

1985

MARY HELEN OWEN, Plaintiff and Appellant,
vs. ROBERT JAMES OWEN, Defendant and
Respondent : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

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

Robert James Owen; Pro Se, Defendant & Respondant.

Peter N. Vlahos; Vlahos & Sharp; Attorney for Plaintiff & Appellant.

Recommended Citation

Brief of Appellant, *Owen v. Owen*, No. 198520478.00 (Utah Supreme Court, 1985).

https://digitalcommons.law.byu.edu/byu_sc1/528

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

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

DO
KF
45.8
.59
DOCK

198520478

20478 IN THE SUPREME COURT OF THE
STATE OF UTAH

MARY HELEN OWEN,
Plaintiff and
Appellant,

vs.

ROBERT JAMES OWEN,
Defendant and
Respondent.

)
)
)
)
)
)
)
)
)
)

Case No. 20478

198520478

APPELLANT'S BRIEF

Appeal from the Judgment of the District Court
in and for the County of Weber, State of Utah
THE HONORABLE JOHN F. WAHLQUIST
DISTRICT COURT JUDGE

PETE N. VLAHOS, ESQ.
VLAHOS & SHARP
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401
(Attorney for Plaintiff &
Appellant)

ROBERT JAMES OWEN
5470 South 700 East
Ogden, Utah 84403
(Pro Se, Defendant &
Respondent)

FILED

MAR 29 1985

Clerk, Supreme Court, Utah

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	2
SUMMARY OF ARGUMENTS	3
ARGUMENT	
POINT ONE	4
A DIVORCE PROCEEDING IS AN EQUITABLE ACTION	
POINT TWO	9
THE JUDGMENT OF THE LOWER COURT CONSTITUTED AN ABUSE OF DISCRETION BY THE COURT	
CONCLUSION	13
ADDENDUM	14
CERTIFICATE OF SERVICE	15

TABLE OF AUTHORITIES

CASES

<u>Behrans vs. Raleigh Hills Hospital Inc.</u> , 673 P. 2d 1179, (Utah 1983)	4
<u>English vs. English</u> , 565 P.2d 409 (Utah 1977) . . .	7, 11
<u>Kikkert vs. Kikkert</u> , 177 N.J. Super. 471, 427 A.2d 76 (1981)	8
<u>MacDonald vs. MacDonald</u> , 120 Utah 573, 236 P.2d 1066 (1951)	9, 12
<u>Palombi vs. D. & C. Builders</u> , 22 Utah 2d 297, 452 P.2d 325 (1969)	7
<u>Pinion vs. Pinion</u> , 92 Utah 255, 67 P.2d 265 (1937)	9
<u>Pope vs. Pope</u> , 589 P.2d 752 (Utah 1978)	7
<u>Turner vs. Turner</u> , 649 P.2d 6 (Utah 1982)	11
<u>Wilson vs. Wilson</u> , 5 Utah 2d 79, 296 P.2d 977 (Utah 1956)	5, 9
<u>Woodward vs. Woodward</u> , 656 P.2d 431 (Utah 1982) . .	7, 8

RULES OF CIVIL PROCEDURE

54(c)(1) Utah Rules of Civil Procedure	4, 6, 14
--	----------

PERIODICALS

<u>Moore's Federal Practice</u> , 6 J. Moore, Section 54.60 (Second Edition 1983)	7
--	---

IN THE SUPREME COURT OF THE
STATE OF UTAH

MARY HELEN OWEN,)	
)	
Plaintiff and)	
Appellant,)	
)	
vs.)	Case No. 20478
)	
ROBERT JAMES OWEN,)	
)	
Defendant and)	
Respondent.)	

BRIEF OF APPELLANT

STATEMENT OF ISSUES PRESENTED ON APPEAL

The issues presented by this Appeal are:

1. Is a divorce action an action in equity, pressing upon the Court the duty to do equity between the parties in accordance with the facts before the Court?
2. Did the Court abuse its discretion in the Judgment and Decree of Divorce ordered by the Court?
3. Is Plaintiff/Appellant entitled to recovery of the attorney fees paid by Plaintiff/Appellant to her trial attorney and for attorney fees on Appeal?

STATEMENT OF THE CASE

This is an action wherein the Plaintiff and Appellant, who was the Wife, brought an action for divorce as against

the Husband, who is the Defendant and Respondent. The Complaint for divorce was filed by Plaintiff and Appellant (Wife) with the aid and assistance of counsel, Frank M. Wells, Esq., and the Defendant and Respondent (Husband) appeared pro se. The Court granted a Decree of Divorce to the Wife.

