

2007

Linda Anderson v. Glenn Hunter Thompson : Brief of Appellant

Utah Court of Appeals

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David J. Friel; Attorney for Petitioner.

Bruce L. Richards; Dean A. Stuart; Bruce L. Richards and Associates; Attorneys for Respondent.

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IN THE UTAH COURT OF APPEALS

LINDA ANDERSON,
(f.k.a. Linda LaRee Thompson),

Petitioner,

v.

GLENN HUNTER THOMPSON,

Respondent.

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Appellate Case No. 20070176

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
FOR TOOELE COUNTY, UTAH
JUDGE MARK S. KOURIS

BRIEF OF APPELLANT

David J. Friel
Attorney for Petitioner
f.k.a. Linda LaRee Thompson
2875 South Decker Lake Dr. #225
Salt Lake City, UT 84119
Telephone: (801) 975-8611

Bruce L. Richards
Dean A. Stuart
Bruce L. Richards and Associates
Attorneys for Respondent
1805 South Redwood Road
P.O. Box 25786
Salt Lake City, UT 84125-0786
Telephone (801) 972-0307

ORAL ARGUMENT IS REQUESTED

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UTAH APPELLATE COURTS
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2875 South Decker Lake Dr. #225
Salt Lake City, UT 84119
Telephone: (801) 975-8611

Bruce L. Richards
Dean A. Stuart
Bruce L. Richards and Associates
Attorneys for Respondent
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P.O. Box 25786
Salt Lake City, UT 84125-0786
Telephone (801) 972-0307

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STATEMENT OF JURISDICTION

The Court has jurisdiction pursuant to Utah Code Ann. §78-2A-3(2)(h).

STATEMENT OF ISSUES

1. Did the Court err in finding the Respondent in contempt of court for not following the Decree of Divorce at paragraphs 9, 10 and 20?

Standard of Review: The standard of review for contempt in a civil action is clear and convincing evidence. VonHake v. Thomas, 759 P.2d 1162 (Utah 1988). Determinations of law are reviewed for correctness. Crookston v. Fire Insurance Exchange, 860 P.2d 937, 938 (Utah 1993).

2. Did the Court err in basing the award of a judgment against Respondent on the finding of contempt?

Standard of Review: The standard of review for contempt in a civil action is clear and convincing evidence. VonHake v. Thomas, 759 P.2d 1162 (Utah 1988). The interpretation of a divorce decree is reviewed for correctness, affording the District Court no deference. Hawkins v. Peart, 37 P.3d 1062 (Utah 2001).

3. Did the Court err in admitting as evidence a statement made in settlement negotiations?

Standard of Review: The standard of review for evidence rulings is clearly erroneous. Davidson v. Prince, 813 P.2d 1225 (Utah Ct. App. 1991).

4. Did the Court err in finding Respondent failed to comply with Court orders given Respondent's compliance with the Order of the prior judge, the parties' stipulation and the prior position of Petitioner?

Standard of Review: The standard of review in divorce proceedings is whether evidence clearly preponderates to the contrary or the trial court has abused its discretion or misapplied principles of law. Wiese v. Wiese, 699 P.2d 700 (Utah 1985).

5. Is Petitioner equitably estopped from claiming past child support given Petitioner's acceptance of Respondent's payment of Petitioner's taxes, failure to raise issues of prior support and Respondent's reliance on Petitioner's actions?

Standard of Review: The standard of review for findings of fact is clearly erroneous. Chen v. Stewart, 123 P.3d 416 (Utah 2005). The standard of review in divorce proceedings has abused its discretion or misapplied principles of Law. Wiese v. Wiese, 699 P.2d 700 (Utah 1985).

6. Did Petitioner waive any right to claim back support by agreeing to waive payments from Respondent?

Standard of Review: The standard of review for findings of fact is clearly erroneous. Chen v. Stewart, 123 P.3d 416 (Utah 2005). The standard of review in divorce proceedings has abused its discretion or misapplied principles of Law. Wiese v. Wiese, 699 P.2d 700 (Utah 1985).

7. Is Petitioner entitled to recover attorney's fees? What amount of attorney's fees are reasonable and necessary?

Standard of Review: The standard of review for attorney's fees is an abuse of discretion. Willey v. Willey, 951 P.2d 226 (Utah 1997). The standard of review for contract interpretations is a review for correctness. Hawkins v. Peart, 37 P.2d 1062 (Utah 2001).

DETERMINATIVE STATUTES

Utah Code Ann. §78-32-1

The following acts or omissions in respect to a court or proceedings therein are contempts of the authority of the Court:

(1) Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding.

(2) Breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

(3) Misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial service.

(4) Deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding.

(5) Disobedience of any lawful judgment, order or process of the court.

(6) Assuming to be an officer, attorney or counselor of a court, and acting as such without authority.

(7) Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.

(8) Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial.

(9) Any other unlawful interference with the process or proceedings of a court.

(10) Disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness.

(11) When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person, concerning the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

(12) Disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

Rule 408, Utah Rules of Evidence

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

STATEMENT OF THE CASE

This case is an appeal from an Order from Trial held October 26, 2006 and Objection Hearing Held December 18, 2006 of the Third Judicial District Court, Tooele County, State of Utah. The Presiding Judge is Mark S. Kouris. The divorce petition was originally filed in 1999.

A Decree of Divorce was entered April 20, 1999. The parties proceeded forward pursuant to the Decree of Divorce and special arrangements of the parties until after Petitioner's remarriage in November, 2004.

Petitioner filed a Petition to Modify Decree of Divorce on March 2, 2005. A stipulation regarding the exchange of financial documents was placed on the record and complied with by the parties. Petitioner requested that her counsel withdraw and new counsel appeared for Petitioner. Petitioner filed an Order to Show Cause. Trial was held on October 26, 2006. The Order being appealed from was entered by the Court on January 9, 2007. Appeal is taken from Paragraphs 4, 5, 7, 9, 10 and 11 of this Order.

STATEMENT OF FACTS

The facts as marshaled to support the Court's findings are stated below. The Court made Finding of Fact 10 that Respondent was not credible (Appendix 2 R @ 212). Respondent believes this finding is clearly erroneous. However, because of this finding, Respondent relies primarily upon evidence presented by or testimony of Petitioner.

Procedural History. Petitioner and Respondent were divorced in April 20, 1999. (Appendix 3, R @ 46-54). The parties are the parents of four children now ranging in age from 17 to 11. The parties proceeded through their post-divorce lives with various accommodations to meet the needs of the children and the financial needs of the children and Petitioner. (Trial Tr. @ 45-49). Petitioner testified Respondent was a good father.

Petitioner remarried in November, 2004. Petitioner's remarriage triggered an automatic adjustment of child support to an amount consistent with the guidelines set forth in the Utah Code. (Appendix 3, R @ 49, 51).

An automatic adjustment of child support took place. Petitioner filed a Petition to Modify Decree of Divorce. (R @ 59-61). An Order to Show Cause related to the Petition to Modify was also filed. (R @ 72-73). The Order to Show Cause leading to the Order from Trial Held October 26, 2006 and Objection Hearing Held December 18, 2006 (the Order appealed from) was filed September 27, 2006. (R @ 165-167).

Child Support. The Stipulation and Property Settlement, Findings of Fact and Conclusions of Law and Decree of Divorce all contain a provision providing for child support in the amount of \$1,000.00 per month. (Appendices 3-5, R @ 14-23, 36-45, 46-54). The Decree states that the parties recognize that said amount is less than as provided by the guidelines set forth in the Utah Code and have agreed on said amount based upon the entire divorce settlement. (Appendix 3, R @ 51). The Child Support Obligation Worksheet identifies the reasons stated by the Court for the deviation to be the property settlement and “Respondent is paying larger amount of spousal support and will adjust child support to comply with statutory amount upon any change to spousal support.” (Appendix 6, R @ 24.)

Upon the termination of alimony, the base child support amount was to be automatically adjusted to an amount consistent with the guidelines set forth in the Utah Code. (Appendices 3-6, R @ 20, 17, 42, 39, 51, 49, 24). The monthly child support obligations were to be automatically increased each year by .7% of the Respondent’s gross receipts in excess of the previous year’s gross business receipts (1998 gross receipts determined to be \$300,000.00) in order to preserve the ratio of monthly child support to Respondent’s yearly gross receipts. (Appendix 3, R @ 51.) The Respondent’s spousal support obligation terminated on the Petitioner’s remarriage. A termination of spousal support automatically triggered a recalculation of the Respondent’s child support obligation. (Appendix 3, R @ 49.)

Upon the termination of spousal support, the amount of child support was automatically increased to \$2,061.00. This is the maximum amount in the child support guidelines for four minor children. Both Petitioner and Respondent testified that Respondent has paid the \$2,061.00 per month since Petitioner's remarriage. (Trial Tr. 57, 63, 94, 95.)

The Court ruled that the base child support amount was \$2,061.00. (Appendix 1, R @ 218). This is consistent with the automatic adjustment called for by the Decree of Divorce. The Court further found the adjustment based on changes in gross receipts to apply. (Appendix 1, R @ 218-219).

Petitioner to Modify. Petitioner filed a Petition to Modify Decree of Divorce on March 2, 2005. The Petition to Modify did not raise any issues regarding back child support. The Petition did not claim that any adjusted child support amount above the child support guidelines was required. (R @ 59-61).

On April 4, 2005, a hearing was held on the Order to Show Cause filed by the Petitioner. This Order to Show Cause involved the Petition to Modify Decree of Divorce. (R @ 72-73, R @ 85). Petitioner's attorney, Shawn Robinson, placed the partial resolution and stipulation on the record. Mr. Robinson stated:

It is anticipated that the parties are going to exchange their tax returns for the years 2002, 2003, 2004 by April 15th. That's assuming that both parties have their 2004 taxes done by that date. They'd also – and we didn't specifically talk about this but they'd exchange their business – any business taxes that they had as well, and their personal taxes. (Apr 4, 2005 OSC Tr. @ 2).

Petitioner's counsel then stated that the issue of modification of the amount of child support was being reserved. (Apr 4, 2005 OSC Tr. @ 2-3). Nothing was stated regarding any issue of prior child support. (R @ 59-61, 72-73).

Petitioner provided copies of her tax returns for the three agreed upon years. Respondent provided his tax returns for the three agreed upon years. The tax returns Respondent provided included the individual income tax returns and the tax returns for Tooele Valley Spine Center (the “Spine Center”). (R @ 91-92). The Spine Center is a professional corporation. The Respondent is the president of the Spine Center and is employed as a chiropractic physician.

Respondent’s gross receipts were contained in the tax returns of the Spine Center for the years 2002-2004. Petitioner’s Request for Production of documents implicitly acknowledges the tax information agreed to be exchanged was exchanged. The Request for Production was for Form 8582 (a form not filed with the IRS), business returns for companies other than the Spine Center and K-1 forms. (R @ 102-104).

The Petitioner sought further business records with a Request for Production of Documents dated November 2, 2005.¹ (R @ 90.) Respondent complied with the Request for Production of Documents. A Certificate of Compliance was filed with the Court on December 7, 2005. (R @ 91-92.) On March 17, 2006, Petitioner filed a Motion to Compel. The Motion erroneously asserted that the Respondent had not complied with the Request for Production of Documents. (R @ 93-95).

Respondent filed a Memorandum In Opposition to Petitioner’s Motion to Compel on April 3, 2006. Attached to this Memorandum was a copy of the Certificate of Compliance as filed with the Court and the actual response to the first Request for Production of Documents. (R @ 102-112.) The Court denied Petitioner’s Motion to Compel by an Order on Petitioner’s Motion to Compel dated June 2, 2006. (R @ 115-117.)

