

2007

Larae Jensen nka Larae Thorpe v. Raymond Jensen : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

WILLIAM A. JENSEN,

Petitioner/Appellee,

vs.

SONJA JENSEN

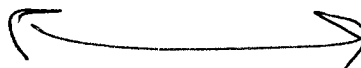
Respondent/Appellant..

**BRIEF OF
RESPONDENT/APPELLANT
SONJA JENSEN**

Appeal No. 20070312-CA
Lower Court No. 034905158

BRIEF OF APPELLANT

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ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	2
Table of Authorities	3
Statement of Jurisdiction	4
Statement of Issues Presented for Review	4
Constitutional Provisions, Statutes, Etc	6
Statement of Case	8
Statement of Facts	11
Summary of Argument	16
Argument	18
 I. Did The Trial Court Err In Only Awarding The Respondent Alimony In An Amount Of \$2,581.00 And Only For A Period Of 5 Years?	 18
 II. Did The Trial Court Err In Not Enforcing The Parties Stipulation To Sell The Marital Home And Divide The Equity?	 26
 III. Did The Trial Court Err In Ordering The Personal Property Sold? .	 31
 IV. Did The Trial Court Err In Ordering The Respondent To Pay One Half Of The Back Payments On The Arizona Condo?	 33

V. Did The Trial Court Err In Failing To Award Respondent Retroactive Alimony?	35
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VI. Did The Trial Court Err In Failing To Set Aside Portions Of The Minute Entry Dated September 29, 2006?	37
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VII. Did the Trial Court Err In Not Awarding To Respondent Some Of Her Attorney's Fee?	38
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Conclusion	40
Mailing Certificate	41
Addendum	42

TABLE OF AUTHORITIES

Cited in Brief

	<u>Page</u>
<u>STATUTES</u>	
U.C.A. 30-3-5(8)(a) through 8(d)	19,22
U.C.A. 30-3-3 (1) and (3)	37
U.C.A. 78-45-3(1)	36,37
U.C.A. 78-45-7.5(7)(a)	23

RULE

U.R.C.P. 60(a) and 60(b)	38
--------------------------	----

CASES

<i>Anderson v. Anderson</i> , 757 P.2d 476 (Utah Ct. App. 1988);	25
<i>Bankowski v. Bankowski</i> , 2003 UT App 357, 80 P.3d 153;	19,22
<i>Brown v. Brown</i> , 744 P.2d 333 (Utah Ct. App. 1987);	29
<i>Cox v. Cox</i> , 877 P.2d 1262 (Utah Ct. App. 1994);	18
<i>Crompton v. Crompton</i> , 888 P.2d 686 (Utah Ct. App. 1994);	22
<i>Hoagland v. Hoagland</i> , 852 P.2d 1025 (Utah Ct. App. 1993);	22
<i>Jones v. Jones</i> , 700 P.2d 1072 (Utah 1985);	25
<i>Kinsman v. Kinsman</i> , 748 P.2d 210 (Utah Ct. App. 1988);	30
<i>Munns v. Munns</i> , 790 P.2d 116 (Utah Ct. App. 1990);	26,33
<i>Rosendahl v. Rosendahl</i> , 876 P.2d 870 (Utah Ct. App. 1994);	19,25
<i>Schaumberg v. Schaumberg</i> , 875 P.2d 598 (Utah Ct. App. 1994);	25
<i>Williamson v. Williamson</i> , 1999 UT App 219, 983 P.2d 1103;	19
<i>Yeargin, Inc. v. Auditing Div. of Utah St. Tax Commn.</i> , 2001 UT 11, 20 P.3d 287..	30,31

STATEMENT SHOWING JURISDICTION

This Court has jurisdiction pursuant to Section 78-2a-(3)(2)(h) U.C.A. (1953), as amended governing appeals transferred from the Supreme Court to the Court of Appeals.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Did The Trial Court Err In Only Awarding The Respondent Alimony In An Amount Of \$2,581.00 And Only For A Period Of 5 Years?

Standard of review: The Court of Appeals will disturb an award of alimony and it's duration is a serious inequity has resulted as to manifest a clear abuse of discretion.

Appeal Preservation: Appellant raised this issue at trial. (T.454,456,529-536)

II. Did The Trial Court Err In Not Enforcing The Parties Stipulation To Sell The Marital Home And Divide The Equity?

Standard of Review: The Court of Appeals reviews the Trial Court's decision to disregard the parties' stipulation in court agreed by parties and their attorneys on the record under a clear and prejudicial abuse of discretion. Further, the Court of Appeals will disturb a Trial Court's ruling if there has been an error in regard to the law.

Appeal Preservation: Appellant raised this issue at trial. (T. 422-427)

III. Did The Trial Court Err In Ordering The Personal Property Sold?

Standard of Review: The Court of Appeals reviews property distribution under a clear and prejudicial abuse of discretion.

Appeal Preservation: Appellant raised this issue at trial. (T. 419-422)

IV. Did The Trial Court Err In Ordering The Respondent To Pay One Half Of The Back Payments On The Arizona Condo?

Standard of Review: The Court of Appeals reviews on an abuse of discretion standard.

Appeal Preservation: This issue was raised at the trial by Petitioner. (T.)

V. Did The Trial Court Err In Failing To Award Respondent Retroactive Alimony?

Standard of Review: The Court of Appeal reviews under an abuse of discretion and will disturb the award if the abuse is clear.

Appeal Preservation: This issue was raised at trial. (T.405)

VI. Did The Trial Court Err In Failing To Set Aside Portions Of The Minute Entry Dated September 29, 2006?

Standard of Review: Abuse of discretion.

Appeal Preservation: This issue was raised by Respondent in her Motion to Set Aside. (R-1557-1560)

VII. Did the Trial Court Err In Not Awarding To Respondent Some Of Her Attorney's Fees?

Standard of Review: Abuse of discretion

Appeal Preservation: This issue was raised at trial. (T. 538)

**CONSTITUTIONAL PROVISIONS, STATUTES,
ORDINANCES, RULES, AND REGULATIONS**

U.C.A. 30-3-5(8)(a) through 8(d)

(8)(a) The court shall consider at least the following factors in determining alimony:

- (i) the financial condition and needs of the recipient spouse;
 - (ii) the recipient's earning capacity or ability to produce income;
 - (iii) the ability of the payor spouse to provide support;
 - (iv) the length of the marriage;
 - (v) whether the recipient spouse has custody of minor children requiring support;
 - (vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and
 - (vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.
- (b) The court may consider the fault of the parties in determining alimony.
- (c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection

(8)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(d) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

U.C.A. 30-3-3 (1) and (3)

(1) In any action filed under Title 30, Chapter 3, 4, or 6, and in any action to establish an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may order a part to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.

. . .

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

U.C.A. 78-45-3(1)

(1) Every father shall support his child and every child shall be presumed to be in need of the support of his father. Every man shall support his wife when she is in need.

U.C.A. 78-45-7.5(7)(a)

(7)(a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed, the parent defaults, or, in contested cases, a hearing is held and the judge in a judicial proceeding or the presiding officer in an administrative proceeding enters findings of fact as to the evidentiary basis for the imputation.

Rule 60(a) and (b) of the Utah Rules of Civil Procedure

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a part or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

STATEMENT OF CASE

Nature of the Case: The Respondent and Petitioner, were married December 5th, 1987 and had two daughters. The Respondent worked and helped the Petitioner finished

college during the first part of the marriage and thereafter he supported the family and the Respondent was a stay at home mom except for a few months in 2001-2002 when she worked at Southwest Airlines. From April 2002 until the trial the Responded was unemployed and suffering from depression. Prior to the trial the parties settled the issues regarding the minor children and the issues at trial related to property and alimony. After the trial the Trial Court awarded alimony of \$2,581 for only a period of five years, denied awarding any retroactive alimony, ordered the Respondent to repay to the Petitioner \$13,152 that he had paid as temporary alimony as payments on the Arizona condo, divided the retirement accounts in half, ordered all of the personal property in both parties homes sold, refused to enforce the terms of the stipulation entered into by the parties in open court regarding the sale of the marital home in Murray, Utah and adopted the Petitioner's value of said home and then divided the equity in both the marital home and the Arizona condo, and denied Respondent any attorney fees.

Course of Proceedings: The Petitioner filed a Verified Petition for Divorce on August 21, 2003 (R. 1-6). Petitioner then filed a Motion for Temporary Orders along with his Affidavit and Financial Declaration on the 26th of February, 2004 (R. 10-27). The Respondent obtained new counsel and filed her Motion for Relief, Affidavit and Financial Declaration on the 8th of March, 2004 (R. 30-48). A hearing was held on the

13th of April, 2004, and the Court entered an Order on temporary orders on the 26th of April, 2004; however, reserving the issues of child support and temporary alimony (R. 182-184). Another hearing was held on the 11th of June, 2004, and an Order from said hearing was entered by the Court on the 22nd of July, 2004 (R. 491-494). The Court took under advisement the issues of temporary alimony and temporary child support and on the 2nd of August, 2004 entered its Minute Entry (R. 576-580) and an Order from said Minute Entry was entered by the Court on the 24th of August, 2004 wherein the Petitioner was ordered to pay temporary alimony in the sum of \$2,859.00 per month effective June 11, 2004. The Respondent was ordered to pay child support in the sum of \$112.00 (R. 161-168). Another hearing was held on the 21st of September, 2004 and the Court entered its Minute Entry (R. 739-740) and an Order was entered on the 7th of February, 2006 in regard to the September 21, 2004 Minute Entry (R. 1369-1371) wherein the issue of who would make the condo payment was left to Judge Fratto because the Commissioner did not make any further recommendation in that regard. Petitioner filed a Motion to Amend the Temporary Orders and for Order for Payment of Mortgage on Arizona Condo (R. 1273-1274). A hearing was held on the 8th of December, 2005 wherein the issue regarding the mortgage payment was taken under advisement (R. 1355). The Court entered a Minute Entry (R. 1357-1368) wherein the Petitioner was ordered to continue to maintain the mortgage payment on the Arizona condo which he had been doing since the

initial Order on Temporary Orders and said issue was subject to review and redistribution at the time of trial. The Trial was held on June 28 and June 29, 2006 with the final day of trial on July 21, 2006 (R. 1435-1438 and R. 1450). The Petitioner filed a Motion to Set Aside the Stipulation to Sell Real Property on the 18th of July, 2006 (R. 1444-1446) and the Court entered its decision on the 21st of August, 2006 (R. 1456-1457). Respondent filed a Motion for Consideration of Additional Issues and Memorandum for Attorney's Fees on the 29th of August, 2006 (R. 1458-1476). On the 29th of September, 2006, the Court entered a Minute Entry (R. 1543-1544). A hearing was held on Respondent's Objections to the proposed Findings and Minutes were entered by the Court on the 20th of February, 2007 (R. 1556). Respondent immediately filed a Motion to Set Aside portions of the Minute Entry from September 29, 2006 on the 21st of February, 2007 (R. 1560) and filed a Notice to Submit said Motion to Set Aside on the 14th of March, 2007 (R. 1561). A hearing was held on the 2nd of April 2007 and the Court denied the Motion to Set Aside or to modify the Minute Entry (R. 1594) and an Order was entered by the Court on the 20th of April, 2007 (R. 1604-1604). The Decree of Divorce was entered on the 4th of April, 2007 (R. 1595-1599) and a Notice of Appeal was filed on the 12th of April, 2007 (R. 1600).

Disposition Below: The Trial Court entered a Decree of Divorce reducing the alimony and only awarding alimony for five (5) years, denied retroactive alimony, failed

to comply with the Stipulation of the parties in regard to the sale of the marital home, ordered the personal property sold, ordered Respondent to pay Petitioner for back payments of temporary alimony for the Arizona condo, did not award either party attorney's fees and denied Respondent's Motion to Set Aside the Minute Entry of September 29, 2006. The Trial Court failed to make adequate findings in regard to the duration of the alimony for only five years, the reduction of needs by the Respondent, the reduction of alimony, why retroactive alimony was not awarded, and why Respondent should pay ½ of condo payments prior to the divorce.

STATEMENT OF FACTS

The parties were married on the 5th of December, 1987, and separated on the 23rd of June, 2003 (T. 217). At the time of the parties' separation the Respondent was unemployed and the Petitioner was employed by Liberty Dialysis earning \$10,000.00 per month or \$120,000.00 per year (T. 219, 378). During the first three (3) years of the marriage the Respondent worked to allow the Petitioner to finish college but thereafter was a stay-at-home Mother for approximately 16 years except for a few months when she was employed with Southwest Airlines earning \$8.00 per hour from August of 2001 to April of 2002 to obtain medical insurance for the minor children since the Petitioner was changing employment (T. 73 and 74). At the time of the trial in this matter the Respondent was 44 years old with a high school diploma and an Associate Degree from

Salt Lake Community College (T. 377). In December of 2001, the Respondent suffered an anaphylactic reaction of a pneumonia vaccine and was given additional medications including oxycontin for her pain. She took a medical leave of absence from Southwest Airlines in April of 2002 and was on medication for approximately one year and then on the 2nd of June 2002 she was admitted to the University of Utah Neuropsychiatric Unit to detox and get off oxycontin and the other medications that she was given for chronic neck pain as a result of the anaphylactic reaction (T. 390-391). In June of 2003 the Respondent suffered from a major depressive disorder and within a few weeks of being released from the University of Utah Neuropsychiatric Unit on the 10th of June, 2003, the parties separated and the Petitioner took the two minor daughters and for a period of three (3) years thereafter refused to allow the Respondent to be involved with her minor daughters or to visit with them, alienated the daughters' affections from their mother even though the Respondent had raised the two minor children as a stay-at-home Mother prior to her illness (T. 386-398).

From the time of the parties' separation in June of 2003 until the time of the trial in June of 2006, a period of three years, the Respondent suffered from major depression disorder due to her separation from her daughters caused by the Petitioner and her lack of visitation with them and her perception of the daughters' affection toward her being alienated by the Petitioner. In March of 2004 she became a patient of Dr. Mausberg, a

psychiatrist, who testified at the time of the trial that she was completely disabled and unable to perform any type of full-time employment functions (T. 266-279). The fact that the Respondent lost contact with her daughters although she continually tried to re-establish the same was devastating to her (T. 291). Respondent also was treated by Dr. Michael Brunson, a psychologist from July of 2004 to the present who also testified at the trial that the Respondent was very depressed, that the Respondent had a horrendous sleep disturbance, a very depressed anxious mood, and due to the stalking by the Petitioner and the non-involvement with her two teenage daughters for the past three years was having a great impact upon the Respondent and she was unable to work full-time due to her psychological disorders (T. 303-306). Both Dr. Mausberg and Dr. Brunson testified that the Respondent's depression and mood disorder may improve in the future when the impact of the whole experience of losing her children and going through the divorce was behind her (T. 284-285, 305-306).

At the time of the separation of the parties in June of 2003, the parties were living on an income of \$10,000.00 per month generated by the Petitioner, and the Respondent was unemployed and generated no income (T. 219). A hearing on Motions on Temporary Orders was heard on the 11th of June, 2004 and the Honorable Michael S. Evans entered a Minute Entry on the 2nd of August, 2004, wherein the Court found that Respondent's needs at the time of the separation in June of 2003 was approximately \$3,771.00, and

imputed income to the Respondent of minimum wage of \$893.00 per month resulting in a net of \$800.00 per month income to the Respondent, and based thereon, awarded to the Respondent temporary alimony of \$2,859.00 to meet her unmet living expenses effective June 11, 2004 (R. 576-579). Respondent's claim for retroactive alimony from the time of separation of June of 2003 to June 11, 2004, a period of one year was reserved (R. 579). Further, in said Minute Entry the Court found that the Petitioner's alleged expenses were over-stated and that he had an ability to contribute the \$2,859.00 in temporary alimony to the Respondent (R. 578). At the time of the trial the Respondent had incurred additional debt since the time of separation in the sum of \$40,617.00 and her monthly living expenses was \$5,743.00 (T. 401, Respondent's Exhibit 36). Respondent requested a judgment for the retroactive alimony from June of 2003 to June of 2004 in the amount of \$34,308.00 (T. 405 and Respondent's Exhibit 37). The Petitioner's monthly expenses at the time of the trial (Petitioner's Exhibit 18) was approximately the same as his monthly expenses at the time of the separation (R. 23) except for an additional auto payment of \$441.00 for a new vehicle and a \$240.00 per month payment on debts (R. 23, Exhibit 18, T. 219, 243-247). The Petitioner alleged in his Verified Petition for Divorce (T. 7) and in his Motion and Affidavit for Temporary Orders (R. 15) that the Respondent's imputed income was \$1,500.00 per month which is approximately \$8.65 per hour.

The parties' stipulated in open Court on the 29th of July, 2007, in regard to the Arizona condo and the marital home in Murray, Utah, that the Respondent would be awarded the Arizona condo with equity of \$126,000.00 and that the Petitioner would be awarded an extra \$63,000.00 from the proceeds received from the sale of the Murray home, and that the Murray home would be listed for sale and each party would be awarded one-half of the net equity proceeds received from the sale (T. 422-426). Both parties and their attorneys agreed in open Court to said stipulation and the Court approved the same. The Petitioner on the 18th of July, 2006 filed a Motion to Set Aside said Stipulation to sell the real property (R. 1444-1446) and said Motion was argued at the closing argument by the parties on the 21st of July, 2006 (Page 501, T. 516-518). Contrary to the Respondent's argument relating to the Motion to Set Aside the Stipulation the Court entered a Ruling in regard to its decision on the 21st of August, 2006, totally ignoring the Stipulation of the parties and valued the Murray home based upon the appraisal of Jerry Weber of \$440,000.00. The Respondent's expert witness, Laurie Ladeau, testified that the value of the Murray home was \$609,908.00 (T. 319-330, Respondent Exhibit 23). The Court then, in its ruling, on pages 33 and 34 (T. 1610) ordered that both the condo in Arizona and the marital home in Murray, Utah, be sold when the youngest child reaches the age of 18 or graduates from high school. The Court then entered a Minute Entry on the 26th of September 2006 (T. 1543 and 1544) wherein

the Court granted the Motion to Set Aside the Stipulation.

In July of 2002 the parties purchased the condominium in Arizona and signed under penalties of civil and criminal liability a Uniform Residential Loan Application wherein both parties agreed that the value of the household furniture and personal property located at the Murray home was valued at \$100,000.00 (T. 409, Respondent's Exhibit 41). The Respondent testified that the value of the parties' marital property in the Arizona condominium was \$15,000.00 (T. 421, Respondent's Exhibit 46).

The Petitioner paid the mortgage payments on the Arizona condo from June of 2004 until the time of the trial pursuant to a temporary Order in the sum of approximately \$1300 per month or a total of \$26,300.00 (T. 226 and 228). Both parties filed Affidavits of Attorney's Fees (R. 1463-1476, 1479-1483).

SUMMARY OF ARGUMENT

I. Did The Trial Court Err In Only Awarding The Respondent Alimony In An Amount Of \$2,581.00 And Only For A Period Of 5 Years?

The Respondent respectfully argues that the Trial Court abused its discretion in reducing the amount of alimony and only awarding alimony for five years in a long-tem marriage. The Trial Court used the wrong standard in determining Respondent's income and failed to make adequate findings as to the imputed income and the reduction of

Respondent's needs. The Trial Court also failed to equalize the standard of living under the appropriate circumstances.

II. Did The Trial Court Err In Not Enforcing The Parties Stipulation To Sell The Marital Home And Divide The Equity?

The Trial Court erred in disregarding the Stipulation entered into by the parties and their attorneys in open court to sell the house in Murray, Utah to determine its equity.

III. Did The Trial Court Err In Ordering The Personal Property Sold?

The Trial Court abused its discretion by ordering the sale of the furniture and furnishings in both homes, when there was sufficient evidence as to its value.

IV. Did The Trial Court Err In Ordering The Respondent To Pay One Half Of The Back Payments On The Arizona Condo?

The Trial Court abused its discretion by awarding the Petitioner one-half of back payments on the condo when the Trial Court had previously determined that the Petitioner had the ability to pay the same as additional temporary alimony, the Respondent needed it, and the Petitioner's needs did not change at the time of the trial.

V. Did The Trial Court Err In Failing To Award Respondent Retroactive Alimony?

The Trial Court abused its discretion by not awarding retroactive alimony when evidence supported the award. Similarly, the Trial Court failed to make detailed findings in conformity with case law and statutory law.

VI. Did The Trial Court Err In Failing To Set Aside Portions Of The Minute Entry Dated September 29, 2006?

Since the Trial Court had already ruled on the Motion to Set Aside the Stipulation in its ruling on August 21, 2006 after the issue was argued during closing arguments, it abused its discretion by not setting aside the portion of the September 29, 2006 minute entry that stated that there was no response to the motion to set aside.

VII. Did the Trial Court Err In Not Awarding To Respondent Some Of Her Attorney's Fee?

In regard to attorney's fees, the Trial Court erred in its finding that the Respondent had not separated her fees from the custody issue when in fact, she had; and, her request for fees was based on the alimony and property division issues.

ARGUMENT

I. Did The Trial Court Err In Only Awarding The Respondent Alimony In An Amount Of \$2,581.00 And Only For A Period Of 5 Years?

