

1986

Wendy Lynn Hermansen v. Terry W. Hermansen : Brief of Appellant

Utah Court of Appeals

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Ephraim H. Fankhauser; Attorney for Appellant.

Gary L. Paxton; Clyde & Pratt; Attorneys for Respondent.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 860136-CA OF THE STATE OF UTAH

WENDY LYNN HERMANSEN,

Plaintiff/Respondent,

vs.

TERRY W. HERMANSEN,

Defendant/Appellant.

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Supreme Court No. 20773

District Court No. D 84-2532

860136-CA

APPELLANT'S BRIEF

APPEAL FROM JUDGMENT AND ORDER OF THE THIRD
DISTRICT COURT IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH, JUDGE DEAN E. CONDER

EPHRAIM H. FANKHAUSER

Attorney for Defendant/Appellant

660 South 200 East, Suite 100

Salt Lake City, Utah 84111

534-1148

GARY L. PAXTON

Attorney for Plaintiff/Respondent

77 West SEcond South, Suite 200

Salt Lake City, Utah 84101

322-2516

FILED

OCT 15 1985

IN THE SUPREME COURT
OF THE STATE OF UTAH

WENDY LYNN HERMANSEN,)	
Plaintiff/Respondent,)	Supreme Court No. 20773
vs.)	District Court No. D 84-2532
TERRY W. HERMANSEN,)	
Defendant/Appellant.)	

APPELLANT'S BRIEF

APPEAL FROM JUDGMENT AND ORDER OF THE THIRD
DISTRICT COURT IN AND FOR SALT LAKE COUNTY,
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EPHRAIM H. FANKHAUSER
Attorney for Defendant/Appellant
660 South 200 East, Suite 100
Salt Lake City, Utah 84111
534-1148

GARY L. PAXTON
Attorney for Plaintiff/Respondent
77 West SEcond South, Suite 200
Salt Lake City, Utah 84101
322-2516

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NATURE OF CASE

This is a divorce action.

PROCEEDINGS AND DISPOSITION IN LOWER COURT

The case was tried before Judge Conder on February 21, 1985. A Memorandum Decision was rendered March 8, 1985. (R. 88-89) Findings of Facts, Conclusions of Law and Decree of Divorce were signed April 30, 1985. (R. 110-126) Defendant's Motion for New Trial and Amendment of Decree of Divorce seeking redistribution of the equity in the residence of the parties was denied by Order dated May 31, 1985. (R. 127-129)

ISSUES PRESENTED

Whether the trial Court erred in awarding the entire equity interest in the marital residence of the parties of the claimed value of \$85,000.00 to Plaintiff where the Court made no finding and did not establish the value of the equity.

Award of the major asset of the parties marital estate, comprising the entire equity interest in the marital residence of the parties, to Plaintiff is so disproportionate under the facts and circumstances of this case to be an inequitable distribution contrary to equitable principles and standards set by the Court.

Whether the failure of the lower Court to make a finding and to establish the value of the equity interest in the marital

residence constitutes error and abuse of discretion where a question was raised as to the value of the equity interest in the marital residence and the Court's distribution of that asset.

STATEMENT OF FACTS

A copy of the trial Court's Memorandum Decision, Findings of Fact, Conclusions of Law and Decree of Divorce are attached as Addendum 1 and 2 respectively. A copy of Defendant's Motion for New Trial is attached as Addendum 3.

The parties married June 27, 1977. (T. 45, L. 21) This was a second marriage for each. One (1) child resulted from this marriage, Jason, age 7. (T. 45-46, L. 22-1). Three (3) other children of Plaintiff from her former marriage, Isha, Jeremiah and Justin (twins) were adopted by Defendant. (T. 41, L. 2-12) The parties separated some time in June, 1984 due to problems in the marriage connected with Plaintiff's association with another man, denied by her. (T. 47, 21-23; T. 72, L. 7-24; T. 172, L. 5) Plaintiff filed her action for divorce July 12, 1984. A Decree of Divorce was entered April 30, 1985. (R. 121-125). Plaintiff made no claim for alimony. (T. 50, L. 45) She remarried in May, 1985.

Prior to the marriage, Defendant owned an interest in a home at 920 McClelland, Salt Lake City, Utah. (T. 89, L. 10-15; T. 147, L. 18-24) The parties lived in this home from the time they were married until early January, 1978, when they moved into the home at 2315 Sheridan Road, Salt Lake City, Utah, purchased

from Plaintiff's father. (Ex. D-7 attached as Addendum 4; T. 88, L. 12-19; T. 89, L. 16-24; T. 147-149). The parties purchased the Sheridan Road home for \$58,000.00. (Ex. D-7). The called for down payment of \$3,000.00 was made by Defendant performing labor, by agreement with Plaintiff's father, (C. A. Persch) to put roofs on his and his son, Steve's, newly constructed homes. (T. 149, L. 5-25; T. 150, L. 1-3). The parties assumed payment of an existing mortgage owing to Valley Bank of \$25,000.00 as part payment of the purchase price. Monthly payments were paid until separation of the parties. (T. 93, L. 18-25; T. 94, L. 13; T. 95, L. 1-24). Of the \$328.00 monthly payment to Valley Bank, \$258.00 came principally from the earnings of Defendant and \$70.00 came from the payment to Plaintiff for property from her first marriage in her father's name. (T. 49, L. 17-21; T. 94, L. 13-18; T. 108-109, L. 18). The parties paid the annual property taxes and insurance on the Sheridan home until 1984 when the divorce action was filed. (T. 95, L. 1-17; T. 174, L. 2-25; T. 19, L. 21-25). The balance of the purchase price of \$30,000.00 was to be payable at the rate of \$3,000.00 per year at eight (8%) percent interest. On December 25, 1978, Plaintiff's parents, C. A. Persch and Sharon Persch, reduced this remaining balance with a Christmas gift of \$6,000.00 each. (Ex. D-8 Addendum 4; T. 96, L. 14-25; T. 97, L. 23-25; T. 150, L. 8-52). At the time of this gift, the only obligation owing to Plaintiff's parents was the obligation for the purchase of

the Sheridan Road home. (Ex. D-7; T. 98, L. 9-19; T. 113, L. 3-21; T. 114, L. 22; T. 115, L. 14, T. 117, L. 21; T. 120, L. 4)

Defendant's income during the marriage ranged from a gross of \$25,000.00 in 1980 to a gross of \$34,400.00 in 1983. (See Ex. P-1, 80-83 tax returns; T. 112, L. 11-14) During 1982 and 1983 Defendant constructed improvements to the Sheridan Road home at a value of \$30,000.00 for labor and materials. (T. 152-154; T. 157, L. 13-25). Defendant testified, without contradiction, that the Sheridan Road home was in poor condition at the time it was purchased and they moved in. (T. 155-156). The Defendant testified that the purchase price of \$58,000.00 was a fair price. (T. 157, L. 9-12)

Each of the parties brought personal property into the marriage consisting mainly of furniture and appliances, which each essentially retained possession. (T. 50, L. 17-20; T. 171, L. 14-24). Plaintiff retained the \$70.00 per month payments from property she owned before marriage and held for her by her father. (T. 49, L. 17-20) Plaintiff received the 1979 Dodge Ram Charger purchased during the marriage with funds received from the sale of Defendant's home, together with the majority of the furniture and appliances acquired during the marriage. (T. 174, L. 13-15; Ex. D-10; T. 169-171).

