

1985

Kenton W. Stephens v. Sharon S. Stephens : Brief of Appellant

Utah Supreme Court

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DOCKET 1985 20437

IN THE SUPREME COURT OF THE
STATE OF UTAH

KENTON W. STEPHENS,)	
)	
Plaintiff and)	
Appellant,)	
)	
vs.)	Case No. 20437
)	
SHARON S. STEPHENS,)	
)	
Defendant and)	
Respondent.)	

BRIEF OF APPELLANT

Appeal from the Judgment of the District Court
in and for the County of Box Elder, State of Utah
THE HONORABLE OMER J. CALL
DISTRICT COURT JUDGE

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IN THE SUPREME COURT OF THE
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Plaintiff and)	
Appellant,)	
)	
vs.)	Case No. 20437
)	
SHARON S. STEPHENS,)	
)	
Defendant and)	
Respondent.)	

BRIEF OF APPELLANT

STATEMENT OF ISSUES PRESENTED ON APPEAL

The issues presented by this Appeal are:

1. That the Court abused its discretion by awarding to the Respondent \$400.00 a month alimony and upon retirement of the Appellant, that the \$400.00 shall represent Respondent's share in the retirement of the Appellant from his employment at Morton-Thiokol and previously at Sperry-Rand, which constituted pure speculation on the part of the Court as to what the Plaintiff's retirement may or may not be.

2. That the award of \$400.00 a month alimony to the Respondent, who is gainfully employed and has a substantial income, to be paid alimony in the sum of \$400.00 a month and

not abating until the Appellant shall have retired or died was an abuse of discretion, in that both parties are relatively young, in good health and each of the parties has permanent employment with substantial income.

3. That the Court abused its discretion in requiring the Appellant to be responsible for one-half (1/2) of the necessary expenditures for capital improvements of the home, where the Respondent has the sole occupancy of the home, has more than a 50% interest in the equity upon sale of the home and can allow the home to become in disrepair and deteriorate with the Appellant being called upon to pay one-half (1/2) of said improvements as shall be determined by the Respondent necessary for the maintenance of the home.

4. That the Court abused its discretion by failing to grant to the Appellant interest to be paid by the Respondent to the Appellant on the Appellant's equity in the home; by awarding the first \$8,500.00 on the sale of the home to the Respondent; and decreeing division of the remaining equity on a 50/50 basis, or in the alternative, by not requiring a sale of the home, which is the only major asset in which the Appellant has been allowed to have an interest, accumulated in the marriage, and not requiring the home to be sold so that each of the parties could afford to purchase a home.

STATEMENT OF THE CASE

This is a case wherein the Plaintiff and Appellant brought an action for divorce as against the Defendant and Respondent, with the Court awarding a Decree of Divorce to both of the parties, and the Lower Court made a division of the assets, together with a division of the retirement funds of the Appellant in a manner from which an Appeal has been made to the Supreme Court of the State of Utah, seeking a modification and reversal of the Lower Courts Judgment and Decree of Divorce.

STATEMENT OF FACTS

The parties were intermarried on July 27, 1968 and there was born as the issue of the marriage two (2) children, Gregory Scott, born November 11, 1971 and Kenna Suzanne, born November 19, 1973. (TR 4)

That subsequent to the marriage of the parties, the Appellant adopted Respondent's son, who at the time of the Decree of Divorce was emancipated. (TR 4)

The Court ordered the Appellant to pay to the Respondent \$225.00 per month per child; made a division of the personal property of the parties; and awarded to each of the parties property possessed prior to the marriage or received from their respective family estates by inheritance. (R 80-83)

The Court awarded to the Respondent 9/13 of one-half (1/2) of Appellant's retirement benefits from his previous employment at Sperry-Rand, and awarded to the Respondent one-half (1/2) of Appellant's Morton-Thiokol retirement benefits as and when received, multiplied by the fraction of 7, divided by the total number of Plaintiff's working years for Morton-Thiokol. (R 83)

The Court then further made an award "that Plaintiff (Appellant) shall pay to the Defendant (Respondent) as and for alimony until the remarriage of Defendant (Respondent), or his property eligibility retirement from Morton-Thiokol Corporation, the sum of \$400.00 per month, said alimony shall terminate upon the death of each party." (R 84)

SUMMARY OF ARGUMENTS

1. The Respondent having not requested nor prayed for alimony; being gainfully employed and having an income of \$1,057.00 a month; having been awarded a savings account with a balance in excess of \$11,000.00; having been awarded \$400.00 a month alimony, together with child support in accordance with the Uniform Child Support Schedule of \$225.00 monthly per child, and the Court ordering the continuation of the \$400.00 a month alimony as being representative of Respondent's share of Appellant's retirement fund from Sperry-Rand and also from Morton-Thiokol, where he

has been employed only seven (7) years, is a clear abuse of discretion and contrary to the previously established case law of the Supreme Court of the State of Utah.

