

1986

Gayla Hatch Anderson v. Michael Hall Hatch : Brief of Appellant

Utah Court of Appeals

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IN THE SUPREME COURT OF THE STATE OF UTAH

GAYLA HATCH ANDERSON,)

Plaintiff/Respondent,)

vs.)

MICHAEL HALL HATCH)

Defendant/Appellant.)

Case No. 860225

13-B

860242-CA

BRIEF OF APPELLANT

APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL
DISTRICT COURT IN AND FOR SALT LAKE COUNTY
HONORABLE DAVID B. DEE, JUDGE

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Plaintiff/Respondent,)	
vs.)	BRIEF OF APPELLANT
MICHAEL HALL HATCH)	Case No. 860225
Defendant/Appellant.)	

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Is the Order of October 9, 1985, res judicata and does it preclude the Order of March 19, 1986?
2. Did the District Court commit reversible error in adopting the recommendations of Domestic Relations Commissioner Peuler without permitting the defendant/appellant an evidentiary hearing?
3. Is the Order of March 19, 1986, erroneous in any event in construing or modifying the Decree of Divorce to give plaintiff the first option to acquire the family residence at the 1975 appraised value?

STATEMENT OF THE CASE

This is a post-judgment proceeding. These proceedings were commenced with an Affidavit for an Order to Show Cause verified and filed by the plaintiff April 15, 1985. (R.42-43) Shortly thereafter the defendant made a Motion for Clarification of Decree filed April 26, 1985, (R.45-46) which motion was amended

May 1, 1985. (R.47-48) The Order to Show Cause and the Amended Motion for Clarification were heard by Commissioner Peuler on May 7, 1985, and taken under advisement. (R.49) (It should be noted that apparently plaintiff's original Motion for Clarification through a mistake on the calendar came on for hearing on May 9, 1985, and was stricken as neither counsel appeared. R.66) The Affidavit and the Motion dealt with the option to purchase the family home as set forth in paragraph 2(b) of the Stipulation executed by the parties and their attorneys on November 6, 1975, (R.15-17), and the said provision was incorporated in the Findings of Fact as paragraph 7 (R.23-26) and in the Decree of Divorce as paragraph 5. (R.20-22)

On August 23, 1985, the Commissioner ruled on the matters which she had taken under advisement and denied the Order to Show Cause brought by the plaintiff for the reason that there was a failure to show that defendant had failed to exercise his option pursuant to the Stipulation. (R.51) No objections were ever made or filed by the plaintiff or her counsel, either to the recommendation or to the October 9th Order. After the time of the argument of the Order to Show Cause plaintiff's counsel, Nolan J. Olsen, withdrew as counsel July 19, 1985, (R.50), and Frank Pignanelli appeared September 13, 1985, as counsel for plaintiff. (R.54) although he had apparently advised Commissioner Peuler of his appearance as early as August 23, 1985, as his name appears on the Memorandum Decision. (R.51)

On September 23, 1985, (after the recommendation noted above and before the October 9 Order) plaintiff filed a new petition entitled "Verified Motion to Compel Defendant to Execute Quit-Claim Deed and Requesting Clarification of Decree." (R.57) Defendant filed opposing Affidavits--one signed by defendant and the other by defense counsel, Leland K. Wimmer (R.70-73), and that matter was thereafter heard September 30, 1985, and the Commissioner took the matter under advisement and made a recommendation later the same day and mailed it out to counsel October 1, 1985. (R.76-77) An Objection was timely filed to that recommendation October 3, 1985. (R.79) Then followed the October 9th Order referred to hereinabove, and the said Verified Motion to Compel came before the Honorable David B. Dee on November 6, 1985. (R.84) On that occasion Mr. Pignanelli, the plaintiff and plaintiff's husband appeared, as did defendant, with his attorneys, Mr. Wimmer and Mr. Madsen. The aforesaid persons were invited into the Judge's chambers. Judge Dee stated that he thought this was a default divorce, that his clerk was sick and that he did not have the file in this matter. There was apparently no court reporter available, however, the judge's bailiff was on duty. The judge then stated that it was his general policy to uphold Commissioner Peuler in every instance and stated in substance, "Why should we pay her (stating an amount) and then not follow her recommendations?" Mr. Madsen then stated in substance that when a recommendation is rejected, it is the

duty of the judge to hear the matter and exercise his judgment. Counsel for the defendant then handed Judge Dee copies of some of the relevant documents from their own file (which documents have apparently been included in the court file at pages R.86-89). Judge Dee then informed the parties that he would not proceed further that day, but that he would obtain the file and review it. No other hearing was ever granted.

Defendant was never afforded any further hearing, but several weeks later Judge Dee's clerk, Brad Willis, notified Kent Wimmer that the Court had ruled in favor of the plaintiff. Findings, Conclusions and a proposed Decree were then drafted by Mr. Pignanelli and submitted to counsel for the defendant. Counsel for defendant objected in writing to the same (R.90-91) on the grounds that there had been no evidentiary hearing and no findings could be made. Those Findings and Conclusions have apparently never been placed in the file and were apparently never signed by the judge. The Court nevertheless signed an Order on March 19, 1986, from which this appeal is taken.

STATEMENT OF FACTS

Because there was no evidentiary hearing, there is no transcript of testimony. There is also no transcript of argument as no argument on the merits was ever permitted, and there was no court reporter present to even record the exchange between counsel and Judge Dee on November 6, 1985.

The primary matter to be considered in this action is the language of the original Stipulation, Findings of Fact and Decree of Divorce noted above, (R.15-17, R.20-22, R.23-26) which documents are set forth in full in the Addendum at the end of this brief. The language as it relates to the issue in this matter in the Stipulation, Findings and Decree is substantially the same, and we quote from paragraph 5 of the Decree of Divorce as follows:

"Plaintiff be, and she is hereby awarded the use of the home and real property located at 13227 South 2860 West, Riverton, Utah, subject to the payment of the mortgage thereon, until the occurrence of one of the following contingencies, to-wit: The remarriage of plaintiff, the youngest child reaches majority, or plaintiff desires to sell said home, at which time defendant shall have first option to purchase plaintiff's equity pursuant to an appraisal to be made forthwith to determine the equity as of this date, said appraisal to be paid for by defendant, and plaintiff shall have the option to purchase defendant's equity on the occurrence of any of the above contingencies in the event defendant does not purchase plaintiff's equity, said equity to be based on an appraisal and determination as of the date of the occurrence of one of the above contingencies. In the event neither party exercises the option to purchase, the home shall be sold and defendant shall receive the equity pursuant to the Decree of Divorce and the present appraisal."

Commissioner Peuler's Memorandum of August 23, 1985, and Judge Dee's Order of October 9, 1985, (both of which are included in the Addendum hereto) affirm in effect the clear language of the said Decree of Divorce and further declare that there is no evidence that defendant failed to exercise his option, which option is a first option as set forth in the Decree. The second Memorandum Decision of Commissioner Peuler of September 30, 1985, and the Order of Judge Dee of March 19, 1986, (both of which are

included in said Addendum) totally rewrite the language of paragraph 5 of the Decree of Divorce in that the said Order gives plaintiff the first option to acquire defendant's equity at the lower appraised value existing in 1975.

Attached to the verified Motion to Compel of the plaintiff was an Exhibit A, (these documents are also included in the Addendum hereto) which consisted of a draft of an early Stipulation which was prepared prior to the entry of the Decree of Divorce. The said Stipulation was never signed by anybody and was rejected by defendant at the time of the negotiations preceding the execution of the Stipulation of November 6, 1975, (R.15) and entry of the Decree of Divorce. The rejected Stipulation, as it relates to the matter of options on the family residence, differs from the wording of the executed Stipulation in that the terms "defendant" and "plaintiff" are reversed in six instances. That Stipulation, however was never signed, and the Stipulation that was signed (R.15) gives the defendant the first option. It is that executed Stipulation (R.15) which is incorporated in paragraph 5 of the Decree of Divorce.

It should also be noted that the unexecuted Stipulation also varies in other respects from the Stipulation finally signed, such as the in amount of child support and attorney's fees. The uncontroverted Affidavit of Leland Kent Wimmer (R.72-73) categorically states that there were no ambiguities or typographical errors in the drafting of the executed Stipulation, which was

incorporated in the Decree. Likewise, the Affidavit of the defendant (R.70) states that the Stipulation actually signed by the parties resulted from many hours of discussion with the plaintiff and that it was not the result of any typographical errors.

SUMMARY OF ARGUMENTS

POINT I. The Order signed by Judge Dee on October 9, 1985, is res judicata and precludes entry of the Order of March 19, 1986, for the reason that the relief sought in the Order to Show Cause and the relief sought in the Motion to Compel are in the main identical and, although the Motion to Compel is somewhat broader than the Order to Show Cause, all additional issues existed at the time of the bringing of the Order to Show Cause and could and should have been included therein, and are determined and disposed of by that Order. Also, the Order dismissing the Order to Show Cause in effect affirms the obvious meaning of the Decree of Divorce wherein it affirms that the defendant had the first option to acquire the home and has not waived the same. The Motion to Compel is nothing more than an improper attempt to circumvent the Order entered on the Order to Show Cause.

