

1997

Katherine A. Thrash v. James L. Thrash : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 970204-CA

IN THE UTAH COURT OF APPEALS

KATHERINE A. THRASH,)	
)	
Plaintiff/Appellant,)	Case No. 970204-CA
)	
vs.)	
)	Priority 15
JAMES L. THRASH,)	
)	
Defendant/Respondent,)	
)	
STATE OF UTAH, Office of)	
Recovery Services,)	
)	
Intervenor.)	

BRIEF OF APPELLANT, KATHERINE A. THRASH

Appeal from Decree of Divorce entered by Second
District Court, Davis County,
Michael G. Allphin, Judge

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FILED
AUG 1997
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JURISDICTION

The Utah Court of Appeals has primary jurisdiction in this matter
as in all divorce matters pursuant to UCA 78-2a-3(h).

STATEMENT OF ISSUES

1. There are only two issues of fact presented by this
appeal. The controlling issues are matters of law.

STANDARD OF REVIEW. Ruling of Trial Court is afforded
deference on appeal except where statutes and rules are
interpreted in which case the standard of review is for

correctness without deference to the rulings of the Trial Court. (See first, Barnes v. Barnes 857 P2d 257, 259 (Utah Court of Appeals 1993). (See also, Bingham v. Bingham 872 P2d 1065, 1062 (Utah Court of Appeals 1994).

- a. The issue of fact is whether or not JAMES L. THRASH impregnated KATHERINE A. NUTT eight months prior to their marriage and is, therefore, the natural father of A.S.T. (TR pg. 147, Transcript, pg. 4, lines 10-20, TR 154-155, Transcript, pgs. 11 and 12, lines 12, 14, 7-20.)

STANDARD OF REVIEW. Presumption of correctness with deference to the Lower Court. (Barnes v. Barnes 857 P2d 257, 259 (Utah Court of Appeals 1993).

- (1) An issue of conflict of interest, a fact which was not remembered by Plaintiff/Appellant until after the default hearing, was ruled on by the Lower Court without taking testimony. (TR 52-56 and 57-59.)

STANDARD OF REVIEW ON APPEAL. The Lower Court is reviewed for correctness without deference. (Bingham v. Bingham 872 P2d 1065, 1062 (Utah Court of Appeals 1994).

- (2) Has Plaintiff/Appellant been denied equal protection of law when the Lower Court excluded her own testimony on paternity under Lord Mansfield's Rule and thereafter

permitted the parties in Raguel Busch v. Steven Busch, Second District Court, Civil No. 944700971DA, stipulation admitted April 9, 1997, at 10:59 a.m. (Addendum, Exhibit #1) to bastardize a minor child by written stipulation? (See also Addendum, Exhibit 7).

STANDARD OF REVIEW for application of Rules such as 4-504 is for correctness without deference. (Bingham v. Bingham Supra).

- b. As a matter of law, is the District Court permitted to consider objections to Plaintiff/Appellant's Findings and Decree which are filed and docketed TWO (2) days after the expiration of the period of time provided by the Court's own rule without requiring that Defendant/Respondent's counsel secure the consent of opposing counsel to have the objection considered late? (TR pg. 139, entry 12/20/96. Also Rule 4-504, Code of Judicial Administration, Addendum, Exhibit #10).

STANDARD OF REVIEW is for correctness. (Bingham v. Bingham supra).

- c. As a matter of law, is the District Court required to maintain the integrity of the Court file by seeking replacement copies of the Findings and Decree of Divorce which were docketed but not in the file at the time the Court ruled on the

motions made by Plaintiff/Appellant? (TR pg. 139, entry 12/20/96. See Addendum, Exhibit #5).

STANDARD OF REVIEW on the facts of uncontroverted disclaimer of paternity by Defendant/Respondent is to afford deference to the Trial Court's findings. (Barnes v. Barnes 857 P2d 257, 259 (Utah Court of Appeals 1993). On the issue of the application of controlling case law, the Trial Court's findings are reviewed for correctness without deference. (Bingham v. Bingham 872 P2d 1065, 1062 (Utah Court of Appeals 1994).

- d. As a matter of law, may a party, by his silence in the Spouse Abuse Protective Order hearing give his consent to the representation that the minor child born during the marriage is not the issue of his body, thereafter claim in a divorce proceeding involving the identical subject matter that he has issue of the marriage? (TR pg. 139, and pg.147, lines 14-19 of Transcript.)

STANDARD OF REVIEW as to the application of the Utah Rules of Civil Procedure, the rulings of the Lower Court are reviewed for correctness without deference. (Bingham v. Bingham *supra*).

- e. Is the Defendant/Respondent required by law to assert his claim to paternity of the minor child born during the parties' marriage by counterclaim or admission in an answer to the Divorce Complaint, or may he rely solely on the claimed

paternity stated in the Verified Complaint? (TR
pg. 1.)

STANDARD OF REVIEW as to the refusal of the District Court to set aside the default hearing, the application of Rule 15(b) of the Utah Rules of Civil Procedure and the application of the remainder of Lord Mansfield's Rule, the actions of the Lower Court are reviewed for correctness on appeal without deference. (Bingham v. Bingham *supra*).

f. Is the District Court required, as a matter of law, to accept the retraction of Plaintiff/Appellant's Verified Complaint paternity claims which are not controverted by any pleading, testimony, or evidence from Defendant? (TR 154, lines 12-14; pg. 155, lines 7-17.)

STANDARD OF REVIEW. Lower Court rulings on motions are afforded deference on appeal (Barnes v. Barnes 957 P2d 257, 259 (Utah Court of Appeals 1993) except when the rulings involve the application of statutes and rules of civil procedure as they do in this case. The standard of review then is for correctness without deference to the interpretation of the Lower Court. (Bingham v. Bingham 872 P2d 1065, 1062 (Utah Court of Appeals 1994).

g. Did the District Court err when it refused to set aside Plaintiff/Appellant's default hearing and either allow Defendant/Respondent to file responsive pleadings or issue an order for DNA

testing of the parties and the minor child? (TR
pg. 42.)

STANDARD OF REVIEW is for correctness without deference.
(Bingham v. Bingham supra).

- h. Did the District Court err in its application of Lord Mansfield's Rule to the default hearing testimony of the Plaintiff/Appellant precluding either party from bastardizing the minor child born TWO (2) months after their marriage? (TR 74-77.)

STANDARD OF REVIEW is to afford the Lower Court's rulings on motions deference (Barnes v. Barnes 857 P2d 257, 259 (Utah Court of Appeals 1993) except when the rulings involve the application of statutes, rules of civil procedure and case law as found herein in which case the Court of Appeals reviews the actions of the Lower Court for correctness affording the Lower Court no deference. (Bingham v. Bingham 872 P2d 1065, 1062 (Utah Court of Appeals 1994).

- i. Did the District Court apply Lord Mansfield's Rule erroneously to the motion for an order requiring DNA tissue tests on the question of paternity by failing to recognize the body of case law which holds that blood tests and DNA tests are not testimonial evidence? (See the case of State in the Interest of J.W.F., 799 P2d 710 at 716 and also UCA 78-25-18).

STANDARD OF REVIEW is for correctness without deference, and appears, in the case at bar, to be a question of "first impression." (Bingham v. Bingham supra).

- j. Is the State of Utah required to pay for, as a matter of law, the court reporter's transcripts for Plaintiff/Appellant whose impecunious affidavit waived the \$82.00 filing fee in the Lower Court? (TR 117-118. TR 119-120.)

STANDARD OF REVIEW is for correctness as a matter of law, the State of Utah having intervened because the Plaintiff/Appellant is a disabled Aid for Dependent Children recipient. (Bingham v. Bingham supra).

- k. Must the State of Utah pay Genetic Design the \$262.00 charged for DNA testing of the parties and the minor child where Plaintiff/Appellant has established her indigence in the Lower Court (TR 111-115), Defendant/Respondent having filed no pleadings which place the paternity of A.S.T. at issue.

STANDARD OF REVIEW is for correctness without deference on appeal where Rule 11 of the Utah Rules of Civil Procedure is violated. The Court of Appeals makes its own determination, and may award attorney's fees as a sanction on appeal. (Barnard v. Sutliff 846 P2d 1229, 1233-35 (Utah Court of Appeals 1992).

