

1997

Janine Ray Noakes, kna Janie Ray Lindsay v. Charles Leroy Noakes : Brief of Appellant

Utah Court of Appeals

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DOCKET NO. 970080-GA

COURT OF APPEALS

JANINE RAY NOAKES,
kna Janie Ray Lindsay,
Plaintiff-Appellee,

CHARLES LEROY NOAKS,
Defendant-Appellant.

Oral Argument
Priority 15

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

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JANINE RAY NOAKES,
Plaintiff-Appellee,

VS

CHARLES LEROY NOAKS,
Defendant-Appellant.

Jurisdiction is conferred on this Court by Utah Code Ann. § 78-2a-3(2)(i) (1996). The final judgment was entered on January 8, 1997. The Notice of Appeal was filed within thirty days of the entry of the judgment and was therefore timely. Utah R. App. P. 4(a).

1.

2.

Was Mrs. Lindsay's simple, undocumented reference to the additional provisions and segments of the foreign Decree, without

filing or registering them, sufficient for her to "bootstrap" into the portion of the Decree filed, such that the requirements of the Utah Foreign Judgment Act could be deemed to have been met? And if so, was it reversible error for the Trial Court to proceed to hear the issues of alimony, where the foreign Decree (alimony) segments were not properly filed under the requirements of the Act?

3.

Does the Statute of Limitations, as set forth in U.C.A. § 78-12-29, apply to enforcement of obligations which were not reduced to judgment at the time when the Foreign Decree was domesticated in Utah? And if it does, does it apply where the unpaid alimony sums accrued prior to the registration in Utah apply only a "liability" at the time of registration, such that the judicial enforcement is barred by the effect of the applicable Statute of Limitations?

4.

Did the Trial Court commit reversible error in refusing to apply (to the past alimony obligations, in this case) the Statute of Limitations provisions as set forth in U.C.A. § 78-12-29, and in so doing, allowing Mrs. Lindsay to seek relief for an obligation not reduced to judgment before the tolling of the statute?

5.

Did the Court err in awarding attorney's fees to Mrs. Lindsay, without making specific findings as to the parties' relative needs and abilities, or some bad faith?

6.

Could the Trial Court award attorney's fees to Mrs. Lindsay if it did not first have proper jurisdiction on the underlying (alimony) issues?

DETERMINATIVE PROVISIONS OF THE UTAH CODE

Appellant asserts that Utah Code Ann. § 78-22a-1 through 9, Utah Foreign Judgments Act and Utah Code Ann. § 78-12-29 (1996) (as to the Statute of Limitations) are both specifically applicable to this case.

STATEMENT OF THE CASE

A. Nature of the Case. This is an appeal from a final order of the Fourth District Court, in and for Utah County, issued by Judge Howard Maetani, in regard to a Petition for Modification and enforcement of a Foreign Decree.

B. Course of Proceedings and Disposition Below. The parties obtained a Decree of Dissolution from the Superior Court, State of Washington, King County, on or about June 13, 1991. Mrs. Lindsay subsequently moved to the state of Utah and Mr. Lindsay moved to the state of California (he has never lived in Utah). On or about October 18, 1994, Defendant/Appellant registered (pursuant to the Utah Foreign Judgment Act, U.C.A. § 78-22a-1(1953)) in the Fourth District Court for the State of Utah, Provo, a

certified/exemplified copy of the foreign judgment entitled "Decree of Dissolution" (which had three separate segments), but only registered the first segment, entitled "Permanent Parenting Plan".

On or about the first week of June, 1995, Mrs. Lindsay was served with a Petition to Modify in the action now registered in Utah, which Petition and registration addressed only the issues of visitation, custody, transportation costs, and attorney's fees -- all covered by the one segment properly registered by the Defendant in Utah.

Subsequently, Mrs. Lindsay, but the default was set aside. On or about February 9, 1996, she filed a counter claim, without complying with the specific filing requirements of the Utah Foreign Judgments Act. On or about April 16, 1996, Mrs. Lindsay filed an Amended Counterclaim (again without complying with the specific requirements of the Utah Foreign Judgments Act), requesting additional relief.

Mr. Noakes raised timely objections to the jurisdictional issues (and statute of limitations). Denying these objections wholesale, the Trial Court extended jurisdiction to consider the issue of alimony.

A trial was held and at the conclusion of trial, a judgment was entered against Mr. Noakes for alimony which accrued prior to registration in Utah in the amount of \$30,486.30, plus attorneys fees and costs. The Trial court entered it's Memorandum Decision, finding in favor of Mrs. Lindsay/Appellee as to alimony and attorney's fees, and the Court subsequently entered it's Findings

of Fact, Conclusions of Law and Order.

C. Statement of Facts. The parties were married on May 9, 1975 in Los Angeles, California, and subsequently established residency in Washington state.

The parties obtained a Decree of Dissolution from the Superior Court, State of Washington, King County on or about June 13, 1991.

The Plaintiff subsequently moved to the state of Utah and the Defendant moved to the state of California. Except for exercising visitation with his daughter in the state of Utah, the Defendant has had no connections or contacts with the state of Utah.

On or about October 18, 1994, Defendant/Appellant registered (pursuant to the Utah Foreign Judgment Act, U.C.A. § 78-22a-1(1953)) in the Fourth District Court for the State of Utah, Provo, a certified/exemplified copy of the foreign judgment entitled "Decree of Dissolution" (which had three separate segments), along with only the first segment, entitled "Permanent Parenting Plan".

On or about the first week of June, 1995, Plaintiff was served with a Petition to Modify in the action now registered in Utah, regarding only the issues of visitation, custody, transportation costs, and attorney's fees -- all covered by the one segment properly registered by the Defendant in Utah.

Subsequently the Plaintiff defaulted, but the Default was set aside.

On or about February 9, 1996, the Plaintiff filed a Counter Claim (without complying with the specific requirements of

the Utah Foreign Judgments Act), where the requested relief was;

a. That the Judgment, Order and Decree entitled "Order on Revision re Order on Reconsideration for Child Support", Superior Court, State of Washington, King County, be adopted in the Fourth District Court, State of Utah;

b. That she be awarded attorney's fees"

On or about April 16, 1996, the Plaintiff filed an Amended Counterclaim (again without complying with the specific requirements of the Utah Foreign Judgments Act), and requested that the orders out of the state of Washington with respect to custody, visitation, child support, alimony, and property division be adopted under the Utah Foreign Judgments Act.

Pursuant to the parties' Washington Decree, the Defendant was obligated to pay the following, as for maintenance;

\$1,000.00 per month from 10-25-90 until August, 1992.

\$800.00 per month from September 1, 1992, through September 1, 1993.

\$1,050.00 per month due from September 1, 1993 until September 1, 1994.

\$400.00 per month from September 1, 1994 until September 1, 1995.

The Plaintiff did not at any time file with the Utah Trial Court (under the requirements of the Utah Foreign Judgment Act) certified copies of the separate segment of the parties' Decree that dealt with alimony.

Some of the disputed issues were resolved by stipulation.

