

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

Case No. 2020-0029

**JAMES R. BRITTON
Appellant**

v.

**PATRICIA F. BRITTON
Appellee**

**On Appeal by Discretionary Appeal from the
10th Circuit Court - Family Division - Brentwood**

**BRIEF FOR APPELLANT
James R. Britton**

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Table of Contents

	<u>Page(s)</u>
Table of Contents.....	2
Table of Authorities.....	5
Questions Presented For Review.....	6
Constitutional Provisions, Statutes, Ordinances, Rules, or Regulations Involved...9	
Statement of the Case and Facts.....	13
Summary of Argument.....	16
Argument.....	18

- I. The Circuit Court erred as a matter of law when, after finding that the 1983 version of RSA 458:19 limited alimony to 3 years in the parties' 1985 divorce decree, but nevertheless found the Petitioner in contempt for not continuing to pay alimony after 35 years, and for declining to give Petitioner an order for reimbursement, or at least credit, for \$360,800.00 in alimony he overpaid between 1988 and 2018.....18
- II. The Circuit Court erred as a matter of law when it held that the parties could reaffirm the alimony portion of the 1985 divorce decree in 2016 and extend alimony from October 26, 2016 to October 25, 2019 when Respondent had filed no motion to renew, modify or extend as required by RSA 458:19 and the decree as to alimony beyond 3 years was unenforceable ab initio.....21
- III. The Circuit Court erred as a matter of law in holding that Petitioner has not carried his burden of proof to terminate alimony when it was the law itself (as found by the lower court) that terminated alimony effective in 1988.....22

IV.	The Circuit Court erred as a matter of law in finding Petitioner in contempt when alimony he stopped paying in 2018 actually terminated as a matter of law 32 years ago.....	23
V.	The Circuit Court erred as a matter of fact and law in awarding Respondent \$6,000.00 in attorney's fees specifically related to contempt only, when Mr. Britton was not in contempt and when all Respondent did related to contempt was to file a motion for contempt.....	23
VI.	The Circuit Court erred as a matter of law and fact in failing to give the Petitioner credit toward alimony for a \$125,000.00 piece of property he gave to Respondent years after their 1985 divorce.....	24
VII.	The lower court erred in ruling that Mrs. Britton was in need of alimony.....	24
VIII.	The lower court erred, both under the law and under its own court rules, in awarding alimony beyond the deadline for Mrs. Britton to request alimony and beyond Mr. Britton's 65 th birthday.....	26
	Conclusion.....	31
	Oral Argument.....	32
	Copy of the Decisions Being Appealed.....	32
	• November 12, 2019 Decision	
	• June 8, 2020 Decision	
	Rule 16(11) Certification.....	32
	Certificate of Service.....	32
	Addendum Table of Contents.....	33
	Decision.....	34
	James R. Britton v. Patricia F. Britton, Case No. 218-1983-DM-00439	
	Judge David G. LeFrancois, 10 th Circuit – Probate Division – Brentwood	
	Dated November 12, 2019	

Petitioner’s Granted Requests for Findings of Facts and Rulings of Law..41
James R. Britton v. Patricia F. Britton, Case No. 218-1983-DM-00439
Judge David G. LeFrancois, 10th Circuit – Probate Division – Brentwood
Dated August 28, 2019

Decision.....48
James R. Britton v. Patricia F. Britton, Case No. 218-1983-DM-00439
Judge David G. LeFrancois, 10th Circuit – Probate Division – Brentwood
Dated June 8, 2020

Notice of Decision – Stipulation.....54
James R. Britton v. Patricia F. Britton, Case No. 218-1983-DM-00439
Judge Charles L. Greenhalgh, 10th Circuit – Probate Division – Brentwood
Dated October 24, 2016

Affidavit of Attorney’s Fees.....57
James R. Britton v. Patricia F. Britton, Case No. 218-1983-DM-00439
Dated November 22, 2019

Table of Authorities

Table of Cases	<u>Page(s)</u>
<i>Henry v. Henry</i> , 129 N.H. 159, 162 (1987).....	18, 20
<i>Lyon v. Lyon</i> , 166 N.H. 315 (2014).....	27
<i>Nassar v. Nassar</i> , 156 N.H. 769 (2008).....	19

Table of Statutes and Other Authorities	<u>Page(s)</u>
RSA 458:19.....	18-21, 26
RSA 458:19-a.....	27
RSA 458:19-aa (I)(b).....	27
RSA 458:19-aa (IV).....	27
RSA 458:32.....	28
Rule 1.3 Fees.....	30
Rule 2.3 Beginning of Legal Action.....	28
Rule 2.4 Notice of Legal Action.....	29

Questions Presented For Review

1. Whether the Circuit Court erred as a matter of law when, after finding that the 1983 version of RSA 458:19 limited alimony to 3 years in the parties' 1985 divorce decree, nevertheless declined to give Petitioner an order for reimbursement, or at least credit, for \$360,800.00 in alimony he paid between 1988 and 2018. Petitioner's motion for reconsideration dated November 20, 2019. Petitioner's response to objection to motion for reconsideration and response to respondent's objection to motion to dismiss dated December 12, 20219. Transcript pp. 14-20. Petitioner's Trial Memorandum dated September 9, 2019.
2. Whether the Circuit Court erred as a matter of law when it held that the parties could reaffirm the alimony portion of the 1985 divorce decree in 2016 and extend alimony from October 26, 2016 to October 25, 2019 when Respondent had filed no motion to renew, modify or extend as required by RSA 458:19 and the decree as to alimony beyond 3 years was unenforceable ab initio. Petitioner's response to objection to motion for reconsideration and response to respondent's objection to motion to dismiss dated December 12, 2019. Petitioner's motion for reconsideration dated November 20, 2019. Transcript pp. 14-20. Petitioner's Trial Memorandum dated September 9, 2019.
3. Whether the Circuit Court erred as a matter of law in holding that Petitioner has not carried his burden of proof to terminate alimony when it was the law itself (as found by the lower court) that terminated alimony effective in 1988. Petitioner's motion for reconsideration dated November 20, 2019. Petitioner's response to objection to motion for reconsideration and response to respondent's objection to motion to dismiss dated December

12, 2019. Transcript pp. 14-20. Petitioner's trial memorandum dated September 9, 2019.

4. Whether the Circuit Court erred as a matter of law in finding Petitioner in contempt when alimony he stopped paying in 2018 actually terminated as a matter of law 31 years ago. Petitioner's motion for reconsideration dated November 20, 2019. Petitioner's response to objection to motion for reconsideration and response to respondent's objection to motion to dismiss dated December 12, 2019. Transcript pp. 14-20. Petitioner's Trial Memorandum dated September 9, 2019.
5. Whether the Circuit Court erred as a matter of fact and law in awarding Respondent \$6,000.00 in attorney's fees specifically related to contempt only, when Mr. Britton was not in contempt and when all Respondent did related to contempt was to file a motion for contempt. Petitioner's motion for reconsideration dated November 20, 2019. Affidavit of Attorney's Fees dated November 22, 2019. Petitioner's Response to Respondent's Fee Affidavit dated December 2, 2019.
6. Whether the Circuit Court erred as a matter of law and fact in failing to give the Petitioner credit toward alimony for a \$125,000.00 piece of property he gave to Respondent years after their 1985 divorce. Petitioner's response to objection to motion for reconsideration and response to respondent's objection to motion to dismiss dated December 12, 2019. Petitioner's motion for reconsideration dated November 20, 2019. Transcript pp. 38-45.
7. Whether the lower court erred in ruling that Mrs. Britton was in need of alimony. Petitioner's response to objection to motion for reconsideration and response to respondent's objection to motion to dismiss dated December 12, 2019. Petitioner's motion for reconsideration dated November 20, 2019. Transcript pp. 38-53.

8. Whether the lower court erred in awarding alimony beyond the deadline for Mrs. Britton to request alimony and beyond Mr. Britton's 65th birthday and was otherwise procedurally defective. Petitioner's response to objection to motion for reconsideration and response to respondent's objection to motion to dismiss dated December 12, 2019. Petitioner's motion to dismiss dated November 22, 2019.

**Constitutional Provisions, Statutes, Ordinances, Rules, or Regulations
Involved**

RSA 458:19 as in effect in 1985:

“Upon a decree of nullity or divorce, the court may restore to the wife all or any part of her estate, and may assign to her such part of the estate of her husband, or order him to pay such sum of money, as may be deemed just, provided that in cases in which no children are involved, or in which the children have reached the age of majority, the order **shall** be effective for not more than 3 years. . . .

However, such order may be renewed, modified or extended if justice requires for periods of not more than 3 years at a time; and may compel the husband to disclose, under oath, the situation of his property; and before or after the decree, may make such orders and use such process as may be necessary.” Emphasis added.

RSA 458:19-a Term and Reimbursement Alimony:

“I. The court may order term alimony upon agreement of the parties or in the absence of an agreement, at the request of either party by petition or motion in a case for divorce, legal separation, or annulment. Any request for alimony shall be made either before the final decree is effective or not later than 5 years from the effective date.”

RSA 458:19-aa (I)(b) Alimony Modification and Termination provides:

“If the prior alimony order has ended, reinstatement shall be requested within 5 years after the end of the order.”

458:19-aa (IV) Alimony Modification or Termination provides:

“IV. Except as provided in paragraph V, term alimony orders shall end upon the payor reaching full retirement age or actual retirement by the payor, whichever is later, unless the parties agree otherwise or the court finds that justice requires a

different termination date based on special circumstances under RSA 458:19-a, IV. The payor's ability to work beyond full retirement shall not of itself be a reason to extend alimony. The payor shall provide the payee reasonable notice in advance of retirement. Sixty days' notice shall be presumed to be reasonable.”

458:32 Modification provides:

“Upon motion and notice to the adverse party in the proceeding, or upon a new petition by either party and like procedure thereon, the court may modify or revise its orders and decrees.”

Rule 1.3 Fees:

A. The appropriate fee must accompany all filings. All fees shall be consolidated into a single payment, when possible.

C. (1) Original Entry of all Marital Matters, Parenting Petitions (including Order of Notice and Guardian ad Litem Fee) and Foreign Decrees \$225.00

(3) Petition to Change Court Order in all Marital Matters and Parenting Petitions

(a) With full agreement \$100.00

(b) Without full agreement \$225.00

Rule 2.3 Beginning of Legal Action:

A. General. After a decree becomes final, either party may petition the court to change the final court order in their case. The petition must be provided to the other party as though it were a new case, with service to be accomplished as set forth in Family Division Rule 2.4. Regardless of which party files the petition,

the parties will maintain original party designations. The original petitioner is always the petitioner, and the original respondent is always the respondent, even though the respondent may be the party requesting change. [emphasis added]

B. Proper Filing. A properly filed petition to change the court order includes: A Petition to Change Court Order that states the names, dates of birth, and address(es) of the parties; the names and dates of birth the parties' children; the parts of the Court's order that are being requested to be changed; the specific changes that are being sought; reason(s) why the Court should change the order; a statement about the receipt of public/medical assistance; a personal data sheet; and the filing fee. [emphasis added]

Rule 2.4 Notice of Legal Action:

B. Individual Petitions. Upon receipt of an individual petition, the court shall attach to the petition a Notice to Respondent (formerly orders of notice) and an appearance form.

(1) The court forwards a notice to the respondent, indicating that the petition has been filed and that the respondent or the respondent's attorney may accept service of the petition at the court within ten (10) days. A respondent's attorney, who has filed an appearance, may request and accept service by mail provided the attorney files a receipt of service signed by the respondent within five (5) business days of the attorney's receipt of the petition.

(2) If neither the respondent nor the attorney for the respondent accepts service of the petition as set forth above, the petition shall be forwarded to the petitioner for service on the respondent either by certified mail,

restricted delivery, signed by the addressee only, or by sheriff; or, if the respondent is out of state, by an officer authorized to make service in the state where the respondent lives. In all instances, the petitioner shall file the return receipt or the return of sheriff/officer service as proof of service.

C. If the above methods of service are neither feasible nor successful, the Court, upon motion of the petitioner, will consider alternate methods of service.

Statement of the Case and Facts

Mr. and Mrs. Britton are 91 and 92, respectively. They were divorced in November of 1985 after their kids were adults. The 1985 divorce decree was a stipulation signed by both parties and their attorneys. It provided for lifetime alimony to be paid by Mr. Britton. However, RSA 458:19 in effect prior to January 1, 1986 applies to this case and prohibits lifetime alimony and limited alimony to 3 years (as the Court below found). Alimony should have ended in November of 1988. Mrs. Britton could have filed a motion prior to November of 1988 to extend the alimony for 3 years, but she never did. In this current action, Mr. Britton filed a motion to modify the November 1985 Divorce Decree by pleading dated June 23, 2018. A trial was held August 28, 2019. The Court issued a decision dated November 12, 2019.

The Court found in its November 12, 2019 Order at p. 2, that the 1983 version of RSA 458:19 is the applicable version to this case, and particularly that “alimony is limited to three years under the statute” (Order, p. 2). The Court found in its November 12, 2019 Order at p. 2, that the 1983 version of RSA 458:19 provides that alimony “is enforceable for a period of three years and can be renewed, modified, or extended for three-year periods at a time”. The Court found that the original divorce decree was issued on November 21, 1985. Order, p. 1. Under the final decree and the applicable 1983 version of RSA 458:19 as found by the Court, a motion to renew, modify or extend could have been filed by Mrs. Britton on or after November 21, 1988. Mrs. Britton stipulated, and the record reflects, that she filed no motion to renew, modify or extend until the day of trial, August 28, 2019.

