

1995

# Jill (Fairbanks) Eyring v. Roger R. Fairbanks : Brief of Appellant

Utah Court of Appeals

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Roger R. Fairbanks, Appellant, Pro se.

Frederick N. Green; Green and Berry; Attorney for Appellee.

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## Recommended Citation

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IN THE UTAH COURT OF APPEALS  
STATE OF UTAH

---

JILL (FAIRBANKS) EYRING )

Plaintiff and Appellee, )

vs. )

Case No. 950371-CA

ROGER R. FAIRBANKS )

Defendant and Appellant. )

Priority 15

---

**BRIEF OF APPELLANT ROGER R. FAIRBANKS**

On Appeal from The Third Judicial District Court of Salt Lake County,  
Judge Murphy, Presiding

---

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(Attorney, Pro se)

**FILED**

DEC 19 1995

COURT OF APPEALS

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**IN THE UTAH COURT OF APPEALS  
STATE OF UTAH**

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JILL (FAIRBANKS) EYRING	)	
	)	
Plaintiff and Appellee,	)	
	)	
vs.	)	Case No. 950371-CA
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ROGER R. FAIRBANKS	)	
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## **STATEMENT SHOWING JURISDICTION**

Judge Murphy of the Third Judicial District Court of Salt Lake County resolved defendant's post-divorce decree motion to compel release of tax exemptions by sustaining plaintiff's objection to Commissioner Evans' Recommendation that the motion be granted. The Utah Court of Appeals has appellate jurisdiction to review the district court's order under Section 78-2a-3(I), Utah Code Annotated.

## **STATEMENT OF THE ISSUES**

The sole issue before this court on appeal may be simply stated: Did the trial court err in construing the Supplemental Decree of Divorce to require defendant to pay the difference in tax liability incurred solely as a result of income of plaintiff's present husband in order to exercise his right to acquire the tax exemptions for the parties' children?

## **STANDARD OF APPELLATE REVIEW**

Consideration of this issue does not require that any deference be given to the trial court's ruling. It requires legal interpretation of the provisions of the Supplemental Decree of Divorce and review of the trial court's legal conclusions de novo for correctness. Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1039-1040 (Utah 1991).

## STATEMENT OF THE CASE

### A. NATURE OF PROCEEDING.

This appeal is from a final order of the Third Judicial District Court in and for Salt Lake County, denying defendant's post-divorce decree motion to compel plaintiff to refund payment demanded for release of tax exemptions.

### B. STATEMENT OF FACTS.

Plaintiff and defendant stipulated to a decree of divorce entered in January of 1993. [R. 333-344]. The decree awarded plaintiff child support in the sum of One Thousand, Three Hundred, Eighty-seven and 00/100 dollars (\$1,387.00) per month, based solely upon income earned by defendant. [R. 334]. Plaintiff was unemployed at the time the decree was entered and remains, by choice, unemployed. She does not contribute financially to the support of the parties' four minor daughters, the youngest of which is 10 years of age.

Paragraph 16 of the Supplemental decree of Divorce awards defendant the right to acquire the tax exemptions for his four daughters "by paying to plaintiff any difference in her tax liability resulting from defendant purchasing the right to claim said tax exemptions." [R. 341-342].

For the tax year 1992, plaintiff had no tax liability, with or without the exemptions. She refused to comply with the decree and ultimately signed over the exemptions on the morning of a hearing scheduled on defendant's motion to compel her to do so.

In February of 1993, plaintiff remarried. For the tax year 1993, plaintiff again refused to release the exemptions. After defendant filed a motion to compel, she demanded and received from defendant the sum of Three Thousand forty-four and 00/100 dollars (\$3,044.00), representing the difference in tax liability of her new husband, based solely upon his income. [R. 360-361]. Defendant advised plaintiff that he was paying under protest in order to preserve his right to the exemptions and would move the court for an order refunding the money. [R. 360-361].