The remaining unsettled issues (at the time of trial) were alimony and visitation rights of the Defendant. The matter came on before trial on October 1, 1996. Over the (jurisdictional and Statute of Limitations) objections by the Plaintiff, the Court agreed to consider the issue of alimony. The Court reserved the issue of visitation until such time as the parties had completed mediation, and, after taking evidence and testimony, issued a Ruling on the remaining issue of alimony arrearages. The Trial Court found that alimony was owing by Mr. Noakes, and subsequently entered an award for alimony and judgment for alimony arrearages in the amount of \$30,486.30, plus attorneys fees and costs.

SUMMARY OF ARGUMENT

The Court erred in hearing and issuing Judgment on the issue of alimony, because the issue was not properly before the Court, having never been registered by either party as a foreign Decree.

The trial court should have applied the U.C.A. § 78-12-29, and in fact could not have relied upon U.C.A. § 78-12-22 because there was never a judgment for past due alimony from the state of Washington. The Trial Court's application of Utah's statutes to interpret, rewrite or alter a foreign Decree, and reaching back to a time prior to when a foreign Decree is registered, is not appropriate and should not have been done by the Utah trial Court.

Essentially, the Trial Court applied the Utah Code retroactively and in a manner to alter the foreign Decree:

specifically to establish that the pre-registration alimony becomes a judgment upon the point at which it becomes due and owing, and back to a point in time when Utah did not have jurisdiction over the parties or the subject of alimony. Such an application is a violation of due process as well as the fact that it is not authorized or justified by any application of any Utah Code or better case law.

The award of attorney's fees was not justified by the Findings of Fact or Conclusions of Law; and does not reflect the fact that the Defendant prevailed on his Petition -- rendered as it was, this aspect of the Ruling appears to have been made under passion or prejudice.

POINT I

**THE PLAINTIFF WAS OBLIGATED TO FIRST COMPLY WITH
THE REQUIREMENTS OF THE UTAH FOREIGN JUDGMENTS ACT
IN SEEKING REVIEW AND JUDGMENT
FOR UNPAID ALIMONY UNDER THE FOREIGN DECREE**

Mrs. Lindsay failed to file the required affidavits and failed to file a certified copy of the separate segment of the Dissolution which dealt with the Separation and Property Agreement (alimony). The only document properly filed and before the Court, was the Decree of Dissolution and the single segment comprising the Parenting Plan, dealing with custody and visitation, which was properly filed and registered by Defendant.

Although a copy of the Separation and Property Agreement was provided to the Court and placed in the file, it was not actually

filed pursuant to the requirements set forth in the Utah Foreign Judgment Act.

This issue is governed by the Utah Foreign Judgment Act, U.C.A. § 78-22a-1 through 3, which states in pertinent part:

(1), for the purpose of this chapter, "foreign judgment" means any judgment, decree or order of a court of the United States or of any other court who's acts are entitled to full faith and credit in this state".

In addition U.C.A. § 78-22a-3 mandates that the counsel for the registering party file a certified copy of the foreign document and also file an Affidavit with the clerk of court stating the last known post-office address of the other party. The Counsel for Plaintiff failed to comply with the proper procedures when he filed both the Counterclaim and Amended Counterclaim -- without the support of the Foreign Judgment Act, the claims fall short of reaching the level of jurisdiction.

Having not been properly registered and supported by compliance with the provisions of the Act, the alimony segment was not properly before the Court, and the Court erred in considering and then awarding judgment for the unpaid alimony. Simply presenting the document to the Court, does not comply with the very specific procedural and notice provisions of the Utah Foreign Judgments Act.

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POINT II

IT WAS REVERSIBLE ERROR FOR THE TRIAL COURT TO PROCEED TO HEAR THE ISSUE OF ALIMONY WHERE THE FOREIGN DECREE SEGMENTS APPLICABLE TO ALIMONY HAD NOT BEEN PROPERLY FILED WITH THE COURT

The Plaintiff failed to file with the Court the required affidavits and failed to file a certified copy of the separate segment of Dissolution which dealt with the Separation and Property Agreement (as to alimony). The only document properly filed and before the Court was the Decree of Dissolution and the single segment comprising the Parenting Plan, dealing with custody and visitation.

Article IV, Section 1 of the United States Constitution provides:

Full Faith and Credit shall be given in each state to the public Acts, Records, and judicial Proceedings of every other State.

Created as a mechanism for enforcing this section, the Utah Foreign Judgment Act, defines a "foreign judgment" as

any judgment, decree, or order of a court of the United States or of any other court whose acts are entitled to full faith and credit in this state." Utah Code Ann. § 78-22a-2(1) (1992).

However, before the said judgment can be enforced in Utah, a party must first file it with a clerk of any district court, pursuant to the terms set forth in the Utah Foreign Judgment Act. See Utah Code Ann. § 78-22a- 2(2) (1992). It is only after the proper filing occurs that the Act provides that;

the clerk of the district court shall treat the foreign judgment in all respects as a judgment of a district court of Utah." Id.

The Utah Supreme Court has stated that the purpose of this statute is to enable "foreign judgments to be treated as if they were local judgments once they have been [*properly registered and*] filed with the clerk of a district court." Pan Energy v. Martin, 813 P.2d 1142, 1144 (Utah 1991) (emphasis added).

The proper procedure must be followed prior to any party having the ability to seek relief in the Court:

"The demands of due process rest on the concept of basic fairness of procedure and demand a procedure appropriate to the case and just to the parties involved."

Wiscombe v. Wiscombe, 744 P.2d 1024, 1025 (Utah App. 1987) (quoting Rupp v. Grantsville City, 610 P.2d 338, 341 (Utah 1980)).

In examining the necessity of properly following the terms of the Utah Foreign Judgment Act, the Court in Holm v. Smilowitz, 840 P.2d 157 (Utah Ct. App. 1992), cited to "Comment at 33. Section 2 of the Uniform Enforcement of Foreign Judgments Act of 1964" and stated that it;

is substantially similar to the Utah Foreign Judgment Act. Thus, enforcement of a foreign custody decree pursuant to the UCCJA must be accomplished in compliance with provisions of the Utah Foreign Judgment Act, which governs the procedure for enforcement of all foreign judgments. See, generally, Beck v. Smith, 296 N.W.2d 886, 891 (N.D. 1980). This ruling is consistent with other states that have held that under the UCCJA, a certified copy of the foreign judgment must first be filed in the state before the state will recognize and enforce it. See, e.g., In re Marriage of Dagan, 103 Or. App. 453, 798

P.2d 253, 255 (1990). Otherwise, nothing could prevent one divorced parent from suddenly appearing on the former spouse's doorstep with a foreign order in hand, demanding immediate change of custody without the custodial parent having an opportunity to be heard, or the foreign order tested for validity. An order of a judge in one state is simply not enforceable in another state until that order has been domesticated in the second state.