The Court found that long before this current action, Mr. Britton stopped paying alimony in 2016 and Mrs. Britton filed a motion for contempt. That action ended with the parties (Petitioner was pro se) signing a stipulation in October of

2016 providing that Mr. Britton would pay alimony arrearages and resume payment of \$200 weekly alimony. Order, p.2.

The Court ruled in its November 12, 2019 Order that, applying the 1983 version of the statute to the October 2016 stipulation, Mr. Britton was required to pay alimony from October 23, 2016 for a period of 3 years and alimony could thereafter be renewed, modified or extended for another 3 years. Order, p. 2. The Court did not address alimony paid between 1988 (3 years after the original divorce decree) and 2016, even though the Court found there was a 3 year limitation on alimony in 1985 ("The court notes, based on its findings above, that Mr. Britton's obligation to pay alimony was limited to three years from October 26, 2016 to October 25, 2019". Order, p. 3). The Court gave Mr. Britton no credit for the \$360,800 he paid in alimony between 1988 and 2016. The lower Court also found Mr. Britton in contempt for failing to pay alimony and ordered that he pay \$6000 in attorney's fees.

Mr. Britton timely appealed this decision.

During the final hearing on August 28, 2019, Mrs. Britton made an oral motion to award alimony and, following the hearing, filed a motion for the same thing dated September 25, 2019. The Court, in its final order of November 12, 2019, allowed the parties to have a hearing on Mrs. Britton's new motion to award alimony, but indicated it had heard all the evidence it thought it needed in the hearing of August 28, 2019.

Without waiving his motion to dismiss the motion to renew alimony, the parties agreed that the Circuit Court could decide on the new matter (new alimony) on the record of the previous August 28, 2019 hearing, even though Mr. Britton (Appellant) argued that the motion for renewed alimony could not be brought because Mr. Britton was over age 65 (he is currently 91) and for other reasons and that in any event, the action was not properly brought under the statute

and Court Rules. Indeed, Mr. Britton filed a motion to dismiss the new motion for alimony and the lower court denied his motion. On June 8, 2020, the Circuit Court granted Mrs. Britton's motion to award alimony finding that Mrs. Britton was in need of alimony and Mr. Britton could pay alimony. The Circuit Court ordered Mr. Britton (Appellant) to pay alimony of \$200/week. Mr. Britton appealed that decision of June 8, 2020, and this Court has consolidated both appeals.

Summary of Argument

For whatever reason, Appellee's attorney, Mr. Millimet, allowed his client to enter into a permanent stipulation in 1985 prohibited by law. RSA 458:19 in effect at the time, barred alimony for more than 3 years. Mr. Millimet knew that but allowed his client to sign the Permanent Stipulation anyway providing for lifetime alimony. Mr. Britton, after paying alimony for 35 years, stopped paying. Mrs. Britton sued Mr. Britton to get alimony going again. The lower court agreed that the statute in effect at the time prohibited lifetime alimony, but then disregarded the statute, and this Court's clear cases interpreting the statute, and ordered that Mr. Britton was in contempt for stopping his alimony payments after 35 years and ordered him to pay arrearages and attorney's fees. The lower court gave Mr. Britton no credit for the \$360,800 he had overpaid since 1988 and gave him no credit for a \$125,000 piece of property Mr. Britton gave to Mrs. Britton after the divorce. The lower court was wrong to find the statute applicable but then ignore the statute and this Court's decisions and was wrong to find Mr. Britton in contempt and wrong to award attorney's fees and wrong not to give Mr. Britton credit for significant overpayments and property and wrong not to order Mrs. Britton to reimburse him.

During the August 28, 2019 trial, after Mr. Britton raised the issue of the 1985 version of RSA 458:19, Mrs. Britton's attorney verbally moved for a renewal of alimony going forward. Mr. Britton objected. Mrs. Britton followed her oral motion for renewal of alimony with a written version. Mrs. Britton did not file a new action, nor did she comply with any statute or court rule for bringing a new action. Mrs. Britton's action was procedurally defective, and in any event Mr. Britton was not required to pay alimony after age 65, and he had overpaid alimony to the tune of \$360,800 plus \$125,000 in real property, and Mrs. Britton has testified that she had access to over \$300,000 in liquid assets (which she had put into an irrevocable trust for her sons so that they would take care of her) and the lower court was wrong to find her in need of alimony going forward, especially in light of the

Court's finding of fact #4 that 91 year old Mr. Britton's only income is social security in the amount of \$1,118.00 per month, and finding #5 that Mr. Britton's monthly expenses exceed his monthly income by \$1,055.50.

Argument

- I. **The Circuit Court erred as a matter of law when, after finding that the 1983 version of RSA 458:19 limited alimony to 3 years in the parties' 1985 divorce decree, but nevertheless found the Petitioner in contempt for not continuing to pay alimony after 35 years, and for declining to give Petitioner an order for reimbursement, or at least credit, for \$360,800.00 in alimony he overpaid between 1988 and 2018.**

The lower Court found that RSA 458:19 in effect prior to January 1, 1986 applies to this November 1985 divorce decree and prohibits lifetime alimony and limits alimony to 3 years:

“Upon a decree of nullity or divorce, the court may restore to the wife all or any part of her estate, and may assign to her such part of the estate of her husband, or order him to pay such sum of money, as may be deemed just, provided that in cases in which no children are involved, or in which the children have reached the age of majority, the order **shall** be effective for not more than 3 years. . . . However, such order may be renewed, modified or extended if justice requires for periods of not more than 3 years at a time; and may compel the husband to disclose, under oath, the situation of his property; and before or after the decree, may make such orders and use such process as may be necessary.” See: *Henry v. Henry*, 129 N.H. 159 (1987) emphasis added.

The *Henry v. Henry* Court was faced with this identical issue. It was a stipulation signed by the parties in that case, just as in this case. And the Supreme Court said that it does not matter what the stipulation says; it matters what the law says. As a result, the Supreme Court held that the stipulation is not controlling. In the *Henry* case, the wife had filed a motion to renew, modify or extend the alimony and so the Court was able to deal with ongoing alimony before alimony ended. In this case, there was no motion to renew, modify or extend over the last 35 years. As such, alimony could not extend beyond 1988.

The Court correctly found in its November 12, 2019 Order at p. 2, that the 1983 version of RSA 458:19 is the applicable version to this case, and particularly correctly found that “alimony is limited to three years under the statute”. The Court correctly found in its November 12, 2019 Order at p. 2, that the 1983 version of RSA 458:19 provides that alimony “is enforceable for a period of three years and can be renewed, modified, or extended for three-year periods at a time”. The Court correctly found that the original divorce decree was issued on November 21, 1985. Order, p. 1. Under the final decree and the applicable 1983 version of RSA 458:19 as found by this Court, a motion to renew, modify or extend could have been filed by Mrs. Britton on or after November 21, 1988. Mrs. Britton stipulated, and the record reflects, that she filed no motion to renew, modify or extend until the day of trial, August 28, 2019. The Court correctly found that the 1983 version of RSA 458:19 provides no timeframe to motion to renew, modify or extend (Order, p. 2), but obviously such a motion must be filed before the alimony expires because the statute makes no reference to reinstatement of alimony. The purpose of alimony is rehabilitative for the obligee and for alimony to be rehabilitative, it would need to continue uninterrupted. *Nassar v. Nassar*, 156 N.H. 769 (2008). It is unthinkable, as in this case, that alimony would rehabilitate from 1985 to 1988 and then reinstate in 2016 for 3 years. That also does not allow for the obligor to plan his financial life and retirement not knowing if any day alimony could be ordered again, especially 31 years after it was to have ceased as a matter of law!

The Court in 1985 simply had no statutory authority to award lifetime alimony in 1985. As such, the decree was void ab initio as to alimony. At best, the 1985 Decree was an order for support for 3 years. If Mrs. Britton has been damaged by her attorney’s advice 35 years ago, she can have a conversation with her law firm (the same law firm that represented her 35 years ago). Alimony should have ended in November of 1988. Mr. Britton could (and did), under these

circumstances, seek reimbursement for overpayment of alimony for 30 years. Mrs. Britton could have filed a motion prior to November of 1988 to extend the alimony for 3 years, but she never did. The fact that the original decree is a stipulation does not trump the statute. A stipulated decree is not enforceable over RSA 458:19 as it was in effect at the time of the 1985 Final Decree. See: *Henry v. Henry*, 129 N.H. 159, 162 (1987).

Leaving aside the issue of what effect the 2016 stipulation had, the Court overlooked or failed to account for alimony paid between November 21, 1988 and October of 2016, nearly 28 years. The overpayment of alimony from November, 1988 (when the alimony order should have ceased by operation of law) until April of 2018 was \$360,800 and is calculated as follows: The original decree, paragraph 4, mandated alimony of \$400/week until Mr. Britton turned 65, then \$200/week for the rest of Mrs. Britton's life. Based on the Court's findings, Mr. Britton was 57 when they divorced in 1985 and would turn 65 in 1993 and Mr. Britton paid \$400/week alimony from November of 1988 until November of 1993, or approximately \$104,000, and then paid \$200/week alimony December 1993 to April of 2018, for approximately \$256,800, for a total paid between November 1988 and April of 2018 of \$360,800. Since the lower Court found that alimony could only extend for 3 years as a matter of law, alimony had to terminate in 1988, and as such, Mr. Britton is entitled to reimbursement, or at very least a credit, of \$360,800 he paid contrary to what the lower Court and this Court has held the law was that is applicable to this case. Further, since Mr. Britton had no obligation to pay alimony, as a matter of law, after October of 1988, he cannot have been found in contempt by the lower court for stopping alimony payments in 2018.

II. The Circuit Court erred as a matter of law when it held that the parties could reaffirm the alimony portion of the 1985 divorce decree in 2016 and extend alimony from October 26, 2016 to October 25, 2019 when Respondent had filed no motion to renew, modify or extend as required by RSA 458:19 and the decree as to alimony beyond 3 years was unenforceable ab initio.

The lower court, after finding that the 1983 version of the statute limited alimony to 3 years, and then disregarding the statutory limitation, misconstrued or misunderstood the law when the lower court held, at page 2, that the October 2016 stipulation required Mr. Britton to pay \$200 per month for three years. If the 1985 decree is, as the lower court has already ruled, enforceable for three years only, all obligations ceased in 1988. The 2016 stipulation cannot somehow turn the 1985 decree into a lifetime alimony, or at least alimony from 1988 until 2016. The Court did not, and cannot, point to any motion to renew, modify, or extend, filed by Mrs. Britton until August 28, 2019. There was never such a motion in 2015 or 2016. There never has been until now. The Court, as a result, had nothing to rule on until now (and procedurally as outlined below, not even now). As such, the 2016 stipulation is of no effect as a matter of law.

Moreover, if the 1985 decree could only, as a matter of law, provide alimony for three years, the 2016 "stipulation" cannot change the law, even if the parties wanted it to. As such, it was a stipulation without meaning or support in the law and is therefore irrelevant. Mr. Britton could not stipulate to something that the law did not allow in the first place, especially since in 2016 there was no pending motion to renew, extend, or modify.

The lower court cites no authority for its conclusion that the order of lifetime alimony in 1985 was not void ab initio, despite finding that the applicable law prevented alimony for more than 3 years. The order was void ab initio as to alimony after November of 1988 because that is what the law says. It is not within the power of any court to find the law applicable, and then ignore it. The law itself, as cited by the lower court, gives the Court no authority to apply the law, or not apply it, at the whim of the Court. Instead, the law gives the Court the power to extend, modify, or renew, which of course the Court can only do on a properly filed Petition. The court could not do so until after proper pleadings are filed (Respondent still has not filed a new action, with service on the petitioner and an opportunity to Answer and litigate, but instead has piggybacked on a case that was finally submitted and over on August 28, 2019, after trial).

III. The Circuit Court erred as a matter of law in holding that Petitioner has not carried his burden of proof to terminate alimony when it was the law itself (as found by the lower court) that terminated alimony effective in 1988.

The lower court, at the bottom of page 4, denied Mr. Britton's motion to terminate alimony holding, in part, that "Mr. Britton has not carried his burden of proof to terminate alimony". The Court misapprehended the burden of proof. Mr. Britton has NO burden of proof whatsoever. As a matter of law, no alimony could be paid after 1988, even if the parties wanted or agreed. That was it. Done. Case closed. As such, Mr. Britton had no burden of proof. Instead, Mrs. Britton, as a matter of law, had the burden to file a motion over these years to modify, renew or extend alimony, which she did not do. As such, she had the burden, IF she had filed such an action, to prove that alimony should be renewed, modified, or extended.

IV. The Circuit Court erred as a matter of law in finding Petitioner in contempt when alimony he stopped paying in 2018 actually terminated as a matter of law 32 years ago.

Despite finding that the law effective in 1985 prevented alimony beyond 1988, the lower court nevertheless found the Petitioner in contempt for not paying the alimony for the very years the court found the law provided he did not have to pay! For all the foregoing reason, such a finding is inconsistent with the law and the lower court's own finding of the law.

V. The Circuit Court erred as a matter of fact and law in awarding Respondent \$6,000.00 in attorney's fees specifically related to contempt only, when Mr. Britton was not in contempt and when all Respondent did related to contempt was to file a motion for contempt.

