

1996

Watson v. Watson : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JOHN D. WATSON,

Plaintiff and Appellee,

vs.

CAMILLE K. WATSON,

Defendant and Appellant.

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: BRIEF OF APPELLANT
:
:
: Case No. 960344-CA
:
: Priority No. 15
:
:

APPEAL FROM ORDER TERMINATING ALIMONY AND REQUIRING
SALE OF MARITAL HOME OF THE FOURTH JUDICIAL DISTRICT
COURT IN AND FOR UTAH COUNTY, JUDGE HOWARD H. MAETANI
PRESIDING.

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COURT OF APPEALS

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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from an Order Terminating Alimony and Requiring Sale of Marital Home of the Fourth Judicial District Court in and for Utah County, Judge Howard H. Maetani presiding.

The Utah Court of Appeals has jurisdiction to hear this matter pursuant to Utah Code Ann. § 78-2a-3(2)(i) (1995).

STATEMENT OF ISSUES FOR REVIEW AND STANDARDS OF APPELLATE REVIEW

a. Whether the trial court committed error in finding that Camille K. Watson, the defendant/appellant, had cohabited with Jerry Talbot within the meaning of Utah Code Ann. § 30-3-5(9) (Supp. 1995) and the case of Haddow v. Haddow, 707 P.2d 669 (Utah 1985). The issue of whether a party has cohabited is a mixed question of fact and law, and the appellate court is not bound by the conclusion of the trial court, Haddow, 707 P.2d at 671,

citing Olwell v. Clark, 658 P.2d 585, 586 n.1 (Utah 1982). In addition, an appellate court is vested with broad equitable powers in reviewing a trial court's actions in a divorce case, Haddow, 707 P.2d at 671, citing Read v. Read, 594 P.2d 871, 872-3 (Utah 1979).

b. Whether the trial court committed error in ordering that plaintiff/appellee's alimony obligation be terminated retroactively to January 1, 1995. This is again a mixed question of fact and law, and the applicable standard is cited *supra*.

The appellant timely filed a Notice of Appeal in the trial court, preserving the trial court's findings of fact, conclusions of law, and order for appeal.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 30-3-5(9) (Supp. 1995)

Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabiting with another person.

STATEMENT OF THE CASE

The case presented on appeal is a divorce action. The appellant, Camille Watson, was the defendant in the case below. John Watson is the appellee and was the plaintiff below. The Decree of Divorce was entered on November 12, 1992. The parties

had three minor children, and the parties were granted joint legal custody, with Camille Watson being the primary custodial parent, subject to John Watson's reasonable and liberal rights of visitation. Camille Watson was awarded the marital home, subject to certain conditions subsequent or triggering events. Those conditions are, (a) Camille Watson remarries or cohabits with any other person, (b) the youngest child reaches age eighteen, or Camille Watson moves from the residence.

John Watson filed a Motion for Order to Show Cause on or about November 27, 1995, alleging that Camille Watson had been cohabiting with Mr. Jerry Talbot. John Watson requested an order terminating alimony payment and enforcing the provisions of the Decree of Divorce regarding disposition of the marital home. An evidentiary hearing on John Watson's motion was held before the Honorable Howard H. Maetani on February 1, 1996. At the close of evidence, the trial court took the matter under advisement. Additionally, the Court requested counsel to submit proposed findings of fact within fifteen days. The trial court issued a memorandum decision on April 8, 1996, and signed the Order, Findings of Fact and Conclusions of Law on May 2, 1996.

STATEMENT OF FACTS

The Trial Court's Summary of Evidence Presented at Trial

The trial court precedes its Findings of Fact with a section

entitled "Evidence Presented At Trial," which is a summary of the testimony of testimony and other evidence presented at trial.

The section begins with the testimony of Robert N. Goode, a private investigator hired by John Watson. The trial court found that Mr. Goode performed surveillance and other investigatory work on Camille Watson's home at 1668 North 390 West Pleasant Grove, Utah, beginning on December 17, 1994. This finding is supported in the record at T.15 l.17; T.18 l. 6. The trial court found that Mr. Goode personally conducted surveillance on Camille Watson's home from December 17, 1994, through early February, 1995, that a stationary video surveillance system was used from February through April, 1995, that from April, 1995 through October, 1995, Mr. Goode conducted random checks on Camille Watson's house, and that a stationary video surveillance system was again used from October to November, 1995, when Mr. Goode ceased surveillance activities. This finding is supported by T.15 l.17; T.18 l. 6. The trial court found that Mr. Goode had performed a "skip trace" on Jerry Talbot and that trace indicated Mr. Talbot's principal domicile and residence was Camille Watson's home. This finding is not well supported by the record. Mr. Goode did testify that in his opinion, Mr. Talbot was living in Camille Watson's home from approximately December 1994 until November of 1995 (T.39 11.4-11), but evidence of a "skip trace"

