

1987

Gay Andersen v. Glade C. Andersen : Brief of Appellant

Utah Court of Appeals

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DOCKET NO. **870338-CA**

IN THE UTAH COURT OF APPEALS

GAY ANDERSEN,)	
Plaintiff/Appellant,)	BRIEF OF APPELLANT
vs.)	
GLADE C. ANDERSEN,)	Case No. 870338-CA
Defendant/Respondent.)	

146

Appeal of a Decree of Divorce
by the Honorable Omer J. Call
First Judicial District Court
Cache County, Utah

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Court of Appeals

Priority No. 15

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JURISDICTION OF COURT

The Decree of Divorce from which this appeal is taken was signed by the court on July 15, 1987, and was entered on July 16, 1987. The Notice of Appeal was filed on August 10, 1987.

This Court has jurisdiction over the appeal in this matter by virtue of the Constitution of Utah, Article VIII, Section 1 et seq., Section 78-2A-1 et seq. Utah Code Ann. (1953 as amended), and Rule 3 R.Utah Ct.App.

NATURE OF PROCEEDINGS

This appeal is from a final Decree of Divorce signed by Judge Omer J. Call of the First Judicial District Court of Cache County, State of Utah.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the court abused its discretion by awarding Gay Andersen only \$300.00 per month alimony and limiting said alimony award to such time as the Court makes a further order or until such time as Gay Andersen completes her schooling, or becomes employed on a full-time basis.

2. Whether the trial court abused its discretion in awarding Appellant Gay Andersen (hereinafter "Gay Andersen") the home only until April 1, 1989, at which time the home was ordered sold and the proceeds divided equally between the parties.

3. Whether the trial court abused its discretion in not specifically valuing the IRA account, there being evidence before the court that the IRA at the time of the parties' separation had in it some \$8,340.76.

4. Whether the trial court abused its discretion by valuing the 1980 Cutlass Oldsmobile at an amount in excess of the evidence before the trial court.

5. Whether the trial court abused its discretion in not requiring Respondent Glade Andersen (hereinafter "Glade Andersen") to maintain certain policies of life insurance and retirement policies with Gay Andersen named as beneficiary thereon.

6. Whether the trial court abused its discretion in not awarding Gay Andersen her reasonable attorney fees and costs incurred in this matter as proffered at trial by stipulation of the parties.

STATEMENT OF THE CASE

NATURE OF THE CASE

This is a divorce case.

COURSE OF PROCEEDINGS

Gay Andersen filed a complaint for divorce on September 26, 1986. An Order to Show Cause was also signed by the court on

September 26, 1986. On October 16, 1986, Glade Andersen filed an Answer and Counterclaim.

On October 27, 1986, a hearing on Gay Andersen's Order to Show Cause was held before Judge VeNoy Christoffersen of the First Judicial District. A Temporary Order was signed by Judge Christoffersen on December 1, 1986 and entered December 3, 1986.

Trial was held on March 13, 1987 before Judge Call. Judge Call signed his Memorandum Decision on May 5, 1987. The Memorandum Decision was entered on May 11, 1987.

The Findings of Fact and Conclusions of Law and Decree of Divorce were signed by Judge Call on July 15, 1987, and were entered July 16, 1987.

Gay Andersen filed this appeal on August 10, 1987.

DISPOSITION AT TRIAL COURT

The Decree of Divorce provided as follows:

The trial court awarded both parties a divorce.

The parties' home was ordered sold on April 1, 1989 and the proceeds divided one-half to each party, Gay Andersen to be entitled to live in the home until April 1, 1989, subject to her paying the taxes and insurance.

The personal property was valued and divided by the Court with Glade Andersen receiving slightly more than Gay Andersen. Each party was awarded:

One-half of the IRA account and
One-half interest in (Glade Andersen's) Pension Plan
from E. A. Miller as and when received in accordance
with the Woodward formula.

Decree of Divorce, numbered paragraph 4.A.

The trial court awarded alimony to Gay Andersen in "the sum of \$300.00 per month until further order of the Court or until such time as (Gay Andersen) completes her schooling or becomes employed on a full-time basis."

The debts were divided between the parties, each party ordered to pay his or her own attorney fees and costs, and Gay Andersen was awarded a \$400.00 judgment against Glade Andersen for temporary alimony left unpaid by Glade Andersen at the date of trial.

STATEMENT OF FACTS

1. Gay Andersen and Glade Andersen were married on July 22, 1953. Married at 17 and 16 years of age respectively, at the time of trial the parties were married nearly 34 years. (Transcript, page 3, lines 19-22; page 4, lines 12-19; page 46, lines 10-18.)

2. During their marriage, the parties had four children. All of the children are now married and live in homes of their own. The youngest of the children was married approximately one and a half years before the trial. At the time of trial, the parties had nine grandchildren, with the tenth on the way. (Transcript, page 3, lines 23-25; page 4, lines 1-11; page 46, lines 10-15.)

3. For all but the first few years of the marriage, Glade Andersen drove trucks. Gay Andersen testified at trial her husband "always made a good wage" and that the parties, though not rich, lived well and did not need to worry. Gay Andersen

testified that except during the first years, when Glade Andersen was gone even more, a typical work week would involve Glade Andersen being gone two or three nights cattle hauling. (Transcript, page 8, lines 17-25; page 9, lines 1-12; page 46, lines 19-20; page 47, lines 1-7.)

4. In 1984 Glade Andersen made \$29,319.60. In 1985 his income was \$28,189.20. His 1986 income was approximately \$28,000.00. (Plaintiff's Exhibit #4; Transcript, page 9, lines 13-25; page 10, lines 1-18.) At trial, both parties testified Glade Andersen had made more money in prior years but had chosen to slow down somewhat in recent years. (Transcript, page 10, lines 5-10; page 58, lines 17-25; page 82, lines 3-13.) Glade Andersen testified his current gross income to be approximately \$2,160.75 per month. (Transcript, page 59, lines 1-25.) Gay Andersen testified her husband historically received a bonus in March of each year, but was not sure he would get one in 1987 due to the recent takeover of the company. (Transcript, page 88, lines 17-25; page 89, line 1.)

5. During their marriage, Gay Andersen was a homemaker. In addition to raising the four children and providing for Glade Andersen and maintaining the home, in recent years Gay Andersen has been actively involved in the lives of her grandchildren. (Transcript, page 8, lines 17-23; page 24, lines 13-25; page 25, lines 1-6; page 33, lines 4-25; page 34, lines 1-13; page 83, lines 23-25; page 84, lines 1-16; page 89, lines 2-25; page 90, line 1.)

6. Gay Andersen's only employment experience during her nearly 34-year marriage was seven years as an on-call school lunch cook. Gay Andersen never had full-time employment. At most, the school lunch job is a 5-hour per day job. In 1984 Gay Andersen made \$52.23, in 1985 \$320.83, and in 1986 \$1,153.40. At trial in March, 1987, Gay Andersen testified she had made a total of \$290.00 in 1987. (Plaintiff's Exhibit #5; Transcript, page 6, lines 7-25; page 7; page 8, lines 1-16; page 10, lines 12-18; page 41, lines 10-13.)