STATEMENT OF FACTS

The Wife was intermarried to the Husband on September 9, 1966 (R 11a), and there was born as issue two (2) children, Robert, born October 19, 1975 and John, born December 22, 1977 (R 11b). As of the date of the Findings of Fact and Decree of Divorce of January 10, 1985, the parties had been Husband and Wife for a period of approximately eighteen and a half (18 1/2) years.

The Husband is employed by the United States Government and has a civil service rating of a GS11, alleging earnings of \$12.57 an hour at his employment at Hill Field, with monthly earnings in the amount of \$2,178.00. (TR 30)

The Wife is unemployed and states that she has no prospects of employment (TR 31). The parties have an equity in a home with admittedly a one-half (1/2) equity belonging to the Wife, but awarding possession of the home to the Husband, providing that the Wife and the two (2) minor children shall be the beneficiaries of the one-half (1/2)

equity of the Wife in the property, subject to receiving same upon the Husband's remarriage, his sale of the home, the youngest child obtaining the age of majority or cohabits (TR 33). The Court further awarded Wife half of an \$5,500.00 debt to be paid by the Wife and half to be paid by the Husband, and awarded to the Wife \$300.00 towards her attorney fees, with liability to the Wife to pay any additional fees charged by her attorney for his services (TR 35).

SUMMARY OF ARGUMENTS

1. An eighteen and a half (18 1/2) year marriage between a Husband and Wife, requires an equitable distribution of the retirement asset accumulated by the Husband during the course of the marriage, and is a property interest to be shared with the Wife.

2. A Court of equity may make an award not prayed for in the Complaint, such as a share in the retirement of the spouse and an equitable distribution of all assets acquired during the course of the marriage by the parties.

3. That where the children are awarded to the Wife and the home is awarded to the Husband, it is an abuse of discretion to not allow the vesting of the Wife's one-half (1/2) interest in the home until the Husband remarries, the youngest child is emancipated, the Husband determines when

the home shall be sold, if ever, or upon cohabitation of the Husband.

4. The failure to award alimony or attorney fees to a Wife who is unemployed and has no specific ability to obtain employment or maintain the standard of life which she had for the eighteen and a half (18 1/2) years of her marriage, which coupled with the failure to pay any of the equity of the home to the Wife, thereby placing the burden upon the State of Utah to support the Wife, together with the requirement that the unemployed Wife be required to pay part of the attorney's fees where the Decree of Divorce is granted to the Wife is a clear abuse of discretion.

5. That requiring the Husband, who is employed and has substantial earnings to be required to pay only one-half (1/2) of the debts of the marriage and leave the unemployed Wife with no cash assets, having liability for the one-half (1/2) of the marital debts is a clear abuse of discretion.

ARGUMENT

POINT ONE

A DIVORCE PROCEEDING IS AN EQUITABLE ACTION

It is submitted to this Honorable Court that in accordance with Rule 54(c)(1), Utah Rules of Civil Procedure, as amended 1953 and as set forth in the case of Behrans vs. Raleigh Hills Hospital, Inc., 673 P.2d 1179, (Utah 1983),

that every final Judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the pleadings.

In the first instance, the Wife was represented by counsel, who upon undertaking the cause of action on behalf of a party seeking a Decree of Divorce, had a duty to obtain all of the facts pertinent to the cause of action which counsel was going to undertake, and counsel having alleged that the Husband and Wife were intermarried on September 9, 1966; (R 1) that there were two (2) minor children born as issue of the marriage and both of the children were of young and tender years; (R 1) that the Husband was employed at Hill Field and had a civil service rating of a GS11 (TR 30), and the Complaint being filed in December, 1984 establishing a marital relationship of the Husband and Wife for a period of eighteen (18) years, should have the knowledge and did have the duty to seek a share of the Husband's retirement on behalf of the Plaintiff and the two (2) minor children.

