

2007

Wesley O. Bayles v. Linda Caryl Bayles : Brief of Appellant

Utah Court of Appeals

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Judy Dawn Barking; Attorney for Respondent/Appellee.

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IN THE UTAH COURT OF APPEALS

WESLEY O. BAYLES)	Appeals Case No. 20070334
Petitioner/Appellant,)	Second District Court No. 004702059
vs.)	
LINDA CARYL BAYLES)	BRIEF OF APPELLANT
Respondent/Appellee.)	

Appeal from Final Judgement and Order entered by the
Second Judicial District Court, State of Utah, Davis County
Honorable Thomas L. Kay, District Court Judge

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STATEMENT OF JURISDICTION

The jurisdiction of this case is vested with the Utah Court of Appeals pursuant to Utah Code Ann. Sec. 78-2a-3(2)(h), and pursuant to Rules 3(a) and 4(a) of the Utah Rules of Appellate Procedure.

STATEMENT OF ISSUES AND STANDARDS OF REVIEW

CONTRACTS

1. Whether the trial court erred in its interpretation of various "California Residential Purchase Agreements" and its conclusion of law as stated within the court's "Findings of Fact" #13.

Determinative Law: "Contracts, made either before or after marriage, the purpose of which is to fix property rights between a husband and wife, are to be liberally interpreted to carry out the intentions of the makers and to uphold such contracts where they are fairly and understandably made, are just and equitable in their provisions, and are not obtained by fraud or overreaching ."

Matlock v. Matlock, 223 Kan 679, 576 P.2d 629, 633 (1978)

Standard of Review: Interpretation of a contract presents a question of law for which the trial court's determination is reviewed under a correction of error standard, according no particular deference to the trial court's decision.

DISTRIBUTION OF RETIREMENT BENEFITS

4. Whether the trial court erred in the distribution of Respondent/Appellee's "Woodward" share of Petitioner/Appellant's retirement benefits.

Determinative Law: "It is preferable to end the marriage and allow the parties to make as much of a clean break from each other as is reasonably possible." Gardner v. Gardner, 748 P.2d 1076 at 1079 (Utah App.1988) "Pursuant to Woodward, the preferred method for doing so is to fix the other spouse's share of the pension plan, as adjusted for all the appropriate considerations, and satisfy the other spouse's share out of other assets, thereby leaving all pension benefits to the employee." See Woodward 656 P.2d 431 at 433 (Utah App. 1982). "This is especially true when there are sufficient other assets for equitable distribution and a present value of the retirement benefits can be established." See Cambers v. Chambers, 840 p.2d 841 at 845 (Utah App. 1992) citing Motes v Motes, 786 P.2d 232 at 234 (Utah App 1989).

Standard of Review: The trial court's determination is reviewed under a correction of error standard, according no particular deference to the trial court.

STATEMENT OF CASE

This is an appeal from the final judgement and "Order Modifying Decree of Divorce" of the Second Judicial District Court for Davis County, State of Utah, Honorable Thomas L. Kay, presiding, filed March 21, 2007 following a hearing on July 3, 2006 during which the court considered the following matters:

CONTRACTS

1.) whether Mrs. Bayles, Respondent/Appellee, should be held in contempt for breach of contract, and compelled to give specific performance in connection with two (2) "California Vacant Land Purchase Agreements" and a "California Residential Purchase Agreement" entered into by Mrs. Bayles, under which Mr. Bayles, Petitioner/Appellant, exercised a right of first refusal granted him by the court in the interlocutory "Decree of Divorce". Such issues were certified for trial by an "Order on Order to Show Cause" filed April 7, 2005 (Record on Appeal page 400)

DISTRIBUTION OF RETIREMENT BENEFITS

2.) a "Verified Petition to Modify Decree of Divorce" filed June 2, 2004 (Record on Appeal page 244) as provided by the interlocutory "Decree of Divorce" (Record on Appeal page 167) the amount of a Survivor Benefit awarded to Respondent/Appellee, and which party should pay the monthly cost, which issues the Court reserved for future determination, subject to a provision that Petitioner/Appellant should not elect a reduced survivor benefit prior to the Court's determination as to the amount and who should pay the monthly cost. (see "Decree of Divorce", paragraphs #24, #26 and #27.)

Petitioner/Appellant objects to the provisions of the Courts "Order Modifying the Decree of Divorce" concerning (among other matters): 1) the trial court's interpretation of the various California Purchase Agreements; and 2) The manner of distributing RespondentAppallee's share of Petitioner/Apellant's retirement benefits;

STATEMENT OF FACTS

1. Mr. Bayles, the Petitioner/Appellant was granted an interlocutory "Decree of Divorce" from Mrs. Bayles, Respondent/Appellee by the Second Judicial District Court, Davis County, State of Utah filed November 25, 2002, effective October 2, 2002. (See Decree of Divorce, page 1., paragraph 2.)

CONTRACTS

2. At the time of the divorce the parties held eight (8) parcels of real property in the State of California as follows: (Decree of Divorce, page 3., paragraph 12.)

- 1.) three (3) parcels together with a double-wide mobile home;
- 2.) a personal residence;
- 3.) two (2) parcels together known as the "Beehive Mine" property;
- 4.) a 23-acre parcel known as the "lake" property; and
- 5.) a 5-acre parcel.

3. The "Decree of Divorce" ordered that all the California real properties be sold and the net proceeds be split 50/50 between Appellant and Appellee. The decree further awarded a Right of First Refusal to Petitioner/Appellant to acquire Respondent/Appellee's interest in the property upon her acceptance of a bona-fide offer. The "Right" was to be based on the same terms as the bona-fide offer and was to be executed within 30 days of being notified by Respondent/Appellee of her acceptance of an offer. Petitioner/Appellant was ordered to pay Respondent/Appellee the amount she would receive from the sale of the parcel based on the same terms of the bona-fide offer and was to make payment within 30 days of Petitioner/Appellant's exercise of his right of first refusal. (Decree of Divorce, page 4., paragraph 15 & 17)

4. On May 13, 2003 shortly after the divorce the three (3) parcels with the mobile home were sold to a third party through escrow. Respondent/Appellee received \$44,419.80 at the escrow closing of that sale. (Transcript of Trial, page 73, lines 10 - 13)

5. During May of 2003 Appellant exercised his Right of First Refusal under a Uniform Real Estate Sales Contract to purchase Appellee's interest in the California personal residence. On or about June 4, 2003 Appellant paid the sum of \$39,286.74 for that interest. Appellee accepted the payment, gave a quit-claim deed, and demanded an additional amount of \$4,350 which the trial court awarded her. (Transcript of Trial, page 75, lines 1 - 6) Appellee refused to comply with any of the terms of the Uniform Real Estate Sales Contract. In it's Order Modifying Decree of Divorce entered March 21, 2007 the trial court found that Appellee was in breach of the contract but denied an order for specific performance finding she is not required to comply with any of the terms of the sales agreement, which is one of the issues of this appeal.

6. During November, 2004 Appellant exercised his Right of First Refusal under a Uniform Real Estate Sales Contract to purchase Appellee's interest in California real property (consisting of two (2) parcels) known as the "Beehive Mine" property. On or about Dec 6, 2004 Appellant paid the sum of \$25,596.22 for that interest. Payment was sent along with a letter in which Petitioner/Appellant demanded Respondent/Appellee comply with the terms of the bona-fide contract. (Transcript of Trial, page 75, lines 13 - 25) She accepted the payment, but refused to open escrow or comply with any of the terms of the Uniform Real Estate Sales Contract. In it's Order Modifying Decree of Divorce the trial court found Appellee was in breach of the contract but denied an order for specific performance finding she is not required to comply with any of the terms of the sales agreement, which is one of the issues of this appeal.