2. The awarding of \$400.00 a month alimony to a spouse who is gainfully employed with a substantial income and opportunity for advancement in her employment, and where the spouse has no physical disabilities evidenced in any manner before the Court, is 43 years of age, and such alimony to continue until the death of the Appellant, who is 46 years of age, is an abuse of discretion.

3. The award to the Respondent of one-half (1/2) of the equity of the home, together with the possessory rights to said home and requiring the Appellant to pay 50% of all capital improvements and maintenance of the home is an abuse of discretion of the Court.

4. The awarding of the equity of a home wherein there is an equity to be divided of \$63,000.00 and which constitutes the only major asset of the marriage allowed to be divided between the parties, without requiring the Respondent to pay interest to the Appellant on Appellant's equity in the home, while at the same time, award to the Respondent of a share in the retirement of Appellant's previous employment is being enhanced as to the share to the Respondent by

the accumulation of interest and earnings of the retirement of Sperry-Rand, the previous employer of the Appellant, and the continued enhancement of the share of the Respondent's interest in Appellant's future retirement from his present employer of Morton-Thiokol being enhanced by the continued employment of the Appellant, is not equitable and is an abuse of discretion of the Court.

ARGUMENT

POINT ONE

THE AWARD OF \$400.00 MONTHLY UPON RETIREMENT OF APPELLANT
IS AN ABUSE OF DISCRETION

The Decree and Judgment of the Lower Court wherein the Court ordered the Appellant to pay to the Respondent the sum of \$400.00 a month to terminate upon the death of either party is directly contrary to the holding of this Court in Woodward vs. Woodward, 656 P.2d 431 (Utah 1982), (R 90) in that the Court has presumptuously assumed that the Respondent's right to participate in 9/13 of the Appellant's employment at Sperry-Rand Corporation, and the current seven (7) years that the Appellant has been employed at Morton-Thiokol (R 79) will, upon his retirement, entitle the Respondent to a share of the Appellant's retirement in the sum of not less than \$800.00 a month or such greater sum as will entitle the Respondent to the fixed sum of \$400.00

monthly and also totally disregards the retirement of the Respondent who is also employed at Morton-Thiokol. (TR 78)

The Court in Woodward vs. Woodward, supra, held that the wife was entitled to share in that portion of the benefits to which the rights accrued during the marriage and established a formula for distribution of such retirement benefits, where they cannot be ascertained with certainty at the time of the divorce proceedings. The Appellant having been employed for only seven (7) years now at the time of the divorce of the parties and no where near having eligibility for retirement from Thiokol, there can be no determination whatsoever as of the time of the Decree of Divorce of what the Appellant's retirement benefits will be from Morton-Thiokol, and there is nothing in the record before the Court that would give a formula for the amount of the retirement, which the Appellant will have from his previous employment at Sperry-Rand upon his reaching the age of retirement.

It is submitted that the Court in Woodward vs. Woodward, supra, held that pension retirement benefits are a form of deferred compensation by the employer to which the Respondent would have a right to participation, but that compensation cannot be set by the Court at \$400.00 a month

without any basis of accounting or accountability as to what the retirement pension of the Appellant will be at the time of his retirement.

The Court in Woodward vs. Woodward, supra, stated:

Whether that resource is subject to distribution, does not turn on whether the spouse can presently use or control it, or on whether the resource can be given a present dollar value. The essential criterion is whether a right to the benefit or asset has accrued in whole or in part during the marriage. To the extent that the right has so accrued, it is subject to equitable distribution.

POINT TWO

AWARD TO EMPLOYED SPOUSE OF \$400.00 MONTHLY ALIMONY FOR LIFE IS ABUSE OF DISCRETION

The Respondent, being gainfully employed at Morton-Thiokol, and earning \$1,057.37 monthly (TR 78); has not made any allegations of any health problems in any part of the record before the Court, and both the Respondent and the Appellant are in their forties, it is submitted that it is an abuse of discretion of the Court in making an alimony award of \$400.00 monthly to continue until either of the parties has become demised. (R 85)

In Warren vs. Warren, 655 P.2d 684, (Utah 1982), this Court established a criteria in determining the alimony and

support to be awarded as between a husband and wife, and established the following factors to be considered in making a determination:

1. The amount and kind of property owed by each of the parties.
2. Whether the property was the husbands before coverture or accumulated jointly.
3. The ability and opportunity of each to earn money.
4. The financial condition and necessities of each party.
5. The health of the parties.
6. The standard of living of the parties.
7. The duration of the marriage.
8. What the wife gave up by the marriage (was her economic status better or worse because of the marriage).
9. What age were they when married.

