

1995

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

Utah Court of Appeals

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Roger R. Fairbanks. Attorney for Appellant.

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

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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

Priority 15

ROGER R. FAIRBANKS )

Defendant and Appellant. )

---

REPLY 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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**FILED**

FEB 20 1996

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
	)	
	)	Priority 15
ROGER R. FAIRBANKS	)	
	)	
Defendant and Appellant.	)	

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**REPLY BRIEF OF APPELLANT ROGER R. FAIRBANKS**

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## TABLE OF CONTENTS

	Page
STATEMENT OF FACTS	1
SUMMARY OF ARGUMENT	3
ARGUMENT	5
I.    DEFENDANT’S NOTICE OF APPEAL IS TIMELY AND THIS COURT HAS FULL JURISDICTION TO CONSIDER THE APPEAL	5
II.   THE COURT’S RULING SHOULD BE REVERSED PRECISELY BECAUSE IT IGNORES BOTH THE PLAIN LANGUAGE OF THE DECREE AND THE MOST BASIC ECONOMIC REALITIES OF THE PARTIES	10
CONCLUSION	14
ADDENDUM	17

## TABLE OF AUTHORITIES

Page

### CASES

<u>Allred v. Allred</u> , 835 P.2d 974 (Utah App. 1992)	11, 12
<u>Martinez v. Martinez</u> , 754 P.2d 69 (Utah App. 1988).	11
<u>Motes v. Motes</u> , 786 P.2d 232 (Utah App. 1989)	11, 12

### STATUTES

Utah Code Annotated § 78-45-7.14, pages 671 and 673.	4, 11
Utah Code Annotated § 78-45-4.1	11

## STATEMENT OF FACTS

There are numerous discrepancies between the record and the statement of facts contained in the brief of plaintiff and appellee, pages 2 through 6. Paragraph 7 on page 3 attempts to understate the amount of the support award, which is \$1,387.00 per month, rather than \$1,187.00 per month as claimed. [R. 309].

Paragraph 8 on page 3, incredibly, asserts that the child support calculation included the imputation of income to the plaintiff. On October 24, 1994, the court rejected, once and for all, plaintiff's repeated attempts to advance this proposition, stating in his ruling from the bench:

There is nothing in the file, an I guess this is almost like negative judicial notice, but I do take judicial notice that there was nothing in the file to indicate that there was a attribution or assumed income to the plaintiff.

[R.620]. Plaintiff and her counsel should be able to recall representations made by them to the court at a pre-trial in August of 1992, that plaintiff was prepared to present medical testimony as to her complete inability to hold employment and that therefore the child support calculation in this matter would be based solely upon defendant's income. [Affidavit of defendant and appellant, page 2, paragraph 2, attached as exhibit "B" to the addendum].

Paragraph 10 on page 4 of appellee's brief consists of plaintiff's unsupported testimony which was fully refuted by defendant on the record and cannot be considered as established for the purposes of this appeal or otherwise. Plaintiff's attempt to characterize this version of facts in the record as "unrebutted" [sic] represents a complete misrepresentation of the facts. Her affidavit testimony and statement at paragraph 10 on page 4 of her brief that defendant " . . . acknowledged that, due to plaintiff's remarriage, that would be the last year that he would claim the exemptions . . ." are fully rebutted and denied by defendant's second affidavit in support of his motion to compel repayment, delivered to the court for filing and served upon counsel for plaintiff on July 11, 1994, which specifically states:

3. Paragraph 8 of plaintiff's affidavit is false. I have never on any occasion stated that I would not exercise my right to claim the exemptions, but have consistently maintained the position that I am entitled to do so, and have always exercised that right based upon tax liability resulting from income of the plaintiff.

A complete copy of defendant's affidavit is attached as Exhibit "C" to the addendum. [Second affidavit in support of motion to compel repayment, page 2, paragraph 3, attached as exhibit "C" to the addendum]. Plaintiff's misrepresentation on this issue inexcusable.

Defendant disputes plaintiff's statement at paragraph 16 on page 5 of the brief of appellee that "plaintiff's counsel prepared an order which included the court's finding's and conclusions." Defendant objected to the order precisely because the court never even purported to make findings and conclusions and counsel for plaintiff had prepared findings and conclusions which did not accurately reflect what was stated by the court from the bench. The court agreed with defendant, ordered that counsel for plaintiff prepare a simple order denying defendant's motion and further ordered that a transcript of his ruling be attached as an essential part of the order so that there would be no further attempts at unilateral interpretation of the court's statements from the bench.