On April 13, 1994, defendant filed the motion which is the subject of this appeal, to compel plaintiff to refund the payment demanded for release of the tax exemptions. [R. 363]

After thorough consideration, the Court Commissioner, in a carefully reasoned memorandum decision, granted the motion to compel repayment, stating:



9. Since the Decree of Divorce was entered in this matter the Child Support *Guidelines with respect to the award of the children as dependents for tax purposes* has been amended and provides some further direction to the court. Section 78-45-7.21(2) provides, “In awarding the exemption, the court or administrative agency shall consider: (a) as the primary factor, the relative contribution of each parent to the cost of raising the child; and (b) among other factors, the relative tax benefit to each parent.” (Emphasis added by commissioner).

The appropriate interpretation of the disputed language as contained in the Decree of Divorce is as the defendant argues: that only the tax liability of these parents is to be considered in determining the amount, if any, defendant is to reimburse plaintiff for the right to claim the children as his dependents. Only if plaintiff's present husband's income is included in determining defendant's child support obligation would it be fair and consistent with the intent of the guidelines to allow the court to consider plaintiff's husband's tax liability in the award of the children as dependents for tax purposes.

See Minute Entry of August 16, 1994, a copy of which attached as Addendum Exhibit 1.

Plaintiff objected to the commissioner's ruling and the Trial Judge overruled the commissioner, denying defendant's motion to compel. A copy of the order and a transcript of his ruling are attached to the Addendum as

Exhibits 2 and 3 respectively.

For the tax year 1994, plaintiff demanded from defendant the sum of Two Thousand, Three Hundred, Forty-five and 71/100 Dollars (\$2,345.71) for the release of the exemptions, a sum based on tax liability resulting completely from income of her present husband. Defendant did not purchase the exemptions and incurred additional tax liability of One Thousand, Nine Hundred, Ninety-nine and 00/100 Dollars (\$1,999.00) as a result of being denied his right to claim the tax exemptions.

By this appeal defendant and appellant seeks (1) reversal of the denial of his motion to compel reimbursement, (2) recovery of the total sum of Five Thousand, Forty-three and 00/100 Dollars (\$5,043.00), paid to plaintiff and incurred by defendant in additional tax liability together with interest at applicable legal rates and, (3) an order consistent with the Commissioner's Ruling of August 16, 1994, that to purchase the exemptions he be required to pay plaintiff only the tax liability resulting from plaintiff's income, not the income of her current husband. In the event this appeal is resolved after April 15, 1996, defendant will also seek recovery for being denied his right to claim the exemptions for the 1995 tax year.

## SUMMARY OF ARGUMENT

Defendant's right to purchase the tax exemptions for the parties' minor children under paragraph 16 of the decree of divorce requires only that he pay any difference in plaintiff's tax liability which would result from her losing the exemptions. The plain meaning of this provision of the decree requires that the calculation of the difference in tax liability be based solely upon income earned by plaintiff. Plaintiff's demand and requirement that defendant pay a difference in tax liability resulting solely from income of her present husband is completely inconsistent with the intent of the parties as it is expressed in the plain language of the decree.

The appropriate interpretation of paragraph 16 of the decree is that only the tax liability of the parties to the divorce decree is to be considered in determining the amount, if any defendant must pay for the right to claim the children as his dependents. The income of plaintiff's present husband is completely irrelevant. Plaintiff earns no income and the income of her present husband has not been considered in determining defendant's child support obligation, which is based solely upon defendant's income. It would be patently unfair and inconsistent with both the intent of the parties as expressed in the decree and the Utah child support guidelines to consider the

tax liability of plaintiff's present husband in calculating what defendant must pay in order to purchase the exemptions.

The trial court's concern that a calculation which does not consider the income of plaintiff's present husband would be "hypothetical" completely misses the point. Any time a non-custodial parent is awarded a right to purchase exemptions based upon the custodial parent's difference in tax liability, there must, by definition, be a calculation involving potentially hypothetical tax calculations which may never actually be incorporated into a return.

The court's order denying defendant's motion to compel reimbursement should be reversed and plaintiff should be required to return with interest all sums defendant previously paid and incurred in additional tax liability as a result of calculations based upon tax liability attributable to income of plaintiff's present husband.

