

1987

Laura Beth Barker, State of Utah v. Michael Robert Barker : Brief of Respondent

Utah Court of Appeals

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David L. Wilkinson; attorney general; Blaine R. Ferguson; Wayne Riches, Clella Lawrence, Howard Maetani; Utah Legal Services; Ross C. Blackham; attorneys for respondent.

Michael R. Barker; pro se.

Recommended Citation

Brief of Respondent, *Laura Beth Barker, State of Utah v. Michael Robert Barker*, No. 870158 (Utah Court of Appeals, 1987).
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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 870158

IN THE COURT OF APPEALS
OF THE STATE OF UTAH

LAURA BETH BARKER, and the	:	Trial Court No. 9085
STATE OF UTAH, by and	:	
through Utah State Dept. of	:	Court of Appeals No. 870158-CA
Social Services,	:	
	:	
Plaintiffs/Respondents,	:	Priority No. 7 (Custody Issue)
	:	
vs.	:	
	:	
MICHAEL ROBERT BARKER,	:	
	:	
Defendant/Appellant.	:	

BRIEF OF RESPONDENT
LAURA BARKER

Appeal from the Judgment of the Sixth
District Court for Sanpete County
Honorable Don V. Tibbs, Judge

Michael R. Barker,
Pro se
Box 142
Santa Clara, Utah 84765

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Laura Barker, and non-parties
Utah Legal Services, Inc.,
Waine Riches, Clella Lawrence,
The Honorable Howard Maetani,
Domestic Relations Commissioner
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LIST OF PARTIES

PLAINTIFF/RESPONDENT.....LAURA BETH BARKER (McGILLIVARY)

PLAINTIFF/RESPONDENT.....STATE OF UTAH BY AND THROUGH THE
UTAH DEPARTMENT OF SOCIAL SERVICES

DEFENDANT/APPELLANT.....MICHAEL ROBERT BARKER

NON-PARTIES/RESPONDENTS.....DAVID L. WILKINSON, UTAH ATTORNEY
GENERAL;
ROSS C. BLACKHAM, SANPETE COUNTY
ATTORNEY;
JOHN ABBOTT;
ROLEEN OLSEN;
OFFICE OF RECOVERY SERVICES;
UTAH LEGAL SERVICES, INC.;
WAINE RICHES, MANAGING ATTORNEY,
PROVO OFFICE UTAH LEGAL SERVICES,
INC.;
CLELLA LAWRENCE, STAFF ATTORNEY,
PROVO OFFICE UTAH LEGAL SERVICES,
INC.;
THE HONORABLE HOWARD MAETANI,
DOMESTIC RELATIONS COMMISSIONER,
FORMERLY MANAGING ATTORNEY, PROVO
OFFICE UTAH LEGAL SERVICES, INC.

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STATEMENT OF JURISDICTION

Pursuant to Utah Code Ann. 78-2a-3(2)(g) the Utah Court of Appeals has jurisdiction to hear Appellant's appeal from an adverse Decree of Divorce and Judgment.

NATURE OF THE PROCEEDINGS BELOW

Plaintiff, Laura Beth Barker (McGillivray) brought an action for divorce against Defendant, Michael Barker. Plaintiff amended her complaint. The State of Utah Department of Social Services joined in the amended complaint as a Plaintiff to recover for assistance paid by the State of Utah to Laura Barker for the support of the parties' children while in her custody.

Defendant Michael Barker responded to the amended complaint and has been representing himself throughout the proceedings. In his response to the amended complaint Michael Barker brought tort like allegations against the non-parties listed above.

Michael Barker has filed many documents, which are too numerous to mention here, throughout the course of the divorce. In his documents, he has raised various motions in the District Court, the Court of Appeals and the Supreme Court. Many if not most of his motions have revolved around asking the Courts to grant him special status and deny jurisdiction over him based on his being a "white male citizen de jure." The various motions at each of the three Courts have been denied.

Michael Barker has filed a timely appeal to this Court from the Decree of Divorce and the separate Order concerning the various pre-trial motions.

STATEMENT OF THE ISSUES

Issue 1. Does Michael Barker enjoy a special status as a "free white male citizen de jure" such that the District Court did not have jurisdiction over him?

Issue 2. Is the Mexican divorce decree obtained by Michael Barker valid?

Issue 3. Did the District Court properly dismiss Michael Barker's "tort-like" allegations and complaints against the non-parties?

Issue 4. Did the District Court properly decide the issues of: derogatory statements by Michael Barker to his children, custody, support, child visitation, and real property distribution.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES
RULES AND REGULATIONS

CONSTITUTIONAL PROVISIONS

Utah Constitution, Article I Section 4 and 15

Copied in the Addendum

STATEMENT OF THE CASE

For the nature of the case, course of proceedings, and

disposition in Court below see Nature of the Proceedings Below at page 6 above.

FACTS

Plaintiff/Respondent, hereafter Laura Barker, and Defendant/Appellant, hereafter Michael Barker, were married on November 4, 1975. (Transcript page 45 lines 17 through 24) hereafter cited as (TR pg. 45 ln. 17-24)

Laura Barker had one child from a previous marriage, Sarah Tabitha Barker born April 21, 1970, who was adopted by Michael Barker. The parties had four children together, Abraham Michael Barker, born September 19, 1976, Emily Laura Barker, Born December 21, 1977, Rebecca Laura Barker, born December 21, 1979, and Benjamin Michael Barker, born February 5, 1981. (TR pg. 46 ln. 4-25)

During the course of the marriage Laura Barker was the primary caretaker of the children. (TR pg. 47 ln. 1-2) She was not employed outside of the home. (TR pg. 79 ln. 10-15) She was the one who primarily fed them, clothed them, bathed them, woke them, sent them to bed, sent them to school, helped them with their school work (TR pg. 47 ln. 11-25) took them to school functions, took them to the doctor, took them to the dentist, and provided them with entertainment. (TR pg. 48 ln. 1-13, pg. 79 ln. 16-19) During the marriage Michael Barker worked full

time (TR pg. 79 ln. 20-23) and only interacted with the children once a week or so. (TR pg. 48 ln. 14-25) The children have been living with Laura Barker since the parties separated. (TR pg. 47 ln. 3-10)

Throughout the marriage there was a substantial amount of physical violence between the parties during which Michael Barker would verbally or physically lash out at Laura Barker, backing her into a corner, at which point she would respond, becoming physically violent in return. (TR pg. 80 ln. 25 to pg. 87 ln. 3)

The parties purchased a home at 11 North 100 West, Mayfield, Utah in October of 1986. The purchase price was \$20,000. They used \$5,000 from the sale of Michael Barker's home in Portland, Oregon for the down payment. They had financed the remainder at \$171.71 per month. At the time of the trial the market value of the house was \$25,000, based on an appraisal from a year earlier. At the time of trial, there was an outstanding balance of \$3,477. (TR pg. 58 ln. 17 to 59 ln. 23)

The parties initially separated from April 18, to September 30, 1984. (TR pg. 68 ln. 4-9) Laura Barker went to Oregon with the children.

