

1987

Janet Sue Johnson v. Val Budge Johnson : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Stephen W. Farr; Farr, Kaufman and Hamilton; Attorney for Plaintiff.

Tim W. Healy; Attorneys for Defendant.

Recommended Citation

Brief of Appellant, *Johnson v. Johnson*, No. 870241 (Utah Court of Appeals, 1987).

https://digitalcommons.law.byu.edu/byu_ca1/475

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

50

IN THE COURT OF APPEALS FOR THE STATE OF UTAH

.A10

DOCKET NO.

870241-CA

JANET SUE JOHNSON,

Plaintiff and
Appellant,

vs.

VAL BUDGE JOHNSON

Defendant and
Respondent.

:
:
:
:
:
:
:
:
:
:
:
:

Case No. 870241-CA

Priority No. 14(b)

BRIEF OF APPELLANT

An appeal from a judgement in the Second Judicial District
Court of Weber County, State of Utah, rendered by the
Honorable Judge John F. Wahlquist.

STEPHEN W. FARR (#1042) of
FARR, KAUFMAN & HAMILTON
Attorney for Plaintiff/Appellant
Bamberger Square, Building 1
205 26th Street, Suite 34
Ogden, Utah 84401
Telephone; 394-5526

TIM W. HEALY (#7606)
Attorney for Defendant/Respondent
863 25th Street
Ogden, Utah 84401
Telephone: 621-2630

IN THE COURT OF APPEALS FOR THE STATE OF UTAH

JANET SUE JOHNSON,

Plaintiff and
Appellant,

vs.

VAL BUDGE JOHNSON

Defendant and
Respondent.

:
:
:
:
:
:
:
:
:
:
:

Case No. 870241-CA

Priority No. 14(b)

BRIEF OF APPELLANT

An appeal from a judgement in the Second Judicial District
Court of Weber County, State of Utah, rendered by the
Honorable Judge John F. Wahlquist.

STEPHEN W. FARR (#1042) of
FARR, KAUFMAN & HAMILTON
Attorney for Plaintiff/Appellant
Bamberger Square, Building 1
205 26th Street, Suite 34
Ogden, Utah 84401
Telephone; 394-5526

TIM W. HEALY (#7606)
Attorney for Defendant/Respondent
863 25th Street
Ogden, Utah 84401
Telephone: 621-2630

TABLE OF CONTENTS

| | |
|--|----|
| JURISDICTION..... | 1 |
| NATURE OF THE PROCEEDINGS..... | 1 |
| STATEMENT OF THE ISSUES PRESENTED ON APPEAL..... | 2 |
| STATEMENT OF THE FACTS..... | 2 |
| SUMMARY OF THE ARGUMENT..... | 8 |
| ARGUMENT..... | 10 |

POINT I

APPELLANT SHOULD BE ENTITLED TO AN EQUITABLE
INTEREST IN RESPONDENT'S MEDICAL LICENSE.

POINT II

THE VALUATION METHOD EMPLOYED BY THE TRIAL COURT
IN DETERMINING THE VALUE OF THE RESPONDENT'S
MEDICAL PRACTICE DID NOT LEAD TO A FAIR ASSESSMENT
OF THE VALUE OF RESPONDENT'S ON-GOING MEDICAL PRACTICE.

POINT III

THE TRIAL COURT ERRED BY BASING ITS AWARD OF
ALIMONY UPON A PROJECTED FUTURE INCOME WHICH
WAS SUBSTANTIALLY BELOW DR. JOHNSON'S INCOME
IN EACH OF THE PRECEDING FIVE YEARS.

POINT IV

THE TRIAL COURT'S AWARD OF ALIMONY IS INSUFFICIENT
AND AN ABUSE OF ITS DISCRETION CONSIDERING THE
FINANCIAL CONDITION AND NEEDS OF MRS. JOHNSON, THE
ABILITY OF MRS. JOHNSON TO PRODUCE A SUFFICIENT
INCOME FOR HERSELF, AND THE INCOME OF DR. JOHNSON.

A. The Court of Appeals has the authority to
fashion its own remedy as a substitution for
that of the trial court.

B. The trial court abused its discretion by
failing to consider the value of Dr. Johnson's
medical degree when awarding alimony.

C. The alimony awarded to Mrs. Johnson by
the trial court is insufficient to maintain

her present standard of living.

D. The trial court failed to consider all of the factors required by the Utah Supreme Court in determining alimony.

E. The trial court's award of alimony is substantially below the rate at which other Utah courts have awarded spouses in similar situations.

F. The fact that Mrs. Johnson was awarded 50 percent of the marital assets does not decrease her need for more alimony since the assets which she received as a result of the property distribution do not produce income.

POINT V

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT HELD THAT THE UNIFORM CHILD SUPPORT SCHEDULE, UPON WHICH IT RELIED IN DETERMINING CHILD SUPPORT, SHOULD NOT BE EXTENDED TO CONSIDER ANNUAL INCOME LEVELS BEYOND \$120,000.00.

POINT VI

APPELLANT IS ENTITLED TO FIFTY PERCENT OF RESPONDENT'S INCOME DURING THE PERIOD THE COUPLE WAS SEPARATED, YET PRIOR TO DIVORCE.

CONCLUSION.....33

ADDENDUM.....33

TABLE OF AUTHORITIES

CASES CITED

| | |
|---|----|
| <u>Berry v. Berry</u> , 635 P.2d 68 (Utah 1981)..... | 15 |
| <u>Bushell v. Bushell</u> , 649 P.2d 85 (Utah 1983)..... | 19 |
| <u>Fletcher v. Fletcher</u> , 615 P.2d 1218, (Utah 1980)..... | 20 |

| | |
|--|----------------------|
| <u>Gramme v. Gramme</u> , 587 P.2d 144 (Utah 1978)..... | 19,20 |
| <u>Higley v. Higley</u> , 676 P.2d 379 (Utah 1983)..... | 20 |
| <u>Jones v. Jones</u> , 700 P.2d 1072 (Utah 1985)..... | 17,22-24 |
| <u>MacDonald v. Macdonald</u> , 236 P.2d 1066 (Utah 1951)..... | 18,20 |
| <u>Olson v. Olson</u> , 704 P.2d 564 (Utah 1985)..... | 21,23 |
| <u>Peterson v. Peterson</u> , 737 P.2d 237 (Utah 1987)..... | 8,10,16-18,22,24,26. |
| <u>Penrose v. Penrose</u> , 656 P.2d 1017 (Utah 1982)..... | 16 |
| <u>Savage v. Savage</u> , 658 P.2d 1201 (Utah 1983)..... | 22,25,26 |
| <u>Searle v. Searle</u> , 522 P.2d 697 (Utah 1974)..... | 21 |
| <u>Turner v. Turner</u> , 649 P.2d 6 (Utah 1982)..... | 4 |
| <u>Yelderman v. Yelderman</u> , 669 P.2d 406 (Utah 1983)..... | 25,26 |

STATUTORY AUTHORITY

| | |
|--|---|
| Rule 3(a), Rules of the Utah Court of Appeals..... | 1 |
|--|---|

IN THE COURT OF APPEALS FOR THE STATE OF UTAH

JANET SUE JOHNSON,

Plaintiff and
Appellant,

vs.

VAL BUDGE JOHNSON

Defendant and
Respondent.

:
:
:
:
:
:
:
:
:
:
:
:

Case No. 870241-CA

Priority No. 14(b)

BRIEF OF APPELLANT

JURISDICTION

Jurisdiction to hear the above entitled appeal is conferred upon the Utah Court of Appeals, pursuant to the Rule 3(a) of the Rules of the Utah Court of Appeals. This is an appeal from a final order or judgement of the Second Judicial District Court. Legislation creating the Utah Court of Appeals granted this Court the specific authority to review decisions in domestic relations cases. The original action herein was an action for divorce.

NATURE OF THE PROCEEDINGS

This is an appeal of a judgement rendered by the Honorable John F. Wahlquist awarding child support, alimony, and dividing the estate of the parties. The judgement was entered on May 22, 1987, and the Notice of Appeal was timely filed on June 19, 1987.

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

The issues presented on appeal are as follows:

1. Whether the Appellant should be awarded a monetary interest in Respondent's medical license.

2. Whether the Trial Court erred in the method it adopted in assessing the value of Respondent's interest in the professional corporation, Associates of Pathology.

3. Whether the trial court erred by basing its award of alimony upon a projected future income which was substantially below the average income of Dr. Johnson in the preceding five years.

4. Whether the Appellant should be awarded more than \$1,000.00 per month alimony for 120 months based upon Respondent's average earnings over the last five years of between \$150,000.00 and \$190,000.00, Appellant having no outside earnings of her own.

5. Whether the trial court erred in limiting child support to \$648.00 per child per month based upon its interpretation of the Uniform Child Support Schedule to mean that a supporting parent who earns more than \$120,000.00 per year should not be assessed more than a parent making only \$120,000.00 because the Schedule does not extend beyond a parental income of \$120,000.00.

6. Whether the Appellant should be awarded one half of Respondent's income during the time the two were separated, but prior to their divorce.

STATEMENT OF THE FACTS

The parties were married on August 19, 1966, and they were separated on or about February 1, 1986. An action for Separate Maintenance was filed by the Appellant and an action for Divorce was filed by way of Counterclaim by Respondent. The matter was heard in the Second Judicial District Court in and for Weber County, State of Utah, the Honorable John F. Wahlquist presiding, on the 20th and 23rd days of March, 1987.

The parties married after the Respondent had completed one year of medical school. Respondent's parents paid costs incurred by Respondent for tuition and books only during his schooling. While the Respondent attended Medical School in St. Louis, Missouri, Appellant was employed by the St. Louis Globe Democrat, and except for the tuition and the books, she supported Respondent during his remaining three years of medical school. Respondent's contribution to his medical school expenses were that he obtained a small scholarship during his final year of medical school in the sum of \$400.00, and he had a part-time job during his third and fourth years of medical school. The average weekly pay from his part time employment was \$150.00 per month. He had the part time job for a period of 21 months. Other than the contributions mentioned above, the sole supporter of the family during the final three years of Respondent's medical school training, was the Appellant, Mrs. Johnson.

Following graduation from medical school, the respondent began a one-year internship. Appellant continued to work during

this one-year period, contributing her earnings to the support of the family. Following completion of a one year internship, Respondent began training as a resident in pathology. At that time, the parties mutually decided to begin their family. The parties further agreed that Appellant would not continue to work, but would serve the family as a full-time homemaker and mother. Appellant terminated her work, and over the next few years three children were born to the marriage.

Appellant earnings from The St. Louis Globe Democrat gross were about \$13,960.00, which approximately equalled the estimated costs of supporting the family during that time which was roughly \$14,725.00. The figure of \$14,725.00 was calculated by multiplying \$475.00, the estimated monthly cost of living during the time Dr. Johnson was in medical school, by the 31 months he spent in school.

Upon graduation from medical school, the Dr. Johnson served his internship with the Public Health Service in Seattle, Washington. He was an intern from July 1969, through July, 1970. Thereafter, he became served his residency with the Public Health Service in Seattle, Washington, from June, 1970 to June, 1974. In that month, Respondent accepted a position with his present employer, Associates of Pathology, Inc., of Ogden, Utah, where he continues to be employed at the present time. By mutual agreement and consent of the parties, Mrs. Johnson has not been employed outside the home since 1970, and although she received a Bachelor of Arts Degree from Weber Sate College, she has not

pursued any career as a result of that degree, due to her commitment as a homemaker.

At the time of the trial in March of 1987, the parties had assets with a fair market value of approximately \$850,000.00 to \$900,000.00. (See, Exhibit entitled "Proposal for Settlement" dated 1/20/87 entered as evidence during opening arguments by Mr. Farr, Tr. p. 10, Exhibit No. unknown). These assets consisted of real and personal property including stocks, bonds, cash, pension and retirement funds. The parties have agreed that the aforementioned assets would be divided equally, with each party receiving approximately 50 percent of their value. (Tr. p. 7, ln. 4-10). The tangible assets have been divided by agreement of the parties.