Defendant sold his home at 920 McClelland and received \$12,000.00 for his equity. (T. 147, L. 18-24; T. 174, L. 1-4) This money was used during the marriage for the down payment on the 1979 Dodge Ram Charger awarded Plaintiff (\$4,000.00),

payment of the annual property taxes on the Sheridan Road home, and to purchase an interest in the Bitner property (\$3,000.00). (T. 174, L. 2-25). The Court awarded Defendant the interest in the Bitner property, subject to any existing indebtedness, the 1981 Ford pickup truck purchased after separation, subject to the existing debt thereon, and his retirement account with Desk and Chairs, Inc. (\$4,600.00), subject to Defendant holding Plaintiff harmless from and against any claim related thereto or arising therefrom. (R. 99-100; 123-125). The lower Court awarded all equity of the parties in the Sheridan Road home to Plaintiff, subject to her paying any and all obligations that the parties owed on the property, without a finding as to the value of the equity. (R. 99, 116, 123) The Court made no determination of whether the claimed equity in the Sheridan Road home was part of the marital estate and made no determination as to the legal rights that the parties had, if any, in the Sheridan Road home. (R. 99; T. 92, L. 7-10).

Plaintiff, through out the trial, claimed the parties were renting the home at Sheridan Road and asserted that she claimed no interest in the Sheridan Road property. (T. 84-87) Plaintiff admitted and acknowledged that she signed Exhibit D-7 at or about the time the parties moved into Sheridan Road. (T. 87, L.7-24; T. 88, L. 2-19; T. 94-95; T. 106, L. 7-24) However, when Plaintiff was asked if she would have any objection to the home or any interest in the home being awarded to Defendant, she stated:

"Yes, because he didn't pay for the house." (T. 107, L. 2-25; T. 108, L. 1-4). Even though Plaintiff claimed no interest in the Sheridan Road property, she was not waiving any interest in the property. (T. 110, L. 5-19). Near the end of the trial, Plaintiff again testified why she believed she had no interest in the Sheridan Road property and stated, "we never put a down payment on it and we lived there for 7 years. January 1st of every year, a lump sum was supposed to been given to my father. That's never been done; and the house has never been put in our name. We didn't have a chance to put it in our name and I don't want to refinance." (T. 202, L. 7-14) This testimony was given by Plaintiff without any contradiction to the claim of Defendant that he made the down payment on the home by putting roofs on the new homes of her father and her brother and that the lump sum payment for the first four (4) years was gifted to them by her parents as evidenced by Exhibit D-8. Plaintiff also testified that as part of her belief that she had no interest in the Sheridan Road property was due to the fact she claimed taxes for the past two (2) years had not been paid and were always delinquent and that Defendant had refused to refinance the home some time after 1978 because to do so would require a higher monthly payment that they couldn't afford. (T. 203-205) This testimony is also contradicted by the tax returns presented as Exhibit 1 by Plaintiff and references to the transcript cited above in this Statement of Facts.

SUMMARY OF ARGUMENTS

The failure of the lower Court to exercise its discretionary powers in accordance with the standards set by the Utah Supreme Court is error.

To award the entire equity interest in the marital residence to Plaintiff is so disproportionate and inequitable that it constitutes a clear abuse of discretion and is contrary to the principles of equity.

Defendant's argument is based primarily on the recent cases of Olson v. Olson, 15, Ut. Adv. Rep. 8, Berger v. Berger, 14, Ut. Adv. Rep. 4, and Jones v. Jones, Utah 700 P.2d 1772, which require the Court to determine the value of property at the time of the Decree of Divorce, make express findings where one of the parties to a property distribution raises a serious question as to the value of one or more of the assets and the trial Court's distribution of those assets.

ARGUMENT

POINT I

THE LOWER COURT'S FAILURE TO EXERCISE ITS DISCRETION
IN ACCORDANCE WITH THE STANDARD SET BY THE SUPREME
COURT IS ABUSE OF DISCRETION AND ERROR.

In a divorce proceeding, there is no fixed formula upon which to determine division of property. The trial Court is given broad discretion to make whatever disposition of property as it deems fair, equitable and necessary for the protection and welfare

of the parties. Turner v. Turner, Utah, 649 P.2d 6 (1982); Fletcher v. Fletcher, Utah, 615 P.2d 218 (1980). However, in dividing property between divorcing spouses, the trial Court is governed by general principles of equity and must exercise its discretion in accordance with the standards set by the Utah Supreme Court. U.C.A. 30-3-5 (1984ed), Jones v. Jones, Utah 700 P.2d 1072, 1074 (1985); Land v. Land, Utah, 605 P.2d 1248 (1980). Each case must be determined on their own set of circumstances and in making a property division in a divorce action the trial Court may properly consider such things as the length of the marriage, the parties respective contributions to the marriage, the assets brought into the marriage, and the contributions of each party in obtaining marital property. Turner v. Turner, Utah, (supra); Preston v. Preston, Utah 646 P.2d 705 (1982); Jespersion v. Jespersen, Utah, 610 P.2d 326 (1980); Jackson v. Jackson, Utah, 617 P.2d 338 (1980).

As set forth in the Statement of Facts herein, Defendant owned an interest in a home before he married Plaintiff. This home was sold and the proceeds he received were used in the marriage as a down payment on the purchase of the 1979 Dodge Ram Charger awarded to Plaintiff, paid the real property taxes on the Sheridan Road marital home and purchased an interest in land in Summit County, referred to as the Bitner property. All that Defendant received from this premarital asset was the interest in the Bitner property, subject to all claims and indebtedness

owing thereon. (T. 147, L. 18-24; T. 174, L. 1-25; R. 99-100; 123-125) The indebtedness on the Bitner property was represented to be \$2,667.00 by Plaintiff's father, C. A. Persch, in his deposition. (See Depo. page 27-34; Ex. D-9) The net equity value in the Bitner property was calculated to be \$666.00. (Ex. D-9) Conversely, Plaintiff retained all interest in the property she had before marriage, held in her father's name for her. (T. 85) The record does not indicate that the trial Court considered this property as part of the marital estate, although it should have, without regard in whose name the property was held. The lower Court is required under the existing Utah case law, to consider all property interests of the parties to be part of the marital estate. Jespersion v. Jespersen (supra). Property divisions are to be made according to equitable principals and not merely according to legal title. Rogers v. Rogers, Utah, 671 P.2d 160 (1983).