On September 30, 1984, when she returned to Utah, Laura Barker signed a quit claim deed transferring the parties' real

property to Gordon Beh. She signed the quitclaim because Michael Barker had asked her to do so. At the time she was attempting to reconcile with Michael Barker. Michael Barker wanted to transfer the title to take the property out of the reach of the Internal Revenue Service. There was no consideration for the transfer. The parties continued to reside in the home after the transfer. Michael Barker lived there until the parties separated on December 25, 1984. Laura Barker and the children continued to live there until September, 1985. She left because the toilet would not work and there were problems with the water heater. The property was then rented, with the rent money paid to Gordon Beh and Gordon Beh transferring it to Michael Barker. (TR pg. 58 ln. 17 to pg. 61 ln. 10, pg. 77 ln. 22 to pg. 78 ln. 15)

Michael Barker works for St. George Mining. He grosses approximately \$1,500 each month. (TR pg. 121 ln. 24 to pg. 126 ln. 14)

Laura Barker receives welfare, Aid to Families With Dependent Children, in the amount of \$517, \$50 from the Office of Recovery Services as a result of Michael Barker's payment of child support, and \$40 working for the Work Experience and Training program, for a total of \$607. She also receives \$99 in food stamps for herself and her five children. (TR pg. 68 ln. 16

to pg. 69 ln. 18, pg. 112 ln. 13 to pg. 113 ln. 14) (Also see Laura Barker's Financial Declaration Exhibit 1, attached)

Laura Barker's monthly expenses as set out in her Financial Declaration are \$963. Presumably her housing expenses will vary somewhat at the time she begins residing in the home in Mayfield. Her current rent of \$315 per month will cease. She will be required to make the house payments of \$171 each month, taxes at \$272.65 each year, insurance, and the normal repair and upkeep which are unknown amounts at this time. (Exhibit 1) (TR pg. 61 ln. 17-22)

At the time of trial Michael Barker's ongoing child support amount as assessed by the Office of Recovery services was \$500, which consisted of a \$190 in kind payment for the house loan and \$310 in direct payment to Laura Barker, which she turned over to the Office of Recovery Services and out of which she received \$50 back. (TR pg. 137 ln. 20-23, pg. 113 ln. 1-3)

On September 30, 1984, at the time the parties were trying to reconcile, Laura Barker signed a document pertaining to a Mexican Divorce Decree. It was her understanding at the time that the only reason for doing so was because Michael Barker needed the decree for Internal Revenue Purposes. As stated above, the parties remained living together as man and wife thereafter until December 25, 1984. Neither party traveled to

Mexico or established residency in Mexico during the course of their marriage. (TR pg. 102 ln. 11 to pg. 104 ln. 15, pg. 113 ln. 18 to pg. 114 ln. 6)

SUMMARY OF ARGUMENTS

POINT I. Michael Barker's argument that the District Court did not have jurisdiction over him because he is a "free white male citizen de jure" has no merit.

POINT II. The District Court's jurisdiction over the parties' divorce was not affected by Michael Barker's Mexican divorce decree. The divorce was obtained through the mail. Neither party had ever been to Mexico during their marriage. Laura Barker was never served with notice of the action. The Mexican decree was therefore void and was not validated by Laura Barker signing her name to it after it was entered by the Mexican Court.

POINT III. The various persons not named in the Amended Complaint but named in Michael Barker's Counterclaim were never properly joined. Furthermore, they could not have been joined in a divorce action where Michael Barker's complaints against them were "tort-like." It was therefore proper for the court to have dismissed the Counterclaim against them.

POINT IV. Michael Barker's derogatory statements about Laura Barker are not protected under either the free speech or freedom of religion clauses of the Utah Constitution. Freedom of speech

is not absolute and there is not a freedom of religion right to teach a child so called "morality" by making derogatory statements about the child's mother.

POINT V. Michael Barker's assertion that the Court adjudicated upon the property rights of a person not a party in the case are absolutely without merit. The Court specifically refused to make any determination as to Gordon Beh's interest in the parties' real property.

POINT VI. The Court considered Michael Barker's contributions to the parties' real property. The Court also considered Laura Barker's and Michael Barker's financial circumstances. The Court properly awarded Laura Barker all right, title and interest to the property.

POINT VII. Michael Barker had very little interaction with his children during the marriage. Laura Barker was the primary caretaker. It was in the children's best interest for Laura Barker to be awarded the care, custody, and control of the parties' children.

POINT VIII. In setting visitation, the primary criteria to be considered is the best interest of the children, not hardship to the non-custodial parent. Michael Barker had little interaction with his children during the parties' 12 year marriage and demonstrated no ability to care for them over long periods of

time. Summer long visitation was not in the children's best interest. However, shorter weekend and week long visitation was appropriate.

POINT IX. Given the parties relative financial circumstances, Laura Barker's ongoing monthly expenses and the reduction of welfare benefits in one year at the time their oldest child turns 18, it was equitable for the Court to increase the overall child support by \$100 at the time the parties' oldest child reaches 18.

POINT X. Michael Barker's remaining arguments are either so void of merit that they do not warrant response or are better argued in the State Respondent's brief.

ARGUMENT

POINT I

FREE WHITE MALES ARE ALSO SUBJECT
TO THE COURT'S JURISDICTION

Michael Barker has made numerous motions to the District Court, argued at trial, made motions to the Court of Appeals, argues as an issue in his brief and raised the argument over and over again that he has some kind of special status as a "free white male de jure" such that the District Court could not exercise jurisdiction over him. This argument is totally void of any merit. Michael Barker's arguments are similar to those

raised in City of Salina v. Wisden, 737 P.2d 981 (Utah 1987) In Wisden the Utah Supreme Court held that the "free man" argument did not prevent a Utah Justice of the Peace Court from properly exercising jurisdiction. Michael Barker's belief that he is a "free white male de jure" in no way prevents the District Court from having jurisdiction over him.

POINT II

THE MEXICAN DIVORCE DECREE IS VOID

Michael Barker argues that a Mexican Divorce Decree that he obtained prevents the District Court from entering a Utah Decree of Divorce.

State Courts will not ordinarily recognize a divorce obtained in a foreign country, if neither spouse had a domicile in that country. Wells v. Wells, 230 Ala. 430, 161 So. 794 (1935), De Young v. De Young, 27 Cal. 2d 521, 165 P.2d 457 (1946) In Wells the Court found that the husband, who had no intention of residing in Mexico, made a trip there for the sole purpose of obtaining a divorce. The Court held that no valid divorce could be granted on constructive service by a nation in which neither party is domiciled.