### **SUMMARY OF ARGUMENT**

Defendant's notice of appeal is timely. The court's order of May 2, 1995, is a valid final, appealable order which was signed by the court when the transcript of the October 24, 1994, hearing became available as an essential part of the order and the record. This court has complete jurisdiction to consider this appeal.

While plaintiff bases her argument on what she contends to be the “economic realities” of the parties, she ignores both the plain language of the decree and the most basic economic realities of the parties. The decree is based upon and establishes the two most basic economic realities of the parties: (1) that plaintiff has no income and does not contribute financially to the support of the parties’ minor children and (2) that defendant is the only party who contributes support to the parties’ minor children of \$1,387.00 per month based upon an income figure of approximately \$65,000 per year. [R. 309, Utah Code Annotated § 78-45-7.14, at p. 673, attached as exhibit”D” to the addendum].

Plaintiff cannot avoid the plain meaning of paragraph 16 of the decree, which requires the defendant to pay to plaintiff only for a difference in “her” tax liability. This language and simple principles of equity and fairness dictate that defendant should not be required to pay a difference in tax liability resulting solely from the income of plaintiff’s present husband in order to purchase the exemptions.

Plaintiff’s attempt to characterize her version of facts in the record as undisputed represents a complete misrepresentation of the facts. Her affidavit testimony and statement at paragraph 10 on page 4 of her brief that

defendant “ . . . acknowledged that, due to plaintiff’s remarriage, that would be the last year that he would claim the exemptions . . .” are rebutted and denied by defendant. Plaintiff’s misrepresentation of the facts on this issue is inexcusable.

## **ARGUMENT**

### **I**

#### **DEFENDANT’S NOTICE OF APPEAL IS TIMELY AND THIS COURT HAS FULL JURISDICTION TO CONSIDER THIS APPEAL**

The order signed by the court and entered on May 2, 1995, constitutes the valid final and appealable order on the issue before this court and is the subject of a timely appeal, notice of which was filed on June 1, 1995. It is the original order prepared by counsel for plaintiff and sent to defendant for his signature approving it as to form. It was submitted to the court when the transcript of the hearing of October 24, 1994, became available as part of the order and the record.

Defendant objected to the first order prepared by counsel for plaintiff because of its attempted characterization of the court's ruling from the bench. To resolve the objection, the court, at a hearing on January 9, 1995, instructed counsel for the plaintiff to prepare a simple order denying defendant's motion and instructed defendant to obtain a transcript of the October 24, 1994, hearing, which was to be included in the record as an essential part of the order, in anticipation of this appeal. Defendant was advised shortly thereafter that the reporter who transcribed the hearing would be unavailable and unable to provide a transcript for an extended period of time. When defendant received the proposed order from counsel for the plaintiff, he corresponded with counsel for plaintiff, advising him of the problem with obtaining a transcript and further advising that because the transcript was essential to the appeal he would hold the original order for submission to the court when the transcript became available. Defendant's correspondence to counsel for plaintiff is not part of the record in this case, but, as a convenience, a copy is included as exhibit "A" to the addendum. A copy of the correspondence was forwarded to the court. [Addendum, exhibit "A"]. When defendant was advised that the transcript would be ready shortly, he proceeded to sign the order approving it as to form and

submitted it to the court to be entered, trusting that the transcript would be placed in the file in time for the notice of appeal. [Affidavit of defendant and appellant, paragraphs 9 - 13, pages 3 and 4, attached as exhibit "B" to the addendum].

The court signed the order on May 2, 1995, and the defendant, after having relied upon the professional courtesy and integrity of counsel for plaintiff and the court, further relied upon it as a valid order in filing the notice of appeal herein. Defendant had no knowledge of the entry of any previous orders prior to the receipt of the brief of appellee on January 20, 1996. [ Affidavit of defendant and appellant, paragraph 14, page 4, attached as Exhibit "B" to the addendum].

The May 2, 1995, order is a valid and appealable order and is, in fact, the only order is properly accompanied the transcript which the court ordered to be included therewith. The court, by signing this order, recognized that the transcript was essential to the order and this appeal.