¹ Petitioner has alleged that Respondent has attempted to delay these proceedings. The record shows that the documents agreed to be exchanged were exchanged in May, 2005. Petitioner then submitted the documents to an accountant. In November, 2005, Petitioner submitted a Request for Production of Documents. However, this

At trial, Petitioner testified that financial information had not been provided. On cross-examination, she testified that the documents might have been received by her prior attorney. (Trial Tr. 52-53, 71.) During the hearing on October 16, 2006, Mr. David Friel stated to the Court that he had seen the documents provided by the Respondent.

Taxes Paid By Respondent. The Decree of Divorce provides that Respondent shall claim the minor children as dependents for tax purposes. The division of exemptions was to be re-evaluated whenever child support is re-evaluated or modified. (Appendix 3, R @ 50.) Petitioner testified that an additional \$100.00 was added to the alimony to compensate for the tax deductions. (Trial Tr. 38.) Petitioner also testified that the Divorce Decree does not require Respondent to pay Petitioner's tax debt. (Trial Tr. 38.) Respondent paid \$21,126.00 or more in taxes for Petitioner. (Trial Tr. 60-62.) Petitioner testified that sometime between January 2000 and April 15, 2000, she contacted Respondent and stated she didn't have money to pay her taxes. (Trial. Tr. 38). Petitioner testified payment for taxes was not put in any Order of the Court but was a verbal agreement because of the tax deductions. (Trial Tr. 39-40).

Child Support Adjustment Upon Remarriage. Petitioner remarried in November, 2004. Following the remarriage, Respondent began paying \$2,061.00 per month. (Trial Tr. 57, 63.) Petitioner and Respondent, according to Petitioner's testimony, met to discuss child support. (Trial Tr. 55-58). The \$2,061.00 is the maximum child support per month according to the child support guidelines. This amount does not consider Petitioner's income. Both paragraph 9 and 19 of the Decree of Divorce provide for an automatic adjustment of (or automatic recalculation) of Respondent's child support obligation. (Appendix 3, R @ 51, 49.)

Request for Production of Documents was submitted to Michelle Tack, the Petitioner's prior counsel. The Request for Production Documents was served November 2, 2005.

Petitioner testified that she did not want an automatic increase but wanted to go to a mediator to determine child support. (Trial Tr. 55-58.) Petitioner did not submit any budget information to Respondent. (Trial Tr. 58). Petitioner submitted a budget to Shawn Robinson. (Trial Tr. 58.)

Admission of Settlement Letter as Evidence. The Court admitted as evidence Plaintiff's Exhibit 6 with the following statement:

If successful in raising child support, ultimately the children will suffer. I will no longer provide the additional help that I have in the past. (Plaintiff's Exhibit 6, Trial Tr. 88-92.)

Petitioner subsequently testified on cross-examination that she thought Respondent was trying to manipulate her. This manipulation was to get a different settlement than Petitioner was proposing or to get Petitioner to budget. (Trial Tr. 108.) The Court, sua sponte, asked the following questions about the "e-mail" extracted from a settlement letter.² The Court asked:

The second question I have for you is concerning the e-mail that we talked about a little bit earlier and I wanted to know what – when you received that note, the part of it that we are talking about, the rest of it is – is settlement negotiations, so that's not to be brought into a courtroom; but the middle part of it, the part indicating that the children will suffer, tell me what your perception of that was when you read it, what did – what did you think when you read it?

Mrs. Anderson: I thought, you know what, it's probably part of a manipulation thing, trying to get me to – to see what – to see his side basically. 'Cause see, in a verbal conversation we had the day the – a coup – a few days prior to that, he said the same thing. He said 'cause we've got through this whole entire divorce, everything, our children unscathed, I mean, they're fine, they don't know

² Exhibit 6 was a letter, not an e-mail. Apparently, Petitioner scanned the letter and e-mailed it to Petitioner's counsel.

any bitterness at all.’ And he threatened that with me, that he would let them know every - you know, I’ll tell the kids, the kids don’t know everything, you know. I’ll tell the kids, the kids will find out and I’m like, only if you tell them, and then this letter came, but I don’t think that he would ever physically hurt them, I don’t.

The Court then asked:

But did you believe that his intention when he sent it to you, was to say if you were to win, if you were to get a judgment in this case, I will be financially damaged by that and therefore, the children will then suffer because I wouldn’t be able to share with them everything I’m sharing with them now? Is – was that your impression?

Mrs. Anderson: I think it was more than manipulation. (Trial Tr. 101-102.)

On direct examination of the Petitioner called as a witness for the Respondent, Petitioner testified that the letter had been prepared while Respondent was at his mother’s house with the children. (Trial Tr. 106-107.) This was during a traditional hunting weekend for Respondent and the children. (Trial Tr. 107.) The pressure was on Respondent to respond back to the Petitioner’s settlement proposal by a certain time. (Trial Tr. 107.) Petitioner, when asked how she took the statement that has been referred to about the children suffering stated that the reason they were negotiating at all was because Respondent had called the Petitioner and asked her to call him to talk about everything. (Trial Tr. 107-108). Petitioner testified that Respondent made the statement to get a different settlement than was being proposed. (Trial Tr. 108).

Court Findings on Credibility. The Court made a finding that the Respondent was not credible. (Appendix 2. Finding of Fact 10 @212.) The bases for this finding were that Respondent clearly contradicted himself on two occasions. Respondent indicated he was

following all of the different measures inside of the Divorce Decree despite that he had admitted that in fact, he was behind on a couple of them. (Trial Tr. 155).

Respondent testified that he complied with the automatic adjustment of child support. (Trial Tr. 79-80.) Respondent also testified that agreements as to extracurricular activities were reached. (Trial Tr. 80.) Respondent testified that he had not paid the Christmas amount for December, 2005, or the clothing amounts since November, 2005. (Trial Tr. 81-82.) Respondent testified as to his understanding of what occurred upon termination of alimony. (Trial Tr. 82.) Respondent testified that he had paid half of the non-school extracurricular activities until November, 2004. (Trial Tr. 83-84.) Respondent and Petitioner negotiated the agreement to pay half each. (Trial Tr. 84.)

Petitioner's testimony corroborates Respondent's testimony. Respondent complied with the agreement regarding activities and lessons. (Trial Tr. 48, 54-55.)

The Court also found Respondent denied the writing of the letter and then the letter was produced and he said at that point his explanations were not corroborated by any other part of the case. (Trial Tr. 155). Respondent's explanation of what happened in terms of interpreting the Divorce Decree, are unreasonable and incredible. (Trial Tr. 155) The testimony regarding the letter has been explained earlier. (See Fact section "Admission of Settlement Letter as Evidence").

Delay In Action to Enforce Decree. The Court found that Petitioner had reasonable explanations for why she waited so long. The Court found that Petitioner attempted to enforce the Decree by setting up different mediation dates. The Court found the financial records were to be turned over by June 1 of each year. (Appendix B, Finding of Fact 11, R @ 212).

Petitioner was asked whether Petitioner said anything to Petitioner in writing that Petitioner owed other money. Petitioner did not answer the question directly but testified that when Petitioner first got married (November, 2004) that Petitioner and Respondent met. Petitioner wanted to go to mediation to set the amount of child support. The two appointments Petitioner set with the mediator were after this meeting. (Trial Tr. 55-56).

Attorney's Fees. The Decree of Divorce in Paragraph 34 provides for reasonable attorney's fees if any party should be found in contempt of any Order of this Court. (Appendix 3, R @ 46). Petitioner was awarded attorney's fees of \$7,652.97. Petitioner was ordered to prepare an Affidavit of Attorney's Fees. (Appendix 2, R @ 219). Petitioner did not prepare an affidavit for the second amount of \$1,386.89.

Summary of Amounts Paid or Claimed. The following table summarizes the child support amounts claimed by Petitioner and the tax amounts paid by Respondent. (Appendix 1 and R @ 60-62).

<u>Year</u>	<u>Child Support</u>	<u>Taxes Claimed</u>	<u>Christmas and Clothing</u>	<u>Total</u>	<u>Taxes Paid</u>
2000	\$ 8,348.46			\$ 8,458.46	\$4,000.00
2001	0			0	3,828.00
2002	12,065.64			12,065.64	5,000.00
2003	5,772.00			5,772.00	4,153.00
2004	0			0	4,153.00
2005	0	\$2,480.00		2,480.00	
2006	5,700.91		\$4,300.00	10,000.91	
	<u>\$31,997.11</u>	<u>\$2,480.00</u>	<u>\$4,300.00</u>	<u>\$38,777.01</u>	<u>\$21,126.00</u>

SUMMARY OF ARGUMENT

The Trial Court erred in finding Respondent in contempt of Court. Respondent was found to have not provided financial documentation. The exchange of financial documentation was addressed before the prior trial judge, Randall Skanchy. As stipulated, Petitioner and

Respondent exchanged three years of income information. The Trial Court should not have issued an Order inconsistent with the Stipulation of the parties, exacerbating the error by using the exchange of information as a basis for a finding of contempt.

The Decree of Divorce provides for an automatic adjustment to take place in accordance with the child support guidelines upon the Petitioner's remarriage. This automatic adjustment took place. The Petition to Modify Divorce Decree sought an increase above the child support guidelines that did not question the automatic adjustment. Respondent complied with the obligations of the Decree of Divorce regarding the automatic increase. Petitioner sought an amount of child support not based on the Divorce Decree but based upon recommendations of a mediator.

The Decree of Divorce provided Respondent with the right to claim the children as dependents. Petitioner's cash flow problem in meeting her taxes resulted in agreement for Respondent to pay amounts not required by the Decree of Divorce.

Petitioner did not claim in writing any additional child support. The discussion of child support relied upon by the Trial Court in finding the Petitioner had attempted to enforce the Divorce Decree related to future child support beyond the Divorce Decree. Petitioner did not seek to enforce or mediate any adjusted child support until bringing the Order to Show Cause in September, 2006.

Petitioner's actions resulted in a waiver of the right to recover additional child support prior to the Trial Court's determination of child support going forward. Petitioner is equitably estopped from retaining the benefit of the agreements regarding taxes, making other accommodations with Respondent, remaining silent as to any claim of past support and then recovering amounts not earlier claimed.

Respondent should not be held in contempt and should not be responsible for attorney's fees. Petitioner has not accounted for or justified the final amount of attorney's fees claimed.

ARGUMENT

POINT I

RESPONDENT SHOULD NOT BE HELD IN
CONTEMPT FOR NOT FOLLOWING
PARAGRAHS 9, 10 AND 20. THE LEGAL
REQUIREMENTS FOR A FINDING OF
CONTEMPT ARE NOT PRESENT.

Utah Code Ann. §78-32-1 provides the acts and omissions constituting contempt.

Disobedience of any lawful judgment, Order or process of the Court is a basis for a finding of contempt. In order to find contempt, the Court must find that the person knew of the requirements, had the capacity to comply and intentionally failed or refused to do so. VonHake v. Thomas, 759 P.2d 1162, 1172 (Utah 1988).

This case is not one involving a “deadbeat” dad that failed or refused to pay child support. To the contrary, Respondent paid all child support and spousal support as worked out by the parties. The Respondent paid more than \$21,000.00 to the Petitioner that was not required by the Decree of Divorce for Petitioner's taxes. (Trial Tr. 38, 39-40, 60-62). Upon the remarriage of the Petitioner, Respondent began paying child support at the maximum amount called for by the child support guidelines. (Trial Tr. 57, 63).

