

1995

# David Hales v. Sandra Gillman Hales : Reply Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Ellen Maycock; Pamela S. Nighswonger; Kruse, Landa & Maycock; Attorneys for Plaintiff/Appellee. Clark W. Sessions; Dean C. Andreasen; Kristine Edde; Campbell Maack & Sessions; Attorneys for Defendant/Appellant.

---

## Recommended Citation

Reply Brief, *Hales v. Hales*, No. 950581 (Utah Court of Appeals, 1995).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/6856](https://digitalcommons.law.byu.edu/byu_ca1/6856)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

UTAH COURT OF APPEALS  
BRIEF

UTAH  
D  
K + U  
50  
.A10

DOCKET NO. 950581-CA

IN THE UTAH COURT OF APPEALS

---

DAVID HALES,	:	
	:	
Plaintiff/Appellee	:	REPLY BRIEF OF APPELLANT
	:	
vs.	:	
	:	
SANDRA GILLMAN HALES,	:	
	:	
Defendant/Appellant.	:	Case No. <sup>950581-CA</sup> 930158-CA
	:	
	:	Priority No. 15
	:	

---

APPEAL FROM THE DECREE OF DIVORCE ENTERED BY THE FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY, STATE OF UTAH, JUDGE RAY M. HARDING

---

Clark W. Sessions (2914)  
 Dean C. Andreasen (3981)  
 Kristine Edde (7190)  
 CAMPBELL MAACK & SESSIONS  
 One Utah Center, Thirteenth Floor  
 201 South Main Street,  
 Salt Lake City, Utah 84111-2215  
 Telephone: (801) 537-5555  
 Attorneys for Defendant/Appellant

Ellen Maycock (2131)  
 Pamela S. Nighswonger (6011)  
 KRUSE, LANDA & MAYCOCK  
 Eighth Floor, Bank One Tower  
 50 West Broadway  
 Salt Lake City, Utah 84101-2034  
 Telephone: (801) 531-7090  
 Attorneys for Plaintiff/Appellee

FILED

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

---

DAVID HALES,	:	
	:	
Plaintiff/Appellee	:	REPLY BRIEF OF APPELLANT
	:	
vs.	:	
	:	
SANDRA GILLMAN HALES,	:	
	:	
Defendant/Appellant.	:	Case No. 930158-CA
	:	
	:	Priority No. 15
	:	

---

APPEAL FROM THE DECREE OF DIVORCE ENTERED BY THE FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY, STATE OF UTAH, JUDGE RAY M. HARDING

---

Clark W. Sessions (2914)  
Dean C. Andreasen (3981)  
Kristine Edde (7190)  
CAMPBELL MAACK & SESSIONS  
One Utah Center, Thirteenth Floor  
201 South Main Street,  
Salt Lake City, Utah 84111-2215  
Telephone: (801) 537-5555  
Attorneys for Defendant/Appellant

Ellen Maycock (2131)  
Pamela S. Nighswonger (6011)  
KRUSE, LANDA & MAYCOCK  
Eighth Floor, Bank One Tower  
50 West Broadway  
Salt Lake City, Utah 84101-2034  
Telephone: (801) 531-7090  
Attorneys for Plaintiff/Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES . . . . .	ii
ARGUMENT . . . . .	1
THE TRIAL COURT ABUSED ITS DISCRETION BY AWARDING MS. HALES ALIMONY IN THE AMOUNT OF ONLY \$1,250.00 PER MONTH . . . . .	1
A. THE TRIAL COURT FAILED TO MAKE ANY FINDING REGARDING MS. HALES' FINANCIAL CONDITION AND NEEDS . . . . .	1
B. THE ALIMONY AWARD FAILS TO ACHIEVE THE EQUALIZATION REQUIRED BY UTAH LAW . . . . .	4
CONCLUSION . . . . .	6