Although in Holm the issue was custody and not alimony, the discussion regarding the need to follow proper procedure is very similar. Applied in the Noakes case now before the Court, the Court could logically conclude that unless the certified copy was required to be properly filed with and recognized up by the Utah Court, along with the Affidavit of the Attorney, nothing would prevent a party from appearing essentially ex parte, and demanding a judgment for tens of thousands of dollars which may or may not have been available to that same party in the foreign state in which the Decree was issued.

Nothing prevented Mrs. Lindsay from taking the proper procedural steps to obtain judicial review in Washington state, and making application for a judgment in that state and then, if entitled to and granted a judgment, then filing it in Utah. Nothing prevented Mrs. Lindsay from properly filing the applicable section of the Decree she wished to have enforced in Utah - pursuant to the Utah Foreign Judgment Act.

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POINT III

THE STATUTE OF LIMITATIONS AS SET FORTH IN
U.C.A. § 78-12-29 SHOULD BE APPLIED IN THIS CASE,
TO THE REQUEST FOR A JUDGMENT FOR ALIMONY BECAUSE
THE ARREARAGES WERE ONLY A "LIABILITY"
AT THE TIME OF TRIAL

Even if Mrs. Lindsay had properly filed the Foreign Decree -
as to alimony, a judgment should not have been entered.

The U.C.A. § 78-12-29 requires that Plaintiff's action seeking
judgment via the enforcement of the Defendant's liability on the
Decree of Divorce, should have been brought "WITHIN ONE YEAR [for]
(1)"An action for liability created by the statutes of a foreign
state".

The liability created by the parties' Washington Decree was as
follows;

\$1,000.00 per month from 10-25-90 until August, 1992.
\$800.00 per month from September 1, 1992 through September 1,
1993.
\$1,050.00 per month due from September 1, 1993 until September
1, 1994.
\$400.00 per month from September 1, 1994 until September 1,
1995.

Mrs. Lindsay's Counter Claim that requested relief was;

a. That the Judgment, Order and Decree entitled "Order on
Revision re Order on Reconsideration for Child Support", Superior
Court, State of Washington, King County be adopted in the Fourth
District Court, State of Utah;

b. That she be awarded attorney's fees.

Then on or about April 16, 1996, the Plaintiff filed an
Amended Counterclaim (again without complying with the specific

requirements of the Utah Foreign Judgments Act), and requested that the orders out of the state of Washington with respect to custody, visitation, child support, alimony, and property division be adopted under the Utah Foreign Judgments Act.

The Defendant's alimony obligation to the Plaintiff ceased on September 1, 1995 (and all arrears prior to February, 1992, were eliminated by Order of 25 March, 1992). Because the Plaintiff initiated (by unregistered counter claims) the action regarding alimony on February 9, 1996, she is limited, if in fact entitled to any relief, by the statute of limitations to recovery 12 months prior to her initiation of the action, provided that she properly plead and raised the issue of a judgment for arrearages. However, Mrs. Lindsay has only requested that the court "adopt" the Foreign Decree.

On April 16, 1996, Plaintiff simply requested that the entire foreign Decree be "enforced", but still did not properly register the segments, and did not ask for a specific judgment. Plaintiff finally but for the first time formally requested a judgment at the time of trial, (held October 1, 1996) -- even were this last minute pleading sufficient, she would still be limited to one-year prior to the October, 1996, request at trial. In that case, the Defendant's alimony obligation/liability would have expired prior to the Defendant's request for Judgment, as it expired (by stipulation of the parties) September 1, 1995, a full year prior to trial -- and the Statute ran out a month prior to late request at trial.

There is ample case law which addresses the issue of statutes of limitations, and the choice of which state's statute of limitations should apply.

Pan Energy v Martin, 813 P.2d 1142, (Utah Supreme Court, May, 1991), addressed the issue of domestication of a foreign Judgment (where the amount owing had already been rendered to judgment) and the effect the domestication has upon the Judgment, which held:

The clerk of the district court shall treat the foreign judgment in all respects as a judgment of a district court of Utah. A judgment filed under this chapter has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, setting aside, or staying, as a judgment of a district court of this state and is subject to enforcement and satisfaction in like manner.

Therefore, even if the Mrs. Lindsay properly filed the Decree, and could be said to have met the specific requirements of the Foreign Judgment Act, by requesting in the Counterclaim (filed on or about February 9, 1996), that the Washington Decree "be adopted" by the Utah Court, the alimony segment of the Decree, remained an "obligation" only, and had not been reduced to a Judgment in any state.

In the Pan Energy case, cited above, the original Order (from the state of Oklahoma), when rendered to Judgment by Utah, had exceeded the statute of limitations in Oklahoma. However, Utah's statute of limitations was longer than that existing in Oklahoma. The Supreme Court ruled that once a foreign judgment is filed with Utah Court's, the laws of Utah applied and not the laws of Oklahoma.

The Utah Supreme Court held in Pan Energy as follows:

The Utah Foreign Judgment Act provides a mechanism for the enforcement of a foreign judgment in Utah. Utah Code Ann. § 78-22a-2(2) (1987) provides in part:

The clerk of the district court shall treat the foreign judgment in all respects as a judgment of a district court of Utah. A judgment filed under this chapter has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, setting aside, or staying, as a judgment of a district court of this state and is subject to enforcement and satisfaction in like manner.

(Emphasis added.) This statute requires foreign judgments to be treated as if they were local judgments once they have been filed with the clerk of a district court. Once filed, the foreign judgment is subject to the same procedures to attack or enforce it as a Utah judgment. Thus, because foreign judgments properly filed in Utah essentially become Utah judgments under the Utah Foreign Judgment Act, the Utah statute of limitations applies to the enforcement of those judgments in Utah. ID.

In Pan Energy, the Supreme Court also referred to the case of Stanford v. Utley, 341 F.2d 265, 268 (8th Cir. 1965), as follows;

In Stanford, Judge (now Justice) Blackmun wrote: "We feel that registration provides, so far as enforcement is concerned, the equivalent of a new judgment of the registration court." 341 F.2d at 268. Stanford was a diversity case in which the court looked to the law of Missouri, the state where the judgment had been registered, for the applicable statute of limitations. Although the judgment was unenforceable in Mississippi, the state where rendered, the court allowed enforcement of the judgment because the Missouri statute of limitations had not yet expired. 341 F.2d at 268.

In Pan Energy, the Utah Supreme Court also addressed the issue of the theory that U.C.A. § 78-22a-8(1987), (Uniformity of Interpretation) raised by the defense, that Utah's method of enforcement of a foreign judgment must be the same as the foreign state's method, that is essentially that Utah must enforce the statute's of the original state, when they held;

The Utah Foreign Judgment Act provides that it "shall be construed to effectuate the general purpose to make uniform the law of those states which enact it." Clearly, the Act does

not make foreign statutes applicable in Utah. Rather, its policy is to provide a simple and uniform method for enforcing foreign judgments in states that enact the Foreign Judgment Act. The Utah Foreign Judgment Act simply requires that foreign judgments filed in the state be treated the same as local judgments in all respects, including the applicable statute of limitations regarding enforcement.