POINT II. The defendant was in any event entitled to an evidentiary hearing on the Verified Motion to Compel Defendant to Execute Quit-Claim Deed and Requesting Clarification of Decree. Even if the Court should find that the Motion to Compel is not precluded by doctrines of res judicata, defendant (having rejected

Commissioner Peuler's recommendation pursuant to Rule 8 of the Rules of the Third District Court) is entitled to an evidentiary hearing on all of the matters raised in the said Motion to Compel. Such a hearing was not afforded the defendant. By the terms of the original Decree of Divorce, the defendant was given a substantial property right in the form of a first option to acquire the property at its value at the time of the Decree of Divorce. The District Court has now taken away that right from the defendant without giving the defendant an opportunity to have an evidentiary hearing on the matter, and thereby defendant has been denied due process of law.

POINT III. Paragraph 5 of the Decree of Divorce is clear and unambiguous and not subject to being interpreted by parol evidence or by any considerations outside of the Decree, and furthermore, paragraph 5 of the Decree of Divorce is not subject to modification on any of the grounds alleged in the Order to Show Cause or Motion to Compel. There is no allegation of a material change of circumstances; the Decree resulted from a prolonged sequence of negotiations culminating in the execution by both parties and their counsel of a Stipulation which was approved by the court and incorporated in Findings of Fact and in the Decree of Divorce in 1975.

The said Decree is clear and unambiguous, and its meaning can be determined from the four corners of the Decree. Furthermore, no proceeding under Rule 60(b) has ever been

undertaken by the plaintiff, and the plaintiff's "intent," "understanding," and "belief" are irrelevant; the Stipulation, Findings and Decree were not the result of typographical errors; alleged "standard practice" was neither established, nor is it relevant; and the Decree cannot be modified at this date because of plaintiff's present feeling that it is "unfair."

ARGUMENT

POINT I. THE ORDER SIGNED BY JUDGE DEE ON OCTOBER 9, 1985, IS RES JUDICATA AND PRECLUDES ENTRY OF THE ORDER OF MARCH 19, 1986.

The Order to Show Cause filed herein on April 15, 1985, (R.42) (copy of which is included in Addendum hereto) asked the court to interpret the Decree of Divorce entered herein on November 21, 1975, (R.20) as granting to the defendant an equity in the home in question in the amount of \$8,408.89 (together with one-half of the value of water stock amounting to \$112.50 for a total of \$8,521.39 and to require the defendant to execute a quit-claim deed to the plaintiff upon receipt of said sum. The said Order of October 9, 1985, (R.80) denied said relief.

The Order of March 19, 1986, (R.93) purports to grant to plaintiff the identical relief denied her by the prior Order of October 9, 1985.

It is true that the plaintiff's Verified Motion to Compel Defendant to Execute Quit-Claim Deed and Requesting

Clarification of Decree (copy is included in Addendum hereto) expands somewhat upon the grounds asserted in the Order to Show Cause. The Order to Show Cause basically asks the Court to interpret the Decree a certain way, and the Verified Motion to Compel also requests the Court to do the same, but goes beyond that and says in effect that the plaintiff signed the wrong Stipulation, apparently by mistake, and goes on to set forth what her understanding of the proper Stipulation was.

The said motion also raises the issue as to whether or not defendant waived his first option. Nevertheless, all of those matters could have been raised in the initial Order to Show Cause. The alleged waiver relating to an offer of sale by plaintiff, for example, date's back to August 10, 1981, four years before the said Order to Show Cause was filed. It is axiomatic that a matter which could have been raised in the Order to Show Cause is barred by ruling on the Order to Show Cause and becomes res judicata with respect to that subject matter.

We cite in support of the foregoing proposition Belliston v. Texaco, Inc., 521 P2d 379 (Utah 1974), where the court stated at page 380 the following:

"In Wheadon v. Pearson this court stated that the doctrine of res judicata applied not only to points and issues which were actually raised and decided in a prior action but also as to those that could have been adjudicated, with the qualification that the claim, demand, or cause be the same in both cases. If the parties have had an opportunity to present their case and judgment is rendered thereon, it is binding both as

to those issues that were tried and to those that were triable in that proceeding, and they are precluded from further litigating the matter."

See also Krofcheck v. Downey State Bank, 580 P2d 243 (Utah 1978), and Penrod v. New Creation Cream, 669 P2d 873 (Utah 1983).

Likewise plaintiff's alleged remarriage on March 26, 1984, asserted as a waiver, was a matter that could have been raised in the original Order to Show Cause, but was not. It should be noted that paragraph 18 of the Motion to Compel is virtually identical with paragraph 3 of the Order to Show Cause.

The motion also refers to "standard practice," which is entirely irrelevant, and also speaks in terms of "unfairness," which likewise is not a matter that can be canvassed at this late date.

We cite in support Christensen v. Christensen, 619 P2d 1372 (Utah 1980), which stated:

" . . . we cannot now upset a stipulated property settlement because of her having relied upon values furnished by her husband in an adversary proceeding or because she was without funds to hire an appraiser of her own."

Also, we cite Foulger v. Foulger, 626 P2d 412, (Utah 1981). In that case the court stated:

"Where a disposition of real property is in question . . . the court should properly be more reluctant to grant a modification. In the interest of securing stability in titles, modifications in a decree of divorce making disposition of real property are to be

granted only upon a showing of compelling reasons arising from a substantial and material change in circumstances.

"The above holds true a fortiori where the property disposition is the product of an agreement and stipulation between the parties, and sanctioned by the trial court. Such a provision is the product of an agreement bargained for by the parties. As such the trial court should subsequently modify such a provision only with great reluctance and based upon compelling reasons."

No such reasons have been advanced in this case, and the clear wording of the Decree of Divorce is not subject to modification ten years after the Decree was entered.

It should be further noted that if plaintiff's contention is true, (that the word "plaintiff" and the word "defendant" were in the six instances interchanged), then plaintiff has the first option and defendant has no option to be waived. In order for defendant to have anything to waive, it must be conceded that the Decree means what it says and that the defendant had the first option. (If the Court should find that the language is clear and that defendant had the first option, but waived it, then the Order of March 19, 1986, is erroneous in any event because in that circumstance defendant would at least be entitled to one-half of the current equity.

The clear and unequivocal meaning of paragraph 5 of the Decree of Divorce (R.20) is simply this: That plaintiff is granted the "use" of the home and is to pay the very modest mortgage payment thereon of \$125 per month for such use. When

plaintiff remarries, or the youngest child reaches majority, or plaintiff desires to sell the home, defendant is given the option to acquire the home by paying to plaintiff her equity in the home determined by an appraisal at the time of the Decree of Divorce. If he does not elect to acquire the home, then the plaintiff is granted the option to acquire the home by paying the defendant his equity, which equity is in that event to be determined at a later date, being the time that plaintiff remarries, the youngest child reaches majority, or plaintiff desires to sell the home. The Decree goes on to provide what will take place if neither party desires to acquire the home, but that provision is irrelevant to this proceeding as it is clear that both parties desire to acquire the home.

The Order to Show Cause of the plaintiff filed on April 15, 1985, (R.42) purports to interpret paragraph 5 of the aforesaid Decree of Divorce in two respects, both of which are erroneous. First, it presupposes that the defendant has waived his first option and goes on to assume that even if he has waived it, that plaintiff has the right to acquire his interest at the 1975 value. The fact of the matter is that, even if the defendant had waived his option to purchase her equity at the 1975 value, she only has the right to acquire his equity at the later value at the time of the occurrence of one of the contingencies. Defendant's equity in the property at the later date would be computed as follows: The property was worth approximately \$70,000

at the occurrence of the first contingency and there was a balance owing on the mortgage at that time of approximately \$14,000, a difference of \$56,000, and defendant's one-half would be \$28,000, an increase to him (over plaintiff's offer) of about \$19,500.

In any event that was the relief sought by the plaintiff in the said Order to Show Cause. That matter was heard before Commissioner Peuler on May 7, 1985, (R.49) at which time the Commissioner took the matter under advisement and rendered her recommendation on August 23, 1985, (R.51). The Order of the Court incorporating her recommendation (no objection having been made by the plaintiff) with approval endorsed thereon by Commissioner Peuler was signed and entered by Judge Dee on October 9, 1985. (R.80)

Subsequent to Commissioner Peuler's making said recommendation on August 23, 1985, the plaintiff attempted to circumvent that ruling by filing what she termed a "Verified Motion to Compel Defendant to Execute Quit-Claim Deed and Requesting Clarification of Decree. In said motion the plaintiff sought to have the Court interpret the aforesaid Decree of Divorce in the same manner as the plaintiff had sought in her Order to Show Cause, to-wit, she wanted the Court to interpret the Decree as providing that the plaintiff had the first right to acquire the property from the defendant by payment to him of one-half the value of the property as of the date of the Decree of Divorce. The said motion was filed on September 23, 1985, subsequent to the

recommendation of Commissioner Peuler on August 23, 1985, recommending denial of the Order to Show Cause.

We respectfully submit that a party cannot circumvent the recommendation of the Commissioner and subsequent decision of the Court based thereon by the simple expedient of filing another proceeding under a different title, but containing a request for the identical relief.

POINT II. THE DEFENDANT WAS IN ANY EVENT ENTITLED TO AN EVIDENTIARY HEARING ON THE VERIFIED MOTION TO COMPEL DEFENDANT TO EXECUTE QUIT-CLAIM DEED AND REQUESTING CLARIFICATION OF DECREE.

Even if the Court should feel that the relief sought in the "Verified Motion to Compel Defendant to Execute Quit-Claim Deed and Requesting Clarification of Decree" (R.57) is not precluded by the Court's Order of October 9, 1985, defendant was nevertheless entitled to a full evidentiary hearing on said petition, which defendant has been denied.

