

1994

Erin Jo Chambers v. Thomas D. Chambers : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

*Appeal from the Second District Court, Weber County
Judge Stanton M. Taylor*

ERIN JO CHAMBERS,)	
)	Appellate Court No. 940210-CA
Plaintiff/Appellee and)	
Cross-Appellant,)	
)	
v.)	Trial Court No. 890901927
)	
THOMAS D. CHAMBERS,)	
)	
Defendant/Appellant and)	Priority: 15
Cross-Appellee)	
)	

**REPLY BRIEF OF APPELLANT AND
ANSWERING BRIEF OF CROSS-APPELLEE**

DOCKET NO. 940210

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Utah Court of Appeals

OCT 17 1994

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SUMMARY OF ARGUMENT

As amplified below, Erin's argument on appeal suffers from several substantive infirmities:

- ▶ Contrary to Erin's suggestion, this is not a case involving any retroactive application of the law. On remand, the trial court was ordered to review the evidence leading to the alimony award and make more detailed findings. The trial court expressly found that it had miscalculated the spousal maintenance for the first three years and that Tom had overpaid Erin by \$108,000.00. The issue is whether the record substantiates the trial court's rationalization for allowing Erin to keep that windfall — not whether evolving principles of common law should be given retroactive effect.
- ▶ Under the applicable standard of review for alimony awards, the Court must affirm as long as there is evidence in the record which reasonably supports the trial court's determination of living expense need. Erin cannot simply "wish away" the corroborative exhibits and testimony at trial, by arguing that she would have used a different strategy for calculating her expenses if she had realized then that she wasn't legally entitled to get a cut of Tom's future income as part of her property settlement. The notion that she was wrongfully denied the opportunity to relitigate the issue of her living expense need is specious: This Court remanded the case for more detailed findings on the alimony award — not for a new trial.
- ▶ Erin cannot be permitted to reargue that the alimony award should be altered so that the parties future incomes are "equalized." That is not the purpose of spousal maintenance, as this Court determined in the first appeal.
- ▶ Finally, Erin misconstrues the legal elements of alimony awards and attorneys' fees awards in dissolution actions. In each case, the responding spouse's ability to pay is a factor which comes into play only after the petitioning spouse's actual financial needs have been established. At that point, it may

be a reason for limiting the final award; and it is never used as a basis for increasing an award above the petitioning spouse's actual financial needs.

ARGUMENT

I. The Trial Court's Decision to Reduce Erin's Alimony is Supported by the Evidence and by Adequate Findings.

The trial court originally awarded Erin alimony of \$10,000 per month for the first three years, to be reduced to \$5,000 per month for the next three years, after which alimony would terminate. R.O.A. 382-383, 402. In the first appeal, this Court held that the trial court's findings were insufficient and remanded the case so the trial court could specifically address Erin's employability, the justification for reduction in alimony, and Tom's ability to pay. Chambers v. Chambers, 840 P.2d 841, 843 (Utah App. 1992). In addition, this Court directed the trial court to reconsider the inclusion of the children's expenses in the alimony award, something which is described as "plainly inequitable" to Tom. Id. at 843, n.1. On remand, after making the additional findings based on certain evidence in the record, the trial court recalculated the alimony and concluded that it should have originally been \$7,000 per month for the first three years, and reduced to \$3,000 per month after that. R.O.A. 732, 923-924, 929. Erin has appealed that part of the Order on Remand, on the grounds that there was "no reasonable basis" for reducing the alimony and that the order was "not supported

by adequate findings." Appellee/Cross-Appellant's Brief at 19, 29, 33.

As the record shows, the trial court's Order on Remand decreasing the alimony was reasonable and supported by adequate findings. In its Order on Remand, the trial court made the following Findings of Fact:

3. In reconsidering the alimony award in the original Decree, it occurs that there were miscalculations.

4. Plaintiff's Exhibit 11 correctly reflected the needs of the plaintiff and her children at about \$10,000.00 per month. That amount failed to consider her additional need of health and accident insurance (previously provided by the defendant) and money to offset her tax liability for her receipt of alimony.

