

IN THE  
**SUPREME COURT OF THE STATE OF UTAH**

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JILLIAN SCOTT,  
*Appellant,*

*v.*

BRADLEY SCOTT,  
*Appellee.*

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No. 20180210  
Heard March 11, 2020  
Filed July 29, 2020

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On Direct Appeal

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Third District, Salt Lake County  
The Honorable Robert P. Faust  
No. 124903563

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Attorneys:

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ASSOCIATE CHIEF JUSTICE LEE authored the opinion of the Court, in  
which CHIEF JUSTICE DURRANT, JUSTICE PEARCE, JUSTICE PETERSEN,  
and JUDGE POHLMAN joined.

Having recused himself, JUSTICE HIMONAS does not participate  
herein; COURT OF APPEALS JUDGE JILL M. POHLMAN sat.

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ASSOCIATE CHIEF JUSTICE LEE, opinion of the Court:

¶1 This is the second time that Jillian Scott has asked this court to reverse a lower court decision terminating her right to alimony on the basis of her alleged cohabitation. When the case first came to this court, Jillian's right to alimony had been terminated under Utah Code section 30-3-5(10) – a statute that then provided that an

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alimony order “terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.”<sup>1</sup> See *Scott v. Scott (Scott I)*, 2017 UT 66, ¶ 3, 423 P.3d 1275. We interpreted the statute to “require[] the paying spouse to establish that the former spouse *is* cohabitating at the time the paying spouse files the motion to terminate alimony.” *Id.* ¶¶ 10, 33. And we reversed a decision terminating Jillian’s right to alimony to the extent it relied on this statute, concluding that Jillian was not cohabitating with her ex-boyfriend at the time the motion to terminate was filed (even if she had been cohabitating previously). See *id.* ¶¶ 1, 21, 21 n.5, 23, 33.

¶2 On the heels of this decision, Jillian’s ex-husband filed a new motion to terminate Jillian’s right to alimony under the terms of the couple’s divorce decree, which provided that her alimony would terminate “upon” her “cohabitation.” (Emphasis added.) And the district court granted that motion. We now uphold that decision. The subtle distinction between the wording of the statute and the divorce decree makes all the difference. Jillian may not have been cohabiting at the time Bradley filed his motion. But there is ample evidence to support the district court’s determination that she had cohabited previously. And that triggered termination of Bradley’s alimony obligations under the decree. We affirm on that basis, while rejecting Jillian’s assertions that there could be no cohabitation here because she and her ex-boyfriend had no shared legal domicile and did not have a common residence for a sufficient period of time.

¶3 In so doing we reiterate that “a marriage-like cohabitation relationship is difficult to define with a hard-and-fast list of prerequisites.” *Myers v. Myers*, 2011 UT 65, ¶ 24, 266 P.3d 806. And we hold that the district court is entitled to substantial deference in its fact-intensive determination on the existence of such a relationship. We reverse on one minor point, however, concluding that Jillian was entitled to an award of her costs on her prior appeal.

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<sup>1</sup> This statutory language was amended in 2018 following our decision in *Scott I*. We cite to the “the version of the statute that was in effect at the time of the events giving rise to [the] suit.” *Harvey v. Cedar Hills City*, 2010 UT 12, ¶ 12, 227 P.3d 256 (alteration in original) (citation and internal quotation marks omitted).

I. BACKGROUND

A. Factual Background

¶4 Jillian and Bradley Scott married in 1979. During their marriage, the couple amassed a level of personal wealth that allowed them to “live[] a lifestyle beyond even the imagination of most of humanity.” But they ultimately ended up divorcing in 2006 after Jillian walked in on Bradley with another woman.

¶5 The divorce decree obligated Bradley to pay Jillian \$6,000 per month after they separated in 2006. But it also provided that Bradley’s alimony obligation would terminate “upon the remarriage or cohabitation” of Jillian. From the time of the divorce until 2018, the Utah Code provided that “[a]ny order” requiring “a party [to] pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.” *See* UTAH CODE § 30-3-5(10).

¶6 In October 2008, Jillian began dating James Okland. Their “intimate” and “exclusive” relationship was a serious one that involved celebrating holidays, traveling, and otherwise spending a significant amount of time together. But their relationship was atypical in many ways.

