

2000

Laree R. Nielsen v. Robin A. Nielsen and Rod Nielsen : Brief in Opposition to Certiorari

Utah Supreme Court

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Robert L. Moody; Moody & Meyers; Attorney for Appellee.

Shawn D. Turner; Larson, Turner, Fairbanks & Dalby; Attorney for Appellants.

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UTAH

BRIEF

CKET NO. 20000375-SC

IN THE SUPREME COURT OF THE STATE OF UTAH

Case Number 20000375-SC
Priority Number 15

LAREE R. NIELSEN

Plaintiff-Appellee

v.

ROBIN A. NIELSEN and ROD NIELSEN

Defendants-Appellants

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

An Appeal from the Fourth Judicial District Court for
Utah County, State of Utah, Honorable Steven L. Hanson

Attorney for Plaintiff-Appellee:

Robert L. Moody,
Moody & Meyers
2525 North Canyon Road
Provo, Utah 84604
(801) 373-2721

Attorney for Defendants-Respondents

Shawn D. Turner
Larson, Turner, Fairbanks, & Dalby
4516 South 700 East, Suite 100
Salt Lake City, Utah 84107
(801) 263-2900

FILE

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Shawn D. Turner
Larson, Turner, Fairbanks, & Dalby
4516 South 700 East, Suite 100
Salt Lake City, Utah 84107
(801) 263-2900

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QUESTIONS PRESENTED FOR REVIEW

1. The mathematical calculation of the judgment by the trial court is correct.
2. In equity, the remedy of constructive trust is an bound by no set formula.
3. Procedural due process is not denied by a remedy that is accurate and fair.

REFERENCE TO OPINION

The Opinion of the Court of Appeals is attached as Exhibit B to the Petition for Writ of Certiorari.

STATEMENT OF JURISDICTION

This Brief in Opposition to Writ of Certiorari arises from Opinion of the Utah Court of Appeals dated February 17, 2000 and the subsequent Order by the Court of Appeals denying the a Petition for Rehearing dated April 3, 2000. The Utah Supreme Court has appellate jurisdiction over this matter pursuant to Utah Code Ann. § 78-2-2(5) and Utah Constitution., art. VIII, § 3.

CONTROLLING CONSTITUTIONAL PROVISIONS AND STATUTES

The controlling constitutional provisions and statutes are set forth in Appendix D to the Petition for Writ of Certiorari and Appendix B of this brief.

STATEMENT OF THE CASE

A. Nature of the Case and Proceedings Below.

This Brief in Opposition to Writ of Certiorari concerns a final judgment and order from the Fourth Judicial District Court of Utah County, State of Utah entered by the Honorable Steven L. Hansen on May 12, 1998. A subsequent motion for a new trial or to correct judgment was denied by the court in October 1998. The Opinion of the Court of Appeals was dated February 17, 2000, and the subsequent Order denying the Petition for Rehearing was dated April 3, 2000.

1. Plaintiff-Appellee LaRee Nielsen, nka LaRee Ricks, and the Defendant Robin Nielsen were divorced pursuant to a Decree of Divorce dated July 16, 1984. (Tr. 11, Ex. 1). Pursuant to the stipulation, the original divorce decree granted custody of five of the children to Robin and the youngest remaining child to LaRee. Robin was also given possession of the family home.

2. In December 1985, Robin was charged with aggravated sexual abuse of the child. At this time, LaRee took possession of the family home and custody of all of the children. Robin was incarcerated in July 1986. (R. 379.)

3. An Order Modifying Divorce Decree was entered May 15, 1987. (Ex. 2.) LaRee was awarded complete and sole possession of the home until the youngest child reached the age of majority. LaRee was also granted custody of all of the children. Robin's support obligations were also modified. (Ex. 2.)

4. On May 15, 1987, LaRee received a judgment against Robin in the sum of \$13,815.74, plus interest that represented her unpaid portion of the retirement benefits and her attorney's fees (1987 Retirement Judgment).

5. On February 1, 1988, LaRee received a judgment against Robin in the sum of \$8,000 for the nonpayment of alimony and child support (1988 Alimony/Support Judgment).

6. In March 1995, LaRee filed this action to recover unpaid child support and alimony, and to quiet title to the home. (R. 5.) In her first cause of action, LaRee alleged that there was a balance of \$3,526.81, plus interest, from the 1987 Retirement Judgment.

7. Cross Motions for Summary Judgment were filed by the parties. (R. 98, 159.) By Memorandum Decision, the trial court granted summary judgment in favor of the Defendants as to the issues of the Utah Fraudulent Transfer Act and constructive trust. The underpinnings of

the constructive trust summary judgment were contract doctrines. The trial court denied Defendants' Motion for Summary Judgment as it related to taxes, insurance, repairs, and maintenance. (R. 256.)

8. A pretrial and scheduling conference was held on August 13, 1997, at which time the trial court entered an Advance Trial Management Order. (R. 266.) Counsel were directed to prepare a joint and agreed-upon pretrial order outlining the claims of the parties, contested issues of fact, contested issues of law, and a summary of supporting facts. (R. 266.) This Joint Pretrial Order was submitted February 6, 1998. (R. 329.) Prior to a previously scheduled trial date, a similar Joint Pretrial Order was submitted on or about June 13, 1996. (R. 95.)

9. The matter was tried on February 9, 1998. During the trial, Laree asked the court to renew the unpaid portion of the judgment obtained on May 15, 1987 (Tr. 16) and the judgment obtained on February 1, 1988 (Tr. 18). The Court granted Motion to Amend the Complaint to renew these judgments in order to conform to the Pretrial Order. (Tr. 56; R. 378.)

10. Following the trial, the trial court entered its Findings of Fact and Conclusions of Law. (R. 381.) A judgment and order was entered on May 12, 1998. (R. 409.)

11. Defendants filed a Motion for New Trial or to Correct Judgment. (R. 383.) The trial court denied this motion. (R. 429.)

12. Defendants filed their Notice of Appeal on October 20, 1998.

13. The appeal was heard by the Court of Appeals and the Court of Appeals issued a decision on February 17, 2000. The Court of Appeals denied the Petition for Rehearing on April 3, 2000.

B. Statement of Facts.

Plaintiff-Appellee LaRee Nielsen, nka LaRee Ricks, and Defendant Robin Nielsen were divorced pursuant to a Decree of Divorce dated July 16, 1984. (R. 381, Ex.1.) At the time of the divorce, LaRee and Robin had six children. Pursuant to stipulation, Robin was granted physical custody of all of the children, except for the youngest child, together with possession of the family home until the youngest child reached the age of 18. (R. 319, Ex. 1.) Pursuant to the Decree of Divorce, the equity in the home was to be divided equally except for a \$6,000 credit for Robin for money he obtained from his parents' estate and used in the acquisition of the home. (R. 319, Ex. 1.)

According to the original Decree of Divorce, Robin was ordered to pay \$200 per month in alimony and \$200 per month in support for the youngest child. LaRee Nielsen was also awarded half of the current interest in Robin's retirement account. (R. 318, Ex.1.)

In December 1995, Robin was charged with aggravated sexual abuse of a child. (R. 379, Tr. 64.) Said charges were tried in March and April 1986. (Tr. 64.) To care for the children, LaRee took possession of the family home in December 1985 (Tr. 12) and has remained in the home since that time.

Without LaRee's knowledge, Robin conveyed his interest in the home to his brother, Rod Nielsen, in a quit claim deed dated January 8, 1986 and recorded on January 10, 1986. (Ex. 3.)

Robin was incarcerated in June 16, 1986 at the Utah State Prison. (Tr. 64.) That day, Robin withdrew his retirement account, in the sum of roughly \$32,000, and sent it to his brother Rod. (Tr. 64, R. 378.)

Soon after Robin's incarceration, LaRee filed for modification of the Divorce Decree. The Decree of Divorce was modified in an Order Modifying Divorce Decree dated May 15, 1987, in which LaRee was awarded fully custody of the four remaining minor children and granted full, complete, and sole possession of the family home, until the youngest child reached the age of majority. (Ex. 2.) Robin's child support obligation was modified and reduced to the amount of \$100 per child per month. The alimony obligation was modified and reduced to \$100 per month. (Ex. 2.)

On May 15, 1987, as part of the Order Modifying Divorce Decree, LaRee received a judgment in the amount of \$13,815.74, plus interest, representing her unpaid portion of the retirement benefits and attorney's fees (1987 Retirement Judgment). (R. 378, Ex. 2, Ex. 4.) Rod subsequently sent LaRee \$10,288.93 as payment against the 1987 Retirement Judgment. (Tr. 15, R. 378.) After crediting the amount received from Rod Nielsen, the balance of the unpaid principal and interest at the time of trial was \$11,616.44. (Ex. 16.)

Then, on February 1, 1988, LaRee obtained a judgment against Robin in the amount of \$8,000 for delinquent alimony and child support beginning August 1986 through and including November 1987 (1988 Alimony/Support Judgment). (Ex. 5.) At the time of the judgment, no objections to the judgment were made. (R. 378.) No payments have been paid toward this judgment. (R. 378.)

In addition, since December 1987, Robin has paid nothing toward alimony and child support. (R. 326.) Total child support and alimony arrearage, as calculated by the trial court, amounted to \$64,521.55. (R. 374, Ex. 16.)

LaRee made the mortgage payments from 1986 until debt on the home was retired in 1994, the sum of principal and interest totaling \$25,767.10. (Tr. 25, 26; Ex. 6.) In addition, LaRee paid the property taxes, insurance, and maintenance during this time.

Using a sales comparison approach, the home was appraised for \$156,000 in June 1996. (Ex. 10.) This is the amount at which the trial court valued the home. (R. 376.)