It is further submitted that a divorce proceeding is equitable, that it is the duty of the Court in an action in equity, and particularly in a divorce proceeding, to do equity between the parties. Wilson vs. Wilson, 5 Utah 2d 79, 296 P.2d 977, 5 Utah 2d 79 (Utah 1956)

At the time of the hearing before the Court, the Wife and Husband had been intermarried for a period of approximately eighteen and a half (18 1/2) years, and the Court having heard the testimony as evidenced in the eight (8) page reporter's transcript of the record before the Court, did set forth evidence before the Court of the term of the marriage and the employment of the Husband at a salary of \$12.57 an hour, which evidences an average monthly gross earnings of \$2,178.80 for the Husband with a GS11 rating at Hill Air Force Base. (TR 30)

It is submitted that the meager testimony contained in the transcript evidences the status of the parties as to employment, earnings and other factors determinative of a decision by a Court of equity, and that the Court, having knowledge of the years of marriage between the parties, the employment of the Husband, the inability of the Wife to find employment and being totally unemployed at the time of trial, and prior thereto was a red light to both the Court and to counsel on behalf of the Wife to invoke the effect of Rule 54(c)(1) of the Utah Rules of Civil Procedure, which states that:

Every final Judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

See also Pope vs. Pope, 589 P.2d 752 (Utah 1978); Palombi vs. D. & C. Builders, 22 Utah 2nd 297, 452 P.2d 325 (1969).

Professor Moore stated in 6 J. Moore, W. Taggart and J. Wicker, Moore's Federal Practice, Section 54.60 at 1212-14 (Second Edition 1983):

**While under Rule 8(a)(3), every pleading setting forth a claim for relief should contain a demand for Judgment, this prayer for relief constituted no part of the pleader's cause of action; a pleading should not be dismissed for legal insufficiency unless it appears to be a certainty that the claimant is entitled to no relief, legal, equitable or maritime, under any state of facts which could be proved in support of the claim, irrespective of the prayer for relief; and except as to a Judgment by default, the prayer does not limit the relief, legal, equitable or maritime, which the Court may grant.

This Court held in English vs. English, 565 P.2d 409 (Utah 1977) that:

The trial Court, in a divorce action, has considerable latitude of discretion in adjusting financial and property interests. A party appealing therefrom has a burden to prove that there was a misunderstanding or misapplication of the law, resulting in substantial and prejudicial error; or the evidence clearly preponderated against the findings, or such a serious inequity has resulted as to manifest a clear abuse of discretion.

This Court in Woodward vs. Woodward, 656 P.2d 431 (Utah 1982), upheld the lower Court in holding 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.

In Kikkert vs. Kikkert, 177 N.J. Super., 471, 427 A.2d 76 (1981), the Court held:

The right to receive moneys in the future is unquestionably **an economic resource subject to equitable distribution based upon proper computation of its present dollar value.

This Court held in Woodward vs. Woodward, supra, that pension or retirement benefits are a form of deferred compensation by the employer. If the rights to these benefits are acquired during the marriage, then the Court must at least consider those benefits in making an equitable distribution of the marital assets.

The failure of counsel for Plaintiff and the Court to consider or award to the Wife a share in the retirement of the Husband where the parties have been married for eighteen and a half (18 1/2) years; the Husband makes in excess of \$2,100.00 a month and has obtained a civil service level at Hill Air Force Base of a GS11 (as has been stated and referenced hereinabove) is contrary to the judicial decisions of this Court, particularly as set forth in the Woodward vs.

Woodward, supra, as contrary to the holdings of this Court, wherein the Court 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 of the right has so accrued, it is subject to equitable distribution.

POINT TWO

THE JUDGMENT OF THE LOWER COURT CONSTITUTED AN ABUSE OF DISCRETION BY THE COURT

In Wilson vs. Wilson, supra, this Court stated:

The Court's responsibility is to endeavor to provide a just and equitable adjustment of their economic resources so that the parties can reconstruct their lives on a happy and useful basis. In doing so, it is necessary for the Court to consider, in addition to the relative guilt or innocence of the parties, an appraisal of all of the attendant facts and circumstances: The duration of the marriage; the ages of the parties; their social positions and standards of living; their health; considerations relative to children; the money and property they possess and how it was acquired; their capabilities in training and their present and potential incomes.

See also Pinion vs. Pinion, 92 Utah 255, 67 P.2d 265 (1937);

MacDonald vs. MacDonald, 120 Utah 573, 236 P.2d 1066 (1951).