7. Though a high school graduate in good health with a desire to work, Gay Anderson testified she had no readily employable skills. Gay Andersen testified at trial that she could not type or take shorthand and does not have skills in the medical area. (Transcript, page 31; page 32, lines 1-2; page 87, lines 23-25.) Gay Andersen testified that she very much needed benefits such as insurance and retirement for the future and medical insurance for the present. (Transcript, page 31, lines 18-25; page 32, lines 1-2.) She testified she had no idea during her 33 years of marriage that she would have to find a job. (Transcript, page 35, lines 8-11.) Gay Andersen testified her only job offer, other than the on-call lunch work job, after applying to numerous employers, was for less than \$4.00 per hour, was part-time, and included no benefits. (Transcript, page 38, lines 23-25; page 39, lines 1-25; page 40, lines 1-11.) Indicating a strong desire to find fruitful employment, Gay Andersen testified of a desire to enroll in business school at

Bridgerland Vocational College. She testified the cost would be \$284.00 per quarter tuition with another \$90.00 for books. The program would last approximately one year. In that training Gay Andersen testified she would learn "typing, word processing, shorthand, accounting, bookkeeping. It would give [her] the full scope." (Transcript, page 32, lines 3-25; page 33, lines 1-3; page 40, lines 12-25; page 41, lines 1-15.) Gay Andersen testified that even with the training she desired, and assuming she was able to find a full-time job at all, she would not make the same kind of money as her husband. (Transcript, page 38, lines 14-18.)

8. Gay Andersen testified to the trial court that her monthly expenses were between \$875.45 and \$915.45 per month. Plaintiff's Exhibit #3 was presented to the court and received as a summary of Gay Andersen's testimony on her monthly expenses. There was no house or rental payment included since the house was paid for and she was living in it. An allocation for taxes and insurance and repairs was added. No marital debts were included except the \$25.00 per month payment on the J. C. Penney debt of \$148.00. (Plaintiff's Exhibit #3; Transcript, page 28, lines 7-25; page 29, lines 1-18.)

9. Glade Andersen testified at trial that his monthly expenses were over \$1,800.00. Included in that amount was some \$485.00 for installment loans. Also included was rent and utilities in excess of \$570.00 for a 3-bedroom show home he was sharing with another woman. Though the testimony was disputed on

how much of the other woman's expenses were included with Glade Andersen's, Glade Andersen did admit the other woman was not employed and only received an unemployment check. (Defendant's Exhibit #15; Transcript, page 79, lines 12-25; page 80; page 81, lines 1-7; page 86, lines 3-11.)

10. Gay Andersen and Glade Andersen purchased their home at 58 South 3rd East in Hyrum, Utah in 1968. Some improvements were needed at the time of trial, particularly a furnace which would cost \$1,800.00 to \$2,500.00. The last mortgage payment on the home was made in 1985. The value of the home was stipulated at trial to be \$46,000.00, the amount showing on an appraisal commissioned by Gay Andersen. (Defendant's Exhibit #13; Transcript, page 4, lines 21-25; page 5; page 6, lines 1-6; page 49, lines 20-25; page 50, lines 1-12); page 66, lines 22-23.) At trial, Gay Andersen expressed her desire to keep the home and her considerable affection for the home:

Well, when Glade left he said it was mine and it's a lovely old home. I love it. I loved it since the moment I walked through the door. Everything in there is my home. My family loves it. My grandchildren love it. In fact, years before when we have talked of selling it and getting something smaller, the kids say don't ever give up this home, mom and dad. We want you to at least let us have a chance at it. Everybody loves it.

(Transcript, page 33, lines 8-16.) Glade Andersen testified he desired the home sold, equity split, and suggested Gay Andersen move into a trailer home. (Transcript, page 41, lines 16-25; page 42, lines 1-25; page 43, lines 1-9; page 49, lines 20-25;

pages 50-53; page 54, lines 1-5; page 75, lines 4-25; page 76, lines 1-5; page 89, lines 11-25; page 90, line 1.)

11. In 1983 the parties (the fund was in Glade Andersen's name) rolled over their profit sharing and retirement fund interest in the E. A. Miller & Sons Packing Co., Inc. profit sharing and retirement fund. Some of the money was retained and spent by the parties in 1983. \$7,500.00 of the money was rolled over into an IRA. At the time of the parties' separation, there was some \$8,340.76 in the IRA. (Plaintiff's Exhibit #7; page 13, lines 15-23; page 378, lines 4-11.) At trial, Gay Andersen testified the money was in the IRA as "a retirement to build on for us." A letter from Zions First National Bank was presented as an exhibit showing the IRA was cashed by Glade Andersen in September and October of 1986. (Plaintiff's Exhibit #8; Transcript, page 14, lines 2-25; page 15, lines 1-5; page 17, lines 23-25; page 18, lines 1-3.) The trial court awarded Gay Andersen "One-half of the IRA" though the account did not exist at the time of trial. (Ibid.; Memorandum Decision, page 3; Decree of Divorce, numbered paragraph 4.A.)

12. The parties testified that there was some \$3,700.00 plus in a fully vested E. A. Miller profit sharing account. The trial court awarded one-half of said fund to Gay Andersen in accordance with the Woodward formula. Gay Andersen does not appeal this award.

13. At the time of trial, the parties had two life insurance policies. The first policy had a \$10,000.00 policy on

the life of Glade Andersen. That policy was provided by Glade Andersen's employer. The second policy was purchased in 1984 from Aetna Life Insurance, Policy No. U 1 1276 105; date of issue October 12, 1984. The specified amount on the policy was \$58,400.00. The policy was purchased by the parties to aid in their retirement. At trial, Gay Andersen requested that Glade Andersen be required to maintain both of the above policies in full force and effect and to keep the premiums current and to keep the name of Gay Andersen or rename Gay Andersen, as the case may be, as the sole beneficiary thereon. (Plaintiff's Exhibits #11 and #9 respectively; Transcript, page 15, lines 23-25; pages 16-17; page 18, lines 1-3; page 35, lines 21-25; page 36, lines 1-6.) Glade Andersen testified that he would be willing to keep fifty or sixty thousand dollars of life insurance on his life with Gay Andersen as beneficiary. (Transcript, page 78, lines 17-25; page 79, lines 1-4.) The trial court made no mention in its final papers of this life insurance/retirement plan.

14. There was also a \$5,000.00 policy through Aetna on Gay Andersen's life which was raised at trial. The premium, approximately \$12.00 per month, was taken out of Glade Andersen's check. Gay Andersen testified she desired that policy be kept in place by Glade Andersen. (Transcript, page 21, lines 21-25; page 22, lines 1-8; page 35, lines 21-25; page 36, lines 1-6.) The trial court made no mention in its final papers of this insurance either.

15. At trial, an appraisal of the parties' personal property was presented the trial court. The trial court also heard testimony on the value of the parties' two vehicles. Four facts need to be mentioned:

(a) In its Memorandum Decision and Findings, the trial court adopted the appraiser's value and then went on and "observe[d] that such values are approximately double the value placed on said property by Plaintiff." (Memorandum Decision, page 2; Findings of Fact, numbered paragraph 11.) The trial court made this findings in spite of the fact that the appraiser was retained by Plaintiff Gay Andersen, the appraisal was presented by exhibit by Gay Andersen, and Gay Andersen testified she agreed with the appraiser's values at trial. (Plaintiff's Exhibit #6; Transcript, page 10, lines 19-25; page 11, lines 1-25.) With the exception of one item, Glade Andersen also agreed to the Palmer appraisal (Transcript, page 54, lines 11-25.)

