

1996

# Jetta Ann Pearson Davie v. Craig Vernon Davie : Brief of Appellant

Utah Court of Appeals

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BRIEF

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DOCKET NO. 960096-CA

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IN THE UTAH COURT OF APPEALS

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JETTA ANN PEARSON DAVIE, :

Plaintiff and :  
Appellee, :

Appeal No. 960096-CA

vs. :

CRAIG VERNON DAVIE, :

Defendant and :  
Appellant. :

Trial Court No. 94-CV-29

Honorable J. Philip Eves

Priority No. 15

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BRIEF OF APPELLANT

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APPEAL FROM DECREE OF DIVORCE OF THE DISTRICT COURT OF THE FIFTH  
JUDICIAL DISTRICT IN AND FOR BEAVER COUNTY, STATE OF UTAH

---

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FILED

JUN 24 1996

COURT OF APPEALS

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	:	Honorable J. Philip Eves
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### JURISDICTIONAL STATEMENT

The District Court of the Fifth Judicial District in and for Beaver County, Utah issued a Decree of Divorce in this matter on December 21, 1995. Appellant timely filed his notice of appeal on April 5, 1996. Jurisdiction in this appeal is proper pursuant to Utah Code Ann. Section 78-2a-3(2)(i) (1996).

### STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether the trial court properly considered a leasehold interest in 277 acres of sagebrush land as a marital asset worth \$90,000, where Appellant's mother gave Appellant, during his marriage to Appellee, a forty-year lease, which specifically prohibited any assignments or sublets, for the exclusive and mandatory use of farming and decades of farming activities on the land had proven unprofitable?

When determining a trial court's assigned value for marital assets, appellate courts apply an "abuse of discretion" standard. Shepard v. Shepard, 867 P.2d 429, 433 (Utah App. 1994); Hill v. Hill, 869 P.2d 963, 966 (Utah App. 1994).

II. Whether the trial court properly imputed Appellant with an income of \$1,500 a month for the purpose of computing child support payments when Appellant's current and historical earnings were less than \$1,000 per month.

The question of whether a trial court properly awarded child support payments is an "abuse of discretion" standard of

appellate review. Woodward v. Woodward, 709 P.2d 393, 394 (Utah 1985).

III. Whether the trial court's award of visitation rights to Appellant was proper when Appellant's right to overnight visitation with his teenage sons is conditioned on Appellant not having his cohabitant and her two small children spend the night in his home.

The trial court's grant of visitation rights is an "abuse of discretion" standard for appellate review. Watson v. Watson, 837 P.2d 1, 4 (Utah App. 1992).

#### **DETERMINATIVE LAW**

Utah Code Annotated Section 78-45-7.5(7) (Supp. 1995) provides, in relevant part, that:

- (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed or a hearing is held and a finding made that the parent is voluntarily unemployed or underemployed.
- (b) If income is imputed to a parent, the income shall be based on the employment potential and probable earnings as derived from work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community.
- (c) If a parent has no recent work history, income shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative hearing shall enter specific findings of fact as to the evidentiary basis for the imputation.

## STATEMENT OF THE CASE

### *A. Nature of the Case*

Trial on this divorce matter was held before Judge J. Philip Eves on January 10-11, 1995. Judge Eves entered a Memorandum Decision on June 19, 1995, and issued a final Decree of Divorce on December 20, 1995.

This appeal is a divorce matter that raises issues regarding the definition and valuation of marital assets, the imputation of income to determine the appropriate amount of child support award and the rights of a father to overnight visitation with his teenage sons.

### *B. Statement of Facts*

1. Appellant's mother, Rosemary Bowman, gave Appellant a forty year lease on 277 acres of sagebrush land (the "Goodwin Lease") on April 27, 1984. (R. at 292DY-EC, 1110-15, 1221.) The Goodwin Lease named only Appellant, Mr. Craig Davie, as lessee and does not mention Appellee, Ms. Jetta Davie. (R. at 292DY-EC, 1111.) The Goodwin Lease proscribes all assignments and sublets. (R. at 292EA, 1112.) The Goodwin Lease automatically terminates on several occurrences, including five years after Appellant's death. (R. at 292DY-EC, 1111.)

2. Before Appellant began farming the Goodwin Farm, Mr. Clifford Cook farmed the Goodwin Farm for twenty years and never made a profit. (R. at 1403-04.) Appellee testified that the Goodwin Farm pays the expenses to run the farm and there was

never any profit from the operations. (R. at 1182.) Appellant testified that he has historically operated at a loss in farming the Goodwin Farm. (R. at 1301, 1306.) All of the witnesses at trial seemed to agree that farming was "an expensive hobby." (R. at 1367.)

3. Judge Eves found that although the Goodwin Lease was solely in Appellant's name, Appellee "had been helping to farm the property and had developed considerable sweat equity therein." (R. at 801; 1559.)

4. Appellant offered her opinion that Goodwin Lease was worth \$244,100. (R. at 1025-26.) Appellant assumed that the \$30 per acre per year that she was paying to lease the 13 Mile Farm was a fair value for the Goodwin Farm also. (R. at 1026.)

5. In his Memorandum Decision, Judge Eves fixed the value of the Goodwin Lease "at \$3,000 per year X 30 years, which equals a total current value of \$90,000." (R. at 699.) When later asked about discounting the stream of payments to present value, Judge Eves responded that the \$90,000 figure was already discounted to present value but "[i]t just isn't included in the calculation." (R. at 1558.)

6. The trial court awarded the Goodwin Lease to Appellant as a joint marital asset at a "current" value of \$90,000. (R. at 801.) In addition to the "\$90,000" Goodwin Lease, Appellant was awarded \$57,069 in other marital property

for a total value of \$147,069.00. (R. at 803.) Appellee was awarded \$121,450.00 which included the parties' house and the Kirk/13 Mile Farm, a 640 acre farm owned in fee simple with an additional 130 acres subject to a leasehold interest that Judge Eves valued at \$40,000. (R. at 787, 803.)

7. Judge Eves awarded Appellant a larger share of the marital debt "in view of the fact that [Appellant] received a higher value of the marital property." (R. at 808.) Appellee was assigned debts totalling \$74,651.63; Appellant was assigned marital debt totalling \$105,821.45. (R. at 807.)

8. Appellant's historical earnings were less than \$10,000 per year for several years preceding divorce. (R. at 1060-63.) Judge Eves imputed Appellant with a monthly income of \$1,500 and used that figure to compute Appellant's child support obligation of \$384.60 per month. (R. at 752.)

9. Judge Eves awarded Appellant with "liberal and reasonable" rights of visitation with his teenage sons. (R. at 782.) However, Judge Eves conditioned Appellant's right to overnight visitation with the following: "It is not appropriate for the boys to visit in the home of [Appellant] when Grace McFall and her two children are spending the night there." (R. at 782-83.) Ms. McFall is both an employee and cohabitant of Appellant who had been residing with Appellant for almost fourteen months when the Decree of Divorce was entered. (R. at 1415-17.)

### SUMMARY OF ARGUMENTS

Appellant is entitled to reversal of the Decree of Divorce on at least three independent grounds: (1) Judge Eves failed to provide any detailed, specific findings on his financial determination of the value of the Goodwin Farm Lease and his inclusion of it as a joint marital asset; (2) Judge Eves erroneously imputed Appellant with a monthly income substantially higher than his historical earnings; and (3) Judge Eves improperly restricted Appellant's right to overnight visitations with his teenage sons.

### ARGUMENT

**I. Judge Eves Abused His Discretion by Including the Goodwin Farm Lease In Appellant's Apportionment of Marital Property at A Value of \$90,000.**

**A. The Goodwin Lease Is Not "Property."**

The term "property" is not defined in Utah's divorce code. Mortensen v. Mortensen, 760 P.2d 304, 305 (Utah 1988) ("'Property' is nowhere defined in our divorce code."). There is no Utah law on point to make the determination whether a lease is "property" for the purpose of the division of marital assets. The "Goodwin Lease" contains several unique characteristics that are not typically associated with a marital asset: (1) it automatically terminates if Appellant attempts to sublet or assign the premises; 2) it automatically terminates if Appellant does not consistently farm the land with the best course of husbandry practiced in the geographical vicinity; (3) it

automatically terminates five years after Appellant's death; (4) Appellant is required to make an annual rental payment; and (5) the lessor reserved the right to give five acres of the premises to each of Appellant's brothers and sisters. (R. at 292DY-EC, 1110-14.)

**B. The Goodwin Lease Is Not A Joint Marital Asset.**

To the extent that the Goodwin Lease is property, if indeed it is property, it should not be considered a marital asset because the Lease was given to Appellant during the course of the marriage. Appellant's mother, Ms. Rosemary Bowman, as lessor, leased the Goodwin Farm to Appellant for forty years for an annual rental payment of One Dollar (\$1.00) per year. (R. at 292DY.) The Lease names Craig Davie alone as "lessee" and makes no mention of Appellee. (R. at 292DY, 1111.) Hence, to the extent that the Goodwin Lease can be considered property, it can be considered a gift to Appellant from his mother.

Although trial courts have wide discretion in property divisions, the general rule is to award the gift to the donee and to divide the remaining property so that the donee does not lose the benefit of his or her gift. Mortensen, 760 P.2d at 307-08. "[T]he donee or heir spouse should not lose the benefit of his or her gift or inheritance by the trial court's automatically or arbitrarily awarding the other spouse an equal amount of the remaining property which was acquired by their joint efforts to offset the gifts or inheritance." Id. Judge Eves grossly



offset the division of marital property and grossly distorted the equitable division of property between the parties by awarding Appellant the Goodwin Lease as a joint marital asset with a court-imposed value of \$90,000.

Judge Eves stated that he considered the Goodwin Lease as marital property due to Appellee's "sweat equity" in her assistance farming and repairing the property after a flood. (R. at 1559.) See Mortensen, 760 P.2d at 308 (noting an exception to the general rule of awarding gifts to donee party when the other spouse has by her efforts contributed to the enhancement or maintenance of that property). If the Goodwin Lease is indeed "property," then it should be treated in a similar manner to other marital assets. For instance, the labors performed by Appellee on the Goodwin Farm were in essence similar to the labors that she performed on the parties' Cow Hollow property. After Appellee requested that Cow Hollow be considered a joint marital asset, but Judge Eves stated the following:

[Appellee] has argued that she acquired marital property rights by virtue of her labor on the [Cow Hollow] property through the years of the marriage. The Court disagrees. The plaintiff enjoyed the use of the property along with the rest of the family and as part of that use participated in maintenance and improvements. The Court finds that the labors performed were not inconsistent with the family use of the property and created no marital right in the plaintiff.

(R. at 688-89.) Appellee's labors on the Goodwin Farm were consistent with family use of the property. Had the family earned any profits from the Goodwin Farm, Appellee would have "enjoyed" those profits along with the rest of the family. Appellee performed labors on both properties that were consistent with maintenance and enhancements of the property. After a flood on the Goodwin Farm, Appellee assisted Appellant and others in the installation of a new irrigation system. (R. at 801.) Appellee also performed routine farming labors on the Goodwin Farm which were consistent with the family's "expensive hobby." Judge Eves' reasoning denying Appellee a "sweat equity" interest in the Cow Hollow property should apply with equal force in denying Appellee a joint marital interest in the Goodwin Farm Lease.

**C. Judge Eves Erroneously Overvalued the Goodwin Lease.**

The trial court artificially inflated the value of the Goodwin Farm Lease by setting a mere leasehold interest in the property at a "current" value of \$90,000. By comparison, the Kirk/13 Mile farm contains 640 acres of land that is owned in fee simple with a leaseback interest in an additional 130 acres. (R. at 787, 803.) The Kirk/13 Mile Farm is over double the size of the Goodwin Farm, is comparable in other respects, has an income-generating gravel pit (R. at 1313), and the trial court placed its value at \$40,000--only 44% of the value it placed on the

leasehold interest in the 277 acre Goodwin Farm.<sup>1</sup> By overvaluing the Goodwin Farm Lease and awarding it to Appellant, Judge Eves has grossly misapportioned the remaining marital assets and debts. Exclusive of the Goodwin Lease, Judge Eves awarded Appellant with only 32%<sup>2</sup> of the marital assets and 59%<sup>3</sup> of the total marital debt. (R. at 803-05.) As a general rule, marital property should be shared equally between the parties unless unusual circumstances, memorialized in adequate findings, require otherwise. Hall v. Hall, 858 P.2d 1022 (Utah App. 1993) (citing Burt v. Burt, 799 P.2d 1166 (Utah App. 1990)). Judge Eves abused his discretion by setting the value of the Goodwin Lease at \$90,000 and using it to unfairly distribute the marital debts and assets. See Hall, 858 P.2d at 1022 (stating that trial courts must distribute property between the parties to a divorce in a fair, systematic fashion); Erickseon v. Wasatch Manor, Inc., 802 P.2d 1314, 1323 (Utah App. 1990) (stating that each party is

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<sup>1</sup> \$40,000 divided by \$90,000 equals forty-four percent.

<sup>2</sup> Appellant was awarded assets valued at \$57,069 plus the Goodwin Lease. Appellee was awarded assets valued at \$121,450 for a combined total marital assets of \$178,519 plus the Goodwin Lease. Exclusive of the Goodwin Lease, Appellant's \$57,069 value of assets divided by the total marital asset value of \$178,519 equals thirty-two percent of the total value of assets.

<sup>3</sup> Appellant was awarded \$105,821.45 of the marital debt. Appellee was awarded only \$74,651.63 of the marital debt, for a combined total of \$180,473.08 of marital debt. Appellant's apportionment of \$105,821.45 divided by the total debt, \$180,473.08 equals fifty-nine percent of the total marital debt awarded to Appellant.

presumed to be entitled to all of his separate property and fifty percent of the marital property).

The Memorandum Decision states that the "Court fixes the value of the [Goodwin] lease at \$3,000 per year X [times] 30 years,<sup>4</sup> which equals a total current value of \$90,000." (R. at 699.) Other than this statement, Judge Eves failed to enter any specific, detailed findings supporting his financial determination of the value of the Goodwin Farm Lease. Judge Eves provided no findings as to how he reached the value of \$3,000 per year. Judge Eves abused his discretion by failing to include finding that were "sufficiently detailed" and failed to "include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached." Hall v. Hall, 858 P.2d 1018, 1021 (Utah App. 1993) (quoting Hansen v. Hansen, 736 P.2d 1055, 1056 (Utah App.), cert. denied, 765 P.2d 1277 (Utah 1987)). In Hall, the Court specifically stated that the "trial court abuses its discretion when it fails to enter specific, detailed findings supporting its financial determinations." Hall, 858 P.2d at 1021. Judge Eves' valuation of the Goodwin Farm Lease should be reversed due to the lack of

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<sup>4</sup> Judge Eves' calculation was also erroneous in that the Goodwin Farm Lease term had less than 28 years remaining when the Decree of Divorce was entered. The forty year Lease term runs from March 1, 1983 until February 28, 2023. The Decree of Divorce was entered on December 21, 1995; the Lease term only had 27 years and two month remaining when the Decree of Divorce was entered.

sufficient findings. Gardner v. Gardner, 748 P.2d 1076, 1078 (Utah 1988) (reversing the valuation of medical assets and remanding for reconsideration of the distribution of marital assets based on the trial court's "sparse" findings of fact on valuation issues).

Additionally, even using his own figures, Judge Eves still failed to discount a \$3,000 stream of payments over thirty years to its present value.<sup>5</sup> See Gardner v. Gardner, 748 P.2d 1076, 1078 (Utah 1988) ("Regardless of how remote the full value of an asset is, it still has present value."). See also In re Continental Airlines, Inc., 134 Bankr. 536, 538 (Del. 1991) ("The parties agree the value of the leasehold is the difference between the fair market rent . . . and the below market rent payable under the Lease Agreement, **discounted to present value.**"); County of Los Angeles v. Kling, 99 Cal. Rptr. 642, 647 (Cal. Ct. App. 1972) (granting a new trial on issue of the valuation of a leasehold interest). The Goodwin Farm Lease, in and of itself, produces no income--and the evidence showed that farming activity on the Goodwin Farm also didn't produce any income. (R. at 1182, 1301, 1306, 1403-04.) The Lease on the Goodwin Farm contains language of invalidation and expressly

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<sup>5</sup> According to generally accepted accounting principles, a stream of payments of \$3,000 per year for thirty years equals a present value of \$30,820.96 at a 9% interest rate. These computations were provided to Appellant by the accounting firm of Hansen, Steed, Bradshaw & Malmrose in Salt Lake City, Utah.

provides that the property cannot be assigned or sublet. (R. at 292EA.) In essence, the Goodwin Farm is nothing more than an expensive hobby for Appellant, who forfeits the Goodwin Lease if he chooses to cease his farming activities. All witnesses agreed that no profit has ever been realized from farming the Goodwin property. (R. at 1182, 1301, 1306, 1403-04.) Hence, Judge Eves' value of \$90,000 for the Goodwin Lease is not supported by the evidence.

Judge Eves' derived the \$30 per acre per year rate from Appellee's testimony:

Q. An we have talked about Cow Hollow. We've talked about the Goodwin Farm also, which is number 33. It looks like there is another mistake. You put a value earlier on the Goodwin Farm of \$244,100, and now we've got items 33 and 34 that shows \$5,070 per year on 33 and \$2,400 per year on 34.

A. I think --

Q. What are those figures?

A. We simply divided it up in -- into what we thought the value of that property would be if someone were to take over that lease for a year.

Q. I see.

A. And we priced it at the same thing that Smithfield had leased the 13-Mile farm to me for a year, which was \$30 per acre. And I'm assuming that's a fair value for -- for the Goodwin Farm too.

(Emphasis added.) (R. at 1024-25.) Appellee's counsel later admitted that Appellee failed to discount her value of the Goodwin Farm to present value. (R. at 1113-14). As already discussed above, the Goodwin Lease' true value, if any, is substantially below Appellee's figures due to the substantial

restrictions the Lease places on Appellant's use of the Goodwin premises. (R. at 242DY-EC.) Judge Eves' reliance on Appellee's mistaken testimony as his sole basis for his valuation of the Goodwin Farm was an abuse of discretion and led to his compounding the Appellee's errors and misunderstanding of the concept of present value. (R. at 801, 1113-14, 1558.)

Furthermore, the Goodwin Farm is a marital asset only to the extent that it is an asset. The Goodwin Farm Lease is not an asset because it does not produce any discretionary income. Testimony at trial established that the parties had consistently lost money on their farming activities and in this respect, the Goodwin Farm Lease may even be considered a debt. Also, any potential future profits from the Goodwin Farm would be derived from Appellant's own hard labor. See Erickseon v. Wasatch Manor, Inc., 802 P.2d 1314, 1323 (Utah App. 1990) (noting that future income conditioned on personal services is not a marital interest). All of the testimony at trial showed that any income derived from farming operations on the Goodwin Farm must necessarily be reinvested back into it. (R. at 1182, 1301, 1306, 1403-04.)

In valuing the Lease on the Goodwin Farm, Judge Eves should have first obtained an appraisal of the property's value if owned in fee simple, for the "total value of all interests cannot exceed the value of the property as a whole." State Road Comm'n v. Brown, 531 P.2d 1294, 1296 (Utah 1975). Furthermore,

the trial court failed to consider the terms and restrictions on the Goodwin Lease. For instance, the fact that the lessee cannot assign or sublet the premises and must farm the property severely decreases the value of the Lease (R. at 292DY-EC), especially when farming operations on the Goodwin Farm are historically unprofitable.

**II. Judge Eves Abused His Discretion In Imputing Appellant's Monthly Income To Be \$1,500.**

The trial court erred in imputing an income of \$1,500 a month to Appellant. The evidence at trial proved that Appellant had been earning less than \$1000 per month for the past four years. (R. at 1060-63.) In Hill v. Hill, 869 P.2d 963, 966 (Utah App. 1994), the Utah Court of Appeals stated that:

[T]he court may not, however, impute income to a parent for the purpose of determining the appropriate level of child support unless the parent either stipulates to the amount imputed or there is a hearing in which the finding is made that the parent is voluntarily unemployed or underemployed. Utah Code Ann. § 78-45-7.5(7)(a).

(Emphasis added.) Appellant neither stipulated to an imputed monthly income of \$1,500, nor was he given a hearing where a finding was made that Appellant was underemployed. In fact, Appellee testified at trial that Appellant had been earning approximately the same income their entire married life. (R. at 1062.) Utah Code Ann. Section 78-45-7.5(b) (Supp. 1995) provides that "[i]f income is imputed to a parent, the income shall be based on the employment potential and probable earnings as



derived from work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community." Appellant's work history and occupational qualifications were related to farming operations. Appellant had been farming for several years before the divorce and he never earned over \$1,000 a month income. (R. at 1062.) Furthermore, Judge Eves did not receive any evidence regarding the "prevailing earnings for persons of similar background in the community," nor did he "enter specific findings of fact as to the evidentiary basis for imputation" as provided in Utah Code Ann. Section 78-45-7.5(c) (Supp. 1995). Judge Eves' failure to make the findings required by Section 78-45-7.5 alone justifies a reversal of his determination on imputation of income. Hall v. Hall, 858 P.2d 1018, 1026 (Utah App. 1993).

In Hall, the trial court imputed income to a husband for the purposes of calculating child support and alimony. The trial court failed to make findings that the husband was voluntarily underemployed and failed to make explicit or implicit findings concerning prevailing earnings for persons in similar backgrounds. In Hall, the husband had earned \$100,000 per year for the three years preceding divorce. Ten days before trial, the husband in Hall began a new job earning only \$40,000 per year. The trial court imputed the husband with a historical income of \$98,499 per year and was reversed on appeal for an

abuse of discretion for failing to comply with the statutory requirements of Section 78-45-7.5. Hall, 858 P.2d at 1023-1026.

The facts of this case are much more egregious than those in Hall. In Hall, the court looked to the past three years of earnings and imputed an income based on that amount. In this case, Judge Eves considered Appellant's past three years earnings and imputed an income over 150% greater than Appellant's historical earnings. Hence, Judge Eves' imputation of additional income in the absence of evidence to support such imputation was improper. See Bohnsack v. Bohnsack, 586 N.Y.S.2d 369 (N.Y. App. Div. 1992). See also Cox v. Cox, 877 P.2d 1262, 1267-68 (Utah App. 1994) (stating that trial courts have appropriately relied on historical income as a basis of imputing a spouse's income).

**III. Judge Eves Abused His Discretion By Denying Appellant the Right to Overnight Visitations In His Home With His Sons.**

Judge Eves restricted Appellant's overnight visitation rights with his 15 year-old twin sons in that the Court found:

[I]t is not appropriate for the boys to visit in the home of the defendant when Grace McFall and her two children are spending the night there. Sheb and Seth have expressed discomfort with visiting overnight when their father is entertaining Ms. McFall overnight. That situation is to be avoided during overnight visitations. The defendant is further awarded such liberal and reasonable visitation rights as may be worked out between the parties in advance.

(Emphasis added.) (R. at 685.) At trial, however, Sheb and Seth never expressed such discomfort with visiting Appellant overnight. Seth testified as follows:

Q. Do you have any difficulties visiting with your father?

A. No. Not -- huh-uh.

Q. Do you have any difficulties with one Gracie McFall?

A. Yes. A little.

Q. What is the difficulty there, if any?

A. I just like to visit with my father. Just him.

Q. Is that a personal preference on your part?

A. Yes.

(R. at 1502.) Seth did not even mention overnight visits. He testified that he likes to visit with his father alone -- one on one. Such testimony may justify the trial court to make a finding that the boys ought to visit their father one at a time, but certainly does not support a finding that the boys have "expressed discomfort with visiting overnight when their father is entertaining Ms. McFall overnight."

Similarly, Sheb's testimony also made no mention of overnight visits when Ms. McFall was present. Sheb testified as follows:

Q. Is there anyone that lives in [Appellant's] mobile home with him?

A. I -- not that I know of. Just Gracie --

Q. Okay.

A. -- and her kids.

Q. Do you have any problem in being in the mobile home with Gracie and her children?

A. I don't like it. I don't.

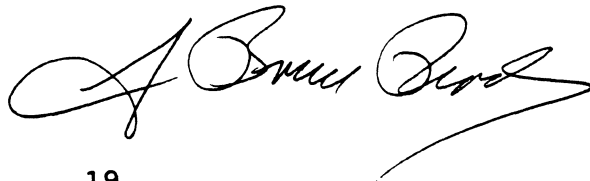
(R. at 1495.) Sheb's testimony did not draw any distinction between daytime and nighttime visits to Appellant's home. Judge Eves finding was not that the boys could not visit Appellant's home when Ms. McFall was present, rather Judge Eves ruled that only overnight visitations were barred when Ms. McFall was present. Despite the boys' testimony, Judge Eves awarded Appellant "liberal" visitation rights. The Record provides no evidentiary basis for Judge Eves' finding concerning overnight visits.

#### CONCLUSION

Based on the foregoing points and authorities, Appellant hereby respectfully requests that this Court reverse the trial court's Findings of Fact and Decree of Divorce and remand for further proceedings. First, Judge Eves' overvaluation of the Goodwin Lease led to an inequitable distribution of marital debts and assets. Judge Eves failed to make sufficient findings to support his financial determinations. Second, Judge Eves erroneously imputed Appellant with a monthly income 150% greater than his historical earnings. Finally, Judge Eves inappropriately restrained Appellant's right to overnight visitations with his teenage sons.