- l. Is Davis County Title XX Legal Aid entitled, as a matter of law, to attorney's fees from

Defendant/Respondent on appeal either under Rule 11 of the Utah Rules of Civil Procedure or as part of any State obligation to provide due process of law or equal protection of law to an indigent Plaintiff/Appellant? (TR 28, Memorandum of Defendant/Respondent's counsel, para. 2, pg. 2).

STATEMENT OF THE CASE

KATHERINE A. THRASH was EIGHT (8) months pregnant with RICK HANSEN'S child at the time she married JAMES L. THRASH. JAMES L. THRASH and KATHERINE A. NUTT were married on April 18, 1992, in Brigham City, Box Elder County, Utah.

KATHERINE A. THRASH was delivered of a male child, whom she named A.S.T., on June 13, 1993, and listed JAMES L. THRASH as the father on the hospital birth records which JAMES L. THRASH signed. A Utah State Department of Health birth certificate showing JAMES L. THRASH as father to A.S.T. was registered on June 18, 1992. (Addendum, Exhibit #2).

The Plaintiff/Appellant is confined to a wheelchair, but she can walk with the aid of crutches.

Plaintiff/Appellant, KATHERINE A. THRASH, filed pro se a Petition for a Spouse Abuse Protective Order in the Second Judicial District Court of Davis County, Civil No. 964700829, on May 5 and on May 30, 1996. An ex parte order was issued against Defendant/Respondent, JAMES L. THRASH. (Addendum, Exhibit 3).

Appellant next sought Title XX Legal Aid to secure a divorce from JAMES L. THRASH on May 28, 1996. Plaintiff signed a Verified Complaint for Divorce on June 5, 1996. She alleged that the minor child, A.S.T., was the issue of the parties. The Verified Complaint was filed on June 10th along with Notice of Divorce Education Requirements and a Support Obligation Worksheet. (TR 1-10 and TR 11-15.)

On June 5th, a Notice of Standing to Intervene was mailed to the Office of Recovery Services. (TR 103-109).

On June 13, 1996, a hearing was held on the ex parte protective order before COMMISSIONER DAVID S. DILLON. The Complaint for Divorce was served by the bailiff to JAMES L. THRASH at this hearing, and a Return of Service was filed with the District Court on June 19, 1996. (TR 20-21.)

At the June 13, 1996, protective order hearing, plaintiff was accompanied by her friend, ELLEN, and was represented by J. VAL ROBERTS, attorney at law. Defendant/Respondent, JAMES L. THRASH, attended the hearing, but was not represented by counsel. JAMES L. THRASH stated off the record, "I guess she has told you that I am not the father of the child." When interrogated off the record, Plaintiff/Appellant admitted, in the presence of her friend, ELLEN, that they had both given false information to counsel when they alleged that the minor child, A.S.T., was the issue of the parties as claimed by Plaintiff/Appellant in the Verified Complaint.

The District Court made no order for child support, it having been represented by counsel that the parties agreed that they had no issue born of the marriage.

On July 10, 1996, ATTORNEY J. VAL ROBERTS mailed to the Court a Default Certificate which is not found in the District Court file and is not indexed by the clerk of the Lower Court. (Addendum, Exhibit #4. The Default Certificate was returned by the Court saying "no proof of service," but the Docket shows the Return of Service was filed June 19, 1996.) (TR 20-21).

On July 15, 1996, the clerk of the Court returned the Default Certificate with the note that there was no Return of Service in the divorce case. The Court's docket shows Summons and Return of Service on JAMES was docketed on June 19, 1996. (TR 20-21).

A letter notifying Plaintiff/Appellant of the default divorce hearing, which had been scheduled for October 31, 1996, was mailed to Plaintiff/Appellant on October 24, 1996.

At the October 31, 1996, default divorce hearing, only the Plaintiff/Appellant and her counsel appeared. Plaintiff/Appellant testified from the stand that Defendant/Respondent was not the father of the minor child, A.S.T. She stated under oath that she had been subjected to non-consensual sexual intercourse with RICK HANSEN months before her marriage to JAMES L. THRASH.

The District Court ruled from the bench that it had jurisdiction over the parties and the subject matter, that irreconcilable differences had been proven by Plaintiff/

Appellant's sworn testimony, and awarded the relief prayed by the Complaint. (TR 156, Transcript pg. 13, lines 2-6).

Findings and Decree, based on the sworn testimony of Plaintiff/Appellant, were mailed to Defendant/Respondent on December 10, 1996, and the Court on December 19, 1996.

The District Court Docket shows that the Findings of Fact and Decree of Divorce were received the next day on December 20, 1996, and were sent that same day to the chambers of the HONORABLE MICHAEL G. ALLPHIN. The Plaintiff/Appellant's Findings and Decree of Divorce were never returned to the District Court file after December 20, 1996, unbeknownst to Plaintiff/Appellant's counsel. (TR 139, 12/20/96 entry. Addendum, Exhibit #5).

On December 19, 1996, Defendant/Respondent, who had not previously been represented by counsel in either the Spouse Abuse Protective Order hearing or the October 31, 1996, default divorce hearing, had retained ATTORNEY JON J. BUNDERSON who filed objections to the Findings and Decree which were not consistent with the Verified Complaint on the issue of paternity of A.S.T. Objections were filed TWO (2) days after the expiration of the time provided by Rule 4-504, Code of Judicial Administration. (TR 24-26, filed 12/19/96, Index entry).

As early as December 16th, Defendant took copies of Plaintiff's Findings and Decree to ATTORNEY JON BUNDERSON who, unknown to Plaintiff's counsel, filed his Appearance of Counsel, a Motion to Deny Signing Plaintiff's Decree and Findings or in

the Alternative, to Set Aside Default on December 19, 1996. The Motion was dated December 17th, but was not filed until TWO (2) days after the time provided by Rule 4-504, Code of Judicial Administration, and did not reach Plaintiff's counsel until December 20, 1996. (TR 23-30.)

The Defendant/Respondent makes neither a sworn nor unsworn claim of paternity. Attorney for Respondent does say in his December 19th Memorandum,

"Defendant desires to be the legal father of the child, and believes it is in the best interest that he function in such capacity.

"Plaintiff has always sworn under oath that the child born during the marriage is the child of the Defendant as noted in the Verified Complaint filed in this matter and the companion Protective Order, Case No. 964700827." (TR 28.)

In the Petition for Protective Order dated May 30, 1996, the box that would indicate a child together is not checked, and no child is listed by Appellant in the Appendix to the Protective Order. (Addendum, Exhibit #3, pg. 1).

In a ruling dated 10 January 1997, the Court finds that it has reviewed Plaintiff's Findings and Decree saying those Findings are not consistent with the Verified Complaint and grants Defendant's Motion to Deny Signing. (TR 38.)

In a later ruling dated February 28, 1997, the Court states that Plaintiff/Appellant has never submitted Findings and Decree. (TR pg. 73.) The Court next finds that, "Plaintiff/Appellant's counsel delivered to Defendant's counsel a proposed Decree and Findings of Fact that were inconsistent with the divorce granted

by the Court. The Court has never had occasion to actually view the Plaintiff's Decree and Findings of Fact as she has never filed them with the Court." (TR 73.)

The Docket shows that the Plaintiff's Decree and Findings were docketed and given to the HONORABLE MICHAEL G. ALLPHIN by the clerk on December 20, 1996. ("FF and DD to MGA," TR 139).

The Findings and Decree of Divorce filed by counsel for Defendant/Respondent were the subject of motions which preserved the issue on appeal and were signed and entered on February 28, 1997. Plaintiff/Appellant's appeal was timely taken.

SUMMARY OF ARGUMENTS

1. The Trial Court had notice that paternity was an issue, that the parties' marriage was broken, and that the Plaintiff/Appellant would controvert her Verified Complaint on the issue of paternity well in advance of the Plaintiff's testimony at the October 31, 1996, default hearing, (TR 139, entry 10/10/96) and erred by not permitting non-testimonial DNA evidence as provided by statute and case law. The Trial Court's next error was its failure to conform the Complaint to the evidence given under oath by the Plaintiff/Appellant as provided by Rule 15(b) of the Utah Rules of Civil Procedure. (Addendum, Exhibit #12).

