

1996

Johnson v. Johnson : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 960577 CA

IN THE UTAH COURT OF APPEALS

ARBRA JOHNSON, :
 :
 Plaintiff and :
 Appellee, :
 vs. :
 MERRILL D. JOHNSON, :
 :
 Defendant and : Case No. 960577CA
 Appellant. :

Pri 15

BRIEF OF APPELLANT

APPEAL FROM AN ORDER OF THE THIRD JUDICIAL DISTRICT
COURT OF SALT LAKE COUNTY, THE HONORABLE SANDRA PEULER
FAILING TO REDUCE OR TERMINATE ALIMONY, FAILING TO FIND A
CHANGE OF CIRCUMSTANCES, AWARDED ALIMONY WITHOUT LOOKING
AT THE COMPLETE FINANCIAL CONDITION OF THE PLAINTIFF, AWARDED
IMPROPERLY, ATTORNEY'S FEES, AND FAILING TO FIND A CONTRACT
TO TERMINATE ALIMONY.

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FILED
Utah Court of Appeals

NOV 20 1996

Marilyn M. Branch
Clerk of the Court

IN THE UTAH COURT OF APPEALS

ARBRA JOHNSON, :
 :
 Plaintiff and :
 Appellee, :
 vs. :
 MERRILL D. JOHNSON, :
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 Defendant and : Case No. 96057-CA
 Appellant. :

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JURISDICTION

The Utah Court of Appeals has jurisdiction to entertain appeals from district courts involving domestic relations matters, including alimony and attorney's fees issues. Section 78-2a-3(2)(h), Utah Code Annotated, as amended.

STATEMENT OF ISSUES

AND

STANDARDS OF APPELLATE REVIEW

The first three issues all deal with alimony related questions. The standard of review is abuse of discretion in reviewing alimony questions. See for example Haslam v. Haslam, 657 P.2d 757 (Utah 1982).

The fourth issue addresses the propriety of an attorney's fee award in a petition to modify a decree of divorce. The standard of review is also abuse of discretion. See for example Munns v. Munns, 790 P.2d 116 (Utah App. 1990).

The fifth issue asks the court to determine if a contract was created. That is a question of law. The standard of review is correction of error, no particular deference being given to the trial court's ruling. See for example, Herm Hughes & Sons, Inc. v. Quintek, Inc., 834 P.2d 582 (Utah App. 1992).

DETERMINATIVE CONSTITUTIONAL PROVISIONS,
STATUTES, ORDINANCES AND RULES.

Section 30-3-3.(1), Utah Code Annotated, as amended,
states as follows:

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

Section 30-3-5.(3), Utah Code Annotated, as amended,
states as follows:

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property and obligations for debts as is reasonable and necessary.

Section 78-2a-3.(2)(h), Utah Code Annotated, as
amended, states as follows:

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

. . .

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;

STATEMENT OF THE CASE

The parties were married on May 7, 1966. The parties were divorced by Judge Richard H. Moffat on December 20, 1990, after a trial on October 18, 1990. They had three children, two of which were under age 18 at the time of the divorce. The Plaintiff was awarded custody of the children. The Plaintiff was attending college at the time of the divorce. The Defendant was ordered to pay child support, to pay alimony, and to keep the Plaintiff on his health care policy while she continued her college education. Alimony was to continue for four years or while the Plaintiff continued her education. When the Plaintiff would be no longer enrolled full time in college, the Court ordered an automatic review of the alimony issue upon the request of the Defendant so that the Court could reduce or terminate alimony. The automatic alimony review provision was not appealed.

On August 31, 1994, the Plaintiff graduated from the University of Utah with a four year degree. In October, 1994, at the Plaintiff's request, the Defendant agreed to forgo filing a request for a review of the alimony issue and to continue paying alimony and providing health care coverage, while the Plaintiff continued to seek employment. The Defendant reports that in return the Plaintiff agreed to seek no additional alimony or insurance once she found employment.

The Defendant did as agreed, including keeping the Plaintiff insured and paying alimony for October, November, December, January, February, March and April, 1995. The Plaintiff accepted and never objected to the continued health care coverage and alimony payments. The Plaintiff found employment on February 20, 1995. She then refused to honor their earlier bargain and insisted on the Defendant paying alimony of \$170.00 per month for a five year period.

The Defendant filed a Petition to Modify Decree of Divorce on April 24, 1995, raising the alimony and several other issues. The Plaintiff filed an Answer to Petition and Counterclaim on June 23, 1995, seeking an increase in alimony and raising several other issues. All issues, except alimony, were resolved prior to the hearing on June 12, 1996, which hearing's rulings are the subject of this appeal.

Judge Sandra Peuler heard the alimony petitions of the parties and found that the Plaintiff's net earned income had gone from \$110.00 per month to \$1,283.00 per month, excluding alimony. Judge Peuler concluded that when net earned income and child support are added together, and before any alimony is paid, the Plaintiff falls approximately \$250.00 short of covering her updated, sworn expenses. The court determined the Defendant had the ability to pay alimony.

The Court then found no substantial change in circumstances and refused to reduce or terminate alimony, which left the Plaintiff with \$300.00 more in alimony than her sworn expenses.

The court ignored the Plaintiff's monthly income, along with her \$70,600.00 house equity and \$9,184.00 in savings and ordered the Defendant to pay \$1,500.00 of the Plaintiff's disputed attorney's fees.

The court determined no meeting of the minds had occurred during the parties' discussions regarding the termination of alimony and health care and found no agreement.

The Court entered the Findings of Fact, Conclusions of Law, and Judgment and Decree on August 5, 1996. Notice of Appeal was filed on August 22, 1996.

STATEMENT OF FACTS

1. The parties' divorce trial was on October 18, 1990, and their divorce was final on December 21, 1990. (Transcript, page 10.) The decision was not appealed.

2. The Defendant was ordered to pay alimony of \$350.00 per month for a period of time and thereafter to pay alimony of \$550.00 per month, which was paid through April, 1995. (Transcript, page 11.)

3. The Plaintiff was allowed by the original trial

court to spend four years completing her college education and at the conclusion of that period of time the Defendant could petition the court to reduce or to terminate alimony.

(Transcript, page 12.)

4. The Defendant was required to maintain health and accident insurance on the Plaintiff, while she was a full time student. (Transcript, page 13.)

5. The Plaintiff graduated from the University of Utah in August, 1994, with a major in communications. (Transcript, page 14.)

6. In October, 1994, the Defendant wrote "last check" in the lower left-hand corner of his monthly alimony check. (Transcript, page 14.)

7. As a result of the Defendant's writing "last check" on the October alimony check, the parties discussed continuation of alimony and health insurance. (Transcript, pages 14, 15, 16, 17, 18, and 19.)

8. The Plaintiff claims that the parties agreed that the Plaintiff would try harder to find employment and that the Defendant would continue to pay alimony. (Transcript, page 17.)

9. The Defendant claims that the parties agreed that the Defendant would not take the matter back to court at that time, that he would continue health insurance coverage, and that

he would continue paying alimony until the Plaintiff found a job. (Transcript, pages 65, 66 and 67.)

10. In April, 1995, the Plaintiff sent a letter requesting that alimony be set at \$170.00 per month for five years, which the Plaintiff claims shows the Plaintiff's state of mind after the Defendant demanded the agreement be honored. (Transcript, pages 19, 94 and 95.)

11. In the December 20, 1990, Findings of Fact, the court found that the Plaintiff was earning \$110.00 per month and the Defendant was earning \$3,100.00 per month. (Findings of Fact and Conclusions of Law, December 20, 1990, paragraphs 8 and 9.)