In the instant matter before the Court, at the time of the marriage, the Respondent brought into the marriage \$18,000.00, (R 2) while the Appellant brought into the marriage \$14,500.00.

During the marriage, the Appellant has used up all of the \$14,500.00 he had during the marriage, is driving a 1969

motor vehicle and has no savings account, while the Respondent has a savings account in excess of \$11,000.00 and has continuously, during her employment at Morton-Thiokol, applied \$70.00 a pay day to a savings account.

That both of the parties are gainfully employed, being both employed at Morton-Thiokol, and being both in the mid forties, with each of the parties being in good health.

The Respondent has been awarded the home, with the Appellant being awarded one-half (1/2) of the equity in the home, subject to an additional sum of \$8,500.00 being awarded to the Respondent, which will be discussed more fully in Point Four, infra. The youngest child is nine (9) years of age, and the Respondent has been awarded, by the Decree, the sum of \$225.00 monthly per child, giving her an additional income of \$450.00, which together with the income to Respondent from her employment of \$1,057.00 a month; \$400.00 a month alimony; interest from her \$11,000.00 savings, plus the \$140.00 a month payroll deduction being saved by Respondent in addition thereto from her employment at Morton-Thiokol, and the awarding of the home to Respondent, with no interest or equity to the Appellant until the youngest child has reached the age of eighteen (the child now being nine years of age), and with the monthly payment on the home to

be borne by Respondent at \$186.00 a month, (TR 69) constitutes a significant high standard of living, substantially in excess of the style of living that the Respondent enjoyed prior to the divorce and award of the Court.

While the duration of the marriage has been for sixteen (16) years, the Respondent's previous spouse had become demised, and the Appellant has furnished a home and full support of the entire household, including that of the Respondent's son, who was adopted by the Appellant following the marriage of the parties.

It is further submitted to the Court that in determining the current standard of living an examination of the alleged expenses of the Respondent were set forth on a Order to Show Cause filed with the Lower Court on February 15, 1984, alleging therein utilities of water, lights, garbage and heat at \$120.00 a month; house payments of \$200.00 a month, (which in fact is \$186.00) and have not been increased (TR 68-69); dentist of \$20.00 a month whereas the medical plan at Thiokol provides for only a \$50.00 deductible per year for medical services, which would make the cost of dental care at approximately \$4.25 a month rather than \$20.00 a month; drugs and vitamins listed at \$40.00 a month, even though the Respondent testified that she and the

children are usually quite healthy; (TR 69) car expense and repairs and upkeep at \$125.00 a month; food for the Respondent and two (2) minor children of \$500.00 a month, which was explained in the following dialogue:

Q: Wouldn't you say \$500.00 is a little bit ridiculous for food for three (3) people under those circumstances?

A: Well, where do we count in ***we have to count other people who join us for meals as miscellaneous?

Q: Does your husband have an obligation to support other people who appear miscellaneously?

Clothing is claimed to be \$100.00 a month and recreation \$100.00 a month as well as other expenses \$100.00 a month for a total allegation of possible expenses as set forth in the Show Cause Order of \$1,305.00 a month.

It is submitted that the maximum possible expenses of the Respondent would be more realistic at \$800.00 a month rather than \$1,305.00 a month as and for her total living costs, including the home payments, utilities and all other items set forth in the schedule at R 21.

POINT THREE

REQUIRING APPELLANT TO PAY ONE-HALF (1/2) OF CAPITAL REPAIRS TO HOME IS AN ABUSE OF DISCRETION

The Court in its Decree of Divorce ordered:

"The Defendant (Respondent), during her occupancy, is to maintain the home property, except for necessary expenditures for capital improvements agreed upon by the parties or necessitated by ordinary wear or depletion, which improvements shall be paid one-half (1/2) by each party." (R 89)

It is submitted to the Court that awarding the possession of the home to the Respondent and imposing upon the Appellant the responsibility to pay one-half (1/2) of the capital improvements for ordinary wear or depletion resulting from the use of the home by the Respondent, is an abuse of discretion and is unconscionable, since the Appellant has no control over the manner in which the Respondent uses and maintains the home, and that there being a total monthly payment on the home of \$186.00, with possession of the home given to the Respondent, should impose a duty of proper care and maintenance of the home.

