

1986

Kelly Renee Peterson v. Jerry Allen Peterson : Brief of Respondent

Utah Court of Appeals

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Barbara E. Ochoa; Utah Legal Services; Attorney for Respondent.

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COURT OF APPEALS
BRIEF

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DOCKET NO. 860179-CA

IN THE COURT OF APPEALS
OF THE STATE OF UTAH

KELLY RENEE PETERSON,	:	
Plaintiff/Appellant,	:	Case No. 860179-CA
vs.	:	
JERRY ALLEN PETERSON,	:	
Defendant/Respondent.	:	Priority Classification: Bb

BRIEF OF RESPONDENT

Appeal from the Judgment of the Fourth
District Court for Millard County
Honorable Cullen Y. Christensen, Judge

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COURT OF APPEALS

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IN THE COURT OF APPEALS

OF THE STATE OF UTAH

KELLY RENEE PETERSON,	:	
Plaintiff/Appellant,	:	Case No. 860170-CA
vs.	:	
JERRY ALLEN PETERSON,	:	
Defendant/Respondent.	:	

STATEMENT OF THE CASE

This is Plaintiff's appeal from a Decree of Divorce entered on January 27, 1986 in the Fourth Judicial District Court for Millard County, by the Honorable Cullen V. Christensen, Judge.

STATEMENT OF FACTS

The parties to this action were married on January 10, 1981, and have two children: Judy Lynn, born March 12, 1982 and Jeffrey Allen, born January 19, 1984 (Tr. at 18, lines 8-10 and 24-25). The parties separated in July, 1985, and Plaintiff subsequently filed for divorce in August, 1985.

Several years prior to the marriage, Defendant and his

uncle, Hal Peterson, purchased a home and a 70-acre tract of land in Scipio, Utah together with 50 shares of Scipio Irrigation stock (Tr. at 20, lines 4-5). The property was purchased from Defendant's grandfather in 1978 for \$20,000, interest free, payable in yearly installments of \$1,000 (Tr. at 19, lines 17-25 and Tr. at 20, lines 1-3).

In 1983, Defendant entered into an oral agreement with his uncle to divide the land and stock (Tr. at 21, lines 6-9). Pursuant to the terms of the oral agreement, Defendant retained the home, 10.5 acres of land, and 5 shares of stock (Tr. at 22, lines 18-21). The uncle retained the remainder of the property and stock, and also assumed the balance of the debt owing on the property (Tr. at 8, lines 22-25).

In the lower court, Defendant was awarded the home, 10.5 acres, and the stock. Of the contested personal property, Defendant was awarded the washer and dryer he brought into the marriage as well as the truck and horse the parties acquired during the marriage. Plaintiff was awarded the camera, the inventory in her gift shop, the 1983 Ford and the motorcycle, all of which were acquired during the marriage (Decree at 3).

The lower court also awarded Plaintiff child support of \$100 per month per child (Decree at 2). This amount

reflected the fact that at the time of the divorce, Defendant's sole source of income was \$830 per month from unemployment compensation (Findings at 3). The court, however, also took into consideration Defendant's historical earning ability, and therefore ordered Defendant to pay \$185 per child per month as child support when he "becomes gainfully employed whereby he produces income approximating that customarily earned by him" (Decree at 2-3).

Plaintiff appeals the award of the real property and washer/dryer to Defendant as well as the child support structure.

SUMMARY OF ARGUMENTS

The lower court was well within its discretion in awarding Defendant both the real and personal property he brought into the marriage. The award of the increased value of the property to Defendant was proper because Plaintiff did not contribute substantially to the value of the property, she received the larger percentage of the marital property, and Defendant was ordered to pay a larger percentage of the marital debts.

The award of child support in this case is most favorable to the Plaintiff. The court took into consideration Defendant's historical earnings in ordering that his child support obligation would increase when he

becomes gainfully employed. Thus, the court was actually looking out for the best interests of the Plaintiff and the children.

Plaintiff has failed to demonstrate an abuse of discretion by the trial court, therefore her appeal should be dismissed and Defendant should be awarded his costs.