At trial, Appellant put on evidence to establish the value of Respondent's interest in the professional corporation, Associates of Pathology. To estimate the value of Respondent's interest in the aforementioned corporation, Appellant retained the services of the accounting firm of KBMG-Peat Marwick, the fourth largest accounting firm in the world, (Tr. p. 58, lines 15-22), with offices in Salt Lake City, Utah, as expert witnesses with respect to the value of respondent's medical practice. Merrill Norman (Tr. pp. 57-206) and John Brough (Tr. pp. 111-113) testified as expert witnesses from that firm at the District Court Trial. The accountants did extensive research into the valuation of the medical practice, their accounting services totalling more than \$8,000.00. However, in spite of the effort

and expertise that went into the valuation of the medical practice by Appellant's experts, the trial court held that the accountant's valuation of the medical practice was not credible. (Conclusions of Law, No. 4).

Although the trial court awarded the Appellant a 50 percent interest in the Respondent's medical practice, (Conclusions of Law No. 9) the manner in which the trial court valued the medical practice is disputed. The trial court held "That the value of defendant's interest in the Associates of Pathology, a professional corporation, is \$14,521.00." (Findings of Fact, No. 18). The trial court valued the Dr. Johnson's interest in the professional corporation by adopting the method of valuation proposed by the Respondent, and used by the professional corporation in their buy-out agreement. (See Plaintiff's Exhibit 9-D referred to in the transcript of the record at pp. 119-20). Essentially, the buy-out agreement states that in the event that a member of Associates of Pathology decides to leave the professional corporation, or dies, the equipment, the cash on hand, and the accounts receivable are added together and the sum of those assets constitutes the worth of the leaving member's portion of the association.

Appellant argued at trial that the Respondent's portion of Associates of Pathology, should be valued as an ongoing concern, rather than according to the buy-out agreement referred to above, which contemplates the termination of a member's interest in the corporation.

According to the method of valuation used by Appellant's experts, the Respondent's portion of the association, valued as a going concern, was approximately \$154,997.00, (see Exhibit 8-P).

The trial court adopted the method of valuation proposed by Respondent referred to above, and determined the value of Respondent's medical practice to be the total of Respondent's equipment, cash on hand, and accounts receivable, which was valued at \$14,521.00. (Findings of Fact, No. 18). According to the trial court's determination, the Appellant was awarded fifty percent of the \$14,521.00, or \$7,260.50. (Conclusions of Law No. 9).

The trial court awarded the Appellant \$1,000.00 per month in alimony for a period of ten years, or until the Appellant remarries, cohabits with another, or dies. (Conclusions of Law No. 8).

Child support was awarded to the Appellant in the amount of \$648.00 per child per month. (Conclusions of Law No. 3). At the trial, the parties agreed that the child support be based upon the Uniform Child Support Schedule as used by the courts in the Second Judicial District. (Tr. p. 12, ln. 8) However, the parties disagreed as to whether the Uniform Schedule was to have a ceiling, or whether it was meant to be extended at the same percentage rates until the child support becomes commensurate with the supporting parent's income. (Tr. at 12-13). The Appellant's position is that the Utah Uniform Child Support Schedule arbitrarily ends at an annual income level of

\$120,000.00 and was meant to continue to extend the child support amounts at the same rates until a figure is arrived at that coincides with the income of the parent paying the child support.

Respondent's position at trial was that The Uniform Child Support Schedule was intended to have a ceiling, beyond which point, an increase in the supporting parent's income will not increase the amount awarded as child support. Dr. Johnson's income for 1986 was \$190,580.00, (see Defendant's answers to Plaintiff's interrogatories, and Tr. pp. 46-49) which amount was not on the Uniform Child Support Schedule because the schedule does not extend beyond a \$120,000.00 annual parental income. The Trial Court held that "the maximum income figure used for child support pursuant to the Uniform Child Support Schedule of \$10,000.00 per month recognizes that even though a father's income may be higher, the cost of raising and supporting said children locally will not increase although the father's income may exceed the \$10,000.00 per month figure." (Findings of Fact No. 27, see also, Memorandum Decision No. 5).

The trial court awarded \$648.00 per month per child for each of the parties three children because the Uniform Child Support Schedule stops at an annual income level of \$120,000.00. According to Appellant, if the Schedule would have been extended according to the rates used in the Schedule, the amount payable as child support would have been \$1,047.00 per month per child for each of the parties three children. (Tr. p. 12).

SUMMARY OF THE ARGUMENT

POINT I. The Appellant believes that a medical license should be considered as property subject to division between spouses, in spite of the Court of Appeals decision in Peterson v. Peterson, 58 Utah Adv. Rep. 28, (Ct. App. 1987), and wishes to raise the issue in the event that the matter goes to the Supreme Court of Utah.

POINT II. Appellant contends that the method of valuation by which the trial court determined the worth of the Respondent's medical practice was not a fair representation of the true value of the practice because the trial court used the dissolution agreement between the doctor members of Associates of Pathology to determine the value of an on-going practice. Mrs. Johnson was not a party to the buy-out agreement between the doctors.

POINT III. Appellant contends that the trial court erred by basing its award of alimony upon a projected future income of Dr. Johnson which was substantially below the doctor's income level of the previous five years.

POINT IV. Appellant contends that the trial court's award of \$1,000.00 per month alimony for 120 months is inadequate, and, considering the factors used by the Utah courts, and recent awards by other Utah courts in similar situations, it is far from being a reasonable award in view of the fact that the wife had

not worked for over 17 years, that she had no outside income, her standard of living, her needs, and the fact that the husband's 1986 income was more than \$190,000.00.

POINT V. Appellant would argue that the Uniform Child Support Schedule, relied upon by the trial court in determining the amount of child support, was not intended to put a ceiling, upon all child support payable, but should continue at the same percentage rates until the figures are in line with the income of the father.

POINT VI. Appellant contends that she is entitled to an equitable interest in Respondent's post-separation, pre-divorce income. Appellant should not be penalized for the time in which the parties were separated by being refused one half of the Respondent's income during that time.

ARGUMENT

POINT I

APPELLANT IS ENTITLED TO AN EQUITABLE INTEREST IN RESPONDENT'S MEDICAL LICENSE

Following trial of this case at the District Court, the Utah Court of Appeals, in the case of Peterson v. Peterson, 58 Utah Adv. Rep. 28, (Ct. App. 1987), held that a medical degree or license is not property subject to division between spouses. Because the same issue was relied upon by the Appellant in this

case, and because the issue has not as yet been heard by the Supreme Court of Utah, the Appellant herein raises the issue in the event that it reaches the Supreme Court of Utah.

Appellant's experts valued Respondent's medical degree and or license at \$1,156,426.00. Briefly, the value was calculated by subtracting the average income of a college graduate at age 44 in 1987, from the annual income of the average pathologist at age 44, in 1987. The average pathologist works until the age of 62. According to the national average for pathologists, Dr. Johnson has a worklife expectancy of 18 years. The difference in the income of the average pathologist, less the income of the average college graduate, multiplied by 18 and reduced to a present day value equals \$1,156,426.00. (See Exhibit 8-P entitled "Summary of Valuation Methods").

According to Appellant's experts, Dr. Johnson makes \$6,437.00 per month more than the average college graduate, and \$2,785.00 per month more than the average pathologist in the United States. Appellant's experts claim that Dr. Johnson's association with Associates of Pathology is the reason that he makes more than the average pathologist of his age. Appellant contends that the medical degree or license has value and that it should be considered as a property interest to be divided between the spouses.

POINT II

THE VALUATION METHOD EMPLOYED BY THE TRIAL COURT
IN DETERMINING THE VALUE OF THE RESPONDENT'S
MEDICAL PRACTICE DID NOT LEAD TO A FAIR ASSESSMENT
OF THE VALUE OF RESPONDENT'S ON-GOING MEDICAL PRACTICE.

At trial, the judge awarded Mrs. Johnson one half of the value of Respondent's medical practice, with this portion of the trial court's decision the Appellant has no argument. However, the trial court based the value of the Respondent's portion of the medical practice upon a dissolution agreement entered into by the members of Associates of Pathology. By adopting this method of valuation, Appellant argues that the court abused its discretion. The net effect of the trial court's adoption of Respondent's method of valuation, was to take Appellant's fifty percent interest in her husband's on-going medical practice from an estimated value of \$77,498.50, according to the Appellant's experts, to an estimated value of \$7,260.50 according the buy-out agreement formula.

The buy-out agreement of Associates of Pathology, adopted by the trial court in determining the value of Respondent's portion of the association, provides a formula by which an associate's portion of the professional corporation is determined for purposes of reaching a pay-off figure in the event that a partner leaves the association, or dies. The value of Dr. Johnson's portion of Associates of Pathology, according to this method, as adopted by the trial court was \$14,521.00, of which Mrs. Johnson was awarded 50 percent, or \$7,260.50.

Essentially, the buy-out agreement states that in the event

a member of Associates of Pathology leaves the corporation or dies, the value of the equipment, cash on hand, and the accounts receivable are totalled and the resulting figure constitutes the worth of the departing member's portion of the association, which he or his heirs is entitled to receive upon disassociation with the other doctors.

The Appellant argued at trial that the Respondent's portion of Associates of Pathology, should be valued as an ongoing concern, rather than as a close-out, because Dr. Johnson did not, nor is he planning, to leave the association. On the contrary, he is probably going to work within the association until he retires, barring some unforeseen event.

According to the method of valuation used by Appellant's experts, the Respondent's portion of the association, valued as a going concern, was approximately \$154,997.00. At trial, Respondent offered no evidence to refute the Appellant's valuation of Dr. Johnson's portion of Associates of Pathology as an on-going enterprise, but argued only that the value of the doctor's portion of the corporation should be computed according to the corporation's buy-out agreement.

To summarize Appellant's argument, the Respondent's portion is worth far more than the value of his medical equipment, accounts receivable, and the cash on hand at a fixed time. The method employed by the trial court in assessing the value of Dr. Johnson's interest in Associates of Pathology, fails to consider good-will, and the fact that the enterprise is an on-going

concern that will continue to produce income until Dr. Johnson either retires or dies. At age 44, Dr. Johnson has 21 years until he reaches age 65, and 18 years until he reaches age 62, the age at which the average pathologist in the United States retires. The trial court has clearly abused its discretion by failing to consider Dr. Johnson's interest in Associates of Pathology as an on-going concern.

POINT III

THE TRIAL COURT ERRED BY BASING ITS AWARD OF ALIMONY UPON A PROJECTED FUTURE INCOME WHICH WAS SUBSTANTIALLY BELOW DR. JOHNSON'S INCOME IN EACH OF THE PRECEDING FIVE YEARS.

In the trial court's Memorandum Decision, at No. 5, the court found that Dr. Johnson's annual income was approximately \$130,000.00 to \$155,000.00. At trial, the Appellant offered evidence that Respondent's pension plan should also be counted as income, because even though money put into the pension plan will not be included as income for tax purposes, the money is discretionary income and should be included as part of the doctor's annual income. (Tr. at pp. 206-207). Doctor Johnson put \$25,000.00 to \$30,000.00 into a pension plan every year. From the trial court's findings of fact, it appears as if the court did not include that amount as part of Dr. Johnson's annual income.

Dr. Johnson had annual incomes for the past five years as indicated in Dr. Johnson's answers to interrogatories. The following figures represent Dr. Johnson's income for the past

five years:

1982

| | |
|--|---------------|
| Wages..... | \$54,000.00 |
| Dividends, interest, and bonds..... | \$11,606.00 |
| Bonus..... | \$51,500.00 |
| Contribution to profit sharing and pension plan... | \$25,000.00 * |
| <hr/> | |
| Total 1982 income..... | \$142,106.00 |

1983

| | |
|--|---------------|
| Wages..... | \$54,000.00 |
| Dividends, interest, and bonds..... | \$13,257.00 |
| Bonus..... | \$66,560.00 |
| Contribution to profit sharing and pension plan... | \$30,000.00 * |
| <hr/> | |
| Total 1983 income..... | \$163,817.00 |

1984

| | |
|--|---------------|
| Wages..... | \$60,000.00 |
| Dividends, interest, and bonds..... | \$15,967.00 |
| Bonus..... | \$93,500.00 |
| Contribution to profit sharing and pension plan... | \$30,000.00 * |
| <hr/> | |
| Total 1984 income..... | \$199,467.00 |

1985

| | |
|--|---------------|
| Wages..... | \$60,000.00 |
| Dividends, interest, and bonds..... | \$17,152.00 |
| Bonus..... | \$72,980.00 |
| Contribution to profit sharing and pension plan... | \$30,000.00 * |
| <hr/> | |
| Total 1985 income..... | \$180,132.00 |

1986

| | |
|--|---------------|
| Wages..... | \$69,000.00 |
| Dividends, interest, and bonds..... | \$10,000.00 |
| Bonus..... | \$81,580.00 |
| Contribution to profit sharing and pension plan... | \$30,000.00 * |
| <hr/> | |
| Total 1982 income..... | \$190,580.00 |

* The amounts contributed to the profit sharing plan, and the pension plan were disputed. However, the figures were included in Appellant's total income figures.