12. Judge Peular found that the Plaintiff's net full time employment income was \$1,083.00 and her part time employment income was \$200.00, for a total earned income of \$1,283.00, and when child support was added in, she had income of \$1,577.00 per month. (Findings of Fact and Conclusions of Law, August 5, 1996, paragraphs 4, 5, and 6.)

13. Judge Peular found that the Defendant's gross income was \$3,800.00 and his net income was \$2,600.00 per month. (Transcript, page 134.)

14. The Plaintiff had accumulated a total of \$9,184.00 in savings at the time of the Petition hearing. (Financial Declaration of Arbra Johnson, paragraph 5.(d).)

15. The Plaintiff's house was valued by her at \$85,000.00, less the outstanding mortgage balance of about \$5,900.00 and another lien (to the Defendant) of \$8,500.00, for a net equity of \$70,600.00 at the time of the Petition hearing. (Financial Declaration of Arbra Johnson, paragraph 5.(h).)

16. The Defendant had accumulated \$425.00 in savings and nothing in real property at the time of the Petition hearing. (Financial Declaration of Merrill Johnson, paragraph 5.(d) and (h).)

17. The Plaintiff's monthly expenses were found to be \$1,824.00, which left the Plaintiff \$250.00 per month short of meeting her monthly expenses. (Findings of Fact and Conclusions of Law, August 5, 1996, paragraph 7. See also Financial Declaration of Arbra Johnson, paragraph 6.)

18. The Plaintiff's attorney charged the Plaintiff \$80.00 per hour for his work, including 13 hours of work on a memorandum, the necessity of which memorandum the Defendant challenged. (Transcript, pages 101 and 102).

SUMMARY OF ARGUMENT

In the original Decree of Divorce the court ordered alimony to be reduced or terminated when the Plaintiff obtained her college degree. That order was not appealed. The specific intentions of the original court were ignored and the court

hearing the petition being appealed from failed to reduce or terminate alimony, as was intended and ordered by Judge Moffat, which is an abuse of discretion.

The court hearing the petition failed to find a change of circumstances, even though the Plaintiff's net earned income increased from \$110.00 per month to \$1,283.00 per month, which is an abuse of discretion.

The court did not look at the Plaintiff's complete financial condition. The court awarded the Plaintiff \$300.00 per month in alimony more than her sworn expenses indicated. The court looked only at the Plaintiff's claimed "needs". The court ignored the Plaintiff's overall "financial condition", including the almost \$80,000.00 in assets of the Plaintiff. All of which is an abuse of discretion.

The court ordered that the Defendant pay \$1,500.00 of the Plaintiff's attorney's fees without considering the almost \$80,000.00 in assets of the Plaintiff. The Plaintiff's financial condition is such that an award based upon need was an abuse of discretion.

The court found no contract establishing an accord and satisfaction. The Plaintiff accepted the benefits of the parties' agreement and then claimed no agreement existed. The Plaintiff's acceptance of the benefits and actions in

April, 1995, establish a contract existed. The court's conclusion of law was incorrect and should be reversed.

ARGUMENT

POINT I

DID THE COURT ERR IN FAILING TO REDUCE OR TERMINATE
ALIMONY AS ORDERED IN THE PARTIES' ORIGINAL
DECREE OF DIVORCE?

At the time of the parties' original divorce trial, October 18, 1990, the Plaintiff was attending college and the Defendant was working. It was anticipated that the Plaintiff would continue to attend college for four years, while the Defendant continued to work. The court did not intend alimony to be set at a certain level and to remain at that level longer than the period of the Plaintiff's college education. In paragraph 13 of the Findings of Fact, the court stated its "intent" specifically as follows:

13. ... It is the intent of the Court that when Plaintiff has obtained a college degree (other than an associate degree), that Defendant should have the right at that time to petition the Court to review the issue of alimony for the purpose of determining whether alimony should be terminated or substantially reduced. To that end, alimony shall continue for four (4) years. At the end of the four-year period Defendant shall have the right to petition the Court for the purpose of determining whether alimony should be reduced or terminated. If at any time during the four-year period, Plaintiff does

not maintain enrollment as a full-time student, Defendant shall have the right to petition this Court in regards to reducing or terminating alimony.

The "intent" of the court was made its ruling. An order was issued in the accompanying Decree of Divorce, wherein it is stated:

7. ... Alimony shall continue for four (4) years. At the end of the four-period Defendant shall have the right to petition the Court for the purpose of determining whether alimony should be reduced or terminated. If at any time during the four-period, Plaintiff does not maintain enrollment as a full-time student, Defendant shall have the right to petition the Court in regards to reducing or terminating alimony.

For four years the Plaintiff enjoyed the benefit of Judge Moffat's ruling and the gaining of a college degree. For four years the Defendant paid the alimony faithfully, expecting Judge Moffat's ruling to be honored when the Plaintiff graduated. Neither party appealed the Judge's setting of alimony for a four year period, with the requirement that alimony would be reduced or terminated when the Plaintiff graduated from college. The Plaintiff appears to now object to this ruling. However, she has waited until after the Defendant had sought to have the court enforce this order to reduce or terminate alimony before she objected to Judge Moffat's ruling.

On April 24, 1995, the Defendant filed a Petition to Modify the Decree of Divorce seeking to enforce Judge Moffat's

Order. In response, the Plaintiff filed an Answer to Petition and Counterclaim, wherein she sought for an increase in alimony.

A similar situation occurred in Campos v. Campos, 523 P.2d 1235 (Utah 1974), wherein the court ruled at trial that the father should pay child support on two children of the marriage. No appeal was taken. Shortly thereafter, the father filed a petition to modify the decree and to gain custody of the children for himself, thus relying upon the terms of the decree. The court denied this petition. The father then filed a petition to modify the decree, wherein he claimed that one of the children was the son of another man and that he should not have to pay child support on this child that was supposedly not his. The court denied the petition, noting that the father did not raise this issue at the time of the trial or in the interim. The court concluded that this was merely an attempt to appeal beyond the time for appeal stating as follows:

It appears to us that the defendant is attempting in these proceedings for a modification to have this court review the decree of divorce originally entered after the time for appeal from that decree has long since expired.

Campos, at 1236.

The trial court has the continuing jurisdiction to make subsequent changes or new orders for maintenance pursuant to Section 30-3-5, of the Divorce Chapter. However, the court must

find that the circumstances contemplated by Judge Moffat had changed in order to ignore the original Decree. Judge Moffat intended for the Plaintiff to obtain a college degree and to get a job. The circumstances contemplated by Judge Moffat happened. Judge Peular's court, in essence acting as a belated appellate court, failed to follow Judge Moffat's Order.

Judge Moffat intended to allow the Plaintiff to attend school full time for a four year period. He could have required her to go to work immediately and to contribute to her support. He appeared to believe that a college educated person could more easily support herself. The Defendant was required to support the Plaintiff while she went to college. The Defendant did so in reliance upon Judge Moffat's order.

It is patently unfair for the Plaintiff to take the benefit of Judge Moffat's ruling and then to ask for alimony to remain the same or to increase. It is also an abuse of discretion for Judge Peular to not enforce Judge Moffat's non-appealed prior ruling. Alimony should be reduced or terminated as of the date the Petition to Modify was filed.

POINT II

DID THE COURT ERR IN NOT FINDING A CHANGE OF CIRCUMSTANCES, WHERE PLAINTIFF'S NET EARNED INCOME HAD INCREASED FROM \$110.00 PER MONTH TO \$1,283.00 PER MONTH?

At the time of the parties' divorce, the Plaintiff was

found to be earning \$110.00 per month. At the Petition to Modify hearing the Plaintiff's net take home pay from her full time employment was found to be \$1,083.00 and from her part time employment was found to be \$200.00, i.e., total income of \$1,283.00. If child support is added in, then she was found to have \$1,577.00 per month to spend.