The equity interest in the Sheridan Road marital home was acquired by purchase during the marriage. Defendant's contributions to acquiring and maintaining this property as set forth in the Statement of Facts herein was substantially greater than those of Plaintiff, to-wit: (1) performed labor for the down payment; (2) remodeled the home; (3) \$258.00 of each month's mortgage payment came from his earnings; (4) used a portion of the proceeds received from the sale of his premarital property to pay the property taxes on Sheridan Road. Plaintiff's contributions con-

sisted mainly of payment of \$70.00 per month on the monthly mortgage payments to Valley Bank and a joint gift from her parents of \$12,000.00, \$6,000.00 to Plaintiff and \$6,000.00 to Defendant. (Ex. D-8) In Preston v. Preston, Utah, 646 P.2d 705 (1982) it was recognized that a husband should be given credit for contributions made from the sale of assets owned prior to marriage to assets acquired during the marriage, together with a portion of the appreciation in value attributable to such contributions. In Berger v. Berger (supra), the trial Court attempted to divide marital property sixty (60%) percent to the wife because of her contributions in the marriage and forty (40%) percent to the husband. In this case, it can be said that an equitable distribution of the equity interest in the Sheridan Road marital home in view of the contributions made by each of the parties would be fifty-fifty, as proposed and advocated by Defendant at the time of trial. (T. 165; Ex. D-9)

The Defendant, by his Motion for new trial, and to modify the Decree of Divorce, raised a question as to the value of the equity in and to the Sheridan Road marital residence. The Court denied this Motion and made no determination of whether the claimed equity in the Sheridan Road marital home was a part of the marital estate; made no determination as to the legal rights that the parties had, if any, in the Sheridan Road home; and awarded all of the equity in the Sheridan Road home to Plaintiff, subject to her paying any and all obligations that the parties

owed on the property without a finding as to the value of the equity. These facts are covered in the Statement of Facts at pages 2 through 6. Recent cases of Olson v. Olson, 15 Ut. Adv. Rep. 8, Berger v. Berger, 14 Ut. Adv. Rep 4 and Jones v. Jones, Utah, 700 P.2d 1772, enunciated that where, as in this case, one of the parties to property distributed raises a serious question as to the value of one or more of the assets, the trial Court's distribution of those assets should be based upon written Findings of Fact that will permit appellate review. In Jones v. Jones (supra), this Court mandated that the trial Court must exercise its discretionary powers in accordance with the standards that have been set by the Supreme Court. In this case, as in Jones, there was no finding of fact of the value of the equity interest of the parties in the Sheridan Road marital home. Defendant testified at trial that his estimate of the market value of the home was \$110,000.00. (T. 164). Defendant determined the equity existing at that time to be \$85,000.00 and proposed that the Court divide the equity interest equally between Plaintiff and Defendant. (T. 163; Ex. D-9). The failure of the trial Court to comply with this mandated standard warrants reversal and modification of the Decree of Divorce to award Defendant an equal share of the equity interest in the Sheridan Road marital home.

POINT II

THE AWARD OF THE ENTIRE EQUITY INTEREST IN THE
MARITAL RESIDENCE TO PLAINTIFF IS AN ABUSE OF

DISCRETION IN THAT TO DO SO IS AN INEQUITABLE DISTRIBUTION OF THE INTEREST IN THE REAL PROPERTY BETWEEN THE PARTIES, CONTRARY TO PRINCIPLES OF EQUITY AND THE STANDARDS SET BY THE UTAH SUPREME COURT.

Where it is clear that the trial Court's award of all of the equity in the marital residence is not based upon express findings as to the value of the equity interest, so as to guide the reviewing Court, those findings are not entitled to deference. DeRose v. DeRose, 19 U.2d 77,79, 426 P.2d 21,22 (1967); Boals v. Boals, Utah, 664 P.2d 1191 (1983); and Pennington v. Pennington, 16 Ut. Adv. Rep. 5, (1985).

Although a presumption of validity is placed on the trial Court's actions in divorce cases and the burden is upon Appellant to show error, divorce cases being in equity, this Court is free to review both the law and the facts. (Utah Const. Art. VIII Sec. 9) As stated in Berger v. Berger (supra), the reviewing Court will over turn the trial Court's judgment where there has been a misunderstanding or misapplication of the law resulting in substantial and prejudicial error or where there has been such an abuse of discretion that an inequity or injustice has resulted. To award Plaintiff all the equity in the Sheridan Road marital residence, is such an abuse of discretion. To do so awards to Plaintiff a disproportionate amount of the marital assets equal to 92% and to Defendant 8% without regard to contributions made in acquiring and maintaining the property and the obligations ordered to be assumed by Defendant. (T. 121, 130, 131).

Plaintiff's father, Mr. Persch, testified that FDC/D&C has claims against Mr. Hermansen of \$30,000.00 to \$40,000.00. Whether in fact these claims exist and can be proved, casts serious doubt as to the value of the pension/retirement awarded Defendant. The distribution of property by the Decree with the values that were set forth in the Findings of Fact is as follows: (See R. 113; also Ex. D-9 attached as Addendum 5).

COURT'S AWARD

<u>TO PLAINTIFF</u>		<u>TO DEFENDANT</u>	
Sheridan Road equity (Ex. D-9; T. 164)	35,000.00	Bitner property (net) (Ex. D-9)	666.00
1979 Dodge (R. 113)	1,130.00	1981 Ford pickup (R. 113)	no equity
Furniture, etc. (Ex. D-9)	4,615.00	Furniture, etc. (Ex. D-9)	2,170.00
		D&C Pension/Retirement	4,653.00
	<hr/>		<hr/>
Total:	\$ 90,753.00		\$ 7,489.40

Defendant merged the majority of the proceeds he received from the sale of his premarital home into the marital property, except for the Bitner property. The facts and circumstances of this case dictate that there should be an equal (50/50) division of the equity interest in the Sheridan Road marital residence when compared with the facts and circumstances of Jespersion v. Jespersen (supra), Berger v. Berger (supra). The Defendant

entered into the marriage owning an interest in a home. He leaves the marriage without any interest in the marital home. Plaintiff entered the marriage with an interest in real property which she retained. She leaves the marriage with the entire equity interest in the marital home purchased during the marriage. Compensating factors do not exist in this case which could justify a division of the marital property of 92% to Plaintiff and 8% to Defendant. (See Workman v. Workman, Utah, 652 P.2d 931 [1982], Jespersion v. Jespersen, [supra], Turner v. Turner (supra), In the context of Preston v. Preston (supra) and Georgedes v. Georgedes, Utah, 627 P.2d 44 (1981). It would not be unreasonable to have allowed Defendant the equivalent of his contributions to the marriage from premarital assets and his direct contributions to acquiring and maintaining the Sheridan Road marital home. These contributions are set forth in the Statement of Facts contained in this Brief and consist of \$7,000.00 premarital, \$3,000.00 labor for down payment, \$30,000.00 for remodeling the home and two-thirds (2/3) of the Valley Bank mortgage reduction of \$12,000.00 for a total contribution of \$52,000.00. These amounts do not include the gift of \$6,000.00 from Plaintiff's parents. (See Ex. D-8)

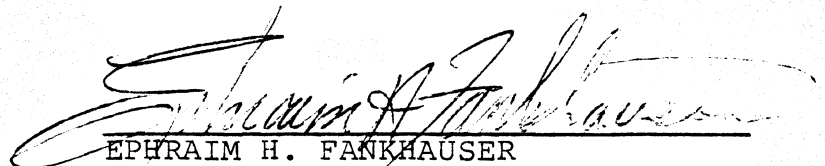
Where the trial Court failed to accomplish the essential objective of a fair and equitable division of property according to the demands of justice and standards set by the Supreme Court,

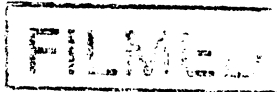
the Decree of Divorce should be modified to award Defendant an equitable portion of the equity interest in the Sheridan Road marital home.