While the Divorce Decree called for automatic adjustments to the amount of child support, Petitioner did not want to accept an automatic increase. Petitioner wanted to receive a higher amount of child support by going to a mediator. (Trial Tr. 55-58). This was followed by the filing of a Petition to Modify Decree of Divorce. (R @ 59-61). By this Petition, Petitioner

did not claim or even reserve a claim for any past-due child support or other amounts. Petitioner claimed a right to increased child support. (R @ 59-61).

The Third District Court received a Partial Resolution and Stipulation on the record regarding the documents to be provided by the parties. Both parties agreed that they would provide income tax information for 2002, 2003 and 2004. (Apr. 4, 2005 OSC Tr. @ 2). Respondent fully complied with this Order of the Court. Petitioner's efforts to obtain additional information regarding businesses not owned by or unrelated to Respondent was denied. (R @ 115-117).

Petitioner requested the withdrawal of her counsel. (R @ 118-119). With new counsel, Petitioner attempted to establish different law of the case. Now, Petitioner did not pursue the increase in child support but rather sought prior amounts. The Court, in a manner inconsistent with the Stipulation of the Parties, ordered that past financial information be provided. (R @ 169). Petitioner was not required to provide information. Respondent complied with the Court's Order.

Respondent should not be held in contempt under circumstances where the parties had worked for over six years with the financial arrangements. Respondent should not be held in contempt when the stipulation of the parties regarding documents was fully complied with and the Petitioner pursued a Modification of Decree of Divorce to change future child support.

POINT II

THE TRIAL COURT SHOULD NOT
DISREGARD THE STIPULATION OF THE
PARTIES AND THE LAW OF THE CASE
PARTICULARLY IN FINDING RESPONDENT
IN CONTEMPT.

From the time of the parties' divorce in 1999 until the remarriage of the Petitioner, the Respondent met all financial obligations pursuant to the Decree of Divorce and the accommodations made by the parties related to payment for extracurricular activities and lessons and payment of Petitioner's taxes. (Trial Tr. 45-49, 38, 60-62). This is evidenced by the acceptance of payments by the Petitioner, the lack of any written or oral demands by the Petitioner for payment of adjusted child support, the filing of an Order to Show Cause and Petition to Modify Decree of Divorce and the stipulation that the financial information to be exchanged involved only the prior three years tax returns.

The Petition to Modify Decree of Divorce claimed a right to \$4,100.00 per month in child support. The stipulation of the parties was placed on the record by Petitioner's counsel as follows:

It is anticipated that the parties are going to exchange their tax returns for the years 2002, 2003, 2004 by April 15th. That's assuming that both parties have their 2004 taxes done by that date. They'd also – and we didn't specifically talk about this but they'd exchange their business – any business taxes that they had as well, and their personal taxes. (Apr. 4, 2005 OSC Tr. @ 2).

Respondent complied with the stipulation entered before Judge Skanchy. (R @ 91-92). Petitioner pursued a Motion to Compel for information from other businesses. (R @ 90). Respondent complied with Rule 34(b)(2) Utah Rules of Civil Procedure by producing the available documents as requested and not objected to. (R @ 102-111). Petitioner filed a Motion to Compel that the Court denied. (R @ 115-117). Respondent remained in compliance with the Court Order and discovery rules.

The Petitioner dismissed her legal counsel. The Notice of Withdrawal of Counsel states the reason to be the request of the Petitioner. (R @ 118-119). New counsel entered an

appearance. Petitioner then disregarded her Petition to Modify and pursued an Order to Show Cause claiming past child support, reimbursement of expenses and other matters. The trial court, now presided over by Judge Kouris, disregarded the stipulation and prior Order of the Court ordering Respondent to provide information regarding past gross receipts and income tax returns. (R @ 169, Oct. 16, 2006 OSC Tr. @ 23).

The Supreme Court in the Matter of E.H., 137 P.3d 809 (Utah 2006), addressed a situation in which a stipulation in an adoption case was accepted by the first judge and voided by the second judge. The Court noted that the law favors the settlement of disputes. See, In re EH, 103 P.3d 809 (UT. Ct. App. 2004) and Mascaro v. Davis, 741 P.2d 938 (Utah 1987).

The Court in In re EH, noted the following:

A challenge to a judge's reversal of a ruling made by a predecessor judge is inevitably composed of two issues. The first concerns whether the reversal so offends the prudential practice of refusing to reopen matters that have already been decided that it cannot be sustained. This question is central for evaluating the application of the law of the case doctrine and, as the Court of Appeals correctly noted, is ordinarily reviewed under an abuse of discretion standard. The second component of an inquiry into a reversal of a prior order focuses on the nature of the matter decided. For example, if both the original ruling and the one that displaced it were based on applications of law each would be reviewed under a correctness standard. When a legal question is presented to an appellate court in law-of-the-case-packaging, a potential dilemma can arise over which the standard of review to apply.

We can identify no reason why an erroneous legal determination should be afforded greater discretion upon appeal merely because it wears the garb of law-of-the-case. For purposes of review, then, considerations of the law of the case must yield to those of the substance of the underlying ruling when ascertaining the proper standard of review. By

stating this rule, we do not intend to diminish the importance of the law of the case doctrine, nor do we surrender the authority of appellate courts to enforce the principal by vacating unexplained and unjustified renunciation of prior court orders.

103 P.3d @ 816.

Here, Respondent complied with the stipulation of the parties and the Order of Judge Skanchy. Then, after a change in strategy, Respondent was held in contempt by Judge Kouris. Petitioner should have been held to the stipulation. At least, Respondent should have been granted the opportunity to comply with the new, inconsistent Order without facing a contempt charge. Petitioner should not be able to pursue one strategy, abandon the strategy and then pursue a contempt claim.

The inconsistent Order and contempt finding by Judge Kouris offends the prudential practice of refusing to reopen matters that have already been decided. To sustain Judge Kouris's orders leaves Respondent in a situation in which the parties' stipulation is voided and Respondent is punished while he has been in compliance.

POINT III

THE TRIAL COURT ERRED IN ADMITTING AS EVIDENCE A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THE TRIAL COURT FURTHER ERRED IN RELYING UPON THIS STATEMENT IN DRAWING CONCLUSIONS ABOUT THE CREDIBILITY OF THE RESPONDENT.

Prior to the trial held October 26, 2006, the parties were involved with settlement negotiations. Respondent, in explaining his position that a proposal made by the Petitioner was not acceptable noted that "the children would suffer" from the settlement proposal. (Petitioner's Exhibit 6, Appendix 7). During the trial, the Respondent was asked whether he had sent an e-

mail letter stating the children would suffer. (Trial Tr. 88-92). The question's context was whether Respondent had threatened that the children would suffer. The Respondent correctly answered the question, "no." Petitioner then attempted to introduce the statement contained in the settlement letter of the Respondent. The Court admitted the statement lifting the single sentence out of the entire letter. (Trial Tr. 93). A second sentence from the same paragraph also remained.

Later, the Court sua sponte questioned the Petitioner regarding the statement. (Trial Tr. 101-102). The Court's questions and answers are set forth in the Statement of Facts. The Court made the finding that the Respondent's testimony was not credible finding that the Respondent had contradicted himself on two occasions. One of the contradictions was the statement from the settlement letter. (Appendix 1, Trial Tr. 155).

Rule 408 Utah Rules of Evidence in pertinent part states:

Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

In Davidson v. Prince, 813 P.2d 1225 (Utah Ct. App. 1991), the court addressed Rule 408. The court stated:

In order for the exclusionary rule to attach, the party seeking to have evidence of offers to compromise or statements made in the course thereof excluded must show that the discussions in question were made in "compromise negotiations" (citations omitted).

813 P.2d @1232.

In the Davidson situation, the court found the letter admitted into evidence to not have been made in compromise negotiations. In the present situation, Petitioner's testimony explains that the letter was in response to an offer of the Petitioner and a counter-proposal of the Respondent. Petitioner testified that negotiations commenced with a phone message left by Respondent. Petitioner and Respondent were under time pressure to reach an agreement (if one could be reached) before the trial date. Respondent was with his children at his mother's home on a hunting trip. Petitioner acknowledged the statement was an effort to convince the Petitioner to accept Respondent's position.

A statement made in settlement negotiations can be used for purposes of impeachment. This impeachment involves use of a prior inconsistent statement. Here, Respondent had not made a prior statement that was inconsistent. One and only one statement, the statement in the settlement letter was involved. Questions about settlement negotiations cannot be asked and then admitted as evidence.

The purpose of Rule 408, Utah Rules of Evidence, is fostering the settlement and compromise of disputes by the parties and providing for open communication in settlement negotiations. If questions can be asked about the negotiations and used against a party, the purpose of Rule 408 is frustrated.

The court admitted the statement directly as evidence and not solely evidence of impeachment. The court, sua sponte, then asked the questions of the Petitioner. Now, the evidence was admitted for purposes of determining whether the Respondent should be held in contempt. No exception to the exclusion of settlement negotiations applies to the questions asked by the court.

The court's error in admitting the statement from negotiations was prejudicial. The court specifically found that the Respondent had contradicted himself on two occasions. This testimony about the statement in settlement negotiations was the basis for the finding of a contradiction by Respondent.

POINT IV

PETITIONER IS EQUITABLY ESTOPPED
FROM MAINTAINING THE BENEFITS OF THE
ACCOMMODATIONS OF THE PARTIES AND
PAYMENTS NOT REQUIRED BY THE
DIVORCE DECREE WHILE CLAIMING
ADJUSTED CHILD SUPPORT AND OTHER
AMOUNTS SHOULD HAVE BEEN PAID.

Utah courts have addressed equitable estoppel in connection with Divorce Decrees on several occasions. Ross v. Ross, 592 P.2d 600 (Utah 1979), addressed the standard for equitable estoppel:

In order to prevail on his theory of estoppel, plaintiff must prove that defendant, by her representations or actions led plaintiff to believe he need not pay alimony or child support, and that plaintiff, in reliance upon said representations, changed his position to his detriment. In such a case, enforcement of the decree creates a hardship and injustice to plaintiff and defendant would be estopped to deny his own misrepresentations, and estopped from claiming unpaid support.

592 P.2d @ 602-603.

The Court in Ross, relied upon Larsen v. Larsen, 5 UT. 2d 224, 300 P.2d 596 (Utah 1956). In Larsen, Appellant claimed that he should not be require to pay back child support under circumstances that the Respondent had orally discussed the Appellant leaving Utah to serve a church mission. The Respondent further requested that the Appellant leave Respondent and the parties' child alone.

The Court remanded the case for a determination as to whether the Respondent was estopped from collecting the back child support. The Court stated:

In Price v. Price, we held that because the state is interested in the child's welfare the parents cannot effectively release future payments of support money by agreeing with the other to that affect. However, this does not mean that a mother may not by her actions or representations, or both, preclude herself from recovering past due installments of support money to reimburse her for any money which she has spent for the support of the child. Where the father's failure to make such payment was induced by her representations or actions and where the result of such representations or actions the father has been lulled into failing to make such payments and into changing his position which he would not have been done but for such representations, and that as a result of such failure to pay and change in his condition it will cause him great hardship and injustice if she is allowed to enforce the payment of such back installments, she may be thereby estopped from enforcing the payment of such back installments. So in this case, if the trial court finds from the evidence that Appellant would not have left his job and gone on a mission for his church but for such representations that she would not require him to pay such installments if he would just leave her and the child alone, and the Appellant in reliance upon her representations complied with her request and that thereafter she supported the child and if such payments are collected from him she will be entitled to them for her own use and benefit and that it would be a great hardship on him to now force him to make such payments, she would now be estopped from forcing him to pay such past due installments as accrued during the time he was filling such mission.

