

1986

## Miner v. Miner : Brief of Respondent

Utah Court of Appeals

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BRIEF

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ET NO. 860226  
IN THE SUPREME COURT OF THE STATE OF UTAH

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DOUGLAS LEE MINER,

:

*860226-CA*

Plaintiff and  
Appellant,

:

Case No. <sup>389</sup>86039

v.

:

Priority 13(b)

:

CAROL JEAN MINER,

:

Defendant and  
Respondent.

:

---oooOooo---

RESPONDENT'S BRIEF

Appeal from the Judgment of the Third District Court  
in and for Salt Lake County  
The Honorable Dean E. Conder, Presiding

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**FILED**

NOV 17 1986

Clerk Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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DOUGLAS LEE MINER,	:	
	:	
Plaintiff and	:	Case No. 86039
Appellant,	:	
	:	
v.	:	Priority 13(b)
	:	
CAROL JEAN MINER,	:	
	:	
Defendant and	:	
Respondent.	:	

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IN THE SUPREME COURT OF THE STATE OF UTAH

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DOUGLAS LEE MINER,	:	
Plaintiff and	:	
Appellant,	:	
v.	:	Case No. 86039
CAROL JEAN MINER,	:	
Defendant and	:	Priority 13(b)
Respondent.	:	

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RESPONDENT'S BRIEF

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STATEMENT OF ISSUE

Did the trial court abuse its discretion in refusing to modify a fixed-sum equity awarded to the wife in the parties' former residence by using those funds to satisfy an alleged but unliquidated and unproven tax liability resulting from the disallowance by the IRS of a tax shelter acquired by the husband during the marriage?

NATURE OF CASE

This is a domestic relations action in which the physician-husband appeals from the denial of his second motion to modify the property distribution. The parties were divorced in

1982 and their assets were subsequently divided. The property distribution awarded the parties' residence to the husband with a fixed-sum equity interest requiring four equal annual payments to the wife.

In 1985, the husband left the state, necessitating the sale of the residence, and failed to make the first annual equity payment. He moved to have the fixed-sum equity interest modified to an equal share in the equity. The motion was denied. He did not appeal.

By 1986, the husband was delinquent in two annual installments and the house had been sold. He again moved to modify the fixed-sum equity interest to allow the payment of joint obligations, including an alleged tax deficiency, with the remaining equity being distributed equally. His motion was again denied. He appeals.

#### STATEMENT OF FACTS

The parties' marriage was terminated by an original Decree of Divorce entered on February 29, 1984, which reserved for later trial, inter alia, the property distribution issue. (R. at 329-31, infra at A-2 through A-4.) Following a trial on May 21 and 22, 1984, the Honorable Dean E. Conder entered a Memorandum Decision on June 5, 1984 (R. at 380-83), and, ultimately, entered a Supplemental Decree of Divorce on August 23, 1984 (R. at 397-402, infra at A-5 through A-10).

That Decree awarded Plaintiff-Appellant Douglas Lee Miner (hereinafter "Dr. Miner") possession and ownership of the parties' residence subject to an equity interest in Defendant-Respondent Carol Jean Miner (hereinafter "Mrs. Miner"). (See, Supplemental Decree, paragraphs 5, 7, and 14, R. at 397-402.) Judge Conder found (Findings, paragraph 6, R. at 387-88, that the residence had a net equity at the time of trial of \$135,356.00 and fixed Mrs. Miner's equity interest in the home at \$67,500.00, requiring Dr. Miner to pay this amount in four equal annual installments of \$16,875.00 with interest at the rate of twelve percent (12%) per annum. (Memorandum Decision, R. at 382 and Supplemental Decree at paragraph 14, R. at 401.) Payments were to be made on June 1 of each year, beginning in 1985. (Id.)

Judge Conder found that Dr. Miner, a physician, earned \$139,104.00 in 1983 (Findings, paragraph 10, R. at 388) and ordered Dr. Miner to pay alimony of \$1,000.00 per month for 24 months and then \$500.00 per month for an additional 24 months. (Supplemental Decree, paragraph 13, R. at 401.) The trial court also divided the parties' personal property, ordered Dr. Miner to pay Mrs. Miner \$1,000.00 per month beginning June 1, 1988, until the sum of \$67,678.00 (representing one-half of the parties' profit sharing account) had been paid with interest at ten

percent (10%) per annum, and distributed to Dr. Miner stocks and securities having a value of approximately \$150,000.00. Dr. Miner took no appeal from the Decree of Divorce.

Dr. Miner failed to make the first annual equity payment on June 1, 1985, and Mrs. Miner moved for the entry of Judgment. (R. at 426.) On June 21, 1985, Judge Conder entered an Order resolving several disputes between the parties and providing that, in the event of the sale of the residence awarded to Dr. Miner, all of the installments due on Mrs. Miner's \$67,500.00 equity interest would be paid and that her interest would constitute a lien on the property. (Order, paragraph 3(b), R. at 433, infra at A-14.) Dr. Miner took no appeal from that Order. The parties stipulated that Mrs. Miner's motion for Judgment on the delinquent installment be continued until August 5, 1985. (R. at 435.)

A few days later, on July 8, 1985, Dr. Miner moved to amend the original property distribution so that Mrs. Miner's interest in the equity of the residence awarded to Dr. Miner would be one-half of the net sales proceeds rather than the fixed amount originally awarded by Judge Conder. (Motion, R. at 438-439, infra at A-16 through A-17.) This Motion was heard, together with Mrs. Miner's Motion for Judgment on the delinquent equity payment, by Domestic Relations Commissioner Sandra Peuler, who recommended that Dr. Miner's Motion for

Modification be denied and Mrs. Miner be awarded judgment for the delinquent equity payment. (R. at 450.) Dr. Miner rejected the Commissioner's recommendation (R. at 455) and the matter was heard by Judge Conder, who denied Dr. Miner's Motion for Modification (Order, R. at 461-62, infra at A-18 through A-19) and granted Mrs. Miner judgment for the delinquent equity payment (Judgment, R. at 459-60). Dr. Miner did not appeal.

Almost a year later, and by then also delinquent on the second annual equity installment, Dr. Miner again moved to modify the fixed-amount equity interest awarded to Mrs. Miner in the original property distribution, this time couching his motion in terms of "relief from judgment" under Rule 60(b)(7) of the Utah Rules of Civil Procedure. (Motion, R. at 463-65, infra. at A-20 through A-23.) Dr. Miner based his motion upon the fact that the sale of the home had produced approximately \$30,000.00 less than anticipated at the entry of the original property distribution and upon the allegation that the IRS had, in the meantime, determined that "Geothermal Partners II," in which Dr. Miner had invested as a tax shelter, had been determined by the IRS to be a sham, supposedly resulting in the disallowance of deductions for the tax year 1981 and the imposition of additional tax for that year in the approximate amount of \$20,000.00. (Id.) Additionally, in his Affidavit in support of his motion, Dr. Miner speculated that additional deductions taken for the tax

years 1982 and 1983 would also be disallowed. (Affidavit, paragraph 7, R. at 532-35.)