The fact's that the Court considers in determining alimony are stated in *Utah Code* 30-3-5(8)(a). The general purpose of alimony is to prevent the receiving spouse from

becoming a public charge and to maintain to the extent possible the standard of living enjoyed during the marriage. *Cox v. Cox*, 877 P.2d 1262 (Utah Ct. App. 1994); *Rosendahl v. Rosendahl*, 876 P.2d 870 (Utah Ct. App. 1994). Further, the goal of alimony is to equalize the parties' standard of living, not just their incomes, in those cases in which insufficient resources exist to satisfy both parties' legitimate needs. *Williamson v. Williamson*, 1999 UT App 219, 983 P.2d 1103. It was undisputed that the reasonable needs of both parties exceeded the amount of net income available to the parties based upon the employment of the Petitioner at the time of separation in June of 2003 and at the time of the divorce in June of 2006. Therefore, the present case qualified for the Court to equalize the standard of living of the parties that existed at the time of the separation of the parties pursuant to *Utah Code* 30-3-5(8)(c). Respondent acknowledges that when determining alimony the Court should not simply equalize income but must review the historical standard of living. *Bankowski v. Bankowski*, 2003 UT App 357, 80 P.3d 153. There is also no dispute to the fact that the Respondent worked the first few years of the marriage to support the Petitioner while he finished college and improved his skills; and that for a period of 16 years prior to the separation in June of 2003 she was a stay-at-home mother taking care of the two daughters except for the approximate seven months in 2001 and 2002 when she worked at Southwest Airlines to obtain health insurance for the minor children for the reason that the Petitioner was out of work during said period of

time. Therefore, the standard of living that the parties enjoyed was based upon an income of approximately \$10,000.00 gross per month at the time of separation in 2003.

Under Petitioner's Trial Exhibits 17 (Addendum A) and 18 (Addendum B), his net income was \$8,128.00.

Specifically, on Exhibit 17 Mr. Jensen received a refund on his Federal tax return of \$5,512.00 which reduced his allegation of Federal income tax on Exhibit 18. Mr. Jensen's statement under oath that his Federal income tax deduction each month was \$1,480.00 on Exhibit 18 is inaccurate and as is stated on line 54 of his Federal tax return, Exhibit 17, the monthly income tax withheld was only \$971.50. This amount should be reduced by the tax refund in the sum of \$459.00 per month showing a total tax deduction each month of only \$512.00. This would increase Mr. Jensen's monthly net income \$968.00 each month.

At the time Commissioner Michael S. Evans of the trial court entered the Order awarding temporary alimony of \$2,859.00 per month and ordering the Petitioner to also pay the payment on the condominium in Arizona, Mr. Jensen's total temporary alimony obligation was \$3,909.00. At the time of the temporary Order the Respondent was receiving disability income of \$1,800.00 per month which terminated in June of 2004. However, Commissioner Evans imputed minimum wage of \$893.00 which resulted in an \$800.00 per month net income (Minute Entry, T. 576-579). Commissioner Evans found

that the best evidence of Respondent's actual expenses at the time of separation was those alleged by the Petitioner in his Affidavit dated June 2, 2004, where he represented from a review of Respondent's bank statements from June 10, 2003 to March 10, 2004, that she had average monthly expenditures of \$3,771.00 (R. 408-415). Specifically, the Petitioner represented to the Court in June of 2004 that Respondent's monthly expenses, based upon their standard of living, was \$3,771.00 which did not include the approximate \$1,300.00 payment on the condo in Arizona which the Petitioner was making. Therefore, the evidence before the Court, both before Commissioner Evans for the temporary alimony and before Judge Fratto at the trial, from the Petitioner is that the Respondent had needs of \$3,771.00 and if she was obligated to pay the mortgage payments on the condo in Arizona which she was under the Decree of Divorce her total monthly needs would be \$5,070.00 (Respondent's Trial Exhibit 26) (Addendum C). In Respondent's Trial Exhibit 36 (Addendum D) she presented to the Court her increased monthly expenses based upon additional loans that she had obtained since the separation of the parties which included attorney's fees and medical expenses.

The Trial Court in its ruling (Addendum E) on page 10 and page 7 found the Respondent's needs were only \$4,000.00 per month; however, it found that the Petitioner's needs were \$5,084.00 per month. The Trial Court failed to clearly indicate how it arrived at the

Respondent's need of \$4,000.00 per month since said amount is not in accordance with the evidence provided to the Court by the Petitioner as to what Respondent's needs were. Again, the best evidence as to Respondent's needs was the exhibit prepared by the Petitioner and submitted to Commissioner Evans for the temporary Order on alimony and also admitted into evidence at the trial as Respondent's Exhibit 26. Contrary to the Trial Court's statements in its ruling on page 11 (T. 1610) the Respondent did not request an equalization of income but requested an equalization of the standard of living. Further, the Trial Court misinterpreted *Utah Code* 30-3-5(8)(d) by requiring special circumstances. Said statute only indicates that under appropriate circumstances the Court may attempt to equalize the parties' respective standards of living. The appropriate circumstances required by 30-3-5(8)(d) would be where the parties' needs exceed their income which is the present case and, therefore, the appropriate circumstance standard was met in this case and the Court should have looked at equalizing the parties' standard of living and abused its discretion by not doing the same. *Bankowski v. Bankowski*, 2003 UT App 357, 80 P.3d 153; *Crompton v. Crompton*, 888 P.2d 686 (Utah Ct. App. 1994); *Hoagland v. Hoagland*, 852 P.2d 1025 (Utah Ct. App. 1993).

The Court also abused its discretion in imputing income to the Respondent based upon a 7-month temporary job with Southwest Airlines which ended due to Respondent's disability. *Utah Code* 78-45-7.5(7)(a) states "income may not be imputed to a parent

unless the parent stipulates to the amount imputed, the party defaults, or it contested cases, a hearing is held and a finding made that the parent is voluntarily unemployed or under-employed.” Further, in subsection (c) states “if a parent has no recent work history or their occupation is unknown, income shall be imputed at least at the Federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding, shall enter specific findings of fact as to the evidentiary basis for the imputation.” The Findings (Addendum F paragraphs 32-34) entered by the Court in regard to imputing income were that although Respondent’s employment with Southwest Airlines did not represent historical income and was of short duration, for some reason the Court found that it was enough to determine that she had the ability to earn an income in the amount of \$8.25 per hour (T. 1610, page 9). The Trial Court disregarded the findings of both Dr. Mausberg and Dr. Brunson in regard to Respondent’s inability to work at the time of the trial due to her depression. It is true that Dr. Mausberg testified that the Respondent’s depression was not permanent and may improve but there was no guarantee of the same. Further, the depression as testified by both Dr. Mausberg and Dr. Brunson was caused by the Petitioner of the two daughters’ affections toward their mother and the Respondent’s lack of parenting time due to Petitioner’s refusal to allow her to see the minor daughters.

The Respondent respectfully submits that the trial court abused its discretion in

imputing income greater than the Federal minimum wage which was imputed by Commissioner Evans in regard to the temporary alimony since there was no additional evidentiary basis for said imputation that did not exist at the time the temporary Order of alimony was entered by the Court. Further, it was undisputed that at the time of the separation of the parties the Respondent was disabled and receiving a disability payment of approximately \$800.00 per month and did not receive any income from any employment from the time of separation to the time of trial.

Respondent acknowledges that in marshalling all the evidence the trial court could disregard the testimony of Dr. Brunson and Dr. Mausberg in regard to Respondent's current ability to work and to rely upon the activities of the Respondent during the pendency of the trial court matter as stated on lines 2-6 of the Court's ruling (T. 1610, page 9). However, the brief employment at Southwest Airlines and the testimony of the Respondent that she was unable to go back to work at Southwest Airlines was not sufficient to impute wages to her of \$8.25 per hour and the Court should have only imputed the minimum wage.

In marshalling the evidence it is apparent that the Court did not have any evidence to support its finding (Addendum F paragraph 36) that the Respondent was only entitled to alimony for a five year period when the parties had been married for 17 years and for over 16 years of said marriage the Respondent had been unemployed. The trial court's

analysis on lines 9 through 25 of page 10 and lines 1 through 6 of page 11 of its ruling (T. 1610)(Addendum E) is not in accordance with the law in regard to the duration for payment of alimony. As previously stated the purpose of alimony is to provide support for the wife as nearly as possible at the standard of living enjoyed during the marriage and to prevent her from becoming a public charge. *Rosendahl v. Rosendahl*, 876 P.2d 870 (Utah Ct. App. 1994); *Schaumberg v. Schaumberg*, 875 P.2d 598 (Utah Ct. App. 1994). There was no evidence presented to the Court to indicate that the Respondent had the necessary education or work skills to increase her income from the imputed income by the Court of minimum wage by Commissioner Evans or the \$8.25 per hour imputed by Judge Fratto. There was no evidence presented that the circumstances of the Respondent would be any different in five years as it was at the time of trial. It appears that the trial court is attempting to limit the duration of the alimony based upon speculation and not upon evidence presented at the trial. A case very similar to the present case is *Anderson v. Anderson*, 757 P.2d 476 (Utah Ct. App. 1988). In that case the wife was in her 50's, had spent most of her life providing services to her family with no monetary remuneration and had minimal work experience. The Utah Court of Appeals found that the wife could not be expected to find a job immediately upon completion of her schooling and her salary, when she did find employment, was unknown and, thus, it overruled the temporary alimony award which required the alimony to terminate upon her 62nd birthday (*id.* at

page 478-479).

Another case on point is *Jones v. Jones*, 700 P.2d 1072 (Utah 1985), where Mrs. Jones was 52 years old at the time of trial and had only performed sporadic season unskilled jobs during the marriage and with the full consent of her husband had devoted most of her time to rearing the parties' children. She had no professional training, few marketable skills and no independent income. In the *Jones* case, the Utah Supreme Court stated in overruling her temporary alimony award and awarding permanent alimony that it is "entirely unrealistic to assume that a woman in her mid 50's with no work experience or training would be able to enter the job market and support herself in anything resembling the style in which the couple had been living." *Id.* at 2075. Lastly, in *Munns v. Munns*, 790 P.2d 116 (Utah Ct. App. 1990), the wife was in her late 50's, in reasonably good health but had never been substantially employed and had not developed any employable skills. Again, the Court found it was unrealistic to assume that the wife would ever be able to provide for herself at a reasonable level and found that the trial court abused its discretion in terminating alimony at the age of 62. *Id.* at 122. The Court went on to state in the *Munns* case that, in the event the parties' circumstances change in the future then the Court could modify the alimony award. In the present case, the Respondent, Sonja Jensen, was a 44-year old woman with an Associate Degree and less than one year of work experience in the last 17 years. Further, she was not in excellent

health and did not have any skills that would guarantee that she could ever obtain employment more than a minimum wage job or at the best the \$8.25 that she enjoyed for the seven months at Southwest Airlines. Therefore, the Trial Court abused its discretion in only awarding temporary alimony for a five-year period and should be reversed and the Respondent should be awarded permanent alimony up to the length of the marriage or terminating based upon the other factors pursuant to statute.

II. Did The Trial Court Err In Not Enforcing The Parties Stipulation To Sell The Marital Home And Divide The Equity?

During the second day of the trial on the 29th of June, 2006, the parties entered into a Stipulation that was placed upon the record (Addendum G) wherein both counsel for the parties and the parties individually acknowledged and agreed upon questioning by the Court that the condominium in Arizona would be awarded to the Respondent, Sonja Jensen, and the marital home in Murray, Utah, would be listed for sale and each party would be awarded one-half of the net equity proceeds received from that sale with the Petitioner, William Jensen, receiving an extra \$63,000.00 from the proceeds from the sale of the Murray home to satisfy his equity interest in the condo in Arizona (T. 422-427, Addendum G).

The Petitioner, William Jensen, then filed his Motion to Set Aside the Stipulation to sell the real property (R. 1444) and during the closing arguments of the parties on July

21, 2006, Petitioner's Motion to Set Aside was argued by counsel for the parties (T. 516-518, Addendum H).

In the Court's ruling on the 21st of August, 2006(Addendum E), the Court stated as follows: "Turning now to the real property, one issue that was presented in front of me was the valuation of the Murray home. I have concluded that the valuation is as the appraiser, Jerry Weber, appraised that property and I believe that to be \$440,000.00. Mr. Jensen is currently living in this home with the children. Mrs. Jensen, the Respondent, is currently living in the condominium in Tempe, Arizona. The task in front of me is how to divide that property and, let's see, I see parody. I don't know if there is any disagreement here in the terms of the equity in the Tempe condominium. With my finding in terms of the value, the fair market value of the Murray home, it is my order that, here again, that these properties be sold, these properties be sold and that the net proceeds be divided equally between the parties. And I am looking for my formula here." (T. 1610, page 16, lines 8-25) The Court then went on the say on page 33, lines 7-25 (T. 1610) "what I had envisioned here, and I am sorry I was unclear with that, that both properties be treated the same, that is, that . . I sort of ordered that they be sold and that from the proceeds the setoffs that I have already outlined be accomplished. And, quite frankly, depending on the determination on these cars, I suppose that would be (inaudible) sale in terms of valuation, but I still want to take a look at that issue and see what we have

there. But none of that should occur, unless you otherwise agree, of course, none of that should occur until the youngest child reaches the age of 18 or graduates from high school. At that point, then, unless you have agreed otherwise, both properties shall have to be sold and then the proceeds, together with the setoffs and so forth, it should all be settled at that point.”

Apparently, the Trial Court made its decision on the Motion to Set Aside the Stipulation in its ruling of August 21, 2006, because the ruling of the Court failed to acknowledge the Stipulation and failed to enter an Order pursuant to the terms thereof. The Court changed the terms of the Stipulation without indicating that it was granting the Motion to Set Aside and ordered the home and residence sold after the youngest child turned 18 and, further, determined a value of the marital home in Murray, Utah, contrary to the Stipulation of the parties in open Court that the value of the marital home would be determined by selling the same.

In *Brown v. Brown*, 744 P.2d 333 (Utah Ct. App. 1987), the above Court stated “a promise or agreement with reference to a pending judicial proceeding, made by a party to the proceeding or his attorney, is binding without consideration. By statute or rule of court such an agreement is generally binding only (a) if it is in writing and signed by the party or attorney, or (b) if it is made or admitted in the presence of the court, or (c) to the extent that justice requires enforcement in view of material change of position in reliance

on the promise or agreement.” There is no question in the present case that the agreement was made in open Court and both parties agreed to the same after being asked by the Court if that was their agreement. Both attorneys also agreed to the same. Further, in *Kinsman v. Kinsman*, 748 P.2d 210 (Utah Ct. App. 1988), the above Court stated that an “[a]ffirmance is based on a contract theory. These parties negotiated and agreed upon terms to settle their divorce action and entered into a stipulation incorporating those terms. A stipulation is an enforceable agreement if it meets the requirements of formality outlined in *Brown v. Brown*” Therefore, there is no question that there was an agreement between the parties in the present case. The issue is whether or not the Court committed an error of law or abused its discretion in setting aside the Stipulation when the same is obviously prejudicial to the Respondent in regard to determining the value of the marital home in Murray, Utah, and precluding the Respondent from presenting rebuttal testimony in regard to the value of the marital home and residence.

In *Yeargin, Inc. v. Auditing Div. of Utah St. Tax Commn.*, 2001 UT 11, 20 P.3d 287, the Utah Supreme Court stated,

[T]here is an institutional hesitancy to relieve a party from a stipulation negotiated and entered into with the advice of counsel, *Rivera v. State Farm Mut. Auto. Ins. Co.*, 2000 Ut 36, ¶ 11, 1 p.3d 539 (quoting *Birch v. Birch*, 771 P.2d 1114, 1116 (Utah Ct.App. 1989)), a court has the discretion to set aside a stipulation under certain conditions. First, the party seeking relief from the stipulation must request it by motion from the trial court. *See Fullmer v. Blood*, 546 P.2d 606, 608-09 (Utah 1976) (holding that party was bound by stipulation of fact because it did not file motion with trial court requesting to

be relieved from it); *Deseret Sav. Bank*, 78 Utah at 252, 2 P.2d 609 (stating that party must seek repudiation through direct proceeding). Second, the motion to repudiate the stipulation must be timely filed. See *Klein v. Klein*, 544 P.2d 472, 476 (Utah 1975). Third, it must show that the stipulation was ‘entered into *advertently or for justifiable cause.*’ *First of Denver*, 600 p.2d at 527 (emphasis added). Inadvertence cannot be the basis for repudiation when the mistake was ‘due to failure to exercise due diligence, (or if it could) have been avoided by the exercise of ordinary care.’ *Rivera*, 2000 Ut 36 at 11, 1 p.3d at 542 (citation omitted). We have also noted that ‘(i)t is unlikely that a stipulation signed by counsel and filed with the court was entered into inadvertently.’ *Dove*, 710 P.2d at 170. Fourth, the lower court must state its basis for relieving the parties of the stipulation. See *id.* (“In the absence of any articulated ‘justifiable cause,’ we must reverse the withdrawal of the stipulation.” (emphasis added) (quoting *First of Denver*, 600 P.2d at 527)).

The Trial Court failed to state any articulated justifiable cause for granting the Motion to Set Aside the Stipulation in the Court’s ruling of August 21, 2006 when the Court did the same. There is the Minute Entry of the Court of September 29, 2006 where the Court indicates that it is granting the Motion to Set Aside the Stipulation because there is no opposition but as stated above, there was opposition to the Motion and it was argued during closing arguments before the Court and the Court, for all intents and purposes, made its decision in granting the Motion to Set Aside the Stipulation on the 21st of August, 2006, when the Court entered its ruling. Again, the Court did not articulate any justifiable cause for granting the Motion and withdrawing the Stipulation. It could be argued that the basis was to allow the youngest child to remain in the home until she graduates from high school but the Respondent was willing to agree to the same as stated

by her counsel in closing arguments if, in fact, the Petitioner agreed upon the value of the home to be \$609,000.00. The critical issue was the value of the Murray home and not whether or not the minor child could reside therein until she finished high school. There is no justifiable cause to set aside the parties' agreement to sell the Murray home to determine the value thereof. Further, there is no justifiable cause to preclude the Respondent from presenting additional rebuttal evidence in regard to the value of the home and residence based upon the fact that the Court did apparently grant the Motion to Set Aside the Stipulation in its ruling on the 21st of August, 2006.

III. Did The Trial Court Err In Ordering The Personal Property Sold?

Respondent again acknowledges her burden of marshalling all of the evidence to support her contention that the trial court abused its discretion in ordering the personal property sold. Respondent's Trial Exhibit 41(Addendum I), the Uniform Residential Loan Application, was signed by both parties in 2002 when they purchased the condominium in Arizona. Both parties again under penalties of criminal and civil liability stated that their household property at that time was worth \$100,000.00. The Trial Court in its ruling on page 13, lines 13-25 states that most of the personal property was not valued which was just not accurate. The Respondent testified in regard to Respondent's Trial Exhibit 40 (Addendum J) wherein all of the items of personal property in the marital home were listed and in regard to Respondent's Exhibit 41 where the value

was agreed upon by the parties to be \$100,000.00. Specifically, the Respondent testified that she made the list, Exhibit 40, just before November 22, 2005 when she left the home and residence and that the \$100,000.00 was a reasonable figure for the value of the property (T. 408-409). In regard to the personal property in Arizona, its value was listed on Respondent's Trial Exhibit 46 (Addendum K) and was testified to by the Respondent as to the value being \$15,000.00 (T. 421).

Although the trial court has the discretion to determine the best procedure to value and divide the personal property, Respondent respectfully submits that the trial court abused its discretion in ordering all of the personal property sold. Neither of the parties stipulated to the same and, in fact, it just doesn't make any sense to order both parties to sell all their furniture and furnishings that they have. The trial court did have sufficient evidence from the parties in regard to the value of the personal property and it should have been awarded to each party with an offset based upon the values as indicated by the evidence, or determine by the Trial Court.

The trial court does not abuse its discretion in awarding property in kind rather than ordering its sale and then awarding the proceeds. The Court is not required to order the sale of any property, but may award property in kind and leave any sale to the discretion of the party to whom it is awarded. *Munns v. Munns*, 790 P.2d 116 (Utah Ct. App. 1990). Further, the trial court did not make a specific finding in regard to how the

personal property was to be sold. The Court's ruling could motivate a party to sell their furniture, furnishings, etc. to a friend or use some other method at an extremely low value which would obviously effect the potential distribution of the proceeds received from the sale. Since neither party is involved in the sale of the other party's personal property there is no assurance that the sale would be reasonable and at an arms-length transaction. The trial court had many other options to choose from which would not have been an abuse of discretion.

