

1986

# Jolene Hatch v. Scott Hatch : Brief of Appellant

Utah Court of Appeals

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Clint S. Judkins; Attorney for Plaintiff-Respondent.

Dale M. Dorius; Attorney for Defendant-Appellant.

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## Recommended Citation

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BRIEF

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DOCKET NO. 860271-CA

IN THE UTAH STATE COURT OF APPEALS

JOLENE HATCH,

Plaintiff,

vs.

SCOTT HATCH,

Defendant.

)

)

)

)

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Case No. 860271-CA

13B

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DEFENDANT-APPELLANT'S BRIEF

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Appeal from order and judgment of the Honorable OMER J. CALL, District Judge in the First Judicial District Court of Box Elder County, judgment entered on October 16, 1986.

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Appellant

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COURT OF APPEALS

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POINT ONE

THE TRIAL COURT ERRED IN NOT RULING ON A MAJOR ISSUE OF THE TRIAL, NAMELY THE CHILD SUPPORT ISSUE. AMPLE EVIDENCE OF A SUBSTANTIAL CHANGE IN CIRCUMSTANCES WAS PRESENTED AND THE TRIAL COURT SHOULD HAVE APPORTIONED SOME OF THE CHILD SUPPORT TO THE RESPONDENT.

POINT TWO

THE TRIAL COURT ERRED IN NOT GRANTING APPELLANT A BIGGER OFFSET FOR RESPONDENT'S GROSSLY NEGLIGENT OR INTENTIONAL DAMAGE TO APPELLANT'S HOME FOLLOWING THE DIVORCE DECREE. THE GREAT WEIGHT OF EVIDENCE POINTS TO MUCH MORE IN DAMAGES THAN THE TRIAL COURT FOUND. EVIDENCE ALSO DICTATES A BIGGER OFFSET FOR DEBTS PAID BY APPELLANT FOR THE BENEFIT OF RESPONDENT.

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## STATEMENT OF ISSUES

### I.

DID THE TRIAL COURT ERR IN FAILING TO RULE ON THE CHILD SUPPORT ISSUE? SHOULD THE COURT HAVE APPORTIONED CHILD SUPPORT BETWEEN APPELLANT AND RESPONDENT, WHOSE EARNINGS HAVE ALMOST DOUBLED SINCE THE DECREE AND WHO NOW EARNS THREE-FOURTHS AS MUCH AS APPELLANT?

### II.

DID THE TRIAL COURT ERR IN FAILING TO AWARD APPELLANT A BIGGER OFFSET IN RESPONSE TO DAMAGE RESPONDENT NEGLIGENTLY OR INENTIONALLY CAUSED TO APPELLANT'S HOUSE AND DEBTS APPELLANT PAID FOR THE BENEFIT OF RESPONDENT? DOES THE GREAT WEIGHT OF EVIDENCE SUBSTANTIATE A BIGGER OFFSET?

## STATEMENT OF FACTS

### I. FACTS CONCERNING CHILD SUPPORT

Appellant Scott Hatch was divorced from Respondent Jolene Hatch on November 28, 1984. The divorce decree gave Appellant custody of the two minor children for the nine-month school year and Respondent custody for the summer (T. 58). Appellant was ordered to financially support the children during the nine months he has custody and pay \$300.00 per month during the summer when Respondent has custody. Respondent was not ordered to pay any child support (T. 62).

At the time of the decree, Respondent was only working part time at Eagles and earning \$4.00 per hour, plus tips, for \$654 per month (T. 115-116 and Memorandum Decision October 2, 1986, page 2). At the present time, she is still working the same amount at Eagles. In addition, she works at Kings for \$3.35 per hour during the winter for an additional \$617.00 per month, based on a 4.3 week month, as the Uniform Child Support Schedule is calculated. This is a total of \$1,271.00 per month in the winter (T. 116). In the summer, she works at Eagles for \$654.00 per month and on construction for \$750.00 per month for a total of \$1,404.00 per month (T. 115). Thus, since the divorce decree, her earnings have doubled.

Since the divorce decree, Appellant's earnings have risen from \$11.44 per hour or \$1,400.00 per month (Memorandum Decision, October 2, 1986, page 2) to \$12.27 per hour for a

urrent monthly total of \$1,962.00 (T. 76-77). Thus, Respondent arns three-fourths as much as Appellant now.

