1996

Joos v. Joos : Brief of Appellant

Utah Court of Appeals

Dan Rodney Roos; Pro See Appellant.
E.H. Fankhauser; Attorney for Appellee.

IN THE UTAH COURT OF APPEALS

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PIPER C. JOOS,	:	
	:	BRIEF OF APPELLANT
Plaintiff and Appellee,	:	
	:	Case No. 960720 - CA
vs.	:	
	:	District Court #954904707 DA
DAN RODNEY JOOS,	:	
	:	Priority Classification 4
Defendant and Appellant.	:	(Orders involving child custody)
	:	
	:	

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APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
HONORABLE SANDRA N. PEULER

----------ooOoo----------

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ALL PARTIES

Dan Rodney Joos	Defendant and Appellant
Piper C. Joos	Plaintiff and Appellee
Anthony Dan Joos	Son to this marriage
Aaron Kent Joos	Son to this marriage
Alexander Brent Joos	Son to this marriage

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[1] Please note - There are numerous citations in this brief to the record of pages 159-225. For your convenience, these pages are included in the Addendum of this brief.

The above errors take root in this bad law that caused the Trial Court to ignore basic rights of our Constitution, allows third party disruption of the marriage contract, allows unilateral rather than no-fault dissolution of the marriage contract and other faults for which it should be declared void.

DETERMINATIVE CONSTITUTIONAL PROVISIONS

A - Constitution of the United States of America.

1. Preamble. We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

2. Amendment XIV, Section I. ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

B - Constitution of Utah.

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

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

3. Article I, Section 7. No person shall be deprived of life, liberty, or property without due process of law.

4. Article I, Section 18. No bill of attainder, ex poste facto law, or law impairing the obligation of contracts shall be passed.

5. Article I, Section 25. The enumeration of rights shall not be construed to impair or deny others retained by the people.

6. Article I, Section 27. Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

DETERMINATIVE STATUTES

1 - Utah Code 30-3-1(1) Proceedings in divorce are commenced and conducted as provided by law for the proceedings in civil causes, except as provided in this chapter.

2 - Utah Code 30-3-1(3)(h) Irreconcilable differences of the marriage.

3 - Utah Code 30-3-4(1)(b) A decree of divorce may not be granted upon default or otherwise except upon legal evidence taken in the cause.

4 - Utah Code 30-3-4(1)(d) ...The Court or the Commissioner in all divorce cases shall enter the decree upon the evidence or, in the case of a decree after default of the defendant, upon the plaintiff's affidavit.

5 - Utah Code 30-3-11.1 — Family Court Act — Purpose. It is the public policy of the State of Utah to strengthen the family life foundation of our society and reduce the social and economic costs to the State resulting from broken homes and to take reasonable measures to preserve marriages, particularly where minor children are involved. The purposes of this act are to protect the rights of children and to promote the public welfare by preserving and protecting family life and the institution of matrimony by providing the courts with further assistance for family counseling, the reconciliation of spouses and the amicable settlement of domestic and family controversies.

6 - Utah Code 30-3-12 - Courts to exercise family counseling powers. Each district Court of the respective judicial

districts, while sitting in matters of divorce, annulment, separate maintenance, child custody, alimony and support in connection therewith, child custody in habeas corpus proceedings, and adoptions, shall exercise the family counseling powers conferred by this act.

7 - Utah Code 30-3-16.1 - Jurisdiction of family court division - powers. Whenever any controversy exists between spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is a child of the spouses or either of them under the age of 17 years whose welfare might be affected, the family court division of the district court shall have jurisdiction over the controversy, over the parties and over all persons having any relation to the controversy and may compel attendance before the Court or a domestic relations counselor of the parties or other persons related to the controversy. The court may make orders in divorce or conciliation proceeding as it deems necessary for the protection of the family interests.

8 - Utah Code 30-3-16.2. Petition for conciliation. Prior to the filing of any action for divorce, annulment, or separate maintenance, either spouse or both spouses may file a petition for conciliation in the family court division invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties or an amicable settlement of the controversy between them so as to avoid litigation over the issues involved.

9 - Utah Code 30-3-16.7 - Effect of petition - pendency of action. ...the pendency of an action for divorce, annulment of marriage or separate maintenance shall not prevent either party to the action from filing a petition for conciliation under this act, either on his own or at the request or direction of the court as authorized by Section 30-3-17; and the filing of a petition for conciliation shall stay for a period of 60 days, unless the court otherwise orders, any trial or default hearing upon the complaint.

10 - Utah Code 30-3-17 - Power and jurisdiction of judge. The judge of a district court may counsel either spouse or both and may in his discretion require one or both of them to appear before him and, in those counties where a domestic

relations counselor has been appointed pursuant to this act, require them to file a petition for conciliation and to appear before such counselor, or may recommend the aid of a physician, psychiatrist, psychologist, social service worker or other specialists or scientific expert, or the pastor, bishop or presiding officer of any religious denomination to which the parties may belong. The power and jurisdiction granted by this act shall be in addition to that presently exercised by the district courts and shall not be in limitation thereof.

DETERMINATIVE RULES

1. Utah Rules of evidence.

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible. All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or the Constitution of the State of Utah, statute, or by these rules, or by other rules applicable in courts of this state. Evidence which is not relevant is not admissible.

DETERMINATIVE CODE

1 - Code of judicial conduct, canon 3: A judge shall perform the duties of the office impartially and diligently.

A - Canon 3 B(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and should not permit, and shall use all reasonable efforts to deter, staff, court officials and others subject to judicial direction and control from doing so. A judge should be alert to avoid behavior that may be perceived as prejudicial.

B - Canon 3 E. (1) A judge shall enter a disqualification in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, a strong

personal bias involving an issue in a case, or personal knowledge of disputed evidentiary facts concerning the proceedings.

DETERMINATIVE TREATISE

"THE ABOLITION OF MARRIAGE, HOW WE DESTROY LASTING LOVE," by Maggie Gallagher, Published in 1996. Bound in the addendum - Pages 1-300 (copied with special permission from the publisher).

STATEMENT OF THE CASE

(a) Nature of the case - My name is Dan Rodney Joos, defendant and appellant. My wife's name is Piper Colleen Joos, plaintiff and appellee. Over a dozen years of a productive and happy marriage were followed by a period of great struggle with challenges beyond our control (R.163). During that time outside parties (others) upset Piper with criticism (R.162,168) and domination (R.398,458,459). Others had wanted Piper to marry someone else (R.162), agreed to testify in court against me over a year before she filed for divorce (R.162), and told her to get a divorce before she ever filed (R.167). Before causing our separation, others had her stay in their homes and keep the children from me (R.357). Others threw me out of our home before she filed for divorce (R.162,405), and have paid her to get a divorce (R.344).

Instead of standing for the importance and sanctity of marriage for ourselves, the children, and society, or recognizing the above interference, and allowing us the opportunity to preserve our family, the Trial Court issued a decree of divorce (R.504).

(b) Course of proceedings

11-14-95 (R.1) Complaint filed citing irreconcilable differences.

1-10-96 (R.47) Answer denying irreconcilable differences exist.

1-26-96 (R.52) To accommodate reconciliation I ask that the restraining order on visitation not be imposed.

2-1-96 (R.57-59) Child abuse is alleged.

2-1-96 (R.56) I am restrained from seeing my wife.

3-20-96 (R.83) Guardian ad litem finds no abuse, expresses concern and recommends that we, with our children, enter counseling.

3-25-96 (R.99) Case certified for trial by Mr. Fankhauser.

4-17-96 (R.101) I request the Court to intervene to preserve marriage (conciliation).

5-1-96 (R.104) Commissioner tells Court I refuse to negotiate for divorce, denies petition for conciliation and asks the District Court to review.