This appeal should not be dismissed on a technicality as urged by counsel for plaintiff, particularly in a case such as this, where the course of the proceedings since the entry of the decree of divorce is fraught with numerous errors, which are evident from the record.

After sustaining plaintiff's objection to the commissioner's recommendation of August 16, 1994, the court prepared a minute entry overruling the objection, which is precisely the opposite of what he intended and had ruled from the bench. [R. 443].

Defendant filed an objection to the first order prepared by counsel for plaintiff. The objection is missing from the record, however, the court obviously received it as evidenced by the notice of hearing on the objection dated December 12, 1994. [R. 474-475]. In spite of this pending objection, the court signed the order submitted by counsel for plaintiff on December 27, 1994. [R. 476-480]. Given the pendency of a valid objection, this order certainly could not be considered valid, as argued by plaintiff, and it is clear that the court did not consider it a valid order.

The court's notice of hearing on the objection was mailed on December 12, 1994, and scheduled the hearing for January 9, 1995, however, notice of the hearing was never mailed to defendant, rather the clerk's mailing certificate shows that it was erroneously addressed to defendant at the office of counsel for the plaintiff. [R. 475]. Counsel for plaintiff, having received two notices of the same hearing, one of which was directed to defendant and mailed to the wrong address, did nothing to advise

the defendant of the hearing. On January 9, 1995, Defendant received a phone call from the court and appeared on five minutes notice, without an opportunity to prepare. [Affidavit of defendant and appellant, paragraphs 4 and 5, page 2, attached as exhibit “B” to the addendum].

At the hearing on January 9, 1995, defendant advised the court of the erroneous minute entry, which was thereafter corrected with a second minute entry. [R. 512]. The court resolved the objection to plaintiff’s order by directing counsel for plaintiff to prepare a simple order denying the defendant’s motion and directing defendant to obtain a transcript of the October 24, 1994, hearing, which was to be included as an essential part of the order for the purpose of accurately preserving the court’s statements from the bench for review on appeal.

By signing the order on May 2, 1995, the trial court recognized the importance of the transcript as part of the record, and entered the order to remedy once and for all the numerous errors and confusion surrounding the motion and his rulings. The order constitutes the final, appealable order signed and entered by the court.

## II

### THE COURT'S RULING SHOULD BE REVERSED PRECISELY BECAUSE IT IGNORES BOTH THE PLAIN LANGUAGE OF THE DECREE AND THE MOST BASIC ECONOMIC REALITIES OF THE PARTIES

The brief of appellee argues that the trial court's ruling is consistent with the "economic realities of the parties' circumstances," and then contends that plaintiff's tax filing status is somehow the single most important and basic economic reality of the parties. [Brief of Appellee, p. 12]. Plaintiff's tax filing status is irrelevant to any issue before this court. She is free to file a joint return with her husband and will continue to be free to do so regardless of the outcome of this appeal. The most basic of the economic realities of these parties are: (1) that the plaintiff is unemployed, by choice, and does not provide financial support for the parties' minor children and (2) that defendant is the only party to this action who has provided and continues to provide financial support for the parties' minor children in the amount of \$17,000 per year. The decree -- which fixed child support at \$1,387.00 per month, based upon the current child support table and income attributed solely to defendant of approximately \$65,000 per

year, with no income attributed to plaintiff. [R. 309, Utah Code Annotated § 78-45-7.14, at p. 673, attached as exhibit “D” to the addendum] -- incorporates and is based upon these undisputed facts. Plaintiff repeatedly urges upon this court what is unfounded speculation and cannot be substantiated from the record, i.e., that her current husband’s income is utilized or is somehow necessary for the support of minor children whose needs can be more than adequately met by defendant’s child support. While Utah Code Annotated §78-45-4.1, may impose a duty of support upon a step parent, there is simply no evidence in the record to support plaintiff’s assertions in subparagraphs 4 and 5 on page 12 of her brief that plaintiff and her husband provide support.