was objected to by Camille Watson's counsel for lack of foundation, and that objection was sustained (T.17 ll. 4-19). The trial court found that "Mr. Goode testified that he personally witnessed Mr. Talbot spending the night with Camille Watson in Pleasant Grove and not at any other address, including that of Mr. Talbot's mother in West Valley City." Mr. Goode did testify that he observed Mr. Talbot staying the night and leave the next morning having changed clothes (T.24). The trial court also found that Mr. Goode had traveled to Mr. Talbot's mother's home in West Valley City once or twice a week during January to March, 1995, and that he neither observed Mr. Talbot nor his car at that residence. This is supported at T.62 l.1 to T.63 l.5.

The trial court also stated that Mr. Goode testified that Mr. Talbot was present at the residence located at 1668 North 390 West, Pleasant Grove, Utah, which is Camille Watson's residence, each night that he personally surveilled the residence. This is supported by Mr. Goode's testimony at T.18 l.20. However, it became clear in cross-examination that Mr. Goode was not testifying that Mr. Talbot spent the night at Camille Watson's home each night Mr. Goode surveilled the residence, and further that Mr. Goode was not sure he saw Mr. Talbot at Camille Watson's residence on each night he personally surveilled the residence. (Beginning at T.50 l.23 to T.57 l.22, generally.) Specifically,

Mr. Goode testified upon cross-examination that it could be correct that the video tapes he took showed no sign of Mr. Talbot on January 5, 1995 (T.50 1.23 to T.51 1.3), January 24 (T.53 11.12-15), January 25 (T.53 11.16-18). Mr. Goode's responses to questioning about whether the videos showed Mr. Talbot present on January 18 (T.51 11.18-25), January 21 (T.52 11.2-7), January 23 (T.53 11.6-11), and January 26 (T.53 11.19-22) were either non-responsive or equivocal. Mr. Goode testified that he could not dispute the fact that there was no evidence of Mr. Talbot on February 3, 1995 (T.54 11.8-10). Mr. Goode also testified in cross-examination that there were no video tapes for February 3rd to February 27 (T. 54 11.11-21). Mr. Goode admitted that the tapes showed that Mr. Talbot left Camille Watson's at 8:38 p.m. (T.54 1.24 - T.55 1.1), and that Mr. Talbot was not there on February 28 (T.55 11.2-6). Mr. Goode also testified that Mr. Talbot was not present on March 7 through 10 (T.56 11.11-20). Furthermore, Mr. Goode admitted making mistakes either on the dates of the videos, or in his notes. (T. 54 1.22.), and to admitted to making selective notes only on the dates that showed Mr. Talbot at Camille Watson's residence, omitting dates where the videotapes did not show Mr. Talbot (T.55 11.4-14).

The next reference to Mr. Goode's testimony in the trial court's findings at R.243 is that Mr. Goode had observed Mr.

Talbot entering and leaving Camille Watson's residence having changed clothes, which is supported at T.24 11.7-15, but also found that Mr. Goode had testified that he observed Mr. Talbot changing clothes in Camille Watson's master bedroom on one occasion, but this is not supported by the record. The trial court also found that Mr. Goode testified that he observed Mr. Talbot present in the master bedroom with Camille Watson, and observed Mr. Talbot follow Mrs. Watson into the master bathroom, which is supported at T.41 11.6-20.

At R.242 ¶6 the trial court found that Mr. Goode observed Mr. Talbot use a garage door opener to obtain access to Camille Watson's residence (supported at T.20 11.6-10); work on his car in the garage at the residence (supported at T.20 11.22-24); use Camille Watson's car frequently (supported at T.23 11.19-25); arrive and leave from the residence when Camille Watson was not present (partially supported at T.31 1.19-T.32 1.9); clean the garage (supported in the record); do yard work at the home (supported at T.41 1.25); enter the home without knocking (supported at T.26 11.1-3; T.20 11.2-10); return late at night when all the lights in the home were off (recorded in the video but not personally observed, T.25 11.19-25); carry groceries into the home (T.37 11.3-5); carry a duffel bag and wight belt into the home and return to the car without the duffel bag (T.37

11.10-25). The trial court also found that Mr. Goode testified that he observed children other than the Watson children at Camille Watson's home every other weekend on a regular basis. While Mr. Goode testified that "there were some dark-haired children that would come every other weekend" (T.32 11.15-16) there was no testimony other than that to establish the regularity of the visits by the other children.