ARGUMENT

I. PROPERTY DISTRIBUTION MADE WAS WELL
WITHIN TRIAL COURT'S DISCRETION

It is an established principle that the trial court is afforded considerable discretion "in adjusting the financial and property interests of parties to divorce . . . and its actions are cloaked with a presumption of validity." Gill v. Gill, 718 P.2d 779, 780 (Utah 1986). See also Burnham v. Burnham, 716 P.2d 781 (Utah 1986); King v. King, 717 P.2d 715 (Utah 1986); Argyle v. Argyle, 688 P.2d 468 (Utah 1984); and Savage v. Savage, 658 P.2d 1201 (Utah 1983). It is the appellant's burden to overcome the presumption of validity, and to do so, the appellant must show that "there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error; or the evidence clearly preponderated against the finding; or such serious inequity has resulted as to manifest a clear abuse of discretion."

Burnham at 782. See also Berger v. Berger, 713 P.2d 605 (Utah 1985); Pope v. Pope, 580 P.2d 752 (Utah 1978); and English v. English, 565 P.2d 409 (Utah 1977).

In the present case, Plaintiff plays upon the emotions of this Court, but fails to meet the requirements necessary to overcome the presumption of validity afforded the trial court.

Plaintiff argues that the lower court abused its discretion by refusing to award her the parties' residence. The award of the residence to Defendant was well within the considerable discretion afforded the trial court.

There is no set formula for dividing the marital estate, but certain factors may be relied upon by the trial court in making an equitable distribution. MacDonald v. MacDonald, 120 Utah 573, 236 P.2d 1066 (1951); Burnham v. Burnham, 716 P.2d 781 (Utah 1986). One such factor which may be properly considered is what money or property each party brought into the marriage. MacDonald at 1070.

In several fairly recent cases, the Utah Supreme Court has upheld a lower court's decision to award property to the party bringing it to the marriage. In Humphreys v. Humphreys, 520 P.2d 193 (Utah 1974), the Court upheld the trial court's decision to reimburse Plaintiff's \$3,400, which she used for a down payment on the parties' home. In

Jespersion v. Jespersen, 610 P.2d 326 (Utah 1980), the Court affirmed the trial court's decision to "permit plaintiff to withdraw from the marital property the equivalent of those assets plaintiff brought into the marriage." Jespersion at 328. And, in Georgedes v. Georgedes, 627 P.2d 44 (Utah 1981), the Court affirmed an award of the home and business to the Plaintiff, who brought both into the marriage, even though he had subsequently transferred title to both pieces of property into joint tenancy.

In the present case, it is undisputed that Defendant brought the home, acreage, stock, and washer/dryer into the marriage (Tr. at 19, lines 17-19, and Tr. at 33, lines 20-25). Plaintiff testified that the real property is presently worth \$40,000 (Tr. at 23, lines 3-5), but also admits that the property has not increased in value since the parties' marriage (Tr. at 56, lines 5-9). Plaintiff did not provide any basis for her valuation of the property. Defendant valued the property at \$26,000, based upon an appraisal performed two years prior to the divorce (Tr. at 58, lines 3-5). Plaintiff estimated that the property is currently valued at \$30,000 (Tr. at 59, lines 8-10). The court interpreted the evidence in the light most favorable to the Plaintiff when it found, based upon Defendant's testimony, that the property had increased in value by

\$4,000 (Findings at 4).

The fact that the lower court did not award any portion of the increased value of the land to Plaintiff was not an abuse of discretion. First, Plaintiff did not make "such a contribution to the increased value of [the] property that she would be entitled to share in that value in the property settlement." Georgedes at 45. Plaintiff's own testimony indicates that the parties only made approximately \$200 worth of improvements to the property during the marriage (Tr. at 23, lines 14-25; and Tr. at 24, lines 1-6).

Second, the award of the increased value of the property must be assessed in light of the total property and debt distribution between the parties. The majority of the personal property was distributed pursuant to stipulation (Tr. at 12, lines 13-25; and Tr. at 13, lines 1-5). No values were assigned to the property distributed pursuant to the stipulation. The personal property items in dispute were as follows: 1978 Ford truck, 1983 Ford car, motorcycle, camera, washer/dryer, and horse (Tr. at 12, lines 6-8). The court accepted Plaintiff's valuations of the property and found them to have the following values: 1978 Ford truck, \$1200 (Findings at 4); 1983 Ford car, \$3500 (Tr. at 30, lines 19-23); motorcycle, \$1300 (Tr. at 30, lines 24-25; and Tr. at 31, lines 1-4); camera, \$500 (Tr. at

28, lines 7-16); horse, \$800 (Tr. at 29, lines 3-6).