Appellant contends that the trial court abused its discretion by undervaluing the income of Dr. Johnson for purposes of awarding alimony and child support.

POINT IV

THE TRIAL COURT'S AWARD OF ALIMONY IS INSUFFICIENT AND AN ABUSE OF ITS DISCRETION CONSIDERING THE FINANCIAL CONDITION AND NEEDS OF MRS. JOHNSON, THE ABILITY OF MRS. JOHNSON TO PRODUCE A SUFFICIENT INCOME FOR HERSELF, AND THE INCOME OF DR. JOHNSON.

- A. The Court of Appeals has the authority to fashion its own remedy as a substitution for that of the trial court.

In the case of Berry v. Berry, 635 P. 2d 68 (Utah 1981), the Utah Supreme Court held that,

"There is no fixed formula which a trial judge in a divorce action must follow in making divisions of properties, but it is the prerogative of the Court to make whatever disposition it deems fair, equitable, and necessary for the protection and welfare of the parties." Id., at 69.

The Appellate Court will not disturb a trial court's Findings and Judgment merely because it views a matter differently, but would do so only if it appeared that the evidence clearly preponderates against the trial court's findings, or that the trial court misapplied the law, or abused its discretion, so that an injustice has resulted. It is the trial court's duty to divide the property and income in a divorce proceeding so that the parties may readjust their lives to the new situation as well as possible, but there is no fixed rule or formula for the distribution of a marital estate. Turner v. Turner, 649 P.2d 6 (Utah 1982).

However, it is the duty and prerogative of the Court of Appeals, in equity matters where the occasion warrants, and after

a review of both the facts and the law, to fashion its own remedy as a substitution for the judgment of the trial court. Penrose v. Penrose, 656 P.2d 1019 (Utah 1982).

B. The trial court abused its discretion by failing to consider the value of Dr. Johnson's medical degree when awarding alimony.

In the present case, the trial court abused its discretion when it failed to consider the value of the husband's medical degree when it awarded alimony to the wife.

In the recent case of Peterson v. Peterson, 58 Utah Adv. Rep. 28 (Ct. App. 1987), the Court, while refusing to term the husband's medical degree as "marital property" for purposes of a division of assets, the court did take into account the value of the degree in the form of alimony. In Peterson, the trial court held that the husband's medical degree had a present value of \$120,000.00, and therefore gave the wife \$1,000.00 per month for 120 months in addition to a \$1,000.00 per month alimony award. In the present case, the trial court held that the Dr. Johnson's medical degree has no value as divisible marital property, and gave the wife only \$1,000.00 per month as alimony, not taking into consideration the value of the husband's medical degree.

In Peterson, the trial court found that the husband was capable of making \$100,000.00 per year, and alimony in the amount of \$1,000.00 per month was awarded on that basis. Additionally, the trial court held that the husband's medical degree had a present day value of \$120,000.00 and awarded the wife that amount

in monthly installments of \$1,000.00 for 120 months.

On appeal, the Utah Court of Appeals held in Peterson, that the husband's medical degree was improperly valued as marital property by the trial court, but upheld the award of \$120,000.00 by granting the value of the medical license to the wife in the form of alimony. In the present case the husband made over \$190,000.00 in 1986, based upon that figure alone, the trial court awarded the wife \$1,000.00 per month alimony.

In Peterson the Court discussed the factors to be used in determining a reasonable amount of alimony. Those factors, taken from the case of Jones v. Jones, 700 P.2d 1072 (Utah 1985), are:

- (1) the financial condition and needs of the wife;
 - (2) the ability of the wife to produce a sufficient income for herself;
 - (3) the ability of the husband to provide support.
- Id. at 1075.

In discussing the third factor, the Court in Peterson stated:

This is the proper realm in which to consider advanced degrees or professional licenses. An advanced degree is ordinarily an indicator of potential future earnings. In addition, the attainment of a degree by one spouse often results in a disparity of income that is likely to last for a great time, particularly in cases like the present one. Dr. Peterson has a history of earning more than \$100,000.00 a year and Mrs. Peterson has not worked for the past fifteen. But it is the discrepancy of their earning power which is the basis for alimony, not the discrepancy of their educations. There is no logical reason, for example, for treating differently a self-trained artist without formal education who earns and will earn \$100,000.00 a year and a doctor with a medical degree who earns and will earn \$100,000.00 a year. Peterson, Utah Adv. Rep. at 32.

In Peterson, while the Court did not award a monetary value to the husband's medical degree in the form of marital property, the

degree was considered, and the Court of Appeals reflected the value of the medical degree in the form of an alimony award.

In the present case the trial court failed to attach a value to the husband's medical degree when it awarded the alimony. In this case, even though the husband makes almost twice as much as the husband in Peterson, the alimony awarded was exactly one half of that awarded in Peterson. That fact alone is good reason to believe there has been an abuse of discretion, but in addition to granting an unreasonably low alimony award based upon the husband's annual income, the trial court did not even consider the potential earning capacity of the Respondent because of his medical degree.

C. The alimony awarded to Mrs. Johnson by the trial court is insufficient to maintain her present standard of living.

In MacDonald v. MacDonald, 236 P.2d 1066 (Utah 1951), the Court held that where there are sufficient assets and income to do so, a wife against whom a divorce decree has been entered is entitled to be provided for according to her station in life and as demanded by her condition of health and lack of ability to work. The facts in the present case are that Mrs. Johnson, who has devoted the past seventeen years of her life to the rearing of Mr. Johnson's children, and supporting Mr. Johnson while he attended Medical school, has forgone career opportunities in which she could have used her bachelor of arts degree in business administration to conceivably advance a career considerably.

Mrs. Johnson is entitled to be provided for according to her

station in life. As a doctor's wife, Mrs. Johnson has led a life of extensive travel, and her social involvement has required that she maintain a certain level of respect and dignity among her peers. To force Mrs. Johnson to lower her standard of living in order to meet the needs of her position would run contrary to the intent for which alimony is provided.

In Bushell v. Bushell, 649, P.2d 85 (Utah 1983), where the ex-wife testified at trial that she needed alimony to repair the roof on her home, to pay the utilities, and to obtain additional training so that she could secure a job which pays adequately. The court considered her financial conditions and needs and reiterated the rule set forth in Gramme v. Gramme, 587 P.2d 144 (Utah 1978), which is that:

The purpose of alimony is to provide support for a wife as nearly as possible at the standard of living she enjoyed during marriage and to prevent her from becoming a public charge.
Id., at 147.

The trial court appears to have disregarded the observation of the court in Gramme that alimony is not a reward, nor a penalty, because it is a post-marital duty of support and maintenance. Fletcher v. Fletcher, 615 P.2d 1218, 1223 (Utah 1980). In MacDonald, Defendant made the argument that:

she was entitled to be provided for according to her station in life and as demanded by her condition of health and lack of ability to work; that she should not be cast aside in her helpless condition to 'sink or swim' or depend of others."

The court agreed with the argument and added that this was part of the continuing responsibility of the marriage covenant:

"... in sickness, in health; for better or worse...." This promise cannot be entirely avoided, even by divorce. In the present case it appears that Defendant is expected to do just what the court in MacDonald was trying to avoid, "sink or swim".

The court found in Higley v. Higley, 676 P.2d 379 (Utah 1983), that an award of only \$100.00 per month alimony was an abuse of discretion because it would not afford the wife a standard of living close to the standard of living enjoyed by the parties during the marriage. The Higley case involved a thirty year marriage and the husband's gross income was \$23,356.80 per year. The court found that the husband had the ability to provide permanent support in an amount greater than \$100.00 per month.

The Court observed in Gramme v. Gramme, 587 P.2d 144 (Utah 1978), that:

the purpose of alimony is to provide post-marital support; it is intended neither as a penalty imposed on the husband nor as a reward granted to the wife. Its function is to provide support for the wife as nearly as possible at the standard of living she enjoyed during the marriage to prevent her from becoming a public charge. Important criteria in delivering a reasonable award for support and maintenance are the financial conditions and needs of the wife, considering her station in life; her ability to produce sufficient income for herself; and the ability of the husband to provide support. Id., at 147.

In addition to providing support for the wife as nearly as possible to the standard of living enjoyed during the marriage, the Utah Supreme Court, in the case of Olson v. Olson, 704 P.2d

564 (1985), in further describing the purpose of alimony stated;

An alimony award should, as far as possible, equalize the parties' respective standards of living and maintain them at a level as close as possible to the standard of living enjoyed during the marriage. Id., at 566, emphasis added.

In the present case, because the trial court abused its discretion by failing to award reasonable alimony, Mrs. Johnson will be deprived of her ability to live in the manner she was accustomed to and will be precluded from other luxuries that were the culmination of the parties' joint efforts over the 21 years of their marriage. It is the responsibility of the trial court to endeavor to provide a just and equitable adjustment of their economic resources so that the parties might reconstruct their lives on a happy and useful basis. Searle v. Searle, 522 P.2d 697 (Utah 1974). In a dissolution of the marriage of a substantial duration, the objective is that the parties separate on as equal a basis as possible. The Utah Court of Appeals in Peterson, the most recent Utah case on alimony, quoted from Savage v. Savage, 658 P.2d 1201 (Utah 1983), the Supreme Court in Savage stated:

Where a marriage is of long duration and the earning capacity of one spouse greatly exceeds that of the other, as here, it is appropriate to order alimony and child support at a level which will ensure that the supported spouse and children may maintain a standard of living not unduly disproportionate to that which they would have enjoyed had the marriage continued. Id., at 1205.

In the present case the Appellant is left with no means of income other than alimony, and that alimony is \$1,000.00. On the

other hand, according to Respondent's answers to Appellant's interrogatories, Respondent had a gross income in 1986 of \$190,580.00, or a gross monthly income of \$15,881.66. To award the Appellant a mere \$1,000.00 per month alimony, in view of the Respondent's income is an obvious abuse of discretion by the trial court.

D. The trial court failed to consider all of the factors required by the Utah Supreme Court in determining alimony.

In the Utah Supreme Court case of Jones v. Jones, 700 P.2d 1072 (1985), the Court recited the three factors that must be considered in fixing a reasonable alimony award:

- (1) the financial conditions and needs of the wife;
- (2) the ability of the wife to produce a sufficient income for herself; and
- (3) the ability of the husband to provide support. Id., at 1075.

The Court in Jones, held that because the trial court, had failed to apply the three factors used in determining alimony, it had abused its discretion. The Utah Supreme Court in Jones stated:

Nowhere in the trial court's memorandum decision, its findings of fact, or its statements made on the record at the conclusion of the hearing is there any indication that the court analyzed the circumstances of the parties in light of these three factors. And our attempt to perform this analysis through a review of the record evidence compels us to conclude that the trial court abused its discretion in fixing alimony award. Id.

In the case at hand, there is no reference in the trial court's Memorandum Decision, or Findings of Fact, that the three factors described in Jones, were considered in fixing an alimony

award. The only factor that appears to have been considered by the trial court in determining the amount of alimony was the third factor, "the ability of the husband to provide support".

The Utah Supreme Court, in the case of Olson v. Olson, 704 P.2d 564, (1985), held that the trial court abused its discretion in awarding alimony where "the record contains only scant indication...of the court's consideration of the first of the three factors, the financial condition and the needs of the wife.... In the present case, the trial court made no references to any of the three factors mentioned in Jones, but only discussed the Mr. Johnson's ability to provide support. According to the precedence set by the courts of appeal in Utah, the decision of the trial court in this case must be reversed for the court's failure to consider all three of the factors required for a proper determination of an alimony award.

In light of the unreasonably small award of alimony and the case law, it is evident that the trial court abused its discretion and in determining the amount of alimony to be awarded to Appellant, due to the fact that the Factors to be considered in determining alimony as set forth in Jones v. Jones, were not adhered to as required by the Utah Supreme Court.

E. The trial court's award of alimony is substantially below the rate at which other Utah courts have awarded spouses in similar situations.