At a pre-trial in this matter in August of 1992, the trial court specifically stated to defendant and his counsel that he could not award the tax exemptions to defendant because he was bound by the precedent of Martinez v. Martinez, 754 P.2d 69 (Utah App. 1988). [Affidavit of defendant and appellant, paragraph 3, page 2, attached as Exhibit “B” to the addendum]. In fact, under the precedent of this court’s opinions in Motes v. Motes, 786 P.2d 232 (Utah App. 1989), and Allred v. Allred, 835 P.2d 974 (Utah App. 1992), both of which predate the decree of divorce, the trial

court had full authority to award the exemptions to defendant, by simply making the appropriate findings of fact that defendant “. . . has the higher income and provides the majority of the support for the child or children whose exemption is claimed . . . .” Motes, at 239. Allred, at 978. Under these authorities the two most basic economic realities -- (1) that defendant was and remains the only party to this action earning income and (2) that defendant was and remains the provider of 100 per cent of the support -- gave the trial court full authority to award the exemptions to defendant.

Plaintiff cannot escape these basic economic realities, which are established as undisputed in the record. The decree itself fixed child support at \$1,387.00 per month, based upon income attributed solely to defendant of approximately \$65,000 per year and no income attributed to plaintiff. [R. 309, Utah Code Annotated § 78-45-7.14, page 673, attached as exhibit “D” to the addendum]. Plaintiff’s contention at page 12 of her brief that there was no evidence upon which the court could base a finding of who provides the greater support is nothing short of ludicrous. [Brief of Appellee, p. 12, footnote 2]. Moreover, plaintiff’s assumption in footnote 2 on page 12 that the unsubstantiated claim of support by a step parent should somehow be considered as an “economic reality” by the court under the

authority of the Allred case is completely unfounded. [Brief of Appellee, p. 12, footnote 2].

Plaintiff's contention at page 16 of her brief that her affidavit testimony is "unrebutted" [sic] is simply false. Plaintiff claims that defendant " . . . indicated that he would not be 'purchasing' the exemptions in the future because the plaintiff would be filing a joint return and it would not be economical for the defendant to purchase the exemptions in that event." [Brief of Appellee, p. 16]. Defendant's second Affidavit in support of his motion to compel repayment, delivered to the court for filing and hand delivered to counsel for plaintiff on July 11, 1994, specifically rebuts this allegation as follows:

3. Paragraph 8 of plaintiff's affidavit is false. I have never on any occasion stated that I would not exercise my right to claim the exemptions, but have consistently maintained the position that I am entitled to do so, and have always exercised that right based upon tax liability resulting from income of the plaintiff.

[Second affidavit in support of motion to compel repayment, paragraph 3, page 2, attached as exhibit "C" to the addendum]. Plaintiff's misrepresentation of the facts on this issue is inexcusable. It is no surprise that the error-plagued record does not contain the original of this affidavit

or the accompanying reply memorandum of defendant in support of the motion to compel repayment, however, the commissioner reviewed these pleadings before ruling in defendant's favor and counsel for plaintiff cannot, in good faith, deny that he received copies of them, as evidenced by the certificate hand delivery attached thereto.

Plaintiff must face the most basic of economic realities which have been established without dispute and cannot avoid the plain meaning of paragraph 16 of the decree, which requires the defendant to compensate plaintiff only for a difference in "her" tax liability. This plain language and simple principles of equity and fairness dictate that defendant should not be required to pay a difference in tax liability resulting from the sole income of plaintiff's present husband in order to purchase the exemptions.


## **CONCLUSION**

The notice of appeal is timely. The court signed and defendant relied upon a valid order which was entered on May 2, 1995, and appealed from on June 1, 1995. The plain language of the decree, the most basic economic realities of the parties 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 renews his request 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) instruct the trial court to 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 for tax liability resulting from plaintiff's income, exclusive of the income of her present husband. In addition, in the event that this appeal is ruled upon after April 15, 1996, defendant requests that he be awarded the amount paid to plaintiff or incurred in additional tax liability as a result of not being able to claim the exemptions for the 1995 tax year.

DATED this 20<sup>th</sup> day of February, 1996.

ROGER R. FAIRBANKS

  
\_\_\_\_\_  
Defendant and Appellant  
Attorney, Pro se

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT ROGER R. FAIRBANKS was mailed, postage prepaid, this 20<sup>th</sup> day of February, 1996, to the following:

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

ROGER R. FAIRBANKS

  
\_\_\_\_\_  
Defendant and Appellant  
Attorney, Pro se

## **ADDENDUM**

- A. Correspondence from defendant to attorney for plaintiff dated January 16, 1995, a copy of which was forwarded to the court.
- B. Affidavit of defendant and appellant.
- C. Defendant's second affidavit in support of motion to compel, dated July 8, 1994, and certified hand delivered to counsel for plaintiff on July 11, 1994.
- D. Utah Code Annotated § 78-45-7.14, pages 671 and 673.

