

1997

Juliette Turley v. Robert Walters Turley : Brief of Appellant

Utah Court of Appeals

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Rosemond G. Blakelock; Blakelock & Stringer; Attorneys for Appellee.

Don R. Peterson; Leslie W. Slaugh; Howard, Lewis & Petersen; Attorneys for Appellant.

DON R. PETERSEN and LESLIE W. SLAUGH, for: HOWARD, LEWIS & PETERSEN 12 0 East
3 00 North Provo, Utah 84 606 ATTORNEYS FOR APPELLANT

ROSEMOND G. BLAKELOCK, for: BLAKELOCK & STRINGER 37 East Center, 2nd Floor
Provo, Utah 84 606 ATTORNEYS FOR APPELLEE

Recommended Citation

Brief of Appellant, *Turley v. Turley*, No. 970020 (Utah Court of Appeals, 1997).
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UTAH COURT OF APPEALS
BRIEF

UTAH
COURT
OF
APPEALS

IN THE COURT OF APPEALS
OF THE STATE OF UTAH

DOCKET NO. 970020-CA

JULIETTE TURLEY,	:	
Plaintiff-Appellee,	:	Case No. 970020-CA
vs.	:	Oral Argument
	:	Priority 15
ROBERT WALTERS TURLEY,	:	
Defendant-Appellant.	:	

BRIEF OF APPELLANT

APPEAL FROM A FINAL ORDER OF THE FOURTH DISTRICT COURT OF
UTAH COUNTY, UTAH, THE HONORABLE HOWARD H. MAETANI

DON R. PETERSEN and
LESLIE W. SLAUGH, for:
HOWARD, LEWIS & PETERSEN
120 East 300 North
Provo, Utah 84606

ATTORNEYS FOR APPELLANT

ROSEMOND G. BLAKELOCK, for:
BLAKELOCK & STRINGER
37 East Center, 2nd Floor
Provo, Utah 84606

ATTORNEYS FOR APPELLEE

FILED
Utah Court of Appeals

APR 18 1997

Marilyn M. Branch
Clerk of the Court

IN THE COURT OF APPEALS
OF THE STATE OF UTAH

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DON R. PETERSEN and
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HOWARD, LEWIS & PETERSEN
120 East 300 North
Provo, Utah 84606

ATTORNEYS FOR APPELLANT

ROSEMOND G. BLAKELOCK, for:
BLAKELOCK & STRINGER
37 East Center, 2nd Floor
Provo, Utah 84606

ATTORNEYS FOR APPELLEE

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ROBERT WALTERS TURLEY,	:	
Defendant-Appellant.	:	

JURISDICTION

Jurisdiction is conferred on this Court by Utah Code Ann. § 78-2a-3(2)(i) (1996). The final judgment was entered December 4, 1996. (R. 190-83.¹) Mr. Turley filed his notice of appeal 30 days later, on January 3, 1997. (R. 194-93.) The notice of appeal was filed within 30 days of the entry of judgment and was therefore timely. Utah R. App. P. 4(a).

ISSUES PRESENTED

1. Where a divorce decree acknowledges the possibility that an obligor may lose his job but orders child support and alimony based on the current employment and provides that the child support and alimony will continue at those levels only so long as the obligor's income does not change, does the actual occurrence of the

¹ The documents in the trial court file are assembled in reverse chronological order. As a result, the pagination on each document is in reverse numerical order.

job loss constitute a change of circumstance justifying modification of the child support and alimony?

2. Where a divorce decree provides that "in the event the defendant's income does not terminate, the amounts paid for child support shall continue . . . , does the support obligation terminate when the income terminates?

Although an appellate court typically "reviews a trial court's modification determination for an abuse of discretion," Hill v. Hill, 841 P.2d 722, 724 (Utah Ct. App. 1992), the trial court's determination in this case involves solely an interpretation of the wording of the decree of divorce. The trial court treated the issue as having been presented by a motion for summary judgment. (R. 158.) The only issues presented involve the interpretation of the decree. "Since appellate courts are in as good a position as trial courts to interpret court rulings . . . , [this court] should review the trial court's interpretation of its order for correctness." Stevensen v. Goodson, 924 P.2d 339, 346 (Utah 1996).

DETERMINATIVE PROVISIONS

Appellant is not aware of any constitutional provisions, statutes, ordinances, rules, or regulations whose interpretation is determinative of the appeal.

STATEMENT OF THE CASE

A. Nature Of The Case. This is an appeal from a final order dismissing appellant's petition for modification of a divorce decree.

B. Course Of Proceedings And Disposition Below. The parties were divorced by a decree entered February 9, 1996. (R. 95-88.) On May 30, 1996, Mr. Turley filed his Verified Petition to Amend Decree of Divorce. (R. 122-119.) A trial on the petition was held October 10, 1996. (R. 159-58.) At the conclusion of trial, however, the parties stipulated that there was only one factual issue (a \$1,400.00 payment which is not at issue on this appeal), and agreed that Mrs. Turley's trial memorandum could be treated as a memorandum supporting summary judgment. (R. 158.) Mr. Turley responded to the "memorandum for summary judgment" (R. 168-64), and Mrs. Turley replied. (R. 173-69.)

The trial court entered its Memorandum Decision on November 15, 1996, finding the issues in favor of Mrs. Turley. (R. 182-77.) On December 4, 1996, the court entered its Findings of Fact, Conclusions of Law and Order granting Mrs. Turley's motion for summary judgment and dismissing Mr. Turley's petition for modification. (R. 190-83.)

C. Statement of Facts. On September 28, 1994, after 27 years of marriage, Mrs. Turley filed a complaint seeking a divorce from Mr. Turley. (R. 7-1.) At that time, Mr. Turley was employed

as President and CEO of Intermountain Farmers Association, but that position was terminated effective August 1, 1995. (R. 65.) Pursuant to his employment agreement with IFA, Mr. Turley's full income of \$123,198.00 per year continued through May 31, 1996, and IFA and Mr. Turley had tentatively contemplated ongoing compensation of one-fourth of that amount for four years. (Id.)

The divorce case was set for trial December 14, 1995, but the parties reached a stipulation which was approved by the court. (R. 85.) The formal documents implementing the stipulation and granting the decree of divorce were entered February 9, 1996. (R. 95-88, 103-96.)

Paragraph 7 of the Findings of Fact and Conclusions of Law entered in connection with the divorce acknowledged that Mr. Turley's income would terminate:

The defendant has represented to the Court that his income with Intermountain Farmers will terminate on May 31, 1996, at which time he will no longer receive income from Intermountain Farmers; however, it is reasonable that in the event the defendant's income does not terminate, the amounts paid for child support and alimony shall continue as set forth above. In the event the defendant's income, which has historically been \$181,000.00 per year, should be that amount, and whether he is employed with Intermountain Farmers Association or any other company, or has income in said amount, then alimony paid by the defendant to the plaintiff shall increase in the amount that child support decreases when the minor children reach their majority, but only so long as the defendant's income is based upon historical earnings of \$181,000.00 per year.

(R. 101.)