In response to Dr. Miner's motion, Mrs. Miner pointed out that Dr. Miner had failed to present to the Court appropriate evidence in support of his claims and that the incomplete copies of IRS materials submitted did "not establish what the ultimate tax consequence of the IRS's position will be." (Reply, page 3, R. at 543-46.) Mrs. Miner also sought an Order of the Court directing the payment from the sales proceeds of the residence of the full amount of her fixed-sum equity interest together with accrued interest (Motion, R. at 540-42) or, in the alternative, Judgment for the second delinquent installment (Motion, R. at 558-59).

A hearing on these motions was held before Judge Conder on June 12, 1986. (See, generally, Transcript, R. at 586-604.) At that hearing, Dr. Miner called no witnesses, submitted no evidence, and made no proffers of proof. It was acknowledged, however, that neither of the two delinquent equity installments had been paid. Counsel for Mrs. Miner pointed out to Judge Conder that there was no real evidence as to what the IRS might ultimately do with the disallowed 1981 deduction, noting that even though disallowed in 1981, it might be possible to take the deduction for the 1982 or 1983 tax year. (Transcript, R. at 597-98.) Having heard the arguments of

counsel for both parties, Judge Conder wisely noted that the value of the residence awarded to Dr. Miner

could have gone up, or it could go down. I take it as to what I have to work on at the time and I made that distribution and that division of the equity. I'm going to stand on that, for whatever payment the doctor was obligated to make under the terms of that equity. . . .

. . . .

As to the tax liability, I think it would be a horrendous obligation at this time to try to decide who has got what taxes to pay.

Transcript of Hearing, R. at 599-600. Judge Conder thus determined that the IRS, not the state court, should determine which of the parties was responsible for any tax liability ultimately and finally found to be owing. A written Order was entered denying Dr. Miner's motion for modification. (R. at 571-73, infra at A-29 through A-31.) Dr. Miner appealed. (R. at 578-79.)

At Dr. Miner's request, Judge Conder stayed execution on any of the prior judgments and placed a portion of the sales proceeds of the residence awarded to Dr. Miner in an interest-bearing trust account pending the resolution of this Appeal. (Order, R. at 562-63A.)

## SUMMARY OF ARGUMENTS

POINT I: Modification of property distributions -- as opposed to alimony and support awards -- should be made with reluctance and only where clearly necessitated by the circumstances. The trial court's grant or denial of modification of a property distribution is viewed with great deference and will be reversed on appeal only if constituting an abuse of discretion or misapplication of relevant law. Dr. Miner failed to present any substantial evidence to the trial court in support of his request for modification and the trial court's denial of that modification, therefore, cannot be reversed on appeal.

POINT II: By the time the trial court denied Dr. Miner's second request for modification, from which he now appeals, Dr. Miner was delinquent on both the first and second annual installment on Mrs. Miner's fixed-sum equity position in the residence that had been awarded to Dr. Miner. Both of Dr. Miner's motions for modification were prompted by his delinquency in the required installments and both sought to modify the original Decree so as to distribute equally the equity in the residence. Having failed to appeal from the first denial of his motion, Dr. Miner should not now be heard to complain of the denial of his subsequent motion.

POINT III: The modification sought by Dr. Miner was unfair and unwarranted by the circumstances. Not only was the claimed tax obligation hypothetical in nature because no final determination had been made by the IRS, but also, if such an obligation arises, it will be because of the IRS's determination that the tax shelter "invested" in by Dr. Miner is a sham. During the marriage, Dr. Miner handled all of the financial affairs of the parties and did not consult with Mrs. Miner in connection with the investment he now claims may ultimately expose both parties to a joint obligation to the IRS. Having selected the investment from which the joint obligation may arise, Dr. Miner should not be permitted to satisfy that joint obligation out of property awarded to Mrs. Miner.

#### ARGUMENT

POINT I. DR. MINER FAILED TO PRESENT EVIDENCE SUFFICIENT TO WARRANT MODIFICATION OF THE ORIGINAL PROPERTY DISTRIBUTION.

As the Appellant appealing from the District Court's refusal to modify a property distribution, Dr. Miner faces a very heavy burden. While divorce actions are equitable in nature, this Court has consistently adhered to the firmly established principle that the trial court's decisions are to be accorded a great deal of deference and

will not be reversed on appeal absent some clear showing of an abuse of discretion or misapplication of relevant law.

This Court's decision in Stettler v. Stettler, 713 P.2d 699 (Utah 1985), is typical of the many cases recognizing, and according great deference to, the trial court's advantaged position to review and determine the respective rights of the parties in domestic relations matters. In Stettler, the wife was awarded a fixed-amount equity interest in the parties' residence, which was to be paid upon the sale of the home or the attainment by the youngest child of the age of 18 years. The home was awarded to the husband. Following the divorce, both parties re-married and the wife left the state. She petitioned for modification, seeking an immediate payment of her equity so as to be able to provide a proper home for her children when they visited. This Court noted that while the modification of a divorce Decree was a matter of equity

the Court accords considerable deference to the judgment of the trial court. Its judgment will not be disturbed unless the evidence clearly preponderates to the contrary or unless the trial court abuses its discretion or misapplies principles of law.

713 P.2d at 701 (emphasis added, footnote citations omitted). Accordingly, by the standard set forth by this

Court in one of the cases upon which he relies, Dr. Miner faces a very heavy burden in this appeal.

Moreover, it is significant to note that the modification sought by Dr. Miner in this case was of the property distribution rather than the alimony or support provisions of the original Decree. In one of the cases upon which Dr. Miner himself relies, Chandler v. West, 610 P.2d 1299 (Utah 1980), this Court held that:

[P]roperty settlements are entitled to a greater sanctity than alimony and support payments in proceedings to modify divorce decrees.

610 P.2d at 1300 (citation omitted). This Court also held that, where the District Court has refused to modify its own earlier property distribution,

[t]hat determination, based on the [trial] court's review of the facts and circumstances, should not be overturned unless it results in such manifest injustice or inequity as to indicate a clear abuse of discretion.

Id. (citations omitted). Thus, even the cases upon which Dr. Miner relies require him to demonstrate a "manifest injustice" in order to prevail in this appeal. This is a burden that he simply cannot meet.

