counsel for plaintiff.

Dated this / 7 day of January, 1995.

BY THE COURT



LYNN W. DAVIS, JUDGE

cc: Juab County Atty
Dexter Anderson, Esq.