At R.242 ¶7 the trial court further summarized Mr. Goode's testimony. The trial court found that Mr. Goode testified he went to Mr. Talbot's former residence in Wendover, Utah and spoke to an apartment manager who informed Mr. Goode that Mr. Talbot had left the address at 1668 North 390 West, Pleasant Grove, Utah as his forwarding address. Mr. Goode did testify that he went to Wendover to check on Mr. Talbot's former residence (T.35 1.11-T.37 1.2), but the trial court also sustained an objection to hearsay testimony from the apartment manager regarding a forwarding address, so the trial court erred in stating that the former manager had informed Mr. Goode of Mr. Talbot's forwarding address. The trial court also found that Mr. Goode found several pieces of mail in the trash showing that Mr. Talbot was using the Pleasant Grove address as his mailing residence. However, Mr. Goode performed around twenty trash searches (T.61 1.12), and found only two pieces of regular mail addressed to Mr. Talbot.

T.27 1.15-T.28 1.4; Plaintiff's Exhibits 3 and 4. Mr. Goode testified that he also found some "junk" mail, but it was not produced at trial and no good explanation was offered for the failure to do so. *T.60 1.16-T.61 1.4; T.68 11.5-24.*

Also at *R.242 ¶7* the trial court found that Mr. Goode testified that he contacted Mr. Talbot's former employer, and was informed that Mr. Talbot was using the Pleasant Grove address on his W-2 form and as a forwarding address. At *T.30 11.17-22* Mr. Goode testified about the W-2 statement, but never testified that Mr. Talbot left Camille Watson's address as his forwarding address with his former employer.

At *R.242 ¶8* the trial court found that Mr. Goode gave his opinion that Mr. Talbot was living in Camille Watson's home from approximately December 1994 to November 1995. This is supported at *T.38 1.7-T.39 1.11*, but Camille Watson's counsel objected to the opinion testimony. The objection was overruled on the basis that Mr. Goode's opinion goes to the weight of the testimony. *Id.*

John Watson's next witness was R. Craig Hilton, who lives across the street from Camille Watson. The trial court summarized his testimony at *R.241-240*. The trial court stated that Mr. Hilton testified that he lives across the street from Camille Watson (supported at *T.73 11.9-20*), and that he has full

view of the Watson residence. This latter statement is not specifically supported by the record, since John Watson's counsel struck his question asking if Mr. Hilton had a full view of the Watson home and it was not responded to. T.74 11.3-6. The trial court next states that Mr. Hilton testified that he met Mr. Talbot two years ago (from the hearing date) at Camille Watson's home (supported in the record at T.74 11.3-18), and that Mr. Talbot had attended a "daddy-daughter" party with Camille Watson's daughter when Mr. Talbot was present (supported at T.74 1.24-T.75 1.14). The trial court stated that he saw the Watson residence every day (supported at T.77 1.1), and that he observed Mr. Talbot leaving from the residence several times between 7:00 a.m. and 8:00 a.m. This is not supported by the record. Mr. Hilton testified at T.80 1.16 to T.81 1.6 that he saw Mr. Talbot leaving Camille Watson's house at that time once or twice in the last couple of years. "Once or twice" is not several, and the distinction is important in this case. The trial court then correctly stated that Mr. Hilton testified that Mr. Talbot was not at Camille Watson's house every day. The trial court then stated that Mr. Hilton testified that Mr. Talbot was at Camille Watson's house several days at a time, and that he appeared to be living there when he was staying there. This is supported at T.80 11.1-15. The trial court then found that Mr. Hilton