5. The Court recognized there were substantial children's expenses involved in the Exhibit 11 needs assessment, but those expenses would be approximately offset by the fact that the child support nearly equalled the amount of children's expenses alleged on Exhibit 11 and the \$4,500.00 child support was included in the income calculations.

6. In recalculating the alimony, if the Court accepts the expenses of Exhibit 11 and adds the expenses of health and accident insurance and taxes on the alimony paid and then deducts the child support, that means the plaintiff has need of about \$7,000.00 to maintain her prior standard of living.

7. The estimated \$7,000.00 for the plaintiff to maintain her prior standard of living does not factor into any consideration of the plaintiff's ability to provide for herself or money received as returns on investments from assets awarded to her as part of the property division.

. . .

10. Plaintiff was thirty years of age at the time of trial. She testified that she had two and

one-half years of college and that she held certain jobs previously, including teaching dancing, working in window display and as a clerk at ZCMI and a clerk at Stop & Shop. She also testified she helped manage some apartments. Plaintiff also testified that she had not made any attempts to obtain any employment outside of the house. The evidence also showed that plaintiff participated in many types of physical activities and there were no reasons, health or otherwise, why plaintiff could not be fully employed and contribute to her own needs. Plaintiff could have found appropriate employment which would provide at least a minimum wage income of \$736.00 to assist in providing her own needs.

. . .

13. The Court figures with a four percent return on her investment base, the imputed income of \$736.00 and the child support, the alimony should be reduced at the end of three years to \$3,000.00 per month.

R.O.A. 923-926 (emphasis added).

The foregoing findings set forth a "reasonable basis" for the trial court's recalculation of the alimony award for the first three years and reduction of alimony thereafter. They are adequate under the law because they are "sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached." Stevens v. Stevens, 754 P.2d 952, 958 (Utah App. 1988). Erin cannot overturn them simply because she disagrees with the way in which the evidence was weighed.

However, the trial court did exceed the mandate of this Court when it reversed itself (without any evidentiary basis) and ordered that alimony would not terminate after six years. See Appellant's Brief at 17-24. On remand, the trial court

should have limited itself to further explaining its original order reducing alimony and its reference to the "substantial income from assets that have been awarded to [Erin]." "Further explanation" was what this Court had mandated, nothing more. Chambers, 840 P.2d at 843.

In her answering brief, Erin does not oppose Tom's argument (or supporting legal authority) that the trial court exceeded its jurisdiction on remand on this issue. Moreover, Erin does not contradict Tom's statements that: (1) Mr. Abold's testimony about Erin's net investment income was unopposed at trial; (2) Mr. Abold's calculations already took into consideration the taxes on Erin's investment base; (3) there was no evidence of a 4% rate of return; and (4) there was no evidence that the family loans were uncollectible. Thus, the trial court's order extending the alimony indefinitely has been shown to be based completely upon unsubstantiated and unproven assumptions outside the record.

When the trial court corrected its mistake on the alimony calculation, and determined that alimony should have been \$7,000 per month instead of \$10,000 per month, it became apparent that Erin had received an overpayment of alimony totalling \$108,000 plus interest. The issue before the court was not whether to make the reduction in the award for the first three years prospective — three years had already passed by then. The issue, in Judge Taylor's own words, was how to deal with "the disposition of [Tom's \$108,000] overpayment [to

Erin]" and whether "[t]o require plaintiff to repay those overpayments" R.O.A. 766-67 (quoted at page 15 of Appellee/Cross-Appellant's Brief). Tom appealed from the decision not to order such repayment. See Appellant's Brief at 11-17.

