

1987

Marsha Diane Rush v. Larry Gene Rush : Brief of Appellant

Utah Court of Appeals

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Lee Anne Walker; Attorney for Respondent.

Phillip W. Dyer; Attorney for Appellant.

Recommended Citation

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BRIEF

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

MARSHA DIANE RUSH,)	
)	
Plaintiff and)	
Respondent,)	
vs.	)	Case No. 870092-CA
)	
LARRY GENE RUSH,	)	Case Priority 14.b.
)	
Defendant and)	
Appellant.)	

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT AND DECREE OF DIVORCE
IN AND FOR THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
CIVIL NO. D85-2636, THE HONORABLE RICHARD H. MOFFAT, PRESIDING

LEE ANNE WALKER
2520 South State
Suite 172
Salt Lake City, Utah 84115

Attorney for Respondent

PHILLIP W. DYER
320 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101

Attorney for Appellant

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Court of Appeals

IN THE UTAH COURT OF APPEALS

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MARSHA DIANE RUSH,)	
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LEE ANNE WALKER
2520 South State
Suite 172
Salt Lake City, Utah 84115

Attorney for Respondent

PHILLIP W. DYER
320 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101

Attorney for Appellant

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

MARSHA DIANE RUSH,)	
)	
Plaintiff and)	
Respondent,)	
vs.	)	Case No. 870092-CA
)	
LARRY GENE RUSH,	)	Case Priority 14.b.
)	
Defendant and)	
Appellant.)	

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

This is a divorce action filed in the Third Judicial District Court in and for Salt Lake County, State of Utah. Defendant/Appellant appeals to this Court pursuant to U.C.A. 78-2a-3(g) from a Decree of Divorce entered on February 10, 1987, by the Honorable Richard H. Moffat.

ISSUES PRESENTED ON APPEAL

I

Did the trial court abuse its discretion in awarding the marital residence and real property to the wife?

II

Did the trial court abuse its discretion in awarding the

wife alimony?

III

Did the trial court improperly order future termination of defendant's visitation rights?

DETERMINATIVE OF STATUTES

Pursuant to Rule 24(a)(6) and (f) of the Rules of the Utah Court of Appeals, defendant/appellant has attached copies of the following as an addendum to this brief:

1. Memorandum Decision of the Honorable Richard H. Moffat, dated December 18, 1986.
2. Findings of Fact and Conclusions of Law entered on February 10, 1987.
3. Decree of Divorce entered on February 10, 1987.
4. U.C.A. 30-3-5(1) (1953).
5. U.C.A. 78-3a-48 (1953).
6. U.C.A. 78-3a-2(10), (14) (1953).

STATEMENT OF THE CASE

This is a divorce action which was commenced in July of 1985. Trial was held on November 19 and 20, 1986, before the Honorable Richard H. Moffat, who rendered a Memorandum Decision on December 18, 1986. From a Decree entered on February 10, 1987, defendant filed his Notice of Appeal on March 10, 1987.

The parties were married for twenty-one (21) years and had

three children (R.187). The children's ages at the time of trial were twelve (12), fifteen (15) and twenty (20) (R.187). The appellant/husband (hereinafter husband) was in a gyro-copter accident in 1983, in which he sustained trauma to the brain and skull (R.122). This injury resulted in plaintiff having cognitive/intellectual dysfunction including lack of emotional control, decreased attention span, decreased ability to concentrate, difficulty with abstract thinking, a word finding difficulty problem, a time-concept problem, recent and remote memory difficulties, geographic disorientation, speech difficulties and fatiguability (R.136-7). Prior to the accident, husband was employed as a mechanic with a monthly take-home pay of \$1,600.00 (R.195). Husband's current total income consists of \$708.00 in Social Security benefits (R.206).

The respondent/wife (hereinafter wife) was employed at the time of trial and earning \$4.50 per hour (R.196). Wife receives \$363.00 in Social Security benefits for the two (2) minor children and for herself (R. 205, 217). Wife also received the \$500.00 per month rent from the properties' real property (R.186, 222). Finally, the adult child of the parties resides with wife and has an income of \$325.00 per month (R.218). The wife's household income is therefore \$1,942.00 per month.