Appellant is aware that the trial court has a reasonable amount of latitude within which it may make its decisions as to the proper amount of alimony, and Appellant respects that

necessary degree of discretion which has been given to the district courts. However, a brief review of some recent Utah alimony awards in which the parties are similarly situated, quickly reveals the inequity that was done when the trial court in the present case awarded only \$1,000.00 per month alimony to Mrs. Johnson. In the most recent case of Peterson v. Peterson, the parties were in much the same position as the parties in the present case. Both of the Husbands are medical doctors, in Peterson, the parties had been married 20 years when they filed for divorce, and they had six children. In the present case, the Johnsons have been married 21 years, with three children. In Peterson, Dr. Peterson was found to have an annual income of about \$100,000.00 per year. In the present case, Dr. Johnson has an annual income of almost double that of Dr. Peterson, he made over \$190,000.00 in 1986. However, in spite of the fact that Dr. Peterson makes only roughly one half of Dr. Johnson's salary, he pays \$2,000.00 per month alimony to Dr. Johnsons \$1,000.00. While Dr. Peterson's monthly alimony payment is roughly 24 percent of his monthly income, Dr. Johnson's monthly alimony payment is about six percent of his monthly income, when a figure of \$190,000.00 is used as the annual income.

In other cases, where the husband's income is in the general range of that of Dr. Johnson, the courts have generally awarded much more substantial alimony awards. In the case of Savage v. Savage, 658 P.2d 1201, (Utah 1983), the Utah Supreme Court upheld an award of \$2,000.00 per month alimony to a wife who's husband

had an annual income of \$133,370.00. In that case, the parties had three children, and had been married for 20 years. The alimony in Savage, was approximately 18 percent of the monthly income of the husband.

Another case of value in assessing the compatibility of the alimony award in the present case with that of other similarly situated parties is the case of Yelderman v. Yelderman, 669 P.2d 406, (Utah 1983). In Yelderman, the husband was a medical doctor, the parties had been married for about 25 years, and had six children. Dr. Yelderman earned in excess of \$100,000.00 annually. In that case, the Utah Supreme Court affirmed an alimony award of \$2,500.00 per month where Dr. Yelderman had an annual income of over \$100,000.00. Even if we use the figure of \$120,000.00 for Dr. Yelderman's annual income, alimony paid by Dr. Yelderman is 25 percent of his monthly income, again far above the percent that Dr. Johnson pays, which is six percent of his monthly income.

The average of the awards of alimony in the cases of Peterson, Savage, and Yelderman, figured as a percent of the husband's monthly income was 22.33 percent. Mrs. Johnson was is awarded approximately 6 percent of Dr. Johnson's monthly income. In this case, the trial court's award is approximately 73 percent below the average of the three cases mentioned above. Clearly, such an award is an abuse of the trial court's discretion, in view of the circumstances of this case, and should be modified to reflect a more equitable figure.

F. The fact that Mrs. Johnson was awarded 50 percent of the marital assets does not decrease her need for more alimony since the assets which she received as a result of the property distribution do not produce income.

The parties reached an agreement as to distribution of their marital assets. A breakdown of the division of assets is included in the document entitled "proposal for Settlement", dated 1/20/87. The assets which Mrs. Johnson received are the following:

| | |
|------------------------------|----------------|
| House | \$130,000.00 |
| Cars | 11,000.00 |
| Cabin | 10,000.00 |
| Boat | 11,000.00 |
| Furniture | 12,000.00 |
| 1/2 of cash | 42,602.00 |
| 1/2 of stock | 18,644.00 |
| cash for A of P ins. & stock | 9,309.00 |
| Share of pension trust | 228,372.00* |
| | <hr/> |
| | \$472,927.00** |

* The figure of \$183,950.00 that was included in the original Exhibit was adjusted to include interest and deposits until April 1, of 1987, the day in which the financial distribution was made.

** This new total includes the adjustment made to Mrs. Johnson's Share of the Pension Trust.

Appellant contends that the assets listed above should not be considered as payment in lieu of alimony because these assets cannot be used to maintain Mrs. Johnson on a day to day basis without depleting her capital assets. On the other hand, Dr. Johnson has a continual income and a steady flow of cash with which to put himself back in the position he was in before the divorce.

Mrs. Johnson should be granted additional alimony so that

she can live at her present standard of living without the need to liquidate her assets in order to provide for her month to month needs.

POINT V

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT HELD THAT THE UNIFORM CHILD SUPPORT SCHEDULE, WHICH IT RELIED UPON IN DETERMINING CHILD SUPPORT, SHOULD NOT BE EXTENDED TO CONSIDER ANNUAL INCOME LEVELS BEYOND \$120,000.00.

The trial court, in its Memorandum Decision, devoted a rather lengthy portion of that document to a discussion of the reasoning behind its interpretation of the Uniform Child Support Schedule to intentionally cut off consideration of a supporting parent's annual income beyond the \$120,000.00 level. The trial court stated:

5. The parties' stipulation reserves the issue of child support. The Court finds that the following of the child support table's last line, that is for approximately \$120,000 per year, is proper. The Court recognizes that the father's earnings likely exceed that figure by \$10,000 to \$25,000 per year. The exact income is deemed by the Court to be immaterial. The Court's reasoning on this matter is set out below.

This Judge wrote the first child support guidelines in Utah. He also served on the Utah Judicial Council when the first statewide guidelines were adopted. The issue of how high child support guidelines should go is a matter of considerable debate. It may be helpful to examine a somewhat similar case. That case concerns a multi-millionaire's divorce in Clearfield, Utah. The children were left with the mother in the family home, and everyone planned sic the children would remain in the public schools and continue to enjoy their friends and association in the middle class neighborhood. This is very

similar to the case at hand. The calculations begin with the consideration of foodstuffs. Milk, eggs, bread and vegetables, etc., cost rich child close to the same as it costs a middle class child. A rich child, by and large, wears the same fashions as his peers. The recreation is principally shared with persons of his own age group. There are some trips expected that will be taken with grandparents, father, and occasionally with the mother, that may be considered more exotic. Doctors and dentists charge rich children and middle class children a fixed rate. The bottom line, arithmetically, was that once a child's father gets to the \$10,000.00 a month level, and a child is raised locally, there is no effect on sums spent actually rearing the child when the father's income increases. One runs into a problem similar to "Brewster's Millions". The Davis County millionaire was the product of generations of rich men, and their efforts to adjust. He concluded that to give a child more than one and one-half times the neighboring kids' allowance is to buy your child problems. An analysis of the monthly budget of this couple while they lived together, and since the separation, supports the hypothesis that prudence does not indicate that anymore sic should be spent on child support in the future than was spent on the child care while the father lived at home. This couple actually spent less while the father lived in the home than is indicated in the child support guidelines in the tables. It is not the purpose of child support to provide savings and/or estates. Savings and estates are matters that are controlled by the parents and involve other considerations.

The trial court acknowledged in the preceding discussion that, "the issue of how high child support should go is a matter of considerable debate." While the Appellant has the utmost respect for the opinion of the trial court on the issue, the Appellant's takes an opposing position from that of the trial court.

The weakness of the trial court's theory, that the Uniform Child Support Schedule was intentionally capped at an income

level of \$120,000.00, is that if such an argument truly were the case, the trial court's analysis fails to answer two questions: (1) why does the schedule increase according to the income of the supporting parent, and; (2) why was the annual income figure of \$120,000.00 chosen as the cut-off point?

If, as the trial court has supposed, a rich child can live for about the same amount as a middle class child, then why does the Schedule reflect any increase in child support payments in conjunction with the supporting parent's income? The logical point at which the trial court's theory ends is that all children can live for a certain established amount if the only considerations are the price of food, and generic clothing, as determined by a sort of breadbasket list of items, the price of which will change according to the economic situation.

If the purpose of the Schedule were to support a child at a certain minimum standard, the support payments would not increase with the parent's income as in the present Schedule.

In contrast to the trial court's theory of the Schedule, it appears that the Schedule increases according to the parent's income for a very simple reason, the same reason that alimony is more for a wife married to a rich man than it is for a woman married to a poor man, because the purpose of alimony is to maintain a standard of living as near as possible to that enjoyed prior to the divorce, and to keep the child in the same lifestyle as that enjoyed before the divorce. If the child of a Rockefeller is forced to live on the same amount of child support

as a child of a person making \$120,000.00 per year, the child could conceivably be forced to make a drastic change in his or her standard of living. If Appellant accepts the trial court's assumption that "a rich child, by and large, wears the same fashions as his peers," and the child has rich children as peers, the child may have to change his or her standard of living if the amount of child support is not commensurate with past standards of living. Child support consists of much more than buying "milk, eggs, bread, and vegetables...." Housing costs are more in upper middle class neighborhoods. If the mother is forced to move out of the neighborhood because she cannot afford to continue to support the children in the manner they are accustomed to, then the child could suffer.

The trial court stated that it based its conclusions upon the assumption that the child was to continue to live in Utah, in a middle class neighborhood, and attend public schools. Even if the child continued to live in Utah, he or she child would be denied many opportunities that were present before the divorce. The child may be denied the opportunities of music lessons, travel abroad, private schools, tutors etc., that more income can provide.

Parents work for a higher income so that they can enjoy what that income provides, for their children, as well as themselves. To say that child support beyond a certain level is unnecessary, is clearly denying the child his or her right to the opportunities made possible by the effort their parents made to

advance themselves, and their family.

Appellant finally contends that it is an abuse of discretion to rely solely upon the Uniform Child Support Schedule in determining a proper amount of child support. The schedule should be used only as a guideline, and should not have the effect of excluding input, or limiting the discretion of the trial court.

POINT VI

APPELLANT IS ENTITLED TO FIFTY PERCENT OF
RESPONDENT'S INCOME DURING THE PERIOD THE
COUPLE WAS SEPARATED, YET PRIOR TO DIVORCE.

The parties separated on or about February 1, 1986. The trial for divorce was held at the end of March, 1987. Accordingly, Respondent had income of approximately 14 months during that time. On the other hand, Appellant had no income during that time other than what was paid to her by Respondent. Appellant's experts offered testimony at trial to the effect that Respondents's share of the post-separation income exceeded the Appellant's share by some \$45,000.00. These calculations were made after taxes and all other considerations were taken into account. Appellant maintains she should be awarded an equitable interest in respondent's post-separation income as that income was an asset of the marriage and the parties agreed in the Stipulation that all assets of the marriage should be divided equally.

It is Appellant's position that the trial court misapplied

Utah Law and made other substantial errors in its failure to award to appellant certain assets, alimony, and interest in other assets. Moreover, it is the Appellant's position that these issues are substantial and merit further proceedings and consideration by the Court of Appeals.

CONCLUSION

The Appellant, Mrs. Johnson believes that the trial court abused its discretion when it adopted Dr. Johnson's method of assessing the value of his interest in the professional corporation, Associates of Pathology, and that for purposes of assessing Mrs. Johnson's share of the marital assets, the interest of Dr. Johnson in the association should be reassessed as an on-going concern.

Appellant requests that This Court review the figures contained in this brief, and in the trial court record, and award an alimony amount that is reasonable, and in line with other persons similarly situated considering the length of marriage, the income of Dr. Johnson, the number of children, and Mrs. Johnson's ability to support herself at the present time. Appellant also ask that This Court remove the limit of ten years for the payment of alimony.

Appellant believes that the trial court erroneously interpreted the intent of the Uniform Child Support Schedule to limit consideration of incomes of supporting parents to

\$120,000.00 per year incomes and below. Appellant asks that This Court award child support to the children of Dr. Johnson at an amount commensurate with Dr. Johnson's income, unlimited by the arbitrary limitations imposed by the fact that the Schedule stops at an annual income of \$120,000.00.

Appellant believes that she is entitled to a fair portion of the income earned by Dr. Johnson between the time of separation and Divorce.

ADDENDUM

Attached.

RESPECTFULLY SUBMITTED this 18 day of December, 1987.