Erin has presented no legal, factual or equitable justification which supports the trial court's decision to let her keep the overpayments. See Appellee/Cross-Appellant's Brief at 35-38. Erin implicitly concedes that the overpayments are Tom's post-decree separate property to which she has no legal claim. The trial court expressed the feeling that repayment would "somehow seem unfair," because the family debts (part of Erin's investment base) were probably uncollectible. R.O.A. 766-767, 924-925. By her silence, Erin concedes that this assumption is absolutely without factual support in the record. Tom also challenged the trial court's unsupported conclusion that repayment would seriously affect Erin's ability to maintain her standard of living and undermine her investment base. This was pure speculation, not supported by logic or any evidence in the record. Erin has not shown it to be otherwise.

The "retroactivity" cases cited by Erin are red herrings. This is not a case where the trial court "retroactively" applied some change in the common law. It is a case where, confronted with the deficiencies of its findings of fact, the trial court "corrected" certain errors on remand.

II. Erin is Not Entitled to an Increase in the Alimony Award.

Erin argues that "the trial court should have increased the alimony rather than decreased it" and requests this Court to remand the case with directions "to fashion an alimony award that would provide her a true and equitable standard of living." Appellee/Cross-Appellant's Brief at 31, 43. Erin's arguments are improper. Erin insists that because Tom's future contract payments were held not to be a marital asset subject to division, she should have received a larger alimony award in the interests of equalizing the disparity in her and Tom's post-decree incomes. Id. at 19. This is exactly the same argument which Erin briefed and argued in the first appeal. (See Appellant's Brief, dated 11/7/91, at 30-39). It was rejected then, see Chambers, 840 P.2d at 842-43, and that rejection is res judicata now. This Court affirmed the decision that Tom's future contract earnings were not subject to division, and it did not direct the trial court to reconsider the award of alimony in light of that holding.

Essentially, Erin is arguing that the trial court erred by relying upon Erin's own Exhibit 11 to set alimony because (a) Exhibit 11 was not "the maximum" of her support request, and (b) it was not representative of her marital standard of living. Appellee/Cross-Appellant's Brief at 26. Erin asserts that at trial and in the first appeal, she had argued that if Tom's future contract earnings were not marital property to be divided, then she would want more alimony. Id. at 19, 27.

However, Erin's trial counsel never put on evidence at trial of how much additional alimony she was claiming. At trial, the issue of division of Tom's future contact earnings was hotly contested. Erin's trial counsel knew there was a chance Erin would not be awarded part of Tom's future earnings. It would have been a simple matter for him to present an alternative exhibit showing a claim for "X" amount of additional alimony.

Erin's trial counsel made a tactical decision not to do so. On appeal, Erin's new counsel complains that Exhibit 11 did not reflect her true living expense need and made no provision for "health insurance," "extended travel", "tax preparation", "expensive gifts for the children", or "real estate or stock investments." Appellee/Cross-Appellant's Brief at 28-30. First, that is directly contrary to Erin's testimony that Exhibit 11 was very close (within \$500) to the living expense need for herself and the parties' children. Tr. II: 105-07. Second, even if there were deficiencies in Exhibit 11 and her trial counsel did not adequately present her proof at trial, Erin has no right to a second bite at the apple. Third, there was additional evidence presented in the record from which the trial court could determine the parties' marital standard of living: Tom presented evidence that the entire Chambers family had enjoyed a comfortable standard of living on an expenditure of approximately \$12,000 per month. Tr. IV: 109-11; Defendant's Exh. 25.

Contrary to Erin's present contention that the trial court did not consider her need for "health insurance," Exhibit 11 clearly requested \$736.20 per month for health costs. In addition, in the Decree the trial court ordered:

The defendant shall maintain such health, accident and dental insurance as is available to him through his employment for the minor children of the parties, and shall pay all uninsured medical, dental, eye care and orthodontic expenses by or on behalf of the children.

The defendant shall take all steps necessary to be certain that the plaintiff is able to secure her COBRA benefits to health insurance from the NBA for insurance protection for 36 months after the entry of this Decree. All such medical insurance premiums and expenses shall be paid by plaintiff.