The principal asset of the parties' marriage is real

property located at 13231 South State Street in Salt Lake County, State of Utah (R.187) and the only evidence presented at trial as to value was the sales price suggested by a realtor of \$115,00.00 (R.169). The debt on the real property is approximately \$25,000.00 (R.219).

SUMMARY OF ARGUMENT

Defendant contends the trial court abused its discretion by awarding, as a practical matter, the entire marital estate to wife. Husband contends his disability as well wife's much greater income mandates he be awarded a portion of the net proceeds from the real property. Moreover, the lower court did not justify its ruling inasmuch as awarding the proceeds so that wife and children could obtain housing ignores husband's disability and housing needs.

Husband also contends the lower court erred in awarding alimony to wife because wife presented no evidence on her need nor on husband's ability to pay. Further, husband being permanently disabled is the more appropriate candidate for spousal support given the wife's greater income.

Finally, the lower court's apparent imposition of automatic termination of husband's visitation rights if husband's mother in any way interferes is, in effect, a termination of parental rights without a hearing. Further, the visitation rights order

does not address the child's best interests or the nature of any specific future conduct on the part of the mother and should be modified to require an evidentiary hearing on those issues.

ARGUMENT

I

THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING THE MARITAL RESIDENCE TO WIFE WITHOUT AWARDING A FAIR AND EQUITABLE PORTION TO HUSBAND.

Admittedly, the trial court's division of property is cloaked with a presumption of validity, Stephens v. Stephens, 728 P.2d 991 (Utah 1986) but such presumption evaporates when the trial court fails to make findings of fact regarding the values of property and the property division is challenged on appeal. Boyle v. Boyle, 55 Utah Adv. Rep. 51,52 (Utah 1987) citing Jones v. Jones, 700 P.2d 1072, 1074-75 (Utah 1985). In the case at bar, the court made absolutely no findings as to value of the parties' real property in either its Memorandum Decision or its Findings of Fact and Conclusions of Law. As such, we must turn to the record in hopes of gleaning some evidence on this issue.

The only evidence concerning the value of real property is a statement made by counsel that the property was listed for \$115,000.00. Wife testified that the debt on the property was approximately \$25,000.00. This evidence results in a net equity position of \$90,000.00, all of which the trial court awarded to

wife. Although the court ordered pre-separation debts to be paid from the sale of the property, no evidence was presented indicating the amount of those debts.

Assuming, arguendo, that there exists \$90,000.00 in equity, did the court fairly and equitably divide the parties' assets? Husband's position is a resounding NO! The parties' respective incomes are approximately equal if you compare wife's wages (\$754.00) with husband's Social Security benefits (\$708.00). Wife, however, also receives \$363.00 in Social Security benefits, \$500.00 in rental income and has an adult child with a monthly income of \$325.00. Wife's household income, therefore, totals \$1,942.00 which is more than double husband's income. In light of his disability, the chances for husband to ever increase his financial position are very slim and to totally deprive him of any portion of the marital estate is so fundamentally unfair and unjust as to approach Constitutional magnitude.

Moreover, the trial judge's justification for awarding the property to wife cannot be supported. Specifically, the trial court stated "the balance of the equity in said property is awarded to the plaintiff for the purpose of her procuring housing for her and the minor children". Nowhere in its decision does the court state why all of the equity is needed for wife's and the children's housing. Furthermore, the court did not address

the fact that husband would be required to obtain new housing. Most certainly husband will need additional funds to obtain housing by virtue of the sale of the marital residence. The lower court's justification for its award cannot therefore stand.

Although the Utah Supreme Court has affirmed an award of the marital residence to one spouse in King v. King, 718 P.2d 779 (Utah 1986), that case is factually distinguishable from the case at bar and is not controlling. In King, the husband conveyed the marital residence to his wife two and one-half (2 1/2) years prior to the divorce proceedings. The conveyance was purely voluntary and without compulsion. Moreover, the wife was unemployed and without future opportunity for employment. As a result, the court held the award of the marital residence to be within the sound discretion of the trial court.