The Court also stated the following regarding the support of the children and its affect on estoppel. The Court stated:

If the child has been the beneficiary of equivalent support and education so that the mother is entitled to receive all of said past due support money, she should be free to release, compromise or waive that which is hers. But if the child has been provided bare shelter and food, and denied the benefit of proper clothes and dental and medical care, then the mother should not be free to waive that portion of past due support money that the child has not received. The authority cited above hold this doctrine is applicable to this extent. It is the prerogative of the trial court to determine these facts and if he finds that facts exist to justify equitable estoppel, he should apply that doctrine and relieve the father from payment of the installments to the extent indicated...

In Wiese v. Wiese, 699 P.2d 700 (Utah 1985), the Court in addressing an obligation of a stepfather to provide support indicated that a party asserting equitable estoppel must prove that he detrimentally relied on the actions or representations of the party to be estopped.

In the present case, the Petitioner actually collected monies not required by the Divorce Decree each year prior to her remarriage. Petitioner remained silent or took no affirmative steps to claim back child support while accepting the payments by Respondent. Respondent changed his position based on Petitioner's actions paying over \$21,000.00 not required by the Divorce Decree. It is unjust for Petitioner to retain the benefits of amounts not required by the Divorce Decree, pursue claims only for future support and after the fact require Respondent to pay prior child support.

POINT V

PETITIONER WAIVED ANY RIGHT TO CLAIM BACK SUPPORT. PETITIONER'S ACTIONS IN NOT PURSUING RECOVERY OF PAST SUPPORT AND ACCEPTANCE OF PAYMENTS NOT REQUIRED BY DIVORCE DECREE CONSTITUTE A WAIVER.

Petitioner acknowledges that agreements were reached by the parties regarding numerous aspects of the Decree of Divorce. Petitioner acknowledges that she received over \$21,000.00 from Respondent to pay her personal income taxes. (Trial Tr. 60-62). The payment of her taxes was not required by the Decree of Divorce. (Trial Tr. 38).

The courts have addressed the requirements for waiver of provisions of a Decree of Divorce. The Utah Supreme court addressed the requirements of waiver in the context of a Divorce Decree in Hunter v. Hunter, 669 P.2d 430 (Utah 1983). In Hunter, the Court stated the requirements for waiver as follows:

A waiver is the intentional relinquishment of a known right. To constitute a waiver, there must be an existing right, benefit or advantage, a knowledge of its existence, and an intention to relinquish it. It must be distinctly made, although it may be express or implied.

669 P.2d @ 432.

Petitioner acknowledged that she decided not to pursue past child support. Petitioner pursued a Petition to Modify Decree of Divorce that did not mention past child support. (R @ 59-61). Petitioner accepted over \$21,000.00 from Respondent that he was not obligated to pay. (Trial Tr. 38). These actions occurred over six years. Petitioner thereby distinctly demonstrated her intention to relinquish past support.

The trial court found "... Petitioner attempted to enforce the Decree of Divorce by setting up different mediation dates." Petitioner testified that the discussion about mediation took place after her remarriage in November, 2004. (Trial Tr. 55-58). The mediation related to Petitioner wanting more future child support than provided by the child support guidelines. (Trial Tr. 55-58). The Court's finding is clearly erroneous. Petitioner did not attempt by mediation to enforce the Decree.

Likewise, Petitioner did not seek to exchange financial records for past child support purposes until September, 2006. Petitioner's intent in pursuing a Petition to Modify Decree of Divorce resulted in a stipulation that was complied with. Petitioner waived any right to claim past amounts.

POINT VI

ATTORNEY'S FEES ARE NOT RECOVERABLE BY THE PETITIONER.

The Decree of Divorce provides that if any party shall be found in contempt of any provisions of any Order of this Court, that party shall be responsible for paying reasonable attorney's fees and costs for the enforcement thereof. (Appendix 3, R @ 46). As provided throughout this Brief, Respondent should not be held in contempt of Court. Consequently, the condition for an award of attorney's fees is not met.

The Court also erred in awarding Petitioner \$1,386.89 in attorney's fees for services subsequent to the trial. Petitioner's counsel was not required to provide any accounting for the claimed fees. The necessity of these fees is subject to question. The questions arise from the position taken by the Petitioner regarding the Findings of Fact and Conclusions of Law and Order. Objection to two sets of proposed findings, conclusions and order was required.

Ultimately, Petitioner determined Respondent's suggested Findings, Conclusions and Order to be correct with the one exception of the dispute of the amount of monthly child support. At the hearing on December 16, 2006, this issue was determined in the Respondent's favor. Under these circumstances, the reasonableness and need for these fees is in question. The Court did not require Petitioner to comply with the requirements of submitting documentation of the amount, reasonableness and need for the services. The Petitioner did not comply with the Order

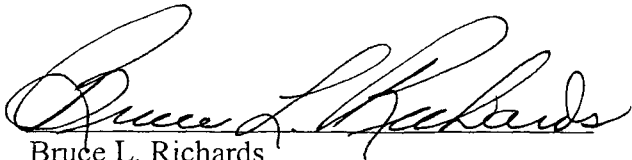
from Trial Held October 26, 2006 and Objection Hearing Held December 18, 2006. (Appendix 1, R @ 219). Petitioner did not provide an Affidavit of Attorney's Fees for the \$1,386.89.

CONCLUSION

Respondent requests that this Court reverse the Order from Trial Held October 26, 2006 and Objection Hearing Held December 18, 2006. Respondent should not be held in contempt of court, should not be responsible for prior child support, Christmas and clothing funds, taxes for Petitioner for tax years after her remarriage or attorney's fees. If the Order is not reversed, Respondent should be credited for amounts paid for Petitioner's taxes against any amount found owing.

Dated this 15th day of May, 2006.

BRUCE L. RICHARDS & ASSOCIATES


Bruce L. Richards
Attorney for Respondent

MAILING CERTIFICATE

I hereby certify that on the 15th day of May, 2007, a copy of Appellant's Brief was mailed via First Class Mail, postage-prepaid to:

David J. Friel
Attorney for Petitioner
2875 South Decker Lake Dr. #225
Salt Lake City, UT 84119



APPENDIX 1

**ORDER FROM TRIAL HELD OCTOBER 26,
2006 AND OBJECTION HEARING HELD
DECEMBER 18, 2006**

JANUARY 9, 2007

2007 JAN -9 AMU: 31

FILED BY

IN THE THIRD JUDICIAL DISTRICT COURT
OF TOOELE COUNTY, STATE OF UTAH

Judge: Mark S. Kouris

00221

ORDER

1. The Court previously found that the parties' actions created a substantial and material change in circumstances and it is ordered that both parties be responsible one-half each for the non-school extracurricular activities of the minor children.

2. The Court orders that Respondent will claim the second and fourth oldest children on his taxes and Petitioner will claim the oldest and third oldest children on her taxes.

3. Respondent is given no credit for his payments on the voluntary insurance that he is providing and covering the children with since the Decree ordered Petitioner to keep insurance on the children.

4. The Court previously found that Respondent is in contempt of Court for not following the Decree of Divorce at paragraph No's 9, 10, and 20. Therefore, the Court enters total judgments against the Respondent in the amount of \$44,311.00.

5. Breaking down into specific categories the \$44,311.00 judgment, the Petitioner is awarded a judgment against the Respondent in the amount of \$2,480.00 for the 2004 taxes that Respondent should have paid of Petitioner's.

6. The Petitioner is awarded judgment against the Respondent in the amount of \$1,726.50 for the non-school extracurricular activities that should have been paid by the Respondent after October, 2004. All non-school extracurricular activities proportionate one-half ($\frac{1}{2}$) payments have been made by Respondent prior to October, 2004.

7. Petitioner is awarded judgment in the amount of \$4,300.00 against the Respondent due to his non compliance with paragraph No. 10 in the Decree of Divorce.

8. Petitioner is awarded judgment in the amount of \$3,808.00 against the Respondent due to his non compliance with paragraph No. 20 in the Decree of Divorce.

9. Petitioner is awarded judgment against Respondent in the amount \$31,997.11 for non compliance of paragraph No. 9 of the Decree of Divorce regarding the automatic adjustment of child support based on the gross receipts of the Respondent per the Decree of Divorce.

10. Attorney fees are justified and necessary and reasonable and Petitioner is awarded attorney fees of \$7,652.97 against the Respondent. Petitioner's counsel will prepare an affidavit of attorney fees incurred by the Petitioner.

11. Respondent has been found in contempt of Court and if found in contempt again the Court will consider jail time. Respondent must understand that he has been found in contempt of Court and jail or a fine could be imposed and the Court expects the Respondent to follow the orders of the Court.

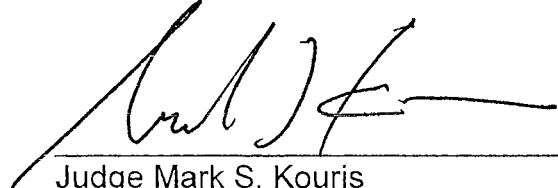
12. Beginning January, 2007 Respondent's monthly child support obligation to Petitioner will be \$2,516.08 based upon the automatic adjustment of child support as per the Decree of Divorce. This is based on Respondent's 2004 and 2005 gross receipts.

Beginning 2007 Respondent will provide his 2006 gross receipts compared to 2005 gross receipts so the parties may calculate if there needs to be an adjustment increase to the base child support amount. The base child support amount is \$2,061.00. The gross receipts from Respondent will be given to Petitioner for 2006 (and each year thereafter) so Petitioner can calculate the child support adjustment in accordance with paragraph 9 of the parties' Decree of Divorce. Petitioner will have fifteen (15) days to calculate the adjustment, if any. Respondent will have fifteen (15) days to respond to Petitioner's figures. If the parties agree, the figures may be adjusted automatically with the increase or decrease. If the parties do not agree, no adjustment can be made without a Court hearing. The monthly child support amount due from Respondent to Petitioner will not be adjusted below \$2,061.00. If Respondent has paid less than the adjusted amount, Respondent shall pay the underpayment with the next month's child support payment. If Respondent has paid more than the adjusted amount, the Respondent shall subtract the over-payment from the next month's child support payment. If any judgment amount remains enforceable, the overpayment may be subtracted from the judgment amount.

13. All provisions of the Decree of Divorce not expressed changed or modified in the action will remain in full force and effect.


DATED this 8 day of January, 2006.

BY THE COURT:



Judge Mark S. Kouris
Third District Court

Approved as to form ~~and content~~:




Bruce L. Richards
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that I caused to be sent by U.S. Mail, a true and correct copy of the foregoing document on this 28 day of DECEMBER, 2006, to:

Bruce L. Richards, Esq.
P.O. Box 25786
Salt Lake City, UT 84125



APPENDIX 2

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JANUARY 9, 2007

David J Friel
Attorney for Petitioner
2875 S. Decker Lake Drive, #225
Salt Lake City, UT 84119
Telephone: (801) 975-1122
Facsimile: (801) 975-8611
Bar No. 6225

THIRD DISTRICT COURT-TOOELE
2007 JAN -9 AM 11:31

FILED BY _____

IN THE THIRD JUDICIAL DISTRICT COURT
OF TOOELE COUNTY, STATE OF UTAH

LINDA ANDERSON,
(f.k.a. Linda LaRee Thompson),

Petitioner,

vs.