IV. Did The Trial Court Err In Ordering The Respondent To Pay One-Half Of The Back Payments On The Arizona Condo?

The trial court through Commissioner Evans, after reviewing the Financial Declarations filed by the parties prior to the hearing on temporary Orders, ordered the Petitioner to not only pay the temporary alimony of \$2,851.00 per month but also ordered the Petitioner to pay the payments on the condo (R. 1357-58) The determination by Commissioner Evans requiring the Petitioner to pay the payments on the Arizona condo was based upon Respondent's Trial Exhibit 25 (Addendum L) which was Petitioner's Affidavit presented to Commissioner Evans wherein the Petitioner represented to Commissioner Evans that, in fact, he was paying the mortgage payment on the Arizona condo and not the Respondent (Expense Exhibit to Respondent's Exhibit 25, Addendum L). Further, Respondent's Financial information provided to Commissioner Evans prior to the hearing on temporary Orders also indicated that she was not paying the payment on

the Arizona condo. The temporary alimony payment was based upon the Petitioner paying the Arizona condo payment and not the Respondent. In fact, if the Respondent had been ordered to pay the Arizona condo then she would have had an additional need of approximately \$1,300.00 per month over and above the \$2,851.00 in temporary alimony which was awarded to her. It is true that the issue of the final allocation of the payment of the Arizona condo was reserved since the Petitioner objected to the Commissioner's Recommendation and the Order of the Court that he pay the same. All of the above evidence was presented to Judge Fratto at the trial.

Respondent acknowledges that the Court has broad discretion in regard to ruling on modifying temporary orders entered by the Court in regard to alimony but Respondent respectfully submits that the trial court abused its discretion by not considering the appropriate factors and needs of the Respondent as it related to the permanent alimony and the payment on the Arizona condo. In Respondent's Trial Exhibit 36 presented to the trial court she did include the payment on the condo and related expenses which increased her needs to \$5,743.00 but the trial court did not make a specific finding as to how it arrived at the alleged \$4,000.00 needs of the Respondent. A comparison of Petitioner's Trial Exhibit 18 (Addendum B) and Respondent's Trial Exhibit 36 (Addendum D) support Respondent's contention that her needs, even though less than the Petitioner's alleged needs, justify the Court in equalizing the standard of living between the parties and

awarding to her the \$3,909.00 in permanent alimony so that she can continue to survive on the same standard of living as the Petitioner and pay her condo payment. Further, the evidence before the Court supported Respondent's decision that she did not have any ability to repay the one-half of the payments on the Arizona condo since she was not awarded any retroactive alimony for the year prior to the temporary order being entered. It is interesting to note that even though the Court did not award the Respondent retroactive alimony the Court did require her to pay back one-half of the condo payments.

Based upon the foregoing the trial court should be reversed in regard to ordering the Respondent to pay one-half of the Arizona condo payment.

V. Did The Trial Court Err In Failing To Award Respondent Retroactive Alimony?

Utah Code 78-45-3 states: "every man shall support his wife when she is in need." There is no dispute that the Respondent was in need of support from the date of separation in June of 2003 until the temporary Order became effective in June of 2004 (T. 404-405, Respondent's Trial Exhibit 37). Further, there is no dispute in the evidence that the Petitioner did not support the Respondent during said period of time. The Court fails to make any specific finding as to why it refused to award retroactive alimony. The only finding is in paragraph 39 of its ruling where the Court states that the Respondent failed to present sufficient evidence to demonstrate a reason why the Court should award retroactive alimony and that said retroactive alimony should not be awarded on temporary

relief (R. 1582). Respondent presented the reasons at the hearing before Commissioner Evans where the issue was reserved for trial which is the common practice with the Commissioners in domestic matters to not go back prior to the time when a party requests alimony and reserving the issue of alimony for the time period prior to that time to the trial court. The Respondent presented the same reasons in her testimony at trial that she was unemployed during said period of time, had no source of income and received nothing from the Petitioner to help support her. (T. 404, 405, 444).

Under Utah Code 30-3-3(3) the Court may order a party to provide support and maintenance to the other party during the pendency of the action. There is no question that there was not a temporary support order for the period from the separation in June 2003 until June of 2004. It is true that the divorce action was not filed by the Petitioner until August 21 of 2003 but the duty of a man to support his wife under 78-45-3 would satisfy Respondent's claim for the months of June and July of 2003.

The Respondent could not present any other reasons other than what she had already presented to the Court at the hearing on temporary relief and at the trial other than the fact that she was unemployed, had no source of income, had the needs to support herself, and the Petitioner was not supporting her during the period of time from June 2003 to June 2004. Therefore, the Respondent is entitled to retroactive alimony and the Court abused its discretion in failing to award the same, or to make sufficient findings as

to why.

VI. Did The Trial Court Err In Failing To Set Aside Portions Of The Minute Entry Dated September 29, 2006?

Respondent has presented argument supporting this issue in her argument on Issue II, “Not Enforcing the Parties Stipulation” and incorporates said argument here.

The Motion to Set Aside the Stipulation (Record 1444-1446) filed the 18th of July, 2006, three days prior to the closing arguments was argued by the parties during the closing arguments. (T. 516-518 and 501-502). The Trial Court in it’s Ruling dealt with said Motion by disregarding the Stipulation and basically granting the Motion. (T. 1610) The Trial Court without a Notice to Submit being filed sua sponte granted the Motion to Set Aside the Stipulation in the Trial Court’s Minute Entry of September 29, 2006. (T. 1544) The Respondent then filed a Motion to Set Aside Portions of said Minute Entry (Record 1557-1560) specifically the portion that stated there was no opposition to the Motion to Set Aside the Stipulation since there was opposition in the closing argument and in the Motion for Consideration of Additional Issues filed on the 29th of August, 2006. (Record 1461-1462)

The only request the Respondent was making to the Trial Court pursuant to URCP 60(a)(b) was to set aside the portion of said Minute Entry that was inaccurate in regard to Respondent’s opposition to the Motion to Set Aside the Stipulation. The Trial Court

erred in refusing to correct it's mistake and should be reversed. (See Udy v. Udy, 1995, 893 P.2d 1097)

VII. Did the Trial Court Err In Not Awarding To Respondent Some Of Her Attorney's Fees?

The Trial Court made an inaccurate conclusion in it's Minute Entry of September 29, 2006.(Record 1543-44) In regard to an award of attorney's fees the Trial Court denied Respondent's request based upon insufficient evidence relating to fees incurred in regard to the custody issued. The Respondent never argued that she was the prevailing party on the custody issue and never requested fees in regard to the same. Only the Petitioner requested fees in regard to the custody issue. In Respondent's Memorandum in Support of Award of Attorney's Fees (Record 1463-66) the Respondent only requested attorney's fees incurred relating to the alimony and property issues upon which the Respondent prevailed. An award of attorney's fees should be based on the receiving spouses financial needs, the payer spouses ability to pay, and the reasonableness of the requested fees. (Davis v. Davis,2003, 76 P.3rd 716) Since the Trial Court did not equalize the standards of living between the parties and left the Petitioner with more monthly income than the Respondent, the Petitioner has the ability to pay some of the attorney's fees of the Respondent. Further, based on the evidence presented to the Trial Court as to the

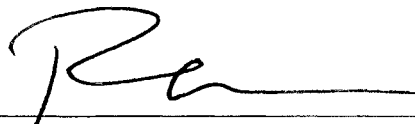
Respondent's financial needs, (T.400-03 and Respondent's Trial Exhibit 37) and her inability to pay (T. 219,378,401) her fees of \$12,574.00 (which was the balance due and owing since October 2005), the balance due and owing since October, 2005, and her lack of any current liquid assets or income other than alimony, the Trial Court should have awarded some fees. In Respondent's attorney's affidavit (Record 1459-60) he attested to the reasonableness and necessity of the fees.

The Trial Courts finding in regard to attorney's fees is in error since the Trial Court requested the Affidavits and Memorandum's and the same are sufficient to establish the reasonable and necessary fees incurred by the Respondent that did not relate to the custody issue upon which the Trial Court relied in denying the award of attorney's fees. Therefore, Respondent should be awarded attorney's fees or this Court should remand to have the Trial Court correctly review the request for fees and the Affidavit and Memorandum filed in support

CONCLUSION

The Trial Court's decisions regarding the seven issues presented on appeal should be reversed and this matter remanded to the Trial Court for further hearing or to amend it's ruling pursuant to the ruling of this Court.

DATED this 14 day of January, 2008.

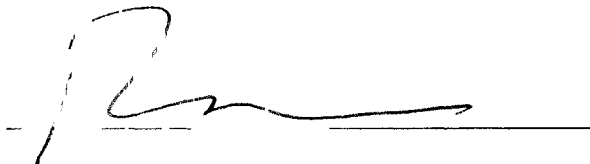


Richard S. Nemelka
Attorney for Respondent/Appellant

CERTIFICATE OF MAILING

This is to certify that I mailed a true and correct copy of the foregoing **BRIEF OF RESPONDENT/APPELLANT SONJA JENSEN** this 14 day of January, 2008, postage prepaid and addressed as follows:

Bart Johnson
Van Cott, Bagley
36 So. State St. Ste. 1900
Salt Lake City, UT 84111
Attorney for Appellee
William A. Jensen



ADDENDUM A

Form 1040

Department of the Treasury — Internal Revenue Service

U.S. Individual Income Tax Return 2005

(99) IRS Use Only — Do not write or staple in this space.

Label
(See instructions.)Use the
IRS label.
Otherwise,
please print
or type.Presidential
Election
Campaign

For the year Jan 1 - Dec 31, 2005, or other tax year beginning , 2005, ending , 20		OMB No. 1545-0074
Your first name WILLIAM A. JENSEN	MI Last name	Your social security number 157-40-3588
If a joint return, spouse's first name MI Last name		Spouse's social security number
Home address (number and street). If you have a P.O. box, see instructions. Apartment no. 5691 SO. SHADY FARM LANE		You must enter your social security number(s) above. ▲
City, town or post office. If you have a foreign address, see instructions. State ZIP code MURRAY, UT 84107-6715		
Check here if you, or your spouse if filing jointly, want \$3 to go to this fund? (see instructions)		<input type="checkbox"/> You <input type="checkbox"/> Spouse

Filing Status

Check only
one box.

1 <input type="checkbox"/> Single	4 <input checked="" type="checkbox"/> Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here .
2 <input type="checkbox"/> Married filing jointly (even if only one had income)	
3 <input type="checkbox"/> Married filing separately. Enter spouse's SSN above & full name here .	5 <input type="checkbox"/> Qualifying widow(er) with dependent child (see instructions)

Exemptions

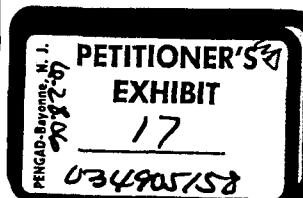
If more than
four dependents,
see instructions.

6a <input checked="" type="checkbox"/> Yourself. If someone can claim you as a dependent, do not check box 6a.	Boxes checked on 6a and 6b, ..	1
b <input type="checkbox"/> Spouse.	No. of children on 6c who:	
c Dependents:		
(1) First name Last name	(2) Dependent's social security number	(3) Dependent's relationship to you
JOHANNA JENSEN	528-87-3360	CHILD
AMANDA JENSEN	529-99-6900	CHILD
d Total number of exemptions claimed		3

Income

Attach Form(s)
W-2 here. Also
attach Forms
W-2G and 1099-R
if tax was withheld.If you did not
get a W-2,
see instructions.Enclose, but do
not attach, any
payment. Also,
please use
Form 1040-V.

7 Wages, salaries, tips, etc. Attach Form(s) W-2	7	120,000.
8a Taxable interest. Attach Schedule B if required	8a	
b Tax-exempt interest. Do not include on line 8a	8b	
9a Ordinary dividends. Attach Schedule B if required	9a	200.
b Qualified divs (see instrs)	9b	200.
10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions)	10	589.
11 Alimony received	11	
12 Business income or (loss). Attach Schedule C or C-EZ	12	
13 Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here.	13	-3,000.
14 Other gains or (losses). Attach Form 4797	14	
15a IRA distributions	15a	
b Taxable amount (see instrs) ..	15b	
16a Pensions and annuities	16a	
b Taxable amount (see instrs) ..	16b	
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E ..	17	
18 Farm income or (loss). Attach Schedule F	18	
19 Unemployment compensation	19	
20a Social security benefits	20a	
b Taxable amount (see instrs) ..	20b	
21 Other income	21	
22 Add the amounts in the far right column for lines 7 through 21. This is your total income. ▶	22	117,789.
23 Educator expenses (see instructions)	23	
24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24	
25 Health savings account deduction. Attach Form 8889	25	
26 Moving expenses. Attach Form 3903	26	
27 One-half of self-employment tax. Attach Schedule SE	27	
28 Self-employed SEP, SIMPLE, and qualified plans	28	
29 Self-employed health insurance deduction (see instructions)	29	
30 Penalty on early withdrawal of savings	30	
31a Alimony paid b Recipient's SSN. ▶ 529-21-8387	31a	34,308.
32 IRA deduction (see instructions)	32	
33 Student loan interest deduction (see instructions)	33	
34 Tuition and fees deduction (see instructions)	34	
35 Domestic production activities deduction. Attach Form 8803	35	
36 Add lines 23 - 31a and 32 - 35	36	34,308.
37 Subtract line 36 from line 22. This is your adjusted gross income	37	83,481.

Adjusted
Gross
Income

Tax and Credits**Standard Deduction for —**

• People who checked any box on line 39a or 39b or who can be claimed as a dependent, see instructions.

• All others:

Single or Married filing separately, \$5,000

Married filing jointly or Qualifying widow(er), \$10,000

Head of household, \$7,300

38	Amount from line 37 (adjusted gross income)	38	83,481.
39a	Check if: <input type="checkbox"/> You were born before January 2, 1941, <input type="checkbox"/> Blind. <input type="checkbox"/> Spouse was born before January 2, 1941, <input type="checkbox"/> Blind. Total boxes checked <input type="checkbox"/> 39a		
b	If your spouse itemizes on a separate return, or you were a dual-status alien, see instructions and check here. <input type="checkbox"/> 39b		
40	Itemized deductions (from Schedule A) or your standard deduction (see left margin)	40	28,984.
41	Subtract line 40 from line 38.	41	54,497.
42	If line 38 is over \$109,475, or you provided housing to a person displaced by Hurricane Katrina, see instructions. Otherwise, multiply \$3,200 by the total number of exemptions claimed on line 6d.	42	9,600.
43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	44,897.
44	Tax (see instrs). Check if any tax is from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972	44	6,696.
45	Alternative minimum tax (see instructions). Attach Form 6251.	45	0.
46	Add lines 44 and 45	46	6,696.
47	Foreign tax credit. Attach Form 1116 if required	47	
48	Credit for child and dependent care expenses. Attach Form 2441	48	
49	Credit for the elderly or the disabled. Attach Schedule R.	49	
50	Education credits. Attach Form 8863	50	
51	Retirement savings contributions credit. Attach Form 8880.	51	
52	Child tax credit (see instructions). Attach Form 8801 if required	52	550.
53	Adoption credit. Attach Form 8839	53	
54	Credits from: a <input type="checkbox"/> Form 8396 b <input type="checkbox"/> Form 8859	54	
55	Other credits. Check applicable box(es): a <input type="checkbox"/> Form 3800 b <input type="checkbox"/> Form 8801 c <input type="checkbox"/> Form	55	
56	Add lines 47 through 55. These are your total credits	56	550.
57	Subtract line 56 from line 46. If line 56 is more than line 46, enter -0-	57	6,146.

Other Taxes

58	Self-employment tax. Attach Schedule SE.	58	
59	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137.	59	
60	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required.	60	
61	Advance earned income credit payments from Form(s) W-2	61	
62	Household employment taxes. Attach Schedule H	62	
63	Add lines 57-62. This is your total tax	63	6,146.

Payments

If you have a qualifying child, attach Schedule EIC.

64	Federal income tax withheld from Forms W-2 and 1099.	64	11,658.
65	2005 estimated tax payments and amount applied from 2004 return.	65	
66a	Earned income credit (EIC).	66a	
b	Nontaxable combat pay election. <input type="checkbox"/> 66b		
67	Excess social security and tier 1 RRTA tax withheld (see instructions)	67	
68	Additional child tax credit. Attach Form 8812	68	
69	Amount paid with request for extension to file (see instructions)	69	
70	Payments from: a <input type="checkbox"/> Form 2439 b <input type="checkbox"/> Form 4136 c <input type="checkbox"/> Form 8885	70	
71	Add lines 64, 65, 66a, and 67 through 70. These are your total payments	71	11,658.

Refund

Direct deposit? See instructions and fill in 73b, 73c, and 73d.

72	If line 71 is more than line 63, subtract line 63 from line 71. This is the amount you overpaid.	72	5,512.
73a	Amount of line 72 you want refunded to you	73a	5,512.
b	Routing number. XXXXXXXXXXXX	c	Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings
d	Account number. XXXXXXXXXXXXXXXXXXXXXXXXXX		
74	Amount of line 72 you want applied to your 2006 estimated tax.	74	

Amount You Owe

75	Amount you owe. Subtract line 71 from line 63. For details on how to pay, see instructions.	75	
76	Estimated tax penalty (see instructions)	76	

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)? ☒ Yes. Complete the following. ☐ No

Sign Here

Joint return? See instructions.

Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation	Daytime phone number
Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	

Paid Preparer's Use Only

Preparer's signature	Date	Preparer's SSN or PTIN
Firm's name (or yours if self-employed) address, and ZIP code	EIN	Phone no.

SORENSEN, VANCE & COMPANY P.C.
3115 E LION LANE, SUITE 220
SALT LAKE CITY, UT 84121

TAX PAYER COPY

870535799

**Copy 2 To Be Filed With
Employee's FEDERAL Tax Return**

c Employer's name, address, and ZIP code Ascend HR Solutions P.O. Box 65157 2196 South 700 East Salt Lake City, UT 84165-0157		1 120,000.14 Wages, tips, other compensation		2 11,658.35 Federal income tax withheld	
		3 90,000.00 Social security wages		4 5,579.95 Social security tax withheld	
		5 120,000.14 Medicare wages and tips		6 1,739.92 Medicare tax withheld	
		7 0.00 Social security tips		8 0.00 Allocated tips	
		9 0.00 Advance EIC payment			
d Employee's social security number 157-40-3588		10 0.00 Dependent care benefits		11 0.00 Nonqualified plans	
		12a Code		12b Code	
e Employee's name, address, and ZIP code JENSEN, WILLIAM 5691 SHADY FARM LANE MURRAY, UT 84107-		13 Statutory employee Retirement plan Third-party sick pay		14 Other 0.00	
5 State UT	Employer's state ID number Y90511	16 State wages, tips, etc. 120,000.14	17 State income tax 4,671.08	18 Local wages, tips, etc.	19 Local income tax
		20 Locality name			

Form W-2 Wage and Tax Statement 2005

This information is being furnished to the Internal Revenue Service.

Department of the Treasury - Internal Revenue Service

a Control number	b Employer identification number (EIN) 870535799	Copy 2 To Be Filed With Employee's State, City, or Local Tax Return				OMB No. 1545-0008
c Employer's name, address, and ZIP code Ascend HR Solutions P.O. Box 65157 2196 South 700 East Salt Lake City, UT 84165-0157		1 120,000.14 Wages, tips, other compensation		2 11,658.35 Federal income tax withheld		
		3 90,000.00 Social security wages		4 5,579.95 Social security tax withheld		
		5 120,000.14 Medicare wages and tips		6 1,739.92 Medicare tax withheld		
		7 0.00 Social security tips		8 0.00 Allocated tips		
		9 0.00 Advance EIC payment				
Employee's social security number 157-40-3588		10 0.00 Dependent care benefits		11 0.00 Nonqualified plans		
		12a Code		12b Code		
e Employee's name, address, and ZIP code JENSEN, WILLIAM 5691 SHADY FARM LANE MURRAY, UT 84107-		13 Statutory employee Retirement plan Third-party sick pay		14 Other 0.00		
5 State UT	Employer's state ID number Y90511	16 State wages, tips, etc. 120,000.14	17 State income tax 4,671.08	18 Local wages, tips, etc.	19 Local income tax	
		20 Locality name				

Form W-2 Wage and Tax Statement 2005

Department of the Treasury - Internal Revenue Service

a Control number	b Employer identification number (EIN) 870535799	Copy C For Employee's Records (See Notice on Back of Copy "B") OMB No. 1545-0008 This information is being furnished to the IRS. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.			
c Employer's name, address, and ZIP code Ascend HR Solutions P.O. Box 65157 2196 South 700 East Salt Lake City, UT 84165-0157		1 120,000.14 Wages, tips, other compensation		2 11,658.35 Federal income tax withheld	
		3 90,000.00 Social security wages		4 5,579.95 Social security tax withheld	
		5 120,000.14 Medicare wages and tips		6 1,739.92 Medicare tax withheld	
		7 0.00 Social security tips		8 0.00 Allocated tips	
		9 0.00 Advance EIC payment			
Employee's social security number 157-40-3588		10 0.00 Dependent care benefits		11 0.00 Nonqualified plans	
		12a Code		12b Code	
Employee's name, address, and ZIP code JENSEN, WILLIAM 5691 SHADY FARM LANE MURRAY, UT 84107-		13 Statutory employee Retirement plan Third-party sick pay		14 Other 0.00	
5 State UT	Employer's state ID number Y90511	16 State wages, tips, etc. 120,000.14	17 State income tax 4,671.08	18 Local wages, tips, etc.	19 Local income tax
		20 Locality name			

ADDENDUM B

COPY

Bart J. Johnsen, Bar # 7068
VAN COTT, BAGLEY, CORNWALL & Mc CARTHY
Attorney for Petitioner
50 South Main Street, Suite 1600
Post Office Box 45340
Salt Lake City, Utah 84145-0340
Telephone: (801) 532-3333
Facsimilie: (801) 534-0058

FILED
THIRD DISTRICT COURT
05 JUN 16 PM 4:39
SALT LAKE DEPARTMENT
BY _____
DEPUTY CLERK

**In the Third Judicial District Court of Salt Lake County
STATE OF UTAH**

William A. Jensen
Petitioner,

Amended
Financial Declaration

vs

Civil No. 034905158

Donja Jensen
Respondent.