In the present case, no conveyance of any interest has ever occurred and wife is currently employed with a household income far in excess of husband's income. King is, therefore, inapplicable.

Although wife's income exceeds husband's income, we admit that her expenses incident to raising the two (2) minor children may warrant something other than a fifty/fifty division of the real property proceeds. Husband therefore requests the court to remand this matter to the trial court and award him twenty-five

percent (25%) of the net proceeds after sale of the property and payment of all the expenses pursuant to the Decree.

II

THE AWARD OF ALIMONY IS WHOLLY UNSUPPORTED BY THE EVIDENCE AND SHOULD BE REVERSED.

An award of alimony must be supported by evidence and findings of fact demonstrating the needs of the wife, her inability to provide sufficient income for herself and the husband's ability to pay, Jones supra. at 1075. Moreover, the purpose of alimony is to "equalize" the parties as close as possible, Higley v. Higley, 676 P.2d 379, 381 (Utah 1983) and "avoid the necessity of one spouse receiving public assistance", Boyle supra. at 52 (citing Higley). See also English v. English, 565 P.2d 409, 411 (Utah 1977).

The trial court's only finding of fact regarding alimony is found at paragraph 5:

"5. Defendant is permanently disabled and receives Social Security benefits for himself, the spouse, and the minor children. Plaintiff is able-bodied, and employed, but does not have job training or skills..."

The trial court's findings do not address the issue of wife's needs by comparing income with expenses. One reason for this deficiency is the fact that absolutely no evidence was presented at trial on wife's monthly expenses. As such, the trial court could not have found her "needs" because the lower

court did not know what, in fact, those needs were.

Second, the trial court made no findings as to husband's ability to pay, but did find him to be permanently disabled and receiving public assistance in the form of Social Security benefits. Moreover, wife adduced no evidence husband has or will ever have an ability to pay alimony, but instead sought to show by testimony of husband's physicians that he was not capable of handling his own financial affairs. That testimony flies in the face of any potential finding of an ability to pay on husband's part and warrants a reversal of the alimony award.

Furthermore, if the trial court had properly considered the purpose of alimony, it would be readily observed that, as between these two parties, the only potential candidate for alimony is the permanently disabled husband, not the wife.

The trial court's award of alimony is wholly unjustified on both the facts and law and should be reversed.

III

THE TRIAL COURT ERRED IN ORDERING FUTURE TERMINATION OF PARENTAL RIGHTS INASMUCH AS THE ORDER FAILS TO COMPLY WITH U.C.A. 78-3a-48(2).

U.C.A. 78-3a-48(2) provides that:

"a termination of parental rights may be ordered only after a hearing is held specifically on the question of terminating the rights of the parent or parents. A verbatim record of the proceedings must be taken and the parties must be advised of their right to counsel..."

The term parental rights includes rights of reasonable visitation. See U.C.A. 78-3a-2(10), (14). The trial court ordered termination of husband's visitation rights if his mother abuses the minor son or "if the mother of the defendant in any way interferes with the visitation privilege, such privilege will be terminated." (emphasis supplied). Not only does the trial court's broad and all-encompassing language fail to address the nature of any alleged interference or the best interests of the child, but the court's automatic termination of visitation rights also ignores the statutory language of U.C.A. 78-3a-48(2) concerning termination of parental rights.

An even more fundamental objection to the court's order is that it predicates husband's visitation on the conduct of a non-party over whom he has no control. Nowhere does the court indicate in any of its determinations that husband can control the conduct of his mother. For that reason, husband should not be punished and deprived of his constitutional right to exercise his parental right of visitation without the benefit of a full evidentiary hearing on the issue of his mother's conduct, vis-a-vis, the minor child.

CONCLUSION

The trial court inequitably and unjustly awarded all the parties' real property proceeds. Husband should be awarded

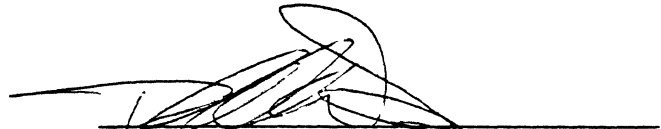
twenty-five percent (25%) of the net proceeds and this case should be remanded for entry of an order in accordance therewith.