7. During February, 2005 Appellant exercised his Right of First Refusal under a Uniform Real Estate Sales Contract to purchase Appellee's interest in the California real property known as the "Lake" property. On or about Mar 5, 2005 Appellant paid the sum of \$38,866.71 for that interest. Payment was sent along with a letter in which Petitioner/Appellant demanded Respondent/Appellee comply with the terms of the bona-fide contract. (Transcript of Trial, page 76, lines 7 - 16) She accepted the payment, but refused to open escrow, deliver a deed, or comply with any of the terms of the Uniform Real Estate Sales Contract. In it's Order Modifying Decree of Divorce the trial court

found Appellee was in breach of the contract but denied an order for specific performance finding she is not required to comply with any of the terms of the sales agreement, which is one of the issues of this appeal.

DISTRIBUTION OF RETIREMENT BENEFITS

8. The interlocutory "Decree of Divorce" awarded Respondent/Appellee a "Woodward" share of Petitioner/Appellant's retirement benefits and a 100% survivor benefit pending Petitioner/Appellant's retirement. The decree specifically provided that his retirement would be sufficient grounds for a petition for modification to determine the proper amount of survivor benefit and who should be required to pay the cost of that benefit. (Decree of Divorce, page 6., paragraph 24.)

9. The interlocutory decree reserved for future determination the issue of the proper amount of survivor benefits to be awarded and the issue of which party should pay the monthly cost to be determined at the time of Petitioner/Appellant's retirement. However, in order to avoid forfeiture of the ability to elect a full survivor benefit, the court ordered Appellant to not elect a reduced survivor benefit. (Decree of Divorce, page 7., paragraph 26 & 27.)

10. Petitioner/Appellant retired on disability effective November 31, 2002. (Transcript of Trial, page 26, lines 17 - 21) Upon retirement he elected a 100% survivor benefit pursuant to the trial court's order within the Decree of Divorce, pending determination of the court as to the appropriate amount of the survivor benefit and who should pay the cost of that benefit.

11. A hearing was held regarding the "Petition to Modify" on July 3, 2006. The trial court rendered it's decision on the Petition on July 5, 2006. The "Findings of Fact and Conclusions of Law" and the "Order Modifying Decree of Divorce" were final upon their filing on March 21, 2007.

SUMMARY OF ARGUMENT

1. **CONTRACTS**: The trial court incorrectly interpreted the plain language of each of the California Purchase Agreements. The trial court committed legal error by incorrectly selecting only one element or provision of each of three (3) California Purchase Agreements (ie: the consideration to be paid) in it's application of established or normal rules of contract construction or interpretation. By selecting only one element of each of the contracts, the court effectively created unenforceable unilateral contracts. Thus, Plaintiff/Appellant's payment for each of the properties should be returned and the properties placed back on the market to obtain truly bona-fide enforceable purchase offers. However, the transactions between the parties as to each parcel of property, meet the longstanding "offer, acceptance and tender" requirements of any contract transaction. Mrs. Bayles received the benefit of tender, to the detriment of Mr. Bayles and the court's equitable powers do not allow the trial court to modify a transaction simply because one of the parties has come to regret the agreement. Mr. Bayles is entitled to specific performance as to each contract for his purchase of Mrs. Bayles's interest in each of the contracts.

2. **DISTRIBUTION OF RETIREMENT BENEFITS**: The trial court committed legal error by not applying the plain language of various Utah Appellate Court Cases which establish fixed principles for distribution of vested retirement benefits. Especially where the present value of an annuity can easily be determined and where there are sufficient assets to provide a lump sum "cash-out" of the Respondent/Appellee's marital interest in the annuity. While the court properly applied the "Woodward" formula for determining the proper portion of the spousal interest, it clearly failed to apply the proper manner of distribution of that interest as established in the "Woodward" case as well as other cases.

ARGUMENT

CONTRACTS

1. Mr. Bayles, the Petitioner/Appellant, is entitled to specific performance relative to the purchase of Mrs. Bayles's one-half interest in each of the California properties.

2. The Utah Supreme Court has long recognized the validity of the rule that "to be enforceable a contract must be sufficiently definite in its terms that the parties know what is required of them" Pitcher v. Lauritzen, 423 P.2d 491 (Utah App. 1967); and Kier v. Condrack, 478 P.2d 327 (Utah App. 1970).

3. Under the evidence and the particular facts of this case there is no dispute that Mr. Bayles agreed to purchase Mrs. Bayles's interest in each of the subject properties. Mrs. Bayles agreed to open an escrow and provide other products and services in consideration of payment by Mr. Bayles of the agreed upon tender.

4. Mrs. Bayles negotiated the terms of each of the three contracts in this case with third parties, without the involvement of Mr. Bayles in any way. When all terms had been accepted by Mrs. Bayles, she then presented them to Mr. Bayles who had the opportunity to either accept them, reject them, modify them, or exercise his right of first refusal to purchase Mrs. Bayles's interest by paying her what she would receive if they were sold to the third parties. (Paragraph #15 of the Decree of Divorce is ambiguous as to whether "what she would" receive means gross or net. Paragraph #17 appears to imply it means net.)

5. Kier is also applicable as to specific performance. There is no dispute in this case that Mr. Bayles properly and timely exercised his right of first refusal on each property and there is no dispute that Mr. Bayles timely tendered full payment of the gross purchase price within thirty (30) days as

required by paragraph #15 of the Decree of Divorce. Nor is there any dispute that Mrs. Bayles accepted and negotiated the payments and then refused to perform any of the agreed upon terms of the contracts. Again, the Utah Supreme Court found that if the parties

... should be obliged to act in good faith in keeping their promises. It would seem inequitable and unjust to permit a seller to simply refuse unreasonably to perform and seek specious excuses in an attempt to justify his refusal. ... But neither party should be permitted to use the reservation of "terms" to get more than they had promised: the plaintiff to get more land, or the defendants to get more money, **nor either to renege on the bargain** ... (emphasis added)

6. Mrs. Bayles's acceptance was "positive and unambiguous" as required by the Utah Supreme Court in R.J. Daum Constr. Co. v. Child, 122 Utah 194 (Utah 1952). Mrs. Bayles's actions in negotiating the payment and refusal to return payment did not change, add to, or qualify the terms of the contracts between the parties for the "sale" of Mrs. Bayles's interest in the California properties and "it's binding force cannot be affected by subsequent communications unless they amount to a mutual agreement to rescind." Id.

7. In the instant case Mrs. Bayles's terms were all set forth in the Real Estate Contracts she sent to Mr. Bayles. Mr. Bayles accepted those terms and tendered his "full payment" and demanded she perform her agreed upon terms. She has the use and benefit of the monies paid to the detriment of Mr. Bayles. Mrs. Bayles cannot hold hostage the agreed upon deeds and other products and services she agreed to provide. Mr. Bayles is entitled to specific performance as to the terms of the contracts or the return of his tender.

DISTRIBUTION OF RETIREMENT BENEFITS

8. It is well established that a person's interest in a retirement plan accrued during a marriage is considered a marital asset subject to equitable distribution upon divorce. See, e.g., Woodward v. Woodward, 656 P.2d 431, 432 (Utah 1982).

9. The best method for distributing or allocating retirement benefits or their value depends on the particular circumstances. But where possible, the purpose to advance, is that of ending marriage and allowing the parties to make as much of a clean break from each other as is reasonably possible. Thus, as between decreeing a more immediate adjustment or simply deferring the other spouse's participation until payments are eventually received, our Supreme Court has stated that the latter alternative should be employed only in rare instances. See Gardner v. Gardner, 748 P.2d 1076, 1079.