**EXHIBIT A**

LAW OFFICE OF  
**ROGER R. FAIRBANKS**  
261 East 300 South, Suite 300  
Salt Lake City, Utah 84111

---

Telephone (801) 532-7977  
Facsimile (801) 532-1597

January 16, 1995

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

Re: Fairbanks v. Fairbanks, Civil No. 914902005

Dear Mr. Green:

I have received the order you forwarded on January 9, 1995. Judge Murphy's clerk advises that the reporter who transcribed the hearing on October 24, 1994, will be unavailable and unable to provide a transcript for an extended period of time. Because the transcript will be essential to an appeal, the order should not be signed and entered until we can be sure that the transcript is available for filing so that it may be included in the record before the filing of a notice of appeal.

Accordingly, I will keep the original order, sign it approving as to form and submit it to the court for signature and entry when the transcript becomes available for filing therewith.

Thank you for your courtesy in this matter. Please contact me should you have questions or concerns.

Very truly yours,



ROGER R. FAIRBANKS

RRF/adh  
cc: Judge Michael R. Murphy

**EXHIBIT B**

ROGER R. FAIRBANKS, 3792  
Defendant and Appellant, Pro Se  
8543 South Nutwood Circle  
Sandy, Utah 84094  
Telephone: 1(801) 568-5178

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IN THE UTAH COURT OF APPEALS  
STATE OF UTAH

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JILL (FAIRBANKS) EYRING	)	
	)	
Plaintiff and Appellee,	)	AFFIDAVIT OF DEFENDANT
	)	AND APPELLANT
vs.	)	
	)	Case No. 950371 - CA
	)	
ROGER R. FAIRBANKS	)	
	)	
Defendant and Appellant.	)	

---

STATE OF UTAH )  
 ) ss:  
COUNTY OF SALT LAKE )

Roger R. Fairbanks, having been first duly sworn upon oath deposes and states as follows:

1. I am the defendant and appellant, above named, and have personal knowledge of the facts set forth below.

2. In August of 1992, at a pre-trial in this action, counsel for plaintiff specifically stated to the court that plaintiff was prepared to present medical testimony as to plaintiff's complete inability to hold employment and that therefore the child support calculation in this matter would be based solely upon my income.

3. At the same pre-trial, the trial court specifically stated to me and my counsel that he could not award the tax exemptions for the children to me because he was bound by the precedent of the Martinez case, which he understood as requiring him to award the exemptions to the custodial parent. He went on to state that he would award me the right to purchase the exemptions by paying to plaintiff the difference her tax liability, which became the basis for the inclusion of paragraph 16 in the decree of divorce.

4. I did not receive any of the hearing scheduled for January 9, 1995, on my objection to plaintiff's proposed order and discovered, upon review of the court file that it was never mailed to my correct address, rather the clerk's mailing certificate shows that it was erroneously addressed to me at the office of counsel for the plaintiff.

5. Counsel for the plaintiff did nothing to advise me of the hearing, in spite of the fact that he received two notices of the same hearing, one of which was directed to me and was obviously mailed to the wrong address.

6. On January 9, 1995, I received a phone call from the court and appeared on five minutes notice, without an opportunity to prepare.

7. At the hearing, I advised the court that the original minute entry was in error; it was thereafter corrected with a second minute entry.

8. The court resolved the objection by instructing counsel for plaintiff to prepare a simple order denying the motion and further instructing that I obtain a transcript of the October 24, 1994, hearing, which was to be included in the record as an essential part of the order, in anticipation of this appeal.

9. I was advised shortly thereafter that the reporter who recorded the hearing would be unavailable and unable to provide a transcript for an extended period of time.

10. When I received the proposed order, I corresponded with counsel for plaintiff, advising him of the problem with obtaining a transcript and further advising that because the transcript was essential to an appeal, I would hold the original order for submission to the court when the transcript became available. A copy of my correspondence to counsel for plaintiff is included as exhibit "A" to the addendum to my reply brief, filed herewith.