testified that he had that observed Mr. Talbot parked his red Corvette and white Pontiac Grand Am in the garage at Camille Watson's home. This is generally but not perfectly supported at T.76 11.3-25. The trial court then stated that Mr. Hilton testified that he saw Mr. Talbot drive Camille Watson's car on several occasions. This is not supported by the record. Mr. Hilton testified he saw Mr. Talbot in Camille Watson's car while she was driving, but not that he saw Mr. Talbot driving her car. T.77 11.22-24. The trial court then found that Mr. Hilton testified that he witnessed Mr. Talbot work on Camille Watson's house and yard (supported at T.87 11.4-11), go to the mailbox (supported at T.78 11.5-7), and wash the cars (supported at T.76 1.17), often when Camille Watson was not present. This latter statement, that Mr. Talbot did certain things while Camille Watson was not present, is not supported in the record. The trial court then stated that Mr. Hilton testified that he had witnessed Mr. Talbot and Camille Watson riding bicycles together (supported at T.81 11.14-20), and arguing in the garage (supported at T.83 11.6-18). The trial court found that Mr. Hilton testified he observed Mr. Talbot playing with the Watson children in the yard. This is not supported in the record. Mr. Hilton testified that he saw the Watson children playing in the front yard, but not that Mr. Talbot was present. T.78 1.20. The

trial court then stated that Mr. Hilton expressed his opinion that Jerry Talbot was living at Camille Watson's home during the period of December 1994 to November 1995. There is no support for this in the record. Mr. Hilton expressed no such opinion. Mr. Hilton only testified as follows:

THE WITNESS: I would say, from my point of view, that when he's there I would assume he lives there. When he's not there I don't know where he lives.

Q. (Mr. Greenwood) Okay. You say ". . . when he lives there." What do you mean by ". . . when he lives there"?

A. Well, I would say that when he is there he parks in the garage and goes in the house and is there for a few days. I would assume that means he is living there.

T.80 11.7-15. It is clear that all Mr. Hilton was saying was that Mr. Talbot sometimes stays at Camille Watson's residence for a few days then leaves, to come back sometime in the future. It is not reasonable that the trial court could have concluded from this that Mr. Hilton was expressing his opinion that Mr. Talbot lived at Camille Watson's house from December 1994 to November 1995.

The trial court next summarized the testimony of Russell

Ware, a United States Postal Service employee, at R.240. Mr. Ware did not appear in person to testify, rather his testimony was offered by affidavit, *Plaintiff's Exhibit #6*. The affidavit stated in general terms that Mr. Ware has delivered mail; to Mr. Talbot at 1668 North 390 West, Pleasant Grove, Utah on an occasional basis since early 1995. No specific information as to what was delivered and when was provided.

The next witness whose testimony the trial court summarized is Mr. Talbot. However, he was not the next witness after admission of Mr. Ware's affidavit. The next witness after Mr. Ware was Shauna Farnsworth. Her testimony is summarized after that of Mr. Talbot.

The trial court's characterization of Mr. Talbot's testimony will be deemed correct with the following exceptions. First, the trial court states at R.239 that Mr. Talbot testified that he always parks his car in the garage which is accessed by a garage door opener. This does not accurately characterize Mr. Talbot's testimony. Mr. Talbot testified that he parks his Corvette in Camille Watson's garage (*T.150 1.23 to T.151 1.3*), and that when he visits with Camille Watson at her house he sometimes has possession of a garage door opener, but that it is "not a permanent fixture in any of [his] vehicles." *T.128 1.11 to T.129 1.5*). Mr. Talbot also testified that he does not always have the

garage door opener with him. *Id.*

Several other witnesses testified, and the trial court characterized or summarized their testimony as well. Some other errors, or points in need of clarification in the trial court's summary are as follows. The trial court stated at R.238 that Shauna Farnsworth testified that Mr. Talbot was present when she and Camille Watson went out jogging in the morning. In reality, Shauna Farnsworth testified that while she and Camille Watson go jogging about three to four times per week (T.99 1.22), she has only seen Mr. Talbot in the home about six times in a two-year span (T.101 1.2-3). So in the between 300 and 400 times Shauna Farnsworth had gone over to Camille Watson's home in a two-year span, she saw Mr. Talbot in the home about six times.

The trial court characterized Camille Watson's testimony as stating that Mr. Talbot has been in her home when she was not present, but neglects to mention that she also stated that her children were at home on those occasions. T.187 11. 18-20.

