

1996

Jane Ann Taylor v. Marc Richard Hansen : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS

Jane Ann Taylor, Plaintiff and Appellant, vs. Marc Richard Hansen, Defendant and Appellee.	Case No. 960774-CA Priority No. 15
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BRIEF OF APPELLEE

On Appeal from the Ruling of the Honorable Michael G. Allphin,
District Judge of the Second Judicial Court, Davis County, Utah,
Dated October 29, 1996.

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Appellee and Defendant Marc Richard Hansen ("Hansen") respectfully submits this Brief of Appellee. The time for filing the Brief of Appellee was extended to July 18, 1997 pursuant to Utah Rule of Appellate Procedure 26(a) and the Stipulation for Extension of Time dated June 9, 1997.

I. JURISDICTION

This Court lacks jurisdiction to review the district court's "Ruling On: (1) Plaintiff's Motion To Compel Defendant To Sign Trust Agreement And For Certain Other Relief; And (2) Plaintiff's Motion For Judgment For Delinquent Child Care Costs And For Other Relief" ("Ruling"), because the Ruling is not a final order or judgment. Utah R. App. P. 3(a) (1997).

II. STATEMENT OF ISSUES

A. Whether this Court lacks jurisdiction to review the district court's Ruling, which denied two postjudgment motions in a divorce proceeding and left the matters presented by those motions open for future determination by the district court? This issue is governed by Utah Rule of Appellate Procedure 3. Utah R. App. P. 3(a) (1997).

B. Whether the district court erred in denying the postjudgment motions of Appellant-Plaintiff Jane Ann Taylor ("Taylor") to compel Hansen to execute a trust agreement and make

payments to Taylor, when the relief sought was contrary to the stipulated Judgment and Decree of Divorce ("Decree")? The standard of appellate review of the district court's interpretation of the stipulated Decree is the correction of error standard. *Lyngle v. Lyngle*, 831 P.2d 1027, 1029 (Utah Ct. App. 1992); *Whitehouse v. Whitehouse*, 790 P.2d 57, 60 (Utah Ct. App. 1990). The standard of appellate review of the district court's findings of fact is the clearly erroneous standard. *Peterson v. Peterson*, 818 P.2d 1305, 1308 (Utah Ct. App. 1991). The standard of appellate review of the district court's determinations that Taylor was not entitled to the reimbursement of a deduction for the children's health insurance premiums or an award of her costs and attorney fees is the abuse of discretion standard. *State v. Pena*, 869 P.2d 932, 938 (Utah 1994); *Soter's v. Deseret Federal Savings and Loan*, 857 P.2d 935 (Utah 1993); *Peterson*, 818 P.2d at 1310.

C. Whether the trial court erred in awarding Hansen the costs and attorney fees he incurred in defending Taylor's motion to compel him to execute a trust agreement contrary to the Decree under Utah Rule of Civil Procedure 11? The standard of appellate review of the district court's conclusion that Taylor violated Rule 11 is the correction of error standard. *Rimensburger v. Rimensburger*, 841 P.2d 709, 711 (Utah Ct. App. 1992). The

standard of appellate review of the sanction imposed by the district court is the abuse of discretion standard. *Schoney v. Memorial Estates, Inc.*, 863 P.2d 59, 62 (Utah Ct. App. 1993); *Taylor v. Estate of Taylor*, 770 P.2d 163, 171 (Utah Ct. App. 1989).

D. **Whether Hansen should be awarded costs and attorney fees on appeal?** The award of costs and attorney fees on appeal is governed by Utah Rule of Appellate Procedure 33. Utah R. App. P. 33(a) (1997).

III. DETERMINATIVE STATUTES AND RULES

The pertinent portions of the following statutes and rules, which are determinative of the appeal or of central importance to the appeal, are set forth in Addendum A:

Utah R. App. P. 3 (1997)

Utah R. App. P. 33 (1997)

Utah R. Civ. P. 11 (1997)

Utah Code of Judicial Administration Rule 6-404 (1997)

Utah Code Ann. § 75-7-401 (1993 Replacement)

Utah Code Ann. § 75-7-402 (1993 Replacement)

Utah Code Ann. § 78-45-7.16 (1995)

Utah Code Ann. § 78-45-7.17 (1995)

IV. STATEMENT OF THE CASE

A. Nature Of The Case.

This is an appeal from the denial of two postjudgment motions in a divorce proceeding. The district court denied the motions because they improperly sought to compel Hansen to execute a trust agreement and make payments to Taylor in contravention of the stipulated Decree. The trial court also denied Taylor's request for costs and attorney fees and awarded Hansen costs and attorney fees under Utah Rule of Civil Procedure 11. The Ruling is attached as Addendum B.

B. Course Of Proceedings.

Taylor filed her Complaint for divorce on August 4, 1995. R. 1-4. She was represented in the divorce proceeding by James P. Cowley and Pamela Martinson of Van Cott, Bagley, Cornwall & McCarthy. R. 1-4, 65-66. After Hansen answered the Complaint and produced the personal and business records requested by Taylor's attorneys, Hansen's deposition was taken on December 5, 1995. R. 5-9, 61. The parties then negotiated a comprehensive settlement of all of the claims and issues in the divorce proceeding.

The settlement terms were incorporated into a stipulated Judgment and Decree of Divorce ("Decree") and Findings of Fact and

Conclusions of Law ("Findings and Conclusions") drafted by Taylor's attorneys. The stipulated Decree, R. 51-58, is attached as Addendum C. The Findings and Conclusions, R. 48-50, are attached as Addendum D. In a supplemental affidavit dated January 26, 1996, Taylor testified that "[t]he Findings and Decree are consistent in every respect with ... our agreed settlement of the matter." R. 29-31, ¶8. Taylor's Supplemental Affidavit, R. 29-31, is attached as Addendum E. The Decree and the Findings and Conclusions were entered by the district court and filed on February 2, 1996. R. 48, 50, 51, 58.

On May 29, 1996, Taylor's father, Keith E. Taylor of Parsons, Behle & Latimer, entered his appearance as Taylor's counsel of record. R. 63-64. Mr. Cowley and Ms. Martinson subsequently filed a Notice of Withdrawal as Taylor's counsel on June 18, 1996. R. 65-66.

On August 1, 1996, Taylor filed a "Motion to Compel Defendant To Sign Trust Agreement Or, In The Alternative, To Amend The Judgment And Decree Of Divorce And For Certain Other Relief" ("Motion to Compel"). R. 69-71. The Motion to Compel sought an order: (1) requiring Hansen to execute a proposed "Trust Agreement and Declaration of Trust" prepared by Taylor ("Taylor's trust agreement") or, in the alternative, awarding

Taylor 214,639 shares of stock which had been awarded to Hansen as Trustee for the parties' children under paragraph 12 of the Decree; (2) awarding Taylor judgment in the amount of \$218.90 to reimburse a deduction Hansen made for Taylor's share of the children's health insurance premiums; (3) requiring Hansen to deliver support payments by first class mail rather than registered mail; and (4) awarding Taylor her costs and attorney fees related to the motion. R. 69-71. Taylor's trust agreement and affidavits of Taylor and her attorney were attached to the Motion to Compel. R. 72-94. Taylor's trust agreement, R. 73-77, is attached as Addendum F.

Hansen filed a memorandum in opposition to the Motion to Compel and submitted two exhibits: the Decree and the proposed trust agreement which Hansen had prepared and executed ("Hansen's trust agreement"). R. 107-28. Hansen's trust agreement, R. 123-128, is attached as Addendum G. Hansen's memorandum asserted that the Motion to Compel was an improper attempt to modify the Decree without filing a petition to modify as required by Utah Code of Judicial Administration Rule 6-404(1); that Taylor's trust agreement did not conform to the Decree; that Hansen's trust agreement did conform to the Decree; that Hansen's \$218.90 deduction for Taylor's share of the children's health insurance premiums conformed to the Decree; that Taylor was not entitled to

an award of her costs and attorney fees; and that Hansen should be awarded his costs and reasonable attorney fees pursuant to Utah Rule of Civil Procedure 11. In a Reply Memorandum filed August 23, 1996, Taylor argued that the relief she sought did not constitute an "amendment" of the Decree and withdrew her alternate prayer "to amend the Judgment and Decree of Divorce." R. 129-133.

On September 1, 1996, Taylor filed another postjudgment motion seeking the entry of judgment in the amount of \$202.50 for "delinquent child care costs," an order requiring Hansen to pay future child care costs within seven days after demand by Taylor, and an award of her costs and attorney fees ("Motion for Judgment"). R. 134-35. Hansen's memorandum in opposition to Taylor's Motion for Judgment explained that Taylor's demand for child care costs did not conform to the Decree or Utah Code Annotated § 78-45-7.16 (1995), and her request for costs and attorney fees should be denied. Hansen attached as exhibits to his memorandum an April 9, 1996 letter to Taylor's attorney requesting verification of her child care expenses and a copy of the demand Taylor had sent him. R. 145-63. Those documents, R. 159-60 and 163, are attached as Addendum H.

The district court heard oral argument on both postjudgment motions on September 24, 1996, and took the matter under advisement. R. 164, 231-57.

C. The District Court's Ruling.

On October 29, 1996, the district court entered a 33 page Ruling denying both motions and awarding Hansen costs and attorney fees under Rule 11 "for having to employ counsel to respond to the improper and groundless trust issues in [Taylor's] Motion to Compel." R. 171-204, at 198, Addendum B.

1. Findings of Fact.

The Ruling contained 35 Findings of Fact on the substance of the final divorce documents and the pleadings, affidavits and exhibits relating to Taylor's motions. Ruling paras. 1-35, R. 171-83, Addendum B. Findings 2 through 4 found that Taylor's attorney prepared the Decree and the Findings and Conclusions; that both parties and their attorneys stipulated in writing to all of the terms of those documents and their entry by the court; and that those documents were properly entered by the court and filed on February 2, 1996. Findings 5 through 8 quoted verbatim the specific provisions of those documents relating to Taylor's motions. Ruling paras. 2-8, R. 171-73, Addendum B. Findings 11 through 18 described the relief sought by Taylor's Motion to

Compel, the pertinent provisions of Taylor's trust agreement, and the affidavits of Taylor and her attorney in support of the Motion to Compel. Ruling paras. 11-18, R. 173-77, Addendum B. Findings 19 through 25 summarized Hansen's memorandum in opposition to Taylor's Motion to Compel and Hansen's trust agreement. Ruling paras. 19-25, R. 177-79, Addendum B. Findings 26 through 30 summarized Taylor's reply memorandum, which withdrew Taylor's request to "amend the Judgment and Decree of Divorce" and stated that if the district court did not grant the Motion to Compel, Taylor would file an appropriate new petition to modify the Decree. Ruling paras. 26-30, R. 179-80, Addendum B.

Findings 31 through 34 summarized the pleadings and documents relating to Taylor's Motion for Judgment, Ruling paras. 31-34, R. 180-81, Addendum B. Finding 32 found that Taylor's demand letter to Hansen's counsel "is mostly handwritten and contains no statements as to the identity of the child care provider except for that printed and stamped on one receipt dated July 9, 1996, with the caption 'tuition for July 10, 1996,' totaling \$27.00." Ruling para. 32, R. 180, Addendum B. Finding 35 summarized the oral argument presented at the September 24, 1996 hearing concerning the Decree's distribution of stock to

Hansen as Trustee for the parties' children. Ruling paras. 35(a)-(h), R. 181-83, Addendum B.

2. Conclusions of Law.

a) Taylor's Trust Agreement.

The district court concluded that Hansen would not be compelled to execute Taylor's trust agreement because it was contrary to the terms of the Decree. R. 183-93, Addendum B. The court held that the final divorce documents were a binding stipulation and interpreted those documents in accordance with the Utah law of contract interpretation. *Id.* at 184-85.

The district court not only held that the stipulated divorce documents reflected an integration, but also reviewed the four disputed terms of Taylor's trust agreement and separately determined the "completeness" of the Decree on each term. R. 186-93, Addendum B. The court concluded that the rights and powers Taylor sought were contrary to the unambiguous provisions of paragraph 12 of the Decree and should have been requested by a petition to modify or Rule 60(b) motion. *Id.*, Addendum B.

In addition, the district court concluded that Hansen's trust agreement conformed to the Decree. While not ordering Taylor to execute Hansen's trust agreement, the court directed the parties "to get together and execute a trust agreement that

comports with the provisions of the Decree, including extra language only as agreed upon by the parties." R. 196, Addendum B.

b) Deduction For Taylor's Share Of The Children's Health Insurance Premiums.

The district court also denied Taylor's Motion to Compel Hansen to reimburse \$218.90 which he had deducted from a payment for her share of the children's health insurance premiums in accordance with paragraph 4(a) of the Decree. Ruling, R. 194, Addendum B; Decree, R. 52, Addendum C. Taylor claimed that because Hansen had not withdrawn the premiums on a monthly basis, he had waived his right to the deduction. R. 102-03. The district court concluded that Taylor had not proved by a preponderance of the evidence that Hansen had waived his right to the deducted insurance premiums, in view of the fact that Taylor knew Hansen could deduct one-half of the premiums, Hansen had had to wait several months for the insurer's calculation of the amount of the health insurance premiums attributable to the children, the Decree was silent as to any term regarding the time or method of the deduction and any term regarding waiver, Hansen had been current in his child support and alimony payments and was paying the children's health insurance, the deductions had only been delayed for a few months, and Taylor had enjoyed the

use of the extra money during that period. Ruling, R. 194-95, Addendum B. See also, R. 160, Addendum H. Concluding that Hansen was entitled to deduct the accumulated insurance premiums totaling \$218.90 under paragraph 4(a) of the Decree, the district court denied Taylor's Motion to Compel on that point. Ruling, R. 194-96, Addendum B.

c) Payments By Mail.

The district court found that the parties had reached agreement on Taylor's request that payments be sent to her by first class mail rather than registered mail and, therefore, did not address that issue in its Ruling. Ruling, R. 196, Addendum B.

d) Taylor's Request For Costs And Attorney Fees.

The district court concluded that Taylor's request for costs and attorney fees under Utah Code Ann. 30-3-3 (1995 Replacement) had no merit and denied it. Ruling, R. 197-98, Addendum B.

e) Award Of Costs And Attorney Fees To Hansen.

The district court awarded Hansen the costs and attorney fees he incurred in responding to the trust agreement issues under Utah Rule of Civil Procedure 11. Ruling, R. 197-98, Addendum B. The court held that Rule 11 "requires some inquiry into both the facts and the law before [a pleading] is filed [and] the level of inquiry is tested against a standard of

reasonableness under the circumstances." *Id.* at 197. It concluded that Taylor had violated that standard:

Here, the Court finds the circumstances remarkable and the behavior absolutely unreasonable. [Taylor] has seen fit to file with the Court this Motion to Compel, that, as set forth above, is wholly without any merit whatsoever in law or in fact. She has drawn up a trust agreement that completely ignores and deviates from the plain, unambiguous and clear language of the stipulated Decree, alleging that the trust agreement should be in accord with "the intentions" of the parties rather than the language of the stipulated Decree, bringing up marital property issues that for all legal purposes were completely disposed of by the Decree; citing no relevant evidence to these allegedly contrary intentions; pled that [Hansen] has refused to sign this improper agreement; and when her attempts to do so didn't work, attempted to couch an obvious petition to modify, or even a Rule 60(b) motion, as a Motion to Compel. Furthermore, it appears that [Taylor] has completely disregarded the case law on the binding nature of stipulations. There is no merit to [Taylor's] request for attorneys' fees, and her request for such is hereby denied. Conversely, [Taylor] has so completely failed to comply with Rule 11 that the Court feels an appropriate sanction should be an award to [Hansen] of his attorneys' fees and costs for having to employ counsel to respond to the improper and groundless trust issues in [Taylor's] Motion to Compel. As requested both in his memorandum in support and at oral arguments, the Court will award to [Hansen] attorneys' fees and costs for any work performed responding, either by pleading, letter, telephone, or in Court, to the trust agreement issues raised by [Taylor's] Motion to Compel. (Footnotes omitted.)

Ruling, R. 197-98, Addendum B.

f) Taylor's Motion For Judgment.

The district court also concluded that Taylor was not entitled to the payment for alleged child care expenses sought in her Motion for Judgment. The court found that Hansen had agreed to pay child care costs when Taylor supplied verification, and that in April of 1996, Hansen's counsel had sent Taylor's counsel a letter requesting specific information about Taylor's employment or school schedule, a statement indicating that the receipts were for child care expenses while Taylor was at work or school, and receipts identifying the dates and name, address and telephone number of the child care provider. R. 160, Addendum H. The court examined Taylor's claim and described it as "an invoice of sorts appearing to be a photocopied collage of various pieces of information." Ruling, R. 199, Addendum B. It found that after Hansen received the "photocopied collage" he sent Taylor a letter again requesting the information his attorney had requested in April. *Id.*

Paragraph 4(c) of the Decree stated that "[Hansen] shall, per the applicable statutes, reimburse [Taylor] for one-half of any child care costs and/or expenses incurred by [Taylor] as a result of her career and/or occupational training and/or employment." Decree, R. 52, Addendum C. Based upon the specific statutory provisions requiring a parent who incurs child care

expenses to provide written verification of the cost and identity of the child care provider to the other parent upon initial engagement, and thereafter on the request of the other parent, the district court ruled that Taylor had not complied with the Decree "per the applicable statutes." Ruling, R. 200, Addendum B; Utah Code Ann. §§ 78-45-7.16 and -7.17. It ruled that Taylor should provide Hansen with copies of actual receipts originating from the daycare provider detailing the dates and times that child care expenses were incurred, verification of Taylor's work or study schedule originating from a third party (such as a copy of the class schedules for schooling attended by Taylor), and a simple handwritten note signed by Taylor stating that the receipts were for child care expenses while Taylor was employed or in school. Ruling, R. 200-02, Addendum B. In denying Taylor's motion for judgment for child care costs, the district court emphasized that its Ruling did not preclude Taylor from filing a future motion for the same or similar relief if she complied with the guidelines set forth in the Ruling. Ruling, R. 202, Addendum B. The district court also denied Taylor's request for costs and attorney fees in relation to the Motion for Judgment. *Id.*

V. SUMMARY OF ARGUMENT

The appeal should be dismissed because the Ruling is not a final order under Utah Rule of Appellate Procedure 3(a) (1997).