At the time of the parties' divorce, the Defendant was found to have gross earnings of \$3,100.00 per month. At the Petition to Modify hearing his net income was found to be \$2,600.00 per month. No net income was determined at the divorce trial for the Defendant.

In summary, the Plaintiff's net income increased as follows between the divorce trial and the petition hearing:

<u>Date</u>	<u>Monthly Net Earnings</u>
October, 1990	\$110.00
June, 1996	\$1,283.00

1,066% change (a \$1,173.00 per month increase)

In addition, the Plaintiff had accumulated a substantial amount of savings, i.e., \$9,184.00, along with net equity in her house of about \$70,600.00. On the other hand, the Defendant had accumulated no savings and had no equity in any real property.

In the case of Haslam v. Haslam, 657 P.2d 757 (Utah 1982), the Supreme Court found an abuse of discretion by a trial

court failing to find a substantial change in circumstances in a situation very much like the situation now before the court.

In Haslam, the wife was unemployed at the time of the divorce. Seventeen years later, she had obtained employment and was earning \$1,200.00 per month. She had also accumulated \$12,000.00 in savings from which she drew interest.

In Haslam, the husband earned between \$1,000.00 and \$1,200.00 per month at the time of the divorce. Seventeen years later he had retired and remarried. He received \$1,250.00 per month from social security, a pension, and stock dividends.

The court found as follows:

On the instant facts it is clear that there has been a substantial change in circumstances. Since the divorce, the former Mrs. Haslam has obtained employment, experienced a substantial increase in income and has accumulated some savings. Mr. Haslam has retired and presently receives income in approximately the same amount as he received at the time of the divorce some seventeen years ago.

Under the circumstances of this case, we think that the combination of the supporting spouse's retirement, together with the dependent spouse's employment, earning of a substantial income, and accumulation of substantial savings subsequent to the original divorce decree, constitutes a substantial change of circumstances.

Haslam, at 758.

The Haslam case is almost identical with the present case. The Plaintiff's earnings in Haslam went from zero to

\$1,200.00 per month, while Ms. Johnson's earnings went from \$110.00 to \$1,283.00 per month. In Haslam the Plaintiff accumulated \$12,000.00 in savings, while Ms. Johnson accumulated \$9,184.00 in savings and \$70,600.00 equity built up in her house.

The Defendant's earnings in Haslam went from \$1,000.00 to \$1,200.00 per month while Mr. Johnson's gross earnings went from \$3,100.00 to \$3,800.00 per month. Mr. Johnson's net income was \$2,600.00 per month. In Haslam the Defendant apparently had accumulated some stock dividends, while Mr. Johnson has accumulated no assets.

In Haslam the Supreme Court reinstated the petition and sent the matter back to the trial court to modify the decree as equity required. The Defendant seeks the same relief in this case. The court abused its discretion by not finding a change in circumstances. The Plaintiff's increase in her income doubled her alimony! The court should have reduced or terminated the Defendant's alimony payments as of the date of filing this action.

POINT III

DID THE COURT ERR BY CHOOSING TO AWARD THE PLAINTIFF \$550.00 PER MONTH, WHICH AMOUNT EXCEEDED PLAINTIFF'S SWORN EXPENSES BY \$300.00 PER MONTH, AND BY NOT LOOKING AT THE PLAINTIFF'S COMPLETE FINANCIAL CONDITION?

In determining a reasonable alimony award the court must consider three factors:

- (1) the financial condition and needs of the receiving spouse;
- (2) the ability of the receiving spouse to produce a sufficient income for him or herself; and
- (3) the ability of the responding spouse to provide support.

Munns v. Munns, 790 P.2d 116, 121 (Utah App. 1990) citations omitted.

The same factors apply to petitions to modify decrees of divorce. Throckmorton v. Throckmorton, 767 P.2d 121 (Utah App. 1988).

Judge Peular did make specific findings of fact on the three factors. The court concluded that when the Plaintiff's income of \$1,577.00 is deducted from her sworn expenses of \$1,824.00, then the Plaintiff falls about \$250.00 per month short of meeting her expenses, which should have led the court to set alimony at a point no greater than \$250.00 per month, instead of at \$550.00 per month.

As a part of the first factor, the trial court is obligated to consider the financial condition of the receiving spouse and not just that spouse's claimed needs. Munns, at 121; Throckmorton, at 124, along with the multitude of other cases cited.

The best evidence of the Plaintiff's needs is her sworn Financial Declaration. It should be true.

At the hearing the Plaintiff claimed that the \$1,824.25 of claimed monthly expenses in the Financial Declaration, including the \$186.00 per month she was spending for clothing and \$150.00 per month she was spending on food were not enough. Either her Financial Declaration or her in court testimony was apparently not true.

The financial condition of the Plaintiff was not considered by Judge Puelar. On her financial declaration form, the Plaintiff's stated value of the house was \$85,000.00 less a mortgage of \$5,923.76 and an \$8,500.00 lien payable in the future to the Defendant. That left equity of approximately \$70,600.00, which belonged to the Plaintiff. The Plaintiff's stated savings in the financial declaration form was \$9,184.00. All totaled, the Plaintiff had a net worth of just less than \$80,000.00. Her financial condition is not very bad. However, the court refused to consider her net worth. The court looked only at the Plaintiff's "needs" testimony, wherein the Plaintiff claimed to lack money for food and clothes.

When the court looks at all of the evidence supporting the court's conclusion to award \$300.00 per month in alimony over and above the expenses, there is insufficient evidence to support the court's ruling. The court abused its discretion. It looked only at the Plaintiff's claimed "needs", not at her "financial condition". If alimony is not terminated it should at very least

be reduced to \$250.00 per month from the date the Defendant's petition was filed.

POINT IV

DID THE FAILURE OF THE TRIAL COURT TO CONSIDER THE PLAINTIFF'S SUBSTANTIAL ASSETS CONSTITUTE A FAILURE TO FULLY CONSIDER FINANCIAL NEED FOR AN ATTORNEY'S FEE AWARD?

By statute, Section 30-3-3, Utah Code Annotated, as amended, the court is authorized to award attorney's fees. It is well established that to recover attorney's fees the moving party must show evidence establishing the financial need of the requesting party and demonstrate the reasonableness of the amount of the award. Munns v. Munns, 790 P.2d 116 (Utah App. 1990), (Citations omitted.)

The Plaintiff sought an award of her attorneys in this action. Both the financial need of the Plaintiff and the reasonableness of the amount of the award were challenged. The court found that the Plaintiff lacked the ability to pay the fees and that a portion of the fees were reasonable. The court then reduced the fee from \$2,480.00 to \$1,500.00 and directed the Defendant to pay that fee of the Plaintiff.

On the issue of reasonableness, the Defendant claimed that 13 hours of the time the Plaintiff spent on a memorandum were unnecessary. At the Plaintiff's attorney's hourly fee of \$80.00, that would mean \$1,040.00 of the \$2,480.00 fee was

challenged. If the \$1,040.00 is deducted from the \$2,480.00, a balance of \$1,440.00 is left. Without the court specifying its reason for a reduction to \$1,500.00, it appears that the court accepted the Defendant's claim that \$1,040.00 of the Plaintiff's attorney's fees were unnecessary. Consequently, the reasonableness of the amount awarded is not being challenged.

The Defendant does challenge the court's finding that the Plaintiff lacked the ability to pay those fees. The trial court failed to consider the Plaintiff's stated net worth of just less than \$80,000.00, as was discussed above under Point III. The Plaintiff had \$9,184.00 in savings. She had about \$70,600.00 in equity in her house. She could tap either of these assets to pay her attorney's fees.