This is applicable in the instant case. Neither party has ever resided in Mexico. Neither party even went to Mexico during the marriage. The Mexican divorce was a "mail order"

divorce.

California Courts have held Mexican mail order divorces invalid, based upon a lack of jurisdiction. Ryder v. Ryder, 2 Cal. App. 2d 426, 37 P.2d 1069 (1934) Du Quesnay v. Henderson, 24 Cal. App. 2d 11, 74 P.2d 294 (1937), and Rudnick v. Rudnick, 131 Cal. App. 2d 227, 280 P.2d 96 (1955) Other states have ruled similarly. Bergeron v. Bergeron, 287 Mass 524, 192 NE 86 (1934), Re Petition of Chong Jah Alix, 252 F. Supp 313 (DC Hawaii 1965), and Greenspan v. Greenspan, 19 NJ Misc. 153, 18 A.2d 283 (1941) A new Jersey Court held mail order divorces lack "even colorable validity" and are utterly void. State v. Najjar, 1 N.J. Super. 208, 63 A.2d 807, aff'd per curiam 2 N.J. 208, 66 A.2d 37 (1949) Najjar affirmed a conviction for bigamy holding that the Mexican mail order decree had no validity and could not be used as a defense to bigamy.

Mexico lacked subject matter jurisdiction since the Barker's marriage did not occur in Mexico, nor did the parties even travel to Mexico during their marriage.

Mexico also lacked personal jurisdiction since neither party ever lived in Mexico, established any kind of residency in Mexico, nor traveled to Mexico during the marriage and Laura Barker was never served or made aware of the proceedings until after they were final.

Michael Barker has argued in his brief that Laura Barker signed some form of a document that resulted in her submitting herself to the jurisdiction of the Mexican court. The document was not submitted into evidence. Michael Barker testified and indicated in his questions to Laura Barker at trial that he felt she had signed a divorce decree. Laura Barker testified that she had understood that the document she signed was a consent of some kind. She also testified that she signed the document on September 30, 1984, the day she returned from Oregon after the parties six month separation. She testified that she signed the document at Michael Barker's request and understood that he wanted to obtain a divorce only for purposes of his dealings with the Internal Revenue Service. She testified that the parties were reconciling and she signed the document so as not to cause problems with the reconciliation. However, at the time she signed it she did not think they were being divorced and in fact they continued to live together as man and wife until they separated on December 25, 1984. (TR pg. 102 ln. 11 to pg. 104 ln. 15, pg. 113 ln. 18 to pg. 114 ln. 6)

While not in evidence, copies of the Mexican divorce decree in Spanish and English are being attached in the addendum. If, for some reason, the Court should find it necessary to remand this issue for further fact finding, Laura Barker proffers that

these documents will be found to be the Mexican divorce decree in question. As can be seen from the face of the English translation of the divorce decree, Laura Barker did sign that document on September 30, 1984. The documents indicate that the divorce had been granted on August 3, 1984, on the supposed default of Laura Barker. Her signature to a divorce decree could in no way validate a decree already void for lack of subject matter and personal jurisdiction.

POINT III

MICHAEL BARKER'S TORT-LIKE CLAIMS
WERE PROPERLY DISMISSED

Michael Barker argues that the District Court acted improperly in dismissing the non-parties (David L. Wilkerson, Utah Attorney General, Ross C. Blackham, Sanpete County Attorney, John Abbott, Roleen Olsen, The Utah Office of Recovery Services, Utah Legal Services, Inc., Wayne Riches, Clella Lawrence, and the Honorable Howard Maetani (hereafter called non-parties)).

However, Michael Barker did not make any motion whatsoever to join the non-parties. Furthermore, even had Michael Barker attempted to join the non-parties, the court had only limited statutory jurisdiction in the divorce action under Utah Code Ann. 30-3-1 et. seq., 78-45-1 et. seq. and 78-45d-1 et seq. and

could not have joined the non-parties to defend against "tort-like" allegations and complaints. The Utah Supreme Court in Lord v. Shaw, 665 P.2d 1288 (Utah 1983) found that a divorce action is highly equitable without a right to trial by jury and tort actions are at law and may well involve a request for trial by jury. The Court held that: "The administration of justice will be better served by keeping the two proceedings separate." Id. at 1291.

POINT IV

DEROGATORY REMARKS ARE NEITHER MORAL NOR PROTECTED
BY THE UTAH CONSTITUTION

Michael Barker argues that the Court's order that he not make derogatory statements about Laura Barker in front of the children somehow violates his right to free speech and religious freedom under the Utah Constitution. He is unable to cite any authority whatsoever in support of his argument.

As stated in his brief, Michael Barker seeks to teach his children certain "moral" values through making derogatory statements about Laura Barker. This is at best a strange and twisted concept for teaching morality. To allow Michael Barker to say things to his children that denigrate Laura Barker results in the children being used as tools in an irrational battle where the only possible real goal is to hurt Laura

Barker. In reality, however, it is much more likely that such action will result in harm to Michael Barker's children.

Freedom of speech is not absolute. For example, minors are protected from harmful speech through such laws as Utah Code Ann. 78-10-1201 et. seq. (See e.g. State v. Burke, 675 P.2d 1198 (Utah 1983) upholding the constitutionality of the statute.) Article I Section 15 of the Utah Constitution does not sanction or allow Michael Barker to inflict harm on his own children through derogatory remarks about their mother. It was proper for the Court to prohibit such remarks.

Michael Barker can point to no protected religious right to teach a child so called morality by denegrating that child's mother. Article I Section 4 of the Utah Constitution does not allow this.

POINT V

THE COURT DID NOT ADJUDICATE PROPERTY RIGHTS OF A NON-PARTY

Michael Barker argues that the District Court adjudicated upon the property rights of a person not a party in the case. He does not indicate whose property rights he feels were adjudicated.

In its findings and order concerning the parties' real property the Court awarded Laura Barker "all of the parties'

right, title and interest" in the property. (TR pg. 211 ln. 24-25) The property had earlier been quitclaimed by the parties to Gordon Beh, not a party to the divorce. With reference to any rights Gordon Beh might have in the property the Court stated:

I am awarding the Plaintiff the parties' home and she will assume any debt obligation on that. Of course, she has got to get it first, and that's between her and Mr. Beh at this point. That's not before me and I won't rule on Mr. Beh's rights because I don't know if he has any rights.

(TR pg.219 ln.1-5)

As can be seen, the Court specifically did not make a ruling as to Gordon Beh's rights in the property. Michael Barker's assertions that the Court did do so are frivolous.