DATED this 19 day of June, 1996.

SCALLEY & READING

A handwritten signature in black ink, appearing to read "J. Bruce Scalley", with a long, sweeping horizontal line extending to the right.

Mailing Certificate

I hereby certify that I mailed, postage prepaid, two  
(2) true and exact copies of the foregoing Brief of Appellant to  
the following party on the 24<sup>th</sup> day of June, 1996:

Willard R. Bishop  
Attorney at Law  
36 North 300 West  
P.O. Box 279  
Cedar City, Utah 84721-0279

Wesley D. Hutchinson

### ADDENDA

- Addendum "A": Memorandum Decision, Dated June 19, 1995
- Addendum "B": Findings of Fact and Conclusions of Law Dated December 21, 1995
- Addendum "C": Decree of Divorce Dated December 21, 1995
- Addendum "D": Relevant Portions of Reporter's Trial Transcript Dated January 10, 1995
- Addendum "E": Relevant Portions of Reporter's Trial Transcript Dated January 11, 1995
- Addendum "F": Relevant Portions of Reporter's Hearing Transcript Dated September 6, 1995



**Addendum "A": Memorandum Decision, Dated June 19, 1995**



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
IN AND FOR BEAVER COUNTY, STATE OF UTAH

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JETTA ANN PEARSON DAVIE, )

Plaintiff, )

vs. )

CRAIG VERNON DAVIE, )

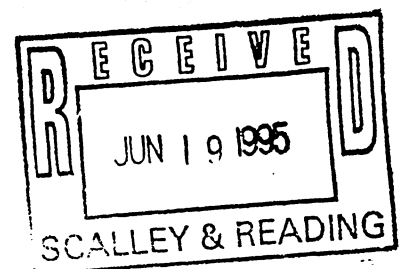
Defendant. )

**MEMORANDUM DECISION**

Civil No. 94-CV-29

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The above-entitled matter came before the Court for Trial on January 10th and 11th, 1995, in Beaver County. The parties were present and represented by their respective counsel, Willard R. Bishop representing the plaintiff and J. Bruce Reading representing the defendant. The Court heard evidence presented by both parties and at the end of the second day, due to the lateness of the hour, the parties requested to be allowed to submit their arguments in writing. A schedule for submission of the arguments was set and the Court took the matter under submission pending the filing of the arguments. Thereafter on May 23, 1995, plaintiff filed a Notice of Readiness for Decision. The Court having now reviewed the submissions of the parties hereby enters the following Memorandum Decision and Orders.



## DIVORCE

The Court finds that jurisdiction and venue have been established. That the plaintiff is entitled to a divorce from the defendant upon the grounds of irreconcilable differences.

## CUSTODY OF MINOR CHILDREN

The plaintiff seeks custody of the parties' two minor children, Sheb and Seth Davie. The twins are now approximately 15 years of age. The defendant, on the other hand, agrees that the plaintiff should be the physical custodian on the children but seeks an award of joint legal custody. Section 30-3-10.2 U.C.A. set outs the factors for the Court to consider in determining whether or not a joint legal custody order is appropriate.

It provides as follows:

- "1. The court may order joint legal custody if it determines that joint legal custody is in the best interest of the child and:
- (a) both parents agree to an order of joint legal custody; or
  - (b) both parents appear capable of implementing joint legal custody."

The Court is well aware of the intense hostility and lack of cooperation that the parties have exhibited toward one another during these proceedings. The parties have not agreed to an order of joint legal custody and it appears evident to the Court that the *parties are not capable of implementing a joint custody order as they are unable to cooperate in any aspect of their dealings*. The Court therefore determines that it would not be in the best interests of Sheb and Seth to place them in a joint legal custody

situation. Accordingly the Court orders custody of the two minor children to the plaintiff, it appearing that she has been the primary caretaker of the children.

### **VISITATION**

The defendant should be, and hereby is, awarded reasonable rights of visitation as provided in § 30-3-35 U.C.A. Said visitation is conditioned upon the defendant's compliance with the following orders:

a. The visitation is to be arranged so that it does not unnecessarily or unreasonably interfere with the school and work activities of the boys.

b. The defendant's right to overnight visitation is conditioned upon providing suitable living quarters for the boys during the visit. The Court specifically finds that it is not appropriate for the boys to visit in the home of the defendant when Grace McFall and her two children are spending the night there. Sheb and Seth have expressed discomfort with visiting overnight when their father is entertaining Ms. McFall overnight. That situation is to be avoided during overnight visitations. The defendant is further awarded such other liberal and reasonable visitation as may be worked out between the parties in advance.

### **CHILD SUPPORT**

The defendant is ordered to pay to plaintiff child support in accordance with the Child Support Guidelines. The Court specifically imputes to the defendant income at the rate of \$1,500.00 per month. Although the defendant has testified that he does not earn

that much, the Court is of the opinion that he is capable of earning that much and imputes that amount to him as his earning ability. The Court further imputes to the plaintiff income in the amount of \$1,000.00 per month.

The Court further determines that the tax deductions for the children are to be split equally, one to each of the parties, it appearing that the income and ability to produce income of the parties are roughly equal and that each could equally benefit from an income tax deduction.

#### **ALIMONY**

Neither party has requested alimony in this case as both are healthy, able-bodied adults and capable of generating their own support. No alimony is awarded to either party except that the defendant is ordered to assume and pay the debts which the Court will assess to him hereafter in lieu of alimony.

#### **PROPERTY DIVISION**

The Court has spent considerable days in reviewing the testimony given at trial as well as the written arguments submitted by the parties. From those sources the Court now awards the following property to the following parties. No value is affixed to those items which the Court finds are pre-marital property as the value of those items appears to be irrelevant. The Court has assigned no value to those items which were divided equally between the parties as it appears that those values would balance out. The Court has assigned values to those items which were awarded to one party or the other

or where there was an unequal division of the asset so that the comparative awards may be judged.

For ease of reference the Court will refer to the items as they are numbered in the plaintiff's *Summary Of Positions Of The Parties, And Argument* which document was the original document submitted as written argument. Reference is made to the plaintiff's argument only because the plaintiff lists items in addition to those listed in the defendant's argument and list them in a slightly different order.

#### PRE-MARITAL PROPERTY

The Court will first list those items awarded to each party as pre-marital property.

Pre-marital property awarded to the plaintiff is as follows:

1. 250 cc Honda Motorcycle
2. 175 cc Kawasaki/Yamaha Motorcycle
3. Rototiller
4. Antique Sewing Machine
5. Newer Sewing Machine
6. Hope Chest from the Master Bedroom
7. Bunkbeds
8. Single Bed
9. Full Bed
10. Double Bed
11. Bosch Bread Machine
12. Wheat Grinder
13. Piano
14. Electric Keyboard
15. Small colored Television with doors
16. Stereo
17. White tin shed
18. Couch & loveseat
19. Rocking Chair

20. One Meat Saw
21. 1974 Ford Truck
22. Plaintiff's personal items stored in the railroad building
23. Plaintiff's personal items & pre-marital property stored in the rafters of the garage

The following pre-marital property is awarded to the defendant:

1. All interest in Cow Hollow
2. Fuel tank & stand
3. Portable Welder ✓
4. Banks' Life Annuity
5. Paul Revere Annuity
6. Woodburning Stove
7. Tool Chest
8. Settling Tanks & Carrier
9. One Meat Saw
10. Flatbed Trailer
11. 1972 Ford Truck ( and defendant is ordered to remove the truck from the plaintiff's property)
12. 250 cc Honda Motorcycle
13. 1961 Stock Truck
14. Antique Watch & Case
15. Motor Manuals
16. Fire Extinguisher in garage
17. Lika .35 MM Camera
18. Collection of Purple Bottles
19. Scrap Books and Pictures belonging to defendant (provided however that the plaintiff may obtain copies for herself if she so desires)
20. Defendant's pre-marital property stored in the rafters of the garage (and such personal items as may belong to him in that storage)
21. The red chainsaw

The Court specifically finds that Cow Hollow is the separate pre-marital property of the Defendant. Plaintiff has argued that she acquired marital property rights by virtue

of her labor on the property through the years of the marriage. The Court disagrees. The plaintiff enjoyed the use of the property along with the rest of the family and as part of that use participated in maintenance and improvements. The Court finds that the labors performed were not inconsistent with the family use of the property and created no marital property right in the plaintiff. The evidence clearly demonstrates that there has been no gift and no co-mingling so as to convert a clear piece of separate property to a marital asset.

#### MARITAL PROPERTY

The Court awards to the plaintiff as marital property the following items (the numerical references are to the numbers listed by the plaintiff in her written opening argument):

1. (Item # 2). Western Rock lease payments are to be used to pay directly to Dr. Prince for the care of the parties' minor children. After Dr. Prince is paid off, the remaining balance of the Western Rock Payments are to be equally divided between the parties. The Court affixes no value since it would be impossible to determine what the actual value will be after Dr. Prince has been paid.

2. (Item # 5). As agreed by the parties each party is awarded \$150.00 from the sale of hay to Mildred Loveridge.

3. (Item # 8). As agreed by the parties the Court awards the family home to the plaintiff. It appears from the evidence that the home was the plaintiff's prior to her

marriage to the defendant. However it also appears that the defendant has made significant contributions to the home in terms of a lump sum contribution as well as payments toward loan obligations. The Court heard evidence from the plaintiff that the current value of her home is \$51,000.00. The Court also heard evidence from an appraiser that the current value is \$78,000.00. The appraiser did admit that he was unable to find comparable sales in the Minersville area and used comparable sales from Beaver to establish his value. He also admitted that there were certain repairs and extensive termite damage that he had not considered at arriving at this value. The Court is of the opinion that the fair-market value is closer to the \$51,000.00 testified to by the plaintiff rather than the \$78,000.00 testified to by the appraiser. Accordingly the Court fixes the current value of the home at \$51,000.00.

The parties testified that there are currently liens totalling \$19,850.00 against the home, consisting of \$14,700.00 owed to Rosemary Bowman and \$5,150.00 owed to the plaintiff's parents. Thus the current equity in the home is \$31,150.00.

The plaintiff argues that some amount of the equity should be awarded to her as pre-marital property in view of the fact that she owned the home for several years prior to her marriage to the defendant. The Court is unable however to determine from the testimony presented what portion of the equity accrued prior to the marriage and what portion has accrued since March of 1978, when the parties were married. It also appears that the plaintiff and defendant have made various contributions to the home



from both marital and separate funds. The Court cannot determine by a preponderance of the evidence the exact nature or amount of the contributions. Therefore the Court finds that, because of co-mingling, the equity in the home is to be treated as marital property in its total. Therefore the Court awards the home to the plaintiff but fixes the value of that award at the total of the equity \$31,150.00.

4. (Item # 9) The newspaper building located in Milford, Utah, is awarded to the plaintiff with a value of \$6,000.00.

5. (Item # 12) The mineral range AUMS are awarded to the plaintiff with a value set at \$8,000.00.

6. (Items # 13, 14 and 15) The plaintiff is awarded a 1/4 undivided interest in the NADA Grazing Rights, including associated water rights and improvements.

7. (Item # 16) The Kirk/13-Mile Farm is awarded to the plaintiff with a value set at \$40,000.00.

8. (Item #17) The water rights owned by the parties are divided equally between them. In the event that the domestic water right cannot be divided, it is awarded to the plaintiff to be used with the Kirk Farm and one-half of the value of that right is to be paid by the plaintiff to the defendant as compensation.

9. (Item #18) The Minersville Range AUMS are awarded to the plaintiff. Value is fixed at \$1,350.00.

10. (Item #19) The gravel pit on the Kirk Farm is awarded to the plaintiff, the

value is included in the \$40,000.00 fixed for the farm hereinabove.

11. (Item # 20) The 13-Mile Farm Lease is awarded to the plaintiff with a value set at \$3,900.00.

12. (Item #23) The horse named Splash is awarded to the plaintiff in the value fixed in the amount of \$700.00. If the horse is not returned to the plaintiff within 30 days after this judgment is entered, the defendant shall pay to the plaintiff the cash equivalent of the value of the horse.

13. (Item #24) The horse named Blondie is likewise awarded to the plaintiff with a value set in the amount of \$700.00. The horse is to be returned to the plaintiff within 30 days of the entry of judgment herein. If the horse is not returned to the plaintiff within 30 days, the defendant shall pay to the plaintiff the cash equivalent of the value of the horse.

14. (Items #32, 33 and 34) The plaintiff is awarded 1/2 of the cows owned by the parties not previously sold or divided. The parties are to work out a mechanism for fair division of the cows. If the parties are unable to do so the Court will, upon motion of either party, hold a hearing to enter appropriate orders relating to the distribution of the cows.

In the event that either side is found to have taken more than his or her fair share of cows or to have secreted cows from the other party, it is the intent of the Court to enter an order requiring the offending party to pay to the other party double the value

of the cows secreted.

15. (Item # 35) The angus and hereford bulls are awarded to the plaintiff at the agreed value of \$2,000.00.

16. (Item # 43) The John Deere bailer is valued at \$2,500.00 and is awarded to the plaintiff.

17. (Item # 44) The John Deere 2280 Swather is awarded to the plaintiff with a value set at \$10,000.00.

18. (Item # 47) The two ruined engines are awarded equally to the parties. The 6 cylinder engine is awarded to the plaintiff and the 4 cylinder engine is awarded to the defendant. The values are deemed to be equal.

19. (Item # 48) The stationary welder is awarded to the plaintiff with values affixed at \$300.00.

20. (Item # 50) The John Deere chainsaw is awarded to the plaintiff with a value set at \$300.00.

21. (Items # 52 and 53) The air compressor and air tank are awarded to the plaintiff with a value for both pieces set at \$250.00.

22. (Item # 55) The various remaining farm tools consisting of shovels, rakes, hoes, pitchforks, etc., are awarded to the plaintiff with a value set at \$200.00.

23. (Item # 56) The 1979 Ford Courier Pickup is awarded to the plaintiff with a value set at \$500.00.

24. (Item # 59) The 1973 Mercury is awarded to the plaintiff with a value set at \$50.00.

25. (Item # 66) The 4-Horse Trailer is awarded to the plaintiff with a value set at \$1,000.00.

26. (Item # 70) Plaintiff's Utah State Retirement fund account is awarded to the plaintiff with a value set at \$1,400.00.

27. (Item # 71) The used freezer in the plaintiff's home is awarded to the plaintiff with a value set at \$100.00.

28. (Item # 72) The two used refrigerators found on the plaintiff's property are awarded to the plaintiff with a value of \$100.00 for both pieces.

29. (Item # 76) The four-drawer filing cabinet located in the plaintiff's home is awarded to the plaintiff. No value is fixed in view of the fact that the metal filing cabinet of equal value is going to be awarded to the defendant.

30. (Items # 79 and 80) The two lawnmowers are awarded to the plaintiff with values set at \$100.00 each for a total of \$200.00.

31. (Item # 82) A pre-fabricated saddle stand is awarded to the plaintiff with a value set at \$50.00.

32. (Item # 92) The plaintiff is awarded the washer and dryer with a value set at \$600.00 for both pieces.

33. (Item # 98) The plaintiff is awarded the microwave with a value set at

\$100.00.

34. (Item # 99) The plaintiff is awarded the dishwasher with the agreed upon value of \$200.00.

35. (Item # 106) The plaintiff is awarded the organ which is located in the family home. Its value is set at \$600.00 in recognition of the fact that the organ was at least partially paid for prior to the marriage of the parties.

36. (Item # 112) The small color television set is awarded to the plaintiff with a value fixed at \$50.00.

37. (Item # 117) The home computer, printer and programs are awarded to the plaintiff with a value set at \$500.00.

38. (Item # 118) The video cassette recorder is awarded to the plaintiff with a value set at \$50.00.

39. (Item # 119) The various VCR tapes in the plaintiff's home are awarded to the plaintiff with a value set at \$300.00, provided however that the defendant is to be allowed to copy any non-commercial tapes that he chooses.

40. (Item # 120) The camcorder is awarded to the plaintiff with a value set at \$100.00.

41. (Item # 122) The stereo cabinet is awarded to the plaintiff with a value set at \$50.00.

42. (Item # 123) The almond tin shed which is on a slab located on the real

estate surrounding the family home is awarded to the plaintiff. The value of that shed has been included in the price for the home fixed by the court.

43. (Item # 126) The kitchen utensils and luxury appliances, including the fire extinguisher in the kitchen, are awarded to the plaintiff with a value set at \$50.00.

44. (Item # 127) The couch in the basement of the marital home is awarded to the plaintiff with a value set at \$200.00.

45. (Item # 132) The plaintiff is awarded 1/2 of all CD's and cassettes owned by the parties at the time of their separation. The other 1/2 are awarded to the defendant. The parties are to divide the cassettes equitably between them. If they are not able to do so the Court will conduct a hearing for making the division upon notice by either side.

46. (Item # 133) The kitchen table and chairs are awarded to the plaintiff with a value fixed at \$250.00.

47. (Item # 134) The pictures, knick-knacks, clocks, collectibles and porcelain figures, etc., are awarded to the plaintiff with the value set at \$1,000.00.

48. (Item # 140) The post-hole digger which was purchased by the parties is awarded to the plaintiff with a value set at \$200.00.

49. (Item # 141) The poles owned by the parties at the time of the trial in this matter are divided 1/2 to each party.

50. (Item # 142) The grain barrel only, not including the trailer, is awarded to the plaintiff with a value fixed at \$200.00.

51. (Item # 143) The net wire owned by the parties at the time of their trial is divided equally between them.

52. (Item # 145) The acetylene torch now in the plaintiff's possession is awarded to her. No value is affixed since the Marquette torch is awarded to the defendant and the Court deems the two torches of equal value.

53. (Item # 146) The 35 mm Cannon camera is awarded to the plaintiff with a value set at \$100.00.

54. (Item # 151) The plaintiff is awarded her wedding ring set. The set was a gift to her during the marriage. No value is set since it is her separate property.

55. (Item # 162) The 1990 Dodge Dynasty is awarded to the plaintiff with a value set at \$6,000.00.

56. (Item # 169) Each party is awarded his or her own scrap books and pictures. Each party is authorized to obtain copies of any photographs retained by the other party.

57. (Item # 171) The two work tables are divided between the parties. The defendant is awarded the table which Sheb and Seth are not currently using for their reloading equipment. That table is awarded to the plaintiff. The Court deems the tables of equal value.

The Court will next list the marital property awarded to the defendant.

1. (Item # 1) The obligation owed to the parties by Ray Barnes is awarded to the defendant with a value set at \$375.00.

2. (Item # 3) The balance owed by Warren Gray for a hay purchase in 1993 is awarded to the defendant with a value set at \$750.00.

3. (Item # 4) The balance owed to the parties for a hay purchase by Mark Thompson in 1993 is awarded to the defendant with a value set at \$475.00.

4. (Item # 5) The balance owed for the Mildred Loveridge hay purchase is divided between the parties. The defendant is awarded \$150.00 of that balance.

5. (Item # 6 ) The balance owing from Beaver County for gravel purchased from the 13-Mile/Kirk Farm is awarded to the defendant with a value set at \$400.00.

6. (Item # 7) The balance owing to the parties for hay purchased by Les Whitney in 1993 is awarded to the defendant with a value set at \$344.00.

7. (Item # 10) The clinic building located in Milford, Utah is awarded to the defendant with a value set at \$6,000.00.

8. (Item # 13) The parties interest in the NADA grazing rights, water rights and improvements is divided equally between the parties. The defendant is awarded 1/4 undivided interest in NADA as was the plaintiff.

9. (Item # 17) The defendant is awarded 1/2 of the water rights owned by the parties, except that if the domestic water right is incapable of division, that water right is awarded to the plaintiff for her use of the Kirk Farm and 1/2 of the value of that right is to be paid by the plaintiff to the defendant to compensate him for that right.

10. (Item # 21) The Goodwin Farm Lease, which has 30 years to run, is awarded



to the defendant. The Court fixes the value of that lease at \$3,000.00 per year X 30 years, which equals a total current value of \$90,000.00.

11. (Items # 25 & 27) The horse Rosebud and her colt are awarded to the defendant with a value fixed at \$1,000.00 for both animals.

12. (Item # 26) The horse Misty is awarded to the defendant with a value set at \$900.00.

13. (Items # 32, 33 and 34) The defendant is awarded 1/2 of the cows as previously stated under the award to the plaintiff.

14. (Item # 36) The polled hereford and 2 herefords are awarded to the defendant at the agreed upon value of \$3,000.00.

15. (Item # 37) The hay wagon is awarded to the value with a value set at \$6,500.00.

16. (Item # 38) The 4020 John Deere Tractor is awarded to the defendant with a value set at \$6,000.00.

17. (Item # 39) The New Holland Baler is awarded to the defendant with a value set at \$8,500.00.

18. (Item # 40) The sprayer is awarded to the defendant at the agreed value of \$500.00.

19. (Item # 41) The corrugator is awarded to the defendant with an agreed upon value of \$300.00.

20. (Item # 42) The scraper is awarded to the defendant with a value set at \$325.00.

21. (Item # 45) The 10,000 gallon fuel tank is awarded to the defendant with a value set at \$1,500.00.

22. (Item # 47) The defendant is awarded the 4 cylinder ruined engine. No value is fixed at it is of equal value of the 6 cylinder engine awarded to the plaintiff.

23. (Item # 49) The defendant is awarded the portable welder with a value fixed at \$300.00. ✓

24. (Item # 54) The defendant is awarded the miscellaneous power and hand tools. The value is set at \$3,000.00, partially in recognition of the fact that the defendant owned some of the tools prior to the marriage. The exact division is impossible to determine given the state of the evidence.

25. (Item # 60) The Trailway Bike is awarded to the defendant with a value set at \$1,000.00.

26. (Item # 73) A used refrigerator is awarded to the defendant with a value set at \$50.00.

27. (Item # 74) One small woman's saddle is awarded to the defendant with a value set at \$600.00.

28. (Item # 102) The food dryer is awarded to the defendant with a value set at \$50.00.

29. (Item # 131) The defendant's jewelry in the possession of the plaintiff is to be returned to him. No value is fixed for the jewelry as it appears that it was a gift and is the defendant's separate property.

30. (Item # 132) The defendant is awarded 1/2 of all CD's and cassettes in the possession of the parties. If necessary the Court will hold a hearing to effectuate an equitable distribution of those items.

31. (Item # 135) The defendant is awarded the 8 handmade quilts with a value of \$100.00 per quilt for a total value of \$800.00.

32. (Item # 136) The defendant is awarded the four western hats with a value of \$100.00 per hat for a total value of \$400.00.

33. (Item # 137) The defendant is awarded the silver belt buckle with a value fixed at \$100.00.

34. (Item # 138) The defendant is awarded the 6 hunting knives with a value of \$100.00 per knife for a total of \$600.00.

35. (Item # 139) The defendant is awarded the weight bench and the various barbells and dumbbells with a value set at \$200.00 total.

36. (Item # 141) The defendant is awarded 1/2 of the poles possessed by the parties at the time of the trial in this case.

37. (Item # 142) the defendant is awarded the trailer which now carries the plaintiff's grain barrel. The value of the trailer is fixed at \$200.00.

38. (Item # 143) The defendant is awarded 1/2 of the net wire which the parties possessed at the time of the trial in this matter.

39. (Item # 145) The defendant is awarded the Marquette torch. No value is fixed since it is considered of equal value with the torch awarded to the plaintiff.

40. (Item # 157) The defendant is awarded the 2nd post hole digger with a value fixed at \$200.00.

41. (Item # 163) The defendant is awarded the 1991 Ford Diesel Pickup Truck with a value fixed at \$12,500.00.

42. (Item # 170) The defendant is awarded the various utensils and dishes on the Cow Hollow property with a value not fixed since there was no value proven.

43. (Item # 171) The defendant is awarded the work table in the plaintiff's garage which is not currently being used by Seth and Sheb for their reloading activities. No value is fixed since the table is deemed to be of equal value to the one awarded to the plaintiff.

The total value of the marital property awarded to the plaintiff is \$121,450.00. The total value of the marital property awarded to the defendant is \$147,069.00.

#### PROPERTY NOT AWARDED

The Court will next list those items which were discussed in argument by the parties but which the Court determined were not marital property and were not subject to award to either party.

1. A horse called Little Red. The evidence demonstrates that this horse actually belongs to Seth and Sheb, the minor children of the parties.
2. A horse called Copper. The evidence now demonstrates that Copper is deceased.
3. A horse acquired in 1993. The evidence clearly demonstrates that the horse in fact belongs to the plaintiff's father and not to the parties.
4. A horse acquired in 1994. The evidence is clear that this horse is the plaintiff's property by gift from her sons and a gentleman admirer.
5. The parties are not entitled to claim cows owned by other persons, including their children.
6. A 1986 F-250 Pickup Truck which the evidence demonstrates is owned by Glade Nicholson, a friend of the plaintiff.
7. A 1985 Mercury which the defendant originally claimed was a marital asset but which has not been proven to exist.
8. A 125 cc Yamaha Motorcycle which the evidence shows is owned in fact by Sheb and Seth, the parties' minor children.
9. A 50 cc Suzuki Moped which the evidence indicates is owned by Codi Davie Lofland.
10. A Yamaha 4-Wheel ATV which likewise belongs to Codi.
11. A 4-horse Fifth Wheel Trailer which does not belong to the parties but which

the evidence belongs to one Robbie Eyre.