R.O.A. 403-404. Contrary to Erin's present contention that the trial court did not consider her need for "extended travel," "tax preparation" or "expensive gifts for the children," Exhibit 11 clearly requested \$3,539.55 per month for "Clothing, Entertainment, Incidentals" and an additional \$300.00 per month for "Entertainment" and another \$1,075.00 per month for "Incidentals." Travel, income tax preparation and gifts were specifically listed in the attachments to Exhibit 11. See Plaintiff's Exh. 11. Furthermore, the court stated in the Decree:

It is acknowledged that defendant is paying child support in the amount of three (3) times higher than the maximum child support amount set forth by the child support schedule for three (3) children, and the higher amount is justified in allowing the children to share in the relative affluence of the defendant.

R.O.A. 403. Contrary to Erin's contention that the trial court did not consider Erin's desire to make investments and create a retirement plan for herself, the trial court was well aware that, by stipulation of the parties, Erin would receive \$1,497,578 in cash and cash equivalent assets, and would have an income from the investment of those sums. Tr. IV: 2-3, 35-49; Tr. III: 93-96; R.O.A. 385-393, 405-410.

Just as she did in the first appeal, Erin argues that the alimony award should be reversed and remanded with directions to the trial court to bring into "parity" and "equalize" the parties' "future standard of living." Appellee/Cross-Appellant's Brief at 28, 30, 34-35 (emphasis added). Just as she did in the first appeal, Erin asserts that Howell v. Howell, 806 P.2d 1209 (Utah App. 1991) and Martinez v. Martinez, 818 P.2d 538 (Utah 1991) support her position. Id. at 35. They do not.

As Tom argued in the first appeal (Brief of Appellee/Cross-Appellant, dated 12/19/91, at 13-20), the true function of alimony is to permit the receiving spouse to maintain the standard of living enjoyed during marriage, and to prevent that spouse from becoming a public charge. English v. English, 565 P.2d 409, 411 (Utah 1977). The Supreme Court has articulated three factors which are to be considered in deciding whether an award of alimony is justified. The trial court must consider: (1) the financial condition and needs of the spouse seeking support, (2) the ability of that spouse to

generate income, and (3) the ability of the responding spouse to provide the support. Id. The courts do not use alimony as a vehicle for equalizing the parties' future incomes.

To the contrary, this Court has explicitly stated that "alimony may not be automatically awarded whenever there is disparity between the parties' incomes." Burt v. Burt, 799 P.2d 1166, 1170 (Utah App. 1990) (emphasis added). In the Gardner case, Judge Howe explained:

We have said that the wife is entitled to enjoy as near as possible the same standard of living she enjoyed during the marriage and she should be prevented from becoming a public charge. English v. English, 565 P.2d 409, 411 (Utah 1977). But this is not the same as "equalizing" their incomes. The instant case is a good example. Mr. Gardner is a highly skilled surgeon earning \$6,000 per month. Mrs. Gardner was not employed at the time of the divorce. She thought she could maintain the standard of living to which she had become accustomed if she received \$1,700 per month alimony. If their financial positions after divorce are to be equal, she presumably should have \$3,000 per month alimony. I do not think the majority intends that result.

The object of divorce is to set the parties free of each other after an equitable division of property is made and, if needed, an award of alimony is made which will enable both parties to maintain as near as possible the standard of living they enjoyed during the marriage. The parties then go their separate ways and attempt to rebuild their lives. But because of the disparity in their earning ability, the wife here, who has training as a secretary but has not been employed for thirty-three years, will never earn as much as her husband-surgeon. Our cases do not suggest that the divorce decree should attempt to cure this disparity by "equalizing" their future incomes.

Gardner v. Gardner, 748 P.2d 1076, 1083 (Utah 1988) (J. Howe, concurring and dissenting) (emphasis added).