Furthermore, the district court correctly denied Taylor's postjudgment motions because the relief they sought was directly contrary to the clear and unambiguous provisions of the stipulated Decree. The district court's comparison of Taylor's motions to the plain language of the Decree revealed that the motions were an obvious attempt to modify or amend the Decree without filing a petition to modify or motion to amend as Utah law requires. Thus, Taylor did not properly invoke the jurisdiction of the district court in the first place or this Court on appeal, and was not entitled to any of the relief sought in her Motion to Compel and Motion for Judgment.

Paragraph 12 of the stipulated Decree clearly provided that 214,639 shares of stock be distributed to Hansen as Trustee for the parties' children, that the trust agreement include the normal and usual provisions with respect to investing and preserving the assets for the use and benefit of the children, and that in the event of Hansen's death Zions Bank would become the substitute trustee. It did not give Taylor any rights or powers over the trust assets or income except the right to an

annual accounting, and it pointedly did not treat the shares distributed to Hansen in his capacity as Trustee as marital property. Decree para. 12, R. 57-58, Addendum C. Under the controlling Utah case law, the district court correctly concluded that Taylor's motion to compel the execution of Taylor's trust agreement giving her substantial rights and powers over the trust assets and income was completely without merit. Taylor's motions for payments for reimbursement of the children's health insurance premiums and unverified child care expenses were also contrary to the provisions of the stipulated Decree, and were properly denied by the trial court.

The lower court's conclusion that Taylor violated Rule 11 is amply supported by the record. Its award of the costs and attorney fees Hansen incurred in responding to Taylor's meritless claims concerning the trust should be affirmed. In addition, Hansen should be awarded damages, including double costs and his reasonable attorney fees, on appeal under Utah Rule of Appellate Procedure 33(a).

VI. ARGUMENT

A. The Appeal Should Be Dismissed For Lack Of Jurisdiction.

The appeal should be dismissed because the Ruling is not a final order under Utah Rule of Appellate Procedure 3(a). Under the final judgment rule which underlies Rule 3, a party is

precluded from appealing any order or judgment that is not final. *Burton v. Utah Transit Auth.*, 872 P.2d 1036 (Utah 1994); *A.J. Mackay Co. v. Okland Construction Co., Inc.*, 817 P.2d 323 (Utah 1991). Since there is no appellate jurisdiction to review a non-final order, such an appeal must be dismissed. *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379 101 S. Ct. 669, 676 (1981); *A.J. Mackay Co.*, 817 P.2d at 325; *Thompson v. Jackson*, 743 P.2d 1230, 1232 (Utah Ct. App. 1987).

It is well-established that a postjudgment ruling in a divorce proceeding which leaves a matter in controversy open for future determination is not a final, appealable order. Indeed, the policy prohibiting piecemeal interlocutory appeals of non-final orders is especially important in divorce cases, where contentious parties could bring repeated postjudgment motions and appeals for years after the divorce was settled. *Pearson v. Pearson*, 641 P.2d 103, 104-05 (Utah 1982). See also, *Van Wagenen v. Walker*, 597 P.2d 1327, 1328 (Utah 1979); *Kennedy v. New Era Indus. Inc.*, 600 P.2d 534 (Utah 1979).

In this case, the district court's Ruling clearly left the matters raised by Taylor's motions open for future determination. The lower court held that both motions improperly sought to modify or amend the Decree without filing a petition to modify pursuant to Utah Code of Judicial Administration Rule 6-404-(1),

or a motion to amend pursuant to Utah Rule of Civil Procedure 60(b), and invited further proceedings to implement or modify the Decree. Ruling, R. 189 n.3, 196, 202, Addendum B.

The district court's Ruling expressly directed the parties to "... get together and execute a trust agreement that comports with the provisions of the Decree, including extra language only as agreed upon by the parties." Ruling, R. 196, Addendum B. It also emphasized that its denial of Taylor's Motion for Judgment "in no means precludes [Taylor] from filing a future motion for the same or similar relief if she complies with the guidelines set forth [in the Ruling] and [Hansen] nevertheless continues to refuse to remit his portions of the child care costs." Ruling, R. 202, Addendum B. Thus, the Ruling on its face was not a final order under Rule 3. *Pearson*, 641 P.2d at 104; *Van Wagenen*, 597 P.2d at 1328.

Moreover, Taylor represented to the district court in her Reply Memorandum and at oral argument that if the court did not grant her Motion to Compel, she would file a petition to modify the Decree. R. 131, 179-80, Addendum B; R. 236-37. The representation Taylor's attorney made to the district court at the hearing clearly reflects the non-final nature of the proceeding below:

Mr. Taylor: Now [Hansen's attorney], in her responsive pleadings, invited my attention to the fact that we're not in the right procedural posture to do that at this hearing. And so in my response, I withdrew that alternate prayer for relief indicating to the Court that if for any reason, Your Honor, things were premature or for any reason you decide that that issue ought not to be resolved at this time, we will comply with Rule 4, we will set an evidentiary hearing in this court

R. 236-37. Contrary to that representation, Taylor purported to appeal the interlocutory Ruling without further procedures in the lower court.

Three avenues exist for securing review of a non-final order: (1) a petition to grant an interlocutory appeal from the order pursuant to Utah R. App. P. 5; (2) a motion for certification of the order pursuant to Utah R. Civ. P. 54(b); and (3) a petition for extraordinary relief pursuant to Utah R. Civ. P. 65B(e). Taylor did not pursue any of those alternative avenues to invoke the appellate jurisdiction of this Court over a non-final order. Consequently, the appeal must be dismissed. *Tyler v. Dep't. of Human Services*, 874 P.2d 119, 120 (Utah 1994); *Salt Lake City Corp. v. Layton*, 600 P.2d 538, 539-40 (Utah 1979); *Kennedy v. New Era Industries, Inc.*, 600 P.2d 534, 535 (Utah 1979).

B. The District Court Correctly Denied Taylor's Motions For Relief Contrary To The Stipulated Judgment And Decree Of Divorce.

1. The District Court Lacked Jurisdiction To Grant The Relief Sought By Taylor's Motions.

The district court concluded correctly that Taylor's Motion to Compel "attempted to couch an obvious petition to modify or even a Rule 60(b) motion, as a Motion to Compel." Ruling, R. 198, Addendum B. While the court did not attempt to discern the reasons for Taylor's improper filing, it noted that "it appears that a Rule 60 motion would not be timely, further it appears dubious on the facts presented that [Taylor] would succeed in a petition to modify." Ruling, R. 198 n.7, Addendum B. Taylor's Motion for Judgment similarly attempted to mask a petition for relief contrary to the Decree as a motion to enforce the Decree. See Section B-4 *infra*.

Utah Code of Judicial Administration, Rule 6-404(1) requires that proceedings to modify a divorce decree shall be commenced by the filing of a petition to modify in the original divorce action, and not by way of an order to show cause. A divorce decree may also be amended pursuant to a timely motion under Utah Rule of Civil Procedure 60(b). This Court and the Utah Supreme Court have consistently enforced those Rules, holding that a district court lacks jurisdiction to amend a divorce decree

except as provided by U. C. J. Ad. Rule 6-404 and Utah R. Civ. P. Rule 60(b). *Kessimakis v. Kessimakis*, 546 P.2d 888 (Utah 1976); *Rimensburger v. Rimensburger*, 841 P.2d 709, 710-11 (Utah Ct. App. 1992); *Grover v. Grover*, 839 P.2d 871 (Utah Ct. App. 1992); *Maxwell v. Maxwell*, 796 P.2d 403, 406 (Utah Ct. App. 1990). Thus, the district court lacked jurisdiction to grant the relief sought by Taylor's motions.

2. The District Court Correctly Denied Taylor's Motion To Compel Hansen To Execute Taylor's Trust Agreement.

There is no error in the district court's carefully reasoned decision that Taylor's trust agreement did not conform to the stipulated Decree. The district court simply read the plain language of paragraph 12 of the Decree, which distributed shares of stock in Cambric Graphics, Inc. to Hansen as Trustee for the parties' children, and determined that Taylor's trust agreement did not comport with its terms. Ruling, R. 185-93, Addendum B.

a) The Enforceability Of The Stipulated Decree.

Taylor's argument that paragraph 12 of the Decree is unenforceable because it is "an agreement to agree" is improperly raised for the first time on appeal. In the district court proceedings, Taylor did not dispute that the stipulated divorce documents drafted by her attorney constitute a binding stipulation. To the contrary, she argued that her Motion to

Compel was brought to enforce the parties' binding stipulation. R. 131, 236-37. Consequently, she cannot attack the stipulation on appeal. *Le Baron & Associates, Inc. v. Rebel Enterprises, Inc.*, 823 P.2d 479 (Utah Ct. App. 1991); *Broberg v. Hess*, 782 P.2d 198 (Utah 1989).

Taylor's attack on the enforceability of the stipulated Decree is also contrary to Utah law. Settlement agreements are enforceable in Utah, even when the parties have not signed any written stipulation or agreement. U. C. J. Ad. Rule 4-504(8); *John Deere Co. v. A & H Equipment, Inc.*, 876 P.2d 880 (Utah Ct. App. 1994); *Goodmansen v. Liberty Vending Systems, Inc.*, 866 P.2d 581 (Utah Ct. App. 1993). A property distribution in a stipulated divorce decree is not only binding, but cannot be modified without a demonstration of compelling reasons. *Foulger v. Foulger*, 626 P.2d 412, 414 (Utah 1981); *Maxwell v. Maxwell*, 796 P.2d 403 (Utah Ct. App. 1990); *Whitehouse v. Whitehouse*, 790 P.2d 57, 61 (Utah Ct. App. 1990). Moreover, divorce decrees commonly require the execution of documents and performance of actions after the decree becomes final. See, e.g., *Maxwell*, 796 P.2d at 407 (decree requiring subsequent transfer of retirement benefits).

The Colorado case relied upon by Taylor is completely inapposite. A Colorado court's determination of child custody

issues under a Colorado statute does not affect the enforceability of a stipulated property division under Utah law. *See, Griffin v. Griffin*, 699 P.2d 407 (Colo. 1985). Moreover, Taylor's citation of outdated cases and continuing disregard of the clear record and Utah case law establishing the enforceability of the stipulated Decree illustrates the frivolous nature of her appeal. *See* Brief of Appellant at 36 (citing *Callister v. Callister*, 261 P.2d 944 (Utah 1953); *Openshaw v. Openshaw*, 126 P.2d 1068 (Utah 1942); and *Klein v. Klein* (erroneous citation in Brief of Appellant)).

b) The District Court's Interpretation Of The Stipulated Decree.

Under Utah law, a stipulated divorce decree is construed in accordance with the Utah rules of contract interpretation. *Whitehouse*, 790 P.2d at 60. The district court correctly applied the Utah law of contract interpretation in concluding that the intent of the parties must be determined first from the Decree itself. Ruling, R. 184, Addendum B. *Willard Pease Oil & Gas Co. v. Pioneer Oil & Gas Co.*, 899 P.2d 766, 770 (Utah 1995).

When the meaning of the decree is clear and unambiguous, as it was in this case, extrinsic evidence is inadmissible to explain the intent of the parties and the court may determine its meaning as a matter of law. *Willard Pease*, 899 P.2d at 770;

Whitehouse, 790 P.2d at 60; *Nielson*, 886 P.2d at 63-64. A decree is ambiguous only if it is susceptible to more than one reasonable interpretation due to uncertain meaning of terms, missing terms, or other facial deficiencies. *Willard Pease*, 899 P.2d at 770. The mere fact that the parties interpret the language differently does not make it ambiguous. R. 184, Addendum B. *Pease* at 772; *Nielson*, 886 P.2d at 63-64; *Whitehouse*, 790 P.2d at 60.

Nor did the district court err in applying the parol evidence rule. R. 184-85, Addendum B. It correctly applied that rule to exclude evidence of contemporaneous conversations, representations or statements offered for the purpose of varying or adding to the terms of an integrated writing. *Hall v. Process Instruments & Control, Inc.*, 890 P.2d 1024, 1026 (Utah 1995); *Webb v. R.O.A. General, Inc.*, 804 P.2d 547 (Utah Ct. App. 1991). Before considering the applicability of the parol evidence rule, the court first determined that the parties intended the writing to be an integration. *Hall* at 1026 (citing *Union Bank v. Swenson*, 707 P.2d 663, 665 (Utah 1985)). Because the writing was integrated, parol evidence was not admissible to vary or contradict unambiguous terms. Ruling, R. 185, Addendum B. *Hall* at 1026-27 (citing *Colonial Leasing Co. v. Larsen Bros. Constr.*, 731 P.2d 483, 487 (Utah 1986)).

The district court properly applied the controlling Utah case law in determining that the stipulated Decree was integrated. It followed the Utah supreme court's 1995 decision in *Hall*, which defined an integrated agreement as a "writing or writings constituting a final expression of one or more terms of an agreement." *Hall* 890 P.2d at 1026-27 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 209 (1981)). Ruling, R. 186, Addendum B. Under *Hall*, "an apparently complete and certain agreement which the parties have reduced to writing will be conclusively presumed to contain the whole agreement." *Hall* at 1026 (quoting *EIE v. St. Benedict's Hosp.*, 638 P.2d 1190, 1194 (Utah 1981)).

The trial court's conclusion that the Decree was integrated was based first upon the plain language of the Decree and the stipulated Finding that "[a]ll matters relating to child custody, property division, and alimony have been agreed to by the parties and are set forth in detail in the [Decree]...." Finding No. 7, R. 49, Addendum D. In addition, the district court separately examined each of the four terms raised by Taylor and concluded that the Decree was integrated as to each of those terms. *Hall*, at 1026-1027.

First, Taylor sought control or oversight of the trust assets, even though paragraph 12 of the Decree called for "normal and usual provisions with respect to investing and preserving the

assets and income of the trust." The trial court concluded that since those "normal and usual" provisions were described in Utah Code Annotated § 75-7-402, the term of the Decree relating to trustee powers was complete and integrated. R. 188, Addendum B. The trial court found that term unambiguous and, in any event, Taylor had not presented any evidence that would clarify any alleged ambiguity about Taylor's claim to final decision making power over the disposition of trust assets. Ruling, R. 188-89, Addendum B. Concluding that the term was integrated and unambiguous and there were no provisions in paragraph 12 or anywhere else in the Decree that would give Taylor the powers she sought, the district court denied the Motion to Compel as to that term. In doing so, the court stressed that if Taylor sought decision making power over trust assets based on newly discovered conduct by Hansen, the court could not grant her motion because there was no mention of any such concerns in any of the divorce pleadings and her request was more properly the subject of a petition to modify or Rule 60(b) motion. Ruling, R. 188-89 and n.3, Addendum B.

Second, Taylor sought a remainder interest in the event of the death of both children, even though paragraph 12 of the Decree provided that only the children would hold beneficial interests in the trust assets and did not provide for Taylor to

have any interest at all. The district court read paragraph 12 as clearly and unambiguously indicating that the trust was intended solely to benefit the children and the trust corpus was to be distributed exclusively to them. Ruling, R. 190, Addendum B. It reasoned that if the parties had agreed that Taylor would have any interest in the trust assets, that agreement would have been included in the Decree, and it was not. Accordingly, it denied Taylor's motion for a remainder interest in the trust. Ruling, R. 190-91, Addendum B. In doing so, the trial court emphasized that Taylor's claim to a remainder interest would be more properly asserted in a petition to modify or Rule 60(b) motion rather than a motion to compel Hansen to sign a trust agreement inconsistent with the terms of the Decree. R. 190-91, Addendum B.

Third, Taylor sought to be appointed substitute trustee in the event Hansen died or was otherwise unable to serve, even though paragraph 12 of the Decree plainly mandated that Zions Bank and Trust be the substitute trustee. The district court concluded that this request was so diametrically opposed to the express term of the Decree "that any argument that the terms are in accord must simply be dismissed as nonsensical." Ruling, R. 191, Addendum B. It held that paragraph 12 of the Decree was

clear, unambiguous, and an integrated expression of the parties' intentions as to the substitute trustee, that no evidence as to the parties' intentions on that point had been presented by either party, and that to compel Hansen to execute a trust agreement naming Taylor as substitute trustee would be contrary to the express language of the Decree. Ruling, R. 191-92, Addendum B.

Fourth, Taylor's trust agreement required that "[c]ash dividends shall be immediately paid and distributed to the custodial parent or guardian" of the children, even though Hansen had already agreed in the stipulated Decree to pay Taylor both child support and alimony. Ruling, R. 192, Addendum B. The Decree only provided for disbursements for the benefit of the children, and was silent as to the disposition of cash dividends. Ruling, R. 192, Addendum B. The court concluded that no evidence had been presented that would entitle Taylor to cash dividends from the trust assets, and the court would not compel Hansen to sign a trust agreement that included terms not contemplated by the Decree. R. 193, Addendum B.

c) The District Court's Refusal To Admit Parol Evidence To Vary The Terms Of the Stipulated Decree.

Taylor challenges Finding of Fact No. 35, which described the oral argument concerning Taylor's motion to compel Hansen to

execute Taylor's trust agreement. Taylor has failed, however, to marshall the evidence in support of that Finding or to demonstrate that it is clearly erroneous. See *Willard Pease*, 899 P.2d at 773. The case on which Taylor relies in challenging the Finding, *Donahue v. Intermountain Health Care*, 748 P.2d 1067 (Utah 1987), has no bearing on this appeal. That decision merely affirmed a trial court's exercise of discretion in granting a new trial based upon an improper closing argument to a jury.

The district court correctly rejected Taylor's argument that the "evidence" she submitted in affidavits and argument should be "accepted as uncontroverted." The court noted that Hansen, in his memorandum in opposition, "set forth the terms of the stipulated Decree that specifically rebut every one of [Taylor's] allegations as to the trust agreement." Ruling, R. 185 n.2, Addendum B. As the district court found, "[t]his, in itself, is the best evidence of the parties' intentions as to the trust agreement" and the remainder of Taylor's "uncontroverted facts" did not need to be controverted because they were not properly before the court on a petition to modify or Rule 60(b) motion. *Id.*

The parol evidence proffered by Taylor was inadmissible in any event, because the Decree contained no ambiguity that could support a reasonable conclusion that Taylor had any rights or

powers over the trust assets and income except the right to an annual accounting. Taylor clearly proffered her parol "evidence" to vary and contradict the Decree rather than to clarify any ambiguity. Ruling, R. 189-193. *Hall*, at 1026; *Whitehouse*, 790 P.2d at 60. Thus, Taylor argues that her parol evidence was admissible to prove that the shares of stock distributed to Hansen as Trustee for the children should be treated as marital property, when the Decree pointedly does not refer to those shares as marital property. Ruling, R. 191, Addendum B. Taylor argues that her parol evidence was admissible to restrict Hansen's powers as trustee, when the Decree expressly states that the trust agreement should contain the "normal and usual" provisions without any restrictions. Ruling R. 187-89, Addendum B. And Taylor argues that her parol evidence was admissible to prove her claim to rights and powers over trust assets and income, when the Decree clearly gives her no such rights or powers. *Id.* Thus, Taylor's arguments fly in the face of the Utah law of contract interpretation. The trial court's denial of Taylor's Motion to Compel the execution of Taylor's trust agreement was clearly correct.