It was mutually agreed between the parties to this cause of action that the home has a value of \$80,000.00, (TR 11) and it is submitted to the Court that ordinarily the rental use of the home of that value would be between \$500.00 and \$600.00 a month, whereas the actual amount to be paid by the Respondent is only \$186.00 monthly for the principal and interest in acquisition of ownership of the home.

The payment of such a nominal rent as the purchase price, together with a substantial benefits awarded to the Respondent by the Court to be paid by Appellant, constitutes an abuse of discretion of the Court to compel the Appellant, not a resident of the premises, nor the party who will ultimately become the owner of the premises, to pay one-half (1/2) of the costs of capital improvements and maintenance to prevent the premises from going into disrepair.

POINT FOUR

FAILURE OF THE COURT TO AWARD INTEREST ON THE HOME EQUITY TO APPELLANT AND ALLOWING CREDIT TO RESPONDENT OF FUTURE MONTHLY INSTALLMENTS FOR AN UNKNOWN PERIOD AS A FIRST DEDUCTION UPON SALE OF THE HOME CONSTITUTES AN ABUSE OF DISCRETION

The Court, in its Decree of Divorce, awarded to the Respondent, not only the right to the use and enjoyment of the home, subject to the usual conditions for payment of the equity of the Appellant to be vested and paid, but awarded as follows:

"Upon termination of Defendant's right to live in the home, the proceeds from the home shall be divided as follows: \$8,500.00 to the Defendant, an amount by which the present mortgage of \$17,000.00 is reduced at the time of the sale to the Defendant, the remainder of the net proceeds from the sale of the home to be

divided one-half (1/2) to each of the parties." (R 89)

It is submitted to this Court that in the first instance, the \$8,500.00 specifically awarded to the Respondent (Defendant), contemplates that none of the other provisions which require payment to the Appellant of his equity in the home will occur, except only upon the youngest child reaching the age of emancipation. It is submitted to this Court that it is difficult to be so clairvoyant and presume that in a period of nine (9) years, the Respondent will not remarry, will not move or put the home up for sale, or will not cohabitate with another person, all of which would accelerate the requirement to pay to the Appellant his equity in the home.

In addition to this totally inequitable award to the Respondent, the Court has further decreed, as has been set forth hereinabove, that the Appellant shall pay one-half (1/2) of the capital improvements and maintenance of the home, during the period of time that the Respondent shall be in possession of said home and prior to its vesting, and also denied to the Appellant the petition of Appellant to be paid interest on his equity of \$34,000.00 in the home during the period that the Respondent shall be in possession of the home and prior to the sale of the home, which deprives the

Appellant of any opportunity to restart his life with the use of the equity which he has in the home and is the only major asset which the Court has not awarded to the Respondent.

In Pope vs. Pope, 589 P.2d 752 (Utah 1978), the Court held at § 15-1-4 Utah Code Annotated as amended 1953, requires Judgments to bear interest at 8% per annum, and that the Court should have invoked also Section 30-3-5, which authorized the Court to make such orders in relation to the property of the parties as may be applicable.

CONCLUSION

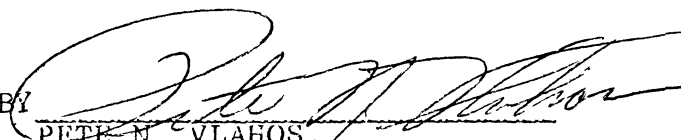
It is submitted to this Honorable Court that the Respondent, being gainfully employed and earning a substantial monthly salary; having a substantial savings account; having being awarded \$450.00 a month child support, is not entitled to \$400.00 a month for the life of the Appellant, considering both of the parties are in their forties, and the further award to the Respondent of a specific sum of \$400.00 a month from the time of retirement to the demise of the Appellant, without actually having knowledge as to the retirement pay of the Appellant, contrary to the previous Judgment of this Court; that the award to the Respondent of

\$8,500.00 to be deducted from the sale of the home upon its sale is totally speculative upon the premise that nothing will occur to compel the payment to the Appellant of his equity in the home prior to the nine (9) year period of the emancipation of the youngest child and without regard to the other conditions which cause acceleration of the payment to a spouse of his equity in a home; that the award to the Respondent of one-half (1/2) of the costs of maintaining the home for any capital improvements thereupon, to be paid by the Appellant, who has no control whatsoever of the premises, and where the monthly purchase payment is \$186.00, is an abuse of discretion of the Court and that it is unconscionable not to award to the Appellant interest to be paid by the Respondent as long as the \$34,000.00 equity of the Appellant in the home remains unpaid and unsatisfied, considering that the equity of the home of the Appellant is the only asset of any consequence of the marriage. The Court should reverse the Judgment of the Lower Court or make such

modifications as are conscionable and equitable.