## ARGUMENT

**IN ORDER FOR DEFENDANT TO ACQUIRE THE TAX EXEMPTIONS FOR HIS CHILDREN, THE DECREE OF DIVORCE REQUIRES ONLY THAT HE PAY THE DIFFERENCE IN THE SOLE TAX LIABILITY OF PLAINTIFF, NOT THE TAX LIABILITY OF HER PRESENT HUSBAND**

Paragraph 16 of the Supplemental Decree of Divorce states:

16. The defendant is awarded the right to purchase the tax exemptions for the parties' minor children from plaintiff. Defendant may exercise this right by paying to plaintiff any difference in her tax liability resulting from defendant purchasing the right to claim said tax exemptions.

Supplemental Decree of Divorce, Paragraph 16, P. 9. [R. 341-342]. There is no dispute that plaintiff is unemployed by choice and that she does not contribute financially to the parties' children. Plaintiff nonetheless contends that this provision requires defendant to pay to her a difference in tax liability based solely on income of her present husband in order to acquire the exemptions. Defendant maintains that he need only pay any difference in her tax liability, exclusive of the tax liability of her present husband.

Courts have uniformly held that “[t]he meaning of a settlement agreement incorporated into a divorce decree should be determined according to the usual rules governing the construction of contracts. Kruse v Todd, 389 S.E.2d 488, 491 (Ga. 1990). See also, Sweeney v. Sweeney, 519 A.2d 1237 (Conn. App. 1987), Sutton v. Sutton, 771 S.W.2d 791 (Ark. App. 1989). The law of contracts, in turn, dictates that such agreements must be interpreted in a manner that is compatible with the clear intent of the parties as manifested by the written terms of the agreement. National Western Life Ins. Co. V. Schmek, 749 P.2d 974, 976 (Colo. App. 1987). As this issue appears to be one of first impression for the Utah Appellate Courts, there are no Utah cases which may be considered determinative. In Motes v. Motes, 786 P.2d 232 (Utah App. 1989), this court ruled on a related issue, holding that state courts have authority to direct a custodial parent to release tax exemptions to a noncustodial parent, in cases such as this where “. . . the noncustodial parent has the higher income and provides the majority of support . . .” Id. at 239. The same policy considerations apply to this case.

The clear intent of the parties as manifested by the written terms of paragraph 16 is that defendant is required to pay to plaintiff only for a

difference in “her” tax liability. It cannot reasonably be interpreted to require defendant to pay a difference in tax liability of plaintiff’s present husband, incurred solely as a result of his income.

The court commissioner, after a lengthy oral argument and careful consideration under advisement, recommended in his minute entry of August 16, 1994, that the trial court grant defendant’s motion to compel reimbursement of \$3,044.49, paid by defendant under protest to plaintiff for the release of tax exemptions. Paragraph 9 of the Commissioner’s findings on page 4 of the Minute Entry states:

Since the Decree of Divorce was entered in this matter the Child Support Guidelines with respect to the award of the children as dependents for tax purposes has been amended and provides some further direction to the court. Section 78-45-7.21(2) provides, “In awarding the exemption, the court or administrative agency shall consider: (A) as the primary factor, the relative contribution of each parent to the cost of raising the child: and (b) among other factors, the relative tax benefit to each parent. (Emphasis added by commissioner)

The appropriate interpretation of the disputed language as contained in the decree is as the defendant argues: that only the tax liability of these parents is to be considered in determining the amount, if any, defendant is to reimburse plaintiff for the right to claim the children as dependents. Only if plaintiff’s present husband’s income is included in determining defendant’s child support obligation would it be fair and consistent with the intent of the guidelines to allow the

court to consider plaintiff's husband's tax liability in the award of the children as dependents for tax purposes.

Minute Entry, Page 4. This ruling by the commissioner is sound in its reasoning and interpretation of Utah law and the decree of divorce. It is also supported by the same policy considerations adopted by this court in Motes, above, favoring the allocation of tax exemptions to the parent of the children who provides the greater support and for whom the tax benefit would be greater.

The commissioner did not misinterpret the law or the decree as plaintiff argued in her objection to his ruling. Her objection and the reasons stated therein are groundless. [R. 406-407]. There is nothing in the commissioner's ruling that "ignores the fact that plaintiff files a joint return." [R. 407]. Nor does it "require the plaintiff to file a married/single return ." [R. 407]. The plaintiff need only obtain a tax form and calculate what her tax would have been based upon her individual income for the year, just as the decree requires her to do in any event. The procedure is very simple; in fact, while plaintiff remains unemployed, the procedure is unnecessary. Once she signs the exemptions over to defendant as required by the decree, she is free to file any appropriate tax return including a joint return with her



present husband. Plaintiff's claim that "[t]he only way to calculate the tax effect of losing exemptions is to calculate the loss of the exemptions in the context of the joint return" is simply false.