8-22-96 (R.153) District Court denies my request for a hearing and denies conciliation petition.

9-6-96 (R.159-172) I deliver, as previously arranged with Trial Court Clerk, my own written memorandum for the Trial Judge.

9-6-96 (R.284) Trial Judge refuses to consider my memorandum.

9-6-96 (R.285-286) Trial Judge says I may speak to the Court only if I am willing for my counsel not to sit with me.

9-6-96 (R.297) Trial Judge refuses to limit evidence to no-fault issues.

9-6-96 (R.395,423,424,425,439) Trial Judge limits testimony and evidence in favor of preserving the marriage.

9-6-96 (R.490) Trial Judge again refuses to consider my memorandum, or to let me speak to the Court before ruling.

9-6-96 (R.500) Trial Judge refuses to consider my memorandum.

9-6-96 (R.504) Trial Judge grants divorce.

(c) Disposition in the Trial Court. Trial Judge refuses to consider preserving the marriage and grants divorce (R.156).

(d) Statement of facts relevant to the issues presented for review.

1. Piper and I were married August 4, 1978 in a sacred manner and place, with a determination to live our lives forever in the way outlined in the book, "Marriage" (R.171).

2. The problems in marriage remained minor, until a few years ago when multiple tragedies and difficulties beset us (R.451).

3. There has been a great deal of interference, and untruths heaped upon us, from outside parties (others) (R.162,168).

4. Others, or the Courts, never succeeded in turning me against Piper, or our vows (R.168).

5. Our's has been recognized as a superior marriage by many people (R.160).

6. The Trial Court made no effort or allowance for us to use legislative mandated statutes to preserve our marriage.

7. The Trial Court decreed a divorce on no-fault grounds showing only fault and personal preference without showing "the parties differences are so great that no reasonable effort would serve to reconcile them" (R.176).

8. This government took away my wife, my family, my children, my home, my property and my income, without allowing me a single opportunity to save this family through the Courts, or to speak freely

to a judge in the process. I only got to answer a bunch of questions, most of which were irrelevant to preserving our family.

SUMMARY OF THE ARGUMENT

Marriage and family have existed for millennia by the support of society, culture and government as the best way to raise children and attain peace, prosperity and happiness in this life. Our governments and constitutions were founded on such a belief. Marriage takes two different, unrelated people and makes the tremendous effort to join them as one body, heart and soul. Only with great social and cultural support and energy can this aspiration be made true[2].

The State of Utah has long recognized the social need to avoid divorce and to strengthen marriage. Most of our gravest problems of crime, poverty, welfare and abuse mount with the erosion of marriage. We must all make a strong stand for marriage for American civilization to stand at all. We cannot continue to devalue marriage to be merely an alternative lifestyle - it is the foundation of all we are, or can be. This legal union is not purely a private act, but a social institution that is being destroyed by no-fault divorce.

"Irreconcilable differences of the marriage" is the cause of the dissolution of this, and many other marriages. Society and State need to ask what will the end result be if this marriage ends? Where will these children be in 20 years? What about all the relatives, neighbors and friends who will lose faith in marriage? How many young men will fail to commit to marriage? How many people will enter into a marriage

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[2] This paragraph and many that follow derives much from the treatise on marriage: **"The Abolition of Marriage, How we Destroy Lasting Love"**, by Maggie Gallagher, published 1996. (See Addendum)

contract with only one foot - watching out for themselves instead of their spouse?

The Trial Court used this law of "irreconcilable differences" to deny the most basic of rights, and destroy this family.

It amazes me that the Trial Judge had no difficulty exercising powers to reconcile an 'irreconcilable divorce' and yet could not see a way to use these powers, with additional powers granted by the legislature, to save a troubled marriage. The very process the courts choose of adversarial methods and litigation extinguishes the life of all marriages that come to it. This marriage is exceptional because we are on appeal to save this family, rather than fight over money, possessions or children.

This Court has a rare opportunity it may never have again, to re-enthrone the importance of commitment to marriage and to change procedures to save marriages. Why should others be able to condemn my wife to a life of fewer choices, mandatory employment and likely loneliness, and have the Trial Court rubber stamp what others told her to do? I will stand with love for Piper's welfare and well-being always, because that is what I promised when we were united in love and matrimony. The courts should also stand for this true love that is lacking in society, and reunite this family.

DETAIL OF THE ARGUMENT

This is not written by a lawyer, and as I try to preserve our family, I ask not to be expected to talk and argue like a lawyer.

As mentioned before, my name is Dan Rodney Joos (Defendant and Appellant) and my wife's name is Piper Colleen Joos (Plaintiff and

Appellee). We have been involved in this action for one and a half years with the courts, and this is my first opportunity to speak freely to a judge. That is one reason I am writing this brief myself.

Instructions given me for this argument include: **(1)** limit remarks to what is in the record, **(2)** try to act as an "Educator," and **(3)** be willing to discuss "policy considerations" on appeal.

It does not take much searching to obtain a wealth of knowledge on a subject as common and broad as marriage and divorce. Volume 7 No. 4 (1961) Utah Law Review is helpful. It has the companion article, also by Brigitte M. Bodenheimer, to the article included in the record (R.210-225).[3] It shows past success of courts preserving marriages in an article entitled, "The Utah Marriage Counseling Experiment: An Account of Changes in Divorce Law and Procedure."

"Judicial Profiles" and "Views From the Bench," articles from the Utah Bar Journal repeatedly echo common themes from the judges themselves. Drawing battle lines and creating adversaries of family members greatly diminishes judges' effectiveness and ability to craft solutions that anyone is happy with in their Courts. Litigation and marriage DO NOT MIX.

Very helpful to me, a commoner with no previous experience in the legal profession, was to study divorce cases themselves at the Trial Court level. Perhaps it is common knowledge to all lawyers and judges, but to read the past thirty years of so many divorce cases has been very insightful to me to see how people think and feel, and to watch patterns emerge. I paid particular attention to complaints and

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[3] See Addendum

grounds, but also saw the universal unhappiness all sides felt in the end result of divorce.

One last education and policy help. People use the subject of marriage like the Constitution; they praise and use it when it suits their needs and ignore it when it does not. Notice the difference the United States Supreme Court speaks of marriage as shown in the book, "The Abolition of Marriage, How we Destroy Lasting Love," by Maggie Gallagher. It is interesting that the Supreme Court is discussing the same subject in both cases, but to two different groups of people. It says, beginning on page 132:

> "This is the distance traveled in just a few short years by the Supreme Court. In the famous 1965 case of *Griswold v. Connecticut*, the Court declared that, in marriage, "We deal with a right of privacy older than the Bill of Rights, older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred.' But in 1972, in *Eisenstadt v. Baird,* the Court had no problem dissolving the sacred union: 'Yet the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with separate intellectual and emotional make-up. If the right of privacy means anything, it is the right of the *individual,* married or single, to be free from unwanted government intrusion'."

The point is - our legislature and society in Utah have always manifested their high regard for marriage - a public institution that is public because it provides the only safe way to raise children. We do not need to follow other states or courts in their definition of marriage, because marriage existed long before them all. Holy matrimony is the foundation on which rests even our great constitutions. States do not define marriage and, for the betterment

of society, Utah may need to set a higher standard and example, like we do in other areas, in firmly supporting intact families. Not too long ago everybody knew what marriage was, now everyone seems to be confused about what it is, why one should get married and stay married, or what benefits should be given marriage.

ISSUE

A - With grounds in dispute, did the Trial Court err by placing my wife and I in adversarial roles? ***and***

With grounds in dispute, did the Trial Court err by failing to provide opportunity to reconcile through the Court before trial by, but not limited to, conciliation?