Judge Fratto
Commissioner Evans

Name: William A. Jensen
Address: 5691 Shady Farm Lane, Murray, UT 84107
Loc. Sec. No.: 157-40-3588
Occupation: Health Administration
Employer: Liberty Dialysis, Oquirrh AKC, Wasatch AKC
Employer Address: 650 East 4500 South, Murray, UT 84107
Number of exemptions claimed 4
Birthdate October 1, 1950

STATEMENT OF INCOME, EXPENSES, ASSETS & LIABILITIES

1 GROSS MONTHLY INCOME from:

Salary and wages, including commissions,
bonuses, overtime and allowances)

\$ 10,000.00

Pension and retirement

Social security

Disability and unemployment insurance

Public assistance (welfare, AFDC payment, etc.)

Child support from any prior marriage

Dividends and interest



Rents	
All other sources: (Specify)	
TOTAL MONTHLY INCOME	\$ 10,000.00

2 MONTHLY DEDUCTIONS

Federal income tax	\$ 1,480.64
State income tax	571.00
FICA/Medicare	765.00
Health insurance	
Disability insurance	22.90
Child support (previous divorce)	
Retirement or pension fund	
401(k)	
Savings plan	
Credit union	
Other (specify)	
TOTAL MONTHLY DEDUCTIONS	\$ 2,839.54

3 NET MONTHLY INCOME: (Attach WTD)	\$ 7,160.46
pay stub and prior year W-2/tax return	

4 DEBTS AND OBLIGATIONS:

Creditor's Name	Account	Balance	Monthly Payment
Gal - Van Cott, Bagley, Cornwall & McCarthy		7,500	2,000
Gal - Richman, Richman, Johnsen		3,335	
Bank One Visa	4417 1230 2551 2020	16,727	240
American Express	3715 655 808 41008		
Transferred balance			
	TOTAL	27,562	\$ 2,240

5 PROPERTY

(a) Real estate	
Address	
5691 Shady Farm Lane, Murray, Utah 84107	
Date of acquisition	August, 1998
Original cost	\$ 375,000
Mortgage balance	\$ 270,000

Mortgage holder	Guaranty Residential Lending	
Monthly payment		\$ 1,761.00
Other liens		
Lienholder		
Current value		\$360,000.00
Basis of valuation		\$375,000.00

(b) Real estate Condo

Address
Tempe, AZ

Date of acquisition

HOA Fees/quarterly \$ 661.00

Mortgage balance \$ 114,556.24

Mortgage holder Countrywide Home Loans

Monthly payment \$ 836.00

(b) Vehicles (Year, make & model)	Value	Balance Owed
1996 Nissan Maxima	\$ 5,500	\$ -

(c) Cash and deposit accounts (banks, savings & loans, credit unions-savings and checking)

Name of institution	Account No.		Current balance
Bank One Checking	13677176		variable
Wells Fargo Checking	344-4351328		variable
Bank One Savings - Johanna	1613749470	approx.	\$ 22,338
Bank One Checking (Johanna)	653585708	approx.	\$ 1,000
Bank One Savings - Amanda	1613749462	approx.	\$ 22,338
Bank One Checking - Amanda	653583682	approx.	\$ 3,000
*Fidelity Investments -Bill & Sonja	x34-109231		\$ 34
**Fidelity Investments - Amanda	2AU-703958		\$ 1,797
***Fidelity Investments - IRA	129-359661		\$ 51,000

* as of June 2005

** as of March 2004

*** as of June 2005

- (d) Securities, stocks, bonds, money
market funds (other)

Name of institution	Account Number	Current value

- (e) Business interests

Name of Business	Shares	Current value

- (f) Other assets (include value of equity)

6 PROFIT SHARING OR RETIREMENT ACCOUNTS

(If more than two accounts, attach sheet with identical information)

Name of company/plan name

Plan representative

Address

Current value

Name of company/plan name

Plan representative

Address

Current value

7 LIFE INSURANCE

Name of Company	Policy No.	Face Amount	Cash Value (if any)

8. MONTHLY EXPENSES

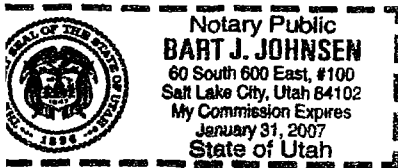
Rent or Mortgage payments (residence)	1,778
Mortgage - condo	836
Home Warrantee	52
HOA Fee	220
Maintenance (residence)	20
Outside maintenance	152
Pool maintenance	50
Food and household supplies	600
Nanny	100
Utilities	400
Telephone	50
Children's cell phone	118
Comcast Net/TV	105
Laundry and dry cleaning	40
Clothing	100
Children's clothing	200
Children's extra curricular	260
Children's school lunch	120
Children's activities	400
Manda's voice lessons	56
Children's hair & grooming	100
Medical	75
Dental	90
School	50
Entertainment	100
Gifts	208
Sports mall	200
Travel/vacations including children	250
Auto expense	150
Auto insurance	205
Auto payment	441
Installment payments (from item 4 above, not including above)	240
Miscellaneous	50
TOTAL MONTHLY EXPENSES	7,816

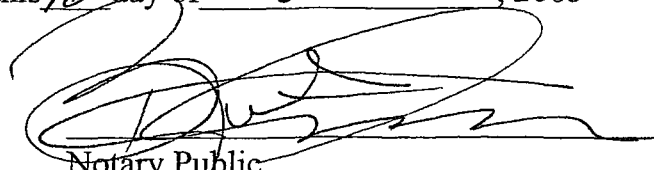
STATE OF UTAH)
 : ss.
County of Salt Lake)

I swear under penalty of perjury that all of the information contained herein is true and correct.


Affiant

Subscribed and sworn to before me this 16th day of JUNE, 2005




Notary Public
Residing in Salt Lake County, Utah

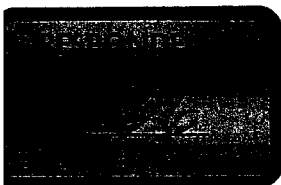
My Commission Expires:

1/31/07

ADDENDUM C

Sonja Jensen's Expenditures June 10, 2003 - March 4, 2004

	Financial Declaration Expenses	Expenses from Bank Statements
Auto registration		104.37
Auto expense	193.00	38.91
Auto payments	499.00	
Sports Mall dues	65.00	9.00
Health & Beauty	250.00	143.76
Ect machines		66.67
MBNA		59.13
Miscellaneous	399.00	17.08
Cash for bills		666.67
Untitled charges		358.51
Storage	150.00	
TOTAL MONTHLY EXPENSES	\$ 6,009.66	\$ 3,771.17



Sonja Jensen's Expenditures June 10, 2003 - March 4, 2004

	Financial Declaration Expenses	Expenses from Bank Statements
Rent or Mortgage payments (residence)	\$ 1,299.00	\$ -
Real property taxes (residence)		-
Real property insurance (residence)	13.66	-
Maintenance (residence)		8.89
Landscape		190.76
Food and household supplies	560.00	46.45
Housecleaning		38.89
Dinning out		39.17
Utilities:	260.00	-
Gas		-
Electricity		-
Water		-
Sewer		-
Telephone including long distance	35.00	83.10
Cellular phone	70.00	25.43
Internet	30.00	-
Computer	100.00	
Cable TV service		-
Laundry and dry cleaning	50.00	4.10
Massage	320.00	713.14
Clothing	250.00	201.69
Medical	300.00	32.33
Prescriptions		16.94
COBRA		31.46
Dental	50.00	
Vision	40.00	
Children's school		23.67
Sonja's school	395.00	
Child care	40.00	
Pets		5.89
Entertainment	250.00	-
Gifts	95.00	22.29
Attorney fees		708.70
Mediation		20.83
Donations	30.00	-
Travel	266.00	40.16
Gas		53.19

ADDENDUM D

			SONJA MANN JENSEN			
			Monthly Expenses			
			Rent or mortgage payments (residence) - Condo			824
			Homeowners Association Fee			220
			Real property taxes (residence)		included in mortgage payment	
			Real property insurance (residence)		included in mortgage payment	
			Maintenance (residence):			
			High window cleaning			100
			Pest Control			20
			Repair and Maintenance			100
			Food /Household Supplies			450
			Utilities:			
			Electric			100
			Telephone:			
			Residence			60
			Cell			120
			Internet			35
			Cable TV			50
			Health/Beauty:			
			Medications			60
			Personal Hygiene			150
			Eye Care (contact lens and products)			20
			Insurance: COBRA 36 months			
			Health			400
			Dental			40
			Vision			20
			Life			30
			Auto			210
			Auto Expenses:			
			Lease payment			420
			Gas			160
			Service			60
			Other Expenses:			
			Clothing			150
			Laundry and Dry Cleaning			50
			Travel (2 trips/year \$450 each)			75
			Entertainment			100
			Gifts			150
			Donations			30
			Psychiatrist/psychologist - uninsured (2 hours @ \$180/hour)			360
			Storage			65
			Health Club			75
			TOTAL EXPENSES			\$ 4,704
			Creditors	Debt	Mo./pmt	
			Richard Nemelka	\$ 8,000 (approx)	\$ 500	
			MBNA Mastercard	\$ 17,192	\$ 173	
			Citicard Mastercard	\$ 5,125	\$ 76	
			Don Holbrook	\$ 4,800	100	
			Michael Brunson, Ph.D.	\$ 3,500 (approx)	100	

APPRAISALS
MRI

1,500
1,000
40,617

50
40
1039

1039

5743

ADDENDUM E

ORIGINAL TRANSCRIPT

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

WILLIAM A. JENSEN,

Petitioner,

vs.

SONJA JENSEN,

Respondent.

)
) Transcript of Court's
) Ruling

) Case No. 034905158 DA

) Judge Joseph C.
) Fratto

August 21, 2006

Reporter: Dawn M. Davis, RPR
Notary Public in and for the State of Utah

FILED
DISTRICT COURT
06 OCT 23 PM 9:47
JUDICIAL DISTRICT
SALT LAKE COUNTY
CLERK
MK



CitiCourt, LLC
THE REPORTING GROUP

170 South Main Street, Suite 300
Salt Lake City, Utah 84101

A P P E A R A N C E S

FOR THE PETITIONER:

Bart J. Johnsen, Esq.
Van Cott, Bagley, Cornwall and McCarthy
Attorneys at Law
50 South Main Street
Suite 1600
Salt Lake City, Utah 84144
(801) 237-0344

FOR THE DEFENDANT:

Richard S. Nemelka, Esq.
Nemelka & Nemelka
Attorneys at Law
6806 South 1300 East
Salt Lake City, Utah 84121
(801) 568-9191

ALSO PRESENT:

William A. Jensen
Sonja Jensen

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17 This is not an opportunity, if you will,
18 in terms of arguing the point. That will have to
19 occur in some other context but -- so I don't want to
20 entertain any argument, but there will be undoubtedly
21 some questions and possibly some points and some
22 issues here that there needs to be a resolution on.

23

24

25

1 petitioner and Ms. Jensen we'll identify as the
2 respondent, but there will claims and counterclaims.
3 And both sides had alleged as a grounds for divorce
4 irreconcilable differences. There was other evidence
5 presented in terms of grounds for divorce, but I
6 believe because of your requests and your prayer in
7 your respective pleadings in the matter, and there
8 being sufficient evidence presented and inferences
9 from evidence presented in terms of both grounds and
10 jurisdiction and the grounds of irreconcilable
11 differences, that the court is going to grant one
12 from the other the divorce, the same to become -- on
13 the grounds of irreconcilable differences, the same
14 to become final and absolute upon entry.

15 Evidence was presented regarding fault and
16 a request to make a determination in terms of fault
17 aside from the grounds for divorce. And there were
18 basically two, it seemed to me. The evidence
19 presented seemed to go to two particular grounds or
20 two particular grounds in terms of fault, evidence in
21 terms of fault presented by the respondent and that
22 was either an affair that had been conducted by the
23 petitioner and/or an alienation of the daughter's --
24 minor child's affections as a basis for the divorce.

25 Now, it seemed to me in terms of analyzing

1 that and listening to the evidence, that the affair
2 approach in terms of fault I believe falls short in
3 terms of being convinced that that was a -- this is,
4 by the way, the respondent's, of course, burden in
5 terms of alleging fault, to prove fault by a
6 preponderance of the evidence and I must be convinced
7 not only that there was an affair but that that was
8 in fact the grounds -- the reason for the divorce.

9 And I cannot conclude that from the --
10 from the evidence. It does not appear to me that
11 there was a -- it appears to me that there was --
12 it's undisputed that there was an affair but that
13 seemed to be have been reconciled and -- and the
14 parties continuing on. And with that reconciliation
15 I have a difficult time concluding, at this point,
16 that that now represents the basis for the divorce,
17 the fault in terms of the divorce.

18 In terms of the alienation of the
19 daughter's affection, that I believe is a closer
20 call, but -- in terms of whether that represents the
21 reason for the divorce. Two issues are presented
22 there, first of all, whether alienating the
23 daughter's affections would represent a fault
24 sufficient to make a finding of fault in terms of the
25 divorce and, second, whether there was an alienation

1 of the child's affections.

2 Certainly the respondent perceives that
3 the child's affections are alienated and -- towards
4 her and that the petitioner's responsible for that.
5 And I suppose implicit in that is that those
6 alienations of -- that alienation of affections is
7 not grounded in any other reasons. In other words,
8 is -- are the affections alienated and is it a
9 sole -- is the sole reason the petitioner's activity
10 in alienating the affections.

11 In terms of the evidence that's presented,
12 I don't find by a preponderance of the evidence
13 really any of that. Whether the -- certainly the
14 respondent perceives the child's affections to be
15 alienated and there are apparently instances where
16 the child has indicated the desire not to have
17 contact with her and so forth and so on, but I think
18 that's a little different than alienation of
19 affections, as it would be for fault, so if -- the
20 alienation part I -- I'm not convinced through the
21 evidence that there is that illegal alienation, if
22 you will.

23 And, secondly, I am not convinced over a
24 preponderance of the evidence that the petitioner is
25 response for that -- solely responsible for that and

1 so, consequently, I am finding no fault.

2 Turning now to the next issue, which is
3 alimony, and let me be as succinct as possible.

4 I have come to the conclusion that -- and
5 much of this is not disputed, if you will, but I
6 won't make those distinctions, I will indicate only
7 that from the evidence I have concluded that the
8 petitioners's income is 10,000 a month, petitioner is
9 in need, if you will, in terms of support of \$5,084 a
10 month.

11 I note that the petitioner, through
12 stipulation, is awarded the custody of the children.

13 The respondent's need is \$4,000 a month.
14 In terms of her ability to support herself, there are
15 a couple of issues.

16 The first is evidence presented in terms
17 of her ability to support herself. I find that she
18 is suffering from a situational depression. And I
19 further find that by counseling and some medication
20 that that depression and situational depression --
21 there is some relief from that. Dr. Mausberg's
22 testimony was convincing on that point.

23 Dr. Mausberg further allowed and testified
24 that she was unable to work as a result of this
25 situational depression, she has inability to work as

1 a result of the situational depression.

2 I do not find that convincing in terms of
3 that opinion. Certainly he didn't testify, in fact,
4 to the contrary, that her inability to work is a
5 permanent situation but -- and maybe that is because
6 the underlying situational depression from which she
7 suffers is not a permanent or chronic depression.
8 And, in fact, he testified that and I find that in
9 addition to counseling and medication that helps to
10 relieve that situational depression, that resolution
11 of the situation that causes the depression would
12 relieve the depression.

13 And that situation apparently is -- there
14 is no -- and that's his testimony and it's not
15 controverted, is really this divorce matter and
16 its -- its not -- its irresolution, its not being
17 resolved.

18 I am hoping to -- that this will -- that
19 the decision today will move that matter greatly
20 forward in relieving that -- the situational
21 depression.

22 As I say, I am not convinced by his
23 evidence -- by the evidence presented, and
24 specifically Dr. Mausberg, that she has an inability
25 to work. In fact, I find from these facts that there

1 is an ability to work.

2 Apparently she is able to function, she is
3 able to travel, she is able to work on her father's
4 affairs. She is able to maintain a household. And
5 it seems to me that those facts are relevant to
6 whether she is able to engage in some employment.

7 In addition to that, there is employment
8 history. During the course of the marriage I find
9 that she was generally not employed outside the home
10 but was a homemaker, but that at points in time she
11 did involve herself in employment and, in fact, with
12 the airlines enjoyed an income of \$8.25 an hour.

13 Now, there have been some argument that
14 that did not represent a historical income but
15 granted the -- the employment was fairly short-lived
16 but -- and of short duration. But, none the less, it
17 appears to me to give enough of a benchmark in terms
18 of her ability to earn an income and the amount of
19 that income and that's 8.25 an hour.

20 So I believe I've indicated her -- her
21 need, which is at \$4,000 a month, her ability to
22 support herself and the petitioner's income and what
23 he is in need of in order to support himself.
24 Mathematically, I believe that's -- she is able to
25 support herself 1,489 -- or \$1,419 a month and, of

1 course, that mathematically is taking \$8.25 an hour,
2 timesing that by 4.3 -- or 40 hours a week and then
3 4.3 weeks and amortize it over a year period and we
4 come out with \$1,409 a month.

5 Subtracting that ability to support
6 herself from her need of \$4,000 leaves a need that I
7 find the petitioner can meet of \$2,581. And that's
8 the award.

9 I am awarding that for a period of five
10 years from today. I have taken into account that a
11 child -- that alimony has been paid for some time
12 previous to this and conclude that five years is an
13 appropriate amount of time, given the age of the
14 parties, their ability to support themselves and,
15 quite frankly, if I could digress here just a little
16 bit to say that this is a sufficient amount of --
17 this is a sufficient sum, that a longer period of
18 time -- or an indefinite period of time, if you will,
19 would -- wouldn't be that open-ended -- I don't know
20 that I could do that, but if it was open-ended or a
21 very much longer period of time puts the respondent
22 in the position of becoming, quite frankly, getting
23 older and then depending on this \$2,581 and I think
24 that that works, quite frankly, to her disservice.

25 She has five years, if you will, to put

1 the house in order in many respects so that she is
2 able to support herself. But if I give her the
3 crutch, if you will, for too long, then I think I do
4 her a disservice and then she finds herself dependent
5 on something that does eventually come to an end and
6 then she finds herself much older.

7 There had been a request and evidence
8 presented relative to equalizing the incomes, that I
9 should consider equalizing the incomes. This was a
10 long-term marriage -- or considered a long-term
11 marriage, 17 years, but I have declined to do that
12 approach and have taken the approach I have already
13 outlined for this reason; and that is I believe the
14 parties are able to earn an income -- both of them
15 are able to earn an income sufficient to support
16 themselves at some point and they are of an age that
17 the special circumstances -- or the appropriate
18 circumstances anticipated in Title 30, Chapter --
19 Title 30, chapter 3 Section 58-D, are nonexistent, do
20 not exist in this case and that the -- so I'm not
21 taking that into account or doing that, an
22 equalization of income with special circumstances.

23 We come now to the property, the division
24 of property. That includes personal property and --
25 and the real property.

1 Let me indicate, first of all, that I have
2 concluded that -- and I don't know that there is a
3 disagreement with this, I don't think there is --
4 that there was a 17-year marriage and that all the
5 property that has been in front of me here to divide
6 in some fashion was properly -- was property obtained
7 during the course of the marriage and so I would find
8 it fair and equitable, all those facts considered,
9 that there should be an equal division of the
10 property. That's what I am going to seek to
11 accomplish here, a parity, an equal division of the
12 property.

13 Now, there had been an attempt by the
14 parties, and each of them to a greater or lesser
15 extent, to attempt to analyze the division of
16 property which would set off one property from the
17 other and do that sort of approach.

18 And I think in terms of -- of -- as a
19 matter of agreement between the parties, that that
20 sort of approach made some sense, that there are some
21 tradeoffs, if you will, between the properties to
22 attempt to accomplish the equalization.

23 The evidence that was presented in front
24 of me, it's difficult for me to do that, for a couple
25 of reasons.

1 First of all, sort of an artificial setup.
2 From my point of view, when there is a disputed
3 matter, an artificial setoff, one property against
4 the other, I don't know is appropriate. In other
5 words, I set off a piece of real property against so
6 much personal property. The parties can agree to
7 such a thing and sometimes that makes a great deal of
8 sense, but it's difficult for the court in a disputed
9 matter to make those kind of setoffs.