Under the Uniform Child Support Schedule (Attachment 1), according to her earnings, Respondent should pay \$232.00 child support per month in the summer, \$202.00 in the winter. Appellant should pay \$318.00 per month.

Although Appellant pled for a ruling on the support issue and introduced evidence, the Trial Court inadvertently did not make a ruling on that issue.

## II. FACTS CONCERNING DAMAGES TO THE HOME

The divorce decree, November 28, 1984, gave Appellant possession of the home as of December 1, 1984 (T. 139). When Appellant took possession, Respondent had been in possession for a year and a half (T. 46). At the time of the divorce, the house was three years old (T. 47).

When he took possession in late November, 1984, Appellant discovered that Respondent had left a significant amount of sewage backed up in the basement for three or four months during the winter of 1983-84 (T. 120). In fact, the sewage was still three or four inches deep in November of 1984 (T. 28), a year after the initial problem. The basement sheetrock was moldy four or five feet high (T. 28), the stud walls were rotted, and the insulation had to be removed (T. 9). The wood paneling in two basement bedrooms had to be replaced (T. 16). The furnace was rusted away where the sewage sat around

it and it didn't work. The water heater, the washer and dryer the tools, and the downstairs carpet were ruined (T. 36 and 50) Upstairs, there was old food lying around, there were animal droppings and urine stains all over the carpet, the bedroom carpet was soaked and water had run down the hall where Respondent had drained the waterbed on the carpet, there were holes in the walls, the drapes were torn, and there was scribbling on the walls (T. 27-29, 37 and 38). The cupboards were full of dishes with food left on them (T. 50). The floor under the waterbed had buckled and had to be replaced (T. 54). The social worker who visited the home described as an unfit place for children to live (T. 29). Respondent admitted to having caused the basement damage (T. 128).

The contractor who assessed the damage and made a bid on repairs estimated the damage to be \$10,000.00 to bring the house back to a livable condition (T. 16) not counting the cost of replacing carpeting or linoleum (T. 17). Appellant and the children could not live in the home for two and a half months while Appellant repaired the home to a livable condition (T. 51 and 52). It is not yet completely repaired (T. 54).

### III. FACTS CONCERNING OTHER DEBTS PAID BY APPELLANT FOR THE BENEFIT OF RESPONDENT

Appellant agreed to pay the mortgage payment of \$310.00 in lieu of \$300.00 child support beginning in December, 1983 (T. 130-131). However, he paid in addition, beyond what he was ordered to pay, \$1,060.00 in delinquent house payments (T. 53).

e paid a delinquent water bill of \$360.00 (T. 53). Respondent says she was supposed to pay utilities (T. 120). Appellant also paid Respondent's delinquent car loan of \$1,500.00 plus interest of \$280.00, \$450.00 excess child support and \$45.00 interest (Order and Judgment October 16, 1986, page 2). He also paid \$400.00 in attorney's fees in connection with being sued over Respondent's car loan (T. 60 and 106). He paid \$250.00 to Big O beyond what he was ordered by the Trial Court to pay as part of the divorce settlement (T. 97). This is a total of \$4,345.00.

#### SUMMARY OF ARGUMENT

1. CHILD SUPPORT. Although Appellant pled for apportioned child support and introduced evidence of a substantial change in Respondent's earnings, which have doubled since the divorce, the court inadvertently failed to rule on the child support issue. Public policy, statutory law and case law all dictate that mothers as well as fathers are obligated to support their children, and Respondent, who earns three-fourths as much as Appellant, should pay some child support.

Under the Uniform Child Support Schedule, she should pay \$232.00 per month in the summer and \$202.00 in the winter. Appellant should pay \$318.00 per month.

2. OFFSETS FOR DAMAGE TO THE HOUSE. The divorce decree ordered Appellant to pay Respondent \$8,750.00 for her equity in the house. Several witnesses testified to the extensive damage



Respondent did to the house, mainly by leaving a flood of sewage in the basement for at least three months. In fact, three or four inches of sewage still stood in the basement a year after the initial problems. Testimony was that about \$10,000.00 of damage was done excluding damage to carpets and linoleum. The trial court ignored over half of this damage in determining the offset.

3. OFFSETS FOR DEBTS PAID BY APPELLANT FOR THE BENEFIT OF RESPONDENT. Evidence showed that Appellant paid \$4,345.00 for Respondent's debts beyond what the property settlement ordered him to pay. The trial court ignored most of this amount, which should have all been offsets.