(b) The trial court awarded Gay Andersen the Oldsmobile Cutlass subject to the debt thereon and placed the net value at \$350.00. (Memorandum Decision, page 3; Decree of Divorce, numbered paragraph 4.A.) Gay Andersen testified the value of the car to be \$2,200.00 to \$2,500.00. (Transcript, page 18, lines 8-15.) Glade Andersen testified that though the car was valued at \$3,800.00 a year and a half earlier, the low blue book of \$1,800.00 and high of \$2,700.00 was "right." (Transcript, page 65, lines 16-25; page 66, line 1.) The Zions Bank debt against the car (the loan was not made to purchase the

car, but to carpet and remodel the home) was \$2,762.03 as of the date of trial. (Transcript, page 23; page 24, lines 1-3.)

\$2,762.03 plus the \$350.00 net value deduced by the trial court places the trial court's valuation of the car at \$3,112.03.

(c) The monthly payment on the \$2,762.03 Zions Bank loan which has the car as security was \$148.17. (Defendant's Exhibit #15.) By placing the debt on Gay Andersen's side of the ledger, her \$874.45 to \$915.45 of monthly expenses was increased by \$148.17 and Glade Andersen's \$1,800.00 of monthly expenses was decreased by \$148.17.

(d) The trial court awarded Glade Andersen the trailer though Gay Andersen testified she had already sold it. (Plaintiff's Exhibit #10; Transcript, page 19, lines 7-25; page 20.)

16. After a stipulation to the reasonableness of the attorney fees, Gay Andersen proffered fees of \$1,800.00 and Glade Andersen proffered fees of \$2,600.00 from which \$1,500.00 to \$2,000.00 was claimed as reasonable with the rest representing travel time. (Transcript, page 29, lines 19-25; page 30, lines 1-17; page 74, lines 2-12.) Gay Andersen further testified she did not have the means to pay her attorney fees. (Transcript, page 30, lines 15-17.)

17. Glade Andersen left the family home on August 5, 1986 and moved with another woman to a home in Brigham City, Utah. (Transcript, page 24, lines 19-25; page 25, lines 1-6.) Gay Andersen testified she had \$100.00 with her on August 5th and

that Glade Andersen deposited \$200.00 into their joint account on August 15. (Transcript, page 25, lines 7-25.) On September 26, 1986, Gay Andersen filed the Complaint for Divorce, a Motion for Order to Show Cause, Affidavit, and Order to Show Cause.

(Record, pages 1-21.) It was between the time Glade Andersen left and the Order to Show Cause was scheduled and Glade Andersen finally paid \$500.00 toward Gay Andersen's support that Gay Andersen sold the trailer for \$1,000.00. (Transcript, page 19, lines 7-25; page 20, lines 1-14; page 25, lines 19-25.) The Temporary Order provided that Glade Andersen pay to Gay Andersen \$300.00 per month temporary alimony plus the utilities on the home (excepting the phone bill, as well as all of the marital debts (excluding J. C. Penney and The Bon). (Record, pages 54-56.) The Decree of Divorce awarded Gay Andersen judgment for \$400.00 against Glade Andersen for temporary alimony owed but not paid on March 13, 1987, the date of the trial. (Decree of Divorce, numbered paragraph 8.)

SUMMARY OF ARGUMENT

1. The trial court's award of \$300.00 per month alimony to Gay Andersen until such time as Gay Andersen finishes school or is employed full-time is an abuse of discretion. Given the duration of the parties' marriage, the disparity of income and income earning potential, experience in the work place, family arrangement, age, relative skills, property, monetary needs, and reasonable expectations, and given the Utah Supreme Court and this Court's mandate that an alimony award "as far as possible,

equalize the parties' respective standards of living and maintain them at a level as close as possible to the standard of living enjoyed during the marriage," the trial court's award of alimony is grossly inadequate in this case. Not only did the trial court not satisfy the basic purpose of alimony set out in Utah case law, the trial court further abused its discretion in failing to make appropriate findings as to the parties' income and ability to earn income and Gay Andersen's needs. The trial court further abused its discretion in requiring the family home be sold in 1989 given the same factors just mentioned and given the purpose of property awards which is to "best serve the needs of the parties" and to allow the parties "to pursue their separate lives." Again, not only was the purpose of a property settlement not met in this case, but the trial court also failed to make findings as to how the needs of the parties would be met and how the parties would be able to go forward separately if the home was sold and, more specifically, how Gay Andersen's needs and abilities would be met by the sale of the home.

2. The trial court failed to specify a set amount in its award of the IRA in spite of the fact that it was cashed by Glade Andersen before the trial. Also, the trial court valued the parties' car at an amount in excess of the undisputed testimony at trial. There being inadequate findings on these points, the trial court abused its discretion.

3. The trial court did not order or even mention an agreement at trial by Glade Andersen that he carry substantial

insurance on his life with Gay Andersen as sole beneficiary. The request and agreement were both reasonable and necessary on the facts of this case and the trial court abused its discretion in failing to make any finding or order thereon. The trial court further abused its discretion in failing to rule on Gay Andersen's request that the insurance on her life be maintained by Glade Andersen.

4. The \$1,800.00 attorney fees requested by Gay Andersen and stipulated to by the parties as reasonable should have been awarded given Gay Andersen's need and Glade Andersen's income and earning potential. The trial court abused its discretion in refusing the request and in making no findings thereon except to order both to pay their own fees and costs.

Gay Andersen further requests her reasonable attorney fees and costs on this appeal given her ongoing need and Glade Andersen's ongoing income and earning potential.

ARGUMENT

I

GAY ANDERSEN IS ENTITLED TO SUBSTANTIAL ALIMONY FOR AN EXTENDED PERIOD AND THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO SO PROVIDE.

Alimony and the request for the home are at the heart of Gay Andersen's case.

This case involved a nearly 34-year marriage during which four children were raised. During the parties' marriage, Glade Andersen provided the income while Gay Andersen raised the children and kept the home. Glade Andersen, for 31 years a truck

driver, was earning approximately \$26,000.00 to \$28,000.00 per year as a truck driver at the time of trial. Gay Andersen, an on-call school lunch cook, earned just over \$50.00 in 1984, \$320.00 in 1985, \$1,153.00 in 1986, and at the time of trial in March, 1987 had earned \$290.00 thus far for 1987. Thus, in the three years before trial, Glade Andersen earned \$85,508.80 and Gay Andersen earned \$1,526.46.

Though she never dreamed she would find herself in this situation, Gay Andersen testified that she was in good health and desired to work. However, at 51 years of age and never having worked at any job other than as a temporary school lunch cook, Gay Andersen testified she did not have sufficient skills with which to obtain any meaningful full-time employment. Gay Andersen testified she had searched diligently for employment without success, and expressed her willingness to go to school and obtain the necessary skills to aid her attempt to find meaningful employment. She testified that even with schooling and assuming she could get a job, her income would come nowhere near the income of Glade Andersen.