3. The District Court Correctly Denied Taylor's Motion To Compel Reimbursement Of The Deduction For The Children's Health Insurance Premiums.

Although the Brief of Appellant contains no explanation of her appeal of the district court's denial of Taylor's claim for reimbursement, it purports to seek reversal on that issue. The motion for reimbursement was frivolous and the district court's denial was plainly correct.-

Paragraph 4(a) of the Decree provided that:

For so long as [Hansen] has available to him through his place of employment health and accident insurance coverage, he shall maintain said insurance and such coverage for the children and shall pay the premiums therefor and may deduct from the child support one-half of the cost incurred to keep the children so insured.

R. 52, 172, Addendums C, B.

Hansen indisputedly maintained the children's health insurance, paid the premiums, and deducted \$218.90 from a payment to Taylor in June 1996 for one-half of the premiums he had paid for the children since the entry of the Decree. Hansen explained that he did not know the amount of the premiums attributable to the children until he received a calculation from the insurer. Ruling, R. 194-95, Addendum B, See R. 160, Addendum H. Taylor did not dispute the correctness of the amount or the fact that Hansen did not receive the insurer's calculation for several months. Yet, she moved to compel Hansen to reimburse the \$218.90

deduction on the ground that he had waived the right to deduct that amount by not taking monthly deductions. R. 70.

The district court correctly applied the Utah case law, which defines a waiver as the "intentional relinquishment of a known right," and requires an existing right, benefit or advantage, a knowledge of its existence, and a distinct intention to relinquish it for a finding of waiver. *Soter's v. Deseret Federal Savings and Loan*, 857 P.2d 935, 942 (Utah 1993). Ruling, R. 194, Addendum B. The court's conclusion that Taylor had "not proved by a preponderance of the evidence that [Hansen] waived his right to the belatedly deducted insurance premium" is subject to review under the abuse of discretion standard. Judge Norman H. Jackson, *Utah Standards of Appellate Review*, 7 Utah B.J. 25-26 (1994). Under that standard, the court's conclusion clearly must be affirmed. *Soter's*, 857 P.2d at 940; R. 195, Addendum B.

4. The District Court Correctly Denied Taylor's Motion For Judgment For Child Care Payments Without The Verification Required By The Decree And Utah Code Annotated § 78-45-7.16.

Paragraph 4(c) of the Decree provided:

[Hansen] shall, per the applicable statutes, reimburse [Taylor] for one-half of any child care costs and/or expenses incurred by [Taylor] as a result of her career and/or occupational training and/or employment.

Decree para. 4(c), R. 52, Addendum C. The applicable statutes are Utah Code Annotated §§ 78-45-7.16 and 78-45-7.17(2) (1995).

Because Taylor had agreed to forward receipts for future claims, the only issue before the trial court was whether Taylor's previous claim for \$202.50 met the standards defined by paragraph 4(c) of the Decree and the applicable statutes. Ruling, R. 200, Addendum B.

Under Section 78-45-7.16, a parent is required to pay his share of child care expenses "upon presentation of proof of the child care expense," and the parent who incurs child care expenses is required to "provide written verification of the cost and identity of the child care provider to the other parent upon initial engagement and thereafter on the request of the other parent." Utah Code Ann. § 78-45-7.16(2)(a), -(2)(b)(i). Section 78-45-7.17 states that the inclusion of child care costs "is not presumed but may be awarded on a case-by-case basis, if the costs are related to the career or occupational training of the custodial parent, or if otherwise ordered by the court in the interest of justice." The district court determined that the "photocopied collage" that Taylor had sent to Hansen did not meet those standards, and therefore denied Taylor's Motion for Judgment.

The district court's denial of the Motion for Judgment for unverified child care costs must be affirmed as correct. The

factual allegations in the Brief of Appellee are not reflected in the documents which Taylor provided to Hansen or the district court; their inclusion in Taylor's Brief only illustrates the insufficiency of the documents she did provide. Compare R. 163, Addendum H, to Brief of Appellant at 27-30. The documents which Taylor's attorney handed to Hansen's attorney at the September 24, 1996 hearing were obviously untimely, but were nevertheless considered by the district court and found wanting. Ruling, R. 202, Addendum B. The trial court's Findings of Fact concerning Taylor's "photocopied collage" are subject to the clearly erroneous standard of review, and certainly meet that standard. *Peterson*, 818 P.2d at 1307-08.

5. The District Court Correctly Denied Taylor's Requests For Other Relief.

There was no reason for the district court to enter an order that Hansen deliver his alimony and child support payments to Taylor by first class mail instead of registered mail. The Decree required the payments to be made by check or other instrument, but did not specify any method of delivery. Decree R. 52-54, Addendum C. In response to the Motion to Compel, Hansen agreed to deliver future payments by first class mail. R. 110, see Ruling, R. 178, Addendum B. At the September 24, 1996 hearing, Taylor's attorney admitted the issue was moot. R. 238.

Under these circumstances, the district court was not obliged to enter any order. The Brief of Appellant challenges the district court's Findings of Fact on this subject, but fails to marshall the evidence or demonstrate that those Findings are clearly erroneous. See Ruling paras. 16(b) and 23, R. 176 and 178, Addendum B; *Peterson v. Peterson*, 818 P.2d at 1307 (clearly erroneous standard of review); *Crouse v. Crouse*, 817 P.2d 836, 838 (Utah 1991) (party seeking to overturn trial court's findings of fact has the burden of marshaling the evidence in support of the findings and then demonstrating that despite such evidence, the findings are so lacking in support as to be against the clear weight of the evidence, and therefore clearly erroneous).

Nor was there any error in the district court's denial of Taylor's requests for costs and attorney fees under Utah Code Annotated § 30-3-3 (1997). The court's denial of fees under Section 30-3-3 is subject to review under the abuse of discretion standard. *Wells v. Wells*, 871 P.2d 1036 (Utah Ct. App. 1994); *Lyngle v. Lyngle*, 831 P.2d 1027 (Utah Ct. App. 1992); *Peterson*, 818 P.2d at 1310. The denial of Taylor's request clearly meets that standard, since Section 30-3-3 gives the trial court broad discretion concerning the allowance of costs and attorney fees. The statute is intended to enable a party to prosecute or defend a divorce proceeding properly. *Id.* Since Taylor's motions were

improperly filed and were denied in their entirety, she was not entitled to any award of costs or fees.

C. The District Court's Award Of The Costs And Attorney Fees Hansen Incurred In Responding To The Trust Agreement Issues Raised By The Motion To Compel Should Be Affirmed.

Utah Rule of Civil Procedure 11 provides, in part, that:

The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law If a pleading, motion, or other paper is signed in violation of this rule, the court ... shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include ... a reasonable attorney's fee.

Whether specific conduct violates Rule 11 is a question of law. *Rimensburger v. Rimensburger*, 841 P.2d 709, 711 (Utah Ct. App. 1992; *Taylor v. Estate of Taylor*, 770 P.2d 163, 171 (Utah Ct. App. 1989) (citing *Golden Eagle Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1538 (9th Cir. 1986)). In *Rimensburger v. Rimensburger*, 841 P.2d 709 (Utah Ct. App. 1992), this Court affirmed a district court's conclusion that the filing of a petition to modify a divorce decree in Salt Lake County when the decree had been entered in Washington County constituted a violation of Rule 11.

In this case, the district court correctly concluded that Taylor's conduct violated Rule 11, which "requires some inquiry into both the facts and the law before the paper is filed[,] with the level of inquiry tested against a standard of reasonableness under the circumstances." Ruling, R. 197, Addendum B. *Taylor*, 770 P.2d at 171 (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1333 at 177 (Supp. 1987)) Indeed, the trial court found "the circumstances remarkable, and the behavior absolutely unreasonable." Ruling, R. 197, Addendum B. It deemed Taylor's Motion to Compel to be "wholly without any merit whatsoever in law or in fact." Ruling, R. 197, Addendum B. It held that Taylor's trust agreement "completely ignores and deviates from the plain, unambiguous and clear language of the stipulated Decree; alleging that the trust agreement should be in accord with 'the intentions' of the parties rather than the language of the stipulated Decree; bringing up marital property issues that for all legal purposes were completely disposed of by the Decree; citing no relevant evidence to these allegedly contrary intentions; plead that [Hansen] has refused to sign this improper agreement; and when their attempts to do so didn't work, attempted to couch an obvious petition to modify, or even a Rule 60(b) motion, as a Motion to Compel." Ruling, R. 197-98, Addendum B. The trial court observed that Taylor had "completely

disregarded the case law on the binding nature of stipulations." Ruling, R. 198, Addendum B.

This Court has indicated that it will affirm the sanction imposed by the trial court, including the reasonableness of any fee award, absent an abuse of discretion. *Taylor*, 770 P.2d at 171. In this case, the trial court determined that Taylor had "so completely failed to comply with Rule 11 that ... an appropriate sanction should be an award to [Hansen] of his attorneys' fees and costs for having to employ counsel to respond to the improper and groundless trust issues in [Taylor's] Motion to Compel." R. 198, Addendum B. Given the clear record of conduct violating Rule 11 in this case, the district court's sanction should be affirmed. *Rimensburger*, 841 P.2d at 711; *Taylor*, 770 P.2d at 171. See also, *Clark v. Booth*, 821 P.2d 1146 (Utah 1991); *Schoney v. Memorial Estates*, 863 P.2d 59 (Utah Ct. App. 1993); *United Pacific Ins. Co. v. Durbans Const. Co., Inv.*, 144 F.R.D. 402 (D. Utah 1992). Indeed, any other result would undermine the district court's ability to sanction improper litigation tactics in this and other divorce cases.

In an action to enforce the provisions of a divorce decree, an award of attorney fees may be based solely upon the trial court's discretion. *Lyngle v. Lyngle*, 832 P.2d 1027, 1030 (Utah Ct. App. 1994). Thus, even if Taylor's conduct had not

constituted a violation of Rule 11, the district court would have had discretion to award fees and costs. *Wells v. Wells*, 871 P.2d 1036, 1038 (Utah Ct. App. 1994); *Lyngle*, 831 P.2d at 1030.

D. Hansen Is Entitled To Recover Twice His Costs And His Attorney Fees Incurred On Appeal Pursuant To Rule 33, Utah Rules of Appellate Procedure.

Utah Rule of Appellate Procedure 33 provides that "if the court determines that [an] appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs ... and/or reasonable attorney fees, to the prevailing party." Utah R. App. P. 33(a) (1997). The Court may order the party or the party's attorney to pay the damages. *Id.* An appeal is "frivolous" if it is "not grounded in fact, not warranted by existing law, or not based on good faith argument to extend, modify, or reverse existing law." Utah R. App. P. 33(b). An appeal is "for delay" if it is "interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal" *Id.* Double costs and attorney fees are awarded on appeal when the totality of an appellant's argument causes the court to believe the appeal was frivolous. *Eames v. Eames*, 735 P.2d 395, 398 (Utah Ct. App. 1987); *O'Brien v. Rush*, 744 P.2d 306 (Utah Ct. App. 1987).

The general rule is that when a party who received attorney fees in the lower court prevails on appeal, the party is also entitled to fees reasonably incurred on appeal. *Hill v. Hill*, 869 P.2d 963, 967 (Utah Ct. App. 1994); *Lyngle*, 831 P.2d at 1031; *Utah Dep't of Social Services v. Adams*, 806 P.2d 1193 (Utah Ct. App. 1991) (citing extensive authority). In addition, the Advisory Committee Note to Rule 33 expressly states that where the trial court awarded damages under Rule 11, it is proper for this Court to award damages under Rule 33. Utah R. App. P. 33; Advisory Committee Note.

This appeal is plainly not grounded in fact, warranted by existing law, or based on good faith. Rather than comply with the district court's suggestions to implement the Decree or follow the proper procedure for seeking its modification, Taylor has purported to appeal a non-final order that is firmly grounded on the plain language of the stipulated Decree, the record, and the controlling Utah statutes and case law. The appeal is "readily recognizable as devoid of merit," as it presents no justiciable question to this Court and is patently unlikely to succeed. *Hunt v. Hurst*, 785 P.2d 414 (Utah 1990). Indeed, Taylor's arguments on appeal "simply controvert the findings of the [trial] court." Consequently, the appeal is frivolous. *O'Brien v. Rush*, 744 P.2d 306 (Utah Ct. App. 1987).

Moreover, the appeal appears calculated to harass Hansen or cause him needless litigation costs. Taylor made no effort to comply with the district court's suggestions to implement the Decree, nor did she pay Hansen the costs and attorney fees he incurred in responding to her motions. Instead, she subjected him to additional costs and attorney fees by filing a meritless appeal of a non-final order.

The fact that Taylor's father is a senior partner in a major law firm renders the award of costs and attorney fees to Hansen especially appropriate. It is unlikely that Taylor actually paid any costs or fees in connection with her postjudgment motions. She should not be allowed to enjoy the properly awarded to her, monthly alimony and child support payments, and other benefits of the parties' settlement and, at the same time, burden her former husband with the expense of responding to frivolous motions and appeals pursued at little or no cost to her. See *Eames*, 735 P.2d at 397-98 (Utah Ct. App. 1987). Even if Taylor's counsel pursued this appeal out of zealous parental concern, an award of double costs and attorney fees would be appropriate. *Hunt v. Hurst*, 785 P.2d 414 (Utah 1990) (awarding double costs plus attorney fees to appellee despite the possibility that counsel took the appeal as "a favor for a distressed friend").

Taylor and her attorney have wasted this court's resources and Hansen's resources with a frivolous appeal. Under these circumstances, Rule 33 requires that Hansen be awarded damages. Utah R. App. P. 33(a) (1997) (See also, Rule 33 Advisory Committee Note stating, "If an appeal is frivolous, the court must award damages"). Hansen therefore requests that this Court award double his costs and his reasonable attorney's fees incurred on appeal.

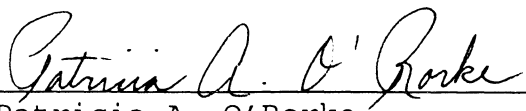
VII. CONCLUSION

For the foregoing reasons, Appellee Marc R. Hansen respectfully urges this Court

- A. To dismiss the appeal for lack of jurisdiction or, in the alternative, affirm the district court's Ruling in all respects; and
- B. To award Hansen twice his costs and his attorney fees incurred on appeal pursuant to Utah Rule of Appellate Procedure 33.

DATED this 18th day of July, 1997.

O'RORKE & GARDINER, LLC



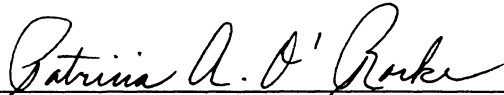
Patricia A. O'Rorke
Attorneys for Appellee-Defendant
Marc Richard Hansen

PROOF OF SERVICE

I hereby certify that a true and correct of the foregoing
BRIEF OF APPELLEE was delivered by hand on the 18th day of
July, 1997 to:

Keith Taylor
Attorney for Appellant, Jane Ann Taylor
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, Utah 84145-0898

O'RORKE & GARDINER, LLC



Patricia A. O'Rourke
Attorneys for Appellee-Defendant
Marc Richard Hansen

Tab A

UTAH RULES OF APPELLATE PROCEDURE

Rule 3. Appeal as of right; how taken.

(a) **Filing appeal from final orders and judgments.** An appeal may be taken from a district ... court to the appellate court with jurisdiction over the appeal from all final orders and judgments....

UTAH RULES OF APPELLATE PROCEDURE

Rule 33. Damages for delay or frivolous appeal; recovery of attorney's fees.

(a) **Damages for delay or frivolous appeal.** Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as defined in Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the damages be paid by the party or by the party's attorney.

(b) **Definitions.** For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief, or other paper interposed for the purpose of delay is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other paper.

UTAH RULES OF CIVIL PROCEDURE

Rule 11: Signing of pleadings, motions, and other papers; representations to court; sanctions.

(a) **Signature.** Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party.

(b) **Representations to court.** By presenting a pleading, written motion, or other paper to the court (whether by signing, filing, submitting, or later advocating), an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(2) **Nature of sanction; limitations.** A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing

payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b) (2).

(3) **Order.** When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

UTAH CODE OF JUDICIAL ADMINISTRATION

Rule 6-404. Modification of Divorce decrees.

Intent:

To establish procedures for modification of existing divorce decrees.

Applicability:

This rule shall apply to all district courts.

Statement of the Rule:

(1) Proceedings to modify a divorce decree shall be commenced by the filing of a petition to modify in the original divorce action. Service of the petition and summons upon the opposing party shall be in accordance with the requirements of Rule 4 of the Utah Rules of Civil Procedure. No request for a modification of an existing decree shall be raised by way of an order to show cause.

UTAH CODE ANNOTATED

75-7-401. Powers of trustee conferred by trust or by law.

The trustee has all powers conferred upon him by the provisions of this part unless limited in the trust instrument.

UTAH CODE ANNOTATED

75-7-402 Powers of trustees conferred by this part.

(1) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization every act which a prudent man would perform for the purposes of the trust, including the powers specified in Subsection (3).

(2) In the exercise of his powers, including the powers granted by this part, a trustee has a duty to act with due regard to his obligation as a fiduciary, according to the standard set forth in Section 75-7-302.