TABLE OF AUTHORITIES

Case Law

Howell v. Howell, 806 P.2d 1209 (Utah Ct. App. 1991) . . . . . 5

Thronson v. Thronson, 810 P.2d 428 (Utah Ct. App. 1991) . . . . . 1, 6

James v. Preston, 746 P.2d 799 (Utah Ct. App. 1987) . . . . . 2

## ARGUMENT

### I.

#### THE TRIAL COURT ABUSED ITS DISCRETION BY AWARDING MS. HALES ALIMONY IN THE AMOUNT OF ONLY \$1,250.00 PER MONTH

##### A. THE TRIAL COURT FAILED TO MAKE ANY FINDING REGARDING MS. HALES' FINANCIAL CONDITION AND NEEDS

A trial court must consider the three well-established factors when determining the amount of an equitable award of alimony. Thronson v. Thronson, 810 P.2d 428, 435 (Utah Ct. App. 1991). In his brief, Mr. Hales asserts that the trial court did consider the three factors. Brief of Appellee at 12. This assertion is erroneous. The trial court utterly failed to make any finding regarding the first factor, i.e., Ms. Hales' financial condition and needs. Such failure constitutes an abuse of discretion by the trial court. Thronson at 435.

Mr. Hales first attempts to support the trial court's award of alimony in the amount of \$1,250.00 by claiming that the trial court may have found that Ms. Hales' claimed financial needs were inflated in amount. There is, however, no support in the record for that position, since the trial court made absolutely no finding regarding the dollar amount of Ms. Hales' reasonable financial needs. Ms. Hales' financial needs represent actual expenses incurred by the parties during the course of their 25-year marriage. It is pure speculation on Mr. Hales part that the trial court determined Ms. Hales claimed financial needs to be inflated

in amount. The failure of the trial court to enter a finding relative to this factor constitutes an abuse of discretion.

Mr. Hales next claims that Ms. Hales bears the burden of marshalling all of the evidence in support of the trial court's finding as to the amount of Ms. Hales' financial needs. The difficulty with that proposition is that the only evidence presented at trial was that Ms. Hales' monthly financial needs totalled \$4,483.28.<sup>1</sup> There was no evidence to the contrary, and the court made no contrary finding. Her expenses included her mortgage, utilities, housecleaning, food, personal items, gas and maintenance for her vehicle, medical expenses for herself and the parties' son Corbin, school supplies and music lessons for Corbin, a minimum monthly credit card payment, entertainment, gifts, Corbin's tennis expenses<sup>2</sup>, and home maintenance.

Although Mr. Hales' counsel cross examined Ms. Hales regarding virtually every one of her monthly expenses, no evidence was introduced to attack their legitimacy, and the trial court made no

---

<sup>1</sup>Introduced into evidence at trial as Defendant's Exhibit 11.

<sup>2</sup> Mr. Hales asserts that Corbin no longer plays tennis, and those expenses should be excluded. However, this assertion is not part of the record and is not properly before the Court. James v. Preston, 746 P.2d 799, 801 (Utah Ct.App. 1987).

finding that any of her expenses were unreasonable in amount.<sup>3</sup> Therefore, the evidence supporting Ms. Hales' financial needs stands uncontroverted.

Despite this uncontroverted evidence, the trial court made absolutely no finding regarding Ms. Hales' financial needs. There is no evidence in support of the trial court's conclusory assertion that Ms. Hales can continue to maintain her standard of living on \$1,250.00 per month in alimony with established monthly living expenses of \$4,483.28.

As to the second factor which the trial court must consider under Utah law, the ability of the recipient spouse to produce a sufficient income for him or herself, the trial court made a partial finding. The trial court found that although Ms. Hales "has no specific job skills, she is not precluded from obtaining employment or reeducating herself in order to find some form of suitable full-time employment." Findings, ¶15. The trial court did not, however, make findings as to the length or cost of Ms. Hales' reeducation, or the amount of income that Ms. Hales could

---

<sup>3</sup> In a candid attempt to analyze her monthly expenses under cross examination, Ms. Hales stated that the expense of cleaning the 40 gallon fish tank (\$40.00 per month) and continuing the parties' tradition of spending \$3,000.00 on Christmas were not particularly important to her. However, these expenses were certainly incurred during the marriage.

reasonably be expected to earn from "suitable full-time employment."<sup>4</sup>

The trial court noted that it had taken the division of property and the attorney fee award into account in determining the amount of the alimony award. Findings, ¶15. It is clear that Ms. Hales does not receive any current financial benefit from the \$1,927.00 IRA awarded to her. Similarly, the equity in the marital residence does not generate any current income which Ms. Hales can use to help meet her established monthly financial needs, and the attorney's fees awarded to Ms. Hales in the amount of \$8,000.00 went directly to her attorney.