Both this Court's decision in Chandler v. West, supra, and Dr. Miner in his Brief, rely upon this Court's decision in Land v. Land, 605 P.2d 1248 (Utah 1980), in which this Court was called upon to determine the circumstances under which a property distribution might be modified. While the property distribution in Land was based upon a stipulation of the parties, the test enunciated by this Court in that case has consistently been cited in connection with the modification of property distributions generally, without regard to whether they came about by stipulation or, as in this case, by the decision of the trial court. While recognizing the trial court's continuing jurisdiction to modify a property distribution, this Court was careful to point out that

the law limits the continuing jurisdiction of the [trial] court where a property settlement agreement has been incorporated into the decree, and the outright abrogation of the provisions of such an agreement is only to be resorted to with great reluctance and for compelling reasons.

605 P.2d at 1251 (footnote citations omitted).

In this case, Dr. Miner simply failed to present sufficient evidence to the trial court to justify the modification that he sought. He called no witnesses and he proffered no testimony; therefore, the only evidence even arguably before the trial court was his own Affidavit. Yet

that Affidavit merely recites the fact that the IRS has indicated that it will deny a depreciation deduction for the 1981 tax year and that Dr. Miner fears that a similar fate awaits deductions for the 1982 and 1983 tax years. The Affidavit and its attachments are devoid of any reference to a final determination by the IRS with respect to the 1981 tax year and, with respect to the 1982 and 1983 tax years, the only information presented is Dr. Miner's speculation and fear that the IRS may take similar action. This extreme weakness in Dr. Miner's "evidence" to the trial court was pointed out at the hearing by Mrs. Miner's counsel (R. at 597-98), yet Dr. Miner took no steps to remedy the deficiency. He cannot now complain that the trial court failed to make the requisite findings to justify the modification that he sought.

The Record simply fails to support either the modification refused by the District Court or the reversal of that refusal by this Court. Dr. Miner failed to carry his burden before the trial court and utterly fails in that effort before this Court.

POINT II. DR. MINER WAS BOUND BY THE PRIOR DENIAL OF HIS MOTION TO MODIFY THE PROPERTY DISTRIBUTION SO AS TO DIVIDE THE EQUITY EQUALLY.

The Supplemental Decree by which the District Court originally divided the parties' assets awarded to Mrs. Miner an equity interest in the residence, which was awarded to Dr. Miner, in the fixed amount of \$67,500.00, providing that it was to be paid with twelve percent interest in four equal annual installments beginning June 1, 1985. (Supplemental Decree, paragraph 14, R. at 401). Dr. Miner took no appeal from that Decree. Dr. Miner failed to make the first payment when it became due. The trial court entered an Order providing that if the home awarded to Dr. Miner were sold, all of the four annual payments would become immediately due. (Order, paragraph 3(b), R. at 433.) Dr. Miner took no appeal.

Faced with Mrs. Miner's pending motion for the entry of judgment with respect to the delinquent 1985 equity payment (R. at 426), Dr. Miner moved to modify the original property distribution so as to divide the equity in the residence equally. (Motion, R. at 438.) The Commissioner recommended (R. at 450), and the District Court ordered (R. at 461-62) the denial of the motion. Dr. Miner took no appeal.

In June of 1986, Dr. Miner, never having paid the first equity installment, also became delinquent on the second equity installment due to Mrs. Miner. He filed his second motion for modification, this time styling it as a "Motion for Relief from Supplemental Decree."

(R. at 463-65.) It was only upon the denial of this second motion that Dr. Miner filed his appeal to this Court.

By his second motion, Dr. Miner sought precisely the same relief that he had sought in his first motion from which he filed no appeal. In both motions, he sought to modify the original fixed-sum equity awarded to Mrs. Miner so as to divide the equity equally. In both motions, he relied upon the fact that he had moved to Texas and the decline in the market value of the property and, in the second, the alleged imposition of additional taxes. As noted by the Trial Court, the move to Texas was "certainly the choice" of Dr. Miner. (Minute Entry, R. at 458.) As discussed under Point I, above, the evidence produced with respect to the alleged additional tax obligation is insufficient to justify modification. The fact that the market value of the property went down rather than up, also, does not justify the modification of a fixed-amount equity award: Dr. Miner certainly would not have complained had property values continued to rise as expected. In any

event, a change in property value is to be anticipated, particularly in today's real estate markets.

The significant fact is, however, that the relief repeatedly sought by Dr. Miner is precisely the same: market conditions having changed, he would prefer to receive an equal share of the equity resulting from the sale of the residence occasioned by his move to Texas rather than receiving merely the remaining equity after the payment of the fixed amount due Mrs. Miner. Having failed to appeal the original denial of his motion, Dr. Miner should not now be heard to complain of the denial of his second motion for the same relief. As this Court noted in Trego v. Trego, 565 P.2d 74 (Utah 1977):

When there has been an adjudication on one set of facts, that should be res adjudicata and there should be no modification unless some material change or circumstance as would warrant doing so.

565 P.2d at 75. To the same effect is this Court's decision in Klein v. Klein, 544 P.2d 472 (Utah 1975) and Anderson v. Anderson, 13 Utah 2d 36, 368 P.2d 264 (1962).

The need for finality of judgments was similarly emphasized by this Court in Drury v. Lunceford, 18 Utah 2d 74, 415 P.2d 662 (1966), in which it was held that it is inappropriate for a party whose motion has been once denied to re-apply for the same relief. In so holding, this Court wisely noted that:

[I]f the party ruled against were permitted to go beyond the rules, make a motion for reconsideration, and persuade the judge to reverse himself, the question arises, why should not the other party who is now ruled against be permitted to make a motion for re-re-consideration, asking the court to again reverse himself? Tenacious litigants and lawyers might persist in motions, arguments and pressures and theoretically a judge could go on reversing himself periodically at the entreaties of one or the other of the parties ad infinitum.

415 P.2d at 663 (original emphasis). These observations are particularly appropriate to facts such as those presented by this case in which every time Dr. Miner was confronted with another delinquent annual equity installment, he moved for modification of the Decree under which that obligation arose. Such repeated applications were appropriately rejected by the trial court.

POINT III. THE MODIFICATION SOUGHT BY DR. MINER WOULD BE UNFAIR AND INEQUITABLE.

The modification sought by Dr. Miner would result in the feared additional tax liability being paid out of the fixed-sum equity interest originally awarded to Mrs. Miner. The most that can be said for such a modification is that it is an attempt by Dr. Miner to pay a hypothetical joint liability from assets awarded to Mrs. Miner. In that regard, it truly seeks to compare the proverbial "apples and oranges": It seeks to pay their supposed obligation with her assets.