It is well established that it is an abuse of discretion for a court to not base an award of attorneys fee on need. Kerr v. Kerr, 610 P.2d 1380, 1384 (Utah 1980). The trial court's award of attorney's fees should be reversed and each party should pay their own attorney's fees.

POINT V

DID THE COURT ERR IN NOT FINDING AN AGREEMENT BETWEEN THE PARTIES TO TERMINATE ALIMONY AND HEALTH CARE WHEN THE DEFENDANT FULLY EXECUTED HIS PART OF THE AGREEMENT AND THE PLAINTIFF ACCEPTED WITHOUT OBJECTION THE BENEFITS TENDERED TO HER?

Pursuant to the Decree of Divorce, the Defendant had a

right to seek a review of the alimony award at the end of the Plaintiff's full-time student enrollment (Decree, paragraph 7), and to discontinue health and accident insurance coverage at the end of the Plaintiff's full-time student enrollment (Decree, paragraph 17). With these two rights in mind, the parties discussed the issues of alimony and of continued health care coverage for the Plaintiff after the Defendant had written "last check" on his October, 1994, alimony check.

The elements of a contract must be present in an accord and satisfaction, including proper subject matter, offer and acceptance, competent parties, and consideration. Bench v. Bechtel Civil & Minerals, Inc., 758 P.2d 460 (Utah App. 1988). As in the Bench case, the Plaintiff does not dispute the terms of the agreement the Defendant detailed, i.e., he would waive his right for an immediate review of the alimony issue and continue health insurance for the Plaintiff, while she sought full-time employment, and in return when she obtained full time employment she would drop her claim for alimony. The Plaintiff merely claims she did not agree. The Plaintiff claims she only agreed to try harder to find a job.

Likewise, as in Bench, the Plaintiff accepted, without objection all of the benefits of the parties' bargain. Now she claims there was no meeting of the minds. The court in Bench refused to allow the Plaintiff to accept the benefits without

objection and then claim no agreement existed. The court stated:

It is well-established that "mutual assent or the meeting of the minds may be proved by words spoken as well as by acts and conduct." Thornton v. Pasch, 139 P.2d 1002, 1003 (Utah 1943).

In addition, in Utah the doctrine of promissory estoppel is recognized. Sugarhouse Finance Co. v. Anderson, 610 P.2d 1369 (Utah 1980). Promissory estoppel requires an individual who makes a promise, which the individual would reasonably expect to induce action or forbearance on the part of the other party, to be estopped from later denying or repudiating the earlier promise. Sugarhouse, at 1373.

In this situation, the Defendant agreed to leave the Plaintiff covered by his health care insurance, to not seek an immediate review of the alimony issue, and to pay alimony until the Plaintiff obtained full-time employment. The Plaintiff's real mind set is shown by her attempt in April, 1995, to get the Defendant to change the deal and agree to pay her \$170.00 per month for five years as alimony. If she truly had not agreed or truly needed the \$550.00 per month in alimony, then why was she trying to negotiate a change? The answer is that she knew she had made a deal and now wanted out of the deal.

The Plaintiff's actions establish her meeting of the mind with the Defendant. The Plaintiff's actions should now estop her from denying the agreement. There was an accord and

satisfaction and the Defendant's obligation to pay alimony should have terminated when the Plaintiff obtained full-time employment in February, 1995.

The standard of review on the issue of whether a contract exists is a correction of error. No particular deference is given to the trial court's ruling on this question of law.

An agreement was reached between the parties. They both behaved as if it would be honored. The Plaintiff received the benefits of the bargain without objection. She now claims it did not exist. The court should confirm the existence of the agreement and terminate the Defendant's alimony obligation as of February, 1996.

CONCLUSION

The court hearing the petition to modify the decree abused its discretion by failing to reduce or to terminate alimony as was originally intended. The court went further and failed to even find a change of circumstances when Plaintiff's net earned income rose from \$110.00 per month to \$1,283.00 per month. The court chose not to look at the complete financial condition of the Plaintiff and ignored her almost \$80,000.00 in assets, including her \$9,184.00 in savings. Consequently, the Plaintiff was awarded \$300.00 more in alimony than her sworn

expenses showed and \$1,500.00 in attorney's fees. This failure to look at the complete financial condition was an abuse of discretion.

The court also found no accord and satisfaction, even though the Plaintiff had accepted the benefits of the parties' agreement. Her claim that no contract existed and the court's conclusion of law to that effect were not correct and should be reversed, terminating the Defendant's alimony obligation in February, 1995.

DATED this 20th day of November, 1996.

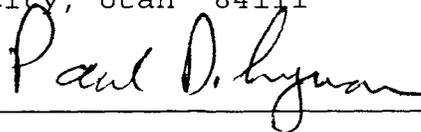


PAUL D. LYMAN
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that a full, true and correct copy of the above and foregoing BRIEF OF APPELLANT was placed in the United States mail at Richfield, Utah, with first-class postage thereon fully prepaid, on the 20th day of November, 1996, addressed as follows:

Gregory B. Wall
WALL & WALL
Attorney at Law
Suite 800 Boston Building
Salt Lake City, Utah 84111



ADDENDUM

Findings of Fact and Conclusions of Law, signed December, 1990

Decree of Divorce, signed December, 1990

Findings of Fact and Conclusions of Law, signed August 5, 1996

Judgment and Decree, signed August 5, 1996

Notice of Entry of Judgment and Decree, signed August 8, 1996

Financial Declaration of Arbra Johnson

DEC 20 1990

SALT LAKE COUNTY
By [Signature]
Deputy Clerk

Mark T. Ethington (4828)
DAY & BARNEY
Attorneys for Plaintiff
45 E. Vine Street
Murray, Utah 84107
Telephone: (801)262-6800

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

ARBRA F. JOHNSON,	:	FINDINGS OF FACT
Plaintiff,	:	AND
vs.	:	CONCLUSIONS OF LAW
MERRILL D. JOHNSON,	:	Case no. 894904175 DA
Defendant.	:	Judge Richard H. Moffat

The above-entitled matter came on for trial before this Court on Thursday, the 18th day of October, 1990, before the Honorable Richard H. Moffat, District Court Judge, presiding and sitting without jury. The Plaintiff appeared in person and by her attorney Mark T. Ethington. The Defendant appeared in person and by his attorney Paul D. Lyman. The parties stipulated as to the majority of the issues, and in regards to those issues not stipulated to, the Court received testimony and evidence on behalf of each of the parties in support of their relative claims, and being fully advised in the premises now makes and enters its, Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. That Plaintiff was a bona fide and actual resident of Salt Lake County, State of Utah for more than three (3) months immediately prior to the commencement of this action.

2. That Plaintiff and Defendant are married having been legally wed on the 7th day of May, 1966, in the State of Utah, City of Salt Lake.

3. That the ninety day waiting period required by Section 30-3-18, Utah Code Ann. (1953 as amended), has expired.

4. That grounds for divorce exist in that there are irreconcilable differences in the marriage such that the marriage can not continue.

5. That the parties have two minor children born as issue of the marriage, namely: Brandi Johnson, born June 8, 1973; and Marilyn Johnson, born May 1, 1979. The parties also have a third child, Melanie Johnson, who has reached her majority.

6. That the parties stipulated in open court that the Plaintiff is a fit a proper person to have the sole care, custody, and control of the parties' minor children following the entry of a final Decree of Divorce in this matter.

7. That it was further stipulated by the parties in open court that the Defendant should be awarded reasonable rights of visitation at such times and places as agreed upon by the parties.

8. That, for purposes of determining child support and alimony, the Defendant's average monthly income will be \$3,100.00. This figure was derived after the Court received testimony by an employee

of Defendant's employer that Defendant's average monthly income would be \$3,423.00, and testimony from Defendant that he spent approximately \$347.60 per month in auto expenses for his employment for which he was not reimbursed. Consequently, the Court gave a credit for the monthly auto expense leaving an approximate monthly income of \$3,100.00.