(3) A trustee has the power, subject to Subsections (1) and (2) to:

(a) collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made. The assets may be retained even though they include an asset in which the trustee is personally interested;

(b) receive additions to the assets of the trust;

(c) continue or participate in the operation of any business or other enterprise and effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(d) acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(e) invest and reinvest trust assets in bonds, notes, stocks or corporations regardless of class, real estate or any interest in real estate, interests in trusts or in any other property, or individual interests in property wherever it is located;

(f) invest and reinvest trust assets in securities of an open-end or closed-end type management investment company or investment trust which is registered under the Investment Company Act of 1940, as amended, including securities of any investment company or investment trust that is affiliated with or a subsidiary of the trustee, or to which the trustee or its affiliate or subsidiary provides a service such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise,

for which it receives reasonable remuneration for such service;

(g) deposit or invest trust funds in a bank, including a bank operated by the trustee;

(h) (i) acquire or dispose of an asset, for cash or on credit, at public or private sale;

(ii) manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and

(iii) encumber, mortgage, or pledge a trust, in connection with the exercise of any power vested in the trustee;

(i) make ordinary or extraordinary repairs or alterations in buildings or other structures, or demolish any improvements, raze existing or erect new party walls or buildings;

(j) (i) subdivide, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and

(ii) make or obtain the vacation of plats and adjust boundaries;

(iii) adjust differences in valuation on exchange or partition by giving or receiving consideration; or

(iv) dedicate easements to public use without consideration;

(k) enter, for any purpose into a lease as lessor or lessee with or without an option to purchase or renew for a term within or extending beyond the term or the trust;

(l) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(m) grant an option involving disposition of a trust asset, or take an option for the acquisition of any asset;

(n) vote a security, in person or by general or limited proxy;

(o) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

(p) sell or exercise stock subscription or conversion rights, consent, directly or through a committee or other agent, to the reorganization, consolidation,

merger, dissolution, or liquidation of a corporation or other business enterprise;

(q) hold property in the name of a nominee or in other form without disclosure of the trust so that title to the property may pass by delivery, but the trustee is liable for any act of the nominee in connection with the property so held;

(r) insure the assets of the trust against damage or loss and the trustee against liability with respect to third persons;

(s) (i) borrow money to be repaid from trust assets or otherwise;

(ii) advance money to be repaid from trust assets or otherwise; or

(iii) advance money for the protection of the trust, and for all expenses, losses, and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(t) (i) pay or contest any claim;

(ii) settle a claim by or against the trust by compromise, arbitration, or otherwise; and

(iii) release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(u) pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(v) allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, amortization, or for depletion in mineral or timber properties;

(w) notwithstanding the provisions of Section 75-5-102, pay any sum distributable to a beneficiary under legal disability without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court, or if none, to a relative;

(x) effect distribution of property and money in divided or undivided interests and adjust resulting differences in valuation;

- (y) (i) employ persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties;
 - (ii) act without independent investigation upon their recommendations; and
 - (iii) instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;
- (z) prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of his duties; and
- (aa) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

UTAH CODE ANNOTATED

78-45-7.16. Child care expenses - Expenses not incurred.

(1) The child support order shall require that each parent share equally the reasonable work-related child care expenses of the parents.

(2) (a) If an actual expense for child care is incurred, a parent shall begin paying his share on a monthly basis immediately upon presentation of proof of the child care expense, but if the child care expense ceases to be incurred, that parent may suspend making monthly payment of that expense while it is not being incurred, without obtaining a modification of the child support order.

(b) (i) In the absence of a court order to the contrary, a parent who incurs child care expense shall provide written verification of the cost and identity of a child care provider to the other parent upon initial engagement of a provider and thereafter on the request of the other parent.

(ii) In the absence of a court order to the contrary, the parent shall notify the other parent of any change of child care provider or the monthly expense of child care within 30 calendar days of the date of the change.

(3) In addition to any other sanctions provided by the court, a parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with Subsection (2)(b).

UTAH CODE ANNOTATED

78-45-7.17 Child care costs.

(2) The need to include child care costs is not presumed but may be awarded on a case-by-case basis, if the costs are related to the career or occupational training of the custodial parent, or if otherwise ordered by the court in the interest of justice.

Tab B

IN THE SECOND JUDICIAL DISTRICT COURT
DAVIS COUNTY, STATE OF UTAH

JANE ANN TAYLOR,

Plaintiff,

v.

MARC RICHARD HANSEN,

Defendants.

**RULING ON: (1) PLAINTIFF'S
MOTION TO COMPEL DEFENDANT
TO SIGN TRUST AGREEMENT AND
FOR CERTAIN OTHER RELIEF; AND
(2) PLAINTIFF'S MOTION FOR
JUDGMENT FOR DELINQUENT
CHILD CARE COSTS AND FOR
OTHER RELIEF**

954701212
Case No. 960700185

The above-entitled matter came on regularly for hearing before the Court on Tuesday, September 24, 1996. Petitioner, Jane Ann Taylor ("Petitioner"), was present and represented by Keith E. Taylor, Respondent Marc Richard Hansen ("Respondent") was present and represented by Patricia A. O'Rorke. The Court, having examined the record, the memoranda of the parties, and having heard oral argument and testimony, hereby enters the following findings of fact and rules as follows:

FINDINGS OF FACT

1. That on or about August 8, 1995, Petitioner, then proceeding under her married name of Jane Ann Taylor Hansen, filed a complaint for divorce from Respondent in this court.
2. That on February 1, 1996, Judge Pro Tempore David Dillon signed a "Judgment and Decree of Divorce" ("**Decree**") granting a divorce between Petitioner and Respondent, which document was prepared by Ms. Taylor's attorney at that time, James P. Cowley ("Mr. Cowley")

3. That on February 1, 1996, Judge Pro Tempore David Dillon further signed a "Findings of Fact and Conclusions of Law" ("**Findings of Fact**") which document was also prepared by Mr. Cowley.

4. The both the Findings of Fact and the Decree (collectively, the "**final divorce documents**") were properly filed with this Court on February 2, 1996.

5. That the final divorce documents were entered with the court for judgment on the pleadings, with all terms of both documents stipulated to in writing by both Respondent and Petitioner, and their respective attorneys, Mr. Cowley and Ms. O'Rorke, below sentences stating respectively: "The plaintiff and the defendant stipulate to the foregoing and move the Court for immediate entry of the foregoing Judgment and Decree of Divorce(.)," and "The plaintiff and the defendant stipulate to the foregoing and move the Court for immediate entry of the foregoing Findings of Fact and Conclusions of Law."

6. That paragraph no. 7 of the Findings of Fact states:

All matters relating to child custody, child support, property division, and alimony have been agreed to by the parties and are set forth in detail in the Judgment and Decree of Divorce submitted by the parties and entered contemporaneously herewith. The Court finds that the provisions agreed to by the parties as set forth in the Judgment and Decree of Divorce are in all respects fair, just, appropriate and equitable and the Court by this finding ratifies, confirms and approves the same.

7. That paragraph no. 4, subparagraph a. of the Decree states:

For so long as the defendant has available to him through his place of employment health and accident insurance coverage, he shall maintain said insurance and such coverage for the children and shall pay the premiums therefor and may deduct from the child support one-half of the cost incurred to keep the children so insured.

8. That paragraph no. 12 of the "Judgment and Decree of Divorce" states:

There is awarded to the defendant in his capacity as a Trustee, 214,639 shares of common stock in Cambric Graphics, Inc. The defendant shall hold and deal with the same as Trustee for the sole and exclusive use and benefit of the two minor children who are of issue of this marriage pursuant to the terms of a Trust Agreement to be prepared, agreed to and executed by the plaintiff and defendant pursuant to this Judgment and Decree of Divorce. The said Trust Agreement shall, in addition to normal and usual provisions with respect to investing and preserving the assets and income for the use and benefit of the children, provide (i) for annual accountings to be made by the defendant to the plaintiff in her capacity as guardian of the children, (ii) for disbursement for the benefit of the children for their health, education, welfare, missions for the Church of Jesus Christ of Latter Day Saints and for their post-high school education, with the corpus to be distributed to the children in equal shares upon their respective 25th birthdays, and (iii) in the event of defendant's death Zion's Bank and Trust Company shall become the substitute trustee.

9. That on or about May 31, 1996, Keith E. Taylor ("**Mr. Taylor**") filed with this Court an "Entry of Appearance," in this matter for Petitioner.

10. That on or about June 18, 1996, James P. Cowley filed a "Notice of Withdrawal of Counsel," withdrawing as counsel of record for Petitioner.

11. That on or about August 1, 1996, Petitioner, through her attorney Mr. Taylor, filed a "Motion to Compel Defendant to Sign Trust Agreement or, in the Alternative, to Amend the Judgment and Decree of Divorce and for Certain Other Relief" ("**Motion to Compel**") supported by a memorandum in support of the motion and the affidavits of both Keith E. Taylor and Petitioner.

12. That the Motion to Compel moves the Court in the alternative to either compel Respondent to sign the trust agreement prepared by her counsel (and attached as an exhibit to the motion) or award Petitioner the shares of stock. That the motion also asked the Court to order Respondent to pay to Petitioner \$218.90 in child support that Respondent allegedly wrongfully withdrew from his June 1996 child support payment, to use ordinary U.S. mail to communicate

with Petitioner; and further to award Petitioner fees and costs relating to the motion.

13. That the "Marc Richard Hansen Irrevocable Trust Agreement" ("Petitioner's proposed trust agreement") attached to the Motion to Compel has as the following relevant provisions:

a. Article 1: Trust Estate. "[. . .] The trust estate shall also include cash and stock dividends, stock splits and intangibles of every kind and description which arise directly and indirectly from the ownership of said stock."

b. Article 3: Dividends. "Additional stock resulting from stock dividends, stock splits or other intangible rights associated with said common stock shall be retained by Trustee as part of the Trust Estate. Cash dividends shall be paid and distributed directly to the custodial parent or the guardian of Krista Hansen and Taylor Hansen."

c. Article 4: Successor Trustee. "In the event that Trustee herein designated ceases or fails so to serve for any reason, including but not limited to death or disability, Jane shall become Trustee in his stead. In the event that Jane shall fail or cease to act as Trustee for any reason, Zions First National Bank shall act as substitute Trustee in her place."

d. Article 5: Disposition of the Trust Estate During the Term of the Trust. "The stock and other property of the Trust Estate may not be encumbered, sold, transferred or otherwise disposed of without first obtaining the written consent of Jane, or in the event of her prior death or disability, the legal guardian of Krista Hansen and Taylor Hansen during their minority or their respective consents after reaching the age of majority." "[. . .] "Payments or distributions to or for the benefit of the beneficiaries either before or after their reaching the age of 18 years shall not diminish in any way Settlor's obligation to pay child support under the Decree." "[. . .] "In the event that either Krista or Taylor shall not survive to the date of the termination of this Trust, his or her interest shall be immediately allocated to the survivor of Krista or Taylor. In the event that both of them shall die before reaching their 25th birthday, all of the assets of the Trust Estate shall be immediately transferred to Jane and this trust shall terminate."

e. Article 6: Powers of the Trustee. "In addition to the powers specifically herein bestowed upon Trustee, Trustee shall have general trustee powers as provided by Utah statutes and regulations."

14. That Petitioner's memorandum in support of her Motion to Compel states: "The

primary thrust of this motion is to deal with marital property which is ordered to be placed in trust under the terms of the final Judgment and Decree of Divorce." That the memorandum further states facts in support of Petitioner's position that the stock to be held in trust is "clearly marital property," citing case law in support of that position. That the memorandum further alleges that during settlement negotiations Respondent represented that he needed to retain voting control over the stock and for that reason she was "willing to have her marital share of the stock placed in trust for the exclusive benefit of her children, provided that her children would be guaranteed the benefit in the success of the business if defendant (Ms. Hansen) were, indeed, to succeed in attaining his financial goals regarding the stock." That the memorandum further states that "[p]laintiff made clear during settlement negotiations that any implementing agreement must guarantee that defendant himself would not benefit directly or indirectly, except for the exercise of voting control, from the ownership of the marital portion of the stock." That the memorandum further states that if Respondent continues to refuse to agree to Petitioner's terms that she should be, as a matter of law and equity, awarded half of the stock as her equitable share of the marital estate.

15. That the Motion to Compel alleges that the parties were thereafter unable to agree on an acceptable form of trust agreement.

16. That the memorandum in support of the Motion to Compel further addresses the other issues in the Motion to Compel, respectively:

- a. Unilateral deduction of past insurance premiums. Counsel for Petitioner alleges: "That it would be unfair to permit Mr. Hansen to withdraw his portion of several cumulative insurance premiums in one lump-sum from one child support payment after

having failed to do so when he should have, which is on a monthly basis; That Petitioner's having done so "interferes significantly with plaintiff's cash flow and her ability to care for the minor children of the parties," and that "[f]urther, given the vast difference in the parties' respective incomes, equity decries defendant's unilateral deduction over plaintiff's objection. . .;" and that Respondent, having not deducted the insurance premiums when he could have, has thus waived his "right to deduct these amounts from child support."

b. Defendant's use of registered mail for support payments. Counsel for Petitioner alleges that Respondent's use of registered mail is very inconvenient and costly for her as she must, to retrieve the registered mail, retain a babysitter and make a special trip to the post office. That counsel for Petitioner has repeatedly requested that Respondent use the regular mail and that the requests have been ignored.

c. Attorneys' fees and costs. Counsel for Petitioner alleges that Ms Taylor is due attorneys' fees and costs relating to the motion as a result of both the bad faith of Respondent and the parties's respective incomes.

17. That Petitioner filed with the Motion to Compel her own affidavit setting forth the grounds for her belief that the shares of stock are in fact marital property, and alleging that because of Respondent's "business ethics during her marriage" she expects him to "take any advantage he can to profit himself personally from the stock which is the subject of the trust. Petitioner further alleges that Respondent, during negotiations, had taken the position that the shares of stock were valueless, apparently contravened by an undated newspaper clip from the *Salt Lake Tribune* reporting that a Canadian subsidiary of Cambric Graphics (which company's

ownership is represented by the disputed shares of stock) had reported that it had received a 10.5 million dollar order.

18. That both the Affidavit of Keith E. Taylor, attached as a exhibit to the Motion to Compel, and the memorandum in support contain transcriptions of parts of a letter written by Mr. Taylor to counsel for Respondent in which, in pertinent part, is stated by Mr. Taylor: "You did not designate any specific paragraph of the draft which I sent over that was inconsistent with the Decree. I have reviewed it again and I can find nothing in the Decree which is any way inconsistent with the terms of the trust agreement I sent over."

19. That on or about August 15, 1996, counsel for Respondent filed a memorandum in opposition to Petitioner's Motion to Compel, alleging in introduction that Respondent "has complied fully with the stipulated Decree of Divorce and vigorously opposes Plaintiff's Motion to Compel. Plaintiff's motion asks this Court to compel the Defendant to enter into a Trust Agreement in contravention of the parties' divorce decree. Consequently, Plaintiff's motion amounts to a motion to modify the parties' divorce decree. As such, Plaintiff's motion is procedurally defective and should therefore be denied."

20. That Respondent's memorandum states that Petitioners proposed trust agreement "contains provisions not contemplated by the divorce decree" such as: 1. the distribution of cash dividends to the custodial parent; 2. Petitioner, rather than Zion's Bank, is listed as substitute trustee; 3. that the stock may not be sold or encumbered without the written consent of Petitioner or the children's legal guardian; and 4. that in the event of the children's death, their interest reverts to Petitioner.

21. That Respondent's memorandum alleges that by asking the Court to compel

Respondent to sign the Petitioner's proposed trust agreement, Petitioner is in effect moving the Court to modify the divorce decree, that no petition to modify has been filed with the Court, nor served on the Respondent, and that Petitioner's motion is thus procedurally defective and should therefore be dismissed.

22. That in regards to the issue of child support and the deducted insurance premiums, Respondent's memorandum alleges that there was no deduction from child support, rather, it was deducted from an installment payment pursuant to the divorce decree, which states that the Petitioner "may deduct from the child support one-half of the cost incurred to keep the children so insured." That Respondent alleges that the decree contains no provisions setting forth the method by which the insurance premiums must be paid, nor does it mention waiver, and as a consequence, Petitioner's request of the Court is once again an improper request to modify and should be denied.

23. That in response to Petitioner's request that the Respondent use the ordinary U.S. mail, Respondent agrees to this request and states that his reasons for using registered mail in the past have only been to protect himself from allegations that the support payments were not mailed.

24. That Respondent alleges that the Petitioner is not due any attorney's fees or costs, in that Respondent has tried to comply with the divorce decree, and has in fact executed a Trust Agreement (which was attached as an exhibit), which the Petitioner has thus far refused to sign.

25. Respondent further alleges that Respondent, rather than Petitioner, is due costs and attorney's fees under Rule 11 because Petitioner's Motion to Compel is not warranted by existing law in that it is in fact an improperly pleaded and filed petition to modify, citing case law in

support of that point.

26. That on or about August 23, 1996, Petitioner filed with the Court a reply memorandum to Respondent's memorandum in opposition. In his reply, Petitioner contends that "the thrust of Plaintiff's motion is to invoke the jurisdiction of this Court to interpret the existing Judgment and Decree of Divorce consistent with the understanding and desire of the parties when they entered into the agreement which led to the Judgment and Decree of Divorce[.]," and that since Respondent has not controverted the evidence under oath filed in support of the motion, the evidence should be accepted as uncontroverted for the purpose of disposing of the motion.

27. That Petitioner's reply states that the issue raised by her Motion to Compel is the "appropriate form of Trust Agreement, the details of which were not prescribed in the Judgment and Decree of Divorce."

28. That Petitioner's reply further states in relation to Respondent's practice of using registered, rather than ordinary mail, that "the uncontroverted evidence submitted with the motion demonstrates his knowledge of the substantial inconvenience that his continuing conduct was causing to Plaintiff." Petitioner further contends that it was "only under the duress of facing this motion" that Respondent has agreed to petitioner's wishes to use ordinary mail.

29. That Petitioner's reply withdraws her request to "amend the Judgment and Decree of Divorce."

30. That Petitioner's reply tells the Court that if it does not grant the relief as requested, Petitioner will file an appropriate new petition to modify the Judgment and Decree of Divorce, but that it is Petitioner's "position that such petition is not necessary to afford to the Plaintiff the relief to which she is obviously entitled under the uncontroverted facts now before

the Court."

31. That on or about September 11, 1996, Petitioner filed another motion with the Court, this one entitled: "Motion for Judgment for Delinquent Child Care Costs and for Other Relief (Petitioner's Motion 2)".

32. That petitioner's Motion 2 asks for judgment against the Respondent on account of his failing to pay delinquent child care costs incurred by the Petitioner, and directing Respondent to pay future child care costs within 7 days of the receipt by him of claim supported by receipts evidencing the amounts expended. That Petitioner's Motion 2 further requests the Court to grant the Petitioner attorney's fees and costs associated with Petitioner's Motion 2. That the motion includes, as Exhibit A, a letter from Petitioner's counsel to Respondent's counsel noting an enclosed "itemization of child care costs." That the enclosed sheet is mostly handwritten and contains no statements as to the identity of the child care provider except for that printed and stamped on one receipt dated July 9, 1996, with the caption "tuition for July 10, 1996," totaling \$27.00.

33. That on or about September 23, 1996, Respondent filed a response to Petitioner's Motion 2, alleging that the Decree of Divorce clearly sets forth that "the defendant shall, per the applicable statutes, reimburse the plaintiff for one half of any child care costs and/or expenses incurred by the plaintiff as a result of her career and/or occupational training and/or employment."