STEPHEN W. FARR

Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed four (4) true and correct copies of the foregoing Brief of Appellant, postage prepaid, on this 18 day of December, 1987, to the following:

TIM W. HEALY (#7606)
Attorney for Defendant/Respondent
863 25th Street
Ogden, Utah 84401
Telephone: 621-2630


Secretary

A D D E N D U M

TIM W. HEALY, #7606
Attorney for Defendant
863 25th Street
Ogden, Utah 84401
Telephone: 621-2630

IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH

| | | |
|--------------------|---|----------------------|
| JANET SUE JOHNSON, |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | FINDINGS OF FACT and |
| |) | CONCLUSIONS OF LAW |
| VAL BUDGE JOHNSON, |) | |
| |) | Civil No. 94737 |
| Defendant. |) | |
| |) | |

The above entitled matter came before the Honorable John F. Wahlquist, District Judge, presiding for trial on the 20th day of March 1987 and again on the 23rd day of March 1987; plaintiff was present represented by her counsel, Stephen W. Farr, Esq; defendant was present represented by his counsel, Tim W. Healy, Esq. A stipulation of the parties regarding the division of real and personal property was read and acknowledged by the parties. Various witnesses were sworn and testified and various items of documentary evidence were received. Counsel for the respective parties met again with the Court on April 22, 1987 for the purpose of clarifying some items from the Memorandum Decision and the Court being duly advised in the premises now enters the following:

FINDINGS OF FACT

- ✓1. That the Court has jurisdiction in this matter inasmuch as both parties are actual and bona fide residents of Weber County, Utah.
- ✓2. That the parties were married in Salt Lake City, Utah on August 19, 1966. They separated on or about February 1, 1986. Each party is now requesting a divorce.

✓3. That three children have been born as issue of the marriage, to-wit: Erik Val Johnson, born October 30, 1970; Jennifer Johnson, born January 22, 1973 and Jamie Anne Johnson, born November 30, 1978.

✓4. That both parties have caused the other party pain and anguish to such an extent that they are unable to continue in the marital relationship with the other. Plaintiff's cruelty was that she did not make a reasonable effort to keep the romance alive and she gave priority to her church work, children and personal interests and has caused her husband, the defendant, to feel isolated and unappreciated

✓5. Plaintiff attempted marriage counselling approximately five years ago. Defendant attempted to revive this counselling in 1985 but plaintiff took no interest in that effort.

✓6. Defendant's cruelty consisted of having developed a secret romance which plaintiff eventually discovered and she filed for separate maintenance. Defendant counterclaimed for divorce. Plaintiff has expressed a desire to continue the marriage but does not plan any personal behavioral changes toward the defendant. Plaintiff testified that defendant plans to continue his relationship with another woman.

✓7. Plaintiff did obtain a college degree in business from Weber State College prior to her marriage to defendant.

✓8. That at the time of the marriage of the parties, defendant had obtained his bachelor's degree and had completed one year of medical school.

✓9. That plaintiff worked for approximately three years following the marriage of the parties but has not worked in the ensuing 17 years. Defendant also worked part-time for two of the three years he was in medical school after the parties were married.

✓10. That defendant's parents paid all of the expenses for defendant's tuition and books during the time that he was in medical school.

✓11. That defendant had a limited fellowship during medical school which was a credit upon his tuition costs.

✓12. That defendant would have achieved a medical degree with or without the plaintiff's limited contribution.

✓13. That plaintiff has enjoyed the benefits and fruits of defendant's medical degree for a substantial period of time.

✓13. That the articles of incorporation of defendant's employer, The Associates of Pathology, are actually little more than a partnership at will.

✓14. That the buy-out agreement fixed the buy-out figure as a proportional share of fixed assets.

✓15. That there is no fixed contract of employment with the hospitals served by the aforesaid corporation; it is a going rate situation.

✓16. That each doctor within the aforesaid professional corporation bills the hospital and/or the other clients for services rendered and the money is eventually divided equally.

✓17. That the market place has provided substitute or new doctors. New doctors come in substantially in the same position as the doctors leaving said corporation. The rates charged by each pathologist are identical to the others and there is no specific reward for seniority or length of service.

✓18. That the value of defendant's interest in the Associates of Pathology, a professional corporation, is \$14,521.00.

✓19. That one of the flaws in plaintiff's calculation of the value of defendant's medical degree is the assumption that the defendant's income would increase each year by a fixed percentage.

✓20. That the basic income of defendant in his employment with the Associates of Pathology will equal the normal charges for piece work done by the pathologist at the direction of the various hospitals and other clients. There is no evidence that the pay for this piecemeal service will increase; in fact, the evidence is that it will lessen. There is also no evidence that the amount of piece work will increase or that the number of doctors sharing the earnings from the Associates of Pathology will decrease.

X 21. ✓ That the earnings of the defendant has levelled off at the present rate for the expected future. The projected income for the defendant for 1987 including salary and bonus is between \$127,000 and \$132,000 which income level is expected to remain constant in the ensuing few years.

✓22. That the income of the defendant as well as the other pathologists within the Associates of Pathology is expected to be set by the fair market place in the future. The rates charged by each pathologist are identical to the others and there is no specific reward for seniority or length of service.

23. That the earnings of the defendant as well as his future potential have been considered by the Court for the purpose of fixing alimony.

✓24. That each of the parties have employed their attorney and relied upon said attorney in good faith.

✓25. That each party has funds with which they may pay their own attorney.

✓26. That the parties have acquired substantial real and personal property during the course of their marriage which should be equitably divided pursuant to the stipulation of the parties.

✓27. That the maximum ^{income} figure used for child support pursuant to the Uniform Child Support Schedule of \$10,000 per

✓ month recognizes that even though a father's income may be higher the cost of raising and supporting said children locally will not increase although the father's income may exceed the \$10,000 per month figure.

✓ 28. That plaintiff and defendant actually spent less while defendant lived in the home for the support of the children of the parties than is indicated in the child support guidelines and the tables adopted by this judicial district based upon defendant's income.

CONCLUSIONS OF LAW

✓ 1. That plaintiff and defendant should each be awarded a decree of divorce from the other upon the grounds of mental cruelty the same to become final upon signing and entry.

✓ 2. That plaintiff should be awarded the care, custody and control of the minor children of the parties subject to reasonable rights of visitation by defendant.

✓ 3. That defendant should pay to plaintiff as and for child support the sum of \$648.00 per month per child commencing with the month of April 1987.

X ✓ 4. That plaintiff's expert witnesses lack credibility regarding the values placed on defendant's ^{interest and} stock with the Associates of Pathology and regarding the value of his medical degree.

X ✓ 5. That defendant's expert witness has high credibility regarding the value of defendant's interest and stock in the Associates of Pathology as well as his earnings as a medical doctor.

✓ 6. That defendant's medical degree should not be marital property subject to division by the Court in a divorce action.

X 7. That defendant's earnings as well as his future potential have been considered by the Court for the purpose of fixing alimony.

✓ 8. That defendant should pay to plaintiff as and for alimony the sum of \$1,000 per month commencing with the month of April 1987. Said alimony should be paid to plaintiff for a period of ten years or until plaintiff either remarries, cohabits with another male person or dies. \$1400.00

✓ 9. That plaintiff should be awarded one-half of the value in defendant's interest in the Associates of Pathology, a professional corporation which total interest is in the sum of \$14,521.00.

✓ 10. That plaintiff should be awarded the family home of the parties subject to assuming and discharging the outstanding mortgage balance thereon and holding the defendant harmless therefrom.

✓ 11. That defendant should be entitled to claim the two oldest children of the parties for income tax purposes commencing in 1986. At such time as the oldest child of the parties reaches the age of 18 or graduates from high school with his appropriate year group, whichever is later, that child support should be discontinued. Defendant should then be entitled to claim the ^{next} oldest child of the parties for income tax purposes. At such time as just one child remains the defendant should be entitled to claim said child for income tax purposes every other year.

✓ 12. That each of the parties should bear the expenses of their own expert witnesses as well as their own attorney fees and costs.

✓ 13. That plaintiff should not be entitled to any portion of defendant's 1986 or 1987 bonus inasmuch as these are considered as part of defendant's overall annual income, provided,

however, that such portions of defendant's 1986 bonus as were previously allocated to the various savings and checking accounts of the parties and formed part of the stipulation of the parties should not be affected.

✓14. That defendant should be responsible for any and all federal and state income taxes owed by him upon his 1986 income. *Refused AUNT pd. \$580.00 - Key to Bm - ALABAMA ALIABLE policy*

15. That the parties should be awarded the following *change or amend* real and personal property with the values indicated herein:

Plaintiff

| | | | |
|---------------------------|----|---------|---|
| House | \$ | 96,000 | ✓ |
| Cars | | 11,000 | ✓ |
| Cabin | | 10,000 | ✓ |
| Boat | | 11,000 | ✓ |
| Furniture | | 12,000 | ✓ |
| ½ cash incl. \$17,000 | | 59,602 | ✓ |
| in Amer. 1st | | | |
| ½ stock | | 18,644 | ✓ |
| Add'l cash in lieu | | | |
| of AofP stock & life ins. | | | |
| cash value | | 9,309 | ✓ |
| Share of pension trust | | 200,950 | ✓ |
| | \$ | 428,505 | |

Defendant

| | | |
|-------------------------------|---------|---|
| Share of cash | 43,791 | -including \$20,000 in Continental Bank |
| ½ stock | 18,644 | checking |
| FFCA-EF Hutton | 10,000 | |
| South Gate Lodge | 10,500 | |
| A of P stock | 14,521 | |
| Life Ins. cash value | 4,099 | |
| Loan to Dean | 900 | |
| Muni bonds MLPF&S & EF Hutton | 116,628 | |
| Pension trust share | 203,421 | |
| Car | 6,000 | |
| | 428,504 | |

\$404,371.00 54845- inc. value

The pension trust share of plaintiff & defendant as reflected above was calculated as of 3/31/86. The additional amounts in said pension trust share which have accrued as of 4/1/87 but which figures are not yet available shall be equally divided between the parties and added to the pension shares of plaintiff & defendant as shown herein.

✓16. That the accumulated amounts in the pension & profit sharing trusts for purposes of property division should be as of April 1, 1987. Both the plaintiff and the defendant should bear their own tax consequences from any draw from these sums.

✓17. That the remaining items of personal property including but not limited to silverware, china and porcelain should be divided equally, traded against other items of similar value or purchased for cash for the value of the other party's interests.

✓18. That the defendant should receive the photo ^{what} equipment, the snow blower and the stereo. ^{He told her he would leave it.}

✓19. That the plaintiff should be awarded the sewing machines, ATV 3 wheeler and the parties should also divide the Lennox china and the Lunt silverware or one party may buy out the other party for one-half of the said value.

✓20. That the parties should sign such Quit Claim Deeds to real property as well as vehicle titles as may be required to effect transfer of the aforesaid real and personal property.

21. That any amounts in the savings and checking ^{what} accounts as well as stocks and bonds in excess of the amounts as shown in paragraph 15 above should be equally divided.

22. That plaintiff's circumstances should not be considered to have changed for purposes of modifying alimony awarded herein so long as her earnings do not exceed \$1400 per month.

DATED this ___ day of MAY, 1987.

DISTRICT JUDGE

Approved as to Form:

Attorney for Plaintiff

IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH

| | | |
|--------------------|---|---------------------|
| JANET SUE JOHNSON, |) | |
| |) | |
| Plaintiff, |) | MEMORANDUM DECISION |
| |) | |
| vs. |) | |
| |) | |
| VAL BUDGE JOHNSON, |) | |
| |) | Case No. 94737 |
| Defendant. |) | |

Defense counsel is invited to submit findings, conclusions, and decree consistent with that indicated below. If he has not done so within two weeks after receipt of this decision, plaintiff's counsel is invited to do so.

FACTS

1. The Court has jurisdiction of the case because of the residency of both parties in Weber County.

2. The parties were married in 1966, and separated in 1986. Each party is now requesting a divorce.

3. Each party has been cruel to the other. The plaintiff's cruelty is that she did not make a reasonable effort to keep the romance alive. She gave priority to her church work, children, and personal interests. This caused her husband to feel isolated and unappreciated. She attempted marriage counseling about five years ago. Her husband attempted to revive

this counseling in 1985, but the plaintiff took no interest in that effort. Defendant's solution to his problem is legally unacceptable. He developed a secret romance. The plaintiff eventually discovered the romance and filed for separate maintenance. He counterclaimed for divorce. She has a desire to continue the marriage, but does not plan any personal behavior changes towards her husband. He now plans to continue with his new romance. The Court's conclusion is that each of the parties are entitled to a divorce on the grounds of mental cruelty. If the parties agree, the divorce may be final at once.

4. The Court accepts the parties' stipulation so far as it goes, concerning child custody, visitation, and property division, etc., and rules on the remaining issues. If any issue is not here ruled on, or further guidance is needed, the Court is available for conference.

5. The parties' stipulation reserves the issue of child support. The Court finds that the following of the child support table's last line, that is for approximately \$120,000 per year, is proper. The Court recognizes that the father's earnings likely exceed that figure by \$10,000 to \$25,000 per year. The exact income is deemed by the Court to be immaterial. The Court's reasoning on this matter is set out below.