2. The Defendant/Respondent's Findings and Decree are not supported by any evidence of his paternity, there having been no trial as alleged by the Trial Judge in his ruling setting forth

the reasons why he would not allow Plaintiff/Appellant to controvert the earlier statement made in her Verified Complaint. In the total absence of any pleading by the Defendant/Respondent claiming paternity as in the case at bar, the Court is required by the rules, the statutes and the case law to either accept the evidence given at the default hearing or to order non-testimonial DNA evidence. (Isaac v. Isaac, 715 P2d 106 at 105, Ut. 1986, Addendum, Exhibit #6). It was an abuse of discretion not to do either one. (See also State ex Rel. J.W.F. 799)2d 710 (Ut. Supreme Court 1990).

3. The Plaintiff/Appellant's State and Federal constitutional rights of equal protection of the law and procedural due process of law have been violated by the present and subsequent ruling of the Trial Court in other cases involving non-disabled parties who stipulate that a child born during their marriage is not the issue of the husband and whose stipulation is subsequently confirmed by DNA tests provided by the State of Utah, Office of Recovery Services. (Addendum, Exhibit #1. Also, Fifth and Fourteenth Amendments, U. S. Constitution, Utah Constitution, Article 1, Section 7, Exhibits #13, 14, and 15).

4. There being no issue of custody, the Trial Court misapplied the best-interest-of-the-child test in State in the Interest of J.W.F., 799 P2d 710 at 716.

5. This Court should exercise its equitable jurisdiction, and put the issue of paternity to rest by either ordering the parties to give non-testimonial DNA evidence or by entering

Plaintiff/Appellant's Findings and Decree. Such resolution will not prevent the Defendant/Respondent from asserting thereafter a best interest claim of custody on which the Lower Court may take evidence and custody evaluations.

ARGUMENT

The Plaintiff/Appellant signed a Verified Petition for a Protective Order stating that the parties had no minor children on May 30, 1996. In describing the Defendant/Respondent's relationship to the minor child, A.S.T., she designated the child as "my son." She asks no protection for the minor child despite a description of force and restraint used on the child, then age three, by Defendant/Respondent. (Addendum, Exhibit #3). The Protective Order designates "no child" in its Appendix, (Addendum, Exhibit #7), and the transcript of the hearing shows that COMMISSIONER DILLON was made aware of an issue of paternity created by the differences between the Petition for the Protective Order and the Verified Complaint for Divorce. No support order was issued at the hearing as would be customary if there were minor children that were issue of the parties. (TR 147, Transcript pg. 4, lines 16-19, and TR 151, Transcript pg. 8, lines 6-23).

Rule 15(b) of the Utah Rules of Civil Procedure clearly requires that the Trial Court conform its Findings to the evidence if such is different than the pleadings. The only

hearing held was the default hearing at which only the Plaintiff/Appellant appeared.

"Such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made by any party at any time even after judgment; but failure to amend does not affect the result of the trial on these issues.***"

If the Court was surprised by the change in the Plaintiff/Appellant's testimony on the issue of paternity, it gave no indication of such surprise. Neither did the Trial Judge give any indication until his final ruling on motions that he was using a "best interest" test to conclude that the child needed a father, (See Ruling, Feb. 28, 1997, TR 73-79), thereby surprising all parties and Plaintiff/Appellant's counsel.

In its attempt to justify Defendant/Respondent's Findings and Decree, the Court cites in its ruling State of Utah in the Interest of J.W.F., 799 P2d 710. The Trial Court cited the correct case, but entirely failed to follow its mandate on the issue to the paternity of A.S.T. when it denied DNA tests.

In its final ruling, the Trial Court denied the Plaintiff/Appellant the protection of Sections 78-25-18 and 78-25-21 UCA as amended.

78-25-18. "In any civil action or in bastardy proceedings in which the parentage of a person is a relevant fact, the court shall order the child and the alleged parents to submit to blood tests." (1987).

78-25-21. "The results of the tests shall be received in evidence***where the conclusion is***that the alleged father is not the

actual father of the child, the question of paternity shall be so resolved." (1969).

Plaintiff/Appellant having identified the actual father in post-default hearing motions by affidavit could, on motion of the State of Utah, Office of Recovery Services, be deprived of the protection provided her by the non-identification provisions of the Code of Federal Regulations covering cases of paternity involving violence to the mother by an order that the person she has identified also submit to DNA testing.

The teaching of the J.F.W. case (supra) is that the Legislature has enacted statutes which limit the scope of Lord Mansfield's Rule by mandating scientific analysis of blood tissue. The use of the mandatory imperative form of English writing, "The court shall order the child and alleged parents to submit to blood tests," will be meaningless for Plaintiff/Appellant unless these DNA tests are ordered in the case at bar.

The Trial Judge erred by reaching the conclusion that the child needs a father because of the Plaintiff/Appellant's paraplegic condition observed when she gave testimony under oath that the Defendant/Respondent is not the father of her minor child. The error was compounded when the Court continued its prior practice in the case of Raguel Busch v. Steven Busch (Addendum, Exhibit #1) permitting two non-disabled parties to bastardize the child born during their marriage by stipulation. Subsequently the State of Utah was permitted to identify the biological father by tissue testing. (See Addendum, Exhibit #9,

"Notice of Results of Genetic Testing." See also Addendum, Exhibit #9, DNA test).

In the case of Busch v. Busch, the HONORABLE MICHAEL G. ALLPHIN accepted the parties' stipulation which declared that a minor child born to the wife during the marriage was not the issue of the husband. (See Addendum, Exhibit #1).

In explaining its holding in State of Utah in the Interest of J.W.F., the Utah Supreme Court cited Logan v. Logan, 30 Utah 2d at 395, 519 P2d at 699:

As stated by this court, the rule is that spouses themselves may not give testimony which would tend to illegitimize the child" (The proof of such facts where necessary must come from other sources. (Ibid at 396 519 P2d 699.)

***the relationship that the stepparent Schoolcraft shares with JWF is sufficient to entitle him to a hearing on custody." (Hutchison 649 P2d at 41. See also Gribble, 583 P2d at 64.)

Of course, granting Schoolcraft a hearing on best interests does not mean that he has any presumption of entitlement to custody citing case law."

Not until such time as a person who has standing under the rule of the Utah Supreme Court case of State of Utah in the Interest of J.W.F., Ibid., pleads the issue of custody of the now five-year-old child and supplies evidence of best interest can a court of law rule that the child needs a father or that Defendant/ Respondent should fill that role. The question was simply not before the Court for decision.

The State of Utah, Office of Recovery Services, who has intervened in the case on appeal here, followed up the Busch v. Busch stipulation with a non-testimonial DNA test of Plaintiff Busch and the alleged father as required by 78-25-18 UCA. The Notice of DNA Test Results establishes that the biological father of the last child born to MRS. BUSCH is not her husband. (See Addendum, Exhibit #9.) The Busch case was decided by the Trial Court subsequent to the Thrash v. Thrash case on appeal here, and is consistent with the Court's prior rulings in other cases, and meets the mandatory testing requirements of 78-25-18 and 78-25-21 UCA which the Court refused to permit in the case at bar.

Unless the ruling of the Trial Court is reversed by this Court as part of its equitable authority and DNA testing ordered, not only will Plaintiff/Appellant be denied equal protection of the law required by both the Federal and Utah Constitutions, the minor child will be precluded from a knowledge of his genetic inheritance.

Most significant, unless the non-paternity of the Defendant/Respondent is established according to statute, the Defendant/Respondent can continue to exercise visitation according to the order of the Lower Court until he can persuade the child to desert his disabled mother and take up residence in the custody of the Defendant/Respondent sometime between his 9th and 12th birthdays.

Defendant/Respondent, who according to the uncontroverted Affidavit of the Plaintiff/Appellant is biologically incapable of

fathoring a child, (TR 46) may hereafter steal away both the affections and the physical possession of a child with whom his only connection is that of stepparent based solely on the erroneous order of the Lower Court. Such a long-term result is clearly outside the proper interpretation of Rule 15(b) of the Utah Rules of Civil Procedure, the existing case law as cited by the Utah Supreme Court in State of Utah in the Interest of J.W.F. (supra) and the mandatory language of the statutes previously cited.

This Court should order DNA testing with the issue of paternity to abide the test outcome and the issue of custody to be determined on proper pleading supported by the Hogge v. Hogge, 649 P2d 51 Ut. 1982, change of circumstance test and a proper custody evaluation.