GLENN HUNTER THOMPSON,

Respondent.

)
)
) **FINDINGS OF FACT AND**
) **CONCLUSIONS OF LAW**
)
)
)

) Civil No. 994300102DA
)
)

) Judge: Mark S. Kouris
)

A bench trial was held before Judge Mark S. Kouris of the Third District Court on October 26, 2006. Subsequently, an Objection hearing was held on December 18, 2006. Petitioner, Linda Anderson, was present and represented by counsel, David J. Friel. Respondent, Glenn Thompson, was present and represented by counsel, Bruce Richards. Based upon the testimony of witnesses and the exhibits received by the Court and the argument of counsel, the Court entered the following:

FINDINGS OF FACT

1. The Court finds that a material and substantial change of circumstances has taken place due to the actions of the parties since entry of the Decree

of Divorce in April, 1999. The Court finds that the parties left out several terms from the Decree of Divorce because they had not thought through in detail the specific agreements made prior to the entry of the Decree of Divorce. The Court finds that the parties' verbal agreement entered into a few months after the Decree was signed was that the parties would split the costs of all non-school extra curricular activities one-half each. This was a material and substantial change in circumstances and was abided to by the parties for approximately five and a half years. The Court finds that the parties' actions created a substantial change in circumstances and it is appropriate that both parties be responsible one-half each for the non-school extra curricular activities of the minor children from the time the parties made the agreement.

2. Respondent has been enjoying all of the tax exemptions for the four minor children from the time of the entry of the Decree of Divorce through 2005. Respondent stepped to the plate and paid the amount due on Petitioner's taxes through 2003 so that Respondent could keep all of the exemptions. Petitioner testified that the agreement of the parties was that Respondent would pay all of Petitioner's tax debt above and beyond \$1,200 per month. The Court finds that in 2004 Petitioner had a tax debt of \$2,480 that she paid and Respondent did not contribute to or pay. For 2005, the Respondent, in accordance with the Decree of Divorce, claimed the four dependants. Petitioner also claimed two dependants. The contributions that Respondent made to Petitioner's tax debt were made so that Respondent could keep the exemptions.

3. The Court finds that the insurance coverage of the minor children by the Respondent was not requested by the Petitioner nor required by the Decree of Divorce. Respondent is given no credit for his payments on the voluntary insurance that he is providing and covering the children with.

4. The Court finds that the parties have different approaches to parenting in relation to the vehicle driven by the minor child. Respondent feels that the child should pay for the truck and its expenses and Petitioner feels that school is more important and the minor child should not be forced to pay for the expenses for the vehicle on his own. No monies are awarded to Petitioner on this issue. Any future payments made by Petitioner on this issue will be from her own funds.

5. The Court finds that Respondent has not been abiding by the Decree of Divorce since 2004 and Respondent has admitted that he has not been paying for one-half of the non-school extra curricular activities of the children since November 2004.

6. The Court finds that paragraph No. 10 of the Decree of Divorce is still in full force and effect and that a judgment should be entered against the Respondent and in favor of the Petitioner.

7. The Court finds that paragraph No. 20 of the Decree of Divorce has not been complied with and that Petitioner did not have access to tax records held by the Respondent and that a judgment should enter against the Respondent in favor of the Petitioner.

8. The Court finds that the Decree of Divorce speaks for itself in that the parties projected that additional child support should be paid from the Respondent to the Petitioner over and above the child support guidelines. Petitioner is to receive a judgment against Respondent for those increases that have not been paid.

9. The Court finds that Petitioner's testimony is completely credible and truthful and is corroborated by her testimony, exhibits, and those issues brought forth at trial.

10. The Court finds that Respondent's testimony is not credible and he has contradicted his own testimony on two separate occasions. The Court finds that Respondent's answers are not corroborated and that his explanations are not credible.

11. The Court finds that Petitioner waited a long period of time to bring this action before the Court and the Court finds that there is no determent in the delay of time because Petitioner has reasonable explanations as to why she waited so long. The Court finds that Petitioner attempted to enforce the Decree of Divorce by setting up different mediation dates. The Court finds that Respondent refused to attend the meditations scheduled by Petitioner. The Court finds that it was impossible for the Petitioner to enforce the Decree of Divorce because the financial records were to be turned over by June 1st of each year.

12. The Court finds that Respondent is in contempt of Court for not following the Decree of Divorce at paragraph No's 9, 10, and 20. The Court finds that

Respondent knew there was an order of the Court and had the ability and capacity to comply with the orders of the Court. The Court finds that Respondent intentionally chose not to follow the orders of the Court. The Court enters total judgements against the Respondent in the amount of \$44,311.00.

13. Itemizing into specific categories for the \$44,311.00 judgment, the Court finds that Petitioner is awarded a judgment against the Respondent in the amount of \$2,480.00 for the 2004 taxes that Respondent should have paid of Petitioner's.

14. The Court finds that Petitioner is awarded judgment against the Respondent in the amount of \$1,726.50 for the non-school extra curricular activities that should have been paid by the Respondent.

15. The Court finds that Petitioner is awarded judgement in the amount of \$4,300.00 against the Respondent due to his non compliance with paragraph No. 10 in the Decree of Divorce.

16. The Court finds that Petitioner is awarded judgement in the amount of \$3,808.00 against the Respondent due to his non compliance with paragraph No. 20 in the Decree of Divorce.

17. The Court finds that Petitioner is awarded judgment against Respondent in the amount \$31,997.11 for non compliance of paragraph No. 9 of the Decree of Divorce regarding the automatic adjustment of child support based on the gross receipts of the Respondent in excess of the previous year's gross receipts.

18. The Court finds that attorney fees are justified and necessary and reasonable and Petitioner is awarded attorney fees of \$7,652.97 against the Respondent. Petitioner's counsel will prepare an affidavit of attorney fees incurred by the Petitioner.

THEREFORE, BASED UPON THE FINDINGS OF FACT PREVIOUSLY OUTLINED,
THE COURT HEREBY ENTERS THE FOLLOWING:

CONCLUSIONS OF LAW

1. The Court concludes that from this point forward Petitioner will claim the oldest and third oldest on her taxes as exemptions and the Respondent will claim the second and youngest child on his taxes.

2. The Court concludes that if the Respondent is found in contempt of Court again the Court will consider jail time. Respondent must understand that he has been found in contempt of Court and jail or a fine could be imposed and the Court expects the Respondent to follow the orders of the Court.

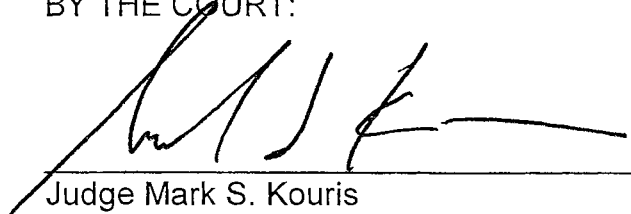
3. Beginning January, 2007 Respondent's monthly child support obligation to Petitioner will be \$2,516.08 based upon the automatic adjustment of child support as per the Decree of Divorce. This is based on Respondent's 2004 and 2005 gross receipts. Beginning 2007 Respondent will provide his 2006 gross receipts compared to 2005 gross receipts so the parties may calculate if there needs to be an adjustment increase to the base child support amount. The base child support amount is \$2,061.00. The gross receipts from Respondent will be given to Petitioner for 2006 (and each year thereafter)

so Petitioner can calculate the child support adjustment in accordance with paragraph 9 of the parties' Decree of Divorce. Petitioner will have fifteen (15) days to calculate the adjustment, if any. Respondent will have fifteen (15) days to respond to Petitioner's figures. If the parties agree, the figures may be adjusted automatically with the increase or decrease. If the parties do not agree, no adjustment can be made without a Court hearing. The monthly child support amount due from Respondent to Petitioner will not be adjusted below \$2,061.00. If Respondent has paid less than the adjusted amount, Respondent shall pay the underpayment with the next month's child support payment. If Respondent has paid more than the adjusted amount, the Respondent shall subtract the over-payment from the next month's child support payment. If any judgment amount remains enforceable, the overpayment may be subtracted from the judgment amount.

4. All provisions of the Decree of Divorce not expressly changed or modified in this action will remain in full force and effect.

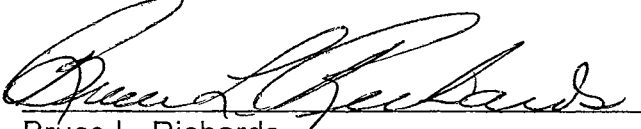
DATED this 8 day of JANUARY, ~~2006~~ ²⁰⁰⁷.

BY THE COURT:



Judge Mark S. Kouris
Third District Court

Approved as to form and content:



Bruce L. Richards
Attorney for Respondent

APPENDIX 3

DECREE OF DIVORCE

APRIL 20, 1999

FILED
3RD DISTRICT COURT-TOOELE
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FILED BY [Signature]

MICHELLE CLAIRE TACK (#6044)
Attorney for Petitioner
10150 South Centennial Parkway
Suite #400
Sandy, Utah 84070
Telephone: (801) 572-8892

IN THE THIRD JUDICIAL DISTRICT COURT
OF TOOELE COUNTY, STATE OF UTAH

LINDA LaREE THOMPSON,	---	oo0oo---	
)		
	:		DECREE OF DIVORCE
Petitioner,)		
	:		
vs.)		
	:		Civil No. <u>994300102</u>
GLENN HUNTER THOMPSON,)		Judge:
	:		
Respondent.)		
	---	oo0oo---	

This matter having been submitted to the Court on the basis of a stipulation and property settlement signed by both parties, and the Court having made its Findings of Fact and Conclusions of Law, it is therefor:

ORDERED, ADJUDGED AND DECREED

1. That the Petitioner is hereby awarded a Decree of Divorce from the Respondent, dissolving the bonds of matrimony heretofore existing between the parties, and said Decree to

become final, and absolute and irrevocable upon being signed by the Court and entered by the clerk.

2. There are four minor children born as issue of this marriage, to wit: TRAVIS GLENN THOMPSON (d.o.b. 1/13/90), DARCIIE LINDA THOMPSON (d.o.b. 7/29/92), LYNDIE LaREE THOMPSON (d.o.b. 7/27/94), and COLE HUNTER THOMPSON (d.o.b. 3/6/96).

3. That the parties are both fit and proper persons to be awarded the care, custody and control of the minor children and therefore the parties should be awarded joint legal custody with the Petitioner being granted primary physical custody. The parties shall work together to resolve issues involving the children, however the Petitioner as custodial parent shall make the final decision.

4. The Respondent shall be granted reasonable and liberal visitation with the minor children, with the minimum to be as detailed in §30-3-35 of the Utah Code. The Respondent shall be awarded visitation on alternate weekends with at least one additional contact midweek.

5. The Respondent shall be awarded holiday visitation in odd numbered years for Memorial Day, July 24th, and Thanksgiving and in even numbered years for Easter, July 4th, and Labor Day. The Christmas holiday shall be divided in such a way as to allow the children to be at home with the Petitioner overnight on Christmas Eve until they are of an age when Santa Claus is no longer a major factor. In odd numbered years, the Petitioner shall have the children Christmas Eve day through Christmas Day at 5:00 p.m. and the Respondent shall have the children on Christmas Day from 5:00 p.m. In even numbered years, the Respondent shall have the children on

Christmas Eve from 5:00 p.m. until 10:00 p.m. and again on Christmas Day from 12:00 noon, with the Petitioner having the children from 10:00 p.m. Christmas Eve until Christmas Day at 12:00 noon.