This Judge wrote the first child support guidelines in Utah. He also served on the Utah Judicial Council when the first statewide guidelines were adopted. The issue of how high child support guidelines should go is a matter of considerable debate. It may be helpful to examine a somewhat similar case. That case concerns a multi-millionaire's divorce in Clearfield, Utah. The children were left with the mother in the family home, and everyone planned the children would remain in the public schools and continue to enjoy their friends and association in the middle class neighborhood. This is very similar to the case at hand. The calculations begin with the consideration of foodstuffs. Milk, eggs, bread and vegetables, etc., cost a rich child close to the same as it costs a middle class child. A rich child, by and large, wears the same fashions as his peers. The recreation is principally shared with persons of his own age group. There are some trips expected that will be taken with grandparents, father, and occasionally with the mother, that may be considered more exotic. Doctors and dentists charge rich children and middle class children a fixed rate. The bottom line, arithmetically, was that once a child's father gets to the \$10,000 a month level, and a child is raised locally, there is no effect on sums spent actually rearing the child when the father's income increases. One runs into a problem similar to "Brewster's Millions". The Davis County millionaire was the product of

generations of rich men, and their efforts to adjust. He concluded that to give a child more than one and one-half times the neighboring kids' allowance is to buy your child problems. An analysis of the monthly budget of this couple while they lived together, and since the separation, supports the hypothesis that prudence does not indicate that anymore should be spent on child support in the future than was spent on child care while the father lived at the home. This couple actually spent less while the father lived in the home than is indicated in the child support guidelines in the tables. It is not the purpose of child support to provide savings and/or estates. Savings and estates are matters that are controlled by the parents and involve other considerations.

6. The parties did not stipulate on whether or not the house should be paid off. The plaintiff should be allowed to chose whether to take the cash and the obligation and/or pay off the mortgage. There is sufficient equity in the home that there is little risk to the defendant. The subject of alimony is not covered by the stipulation, nor is the value of the medical doctor degree, nor the value of the defendant's position in the professional corporation.

The plaintiff is awarded alimony at the rate of \$1,000 to be continued under the general terms of alimony, but not to exceed ten years. The Court's rationale in ruling on this matter is indicated below.

The plaintiff has enjoyed the benefits of this medical degree for a substantial period of the time.

The plaintiff did not create this degree. Her contribution was a very limited financial one for three years and a few months that she worked at I.R.S. She earned about \$14,000 during that time and shared it with the defendant. The defendant was well on his way to the medical degree before this marriage. He had achieved his undergraduate education and the degree that made his acceptance into medical school possible. He had been accepted into medical school. He had already completed one year before the marriage. He had the support of his parents. His parents continued to pay all of his tuition and book charges until the degree was obtained. He had a limited fellowship. He worked part time for two of the three years the couple lived together during medical school. The evidence indicates that the defendant would have achieved a medical degree with or without the plaintiff's limited financial contribution. She married a medical student. She will further enjoy the fruits of his study in the future. She has received substantial sums of money that his training has provided in the property settlement. The child support here awarded reflects his higher earning capacity.

7. The stipulation does not cover attorneys' fees or the cost of expert witnesses. Each party shall bear their own expenses in this matter.

Much of the trial time has been concerned with the plaintiff's allegation of the present value of the medical degree and the stock exceeds a million dollars and that he should pay her one-half. The plaintiff's expert witness' testimony as to the value of the medical degree and/or the stock lacks credibility.

First let us be concerned with the value of the stock position in the professional corporation. There is no fixed contract for employment with the hospitals. It is a "going rate" situation. Each doctor does equal work and gets equal pay regardless of the number of years he has spend with the group. The articles of incorporation are actually little more than a partnership at will. The buy out agreement fixes the buy out figure as a porportional share of the fixed assets. Each doctor bills the hospital for each service, and the money is eventually split equally. One of the principal benefits of the business is the arrangement makes is possible for the corporation to pay into a retirement fund sums that, in effect, defer taxation. This accumulation of funds for the purpose of division in this case shall be calculated as of the value indicated by the defendant's experts as of April 1, 1987. Both the plaintiff and the defendant must bear their own tax consequences from any draw from these sums. The value of these deferred earnings is as indicated by the defendant's experts. The market place has provided

substitute or new doctors. The new doctors come in substantially in the same position as the leaving doctors. This is true of the manner in which this defendant was treated. There is no indication in the immediate future that the earnings of these doctors will exceed the simple value of a pathologist's services on a piecemeal basis to the hospitals.

8. The value of the plaintiff's expert witness testimony as to the worth of the M.D. degree is not credible. One of his flaws is the assumption that a doctor's income will increase each year by a fixed percentage. The basic income of this group is on the formula that cash received will equal the normal charges for piece work done by the pathologist at the various hospital's directions. Unless the rate charged for the piecemeal service is increased, and there is no evidence that it will be, in fact evidence is that it will lessen, or the amount of piece work increases, and there is no evidence that it will, or the number of doctors sharing the funds will decrease, and there is no evidence that suggests this, the earnings have leveled off at the present rate for the expected future. Each one of the pathologists charges rates identical to the others, and there is no specific reward for seniority or length of service. The income of these pathologists is expected to be set by the fair market place in the future. The defendant's

accountant has high credibility, the plaintiff's expert is not credible. There is no reason the defendant should pay the plaintiff's experts.

9. Each party has funds from which they may pay their own attorney. The Court finds that each of the parties have employed their attorney and relied upon their attorney in good faith. Each party will bear their own attorney's fees.

10. The value of the professional corporation stock is as indicated by the defendant's accountant.

11. The Court has considered the defendant's contention that the plaintiff should be forced to either find employment or charged as though she were working. It is recognized that, in this day and age, it is rare to see a 44 year old woman, in good health, with a college degree, who has no serious plans for employment. The Court is also aware of the fact that she does have an 8 year old child at home. She should be encouraged to work eventually. She is not to be considered to have changed the circumstances if she finds employment, so long as the earnings do not exceed \$1,300 or \$1,400 per month.

DATED this 27 day of March, 1987.


JS
JOHN F. WAHLQUIST, Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 30 day of March, 1987, a true and correct copy of the foregoing Memorandum Decision was served upon the following:

Stephen W. Farr
FARR, KAUFMAN & HAMILTON
Attorney for Plaintiff
205 26th Street
Ogden, Utah 84401

Tim W. Healy
Attorney for Defendant
863 25th Street
Ogden, Utah 84401



PAULA CARR, Secretary

PROPOSAL FOR SETTLEMENT

1/20/87

ASSETS

Note: The following values are approximate although the cash will be equally divided.

| | | |
|-------|-------------------------------|-------------------|
| CASH: | Continental Bank checking | 20,000 |
| | Continental Bank liquid money | 7,500 |
| | American 1st | 17,000 |
| | Peoples 1st | 7,700 |
| | Ogden 1st | 7,000 |
| | American Savings | 9,000 |
| | Merrill Lynch Ready Assets | 38,000 |
| | Continental Bank | 13,004 |
| | | <u>\$ 119,204</u> |

| | | | |
|--------|-------------|---------------|----------------------------|
| HOUSE: | Gross value | \$130,000 | Award to plaintiff as shar |
| | Mortgage | <u>34,000</u> | of assets |
| | Net Value | \$ 96,000 | |

** Pay off mortgage out of cash, leaving \$85,204 in available cash to be divided.

Bear Lake Cabin - our 1/3 value - \$10,000. This should go to plaintiff since the other owners are members of her family and since it was built at the request of her father who asked defendant to help fund it.

| | | | |
|-------|--------------------------|-----------|-----------|
| CARS: | 1985 Chevrolet Astro Van | \$11,000 | Plaintiff |
| | 1987 Chevrolet Spectrum | No Equity | Plaintiff |
| | 1984 Dodge Daytona | 6,000 | Defendant |

** Defendant does not know the equity in the Chevy Spectrum or how it was paid for.

| | | | |
|---------|----------------------------------|--------------|----------|
| STOCKS: | Insured Income Properties (FFCA) | E. F. Hutton | \$10,000 |
| | Several stocks at Merrill Lynch | | 37,280 |

| | | |
|------------------|---------------|----------|
| MUNICIPAL BONDS: | | |
| | Merrill Lynch | \$37,057 |
| | E.F. Hutton | 74,192 |
| | A/O 1/31/87 | 116,628 |

| | | |
|------------------|--------------|-----------|
| SOUTH GATE LODGE | (Not liquid) | \$ 10,500 |
|------------------|--------------|-----------|

| | |
|-------------------------------|-----------|
| ASSOCIATES OF PATHOLOGY STOCK | \$ 14,521 |
|-------------------------------|-----------|

| | |
|-------|----------------------|
| BOAT: | \$11,000 - Plaintiff |
|-------|----------------------|

INSURANCE POLICIES -
Cash value of \$4,099

Page -2-

| | | |
|----------------------|-----------|-------------|
| A OF P PENSION PLAN | \$405,000 | |
| LOAN TO DEAN JOHNSON | \$ 900 | |
| HOME FURNISHINGS | \$ 12,000 | - plaintiff |
| TOTAL ASSETS | \$857,008 | |

| <u>JANET</u> | | + 3500 New Bonus <u>VAL</u> | |
|--|-----------|--------------------------------|---|
| House | \$130,000 | \$ 26,791 | Share of cash |
| Cars | 11,000 | 18,644 | 1/2 of stock |
| Cabin | 10,000 | 10,000 | FFCA-E.F.Hutton |
| Boat | 11,000 | 10,500 | South Gate Lodge |
| Furniture | 12,000 | 14,521 | A of P Stock |
| 1/2 of cash | 42,602 | 4,099 | Life Ins. cash value |
| 1/2 of stock | 18,644 | 900 | Loan to Dean |
| Addition cash in lieu of A of P stock & life ins. cash value 9309.00 | | 116,628 | Municipal bonds MLPF&S and E.F. Hutt |
| Share of Pension Trust | 183,950 | 220,421 | Pension trust share |
| | | 6,000 | Car |
| | | <hr/> | |
| | | \$428,504 | Total |
| TOTAL | \$428,504 | | |

287272 Absorbing 1 kg. New

7% 11-29
1200 / hr

*** Plaintiff will be liable for any taxes on Pension trust or must roll it over into an IRA, (the same as defendant would have to do if he had the Pension trust funds distributed).

Other items such as silverware, china, porcelain to be divided equally, traded against other items of similar value or purchased for cash for the value of the other parties interest.

Other items to be balanced against each other (e.g. photo equipment to defendant, sewing machines to plaintiff; snowblower to defendant, ATC 3 wheeler to plaintiff, stereo to defendant, plaintiff may have Lenox china & Lunt silverware in return for 1/2 of their value to defendant or the parties may divide said china & silverware.

Municipal Bonds should to to defendant because he is the party in the ongoing taxable situation with earned income and also because he is assuming non-liquid assets such as South Gates Apartments and Assoc. of Pathology stock, and since defendant is providing other benefits such as insurance and health insurance, and is assuming debt on the insurance loans. Plaintiff will also receive less from the pension trust and therefore will have less consequence than defendant on that item.

Defendant has provided bank accounts of more than \$16,000 for each of the 3 children. This money should not be considered in the settlement, but defendant should remain as custodian jointly with the children on 1/2 of the accounts and plaintiff should remain as custodian jointly with the children on the other 1/2 of the accounts.

Since defendant will be providing nearly all of the childrens' financial support, and since the child support money is taxable to him and not to plaintiff, it should be stipulated in the divorce decree that the children be listed as his dependents for tax purposes.