The Verified Motion to Compel Defendant to Execute Quit-Claim Deed and Requesting Clarification of Decree was filed on September 23, 1985, and was heard before Commissioner Peuler on September 30, 1985, at which time the matter was taken under advisement by her. Apparently later on that day the Commissioner reached her decision and filed a Memorandum Decision dated September 30, 1985, which she mailed to counsel the next day, October 1, 1985. On October 3, 1985, the defendant filed an Objection and demand for further hearing (R.79), and the

said request constituted a timely and proper request for a full hearing before Judge David B. Dee, defendant having thus rejected the recommendation of the Commissioner. See Rule 8 of the Third District Court Rules in the Addendum hereto.

Plaintiff's Motion to Compel was indeed noticed up for hearing before Judge Dee on the 6th day of November, 1985. On that occasion, as noted before, Mr. Pignanelli and the plaintiff and plaintiff's husband appeared, as did the defendant and his attorneys. The aforesaid persons, being six in all, were invited into the judge's chambers. As noted above, he initially stated that he thought this was a default divorce case, that his clerk was sick and he did not have the file. The judge then stated in substance that it is his general policy to uphold the Commissioner in every instance, suggesting that why else was she on the payroll. Counsel for the defendant requested a hearing (pursuant to said Rule 8 as the Commissioner's recommendation had been timely rejected) and, although entitled to such a hearing under said Rule 8, no such hearing was afforded. The Court accepted copies of several of the documents inasmuch as he did not have the file and said that he would get the file and look it over. It is clear from the foregoing that the defendant was never granted an appropriate hearing in the premises and was denied due process of law as vested property rights were taken from the defendant without just cause and without a hearing. The defendant was entitled to have the Court hear testimony on all issues, including

the issue of waiver and to hear testimony on the meaning of the Decree should it be determined that the Decree was in any way ambiguous. No record was made of the proceedings, no court reporter was present, nor any recording device. The whole episode took place in chambers, and in the context of the Court's statement that he always upheld Commissioner Peuler's recommendations.

POINT III. PARAGRAPH 5 OF THE DECREE OF DIVORCE IS CLEAR AND UNAMBIGUOUS, AND IS NOT SUBJECT TO MODIFICATION ON ANY OF THE GROUNDS ALLEGED IN EITHER THE ORDER TO SHOW CAUSE OR THE MOTION TO COMPEL.

It is the contention of the defendant that even if the decree of October 9, 1985, is not res judicata as to the Order of March 19, 1986, and even if defendant had been afforded an appropriate evidentiary hearing, paragraph 5 of the Decree of Divorce is clear and unambiguous and is not subject to change upon any of the grounds alleged in either the Order to Show Cause of the Verified Motion to Compel. We will canvass the grounds separately:

1. In the Order to Show Cause no ground is given except that it is asserted that the Decree of Divorce is subject to an interpretation as claimed by the plaintiff. A fair reading of the Decree shows that that claim is entirely inaccurate. The Decree, as it relates to the option of the defendant and the option of the plaintiff (which are the only items at issue) is

entirely clear. Under established law, where the Decree is clear, no clarification or explanatory testimony is acceptable, and the Court is required to enforce the document according to its clear meaning as ascertained from the four corners of the Decree.

In Park City Utah Corporation v. Ensign Company, 586 P2d 446 (Utah 1978), the Supreme Court stated at page 450:

"If the language of a judgment be clear and unambiguous, it must be enforced as it speaks. However, when the meaning is obscure or ambiguous, the entire record may be resorted to for the purpose of construing the judgment."

The Supreme Court of Utah stated in Larsen v. Larsen, 561 P2d 1077 (Utah 1977), at page 1079 as follows:

"Mrs. Larsen did not appeal from the decree, and neither she nor the state have proceeded under Rule 60(b), U.R.C.P., to obtain relief from the decree. Furthermore, the trial court specifically found the support obligation was just and proper . . . "

In this case plaintiff did not appeal the decision, has not proceeded under Rule 60(b) and, as in the Larsen case, the court specifically found in Finding No. 7 (R.23) that the provision for distribution of the house was "fair and reasonable."

Even if the plaintiff had grounds to vacate the Decree under Rule 60(b), such proceeding would have to be brought within three months after the entry of the Decree if it is to be done in the same action. Although Rule 60(b) seems to indicate that a separate action may be permissible, none has been brought in this case, and the plaintiff would probably be precluded from doing so in any event by laches.

2. Plaintiff's "intent" or plaintiff's "understanding" or plaintiff's "belief" was that defendant would not have a first option (see paragraphs 6, 7 & 8 of Verified Motion to Compel-R.58)

The subjective intent, understanding or belief of a party is irrelevant once a stipulation has been negotiated, signed by the parties and their attorneys, approved by the court, and entered in the Decree of Divorce.

In Land v. Land, 605 P2d 1248 (Utah 1980), the Court stated the following at page 1251:

" . . . when a decree is based upon a property settlement agreement, forged by the parties and sanctioned by the court, equity must take such agreement into consideration. Equity is not available to reinstate rights and privileges voluntarily contracted away simply because one has come to regret the bargain made. Accordingly the law limits the continuing jurisdiction of the court where property settlement agreement has been incorporated into the decree, and the outright abrogation of the provisions of such agreement is only to be resorted to with great reluctance and for compelling reasons."

See also Despain v. Despain, 627 P2d 526 (Utah 1981), and Lea v. Bowers, 658 P2d 1213 (Utah 1983).

It is well-established that in the interpretation of contracts, as well as judicial instruments, subjective intention is irrelevant, and the documents are to be given the fair meaning which an objective reading thereof yields.

3. Plaintiff alleges that there were "typographical errors" in the Decree of Divorce. See paragraph 10 of said verified motion. It is clear that we are here not dealing with

"typographical errors," but rather with the desire of the plaintiff to have the court rewrite the Decree of Divorce in accordance with the provisions of the rejected and unsigned Stipulation. In order to have the Decree of Divorce conform to that Stipulation, the word "defendant" in paragraph 5 of the Decree would have to be changed to "plaintiff" three times, and the word "plaintiff" would have to be changed to "defendant" three times. Six changes in all, and that is certainly more than a typographical error. Furthermore, if the appropriate changes were then made in the Findings of Fact and in the original Stipulation, at least 18 changes would have to be made, and it is clear that we are not dealing with any kind of typographical or clerical error.

Furthermore, although plaintiff attempts to put the blame on Attorney Nolan Olsen for not carrying out her instructions, it must be noted that the plaintiff's own signature is on the Stipulation which was finally signed by the parties and their attorneys (R.15-17), and it is upon that Stipulation that the Findings of Fact, Conclusions of Law (R.23-26) and Decree of Divorce (R.20-22) were based.

It should also be noted that the divorce was obtained by plaintiff, and the Findings of Fact, Conclusions of Law and Decree of Divorce were drafted by plaintiff's own attorney, not defendant's. It is not realistic to suppose that the parties made 18 errors through oversight. The Stipulation, Findings and Decree

were drafted as they were because that was the negotiated agreement of the parties as approved by the court.

4. In paragraph 24 of the Motion to Compel plaintiff asserts that there is a "standard practice" in these matters, which standard practice in her belief would have lead to a different agreement. We do not believe that there is any standard practice in this matter, but in any event, it is the agreement of the parties as approved by the Court that is determinative, not any such standard practice. This is just another way of saying that the Decree does not conform with plaintiff's present desires and she wished now to have the Court rewrite the Decree in accordance with some theoretical "standard practice." As noted in the Land case above, this is not permissible.

5. The plaintiff claims that the Decree is "unfair" as written. (See paragraph 25 of the Motion to Compel.) This of course constitutes no basis for a modification of the Decree of Divorce as noted in the Land case, supra. It is axiomatic that a Decree of Divorce can only be modified upon a material, permanent change of circumstances, and not because the plaintiff--ten years after entry of the Decree--claims that it is unfair.

6. The plaintiff asks that the Court clarify the Decree. See paragraph 26 (R.62). As noted above, clarification of a Decree may be appropriate where the language is ambiguous, but where the language is clear, no such interpretation is permitted. If the plaintiff is using the word "clarify" in the

sense of asking the Court to enforce the order as written, then such a request is no doubt appropriate, but if the Decree is to be enforced as written, then it is defendant who has the first option to purchase the property, not the plaintiff.

CONCLUSION

It is defendant's position that the Order of the Court of October 9, 1986, denying plaintiff's Order to Show Cause is res judicata and determinative of the issues in this action, and that it precludes the Order of March 19, 1986. Even if the foregoing position is rejected, it is clear that defendant timely objected to the recommendation of Commissioner Peuler and requested a hearing and was entitled to an evidentiary hearing before Judge Dee with a court reporter present and a record kept of the proceedings. It is the position of the defendant that the Court could have denied plaintiff relief based upon the doctrine of res judicata, but before the Court could rule for the plaintiff, it would be necessary to hear evidence on all of the conflicting factual assertions. That is certainly true if the plaintiff is to be permitted to get into matters such as her "intention," her "belief," her "understanding," "typographical errors," "standard practice," "unfairness" and the like. So, at the very least, if the foregoing assertions of the plaintiff are to be entertained by the Court, defendant is entitled to put on his evidence and testimony with respect to each of those matters.