¶7 Okland’s immense personal wealth allowed the couple to enjoy a lavish lifestyle very different from that of most people. When the couple began dating, Okland owned at least two homes—one in Salt Lake City, Utah (his primary residence) and one in Sun Valley, Idaho.<sup>2</sup> He later purchased an additional home in Rancho Santa Fe, California. Okland also had access to a private jet and owned multiple vehicles, including a Porsche that he later had shipped to the Rancho Santa Fe house. Though Jillian had her own condominium in Salt Lake City, she spent the majority of her time traveling with Okland or at one of his homes. During the relationship, the couple took approximately thirty-six trips together. These trips included work trips for Okland as well as many trips to Okland’s homes, where they would stay for a week or more at a time. In light of the couple’s frequent vacationing and traveling, Jillian arranged to have all but her junk mail delivered electronically.

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<sup>2</sup> Okland “may have either owned or had use of a home in Scottsdale, Arizona” as well.

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¶8 Jillian spent upwards of eighty percent of her time traveling with Okland or in one of his homes. She accompanied him on work trips. The couple celebrated holidays and special occasions together, including Okland's retirement (a twenty-five-day cruise) and Jillian's daughter's high school graduation (a trip to Hawaii). Okland also gave Jillian's daughter \$5,000 as a graduation gift.

¶9 The two spent more than just time together. They also spent money together. Jillian was an authorized user on Okland's credit cards. And Jillian made good use of these cards, paying for necessities such as groceries, gas, and lodging, as well as wedding gifts, Christmas and birthday gifts, and presents for grandchildren.

¶10 In 2010, around the time Jillian's daughter moved to southern California for college, the couple began looking to acquire a home in Rancho Santa Fe, California. While Okland ended up financing the purchase, both "shared [in the] decisions regarding the selection and ultimate purchase of the home," and viewed the home as a joint acquisition. Jillian hired the real estate agent, and she was charged with locating a home to her liking. In August 2010, she wrote to the agent and said that the house "ha[d] [her] name all over it!" while noting that Okland "still want[ed] to look at the covenant and get a feel for everything." The next month, she wrote that *they* were "looking for a really good buy!!!" She also explained that Okland was "very conservative with his money" and commented that he had said that *they* "pa[id] cash for everything."<sup>3</sup> She also wrote that "it's really up to James at this point" and noted that she had told him that she "want[ed] to grow old" in Rancho Santa Fe with him and "[h]e [had] agreed!" About a month later, Okland made an offer on behalf of both of them, stating: "*Jill and I* would like to offer \$2,125,000 all cash and close within 15 days." (Emphasis added.)

¶11 In February 2011 (after Okland had purchased the home), the couple flew to Rancho Santa Fe in Okland's plane. Okland also had his Porsche shipped there. The real estate agent noted that Jillian "act[ed] like a spouse" as she decorated and replaced furniture in the home. Jillian had several personal items shipped to the home on Okland's dime, including paintings, Italian tables, dining room cabinets, bedroom chairs, ottomans, a wooden desk, a game table and chairs, Navajo rugs, and three stone cheetahs. Both

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<sup>3</sup> The direct quote was, "[W]e pay cash for everything. *We* only financed a part of the plane!" (Emphases added.)

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Jillian and Okland had keys and full access to the home, and Jillian participated in decisions about who else should have a key. Okland also gave Jillian “family status” at the community country club—a move that required him to represent that the couple was “living together and maintaining a common household.”

¶12 There is no indication, however, that Okland viewed the new home as his primary residence. He arranged to have his bills associated with that property sent to Salt Lake and testified that he viewed the Rancho Santa Fe home as a vacation property. Jillian, conversely, put her Salt Lake condominium up for sale.

¶13 Despite access to Okland’s substantial financial resources, Jillian was loath to “give up [her] alimony,” which she described on one occasion as her “extra ‘fun money.’” And fear of losing out on that cash flow may have been a factor in the couple putting off marriage. As she wrote to a friend, “[w]e have talked about marriage but I am not ready to give up my alimony.”<sup>4</sup> The record also suggests that the couple may have openly told others that they remained unmarried only because they didn’t want Jillian to lose her alimony. And while Okland did not recall ever proposing or telling others that the alimony was what stood in the way of their marriage, he did testify that he had purchased a diamond for Jillian. He also acknowledged that his memory was imperfect.

¶14 Jillian’s relationship with Okland eventually fell apart. Around the beginning of April 2011, Okland left Rancho Santa Fe and returned to Salt Lake. He then abruptly ended the relationship by leaving Jillian a voice message.

¶15 Like many breakups, this one left an ex-partner upset and disoriented. In an email to Okland shortly after the breakup, Jillian wrote “I just don’t understand how this happened. . . . You buy a dream home for us to share our lives in. . . . We decorate it with my furniture . . . . You then *voice mail* me it’s over with no explanation. My dream has now become a nightmare[;] I wish I never shared Rancho Santa Fe with you.” She said that she was “sad, really sad, [and] confused.” In a later email she called Okland a “DREAM STEALER,” a “needy user,” and a “Spineless Snake.”

