

1986

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

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Ephraim H. Fankhauser; Attorney for Appellant.

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

Recommended Citation

Brief of Respondent, *Wendy Lynn Hermansen v. Terry W. Hermansen*, No. 860136 (Utah Court of Appeals, 1986).
https://digitalcommons.law.byu.edu/byu_ca1/52

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU
50

.A10
DOCKET NO. 860136-CA IN THE SUPREME COURT
OF THE STATE OF UTAH

WENDY LYNN HERMANSEN,

Plaintiff/Respondent,

vs.

TERRY W. HERMANSEN,

Defendant/Appellant.

Case No. 20773

860136-CA

APPEAL FROM A JUDGMENT
AND ORDER OF THE THIRD DISTRICT COURT
SALT LAKE COUNTY, UTAH

HONORABLE DEAN E. CONDER, JUDGE

BRIEF OF RESPONDENT

Gary L. Paxton
CLYDE & PRATT
200 American Savings Plaza
77 West Second South
Salt Lake City, Utah 84101
Telephone: (801) 322-2516
Attorneys for Plaintiff/
Respondent

Ephraim H. Fankhauser
660 South 200 East, Suite 100
Salt Lake City, Utah 84111
Telephone: (801) 534-1148
Attorney for Defendant/Appellant

FILED
DEC 16 1985

Clerk, Supreme Court, Utah

IN THE SUPREME COURT
OF THE STATE OF UTAH

WENDY LYNN HERMANSEN,
Plaintiff/Respondent,
vs.
TERRY W. HERMANSEN,
Defendant/Appellant.

Case No. 20773

APPEAL FROM A JUDGMENT
AND ORDER OF THE THIRD DISTRICT COURT
SALT LAKE COUNTY, UTAH

HONORABLE DEAN E. CONDER, JUDGE

BRIEF OF RESPONDENT

Gary L. Paxton
CLYDE & PRATT
200 American Savings Plaza
77 West Second South
Salt Lake City, Utah 84101
Telephone: (801) 322-2516
Attorneys for Plaintiff/
Respondent

Ephraim H. Fankhauser
660 South 200 East, Suite 100
Salt Lake City, Utah 84111
Telephone: (801) 534-1148
Attorney for Defendant/Appellant

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Statement of the Case as to Facts	1
Summary of Arguments	8
Argument	
I. APPELLANT'S CLAIM HAS BEEN WAIVED.	9
II. THE TRIAL COURT'S FAILURE TO FIND ANY CLAIM IN THE SHERIDAN ROAD PROPERTY TO BE MARITAL ESTATE IS SUPPORTED BY THE EVIDENCE.	12
III. THE TRIAL COURT'S FAILURE TO VALUE THE SHERIDAN ROAD PROPERTY WAS NOT ERROR.	18
IV. THE COURT'S PROPERTY DISTRIBUTION IS EQUITABLE.	19
Conclusion	20

TABLE OF AUTHORITIES

Page

Cases

<u>Cohan v. Cohan</u> , 474 P.2d 792 (Colo. 1970)	14
<u>Jackman v. Jackman</u> , 696 P.2d 1191 (Utah 1985).	18
<u>Jespersion v. Jespersen</u> , 610 P.2d 326 (Utah 1980).	17
<u>Jones v. Jones</u> , 700 P.2d 1772 (Utah 1985)	9
<u>Larrabee v. Larrabee</u> , 504 P.2d 358 (Colo.Ct. Ap. 1972).13,14,18	
<u>Preston v. Preston</u> , 646 P.2d 705 (Utah 1982).	17
<u>Turner v. Turner</u> , 649 P.2d 6 (Utah 1982)	19

STATEMENT OF THE CASE
AS TO FACTS

Respondent is dissatisfied both with Appellant's failure to cite facts in the record which support the lower Court's ruling and with his argument's references to matters not sustained by the record. Accordingly, Respondent makes this statement of facts relevant to the issues presented for review which issues center in Appellant's claim that he should have been awarded one-half of the "equity interest" in the Sheridan Road residential real property.

The Sheridan Road property claim was the subject of the following colloquy with the trial court at the outset of Appellant's examination of Respondent regarding that property:

MR. PAXTON: Your Honor, I understood from what was reported to me by Mr. Fankhauser, as a result of the pretrial conference with this Court, that the issue of who owned this property [Sheridan Road] or whether these two people involved in this case, the plaintiff and the defendant, indeed have any right, title or any equitable interest in it, vis-a-vis its titled owner, Mr. Cap Persch, was not an issue in this proceeding.