Finally, it is defendant's position that none of the aforesaid matters could appropriately be canvassed by the Court at this late date and that, had the matter been heard, the Court would be compelled as a matter of law to overrule the contentions of the plaintiff and rule in favor of the defendant in any event. We respectfully submit that this Court can and should rule against the plaintiff as a matter of law, but if defendant is in error in that belief, then at least defendant is entitled to his day in court with respect to any factual issues which the Court believes could properly be raised by the plaintiff ten years after entry of the Decree.

For the aforesaid reasons, it is the position of the defendant that the aforesaid Decree of Divorce does grant the defendant a first option, that the language of the Decree is clear and unequivocal and should be enforced as written, and that no extraneous evidence is necessary or proper.

Respectfully submitted,

Leland K. Wimmer
LELAND KENT WIMMER
GORDON A. MADSEN
ROBERT C. CUMMINGS
KIM CLEGG

CERTIFICATE OF MAILING

I certify that two copies of the foregoing Brief with Addendum were mailed to Frank R. Pignanelli, attorney for defendant/respondent, at his address, 48 Post Office Place, 3rd Floor, Salt Lake City, Utah 84101, postage prepaid, this _____ day of August, 1986.

Attorney for Defendant

ADDENDUM

Items in the Addendum are referred to by the same page numbers as in the Record and in the same order.

Contents of Addendum:

Stipulation, R.15-17.

Findings of Fact, Conclusions of Law, R.23-26.

Decree of Divorce, R.20-22.

Affidavit for Order to Show Cause, R.42-43.

Recommendation (August 23, 1983), R.51.

Verified Motion to Compel, R.57-69.

Recommendation (September 30, 1985), R.76-77.

Order, R.80.

Order, R.93-95.

Rule 8, Third District Court Rules.

LELAND K. WIMMER
Attorney for Defendant
600 Utah Savings Building
Salt Lake City, Utah 84111
Telephone: 533-0538

CLERK
Trenton D. Riddle
CLERK

Jan

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

GAYLA HATCH,	:	
plaintiff,	:	
	:	STIPULATION
-vs-	:	
	:	
MICHAEL HALL HATCH,	:	Civil No. D- 18898
defendant.	:	

Plaintiff and defendant hereby stipulate and agree together with their respective attorneys, subject to the approval of the Court, as follows:

1. Defendant hereby consents that his default be entered in this action by the court, and waives his appearance in said action, and consent that plaintiff proceed to a hearing upon her complaint in accordance with the following terms.

2. Plaintiff shall thereupon present evidence to the court in support of the allegations of her complaint on file herein. If the court deems such evidence sufficient to award to plaintiff a Decree of Divorce from defendant, then said Decree, subject to the approval of the court, shall provide as follows:

a. Plaintiff may be awarded the care, custody and control of the two minor children of the parties, to-wit: James Craig Hatch and Vanessa Kay Hatch, subject to the right of reasonable visitations by the defendant.

b. Plaintiff may be awarded the use of the home and real property located at 13227 South 2860 West, Riverton, Utah, subject to the payment of the mortgage thereon, until the occurrence of one of the following contingencies, to-wit: The remarriage of plaintiff, the youngest child reaches majority, or plaintiff desires to sell said home, at which time defendant shall have first option to purchase plaintiff's equity pursuant to an appraisal to be made forthwith to determine the equity as of this date, said appraisal to be paid for by defendant, and plaintiff shall have the option to purchase defendant's equity on the occurrence of any of the above contingencies in the

event defendant does not purchase plaintiff's equity, said equity to be based on an appraisal and determination as of the date of the occurrence of one of the above contingencies. In the event neither party exercises the option to purchase, said home would be sold and defendant would receive the equity pursuant to the Decree of Divorce and the present appraisal.

c. Plaintiff may be awarded as her sole and separate property the furniture, furnishings and fixtures, the 1970 Buick Riviera automobile and her personal belongings.

d. Defendant may be awarded as his sole and separate property the 1968 Dodge pickup and his personal belongings and the personal property in his possession and control.

e. Plaintiff shall be ordered to assume and discharge the obligation due Farm Home Administration on the mortgage on the home, and defendant shall be ordered to assume and discharge all other debts and obligations as set

R154 16

forth by the divorce Complaint, as well as any and all other debts and obligations incurred prior to filing of this divorce, by the parties during their marriage.

f. Defendant shall be ordered to pay to plaintiff the sum of \$100.00 per child per month, for the support and maintenance of the two minor children of the parties.

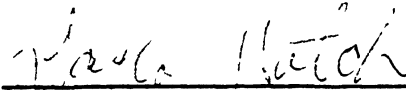
g. Defendant shall be ordered to maintain medical insurance on the minor children and maintain his present life insurance naming the minor children as beneficiaries thereon, through operation engineers so long as defendant is eligible to do so.

h. Plaintiff shall be awarded no alimony.


i. Plaintiff agrees to continue existing marriage counseling.

j. Each party shall assume and pay their own attorney fees and court costs.

DATED this 6th day of November, 1975




GAYLA HATCH, Plaintiff



NOLAN J. OLSEN,
Attorney for Plaintiff



MICHAEL HALL HATCH, Defendant



LELAND K. WIMMER,
Attorney for Defendant
Utah Savings Bldg.
Salt Lake City, Utah

000017

Nov 21 10 51 AM '75

STEWART M. HANSON, JR., CLERK
BY Trenton D. Riddle
DEPUTY CLERK



NOLAN J. OLSEN
Attorney for Plaintiff
8138 South State Street
Midvale, Utah 84047
255-7176

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

GAYLA HATCH,	:	
Plaintiff,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
-vs-	:	
MICHAEL HALL HATCH,	:	
Defendant.	:	Civil No. D-18898

The above entitled matter having come on regularly for hearing on the 21st day of November, 1975, before this court, the Honorable Stewart M. Hanson, Sr., Judge presiding, and the plaintiff having appeared in person and by her attorney, Nolan J. Olsen, and the defendant and his attorney, Leland K. Wimmer, having consented in a Stipulation dated the 6th day of November, 1975, that plaintiff may proceed to present her evidence without further notice, and the court having read and approved the Stipulation on file herein, and the plaintiff having been sworn and testified concerning the allegations of her Complaint, and the court having been fully advised in the premises, and upon motion of Nolan J. Olsen, attorney for plaintiff, the court makes the following

FINDINGS OF FACT:

1. Plaintiff and defendant were actual and bona fide residents

R 23

of Salt Lake County, State of Utah, for more than three (3) months immediately prior to the commencement of this action.

2. That the Complaint herein has been on file for more than ninety (90) days.

3. Plaintiff and defendant are wife and husband, having been married at Elko, Elko County, State of Nevada, on the 16th day of December, 1962.

4. Plaintiff and defendant have two (2) minor children as issue of this marriage, to-wit: James Craig Hatch, born May 30, 1967, and Vanessa Kay Hatch, born November 22, 1970.

5. That the aforementioned children are in the care, custody and control of the plaintiff, who as their mother is a fit and proper person to be awarded their care, custody and control, subject to the right of reasonable visitations by the defendant.

6. During the course of this marriage, the defendant has treated the plaintiff cruelly by being argumentative, by remaining away from the home of the parties for long and unreasonable times, and by various and other conduct, which has caused the plaintiff great mental anguish, physical distress and suffering.

7. It is fair and reasonable that plaintiff be awarded the use of the home and real property located at 13227 South 2860 West, Riverton, Utah, subject to the payment of the mortgage thereon, until the occurrence of one of the following contingencies, to-wit: the remarriage of plaintiff, the youngest child reaches majority, or the plaintiff desires to sell said home, at which time defendant shall have first option to purchase plaintiff's equity pursuant to an appraisal to

be made forthwith to determine the equity as of this date, said appraisal to be paid for by defendant, and plaintiff shall have the option to purchase defendant's equity on the occurrence of any of the above contingencies in the event defendant does not purchase plaintiff's equity, said equity to be based on an appraisal and determination as of the date of the occurrence of one of the above contingencies. In the event neither party exercises the option to purchase, the home shall be sold and defendant shall receive the equity pursuant to the Decree of Divorce and the present appraisal.

8. It is fair and reasonable that plaintiff be awarded as her sole and separate property the furniture, furnishings and fixtures, the 1970 Buick Riviera automobile and her personal belongings, and it is fair and reasonable that defendant be awarded as his sole and

separate property the 1968 Dodge pickup and his personal belongings and the personal property in his possession and control.

9. It is fair and reasonable that plaintiff be ordered to assume and discharge the obligation due Farm Home Administration on the mortgage on the home, and it is fair and reasonable that defendant be ordered to assume and discharge the obligations due Walker Bank and Trust Company, two accounts, \$950.00 and \$1,000.00, liens on the 1970 Buick automobile and the 1968 Dodge pickup; Sears, \$300.00; Walker Bankard, \$350.00; Alden's, \$250.00; and any and all other debts and obligations incurred by the parties during their marriage up to the date of the filing of the Complaint herein on July 18, 1975, and hold plaintiff harmless therefrom.

10. It is fair and reasonable that defendant be ordered to pay to plaintiff the sum of \$100.00 per child per month, a total of \$200.00 per month, for the support and maintenance of the two minor children of the parties.

11. It is fair and reasonable that plaintiff be awarded no alimony.

12. It is fair and reasonable that defendant be ordered to maintain medical insurance on the two minor children, and to maintain his present life insurance naming the minor children as beneficiaries thereon.