For the reasons outlined above, Mr. Britton cannot be in contempt for failure to pay alimony when the alimony terminated by operation of law 32 years ago. If he was not in contempt, it was error to order him to pay attorney's fees. Even if Petitioner was in contempt, the award of \$6,000 in fees is erroneous, illegal and was an unsustainable exercise of discretion. Mrs. Britton's attorney, Pam Peterson, claims she spent 27.6 hours litigating the issue of contempt when only a motion for contempt was needed. Either Mr. Britton paid, or he did not pay, and all that was necessary was a motion for contempt to set that issue before the Court. No discovery was needed as Mr. Britton did not dispute that he stopped paying. At trial, all she needed to do, as far as contempt is concerned, was to present the final decree and ask when Mr. Britton stopped paying. At most, she should have billed one hour to draft the motion and ask the question at trial. Indeed, she billed 1.4 hours to draft a motion for contempt, review Britton's

financial affidavit, review the motion for modification and research RSA 458 (see 7/15/18 line item attached to Peterson affidavit). Nowhere in Peterson's affidavit or attachments does Peterson even attempt to explain how each specific service was necessary to establish that the decree required him to pay alimony and that he stopped in April of 2018. All of her services related to her cross petition to set aside the original 35-year-old property division.

VI. The Circuit Court erred as a matter of law and fact in failing to give the Petitioner credit toward alimony for a \$125,000.00 piece of property he gave to Respondent years after their 1985 divorce.

The Court also failed to take into consideration that Mr. Britton pre-paid alimony by deeding a \$125,000 property to Mrs. Britton, with no obligation to do so, and after the divorce was final, and she sold that property and kept the cash. The Court found that Mr. Britton had given Mrs. Britton real property 6 years after the divorce and that she then sold it for \$125,000 (Transcript pp. 38-45).

VII. The lower court erred in ruling that Mrs. Britton was in need of alimony.

The second order of the lower court required Petitioner to pay alimony going forward, starting in June 2020, in the amount of \$200 per week. The Court chastised Mr. Britton for transferring \$240,000 to his wife in return for lifetime care but failed to find any fault with Mrs. Britton for doing the exact same thing! Mrs. Britton testified that she took over \$300,000 from the sale of her home and put it in an irrevocable trust for her boys on the understanding that they take care

of her for her lifetime. Both Mr. and Mrs. Britton have done the exact same thing, but fault has been found by this Court with Mr. Britton for doing it, but then failing to find that Mrs. Britton is not in need of support because she willingly gave her boys over \$300,000, plus Florida property, plus all her life savings, so that the boys could care for her. (Transcript pp. 45-46, 49-50, 78-79). If Mr. Britton can afford to pay alimony because he gave his wife \$240,000 to care for her for his remaining lifetime, Mrs. Britton does not need alimony because she gave away well over \$300,000 in cash and real estate to her sons to take care of her for her remaining lifetime.

Aside from the fact that Mrs. Britton has put aside over \$300,000 in cash in an irrevocable trust with her sons as trustees so that she will be well take care of, she testified that she has income from Mr. Britton's former business of \$3,210.95 per month and her sons pay all her expenses. Transcript pp. 51-53. By contrast, Mr. Britton testified that his income was limited to \$1,118 in monthly social security. Transcript p. 112.

In Mrs. Britton's objection to motion to dismiss the motion to extend alimony, she claims that her "Circumstances had not changed dramatically since the 1985 divorce", yet she wants alimony 31 years after it should have ended in 1988, all the while not showing why anything is different (except that she gave her sons \$300,000.00 and put it beyond her control). The request for renewal, modification or extension has to show some special circumstances warranting something different. Mrs. Britton was in exactly the same position she was in 1985, according to her own pleadings, and as such, is not entitled to a modification, renewal or extension.

This case is different from most cases that came before this Court where at least one party is employed. In this case, both parties are in their 90's and only Mrs. Britton is employed. Both parties have social security. Both parties gave someone else their money on the agreement that they would be cared for in their senior years.

The lower court found that Mr. Britton has social security monthly income of \$1,118.00 and that his monthly expenses exceed his income by \$1,055.50. The analysis ends here. Mr. Britton does not have the income to support alimony and himself. The lower court should have considered a wash the fact that both parties put their money in the control of someone else for their long-term care. If the court is going to conclude that Mr. Britton can afford alimony because he put money with his wife, it must likewise conclude that Mrs. Britton does not need alimony because she put all of her assets in the control of her sons.

VIII. The lower court erred, both under the law and under its own court rules, in awarding alimony beyond the deadline for Mrs. Britton to request alimony and beyond Mr. Britton's 65th birthday.

On June 8, 2020, the Circuit Court granted Mrs. Britton's motion to award alimony found that Mrs. Britton was in need of alimony and Mr. Britton could pay alimony. The Circuit Court ordered Mr. Britton (Appellant) to pay alimony of \$200/week.

As this Court has found, the 1983 version of RSA 458:19 allowed Respondent to file a Petition to renew, modify or extend the 1985 alimony order. That option ceased on January 1, 2019 when the statute changed. Mrs. Britton is

under the new statute because she waited so long to bring an action. The current version of RSA 458:19 prohibits a request for alimony more than 5 years after the original Order (original Order was 1985). “**458:19-a Term and Reimbursement Alimony.** – I. The court may order term alimony upon agreement of the parties or in the absence of an agreement, at the request of either party by petition or motion in a case for divorce, legal separation, or annulment. Any request for alimony shall be made either before the final decree is effective or not later than 5 years from the effective date.” The effective date of the Decree in this case was November 21, 1985. Mrs. Britton would have had to file her current motion by November 21, 1990. She never did so. Current law does not allow her to do so now.

Moreover, the current law applicable to the parties in a request for modification of the 1985 Alimony order requires that Mrs. Britton must have requested modification of alimony within 5 years of the original alimony termination, which was 5 years after 1985, or by 1990. RSA 458:19-aa (I)(b) provides: “If the prior alimony order has ended, reinstatement shall be requested within 5 years after the end of the order.” She filed no such request for modification. People cannot plan their lives if a lawsuit that was over 35 years ago and be reopened and the rules changed. It is not fair and it is not the law. RSA 458:19 simply “does not authorize a trial court to make a new alimony order or to renew an expired alimony order when the petition for such order is filed outside of the five-year limitations period in RSA 458:19, I and VII.” *Lyon v. Lyon*, 166 N.H. 315, 320 (2014).

Even if the Respondent had done everything according to current law, the Court cannot order Alimony beyond Mr. Britton’s retirement age, which was about 25 years ago. See RSA 458:19-aa (IV).

Not only did the lower court entirely disregard the law as it applies to this case, it disregarded its own rules. Even if the Court could entertain Respondent's motion, Mrs. Britton seeks to begin a whole new action within this action, even though this current matter has been submitted after a day-long trial on August 28, 2019, over one month BEFORE she filed her Motion. This she cannot do because both the statute and the court rules prohibit her attempt.

Mrs. Britton, over a month after her attorney told the Court she rested and her case was submitted, has filed a "Motion to Award Alimony", noting that under the RSA 458:19 in effect at the time of the 1985 divorce decree, alimony automatically terminated in 1988. However, a motion can only be filed in an existing proceeding and there is no proceeding as of August 28, 2019, no motion to reopen the case and no fee has been paid and no other documents required by court rules have been filed. The relevant statute provides: "458:32 Modification. – Upon motion and notice to the adverse party in the proceeding, or upon a new petition by either party and like procedure thereon, the court may modify or revise its orders and decrees." Providing notice after the case is submitted and trial is over is indeed no notice at all. Under the statute, Mrs. Britton MUST file a new petition, get orders of notice from the clerk, pay the filing fee of \$225, have Mr. Britton served, and await his answer, and then proceed with discovery.

This Court's rules explain for Mrs. Britton the procedure she must follow, none of which she has even attempted yet:

2.3 Beginning of Legal Action:

A. General. After a decree becomes final, either party may petition the court to change the final court order in their case. The petition must be provided to the other party as though it were a new case, with service to be accomplished as set forth in Family Division Rule 2.4. Regardless of which party files the petition, the parties will maintain original party designations. The original petitioner is

always the petitioner, and the original respondent is always the respondent, even though the respondent may be the party requesting change.

B. Proper Filing. A properly filed petition to change the court order includes: A Petition to Change Court Order that states the names, dates of birth, and address(es) of the parties; the names and dates of birth the parties' children; the parts of the Court's order that are being requested to be changed; the specific changes that are being sought; reason(s) why the Court should change the order; a statement about the receipt of public/medical assistance; a personal data sheet; and the filing fee.

2.4 Notice of Legal Action:

B. Individual Petitions. Upon receipt of an individual petition, the court shall attach to the petition a Notice to Respondent (formerly orders of notice) and an appearance form.

(1) The court forwards a notice to the respondent, indicating that the petition has been filed and that the respondent or the respondent's attorney may accept service of the petition at the court within ten (10) days. A respondent's attorney, who has filed an appearance, may request and accept service by mail provided the attorney files a receipt of service signed by the respondent within five (5) business days of the attorney's receipt of the petition.

(2) If neither the respondent nor the attorney for the respondent accepts service of the petition as set forth above, the petition shall be forwarded to the petitioner for service on the respondent either by certified mail, restricted delivery, signed by the addressee only, or by sheriff; or, if the respondent is out of state, by an officer authorized to make service in the state where the respondent lives. In all instances, the petitioner shall file the return receipt or the return of sheriff/officer service as proof of service.

C. If the above methods of service are neither feasible nor successful, the Court, upon motion of the petitioner, will consider alternate methods of service.

Mrs. Britton has paid no fee as required by rule:

Rule 1.3 Fees:

- A. The appropriate fee must accompany all filings. All fees shall be consolidated into a single payment, when possible.

- C. (1) Original Entry of all Marital Matters, Parenting Petitions (including Order of Notice and Guardian ad Litem Fee) and Foreign Decrees \$225.00

(3) Petition to Change Court Order in all Marital Matters and Parenting Petitions
 - (c) With full agreement \$100.00
 - (d) Without full agreement \$225.00

As such, Mrs. Britton's' oral motion and subsequent written motion filed well after the trial was over, were procedurally defective and the order for future alimony must be vacated.

Conclusion

The law is clear: alimony ended by operation of law in 1988. As such, the failure to pay now cannot be contempt. The 2016 stipulation is meaningless because the order for lifetime alimony was meaningless. The 2016 stipulation is also meaningless because it was not the product of a petition to renew, extend or modify. The subsequent order for on-going alimony was wrong because it did not give credit for \$360,800 in overpaid alimony, it could not have been ordered for 5 years from the final decree, the statute does not allow alimony after Mr. Britton turned 65, and because Mr. Britton does not have the ability to pay alimony.

Oral Argument

The Plaintiff/Appellant respectfully requests oral argument of not more than 15 minutes.

Copy of the Decisions Being Appealed

A copy of the decisions below that are being appealed or reviewed are appended to this brief.

RULE 16(11) CERTIFICATION

I hereby certify that the foregoing Brief of Petitioner/Appellant complies with the word limit requirement of Rule 16(11). The number of words in this Brief is 7,689.

Certificate of Service

I hereby certify that the foregoing Brief of Petitioner/Appellant has on this day been forwarded to counsel of record for the Respondent/Appellee's counsel via the Court's electronic filing system and one (1) paper copy has been mailed to the lower court (10th Circuit - Family Division - Brentwood) via USPS regular mail.

/s/Jonathan M. Flagg

Jonathan M. Flagg, Esq.

NH Bar No. 4811

ADDENDUM TABLE OF CONTENTS

Pages:

1. Decision of 10 th Circuit – Family Division – Brentwood.....	34
James R. Britton v. Patricia F. Britton, Case No. 218-1983-DM-00439	
Judge David G. LeFrancois, 10 th Circuit – Probate Division – Brentwood	
Dated November 12, 2019	
2. Petitioner’s Granted Requests for Findings of Facts and Rulings of Law.....	41
James R. Britton v. Patricia F. Britton, Case No. 218-1983-DM-00439	
Judge David G. LeFrancois, 10 th Circuit – Probate Division – Brentwood	
Dated August 28, 2019	
3. Decision of 10 th Circuit – Family Division – Brentwood.....	48
James R. Britton v. Patricia F. Britton, Case No. 218-1983-DM-00439	
Judge David G. LeFrancois, 10 th Circuit – Probate Division – Brentwood	
Dated June 8, 2020	
4. Notice of Decision – Stipulation.....	54
James R. Britton v. Patricia F. Britton, Case No. 218-1983-DM-00439	
Judge Charles L. Greenhalgh, 10 th Circuit – Probate Division – Brentwood	
Dated October 24, 2016	
5. Affidavit of Attorney’s Fees.....	57
James R. Britton v. Patricia F. Britton, Case No. 218-1983-DM-00439	
Dated November 22, 2019	

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

10th Circuit - Family Division - Brentwood
PO Box 1208
Kingston NH 03848-1208

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

**JONATHAN M. FLAGG, ESQ
FLAGG LAW PLLC
93 MIDDLE STREET
PORTSMOUTH NH 03801**

**Case Name: James R. Britton and Patricia F. Britton
Case Number: 218-1983-DM-00439**

Enclosed please find a copy of the Court's Order dated November 07, 2019 relative to:

**Order on Petitioner's Motion for Modification (#7), Respondent's
Motions for Contempt(#15) and For Modification (#22) and
Related Procedural Motions**

November 12, 2019

LoriAnne Hensel
Clerk of Court

(586)

C: Pamela A. Peterson, ESQ

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

COUNTY OF ROCKINGHAM

10TH CIRCUIT - FAMILY DIVISION - BRENTWOOD

In the Matter of:

James R Britton and Patricia F Britton

Case No. 218 - 1983 - DM - 439

ORDER ON PETITIONER'S MOTION FOR MODIFICATION (#7), RESPONDENTS MOTIONS FOR CONTEMPT (#15) AND FOR MODIFICATION (#22), AND RELATED PROCEDURAL MOTIONS

A one-day final hearing was held on August 28, 2019, at which both parties appeared with counsel and presented testimony and other evidence. Based on the evidence presented, the court makes the following findings and orders.