10 Secondly, in terms of the value of some of
11 the property, I am able to conclude in terms of the
12 values of -- we have two pieces of real property,
13 being the Arizona home and the Salt Lake home, the
14 tradeoff in terms of those properties, because I
15 think I can determine a value for those properties.

16 But in terms of the real property that was
17 presented to me -- and I think we have a specific
18 exhibit and testimony and so forth -- some of the
19 property was valued and -- I have a value and it's an
20 undisputed value, I suppose, but most of that
21 personal property was not valued. And so for me to
22 be able to sort of lump sum -- and I know Mr. Nemelka
23 had suggested the value -- sort of a lump sum value
24 of \$100,000, I believe, but I'm not able, from the
25 evidence, to conclude that and so for those two

1 reasons what you urged me to do, which is sort of the
2 setoff kind of approach, one property against
3 another, I don't think I am able to do.

4 So, in short, I seek to accomplish parity,
5 but I think the only way that I can accomplish that
6 is in the manner that I'm going to tell you now.

7 In terms of the personal property. Well,
8 before I come to the formula that I'm going to
9 propose to this, let me indicate also that the record
10 was searched here to see if there had been a prior
11 division of some sort on the property that you had
12 imposed and I was not able to find that.

13 There apparently is -- the commissioner
14 restrained the parties from disposing of assets on
15 April the 13th, 2004, reserved the issue of personal
16 property division on June 11th, 2004 and
17 September the 21st, 2004 and the -- then there was a
18 suggestion by the commissioner, a recommendation, if
19 you will, that the property be equally divided,
20 arising from the pretrial conference on the 20th of
21 June, 2005.

22 Apparently the commissioner, nor is there
23 any other order that makes some sort of division.
24 And so this is the formula that I'm going to impose
25 on all of the personal property, except that property

1 which can be identified as property belonging to
2 others, including the children, or is the personal
3 items and effects of the individual party, that is,
4 their clothing and their jewelry and so forth.

5 Hopefully I -- with making that exception,
6 I do not create a further problem in the fact that
7 property won't be in dispute, but if there is then I
8 suppose we'll have to deal with that, but I think
9 each party should be awarded their personal property
10 and effects.

11 That which is left, which would be
12 furniture, furnishings, fixtures, appliances, so
13 forth, I am going to order that that all be sold
14 within 60 days and that the net proceeds from that
15 sale be divided equally. That's the Arizona home and
16 that's the Salt Lake home.

17 Now, if within that 60-day period you come
18 to an agreement otherwise, then that agreement will
19 become the order of the court. So that I'm clear --
20 I don't want to overdo the point, but so I'm clear,
21 what I seek to do is to say let's achieve parity.
22 The way to do that, aside from an agreement, you'll
23 take this property, I'll take that property, so
24 forth, just to sell it all, lock, stock and barrel,
25 except for the personal -- what is clearly the

1 personal property of the other party, their clothing,
2 for example, and then divide it.

3 But I urge you to reach what probably
4 would be a more acceptable resolution and certainly
5 given what observes in terms of how much one can sell
6 some of this property for that you reach an agreement
7 for a different kind of division.

8 Turning now to the real property. One
9 issue that was presented in front of me was the
10 valuation of the Murray home. I have concluded that
11 the valuation is as the appraiser, Jerry Webber,
12 appraises that property, and I believe that to be
13 \$440,000.

14 Mr. Jensen is currently living in this
15 home with the children. Mrs. Jensen, the respondent,
16 is currently living in the condominium in Tempe,
17 Arizona. The task in front me is how to divide that
18 property and -- let's see. I seek parity. I don't
19 know if there is any disagreement here in terms of
20 the equity in the Tempe condominium. With my finding
21 in terms of the value -- the fair market value of the
22 Murray home, it is my order that, here again, that
23 these properties be sold -- these properties be sold
24 and that the net proceeds be divided equally between
25 the parties. And I am looking for my formula here.

1 Let me resolve some other issues in terms
2 of these properties, but for right now it is sell the
3 properties, divide the equity equally between the two
4 parties.

5 Turning now to the issue of contempt.
6 There were two causes in order to show cause in terms
7 of contempt. The first is -- concerns the
8 petitioner.

9 On the 13th of April of 2004 the
10 petitioner was restrained from discussing the case
11 with the children and from making disparaging
12 comments about each other in front of the children.

13 I heard evidence that the petitioner had
14 become involved in a videotaping of the respondent,
15 apparently for the purpose of, as the evidence had
16 indicated, that she apparently was lying and that the
17 petitioner wanted to prove that she was lying. And
18 he had been involved in that, although the evidence
19 was that the daughter had sort of begun the process,
20 but then the petitioner joined in and encouraged it.

21 And I infer from all of that that that
22 order has been violated because one could not engage
23 in that process with the daughter without discussing
24 the case and that, in fact, was the focus,
25 apparently, of the activity, was to show that -- or

1 attempt to show that Mrs. Jensen was lying in order
2 to generate some proof of that fact.

3 Mrs. Jensen -- on the other side,
4 Mrs. Jensen was accused of being in contempt because
5 she had disseminated and mailed documents subsequent
6 to the temporary restraining order that restrained
7 her from doing so. And she was restrained from doing
8 so on September 27th by order of the court,
9 September the 27th of 2004. And we had the testimony
10 of the witness, Santilli, that he had received these
11 prohibited documents in October of 2004.

12 The respondent denies having sent them.
13 Mr. Santilli is not aware of who sent them, only that
14 they were sent and he received them and when he
15 received them.

16 I find Mr. Santilli to be a credible
17 witness and, consequently, conclude and find that, in
18 fact, he did receive these documents in October
19 of 2004, subsequent to the temporary restraining
20 order. And that I infer from the evidence that -- I
21 conclude from the evidence that the respondent was
22 responsible for having sent that.

23 Now, there may have been an explanation
24 here that there was a delay in the mail and so forth
25 because the time period was very close here, but I'm

1 not able to make those findings. What I am able to
2 find is that there was a restraint on September the
3 27th and that the first days of October of 2004
4 Mr. Santilli received these documents.

5 And so with that I find -- well, let me
6 apply the standard that has to be applied in
7 contempt, and that is that the party knew of the duty
8 imposed by the court's order, had the ability to
9 comply with the court's order and willfully and
10 knowingly refused to comply. And in both instances I
11 make that finding and find each party in contempt of
12 these respective orders that I have identified.

13 We had issues of the debt -- of debt that
14 apparently involved dental expenses of \$343.45 for
15 the children. The parties are obligated and they
16 stipulated that they owed that debt and I concluded
17 that the unreimbursed dental expense of \$343.35 be --
18 respondent is ordered to pay half of that as her
19 obligation and that a judgment should enter
20 accordingly.

21 The commissioner, on the 7th of February,
22 2006, had ordered that Mr. Jensen maintain the Tempe
23 payments, the Tempe condominium payments, which would
24 be subject to review of this court in the
25 redistribution at the trial.

1 Mr. Jensen continued to pay the mortgage
2 and the HOA payments on the Tempe property and I find
3 that that was paid in an amount of \$26,304.84
4 pursuant to that order.

5 Another issue in terms of financial
6 obligation that was set for review by -- during the
7 course of the trial was the appraisal costs that had
8 been incurred by -- I believe it was the respondent
9 that incurred the appraisal costs and has requested
10 that it be a requirement that the petitioner
11 participate in those expenses.

12 And so this now is the formula in terms of
13 the property, taking into account those debts.

14 Because the -- there is a child -- a minor
15 child in the property, I have ordered both properties
16 to be sold but that -- well, let me phrase it this
17 way. That need not occur until the youngest child,
18 the minor child, reaches the age of 18 or graduates
19 from high school, whichever occurs last. And that
20 can either be by sale of those properties or paying
21 one to the other of one half of the net equity
22 realized from these properties.

23 I need not make this more confusing than
24 it is. What I envision here is I am looking for
25 parity, that there is net equity in the sale of those

1 properties. Or if there is no sale of the property,
2 of course an equity amount has to be divided in half,
3 one -- each gets half of the equity of both
4 properties and that is to be paid either by selling
5 the properties or otherwise resolving that payment
6 when the youngest child reaches 18 or graduates from
7 high school, whichever occurs last.

8 The respondent's half -- if I can read my
9 writing, I could probably tell you more clearly now,
10 but what I intended -- but it's for the respondent's
11 half -- of course she is to pay one half of the
12 payments that the petitioner made in supporting the
13 Tempe property during the pendency of this divorce.
14 And the respondent is to pay the -- the petitioner is
15 to pay the respondent one half of the appraisal costs
16 that were incurred.

17 There was an issue regarding the tax
18 refund. I find, reviewing the record and the
19 commissioner's recommendation on the 13th of April,
20 2004, in which it was indicated with regard to the
21 tax refund sums, the sums be evenly divided. That
22 applied and referred to only the 2003 tax refund and
23 not to any future tax refund.

24 Regarding the photos and the videos. And
25 I would indicate to you, of course, that we had

1 evidence here that the respondent was in possession
2 of photographs -- family photographs and videos and
3 the petitioner should have a portion of those.

4 And there had been a stipulation regarding
5 making copies, but I'm going to impose this formula
6 that I do believe to be fair and equitable in
7 disposing of that issue.

8 And that is that each party, in terms of
9 what photographs and videos may fall into the
10 category of family photographs and videos, that they
11 should make a duplicate of all those photographs and
12 videos and then the nonpossessing party, the party
13 that doesn't have those videos or, consequently, did
14 not make the copies, they should divide -- they
15 should decide whether to take originals or copies of
16 one half of the originals and copies. In other
17 words, I am looking to see what you have duplicated
18 and the nonpossessing party determines which
19 photographs to take the original or the duplicate,
20 but only to one half of those photographs. And
21 that's by number, so a video is one, one photograph
22 is another one and so forth.

23 And then the nonpossessor of the
24 photographs should pay for one half of the
25 duplicating costs for whichever photographs they

1 determine to take. And so I see that as a -- without
2 explaining it much further -- it may seem a little
3 complicated, but I think it covers all the
4 possibilities here. I just want to make certain that
5 each party has an opportunity to enjoy the original
6 photographs and the copies of the photographs, the
7 copies are well done and everyone be satisfied with
8 the set that they come out with, that they are able
9 to enjoy these photographs. I know there is some
10 (inaudible) but I want to make sure that's a safe
11 proposition.

12 I think that covers all the issues.

13 Any questions?

14 Mr. Nemelka.

15 MR. NEMELKA: Quite a few, Your Honor.

16 There are many issues this court hasn't addressed.

17 One was that we asked in the motion that
18 the file be sealed.

19 Number 2, we asked for a specific
20 restraining order restraining any contact, harming or
21 harassing my client by either Mr. Jensen or the two
22 daughters.

23 We also requested a judgment for the
24 retroactive alimony from the period of time that the
25 parties separated until the court made the order,

1 which was approximately a year.

2 Further, there were some items of personal
3 property that were sold and we need the court to
4 address those items. There was a pool table, a
5 ping-pong table, patio furniture that Mr. Jensen we
6 believe disposed of, so they are no longer there, but
7 what the court wants to do about that.

8 In regard to the judgment the court asked
9 for in regard to one-half of the medical expenses, we
10 would ask that there be a 30-day stay on the payment
11 that would allow my client to pay that, so my client
12 doesn't have a record that goes onto her credit card.

13 Oh, and my client also indicated there was
14 a sofa and a love seat that has been disposed of, we
15 think. All of those items we believe were exhibits
16 in court and we just need to have a ruling as to
17 those items that have been disposed of, that there
18 needs to be some mechanism to maybe value them since
19 there is no way we can sell them.

20 Then the last issue, Your Honor, the court
21 hasn't -- was with regard to attorney's fees.

22 THE COURT: Let me -- well, let me deal
23 with that, that's true, and I do have that and I did
24 mean to comment on that.

25 I think my -- our agreement at the

1 conclusion of the trial -- and that was I would make
2 my decision with that decision in mind, that each
3 party be given the opportunity to submit a memorandum
4 and their costs. I know Mr. Johnsen, you have on
5 July 17th filed an affidavit of attorney's fees and
6 costs and indeed you may want to -- in terms of the
7 affidavit of fees and costs rely on that.

8 But the reason I want a memorandum is
9 because I want your -- your determination, your views
10 here as to why you think you are entitled to
11 attorney's fees, why the evidence would support that
12 you are entitled to any attorney's fees. And so
13 let's -- let's give that a -- and then with that
14 decision we can proceed, I suppose, to a final decree
15 with that decision, with that issue decided in the
16 final decree.

17 Let me give you -- if you would think this
18 would be an appropriate amount of time -- today is
19 the 21st. If I give you until next Monday to file
20 this affidavit and memorandum.

21 MR. JOHNSEN: That would be fine with me.

22 THE COURT: Is that sufficient?

23 And then everyone correspond one to the
24 other in terms of the memorandum and an affidavit.
25 If we made that --

1 MR. NEMELKA: Your Honor, can we extend
2 that two weeks? I have to go up to a trial in
3 Montana.

4 THE COURT: Meaning the initial
5 memorandum?

6 MR. NEMELKA: Yes. I am going to be gone
7 a few days this week to do a trial in Montana.

8 THE COURT: Let's make it the -- Monday is
9 Labor Day. Let's make it Wednesday, the 6th.

10 MR. NEMELKA: Thank you.

11 THE COURT: That's the filing of the
12 memorandum and the affidavit and then if you could
13 reply one to the other by the -- let's make it the
14 15th, which would be Friday, the 15th. And then I
15 will consider the matter submitted and will decide
16 that issue, let you know that in writing and then
17 with that Mr. Johnsen will take his hand to the
18 findings and the decree and hopefully to conclude
19 that matter.

20 MR. NEMELKA: Your Honor, I forgot to
21 mention two other things.

22 In regard to the sale of the personal
23 property, the court didn't mean to include in that
24 the retirement account that I think we stipulated
25 would be cut in half. They are not going to --

1 THE COURT: No, the retirement account --
2 that's a different issue and that's already been
3 stipulated to in terms of --

4 MR. NEMELKA: And also we -- I believe we
5 had stipulated to, although plaintiffs may not, there
6 was an extension of that in the trial in regard to
7 the three businesses, Focus Enterprise, Jensen Family
8 Partnership and Jensen Family Trust. I think we
9 stipulated that my client would be awarded all of
10 those based upon her assumption of the liabilities.

11 MR. JOHNSON: Well, I don't think we
12 stipulated, we just indicated we wouldn't have any
13 objection if the court did that.

14 THE COURT: Well, I'll make that -- well,
15 unless there is -- I don't know the distinction
16 that's being made here. I thought that matter had
17 been resolved and, in fact, I believe there were some
18 lawsuits pending and I believe the petitioner
19 indicated they were making no claims in terms of the
20 lawsuits.

21 MR. NEMELKA: Not the lawsuits but the
22 three entities. What we asked the court to do was we
23 are going to make sure that all of those assets that
24 were in those would be (inaudible), that my client
25 would be awarded (inaudible).

1 THE COURT: All right. Let me put that on
2 the list. Am I incorrect here? There were some
3 lawsuits I thought connected with these businesses
4 and the stipulation was that those were your lawsuits
5 and whatever, if anything, you realized from those
6 lawsuits, that was yours.

7 MR. NEMELKA: That's correct, but we need
8 the three entities simply because they were -- excuse
9 me -- dismissed in the lawsuit by Judge Lindberg
10 pending a ruling here as to whether or not we own
11 those entities so that we could get them back into
12 the lawsuit.

13 THE COURT: All right. I understand that.

14 Mr. Johnsen, any questions you have?

15 MR. JOHNSEN: I do have questions. And I
16 don't disagree with any of Mr. Nemelka's listing of
17 items to be decided except the issue of the alleged
18 disposal of personal property. There was no evidence
19 put on that, that was not heard at trial and so --

20 MR. NEMELKA: You mean the sold property?

21 MR. JOHNSEN: The allegations that he sold
22 any personal property, there was no evidence put on
23 that whatsoever.

24 I have a question and you've -- you have
25 made an alimony obligation for five years from today

1 of 2,581, so the question is, is Miss Jensen's
2 obligation to pay the condo payment where she lives,
3 is that effective as of today?

4 Then you've asked for all the personal
5 property to be sold. Would that include the cars?

6 You indicated that the real property would
7 both be sold and the net proceeds divided equally.
8 Then you indicated the Murray home would be sold
9 after the youngest child was emancipated. Would the
10 Arizona condo be sold sooner than that or not?

11 And you've ordered both parties to share
12 equally in appraisal costs. Miss Jensen had -- there
13 were two appraisals, one by Jerry Webber, one by an
14 appraiser in Arizona, but then Miss Jensen brought in
15 a witness who is a real estate agent and she alleges
16 there was a cost there. Would that cost be shared
17 equally? And those are my questions.

18 THE COURT: Let me resolve those matters.

19 The first, the sealing the file. I am
20 declining to do that. I believe now -- and it was
21 sort of customary, assuming there was no objection to
22 sealing the file, it may be sealed, but I think I
23 have an obligation here to -- that these are records
24 open to the public and there being good and
25 sufficient reason as to why the file should be sealed

1 I don't see and none really has been argued. I
2 decline to seal the file.

3 In terms of restraining Mr. Jensen -- and
4 I don't -- there was no objection that was -- it had
5 been raised and there didn't seem to be an objection
6 so I am going to restrain Mr. Jensen from any contact
7 with the respondent, and that's by any means, method
8 or mode or needing a third person to contact
9 Miss Jensen.

10 In terms of the child being restrained, I
11 think there is a technical aspect to this. The child
12 actually is not a party in front of me, but I think I
13 can order that to be done and so, consequently, I
14 decline to do that.

15 In terms of retroactive alimony, I don't
16 see a basis that would permit that, I -- in terms of
17 going -- being retroactive and so I decline to do
18 that.

19 Let me see. I've got the sold property.
20 I agree with Mr. Johnsen on this. I don't know that
21 I have much evidence in terms of that, but in order
22 to affectuate that properly in terms of the formula
23 that I want to give this and have given this, I would
24 have to take, I suppose, further evidence regarding
25 what the value of that property is to make a finding

1 on that property. And I'm not able to do that with
2 the evidence that's presented in front of me and so
3 regarding that which was sold, so forth, we'll make
4 no further order.

5 In terms of the judgments, which would be
6 for about \$117, I believe, if we divide the matter in
7 half, that pro -- that dental bill in half, those
8 dental bills in half, your request is granted and
9 the -- that judgment is stayed for 30 days.

10 In terms of the three businesses, those
11 are awarded to the respondent subject to the
12 liabilities which she should assume, the petitioner,
13 and performance therefrom.

14 In terms of the condominium, I believe it
15 is appropriate now, but the matter has been concluded
16 by trial and that subject to the further division, as
17 I have already outlined in terms of selling
18 properties and so forth or otherwise agreeing that
19 the respondent has possession of that property
20 subject to any indebtedness -- or debt, fees,
21 charges, that she should assume payment and hold the
22 petitioner harmless.

23 In terms of the automobiles -- and I
24 apologize as I didn't deal with that issue and that
25 was clearly presented to me. But, just briefly, was

1 there really any dispute that the parties should be
2 awarded the automobiles that are in their possession
3 subject to the debt on those automobiles, if there
4 are any?

5 MR. NEMELKA: There wasn't a debt. The
6 difference was the value. He has the 14,000, 11,000,
7 whatever, and she has the 2,000, so there is a
8 \$10,000 difference, and so if we don't sell them the
9 court has to make a determination of value.

10 THE COURT: Wasn't the one --

11 MR. NEMELKA: His Nissan was leased.

12 THE COURT: There was a leased vehicle.

13 MR. NEMELKA: He had a Ford Focus.

14 MR. JOHNSEN: That is driven by the
15 daughter. That's for the daughter.

16 THE COURT: Let me do this. We have gone
17 way beyond the time that I have allowed and, of
18 course, I have other matters. Let me do this.
19 Together with the attorneys let me look at that issue
20 again and together with my determination regarding
21 attorneys' fees we'll decide the issue regarding the
22 automobiles.

23 MR. NEMELKA: If I may, Your Honor.

24 THE COURT: Yes. Wait a second.

25 MR. NEMELKA: Mr. Johnsen also brought up

1 a good point that I forgot to mention and that is to
2 address does my client have to sell the condo now if
3 he doesn't have to sell his until --

4 THE COURT: That was the next thing on the
5 list.

6 MR. NEMELKA: I'm sorry.

7 THE COURT: That was the next thing on my
8 list, which was the sale of the house.

9 What I had envisioned here -- and I am
10 sorry I was unclear with that -- that both properties
11 be treated the same, that is, that asked -- I sort of
12 ordered that they be sold and that from the proceeds
13 these setoffs that I have already outlined be
14 accomplished. And, quite frankly, depending on the
15 determination on these cars, I suppose that would be
16 (inaudible) sell in terms of valuation, but I still
17 want to take a look at that issue and see what we
18 have there. But that none of that should occur --
19 unless you otherwise agree, of course, none of that
20 should occur until the youngest child reaches the age
21 of 18 or graduates from high school. At that point,
22 then -- unless you have agreed otherwise -- both
23 properties have to be sold and then the proceeds,
24 together with the setoffs and so forth, it should all
25 be settled at that point.