SUMMARY OF THE ARGUMENT

The trial court abused its discretion when it made findings of fact where no support was found in the record, and when it made findings that were clearly against the great weight of the evidence. The trial court then committed error of law when it misapplied the standard set forth in Haddow v. Haddow, 707 P.2d

669 (Utah 1985) to the facts of the case. The trial court's order terminating John Watson's alimony obligation and ordering that Camille Watson's residence be sold pursuant to the terms of the divorce decree should be overturned.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED ERROR IN ITS FINDINGS OF FACT

The trial court abused its discretion when it found that Mr. Talbot and Camille Watson had shared a common residence. The testimony of R. Craig Hilton, a neighbor, established only that Mr. Talbot appeared to spend up to three nights consecutively at Camille Watson's home. The trial court stated that it relied heavily on Mr. Hilton's testimony (R.234), but his testimony did not establish that Mr. Talbot had spent more than half of his nights at Camille Watson's residence. The testimony of the private investigator, Mr. Goode, upon which the trial court also heavily relied, was substantially impeached on cross-examination. The trial court's basis for believing Mr. Goode's testimony over that of other witnesses, such as Shauna Farnsworth, a friend of Camille Watson who had frequent personal contact with Camille at her residence, was that he was an "uninterested party." R.234. Mr. Goode was in fact paid \$1,500 for his services by Mr. Watson, which makes him far from uninterested. The job he was doing for

Mr. Watson was essentially to substantiate cohabitation. That was essentially the purpose for which he was retained. Mr. Goode is not a true professional such a licensed social worker or psychologist who might be expected to conduct an independent and unbiased investigation of, for example, parents' respective qualifications for custody for the benefit of the court. He has one paying client, John Watson, and in a case such as this, he is expected to find evidence to substantiate cohabitation.

The trial court apparently did not consider the testimony of Shauna Farnsworth, who stated that she only saw Mr. Talbot in Camille Watson's house around six times in two years, when she was visiting her house three to four times per week. In fact, of all the witnesses who testified at the evidentiary hearing, only Mr. Goode testified that he saw Mr. Talbot at Camille Watson's house every day he conducted surveillance, and that testimony was shown to be false on cross examination. In fact, Mr. Talbot did not conduct personal surveillance every day, and even on days when he did conduct surveillance, Mr. Talbot was not always there. (See citations in Statement of Facts section.)

Among the errors the trial court made in its findings of fact, which were pointed out in the Statement of Facts section, *supra*, are the following. The trial court stated that Mr. Hilton saw Mr. Talbot leave for work from Camille Watson's residence

several times between 7:00 a.m. and 8:00 a.m. This is not supported by the record. Mr. Hilton testified at T.80 1.16 to T.81 1.6 that he saw Mr. Talbot leaving Camille Watson's house at that time once or twice in the last couple of years. "Once or twice" is not several, and, as stated earlier, the distinction is important in this case. What the actual testimony of Mr. Hilton showed is that it was very rare indeed for him to see Mr. Talbot leaving for work from Camille Watson's house, despite the fact that he had the opportunity to observe her house each morning.

Another serious and material error the trial court committed in its characterization of Mr. Hilton's testimony is that the trial court stated that Mr. Hilton expressed his opinion that Jerry Talbot was living at Camille Watson's home during the period of December 1994 to November 1995. Mr. Hilton expressed no such opinion, and stated only that while Mr. Talbot was staying at Camille Watson's house for a few days, he appeared to be living there. That opinion, even had it been correctly stated, should have been given little weight, since it is clear Mr. Hilton was not testifying as to the legal standard for residency, and his opinion was not very material to the issue of residency.

It is also significant that Mr. Hilton testified that there were times when he had not seen Mr. Talbot for periods of weeks.

T.90 11.7-9.

There were other errors in the trial court's findings which were set forth in the Statement of Facts section, and while individually they were not highly material, the cumulative effect of them is material because all the other errors were prejudicial to Camille Watson.

II. THE TRIAL COURT MISAPPLIED THE PRINCIPLES OF HADDOW V. HADDOW

In addition to committing an abuse of discretion in mischaracterizing the testimony and in its weighing of the testimony, the trial court also erred in its application of the facts of this case to the standard set forth in Haddow v. Haddow, 707 P.2d 669 (Utah 1985). The Utah Supreme Court set forth the test for cohabitation for purposes of terminating alimony and enforcing an equitable lien in Haddow v. Haddow, 707 P.2d 669 (Utah 1985)¹. The court held there were two key elements to be considered in determining whether a party is cohabiting: common residency and sexual contact evidencing a conjugal association.