JOHNSON VS JOHNSON TIMELINE OF MEDICAL TRAINING

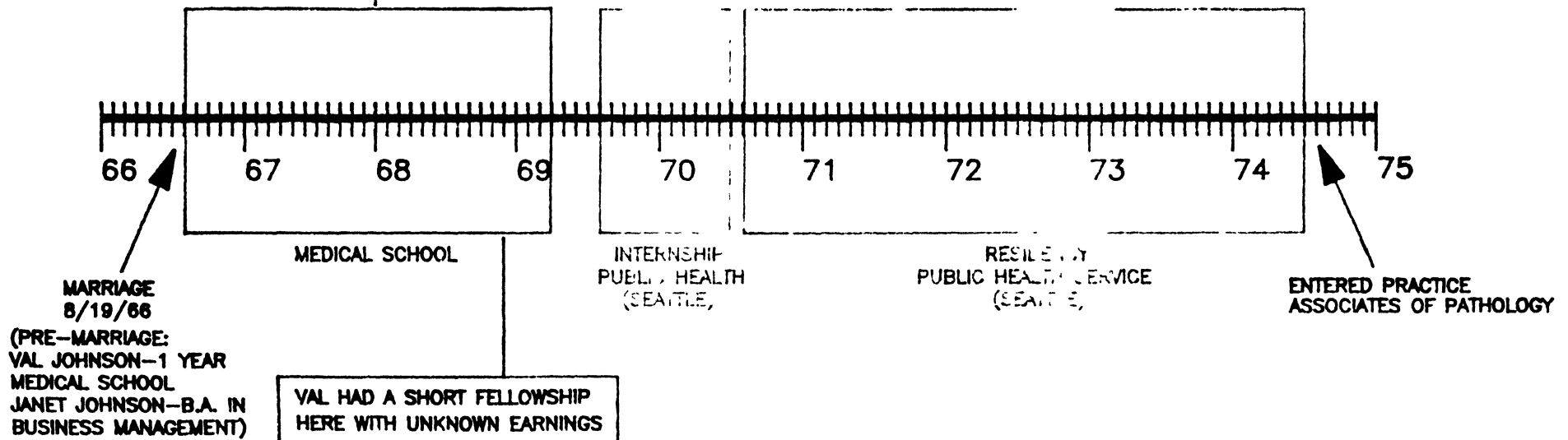
JANET JOHNSON'S EARNINGS

| | |
|-------------------------|----------------------------|
| WORKED AT THE ST. LOUIS | 28 WEEKS @ \$90 = \$ 2,520 |
| GLOBE DEMOCRAT | 52 WEEKS @ \$105 = 5,460 |
| | 52 WEEKS @ \$115 = 5,980 |
| | <u>\$13,960</u> |

ESTIMATED FAMILY LIVING COSTS

| | |
|-----------------|-----------------|
| RENT | 150 |
| FOOD | 100 |
| UTILITIES | 50 |
| ENTERTAINMENT | 0 |
| TRAVEL | 50 |
| CLOTHING | MIN |
| MEDICAL | 0 |
| MISC. | 50 |
| FEES, BOOKS | |
| SAVINGS & TAXES | 75 |
| | <u>475</u> |
| | X 31 MO |
| | <u>\$14,725</u> |

COMPARE



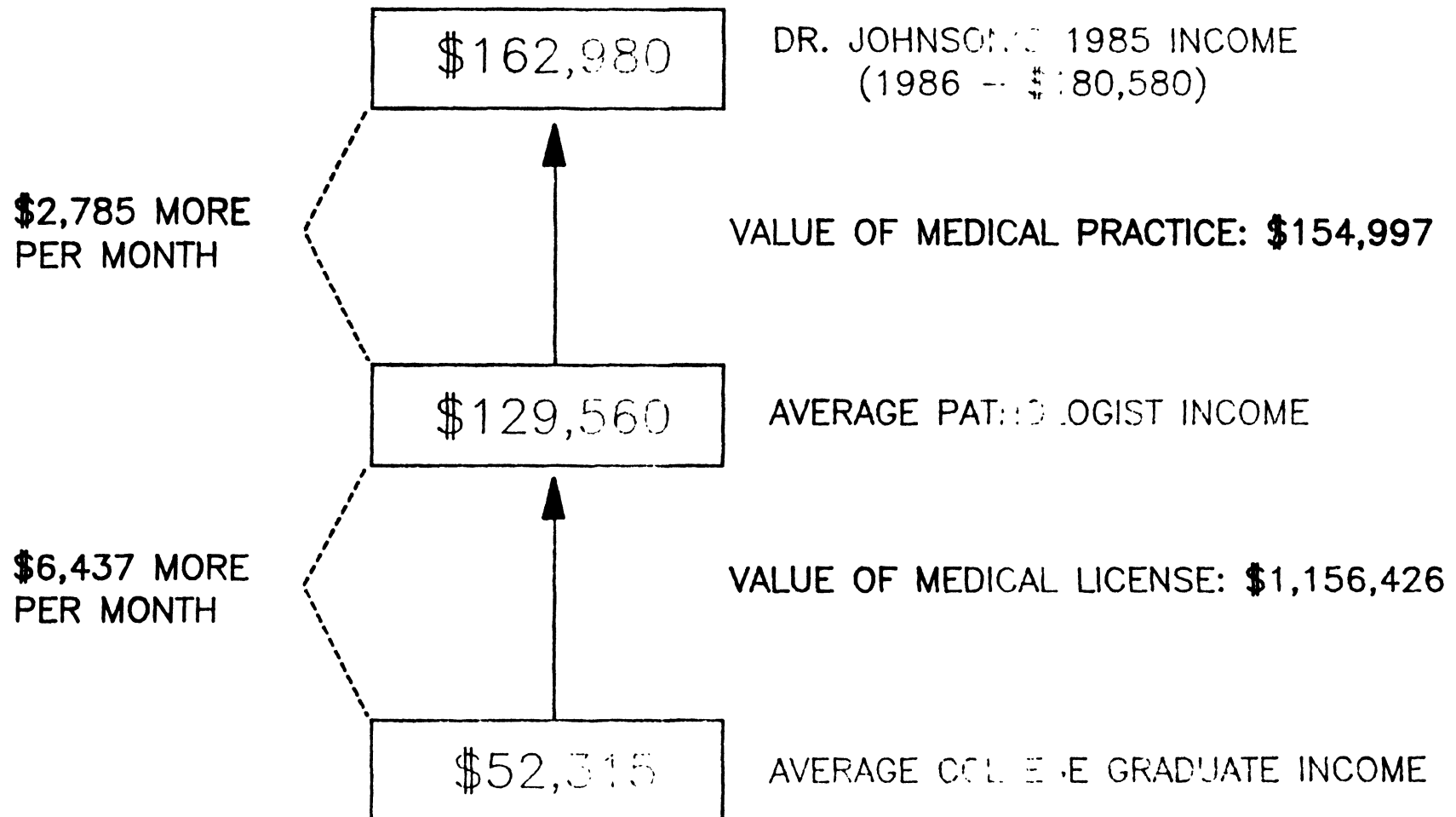
JOHNSON VS. JOHNSON
VALUATION OF MEDICAL LICENSE
SCENARIO 1
AVG. COLLEGE GRADUATE INCOME VS. AVG. PATHOLOGIST INCOME
SCHEDULE A
CALCULATION OF PRESENT VALUE OF LICENSE

| PERIOD | YEAR | DR. JOHNSON'S AGE | INCOME FOR COLLEGE GRADUATE | TAX | INCOME FOR COLLEGE GRADUATE AFTER TAX | INCOME FOR PATHOLOGIST | TAX | INCOME FOR PATHOLOGIST AFTER TAX | AFTER TAX DIFFERENCE | PRESENT VALUE FACTOR @ 9.39% | PRESENT VALUE | CUMULATIVE PRESENT VALUE |
|--------|------|-------------------------|-----------------------------------|----------|--|---------------------------|----------|--|-------------------------|------------------------------------|------------------|--------------------------------|
| 1 | 1987 | 45 | \$52,315 | \$14,648 | \$37,667 | \$129,560 | \$36,277 | \$93,283 | \$55,616 | 0.9561173 | 53,175 | 53,175 |
| 2 | 1988 | 46 | 56,898 | 15,931 | 40,967 | 141,972 | 39,752 | 102,220 | 61,253 | 0.8740445 | 53,538 | 106,713 |
| 3 | 1989 | 47 | 61,882 | 17,327 | 44,555 | 155,572 | 43,560 | 112,012 | 67,457 | 0.7990169 | 53,899 | 160,612 |
| 4 | 1990 | 48 | 67,303 | 18,845 | 48,458 | 207,274 | 58,037 | 149,237 | 100,779 | 0.7304295 | 73,612 | 234,224 |
| 5 | 1991 | 49 | 73,199 | 20,496 | 52,703 | 227,131 | 63,597 | 163,534 | 110,831 | 0.6677297 | 74,005 | 308,229 |
| 6 | 1992 | 50 | 78,235 | 21,906 | 56,329 | 248,890 | 69,689 | 179,201 | 122,872 | 0.6104120 | 75,003 | 383,232 |
| 7 | 1993 | 51 | 83,618 | 23,413 | 60,205 | 272,734 | 76,366 | 196,368 | 136,163 | 0.5580145 | 75,981 | 459,213 |
| 8 | 1994 | 52 | 89,371 | 25,024 | 64,347 | 298,862 | 83,681 | 215,181 | 150,834 | 0.5101147 | 76,943 | 536,156 |
| 9 | 1995 | 53 | 95,519 | 26,745 | 68,774 | 327,492 | 91,698 | 235,794 | 167,020 | 0.4663266 | 77,886 | 614,042 |
| 10 | 1996 | 54 | 102,091 | 28,585 | 73,506 | 358,866 | 100,482 | 258,384 | 184,878 | 0.4262973 | 78,813 | 692,855 |
| 11 | 1997 | 55 | 109,115 | 30,552 | 78,563 | 393,246 | 110,109 | 283,137 | 204,574 | 0.3897041 | 79,723 | 772,578 |
| 12 | 1998 | 56 | 116,622 | 32,654 | 83,968 | 430,919 | 120,657 | 310,262 | 226,294 | 0.3562520 | 80,618 | 853,196 |
| 13 | 1999 | 57 | 124,646 | 34,901 | 89,745 | 472,201 | 132,216 | 339,985 | 250,240 | 0.3256715 | 81,496 | 934,692 |
| 14 | 2000 | 58 | 133,221 | 37,302 | 95,919 | 517,437 | 144,882 | 372,555 | 276,636 | 0.2977159 | 82,359 | 1,017,051 |
| 15 | 2001 | 59 | 142,437 | 39,882 | 102,555 | 567,008 | 158,762 | 408,246 | 305,691 | 0.2721601 | 83,197 | 1,100,248 |
| 16 | 2002 | 60 | 151,282 | 42,359 | 108,923 | 621,327 | 173,972 | 447,355 | 338,432 | 0.2487980 | 84,201 | 1,184,449 |
| 17 | 2003 | 61 | 160,677 | 44,990 | 115,687 | 680,850 | 190,638 | 490,212 | 374,525 | 0.2274412 | 85,182 | 1,269,631 |
| 18 | 2004 | 62 | 170,655 | 47,783 | 122,872 | 746,076 | 208,901 | 537,175 | 414,303 | 0.2079178 | 86,141 | 1,355,772 |

PRESENT VALUE OF LICENSE AT JANUARY 1, 1987 1,355,772
OFFSET FOR INVESTMENT IN LICENSE INCLUDING ACCRUED INTEREST TO JANUARY 1, 1987 (199,346)

NET PRESENT VALUE OF LICENSE AT JANUARY 1, 1987 \$1,156,426
=====

JOHNSON VS JOHNSON SUMMARY OF VALUATION METHODS



EXHIBIT

Child Support

| Child's Name | Date of Birth | Age |
|--------------------|-------------------|-----|
| ERIK VAL JOHNSON | October 30, 1971 | 16½ |
| JENNIFER JOHNSON | January 22, 1973 | 14 |
| JAMIE ANNE JOHNSON | November 30, 1978 | 8 |

Defendant had earnings in 1986 as follows:

- a. Regular income Associates of.....\$ 150,580.00
Pathology
- b. Interest and dividends.....\$ 10,000.00
- c. Contribution to pension and profit...\$ 30,000.00
plan
- Total income for 1986.....\$ 190,580.00
- Gross monthly income.....\$ 15,881.66

The Uniform Child Support Schedule is calculated to gross monthly earnings of \$9,955.00. Accordingly, the defendant has gross income of \$5,926.00 per month above the maximum chart schedule. For three children, child support is per the maximum chart income level, plus \$6.00 per month per child for each \$89.00 of additional gross income. Accordingly, defendant should pay child support at the maximum chart income level of \$648.00 per month per child, plus an additional \$399.00 per month per child, for a total of \$1,047.00 per month per child.