12. A man's saddle located at the plaintiff's house which the evidence shows belongs to Glade Nicholson.

13. Family recreation equipment. The defendant claims that there is various family recreational equipment belonging to the parties. The plaintiff disputes the existence of that equipment. The Court is unable to determine whether that equipment exists. If in fact it exists it should be awarded to the plaintiff for the children's use. No value is fixed.

14. The defendant claims that there is a riding mower which is part of the marital estate. The Court has received no evidence to prove that such a mower exists. It is disputed by the plaintiff. The riding mower is not awarded.

15. The defendant claimed the existence of several hope chests which he said belonged to the parties. The Court is convinced that one of the hope chests in question belongs to Christie, a daughter. The other hope chests were not proven to exist and therefore are not awarded.

16. A second set of bunkbeds. The defendant claimed the existence of a second set of bunkbeds. The plaintiff disputes the existence of that set of beds. The Court finds that the existence of the beds has not been proven and therefore they are not awarded.

17. The same applies to two additional food dryers which are not awarded.

18. The same applies to a third guitar which is not awarded.

19. The Court finds that the two saxophones belong to Seth and Sheb, the two minor children of the parties.

20. Likewise the two guitars in the possession of the plaintiff belong to Seth and Sheb, the minor children of the parties.

21. Additional 13-inch TV's. The parties apparently now agree that although there were additional 13-inch TV's in the possession of the parties they are no longer existent and therefore they are not awarded other than as set forth above.

21. The parties and the children each own various pieces of horse tack. Each is awarded his or her own tack. If the parties are unable to determine who owns what tack, the Court will convene a hearing for purposes of making those awards upon proper notice from either party.

22. A trailer located on the Goodwin Farm clearly belongs to Rosemary Bowman and not to either of the parties.

23. A saddle stand made by the defendant and given to Seth and Sheb belongs to the two children of the parties.

#### **DEBTS AND FINANCIAL OBLIGATIONS**

In view of the division of property arrived at by the Court, and considering the nature of the obligations which the parties owe, the Court affixes the responsibility for repayment of debt as suggested by plaintiff in her original argument entitled *Summary of Positions of the Parties and Argument*. Although that assessment of the debt requires

the defendant to pay more than the plaintiff, in view of the fact that the defendant received more of the property, that division seems appropriate.

### **ATTORNEY FEES**

Plaintiff has sought an award of Attorney Fees against defendant. This case has been long and bitter. However the Court is unable to determine with precision where the fault lies for this situation. The Court does find that both parties have been awarded considerable assets, both are able to work and meet their financial needs and both have incurred extensive attorney fees. The Court sees no basis for requiring the defendant to pay the plaintiff's attorney. Each party is ordered to pay his or her own attorney fees.

### **COSTS**

Costs are awarded to the plaintiff as the prevailing party.

### **INJUNCTION**

The permanent injunction sought by the plaintiff is granted as prayed in plaintiff's opening written argument.


The counsel for the plaintiff is ordered to prepare Findings of Fact and Conclusions of Law as well as a Decree of Divorce setting out the content of this Decision as well as those items otherwise agreed upon by the parties. Once those documents have been prepared they should be forwarded to defendant's counsel for review before being submitted to the Court for signature. If there are other items which



the Court has overlooked, and which need attention, either party may call those matters to the Court's attention at the Court's next law & motion day upon prior notice to the other side.

DATED this 15<sup>th</sup> day of June, 1995.

  
\_\_\_\_\_  
J. PHILIP EVES  
Fifth District Court Judge

By 

***Signature Affixed at Direction of District Judge.***

Mailing Certificate

I hereby certify that on this 16<sup>th</sup> day of June, 1995, I mailed true and correct copies of the above and foregoing Memorandum Decision, first-class postage prepaid, to the following counsel of record:

Willard R. Bishop, Esq.  
P. O. Box 279  
Cedar City, UT 84721-0279

J. Bruce Reading, Esq.  
261 East 300 South  
Suite #200  
Salt Lake City, UT 84111

  
\_\_\_\_\_  
Court Administrative Executive

**Addendum "B": Findings of Fact and Conclusions of Law Dated  
December 21, 1995**

FILED

DEC 21 1995

Paul B. Bishop Clert

WILLARD R. BISHOP, P.C.  
Willard R. Bishop - #0344  
Attorney for Plaintiff  
P. O. Box 279  
Cedar City, UT 84721-0279  
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IN THE FIFTH JUDICIAL DISTRICT COURT OF BEAVER COUNTY

STATE OF UTAH

JETTA ANN PEARSON DAVIE,

Plaintiff,

vs.

CRAIG VERNON DAVIE,

Defendant.

*FINDINGS OF FACT AND  
CONCLUSIONS OF LAW*

Civil No. 94-CV-29  
Honorable J. Philip Eves

The above-entitled matter came on regularly for trial to the Court on January 10 and 11, 1995, in connection with all issues extant in the case, as set forth in the Pretrial Order. Plaintiff JETTA ANN PEARSON DAVIE appeared personally and was represented by her attorney of record, Mr. Willard R. Bishop. Defendant CRAIG VERNON DAVIE also appeared personally and was represented by his attorney of record, Mr. J. Bruce Reading. Following the completion of presentation of evidence on the second day of trial, the parties and the Court determined it would be appropriate to submit arguments in writing. The schedule for submission of the arguments was set and the Court took the matter under submission pending the filing of the arguments. Thereafter, on May 23, 1995, Plaintiff filed

a document entitled "Notice of Readiness for Decision". The Court having reviewed the written submissions of the parties, and based upon a preponderance of the evidence, now makes and enters its:

### **FINDINGS OF FACT**

#### **Jurisdiction and Grounds for Divorce**

1. Both Plaintiff and Defendant are actual, bona fide residents of Beaver County, State of Utah, and were such for more than three months immediately prior to the commencement of this action.

2. Plaintiff and Defendant are wife and husband, having married on March 3, 1978, in Minersville, Beaver County, State of Utah.

3. Irreconcilable differences have arisen between the parties to the point that it is impossible for Plaintiff to continue the marriage relationship with Defendant.

#### **Custody Matters**

4. As issue of their marriage, and as a result of adoption of Plaintiff's children by a prior marriage, the parties are parents of the following children:

A. Christi Dawn Davie Weldert, a daughter, born September 30, 1968, now married and 26 years of age.

B. Codi Ann Davie Lofland, a daughter, born May 19, 1970, now married and 25 years of age.

C. Seth Craig Davie, a son, born November 18, 1979, now 15 years of age.

D. Sheb Eugene Davie, a son, born November 18, 1979, now 15 years of age.

No other children have been born to the parties and no other children are expected.

5. Plaintiff seeks custody of the parties' two minor children, Sheb and Seth Davie. The boys are now 15 years of age, as set forth above. Defendant Craig Vernon Davie, on the other hand, agrees that Plaintiff should be the physical custodian of the children, but seeks an award of joint legal custody.

6. UCA 30-3-10.2 (1953, as amended), sets out the factors for the Court to consider in determining whether or not a joint legal custody is appropriate. That statute provides as follows:

"1. The court may order joint legal custody if it determines that joint legal custody is in the best interest of the child and: (a) both parents agree to an order of joint legal custody; or (b) both parents appear capable of implementing joint legal custody."

7. During the course of these proceedings, the parties have exhibited intense hostility and lack of cooperation towards each other. The parties have not agreed to an order of joint legal custody, and the Court finds that the parties are not capable of implementing a joint custody order as they are unable to cooperate in any aspect of their dealings.

8. It is not in the best interests of Seth Craig Davie and Sheb Eugene Davie to place them in a joint legal custody situation.

9. Plaintiff has been and still is, the primary caretaker of the parties' minor children. The best interest of the minor children would be served by awarding their care, custody, and control to Plaintiff Jetta Ann Pearson Davie.

**Visitation**

10. The minor children of the parties are substantially engaged in work, school activities, and extra-curricular activities.

11. It is not appropriate for the minor children to visit in the home of Defendant when Grace McFall and her two children are spending the night there. Both Sheb and Seth Davie have expressed discomfort with visiting overnight when their father is entertaining Ms. McFall overnight. That situation should be avoided.

12. It is appropriate that Defendant be awarded reasonable rights of visitation as provided in UCA 30-3-35 (1953, as amended), and such other liberal and reasonable visitation as may be worked out between the parties in advance, said visitation to be conditioned upon Defendant's compliance with the following conditions:

A. Visitation is to be arranged so that it does not unnecessarily or unreasonably interfere with the school work and work activities of the boys.

B. Defendant's right to overnight visitation should be conditioned upon providing suitable living quarters for the boys during the visit. It is not appropriate for the boys to visit in the home of Defendant when Grace McFall and her two children are spending the night there.

**Child Support**

13. Defendant has the capacity to earn income at the rate of \$1,500.00 per month. Defendant testified that he does not earn that much, but the Court finds that he is capable of earning that much and should impute that amount to him as earning ability.

14. The Court finds that Plaintiff has the ability to earn income in the amount of \$1,000.00 per month.

15. Using the income figures set forth above, Plaintiff has a gross monthly income, or capability to earn the same, of \$1,000.00. Defendant has a gross monthly income, or the capability to earn the same, of \$1,500.00 per month. The adjusted gross income for child support purposes, therefore, comes to \$2,500.00 per month. Using the applicable guidelines, the base combined support obligation of both parties is \$641.00 per month. Plaintiff's share of the base combined support obligation is 40%, or \$256.40 per month, which will be met by having the children in her home. Defendant's 60% share of the base combined support obligation is \$384.60 per month, which Defendant should be required to pay to Plaintiff. Because of the ages and abilities of the minor sons of the parties, work-related child care costs are not applicable. To the extent that either party pays medical, dental, and optical insurance premiums for insurance covering the parties' minor children, that portion of the premium which goes to pay for the children's coverage should be divided and apportioned between the parties equally, share and share alike. In the event that the children visit with Defendant for more than 25 of 30 consecutive days in the summertime for extended



visitation, then the base support award for each child will be reduced by 50% for that period of time. Since the base child support award to be paid by Defendant to Plaintiff is \$384.60 per month, that works out to an individual award of \$192.30 per month per child. Said child support should be paid until such time as the children reach their age of majority or complete high school, whichever occurs later, from and after January 11, 1995. Withholding should be required in accordance with applicable law.

**Medical and Dental Insurance**

16. Plaintiff should be required to maintain medical, dental and optical insurance coverage for the benefit of the parties' minor children when such is available at reasonable cost. Premiums applicable to the children's coverage should be shared equally by the parties, as should medical, dental, and optical expenses for the children which are not covered by insurance.

**Tax Deductions**

17. The parties could benefit equally from use of the minor children as deductions for state and federal income tax purposes. As a result, it is fair, equitable, and reasonable that each party be permitted to claim one of the children as a dependent for state and federal income tax purposes.

**No Alimony**

18. Neither party requested alimony. Both parties are healthy, able-bodied adults and are capable of generating their own support. It is appropriate that no alimony be

awarded to either party, provided, however, that it is fair, equitable, and reasonable that Defendant be required to assume and pay debts which the Court will assign to him hereafter, in lieu of alimony, since Plaintiff will not be able to support herself if required to pay the debts assigned to Defendant.

**Division of Assets**

**Plaintiff's Separate Property**

19. It is fair, equitable, and reasonable that Plaintiff be awarded as her sole and separate property, free and clear of any claim of Defendant, the items listed below which were and are her premarital property. No value is assigned to the items of premarital property awarded to Plaintiff for the reason that their value is irrelevant, those items not being subject to a division between the parties.

- A. 250 cc Honda motorcycle
- B. 175 cc Kawasaki/Yamaha motorcycle
- C. Rototiller
- D. Antique sewing machine
- E. Newer sewing machine
- F. Hope chest from the master bedroom
- G. Bunk bed
- H. Single bed
- I. Full bed
- J. Double bed
- K. Bosch bread machine
- L. Wheat grinder
- M. Piano
- N. Electric key board
- O. Small color television with doors
- P. Stereo
- Q. White tin shed

- R. Couch and loveseat
- S. Rocking chair
- T. One meat saw
- U. 1974 Ford truck
- V. Plaintiff's personal items stored in the railroad building
- W. Plaintiff's personal items and premarital property stored in the rafter of the garage.
- X. Plaintiff's Wedding ring set

**Defendant's Separate Property**

20. It is fair, equitable, and reasonable that Defendant be awarded as his sole and separate property, free and clear of any claim of Plaintiff, the items set forth below, which were and are his premarital property. No value is assigned to these items for the reason that their value is irrelevant, they not being subject to a division between the parties.

- A. All interest in Cow Hollow property
- B. Fuel tank and stand
- C. Portable welder
- D. Banker's Life Annuity
- E. Paul Revere Annuity
- F. Woodburning stove
- G. Tool chest
- H. Acetylene tanks and carrier
- I. One meat saw
- J. Flatbed trailer
- K. 1972 Ford truck, which Defendant should be ordered to remove from Plaintiff's property.
- L. 350 cc Honda motorcycle
- M. 1961 stock truck
- N. Antique watch and case
- O. Motor manuals
- P. Fire extinguisher in garage
- Q. Leica 35mm camera
- R. Collection of purple bottles

- S. His scrap books and pictures, provided, however, that Plaintiff should be permitted to obtain copies for herself, should she so desire.
- T. Defendant's premarital property stored in the rafters of the garage, together with such personal items as may belong to him in that storage.
- U. The red chain saw

21. The Court specifically finds that the Cow Hollow property is separate, premarital property of the Defendant. Plaintiff argued that she acquired marital property rights by virtue of her labor on the property through the years of the marriage. However, the Court finds that Plaintiff enjoyed the use of the property along with the rest of the family and as part of that use, participated in maintenance and improvements. The labors performed by Plaintiff on the Cow Hollow property were not inconsistent with the family use of the property and created no marital property right in Plaintiff. Where there has been no gift, and no commingling so as to convert a clear piece of separate property to a marital asset, the property remains separate.

**Plaintiff's Marital Property**

22. It is fair, equitable, and reasonable that Plaintiff be awarded as her sole and separate property, free and clear of any claim of Defendant, the following items of marital property:

- A. One-half interest in the Western Rock lease of water from a windmill at the 13-Mile/Kirk Farm, and a site upon which Western Rock keeps its batch plant. Lease payments from this lease are to be paid directly to Dr. Prince for the orthodontic care of the parties' minor children. After Dr. prince is paid off, the remaining balance of the Western Rock payments are to be equally divided between the parties. The

Court affixes no value to this award since it is impossible to determine what the actual value of the lease will be after Dr. Prince has been paid, and for the further reason that there is no need to set a value upon the interest here awarded, since it will be divided equally between the parties.

- B. The \$150.00 already received by Plaintiff from the sale of hay to Mildred Loveridge. Defendant has also received \$150.00 from that source.
- C. The family home located in Minersville, Beaver County, State of Utah, more specifically described as follows:

Beginning at the Southwest corner of Lot 2, Block 31, Plat "B", Minersville Town Survey, and running thence North 9 rods; thence North 51°30' East 3.2 rods; thence South 1.2 rods; thence North 60°53' East 4.82 rods; thence South 11.53 rods; thence West 7 rods to the point of beginning. Together with all rights, privileges, improvements, and appurtenances thereunto belonging or any wise appertaining.

The Court finds that the home belonged to Plaintiff prior to her marriage to Defendant. The Court further finds that Defendant made significant contributions to the home in terms of a lump sum contribution as well as payments towards loan obligations. The Court heard evidence from Plaintiff that the current value of her home is \$51,000.00. The Court also heard evidence from an appraiser that the current value is \$78,000.00. The appraiser did admit that he was unable to find comparable sales in the Minersville area and used comparable sales from Beaver to establish his value. He also admitted that there were certain repairs and extensive termite damage that he had not considered in arriving at his value. The Court is of the opinion that the fair market value is closer to the \$51,000.00 testified to by the Plaintiff rather than the \$78,000.00 testified to by the appraiser. Accordingly, the Court fixes the current value of the home at \$51,000.00. The parties testified that there are currently liens totaling \$19,850.00 against the home, consisting of \$14,700.00 owed to Rosemary Bowman and \$5,150.00 owed to Plaintiff's parents. Thus, the current equity in the home is \$31,150.00. Plaintiff argued that

some amount of the equity should be awarded to her as premarital in view of the fact that she owned the home for several years prior to her marriage to Defendant. The Court is unable, however, to determine from the testimony presented what portion of the equity accrued prior to the marriage and portion accrued since March of 1978, when the parties were married. The Court finds that Plaintiff and Defendant have made various contributions to the home from both marital and separate funds. The Court cannot determine by a preponderance of the evidence the exact nature or amount of the contributions. Therefore, the Court finds that because of commingling, the equity in the home is to be treated as marital property in total. Therefore, the Court finds the home should be awarded to Plaintiff, but fixes the value of that award at the total of the equity in the amount of \$31,150.00.

- D. The newspaper building located in Milford, Beaver County, Utah, with a value of \$6,000.00, which property is more specifically described as follows:

Beginning at a point of West boundary line of Lot 4, said point being 175.35 feet from Northwest corner of Block 10, Plat "B", Milford Town Survey, thence South 80°07' East 69.41 feet; thence South 24°55' West 32.77 feet; thence North 80°07' West 61.04 feet; thence North 9°53' East 31.65 feet to beginning. Together with all rights, privileges, and appurtenances thereunto belonging.

- E. The Mineral Range grazing rights/AUMS, with a value of \$8,000.00, specifically described as being and including:

(1) Share Certificate No. 209, including 23 one and one-half shares of common stock of the North Divide Grazing Company.

(2) Mineral Range AUMS, described as follows:

Including, but not limited to, 36 AUMS, as evidenced by Minersville No. 6104 and 121 AUMS as evidenced by Mineral Range No. 6107, and including 112 AUMS suspended non-use.

- F. A one-fourth ( $\frac{1}{4}$ ) undivided interest in and to all NADA lands, BLM grazing rights, the State land lease, NADA Corporation stock, associated water rights and improvements. The land included in NADA is located in Iron County, State of Utah, and is more specifically described as follows:
- (1) Parcel 1: The South quarter of Section 3, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (2) Parcel 2: Lots 3, 4, 5, 6, 11, 12, and the South one-half of Section 4, all in Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (3) Parcel 3: Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, and 12, all in Section 5, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (4) Parcel 4: Lots 1, 2, and 4, all in Section 6, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (5) Parcel 5: The West one-half; and the South one-half of the Southeast quarter, both in Section 8, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (6) Parcel 6: The Southeast quarter; the Northeast quarter of the Southwest quarter; and the South half of the Southwest quarter, all in Section 9, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (7) Parcel 7: The Northeast one-quarter; the East one-half of the Northwest one-quarter; and the North one-half of the Southeast one-quarter, all in Section 30, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (8) Parcel 8: The Northwest quarter of the Southeast quarter; the North one-half of the Southwest one-quarter; the Southwest one-quarter of the Southwest one-quarter; all in Section 1, Township 31 South, Range 12 West, Salt Lake Base and Meridian.

- (9) Parcel 9: The North one-half of Section 12, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (10) Parcel 10: The West one-half of Section 15, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (11) Parcel 11: The West one-half of Section 22, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (12) Parcel 12: The West one-half of Section 23, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (13) Parcel 13: The West one-half of Section 26, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (14) Parcel 14: The Northeast one-quarter of Section 33, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (15) Parcel 15: The Southeast one-quarter of Section 28, Township 31 South, range 12 West, Salt Lake Base and Meridian.
- (16) Parcel 16: The West one-half of Section 2, Township 32 South, Range 13 West, Salt Lake Base and Meridian.
- (17) Parcel 17: The West one-half of Section 3, Township 32 South, Range 13 West, Salt Lake Base and Meridian.
- (18) Parcel 18: The Southwest one-quarter of Section 11, Township 32 South, Range 13 West, Salt Lake Base and Meridian.
- (19) Parcel 19: The Northeast one-quarter and the North 23 acres of the Southeast one-quarter of Section 10, Township 32 South, Range 13 West, Salt Lake Base and Meridian.

TOGETHER WITH all AUMS, including, but not limited to, 374 AUMS formerly belonging to Rosemary G. D. Bowman, who took title as Rosemary G. Davie, in the NADA BLM allotment.



TOGETHER WITH WUC No. 71-1450, 71-1451, 71-1698, 71-1713, 71-1723, and 71-1724, and any and all other water rights pertaining thereunto.

TOGETHER WITH all interest in State of Utah Grazing Lease No. 20730, and any subsequent State of Utah Grazing Leases.

TOGETHER WITH all oil and mineral and geothermal rights, together with the right of ingress and egress for mining, exploring, and/or removing the same.

- (20) The State of Utah Division of State Lands and Forestry Grazing Permit No. GP-20730, containing 102 AUMS, more or less, covering 2,898.24 acres, more or less, of land owned by the State of Utah, consisting of Sections 16 and 32 in Township 31 South, Range 12 West, Salt Lake Base and Meridian, and including all of Sections 32 and 36, and the West half of Section 21, in Township 31 South, Range 13 West, Salt Lake Base and Meridian.
- (21) All windmills, water right improvements, and other improvements.
- (22) All ownership interest in NADA, whether manifested by share certificates or otherwise.

G. The Kirk/13-Mile Farm, with a value established at \$40,000.00, located in Beaver County, Utah, and more specifically described as follows:

- (1) Parcel 1: Lot 2 and the Southwest quarter of the Northeast quarter of Section 5, Township 30 South, Range 11 West, Salt Lake Base and Meridian.
- (2) Parcel 2: Lots 1, 2, and 3; the South half of the Northeast quarter and the Southeast quarter of the Northwest quarter of Section 4, Township 30 South, Range 11 West, Salt Lake Base and Meridian.

- (3) Parcel 3: Lots 1, 2, 3, and 4 and the South half of the North half of Section 3, Township 30 South, Range 11, West, Salt Lake Base and Meridian.

TOGETHER WITH all AUMS, including but not limited to, 36 AUMS as evidenced by Minersville No. 6104 and 121 AUMS as evidence by Mineral Range No. 6107, and 112 AUMS suspended non-use.

SUBJECT TO a life estate in Rosemary Davie Bowman in and to all geothermal rights, together with the right of ingress and egress for the purpose of exploring and/or removing the same.

TOGETHER WITH all rights, privileges, improvements, and appurtenances thereunto belonging or in anywise appertaining thereunto.

- (4) Parcel 4: Beginning at the South quarter corner of Section 33, Township 29 South, Range 11 West, Salt Lake Base & Meridian; thence Westerly along the section line to a point 160 feet West of the South quarter corner of said Section 33; thence North 160 feet; thence East 160 feet to the center section line of said Section 33; thence South 160 feet along the section center line to the point of beginning.

- H. An undivided one-half interest in and to the water rights owned by the parties, as evidenced by WUC 71-1650 and 20105, containing 116.02 acre feet of water, including 25.4 acre feet of water for irrigation, stock watering equivalent for 500 units (14 acre feet), and one domestic right, approximately .045 acre feet. In the event that the domestic water right cannot be divided, it should be awarded to Plaintiff to be used with the Kirk Farm, and one-half of the value of that right should be paid by Plaintiff to the Defendant as compensation.
- I. As indicated above, the Minersville Range AUMS should be awarded to Plaintiff. The value of those grazing rights is fixed at \$1,350.00.

- J. The gravel pit on the Kirk Farm should be awarded to Plaintiff. The value of the gravel pit is included in the \$40,000.00 value assigned to the Kirk/13-Mile Farm, above.
- K. The 13-Mile Farm lease should be awarded to Plaintiff with a value of \$3,900.00.
- L. The horse named "Splash" with a value fixed in the amount of \$700.00. If the horse is not returned to Plaintiff by Defendant within 30 days after the judgment to be entered hereafter is entered, Defendant should be required to pay Plaintiff the cash equivalent of the value of the horse.
- M. The horse named "Blondie" with a value set in the amount of \$700.00. The horse should be returned to Plaintiff by Defendant within 30 days of the entry of judgment herein. If the horse is not returned to Plaintiff within 30 days, Defendant should be required to pay to Plaintiff the cash equivalent of the value of the horse.
- N. One-half of all cattle owned by the parties, not previously sold or divided. Plaintiff should be required to prepare two (2) lists of what she perceives to be an equal division of such cattle and calves. Defendant should then be allowed to choose which list he prefers, and upon this basis the previously undivided cattle and calves should be distributed.
- O. Because of the circumstances in this case, in the event that either Plaintiff or Defendant is found to have taken more than his or her fair share of cows, or to have secreted cows from the other party, the Court, following hearing, should enter an order requiring the offending party to pay to the other party double the value of the cows secreted.
- P. The Angus and Hereford bulls at the agreed value of \$2,000.00.
- Q. The John Deere bailer at the value of \$2,500.00.
- R. The John Deere 2280 swather at the value of \$10,000.00.