Summary of issues.

Petitioner, Mr. Britton, filed a motion for modification to terminate alimony (#7) alleging a substantial decrease in his ability to pay alimony. At the beginning of the final hearing, he made an oral motion for summary judgment to terminate alimony arguing that the original alimony order of lifetime alimony stipulated to by the parties and approved by the court as part of the 1985 Decree of Divorce was void under the alimony statute in force at the time, RSA 458 - 19, which limited an alimony award for a spouse, where there are no minor children, to a time frame of three years.

Respondent, Ms. Britton, filed a motion for contempt for nonpayment of alimony (#15) as a result of Mr. Britton ceasing to make alimony payments in April 2018. She also filed a motion to reopen the property settlement which was part of the 1985 stipulation approved by the court as part of the Final Decree, alleging fraud by Mr. Britton in the valuation of the family mobile home park business.

Also at the beginning of the final hearing, after Mr. Britton made his oral motion for summary judgment, Ms. Britton made an oral motion for renewal or extension and increase in alimony. She also made a request to keep the record open for submission of certain bank account and trust records. Ms. Britton filed a written motion to modify alimony after the hearing to which Mr. Britton filed a written objection.

There are also a number of motions regarding discovery and dismissal of various motions.

The court ordered the parties to file memoranda of law regarding the alimony termination issue raised by Mr. Britton at the beginning of the trial. Both parties filed memoranda and replies.

History of the case.

The parties were divorced pursuant to a Final Decree of Divorce issued on November 21, 1985. The divorce decree incorporated the parties' permanent stipulation. Ms. Britton is 91 years old, resides in Massachusetts, and has not remarried. Mr. Britton is 90 years old, resides in Florida, and married his current wife, Katharina, in August 1986.

13 35

The permanent stipulation provided that Mr. Britton was to pay alimony to Ms. Britton for the remainder of her life with an initial weekly payment of \$400 to be reduced to \$200 upon Ms. Britton attaining the age of 65. In 2016 Ms. Britton filed a petition to bring forward and for contempt alleging that Mr. Britton stopped paying alimony as a result of a dispute between Mr. Britton and his two adult sons, who had taken over the family business managing the mobile home park. The parties resolved the alimony dispute with the filing of a stipulation in October 2016, which was approved by the court (#6). The stipulation provided that Mr. Britton pay all of the alimony arrearage and resume payment of the \$200 weekly alimony.

In June 2018, Mr. Britton filed the motion for modification requesting the termination of alimony because of a substantial decrease in his income. He stopped paying alimony in April 2018 and Ms. Britton filed her motion for contempt for nonpayment of alimony in July 2018. She filed her motion for modification of the property distribution in December 2018.

Petitioner's Motion for Summary Judgment.

Mr. Britton is correct that the version of the alimony statute, RSA 458:19, applicable to this 1985 Final Decree is the 1983 law which provides as follows:

"Upon a decree of nullity or divorce, the court may restore to the wife all or any part of her estate, and may assign to her such part of the estate of her husband, or order him to pay such sum of money, as may be deemed just, provided that in cases in which no children are involved, or in which the children have reached the age of majority, the order shall be effective for not more than 3 years.... However, such order may be renewed, modified or extended if justice requires for periods of not more than 3 years at a time; and may compel the husband to disclose, under oath, the situation of his property; and before or after the decree, may make such orders and use such process as may be necessary." Henry v. Henry, 525 A.2d 267, 268 (N.H. 1987).

Mr. Britton is not correct, however, that as a result, he is entitled to summary judgment terminating any alimony payment obligation. Although alimony is limited to three years under the statute, alimony may be renewed, modified or extended if justice requires for periods of not more than three years at a time. The alimony order as part of the permanent stipulation approved by the court is not void *ab initio* as Mr. Britton argues; rather, it is enforceable for a period of three years and can be renewed, modified, or extended for three year periods at a time.

The parties' stipulation in October 2016, approved by the court, provided that Mr. Britton would continue to pay weekly alimony of \$200 to Ms. Britton. Applying the 1983 version of the alimony statute to that stipulation, just as it is applied to the original 1985 stipulation, means that alimony can continue for a three year period and can be renewed, modified, or extended for three year periods at a time thereafter in accordance with the provisions of the statute. Therefore, the October 2016 stipulation and order requires Mr. Britton to pay \$200 weekly alimony to Ms. Britton commencing October 23, 2016, for a period of three years, subject to being "renewed, modified, or extended if justice requires for periods of not more than three years at a time" as provided in the statute.

The court notes that there is no time frame in the statute in which a request to renew, modify or extend the alimony must be filed, unlike more recent versions of the alimony statute. See, for example, RSA 458:19 effective January 1, 2002, which requires that a petition to renew alimony is to

be made within five years of the termination date of the alimony. In addition, in *Morphy v. Morphy*, 114 NH 86 (1974), the Supreme Court held that a trial court can extend or renew a terminated alimony order.

Accordingly, Mr. Britton's Motion for Summary Judgment for termination of alimony is denied.

Petitioner's Motion for Modification of the Final Decree for termination of alimony.

Mr. Britton alleges a substantial change in his monthly financial circumstances which impacts his ability to continue to pay alimony and that the needs of Ms. Britton do not justify a continuation of payments to her. The court notes, based on its findings above, that Mr. Britton's obligation to pay alimony was limited to three years from October 26, 2016 to October 25, 2019. He stopped paying alimony in April 2018 and filed his motion in June 2018, so that any order reducing or terminating alimony would only go back to the filing of his motion in June 2018.

The parties submitted substantial evidence of both parties' financial circumstances for the court to apply to the alimony standard, as set out in the 1983 version of the alimony statute, which provides that the court may order payment of a sum of money "as may be deemed just." The statute, as referenced above, also sets out the standard to be applied for renewal, modification, or extension of an alimony payment, but does not specifically provide a standard for termination of alimony within the three year payment period "if justice requires". Reading the statute in a fair and just manner as a whole, the appropriate standard for termination of alimony would be the same as for an initial award and for a renewal, modification or extension; that is, determining what is just.

As well, case law over a number of years has discussed the standard for changing alimony. Alimony may be modified if there is a substantial change in circumstances which makes the original alimony award unfair or improper; however, changes which are both foreseeable and actually anticipated are not considered substantial. *Laflamme v. Laflamme*, 144 N.H. 524 (1999); *Arvenitis and Arvenitis*, 152 N.H. 653 (2005). In addition, the current version of the alimony statute, RSA 458:19 -aa also sets out similar standards: (1) there has been a substantial and unforeseeable change of circumstances since the effective date of the alimony order; (2) there is no undue hardship on either party; and (3) justice requires a change in amount or duration.

Mr. Britton as the moving party has the burden of proof to establish his request to terminate alimony.

Mr. Britton testified that over the course of his life he built a substantial business of owning and managing mobile home parks as well as being a commercial fisherman. In or about 1990 the mobile home park business was very successful and he transferred the business to his two adult sons through a series of transactions to limit tax consequences. He was paid approximately \$87,000 a year from approximately 1990 to 2016. Mr. Britton had several disputes with his adult sons regarding the business which finally resulted in an agreement in 2018 in which Mr. Britton received \$250,000 in lieu of any further claims for payments from his sons or the business. He testified that he put \$40,000 in a joint certificate of deposit with his current wife and gave the remaining approximately \$200,000 to his current wife in exchange for her verbal promise to take care of him for the rest of his life.

In June 2017, Mr. Britton and his wife sold their jointly held residence and received \$626,880.92 in proceeds. Their current joint residence is worth more than \$300,000. According to Mr.

Britton the residence sold in June 2017 was his wife's residence, even though it was jointly held, and the proceeds of that sale are all in various accounts or trusts of his wife. Mr. Britton also testified at his wife received a large amount of money from her family.

In March 2018, Mr. Britton sold a fishing boat for \$154,600. He testified that those proceeds went to repay a friend for Mr. Britton's living expenses that he borrowed from the friend. The evidence of the "living expenses" and the loan was not convincing.

Mr. Britton lists his sole income on his most recent financial affidavit as \$1118 in Social Security and lists his monthly expenses as \$2173.50.

Mr. Britton has not established that he cannot continue to pay alimony of \$200 per week to Ms. Britton. He was receiving substantial monthly payments from his two sons relating to the transfer of the family mobile home park business until the dispute which was resolved when he agreed to a payout of \$250,000 in lieu of future payments. Mr. Britton could have continued to use the \$250,000 to pay alimony obligations and pay his living expenses but chose to give most of it to his current wife for a verbal promise that she would take care of him. One spouse has a legal obligation to provide the necessities of life to the other spouse without needing to obtain a promise to do so. By giving the \$200,000 to his current wife, Mr. Britton created a false picture of an inability to pay Ms. Britton the alimony he had agreed to pay and to pay his monthly expenses.

In addition, Ms. Britton has a need for alimony. Her most recently filed financial affidavit shows total monthly income of \$2689.10, representing Social Security and retirement benefits of distributions and income from the family mobile home business paid to her by her sons. She has monthly expenses of \$8558, \$4054.95 of which are paid by her sons or their business entity. Even with her sons contributing to her needs, Ms. Britton still has a monthly deficit of approximately \$4500. Alimony of \$200 a week would result in additional monthly income of \$866, which still leaves her with a monthly deficit.

Ms. Britton received assets from the divorce in 1985 and has created an irrevocable trust in which to hold most of those assets. She is entitled to income from the trust annually and her remainder beneficiaries, her two sons, are entitled to the trust principal upon her death.

Ms. Britton's circumstances have not changed dramatically since her divorce in 1985. She never remarried. She has worked off and on for the family business. She has held other low-paying jobs until age 82. She was the primary caregiver for the parties' children during the marriage. She has relied on the lifetime alimony to which Mr. Britton agreed. Mr. Britton emphasized in his testimony that at the time of the divorce he wanted to make sure that the permanent stipulation was fair and specifically made sure the parties' two sons were in the room when the permanent stipulation was finalized to show them that he was being fair to their mother.

Using the standard set forth in the 1983 version of the alimony statute or the other standards developed in the case law and statutory provisions set forth above, Mr. Britton has not carried his burden of proof to terminate alimony. Accordingly, Mr. Britton's motion for modification to terminate alimony is denied.

Respondent's Motion for Contempt.

Mr. Britton stopped paying alimony in April 2018. As set forth above, Mr. Britton had an ability to continue to pay alimony but for his giving away \$200,000 to his current wife. Mr. Britton cannot give away assets in order to avoid paying alimony.

Accordingly, the court finds Mr. Britton in contempt for failure to pay alimony and is ordered to pay all arrearages of \$200 per week due from the nonpayment on April 6, 2018 to October 25, 2019 (the termination of the three year period covered by the 2016 stipulation) within 30 days of the issuance date of this order. As a result of the contempt, respondent is awarded attorney's fees and costs. An affidavit of fees and costs solely related to the motion for contempt may be submitted within 10 days of the issuance date of this order.

Respondent's motion for modification of the property settlement.

Ms. Britton's motion is based on an allegation that Mr. Britton substantially undervalued the worth of the family business, the mobile home parks, at the time of the permanent stipulation and that Ms. Britton substantially relied on Mr. Britton's valuation in agreeing to the stipulation. The evidence included testimony about Mr. Britton's valuation of the mobile home parks in 1985 at the time of the permanent stipulation in the amount of \$2 million and then his valuation at the time of his prenuptial agreement with his future wife in 2016 of \$4 million. No actual appraisals were submitted. The evidence was unclear as to whether the evaluations were "gross" or "net" valuations, or what, if any significant factors affecting evaluation occurred between the two time periods, albeit fairly close together. Ms. Britton had appraisals of the properties on which she relied. Both parties were represented by counsel during the negotiations of the permanent stipulation.

Ms. Britton has not carried her burden of proof to establish misrepresentation of the nature and value of assets at the time of the divorce. See *Schafmaster v. Shafmaster*, 138 NH 460 (1994).

Respondent's Motion to Award Alimony.

As referenced above, petitioner made an oral motion requesting alimony at the beginning of the final hearing after respondent made the oral motion for summary judgment on the issue of alimony. Petitioner followed up with a written motion to which petitioner filed an objection.

The court heard substantial evidence on the issue of alimony during the final hearing and made a determination to deny petitioner's motion to terminate alimony based on the evidence presented. Much of that evidence would be pertinent to respondent's motion to award alimony. It would be a waste of judicial time and there would be additional costs to the parties to conduct a completely new and separate final hearing on Ms. Britton's motion for alimony. On the other hand, the parties may have additional evidence which they may want to submit to supplement the evidence already submitted.

Accordingly, the court will issue an order on the respondent's motion for alimony without further hearing, unless either party requests an additional hearing within 10 days of the issuance date of this order. If a request is made, the court will keep the record open and schedule an additional three hour hearing for additional evidence to supplement the existing record, as the court calendar allows. If no request for a further hearing is made, then the court will issue an order without further hearing.

Additional motions.

All additional pending motions regarding discovery, motions to compel, motions to dismiss, and motions to keep the record open for other matters not addressed above are denied.

Requests for findings of fact and rulings of law.

The parties' requests are denied as either not being in proper form, irrelevant, or addressed in the narrative order, except for the following requests which are granted:

Petitioner's requests: 1, 3-8, 10, 15-18, 21-22, 27, 30-31, 36, 43-45, 52-54. Rulings: 1-2, 5, 7.

Respondent's requests: 1-14, 16-18, 20-23, 28-30, 32-33, 40, 43-60, 62-69, 71-72, 74, 79-85, 87-88.

If the granted requests conflict with the narrative order, the narrative order controls.

So Ordered.