13. It is fair and reasonable that each party be ordered to assume and pay their own attorney fees and court costs.

From the foregoing Findings of Fact, the court makes the following

CONCLUSIONS OF LAW:

1. Plaintiff should be granted a Decree of Divorce on the grounds of mental cruelty.

2. Plaintiff should be awarded the care, custody and control of the two minor children of the parties, subject to the right of reasonable visitations by the defendant.

3. Plaintiff and defendant should be awarded property as set forth in the Findings of Fact above.

4. Plaintiff and defendant should be ordered to assume and discharge the debts and obligations as set forth in the Findings of Fact above.

5. Defendant should be ordered to pay to plaintiff the sum of \$100.00 per child per month, a total of \$200.00 per month, for the support and maintenance of the two minor children of the parties.

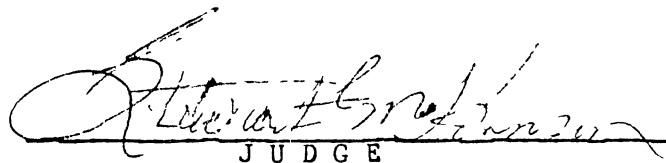
6. Plaintiff should be awarded no alimony.

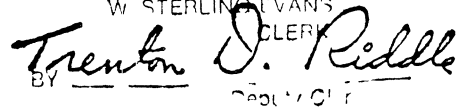
7. Defendant should be ordered to maintain medical insurance on the minor children, and to maintain his present life insurance naming the minor children as beneficiaries thereon.

8. That each party should be ordered to assume and pay their own attorney fees and court costs.

DATED this 21st day of _____, 1975.

BY THE COURT:


J U D G E

ATTEST
W. STERLING EVANS
CLERK

BY Trenton J. Riddle
Deputy Clerk

Nov 21 10 51 '75
CITY OF SALT LAKE COUNTY, U.S. CLERK
Trenton J. O. Riddle
8f-----[REDACTED]-----

R CHILDS

NOLAN J. OLSEN
Attorney for Plaintiff
8138 South State Street
Midvale, Utah 84047
255-7176

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

GAYLA HATCH,	:	
	:	
Plaintiff,	:	DECREE OF DIVORCE
	:	BK 136 NO. 948
-vs-	:	11-24-75-9.18 AM.
MICHAEL HALL HATCH,	:	
	:	Civil No. D-18898
Defendant.	:	

The above entitled matter having come on regularly for hearing on the 21st day of November, 1975, before this court, the Honorable Stewart M. Hanson, Sr., Judge presiding, and the plaintiff having appeared in person and by her attorney, Nolan J. Olsen, and the defendant and his attorney, Leland K. Wimmer, having consented in a Stipulation dated the 6th day of November, 1975, that plaintiff may proceed to present her evidence without further notice, and the court having read and approved the Stipulation on file herein, and the plaintiff having been sworn and testified concerning the allegations of her Complaint, and the court having been fully advised in the premises, and the court having heretofore made and entered its Findings of Fact and Conclusions of Law, and upon motion of Nolan J. Olsen, attorney for plaintiff,

R 20

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the bonds of matrimony heretofore existing between the plaintiff, GAYLA HATCH, and the defendant, MICHAEL HALL HATCH, be, and the same are hereby dissolved, providing, however, that the Decree shall not become final until three (3) months from the date hereof, during which time neither of the parties hereto shall remarry, which Decree will become final without further notice or proceedings, unless either of the parties hereto or the court on its own motion shall

institute further proceedings herein.

2. Plaintiff be, and she is hereby awarded the care, custody and control of the two (2) minor children of the parties, to-wit: James Craig Hatch, born May 30, 1967, and Vanessa Kay Hatch, born November 22, 1970, subject to the right of reasonable visitations by the defendant.

3. Defendant be, and he is hereby ordered to pay to plaintiff the sum of \$100.00 per child per month, a total of \$200.00 per month, for the support and maintenance of the two (2) minor children of the parties.

4. Plaintiff be, and she is hereby awarded no alimony.

5. Plaintiff be, and she is hereby awarded the use of the home and real property located at 13227 South 2860 West, Riverton, Utah, subject to the payment of the mortgage thereon, until the occurrence of one of the following contingencies, to-wit: the remarriage of plaintiff, the youngest child reaches majority, or the plaintiff desires to sell said home, at which time defendant shall have first option to purchase plaintiff's equity pursuant to an appraisal to be made forthwith to

R 20 + 21

determine the equity as of this date, said appraisal to be paid for by defendant, and plaintiff shall have the option to purchase defendant's equity on the occurrence of any of the above contingencies in the event defendant does not purchase plaintiff's equity, said equity to be based on an appraisal and determination as of the date of the occurrence of one of the above contingencies. In the event neither party exercises the option to purchase, the home shall be sold and defendant shall receive the equity pursuant to the Decree of Divorce and the present appraisal.

6. Plaintiff be, and she is hereby awarded as her sole and separate property the furniture, furnishings and fixtures, the 1970 Buick Riviera automobile and her personal belongings, and defendant be, and he is hereby awarded as his sole and separate property the 1968 Dodge pickup and his personal belongings and the personal property in his possession and control.

7. Plaintiff be, and she is hereby ordered to assume and discharge the obligation due Farm Home Administration on the mortgage on the home, and defendant be, and he is hereby ordered to assume and

discharge the obligations due Walker Bank and Trust Company, two accounts, \$950.00 and \$1,000.00, liens on the 1970 Buick automobile and the 1968 Dodge pickup; Sears, \$300.00; Walker Bankard, \$350.00; Alden's, \$250.00; and any and all other debts and obligations incurred by the parties during their marriage up to the date of the filing of the Complaint herein on July 18, 1975, and hold plaintiff harmless therefrom.

8. Defendant be, and he is hereby ordered to maintain medical insurance on the two minor children, and to maintain his present life insurance naming the minor children as beneficiaries thereon.

9. Plaintiff and defendant be, and they are each ordered to assume and pay their own attorney fees and court costs.

DATED this 21st day of January, 1975.

BY THE COURT:

J U D G E

ATTEST
W. STERLING EVANS
CLERK
Trenton D. Riddle
BY _____
County Clerk.

R 22

FILED

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SALT LAKE COUNTY, UTAH

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W. DIANE HINDLEY CLERK
3rd DIST. COURT

[Signature]
DEPUTY CLERK

NOLAN J. OLSEN
Utah State Bar No. 2464
OLSEN & OLSEN
Attorneys for Plaintiff
8138 South State Street
Midvale, Utah 84047
Telephone: 255-7176

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

GAYLA HATCH (ANDERSON),)	
Plaintiff,)	AFFIDAVIT FOR ORDER TO SHOW CAUSE
)	
vs.)	
)	Civil No. D-18898
MICHAEL HALL HATCH,)	
Defendant.)	Judge

STATE OF UTAH)
 : ss
County of Salt Lake)

GAYLA HATCH (ANDERSON), being first duly sworn, deposes and says:

1. That she is the plaintiff in the above entitled action.
2. That she was granted a Decree of Divorce on November 21, 1975.
3. That pursuant to said Decree of Divorce, paragraph 7, defendant was awarded an equitable interest in said home, said sum being the sum of \$8,408.89 together with one-half ($\frac{1}{2}$) of the value of water stock which value is the sum of \$112.50, a total being \$8,521.39.
4. That plaintiff on or about April 7, 1984, made arrangements for a loan to pay said sum, however, defendant failed and refused to sign a Quit Claim Deed and receive his money.
5. That on October 1984, plaintiff had her attorney remit to defendant, a letter requesting a closing and defendant failed and refused to provide notice to plaintiff's counsel agreeing to said closing.

6. That it has been necessary for plaintiff to employ counsel in bringing this action.

WHEREFORE, plaintiff prays that an Order to Show Cause be made and entered by the Court requiring plaintiff to show cause, if any he may have:

1. Why he should not execute a Quit Claim Deed on the property located at 13227 South 2860 West, Riverton, Utah, and place said Quit Claim Deed in escrow and accept the sum of \$8,529.39 as his equity in the home and real property pursuant to the Divorce Decree.

2. Why plaintiff should not be granted judgment against the defendant for reasonable attorney's fees for the use and benefit of plaintiff's counsel herein.

DATED this 9 day of APRIL, 1985.

Gayla Hatch Anderson
GAYLA HATCH (ANDERSON)

SUBSCRIBED AND SWORN TO BEFORE me this 9th day of APRIL, 1985.

Notary Public
NOTARY PUBLIC

My Commission Expires:

May 7, 1985

Residing at: Salt Lake City - Utah

County of Salt Lake - State of Utah

FILE NO. D-18878

TITLE: (✓ PARTIES PRESENT)

COUNSEL: (✓ COUNSEL PRESENT)

Sayla Hatch

F. Pignarello

VS

Michael Hall Hatch

L. Wimmer

CLERK

HON. Comm Peuler

JUDGE

REPORTER

DATE: 8-23-85

BAILIFF

Plaintiff's order to show cause having been argued, the commissioner recommends as follows: that plaintiff's order to show cause be denied, as no evidence was presented to show that defendant failed to exercise his option.