9. That, for purposes of determining child support and alimony, the Plaintiff's average monthly income is \$110.00.

10. That the minor children of the parties are in need of support, and, pursuant to the child support worksheet attached hereto, the total amount of child support to be paid by Defendant should be \$588.79 per month.

11. That the parties stipulated in open court that the child support would be paid on the first of each month, and that the child support would be paid through the clerks office at the Third District Court.

12. That if the Defendant becomes delinquent in his child support obligation for the minor children of the parties' in an amount at least equal to child support payable for one month, then the Plaintiff shall be entitled to mandatory income withholding relief pursuant to Utah Code Ann. Section 78-45d-1, et seq. (1953 as amended). This income withholding procedure shall apply to existing and future payors. All withheld income shall be submitted to the Office of Recovery Services, P.O. Box 15450, Salt lake City, Utah

84115-0400, until such time as the Defendant no longer owes child support for the remaining minor child of the parties.

13. That Plaintiff is in need of support in the form of alimony, and based upon the monthly expenses of Plaintiff, and based upon the Defendant's ability to pay, the amount of alimony should be \$350.00 per month, and when Brandi turns 18 on June 8, 1991, the amount of alimony should increase to \$550.00 per month. Alimony is to be paid the first of each month through the clerks office at the Third District Court. It is the intent of the Court that when Plaintiff has obtained a college degree (other than an associate degree), that Defendant should have the right at that time to petition the Court to review the issue of alimony for the purpose of determining whether alimony should be terminated or substantially reduced. To that end, alimony shall continue for four (4) years. At the end of the four-year period Defendant shall have the right to petition the Court for the purpose of determining whether alimony should be reduced or terminated. If at any time during the four-year period, Plaintiff does not maintain enrollment as a full-time student, Defendant shall have the right to petition this Court in regards to reducing or terminating alimony.

14. That the parties should, by April 30th of each year hereafter, exchange W-2 forms and tax returns. This should be done to facilitate any adjustments in child support and alimony.

15. That it was stipulated in open court by the parties that the minor children are in need of health insurance, and that the

Defendant should continue to maintain the minor children on the health insurance policy maintained through his employment. That the parties should equally share in the payment of deductible and uncovered medical and dental expenses, except that major medical and dental expenses, such as braces for Marilyn, should be paid by the parties according to the same ratio that each party pays for child support as indicated by the child support worksheet attached hereto. That the parties should consult with one another, in non-emergency situations, regarding whether to incur major medical and dental expenses. The Defendant's consent to non-emergency, major uncovered medical and dental services should not be unreasonably withheld.

16. That the Defendant should maintain a life insurance policy on himself with the minor children as beneficiaries with each child to be listed as a 50% beneficiary so long as each child is a minor.

17. That it was stipulated in open court that the parties maintained a marital residence at 3442 W. Brett Ave. in Salt Lake County, and that the stipulated value of the residence is \$52,000.00, and that the Plaintiff should be awarded the house subject to an equitable lien in favor of the Defendant in the amount of \$8,500.00.

18. That the parties stipulated in open court that, assuming the second mortgage is completely paid by the Defendant, there is approximately \$42,000.00 in equity in the home, and that the Defendant currently has two IRA's through his employment worth approximately \$25,000.00, and that the Defendant should keep the IRA's free and clear of any interest of Plaintiff's, and that

Plaintiff should be given a \$12,500.00 credit against Defendant's interest (which is \$21,000.00), in the equity in the home, leaving the Defendant an \$8,500.00 equitable interest in the home.

19. That in order to perfect the Defendant's interest in the home, the Defendant should convey by Quit-Claim deed his interest in the home to the Plaintiff, and in return, the Plaintiff should execute in favor of the Defendant a Trust Deed and Note against the home in the amount of \$8,500.00.

20. That the parties stipulated in open court that Plaintiff should pay the \$8,500.00 to the Defendant when the Plaintiff sells the home, or when the Plaintiff remarries, or when the youngest child of the parties, Marilyn, reaches age 18, whichever occurs first.

21. That it was stipulated in open court that the Defendant should continue to pay those debts of the parties that he has heretofore paid since the separation of the parties, and in particular, that the Defendant should continue to pay and be responsible for the second mortgage on the home. That it was further stipulated that each party would be responsible for the individual debts they have incurred since the parties separated.

22. That it was stipulated in open court that the Defendant would be awarded the boat, the camper, and the 4X4 truck, and that the Defendant would sell these items and use the proceeds to pay off the second mortgage.

23. That it was stipulated in open court that the Defendant

should be awarded those items of personal property in the garage as agreed upon by the parties.

24. That it was stipulated in open court that as long as both parties remain unmarried, and as long as the Plaintiff remains a full-time student, the Defendant should be required to maintain the Plaintiff on the health and accident insurance policy offered through his employment.

25. That it was stipulated in open court that the Plaintiff should be awarded the Oldsmobile, and Defendant should be awarded the Monte Carlo, each free and clear of any interest of the other.

26. That the Defendant should be allowed to claim the two minor children as exemptions for income tax purposes.

27. That based upon representations of counsel for Plaintiff as to the time he has spent on this case and the amount of fees he has charged, the Plaintiff should be awarded attorneys fees in the amount of \$1,500.00. The attorneys fees may be paid in monthly installments as agreed upon by Defendant and counsel for Plaintiff.

From the foregoing Findings of Fact, the Court now makes and enters its,

CONCLUSIONS OF LAW

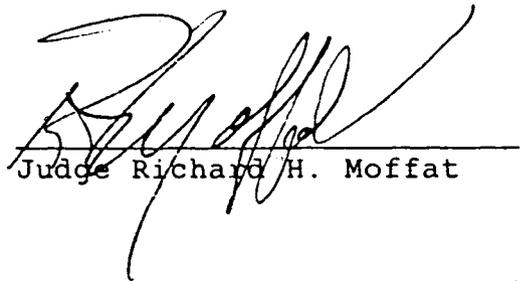
1. The Plaintiff is entitled to a Decree of Divorce dissolving the bonds of matrimony in this marriage upon the grounds set forth in the Findings of Fact. The Decree shall become final upon its entry.

2. The specific Findings above are to be enforceable as an order of this Court, and are set forth in the Decree entered in this action.

Dated this 20th day of December, 1990.

COURT HOUSE, RICHFIELD, UTAH
COUNTY CLERK'S OFFICE
COUNTY CLERK, RICHFIELD COUNTY, STATE OF UTAH

DATE: Feb. 1, 1991
Rosemary Thurman
DEPUTY COURT CLERK



Judge Richard H. Moffat

CERTIFICATE OF MAILING

I certify that I am employed by the office of Day & Barney, and that I mailed a true and correct copy of the foregoing Findings of Fact and Conclusions of Law, postage pre-paid, to:

Paul D. Lyman, Esq.
Attorney for Defendant
250 N. Main
Richfield, Utah 84701

on this ___ day of December, 1990.