The award of alimony is wholly unsupported by any evidence or findings and should be reversed in total.

The lower court's provision concerning husband's mother's conduct and visitation rights should be modified to provide for a full evidentiary hearing during which the issues of the minor child's best interests, the nature of the mother's alleged interference and the husband's ability to prevent the alleged interference should be addressed. The court should therefore remand this matter for modification of the Decree in accordance with the foregoing.

DATED this 20 day of July, 1987.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Phillip W. Dyer", is written over a horizontal line.

Phillip W. Dyer
Attorney for Defendant/Appellant

ADDENDUM

FILED IN CLERK'S OFFICE
Salt Lake City, Utah

DEC 18 1986

H. Dixon Hindley, Clerk 3rd Dist. Court
By [Signature] Deputy Clerk

FILED

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

MARSHA DIANE RUSH,	:	MEMORANDUM DECISION
Plaintiff,	:	CIVIL NO. D-85-2636
vs.	:	
LARRY GENE RUSH,	:	
Defendant.	:	

1. A divorce is granted to the plaintiff.

2. Custody of the minor children is awarded to the plaintiff, subject to reasonable rights of visitation at reasonable times and places being vested in the defendant. In this regard, visitation will not take place at the residence or home of the plaintiff, and the defendant shall give 48 hours advance notice of when he wishes to visit with the children. The children shall not be required to go on visitations with the plaintiff if they reasonably do not desire to do so. The minor son of the parties may visit overnight with the defendant on those occasions when the defendant and the minor son so agree. The minor son is in no way obligated to visit overnight with the defendant, and may refuse to do so at any time.

3. If there is any problem about abuse of the minor son by the defendant or his mother, or if the mother of the defendant

in any way interferes with the visitation privilege, such privilege will be terminated.

4. The defendant may drive a vehicle with the children in said vehicle only so long as the children are comfortable with him doing so. In the event they express any discomfort with his driving, he is to cease driving them immediately, and make other arrangements for transportation.

5. The real property of the parties is ordered sold, and the past due debts of both parties that were incurred prior to separation, including the medical bills of the defendant shall be paid out of the proceeds of that sale. The balance of the equity in said property is awarded to the plaintiff for the purpose of her procuring housing for she and the minor children.

6. Alimony is awarded the plaintiff in a sum equal to the social security payment paid to her as the former spouse of a disabled person, plus \$1.00^{per month on} to preserve her right to alimony.

7. Child support is awarded only in the amount of the support benefit payable to the minor dependent children under social security. The defendant is ordered to assign such benefits above-described, and do all other things necessary to assure that the spouse and children receive the same. The alimony and child support are limited as set forth herein, based on the fact that the equity of the parties in the real estate has

been awarded to the plaintiff in lieu of any further order of alimony or support at this time.

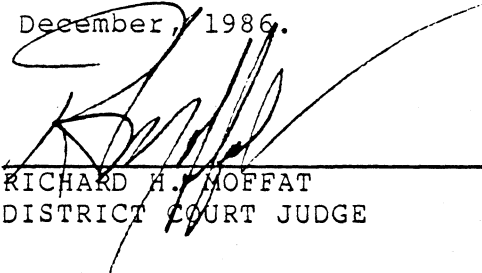
8. Each party shall pay their own attorney's fees and costs.

9. The balance of the issues shall be resolved as set forth in the Stipulation between the parties, dated November 14, 1986.

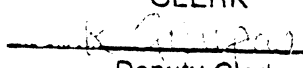
10. The parties are both restrained from harassing each other at all times.

11. The plaintiff's attorney is to prepare the Findings of Fact, Conclusions of Law, and the Decree herein.

Dated this 15 day of December, 1986.