While in Pan Energy the issue was clearly "statute of limitations", it is dicta that would guide the court in any issue in dispute where the Utah Foreign Judgment Act is involved. In the instant case, the issue is alimony, and therefore, as to the issue of alimony, the Utah Court is bound by the application of the Utah statute of limitations, as it applies in this case.

The Restatement of Conflicts Laws provides that "the local law of the forum determines the methods by which a judgment of another state is enforced" Restatement (second) of Conflicts of Laws, §99, 1969.

The rational behind this section is described in comment a, b, and c of § 99, which states:

a. Rational. The method by which a sister State judgment is to be enforced are determined by local law of the forum, subject to the qualification that they cannot be made so complex and expensive as to make enforcement of a sister state judgment unduly difficult (citing Broderick v. Rosner, 294 U.S. 629 (1935)).

Although the parties Decree of Divorce required Defendant to pay alimony, even beyond the Plaintiff's remarriage, the Plaintiff has never had the arrearages reduced to Judgment, and the obligation of the Plaintiff to act on the Defendant's liability, once registered as a foreign Decree in Utah, and to render it to

Judgment, had a one-year Utah statute of limitations to seek Judgment for any claimed arrears.

Should the Utah court then choose to render any judgment against the Defendant, he would then have the right to assert any Utah defenses he may choose against the judgment -- including the application of the Statutes of Limitations, restricting the scope of the Utah Court's reach, and the court's ability to render a judgment.

POINT IV

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN REFUSING TO APPLY THE STATUTE OF LIMITATIONS PROVISION AS SET FORTH IN U.C.A. § 78-12-29

The trial court cited two cases in justifying it's reliance upon the avoidance of the Statutes applicable to foreign judgments (one year statute), and in support of it's choice and application and use of U.C.A. § 78-12-22 (eight years statute of limitations).

The first case was Logan v. Schneider, 609 P.2d 943 (Utah 1980). The Logan case can be distinguished from the Noakes situation. in Logan, the Plaintiff sought an order which would require Defendant to pay child support. Later a child support order was entered, in Ohio.

Later, (again in Ohio), the Plaintiff filed with the Ohio court a motion claiming arrearages in child support payments in the amount of \$4,695, and the Ohio Court entered a judgment against Defendant, granting plaintiff a judgment in the amount of \$4,905.

The Plaintiff then moved to Utah and sought enforcement of the specific Ohio judgment against Defendant.

The Defendant's claims in Logan was that the claim was new in Utah and thus untimely. However, the distinction between Noakes and Logan is both critical and clear. In Logan the Utah Supreme Court applied the applicable statute of limitation that was effective in the state of Ohio, and because Ohio "courts have explicitly held that in Ohio there is no statute which prescribes that judgments or actions on judgments (including court-ordered support payments) are subject to any limitation. ...The 1975 action is therefore not barred." The Utah Supreme Court in Logan applied the Ohio statute of limitations.

The latter case of Pan Energy established that it is now the Utah Statute of Limitations that are applicable to foreign judgments and orders. Therefore, Logan would not be applicable to Noakes.

Although the Court in Logan also cited the Utah Code as to statute of limitations, and observed that in Utah the action would not have been barred (because it was brought within 8 years), the Logan Court expressly found that the Ohio statutes applied to a review of the Ohio Judgment, even in Utah. This is no longer the law.

The trial Court in this instant matter, also cited to Seeley v. Park, 532 P.2d 684 (Utah 1975), and applied the eight year statute of Limitations. Seeley was a case which dealt with an order issued from a Utah Order to Show Cause after registration,

and did not deal with the registration of the foreign Decree. There is no question that in Utah - when a Decree of Divorce is entered, an obligation as for alimony becomes a judgment essentially when it becomes due and owing.

However, Defendant asserts that U.C.A. § 78-12-22 does not apply because the alimony payments which were owing were not rendered to judgment in Washington prior to registration, and were not timely rendered to judgment in Utah. In point of fact, Utah does not know whether or not they were rendered to judgment in Washington, because that was never raised or litigated. If Washington does not have an exact statute (similar to the defect in the Logan case), then they never were judgments, and only the payments which became due and owing after the Utah registration, might even become judgments.

The foreign Decree must be examined in a different light than that asserted by the Plaintiff. Accepting Plaintiff's position, once Plaintiff is deemed to have filed the Foreign Decree, the following alimony obligations became (at the filing) a judgment, because they essentially became judgments each month they were due.

Seeley found that;

(because) "the defendant had not paid all of the installments for alimony and support as ordered by the decree of divorce. The question was raised as to whether the statute of limitation applied. This court held that it did and stated, "Exception therefore may issue for the arrearages accumulated within a period of eight years." [citing to Openshaw v. Openshaw 105 Utah 574, 144 P.2d 528 (1943),]

The distinction of Seeley from this instant case can be found by examination and application of the Pan Energy case. In Pan

Energy, the Supreme Court (referring to the case of Stanford v. Utley, 341 F.2d 265, 268 (8th Cir. 1965)), stated as follows;

In Stanford, Judge (now Justice) Blackmun wrote: "We feel that registration provides, so far as enforcement is concerned, the equivalent of a new judgment of the registration court." 341 F.2d at 268. Stanford was a diversity case in which the court looked to the law of Missouri, the state where the judgment had been registered, for the applicable statute of limitations. Although the judgment was unenforceable in Mississippi, the state where rendered, the court allowed enforcement of the judgment because the Missouri statute of limitations had not yet expired. 341 F.2d at 268.

Therefore, under application of this case law, the post-registration monthly alimony obligations of Defendant (if the Decree had been properly filed) would be "new" in Utah. However, the old alimony obligations were only "liabilities" because of the examination of the United States Supreme Court and the Utah Supreme Court as to the issue of statute of limitations.

The application of the statute of limitations - as set forth in U.C.A. § 78-12-29 requires that Defendant's alimony obligation in Washington be considered only "liability" in Utah because if it was not - it would be in conflict with Utah's enforcement doctrine - as established in Pan Energy. That is because if a judgment opportunity dies under the statute of limitations which has expired in the original state of jurisdiction - is capable of resurrection or extension in Utah, due to retroactive application of Utah's broader code, then essentially only one state's statute will effectively bar enforcement -- the state with the longest statute - - forum shopping at it's ugliest.

Further, it could not be that the new jurisdictional state

could also apply the notion that once a foreign matter is rendered to judgment (as in Seeley) the longer eight year statute is applicable.

The longer (8-year) statute of limitations should not be applicable to alimony awards made in a Decree domesticated in Utah, where the arrearages were only a "liability" and not yet reduced to judgment. Especially where such judgment would be bared if the correct statute of limitations would have been applied. In Stanford, Judge (now Justice) Blackmun wrote: "We feel that registration provides, so far as enforcement is concerned, the equivalent of a new judgment of the registration court." 341 F.2d at 268.