The Decree of Divorce similarly noted the anticipated termination of Mr. Turley's income. Paragraph 3 of the decree ordered Mr. Turley to pay \$1,300.00 per month as support for the two minor children. Paragraph 4 ordered Mr. Turley to pay \$1,500.00 per month as alimony. (R. 94.) Paragraph 7 of the decree made those payments conditional on Mr. Turley's continued employment:

The defendant's income from Intermountain Farmers will terminate on May 31, 1996, at which time he will no longer receive income from Intermountain Farmers; however, in the event the defendant's income does not terminate, the amounts paid for child support shall continue as set forth above. With respect to alimony, alimony shall increase in the amount that child support decreases when the minor children reach their majority, only so long as the defendant's income is based upon historical earnings of \$181,000.00 per year.

(R. 93.)

The \$9,583.00 per month Mr. Turley was receiving from IFA did terminate effective May 31, 1996. (R. 124.) Mr. Turley attempted to find other work, but at the time he filed his petition to modify, he was only earning approximately \$1,000.00 per month. (Id.) The trial court denied his requested modification, and Mr. Turley thereafter perfected this appeal.

SUMMARY OF ARGUMENT

The parties' divorce decree noted that Mr. Turley's income would terminate only a few months after entry of the decree. Rather than attempting to predict the future, the divorce decree

made an award of alimony and child support based on Mr. Turley's then current income and provided that the alimony and child support would continue at those levels until the income terminated. Implied in the decree was the expectation that a modification would need to occur when Mr. Turley's post-IFA income became known.

The trial court dismissed Mr. Turley's petition for modification based on the rule that a decree may be modified only upon proof of a substantial change in circumstances not contemplated at the time of the decree. Although Mr. Turley's loss of income was known at the time of the decree, the decree did not contemplate or account for the actual level of the reduced income. The decree must be read to give effect to all of its terms. Those terms include provisions that the alimony and child support will continue only so long as Mr. Turley's income continued at the IFA levels. The only internally consistent interpretation of the divorce decree is that the divorce decree anticipated the need for a future hearing after Mr. Turley's income became known.

ARGUMENT

POINT I

MR. TURLEY'S INABILITY TO EARN HIS PRIOR LEVEL OF INCOME WAS NOT A CIRCUMSTANCE CONTEMPLATED BY THE DECREE OF DIVORCE.

Utah Code Ann. § 30-3-5(3) (1995) vests a divorce court with "continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the

children and their support . . . as is reasonable and necessary." A prerequisite to invoking the divorce court's continuing jurisdiction is proof of "a substantial change of circumstances subsequent to the decree, that was not originally contemplated within the decree itself." Woodward v. Woodward, 709 P.2d 393, 394 (Utah 1985). The trial court employed this principle to hold that because Mr. Turley's potential loss of income was known and in fact stated in the decree of divorce, Mr. Turley must continue to pay \$2,800.00 in child support and alimony as though he were earning over \$9,000.00 per month, although his current income is around \$1,000.00 per month. This is obviously not fair nor was it contemplated by the parties or the court at the time of the divorce decree.

The understanding of the parties and the divorce court is best represented in paragraph 7 of the Findings of Fact and Conclusions of Law, which states:

The defendant has represented to the Court that his income with Intermountain Farmers will terminate on May 31, 1996, at which time he will no longer receive income from Intermountain Farmers; however, it is reasonable that in the event the defendant's income does not terminate, the amounts paid for child support and alimony shall continue as set forth above. In the event the defendant's income, which has historically been \$181,000.00 per year, should be that amount, and whether he is employed with Intermountain Farmers Association or any other company, or has income in said amount, then alimony paid by the defendant to the plaintiff shall increase in the amount that child support decreases when the minor children reach their majority, but only so long as the defendant's

income is based upon historical earnings of
\$181,000.00 per year.

(R. 101.)

In other words, the divorce court noted the probable future loss of income, but declined to forecast the future and explicitly decided only what support would be based on present income. This approach is consistent with Utah law. In MacLean v. MacLean, 523 P.2d 862 (Utah 1974), the trial court anticipated that the wife would gain employment and that her need for alimony would be reduced. The trial court attempted to anticipate the probable employment by reducing alimony 5% each year. The Utah Supreme Court rejected such an attempt to divine the future and counseled: "We deem it best that the changes in alimony either downward or upward should be left to future determinations by the court under its continuing jurisdiction." 523 P.2d at 863.

The divorce court in the instant matter did just what the MacLean court advised. The court set alimony and child support based on the only facts which were known, which was the income at the time of the decree. The court also specifically stated that these amounts would continue only so long as the income continued.

The decisions relied upon by the trial court and Mrs. Turley below do not support the dismissal of Mr. Turley's petition to modify. In Durfee v. Durfee, 796 P.2d 713 (Utah Ct. App. 1990), the trial court found that the husband's income had increased by \$16,000.00 over the ten years following the divorce. The husband characterized the increase as modest and argued that such an

increase would have been clearly "contemplated" by the parties at the time of the decree. The Court of Appeals rejected that argument and stated:

The fact that the parties may have anticipated an increase of income in their own minds or in their discussions does not mean that the decree itself contemplates the change. In order for a material change in circumstances to be contemplated in a divorce decree, there must be evidence, preferably in the form of a provision within the decree itself, that the trial court anticipated the specific change.

796 P.2d at 716. The Durfee court illustrated this quotation by citation to Dana v. Dana, 789 P.2d 726 (Utah Ct. App. 1990). In that case, the trial court anticipated that the wife, who earned \$3,000.00 the year prior to the divorce, would soon earn approximately \$10,000.00 to \$12,000.00 per year in gross income. Four years after the divorce, the wife actually was earning \$17,000.00 per year in gross income. The Court of Appeals held that because part of this increase was contemplated at the time of the divorce, the actual increased income was only \$5,000.00 to \$7,000.00 for purposes of determining whether a substantial change in circumstances had occurred. 789 P.2d at 729.

These cases actually support Mr. Turley's position. The rule established by these cases is that where a trial court makes a support order *which is intended to account for* anticipated future changes, the actual occurrence of those anticipated changes will not constitute a "substantial change of circumstances." The decree

in the instant case did not "contemplate" the loss by making a support order which would account for the future income loss.

Moore v. Moore, 872 P.2d 1054 (Utah Ct. App. 1994), also fails to support the position of Mrs. Turley in the trial court below. The court held in that case that the initial support amounts were set based on an expectation that the wife would soon be employed as a school teacher. The court accordingly held that the wife's actually obtaining that employment was not a substantial change in circumstances.²

The decree in the instant case expressly acknowledges that Mr. Turley's income from his then current employer would end, but the parties did not know nor did the divorce court forecast what his income would be thereafter. The divorce decree does not, therefore, *contemplate* or account for the future income. To the contrary, the decree expressly contemplates income at the level of the decree. Mr. Turley does not now earn that level of income, and the trial court's order dismissing his petition to modify the decree must be reversed.

² Part of the rationale of Moore squarely conflicts with the holding in Durfee. The Moore court based its holding on evidence that "[a]t the time the decree was entered, the parties had discussed Mrs. Moore's plan to recertify as a school teacher or to obtain a Master's degree in sociology." 872 P.2d at 1055 (underlining added). In Durfee, the court disapproved relying on the parties' discussions. The Durfee court stated: "The fact that the parties may have anticipated an increase of income in their own minds or in their discussions does not mean that the decree itself contemplates the change." 796 P.2d at 716.