Subtracting the mortgage payments made by LaRee in the amount of \$25,767.10 from the appraised value of \$156,000, the trial court concluded that the equity in the home was \$130,232.90.) (R. 374.) This left \$65,116.45 in equity for each party before considering any credits or offsets. (R. 374.) The trial court allowed Robin a \$6,000 credit for his inheritance that was used toward the initial payment for the as evidenced in the Decree of Divorce, giving Robin equity in the amount of \$71,116.45. From this amount, the amounts of \$11,616.44 and \$64,521.55, which represented the noncomplete payment of the retirement funds and the support arrearage, were subtracted. This resulted in \$5,021.54 still owing to LaRee after being credited for her equitable share in the home. (R. 374.) The Court of Appeals held that the \$64,521.55 figure had been miscalculated because the trial court added compounded rather than simple interest.

Rod Nielsen did not give Robin Nielsen adequate consideration for the quit claim deed; any loans Rod gave to Robin during Robin's marriage were of an unspecified amount, were of small amounts given periodically, and were not memorialized in writing. (R. 377, Tr. 47-48.) The money received by Rod from Robin's retirement funds more than satisfied any obligation Robin had to Rod. (R. 377, Tr. 65-67.) Finding that Rod was acting as a constructive trustee in a confidential relationship for Robin's equity in the home (R. 377), the trial court decreed that all

right, title, and interest in the real property be adjudged and decreed to be the property of LaRee Nielsen. (R. 408.) LaRee was also awarded judgment against Robin Nielsen in the amount of \$5,021.54. (R. 409.)

STANDARD OF REVIEW

The Court of Appeals articulated the correct standard of review:

“On appeal from a bench trial, we view the evidence in a light most favorable to the trial court’s findings” Further, it is well settled that “[w]e do not reverse a trial court’s findings of fact unless they are clearly erroneous,” and “[w]hen challenging a trial court’s findings, ‘[a]n appellant must marshal the evidence in support of the findings and then demonstrate that despite this evidence, the trial court’s findings are so lacking in support as to be “against the clear weight of the evidence.””

Nielsen v. Nielsen, 2000 UT App 37, 1 (Utah App.) (citations omitted).

ARGUMENT

POINT ONE

I. The Mathematical Calculation of the Judgment by the Trial Court is Correct.

The trial court entered judgment against Robin A. Nielsen (Robin) in favor of LaRee Ricks (LaRee) in the amount of \$76,137.99. This judgment represented two facets of the parties’ divorce, namely (1) LaRee’s share of Robin’s pension and (2) unpaid child support and alimony from August 1986 onward. In this appeal, Robin seeks to modify the judgment pursuant to Rule 60(a) of the Utah Rules of Civil Procedure on the basis that there were clerical mistakes in the judgment. However, there were no clerical mistakes in the trial court’s judgment (except that interest should not have been compounded, as the Court of Appeals held). An explanation of the trial court’s calculation the judgment follows below:

A. The Calculation of the 1987 Pension Judgment is Correct

On May 15, 1987, LaRee obtained a judgment against Robin for \$13,814.74 for incomplete payment of LaRee's share of Robin's retirement funds (1987 Retirement Judgment). From the time that this judgment was entered until the current matter was heard, Rod Nielsen (on behalf of Rod) had paid LaRee \$10,288.93 in satisfaction of the judgment. At the time of trial, the trial court found that the remaining balance on the 1987 Retirement Judgment was \$3,526.81. Further, as of February 1998, interest had accrued on this outstanding balance at the rate of 12% per annum, which interest totaled \$8,089.63. The trial court concluded that this judgment should be renewed. Hence the amount of \$11,616.44 stemming from the 1987 Pension Judgment became part of the current trial court's judgment. The trial court made no clerical mistakes in entering this judgment.

B. The Calculation of the 1988 Alimony/Support Judgment is Correct.

On February 1, 1988, LaRee obtained a judgment against Robin in the amount of \$8,000 for child support and alimony arrearage owing for the period of August 1986 to November 1987 (the 1988 Alimony/Support Judgment). The trial court found that Robin made no objection to this 1988 Alimony/Support Judgment at the time it was rendered. (R. 378.)

The trial court also allowed the 1988 Alimony/Support Judgment to be renewed. This 1988 Alimony/Support Judgment, together with unpaid alimony at the rate of \$100 per month, beginning in December 1987, unpaid child support at the rate of \$100 per month for each child (until each child reached the age of eighteen), also beginning in December 1987, and interest at the rate of 7.23 % per annum made up the other portion of the trial court's judgment. The total amount of judgment for unpaid child support and alimony arrearage was \$64,521.55. Again,

there was no clerical mistake in entering this judgment (except, as the Court of Appeals clarified, that interest should not have been compounded).

C. No Clerical Mistake Was Made By the Trial Court.

Rule 60(a) of the Utah Rules of Civil Procedure states that “Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from *oversight or omission* may be corrected by the court at any time of its own initiative or on the motion of any party” Ut. R. Civ. Pro. 60(a) (emphasis added). Robin cannot show such a clerical oversight or omission was made in the judgment by the trial court. The obvious purpose behind the rule is to allow a party to correct a judgment when, for some clerical reason, the amount of the judgment is different from the amount that the trial court determined. This Court has held that the question of whether a (purported) error is “judicial” or “clerical” depends not on who made it, but on whether it was made in rendering the judgment or in recording the judgment. *Lindsay v. Atkin*, 680 P.2d 401 (Utah 1984). The Rule is not intended to correct errors of a substantial nature, particularly where the claim of error is unilateral. *Id.* The correction contemplated by Rule 60(a) must be for the purpose of reflecting the actual intention of the court and parties. *Id.*

Rule 60(a) should not be used as a vehicle for a party to have an open-ended opportunity to re-litigate the merits and amount of a judgment. In the current case, the trial court heard evidence concerning delinquent alimony and child support payments, past judgments, and principal and interest calculations, and received supporting exhibits. (Ex. 12, 15, and 16.) LaRee was also cross examined concerning these facts. The calculations of LaRee were accurate, true, and correct and were accepted by the court. The court then made its Findings.

D. This Court Should Not Receive New Evidence.

Instead of correcting a clerical mistake, Robin Nielsen now seeks, through this appeal, to present new evidence concerning the judgment amount. To permit Robin to submit calculations without foundation or cross examination flies in the face of the purpose of a trial court in accepting evidence and the function of an appeal of reviewing the trial for legal errors. Moreover, the calculations submitted by Robin in his Petition are inaccurate, incomplete, confusing, and are not supported by the Record. (Pet. Cert., p. 6.)

For example, the alimony and child support calculations in the Petition begin in May 1987. However, the child support and alimony obligations from the commencement of the divorce until November 1987 have already been reduced to a judgment in the 1988 Support/Alimony Judgment. Because no clerical mistake was made, the time for determining whether the trial court rendered judgment for the correct amount in 1988 has past. Rule 60(a) contemplates modifications to judgments for clerical errors; it does not provide for procedure to examine all the facts supporting a judgment.

POINT TWO

II. In Equity, the Remedy of Constructive Trust is Bound by No Set Formula.

A. The Petitioners Waived the Argument that the Trial Court Created a New Set of Plaintiffs' Rights.

The argument that the trial court and the Court of Appeals created a new set of plaintiffs' rights by imposing a constructive trust has been raised for the first time in the Petition for Writ of Certiorari. Where an appellant fails to brief an issue on appeal, the point is waived. *Bott v.*

Deland, 922 P.2d 732 (Utah 1996). The Petitioners did not brief this issue to the Court of Appeals, although it was available to be briefed. The Court should not grant certiorari to hear it.

B. Nevertheless, the Remedy of Constructive Trust, as Ordered by the Lower Courts, Does Not Create a New Set of Plaintiffs' Rights.

This Court has held that it will only disturb the trial court's decree of constructive trust if it constitutes abuse of discretion. *Thurston v. Box Elder County*, 892 P.2d 1034, 1041 (Utah 1995).

A constructive trust is an equitable remedy to prevent unjust enrichment. *Ashton v. Ashton*, 733 P.2d 147, 150 (Utah 1987); *In re Estate of Hock*, 655 P.2d 111, 114 (Utah 1982); *Carnesecca v. Carnesecca*, 572 P.2d 708, 710 (Utah 1977); *Hawkins v. Perry*, 123 Utah 16, 23, 253 P.2d 372, 375 (1953); *Haws v. Jensen*, 116 Utah 212, 216, 209 P.2d 229, 231 (1949). If the evidence is of a clear and convincing nature warranting the remedy, the trial court may alter a deed which is regular in form and is presumed to convey a clear and unambiguous title. *Ashton*, 733 P.2d at 151; *In re Estate of Hock*, 655 P.2d at 1114.

"A court of equity in decreeing a constructive trust, is bound by no unyielding formula, but is free to effect justice according to the equities peculiar to each transaction wherever a failure to perform a duty to convey property would result in unjust enrichment." *Haws*, 209 P.2d at 232. "Constructive trusts include all those instances in which a trust is raised by the doctrines of equity for the purpose of working out justice in the most efficient manner, where there is no intention of the parties to create such a relation." *Parks v. Zions First Nat'l Bank*, 673 P.2d 590, 599 (Utah 1983) (citing J. Pomeroy, *Equity Jurisprudence* § 1044 (1941)).

Constructive trust does not create a new set of plaintiffs' rights as the Petitioners have argued. Rather, it is a time-tested remedy that is steeped in the law of equity. The Utah Legislature did not intend to abrogate or "preempt" the remedy of constructive trust merely because a plaintiff may use the Utah Fraudulent Transfer Act to accomplish the same end as constructive trust might accomplish. A variety of causes of action may be used to accomplish the same purpose. The fact the various causes of action have different statutes of limitation¹ does not mean that this Court should eliminate one in favor of another, or that the Utah Legislature had the intention of doing so when it enacted legislation. Such jurisprudence would cause utter chaos in the law.

C. The Petitioners Have Failed to Marshall the Evidence, and Cannot Prove, that the Trial Court Abused Its Discretion.

Moreover, although the Petitioners assail the trial court's findings of fact (Pet. Cert., p. 8), the Petitioners fail to challenge sufficiently the trial court's findings that imposed a constructive trust. As explained in *Scharf v. BMG Corp.*, 700 P.2d 1068, 1070 (Utah 1985), there is a "duty incumbent upon an appellant to mount a successful challenge to a trial court's findings of fact. An appellant must marshal all of the evidence in support of the trial court's findings." Because the Petitioners have not challenged those findings and has not demonstrated that the trial court abused its discretion, *see Thurston*, 892 P.2d at 1041, the trial court's findings should not be disturbed. *Ashton*, 733 P.2d at 150.