- S. The six-cylinder ruined engine should be awarded to Plaintiff, and the four-cylinder engine should be awarded to Defendant. No value is set for these items, their values being deemed equal by the Court.
- T. The stationary welder at the value of \$300.00.
- U. The John Deere chain saw with a value of \$300.00.
- V. The air compressor and air tank with a total value for both pieces of \$250.00.
- W. The various remaining farm tools consisting of shovels, rakes, hoes, pitch forks, etc., with a value set at \$200.00.
- X. The 1979 Ford Courier pickup, with a value of \$500.00.
- Y. The 1973 Mercury, with a value of \$50.00.
- Z. The four-horse trailer, with a value of \$1,000.00.
- AA. Her Utah State Retirement Fund Account, with a value of \$1,400.00.
- AB. The used freezer in her home, with a value of \$100.00.
- AC. The two, used refrigerators found on Plaintiff's property, with a value of \$100.00 for both pieces.
- AD. The four-drawer filing cabinet located in Plaintiff's home. No value is affixed to this item in view of the fact that the metal filing cabinet of equal value is going to be awarded to Defendant.
- AE. Two lawn mowers, with value set at \$100.00 each, for a total value of \$200.00.
- AF. The prefabricated saddle stand, with a value of \$50.00.
- AG. The washer and dryer, with a value of \$600.00 for both pieces.
- AH. The microwave oven, with a value of \$100.00.

- AI. The dishwasher, with the agreed value of \$200.00.
- AJ. The organ which is located in the family home. Its value is set at \$600.00 in recognition of the fact that the organ was at least partially paid for prior to the marriage of the parties.
- AK. The small color television set, value \$50.00.
- AL. The home computer, printer and programs with a value of \$500.00.
- AM. The video cassette recorder with a value of \$50.00.
- AN. The various VCR tapes in Plaintiff's home, with a set value of \$300.00, provided, however, that Defendant should be allowed to copy any noncommercial tapes that he chooses.
- AO. The camcorder, with a value of \$100.00.
- AP. The stereo cabinet, with a value of \$50.00.
- AQ. The almond-colored tin shed which is on a slab located on the real estate surrounding the home. The value of this item has been included in the value of the home, already fixed by the Court.
- AR. The kitchen utensils and luxury appliances, including the fire extinguisher in the kitchen, with a value of \$50.00.
- AS. The couch in the basement of the marital home, with a value of \$200.00.
- AT. One-half of all compact discs and cassettes owned by the parties at the time of their separation. The other one-half of the compact discs and cassettes should be awarded to Defendant. The parties are to divide the cassettes and compact discs equally between them. If they are not able to do so, the Court should conduct a hearing for making the division upon notice to both sides.
- AU. The kitchen table and chairs, with value of \$250.00.

- AV. The pictures, knick-knacks, clocks, collectibles and porcelain figures, etc., with the value of \$1,000.00.
- AW. The posthole digger which was the purchased by the parties, with a value of \$200.00.
- AX. One-half of the poles owned by the parties at the time of trial, with Defendant receiving the other one-half.
- AY. The grain barrel, not including the trailer, with a value of \$200.00.
- AZ. One-half of the net wire owned by the parties at the time of trial, with Defendant receiving the other one-half.
- BA. The acetylene torch now in her possession. No value is affixed by the Court since the Marquette torch is awarded to the Defendant and the Court deems the two torches of equal value.
- BB. The 35mm Canon camera, with value of \$100.00.
- BC. Her wedding ring set. The set was a gift to her during the marriage. No value is set because it is her separate property.
- BD. The 1990 Dodge Dynasty, with value of \$6,000.00.
- BE. Her own scrap books and pictures. Defendant should likewise be awarded his own scrap books and pictures. Each party should be authorized to obtain copies of any photographs retained by the other party.
- BF. The two work tables should be divided between the parties. Plaintiff should be awarded the table which Sheb and Seth Davie are currently using for their reloading equipment. Defendant should be awarded the other table. No value is set for the reason that the Court deems the tables to be of equal value.

**Defendant's Marital Property**

23. Defendant should be awarded as his sole and separate property, free and clear of any claim of Plaintiff, the following items of marital property:

- A. The obligation owed to the parties by Ray Barnes, with the value of \$375.00.
- B. The balance owed by Warren Gray for a hay purchase in 1993, with a value of \$750.00.
- C. The balance owed to the parties for hay purchases by Mark Thompson in 1993, with a value of \$475.00.
- D. The amount of \$150.00 already received by Defendant from Mildred Loveridge for a hay purchase.
- E. The balance owing from Beaver County for gravel purchased from the 13-Mile/Kirk Farm, with a value of \$400.00.
- F. The balance owing to the parties for hay purchased by Les Whitney in 1993, with a value of \$344.00.
- G. The clinic building located in Milford, Beaver County, Utah, with a value set at \$6,000.00, which clinic building is more specifically described as follows:

Commencing at a point on Westerly sideline of Lot 4 from which the Northwest corner of said Block 10, Plat "B", Milford Town Survey, bears North 9°53' East 207 feet South 80°07' East 61.04 feet to a point on Westerly line of railroad right-of-way; thence South 24°55' West 37.95 feet; thence North 80°07' West 51.2 feet to a point on Easterly line of Main Street from which point the Southern extremity of Lot 4 bears South 9°53' West 190.61 feet; thence North 9°53' East along East line of Main Street 36.65 feet to beginning. Together with all rights, privileges and appurtenances thereunto belonging.

- H. An undivided one-quarter interest in all NADA property, water rights, improvements, shares, or ownership, thus resulting in an equal division of all NADA interests between the parties. Legal descriptions of the properties are more specifically described as follows:
- (1) Parcel 1: The South quarter of Section 3, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (2) Parcel 2: Lots 3, 4, 5, 6, 11, 12, and the South one-half of Section 4, all in Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (3) Parcel 3: Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, and 12, all in Section 5, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (4) Parcel 4: Lots 1, 2, and 4, all in Section 6, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (5) Parcel 5: The West one-half; and the South one-half of the Southeast quarter, both in Section 8, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (6) Parcel 6: The Southeast quarter; the Northeast quarter of the Southwest quarter; and the South half of the Southwest quarter, all in Section 9, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (7) Parcel 7: The Northeast one-quarter; the East one-half of the Northwest one-quarter; and the North one-half of the Southeast one-quarter, all in Section 30, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
  - (8) Parcel 8: The Northwest quarter of the Southeast quarter; the North one-half of the Southwest one-quarter; the Southwest one-quarter of the Southwest one-quarter; all in Section 1, Township 31 South, Range 12 West, Salt Lake Base and Meridian.



- (9) Parcel 9: The North one-half of Section 12, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (10) Parcel 10: The West one-half of Section 15, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (11) Parcel 11: The West one-half of Section 22, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (12) Parcel 12: The West one-half of Section 23, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (13) Parcel 13: The West one-half of Section 26, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (14) Parcel 14: The Northeast one-quarter of Section 33, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (15) Parcel 15: The Southeast one-quarter of Section 28, Township 31 South, range 12 West, Salt Lake Base and Meridian.
- (16) Parcel 16: The West one-half of Section 2, Township 32 South, Range 13 West, Salt Lake Base and Meridian.
- (17) Parcel 17: The West one-half of Section 3, Township 32 South, Range 13 West, Salt Lake Base and Meridian.
- (18) Parcel 18: The Southwest one-quarter of Section 11, Township 32 South, Range 13 West, Salt Lake Base and Meridian.
- (19) Parcel 19: The Northeast one-quarter and the North 23 acres of the Southeast one-quarter of Section 10, Township 32 South, Range 13 West, Salt Lake Base and Meridian.

TOGETHER WITH all AUMS, including, but not limited to, 374 AUMS formerly belonging to Rosemary G. D. Bowman, who took title as Rosemary G. Davie, in the NADA BLM allotment.

TOGETHER WITH WUC No. 71-1450, 71-1451, 71-1698, 71-1713, 71-1723, and 71-1724, and any and all other water rights pertaining thereunto.

TOGETHER WITH all interest in State of Utah Grazing Lease No. 20730, and any subsequent State of Utah Grazing Leases.

TOGETHER WITH all oil and mineral and geothermal rights, together with the right of ingress and egress for mining, exploring, and/or removing the same.

- (20) The State of Utah Division of State Lands and Forestry Grazing Permit No. GP-20730, containing 102 AUMS, more or less, covering 2,898.24 acres, more or less, of land owned by the State of Utah, consisting of Sections 16 and 32 in Township 31 South, Range 12 West, Salt Lake Base and Meridian, and including all of Sections 32 and 36, and the West half of Section 21, in Township 31 South, Range 13 West, Salt Lake Base and Meridian.
- (21) All windmills, water right improvements, and other improvements.
- (22) All ownership interest in NADA, whether manifested by share certificates or otherwise.
- I. One-half of the water rights owned by the parties, as set forth in paragraph 22H, above, except that if the domestic water right is incapable of division, that water right should be awarded to Plaintiff for her use on the Kirk Farm and one-half of the value of that right is to be paid by the Plaintiff to the Defendant to compensate him for that right.
- J. The Goodwin Farm Lease, which has 30 years to run, for a total current value of \$90,000.00. Plaintiff contributed significantly to the rehabilitation and improvement of the farm ground and irrigation system subject to the lease, to the point that the value of the leasehold interest constitutes marital property.

- K. The horse "Rosebud" and her colt, with a value of \$1,000.00 for both animals.
- L. The horse "Misty" with a value of \$900.00.
- M. One-half of the cows, as previously stated in paragraph 22N, above, concerning the award to Plaintiff.
- N. The polled Hereford bull and two, horned Hereford bulls, at the agreed upon value of \$3,000.00.
- O. The hay wagon, with the value of \$6,500.00.
- P. The 4020 John Deere tractor, with a value of \$6,000.00.
- Q. The New Holland baler, with value of \$8,500.00.
- R. The sprayer, valued at \$500.00.
- S. The corrugator, with an agreed upon value of \$300.00.
- T. The scraper, with value set at \$325.00.
- U. The 10,000 gallon fuel tank, with value of \$1,500.00.
- V. The four-cylinder ruined engine. No value is fixed, for the reason that it is the same value as the six-cylinder engine to be awarded to Plaintiff.
- W. The portable welder, with value of \$300.00.
- X. The miscellaneous power and hand tools, with value set at \$3,000.00, partially in recognition of the fact that Defendant owned some of the tools prior to the marriage. The exact division is impossible to determine given the state of the evidence.
- Y. The Trailway bike, valued at \$1,000.00.
- Z. A used refrigerator, valued at \$50.00.

- AA. One small woman's saddle, valued at \$600.00.
- AB. The food dryer, valued at \$50.00.
- AC. His jewelry, if any, in the possession of Plaintiff, which should be returned to him by Plaintiff. No value is fixed for the jewelry as it appears that it was a gift and is the Defendant's separate property.
- AD. One-half of all compact discs and cassettes in the possession of the parties. If necessary, the Court will hold a hearing to effectuate an equitable distribution of those items.
- AE. Eight handmade quilts, with a value of \$100.00 per quilt, for a total value of \$800.00.
- AF. Four western hats with a value of \$100.00 per hat, for a total value of \$400.00.
- AG. The silver belt buckle, with a value of \$100.00.
- AH. Six hunting knives with a value of \$100.00 per knife for a total of \$600.00.
- AI. The weight bench and various barbells and dumbbells, with a value of \$200.00.
- AJ. One-half of the poles possessed by the parties at the time of the trial in this case.
- AK. The trailer which now carries the Plaintiff's grain barrel. The value of the trailer is fixed at \$200.00.
- AL. One-half of the net chicken wire possessed by the parties at the time of trial.
- AM. The Marquette torch. No value is fixed since it is considered of equal value to the torch awarded to Plaintiff.
- AN. The second posthole digger, valued at \$200.00.

- AO. The 1991 Ford diesel pickup truck, with value of \$12,500.00.
- AP. The various utensils and dishes on the Cow Hollow property, with no value fixed, since no value was proven.
- AQ. The work table in Plaintiff's garage which is not currently being used by Seth and Sheb for their reloading activities. No value is affixed by the Court, since this table is deemed to be of equal value to the one awarded to Plaintiff.
- AR. The "MC" brand and earmark, upon final distribution of all the cattle.

**Value of All Marital Property**

24. The total value of the marital property awarded to Plaintiff is \$121,450.00.

The total value of the marital property awarded to Defendant is \$147,069.00.

**Property Not Awarded**

25. The Court determined that various items of property discussed in argument by the parties were not marital property, and were not subject to award to either party.

Those items are as follows:

- A. The horse called "Little Red". The evidence demonstrates that this horse actually belongs to Seth and Sheb, the minor children of the parties.
- B. A horse called "Copper". The evidence now demonstrates that Copper is deceased.
- C. A horse acquired in 1993. The evidence clearly demonstrates that the horse in fact belongs to Plaintiff's father and not to the parties.
- D. A horse acquired in 1994. The evidence is clear that this horse is the Plaintiff's property by gift from her sons and a gentleman admirer.

- E. The parties are not entitled to claim cows owned by other persons, including their children.
- F. A certain 1986 F-250 pickup truck which the evidence demonstrates is owned by Glade Mickelson, a friend of Plaintiff.
- G. A 1985 Mercury vehicle which the Defendant originally claimed was a marital asset, but which has not been proven to exist.
- H. A 125 cc Yamaha motorcycle which the evidence shows is owned in fact by Sheb and Seth, the parties' minor children.
- I. A 50 cc Suzuki moped which the evidence indicates is owned by Codi Davie Lofland.
- J. A Yamaha 4-wheel ATV which likewise belongs to Codi Davie Lofland.
- K. A four-horse fifth-wheel trailer which does not belong to the parties but which the evidence shows belongs to one Robbie Eyre.
- L. A man's saddle located at Plaintiff's house which the evidence shows belongs to Glade Mickelson.
- M. Family recreation equipment. The Defendant claims that there is various family recreational equipment belonging to the parties. The Plaintiff disputes the existence of that equipment. The Court is unable to determine whether that equipment exists. If it in fact it exists it should be awarded to the Plaintiff for the children's use. No value is fixed.
- N. The Defendant claims that there is a riding mower which is part of the marital estate. The Court has received no evidence to prove that such a mower exists. It is disputed by the Plaintiff. The riding mower is not awarded.
- O. The Defendant claimed the existence of several hope chests which he said belonged to the parties. The Court is convinced that one of the hope chests in question belongs to Christi Davie Weldert, a daughter.

The other hope chests were not proven to exist and therefore are not awarded.

- P.** The second set of bunk beds. The Defendant claimed the existence of a second set of bunk beds. The Plaintiff disputes the existence of that set of beds. The Court finds that the existence of the beds has not been proven and therefore, they are not awarded.
- Q.** Defendant claimed the existence of two additional food dryers. The Plaintiff disputed the existence of such additional food dryers. The Court finds that the existence of the two additional food dryers has not been proven, and therefore, they are not awarded.
- R.** A third guitar. Defendant claimed the existence of a third guitar. Plaintiff disputed such alleged existence. The Court finds that the existence of the third guitar has not been proven, and therefore, it is not awarded.
- S.** The Court finds that the two saxophones belong to Seth and Sheb, the two minor children of the parties.
- T.** Likewise, the two guitars in the possession of the Plaintiff belong to Seth and Sheb, the minor children of the parties.
- U.** Additional, 13-inch television sets. The parties apparently now agree that although there were additional 13-inch television sets in the possession of the parties, they are no longer existing and therefore, are not awarded other than as set forth above.
- V.** The parties and the children each own various pieces of horse tack. Each should be awarded his or her own tack. If the parties are unable to determine who owns what tack, the Court should convene a hearing for purpose of making those awards upon proper notice from either party.
- W.** A trailer located on the Goodwin Farm clearly belongs to Rosemary Bowman, and not to either of the parties.

- X. A saddle stand made by the Defendant and given to Seth and Sheb belongs to the two children of the parties.

**Division of Debts**

26. Based upon the divergent testimony of the parties, with no preponderance being found, the Court chooses to use Plaintiff's values and evidence pertaining to the marital debts and obligations by the parties.

**Debts Assigned to Plaintiff**

27. It is fair, equitable, and reasonable that Plaintiff be required to assume and pay, and to hold Defendant free and harmless therefrom, the following debts and obligations of the parties:

- A. The debt owed to Mountain America Credit Union to purchase the 1990 Dodge Dynasty vehicle, approximately \$5,200.00.
- B. The debt owed to Rosemary Bowman for the addition to the house, approximately \$14,700.00.
- C. The debt owed to Ralph Pearson in connection with the balance on the home, approximately \$5,150.00.
- D. The debt owed to First Interstate Bank for an operating loan, approximately \$6,279.93.
- E. The debt owed to Farmers Home Administration, No. 44-19, for the 13-Mile Farm and the Goodwin Farm, approximately \$43,321.70.
- F. The total of the above debts assigned to Plaintiff comes to approximately \$74,651.63.



**Debts Assigned to Defendant**

28. It is fair, equitable, and reasonable that Defendant be required to assume and pay, and to hold Plaintiff free and harmless from, the following debts and obligations of the parties:

- A. The debt owed to First Security Bank to purchase the 1991 Ford diesel truck, approximately \$14,000.00.
- B. The debt owed to SCS and the State of Utah for well and gated pipe on the Goodwin Farm, approximately \$10,957.00.
- C. The debt owed to SCS and the State of Utah for a sprinkler system on the Goodwin Farm, approximately \$13,489.00.
- D. The debt owed to Minersville Feed and Supply, approximately \$16,800.00.
- E. The debt owed to Farmers Home Administration, No. 44-21, for the 13-Mile Farm and Goodwin Farm, in the amount of approximately \$21,194.87, and approximately \$2,851.00, respectively.
- F. The debt owed to Farmers Home Administration, No. 44-22, for the 13-Mile and Goodwin Farms, approximately \$29,380.58.
- G. The total debt assigned to Defendant comes to approximately \$105,821.45.

**Comparison of Debt Assignment**

29. The above assessment of debt requires Defendant to pay more debt than is required of Plaintiff. In view of the fact that Defendant received a higher value of the marital property, the division of debt appears appropriate.

**Attorney Fees and Costs**

30. Plaintiff sought an award of attorney fees against Defendant. This case has been long and bitter. The Court is unable to determine with precision where the fault lies for this situation. The Court finds that both parties have been awarded considerable assets, both are able to work and meet their financial needs, and both have incurred extensive attorney fees. The Court sees no basis for requiring the Defendant to pay the Plaintiff's attorney. It is appropriate that each be ordered to pay his or her own attorney fees.

31. Costs should be awarded to Plaintiff as the prevailing party, upon the filing of an appropriate memorandum of costs and disbursements.

**Permanent Injunction**

32. Because of the negative and hostile interactions between the parties during the course of these proceedings, it is appropriate that the Court enter a mutual, permanent injunction, permanently restraining and enjoining the parties from bothering, molesting, harassing, threatening, or libeling the other, and interfering with the other in any way. Further, said permanent injunction should enjoin and restrain the parties from saying anything derogatory about the other in the presence of hearing of the parties' minor children, and each should be permanently enjoined and restrained from permitting any friend or relative from saying or doing anything derogatory about or towards the other in the presence of the minor children.

**Execution of Documents**

33. The parties should be required to execute and deliver documents reasonably necessary to carry out the division of debts, liabilities, assets and properties set forth above.

**Marital and Business Records**

34. Both parties are in possession of marital and business records. If requested, the party in possession of such records should provide a copy of any requested records to the other at the requesting party's expense.

From the foregoing Findings of Fact, the Court now makes and enters its:

**CONCLUSIONS OF LAW**

1. This Court has jurisdiction of the subject matter of this action and the persons of the parties.

2. Plaintiff should be awarded a Decree of Divorce from Defendant upon the ground of irreconcilable differences, to become final and effective immediately upon execution, filing, and entry in the register of action.

3. Child custody, visitation, and support should be ordered as set forth above.

4. Medical, dental, and optical insurance coverage for the minor children should be obtained as set forth above and costs of such coverage shared equally by the parties. Medical, dental, and optical expenses reasonably incurred for the benefit of the children but not covered by insurance, should be apportioned and shared equally between the parties.

5. No alimony should be awarded either party, except Defendant should be required to assume and pay debts assigned to him in lieu of alimony.

6. Debts, liabilities assets and properties of the parties should be divided, awarded, and assigned as set forth above.

7. The parties should be ordered to pay their respective attorney fees.

8. Plaintiff, as prevailing party, should be awarded her costs upon filing an appropriate memorandum of costs and disbursements.

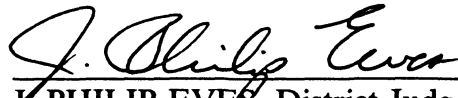
9. A permanent injunction should issue as set forth above.

10. The parties should be required to execute and deliver documents reasonably necessary to carry out and implement the division of debts and assets indicated above.

LET A DECREE OF DIVORCE BE ENTERED ACCORDINGLY.

DATED this 20<sup>th</sup> day of December, 1995.

BY THE COURT:

  
J. PHILIP EVES, District Judge

APPROVED AS TO FORM:

\_\_\_\_\_  
WILLARD R. BISHOP  
Attorney for Plaintiff

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**J. BRUCE READING**  
**Attorney for Defendant**

**Addendum "C": Decree of Divorce Dated December 21, 1995**

FILED

DEC 21 1995

Paul B. Bishop Clerk

WILLARD R. BISHOP, P.C.  
Willard R. Bishop - #0344  
Attorney for Plaintiff  
P. O. Box 279  
Cedar City, UT 84721-0279  
Telephone: (801) 586-9483

IN THE FIFTH JUDICIAL DISTRICT COURT OF BEAVER COUNTY

STATE OF UTAH

JETTA ANN PEARSON DAVIE,	)	
	)	
Plaintiff,	)	<i>DECREE OF DIVORCE</i>
	)	
vs.	)	
	)	
CRAIG VERNON DAVIE,	)	Civil No. 94-CV-29
	)	Honorable J. Philip Eves
Defendant.	)	

The above-entitled matter came on regularly for trial to the Court on January 10 and 11, 1995, in connection with all issues extant in the case, as set forth in the Pretrial Order. Plaintiff JETTA ANN PEARSON DAVIE appeared personally and was represented by her attorney of record, Mr. Willard R. Bishop. Defendant CRAIG VERNON DAVIE also appeared personally and was represented by his attorney of record, Mr. J. Bruce Reading. Following the completion of presentation of evidence on the second day of trial, the parties and the Court determined it would be appropriate to submit arguments in writing. The schedule for submission of the arguments was set and the Court took the matter under submission pending the filing of the arguments. Thereafter, on May 23, 1995, Plaintiff filed

a document entitled "Notice of Readiness for Decision". The Court having previously reviewed the written submissions of the parties, and having previously made and entered its Findings of Fact and Conclusion of Law;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

*Decree of Divorce*

1. Plaintiff should be and she hereby is awarded a decree of divorce from Defendant upon the ground of irreconcilable differences, said decree to become final and effective immediately upon execution, filing and entry in the register of actions.

*Custody and Visitation*

2. That Plaintiff should be and she hereby is awarded the care, custody and control of the parties' minor children, and Defendant is hereby awarded reasonable rights of visitation as provided in UCA 30-3-35 (1953, as amended), and such other liberal and reasonable visitation as may be worked out between the parties in advance. said visitation to be conditioned upon Defendant's compliance with the following conditions:

A. Visitation is to be arranged so that it does not unnecessarily or unreasonably interfere with the school work and work activities of the boys.

B. Defendant's right to overnight visitation shall be conditioned upon providing suitable living quarters for the boys during the visit. It is not appropriate



for the boys to visit in the home of Defendant when Grace McFall and her two children are spending the night there.

*Child Support*

3. That Plaintiff should be and she hereby is awarded, and Defendant should be and he hereby is required to pay to Plaintiff, child support in the amount of \$192.30 per month per child, or \$384.60 per month. Such child support shall be paid until such time as the children reach their age of majority or complete high school, whichever occurs later, from and after January 11, 1995. Withholding shall be required in accordance with applicable law. In the event that the children visit with Defendant for more than 25 of 30 consecutive days in the summertime for extended visitation, then the base support award for each child will be reduced by 50% for that period of time.

*Medical and Dental Insurance*

4. That Plaintiff should be and she hereby is required to obtain and maintain medical, dental, and optical insurance coverage for the benefit of the parties' minor children when available at reasonable cost. Premiums applicable to the children's coverage shall be shared equally by the parties, as shall medical, dental, and optical expenses for the children which are not covered by insurance.

*Tax Deductions*

5. That each party shall be permitted to claim one of the children as a dependent for state and federal income tax purposes.

*No Alimony*

6. No alimony is awarded either party, provided, that Defendant shall assume and pay debts which the Court will assign to him hereafter, in lieu of alimony, since Plaintiff will not be able to support herself if required to pay the debts assigned to Defendant.

*Division of Assets*

*Plaintiff's Separate Property*

7. That Plaintiff should be and she hereby is awarded, as her sole and separate property, free and clear of any claim of Defendant, the items listed below which were and are her premarital property. No value is assigned to the items of premarital property awarded to Plaintiff for the reason that their value is irrelevant, those items not being subject to a division between the parties.

- A. 250 cc Honda motorcycle
- B. 175 cc Kawasaki/Yamaha motorcycle
- C. Rototiller
- D. Antique sewing machine
- E. Newer sewing machine
- F. Hope chest from the master bedroom
- G. Bunk bed
- H. Single bed
- I. Full bed
- J. Double bed
- K. Bosch bread machine
- L. Wheat grinder
- M. Piano
- N. Electric key board
- O. Small color television with doors
- P. Stereo
- Q. White tin shed

- R. Couch and loveseat
- S. Rocking chair
- T. One meat saw
- U. 1974 Ford truck
- V. Plaintiff's personal items stored in the railroad building
- W. Plaintiff's personal items and premarital property stored in the rafter of the garage
- X. Plaintiff's wedding ring set

*Defendant's Separate Property*

8. That Defendant should be and he hereby awarded, as his sole and separate property, free and clear of any claim of Plaintiff, the items set forth below, which were and are his premarital property. No value is assigned to these items for the reason that their value is irrelevant, they not being subject to a division between the parties.