6. The Respondent shall be granted visitation for each child's birthday from 5:00 p.m. on the actual birthday if said day is a weekday. If the birthday is a weekend day during the Respondent's regular scheduled visitation, then he shall have the entire weekend subject to the Petitioner having visitation on the actual birthday from 5:00 p.m. If the birthday is a weekend day and is not during the Respondent's regular scheduled visitation, then he shall have visitation on the actual birthday from 5:00 p.m. The party exercising birthday visitation shall have the option to also include the parties' other children in said birthday visitation.

7. Both parties shall have reasonable blocks of visitation time during the summer vacation period and shall have the option to travel with the children with reasonable notice to the other party. With the exception of vacation and travel time the parties shall continue to follow the regular visitation schedule as detailed herein.

8. Should either party need child care during their respective periods of time with the children they shall give the other party the first option to provide such care. Neither party shall, however, be required to adjust their individual plans in order to accommodate the other party's schedule and should either party fail to provide such care after agreeing to do so they shall be responsible for the actual costs incurred for substitute care.

9. The Respondent shall pay child support for the parties' minor children in the amount of \$1,000.00 per month. The parties' recognize that said amount is less than as provided by the guidelines set forth in the Utah Code and have agreed on said amount based upon the entire divorce settlement. Upon the termination of alimony the base child support amount shall be automatically adjusted to an amount consistent with the guidelines set forth in the Utah Code. The Respondent's monthly child support obligation shall be automatically increased each year by .7% (.007) of the Respondent's gross business receipts in excess of the previous year's gross business receipts (1998 gross business receipts determined to be \$300,000.00) in order to preserve the ratio of monthly child support to Respondent's yearly gross business receipts.

10. The Respondent shall make the following payments to the Petitioner for the benefit of the children in addition to child support:

a. One thousand dollars (\$1,000.00) yearly by December 1st for Christmas with this sum to be matched by the Petitioner.

b. Seven hundred fifty dollars (\$750.00) yearly by August 1st for school clothing and supplies with this sum to be matched by the Petitioner. Said funds may be maintained in a separate account and spent over the course of the year.

c. Five hundred dollars (\$500.00) yearly by May 1st for Spring and Summer clothing with this sum to be matched by the Petitioner. Again, said funds may be maintained and budgeted over the course of the year.

d. All costs for non-school extra-curricular activities and lessons for the minor children (baseball, softball, basketball, soccer, golf, music, swimming, etc..) along with costs of all equipment, apparel and travel associated with participation therein.

e. One-half of the costs for an agreed-upon birthday party for each child yearly.

11. Respondent shall be responsible for expenses for the children's missions and reasonable college education with some contribution from each respective child.

12. The Respondent shall not be subject to Universal Income Withholding pursuant to §62A-11-403 of the Utah Code unless he should become delinquent in his obligations under this agreement.

13. The parties shall exchange income information and verification no later than June 1st of each year. The Petitioner will also provide Respondent with documentation of her matching funds pursuant to the provisions of paragraph 15 above no later than June 1st each year.

14. The Respondent shall be allowed to claim the minor children as dependents for tax purposes with this division of exemptions to be re-evaluated whenever child support is re-evaluated or modified.

15. The Petitioner shall continue to provide the children's medical insurance and shall pay the premiums thereon.

16. The parties shall each pay one-half (½) of any and all routine medical, optical and/or dental expenses incurred for the benefit of the parties' minor children which are not covered by

insurance, including deductibles and co-pays. Financial responsibility for any catastrophic expenses which might be incurred for the benefit of the minor children shall be determined based on the parties' respective financial positions at that point in time.

17. That should work and/or training related child care be required at any point, the parties agree to divide this expense equally.

18. The Respondent shall be required to pay the premiums thereon and maintain in effect at least \$800,000.00 of life insurance for the benefit of the parties' minor children with the Petitioner named as Trustee of all proceeds of said policy. Further, the Respondent shall be required, should he be able to obtain even limited disability insurance, to maintain disability insurance for the benefit of the minor children and the Petitioner as long as he is subject to an alimony and/or child support obligation.

19. The Respondent shall pay the Petitioner \$3,100.00 monthly as and for spousal support for a period of twelve years following the entry of the Decree of Divorce in this matter. The Respondent's support obligation is based upon the assumption of the parties that the Petitioner will remarry within this twelve year period and therefore a continuation of alimony beyond this twelve year period shall be considered should the Petitioner not be re-married at the termination of said period. The Respondent's spousal support obligation shall terminate upon the Petitioner's death, remarriage, or cohabitation and such a termination shall automatically trigger a recalculation of the Respondent's child support obligation.

20. The Respondent shall also pay the Petitioner a reasonable annual "cost of living" increase in alimony which shall consist of one percent (1%) of Respondent's gross business receipts for the previous year over \$300,000.00. This additional amount of alimony shall be paid in one lump sum no later than June 1st of each year.

21. That the Petitioner shall be awarded the parties' marital residence located at 638 Country Club, Stansbury Park, Utah, and shall assume and pay all expenses related thereto, including the mortgage, taxes, and utilities, and shall hold the Respondent harmless thereon.

22. The Respondent shall execute a quit-claim deed transferring any and all interest he may have in the marital residence to the Petitioner.

23. That the Respondent shall be awarded the business TOOELE VALLEY SPINE CENTER along with all property associated therewith as well as the commercial real property purchased for said business, and he shall assume and pay all expenses related thereto and shall hold the Petitioner harmless thereon.

24. The Petitioner shall if needed execute a quit-claim deed transferring any and all interest she may have in the business and business property to the Respondent.

25. That the Respondent shall be awarded fifty percent (50%) -- approximately \$5,000 -- of the parties' cumulative IRA accounts, fifty percent (50%) -- approximately \$4,200 -- of the parties' cumulative savings, and his personal effects and property.

26. That the Petitioner shall be awarded fifty percent (50%) -- approximately \$5,000 --

of the parties' cumulative IRA accounts, fifty percent (50%) -- approximately \$4,200 -- of the parties' cumulative savings, her personal effects and property, and the balance of the marital property in/at the marital residence.

27. That the Respondent shall be awarded the Bobcat automobile and shall assume and pay all expenses related thereto including insurance and shall hold the Petitioner harmless thereon.

28. That the Petitioner shall be awarded the 1994 Suburban and shall assume and pay all expenses related thereto including insurance and shall hold the Respondent harmless thereon. However, the Respondent shall be awarded the right to the reasonable use of said vehicle during his visitation periods until he has obtained reliable transportation and the Petitioner shall be granted the use of his vehicle during said visitation periods.

29. That the Respondent shall assume and pay his student loans and also the debt to his parents in the approximate amount of \$20,000.00 and shall hold the Petitioner harmless thereon.

30. That the Petitioner shall assume and pay the debt to her parents in the approximate amount of \$18,000.00 and shall hold the Respondent harmless thereon.

31. In the event that any outstanding debt or obligation of any kind has been incurred by either party other than the debts and obligations set forth and intended above, the party actually incurring the debt or obligation shall assume and be solely responsible for paying it and shall hold the other party harmless from all claims, obligations, and expenses with respect to said debt.

32. If this matter is uncontested, the parties' shall each be responsible for one-half of the

attorney's fees and costs associated with this action.

33. Each party should be ordered to execute and deliver to the other party any documents necessary to implement the provisions to the Decree of Divorce entered by the Court.

34. If any party should be found to be in contempt of any provisions of any Order of this Court, that party shall be responsible for paying reasonable attorney's fees and costs for the enforcement thereof.

DATED this ~~20~~ day of April, 1999.

BY THE COURT:


DISTRICT COURT JUDGE

Approved as to form:



GLENN HUNTER THOMPSON
Respondent

APPENDIX 4

**FINDINGS OF FACT AND CONCLUSIONS OF
LAW**

APRIL 20, 1999

FILED
3RD DISTRICT COURT TOOELE
99 APR 20 PM 12:29
FILED BY fl

MICHELLE CLAIRE TACK (#6044)
Attorney for Petitioner
10150 South Centennial Parkway
Suite #400
Sandy, Utah 84070
Telephone: (801) 572-8892

IN THE THIRD JUDICIAL DISTRICT COURT
OF TOOELE COUNTY, STATE OF UTAH

LINDA LaREE THOMPSON,	---	oo0oo---)	
	:)	FINDINGS OF FACT &
Petitioner,	:)	CONCLUSIONS OF LAW
	:)	
vs.	:)	
	:)	Civil No. <u>994300102</u>
GLENN HUNTER THOMPSON,	:)	Judge:
	:)	
Respondent.	:)	
	---	oo0oo---		

This matter having been submitted to the Court on the basis of a stipulation and property settlement signed by both parties, the Court hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That both parties have been actual and bona fide residents of Tooele County, State of Utah, for at least the three months immediately prior to the filing of this divorce action.

2. That LINDA LaREE THOMPSON and GLENN HUNTER THOMPSON were married on or about June 12, 1987, in Salt Lake City, County of Salt Lake, State of Utah, and are wife and husband.

3. LINDA LaREE THOMPSON and GLENN HUNTER THOMPSON have been unable to resolve their marital problems making continuation of their marriage impossible.

4. LINDA LaREE THOMPSON should be granted a divorce from GLENN HUNTER THOMPSON on the grounds of irreconcilable differences.

5. That the parties have entered into a Stipulation and Property Settlement which makes a complete and final settlement of all claims and disputes raised by the pleadings on file with the Court, including all issues concerning alimony and the division and allocation of their debts and property.

6. There are four minor children born as issue of this marriage, to wit: TRAVIS GLENN THOMPSON (d.o.b. 1/13/90), DARCIE LINDA THOMPSON (d.o.b. 7/29/92), LYNDIE LaREE THOMPSON (d.o.b. 7/27/94), and COLE HUNTER THOMPSON (d.o.b. 3/6/96).

7. That the parties are both fit and proper persons to be awarded the care, custody and control of the minor children and therefore the parties should be awarded joint legal custody with the Petitioner being granted primary physical custody. The parties shall work together to resolve issues involving the children, however the Petitioner as custodial parent shall make the final decision.

8. The Respondent shall be granted reasonable and liberal visitation with the minor children, with the minimum to be as detailed in §30-3-35 of the Utah Code. The Respondent shall be awarded visitation on alternate weekends with at least one additional contact midweek.

9. The Respondent shall be awarded holiday visitation in odd numbered years for Memorial Day, July 24th, and Thanksgiving and in even numbered years for Easter, July 4th, and Labor Day. The Christmas holiday shall be divided in such a way as to allow the children to be at home with the Petitioner overnight on Christmas Eve until they are of an age when Santa Claus is no longer a major factor. In odd numbered years, the Petitioner shall have the children Christmas Eve day through Christmas Day at 5:00 p.m. and the Respondent shall have the children on Christmas Day from 5:00 p.m. In even numbered years, the Respondent shall have the children on Christmas Eve from 5:00 p.m. until 10:00 p.m. and again on Christmas Day from 12:00 noon, with the Petitioner having the children from 10:00 p.m. Christmas Eve until Christmas Day at 12:00 noon.