POINT VI

THE REAL PROPERTY AWARD WAS PROPER

Michael Barker argues that in awarding Laura Barker the parties' home, the Court did not consider the \$5000 from the sale of a home that he owned prior to the marriage. The \$5,000 was used as down payment on the parties' home in Mayfield, Utah. However, the Court was fully aware of the \$5,000. (See TR pg. 58 ln. 25 to pg. 59 ln. 4 Laura Barker testifying: "Q Was there a down payment on that? A \$5,000. Q Where did that money come from? A From a down payment from a home that he had in Portland, Oregon.") (And see TR pg. 116 ln.10-13 "THE COURT: But in answer to your question, I can answer your question because

she already testified that you got a down payment from a house you owned in Oregon. See, I understand that now. That's why I have been listening.)

It is unclear what issue Michael Barker is trying to raise with regards to the home. While, as stated above, he argues that the Court did not consider the proceeds from his property in Oregon, in his brief under paragraph 6 page 36 he asks that "the Court order Respondant/Plaintiff to live in the Mayfield home as per the parties mutual agreement pursuant to the foreign divorce decree." Under Point 20 on page 32 he indicates that he made the home available to Laura Barker and their children and Laura Barker made some kind of a bargain contracting away her rights. However, whatever his contention, the award was within the equity powers of the Court.

In Workman v. Workman, 652 P.2d 931 (Utah 1982) the Utah Supreme Court held that property acquired prior to the marriage by the husband could be considered as marital assets to be divided at the time of divorce. In Jackson v. Jackson, 617 P.2d 338 (Utah 1980) the Court held that the title to marital property prior to the parties' divorce was not binding on the trial Court's distribution. These cases are both cited in Newmeyer v. Newmeyer, 69 Utah Adv. Rep. 32 (Filed November 13, 1987) where the court held that "the overriding consideration

is that the ultimate division be equitable--that property be fairly divided between the parties, given their contributions during the marriage and their circumstances at the time of the divorce." Id. at 33. (emphasis added) At Michael Barker's insistence, Laura Barker did not work outside of the home during the marriage and therefore did not contribute actual money towards the house payments. Nevertheless, as a traditional housewife she did make an equal contribution toward the marriage.

More importantly, the parties' circumstances at the time of the divorce were so different, that the award of the home to Laura Barker was proper as a means of resolving some of the difference. Michael Barker has the greater earning capacity between the parties. His gross income is \$1,500 a month. Even with a child support order of \$500 a month he is left with \$1,000 for one person. Laura Barker is on welfare and has a total income of \$706, if food stamps are included as income. She is only able to earn \$40 a month at her employment, which is part of the welfare grant. She is supporting a family of six on that income, including herself and the parties' five children. Michael Barker is not paying any alimony to Laura Barker.

The Court specifically found that "in view of the number of children involved and the lack of earning power of the Plaintiff that all of the parties' interest in that home should be awarded

to her so that the children will have a place to live." (TR pg.212 ln.11-15) The Court's decision was proper and well within its equitable powers.

POINT VII

THE CUSTODY AWARD WAS PROPER

Michael Barker argues that the award of custody of the children to Laura Barker was an abuse of discretion.

In making a custody award the court must be concerned with the best interest of the children. Hutchison v. Hutchison, 649 P.2d 38, 41 (Utah 1982) The Hutchison Court set out some of the criteria to be used in determining best interest. In Pusey v. Pusey, 40 Utah Adv. Rep. 3 (Filed August 18, 1986) the Utah Supreme Court further clarified the criteria, listing several factors for determining child custody, the most important of which was the identity of the primary caretaker parent during the marriage.

The evidence at trial was that Laura Barker was the primary caretaker of the children throughout the marriage. She fed, bathed, clothed, entertained, took care of when ill and did all of the other responsibilities for the children that a primary caretaker does. Michael Barker's interaction with the children was minimal at best, interacting with them only once a week. In addition, the children have lived with Laura Barker since their

birth, including during both of the parties' separation periods. Currently, Laura Barker has the greater amount of time to spend with the children. Under the criteria set out in Hutchison and Pusey it was proper for the Court to award her custody.

POINT VIII

THE VISITATION ORDER WAS PROPER

Michael Barker argues that the Court's order of only two weeks visitation in the summer and every other weekend was too restrictive. He argues that the Court should consider his financial situation and the distance he has to travel for visitation and allow him to have the children throughout their entire summer break.

However, the proper criteria in setting visitation is not Michael Barker's hardship, but what is in the children's best interest. See e.g. Ebbert v. Ebbert, 69 Utah Adv. Rep. 41, 42 (Filed November 3, 1987) The record reflects that Michael Barker had only minimal interaction with his children throughout the marriage. He occasionally helped them with their homework and played with them. (TR pg. 47 ln. 23 to pg. 48 ln. 22) There is no indication that he performed or has the ability to perform any of the responsibilities of primarily taking care of the children over lengthy periods of time -- functions that were done exclusively by Laura Barker during the marriage. After

paying little attention to his children during the 12 year marriage, there is little reason he will do so now. Allowing summer long visitation would therefore not be in the best interest of the children. However, maintaining contact with their father through shorter weekend visitation and two, two-week periods in the summer is more in line with Michael Barker's past record and ability to interact effectively with his children, thus making the visitation better for the children. The Court's visitation Order is in the children's best interest and should be upheld.

POINT IX

THE CHILD SUPPORT AWARD WAS PROPER

Michael Barker argues that he is being penalized for his children reaching the age of 18 because the Court has ordered an increase of child support at the time the first child reaches 18. He also argues that there has not been a change of circumstances to warrant such an increase.

Michael Barker's reliance on cases that require a change of circumstances to modify or make new awards of child support is misplaced. There is no such requirement for making new orders. Furthermore, at the time the support is increased, the Court will not be modifying an existing order nor creating a new one where no support had existed before.

Instead, the Court is setting a contingency in its present order for an increase of support for the remaining four children at a point in time when the support for the fifth child terminates. The overall support will only increase by \$100, leaving Michael Barker with a far superior income for one person (\$900) than Laura Barker will have for five (\$806 less the amount her welfare grant and food stamps will be reduced because the oldest child is no longer eligible.)

The increase is a rational one. Laura Barker's welfare grant and food stamps will be reduced at the time the oldest child reaches 18 in approximately one year. The major expenses for housing, utilities, food and transportation will not decrease significantly with one child turning 18, even if the child moves out of the home. However, the expenses for the remaining four children will increase as the four children become older. With \$500 per month child support, Laura Barker's present income is not sufficient to pay her monthly expenses of \$963. Even if she moves into the parties home, there will be some savings, possibly as much as \$144 if the upkeep and repairs, taxes and insurance on the home are not considered. Nevertheless, her expenses will still exceed her present income.

There is no indication that Michael Barker cannot meet his monthly expenses with a gross income of \$1,500 and child support

at the present \$500 or the higher \$600.

Given the relative financial positions of the parties, the number of children living with Laura Barker, her expenses, and the pending reduction of income as a result of the loss of welfare for the oldest child, the increase in child support in one year is reasonable.