1 MR. NEMELKA: And he, Mr. Jensen, should
2 assume and pay the indebtedness on the Murray home
3 until it's sold and hold my client harmless.

4 THE COURT: Yes. Each party in possession
5 of the home pays the debt and pays the mortgage and
6 the fees and taxes and so forth.

7 MR. NEMELKA: On the personal property,
8 Your Honor, my -- maybe I didn't articulate my
9 suggestion, but the question is that the evidence
10 that was presented to the court in regard to our
11 exhibit, okay, has items listed on there that we
12 believe have been sold. So when the court says, Sell
13 all the property, we believe that what the court is
14 saying is sell all the property, that we need to
15 present it to the court was there. If there isn't
16 something there, then I guess we would have to bring
17 that back. I guess I didn't want the record to
18 indicate that -- we had to present evidence. We --
19 Mr. Johnsen is probably accurate, we didn't present
20 evidence that some of those items have been sold, but
21 we did present evidence that they were in existence.
22 And so if they are not in existence, they should be
23 precluded from bringing that issue before the court
24 because we can't sell something that's not there.

25 Does that make sense?

1 THE COURT: Well, I understand that.
 2 Hopefully there is not a problem. I don't know how
 3 to overcome that other than each side taking
 4 inventory as of this point. I am talking about
 5 today. In terms of past activity selling property
 6 and so forth, for the reasons I've already given, I'm
 7 not able to accommodate that. So what I am saying is
 8 the property, as it exists today, is to be
 9 sold and --

10 MR. NEMELKA: Well, Your Honor, we have to
 11 respectfully disagree with that because either one of
 12 the parties could have got rid of a lot of stuff in
 13 the time of the trial until today.

14 THE COURT: Well, and that --

15 MR. NEMELKA: We shouldn't be precluded
 16 from bringing that back before the court.

17 THE COURT: We are getting into argument
 18 and we have gone way past the time. I am not sure
 19 how to accommodate that, Mr. Nemelka. That may have
 20 to be brought back to my attention, but in terms of
 21 the evidence that's in front of me, and what formula
 22 I believe to be reasonable and so forth, I think I
 23 can only accommodate it this way and so the order is
 24 that the property, as it exists today, is to be
 25 divided in half in the manner that -- I guess I

1 understand what you are saying. I suppose there is
2 orders in terms of -- there may be orders in terms of
3 selling the property --

4 MR. NEMELKA: There is.

5 THE COURT: -- and so forth, but, you see,
6 I am not able to sort through that and if that, in
7 fact, be the case, without some further
8 proceedings so --

9 MR. NEMELKA: I don't want to be
10 precluded --

11 THE COURT: I am not precluding any of
12 that. I guess I am precluding in terms of -- well, I
13 am not precluding that. I will leave it like that
14 right now.

15 The final question was whether my -- the
16 division of -- or my requirement that each party pay
17 one-half of the appraisal costs included the witness
18 and the witness' testimony and so forth and it does
19 not. That's whatever appraisals and what appraisal
20 took place on the condominium in Tempe, Arizona.

21 MR. JOHNSON: Your Honor, when you ruled
22 on the restraining order -- I have just a follow-up
23 question. We have two competing orders at this
24 point. Mr. Jensen is required by order to
25 communicate with Miss Jensen in regard to the

1 children's activity by e-mail and he has been doing
2 that. Now the restraining says no contact
3 whatsoever. Does the court want him to continue to
4 send updates in regard to the children or not?

5 MR. NEMELKA: We don't have any problem
6 with e-mail.

7 MR. JOHNSON: Then I guess --

8 THE COURT: If we accommodate it this
9 way -- I understand what you are asking. If we
10 accommodate the order this way; the restraining order
11 except as -- except the contact that has been
12 previously ordered, which apparently is e-mail
13 regarding the children. And there is no other
14 contact between the parties. So it's e-mail
15 regarding the children.

16 In terms of the contempt --

17 MR. NEMELKA: I did have one clarifying
18 question. The court held both parties in contempt
19 and neither party was sanctioned.

20 THE COURT: Well, that's what I was about
21 to address, as I told you, in terms of the sanctions.
22 As I say, I am not going to -- in terms of further
23 argument on the issue, but it seems to me both
24 parties have been found in contempt and,
25 consequently, there are no further sanctions to be

1 imposed.

2 MR. NEMELKA: Now the last is who do you
3 want to prepare the order?

4 THE COURT: Well, that will be
5 Mr. Johnsen, but he will do it after I have decided
6 the two issues that have been reserved in the manner
7 I previously explained.

8 I appreciate all of your efforts in terms
9 of this matter and, as I say, I'll let you know on
10 those remaining in writing after apparently
11 August 3 -- or around September the 15th, Friday,
12 September the 15th is the deadline.

13 MR. JOHNSEN: Thank you, Your Honor.

14 MR. NEMELKA: Thank you, Your Honor.

15 (Proceedings concluded.)

16 * * *

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
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 **Notary Public**
DAWN M. DAVIS
1105 North 1100 West
Farmington UT 84025
My Commission Expires
March 8, 2008
State of Utah

ADDENDUM F

FILED DISTRICT COURT
Third Judicial District

APR 02 2007

SALT LAKE COUNTY

By _____ Deputy Clerk

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WILLIAM A. JENSEN, Petitioner, vs. SONJA JENSEN, Respondent.	FINDINGS OF FACT AND CONCLUSIONS OF LAW Case No. 034905158 Judge Joseph C. Fratto Commissioner Michael S. Evans
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Based upon the testimony of the parties and other witnesses, the exhibits admitted, and good cause appearing therefore, the Court now makes and enters the following:

FINDINGS OF FACT

JURISDICTION AND GROUNDS

1. Petitioner and Respondent are husband and wife, having married in Salt Lake County, State of Utah on the 5th day of December, 1987.
2. Petitioner is a resident of Salt Lake County, State of Utah and was a resident for more than three months prior to filing this action.
3. During the marriage, the parties have experienced irreconcilable differences that make the continuation of the marriage impossible to the parties. The parties have attempted to

resolve these differences but with no success. The Court finds no fault of either party in regard to the grounds for the divorce.

4. The parties separated on approximately June 23, 2003 and have resided apart ever since.

CUSTODY AND CHILD SUPPORT

5. There are two children born as issue of the parties' marriage, one of whom remains a minor namely AMANDA JENSEN, born the 1st day of April, 1990. Currently the child resides in Salt Lake County, State of Utah.

6. There are no other custody proceedings pending or filed in the Juvenile Court.

7. Utah is the home state of the minor child as defined by section 78-45c-3(1)(a) of the Utah Code Annotated in that the child currently resides in the State of Utah; that the child has resided in the State of Utah for the six months immediately preceding this action; and that no other state has assumed jurisdiction over the minor child consistent with the provisions of section 78-45c-1 et. seq.

8. Pursuant to Utah Code Annotated section 78-45-9 neither party, nor the minor child, has received any support services from the State of Utah, and hence the State of Utah does not need to be joined as a party.

9. Petitioner is a fit and proper person to be awarded primary physical and legal custody of the minor child with Respondent being awarded reasonable parent-time as she and the child can agree.

10. Petitioner is employed and earns \$10,000.00 per month. Respondent is currently unemployed but has historical earnings of \$8.25 per hour which equals \$1,409.00 per month. Child support should be based upon Utah Code Annotated section 78-45-7.14, which yields a monthly obligation from Respondent to Petitioner of \$102.64.

11. Neither Petitioner nor Respondent is or has been receiving public assistance as defined by Utah Code Annotated section 62A-11-303(3) and hence the State of Utah, Department of Social Services Office of Recovery Services need not be joined in this action as set forth in Utah Code Annotated section 78-45-9.

REAL PROPERTY

12. During the marriage the parties acquired certain real property. Specifically, a residence located at 5691 Shady Farm Lane, Murray, Utah 84107 and a second residence located at 1209 East Northshore Dr., #238 Tempe, Arizona. Each of these parcels of real property is subject to an encumbrance.

13. The Murray, Utah home is currently occupied by Petitioner and the parties' two children. Based upon the appraisal performed by Jerry Webber, the Court finds that the home has a value of \$440,000.00 and is subject to an encumbrance of \$256,744.00 leaving net equity therein of \$183,256.00.

14. The Tempe, Arizona condo is currently occupied by Respondent. Based upon the appraisal stipulated to by the parties, the Court finds that the condo has a value of \$238,000.00 and is subject to an encumbrance of \$111,980.00 leaving net equity therein of \$126,020.00.

15. The Court finds that the equity in the homes shall be equally divided. The Court finds that the division of the equity in the property can be by sale of the property or paying to the other party one-half the net equity in the property based upon the values as set forth herein.

16. The Court finds that because there is a minor child residing in the Murray home that neither property is required to be sold until the minor child reaches 18 years of age or graduates from high school, whichever is later.

17. The Court finds that as of September 1, 2006, Petitioner shall assume and pay the encumbrances and expenses of the home at 5691 Shady Farm Lane, Murray, Utah 84107 without contribution from Respondent and shall hold Respondent harmless on that obligation.

18. The Court finds that as of September 1, 2006, Respondent shall assume and pay the encumbrances and expenses of the condominium at 1209 East Northshore Dr., #238 Tempe, Arizona without contribution from Petitioner and shall hold Petitioner harmless on that obligation.

PERSONAL PROPERTY

19. During the marriage, certain marital property has been acquired. This property consists of items of personal property, household furniture, and appliances.

20. The Court finds that there is insufficient information to place a specific value on the items of personal property, household furniture, and appliances.

21. The Court finds that each party has a vehicle or vehicles in his or her possession and that the vehicles shall be awarded as divided. The Court finds that there was insufficient evidence presented to assign any value to any vehicle and as such, there will be no adjustment in

the value of the vehicles. Further, it appears to the Court that Petitioner has a vehicle that is leased and thus has no value.

22. The Court finds that the .38 cal revolver has no value and that it shall be awarded to Petitioner.

23. The Court finds that each party shall be awarded their personal effects, personal items, clothing and jewelry.

24. The Court finds that in order to equalize the value of the personal property between the parties, that except for each party's personal effects and any property that belongs to any other person, including the children, all furniture, furnishings, fixtures, appliances and so forth shall be sold by October 21, 2006 and the net proceeds from the sale divided equally.

FINANCIAL ACCOUNTS AND BUSINESS ENTITIES

25. During the marriage, interest in retirement and/or pension plans was acquired through each party's employment.

26. The Court finds that the retirement and/or pension plans shall be divided equally through the use of a Qualified Domestic Relations Order.

27. During the marriage, the parties acquired interests in certain entities known as William A. Jensen Family Limited Partnership, Jensen Family Trust, and Focus Enterprise, LLC.

28. The Court finds that the Family Limited Partnership and/or the Trust hold title to property belonging to the parties and that any and all interest in that property shall be conveyed from the entity to the parties.

29. The Court finds that after the entities have transferred all interest in property belonging to the parties, Respondent shall be awarded all right, title, and interest in the entities and shall hold Petitioner harmless for any liability thereon.

30. The Court finds that each child has an account in her own name that shall be awarded to each of them.

ALIMONY

31. Petitioner has gross monthly income of \$10,000.00 and has monthly needs of \$5,084.00. Petitioner has the ability to contribute alimony to Respondent of \$2,581.00 per month.

32. Respondent is currently unemployed and/or underemployed. Respondent claims that she suffers from depression which precludes her from working at all. The Court finds that Respondent suffers from a situational depression consistent with the testimony of Dr. Mausberg. Respondent's situation that causes the depression is the current divorce action and by resolution of the divorce action, the depression will be reduced. Additionally, Dr. Mausberg testified, and the Court finds credible, that the depression is not permanent or chronic and that Respondent can obtain counseling and medication that helps to relieve the depression.

33. The Court further finds that whatever depression Respondent suffers from does not render her unable to work. The Court finds that she has the ability to work and that she has the ability to function. Respondent has the ability to work on her father's affairs, the ability to travel, and the ability to maintain a household. The Court finds that these abilities demonstrate her ability to engage in employment.

34. The Court finds that income should be imputed to Respondent based upon her past employment with Southwest Airlines where she earned \$8.25 per hour. Although during the marriage Respondent was not generally employed outside the home, she was employed at points in time and was employed by Southwest Airlines. Although the employment with Southwest was of a fairly short duration, the Court finds that employment to be the benchmark of her ability to earn an income and finds that she can earn, and will be imputed with, income of \$8.25 per hour which equals \$1,409.00 per month.

35. Respondent has monthly needs of \$4,000.00. Respondent set forth her needs in her Exhibit 36 at \$4,704.00, not including payment of debt. The Court finds that Respondent failed to demonstrate the existence of much of her claimed debt and failed to demonstrate that she would not be able to satisfy any actual debt from her share of the division of assets. As such, no monthly debt payments are included in Respondent's monthly needs. The Court reduces Respondent's claimed needs of \$4,704.00 by \$704.00 finding that claimed expenses for window cleaning, food and household supplies, personal hygiene, health and auto insurance, an automobile lease that she does not have, clothing, psychiatrist, storage, and health club are overstated and exaggerated. As such, the Court finds that Respondent's reasonable monthly needs are \$4,000.00 and after deduction of \$1,409.00 per month Respondent has a monthly shortfall of \$2,581.00.

36. The Court finds that alimony to Respondent shall be awarded for a period of five years from the date of the Court's oral ruling, August 21, 2006. The Court finds that due to the age of the parties that if the alimony period were longer than five years, Respondent would

become older and rely only on the alimony for her support and that such reliance would be a disservice to her. The Court finds that Respondent has the ability to use the period of five years to put her house in order and be able to support herself at that time.

37. Respondent has alleged that she should be awarded alimony based upon the fault of Petitioner. The Court finds that the allegation of an affair by Petitioner was reconciled well prior to this divorce action and thus cannot find that any affair was the fault in terms of the divorce. The Court finds further that Respondent's allegation that Petitioner alienated the daughters' affections from Respondent has not been proven. The Court is not convinced that the children have been alienated against Respondent and is not convinced that Petitioner is solely responsible for any alleged alienation of the children. The Court finds no fault.

38. Respondent alleged that the Court should equalize the income of the parties. The Court finds that each party has the ability to earn an income sufficient to support themselves at some point and thus finds no special circumstances upon which to base any sort of income equalization.

39. The Court finds that Respondent has failed to present sufficient evidence to demonstrate a reason why the Court should award retroactive alimony and as such no retroactive alimony will be awarded.

RESERVED FINANCIAL ISSUES

40. On or about February 7, 2006, the Court entered a Recommendation and Order that required Petitioner to pay the monthly mortgage on the Arizona condo along with the necessary home owner's fees. The Order specifically reserved for trial the issue of the final apportionment of

the payments made by Petitioner on the condo. During the period when the issue was reserved, Petitioner paid \$26,304.84 in monthly mortgage payments and home owner's association fees. The Court finds that Respondent should repay to Petitioner one-half the payments made by him for the Arizona condo because she had exclusive use and possession of that residence during that time. The Court finds that this sum shall be paid to Petitioner at the time the parties settle the division of the equity in the real property.

41. On or about August 24, 2004 the Court entered a Recommendation and Order that required each party to pay one-half of all unreimbursed medical and dental expenses incurred for the minor children. Subsequent to the entry of the Order, Petitioner incurred \$343.45 in unreimbursed medical expenses for the minor children. The Court finds that Respondent owes to Petitioner one-half that amount

42. In preparation for trial, Respondent obtained appraisals of the marital real property. Respondent paid \$600.00 for those appraisals.

43. On or about April 13, 2004 the Court entered a Recommendation and Order that indicated that tax refund sums would be evenly divided. The Court finds that this Order applied and referred to only the 2003 tax refund and not to any future tax refund.

44. At trial Respondent moved the Court for an Order Sealing the File. The Court finds that Respondent has failed to present sufficient reasons as to why the file should be sealed and as such, her Motion is denied.

CONTEMPT

45. On the 13th day of April, 2004 Petitioner was restrained from discussing the divorce action with the minor children. Subsequent to the entry of that Order, Petitioner became involved in videotaping Respondent to prove that she was lying. Initially, the older minor child began the process of the videotaping, but Petitioner joined in and encouraged the process. The Court finds that the Order was violated because Petitioner could not have engaged in the process without discussions with the minor child. Petitioner knew of the Order, had the ability to comply with the Order, but violated the Order. Petitioner is in contempt of the April 13, 2004 Order.

46. On the 27th day of September, 2004, the Court entered a Restraining Order against Respondent from dissemination of certain documents. Subsequent to the entry of that Order, Respondent caused to be mailed those documents to at least one person. Respondent knew of the Order, had the ability to comply with the Order, but violated the Order. Respondent is in contempt of the September 27, 2004 Order.

47. Because each party is in contempt of an Order there are no further sanctions to be imposed on either party.

ATTORNEY FEES

48. Each party requested an award of attorney fees by arguing that each is the prevailing party mainly in regard to the fees incurred in the custody issues. The Court finds that no evidence was taken at trial on the issue of the fees and the affidavits are not specific as to the fees incurred relative to the issue of custody. There is insufficient evidence to determine the reasonableness and necessity of the fees and therefore no fees shall be awarded.

MISCELLANEOUS

49. Respondent's maiden name is MANN.

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

CONCLUSIONS OF LAW

1. It is reasonable and proper that the Court assume jurisdiction over these parties, the child, and this matter.

2. It is reasonable and proper that the parties be granted a Decree of Divorce, the same to be final upon entry, on the basis of irreconcilable differences.

3. It is reasonable and proper that Petitioner be granted primary physical and legal custody of the minor child with Respondent being granted parent-time as she and the minor child can agree.

4. It is reasonable and proper that Respondent pay monthly child support in the sum of \$102.64 to Petitioner for the use and benefit of the minor child based on the Combined Child Support Obligation Table as set forth in Utah Code Annotated section 78-45-7.14. It is reasonable and proper that this sum be paid until such time as the parties' child reaches the age of majority or graduates from high school during her normal and expected year of graduation, whichever occurs later.

5. It is reasonable and proper that pursuant to Utah Code Annotated section 78-45-7.11 the base child support award shall be reduced by 50 percent for each child for time periods during which the child is with the noncustodial parent by order of the court or by written agreement of the parties for at least 25 of any 30 consecutive days.

6. It is reasonable and proper that pursuant to Utah Code Annotated section 78-45-7.15 Petitioner should be ordered to obtain medical insurance for the benefit of the minor child. It is reasonable and proper that Respondent pay one-half of the out-of-pocket costs of the premium actually paid by Petitioner, and the monthly child support obligation from Respondent to Petitioner should be adjusted accordingly. It is reasonable and proper that each parent share equally in all reasonable and necessary uninsured medical expenses including deductibles and copayments, incurred for the minor child, and each party should provide verification of the expense within 30 days of incurring the same.

7. It is reasonable and proper that pursuant to Utah Code Annotated section 78-45-7.16, both parties shall share equally the reasonable work-related child-care expenses incurred by Petitioner or Respondent.

8. It is reasonable and proper that Petitioner be awarded the tax exemption for the minor child.

9. It is reasonable and proper that the equity in the homes be divided equally between the parties and that the division of the equity in the property can be by sale of the property or by paying to the other party one-half the net equity in the property based upon the values as set forth herein.

10. It is reasonable and proper that because there is a minor child residing in the Murray home that the neither property is required to be sold until the minor child reaches 18 years of age or graduates from high school, whichever is later.

11. It is reasonable and proper that as of September 1, 2006, Petitioner is awarded all right and title to and shall assume and pay the encumbrances and expenses of the home at 5691 Shady Farm Lane, Murray, Utah 84107 without contribution from Respondent and shall hold Respondent harmless on that obligation.

12. It is reasonable and proper that as of September 1, 2006, Respondent is awarded all right and title to and shall assume and pay the encumbrances and expenses of the condominium at 1209 East Northshore Dr., #238 Tempe, Arizona without contribution from Petitioner and shall hold Petitioner harmless on that obligation.

13. It is reasonable and proper that Petitioner shall be awarded the vehicles in his possession and Respondent shall be awarded the vehicles in her possession.

14. It is reasonable and proper that Petitioner shall be awarded the .38 cal revolver and that he shall remove Respondent's name from any record of ownership in his possession or control.

15. It is reasonable and proper that each party shall be awarded their personal effects, personal items, clothing and jewelry.

16. It is reasonable and proper that in order to equalize the value of the personal property between the parties, that except for each party's personal effects and any property that belongs to any other person, including the children, all furniture, furnishings, fixtures, appliances and so forth shall be sold by October 21, 2006 and the net proceeds from the sale divided equally.

17. It is reasonable and proper that the parties share equally any and all retirement or pension plans that were accrued during the marriage and that these be divided pursuant to the Woodward formula and that a Qualified Domestic Relations Order enter.

18. It is reasonable and proper that the parties shall ensure that any interest in the parties' real or personal property shall be transferred from the entities established by the parties.

19. It is reasonable and proper that once the property interests have been transferred, Respondent shall be awarded all right, title, and interest in the William A. Jensen Family Limited Partnership, the Jensen Family Trust, and Focus Enterprise, LLC and shall hold Petitioner harmless for any liability thereon.