#### ARGUMENT

The Court, in considering appeals of divorce decree modifications such as the instant case, has "broad equitable powers and (is) not necessarily bound or limited by the trial court's findings." Thompson v. Thompson 709 P.2d 361 (Utah 1985). Since divorce proceedings are equitable, "it is the prerogative of the Court to review the facts as well as the law...." Ross v. Ross 592 P.2d 600, 602 (Utah 1979). The Constitution of Utah, Art. VIII, Section 9 states in pertinent part, "In equity cases the appeal may be on questions of both law and fact...."

In the instant case, the Court needs to review the facts to see that Appellant pled for a ruling on the child support issue and introduced much evidence, but the trial court inadvertently

did not make a ruling. The Court must also review the facts to determine the amount of child support which should be required from Respondent. Facts also need to be reviewed on the offset issue to show that the "evidence clearly preponderates against the findings" of the trial court and that a bigger offset was justified. Adams v. Adams 593 P.2d 147, 149 (Utah 1979).

#### POINT I

THE TRIAL COURT ERRED IN NOT RULING ON A MAJOR ISSUE OF THE TRIAL, NAMELY THE CHILD SUPPORT ISSUE. AMPLE EVIDENCE OF A SUBSTANTIAL CHANGE IN CIRCUMSTANCES WAS PRESENTED AND THE TRIAL COURT SHOULD HAVE APPORTIONED SOME OF THE CHILD SUPPORT TO THE RESPONDENT.

Appellant pled for child support to be apportioned and some assessed against Respondent. He introduced evidence of a substantial change in Respondent's earnings but the trial court inadvertently made no ruling (Order and Judgment of October 16, 1986, page 2).

The original divorce decree charged Appellant with total responsibility for child support for the parties' two minor children during the nine months he has custody and, additionally, ordered him to pay \$300.00 per month for the three months Respondent has custody. At the time of the decree, Respondent was only working part time, earning \$4.00 per hour plus tips, equaling \$654.00 per month. Appellant was earning \$1,400.00 per month.

Since the decree, Respondent's earnings have doubled, a substantial change in circumstances. She now earns \$1,271.00 per month in the winter and \$1,404.00 per month in the summer. Appellant now earns \$1,962.00 per month. Thus, Respondent earns three-fourths as much as Appellant.

The Utah Supreme Court in Woodward v. Woodward 709 P.2d 393, 394 (Utah 1985) cites the rule that "(b)oth parents have an obligation to support their children. A child's right to that support is paramount." The Woodward Court cites the statutory basis for the principle that the mother as well as the father is obligated to support her children. The Uniform Civil Liability for Support Act, Utah Code Ann. Sections 78-45-3 and -4 (1953 as amended) says, "Every man shall support his child (and) every woman shall support her child...."

The Woodward Court says further, "The fact that one parent is not currently required to pay support to the other neither terminates the child's right nor obviates that parent's responsibility for such support as may be determined at some future time." Id. citing In re C.J.U. 660 P.2d 237, 239 (Utah 1983). In the instant case, there has been a substantial change in Respondent's income, which has doubled. It is equitable to apportion some of the expenses of raising children to the mother. Since she pays nothing the nine months when Appellant has custody, Respondent should at least pay all the support during the summer. Under the Bernard v. Attebury standard for

determining equitable child support, considering the relative wealth, income and ability of each party to earn, Respondent should pay some child support. 629 P.2d 892, 894 (Utah 1981).

#### POINT TWO

THE TRIAL COURT ERRED IN NOT GRANTING APPELLANT A BIGGER OFFSET FOR RESPONDENT'S GROSSLY NEGLIGENT OR INTENTIONAL DAMAGE TO APPELLANT'S HOME FOLLOWING THE DIVORCE DECREE. THE GREAT WEIGHT OF EVIDENCE POINTS TO MUCH MORE IN DAMAGES THAN THE TRIAL COURT FOUND. EVIDENCE ALSO DICTATES A BIGGER OFFSET FOR DEBTS PAID BY APPELLANT FOR THE BENEFIT OF RESPONDENT.