Respectfully submitted this 5 day of April, 1985.

VLAHOS & SHARP

BY 
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Appellant
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ADDENDUM

Statutes

U.C.A. § 15-1-4 Interest on Judgments as amended 1981

Any Judgment rendered on a lawful contract shall conform thereto and shall bear the interest agreed upon by the parties, which shall be specified in the Judgment; other Judgments shall bear interest at the rate of 12% per annum.

U.C.A. § 30-3-5 as amended 1984

(1) When a Decree of Divorce is rendered, the Court may include in it such orders in relation to the children, property and parties, and the maintenance and health care of the parties and include in every Decree of Divorce an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children. If coverage is available at a reasonable cost, the Court may also include an order requiring the purchase and maintenance of appropriate health, hospital and dental care insurance for those children. The Court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the support and maintenance of the parties, the custody of the children and their support, maintenance and health and dental care, or the distribution of the property as shall be reasonable and necessary. Visitation rights of parents, grandparents and other relatives shall take into consideration the welfare of the child.

(2) Unless a Decree of Divorce specifically provides otherwise, any order of the Court that a party pay alimony to a

former spouse shall automatically terminate upon the remarriage of that former spouse, unless that marriage is annulled and found to be void ab initio, in which case alimony shall resume, providing that the party paying alimony be made a party to the action of annulment and that party's rights are determined.

(3) Any order of the Court that a party pay alimony to a former spouse shall be terminated upon application of that party establishing that the former spouse is residing with a person of the opposite sex, unless it is further established by the person receiving alimony that the relationship or association between them is without any sexual contact.

Findings of Fact and Conclusions of Law

Attached, Exhibit "A"

Decree of Divorce

Attached, Exhibit "B"

EXHIBIT "A"

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IN THE DISTRICT COURT OF BOX ELDER COUNTY
STATE OF UTAH

KENTON W. STEPHENS,	/	
Plaintiff,	/	FINDINGS OF FACT AND
		CONCLUSIONS OF LAW
vs.	/	
SHARON S. STEPHENS,	/	Civil No. <u>18430</u>
Defendant.	/	

This matter having come on regularly for trial on the 28th day of September, 1984, before the Honorable Cmer J. Call, one of the Judges of the above entitled Court, sitting without a jury, and the Plaintiff appearing in person and with his attorney, Pete N. Vlahos, and the Defendant appearing in person and with her attorney, Frank M. Wells, and each of the parties having been sworn and testifying in their own behalf, exhibits having been offered and received, and certain stipulations having been made in open Court

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

concerning personal properties and other matters, and each of the respective attorneys having filed with the Court their written argument as to what the Court's decision should be, and the Court being fully cognizant of all matters pertaining therein and having rendered its Memorandum Decision in writing, and being fully informed in the premises, enters the following:

FINDINGS OF FACT

1. That Plaintiff and Defendant have each been bona fide residents of Box Elder County, State of Utah for at least three (3) months prior to the commencement of this action.

2. That Plaintiff and Defendant intermarried in Arlington, Texas on or about the 27th day of July, 1968 and ever since time have been and still are husband and wife; that there are two (2) children born as issue of the marriage and the Plaintiff adopted one (1) of the Defendant's children by a previous marriage and that child is now emancipated and there are two (2) minor children living at home, to-wit: Gregory Scott, born November 11, 1971 and Kenna Suzanne, born November 19, 1973.

3. That the Defendant shall be awarded the care, custody and control of the minor children, subject to reasonable and liberal visitation, which the parties have

agreed should be every other weekend, commencing Friday evening at 6:00 p.m. through Sunday evening at 6:00 p.m., every other holiday, and that the Plaintiff may pick up the children at 6:00 p.m. the night before the holiday and keep them until 6:00 p.m. the day of the holiday, plus extended summer visitation of thirty (30) days, which may be broken up into two (2) fifteen (15) day periods if the Plaintiff elects, provided however the Plaintiff must give the Defendant notice by May 30th when he intends on exercising his summer visitation.

4. That the Defendant is awarded the care, custody and control of the minor children, provided however that if either of them elect to reside permanently with the Plaintiff, such election shall be deemed a substantial change of circumstance, and thus leave only for determination the best interest of the child or children in any future custody proceedings.

5. That the Plaintiff is presently employed at Morton Thiokol and has a gross salary of \$3,800.00 per month with a net take home pay of \$2,365.00 per month; and the Defendant is employed at Morton Thiokol with a gross salary of \$1,058.00 per month and \$788.00 take home pay.