When families are in crises, litigation before the Courts is the worst solution to their problems. This has been stated so often by so many people that it is common knowledge. This issue is before the Court of Appeals for the first time because litigation effectively destroyed all other marriages that came into this system, and found no way to escape.

In an example by Brigitte M. Bodenheimer (R.212) she tells how two lawyers allowed an experiment in a marital crisis with their clients rather than draw the battle lines that always occur with a divorce suit. She reports:

> "... in the final stages of the interview the couple found a common ground and formed a kind of alliance against the neighbor, who they felt had lied to them both.
>
> "Doctors Langsley and Kaplan report that, 'the two lawyers had been shaken by the interview'. The husband's attorney realized that the neighbor was not the only source of friction and became disenchanted with his client as a

> martyr. The wife's lawyer began to be sympathetic with Mr. Simpson's plight and now wanted a reconciliation: 'Not completely in jest, they spoke of switching clients. They agreed to cooperate with one another in helping the Simpsons solve their problems.'
>
> "The joint interview had served to resolve the crisis."

In the complaint for divorce for our case it says simply (R.1):

> *3. During the course of the marriage the parties have developed irreconcilable differences. Plaintiff believes she can no longer continue in the marital relationship.*

Although my answer (R.47) denies such, the District Court, from the filing of the complaint, treated me guilty as charged. This shows a glaring defect of "irreconcilable differences." Had I been accused on one of the fault grounds of divorce, the Court would have had to investigate further into the matter. The Court instead, accepted as fact my wife's statement and simply used as evidence from that point, "If she says so, it must be so." "Irreconcilable differences" gave the Court the right to ignore everything I have said to preserve the marriage and to force us to a divorce.

Utah Code 30-3-4(1)(b) and 30-3-4-(1)(d) clearly say twice that the Court can only grant a divorce based on the evidence. (This brief, page 3) (hereafter referred to as P.)

Because of the three month waiting period before any hearing is allowed to present evidence, the Trial Court should have spent that time to move quickly to solve the marital crisis and to preserve the family.

Mrs. Bodenheimer states further(R.213) exactly the same events that happened to our family:[4]

> "The general observation of Doctors Langsley and Kaplan based on their experience with a large number of marital conflict situations are of value to the legal profession. Their findings show: the stress which produces separation is rarely just chronic dissatisfaction with the relationship. Often there is entry of some new features into the conflict....**one spouse**, angry over a repetition of chronic conflict, **seeks and finds someone else who encourages separation** as the solution." (Emphasis added).

These other people unknowingly fell into the same trap shown on this page (R.213):

> "**They focus only on the old problems** that the family has lived with all these years. To accept their assessment of the problem's chronicity would be to **miss the point of crisis** and to assume that the marriage has always been as bad as it seems at the time" (Emphasis added).

Instead of doing the same thing as the people trying to break up our family, and putting us on the railroad to divorce, the Court should have used its special powers, given by the legislature, to reconcile during the waiting period. As further shown in the record, page 213, the Court should have reopened communication and eliminated the "flame fanners" who would not support the marriage. How easily it could have used those special powers to order a few changes and adjustments on our parts in the children's, our own and society's interest of keeping the family intact.

Piper and I had first hand experience in this role only a few years ago. A long time family friend came to our home to tell us that

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[4] Kindly remember that because of so many references to the record of pages 159-225, these pages are provided conveniently in the addendum.

she was going to get a divorce. She was as angry as Piper ever was, but we refused to side with her against her husband. I mocked her when she said things I *knew* were not true, and she returned home and their family was saved. Their young daughters still have a father who returns home every night after work. Intervention in the crisis is intense, but is "relatively brief" (R.211, 216).

The Court never allowed Piper this intervention that the "flame fanners" were preventing her from having. As one judge's experience shows (R.213-214):

> "... became saddened and disturbed by the spectacle of human misery parading before him daily in the "sham battle" of adversary proceedings with but one adversary. He began to ask questions from the bench and found that people with all kinds of troubles were seeking help."

He then states that what he had been doing was "to bury a live corpse" and that "Honest efforts at marriage mending or amicable adjustments" would continue to be frustrated as long as divorce law retained the "twin syndromes of the accusatory approach and the adversary procedures."

This brief (P.6-7) shows clearly how the Court railroaded the marriage to divorce without ever finding out what the crisis was (R.224), what Piper was trying to communicate (R.224), or the "turning point" that the Court was being asked to play in the marital relationship (R.224).

The Trial Court did as it was warned not to do - decreed "divorce without breakdown" (R.224). Utah Code 30-3-12 clearly states (P.3-4):

> "Each District Court of the respective judicial districts, while sitting in matters of divorce....SHALL exercise the family counseling powers conferred by this act."

There is no discretion in it or in our stated public policy (P.3); UC 30-3-11.1):

> "...To take reasonable measures to preserve marriages... preserving and protecting family life and the institution of matrimony....the reconciliation of spouses and the amicable settlement of domestic and family controversies."

I asked from the beginning that there be no restraining order on visitation *for the exact purpose* of accommodating reconciliation (R.52). With child abuse alleged (R.57-59) the Court must have felt it desirable to ignore my request and restrained me from seeing my wife (R.56).

But when the guardian ad litem determined there was no abuse (R.83) The Court should have reversed this restraint, returned me to the home, and began the reconciliation process. We had lived peacefully for sixteen years, and had only become separated by interference of others. The Court should have re-established our communication, and eliminated outside interference. The guardian ad litem report should have been a red flag to the Court that the situation was not as it seemed, and the Court should have found out who convinced Piper that the children were abused.

I believe that had the guardian ad litem report not been in my favor it would have been quoted, perhaps verbatim, in the District Court trial, but the trial judge erred by ignoring it completely. Its

recommendations became irrelevant to the trial judge because I was not guilty of abuse.

Utah Code 30-3-1(1) says that divorce will be handled as "civil causes, except as provided in this chapter" (P. 3). The exception allowed here is that the Trial Court will do everything in its power to prevent the divorce from happening. This exception gives the trial judge powers and jurisdiction that it normally does not enjoy. Utah Code 30-3-17 (p.4-5) says:

> "... The power and jurisdiction granted by this act shall be in addition to that presently exercised by the District Courts and shall not be in limitation thereof."

The additional jurisdiction is found in Utah Code 30-3-16.1 (P.4):

> "Whenever any controversy exists between spouses... the District Court shall have jurisdiction over the controversy, over the parties **and over all persons having any relation to the controversy** and may compel attendance before the Court... **other persons** related to the controversy." (Emphasis added).

This statute then gives the District Court the **power** to eliminate others from interfering in the marriage and to re-establish communication between the spouses (P.4):

> "The Court may make **orders** in divorce or **conciliation** proceeding as it deems necessary **for the protection of the family** interests." (Emphasis added)

The District Court made no such effort, and refused our repeated requests, including the petition for conciliation (R.101) to provide the proper forum to reconcile. Perhaps the Trial Court thought that we could do it all on our own, and we were in court because of problems

that could not be corrected. Such a belief ignores what was given to the trial judge (R.218):

> "Almost any couple during a lifetime of marriage could find ample opportunity to break up, **depending upon who is around** when divorce impends". (Emphasis added).

If our friend had gone to see a "flame fanner" (R.213) instead of Piper and me, she likely would have ended up in court and divorced, although her marriage was very reconcilable, and was saved. Sometimes people just need a little help being directed what to do in the middle of a crisis - something easily done even at court level. Also said in the record (R.223-224):

> "But there will always be couples who will refuse to see any helping agency before they get to Court (Although these people are often the ones who most readily change their minds). Thus a State seriously concerned about preserving families **must provide a final opportunity for conciliation** at the Court stage. The Court is the "narrow pass" through which all divorce seekers must "file" and the only place where all can be reached.
>
> Experience in Ohio, California, Wisconsin, Michigan, Utah and other States proves that court-attached conciliation services are effective and invaluable to many families."