POINT II

THE DIVORCE DECREE AND SUPPORTING FINDINGS PROVIDE THAT SUPPORT WAS TO CONTINUE ONLY AS LONG AS MR. TURLEY WAS EARNING \$181,000 PER YEAR.

The issue in the instant case is not whether the change in circumstances was contemplated. The parties and court clearly knew at the time of the divorce decree that Mr. Turley's income would terminate only a few months after the decree. The parties did not know what his income would then be. Rather, the issue in this case is whether the initial divorce decree provided that Mr. Turley's \$2,800.00-per-month support obligation would continue even after his income stopped. The interpretation of the decree is a question of law and is reviewed by this Court for correctness. Stevensen v. Goodson, 924 P.2d 339, 346 (Utah 1996). The same rules of construction apply as for any written instrument. Bettinger v. Bettinger, 793 P.2d 389, 391 (Utah Ct. App. 1990). The decree must be interpreted in a way to give effect to each of its provisions. W. & G. Co. v. Redevelopment Agency of Salt Lake City, 802 P.2d 755, 769 (Utah Ct. App. 1990). To the extent that the language in the decree is ambiguous or confusing, "the entire record may be resorted to for the purpose of construing the judgment." Bettinger, supra, (quoting Park City, Utah Corp. v. Ensign Co., 586 P.2d 446, 450 (Utah 1978)).

Application of these rules supports only one conclusion: The divorce decree provided that its support provisions would continue only so long as Mr. Turley was still earning \$181,000.00 per year.

Paragraph 7 of the decree provides that the child support shall continue "in the event the defendant's income does not terminate." The corollary of the statement is that the child support will not continue if defendant's income terminated. While not as clear as for child support, the same paragraph also indicates that ongoing alimony is contingent upon defendant's income remaining at \$181,000.00 per year.

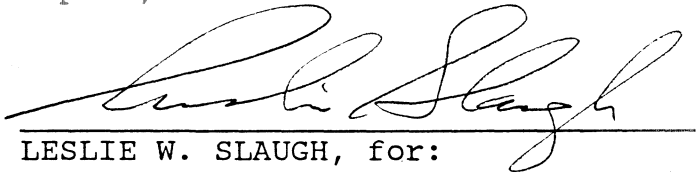
Any uncertainty in the intent of the divorce decree is dispelled by reference to paragraph 7 of the divorce court's findings. (R. 101, quoted above in the Statement of Facts.) If the decree contemplates what Mrs. Turley claims, that Mr. Turley's \$2,800 monthly support obligation was to continue even after he lost his income, then the findings do not support the decree. The findings unambiguously state that "it is reasonable that in the event defendant's income does not terminate, the amounts paid for child support and alimony shall continue as set forth above." This Court should reject any interpretation of the decree which causes to decree to be unsupported by the findings.

The only interpretation of the divorce decree which gives effect to all of its terms and which makes sense in light of the findings is that the support obligations were to continue only so long as Mr. Turley continued to earn \$181,000.00 per year. That income stream has now ended. Mr. Turley is now entitled to a reduction of his support obligations commensurate with his current income.

CONCLUSION

The divorce decree and the supporting findings must be read to require payment of alimony and child support at the divorce decree levels only so long as Mr. Turley's income remained at the same level. Although the divorce decree acknowledges the possibility that his income would terminate, the support awards do not "contemplate" the reduced income; the decree does just the opposite. The decree contemplates, i.e., is based on, an income of \$181,000.00 per year. Mr. Turley has experienced a substantial change of circumstances from those "contemplated" by the decree of divorce and is entitled to modification of the decree. The trial court's dismissal of his petition for modification must be reversed.

DATED this 18th day of April, 1997.

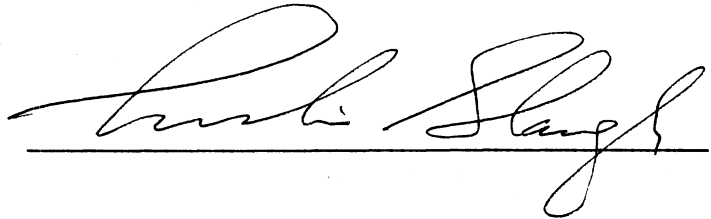


LESLIE W. SLAUGH, for:
HOWARD, LEWIS & PETERSEN
Attorneys for Defendant-Appellant

MAILING CERTIFICATE

I hereby certify that two true and correct copies of the foregoing were mailed to the following, postage prepaid, this 18th day of April, 1997.

Rosemond G. Blakelock, Esq.
Blakelock & Stringer
37 East Center, 2nd Floor
Provo, UT 84606

A handwritten signature in cursive script, appearing to read "Rosemond G. Blakelock", is written over a horizontal line.

J:\LWS\TURLEY.BRF

APPENDIX "A"

Findings of Fact, Conclusions of Law and Order
(R. 190-183)

Rosemond Blakelock #6183
BLAKELOCK AND STRINGER, P.A.
Attorney(s) for Plaintiff
37 East Center, 2nd Floor
Provo, Utah 84606
Telephone: (801) 375-7678

FILED
1996 OCT -4 AM 11:21

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IN THE FOURTH DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

JULIETTE TURLEY,

Plaintiff,

v.

ROBERT WALTERS TURLEY,

Defendant.

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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

Case No. 944402269

Judge Howard Maetani

This matter came before the Court for trial on October 10, 1996. Plaintiff Juliette Turley was present and represented by counsel Rosemond Blakelock. Defendant Robert Walters Turley was present and represented by counsel Don R. Petersen.

The Court granted the parties 10 days to submit their proposed Findings of Fact and Conclusions of Law and 5 days to submit replies. No Findings of Fact and Conclusions of Law were submitted. However, Defendant submitted a Memorandum in Opposition to Plaintiff's Motion for Summary Judgement on October 23, 1996, and Plaintiff submitted a response to Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment on October 28, 1996. Plaintiff then brought the matter before the Court on October 28, 1996, when Plaintiff filed a Motion to Submit.

The Court having heard the testimony of witnesses, considered

the exhibits and arguments of counsel, reviewed the submitted documents, and being fully advised in the premises, now makes the following:

FINDINGS OF FACT

1. The Court finds that the Plaintiff and Defendant were divorced on February 9, 1996.

2. The Court finds that the divorce was granted pursuant to stipulation.

3. The Court finds that paragraph 4 of the Divorce Decree sets out that the Defendant is to pay the Plaintiff alimony in the sum of \$1,500.00 per month for the Plaintiff's support and maintenance. the sum is to be paid in semi-monthly installments of \$750.00 each to be paid on the 5th and 20th of each month.

4. The Court finds that paragraph 3 of the divorce decree sets out that the Defendant is to pay the Plaintiff child support in the sum of \$1,300.00 per month for support and maintenance of the two minor children. Child support is to continue until the minor children reach the age of 18 years of graduate from high school with their normal matriculated class, whichever occurs last.