¶16 Like their relationship, however, their breakup was also singular in many ways. Because Jillian had contracted a dangerous

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<sup>4</sup> In November 2010, Jillian endorsed one alimony check by signing and then writing “hahahahaha.”

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staph infection following a breast augmentation surgery that Okland had paid for (a \$17,000-plus bill), Okland told her that she could stay at the Rancho Santa Fe house following the breakup until she recovered. He also said that she could continue to use his credit card for gas and groceries. As a result, Jillian continued to treat the California home as her own. On April 10, she posted a picture of the roses at the Rancho Santa Fe home on Facebook and wrote “I love my rose garden.” In an email to Okland on April 13, she told him that she had bought things to make the home “earth-quake ready.”

¶17 The couple also began discussing a possible financial settlement. Eventually Okland paid Jillian \$110,000. And when Okland emailed Jillian and asked her to “sign a release from all future claims,” Jillian responded that “[w]hen the money is in my account, you may consider this e-mail as the disclaimer to any and all future claims against you.” Okland also informed Jillian that he wanted his Porsche back, though he suggested that he was willing to either pay for a one-year lease or give her \$36,000 to buy a new car. Neither Jillian nor Okland had ever had a relationship with a boyfriend or girlfriend that had ended in financial settlement.

B. Procedural Background

¶18 Following the break-up, Jillian’s ex-husband Bradley filed a petition to terminate his alimony payments. He argued that Jillian had cohabited with Okland and that termination was proper under both the divorce decree and state statute, the latter of which provided that “[a]ny order” requiring “a party [to] pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.” UTAH CODE § 30-3-5(10). The district court held that Okland and Jillian had cohabitated and terminated alimony “pursuant to Utah Code § 30-3-5(10).”

¶19 The court of appeals affirmed on the same ground. *See Scott v. Scott*, 2016 UT App 31, ¶¶ 9 n.2, 39, 368 P.3d 133, *rev’d*, *Scott I*, 2017 UT 66, 423 P.3d 1275. We reversed, holding that “Utah Code section 30-3-5(10) requires the paying spouse to establish that the former spouse *is* cohabiting at the time the paying spouse files the motion to terminate alimony.” *Scott I*, 2017 UT 66, ¶¶ 10, 33. It was undisputed that Jillian had not been cohabiting at the time of Bradley’s filing, and we did not address the question whether she and Okland had ever done so. Like the lower courts, we “d[id] not consider the decree’s language.” *Id.* ¶ 3 n.1.

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¶20 After we issued our opinion, Bradley moved to terminate alimony under the *divorce decree* rather than the statute. And Jillian filed a motion for an award of her costs in the *Scott I* appeal under Utah Rule of Appellate Procedure 34(a), under which the costs of an appeal are “taxed against the appellee” “if a judgment or order is reversed” “unless otherwise ordered.”

¶21 Jillian opposed Bradley’s motion, asserting that Bradley was foreclosed from relying on the decree under the “mandate rule” given that Bradley had presented his appeal as if the decree and statute were “coextensive for purposes of the law of the case.” Jillian thus contended that Bradley had waived the right to rely on the divorce decree as an alternative ground for termination of alimony. She also opposed the motion on its merits. She asserted that there could be no finding of cohabitation because she and Okland had never established a shared legal domicile and because the two of them had not resided together for more than a temporary or brief period of time.

¶22 The district court granted Bradley’s motion. It first held that it was not foreclosed from considering the decree under the mandate rule. It also held that Bradley had carried his burden of establishing Jillian’s cohabitation with Okland, relying on findings and conclusions entered in the first round of proceedings (under the statute) and noting that Jillian had not contested any of the court’s findings.

¶23 The district court also denied Jillian’s motion for an award of costs. It did so without explanation.

¶24 Jillian then filed this appeal, which the court of appeals certified for our consideration. Jillian raises three principal claims of error on appeal. First, she contends that the district court violated the mandate rule in addressing Bradley’s motion under the divorce decree. Next, she challenges the district court’s termination of alimony on the merits, asserting error in the determination that Jillian cohabited with Okland under the terms of the decree. Finally, Jillian claims that she was entitled to an award of her costs on appeal in *Scott I* and that the district court erred in refusing to enter an award in her favor. We affirm on the first two points and reverse on the third.