More of this discussion on what happened, and the law, would leave me with few pages to discuss the other issues. Let me end this issue by pointing out Utah Code 30-3-16.7 says (P.4):

> "Pendency of an action for divorce....**SHALL NOT PREVENT** either party to the action from filing a petition for conciliation under this act." (Emphasis added)

The Trial Court denied my request for a hearing, and our petition for conciliation (R.153), and set the matter for trial without Piper and I ever seeing a judge. Piper and I were expected to be

adversaries, and oppose each other on all the issues that come with breaking up a family, so the Court could use its great wisdom to reconcile our differences in divorce. I refused to negotiate for divorce (R.104) and knew at trial I could not claim to want to preserve our family, while at the same time fighting for the best situation in divorce. How odd that the trial judge expected me to play such a dual role and to destroy my own family!

ISSUE

B - Did the Trial Court err in granting divorce without showing irreparable breakdown of the marriage?

The Trial Court begins it's ruling on page 503 of the record. The trial judge said on page 504:

> "First of all, as to the divorce itself, I do find there is jurisdiction over this matter and that the plaintiff has set forth sufficient basis for a divorce to be granted her, that basis being irreconcilable differences.
>
> "The **testimony of the plaintiff which the Court finds sufficient for the purposes of irreconcilable differences**, include her testimony that she has objected to the defendant's treatment of the children, that she felt the defendant had been critical in that he preaches to her. She's disagreed with how finances were handled. He left and stayed away for two and a half months without providing support for them, which upset her, and that the parties have disagreed on how they should live their lives.
>
> '"**She has concluded**, based upon that, and that **testimony was limited to the past year** and preceding the filing of the complaint, and that **led her to conclude** that the parties had irreconcilable differences.
>
> "...**She has concluded** that their differences are so great at this time that no reasonable effort would reconcile them.
>
> "**In her opinion**, the differences and disputes are so great that nothing can be done.

> "...**And her testimony** is that, "Based upon the differences and disputes and separations that they had, the differences are irreconcilable **and I find that testimony to be sufficient** for me to grant the divorce." (Emphasis added)

So, we see in this ruling the key to why the Trial Court never allowed us the opportunity to discuss or receive any chance of reconciliation through the Courts. We see now why both the judge and the commissioner said Piper could have a divorce if that is what she wanted - long before any evidence was given at the trial (R.165-166). They ruled, in effect, that irreconcilable differences is founded simply on the conclusions and testimony of the plaintiff. The Court did not investigate Piper's conclusions, and simply treated my testimony to the contrary as irrelevant. This "no-fault" divorce, to the Trial Court means "unilateral divorce." Even worse, in our particular situation, it means that the marriage contract can be disrupted by third parties (R.162,167,168), and ended without intervention by the District Courts of Utah.

Case law is extensive that shows the validity of no-fault statutes, and always rests on proof that the marriage is no longer viable, and there is no hope of reconciliation (R.173-209). By not following this strict legal definition, the Trial Court caused many errors before and during the trial. I wish to point out that the real problem is more the result of **BAD LAW,** than judicial shortcomings.

Just before the Trial Court issued it's ruling, Mr. Barker pointed out on behalf of myself, the defendant (R.493):

> "And the purpose of the conciliation statute and the purpose of no-fault divorce is to foster the public policy

> of preserving marriages. This is one that can be preserved and ought to be.
>
> "The worst that she's said about him is that he's domineering, judgmental. All conclusionary items. She hasn't identified any specific supporting facts, and he is willing to do whatever it is he needs to do if she'd just tell him what it is. But if she won't tell him, of course, how can he do it?"

A review of the evidence for grounds of divorce shows a lack of evidence of marriage breakdown and manifests only fault and personal preference instead.

The transcript of my wife's testimony to grounds begins on page 293 of the record and continues until page 303 of the record where the trial judge says:

> "I will indicate at the present time that I believe the direct testimony is sufficient, in terms of grounds. If you'd like to move on to the other areas."

A review of that testimony show no "irreconcilable differences" and shows no marriage breakdown. It shows a few broad statements such as, "He's very judgmental. He's critical of how I am. He preaches to me" (R.294). Also mentioned are sacrifice, doing without, and lectures about spending money (R.301-302).[5]

What is missing from all the testimony is evidence of breakdown of the marriage. There are no hateful words, no public humiliation, no expressions of wanting a divorce, no refusal of support and companionship, and no withholding of love. There are no such accusations because it never happened in our marriage. I remained one hundred percent true to our vows and our love.

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[5] Actually most of pages 293-303 are filled with discussion of the law by the Court and attorneys.

The testimony includes fault that was objected to, and should never have been allowed, but the trial judge based her decision to allow this evidence with these words (R.297):

> "Well I am going to overrule the objection. And let me make this observation. I believe the complaint was filed based upon irreconcilable differences. However, there are, as both counsel have noted, numerous other grounds under the statute that allow the Court to grant a divorce based upon fault. I'm not going to, at this point in time, limit the plaintiff in her testimony until I've had an opportunity to hear more. I don't know what she's proceeding on. And if she chooses to give testimony as to fault, I guess I'll have to determine, at that point, as to whether or not to grant a divorce based upon a different ground."

I went to trial to help Piper surmount the influence of people controlling her - only to have the judge grant a "no-fault" divorce based on inadmissible evidence of fault. Rule 402 of the Utah Rules of Evidence states (P.5):

> "Relevant evidence generally admissible; irrelevant evidence inadmissible. Evidence which is not relevant is not admissible."

In a unanimous opinion of the Utah Supreme Court we are reminded that the Courts are involved as a party only to prevent its dissolution, and it is not for the parties (or others) to decide to end a marriage. *Palmer v. Palmer 72 P. 3, 8*:

> "Mutual agreement of a male and female who are of the requisite age and capacity may create the marriage relation, but it can never dissolve it. The state being founded upon the family, so high is the marriage status regarded by mankind, so necessary is its permanency to promote the public welfare and private morals that **the State,** to every marriage contract entered into within its jurisdiction, **makes itself a party, in the sense that it will not permit its rescission or dissolution** except for a cause provided by law, the

existence of which is to be ascertained by a court of competent jurisdiction, upon evidence regularly submitted in a proper proceeding instituted in good faith for that purpose. The parties cannot even consent to a decree in open court, nor stipulate as to the facts. **The decree must be based on absolute proof.** The welfare of humanity, the intelligence and progress of the human race, high moral and social ethics, alike demand this.

"...The law requires husband and wife, in their relation to each other, to perform certain duties and refrain from committing certain wrongs. Taking note of human infirmity, and of certain failure of some to do as it requires, or to refrain from doing what it forbids, it makes possible a method of release from the marriage contract **upon proof that its purpose must entirely fail** of accomplishment. **Every decree of divorce must rest upon proof of such facts**....not at all upon the wishes or agreements of the parties." (Emphasis added)

Referring again to the basis upon which the trial judge granted divorce (P.20), every issue, except one, shows only a personal preference of handling things in a different way. They do not meet the tests and conditions as shown near the end of 24 AmJur 2d.§ 31, or as said in it's final paragraph:

"The marriage relationship is for all intents and purposes ended, no longer viable, a hollow sham beyond hope of reconciliation or repair."

One issue, our separation at her request (R.295-300) shows fault, but cannot be used as grounds for divorce anyway.

In *Hilton v. Roylance* 69 P. 660,669, the Utah Supreme Court says:

"Cohabitation may immediately follow as an incident to a marriage, but it is not compulsory; and the parties may cohabit or not, as they may mutually agree, without affecting their status".