The case at bar presents this Honorable Court with an opportunity to reaffirm the existing decisions so as to preclude future media events such as occurred in the Third District Court recently when two women disputed visitation with a child which one had conceived by artificial insemination and the other had assisted in parenting to the extent that the child was said to know only the two of them as parents.

The more recent New Jersey case that was a national television event cast a shadow of disrespect over the law when a natural mother was deprived of custody of a baby who two of her consorts each claimed as their issue. DNA testing was reported nationally as excluding both men as fathers, and the child was

thereafter returned to her only identified biological parent who then resided outside New Jersey.

The strict enforcement of the controlling statutes and case law should be a concern of this Court as it strives to protect the rights of biological mothers and awaits future evidence on best interest and change of circumstance.

As demonstrated by the post-judgment proceedings in the case of STATE OF UTAH, Office of Recovery Services, ex rel. RAQUEL LEIGH BUSCH, Plaintiff, vs. DAVID SCOTT SIMONSEN, Defendant, Civil No. 974700047, Second Judicial District Court, Davis County, Farmington Department, Notice of Results of Genetic Testing, JUDGE MICHAEL G. ALLPHIN, (See Addendum, Exhibits 8 and 9) dated 25 April 1997, RAQUEL BUSCH and her husband were permitted to bastardize the last child born during their marriage. Thereafter, the State of Utah, who is here an intervenor, was permitted as Plaintiff to secure DNA tests which established that DAVID S. SIMONSEN is the biological father of the child.

To make matters more difficult, that Lower Court denied the Plaintiff/Appellant's post-hearing motions for DNA testing. (TR 73-78). The Lower Court also denied Plaintiff/Appellant's due process request to set aside the default (TR 40) which was also pled as an alternative remedy by Defendant/Respondent. (TR 27).

In the Busch case, the child, K.B., was born May 30, 1996. The Busch Complaint for Divorce was filed in May of 1994. The stipulation disclaiming the last Busch child was signed August

28, 1996, by both parties and their counsel, and was filed with the approval of the Court in open court on April 9, 1997. (Addendum, Exhibit #1).

KATHERINE ANNETTE THRASH, Plaintiff/Appellant, was denied the right to illegitimize the child she had conceived eight months prior to her marriage to Defendant/Respondent and who was born just short of two months following her marriage when the Lower Court rejected, without comment, her testimony that Defendant/Respondent was not the father. (TR 155-156, Transcript pgs. 12-13, lines 21-25 and lines 2-6).

Two non-disabled parents were permitted to illegitimize the last child born during their marriage, and the State of Utah sued separately to establish paternity by DNA testing and to secure child support to reimburse Recovery Services for the AFDC welfare payments made to the natural mother.

Plaintiff/Appellant was denied the protection of DNA testing on the Court's unsupported ruling that, "The child needs a father, and the Defendant is willing to be the father." The State of Utah presently collects \$176.00 per month child support from the Defendant/Respondent to reimburse itself for the AFDC benefits paid by Department of Human Services to the Plaintiff/Appellant.

Plaintiff/Appellant is represented by Davis County Title XX Legal Aid which pays counsel \$30.00 per hour and provides no resources for any other aspect of representation. Plaintiff/Appellant has paid \$510.00 costs for the publication of the Brief

and Transcript so far, and should be reimbursed by Defendant/Respondent.

The sealed envelope in the Trial Record was never read by the Lower Court, and no reference was made to its contents, the Court having denied counsel for Plaintiff/Appellant's request to review the contents. (TR 19).

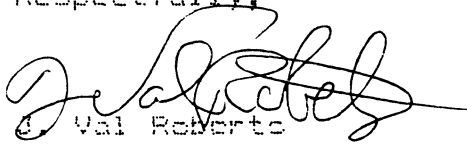
CONCLUSION

Counsel for Plaintiff/Appellant seeks, in the spirit of a brief submitted in the style of Justice Louis Brandis, to overcome the good intentions of the Lower Court in awarding the Plaintiff/Appellant's illegitimate minor child a father to meet a need which the Court perceived from observing the paraplegic condition at the time she gave her sworn testimony of illegitimacy during the default hearing which is the only evidentiary hearing conducted in the matter. The Lower Court decision should be reversed. DNA tests should be ordered even if this Court finds that they are not necessary to maintain the remainder of Lord Mansfield's Rule if for no other reason than to remove all doubt as to the minor child's genetic makeup. This Court could also mandate DNA testing of the father identified by Plaintiff/Appellant so as to absolutely insure the child a biological place to land in the event that the Plaintiff/Appellant, who has been the primary care giving parent, is incapacitated at some future time if requested by the Utah State Office of Recovery Services in its capacity as Intervenor.

Plaintiff/Appellant's impoverished condition requires that she be reimbursed for costs of transcript and binding. While Plaintiff/Appellant's counsel is not entitled to any attorney's fees on appeal, the Davis County Title XX Legal Aid Program should be reimbursed for what it has paid out in addition to the judgment granted for \$292.00 by the Lower Court.

Dated this 13th day of August, 1997.

Respectfully,

A handwritten signature in cursive script, appearing to read "J. Val Roberts", written over the typed name.

J. Val Roberts
Attorney at Law
Davis County Title XX Legal Aid

ADDENDUM

ADDENDUM

TABLE OF CONTENTS

Bucch Stipulation	Exhibit 1
Birth Certificate	Exhibit 2
Petition for Spouse Abuse Protective Order.	Exhibit 3
Default Certificate	Exhibit 4
Plaintiff/Appellant's Findings and Decree	Exhibit 5
TESEE_Y. TESEE. 715 P2d 106 at 105, Ut. 1986	Exhibit 6
Spouse Abuse Protective Order	Exhibit 7
Notice of Results of Genetic Testing.	Exhibit 8
DNA Test.	Exhibit 9

RULES

Rule 4-504. Code of Judicial Administration.	Exhibit 10
Rule 11. Utah Rules of Civil Procedure	Exhibit 11
Rule 15(b). Utah Rules of Civil Procedure.	Exhibit 12

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment V	Exhibit 13
Constitution of Utah, Article I, Section 7.	Exhibit 14
United States Constitution, Amendment XIV, Sec. 1	Exhibit 15

Tab 1

FILED IN CLERK'S OFFICE

APR 9 10 53 AM '97

CLERK, 2ND DIST. COURT

BY _____

DIUMENTI & LEWIS
George S. Diument II #0888
Attorney for Plaintiff
505 South Main Street
Bountiful, Utah 84010
Telephone: 292-0447

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

RAQUEL BUSCH,	:	
Plaintiff,	:	STIPULATION AND AGREEMENT
vs.	:	
STEVEN BUSCH,	:	Case No. 944700971
Defendant,	:	
STATE OF UTAH, Department of Human Services,	:	
Intervenor.	:	

Come now the plaintiff and defendant above named and hereby stipulate and agree, subject to the approval of the Court, as follows:

1. That the parties have experienced irreconcilable differences during the course of their marriage, and each should be granted a divorce from the other.
2. That there have been 3 children born issue of this marriage to wit:

Ian Busch, born March 17, 1986; His Depent ^{IB}
Sean Busch, born July 28, 1988; Her Depent ^{IB}
Stevie Busch, born December 9, 1989 His Depent ^{IB}
Kezzekiah Busch, Her Depent ^{IB} (NOT ISSUE OF MARRIAGE)

3. That plaintiff is a fit and proper parent and should be awarded the sole care, custody and control of the parties' minor children, with reasonable and generous visitation reserved in the defendant as prescribed by the Minimum Visitation Guidelines, a copy of which is attached hereto and incorporated herein.

4. That the defendant should pay child support to the plaintiff in the amount of ~~\$166.92~~ ^{\$418.25} per month in accordance with the Uniform Child Support Schedule, based upon plaintiff's income at \$730.00 per month and the defendant's income at \$619.00 per month.

5. ~~That in the event that the defendant is current on his~~ ^{PB} child support obligation he shall have the right to claim the minor ^{PB} children as dependents for income tax purposes. ^{It 2 Olds #80716} ^{PB} ^{August 1987}

6. That both parties maintain medical, dental and optical insurance for the benefit of the minor children if it is available through their employer at a reasonable cost.

7. That defendant shall pay one-half of work related child care expenses subject to plaintiff's proof of such claims, e.g., receipts, bills, etc.