The proposed modification is also unfair because it was Dr. Miner who, without the knowledge or active consent of Mrs. Miner, "invested" in the tax shelter now claimed by the IRS to be a sham. As set forth in Mrs. Miner's Affidavit in opposition to the motion for modification, it was Dr. Miner "who made all financial decisions without explanation" to Mrs. Miner. (Affidavit, paragraph 5, R. at 554, infra at A-25.) Dr. Miner invested in the tax shelter in late December of 1981 as a general partner and it was he who had the responsibility to determine the advisability of that "investment." (Id., R. at 554-55.) Since it was Dr. Miner who chose to make the "investment," it is unfair that he should now seek to pay the supposed additional tax liability from the assets awarded to Mrs. Miner.

Judge Conder wisely left it up to the IRS and the Tax Court to determine, as between Dr. and Mrs. Miner, where should rest the burden of any additional tax ultimately and finally imposed by the IRS. Judge Conder, in ruling from the bench, noted that he would "leave the tax return with the Internal Revenue Service and let the chips fall where they may."

(Tr., R. at 602.)

Dr. Miner's request for modification was unfair. It was he who voluntarily chose to abandon the residence in Salt Lake and move to Texas. It was he who selected the tax shelter claimed to be a sham by the IRS and it was he who selected the accountant who allegedly made an error in addition. Mrs. Miner's interest in the equity of the residence was in a fixed amount; had the value of the property gone up, Dr. Miner would certainly have been entitled to resist any attempt by her to gain a larger share than had originally been awarded. The proposed modification is merely an attempt to pay an unliquidated joint obligation out of the property distribution awarded to Mrs. Miner. The Trial Court properly denied the requested modification.

#### CONCLUSION

Property settlements, as distinguished from alimony and support awards, should be modified only with reluctance and where the circumstances clearly necessitate modification. In this case, Dr. Miner presented no testimony and proffered no

evidence in support of his request for modification. His Affidavit and the attachments to it indicate merely that the IRS may impose an additional tax for 1981. There was no final determination or adjudication to that effect. Under such circumstances, the evidence in support of the modification was insufficient to justify it and it was properly denied.

Both times Dr. Miner was faced with a delinquent annual equity installment, he moved the Court to modify the Decree creating that obligation. Both times the trial court denied that motion. Having failed to appeal from the first denial, Dr. Miner should not now be permitted to complain of the second denial. Both motions sought precisely the same relief.

The modification sought by Dr. Miner was properly rejected by the trial court because it was neither warranted by nor fair under the circumstances. At most, the potential additional tax liability that the parties will face is a joint obligation, whereas the proposed modification would pay that joint obligation from assets awarded to Mrs. Miner (the equity in the residence). Since the tax shelter that may ultimately result in an additional tax liability was selected by Dr. Miner without consultation with Mrs. Miner, it is not fair that he should impose their obligation upon her.

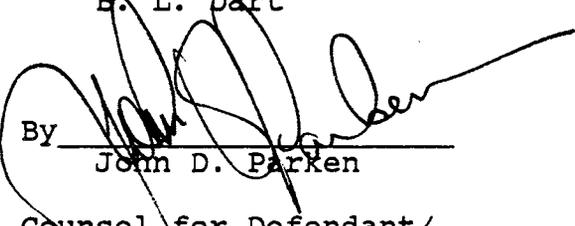
The trial court correctly refused to modify its original property distribution and that carefully considered refusal should be affirmed in all respects.

RESPECTFULLY SUBMITTED this 12 day of November, 1986.

DART, ADAMSON & PARKEN

By 

\_\_\_\_\_  
B. L. Dart

By 

\_\_\_\_\_  
John D. Parken

Counsel for Defendant/  
Respondent

MAILING CERTIFICATE

I hereby certify that on the \_\_\_\_ day of  
November, 1986, I caused four (4) true and correct copies of  
the foregoing Respondent's Brief to be mailed, postage  
prepaid, to David S. Dolowitz, Parsons, Behle & Latimer,  
Attorneys for Appellant, P. O. Box 11898, Salt Lake City,  
Utah 84147-0898.

ADDENDUM

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the judge to whom this matter was assigned, The Honorable Dean E. Conder. Counsel for the parties appeared before Judge Conder who determined to accept the request of the parties and the recommendation of the Commissioner, heard the stipulations of counsel and the parties and the testimony of each of the parties and being advised thus in the premises and having entered its findings of fact and conclusions of law,

HEREBY ORDERS, ADJUDGES AND DECREES that:

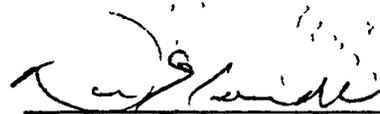
1. The parties are granted a decree of divorce, each from the other, the same to become final upon entry.

2. All remaining issues in this matter are reserved for trial and there shall be no evidence or issue preclusion by reason of the fact that the decree of divorce has been entered in this matter.

3. The court, on its own, directs and orders each of the parties not to make any derogatory statement about the other to or in front of the minor children of the parties.

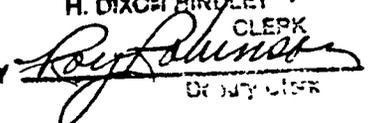
4. This matter shall be placed upon the trial calendar so that the remaining issues can come before the court for trial.

DATED this 29 day of February, 1984.



DEAN E. CONDER,  
District Judge

ATTEST  
H. DIXON HINDLEY  
CLERK

BY   
Deputy Clerk

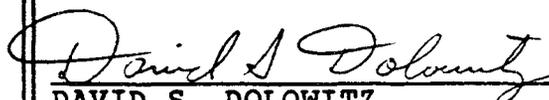
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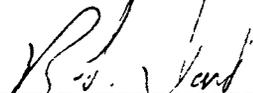
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APPROVED AS TO FORM AND CONTENT:

Decree of Divorce  
Civil No. D83-2583  
Miner v. Miner



DAVID S. DOLOWITZ  
Attorney for Plaintiff



B. L. DART  
Attorney for Defendant

7137K

FILED IN CLERK'S OFFICE  
Salt Lake County Utah

AUG 23 1984

DAVID S. DOLOWITZ (0899)  
of and for  
PARSONS, BEHLE & LATIMER  
Attorneys for Plaintiff  
185 South State Street, Suite 700  
Post Office Box 11898  
Salt Lake City, Utah 84147  
Telephone: (801) 532-1234

By *[Signature]*  
Deputy Clerk

185  
3270

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

\* \* \* \* \*

DOUGLAS LEE MINER,  
Plaintiff,

v.

CAROL JEAN MINER,  
Defendant.