6. That Plaintiff shall pay to the Defendant the sum of \$225.00 per month per child, the same to be effective as a continuation of the temporary child support obligation, and Plaintiff shall be entitled to claim the children as dependents for income tax purposes.

7. That during the course of the marriage, the parties herein have acquired both real and personal properties, which the Court finds have the following valuations: An equity in a family home valued at \$63,000.00; a 1980 Toyota automobile valued at \$3,500.00; a 1969 Chevrolet truck valued at \$300.00; a 1965 Volkswagen valued at 250.00; a canoe valued at \$150.00; a camper shell valued at \$150.00; cab over camper valued at \$250.00; four (4) horse trailers valued at \$750.00; tools valued at \$200.00; guns and sporting equipment valued at \$1,000.00; utility trailer valued at \$200.00; cash value of insurance invested in stock valued at \$3,800.00; two (2) horses valued at \$1,200.00; horse paraphernalia valued at \$1,050.00; lawn and yard equipment valued at \$400.00; household furniture valued at \$1,500.00; washer and dryer valued at \$500.00; freezer valued at \$200.00; dishwasher valued at \$100.00; refrigerator valued at \$350.00.

8. That the Defendant brought into the marriage \$19,500.00 in the form of cash deposit; Plaintiff brought into the marriage in the form of vehicles, horses and a savings account of \$4,000.00, a total of \$14,500.00, each claims the contributions have been consumed in the course of the marriage.

9. That Plaintiff has a vested interest in a pension with Sperry-Rand Corporation for thirteen (13) years employment, nine (9) years of which occurred during the parties marriage.

10. That Plaintiff has seven (7) years employment with Morton Thiokol and a pension retirement program based thereon.

11. That the Plaintiff introduced into Court an exhibit concerning items of personal property that the Defendant agreed to, and the Court has made a determination of those items in dispute.

12. That the Defendant has requested alimony be awarded to her.

13. That the Defendant has retained Attorney Frank M. Wells to represent her and has incurred reasonable attorney's fees and the Plaintiff has retained Attorney Pete N. Vlahos to represent him and has incurred reasonable attorney's fees.

14. That the Defendant has treated the Plaintiff cruelly, and that the Plaintiff has treated the Defendant cruelly, causing further marital relations between the parties herein intolerable.

From the above and foregoing Findings of Fact, the Court arrives at the following:

CONCLUSIONS OF LAW

1. That the Plaintiff, Kenton W. Stephens, is entitled to a Decree of Divorce from the Defendant, Sharon S. Stephens, and the Defendant, Sharon S. Stephens, is entitled to a Decree of Divorce from the Plaintiff, Kenton W. Stephens, said divorce to become final upon the signing and entry.

2. That the Defendant shall be awarded the care, custody and control of the two (2) minor children, subject to reasonable and liberal visitation upon the condition that in the event the minor children, or either of them, elect to reside permanently with the Plaintiff, such election shall be deemed a substantial change of circumstance and thus leave only for determination the best interest of the child or children in any future custody proceedings.

3. That the parties have stipulated since the Memorandum Decision that said visitation be set out as follows:

Plaintiff be allowed to have the children every other weekend from Friday at 5:00 p.m. through Sunday at 7:00 p.m., every other holiday, provided however that if it is Plaintiff's holiday, he may pick up the children the night before the holiday at 5:00 and return them on the holiday at 7:00, extended summer visitation of thirty (30) days which may be broken into two (2) fifteen (15) day periods if Plaintiff elects, provided however the Plaintiff must give the Defendant notice by May 30th of each year when he intends on exercising the visitation, with Plaintiff to have Father's Day regardless of whose weekend and Defendant to have Mother's Day regardless of whose weekend, and that the holidays shall control over the weekend visitation.

4. That the Plaintiff shall pay to the Defendant the sum of \$225.00 per month per child as and for support, provided however the Plaintiff shall be entitled just between the parties to claim the children as dependents for income tax purposes.

5. That the Plaintiff shall be awarded the following items of personal property with value placed on the Court as follows: The 1969 Chevrolet truck valued at \$800.00; the 1965 Volkswagen valued at \$250.00; canoe valued at \$150.00; camper shell valued at \$150.00; cab over camper valued at

\$250.00, four (4) horse trailers valued at \$750.00; horses and paraphernalia valued at \$2,250.00; tools valued at \$200.00; guns and sporting equipment valued at \$1,000.00; utility trailer valued at \$200.00; stock valued at \$3,800.00.