November 7, 2019

Date



Hon. David G. LeFrancois, Justice

✓ = Granted

STATE OF NEW HAMPSHIRE

10th Circuit Court – Family Division – Brentwood

In the Matter of
James R. Britton and Patricia F. Britton
Docket No. 218-1983-DM-00439

PETITIONER'S REQUESTS FOR FINDINGS OF FACT AND RULINGS OF
LAW

NOW COMES the Petitioner, James R. Britton, by and through counsel, Flagg Law, PLLC, and respectfully submits the following Motion to Dismiss, and states as follows:

FINDINGS OF FACT

- ✓ 1. In this current action, Mr. Britton filed a motion to modify the 1985 Divorce Decree to eliminate the lifetime alimony based on changed circumstances.
2. Mr. Britton has changed circumstances which is the loss of his pension from his business.
- ✓ 3. Mr. Britton received \$250,000 from his pension buyout.
- ✓ 4. Mr. Britton receives \$1,118.00 from social security each month.
- ✓ 5. Mr. Britton's monthly expenses, not including alimony to Mrs. Britton, exceed his social security income by over \$1,055.50.
- ✓ 6. Mr. Britton deeded Mrs. Britton property on Marlborough Street in Salem, MA on August 23, 1991 for no cash up front (see deed at book 10924, page 158 as Petitioner's Exhibit 7 (hereinafter "Lot 1 property").
- ✓ 7. Mr. Britton deeded the Lot 1 property to Mrs. Britton 6 years after the 1985 divorce.
- ✓ 8. Mrs. Britton denied in her answer to Interrogatory #9 that Mr. Britton deeded her any property.
9. Mrs. Britton receives \$3,210.95 annually from Mr. Britton's former mobile home park now owned by the parties' sons.
- ✓ 10. Mrs. Britton's gross annual income exceeds \$32,000.00.
11. Mrs. Britton's gross annual income for 2015 was \$32,330.00, for 2016 was \$32,160.00, and for 2017 was \$32,196.08.
12. Mrs. Britton has additional monthly income from East Pointe Holdings, Inc. of \$3,210.95 which is an annual amount of \$38,531.40.
13. Mrs. Britton has additional monthly income from Michael Britton and Daniel Britton of \$844.00 which is an annual amount of \$10,128.00.
14. Between Mrs. Britton's taxable income, East Pointe Holdings, Inc. income, and income from Michael and Daniel Britton, her total annual income is approximately \$80,855.48 or approximately \$6,737.96 per month. See Respondent's financial affidavit filed with this Court.

- ✓ 15. Respondent states in her financial affidavit that her monthly expense for groceries, as a single person, is \$802.00. Petitioner states in his financial affidavit that his monthly expense for groceries, as a single person, is \$400.00.
- ✓ 16. Respondent states in her financial affidavit that her monthly expense for eating out, as a single person, is \$150.00. Petitioner states in his financial affidavit that his monthly expense for eating out, as a single person, is \$20.00.
- ✓ 17. Respondent states in her financial affidavit that her monthly expense for clothing and shoes is \$200.00. Petitioner states in his financial affidavit that his monthly expense for clothing and shoes is \$10.00.
- ✓ 18. Respondent states in her financial affidavit that her monthly expense for gifts is \$417.00. Petitioner states in his financial affidavit that his monthly expense for gifts is \$30.00.
19. Mr. Britton's gross annual income is \$15,012.00.
20. Mrs. Britton chose to put all of her money, including the \$294,950.18 she received from the sale of her Marlborough, MA home into an irrevocable trust where she cannot get at the principal.
- ✓ 21. According to the Patricia Britton Irrevocable Trust, the entire principal is distributed upon her death to her sons' Trust. See paragraph 3.1(b) of Mrs. Britton's Trust.
- ✓ 22. Patricia Britton put her property in Beach Cove into her Irrevocable Trust. See answer to Interrogatory #6.
23. Mr. Britton had no legal obligation to deed the Lot 1 property to Mrs. Britton.
24. Mr. Britton did not make a gift of the Lot 1 property to Mrs. Britton.
25. Mr. and Mrs. Britton were divorced at the time he deeded the Lot 1 property to her, they were not in a relationship with each other, and there are no circumstances under which the conveyance would be considered a gift.
26. At the time of the transfer, Mr. Britton expected compensation at some point in the future, but he did not pursue the issue until now.
- ✓ 27. Mrs. Britton sold a portion of the Lot 1 property by deed dated December 15, 2004 and recorded at book 23846, page 550 (see Petitioner's exhibit 11) for \$125,000.00.
28. The cost of assisted living and nursing home likely will exceed in 3 years all that Mr. Britton obtained in his pension buyout.
29. It was reasonable for Mr. Britton to pay the proceeds of his pension buyout to his wife who has agreed to care for him for the remainder of his life.
- ✓ 30. Mrs. Britton filed a Motion for Modification in which she seeks to modify the property settlement from the final decree from 34 years ago.
- ✓ 31. Mrs. Britton was represented by counsel in 1985.
32. Mrs. Britton's counsel drafted the original 1985 final divorce decree stipulation.
33. Mrs. Britton claims that her "main consideration" in the property settlement was receipt of lifetime alimony. See Mrs. Britton's motion to modify, paragraph 10.
34. The final decree is silent as to any alleged "consideration".
35. Mrs. Britton's counsel called the monthly payments in the final stipulation: "alimony".
- ✓ 36. Mrs. Britton's counsel also signed the permanent stipulation.

37. Mrs. Britton suggests at paragraph 13 that she "has reason to believe" that Mr. Britton was "less than truthful" about property values in the original divorce.
38. Mr. Britton never got the property at Sherwood Forest.
39. Mr. Britton never sold the property at Sherwood Forest.
40. Before signing the final stipulated divorce judgment, Mrs. Britton and her attorney obtained appraisals of property. See paragraph 14 of Mrs. Britton's motion to modify.
41. Mrs. Britton's only "reason to believe" that Mr. Britton was untruthful in the value of his property was his personal opinion in his 1985 divorce deposition as compared to his later opinion in his antenuptial agreement with his current wife. See motion to modify, paragraphs 15-20.
42. Mr. Britton's personal opinions of value from 39 years ago are all that Mrs. Britton is basing her motion to modify on.
- ✓ 43. Mr. Britton is not an appraiser.
- ✓ 44. Mr. Britton has no appraisal education, training or experience.
- ✓ 45. The parties' sons worked in the family trailer park business at the time of the final divorce stipulation.
46. The parties' sons knew the value of the trailer parks.
47. The parties' sons believed the final divorce stipulation was fair.
48. Mrs. Britton relied on the advice of her sons that the final stipulation was fair.
49. Mrs. Britton did not rely on Mr. Britton's opinion of value of Sherwood Forest.
50. Mrs. Britton has put all of her assets in an Irrevocable Trust for her two sons.
51. If Mrs. Britton had obtained Sherwood Forest in the divorce, she would have put it in her Trust for her two sons.
- ✓ 52. The parties two sons own Sherwood Forest now, both land and business.
- ✓ 53. The parties' sons were in the lawyer's office with the parties and their attorneys and agreed the final stipulation was fair to their mother.
- ✓ 54. In deciding whether to sign the original divorce decree stipulation, Mrs. Britton relied on her attorney's advice.
55. In deciding whether to sign the original divorce decree stipulation, Mrs. Britton relied on her appraiser's advice.
56. Mr. Britton gave his two sons his mobile home park business (Sherwood Forest) so that they could use the proceeds to help support Mrs. Britton.
57. The parties' two sons later agreed to give their father a monthly pension.
58. Kathy Britton and Mr. Britton gave a tax benefit to Mr. Britton's two sons so they would not have a tax on the gift of Sherwood Forest.
59. In return for the Kathy Britton tax benefit, Mr. Britton gave land on Powder Mill Road to Kathy Britton (Circle Trust).
60. Kathy Britton gave Mr. and Mrs. Britton's sons the property located at Powder Mill Road.
61. The properties in the original divorce are gone and cannot be appraised.
62. Mrs. Britton and Mr. Britton both took substantial sums of money and voluntarily put their money beyond their control.
63. Mrs. Britton refused to disclose her divorce file to Mr. Britton.
64. It is not likely that Mrs. Britton has no divorce file but has the deposition and appraisal from her divorce file.

65. Mrs. Britton's divorce file is relevant to this matter because Mrs. Britton claims she "has reason to believe" that Mr. Britton was untruthful in his opinion of value of Sherwood Forest.
66. Mrs. Britton's divorce file is relevant to this matter because Mrs. Britton claims her "main consideration" in the property division was receipt of lifetime alimony.
67. The statute of limitations has run on Mrs. Britton's ability to challenge the original divorce stipulation.
68. In his 1984 deposition, Mr. Britton made no representation of value of Sherwood Forest.
69. Even if Mr. Britton made a representation of value of Sherwood Forest in his deposition, there is no proof that he knew it was false.
70. Mrs. Britton has submitted no evidence that Mr. Britton intended that Mrs. Britton rely on his comments of value of Sherwood Forest in his deposition.
71. Mrs. Britton relied on her appraisal of Sherwood Forest, not on the opinion of Mr. Britton.
72. Mrs. Britton has submitted no evidence of undue influence by Mr. Britton as she was represented by her attorney, had the assistance of appraisers, and had been separated from Mr. Britton for several years.
73. Mrs. Britton has submitted no evidence of deceit on the part of Mr. Britton.
74. Mrs. Britton has submitted no evidence of misrepresentation on the part of Mr. Britton.
75. Mrs. Britton has submitted no evidence of mutual mistake on the part of Mr. Britton.
76. Mrs. Britton has submitted no evidence of fraud on the part of Mr. Britton.
77. Mrs. Britton has failed to state a claim upon which relief can be granted in her cross-modification.
78. Respondent's claim and that of her attorney that neither one of them have Respondent's divorce file through November of 1985 is simply not believable because they have what they allege to be James Britton's deposition and the appraisals.

RULINGS OF LAW

- ✓ 1. Alimony is modifiable in this case. "It is modifiable based upon the changes in the parties' financial conditions or needs. See *Hager*, 299 So.2d at 750-51."

In re Schaulin-Viviers, 163 N.H. 266, 270, 37 A.3d 398, (2012)

- ✓ 2. Our case law unequivocally states that property settlements and alimony are entirely different matters, and that, although the former cannot be modified on account of changed circumstances, the latter can be so modified. See generally *McSherry v. McSherry*, 135 N.H. 451, ---, 606 A.2d 311, 312 (1992); *Dupuis v. Click*, 135 N.H. 333, ---, 604 A.2d 576, 577 (1992); *Stebbins v. Stebbins*, 121 N.H.

Norberg v. Norberg, 135 N.H. 620, 623, 609 A.2d 1194, (1992)

3. Mrs. Britton's claim that alimony was a property division is untenable. "We first address the plaintiff's claim that the alimony award constituted a property settlement which survives the payor's death. The distinctions between alimony payments and property settlements are well established in our case law. See generally *Stebbins v. Stebbins*, 121 N.H. 1060, 1062-63, 438 A.2d 295, 297-98 (1981) (and cases cited therein). "[C]ontinuing obligations, such as alimony and child support, involve indefinite payments which remain modifiable by the court ... [and,] unless otherwise provided, support payments terminate upon the death of either spouse, and the estates of the spouses have no rights or responsibilities concerning these payments." *Stebbins*, 121 N.H. at 1063, 438 A.2d at 297-98 (citation omitted). On the other hand, "[a] property settlement ... exists when a spouse agrees to make monetary payments which are ascertainable in amount, payable within a definite period, and binding upon the estate of the paying spouse." *Stebbins*, 121 N.H. at 1063, 438 A.2d at 297 (citation omitted). The plaintiff asserts "that her receipt of alimony was in exchange for her release of any further claims upon the homestead of the parties 135 N.H. 336 and upon defendant's business assets," and, therefore, it should be considered a property right. She attempts to bolster this argument by utilizing RSA 458:19 (1955), the applicable statute at the time of the divorce, see *Henry v. Henry*, 129 N.H. 159, 161, 525 A.2d 267, 268 (1987), which allows alimony payments to continue for three years after the youngest child reaches the age of majority. This argument is untenable."

Dupuis v. Click, 135 N.H. 333, 335-336, 604 A.2d 576, (1992)

4. Mr. Britton is entitled to rely on the 1985 property division. "We have long held that a property settlement in a divorce decree is "a final distribution of a sum of money or a specific portion of the spouses' property ... [and] is not subject to judicial modification on account of changed circumstances." *Stebbins v. Stebbins*, 121 N.H. 1060, 1063, 438 A.2d 295, 297 (1981) (citations omitted); see *Douglas v. Douglas*, 109 N.H. 41, 43, 242 A.2d 78, 80 (1968) (court lacks authority to modify property settlement portion of divorce decree). Support and custody orders, on the other hand, may be modified in light of changed circumstances because the superior court, pursuant to statutory authority, retains continuing jurisdiction over such matters. *Erdman v. Erdman*, 115 N.H. 380, 381, 341 A.2d 271, 271-72 (1975); RSA 458:14. "The reason that property settlements are not subject to modification for changed circumstances is that decrees of property division, unlike orders for support or custody, are not 'continuing' orders." *Dubois v. Dubois*, 121 N.H. 664, 669, 433 A.2d 1277, 1280 (1981). In a case such as *Jones v. Jones*, 120 N.H. 559, 561, 419 A.2d 403, 404 (1980), where the trial court found, and we held, that the obligation to pay a mortgage was a property settlement, the payments may not be modified for changed circumstances. Conceding that this is the law, the defendant asks us to change it, essentially arguing that the master should be allowed the flexibility, in hard economic times, to fashion a modification order equitable to both parties, even if to do so entails

reconsideration of a property settlement. A property distribution in cases of divorce and separation creates vested rights upon which the parties are entitled to rely in starting and planning a new and different life. It is, in effect, an assignment of assets, however modest or extensive, reflective of the efforts of the parties and the considered judgment of the equity court in arriving at a degree of parity called fairness. Such judgments are made, as are judgments in the business world generally, upon reflection of the prevailing economic climate as well as the vicissitudes of economic times. Although, in appropriate cases, non-economic considerations may come into play, as, for instance, with the origin and distribution of family heirlooms, the great weight of considerations in most cases is economic. For this reason, in marital cases, as in the business world, modification of interests thought to be vested is not permitted in the absence of fraud, undue influence, deceit or misrepresentation, *Durkin v. Durkin*, 119 N.H. 41, 397

135 N.H. 454

A.2d 304 (1979), or mutual mistake, *Grabowski v. Grabowski*, 120 N.H. 745, 422 A.2d 1040 (1980). We are not inclined to revisit the fundamental premises of this area of our law.”