The third factor, the ability of the payor party to provide support, is the only factor the trial court specifically addressed. The trial court found that Mr. Hales earns \$8,333.00 of gross income per month. Findings, ¶7.

In summary, there is insufficient evidence and incomplete findings of fact to support the trial court's meager alimony award.

**B. THE ALIMONY AWARD FAILS TO ACHIEVE THE EQUALIZATION REQUIRED BY UTAH LAW**

Mr. Hales' argument that equalization of the parties' income is not required is meritless. It is true that dollar for dollar

---

<sup>4</sup>The trial court did not impute any income to Ms. Hales for purposes of calculating child support.

parity is not required. However, as Mr. Hales himself acknowledges, alimony must achieve "sufficient parity to allow both parties to be on an equal footing financially as of the time of the divorce . . . ." Howell v. Howell, 806 P.2d 1209, 1213 (Utah Ct.App. 1991) (holding that sufficient parity was not achieved where alimony allowed plaintiff an economic advantage by a multiple of two to four times).

Here, parity is completely lacking and non-existent when the parties experience a 2:1 difference in income. As Ms. Hales explained in her initial brief, Mr. Hales has disposable income of \$3,534.00 per month after deduction of taxes, alimony, and child support. Ms. Hales, on the other hand, has a disposable monthly income of only \$1,917.00<sup>5</sup>. This imbalance will only be exacerbated when Mr. Hales' child support obligation ceases.

This Court addressed this kind of inequitable situation in Howell, and held that an alimony award which fell dramatically short of the defendant's monthly expenses, when the plaintiff had an income sufficient to cover such expenses, should be overturned. As mandated by Howell, the inequitable and insufficient award of alimony should be overturned since it fails to realize any semblance of parity in the parties' economic conditions. An award

---

<sup>5</sup> For explanation of these amounts, see Brief of Appellant, at p. 12.

should be entered which meets the required goal of equalizing the parties' standards of living. An award of \$2,392.00, which equitably divides Mr. Hales' net income, would achieve this goal<sup>6</sup>.

CONCLUSION

The trial court's award of alimony in the amount of \$1,250.00 per month constitutes an abuse of discretion. The award does not consider Ms. Hales' uncontroverted monthly living expenses, which are more than twice the total child support and alimony ordered by the court, and fails to achieve any parity between the parties' standards of living.

Therefore, Ms. Hales respectfully requests that this Court reverse the trial court's award of alimony and enter an award of \$2,392.00, which is commensurate with Ms. Hales' established need, Mr. Hales' ability to pay, and the marital lifestyle of the parties.

DATED this 6th day of May, 1996.

CAMPBELL MAACK & SESSIONS

  
CLARK W. SESSIONS  
DEAN C. ANDREASEN  
KRISTINE EDDE  
Attorneys for Appellant

---

<sup>6</sup> Because the trial court's award constitutes an abuse of discretion, this Court may properly overturn the trial court's alimony award and enter an appropriate award. Thronson v. Thronson, 810 P.2d 428, 435 (Utah Ct.App. 1991).

CERTIFICATE OF SERVICE

I hereby certify that on the 6 day of May 1996, a true and correct copy of the foregoing **REPLY BRIEF OF APPELLANT** was mailed, postage prepaid, first-class, to:

Ellen Maycock  
Pamela S. Nighswonger  
KRUSE, LANDA & MAYCOCK  
Eighth Floor, Bank One Tower  
50 West Broadway  
Salt Lake City, Utah 84101-2034



---