Counsel should advise if a special setting is necessary

Dandra Peuler

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Sent Counsel 8/26/85

PAGE ____ OF ____

Frank R. Pignanelli (4392)
GUSTIN, ADAMS, KASTING & LIAPIS
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Third Floor, New York Building
48 Post Office Place
Salt Lake City, Utah 84101
Telephone: (801) 532-6996

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

SEP 23 1985
Mancey Everett
CLERK

IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----oo0oo-----

GAYLA HATCH (ANDERSON),	:	VERIFIED MOTION TO COMPEL
	:	DEFENDANT TO EXECUTE
Plaintiff,	:	QUIT-CLAIM DEED AND REQUESTING
	:	CLARIFICATION OF DECREE
v.	:	
	:	
MICHAEL HALL HATCH,	:	Civil No. D-18898
	:	
Defendant.	:	Judge

-----oo0oo-----

COMES NOW the Plaintiff Gayla Hatch Anderson, by and through the undersigned counsel of Gustin, Adams, Kasting & Liapis, and hereby moves this Court for an Order compelling Defendant to execute a Quit-Claim Deed on the property located at 13227 South 2860 West, Riverton, Utah, and accept the sum of \$8,529.39 as his equity in the home and real property pursuant to the Decree of Divorce entered in the above-entitled matter and, further, for an Order from this Court clarifying and determining the present and future rights of Plaintiff and Defendant in regards to the above-described property.

This Motion is based upon, but not limited to, the following:

1. Plaintiff was granted a Decree of Divorce on November 21, 1975.

2. Prior to the Default Hearing on November 21, 1975, Plaintiff and Defendant entered into an Agreement and Stipulation which provided for, among other things, how the parties' marital residence was to be disposed of and provided for in an equitable fashion.

3. The Plaintiff's former counsel, Nolan J. Olsen, prepared a Stipulation (attached as Exhibit "A," incorporated by reference herein), and in accordance to Plaintiff's instructions, said Stipulation, provided that Plaintiff would have the first option to purchase Defendant's equity in the parties' marital residence in the event the established contingencies were to occur.

4. The Plaintiff, never waived from her instructions to her previous counsel that the above-described disposition of the home should be set forth in the Decree of Divorce.

5. The Plaintiff, on the instructions of her previous counsel, Nolan J. Olsen, signed a Stipulation which was eventually entered and filed with this Court, and Plaintiff was never notified that said Stipulation contained language which varied from her above-described intent and understanding as to the disposition of the parties' marital residence.

6. That the language contained in paragraph 5 of the Decree of Divorce entered by this Court on November 21, 1975, did not accurately reflect Plaintiff's intent and understanding as to the

disposition of the parties' marital residence pursuant to the Agreement and Stipulation Plaintiff and Defendant entered into.

7. That it is Plaintiff's understanding that she was to have the first option to purchase Defendant's equity as of the date of the Decree of Divorce, and that Defendant would have the option to purchase Plaintiff's equity in the event that Plaintiff did not purchase Defendant's equity on the occurrence of the described contingencies.

8. That it is Plaintiff's belief and understanding that it is standard practice that the party who assumes the mortgage and continues to live in the marital residence has the first option to buy out the other party in the event of one of the contingencies to occur, and it was this standard practice that Plaintiff wished to have incorporated into the Decree of Divorce on November 21, 1975.

9. That Plaintiff, in accordance with her understanding of paragraph 5 of the Decree of Divorce, arranged for an appraisal of said home around the date that said Decree was entered, and said appraisal appraised Defendant's equity as of November, 1975, to be \$8,408.49.

10. That based upon the circumstances surrounding the preparation of the final Stipulation and final Decree of Divorce, it is the belief of Plaintiff that paragraph 5 in the Decree of Divorce contains several typographical errors which transpose Defendant and Plaintiff, thus creating the now confusing result.

11. Paragraph 5 of the Decree of Divorce, as it now reads, provides that Plaintiff is awarded the use of the parties' marital residence until she desires to sell the said home, at which time the Defendant will have the first option to purchase Plaintiff's equity pursuant to an appraisal made as of the date of the Decree of Divorce.

12. That Plaintiff, on February 2, 1981, and again on August 10, 1981, listed the said property to be put on the market for sale (as evidenced by Exhibit "B," incorporated by reference herein), and Plaintiff advised the Defendant of such listings.

13. That Defendant, upon being advised of Plaintiff's listing of the parties' marital residence, did not attempt to exercise the above-described option to purchase Plaintiff's equity.

14. That it is Plaintiff's belief that because of Defendant's failure to exercise his option under paragraph 5 of the Decree of Divorce, he has hereby waived the same.

15. That Plaintiff, on March 26, 1984, married Terry Anderson, and notified the Defendant of her marriage to Mr. Anderson.

16. That paragraph 5 of the above-described Decree of Divorce, provides that upon the remarriage of Plaintiff, Defendant shall have the first option to purchase Plaintiff's equity pursuant to the appraisal made as of the date of the entry

of the Decree of Divorce, and Plaintiff shall have the option to purchase Defendant's equity if the Defendant fails to do so.

17. That it is the belief and understanding of Plaintiff, that Defendant, having been notified of Plaintiff's marriage to Mr. Anderson, has failed to exercise his option to purchase her equity in said home, and has hereby waived the same.

18. That pursuant to said Decree of Divorce, Defendant was awarded an equitable interest in said home, said sum being the sum of \$8,408.89, together with one-half of the value of water stock, which value is the sum of \$112.50, for a total of \$8,521.39.

19. Plaintiff, on or about April 7, 1984, and Defendant having waived his option on three separate occasions to purchase Plaintiff's equity, made arrangements for a loan to pay Defendant's equity and water stock value; however, Defendant failed and refused to sign a Quit-Claim Deed and receive his money.

20. That on several occasions, Plaintiff has requested Defendant to cooperate in the accepting of the loan, and assigning of the Quit-Claim Deed, pursuant to paragraph 5 of the Decree of Divorce.

21. Defendant has failed and refused to comply with the above-described terms and conditions of the Decree of Divorce.

22. At paragraph 5 of the Decree of Divorce, it states that value of the equity to be purchased by either party will be based

upon an appraisal to be made "forthwith to determine the equity as of this date"

23. That paragraph 5 of the Decree of Divorce states farther on that the equity is to be based on an appraisal and determination "as of the date of the occurrence of one of the above contingencies."

24. That it is the belief and understanding of Plaintiff, that it is a standard practice that an appraisal is to be conducted at the time the Decree of Divorce is entered, if one of the parties is to assume the mortgage and continues to reside in the residence, and Plaintiff desired that said practice would be incorporated in the Decree of Divorce.

25. That it is the belief and understanding of Plaintiff that it would be unfair to the latter interpretation of the valuation of the equity to occur in that in the last ten years since the parties' divorce, she has maintained all the mortgage payments, property taxes, insurance premiums, all house improvement expenses, and to award Plaintiff one-half of this valuation is both grossly unfair and does not reflect what the parties intended at the time of the divorce.

26. The Plaintiff desires of this Court a clarification and determination as to the equity valuation contained in paragraph 5 of the Decree of Divorce.

27. That Plaintiff has been required to employ counsel in the bringing of this action, and that costs and attorneys' fees

in the maintenance of this action should be awarded to her in the form of a judgment against Defendant.

WHEREFORE, Plaintiff respectfully moves the Court:

1. For an Order requiring Defendant to execute a Quit-Claim Deed on the property located at 13227 South 2860 West, Riverton, Utah, and to accept the sum of \$8,529.39 as his equity in the home and real property pursuant to the above-described Decree of Divorce.

2. For an Order from this Court clarifying and determining the rights of the parties in regards to the option requirements as to the disposition of the parties' marital residence, and as to the date of when an appraisal must have been conducted to value the parties' equity at the time of the Decree of Divorce.

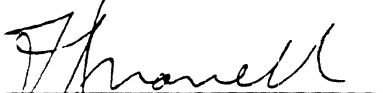
3. For an Order granting judgment against the Defendant for reasonable attorneys' fees and costs incurred in the maintenance of this action.

4. For such proper and other relief necessary under the circumstances.

DATED this 23 day of September, 1985.

GUSTIN, ADAMS, KASTING & LIAPIS

By



Frank R. Pignanelli

State of Utah)
 : ss.
County of Salt Lake)

Gayla Hatch Anderson, being first duly sworn under oath,
deposes and says:

That she is the Plaintiff in the above-entitled matter and
has read the foregoing Verified Motion to Compel Defendant to
Execute Quit-Claim Deed and Requesting Clarification of Decree
and knows the contents thereof and that the same is true of
Plaintiff's own knowledge except as to those matters stated upon
information and belief, and, as to those matters, Plaintiff
believes them to be true.

Gayla Hatch Anderson
GAYLA HATCH ANDERSON

SUBSCRIBED AND SWORN to before me this 23rd day of September,
1985.

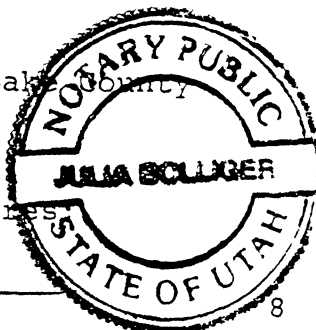
Julia Bolliger

Notary Public

Residing at Salt Lake County

My commission expires

9/6/88



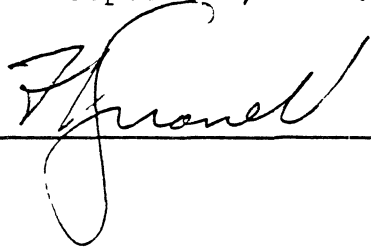
1264

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Plaintiff's Verified Motion to Compel Defendant to Execute Quit-Claim Deed and Request for Clarification of Decree ^{Hand-delivered} was ~~duly mailed by placing the same in the United States Mails, postage prepaid,~~ at Salt Lake City, Utah, addressed to:

Leyland K. Wimmer, Esq.
Attorney at Law
604 Judge Building
Salt Lake City, Utah 84111

DATED this 23 day of September, 1985.