10. The Utah Appeals Court in Chambers v. Chambers, 840 P.2d 841 (Utah App. 1992) discussed the manner of distributing retirement benefits:

Pursuant to "Woodward", the preferred method for doing so is to fix the other spouse's share of the pension plan, as adjusted for all the appropriate considerations, and satisfy the other spouse's share out of other assets, **thereby leaving all pension benefits to the employee**. See Woodward, 656 p.2d 431 at 433. This is especially true when there are sufficient other assets for equitable distribution and a present value of the retirement benefits can be established. id. However, **in the case at bar, it would appear that the trial court did not even consider such possibility here**. Accordingly, the trial court's order with regard to Mr. Chambers's retirement benefit **is reversed and remanded with directions to reconsider it's division of Mr. Chambers's retirement benefits** under the analysis set forth in "Woodward", including particularly the preference for valuation of the non-employee spouse's share and it's immediate cash-out from other assets. (emphasis added) Chambers v. Chambers, 840 P.2d 841 (Utah App. 1992).

11. Obviously, postponing a distribution until monthly payments are received and incurring possible ongoing entanglement between the parties until one of them dies, is inimical to the goal of ending the marriage, making as much of a clean break as possible.

12. In a similar case the Utah Court of Appeals in Motes v. Motes, 786 P.2d 232 at 234 - 235 (Utah App. 1989) said:

"The instant case does not involve the difficult questions presented by retirement programs held by those still working, which will--or may--only eventually result in income. In the instant case, like in Greene, one spouse had already retired and his retirement benefits had ripened into monthly payments, see 751 P.2d 827 at 828, the present value of plaintiff's share of the now-fixed stream of income, which the benefits have become, can be readily calculated and compensated for with distribution of other assets having an equivalent value, or cashed out over a comparatively short time." **"Accordingly, we reverse the court's treatment of both parties' retirement funds and remand for distribution in accordance with the foregoing."** See Greene v Greene, 751 P.2d 827 (emphasis added)

As with "Greene", this instant case does not have the difficult issues of benefits not yet realized.

In the instant case Mr. Bayles has retired and the present value of his annuity is readily determinable.

CONCLUSION

CONTRACTS

1. The trial court incorrectly interpreted the plain language of each of the three (3) California Purchase Agreements. The trial court committed legal error by incorrectly selecting only one element or provision of each of the three (3) California Purchase Agreements (ie: the consideration to be paid) in it's application of established or normal rules of contract construction or interpretation. By selecting only one element of each of the contracts, the trial court effectively created unenforceable unilateral contracts. Thus, Plaintiff/Appellant's payment for each of the properties should be returned and the properties placed back on the market to obtain truly bona-fide enforceable purchase offers.

2. It was judicial error for the trial court to refuse to order specific performance or return the monies Petitioner/Appellant paid to Respondent/Appellee. The ruling of the trial court should be reversed and Respondent/Appellee should be ordered to either return all monies she was paid under the three (3) California Purchase Agreements, or provide all the services and products called for within the four corners of the contract.

DISTRIBUTION OF RETIREMENT BENEFITS

3. The trial court incorrectly interpreted the plain language of a body of Utah Appellate case law which establish fixed principles for distribution of vested retirement benefits. Especially where the present value of the retirement annuity can easily be determined and where there are sufficient assets to provide a lump sum "cash-out" of the Respondent/Appellee's marital interest in the annuity. Thus the trial court erred in the distribution of Respondent/Appellee's "Woodward" share of Petitioner/Appellant's retirement benefits. While the court properly applied the "Woodward" formula for determining the proper portion of the spousal interest, it clearly failed to apply the proper manner of distribution of that interest as established in the "Woodward" case as well as other cases.

4. Accordingly, the trial court's order with regard to Mr. Bayles's retirement benefit should be reversed and remanded with directions to reconsider it's manner of distributing Mr. Bayles's retirement benefits under the analysis set forth in "Woodward" and the preference for valuation of the spouse's share and it's immediate cash-out from other assets.

5. Based on the foregoing, Mr. Bayles respectfully requests that the court reverse and remand with directions to reconsider it's division of Mr. Bayles's retirement benefits under the analysis set forth in "Woodward" and the preference for valuation of the spouse's share and it's immediate cash-out from other assets consistent with this court's decision.

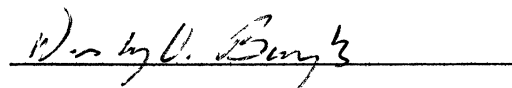
DATED this 4th day of September, 2007

Wesley O. Bayles
Wesley O. Bayles,
pro se

CERTIFICATE OF SERVICE

I, Wesley O. Bayles, certify that on the 4th day of September, 2007, I served a copy of the attached Brief of the Petitioner/Appellant upon Judy Dawn Barking, the counsel for Respondent/Appellee in this matter, by mailing to her by first class mail, postage prepaid to the following address:

Judy Dawn Barking
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427 27th Street
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ADDENDUM

Findings of Fact and Conclusions of Law

Decree of Divorce

Findings of Fact and Conclusions of Law

Order Modifying Decree of Divorce

FILED

NOV 25 2002

Layton District Court

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IN THE SECOND JUDICIAL DISTRICT COURT,
IN AND FOR DAVIS COUNTY, STATE OF UTAH

WESLEY O. BAYLES,

Petitioner ,

vs.

LINDA CARYL BAYLES,

Respondent .

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Civil No. 004702059 DA

Judge Thomas L. Kay

The above-entitled matter was heard before the Honorable Thomas L. Kay, Judge of the above-entitled court, pursuant to a trial on this matter held on October 1 through October 2, 2002. The Court, having reviewed the documents and pleadings on file herein, having heard testimony and reviewed documentation and being fully advised as to both the evidence and law pertaining thereto, hereby makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. The petitioner is a resident of Davis County, State of Utah, and has been for at least three (3) months immediately prior to the filing of this action.

INDINGS OF FACT AND CONCLUSIONS OF LAW



004702059 VD10820261

2. The parties resided in the marital relationship in the State of Utah or the acts complained of by the petitioner were committed by the respondent in the State of Utah and therefore the above-captioned Court has jurisdiction over the respondent pursuant to Utah Code Annotated §78-27-24(6) (1953 as amended).

3. The petitioner and respondent were married in the City of Bountiful, State of Utah, on the 10th day of August, 1988, and separated on or about November 28, 2000.

Grounds for Divorce

4. During the course of this marriage, differences have arisen between the parties, which differences have now become irreconcilable, thereby making continuation of the marriage relationship impossible.

5. The petitioner should be granted a Decree of Divorce from the respondent on the grounds of irreconcilable differences effective October 2, 2002.

Children of the Parties

6. No Children have been born as issue of this marriage and none are expected.

7. The respondent currently has physical custody of two minor children, the petitioner's grand nephew Andrew Vincent Salazar and Andrew's sister BreAnna Rosa Flores Salazar, who are not the issue of this marriage. Custody is held pursuant to Salazar v. Salazar, case number 954904926 DA, filed in the Third District Court in and for Salt Lake County, State of Utah.

8. The Court finds that the issue of child support was not certified for trial and, even if it had been, there is no Utah

statute or case law that extends an obligation for petitioner to pay child support in this circumstance.

Health Insurance

9. Each party should maintain their own health, accident, hospitalization and dental insurance. The petitioner should provide any necessary cooperation in respondent's obtaining for her benefit continued health, accident, hospitalization and dental insurance coverage under the federal C.O.B.R.A. legislation, at the sole cost of the respondent.

10. On February 14, 2002, the Commissioner ordered the petitioner to pay the respondent \$1,100 per month commencing March 1, 2002. The Commissioner allowed the petitioner to deduct from said payments the amount of \$87.50 per month representing the respondent's share of monthly health insurance premiums paid by petitioner. He also ordered (in a separate paragraph) each party to be responsible for their own debts from the date of separation.

11. On August 30, 2002, the Commissioner ruled that his Order was to be applied prospectively and not retroactively. He found the petitioner wrongfully withheld \$1,312.50 representing one-half of the cost of health insurance premiums previously paid by petitioner for 15 months from the date of separation to the date of his Order (December 1, 2000, to February 14, 2002) and ordered the petitioner to reimburse the amount of \$1,312.50 to the respondent.