Plaintiff was not able to give a value on the washer/dryer, but she did testify that the appliances were eight years old (Tr. at 34, lines 5-9). The court awarded to each party those items which they brought into the marriage, including the Defendant being awarded the washer/dryer (Findings at 4: and Decree at 3). The court made the following distribution of the items acquired during the marriage of the parties. Plaintiff was awarded the car, motorcycle, and camera, and the inventory in her business, valued at \$3000 (Tr. at 52, lines 5-17). The combined value of the property awarded to Plaintiff is \$8300. Defendant was awarded the increased value of the property, the truck and the horse, having a combined value of \$6000.

In addition to the distribution of personal property, the court also distributed the debts of the parties. Plaintiff was ordered to pay the debt to Zion's Bank in the amount of \$6,000, which was secured by the car and motorcycle, and the debt on the lease for her business in the amount of \$2,700, for a total debt obligation of \$8,700. Defendant was ordered to pay the following debts: Fillmore Hospital, \$200; Nephi Hospital, \$3300; Payson Hospital \$220; Commercial Credit, \$1500; Scipio Garage, \$170; Valley Bank, \$1200, which was secured by the truck; and Eva Meeker,

\$3,000, for a total debt obligation of \$9,590. The debt to Eva Meeker, Defendant's grandmother, is a loan incurred for the purchase of the inventory for Plaintiff's gift shop (Tr. at 11, lines 4-10).

Finally, it should be remembered that the trial court allowed Plaintiff to remain in the home, rent free, for six months following the entry of the Decree of Divorce (Decree at 4).

Considering that Defendant received a smaller share of the property acquired during the marriage, and was ordered to pay a larger share of the family debts, it is difficult to understand Plaintiff's complaint that the trial court abused its discretion by making the property distribution it did.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN BASING CHILD SUPPORT ON DEFENDANT'S FUTURE INCOME

The trial court has broad discretion in assessing the child support obligations of the parties. The child support amount should reflect the needs of the children and the parent's ability to pay. Woodward v. Woodward, 709 P.2d 303 (Utah 1985).

The trial court's decision in this case is most favorable to Plaintiff. Rather than simply basing child support on Defendant's current income, the court took into

consideration Defendant's work history, and allowed for an increase in child support when Defendant becomes employed. Thus, Plaintiff is spared the time and expense of petitioning the court to modify the child support amount at a later date should Defendant find employment which produces income approximating that customarily earned by him (Decree at 2-3). Contrary to Plaintiff's argument, the Decree does not indicate that Defendant's duty to pay child support will terminate when Defendant ceases to receive unemployment compensation. Of course, should Defendant's unemployment cease prior to his finding employment, he may petition the court for a modification based upon his change in circumstances. Likewise, should Defendant find employment whereby he earns more than he did historically, Plaintiff may petition the court for an increase in child support. The court retains continuing jurisdiction over the parties to review and revise the decree as circumstances may require. MacDonald at 1071.

Therefore, the trial court did not abuse its discretion in basing Defendant's child support payments on his present and predicted future incomes.

CONCLUSION

Plaintiff has failed to demonstrate that the trial

court abused its discretion in making the property distribution between the parties. Each party was awarded the property they brought into the marriage. Of the \$14,300 worth of assets acquired during the marriage, Plaintiff was awarded \$8,300 and Defendant was awarded \$6,000. Of the \$18,290 in marital debts, Plaintiff was ordered to pay \$8,700, and Defendant was ordered to pay \$9,590. If anything, Plaintiff received the advantage in the property distribution.

It was also to Plaintiff's advantage that the court allowed a provision for an increase in child support based on Defendant's future employment. In addition, Plaintiff is free to seek a modification of child support whenever she feels the circumstances warrant.

Therefore, Defendant requests that Plaintiff's appeal be dismissed and that he be awarded his costs herein.

RESPECTFULLY SUBMITTED this 13 day of

February, 1987.