In the instant matter before the Court, in addition to the Court's failure to award the Wife any retirement funds of the Husband, despite the eighteen and a half (18 1/2) year marriage, (TR 30) the Lower Court denied alimony to the Wife even though she was unemployed at time of trial and had been so unemployed for a substantial period of time and testified that she had no particular skills or ability of which to earn a living. (TR 30)

The Court further evidenced its abuse of discretion in awarding the house to the Husband, despite the fact that the Wife was awarded the care and custody of the two (2) minor children, (TR 33-34) and to add insult to injury, the Court ruled, with the assistance of Wife's counsel, that the standard of the Court for the Wife obtaining her one-half (1/2) equity in the home will be as follows:

Mr. Wells: Well, I think that the standard of the Court would be in the event he remarries or sells his home or the youngest child obtains the age of majority unless he's obviously able to take out a second mortgage to satisfy the equity lien.

The Court: Or cohabits, usually have that in it. What else? The youngest child is how old now?

The Witness: Nine (9). (TR 33)

In addition, no proof was presented to the Court of the actual wages made by the Husband, and a guess was made as to

the husband's gross wages and child support in accordance with the Uniform Child Support Schedule which is not in a correct amount.

The Court additionally held the Wife, who is totally unemployed, liable for one-half (1/2) of the indebtedness of a hospital bill with a balance in the amount of \$5,500.00.

There was a further abuse of the discretion of the Court in awarding only part of the attorney fees to the Wife, even though she was granted the Decree of Divorce, and the Husband was ordered only to pay \$300.00 towards the attorney fees and not the full amount of the attorney's fee. (TR 35)

It is submitted to this Court that the failure to award the disabled and unemployed Wife alimony, where the Husband is gainfully employed and the Wife has the custody of two (2) minor children, clearly manifests an abuse of discretion and is contrary to the holdings of this Court in any number of cases as is set forth in Turner vs. Turner, 649 P.2d 6 (Utah 1982), wherein the Court has stated:

**The purpose of alimony is to provide post-marital support. It is intended neither as a penalty nor as a reward.

This Court in English vs. English, 565 P.2d 409 (Utah 1977) stated:

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

This Court, further in the MacDonald vs. MacDonald, supra, set forth a basis for determining "the financial conditions and needs of the Wife, the ability of the Wife to procure sufficient income for herself, and the ability of the Husband to provide support".

It is submitted to this Honorable Court that in accordance with the facts evidenced before this Court, in the meager record which there is, clearly evidences that there was an acute abuse of discretion by the Court in not only not awarding alimony for her support, so that she need not become a public charge, but also in compelling the Wife to pay one-half (1/2) of the indebtedness of a \$5,500.00 debt and a substantial part of the attorney fees.

It is submitted to this Honorable Court that this Court does have the prerogative to review the evidence and to substitute its judgment for that of the Trial Court, and at the very least to reverse the judgment of the Court so that a full trial with competent counsel and adequate evidence placed in the record to allow a Court of equity to render a viable, equitable judgment.

CONCLUSION

It is submitted to this Honorable Court that the Wife has suffered a clear abuse of discretion of the Court as evidenced by the judgment of the Court, as set forth hereinabove in this Brief, and that this Court, if it finds sufficient facts in the record before it, has a right and a duty to make a partial or total remedy forthwith to end the suffering of the Wife and the children, in restoring their dignity so that they need not be wards of the State where there is a substantial asset in the home and where the Husband is substantially and gainfully employed, and to reverse the findings of the Lower Court and its judgment, and if necessary, to return the matter to a Lower Court for an additional hearing as to those matters which the Court believes it cannot fully adjudicate with the evidence presently before the Court, and that present counsel should not be required to furnish pro bono legal services necessitated by incompetent counsel in the Lower Court.

Respectfully submitted this 21st day of March, 1985.

VLAHOS & SHARP

BY 

PETE N. VLAHOS, of the firm
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401
(Attorney for Plaintiff &
Appellant)

ADDENDUM

Utah Rule of Civil Procedure,

54(c) Demand for Judgment.

(1) Generally.

Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. It may be given for or against one or more of several claimants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between or among themselves.

Findings of Fact and Conclusions of Law

Attached

Decree of Divorce

Attached

JAN 10 3 05 PM '85

FRANK M. WELLS
Attorney for Plaintiff
2564 Washington Blvd., #4
Ogden, Utah 84401
Telephone: 621-6183

WEBER COUNTY CLERK
RICHARD D. CROOK

IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

MARY HELEN OWEN)	FINDINGS OF FACT
)	AND CONCLUSIONS OF
Plaintiff,)	LAW
)	
vs.)	Civil No. 90750
)	
ROBERT JAMES OWEN)	
)	
Defendant.)	