MR. FANKHAUSER: That's true. Still, the Court can determine if there is an equity interest and then the Court can deal with it, is that what you're talking about?

MR. PAXTON: The Court is not here to determine if in fact any equity interest exists in favor of this plaintiff and this defendant, vis-a-vis, the titled property owner.

THE COURT: I don't understand that statement, Mr. Paxton. If these people have a claim in some property,

this Court as between these people can determine what their respective interest may be. As to somebody else, I make no determination, right?

* * *

MR. PAXTON: On that basis then, I understand that we're not here to quiet any title or grant any award against any other persons?

THE COURT: I can't.

MR. PAXTON: Exactly. Exactly, but I think the Court can determine, based upon any evidence, what the character of any asserted claim may be, whether it's joint marital property or pro-parties (sic) [partakes] of any separate property character or whatever, is that correct then? Do I understand the Court?

THE COURT: As between these parties, the only determination I will be able to make is whether or not one has any preferential rights over the other if it is marital estate.

(R. 228-30).

The record facts relevant to the issues presented, including the issue framed by the trial court, are:

Wendy and Terry Hermansen resided in a home at 2315 Sheridan Road, Salt Lake City, Utah, from January 1978 until their separation in June 1984. (Findings of Fact ¶¶6 and 11, Record on Appeal pagination number 113, hereinafter "R.") Wendy's parents, C. A. and Sharon Persch, were record owners of that property throughout the time of the parties' occupancy and at the time of trial. (R. 257, 259) Prior to their move to Sheridan Road the parties had resided in a house on McClelland

Avenue in Salt Lake City which Terry had owned before they married in June 1977. (R. 182, 226) At about the time they moved into Sheridan Road they had a discussion at the home with Wendy's father which resulted in their signing a document he drew, Defendant's Exhibit 7. (R. 254) Mr. Persch characterized Exhibit D-7 as an "offer to sell the property which involved a gift if it was performed." (R. 274, 276) Terry understood that the purchase offer had been made by Wendy's parents pursuant to their plan to gift \$30,000 for tax purposes to each of their children toward a home. (R. 250, 253, 255-56) Mr. Persch testified that he discussed his intent to gift to his daughter and grandchildren at the time Exhibit D-7 was signed and said: "I wanted to see that my children and grandchildren were living in the best conditions possible. If I could help in any way, I was going to make all desire to make that happen. I did want to gift them as much money as I possibly could." (R. 260-62)

Part of the gift was reflected in the difference between Exhibit D-7's recited \$58,000 purchase price and the property's fair market value at that time which Mr. Persch testified was \$70-75,000. (R. 261) He based that valuation, in part, upon an earlier bank loan appraisal he had obtained. (R. 276-77) Terry testified that another gift related to the Sheridan Road property was made by Mr. and Mrs. Persch on Christmas Day 1978 by their delivery to Wendy and him of Exhibit D-8, a signed card acknowledging reduction of their note

indebtedness by four \$3,000 gift amounts totalling \$12,000. (R. 250; Ex. D-8) When they had "moved in originally" Terry understood that gifts were going to be made in this form each year until they couldn't give any more for tax purposes. (R. 250, 255-56) Terry characterized their occupancy of Sheridan Road in 1978 as follows: "We were living there, maintaining the place and paying the bills." (R. 252)

Whether the parties made the down payment called for by Exhibit D-7 was disputed: Terry claimed to have performed roofing labor for Mr. Persch and Wendy's brother in exchange for that payment (R. 286-87); Wendy testified no down payment was made. (R. 339) Nevertheless, Terry did not controvert Mr. Persch's testimony that Wendy and he had not performed the contract in that they had failed to assume the Valley Bank loan and that Terry told him he did not want to buy the house, that he did not have the money and he couldn't afford it and did not want to refinance it. (R. 274, 278) Wendy's belief that they had no ownership interest in the Sheridan Road property was based on similar reasons: No down payment or yearly payments had been made, and when her father discussed the refinancing of the Valley Bank mortgage Terry told her "he didn't want to do it, to make a higher monthly payment" because he couldn't afford it. (R. 339, 341) The purchase offer required that the mortgage loan be assumed, not just that the monthly loan payments be made, in order that Mr. Persch "could get off the line" for the loan. (R. 274)