5. The Court finds that paragraph 7 of the divorce decree states:

The defendant's income from Intermountain Farmers will terminate on May 31, 1996, at which time he will no longer receive income from Intermountain farmers; however, in the event the defendant's income does not terminate, the amounts paid for child support shall continue as set forth above. With respect to alimony, alimony shall increase in the amount that child support decreases when the minor children reach their majority, only so long as the defendant's income is based upon

historical earnings of \$181,000.00 per year.

6. The Court finds that the Defendant has applied to modify the amount of alimony.

Based upon the forgoing Findings of Fact the Court now makes the following;

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties in this action and over the subject matter of this action.

2. The Court has "continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties. Utah Code Ann. §30-3-5(3).

3. Concerning the circumstances under which a court may modify a divorce decree, the Utah Court of Appeals stated, "On a petition for a modification of a divorce decree, the threshold requirement for relief is a showing of a substantial change of circumstances occurring since the entry of the decree and not contemplated in the decree itself. Durfee v. Durfee, 796 P.2d 713, 716 (Utah App. 1990) (emphasis added) (quoting Stettler v. Stettler, 713 P.2d 699, 701 (Utah 1985)). Therefore, in addition to finding there was a substantial change of circumstance, the Court must also determine if the change of circumstance was contemplated at the time of the divorce decree.

4. The decree of divorce specifically states:

The defendant's income from Intermountain Farmers will terminate on May 31, 1996, at which time he will no longer

receive income from Intermountain farmers; however, in the event the defendant's income does not terminate, the amounts paid for child support shall continue as set forth above. With respect to alimony, alimony shall increase in the amount that child support decreases when the minor children reach their majority, only so long as the defendant's income is based upon historical earnings of \$181,000.00 per year.

The language of the divorce decree is plain on its face. The parties did contemplate the fact that the Defendant could lose his income from Intermountain Farmers. Paragraph 7 of the divorce decree specifically addresses this contingency. It states that if the Defendant's income does not terminate, that the child support will continue as set out in the decree. The divorce decree at paragraph 7 states that Plaintiff's income from Intermountain Farmers will terminate on May 31, 1996. This statement is clear evidence that the parties knew the Plaintiff would lose his employment.

This paragraph when taken in whole plainly indicates the fact the Defendant would lose his income from Intermountain Farmers was contemplated and contingencies for child support were included in the document. Paragraph 7 particularly explicitly refers to the termination of his employment, yet there is nothing in the decree indicating agreement to alter alimony when this happened. Defendant argues that paragraph 7 contemplates a reduction in child support upon termination of the employment. Defendant argues that the language indicating that child support would not decrease indicates an agreement to reduce the child support on the termination of the Defendant's employment with Intermountain farmers. The fact that child support may or may not have been anticipated as being modified is not dispositive in this case. The

alimony and child support provisions are handled in separate paragraphs. The Court therefore must address them separately. The fact that a reduction in child support may have been anticipated does not affect the question of alimony. See Moore v. Moore, 872 P.2d 1054, 1055-56 (Utah App. 1994).

5. In Moore v. Moore, the Utah Court of Appeals held that a change in income is not a substantial change if the change was anticipated at the time the divorce decree was entered. The Court said, "The trial court further determined that Mrs. Moore's employment and stable income constituted a substantial change in material circumstances. However, the Court in its own findings makes clear that this circumstance was also contemplated at the time the decree was entered.... Id., at 1056. The Court went on to say:

The fact that Mrs. Moore presently has a stable income cannot be considered a change in circumstances. The parties obviously contemplated that Mrs. Moore would earn approximately \$ 1300 at the time the divorce decree was entered. Mrs. Moore's stable level of income was anticipated at the time of the divorce when the original alimony award was set. Thus, the court incorrectly determined that Mrs. Moore's present, stable income was a substantial change in her material circumstances.

In sum, the court's findings do not support a determination that a substantial change in material circumstances not contemplated at the time of the entry of the original decree has occurred. We therefore reverse the court's determination of a substantial change in circumstances and remand for a reinstatement of the original \$ 1050 alimony award.

The case at bar is similar in that the parties obviously knew the Plaintiff's employment was going to terminate in May and knew his income would change. This event was anticipated and contemplated by the parties yet they did not take account of this in setting alimony.

6. In addition, the Court in Moore faced an issue of child support. The divorce decree said that the child support obligation ceased when the children reached majority. Mr. Moore petitioned to terminate the alimony obligation because the children had all become emancipated and Mrs. Moore had a stable income. The Utah Court of Appeals did not reach the merits of whether a child reaching majority constituted a substantial change in circumstances saying, "It was certainly a circumstance that was contemplated at the time the decree was entered. Id. at 1055. This Court therefore does not decide if the change in Defendant's income is a substantial, material change in circumstances as this change was undoubtedly contemplated at the time the divorce decree was entered.

7. For the above stated reasons, the Court finds no grounds for modification of the divorce decree based on changed circumstances contemplated at the time the divorce decree was entered. The divorce decree explicitly refers to the fact that the Defendant would lose his income from Intermountain Farmers. Thus the Court cannot now alter the decree.

8. Each party should pay their own attorney's fees and costs in this matter.

BASED upon the foregoing Findings of Fact and Conclusions of Law, and for good cause appearing, the Court issues the following;

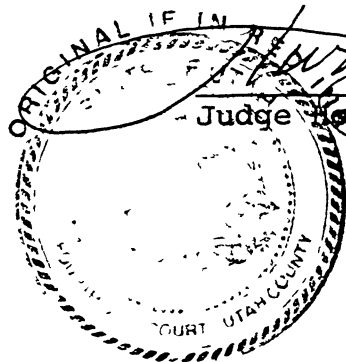
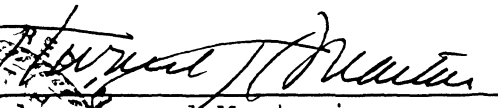
ORDER

1. The Plaintiff's Motion for Summary Judgment is granted, and ~~the~~ Petition for Modification is hereby dismissed with prejudice.

2. The Court cannot now alter the decree of divorce.

3. Each party shall pay their own attorney's fees and costs in this ~~matter~~.

DATED this 2 day of December, 1996.

 ORIGINAL IF IN

Judge Edward Maetani

APPROVED AS TO FORM:


Don R. Petersen, Esq.

NOTICE TO DEFENDANT'S ATTORNEY

TO: Don Petersen
120 East 300 North
Provo, Utah 84606

You will please take notice that he undersigned attorney for Plaintiff will submit the above and foregoing Order to the Honorable Howard Maetani for his signature, upon the expiration of five (5) days from the date of this Notice, plus three (3) days for mailing, unless written objection is filed prior to that time, pursuant to Rule 4-504 of the Rules of Judicial Administration of the State of Utah.

DATED this 22 day of November, 1996.


ROSEMOND G. BLAKELOCK
Attorney for Plaintiff

APPENDIX "B"

Memorandum Decision
(R. 182-177)

11-15-96 *RLC* *Denier*

**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

JULIETTE TURLEY,

Plaintiff,

v.