¹The Court of Appeals held that four year statute of limitations found in Utah Code Ann. § 78-12-25(3) applied to the doctrine of constructive trust, rather than the four-year statute of limitations (after the transfer) found in the Utah Fraudulent Transfer Act, § 25-6-10, as asserted by the Petitioners. Respondent argues that any time limitation for constructive trust should be at least four years after discovery.

In paragraphs 21 through 23 of the trial court's Findings of Fact, the court found:

21. Before Robin Nielsen went to prison he conveyed his interest in the home to his brother Rod by quit-claim deed dated January 8, 1986. This deed was recorded on January 10, 1986.

22. Rodney Nielsen testified that the consideration he gave for the quit claim deed were the loans which he gave Robin during Robin's marriage. These were of an unspecified amount as they were small loans given periodically and not memorialized in writing. Robin Nielsen testified that he transferred his retirement account to Rod in satisfaction of the loans which he had received from Rod. The Court finds that Robin owed Rod only a few thousand dollars at the time of the divorce and the transfer of the retirement account and that there was no consideration given by Rod to Robin for the quit-claim deed.

23. The Court finds that Rod obtained the quit-claim deed of Robin's interest in the home so that he could preserve his brother's interest in the home as Robin was going to prison. Thus the Court finds that Rod has been acting as an constructive trustee for Robin's equity in the home.

(R. 377, 378.)

The trial court also found that Rod Nielsen acted as a constructive trustee for Robin of any remaining balance of the retirement funds. (R. 378.) The very day he went to prison, Robin withdrew his retirement account (Tr. 64), in the sum of roughly \$32,000, and gave it to his brother Rod. (Tr 64, R. 378). Rod testified that he was holding the funds from Robin's retirement account while Robin was in prison. (Tr. 50, R. 378). Robin later testified that he gave the funds to Rod because he owed him money from the numerous loans given to him over the years. (Tr. 65-66, R. 378). The Petitioners have not cited any facts in the record that are contrary to these that would warrant disturbing the trial court's constructive trust remedy.

D. The Petitioners Have Not Marshaled the Evidence that LaRee Had Constructive Notice of the Quit Claim Deed from Robin to Rod.

The trial court found that LaRee first discovered the conveyance to Rod on May 15, 1991, when she made an application for a loan. (R. 377.) This is a factual finding that the Petitioners

do not contest on appeal. *See Sevy v. Security Title Co.*, 902 P.2d 629, 634 (Utah 1995) (“[T]he issue of when a claimant discovered or should have discovered the facts forming the basis of a cause of action is a question of fact, and the fact finder’s conclusion cannot be overturned on appeal unless it is clearly erroneous.”) Although constructive notice may have occurred when the deed was recorded, again the Petitioners have failed to marshal any evidence in the record that LaRee had notice of the facts which would justify imposing the constructive trust before May 15, 1991.

POINT THREE

II. Procedural Due Process is not Denied by a Remedy that is Accurate and Fair.

A. The Petitioners Waived the Argument that the Trial Court Denied Them Due Process.

Here also, the Petitioners raise the argument that they were denied due process for the first time in this Petition for Writ of Certiorari. Where an appellant fails to brief an issue on appeal, the point is waived. *Bott v. Deland*, 922 P.2d 732 (Utah 1996). The Petitioners did not brief this issue to the Court of Appeals, although it was available to be briefed. The Court should not grant certiorari to hear it.

B. The Purpose of Procedural Due Process is to Produce Decisions that are Accurate.

The Petitioners have claimed that the trial court deprived them of procedural due process under the due process clauses of the U.S. Constitution, amend. V (or, presumably, amend. XIV) and the Utah Constitution, art. I, § 7.² This due process argument concerns two aspects of the

²The Utah Supreme Court has held that the due process clauses of the Federal and State Constitutions are substantially similar, and that the decisions of the federal Supreme Court are highly persuasive to the application of Utah’s due process clause. *Untermeyer v. State Tax*

litigation below, (1) that the trial court granted the Motion to Amend to enable LaRee to renew her judgments, and (2) that the trial court granted the remedy of constructive trust after hearing the evidence when the trial court had already ostensibly granted summary judgment for the defendants on the issue of constructive trust.

The United States Supreme Court has written that,

The function of legal process, as that concept is embodied in the Constitution, and in the realm of factfinding, is to minimize the risk of erroneous decisions. Because of the broad spectrum of concerns to which the term must apply, flexibility is necessary to gear this process to the particular need; the quantum and quality of the process due in a particular situation depend upon the need to serve the purpose of minimizing the risk of error.

Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 13 (1979). *See also Fuentes v. Shevin*, 407 U.S. 67, 97 (due process functions to “prevent unfair and mistaken deprivations” of life, liberty and property.) The principal reason for procedural safeguards, then, is to prevent inaccurate decisions.

C. Granting the Motion to Amend Afforded Procedural Due Process.

In March 1995, LaRee filed this action to recover all past-due child support and alimony payments owed through February 1995. (R. 5.) In her first cause of action, LaRee also alleged that there was a balance of \$3,526.81, plus interest, from the retirement monies transferred to Defendant Rod Nielsen. (R. 3.) The original complaint effectively claims and puts Robin and Rod on notice that she is pursuing all past due child support and alimony arrearage as well as the unpaid balance of the retirement monies. The two judgments entered on February 1, 1988 (Ex.

Comm’n, 102 Utah 14, 129 P.2d 881 (1942).

5) and May 15, 1987 (Ex. 4) fall within the eight year statute of limitations from the time the Complaint was filed.

A pretrial and scheduling conference was held on August 13, 1997. At that time the trial court entered an Advance Trial Management Order. (R. 266.) Counsel were directed to prepare a joint and agreed upon pretrial order outlining the claims of the parties and the issues to be tried. (R. 266.) The Joint Pretrial Order was submitted February 6, 1999. (R. 329.) A similar Joint Pretrial Order was submitted on or about June 13, 1996, prior to a previously scheduled trial date. (R. 95.) In both pretrial orders, the two delinquent judgments were identified as claims of LaRee.

During the trial, Plaintiff LaRee Nielsen asked the court to renew the unpaid portion of the judgment obtained on May 15, 1987 (Tr. 16) and the judgment obtained on February 1, 1988 (Tr. 18.) The court granted the Motion to Amend to renew these judgments in order to conform to the Pretrial Order. (Tr. 56; R. 378.)

A primary purpose of a pretrial order is to narrow the issues so that the parties do not have to go back and amend their pleadings and such. A pretrial order, in essence, becomes a pleading. At trial, parties are governed by the pretrial order.

In any event, Rule 15(b) of the Utah Rules of Civil Procedure permits the trial court to grant LaRee's Motion to Amend her Complaint. Rule 15(b) states:

(1) When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. (2) If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court

may allow the pleadings to be amended when the presentation of the merits of the action will be subverted thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court shall grant a continuance, if necessary, to enable the objecting party to meet such evidence.

Utah R. Civ. Pro, 15(b) (numbering added).

The facts of this case arguably fall within the first *and* second part of the Rule. Under the first part, the issue of renewing the two judgments was tried by express or implied consent as identified and agreed to in the Joint Pretrial Order. The amendments were permitted to conform the pleadings to the evidence. The second part of the rule is also applicable because objections were made at the trial that the issues of the renewed judgments were not properly plead. The merits of the action would have been defeated by not allowing the pleadings to be amended. The Defendants failed to satisfy the court that they would be prejudiced by the admission of the past judgments, nor did they request a continuance to enable them to meet such evidence. Because the Defendants were put on notice³ as early as the Complaint and certainly at the time of the Pretrial Orders that the two judgments were claimed by LaRee Nielsen, they cannot claim they were prejudiced.

Rule 15(c) of the Utah Rules of Civil Procedure sets forth that the amendments relate back to the original pleading. This brings both judgment well within the required statute of limitations. The trial court's decision to grant the Motion to Amend does not affect the accuracy of its findings of fact or conclusions of law. Procedural due process was thus provided.

D. The Remedy of Constructive Trust does not Deprive of Due Process.

Finally, the Petitioners claim that they were deprived of substantive due process by the trial court's decree of constructive trust. The Petitioners rely on the trial court's earlier

Memorandum Decision rendered from the parties' Motions for Summary Judgment. (R. 256.) In its earlier decision the trial court applied principles of contract law in granting the Defendants' Motion, stating: "As a general rule, none is liable upon a contract except those two are parties to it;" and "It is axiomatic in the law of contract that a person not in privity cannot sue on a contract." (R. 251, 252 (citations omitted).) In this earlier decision, the trial court recognized that in theory, Rod could be unjustly enriched, "but the contract or medium through which he obtained this wealth, is between Robin Nielsen and himself and not between LaRee Nielsen and [Rod] Nielsen. (R. 251.) Yet through the trial the court gained a better understanding of the facts and the equitable doctrines and rightly changed its position.

The Petitioners appear to argue that the trial court's summary judgment became the law of the case and that because it was the law of the case the trial court could not change its decision. This argument is legally incorrect. On this issue, the Utah Supreme Court wrote that,

The law of the case doctrine is not a limit on judicial power, but only a practice designed "to protect both court and parties against the burdens of repeated reargument by indefatigable diehards." 18 Charles A. Wright et al., *Federal Practice and Procedure* § 4478, at 789-90 (1981) [hereinafter *Federal Practice*]. "The doctrine is not an inexorable command that rigidly binds a court to its former decisions but rather is an expression of good sense and wise judicial practice." *Carp, Inc. v. Ward Foods, Inc.*, 567 F.2d 1316, 1320 (5th Cir. 1978), . . . see *Salt Lake City, Corp. v. James Constructors, Inc.*, 761 P.2d 42, 44-45 n.5 (Utah Ct. App. 1988). Among situations where reconsideration of a previously decided issue is recognized as desirable, notwithstanding the law of the case, is when there is a "need to correct a clear error or prevent manifest injustice." *Federal Practice*, § 4478, at 790. As one appellate court observed, with all delicacy aside: "The only sensible thing for a trial court to do is to set itself right as soon as possible when convinced that the law of the case is erroneous. There is no need to await reversal." *Champaign-Urbana News Agency, Inc. v. J.L. Cummins News Col.*, 632 F.2d 680, 683 (7th Cir. 1980). Simply put, the law of the case doctrine does not prohibit a judge from catching a mistake and fixing it.