POINT X

MICHAEL BARKER'S REMAINING ARGUMENTS ARE EITHER
SO VOID OF MERIT THAT THEY DO NOT WARRANT RESPONSE,
OR ARE BETTER ARGUED IN THE BRIEF BY THE STATE OF UTAH

CONCLUSION

Laura Barker respectfully asks that Michael Barker's appeal be dismissed in its entirety and that he take nothing thereby. She also asks that she be awarded reasonable attorney's fees.

Respectfully submitted this 28 day December, 1987.

W. Rich.

UTAH LEGAL SERVICES, INC.

By Wayne Riches

Attorney for Respondent

-29-

ADDENDUM

MEXICAN DIVORCE DECREE, SPANISH AND ENGLISH COPIES.

FINANCIAL DECLARATION OF LAURA BARKER

UTAH CONSTITUTION, ARTICLE I, SECTIONS 4 AND 15

Estados Unidos Mexicanos

That in the Docket Number 144/1984

Civil Court of FIRST Instance

CITY OF "VILLAHERMOSA"

STATE OF " TABASCO "

REPUBLIC OF MEXICO

271605

Final Divorce Decree.

PLAINTIFF

MR MICHAEL ROBERT BARKER.

DEFENDANT

MRS. LAURA BETH MCGILLIVRAY BARKER.



Judge: HON. JAVIER TORRES CASTRO, ATTY AT LAW.

Clerk: AUSENCIO ZURITA LOPEZ.

Date Filed: JULY 27/1984

Date Granted: AUGUST 3/1984

174/394. SENTENCIA:- Villahermosa, Tabasco, a veintisiete de julio de --
mil novecientos ochenta y cuatro. -----

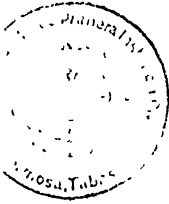
271605

tran separados desde el dieciocho de abril del año en curso hasta la presente fecha en forma consecutiva, -----
 2/o.- Se dió entrada a la demanda y se mandó a emplazar a la demandada en la forma que la ley previene; y transcurrido el término del emplazamiento sin que hubiese contestación, la solicitud de la parte actora se tuvo por acusada la correspondiente rebeldía y se abrió el juicio a prueba.
 3/o.- Durante el período probatorio únicamente la parte actora ofreció como sus pruebas, la DOCUMENTAL, consistente en los documentos que acompañó a la demanda; la CONFESSIONAL, de la demandada, al tenor de las posiciones que le fueron articuladas; la INSTRUMENTAL, de las actuaciones judiciales y la PRESUNCIONAL, legal y humana y en su oportunidad se celebró la audiencia de alegatos, quedando citadas las partes para oír sentencia; y -----

C O N S I D E R A N D O:

I.- La competencia de este Juzado para conocer y fallar el presente juicio, quedó legalmente establecida con la sujeción expresa de la parte actora de conformidad con lo dispuesto por los artículos 139, 144 y 180 del Código de Procedimientos Civiles. -----
 II.- La personalidad del Mandatario Jurídico del actor, se justificó en autos con el testimonio del Poder Especial otorgado a su favor, ante la fé de un Notario Público y la existencia del matrimonio cuya disolución se solicita, quedó igualmente justificado con el certificado respectivo, documentos que obran en autos y que hacen prueba plena, según lo disponen los artículos 421 Fracción VII y 519 de la Ley Procesal Civil antes invocada. -----

Hoja Número dos...



III.¹ La demanda se funda en la crueldad mental con que la cónyuge demandada trata a su esposo y en la separación desde el dieciocho de abril del año en curso hasta la presente fecha en forma -- conspiciua, causales de divorcio que se encuentran previstas en el artículo 206 del Código Civil Vigente y que se probaron en legal forma con las pruebas antes enunciadas y de manera especial -- con la confesión ficta de la misma demandada, atenta la declaración judicial que la tuvo por confesarse en las posiciones que le -- fueron articuladas, en esta virtud es procedente resolver declarando disuelto el matrimonio de que se trata y dejando a los cónyuges en actitud de contraer nuevas nupcias, ejecutoriado que sea -- el presente fallo y los menores hijos del matrimonio quedarán bajo la custodia de ambos padres y la esposa recobrará su nombre de soltera. -----

Por lo expuesto y fundado y con apoyo en los artículos 561, 564, 572 y relativos del Código de Procedimientos Civiles, es de fallarse y se falla: -----

PRIMERO:- Ha procedido legalmente este juicio de divorcio en el -- cual la parte actora probó su acción y la parte demandada no contestó la demanda ni opuso excepciones. -----

SEGUNDO:- Se declara definitivamente disuelto el matrimonio que contrajeron: MICHAEL ROBERT PARKER y LAURA PETH MCGILIVRAY BARKEr, en Salt Lake City, Utah., U.S.A., con fecha cuatro de noviembre de mil novecientos setenta y cinco. -----

TERCERO:- Los cónyuges mencionados quedan en actitud legal de contraer nuevas nupcias, ejecutoriado que sea el presente fallo y la esposa recobrará su nombre de soltera. -----

CUARTO:- Los menores hijos del matrimonio permanecerán en custodia

de ambos padres. -----

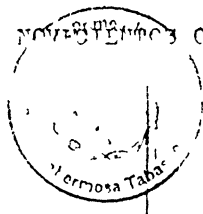
UTILIC:-- Notifíquese. -----

ASI, definitivamente juzgando lo sentenció y firma el Ciudadano Licenciado Javier Torres Castro, Juez del Juzgado Primero de Primera Instancia Civil de esta Ciudad, ante su Notario que suscriba.-- Doy fé.-- J.-- T.-- Castro.-- A.-- Zurita López.-- Rúbricas. -----

Villahermosa, Tabasco, a trece de Agosto de mil novecientos ochenta y cuatro. -----

Habiendo transcurrido el término legal sin que se interponga ningún recurso en contra de la sentencia que antecede, -- como se pide y con fundamento en los artículos 584 Fracción II y 586 del Código de Procedimientos Civiles, se declara -- ejecutoriada y se hace al promoviente la copia certificada que solicita.-- Así, lo acordó y firmó el Ciudadano Juez del -- Juzgado Primero de Primera Instancia Civil de esta Ciudad.-- Doy fé.-- J.-- T.-- Castro.-- A.-- Zurita López.-- Rúbricas.-----

Y EN CUMPLIMIENTO DE LO ORDENADO POR EL CIUDADANO JUEZ, SE -- EXISTE LA PRESENTE COPIA CERTIFICADA EN DOS HOJAS UTILES, -- LAS CUALES TIENEN BIEN VALOR LEGAL PROBATIVO PARA LOS USOS -- FINES PROPIOS DE LLEVAR EL SELLO Y LA FIRMA A FOLIO Y -- LETRA DEL SECRETARIO DEL JUZGADO PRIMERO DE PRIMERA INSTANCIA CIVIL DE ESTA CIUDAD DE VILLAHERMOSA, ESTADO DE TABASCO, REPUBLICA MEXICANA, A LOS TRES DIAS DEL MES DE AGOSTO DE MIL -- NOVECIENTOS OCHENTA Y CUATRO. -----



EL SECRETARIO:

AUSENCIA ZURITA LOPEZ.--

Conforme: El Ciudadano Juez del Juzgado Primero de Primera --

Hoja Número tres.