10. The Respondent shall be granted visitation for each child's birthday from 5:00 p.m. on the actual birthday if said day is a weekday. If the birthday is a weekend day during the Respondent's regular scheduled visitation, then he shall have the entire weekend subject to the Petitioner having visitation on the actual birthday from 5:00 p.m. If the birthday is a weekend day and is not during the Respondent's regular scheduled visitation, then he shall have visitation on the actual birthday from 5:00 p.m. The party exercising birthday visitation shall have the option to also

include the parties' other children in said birthday visitation.

11. Both parties shall have reasonable blocks of visitation time during the summer vacation period and shall have the option to travel with the children with reasonable notice to the other party. With the exception of vacation and travel time the parties shall continue to follow the regular visitation schedule as detailed herein.

12. Should either party need child care during their respective periods of time with the children they shall give the other party the first option to provide such care. Neither party shall, however, be required to adjust their individual plans in order to accommodate the other party's schedule and should either party fail to provide such care after agreeing to do so they shall be responsible for the actual costs incurred for substitute care.

13. The Respondent shall pay child support for the parties' minor children in the amount of \$1,000.00 per month. The parties' recognize that said amount is less than as provided by the guidelines set forth in the Utah Code and have agreed on said amount based upon the entire divorce settlement. Upon the termination of alimony the base child support amount shall be automatically adjusted to an amount consistent with the guidelines set forth in the Utah Code. The Respondent's monthly child support obligation shall be automatically increased each year by .7% (.007) of the Respondent's gross business receipts in excess of the previous year's gross business receipts (1998 gross business receipts determined to be \$300,000.00) in order to preserve the ratio of monthly child support to Respondent's yearly gross business receipts.

14. The Respondent shall make the following payments to the Petitioner for the benefit of the children in addition to child support:

a. One thousand dollars (\$1,000.00) yearly by December 1st for Christmas with this sum to be matched by the Petitioner.

b. Seven hundred fifty dollars (\$750.00) yearly by August 1st for school clothing and supplies with this sum to be matched by the Petitioner. Said funds may be maintained in a separate account and spent over the course of the year.

c. Five hundred dollars (\$500.00) yearly by May 1st for Spring and Summer clothing with this sum to be matched by the Petitioner. Again, said funds may be maintained and budgeted over the course of the year.

d. All costs for non-school extra-curricular activities and lessons for the minor children (baseball, softball, basketball, soccer, golf, music, swimming, etc..) along with costs of all equipment, apparel and travel associated with participation therein.

e. One-half of the costs for an agreed-upon birthday party for each child yearly.

15. Respondent shall be responsible for expenses for the children's missions and reasonable college education with some contribution from each respective child.

16. The Respondent shall not be subject to Universal Income Withholding pursuant to §62A-11-403 of the Utah Code unless he should become delinquent in his obligations under this agreement.

17. The parties shall exchange income information and verification no later than June 1st of each year. The Petitioner will also provide Respondent with documentation of her matching funds pursuant to the provisions of paragraph 15 above no later than June 1st each year.

18. The Respondent shall be allowed to claim the minor children as dependents for tax purposes with this division of exemptions to be re-evaluated whenever child support is re-evaluated or modified.

19. The Petitioner shall continue to provide the children's medical insurance and shall pay the premiums thereon.

20. The parties shall each pay one-half ($\frac{1}{2}$) of any and all routine medical, optical and/or dental expenses incurred for the benefit of the parties' minor children which are not covered by insurance, including deductibles and co-pays. Financial responsibility for any catastrophic expenses which might be incurred for the benefit of the minor children shall be determined based on the parties' respective financial positions at that point in time.

21. That should work and/or training related child care be required at any point, the parties agree to divide this expense equally.

22. The Respondent shall be required to pay the premiums thereon and maintain in effect at least \$800,000.00 of life insurance for the benefit of the parties' minor children with the Petitioner named as Trustee of all proceeds of said policy. Further, the Respondent shall be required, should he be able to obtain even limited disability insurance, to maintain disability insurance for the benefit

of the minor children and the Petitioner as long as he is subject to an alimony and/or child support obligation.

23. The Respondent shall pay the Petitioner \$3,100.00 monthly as and for spousal support for a period of twelve years following the entry of the Decree of Divorce in this matter. The Respondent's support obligation is based upon the assumption of the parties that the Petitioner will remarry within this twelve year period and therefore a continuation of alimony beyond this twelve year period shall be considered should the Petitioner not be re-married at the termination of said period. The Respondent's spousal support obligation shall terminate upon the Petitioner's death, remarriage, or cohabitation and such a termination shall automatically trigger a recalculation of the Respondent's child support obligation.

24. The Respondent shall also pay the Petitioner a reasonable annual "cost of living" increase in alimony which shall consist of one percent (1%) of Respondent's gross business receipts for the previous year over \$300,000.00. This additional amount of alimony shall be paid in one lump sum no later than June 1st of each year.

25. That the Petitioner shall be awarded the parties' marital residence located at 638 Country Club, Stansbury Park, Utah, and shall assume and pay all expenses related thereto, including the mortgage, taxes, and utilities, and shall hold the Respondent harmless thereon.

26. The Respondent shall execute a quit-claim deed transferring any and all interest he may have in the marital residence to the Petitioner.

27. That the Respondent shall be awarded the business TOOEE VALLEY SPINE CENTER along with all property associated therewith as well as the commercial real property purchased for said business, and he shall assume and pay all expenses related thereto and shall hold the Petitioner harmless thereon.

28. The Petitioner shall if needed execute a quit-claim deed transferring any and all interest she may have in the business and business property to the Respondent.

29. That the Respondent shall be awarded fifty percent (50%) -- approximately \$5,000 -- of the parties' cumulative IRA accounts, fifty percent (50%) -- approximately \$4,200 -- of the parties' cumulative savings, and his personal effects and property.

30. That the Petitioner shall be awarded fifty percent (50%) -- approximately \$5,000 -- of the parties' cumulative IRA accounts, fifty percent (50%) -- approximately \$4,200 -- of the parties' cumulative savings, her personal effects and property, and the balance of the marital property in/at the marital residence.

31. That the Respondent shall be awarded the Bobcat automobile and shall assume and pay all expenses related thereto including insurance and shall hold the Petitioner harmless thereon.

32. That the Petitioner shall be awarded the 1994 Suburban and shall assume and pay all expenses related thereto including insurance and shall hold the Respondent harmless thereon. However, the Respondent shall be awarded the right to the reasonable use of said vehicle during his visitation periods until he has obtained reliable transportation and the Petitioner shall be granted the

use of his vehicle during said visitation periods.

33. That the Respondent shall assume and pay his student loans and also the debt to his parents in the approximate amount of \$20,000.00 and shall hold the Petitioner harmless thereon.

34. That the Petitioner shall assume and pay the debt to her parents in the approximate amount of \$18,000.00 and shall hold the Respondent harmless thereon.

35. In the event that any outstanding debt or obligation of any kind has been incurred by either party other than the debts and obligations set forth and intended above, the party actually incurring the debt or obligation shall assume and be solely responsible for paying it and shall hold the other party harmless from all claims, obligations, and expenses with respect to said debt.

36. If this matter is uncontested, the parties' shall each be responsible for one-half of the attorney's fees and costs associated with this action.

37. Each party should be ordered to execute and deliver to the other party any documents necessary to implement the provisions to the Decree of Divorce entered by the Court.

38. If any party should be found to be in contempt of any provisions of any Order of this Court, that party shall be responsible for paying reasonable attorney's fees and costs for the enforcement thereof.

39. The Respondent, GLENN HUNTER THOMPSON, has consented to the Court proceeding to grant a Decree of Divorce to the Petitioner consistent with this Stipulation of the parties without further notice to him and without his presence and has consented to the waiver of the


statutory 90-day waiting period.

CONCLUSIONS OF LAW

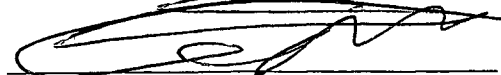
1. That the court has jurisdiction over the parties to this action, and over the subject matter of the action.
2. That the Petitioner shall be granted a Decree of Divorce, to become absolute, final and irrevocable upon entry by the Court.
3. That the Decree of Divorce shall be granted and entered in accordance with the Findings of Fact.

DATED this 19 day of April, 1999.

BY THE COURT:


DISTRICT COURT JUDGE

Approved as to form:



GLENN HUNTER THOMPSON
Respondent

APPENDIX 5

STIPULATION AND PROPERTY SETTLEMENT

APRIL 16, 1999

FILED 5/1/16
99 APR 16 PM 12:11
T-1034

MICHELLE CLAIRE TACK (#6044)
Attorney for Petitioner
10150 South Centennial Parkway
Suite #400
Sandy, Utah 84070
Telephone: (801) 572-8892

IN THE THIRD JUDICIAL DISTRICT COURT
OF TOOELE COUNTY, STATE OF UTAH

---oo0oo---

LINDA LaREE THOMPSON,

Petitioner,

vs.

GLENN HUNTER THOMPSON,

Respondent.

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)

**STIPULATION & PROPERTY
SETTLEMENT**

Civil No. 994300102
Judge:

---oo0oo---

The above-named parties hereby stipulate and agree as follows:

1. That the parties acknowledge and agree that continuation of this marriage existing between them is no longer possible, and it is in the best interests of the parties hereto that this matter before the Court be concluded, and to that end, the parties in contemplation thereof, enter into this agreement. Each party acknowledges that the terms of this agreement are not binding upon the Court

until the same are approved by the Court, and each party agrees that upon approval by the Court, the terms and conditions hereof may be part of the Findings of Fact and Conclusions of Law and Decree of Divorce to be entered by the Court.

2. That the parties hereby acknowledge and consent to the jurisdiction of this Court and consent to a Divorce Decree being issued in accordance with the terms and conditions of this stipulation and property settlement.

3. That both parties have been actual and bona fide residents of Tooele County, State of Utah, for at least the three months immediately prior to the filing of this divorce action.

4. That LINDA LaREE THOMPSON and GLENN HUNTER THOMPSON were married on or about June 12, 1987, in Salt Lake City, County of Salt Lake, State of Utah, and are wife and husband.

5. LINDA LaREE THOMPSON and GLENN HUNTER THOMPSON have been unable to resolve their marital problems making continuation of their marriage impossible.

6. LINDA LaREE THOMPSON should be granted a divorce from GLENN HUNTER THOMPSON on the grounds of irreconcilable differences.

7. There are four minor children born as issue of this marriage, to wit: TRAVIS GLENN THOMPSON (d.o.b. 1/13/90), DARCIE LINDA THOMPSON (d.o.b. 7/29/92), LYNDIE LaREE THOMPSON (d.o.b. 7/27/94), and COLE HUNTER THOMPSON (d.o.b. 3/6/96).

8. That the parties are both fit and proper persons to be awarded the care, custody and

control of the minor children and therefore the parties should be awarded joint legal custody with the Petitioner being granted primary physical custody. The parties shall work together to resolve issues involving the children, however the Petitioner as custodial parent shall make the final decision.

9. The Respondent shall be granted reasonable and liberal visitation with the minor children, with the minimum to be as detailed in §30-3-35 of the Utah Code. The Respondent shall be awarded visitation on alternate weekends with at least one additional contact midweek.

10. The Respondent shall be awarded holiday visitation in odd numbered years for Memorial Day, July 24th, and Thanksgiving and in even numbered years for Easter, July 4th, and Labor Day. The Christmas holiday shall be divided in such a way as to allow the children to be at home with the Petitioner overnight on Christmas Eve until they are of an age when Santa Claus is no longer a major factor. In odd numbered years, the Petitioner shall have the children Christmas Eve day through Christmas Day at 5:00 p.m. and the Respondent shall have the children on Christmas Day from 5:00 p.m. In even numbered years, the Respondent shall have the children on Christmas Eve from 5:00 p.m. until 10:00 p.m. and again on Christmas Day from 12:00 noon, with the Petitioner having the children from 10:00 p.m. Christmas Eve until Christmas Day at 12:00 noon.