Barbara E. Ochoa
UTAH LEGAL SERVICES, INC.
By Barbara E. Ochoa
Attorney for
Defendant/Respondent

Mailing Certificate

I hereby certify that I mailed four true and correct copies of the foregoing Respondent's Brief to Mr. Dwight Epperson, Attorney for Plaintiff/Appellant, 36 South State Street, Suite 1200, Salt Lake City, Utah 84111, postage prepaid this 18 day of February, 1987.

Barbara E Olson

APPENDIX

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IN THE FOURTH JUDICIAL DISTRICT COURT OF MILLARD COUNTY,

STATE OF UTAH

KELLY RENEE PETERSON and
UTAH STATE DEPARTMENT OF
SOCIAL SERVICES,

Plaintiffs,

vs.

JERRY ALLEN PETERSON,

Defendant.

*

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DECREE OF DIVORCE

*

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Civil No. 7958

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This cause having been tried to the Court sitting without a jury on November 13, 1985, the Honorable Cullen Y. Christensen, Fourth Judicial District Judge presiding, the parties each appearing in person and by counsel, a stipulation having been read into the record wherein and whereby the parties stipulated to a division of certain personal property, evidence having then been offered and received, the Court having issued a memorandum decision, and having directed that the Utah State Department of Social Services be named as a party Plaintiff to facilitate an award of judgment against Defendant for public assistance provided to Plaintiff and her two minor children, the Court

Decree of Divorce
Peterson et al vs. Peterson
Civil No. 7958

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having entered its Findings of Fact and Conclusions of Law, now decrees as follows:

D E C R E E

1. Plaintiff is awarded a decree of divorce from Defendant, which decree shall become absolute and final upon entry.
2. Plaintiff is awarded the care, custody and control of the minor children of the parties, subject to reasonable rights of visitation in and for Defendant, which visitation rights are hereby defined as follows:
 - A. One-half of the Christmas holiday.
 - B. One-half of the Thanksgiving holiday.
 - C. Alternating visits on every other holiday.
 - D. Every other birthday.
 - E. Each Father's Day.
 - F. One month summer visit for each child when age 4 or less.
 - G. Five weeks summer visit at age 5.
 - H. Six weeks summer visit when the children reach the ages of 6 years.
 - I. Every other weekend from 6:00 p.m. Friday to 6:00 p.m. Sunday.
3. Defendant shall provide Plaintiff with advance notice of his intent to exercise visitation rights, which notice shall be not less than 48 hours for other than summer visits, and not less than 2 weeks for summer visits.
4. As long as Defendant is drawing unemployment compensation in the amount above indicated he shall pay the sum of \$100.00 per month per child as support money, payable one-half on the 1st and one-half on the 15th days of each month beginning on the 1st day of December, 1985. At such time as

Defendant becomes gainfully employed whereby he produces income approximating that customarily earned by him as above indicated, such support shall be increased to the sum of \$185.00 per month per child.

5. Plaintiff is hereby awarded alimony in the amount of \$1.00 per month, commencing on the 1st day of December, 1985, and continuing for a period of three years or until the Plaintiff remarries or cohabits with another person of the opposite sex, whichever event first occurs; provided that should Defendant become employed in his usual employment, the Court shall review the matter of alimony upon petition being filed for that purpose.

6. Plaintiff is hereby awarded the following personal property:

- (A) Bed
- (B) Cedar Chest
- (C) Children's beds and children's items.
- (D) Large dresser which Plaintiff had before marriage
- (E) Two tall 5 drawer dressers
- (F) Small 3 drawer dresser
- (G) Rocking chair
- (H) Television
- (I) Plaintiff's tapes and records
- (J) Camera;
- (K) The 1983 Ford car and the motorcycle, subject to the indebtedness thereon;
- (L) The Delta gift shop subject to the lease obligation incident thereto.

7. Defendant is hereby awarded the following personal property:

- (A) 3 antique dressers and dresser now in Defendant's possession
- (B) Stereo
- (C) Other items in house which Defendant owned before marriage
- (D) 1978 Ford truck, subject to the indebtedness thereon
- (E) Horse
- (F) Water stock
- (G) Washer and Dryer, subject to Plaintiff's use thereof for the period hereinafter indicated.
- (H) Defendant's tapes and records

8. Plaintiff shall assume and pay the following debts and hold the Defendant harmless from liability thereon:

- (A) The obligation to Zions Bank.
- (B) The rental obligation on the Delta gift shop.
- (C) Any debts separately incurred by her since the separation of the parties.