8. That both parties shall pay one-half of non-covered medical, dental and optical expenses.

8. That both parties waive any and all rights to alimony.

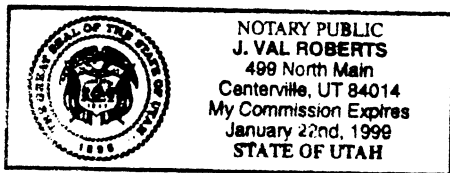
9. That defendant shall relinquish any and all claims attendant the real property and mobile home located at 1296 Governor Circle, Woods Cross, Utah, subject to plaintiff's assumption of all obligations attendant the real property and mobile home, including but not limited to all costs attendant

maintenance, mortgage payments, taxes and insurance thereon.

10. That the debts incurred during the course of the parties' marriage be divided equally between them, and the parties shall each be responsible for all debts incurred since their separation, holding the other harmless thereon.

11. That each party shall be responsible for their own costs and attorney's fees attendant this divorce action, and hold the other blameless thereon.

Dated this 28 day of August, 1996.



Raquel Busch
Raquel Busch
Plaintiff


STATE OF UTAH)
COUNTY OF Davis) ss.

Subscribed and sworn to before me this 28 day of
August, 1996.

J. Val Roberts
Notary Public
Residing at:

My Commission Expires:


Dated this 9TH day of April, 1996.



Steven Busch
Defendant

STATE OF UTAH)
COUNTY OF Davis) ss.

Subscribed and sworn to before me this 9TH day of
April, 1996.



Notary Public
Residing at: 3400 W. 1000 N.

My Commission Expires:

Approved as to form:

Richard A. Hummel
Assistant Attorney General
Intervenor

J. Val Roberts
Attorney for Plaintiff
Davis County Title XX Legal Aid

Tab 2

STATE OF UTAH — DEPARTMENT OF HEALTH

143 92 014939

STATE OF UTAH — DEPARTMENT OF HEALTH CERTIFICATE OF LIVE BIRTH

LOCAL FILE NUMBER 02-213

STATE BIRTH NUMBER

1. CHILD'S NAME FIRST: Andrew MIDDLE: Scott LAST: THRASH	
2. DATE OF BIRTH (Month, Day, Year) June 13, 1992	3. TIME OF BIRTH 24 Hour Clock 1055
4. SEX Male	5. CITY, TOWN OR LOCATION OF BIRTH Brigham City
6. COUNTY OF BIRTH Box Elder	
7. PLACE OF BIRTH 1 <input type="checkbox"/> Residence Planned 2 <input type="checkbox"/> Residence Unplanned 3 <input checked="" type="checkbox"/> Hospital 4 <input type="checkbox"/> Freestanding Birthing Center 5 <input type="checkbox"/> Clinic/Doctor's Office	
8. FACILITY NAME (If not institution, give street and number) BRIGHAM CITY COMMUNITY HOSPITAL	
9. I certify that this child was born alive at the place and time and on the date stated. Signature: Rebecca R. Earl	10. DATE SIGNED (Month, Day, Year) June 15, 1992
11. I CERTIFY THAT THE ABOVE NAMED CHILD WAS BORN ALIVE AT THE PLACE AND TIME AND ON THE DATE STATED ABOVE. Attendant Signature: Stephen E. Starr 1 <input checked="" type="checkbox"/> MD 2 <input type="checkbox"/> D.O. 3 <input type="checkbox"/> C.N.M. 4 <input type="checkbox"/> Other Midwife 5 <input type="checkbox"/> Other (Specify):	
12. CERTIFIER'S NAME AND TITLE (Type/Print) Name: Rebecca R. Earl Hospital Administrator 1 <input type="checkbox"/> Designated Representative 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/> Other (Specify):	
13. ATTENDANT'S NAME AND MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, Zip Code) Stephen E. Starr, M.D. 990 S. 500 W., Brigham City, UT 84302	
14. REGISTRAR'S SIGNATURE: John C. Bailey M.D. 15. DATE FILED BY REGISTRAR (Month, Day, Year) JUN 18 1992	
16a. MOTHER'S NAME (First, Middle, Last) Katherine Annette Thrash	
16b. MAIDEN LAST NAME Nutt	
17. DATE OF BIRTH (Month, Day, Year) September 28, 1965	
18. BIRTHPLACE (State or Foreign Country) Oklahoma	
19a. RESIDENCE (Street and number of residence) 50 N. 500 W. #306	
19b. CITY, TOWN/COMMUNITY Brigham City	
19c. INSIDE CITY LIMITS? 1 YES <input checked="" type="checkbox"/> 2 NO <input type="checkbox"/>	
19d. COUNTY Box Elder	
19e. STATE Utah	
20. MOTHER'S MAILING ADDRESS (If same as residence, enter Zip Code only) 84302	
21. FATHER'S NAME (First, Middle, Last) James Lee Thrash	
22. DATE OF BIRTH (Month, Day, Year) January 18, 1938	
23. BIRTHPLACE (State or Foreign Country) Pennsylvania	
24. I certify that the personal information provided on this certificate is correct to the best of my knowledge and belief. Signature of Parent or Other Informant: Katherine A. Thrash	
25. Parental permission is given to provide the child's name and date of birth to the Social Security Administration for purposes of issuing a social security number to the newborn. 1 YES <input checked="" type="checkbox"/> 2 NO <input type="checkbox"/>	

This is to certify that this is a true copy of the certificate on file in this office. This certified copy is issued under authority of section 26-2-22 of the Utah Code Annotated, 1953 As Amended.

Date Issued:

JUL 10 1997 Barry E Nangle

Barry E. Nangle
DIRECTOR OF VITAL RECORDS

SDH-BVR 94 (9/96)

SL 892041



* 0 0 8 9 2 0 4 1 *



Tab 3

Katherine Thrash
Petitioner's Name
1575 So. 1000 E. apt. #5
Address (may be omitted for privacy)
Cld. Ut. 84015
City, State, ZIP
801) 774-5147
Telephone (may be omitted)

FILED IN CLERK'S OFFICE
DAVIS COUNTY, UTAH
MAY 30 2 38 PM '96
CLERK, 2ND DIST. COURT
BY JMC
DEPUTY CLERK

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

Katherine Thrash

Petitioner,

vs.

James Thrash

Respondent.

VERIFIED PETITION FOR
PROTECTIVE ORDER

Civil No. 964700829

Judge

PETITIONER IS ADVISED THAT LYING TO OBTAIN A PROTECTIVE ORDER MAY BE CONSIDERED A FELONY UNDER THE UTAH CODE.

The Petitioner alleges against the Respondent and states as follows:

1. Either I or Respondent reside, or the acts occurred, in this County.
2. Neither party is the minor child (step, adoptive, or natural) of the other party
3. I am 16 or older, or emancipated. Respondent and I have the following relationship

(check and circle all that apply):

- ☒ currently formerly] married;
- ☒ currently living have lived] as if married;
- ☒ related by blood or marriage; [describe relationship: Husband]
- ☐ have one or more children together;
- ☒ currently residing have resided] in the same residence.

4. Respondent and I are the parents of the minor children listed in the Appendix to this Petition.

5. On or about _____, 19____, the Respondent threatened, attempted, or caused the following acts of abuse or domestic violence. (Describe in detail what happened, where, who was involved (including the minor children), if weapons were involved, and if injuries resulted.

Attach more sheets if necessary.)

James Thrash has in the past pushed, hit, thrown baby toys at me. I have cerebral palsy which requires me to use a wheelchair, scooter or crutches. I believe that James is intentionally trying to hurt me by putting cords and other obstacles in my way causing me to fall and hurt myself. James put all the kitchen utensils in the upper cabinets and I can't reach them. I am afraid that James is going to hurt me if I ask him to leave. Also on May 28 of this month James has been very angry and has been very rough with my son, please read Attached.

6. The following is a description of other acts of abuse or domestic violence by Respondent. (Describe with the same detail as above. Attach more sheets if necessary.)

COMPLAINT CONTINUATION

Item 5.

On^{ly} about 28 May 1996 Mr. James Thrash, did spank (two different times) and set down Andrew very forcefully. He did also restrain the child with much force and bent the child while restraining him.

Mr. Thrash has, in the past many times, covered the child's mouth while restraining him. He has held his hand on the child's mouth for more than 3 minutes at a time.