The above-entitled matter came on regularly for hearing before the Honorable John F. Wahlquist, Judge of the above-entitled Court, on the 2nd day of January, 1985. The Plaintiff was present and represented by her counsel, Frank M. Wells; and the Defendant was present representing himself. The parties were both sworn and testified and the Court being fully apprised of the circumstances, now therefore, enter its

FINDINGS OF FACT

1. That the Plaintiff and Defendant are husband and wife, having been married in Weber County, Utah on the 9th day of September, 1966.

2. That there are two (2) children born as issue of this marriage, to-wit: ROBERT EVAN OWEN, d.o.b. October 19, 1975; and JOHN EDWARD OWEN, d.o.b. December 22, 1977; that the Plaintiff is a fit and proper person to have the care, custody and control of said minor children subject to reasonable visitation rights in the Defendant.

3. That for several months last past the Defendant has treated Plaintiff cruelly, causing her great mental distress which has resulted in the separation of the parties as of October 17, 1984.

4. That the parties have acquired certain assets and obligations during the marriage and that the Court should make an equitable distribution as to same, to include the Plaintiff receiving a lien for her half of the equity in the family home at: 5470 South 700 East.

Based upon the foregoing Findings of Fact, the Court now enters its:

CONCLUSIONS OF LAW

1. That the bonds of matrimony now and heretofore existing between the Plaintiff and Defendant be dissolved, and that the Plaintiff be awarded a Decree of Divorce herein, subject only to a 90 day interlocutory period after which said divorce

to become final.

2. That the Plaintiff be awarded the care, custody and control of the said minor children with reasonable rights of visitation in the Defendant; and Defendant shall pay to the Plaintiff the sum of \$ 348.00 per month as and for child support, based upon the Uniform Support Scedule set for an hourly wage of \$ 12.57 per hour.

3. Plaintiff is awarded one-half of the equity now existing in the property located at 5470 South 700 East as of the date of January 2, 1985, with said equity payable to the Plaintiff in the event the Defendant should co-habitate, re-marry, sale the residence, or the youngest child shall attain the age of majority.

4. Plaintiff is awarded the 1974 Cougar automobile along with her personal effects.

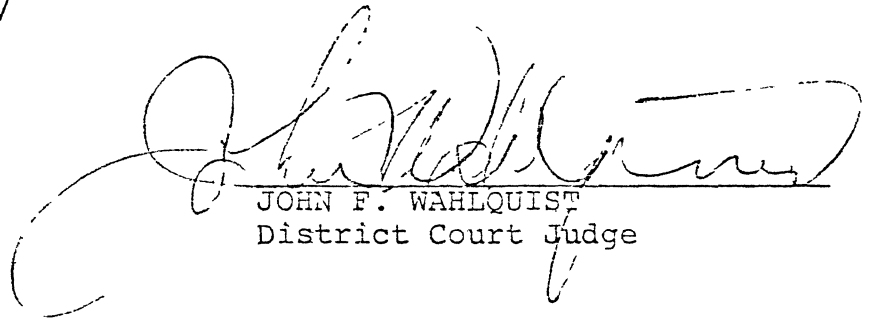
5. Defendant is awarded the 1978 Grand Prix of the parties along with his personal effects.

6. That the Plaintiff and Defendant shall be responsible, one-half each, for the St. Benedict's Hospital obligation due and owing for the Plaintiff, with the one-half each obligation to be determined after the deduction of amounts payable by the Defendant's health insurance.

Owen vs. Owen
Findings of Fact
Page 4

7. That the Defendant shall be responsible for
\$ 300.00 toward Plaintiff's attorney's fees.

Dated this 10 day of January, 1985.



JOHN F. WAHLQUIST
District Court Judge

Recorded Book	13.0.
Page	2142
Indexed	

EXHIBIT "B"

FRANK M. WELLS
 Attorney for Plaintiff
 2564 Washington Blvd., #4
 Ogden, Utah 84401
 Telephone: 621-6183

JAN 17 3 00 PM '85

WELLS
 AND GREENE

IN THE DISTRICT COURT OF WEBER COUNTY
 STATE OF UTAH

52 | 293

MARY HELEN OWEN)	DECREE OF DIVORCE
)	
Plaintiff,)	
)	
vs.)	Civil No. 90750
)	
ROBERT JAMES OWEN)	
)	
Defendant.)	