Plaintiff is unemployed by choice. She earns no income and therefore has no tax liability. She does not contribute to the cost of raising the parties' four minor children. She receives almost \$17,000.00 per year, completely tax free from defendant, for whom said income is taxable and not subject to any claim for deduction. The district court's ruling that defendant must pay the difference in her husband's tax liability essentially increases her child support to \$20,000.00 per year tax free. Under the plain meaning of the decree and simple principles of equity and fairness, she should not be entitled to additional compensation for the exemptions on the children by virtue of the fact that she has married someone who earns in excess of \$75,000.00 per year and wants the exemptions so that he may save over \$3,000 in state and federal taxes. Requiring defendant to pay a difference in tax liability resulting solely from the income of plaintiff's present husband renders defendant's right to purchase the exemptions meaningless and has the effect of erasing it completely from the decree, a result which contradicts the clear intent of the parties.

## CONCLUSION

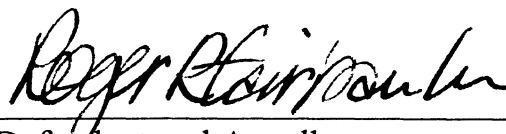
The plain language of the decree and principles of fairness and equity dictate that defendant not be required to pay a difference in tax liability resulting solely from income of plaintiff's present husband in order to purchase the tax exemptions for his children. For the reasons stated above defendant respectfully requests that this court: (1) reverse the trial court's denial of his motion to compel reimbursement, (2) Order plaintiff to pay to defendant the total sum of Five Thousand, forty-three and 00/100 Dollars (\$5,043.00), paid to plaintiff and incurred by defendant in additional tax liability, together with interest at applicable legal rates and, (3) Enter an order consistent with the Commissioner's Ruling of August 16, 1994, that to purchase the exemptions he be required to pay plaintiff only the tax liability resulting from plaintiff's income, not the income of her present husband. In addition, if this appeal is ruled upon after April 15, 1996, defendant requests that he be awarded an additional sum representing the amount paid to plaintiff or incurred in additional tax liability as a result of not being able to claim the exemptions.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing BRIEF  
OF APPELLANT ROGER R. FAIRBANKS was Mailed, postage prepaid,  
this 19<sup>th</sup> day of December, 1995, to the following:

Frederick N. Green  
GREEN & BERRY  
622 Newhouse Building  
10 Exchange Place  
Salt Lake City, Utah 84111

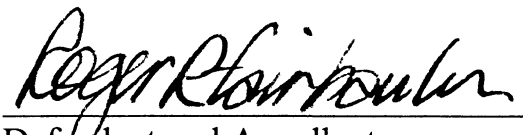
ROGER R. FAIRBANKS

A handwritten signature in black ink, appearing to read "Roger R. Fairbanks", written over a horizontal line.

Defendant and Appellant  
Attorney, Pro se

DATED this 19<sup>th</sup> day of December, 1995.

ROGER R. FAIRBANKS

A handwritten signature in black ink, appearing to read "Roger R. Fairbanks", written over a horizontal line.

Defendant and Appellant  
Attorney, Pro se

## **ADDENDUM**

1. Minute Entry of Court Commissioner Dated August 16, 1994. [R. 399-405].
2. Order of Trial Court Dated May 2, 1995. [R.599-600].
3. Transcript of hearing on October 24, 1994. [R. 618-622].
4. Utah Code Annotated Section 78-45-7.21.



Jill Fairbanks, Plaintiff,	:	MINUTE ENTRY
vs.	:	CASE NO: 914902005 DA
Roger R. Fairbanks, Defendant.	:	COMMISSIONER: Michael S. Evans

## FINDS:

- AUG 11 1934

3. The Decree of Divorce specifically provides, in paragraph 4, defendant's obligation to obtain life insurance, which life insurance defendant has failed to obtain simply alleging that he cannot afford to do so.