12. The petitioner has failed to reimburse to the respondent \$1,312.50, representing petitioner's withholding of 1/2

of the cost of health insurance premiums paid from December 1, 2000, through February 14, 2002 ($\$87.50 \times 15 \text{ months} = \$1,312.50$).

Debts and Obligations

13. The parties have incurred certain debts and obligations. The parties are unable to afford the lifestyle they have been maintaining and have incurred extensive credit card debt.

14. The respondent should be required to pay and hold petitioner harmless on the debts owing on the Providian Card, the Citibank card, the Chase/Walmart Card, and the MBNA card.

15. The petitioner should be required to pay and hold the respondent harmless on the debts owing on the America First Credit Union Visa card, the line of credit at America First Credit Union, and the Firestone account.

16. Since the separation of the parties, the petitioner has paid approximately \$61,000 toward the marital debt obligations that existed at the time of separation. The petitioner shall not receive any credit or offset in the marital settlement for such payments. This Court finds that the majority of the debt was incurred by the petitioner and that petitioner had the financial ability to pay the debt and the respondent did not.

Real Property

17. The petitioner and the respondent have acquired a residence located at 1422 Vineyard Drive, Bountiful, Utah (the "Bountiful Residence"). The Bountiful Residence should be awarded to the petitioner subject to the debt thereon. The respondent should cooperate in executing a quitclaim deed in favor of the

petitioner or other documents necessary to relinquish her interest in the Bountiful Residence.

18. The petitioner should be permitted to sell the Bountiful Residence, with the respondent having no further claim or interest therein. The petitioner should be permitted to retain any profit or be responsible for any loss associated with any sale thereof. Respondent shall cooperate in executing any documents and taking any steps necessary to allow the petitioner to proceed with the sale and transfer of the Residence.

19. The respondent should not be responsible for payment of the first and second mortgage on the Bountiful Residence for the period she resided in the Residence from the date of separation through the time she moved to Oklahoma in August 2001.

20. The parties have acquired additional interests in certain other real property, including but not limited to (a) Parcel 1 of land and associated improvements located at 10692 Forbestown Road, Yuba County, California; (b) Parcel 13 of land and associated improvements located at 10747 Forbestown Road, Yuba County, California; (c) Parcel 15 of land and associated improvements located at 10695 Forbestown Road, Yuba County, California; (d) Parcel 16 of land and associated improvements located at 10691 Forbestown Road, Yuba County, California; and (e) Parcels 8 and 10 of land located in Yuba County, California, also known as the Beehive Mine.

21. Parcels 1, 13, 15, and 16 are found to be jointly held by the parties and should be considered joint marital property.

22. The Court finds that there is not clear and convincing evidence of duress associated with plaintiff's transfer of parcels 8 and 10 to the respondent as a joint tenant. Parcels 8 and 10 should be considered joint marital property.

23. The real property and improvements known as Parcel 2 (also known as parcels 22 and 23) located at approximately 10681 Forbestown Road, Yuba County, California shall be considered joint marital property. There is not sufficient evidence to conclusively track the funds used to purchase the property and to establish the lack of commingling that would be required to establish Parcel 2 (also referred to as Parcels 22 and 23) as the separate property of the petitioner.

24. In light of the parties' past payment and debt history, the above-mentioned California properties should be sold as soon as possible.

25. The petitioner shall hereinafter be entitled to retain the rental income from Parcels 1 and 15 and shall be obligated to maintain the monthly payments on the mortgages for said parcels through the date of sale of said properties.

26. The petitioner should be awarded a right of first refusal for the purchase of any and all of the California properties. Upon acceptance of any bona fide offer to purchase a California property, the petitioner shall receive written notice of the acceptance of the offer and shall have thirty (30) days

from the receipt of said notice to provide written notice of his election to purchase the property on the same terms as the bona fide offer. If petitioner exercises the right of first refusal, he shall pay the respondent the amount she would receive from the sale of that parcel, said payment to be made within 30 days of the time he exercises his right of first refusal.

27. The respondent is awarded a secondary right of first refusal. In the event that the petitioner fails to exercise his right of first refusal within thirty (30) days following his receipt of notice of acceptance of a bona fide offer, the respondent shall thereafter have thirty (30) days to provide written notice of her election to purchase the property on the same terms as the bona fide offer. If respondent exercises her right of first refusal, she shall pay the petitioner the amount he would receive from the sale of that parcel, said payment to be made within 30 days of the time she exercises her right of first refusal.

28. At the time of closing on the sale of each California property, proceeds from the sale shall first be applied to pay any and all closing costs, real estate commissions or fees, and any existing mortgage obligations owing, including any tax and/or debt delinquencies owed in relation to the property. After such costs have been paid, the petitioner shall be entitled to receive one-half of the total amount of payments he has made toward delinquent and current taxes on the property and, as applicable, one-half of the total amount he has paid toward the mortgage obligations in the property commencing with the month of

October 2002 through the date of sale. Any and all remaining proceeds from the sale of the property shall be split equally between the parties.

29. The Court finds that the real property and improvements located at (a) 1441 Michigan Avenue, Salt Lake City, Utah, and (b) Blanding, Utah, are the separate, inherited property of the petitioner.

30. The petitioner has made no claim in these proceedings as to any ownership interest in the home in which respondent is residing in the State of Oklahoma nor to the respondent's mother's home in Oklahoma.

Personal Property

31. The parties have acquired certain joint marital personal property, including household furniture, motor vehicles, and certain personal property and possessions.

32. The respondent should be awarded those personal heirlooms located at the California properties, namely plates, platters, clocks, and lamps. The court finds that the ski pole in the possession of the petitioner is a family heirloom of the respondent and respondent shall be awarded the ski pole. Petitioner shall be permitted to make a model of the ski pole and shall deliver possession of the ski pole to the respondent within 90 days of entry of this Order at her place of residence and at the expense of the petitioner.

33. The remainder of the personal property should be awarded to the parties as currently divided.

34. The petitioner has received approximately \$15,000 more in value of personal property than has the respondent.

35. The Court finds that the petitioner has paid \$15,000 to the respondent, which shall be considered an offset for the additional value of personal property received by the petitioner.

Alimony

36. The petitioner has made monthly payments to the respondent from the date of separation, including the total amount of \$8,337 in monthly payments during the period from February 14, 2002, through the month of October 2002. These payments shall be considered temporary alimony.

37. The respondent has the ability to earn \$8 per hour and to work 40 hours per week. The petitioner is not working like he used to work, but historically has had a greater ability to pay expenses than the respondent has ability to earn money.

38. Commencing with the month of November 2002, the petitioner should hereinafter be obligated to pay alimony to the respondent in the monthly amount of \$1,000, payable one-half on the 5th of the month and one-half on the 20th of each month, to continue until alimony is reviewed at the time of petitioner's retirement. Alimony shall terminate as determined by the Court or upon the marriage or cohabitation of the respondent, the death of either party, or upon the occurrence of any event, which, under Utah law, shall cause alimony to cease.

39. The alimony award shall be reviewed at the time of petitioner's retirement. Based upon the current circumstances of

the parties, petitioner's retirement shall be considered to be a sufficient basis to permit a review of alimony. At the time of review, the Court shall make determinations as to whether the monthly alimony payments will be modified or discontinued. Such review shall be made in conjunction with review of the issues related to payment of retirement and survivor benefits set forth in the following section.

Pensions and Retirement Benefits

40. The petitioner has acquired pension and retirement funds prior to and during the term of the marriage of the parties. The respondent should be entitled to receive one-half (1/2) of the petitioner's pension and retirement funds which were accrued during the term of the marriage pursuant to the Woodward formula and a Qualified Domestic Relations Order shall issue in association therewith.