RICHARD H. MOFFAT
DISTRICT COURT JUDGE

ATTEST
H. DIXON HINDLEY
CLERK
By 
Deputy Clerk

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, postage prepaid, to the following, this 19 day of December, 1986:

Lee Anne Walker
Attorney for Plaintiff
2520 S. State, Suite 172
Salt Lake City, Utah 84115

Edward K. Brass
Attorney for Defendant
321 South 600 East
Salt Lake City, Utah 84102

K. G. (S. P. A.)

FEB 6 1987

LEE ANNE WALKER
Attorney for defendant
2520 S. State, Suite 172
Salt Lake City, UT 84115
(801) 486-8331

H. Dixon Hendley, Clerk 3rd Dist. Court
By K. Grotz
Deputy Clerk

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

MARSHA DIANE RUSH,	)	FINDINGS OF FACT AND CONCLU-
PLAINTIFF	)	SIONS OF LAW
V)	
LARRY GENE RUSH,	)	JUDGE RICHARD H. MOFFAT
DEFENDANT	)	CIVIL D85-2636

This matter came on regularly for hearing on Wednesday, the 19th day of November, at 10 a.m. and thereafter as required for the matter to be heard. The plaintiff was present and represented by her counsel, Lee Anne Walker. Defendant was present and represented by his counsel.

Upon the testimony of the parties and their witnesses, exhibits received, the partial stipulation of the parties, the argument of counsel, the Court makes the following:

FINDINGS OF FACT

1. The plaintiff has been a bona fide resident of Salt Lake County for more than three months prior to commencement of this action.

2. The parties were married April 30, 1965, in Murray, Salt Lake County, State of Utah.

3. The parties have three children as issue of this marriage:

Sharon Lynn Rush, born 6-28-1966.

Kristie Marie Rush, born 9-19-1971

Ricky Lee Rush, born 6-24-1974

There are no other children expected. The oldest is no longer a minor.

4. Defendant has inflicted mental and physical cruelty on plaintiff and the children, causing plaintiff great mental distress. Particularly, defendant is a head trauma patient, having been in an accident on June 16, 1983. Plaintiff attended him in the hospital, and tried in every way to help him recover. He is physically much recovered, but his attitudes and memory span have been affected. He has become physically violent and abusive. He has defied plaintiff and the doctors, and seized the income, subjecting plaintiff and the children to great risks and financial hardships.

5. Defendant is permanently disabled and receives Social Security benefits for himself, the spouse, and the minor children. Plaintiff is able-bodied and employed, but does not have job training or skills. The parties also rent a shop on the front of their property for FIVE HUNDRED (\$500.00) DOLLARS per month.

6. The parties stipulated in Court that the personal property and furniture should be awarded as divided.

7. Plaintiff is a fit and proper person to be awarded the custody of the parties' minor children, subject to reasonable rights of visitation at reasonable times and places bring vested in the defendant. In this regard, visitation will not take place

at the residence or home of the plaintiff, and defendant shall give 48 hours advance notice of when he wishes to visit with the children. The children shall not be required to go on visitations with the defendant if they reasonably do not desire to do so. The minor son of the parties may visit overnight with the defendant on those occasions when the defendant and the minor son so agree. The minor son is in no way obligated to visit overnight with the defendant, and may refuse to do so at any time.

8. If there is any problem about abuse of the minor son by the defendant or his mother, or if the mother of the defendant in any way interferes with the visitation privilege, such privilege will be terminated.

9. The defendant may drive a vehicle with the children in said vehicle only so long as the children are comfortable with him doing so. In the event they express any discomfort with his driving, he is to cease driving them immediately, and make other arrangements for transportation.

10. The real property of the parties is ordered sold. The past due debts of both parties that were incurred prior to separation, including the medical bills of the defendant, shall be paid out of the proceeds of that sale. The balance of the equity in said property is awarded to the plaintiff for the purpose of her procuring housing for her and the minor children.

6. Alimony is awarded the plaintiff in a sum equal to the monthly Social Security payment paid to her as the former spouse of a disabled person, plus \$1.00 to preserve her right to alimony.