NOLAN J. OLSEN
Attorney for Plaintiff
8138 South State Street
Midvale, Utah 84047
255-7176

EXHIBIT "A"

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

GAYLA HATCH,	:	
	:	
Plaintiff,	:	S T I P U L A T I O N
	:	
-vs-	:	
	:	
MICHAEL HALL HATCH,	:	
	:	
Defendant.	:	Civil No. D-18898

It is hereby stipulated and agreed by and between plaintiff and defendant personally and their respective counsel as follows:

1. Defendant hereby consents that his default be entered in this action by the court, and waives his appearance in said action. Defendant further waives the ninety (90) day waiting period and the three (3) month interlocutory period following the granting of the Decree herein.
2. Plaintiff shall thereupon present evidence to the court in support of the allegations of her Complaint on file herein. If the court deems such evidence sufficient to award to plaintiff a Decree of Divorce from defendant, then said Decree, subject to the approval of the court, shall provide as follows:
 - a. Plaintiff may be awarded the care, custody and control of the two minor children of the parties, to-wit: James Craig Hatch and Vanessa Kay Hatch, subject to the right of reasonable visitations by the defendant.

R 66

b. Plaintiff may be awarded the use of the home and real property located at 13227 South 2860 West, Riverton, Utah, subject to the payment of the mortgage thereon, until the occurrence of one of the following contingencies: to-wit: the remarriage of plaintiff, the youngest child reaches majority, or plaintiff desires to sell said home, at which time plaintiff shall have first option to purchase defendant's equity pursuant to an appraisal to be made forthwith to determine the equity as of this date, said appraisal to

be paid for by defendant, and defendant shall have the option to purchase plaintiff's equity on the occurrence of any of the above contingencies in the event plaintiff does not purchase defendant's equity, said equity to be based on an appraisal and determination as of the date of the occurrence of one of the above contingencies. In the event neither party exercises the option to purchase, said home would be sold and defendant would receive the equity pursuant to the Decree of Divorce and the present appraisal.

c. Plaintiff may be awarded as her sole and separate property the furniture, furnishings and fixtures, the 1970 Buick Riviera automobile and her personal belongings.

d. Defendant may be awarded as his sole and separate property the 1968 Dodge pickup and his personal belongings.

e. Plaintiff shall be ordered to assume and discharge the obligation due Farmers Administration on the mortgage on the home, and defendant shall be ordered to assume and discharge all other debts and obligations as set forth by the divorce Complaint, as well as any and all other debts and obligations incurred by the parties during their marriage and hold plaintiff harmless therefrom.

f. Defendant shall be ordered to pay to plaintiff the sum of \$150.00 per child per month, a total of \$300.00 per month, for the support and maintenance of the two minor children of the parties.

g. Plaintiff shall be awarded no alimony.

h. Defendant shall be ordered to maintain medical insurance on the minor children and maintain his present life insurance naming the minor children as beneficiaries thereon.

i. Defendant shall be ordered to pay \$350.00 additional attorney fees to plaintiff's counsel herein.

DATED this _____ day of _____, 1975.

GAYLA HATCH, Plaintiff

NOLAN J. OLSEN, Attorney for Plaintiff

MICHAEL HALL HATCH, Defendant

LELAND K. WINNER, Attorney for Defendant
Utah Savings Bldg., Salt Lake City, Utah

EXHIBIT "B"

SALT LAKE BOARD OF REALTORS—MULTIPLE LISTING SERVICE
ALL changes MUST be reported within 48 HOURS by LISTING OFFICE or subject to fine.

Prop. Address 13227⁸⁶ 2900 W Card # 34544 I.D.# 564

Reported By Dennis

COMPLETE APPLICABLE SECTION ONLY:

STATUS (Check One Box ONLY):

(Non-Sale) W ☐ Date _____

Copy Attached

MISCELLANEOUS CHANGES

Change _____ From _____ To _____

Remarks: _____

Salt Lake Change Form - 7 (New 11-80) III

# 00, POU # 34574		#Add. 13227 S. 2100 West	
#Bel. 10, 00 @ 1.5%		Retain Last Copy - Submit Remaining Copies To: SALT LAKE BOARD OF REALTORS	
Pmt. \$ 100. T.I. V		(See Map) RESIDENTIAL FORM	
FHA	VA	CV	CT
To			
Tx. Max DS %		#OMR Last Date	
Ref. Eq. NAC		#CND Exp. Date	
Other		#OMC	
Salt Lake Residential Form-1 (Revised 9-80) VI			
Lot X		City S	
Owner Ph. St. Loc. Age		Tenant Ph. Show: Anytm. Appt. KB	
#BR M U D KBI	Cpts.	Patio	Sewer
#BA M U D Rec.Rm.	Dps.	Ldsp.	S/W Crb.
LR X G Fr.Plc.	A/C	Sp.Sys.	Wtr. M I
Dng. F K C/P Ldry.	Heat	Fence	Bsmt. F %
Type Const. Style		Rea.Sale Poss.	
#Area		Remarks:	
LS n Ph. Est. Sq.Ft. M U D			
Sch: E 2J H			

1268

EXHIBIT "B"

SALT LAKE BOARD OF REALTORS – MULTIPLE LISTING SERVICE

ALL changes MUST be reported within 48 HOURS by LISTING OFFICE or subject to fine

Prop Address 13227 S. 2900 W Card# 5146 ID # 242
 Company RW-Mansell Date Reported 9-22-81
 Reported By Frank Mansell

COMPLETE APPLICABLE SECTION ONLY:

STATUS (Check ONE Box ONLY):

(Time Clause) T C. ☐ Date _____ (Sold) S ☐
 (Reinstate) A ☐ Date _____ (FILL IN ALL INFORMATION)
 (Under Contract) U ☐ Date _____ Date _____
 (All Closing Information) S ☐ Date _____ Price \$ 58,200
 (Non Sale, Copy Attached) W ☐ Date _____ Loan Type _____
 Selling Office I D # 241981

MISCELLANEOUS CHANGES

ITEM	OLD	NEW
Change <u>LS</u>	From <u>13227 S. 2900 W</u>	To <u>13227 S. 2900 W</u>
Change <u>13227 S. 2900 W</u>	From <u>13227 S. 2900 W</u>	To <u>13227 S. 2900 W</u>
Change _____	From _____	To _____

Remarks _____

S

Ut Lake Change Form – 7 (Revised 3 81) III

10-Aug-81 00242 10-Feb-82

#50979 Add 13227 S 2900 WEST \$58,200

R9 Loc SW 13227 2900 City RIVERTON S Per

Est Sq Ft	BR	BA	FP	Extr	BR	Heat	G	Fnc	P	Type	RES	Age	9
M 1134	3	FH	0	Style	RAM	A/C	V	Ldsp	F	Sewer	S	W	
U	0	0	0	LR	18X13	Rec		Spsy	Wtr	M, I	Crby	Y	
D 1134	0	0	0	Dng	K	Ldry	D	Cpt	F	Bsmt	F	F	20 %
I 2268	3	2	0	Grg	CP	Pat	1	Wcv	F	Zoning	R-R-2-2		

Incl GRD, HRP, HOR, RNG, VW

Remarks SOME DRAPES EXEMPT SELLERS WORK # 350-71
 50 HORSE PROPERTY HOUSE SPOTLESS NEIGHBORHOOD
 COMPARABLE AND BETTER ALL BRICK BEST BUY

App GAYLA HATCH Ph 254-3037 Show E62
 Ls TAN FRIEALIX Ph 485-8665 Poss ARRANGE J280
 Lo RW MANSSELL Ph 487-5611 SOC 3% H283

Terms CV, FHA, VA, CS, OF 6.5 POINTS FHA OK

Bal \$ 14,950 FIX
 Pmt \$125 PITIM
 Ln Type (ITH @ 7.250 %
 To FARM HOME
 Taxes \$475
 Fee \$
 Lot 100X3/4ACRE
 Acres .75
 #50979

Sold \$	Date
Trms	ID

Salt Lake - Residential Form 1 Res 5-81

1269

FILE NO. D-18898

TITLE: (✓ PARTIES PRESENT)

COUNSEL: (✓ COUNSEL PRESENT)

Sayla Hatch

: F. Pignanelli

vs

: L. Wimmer

Michael Hall Hatch

: G. Madsen

CLERK

HON. Comm Peuler

JUDC

REPORTER

DATE: 9-30-85

BAILIFF

Plaintiff's order to show cause (having been) argued, the commissioner now recommends as follows:

That the intent of the decree, as evidenced by the stipulation, was that defendant was to receive the 1/2 share of his equity based upon the amount of equity existing at the time of the decree. He was to receive that amount either at such time as plaintiff exercised an option to purchase his equity, or upon the occurrence of one of the contingencies listed. If defendant purchased plaintiff's share of equity, her equity was to be determined as of the date of the contingency.

That the prior recommendation is

000075

Sent Counsel 10/1/85

PAGE ____ OF ____

County of Salt Lake - State of Utah

FILE NO. _____

TITLE: (✓ PARTIES PRESENT)

COUNSEL: (✓ COUNSEL PRESENT)

:

:

:

:

:

CLERK

HON. _____ JUDGE

REPORTER

DATE: _____

BAILIFF

affirmed.