DEC 20 1990

SALT LAKE COUNTY
By R. G. Lopez

Mark T. Ethington (4828)
DAY & BARNEY
Attorneys for Plaintiff
45 E. Vine Street
Murray, Utah 84107
Telephone: (801)262-6800

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

ARBRA F. JOHNSON,	:	DECREE OF DIVORCE
Plaintiff,	:	2162014
vs.	:	12-24-90
	:	8:00 a.m.
MERRILL D. JOHNSON,	:	Case No. 894904175 DA
Defendant.	:	Judge Richard H. Moffat

The above-entitled matter came on for trial before this Court on Thursday, the 18th day of October, 1990, before the Honorable Richard H. Moffat, District Court Judge, presiding and sitting without jury. The Plaintiff appeared in person and by her attorney Mark T. Ethington. The Defendant appeared in person and by his attorney Paul D. Lyman. The parties stipulated as to the majority of the issues, and in regards to those issues not stipulated to, the Court received testimony and evidence on behalf of each of the parties in support of their relative claims. The Court, after being fully advised and having rendered its decision herein by way of written Findings of Fact and Conclusions of Law, and it appearing that judgment should be entered in accordance therewith, it is hereby,

ORDERED, ADJUDGED AND DECREED as follows:

1. The Plaintiff is awarded a Decree of Divorce dissolving the bonds of matrimony between Plaintiff and Defendant. The Decree shall become final upon entry and is awarded by reason of grounds found by the Court in accordance with Utah Code Ann., Section 30-3-1 (1953 as amended), to wit: There are irreconcilable differences in the marriage such that the marriage cannot continue.

2. The parties have two minor children born as issue of the marriage, namely: Brandi Johnson, born June 8, 1973; and Marilyn Johnson, born May 1, 1979. The parties also have a third child, Melanie Johnson, who has reached her majority.

3. The Plaintiff is awarded the care, custody and control of the parties' minor children, with the Defendant to have reasonable rights of visitation as agreed upon by the parties.

4. The Defendant shall pay child support in the total amount of \$588.79 per month. The amount of child support is calculated pursuant to the child support worksheet attached hereto and by this reference made a part hereof.

5. The child support shall be paid by the first of each month, and shall be paid through the clerks office at the Third District Court.

6. If the Defendant becomes delinquent in his child support obligation in an amount at least equal to child support payable for one month, then the Plaintiff shall be entitled to mandatory income withholding relief pursuant to Utah Code Ann. Section 78-45d-1, et seq. (1953 as amended). This income withholding procedure shall

apply to existing and future payors. All withheld income shall be submitted to the Office of Recovery Services, P.O. Box 15450, Salt lake City, Utah 84115-0400, until such time as the Defendant no longer owes child support for the remaining minor child of the parties.

7. The Defendant shall pay alimony to the Plaintiff in the amount of \$350.00 per month, and when Brandi turns 18 on June 8, 1991, the amount of alimony shall increase to \$550.00 per month. Alimony is to be paid by the first of each month, and is to be paid through the clerks office at the Third District Court. Alimony shall continue for four (4) years. At the end of the four-period Defendant shall have the right to petition the Court for the purpose of determining whether alimony should be reduced or terminated. If at any time during the four-period, Plaintiff does not maintain enrollment as a full-time student, Defendant shall have the right to petition the Court in regards to reducing or terminating alimony.

8. The parties shall, by April 30th of each year hereafter, exchange W-2 forms and tax returns and paycheck stubs in order to facilitate any adjustments in child support and alimony.

9. The Defendant shall continue to maintain the minor children on the health and accident insurance policy maintained through his employment. The parties shall equally share in the payment of deductible and uncovered medical and dental expenses, except that major medical and dental expenses, such as braces for Marilyn, shall be paid by the parties according to the same ratio that each party

is responsible for child support as indicated by the child support worksheet attached hereto and by this reference made a part hereof. The parties shall consult with each other, in non-emergency situations, regarding whether to incur major, uncovered medical or dental expenses. The Defendant's consent to non-emergency, major, uncovered medical and dental services shall not be unreasonably withheld.

10. The Defendant shall maintain a life insurance policy on himself with the minor children as the beneficiaries with each child to be listed as a 50% beneficiary so long as each child is a minor.

11. The Plaintiff shall be awarded the marital residence of the parties located at 3442 W. Brett Ave., in Salt Lake County, subject to an equitable lien in favor of the Defendant in the amount of \$8,500.00, which shall be due and payable when the Plaintiff sells the house, remarries, or when the youngest child, Marilyn, reaches the age of 18, whichever occurs first. The Defendant shall give to Plaintiff a Quit-Claim deed conveying his interest in the home to Plaintiff, and Plaintiff shall give to the Defendant a Trust Deed and Note for the amount of the equitable interest.

12. The Defendant shall be awarded the IRAs that are maintained through his employment free and clear of any interest of the Plaintiff.

13. The Defendant shall continue to pay and be responsible for those debts of the parties that he has heretofore paid since the

separation of the parties. In particular, the Defendant shall pay and be responsible for the second mortgage on the marital residence.

14. The parties shall be responsible for the individual debts they have incurred since the separation of the parties.

15. The Defendant shall be awarded the boat, the 4X4 truck, and the camper, and the Defendant shall sell these items and use the proceeds thereof to pay off the second mortgage.

16. The Defendant shall be awarded those items of personal property in the garage as agreed upon by the parties.

17. As long as both parties remain unmarried, and as long as Plaintiff remains a full-time student, Plaintiff shall remain on the Defendant's health and accident insurance policy offered through his employment.

18. The Plaintiff shall be awarded the Oldsmobile and the Defendant shall be awarded the Monte Carlo, both free and clear of any interest of the other party.

19. The Defendant shall be allowed to claim the minor children as exemptions for income tax purposes.

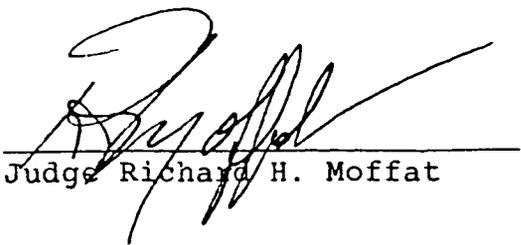
20. The Plaintiff is awarded \$1,500.00 in attorneys fees. This amount shall be paid to Plaintiff's attorney. The attorneys fees may be paid in monthly installments as agreed upon by Defendant and counsel for Plaintiff.

Dated this 20th day of December, 1990.

CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL DOCUMENT ON FILE IN THE TRUST AND PROBATE COURT, SALT LAKE COUNTY, STATE OF UTAH.

DATE: February 1, 1991

Roberta J. Hurman
DEPUTY COURT CLERK


Judge Richard H. Moffat

CERTIFICATE OF MAILING

I certify that I am employed by the office of Day & Barney, and that I mailed a true and correct copy of the foregoing Decree of Divorce, postage pre-paid, to:

Paul D. Lyman, Esq.
Attorney for Defendant
250 N. Main
Richfield, Utah 81701

on this ___ day of December, 1990.

GREGORY B. WALL (3365)
WALL & WALL
Attorneys for Plaintiff
Suite 800 Boston Building
Salt Lake City, Utah 84111
521-8220

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

ARBRA F. JOHNSON,)
Plaintiff :
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
)
 v. :
)
MERRILL D. JOHNSON, : Civil No. 894904175 DA
)
Defendant : Judge Sandra Peuler
)

On the 12th day of June, 1996, the defendant's petition to modify the Decree of Divorce by eliminating the alimony requirement entirely, together with the plaintiff's counter petition to modify the Decree to increase the alimony award to her, came on for hearing before the court sitting without a jury, the honorable Sandra Peuler presiding. The plaintiff was present and represented by her attorney, Gregory B. Wall. The defendant was present and represented by his attorney, Paul D. Lyman. Both parties were sworn and testified concerning the issues presented here. Various exhibits were introduced and received by the court. Based upon the testimony and evidence, and the court being fully advised in the premises and the law, does herewith make and enter the following:

FINDINGS OF FACT

1. At the time of the Decree the child support paid to

plaintiff was \$588.00 per month, alimony of \$350.00 per month, income from her shop of \$110.00 per month, for a monthly income of \$1,048.00.

2. At the time of the entry of the Decree her expenses were \$1,250.00.

3. At the time of the entry of the Decree her income did not meet her expenses, let alone the standard of living she had enjoyed during the course of her marriage of 24 years to the defendant.