## II. MANDATE RULE

¶25 In *Scott I* we assessed whether Bradley’s alimony obligation was properly terminated under Utah Code section

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30-3-5(10). 2017 UT 66, 423 P.3d 1275. That statute contemplated termination of alimony upon a showing that a former spouse was cohabiting with another at the time the petition for termination was filed. Because there was no basis for concluding that Jillian had been cohabiting with Okland in October 2011 when Bradley filed his termination petition, we reversed a decision terminating alimony under the terms of the statute. And we did so without considering whether Jillian and her ex-boyfriend had cohabited at some point prior to the filing of Bradley’s petition.

¶26 Thereafter, the district court considered a motion to terminate alimony under the divorce decree—a document that contemplates termination “upon cohabitation” and thus does not require a showing of cohabitation at the time the motion to terminate is filed. Jillian sought to avoid an inquiry into cohabitation under the decree. She pointed to an element of the “law of the case” doctrine called the “mandate rule.” In her view this rule prevents a litigant (appellee) from taking a position on remand that he previously “represent[ed] . . . [was] not an alternative ground [on which] to affirm” a lower court in appellate proceedings. And Jillian claimed that this rule barred Bradley from relying on the divorce decree in proceedings on remand in the district court, since in her view Bradley had affirmatively represented that the divorce decree and the statute “presented the same issue” – and thus impliedly represented that the decree was not “an alternative ground [on which] to affirm.”

¶27 We accept Jillian’s formulation of the mandate rule for the sake of argument (without formally endorsing it). But we reject her position because we find no basis for the assertion that Bradley represented that the divorce decree could not provide an alternative ground for affirmance.

¶28 Jillian initially appealed from a district court decision that terminated alimony solely “[p]ursuant to Utah Code § 30-3-5(10).” Before the court of appeals and this court, Jillian relied on an (unpreserved) argument that Utah Code section 30-3-5(10) required ongoing cohabitation. In response, Bradley argued that the statute did not require ongoing cohabitation. In so doing, he did not ignore the decree; he cited it in support of his position that the parties had understood that the statute did not require ongoing cohabitation. In the course of this argument, Bradley did once assert that the standard under the decree and the statute was “similar or the same.” But Bradley made this point in the context of his broader argument that the statute did not require ongoing

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cohabitation.<sup>5</sup> So contrary to Jillian’s characterization, Bradley did not represent that termination under the decree rose or fell with the court’s acceptance or rejection of Jillian’s statutory argument. He simply asserted that the statute did not support Jillian’s argument, as evidenced by the fact that the parties had understood the statute differently when they made their agreement.

¶29 Because the parties focused their attention on the statute rather than the decree, both the court of appeals and this court relied on the statute and refused to consider whether the decree could lead to a different outcome. As we explained in *Scott I*, “[o]n *certiorari*, neither party contends that the language of the decree controls or that under the decree this court should reach a different result.” 2017 UT 66, ¶ 3 n.1. We accordingly limited “our analysis to the parties’ arguments,” and did not “consider the decree’s language.” *Id.* We even went so far as to note that “the language of the divorce decree may point to a different result.” *Id.* ¶ 21 n.5.

¶30 As an appellee, Bradley had the prerogative of identifying alternative grounds for affirmance. *See State v. Van Huizen*, 2019 UT 01, ¶ 39, 435 P.3d 202. But he was under no obligation to do so. *See Utah Dep’t of Transp. v. Ivers*, 2009 UT 56, ¶ 17, 218 P.3d 583; *Madsen v. Washington Mut. Bank fsb*, 2008 UT 69, ¶ 26, 199 P.3d 898. Because Jillian was challenging decisions (in the district court and the court of appeals) that were based solely on the statute, Bradley was under no obligation to make an argument under the divorce decree; he was free to simply argue that he should prevail under the statute.

¶31 Our prerogative as an appellate court was similar. We were in a position to “affirm the judgment appealed from if it [was] sustainable on any legal ground or theory apparent on the record.” *Madsen*, 2008 UT 69, ¶ 26 (citation and internal quotation marks omitted). But we had no obligation to do so. *Id.* The fact that “we

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<sup>5</sup> In the oral argument before the court of appeals, for example, Bradley argued that the “is” in the statute “just means are they cohabiting at some point after the divorce . . . , which is also consistent with what the parties themselves understood because . . . they . . . agree[d] to a decree that said [alimony] terminates upon cohabitation. They knew that’s what the statute meant and that’s what they agreed to.” And in his brief in both appellate courts Bradley asserted that “Ms. Scott’s argument is not supported by the statute, or by the stipulated Decree itself (which provides that alimony terminates ‘upon’ cohabitation).”