Gay Andersen testified her average necessary monthly expenses (does not include a mortgage or rental payment) were between \$875.45 and \$915.45 per month. Not included in that amount were fees and costs for schooling. Also not included was the \$148.17 payment on the \$2,700.00 Zions Bank loan she was ordered to pay in the Decree of Divorce, as well as her attorney fees and costs which she was also ordered to pay.

The trial court awarded Gay Andersen \$300.00 per month alimony "until such time as [she] completes her schooling or becomes full-time employed on a full-time basis." Presumably, if Gay Andersen were to go to business school at Bridgerland Vocational School for the one-year program she told of at trial, her alimony would cease entirely at the end of the school year though she may have no means of support whatever. If Gay Andersen were to obtain full-time employment at \$4.00 per hour (\$8,320.00 per year--a supposition made by opposing counsel at trial), her alimony would terminate though her wage would be substantially less than one-third the wage of Glade Andersen.

Gay Andersen testified of the special meaning the home had to her, the parties' children, and the parties' grandchildren. The home was paid for. An older home, a furnace was needed and some upkeep would have to be done. At trial, Gay Andersen requested that she be allowed to keep the home in order to enjoy it with her family (as she had done since the purchase of the home in 1968) and to alleviate financial strain to her since she would have no mortgage payment.

The trial court provided that Gay Andersen be allowed exclusive use of the parties' home only until April 1, 1989 (subject to payment of the taxes and insurance), at which time the home is to be sold and the equity divided equally between the parties.

The remainder of the parties' personal property and debts was divided in the Decree of Divorce by dividing the IRA and

retirement one-half to each, giving Glade Andersen \$348.00 more of personal property, and requiring Glade Andersen to pay perhaps \$2,000.00 to \$3,000.00 more of the marital debts than Gay Andersen. In short, Gay Andersen was required to pay debts which further added to her expense and was awarded no liquid assets whatever to aid her in meeting her necessary living expenses.

The trial record readily reveals the disparity in income and earning potential of the parties. With her own income and the \$300.00 alimony, even with the mortgage-free home, Gay Andersen does not even have half of what she needs to survive.

As stated by the Utah Supreme Court on numerous occasions:

An alimony award should, as far as possible, equalize the parties' respective standards of living and maintain them at a level as close as possible to the standard of living enjoyed during the marriage. In determining the amount of alimony to be awarded, it was necessary for the trial court to consider the financial condition and needs of the plaintiff, her ability to produce a sufficient income for herself, and the ability of the defendant to provide support.

Olson v. Olson, 704 P.2d 564, 566 (Utah 1985) (footnotes omitted). See also Higley v. Higley, 676 P.2d 379 (Utah 1983), and Savage v. Savage, 658 P.2d 1201 (Utah 1983).

As stated in Eames v. Eames, 735 P.2d 395 (Utah App. 1987): "Surely a wife of thirty years deserves something more than being cast adrift in the sea of economic uncertainty without some long-term support from a husband with superior earning potential."

Each of the cases just cited have facts similar to this case. Olson, supra, involved a 20-odd-year marriage, the wife

having no reasonable expectation of obtaining sufficiently fruitful employment to aid her in maintaining the standard of living she enjoyed while married. The Supreme Court reversed the trial court and made a substantial 2-year award of alimony permanent.

In Higley, supra, the parties were married 30 years. The wife was a homemaker and had the added complication of poor physical health. The Supreme Court reversed a trial court award of \$100.00 per month alimony, citing she needed \$800.00 per month for living expenses and alimony "should, in as far as possible, equalize the parties' respective standards of living and maintain them at a level as close as possible to the standard of living enjoyed during the marriage." Higley, supra, 676 P.2d at 381.

Observations were made by the Utah Supreme Court in Higley, supra, which are applicable in this case. The Supreme Court noted the fifteen factors to be considered in divorce actions as set out in MacDonald v. MacDonald, 120 Utah 573, 236 P.2d 1066 (1951). The MacDonald factors were applied to the facts in Higley, supra, to set the stage for the Supreme Court's assessment of the trial court's award of alimony. The duration of the marriage and age of the parties at marriage were factors: in this case, 30 years and 17 and 16 respectively. The present income of the parties and property owned were factors: in this case, Glade Andersen's average income in the last three years was over \$28,000.00 and Gay Andersen's was under \$1,000, and the property of the parties consisted of a home, IRA, and some

personal items and effects, all of which was acquired during the marriage through the parties' joint efforts, and none of which produces income. The status of the children was a factor: in this case, the parties' four children are raised and there are nearly ten grandchildren. The success of the marriage was a factor: characterized by Gay Andersen in this case as being a happy marriage with many good times with Glade Andersen's leaving and moving in with another woman being a great shock; characterized by Glade Andersen in this case as being a failed marriage since Gay Andersen's mother resided with the parties for a time some 18 years ago and conflict arose between the parties at that time. The present needs and standard of living the parties grew accustomed to during the marriage was a factor: in this case, Gay Andersen testified Glade Andersen was a fine provider and the parties, while not rich, had a good life financially and were able to meet all their needs and more.

Application of the MacDonald factors to this case strengthens Gay Andersen's claim for relief on this appeal.

The Supreme Court also observed in Higley, supra, that even if an older woman was able to find full-time employment, her prospects for meaningful earnings were low at best and were diminished by the absence of a prior work history, all of which is applicable in this case. The Supreme Court wrote:

In 1981, the median income for a woman in the United States with a high school education was \$6,495 per year. See Bureau of the Census, U.S. Department of Commerce, Current Population Reports, Series P-670 No. 137, Money Income of Households, Families, and

Persons in the United States: 1981, Table 37
(Washington, D.C., 1983). Another study reveals that, overall, women's earnings in the United States average \$.59 for every \$1 earned by men. See Bureau of Labor Statistics, U.S. Department of Labor, Report 673, The Female--Male Earnings Gap: A Review of Employment and Earnings Issues, Table 6
(Washington, D.C., September, 1982). Moreover, because the appellant has no previous work history her projected earnings may in fact be even lower than the above figures.

676 P.2d at 381. Like Higley, supra, Gay Andersen may be dangerously close to being "forced to resort to public assistance" as a result of the Decree of Divorce even if she is able to earn the 1981 median U.S. income for a woman with a high school education.

Savage, supra, involved another marriage of long duration (20 years or so). The Supreme Court upheld an award of substantial alimony. The Supreme Court pointed out that the husband's earning capacity greatly exceeded the wife's, requiring the substantial alimony award to enable the wife to "maintain a standard of living not unduly disproportionate to that which they would have enjoyed had the marriage continued." Savage, supra, 658 P.2d at 1205.

Eames, supra, involved a marriage of 30 years. The husband was making \$34,000.00, the wife \$10,000.00. Alimony of \$450.00 per month while the youngest child was home and \$300.00 per month when the child left home was upheld. This Court felt so strongly about the clear entitlement of the wife to alimony that it ruled

the husband's appeal frivolous and without merit and awarded the wife her attorney fees on appeal on that basis alone.

The parties in this case were married nearly 34 years. Glade Andersen provided a good living for the family and has a continuing ability to earn a substantial income. Gay Andersen provided a good home, raised the children, and continued to support the children and help with the grandchildren in the home. Gay Andersen had no readily employable skills at the time of trial. Gay Andersen had no real job or job experience. As a result, Gay Andersen must look and is entitled to look to Glade Andersen for alimony in a substantial sum for an extended period of time.