Instancia Civil de esta Ciudad de Villahermosa, Estado
de Tabasco, República Mexicana.- En la misma fecha y -
año.- Conste.



Javier Torres Castro
Lic. Javier Torres Castro

(TRANSLATION)
Certified Copy of Final Divorce Decree

THE CITIZEN, AUSENCIO ZURITA LOPEZ, CLERK OF THE FIRST CIVIL COURT OF THIS CITY
OF VILLAHERMOSA, STATE OF TABASCO, REPUBLIC OF MEXICO, - - - - -

C U R T I F I E S : That in the file for divorce instituted before this Court
by Mr. MICHAEL ROBERT BARKER, against his wife, Mrs. LAURA BETH MCGILLIVRAY -
BARKER, there is a duly executed sentence reading as follows: - - - - -

File 144/984 SENTENCE: "VILLAHERMOSA, Tabasco, JULY TWENTY SEVENTH, NINETEEN
HUNDRED AND EIGHTY FOUR. - - - - -

---HAVING HEARD, for final resolution on the actions of the present suit
for divorce; and, IN CONSEQUENCE - - - - -

---1st. That expressly submitting himself to the competence and juris-
diction of this Court, Mr. MICHAEL ROBERT BARKER, through his juridical -
empowered legally recognized in actions, Atty. JOSE CRUZ RUIZ, institut-
ed divorce suit against Mrs. LAURA BETH MCGILLIVRAY BARKER, declaring -
that the marriage was entered in SALT LAKE CITY, UTAH, U.S.A., on Novem-
ber 4th, 1975, that the property acquired has been mutually settled and
that five sons were born, bearing the names of SARAH TABITHA BARKER, ABRA-
HAM MICHAEL BARKER, EMILY LAURA BARKER, REBECCA LAURA BARKER and BENJAMIN
MICHAEL BARKER, all minors living under the joint custody of both parents
and declared that the first of the abovementioned daughters is adopted le-
gally and declared grounds of MENTAL CRUELTY inflicted by the defendant
to the extent that they have been separated since April 18th of this year
to this date. - - - - -

---2nd. The suit was entered and the defendant summoned to contest same ac-
cording to the Law, which action was not contested by her so was consid-
ered contested in the negative sense and the suit was open to declarations.

---3rd. During the legal period the plaintiff rendered his sole declarat-
ions as proof: the DOCUMENTAL, the INSTRUMENTAL, the CONFESSORIAL by the -
defendant in the positions that were articulated and the PRESUPPOSITIONAL,
legal and human, finally the hearing of petitions was held and the parties
were summoned to hear sentence; and, CONSIDERING - - - - -

---I. That the competence and jurisdiction of this Court to hear and ren-
der judgement in the present suit was legally established with the express
submission of the plaintiff to this Jurisdiction and in accordance with
articles 139, 144, 180 of the CODE OF CIVIL PROCEDURES. - - - - -

---II. The juridical empowered of the plaintiff was legally recognized in
actions through the notarized power of attorney form issued in his favor
and the marriage was confirmed by means of the marriage certificate exhib-
ited, which documents are on file and constitute legal proof, as prescribed
in articles 401 fraction VII and 519 of the above ORDINANCE. - - - - -

---III. That this suit is based on grounds of MENTAL CRUELTY inflicted by
the defendant and a consuetive separation since April 18th of this year,
grounds specified in article 206 of the present CIVIL CODE and duly proven,
especially through the tacit confession by the defendant in the positions
that were articulated and in that virtue, it is proper to resolve and de-
clare the bonds of matrimony dissolved, granting both parties legal antit-
tude to contract new matrimony once this verdict is duly executed, the chil-
dren will remain under joint custody of both parents and the wife regains
her maiden name. - - - - -

---In view of the above, based on articles 561,564,572 of the CODE OF CIVIL PROCEDURES, it is hereby resolved. - - - - -v- - - - -

---FIRST: This suit was processed in all its legal forms with the plaintiff proving his action and the defendant abstaining from contest or any form of objections. - - - - -

---SECOND: The marriage contracted by Mr. MICHAEL ROBERT BARKER and LAURA BETH MCGILLIVRAY BARKER, in Salt Lake City, Utah, U.S.A., on November 4, 1975 is hereby declared definitely dissolved. - - - - -

---THIRD: Both parties are granted legal aptitude to contract new matrimony once this verdict is duly executed and the wife regains her maiden name. - - - - -

---FOURTH: The minors will remain under joint custody of BOTH PARENTS. -

---FIFTH: ALL PARTS BE NOTIFIED. - - - - -

---THUS, definitely judged it was sentenced and signed by the Citizen, Atty. JAVIER TORRES CASTRO, Judge of First Instance of this City before his Clerk, who authorizes. I ATTEST". J.T.CASTRO., A.ZURITA LOPEZ., SIGNATURES

---"VILLAHERMOSA, Tabasco, AUGUST THIRD, NINETEEN HUNDRED AND EIGHTY FOUR.

---No objections having been interposed within the legal period of this sentence, as requested, based on articles 584 fraction II and 586 of the CODE OF CIVIL PROCEDURES, it is declared duly executed and certified copies issued as requested. THUS, approved and signed by the Citizen Judge. I ATTEST". J.T.CASTRO., A.ZURITA LOPEZ, SIGNATURES". - - - - -

---AND IN COMPLIANCE WITH THE ORDAINED BY THE CITIZEN JUDGE, THE PRESENT CERTIFIED COPY IS ISSUED IN TWO LEGAL SHEETS, WHICH CONSTITUTE LEGAL PROOF FOR THE LEGAL PURPOSES IT MAY SERVE, AS IT BEARS THE SEAL AND SIGNATURE OF THE COURT CLERK OF THIS CITY OF VILLAHERMOSA, STATE OF TABASCO, REPUBLIC OF MEXICO, ON AUGUST THIRD, NINETEEN HUNDRED AND EIGHTY FOUR. - - - - -

COURT SEAL THE COURT CLERK
(stamped) (signature)
AUSENCIO ZURITA LOPEZ

ISSUED WITH THE APPROVAL OF THE JUDGE OF FIRST INSTANCE OF THIS CITY OF VILLAHERMOSA, STATE OF TABASCO, REPUBLIC OF MEXICO, ON THE ABOVE DATE AND YEAR. I ATTEST". Atty. JAVIER TORRES CASTRO. (SIGNATURE)

(I CERTIFY, THAT THE FOREGOING IS A TRUE AND EXACT TRANSLATION FROM THE ORIGINAL IN SPANISH)


F. E. Grijalva
(translator)

Accepted by.
Laura Beth McGillivray Barker This 30 day of September, 1984



Walter Torres

BY *[Signature]*
HERBERT S. BY
WASHINGTON CITY
1985 FEB -4 PM 4:55
221605
1000 135-1
1-368 ext 559-546
Sgt. Michael R. Barker

IN THE _____ JUDICIAL DISTRICT COURT
OF THE STATE OF UTAH

IN AND FOR _____ COUNTY

Laura Beth Barker
Plaintiff

FINANCIAL DECLARATION

vs.