9. Defendant shall assume and pay the following debts and hold the Plaintiff harmless from liability thereon:

- (A) Fillmore Hospital
- (B) Nephi Hospital
- (C) Payson Hospital
- (D) Commercial Credit
- (E) Scipio Garage
- (F) Valley Bank
- (G) Eva Meeker
- (H) Any other debts incurred during the marriage except as specifically ordered to be paid by Plaintiff
- (I) Any debts separately incurred by him since the separation of the parties

10. That the real property interest of the parties, including the contracts, are awarded to the Defendant, provided that the Plaintiff shall be entitled to reside in said premises and have the use of the washer and dryer therein until June 1, 1986, at which time Plaintiff shall vacate said premises; provided further that during the period of her occupancy, the Plaintiff shall be responsible for payment of utility charges incurred during such period. Said real property is situate in Millard County, Utah, and is particularly described as follows:

Commencing 831.80 feet East of the South Quarter
Corner of Section 18, Township 18 South, Range 2
West, Salt Lake Base and Meridian; thence North
246.37 feet; thence East 409.00 feet; thence

North 391.0 feet; thence North 73°00'59" East
276.04 feet; thence South 718.00 feet; thence
West 673.00 feet to the point of beginning.
(Containing 6.42 acres, more or less)

Commencing 831.80 feet East of the North Quarter
Corner of Section 19, Township 18 South, Range 2
West, Salt Lake Base and Meridian; thence East
673.00 feet; thence South 264.00 feet; thence
West 673.00 feet; thence North 264.00 feet to the
point of beginning. (Containing 4.08 acres, more
or less)

11. That each party is required to promptly execute and deliver such documents as may be necessary or appropriate to accomplish the transfer and disposition of the assets above noted.

12.--The Utah State Department of Social Services, being joined as a party hereto, and claiming from Defendant reimbursement in the sum of \$1,100.00 for support paid to Plaintiff and said minor children, through the month of November, 1985, a fact denied by Defendant, said issue is reserved for further litigation, however, said Department is authorized to withhold and deliver earnings according to law in the event of Defendant's default in payment of any judgment awarded thereby, and for the collection of any future support obligation.

13. That Defendant shall pay to Plaintiff as attorney's fees the sum of \$500.00 plus costs of Court incurred, and Plaintiff is hereby awarded judgment against Defendant in said sum.

14. Medical and dental health insurance coverage for the parties' minor children shall be provided by the parties, or the expenses therefor otherwise satisfied by them, as follows:

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A. Both Plaintiff and Defendant shall procure and maintain such insurance when and so long as offered to her or him as a fringe benefit pursuant to their employment.

B. If neither party can obtain such insurance as a fringe benefit through her or his employment, then each shall obtain same through their employment, if offered, and pay the premium expense therefor as a wage or salary deduction.

C. If neither party can obtain such insurance through employment, either as a fringe benefit or by paying for same, then Defendant shall obtain such insurance and maintain same by the purchase of a private policy therefor, and the premium expense in that regard shall then be satisfied equally by the parties.

D. All expenses for medical and dental care for said minor children which are not covered by insurance shall be satisfied equally by the parties.

DATED this 22 day of January, 1986.

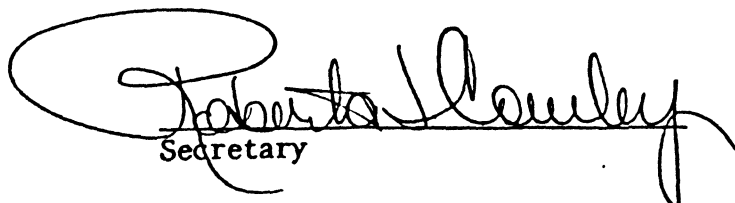
BY THE COURT

/s/
CULLEN Y. CHRISTENSEN, District Judge

MAILING CERTIFICATE

I herewith and hereby certify that a copy of the foregoing DECREE OF DIVORCE was placed in the United States mail at Richfield, Utah, with first-class postage thereon fully prepaid, this 9th day of January, 1986, addressed as follows:

Richard K. Glauser, Esq.
McKAY, BURTON & THURMAN
Suite 1200 - Kennecott Building
Salt Lake City, Utah 84133


Secretary

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IN THE FOURTH JUDICIAL DISTRICT COURT OF MILLARD COUNTY,

STATE OF UTAH

KELLY RENEE PETERSON and
UTAH STATE DEPARTMENT OF
SOCIAL SERVICES,

Plaintiffs,

vs.