Appellant was ordered to pay Respondent \$8,750.00 for her equity in the house. Respondent does not dispute the fact that she kept a very dirty house and left sewage standing in the basement of the home while she was in possession. The social worker who visited the home described the condition. There was old food lying around on counters and on the floor. The carpets were wet. The bedroom carpet was soaked and water had run down the hall. There were animal droppings and stains on the carpet and holes in the sheetrock. The basement was still full of sewage three to four inches deep a year after the original deep floods. Rags, old clothes and garbage littered the floor in all of the rooms. Mold was four or five feet up on the basement sheetrock which had buckled. The basement carpet was covered with liquid creating what he described as an unfit place for children to live.

Respondent admits she was responsible for basement damage. The contractor who bid on repairs estimated the damages to be \$10,000.00 not counting money to replace carpets or linoleum. His bid included some upstairs damage to one wall for which Appellant may have been responsible. The Trial Court mentions that an appraisal done on the home was the basis for the divorce decree property settlement giving Respondent \$8,750.00 in equity on the home (Order and Judgment, October 16, 1986). The trial court questioned whether "deferred maintenance" in the appraisal was meant to include some of the damage to the home (T. 237). While it could include some of the deterioration upstairs such as scribbling on the walls and the linoleum in the kitchen, damage from a basement full of sewage is hardly deferred maintenance. An appraisal done on a home full of sewage, which several witnesses said created an overpowering smell, would have mentioned the damage had it existed at the time (October 14, 1983 ((T. 102).) A second appraisal was done from outside the home (T. 103) so it likely would not have included the damages anyway, had there been any at the time. Testimony places the sewage damage in the winter of 1983-84, after the appraisal.

The entire basement had to be redone, including the sheetrock, studs, insulation and carpeting before the house was even habitable. It was not part of the first divorce settlement. Although the damage had occurred, Appellant was ordered not to come to the home and he was not aware that the problem had not

been corrected. Respondent told him she had called Rupp to repair the septic tank (T. 68).

The trial court in his Order and Judgment of October 16, 1986, page 2, itemized \$12,053.75 in debts Appellant owed Respondent under the decree. He itemized offsets of \$2,257.00 for Appellant paying the car loan plus interest and extra child support (page 2). The Court gave offsets of \$3,735.00 for damage to the basement, and then held Appellant 1/3 responsible leaving only \$2,800.00 as an offset for the damage to the basement. This included only studs, insulation, sheetrock, and wood paneling.

This minimal offset is against the great weight of evidence. The court does not give credit for the damage to the furnace, the water heater, the washer and dryer, the carpet downstairs (which stood a year soaked in sewage), the tools ruined by the sewage, basement paint, the carpet Respondent emptied the waterbed on upstairs, attorney's fees of \$400.00 when Appellant was sued for Respondent's overdue car loan, delinquent house payments of \$1,060.00, the delinquent water bill of \$360.00, damage to the carpet upstairs from animal feces and urine, \$1,500.00 for general demolition and clean up of the basement that was necessary before it could be repaired (T. 19), \$250.00 Appellant paid to Big O beyond what he was ordered to pay in the decree, and cleaning up the upstairs. The house was only three years old. The damages named above were all part of the testimony and

amount to at least an additional \$4,000.00. Since Respondent's actions in leaving the sewage for a year were at least grossly negligent if not intentional, she should forego the amount of equity she was awarded since she destroyed at least that much of the value of the home. The smell may be permanent.

#### CONCLUSION

Appellant prays for the following relief:

1. Appellant's child support obligation should be reduced and made proportional to Respondent's obligation. Under Utah's Uniform Child Support Schedule, Respondent should owe \$232.00 per month in the summer and \$202.00 per month during the winter. Appellant, under the Schedule, should owe \$318.00 per month. Public policy, statutory law and case law all dictate that a mother has a duty to support her children. Here, Respondent's income has doubled since the divorce, a substantial change in circumstances, and the court should modify the child support.

2. The great weight of evidence supports a greater offset of Appellant's debts to Respondent. Testimony support an offset of at least \$8,000.00 for Respondent's grossly negligent or intentional damage to the house and an additional offset of at least \$7,715.00 in itemized payments Appellant made for the benefit of Respondent, not required by the decree. The Court found that Appellant owes \$12,053.75 to Respondent before offsets (Order and Judgment, October 16, 1986). Evidence in the record substantiates offsets of \$15,715.00.

ADDENDUM

CONTENTS

Uniform Child Support Schedule dated January 1986.

Memorandum Decision entered October 2, 1986.

Order and Judgment entered October 16, 1986.

DATED this 17th day of April, 1987.