Civil No. _____

Defendant

Husband: _____

Wife: Laura Beth Barker

Address: _____

Address: 71 E Center 44-8

Soc. Sec. No: _____

Ephraim, UT 84627

Soc. Sec. No: 543-64-8090

Occupation: _____

Occupation: _____

Employer: _____

Employer: _____

Birthdate: _____

Birthdate: August 9, 1951

NOTE: This declaration must be filed before or at the time of the hearing. Failure by either party to complete, present, and file this form as required will authorize the Court to accept the statement of the other party as the basis for its decision. Any false statement made hereon shall subject you to the penalty for perjury and may be considered a fraud upon the Court.

STATEMENT OF INCOME, EXPENSES, ASSETS AND LIABILITIES
Attach copies of State and Federal Income Tax Returns for last two taxable years and wage statements from your employer for last 8 weeks.

1. Gross monthly income from:

Salary and wages, including commission, bonuses, allowances and overtime. Payable _____

Pay period _____.

(NOTE: To arrive at monthly income figure if paid weekly, multiply weekly income by 4.3; if paid bi-weekly income by 2.15)

Pensions and retirement _____

Social security _____

Disability and unemployment insurance _____

Public assistance (welfare, AFDC payments, etc.) _____

Child support from any prior marriage _____

Dividends and interest _____

Rents _____

All other sources (specify) child support after ORS

from defendant
TOTAL MONTHLY INCOME

HUSBAND	WIFE
	WEAT Stipend
	40
	517
	50
	607

Good 5 25 99

	HUSBAND	WIFE
2. Itemize monthly deductions from gross income:		
State and federal income taxes	\$	\$
Number of exemptions taken		
Social security		
Medical or other insurance (describe fully)		
Union or other dues		
Retirement or pension fund		
Savings plan		
Credit union		
Other (specify)		
TOTAL MONTHLY DEDUCTIONS		

3. Net monthly income--take home pay 607

4. Debts and obligations:

Creditor's Name	FOR	DATE PAYABLE	BALANCE	MONTH PAYME
First Security Bank, Cedar City, house payment				171.

(If insufficient space, insert total and attach schedule)

5. All property of the parties known to be owned individually or join
(Indicate who holds or how title held: (H) Husband (W) Wife or
(J) Jointly)

	VALUE	OWE THERE
(a) Household furnishings, furniture, appliances and equipment	\$	\$
(b) Automobile (Year-Make)		
(W) '71 Buick Skylark		0
		0
		0
(c) Securities - stocks - bonds		
(J) two hundred shares, Retiree mine stock purchased around 1979	600	0
(d) Cash and Deposit Accounts (banks, savins & loans, credit unions - savings and check		

(e) Life Insurance:

Name of Company	Policy No.	Face Amount	Cash Value Accumulated or Loan Amou
		\$	\$

(f) Profit Sharing or Retirement Accounts

Value of interest a Amount presently ve

Name _____

Name _____

(g) Other Personal Property and Assets (Specify)

(h) Real Estate (where more than one parcel of real estate owned, attach sheet with identical information for all additional property)

Address <u>11 N 100 W</u>	Type of Property <u>home & 2 1/2 a</u>
<u>Mayfield, Utah 84043</u>	Date of Acquisition <u>October 1</u>
Original Cost \$ <u>20,000</u>	Total Present Value \$ <u>25,000</u>
Cost of Additions \$ _____	Basis of Valuation <u>appraisal</u>
Total Cost \$ <u>20,000</u>	
Mortgage Balance \$ <u>3,477</u>	
Other Liens \$ _____	
Equity \$ <u>21,523</u>	And to whom _____
Monthly Amortization \$ _____	
Taxes \$ <u>272.65</u>	
Individual contributions \$ _____	

(i) Business Interest (Indicate name, share, type of business, value less indebtedness)

(j) Other Assets (specify)

6. Total monthly expenses: (Specify which party is the custodial parent and list name and relationship of all members of the household whose expenses are included).

Wife custodial parent Sarah Tabitha (D)

Abraham Michael (S) Emily Louisa (D)

Rebecca Louisa (D) Benjamin Michael (S)

	HUSBAND	WIFE
Rent or mortgage payments (residence)		315
Rent property taxes (residence)		
Real property insurance (residence)		
Maintenance (residence)		10
Food and household supplies		35
Utilities including water, electricity, gas, and heat		250
Telephone		30
Laundry and cleaning		15
Clothing		
Medical		
Dental		
Insurance (life, health, accident, comprehensive, disability) Exclude payroll deducted		
Child care		
Payment of child/spousal support re prior marriage		
School		
Entertainment (includes clubs, social obligations, travel, recreation)		40
Incidentals (grooming, tobacco, alcohol, gifts, donations, including tithing)		6
Transportation (other than automobile)		
Auto expenses (gas, oil, repair, insurance) <u>will increase</u>		5
Auto payments		
Installment payments (insert total and attach itemized schedule if not fully set forth in (d))		
Other expenses (insert total and specify on attached sheet)		
TOTAL EXPENSES		96

I declare under penalty of perjury that the foregoing, including any attachments, is true and correct and that this declaration was executed the 25th day of March, 1997, at _____

(Plaintiff or Defendant) Attorney's Signature

Laura Barber
Party's Signature

BRING TO THE HEARING ALL DOCUMENTS AND OTHER SUPPORTING INFORMATION NECESSARY TO VERIFY OR EXPLAIN THE STATEMENTS MADE IN THIS DECLARATION, INCLUDING, BUT NOT LIMITED TO PASSBOOKS, CHECK BOOKS, CANCELLED CHECKS, CERTIFICATES, POLICIES, AND OTHER DOCUMENTATION.