34. That Respondent's response further states that Respondent's attorney mailed a letter (which was attached as an exhibit) to Petitioner's former counsel on April 9, 1996, stating Respondent's need for the information and requesting her schedule, a statement indicating that

the receipts are for child care expenses while she was employed or in training, and receipts for child care indicating the dates and time and the name, address, and telephone number of the child care provider. The response states that the Respondent will comply with the decree and the law as soon as Petitioner provides to him the appropriate information., and that no attorneys' fees are appropriate.

35. That the oral argument in front of the Court on September 24, 1996 was not especially helpful to the court on the issues that Petitioner raises in his motion, but the following positions of the parties were argued:

a. Petitioner alleged that during negotiations prior to the stipulated Decree, the parties envisioned that the trust agreement was only to allow the Respondent to be able to retain voting rights over the shares of stock, and that he was by no means otherwise to benefit from the stock.

b. Petitioner further alleged that the trust agreement needed to be in the form proposed by the Petitioner because of Respondent's alleged "bad business practices and past bad conduct," or else the children will be "beaten out of their property," relying once again, as exemplary support for this position, on the single allegation of misrepresentation of the value of the Cambric stock by the Respondent. Petitioner alleged, citing no evidence, that Respondent might want to sell the minimally valuable stock to a friend in a sham sale, and that then when the stock became valuable, reap the rewards while his children are left with nothing but the few dollars from the sham sale.

c. Respondent stated that he would never have agreed to the terms of the Divorce Decree if it could be construed to encompass the terms of the Trust Agreement

proposed by the Petitioner, in that there never was any agreement reached on the issue of whether the shares of stock were marital property, and that Respondent had always contended that they were not marital property. Respondent also stated that it was clear during the negotiations that Respondent needed unencumbered control over the shares of stock, and that he would not have signed the decree if he had thought that it would give the power to Petitioner to consent to or deny every transaction involving the stock, whether it be a sale, merger, acquisition or any of various other transactions.

d. Respondent specifically objected to the Petitioner's proposed trust agreement in the areas of: 1. the assent required of the Petitioner on sales, encumbrances, etc; 2. the reversionary interest of Petitioner; 3. making Petitioner, rather than Zion's Bank the substitute trustee; 4. the distribution of cash dividends directly to the custodial parent, in that Petitioner had already been awarded spousal support and child support.

e. Respondent stated that the Decree, written by counsel for Petitioner, set forth that the Trust Agreement was to be in accordance with "normal and usual provisions with respect to investing and preserving the assets and income of the trust for the use and benefit of the children," and additionally provide for: 1. an annual accounting to the Petitioner; 2. disbursements for the children for their health education, welfare, L.D.S. church missions and post high school education; 3. equal distributions of the trust corpus to each of the two children on their respective 25th birthdays; and 4. that Zions Bank and Trust was to be the substitute trustee.

f. Respondent further stated that it was always his intention that the shares were for the sole and exclusive benefit of the children as the Decree set forth, not the

Petitioner, and that the trust estate was protected the same as any other trust estate, by the trustee fiduciary duties set forth by Utah law (citing U.C.A. § 75-7-302 "Trustee's standard of care and performance").

g. Further, Respondent stated, Utah law sets forth the powers of a trustee at U.C.A. § 75-7-402, and that the terms "normal and usual" in the decree referring to the trust would encompass these statutory powers, as they were not restricted by the decree, and that the statutory powers explicitly grant to the trustee the powers that Petitioner is attempting to restrict by her proposed trust agreement.

h. Further, Respondent alleged, that Petitioner's attempt to compel Respondent to sign the Petitioner's proposed trust agreement is in effect an attempt to modify the Decree by forcing the Respondent to sign the agreement, which gives powers and interests to the Petitioner not encompassed by the decree nor agreed to by the Respondent, in lieu of the terms of the decree.

CONCLUSIONS OF LAW

A. Trust Agreement

Nature and Effect of Stipulations

There has been no argument by Petitioner as to the binding nature of the stipulated divorce agreement embodied by the final divorce documents, both entered into and signed by both parties in this case. Nevertheless, these documents and their interpretation are essentially at the heart of this case, thus the Court feels that a brief discussion on this point would be helpful. Regarding the binding nature of stipulations, the Utah Court of Appeals' stated in

Kinsman v. Kinsman, 748 P.2d 210, 212 (Utah App. 1988) that "[a] stipulation is an enforceable agreement if it meets the requirements of formality outlined in Brown v. Brown, 744 P.2d 333 (Utah App. 1987)." According to Brown, to indicate the parties' assent, the stipulation must be "reduced to writing, signed and filed with the clerk or read into the record before the court." 744 P.2d at 335. The final divorce documents meet those requirements, thus, any subsequent attempt by either party to alter the terms as set forth in the stipulation would be inappropriate absent a properly filed petition to modify. Having met these requirements, their stipulations are subject to the rules of contract interpretation. (See, e.g., Redevelopment Agency v. Daskalas, 785 P.2d 1112, 1118 (Utah Ct. App. 1989).

Under basic rules of contract interpretation, the intent of the parties is to be determined first from the writing itself. Willard Pease Oil & Gas Co. v. Pioneer Oil & Gas Co., 899 P.2d 766, 770 (Utah 1995). However, if the meaning of the contract is ambiguous, extrinsic evidence is admissible. Willard Pease, 899 P.2d at 770. A contract is considered ambiguous if it is susceptible to more than one reasonable interpretation due to uncertain meaning of terms, missing terms, or other facial deficiencies. Id. Finally, if extrinsic evidence fails to clarify the intent of the parties, it will be construed against the drafter. Trolley Square Assocs. v. Nielson, 886 P.2d 61, 63-64 (Utah Ct. App. 1994).

The aforementioned rules notwithstanding, the parol evidence rule operates to exclude evidence of contemporaneous conversations, representations, or statements offered for the purpose of varying or adding to the terms of an integrated contract. Hall v. Process Instruments & Control, Inc., 890 P.2d 1024, 1026 (Utah 1995). Thus, "before considering the applicability of the parol evidence rule in a contract dispute, the court must first determine that the parties

intended the writing to be an integration." Hall at 1026 [citing Union Bank v. Swenson, 707 P.2d 663, 665 (Utah 1985)]. Furthermore, parol evidence, although not admissible to vary or contradict the clear and unambiguous terms of the contract, is admissible to clarify ambiguous terms. Hall at 1026-27 [citing Colonial Leasing Co. v. Larsen Bros. Constr., 731 P.2d 483, 487 (Utah 1986)].

It appears that the primary matter before the Court can essentially be characterized as a motion to request that the Court interpret the Decree to determine if the Petitioner's proposed trust agreement comports with the terms set forth in the Decree, and if the answer is in the affirmative, to compel Respondent to execute such agreement. This was essentially stated as the Petitioner's desire by the Petitioner at oral arguments, and the Court will proceed in this manner, using the final divorce documents, as currently filed,¹ as a reference against which the Petitioner's Proposed Trust Agreement will be judged.²

Integration

At oral argument, Petitioner made the statement that "it was unfortunate" that Petitioner's prior counsel and Respondent's counsel had not had the parties agree to and actually execute a final trust document before the divorce became final. Petitioner asserts that had the parties done so, the assent by both parties to include the terms proposed by Petitioner would have been

¹ In her reply to Respondent's memorandum in opposition, Petitioner stated that she was withdrawing the alternative Motion to Amend included as part of the Motion to Compel.

² The Court rejects Petitioner's argument that the "evidence" filed by Petitioner should be "accepted as uncontroverted" in that it has not been rebutted by Respondent. Respondent, in his Memorandum in Opposition, has set forth the terms of the stipulated Decree that specifically rebut every one of Petitioner's allegations as to the trust agreement. This, in itself, is the best evidence of the parties' intentions as to the trust agreement. As the bulk of the alleged "uncontroverted facts" relate to the issue of marital property, a subject not properly before the Court, those facts do not need to be controverted.

evident from the trust document. Respondent adamantly opposes Petitioner's position, stating in pleadings and at oral argument that there never was any agreement to the Petitioner's proposed terms, and that in fact there never would have been any stipulation to the final divorce documents had he known that the documents might be interpreted to include such terms. Respondent objects to: 1. any trust terms establishing control or oversight of trust assets by Petitioner; 2. any trust terms evidencing a marital property interest in the trust assets, such as a remainder interest; 3. the Petitioner as substitute trustee; and 4. any automatic, rather than discretionary, cash dividend distribution.

With respect to integration, the Utah Supreme Court has recently stated: "An integrated agreement is defined as 'a writing or writings constituting a final expression of one or more terms of an agreement.'" Hall, 890 P.2d at 1027 [quoting RESTATEMENT (SECOND) OF CONTRACTS § 209 (1981)]. Regarding integration, any relevant evidence would be admissible. Id. at 1026. The Hall Court also stated: "Where the parties reduce an agreement to a writing which in view of its completeness and specificity reasonably appears to be a complete agreement, it is taken to be an integrated agreement unless it is established by other evidence that the writing did not constitute a final expression." Id. at 1027. [quoting RESTATEMENT (SECOND) OF CONTRACTS § 209(3) (1981)] Also, the Court stated: "an apparently complete and certain agreement which the parties have reduced to writing will be conclusively presumed to contain the whole agreement. Id. at 1026 [quoting Eie v. St. Benedict's Hosp., 638 P.2d 1190, 1194 (Utah 1981)]

The Court must therefore, initially, determine if the terms of the contract are "complete." With respect to that determination, the Court finds it very significant that the Findings of Fact includes the statement: "All matters relating to child custody, property division, and alimony have

been agreed to by the parties and are set forth in detail in the Judgment and Decree of Divorce submitted by the parties and entered contemporaneously herewith." (emphasis added) A more emphatic statement as to integration could hardly be made if the phrase "this agreement represents an integration" was substituted in its place. Nevertheless, with respect to each of the 4 above-mentioned disputed terms, the Court will make a determination as to their respective "completeness. If the Court determines that the term is not "complete," then by using extrinsic evidence, the Court will determine the integrated meaning of the term, and if the term is "complete," then by using extrinsic evidence, the meaning of any ambiguous terms.

1. Control or oversight by Petitioner as to trust assets

Paragraph 12 of the Decree sets forth the only mention in the divorce documents relating to the assets that are to be held in trust. With respect to trustee powers in relation to these assets, it states: "in addition to normal and usual provision with respect to investing and preserving the assets and income of the trust for the use and benefit of the children, provide (i) for annual accountings to be made by the defendant to the plaintiff in her capacity as guardian of the children. . . ." Neither in the final divorce documents themselves, nor in the subsequent pleadings, nor at oral argument, has the Petitioner attempted to enlighten the Court as to the meaning of "normal and usual" with respect to trustee powers. There has been no case law submitted by either party, nor has the Court been able to find any helpful case law on the subject. Respondent, in his counsel's oral argument, made reference to Utah Code Ann. § 75-7-402, "Powers of trustees conferred by this part." Section 75-7-402 states in relevant part:

(1) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform,

without court authorization, every act which a prudent man would perform for the purposes of the trust, including the powers specified in Subsection (3).

(2) In the exercise of his powers, including the powers granted by this part, a trustee has a duty to act with due regard to his obligation as a fiduciary, according to the standard set forth in Section 75-7-302.

(emphasis added) Subsection (3) specifically gives unto the trustee, along with many other enumerated powers, power, subject to subsections (1) and (2), to encumber, sell, transfer, or otherwise dispose of the trust assets. Section 75-7-401 states that a trustee shall have "all powers conferred upon him by the provisions of this part unless limited in the trust instrument." Paragraph 12 of the Decree lists 3 provisions or restrictions relating to the trustee's power. None of these three provisions would give Petitioner the powers that she seeks. It is the Court's opinion that "normal and usual" trustee powers are those enumerated in Utah Code Ann. § 75-7-402. With that section as a reference, *the term of the Decree relating to trustee powers needs no further reference to be said that "in view of its completeness and specificity reasonably appears to be a complete agreement."* Therefore, it is the Court's opinion that that term is fully integrated, and extrinsic parol evidence will only be admitted to clarify any ambiguous terms.

Petitioner claims that the powers granted by the terms of Petitioner's proposed trust agreement, to wit, that Petitioner would have the final decision making power over any encumbering, selling, transferring or other disposal of the trust assets, were intended and agreed upon by the parties, or possibly in the alternative, that Respondent's alleged newly discovered deception or previously known dishonest business practices makes such terms necessary. Nowhere in paragraph 12, nor elsewhere in the Decree, is any mention made

of any power to be given to or retained by the Petitioner. If it is the latter alternative argument that Petitioner is espousing, the Court can offer no relief under this motion, as there was no mention of any of these concerns in any of the divorce pleadings, and would more properly be the subject of a petition to modify, or perhaps a Rule 60(b) motion.³ Petitioner has presented no evidence, except for the in-court representations of her counsel, that the parties had intended, at the time of the signing of the Decree, that the trust agreement would give Petitioner final consent power over the disposition of any of the assets of the trust. The Court does not find the term of the Decree relating to trustee powers ambiguous. Even if the Court had found the term ambiguous, the Court finds that there has been no evidence presented by the Petitioner that would clarify any alleged ambiguity, thus any such ambiguity will be construed against Petitioner, the drafter. (Trolley Square, 886 P.2d at 63-64.)

The Court finds that the term of the Decree relating to trustee powers is clear, integrated and enforceable as it stands. There are no provisions in paragraph 12, or anywhere else in the decree that would give to Petitioner the powers that she seeks.⁴ The

³ "The appropriate procedure to provide such notice and obtain relief from a judgment based on a mistakenly executed stipulation is to file a motion pursuant to Utah R.Civ.P. 60 (b)(1), seeking relief because of "mistake, inadvertence, surprise, or excusable neglect," within three months after the judgment, order or proceeding was entered." Maxwell v. Maxwell, 796 P.2d 403, 406 (Utah Ct. App. 1990)

⁴ The issue is not before the Court, but it appears, from the nature of the powers that Petitioner seeks to have imposed as a result of her proposed trust agreement, that she seeks to effectively be named as a co-trustee of the trust assets, along with Respondent. There is absolutely no provision in the Decree for this, and the Court finds it somewhat incredible that Petitioner would have the Court believe that this provision could somehow be read into the language of the Decree. Furthermore, Petitioner has presented absolutely no evidence whatsoever to explain why the assets of the trust would not be protected in exactly the same fashion as are the assets of all other trusts in this state, that is, by the beneficiaries'

Court hereby denies Petitioner's motion as to this term.

2. Petitioner's remainder interest

Petitioner's proposed trust agreement gives a remainder interest to Petitioner in the event that she is predeceased by both children. Unfortunately, paragraph 12 is completely silent on this point. Paragraph 12 states only that the beneficiary interest in the trust assets is to be shared equally by both children, with each child's share of the corpus to be distributed upon their respective 25th birthdays.

The fact that the terms of the Decree are not as specific as to the disposition of the trust assets in the unfortunate event that the children predecease their mother does not demonstrate that the term is unenforceable or unclear as written. Paragraph 12 is clear and unambiguous as to the intent of the parties on this point - the trust was to benefit the children, and the trust corpus was to be distributed to them on their 25th birthdays. Possibly it might be argued, but it was not, that the remainder interest is a purely collateral matter to the beneficial interest of the children, and that parol evidence would thus be admissible on the point. Counsel for Petitioner, both orally and in pleadings, made the argument that the shares of stock were in fact marital property, and that both parties had allegedly agreed to this fact prior to the signing of the decree. In opposition, Respondent's counsel stated that Respondent would not have agreed to the Decree if he had known that it would be construed to say that the shares to be held in trust were in fact marital property. However, as stated before, any such arguments would be more

rights against Respondent arising from the prudent investor rule, and the fiduciary duties of trustees codified by Utah Code Ann. § 75-7-301, et seq.

suited to a properly filed petition to modify or Rule 60(b) motion, rather than this motion, which is simply to compel the Respondent to sign a trust agreement consistent with the terms of the decree⁵

The Decree makes no mention whatsoever of the shares of stock being marital property, rather it states only that they should be held in trust for the benefit of the children. It is the Court's opinion that if Respondent had agreed that Petitioner would have a remainder interest, or any interest at all, in the shares of stock, such would have been included in the Decree, and it is not. Perhaps it is unfortunate that the Decree did not elaborate more on this point. Nevertheless, the Court will not compel Respondent to sign a trust agreement that includes terms not contemplated by the Decree. Therefore, Petitioner's motion as it relates to the Court compelling Respondent to sign a proposed trust agreement giving her any remainder interest is hereby denied.

3. Substitute Trustee

On this point, Petitioner's proposed trust agreement is so diametrically opposed to the correlating express term of the Decree that any argument that the terms are in accord must simply be dismissed as nonsensical. The Decree plainly states, that, in the event of

⁵ In her Memorandum in Support of the Motion to Compel, Petitioner makes many fine arguments as to how the shares of stock should in fact be considered marital property. Her counsel reads passages from Respondent's deposition testimony that would appear to be quite relevant to any discussion as to marital property, however, it does not evidence the Respondent's intentions concerning the disposition of what might possibly have been marital property. In crashing silence, the decree makes no mention of any of these intentions. In contrast, the Decree does set forth in detail the distribution of many other items of real and personal property. Whatever reasons the parties had in not including the shares of stock in the distribution of marital property, they were not, thus the Court will interpret the Decree as written, and stipulated to, by the parties.

Respondent's death, the substitute trustee shall be Zions Bank and Trust. Petitioner's proposed trust agreement states, that in the event that respondent should cease or fail to serve for any reason, including but not limited to death or disability, as trustee, that Petitioner shall become substitute trustee in his stead. Once again, Petitioner seeks to introduce terms not contemplated by the divorce decree. The provision as to substitute trustee is clear, unambiguous, and in the Court's opinion, an integrated expression of the parties intentions as to this point. No evidence as to the parties' prior or contemporaneous intentions on this point was presented by either party, thus the term will be therefor construed against the drafter. To compel Respondent to execute an agreement naming Petitioner as substitute trustee would be against the express terms of the Decree. This the Court will not do, and thus the Petitioner's motion as it relates to this term is hereby denied.