4. It appears that defendant was provided with plaintiff's request for reimbursement regarding the children's medical bills, if not early then by way of pleadings submitted in support of plaintiff's present motion, and it is reasonable that judgment be entered against defendant in the amount of ~~attorney's fees~~ <sup>medical bills</sup> as prayed.

5. It does not appear as though defendant has been delinquent in the payments of child support in an amount equal to support owing for a thirty day period and within the meaning of the statute and it is inappropriate to find such a delinquency has occurred and to enter an order to withhold and deliver child support.

6. The parties disagree with the interpretation of the Decree of Divorce as it relates to the award of attorney's fees to plaintiff. The Decree of Divorce in paragraph 15 orders defendant to pay to plaintiff the sum of \$3,000.00 as a contribution to plaintiff's attorney's fees and sets forth a payment schedule. The final sentence of paragraph 15, which is the disputed language provides, "In the event the defendant becomes more than thirty days delinquent in payment of said obligation for attorney's fees and costs, then plaintiff shall be entitled to obtain a judgment against defendant for the unpaid balance owing . . .". Plaintiff argues that any thirty day delinquency in any of the payments pursuant to schedule allows her to seek a judgment for any unpaid balance of the original \$3,000.00 award, while defendant argues that only those payments which were due according to the schedule of payments may be reduced to



judgment. The Commissioner finds that the Decree is appropriately interpreted to require that any unpaid balance owing of the \$3,000.00 attorney's fees awarded at the time of a thirty day delinquency, which has in fact occurred, is the appropriate interpretation of the Decree.

7. The parties also dispute the language of paragraph 16 of the Decree of Divorce regarding the right to claim the parties' minor children as dependents for tax purposes. Paragraph 16 provides, in pertinent part, "The defendant is awarded the right to purchase the tax exemptions for the parties' minor children from plaintiff. Defendant may exercise this right by paying to plaintiff any difference in her tax liability resulting from defendant purchasing the right to claim said tax exemptions."

The parties' dispute in this regard stems from plaintiff's remarriage and her argument that, although she remains substantially unemployed and generating minimal income for herself, that the tax liability resulting from her present husband's income is her shared liability and that only by defendant repaying all of the additional tax liability resulting from plaintiff and her present husband not claiming the children as their dependents are the terms of the Decree of Divorce fulfilled. Defendant argues, conversely, that it is only any tax liability plaintiff in her own name and as a result of her own earnings that he is required to reimburse.

8. The child support award entered in this matter was entered pursuant to Utah's Child Support Guidelines attributing no income to plaintiff and requiring that defendant pay one hundred percent of the guideline amount of support.

9. Since the Decree of Divorce was entered in this matter the Child Support Guidelines with respect to the award of the children as dependents for tax purposes has been amended and provides some further direction to the court. Section 78-45-7.21(2) provides, "In awarding the exemption, the court or administrative agency shall consider: (a) as the primary factor, the relative contribution of each parent to the cost of raising the child; and (b) among other factors, the relative tax benefit to each parent." (emphasis added)

The appropriate interpretation of the disputed language as contained in the Decree of Divorce is as the defendant argues: that only the tax liability of these parents is to be considered in determining the amount, if any, defendant is to reimburse plaintiff for the right to claim the children as his dependents. Only if plaintiff's present husband's income is included in determining defendant's child support obligation would it be fair and consistent with the intent of the guidelines to allow the court to consider plaintiff's husband's tax liability in the award of the children as dependent's for tax purposes.

**RECOMMENDS:**

1. The parties be restrained from having any contact with one another during times the children are exchanged for periods of visitation and that defendant arrive at plaintiff's home at the appointed time, in no event later than 7:00 p.m. when the visitation is to commence at 6:00 p.m., and remain in his vehicle while plaintiff sends the children out, with the process to be repeated at the end of any visitation period.

2. In the event defendant arrives more than one hour past the scheduled time for visitation, plaintiff be free to make other arrangements for the children.

3. The issue of defendant's contempt for failure to obtain life insurance as ordered in the Decree of Divorce be certified for further hearing before the assigned judge. Defendant may purge himself of any finding of contempt in this regard by his forthwith obtaining life insurance consistent with the Decree of Divorce.