The state of Utah may certainly enforce a valid Judgment from another state, and may be empowered in some few cases, to resurrect previously dead judgment's which have expired under the original state's statutes, but this Court cannot set a policy whereby the foreign Court can enter a Judgment which could not have been entered in the original state -- cannot create a new basis for judgment that never existed as a basis in the original state.

The state of Utah can also act to automatically render to judgment future payments as they become due -- but it cannot assume a fact not before the Court; cannot retroactively apply Utah Code to a Decree that was not registered until 1995 in Utah, unless the requested amounts had already been rendered to judgment at or before the time it was filed in Utah.

For the Court to be able to do such a thing - by policy - to

existed under the jurisdiction at the time of the Decree, would create potential chaos for future litigants -- and support clear forum shopping.

Suppose a party had a Washington Decree granted in 1975 that allowed (by statute) the Plaintiff to collect a \$50.00 fine for every day that the Defendant was one day late on alimony. Then later (in 1980) the state of Washington repealed, as to all prior and future Decrees, the statute that allowed such a sanction. The Plaintiff would have been unable to collect the sanction in the state of Washington, at least from 1980 on.

Then suppose that subsequently, Utah's legislature adopted the same penalty statute, in 1995. Under the application of the law as the Trial Court and Appellee would have it, the hypothetical Plaintiff could then move to Utah and file the foreign Decree and then ask not only for the ongoing late charges (because it would be enforceable in Utah), but could also request past due fines for every day the Defendant was late for the eight years preceding 1995 that were previously eliminated in the foreign state.

In this instant case, Defendant, Mr. Noakes, relied upon the application of Washington law -- indeed, both parties lived by the Washington state of the law -- neither paying nor seeking collection of the alimony arrearages. Then, the Plaintiff, Mrs. Noakes, in retaliation for the visitation matters being addressed, sought enforcement and resurrection of the Washington support arrearages, by counterclaiming in Utah.

Utah law clearly applies to the Decree as though it were a

"new" judgment, as for the issue of prospective requests. However, there was no information before the court which would enable the court to know whether or not the alimony payments could have been rendered to "judgment" in Washington, as was required by U.C.A. § 78-12-22.

Simply put, the trial court in Noakes was not enforcing a "judgment" from the state of Washington. The trial court looked at a foreign Decree and applied Utah law to reach back to a point in time when Utah Courts had no jurisdiction over the parties' or the subject matter.

The trial court could not have applied U.C.A. § 78-12-22, because it had no information that the past due payments had ever been rendered to judgment in Washington state; and for this court to render them to judgment would have been like "retroactive" filing of the foreign decree, not a registration of a "new" decree as is set forth by the United States Supreme Court in Stanford.

POINT V

THE TRIAL COURT SHOULD NOT HAVE AWARDED ATTORNEY'S FEES

The trial court could not have awarded attorney's fees to Plaintiff, if it did not have the jurisdiction to issue the judgment as to alimony. In as much as the Defendant prevailed on his visitation matters, the fees were at worst a wash.

The Appellate Court typically reviews a trial court's award of attorney's fees for an abuse of discretion:

his visitation matters, the fees were at worst a wash.

The Appellate Court typically reviews a trial court's award of attorney's fees for an abuse of discretion:

The decision to make such an award and the amount thereof rest primarily in the sound discretion of the trial court."
Bell v. Bell, 810 P.2d 489, 493 (Utah App. 1991).

In addition the Court in Bell ruled:

[in order] to permit meaningful review of the trial court's discretionary ruling, we have consistently encouraged trial courts to make findings to explain the factors which they considered relevant in arriving at an attorney fee award.'" Id. at 494.

The trial court did not make sufficient Findings to support the award of attorney's fees. It is simply insufficient to say that it was appropriate in a case to enforce an "order of alimony".

The Court did not even issue any Findings regarding the financial need of the requesting party, and no evidence was placed into the record in that regard.

Further, the Utah Court of Appeals has consistently reversed or remanded any final order unsupported by adequate findings of fact.

CONCLUSION

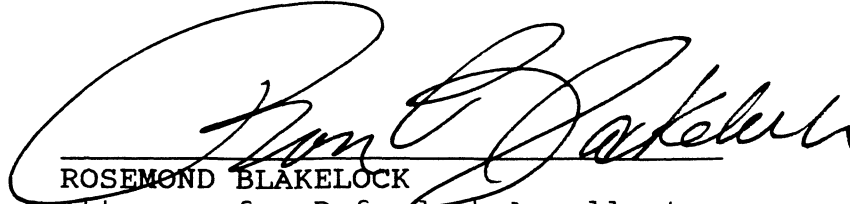
The award of alimony for a time when the Court did not have jurisdiction over the parties or the subject matter was inappropriate.

The trial court applied the wrong statute of limitations, as

to the issue of alimony.

The award of attorney's fees was not supported by the findings of the court.

RESPECTFULLY submitted this 5 day of June, 1997.


ROSEMOND BLAKELOCK
attorney for Defendant-Appellant

CERTIFICATE OF MAILING/SERVICE

This is to certify that 8 copies of the foregoing BRIEF were mailed to the Clerk of the Court of Appeals, and 2 copies were mailed to the Plaintiff/~~Appellant~~ at 48 N. University Ave Drvo Utah 84601, ~~Appellee~~ postage prepaid this 5 day of June, 1997.



APPENDIX "A'

MEMORANDUM DECISION

FILED
Fourth Judicial District Court of
Utah County, State of Utah.
CARMA B. SMITH, Clerk
11-15-96 TLC Deputy

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

Janine Ray NOAKES, nka LINDSAY,	MEMORANDUM DECISION
Plaintiff,	CASE NO. 944402466
vs.	DATE: November 15, 1996
Charles Leroy NOAKES,	JUDGE: HOWARD H. MAETANI
Defendant.	

This matter came before the court on October 1, 1996. Plaintiff Janine Ray Noakes, nka Lindsay was present and represented by counsel Brent D. Young. Defendant Charles Leroy Noakes was present and represented by counsel Rosemond Blakelock. The Court granted Plaintiff 15 days to submit an affidavit for attorney fees. Plaintiff was allowed 15 days to submit objections to the Trial Memorandum submitted by defendant. Defendant was allowed an additional five days to respond to Plaintiff's objection, and Plaintiff was given an additional five days to respond. The Court also granted Defendant 15 days to submit proof of alimony payments made in 1993, including agreement made with Plaintiff's counsel to pay attorney fees in 1992.

Plaintiff submitted Affidavit for Attorney Fees on October 4, 1996. Defendant submitted a Response to Plaintiff's Trial Memorandum with a Notice to Submit on October 21, 1996. Defendant failed to submit any proof of alimony payments.