4. Disposition of Cash Dividends

The Decree is completely silent as to any provision relating to the disposition of cash dividends. As stated above, the Decree does make provisions for "disbursement for the benefit of the children" in connection with several fairly broad purposes, which are relatively well restated by the correlating terms of "Article 5" of Petitioner's proposed trust agreement. In "Article 3" of Petitioner's proposed trust agreement, Petitioner has interposed the requirement that "[c]ash dividends shall be immediately paid and distributed to the custodial parent or guardian" of the children." It is important to note that Respondent has already agreed, in the Decree, to pay Petitioner both child support and alimony. As mentioned above, Respondent disputes that Petitioner is entitled to any

interest whatsoever in the assets of the trust, and there is no mention in the Decree of any interest of Petitioner in the trust assets. There has been no evidence presented that would entitle Petitioner to cash dividends from the trust assets. Nevertheless, Petitioner requests that the Court compel Respondent to sign her proposed trust agreement giving her cash dividends. Once again, the Court will not compel Respondent to sign any trust agreement that includes terms not contemplated by the Decree. On this point, then, Petitioner's motion is also denied.

In conclusion of the discussion as to the trust agreement, truly, as the Utah Supreme Court stated in Redevelopment Agency of Salt Lake City v. Mitsui Inv., Inc., 522 P.2d 1370 (Utah 1974), a party (in this case the Petitioner), after having stipulated to a judgment, "should not feel too badly abused" by not being allowed to renege on its stipulation.

B. Withheld Insurance Premiums

Petitioner also seeks to have the Court compel Respondent to reimburse Petitioner for the \$218.90 that he withheld from the June 1996 child support check. Petitioner claims that the amount was "wrongfully" withdrawn, over her objections. Petitioner claims that by doing so, Respondent has significantly interfered with her cash-flow, and has "worked a hardship on the children" and Petitioner. Petitioner further claims that even if Respondent is entitled to withdraw his portion of the health insurance premium from his monthly child support payments, he must do so on a monthly basis, and not "willy-nilly, simply accumulate claimed amounts to be deducted and then lump-sum them at any given point in time." Petitioner claims that by voluntarily failing to have withdrawn the premiums on a monthly basis, he has waived his right to this money.

Respondent, in his reply, and at oral argument counters that the amount was not deducted from child support, but was in fact deducted from an "installment payment" to be made to Petitioner under the decree. [Paragraph 6(d) of the Decree?] Further, Respondent states that the decree is silent as to the method by which the premiums may be deducted, and there is no provision in the Decree regarding waiver. Respondent is correct - once again the Decree is silent on a point that Petitioner would rather that it had addressed - this time as to the method or time period for deducting Respondent's portion of health insurance premiums.

In support of her position that Respondent's failure to withdraw the insurance premiums represents a waiver, he states that "[u]nder Utah law, waiver is the voluntary relinquishment of a known right," citing two cases for that proposition. One of the cases cited, Soter's v. Deseret Federal Savings and Loan, 857 P.2d 935 (Utah 1993) appears to be the best Utah authority regarding the elements of a waiver. The Supreme Court makes clear that three elements are required for the finding of a waiver: 1. an existing right, benefit or advantage; 2. a knowledge of its existence; and, 3. an intention to relinquish it. Id., at 942. The Court makes the observation that in most cases, as in this case, the first two elements are not in dispute, rather it is ordinarily the "intention" to relinquish that must be found. Id., at 940. Therefor, the Court must determine if Respondent's failure to withdraw the monthly insurance premiums was intended as a waiver of his right to those premiums. The Supreme Court states that to qualify as such, it must be proved by a preponderance of the evidence that the waiver was "distinct," in light of the "totality of the circumstances." Id., at 942 and n6.

In this case, as related by counsel for Respondent at oral arguments, and unrebutted by Petitioner, Respondent had to wait several months before a determination could be reached by

his company and his insurance company with respect to the exact amount that Respondent was paying for the children's health insurance. During this time, and at all other times, Respondent has been current in his child support and was paying the children's health insurance. Rather than deduct the wrong amount, Respondent states that he chose to wait to deduct the amount until the exact amount was known. At that point, he states that he deducted the amount not from the child support, but from installment payments that Respondent was to make to Petitioner.

During the time that Respondent was not deducting the amount from his child support payment, Petitioner was entitled to an extra almost \$44.00 per month as child support, while Respondent was paying this amount towards the children's insurance premium. Petitioner complains of the inequity of her having to have her cash flow interrupted in this manner, yet surely she knew that the insurance premium was not being deducted from the prior checks. During this period she submitted no complaint that her cash flow had been wrongfully increased and that she was thereby injured.

In view of the fact that Petitioner knew that Respondent could deduct his portion of the premiums from child support; the Respondent's stated reason for not having made the deductions; the silence of the Decree as to any term regarding the time or method of this deduction; the absence of any term regarding waiver in the Decree; the ongoing current status of Respondent's child support payments; the short duration in time in which the deductions were not made; and the Petitioner's use of the extra money for that period; the Court finds that in light of the totality of the circumstances, Petitioner has not proved by a preponderance of the evidence that Respondent waived his right to the belatedly deducted insurance premiums. Respondent was

fully within his rights in deducting the accumulated insurance premiums.⁶ Therefore the Court hereby denies Petitioner's motion on this point.

C. Mail issue

It appears that the parties have reached agreement on this issue of the Motion to Compel, thus the Court will not address it.

In conclusion, based on the facts and reasons set forth above, the Court hereby denies, in the entirety, Plaintiff's Motion to Compel. On the other hand, it appears that the Respondent's executed Trust Agreement, enclosed as an exhibit in his memorandum in opposition, appears to track the Decree rather well. Respondent, at oral argument, requested that the Court compel Petitioner to sign Respondent's trust agreement. At this juncture, the Court is not inclined to take such action but would instead direct the parties to get together and execute a trust agreement that comports with the provisions of the Decree, including extra language only as agreed upon by the parties.

D. Attorney's Fees

In her Motion to Compel, Petitioner seeks attorneys' fees and costs relating to the motion, alleging that:

[D]espite repeated efforts of plaintiff's counsel, defendant has refused to execute a trust agreement consistent with the intent of the parties when they entered into the divorce Settlement Agreement which would make it impossible for defendant,

⁶ The Court makes no determination as to the correct method or interval by which Respondent should deduct the insurance premiums, nor does the Court make any determination regarding what might constitute a waiver, but realizes that if the premiums were to be left undeducted for a much longer period, potentially a waiver could result.

under any circumstances, to utilize trust assets for his own use and benefit.

Petitioner has since filed with the Court the affidavit of her attorney Keith Taylor (Mr. Taylor"), alleging \$1,500 in attorneys' fees. Respondent replies in his memorandum in opposition that Petitioner is not entitled to attorneys' fees and costs, as Respondent has attempted to abide by the terms of the decree by executing a Trust Agreement in conformance with the Decree.

Respondent also requests attorneys' fees, pursuant to Rule 11 of the Utah Rules of Civil Procedure, for having to respond to Petitioner's "procedurally defective motion to modify the Divorce Decree." As support, Respondent cites Rimensburger v. Rimensburger, 841 P.2d 709 (Utah Ct. App. 1992). In that case, one of the party's attorneys were sanctioned for filing a petition to modify in the incorrect County, holding that the "choice of forum was not grounded in law or logic." Id., at 711.

The Utah Court of Appeals, in discussing Rule 11, states that Rule 11 "requires some inquiry into both the facts and the law before the paper is filed; the level of inquiry is tested against a standard of reasonableness under the circumstances." Taylor v. Estate of Taylor, 770 P.2d 163, 171 (Utah Ct. App. 1989) [quoting 5 C. Wright & A. Miller, Federal Practice and Procedure §1333 at 177 (1987 Supp.)] Here, the Court finds the circumstances remarkable, and the behavior absolutely unreasonable. Petitioner has seen fit to file with the Court this Motion to Compel, that, as set forth above, is wholly without any merit whatsoever in law or in fact. She has drawn up a trust agreement that completely ignores and deviates from the plain, unambiguous and clear language of the stipulated Decree, alleging that the trust agreement should be in accord with "the intentions" of the parties rather than the language of the stipulated Decree, bringing up marital property issues that for all legal purposes were completely disposed of by the

Decree, citing no relevant evidence to these allegedly contrary intentions, plead that Respondent has refused to sign this improper agreement, and when her attempts to do so didn't work, attempted to couch an obvious petition to modify, or even a Rule 60(b) motion, as a Motion to Compel.⁷ Furthermore, it appears that Petitioner has completely disregarded the case law on the binding nature of stipulations.⁸ There is no merit to Petitioner's request for attorneys' fees, and her request for such is hereby denied. Conversely, Petitioner has so completely failed to comply with Rule 11 that the Court feels an appropriate sanction should be an award to Respondent of his attorneys' fees and costs for having to employ counsel to respond to the improper and groundless trust issues in Petitioner's Motion to Compel. As requested both in his memorandum in support and at oral arguments, the Court will award to Respondent attorneys' fees and costs for any work performed responding, either by pleading, letter, telephone, or in Court, to the trust agreement issues raised by Petitioner's Motion to Compel. The Court thereby requests that Respondent prepare and submit to the Court an appropriate motion, affidavit setting forth in detail the tasks performed, and order for the Court's signature on this matter.

E. Delinquent Child Care Costs

In Petitioner's second motion before the Court, her "Motion For Delinquent Child Care Costs and For Certain Other Relief," Petitioner requests that the Court enter judgment against Respondent in the amount of \$202.50, representing Respondent's portion of child care costs that

⁷ The Court does not attempt to discern the reasons for Petitioner's behavior, but it is noteworthy that it appears that a Rule 60(b) motion would not be timely, further it appears dubious on the facts presented that Petitioner would succeed in a petition to modify

⁸ See, e.g., Foulger v Foulger, 626 P.2d 412 (Utah 1981), DLB Collection Trust v Harris, 893 P.2d 593 (Utah Ct. App. 1995), and United Factors v T.C. Assoc's, Inc., 445 P.2d 766 (Utah 1968), as well as the cases the Court cites above

he has allegedly refused to pay, and further directing Respondent to pay future child care costs within 7 days of receipt of claims for child care costs accompanied by receipts evidencing the expenditures.

Respondent replies that he will pay the back child care costs when Petitioner supplies him with the proper information that he believes that he is entitled to. He states that on April 9 of this year his counsel mailed a letter to Petitioner's counsel asking for certain information, including: 1. information pertaining to Petitioner's current employment or training program; 2. her schedule; 3. a statement indicating that the receipts are for child care expenses while Petitioner was employed or in training; and 4. receipts for child care indicating the dates and time and the name, address and telephone number of the child care provider.

Petitioner has submitted an invoice of sorts appearing to be a photocopied collage of various pieces of information, including: handwritten dates listing the times which Petitioner worked; some typewritten notation, appearing to be a receipt, but with no reference as to its origin or for what the payment was made, stating "Recorded By: ac," and dated 5-6-96; another handwritten notation stating that Petitioner attended school on July 9, 1996, and making request for \$13.50 as Respondent's share of child care costs for that day; a signed receipt from Sunshine Kids Daycare for July 9, 1996 in the amount of \$27.00; and some other typewritten notation with no information at all, with two amounts shown, \$126.00 and \$140.00.

After Respondent received the above claim, on August 26, 1996 he wrote a letter to Petitioner referencing the information requested in the April 9th letter, stating that he needed this information before he could pay the amounts claimed.

The Decree itself states that "the defendant shall, per the applicable statutes, reimburse

the plaintiff for one half of any child care costs and/or expenses incurred by the plaintiff as a result of her career and/or occupational training and/or employment." Utah statutory law on this matter is somewhat helpful - Utah Code Ann. § 78-45-7.16 states in relevant part: "The child support order shall require that each parent share equally the reasonable work-related child care expenses of the parents [subsection (1)]; "If an actual expense for child care is incurred, a parent shall begin paying his share on a monthly basis immediately upon presentation of proof of the child care expense" [subsection (2)(a)]; and "a parent who incurs child care expenses shall provide written verification of the cost and identity of the child care provider to the other parent upon initial engagement and thereafter on the request of the other parent." [subsection (2)(b)(i)] Section 78-45-7.17(2) also states: "The need to include child care costs is not presumed, but may be awarded on a case-by-case basis, if the costs are related to the career or occupational training of the custodial parent, or if otherwise ordered by the court in the interests of justice." As the Petitioner, by letter, agrees to forward receipts in the future when making claims, the Court must determine if the Petitioner's previously submitted claim for payment meets the necessary standard providing him with the information he requests, and then to enter the appropriate corresponding order.

Unfortunately, the Court can find no case law construing the above-referenced portions of § 78-45-7.16, possibly because they are relatively new, with an effective date of July 1, 1994. The Court can also find no prior Utah case law dealing with this situation on a common-law basis. Therefore, the Court must make some determination as to the meaning of such terms as "proof of the child care expense," "written verification of the cost and identity of the child care provider," "related," and "reasonable." It is the Court's opinion that the words "proof" and

"written verification" in this context connote some sort of writing by an objective third party. A written receipt from the child care provider of the type which Petitioner has presented Respondent for the one day's child care costs would appear to be acceptable as a receipt for one day. The other notations on the "collage" of claims submitted by Petitioner have no reference whatsoever as to their place of origin, no signature as verification, and no information as to dates that costs were incurred, and would therefore be unacceptable as "proof" or "written verification." It is the Court's opinion that Petitioner should provide Respondent with copies of actual receipts, originating from the day care provider, detailing the dates and times that child care expenses were incurred.

The Respondent is somewhat unclear as to the reasons he requests such detailed scheduling information, although the Court would presume that it is so that he can cross-reference the dates on receipts for which child care costs are claimed against the dates Petitioner was actually working or in school. As the statute clearly states that payment is to be paid for those child care costs "related" to employment or education, it would seem inequitable that Respondent not at least be provided with some means by which he can verify the fact that they were so incurred, and that they were in fact "reasonable." It is the Court's opinion that the handwritten note listing the dates Petitioner worked or was in schooling do not meet the necessary level of objectivity that is implied by the statute. Counsel for Petitioner, at oral arguments, related the trouble that Petitioner would have to go to get such schedules, and the Court has taken notice of this. Nevertheless, it is the Court's opinion that written verification originating from some third party would be appropriate. A simple copied report of Petitioner's work schedule would suffice, as would a copy of the class schedule for schooling attended or to be attended by the Petitioner.

The procurement by the Petitioner and the forwarding to Respondent of these items does not appear to the Court to be inordinately burdensome. Filed after the hearing, but mailed the day of the hearing, is a letter from Counsel for Petitioner to Counsel for Respondent, with, as an enclosure, a copy of a letter from the Office of the Registrar of the University of Utah, stating that Petitioner is a full time student. This may be acceptable as a "statement," but as it lists no schedule at all, it certainly does not meet the Court's requirement of a "schedule." With regard to the "statements" requested by Respondent, a simple handwritten note, signed by the Petitioner, stating the information Respondent requests would suffice, and does not seem to be inequitable, either, in view of the fact that she is requesting that Respondent pay her for those costs.

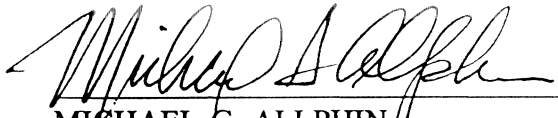
In view of the above-mentioned reasons, the Court hereby denies Petitioner's Motion for Delinquent Child Care Costs and for Certain other Relief. This ruling in no means precludes Petitioner from filing a future motion for the same or similar relief if she complies with the guidelines set forth above, and the Respondent nevertheless continues to refuse to remit his portion of the child care costs. The Court hereby also denies Petitioner attorneys' fees in relation to Motion 2.

Conclusion

In conclusion, the Court hereby denies both of Petitioner's motions in the entirety, and grants attorneys' fees and costs to Respondent for work performed in response to those issues involving the trust agreement contained within Petitioner's Motion to Compel.

Dated October 29th, 1996.

BY THE COURT:



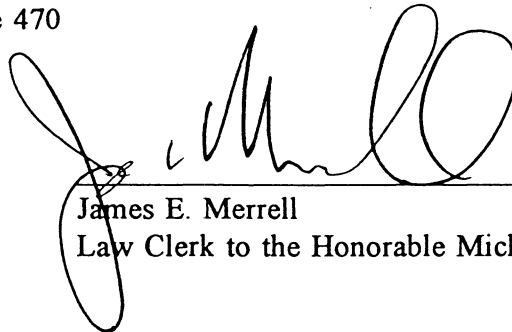
MICHAEL G. ALLPHIN
DISTRICT JUDGE

CERTIFICATE OF DELIVERY

I certify that a true and correct copy of the foregoing Ruling was mailed on October 29th, 1996, first class postage prepaid to the following:

Keith E. Taylor
Parsons Behle & Latimer
Attorneys for Plaintiff
201 South Main Street
P.O. Box 45898
Salt Lake City, UT 84145-0898

Patricia A. O'Rourke
O'Rourke & Gardiner, LLC
Attorneys for Defendant
6995 Union Park Center, Suite 470
Midvale, UT 84047



James E. Merrell
Law Clerk to the Honorable Michael G. Allphin

Tab C

FILED IN CLERK'S OFFICE
DAVIS COUNTY

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CLERK OF DIST. COURT

BY TE 07/07/96

VAN COTT, BAGLEY, CORNWALL & MCCARTHY
James P. Cowley (0739)
Attorneys for Plaintiff
50 South Main Street, Suite 1600
P. O. Box 45340
Salt Lake City, Utah 84145
Telephone: (801) 532-3333

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY

STATE OF UTAH

JANE ANN TAYLOR HANSEN,)	
)	
Plaintiff,)	JUDGMENT AND DECREE OF
)	DIVORCE
vs.)	
)	
MARC RICHARD HANSEN,)	Civil No. 954701212
)	
Defendant.)	Honorable Glen R. Dawson
)	
)	
)	

Based upon the matters on file herein, including the Affidavit of Plaintiff and the Stipulation and Motion of the parties endorsed hereon and the Court having heretofore made and entered it's Findings of Fact and Conclusions of Law, the Court now makes and enters its

JUDGMENT AND DECREE OF DIVORCE

1. The parties are given and granted a judgment and decree divorcing them from each other and severing the bonds of matrimony. The divorce shall become final on January 15, 1996 or upon the entry hereof, whichever is later.

2. The care, custody and control of the two minor children who are of issue of the marriage is awarded to the

JUDGMENT ENTERED
BY KL

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plaintiff, reserving to the defendant the right to visit with said children at all reasonable times and places *in accordance with Utah Code Annotated § 30-3-32, et seq.* *TPC* *QAG MH*

3. Pursuant to the Utah Child Support Guidelines and per the worksheet filed contemporaneously herewith, the defendant shall pay to the plaintiff as child support for the use and benefit of the two minor children the sum of \$1,200 per month commencing with the month of January 1996 and continuing thereafter until further order of the Court.