23101
648.00
648.00
\$79.00

..... CHILD SUPPORT SCHEDULE
(Amount To Be Paid Per Child)

| Monthly Income | | Total Number of Children | | | | | | | |
|----------------|-----|--------------------------|-----|-----|-----|-----|-----|-----|-----|
| 4.3 Weeks) | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 0 - 217 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 218 - 295 | 28 | 21 | 17 | 14 | 12 | 11 | 11 | 9 | 8 |
| 296 - 384 | 33 | 28 | 22 | 19 | 16 | 14 | 14 | 12 | 11 |
| 385 - 473 | 47 | 36 | 28 | 23 | 20 | 18 | 18 | 15 | 14 |
| 474 - 562 | 56 | 42 | 34 | 29 | 25 | 21 | 21 | 19 | 17 |
| 563 - 651 | 67 | 50 | 40 | 33 | 29 | 25 | 25 | 22 | 20 |
| 652 - 741 | 76 | 57 | 50 | 39 | 33 | 29 | 29 | 25 | 23 |
| 742 - 830 | 85 | 64 | 51 | 43 | 36 | 32 | 32 | 28 | 26 |
| 831 - 919 | 96 | 71 | 57 | 48 | 41 | 36 | 36 | 32 | 29 |
| 920 - 1008 | 105 | 80 | 63 | 53 | 46 | 40 | 40 | 35 | 32 |
| 1009 - 1098 | 115 | 87 | 69 | 57 | 49 | 43 | 43 | 38 | 34 |
| 1099 - 1187 | 125 | 94 | 75 | 62 | 54 | 47 | 47 | 41 | 37 |
| 1188 - 1276 | 135 | 101 | 81 | 68 | 57 | 51 | 51 | 44 | 40 |
| 1277 - 1366 | 144 | 109 | 87 | 73 | 62 | 54 | 54 | 48 | 43 |
| 1367 - 1455 | 154 | 116 | 92 | 77 | 66 | 57 | 57 | 51 | 46 |
| 1456 - 1544 | 164 | 123 | 98 | 82 | 70 | 62 | 62 | 55 | 49 |
| 1545 - 1633 | 173 | 130 | 104 | 87 | 75 | 66 | 66 | 57 | 53 |
| 1634 - 1723 | 184 | 138 | 110 | 91 | 78 | 69 | 69 | 61 | 55 |
| 1724 - 1812 | 193 | 145 | 116 | 97 | 83 | 73 | 73 | 64 | 59 |
| 1813 - 1901 | 202 | 152 | 122 | 102 | 87 | 76 | 76 | 68 | 61 |
| 1902 - 1991 | 213 | 159 | 129 | 106 | 91 | 80 | 80 | 71 | 64 |
| 1992 - 2080 | 222 | 167 | 133 | 111 | 95 | 83 | 83 | 74 | 67 |
| 2081 - 2169 | 232 | 174 | 139 | 116 | 99 | 87 | 87 | 77 | 70 |
| 2170 - 2258 | 242 | 181 | 145 | 121 | 104 | 91 | 91 | 81 | 73 |
| 2259 - 2348 | 252 | 188 | 151 | 126 | 108 | 95 | 95 | 84 | 76 |
| 2349 - 2437 | 261 | 197 | 157 | 131 | 112 | 98 | 98 | 87 | 78 |
| 2438 - 2526 | 271 | 204 | 163 | 136 | 116 | 102 | 102 | 90 | 82 |
| 2527 - 2616 | 281 | 211 | 168 | 140 | 121 | 105 | 105 | 94 | 84 |
| 2617 - 2705 | 290 | 218 | 174 | 145 | 124 | 109 | 109 | 97 | 88 |
| 2706 - 2794 | 301 | 226 | 180 | 150 | 129 | 112 | 112 | 99 | 90 |
| 2795 - 2883 | 310 | 233 | 186 | 156 | 133 | 116 | 116 | 103 | 94 |
| 2884 - 2973 | 319 | 240 | 192 | 160 | 137 | 121 | 121 | 106 | 96 |
| 2974 - 3062 | 330 | 247 | 198 | 165 | 142 | 124 | 124 | 110 | 99 |
| 3063 - 3151 | 339 | 258 | 203 | 169 | 148 | 128 | 128 | 112 | 102 |
| 3152 - 3240 | 348 | 265 | 209 | 174 | 152 | 132 | 132 | 115 | 104 |
| 3241 - 3329 | 358 | 273 | 215 | 179 | 156 | 135 | 135 | 118 | 107 |

UNIFORM CHILD SUPPORT SCHEDULE
(Amount To Be Paid Per Child)

| Monthly Income (Weeks) | Total Number of Children | | | | | | | |
|---------------------------|--------------------------|-----|-----|-----|-----|-----|-----|-----|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 0 - 3418 | 368 | 280 | 221 | 184 | 160 | 139 | 121 | 110 |
| 9 - 3508 | 377 | 287 | 227 | 189 | 165 | 143 | 125 | 113 |
| 9 - 3597 | 387 | 295 | 233 | 194 | 169 | 146 | 128 | 116 |
| 8 - 3686 | 397 | 302 | 239 | 198 | 173 | 150 | 131 | 119 |
| 7 - 3775 | 407 | 310 | 244 | 203 | 177 | 154 | 134 | 122 |
| 6 - 3865 | 416 | 317 | 250 | 208 | 181 | 157 | 138 | 125 |
| 6 - 3954 | 426 | 324 | 256 | 213 | 186 | 161 | 141 | 128 |
| 5 - 4043 | 436 | 332 | 262 | 218 | 190 | 165 | 144 | 131 |
| 4 - 4132 | 446 | 339 | 268 | 223 | 194 | 168 | 147 | 134 |
| 3 - 4222 | 455 | 347 | 274 | 228 | 198 | 172 | 150 | 137 |
| 3 - 4311 | 465 | 354 | 279 | 233 | 203 | 176 | 154 | 140 |
| 2 - 4400 | 475 | 362 | 285 | 237 | 207 | 179 | 157 | 142 |
| 11 - 4489 | 485 | 369 | 291 | 242 | 211 | 183 | 160 | 145 |
| 10 - 4579 | 494 | 376 | 297 | 247 | 215 | 187 | 163 | 148 |
| 10 - 4668 | 504 | 384 | 303 | 252 | 220 | 190 | 166 | 151 |
| 9 - 4757 | 514 | 391 | 309 | 257 | 224 | 194 | 170 | 154 |
| 8 - 4846 | 523 | 399 | 315 | 262 | 228 | 198 | 173 | 157 |
| 17 - 4936 | 533 | 406 | 320 | 267 | 232 | 202 | 176 | 160 |
| 17 - 5025 | 543 | 413 | 326 | 271 | 237 | 205 | 179 | 163 |
| 26 - 5114 | 553 | 421 | 332 | 276 | 241 | 209 | 183 | 166 |
| 15 - 5203 | 562 | 428 | 338 | 281 | 245 | 213 | 186 | 169 |
| 04 - 5293 | 572 | 436 | 344 | 286 | 249 | 216 | 189 | 172 |
| 94 - 5382 | 582 | 443 | 350 | 291 | 254 | 220 | 192 | 175 |
| 83 - 5471 | 592 | 450 | 355 | 296 | 258 | 224 | 195 | 177 |
| 72 - 5560 | 601 | 458 | 361 | 301 | 262 | 227 | 199 | 180 |
| 61 - 5650 | 611 | 465 | 367 | 305 | 266 | 231 | 202 | 183 |
| 51 - 5739 | 621 | 473 | 373 | 310 | 270 | 235 | 205 | 186 |
| 40 - 5828 | 630 | 480 | 379 | 315 | 275 | 238 | 208 | 189 |
| 29 - 5917 | 640 | 487 | 385 | 320 | 279 | 242 | 211 | 192 |
| 18 - 6007 | 650 | 495 | 391 | 325 | 283 | 246 | 215 | 195 |
| 08 - 6096 | 660 | 502 | 396 | 330 | 287 | 249 | 218 | 198 |
| 97 - 6185 | 669 | 510 | 402 | 335 | 292 | 253 | 221 | 201 |
| 186 - 6274 | 679 | 517 | 408 | 340 | 296 | 257 | 224 | 204 |
| 275 - 6364 | 689 | 524 | 414 | 344 | 300 | 260 | 227 | 207 |
| 365 - 6453 | 699 | 532 | 420 | 349 | 304 | 264 | 231 | 210 |
| 454 - 6542 | 708 | 539 | 426 | 354 | 309 | 268 | 234 | 212 |

(Amount To Be Paid Per Child)

| ss Monthly Income (4.3 Weeks) | Total Number of Children | | | | | | | |
|----------------------------------|--------------------------|-----|-----|-----|-----|-----|-----|-----|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 6543 - 6631 | 718 | 547 | 431 | 359 | 313 | 271 | 237 | 215 |
| 6632 - 6721 | 728 | 554 | 437 | 364 | 317 | 275 | 240 | 218 |
| 6722 - 6810 | 737 | 562 | 443 | 369 | 321 | 279 | 244 | 221 |
| 6811 - 6899 | 747 | 569 | 449 | 374 | 326 | 282 | 247 | 224 |
| 6900 - 6988 | 757 | 576 | 455 | 378 | 330 | 286 | 250 | 227 |
| 6989 - 7078 | 767 | 584 | 461 | 383 | 334 | 290 | 253 | 230 |
| 7079 - 7167 | 776 | 591 | 467 | 388 | 338 | 293 | 256 | 233 |
| 7168 - 7256 | 786 | 599 | 472 | 393 | 343 | 297 | 260 | 236 |
| 7257 - 7345 | 796 | 606 | 478 | 398 | 347 | 301 | 263 | 239 |
| 7346 - 7435 | 806 | 613 | 484 | 403 | 351 | 304 | 266 | 242 |
| 7436 - 7524 | 815 | 621 | 490 | 408 | 355 | 308 | 269 | 245 |
| 7525 - 7613 | 825 | 628 | 496 | 412 | 360 | 312 | 272 | 247 |
| 7614 - 7702 | 835 | 636 | 502 | 417 | 364 | 316 | 276 | 250 |
| 7703 - 7792 | 844 | 643 | 507 | 422 | 368 | 319 | 279 | 253 |
| 7793 - 7881 | 854 | 650 | 513 | 427 | 372 | 323 | 282 | 256 |
| 7882 - 7970 | 864 | 658 | 519 | 432 | 376 | 327 | 285 | 259 |
| 7971 - 8059 | 874 | 665 | 525 | 437 | 381 | 330 | 289 | 262 |
| 8060 - 8149 | 883 | 673 | 531 | 442 | 385 | 334 | 292 | 265 |
| 8150 - 8238 | 893 | 680 | 537 | 447 | 389 | 338 | 295 | 268 |
| 8239 - 8327 | 903 | 687 | 543 | 451 | 393 | 341 | 298 | 271 |
| 8328 - 8416 | 913 | 695 | 548 | 456 | 398 | 345 | 301 | 274 |
| 8417 - 8506 | 922 | 702 | 554 | 461 | 402 | 349 | 305 | 277 |
| 8507 - 8595 | 932 | 710 | 560 | 466 | 406 | 352 | 308 | 280 |
| 8596 - 8684 | 942 | 717 | 566 | 471 | 410 | 356 | 311 | 283 |
| 8685 - 8773 | 951 | 725 | 572 | 476 | 415 | 360 | 314 | 285 |
| 8774 - 8863 | 961 | 732 | 578 | 481 | 419 | 363 | 317 | 288 |
| 8864 - 8952 | 971 | 739 | 583 | 485 | 423 | 367 | 321 | 291 |
| 8953 - 9041 | 981 | 747 | 589 | 490 | 427 | 371 | 324 | 294 |
| 9042 - 9130 | 990 | 754 | 595 | 495 | 432 | 374 | 327 | 297 |
| 9131 - 9220 | 1000 | 762 | 601 | 500 | 436 | 378 | 330 | 300 |
| 9221 - 9309 | 1010 | 769 | 607 | 505 | 440 | 382 | 334 | 303 |
| 9310 - 9398 | 1020 | 776 | 613 | 510 | 444 | 385 | 337 | 306 |
| 9399 - 9487 | 1029 | 784 | 619 | 515 | 449 | 389 | 340 | 309 |
| 9488 - 9577 | 1039 | 791 | 624 | 520 | 453 | 393 | 343 | 312 |
| 9578 - 9666 | 1049 | 799 | 630 | 524 | 457 | 396 | 346 | 315 |
| 9667 - 9755 | 1058 | 806 | 636 | 529 | 461 | 400 | 350 | 318 |
| 9756 - 9844 | 1068 | 813 | 642 | 534 | 466 | 404 | 353 | 320 |
| 9845 - 9933 | 1078 | 821 | 648 | 539 | 470 | 407 | 356 | 323 |