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have the *discretion* to affirm [a] judgment on an alternative ground” that is “apparent in the record,” moreover, does not mean “that our declining to rule on an alternative ground can be construed as a ruling on the merits of the alternative ground.” *Id.* When our decisions leave issues open, “the trial court ordinarily has discretion to permit amended or supplemental pleadings as to those matters.” *Ivers*, 2009 UT 56, ¶ 12 (citation omitted). That is what our decision in *Scott I* did—it left open the decree issue. And that left the district court free to consider arguments on that issue thereafter.

¶32 In hindsight, Bradley’s decision to litigate the initial round of appeals under the alimony statute alone may seem to have been a poor one.<sup>6</sup> While Bradley was not obligated to rely on the decree as an alternative ground for affirmance, the decree’s language would have provided a powerful response to Jillian’s statutory “is” argument. And, as our decision today shows, this court would have reached a different outcome in *Scott I* if we had exercised our discretion to consider the decree. Yet none of this changes the fact that Bradley was under no obligation to raise this argument and we were under no obligation to address it. Because we chose not to address it, the district court was permitted to consider the decree’s language even after our decision in *Scott I*.

## III. COHABITATION

¶33 The district court relied on the terms of the divorce decree in its decision following *Scott I*. It noted that the divorce decree provided that Bradley’s alimony obligation would terminate “upon the remarriage or cohabitation” of Jillian. And it terminated Jillian’s

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<sup>6</sup> The strategy was perhaps understandable, however, given that Jillian did not raise her statutory “is” argument until the case arrived at the court of appeals. For that reason, Bradley may have had no reason to ask the district court to adjust its order to rely on the decree rather than the statute. And because he had already won on statutory grounds before the district court, he may have simply thought he could do so again on appeal. Such an assumption would not have been completely unfounded. The question of timing under Utah Code section 30-3-5(10) that we considered in *Scott I* was a close call, as evidenced by the fact that Bradley convinced a panel of court of appeals judges that he should prevail under that statute.

right to alimony on the ground that Jillian began cohabitating with Okland on February 17, 2011.

¶34 The district court’s cohabitation determination is a fact-intensive determination of a mixed question of fact and law that is entitled to substantial deference on appeal.<sup>7</sup> See *In re Adoption of Baby B.*, 2012 UT 35, ¶ 42, 308 P.3d 382 (noting that “fact-like” mixed determinations are subject to a deferential standard of review). And there is ample evidence to support the district court’s decision.

¶35 Our case law holds that the “key question” in the cohabitation analysis is whether an unmarried couple has “entered into a relationship akin to that generally existing between husband and wife.” *Myers v. Myers*, 2011 UT 65, ¶ 22, 266 P.3d 806 (citation and internal quotation marks omitted). We have emphasized that such a relationship is “difficult to define with a hard-and-fast list of prerequisites,” given that “there is no single prototype of marriage” to which “all married couples conform.” *Id.* ¶ 24. With this in mind, our case law “identif[ies] general hallmarks of marriage (and thus cohabitation)” rather than laying out bright-line rules in this area. *Id.*

¶36 The hallmarks of a marriage relationship include “a shared residence, an intimate relationship, and a common household involving shared expenses and shared decisions.” *Id.* Other factors such as “the length and continuity of the relationship, the amount of time the couple spends together, the nature of the activities the couple engages in, and whether the couple spends vacations and holidays together” may also “inform the question whether a relationship resembles that of a married couple.” *Id.* ¶ 24 n.3.

¶37 Jillian’s relationship with Okland exhibited many of the above-noted hallmarks of a marriage relationship. Like a married couple, Okland and Jillian (a) engaged in an extended and

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<sup>7</sup> The court of appeals has occasionally employed a different standard of review in cohabitation cases. See, e.g., *Hosking v. Chambers*, 2018 UT App 193, ¶ 23, 437 P.3d 454 (reviewing the ultimate determination of cohabitation for correctness). To the extent those cases suggest that a different standard of review applies, they are hereby overruled.

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exclusive sexual relationship that lasted around thirty months;<sup>8</sup> (b) spent a significant amount of time together at Okland’s homes and elsewhere, including on vacations and holidays;<sup>9</sup> (c) established “a common household involving shared expenses and shared decisions,”<sup>10</sup> in which Jillian was an authorized user on Okland’s credit cards and the two participated jointly in financial and other decisions related to the purchase of a home; (d) purchased a shared residence together—a house in Rancho Santa Fe—where Jillian acted like a spouse in the purchase, in decorating decisions, and in deciding who would have a key, and where Jillian was given “family status” at a country club based on Okland’s representation that the couple was “living together and maintaining a common household”;<sup>11</sup> and (e) ended their relationship with a financial settlement, in which Okland paid Jillian \$110,000 on the condition that she “sign a release from all future claims.”