41. The petitioner's retirement plan includes an option to elect either full or partial survivor benefits. The Court finds that election of a survivor benefit will decrease the total monthly benefit payment under petitioner's pension and retirement plan in an amount that cannot be calculated to an exact amount at this time. The Court reserves for future determination the issue of the amount of survivor benefits to be awarded to the respondent and the issue of which party shall pay the monthly cost. Such determination shall be made at the time of petitioner's retirement, subject to the provision of the following paragraph.

42. In order to avoid forfeiture of the ability to elect a full survivor benefit, the petitioner shall not elect a

reduced survivor benefit prior to the Court's determination pursuant to the provision in paragraph 41 above.

Life Insurance

43. The respondent should be listed as a one-half-interest beneficiary on the currently existing life insurance policy on petitioner's life. The court finds that such designation is equitable considering the length of the marriage of the parties.

Attorney's Fees

44. The Court finds three reasons for awarding attorney fees in this case. First, the respondent did not ask for the divorce and did not want the divorce so she had to hire an attorney. Secondly, the Court finds the respondent does not have the ability to pay. Thirdly, in light of the rulings previously, the respondent prevailed in more issues than the petitioner.

45. The petitioner shall pay \$1,500 toward respondent's attorney's fees by December 2, 2002, based upon petitioner's ability to pay a portion of the fees. The respondent should be ordered to assume and pay the remainder of her own costs and attorney's fees incurred herein. The petitioner should be ordered to assume and pay his own costs and attorney's fees incurred herein.

Miscellaneous Provisions

46. Each party should be ordered to execute and deliver to the other party any documents required to implement or support the provisions of the Decree of Divorce entered by the Court.

CONCLUSIONS OF LAW

1. The parties are subject to the jurisdiction of this Court as set forth above in the Court's Findings of Fact.

2. The petitioner should be granted a Decree of Divorce from the respondent on the grounds of irreconcilable differences effective October 2, 2002.

Children of the Parties

3. The petitioner shall not be obligated to pay child support to the respondent in regards to Andrew and BreAnna.

Health Insurance

4. Each party should maintain their own health, accident, hospitalization and dental insurance. The petitioner should provide any necessary cooperation in respondent's obtaining for her benefit continued health, accident, hospitalization and dental insurance coverage under the federal C.O.B.R.A. legislation, at the sole cost of the respondent.

5. On February 14, 2002, the Commissioner ordered the petitioner to pay the respondent \$1,100 per month commencing March 1, 2002. The Commissioner allowed the petitioner to deduct from said payments the amount of \$87.50 per month representing the respondent's share of monthly health insurance premiums paid by petitioner. He also ordered (in a separate paragraph) each party to be responsible for their own debts from the date of separation.

6. The respondent shall be entitled to receive the insurance check in the amount of \$1,636.03 in satisfaction of the \$1,312.50 owing pursuant to paragraph 6 above. The Court finds

that the check has already been delivered to the respondent as satisfaction of said obligation.

Debts and Obligations

7. The respondent should be required to pay and hold petitioner harmless on the debts owing on the Providian Card, the Citibank card, the Chase/Walmart Card, and the MBNA card.

8. The petitioner should be required to pay and hold the respondent harmless on the debts owing on the America First Credit Union Visa card, the line of credit at America First Credit Union, and the Firestone account.

9. Since the separation of the parties, the petitioner has paid approximately \$61,000 toward the marital debt obligations that existed at the time of separation. The petitioner shall not receive any credit or offset in the marital settlement for such payments.

Real Property

10. The Bountiful Residence should be awarded to the petitioner subject to the debt thereon. The respondent should cooperate in executing a quitclaim deed in favor of the petitioner or other documents necessary to relinquish her interest in the Bountiful Residence.

11. The petitioner should be permitted to sell the Bountiful Residence, with the respondent having no further claim or interest therein. The petitioner should be permitted to retain any profit or be responsible for any loss associated with any sale thereof. Respondent shall cooperate in executing any documents

and taking any steps necessary to allow the petitioner to proceed with the sale and transfer of the Residence.

12. The respondent should not be responsible for payment of the first and second mortgage on the Bountiful Residence for the period she resided in the Residence from the date of separation through the time she moved to Oklahoma in August 2001.

13. The parties have acquired additional interests in certain other real property, including but not limited to (a) Parcel 1 of land and associated improvements located at 10692 Forbestown Road, Yuba County, California; (b) Parcel 13 of land and associated improvements located at 10747 Forbestown Road, Yuba County, California; (c) Parcel 15 of land and associated improvements located at 10695 Forbestown Road, Yuba County, California; (d) Parcel 16 of land and associated improvements located at 10691 Forbestown Road, Yuba County, California; (e) Parcels 8 and 10 of land located in Yuba County, California, also known as the Beehive Mine; and (f) Parcel 2 of land located in Yuba County, California, also known as Parcels 22 & 23.

14. The above-mentioned California properties should be sold as soon as possible.

15. The petitioner shall hereinafter be entitled to retain the rental income from Parcels 1 and 15 and shall be obligated to maintain the monthly payments on the mortgages for said parcels through the date of sale of said properties.

16. The petitioner is awarded a right of first refusal for the purchase of any and all of the California properties.

Upon acceptance of any bona fide offer to purchase a California property, the petitioner shall receive written notice of the acceptance of the offer and shall have thirty (30) days from the receipt of said notice to provide written notice of his election to purchase the property on the same terms as the bona fide offer. If petitioner exercises the right of first refusal, he shall pay the respondent the amount she would receive from the sale of that parcel, said payment to be made within 30 days of the time he exercises his right of first refusal.

17. The respondent is awarded a secondary right of first refusal. In the event that the petitioner fails to exercise his right of first refusal within thirty (30) days following his receipt of notice of acceptance of a bona fide offer, the respondent shall thereafter have thirty (30) days to provide written notice of her election to purchase the property on the same terms as the bona fide offer. If respondent exercises her right of first refusal, she shall pay the petitioner the amount he would receive from the sale of that parcel, said payment to be made within 30 days of the time she exercises her right of first refusal.

18. At the time of closing on the sale of each California property, proceeds from the sale shall first be applied to pay any and all closing costs, real estate commissions or fees, and any existing mortgage obligations owing, including any tax and/or debt delinquencies owed in relation to the property. After such costs have been paid, the petitioner shall be entitled to receive one-half of the total amount of payments he has made

toward delinquent and current taxes on the property and, as applicable, one-half of the total amount he has paid toward the mortgage obligations in the property commencing with the month of October 2002 through the date of sale. Any and all remaining proceeds from the sale of the property shall be split equally between the parties.

19. The real property and improvements located at (a) 1441 Michigan Avenue, Salt Lake City, Utah, and (b) Blanding, Utah, are the separate, inherited property of the petitioner.

Personal Property

20. The respondent should be awarded those personal heirlooms located at the California properties, namely plates, platters, clocks, and lamps. The court finds that the ski pole in the possession of the petitioner is a family heirloom of the respondent and respondent shall be awarded the ski pole. Petitioner shall be permitted to make a model of the ski pole and shall deliver possession of the ski pole to the respondent within 90 days of entry of this Order at her place of residence and at the expense of the petitioner.

21. The remainder of the personal property should be awarded to the parties as currently divided.

22. The \$15,000 previously paid to the respondent shall be considered an offset for the additional value of personal property received by the petitioner.

Alimony

23. The petitioner has made monthly payments to the respondent from the date of separation, including the total amount

of \$8,337 in monthly payments during the period from February 14, 2002 through the month of October 2002. These payments shall be considered temporary alimony.