7. Child support is awarded to plaintiff only in the amount of the support benefit payable to the minor children under Social Security. The defendant is ordered to assign such benefits above-described, and do all other things necessary to assure that the plaintiff and children receive the same. The alimony and child support are limited as set forth herein, based on the fact that the equity of the parties in the real estate has been awarded to plaintiff in lieu of any further order of alimony or support at this time.

8. Each party shall pay their own attorney's fees and costs in this matter.

9. The Court awards the mobile home to plaintiff, the 1981 Subaru to plaintiff, and the truck to the defendant. The parties should assume the obligations of these respective items as awarded and hold the other harmless therefrom.

10. The defendant is ordered to be responsible for and hold plaintiff harmless from any debts or judgments he incurred since the separation of the parties and for the repair bill incurred for his truck. The parties are ordered to be responsible for and hold each harmless from their own debts and obligations from the date of the divorce.

11. The parties are both restrained from harrassing each other at all times.

From the Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. Plaintiff is entitled to a Decree of Divorce, according to law, upon the grounds of mental cruelty, to be final upon

entry.

2. The terms of the divorce should be based on the stipulations of the parties and the findings and conclusions of the Court.

3. If any of the Findings are conclusions of law, they shall be deemed Conclusions.

DATED this 1st day of Feb., 1987.

BY THE COURT

[Signature]
RICHARD H. MOFFAT
DISTRICT JUDGE

APPROVAL AS TO FORM:

[Signature]
EDWARD BRASS
Attorney for defendant

ATTEST
H. DIXON HINDLEY
CLERK
By [Signature]
Deputy Clerk

MAILING CERTIFICATE

I CERTIFY that I mailed a true and correct copy of these Findings of Fact and Conclusions of Law to defendant's counsel, Edward K. Brass, at his office at 321 South 600 East, Salt Lake City, UT 84102 postage prepaid through the U. S. mails this 26th day of January, 1987.

[Signature]

FEB 6 1987

LEE ANNE WALKER
Attorney for defendant
2520 S. State, Suite 172
Salt Lake City, UT 84115
(801) 486-8331

H. Dixon Hendley, Clerk 3rd Dist. Court
By R. Grotz
Deputy Clerk

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

MARSHA DIANE RUSH,	)	DECREE OF DIVORCE
PLAINTIFF	)	<i>BL 212 NO. 3864</i>
V	)	<i>2-10-87 - 8:34 AM</i>
LARRY GENE RUSH,	)	JUDGE RICHARD H. MOFFAT
DEFENDANT	)	CIVIL D85-2636

This matter came on regularly for hearing on Wednesday, the 19th day of November, at 10 a.m. and thereafter as required for the matter to be heard. The plaintiff was present and represented by her counsel, Lee Anne Walker. Defendant was present and represented by his counsel.

Upon the testimony of the parties and their witnesses, exhibits received, the stipulations of the parties, the argument of counsel, and for good cause appearing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Plaintiff is granted a decree of divorce, to be final upon entry.

2. Plaintiff is awarded the custody of the parties' minor children, subject to reasonable rights of visitation at reasonable times and places being vested in the defendant. In this regard, visitation will not take place at the residence or home of the plaintiff, and defendant shall give 48 hours

advance notice of when he wishes to visit with the children. The children shall not be required to go on visitations with the defendant if they reasonably do not desire to do so. The minor son of the parties may visit overnight with the defendant on those occasions when the defendant and the minor son so agree. The minor son is in no way obligated to visit overnight with the defendant, and may refuse to do so at any time.

3. If there is any problem about abuse of the minor son by the defendant or his mother, or if the mother of the defendant in any way interferes with the visitation privilege, such privilege will be terminated.

4. The defendant may drive a vehicle with the children in said vehicle only so long as the children are comfortable with him doing so. In the event they express any discomfort with his driving, he is to cease driving them immediately, and make other arrangements for transportation.

5. The real property of the parties is ordered sold. The past due debts of both parties that were incurred prior to separation, including the medical bills of the defendant, shall be paid out of the proceeds of that sale. The balance of the equity in said property is awarded to the plaintiff for the purpose of her procuring housing for her and the minor children.