20. It is reasonable and proper that the bank accounts titled in the children's names remain their property and there be no further action in regard to those accounts.

21. It is reasonable and proper that alimony of \$2,581.00 be awarded from Petitioner to Respondent from September 1, 2006 through August 31, 2011, a period of five years. It is reasonable and proper that this sum be paid to Respondent until such time as the death of either party, Respondent's remarriage, her cohabitation, or the expiration of the five year period.

22. It is reasonable and proper that no retroactive alimony shall be awarded.

23. It is reasonable and proper that Respondent shall pay to Petitioner the sum of \$13,152.42, which represents one-half of the payments made by Petitioner on the Arizona Condo, at the time the parties settle the division of the equity in the real property.

24. It is reasonable and proper that Respondent shall pay to Petitioner the sum of \$171.73 which represents one-half of unreimbursed medical and dental expenses incurred for the

minor children and that if Respondent fails to pay that amount by September 21, 2006, judgment shall enter.

25. It is reasonable and proper that Petitioner shall pay to Respondent the sum of \$300.00, which represents one-half of the costs of appraisals on the real property, at the time the parties settle the division of the equity in the real property.

26. It is reasonable and proper that because each party has been found in contempt that no further sanctions shall be imposed on either party.

27. It is reasonable and proper that each party be responsible for their separate debts and obligations and those incurred subsequent to the date of separation — June 23, 2003, and that they be required to hold the other harmless from any liability thereon.

28. It is reasonable and proper that each party be responsible to pay his or her own attorney fees incurred in this action.

29. It is reasonable and proper that each party be ordered to execute and deliver to the other any and all documents that are required to effectuate the provisions of the Decree of Divorce entered by the Court.

30. It is reasonable and proper that Petitioner be restrained from any contact with Respondent, by any means, method, or mode except by email and only regarding the parties' minor child.

31. It is reasonable and proper that Respondent shall be restored to her maiden name of MANN.

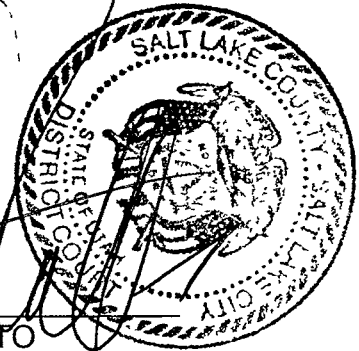
LET JUDGMENT ENTER ACCORDINGLY

DATED this 2nd day of April, 2007


ORDERED BY:

BY THE COURT

JOSEPH C. FRATTO
District Court Judge



APPROVED AS TO FORM


RICHARD S. NEMELKA
Attorney for Respondent

ADDENDUM G

1 Q But you still believe it's your kid's money and it
2 ought to be awarded to them?

3 A It was given to them, yes.

4 Q Okay, and so as long as it's their money that they
5 can use, you're all right with it?

6 A Right.

7 Q And so that's why we have it listed under either
8 one. Do you have a 1996 Mazda van?

9 A Correct.

10 Q And does there have to be some work done on that?

11 A Yes, it needs it 90,000 dollar, 90,000 mile
12 service, which is if it's like the 60,000 mile service will
13 be close to between 800 and a thousand dollars.

14 Q All right, now the house in Murray under Mr.
15 Jensen's proposal, that's just the value of the mortgage and
16 the equity.

17 Is this be a good time to -

18 MR. JOHNSEN: It's probably a really good time.

19 MR. NEMELKA: Your Honor, if I may, the parties have
20 discussed this issue and have stipulated that Mrs. Jensen
21 would be awarded the condominium in Arizona. But in regard
22 to the house in Murray that Mr. Jensen is currently living
23 in, that that would be listed for sale and that the parties
24 would each be awarded one-half of the net equity proceeds
25 received from that. Obviously Mrs. Jensen's amount that she

1 would received would be reduced by the equity as we've agreed
2 upon here that's in the Arizona home -

3 THE COURT: And that's, what amount is that?

4 MR. NEMELKA: That's the \$126,000.

5 THE COURT: So half the -

6 MR. NEMELKA: Half the -

7 THE COURT: Half, half the net proceeds from the -

8 MR. NEMELKA: Sale.

9 THE COURT: Sale of the Murray home, less -

10 MR. NEMELKA: Is that right? Am I saying that
11 right?

12 THE COURT: - less \$126,000?

13 MR. NEMELKA: Well, I think I'm saying that right.

14 MR. JOHNSEN: I think maybe, maybe I can help. Is
15 Mr. Jensen will get \$63,000 extra from the cash from Murray
16 to offset -

17 MR. NEMELKA: Right.

18 MR. JOHNSEN: - \$126,000 in equity that she will be
19 receiving in the Arizona condo.

20 MR. NEMELKA: Right.

21 THE COURT: Well, I just want to make certain the
22 record is clear, because that's Mr. Nemelka, that's -

23 MR. NEMELKA: Yes, that's correct, yes, because he's
24 entitled to one-half of that equity in the condo and that
25 will be awarded to him out of the proceeds from the sale of

1 the house in Murray and then the balance will be divided
2 equally between the parties, correct.

3 THE COURT: Mr. --

4 MR. NEMELKA: And we've also stipulated that -
5 what's the person's name that's going to list the house?

6 MR. JENSEN: Jolynn Nilson.

7 MR. NEMELKA: That Jolynn Nilson would list the
8 house for sale based upon Mr. Jensen's representation that
9 she is not going to charge the 3% commission for the selling
10 cost and we'll be able to save some money that way for the
11 parties.

12 THE COURT: Mr. Johnsen, that's your, your agreement
13 and your stipulation?

14 MR. JOHNSEN: It is, Your Honor, just with the
15 clarification that the, the listing agent's not going to
16 charge a seller commission. We'll probably still have to pay
17 a buyer's commission.

18 MR. NEMELKA: Sure and, and she may incur some
19 costs-

20 MR. JOHNSEN: Right.

21 MR. NEMELKA: - as part of putting it on the MLS.

22 MR. JOHNSEN: And we also agreed that if there are
costs of sale recommended by the real estate agent, you know,
fix this, do that, paint that, that those costs would be
reimbursed from the sale proceeds. So if Mr. Jensen advances

1 those costs, those costs would then be reimbursed.

2 THE COURT: Mr. Nemelka, a little bit unusual
3 [inaudible] talking to the witness here and if we need to
4 take a few moments here so that we can clarify -

5 MR. NEMELKA: No, that's fine.

6 THE COURT: - the stipulation which we're doing this
7 while Ms. Jensen -

8 MR. NEMELKA: I apologize.

9 THE COURT: - is there on the witness stand.

10 MR. NEMELKA: I apologize, Your Honor.

11 THE COURT: Well, let me ask this then. Mr. Johnsen
12 just indicated something, that's agreeable with you Mr.
13 Nemelka?

14 MR. NEMELKA: Yes, yes, Your Honor.

15 THE COURT: All right, so we have this -

16 MR. NEMELKA: No, may I ask my client the question
17 of whether she agrees with that stipulation?

18 THE COURT: Well that's the, no I'm going to ask
19 that. I just want to make certain that the record is clear
20 in terms of what the proposed, what the stipulation and the
21 agreement is and whether both the attorney's and the parties
22 agree.

23 So Mr. Nemelka, you, that's, that's agreeable with
24 you?

25 MR. NEMELKA: That is, Your Honor.

1 THE COURT: Mr. Johnsen, that's agreeable, that's
2 your stipulation?

3 MR. JOHNSEN: It is, Your Honor.

4 THE COURT: Mr. Jensen, that's your agreement and
5 stipulation?

6 MR. JENSEN: It is.

7 THE COURT: And Ms. Jensen, that's your agreement
8 and stipulation?

9 MS. JENSEN: What I would like to say is if Jolynn
10 Nilson brings in the buyer then there would be no commission
11 charge whatsoever; is that correct?

12 MR. JOHNSEN: Well, I don't think we can enter into
13 an agreement to bind those people. But it's our
14 understanding that she would be willing to do it for no
15 seller's commission. Now if that changes, then I think Mr.
16 Nemelka and I could certainly talk about maybe using a
17 different agent. But, and I think, I actually think Mr.
18 Nemelka was pretty clear on that when he indicated that it
19 was that representation was the reason we agreed to that
20 agent. So if something changes, certainly I think we can
21 work that out.

22 MR. NEMELKA: Okay.

23 THE COURT: That, with that, that's agreeable with
24 you?

25 MS. JENSEN: That is. Uh-huh (affirmative).

1 THE COURT: And Mr. Jensen, that's agreeable with
2 you?

3 MR. JENSEN: Yes.

4 MR. NEMELKA: Thank you, Your Honor.

5 Q (BY MR. NEMELKA) The last item under Mr. Jensen's
6 we have the Nissan and that's really a 2005 you said. But
7 that's leased in any event, right? That's what Mr. Jensen
8 testified -

9 A Right, correct.

10 Q - that's the Nissan that's leased? Then the Ford
11 Focus is the one that he talked about and you put a value of
12 14,000 on that?

13 A Correct.

14 Q So based upon our stipulation in regard to the
15 house, that would adjust the amount at the bottom. But down
16 at the bottom I also have a tax refund of \$5,512 and on the
17 left side we say one-half of that tax return refund per the
18 Order from the hearing held April 13th, 2000 - that's not
19 2006 I don't believe, I think that's 2004. Yeah, that should
20 be a 2004.

21 May I make that correction on that Exhibit, Your
22 Honor?

23 THE COURT: Any objection?

24 MR. JOHNSON: Well I don't have any objection to him
25 correcting that, that, but I don't believe that there was

ADDENDUM H

1 all the assets that are divided in this divorce are removed
2 from said entities. That was also a previous stipulation and
3 order in regard to the proceeds received from the lawsuit of
4 Summit Dialysis that she's entitled to all of that.

5 Now in regard to the condo in Arizona, Your Honor,
6 we agree with Mr. Johnsen that the value is 126,000. Mr.
7 Jensen's equity interest is 63,000. Now we stipulated in
8 court and we didn't present any more evidence based upon the
9 stipulation that the Murray house would be sold. There's
10 evidence before the Court, specifically in Exhibit 23 and the
11 testimony of Laurie is it, yeah, Laurie Nadeau, that the
12 value of the Murray home is \$609,000. Now we didn't go in
13 and present more evidence on that because of the stipulation
14 that the house would be sold, and the best way to determine
15 the market value of the house is for it to be sold. Now as
16 we're here today we have a motion before the Court to set
17 aside that stipulation. Well, first of all, we don't believe
18 the Court should set aside the stipulation because it was an
19 agreement that was made in open court and the Murray house
20 should be sold. Now we don't dispute the fact that Amanda,
21 who will be a junior at Murray High School next year, may
22 have to move into some other home which we don't see as that
23 traumatic. She's, like we said, a junior in high school and
24 she can continue to stay at the same high school. She can
25 drive, etc. Now if Mr. Jensen wants to agree that the value

1 is \$609,000 and he wants to go refinance the house and pay my
2 client her one-half equity, then she wouldn't be prejudiced.
3 But she would be prejudiced if they're now asking this Court
4 to make a determination as to a different value of the home
5 based upon the fact that we didn't present additional
6 evidence because they stipulated to that fact. So --

7 THE COURT: To selling --

8 MR. NEMELKA: To selling the home. Now if they want
9 to -

10 THE COURT: May I --

11 MR. NEMELKA: Sure.

12 THE COURT: - if, how would you urge the division of
13 property if, I mean how, in terms of my decision, if the
14 Murray home was to be sold and the Tempe home awarded to the
15 respondent?

16 MR. NEMELKA: Well, that was part of the
17 stipulation, Your Honor. We stipulated that from the Murray
18 home Mr. Jensen would receive the first \$63,000.

19 THE COURT: Oh, I see. I see.

20 MR. NEMELKA: Yeah, we stipulated to that. In fact
21 we went on -

22 THE COURT: He receives the first 63,000 -

23 MR. NEMELKA: Right.

24 THE COURT: - and the remainder is then divided in
25 half?

1 MR. NEMELKA: Right, after, after the costs. In
2 fact, Mr. Jensen testified and stipulated that he had someone
3 that was going to list the property and wouldn't incur all of
4 the commissions.

5 THE COURT: Well, is there any agreement in terms of
6 the Tempe home -

7 MR. NEMELKA: Yeah.

8 THE COURT: - other than -

9 MR. NEMELKA: Yeah, we did -

10 THE COURT: - awarded -

11 MR. NEMELKA: Oh yeah. Yeah, we all stipulated and
12 agreed to that. She gets the Tempe home. He gets 63,000 in
13 it. He gets the first 63,000 out of the sale of the Murray
14 home. We agreed on who was going to sell it, and that he was
15 going to list it and save some money on the commissions. So
16 we want that to continue to happen.

17 I guess the Court, obviously the Court has options
18 to do whatever it wants. The Court could say, well, we'll
19 wait until Amanda finishes high school in two years and then
20 we'll sell the house and determine what the value is then.
21 Obviously that wouldn't prejudice my client either.

22 THE COURT: Well, that was not part of the
23 stipulation?

24 MR. NEMELKA: No, but that wasn't part of the
25 stipulation.

1 \$4,000 per month and she'll have \$4,000 per month with, she
2 has a \$1,000 a month house payment and he has a \$1,700 a
3 month payment. So she's going to have \$2,900 a month to
4 spend and Mr. Jensen and the two minor children are going to
5 have \$2,300 a month to spend. That would not be supported by
6 the evidence that was presented to the Court.

7 THE COURT: And let me interrupt you for just one
8 [inaudible] you're talking about the Murray house, were there
9 stipulations in terms of how that was to be handled? The
10 Murray house?

11 MR. JOHNSSEN: In what regard?

12 THE COURT: Well, in terms of selling it?

13 MR. JOHNSSEN: We did put on, on the record selling
14 it. But, Your Honor, we've asked the Court to actually set
15 aside that settlement because the minor child would be really
16 disturbed by being able to do that, plus it would be really
17 very difficult to do it right now. The evidence was
18 presented to the Court as far as the value of the houses and
19 the Court can make a finding as to the equity in the houses.

20 THE COURT: So the situation at this point is there
21 was a stipulation to sell the house and divide the equity in
22 the house.

23 MR. JOHNSSEN: That's correct.

24 THE COURT: And I'm going to have to set that aside
25 in order to approach it some other way [inaudible].

ADDENDUM I

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower" as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ☐ the income or assets of a person other than the Borrower (including the Borrower's spouse) will be used as a basis for loan qualification or ☐ the income or assets of the Borrower's spouse will not be used as a basis for loan qualification but his or her liabilities must be considered because the Borrower resides in a community property state the security property is located in a community property state or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Loan type for <input type="checkbox"/> V.A. <input checked="" type="checkbox"/> Conventional <input type="checkbox"/> Other <input type="checkbox"/> FHA <input type="checkbox"/> FmHA	Agency Case Number	Lender Case Number 504jen
Interest Rate 117.520	No. of Months 360/360	Amortization Type <input checked="" type="checkbox"/> Fixed Rate <input type="checkbox"/> Other (explain) <input type="checkbox"/> GPM <input type="checkbox"/> ARM (type)

II. PROPERTY INFORMATION AND PURPOSE OF LOAN

Property Address (street, city, state, ZIP) East Northshore Drive #238, Tempe, AZ 85283 County: Maricopa	No. of Units 1
Description of Subject Property (attach description if necessary)	Year Built 1977

Loan Purpose <input checked="" type="checkbox"/> Purchase <input type="checkbox"/> Construction <input type="checkbox"/> Other (explain) <input type="checkbox"/> Refinance <input type="checkbox"/> Construction Permanent	Property will be <input checked="" type="checkbox"/> Primary Residence <input type="checkbox"/> Secondary Residence <input type="checkbox"/> Investment
--	---

Complete this line if construction or construction-permanent loan

Original Cost \$	Amount Existing Liens \$	(a) Present Value of Lot \$	(b) Cost of Improvements \$	Total (a+b) \$
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Complete this line if this is a refinance loan.

Original Cost \$	Amount Existing Liens \$	Purpose of Refinance	Describe Improvements <input type="checkbox"/> made <input type="checkbox"/> to be made Cost \$
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Loan is held in what Name(s) William A Jensen	Manner in which Title will be held Joint tenants	Estate will be held in <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (show expiration date)
Type of Down Payment Settlement Charges and/or Subordinate Financing (explain) Sinking/Savings		

Borrower

III. BORROWER INFORMATION

Co-Borrower

Borrower's Name (include Jr or Sr if applicable) William A Jensen				Co-Borrower's Name (include Jr or Sr if applicable) Sonja Jensen			
Community Number 0-3588	Home Phone (incl. area code) 801-263-8414	Age 15	Yrs. School 15	Social Security Number 529-21-8387	Home Phone (incl. area code) 801-263-8414	Age 38	Yrs. School 14
Married <input type="checkbox"/> Unmarried (include single, divorced, widowed) Separated <input type="checkbox"/> <input checked="" type="checkbox"/> Married <input type="checkbox"/> Unmarried (include single, divorced, widowed) Separated <input type="checkbox"/>		Dependents (not listed by Co-Borrower) no ages 2		Dependents (not listed by Borrower) no ages 0			
Address (street, city, state, ZIP) Shady Farm Lane Day, UT 84107				Present Address (street, city, state, ZIP) 5691 Shady Farm Lane Murray, UT 84107			
<input checked="" type="checkbox"/> Own <input type="checkbox"/> Rent <input type="checkbox"/> No Yrs 5				<input checked="" type="checkbox"/> Own <input type="checkbox"/> Rent <input type="checkbox"/> No Yrs 5			

Living at present address for less than two years, complete the following.

Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent <input type="checkbox"/> No Yrs	Former Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent <input type="checkbox"/> No Yrs
Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent <input type="checkbox"/> No Yrs	Former Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent <input type="checkbox"/> No Yrs

Borrower

IV. EMPLOYMENT INFORMATION

Co-Borrower

Address of Employer Unit Medical Centaurus 2, CA 92612		<input type="checkbox"/> Self Employed Yrs. on this job 1.5 Yrs. employed in this line of work/profession 7	Name and Address of Employer <input type="checkbox"/> Self Employed Yrs. on this job Yrs. employed in this line of work/profession	
Title/Type of Business Regional Manager	Business Phone (incl. area code) 949-636-2722	Position/Title/Type of Business	Business Phone (incl. area code)	
Employed in current position for less than two years or if currently employed in more than one position, complete the following:				
Address of Employer 7 3. Galleria Dr. Day UT 84123		Dates (from-to) 1996 01/2000 Monthly Income \$ 8,000.00	Name and Address of Employer <input type="checkbox"/> Self Employed Dates (from-to) Monthly Income \$	
Title/Type of Business Regional Manager	Business Phone (incl. area code)	Position/Title/Type of Business	Business Phone (incl. area code)	
Address of Employer <input type="checkbox"/> Self Employed Dates (from-to) Monthly Income \$		Name and Address of Employer <input type="checkbox"/> Self Employed Dates (from-to) Monthly Income \$		
Title/Type of Business	Business Phone (incl. area code)	Position/Title/Type of Business	Business Phone (incl. area code)	

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION						
Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
mpl Income*	\$ 8,500.00	\$	\$ 8,500.00	Rent	\$	\$
le				First Mortgage (P&I)	2,106.00	742.81
's				Other Financing (P&I)		
ssions				Hazard Insurance		
ids/Interest				Real Estate Taxes		80.42
nal Income				Mortgage Insurance		
(before completing ance in "describe me " below)				Homeowner Assn Dues		150.00
	\$ 8,500.00	\$	\$ 8,500.00	Other		
	\$ 8,500.00	\$	\$ 8,500.00	Total	\$ 2,106.00	\$ 973.23

Describe Other Income Notice: Alimony, child support, or separate maintenance income need not be revealed if the Borrower(B) or Co-Borrower(C) does not choose to have it considered for repaying this loan.

	Monthly Amount
	\$

statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis, otherwise separate Statements Schedules are required. If the Co-Borrower section was completed about a spouse, this Statement and supporting schedules must be completed by that spouse also.