SUPPLEMENTAL  
DECREE OF DIVORCE

Civil No. D-83-2353

Judge Dean E. Conder

\* \* \* \* \*

JUDGEMENT

The above-entitled matter came before the Court for trial on May 21 and May 22, 1984, the Honorable Dean E. Conder presiding. The plaintiff was present in person and represented by counsel David S. Dolowitz. The defendant was present in person and represented by counsel B. L. Dart, Jr. The Court heard and considered the testimony of each of the parties and the witnesses offered in their behalf, reviewed and considered the exhibits accepted into evidence on behalf of each of the parties, heard arguments of counsel and considered the legal and factual arguments presented to the Court in written and

oral form, after having previously granted a decree of divorce to each of the parties and now being advised in the premises and having published its memorandum decision on the 5th day of June, 1984, and having made and entered its supplemental findings of fact and conclusions of law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Care, custody and control of the minor children of the parties is awarded to the plaintiff, their father subject to reasonable and liberal rights of visitation in the defendant which visitation shall be for David and Krista, and if they so desire, Barbara and Katie:

a. Every other Saturday morning at 9:00 a.m. until Sunday evening at 6:00 p.m.

b. Every other red letter holiday and the 24th of July, with the exception of Mother's Day which shall always be spent with the defendant and Father's Day which shall always be spent with the plaintiff.

c. The children may visit with their mother during the week as they (the children) desire but they must notify the plaintiff or his housekeeper that they are visiting and must be home by dinner time.

d. The defendant shall have the right to a summer visitation period which shall not exceed two weeks and this should be planned with the children to take into account their schedules.

e. The plaintiff shall have a right to take summer trip with the children of at least two weeks duration.

f. The defendant is admonished and requested to plan meaningful activities with and for the children when they are visiting with her.

g. Barbara and Katie shall arrange such visitation with the defendant as they deem mutually desirable.

h. All visitation between the defendant, David and Krista shall be arranged so that David and Krista visit the defendant together.

2. Each of the parties to this matter, the plaintiff and the defendant, is enjoined and prohibited from making derogatory remarks about the other to the children about the other parent.

3. Each of the parties in this matter is enjoined and prohibited from using the children to get back at the other parent.

4. Neither party shall annoy, harass the other or make physical contact with the other.

5. The defendant is enjoined and prohibited from going on or about the property at 1522 Roxbury Road, Salt Lake City, Utah except as incident to picking up or returning the children from a visit when said visit is a regularly scheduled visit.

6. The defendant at this time is not ordered to pay any child support to the plaintiff for and on behalf of the children.

7. The home and real property located at 1522 Roxbury Road, Salt Lake City, Utah is awarded to the plaintiff subject to the equitable interest of the defendant which shall be paid as is hereinafter set out.

8. The plaintiff is awarded the Scout automobile; the furniture, fixtures, furnishings and appliances located at the home at 1522 Roxbury Road, Salt Lake City, Utah, except those are herein awarded specifically to the defendant, his IRA account; one-half of the food storage; one-half of the paintings; his gun collection; his camera and photographic equipment; one-half of the profit sharing account, to-wit \$67,678 subject to the provisions for division of this account as are herein set out; one-half of his interest in the Geothermal tax shelter.

9. All of the stock received by the plaintiff from his parents either before or during the marriage is awarded to him as his sole and separate property as said property is not part of the marital estate.

10. The defendant is awarded an equity interest in the home of the parties valued at \$67,500 to be paid as herein set out; the Honda automobile; the two bank accounts

First Security Bank totalling \$5,637; one-half of the food storage; one-half of the paintings; the china, crystal and silverware; the sporting equipment and one-half of the profit sharing account in the amount of \$67,678 which should be distributed as is hereinafter set forth and one-half interest of the parties in the Geothermal tax shelter.

11. The plaintiff is ordered to pay, assume and hold harmless the defendant from the following debts and obligations: the debt to his father, A. U. Miner, in the amount of \$4,480 toward the purchase of the home on Roxbury Road; the VISA account; the Fort Douglas Account; the Deseret Foundation obligation and any and all sums due to his parents or family.

12. Each of the parties is ordered to pay all debt and obligations incurred by them since their separation.

13. The plaintiff is ordered to pay to the defendant alimony in the sum of \$1,000 per month for 24 months commencing with the month of June in 1984 and then the sum of \$500 per month for 24 months after which time alimony shall terminate.

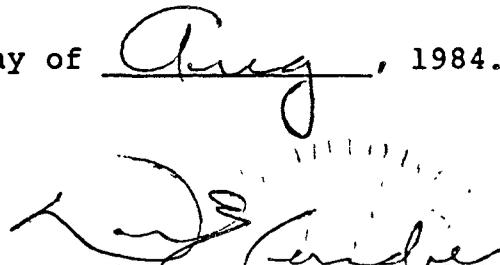
14. The defendant's equity in the home shall be paid in four annual installments of \$16,875 principal plus accrued interest at 12% per annum on the unpaid balance with the first payment to be made on or before June 1, 1985 and then each June 1 thereafter until the debt is paid in full. Interest on this sum commences as of June 5, 1984.

15. The plaintiff is ordered to pay to the defendant the sum of \$67,678 (being one-half of the profit sharing account) at the rate of \$1,000 per month beginning June 1, 1988. Payments are to be applied first to accrued interest which shall accrue at the rate of 10% per annum, and then the balance to principal. Interest shall accrue on this sum from June 5, 1984.

16. Each of the parties shall pay their own costs and attorneys' fees.

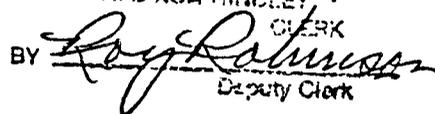
17. Each of the parties is ordered to sign all documents and carry out all steps necessary to effect the above-stated order.

DATED this 23 day of Aug, 1984.

  
DEAN E. CONDER  
DISTRICT COURT JUDGE

APPROVED AS REFLECTING THE ORDER OF THE COURT:

  
David S. Dolowitz  
Attorney for Plaintiff

ATTEST  
H. DIXON HINDLEY, I  
CLERK  
BY   
Deputy Clerk

\_\_\_\_\_  
B. L. Dart  
Attorney for Defendant

FILED

FILED IN CLERK'S OFFICE  
Salt Lake County Utah

JUN 21 1985

H. Dixon Jindrich, Clerk 3rd Dist Court  
By [Signature]  
Deputy Clerk

B. L. DART (818)  
Attorney for Defendant  
310 South Main  
Suite 1330  
Salt Lake City, Utah 84101  
(801) 521-6383

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

---oooOooo---

DOUGLAS LEE MINER,	:	
	:	ORDER
Plaintiff,	:	
v.	:	
CAROL JEAN MINER,	:	Civil No. D83-2353
	:	Judge Conder
Defendant.	:	

---oooOooo---

Hearing on defendant's Motion for an Order enforcing the terms of the Decree of Divorce heretofore entered came on regularly for hearing before the above-entitled Court on the 31st day of May, 1985, at the hour Of 10:00 a.m., the Honorable Commissioner Sandra Peuler presiding; plaintiff appearing by and through his attorney, David S. Dolowitz, and defendant appearing in person and being represented by her attorney, John D. Sheaffer, Jr., on behalf of B. L. Dart; and the matter having been submitted and a recommendation having been made, and the recommendation having not been accepted by

plaintiff and the matter having then come on for further hearing before the Honorable Dean E. Conder, and the Court having heard arguments of counsel, and having reviewed the file in this matter, and having an opportunity to have spoken with the minor children of the parties, and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED:

1. The plaintiff is moving from the state of Utah on the 22nd of June and the children have expressed a desire to have visitation with the defendant but not prior to their move because of their desire to say goodbye to their friends and attend various social functions which have been planned by reason of their move. Because of this circumstance it is ordered that the defendant's request for summer visitation from June 9, 1985 to June 20, 1985 is denied, but for the summer of 1985 defendant is awarded visitation for a two week period during the month of August at defendant's option with defendant to notify plaintiff by the 15th of July of the two week period of time she desires summer visitation.