JERRY ALLEN PETERSON,

Defendant.

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Civil No. 7958

This cause was tried to the Court sitting without a jury on November 13, 1985, the Honorable Cullen Y. Christensen, Fourth Judicial District Judge presiding, the parties each appearing in person and by counsel, a stipulation having been read into the record wherein and whereby the parties stipulated to a division of certain personal property, evidence having then been offered and received, the Court having issued a memorandum decision, and having directed that the Utah State Department of Social Services be named as a party Plaintiff to facilitate an award of judgment against Defendant for public assistance provided to Plaintiff and her two minor children, now therefore, the Court finds and concludes as follows:

FINDINGS OF FACT

1. Plaintiff and Defendant are wife and husband having married on January 10, 1981.

2. Plaintiff was an actual and bona fide resident of Millard County, Utah for more than three months immediately prior to the filing of the Complaint herein.

3. Two children have been born as issue of said marriage, to wit: Judy Lynn Peterson, a girl, born March 12, 1982 and Jeffrey Allen Peterson, a boy, born January 18, 1984.

4. Plaintiff is a fit and proper person to have the care, custody and control of said minor children, subject to reasonable rights of visitation in and for Defendant, which visitation rights are hereby defined as follows:

- A. One-half of the Christmas holiday.
- B. One-half of the Thanksgiving holiday.
- C. Alternating visits on every other holiday.
- D. Every other birthday.
- E. Each Father's Day.
- F. One month summer visit for each child when age 4 or less.
- G. Five week summer visit for each child when age 5.
- H. Six week summer visit for each child when age 6.
- I. Every other weekend from 6:00 p.m. Friday to 6:00 p.m. Sunday.

5. Defendant should provide Plaintiff with advance notice of his intent to exercise visitation rights, which notice shall be not less than 48 hours for other than summer visits, and not less than 2 weeks for summer visits.

6. That for several months prior to the filing of the action and as a continual course of conduct the Defendant treated the Plaintiff cruelly,

causing her great mental distress and suffering, more in particular as follows:

A. Defendant kept company with another woman over the objections of Plaintiff.

7. That the parties have been separated since July, 1985.

8. That Plaintiff has no net monthly income, however, Plaintiff is receiving Public Assistance; that Plaintiff claims monthly living expenses of \$1,176.00, plus debt service of \$296.13; that Plaintiff is presently residing in the family home at Scipio, Utah and is commuting to Delta, Utah, where she operates a small gift shop; that said gift shop has been operating at a loss; that by reason of Plaintiff's limited job experience and training it is not likely that Plaintiff will be able to earn significantly more than minimum wage; that the condition of Plaintiff's health is good.

9. That Defendant has net monthly income of \$830.00 from unemployment compensation; that Defendant, when he is employed, customarily can earn approximately \$11.50 per hour, which will produce gross monthly income based on 40 hours per week of \$1,978.00 per month and net income of \$1,720.00 per month; Defendant claims monthly living expenses of \$750.00, plus debt service of \$146.00; Defendant presently resides out of the family home; that by reason of Defendant's job experience and training it is likely that Defendant will be able to earn as much as last above indicated; that the condition of Defendant's health is good.

10. That the parties respectively brought the following assets into the marriage:

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Plaintiff: Miscellaneous furniture of undetermined value.

Defendant: (A) Miscellaneous furniture of
undetermined value, includes a washer and dryer.

(B) 10.5 acres of land with residence
situate thereon and with 5 shares of water stock,
all having a fair value at the time of the
marriage of \$26,000.00.