- A. All interest in Cow Hollow property
- B. Fuel tank and stand
- C. Portable welder.
- D. Banker's Life Annuity
- E. Paul Revere Annuity
- F. Woodburning stove
- G. Tool chest
- H. Acetylene tanks and carrier
- I. One meat saw
- J. Flatbed trailer
- K. 1972 Ford truck, which Defendant should be ordered to remove from Plaintiff's property.
- L. 350 cc Honda motorcycle
- M. 1961 stock truck
- N. Antique watch and case
- O. Motor manuals
- P. Fire extinguisher in garage
- Q. Leica 35mm camera
- R. Collection of purple bottles

- S. His scrap books and pictures, provided, however, that Plaintiff shall be permitted to obtain copies for herself, should she so desire.
- T. Defendant's premarital property stored in the rafters of the garage, together with such personal items as may belong to him in that storage.
- U. The red chain saw

**Plaintiff's Marital Property**

9. That Plaintiff should be and she hereby is awarded, as her sole and separate property, free and clear of any claim of Defendant, the following items of marital property:

- A. One-half interest in the Western Rock lease of water from a windmill at the 13-Mile/Kirk Farm, and a site upon which Western Rock keeps its batch plant. Lease payments from this lease are to be paid directly to Dr. Prince for the orthodontic care of the parties' minor children. After Dr. Prince is paid off, the remaining balance of the Western Rock payments are to be equally divided between the parties. The Court affixes no value to this award since it is impossible to determine what the actual value of the lease will be after Dr. Prince has been paid, and for the further reason that there is no need to set a value upon the interest here awarded, since it will be divided equally between the parties.
- B. The \$150.00 already received by Plaintiff from the sale of hay to Mildred Loveridge. Defendant has also received \$150.00 from that source.
- C. The family home located in Minersville, Beaver County, State of Utah, more specifically described as follows:

Beginning at the Southwest corner of Lot 2, Block 31, Plat "B", Minersville Town Survey, and running thence North 9 rods; thence North 51°30' East 3.2 rods; thence South 1.2 rods; thence North 60°53' East 4.82 rods; thence South 11.53 rods; thence West 7 rods to the point of beginning. Together with all rights, privileges, improvements, and appurtenances thereunto belonging or any wise appertaining.

The Court finds that the home belonged to Plaintiff prior to her marriage to Defendant. The Court further finds that Defendant made significant contributions to the home in terms of a lump sum contribution as well as payments towards loan obligations. The Court heard evidence from Plaintiff that the current value of her home is \$51,000.00. The Court also heard evidence from an appraiser that the current value is \$78,000.00. The appraiser did admit that he was unable to find comparable sales in the Minersville area and used comparable sales from Beaver to establish his value. He also admitted that there were certain repairs and extensive termite damage that he had not considered in arriving at his value. The Court is of the opinion that the fair market value is closer to the \$51,000.00 testified to by the Plaintiff rather than the \$78,000.00 testified to by the appraiser. Accordingly, the Court fixes the current value of the home at \$51,000.00. The parties testified that there are currently liens totaling \$19,850.00 against the home, consisting of \$14,700.00 owed to Rosemary Bowman and \$5,150.00 owed to Plaintiff's parents. Thus, the current equity in the home is \$31,150.00. Plaintiff argued that some amount of the equity should be awarded to her as premarital in view of the fact that she owned the home for several years prior to her marriage to Defendant. The Court is unable, however, to determine from the testimony presented what portion of the equity accrued prior to the marriage and portion accrued since March of 1978, when the parties were married. The Court finds that Plaintiff and Defendant have made various contributions to the home from both marital and separate funds. The Court cannot determine by a preponderance of the evidence the exact nature or amount of the contributions. Therefore, the Court finds that because of commingling, the equity in the home is to be treated as marital property in total. Therefore, the Court finds the home should be awarded to Plaintiff, but fixes the value of that award at the total of the equity in the amount of \$31,150.00.

- D. The newspaper building located in Milford, Beaver County, Utah, with a value of \$6,000.00, which property is more specifically described as follows:

Beginning at a point of West boundary line of Lot 4, said point being 175.35 feet from Northwest corner of Block 10, Plat "B", Milford Town

Survey, thence South 80 07' East 69.41 feet; thence South 24 55' West 32.77 feet; thence North 80 07' West 61.04 feet; thence North 9 53' East 31.65 feet to beginning. Together with all rights, privileges, and appurtenances thereunto belonging.

E. The Mineral Range grazing rights/AUMS, with a value of \$8,000.00, specifically described as being and including:

- (1) Share Certificate No. 209, including 23 one and one-half shares of common stock of the North Divide Grazing Company.
- (2) Mineral Range AUMS, described as follows:

Including, but not limited to, 36 AUMS, as evidenced by Minersville No. 6104 and 121 AUMS as evidenced by Mineral Range No. 6107, and including 112 AUMS suspended non-use.

F. A one-fourth (¼) undivided interest in and to all NADA lands, BLM grazing rights, the State land lease, NADA Corporation stock, associated water rights and improvements. The land included in NADA is located in Iron County, State of Utah, and is more specifically described as follows:

- (1) Parcel 1: The South quarter of Section 3, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (2) Parcel 2: Lots 3, 4, 5, 6, 11, 12, and the South one-half of Section 4, all in Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (3) Parcel 3: Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, and 12, all in Section 5, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (4) Parcel 4: Lots 1, 2, and 4, all in Section 6, Township 31 South, Range 12 West, Salt Lake Base and Meridian.

- (5) Parcel 5: The West one-half; and the South one-half of the Southeast quarter, both in Section 8, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (6) Parcel 6: The Southeast quarter; the Northeast quarter of the Southwest quarter; and the South half of the Southwest quarter, all in Section 9, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (7) Parcel 7: The Northeast one-quarter; the East one-half of the Northwest one-quarter; and the North one-half of the Southeast one-quarter, all in Section 30, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (8) Parcel 8: The Northwest quarter of the Southeast quarter; the North one-half of the Southwest one-quarter; the Southwest one-quarter of the Southwest one-quarter; all in Section 1, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (9) Parcel 9: The North one-half of Section 12, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (10) Parcel 10: The West one-half of Section 15, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (11) Parcel 11: The West one-half of Section 22, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (12) Parcel 12: The West one-half of Section 23, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (13) Parcel 13: The West one-half of Section 26, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (14) Parcel 14: The Northeast one-quarter of Section 33, Township 31 South, Range 12 West, Salt Lake Base and Meridian.

- (15) Parcel 15: The Southeast one-quarter of Section 28, Township 31 South, range 12 West, Salt Lake Base and Meridian.
- (16) Parcel 16: The West one-half of Section 2, Township 32 South, Range 13 West, Salt Lake Base and Meridian.
- (17) Parcel 17: The West one-half of Section 3, Township 32 South, Range 13 West, Salt Lake Base and Meridian.
- (18) Parcel 18: The Southwest one-quarter of Section 11, Township 32 South, Range 13 West, Salt Lake Base and Meridian.
- (19) Parcel 19: The Northeast one-quarter and the North 23 acres of the Southeast one-quarter of Section 10, Township 32 South, Range 13 West, Salt Lake Base and Meridian.

TOGETHER WITH all AUMS, including, but not limited to, 374 AUMS formerly belonging to Rosemary G. D. Bowman, who took title as Rosemary G. Davie, in the NADA BLM allotment.

TOGETHER WITH WUC No. 71-1450, 71-1451, 71-1698, 71-1713, 71-1723, and 71-1724, and any and all other water rights pertaining thereunto.

TOGETHER WITH all interest in State of Utah Grazing Lease No. 20730, and any subsequent State of Utah Grazing Leases.

TOGETHER WITH all oil and mineral and geothermal rights, together with the right of ingress and egress for mining, exploring, and/or removing the same.

- (20) The State of Utah Division of State Lands and Forestry Grazing Permit No. GP-20730, containing 102 AUMS, more or less, covering 2,898.24 acres, more or less, of land owned by the State of Utah, consisting of Sections 16 and 32 in Township 31 South, Range 12 West, Salt Lake Base and Meridian, and including all of Sections 32 and 36, and the West half of



Section 21, in Township 31 South, Range 13 West, Salt Lake Base and Meridian.

- (21) All windmills, water right improvements, and other improvements.
- (22) All ownership interest in NADA, whether manifested by share certificates or otherwise.

G. The Kirk/13-Mile Farm, with a value established at \$40,000.00, located in Beaver County, Utah, and more specifically described as follows:

- (1) Parcel 1: Lot 2 and the Southwest quarter of the Northeast quarter of Section 5, Township 30 South, Range 11 West, Salt Lake Base and Meridian.
- (2) Parcel 2: Lots 1, 2, and 3; the South half of the Northeast quarter and the Southeast quarter of the Northwest quarter of Section 4, Township 30 South, Range 11 West, Salt Lake Base and Meridian.
- (3) Parcel 3: Lots 1, 2, 3, and 4 and the South half of the North half of Section 3, Township 30 South, Range 11, West, Salt Lake Base and Meridian.

TOGETHER WITH all AUMS, including but not limited to, 36 AUMS as evidenced by Minersville No. 6104 and 121 AUMS as evidence by Mineral Range No. 6107, and 112 AUMS suspended non-use.

SUBJECT TO a life estate in Rosemary Davie Bowman in and to all geothermal rights, together with the right of ingress and egress for the purpose of exploring and/or removing the same.

TOGETHER WITH all rights, privileges, improvements, and appurtenances thereunto belonging or in anywise appertaining thereunto.

- (4) Parcel 4: Beginning at the South quarter corner of Section 33, Township 29 South, Range 11 West, Salt Lake Base & Meridian; thence Westerly along the section line to a point 160 feet West of the South quarter corner of said Section 33; thence North 160 feet; thence East 160 feet to the center section line of said Section 33; thence South 160 feet along the section center line to the point of beginning.
- H. An undivided one-half interest in and to the water rights owned by the parties, as evidenced by WUC 71-1650 and 20105, containing 116.02 acre feet of water, including 25.4 acre feet of water for irrigation, stock watering equivalent for 500 units (14 acre feet), and one domestic right, approximately .045 acre feet. In the event that the domestic water right cannot be divided, it shall be awarded to Plaintiff to be used with the Kirk Farm, and one-half of the value of that right shall be paid by Plaintiff to the Defendant as compensation.
- I. As indicated above, the Minersville Range AUMS shall be awarded to Plaintiff. The value of those grazing rights is fixed at \$1,350.00.
- J. The gravel pit on the Kirk Farm. The value of the gravel pit is included in the \$40,000.00 value assigned to the Kirk/13-Mile Farm, above.
- K. The 13-Mile Farm lease, with a value of \$3,900.00.
- L. The horse named "Splash" with a value fixed in the amount of \$700.00. If the horse is not returned to Plaintiff by Defendant within 30 days after the judgment to be entered hereafter is entered, Defendant shall be required to pay Plaintiff the cash equivalent of the value of the horse.
- M. The horse named "Blondie" with a value set in the amount of \$700.00. The horse shall be returned to Plaintiff by Defendant within 30 days of the entry of judgment herein. If the horse is not returned to Plaintiff within 30 days, Defendant shall to pay to Plaintiff the cash equivalent of the value of the horse.

- N. One-half of all cattle owned by the parties, not previously sold or divided. Plaintiff is hereby required to prepare two (2) lists of what she perceives to be an equal division of such cattle and calves. Defendant shall then be allowed to choose which list he prefers, and upon this basis the previously undivided cattle and calves should be and hereby are, distributed.
- O. Because of the circumstances in this case, in the event that either Plaintiff or Defendant is found to have taken more than his or her fair share of cows, or to have secreted cows from the other party, the Court, following hearing, shall enter an order requiring the offending party to pay to the other party double the value of the cows secreted.
- P. The Angus and Hereford bulls at the agreed value of \$2,000.00.
- Q. The John Deere bailer at the value of \$2,500.00.
- R. The John Deere 2280 swather at the value of \$10,000.00.
- S. The six-cylinder ruined engine shall be awarded to Plaintiff, and the four-cylinder engine shall be awarded to Defendant. No value is set for these items, their values being deemed equal by the Court.
- T. The stationary welder at the value of \$300.00.
- U. The John Deere chain saw with a value of \$300.00.
- V. The air compressor and air tank with a total value for both pieces of \$250.00.
- W. The various remaining farm tools consisting of shovels, rakes, hoes, pitch forks, etc., with a value set at \$200.00.
- X. The 1979 Ford Courier pickup, with a value of \$500.00.
- Y. The 1973 Mercury, with a value of \$50.00.
- Z. The four-horse trailer, with a value of \$1,000.00.

- AA. Her Utah State Retirement Fund Account, with a value of \$1,400.00.
- AB. The used freezer in her home, with a value of \$100.00.
- AC. The two, used refrigerators found on Plaintiff's property, with a value of \$100.00 for both pieces.
- AD. The four-drawer filing cabinet located in Plaintiff's home. No value is affixed to this item in view of the fact that the metal filing cabinet of equal value is going to be awarded to Defendant.
- AE. Two lawn mowers, with value set at \$100.00 each, for a total value of \$200.00.
- AF. The prefabricated saddle stand, with a value of \$50.00.
- AG. The washer and dryer, with a value of \$600.00 for both pieces.
- AH. The microwave oven, with a value of \$100.00.
- AI. The dishwasher, with the agreed value of \$200.00.
- AJ. The organ which is located in the family home. Its value is set at \$600.00 in recognition of the fact that the organ was at least partially paid for prior to the marriage of the parties.
- AK. The small color television set, value \$50.00.
- AL. The home computer, printer and programs with a value of \$500.00.
- AM. The video cassette recorder with a value of \$50.00.
- AN. The various VCR tapes in Plaintiff's home, with a set value of \$300.00, provided, however, that Defendant should be allowed to copy any noncommercial tapes that he chooses.
- AO. The camcorder, with a value of \$100.00.
- AP. The stereo cabinet, with a value of \$50.00.

- AQ. The almond-colored tin shed which is on a slab located on the real estate surrounding the home. The value of this item has been included in the value of the home, already fixed by the Court.
- AR. The kitchen utensils and luxury appliances, including the fire extinguisher in the kitchen, with a value of \$50.00.
- AS. The couch in the basement of the marital home, with a value of \$200.00.
- AT. One-half of all compact discs and cassettes owned by the parties at the time of their separation. The other one-half of the compact discs and cassettes shall be awarded to Defendant. The parties are to divide the cassettes and compact discs equally between them. If they are not able to do so, the Court shall conduct a hearing for making the division upon notice to both sides.
- AU. The kitchen table and chairs, with value of \$250.00.
- AV. The pictures, knick-knacks, clocks, collectibles and porcelain figures, etc., with the value of \$1,000.00.
- AW. The posthole digger which was the purchased by the parties, with a value of \$200.00.
- AX. One-half of the poles owned by the parties at the time of trial, with Defendant receiving the other one-half.
- AY. The grain barrel, not including the trailer, with a value of \$200.00.
- AZ. One-half of the net wire owned by the parties at the time of trial, with Defendant receiving the other one-half.
- BA. The acetylene torch now in her possession. No value is affixed by the Court since the Marquette torch is awarded to the Defendant and the Court deems the two torches of equal value.
- BB. The 35mm Canon camera, with value of \$100.00.

- BC. Her wedding ring set. The set was a gift to her during the marriage. No value is set because it is her separate property.
- BD. The 1990 Dodge Dynasty, with value of \$6,000.00.
- BE. Her own scrap books and pictures. Defendant shall likewise be awarded his own scrap books and pictures. Each party shall be authorized to obtain copies of any photographs retained by the other party.
- BF. The two work tables shall be divided between the parties. Plaintiff shall be awarded the table which Sheb and Seth Davie are currently using for their reloading equipment. Defendant shall be awarded the other table. No value is set for the reason that the Court deems the tables to be of equal value.

*Defendant's Marital Property*

10. That Defendant should be and hereby is awarded, as his sole and separate property, free and clear of any claim of Plaintiff, the following items of marital property:

- A. The obligation owed to the parties by Ray Barnes, with the value of \$375.00.
- B. The balance owed by Warren Gray for a hay purchase in 1993, with a value of \$750.00.
- C. The balance owed to the parties for hay purchases by Mark Thompson in 1993, with a value of \$475.00.
- D. The amount of \$150.00 already received by Defendant from Mildred Loveridge for a hay purchase.
- E. The balance owing from Beaver County for gravel purchased from the 13-Mile/Kirk Farm, with a value of \$400.00.
- F. The balance owing to the parties for hay purchased by Les Whitney in 1993, with a value of \$344.00.

- G. The clinic building located in Milford, Beaver County, Utah, with a value set at \$6,000.00, which clinic building is more specifically described as follows:

Commencing at a point on Westerly sideline of Lot 4 from which the Northwest corner of said Block 10, Plat "B", Milford Town Survey, bears North 9°53' East 207 feet South 80°07' East 61.04 feet to a point on Westerly line of railroad right-of-way; thence South 24°55' West 37.95 feet; thence North 80°07' West 51.2 feet to a point on Easterly line of Main Street from which point the Southern extremity of Lot 4 bears South 9°53' West 190.61 feet; thence North 9°53' East along East line of Main Street 36.65 feet to beginning. Together with all rights, privileges and appurtenances thereunto belonging.

- H. An undivided one-quarter interest in all NADA property, water rights, improvements, shares, or ownership, thus resulting in an equal division of all NADA interests between the parties. Legal descriptions of the properties are more specifically described as follows:

- (1) Parcel 1: The South quarter of Section 3, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (2) Parcel 2: Lots 3, 4, 5, 6, 11, 12, and the South one-half of Section 4, all in Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (3) Parcel 3: Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, and 12, all in Section 5, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (4) Parcel 4: Lots 1, 2, and 4, all in Section 6, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (5) Parcel 5: The West one-half; and the South one-half of the Southeast quarter, both in Section 8, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (6) Parcel 6: The Southeast quarter; the Northeast quarter of the Southwest quarter; and the South half of the Southwest quarter,

all in Section 9, Township 31 South, Range 12 West, Salt Lake Base and Meridian.

- (7) Parcel 7: The Northeast one-quarter; the East one-half of the Northwest one-quarter; and the North one-half of the Southeast one-quarter, all in Section 30, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (8) Parcel 8: The Northwest quarter of the Southeast quarter; the North one-half of the Southwest one-quarter; the Southwest one-quarter of the Southwest one-quarter; all in Section 1, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (9) Parcel 9: The North one-half of Section 12, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (10) Parcel 10: The West one-half of Section 15, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (11) Parcel 11: The West one-half of Section 22, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (12) Parcel 12: The West one-half of Section 23, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (13) Parcel 13: The West one-half of Section 26, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (14) Parcel 14: The Northeast one-quarter of Section 33, Township 31 South, Range 12 West, Salt Lake Base and Meridian.
- (15) Parcel 15: The Southeast one-quarter of Section 28, Township 31 South, range 12 West, Salt Lake Base and Meridian.
- (16) Parcel 16: The West one-half of Section 2, Township 32 South, Range 13 West, Salt Lake Base and Meridian.



- (17) Parcel 17: The West one-half of Section 3, Township 32 South, Range 13 West, Salt Lake Base and Meridian.
- (18) Parcel 18: The Southwest one-quarter of Section 11, Township 32 South, Range 13 West, Salt Lake Base and Meridian.
- (19) Parcel 19: The Northeast one-quarter and the North 23 acres of the Southeast one-quarter of Section 10, Township 32 South, Range 13 West, Salt Lake Base and Meridian.

TOGETHER WITH all AUMS, including, but not limited to, 374 AUMS formerly belonging to Rosemary G. D. Bowman, who took title as Rosemary G. Davie, in the NADA BLM allotment.

TOGETHER WITH WUC No. 71-1450, 71-1451, 71-1698, 71-1713, 71-1723, and 71-1724, and any and all other water rights pertaining thereunto.

TOGETHER WITH all interest in State of Utah Grazing Lease No. 20730, and any subsequent State of Utah Grazing Leases.

TOGETHER WITH all oil and mineral and geothermal rights, together with the right of ingress and egress for mining, exploring, and/or removing the same.

- (20) The State of Utah Division of State Lands and Forestry Grazing Permit No. GP-20730, containing 102 AUMS, more or less, covering 2,898.24 acres, more or less, of land owned by the State of Utah, consisting of Sections 16 and 32 in Township 31 South, Range 12 West, Salt Lake Base and Meridian, and including all of Sections 32 and 36, and the West half of Section 21, in Township 31 South, Range 13 West, Salt Lake Base and Meridian.
- (21) All windmills, water right improvements, and other improvements.

- (22) All ownership interest in NADA, whether manifested by share certificates or otherwise.
- I. One-half of the water rights owned by the parties, as set forth in paragraph 10H, above, except that if the domestic water right is incapable of division, that water right should be awarded to Plaintiff for her use on the Kirk Farm and one-half of the value of that right is to be paid by the Plaintiff to the Defendant to compensate him for that right.
  - J. The ~~Goodwin~~ Farm Lease, which has 30 years to run, for a total current value of \$90,000.00. Plaintiff contributed significantly to the rehabilitation and improvement of the farm ground and irrigation system subject to the lease, to the point that the value of the leasehold interest constitutes marital property.
  - K. The horse "Rosebud" and her colt, with a value of \$1,000.00 for both animals.
  - L. The horse "Misty" with a value of \$900.00.
  - M. One-half of the cows, as previously stated in paragraph 9N, above, concerning the award to Plaintiff.
  - N. The polled Hereford bull and two, horned Hereford bulls, at the agreed upon value of \$3,000.00.
  - O. The hay wagon, with the value of \$6,500.00.
  - P. The 4020 John Deere tractor, with a value of \$6,000.00.
  - Q. The New Holland baler, with value of \$8,500.00.
  - R. The sprayer, valued at \$500.00.
  - S. The corrugator, with an agreed upon value of \$300.00.
  - T. The scraper, with value set at \$325.00.

- U. The 10,000 gallon fuel tank, with value of \$1,500.00.
- V. The four-cylinder ruined engine. No value is fixed, for the reason that it is the same value as the six-cylinder engine to be awarded to Plaintiff.
- W. The portable welder, with value of \$300.00.
- X. The miscellaneous power and hand tools, with value set at \$3,000.00, partially in recognition of the fact that Defendant owned some of the tools prior to the marriage. The exact division is impossible to determine given the state of the evidence.
- Y. The Trailway bike, valued at \$1,000.00.
- Z. A used refrigerator, valued at \$50.00.
- AA. One small woman's saddle, valued at \$600.00.
- AB. The food dryer, valued at \$50.00.
- AC. His jewelry, if any, in the possession of Plaintiff, which should be returned to him by Plaintiff. No value is fixed for the jewelry as it appears that it was a gift and is the Defendant's separate property.
- AD. One-half of all compact discs and cassettes in the possession of the parties. If necessary, the Court will hold a hearing to effectuate an equitable distribution of those items.
- AE. Eight handmade quilts, with a value of \$100.00 per quilt, for a total value of \$800.00.
- AF. Four western hats with a value of \$100.00 per hat, for a total value of \$400.00.
- AG. The silver belt buckle, with a value of \$100.00.
- AH. Six hunting knives with a value of \$100.00 per knife for a total of \$600.00.

- AI. The weight bench and various barbells and dumbbells, with a value of \$200.00.
- AJ. One-half of the poles possessed by the parties at the time of the trial in this case.
- AK. The trailer which now carries the Plaintiff's grain barrel. The value of the trailer is fixed at \$200.00.
- AL. One-half of the net chicken wire possessed by the parties at the time of trial.
- AM. The Marquette torch. No value is fixed since it is considered of equal value to the torch awarded to Plaintiff.
- AN. The second posthole digger, valued at \$200.00.
- AO. The 1991 Ford diesel pickup truck, with value of \$12,500.00.
- AP. The various utensils and dishes on the Cow Hollow property, with no value fixed, since no value was proven.
- AQ. The work table in Plaintiff's garage which is not currently being used by Seth and Sheb for their reloading activities. No value is affixed by the Court, since this table is deemed to be of equal value to the one awarded to Plaintiff.
- AR. The "MC" brand and earmark, upon final distribution of all the cattle.

*Value of all Marital Property*

11. The total value of the marital property awarded to Plaintiff is \$121,450.00.

The total value of the marital property awarded to Defendant is \$147,069.00.