4. Since the date of the Decree the plaintiff has completed her education at the University of Utah and has become employed full time, with a monthly gross income of \$1,573.00, and a net take home pay of \$1,083.82. This figure was arrived at by adding back a couple of small voluntary contributions deducted from her pay, and multiplying a pay period, found to be 80 hours, times 2.15.

5. The court finds that her current shop income is \$200.00 per month, and that her child support is \$294.00 per month.

6. If the plaintiff receives no alimony her monthly income is \$1,577.00.

7. Since the date of the Decree her expenses have also increased and the court finds that her monthly expenses are \$1,824.00 per month, which leaves her approximately \$250.00 per month short of her expense needs.

8. The plaintiff has testified and the court finds that her income does not meet her needs.

9. The plaintiff is unable to purchase sufficient clothing and food for herself and the child.

10. Based upon the testimony the plaintiff's expenses

substantially exceed her monthly income and her income falls substantially short of meeting her needs.

11. Since the date of the Decree the defendant's income has also increased. At the time of the Decree his income was found to be \$3,100.00 per month. His income for 1994 was \$3,800.00 per month, and he testified that it remained about the same for 1995 as it was for 1994.

12. The defendant's income after taxes is \$2,600.00 per month, and his expenses, including his child support obligation, total \$2,083.00 per month.

13. The court finds that the defendant has a continuing ability to pay alimony in the amount originally ordered by the court.

14. Alimony has been in place five years, but the plaintiff is has still not reached a level to support her needs, let alone her prior standard of living, without alimony from the defendant.

15. The purpose of alimony to provide a standard of living for the divorced spouse commensurate with her standard of living during the marriage has not been met, yet the defendant has continued to enjoy the same standard of living that he had during the marriage.

16. The defendant has urged the court to find that the plaintiff could obtain financial relief by refinancing the home, but there has been no evidence presented that she could qualify, what the payments might be, or what relief might be provided. Defendant has asked the court to speculate as to the effects of refinancing the home and other avenues of relief through obtaining loans by plaintiff, but no evidence has been presented to support

any finding in defendant's favor, or that such avenues would provide any relief to the plaintiff.

17. The defendant has alleged in his petition to modify that an agreement was entered into by the parties to terminate the alimony in the fall of 1994, or spring of 1995.

18. There is evidence that the parties discussed alimony termination, but there is no evidence that there was ever a meeting of the minds on any terms of an agreement to terminate. Although offers and counteroffers were made over a period of time there was never an agreement reached nor any offer accepted by either party.

19. While the defendant's petition is based solely upon the agreement, the parties have mutually agreed that the court could consider the issue of a substantial change in circumstances.

20. The plaintiff's counter petition to increase the alimony is likewise not supported by a substantial change in circumstances of the parties.

21. The plaintiff has incurred attorney's fees, but she lacks the ability to pay those fees. At the same time the defendant has the ability to assist the plaintiff in the payment of her attorney's fees, plus the court finds that the plaintiff has substantially prevailed in these proceedings. Evidence has been received as to the fees incurred and the reasonableness of the fees. The court finds the fees to be reasonable and necessary for the purpose of representing the plaintiff, and accordingly a fair amount of fees to be paid by defendant to the plaintiff is \$1,500 00.

22. The defendant unilaterally ceased paying alimony to the plaintiff in April, 1995, his last payment being for that month, but no payments have been since. The plaintiff should be granted a judgment for the arrearage, which totals \$7,150.00 through and including June, 1996.

FROM THE FOREGOING the court now makes and enters the following:

CONCLUSIONS OF LAW

1. There has been no substantial change in circumstances warranting modifying the Decree of Divorce to either decrease, eliminate altogether, or increase the alimony paid to the plaintiff by defendant, and therefore the monthly amount of \$550.00 shall continue. Accordingly, the petitions of both parties should be denied.

2. There was no agreement reached by the parties to either decrease or eliminate the alimony requirement.

3. The plaintiff is entitled to back alimony not paid to her by the defendant, commencing with payment due for May, 1995, and which amount totals \$7,150.00 through June, 1996, and a judgment for said amount shall be entered against the defendant and in favor of plaintiff, plus interest thereon at the rate of 7.35% per annum. He shall be given the right to make reasonable monthly payments to pay said indebtedness.

4. A judgment against defendant and in favor of plaintiff shall be entered in the amount of \$1,500.00 for attorney's fees incurred by plaintiff, plus interest thereon at the rate of 12% per annum. The defendant shall be given the opportunity to make

reasonable monthly payments thereon.

5. As long as reasonable and regular monthly payments are made on the above judgments the plaintiff may not execute on said judgments.

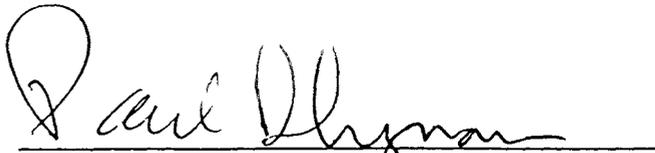
6. Defendant shall pay his own costs and attorney's fees incurred in these proceedings.

DATED this ____ day of _____, 1996.

BY THE COURT:

SANDRA PEULER
District Judge

Approved as to form:



PAUL D. LYMAN
Attorney for Defendant

GREGORY B. WALL (3365)
WALL & WALL
Attorneys for Plaintiff
Suite 800 Boston Building
Salt Lake City, Utah 84111
521-8220

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

ARBRA F. JOHNSON,)
 :
) JUDGMENT AND DECREE
 Plaintiff :
)
 v. :
) Civil No. 894904175 DA
 MERRILL D. JOHNSON, :
) Judge Sandra Peuler
 Defendant :
)

On the 12th day of June, 1996, the petition of the defendant to terminate alimony to the plaintiff and the petition of the plaintiff to increase the amount of alimony both came on for hearing before the court, the honorable Sandra Peuler presiding. The plaintiff was present and represented by her attorney, Gregory B. Wall. The defendant was likewise present and represented by his attorney, Paul D. Lyman.

Both parties were sworn and testified, evidence was offered and received by the court, and the court being fully advised in the law and the premises, and the court having heretofore made and entered its Findings of Fact and Conclusions of Law, does herewith ADJUDGE AND DECREE AS FOLLOWS:

1. Neither party has shown a substantial change in circumstances warranting a modification of the Decree as to

alimony, and accordingly the alimony payment to be paid to plaintiff by defendant in the amount of \$550.00 per month shall continue without change.

2. The defendant is ordered to pay the plaintiff the arrearage in alimony that have accrued, which total \$7,150.00 through June, 1996. A judgment against defendant and in favor of plaintiff for said amount is granted with interest thereon at the rate of 7.35% per annum. The defendant is ordered to make reasonable monthly payments on this amount to the plaintiff, and plaintiff is restrained from executing upon the judgment provided the defendant makes regular monthly payments in reasonable amounts.

3. The defendant is ordered to pay to plaintiff the sum of \$1,500.00 for her attorney's fees incurred in these proceedings, with interest thereon at the rate of 7.35% per annum. The defendant is ordered to make regular monthly payments on this amount and the plaintiff is restrained from executing on said judgment provided the defendant makes regular, reasonable monthly payments.

4. No agreement was made between the parties to modify or eliminate the alimony and the petition of defendant to modify the decree on the basis of an agreement between the parties is denied.

5. Defendant is directed to pay his own costs and attorney's fees incurred in this action.

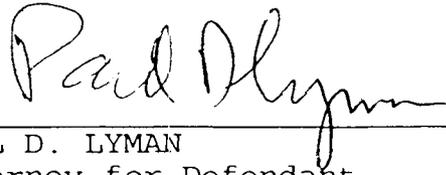
DATED this _____ day of _____, 1996.