As a further order, each of the parties shall be obligated to pay one-half of the transportation expenses of the children from the state of Texas to and from the state of Utah or the state of California whichever of the latter two states

defendant elects as the state where she desires to exercise her summer visitation for 1985.

2. Defendant has waived any claim she might have in the food storage and plaintiff is hereby awarded all of the paintings of the parties pursuant to an agreement of the parties in exchange for a modification of the Decree of Divorce as it relates to alimony and is hereinafter provided.

3. Defendant is hereby awarded, in addition to the alimony provided in the original Decree of Divorce, an award of alimony from plaintiff of 18 installments in the amount of \$500 each, which alimony shall not terminate upon the remarriage of defendant but shall terminate upon defendant's death as to any installments which have not yet come due at the time of her death.

Payment of these installments of alimony shall be on a monthly basis commencing with the month of June, 1986, with payments to be paid on or before the 20th day of the month in which due, except that there will be an acceleration of the due date of the installments upon the happening of the following events:

a. In the event defendant does remarry so that her alimony obligation created under the Decree of Divorce is terminated, then plaintiff's obligation for the payment of these

installments shall be accelerated so that commencing with the month following the termination of alimony under the original Decree of Divorce, plaintiff shall pay to defendant two (2) installments each month to be paid by the 20th day of the month until all installments have been paid.

b. In the event of the sale of the house of the house and real property at 1522 Roxbury Road by plaintiff, all of the installments shall become immediately due and shall constitute a lien against said house and real property until paid.

4. The plaintiff shall pay to defendant within thirty days the balance owing on the savings accounts awarded to defendant in the Supplemental Decree of Divorce heretofore entered, in the sum of \$1,387 together with interest at the rate of ten percent per annum. In the event plaintiff does not pay to defendant the balance owing on said savings accounts, together with interest, within thirty days then judgment in said sum shall enter in favor of defendant and against plaintiff.

5. The plaintiff has no documents relating to stock in Geothermal, and he has been unable to obtain these documents. The plaintiff shall cooperate in all ways necessary to enable the defendant to obtain documents relating to the stock in Geothermal.

6. Defendant is awarded attorney's fees in connection with this proceeding in the sum of \$150.

DATED this 21 day of June, 1985.

BY THE COURT:

  
DEAN E. CONDER  
District Court Judge

APPROVAL AS TO FORM:

  
DAVID S. DOLOWITZ

ATTEST  
H. TRACON HUNLEY  
CLERK  
BY   
Clerk

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SALT LAKE COUNTY, UTAH

JUL 9 4 34 PM '85

DAVID S. DOLOWITZ, (8899)  
of and for  
PARSONS, BEHLE & LATIMER  
Attorneys for Plaintiff  
185 South State Street, Suite 700  
P.O. Box 11898  
Salt Lake City, UT 84147-0898  
Telephone: (801) 532-1234

BY  
DEPUTY CLERK  
CLERK  
3RD DIST. COURT

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

\* \* \* \* \*

DOUGLAS LEE MINER, )  
 )  
 Plaintiff, ) MOTION  
 )  
 v. )  
 ) Civil No. D83-2353  
 CAROL JEAN MINER, ) Judge Dean Conder  
 )  
 Defendant. )

\* \* \* \* \*

Plaintiff in the above-entitled matter hereby moves the above-entitled court to modify the provisions of the Decree of Divorce on file herein, to provide that the home acquired by the parties on Roxbury Road, in Salt Lake City, Utah, be sold and the net proceeds of sale be divided equally between the parties, that the provisions of the Decree of Divorce which required the plaintiff to pay the defendant for her interest in the home be vacated and this modification be effected on the grounds that at the time the court made its Decree, the plaintiff intended to live in the home and raise the children

of the parties in the home, but he has now been required, as a result of a change in employment, to move to the state of Texas, that the home is for sale, that he has been required to purchase a home in Texas, and is presently making payments on both the Salt Lake City home (to preserve the equity of both of the parties) and the home in Texas for himself and the children of the parties, and it is thus fair and equitable to modify the Decree of Divorce to require a simple division of the equity of the parties in the home rather than require the plaintiff to make payments to the defendant.

DATED this 8<sup>th</sup> day of July, 1985.

  
DAVID S. DOLOWITZ  
Attorney for Plaintiff

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing Motion to the following on this 8<sup>th</sup> day of July, 1985:

Mr. B. L. Dart  
Attorney at Law  
310 South Main Street, Suite 1330  
Salt Lake City, Utah 84101

  
DAVID S. DOLOWITZ

7653A

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Salt Lake County Utah

B. L. DART (818)  
Attorney for Defendant  
310 South Main  
Suite 1330  
Salt Lake City, Utah 84101  
(801) 521-6383

SEP 25 1985

H. D. HINDLEY, Clerk 3rd Dist. Court  
By *[Signature]*  
Deputy Clerk

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

---oooOooo---

DOUGLAS LEE MINER,	:	
	:	
Plaintiff,	:	ORDER DENYING MOTION FOR MODIFICATION
	:	
v.	:	
	:	
CAROL JEAN MINER,	:	Civil No. D83-2353
	:	
Defendant.	:	Judge Conder

---oooOooo---

Plaintiff's Motion to Modify the Decree of Divorce by modifying defendant's entitlement to receive payments on her interest in the residence of the parties came on regularly for hearing on the 20th day of August, 1985, plaintiff by his attorney, David S. Dolowitz, and defendant appearing by her attorney, B. L. Dart, and the Court having reviewed the pleadings and having heard arguments, finds that the changes of plaintiff in his professional work and move from Utah to Texas were voluntary and are not legally sufficient to justify a modification of the Decree of Divorce, and the Court being fully advised,

IT IS HEREBY ORDERED:

That plaintiff's Motion for Modification is hereby denied.