ROBERT WALTERS TURLEY,

Defendant.

MEMORANDUM DECISION

Case No. 944402269
Judge Howard H. Maetani

This matter came before the Court for trial on October 10, 1996. Plaintiff Juliette Turley was present and represented by counsel Rosemond Blakelock. Defendant Robert Walters Turley was present and represented by counsel Don R. Petersen.

The Court granted the parties 10 days to submit their proposed Findings of Fact and Conclusions of Law and 5 days to submit replies. No Findings of Fact and Conclusions of Law were submitted. However, Defendant submitted a Memorandum in Opposition to Plaintiff's Motion for Summary Judgement on October 23, 1996 and Plaintiff submitted a response to Defendants Memorandum in Opposition to Plaintiff's Motion for Summary Judgement on October 28, 1996. Plaintiff then brought the matter before the court on October 28, 1996 when Plaintiff filed a Motion to Submit.

The Court, having heard the testimony of witnesses, considered the exhibits and arguments of counsel, reviewed the submitted documents, and being fully advised in the premises now makes the following:

Memorandum Decision

Findings of Fact

1. The Plaintiff and Defendant were divorced on February 9, 1996.
2. The divorce was granted pursuant to stipulation.
3. Paragraph 4 of the divorce decree sets out that the Defendant is to pay the Plaintiff alimony in the sum of \$1,500.00 per month for the Plaintiff's support and maintenance. This sum is to be paid in semi-monthly installments of \$750.00 each to be paid on the 5th and 20th days of each month.
4. Paragraph 3 of the divorce decree sets out that the Defendant is to pay to the Plaintiff child support in the sum of \$1,300.00 per month for support and maintenance of the two minor children. Child support is to continue until the minor children reach the age of 18 years or graduate from high school with their normal matriculated class, whichever occurs last.
5. Paragraph 7 of the divorce decree states:

The defendant's income from Intermountain Farmers will terminate on May 31, 1996, at which time he will no longer receive income from Intermountain Farmers; however, in the event the defendant's income does not terminate, the amounts paid for child support shall continue as set forth above. With respect to alimony, alimony shall increase in the amount that child support decreases when the minor children reach their majority, only so long as the defendant's income is based upon historical earnings of \$181,000.00 per year.
6. Defendant has applied to modify the amount of alimony.

Conclusions of Law

1. This Court has jurisdiction over the parties to this action and over the subject matter of this action.

2. The Court has “continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties. Utah Code Ann. §30-3-5(3).

3. Concerning the circumstances under which a court may modify a divorce decree, the Utah Court of Appeals stated, “On a petition for a modification of a divorce decree, the threshold requirement for relief is a showing of substantial change of circumstances occurring since the entry of the decree and not contemplated in the decree itself.” *Durfee v. Durfee*, 796 P.2d 713, 716 (Utah App. 1990)(quoting *Stettler v. Stettler*, 713 P.2d 699, 701 (Utah 1985). Therefore, in addition to finding there was a substantial change of circumstance, the Court must also determine if the change of circumstance was contemplated at the time of the divorce decree.

4. The decree of divorce specifically states:

The defendant’s income from Intermountain Farmers will terminate on May 31, 1996, at which time he will no longer receive income from Intermountain Farmers; however, in the event the defendant’s income does not terminate, the amounts paid for child support shall continue as set forth above. With respect to alimony, alimony shall increase in the amount that child support decreases when the minor children reach their majority, only so long as the defendant’s income is based upon historical earnings of \$181,000.00 per year.

The language of the divorce decree is plain on its face. The parties did contemplate the fact the Defendant could lose his income from Intermountain Farmers. Paragraph 7 of the divorce decree specifically addresses this contingency. It states that if the Defendant’s income does not terminate, that the child support will continue as set out in the decree. The divorce decree in paragraph 7 states that Plaintiff’s income from Intermountain Farmers will terminate on May 31, 1996. This statement is clear evidence that the parties knew the Plaintiff would lose his employment.

This paragraph when taken in whole plainly indicates the fact the Defendant would

lose his income from Intermountain Farmers was contemplated and contingencies for child support were included in the document. Paragraph 7 particularly explicitly refers to the termination of his employment, yet there is nothing in the decree indicating agreement to alter alimony when this happened. Defendant argues that paragraph 7 contemplates a reduction in child support upon termination of the employment. Defendant argues that the language indicating that child support would not decrease indicates an agreement to reduce the child support on the termination of Defendant's employment with Intermountain Farmers. The fact that child support may or may not have been anticipated as being modified is not dispositive in this case. The alimony and child support provisions are handled in separate paragraphs. The Court therefore must address them separately. The fact that a reduction in child support *may* have been anticipated does not affect the question of alimony. *See Moore v Moore*, 872 P 2d 1054, 1055-56 (Utah App 1994).

5. In *Moore v Moore*, the Utah Court of Appeals held that a change in income is not a substantial change in circumstances if the change was anticipated at the time the divorce decree was entered. The court said, "The trial court further determined that Mrs. Moore's employment and stable income constituted a substantial change in material circumstances. However, the court in its own findings makes clear that this circumstance was also contemplated at the time the decree was entered." *Id.* at 1056. The court went on to say

The fact that Mrs. Moore presently has a stable income cannot be considered a change of circumstances. The parties obviously contemplated that Mrs. Moore would earn approximately \$1,300 at the time the divorce decree was entered. Mrs. Moore's stable level of income was anticipated at the time of the divorce when the original alimony award was set. Thus, the court incorrectly determined that Mrs. Moore's present, stable income was a substantial change in her material circumstances.

In sum, the court's findings do not support a determination that a substantial change in material circumstances not contemplated at the time of the entry of the original decree

has occurred. We therefore reverse the court's determination of a substantial change in circumstances and remand for a reinstatement of the original \$1050 alimony award. *Id.* at 1056.

The case at bar is similar in that the parties obviously knew the Plaintiff's employment was going to terminate in May and knew his income would change. This event was anticipated and contemplated by the parties yet they did not take account of this in setting the alimony.

6. In addition, the court in *Moore* faced an issue of child support. The divorce decree said that the child support obligation ceased when the children reached majority. Mr. Moore petitioned to terminate the alimony obligation because the children had all become emancipated and Mrs. Moore had a stable income. The Utah Court of Appeals did not reach the merits of whether a child reaching majority constituted a substantial change in circumstances saying, "It was certainly a circumstance that was contemplated at the time the decree was entered." *Id.* at 1055. This court therefore does not decide if the change in Defendants income is a substantial, material change in circumstances as this change was undoubtedly contemplated at the time the divorce decree was entered.

7. For the above stated reasons, the Court finds no grounds for modification of the divorce decree based on changed circumstances contemplated at the time the divorce decree was entered. The divorce decree explicitly refers to the fact the Defendant would lose his income from Intermountain Farmers. Therefore, this Court cannot now alter the decree.

8. Each party is to pay their own attorney's fees and costs in this matter.

9. Attorney for Plaintiff is to prepare an Order in accordance with the above Memorandum Decision, and submit it to the Court for signature.

Dated this 15 day of November, 1996.