11. I also forwarded a copy of the correspondence to the court.

12. When I was ultimately advised that the transcript would be ready shortly, I proceeded to sign the order, approving it as to form and submitted it to the court to be entered, secure in the knowledge transcript would be placed in the file in time for the filing of a notice of appeal.


13. I filed the notice of appeal on June 1, 1995, after having relied upon the professional courtesy and integrity of counsel for plaintiff and the court, and further having relied upon it as a valid order in filing the notice of appeal herein.

14. I had no knowledge of the entry of any orders prior to the entry of the May 2, 1995, order, until I reviewed the of the brief of appellee which I received on January 20, 1996.

DATED this 16<sup>th</sup> day of February, 1996.

  
Roger R. Fairbanks

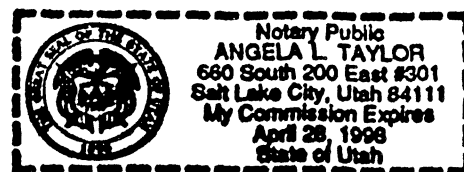
Subscribed and sworn to before me this 16<sup>th</sup> day of February, 1996

  
Notary Public

Residing In: Salt Lake, UT

My commission expires:

April 28, 1998



**EXHIBIT C**

ROGER R. FAIRBANKS, 3792  
Attorney Pro Se  
261 East 300 South, Suite 300  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7977

---

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

---

JILL FAIRBANKS	)	
	)	
Plaintiff,	)	SECOND
	)	AFFIDAVIT OF
v.	)	ROGER R. FAIRBANKS
	)	IN SUPPORT OF MOTION
	)	TO COMPEL REPAYMENT
	)	
ROGER R. FAIRBANKS,	)	Civil No. 91-4902005DA
	)	Judge: Michael Murphy
Defendant.	)	

---

STATE OF UTAH            )  
                              )   ss:  
COUNTY OF SALT LAKE )

Roger R. Fairbanks, having been first duly sworn upon oath  
deposes and states as follows:

1. That I am the defendant, above named, and have personal  
knowledge of the facts set forth below.

2. Paragraph 7 of plaintiff's affidavit of May 16, 1994, is  
completely untrue. Plaintiff has never made any demand for a W-2  
form from me, and such a demand would futile, in any event, as I  
am unemployed and do not receive a W-2. Plaintiff has yet to

produce a copy of her tax return for 1993, and provided copies of her W-2 only after this motion was filed.

3. Paragraph 8 of plaintiff's affidavit is false. I have never on any occasion stated that I would not exercise my right to claim the exemptions, but have consistently maintained the position that I am entitled to do so, and have always exercised that right based upon tax liability resulting from income of the plaintiff. In fact, as the file herein substantiates, for 1992, the plaintiff only signed over the exemptions for the children within one hour of a hearing I scheduled on a motion to compel her to do so. Plaintiff willfully and flagrantly refused to sign over the exemptions for 1992 even though she owed no tax and could still receive earned income credit of \$500 from the federal government.

4. Paragraph 9 of plaintiff's affidavit is false. Plaintiff has never attempted to discuss taxes with me. I have consistently advised plaintiff of my intention to claim the exemptions. I demanded plaintiff's W-2 and tax return in early March of 1994, when plaintiff failed to comply with the February 28 deadline imposed under the divorce decree.

5. Paragraph 11 is false. Plaintiff and her husband have yet to provide copies of the return actually filed, and only provided figures and drafts of a proposed return after this motion was filed.

6. Paragraph 12 is not only completely false, it is based upon an alleged conversation to which the plaintiff was not even a party. Plaintiff is not competent to testify except upon

personal knowledge. In any event I did not make such statements. I did make it clear to plaintiff's husband that I intended to contest plaintiff's violation of the divorce decree, and seek reimbursement, after her refusal to sign over the exemptions in compliance with the decree.

7. It appears to me that Plaintiff's husband has tried to be cooperative in dealing with the situation. Even when he finally produced a copy of plaintiff's W-2 after this motion was filed, he stated that he was providing the W-2 against plaintiff's wishes.

8. Paragraphs 14 through 16 appear to me as an attorney to be an attempt to make arguments which have no place in an affidavit, and should be made in an opposition memorandum.

9. In October of 1992, as a result of constant telephone harassment by the plaintiff of partners, associates and staff at Christensen Jensen & Powell, I was asked to leave the firm.