CONCLUSION

The Court failed to make a division of marital property on a fair, reasonable and equitable basis. To award Plaintiff 92% of the marital property, where compensating factors do not exist to justify such a disproportionate division, it is a clear abuse of discretion and error. The lower Court failed to exercise its discretionary powers in accordance with the standards that have been set by the Utah Supreme Court when it failed to make an express finding as to the value of the equity interest in the marital residence. The Court should modify the Decree of Divorce to award Defendant one-half (1/2) of the equity interest in the Sheridan Road marital home in view of the substantial contributions made by Defendant in acquiring and maintaining this property interest.

Respectfully submitted


EPHRAIM H. FANKHAUSER
Attorney for Defendant/Appellant



FILED IN CLERK'S OFFICE
Salt Lake County Utah

MAR 8 1985

IN THE DISTRICT COURT OF SALT LAKE COUNTY, H. Dixon Findley, Clerk 3rd Dist. Court

STATE OF UTAH.

By

[Signature]
Deputy Clerk

WENDY LYNN HERMANSEN, :

Plaintiff, : Memorandum Decision

vs : Civil No.D84-2532

TERRY W. HERMANSEN, :

Defendant. :

This court having heard the evidence and reviewed the memorandums submitted by the respective parties determines the issues as follows:

1. Plaintiff is entitled to a decree of divorce from the defendant to become final upon entry.

2. Plaintiff is granted the custody of the minor children subject to the defendant's right of reasonable visitation rights with the said children. Defendant is ordered to pay to the plaintiff the sum of \$150.00 per month per child for the support and maintenance of the children.

3. Each party is awarded two children (alternating by age) as allowable dependents for income tax purposes.

4. Both parties are ordered to carry health, dental and accident insurance upon each of the children where it is available at the place of employment of each of the respective party. Any excess medical expenses shall be borne equally by the parties.

5. Defendant is awarded limited visitation with the children only under supervision. Defendant is permitted phone visitation with each of the children as the child is willing to communicate.

6. Whatever equity the parties own in the home at 2315 Sheridan Road is awarded to the plaintiff subject to the plaintiff paying any and all obligations that the parties owe on said property and holding the defendant harmless therefrom. This court makes no determination as to the legal rights that the parties have, if any, in the real estate.

7. The Bitner property is awarded to the defendant, subject to his paying any and all obligations thereon and holding the plaintiff harmless therefrom.

8. Plaintiff is awarded the 1979 Dodge Ram Charger, subject to any debt thereon which the plaintiff is to assume and pay and to hold the defendant harmless therefrom.

9. Defendant is awarded the 1981 Ford pick up subject to any debt thereon which the defendant is to assume and pay and to hold the plaintiff harmless therefrom.

10. The retirement account at FDC/D&C is awarded to the defendant and he is ordered to hold plaintiff harmless from any claim arising from said account.

11. All furniture and furnishings are divided between the parties as set forth in Exhibit 9 on file herein, including the separate property owned by the parties before their marriage, (see "Schedule of Furniture and Personal Property", sections I, II, and III.)

12. All marital debts are to be assumed and paid by each of the respective parties as set forth in Exhibit 10 on file herein.

13. All photos acquired during marriage are to be divided equally between the parties. The parties will flip a coin to see who get to make the first selection and then the other makes a selection until all of the photos are chosen. Once all of the photos are selected, the party desiring a copy of the photo in possession of the other party shall pay for the cost of making the copy.

14. Plaintiff is granted a judgment against the defendant for arrearage in the sum of \$1200.00 thru January, 1985.

15. Defendant is ordered to return to Jason the bicycle belonging to Jason.

16. The Doxey painting is awarded to the defendant.

17. Plaintiff's maiden name of Persch is awarded to her.

18. Each party is ordered to pay his or her own costs and expenses of litigation.

19. Each party is restrained and enjoined from harassing, annoying or in any way from interfering with the other.

20. Plaintiff is ordered to prepare the necessary Findings, Conclusions and Decree in accordance herewith.

Dated this 8 day of March, 1985.

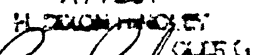


Dean R. Conder, District Judge

Copy to be mailed to each counsel.

ATTEST

100



H. J. Conder

Gary L. Paxton A2548
CLYDE, PRATT, GIBBS & CAHOON
Attorneys for Plaintiff
77 West 200 South, Suite 200
Salt Lake City, Utah 84101
Telephone: (801) 322-2516

CLERK OF DISTRICT COURT
SALT LAKE COUNTY, UTAH

MAY 14 9 18 AM '85

H. D. [Signature]
BY [Signature] CLERK

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

WENDY LYNN HERMANSEN,

Plaintiff,

vs.

TERRY W. HERMANSEN,

Defendant.

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

Civil No. D84-2532

THIS ACTION came on regularly for trial before the Honorable Dean E. Conder, District Judge, on February 21, 1985, at the hour of 10:00 o'clock a.m. The parties were present and represented by their counsels of record, Gary L. Paxton and E. H. Fankhauser. Thereupon, preliminary statements were made to the Court after which Plaintiff and witnesses on her behalf were called to testify and cross-examined and exhibits were admitted into evidence after which she rested. Defendant then testified on his own behalf and additional exhibits were admitted into evidence and he rested. The Court then announced certain findings and invited the parties to submit written proposals for resolution of the remaining issues joined in the action, and the parties having submitted memoranda and the Court having reviewed the same and having considered the evidence introduced at trial and, having issued its Memorandum

CLYDE, PRATT,
GIBBS & CAHOON
ATTORNEYS AT LAW
AMERICAN SAVING
PLAZA
200 SOUTH
SALT LAKE CITY,
UTAH 84101

Decision, and now being deemed fully advised in the premises and good cause appearing, makes the following

FINDINGS OF FACT

1. Plaintiff was an actual and bona fide resident of Salt Lake County, State of Utah, at the time of commencement of this action and she had been for more than three (3) months immediately prior thereto.

2. More than ninety (90) days has elapsed since the filing of the Complaint.

3. The parties were married to each other near Oakley, Summit County, Utah, on June 27, 1977 and ever since have been husband and wife.

4. The parties are parents of four (4) minor children, the youngest of whom, Jason Hermansen, is the issue of this marriage. The parties' other three (3) children, Isha, Jeremiah and Justin Hermansen, are Plaintiff's natural children who have been legally adopted by Defendant.