McSherry v. McSherry, 135 N.H. 451, 453-454, 606 A.2d 311, (1992)

- ✓ 5. RSA 458:19 in effect prior to January 1, 1986 applies to this case and prohibits lifetime alimony:

“Upon a decree of nullity or divorce, the court may restore to the wife all or any part of her estate, and may assign to her such part of the estate of her husband, or order him to pay such sum of money, as may be deemed just, provided that in cases in which no children are involved, or in which the children have reached the age of majority, the order shall be effective for not more than 3 years. . . .

However, such order may be renewed, modified or extended if justice requires for periods of not more than 3 years at a time; and may compel the husband to disclose, under oath, the situation of his property; and before or after the decree, may make such orders and use such process as may be necessary.” See: *Henry v. Henry*, 129 N.H. 159 (1987)

6. A stipulated decree is not enforceable over RSA 458:19 as it was in effect at the time of the 1985 Final Decree. See: *Henry v. Henry*, 129 N.H. 159, 162 (1987).

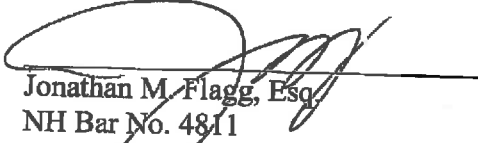
- ✓ 7. Mrs. Britton has failed to establish fraud which is necessary to reopen a property division. To establish fraud, a plaintiff must prove that the defendant made a representation with knowledge of its falsity or with conscious indifference to its truth with the intention to cause another to rely upon it. *Patch v. Arsenault*, 139 N.H. 313, 319, 653 A.2d 1079, 1083-84 (1995). In addition, a plaintiff must demonstrate justifiable reliance. *Gray v. First NH Banks*, 138 N.H. 279, 283, 640 A.2d 276, 279 (1994). A plaintiff cannot allege fraud in general terms, but must specifically allege the essential details of the fraud and the facts of the defendants'

fraudulent conduct. *Proctor v. Bank of N.H.*, 123 N.H. 395, 399, 464 A.2d 263, 265 (1983).

Snierson v. Scruton, 145 N.H. 73, 761 A.2d 1046, (2000)

Respectfully Submitted,
James R. Britton,
By and through his counsel,

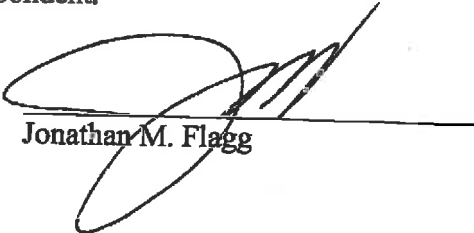
Dated: August 28, 2019


Jonathan M. Flagg, Esq.
NH Bar No. 4811
Flagg Law, PLLC
93 Middle Street
Portsmouth, NH 03801
603.766.6300

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the forgoing was delivered in-hand to Attorney Pamela A. Peterson, counsel for the Respondent.

Dated: August 28, 2019


Jonathan M. Flagg

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

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NOTICE OF DECISION

**JONATHAN M. FLAGG, ESQ
FLAGG LAW PLLC
93 MIDDLE STREET
PORTSMOUTH NH 03801**

**Case Name: James R. Britton and Patricia F. Britton
Case Number: 218-1983-DM-00439**

Enclosed please find a copy of the Court's Order dated June 08, 2020 relative to:
**Order on Respondent's Motion to Award Alimony (Index
Number 71)**

June 08, 2020

**LoriAnne Hensel
Clerk of Court**

(586)

C: Pamela A. Peterson, ESQ

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

COUNTY OF ROCKINGHAM

10TH CIRCUIT - FAMILY DIVISION - BRENTWOOD

In the Matter of:
James R Britton and Patricia F Britton

Case No. 218 - 1983 - DM - 439

ORDER ON RESPONDENT'S MOTION TO AWARD ALIMONY (INDEX NUMBER 71)

A one day final hearing was held on August 28, 2019, on petitioner's motion for modification (Index number 7), respondent's motions for contempt (Index number 15) and for modification (Index number 22) and related procedural motions. Both parties appeared with counsel and presented testimony and other evidence. The court issued orders including denying petitioner's motion for summary judgment, denying petitioner's motion for modification of the Final Decree for termination of alimony, and granting respondent's motion for contempt for the petitioner's failure to pay alimony, among other orders (Order dated November 7, 2019 at Index number 73).

During the course of the hearing, respondent made an oral motion to award alimony which was followed up by a written motion to which petitioner filed an objection. As part of the November 7, 2019 Order, the court advised that it will issue an order on respondent's motion for alimony without further hearing based on the evidence presented by the parties unless either party requests an additional hearing. Petitioner requested an additional hearing and a hearing was scheduled for June 3, 2020. Thereafter, the parties agreed to have the court decide the motion on the record presented and withdrew any request for an additional hearing.

Accordingly, the court incorporates herein all of the findings and orders of the November 7, 2019 Order and based on the evidence presented grants the respondent's motion to award alimony in the amount of \$200 per week for the three year period of time from October 2019 to October 2022 for the reasons set forth below.

Applicable law.

The court previously found as set out in its November 7, 2019 Order that the 1983 version of the alimony statute, RSA 458:19, is applicable to the parties' 1985 Final Decree, which incorporated the parties' stipulation for lifetime alimony payments to respondent by petitioner, originally in the amount of \$400 per week and then reduced to \$200 per week.

The 1983 version of RSA 458:19 as cited in *Henry v. Henry*, 525 A.2d 267, 268 (NH 1987) is as follows:

"Upon a decree of nullity or divorce, the court may restore to the wife all or any part of her estate, and may assign to her such part of the estate of her husband, or order him to pay such sum of money, as may be deemed just, provided that in cases in which no children are involved, or in which the children have reached the age of majority, the order shall be effective for not more than 3 years.... However, such order may be renewed, modified or extended if justice requires for periods of not more

than 3 years at a time; and may compel the husband to disclose, under oath, the situation of his property; and before or after the decree, may make such orders and use such process as may be necessary."

Despite the three year limitation on alimony payments of the 1983 version of RSA 458:19, petitioner faithfully paid weekly alimony to respondent in accordance with the parties' stipulation approved by the court until April 2016, which triggered a motion for contempt filed by respondent for the nonpayment of alimony. That motion for contempt was resolved by the stipulation approved in October 2016 in which petitioner paid all alimony arrearage and reaffirmed payment of the weekly alimony going forward (Index number 6). The court found in the November 7, 2019 Order that the October 2016 stipulation requires petitioner to pay \$200 weekly alimony to respondent commencing in October 2016, for a period of three years, subject to being "renewed, modified, or extended if justice requires for periods of not more than three years at a time" as provided in the 1983 version of the alimony statute.

In April 2018 petitioner again stopped paying weekly alimony to respondent and in June 2018 filed pleadings to terminate alimony. Respondent filed pleadings in July 2018 seeking a finding of contempt for nonpayment of alimony and to enforce the continued weekly payments of alimony. These pleadings were resolved in the November 7, 2019 Order which, among other orders, affirmed the petitioner's obligation to pay respondent \$200 weekly alimony pursuant to the October 2016 Order approving the parties' stipulation to continue weekly alimony, based on the 1983 version of RSA 458:19.

Respondent's pending motion to award alimony is requesting alimony to continue, which based on the court's prior rulings, would be for another three year period from October 2019 to October 2022 based on the court's interpretation of the standard in the applicable statute, the 1983 version of RSA 458:19.

The court has already made findings rejecting petitioner's argument that the 1983 version of RSA 458:19 required termination of alimony in 1988, three years after the 1985 Final Decree of Divorce. Petitioner also argues that respondent's motion to award alimony is not properly before the court procedurally and that the standard in the January 1, 2019 version of RSA 458:19, including RSA 458:19-aa, applies to the motion rather than the standard in the 1983 version of RSA 458:19.

In connection with the question of procedure, the court allowed the petitioner to make an oral motion during trial in an open case in which respondent had already pled enforcement of the alimony orders, required the respondent to follow up the oral motion with a written pleading, provided petitioner with an opportunity to respond thereto, which he did, and provided both parties with an opportunity for a further hearing and for the submission of testimony and other evidence, which they both eventually declined. The motion is properly before the court for determination.

The 2019 version of RSA 458:19, including section 19-aa, is not applicable to this case. The effective date of the statute is January 1, 2019, which is obviously long after the date of the 1985 Final Decree, after the October 2016 stipulation approved by the court reaffirming payments of weekly alimony, and after the reopening of the case in 2018 regarding petitioner's motion to terminate alimony and respondent's motion for contempt and to enforce the alimony orders.

The 2019 version did become effective while this case was open and before the date of trial at which the motion to award alimony was made. Chapter 310 of the laws of 2018 (SB 71) specifically states that the changes in RSA 458:19 shall apply to all cases filed on or after January 1, 2019. See Chapter 310:6 of the Laws of 2018. Chapter 310:6 II also provides that cases filed between the effective date of section six on June 25, 2018 and January 1, 2019 shall be controlled by the law in effect on the effective date of section six (namely June 25, 2018) unless the court in its discretion finds that adopting any or all of the provisions due to take effect on January 1, 2019 would be both equitable and consistent with the law existing as of the date of passage. Section 310:6 III also provides that parties to any case filed prior to January 1, 2019 may agree to adopt some or all of the provisions of the act. The parties in this case had no such agreement. For all of the reasons cited above and in this court's order of November 7, 2019, this court finds that it is appropriate to continue to apply the 1983 version of the alimony statute to this particular case.

There is a presumption of prospective application of a statute when a statute affects substantive rights, but this presumption is reversed when the statute is remedial in nature or effects only procedural rights, which in that case retrospective application would not be unjust. *Kenick and Bailey*, 156 N.H. 356 (2007).

In *Kenick and Bailey* at 576-7, the Supreme Court in discussing the prospective/retrospective application of another portion of another version of RSA 458:19 stated as follows:

When, as in this case, the legislature is silent as to whether a statute should be applied prospectively or retroactively, our interpretation turns upon whether the statute affects the parties' substantive or procedural rights. Id. at 63, 371 A.2d 30. "[T]here is a presumption of prospectively when a statute affects substantive rights. This presumption ... is reversed ... when the statute is remedial in nature or affects only procedural rights. In that case, retrospective application is not unjust." Eldridge v. Eldridge, 136 N.H. 611, 613, 620 A.2d 1031 (1993) (citations omitted). "Unlike statutes affecting substantive rights, those affecting procedural or remedial rights are usually deemed to apply retroactively to accrued cases not yet filed or those pending cases which on the effective date of the statute have not yet gone beyond the procedural stage to which the statute pertains." Petition of Beaugard, 151 N.H. 445, 448, 859 A.2d 1153 (2004).

We begin our analysis by determining whether RSA 458:19, I, is remedial in nature. See id. "A remedial statute is one designed to cure a mischief or remedy a defect in existing laws." Id. (quotation and ellipsis omitted). Here, the bill to amend RSA 458:19, I, was introduced in the Senate with a curative purpose:

"Currently there is no limitation on when a spouse could come back to court for alimony. When a couple divorces, the process takes into consideration all of the possessions and assets of the couple and awards them accordingly. After a divorce, there must be some time when people are ready to move on with their lives and say the marriage is over."

N.H.S. Jour. 1275 (2001). By establishing a five-year time limit under RSA 458:19, I, the legislature remedied a perceived defect in the law that had allowed divorced parties to seek alimony indefinitely. See id. We conclude, therefore, that RSA 458:19, I, is remedial in nature and that it applies retroactively.

The petitioner argues that RSA 458:19, I, affects substantive rights and, therefore, should be applied prospectively. We disagree. Substantive rights are vested rights. See In the Matter of Goldman & Elliott, 151 N.H. 770, 774, 868 A.2d 278 (2005). Where, as here, an original divorce decree has not ordered either party to pay alimony, neither party has a vested right to receive it. The five-year limitation set forth in RSA 458:19, I, therefore, does not affect substantive rights. See id.

The petitioner mistakenly relies upon our decision in Donovan to support her argument. In Donovan, we addressed whether a statute that eliminated the trial court's discretion to order parties to contribute to their children's college expenses applied retroactively or prospectively. Donovan, 152 N.H. at 61, 871 A.2d 30. We held that because the statute affected a substantive right—the right to receive previously court-ordered educational contributions—it applied prospectively. Id. at 63, 871 A.2d 30. Here, by contrast, the original divorce decree did not order alimony.