In applying Haddow, the trial court must determine whether as a matter of law whether the third party and the ex-spouse have common residency. The Utah Supreme Court in Haddow affirmed definition of "common residency" set forth in Knuteson v.

¹ Accord Sigg v. Sigg, 276 Utah Adv. Rep. 50 (Utah Ct. App., October 26, 1995).

Knuteson, 619 P.2d 1387 (Utah 1980), which is the sharing of a common abode that both parties consider their principle domicile for more than a brief period of time. Haddow, 707 P.2d at 672, citing Knuteson, 619 P.2d at 1389. Haddow also held that the abode must be "settled," and a stay of two months and ten days did not qualify as settled. Id. The court in Haddow set forth factors the trial court is to consider in determining whether the residency requirement has been met. They are as follows: that the stay be more than temporary²; that the party and the third person share common expenses; that the furniture or personal belongings of the third person be found in the home of the party; that they share assets or have joint bank accounts or liabilities; that they jointly own property; that they reside together continuously for sustained periods of time; that the third person have free access to the party's residence and may come and go and he may please, as opposed to the third person schedule his visits to coincide with the presence of the person he is visiting.

The trial court in the instant case failed to establish enough of the factors for it to conclude that the residency requirement had been met. Testimony showed that Mr. Talbot had

² See Knuteson v. Knuteson, 619 P.2d 1387, 1389 (Utah 1980), where the court held that a stay of two months and ten days did not establish a "settled abode."

not moved his furniture, clothing, or any of his personal belongings into Camille Watson's residence, with the exception of a television set and a stereo set. No evidence suggests that Mr. Talbot stored clothing or other personal effects there. The evidence also established that Jerry Talbot and Camille Watson had no joint credit, and that they had no joint checking accounts. In fact, they had not commingled their finances in any meaningful way. The trial court points out that Mr. Talbot did not have a bank account, but that it not material to the issue of commingling. The evidence presented at the hearing also established that Jerry Talbot and Camille Watson have no joint property of any kind. The evidence presented at the hearing also established that Camille Watson has paid from her own proceeds all living expenses expended on behalf of her or the minor children issue of these parties, including the payment of the mortgage, utilities (gas, water, electricity), and food for the children, with exception of a few times when Mr. Talbot bought food when he was going to be with Defendant and her children at her residence. Furthermore, no evidence was presented that Camille Watson and Jerry Talbot hold themselves out to the general public that they reside in the same residence.

The greater weight of the evidence, taking the testimony of Mr. Hilton, Mrs. Farnsworth, Camille Watson, Mr. Talbot, Rowella

Talbot, and other witnesses showed that Camille Watson and Jerry Talbot have not resided continuously for sustained periods of time. The evidence also showed that Camille Watson's residence was not the primary residence of Jerry Talbot. Jerry Talbot had spent the night frequently at Camille Watson's home, but it was not established that he spent most of his nights there, that he received most or even a substantial portion of his mail there, or that he did his laundry there.

The trial court simply did not establish the requisite elements of residency. Furthermore, the evidence relating to sexual contact was very circumstantial. The trial court seems to rely heavily on the empty condom box found in the trash by Mr. Goode. However, when John Watson's counsel questioned Mr. Talbot about it, he never asked him if he used the condoms while at Camille Watson's house. He only asked him if he had ever used condoms like the ones which the box apparently had contained, and Mr. Talbot responded that he did not know. It should be pointed out that Camille Watson has a sixteen-year-old son living with her, and it is possible the box could have belonged to him, without suggesting that that was the case.

CONCLUSION

The trial court abused its discretion and committed error of law in applying the test of Haddow v. Haddow (cited *infra*).

Therefore, the trial court's order terminating John Watson's alimony obligation and ordering that Camille Watson's residence be sold pursuant to the terms of the divorce decree should be overturned. The appellant, Camille Watson, should be awarded her costs and attorney fees incurred in defending against John Watson's order to show cause and incurred in this appeal.

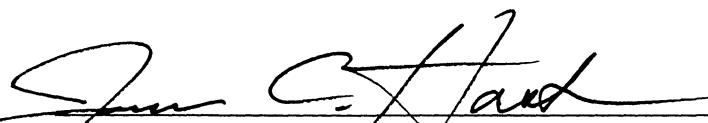
DATED this 15 day of October, 1996.

HASKINS & ASSOCIATES

P.S.:
No addendum to this
brief is necessary.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Appellant was sent by first class mail, postage prepaid, this 15 day of October, 1996, to:

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