6. Alimony is awarded the plaintiff in a sum equal to the monthly Social Security payment paid to her as the former spouse of a disabled person, plus \$1.00 to preserve her right to alimony.

7. Child support is awarded to plaintiff only in the amount

of the support benefit payable to the minor children under Social Security. The defendant is ordered to assign such benefits above-described, and do all other things necessary to assure that the plaintiff and children receive the same.

8. Each party shall pay their own attorney's fees and costs in this matter.

9. The Court awards the mobile home to plaintiff, the 1981 Subaru to plaintiff, and the truck to the defendant. The parties should assume the obligations of these respective items as awarded and hold the other harmless therefrom.

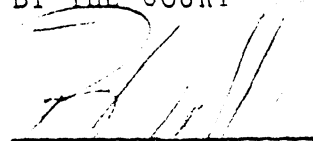
10. The defendant is ordered to be responsible for and hold plaintiff harmless from any debts or judgments he incurred since the separation of the parties and for the repair bill incurred for his truck. The parties are ordered to be responsible for and hold each harmless from their own debts and obligations from the date of the divorce.

11. The parties are both restrained from harrassing each other at all times.

12. The personal property and furniture is awarded as divided.

DATED this 6th day of February, 1987.

BY THE COURT


RICHARD H. MOFFAT
DISTRICT JUDGE

ATTEST
H. DIXON HINDLEY
CLERK

By K. Quotepan
Deputy Clerk

APPROVAL AS TO FORM:

EDWARD BRASS
Attorney for defendant

MAILING CERTIFICATE

I CERTIFY that I mailed a true and correct copy of this Decree of Divorce to defendant's counsel, Edward K. Brass, at his office at 321 South 600 East, Salt Lake City, UT 84102 postage prepaid through the U. S. mails this 26th day of January, 1987.

Lee Anne Walker

Utah Code Ann. 30-3-5

U.C.A. 30-3-5. Disposition of property - Maintenance and health of parties and children - Court to have continuing jurisdiction - Custody and visitation - Termination of alimony.

(1) When a decree of divorce is rendered, the court may include in it such orders in relation to the children, property and parties, and the maintenance and health care of the parties and children, as may be equitable...

Utah Code Ann. 78-3a-48

U.C.A. 78-3a-48. Termination of parental rights - Grounds Hearing - Effect of order - Placement of child - Voluntary petition of parent.

(2) A termination of parental rights may be ordered only after a hearing is held specifically on the question of terminating the rights of the parent or parents. A verbatim record of the proceedings must be taken and the parties must be advised of their right to counsel. No such hearing shall be held earlier than ten days after service of summons is completed inside or outside of the state...

Utah Code Ann. 78-3a-2

U.C.A. 78-3a-2. Definitions. - As used in this act:

(10) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including, but not limited to, the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation, and the right to reasonable visitation unless restricted by the court. If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to marriage, to enlistment, and to consent to major medical, surgical, or psychiatric treatment.

(14) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

IN THE UTAH COURT OF APPEALS

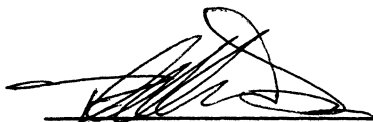
STATE OF UTAH

MARSHA DIANE RUSH,)	
)	
Plaintiff and	)	CERTIFICATE OF FILING
Respondent,	)	AND SERVICE
vs.)	
	)	Case No. 870092-CA
LARRY GENE RUSH,)	
	)	Case Priority 14.b.
)	
Defendant and)	
Appellant.)	

PHILLIP W. DYER, Attorney for Defendant/Appellant, Larry Gene Rush, hereby certifies that on the 20 day of July, 1987, the original and seven copies of the Brief of Appellant were filed with the Clerk of the Court of Appeals and that four copies of the Brief of Appellant were hand-delivered to Lee Anne Walker, Attorney for Plaintiff/Respondent, 2520 South State Street, Suite 172, Salt Lake City, Utah 84115.

DATED this 20 day of July, 1987.

Respectfully submitted,



Phillip W. Dyer
Attorney for Defendant/Appellant