*The instant case is similar to Goldman, 151 N.H. at 774–75, 868 A.2d 278. Goldman **577 concerned the same amendment as Donovan; however, in Goldman, unlike in Donovan, there was no prior court order requiring the parties to contribute to their children's college expenses. Goldman, 151 N.H. at 771, 868 A.2d 278. Just before the effective date of the amendment, the respondent in Goldman sought payment of college expenses. Id. We held that her motion did not “secure her a vested right under the prior law.” id. at 774, 868 A.2d 278. Her motion “did not transform her hope for a discretionary college contribution award into a fixed, certain and absolute right that the court consider her request and issue an award.” Id. Similarly, in this case, where the petitioner filed her motion for alimony long after the effective date of the amendment, her motion plainly could not transform any hope for an alimony award that she may have had prior to the amendment's effective date into a fixed, certain and absolute right to receive one. See id.*

The petitioner also mistakenly relies upon Henry v. Henry, 129 N.H. 159, 161, 525 A.2d 267 (1987), to support her assertion that RSA 458:19, I, should apply prospectively. Henry is factually distinguishable from this appeal. In Henry, unlike the instant case, we did not analyze whether the amendment at issue was remedial or substantive. Moreover, the petitioner in Henry sought continuation of previously ordered alimony, while the petitioner here seeks alimony in the first instance. See Henry, 129 N.H. at 161, 525 A.2d 267. Further, the petitioner in Henry was entitled to seek continuation of alimony under either version of the statute at issue. Id.

In this case, respondent has had a vested right to alimony since the 1985 Final Decree based on the parties' stipulation for lifetime alimony and confirmed by the parties in 2016. The provisions and standards in the 1983 version of RSA 458:19 are different from the provisions and standards of the 2019 version of RSA 458:19, including the standard to be applied for renewal of alimony. The new version makes significant substantive changes in the alimony statute rather than “cure a mischief or remedy a defect” in the existing law. In addition, the 2019 statutory change became effective after the filing of the matters that reopened this case. All of this points to the 2019 version of RSA 458:19 as substantive rather than remedial and should be applied prospectively rather than retroactively. Therefore, the 2019 version of RSA 458:19 is not applicable to this case.

Alimony standard.

In applying the standard under the 1983 version of RSA 458:19, namely “such order may be renewed, modified or extended if justice requires”, the court has already made findings in its

November 7, 2019 order that respondent has a need for continuing alimony and petitioner has an ability to pay alimony. The parties circumstances have not changed since the hearing and the findings made by the court. As the court previously found, petitioner emphasized in his testimony that at the time of the divorce he wanted to make sure that the permanent stipulation was fair and specifically made sure that the parties' two sons were in the room when the permanent stipulation was finalized to show that that he was being fair to their mother. The fact of the parties amazing longevity is not a basis to end alimony as long as there is a need for it and an ability to pay it. Those findings and orders are reaffirmed. Petitioner is to continue to make weekly alimony payments of \$200 from October 2019 to October 2022 as allowed for in the 1983 version of RSA 458:19.

Jurisdiction pending appeal.

Petitioner has appealed the court order of November 7, 2019 and the appeal is pending in the Supreme Court. Therefore, this court's orders on appeal are not final until the appeal is complete. This order may also be appealed.

In Rollins and Rollins, 122 N.H. 6, 10 (1982), the Supreme Court found that the timely filing of an appeal of the trial court's Final Decree in a divorce proceeding means that the Final Decree does not go to judgment and Temporary Decrees remain in effect (the Court citing Superior Court Rule 74 that a Decree does not go to final judgment if a timely Appeal is taken to the Supreme Court). There is an exception to the Rollins rule, if the trial court orders that a Final Decree, or a portion thereof is to be in effect, pending appeal.

In addition, the trial court has the authority, while the case is on appeal, to preserve the status quo; that is, to issue orders to enforce existing orders. The status quo in this case includes the October 24, 2016 Order approving the parties' stipulation that petitioner shall continue to pay respondent \$200 weekly alimony.

As well, the Supreme Court has found that the trial court is in the best position to assess the parties' circumstances during an appeal and to make further orders accordingly, such as payments of alimony and child support. Nicolazzi v. Nicolazzi, 131 N.H. 694 (1989) (acknowledging the trial court's discretion to set levels of alimony and child support to be paid during appeal). The ruling in Nicolazzi would also be appropriate here regarding alimony.

Accordingly, The Court has discretion to set levels of alimony during the pendency of the appeal. The court orders temporary alimony of \$200 a week during the pendency of this appeal, which the court determines to be a just amount based on findings set forth above.

So Ordered.

June 8, 2020



Hon. David G. LeFrancois, Justice

Date _____



**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

10th Circuit - Family Division - Brentwood
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NOTICE OF DECISION

**PAMELA A. PETERSON, ESQ
DEVINE MILLIMET & BRANCH PA
111 AMHERST STREET
MANCHESTER NH 03101**

Case Name: **James R. Britton and Patricia F. Britton**
Case Number: **218-1983-DM-00439**

Enclosed please find a copy of the Court's Order dated October 24, 2016 relative to:
Stipulation

October 25, 2016

(618770)
C: James R Britton

LoriAnne Hensel
Clerk of Court

THE STATE OF NEW HAMPSHIRE

**10th CIRCUIT – FAMILY DIVISION – BRENTWOOD
DOCKET NO.: 218-1983- DM-0439**

In the Matter of James R. Britton and Patricia F. Britton

RECEIVED

OCT 24 2016

10th Circuit at Brentwood

STIPULATION

NOW COMES the Petitioner, James R. Britton, Pro Se, and the Respondent, Patricia F. Britton, by and through her attorneys, Devine, Millimet & Branch, P.A., and set forth the following as their Stipulation for approval by this Court:

1. Pending in this matter is the Respondent's Petition to Bring Forward and for Contempt and to Enforce Final Decree Re: Alimony (hereinafter "Respondent's Petition") against the Petitioner, James R. Britton.
2. A Hearing is scheduled in this matter for October 31, 2016 at 11:30 a.m.
3. The parties agree to resolve the Respondent's Petition as outlined herein and remove the October 31, 2016 hearing from the docket.
4. Upon signing this Stipulation, the Petitioner, James R. Britton, shall pay to Patricia F. Britton, with payment issued through her attorney, the sum of Five Thousand Four Hundred Dollars (\$5,400.00), which represents his alimony obligation from April 15, 2016 through October 22, 2016.
5. Thereafter, James R. Britton shall pay any and all future weekly alimony payments to Patricia F. Britton in a timely manner via the office at Exeter River Landing.

6. On or before December 1, 2016, James R. Britton shall pay to Patricia F. Britton, with payment issued through her attorney, the sum of Four Thousand Eight Hundred Eight-Seven Dollars (\$4,887.00) for Patricia F. Britton's attorney's fees.
7. On or before December 1, 2016, James R. Britton shall pay to Patricia F. Britton, with payment made through attorney, the sum of Three Hundred Ninety Six Dollars and Sixty-One Cents (\$396.61) for Patricia F. Britton's costs in having to bring this action.
8. The total attorney's fees and costs to be paid by James R. Britton by December 1, 2016 are Five Thousand Two Hundred Eighty-Three Dollars and Sixty-One Cents (\$5,283.61).
9. All other Court Orders, not inconsistent herewith, shall remain in full force and effect.

Dated: 10/19/16

James R. Britton
James R. Britton, Petitioner

Dated: 10/19/16

Whitney Rego
Witness for Petitioner

Dated: 10-8-16

Patricia Britton
Patricia F. Britton, Respondent

Dated: 10/18/16

Pamela A. Peterson
Pamela A. Peterson, Esq. (NH #11020)

Approved.

Dated: 10/24/16

Charles L. Greenhalgh
Judge, Family Division Circuit Court

Charles L. Greenhalgh

The State of New Hampshire

10th CIRCUIT – FAMILY DIVISION – BRENTWOOD
DOCKET NO. 218-1983-DM-00439

In the Matter of James R. Britton and Patricia F. Britton

AFFIDAVIT OF ATTORNEYS' FEES AFFIDAVIT OF COUNSEL

NOW COMES Attorney Pamela Peterson, counsel for the Respondent, Patricia F. Britton, in the above-captioned matter and states unto the Court as follows:

1. I am an attorney in good standing in the State of New Hampshire. I am a shareholder at Devine, Millimet & Branch, P.A.
2. I performed legal services on behalf of the Respondent, Patricia F. Britton. My paralegal, Lynn Brunelle, performed legal services on behalf of the Respondent.
3. My current billing rate on this matter is \$350.00 per hour. My paralegal's billing rate is \$180.00 per hour.
4. In its Order dated November 12, 2019 (Clerk's Notice date), the Court ordered James R. Britton to pay Patricia F. Britton's legal fees related to her Motion for Contempt. The Court stated in its Order, in relevant part:

"The Court finds Mr. Britton in contempt for failure to pay alimony and is ordered to pay all arrearages of \$200 per week due from the nonpayment on April 6, 2018 to October 25, 2019 (the termination of the three year period covered by the 2016 stipulation) within 30 days of the issuance date of this order. As a result of the contempt, respondent is awarded attorney's fees and costs. An affidavit of fees and costs solely related to the motion for contempt may be submitted within 10 days of the issuance date of this order."

5. I have attached a summary of all relevant costs and billing charges incurred in relation to Patricia Britton's Motion for Contempt, also including time spent obtaining discovery as well as at the January 7, 2019 Pre-Trial Conference and the August 27, 2019 Final Hearing. (See Exhibit A).
6. The time spent preparing for the issue of the Motion for Contempt both the PreTrial Conference and the Final Hearing is listed at 1/3 of the total time in recognition that other motions were pending in this matter, namely James Britton's Motion to Terminate Alimony and Patricia Britton's Motion for Modification (property).


7. Simultaneously, Patricia A. Britton has filed a Limited Motion for Reconsideration on the issue of attorney's fees incurred relative to litigating James Britton's Motion to Terminate Alimony. Accordingly, I have listed the attorney's fees for that matter in grey, with the exception that the Pre-Trial Conference and Final Hearing fees, which overlap with the Motion for Contempt. The total time spent preparing for both the Pre-Trial Conference and the Final Hearing is similarly listed at 1/3 of the total time, in a separate column.

8. In regard to the Motion for Contempt, I performed a total of \$9,660.00 of services at my billing rate of \$350.00 per hour and my paralegal performed a total of \$972.00 of services at her billing rate of \$180.00 per hour.

9. In regard to the Motion to Terminate (listed in grey) and in a separate column, I performed a total of \$7,070.00 of services at my billing rate of \$350.00 per hour and my paralegal performed a total of \$1,584.00 of services at her billing rate of \$180.00 per hour.


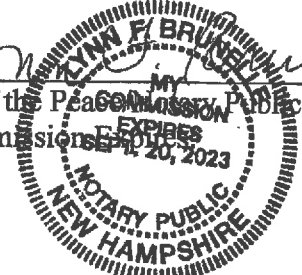
Respectfully submitted,

Date: November 22, 2019


Pamela A. Peterson, Esquire (#11020)
111 Amherst Street
Manchester, NH 03101
(603) 669-1000

STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS

Personally appeared the above-named Pamela A. Peterson, and took oath that the foregoing statements are true to the best of her knowledge and belief this 22nd day of November 2019.


Justice of the Peace
My Commission Expires April 20, 2023


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been emailed and mailed this day to Attorney Jonathan Flagg, counsel for James Britton.

Date: 11.22.2019



Pamela A. Peterson, Esquire

**In the Matter of James R. Britton and Patricia F. Britton
Docket No. 218-1983-DM-00439**

ATTORNEYS' FEES

DATE	TIME-KEEPER	DESCRIPTION OF SERVICE	ATTORNEY HOURS CONTEMPT	PARA HOURS CONTEMPT	ATTORNEY HOURS TERMINATE	PARA HOURS TERMINATE
6/13/2018	PAP	Email correspondence re: alimony not paid	0.10			
6/18/2018	PAP	Preparation of letter to James Britton	0.40			
6/23/2018	PAP	E-mail correspondence from James Britton	0.10			
6/24/2018	PAP	Response e-mail correspondence to James Britton	0.10			
6/24/2018	PAP	Response e-mail correspondence from James Britton. Send additional response to James Britton.	0.20			
7/3/2018	PAP	Receipt of Motion for Modification of Decree of Divorce and to Request to Terminate Alimony; Correspondence to Ms. Britton with same			0.20	
7/12/2018	PAP	Begin preparation of Motion for Contempt	0.20			
7/13/2018	PAP	Receipt and review of Court's Order of Notice on Petition to Change Court Order; Receipt and review of James Britton's Financial Affidavit; Correspondence with same			0.40	
7/15/2018	PAP	Further review of Financial Affidavit of James R. Britton; Finish preparation of Motion for Contempt; Review Motion for Modification, Including RSA 458:14 cited in Motion for Modification	1.40			
7/16/2018	PAP	Correspondence to James Britton regarding formal acceptance of service			0.10	
7/18/2018	PAP	Revise Motion for Contempt	0.40			
7/18/2018	PAP	E-mail correspondence from James Britton that he does not have a computer and he did not receive any emailed letter of July 16, 2018 as he does not have a computer	0.10			
7/23/2018	PAP	Receipt and review of the Court's Order of Notice on Petition to Change Court Order received from Mr. Britton for service upon Ms. Britton; preparation of Acceptance of Service			0.20	
7/25/2018	PAP	Correspondence to Mr. James Britton with signed Acceptance of Service	0.10			
7/25/2018	PAP	Preparation of Appearance; Correspondence to Court filing Appearance and Motion for Contempt	0.20			
7/30/2018	PAP	E-mail correspondence from James Britton re: status of our receipt of Service Copy; response e-mail correspondence to James Britton	0.10			