During the time the parties occupied the Sheridan Road home they paid the monthly \$328 mortgage loan payments to Valley Bank. Those payments came from two sources: \$258/mo. from their current earnings, and \$70/mo. from proceeds Wendy received from property she owned before the marriage. (R. 230-31, 240, 242, 246, 272) They also paid the property taxes and insurance because, as Wendy testified, "The rent would have been substantially higher if we didn't do that." (R. 232) However, the year before their separation, 1983, and again in 1984 they failed to pay the property taxes. (R. 219-20)

Terry testified that when they moved into Sheridan Road the yard was overgrown with a lot of garbage in the garage and in the back which he cleaned up, hauled away and relandscaped. (R. 155-56) His description of the interior and exterior condition of the home was: "Living room was in fairly good condition. That was about it." (R. 156) In 1982 the parties completed numerous remodeling projects with Terry performing most of the labor. Terry testified the cost of the remodeling materials was "close to \$25-30,000" and was paid by billing them to Mr. Persch's company, Furniture Distribution Center ("F.D.C."). (R.291-94) Terry offered no evidence regarding either the increase in Sheridan Road's market value, if any, attributable to that remodeling or the value of his labor.

It was through F.D.C. and an affiliated Utah corporation, Desk & Chairs, Inc., which had been organized and funded by Mr. Persch and F.D.C. for Terry's sole ownership and operation, that he realized his income which increased from \$25,000 in 1980 to \$34,400 in 1983. (Ex. 1-P) Wendy worked in the Desk & Chairs business as well earning \$4,000 in 1983 (Ex. P-1) At the time of trial Desk & Chairs was defunct but she continued to be employed at F.D.C. (R. 185, 271) The \$4,600 vested pension plan funds awarded to Terry (Memorandum Decision ¶11, R. 99) were the sole remnant of that defunct corporation.

Terry acknowledged that it was either from F.D.C. via company trades, non-cash bonuses or paycheck deductions or from Mr. and Mrs. Persch via gifts that the parties obtained the furniture and personal property items acquired during the marriage which are identified in his Exhibit D-9. (R. 292, 328-336)

Considering all this Mr. Persch testified "We've given them countless thousands." (R. 262)

The parties brought certain items of personal property into the marriage. Those which remained at the time of trial were acknowledged to remain the property of each. (Findings of Fact ¶14, R. 114; Decree of Divorce ¶11, R. 124)

Terry sold his McClelland property during the marriage realizing \$12,000. (R. 311) \$4,000 of that sum was used as the down payment to purchase the 1979 Dodge Ramcharger awarded to

Wendy. (R. 311) Mr. and Mrs. Persch had paid off the \$1,200 balance of the original lien against the vehicle in 1981. (R. 240, 319) However, the parties later took out another loan against it to pay family debts the unpaid balance of which was \$1,700. when they separated. By the time of trial Wendy had paid that loan balance down to \$862. (R. 218-19, 240) An expert witness called by Wendy testified that in his opinion the Ramcharger's market value was \$2,000. (R. 146) Terry's opinion testimony of the value of the truck was not received. (R. 305-306) The court found its value to be as the expert testified. (Findings of Fact ¶13, R. 113)

McClelland proceeds were also used to pay Sheridan Road property taxes (R. 311), and for Terry's \$3,000 share in a ten-acre real property investment with Mr. Persch and Wendy's brother called the "Bitner" property. (R. 322-23, 325) Wendy testified she understood the Bitner investment was a family deal which included her brother's wife and her. (R. 338) Neither party offered any valuation evidence for the Bitner property. (R. 200, 321-22)

Terry's Exhibit D-9 contains valuation figures for the Sheridan Road (\$110,000) and Bitner (\$20,000) properties, as well as a Bitner indebtedness (\$2,667), which are used in his brief as the foundation for his analysis and argument that the Court's property distribution is inequitable. (Appellant's Brief pp. 9, 11 and 13) However, Exhibit D-9 was received solely for

the purpose of "...what he would claim to be his feelings as to distribution" (R. 301) and not as evidence of the matters it contains. None of those figures is properly argued to the Court for these reasons: Upon counsel's timely objection the Court ordered Terry's testimony regarding that Sheridan Road value estimate stricken (R. 301); the only evidence related to the Bitner property's value was its \$18,500 acquisition price but the purchase date was not established (R. 325); and, the Bitner indebtedness figure was taken from Mr. Persch's unpublished deposition. (Appellant's Brief p. 9)

With the single exception of the claimed Sheridan Road "gross equity" which Terry proposed be divided equally, the Court distributed all of the properties before it in exactly the manner suggested in his Exhibit D-9, "Defendant's Proposed Property Settlement" (Memorandum Decision ¶¶6-11, R.99). Similarly, the Court ordered the parties to pay and discharge their obligations, including the liens on the vehicles awarded to each, in the manner proposed in Terry's Exhibit D-10, "Schedule of Debts and Obligations" (Memorandum Decision ¶12, R. 100).