Mr. Thrash is very rough with the child even in play. He has dragged the child across the floor causing rug burns on the child's back. He hits the child with closed fists ^{in play.}

Mr Thrash had an open diesel fuel in the home and in the entry way to the apartment for at least 3 weeks. Even though he was asked and requested to move it he still hesitated several weeks. The fumes were adversely affecting Andrew and Mrs. Thrash. The fire hazards were extremely high

COMPLAINT CONTINUATION

Item _____

Mr Thrash has left Andrew unattended while Andrew was sleeping. The most recent incident was in the early part of May 1996.

Because of when he hit and pushed me in Aug 1994 and I am afraid of what he is doing lately to both Andrew and myself that he is leading up to another blow up.

I came in last week to get a protective order, but I was so upset that I couldn't remember all the incidents that have happened recently.

7. The following is a list of case numbers (include court locations) in which protective orders or divorce and other orders have been issued concerning me, the Respondent and/or others named in this petition.

944700283

964700786

8. The following other cases have involved or currently involve me, Respondent and/or the others named in this petition: _____

9. I also request relief for the family and household members listed in the Appendix.

WHEREFORE: I respectfully request that this Court:

1. Immediately issue an Ex Parte Protective Order and, after a hearing, issue a Protective Order. (Check if appropriate) ☐ Include in the Protective Order provisions for child and spousal support, child custody and visitation, and other civil orders which should be in effect for ____ days (up to 150 days. If additional time is needed please explain in writing and attach.)

2. Order the Respondent to appear at a hearing.

DATED: May 30, 1996

State of Utah)

Davis County)

(ss:

STATE OF UTAH
COUNTY OF DAVIS
THE UNDERSIGNED, CLERK OF THE DISTRICT COURT
OF DAVIS COUNTY, DO HEREBY CERTIFY THAT THE
ANNEXED AND FORWARDED IS A TRUE AND FULL COPY
OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS
SUCH CLERK

WITNESS MY HAND AND SEAL OF SAID OFFICE

THIS 4 DAY OF June, 1996

PAULA CABR, CLERK

Being sworn, I state that I am the Petitioner; that I have read this Petition and the statements in it are true and correct to the best of my knowledge; that I believe I am entitled to the relief requested, and that this Petition is not being used to harass or to abuse process.

Katherine A Thrash
Petitioner

Subscribed and sworn to before me on May 30 1996

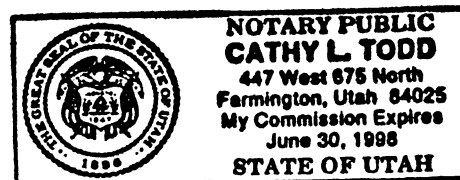
Cathy L. Todd
Clerk or Notary Public

Residing at:

My Commission Expires:

Serve Respondent at:

1575 S. 1000 E. #5
Clearfield, UT



Tab 4

There is NO
Proof of SERV.
ON THIS CASE, ON
file w/ the Court

J. Val Roberts 02772
Attorney for Plaintiff
P. O. Box 666
Centerville, Utah 84014
Telephone (801) 295-7003

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT

IN AND FOR DAVIS COUNTY, STATE OF UTAH

KATHERINE A. THRASH,

Plaintiff,

vs.

JAMES L. THRASH,

Defendant.

:

:

:

:

:

DEFAULT CERTIFICATE

Civil No. ⁸³ Ye4/00857
Judge

THE STATE OF UTAH TO THE SAID DEFENDANT:

In this action the defendant, JAMES L. THRASH, having been regularly served with process and having failed to appear and answer the plaintiff's Complaint on file herein, and the time allowed by law for answering having expired, the default of said defendant in the premises is hereby duly entered according to law.

ATTEST my hand, and the seal of said Court, this _____ day
of July, 1996.

The Return of Service
was mailed to the
Court on June 18, 1996

He was personally
served on June 13th
at Court

By _____

Deputy Clerk

Clerk

Tab 5

COPY

J. Val Roberts 02772
Attorney for Plaintiff
P. O. Box 666
Centerville, Utah 84014
Telephone (801) 295-9003

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT

IN AND FOR DAVIS COUNTY, STATE OF UTAH

KATHERINE A. THRASH,	:	FINDINGS OF FACT
	:	AND
Plaintiff,	:	CONCLUSIONS OF LAW
vs.	:	
JAMES L. THRASH,	:	
Defendant.	:	Civil No. 964700883
	:	Judge Michael G. Allphin

The above-entitled matter came on regularly for hearing on Thursday, the 31st day of October, 1996, at 9:00 a.m. before the HONORABLE MICHAEL G. ALLPHIN, a Judge of the District Court. The plaintiff appeared in person and by her counsel, J. VAL ROBERTS, ESQ. The defendant did not appear either in person or through counsel.

The defendant was personally served with Summons and Complaint for Divorce on June 13, 1996, at the Courthouse in Farmington, Davis County, Utah. A Return of Service had been filed showing that the defendant had received a copy of the Complaint and Summons more than twenty days previously, and that the time for filing an answer had expired; and no answer having been filed, the Court permitted the defendant's default to be entered.

The plaintiff was sworn and testified to the issues raised by the Complaint. The Court having received the sworn testimony

of the plaintiff in her behalf regarding the jurisdiction of the Court and other legal requirements concerning her prayer for a divorce, and now being fully advised in the premises, hereby makes and enters its:

FINDINGS OF FACT

1. The Complaint was filed on June 5, 1996.
2. The Summons was served at the Courthouse on June 13, 1996.
3. The Court finds that it has jurisdiction over the parties and the subject matter.
4. Plaintiff is an actual and bona fide resident of the County of Davis, State of Utah, and has been for more than three months immediately prior to the commencement of this action.
5. Plaintiff and defendant were married on the 18th day of April, 1992, in Brigham City, Box Elder County, Utah.
6. The Court finds from the sworn testimony of the plaintiff that the minor child, ANDREW SCOTT THRASH, born June 13, 1992, is not the issue of the defendant, plaintiff having testified under oath that the child was conceived as a consequence of a prior rape.
7. Alimony. Based on the plaintiff's waiver of alimony as expressed in her sworn testimony, the Court finds that neither party should be awarded alimony from the other.
8. The Court finds from the sworn testimony that the plaintiff has substantially proved the allegation of

irreconcilable differences and grants her a divorce against the defendant, the same to become final on entry.

9. Plaintiff testified under oath concerning the fundamental fairness of the division of property prayed for in her Complaint; and based on the testimony and the record on file herein, the Court hereby finds that the property should be divided as follows:

- a. Plaintiff should be awarded all of the household goods, the beds, dressers, table and chairs, the toaster, mix master, portable dishwasher acquired during the marriage, the child's bedroom set, toys and clothing, the utility trailer used for carrying the plaintiff's motorized scooter, her computer, her clothing and personal effects.
- b. Defendant should be awarded as his separate property the 1961 Econoline Van, the 1986 Plymouth with the debt due thereon, the dresser, the organ and the payments of \$110.00 per month due thereon, his dresser in the minor child's bedroom, his hand and power tools, his antique computers, printers, modems etc , his horse pictures given by his parents, his clothing and personal effects.
- c. The parties acquired no real property during the course of the marriage, nor do they presently own an interest in real property.

d. The Court finds that there are no cash or savings accounts to divide.

e. The Court finds that there are no retirement benefits to be divided.

10. Marriage Debts. The Court finds that the defendant shall pay all marital obligations incurred by the parties during the course of their marriage up to and including the date of separation; thereafter, each of the parties shall be responsible for their own respective obligations. In addition, the Court finds that the defendant shall hold plaintiff harmless on said debts. The debts include, but are not limited to, the following:

- a. The 1986 Plymouth automobile, Baird Motors, \$1,500.00.
- b. Atlanta Casualty, \$57.00 per month.
- c. AFCO Financial for the organ, \$110.00 per month.
- d. Utah Power & Light, \$30.00.
- e. U. S. West Communications for the pager, amount unknown.
- f. His school loans due Consumer Credit.
- g. All debts in his name acquired prior to the marriage.

The Court finds further that the defendant shall be required to notify each of the creditors that he is obligated under this Decree to pay the marital debts as listed herein and hold the plaintiff harmless thereon.

11. Payment of Attorney's Fees. It is a finding of the Court that a judgment shall be entered against the defendant in favor of the Davis County Title XX Legal Aid Coordinator for attorney's fees in the sum of \$200.00 plus costs of court in the sum of \$82.00 as a result of the prosecution of these proceedings by Davis County Legal Aid; the same shall bear interest according to the statutory schedule for judgments.