*Property Not Awarded*

12. That various items of property discussed in argument by the parties were not marital property, and are not subject to award to either party. Those items are as follows:

- A. The horse called "Little Red". The evidence demonstrates that this horse actually belongs to Seth and Sheb, the minor children of the parties.
- B. A horse called "Copper". The evidence now demonstrates that Copper is deceased.
- C. A horse acquired in 1993. The evidence clearly demonstrates that the horse in fact belongs to Plaintiff's father and not to the parties.
- D. A horse acquired in 1994. The evidence is clear that this horse is the Plaintiff's property by gift from her sons and a gentleman admirer.
- E. The parties are not entitled to claim cows owned by other persons, including their children.
- F. A certain 1986 F-250 pickup truck which the evidence demonstrates is owned by Glade Mickelson, a friend of Plaintiff.
- G. A 1985 Mercury vehicle which the Defendant originally claimed was a marital asset, but which has not been proven to exist.
- H. A 125 cc Yamaha motorcycle which the evidence shows is owned in fact by Sheb and Seth, the parties' minor children.
- I. A 50 cc Suzuki moped which the evidence indicates is owned by Codi Davie Lofland.
- J. A Yamaha 4-wheel ATV which likewise belongs to Codi Davie Lofland.
- K. A four-horse fifth-wheel trailer which does not belong to the parties but which the evidence shows belongs to one Robbie Eyre.

- L. A man's saddle located at Plaintiff's house which the evidence shows belongs to Glade Mickelson.
- M. Family recreation equipment. The Defendant claims that there is various family recreational equipment belonging to the parties. The Plaintiff disputes the existence of that equipment. The Court is unable to determine whether that equipment exists. If it in fact it exists it should be awarded to the Plaintiff for the children's use. No value is fixed.
- N. The Defendant claims that there is a riding mower which is part of the marital estate. The Court has received no evidence to prove that such a mower exists. It is disputed by the Plaintiff. The riding mower is not awarded.
- O. The Defendant claimed the existence of several hope chests which he said belonged to the parties. The Court is convinced that one of the hope chests in question belongs to Christi Davie Weldert, a daughter. The other hope chests were not proven to exist and therefore are not awarded.
- P. The second set of bunk beds. The Defendant claimed the existence of a second set of bunk beds. The Plaintiff disputes the existence of that set of beds. The Court finds that the existence of the beds has not been proven and therefore, they are not awarded.
- Q. Defendant claimed the existence of two additional food dryers. The Plaintiff disputed the existence of such additional food dryers. The Court finds that the existence of the two additional food dryers has not been proven, and therefore, they are not awarded.
- R. A third guitar. Defendant claimed the existence of a third guitar. Plaintiff disputed such alleged existence. The Court finds that the existence of the third guitar has not been proven, and therefore, it is not awarded.
- S. The Court finds that the two saxophones belong to Seth and Sheb, the two minor children of the parties.

- T. Likewise, the two guitars in the possession of the Plaintiff belong to Seth and Sheb, the minor children of the parties.
- U. Additional, 13-inch television sets. The parties apparently now agree that although there were additional 13-inch television sets in the possession of the parties, they are no longer existing and therefore, are not awarded other than as set forth above.
- V. The parties and the children each own various pieces of horse tack. Each should be awarded his or her own tack. If the parties are unable to determine who owns what tack, the Court should convene a hearing for purpose of making those awards upon proper notice from either party.
- W. A trailer located on the Goodwin Farm clearly belongs to Rosemary Bowman, and not to either of the parties.
- X. A saddle stand made by the Defendant and given to Seth and Sheb belongs to the two children of the parties.

*Division of Debts*

13. The Court shall use Plaintiff's values and evidence pertaining to the marital debts and obligations owed by the parties.

*Debts Assigned to Plaintiff*

14. That Plaintiff should be and she hereby is, required to assume and pay, and to hold Defendant free and harmless therefrom, the following debts and obligations of the parties:

- A. The debt owed to Mountain America Credit Union to purchase the 1990 Dodge Dynasty vehicle, approximately \$5,200.00.
- B. The debt owed to Rosemary Bowman for the addition to the house, approximately \$14,700.00.

- C. The debt owed to Ralph Pearson in connection with the balance on the home, approximately \$5,150.00.
- D. The debt owed to First Interstate Bank for an operating loan, approximately \$6,279.93.
- E. The debt owed to Farmers Home Administration, No. 44-19, for the 13-Mile Farm and the Goodwin Farm, approximately \$43,321.70.
- F. The total of the above debts assigned to Plaintiff comes to approximately \$74,651.63.

*Debts Assigned to Defendant*

15. That Defendant should be and he hereby is required to assume and pay, and to hold Plaintiff free and harmless from, the following debts and obligations of the parties:

- A. The debt owed to First Security Bank to purchase the 1991 Ford diesel truck, approximately \$14,000.00.
- B. The debt owed to SCS and the State of Utah for well and gated pipe on the Goodwin Farm, approximately \$10,957.00.
- C. The debt owed to SCS and the State of Utah for a sprinkler system on the Goodwin Farm, approximately \$13,489.00.
- D. The debt owed to Minersville Feed and Supply, approximately \$16,800.00.
- E. The debt owed to Farmers Home Administration, No. 44-21, for the 13-Mile Farm and Goodwin Farm, in the amount of approximately \$21,194.87, and approximately \$2,851.00, respectively.
- F. The debt owed to Farmers Home Administration, No. 44-22, for the 13-Mile and Goodwin Farms, approximately \$29,380.58.
- G. The total debt assigned to Defendant comes to approximately \$105,821.45.



- H. The requirement that Defendant assume and pay the above debts shall be deemed a requirement in lieu of alimony. See paragraph 6, page 4, above.

*Comparison of Debt Assignment*

16. The above assessment of debt requires Defendant to pay more debt than is required of Plaintiff. In view of the fact that Defendant received a higher value of the marital property, the division of debt appears appropriate.

*Attorney Fees and Costs*

17. That each party is hereby required to pay his or her own attorney fees.
18. Costs of court shall be awarded to Plaintiff as the prevailing party, upon the filing of an appropriate memorandum of costs and disbursements.

*Permanent Injunction*

19. That a mutual, permanent injunction be and hereby is entered in this matter, permanently restraining and enjoining the parties from bothering, molesting, harassing, threatening, or libeling the other, and from interfering with the other in any way. Further, that said permanent injunction hereby enjoins and restrains the parties from saying anything derogatory about the other in the presence or hearing of the parties' minor children, and each is hereby permanently enjoined and restrained from permitting any friend or relative from saying or doing anything derogatory about or towards the other in the presence of the minor children.

Execution of Documents

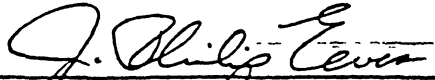
20. That the parties should be and they hereby are required to execute and deliver documents reasonably necessary to carry out the division of debts, liabilities, assets and property set forth above.

Marital and Business Records

21. Both parties are in possession of marital and business records. If requested, the party in possession of such records shall provide a copy of any requested records to the other at the requesting party's expense.

DATED this 20<sup>th</sup> day of December, 1995.

BY THE COURT:

  
J. PHILIP EVES, District Judge

APPROVED AS TO FORM:

\_\_\_\_\_  
WILLARD R. BISHOP  
Attorney for Plaintiff

\_\_\_\_\_  
J. BRUCE READING  
Attorney for Defendant

**Addendum "D": Relevant Portions of Reporter's Trial Transcript  
Dated January 10, 1995**

COPY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF BEAVER, STATE OF UTAH

HON. J. PHILIP EVES, judge

JETTA ANN PEARSON DAVIE, )

Plaintiff, )

vs. )

CRAIG VERNON DAVIE, )

Defendant. )

Civil No. 94-CV-29

VOLUME I

REPORTER'S TRIAL TRANSCRIPT

Tuesday, January 10, 1995

APPEARANCES OF COUNSEL:

For the Plaintiff: WILLARD R. BISHOP, ESQ.  
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Cedar City, Utah 84720

For the Defendant: SCALLEY & READING  
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DISK  
ENCLOSED

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1 BEAVER, UTAH; TUESDAY, JANUARY 10, 1995

2 -oOo-

3  
4 THE COURT: Good morning. Today is the 10th day  
5 of January, 1995. The time is four minutes after 10:00.  
6 The matter before the Court is 94-CV-29, entitled Jetta Ann  
7 Pearson Davie versus Craig Vernon Davie. I see the  
8 plaintiff.

9 Is the defendant present?

10 MR. READING: The defendant is en route, Your  
11 Honor.

12 THE COURT: Are you ready to proceed?

13 MR. READING: We are, Your Honor.

14 THE COURT: All right. Mr. Bishop, an opening  
15 statement?

16 MR. BISHOP: Oh, no. I'll just start by calling  
17 a witness, and we will just move on.

18 THE COURT: Mr. Reading, do you wish to make an  
19 opening statement at this point?

20 MR. READING: No. I'll reserve it.

21 THE COURT: All right.

22 MR. BISHOP: Call Jetta Ann Pearson Davie,  
23 please.

24 Would you take the witness and be sworn. Or be  
25 sworn and take the witness stand. Take those with you.



1 season.

2 Q. Sure. Item number 30, please? Is that the  
3 clinic bill that you already told us about?

4 A. Yes, sir.

5 Q. Item 31?

6 A. Newspaper building.

7 Q. We've already talked about that, have we not?

8 A. Yes, sir.

9 THE COURT: Are those part of the same  
10 property? 30 and 31?

11 THE WITNESS: Yes. They're on the same deed.  
12 They're not -- they're not the same property. They're on  
13 the same warranty deed, but they are two separate pieces of  
14 property.

15 THE COURT: Okay. They're not physically --

16 THE WITNESS: Attached.

17 THE COURT: -- attached or adjoined?

18 THE WITNESS: They are two separate buildings.

19 THE COURT: Okay.

20 Q. BY MR. BISHOP: And the assessor sends out  
21 separate tax notices, does he not?

22 A. Yes, sir.

23 Q. And we have talked about Cow Hollow. We've  
24 talked about the Goodwin farm also, which is item number  
25 33.

1                   It looks like here there's another mistake. You  
2 put a value earlier on the Goodwin farm of \$244,100, and  
3 now we've got items 33 and 34 that shows 5,070 per year on  
4 33 and \$2,400 on 34.

5           A.     I think --

6           Q.     What are those figures?

7           A.     We simply divided it up in -- into what we  
8 thought the value of that property would be if someone were  
9 to take over that lease for a year.

10          Q.     I see.

11          A.     And we priced it at the same thing that  
12 Smithfield had leased the 13-Mile farm to me for a year,  
13 which was \$30 per acre. And I'm assuming that's a fair  
14 value for -- for the Goodwin farm too.

15          Q.     So you're saying the two figures that were there  
16 on 33 and 34 now are rental figures for the property for  
17 one year?

18          A.     For one year, yes, sir.

19          Q.     I see. Item 35 we've talked about. 36 we've  
20 talked about.

21                   Let's go to 37, please. We have talked about  
22 Nada -- or 37-A. Is that the ground itself?

23          A.     Yes, sir.

24          Q.     And you're suggesting that that be divided  
25 equally between you and Mr. Davie?

1           A.     Yes, sir.

2           Q.     37-B. How does that compare with item 24?

3           THE COURT: Can I go back to 37?

4           MR. BISHOP: Sure.

5           THE COURT: When you say divided equally, what  
6 have you got in mind? The undivided interest?

7           THE WITNESS: The undivided interest. I  
8 discussed it with my attorney, that I would like to pick  
9 out a piece of ground and then -- but since Rosemary has an  
10 undivided one half interest, that's not something that  
11 could be done.

12          THE COURT: You're not asking for a partition of  
13 the property at this stage?

14          THE WITNESS: I am not, sir. Just -- just an  
15 interest.

16          THE COURT: All right.

17          THE WITNESS: Like I say, it's a big area, and  
18 none of it is fenced within the -- within the inside  
19 perimeter.

20          THE COURT: Okay. Go ahead, Mr. Bishop.

21          Q.     BY MR. BISHOP: Item 37-B, please? Would you  
22 compare that to item 24. Have we got a double entry here?

23          A.     We've just stated on 24 that we wanted it  
24 divided in half. And on 37, we simply put a value as to  
25 what those AUM's were worth.

1 haul the hay with the hay wagon. I've hauled hay with  
2 truck and tractor, but I -- I don't use the hay wagon.

3 Q. Okay. You were also pretty knowledgeable in the  
4 delivery of calves.

5 Have you ever done a cesarean?

6 A. Most people don't do their own cesareans. Craig  
7 is capable of doing the cesareans. I personally have  
8 assisted in handing the tools to them and being there with  
9 it, but the actual cutting -- if we have had it done -- has  
10 been done by Craig or a veterinarian. Most people use a  
11 veterinarian.

12 Q. Okay. Before we leave page two, you've  
13 estimated your husband's income at \$1,500 per month.

14 Upon what did you base that estimation?

15 A. There's an asterisk -- one. And it's stated  
16 down at the bottom, imputed and estimated. Defendant is  
17 easily capable of earning 1,500 per month and should be  
18 working.

19 Q. And I'm just interested in your basis for that.

20 A. He's capable of working. He's apparently had  
21 enough education and is strong and healthy and able of  
22 earning that type of money. He finished a course in  
23 welding. My understanding is he has spent the summer  
24 welding with the pumice mining company. I was told that he  
25 made excellent money while welding there. Of course that's

1 not written down as an income that he had.

2 Q. Let's -- let's go to page 21 of your Exhibit  
3 No. 1.

4 I believe that is the beginning of the 1991 tax  
5 information; is that correct?

6 A. Yes, sir.

7 Q. How much money in 1991 does it show that  
8 Mr. Davie earned?

9 A. That shows what he earned, not what he's capable  
10 of earning. That's a part-time job.

11 Q. Okay. I understand. But you were living with  
12 him at that time, and that was what was being done?

13 A. That's why I was working too. To bring up the  
14 balance of the income.

15 Q. Sure. But nonetheless, that was the amount that  
16 was earned in 1991 while you were still married to him;  
17 correct?

18 A. Yes, sir.

19 Q. Okay. Now let's go to -- it looks like it's  
20 page 37, 1992.

21 You were still married; correct?

22 A. Yes, sir.

23 Q. Still living together?

24 A. Yes, sir.

25 Q. Still working as a team?

1 A. Yes, sir.

2 Q. Still partners?

3 A. Yes, sir.

4 Q. How much did he earn in that year?

5 A. Again, part-time job, 86 -- what does it say?

6 84 or 86. I think it says 8,400.

7 Q. 8,400?

8 A. The asterisk states that he's capable of  
9 earning, not that's what he earns.

10 Q. But nonetheless, while you were partners with  
11 him and working with him, that was the amount that was  
12 earned in your presence, right?

13 A. Yes, sir.

14 Q. And the 1993 -- it looks like it's -- this is  
15 really faint, so you're going to have to help me. It  
16 starts around page 56. Can you show me which -- or how  
17 much he was earning.

18 MR. BISHOP: 54.

19 MR. READING: Is it 54? Page 54.

20 THE WITNESS: I'm sorry. I can't read what it  
21 says.

22 MR. READING: 54. Thank you. 1993.

23 Q. You were still married with him in 1993, right?

24 A. Yes, sir.

25 Q. Still partners with him?

1           A.     Yes, sir.

2           Q.     Still living under the same home -- or under the  
3 same roof?

4           A.     I'm sorry. Which -- on page 54?

5           Q.     Page 54, uh-huh.

6                     And during that year, how much was earned by  
7 your husband?

8           A.     8,400.

9           Q.     All right. But yet today, can you help me  
10 understand why you believe after three of the past four  
11 years while you were living with him and partners with him,  
12 you believe that he should be earning more money now than  
13 he was earning then?

14          A.     He was, as you stated, not capable of working a  
15 full-time job, because he had too much farm and cattle. I  
16 took on the responsibility of half of his farm work, and I  
17 acquired another job besides. Two more jobs besides. If  
18 I'm capable of taking half of the farm and acquiring two  
19 more jobs, certainly he should be capable of completing his  
20 half of the farm and holding down a job.

21          Q.     In fact, you really believe that he's not -- nor  
22 ever has -- worked to his capability; isn't that correct?

23          A.     That's correct.

24          Q.     Okay. On page three of P-1, the very bottom of  
25 that page, it has "Craig annuity, Banker's Life; Craig

1 annuity, Paul Revere."

2 When were those annuities purchased?

3 A. They were purchased before we were married.

4 Q. Has there been any contribution, to your  
5 knowledge, made to those annuities since you've been  
6 married?

7 A. Yes, sir.

8 Q. When were those contributions made?

9 A. Well, we would probably have to go back 14, 15,  
10 16, and 17 years ago. But yes, those contributions were  
11 made up until the last -- there were probably five years of  
12 contributions put into those until we froze them.

13 The purpose of these --

14 Q. Ma'am, first of all, let's just kind of stick to  
15 what I'm asking, and we'll get through this a little  
16 quicker.

17 You say there have been five years of  
18 contributions to those annuities?

19 A. No. I said we would probably have to go back  
20 that many years. I can't tell you exactly how many years  
21 we contributed to it, but approximately that many.

22 Q. Approximately five years; is that correct?

23 A. Yes, sir.

24 Q. And do you have any recollection of what that  
25 contribution was for each of those five years?



1 THE WITNESS: The fifth, being the government --

2 Q. BY MR. READING: The government.

3 A. -- we're talking about?

4 Q. Uh-huh.

5 A. Perhaps we should only be appraising the water  
6 and not the windmill on this. Like I said, this was the  
7 best of my ability to try to come up with something that  
8 was a close valuation. If -- if I should take away the  
9 cost of -- of it being -- I don't know -- the hole in the  
10 ground, we could do that. I --

11 Q. All right.

12 A. If you have a better valuation, I'm willing  
13 to -- to hear it, sir.

14 Q. All right. Has this ground appreciated at all  
15 since it was gifted to you?

16 A. Has this ground --

17 Q. Appreciated at all since it was gifted to you  
18 back in 1981?

19 A. I don't know. It -- it went through a period of  
20 time when the MX was coming in that the values went sky  
21 high. And when MX didn't come in, the value went down  
22 again. And at this point, I don't think -- I actually feel  
23 that it's probably about the same.

24 Q. Okay. On the top of page seven is the Goodwin  
25 place, which is presently being leased to Mr. Davie, I

1 believe; is that correct?

2 A. Yes, sir.

3 Q. You're not on the lease?

4 A. No.

5 Q. In fact, if Mr. Davie dies, you still wouldn't  
6 be on the lease; is that correct? You wouldn't have any  
7 interest?

8 A. It says on there -- I'd have to look at the  
9 lease. But it would go to his family. His children.

10 Q. The children would?

11 A. I -- I -- I'm not sure, without reading it  
12 again, if it would cover myself and my kids.

13 MR. BISHOP: Maybe we better read the lease.

14 THE WITNESS: I'd have to read the lease to be  
15 sure of that.

16 MR. READING: Why don't we do that to make  
17 sure. And let's turn to -- I think it's 130.

18 MR. BISHOP: Yes, sir.

19 Q. BY MR. READING: And I'm going to call your  
20 attention -- first of all, let's just kind of work through  
21 it in stages. Paragraph 14. I want you to read paragraph  
22 14 and tell us whether or not -- well, if you would agree  
23 with me that this lease cannot be assigned or sublet.

24 MR. BISHOP: Objection. Calls for a conclusion  
25 this witness is not qualified to give.

1 THE COURT: Overruled.

2 THE WITNESS: Are you asking me to read it out  
3 loud at this point or --

4 Q. BY MR. READING: No. I think we all can just  
5 read it. I don't want to test your reading verbal skills.  
6 If you will just read that and tell me after you've read it  
7 if you believe this lease could be sublet or assigned.

8 A. Well, as looking to the whole thing, it says  
9 sublet the premises or any part thereof or allow any other  
10 persons other than the lessee's agents, family and  
11 servants.

12 Q. Sure.

13 A. I think a wife and kids happen to be part of a  
14 family.

15 Q. Agreed.

16 A. The last I -- I heard.

17 Q. Agreed. But to sublet it to someone else to  
18 generate income from it --

19 A. That cannot be done.

20 Q. -- is that possible?

21 All right. Go now to page 133, which is page  
22 four of the lease, and look, if you wouldn't mind, at  
23 paragraph 17. And I guess -- read the whole thing for me,  
24 but I'm most interested in the second paragraph of  
25 paragraph 17.

1 THE COURT: Second paragraph? Okay.

2 Q. BY MR. READING: Upon Craig's death, do you see  
3 anywhere in that, that you would inure to the benefit of  
4 this lease? You, personally?

5 A. No. It states that it would be Seth and Sheb's.

6 Q. All right. Now, let's go back to page seven and  
7 help me understand how you evaluated the value of this  
8 leasehold interest to you and to Mr. Davie at \$244,100.

9 A. It was done the same as we had done the 13-Mile  
10 farm or to find a monthly on it. It was --

11 THE COURT: A monthly what?

12 THE WITNESS: I'm sorry. A yearly on it. The  
13 same as we had done with the 13-Mile farm. It was \$30 per  
14 acre per year.

15 THE COURT: I don't understand. Yearly what?  
16 Yearly income?

17 THE WITNESS: As a lease. As what someone would  
18 have to pay to -- to have this property.

19 THE COURT: All right.

20 THE WITNESS: Or what value it would be to  
21 someone else.

22 THE COURT: A lease?

23 THE WITNESS: So that someone would pay -- yes.  
24 What someone would pay to lease this property, is what it  
25 was valued at.

1 THE COURT: All right.

2 THE WITNESS: And the lease goes for 30 more  
3 years. So we're assuming that on a yearly basis, it would  
4 be worth the \$5,070 to lease it for the -- the crop ground,  
5 and \$2,400 a year to lease it for the pasture ground. And  
6 to find the actual value for the next 30 years as to what  
7 the lease is, that's what the amount comes to. That's how  
8 we come to that amount.

9 Q. BY MR. READING: Did you present value that  
10 stream of payments over the next 30 years to present value?

11 A. Pardon me?

12 Q. Well, for example, if we have a payment that we  
13 expect to receive, and it's going to be coming in for 30  
14 years --

15 MR. BISHOP: Stipulated she did not.

16 MR. READING: Okay. If that's the case, then we  
17 can go on.

18 THE COURT: All right.

19 Q. BY MR. READING: The value that you have here of  
20 \$244,100 -- who can have the benefit of that value as you  
21 have read the lease? In other words, are you entitled to  
22 that benefit after you have read the lease?

23 A. As long as I am his family or his wife, yes.

24 Q. And as soon as that --

25 A. At the point as --

1 Q. When that terminates --

2 A. When that terminates, no.

3 Q. Thank you. That's all I have on that issue.

4 Now, you mentioned that you put in some  
5 improvements on the Goodwin farm; is that correct?

6 A. Yes, sir.

7 Q. By mentioning that, are you demanding any kind  
8 of recompense for the service that you rendered on the  
9 Goodwin farm? Did you want any kind of payment or any kind  
10 of remuneration for that work?

11 A. What I am stating is that because of the amount  
12 of money and work that was put into that, it became a  
13 marital asset.

14 Q. I see. Well, let's take a look at the amount of  
15 time that you took to do the various things that you  
16 discussed concerning the improvements that you helped  
17 with.

18 Now, I believe that you said that you cleaned  
19 off -- what do they call that? Land -- land --

20 MR. BISHOP: Land-planing.

21 MR. READING: Thank you.

22 Q. Did you do that each year? Is that it?  
23 Land-planing?

24 A. I didn't say I done it each year. I said as the  
25 crops were taken out and new crops were put in, yes, I did

**Addendum "E": Relevant Portions of Reporter's Trial Transcript  
Dated January 11, 1995**

COPY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
IN AND FOR THE COUNTY OF BEAVER, STATE OF UTAH

HON. J. PHILIP EVES, judge

JETTA ANN PEARSON DAVIE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil No. 94-CV-29
	)	
CRAIG VERNON DAVIE,	)	
	)	
Defendant.	)	VOLUME II

REPORTER'S TRIAL TRANSCRIPT  
Wednesday, January 11, 1995

APPEARANCES OF COUNSEL:

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1 MR. BISHOP: Let's ask.

2 May I approach the witness and give her some  
3 notes?

4 THE COURT: You may.

5

6 RECROSS-EXAMINATION

7 BY MR. READING:

8 Q. Mrs. Davie, I asked you to take a look at what  
9 the expenses were to produce that hay out on the 13-Mile  
10 farm, and I think you've told me that you were able to put  
11 those numbers together as to -- as to those expenses.  
12 Could you share those with the -- with the Court.

13 A. Repairs and parts were \$8,524.37. Fuel and oil  
14 was \$11,115.20. The operating loan that had to be paid was  
15 \$2,875.92. The loan for the swather -- for the use -- was  
16 \$2,215.38. I made a payment of \$1,938.34 on operating  
17 loans to Farm Home Administration. The income on the hay  
18 was \$29,300, and the outgo was \$25,669.21, leaving a  
19 balance profit of \$3,630.79.

20 And that leaves the payment on the 13-Mile farm,  
21 which will be made at the time the lease is acquired  
22 through hopefully the decision of the Court, which is  
23 \$3,900, leaving a deficit of \$269.21. Still not paid is  
24 the operating note from Minersville Feed for \$3,000. And  
25 with Farm Home Administration, I have a balance left

1 paying -- owing to them of \$2,400, leaving me a deficit of  
2 \$5,669.21.

3 Q. Okay. So when you testified on redirect that  
4 the farm basically pays for the expenses to run the farm,  
5 and you've got to go make a living to eat food, you weren't  
6 kidding?

7 A. Yes, sir.

8 Q. And has that been basically your experience with  
9 both the Goodwin and the 13-Mile farm during the time that  
10 you've been farming?