10A. That the parties have accumulated the following assets during
the course of the marriage:

<u>ITEM</u>	<u>VALUE</u>	<u>ENCUMBRANCE</u>
(A) Increased value in 10.5 acres of land, residence and 5 shares of water stock.	\$ 4,000.00	\$ --0--
(B) Gift shop, Delta	3,000.00	5,700.00
(C) 1983 Ford and a motorcycle	4,800.00	6,000.00
(D) Horse	800.00	--0--
(E) Camera	500.00	--0--
(F) 1978 Ford truck	1,200.00	1,200.00

11. That the parties owe the following marital debts:

<u>CREDITOR</u>	<u>AMOUNT/PAYABLE</u>	<u>SECURITY</u>
(A) Fillmore Hospital	\$ 200.00	--0--
(B) Nephi Hospital	3,300.00	--0--
(C) Payson Hospital	220.00	--0--
(D) Commercial Credit	1,500.00	--0--
(E) Scipio Garage	170.00	--0--
(F) Valley Bank	1,200.00/146.00 p/m	truck
(G) Zions Bank	6,000.00/296.00 p/m	car and motorcycle
(H) Eva Meeker	3,000.00	--0--
(I) Classic Sales	2,700.00/30.00 p/m	gift shop

12. That the parties respectively claim attorney's fees incurred in
connection herewith as follows:

Plaintiff: \$1,200.00, based on 15 hours at \$80.00 per hour.
Defendant: \$1,600.00, based on 20 hours at \$80.00 per hour.

13. The Utah State Department of Social Services has appeared in this action and claims reimbursement from Defendant in the sum of \$1,100.00 for public assistance paid to Plaintiff and her minor children through November, 1985, which claim Defendant denies, and said issue is reserved for future adjudication between said parties.

14. Medical and dental health insurance coverage for the parties' minor children should be provided by the parties, or the expenses therefor otherwise satisfied by them, as follows:

A. Both Plaintiff and Defendant should procure and maintain such insurance when and so long as offered to her or him as a fringe benefit pursuant to their employment.

B. If neither party can obtain such insurance as a fringe benefit through her or his employment, then each should obtain same through their employment, if offered, and pay the premium expense therefor as a wage or salary deduction.

C. If neither party can obtain such insurance through employment, either as a fringe benefit or by paying for same, then Defendant should obtain such insurance and maintain same by the purchase of a private policy therefor, and the premium expense in that regard should then be satisfied equally by the parties.

D. All expenses for medical and dental care for said minor children which are not covered by insurance should be satisfied equally by the parties.

CONCLUSIONS OF LAW

1. Plaintiff is entitled to a decree of divorce from Defendant on the grounds of cruelty.

2. Plaintiff should be awarded the care, custody and control of the minor children of the parties, subject to reasonable rights of visitation in and for Defendant, which visitation rights are hereby defined as follows:

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- A. One-half of the Christmas holiday.
- B. One-half of the Thanksgiving holiday.
- C. Alternating visits on every other holiday.
- D. Every other birthday.
- E. Each Father's Day.
- F. One month summer visit for each child when age 4 or less.
- G. Five week summer visit for each child when age 5.
- H. Six week summer visit for each child when age 6.
- I. Every other weekend from 6:00 p.m. Friday to 6:00 p.m. Sunday.

3. As long as Defendant is drawing unemployment compensation in the amount above indicated he should pay the sum of \$100.00 per month per child as support money, payable one-half on the 1st and one-half on the 15th days of each month beginning on the 1st day of December, 1985. At such time as Defendant becomes gainfully employed whereby he produces income approximating that customarily earned by him as above indicated, such support should be increased to the sum of \$185.00 per month per child.

4. Plaintiff should be awarded alimony in the amount of \$1.00 per month, commencing on the 1st day of December, 1985, and continuing for a period of three years or until the Plaintiff remarries or cohabits with another person of the opposite sex, whichever event first occurs; provided that should the Defendant become employed in his usual employment, the Court should review the matter of alimony upon petition being filed for that purpose.

5. Plaintiff should be awarded the following personal property:

- (A) Bed
- (B) Cedar Chest
- (C) Children's beds and children's items.
- (D) Large dresser which Plaintiff had before marriage
- (E) Two tall 5 drawer dressers
- (F) Small 3 drawer dresser

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- (G) Rocking chair
- (H) Television
- (I) Plaintiff's tapes and records
- (J) Camera
- (K) The 1983 Ford car and the motorcycle, subject to the indebtedness thereon;
- (L) The Delta gift shop subject to the lease obligation incident thereto.