10. Since October of 1992, I have been unemployed and have done the best I can to earn a livelihood as a sole practitioner.

11. The divorce decree herein awarded plaintiff child support based solely upon income of \$65,000 attributed to me. Plaintiff was prepared to have medical practitioners testify that she was incapable of employment. My monthly child support payment is \$1387.00.

12. Within one month of the settlement of this matter, the plaintiff became employed.

13. During a very difficult time of unemployment, which continues to the present, I have continued to maintain my child

support payments current, even though my income for 1992 was \$58,000 (\$7,000 less than the amount contemplated by the decree) and my income for 1993 was \$39,000 (\$26,000 less than contemplated by the decree). Out of consideration for the needs of my children, I have not sought a reduction in child support. Copies of my 1992 and 1993 tax returns are attached hereto as exhibit "A."

14. My child support payments are current, with no amount owing to plaintiff.

15. My child support payments are never more than a few days late; I pay the plaintiff when I pick up the children for visitation. The payments rarely clear my checking account within the week and many have remained unnegotiated by the plaintiff for up to three weeks.

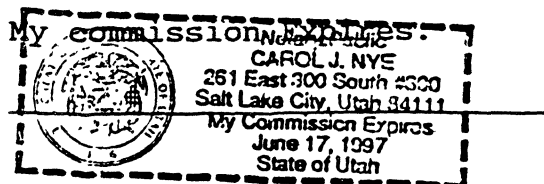
DATED this 8<sup>th</sup> day of July, 1994.

Roger R. Fairbanks  
Roger R. Fairbanks

Subscribed and sworn to before me this 8<sup>th</sup> day of July, 1994.

Carol J. Nye  
Notary Public

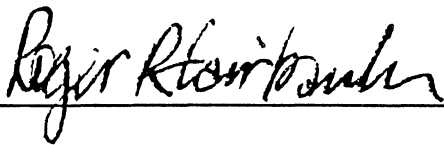
Residing in: Davis County, Utah



CERTIFICATE OF SERVICE

I hereby certify that I hand delivered a true and correct copy  
of the foregoing, this 11<sup>th</sup> day of July, 1994, to the following:

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

  
\_\_\_\_\_

**EXHIBIT D**

(c) two representatives recommended by the Utah State Bar Association; and

(d) an uneven number of additional persons, not to exceed five, who represent diverse interests related to child support issues, as the governor may consider appropriate. However, none of the individuals appointed under this subsection may be members of the Utah State Bar Association.

(2) (a) The advisory committee shall review the child support guidelines to ensure their application results in the determination of appropriate child support award amounts.

(b) The committee shall report to the Legislative Judiciary Interim Committee on or before October 1 in 1989 and 1991, and then on or before October 1 of every fourth year subsequently.

(c) The committee's report shall include recommendations of the majority of the committee, as well as specific recommendations of individual members of the committee.

(3) The committee members serve without compensation. Staff for the committee shall be provided from the existing budgets of the Department of Human Services and the Judicial Council. The committee ceases to exist no later than the date the subsequent committee under this section is appointed.

**History:** C. 1953, 78-45-7.13, enacted by L. 1989, ch. 214, § 15; 1990, ch. 183, § 58.

**Amendment Notes.** — The 1990 amendment, effective April 23, 1990, substituted "Human Services" for "Social Services" in Subsection (3).

**Effective Dates.** — Laws 1989, ch. 214 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

#### 78-45-7.14. Child support obligation table.

The following is the Base Combined Child Support Obligation Table:

##### BASE COMBINED CHILD SUPPORT OBLIGATION

(Both Parents)

(Adjusted for FICA, and federal and state taxes)

Monthly Combined Adj. Gross Income	Children									
	1	2	3	4	5	6	7	8	9	10
Less than \$200	\$20	\$28	\$30	\$31	\$32	\$33	\$34	\$35	\$35	\$36
\$200	\$23	\$34	\$35	\$35	\$36	\$36	\$37	\$38	\$38	\$39
225	25	38	39	39	40	40	41	41	42	42
250	28	42	43	43	44	45	46	46	47	48
275	51	67	67	68	69	69	70	70	71	71
300	56	73	73	74	75	76	76	83	84	85
325	60	78	79	80	81	82	83	83	85	86
350	65	84	85	86	87	88	89	89	90	91
375	69	90	91	92	93	94	95	96	97	98
400	74	96	97	98	99	100	101	102	103	104
425	78	102	103	104	105	106	107	108	109	110