BY THE COURT:


HOWARD H. MAETANI
District Court Judge

cc:

Rosemond Blakelock, Esq.
Don R. Petersen, Esq.

APPENDIX "C"

Findings of Fact and Conclusions of Law
(R. 103-96)

FILED
CLERK OF DISTRICT COURT

1996 FEB -9 AM 10:36

JK

DON R. PETERSEN (2576), for:
HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 East 300 North Street
P O. Box 778
Provo, Utah 84603
Telephone: (801) 373-6345
Facsimile: (801) 377-4991

Our File No. 22,905

Attorneys for Defendant

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

<p>JULIETTE TURLEY,</p> <p>Plaintiff,</p> <p>vs.</p> <p>ROBERT WALTERS TURLEY,</p> <p>Defendant.</p>	<p>FINDINGS OF FACT AND CONCLUSIONS OF LAW</p> <p><i>944457269</i></p> <p>Case No. 91440002</p> <p>Judge Howard H. Maetani</p>
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The above-entitled matter came on regularly for trial on December 14, 1995. The plaintiff appeared in person and was represented by her attorney, Rosemond Blakelock; the defendant appeared in person and was represented by his attorney, Don R. Petersen. The parties entered into a stipulation, which was presented to the Court and approved. The Court being fully advised in the premises, now makes and enters the following:

FINDINGS OF FACT

1. The plaintiff and defendant were married on May 31, 1967, in Salt Lake City, Salt Lake County, Utah.

2. During the course of the marriage, the parties have experienced irreconcilable differences making it impossible for them to continue their marriage relationship.

3. The parties have two minor children, to-wit: Christine Turley, born March 6, 1979; and Brian Judd Turley, born January 14, 1982.

4. The plaintiff and defendant are both responsible individuals fit to be awarded the care, custody and control of the minor children of the parties. It is, therefore, reasonable and proper that the plaintiff and defendant be awarded joint custody of the minor children, with the plaintiff being awarded residential and physical custody of the children and the defendant being awarded reasonable rights of visitation.

5. It is reasonable and proper that the defendant pay to the plaintiff child support in the sum of \$1,300.00 per month for support and maintenance of the two minor children. Child support shall continue until the minor children reach the age of 18 years or graduate from high school with their normal matriculated class, whichever occurs last. Support payments shall be made by automatically transferring funds from the defendant's bank account to Zions First National Bank, 2100 South 900 West, Salt Lake City, Utah, account number 07346943, into plaintiff's bank account at Bank of American Fork, Alpine Branch, Alpine, Utah, account number 0186452; \$650.00 on the 5th day of each month and \$650.00 on the 20th day of each month.

6. It is reasonable and proper that the defendant pay to the plaintiff alimony in the sum of \$1,500.00 per month for the plaintiff's support and maintenance.

7. The defendant has represented to the Court that his income with Intermountain Farmers will terminate on May 31, 1996, at which time he will no longer receive income from Intermountain Farmers; however, it is reasonable that in the event the defendant's income does not terminate, the amounts paid for child support and alimony shall continue as set forth above. In the event the defendant's income, which has historically been \$181,000.00 per year, should be that amount, and whether he is employed with Intermountain Farmers Association or any other company, or has income in said amount, then alimony paid by the defendant to the plaintiff shall increase in the amount that child support decreases when the minor children reach their majority, but only so long as the defendant's income is based upon historical earnings of \$181,000.00 per year.

8. It is reasonable and proper that the plaintiff be awarded all right, title and interest in and to the family home of the parties located at approximately 1221 North Grove Drive, Alpine, Utah, subject to the obligation owed thereon to Lomas Mortgage Company in the approximate amount of \$20,000.00, which obligation the plaintiff shall assume and shall hold the defendant harmless therefrom. Said property consists of a home and approximately 1.1 acres. Subject to an easement on the south side of the property in favor of the defendant or his successors in interest by which to gain access to the barn and property located thereon, said access shall be 24 feet in width. The defendant shall forthwith execute a quit claim deed conveying his interest in said property to the plaintiff.

9. It is reasonable and proper that the plaintiff be awarded all right, title and interest in and to a cabin in which the parties have an interest located in proximity to the Smith Moorehouse Reservoir in Summit County, Utah.

10. It is reasonable and proper that the defendant be awarded approximately 3.89 acres of property located on the east and west sides of the home property awarded to the plaintiff. The property shall be subject to an easement on behalf of the plaintiff which will allow the plaintiff and her successors in interest to traverse over and obtain access to the plaintiff's property. It is further reasonable and proper that the defendant may develop or sell the property awarded to him, but he will not live on the property in the event a home is built on the property. The dimensions of the easement are the road as presently used and occupied.

11. It is reasonable and proper that the defendant be awarded all right, title and interest in and to the Fountain Green property consisting of approximately 6.80 acres.

12. It is reasonable and proper that the defendant be awarded all right, title and interest in the real property located in Mexico.

13. It is reasonable and proper that the defendant be awarded all right, title and interest in and to the retirement plan he has accumulated at his place of employment, Intermountain Farmers Association, commonly known as Intermountain Farmers Association 401K Retirement Plan.

14. It is reasonable and proper that the defendant be awarded all right, title and interest in and to the radio station with call letters KTUR, consisting of stock, real property and

personal property. The defendant shall assume all obligations associated with said radio station and hold the plaintiff harmless therefrom.

15. It is understood that some or all of the real property being awarded to the plaintiff and the defendant may be held in a family trust. The plaintiff and defendant shall direct the trustee of the trust to take all actions necessary so the properties are divided as set forth herein.

16. It is reasonable and proper that the plaintiff assume the following debts and obligations and shall hold the defendant harmless therefrom: Discover credit card in the approximate amount of \$2,000.00; MasterCard in the approximate amount of \$2,000.00; and Visa credit card in the approximate amount of \$2,000.00, held in her name.

17. It is reasonable and proper that the defendant pay to the plaintiff the sum of \$1,000.00 for attorney fees, said sum to be paid on or before May 31, 1996.

18. It is reasonable and proper that the defendant pay to the accounting firm of Hawkins, Cloward & Simister the sum of \$300.00 towards fees incurred by said accounting firm. It is understood that the defendant has heretofore paid to said accounting firm the sum of \$2,400.00.

19. It is reasonable and proper that the defendant assume the following obligations and shall hold the plaintiff harmless therefrom: attorney fees incurred with the firm of Howard, Lewis & Petersen; James Knell, orthodontist, in the approximate amount of \$3,200.00; Zions Bank MasterCard in the approximate amount of \$3,944.00; Zions Bank line of credit in the

approximate amount of \$100,000.00; IFA Credit Union in the approximate amount of \$30,000.00; GM MasterCard in the approximate amount of \$8,413.00; Nations Bank Visa in the approximate amount of \$7,906.00; Zions Bank Visa in the approximate amount of \$14,969.00; 401K loan payment in the approximate amount of \$20,000.00; Park Leasing in the approximate amount of \$90,000.00; Howard Braun in the approximate amount of \$12,500.00; Contractors Leasing in the approximate amount of \$96,000.00; C. F. Turley in the approximate amount of \$165,000.00; radio station operating debt in the approximate amount of \$47,500.00; Jones Waldo law firm in the approximate amount of \$3,000.00; and First Security Bank Leasing in the approximate amount of \$9,000.00.