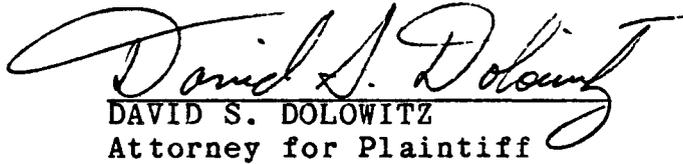
DATED this 25 <sup>Sent</sup> day of ~~August~~, 1985.

BY THE COURT:

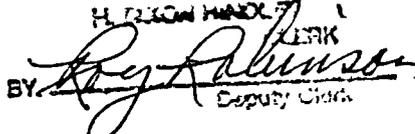


DISTRICT JUDGE

APPROVAL AS TO FORM:



DAVID S. DOLOWITZ  
Attorney for Plaintiff

ATTEST  
H. ELSON HANCOCK  
CLERK  
BY   
Deputy Clerk

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SALT LAKE CITY

JUN 4 3 56 PM '86

*K. W. [Signature]*  
CLERK

DAVID S. DOLOWITZ (0899)  
of and for  
PARSONS, BEHLE & LATIMER  
Attorneys for Plaintiff  
185 South State Street, Suite 700  
P.O. Box 11898  
Salt Lake City, UT 84147-0898  
Telephone: (801) 532-1234

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

\* \* \* \* \*

DOUGLAS LEE MINER, )  
 )  
 Plaintiff, ) MOTION FOR RELIEF FROM  
 ) JUDGMENT  
 )  
 v. )  
 )  
 CAROL JEAN MINER, ) Civil No. D83-2353  
 ) Judge Dean E. Conder  
 )  
 Defendant. )

\* \* \* \* \*

Plaintiff hereby moves the above-entitled court, pursuant to the provisions of Rule 60(b)(7) of the Utah Rules of Civil Procedure and, based on the court's continuing jurisdiction under the provisions of § 30-3-5, UTAH CODE ANN. (1953) to amend the Decree of Divorce made and entered herein on August 23, 1984, in particular, paragraphs 10 and 14 thereof, wherein the court determined that the equity of the parties in their home, \$135,900.00, should be divided equally between them and that the plaintiff should pay to the defendant the sum of \$67,500.00 over four years in four installments at

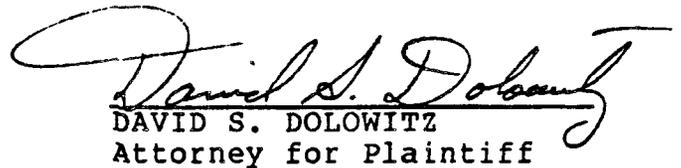
interest on the grounds that the home was valued by the court at \$235,000.00, but that the home, when sold by the plaintiff, produced a gross selling price of \$215,000.00 and a net sales price of approximately \$202,100.00; that is approximately \$33,000.00 less than the court ruled, and on the further ground that the Geothermal Partnership which the court divided equally between the parties has been disallowed for tax purposes by the Internal Revenue Service for the tax year 1981 which has produced a claim against the parties for the sum of \$20,767.15 in 1981 and an additional claim for interest penalty that will have to be paid after all the other taxes are paid as a penalty which will be in the approximate sum of \$19,000.00, but which sum cannot be fully determined until the taxes for that year are paid and an additional tax in 1982 in the approximate sum of \$10,584.69, which sum cannot be fully determined until that tax is paid, incurred as a result of an accounting error in the preparation of the 1982 taxes by the accounting firm, plus interest penalty that cannot be determined until the taxes, interest and penalty are paid. In addition, plaintiff anticipates additional assessments of taxes, interest and penalty for 1982 and 1983, based on the disallowance of the Geothermal Partnership of approximately \$10,000.00.

Plaintiff specifically moves the court to amend the decree by vacating the provisions of paragraphs 10 and 14 of

the Decree and to vacate the judgment for \$24,975.00 plus interest at 12 percent entered on August 25, 1985 as enforcement by this court of the provisions of paragraphs 10 and 14 of the Amended Decree of Divorce and after vacating all those provisions, require that the parties use the proceeds of sale from their home, first to pay all taxes due for the tax years 1981, 1982 and 1983, and, thereafter, to divide the net proceeds of sale equally between the parties.

All supporting documents are attached to the memorandum in support of this motion, except plaintiff's accountant's worksheets demonstrating the scope of the tax liability and those are attached hereto.

DATED this 4<sup>th</sup> day of June, 1986.

  
DAVID S. DOLOWITZ  
Attorney for Plaintiff

*Dolowitz*

MAILING CERTIFICATE

I hereby certify that I caused to be ~~mailed~~, postage *delivered*  
~~prepaid~~, a true and correct copy of the foregoing Motion to the  
following on this 4 day of June, 1986:

Mr. B. L. Dart  
310 South Main Street, Suite 1330  
Salt Lake City, Utah 84101

*David S. Dolowitz*  
\_\_\_\_\_  
DAVID S. DOLOWITZ

9991A

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SALT LAKE COUNTY UTAH

JUN 11 4 34 PM '86

H. DIXON HOLEY, CLERK  
DISTRICT COURT  
BY *[Signature]*  
DEPUTY CLERK

B. L. DART (818)  
Attorney for Defendant  
Suite 1330  
310 South Main  
Salt Lake City, Utah 84101  
Telephone: (801) 521-6383

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

---oooOooo---

DOUGLAS LEE MINER, : AFFIDAVIT OF DEFENDANT IN  
Plaintiff, : OPPOSITION TO PLAINTIFF'S  
v. : MOTION AND IN SUPPORT OF  
 : DEFENDANT'S MOTION  
 :  
 : *083-2353*  
CAROL JEAN MINER, : Civil No. ~~D85-2353~~  
Defendant. : Judge Dean E. Conder

---oooOooo---

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

Carol Miner, being first duly sworn, deposes and says:

1. Affiant is the defendant in the above-captioned action.
2. Defendant has spoken with the children and tentatively arranged with them for summer visitation in 1986 from the 1st of August to the 14th of August. It is her desire that the Court set down these dates as her visitation entitlement dates under the same provisions which the Court ordered last year providing that each of the parties bear one-half of the

transportation costs between the children's home in Texas and the plaintiff's home in California.

3. During the period since the entry of the Decree of Divorce, plaintiff has been chronically late on his payments of alimony and at the present time has not made the May installment. It is defendant's desire that the Court specify a date certain in each month when the alimony is due so that there can be no question of when defendant is entitled to the alimony. In respect to this request, defendant asks the Court to set the payment date as the 5th of the month for which the alimony is due.