5. During the marriage the Defendant treated the Plaintiff cruelly, causing her great mental distress in that he argued unreasonably with her and criticized her without cause.

6. The parties separated in July 1984. Since that time there has occurred emotional and psychological stress and conflict between the parties, particularly with regard to their daughter, Isha, of a nature and to the extent that the Court finds there is no expectation whatever that the parties could reconcile their differences and the Court finds that it would be in the best

interest of Plaintiff and the parties' children to make the decree in this action final upon entry.

7. Plaintiff is a fit and proper person to be awarded the custody of the parties' minor children and the Court finds the children's best interests would be served by awarding their custody to Plaintiff.

8. The Court finds that under the circumstances existing at this time with regard to the emotional stress and conflict between the parties and the children, it would be in the children's best interest to limit Defendant's visitation to supervised visits to be conducted at the offices of the Division of Family Services.

9. Plaintiff is presently employed full-time at Furniture Distribution Center at a wage rate of \$6.00/hour. Her proffer of her Financial Declaration's statement of monthly expenses as her testimony regarding the reasonable and necessary costs of maintaining herself and the parties' children was accepted by the Court. Health insurance is available to Plaintiff through her employer which is presently in force for the benefit of herself and the children at a cost to her of approximately \$130/month.

10. Defendant is presently employed as a foreman with Bartile Roofs, Inc., from which employment he realizes an average net, monthly income of \$1,098.00. He is also paid a truck and tool allowance of \$200-275/month by his employer for the use of his vehicle and tools on Bartile jobs. In the near future health insurance will be made available to Defendant by his employer which could cover the parties' children.

11. Between January 1978 and their separation, the parties resided in a home at 2315 Sheridan Road, Salt Lake City, Utah, ~~owned by Plaintiff's parents~~. During the period of that occupancy the parties did certain remodeling, paid some property taxes and made the \$328 monthly payments on a Valley Bank encumbrance against the property. \$70 of each monthly payment to Valley Bank was made with Plaintiff's separate funds. No evidence was admitted at trial as to the present fair market value of said real property or the increase in its value, if any, attributable to any remodeling.

12. During the marriage Defendant and Plaintiff's brother, Steve Persch, obtained ~~(for themselves and their wives)~~ from Plaintiff's father's company, Furniture Distribution Center, an interest in certain unimproved real property located at Park City, Utah, identified as the Bitner property. Defendant claimed to have paid \$3,000 for that property interest.

13. During the marriage the parties acquired certain items of personal property which they owned at the time of trial, including, but not limited to: a 1979 Dodge Ramcharger, fair market value of approximately \$2,000.00 subject to a Valley Bank lien of \$862.00; a 1981 Ford pickup, the value of which is not materially in excess of the Zions Bank lien against it; certain furniture, furnishings, appliances and firearms identified in Exhibit D-9; family photographs; a painting by Doxey which cost \$500.00 for which no present value testimony was presented; and, a vested pension account with Desk & Chairs, Inc., a Utah corporation, of approximately \$4,600.00.

14. Each party owned the following items of personal property prior to their marriage which properties have not lost their separate property character:

Plaintiff's: Refrigerator, Zenith TV, sofa and coffee table, antique dining room set with chairs, 410 shotgun and .22 cal. pistol.

Defendant's: Furniture in possession, 12 ga. shotgun, 12 ga. Remington shotgun and .22 cal. auto pistol.

15. At the time of trial, the following debts and obligations were outstanding against the parties, or either of them: Valley Bank (Ramcharger lien); Valley Bank-Visa Card (Plaintiff's attorney's fees and children's clothes, \$686); Utah Bank and Trust (1983 income tax loan); Zions Bank (1981 Ford truck lien, \$6,200); Mervyn's (children's clothes and miscellaneous family expenses, \$700); Bryner Clinic, (\$50), Salt Lake Clinic, (\$200), Salt Lake Surgical Center (\$65) and Drs. Bennion, Allred and Ring/Wong (children's medical expenses); Dr. Borgoyne (marital counselling, \$185); and, IRS (1983 income tax assessment \$28).

16. Any debts other than those identified in Paragraph 15, above, incurred by either party after their separation in July 1984, are the separate debts of each.

17. Both parties have incurred attorney's fees expenses and costs related to these proceedings and Defendant is not in a financial position to contribute to Plaintiff's litigation expenses.

18. Defendant has in his possession for repair a bicycle belonging to Jason.

19. Defendant is in arrears under the Court's Temporary Support Order in the sum of \$1,100.00 for the period ending March 26, 1985. The Court finds no basis upon which to reduce its Temporary Support Order as requested in Defendant's filed motion, dated 4 January 1985.

20. It would be reasonable to restore to Plaintiff the use of her maiden name, Wendy Lynn Persch.

21. The Court finds that unusually severe emotional and psychological stress and conflict has come to exist between the parties since their separation and that it is likely to continue and to be detrimental unless each party is restrained and enjoined from harassing, annoying or in any way interfering with the other.

From the foregoing Findings of Fact the Court enters its

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties, their children and the properties acquired during their marriage identified in the foregoing Findings of Fact.

2. Plaintiff should be granted a judgment and decree of divorce from and against Defendant on the grounds of mental cruelty which decree should be made final upon entry as good cause for waiver of the statutory interlocutory period has been shown.

3. Plaintiff should be awarded no alimony.

4. Plaintiff should be awarded the care, custody and control of the parties' four (4) minor children.

5. Defendant should be awarded reasonable visitation rights with the children which, until further order of the Court, should be limited to be exercised only under supervision at the offices

of the Division of Family Services. Defendant should also be permitted to visit with the children by telephone as each child is willing to communicate with him.

6. Defendant should be ordered to pay Plaintiff child support in the sum of \$150.00/month/child. Each party should be entitled to claim two (2) of the children (alternating by age) as allowable exemptions for income tax purposes. Each party should be ordered to carry the health, dental and accident insurance for the benefit of the children where it is available at his/her place of employment and each party to should bear one-half of any excess medical expenses for the children not paid by such insurance.

7. The Court makes no determination as to the legal rights that the parties may have, if any, in the real property owned by Plaintiff's parents located at 2315 Sheridan Road, Salt Lake City, Utah. However, any equity or interest that the parties may have or own in that real property should be awarded and distributed to Plaintiff subject to her payment of any and all obligations the parties may owe thereon and subject to her holding the Defendant harmless therefrom.

8. Any and all equity or interest the parties may or own in the Bitner property at Park City, Utah, should be awarded and distributed to the Defendant subject to his paying any and all obligations thereon and holding the Plaintiff harmless therefrom.

9. Plaintiff should be awarded the 1979 Dodge Ramcharger subject to the Valley Bank lien thereon which she should pay and hold Defendant harmless from and against.

10. Defendant should be awarded the 1981 Ford truck subject to all debt thereon which he should pay and hold Plaintiff harmless from and against.