Monthly Combined Adj. Gross Income	Children									
	1	2	3	4	5	6	7	8	9	10
\$2,100	\$265	\$432	\$557	\$637	\$701	\$754	\$798	\$835	\$865	\$890
2,200	267	447	576	659	725	780	825	863	895	921
2,300	275	461	595	680	749	805	853	892	925	952
2,400	283	476	614	702	772	831	880	921	955	983
2,500	285	482	625	715	788	849	899	942	977	1,006
2,600	290	497	644	737	812	875	927	970	1,007	1,037
2,700	298	511	663	758	836	900	954	999	1,037	1,068
2,800	313	532	689	787	866	932	988	1,034	1,073	1,105
2,900	321	547	708	809	890	959	1,016	1,063	1,103	1,136
3,000	330	562	728	831	915	985	1,043	1,092	1,133	1,167
3,100	339	577	747	853	939	1,011	1,071	1,121	1,163	1,197
3,200	348	592	766	875	963	1,037	1,098	1,150	1,192	1,228
3,300	357	607	786	897	988	1,063	1,126	1,179	1,222	1,259
3,400	366	622	805	920	1,012	1,089	1,154	1,207	1,252	1,290
3,500	375	637	824	942	1,036	1,115	1,181	1,236	1,282	1,320
3,600	384	653	844	964	1,061	1,142	1,209	1,265	1,312	1,351
3,700	393	668	863	986	1,085	1,168	1,237	1,294	1,342	1,382
3,800	402	683	882	1,008	1,109	1,194	1,264	1,323	1,372	1,412
3,900	419	706	909	1,038	1,142	1,228	1,300	1,360	1,410	1,452
4,000	427	720	928	1,060	1,166	1,254	1,328	1,389	1,440	1,483
4,100	435	735	947	1,082	1,190	1,280	1,355	1,418	1,470	1,514
4,200	443	749	966	1,103	1,214	1,306	1,383	1,447	1,501	1,545
4,300	451	764	985	1,125	1,238	1,332	1,411	1,476	1,531	1,576
4,400	459	778	1,004	1,147	1,262	1,358	1,438	1,505	1,561	1,608
4,500	477	802	1,032	1,177	1,295	1,393	1,475	1,543	1,600	1,648
4,600	485	816	1,050	1,199	1,319	1,419	1,502	1,572	1,630	1,679
4,700	493	831	1,069	1,221	1,343	1,445	1,530	1,601	1,661	1,710
4,800	501	845	1,088	1,243	1,367	1,471	1,558	1,630	1,691	1,741
4,900	509	860	1,107	1,264	1,391	1,497	1,585	1,659	1,721	1,773
5,000	517	874	1,126	1,286	1,415	1,523	1,613	1,688	1,751	1,804
5,100	525	889	1,145	1,308	1,439	1,549	1,641	1,717	1,781	1,835
5,200	534	903	1,164	1,329	1,463	1,575	1,668	1,746	1,812	1,866
5,300	564	939	1,203	1,372	1,508	1,621	1,716	1,795	1,861	1,916
5,400	570	951	1,220	<u>1,391</u>	1,529	1,644	1,740	1,820	1,886	1,942
5,500	577	963	1,236	1,410	1,550	1,666	1,763	1,844	1,912	1,968
5,600	583	976	1,252	1,429	1,571	1,689	1,787	1,869	1,937	1,994
5,700	590	988	1,269	1,448	1,592	1,712	1,811	1,894	1,963	2,020
5,800	596	1,001	1,285	1,467	1,613	1,734	1,835	1,919	1,988	2,046
5,900	603	1,013	1,302	1,485	1,634	1,757	1,859	1,943	2,014	2,072
6,000	609	1,025	1,318	1,504	1,655	1,780	1,883	1,968	2,039	2,097
6,100	616	1,038	1,334	1,523	1,676	1,802	1,907	1,993	2,064	2,123
6,200	622	1,050	1,351	1,542	1,697	1,825	1,931	2,018	2,090	2,149
6,300	630	1,062	1,367	1,561	1,718	1,847	1,954	2,042	2,115	2,175