¶38 In light of the evidence of these hallmarks of a marriage relationship, Jillian is in no position to challenge the district court’s determination of cohabitation on the ground that it exceeded the bounds of its discretion. And in fact, Jillian does not raise that kind of challenge to the district court’s decision. Instead she contends that the district court applied a faulty legal standard in assessing cohabitation.

¶39 Jillian claims that the determination of “shared residence” is a threshold legal requirement that must be established before any other “hallmarks” of marriage are considered in the cohabitation analysis. And she cites two purported legal errors in the district court’s shared residence analysis. First, she contends that the threshold showing of shared residence requires proof that both members of the relationship deem the residence their principal

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<sup>8</sup> See *Myers v. Myers*, 2011 UT 65, ¶ 24, 266 P.3d 806 (noting that the hallmarks of marriage include “an intimate relationship”); *id.* ¶ 24 n.3 (identifying “the length and continuity of the relationship” as a factor that informs the cohabitation inquiry).

<sup>9</sup> See *id.* ¶ 24 n.3 (identifying “the amount of time the couple spends together” and “whether the couple spends vacations and holidays together” as cohabitation considerations).

<sup>10</sup> *Id.* ¶ 24.

<sup>11</sup> *Id.* (identifying “shared residence” as a hallmark of marriage).

“domicile.” Because in Jillian’s view the Rancho Santa Fe home was not the legal domicile for either Okland or for her, she asserts that any remaining hallmarks of marriage are insufficient to establish cohabitation. Second, she argues that the shared-residence threshold requires a couple to live together for a longer period of time than she and Okland ever did. As she notes, they lived together in the Rancho Santa Fe home for only forty-two days. And she argues that a stay of that length is insufficient under our case law as well as the cohabitation law of other states.

¶40 We reject the premise that shared residence is a threshold element that must be met before other hallmarks of marriage may be considered in the cohabitation analysis. The key hallmarks of a marriage-like relationship under *Myers* go to the “nature and extent” of a couple’s “common residence, relationship, and interactions.” *Id.* ¶ 22. These considerations are assessed in a holistic inquiry that recognizes that there is no single prototype of a relationship akin to marriage. And that framework is incompatible with the rigid rule that Jillian proposes.

¶41 We also conclude that our case law has not established the bright-line rules on residence proposed by Jillian. First, we hold that “shared residence” does not mean legal domicile. And we find that there is ample evidence in the record to sustain the determination that the Rancho Santa Fe home was a shared residence. Next, we consider the question of a minimum duration standard for shared residence. We acknowledge that “shared residence” implies some period of time that is indicative of a marriage-like relationship. But we decline to endorse a hard-and-fast rule precluding a decision to credit the forty-two days of shared residency in the circumstances of this case.

#### A. Shared Residence, Not Legal Domicile

¶42 Jillian’s position on the definition of “shared residence” may seem to find support in our decision in *Haddow v. Haddow*, 707 P.2d 669 (Utah 1985). There we said that “common residency means the sharing of a common abode that both parties consider their principal *domicile*.” *Id.* at 672 (emphasis added). And there is a sense

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of “domicile” that would suggest that the Rancho Santa Fe home was not Okland’s legal domicile, and perhaps not Jillian’s either.<sup>12</sup>

¶43 That said, we do not interpret *Haddow* to impose a requirement of a shared legal *domicile*, or to foreclose evidence of other hallmarks of marriage until after proof of a shared residence. *Haddow* did not establish a requirement of a unitary legal conception of domicile like that advocated by Jillian. In context, we think the *Haddow* reference to “domicile” is best viewed as a colloquial use of the term – a synonym for *residence* or *dwelling place*. See *Domicile*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/domicile> (last visited July 5, 2020) (“a dwelling place: place of residence”).

¶44 *Haddow* speaks of a couple’s “principal domicile.” 707 P.2d at 672. And the existence of a shared, unitary domicile in the legal sense would undoubtedly weigh strongly in favor of a determination of cohabitation. We find no room in our law for the imposition of a hard-and-fast requirement of proof of such a domicile, however.