ASSETS		Cash or Market Value	Liabilities and Pledged Assets. List the creditor's name, address and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities which will be satisfied upon sale of real estate owned or upon refinancing of the subject property		Monthly Payt. & Mos. Left to Pay	Unpaid Balance
Investment in real estate held by		\$	Name and address of Company		\$ Payt./Mos	\$
Checking and savings accounts below			Bank of America			
and address of Bank, S&L, or Credit Union			Acct no		2,106	267,851
Investments			Name and address of Company		\$ Payt./Mos	\$
34-109231		\$ 136,595	BK 1			
and address of Bank, S&L, or Credit Union			Acct no		10 / (R)	297
One			Name and address of Company		\$ Payt./Mos	\$
913677176		\$ 53,255	First USA Bank			
and address of Bank, S&L, or Credit Union			Acct no		10 / (R)	128
Investments			Name and address of Company		\$ Payt./Mos	\$
129359661		\$ 33,709				
and address of Bank, S&L, or Credit Union			Acct no		\$ Payt./Mos	\$
Name and address of Company			Name and address of Company		\$ Payt./Mos	\$
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Name and address of Company			Name and address of Company		\$ Payt./Mos	



1. Real Estate Owned (if additional properties are owned, use continuation sheet)[illegible]

VIII. DECLARATIONS

IX. ACKNOWLEDGMENT AND AGREEMENT

igned specifically acknowledge(s) and agree(s) that (1) the loan requested by this application will be secured by a first mortgage or deed of trust as described herein, (2) the property will not be used for any illegal or prohibited purpose or use, (3) all statements made in this application for the purpose of obtaining the loan indicated herein, (4) occupation of the property will be as indicated above; (5) verification or reverification of information contained in the application may be made at any time by the Lender, its agents, successors and assigns, either directly or through a rating agency, from any source named in this application, and the original copy of this application will be retained by the Lender, even if the loan is not made; (6) the Lender, its agents, successors and assigns will rely on the information contained in the application and I/we have a continuing duty to amend and/or supplement the information provided in this application if any of the material facts which I/we have represented herein should change; (7) on the event any other payments on the loan indicated in this application become delinquent, the Lender, its agents, successors and assigns may, in addition to all other rights and remedies, report my/our name(s) and account information to a credit reporting agency; (8) the loan may be transferred to successor or assign of the Lender without notice to me and/or the administration of the loan account may be assigned to an agent, successor or assign of the Lender with prior notice to me; (9) the Lender, its agents, successors and assigns make no representations, express or implied, to the Borrower(s) regarding the property, the condition of the property, or the value of the property.

I/We certify that the information provided in this application is true and correct as of the date set forth opposite my/our signature(s) on this application and I/we acknowledge my/our understanding that any intentional or negligent misrepresentation(s) of the information contained in this application may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, relating to and liability for monetary damages to the Lender, its agents, successors and assigns, insurers and any other person or entity for any loss due to reliance upon any misrepresentation which I/we have made on this application.

Signature	Date	Co-Borrower's Signature	Date
		X 	

X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES

ing information is requested by the Federal Government for certain types of loans related to a dwelling, in order to monitor the Lender's
with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are
d to do so. The law provides that a Lender may neither discriminate on the basis of this information, nor on whether you choose to furnish
it, if you choose not to furnish it, under Federal regulations this Lender is required to note race and sex on the basis of visual observation
' If you do not wish to furnish the above information please check the box below. (Lender must review the above material to assure that
are satisfy all requirements to which the Lender is subject under applicable state law for the particular type of loan applied for)

CO-BORROWER

m 65 10/92
13 Loanapp3 hp 2/95

Continuation of Fannie Mae Uniform Loan Application

is continuation sheet if you
ore space to complete the
ual Loan Application
for Borrower or C for
ower

Borrower

William A Jensen

Agency Case Number

Co-Borrower

Sonja Jensen

Lender Case Number

504jen

nderstand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the
as applicable under the provisions of Title 18, United States Code, Section 1001, et seq

Signature

Date

Co-Borrower's Signature

Date

ADDENDUM J

ITEMS IN MURRAY (marital) RESIDENCE

William Jensen vs. Sonja Jensen

Upstairs Living Room

Brown leather couch (\$2500 value) (1)
Side tables (Ethan Allen) (2)
Coffee table (Ethan Allen) (1)
Round table (Ethan Allen) (pineapple) (1)
Silk Flowering Plant on pineapple table (Ethan Allen) (1)
Chairs (rose fabric) (Ethan Allen) (2)
Silk Plant in brass holder (1)
Silk Plant on end table (1)
Thomas Kinkade Lg. Painting (1) (\$4000 value)
Crystal Lamp (1) (Bill personal)
Mirror (square) next to front door (Ethan Allen) (1)
Silk Plant (in front of window) (1)

Upstairs Office/Den

Wicker Chair (Ethan Allen) (1)
Computer (1)
Silk Plants (4)
Large Desk (1)
Silk Plant and Stand (1 each)
File Cabinet (1)
Printer (1)
Misc. office supplies (stapler, pencil sharpener, clock, etc.)

Hallway next to Office

Large Silk Plants (3)
Picture (Boy looking out window) (1) (Bill personal)

Master Bedroom

King Size Bed (Ethan Allen) (1)
Leather Bench (Ethan Allen) (1)
Large Dresser (Ethan Allen) (1)
Large Wall Mirror (Ethan Allen) (1)
Picture (Ethan Allen) (large with black frame north wall) (1)
Picture (Ethan Allen) next to door (1)
Mirror (Ethan Allen) (small) next to bed (1)
Night Stands (Ethan Allen) (2)
Silk Plant on Dresser in Box (Ethan Allen) (1)
Large Floor Silk Plant (Ethan Allen) (1)



Mirror (small) Ethan Allen (1)
Small black TV (1)
Small Silk Plants on Endtables (Ethan Allen) (3)
Lamps (2)
Misc. Linens (towels, washcloths, rugs, bed linens, etc)

Amanda's Bedroom (upstairs)

Glider Rocker w/Ottoman (1 each)
Queen Size Bed (1)
Dresser w/mirror (1)
End Table (1)
Small Desk (1)
Chair (1)
Silk Plants (2)

Hanna's Bedroom (downstairs)

Queen Bed (1)
Dresser w/mirror (1)
End table (1)
Drawer chest (1)
Lamp (1)

Downstairs Family Room

Large Television Hutch (Ethan Allen) (1)
DVD Player (1)
VCR (1)
Large Television (1)
Silk Plant on TV Hutch (1)
Roman Numeral Clock on TV Hutch (1)
Knick Knacks on TV Hutch (3) i.e. baskets
Pool Table (1) & Assessories (pool ques, balls, etc.)
Pool Table Side Chairs (2)
Plants (2)
Bar Refrigerator (1)
Silk Plant on bar refrigerator (1)
Silk Plants on Bar (2)
Large Corner Silk Plant adjacent loveseat and couch (1)
Large Silk Palm Tree (Ethan Allen) (1)
Piano (1)
Piano Bench (1)
Piano Lamp (Sonja personal)
Silk Plant in Stone Base on Piano (Ethan Allen) (1)
Elephant Mirror (1)
Silk Plant on piano (1)
Maroon Recliner Couch (1)
Maroon Recliner Loveseat (1)

Ping Pong Table (1) & Assessories
Family pictures (12)

Downstairs Bathroom

Birth announcement needlepoint pictures (2)
Bath towels and linens

Downstairs Playroom

Violin (1)
Card Table /4 Chairs

Downstairs Storage Room

Shelves (3)
Holiday Decorations
Old Filing Cabinet (1)
All kids school papers
Folding Chairs (2)
Television (small black) (1)
Dining Buffet (Ethan Allen) (1)
Table Leaves (Ethan Allen) (2)

Kitchen

Steel Cookware
Dishes
Glasses
Silverware
All Misc. kitchenware (platters, crystal candlesticks, etc.)
Toaster oven (1)
Microwave (1)
Kitchen Table (Ethan Allen) (incl. beveled glass top) (1)
Large Rug (1)
Chairs (Ethan Allen) (8)
Green Barstools (3)
Refrigerator (1)
Tupperware
Spices
Cleaners

Laundry Room

Washer (1)
Dryer (1)
Picture (1)
Shoe polish kit (1)
Cleaners (misc)

Upstairs TV Room

Children's elementary school papers (in closet)

Upstairs Family Room

Misc. knick knacks on wall unit Large Green Sofa (1)

Plants (3) on wall unit

Green Loveseat (1)

Stereo (1)

Green Chair (1)

Cassette Tapes & CDs

Olympus OM10 Camera and Lens (Sonja personal)

Endtables (2)

Hanging Silk Plant by fireplace (1)

Coffeetable (1)

Candlestick on fireplace (Ethan Allen) (1)

Maroon Lamps (2)

Large Television (1)

VCR (1)

DVD Player (1)

Globe (1) (Bill personal)

Parthenon Picture (personal)

Garage

Large Tool cabinet/cupboard (1)

Tools (cabinet full)

Yard Blower (1)

Ladder (Tall) (1)

Outside Christmas Lights

Ladder (folding) (1)

Refrigerator (1)

Sports Equipment (basketballs, badminton, tennis backboard etc.)

Backyard

Patio Table (1)

Chairs (6)

White Stacking Yard Chairs

Weber Gas Grill (1) \$3000 value

Green Patio Swing (1)

All Swimming Pool Accessories

11-22-05

ADDENDUM K

DIVISION OF MARITAL ASSETS

SONJA JENSEN	VALUE	WILLIAM JENSEN	VALUE
1. Focus Enterprise	\$0.00	1. House in Murray	\$353,164
		Value:	\$609,908
		Mortgage	(\$256,744)
		Equity:	\$353,164
2. Jensen Family Partnership	\$0.00	2. Personal Property	\$100,000
3. Jensen Family Trust	\$0.00	3. All investments,	1/2
		Retirement benefits	
		and Accounts (32,500) approx.	
4. Condo in Arizona	\$126,000	4. 2006 Nissan \$30,000	Leased
Value:	\$238,000	2005 Ford Focus	\$14,000
Mortgage	(\$111,980)		
Equity:	\$126,000		
5. Personal Property	\$15,000	5. Partnership Account	
		To Hanna	
6. All investments,	1/2	\$22,300	
Retirement benefits			
and Accounts (32,500) approx.			
7. Partnership Account			
To Amanda			
\$22,300			
8. 1996 Mazda Van	\$2,500		
TOTAL VALUE:	\$144,500	TOTAL VALUE:	\$467,164
TO EQUALIZE	\$161,332		(-\$161,332)
FINAL TOTAL:	\$305,832		\$305,832

½ of Tax Refund \$5,512
per Order from Hearing Held
April 13, 2006

Tax Refund \$5,512

ADDENDUM L

- FEB 26 PM 4:33

Bart J. Johnsen, Esq. (7068)
RICHMAN RICHMAN & JOHNSEN, L.L.C.
Attorneys for Petitioner
 60 South 600 East, Suite 100
 Salt Lake City, Utah 84102
 Telephone: (801) 532-8844

SOUTHERN DISTRICT
SOUTHERN COUNTY
BY _____
DEPUTY CLERK

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

<p>WILLIAM A. JENSEN,</p> <p>Petitioner,</p> <p>vs.</p> <p>SONJA JENSEN,</p> <p>Respondent.</p>	<p>AFFIDAVIT OF WILLIAM A. JENSEN IN SUPPORT OF HIS MOTION FOR TEMPORARY ORDERS</p> <p>Case No. 034905158</p> <p>Judge Fratto Commissioner Evans</p>
--	---

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

WILLIAM A. JENSEN, being first duly sworn, deposes and states as follows:

1. Affiant is over the age of 18 years and is competent to testify to the matters set forth herein. Affiant is the Petitioner above-named and has personal knowledge of all the facts set forth herein except as to those stated upon information and belief, and as to those, Affiant believes them to be true.

2. Affiant and Respondent are the parents of two minor children, namely JOHANNA JENSEN, born the 9th day of August, 1988, and AMANDA JENSEN, born the 1st day of April, 1990.

3. Affiant is a fit and proper person to be awarded primary physical custody of the minor children with Respondent being awarded reasonable parent-time at a minimum consistent with the provisions of Utah Code Annotated section 30-3-35.

4. Since approximately September 2003, the minor children have resided with Petitioner at the former marital residence in Murray. The children have thrived under Petitioner's care, additionally, both children have expressed a sincere desire to reside with Affiant as their primary caregiver.

5. During the time since Respondent's move from the marital residence, she has been admitted into the University of Utah Neuropsychiatric Institute for treatment for her mental illness. Respondent discontinued her treatment, including her treatment with her psychiatrist, and has recently indicated to the children that she intends to obtain their custody and remove Petitioner from the marital residence. It is not in the best interests of the minor children for Respondent to attempt to provide care for the children due, in large part, to her mental illness.

6. Affiant believes it is in the best interests of the minor children for them to continue to reside with Affiant as their primary caregiver.

7. Affiant believes it is appropriate that he be awarded temporary exclusive possession of the marital residence in Murray to reside with the children. Affiant should be obligated to pay the mortgage payment and expenses if he has possession of the home.

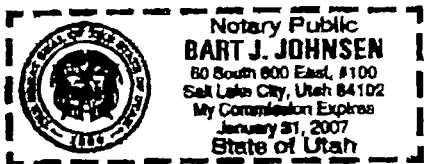
8. Affiant requests the Court require Respondent to pay child support to Petitioner in the monthly sum of \$182.00 per month which is consistent with the child support guidelines. Affiant refers the Court to the Verified Petition for Divorce as support for this request.

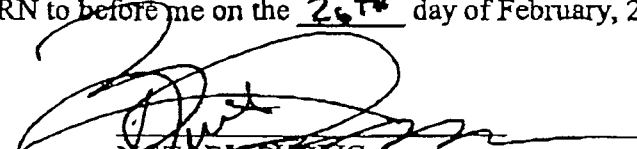
9. Affiant requests the Court enter any further orders that are required in this matter.

DATED this 26th day of February, 2004


WILLIAM A. JENSEN

SUBSCRIBED AND SWORN to before me on the 26th day of February, 2004.





NOTARY PUBLIC
Residing in Salt Lake County, Utah

My commission expires:

1/31/07

DATED this 26th day of February, 2004

RICHMAN RICHMAN & JOHNSEN, L.L.C.

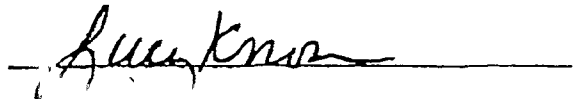

BART J. JOHNSEN
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 26, 2004, I caused to be served a true and correct copy of the foregoing **AFFIDAVIT OF WILLIAM A. JENSEN IN SUPPORT OF HIS MOTION FOR TEMPORARY ORDERS** to the following, using the method indicated below:

Matthew A. Steward
CLYDE, SNOW, SESSIONS & SWENSON
201 South Main Street, #1300
Salt Lake City, Utah 84111

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Bart J. Johnsen, Bar # 7068
RICHMAN RICHMAN & JOHNSEN, L.L.C.
Attorney for Petitioner
60 South 600 East, Suite 100
Salt Lake City, Utah 84102
Telephone: (801) 532-8844

FEB 26 PM 4:33

JUDICIAL DISTRICT
SALT LAKE COUNTY
BY _____
DEPUTY CLERK

**In the Third Judicial District Court of Salt Lake County
STATE OF UTAH**

William A. Jensen

Petitioner,

:

Financial Declaration

vs

:

Civil No. 034905158

Sonja Jensen

:

Judge Fratto

Respondent.

Commissioner Evans

Name: William A. Jensen
Address: 5691 Shady Farm Lane, Murray, UT 84107
Soc. Sec. No.: 157-40-3588
Occupation: Health Administration
Employer: Liberty Dialysis, Oquirrh AKC, Wasatch AKC
Employer Address: 650 East 4500 South, Murray, UT 84107
Number of exemptions claimed: 4
Birthdate: October 1, 1950

STATEMENT OF INCOME, EXPENSES, ASSETS & LIABILITIES

1 GROSS MONTHLY INCOME from:

Salary and wages, including commissions,
bonuses, overtime and allowances)

\$ 10,000.00

Pension and retirement

Social security

Disability and unemployment insurance

Public assistance (welfare, AFDC payment, etc.)

Child support from any prior marriage

Dividends and interest	_____
Rents	_____
All other sources: (Specify)	_____
TOTAL MONTHLY INCOME	\$ 10,000 00

2 MONTHLY DEDUCTIONS

Federal income tax	\$ 1,480 64
State income tax	571.00
FICA/Medicare	765.00
Health insurance	_____
Disability insurance	22.90
Child support (previous divorce)	_____
Retirement or pension fund	_____
401(k)	_____
Savings plan	_____
Credit union	_____
Other (specify)	_____
TOTAL MONTHLY DEDUCTIONS	\$ 2,839 54

3 NET MONTHLY INCOME: (Attach W-2 stub and prior year W-2/tax return) **\$ 7,160 46**

4 DEBTS AND OBLIGATIONS:

Creditor's Name	Purpose of debt	In whose name	Balance	Monthly Payment
TOTAL			\$ -	\$ -

5 PROPERTY

- (a) Real estate (if more than one parcel of real estate, attach sheet with identical information)

Address 5691 Shady Farm Lane, Murray, Utah 84107

Date of acquisition 11/11/1998

Original cost	\$375,000
Mortgage balance	\$270,000
Mortgage holder	Guaranty Residential Lending
Monthly payment	\$1,772
Other liens	\$0
Lienholder	0
Monthly payment	\$0
Current value	\$360,000
Basis of valuation	\$375,000

6 PROPERTY:

(b) Real estate (if more than one parcel of real estate, attach sheet with identical information)

Address:	1209 East Northshore Drive #238 Tempe AZ 85283	
Date of acquisition:	August 2002	
Original cost:		\$149000
Mortgage balance		\$115973
Mortgage holder	Countrywide Funding	
Monthly payment (includes HOA Fee paid quarterly)		\$1044.00
Other liens		\$0
Lienholder		0
Monthly payment		\$0
Current value		\$160,000
Basis of valuation		\$190,000

(b) Vehicles

Year	Make	Model	Value	Balance Owed
1996	Nissan	Maxima	5500	0

(c) Cash and deposit accounts (banks, savings & loans, credit unions-savings and checking)

Name of institution	Account No.	Current balance
Bank One Checking	13677176	\$4000 (Approx)
Wells Fargo Checking	344-4351328	\$982
Bank One Savings Johanna Jensen	1613749470	\$22,338
Bank One Savings Amanda Jensen	1613749462	\$22,338

(d) Securities, stocks, bonds, money market funds (other)

Name of institution	Account Number	Current value
Fidelity Investments: See Attached		

(e) Business interests

Name of business	Shares	Current value

(f) Other assets (include value of equity)

6 PROFIT SHARING OR RETIREMENT ACCOUNTS

(If more than two accounts, attach sheet with identical information)

Name of company/plan name	
Plan representative	
Address	
Current value	

Name of company/plan name	
Plan representative	
Address	
Current value	

LIFE INSURANCE

Name of Company	Policy No.	Face Amount	Cash Value(if any)

8. MONTHLY EXPENSES SEE ATTACHED SHEET

Rent or Mortgage payments (residence)	
Real property taxes (residence)	
Real property insurance (residence)	
Maintenance (residence) pool, housecleaning, yard and misc	
Food and household supplies	


Utilities:	
Natural gas	
Murray City	
Telephone	
Laundry and dry cleaning	
Clothing (Self and Kids)	
Medical	
Dental	
Insurance (life , accident, comprehensive, liability, disability:excluding deductions from wages in item 2 above)	
Child care	
Payment of child support or alimony from prior marriage	
School	
Entertainment	
Gifts	
Donations	
Travel	
Auto expense	
Auto payments	
Installment payments (from item 4 above, not including above)	
Other expenses (specify)	See Attached
Total	\$

STATE OF UTAH)

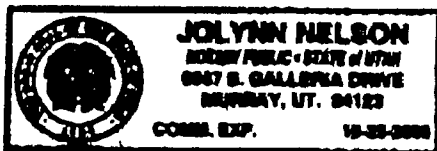
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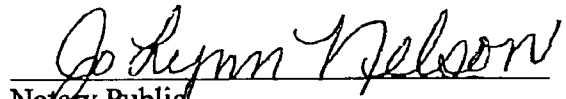
County of Salt Lake)

I swear under penalty of perjury that all of the information contained herein is true and correct.


Affiant

Subscribed and sworn to before me this 15 day of JANUARY, 2004




Notary Public
Residing in Salt Lake County, Utah

My Commission Expires:

10-25-06

	HOUSE	CONDO
EXPENSES		
Monthly Payments	\$1,771.57	\$824.00
HOA Fee	\$0.00	\$220.00
Utilities	\$400.00	\$150.00
Phone	\$50.00	\$50.00
Sports Mall	\$200.00	\$0.00
Health Insurance	\$0.00	\$0.00
Cable TV	\$60.00	\$50.00
Internet	\$0.00	\$10.00
Food	\$1,000.00	\$0.00
Car	\$150.00	\$0.00
Auto insurance	\$50.00	\$0.00
Dry Cleaning	\$100.00	\$0.00
Kids Clothes	\$200.00	\$0.00
Kids Hair	\$150.00	\$0.00
Kids School Lunch	\$120.00	\$0.00
Kids Activities	\$400.00	\$0.00
Kids Allowance	\$300.00	\$0.00
Yard Care	\$50.00	\$0.00
Pool	\$50.00	\$0.00
House Cleaning	\$170.00	\$0.00
Nanny	\$300.00	\$0.00
Misc.	\$400.00	\$0.00
TOTAL EXPENSES	\$6,921.57	\$1,304.00
COMBINED TOTAL EXPENSE	\$7,225.57	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 26, 2004, I caused to be served a true and correct copy of the foregoing **PETITIONER'S FINANCIAL DECLARATION** to the following, using the method indicated below:

Matthew A. Steward
CLYDE, SNOW, SESSIONS & SWENSON
201 South Main Street, #1300
Salt Lake City, Utah 84111

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile 521-6280