Gilmore v. Wright, 850 P.2d 431, 439 (Utah 1993) (Orem, J., concurring).

This was exactly what the trial judge did. As previously stated, a constructive trust is an equitable remedy to prevent unjust enrichment regardless of express or implied intention. *See* argument above, page 10. After being presented the evidence at trial, the trial court correctly recognized that in order to properly do justice according to the equitable interests in the home, it had no choice but to impose a constructive trust. The trial court was not bound by the set formula of contract law. Rod unquestionably had a duty to convey the equitable interest in the home as well as the remaining retirement proceeds to Robin. If not, Rod would be unjustly enriched.

Under these circumstances, it was proper for the trial court to impose a constructive trust. Without such a remedy, LaRee would very likely not have a legitimate means of collecting the past judgments and arrearage for support. Refusing to recognizing a constructive trust, would set an ill-advised precedent of allowing a party with an interest in real property to secrete that interest by deeding it to a relative or other confidential relationship. Then, in the event that support payments are not paid, the aggrieved party would be relegated to the strict principles of contractual privity, and would be unable to recover in equity. Such a practice would allow the constructive trustee to act as a “conscious wrongdoer.” *See Parks v. Zions First Nat’l Bank*, 673 P.2d 590, 603 (Utah 1983).

The well-reasoned decisions of the trial court and the Court of Appeals effected justice accurately and fairly. Imposing a constructive trust did not impinge upon the Defendants’ right to procedural due process.

CONCLUSION

The evidence heard by the trial court was of a clear and convincing nature warranting the equitable remedy of a constructive trust. The Court of Appeals was correct to affirm it. The calculations of the judgments should not be disturbed. These conclusions of law did not create new causes of action nor did they deprive any party of due process. Any other result, would unjustly enrich Rod Nielsen and permit Robin Nielsen to secret his assets, thus avoiding the duties of a parent and spouse, and likely making it impossible for LaRee Nielsen to satisfy her judgments. For these reasons, this Court should deny the Petitioner's request for a Writ of Certiorari.

Respectfully submitted this 2nd day of June 2000.

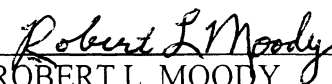


ROBERT L. MOODY
Attorney for Plaintiff-Appellee LaRee Nielsen

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of June, 2000, I mailed two true and correct copies of the foregoing Brief in Opposition to Writ of Certiorari, postage prepaid, to the following:

Shawn D. Turner
Larson, Turner, Fairbanks & Dalby
Attorney for Defendants-Appellants
4516 South 700 East, Suite 100
Salt Lake City, Utah 84107



ROBERT L. MOODY
Attorney for Plaintiff-Appellee LaRee Nielsen

ADDENDUM “A”

**COPIES OF FINDINGS OF FACT AND CONCLUSIONS OF LAW,
AND EXHIBITS 1, 2, 3, 4, 5, 12, 15, AND 16**

FILED
Fourth Judicial District Court
of Utah County, State of Utah
CARMA B. SMITH, Clerk
7/16/98 AB Deputy

**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

LAREE R. NIELSEN, Plaintiff, vs. ROBIN A. NIELSEN and ROD NIELSON, Defendants.	CASE NO. 950400143 DATE: April 13, 1998 FINDINGS OF FACT AND CONCLUSIONS OF LAW JUDGE STEVEN L. HANSEN
--	--

The above-captioned matter came before the Court for trial on February 9, 1998. Plaintiff was present and represented by counsel Robert L. Moody and Defendants were present and represented by their counsel Shawn D. Turner. The Court having heard witnesses, having reviewed the file and the pleadings therein and having fully considered the evidence presented does hereby enter the following:

FINDINGS OF FACT

1. Plaintiff, Laree Nielsen, and Defendant, Robin Nielsen, were divorced in a Decree of Divorce dated the 16th day of July, 1984.
2. At the time of divorce the parties had six children. Pursuant to stipulation, Robin Nielsen was granted custody of all of the children, except the youngest, and was also given possession of the family home. Accordingly, he was also given possession of the household furniture and other furnishings.

3. Pursuant to the Decree of Divorce, the court awarded one-half of the real property and the home in which they lived (716 West 580 South, Orem, Utah) to each party, excepting a \$6,000 credit to Robin Nielsen as he had obtained this money from his parents estate and used such in the acquisition of the home. The house was worth \$115,656 at the time of divorce.

4. The Decree provided that the home was to be sold "when the youngest child reached the age of eighteen years or when the defendant remarries, or when the parties hereto can mutually agree it is in their best interest."

5. Pursuant to the Decree, Robin Nielsen was ordered to pay \$200 per month in alimony and \$200 per month in support for the youngest child.

6. The Decree also awarded Laree Nielsen one-half of the current interest in Robin Nielsen's retirement account.

7. The Decree of Divorce ordered Robin Nielsen to pay the costs associated with the case and an amount to his brother Rod which Rod had lent to Robin so that he could buy a van.

8. The Decree of Divorce also awarded each party one car. Robin asserts that his car was involved in an accident and that Laree cashed the insurance check. The Court finds that there is insufficient evidence that Robin owned the car at the time of the accident, or that Laree in fact cashed the check which should have gone to Robin. Furthermore, as the accident occurred more than ten years ago it is well beyond the statute of limitations as no action nor

judgment has been pursued up until this time.

9. In December of 1985, Robin Nielsen was charged with aggravated sexual abuse of a child, said charges were tried in March and April of 1986. Robin was incarcerated in July of 1986.

10. Laree Nielsen took possession of the home and custody of the children in December of 1985, and has remained in the home since that time.

11. Robin Nielsen claims that he should have a credit of the estimated \$25,000 worth of household furnishings and furniture which he did not receive. However, the Court finds that the intention of the award of the household items was that it accompany the house for the benefit of the children rather than as a property award to an individual party.

12. After Robin Nielsen was incarcerated, Laree Nielsen filed for a modification of the Divorce Decree. The Order Modifying the Decree dated May 15, 1987 awarded Laree Nielsen complete and sole possession of the home until the youngest child reached the age of majority and gave her custody of all the children. Robin's support obligation was also changed so that he owed \$100 per month in alimony and \$100 per month per child for child support.

13. Laree Nielsen has worked at Brigham Young University in the Missionary Training Center since 1985. She currently earns \$1,800 per month.

14. Laree Nielsen has not received child support nor alimony from her ex-husband, Robin Nielsen, since November of 1987.

15. Laree received a judgment against Robin in the sum of \$8,000 in February of 1988 for the nonpayment of alimony and child support. At the time of the judgment no

objections to the judgment were made. Nothing has been paid towards that judgment. The Court allowed Plaintiff to amend her complaint and renew this judgment at trial.

16. Robin did not pay his alimony or child support obligations since that time and there is now owing, including the 1988 judgment and interest, \$64,521.55 in arrearages.

17. Before Robin Nielsen was incarcerated in the State Penitentiary he withdrew his retirement account, in the sum of roughly \$32,000, and gave it to his brother Rod.

18. When asked why he received Robin's retirement account, Rod Nielsen testified that he was holding the funds while Robin was in prison. Robin later testified that he gave the funds to Rod as he owed him money from the numerous loans given to him over the years. The Court finds that Rod has acted as a constructive trustee for Robin of any remaining balance of the retirement funds.

19. Laree Nielsen received a judgment in the amount of \$13,815.74 plus interest at the legal rate of 12% representing her unpaid portion of the retirement benefits and attorney's fees. A letter was sent by Laree's attorney on July 21, 1987 identifying Rod Nielsen as the recipient of the funds from Robin Nielsen, and demanding that Robin have Rod pay the same to Laree. Rod subsequently sent Laree \$10,288.93 against the judgment.

20. Crediting the amount that Rod sent Laree from the retirement, there is a present balance of unpaid principle and interest in the sum of \$11,616.44. The Court allowed the Plaintiff to amend her complaint and renew this judgment at trial.

21. Before Robin Nielsen went to prison he conveyed his interest in the home to his brother Rod by quit-claim deed dated January 8, 1986. This deed was recorded on January 10,

1986.

22. Rodney Nielsen testified that the consideration he gave for the quit-claim deed were the loans which he gave Robin during Robin's marriage. These were of an unspecified amount as they were small loans given periodically and not memorialized in writing. Robin Nielsen testified that he transferred his retirement account to Rod in satisfaction of the loans which he had received from Rod. The Court finds that Robin owed Rod only a few thousand dollars at the time of the divorce and the transfer of the retirement account and that there was no consideration given by Rod to Robin for the quit-claim deed.

23. The Court finds that Rod obtained the quit-claim deed of Robin's interest in the home so that he could preserve his brother's interest in the home as Robin was going to prison. Thus, the Court finds that Rod has been acting as a constructive trustee for Robin's equity in the home.

24. Laree Nielsen was not aware of this conveyance until 1991 when she sought to obtain a loan and the deed was discovered.

25. Laree Nielsen paid the mortgage from December of 1985 to 1994, when the mortgage was paid in full. The principle and interest which she paid towards the mortgage over this time period was \$25,767.10.

26. Laree also paid the taxes and insurance on the house and lot during this time. The taxes totaled \$12,073.44 and the insurance payments totaled \$6,148.24. However, Laree never requested that Rod or Robin contribute to the payment of the tax or insurance costs.

27. The house appraised for \$156,000 using the comparable sale method in June of

1996. Another appraisal found the house and lot to be worth \$145,000 using the comparable sale approach and \$152,000 using the cost approach. The Court finds that the home is worth \$156,000 as the appraisal estimating this amount was very thorough and convincing. The Court also notes that there was not much disparity in the estimates given.