6. That the Defendant shall be awarded the following items of personal property, to-wit: the household furniture, fixtures, etc. valued at \$1,500.00; washer and dryer valued at \$500.00; freezer valued at \$200.00; dishwasher valued at \$100.00; refrigerator valued at \$350.00; Toyota automobile valued at \$3,500.00; incidental items including camera, endurance saddle, blue tent, one (1) set of bunk beds, a 22 rifle from her father, a lawn mower and tools from her father valued at \$150.00.

7. That the Plaintiff shall also be awarded those items of personal property including tools and equipment that were from his father's estate which were set forth in Plaintiff's exhibit and which the Defendant stipulated to as his sole and separate property.

8. That the federal income tax that the parties received shall be divided equally between the parties.

9. That the Defendant shall have the right to the use of the home and the equity therein, subject to the following

terms: Defendant shall have the right to live in the home until the youngest child reaches majority, her remarriage or sale of the property, whichever occurs first. Upon termination of Defendant's right to live in the home, the proceeds from the home shall be divided as follows: \$8,500.00 to the Defendant, an amount by which the present mortgage of \$17,000.00 is reduced at the time of the sale to the Defendant, the remainder of the net proceeds from the sale of the home to be divided one-half ($\frac{1}{2}$) to each of the parties. The Defendant, during her occupancy, is to maintain the home property, except for necessary expenditures for capital improvements agreed upon by the parties or necessitated by ordinary wear or depletion, which improvements shall be paid one-half ($\frac{1}{2}$) by each party. Defendant to pay and discharge as due the mortgage payments, taxes and insurance on said home.

10. That the Defendant shall also be entitled to received one-half ($\frac{1}{2}$) of nine thirteenths of Plaintiff's Sperry Rand Retirement benefits as and when they are received by the Plaintiff. That Defendant is also to receive one-half ($\frac{1}{2}$) of Plaintiff's Morton Thiokol retirement benefits as and when received, multiplied by the fraction of seven (7) divided by the total number of Plaintiff's working years for Morton Thiokol.

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11. That Plaintiff shall pay to the Defendant as and for alimony until the remarriage of Defendant or his property eligibility retirement from Morton Thiokol Corporation the sum of \$400.00 per month, said alimony shall terminate upon the death of each party.

12. That each of the parties shall assume and pay their own attorney fees and costs.

DATED this _____ day of December, 1984.

OMER J. CALL,
District Court Judge

APPROVED AS TO FORM:

FRANK M. WELLE,
Attorney for Defendant

DEC 2

EXHIBIT "B"

PETE N. VLAHOS
VLAHOS & SHARP
Attorney for Plaintiff
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401
Telephone: 621-2464

IN THE DISTRICT COURT OF BOX ELDER COUNTY
STATE OF UTAH

KENTON W. STEPHENS,	/	
Plaintiff,	/	DECREE OF DIVORCE
vs.	/	
SHARON S. STEPHENS,	/	Civil No. <u>18430</u>
Defendant.	/	

This matter having come on regularly for trial on the 28th day of September, 1984, before the Honorable Omer J. Call, one of the Judges of the above entitled Court, sitting without a jury, and the Plaintiff appearing in person and with his attorney, Pete N. Vlahos, and the Defendant appearing in person and with her attorney, Frank M. Wells, and each of the parties having been sworn and testifying in their own behalf, exhibits having been offered and received, and certain stipulations having been made in open Court

DECREE OF DIVORCE

1

EXHIBIT "B"

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concerning personal properties and other matters, and each of the respective attorneys having filed with the Court their written argument as to what the Court's decision should be, and the Court being fully cognizant of all matters pertaining therein and having rendered its Memorandum Decision in writing, and being fully informed in the premises, and having made its Findings of Fact and Conclusions of Law, enters the following Order:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That the Plaintiff, Kenton W. Stephens, is granted a Decree of Divorce from the Defendant, Sharon S. Stephens, and the Defendant, Sharon S. Stephens, is granted a Decree of Divorce from the Plaintiff, Kenton W. Stephens, said divorce to become final upon the signing and entry.

2. That the Defendant is awarded the care, custody and control of the two (2) minor children, subject to reasonable and liberal visitation upon the condition that in the event the minor children, or either of them, elect to reside permanently with the Plaintiff, such election shall be deemed a substantial change of circumstance and thus leave only for determination the best interest of the child or children in any future custody proceedings.