DALE M. DORIUS  
Attorney for Appellant  
P. O. Box U  
29 South Main Street  
Brigham City, UT 84302

CERTIFICATE OF MAILING

I hereby certify that I mailed four true and correct copies of the foregoing Brief of Appellant to Attorney for Plaintiff/Respondent CLINT S. JUDKINS at 123 East Main Street, Tremonton, UT 84337, this 17th day of April, 1987.



DALE M. DORIUS



# UNIFORM CHILD SUPPORT SCHEDULE (Amount To Be Paid Per Child)

GROSS MONTHLY INCOME (1.3 Rows 5)		Total Number of Children						
		1	2	3	4	5	6	7
0 - 217	0	0	0	0	0	0	0	0
* 218 - 295	28	21	17	14	12	11	9	8
296 - 384	33	28	22	19	16	14	12	11
385 - 473	47	36	28	23	20	18	15	14
474 - 562	56	42	34	29	25	21	19	17
563 - 651	67	50	40	33	29	25	22	20
652 - 741	76	57	50	39	33	29	25	23
742 - 830	85	64	51	43	36	32	28	26
831 - 919	96	71	57	48	41	36	32	29
920 - 1008	105	80	63	53	46	40	35	32
1009 - 1098	115	87	69	57	49	43	38	34
1099 - 1187	125	94	75	62	54	47	41	37
1188 - 1276	135	101	81	68	57	51	44	40
1277 - 1365	144	109	87	73	62	54	48	43
1367 - 1455	154	116	92	77	66	57	51	46
1456 - 1544	164	123	98	82	70	62	55	49
1545 - 1633	173	130	104	87	75	66	57	53
1634 - 1723	184	138	110	91	78	69	61	55
1724 - 1812	193	145	116	97	83	73	64	59
1813 - 1901	202	152	122	102	87	76	68	61
1902 - 1991	213	159	129	106	91	80	71	64
1992 - 2080	222	167	133	111	95	83	74	67
2081 - 2169	232	174	139	116	99	87	77	70
2170 - 2258	242	181	145	121	104	91	81	73
2259 - 2348	252	188	151	126	108	95	84	76
2349 - 2437	261	197	157	131	112	98	87	78
2438 - 2526	271	204	163	136	116	102	90	82
2527 - 2616	281	211	168	140	121	105	94	84
2617 - 2705	290	218	174	145	124	109	97	88
2706 - 2794	301	226	180	150	129	112	99	90
2795 - 2883	310	233	186	156	133	116	103	94
2884 - 2973	319	240	192	160	137	121	106	96
2974 - 3062	330	247	198	165	142	124	110	99
3063 - 3151	339	258	203	169	148	128	112	102
3152 - 3240	348	265	209	174	152	132	115	104
3241 - 3329	358	273	215	179	156	135	118	107

\* For incomes between \$218-295, subtract \$217 from the income to arrive at available income. The child support amount must not exceed the available income amount.

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Dale M. Dorius Atty at Law

IN THE DISTRICT COURT OF BOX ELDER COUNTY, STATE OF UTAH

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JOLENE HATCH,	)	
Plaintiff,	)	MEMORANDUM DECISION
vs.	)	
SCOTT HATCH,	)	Civil No. 18199
Defendant.	)	

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In this matter each party seeks modification of a divorce decree awarding plaintiff custody of the parties' two minor children during the summer months and the defendant such custody during the normal school year. Further, each party contends the other party has failed to comply with the terms and conditions of the divorce decree requesting appropriate sanctions and attorney's fees therefore.

After a lengthy hearing and arguments by counsel, the court concludes that there are no substantial changes of circumstances justifying the uprooting of the children from their school and summer residences and routines. Rather, the court finds that child care as provided by each of the parties during the time when the children reside with each party, while extensive is nevertheless adequate, the children seem to be getting along well and with good rapport with both parties. Both parties are providing adequate parenting and the children appear to be happy and comfortable in each home. The change which the parties assert, the plaintiff that she is more serene, less nervous, a better housekeeper, and that defendant drinks too much and leaves the children too much with child care people, and the

defendant's assertion that plaintiff is an inadequate housekeeper, leaves the children unattended and too often in the care of neighbors and baby sitters, the court finds were essentially the same allegations as were litigated in the prior divorce hearing and resulted in the conclusion of the court that each of the parties was fit to have custody of the children.