The Utah Supreme Court says in a unanimous decision (*Kidman v Kidman, 164 P.2d 201,202*):

> "A party cannot make the separation which was begun and prolonged by common consent, a ground for divorce **where he has made no effort at a reconciliation.** Such separation is deemed to be with the consent of both parties." (Emphasis added)

Another fully concurred opinion of the Utah Supreme Court says (*Speak v. Speak, 19 P.2d 386,387,388*):

> "A separation to which both parties willingly concur is not in any sense of the word a willful desertion of one by the other. ...Mrs. Speak says she has never refused to live with her husband. The evidence rather clearly shows that Speak seemed more anxious to be free from her than she to be from him.... Plaintiff has failed to prove a case of willful desertion by his wife against his will and without his consent.
>
> The judgement and decree of the District Court for Salt Lake County is reversed, and the case remanded, with directions to dismiss plaintiff's complaint".

The Utah Court of Appeals ruled recently that "Irreconcilable differences of the marriage" is indeed a no-fault statute. (*Haumont v. Haumont 793 P.2d 421,427*)

> "Because subsection (h) does not set forth a specific fault of the defendant, in contrast to these other subsections, we can infer that subsection (h), unlike the other provisions, is intended to be a no-fault provision."

Needing to move on to the last issue on appeal, let me cite two more cases, prefaced by the observation that, rather than marriage breakdown beyond repair, the record shows abundant evidence that our unhappiness is rooted more in the control and domination of others who

have refused to be happy with Piper doing things differently than they do - even though her ways were much better than theirs. In a cruel and abusive way, without my knowledge, they attacked her during the most trying times of her life. Imagine the effect of others telling Piper that her husband was trying to kill her for her insurance money as she lay in bed recovering from one of several tragic miscarriages. Why would others tear her down when she accepted the challenge of being a foster-mother, or tell her that I was unfaithful and paying "hush money?" When these others found out about her outstanding effort and diligence that paid off our home mortgage on one income in only 10 years, they said it did not matter that the home was paid for because the inside was a "dump," and the children had to "do without."

During this time others criticized her for working on the basement herself, for growing and using garden food instead of buying it, and for refurbishing used furniture. This is the marital crisis in which the Trial Court was being asked to intercede. This is the cry for help that was before the Trial Judge, who tightened the cords of control others held over Piper, rather than use special powers from the legislature to cut them. Astoundingly, in the trial itself, is a demonstration of how others have maintained authority over Piper. I had to defend her against these questions.

(R.454) Q. She's not very good with figures, is she?

(R.468) Q. You knew that prior to her marriage, she had had hepatitis as a child?
A. Yes
Q. And that she had very limited stamina?

This is how others treated Piper. They say, "Poor, weak, not-very-smart Piper; You do what we say and we (who are much stronger and smarter than you) will watch out for you. You do things our way, and make your family do things our way to please us, and we will indulge you and not say bad things about you, like we say about people we don't control."

Piper's marriage was a threat to this secret pact, because I vowed to God my eternal love and all I possessed with Piper in Holy Matrimony, without heed to other's wishes.

When we came before the District Court, it should have supported her decision to marry, and the marriage contract, rather than promote others who would destroy it. The Courts should pay attention to this marriage and all marriages. At trial I said (R.421):

> "Piper is the truest person I have ever known. On her worst day, she's ten times truer than the people surrounding her on their best day. And I have never known her to--to be anything but without guile. And while she has been very unhappy and these last few years have been very stressful and I, probably, have been to blame in not defending her properly against the words and actions of others. But I didn't know everything that had been said behind my back to her.
>
> She is a very special person. And I think through all of this, everything that has been said and done, she's been trying--she told me a few weeks ago there's only one person she trusts, and that person told her to get a divorce."

It takes a superior character like Piper to accomplish what she has done. Others, who were probably jealous, ignored what she accomplished and criticized her for things that were less important. For everything she chose to do, there are a hundred things that could not be done. As the record shows (R.467-470), we chose to live on one

income, and allow her to devote time and effort to raise the children. It was part of our "contract," as in the book, Marriage (R.171). To have done that, and paid off the mortgage, finished the basement, and furnished a home for a family at the same time, shows a woman who *is* extraordinary "with figures" and has *remarkable* "stamina." All this, and more, were accomplished because of our marriage contract. Anyone would yell for help loud and long after making such effort and afterward being told by others that she is a weak fool - others who should have cared more for her than themselves. When she did as they wanted, and filed for divorce, they finally gave her peace, and started supporting her, instead of criticizing once they were again in control. Piper is 40 years old, old enough to be free of this control. She was wise enough to have married the one person who loved her enough not to give up in the process of freeing her.

The Utah Supreme Court *(Cordner v. Cordner 61 P.2d 601)* lists on page 603 numerous items that would be indicative of marriage breakdown, none of which happened in our marriage nor in that marriage. In summation they say on page 604:

> "Before a divorce may be granted, it must be alleged and proved that the further maintenance of the relationship is incompatible with the public policy of the state...
>
> 'No substantial reason appears why they may not again resume the relation established by this marriage contract. The defendant desires to do so. She has the right to insist upon her legal rights. A little more forbearance and less obstinacy on the part of both may well result in a happy home. No irreconcilable incompatibility appears".

Another Utah Supreme Court, without dissent, ruled *(Cawley v. Cawley 202 P. 10,11)*:

"Moreover, we are thoroughly convinced that the defendant did all within her power to prevent the airing of the domestic infelicities of herself and her husband in the courts and thus to keep them from becoming public for all of which she is to be commended. We shall therefore merely state such conclusions as we deem necessary.

It may be that if the defendant had refused to answer plaintiff's numerous charges and had failed to appear in the action, that upon his evidence alone the court might have granted him a decree of divorce. When the defendant came into the court, however, and denied plaintiff's accusations and made full explanation respecting the true situation....the District Court could not grant the divorce he sought for the simple reason that he had utterly failed to establish his charges".

ISSUE

C - Is Utah Code 30-3-1(3)(h) "Irreconcilable Differences of the Marriage" unconstitutional?

The Trial Court was given information about how no-fault divorce grounds are held to be valid. On the bottom of page 175 of the record it says that it has **never** been held invalid. Pages 179-182 of the record (See Addendum) discusses the attacks on the validity, unfortunately, the protection of **rights** in other States are lacking in Utah Law. If there is a **bad law** that tramples **any** Constitutional **rights** then a court must declare that law unconstitutional.

55 ALR 3d 581 says (R.180):

"The Court reasoned that the **rights** of the responding party who elects to oppose the dissolution of the marriage are fully protected, procedures prescribed for **exhausting all reasonable efforts to save the marriage by reconciliation** demonstrating the continuing concern of the law for the preservation of the marriage whenever possible. The Court observed that the continuing policy to avoid collusive dissolutions and to insure that **dissolutions would be granted only upon adequate proof** that the causes of the **marital failure were in truth irremediable** had been emphasized by a recent decision." (Emphasis added).

It then says, in that State, that the legislature had not left the dissolving of marriages to "any litigant" nor to the "Courts without any guidelines whatsoever."

If their statute is held valid because of such protections, then surely **our's must be invalid** for lacking every one. And our's tramples many more rights.

Returning again to *Cordner v. Cordner 61 P2d 601, 604* the Utah Supreme Court says:

> "The marriage covenant creates a status not lightly to be regarded. It is presumed that before a man and a woman marry they have wisely, carefully, discreetly and reverently considered the matter. The institution of marriage is a sacred one protected by the law, fostered by religion, and maintained and encouraged by organized society. Once entered into, good cause for separation must be alleged."

If a marriage is fostered by religion, why should we fear to say religion or God in discussing this marriage? The marriage covenant is far more a religious contract than a civil one. The government's only interest in this contract, stated so many times by the Utah Supreme Court is for the **preservation of marriage**. Doing anything more than that is unlawful intrusion of the government into the privacy and rights protected by our Constitutions.