24. Commencing with the month of November 2002, the petitioner should hereinafter be obligated to pay alimony to the respondent in the monthly amount of \$1,000, payable one-half on the 5th of the month and one-half on the 20th of each month, to continue until alimony is reviewed at the time of petitioner's retirement. Alimony shall terminate as determined by the Court or upon the marriage or cohabitation of the respondent, the death of either party, or upon the occurrence of any event, which, under Utah law, shall cause alimony to cease.

25. The alimony award shall be reviewed at the time of petitioner's retirement. Based upon the current circumstances of the parties, petitioner's retirement shall be considered to be a sufficient basis to permit a review of alimony. At the time of review, the Court shall make determinations as to whether the monthly alimony payments will be modified or discontinued. Such review shall be made in conjunction with review of the issues related to payment of the retirement and survivor benefits set forth in the following section.

Pensions and Retirement Benefits

26. The petitioner has acquired pension and retirement funds prior to and during the term of the marriage of the parties. The respondent should be entitled to receive one-half (1/2) of the petitioner's pension and retirement funds which were accrued during the term of the marriage pursuant to the Woodward formula

and a Qualified Domestic Relations Order shall issue in association therewith.

27. The petitioner's retirement plan includes an option to elect either full or partial survivor benefits. The Court finds that election of a survivor benefit will decrease the total monthly benefit payment under petitioner's pension and retirement plan in an amount that cannot be calculated to an exact amount at this time. The Court reserves for future determination the issue of the amount of survivor benefits to be awarded to the respondent and the issue of which party shall pay the monthly cost. Such determination shall be made at the time of petitioner's retirement, subject to the provision of the following paragraph.

28. In order to avoid forfeiture of the ability to elect a full survivor benefit, the petitioner shall not elect a reduced survivor benefit prior to the Court's determination pursuant to the provision in paragraph 27, above.

Life Insurance

29. The respondent should be listed as a one-half-interest beneficiary on the currently existing life insurance policy on petitioner's life. The court finds that such designation is equitable considering the length of the marriage of the parties.

Attorney's Fees

30. The petitioner shall pay \$1,500 toward respondent's attorney's fees by December 2, 2002. The respondent should be ordered to assume and pay the remainder of her own costs and attorney's fees incurred herein. The petitioner should be ordered

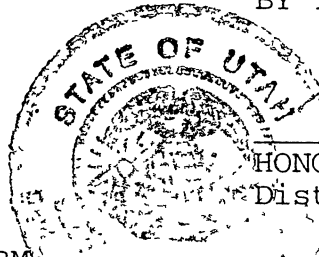
to assume and pay his own costs and attorney's fees incurred herein.

Miscellaneous Provisions

31. Each party should be ordered to execute and deliver to the other party any documents required to implement or support the provisions of the Decree of Divorce entered by the Court.

MADE AND ENTERED this 24th day of November, 2002.

BY THE COURT:



Thomas L. Kay
HONORABLE THOMAS L. KAY
District Court Judge

APPROVED AS TO FORM:

Judy Dawn Barking
JUDY DAWN BARKING
Attorney for Respondent

FILED

NOV 25 2002

Layton District Court

E. NORDELL WEEKS (3412)
ERIC N. WEEKS (7340)
WEEKS LAW FIRM
Attorneys for Petitioner
1050 Walker Terrace
19 East 200 South
Salt Lake City, Utah 84111
Telephone: 322-2800

Divorce Decree



004702059

VD10820269

BAYLES, LINDA CAF^{CD}

IN THE SECOND JUDICIAL DISTRICT COURT,

IN AND FOR DAVIS COUNTY, STATE OF UTAH

WESLEY O. BAYLES,

Petitioner,

vs.

LINDA CARYL BAYLES,

Respondent.

DECREE OF DIVORCE

Civil No. 004702059 DA

Judge Thomas L. Kay

The above-entitled matter was heard before the Honorable Thomas L. Kay, Judge of the above-entitled court, pursuant to a trial held on October 1 and October 2, 2002. The Court, having reviewed the documents and pleadings on file herein, having heard argument and testimony, and being fully advised as to both the evidence and law pertaining thereto, and having previously entered its Findings of Fact and Conclusions of Law, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. The parties are subject to the jurisdiction of this Court as set forth above in the Court's Findings of Fact.

2. The petitioner should be granted a Decree of Divorce from the respondent on the grounds of irreconcilable differences effective October 2, 2002.

MUNSTER
... PM,

Children of the Parties

3. The petitioner is not obligated to pay child support to the respondent in regards to Andrew Vincent Salazar and BreAnna Rosa Flores Salazar.

Health Insurance

4. Each party shall maintain their own health, accident, hospitalization and dental insurance. The petitioner shall provide any necessary cooperation in respondent's obtaining for her benefit continued health, accident, hospitalization and dental insurance coverage under the federal C.O.B.R.A. legislation, at the sole cost of the respondent.

5. The respondent shall be entitled to receive the insurance check in the amount of \$1,636.03 in satisfaction of the \$1,312.50 owing pursuant to the Commissioner's earlier recommendation. The check has already been delivered to the respondent as satisfaction of said obligation.

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6. The respondent is required to pay and hold petitioner harmless on the debts owing on the Provident Card, the Citibank card, the Chase/Walmart Card, and the MBNA card.

7. The petitioner is required to pay and hold the respondent harmless on the debts owing on the America First Credit Union Visa card, the line of credit at America First Credit Union, and the Firestone account.

8. Since the separation of the parties, the petitioner has paid approximately \$61,000 toward the marital debt obligations that existed at the time of separation. The petitioner shall not

receive any credit or offset in the marital settlement for such payments.

Real Property

9. The Bountiful Residence is awarded to the petitioner subject to the debt thereon. The respondent shall execute a quitclaim deed in favor of the petitioner or other documents necessary to relinquish her interest in the Bountiful Residence.

10. The petitioner is permitted to sell the Bountiful Residence, with the respondent having no further claim or interest therein. The petitioner shall be permitted to retain any profit or be responsible for any loss associated with any sale thereof. Respondent shall cooperate in executing any documents and taking any steps necessary to allow the petitioner to proceed with the sale and transfer of the Residence.

11. The respondent is not responsible for payment of the first and second mortgage on the Bountiful Residence for the period she resided in the Residence from the date of separation through the time she moved to Oklahoma in August 2001.

12. The parties jointly hold certain other real property, namely (a) Parcel 1 of land and associated improvements located at 10692 Forbestown Road, Yuba County, California; (b) Parcel 13 of land and associated improvements located at 10747 Forbestown Road, Yuba County, California; (c) Parcel 15 of land and associated improvements located at 10695 Forbestown Road, Yuba County, California; (d) Parcel 16 of land and associated improvements located at 10691 Forbestown Road, Yuba County, California; (e) Parcels 8 and 10 of land located in Yuba County,

California, also known as the Beehive Mine; and (f) Parcel 2 of land located in Yuba County, California, also known as Parcels 22 & 23.

13. The above-mentioned California properties shall be sold as soon as possible.

14. The petitioner is hereinafter entitled to retain the rental income from Parcels 1 and 15 and is obligated to maintain the monthly payments on the mortgages for said parcels through the date of sale of said properties.

15. The petitioner is awarded a right of first refusal for the purchase of any and all of the California properties. Upon acceptance of any bona fide offer to purchase a California property, the petitioner shall receive written notice of the acceptance of the offer and shall have thirty (30) days from the receipt of said notice to provide written notice of his election to purchase the property on the same terms as the bona fide offer. If petitioner exercises the right of first refusal, he shall pay the respondent the amount she would receive from the sale of that parcel, said payment to be made within 30 days of the time he exercises his right of first refusal.

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right of first refusal, she shall pay the petitioner the amount he would receive from the sale of that parcel, said payment to be made within 30 days of the time she exercises her right of first refusal.