28. All of the children of the parties had turned eighteen by July of 1997. James turned eighteen in June of 1987, John turned eighteen in October of 1988, Mark turned eighteen in March of 1993, and Curtis turned eighteen in July of 1997. Anne and David had turned eighteen before the Decree was modified.

29. The Court finds that Rod Nielsen asks that the home be sold as all of the children have now eighteen years of age or older. Rod claims that he has an interest in the home due to the quit-claim deed given him by his brother Robin. Laree Nielsen asserts that Rod does not have an interest in the home and that she is entitled to credits for the expenditures she has made towards the home since Robin went to prison and that the home should not be sold but remain in her possession.

30. The Court finds that Laree Nielsen has paid maintenance and repair costs as illustrated in Exhibit 9, which total \$18,398.24. However, there are many items which would not be considered repair or maintenance such as an expensive vacuum cleaner, storage payments, and a washing machine.

31. Prior to filing the Complaint, Laree never asked Robin nor Rod to contribute to these expenditures. She testified that after they resisted paying the retirement benefits and alimony and child support owing her that she knew that they would not help with the

maintenance costs of the house.

32. The Court finds that these claimed maintenance and repair costs did not enhance the value of the home as an improvement would, but rather kept the house and property from becoming wasted and in disrepair. This is evident by the appraisals which indicated that the house and lot had repair and maintenance concerns and was only in fair condition. Therefore, the Court does not find that Laree Nielsen should get any credit against Robin Nielsen's equity for these expenditures.

The Court having made the above Findings of Facts now makes and enters its:

CONCLUSIONS OF LAW

1. The Court concludes that there is owing from the judgment dated May 15, 1987, the sum of \$11,616.44 including interest and that said judgment should be renewed. This judgment is the retirement benefits which were not paid in full to Laree Nielsen.

2. The Court concludes that the February 1988 judgment should be renewed and that including this judgment, the accrued arrearage since that judgment, and the interest on these unpaid support obligations that Robin owes Laree \$64,521.55.

3. A constructive trust may be imposed if the grantee was in a confidential relationship with the grantor. *Mattes v. Olearin*, 759 P.2d 1177 (Utah App. 1988), *cert. denied* 773 P.2d 45 (Utah 1988). Furthermore, a constructive trust is an equitable remedy to prevent unjust enrichment in absence of any express or implied intention to form a trust. *Id.*

4. The Court concludes that under the facts as set forth in the foregoing Findings of

Fact that the Defendant, Rod Nielsen, is a constructive trustee of the home for and in behalf of Robin Nielsen, his brother.

5. The Court concludes that Laree Nielsen is not entitled to contribution of the taxes, insurance, or maintenance and repair expenses as these expenses were a necessary burden of having the benefit of living in the home and Laree never asked Rod nor Robin for contribution of these expenses until this action was filed.

6. The Court concludes that there is \$130,232.90 of equity in the home as the home is valued at \$156,000 and Laree has paid off the mortgage in the amount of \$25,767.10. This would leave each party with \$65,116.45 in equity before considering any credits or offsets.

7. The Court concludes that there is still owing the \$6,000 towards the initial down payment as evidenced in the Decree of Divorce. This would be paid to Robin Nielsen so that he could offset this against his inheritance.

8. The \$62,116.45 plus the \$6,000 inheritance money would give Robin equity in the amount of \$71,116.45. However, Robin owes Laree \$11,616.44 for the noncomplete payment of his retirement funds as well as \$64,521.55 of support arrearages. When these obligations are added into his equity, Robin Nielsen still owes Laree Nielsen \$5,021.54. Judgment in the amount of \$5,021.54 will be awarded to Laree Nielsen.

9. The Court concludes that any right, title and interest in the real property located at 716 West 580 South in Orem, Utah, more particularly described as: Lot 6, Plat 8, Woodcrest Heights, as recorded in the records of the Utah County Records Office be adjudged and decreed to be the property of Plaintiff, Laree R. Nielsen.

Counsel for Plaintiff shall prepare a proposed order consistent with the terms of this Memorandum Decision and submit it to counsel for Defendant, prior to submission to the court for signature.

DATED this 14 day of April, 1998,

BY THE COURT


STEVEN L. HANSEN



cc: Robert L. Moody
Shawn D. Turner

EXHIBIT 1

PLAINTIFF'S
EXHIBIT NO. <u>1</u>
CASE NO. <u>9504-143</u>

1984 JUL 16 PM 4:30

WILLIAM E. CARTER

CLERK

1 STOTT P. HARSTON
ALDRICH, NELSON, WEIGHT & ESPLIN
2 Attorneys for Plaintiff
43 East 200 North
3 P.O. Box "L"
Provo, Utah 84603
4 Tel: 373-4912

5 IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

6 STATE OF UTAH

7 LARSE NIELSEN,

:

DEGREE OF DIVORCE

8 Plaintiff,

:

9 vs.

:

10 Case No. 64587

11 ROBIN NIELSEN,

:

12 Defendant.

:

13 This matter came on for hearing on the 27th day of March, 1984,
14 plaintiff appearing in person and represented by her attorney, Stott P. Harston,
15 Esq., and the defendant appearing in person and by and through his attorney,
16 Sheldon R. Carter, Esq.. Plaintiff and defendant having testified to matters
17 set forth in the Complaint and Answer, the court being fully advised in the
18 premises, and the parties having presented their evidence and the court having
19 taken the matter under advisement, and having made an entered its Findings of
20 Fact and Conclusions at Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

21 DEGREE OF DIVORCE

22 1. During this marriage defendant has physically and verbally abused
23 the plaintiff, causing her physical and mental distress and suffering and
24 therefore entitles plaintiff to a Decree of Divorce and she is hereby divorced
25 from the defendant to become final three months after the signing of the Decree
26 and entry by the clerk into the Registry of Actions.

1 2. There have been born as issue of this marriage six (6) children,
2 to-wit: ANNE MARIE NIELSEN, age 18; DAVID AARON NIELSEN, age 16; JAMES ANDREW
3 NIELSEN, age 14; JOHN ARIC PAUL NIELSEN, age 12; MARC ALAN PHILLIP NIELSEN, age
4 8; CURTIS ANTHONY PETER NIELSEN, age 4. The court approves the stipulation of
5 the parties entered into at the time of trial concerning the joint custody of
6 the six children, the plaintiff to have the parties youngest child, Curtis, in
7 her immediate custody and the defendant the other minor children with him,
8 together with a possession of the family home until the youngest child reaches
9 the age of 18 years or the happening of other conditions which will require a
10 sale of the home and equal division of the equity or buy out of the defendant.
11 Under this joint custody arrangement, if either party moves from the City of
12 Provo, that shall constitute a material change of circumstances such that the
13 matter of custody may be examined upon application to the court.

14 3. The parties own real property and a home thereon, and the equity in
15 said property and home will be divided equally after the defendant receives a
16 \$6,000 credit from proceeds due him from money he obtained from his parents
17 estate and used in the acquisition of said home. Said home shall be sold when
18 the youngest child residing with defendant reaches the age of 18 years or when
19 defendant remarries, or when the parties hereto can mutually agree it is in
20 their best interest.

21 4. Both parties are mutually restrained against physical abuse or
22 harassment of the other and further restrained from any trespass upon the
23 property of the other or taking personal property from the other, except as is
24 reasonably necessary to effectuate the management of the joint custody of the
25 parties minor children herein.

26 5. The personal property of the parties is awarded as follows:

1 a. Plaintiff is awarded the 1983 Toyota Tercel subject to
2 the debt due against the same together with all personal effects and
3 clothing and personal effects and clothing of the minor child Curtis,
4 and all other personal effects she has in her possession.

5 b. Defendant is awarded all household furniture and
6 furnishings, personal effects and clothing and personal effects and
7 clothing of the minor children residing immediately with him and all
8 other personal property in his possession.

9 6. Defendant is ordered to assume and pay all obligations incurred by
10 the parties prior to the filing of this action for divorce including those
11 advancements from his brother for the van acquired by the parties and payments on
12 any and all other items of property in defendant's possession. Defendant shall
13 not be responsible for the debt on the 1983 Toyota Turcell which shall be paid to
14 the plaintiff.

15 7. The court finds that plaintiff is unable to meet the reasonable
16 needs of herself and her minor child, and therefore defendant is ordered to
17 pay as child support in the sum of \$200.00 per month and additionally pay to
18 plaintiff the sum of \$200.00 per month as alimony, for a total monthly amount of
19 of \$400.00 per month for the support and maintenance of the plaintiff and the
20 minor child. Said child support shall continue through the minority years of the
21 minor child and continue till the age 18 so long as said child is living with
22 plaintiff unmarried. Said sums of child support and alimony are due on or before
23 the 5th day of each month beginning on the 5th day of the next month after the
24 court signs the Decree of Divorce herein.

25 8. The court further finds that defendant is a participant with vested
26 rights in the Utah Retirement System Program and the court has received

1 information regarding the amounts attributed to defendant in said program. The
2 information has been obtained and the court finds these documents will be
3 sealed in the court file and that the figure shown on the members annual
4 statement for the year 1982 be updated to the date of Complaint for divorce
5 which was filed on August 18, 1983, and that as of that date the plaintiff is
6 awarded a one-half interest in whatever retirement benefit would have been
7 payable to the defendant had he retired as of that date. That amount is payabl
8 and due to the plaintiff by the defendant upon the retirement of the defendant,
9 or one-half the cash value of defendant's interest, payable in cash or monthly
10 installments of not to exceed twenty years at ten percent interest, such
11 payments to begin January 1, 1985.

12 11. Plaintiff was required to retain the services of an attorney to
13 bring this proceeding and agreed to pay him a reasonable fee for his services
14 which the court finds to be the sum of \$500.00, for which sum the plaintiff is
15 entitled to a judgment against defendant for the use and benefit of her
16 attorney.

17 12. Defendant is hereby required to maintain through his employment or
18 equivalent policies all available health, medical, accident and dental insuranc
19 under a policy with his employer, including the minor child in plaintiff's
20 immediate care and custody.