20. In the event there are other debts incurred by either the plaintiff or the defendant which are not set forth herein, each party shall pay for the debt that they have incurred.

21. Each party shall be awarded the personal property now in their possession, except for a grandfather clock which shall be delivered to the defendant, as well as a musical encyclopedia with records, which shall be delivered to the defendant when the children are no longer residing in the home and not using the same for piano lessons, and the Encyclopedia Britannica which shall be delivered to the defendant when the children are no longer residing in the home. The defendant shall further be awarded his musical records, consisting of both Spanish and English, and his personal paraphernalia located on the premises awarded to the plaintiff.

22. It is reasonable and proper that with respect to life insurance policies held in the names of the parties, said policies shall be kept in full force and effect with the minor children designated as beneficiaries. At such time as the children are no longer minors, the parties shall be free to do with the policies as they see fit. For the policies on which the plaintiff is designated the owner, she may designate new beneficiaries when the children are no longer minors; for the policies on which the defendant is designated the owner, he may designate new beneficiaries when the children are no longer minors. It is understood that there is a policy insuring the defendant's life through Intermountain Farmers Association, which is owned by Intermountain Farmers Association, and that International Farmers Association may terminate said policy at any time it desires. Each party shall take physical possession of the policies on which they are designated as owner.

23. It is reasonable and proper that the defendant maintain health insurance through his employer so long as it is available at a reasonable cost. Any medical expenses incurred on behalf of the minor children which are not paid for by insurance shall be paid 50% by the plaintiff and 50% by the defendant.

24. It is reasonable and proper that the plaintiff be awarded the 1986 GMC Suburban and the 1989 Oldsmobile Cutlass. At such time as the 1986 GMC Suburban and the 1989 Oldsmobile Cutlass are paid for, title shall be delivered forthwith to the plaintiff. Until the obligations are satisfied, the defendant shall pay for the vehicle insurance.

25. It is reasonable and proper that the defendant be awarded the 1988 Chevrolet pickup truck and the 1986 Buick automobile.

26. It is reasonable and proper that each party will execute such deeds and documents necessary to implement the terms of the orders of the Court.

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

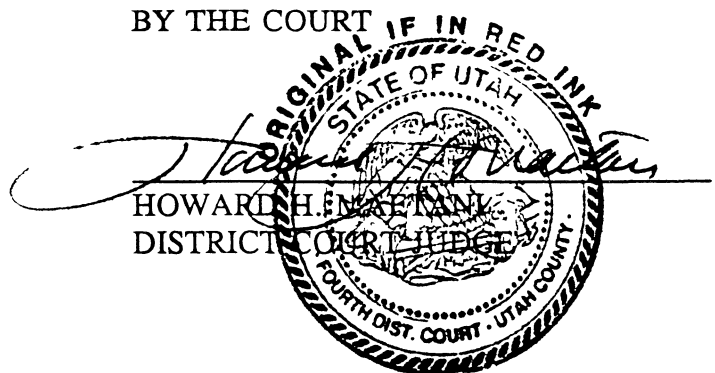
CONCLUSIONS OF LAW

1. The plaintiff is entitled to a decree of divorce divorcing her from the defendant, said decree to become final and absolute upon signing and filing of the same in the office of the Clerk of the Court.

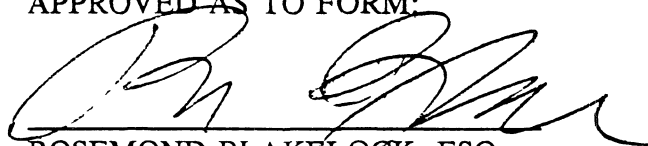
2. The plaintiff and defendant are entitled to judgment consistent with the foregoing Findings of Fact.

DATED this 7 day of February, 1996.

BY THE COURT



APPROVED AS TO FORM:


ROSEMOND BLAKELOCK, ESQ.
Attorney for Plaintiff

APPENDIX "D"

Decree of Divorce
(R. 95-88)

1996 FEB -8 AM 10 36
JF

DON R. PETERSEN (2576), for:
HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 East 300 North Street
P.O. Box 778
Provo, Utah 84603
Telephone: (801) 373-6345
Facsimile: (801) 377-4991

Our File No. 22,905

MICROFILMED 2. 12. 96

Attorneys for Defendant

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

<p>JULIETTE TURLEY,</p> <p>Plaintiff,</p> <p>vs.</p> <p>ROBERT WALTERS TURLEY,</p> <p>Defendant.</p>	<p>DECREE OF DIVORCE</p> <p>944407269</p> <p>Case No. 91440002</p> <p>Judge Howard H. Maetani</p>
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The above-entitled matter came on regularly for trial on December 14, 1995. The plaintiff appeared in person and was represented by her attorney, Rosemond Blakelock; the defendant appeared in person and was represented by his attorney, Don R. Petersen. The parties entered into a stipulation, which was presented to the Court and approved. The Court having heretofore entered its Findings of Fact and Conclusions of Law, and being fully advised in the premises, now makes and enters the following:

DECREE OF DIVORCE

1. The plaintiff is awarded a decree of divorce divorcing her from the defendant, which decree shall become final and absolute upon signing and filing of the same in the office of the Clerk of the Court.

2. The plaintiff and defendant are hereby awarded joint custody of the minor children of the parties, to-wit: Christine Turley, born March 6, 1979; and Brian Judd Turley, born January 14, 1982, with the plaintiff being awarded residential and physical custody of the children and the defendant being awarded reasonable rights of visitation.

3. The defendant is ordered to pay to the plaintiff child support in the sum of \$1,300.00 per month for support and maintenance of the two minor children. Said sum shall be paid in semi-monthly installments of \$650.00 each to be paid on the 5th and 20th days of each month, beginning on the 5th day of January, 1996. Child support shall continue until the minor children reach the age of 18 years or graduate from high school with their normal matriculated class, whichever occurs last.

4. The defendant is ordered to pay to the plaintiff alimony in the sum of \$1,500.00 per month for the plaintiff's support and maintenance. Said sum shall be paid in semi-monthly installments of \$750.00 each to be paid on the 5th and 20th days of each month, beginning on the 5th day of January, 1996.

5. The provisions of Utah Code Ann. § 62A-11-401 are not implemented at this time, provided all payments for child support and alimony are taken directly from the defendant's checking account automatically and deposited into a checking account designated by the plaintiff. Payments for child support and alimony shall be made by automatic transfer from the defendant's bank account at Zions First National Bank, 2100 South 900 West, Salt Lake City, Utah, account number 07346943, into plaintiff's bank account at Bank of American Fork,

Alpine Branch, Alpine, Utah, account number 0186452; \$650.00 on the 5th day of each month and \$650.00 on the 20th day of each month.

6. The defendant is granted the right to claim the minor children for income tax exemptions.

7. The defendant's income from Intermountain Farmers will terminate on May 31, 1996, at which time he will no longer receive income from Intermountain Farmers; however, in the event the defendant's income does not terminate, the amounts paid for child support shall continue as set forth above. With respect to alimony, alimony shall increase in the amount that child support decreases when the minor children reach their majority, only so long as the defendant's income is based upon historical earnings of \$181,000.00 per year.