4. Plaintiff be awarded judgment against defendant in the sum of \$755.00 representing one half of the children's uninsured medical expense. The issue of defendant's contempt in this regard be reserved pending his future performance.

5. Defendant be admonished to abide by the terms of the Decree of Divorce in promptly make all payments of child support on the date due. The issue of defendant's contempt in this regard should be reserved pending his future performance.

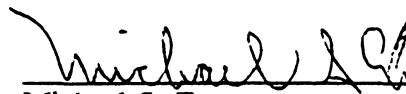
6. Plaintiff be awarded judgment against defendant in the sum of \$3,000.00, together with judgment rate of interest, representing attorney's fees due, owing but unpaid pursuant to the Decree of Divorce.

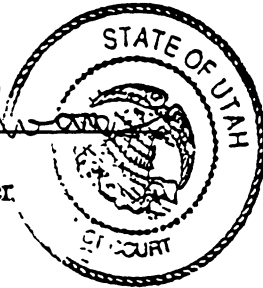
7. Defendant's Motion to Compel Reimbursement of sums paid to plaintiff representing reimbursement to plaintiff for her tax liability resulting from not claiming the parties' minor children as her dependents for tax purposes be granted and plaintiff return, forthwith, that portion of the sums defendant previously paid which represent additional tax liability attributable to plaintiff's present husband. In the event plaintiff herself incurred any additional tax liability on her earnings as a result of not claiming the children as her

dependents for tax purposes, said sum should not be repaid to defendant.

8. Each party bear their own attorney's fees and costs for this hearing.
9. Plaintiff's Counsel is to prepare an order consistent with this recommendation.

Dated this 16 day of August, 1994.

  
Michael S. Evans  
District Court Commissioner.

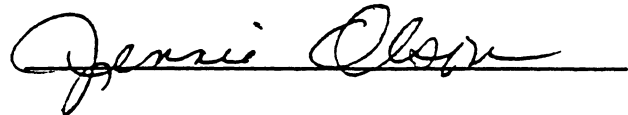


MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry,  
postage prepaid, to the following this 16 day of August, 1994.

Frederick N. Green  
GREEN & BERRY  
Attorney for Plaintiff  
622 Newhouse Building  
10 Exchange Place  
Salt Lake City, UT 84111

Roger R. Fairbanks  
Defendant  
594 West Murray Boulevard, Apt. 1-K  
Murray, UT 84123

A handwritten signature in cursive script, reading "Jennie Olson", is written over a horizontal line.

**EXHIBIT 2**

GREEN & BERRY  
FREDERICK N. GREEN (1240)  
SUSAN C. BRADFORD (5377)  
Attorneys for Plaintiff  
622 Newhouse Building  
10 Exchange Place  
Salt Lake City, Utah 84111  
Telephone: (801) 363-5650

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

---

JILL FAIRBANKS,

Plaintiff,

vs.

ROGER R. FAIRBANKS,

Defendant.

O R D E R

Civil No. 914902005DA

Judge Michael R. Murphy

---

The above-entitled matter came on regularly for hearing on the 24th day of October, 1994, before the Honorable Judge Michael R. Murphy, Presiding, based upon the Plaintiff's Objection to Commissioner's Recommendation, the Plaintiff appearing in person and through her attorney of record, and the Defendant appearing in person and as his own attorney, the matter having been submitted to the Court pursuant to Rule 4-501 and Rule 6-401 of the Code of Judicial Administration, and the Court having granted oral argument and considered the evidence and argument of the parties, and good cause otherwise appearing, it is, hereby

ORDERED, ADJUDGED AND DECREED, as follows:

1. That the Plaintiff's objection to the Commissioner's recommendation is, and is hereby, sustained.
2. That the Defendant's Motion to Compel is denied.

3. That in all other respects the Commissioner's recommendation is affirmed insofar as no other portions thereof have been objected to.

4. That the basis for this Order was articulated by the Court at the time of the ruling. The Defendant shall, as soon as possible, obtain a transcript of the ruling at the Defendant's expense which shall be made a part of this record and incorporated herein by this reference.

DATED THIS 2nd day of May, 1995.