This traditional two-step approach begins with an examination of the expenses generated by the parties' lifestyle during marriage and ends with the determination of whether any amount is needed to supplement the potential recipient's own income in order to remain "at a level as close as possible to that standard of living." See Gardner, 748 P.2d at 1081; Rasband v. Rasband, 752 P.2d 1331, 1333 (Utah App. 1988); Howell v. Howell, 806 P.2d 1209, 1212 (Utah App. 1991). The goal is maintenance of the status quo, not ascendancy to new heights.

As Tom pointed out in the first appeal, the Supreme Court has declined to recognize the equitable restitution approach which Erin endorses:

The Court of Appeals' concept of equitable restitution cannot be sustained for three reasons. First, the concept of equitable restitution is based on the proposition that a failed marriage is a venture akin to a commercial partnership in which the spouses invest their time and effort solely for remunerative activities . . . In any event, the spouse's contributions cannot be reduced to a common denominator that allows for a valid comparison in monetary terms. Indeed, the very attempt to do so would interfere with the trial court's ability to achieve an equitable result based on the needs of the spouses in light of the monetary resources available. For example, if a spouse avoids his or her marital responsibilities, the partnership theory might result in denying that spouse any award of support or property at divorce, irrespective of his or her need and the other spouse's ability to pay. That is not the law.

Martinez v. Martinez, 818 P.2d 538, 540-41 (Utah 1991) (emphasis added). The Supreme Court emphasized that the English factors provide an adequate framework from which to

fashion an appropriate award of alimony and that the award must have a relationship to the recipient's need, in light of the standard of living the parties had during the marriage. Id.

As in the first appeal, Erin again tries to bolster her "equal income" argument¹ with the Supreme Court's statement that "in some circumstances" it may be appropriate for the trial court to make a "compensating adjustment" while dividing marital property and awarding alimony. Martinez, 818 P.2d at 542. The facts of the present case do not fall within those limited situations contemplated by the Supreme Court:

The cases which have refused to hold that professional degrees and practice constitute marital property subject to valuation and distribution have nonetheless assessed and divided the value of the degree or practice on the basis of other legal and equitable remedies. These cases follow a common fact pattern. Typically, the husband is supported throughout a long graduate or professional program by the working wife, and the couple is divorced soon after graduation. In such cases, there are few marital assets to distribute,

¹ Erin's position is still essentially based on the factors rejected by the Supreme Court in Martinez: (1) the length of the marriage, (2) financial contributions and personal development sacrifices made by the spouse requesting equitable restitution, (3) the duration of the contributions and sacrifices during the marriage, (4) the disparity in earning capacity between the spouses, and (5) the amount of property accumulated during the marriage. Martinez v. Martinez, 754 P.2d 69, 78 (Utah Ct. App. 1988), rev'd, 818 P.2d 538 (Utah 1991).

and the courts have considered other ways of compensating the spouse.

Gardner, 748 P.2d at 1080-81 (cited for illustrative purposes in Martinez).²

The Utah courts have consistently reversed alimony awards that appeared to be designed merely to equalize disparity in the parties' respective income levels rather than providing supplemental income necessary to meet the recipient's "living expense need." In Burt v. Burt, 799 P.2d 1166 (Utah App. 1990), this Court stated:

It is questionable from the record that this is a case warranting alimony in favor of defendant, whose substantial accumulated wealth and monthly income should permit her a standard of living comparable to what she enjoyed during the marriage. Rather, alimony was the device the court selected to narrow the gap between the parties' incomes. Especially since nearly all income at issue in this case is simply the return on property interests, the court's approach was incorrect. Proper distribution of property interests of one sort or another should have come first, and only then would alimony need to be considered.