SUMMARY OF ARGUMENTS

Respondent submits that Appellant's failure to request the trial court to amend its findings to correct the insufficiencies which he argues as the basis for the relief he seeks here constitutes a waiver of those claims.

Respondent also submits that the trial court's failure to find that any interest in the Sheridan Road property or the interest acquired by Appellant in the Bitner property were marital estate is supported by the evidence and that its award of "any and all" interests in those properties to each party, respectively, is in harmony with this Court's rulings in which it is acknowledged that restoration of separate property contributions to parties in divorce actions is proper.

Respondent submits that Appellant's claim of error as a result of the trial court's failure to establish a valuation for the Sheridan Road property is without merit where the court did not first find that the property was marital estate and, therefore, subject to distribution. Lastly, Respondent argues that the Court's division of the property items it found to be subject to distribution cannot be shown to be so inequitable as to be the result of an abuse of discretion.

ARGUMENT

I. APPELLANT'S CLAIM HAS BEEN WAIVED

Appellant cites Jones v. Jones, 700 P.2d 1772 (Utah 1985), as authority for the relief he seeks. Respondent suggests that the Jones decision cuts against him.

In Jones this Court ruled that the appellant-wife's contention that the case should be remanded for entry of

findings as to property values in order that the equitability of the decreed property distribution could be assessed had been waived for the reason that her counsel had made no motion to the trial court to amend its findings to include specific property values.

At the trial of this action the Court stated that its consideration of evidence relevant to Terry's claim that the parties owned an "equity interest" in the Sheridan Road property would be for the purpose of determining whether either party had preferential rights over the other if such claim was found to be marital estate. (R. 230)

The trial court did not find that any such claim was marital estate. (Findings of Fact ¶11 and Conclusions of Law ¶7, R. 113, 116), and Appellant's post-trial motion for a new trial or amendment of judgment did not request that any new or additional findings be made in that regard. Nevertheless, he now claims this is an insufficiency in the findings which results in error in the Court's property award. (Appellant's Brief p. 5, para. 1 and p. 10, para. 2) The trial court had correctly indicated to counsel that a finding that any claimed interest in the Sheridan Road property was marital estate would have to be made before it could consider what the parties' rights in that property should be. In the absence of such a finding the trial court's award of any such interest to Wendy is entitled the presumption that it is correct and

supported by the evidence and Terry's failure to request the trial court to make an express finding on that issue precludes him from claiming that insufficiency as error now. The Jones "waiver" holding is directly on point.

Neither did Appellant's post-trial motion specifically request the Court to open the judgment and take further evidence in order to value the Sheridan Road property. Rather, it merely challenged the Court's ruling on the admissibility of Terry's valuation testimony (R. 301) and objected to the Court's refusal to award him what he wanted on the Sheridan Road property as an abuse of discretion.

And last, in his post-trial motion Terry did not request the Court to make a finding as to whether the Bitner property interest awarded to him was marital estate or to establish its valuation for the purpose of assessing the merit of his motion. Because the equitability of a property distribution order can only be weighed by viewing all of its provisions as a whole, Appellant's failure to request the lower court to correct all parts of its order susceptible to the same objections which he now raises in connection with only some parts should preclude him from obtaining the Court's review of that order.

Accordingly, this Court should rule that Appellant has waived any claim to the relief he seeks.

II. THE TRIAL COURT'S FAILURE TO FIND
ANY CLAIM IN THE SHERIDAN ROAD
PROPERTY TO BE MARITAL ESTATE IS
SUPPORTED BY THE EVIDENCE.

Appellant premises his arguments to this Court on the assumptions that the parties had an "equitable interest" in the Sheridan Road property and that this interest was marital estate. However, the trial court made no findings regarding either of those assumptions which is supported by the evidence.

The first point to be made is that the parties had no interest whatever in the Sheridan Road property. According to the testimony of Mr. Persch the parties failed to perform the terms of Exhibit D-7 which he described as an offer to purchase "involving a gift if it was performed." (R. 274, 276) The best position the parties ever occupied under Exhibit D-7 was a chance to own the property if they complied with its terms. Terry did not controvert Mr. Persch's testimony that he had refused to assume the Valley Bank loan when his father-in-law requested him to do so saying that didn't want to buy the house because he couldn't afford it. (R. 274, 278) The trial judge could choose to believe Mr. Persch--which he apparently did--and

this Court should not substitute its view of the evidence for that of the fact finder who alone can assess demeanor and credibility. The court's failure to find any marital-estate interest in the the Sheridan Road property is supported by substantial record evidence and its conclusions should not, therefore, be disturbed.