11 A. Yes, sir.

12 Q. So really, the value in farming, as I see it --  
13 and -- and if you'll bear with me, because I'm trying to  
14 get to the valuation question -- the value in farming, as I  
15 see it, is the work ethic and the satisfaction you get out  
16 of farming, number one, and number two, the increased value  
17 in land, if you own the land, because that's your  
18 investment? You're hoping that, at least, is going to earn  
19 a nest egg for you over the years; is that correct?

20 A. No, sir.

21 Q. What other value is there?

22 A. When you purchase the farm, or when you go into  
23 farming, you go in with the idea that it has to be able to  
24 pay for itself to be able to make a profit off from it.  
25 We've been working towards that.

1                   And if you remember in the testimony -- I'm sure  
2                   you do -- we discussed a flood that we had that done a lot  
3                   of destruction, that money had to be borrowed. In  
4                   preparation and through financing, if Craig and I were able  
5                   to pay our debts in full for '94 and '95, the debts we had  
6                   incurred because of these problems would then be cleared  
7                   enough away that we would each show a profit off from  
8                   that. This discussion had been made. We would be able to  
9                   probably live without extra jobs off from the farm if we  
10                  were able to pay those debts by '96.

11                 Q.     Have you not --

12                 A.     And that's what we're striving for.

13                 Q.     Good. In the time of your marriage, when you've  
14                   had a farming operation, have you ever been able to live  
15                   off the farming operation without extra jobs?

16                 A.     We haven't.

17                 MR. READING: Okay. No further questions.

18                 THE COURT: Any other questions, Mr. Bishop?

19                 MR. BISHOP: One.

20

21                                 RE-REDIRECT EXAMINATION

22                 BY MR. BISHOP:

23                 Q.     If the flood had not occurred, do you believe  
24                   you'd now be in a profit situation?

25                 A.     Of course, sir.

1                   MR. BISHOP: Nothing further of this witness at  
2 this time.

3                   THE COURT: Do you want to explain to me how the  
4 flood plays into the figures you just gave us. I didn't  
5 understand it.

6                   THE WITNESS: When we received the lease on the  
7 Goodwin farm, we had put one piece of property -- reseeded  
8 one piece of property. Put grain in it.

9                   THE COURT: On the Goodwin farm?

10                  THE WITNESS: On the Goodwin farm.

11                  THE COURT: Okay.

12                  THE WITNESS: I don't know if you remember when  
13 the reservoir flooded over and went down and filled the  
14 Sevier Lake. That water ran over the top of our farm for  
15 several weeks, completely destroyed that farm.

16                  Because of that, we not only lost the money that  
17 we had put into the crop and lost not having any profit and  
18 the money we put into fuel, electricity to farm that crop  
19 that we'd already started farming, but we also lost all the  
20 ditches and a well. And we had to borrow another \$48,000,  
21 which was 3 percent interest, which was good money, but we  
22 still had to borrow that money. So not only did we not get  
23 a crop, the whole thing had to be put back together. We  
24 then had a payment of 4,900 and some odd dollars to make  
25 every year on that. And we were another like four years

1           THE WITNESS: That would be after demolition  
2 costs. So it could be worth more than that -- well, no.  
3 Six -- it -- 6,000 each. And that would be if you were to  
4 buy it, then you would have to pay for the demolition on  
5 top of that.

6           THE COURT: Okay.

7           THE WITNESS: So --

8           THE COURT: So this is the value of the land  
9 without considering demolition costs? Is that what you're  
10 saying?

11          THE WITNESS: Yes, yes.

12          THE COURT: Okay. Next question?

13          Q. BY MR. READING: Did I ask you to take a look at  
14 the 640 acres in the name of the parties that is commonly  
15 referred to by me as the 13-Mile farm and I think by the  
16 defendants as the -- or by the plaintiffs as the Kirk  
17 Farm? Did you take a look at that acreage?

18          A. Yes, I have.

19          Q. And what did you do to -- and did I ask you to  
20 give me an appraisal of what just the cost of the acreage  
21 or the value of the acreage would be?

22          A. Yes.

23          Q. What did you do in preparation of giving me your  
24 opinion today?

25          A. The same process as before.



1 Q. Why don't you explain that so we have that on  
2 the record.

3 A. Well, you'd research the market. The -- the  
4 sales that have taken place in that area. The -- the  
5 potential for -- for growth. If -- if, you know, the pig  
6 farm is going in in that particular area, then values are  
7 going to be affected one way or the other.

8 Q. It's my understanding that this is essentially  
9 sagebrush land?

10 A. Yes, it is.

11 Q. Did you equate into your value per acre anything  
12 to do with water rights?

13 A. No.

14 Q. What is the value that you established per acre  
15 for that?

16 A. I have -- yeah. I have \$80 an acre. And  
17 that -- that is a reflection upon it being in a closer  
18 location to this pig farm.

19 Q. Okay.

20 THE COURT: And that's again raw ground?

21 THE WITNESS: Yes, it is. Brush land.

22 THE COURT: I mean that's your --

23 THE WITNESS: Yes.

24 THE COURT: Your value there is just for the  
25 ground? Not for improvements; not for water rights?

1 THE WITNESS: Right.

2 THE COURT: Okay.

3 MR. READING: That's all the questions I have.

4 THE COURT: Cross-examination?

5 MR. BISHOP: Yes, Your Honor. I'd like the  
6 bailiff to give D-5 to the witness.

7 THE COURT: D-5?

8 MR. BISHOP: D-5. It's the diagram. There it  
9 is right there in front of the witness.

10 The sticker in front to your left,  
11 Mr. McKibben.

12

13 CROSS-EXAMINATION

14 BY MR. BISHOP:

15 Q. Do you have what's been marked for  
16 identification and admitted as D-5?

17 A. Yes, I do.

18 Q. And do you recognize that document?

19 A. Well, it -- it's like the Kirk Farm area  
20 that's -- as has been referenced.

21 Q. This is the area --

22 A. Yes.

23 Q. -- that you've just been talking about as far  
24 as -- designated as the pig farm area; correct?

25 A. Okay.

1 for her cows, you did the same thing; is that correct?

2 A. Yes.

3 Q. But the actual sales were 16,488.60? Isn't that  
4 what that document states?

5 A. 17,000. Is that --

6 Q. Look at item 21 on the account.

7 A. All right. No. You want to use your 17,529.  
8 Because I did bale a little extra hay, and I did sell that.

9 Q. All right. Does the expenses -- the expenses  
10 shown on this operation show to be 26,000 -- or --

11 A. 24.

12 Q. On D-19, your expenses were \$24,095; is that  
13 correct?

14 A. Right.

15 Q. What -- does that show that you operated at a  
16 profit or a loss?

17 A. At a loss.

18 Q. All right. Has that generally been your  
19 experience with the Goodwin farm?

20 A. Yes.

21 MR. READING: We'd move for D-16's admission  
22 merely to show his expenses for 1994.

23 MR. BISHOP: No objection to its admission,  
24 without it -- admitting the numbers on it.

25 THE COURT: Actually it's not to show expenses,

1 it's to show income.

2 MR. READING: Income. And also -- that's true.  
3 There is also expenses listed on the front sheet as well,  
4 Your Honor.

5 THE COURT: Do you have a copy for me? If you  
6 don't, I'll just look at the original.

7 MR. READING: I wish you would. That's one of  
8 the foul-ups I've had here. Your Honor, I didn't get that  
9 copied, and I apologize, Your Honor.

10 THE COURT: All right. What constitutes D-16 in  
11 your --

12 MR. READING: It's two sheets, Your Honor.  
13 There's a cover sheet and -- and an attachment sheet, which  
14 is the break-out in total showing -- such as we did with  
15 Mrs. Davie's account for 1994 and both of their accounts  
16 for 1993. I tried to have a break-out shown for his 1994  
17 income, and that's what that is.

18 THE COURT: All right. Let's go ahead, then.

19 MR. READING: All right.

20 Q. Do you have D-17 in front of you, sir?

21 A. D-17.

22 Q. Exhibit D-17.

23 A. No. All the exhibits here are gone.

24 MR. READING: All right. Could we have the  
25 witness handed D-17.

1 MR. BISHOP: Which one is that?

2 MR. READING: D-17 is the profit and loss report  
3 for Craig and Jetta Davie in 1993.

4 MR. BISHOP: That's the one that Morris --

5 MR. READING: That's the one we introduced  
6 through Morris, uh-huh.

7 MR. BISHOP: Okay.

8 Q. BY MR. READING: I call your attention to the  
9 front sheet of that document wherein farm expenses are  
10 shown for the calendar year of 1993 to be \$79,463.23.

11 Do you see that?

12 THE COURT: What --

13 MR. READING: It's about the second line from  
14 the bottom on the first --

15 THE COURT: I see it. Okay.

16 MR. READING: The first --

17 THE WITNESS: Okay. Yeah.

18 Q. BY MR. READING: Do you see that?

19 A. Yeah.

20 Q. Now, this is while you and Ms. Davie were living  
21 together; isn't that correct? 1993?

22 A. Right.

23 Q. And do you have reason to challenge these  
24 numbers as farm expenses for your -- for the period of  
25 1993?

1           A.     Yes.

2           Q.     Upon what basis do you challenge that number?

3           A.     In December, I picked up the November checks,  
4 and I briefly went through them and went down them. I sat  
5 down also with the bank book, and I went through those.  
6 And the problem is where she allocates the funds. What she  
7 puts on "farm," and what she puts on "Christmas."

8           Q.     Okay. Let's go -- you've been handed  
9 Exhibit D-10.

10                   What is that?

11           A.     This is a list I made from the checks that I  
12 went through on my checkbook.

13           Q.     That's the time when you picked up the checkbook  
14 in --

15           A.     Not the checkbook, but the returned checks.

16           Q.     And you observed these checks having been  
17 written, is that right?

18           A.     Yes.

19           Q.     And based upon that, what did you determine?

20           A.     That I come up with \$5,454.45 in the month of  
21 November were spent for Christmas. And I went through the  
22 roof.

23           Q.     Well, why would that then challenge your --  
24 challenge the number entered for -- in the farm expenses on  
25 D-17?

1           A.     All right.  Because they're not where they  
2 belong, in my opinion.

3           Q.     And what do you mean by that?

4           A.     She's charging mainly clothing and things she's  
5 bought as gifts as farm expenses.

6           Q.     And what would give you that indication?

7           A.     D-10.

8           Q.     All right.  And what on D-10 would give you that  
9 indication?

10          A.     Do you want me to read the things that came up?  
11 Heres a few of them.  Kmart, Wal-Mart, Burns, Maurice's,  
12 Gart Brothers, Scandals, Jolley's, Enjoy Wear, IFA, Lee's.

13          Q.     Were those checks, as you looked at them,  
14 designated as farm expenses?

15          A.     There was no designation to them.

16          Q.     Then how do you know that they were, in fact,  
17 included in farm expenses?

18          A.     From the report that Morris -- Morris did.

19          Q.     All right.  So you reviewed those numbers and  
20 found out that these checks were designated as farm  
21 expenses; is that correct?

22          A.     Yes.  There's one more little check here.  It's  
23 CLM.  Cedar Livestock Market.  It's a purchase of a horse  
24 for \$525.

25          Q.     Was that designated as farm expenses or as

1 personal, or do you know?

2 A. It went to "Farm."

3 Q. Okay. Why is that check a concern to you?

4 A. The horse ended up at Ralph Pearson's.

5 Q. Oh. All right.

6 THE COURT: Why is that a concern to you?

7 THE WITNESS: The first thing, I didn't know she  
8 used our funds to buy a horse. And the second thing is  
9 that she told me it was a gift for Ralph. And as far as  
10 I'm concerned, we didn't have that kind of money to be  
11 giving those kind of gifts.

12 THE COURT: Okay.

13 Q. BY MR. READING: Mr. Davie, the farm operation  
14 of the Goodwin place and of the 13-Mile farm -- to your  
15 knowledge, have they ever made money for you?

16 A. No.

17 Q. All right. I want to show you what's been  
18 marked as D-6.

19 Can you identify this?

20 A. Yes.

21 Q. What is it?

22 A. It's the Nada allotment.

23 MR. READING: We'd move for its admission just  
24 so we can talk about it, Your Honor.

25 MR. BISHOP: No objection.



1 THE COURT: It's D-6?

2 MR. READING: That's correct.

3 THE COURT: It's received.

4 Q. BY MR. READING: How many families run cattle on  
5 Nada?

6 A. Now?

7 Q. Yes.

8 A. Okay. There's two main entities, Davies and  
9 Carters.

10 Q. All right. How many wells do you -- windmills  
11 and wells do you own on Nada?

12 A. We own three outright. The Bench, the Lewis --  
13 no, no. All right. The Bench, the Cliffs, and the Little  
14 Nada well.

15 Q. Okay. Could you -- do you have the original  
16 there, sir?

17 A. Yeah. I've got the original.

18 Q. Would you mind just marking where those are on  
19 Nada.

20 A. All right.

21 Q. Approximately.

22 A. (Witness complied).

23 Q. Now, one of those -- those are the three wells  
24 that are owned outright? That means the ground --

25 A. We own the land, the water, the windmill. We

1 something. And I got in return the use of the roads.

2 Q. Has this pit generated other income in the past  
3 other than just a dollar per haul?

4 A. Yes.

5 Q. What income has it historically generated and  
6 when?

7 MR. BISHOP: Objection. Foundation. If he  
8 could put it in a relative time period, I have no  
9 objection. But if we're going back to 1950, I think that's  
10 a little vague.

11 THE COURT: Overruled. He can answer the  
12 question.

13 THE WITNESS: It would be back in the late '50s,  
14 early '60s when Wayne Wiseman started his concrete  
15 business. And that income back then generated probably  
16 around 1,500 to \$2,000 a month.

17 Q. BY MR. READING: Have you had any major sales  
18 like that between the late 1950s and just the occasional  
19 haul by the county of your gravel?

20 A. Not that amount. They hauled some gravel out  
21 there to dress up some roads for some drill sites and a few  
22 other things.

23 Q. Generally speaking, it is available, but it  
24 isn't a hot product?

25 A. No.

1 Q. All right. If you were to evaluate the worth of  
2 that gravel pit -- in other words, you wanted to sell it as  
3 a pit as an -- as a place where people could generate  
4 gravel and -- what would you put for a price?

5 MR. BISHOP: Objection, Your Honor. Asking the  
6 price is irrelevant. What we're --

7 MR. READING: Cost.

8 MR. BISHOP: -- looking for is fair market  
9 value.

10 THE COURT: Sustained.

11 Q. BY MR. READING: What would be the fair market  
12 value that you would suggest that would be worth?

13 A. That's real hard.

14 THE COURT: We're talking about what now? Just  
15 the gravel?

16 MR. READING: Just the gravel pit.

17 THE COURT: What did you include in the gravel  
18 pit?

19 Q. BY MR. READING: What would you include in a --  
20 in -- for the gravel pit? Where is the gravel located?

21 A. More to the north, the east, and the west.

22 Q. How many acres?

23 A. How many acres there of gravel?

24 Q. Uh-huh.

25 A. Many acres. There's five acres of a gravel pit

1 there. If you retained five acres, you'd have to move an  
2 awful lot of gravel to remove it. And it would have a  
3 massive value. But the problem is is that the demand is  
4 not there for that much gravel. And if I were going to  
5 sell it, I'd probably start at \$50,000.

6 Q. For the pit?

7 THE COURT: You think that's the fair market  
8 value of the gravel in the ground?

9 THE WITNESS: No. If you go by a yard basis,  
10 you'd go somewhere between -- gravel is now going between  
11 three and \$5 a yard.

12 THE COURT: We're not talking about selling the  
13 gravel to a customer. The question is as the gravel sits  
14 there on the ground -- and whatever you include in the  
15 gravel pit. And I think you're saying you'd include about  
16 five acres of ground.

17 THE WITNESS: Uh-huh.

18 THE COURT: What would be the -- the price that  
19 you think that gravel would --

20 THE WITNESS: Sell for?

21 THE COURT: -- sell for on the market between a  
22 willing buyer and a willing seller, if you just put it on  
23 the market as it sits on the ground and said, "I want to  
24 sell this gravel pit"?

25 THE WITNESS: I wouldn't go less than \$50,000.

1 ground.

2 A. All right.

3 Q. Is irrigated farm ground in that general area  
4 going for -- a lease that is for \$30 an acre?

5 A. I wouldn't know. I haven't checked into it.

6 Q. All right. Is the same thing true with respect  
7 to what you can get for pasturage? You don't know what you  
8 can get for pasturage?

9 A. I charge \$35 per head per month on the horses.

10 Q. For just flat out pasturage?

11 A. Right.

12 Q. And how many horses can be pastured on the  
13 Goodwin farm?

14 A. If you go much over 10 head, then the pasture  
15 won't support the horses, and they need to be supplemented  
16 through the winter.

17 Q. When we're talking pasturage for the horses,  
18 we're talking about grazing on the Goodwin farm, right?

19 A. Yes. In the winter time, you've got the field,  
20 and in the summertime, you've only got the pasture.

21 Q. All right. On item 36 -- if you'd look at  
22 that -- you've placed a value on the leasehold interest on  
23 the -- on the 13-Mile farm of \$24,000; correct?

24 A. That's what the plaintiff has placed, yes.

25 Q. But that does not represent the value of the

1 leasehold interest, does it, but represents the value of  
2 the work done for that year?

3 A. I think that represents her income.

4 Q. Sure. And -- that's income. That has something  
5 to do with the work that's done and not with just the value  
6 of the leasehold interest.

7 In other words, you can't get this \$24,000  
8 simply by leasing the ground?

9 A. Right.

10 Q. You've got to work and raise a crop and do all  
11 the things that you have to do and sell it.

12 If that's the case, then you can realize an  
13 income from it, don't you?

14 A. Realize an income from it? Farming -- if you  
15 want to call it an expensive hobby, sure.

16 Q. Well, you put a value of 24,000 on it, right?

17 A. Well, that's what I think she made off the  
18 property, yes.

19 Q. All right. You've talked about the gravel pit.  
20 Originally you put a value of a hundred thousand dollars on  
21 it, and today you changed it to 50,000; is that correct?

22 A. Yes. You can put any value there you want,  
23 depending on the buyer.

24 Q. So you're telling me that that is not something  
25 that a reasonable buyer would pay to a reasonable seller

1 for the gravel pit?

2 A. A reasonable seller is the key word there.

3 Q. Well, considering you, are you a reasonable  
4 seller?

5 A. Me?

6 Q. Yeah.

7 A. I asked Smithfield for \$225 an acre for  
8 sagebrush.

9 Q. Did you get it?

10 A. No.

11 Q. Did you get it on the -- the sale of the -- that  
12 portion of the 13-Mile farm that went --

13 A. Yes.

14 Q. -- on the sagebrush that went there?

15 A. Yes.

16 Q. Would you be willing to take that gravel pit  
17 yourself at \$100,000?

18 A. Not at 100,000, no.

19 Q. Would you be willing to take it at \$50,000?

20 A. Where Jetta has the lease on the 13-Mile farm,  
21 and she wants to participate there, I think she ought to  
22 have the income that comes from that also.

23 Q. I'm just asking if you would be willing to take  
24 the -- the gravel pit at \$50,000.

25 A. Not if it means giving up Nada, no.

1 oath, please.

2

3

CLIFFORD COOK,

4

the witness herein, having been

5

first duly sworn, was examined

6

and testified as follows:

7

THE WITNESS: I do.

8

THE COURT: Have a seat on the witness stand.

9

10

DIRECT EXAMINATION

11

BY MR. READING:

12

Q. Mr. Cook, please state your name.

13

A. Clifford Cook.

14

Q. And, Mr. Cook, where do you reside?

15

A. Milford.

16

Q. And how long have you known the -- the defendant

17

here, Mr. Craig Davie?

18

A. Ever since he was about 12 years old.

19

Q. In fact, sir, have you -- have you in the past

20

run the Nada and Goodwin farm?

21

A. Yes, sir. For about 20 years.

22

Q. In fact, you ran those properties just before

23

Craig took over, did you not?

24

A. Yes. Craig took over in '94. Yeah, '94.

25

Q. In those 20 years of running those two places,



1 did you ever make a profit?

2 A. No.

3 Q. I'm going to show you --

4 A. You'll have to -- you'll have to have other  
5 income besides -- to make a profit. It's more of a hobby.

6 MR. READING: Okay. Would you please hand  
7 Mr. Cook D-7.

8 THE COURT: He says it's a hobby, confirming my  
9 previous suspicion.

10 Q. BY MR. READING: Mr. Cook, on D-7, would you  
11 look down at item 17, which is a four-horse trailer.

12 A. Okay.

13 Q. Are you aware of a four-horse trailer that is  
14 owned by Mr. Craig Davie?

15 A. Yes, sir.

16 Q. Do you know whether or not that trailer was  
17 owned by him before the marriage?

18 A. Yes, I do. Because --

19 Q. Well, first of all, was it owned by him before  
20 the marriage?

21 A. Yes.

22 Q. All right.

23 THE WITNESS: Your Honor? Could I straighten  
24 some of this out for you?

25 THE COURT: No. Thank you. I'll just ask you

1 to answer the questions, please.

2 MR. READING: Would you please hand the witness  
3 D-11.

4 Q. Mr. Cook, what's been handed to you is a  
5 purported Bill of Sale that was signed by Craig Davie of a  
6 couple horses.

7 A. Yes.

8 Q. Do you see your signature on that?

9 A. Yes.

10 Q. Was that, in fact, witnessed at or about the  
11 20th day of December, 1993?

12 A. Right.

13 MR. READING: No further questions of Mr. Cook.

14

15 CROSS-EXAMINATION

16 BY MR. BISHOP:

17 Q. Mr. Cook, did I understand you to tell us that  
18 Mr. Craig Davie took over the Goodwin farm in 1994?

19 A. I -- no. I said 19 and 74.

20 Q. '74. Okay. What's the color of the four-horse  
21 trailer that you're talking about?

22 A. I believe it's blue.

23 Q. What brand is it?

24 A. I can't tell you that. I haven't see it for so  
25 many years, I don't know what brand it is.

1 THE COURT: Miss McFall, will you come forward  
2 and face the clerk, raise your right hand and take the  
3 oath, please.

4

5

GRACE MCFALL,

6

the witness herein, having been

7

first duly sworn, was examined

8

and testified as follows:

9

THE WITNESS: I do.

10

THE COURT: Have a seat on the witness stand.

11

12

DIRECT EXAMINATION

13

BY MR. READING:

14

Q. Please state your name and your residence.

15

A. Grace McFall. Milford Flats, Utah.

16

Q. Are you presently employed?

17

A. Yes, I am.

18

Q. By whom?

19

A. Craig Davie.

20

Q. How long have you been so employed?

21

A. Since August 10th or 15th of 1993.

22

Q. And what is your rate of compensation?

23

A. A hundred dollars a week.

24

Q. What is it that you are required to do for that

25

money? What is your job? What do you do?

1           A.     Farm labor. I change water, cut hay, mark  
2 cattle, gather cattle, help do surgeries on cattle, repair  
3 gated pipe, move gated pipe, put it back again. Whether  
4 it's two hours or a hundred hours a week, the rate of pay  
5 is the same.

6           Q.     What qualified you for this job -- job before  
7 August of 1993?

8           A.     The past six years, I have worked for seven or  
9 eight other ranchers. Billy Dalton, Stanley Dalton, Lyle  
10 Carter, Dean Carter -- there's a long list. But I've done  
11 farm work for six years.

12          Q.     Now, I believe D-11 will probably be in front of  
13 you there. That's the Bill of Sale.

14          A.     Okay. Uh-huh.

15          Q.     Describe to me, please, why this Bill of Sale  
16 was -- was signed.

17          A.     Okay. When I went to work for Craig and Jetta  
18 in August, Craig said he would make sure that I got paid,  
19 you know, some way. Don't worry about it. When December  
20 came, it was close to Christmas, you know, and he said, "I  
21 can't pay you."

22                     And I said, "Okay. That's fine."

23                     Three or four days after Christmas, he came and  
24 brought this in lieu of payment. At that time, Craig had  
25 signed it and his accountant had signed it. I am not sure

1 when Cliff signed it. I wasn't there when Cliff signed  
2 it. But I did tell him -- I said, "To be legal, you know,  
3 it's got to have two signatures."

4 But it was shortly after Christmas that he came  
5 over, and he gave me -- me Misty, especially. He stated  
6 that Jetta said she didn't want any horses that he broke,  
7 so that he would pay my wages with Misty.

8 And a yearling filly was bought for my children,  
9 because she is small, and Rosebud is 16 years old. I hoped  
10 to breed her twice more, and I figured that would help  
11 compensate me for my wages.

12 Q. Where do you keep the horses?

13 A. I pasture them with Craig.

14 Q. Is there any type of compensation that you give  
15 to him for that pasturing privilege?

16 A. Okay. I reside in his house. And have since  
17 the end of October. I pay him I think it's a hundred and  
18 five -- he's got the records. About \$105 for the month for  
19 the board for the three horses. But since the foal was  
20 born -- and it's now six months old -- I pay extra for it.  
21 But I don't know. He's got the records on it. But there  
22 is a balance still owing and due to me.

23 Q. All right. Does Craig ride any of your horses  
24 without your permission?

25 A. No.

1 MR. READING: That's all I have, Your Honor.

2 THE COURT: All right.

3 MR. BISHOP: I need to speak with my witness a  
4 moment.

5 THE COURT: You may.

6 (Discussion off the record.)