4. With respect to and in addition to the child support provided for in Paragraph 3, the parties shall be governed by the following additional matters with respect to the two minor children:

a. For so long as the defendant has available to him through his place of employment health and accident insurance coverage, he shall maintain said insurance and such coverage for the children and shall pay the premiums therefor and may deduct from the child support one-half of the cost incurred to keep the children so insured.

b. The parties shall each pay one-half of all uninsured hospital, health care, medical and dental expenses for the children including, without limitation, orthodontic and optical expenses.

c. The defendant shall, per the applicable statutes, reimburse the plaintiff for one-half of any child care costs and/or expenses incurred by the plaintiff as a result of her career and/or occupational training and/or employment.

d. For so long as the defendant promptly pays the child support as required by Paragraph 3 above, ~~and for so long as the plaintiff is unemployed~~, the defendant shall be entitled to claim both children as dependent exemptions upon his federal and state income tax returns. If there is any change in circumstances that results in a change in the amount of alimony and/or child support, then it will be appropriate for the court to also reconsider this paragraph with respect to the party that is entitled to claim a child or children as dependent exemptions. MT 44
JPC

e. One-half of the child support required by Paragraph 3 above shall be paid by defendant to plaintiff on or before the 5th day of the month and the other half shall be paid by defendant to plaintiff on or before the 20th day of each month.

f. The income of the defendant is subject to income withholding in accordance with the provisions of Title 62A-11-501 et. seq. UCA but withholding shall not be implemented unless the defendant fails to promptly pay the child support as provided for in Paragraphs 3 and 4 above and subparts.

g. The child support payments by defendant to plaintiff shall be in the form of check or other instrument to be maintained by the defendant as evidence and proof of his timely payment of the child support.

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5. For a period of seven years and ending with the month of December 2003, (unless defendant's duty to pay alimony is terminated at an earlier date in accordance with the laws of the state of Utah) the defendant shall pay to the plaintiff as alimony on or before January 5, 1996 and on or before the fifth day of each month thereafter the sum of \$1,100.

6. There is awarded to the plaintiff as her sole separate property the hereinafter described marital assets and plaintiff shall pay and discharge the hereinafter described liabilities:

a. One-half of the net proceeds from the recent sale of the parties home in Davis County, Utah, together with one-half of the cost basis therein (including any carry over basis).

b. The Subaru automobile in possession of and operated by the plaintiff free and clear of any encumbrance.

c. The IRA account at Fidelity Investments^{3/4} owned by the parties with an approximate value of \$7,600.

d. \$925 in cash to be paid by defendant to plaintiff on or before June 30, 1996.

e. The bank accounts, furnishings, fixtures, personal effects, and other personal property now in plaintiff's possession.

f. Plaintiff shall pay and discharge all debts incurred by her since the parties' separation in August 1995.

g. Plaintiff shall pay and discharge her own attorneys' fees and costs in this action.

7. There is awarded to the ^{defendant} ~~plaintiff~~ as his sole separate property the hereinafter described marital assets and defendant shall pay and discharge the hereinafter described liabilities:

a. One-half of the net proceeds from the recent sale of the parties home in Davis County, Utah, together with one-half of the cost basis therein (including any carry over basis).

b. Isuzu Trooper automobile in possession and operated by the defendant subject to the debt thereon which the defendant shall assume and pay and from which he shall save and hold the plaintiff harmless.

c. The 401K account at Cambric Graphics, Inc. administered by Massachusetts Mutual owned by the parties with an approximate value of \$9,450.

d. 214,639 shares of the common stock of Cambric Graphics, Inc.

e. The bank accounts, furnishings, fixtures, personal effects, and other personal property now in defendant's possession.

f. Defendant shall pay and discharge all debts incurred by him since the parties' separation in August 1995.

g. The defendant shall, on or before June 30, 1996, pay to the defendant the \$925 referred to in Paragraph 6d above.

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h. Defendant shall, within ten days after entry of the Decree of Divorce, pay and discharge the Zion's Bank automobile loan secured by the title on the Subaru automobile being awarded to the plaintiff and defendant shall save and hold plaintiff harmless from said obligation.

i. Except as specifically provided in Paragraph 6f above, the defendant shall pay and discharge all outstanding debts and obligations (including unsecured credit card debts in the approximate amount of \$11,700) incurred during the marriage and shall save and hold plaintiff harmless therefrom.

j. Defendant shall pay and discharge his own attorneys' fees and costs in this action.

8. The parties shall file joint federal and state income tax returns for the calendar year 1995. The defendant shall pay and discharge any and all tax liabilities for 1995 and shall save and hold the plaintiff harmless therefrom. If there is any federal or state income tax refund for calendar year 1995, the same shall be divided equally between the parties.

9. The defendant shall save and hold the plaintiff harmless from any and all federal and state tax liabilities, penalties and interest for all years for which the parties filed joint tax returns.

10. For so long as the defendant has a duty to pay child support, he shall maintain insurance upon his life with

unencumbered death benefits in an amount of not less than \$150,000, payable to the plaintiff in her capacity as natural mother and court-appointed guardian of the children who are of issue of the marriage and to be used by her for the use and benefit of said children only as allowed by order of the supervisory court.

11. For so long as the defendant has a duty to pay alimony he shall maintain insurance upon his life with unencumbered death benefits in an amount of not less than \$100,000 payable to the plaintiff.


12. There is awarded to the defendant in his capacity as a Trustee, 214,639 shares of common stock in Cambric Graphics, Inc. The defendant shall hold and deal with the same as Trustee for the sole and exclusive use and benefit of the two minor children who are of issue of this marriage pursuant to the terms of a Trust Agreement to be prepared, agreed to and executed by the plaintiff and defendant pursuant to this Judgment and Decree of Divorce. The said Trust Agreement shall, in addition to normal and usual provisions with respect to investing and preserving the assets and income of the trust for the use and benefit of the children, provide (i) for annual accountings to be made by the defendant to the plaintiff in her capacity as guardian of the children, (ii) for disbursement for the benefit of the children for their health, education, welfare, missions for the Church of Jesus Christ of Latter Day Saints and for their post-high school education,

with the corpus to be distributed to the children in equal shares upon their respective 25th birthdays, and (iii) in the event of defendant's death Zions Bank and Trust Company shall become the substitute trustee.

13. There is granted to the plaintiff the right to resume the use of her maiden name of Jane Ann Taylor and to be known thereby.

14. The parties shall cooperate and execute such documents and make such deliveries and do such things that are necessary to implement the terms hereof, including, if necessary, preparation, approval and submittal to the Court for entry, Qualified Domestic Relations Orders.

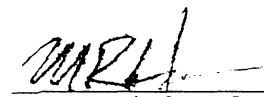
DATED this 1 day of February, 19 96.

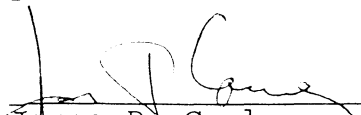

Glen R. Dawson, Judge Pro Tempore

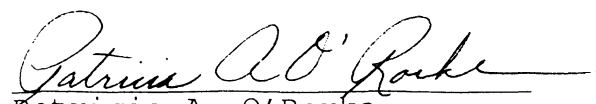
STIPULATION AND MOTION

The plaintiff and the defendant stipulate to the foregoing and move the Court for immediate entry of the foregoing Judgment and Decree of Divorce.


Jane Ann Taylor Hansen,
Plaintiff


Marc Richard Hansen,
Defendant


James P. Cowley,
Attorney for Plaintiff


Patricia A. O'Rourke,
Attorney for Defendant

Tab D

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CLERK'S OFFICE

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James P. Cowley (0739)
Attorneys for Plaintiff
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Salt Lake City, Utah 84145
Telephone: (801) 532-3333

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY

STATE OF UTAH

JANE ANN TAYLOR HANSEN,)	
)	
Plaintiff,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
vs.)	
)	
MARC RICHARD HANSEN,)	Civil No. 954701212
)	
Defendant.)	Honorable Glen R. Dawson
)	
)	
)	

Based upon the matters on file herein, including the Affidavit of plaintiff, and the Stipulation and Motion of the parties endorsed hereon and good cause appearing, the Court now makes and enters these

FINDINGS OF FACT

1. Plaintiff was an actual and bona fide resident of Davis County, state of Utah for a period of more than three months prior to the filing of the Complaint in this action.
2. Plaintiff and defendant are husband and wife, having been married in Salt Lake City, Utah on March 10, 1989.
3. Two children have been born as issue of this marriage: Krista Ann Hansen, born July 10, 1991, and Taylor

Marc Hansen, born January 21, 1993. No other children are expected.

4. There are irreconcilable differences between the parties which make the continuation of their marital relationship impossible.

5. Plaintiff is a fit and proper person to be awarded custody of the parties' minor children. It is in the best interest of the parties' two minor children that their custody be awarded to Plaintiff, reserving to the defendant the right to visit with the children at all reasonable times and places.

6. The defendant has a high school education. He is employed full-time and has a gross income of \$90,000 per year. The plaintiff has a college education. She has been employed in the past but has not been gainfully employed for a number of years. Plaintiff properly devotes her time and attention to the care of the children and it is in their best interest that she continue to do so *at this time*. *But not at all*
✓ PC

7. All matters relating to child custody, child support, property division, and alimony have been agreed to by the parties and are set forth in detail in the Judgment and Decree of Divorce submitted by the parties and entered contemporaneously herewith. The Court finds that the provisions agreed to by the parties as set forth in the Judgment and Decree of Divorce are in all respects fair, just,

appropriate and equitable and the Court by this finding ratifies, confirms and approves the same.


Based upon the foregoing Findings of Fact the Court now makes its

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter and the parties.

2. The Court should make and enter that Judgment and Decree of Divorce submitted contemporaneously herewith.

DATED this 1 day of February, 1996.



Glen R. Dawson, Judge Pro Tempore


STIPULATION AND MOTION

The plaintiff and the defendant stipulate to the foregoing and move the Court for immediate entry of the foregoing Findings of Fact and Conclusions of Law.


Jane Ann Taylor Hansen,
plaintiff


Marc Richard Hansen,
defendant


James P. Cowley,
Attorney for plaintiff


Patricia A. O'Rourke,
Attorney for defendant

Tab E

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Feb 2 3 41 PM '93
VAN COTT, BAGLEY, CORNWALL & MCCARTHY
James P. Cowley (0739)
Pamela Martinson (6273)
Attorneys for Plaintiff
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Salt Lake City, Utah 84145
Telephone: (801) 532-3333

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY

STATE OF UTAH

JANE ANN TAYLOR HANSEN,)

Plaintiff,)

vs.)

MARC RICHARD HANSEN,)

Defendant.)

SUPPLEMENTAL AFFIDAVIT OF
JANE ANN TAYLOR HANSEN

Civil No. 954701212

Honorable Glen R. Dawson

STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

Jane Ann Taylor Hansen, being duly sworn under oath,
deposes and states as follows:

1. I am the Plaintiff in the above-entitled action.
I make this Affidavit on the basis of my personal knowledge.

2. I was a resident of Davis County, State of Utah,
for more than three months prior to the filing of this action.

3. The Defendant and I were married in Salt Lake
City, Utah, on March 10, 1989. Two children have been born as
issue of our marriage: Krista Ann Hansen, born July 10, 1991,

and Taylor Marc Hansen, born January 21, 1993. No other children are expected.

4. There are irreconcilable differences between us which constitute grounds for divorce pursuant to Utah Code Annotated § 30-3-1. We have been separated on several occasions, and have attempted to resolve our differences through marriage counseling, numerous conversations and the help of family members. Despite these efforts, it is impossible for the Defendant and I to reconcile our differences and live together as husband and wife.

5. Public assistance has not and is not being provided to me.

6. Attached hereto is a Universal Income Withholding Information Sheet that I have prepared and that is accurate.

7. I am not employed. The defendant is employed and earns a gross income of \$7500 per month. That is verified by his 1994 Tax Return, a copy of which is attached hereto. In addition, I have verified the same by reference to his current paychecks. Furthermore, the defendant's testimony on deposition establishes his income of \$7500 per month.

8. The defendant and I have endorsed our Stipulation and Motion for entry upon the Findings and Decree. The Findings and Decree are consistent in every respect with the Complaint on file herein and with our agreed settlement of the matter.

9. There is attached hereto a Statement of Compliance with respect to child support. The child support required by the Judgment is consistent with the guidelines.

DATED this 26 day of January, 1996.

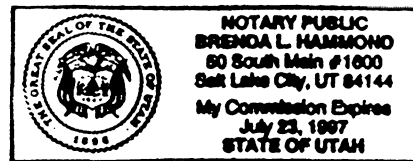
Jane Ann Taylor Hansen
Jane Ann Taylor Hansen

SUBSCRIBED AND SWORN TO before me this 26 day of January, 1996.

Brenda L. Hammond
NOTARY PUBLIC

Residing at: Salt Lake City, UT

My Commission Expires:
7-23-97



Tab F

MARC RICHARD HANSEN
IRREVOCABLE TRUST AGREEMENT AND DECLARATION OF TRUST

This Agreement and Declaration entered into this ____ day of March 1996 by and between Marc Richard Hansen of Salt Lake City, Utah, ("Settlor"), Marc Richard Hansen as Trustee in Trust for Krista Hansen and Taylor Hansen, minor children ("Trustee") and Jane Ann Taylor ("Jane").

W I T N E S S E T H: Whereas, as part of a divorce settlement agreement, and pursuant to the Judgment and Decree of Divorce dated February 1, 1996, and filed by the county clerk at David County on February 2, 1996 in Jane Ann Taylor Hansen vs. Marc Richard Hansen, Civil No. 954701212, ("Decree"), Settlor and Jane desire to establish an irrevocable trust for the use and benefit of their minor children, Krista Hansen and Taylor Hansen;

Now, Therefore, effective this ____ day of March, 1996, Trustor, Jane and Trustee hereby establish an irrevocable trust to provide as follows:

ARTICLE 1

Trust Estate. Trustor, desiring to establish an *in vivos* irrevocable trust does hereby give, convey, transfer and assign to Trustee 214,639 shares of common stock of Cambric Graphics, Ltd. ("Stock"), to hold, manage and distribute in accordance with the provisions of this trust agreement and Trustee accepts this transfer, assignment and designation in trust for the uses and purposes set forth in this trust agreement. Attached hereto as Exhibit A is the stock certificate issued by Cambric Graphics, Ltd for 214,639 shares of its common stock in the name of Marc Richard Hansen, Trustee in Trust for Krista Hansen and Taylor Hansen.

The Trust Estate shall also include cash and stock dividends, stock splits and intangibles of every kind and description which arise directly or indirectly from the ownership of said shares of stock.

ARTICLE 2

Voting Right. During the term of this trust prior to distribution to the beneficiaries hereof, Trustee shall be entitled to exercise voting rights over said stock.

ARTICLE 3

Dividends. Additional stock resulting from stock dividends, stock splits or other intangible rights associated with said common stock shall be retained by Trustee as part of the Trust Estate.

Cash dividends shall be immediately paid and distributed directly to the custodial parent or the guardian of Krista Hansen and Taylor Hansen.

ARTICLE 4

Successor Trustee. In the event that Trustee herein designated ceases or fails so to serve for any reason, including but not limited to death or disability, Jane shall become Trustee in his stead. In the event that Jane shall fail or shall cease to act as Trustee for any reason, Zions First National Bank shall act as substitute Trustee in her place.

ARTICLE 5

Disposition of the Trust Estate During the Term of the Trust.

The Stock and other property of the Trust Estate may not be encumbered, sold, transferred or otherwise disposed of without first obtaining the written consent of Jane, or

in the event of her prior death or disability, the legal guardian of Krista Hansen and Taylor Hansen during their minority or their respective consents after reaching the age of majority.

Subject to all of the foregoing provisions herein, the Trustee shall hold all of the Trust Estate solely for the use and benefit of Krista Hansen and Taylor Hansen. It is the desire of the Settlor and Jane to utilize the Trust assets for the sole and exclusive benefit of their two minor children, Krista Hansen and Taylor Hansen, to and including their respective 18th birthdays. Upon their respectively reaching the age of 18 years, Trustor and Jane desire that one-half of the assets then existing in the Trust Estate be allocated to each of the beneficiaries and utilized, in addition to necessary maintenance and medical and dental coverage, to assist them respectively, in their educational, trade school or LDS missionary experience needs. Payments or distributions to or for the benefit of the beneficiaries either before or after their reaching the age of 18 years shall not diminish in any way Settlor's obligation to pay child support under the Decree.

Upon the day that Krista reaches the age of 25 years, the assets of the Trust Estate allocated to her shall be directly, immediately and unconditionally distributed to her. Upon the day that Taylor reaches the age of 25 years, the assets of the Trust Estate allocated to him shall be directly, immediately and unconditionally distributed to him and this Trust shall terminate.

In the event that either Krista or Taylor shall not survive to the date of the termination of this Trust, his or her interest shall be immediately allocated to the survivor of Krista and Taylor. In the event that both of them shall die before reaching their 25th

75

birthday, all of the assets of the Trust Estate shall be immediately transferred to Jane and this Trust shall terminate.

ARTICLE 6

Powers of the Trustee. In addition to the powers specifically herein bestowed upon Trustee, Trustee shall have general trustee powers as provided by Utah statutes and regulations.

ARTICLE 7

Compensation of Trustee. The Trustee shall receive no compensation for his or her services in performing the duties of Trustee. If Zions First National Bank is appointed substitute trustee under the provisions hereof and of the Decree, it shall be entitled to reasonable compensation for so acting.

ARTICLE 8

Applicable Law. The validity and construction of this Trust Agreement and Declaration shall be controlled by the laws of the state of Utah.

ARTICLE 9

If the validity of any provision of this Trust Agreement shall be unenforceable, the remaining provisions, nevertheless, shall be carried into effect.

ARTICLE 10

Revocability. It is the intention of Settlor, Trustee and Jane that this Trust Agreement and Declaration shall be completely irrevocable; it is their mutual intention that Mark Richard Hansen shall, under no circumstances, retain a beneficial interest in the Trust assets or benefit personally in any way from the existence of the Trust.

ARTICLE 11

Trustee shall make an annual accounting to Jane in her capacity as guardian of Krista and Taylor as of December 31 of each year. Said accounting shall be provided to Jane not later than January 31 of each year.

IN WITNESS WHEREOF, the undersigned have executed this Irrevocable Trust Agreement and Declaration of Trust this _____ day of March, 1996.