The \$900.00 per month requested by Gay Andersen at trial was not excessive. Of the \$26,000.00 to \$28,000.00 plus per year earned by Glade Andersen, the \$900.00 per month alimony awarded to Gay Andersen would reduce his gross income by only one-third. In addition, at trial it was shown Glade Andersen had made substantially more income in past years and would be free to do so now.

After presenting her proposed order to the trial court, Gay Andersen assessed her requirements this way:

I just need to be where I am. I want to be where I am. ... I need the monies to be able to get my life together. I need monies and help to be able to live like I'm used to living and I feel at my age, I don't want to have to go down the scale. I don't expect to go up, but I'd like to stay where I was and I think all in all, it's reasonable to ask. I

wish I would have known alot of things, but
I didn't.

(Transcript, page 38, lines 5-13.)

In fixing alimony and dividing property, trial courts are allowed considerable discretion. This Court recently addressed trial court discretion in divorce cases in Ruhsam v. Ruhsam, 65 Utah Adv.Rep. 29 (Ct.App. 09/11/87):

It is well established that in divorces trial courts are given considerable discretion in adjusting the parties' financial and property interests, and their actions are entitled to a presumption of validity. Burnham v. Burnham, 716 P.2d 781, 782 (Utah 1986); Savage v. Savage, 658 P.2d 1201, 1203 (Utah 1983). To overcome the presumption, the appealing party must demonstrate 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." Pope v. Pope, 589 P.2d 752, 753 (Utah 1978); see also Eames v. Eames, 735 P.2d 395, 397 (Utah Ct.App. 1978); Boyle v. Boyle, 735 P.2d 669, 670-71 (Utah Ct.App. 1987).

The Utah Supreme Court has stated that trial courts, in exercising their discretion in divorce actions, "need be guided by the general purpose to be achieved by a property division, which is to allocate the property in a manner which best serves the needs of the parties and best permits them to pursue their separate lives." Burke v. Burke, 733 P.2d 133, 135 (Utah 1987).

65 Utah Adv. Rep. at 30.

This Court went on in Ruhsam, supra, to reject the trial court's alimony award and disposition of the home. As to alimony, this Court rejected the lower court's consideration of net income and instead looked at the gross income figures:

Finally, the court, in considering the husband's ability to provide support, stated that his earnings would be between \$2,000.00 and \$3,000.00 per month. The uncontroverted testimony at trial was that Mr. Ruhsam earned \$2,915.00 per month and received \$2,941.00 per month in retirement and disability pay. His monthly income, therefore, was \$5,850.00. From this amount plaintiff was ordered to pay to defendant \$600.00 per month as alimony, and approximately \$457.00 of his monthly retirement benefits would go to defendant directly. These deductions would leave plaintiff \$4,603.00 per month net income before taxes and other employment deductions. Defendant, with an earning ability of \$200.00 per month, would have total monthly income of \$1,257.00. On its face, this disparity is disturbing, and would not appear to satisfy the goal of alimony to maintain defendant at the same standard of living as during the marriage. We do not mean to imply, however, that the means of doing so is necessarily by equalizing income, but there must be some clear rationale for the level of alimony consistent with the stated criteria.

The Memorandum Decision and Findings of Fact in this case, though listing the gross income of the parties, rely entirely on a net figure (the net figure is one-third less than Glade Andersen's gross income figures) in setting alimony. Though the Memorandum Decision and Findings of Fact acknowledge that Gay Andersen "has worked in the school lunch program earning approximately \$300.00 per month or less" the actual alimony award of \$300.00 for what could be only one year, like Ruhsam, supra, reveals a "disparity" which is "disturbing." In fact, with the present order, Gay Andersen can in no way maintain the standard of living she enjoyed during the marriage and as a result may in consequence be in danger of becoming a public charge. Ruhsam,

supra, Higley, supra, and Marchant v. Marchant, 66 Utah Adv.Rep. 45,49 (Ct.App. 09/18/87).

In this case, the trial court abused its discretion in failing to make findings on Gay Andersen's needs, ability to earn income, and Glade Andersen's ability to earn income. Further, the trial court apparently ignored the Supreme Court and this Court's holdings that "the purpose of alimony is to maintain as much as possible the standard of living the parties enjoyed during their marriage and avoid the necessity of one spouse receiving public assistance." Ruhsam, 65 Utah Adv.Rep. at 30 (extensive citations not included). As a consequence, the alimony award is a clear abuse of discretion and should be reversed and remanded for rehearing.

This Court also reversed the trial court's disposition of the home in Ruhsam, supra. Though the facts of this case are not greatly similar on this point, the edict by this Court that a property settlement best serve "the needs of the parties" and best allow the parties "to pursue their separate lives" applies. Ruhsam, supra, 675 Utah Adv.Rep. at 30.

As argued above, an award of the home to Gay Andersen either outright or for life would do much to enable her to enjoy her family in a home she loves dearly, and would benefit Glade Andersen in that Gay Andersen's need for alimony would not be so great.

Insomuch as alimony and the home are so inextricably connected in this case, the order on the home should also be

reversed and remanded in order that a fresh look be taken at both alimony and disposition of the home.

II

THE FINDINGS AS TO THE IRA ACCOUNT AND
VALUATION OF THE CAR ARE INADEQUATE,
REQUIRING REVERSAL ON THOSE ITEMS.

At trial, Gay Andersen presented evidence that on the date of their separation, the parties owned (in Glade Andersen's name only) an IRA at Zions Bank in the sum of \$8,340.76. The evidence also showed Glade Andersen withdrew the IRA in September and October of 1986. Gay Andersen requested she be awarded one-half (\$4,170.38) of the IRA as constituted on the date of the parties' separation. The Memorandum Decision, Findings of Fact and Conclusions of Law and Decree of Divorce award Gay andersen "One-half of the IRA account."

In subsequent requests for her \$4,170.38, Glade Andersen has disputed the amount awarded by Judge Call. Since no amount was specified in any findings, Gay Andersen has no means with which to collect the \$4,170.38.

As to the 1980 Oldsmobile Cutlass, the undisputed testimony at trial was that the car was worth \$2,200.00 to \$2,500.00. However, the Memorandum Decision, Findings of Fact and Conclusions of Law and Decree of Divorce seemingly have it valued at over \$3,000.00.

As stated in Marchant, supra, citing Acton v. Deliran, 737 P.2d 996, 999 (Utah 1987):

"Failure of the trial court to make findings
on all material issues is reversible error

unless the facts in the record are 'clear, uncontroverted, and capable of supporting only a finding in favor of the judgment,' and the findings "'should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusions on each factual issue was reached'" (citations omitted).

66 Utah Adv. Rep. at 47.

On the IRA and perhaps arguably on the car as well, the facts are not completely clear. Since the findings are without sufficient detail to show what the trial court had in mind on the IRA and car, this Court should find reversible error.

III

WHERE GLADE ANDERSEN AGREED TO MAINTAIN \$50,000.00 TO \$60,000.00 IN INSURANCE ON HIS LIFE WITH GAY ANDERSEN AS BENEFICIARY, THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO SO ORDER.

As set out in Statement of Facts, paragraph 13, Gay Andersen requested and Glade Andersen agreed that he would maintain \$50,000.00 to \$60,000.00 of life insurance on his lie with Gay Andersen as sole beneficiary thereon.