Just because the Commissioner said (R.104), "Mr. Joos refuses to negotiate because of his religious beliefs," was no reason for the Trial Court to take the attitude that me and my "religious beliefs" can just be ignored, and the Court can now make orders affecting any part of my life, family and property without any consideration to anything

I say. Not a single request or desire of mine is found in the ruling. How is that possibly "due process" or "equal protection"?

In *Hilton v. Roylance 69 P 660, 665* the Utah Supreme Court explains that the Courts must take notice of the contents of the Bible, that "Christianity has been declared to be a part of the common law," and Courts must "assume knowledge of the revealed laws of God." Indeed the Utah Constitution begins (P.2) "Grateful to Almighty God..." and the United States Constitution, Article VII, is signed in convention "In the year of our Lord." That is the key to the greatness this nation has achieved above every other nation. Simply as put on every coin, "In God we trust".

When we take away from what God says marriage is, then we destroy the foundation on which our society and Constitutions rest. The very center of marriage is its vow - that a man and a woman will hold themselves for each other only - in following God's laws - and thereby become husband and wife. Even people without religion follow these same rules to achieve a union of heart and body to become "one flesh." It can happen no other way.

Every person that practices law in the courtroom has made a vow (oath). What is its purpose? What does an oath accomplish? A good example is a soldier who has taken an oath to defend his country. It is so - when that soldier is lost, dirty, hurt, hungry and lonely - the soldier will have something to cling to and to follow to do what is right, and to continue to do his duty when it is no longer easy. The marriage vow has the same purpose. Happy people do not ask for a divorce! Why should the Courts be surprised that only people with marriage problems are asking them for help, and that the Court's only

intrusion and duty is to aid the couple to make things well again. Sick people see doctors, do doctors execute them for getting sick?

Referring again to *Hilton v. Roylance 69 P. 660, 666,* the Utah Supreme Court quotes much of the revelation on celestial marriage of the Church of Jesus Christ of Latter-Day Saints (LDS). It says:

> "And again, verily I say unto you, if a man marry a wife, and make a covenant with her for time and all eternity....".

Is this not what Piper and I did? Why did the State of Utah say a decade later in 1987, House Bill 139, that our covenant was illegal, and in practice, the Courts upheld it? As practiced by the Trial Courts of this State, people can make any sort of contract for any length of time, and the Courts will read it and uphold it, but a man and a woman no longer have a right to make a lifetime commitment in marriage to each other. The vow is illegal, and either one can leave at any time, and the Courts will reward the person who leaves, and punish the person who is left. In effect, the government has destroyed marriage by making a winner of the person who leaves, and refusing to regard the commitment which is the center of marriage.

I told the Trial Judge that I listened to what was said by the legislature in 1987 (R.165). It is no surprise that a lawyer introduced the bill, and when it met opposition in the Senate, another lawyer defended it. They said it was to prevent blow-ups in Court. I bet everyone wishes they could change the law to make their jobs easier. Now, instead of the sometimes challenging task of trying to preserve marriage, lawyers and judges could work hard at making divorce easy, and still slap each other on the back and say "job well done."

What if a doctor changes the law and says his job now includes helping people die happy. Now he does not have to work very hard to heal his patients, and in fact **causes** their deaths by making sure they die without pain. Such a law would destroy his oath to preserve life.

The Utah Supreme Court further states in *Hilton v. Roylance 69 P. 660, 667*:

> "Now, the evidence in the case at bar discloses the fact that both parties to the sealing ceremony were members of the Mormon Church, and believed in its doctrines and tenets. We must, therefore, assume that as viewed by them, the revelation was of Divine origin, sacred and **binding in conscience.**" (Emphasis added).

On page 668, the Utah Supreme Court begins quoting President Brigham Young speaking of marriage and divorce:

> "But if he honors his priesthood, and you are to blame and come short of doing your duty, and prove yourself unworthy of celestial glory, it will be left to him to do what he pleases with you. You will be very glad to get to him if you find the fault was in yourself and not in him. But if you are not at fault, be not troubled about being joined to him there, for no man will have the privilege of gathering his wives and children around him there unless he proves himself worthy of them". On the subject of divorces he said: "I tell the brethren and sisters when they come to me and want a bill of divorce that I am ready to seal people and administer in the ordinances, and they are welcome to my services,; but when they undertake to break the commandments and tear to pieces the doings of the Lord, I make them give me something. I tell a man he has to give me ten dollars if he wants a divorce. For what? My services? No; for his foolishness....you might as well ask me for a piece of blank paper for a divorce, as to have a little writing on it, saying, 'We mutually agree to dissolve partnership and keep ourselves apart from each other', etc. It is all nonsense and folly. There is no such thing in the ordinances of the House of God. You cannot find any such law. It is true, Jesus told the people that a man could put his wife away for fornication, but for nothing short of this".

Why did the Trial Court, whose involvement in this action is only to preserve marriage, deny me the right to give evidence of what Piper and I vowed in marriage. On this same page the Utah Supreme Court then quotes LDS President Taylor, President Wilford Woodruff, Elder Orson Pratt followed by Dr. James E. Talmage and Parley P. Pratt. On page 670 the Court says of this couple;

> "They have construed their own contract, this Court has the right to adopt the same construction; it being also warranted by the facts."

The trial judge was given an explanation of our situation (R.159-172) and of our contract (R.171), which she repeatedly refused to consider. The record (R.158) shows that this "contract" (marriage book) was marked as an exhibit, but not offered because the Trial Judge was impatient (R.395,423,424,425,439). It was also written by the current President of the LDS Church when we married(R.171), and the last half is devoted to the subject of divorce, all of which we bound ourselves to follow.

All of this happened because of a lousy law. The trial judge acted as most judges across the State. The Code of Judicial Conduct, Canon 3 (P.5-6) makes it clear that the judge must be impartial, but this defective law causes unfairness and denial of rights. I attack only the law, not the trial judge.

Returning again to *Hilton v. Roylance Page 663*, the Supreme Court says:

> "From time immorial marriage has been, in every civilized country, recognized as the foundation of civilization and of the social system".

They also say (same Page):

> "Marriage, strictly speaking, is not a mere civil contract, but a status created by contract. It is true, it is founded in the consent of the parties, but the consent is the contract because of which the status is created. Marriage differs from ordinary contracts, in that **it can only exist where one man and one woman are legally united for life".** (Emphasis Added).

"Irreconcilable differences of the marriage" voided this lifetime commitment, and said marriage is only a lifestyle we choose or choose not to do every day. The law caused the trial judge to err in the ruling when she said (R.504):

> "I think that although I've heard testimony today from the defendant that he believes the marriage can be reconciled, **it takes two to make that commitment."** (Emphasis added).

Wrong, wrong, wrong! Marriage means that we made "that commitment" over 18 years ago. It is not a consent or contract that we are committing to on the day of trial. "For better or for worse; Richer or poorer," are vows of commitment from the beginning, to get us through when life is worse or poorer, until the rich and better return. We were before the Court to see if others would get their way to end "that commitment," or if the Court would stand for "that commitment" and change the others.

The information given to the trial judge (R.167) includes a quote of an article from volume 1975 number 1 of the Brigham Young University Law Review that explains why Courts deal poorly with common law issues like marriage. Page 91 of the same article says:

> "When two parties have entered a contract, the terms of their legal relationship, their rights and duties toward one

> another, are to be found, not in the law books, but in a document they have themselves drafted and agreed upon".

It then explains the "coercive elements" of contracts that helps people fulfill obligations they are "inclined to ignore," and reminds us not to ignore "the fact that the capacity to bind oneself legally is itself facilitative."