Marc Richard Hansen, Settlor

Marc Richard Hansen, Trustee

Jane Ann Taylor Hansen

Tab G

MARC RICHARD HANSEN

IRREVOCABLE TRUST AGREEMENT AND DECLARATION OF TRUST

This Irrevocable Trust Agreement ("Agreement") and Declaration entered into by and between Marc Richard Hansen of Salt Lake City, Utah, ("Settlor"), Marc Richard Hansen as Trustee in Trust ("Trustee") for Krista Hansen and Taylor Hansen, minor children, and Jane Ann Taylor ("Jane"), who are sometimes referred to as "the Parties."

WHEREAS, the Settlement Agreement executed by Marc Richard Hansen and Jane Ann Taylor provided that 214,639 of the 429,278 shares of common stock in Cambric Graphics, Inc. held in the name of Marc Richard Hansen should be held in trust for the sole and exclusive use and benefit of Krista Hansen and Taylor Hansen; and

WHEREAS, the Judgment and Decree of Divorce entered on February 2, 1996 by the Second Judicial District Court of Davis County, State of Utah, in the divorce proceeding entitled *Jane Ann Taylor Hansen v. Marc Richard Hansen*, Civil No. 954701212, awarded to Marc Richard Hansen in his capacity as Trustee 214,637 shares of stock in Cambric Graphics, Inc. to hold and deal with as Trustee for the sole and exclusive use and benefit of Krista Hansen and Taylor Hansen pursuant to the terms of a Trust Agreement to be prepared, agreed to and executed by Marc Richard Hansen and Jane Ann Taylor;

NOW THEREFORE, the Parties enter this IRREVOCABLE TRUST AGREEMENT and, in consideration for the mutual promises contained herein and the terms of the Settlement Agreement and the Judgment and Decree of Divorce, hereby agree to the following terms and conditions

1. Conveyance of Stock. Settlor does hereby give, convey, transfer and assign to Trustee, and Trustee does hereby accept, 214,639 shares of common stock of Cambric Graphics, Inc. ("the Stock"), to hold, manage and distribute for the sole and exclusive use and benefit of Krista Hansen and Taylor Hansen pursuant to the terms of this Agreement. Attached hereto as Exhibit A is the stock certificate issued by Cambric Graphics, Inc. for 214,639 shares of its common stock in the name of Marc Richard Hansen, Trustee in Trust for Krista Hansen and Taylor Hansen.

2. Name of Trust. This trust shall be known as the Hansen Children's Trust.

3. Term. The Term of this Trust shall be from the date of this Agreement until the twenty-fifth birthday of Taylor Hansen, on January 21, 2018.

4. Powers of Trustee. During the term of the Trust, the Trustee shall have general trustee powers as provided by Utah statutes and regulations. Trustee may, in his discretion, exercise all of the voting rights associated with the Stock, sell or transfer the Stock, and invest all of the proceeds of the Stock, including but not limited to cash and stock dividends, stock splits, and intangibles of every kind and description which arise directly or indirectly from the ownership of the Stock, as Trust property for the sole and exclusive use and benefit of Krista Hansen and Taylor Hansen. Trustee shall pay any income taxes or other obligations arising from the Stock or other Trust property and may take such actions as he deems necessary and appropriate to preserve the Trust property for the use and benefit of Krista Hansen and Taylor Hansen.

5. Distributions. Trustee shall divide the Trust property into two equal shares, one-half for the use and benefit of Krista Hansen and one-half for the use and benefit of Taylor Hansen.

a) Trustee shall have discretion to retain or distribute to or for the benefit of Krista Hansen part or all of the principal and net income of the one-half portion of the Trust property set aside for Krista's use and benefit for Krista's health, education, welfare, mission for the Church of Jesus Christ of Latter Day Saints, and post-high school education. Trustee shall distribute the remainder, if any, of said one-half portion of the Trust property to Krista upon her twenty-fifth birthday, July 10, 2016. In the event Krista does not survive until July 10, 2016, the remainder of her one-half portion shall be distributed to her surviving children in equal shares or, if Krista leaves no surviving child, the remainder of her one-half portion shall be distributed to Taylor Hansen together with his one-half portion.

b) Trustee shall have discretion to retain or distribute to or for the benefit of Taylor Hansen part or all of the principal and net income of the one-half portion of the Trust property set aside for Taylor's use and benefit for Taylor's health, education, welfare, mission for the Church of Jesus Christ of Latter Day Saints, and post-high school education. Trustee shall distribute the remainder, if any, of said one-half portion of the Trust property to Taylor upon his twenty-fifth birthday, January 21, 2018. In the event Taylor does not survive until January 21, 2018, the remainder of his one-half portion shall be distributed to his surviving children in equal shares or, if Taylor leaves no

surviving child, the remainder of his one-half portion shall be distributed to Krista Hansen together with her one-half portion.

c) Annually Trustee shall add retained income to the principal of the trust. Trustee may, for federal income tax purposes, maintain one or more separate accounts reflecting retained income which has been added to principal.

d) The existence and terms of the Trust shall not limit or effect in any way the child support obligations of Trustee set forth in the Settlement Agreement and the Judgment and Decree of Divorce.

6. Annual Accountings. By March 31 of each year, the Trustee shall provide Jane Ann Taylor, in her capacity as guardian of Krista Hansen and Taylor Hansen, an accounting of the assets, liabilities, income and expenses of the Trust and all transactions and distributions made by the Trust during the preceding calendar year. Copies of the annual accounting shall be provided to each Beneficiary after the child reaches the age of eighteen years.

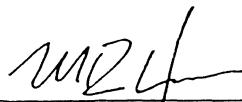
7. Successor Trustee. In the event that Trustee ceases or fails to serve as trustee for any reason, including but not limited to death or disability, Zions First National Bank shall act as substitute Trustee in his place. Neither the Trustee nor the Successor Trustee shall be required to provide any bond or other security.

8. Compensation of Trustee. The Trustee shall receive no compensation for his or her services in performing the duties of Trustee. If Zions First National Bank becomes substitute trustee under the provision of this Agreement and the Decree, it shall be entitled to reasonable compensation for its services.

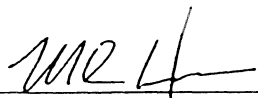
9. Applicable Law. The validity and construction of this Trust Agreement and Declaration shall be controlled by the laws of the state of Utah.

10. Severability. If the validity of any provision of this Trust Agreement shall be unenforceable, the remaining provisions shall be carried into effect in accordance with the Judgment and Decree of Divorce.

IN WITNESS WHEREOF, the undersigned have executed this Irrevocable Trust Agreement and Declaration of Trust this 7 day of ^{MAY}~~April~~, 1996.



Marc Richard Hansen, Settlor



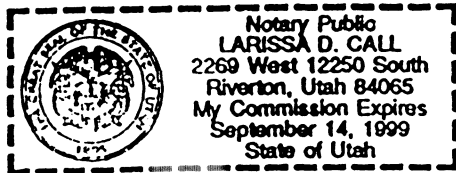
Marc Richard Hansen, Trustee

Approved and Agreed:

Jane Ann Taylor

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the 7th day of May, 1996, personally appeared before me Marc Richard Hansen, the signer of the above instrument, who duly acknowledged to me that he executed the same.



My Commission Expires:

9-14-99

Larissa D. Call
Notary Public

Residing at:

Salt Lake County, Utah

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the _____ day of _____, 1996, personally appeared before me Jane Ann Taylor, the signer of the above instrument, who duly acknowledged to me that she executed the same.

Notary Public

My Commission Expires:

Residing at:

MARC RICHARD HANSEN
IRREVOCABLE TRUST AGREEMENT AND DECLARATION OF TRUST

This Agreement and Declaration entered into this ____ day of March, 1996 by and between Marc Richard Hansen of Salt Lake City, Utah, ("Settlor"), Marc Richard Hansen as Trustee in Trust for Krista Hansen and Taylor Hansen, minor children ("Trustee") and Jane Ann Taylor ("Jane").

W I T N E S S E T H: Whereas, as part of a divorce settlement agreement, and pursuant to the Judgment and Decree of Divorce dated February 1, 1996, and filed by the county clerk at David County on February 2, 1996 in Jane Ann Taylor Hansen vs. Marc Richard Hansen, Civil No. 954701212, ("Decree"), Settlor and Jane desire to establish an irrevocable trust for the use and benefit of their minor children, Krista Hansen and Taylor Hansen;

Now, Therefore, effective this ____ day of March, 1996, Trustor, Jane and Trustee hereby establish an irrevocable trust to provide as follows:

ARTICLE 1

Trust Estate. Trustor, desiring to establish an *in vivos* irrevocable trust does hereby give, convey, transfer and assign to Trustee 214,639 shares of common stock of Cambric Graphics, Ltd. ("Stock"), to hold, manage and distribute in accordance with the provisions of this trust agreement and Trustee accepts this transfer, assignment and designation in trust for the uses and purposes set forth in this trust agreement. Attached hereto as Exhibit A is the stock certificate issued by Cambric Graphics, Ltd. for 214,639 shares of its common stock in the name of Marc Richard Hansen, Trustee in Trust for Krista Hansen and Taylor Hansen.

The Trust Estate shall also include cash and stock dividends, stock splits and intangibles of every kind and description which arise directly or indirectly from the ownership of said shares of stock.

ARTICLE 2

Voting Right. During the term of this trust prior to distribution to the beneficiaries hereof, Trustee shall be entitled to exercise voting rights over said stock.

ARTICLE 3

Dividends. Additional stock resulting from stock dividends, stock splits or other intangible rights associated with said common stock shall be retained by Trustee as part of the Trust Estate.

Cash dividends shall be immediately paid and distributed directly to the custodial parent or the guardian of Krista Hansen and Taylor Hansen.

ARTICLE 4

Successor Trustee. In the event that Trustee herein designated ceases or fails so to serve for any reason, including but not limited to death or disability, Jane shall become Trustee in his stead. In the event that Jane shall fail or shall cease to act as Trustee for any reason, Zions First National Bank shall act as substitute Trustee in her place.

ARTICLE 5

Disposition of the Trust Estate During the Term of the Trust.

The Stock and other property of the Trust Estate may not be encumbered, sold, transferred or otherwise disposed of without first obtaining the written consent of Jane, or

in the event of her prior death or disability, the legal guardian of Krista Hansen and Taylor Hansen during their minority or their respective consents after reaching the age of majority.

Subject to all of the foregoing provisions herein, the Trustee shall hold all of the Trust Estate solely for the use and benefit of Krista Hansen and Taylor Hansen. It is the desire of the Settlor and Jane to utilize the Trust assets for the sole and exclusive benefit of their two minor children, Krista Hansen and Taylor Hansen, to and including their respective 18th birthdays. Upon their respectively reaching the age of 18 years, Trustor and Jane desire that one-half of the assets then existing in the Trust Estate be allocated to each of the beneficiaries and utilized, in addition to necessary maintenance and medical and dental coverage, to assist them respectively, in their educational, trade school or LDS missionary experience needs. Payments or distributions to or for the benefit of the beneficiaries either before or after their reaching the age of 18 years shall not diminish in any way Settlor's obligation to pay child support under the Decree.

Upon the day that Krista reaches the age of 25 years, the assets of the Trust Estate allocated to her shall be directly, immediately and unconditionally distributed to her. Upon the day that Taylor reaches the age of 25 years, the assets of the Trust Estate allocated to him shall be directly, immediately and unconditionally distributed to him and this Trust shall terminate.

In the event that either Krista or Taylor shall not survive to the date of the termination of this Trust, his or her interest shall be immediately allocated to the survivor of Krista and Taylor. In the event that both of them shall die before reaching their 25th

birthday, all of the assets of the Trust Estate shall be immediately transferred to Jane and this Trust shall terminate.

ARTICLE 6

Powers of the Trustee. In addition to the powers specifically herein bestowed upon Trustee, Trustee shall have general trustee powers as provided by Utah statutes and regulations.

ARTICLE 7

Compensation of Trustee. The Trustee shall receive no compensation for his or her services in performing the duties of Trustee. If Zions First National Bank is appointed substitute trustee under the provisions hereof and of the Decree, it shall be entitled to reasonable compensation for so acting.

ARTICLE 8

Applicable Law. The validity and construction of this Trust Agreement and Declaration shall be controlled by the laws of the state of Utah.

ARTICLE 9

If the validity of any provision of this Trust Agreement shall be unenforceable, the remaining provisions, nevertheless, shall be carried into effect.

ARTICLE 10

Revocability. It is the intention of Settlor, Trustee and Jane that this Trust Agreement and Declaration shall be completely irrevocable; it is their mutual intention that Mark Richard Hansen shall, under no circumstances, retain a beneficial interest in the Trust assets or benefit personally in any way from the existence of the Trust.

ARTICLE 11

Trustee shall make an annual accounting to Jane in her capacity as guardian of Krista and Taylor as of December 31 of each year. Said accounting shall be provided to Jane not later than January 31 of each year.

IN WITNESS WHEREOF, the undersigned have executed this Irrevocable Trust Agreement and Declaration of Trust this ____ day of March, 1996.

Marc Richard Hansen, Settlor

Marc Richard Hansen, Trustee

Jane Ann Taylor Hansen

Tab H

LAW OFFICES
O'RORKE & GARDINER, LLC

SUITE 470
6995 UNION PARK CENTER
MIDVALE, UTAH 84047

PATRICIA A. O'RORKE

TELEPHONE (801) 569-3131
TELECOPIER (801) 569-3434

April 9, 1996

Pamela Martinson
VanCott, Bagely, Cornwall & McCarthy
50 South Main, Suite 1600
Salt Lake City, Utah 84144

Re: *Hansen v. Hansen*

Dear Pam:

I am writing with respect to the payments of alimony, child support, medical insurance, medical expenses, and child care expenses for the Hansens' children, and the draft trust agreement. I hope we can establish a more workable format for the parties to handle these expenses on an on-going basis without our involvement, and complete the trust agreement as soon as possible.

First, we need a functional method for Marc to deliver the monthly payment for alimony and child support. Jane moved from the address to which he was sending the checks and did not give him a forwarding address. Since then, he has been asked to deposit the support payments in an account at Merrill Lynch rather than mailing them to Jane. Marc mailed this month's check to Merrill Lynch at its office in downtown Salt Lake City. It would be more convenient to deposit the payments into an account with a bank which has branches in Draper or Sandy or to mail the payment to Jane at her current address. Marc requests that Jane or Keith or you deliver a letter to him telling him exactly where and how the payments should be made.

Second, the Decree provides for the parties to share the children's unreimbursed medical expenses equally. Marc requests that when Jane sends him a request for such payments, she provide a written statement listing the expenses and stating that they are necessary medical expenses incurred for the benefit of Krista and/or Taylor, with receipts reflecting the child who received the care, the treatment or diagnosis, and the name, address and telephone number of the doctor or health caregiver. Jane recently sent Marc a list of medical expenses showing a total owed by Marc of \$169.00. One of the invoices included a past due amount of \$62.00 with no description of who was treated and another \$15.00 charge had no receipt to back it up. I am enclosing Marc's check for \$130.51. He

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Pamela Martinson

4/9/96

Page 2

will send the remainder when Jane sends receipts. Perhaps you could give Jane a form to use so that this procedure is simplified.

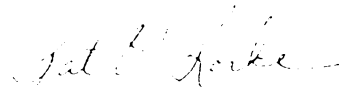
Third, the Decree provides for Marc to pay one-half of any child care expenses incurred by Jane as a result of her career, occupational training or employment. Jane sent Marc a request for child care payment without any of the verification required under the statute. Would you please ask Jane to provide a statement indicating her current employment or training program, the schedule, a statement indicating that the receipts are for child care expenses for Krista and/or Taylor incurred while she was employed or in training, and receipts for the expenses showing the child receiving the day care, the dates and times, and the name, address and telephone number of the child care provider. If she has a regular schedule and child care provider, perhaps Marc could make his 50% payment directly to the provider.

Fourth, the Decree provides for the health insurance premiums for the children to be deducted from the child support payments. The health insurance premiums for the children which are deducted from Marc's salary are \$87.56 per month. I am enclosing a copy of a memo from the Controller of Marc's employer verifying the amount. Beginning in June, Marc will deduct \$43.78 from the child support due each month. Rather than deducting the premiums for the prior five months, which amount to \$218.90, from the monthly payment, I suggest that this amount be deducted from the payment due to Jane in June, 1996. Please let me know your thoughts regarding this suggestion.

Finally, the draft trust agreement which Keith Taylor sent me diverged from the terms provided in the settlement agreement and Decree. I will send you a revised draft acceptable to Marc and me within a few days.

Thanks for your assistance in this matter.

Very truly yours,



Patricia A. O'Rourke

PAO:djd

Enclosures - As Stated

160

MARC R. HANSEN 09-89
900 S #210 298-6877
SALT LAKE CITY, UT 84111

1208

4/2 19 96

31 7941/3,740

Pay to the
Order of JANE TAYLOR

\$ 130⁵¹

ONE-HUNDRED AND THIRTY 3 ⁵¹/₁₀₀ Dollars

University
CREDIT UNION

MAIL PAYMENTS DEPOSITS TO
P.O. BOX 50025
SALT LAKE CITY, UTAH 84158-0025
3000 SOUTH 1300 EAST
SALT LAKE CITY, UTAH 84106

For

MRL

⑆324079416⑆7500 00640640⑈ 1208

substitute teacher
Davis School District

May 2, 1996
May 3, 1996
April 17, 1996
April 30, 1996
 $= 108 \div 2 = 54.00$

worked
American Stores

march 18, 1996
march 19, 1996
march 20, 1996
march 21, 1996
march 22, 1996
march 25, 1996
march 26, 1996
march 27, 1996
march 28, 1996
march 29, 1996

DATE: 05-06-1996
RECORDED BY: ac
TAX ID NUMBER:
RECEIPT AMOUNT: \$ 169.00
BALANCE DUE: \$ 0.00

$= 266 \div 2 = 133.00$

32996 B WAT 03-25:FF

(26.00)

032696 P THRU 3-25-1996

(40.00)

attended school
July 9, 1996
 $= 27 \div 2 = 13.50$

total = 202.50

RECEIPT		DATE <u>July 9, 1996</u>	No. <u>9585</u>
RECEIVED FROM <u>Sunshine Kids Daycare</u>			
ADDRESS <u>215 S 300 E</u>			
		DOLLARS \$	<u>27.00</u>
FOR <u>Twisted for July 10, 1996</u>			
YOUNG WORLD CHILD CARE			
ACCOUNT	HOW PAID	215 SOUTH 300 EAST	
<u>27.00</u>	<u>27.00</u>	UNIFORMS 0184010-296-2571	
<u>27.00</u>		BY <u>P. [Signature]</u>	