The request was reasonable given Gay Andersen's substantial alimony need and consequent continued reliance on Glade Andersen and in light of Glade Andersen's profession of truck driving.

Glade Andersen's agreement to provide the insurance was "one of fact for the trial court to determine which the trial court could have followed unless the court thought it unfair or unreasonable." Klein v. Klein, 544 P.2d 473, 476 (Utah 1975). However, for the trial court to ignore the issue of insurance

completely, making no findings whatever on insurance, was an abuse of discretion.

At trial, Gay Andersen also requested that a \$5,000.00 policy on her life be maintained by Glade Andersen since the insurance was through his employment and required a premium of only \$12.00 per month. No mention was made by the trial court of this request in the findings or elsewhere.

IV

GAY ANDERSEN IS ENTITLED TO HER ATTORNEY FEES
AND COSTS REASONABLY INCURRED IN THIS MATTER
AT TRIAL AND ON THIS APPEAL.

The parties stipulated to the reasonableness of attorney fees at trial. Gay Andersen presented fees totaling \$1,800.00. Glade Andersen presented fees totaling \$1,500.00 to \$2,000.00.

Gay Andersen testified that she has no means with which to pay her fees in this case. As already argued, Glade Andersen's income and earning ability far exceed that of Gay Andersen. In the three years before trial, Glade Andersen made over \$85,000.00 and Gay Andersen just over \$1,500.00.

The stipulation of the parties and testimony of Gay Andersen fully satisfied the requirement of Huck v. Huck, 734 P.2d 417, 419 (Utah 1986): "In divorce cases, an award of attorney fees must be supported by evidence that it is reasonable in amount and reasonably needed by the party requesting the award."

There are no findings on attorney fees and costs by the trial court, the court choosing instead to summarily require "Each party [to] be responsible for attorney's fees and costs

incurred by each" (Memorandum Decision, page 4.) This absence of findings is alone reversible error as argued in paragraph III above. In addition, Gay Andersen, having met her burden on both reasonableness of the fees and costs incurred, her need, and Glade Andersen's far greater ability to pay the fees and costs, should have been awarded her reasonable fees in this matter. The trial court's failure to award her fees was a clear abuse of discretion.


Gay Andersen respectfully submits that where she has a continuing need and Glade Andersen's income and earning ability far exceed her own, she should also be awarded a reasonable attorney fee and costs incurred subsequent to trial and in the bringing of this appeal.

CONCLUSION

Except for the granting of the divorce, the division of the parties \$3,700.00 retirement, and the valuation of the bulk of the parties' minor personal property items, Gay Andersen appeals the entirety of the Decree of Divorce in this case and, except for those items noted, requests that this matter be reversed and remanded for a new trial. Gay Andersen further requests that she be awarded her reasonable attorney fees and costs of this appeal.

Dated this 3rd day of November, 1987.


HILLYARD, ANDERSON & OLSEN



LARRY E. JONES
Attorney for Plaintiff/Appellant

CERTIFICATE OF MAILING

I hereby certify that four true and correct copies of the foregoing BRIEF OF APPELLANT were mailed, postpaid, to Richard B. Johnson, Attorney for Defendant/Respondent, at 120 East 300 North, Provo, Utah 84603, this 3rd day of November, 1987.



LARRY E. JONES
Attorney for Plaintiff/Appellant

ADDENDUM

	<u>Page</u>
MEMORANDUM, filed 5/5/87	A 1-5
FINDINGS OF FACT AND CONCLUSIONS OF LAW, filed 7/15/87	A 6-13
DECREE OF DIVORCE, filed 7/15/87	A 14-19

RECEIVED
MAY 12 1987

IN THE DISTRICT COURT OF CACHE COUNTY, STATE OF UTAH

GAY ANDERSON,)	
Plaintiff,)	MEMORANDUM DECISION
vs.)	
GLADE C. ANDERSEN,)	Civil No. 25207
Defendant.)	

In this matter the court finds plaintiff is entitled to a decree of divorce from the defendant on the grounds of mental cruelty the defendant having moved out of the family home and taken up residence with another woman. The defendant is also found to be entitled to a decree of divorce from the plaintiff on the grounds of mental cruelty, the plaintiff having long ago advised the defendant she no longer cared for him and had withdrawn all affection. The decree of divorce shall be final on entry.

The court finds the parties are 51 and 50 years old respectively, the defendant employed as a truck driver for E. A. Miller with earnings in 1985 of \$28,189.20 and a current gross income of \$26,000.00 per year. That after deduction of Federal and State Income Taxes, Social Security, Medical and Life Insurance deductions, defendant has \$1,405.00 net income per month against which a Credit Union monthly payment of \$97.82 is also taken therefrom. The defendant further has payments on three Zions Bank Loans, a ZCMI Account, Citi-Bank and Med-Master of \$465.00 per month with the principal balance of those debts totaling more than \$7,400.00. Plaintiff is in good health and has worked in

the school lunch program earning approximately \$200.00 per month or less and desires to and has begun training for more remunerative employment. The parties have a home valued at \$46,000.00 and a list of personal property hereinafter divided.

Obviously there is insufficient income to meet the living expenses claimed by each of the parties and the payment of the debts accumulated for plaintiff's chiropractor, the daughter's wedding, home improvements, Visa charge accounts among others.

The court takes as the value of the personal property the values placed thereon by one Sue Ann Palmer as to the household furniture and fixtures and observes that such values are approximately double the value placed on said property by the plaintiff. The court awards the household property as follows:

To Plaintiff:

	<u>Value</u>
One-half dishes, pots and pans;	
Wall decorations;	\$150.00
Linens;	250.00
Vacuum cleaner;	40.00
Kitchen table and chairs;	90.00
Range;	200.00
Fridge;	150.00
Speed Queen Washing Machine;	250.00
Amana Microwave;	175.00
Mattress (Beauty Rest), (Box springs, frame & headboard;	225.00
Bedroom set (yellow);	65.00
Bedroom set (gray);	75.00
Zenith TV;	225.00
2 table lamps;	18.00
3 end tables ;	125.00
Fisher Stereo Console;	50.00
1 hideabed couch;	80.00

Singer Sewing Machine;	\$75.00
Lawn Mower;	45.00
Wood Stove;	450.00
Eight ft. couch (\$125.00), love seat, chairs & ottoman (\$225.00);	350.00
Oldsmobile Cutlass subject to debt thereon;	<u>350.00</u>
Total	\$3438.00
Plus,	
One-half of the Ira Account; and	
One-half interest in defendant's pension plan from E. A. Miller as and when received in accordance with the Woodward formula.	

To Defendant:

	<u>Value</u>
One-half dishes, pots and pans;	\$
Bamboo Trunk;	75.00
Two car stereos;	55.00
Recliner;	55.00
Grandfather Clock (new);	800.00
Desk;	35.00
Sansui Stereo;	250.00
Homelite Chain Saw;	25.00
Skil Chain Saw;	225.00
Lawn Mower;	65.00
House Trailer;	1000.00
Pickup truck;	1200.00
Total	\$3785.00
Plus,	
One-half IRA Account;	
Balance of the E. A. Miller Retirement as & when received.	