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

A. Findings of Fact

1. The parties were married on May 9, 1975 in Los Angeles, California.
2. The parties obtained a Decree of Dissolution from the Superior Court, State of Washington, King County, on or about June 13, 1991.
3. On or about October 18, 1994, Defendant registered the foreign judgment entitled Decree of Dissolution under the Foreign Judgment Act, U.C.A. §78-22a-1 (1953).
4. On June 5, 1995, defendant petitioned the court to modify the Decree regarding the issues of visitation, custody, transportation costs and attorney's fees.
5. On April 16, 1996, Plaintiff filed an Amended Counterclaim to enforce the support order contained in the Separation and Property Settlement Agreement. Plaintiff asserts that defendant is delinquent in spousal support payments in the amount of \$37,000. *See* Plaintiff's Amended Counterclaim ¶ 6.
6. The court heard oral arguments on October 1, 1996. The remaining unsettled issues were alimony and visitation rights of the defendant. The Court will not address the issue of visitation until the parties have completed mediation. The Court will address the remaining issue of alimony.

B. Issues

Plaintiff argues that the court has jurisdiction over the matter of alimony under the Utah Foreign Judgment Act, Utah Code Annotated §78-22a-1-3 (1953). Plaintiff asks that the Decree be enforced and that defendant be ordered to pay delinquent alimony. Defendant claims that Plaintiff is not entitled to ask for alimony arrearages because plaintiff failed to follow the procedure for foreign judgments under U.C.A. §78-12-29 (1953).

Defendant claims that plaintiff failed to reduce the alimony to a judgment. Defendant argues that plaintiff is now precluded from asking for the delinquent alimony because plaintiff

failed to request a judgment before the one year statute of limitations expired for such actions under U.C.A. §78-22-29 (1953). Defendant claims that his alimony liability expired September 1, 1996.

C. Analysis

Jurisdiction

The Utah Foreign Judgment Act specifies the procedure to be used when registering a foreign judgment in Utah. The Act defines a foreign judgment as “any judgment, decree, or order of a court of the United States or of any other court whose acts are entitled to full faith and credit in this state.” Utah Code Annotated §78-22a-2(1) (1953). Once a foreign judgment is filed under the Act, it is given the same treatment and consideration as “a judgment of a district court of this state.” Utah Code Annotated §78-22a-2-(3) (1953). By registering the Decree of Dissolution with the state under the Foreign Judgment Act in 1994, Defendant brought the Decree under the jurisdiction of Utah.

The Decree of Dissolution is comprised of three documents: 1) the Decree of Dissolution; 2) the Permanent Parenting Plan; and 3) the Separation and Property Settlement Agreement. The Decree of Dissolution states that “[t]he property and liabilities are distributed as set forth in the Separation Agreement which is incorporated herein as if fully set forth.” *See* Decree of Dissolution, pg. 2, lines 11-13. The Parenting Plan is referred to in similar language earlier in the document. *See* Decree of Dissolution, pg. 1, lines 20-22. The plain language of the document implies that by domesticating the Decree of Dissolution, all the documents are domesticated, thereby giving the court jurisdiction under the Utah Foreign Judgment Act to enforce the agreement. By domesticating the Decree of Dissolution in October, 1994, defendant domesticated all three documents comprising the Decree. As a result, plaintiff may go forward with her Amended Counterclaim.

Alimony Arrearages

Defendant argues that plaintiff is precluded from asking for alimony arrearages because §78-12-29 specifies a one year statute of limitations. Defendant claims that plaintiff should have asked for a judgment for the arrearages before September 1, 1996. See Response to Plaintiff's Trial Memorandum at pg. 6.

The Court does not find defendant's argument compelling. The argument fails because the appropriate statute to apply to the case at hand is U.C.A. §78-12-22 (1953) which states:

Within eight years:

An action upon a judgment or decree of any court of the United States or of any state or territory within the United States.

An action to enforce any liability due or to become due, for failure to provide support of maintenance for dependent children.

In Seeley v. Park, 532 P.2d 684 (Utah 1980), the Utah Supreme court ruled that the eight year statute of limitations applies to alimony arrearages. In Logan v. Schrieder, 609 P.2d 943 (Utah 1980) the court determined that an Utah action brought in 1978 to enforce a 1975 Ohio action for support arrearages was filed under this section in a timely manner. The current plaintiff filed her action for alimony arrearages on or about April 17, 1996 in an Amended Counterclaim. The arrearages date from October, 1990, to September, 1995, well within the eight year limitation specified in U.C.A. §78-12-22.

The Separation and Property Settlement, dated November 16, 1990, obligated the Defendant to pay the following maintenance payments:

\$1000.00 per month from October 25, 1990, due and payable on the 26th day of each month to be paid until August 1992.

\$800.00 per month due and payable from September 1, 1992 through September 1, 1993.

\$1050.00 per month due and payable from September 1, 1993 through September 1, 1994.

\$400.00 per month due and payable from September 1, 1994 through

September 1, 1995.

This arrearage amounts to \$30,486.30 including interest. *See* Affidavit in Support of Mot. To Dismiss Petition to Modify: Custody, Visitation, Child Support, at Exhibit A. Defendant claims he made some payments which were not credited by Plaintiff. During oral arguments on October 1, 1996, Defendant was given 15 days to submit evidence of these payments. Defendant failed to submit any evidence of payments. Therefore, the amount in arrears remains uncontested.

Attorney Fees

Under U.C.A. §30-3-3 (1953), the court may award attorney fees and court costs “in any action to enforce an order of ...alimony...in a domestic case.” In determining the appropriateness of an award of attorney’s fees the Court considers the following factors specified in Beals v. Beals, 682 P.2d 862 (Utah 1984); cited in Huck v. Huck, 734 P.2d 417 (Utah 1986), and in Talley v. Talley, 739 P.2d 85 (Utah App. 1987):

- a. necessity of the number of hours dedicated by the attorney;
- b. reasonableness of the rate charged;
- c. rates commonly charged for divorce actions in the community; and
- d. financial need of the requesting party.

Plaintiff had to defend the case, which was originally a petition for custody. Visitation and delinquent alimony were later added to the case. Plaintiff prevailed on the issues of custody and alimony. Plaintiff’s attorney charged fees totaling \$3,756.50 plus \$130.00 court costs.

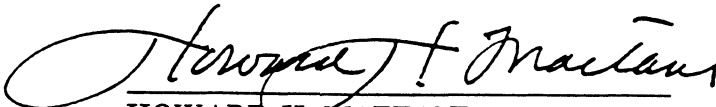
The Court finds the attorney’s fees and costs incurred by plaintiff in this action to be fair, reasonable, and necessary given the complexity of the case, the fees customarily charged for similar services in the community, the experience and expertise of counsel, and the type and

quality of work involved in this matter.

D. DECISION

1. The court hereby exercises jurisdiction over the parties and the subject matter of this action.
2. Plaintiff is awarded a judgment for alimony arrearages in the amount of \$30,486.30 plus interest at the statutory rate.
3. Since neither party has submitted Financial Declarations declaring need or obligations, the court will focus on the prevailing party to determine the award of attorney's fees. Therefore, plaintiff is awarded court costs in the amount of \$130.00 and attorney fees in the amount of \$3,000.00.
4. Counsel for Plaintiff Janine Ray Noakes, nka Lindsay, is directed to prepare on Order consistent with the above Memorandum Decision and submit it to the Court for signature.

DATED at Provo, Utah this 15 day of November, 1996.