CONSTITUTION OF UTAH

PREAMBLE

ARTICLE I DECLARATION OF RIGHTS
ARTICLE II STATE BOUNDARIES
ARTICLE III ORDINANCE
ARTICLE IV ELECTIONS AND RIGHT OF SUFFRAGE
ARTICLE V DISTRIBUTION OF POWERS
ARTICLE VI LEGISLATIVE DEPARTMENT
ARTICLE VII EXECUTIVE DEPARTMENT
ARTICLE VIII JUDICIAL DEPARTMENT
ARTICLE IX CONGRESSIONAL AND LEGISLATIVE APPOINTMENT
ARTICLE X EDUCATION
ARTICLE XI COUNTIES, CITIES AND TOWNS
ARTICLE XII CORPORATIONS
ARTICLE XIII REVENUE AND TAXATION
ARTICLE XIV PUBLIC DEBT
ARTICLE XV MILITIA
ARTICLE XVI LABOR
ARTICLE XVII WATER RIGHTS
ARTICLE XVIII FORESTRY
ARTICLE XIX PUBLIC BUILDINGS AND STATE INSTITUTIONS
ARTICLE XX PUBLIC LANDS
ARTICLE XXI SALARIES
ARTICLE XXII MISCELLANEOUS
ARTICLE XXIII AMENDMENT AND REVISION
ARTICLE XXIV SCHEDULE

PREAMBLE

Grateful to Almighty God for life and liberty, we, the people of Utah, in order to secure and perpetuate the principles of free government, do ordain and establish this CONSTITUTION 1896

ARTICLE I. DECLARATION OF RIGHTS

Section 1 [Inherent and inalienable rights]
Section 2 [All political power inherent in the people]
Section 3 [Utah inseparable from the Union]
Section 4 [Religious liberty]
Section 5 [Habeas corpus]
Section 6 [Right to bear arms]
Section 7 [Due process of law]
Section 8 [Offenses bailable]
Section 9 [Excessive bail and fines - Cruel punishments]
Section 10 [Trial by jury]
Section 11 [Courts open - Redress of injuries]
Section 12 [Rights of accused persons]
Section 13 [Prosecution by information or indictment - Grand jury]
Section 14 [Unreasonable searches forbidden - Issuance of warrant]
Section 15 [Freedom of speech and of the press - Libel]
Section 16 [No imprisonment for debt - Exception]
Section 17 [Elections to be free - Soldiers voting]
Section 18 [Attainder - Ex post facto laws - Impairing contracts]
Section 19 [Treason defined - Proof]
Section 20 [Military subordinate to the civil power]
Section 21 [Slavery forbidden]
Section 22 [Private property for public use]
Section 23 [Irrevocable franchises forbidden]
Section 24 [Uniform operation of laws]
Section 25 [Rights retained by people]
Section 26 [Provisions mandatory and prohibitory]
Section 27 [Fundamental rights]

Section 1 [Inherent and inalienable rights]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties to acquire, possess and protect property to worship according to the dictates of their consciences to assemble peaceably, protest against wrongs, and petition for redress of grievances, to communicate freely their thoughts and opinions, being responsible for the abuse of that right 1896

Section 2 [All political power inherent in the people]

All political power is inherent in the people and all free governments are founded on their authority for their equal protection and benefit and they have the right to alter or reform their government as the public welfare may require 1896

Section 3 [Utah inseparable from the Union]

The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land 1896

Section 4 [Religious liberty]

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, no religious test shall be required as a qualification for any office of public trust or for any vote at any election, nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment. No property qualification shall be required of any person to vote, or hold office except as provided in this Constitution 1896

Section 5 [Habeas corpus]

The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it 1896

Section 6 [Right to bear arms]

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state as well as for other lawful purposes shall not be infringed but nothing herein shall prevent the Legislature from defining the lawful use of arms 1985

Section 7 [Due process of law]

No person shall be deprived of life, liberty or property, without due process of law 1896

Section 8 [Offenses bailable]

All prisoners shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption strong or where a person is accused of the commission of a felony while on probation or parole or while free on bail awaiting trial on a previous felony charge, and where the proof is evident or the presumption strong 1973

Section 9 [Excessive bail and fines - Cruel punishments]

Excessive bail shall not be required, excessive fines shall not be imposed nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor 1896

Section 10 [Trial by jury]

In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall

consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded. 1896

Section 11. [Courts open - Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party. 1896

Section 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense. 1896

Section 13. [Prosecution by information or indictment - Grand jury.]

Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by information after examination and commitment by a magistrate, unless the examination be waived by the accused with the consent of the State, or by indictment, with or without such examination and commitment. The formation of the grand jury and the powers and duties thereof shall be as prescribed by the Legislature. 1949

Section 14. [Unreasonable searches forbidden - Issuance of warrant.]

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized. 1896

Section 15. [Freedom of speech and of the press - Libel.]

No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. 1896

Section 16. [No imprisonment for debt - Exception.]

There shall be no imprisonment for debt except in cases of absconding debtors. 1896

Section 17. [Elections to be free - Soldiers voting.]

All elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers, in time of war, may vote at their post of duty, in or

out of the State, under regulations to be prescribed by law. 1896

Section 18. [Attainder - Ex post facto laws - Impairing contracts.]

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed. 1896

Section 19. [Treason defined - Proof.]

Treason against the State shall consist only in levying war against it, or in adhering to its enemies or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act. 1896

Section 20. [Military subordinate to the civil power.]

The military shall be in strict subordination to the civil power, and no soldier in time of peace, shall be quartered in any house without the consent of the owner; nor in time of war except in a manner to be prescribed by law. 1896

Section 21. [Slavery forbidden.]

Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State. 1896

Section 22. [Private property for public use.]

Private property shall not be taken or damaged for public use without just compensation. 1896

Section 23. [Irrevocable franchises forbidden.]

No law shall be passed granting irrevocably any franchise, privilege or immunity. 1896

Section 24. [Uniform operation of laws.]

All laws of a general nature shall have uniform operation. 1896

Section 25. [Rights retained by people.]

This enumeration of rights shall not be construed to impair or deny others retained by the people. 1896

Section 26. [Provisions mandatory and prohibitory.]

The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise. 1896

Section 27. [Fundamental rights.]

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government. 1896

ARTICLE II. STATE BOUNDARIES

Section 1. [State boundaries.]

The boundaries of the State of Utah shall be as follows:

Beginning at a point formed by the intersection of the thirty-second degree of longitude west from Washington, with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the intersection of the same with the thirty-seventh degree of longitude west from Washington; thence due north along said thirty-seventh degree of west longitude to the intersection of the same with the forty-second degree of north latitude; thence due east along said forty-second degree of north latitude to the intersection of the same with the thirty-fourth degree of longitude west from Washington; thence due south along said thirty-fourth degree of west longitude to the intersection of the same with the forty-first degree of north latitude; thence due east along said forty-first degree of north latitude to the intersection of the same with the thirty-second

CERTIFICATE OF MAILING

I hereby certify that I mailed 4 true and correct copies of the foregoing Respondent Laura Barker's Brief to each of the following: Michael R. Barker, Pro Se, Box 142, Santa Clara, Utah 84765, Blaine R. Ferguson, Assistant Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84114, and Ross C. Blackham, Sanpete County Attorney, Sanpete County Courthouse, Manti, Utah 84642, this 28 day of December, 1987.

Wa. Barker.