8. The plaintiff is awarded all right, title and interest in and to the family home of the parties located at approximately 1221 North Grove Drive, Alpine, Utah, subject to the obligation owed thereon to Lomas Mortgage Company in the approximate amount of \$20,000.00, which obligation the plaintiff is ordered to assume and hold the defendant harmless therefrom. The defendant is ordered to execute a quit claim deed in favor of the plaintiff. Said property consists of a home and approximately 1.1 acres, subject to an easement on the south side of the property in favor of the defendant or his successors in interest by which to gain access to the barn and property located thereon, said access being 24 feet in width, which property is awarded to the defendant. The defendant is ordered to forthwith execute a quit claim deed conveying his interest in said property to the plaintiff.

9. The plaintiff is awarded all right, title and interest in and to a cabin in which the parties have an interest located in proximity to the Smith Moorehouse Reservoir in Summit County, Utah. The defendant is ordered to execute a quit claim deed in favor of the plaintiff.

10. The defendant is awarded all right, title and interest in and to approximately 3.89 acres of property located on the east and west sides of the home property awarded to the plaintiff. The plaintiff is ordered to execute a quit claim deed conveying her right, title and interest in said property to the defendant. The defendant's 3.89 acres of property shall be subject to an easement in favor of the plaintiff which will allow the plaintiff and her successors in interest to traverse over and obtain access to the plaintiff's property. The defendant may develop or sell the property awarded to him, but he will not live on the property in the event a home is built on the property. The dimensions of the easement are the road as presently used and occupied. The plaintiff is ordered to execute a quit claim deed conveying her interest in the said property to the defendant.

11. The defendant is awarded all right, title and interest in and to the Fountain Green property consisting of approximately 6.80 acres. The plaintiff is ordered to execute a quit claim deed conveying her interest in the said property to the defendant.

12. The defendant is awarded all right, title and interest in the real property located in Mexico.

13. The defendant is awarded all right, title and interest in and to the retirement plan he has accumulated at his place of employment, Intermountain Farmers Association, commonly known as Intermountain Farmers Association 401K Retirement Plan.

14. The defendant is awarded all right, title and interest in and to the radio station with call letters KTUR, consisting of stock, real property and personal property. The defendant is ordered to assume all obligations incurred in connection with the radio station and to hold the plaintiff harmless therefrom.

15. The plaintiff is ordered to assume the following debts and obligations and to hold the defendant harmless therefrom: Lomas Mortgage Company in the approximate amount of \$20,000.00; Discover credit card in the approximate amount of \$2,000.00; MasterCard in the approximate amount of \$2,000.00; and Visa credit card in the approximate amount of \$2,000.00.

16. The defendant is ordered to pay to the plaintiff's counsel the sum of \$1,000.00 for attorney fees, said sum to be paid on or before May 31, 1996.

17. The defendant is ordered to pay to the accounting firm of Hawkins, Cloward & Simister the sum of \$300.00 towards fees incurred by said accounting firm.

18. The defendant is ordered to assume the following obligations and to hold the plaintiff harmless therefrom: attorney fees incurred with the firm of Howard, Lewis & Petersen; James Knell, orthodontist, in the approximate amount of \$3,200.00; Zions Bank MasterCard in the approximate amount of \$3,944.00; Zions Bank line of credit in the approximate amount of \$100,000.00; IFA Credit Union in the approximate amount of \$30,000.00; GM MasterCard in

the approximate amount of \$8,413.00; Nations Bank Visa in the approximate amount of \$7,906.00; Zions Bank Visa in the approximate amount of \$14,969.00; 401K loan payment in the approximate amount of \$20,000.00; Park Leasing in the approximate amount of \$90,000.00; Howard Braun in the approximate amount of \$12,500.00; Contractors Leasing in the approximate amount of \$96,000.00; C. F. Turley in the approximate amount of \$165,000.00; radio station operating debt in the approximate amount of \$47,500.00; Jones Waldo law firm in the approximate amount of \$3,000.00; and First Security Bank Leasing in the approximate amount of \$9,000.00.

19. In the event there are other debts incurred by either the plaintiff or the defendant which are not set forth herein, each party is ordered to pay for the debt that they have incurred.

20. Each party is awarded the personal property now in their possession, except for a grandfather clock and a musical encyclopedia with records, which are awarded to the defendant and shall be delivered to the defendant when minor children are no longer residing in the home or not using the same for piano lessons, together with the Encyclopedia Britannica, which shall be delivered to the defendant when minor children are no longer residing in the home. The defendant is further awarded his musical records, consisting of both Spanish and English, and his personal paraphernalia located on the premises awarded to the plaintiff.

21. With respect to life insurance policies held in the names of the parties, said policies shall be kept in full force and effect with the minor children designated as beneficiaries.

At such time as the children are no longer minors, the parties shall be free to do with the policies as they see fit. For the policies on which the plaintiff is designated the owner, she may designate new beneficiaries when the children are no longer minors; for the policies on which the defendant is designated the owner, he may designate new beneficiaries when the children are no longer minors. It is understood that there is a policy insuring the defendant's life through Intermountain Farmers Association, which is owned by Intermountain Farmers Association, and that it may terminate said policy at any time it desires. Each party is awarded physical possession of the life insurance policies on which they are designated as the owner.

22. The defendant is ordered to maintain health insurance through his employer so long as it is available at a reasonable cost. Any medical expenses incurred on behalf of the minor children which are not paid for by insurance will be paid 50% by the plaintiff and 50% by the defendant. In the event the plaintiff desires to obtain health insurance through any existing COBRA plans, the defendant shall cooperate in executing such documents so that the plaintiff may obtain coverage, which shall be maintained at plaintiff's expense.


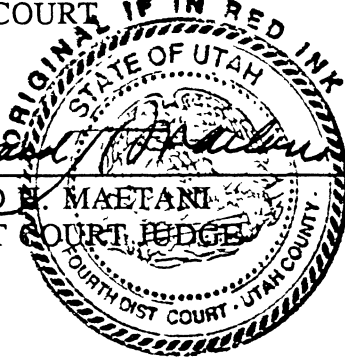
23. The plaintiff is awarded the 1986 GMC Suburban and the 1989 Oldsmobile Cutlass. At such time as the obligations owed on the 1986 GMC Suburban and the 1989 Oldsmobile Cutlass are satisfied, titles to those vehicles shall be delivered to the plaintiff. Until the obligations are satisfied, the defendant shall pay for the vehicle insurance.

24. The defendant is awarded the 1988 Chevrolet pickup truck and 1986 Buick automobile.


25. Each party is ordered to execute such deeds and documents necessary to implement the terms of this Decree of Divorce.

DATED this 7 day of ~~January~~ ^{February}, 1996.

BY THE COURT **IF IN RED INK**


HOWARD B. MAEFANI
DISTRICT COURT JUDGE


APPROVED AS TO FORM:


ROSEMOND BLAKELOCK, ESQ.
Attorney for Plaintiff

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