Assuming, however, that the Court found some interest in the Sheridan Road property had been acquired during the marriage it was, nevertheless, proper under the evidence for the Court to not find that interest to be marital estate and to set any such interest over to Wendy.

The case of Larrabee v. Larrabee, 504 P.2d 358 (Colo. Ct. Ap. 1972) is persuasive authority for this position. In Larrabee the wife had been gifted three parcels of property: one by her grandfather prior to the marriage and two by her mother during the marriage. The mother's gifts were made to the wife, her brother and their spouses. The gifts were made to reduce the mother's estate and were motivated by tax considerations. Upon delivery of the deeds the grantees had executed secured promissory notes payable in yearly installments. As each installment came due it was forgiven. The notes remained unpaid at the time of trial. The court divided the parties' personal properties between them and awarded "all of their interests in the real property" to the

wife. Upon the husband's appeal of that real property award the court found and held:

In determining the proper division of property in a divorce action many factors must be considered, including how the property was acquired, the financial situation of the parties, their participation in enhancing and preserving its value, and all other pertinent circumstances. [citations omitted] The husband was on active duty as a petty officer in the navy during the five year duration of the marriage. The court found that his participation, if any, in the management of the land given to the wife prior to the marriage was adequately compensated by the income received therefrom. The court further found that the gift from the wife's mother was intended primarily as a gift to her own children and that the husband was not entitled to retain any interest in the land. Under the ' circumstances of this case, the award of the property to the wife, based on these findings was not an abuse of discretion.

504 P.2d at 359-60.

Also close on point is the case cited in the Larrabee opinion, Cohan v. Cohan, 474 P.2d 792 (Colo. 1970). The wife's principal contention on appeal was that the Court had erred in finding that money given to her by the husband's parents was a gift to him rather than to her. Before the marriage the husband's father had drawn two checks payable to her for \$6,000 and \$5,000 specifying that the proceeds were to be applied toward a house for the parties. She endorsed the checks, gave them back to her husband and the proceeds were applied in

acquiring a home. The husband's father testified that he made the checks payable to her on his accountant's advice for gift tax purposes. In its attempt to restore the wife substantially to the same asset position she had occupied prior to the marriage the Court found

[T]hat this was a gift by the defendant's parents to the defendant and that the plaintiff was not entitled to any portion of the \$11,000 in the property division. The testimony was in conflict, but there was ample evidence to support the finding of the trial court as to the intent with respect to the gifts, and we should not and will not disturb that finding.

474 P.2d at 793.

The facts of our case are analogous to those of Larrabee and Cohan.

There was substantial evidence before the trial court which could support a finding that Wendy's parents intended to gift the Sheridan Road property to their daughter and their grandchildren. Property coming from a spouse's family in this way could properly be viewed as separate in character. The trial court's award to Terry of all interest in the Bitner property can be justified by a similar view of the credible evidence, namely, recognition of the separate character of an asset acquired during the marriage with his pre-marital funds.

As to Terry's claim of joint contributions to the Sheridan Road property, his payment of property taxes out of his

McClelland sales proceeds would have totalled approximately \$5,400 for the years 1978 to 1983 (average taxes per/year = \$900; Ex. P-1) which was less than Wendy's \$70 per month contribution from her pre-marital funds to each house payment during the six and one-half years they lived there (84 mos. x \$70 = \$5,880). Viewing the evidence in the light most favorable to the Court's findings, the balance of each monthly payment they made, \$258, could be seen as no more than the use value of the property given Wendy's testimony that they would have been required to pay more rent than that if they had not also paid the property taxes and insurance. (R. 232) Terry's claim to have performed labor in exchange for the down payment was disputed (R. 286-87 and 339) It was not disputed, however, that the materials that went into the 1982 remodeling were paid for by Mr. Persch's company. (R. 291-94)

As shown by the following summary of evidence supporting the Court's ruling, Wendy's personal and family-gift contributions to the acquisition and use of the Sheridan Road property outweighed Terry's by an approximate 8:1 margin:

<u>TERRY</u>	<u>WENDY</u>
\$3,000 labor down payment (disputed)	\$17,000 Persch family gift on acquisition
	12,000 additional Persch family gift
5,400 property taxes paid pre-marital funds	5,880 contributions to house payments, pre-marital funds
(?) labor on property	(?) labor on property
	30,000 remodeling materials paid by Persch business
<hr/>	<hr/>
\$8,400	\$64,880

The foregoing facts adequately support the Court's failure to find any interest in Sheridan Road to be marital estate.