11. The personal properties now owned by the parties which were acquired during their marriage should be set over and distributed between them as follows:

To Plaintiff: One wing-back chair; pigskin bench; sofa; two brass end tables and two brass lamps; brass fireplace set; two love seats; dining room table and break front; oak kitchen table; big screen TV; chrome sofa table; piano; refrigerator; gas range; chest type freezer; microwave oven; desk with hutch top; video recorder; and, all other items presently in her possession not specifically awarded to Defendant, below.

To Defendant: One wing-back chair; ottoman; Doxey oil painting; water color painting; console TV set; firearms (410 pistol, .32 cal. pistol, .44 cal. pistol, .357 pistol; 20 ga. shotgun and 30-30 rifle); and, all other items in his possession not specifically awarded to Plaintiff, above.

All photographs should be divided equally. The parties should flip a coin to see who makes the first selection and then selections should alternate until all are chosen. Either party desiring a copy of any photograph in the possession of the other should pay for the cost of copying.

12. The personal property items identified by the Court in Paragraph 14 of its Findings, above, should be recognized and declared to be, and remain, the separate property of each.

13. The obligations and debts outstanding against the parties, or either of them, identified in Paragraph 15 of the Court's Findings, above, should be assumed and paid by them in the following manner:

By Plaintiff: Valley Bank (Ramcharger loan); Valley Bank (Visa Card); Salt Lake Surgical Center; Dr. Borgoyne; and one-half Utah Bank & Trust loan (1983 income taxes) and 1983 income tax assessment.

By Defendant: Zions Bank (truck loan); Bartile truck loan; Mervyn's; Salt Lake Clinic and Bryner Clinic; and one-half Utah Bank & Trust loan (1983 income taxes) and 1983 income tax assessment.

14. Any debts incurred by either party separately since their July 1984 separation should be assumed and paid by each as his/her separate debt and each should be ordered to hold the other harmless therefrom.

15. All interest in the Desk & Chairs, Inc., retirement account should be set over and awarded to Defendant and he should be ordered to hold Plaintiff harmless from and against any claim related thereto or arising therefrom.

16. Defendant should be ordered to return Jason's bicycle to Plaintiff for the child's use.

17. All children's furniture should be awarded to Plaintiff for the use and benefit of the parties' children.

18. Defendant's Motion to Reduce Temporary Support, dated 4 January 1985, should be denied.

19. Plaintiff should be given and granted judgment against Defendant for child support arrearages accrued under the Court's Temporary Support Order through March 26, 1985, in the sum of \$1,100.00.

20. Each party should be permanently restrained and enjoined from harassing, annoying or in any way interfering with the other.

21. The use of Plaintiff's maiden name, Wendy Lynn Persch, should be restored to her.

22. Each party should be ordered to pay his/her own expenses of this litigation, including attorney's fees and court costs.

DATED this 30 day of April, 1985.

BY THE COURT



DEAN E. CONDER
District Judge

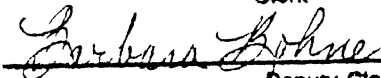
APPROVED as to form:

E. H. FANKHAUSER
Attorney for Defendant

ATTEST

H. DIXON HINDLEY

Clerk

By 
Deputy Clerk

GARY L. PAXTON, A2548
CLYDE, PRATT, GIBBS & CAHOON
Attorneys for Plaintiff
77 West 200 South, Suite 200
Salt Lake City, Utah 84101
Telephone: (801) 322-2516

CLERK
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H. D. [Signature]
BY [Signature] CLERK

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

BA. 197 NO. 3282

WENDY LYNN HERMANSEN,

Plaintiff,

VS.

TERRY W. HERMANSEN,

Defendant.

5-14-85 - 11:09 a.m.

DECREE OF DIVORCE

Civil No. D84-2532

THIS ACTION came on regularly for trial before the Honorable Dean E. Conder, District Judge, on February 21, 1985, at the hour of 10:00 o'clock a.m. The parties were present and represented by their counsels of record, Gary L. Paxton and E.H. Fankhauser. Thereupon, preliminary statements were made to the Court after which Plaintiff and witnesses on her behalf were called to testify and cross-examined and exhibits were admitted into evidence after which she rested. Defendant then testified on his own behalf and additional exhibits were admitted into evidence and he rested. The Court then announced certain findings and invited the parties to submit written proposals for resolution of the remaining issues joined in the action, and the parties having submitted memoranda and the Court having reviewed the same and having considered the evidence introduced at trial and having issued its Memorandum

14. All interest in the Desk & Chairs, Inc., retirement account is hereby set over and awarded to Defendant and he is ordered to hold Plaintiff harmless from and against any claim related thereto or arising therefrom.

15. Defendant is ordered to return Jason's bicycle to Plaintiff for the child's use.

16. All children's furniture is awarded to Plaintiff for the use and benefit of the parties' children.

17. Plaintiff is given and granted judgment against Defendant for child support arrearages accrued under the Court's Temporary Support Order through March 26, 1985, in the sum of \$1,110.00.

18. Each party is permanently restrained and enjoined from harassing, annoying or in any way interfering with the other.

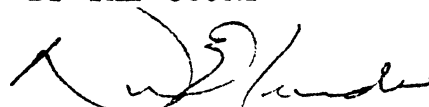
19. The use of Plaintiff's maiden name, Wendy Lynn Persch, is hereby restored to her.

20. Defendant's Motion to Reduce Temporary Support, dated 4 January 1985, is hereby denied.

21. Each party is hereby ordered to pay and discharge his/her own expenses of this litigation, including attorney's fees and costs.

MADE AND ENTERED this 30 day of April, 1985.

BY THE COURT



DEAN E. CONDER
District Judge

APPROVED as to form:

PRATT,
CAHOON
S AT LAW
IN SAVINGS
ZA
OND SOUTH

E. H. FANKHAUSER
Attorney for Defendant

ATTEST

H. DIXON HINDLEY


Clerk

To Defendant: One wing-back chair; ottoman; Doxey oil painting; water color painting; console TV set; firearms (410 pistol, .32 cal. pistol, .44 cal. pistol, .357 pistol; 20 ga. shotgun and 30-30 rifle); and, all other items in his possession not specifically awarded to Plaintiff, above.

All photographs are to be divided equally. The parties shall flip a coin to see who makes the first selection and then selections will alternate until all are chosen. Either party desiring a copy of any photograph selected by the other is to pay for the cost of copying.

11. The personal property items identified by the Court in Paragraph 14 of its Findings of Fact, are hereby recognized and declared to be, and remain, the separate property of each. Each party is ordered to deliver to the other any such items in his/her possession or under his/her control belonging to the other.

12. The obligations and debts outstanding against the parties, or either of them, identified in Paragraph 15 of the Court's Findings of Fact are to be assumed and paid by them in the following manner:

By Plaintiff: Valley Bank (Ramcharger loan); Valley Bank (Visa Card); Salt Lake Surgical Center; Dr. Borgoyne; and one-half Utah Bank & Trust loan (1983 income taxes) and 1983 income tax assessment.