As to the home and alimony the court orders that plaintiff shall be entitled to live in the home subject to payment of taxes and insurance thereon for the period ending April 1, 1989 at which time the home shall be sold and the net proceeds therefrom divided equally one-half to each party. That defendant shall pay to plaintiff as and for alimony the sum of \$300.00 per month until the further order of the court or until such time the plaintiff completes her schooling or becomes

employed on a full time basis.

The court further orders the defendant to pay and discharge the debts owing Andersen Lumber Company, ZCMI, Sears, Zions Bank, Med-Master and Citi-Bank and to save plaintiff harmless thereon. The plaintiff shall pay and discharge the obligations owing to J. C. Penney (\$148.00) and the Bon and the obligation owing on the 1980 Cutlass Oldsmobile. Each party shall be responsible for attorney's fees and costs incurred by each and debts incurred since the separation.

Finally the court finds the defendant was at the time of the ^{last} hearing \$400.00 delinquent in payment of temporary alimony under Judge Christoffersen's Temporary Order.

The court recognizes that from the foregoing figures it would appear the defendant will have only \$843.00 per month from which to pay the \$300.00 per month alimony and to pay his own living expenses while the plaintiff appears to have the \$300.00 alimony, her \$200.00 per month earnings and virtually free rent. However the court notes that defendant has earned two to three thousand dollars more in past years than he is currently earning and further his total income tax deductions will be reduced by the tax on \$3600.00 per year alimony. Either party to prepare the appropriate findings, conclusions, and decree submitting the same to opposing counsel for approval as to form.

Dated this 5th day of May 1987.

BY THE COURT:

- A 4 - Orin Hall

MAILING CERTIFICATE

Copy of the foregoing Memorandum Decision mailed this 11th
day of ^{May}~~April~~ 1987 to Larry E. Jones, Attorney for Plaintiff, 175 East
100 North, Logan, Utah 84321 and to Richard B. Johnson, Attorney for
Defendant, 1327 South 800 East, Suite 300, Orem, Utah 84058.

Seth S. Allen
Cache County Clerk

By Dotti C Campbell
Deputy

RICHARD B. JOHNSON, #1722
Attorney for Defendant
1327 South 800 East, Suite #300
Orem, Utah 84058
Telephone: (801) 225-1632

IN THE DISTRICT COURT OF CACHE COUNTY
STATE OF UTAH

GAY ANDERSON,	:	
	:	
Plaintiff,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
vs.	:	
	:	
GLADE C. ANDERSON,	:	
	:	Civil No. 25207
Defendant.	:	

This matter came on before the Honorable Omer J. Call for trial on the 13th day of March, 1987. The Plaintiff was present and represented by her attorney, Larry E. Jones. The Defendant was present and represented by his attorney, Richard B. Johnson. The Court, after having heard testimony and being fully advised in the premises, now makes and enters the following:

FINDINGS OF FACT

1. The Court finds that the parties were residents of Cache County, State of Utah, for more than three months

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Number

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JUL 16 1987

SETH S. ALLEN, Clerk

 Deputy

immediately prior to the filing of the Complaint for divorce.

2. The Court finds that the Plaintiff and Defendant were married to each other on July 22, 1953, in Garland, Box Elder County, State of Utah, and since that time have been and now are husband and wife.

3. The Court finds that the Plaintiff and Defendant are the parents of four children, none of whom are minors, and none of whom reside at home, and further, that no more children are expected.

4. The Court finds that the Plaintiff is entitled to a Decree of Divorce from and against the Defendant upon the grounds of mental cruelty in that the Defendant moved out of the family home and has taken up residence with another woman.

5. The Court finds that the Defendant is also entitled to a Decree of Divorce from the Plaintiff on the grounds of mental cruelty in that the Plaintiff having long ago advised the Defendant she no longer cared for him and had withdrawn all affection from him. The Court finds that the mutual Decree of Divorce shall become final upon entry.

6. The Court finds that the parties are 51 and 50 years old respectively.

7. The Court finds that the Defendant is employed as a truck driver for E.A. Miller with earnings in 1985 of \$28,189.20 and a current gross income of \$26,000.00 per year. The Court finds that after the deduction of federal and state income taxes, social security, medical and life insurance deductions, Defendant has \$1,405.00 net income per month against which a credit union monthly payment of \$97.82 is also taken therefrom. The Court finds that the Defendant further has payments on three Zions Bank loans, a ZCMI account, Citi-Bank, and Med-Master of \$465.00 per month with a principal balance of those debts totalling more than \$7,400.00.

8. The Court finds that the Plaintiff is in good health and has worked in the school lunch program earning approximately \$200.00 per month or less and desires to and has begun training for more remunerative employment.

9. The Court finds that the parties have a home valued at \$46,000.00 and personal property hereinafter divided.

10. The Court notes that there is insufficient income to meet the living expenses claimed by each of the parties and the payment of the debts accumulated for the Plaintiff's chiropractor, the daughter's wedding, home improvements, visa

charge accounts among others.

11. The Court takes as the value of the personal property the values placed thereon by one Sue Ann Palmer as to the household furniture and fixtures and observes that such values are approximately double the value placed on said property by the Plaintiff. The Court awards the household property as follows:

A. To Plaintiff:

One-half dishes, pots and pans	\$150.00
Wall decorations	250.00
Linens	40.00
Vacuum cleaner	90.00
Kitchen table and chairs	200.00
Range	150.00
Speed Queen washing machine	250.00
Amana microwave	175.00
Mattress (Beauty Rest), box springs, frame and headboard	225.00
Bedroom set (yellow)	65.00
Bedroom set (gray)	75.00
Zenith tv	225.00
Two table lamps	18.00
Three end tables	125.00
Fisher stereo console	50.00
One hideabed couch	80.00
Singer sewing machine	75.00
Lawn mower	45.00
Wood stove	450.00
8 ft. couch (\$125.00), love seat, chairs and ottoman (\$225.00)	350.00
Oldsmobile Cutlass subject to debt thereon	350.00

TOTAL	\$3,438.00
Plus,	
One-half of the IRA account and	
One-half interest in the Defendant's	
Pension Plan from E.A. Miller	
as and when received in	
accordance with the Woodward	
formula	

B. To Defendant:

One-half dishes, pots and pans	75.00
Bamboo Truck	55.00
Two car stereos	55.00
Recliner	800.00
Grandfather clock (new)	800.00
Desk	35.00
Sansui Stereo	250.00
Homelite chain saw	25.00
Skil chain saw	225.00
Lawn mower	65.00
House trailer	1,000.00
Pickup	1,200.00

TOTAL	\$3,785.00
-------	------------

Plus,
 One-half of the IRA account
 Balance of the E.A. Miller
 retirement as and when received

12. The Court finds that as to the home and alimony that the Plaintiff shall be entitled to live in the home subject to the payment of taxes and insurance thereon for a period ending April 1, 1989, at which time the home shall be sold and the net

proceeds therefrom divided equally one-half to each party.

13. The Court finds that the Defendant shall pay to the Plaintiff as and for alimony the sum of \$300.00 per month until further order of the Court or until such time as the Plaintiff completes her schooling or becomes employed on a full time basis.

14. The Court finds and orders the Defendant to pay and discharge the debts owing Anderson Lumber Company, ZCMI, Sears, Zions Bank, Med-Master and Citi-Bank and to save the Plaintiff harmless therefrom.