150

The above-entitled matter came on regularly for hearing before the Honorable John F. Wahlquist, Judge of the above-entitled Court, on the 2nd day of January, 1985. The Plaintiff was present and represented by her counsel, Frank M. Wells; and the Defendant was present representing himself. The parties were both sworn and testified and the Court having signed and filed its Findings of Fact and Conclusions of Law, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. That the bonds of matrimony now and heretofore existing between the Plaintiff and Defendant be dissolved, and that the Plaintiff be awarded a Decree of Divorce herein, subject

1 WELLS
 2564 WASH BLVD #4
 OGDEN UT 84401
 621 6183

10

Owen vs. Owen
Decree of Divorce
Page 2

only to a 90 day interlocutory period after which said divorce to become final.

2. That the Plaintiff is awarded the care, custody and control of the said minor children with reasonable rights of visitation in the Defendant; and Defendant shall pay to the Plaintiff the sum of \$ 348.00 per month as and for child support, based upon the Uniform Support Schedule set for an hourly wage of \$ 12.57 per hour.

3. Plaintiff is awarded one-half of the equity now existing in the property located at 5470 South 700 East as of the date of January 2, 1985, with said equity payable to the Plaintiff in the event the Defendant should co-habitate, re-marry, sale the residence, or the youngest child shall attain the age of majority.

4. Plaintiff is awarded the 1974 Cougar automobile along with her personal clothing and effects.

5. Defendant is awarded the 1978 Grand Prix of the parties along with his personal effects.

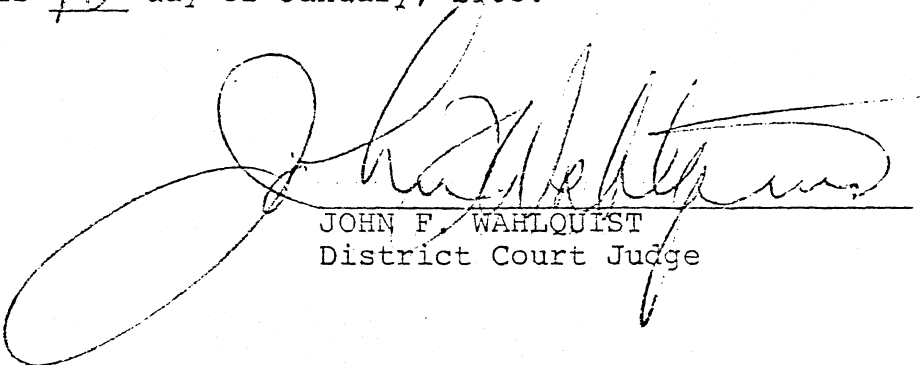
6. That the Plaintiff and Defendant shall be responsible, one-half each, for the St. Benedict's Hospital obligation due and owing for the Plaintiff, with the one-half each obligation to be determined after the deduction of amounts payable by the Defendant's health insurance.

Recorded Book 130
Page2144..
Indexed

Owen vs. Owen
Decree of Divorce
Page 3

7. That the Defendant shall be responsible for
\$ 300.00 toward Plaintiff's attorney's fees.

Dated this 10 day of January, 1985.



JOHN F. WAHLQUIST
District Court Judge

Owen vs. Owen
Divorce Decree
Page 4

CERTIFICATE OF MAILING

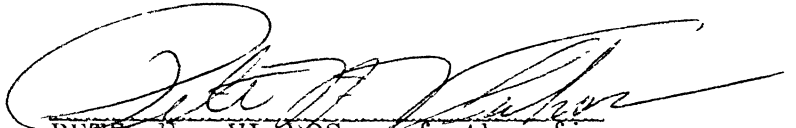
FILED IN CASE NO. 90750

I hereby certify that I caused to be mailed a true
a correct copy of the foregoing Divorce Decree to the
Defendant's last known address of 5470 South 700 East, Ogden,
Utah 84403 on this 21st day of January, 1985.

Walter K. Faldalen
Secretary

CERTIFICATE OF SERVICE

Comes now counsel for the Plaintiff and Appellant and certifies to the Court that fifteen (15) copies of Appellant's Brief was posted or 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 Defendant and Respondent, who was pro se in the Lower Court, by posting same in the U.S. mail, postage prepaid and addressed to Robert James Owen, 5470 South 700 East, Ogden, Utah 84403 on this 21st day of March, 1985..


PETE N. VLAHOS, of the firm
Attorney for Plaintiff &
Appellant