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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PHONEISHA FOLKES, Plaintiff and Respondent, v. ARTHUR T. BUFFORD, Defendant and Appellant.	B175903 (Super. Ct. No. LF 002061) (Richard G. Kolostian, Judge) ORDER MODIFYING OPINION AND DENYING REHEARING (No Change in Judgment)

THE COURT:*

IT IS ORDERED that the opinion filed herein on January 5, 2005, be modified in the following particulars:

On page 3, at the end of the first paragraph, after the sentence ending "to set aside the proposed order." add the following:

> He also, in a request for a statement of decision, states the trial court failed to modify child support notwithstanding his March 2004 income and expense declaration.

Commencing on page 3 and ending on page 4, delete the second and third full paragraphs under Discussion beginning with "As noted above," and ending on page 4 with the "*Pulver*" citation. In their place insert the following:

> As noted above, the April 5 motion also sought modification of the child support order. Appellant argues he presented significant evidence of a change in circumstances and the court was obliged to decrease the support obligation at the May 5 hearing. Not so. First, appellant's April 5 motion consisted of nothing more than an amended income and expense declaration, the same declaration which was filed with the court prior to the March 30 hearing. Second, appellant's supplement to his motion for reconsideration, filed April 26, did not even address the issue which was a subject of the March 30 hearing. He attempted to relitigate the original custody split awarding respondent 70 percent of custody and appellant 30 percent. Nonetheless, the information he provided failed to set forth a significant change in circumstances. Third, he complained respondent was paying too much for babysitters, but the original hearing of November 25 dealt with issues relating to respondent's need for child care during the times she worked. Fourth, in his declaration in support of his motion for reconsideration, the only new information he supplies is his claim his wife underreported her income. His bare assertion does not make it so. Finally, as noted, appellant failed to provide a record of the March 30 hearing. We cannot determine from the record whether the May 5 hearing was nothing more than a literal reprise of March 30. It is appellant's duty to affirmatively demonstrate error. He has failed to do so.

This modification does not have an effect on the judgment.

Appellant's petition for rehearing is denied.

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SPENCER P. J. VOGEL, J. SUZUKAWA, J.**

** (Judge of the L. A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)