17. At the time of closing on the sale of each California property, proceeds from the sale shall first be applied to pay any and all closing costs, real estate commissions or fees, and any existing mortgage obligations owing, including any tax and/or debt delinquencies owed in relation to the property. After such costs have been paid, the petitioner shall be entitled to receive one-half of the total amount of payments he has made toward delinquent and current taxes on the property and, as applicable, one-half of the total amount he has paid toward the mortgage obligations in the property commencing with the month of October 2002 through the date of sale. Any and all remaining proceeds from the sale of the property shall be split equally between the parties.

18. The real property and improvements located at (a) 1441 Michigan Avenue, Salt Lake City, Utah, and (b) Blanding, Utah, are the separate, inherited property of the petitioner.

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19. The respondent is awarded those personal heirlooms located at the California properties, namely plates, platters, clocks, and lamps. The ski pole in the possession of the petitioner is a family heirloom of the respondent and respondent is awarded the ski pole. Petitioner is permitted to make a model of the ski pole and shall deliver possession of the ski pole to

the respondent within 90 days of entry of this Decree at her place of residence and at the expense of the petitioner.

20. The remainder of the personal property is awarded to the parties as currently divided.

21. The \$15,000 previously paid to the respondent shall be considered an offset for the additional value of personal property received by the petitioner.

Alimony

22. The petitioner has made monthly payments to the respondent from the date of separation, including the total amount of \$8,337 in monthly payments during the period from February 14, 2002 through the month of October 2002. These payments shall be considered temporary alimony.

23. Commencing with the month of November 2002, the petitioner is hereinafter obligated to pay alimony to the respondent in the monthly amount of \$1,000, payable one-half on the 5th of the month and one-half on the 20th of each month, to continue until alimony is reviewed at the time of petitioner's retirement. Alimony shall terminate as determined by the Court or upon the marriage or cohabitation of the respondent, the death of either party, or upon the occurrence of any event, which, under Utah law, shall cause alimony to cease.

24. The alimony award shall be reviewed at the time of petitioner's retirement. Based upon the current circumstances of the parties, petitioner's retirement shall be considered to be a sufficient basis to permit a review of alimony. At the time of review, the Court shall make determinations as to whether the

monthly alimony payments will be modified or discontinued. Such review shall be made in conjunction with review of the issues related to payment of the retirement and survivor benefits set forth in the following section.

Pensions and Retirement Benefits

25. The petitioner has acquired pension and retirement funds prior to and during the term of the marriage of the parties. The respondent is entitled to receive one-half (1/2) of the petitioner's pension and retirement funds which were accrued during the term of the marriage pursuant to the Woodward formula and a Qualified Domestic Relations Order shall issue in association therewith.

26. The petitioner's retirement plan includes an option to elect either full or partial survivor benefits. The Court finds that election of a survivor benefit will decrease the total monthly benefit payment under petitioner's pension and retirement plan in an amount that cannot be calculated to an exact amount at this time. The Court reserves for future determination the issue of the amount of survivor benefits to be awarded to the respondent and the issue of which party shall pay the monthly cost. Such determination shall be made at the time of petitioner's retirement, subject to the provision of the following paragraph.

27. In order to avoid forfeiture of the ability to elect a full survivor benefit, the petitioner shall not elect a reduced survivor benefit prior to the Court's determination pursuant to the provision in paragraph 26, above.

Life Insurance

28. The respondent shall be listed as a one-half-interest beneficiary on the currently existing life insurance policy on petitioner's life.

Attorney's Fees

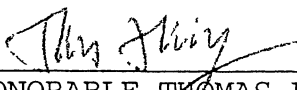
29. The petitioner shall pay \$1,500 toward respondent's attorney's fees by December 2, 2002. The respondent is ordered to assume and pay the remainder of her own costs and attorney's fees incurred herein. The petitioner is ordered to assume and pay his own costs and attorney's fees incurred herein.

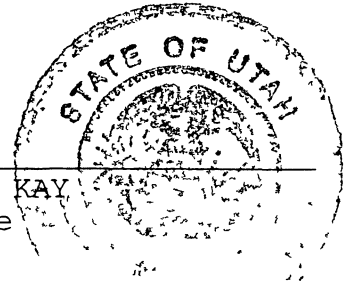
Miscellaneous Provisions

30. Each party is ordered to execute and deliver to the other party any documents required to implement or support the provisions of this Decree.


MADE AND ENTERED this 28th day of November, 2002.

BY THE COURT:


HONORABLE THOMAS L. KAY
District Court Judge



APPROVED AS TO FORM:


JUDY DAWN BARKING
Attorney for Respondent

a 38-BaylesW div decree

Michael D. Murphy (#5115)
Attorney for Petitioner
13 North Main
P.O. Box 15
Kaysville, Utah 84037
(801) 547-9274

IN THE SECOND JUDICIAL DISTRICT COURT
DAVIS COUNTY, STATE OF UTAH

WESLEY O. BAYLES,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
Petitioner)	
)	
vs.)	
)	
LINDA CARYL BAYLES,)	Civil No. 004702059
)	
Respondent.)	Judge Thomas L. Kay

This matter came on regularly scheduled before this Court for trial on July 3, 2006, the Honorable Thomas L. Kay, District Court Judge, presiding. Petitioner was present and represented by his attorney, Michael D. Murphy, and the Respondent was present and represented by her attorney, Judy Dawn Barking. The Court, after hearing argument and testimony and having reviewed the parties' exhibits, and being fully advised in the premises, now makes and enters on July 5, 2006 the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The court finds that the issues in this case is whether or not Petitioner should continue to pay alimony to the Respondent and what, if any, money that Petitioner has paid Respondent since June of 2004 should be paid back.

2. The Court finds that the second issue the Court is considering is who should pay for the survivor benefits and if Respondent should reimburse the Petitioner for the survivor benefits that he paid since the filing of the Petition to Modify on June, 2004.

3. The third issue is the parcels of property and whether or not the Respondent should strictly comply with the terms and conditions which accompanied the various post divorce sales of the various parcels of property.

4. The fourth issue is what should be done with the remaining unsold five-acre parcel.

5. The fifth issue is who should be ordered to pay attorney fees in this matter.

6. The sixth issue is who should be responsible for transportation costs and costs of trial.

7. The remaining issue of whether or not Petitioner should continue to maintain the Respondent as a beneficiary on his life insurance policy has been stipulated and the parties stipulate that Petitioner should no longer be obligated to carry Respondent as a beneficiary on his life insurance policy.

8. In regards to alimony, the Court finds that Petitioner was, at the time of October 2002, employed full time at the Internal Revenue Service. Petitioner had not had his disability rating from IRS prior to the trial and was earning almost twice' per month at the time of the entry of the Decree of

Divorce than he is earning now. The Court further finds that Petitioner filed the Petition to Modify in June of 2004 and that he was current in his monthly alimony through May of 2005. The Court further finds that from May of 2005, Respondent has been able to hold her own.

9. The Court finds that Petitioner no longer has the ability to pay alimony. Petitioner is disabled and alimony should terminate. The Court finds that the parties' incomes are substantially similar and there is no way that alimony can be justified. Even if the Respondent needs alimony, Petitioner cannot pay alimony.

10. The Court finds that \$12,000 of alimony has been paid from the time of the motion to modify in June of 2004 through May of 2005. The Court finds that what alimony has been paid has been paid. The Court further finds that it is not appropriate under the circumstances of this case to order that the alimony that was paid has to be repaid. Both parties shall go forward with no on-going alimony, or with no alimony to be refunded or no alimony due.