21 DATED this 16th day of June, 1984.

22 BY THE COURT:

23 STATE OF UTAH) ss
COUNTY OF UTAH)
I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT
OF UTAH COUNTY, UTAH DO HEREBY CERTIFY THAT THE
24 ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF
AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH

25 WITNESS MY HAND AND SEAL OF SAID COURT THIS

26 DAY OF _____ 19____
WILLIAM F. HUISH, CLERK

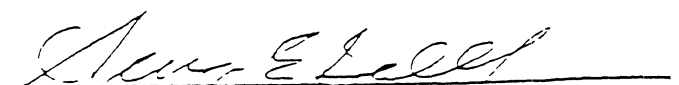

GEORGE E. BALLIF, JUDGE

EXHIBIT 2

PLAINTIFF'S
EXHIBIT NO. <u>2</u>
CASE NO. <u>9504-143</u>
DATE: <u>2/9/98</u> CLK/KF

1 STOTT P. HARSTON (1395)
2 ALDRICH, NELSON, WEIGHT & ESPLIN
3 Attorneys for Plaintiff
4 43 East 200 North
5 P.O. Box "L"
6 Provo, UT 84603
7 Telephone: 373-4912

8 IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
9 STATE OF UTAH

10 LAREE R. NIELSEN, :
11 : ORDER MODIFYING DIVORCE
12 Plaintiff, : DECREE
13 :
14 vs. :
15 : Civil No. 64,587
16 ROBIN A. NIELSEN, :
17 : Judge George E. Ballif
18 Defendant. :
19

20 This matter came up regularly on July 18, 1986, at 3:00
21 o'clock p.m. for a hearing pursuant to Plaintiff's Petition to
22 Modify the Divorce Decree heretofore entered, as well as
23 Plaintiff's motions for temporary relief and related matters,
24 pending final disposition in the matter. Plaintiff appeared and
25 was represented by counsel, Stott P. Harston of Aldrich, Nelson,
26 Weight & Esplin, and Defendant appeared and was represented by
his counsel, Dale A. Andersen, Esq., with proceedings before the
Honorable Judge George E. Ballif. Wherefore, the parties having
stipulated on the record as to the terms of these proceedings,
and the Court being fully advised in the premises, and good cause
appearing,

WHEREFORE IT IS ORDERED, ADJUDGED AND DECREED that the
Divorce Decree as well as Findings of Fact and Conclusions at Law

1 be modified, as follows:

2 1. There has been a material change in circumstances since
3 the Divorce Decree was entered, in that Defendant is now
4 incarcerated in the Utah State Prison for a three-year minimum
5 mandatory sentence, but which could be for a term of up to
6 fifteen (15) years, the same being for the crime of sexual abuse
7 of a child. It is, therefore, in the best interests of all the
8 parties' four (4) minor children that the full custody and
9 control of said children be awarded to Plaintiff herein, and the
10 same is so ordered.

11 2. Because of Defendant's current and prospective
12 incarceration in the Utah State Prison his child support
13 obligation is hereby modified and reduced to the amount of One
14 Hundred Dollars (\$100.00) per child per month plus One Hundred
15 Dollars (\$100.00) per month in alimony, totalling Five Hundred
16 Dollars (\$500.00) per month as of and beginning with the date of
17 this hearing. Defendant's release from prison, if and when it
18 occurs, shall be deemed a material change in circumstances in
19 this matter.

20 3. Plaintiff shall be granted full, complete and sole
21 possession of the home of the parties located at 716 West 580
22 South, City of Crem, Utan County, until the youngest of the
23 parties' minor children have reached the age of majority.

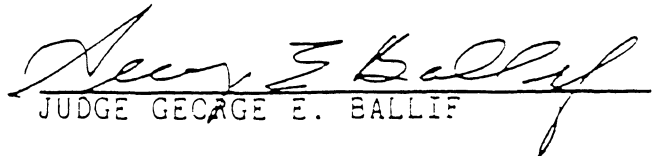
24 4. Defendant shall be granted reasonable rights of
25 visitation with the parties' minor children, as appropriate and
26

1 accommodate such visitation between the parties' children and
2 their father insofar as said children desire to and be allowed to
3 visit their father while in prison, and Plaintiff shall not
4 instruct said minor children not to visit their father or in any
5 way hinder such visitation.

6 5. Plaintiff is hereby granted judgment against Defendant
7 as and for her one-half interest and equity in Defendant's Utah
8 State Retirement Fund, and as Defendant has withdrawn his money
9 from said Retirement Fund entirely, and Plaintiff is now entitled
10 to judgment for her interest therein under the terms and as of
11 the date Decree of Divorce heretofore entered, in the amount of
12 \$ 12,859.74, plus interest at the legal rate from the date
13 of said Divorce Decree.

14 6. Plaintiff is granted judgment against Defendant in the
15 amount of \$ 911.25, as and for a reasonable attorney's
16 fee, plus costs in the amount of \$ 44.75, noting the
17 Affidavit in Support of Attorney's Fees, and the Memorandum of
18 Costs and Disbursement filed herewith.

19 BY THE COURT this 15 day of May, 1987.

20
21 
22 JUDGE GEORGE E. BALLIF

23 MAILING CERTIFICATE

24 I hereby certify that I mailed, postage prepaid, a copy of
25 the foregoing instrument to Mr. Dale A. Andersen, Attorney for
Defendant, at 2096 Templeview Drive, Provo, UT 84604 this 15
day of May, 1987.

EXHIBIT 3

PLAINTIFF'S	
EXHIBIT NO.	<u>3</u>
CASE NO.	<u>9504-143</u>
DATE:	<u>2/9/98</u> CLK: <u>SKF</u>

LAURENCE

EXHIBIT 4

PLAINTIFF'S

EXHIBIT NO. 4
CASE NO. 9504-143
DATE: 2/6/98 CLK: SKP

1 STOTT P. HARSTON (1595)
2 ALDRICH, NELSON, WEIGHT & ESPLIN
3 Attorneys for Plaintiff
4 45 East 200 North
5 P.O. Box "L"
6 Provo, UT 84605
7 Telephone: 373-4912

8 IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
9 STATE OF UTAH

10 LAREE R. NIELSEN,	:	
	:	
11 Plaintiff,	:	NOTICE OF JUDGMENT
	:	
12 vs.	:	
	:	
13 ROBIN A. NIELSEN,	:	Civil No. 64587
	:	
14 Defendant.	:	

15 TO THE ABOVE-NAMED DEFENDANT, ROBIN A. NIELSEN:

16 You will please take notice that on May 15, 1987, judgment
17 was entered against you in favor of Plaintiff in connection with
18 the Order Modifying Divorce Decree in the amount of Twelve
19 Thousand Eight Hundred Fifty-nine and 71/100 Dollars (\$12,859.71)
20 as Plaintiff's one-half interest in equity in Defendant's Utah
21 State Retirement Fund, plus the amount of Nine Hundred Eleven and
22 25/100 Dollars (\$911.25) as and for reasonable attorney's fee,
23 plus costs in the amount of Forty-four and 75/100 Dollars
24 (\$44.75) totalling Thirteen Thousand Eight Hundred Fifteen and
71/100 Dollars (\$13,815.71) plus interest thereon at the legal
rate of twelve percent (12%) per annum from that date until paid.

1 DATED and 71 day of JULY, 1987.

MAILING CERTIFICATE

I hereby certify that I mailed, postage prepaid, a copy of the foregoing instrument to Mr. Dale A. Andersen, Attorney for Defendant, at 2096 Temple View Drive, Provo, UT 84601, and to Mr. Robin A. Nielsen, Defendant, c/c Utah State Prison, P.O. Box 250, Draper, UT 84020 this 21st day of July, 1987.

Quentin Allen

EXHIBIT 5

PLAINTIFF'S
EXHIBIT NO. <u>5</u>
CASE NO. <u>9504-143</u>

FILED
FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY

1988 FEB -1 PM 3:36

WILLIAM R. NIELSEN
CLERK

1 STOTT P. HARSTON (1395)
2 ALDRICH, NELSON, WEIGHT & ESPLIN
3 Attorneys for Plaintiff
4 43 East 200 North
5 P.O. Box "L"
6 Provo, UT 84603
7 Telephone: 373-4912

8 IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

9 STATE OF UTAH

10 LAREE R. NIELSEN, :
11 : ORDER OF JUDGMENT
12 Plaintiff, :
13 : Civil No. 64587
14 vs. :
15 : (Commissioner Maetani)
16 ROBIN ADAIR NIELSEN, :
17 :
18 Defendant. :

19 This matter came regularly before the above-entitled Court
20 on January 12, 1988, at 10:00 a.m., Defendant having regularly
21 been served on December 16, 1987, and this matter having been
22 continued one week from the date originally set of January 5,
23 1988, pursuant to request of defense counsel, Glen J. Ellis of
24 Ellis & Ellis, the matter being heard before the Honorable
Commissioner Howard H. Maetani, Plaintiff appearing in person and
represented by counsel, Stott P. Harston of Aldrich, Nelson,
Weight & Esplin, and neither defense counsel nor the Defendant
present, the matter appearing before the Court pursuant to
Plaintiff's Order to Show Cause seeking judgment on back-due and
unpaid child support and alimony, as set forth in Plaintiff's

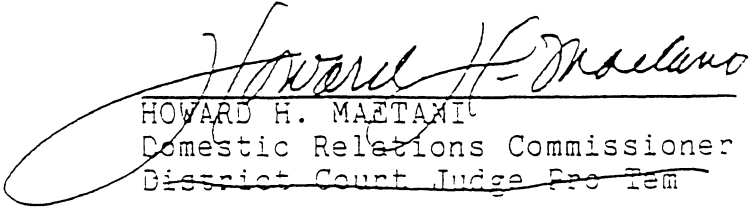
1 Affidavit heretofore served upon Defendant and is again proffered
2 in the Court, and good cause appearing, and the Court being fully
3 advised in the premises, it is hereby ORDERED, ADJUDGED and
4 DECREED:

5 1. That judgment be entered in favor of Plaintiff and
6 against Defendant for 14 months delinquent child support
7 beginning August 1986 through and including November 1987 in the
8 amount of \$400.00 per month, for a total of \$6,400.00 thereon;
9 and

10 2. That judgment be entered in favor of Plaintiff and
11 against Defendant for 14 months delinquent alimony beginning
12 August 1986 through and including November 1987 in the amount of
13 \$100.00 per month, for a total of \$1,600.00, for a total judgment
14 for delinquent child support and delinquent alimony in the amount
15 of \$8,000.00.