¶45 *Haddow* contrasts the status of a “resident” with that of a “visitor.” *Id.* at 673. A “resident will come and go as he pleases in his own home, while a visitor, however regular and frequent, will schedule his visits to coincide with the presence of the person he is visiting.” *Id.* This is key to understanding the *Haddow* notion of residence. It focuses on a person’s status and place in the home, without any firm requirement that it be his only home.

¶46 This is reinforced in our more recent case law. In *Myers* we emphasized that there is no one-size-fits-all conception of a marriage-like relationship. 2011 UT 65, ¶ 24, 266 P.3d 806. With that in mind, we declined to “delineate a list of required elements of cohabitation,” electing instead to merely identify the “hallmarks” of the relationship. *Id.* And our framework for this analysis is

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<sup>12</sup> See *Lilly v. Lilly*, 2011 UT App 53, ¶ 13, 250 P.3d 994 (stating that “[a] person may . . . have multiple physical residences at any one time but only one domicile or legal residence”); see also 25 Am. Jur. 2d *Domicil* § 24 (2020) (“One does not lose one’s domicil by mere physical presence elsewhere unless that presence is accompanied by an intention to abandon the old residence and adopt the new.”).

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incompatible with the rigid, unitary notion of legal domicile proposed by Jillian.

¶47 Just as there is no single prototype of a marriage-like relationship, there is likewise no required conception of a couple’s “common residence.” Our law considers the “nature and extent” of the couple’s shared residence as an important element of the overall inquiry into the existence of a relationship akin to marriage. *Id.* ¶ 22. And we have no trouble concluding that there was a basis for the district court to conclude that Jillian and Okland established a common residence in their home in Rancho Santa Fe – a residence indicative of a marriage-like relationship.

¶48 The Rancho Santa Fe home may not have been the prototypical “principal domicile” that we spoke of in *Haddow*. But it was a common residence or dwelling. Neither Jillian nor Okland were visitors in that home. It was a common residence – albeit one of several.

¶49 As the purchase process revealed, Okland and Jillian viewed the Rancho Santa Fe property as a shared dwelling. Jillian was heavily involved in the purchase process, and Okland recognized that he was buying the house for the both of them. Tellingly, he made the offer on the home on behalf of both himself and Jillian. And given that Okland financed the purchase, there is no question the home was *one* of his residences.

¶50 In February 2011, Jillian (accompanied by Okland) moved herself and substantial personal items into the Rancho Santa Fe home. This was not a visit. And neither Okland nor Jillian treated it as such. Both were aware that Jillian was trying to sell her home in Salt Lake. And they acted as if they were spouses as they ordered their affairs concerning the home. As the real estate agent observed, Jillian acted like a spouse as she made decisions about decorations and furnishings. Both had keys and full access to the home. Jillian also made decisions about who else would have a key. And Okland gave Jillian “family status” at the community country club, which required representing to the club that the couple was “living together and maintaining a common household.”

¶51 The above record facts are significant. They amply support the district court’s determination that the Rancho Santa Fe home was a shared residence under our case law.

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B. Shared Residence for a Period Indicative of a Marriage-Like Relationship

¶52 Jillian’s position on the duration standard for common residence is also rooted in our opinion in *Haddow*. There we spoke of a “common abode” shared by a couple “for more than a temporary or brief period of time.” *Haddow v. Haddow*, 707 P.2d 669, 672 (Utah 1985). In this case Jillian and Okland shared the Rancho Santa Fe home for only a forty-two-day period. And Jillian insists that that is a “temporary or brief period” – insufficient under our case law, and short of the period required in a number of other jurisdictions.

¶53 Jillian claims that our case law has already established that a shared stay of two months and ten days is too “temporary or brief” to sustain a determination of shared residence—and by association, cohabitation. And because forty-two days falls short of that benchmark, she suggests that the district court erred in finding cohabitation.

¶54 Jillian claims to find support for her position in *Knuteson v. Knuteson*, 619 P.2d 1387 (Utah 1980). And she notes that other states have adopted minimum time bars that support her view that forty-two days fails as a matter of law.<sup>13</sup> She further asserts that almost no cases from jurisdictions without a statutory time bar have found cohabitation when confronted with such a short stay.

¶55 We understand the impulse to establish a clear time standard. A very brief period of shared residence may not resemble a marriage-like relationship. And a spouse with a right to alimony could certainly benefit from a clear rule, which would facilitate planning and protect reliance interests. We decline to set a clear rule here, however, as we find it unsupported by our case law – which again emphasizes that “there is no single prototype of marriage that all married couples conform to,” and subjects the cohabitation inquiry to a holistic, multi-factor analysis. *Myers v. Myers*, 2011 UT 65, ¶ 24, 266 P.3d 806. So although we do not foreclose the possibility of establishing a minimum time standard in a future case, for now we fall back on our flexible, multi-factor

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<sup>13</sup> See N.D. CENT. CODE ANN. § 14-05-24.1(3) (requiring cohabitation for one year); S.C. CODE ANN. § 20-3-130(B) (ninety days); VA. CODE ANN. § 20-109(A) (one year).

inquiry and leave for the legislature the decision whether to set a fixed standard by statute.