6. Defendant should be awarded the following personal property:

- (A) 3 antique dressers and dresser now in Defendant's possession
- (B) Stereo
- (C) Other items in house which Defendant owned before marriage
- (D) 1978 Ford truck, subject to the indebtedness thereon
- (E) Horse
- (F) Water stock
- (G) Washer and Dryer, subject to Plaintiff's use thereof for the period hereinafter indicated.
- (H) Defendant's tapes and records

7. Plaintiff should assume and pay the following debts and hold the

Defendant harmless from liability thereon:

- (A) The obligation to Zions Bank.
- (B) The rental obligation on the Delta gift shop.
- (C) Any debts separately incurred by her since the separation of the parties.

8. Defendant should assume and pay the following debts and hold the

Plaintiff harmless from liability thereon:

- (A) Fillmore Hospital
- (B) Nephi Hospital
- (C) Payson Hospital
- (D) Commercial Credit
- (E) Scipio Garage
- (F) Valley Bank
- (G) Eva Meeker
- (H) Any other debts incurred during the marriage except as specifically ordered to be paid by Plaintiff
- (I) Any debts separately incurred by him since the separation of the parties.

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9. That the real property interest of the parties, including the contracts, should be awarded to the Defendant, provided that the Plaintiff should be entitled to reside in said premises and have the use of the washer and dryer therein until June 1, 1986, at which time Plaintiff should vacate said premises; provided further that during the period of her occupancy, the Plaintiff should be responsible for payment of utility charges incurred during such period.

10. That each party should be required to promptly execute and deliver such documents as may be necessary or appropriate to accomplish transfer and disposition of the assets above noted. In any event, appropriate legal descriptions of the various properties, both real and personal, should be included in the decree of divorce to be entered pursuant hereto.

11. The Utah State Department of Social Services claims the sum of \$1,500.00 from Defendant for public assistance provided to Plaintiff and said minor children through the month of November, 1985, which claim Defendant denies, and said issue should be reserved for future litigation. However, said Department is and shall be authorized to withhold and deliver earnings according to law in the event of Defendant's default in payment of any judgment awarded for support expenditures or for any future support obligation.

12. That Defendant should pay to Plaintiff as attorney's fees the sum of \$500.00 plus costs of Court incurred.

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13. That by reason of the protracted separation of the parties, their estrangement, the length of the marriage and the unlikelihood of reconciliation, the decree of divorce herein should become final upon entry thereof.

14. Medical and dental health insurance coverage for the parties' minor children should be provided by the parties, or the expenses therefor otherwise satisfied by them, as follows:

A. Both Plaintiff and Defendant should procure and maintain such insurance when and so long as offered to her or him as a fringe benefit pursuant to their employment.

B. If neither party can obtain such insurance as a fringe benefit through her or his employment, then each should obtain same through their employment, if offered, and pay the premium expense therefor as a wage or salary deduction.

C. If neither party can obtain such insurance through employment, either as a fringe benefit or by paying for same, then Defendant should obtain such insurance and maintain same by the purchase of a private policy therefor, and the premium expense in that regard should then be satisfied equally by the parties.

D. All expenses for medical and dental care for said minor children which are not covered by insurance should be satisfied equally by the parties.

DATED this 22 day of January, 1986.

BY THE COURT

/s/
CULLEN Y. CHRISTENSEN, District Judge

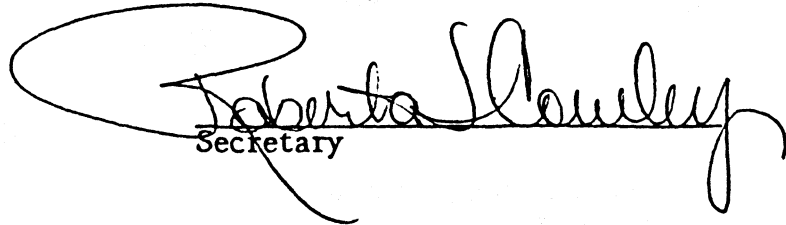
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MAILING CERTIFICATE

I herewith and hereby certify that a copy of the foregoing FINDINGS
OF FACT AND CONCLUSIONS OF LAW was placed in the United States mail at
Richfield, Utah, with first-class postage thereon fully prepaid, this 9th
day of January, 1986, addressed as follows:

Richard K. Glauser, Esq.
McKAY, BURTON & THURMAN
Suite 1200 - Kennecott Building
Salt Lake City, Utah 84133


Secretary