4. The Decree of Divorce was modified by stipulation in May of 1985 where it was provided in paragraphs 2 and 3 of the Order that defendant's claim to paintings would be waived and those paintings would be awarded to plaintiff. Concurrently, defendant was awarded from plaintiff, an alimony award of \$500 a month for 18 installments, a total of \$9,000. Under the provisions of paragraph 3b, it was provided that in the event of the sale of the home at 1522 Roxbury Road, all the installments would become immediately due and by reason of the sale, which has now occurred, defendant desires that she be awarded a judgment for all 18 installments with the money to be paid out of the proceeds of sale.

5. During the marriage of the parties, plaintiff was the party who made all financial decisions without explanation to defendant. This included the investment which was made by

plaintiff in December of 1981 in the Geothermal Partners II. Plaintiff made this investment it now appears as a general partner under circumstances where he had the responsibility to determine the advisability of this investment.

If in fact there are now assessments being made based on disallowance by the IRS of certain deductions, then the cost of those should be borne by the plaintiff since while it is true defendant signed tax returns, she was not knowledgeable as to plaintiff's activities and simply followed plaintiff's instructions as to the signing of the tax returns each year which had been prepared by accountants retained by plaintiff.

6. From the documentation provided by plaintiff, it appears that some of the claimed deductions which the IRS is electing to disallow arose out of income sources not declared in 1982 which may well relate to assets awarded to plaintiff and not awarded as marital assets, such as the \$150,000 in stocks the Court awarded to him as a non-marital asset. It also appears that some of the deductions which the IRS is currently disallowing may be carried forward and deductible in later years. At this time it is impossible to tell what the full tax ramification and impact of the action by the IRS is.

It further appears that plaintiff has received from the IRS communications and correspondence relating to the disallowance of certain expenses in 1981 and 1982. Defendant has

received no information from plaintiff and has not been in a position where she could adequately protect herself, and to now make her responsible for not only the tax liability but the penalties and interest which have accrued would be unfair and inappropriate. It is submitted that the relative rights and responsibilities between the parties with respect to the claims of the IRS should be litigated through the tax courts and the ultimate determination by the tax courts should be dispositive. This Court should refuse to grant plaintiff's Motion in this proceeding and allow the tax courts to make the final determination.

7. It has been necessary for defendant to retain an attorney to represent her in the defense of the Motions filed by plaintiff in this proceeding and defendant, who is without any current employment or independent source of income, is in need of the Court to award her attorney's fees in this proceeding.

DATED this 11th day of June, 1986.

Carol Jean Miner  
CAROL JEAN MINER

Subscribed and sworn to before me this 11th day of June, 1986.

Jennifer Morgan  
NOTARY PUBLIC  
Residing at Salt Lake County.

Commission expires:

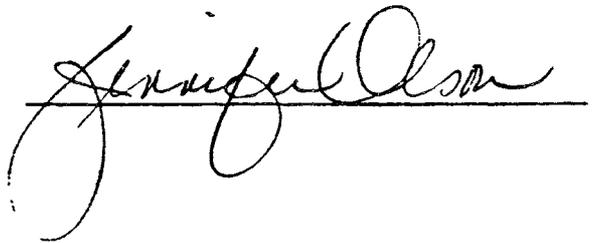
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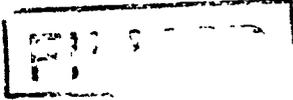
DELIVERY CERTIFICATE

I hereby certify that on the 11 day of June, 1986, I  
hand-delivered a copy of the foregoing Affidavit to:

David S. Dolowitz  
Parsons, Behle & Latimer  
185 South State, 7th floor  
Salt Lake City, Utah 84111

Attorney for plaintiff.

A handwritten signature in cursive script, appearing to read "Jennifer Olson", is written over a horizontal line.



FILED IN CLERK'S OFFICE  
Salt Lake County Utah

JUN 24 1986

B. L. DART (818)  
Attorney for Defendant  
310 South Main  
Suite 1330  
Salt Lake City, Utah 84101  
(801) 521-6383

H. Dixon Hindley, Clerk 3rd Dist. Court

By *[Signature]*  
Deputy Clerk

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

---oooOooo---

DOUGLAS LEE MINER,	:	
	:	
Plaintiff,	:	ORDER
v.	:	
CAROL JEAN MINER,	:	Civil No. D83-2353
	:	
Defendant.	:	Judge Conder

---oooOooo---

Plaintiff's Motion For Relief From Judgment and  
Defendant's Motion For Enforcement of Terms of Decree of Divorce  
and For Clarification or Alternatively For Amendment of the  
Decree of Divorce both came on regularly for hearing by  
stipulation on Thursday, the 12th day of June, 1986, at the hour  
of 8:00 a.m., plaintiff being represented by his attorney David  
S. Dolowitz and defendant appearing in person and represented by  
her attorney B. L. Dart, and the Court having heard the arguments  
of the respective counsel and certain matters having been  
stipulated and the Court having considered the arguments and the  
stipulations and being fully advised,

IT IS HEREBY ORDERED as follows:

1. Defendant shall have the right to have the minor children with her from the 1st of August to the 14th of August. The childrens' desires are to be considered insofar as there may be any conflict with prior existing commitments. The cost of transportation between plaintiff's home in Texas and defendant's home in California shall be divided with defendant to pay the cost of transporting the children to California and plaintiff to pay the cost of transporting the children back to Texas.

2. Pursuant to stipulation, it is established that plaintiff's payments to defendant of alimony shall be due on the fifth day of each month for which the alimony is due and should be paid henceforth through the clerk of the District Court of Salt Lake County.

3. Plaintiff's Motion to Modify the Decree of Divorce to change the equity entitlements of the parties in the house and real property at 1522 South Roxbury Road by vacating the provisions of paragraphs 10 and 14 of the Decree of Divorce and to vacate the currently outstanding judgment for \$24,975, plus interest at 12 percent (12%) entered on August 25, 1985, is denied. Plaintiff's Motion that the parties use the proceeds of sale from said house and real property first to pay all taxes due for tax years 1981, 1982, and 1983 and thereafter to divide the net proceeds of sale equally between the parties is denied.

4. Defendant's Motion to Modify the Decree of Divorce to accelerate payments by plaintiff to defendant beyond those originally provided in the Decree of Divorce is denied.

5. Defendant's request for attorney's fees is denied, each party to bear their own attorney's fees and costs.

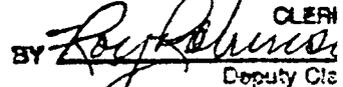
DATED this 24 day of June, 1986.

BY THE COURT:



DEAN E. CONDER  
District Court Judge

ATTEST  
H. DIXON HINDLEY  
CLERK

BY   
Deputy Clerk

MAILING CERTIFICATE

I hereby certify that on the 13 day of June, 1986,

I mailed a copy of the foregoing Order to:

David S. Dolowitz  
Attorney for Plaintiff  
185 South State Street  
Suite 700  
Salt Lake City, Utah 84111