16 DATED this 1 day of February, 1988.

17 BY THE COURT:

18
19 
20 HOWARD H. MAETANI
21 Domestic Relations Commissioner
22 District Court Judge Pro Tem

23 
24 DISTRICT COURT JUDGE

EXHIBIT 12

PLAINTIFF'S
EXHIBIT NO. <u>12</u>
CASE NO. <u>9504-143</u>
DATE: <u>2/9/96</u> CLK: <u>SKF</u>

SCHEDULE OF DELINQUENT ALIMONY
AND CHILD SUPPORT

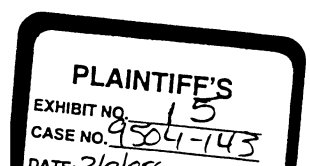
<u>DATE</u>	<u>CHILD SUPPORT</u>	<u>ALIMONY</u>
DEC. 1987	300.00	100.00
1988	3,400.00	1,200.00
1989	2,400.00	1,200.00
1990	2,400.00	1,200.00
1991	2,400.00	1,200.00
1992	2,400.00	1,200.00
1993	1,500.00	1,200.00
1994	1,200.00	1,200.00
1995	1,200.00	1,200.00
1996	1,200.00	1,200.00
1997	700.00	1,200.00
JAN. 1998	0.00	100.00
TOTAL	19,100.00	12,200.00

**RETIREMENT
JUDGEMENT PLUS INTEREST***
*@ 12% per Annum

Judgement signed May 15, 1987, as referred to in Notice of Judgement July 21, 1987.

Original sum of Judgement: \$13,815.74
Amount paid by Rodney Nielsen: \$10,288.93 (Paid from Robin Nielsen's Retirement)
Balance unpaid: \$ 3,526.81
Interest accrued and unpaid: \$ 8,089.63
TOTAL AMOUNT DUE: \$11,616.44

Month/Year	Principal:	Interest:	Unpaid Balance:
Aug-Dec. 1987	\$ 3,526.81	\$ 176.34	\$ 3,703.15
Jan-Dec. 1988	\$ 3,703.15	\$ 444.38	\$ 4,147.53
Jan-Dec. 1989	\$ 4,147.53	\$ 497.70	\$ 4,645.23
Jan-Dec. 1990	\$ 4,645.23	\$ 557.43	\$ 5,202.66
Jan-Dec. 1991	\$ 5,202.66	\$ 624.32	\$ 5,826.98
Jan-Dec. 1992	\$ 5,826.98	\$ 699.24	\$ 6,526.22
Jan-Dec. 1993	\$ 6,526.22	\$ 783.15	\$ 7,309.37
Jan-Dec. 1994	\$ 7,309.37	\$ 877.12	\$ 8,186.49
Jan-Dec. 1995	\$ 8,186.49	\$ 982.38	\$ 9,168.87
Jan-Dec. 1996	\$ 9,168.87	\$1,100.26	\$ 10,269.13
Jan-Dec. 1997	\$10,269.13	\$1,232.30	\$ 11,501.43
Jan-Feb. 1998	\$11,501.43	\$ 115.01	\$ 11,616.44



**CHILD SUPPORT/ALIMONY SCHEDULE:
PRINCIPAL/INTEREST
7.23%/ANNUUM, ie .6025%/MONTH**

MONTH:	BEGINNING PRINCIPAL:	INTEREST:	ALIMONY:	CHILD SUPPORT:	ENDING BALANCE:
Dec. 1987	\$ 8,000.00	\$ 48.20	\$ 100.00	\$ 300.00	\$ 8,448.20
Jan. 1988	\$ 8,448.20	\$ 50.90	\$ 100.00	\$ 300.00	\$ 8,899.10
Feb. 1988	\$ 8,899.10	\$ 53.62	\$ 100.00	\$ 300.00	\$ 9,352.72
Mar. 1988	\$ 9,352.72	\$ 56.35	\$ 100.00	\$ 300.00	\$ 9,809.07
Apr. 1988	\$ 9,809.07	\$ 59.10	\$ 100.00	\$ 300.00	\$ 10,268.17
May 1988	\$10,268.17	\$ 61.87	\$ 100.00	\$ 300.00	\$ 10,730.04
June 1988	\$10,730.04	\$ 64.65	\$ 100.00	\$ 300.00	\$ 11,194.69
July 1988	\$11,194.69	\$ 69.69	\$ 100.00	\$ 300.00	\$ 11,664.38
Aug. 1988	\$11,664.38	\$ 70.28	\$ 100.00	\$ 300.00	\$ 12,134.66
Sep. 1988	\$12,134.66	\$ 73.11	\$ 100.00	\$ 300.00	\$ 12,607.77
Oct. 1988	\$12,607.77	\$ 75.96	\$ 100.00	\$ 300.00	\$ 13,083.73
Nov. 1988	\$13,083.73	\$ 78.83	\$ 100.00	\$ 200.00	\$ 13,462.56
Dec. 1988	\$13,462.56	\$ 81.11	\$ 100.00	\$ 200.00	\$ 13,843.67
Jan. 1989	\$13,843.67	\$ 83.41	\$ 100.00	\$ 200.00	\$ 14,227.08
Feb. 1989	\$14,227.08	\$ 85.72	\$ 100.00	\$ 200.00	\$ 14,612.80
Mar. 1989	\$14,612.80	\$ 88.04	\$ 100.00	\$ 200.00	\$ 15,000.84
Apr. 1989	\$15,000.84	\$ 90.38	\$ 100.00	\$ 200.00	\$ 15,391.22
May 1989	\$15,391.22	\$ 92.73	\$ 100.00	\$ 200.00	\$ 15,783.95
June 1989	\$15,783.95	\$ 95.10	\$ 100.00	\$ 200.00	\$ 16,179.05
July 1989	\$16,179.05	\$ 97.48	\$ 100.00	\$ 200.00	\$ 16,576.53
Aug. 1989	\$16,576.53	\$ 99.87	\$ 100.00	\$ 200.00	\$ 16,796.40
Sep. 1989	\$16,796.40	\$ 101.20	\$ 100.00	\$ 200.00	\$ 17,197.60
Oct. 1989	\$17,197.60	\$ 103.62	\$ 100.00	\$ 200.00	\$ 17,601.22
Nov. 1989	\$17,601.22	\$ 106.05	\$ 100.00	\$ 200.00	\$ 18,007.27
Dec. 1989	\$18,007.27	\$ 108.49	\$ 100.00	\$ 200.00	\$ 18,415.76
Jan. 1990	\$18,415.76	\$ 110.96	\$ 100.00	\$ 200.00	\$ 18,826.71
Feb. 1990	\$18,826.71	\$ 113.43	\$ 100.00	\$ 200.00	\$ 19,240.14
Mar. 1990	\$19,240.14	\$ 115.92	\$ 100.00	\$ 200.00	\$ 19,656.06
Apr. 1990	\$19,656.06	\$ 118.43	\$ 100.00	\$ 200.00	\$ 20,074.49
May 1990	\$20,074.49	\$ 120.95	\$ 100.00	\$ 200.00	\$ 20,495.44
June 1990	\$20,495.44	\$ 123.49	\$ 100.00	\$ 200.00	\$ 20,918.80
July 1990	\$20,918.80	\$ 126.04	\$ 100.00	\$ 200.00	\$ 21,344.84
Aug. 1990	\$21,344.84	\$ 128.60	\$ 100.00	\$ 200.00	\$ 21,593.44
Sep. 1990	\$21,593.44	\$ 130.10	\$ 100.00	\$ 200.00	\$ 22,023.54
Oct. 1990	\$22,023.54	\$ 132.69	\$ 100.00	\$ 200.00	\$ 22,456.23
Nov. 1990	\$22,456.23	\$ 135.30	\$ 100.00	\$ 200.00	\$ 22,891.53
Dec. 1990	\$22,891.53	\$ 137.92	\$ 100.00	\$ 200.00	\$ 23,329.45