This law allowed the Trial Court to completely ignore our right to consult the terms of our "contract," and allows the District Court to satisfy the desires of only one spouse to dissolve a marriage contract, even though the Utah Supreme Court said in 1991 in *Brehany v. Nordstrom 812 P.2d 49,55:*

> "Here, the plaintiffs correctly observe that every good contract is subject to an implied covenant of good faith....'Courts endeavor to construe contracts so as to not to grant one of the parties an absolute and arbitrary right to terminate the contract'".

What about my right to defend my wife at all times. Never, until after a decree of divorce, should the Courts make me an adversary of my wife, and destroy the marriage covenant.

55 ALR 3d 581 § 13.5 (R.201) speaks of allowing the Trial Court "To Bifurcate" the trial. That is the only way to preserve this right. It could work this way: Someone files for divorce. The District Court spends three months trying to fix the marriage. If unable to save some marriages with valid grounds for divorce, the District Court has the parties appear, and in the time it takes to handle a traffic ticket, decrees divorce. The judge asks the couple to work together and write a division of property and support, etc. A few weeks later all these issues are okayed by the judge, and put into the record. There are no

lawyers, trials, litigation, interrogatories or expense. The Court is free to create solutions and no battle lines are drawn. If the couple tries to battle, the judge threatens to reverse the decree to separate-maintenance until they cooperate. Public policy is better served by a difficult marriage, than by any divorce. Single people and married people decide what to do with their income, property and children without government interference, couples who divorce do not surrender those rights. Also the government should not seek to inflame people so it can make those decisions. If the judge makes them work it out themselves, they will - after the divorce decree. In *Palmer v. Palmer, 72 P.3, 9* the Utah Supreme Court ends in this unanimous opinion:

> "Not only the law, but a man's most sacred honor, as well as every principle of justice and equity, demands that he treat his wife <u>at all times</u> and <u>under all circumstances</u>, respectfully, fairly, openly. Surely nothing less was due her." (Emphasis added).

This is my wife's **right** not to be treated as an adversary by her husband. This right, and rights to decide money, property and parental rights fall under Article I, Section 25 (P.3) of the Constitution of Utah. As practiced, this divorce law of Utah does not survive such scrutiny. Section 27 of the same Article (P.3) says it is "essential to the security of individual rights" to go back and study fundamental principles.

This law fails on two accounts to survive scrutiny with Article I, Section 18 of the Utah Constitution (P.3). For our marriage, it is an "*ex poste facto law,*" and it is a law that impairs the "obligation of contracts."

Article I, Section I (P.2) says, "All men have the inherent and inalienable right...to communicate freely their thoughts and opinions." This law took away my family, property and possessions without a single opportunity to speak to a judge. The record (R.490) shows one of many attempts to speak to the Court. When the attorney asks that I be able to speak, the Court says:

> "No, I'm not going to do that. I think you're as acquainted with the facts, if not more so, than Mr. Joos is."

How can a judge say that? This case has probably cost our family $20,000.00 to fulfill all the requirements the Court demands. There is no money for us to teach the lawyers all we know. Most marriages would have been extinguished already by this financial burden. Our wisdom to follow our wedding vows blesses us with no mortgage payment now, and is the reason our family can endure this judicial gauntlet.

The Preamble of the Constitution of the United States of America (P.2) says its whole purpose of being is to "secure the blessings of liberty to ourselves and our posterity." Who is more a man's posterity than his family? This law fails Amendment XIV, Section I(P. 2) that says, "No state shall make or enforce any law" that isn't fair or that "deprives any person" (See also the Constitution of Utah, Article I, Section 7, [P.3]). 55 ALR 3d 581 § 5 (R.188) says:

> "Divorce could not be based on irreconcilable differences where there has been no property settlement agreement".

In the transcript, the trial judge excuses the ruling's unfairness, saying repeatedly that, because I refused to make counter proposals and give evidence, she could only consider what Piper

proposed. I do not detail it all here because my only purpose is to preserve the family. The end result of my "foolishness" of refusing to fight for property and children is, that out of an estate worth in excess of $100,000.00, I get for my use a mere $1,500.00 in propery. I get to pay almost all of the marital debt, and Piper keeps all the rest of the property. The children cannot go with me unless I buy a new car, and the children cannot stay with me until I get a place for them to live, all without any allowance for me to "buy them," effectively barring our children's right to be with their father. How can a law even be fair that allows plaintiffs the relief they seek 100% of the time? In no other civil suit does the plaintiff always win.

The government deprived me of everything in my life, refused me "equal protection of the laws," and took away my right to defend and preserve my family, without allowing me a single opportunity to speak to a judge, because of five simple words that some lawyer added to *grounds for divorce* to make his job easier. Look at how many marriages and families he destroyed to make his life easier. Studies show that "no-fault" divorce statutes are the **cause of** a 20-25% increase of the divorce rate[6].

Look at the index to the trial transcript (R.283) and see ten separate examinations by the attorneys to pin me down on property settlement issues - and I showed up only to save my family.

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[6] "Abolition of Marriage", by Maggie Gallagher P. 148 (See addendum) See also the ABA Journal, April, 1997, "Putting the Blame on No-fault", page 52.

I was under oath, and had no choice but to answer their questions honestly, although very reluctantly - hundreds of questions which I did not care about - to satisfy the Court. For example:

(R.402) Q. What were her complaints?
A. I believe this difficult to answer because I - I believe I promised to always to defend and protect her.

(R.431) Q. Are these items you want?
A. I want to be married, I don't really care about the property.

(R.468) Q. And so you think she ought to go out and get a second job?
A. I think that we ought to stay married and that I - -
Q. I see.
A. - - Should support the family.

(R.474) Q. Are you willing to give Piper $7,500.00 and take the piano?
A. I - - through all of this, the only thing I'm willing to do is try and save the marriage.
Q. I see. So you don't have an answer to that.
A. I don't want to fight with her over material possessions at all.

(R. 475) Q. Would you be willing to leave the piano in the home for the use of the children?
A. I - - I'm willing to do every - - anything to save the marriage.

The real issue here is that the government intrudes into the marriage covenant **only** out of its great interest to preserve it. As the United States Supreme Court says, in *Griswold v. Connecticut,* of marriage (P.12), "We deal with a right of privacy older than the Bill of Rights," and in *Eisenstadt v. Baird* (P.12), "If the **right of privacy** means anything, it is the right of the individual, married or single, **to be free from unwanted government** intrusion." A suit for divorce allows the government a privilege to bypass these rights, allowing the government to "enter the sacred home of marriage, to speak in its

living room with the couple about reconciliation," but what happens instead, upon notice of this marital disharmony, this privileged government "barges into this sacred home, refuses to talk to the couple about reconciliation, evicts the husband and tries to fan into flame the controversy to justify the Court snooping through the house from top to bottom, rearranging its contents at will".

I suppose a Court could even declare all of Utah Code 30-3 unconstitutional, and divorce illegal, and have the support of everyone, including groups who are normally its foes, when it explains that the laws need to be rewritten to narrow the interest of government, and to eliminate government intrusion into the rights of a challenged couple, rights that are inviolate to married and to single citizens. That would force the three branches of government to work together to rewrite the laws that would change divorce from conflict and catastrophe to understanding and solution. It would be a "new birth of freedom" that strengthens marriage, family, society, the state, and the nation, as the Courts begin to solve problems, save families, and increase contentment. The Utah Constitution says it all, what needs to be done in, Article I, Section 27 (P.3). Frequent **recurrence** to **fundamental** principles is essential to the **security** of **individual rights,** and the **perpetuity** of free **government.**

There is no question that a suit for divorce is a process to change a person's status from married to single. Is such a process constitutional that allows the most fundamental of our rights and privacy to be trampled? The government could not invade the privacy and deny rights to either a single or married parent like it does during a divorce suit. The government could not decide the property

and financial rights of married or single citizens like it does during divorce. Married or single parents are free to determine where a child lives, even if it is to a shady, distant friend, whose influence is dangerous, all without the government stepping in.