Burt, 799 P.2d at 1170, n.3. Accord DuBois v. DuBois, 29 Utah 2d 75, 504 P.2d 1380, 1381 (1973) (trial court abused discretion in awarding alimony where "it appears that the income from the assets awarded to the plaintiff is sufficient

² In Martinez, the wife had made substantial sacrifices to enable her husband to finish medical school, but the parties divorced before they could enjoy the higher standard of living permitted by his degree. Martinez, 818 P.2d at 539. Because of this, the Supreme Court stated that "it may be appropriate" for the trial court to make a "compensating adjustment." Id. In the present case, where significant property had accumulated during the marriage and Erin had enjoyed a comfortable standard of living for many years, she has already shared in the economic benefits that have actually been realized. See Gardner, 748 P.2d at 1081.

to maintain her lifestyle in the manner to which she is accustomed without periodic payments from defendant"); Jeppson v. Jeppson, 684 P.2d 69, 70 (Utah 1984) (alimony terminated where plaintiff's ability to perform some work plus assets available to her were sufficient to support her need).

Godfrey v. Godfrey, 854 P.2d 585 (Utah App. 1993), which cites Chambers, does not support Erin's claim for more alimony. It stands for the proposition that an alimony award should maintain the receiving spouse "at a level as close as possible to that standard of living enjoyed during the marriage." Godfrey, 854 P.2d at 589. There is more than adequate support in the record for the trial court's finding that Erin "has need of about \$7,000.00 to maintain her prior standard of living." R.O.A. 923-926. The trial court's alimony award will not be disturbed on appeal unless there has been "a clear and prejudicial abuse of discretion." Id. Erin has not shown that the trial court has abused its discretion in setting the alimony at \$7,000 per month for the first three years and reducing it to \$3,000 per month thereafter.³

III. Attorneys' Fees Cannot be Awarded Because There is no Finding of Need.

On remand, in determining whether Erin had the ability to pay her own attorneys' fees, the trial court found: "It is

³ There is no basis for Erin's claim that the child support should have been increased when the alimony was decreased. Appellee/Cross-Appellant's Brief at 25. The children's expenses erroneously included in the alimony award totalled approximately \$4,783.36 per month. However, the parties stipulated to child support of \$4,500.00 per month.

clear with the distribution of almost a million and a half dollars in assets, that the plaintiff could pay her own attorney." R.O.A. 735-736; 928, 930. Nevertheless, the court ordered Tom to pay some of Erin's attorneys' fees because it believed that taxes, family loans, and legal expenses would make "substantial inroads" into that investment base. In his opening brief, Tom has established that there is no evidence that the family loans were uncollectible. Erin does not contest this. Erin also concedes that the taxes were already taken into consideration by Mr. Abold, the expert who testified about Erin's investment base and calculated her investment income. Similarly, Erin fails to point to any evidence in the record which would support the trial court's conclusion that Erin's legal expenses would substantially erode her investment base.

Erin likes to remind the Court that Tom's post-decree monthly income is "several times" greater than Erin's. Tom's income is irrelevant to a determination of Erin's ability to pay. In this case, the court found that Erin did have the ability to pay her own attorneys' fees. It was error for the court to order Tom to pay part of Erin's fees despite its finding of no need.

In this appeal, as in the first appeal (see Appellant's Brief, dated 11/7/91, at 39-41), Erin argues that the trial court erred in awarding her only a partial reimbursement of her attorneys' fees. See Appellee/Cross-Appellant's Brief at

42-43. That issue was disposed of in the first appeal. Furthermore, it is within the court's discretion to award less than the claimed amount of fees, as long as it has "reasonable justification." Bell v. Bell, 810 P.2d 489, 494 (Utah App. 1991). Contrary to Erin's assertion, the trial court did justify only a partial award of attorneys' fees. In the Decree and in the Order on Remand, the court stated that Erin could pay her own attorneys' fees in light of the million and a half dollars in assets she received. R.O.A. 396, 928, 930.