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DATE	TIME-KEEPER	DESCRIPTION OF SERVICE	ATTORNEY HOURS CONTEMPT	PARA HOURS CONTEMPT	ATTORNEY HOURS TERMINATE	PARA HOURS TERMINATE
7/30/2018	PAP	Response e-mail correspondence from James Britton; E-mail correspondence to James Britton re: Motion for Contempt being treated as 10-day motion	0.20			
8/14/2018	PAP	Receipt and review of Mr. Britton's Response to Motion for Contempt and to Enforce Final Decree re: Alimony; Correspondence to Ms. Britton with same	0.30			
9/6/2018	PAP	Receipt and review of the Court's Notice of Decision regarding Motion for Contempt; Correspondence to Ms. Britton with same	0.20			
9/7/2018	PAP	Continued preparation of Answer and Objection to Motion to Modify			0.40	
9/7/2018	LFB	Conference call with Attorney Peterson re: finalizing Rule 1.25-A documents for Ms. Britton; receive and review multiple e-mail communications from Mr. Britton together with supplemental discovery; preparation of Financial Affidavit of Patricia Britton, and Addendum to Monthly Expenses; communications with Attorney Peterson re: discovery				1.40
9/11/2018	PAP	Correspondence to Mr. Britton with Mandatory Rule 1.25-A documents	0.10			
9/12/2018	PAP	Begin preparation of Answer and Objection to Motion for Modification of Decree of Divorce - Request for Termination of Alimony Order			0.80	
9/14/2018	PAP	Correspondence to Mr. Britton regarding Rule 1.25-A Mandatory Disclosure	0.10			
9/17/2018	PAP	Continued preparation of Answer and Objection to Motion for Modification of Alimony			0.40	
9/18/2018	PAP	Travel from home to Court; Attend Structuring Conference Hearing at Brentwood Family Division Court with Patricia Britton; Conference with Patricia Britton after the hearing to discuss the case and review the Answer and Objection; Travel back from Court to home	3.00			

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DATE	TIME-KEEPER	DESCRIPTION OF SERVICE	ATTORNEY HOURS CONTEMPT	PARA HOURS CONTEMPT	ATTORNEY HOURS TERMINATE	PARA HOURS TERMINATE
9/20/2018	PAP	Correspondence to the Court filing Answer and Objection to Petitioner's Motion for Modification of Decree of Divorce - Request for Termination of Alimony Order			0.10	
9/20/2018	PAP	Correspondence to Mr. Britton regarding missing copy of Amended Financial Affidavit	0.10			
9/24/2018	PAP	E-mail correspondence from James Britton re: Financial Affidavit	0.10			
9/25/2018	LFB	Receive and review Court's Scheduling Conference Order; update court Imposed tasks and deadlines; receive and review Ms. Britton's edits to Financial Affidavit form; brief review of discovery received from Ms. Britton; communications with Attorney Peterson re: discovery issues		0.30		
10/4/2018	PAP	Receipt and review of the Court's Notice of Hearing scheduling a Pretrial Conference	0.10			
10/4/2018	PAP	Begin preparation of Interrogatories upon James Britton	0.50			
10/5/2018	PAP	Continued preparation of Interrogatories Upon James Britton	1.50			
11/14/2018	PAP	Finish Interrogatories Upon James Britton	0.20			
11/14/2018	PAP	Correspondence to Mr. James Britton with First Set of Interrogatories and Production of Documents	0.10			
11/19/2018	LFB	Receive and review First Set of Interrogatories and Requests for Production of Documents Propounded Upon Patricia Britton, and update related tasks and deadlines re: same		0.10		
12/6/2018	LFB	Preparation of typed version of Mr. Britton's Interrogatories Upon Patricia Britton		0.30		
12/10/2018	PAP	Receipt and review of correspondence from James Britton to the Court filing his Response to Respondent's Motion to Excuse Attendance at Pre-Trial Conference; Correspondence to Ms. Britton with same	0.40			
12/18/2018	LFB	E-mail correspondence to Mr. James Britton re: his responses to Interrogatories		0.10		

**In the Matter of James R. Britton and Patricia F. Britton
Docket No. 218-1983-DM-00439**

ATTORNEYS' FEES

DATE	TIME-KEEPER	DESCRIPTION OF SERVICE	ATTORNEY HOURS CONTEMPT	PARA HOURS CONTEMPT	ATTORNEY HOURS TERMINATE	PARA HOURS TERMINATE
1/2/2019	PAP	Preparation of first draft of Proposed Final Decree and Pre-Trial Statements; preparation of Uniform Alimony Order for Pre-Trial Conference; Review Uniform Allmony Order (original time 2.20)	0.70		0.70	
1/2/2019	LFB	Begin updating Patricia Britton's wage information for Financial Affidavit (original time 0.20)		0.10		0.10
1/2/2019	LFB	Preparation of Uniform Alimony Order (original time 0.30)		0.10		0.10
1/4/2019	PAP	Assemble documents for Pre-Trial, finalize Financial Affidavit (original time 0.50)	0.20		0.20	
1/7/2019	PAP	Attend Pre-Trial Conference at Court; Drive from Court to office (original time 1.70)	0.60		0.60	
1/14/2019	PAP	Receipt and review of the Court's Notice of Decision on Pretrial Conference Report with Supplemental Pretrial Orders; Correspondence to Ms. Britton with same	0.30			
2/13/2019	PAP	Work on Answers to Interrogatories for Patricia Britton	1.10			
2/21/2019	PAP	Added additional information to Interrogatory responses	0.10			
3/11/2019	LFB	Receive and review Ms. Britton's responsive discovery documents and edit Answers to Interrogatories; formally assemble responsive documents for production; meeting with Attorney Peterson to review and discuss further discovery documents to produce, and revisions to Answers; further edits to Answers to Interrogatories		1.30		
3/14/2019	PAP	Correspondence to Attorney Flagg re: answers to interrogatories	0.10			
3/15/2019	PAP	E-mail correspondence to Attorney Flagg re: asking for update on status of Mr. Britton's discovery	0.10			
3/20/2019	LFB	Assembly of Patricia Britton's Final Responses to Interrogatories and discovery documents produced to Attorney Flagg on March 14, 2019		0.20		
3/28/2019	PAP	Initial review of Answer to Interrogatories and documents received last night from Attorney Flagg	0.80			

**In the Matter of James R. Britton and Patricia F. Britton
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DATE	TIME-KEEPER	DESCRIPTION OF SERVICE	ATTORNEY HOURS CONTEMPT	PARA HOURS CONTEMPT	ATTORNEY HOURS TERMINATE	PARA HOURS TERMINATE
3/31/2019	PAP	Initial comparison of James Britton's Answers to Interrogatories with original unsigned Answers to Interrogatories	0.20			
4/3/2019	LFB	Assemble three sets of Mr. Britton's answers to interrogatories and document productions, Bates Stamp same; prepare index of all discovery produced; compare answers in all three sets to determine any revisions and prepare summary chart confirming same; begin review of Mr. Britton's answers to interrogatories and begin correspondence to Attorney Flagg outlining deficiencies				2.30
4/5/2019	PAP	Preparation of detailed e-mail correspondence to Attorney Flagg re: discovery issues			0.50	
4/5/2019	PAP	Response e-mail correspondence from Attorney Flagg re: discovery and standard of review			0.10	
4/11/2019	PAP	Review and revise first draft of deficiency letter to Attorney Flagg			0.20	
4/18/2019	LFB	Preparation of detailed correspondence to Attorney Flagg with Patricia Britton's supplemental discovery documents and information; preparation of bank authorization and credit card authorization to obtain Patricia Britton's financial records; confer with Attorney Peterson re: difficulty obtaining records from Bank of America				0.70
4/18/2019	LFB	Prepare authorizations for Bank of America release of records; confer with Attorney Peterson re: Bank of America issue trying to obtain records; preparation of Subpoena Duces Tecum for Bank of America records; finalize correspondence to Attorney Flagg; e-mail correspondence to Mr. Britton together with subpoena for review and approval				0.80
4/26/2019	PAP	Emails from Attorney Flagg that they are reviewing Mr. Britton's deficient Answers to Interrogatories and addressing the issues; Also they will send Mr. Britton's updated Financial Affidavit on Monday, April 29, 2019			0.20	

64

**In the Matter of James R. Britton and Patricia F. Britton
Docket No. 218-1983-DM-00439**

ATTORNEYS' FEES

DATE	TIME-KEEPER	DESCRIPTION OF SERVICE	ATTORNEY HOURS CONTEMPT	PARA HOURS CONTEMPT	ATTORNEY HOURS TERMINATE	PARA HOURS TERMINATE
5/2/2019	PAP	E-mail correspondence from Attorney Flagg with signed Financial Affidavit of James Britton			0.20	
5/14/2019	PAP	Correspondence to Attorney Flagg with Ms. Britton's Bank of America checking account statements and credit card statements			0.10	
5/14/2019	LFB	Assemble Ms. Britton's supplemental discovery into secured link; e-mail correspondence to Attorney Flagg together with Ms. Britton's supplemental discovery documents				0.20
5/15/2019	PAP	Finish list of missing discovery to mail to the Court			0.20	
6/18/2019	PAP	Receipt and review of multi-page correspondence from Attorney Flagg re: outstanding discovery due from James Britton			0.30	
6/18/2019	LFB	Preparation of secured final discovery disclosure of Patricia Britton; e-mail correspondence to Attorney Flagg with Patricia Britton's Social Security Statement; review correspondence from Attorney Flagg re: Mr. Britton's outstanding discovery disclosures				0.30
7/12/2019	PAP	Emails to/from Attorney Flagg's office re: discovery issues; Begin preparation of missing discovery list			0.50	
7/16/2019	PAP	Finalize missing documents list			0.20	
7/17/2019	PAP	Correspondence to Attorney Flagg re: missing discovery			0.10	
8/1/2019	PAP	Receive and review correspondence from Attorney Flagg re: James Britton's Seacoast Bank records and Bank of America credit card statements			0.30	
8/7/2019	PAP	Correspondence to Attorney Flagg responding to his letter dated July 31, 2019 re: discovery			0.30	
8/13/2019	PAP	Begin preparation of Proposed Order for Trial (original time 0.30)	0.10		0.10	
8/14/2019	PAP	Receive and review correspondence from Attorney Flagg re: Petitioner's Financial Affidavit, Witness & Exhibit List and Proposed Order and prepare correspondence to Ms. Britton re: the same (original time 0.50)	0.20		0.20	

**In the Matter of James R. Britton and Patricia F. Britton
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DATE	TIME-KEEPER	DESCRIPTION OF SERVICE	ATTORNEY HOURS CONTEMPT	PARA HOURS CONTEMPT	ATTORNEY HOURS TERMINATE	PARA HOURS TERMINATE
8/14/2019	PAP	Finalize preparation of Proposed Final Decree, Witness List to submit to Court today (original time 2.50)	0.80		0.80	
8/17/2019	PAP	Preparation for trial, including selection of exhibits, preparation of findings of fact and rulings of law (original time 5.80)	1.90		1.90	
8/17/2019	LFB	Work with Attorney Peterson on several aspects of trial preparation, including review and analysis of multiple potential trial exhibits, and begin creating financial analysis spreadsheets on James Britton's spending habits (original time 6.00)		2.00		2.00
8/19/2019	LFB	Review potential exhibits and rebuttal exhibits with Attorney Peterson, and discuss further financial analysis spreadsheets for travel expenses of James Britton (original time 0.40)		0.10		0.10
8/20/2019	PAP	Assemble Exhibit Binder for Court and Attorney Flagg that are due tomorrow (original time 4.30)	1.40		1.40	
8/20/2019	LFB	Meeting with Attorney Peterson to review and determine relevant hearing exhibits; further assembly of exhibits and begin hearing binders (original time 0.80)		0.30		0.30
8/21/2019	PAP	Letter all exhibits for hearing (original time 0.90)	0.30		0.30	
8/21/2019	LFB	Meetings with Attorney Peterson re: finalizing trial exhibits; redact 2016 and 2017 tax returns; update financial spreadsheet concerning Seacoast Bank activity of James Britton; assembly of two trial binders of 30 exhibits each (original time 1.50)		0.50		0.50
8/24/2019	PAP	Organization of file for trial preparation tomorrow, including organizing files to bring to trial, assembly of subfolders for trial testimony (original time 1.10)	0.40		0.40	

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8/25/2019	PAP	Continued trial preparation, including begin preparation of Mrs. Britton's direct examination; online research on whether James Britton has Florida fishing license; assemble information for cross-examination of James Britton; organize exhibit binders (original time 5.10)	1.70		1.70	
8/26/2019	PAP	Continued preparation of Findings of Fact and Rulings of Law for trial (original time 1.10)	0.40		0.40	
8/26/2019	PAP	Office conference with Mrs. Britton to prepare for trial (original time 3.60)	1.20		1.20	
8/26/2019	PAP	Continued preparation of cross-examination of James Britton (original time 2.70)	0.90		0.90	
8/27/2019	PAP	Additional review of file materials for James Britton cross-exam, including overview of 1985 deposition (original time 2.40)	0.80		0.80	
8/27/2019	PAP	Finish preparation of Findings of Fact and Rulings of Law for trial (original time 1.10)	0.40		0.40	
8/28/2019	PAP	Travel to Court; Attend Final Hearing (original time 7.90)	2.60		2.60	
			27.60	5.40	20.40	8.80
		COMBINED TOTALS - BOTH MOTIONS	\$ 9,660.00	\$ 972.00	\$ 7,070.00	\$ 1,584.00
		MOTION FOR CONTEMPT ONLY	10,632.00			
		MOTION TO TERMINATE ONLY (GREY)	\$ 8,654.00			