By Defendant: Zions Bank (truck loan); Bartile truck loan; Mervyn's; Salt Lake Clinic and Bryner Clinic; and one-half Utah Bank & Trust loan (1983 income taxes) and 1983 income tax assessment.

13. Any debts incurred by either party separately since their July 1984 separation are to be assumed and paid by each as his/her separate debt and each is ordered to hold the other harmless therefrom.

6. Any and all equity or interest that the parties may have or own in the real property located at 2315 Sheridan Road, Salt Lake City, Utah, is hereby awarded and distributed to Plaintiff subject to her payment of any and all obligations the parties may owe thereon and subject to her holding the Defendant harmless therefrom.

7. Any and all equity or interest the parties may have or own in the Bitner property at Park City, Utah, is hereby awarded and distributed to the Defendant subject to his paying any and all obligations thereon and holding the Plaintiff harmless therefrom.

8. Plaintiff is awarded the 1979 Dodge Ramcharger subject to the Valley Bank lien thereon which she is ordered to pay and to hold Defendant harmless from and against.

9. Defendant is awarded the 1981 Ford truck subject to all debt thereon which he is ordered to pay and to hold Plaintiff harmless from and against.

10. The personal properties now owned by the parties which were acquired during their marriage are hereby set over and distributed between them as follows:

To Plaintiff: One wing-back chair; pigskin bench; sofa; two brass end tables and two brass lamps; brass fireplace set; two love seats; dining room table and break front; oak kitchen table; big screen TV; chrome sofa table; piano; refrigerator; gas range; chest type freezer; microwave oven; desk with hutch top; video recorder; and, all other items presently in her possession not specifically awarded to Defendant, below.

Decision and having heretofore entered its Findings of Fact and Conclusions of Law and good cause appearing

NOW THEREFORE, pursuant to the foregoing and upon motion of Plaintiff's counsel

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff Wendy L. Hermansen is granted a judgment and decree of divorce from and against Defendant Terry W. Hermansen which decree shall become final and absolute upon entry hereof.

2. Plaintiff is awarded no alimony.

3. Plaintiff is awarded the care, custody and control of the parties' four (4) minor children, Isha, Jeremiah, Justin and Jason Hermansen.

4. Defendant is awarded reasonable visitation rights which, until further order of the Court, are limited in that they are to be exercised only under supervision at the offices of the Division of Family Services. Defendant is also to be permitted to visit with the children by telephone as each child is willing to communicate with him.

5. Defendant is hereby ordered to pay Plaintiff child support in the sum of \$150.00/month/child. Each party is granted the right to claim two (2) of the children (alternating by age) as allowable exemptions for income tax purposes. Each party is ordered to carry the health, dental and accident insurance for the benefit of the children where it is available at his/her place of employment and each party is ordered to bear one-half of any excess medical expenses for the children not paid by such insurance.

FILMED

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

MAY 9 4 04 PM '85

E. H. FANKHAUSER
Bar No. 1032
Attorney for Defendant
660 South 200 East, Suite 100
Salt Lake City, Utah 84111
Telephone: 534-1148

H. D. A. 380
BY *Mancey Everett*
CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH


WENDY LYNN HERMANSEN,)	
Plaintiff,)	MOTION FOR NEW TRIAL AND
vs.)	AMENDMENT OF JUDGMENT AND
TERRY W. HERMANSEN,)	DECREE
Defendant.)	Civil No. D84-2532
)	Judge Conder

Defendant, Terry Hermansen, by and through his attorney, E. H. Fankhauser, moves this Court for a new trial on the issue of division of real property, to-wit: The equity in the home and residence of the parties in the approximate sum of \$85,000.00; and the assumption of debts and obligations by Defendant relating to property awarded Defendant; and for amendment of the Judgment and Decree of Divorce entered by the Court to the effect of awarding Defendant one-half (1/2) of the equity in and to the marital residence of the parties in that the Court abused its discretion in refusing to allow Defendant to testify as to the value of the residence; in failing to award Defendant a fair and equitable portion of the equity interest of the parties in said home and real property;

and in awarding Defendant interest in real property subject to alleged debts and obligations that would in effect diminish any award of property or assets to Defendant.

The award of all equity in and to the home and residence to Plaintiff is excessive and appears to have been awarded under the influence of passion or prejudice. The award of all equity in the marital home and residence to Plaintiff is contrary to principals of equity in domestic matters and is an abuse of the Courts discretion.

DATED this 9 day of May, 1985.


E. H. FANKHAUSER
Attorney for Defendant

MAILING CERTIFICATE

I certify a true and correct copy of the foregoing was mailed to Gary L. Paxton, Attorney for Plaintiff, 77 West 200 South, Suite 200, Salt Lake City, Utah 84101 on this 9 day of May, 1985.



~~INTERROYAL NEW DEALER REQUEST~~

INCORPORATION

☐ ORDER ATTACHED
TO CREDIT

AMOUNT

SALES ADMINISTRATION DEPT. N.Y.

ORIGINATING SALESMAN

SALES TAX EXEMPT CERTIFICATE #

NAME OF PROSPECTIVE DEALER (exact and complete)

STREET ADDRESS (No Box Number)

Y	STATE	ZIP CODE	PHONE	NAMES OF PRINCIPALS
---	-------	----------	-------	---------------------

THERE WILL BE BRANCHES ISSUING PURCHASE ORDERS, LIST ADDRESSES AND NAMES IF DIFFERENT. ADDITIONAL SALES TAX EXEMPTION CERTIFICATE NUMBERS IF APPLICABLE.

DEALER CLASSIFICATION DESIRED:

OFFICE

LUXE

STOCKING

NON STOCKING

INTERROYAL DEALER

☐ FULL LINE (INCLUDES ROYALMETAL LINE)

☐ OPENScape

☐ CROYDON

☐ VERTI-FILE (INCLUDES ALL FILES)

☐ PARTITIONS

☐ OTHER

ROYALMETAL DEALER

☐ ROYALMETAL LINE (E.C.)

☐ INDUSTRIAL SEATING

☐ OTHER

☐ BEAUTY

☐ GOV'T. AGENCY*

☐ NATIONAL ACC'T.*

☐ OTHER

ALTH CARE

ALL LINES DEALER (22A)

HOSPITAL (HO)

*ALSO "X" PRODUCT LINE(S)
TO BE AUTHORIZED TO PURCHASE

EXPECTED SALES	NO. OF MAILING Pcs. DESIRED	NO. OF OUTSIDE SALESMEN	HAVE SHOWROOM	APPROX. SQ. FT.
----------------	-----------------------------	-------------------------	---------------	-----------------

ROOM SAMPLE R ATTACHED	IF NO, GIVE REASON	WILL CARRY STOCK
------------------------	--------------------	------------------

IF OTHER ROYAL DEALER	HOW WILL THEY BE AFFECTED
-----------------------	---------------------------

Contract 3000⁰⁰ down balance 30,000⁰⁰

PETING LINES DEALER CARRIES

@ 8% interest - 3000⁰⁰ /yr due Jan 1st each year

ANK - (Full Name and Address)

plus assumption of mortgage at Valley Bank.