BY THE COURT:

151  
HONORABLE MICHAEL R. MURPHY  
DISTRICT COURT JUDGE

Approved as to Form:

Roger R. Fairbanks 4/24/94  
ROGER R. FAIRBANKS, ESQ.  
Defendant Pro Se



CERTIFICATE OF MAILING

STATE OF UTAH                                 )  
  : ss  
COUNTY OF SALT LAKE                     )

Audree D. Askee, being duly sworn, says:

That she is employed in the offices of GREEN & BERRY,  
attorneys for Plaintiff herein, that she served the attached  
ORDER upon the following parties by placing a true and correct  
copy thereof in an envelope addressed to:

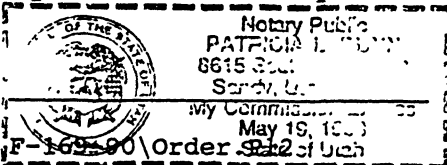
Roger R. Fairbanks, Esq.  
Defendant Pro Se  
261 East 300 South, #300  
Salt Lake City, Utah 84111

and depositing the same, sealed, with first class postage prepaid  
thereon, in the United States Mail at Salt Lake City, Utah on the  
9 day of ~~October~~ <sup>January</sup>, 1995.

SUBSCRIBED AND SWORN to before me this 9 day of ~~October~~ <sup>January</sup>,  
1995.

Patricia R. Dunn  
Notary Public  
Residing in Salt Lake  
County, State of Utah

My Commission Expires:



## **EXHIBIT 3**

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IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY STATE OF UTAH

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JILL FAIRBANKS

:

PLAINTIFF,

: CASE NO. 914902005

VS.

:

ROGER R. FAIRBANKS,

: JUDGE MICHAEL R. MURPHY

DEFENDANT.

:

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REPORTER'S PARTIAL TRANSCRIPT

HEARING OF OCTOBER 24, 1994

BEFORE THE HONORABLE MICHAEL R. MURPHY

A P P E A R A N C E S:

FOR THE PLAINTIFF:

FREDERICK N. GREEN

ATTORNEY AT LAW

10 EXCHANGE PLACE #622

SALT LAKE CITY, UTAH 84111

FOR THE DEFENDANT:

PRO SE

REPORTED BY: GAYLE B. CAMPBELL, CSR

1                   OCTOBER 24, 1994     SALT LAKE CITY, UTAH.

2                   P R O C E E D I N G S.

3                   (EXCERPT OF PROCEEDINGS CONTAINING  
4 COURT'S RULING.)

5  
6                   THE COURT:     I'M PREPARED TO RULE ON THIS  
7 AT THIS TIME.

8                   A COUPLE OF ITEMS, JUST AS BACKGROUND.   THE  
9 CHILD SUPPORT IN THIS PARTICULAR CASE IS PREMISED ON  
10 ON THE CHILD SUPPORT GUIDELINES AS THEY WERE  
11 PRE-JULY, 1994.   AS OF JULY 1994, THERE WAS A CHANGE  
12 IN THE GUIDELINE AMOUNTS, -IN PART AS A RESULT OF  
13 TAKING OUT SOME -- FOR WANT OF A BETTER TERM --  
14 DISTORTION IN THE AMOUNT OF CHILD SUPPORT TO BE  
15 AWARDED AS A CONSEQUENCE OF THE ATTRIBUTING OR  
16 ASSUMING THAT THE EXEMPTIONS WOULD GO TO THE  
17 CUSTODIAL PARENT.

18                   THAT WAS COMPLETELY TAKEN OUT OF ANY  
19 CALCULATION OF THE GUIDELINES, AND WAS PUT IN AS A  
20 SEPARATE PROVISION REQUIRING THE COURT IN EACH CASE  
21 TO INDEPENDENTLY ALLOCATE THE EXEMPTIONS.

22                   SO AS IT STOOD BEFORE JULY OF 94, THE  
23 GUIDELINES THAT WERE APPLICABLE WERE IN FACT REDUCED  
24 FOR THE ASSUMPTION THAT THE EXEMPTION GOES TO THE  
25 CUSTODIAL PARENT.