15. The Court finds that the Plaintiff shall pay and discharge the obligation owing J.C. Penneys (\$148.00) and the Bon and the obligation owing on the 1980 Cutlass Oldsmobile.

16. The Court finds that each party shall be responsible for attorney's fees and costs incurred by each and any debts incurred since separation.

17. The Court finds that the Defendant was at the time of the last hearing \$400.00 delinquent in payment of temporary alimony under Judge Christoffersen's temporary Order.

18. The Court recognizes and finds that from the foregoing figures it would appear that the Defendant will have only

\$843.00 per month from which to pay the \$300.00 per month alimony and to pay his own living expenses while the Plaintiff appears to have the \$300.00 alimony, her \$200.00 per month earning and virtually free rent. However, the Court notes that Defendant has earned \$2,000.00 to \$3,000.00 more in the past years than he is currently earning and further his total income tax deductions will be reduced by the tax on \$3,600.00 per year alimony.

19. From the foregoing Findings of Fact, the Court now makes and enters the following:

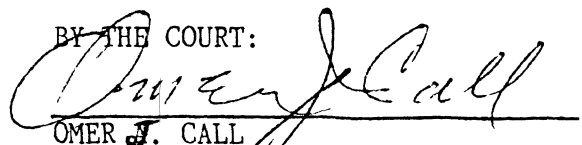
CONCLUSIONS OF LAW

1. Each of the parties is awarded a Decree of Divorce from and against the other upon the grounds of mental cruelty which Decree shall become final upon entry of the same in the records of the Clerk of the Court.

2. The parties are entitled to Orders relating to real property, personal property, debts and obligations, alimony, and attorney's fees as is more fully set forth in the foregoing Findings of Fact.

DATED this 15th day of July, 1987.

BY THE COURT:


OMER J. CALL
District Court Judge

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MAILING CERTIFICATE

I hereby certify that on the 30th day of June, 1987, I mailed a true and correct copy of the foregoing, postage prepaid, to:

Larry E. Jones
Attorney for Plaintiff
175 East 100 North
Logan, Utah 84321

Caryl Rawlings

RICHARD B. JOHNSON, #1722
Attorney for Defendant
1327 South 800 East, Suite #300
Orem, Utah 84058
Telephone: (801) 225-1632

IN THE DISTRICT COURT OF CACHE COUNTY
STATE OF UTAH

GAY ANDERSON,	:	
	:	
Plaintiff,	:	DECREE OF DIVORCE
	:	
vs.	:	
	:	
GLADE C. ANDERSON,	:	
	:	Civil No. 25207
Defendant.	:	

This matter came on before the Honorable Omer J. Call for trial on the 13th day of March, 1987. The Plaintiff was present and represented by her attorney, Larry E. Jones. The Defendant was present and represented by his attorney, Richard B. Johnson. The Court, after having heard testimony and being fully advised in the premises, and having heretofore entered its Findings of Fact and Conclusions of Law, now makes and enters the following:

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- A 14 -

Number

25207-25

JUL 16 1987

SETH S. ALLEN, Clerk

cc Deputy

DECREE OF DIVORCE

1. Each of the parties is awarded a Decree of Divorce from and against the other upon the grounds of mental cruelty which Decree shall become final upon entry of the same in the Records of the Clerk of the Court.

2. The parties have acquired a home and property located at 58 South 3rd East, Hyrum, Cache County, Utah, which property is more particularly described as follows:

Beg SE Cor N/2 Lt 1 Blk 11-1/2 Plt A Hyrum City Svy &
th N 115 ft th W 111 ft th S 8 ft th W 93 ft th S 8
ft th W 136 ft to W ln sd n/2 th S to SW cor sd n/2
th E alg S ln sd n/2 to beg cont 0.83 ac

3. The Court orders that the Plaintiff shall be entitled to live in the home subject to the payment of taxes and insurance thereon for a period ending April 1, 1989, at which time the home shall be sold and the net proceeds therefrom divided equally one-half to each party.

4. As it relates to the personal property of the marriage, the Court awards the household property as follows:

A. To Plaintiff:

One-half dishes, pots and pans	\$150.00
Wall decorations	250.00
Linens	40.00
Vacuum cleaner	90.00

Kitchen table and chairs	200.00
Range	150.00
Speed Queen washing machine	250.00
Amana microwave	175.00
Mattress (Beauty Rest), box springs, frame and headboard	225.00
Bedroom set (yellow)	65.00
Bedroom set (gray)	75.00
Zenith tv	225.00
Two table lamps	18.00
Three end tables	125.00
Fisher stereo console	50.00
One hideabed couch	80.00
Singer sewing machine	75.00
Lawn mower	45.00
Wood stove	450.00
8 ft. couch (\$125.00), love seat, chairs and ottoman (\$225.00)	350.00
Oldsmobile Cutlass subject to debt thereon	350.00

TOTAL

\$3,438.00

Plus,
One-half of the IRA account and
One-half interest in the Defendant's
Pension Plan from E.A. Miller
as and when received in
accordance with the Woodward
formula

B. To Defendant:

One-half dishes, pots and pans	75.00
Bamboo Truck	55.00
Two car stereos	55.00
Recliner	800.00
Grandfather clock (new)	800.00
Desk	35.00
Sansui Stereo	250.00

Homelite chain saw	25.00
Skil chain saw	225.00
Lawn mower	65.00
House trailer	1,000.00
Pickup	1,200.00

TOTAL	\$3,785.00

Plus,
 One-half of the IRA account
 Balance of the E.A. Miller
 retirement as and when received

5. The Defendant shall pay to the Plaintiff as and for alimony the sum of \$300.00 per month until further order of the Court or until such time as the Plaintiff completes her schooling or becomes employed on a full-time basis.

6. The Defendant shall pay and discharge the debts owing Anderson Lumber Company, ZCMI, Sears, Zions Bank, Med-Master. and Citi-Bank and shall save the Plaintiff harmless therefrom.

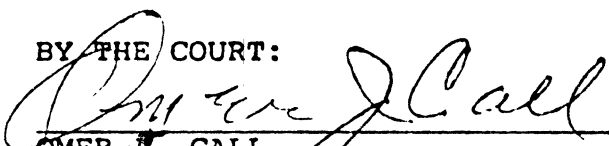
7. The Plaintiff shall pay and discharge the obligations owing to J.C. Penney (\$148.00) and the Bon and the obligations owing on the 1980 Cutlass Oldsmobile.

8. Each of the parties shall be responsible for attorney's fees and costs incurred by each other and any debts incurred since separation.

8. The Defendant was at the time of the last hearing \$400.00 delinquent in payment of temporary alimony under Christoffersen's temporary Order.

DATED this 15th day of July, 1987.

BY THE COURT:


OMER J. CALL
District Court Judge

MAILING CERTIFICATE

I hereby certify that on the 30th day of June, 1987, I mailed a true and correct copy of the foregoing, postage prepaid, to:

Larry E. Jones
Attorney for Plaintiff
175 East 100 North
Logan, Utah 84321

Caryl Rawlings

SETH S. ALLEN, Clerk of the First District Court of Utah certified this 20
day of July 19 87
as a true copy of the within instrument on file in this office.
File No. 25207
By Len Danks

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