REFERENCES - (Name and Complete Address)

2 of 25,000⁰⁰ -

7000⁰⁰ due in 1978 if required by seller

by refinancing Valley Bank Mortgage

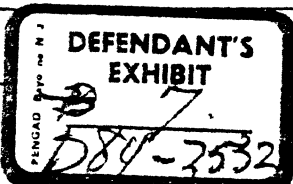
IF NEITHER - ADVISE WHY

SALESMAN'S SIGNATURE

Buyers

DO NOT WRITE BELOW THIS LINE

SALES DEPARTMENT		CREDIT DEPARTMENT		SALES ADMINISTRATION	
PROVED	REGIONAL SALES MGR.	DATE	APPROVED	CREDIT MGR.	DATE
REJECTED			REJECTED		
PROVED	NATIONAL SALES MGR.	DATE	D&B RATING		
REJECTED					
			RET'D. TO SALESMAN		
			#3 TO CREDIT		
			#4 TO CREDIT		
			#5 RT'D. FROM CREDIT		
			FOLLOW-UP		



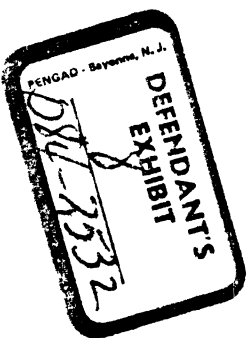
12/25/78

To
Terry Wendy Hernandez

This is your receipt
reflecting your
last extensions on your
note to ~~the~~ ^{cash}

13,000⁰⁰ - \$1,000⁰⁰ as follows

We gift you from Cop
3000 to Terry from Cash
3000 to Wendy from Sheri-
3000 to Terry from Sheri-
3000 to Wendy from Sheri-
3000 to Wendy from Sheri-
Wendy from Sheri-
Wendy from Sheri-



Terry & Wendy



To Thank You



DEFENDANT'S PROPOSED PROPERTY SETTLEMENT

		DISTRIBUTION		
		<u>TOTAL</u>	<u>WENDY</u>	<u>TERRY</u>
<u>SIDENCE:</u>				
st. Mkt. Value	110,000.00			
ess Mtg (Valley Bank)	(7,000.00)			
ess Contract - Persch	(18,000.00)			
GROSS EQUITY		85,000.00	42,500.00	42,500.00
laintiff awarded possession and use subject to indebtedness. Equity divided equally 1/2 each party. Defendant's equity payable on usual event of remarriage, sale, etc., Defendant to have lien for his share of equity				
<u>VTOMOBILES:</u>				
(A) 1979 Dodge Ram Charger	6,000.00			
Loan balance (11/84)	(1,200.00)			
		4,800.00	4,800.00	-----
(B) 1981 Ford Pickup	7,200.00			
Loan balance (11/84)	7,200.00			
		0	-----	0
<u>OTE:</u>				
Defendant paid \$4,000.00 down on 1979 Dodge from funds owned before marriage. Plaintiff awarded Dodge in lieu of any interest in Defendant's Retirement account. 1981 Ford pickup bought by Defendant after parties separated July, 1984 Defendant awarded Ford				
<u>FURNITURE, ETC.</u>				
(A) Awarded Plaintiff per Schedule			4,615.00	-----
(B) Awarded Defendant per Schedule			-----	2,170.00
<u>BITNER PROPERTY (1/6 Interest 10 Acres)</u>				
Est. Present Value	20,000.00			
1/6th Interest	3,333.00			
Less amount owed & assessments (Disputed)	(2667.00)			
	666.00	666.00	-----	666.00
Any and all interest awarded to Defendant				

	DISTRIBUTION	
<u>TOTAL</u>	<u>WENDY</u>	<u>TERRY</u>

RETIREMENT ACCOUNT:
WDC/D&C INC.

Approx Present Value	5,000.00	----	5,000.00
----------------------	----------	------	----------

all awarded Defendant in lieu
of interest in 79 Dodge
and furniture disparity

TOTALS

	\$ 51,915.00	\$ 50,336.00
--	--------------	--------------

SCHEDULE OF FURNITURE AND PERSONAL PROPERTY

VALUE

Each party awarded personal property owned
before marriage

- (A) Plaintiff: Refrigerator, Zenith TV, sofa and
coffee table, Antique dining room set with
chairs, 410 Shotgun, 22 Cal. Pistol, children's
furniture
- (B) Defendant: Furniture in possession, 12 gauge
Shotgun (single shot), 12 gauge Remington
(Model II) Shotgun, 22 caliber Automatic
Pistol

Furniture and personal property acquired during
marriage awarded to Plaintiff

1 Wing Back Chair	500.00
Pig Skin Bench	350.00
Sofa (wedding gift)	200.00
2 Brass end tables (\$100 each)	200.00
2 Brass lamps (\$20 each)	40.00
Brass fireplace set	150.00
2 Love seats (joint gift - \$50 each)	100.00
Dining room Table and Breakfront (gift)	----
Oak kitchen table w/ 4 chairs	25.00
Big Screen TB (on loan - FDC)	----
Chrome Sofa Table	100.00
Children's bedroom furniture	---
Piano (joint gift - Def. paid \$200 downpayment)	800.00
Refrigerator	----
Gas Range (1 yr old)	900.00
Freezer (chest)	300.00
Microwave Oven (needs repair)	350.00
Desk w/ Hutch top	150.00
Video Recorder (J.V.C.)	450.00

Total to Plaintiff

\$ 4,615.00

I. Furniture and personal property to be
awarded to Defendant

1 Wing Back chair	500.00
1 Ottoman	200.00
1 Oil painting (Doxey)	500.00
1 Water color painting	20.00
TV Set (console) (needs repair)	150.00

VALUE

Furniture awarded Defendant - Cont.

1 410 Thompson Pistol	150.00
1 32 Cal. Pistol Colt (sold)	50.00
1 44 Cal. Ruger (sold)	75.00
1 357 Smith-Wesson (sold)	175.00
1 Remington 20 Gauge Shotgun (sold)	250.00
1 Winchester 30-30 Rifle (sold)	100.00
	<hr/>
Total to Defendant	\$2,170.00
	<hr/> <hr/>

VESTED TERMINATION BENEFITS

for

TERRY HERMANSEN

DESKS & CHAIRS, INC.
EMPLOYEES' PENSION TRUST

DATE OF TERMINATION: 01-15-84

VESTED PERCENTAGE: 100%

LOAN NOTE: \$ 1,570 *
(Principal & Interest @ 12%)

CHECKING ACCOUNT: 334

PAYABLE TO PLAN: 2,488

LIFE INSURANCE CASH VALUE: 261

TOTAL VESTED BENEFIT: \$ 4,653

LESS LOAN: 1,570

PAYABLE FROM TRUST TO TERRY: \$ 3,083

* FDC has loan which should be paid directly to Terry from FDC.