Indeed, the Court's award of all Bitner property interest to Terry and any Sheridan Road property interest to Wendy is supportable under the evidence as a recognition of the separate-property character of the fund (Terry's McClelland sale proceeds) or source (Wendy's family gifts) which made each acquisition possible. As such the Court's property award is in harmony with this Court's rulings in cases such as Preston v. Preston, 646 P.2d 705 (Utah 1982) and Jespersion v. Jespersen, 610 P.2d 326 (Utah 1980).

III. THE TRIAL COURT'S FAILURE TO
VALUE THE SHERIDAN ROAD PROPERTY
WAS NOT ERROR.

In Larrabee, supra, the appellant-husband also argued that the court had abused its discretion by awarding the real property to the wife without first determining its value. The court rejected that argument stating:

[B]efore value becomes important the court must first determine whether the property is subject to division.

504 p.2d at 360.

This Court's ruling in Jackman v. Jackman 696 P.2d 1191 (Utah 1985) is similar. In that case a husband was found to have no interest in businesses that the appellant-wife had attempted to prove he owned when the suit was initiated. The Court's exclusion from the property distribution of the value of his alleged interests in those business entities and the Court's award to her of any interest he "has or may have had" in those entities was held not to be an abuse of discretion.

In this case the court below did not find that any interest or equity the parties may have acquired in the Sheridan Road property was marital estate subject to distribution. Accordingly, its failure to establish a valuation for that property was not an abuse of discretion.

IV. THE COURT'S PROPERTY DISTRIBUTION
IS EQUITABLE.

There is no fixed rule or formula for distribution of a marital estate and the standard applied by this Court in reviewing such awards is straightforward: Was the distribution either the result of a misapplication of law or was it so inequitable as to indicate a clear abuse of discretion. Turner v. Turner, 649 P.2d 6 (Utah 1982).

The trial court did not find that the parties had acquired any marital-estate interest in the Sheridan Road property. The Bitner property interest was found to have been obtained by Terry and Wendy's brother. (Findings of Fact ¶12, R. 113) As for those properties the Court specifically found were acquired during the marriage by the parties it established dollar valuations. (Findings of Fact ¶13, R. 113) Its division of those properties, summarized below, although resulting in a dollar-value split favoring Terry cannot be said to be inequitable.*

<u>TO TERRY</u>		<u>TO WENDY</u>	
1981 Ford pickup	\$ -0-	1979 Ramcharger	\$1,132
Furniture, etc.	2,170	Furniture, etc.	4,615
Desk & Chairs	4,600		
vested pension funds			
	<hr/>		<hr/>
	\$6,770		\$5,747

* (Values: Findings of Fact ¶13, R. 113; Exhibit D-9, Schedule of Furniture and Personal Property.)

Terry's final argument that he leaves the marriage having unfairly lost his pre-marital separate property (the

McClelland sales proceeds) is also without merit when the evidence is viewed in the light most favorable to the Court's findings and ruling: the \$5,400 he spent for property taxes was more than matched by Wendy's \$5,800 separate property contribution to the monthly house payments; his \$3,000 Bitner investment remains intact; and his \$4,000 contribution to the acquisition of the Ramcharger would have been offset by Wendy's parents' payment of the \$1,200 purchase money lien balance and her discharge of the subsequent lien against that vehicle which secured a loan used to pay family debts.

CONCLUSION

Substantial record evidence exists which supports the trial court's findings and order. Appellant has not demonstrated that the property award was the result of a misapplication of law. Neither has he shown that the Court's distribution of the properties before it works such a manifest inequity as to indicate a clear abuse of discretion. Accordingly, the order of the trial court should be affirmed.

RESPECTFULLY SUBMITTED this 16th
day of December 1985

GARY L. PAXTON
Clyde & Pratt
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that four true and correct copies of the foregoing Brief of Respondent Wendy Lynn Hermansen were hand-delivered on this 16 day of December 1985 to the following:

Ephraim H. Fankhauser
660 South 200 East, Suite 100
Salt Lake City, Utah 84111



GARY L. RAXTON