HOWARD H. MAETANI
Fourth District Court Judge

cc: Brent D. Young
Rosemond Blakelock

APPENDIX "B"

NOTICE OF ENTRY OF JUDGEMENT

JAN. 13 1997

BRENT D. YOUNG (3584)
IVIE & YOUNG
Attorneys for Plaintiff
48 North University Avenue
P.O. Box 672
Provo, UT 84603
Telephone: (801) 375-3000

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

JANINE RAY NOAKES, nka
LINDSAY,

Plaintiff,

vs.

CHARLES LEROY NOAKES,

Defendant.

NOTICE OF ENTRY OF JUDGMENT

Civil No. 944402466

Judge: Howard Maetani

Pursuant to Rule 58A(d) of the Utah Rules of Civil Procedure, all parties are hereby notified that on the 8th day of January, 1997, judgment in the above-entitled matter was entered by the Court, (signed on 6 January, 1997) a full, true and correct copy of which is herewith served upon you. **(Findings of Fact and Conclusions of Law, and Order).**

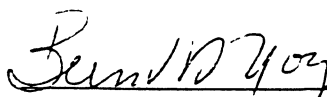
Dated this 10 day of January, 1997.


BRENT D. YOUNG

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing on the 1st day of January, 1997, to Rose Blakelock, Attorney for Defendant, postage prepaid, addressed as follows:

Rose Blakelock
Attorney at Law
37 E. Center, 2nd floor
Provo, UT 84606


BRENT D. YOUNG

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APPENDIX "C"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

COPY TO CLIENT

12/16/96

JAN 13 1997

BRENT D. YOUNG (3584)
IVIE & YOUNG
Attorneys for Plaintiff
48 North University Avenue
P.O. Box 672
Provo, Utah. 84603
Telephone: (801) 375-3000

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

JANINE RAY NOAKES, nka
LINDSAY,

Plaintiff,

v.

CHARLES LEROY NOAKES,

Defendant.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
(HEARING DATE 1 OCTOBER, 1996)

Civil No. 944402466
Judge: Howard Maetani

This matter came before the court on October 1, 1996. Plaintiff Janine Ray Noakes, nka Lindsay was present and represented by counsel Brent D. Young. Defendant Charles Leroy Noakes was present and represented by counsel Rosemond Blakelock. The Court granted plaintiff 15 days to submit an affidavit for attorney fees. Plaintiff was allowed 15 days to submit objections to the Trial Memorandum submitted by defendant. Defendant was allowed an additional five days to respond to Plaintiff's objection, and plaintiff was given an additional five days to respond. The court also granted defendant 15 days to submit proof of alimony payments made in 1993, including agreement made

with plaintiff's counsel to pay attorney fees in 1992.

Plaintiff submitted Affidavit for Attorney Fees on October 4, 1996. Defendant submitted a Response to Plaintiff's Trial Memorandum with a Notice to Submit on October 21, 1996. Defendant failed to submit any proof of alimony payments.

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 parties were married on May 9, 1975 in Los Angeles, California.
2. The court finds the parties obtained a Decree of Dissolution from the Superior Court, State of Washington, King County, on or about June 13, 1991.
3. The court finds on or about October 18, 1994, Defendant registered the foreign judgment entitled Decree of Dissolution under the Foreign Judgment Act, U.C.A. §78-22a-1 (1953).
4. The court finds on June 5, 1995, defendant petitioned the court to modify the Decree regarding the issues of visitation, custody, transportation costs and attorney's fees.
5. The court finds on April 16, 1996, Plaintiff filed an Amended Counterclaim to ~~en~~ enforce the support order contained in the Separation and Property Settlement Agreement.

Plaintiff asserts that defendant is delinquent in spousal support payments in the amount of \$37,000. *See* Plaintiff's Amended Counterclaim paragraph 6.

6. The court heard oral arguments on October 1, 1996. The remaining unsettled issues were alimony and visitation rights of the defendant. The court will not address the issue of visitation until the parties have completed mediation. The court will address the remaining issue of alimony.

ISSUES

7. Plaintiff argued that the court has jurisdiction over the matter of alimony under the Utah Foreign Judgment Act, Utah Code Annotated §78-22a-1-3 (1953). Plaintiff asks that the Decree be enforced and that defendant be ordered to pay delinquent alimony. Defendant claims that plaintiff is not entitled to ask for alimony arrearage because plaintiff failed to follow the procedure for foreign judgments under U.C.A. §78-12-29 (1953).

8. Defendant claims that plaintiff failed to reduce the alimony to a judgment. Defendant argues that plaintiff is now precluded from asking for the delinquent alimony because plaintiff failed to request a judgment before the one year statute of limitations expired for such actions under U.C.A. §78-22-29 (1953). Defendant claims that his alimony liability expired September 1, 1996.

ANALYSIS

Jurisdiction

9. The court finds the Utah Foreign Judgment Act specifies the procedure to be used when registering a foreign judgment in Utah. The Act defines a foreign judgment as "any judgment, decree, or order of a court of the United States or of any other court whose acts are entitled to full faith and credit in this state." Utah Code Annotated §78-22a-2(1) (1953). Once a foreign judgment is filed under the Act, it is given the same treatment and consideration as "a judgment of a district court of this state." Utah Code Annotated §78-22a-2-(3) (1953). By registering the Decree of Dissolution with the state under the Foreign Judgment Act in 1994, Defendant brought the Decree under the jurisdiction of Utah.

10. The Decree of Dissolution is comprised of three documents: 1) the Decree of Dissolution, 2) the Permanent Parenting Plan; and 3) the Separation and Property Settlement Agreement. The Decree of Dissolution states that "[t]he property and liabilities are distributed as set forth in the Separation Agreement which is incorporated herein as if fully set forth." *See* Decree of Dissolution, pg. 2, lines 11-13. The Parenting Plan is referred to in similar language earlier in the document. *See* Decree of Dissolution, pg. 1, lines 20-22. The plain language of the document implies that by domesticating the

Decree of Dissolution, all the documents are domesticated, thereby giving the court jurisdiction under the Utah Foreign Judgment Act to enforce the agreement. By domesticating the Decree of Dissolution in October, 1994, defendant domesticated all three documents comprising the Decree. As a result, plaintiff may go forward with her Amended Counterclaim.

ALIMONY ARREARAGE

11. Defendant argues that plaintiff is precluded from asking for alimony arrearage because §78-12-29 specifies a one year statute of limitations. Defendant claims that plaintiff should have asked for a judgment for the arrearage before September 1, 1996. *See* Response to Plaintiff's Trial Memorandum at pg. 6.

12. The Court does not find defendant's argument compelling. The argument fails because the appropriate statute to apply to the case at hand is U.C.A. §78-12-22 (1953) which states:

Within eight years:

An action upon a judgment or decree of any court of the United States or of any state or territory within the United States.

An action to enforce any liability due or to become due, for failure to provide support of maintenance for dependent children.