3. That the parties have stipulated since the Memorandum Decision that said visitation be set out as follows: Plaintiff is allowed to have the children every other weekend from Friday at 5:00 p.m. through Sunday at 7:00 p.m., every other holiday, provided however that if it is Plaintiff's holiday, he may pick up the children the night before the holiday at 5:00 and return them on the holiday at 7:00, extended summer visitation of thirty (30) days which may be broken into two (2) fifteen (15) day periods if Plaintiff elects, provided however the Plaintiff must give the Defendant notice by May 30th of each year when he intends on exercising the visitation, with Plaintiff to have Father's Day regardless of whose weekend and Defendant to have Mother's Day regardless of whose weekend, and that the holidays shall control over the weekend visitation.

4. That the Plaintiff is ordered to pay to the Defendant the sum of \$225.00 per month per child as and for support, provided however the Plaintiff is entitled just between the parties to claim the children as dependents for income tax purposes.

5. That the Plaintiff is awarded the following items of personal property with value placed on the Court as follows: The 1969 Chevrolet truck valued at \$800.00; the

1965 Volkswagen valued at \$250.00; canoe valued at \$150.00; camper shell valued at \$150.00; cab over camper valued at \$250.00, four (4) horse trailers valued at \$750.00; horses and paraphernalia valued at \$2,250.00; tools valued at \$200.00; guns and sporting equipment valued at \$1,000.00; utility trailer valued at \$200.00; stock valued at \$3,800.00.

6. That the Defendant is awarded the following items of personal property, to-wit: the household furniture, fixtures, etc. valued at \$1,500.00; washer and dryer valued at \$500.00; freezer valued at \$200.00; dishwasher valued at \$100.00; refrigerator valued at \$350.00; Toyota automobile valued at \$3,500.00; incidental items including camera, endurance saddle, blue tent, one (1) set of bunk cots, a 22 rifle from her father, a lawn mower and tools from her father valued at \$150.00.

7. That the Plaintiff is also awarded those items of personal property including tools and equipment that were from his father's estate which were set forth in Plaintiff's exhibit and which the Defendant stipulated to as his sole and separate property.

8. That the federal income tax that the parties received shall be divided equally between the parties.

9. That the Defendant shall have the right to the use of the home and the equity therein, subject to the following terms: Defendant shall have the right to live in the home until the youngest child reaches majority, her remarriage or sale of the property, whichever occurs first. Upon termination of Defendant's right to live in the home, the proceeds from the home shall be divided as follows: \$8,500.00 to the Defendant, an amount by which the present mortgage of \$17,000.00 is reduced at the time of the sale to the Defendant, the remainder of the net proceeds from the sale of the home to be divided one-half ($\frac{1}{2}$) to each of the parties. The Defendant, during her occupancy, is to maintain the home property, except for necessary expenditures for capital improvements agreed upon by the parties or necessitated by ordinary wear or depletion, which improvements shall be paid one-half ($\frac{1}{2}$) by each party. Defendant to pay and discharge as due the mortgage payments, taxes and insurance on said home.

10. That the Defendant is also entitled to received one-half ($\frac{1}{2}$) of nine thirteenths of Plaintiff's Sperry Rand Retirement benefits as and when they are received by the Plaintiff. That Defendant is also to receive one-half ($\frac{1}{2}$) of Plaintiff's Morton Thiokol retirement benefits as and

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when received, multiplied by the fraction of seven (7) divided by the total number of Plaintiff's working years for Morton Thiokol.

11. That Plaintiff is ordered to pay to the Defendant as and for alimony until the remarriage of Defendant or his property eligibility retirement from Morton Thiokol Corporation the sum of \$400.00 per month, said alimony shall terminate upon the death of each party.

12. That each of the parties are ordered to assume and pay their own attorney fees and costs.

DATED this 21 day of December, 1984.

181 Omer J. Call
OMER J. CALL,
District Court Judge

APPROVED AS TO FORM:


FRANK M. WELLS,
Attorney for Defendant

FIRST JUDICIAL DISTRICT
STATE OF UTAH
FOR ELDER DEPUTY
I, _____, District Court for the
State of Utah, do hereby certify and
declare that the foregoing is a true and
correct copy of the original as the same
appears in my files and records.
By Sharon P. Lewis Deputy

DECREE OF DIVORCE

CERTIFICATE OF SERVICE

There comes now counsel for the Plaintiff and Appellant and certifies to the Court that fifteen (15) copies of the Appellant's Brief was posted and delivered to the Clerk of the Supreme Court of the State of Utah, 332 State Capitol Building, Salt Lake City, Utah 84114, and that four (4) copies were mailed to the attorney for the Defendant and Respondent, Frank Wells, Esq., at 2564 Washington Boulevard, Ogden, Utah 84401 on this - 5 day of April, 1985.


PETE N. VLAHOS,
Attorney for Plaintiff &
Appellant