CONCLUSIONS OF LAW

Plaintiff is entitled to a Decree of Divorce from defendant to become final on entry. Said Decree of Divorce shall include the provisions contained in the foregoing Findings of Fact heretofore made.

Dated this _____ day of December, 1996.

BY THE COURT:

MICHAEL G. ALLPHIN
District Court Judge

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, postage prepaid, this 10th day of December, 1996, to the following:
Mr. James L. Thrash, Defendant, 1575 South 1000 East, Apt. 5,
Clearfield, Utah 84015.

NOTE TO DEFENDANT. You are specifically advised that the document covered by this mailing certificate is only a sample. Your divorce has not been signed by the Judge, has not been entered in the Register of Judgments, and is not final at this time.

J. VAL ROBERTS
Attorney at Law

COPY

J. Val Roberts 02772
Attorney for Plaintiff
P. O. Box 666
Centerville, Utah 84014
Telephone (801) 295-9003

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT

IN AND FOR DAVIS COUNTY, STATE OF UTAH

KATHERINE A. THRASH,	:	
	:	DECREE OF DIVORCE
Plaintiff,	:	
	:	
vs.	:	
	:	
JAMES L. THRASH,	:	
	:	Civil No. <u>964700883</u>
Defendant.	:	Judge Michael G. Allphin

The above-entitled matter came on regularly for hearing on Thursday, the 31st day of October, 1996, at 9:00 a.m. before the HONORABLE MICHAEL G. ALLPHIN, a Judge of the District Court. The plaintiff appeared in person and by her counsel, J. VAL ROBERTS, ESQ. The defendant did not appear either in person or through counsel.

The plaintiff was sworn and gave testimony on the issues raised by the Complaint. The Court finds grounds to award plaintiff a Decree of Divorce the same to become final on entry.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The plaintiff is granted a Decree of Divorce from defendant and the bonds of matrimony heretofore existing between plaintiff and defendant are hereby dissolved, said Decree of Divorce to become final upon entry in the records of the Clerk's

Office in and for the County of Davis, State of Utah, automatically, without further action by either of the above-named parties.

2. The Complaint was filed on June 5, 1996.

3. The Summons was served at the Courthouse on June 13, 1996.

4. The Court has jurisdiction over the parties and the subject matter.

5. Alimony. Neither party is awarded alimony from the other.

6. Plaintiff is awarded all of the household goods, the beds, dressers, table and chairs, the toaster, mix master, portable dishwasher acquired during the marriage, the child's bedroom set, toys and clothing, the utility trailer used for carrying the plaintiff's motorized scooter, her computer, her clothing and personal effects.

7. Defendant is awarded as his separate property the 1961 Econoline Van, the 1986 Plymouth with the debt due thereon, the dresser, the organ and the payments of \$110.00 per month due thereon, his dresser in the minor child's bedroom, his hand and power tools, his antique computers, printers, modems etc., his horse pictures given by his parents, his clothing and personal effects.

8. There are no cash or savings accounts or retirement benefits to divide.

9. Marriage Debts. The Court orders that the defendant shall pay all marital obligations incurred by the parties during the course of their marriage up to and including the date of separation; thereafter, each of the parties shall be responsible for their own respective obligations. In addition, the Court orders that defendant shall hold the plaintiff harmless on said debts. The debts include, but are not limited to, the following:

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- b. Atlanta Casualty, \$57.00 per month.
- c. AFCD Financial for the organ, \$110.00 per month.
- d. Utah Power & Light, \$30.00.
- e. U. S. West Communications for the pager, amount unknown.
- f. His school loans due Consumer Credit.
- g. All debts in his name acquired prior to the marriage.

The Court orders further that the defendant shall notify each of the creditors that he is obligated under this Decree to pay the marital debts as listed herein and hold the plaintiff harmless thereon.

10. Payment of Attorney's Fees. It is the order of the Court that a judgment be entered against the defendant in favor of the Davis County Title XX Legal Aid Coordinator for attorney's fees in the sum of \$200.00 plus costs of court in the sum of \$82.00 as a result of the prosecution of these proceedings by

Davis County Legal Aid; the same shall bear interest according to the statutory schedule for judgments.

Dated this _____ day of December, 1996.

BY THE COURT:

MICHAEL G. ALLPHIN
District Court Judge

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing DECREE OF DIVORCE, postage prepaid, this 10th day of December, 1996, to the following: Mr. James L. Thrash, Defendant, 1575 South 1000 East, Apt. 5, Clearfield, Utah 84015.

NOTE TO DEFENDANT. You are specifically advised that the document covered by this mailing certificate is only a sample. Your divorce has not been signed by the Judge, has not been entered in the Register of Judgments, and is not final at this time.

J. VAL ROBERTS
Attorney at Law

Tab 6

**Pamela Archer TEECE, Plaintiff
and Respondent,**

v.

**James Allen TEECE, Defendant
and Appellant.**

No. 19308.

Supreme Court of Utah.

Feb. 28, 1986.

Husband appealed from divorce decree entered by the Third District Court, Salt Lake County, Judith M. Billings, J. The Supreme Court, Howe, J., held that husband was entitled to blood tests to assist in making paternity determination.

Reversed and remanded.

1. Children Out-of-Wedlock ⇨45

Rule which bars testimony from either parent that would illegitimize their child does not prohibit introduction of results of blood or tissue typing tests or of testimony from witnesses other than the putative parents on the issue of paternity. U.C.A.1953, 78-25-18.

2. Divorce ⇨86

Husband who denied paternity on basis that he was in Canada at time conception would have occurred was entitled to blood tests to assist in making paternity determination in divorce case, although child was born during marriage. U.C.A.1953, 78-25-18.

3. Divorce ⇨252.5(1)

Even if husband's \$6,500 contribution toward down payment on parties' house and lot was from sale of husband's business prior to marriage, difference between husband's down payment and wife's \$3,500 down payment was not so great as to render equal division of the house an abuse of discretion.

4. Divorce ⇨252.5(1)

Husband was not entitled to be reimbursed for additions to parties' home prior

to splitting of the equity based on his contention that \$8,000 of the \$13,000 cost came from inheritance from his mother, in absence of accurate records that would have substantiated husband's claim.

5. Divorce ⇨252.5(2)

Husband was entitled to immediate sale of parties' home so that he could recover his equity if it were found that he was not father of wife's minor child. U.C.A.1953, 30-3-5.

6. Divorce ⇨85

Failing to impose sanctions against wife for her failure to comply with husband's discovery requests was not abuse of discretion in light of difficulty both parties experienced in locating accurate records to support their claims. Rules Civ.Proc., Rule 37(d).

Larry A. Kirkham, Salt Lake City, for defendant and appellant.

Kenneth Okazaki, Robert Ryberg & Associates, Salt Lake City, for plaintiff and respondent.

HOWE, Justice:

Defendant appeals from a decree of divorce, contending that the trial court erred in refusing to order a blood test to determine paternity of a minor child born during the marriage, in its distribution of the marital property, and in refusing to impose sanctions for plaintiff's failure to comply with his discovery request.

I

[1, 2] Plaintiff and defendant were married in 1973. In May of 1981, plaintiff gave birth to a child. Soon thereafter, she filed this action for divorce. In his answer to her complaint, defendant denied paternity. Along with a request for blood tests, he submitted an affidavit stating that he did not have access to plaintiff during the time conception would have occurred because he was in Canada. The trial court denied defendant's motion for blood tests, basing its decision on Lord Mansfield's rule. We ac-

knowledge of our acceptance of that rule in *Lopes v. Lopes*, 30 Utah 2d 393, 518 P.2d 687 (1974), and left "the proof of [paternity] to come from other sources." Nothing in the rule, which bars testimony from either parent that would illegitimize their child, prohibits the introduction of the results of blood or tissue typing tests or of testimony from witnesses other than the putative parents on the issue of paternity. *Hales v. Hales*, Utah, 656 P.2d 423 (1982).