11. The Respondent shall be granted visitation for each child's birthday from 5:00 p.m. on the actual birthday if said day is a weekday. If the birthday is a weekend day during the

Respondent's regular scheduled visitation, then he shall have the entire weekend subject to the Petitioner having visitation on the actual birthday from 5:00 p.m. If the birthday is a weekend day and is not during the Respondent's regular scheduled visitation, then he shall have visitation on the actual birthday from 5:00 p.m. The party exercising birthday visitation shall have the option to also include the parties' other children in said birthday visitation.

12. Both parties shall have reasonable blocks of visitation time during the summer vacation period and shall have the option to travel with the children with reasonable notice to the other party. With the exception of vacation and travel time the parties shall continue to follow the regular visitation schedule as detailed herein.

13. Should either party need child care during their respective periods of time with the children they shall give the other party the first option to provide such care. Neither party shall, however, be required to adjust their individual plans in order to accommodate the other party's schedule and should either party fail to provide such care after agreeing to do so they shall be responsible for the actual costs incurred for substitute care.

14. The Respondent shall pay child support for the parties' minor children in the amount of \$1,000.00 per month. The parties' recognize that said amount is less than as provided by the guidelines set forth in the Utah Code and have agreed on said amount based upon the entire divorce settlement. Upon the termination of alimony, the base child support amount shall be automatically adjusted to an amount consistent with the guidelines set forth in the Utah Code. The Respondent's

monthly child support obligation shall be automatically increased each year by .7% (.007) of the Respondent's gross receipts in excess of the previous year's gross business receipts (1998 gross receipts determined to be \$300,000.00) in order to preserve the ratio of monthly child support to Respondent's yearly gross receipts.

15. The Respondent shall make the following payments to the Petitioner for the benefit of the children in addition to child support:

a. One thousand dollars (\$1,000.00) yearly by December 1st for Christmas with this sum to be matched by the Petitioner.

b. Seven hundred fifty dollars (\$750.00) yearly by August 1st for school clothing and supplies with this sum to be matched by the Petitioner. Said funds may be maintained in a separate account and spent over the course of the year.

c. Five hundred dollars (\$500.00) yearly by May 1st for Spring and Summer clothing with this sum to be matched by the Petitioner. Again, said funds may be maintained and budgeted over the course of the year.

d. All costs for non-school extra-curricular activities and lessons for the minor children (baseball, softball, basketball, soccer, golf, music, swimming, etc..) along with costs of all equipment, apparel and travel associated with participation therein.

e. One-half of the costs for an agreed-upon birthday party for each child yearly.

16. Respondent shall be responsible for expenses for the children's missions and

reasonable college education with some contribution from each respective child.

17. The Respondent shall not be subject to Universal Income Withholding pursuant to §62A-11-403 of the Utah Code unless he should become delinquent in his obligations under this agreement.

18. The parties shall exchange income information and verification no later than June 1st of each year. The Petitioner will also provide Respondent with documentation of her matching funds pursuant to the provisions of paragraph 15 above no later than June 1st each year.

19. The Respondent shall be allowed to claim the minor children as dependents for tax purposes with this division of exemptions to be re-evaluated whenever child support is re-evaluated or modified.

20. The Petitioner shall continue to provide the children's medical insurance and shall pay the premiums thereon.

21. The parties shall each pay one-half ($\frac{1}{2}$) of any and all routine medical, optical and/or dental expenses incurred for the benefit of the parties' minor children which are not covered by insurance, including deductibles and co-pays. Financial responsibility for any catastrophic expenses which might be incurred for the benefit of the minor children shall be determined based on the parties' respective financial positions at that point in time.

22. That should work and/or training related child care be required at any point, the parties agree to divide this expense equally.

23. The Respondent shall be required to pay the premiums thereon and maintain in effect at least \$800,000.00 of life insurance for the benefit of the parties' minor children with the Petitioner named as Trustee of all proceeds of said policy. Further, the Respondent shall be required, should he be able to obtain even limited disability insurance, to maintain disability insurance for the benefit of the minor children and the Petitioner as long as he is subject to an alimony and/or child support obligation.

24. The Respondent shall pay the Petitioner \$3,100.00 monthly as and for spousal support for a period of twelve years following the entry of the Decree of Divorce in this matter. The Respondent's support obligation is based upon the assumption of the parties that the Petitioner will remarry within this twelve year period and therefore a continuation of alimony beyond this twelve year period shall be considered should the Petitioner not be re-married at the termination of said period. The Respondent's spousal support obligation shall terminate upon the Petitioner's death, remarriage, or cohabitation and such a termination shall automatically trigger a recalculation of the Respondent's child support obligation.

25. The Respondent shall also pay the Petitioner a reasonable annual "cost of living" increase in alimony which shall consist of one percent (1%) of Respondent's gross business receipts for the previous year over \$300,000.00. This additional amount of alimony shall be paid in one lump sum no later than June 1st of each year.

26. That the Petitioner shall be awarded the parties' marital residence located at 638

Country Club, Stansbury Park, Utah, and shall assume and pay all expenses related thereto, including the mortgage, taxes, and utilities, and shall hold the Respondent harmless thereon.

27. The Respondent shall execute a quit-claim deed transferring any and all interest he may have in the marital residence to the Petitioner.

28. That the Respondent shall be awarded the business TOOELE VALLEY SPINE CENTER along with all property associated therewith as well as the commercial real property purchased for said business, and he shall assume and pay all expenses related thereto and shall hold the Petitioner harmless thereon.

29. The Petitioner shall if needed execute a quit-claim deed transferring any and all interest she may have in the business and business property to the Respondent.

30. That the Respondent shall be awarded fifty percent (50%) -- approximately \$5,000 -- of the parties' cumulative IRA accounts, fifty percent (50%) -- approximately \$4,200 -- of the parties' cumulative savings, and his personal effects and property.

31. That the Petitioner shall be awarded fifty percent (50%) -- approximately \$5,000 -- of the parties' cumulative IRA accounts, fifty percent (50%) -- approximately \$4,200 -- of the parties' cumulative savings, her personal effects and property, and the balance of the marital property in/at the marital residence.

32. That the Respondent shall be awarded the Bobcat automobile and shall assume and pay all expenses related thereto including insurance and shall hold the Petitioner harmless thereon.

33. That the Petitioner shall be awarded the 1994 Suburban and shall assume and pay all expenses related thereto including insurance and shall hold the Respondent harmless thereon. However, the Respondent shall be awarded the right to the reasonable use of said vehicle during his visitation periods until he has obtained reliable transportation and the Petitioner shall be granted the use of his vehicle during said visitation periods.

34. That the Respondent shall assume and pay his student loans and also the debt to his parents in the approximate amount of \$20,000.00 and shall hold the Petitioner harmless thereon.

35. That the Petitioner shall assume and pay the debt to her parents in the approximate amount of \$18,000.00 and shall hold the Respondent harmless thereon.

36. In the event that any outstanding debt or obligation of any kind has been incurred by either party other than the debts and obligations set forth and intended above, the party actually incurring the debt or obligation shall assume and be solely responsible for paying it and shall hold the other party harmless from all claims, obligations, and expenses with respect to said debt.

37. If this matter is uncontested, the parties' shall each be responsible for one-half of the attorney's fees and costs associated with this action.

38. Each party should be ordered to execute and deliver to the other party any documents necessary to implement the provisions to the Decree of Divorce entered by the Court.

39. If any party should be found to be in contempt of any provisions of any Order of this

Court, that party shall be responsible for paying reasonable attorney's fees and costs for the enforcement thereof.

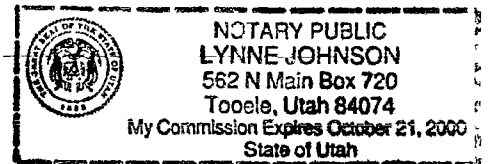
40. The Respondent, GLENN HUNTER THOMPSON, hereby consents to the Court proceeding to grant a Decree of Divorce to the Petitioner consistent with this Stipulation of the parties without further notice to him and without his presence and consents to the waiver of the statutory 90-day waiting period.

DATED this 13 day of April, 1999.

Linda LaRee Thompson
LINDA LaREE THOMPSON
Petitioner

Subscribed and sworn to before me this 13 day of April, 1999.

My Commission Expires: 21 Oct '00



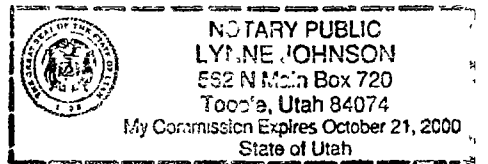
Lynne Johnson
Notary Public
Residing in Tooele County

DATED this 13 day of April, 1999.

Glenn Hunter Thompson
GLENN HUNTER THOMPSON
Respondent

Subscribed and sworn to before me this 13 day of April, 1999.

My Commission Expires: 21 Oct '00



Lynne Johnson
Notary Public
Residing in Tooele County

APPENDIX 6

CHILD SUPPORT OBLIGATION WORKSHEET

APRIL 16, 1999

IN THE Third DISTRICT COURT

Taale

COUNTY, STATE OF UTAH

99 APR 15 PM 12:11

FILED BY \$

Linda Lakee Thompson

VS.

Glenn Hunter Thompson

CHILD SUPPORT OBLIGATION WORKSHEET
(SOLE CUSTODY AND PATERNITY)

Civil No. 994300102

	MOTHER	FATHER	COMBINED
1. Enter the # of natural and adopted children of this mother and father for whom support is to be awarded.	//////////	//////////	4
2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definition of income.	---	\$ 10,000	//////////
2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case).	-	-	//////////
2c. Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1).	-	-	//////////
2d. OPTIONAL: Enter the amount from Line 12 of the Children in Present Home Worksheet for either parent.	-	-	//////////
3. Subtract Lines 2b, 2c, and 2d from 2a. This is the Adjusted Gross Income for child support purposes.	-	\$ 10,000	\$ 10,000
4. Take the COMBINED figure in line 3 and the number of children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here.	//////////	//////////	\$ 2,050
5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	0%	100%	//////////
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 0-	\$ 2,050	//////////

7. BASE CHILD SUPPORT AWARD: Bring down the amount in Line 6 for the Obligor Parent or enter the amount from the Low Income Table.

\$ 2,050

8. Which parent is the obligor? ☐ Mother ☒ Father

9. Is the support award the same as the guideline amount in line 7? ☐ Yes ☒ No
If NO, enter the amount ordered: \$ 1,000.00, and answer number 10.

10. What were the reasons stated by the Court for the deviation?

- ☒ property settlement
- ☐ excessive debts of the marriage
- ☐ absence of need of the custodial parent
- ☒ other: Respondent is paying larger amount of spousal support and will adjust child support to comply with statutory amount upon any change to spousal support.

Barney Bar No. 6044

☐ Electronic filing

☒ Manual filing

APPENDIX 7

PETITIONER'S EXHIBIT 6

SETTLEMENT LETTER

OCTOBER 26, 2006

PERGAND-Seymour, N. J.
**PLAINTIFF'S
EXHIBIT**
6

Linda.

[REDACTED]

If successful in raising child support, ultimately the children will suffer. I will no longer provide the additional help that I have in the past.

[REDACTED]