In Seeley v. Park, 532 P.2d 684 (Utah 1980), the Utah Supreme Court ruled that the eight year statute of limitations applies to alimony arrearage. In Logan v. Schrieder,

609 P.2d 943 (Utah 1980) the court determined that an Utah action brought in 1978 to enforce a 1975 Ohio action for support arrearage was filed under this section in a timely manner. The current plaintiff filed her action for alimony arrearage on or about April 17, 1996 in an Amended Counterclaim. The arrearage date from October, 1990, to September, 1995, well within the eight year limitation specified in U.C.A. §78-12-22.

13. The court finds the Separation and Property Settlement, dated November 16, 1990, obligated the Defendant to pay the following maintenance payments:

\$1000.00 per month from October 25, 1990, due and payable on the 26th day of each month to be paid until August 1992.

\$800.00 per month due and payable from September 1, 1992 through September 1, 1993.

\$1050.00 per month due and payable from September 1, 1993 through September 1, 1994.

\$400.00 per month due and payable from September 1, 1994 through September 1, 1995.

14. The court finds this arrearage amounts to \$30,486.30 including interest. See Affidavit in Support of Motion To Dismiss Petition to Modify: Custody, Visitation, Child Support, at Exhibit A. Defendant claims he made some payments which were not credited by Plaintiff. During oral arguments on October 1, 1996, Defendant was given 15 days to submit evidence of these payments. Defendant failed to submit any evidence of

payments. Therefore, the amount in arrears remains uncontested.

Attorney Fees

15. The court finds under U.C.A. §30-3-3 (1953), the court may award attorney fees and court costs "in any action to enforce an order of ... alimony ... in a domestic case." In determining the appropriateness of an award of attorney's fees the court considers the following factors specified in Beals v. Beals, 682 P.2d 862 (Utah 1984); cited in Huck v. Huck 734 P.2d 417 (Utah 1986), and in Talley v. Talley, 739 P.2d 85 (Utah App. 1987):

- a. necessity of the number of hours dedicated by the attorney;
- b. reasonableness of the rate charged;
- c. rates commonly charged for divorce actions in the community; and
- d. financial need of the requesting party.

16. The court finds plaintiff had to defend the case, which was originally a petition for custody. Visitation and delinquent alimony were later added to the case. Plaintiff prevailed on the issues of custody and alimony. Plaintiff's attorney charged fees totaling \$3,756.50 plus \$130.00 court costs.

17. The court finds the attorney's fees and costs incurred by plaintiff in this action to be fair, reasonable, and necessary given the complexity of the case, the fees

customarily charged for similar services in the community, the experience and expertise of counsel, and the type and quality of work involved in this matter.

18. The court finds it shall exercise jurisdiction over the parties and the subject matter of this action.

19. The court finds plaintiff shall be awarded a judgment for alimony arrearage in the amount of THIRTY THOUSAND FOUR HUNDRED EIGHTY SIX DOLLARS and 30/100 (\$30,486.30), plus interest at the statutory rate.

20. The court finds since neither party has submitted Financial Declarations declaring need or obligations, the court shall focus on the prevailing party to determine the award of attorney's fees. Therefore, plaintiff shall be awarded court costs in the amount of ONE HUNDRED THIRTY DOLLARS (\$130.00) and attorney fees in the amount of THREE THOUSAND DOLLARS (\$3,000.00).

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

CONCLUSIONS OF LAW

(1) That the court exercises jurisdiction over the parties and the subject matter of this action;

(2) That plaintiff is entitled to judgment against the defendant for alimony arrearage in the amount of THIRTY THOUSAND FOUR HUNDRED EIGHTY SIX and

30/100 (\$30,486.30), plus interest at the statutory rate;

(3) That plaintiff is entitled to judgment against the defendant for court costs in the amount of ONE HUNDRED THIRTY DOLLARS (\$130.00) and for attorney's fees in the amount of THREE THOUSAND DOLLARS (\$3,000.00).

Dated this 6 day of Jan, 1997.

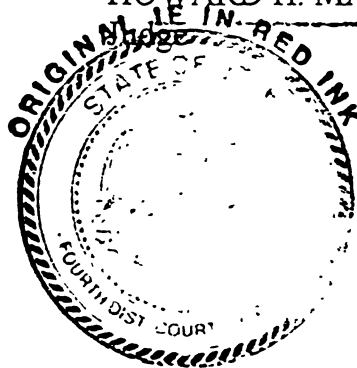
BY THE COURT:

Howard H. Maetani

HOWARD H. MAETANI

Approved as to form:

RI
ROSE BLAKELOCK
Attorney for Defendant



H:\COMMON\HEATHER\LND SY.FOF

APPENDIX "D"

ORDER

COPY TO CLIENT

12/16/96

1997 OCT - 1

POP

BRENT D. YOUNG (3584)
IVIE & YOUNG
Attorneys for Plaintiff
48 North University Avenue
P.O. Box 672
Provo, Utah, 84603
Telephone: (801) 375-3000

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

JANINE RAY NOAKES, nka
LINDSAY,

Plaintiff,

v.

CHARLES LEROY NOAKES,

Defendant.

ORDER (HEARING DATE 1
OCTOBER, 1996)

Civil No. 944402466
Judge: Howard Maetani

This matter came before the court on October 1, 1996. Plaintiff Janine Ray Noakes, nka Lindsay was present and represented by counsel Brent D. Young. Defendant Charles Leroy Noakes was present and represented by counsel Rosemond Blakelock. The Court granted plaintiff 15 days to submit an affidavit for attorney fees. Plaintiff was allowed 15 days to submit objections to the Trial Memorandum submitted by defendant. Defendant was allowed an additional five days to respond to Plaintiff's objection, and plaintiff was given an additional five days to respond. The court also granted defendant 15 days to submit proof of alimony payments made in 1993, including agreement made

with plaintiff's counsel to pay attorney fees in 1992.

Plaintiff submitted Affidavit for Attorney Fees on October 4, 1996. Defendant submitted a Response to Plaintiff's Trial Memorandum with a Notice to Submit on October 21, 1996. Defendant failed to submit any proof of alimony payments.

The court, having heard the testimony of witnesses, considered the exhibits and arguments of counsel, reviewed the submitted documents, being fully advised in the premises, and based upon the accompanying Findings of Fact and Conclusions of Law, now makes the following:

ORDER

1. The court exercises jurisdiction over the parties and the subject matter of this action.
2. Plaintiff is awarded judgment against the defendant for alimony arrearage in the amount of THIRTY THOUSAND FOUR HUNDRED EIGHTY SIX and 30/100 (\$30,486.30), plus interest at the statutory rate.
3. Plaintiff is awarded judgment against the defendant for court costs in the amount of ONE HUNDRED THIRTY DOLLARS (\$130.00) and for attorney's fees in the

amount of THREE THOUSAND DOLLARS (\$3,000.00).

Dated this 6 day of Jan, 1997.

BY THE COURT:

Howard H. Maetani

HOWARD H. MAETANI

Judge

Approved as to form:

Rose Blake Lock

ROSE BLAKELOCK
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