7 MR. BISHOP: That's all of this witness.

8 THE COURT: You may step down.

9 THE WITNESS: Thank you.

10 THE COURT: Any other witnesses?

11 MR. BISHOP: Yes. Mr. Sheb Davie, please.

12 THE COURT: Mr. Davie, do you want to come  
13 forward and step up here and face the clerk and raise your  
14 right hand and take the oath, please.

15

16 SHEB E. DAVIE,

17 the witness herein, having been

18 first duly sworn, was examined

19 and testified as follows:

20 THE WITNESS: Yes.

21 THE COURT: Have a seat over here on the witness  
22 stand.

23 ///

24 ///

25 ///

## DIRECT EXAMINATION

BY MR. BISHOP:

Q. Mr. Davie, would you tell us your name, please.

A. Sheb Eugene Davie.

Q. Where do you live, Mr. Davie?

A. With my mother in Minersville.

Q. Do you know Mr. Davie and Mrs. Davie here?

They're your parents, aren't they?

A. Yes.

Q. Mr. Davie, how long have your parents been separated?

A. Since probably about this time last year.

Q. Okay. Since their separation, have you had occasion and opportunity to visit with your father?

A. Uh-huh, yes.

Q. Have you visited with him to his satisfaction?

A. I don't know what -- to his satisfaction, but I've visited with him as much as I possibly could.

Q. Has your mother discouraged you from visiting with him?

A. No. Never.

Q. I see. Do you have any difficulty in visiting with your father?

A. No. Not -- I don't have any difficulty with visiting with my father.

1 Q. Where does he live?

2 A. On the Milford flat just before town on the  
3 Goodwin farm.

4 Q. Is there anyone that lives in his mobile home  
5 with him?

6 A. I -- not that I know of. Just Gracie --

7 Q. Okay.

8 A. -- and her kids.

9 Q. Do you have any problem in being in the mobile  
10 home with Gracie and her children?

11 A. I don't like it. I don't.

12 Q. I see. Did your mother have anything to do with  
13 this dislike?

14 A. No.

15 Q. I'm going to ask the bailiff to give you D-11,  
16 please.

17 Now, Mr. Davie, will you read D-11, please. Do  
18 you see any names of any horses on D-11?

19 A. Yes. I see the mare, Rosebud. And I see the  
20 filly, Misty, and the filly Splash both.

21 Q. I see. Were you ever promised any one of those  
22 horses?

23 A. No.

24 Q. Okay. That document purports to be a document  
25 transferring those horses from your father to Gracie McFall



1 back in December of 1993.

2 When is the first time you saw that document?

3 A. Last night.

4 Q. Okay. Before last night, did your father ever  
5 tell you about the transfer of those horses to Miss McFall?

6 A. No.

7 MR. BISHOP: I have nothing further of this  
8 witness.

9 THE COURT: Any questions?

10 MR. READING: Just a minute, Your Honor.

11 (Discussion off the record.)

12

13 CROSS-EXAMINATION

14 BY MR. READING:

15 Q. Can I call you Sheb?

16 A. Yes.

17 Q. Why don't you like visiting your dad when Gracie  
18 is in the trailer?

19 A. I -- I just don't. I've heard a lot about  
20 Gracie, and I've seen a lot about her. She once had a  
21 12-year-old daughter -- 13. She was just a little older  
22 than me. A year older than me. And just her influence.  
23 And I know she's got it from her parents. From her mother  
24 and her father.

25 Q. Where have you heard about Gracie?

1           A.     And I just don't like it.

2           Q.     Where have you heard about Gracie besides from  
3 her daughter?

4           A.     I -- she's lived in Minersville. She's lived on  
5 the flat. She's lived all over. I --

6           Q.     I understand. But where have you heard things  
7 about Gracie?

8           THE COURT: You mean from whom?

9           Q.     BY MR. READING: From whom? Excuse me. From  
10 whom have you heard things about Gracie?

11          A.     I don't know. I couldn't answer that.

12          Q.     Has your mom talked to you about Gracie?

13          A.     Yes.

14          Q.     Has Glade talked to you about Gracie?

15          A.     Yeah. He talked to me about Gracie.

16          Q.     Has that influenced you about your feelings  
17 about Gracie?

18          A.     No.

19          Q.     So you had those concerns before you talked to  
20 your mom --

21          A.     Oh, yeah.

22          Q.     -- and Glade?

23                 Can you tell me anyone else you've talked to  
24 about -- any other person with whom you've discussed Gracie  
25 besides these two?

1           A.     I know my friends. All my friends around me do  
2 not like her. And they tell me things that she has done.  
3 And some of her kids. And -- I mean I've been on  
4 playgrounds with them with -- with their kids and --

5           Q.     How old are you, sir?

6           A.     I'm 15.

7           Q.     Do you know how old Gracie's children are?

8           A.     She has got an eight-year-old, I think, and a  
9 seven.

10          Q.     And you're 15?

11          A.     Yeah. And she has got a daughter. I don't --  
12 she must be with a dad -- another dad or something like  
13 that.

14          Q.     Okay. So she's not around anymore.

15                 Was that the child that you had the most problem  
16 with on the playground?

17          A.     Probably.

18          Q.     She's no longer there?

19          A.     No.

20          Q.     You love your dad?

21          A.     Uh-huh, yes.

22          Q.     Want to continue to have a close association  
23 with him?

24          A.     Yes.

25                 MR. READING: No further questions.

1 MR. BISHOP: Nothing further of this witness.

2 THE COURT: You may step down. Thank you.

3 Any other witnesses?

4 MR. BISHOP: Mr. Seth Davie, please.

5 THE COURT: Seth Davie.

6

7

SETH CRAIG DAVIE,

8

the witness herein, having been

9

first duly sworn, was examined

10

and testified as follows:

11

THE WITNESS: Yes.

12

THE COURT: Have a seat on the witness stand.

13

14

DIRECT EXAMINATION

15

BY MR. BISHOP:

16

Q. Mr. Davie, would you tell us your name, please.

17

A. Seth Craig Davie.

18

Q. Where do you reside?

19

A. Do I live?

20

Q. Yes. Where do you live?

21

A. In Minersville with my mother, Jetta Davie.

22

Q. And your father is Mr. Craig Davie here today?

23

A. Yes.

24

Q. Mr. Davie, I'm going to ask you to look at

25

what's been admitted as D-11, which is a document in front

1 of you. Would you look at that.

2 When is the first time you saw that document?

3 A. Last night.

4 Q. Okay. Did you see any horses whose names you  
5 recognize on that document?

6 A. Yes. Rosebud, the mare; Misty, the filly, and  
7 Splash, the filly.

8 Q. Okay. Were you ever promised a foal out of one  
9 of those?

10 A. Yes. Out of Rosebud.

11 Q. Okay. And when did this take place?

12 A. It was last year when she was bred.

13 Q. About what time was she bred?

14 A. May.

15 Q. Of 1993?

16 A. Yes.

17 Q. Okay. And she has --

18 A. Of '94. I'm sorry.

19 Q. Of '94?

20 A. I'm sorry. May of 1994.

21 Q. Has she foaled yet?

22 A. No. She should be in April or May.

23 Q. Do you expect to receive the foal at that time?

24 A. Yes.

25 Q. Okay. At any time before last night, did your

1 father tell you that he had transferred those three horses  
2 to Gracie McFall?

3 A. No.

4 Q. Okay. Is this a surprise to you, then?

5 A. Yes.

6 Q. Okay. And, Mr. Davie, your parents have been  
7 separated for how long now?

8 A. It's been about a year.

9 Q. Have you been able to visit with your father  
10 since that time?

11 A. Yes.

12 Q. How often do you visit with him?

13 A. Just whenever he calls or I call or --

14 Q. Okay.

15 A. Whenever we want to.

16 Q. Has it been left up to you to make those  
17 arrangements?

18 A. Yes, it has.

19 Q. Has your mother discouraged you from visiting  
20 with your father?

21 A. No.

22 Q. Did you have any difficulties in visiting with  
23 your father?

24 A. No. Not -- huh-uh.

25 Q. Do you have any difficulties with one Gracie

1 McFall?

2 A. Yes. A little.

3 Q. What is the difficulty there, if any?

4 A. I just like to visit with my father. Just him.

5 Q. Is that just a personal preference on your part?

6 A. Yes.

7 MR. BISHOP: I have nothing further of this  
8 witness.

9 THE COURT: Questions?

10

11 CROSS-EXAMINATION

12 BY MR. READING:

13 Q. Seth, how many horses do you have?

14 A. Me?

15 Q. Uh-huh.

16 A. I have one.

17 Q. Okay. And with this foal or -- you're going to  
18 have to help me. I'm a city boy. With this colt that is  
19 coming, that will be your second horse?

20 A. Yes.

21 Q. And the horse that you presently have -- how did  
22 you come by that horse?

23 A. It was given to -- to me by my mother and my  
24 father.

25 Q. Okay. Do you want to continue to have a close

1 relationship with your dad?

2 A. Yes. I would love to.

3 Q. Do you know that he loves you?

4 A. Yes.

5 MR. READING: Okay. No further questions.

6 MR. BISHOP: Nothing further.

7 THE COURT: Thank you. You can step down.

8 MR. BISHOP: That's all, Your Honor.

9 THE COURT: Any surrebuttal?

10 MR. READING: Heck no.

11 THE COURT: Okay. That concludes the  
12 presentation of evidence in the matter. It's now 5:30.  
13 Pursuant to our discussion in chambers, we're going to  
14 recess for the evening, and counsel may submit their  
15 closing arguments in writing and in so doing attempt to  
16 rectify the various lists that have been given setting  
17 forth those issues that are resolved by agreement and those  
18 issues that still need to be decided by the Court.

19 How soon can you do that?

20 MR. BISHOP: I'd need at least 20 days, Your  
21 Honor. I have quite a heavy court schedule.

22 MR. READING: That would be -- that would be  
23 acceptable with me.

24 THE COURT: Do you want to each submit your list  
25 simultaneously or your responses simultaneously or your



1 arguments?

2 MR. BISHOP: Let's do this, Your Honor. I think  
3 we need to get together on this list --

4 MR. READING: That first.

5 MR. BISHOP: -- somehow. And once we have that  
6 list, then of course the argument will fall into line. To  
7 try to do argument before we put the list together is --

8 THE COURT: Right.

9 MR. BISHOP: -- is a difficult problem.

10 Let's say this. Can we have 20 days to get the  
11 list together? And then within 10 days thereafter submit  
12 simultaneous --

13 MR. READING: That will be fine.

14 THE COURT: All right. That's the order. 20  
15 days from today to put the list together indicating what's  
16 been resolved and what still needs to be decided. And then  
17 10 days thereafter for each side to submit written  
18 argument. And thereafter, we'll either set it for oral  
19 argument, or I'll decide it under 4-501, depending how you  
20 want to submit it.

21 MR. BISHOP: At this point, we suggest that we  
22 submit it on the documents. Although that may change. I  
23 think that's our idea, Your Honor.

24 THE COURT: All right. We're in recess.

25 (Whereupon, the proceedings were concluded at 5:30 P.M.)

**Addendum "F": Relevant Portions of Reporter's Hearing Transcript  
Dated September 6, 1995**

COPY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF BEAVER, STATE OF UTAH

HON. J. PHILIP EVES, judge

JETTA ANN PEARSON DAVIE, )

Plaintiff, )

vs. )

CRAIG VERNON DAVIE, )

Defendant. )

Civil No. 94-CV-29

REPORTER'S HEARING TRANSCRIPT

Wednesday, September 6, 1995

APPEARANCES OF COUNSEL:

For the Plaintiff: WILLARD R. BISHOP, ESQ.  
36 North 300 West  
Cedar City, Utah 84720

For the Defendant: SCALLEY & READING  
BY: J. BRUCE READING, ESQ.  
261 East 300 South  
Salt Lake City, Utah 84111

PAUL G. McMULLIN  
CERTIFIED SHORTHAND REPORTER

P.O. BOX 1534  
ST. GEORGE, UTAH 84771  
(801) 674-1283

1 division of the cattle, that the "MC" ear mark and brand  
2 may be awarded to Mr. Davie?

3 MS. DAVIE: That's fine.

4 MR. BISHOP: Not a problem.

5 THE COURT: Okay. That takes care of that one.

6 MR. READING: The other issue is concerning the  
7 Goodwin property, Your Honor. And if -- if the Court  
8 recalls, this was the lease to Mr. Davie.

9 THE COURT: I do.

10 MR. READING: And it -- it concerns me a little  
11 bit that it appears that there might be an inconsistency in  
12 the order of the Court, wherein it states that the Court  
13 fixes the value of that lease at \$3,000 per year times 30  
14 years, which equals a total current value of \$90,000,  
15 when -- and there's no discounting the present value of  
16 that stream of payments.

17 THE COURT: Yes, there is. It just isn't  
18 included in that calculation.

19 MR. READING: I see. Okay. Well, as long as --  
20 as long as the Court is aware of that.

21 THE COURT: I am. That's the value that I fixed  
22 as the current value.

23 MR. READING: All right. And the other issue  
24 that I had is that there was no specific findings, as it  
25 was, with the --

1 MR. BISHOP: Cow Hollow.

2 MR. READING: -- Cow Hollow and with the marital  
3 residence, wherein we -- we showed the Court the lease  
4 where my client was the sole lessee with the children with  
5 reversionary interest and no assignment value, so why did  
6 the Court believe that to be marital property.

7 THE COURT: Which?

8 MR. READING: The lease of the Goodwin property,  
9 Your Honor. This lease was solely in my client's name,  
10 with reversion to the children if they desired to farm it.  
11 But the defendant was -- the plaintiff was specifically  
12 excluded from it, and there was no assignment rights in  
13 that lease.

14 I think it would be helpful if the Court would  
15 help us understand why either -- I guess through her sweat  
16 equity or something.

17 THE COURT: That's what I had in mind, was that  
18 she had been helping to farm the property and had developed  
19 considerable sweat equity therein.

20 MR. BISHOP: Right. We -- we put on substantial  
21 evidence concerning what they did on it.

22 MR. READING: That's correct.

23 THE COURT: That's correct.

24 MR. READING: And I think that might assist us  
25 if those findings were there as they were with the other

**Addendum "G": Relevant Portion of Trial Exhibit P1, Goodwin  
Lease Dated April 30, 1984**

154880

LEASE

FILED FOR RECORD  
2:30 o'clock *P*<sup>m</sup>  
APR 30 1984  
*Bruce*  
Beaver County Recorder  
Fee \$ 10.00

THIS INDENTURE, made this 30 day of APRIL, 1984, by and between ROSEMARY BOWMAN, dealing with her sole and separate property, of Farmington, San Juan County, State of New Mexico, herein referred to as "Lessor", which expression shall include Lessor's heirs, executors, administrators, assigns, and successors in interest, and CRAIG DAVIE of Post Office Box 111, Minersville, Utah, 84752, herein referred to as "Lessee", which expression shall include Lessee's heirs, executors, and administrators, WITNESSETH:

1. DEMISE OF PREMISES. Lessor, for and in consideration of the covenants and agreements herein contained to be kept and performed by Lessee, Lessee's heirs, executors, administrators, assigns and successors in interest, and upon the terms and conditions herein contained, does hereby let, lease and demise to Lessee the following described property, hereinafter called the Premises, situate in the County of Beaver, State of Utah, more particularly described as follows:

W-1/2 SW-1/4 Sec. 17, T28S, R10W, SLM. Contains 80 acres

ALSO commencing at SW co of E-1/2 SW-1/4 Sec. 17, thence E 28 rds N 160 rds; W 28 rds; S 160 rds. Contains 28 acres NE-1/4 NE-1/4; W-1/2 NE-1/4 Sec. 18, T28S, R10W, SLM total 120 acres LESS 1.13 acres for road. Net in this parcel contains 118.87 acres

SE-1/4 NE-1/4 Sec. 18, T28S, R10W, SLM. Contains 40 acres Commencing at SE Corner Sec. 7, T28S, R10W, SLM: thence W 1320 ft.; N 515 ft.; S 88°45' E 1320 ft.; S 482 ft. to the beginning. Contains 14.57 acres

W-1/2 NW-1/4 Sec. 17, T28S, R10W, SLM. Contains 80 acres Commencing SW Corner Sec. 8, T28S, R10W, SLM, thence 80 rds; n 598 ft, NW'ly along H'way 1,013 ft.; W 823 ft., S 80 rds. to beginning. Contains 35.9 acres

This property is subject to a life estate of Mrs. Cuma Goodwin to live in the residence located on this property. This Lease is made specifically subject to that life estate.

Lessor herein reserves the right to sell, give, transfer or convey by deed out of the demised properties to the brothers and sisters of Lessee herein, five acres to each brother and sister, upon ninety (90) days written notice to the Lessee. Said Notice shall include a description of the land and the name of the person the property will be deeded to.

2. TERM OF LEASE. The term of this Lease shall be for a period of forty (40) years, beginning on the 1st day of March, 1983 and ending on the 28th day of February, 2023.

3. RENT. Lessee, for and in consideration of this Lease and the demise of the said premises by Lessor to Lessee, hereby agrees and covenants with Lessor to pay as rent for the said premises, without notice or demand, the sum of One Dollar (\$1.00) per year, payable on the first day of March of each year hereafter.

4. USE OF PREMISES. Lessee, for and in consideration of this Lease and the demise of the said premises by Lessor to Lessee, hereby agrees and covenants with Lessor to use and occupy the said premises for the purpose of planting, growing and harvesting those crops that are specified in Exhibit "A" attached hereto and may be used as the residence of the Lessee and his family. The premises shall not be used for any other purpose without the prior written consent of the Lessor.

5. OPERATIONS ON PREMISES. All operations conducted on the premises by the Lessee as incidents of any of the uses specified in paragraph 4 of this Lease shall be conducted by the Lessee in accordance with the best course of husbandry practiced in the geographical vicinity of the premises. Should the Lessee fail to take any action required by the best course of husbandry practiced in the geographical vicinity of the premises or should the Lessee fail to conduct any operation undertaken by him on the premises in accordance with the best course of husbandry practiced in the geographical vicinity of the premises, the Lessor may, after serving ten days' written notice of such failure on the Lessee in the manner provided for services of notices in this Lease, enter the premises and take such action as the Lessor may deem necessary to protect his interest in this Lease and in the premises. Lessee agrees to reimburse the Lessor on demand for the cost of any actions taken by the Lessor pursuant to the provisions of this paragraph.

6. UTILITIES. The Lessee shall pay all charges for the *furnishing of gas, electricity, and other public utilities to the premises* including any tax or assessment imposed on the premises for any irrigation district for the furnishing of water thereto.

7. WASTE OR NUISANCE. The Lessee shall not commit or permit the commission by others of any waste on the premises; the Lessee shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in \_\_\_\_\_ on the premises; and the Lessee shall not use or permit the use of the premises for any unlawful purpose.

8. INSURANCE HAZARDS. The Lessee shall not commit or permit the commission of any hazardous acts on the premises nor use or permit the use of the premises in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the premises, the improvements and the crops on the premises. The Lessee shall, at his own cost and expense, comply with any and all requirements of Lessor's insurance carriers necessary for the continued maintenance at reasonable rates of reasonable fire and liability insurance on the premises and the improvements and crops thereon.

9. MAINTENANCE. The Lessee shall, at his own cost and expense keep and maintain the premises, all improvements on the premises and all facilities appurtenant to the premises in good order and repair and in as safe and clean a condition as they were when received by him from the Lessor, reasonable wear and tear excepted.

10. ALTERATIONS AND LIENS. The Lessee shall not make or permit any other person to make any alterations to the premises or to any improvement thereon or facility appurtenant thereto without the written consent of the Lessor first had and obtained. The Lessee shall keep the premises free and clear from any and all liens, claims and demands for work performed, materials furnished, or operations conducted thereon at the instance or request of Lessee.

11. INSPECTION BY LESSOR. The Lessee shall permit the Lessor or the Lessor's agents, representatives or employees to enter the premises at all reasonable times for the purpose of inspecting the



premises to determine whether the Lessee is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect the Lessor's interest in the premises.

12. ACCEPTANCE BY LESSEE. The Lessee accepts the premises, as well as the improvements thereon and the facilities appurtenant thereto, in their present condition. The Lessee agrees with, and represents to the Lessor, that the premises have been inspected by him and that he has been assured by means independent of the Lessor or any agent of the Lessor of the truth of all facts material to this Lease and that the premises are being leased by the Lessee as a result of his inspection and investigation and not as a result of any representations made by the Lessor or any agent of the Lessor.

13. HOLD HARMLESS. The Lessee agrees to indemnify and hold the Lessor and the property of the Lessor, including the premises, free and harmless from any and all claims, liability, loss, damage or expense resulting from the Lessee's occupation and use of the premises, specifically including without limitations any claim, liability, loss or damage arising:

(a) By reason of the injury to person or property, from whatever cause, while in or on the premises or in any way connected with the premises or with the improvements or personal property in or on the premises including any liability for injury to the person or personal property of the Lessee, his agents, officers or employees;

(b) By reason of any work performed on the premises or materials furnished to the premises at the instance or request of the Lessee, his agents or employees;

(c) By reason of the Lessee's failure to perform any provision of this Lease or to comply with any requirement imposed on him or on the premises by any duly authorized governmental agency or political subdivision;

(d) Because of the Lessee's failure or inability to pay as they become due any obligations incurred by him in the agricultural or other operations to be conducted by him on the premises.

14. SUBLEASING AND ASSIGNING. The Lessee shall not encumber, assign, or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the premises or any of the improvements that may now or hereafter be constructed or installed on the premises. Neither shall the Lessee sublet the premises or any part thereof or allow any other persons, other than the Lessee's agents, family and servants, to occupy or use the premises or any part thereof. Any encumbrance, assignment, transfer or subletting of the Lessee, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of the Lessor, terminate this Lease.

15. ABANDONMENT BY LESSEE. Should the Lessee breach this Lease and abandon the premises prior to the natural termination of the term of this Lease, the Lessor may:

(a) Continue this Lease in effect by not terminating the Lessee's right to possession of the premises, in which event the Lessor shall be entitled to enforce all his rights and remedies under this Lease including the right to recover the rent specified in this Lease as it becomes due under this lease; or

(b) Terminate this Lease and recover from the Lessee:

(1) The worth at the time of award of the unpaid rent which

had been earned at the time of termination of the lease;

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of the Lease until the time of award exceeds the amount of rental loss that the Lessee proves could have been reasonably avoided;

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that the Lessee proves could be reasonably voided; and

(4) Any other amount necessary to compensate the Lessor for all detriment proximately caused by the Lessee's failure to perform his obligations under this lease.

16. DEFAULT BY LESSEE. All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby demised to the Lessee. Should the Lessee default in the performance of any covenants, condition or agreement contained in this Lease the Lessor may terminate this Lease and re-enter and regain possession of the premises in the manner then provided by the laws of unlawful detainer of the State of Utah then in effect.

17. TERMINATION OF LEASE. Notwithstanding any of the provisions contained in this Lease, this Lease shall terminate automatically if, for any 364 day period, no husbandry operations are undertaken by the Lessee herein, unless the reason for the lack of husbandry operations is the direct result of weather conditions outside the control of Lessee. If for any reason, including weather conditions outside the control of Lessee, husbandry operations are not undertaken by Lessee for a period of two consecutive 364 day periods, this lease shall automatically terminate.

Upon the death of the Lessee herein, this Lease shall terminate automatically upon the expiration of five (5) years from the date of the death of the Lessee or upon the 21st birthday of the twin minor boys of the Lessee, Seth and Sheb Davie, whichever event shall occur first. All other terms and conditions of this Lease shall remain in effect and be binding upon Seth and Sheb Davie.

18. INSOLVENCY OF LEASE. The insolvency of the Lessee as evidenced by a receiver being appointed to take possession of all or substantially all of the property of the Lessee, the making of a general assignment for the benefit of creditors by the Lessee, or the adjudication of the Lessee as a bankrupt under the Federal Bankruptcy Act shall terminate this lease and entitle the Lessor to re-enter and regain possession of the premises.

19. ATTORNEYS FEES. Should any litigation be commenced between the parties to this Lease concerning the premises, this Lease or the rights and duties in relation thereto, the party, Lessor or Lessee, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for his attorneys fees in such litigation which shall be determined by the Court in such litigation or in a separate action brought for that purpose.

20. NOTICES. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by


this Lease or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service when deposited in the United States mail, first-class postage prepaid, addressed to the Lessee at the address of the premises or to the Lessor at 2016 Santiago, Farmington, New Mexico, 87401. Either party, the Lessor or the Lessor, may change their address for the purpose of this paragraph by giving written notice of such change to the party in the manner provided in this paragraph.

21. HEIRS AND SUCCESSORS. This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this paragraph contained shall be construed as a consent by the Lessor to any assignment of this Lease or any interest therein by the Lessee.

22. TIME IS OF THE ESSENCE. Time is expressly declared to be the essence of this Lease.

23. WAIVER. The waiver of any breach of any the provisions of this Lease by the Lessor shall not constitute a continuing waiver or a waiver of any subsequent breach by the Lessee either of the same or of another provisions of this Lease.

EXECUTED on April 27, 1984 at Mississippi, Ala.

  
Rosemary Bowman  
ROSEMARY BOWMAN  
Lessor

Craig Davie  
CRAIG DAVIE  
Lessee