1           THERE IS NOTHING IN THE FILE, AND I GUESS  
2           THIS IS ALMOST LIKE NEGATIVE JUDICIAL NOTICE, BUT I  
3           DO TAKE JUDICIAL NOTICE THAT THERE WAS NOTHING IN  
4           THE FILE TO INDICATE THAT THERE WAS A ATTRIBUTION OR  
5           ASSUMED INCOME TO THE PLAINTIFF. BUT IF THAT WAS  
6           ANY PART OF THE COMMISSIONER'S RULING, I DON'T  
7           UNDERSTAND THE NEXUS AND IT DOESN'T SEEM TO ME TO BE  
8           A LOGICAL PREMISE TO HIS RULING.

9           WHAT APPEARS TO BE IMPORTANT IN THIS CASE  
10          IS -- WELL, LET ME ELIMINATE THIS FIRST. THE NON-  
11          PARTIES, AND THAT IS MS. EYRING'S NEW SPOUSE'S  
12          INCOME, AS MR. FAIRBANS SUGGESTS, SHOULD NOT BE  
13          CONSIDERED.

14          TO ME THAT MISS MISSES THE POINT. THE  
15          POINT IS THE ARTICULATION IN THE DECREE, OR WHAT IS  
16          NOW THE SUPPLEMENTAL DECREE. AND THAT PREMISES THE  
17          DETERMINATION OF THE COST OF PURCHASING THE  
18          EXEMPTION BASED ON WHAT WAS REFERENCED AS "HER",  
19          MEANING THE PLAINTIFF'S TAX LIABILITY.

20          WELL, ONCE SHE BECOMES REMARRIED, THEN SHE  
21          HAS THE ALTERNATIVE OF FILING JOINTLY OR SEPARATELY.  
22          HER TAX LIABILITY IS BASED ON THE RETURN THAT SHE  
23          DOES IN FACT FILE. THE CHOICE HERE WAS TO FILE  
24          JOINTLY. AND SHE IS JOINTLY AND SEVERALLY LIABLE  
25          FOR THE TAX LIABILITY RESULTING FROM THAT RETURN.

1           TO RESOLVE THIS CASE ON THE BASIS OF  
2           HYPOTHETICAL CALCULATIONS, AND THAT IS, A  
3           CALCULATION OF TAX LIABILITY IF SHE WERE MARRIED  
4           FILING SEPARATELY, OR THE TAX LIABILITY OF HER BEING  
5           SINGLE AND FILING AS HEAD OF HOUSEHOLD IS EXACTLY  
6           THAT, IS A HYPOTHETICAL.

7           THESE ARE REAL MATTERS, AND THEY SHOULD BE  
8           DETERMINED IN THE REAL CONTEXT, AND THAT CONTEXT IS  
9           MARRIED FILING JOINTLY. AND ONLY IN THAT CONTEXT DO  
10          WE APPROPRIATELY ANALYSE THE EXPRESSION, "HER TAX  
11          LIABILITY," AS THAT EXPRESSION IS USED IN THE  
12          DECREE.

13          FOR THAT REASON THAT PORTION OF THE  
14          COMMISSIONER'S RECOMMENDATION IS OVERRULED. AND  
15          YOU'RE TO PREPARE AN ORDER UNDER RULE 4-504 TO THAT  
16          EFFECT, MR. GREEN.

17                 MR. GREEN: I WILL, YOUR HONOR.

18                 (PROCEEDINGS CONCLUDED.)  
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**EXHIBIT 4**

**78-45-7.21. Award of tax exemption for dependent children.**

(1) No presumption exists as to which parent should be awarded the right to claim a child or children as exemptions for federal and state income tax purposes. Unless the parties otherwise stipulate in writing, the court or administrative agency shall award in any final order the exemption on a case-by-case basis.

(2) In awarding the exemption, the court or administrative agency shall consider:

- (a) as the primary factor, the relative contribution of each parent to the cost of raising the child; and
- (b) among other factors, the relative tax benefit to each parent.

(3) Notwithstanding Subsection (2), the court or administrative agency may not award any exemption to the noncustodial parent if that parent is not current in his child support obligation, in which case the court or administrative agency may award an exemption to the custodial parent.

(4) An exemption may not be awarded to a parent unless the award will result in a tax benefit to that parent.

**History:** C. 1953, 78-45-7.21, enacted by L. 1994, ch. 118, § 22.

**Effective Dates.** — Laws 1994, ch. 118, § 23 makes the act effective on July 1, 1994.