¶56 Our existing case law does not support Jillian’s view. *Knuteson* did not set a generally applicable minimum period of “two months and ten days.” We did make reference to that period. *Knuteson*, 619 P.2d at 1388. But the time period itself was not the basis for our holding. Instead we were focused on the circumstances and motivation of the spouse who moved in with a neighbor in that case (Ms. Knuteson) – the fact that she had been forced to move out of her own home when her ex-husband had failed to pay alimony and thereby left her unable to pay her utility bills, which “resulted in the utility companies cutting off the light, gas, and water.” *Id.* We also emphasized that Ms. Knuteson moved back to her own home “as soon as [she] could resume her normal life in her own home” – once Mr. Knuteson was forced to pay alimony, and the utilities were turned back on. *Id.* at 1389. This was the basis for our determination that the period of shared residence in *Knuteson* was “a temporary stay at another’s home.” *Id.* But this was not the establishment of a minimum period of shared residence. It was a holding based on the unique circumstances of the case, which highlighted that Ms. Knuteson’s stay was “temporary” in the sense that it was not a marriage-like shared residence, but the result of an unfortunate economic necessity.

¶57 Jillian’s and Okland’s shared residence bore little resemblance to the residence that Ms. Knuteson shared with a neighbor. So the *Knuteson* determination that two months and ten days was a “temporary stay” and not a marriage-like shared residence is not particularly helpful to the question presented here. And it is certainly not controlling under the flexible, multi-factored analysis under *Myers*.

¶58 In light of all the unique facts and circumstances of this case, we conclude that Jillian shared a residence with Okland for a sufficient period of time to support a determination of cohabitation. In so holding, we emphasize the deferential standard of review that applies to our review of a fact-intensive determination of cohabitation. And we acknowledge that the relatively brief period of Jillian’s shared residence with Okland is the most tenuous

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element of the inquiry into her alleged cohabitation.<sup>14</sup> But we affirm because we see no basis for a determination that the district judge exceeded the bounds of his ample discretion on the fact-intensive question presented for our decision.

IV. COSTS OF *SCOTT I* APPEALS

¶59 Jillian filed a motion for an award of the costs incurred in her appeal in the first appeal in this case (in *Scott I*). She invoked rule 34 of the Utah Rules of Appellate Procedure, which states that “if a judgment or order is reversed, costs shall be taxed against the appellee unless otherwise ordered.” UTAH R. APP. P. 34(a). The district court denied that motion. We now reverse.

¶60 The simple standard set forth in rule 34 was satisfied here. In the *Scott I* appeal Jillian secured a reversal of the judgment entered against her. She did so on the basis of our determination that the governing statute required proof that an ex-spouse “is cohabiting at the time” of a motion to terminate alimony. *See Scott I*, 2017 UT 66, ¶ 33, 423 P.3d 1275.

¶61 That holding entitled Jillian to an award of her costs under rule 34. A “judgment or order” was “reversed” in *Scott I*. That required that “costs shall be taxed against the appellee unless otherwise ordered.” UTAH R. APP. P. 34(a). And we did not otherwise order. We reverse the denial of Jillian’s motion for an award of costs on that basis. And we remand to allow the district court to determine the amount of such costs in the first instance.

V. CONCLUSION

¶62 Our Utah standard of cohabitation requires a fact-intensive inquiry into the nature and extent of a couple’s “common residence, relationship, and interactions.” *Myers v. Myers*, 2011 UT 65, ¶ 22, 266 P.3d 806. The goal is to determine whether these considerations sustain a determination that an ex-spouse has entered into a relationship akin to marriage. Such a

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<sup>14</sup> Perhaps another judge encountering these same facts might have concluded that Jillian’s shared residence with Okland was for too short a period of time to sustain a determination that they cohabited in a manner that was akin to a marriage relationship. And perhaps we would also sustain that determination on a record like this one. But that just underscores the significance of the standard of review in a case like this one, and the importance of the district judge’s exercise of discretion.

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determination triggers a deferential standard of review. We affirm the termination of Jillian's right to alimony under that standard, while reversing the denial of her motion for costs on her first appeal.

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