IV. There is no Reason for an Evidentiary Hearing.

Erin has asked this Court to remand this case with directions to the trial court "to conduct a hearing to adequately address the needs and circumstances of Mrs. Chambers and to fashion an alimony award that would provide her a true and equitable standard of living." Appellee/Cross-Appellant's Brief at 43. In other words, Erin wants a new trial. She wants an opportunity to re-write Exhibit 11 to include more expenses, and she wants an opportunity to argue once again what she argued at trial and argued in the first appeal — that she should have received a larger alimony award because she was not awarded part of Tom's future contract earnings. See Appellee/Cross-Appellant's Brief at 28, 30. Erin also wants an opportunity to put on evidence of her "true" investment base. See Appellee/Cross-Appellant's Brief at 33. Of course, at trial Erin could have presented her own evidence to contradict or supplement Mr. Abold's testimony

regarding her investment base and income, but she did not do so. In addition, she wants a chance to re-do the attorneys' fees affidavit presented at trial. Id. The parties had their trial. Erin is not entitled to re-try these matters in a so-called "evidentiary hearing" on remand.

At the June 7, 1993, hearing Erin raised these same issues regarding the future contract earnings, investment base, and attorneys' fees, and she requested an evidentiary hearing. The trial court stated:

I don't see the necessity for the retrial of the case. I think that the Court has heard the evidence and the record is available to me. And I believe that the Court is able to follow the directions of the Court of Appeals in handing down a new Findings of Fact, Conclusions of Law, and Decree, relating specifically to the three issues: alimony, attorneys' fees and the division of the retirement.

Hr. (6/7/93) at 54-55. The trial record was adequate for the trial court to follow this Court's mandate in the first appeal. Nothing has changed in that respect. There is no basis for this Court to order an evidentiary hearing.

V. Erin Should Not be Awarded Attorneys' Fees on Appeal.

Tom opposes Erin's request for attorneys' fees on appeal. If Tom prevails on the main issues in this appeal, Erin's attorneys' fees request must be denied. See e.g., Hall v. Hall, 858 P.2d 1018, 1027 (Utah App. 1993). Even if Erin substantially prevails in this appeal, she should not be awarded attorneys' fees because she is not in need of financial assistance and she was only granted partial

attorneys' fees at trial. See Hill v. Hill, 869 P.2d 963, 967 (Utah App. 1994); Allred v. Allred, 835 P.2d 974, 979 (Utah App. 1992).

CONCLUSION

For the reasons expressed above, Tom requests that the Order on Remand be reversed in part, with the following instructions on remand: (1) that the trial court be directed to order Erin to reimburse Tom for overpayments of alimony in the amount of \$108,000 plus interest; (2) that the trial court be directed to reinstate its original order terminating alimony payments after six years; and (3) that the trial court be directed to reverse its award of attorneys' fees to Erin and order Erin to reimburse Tom for previous payments in the amount of \$22,500 plus interest. In all other respects, the Order on Remand and the Decree should be affirmed. In addition, Erin's request for attorneys' fees on appeal should be denied.

RESPECTFULLY SUBMITTED this 15 day of October, 1994.

VLAHOS, SHARP & BRADLEY

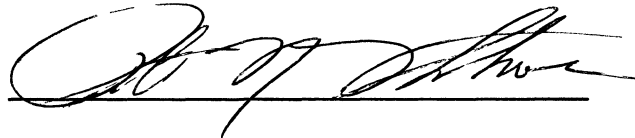
By 

Pete N. Vlahos
Legal Forum Building
2447 Kiesel Avenue
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Attorneys for Defendant/Appellant
and Cross-Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15 day of October, 1994, I mailed two (2) true and correct copies of the foregoing REPLY BRIEF OF APPELLANT/ANSWERING BRIEF OF CROSS-APPELLEE to the attorney for Plaintiff/Appellee/Cross-Appellant, by placing same in the United States Mail, postage prepaid and addressed to the following:

Brian R. Florence
FLORENCE AND HUTCHISON
818 - 26th Street
Ogden, UT 84401

A handwritten signature in black ink, appearing to read 'Brian R. Florence', is written over a horizontal line.