CHILD SUPPORT/ALIMONY SCHEDULE:**Page 2**

MONTH:	BEGINNING PRINCIPAL:	INTEREST:	ALIMONY:	CHILD SUPPORT:	ENDING BALANCE:
Jan. 1991	\$ 23,329.45	\$ 140.56	\$ 100.00	\$ 200.00	\$ 23,770.01
Feb. 1991	\$ 23,770.01	\$ 143.21	\$ 100.00	\$ 200.00	\$ 24,213.22
Mar. 1991	\$ 24,213.22	\$ 145.89	\$ 100.00	\$ 200.00	\$ 24,659.10
Apr. 1991	\$ 24,659.10	\$ 148.57	\$ 100.00	\$ 200.00	\$ 25,107.67
May 1991	\$ 25,107.67	\$ 151.27	\$ 100.00	\$ 200.00	\$ 25,558.94
June 1991	\$ 25,558.94	\$ 153.99	\$ 100.00	\$ 200.00	\$ 26,012.93
July 1991	\$ 26,012.93	\$ 156.73	\$ 100.00	\$ 200.00	\$ 26,469.66
Aug. 1991	\$ 26,469.66	\$ 159.48	\$ 100.00	\$ 200.00	\$ 26,929.14
Sep. 1991	\$ 26,929.14	\$ 162.25	\$ 100.00	\$ 200.00	\$ 27,391.39
Oct. 1991	\$ 27,391.39	\$ 165.03	\$ 100.00	\$ 200.00	\$ 27,856.42
Nov. 1991	\$ 27,856.42	\$ 167.84	\$ 100.00	\$ 200.00	\$ 28,324.25
Dec. 1991	\$ 28,324.25	\$ 170.65	\$ 100.00	\$ 200.00	\$ 28,794.90
Jan. 1992	\$ 28,794.90	\$ 173.49	\$ 100.00	\$ 200.00	\$ 29,268.39
Feb. 1992	\$ 29,268.39	\$ 176.34	\$ 100.00	\$ 200.00	\$ 29,744.73
Mar. 1992	\$ 29,744.73	\$ 179.21	\$ 100.00	\$ 200.00	\$ 30,223.94
Apr. 1992	\$ 30,223.94	\$ 182.10	\$ 100.00	\$ 200.00	\$ 30,706.04
May 1992	\$ 30,706.04	\$ 185.00	\$ 100.00	\$ 200.00	\$ 31,191.04
June 1992	\$ 31,191.04	\$ 187.93	\$ 100.00	\$ 200.00	\$ 31,678.97
July 1992	\$ 31,678.97	\$ 190.87	\$ 100.00	\$ 200.00	\$ 32,169.84
Aug. 1992	\$ 32,169.84	\$ 193.82	\$ 100.00	\$ 200.00	\$ 32,663.66
Sep. 1992	\$ 32,663.66	\$ 196.80	\$ 100.00	\$ 200.00	\$ 33,160.46
Oct. 1992	\$ 33,160.46	\$ 199.79	\$ 100.00	\$ 200.00	\$ 33,660.25
Nov. 1992	\$ 33,660.25	\$ 202.80	\$ 100.00	\$ 200.00	\$ 34,163.05
Dec. 1992	\$ 34,163.05	\$ 205.83	\$ 100.00	\$ 200.00	\$ 34,668.88
Jan. 1993	\$ 34,668.88	\$ 208.88	\$ 100.00	\$ 200.00	\$ 35,177.76
Feb. 1993	\$ 35,177.76	\$ 211.95	\$ 100.00	\$ 200.00	\$ 35,689.71
Mar. 1993	\$ 35,689.71	\$ 215.03	\$ 100.00	\$ 200.00	\$ 36,204.74
Apr. 1993	\$ 36,204.74	\$ 208.13	\$ 100.00	\$ 100.00	\$ 36,622.87
May 1993	\$ 36,622.87	\$ 220.65	\$ 100.00	\$ 100.00	\$ 37,043.52
June 1993	\$ 37,043.52	\$ 223.19	\$ 100.00	\$ 100.00	\$ 37,466.71
July 1993	\$ 37,466.71	\$ 225.74	\$ 100.00	\$ 100.00	\$ 37,892.45
Aug. 1993	\$ 37,892.45	\$ 228.30	\$ 100.00	\$ 100.00	\$ 38,320.75
Sep. 1993	\$ 38,320.75	\$ 230.88	\$ 100.00	\$ 100.00	\$ 38,751.63
Oct. 1993	\$ 38,751.63	\$ 233.48	\$ 100.00	\$ 100.00	\$ 39,185.11
Nov. 1993	\$ 39,185.11	\$ 236.09	\$ 100.00	\$ 100.00	\$ 39,621.20
Dec. 1993	\$ 39,621.20	\$ 238.72	\$ 100.00	\$ 100.00	\$ 40,059.92

CHILD SUPPORT/ALIMONY SCHEDULE:**Page 3**

MONTH:	BEGINNING PRINCIPAL:	INTEREST:	ALIMONY:	CHILD SUPPORT:	ENDING BALANCE:
Jan. 1994	\$ 40,059.92	\$ 241.36	\$ 100.00	\$ 100.00	\$ 40,501.28
Feb. 1994	\$ 40,501.28	\$ 244.02	\$ 100.00	\$ 100.00	\$ 40,945.30
Mar. 1994	\$ 40,945.30	\$ 246.70	\$ 100.00	\$ 100.00	\$ 41,392.00
Apr. 1994	\$ 41,392.00	\$ 249.39	\$ 100.00	\$ 100.00	\$ 41,841.39
May 1994	\$ 41,841.39	\$ 252.09	\$ 100.00	\$ 100.00	\$ 42,293.48
June 1994	\$ 42,293.48	\$ 254.82	\$ 100.00	\$ 100.00	\$ 42,748.30
July 1994	\$ 42,748.30	\$ 257.56	\$ 100.00	\$ 100.00	\$ 43,205.86
Aug. 1994	\$ 43,205.86	\$ 260.32	\$ 100.00	\$ 100.00	\$ 43,666.18
Sep. 1994	\$ 43,666.18	\$ 263.09	\$ 100.00	\$ 100.00	\$ 44,129.27
Oct. 1994	\$ 44,129.27	\$ 265.88	\$ 100.00	\$ 100.00	\$ 44,595.15
Nov. 1994	\$ 44,595.15	\$ 268.69	\$ 100.00	\$ 100.00	\$ 45,063.84
Dec. 1994	\$ 45,063.84	\$ 271.51	\$ 100.00	\$ 100.00	\$ 45,535.35
Jan. 1995	\$ 45,535.35	\$ 274.35	\$ 100.00	\$ 100.00	\$ 46,009.70
Feb. 1995	\$ 46,009.70	\$ 277.21	\$ 100.00	\$ 100.00	\$ 46,486.91
Mar. 1995	\$ 46,486.91	\$ 280.08	\$ 100.00	\$ 100.00	\$ 46,966.99
Apr. 1995	\$ 46,966.99	\$ 282.98	\$ 100.00	\$ 100.00	\$ 47,449.97
May 1995	\$ 47,449.97	\$ 285.89	\$ 100.00	\$ 100.00	\$ 47,935.86
June 1995	\$ 47,935.86	\$ 288.81	\$ 100.00	\$ 100.00	\$ 48,424.67
July 1995	\$ 48,424.67	\$ 291.76	\$ 100.00	\$ 100.00	\$ 48,916.43
Aug. 1995	\$ 48,916.43	\$ 294.72	\$ 100.00	\$ 100.00	\$ 49,411.15
Sep. 1995	\$ 49,411.15	\$ 297.70	\$ 100.00	\$ 100.00	\$ 49,908.85
Oct. 1995	\$ 49,908.85	\$ 300.70	\$ 100.00	\$ 100.00	\$ 50,409.55
Nov. 1995	\$ 50,409.55	\$ 303.72	\$ 100.00	\$ 100.00	\$ 50,913.27
Dec. 1995	\$ 50,913.27	\$ 306.75	\$ 100.00	\$ 100.00	\$ 51,420.02
Jan. 1996	\$ 51,420.02	\$ 309.81	\$ 100.00	\$ 100.00	\$ 51,929.83
Feb. 1996	\$ 51,929.83	\$ 312.88	\$ 100.00	\$ 100.00	\$ 52,442.71
Mar. 1996	\$ 52,442.71	\$ 315.97	\$ 100.00	\$ 100.00	\$ 52,958.68
Apr. 1996	\$ 52,958.68	\$ 319.08	\$ 100.00	\$ 100.00	\$ 53,477.76
May 1996	\$ 53,477.76	\$ 322.20	\$ 100.00	\$ 100.00	\$ 53,999.96
June 1996	\$ 53,999.96	\$ 325.35	\$ 100.00	\$ 100.00	\$ 54,525.31
July 1996	\$ 54,525.31	\$ 328.52	\$ 100.00	\$ 100.00	\$ 55,053.82
Aug. 1996	\$ 55,053.82	\$ 331.70	\$ 100.00	\$ 100.00	\$ 55,585.52
Sep. 1996	\$ 55,585.52	\$ 334.90	\$ 100.00	\$ 100.00	\$ 56,120.42
Oct. 1996	\$ 56,120.42	\$ 338.13	\$ 100.00	\$ 100.00	\$ 56,658.55
Nov. 1996	\$ 56,658.55	\$ 341.37	\$ 100.00	\$ 100.00	\$ 57,199.92
Dec. 1996	\$ 57,199.92	\$ 344.63	\$ 100.00	\$ 100.00	\$ 57,744.55

CHILD SUPPORT/ALIMONY SCHEDULE:**Page 4**

MONTH:	BEGINNING PRINCIPAL:	INTEREST:	ALIMONY:	CHILD SUPPORT:	ENDING BALANCE:
Jan. 1997	\$ 57,744.55	\$ 347.91	\$ 100.00	\$ 100.00	\$ 58,292.46
Feb. 1997	\$ 58,292.46	\$ 351.21	\$ 100.00	\$ 100.00	\$ 58,843.67
Mar. 1997	\$ 58,843.67	\$ 354.53	\$ 100.00	\$ 100.00	\$ 59,398.20
Apr. 1997	\$ 59,398.20	\$ 357.87	\$ 100.00	\$ 100.00	\$ 59,956.07
May 1997	\$ 59,956.07	\$ 361.24	\$ 100.00	\$ 100.00	\$ 60,517.31
June 1997	\$ 60,517.31	\$ 364.62	\$ 100.00	\$ 100.00	\$ 61,081.93
July 1997	\$ 61,081.93	\$ 368.02	\$ 100.00	\$ 100.00	\$ 61,649.95
Aug. 1997	\$ 61,649.95	\$ 371.44	\$ 100.00		\$ 62,121.39
Sep. 1997	\$ 62,121.39	\$ 374.28	\$ 100.00		\$ 62,595.67
Oct. 1997	\$ 62,595.67	\$ 377.14	\$ 100.00		\$ 63,072.81
Nov. 1997	\$ 63,072.81	\$ 380.01	\$ 100.00		\$ 63,552.82
Dec. 1997	\$ 63,552.82	\$ 382.91	\$ 100.00		\$ 64,035.73
Jan. 1998	\$ 64,035.73	\$ 385.82	\$ 100.00		\$ 64,521.55

ADDENDUM “B”

DISPOSITIVE STATUTES AND RULES

Rule 15(b), Utah Rules of Civil Procedure

(b) *Amendments to conform to the evidence.* When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court shall grant a continuance, if necessary, to enable the objecting party to meet such evidence.

Rule 15(c), Utah Rules of Civil Procedure

(c) *Relation back of amendments.* Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.