As to modification of the decree regarding child support and particularly defendant's claim for child support from plaintiff during the nine months defendant, has custody, the court notes that defendant alleges plaintiff had no income at the time of the decree of divorce and currently earns \$1,500.00 per month. The court's finding at the time of the decree of divorce was that plaintiff earned \$654.00 net income and defendant earned \$11.44 per hour or approximately \$1,400.00 net income per month. While plaintiff's earnings are now increased during the summer months, defendant's income is up approximately \$ .83 per hour and his earnings greatly exceed her earnings.

The final issues relate to the provisions of the decree which provide that the defendant should pay to plaintiff the sum of \$8,750.00 together with eleven (11%) percent interest thereon; \$75.00 per month alimony for one year; \$150.00 per month per child for the three months the children reside with their mother and \$450.00 towards plaintiff's attorney's fees and for damages to her air conditioner. Defendant asserts that during the period plaintiff occupied the family

home she caused damages thereto exceeding \$10,000.00, that defendant ought to have an offset for taxes he paid on the home and other obligations paid by him and that such damages, offsets and obligation exceeded the amounts owed by defendant to plaintiff.

The court notes that some of the offsets claimed by the defendant were litigated at the first trial and defendant was ordered as part of the property division to pay the delinquent taxes on the home, the water bill, and the Big-O tire bill. Further, the court notes that defendant's proposal at the first trial of the matter included the claim that considerable damage had been done to the house after the separation of the parties and pending the decree of divorce, including septic tank backup, carpets, washer, dryer, furnace repairs, holes in walls, TV broken, and linoleum torn up and damaged. All of said matters were taken into account in the division of the property and award of alimony at the first trial. Plaintiff contends defendant was well aware of the septic tank or sewer backup problem, that he denied her request for help in the matters and because of her limited income and the defendant's failure to pay her the alimony and equity in the home she was unable to properly protect the home or to remedy the damage.

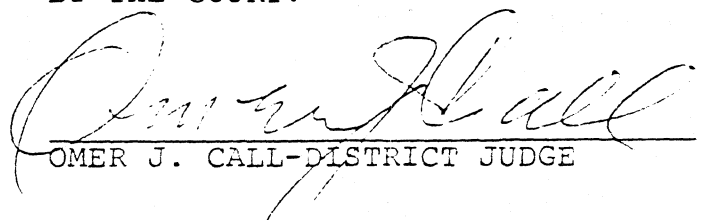
Without further reviewing the evidence or contentions of the parties the court finds that the defendant's obligations to plaintiff were: \$8,750.00 plus interest of \$1,764.00; \$450.00 attorney's fees and air conditioner damages plus accumulated interest of \$90.75; \$900.00 alimony plus accumulated interest of \$99.00; the child support obligation was paid by the defendant paying the monthly house payments

in the home during the period the plaintiff resided in the home. The court further finds the defendant has paid for the benefit of the plaintiff \$1,500.00 on plaintiff's car plus interest of \$280.00; and child support payments of \$450.00 in excess of his obligation plus \$45.00 interest.

Finally, the court concludes the damages sustained to the basement area of the family home were for the most part unknown to the defendant and attributable to the plaintiff's failure to timely remedy the septic tank or sewer backup which resulted in the destruction of the paneling, sheet rock, and insulation on the walls in the basement. Those damages the court finds to be: framing materials and labor \$1,450.00; insulation \$475.00; sheet rock \$1,050.00; wood paneling materials and labor \$760.00 for a total of \$3,735.00. The court concludes plaintiff should be liable for three-fourths thereof or \$2,800.00. The total credits due the plaintiff are thus \$12,053.75 against which the defendant should have an offset of \$5,075.00 with the result that plaintiff should have judgment against the defendant for the sum of \$6,978.75. Each party to bear their own costs and attorney's fees and the decree to otherwise remain as entered. Plaintiff to prepare the appropriate findings and judgment.

Dated this 2nd day of October, 1986.

BY THE COURT:

  
HOMER J. CALL-DISTRICT JUDGE

MAILING CERTIFICATE

Copy of the foregoing Memorandum Decision mailed this 2nd day of October, 1986, to Clint S. Judkins, Attorney for Plaintiff, 123 East Main Street, Tremonton, Utah 84337 and to Dale M. Dorius, Attorney for Defendant, 29 North Main, P. O. Box U, Brigham City, Utah 84337.