Counsel should advise if a special
setting is necessary with Judge Dee.

Gandra Deuler

LELAND K. WIMMER
Attorney for Defendant
604 Judge Building
Salt Lake City, Utah 84111
Telephone: 533-0538

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

OCT 9 1985

H. DIXON, Clerk of the Court
By Bradwell

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

GAYLA HATCH,
 plaintiff,

-vs-

MICHAEL HALL HATCH,
 defendant.

ORDER UPON HEARING OF
PLAINTIFF'S ORDER TO SHOW
CAUSE

Civil No. 18898

Plaintiff's Order to Show Cause came on for hearing before the
Honorable Sandra Peuler, Commissioner on the 9th day of May A.D. 1985.
Parties were present and represented by each of their respective attorneys
of record. After arguments of counsel and review of the file the Court
being fully advised in the matter now on motion of Leland K. Wimmer it is
hereby ordered that the relief requested by plaintiff's Order to Show
Cause be denied.

DATED this 9 day of Oct 1985.

By the Court,

Recommended Sandra Peuler
Sandra Peuler, Commissioner

David M. Dee
District Judge

ATTEST
H. DIXON, Clerk

Mailing Certificate

I hereby certify that I mailed a true and correct copy of the foregoing -

Order Upon Hearing of Plaintiff's Order to Show Cause to Gayla Hatch a/k/a

Gayla Hatch Anderson at 13227 South 2860 West, Riverton, Utah 84065.

Leland K. Wimmer

FILMED

FILED IN CLERK'S OFFICE
Salt Lake County Utah

MAR 19 1986

H Dixon, Clerk, Chgo. Dist. Court
By [Signature] Deputy Clerk

FRANK R. PIGNANELLI (4392)
GUSTIN, ADAMS, KASTING & LIAPIS
Attorneys for Plaintiff
Third Floor, New York Building
48 Post Office Place
Salt Lake City, Utah 84101
Telephone: (801) 532-6996

IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----oo0oo-----

GAYLA HATCH ANDERSON,	:	
	:	O R D E R
Plaintiff,	:	
	:	
v.	:	
	:	
MICHAEL HALL HATCH,	:	Civil No. D-18898
	:	
Defendant.	:	Judge Dee

-----oo0oo-----

Defendant's Objection to Commissioner Sandra Peuler's
September 30, 1985, Memorandum Decision in the above-entitled
matter having come on regularly for hearing on November 6, 1985,
at 9:00 a.m., before the Honorable David B. Dee, one of the
Judges of the above-entitled Court, and Plaintiff appearing in
person and by and through her counsel, and Defendant having
appeared in person by and through his counsel, and the Court
having heard argument from counsel, and the Court being further
advised on the premises and upon the Motion of Frank R.
Pignanelli of GUSTIN, ADAMS, KASTING & LIAPIS, attorneys for
Plaintiff;

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
FOLLOWS:

1. That the intent of the Decree of Divorce entered by this Court on November 21, 1975, as evidenced by the Stipulation, is that the Defendant is to receive the one-half share of his equity based upon the amount of equity existing at the time of the Decree.


2. That the Defendant is to receive his share of the equity in the parties marital residence at such time as the Plaintiff exercises the option to purchase Defendant's share of the equity, or upon the occurrence of one of the contingencies listed in Paragraph 5 of the Decree of Divorce.

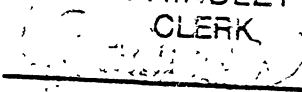
3. That if Defendant purchases Plaintiff's share of equity in the parties marital residence, Plaintiff's equity is to be determined as of the date of the occurrence of the listed contingency in paragraph 5 of the Decree of Divorce.

4. That the Recommendations contained in Commissioner Peuler's September 30, 1985, Memorandum Decision in the above-entitled matter are affirmed.

DATED this 19 day of ^{March}~~February~~, 1986.

BY THE COURT:


DAVID B. DEE
District Court Judge

H. DIXON HINDLEY
CLERK
By 
Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Order was duly mailed by placing the same in the United States Mails, postage prepaid, at Salt Lake City, Utah, addressed to:

Leland K. Wimmer, Esq.
604 Judge Building
Salt Lake City, Utah 84111

DATED this _____ day of February, 1986.

or parties obtaining the ruling shall within fifteen (15) days or such shorter time as the court may direct, file with the court a proposed order, judgment or decree in conformity with the ruling.

(b) Copies of the proposed order, judgment or decree in civil and domestic cases shall be served on opposing counsel before being presented to the court for signature unless approved as to form by opposing counsel, or the court otherwise orders. Notice of objections thereto shall be filed with the court and served on opposing counsel no later than five (5) days after service of said proposed order, judgment or decree.

(c) Stipulated settlements and dismissals shall be reduced to writing and presented to the court for signature within fifteen (15) days of the settlement and dismissal.

(d) Default judgments:

Default judgments which require a judge's signature shall be submitted to the judge assigned to the case. Default judgments which include an award of attorney's fees shall be supported by an attorney's fee affidavit which sets forth: (1) the legal basis for the award of the attorney's fees requested; (2) the amount requested; and (3) evidence that the amount requested constitutes a fair and reasonable fee for the services performed.

RULE 5. PRETRIAL CALENDAR.

This rule modifies Rule 5.1 of the Rules of Practice of the District Courts and Circuit Courts of the State of Utah.

(a) Pretrial hearings in civil cases will be held when so ordered by the court. Pretrial hearings will be held before the judge who has been assigned the case. Motions for pretrial hearings may be filed at any time. Such motions shall set forth with particularity why a pretrial hearing is requested. The Court may order in any case that such motions must be accompanied by a proposed pre-trial order in the format set out in the Rules of Practice of the District and Circuit Courts of the State of Utah; or that such a pretrial order be prepared before a final settlement conference or trial date is set.

RULE 6. JURY TRIALS - CIVIL.

Rule 4.2 of the Rules of Practice in the District Courts and Circuit Courts of the State of Utah shall not apply in the Third Judicial District Court.

(a) Cases will be set for jury trial only upon the filing of a written demand for jury trial and the payment of the required statutory fee deposited with the clerk of court within the time provided herein. Such written demand for jury trial and the payment of the required statutory fee must be filed no later than ten (10) days prior to trial or at such other time as the trial judge may order. The court may in its discretion, upon motion, order a trial by jury of any or all issues.

RULE 7. MOTIONS FOR SUPPLEMENTAL PROCEEDINGS.

Motions for supplemental proceedings will be set on the regular weekly supplemental proceedings calendar before a clerk of the court. Counsel may alternatively schedule the matter to be heard before the judge assigned to the case on the assigned judge's regular law and motion calendar.

RULE 8. DOMESTIC RELATIONS COMMISSIONER.

(a) A Domestic Relations Commissioner may be appointed for the purpose of assisting the court in domestic relations matters as directed by the court.

(b) All domestic relations matters, including orders to show cause, pretrial conferences, petitions for modification of a divorce decree, scheduling conferences, and all other applications for relief, except ex parte motions, shall be referred to the Domestic Relations Commissioner before any hearing may be scheduled before the assigned District Court Judge, unless otherwise ordered by the assigned judge.

(c) The Commissioner shall, after hearing any motion or other application for relief, recommend entry of an order thereon, and shall further make a written recommendation as to each matter heard. Should the parties not consent to the recommended order, the matter shall be referred for further disposition by the assigned judge.

(d) Any party objecting to the recommended order or seeking further hearing before the assigned judge shall, within five (5) days of the entry of the Commissioner's recommendations provide notice to the Commissioner's office and opposing counsel that the recommended order is not acceptable or that further hearing is desired. The Commissioner shall then refer the matter to the assigned judge for further hearing, conference or trial. If no objection or request for further hearing is made within five (5) days, said party shall be deemed to have consented to entry of an order in conformance with the Commissioner's recommendation.

(e) All recommendations of the Commissioner accepted by the parties shall be presented to the court and opposing counsel pursuant to Rule 4 of these Rules. All proposed judgments, orders and decrees must be approved as to form by the signature of the Commissioner before presentation to the assigned judge in the case.

(f) Any party obtaining a temporary restraining order or other temporary order pending a hearing shall be responsible for obtaining from the assigned judge any extension thereof before the expiration date as may be necessary pending hearing before the Commissioner of the assigned judge.

RULE 9. PROBATE.

(a) The probate calendar will be assigned to a District Court Judge in Salt Lake County on a rotating assignment basis each January and July 1.

(b) Pursuant to Utah Uniform Probate Code, Sections 75-1-201 and 75-1-307, the judge assigned to the probate division of the Third Judicial District Court is appointed registrar to act in that capacity as required.

(c) The probate clerk pursuant to Section 75-1-401, Utah Uniform Probate Code is granted authority to order and schedule dates for hearing and to prepare the probate calendar of matters to be heard by the judge assigned to the probate division of the court.

(d) Pursuant to Sections 75-1-102(1) and 75-1-102(2) Utah Uniform Probate Code, the probate clerk is authorized to use the signature stamp of the assigned probate judge on informal matters presented to the court for handling.

RULE 10. ADOPTIONS.

(a) The adoption calendar will be assigned to a District Court Judge in Salt Lake County on a rotating assignment basis each January and July 1.

(b) Pursuant to Section 78-30-14, Utah Code Annotated, 1953 as amended, pertaining to a request by the court for the Division of Family Services to verify the petition and conduct an investigation in adoptions, the petitioners shall, sixty