It is time for the Courts to say either they can, or cannot, help preserve marriage. If they cannot, because they inevitably cause more controversy and damage, then say so, and the legislature can choose one of many methods that could immediately cut divorce in half, relieve the tremendous burden divorce causes on the Court's resources, and cease the aftermath of decline, socially and individually, that always follows broken homes.

The law caused me to want to laugh out loud in Court when the trial judge began saying the ruling was made in the "interests" and "security" of the children. What a joke! In front of the Trial Judge was information from a February 27, 1995 *Time Magazine* article (R.169, 170) that said, in the event of a divorce, our children had no chance, not even one child, of having a happy, well adjusted life after divorce - for the rest of their lives! In front of the judge was also information from *US News and World Report* (February 27, 1995) (R.170):

> "Dad is destiny. More than virtually any other factor, a **biological father's presence in the family** will **determine** a child's success and happiness. Rich or poor, white or black, the children of divorce and those outside of marriage struggle through life at a **measurable** disadvantage... (Emphasis added).

In fact, evidence shows that it is better for a child that his father dies than for separation by divorce[7], not because dads are of so

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[7] "Abolition of Marriage" P.60 (See addendum)

little importance but because "The only reliable way to be an effective father is inside an intact marriage to the mother of your children"[8].

When the trial judge punished our children because their dad was seeking to protect their "interests" in keeping the family together, and said they could not go with him or stay with him (R. 505) until he started acting divorced, I did what was most important for these children. This government may prevent us from seeing each other and being together, but no court, or neighbor, or relative can ever prevent me from doing what is the very most critical for each child: I loved their mother!

CONCLUSION AND RELIEF SOUGHT

When we stand before this Court for oral argument, you will not need a calendar to measure the time we have waited for the Courts to redress the injustices of others against our family. Since before our marriage, Piper is the one who has cut my hair. Because I have refused to give in, and allow others to destroy our family, I have not found a place to live, bought a new car to drive, or made other divorce arrangements including finding someone else to cut my hair. In short, I have used money and time to pay debts and to save the family. Many people have volunteered to cut my hair for free, but it grows, uncut, as a token to my wife that I will not abandon her and "move on." Its length is probably inappropriate for me to stand before this Court, as it used to be short, but this Court will know by its length in inches how long it has been that our family has waited for this Court's intervention. It has not been cut since the time that others told

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[8] "Abolition of Marriage" P.62.

Piper to get a divorce, entered our home, said in earshot of our children that they do not need a father, (And how wonderful it is for them not to have me around) and threw me out of our home into the street. I think we have all waited long enough.

Divorce burdens the courts, financially devastates families(especially women and children), enriches lawyers, exacts tremendous social costs and hurts every child. If attorneys profit from marriage it should be only in its preservation. It is unfair to them as Officers of the Court, who(with the court) are supposed to support the legislative mandate to help save marriages — to have to negotiate the best deal of divorce at the same time. Neither courts nor attorneys should say or do anything towards breaking up a home until after a decree of divorce. Even after the decree everyone is better served in an atmosphere of mediation than in litigation.

If only one word had been added to Utah Code 30-3, the courts might have been preserving marriages all this time. The Legislative and Executive branches made a mistake and the Judicial branch has been paying for it ever since. Utah Code 30-3-1(1) is in error! The very first line of the Utah Code on divorce **should** have begun, "Proceedings in divorce are **not** commenced or conducted as....in civil causes, except as provided in this chapter." Marriage should have been treated differently than all other "civil causes." Society and prosperity and the Constitutions do not rest on the foundation of other "civil causes." What are the social costs this missing word has been to our state. If the legislature had not made the courts tear apart homes by litigation, we would not have so many prisons, gangs, overworked courts, or abuse and welfare.

What really affects crime rates? Does race, location, education or income determine crime? No, something more important than even poverty will predict crime best. (see addendum, "The Abolition of Marriage" page 49):

> "The single best predictor of the degree of violence in a given community was once again the proportion of single-parent families. So powerful was the connection between disrupted families and crime that, once family status was controlled for, neither race nor income had any effect on the crime rate."

Almost everybody's attention turned to trying to make divorce easier and less painful and we forgot that government's role was marriage preservation. Government was supposed to **make marriage better** - really support it - not to disrupt it and not even to force someone to be happy in a difficult marriage, but to help improve all marriages. The courts ended up with the job because everyday they make rulings in civil causes to end disputes and to bring peace to misunderstandings. If someone tells a judge, "I'm not happy, I don't want to pay for this car," the judge will try to work out a solution, not just say, "If you don't want to pay, don't pay."

The Utah Bar President (Utah Bar Journal, Jan.1996, P.4) discusses easier and faster ways to divorce, the cover story for the ABA Journal (Feb.1997, P.48-58) talks of making better divorces. Who **is standing for** marriage anymore?! The worst example is page 23 of the 1993 October issue of the Utah Bar Journal. The only thing that distinguishes this from an advertisement for divorce is that it doesn't say, "Come in before your tenth anniversary and get half off on court

costs!" What is this trial judge thinking? Is this our government's role in society and marriage?

In *Morrison v. Federico, 232 P.2d 374,379,* Chief Justice Wolfe of the Utah Supreme Court goes to great length and detail on what the courts should be doing for marriage to "adjust marital difficulties rather than fan them into flame."

The Court of Appeals of Utah recently went back a lot of years to quote a Utah Supreme Court on marriage. *(Neilson v. Neilson 780 P.2d 1264,1269 [Utah App. 1989])*

> "We believe the statutes regulating marriage and divorce still reflect that it is public policy of this State to preserve marriage and disfavor dissolution. 'When [the marriage] status is created the rights involved are not merely private, but they are also of public concern. The social system and welfare of the State having their foundation in the family, the State is an interested party...' *Palmer v. Palmer, 72 P. at 7.*"

It takes courage these days to stand for marriage, but we must do so if we expect a 21 year old man to have the courage to pledge himself for the rest of his life to a girl and for her to have the courage to accept his proposal in marriage. If they can't have faith and confidence in marriage then alternative lifestyles with no commitment seem attractive.

RELIEF SOUGHT

I ask this Court to reverse our divorce decree and remand to the District Court this case for dismissal.

I don't believe anything else would matter very much. I have tried to argue broadly so sweeping changes can be made to better all

lives in the State. No matter how narrowly this Court rules, I know in my heart that Piper has given this State an extraordinary centennial gift and sesquicentennial gift celebrating the Pioneer's arrival. I'm certain that her gifts surpass any other citizens in this State. Compare a Bible story: A subtle serpent was harassing Eve hoping to make a tragedy of her life's story. Apparently Adam wasn't doing much to intervene in her behalf. With great wisdom she prodded him into action by eating the forbidden fruit. He ate the fruit because **he was married** and **vowed to be with** her **always.** It was a difficult path, but God maneuvered Eve from a disaster to become the mother of all nations. Marriage saved them. Others who would have cast Piper down and made a tragedy of her life's story forgot one thing. She wisely made a covenant 18 years ago in marriage that provided that she would be loved and protected forever. Instead of a sad ending, others have made her the key to another of God's miracles - the rebirth of family and marriage for a new millennium.

Dated the 10th day of April, 1997.

Dan Rodney Joos

Dan Rodney Joos, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that I caused 2 true and correct copies of the foregoing brief to be served by hand delivery to the following party at the address indicated below:

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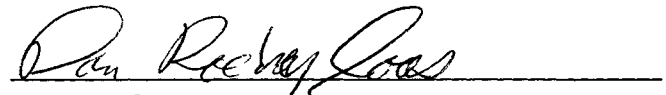

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