11. In regard to the survivor benefits, the Court finds that the cost of the survivor benefits is approximately \$272.00 per month and the issue is who should pay for those survivor benefits. Respondent already pays a proportion of the cost of the Survivor Benefit by virtue of a proportional reduction of her

Woodward share of the retirement benefit. Respondent will benefit by those survivor benefits. She currently receives \$599.00 per month and that amount will be increased annually pursuant to cost of living increases. If Petitioner dies prior to the Respondent, Respondent's survivor benefits would triple. The Court sees arguments of the parties both ways in determining who should be obligated to pay for the survivor benefits and finds an argument can be made for splitting it down the middle. The Court finds that the survivor benefit has been chosen and has to continue and that Petitioner should be ordered to pay for it just as it has been in the past. Respondent will have no obligation to pay any back survivor benefit payments. Respondent currently receives \$599.00 per month as her Woodward share of the retirement and that amount will be increased annually pursuant to annual cost of living increases.

12. As an off-set of the survivor benefits being paid as they currently are, Petitioner shall receive the five acre parcel of property, free and clear of any claim by the Respondent, subject to any debt thereon. Petitioner will have full authority to sell the five acre parcel and receive all monies from that sale. The Court finds that if Petitioner lives 20 more years, the cost of the five acre parcel gets roughly close to what it would cost him to pay for the survivor benefit. The Court finds that is fair. The Court further finds that everybody agrees that

there may be a title problem on this five acres and that Petitioner may get less than what he's going to have to pay over the time, but finds that's the best the Court can do. It is equitable to give Respondent survivor benefit, but appropriate to give Petitioner a source of funds with which to pay the survivor benefit.

13. In regards as to whether Respondent should comply with all terms of the sales for the various parcels of properties since the entry of the Decree of Divorce, the court finds that the position of Petitioner is that Respondent accepted offers that included terms of a grant deed, title insurance, and other items, and that these were bona fide offers.

The Court finds that things like title insurance and things like these other issues, normally in a closing on a sale, all these things are deducted, including real estate commissions or whatever they are, as closing costs. The Court further finds that's what would have happened if the closing of these sales contracts would have been sent to a third party.

The Court finds that if Petitioner wished to have Respondent comply with the terms of the sales contracts, then Petitioner should have done them prior to the time he sent payment.

The Court finds Petitioner can argue that Respondent should have been put on notice of the terms of the contracts because they were in the contracts.

The Court finds that Respondent had not complied with the terms of the sales contracts, but that Petitioner did not demand compliance with the terms of the sales contracts until after payment had been made.

The Court further finds the terms of the sales contracts were more of a technicality than what the bargain was.

Thus the Court is not going to order that Respondent is going to have to comply with any of the terms of the sales contracts. Consequently, Respondent shall not be held in contempt for not complying any of the terms contained in the sales contracts of the various parcels of real property.

Respondent was not put on notice to perform all the terms of the contracts before the checks for payment were sent; therefore, the Court will not order additional performance other than requiring Respondent to provide Petitioner with a grant deed on property held by the parties by a grant deed and with a quit claim deed on properties held by the parties on a quit claim deed.

As co-owner of the property by quit claim deed, Petitioner cannot complain of not getting a warranty deed from Respondent. Petitioner should not get better title than he had before; he takes the property like it was when he had it prior to adding Respondent to the title. Respondent's only obligation is to provide Petitioner with the deed.

14. Each party shall pay for their own attorney fees.

15. The court further finds that each party shall pay for their own costs and expenses. Petitioner's attorney shall reimburse the Respondent, as agreed, \$120.00. This \$120.00 is the cost that Respondent incurred for Petitioner's attorney making a motion for continuing the June 2006 trial based upon the death of Petitioner's attorney's aunt.

16. The Court finds that in regards to Petitioner obtaining title to the various properties, Respondent shall convey to Petitioner titles to the various properties as follows: If the parties acquired title to a parcel of property by a grant deed, then Petitioner shall receive a grant deed from Respondent. If the parties acquired title to a parcel of property by a quit claim deed, then Petitioner shall receive a quit claim deed from Respondent. Respondent shall have three months from the date of this ruling, July 5, 2006, to convey title to Petitioner for the un conveyed titles of property.

CONCLUSIONS OF LAW

1. The Court concludes that the parties are subject to the jurisdiction of the Court as set out above under the Court's Findings of Fact, that the Petitioner is entitled to an Order

Modifying Decree of Divorce, the same to become final upon entry herein.

2. The Court concludes that all other issues of dispute have been resolved with the Court pursuant to the above Findings of Fact.

SIGNED and DATED this ____ day of _____, 2007.

BY THE COURT

JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Findings of Fact and Conclusions of Law, postage prepaid, this _____ day of _____, 2007, to:

Judy Dawn Barking
Attorney for Respondent
427 27th Street
Ogden, UT 84401

Secretary

Michael D. Murphy (#5115)
Attorney for Petitioner
13 North Main
P.O. Box 15
Kaysville, Utah 84037
(801) 547-9274

IN THE SECOND JUDICIAL DISTRICT COURT
DAVIS COUNTY, STATE OF UTAH

WESLEY O. BAYLES,)	ORDER MODIFYING
)	DECREE OF DIVORCE
Petitioner)	
)	
vs.)	
)	
LINDA CARYL BAYLES,)	Civil No. 004702059
)	
Respondent.)	Judge Thomas L. Kay

This matter came on regularly scheduled before this Court for trial on July 3, 2006, the Honorable Thomas L. Kay, District Court Judge, presiding. Petitioner was present and represented by his attorney, Michael D. Murphy, and the Respondent was present and represented by her attorney, Judy Dawn Barking. The Court, after hearing argument and testimony and having reviewed the parties' exhibits, and being fully advised in the premises, and having previously entered on July 5, 2006 its Findings of Fact and Conclusions of Law, now makes and enters the following Order.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Pursuant to the parties' stipulation, the Petitioner shall no longer be obligated to carry Respondent as a beneficiary on his life insurance policy.

2. Pursuant to the Court's findings that Petitioner no longer has the ability to pay alimony, petitioner is disabled, and the parties' incomes are substantially similar and there is no way alimony can be justified. Even if the Respondent needs alimony, Petitioner cannot pay alimony, and the Court orders that alimony shall terminate.

3. The \$12,000 in alimony payments made since 2004 shall not be refunded. What alimony has been paid has been paid and the alimony that was paid shall not be repaid. Both parties shall go forward with no on-going alimony, or with no alimony to be refunded or with no alimony due.

4. The survivor retirement benefits shall continue to be paid as they have been and Petitioner shall continue to pay for it just as it has been in the past. Respondent shall have no obligation to pay any back survivor benefit payments.

5. As an off-set of the survivor benefits being paid as they currently are, Petitioner shall receive the five acre parcel of property, free and clear of any claim by the Respondent, subject to any debt thereon. Petitioner shall have full authority to sell the five acre parcel and receive all monies from that sale.

6. Respondent shall not have to comply with any of the terms of the sales contracts other than Respondent shall provide Petitioner with a grant deed on property held by the parties by a

grant deed and with a quit claim deed on properties held by the parties on a quit claim deed. Respondent shall not be held in contempt for not complying with all the terms contained in the sale of the various parcels of real property.

7. Each party shall pay for their own attorney fees.

8. Each party shall pay for their own costs and expenses. Petitioner's attorney shall reimburse the Respondent, as agreed, \$120.00. This \$120.00 is the cost that Respondent incurred for Petitioner's attorney making a motion for continuing the June 2006 trial based upon the death of Petitioner's attorney's aunt.

9. Respondent shall convey to the Petitioner titles to the various properties as follows: If the parties acquired title to a parcel of property by a grant deed, then Petitioner shall receive a grant deed from Respondent. If the parties acquired title to a parcel of property by a quit claim deed, then Petitioner shall receive a quit claim deed from Respondent. Respondent shall have three months from the date of this ruling, July 5, 2006, to convey title to Petitioner for the unconveyed titled of property.

SIGNED and DATED this ____ day of _____, 2007.

BY THE COURT

JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of
the foregoing Order Modifying Decree, postage prepaid, this _____
day of _____, 2007, to:

Judy Dawn Barking
Attorney for Respondent
427 27th Street
Ogden, UT 84401

Secretary