BY THE COURT:

SANDRA PEULER

District Court Judge

The foregoing Decree approved as to form:

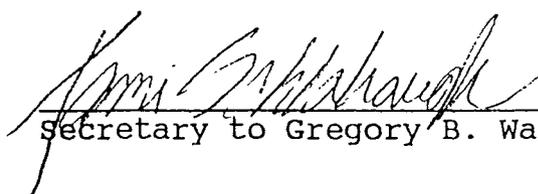
A handwritten signature in cursive script, reading "Paul D. Lyman". The signature is written in black ink and is positioned above a horizontal line.

PAUL D. LYMAN
Attorney for Defendant

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing Notice of Entry of Judgment and Decree was mailed, postage prepaid to on this 8th day of August, 1996 to the following:

Paul Lyman, Esq.
835 East 300 North, #100
Richfield, Utah 84701


Secretary to Gregory B. Wall

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

Plaintiff
vs.
Defendant

Husband: _____
Address: _____
Soc. Sec. No.: _____
Occupation: _____
Employer: _____
Birthdate: _____

Case No. _____

Financial Declaration

Dated: _____

Wife: Arbra Johnson
Address: 3442 Brett Avenue
West Valley City, UT 84119
Soc. Sec. No.: 528-68-6546
Occupation: Administrative Assistant
Employer: Corp. of the President- L.D.S. Church
Birthdate: 4/24/46

NOTE: THIS DECLARATION MUST BE FILED WITH THE DOMESTIC CALENDAR CLERK 5 DAYS PRIOR TO THE PRE-TRIAL 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

(NOTE: To arrive at monthly figures when income is received and deductions are made weekly, multiply by 4.3; if figures are on a bi-weekly basis, multiply by 2.167)

- Gross monthly income from:
 - Salary and wages, including commissions, bonuses, allowances and overtime, payable _____ (pay period) every 2 weeks
 - Pensions and retirement _____
 - Social security _____
 - Disability and unemployment insurance _____
 - Public assistance (welfare, AFDC payment, etc.) _____
 - Child support from any prior marriage _____
 - Dividends and interest _____
 - Rents _____
 - All other sources: (Specify) Hair Haven Styling Salon

TOTAL MONTHLY INCOME _____
- Itemize monthly deductions from gross income:
 - State and federal income taxes _____
 - Number of exemptions taken _____
 - Social security _____
 - Medical or other insurance (describe fully) _____
24 hr. Accidental Death & Dismemberment
 - Union or other dues _____
 - Retirement or pension fund _____
 - Savings plan _____
 - Credit union _____

HUSBAND	WIFE
\$	\$
	1,400.00
	294.00
	207.00
\$	\$
\$	\$ 1,901.00
	259.02
	0
	122.55
	59.36
	1.84
	25.84

Other: (specify) UTA BUS PASS
Office Fund
 TOTAL MONTHLY DEDUCTIONS

	7.60
	2.00
\$	\$ 488.21
\$	\$

3. Net monthly income - take home pay

4. Debts and obligations:

Creditor's Name	For	Date Payable	Balance	Monthly Payment
First Instate Bank	Automobile	10th	\$9475.44	242.96
Bank One Mortgage Corp.	Home	1st	5923.76	224.00
Perkins/NDSL	Loan	1st	1904.60	40.00
EduServ Technologies, Inc.	loan	10th	7800.80	65.09
National Beauty Service Shop		10th		7.55
Shop Licensing Fees	city, county, state	yearly		10.00
TOTAL			\$ 25116.60	\$ 589.60

(If insufficient space, insert total and attach schedule)

5. All property of the parties known to me owned individually or jointly (indicate who holds or how title held: (H) Husband, (W) Wife, (J) Jointly).

WHERE SPACE IS INSUFFICIENT FOR COMPLETE INFORMATION OR LISTING PLEASE ATTACH SEPARATE SCHEDULE.

(a) Household furnishings, furniture, appliances and equipment

	Value	Owed Thereon
	\$ 1,000.00	\$ 0
(b) Automobile (Year-Make) <u>1995 Saturn SL2</u>	<u>14,577.60</u>	<u>9,475.44</u>
<u>First Interstate Bank (W)</u>		

(c) Securities - stocks, bonds

(d) Cash and Deposit Accounts (banks, savings & loans, credit unions - savings and checking)

West One Bank	1,850.17	
Granite Credit Union	257.15	
OppenheimerFunds	7,077.06	

(e) Life Insurance:

Name of Company	Policy No.	Face Amount	Cash value, accumulated dividend, or loan amount
<u>Farmer's New World Life</u>	<u>001507645</u>	<u>\$ 5,923.76</u>	<u>\$ mortgage Ins.</u>
<u>Deseret Healthcare Life</u>		<u>40,000.00</u>	<u>reducing to \$10,000</u>

(f) Profit sharing or Retirement Accounts

Name	Value of interest and amount presently vested
<u>Pioneer II (IRA)</u>	<u>\$500.00</u>

(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 3442 Brett Avenue (W) Type of Property Residential
West Valley City, UT 84119 Date of Acquisition 7/3/70
 Original Cost \$ 16,200.00 Total Present Value \$ 85,000.00
 Cost of Additions \$ 10,000.00 Basis of Valuation homes sold in the area
 Total Cost \$ 26,200.00
 Mtg. Balance \$ 5,923.76
 Other Liens \$ 8,500.00
 Equity \$ 70,576.00
 Monthly Amortization 224.00 And to whom Bank One Mortgage Corp.
 Taxes \$ 615.83
 Individual contributions 0

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

Hair Haven Styling Salon, Owner/operator, None

(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.)

	HUSBAND	WIFE
* <u>W = Custodial Parent</u>		
<u>Marilyn - Daughter</u>	\$	\$
Rent or mortgage payments (residence)		224.00
Real property taxes (residence)		Included
Real property insurance (residence)		Included
Maintenance (residence)		207.14
Food and household supplies		150.00
Utilities including water, electricity, gas and heat		181.34
Telephone		32.08
Laundry and cleaning		20.00
Clothing		186.00
Medical <u>Prescriptions</u>		23.00
Dental		0
Insurance (life, accident, comprehensive liability, disability) Exclude Payroll Deducted		6.34
Child Care		N/A
Payment of child spousal support re: prior marriage		N/A
School		8.33
Entertainment (includes clubs, social obligations, travel recreation)		10.00
Incidentals (grooming, tobacco, alcohol, gifts, and donations)		170.66
Transportation (other than automobile)		N/A
Auto expense (gas, oil, repair, insurance)		167.71
Auto payments		242.96
Installment payment(s). (Insert total and attach itemized schedule if not fully set forth in (d) on the first page hereof)		105.05
Other expenses (Insert total and specify on attached schedule)		89.64
	\$	\$
TOTAL EXPENSES		1824.25

STATE OF UTAH

COUNTY OF SALT LAKE

ss.



I swear that the matters stated herein are true and correct.

Subscribed and sworn to before me this

day of

, 19__

Notary Public residing in Salt Lake County, Utah

My Commission Expires: _____

BRING TO THE PRE-TRIAL HEARING ALL DOCUMENTS AND OTHER SUPPORTING INFORMATION NECESSARY TO VERIFY OR EXPLAIN THE STATEMENTS MADE IN THIS DECLARATION, INCLUDING BUT NOT LIMITED TO, PAYROLL STUBS FOR THE MOST RECENT 90 DAYS, 3 MOST RECENT TAX RETURNS, CREDIT UNION SHARE STATEMENTS, PASSBOOKS, CHECKBOOKS, CANCELLED CHECKS, CERTIFICATES, POLICIES AND OTHER RELEVANT AND MATERIAL DOCUMENTATION.