Jay R. Hirschi  
Box Elder County Clerk

By Sharon C. Hirschi  
" Deputy "

October 1986

Dale M. Dorius Attorney at Law

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123 East Main Street  
Tremonton, Utah 84337  
Telephone: 257-3885

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IN THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR BOX ELDER COUNTY, STATE OF UTAH

---

JOLENE HATCH,	)	
	)	
Plaintiff,	)	
Vs.	)	ORDER AND JUDGMENT
	)	
SCOTT HATCH,	)	Civil No. 18199
	)	
Defendant.	)	

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The hearing on each parties Petition for Modification of Divorce Decree came on for hearing on the 23rd day of May, 1986 at the hour of 10:00 o'clock a.m., before the above-entitled Court, the Honorable Omer J. Call, District Court Judge presiding and sitting without a Jury. The Plaintiff was personally present and was represented by her Counsel of record, Clint S. Judkins and the Defendant was personally present and was represented by his Counsel, Dale M. Dorius. The parties each presented evidence in the form of sworn testimony and exhibits. The Court heard the evidence and took the matter under advisement and issued it's Memorandum Decision dated the 2nd day of October, 1986. The Court being fully familiar in the premises hereby enters the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The child care as provided by each of the parties during the time when the children reside with each party while

extensive is nevertheless adequate.

2. Both parties are providing adequate parenting and the children appear to be getting along well, are happy and comfortable in each home and have good rapport with both parties.

3. The changes which the parties assert were essentially litigated in the prior divorce hearing and resulted in the conclusion of the Court that each of the parties was fit to have custody of the children.

Plaintiff's earnings have increased during the summer months since the Decree of Divorce but Defendant's income is up approximately \$.83 per hour and his earnings greatly exceed Plaintiff's earnings.

4. At the time of the Divorce, Defendant's obligations to Plaintiff's were \$8,750.00 plus interest of \$1,764.00; \$450.00 attorney's fees and air conditioner damage plus accumulated interest of \$90.75; \$900.00 alimony plus accumulated interest of \$99.00; the child support obligation was paid by the Defendant paying the monthly house payments on the home during the period the Plaintiff resided in the home. The Defendant has paid for the benefit of the Plaintiff \$1500.00 on Plaintiff's car plus interest of \$280.00; and child support payment of \$450.00 in excess of his obligation plus \$45.00 interest.

5. The damages sustained to the basement area of the family home were for the most part unknown to the Defendant and attributable to the Plaintiff's failure to timely remedy the septic tank or sewer backup which resulted in the destruction of the paneling, sheet rock, and insulation on the walls in the



basement. Those damages are: framing materials and labor \$1,450.00; insulation \$475.00; sheet rocking \$1,050.00; wood paneling materials and labor \$760.00, for a total of \$3,735.00. Plaintiff should be liable for 3/4's thereof or \$2,800.00. The total credits due the Plaintiff are thus \$12,053.75 against which the Defendant should have an offset of \$5,075.00, with the result that Plaintiff should have Judgment against the Defendant for the sum of \$6,978.75.

O R D E R:

After having made the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff, JOLENE HATCH, is hereby awarded Judgment against Defendant in the sum of \$6,978.75, which said sum shall bear interest at the legal rate of 12% per annum from and after the date hereof until paid.
2. Each party shall bear their own costs and attorney's fees incurred in this matter.
3. The Decree of Divorce entered in this case shall remain as entered, except as specifically modified herein.

DATED this 16<sup>th</sup> day of October, 1986.

FIRST JUDICIAL DISTRICT  
STATE OF UTAH  
BOX ELDER COUNTY

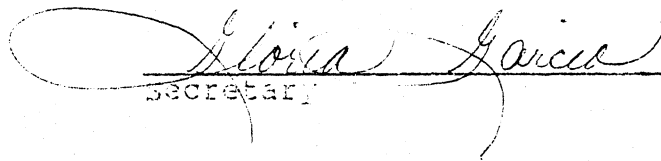
I, the undersigned Clerk of the First District Court for the State of Utah, do hereby certify that the annexed and foregoing is a true and full copy of an original document on file in my office as said Clerk.

Witness my hand and the seal of said Court  
this 16 day of April, 19 87  
Sharon A. Davis Deputy

18 Omer J. Call  
Omer J. Call  
District Court Judge

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of  
the foregoing document to Dale M. Dorius, Attorney for Defendant,  
P. O. Box U, Brigham City, Utah 84302, this 6<sup>th</sup> day of  
October, 1986.

  
Secretary