The principle that children born in wedlock are presumed to be legitimate is universally recognized. *Holder v. Holder*, 9 Utah 2d 163, 340 P.2d 761 (1959); *Peters v. Campbell*, 80 Wyo. 492, 345 P.2d 234 (1959); *Pierson v. Pierson*, 124 Wash. 319, 214 P. 159 (1923). This presumption of legitimacy had its origins in English common law. While the presumption was originally rigid and arbitrary, it is now generally held that the presumption of legitimacy is rebuttable. See H. Clark, *The Law of Domestic Relations in the United States*, at 172 (1968). However, according to the predominant legal authorities, it remains one of the stronger rebuttable presumptions in the law.

The effect of Lord Mansfield's rule has been substantially eroded by the enactment of U.C.A., 1953, § 78-25-18, which provides unequivocally that "[i]n any civil action or in bastardy proceedings in which the parentage of a person is a relevant fact, the court shall order the child and alleged parents to submit to blood tests." (Emphasis added.)

Inasmuch as the Utah legislature has expressly mandated that the courts utilize blood tests to assist in making a determination of paternity, the lower court's denial of defendant's motion was clearly error, and on this ground we must reverse.

II

The trial court divided equally the parties' equity in their house and lot. However, plaintiff was given possession for so long as she chose to live there, but not beyond her remarriage or the eighteenth birthday of the child. Defendant assails

this division, contending that before the equity was divided he should have been reimbursed for his contribution toward the down payment and for funds he later provided to pay for a garage and patio which were added.

[3] The down payment of \$10,000 was withdrawn from two savings accounts. The parties seem to agree that defendant contributed about \$6,500 and plaintiff contributed about \$3,500 of that amount. Most of plaintiff's contribution came from a gift of \$3,000 which defendant had previously made to her. The source of the funds contributed by defendant was in dispute. Plaintiff testified that defendant's contribution came from his pay checks which she had deposited in one of the savings accounts while the parties lived on her earnings. On the other hand, defendant testified that the source of his contribution was the sale of a business prior to the marriage. On cross-examination, however, defendant admitted that he did not know how much money he had in savings at the time of his marriage. Thus, the trial court was faced with conflicting testimony and chose to believe plaintiff that defendant's contribution to the down payment came from the joint earnings of the parties during their marriage. However, even if we accept as true defendant's testimony as to the source of his \$6,500 contribution, the difference in the contributions made by the two parties was not so great as to give rise to any abuse of discretion on the part of the trial court. Mathematical equality in the division of each marital property is not required. *Workman v. Workman*, Utah, 652 P.2d 931 (1982). The overall division need only be equitable. *Fletcher v. Fletcher*, Utah, 615 P.2d 1218, 1222 (1980).

[4] As to the additions made to the home, defendant testified that approximately \$8,000 of the \$13,000 cost came from inheritance from his mother. He contends that he should have been reimbursed for that amount before the equity in the house and lot was divided. Plaintiff offered no evidence on the source of the

funds for the addition. However, payment was made by checks from defendant's own checking account which he set up in May 1977. *In that account, he admitted that he commingled inheritance money with his earnings.*" During this time, the parties were living on plaintiff's earnings, with the exception of the mortgage payments, which were paid from defendant's checking account. In light of the uncertainty of the evidence presented and the lack of accurate records that would have substantiated defendant's claim, we cannot disturb the trial court's refusal to reimburse defendant for the additions prior to splitting the equity.

Neither should defendant be reimbursed for payments made by him on the first and second mortgages from his earnings during the marriage. Again, during this period of time the parties were otherwise living on plaintiff's earnings.

[5] Defendant's contention that the court should have ordered an immediate *sale of the home, however, merits close consideration.* Upon a determination of the paternity issue addressed above, if the Court should find that defendant is not in fact the father of the minor child, an order should be entered requiring the home of the parties to be sold as soon as practicable to allow defendant to now receive his share of the equity. Absent such a finding, the award of possession to plaintiff and the child is affirmed subject to the right of defendant to seek modification of that arrangement pursuant to the continuing jurisdiction of the court vested by U.C.A., 1953, § 30-3-5. In view of the facts that defendant was fifty-one years of age when the child was born, that at the time of the trial he was living in his truck and camper, that his health was somewhat impaired, and that his future income was uncertain, it may be inequitable to tie up his share of the equity, \$23,378 (*which does not bear interest*), for the full eighteen years of minority of the child. He should have and does have the opportunity to seek periodic review of the equity of continuing that arrangement. *See Chandler v. West*, Utah, 610 P.2d 1299 (1980).

We have reviewed the division of the personal property and find it to be within the ambit of discretion reposed in trial judges and affirm that portion of the decree.

III

[6] Defendant's final contention is that the trial court abused its discretion by failing to impose sanctions against plaintiff for her failure to comply with his discovery requests. He relies on the court's authority under Rule 37(d), Utah R.Civ.P., to impose sanctions when it determined that his motions to compel were well taken. He moved the court for an order compelling discovery, and at a hearing on March 3, 1983, plaintiff was given ten days to respond or her default would be entered. On March 15, plaintiff's counsel asked that defendant's counsel allow him until March 18 to respond. The court subsequently ordered plaintiff to comply by that date. *However, plaintiff's counsel did not deliver the requested information until Monday, March 21, to defendant's attorney.*

Rule 37(d) provides:

[T]he court in which the action is pending on motion *may* make such orders in regard to the failure as are just, and among others it *may* take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this Rule. In lieu of any order or introduction thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, *unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust....*

(Emphasis added.)

We have interpreted the language of this rule "as presently worded [to be] permissive, rather than mandatory," and have recognized that it "grants the court discretionary authority to impose the sanctions mentioned. Where the authority to perform a proposed action rests with the discretion of

the court, we must allow considerable latitude in which he may exercise his judgment." *Carman v. Slavens*, Utah, 546 P.2d 601 (1976). See also *Tucker Realty, Inc. v. Nunley*, 16 Utah 2d 97, 396 P.2d 410 (1964).

The record substantiates the difficulty both parties experienced in locating accurate records to support their claims. Inasmuch as inadequate records were kept and in some instances were actually missing, discovery problems existed. Under these circumstances, it was not unreasonable for the court to find that plaintiff's delay was

"justified." We find no abuse of discretion in refusing sanctions.

Reversed and remanded for further proceedings consistent with this opinion. No costs awarded.

HALL, C.J., and STEWART, DURHAM and ZIMMERMAN, JJ., concur.



Tab 7

Petitioner's Name

Address (may be omitted for privacy)

City, State, ZIP

Telephone (may be omitted)

FILED IN CLERK'S OFFICE
DAVIS COUNTY

JUN 13 4 03 PM '96

CLERK, 2ND JUDICIAL COURT

BY DEPUTY CLERK

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

Katherine Thrash

Petitioner,

vs.

James Thrash

Respondent.

)
)
)
)
)
)
)
)
)
)

PROTECTIVE ORDER

Civil No. 904700827

Judge

This matter came for hearing on 6/13/96, before the undersigned. The following parties were in attendance:

☒ Petitioner ☐ Petitioner's attorney J Val Roberts

☒ Respondent ☐ Respondent's attorney _____

The Court having reviewed Petitioner's Verified Petition for Protective Order and:

___ having received argument and evidence,

___ having accepted the stipulation of the parties


___ having entered the default of the Respondent for failure to appear


and it appearing that domestic violence or abuse has occurred,


IT IS HEREBY ORDERED:
(The Judge or Commissioner shall initial
each section that is included in this Order.)

JD


1. The Respondent is restrained from attempting, committing, or threatening to commit abuse or domestic violence against Petitioner and the minor children and members of Petitioner's family or household listed in the Appendix to this Order.

 2. The Respondent is prohibited from directly or indirectly contacting, harassing, telephoning, or otherwise communicating with the Petitioner.

 3. The Respondent shall be removed and excluded, and shall stay away, from Petitioner's residence, and its premises, listed in the Appendix and Respondent is prohibited from terminating or interfering with the utility services to the residence.

 4. The Respondent is ordered to stay away from the addresses listed in the Appendix.

_____ 5. The Court having found that Respondent's use or possession of a weapon may pose a serious threat of harm to Petitioner, the Respondent is prohibited from purchasing, using, or possessing the firearm or weapon(s) listed in the Appendix.

 6. The Petitioner is awarded possession of the residence, ~~automobile~~ and/or other essential personal effects listed in the Appendix. This award is subject to orders concerning the listed property in future domestic proceedings. An officer from the law enforcement agency listed in the Appendix shall accompany Petitioner to ensure that Petitioner safely regains possession of the awarded property.

_____ 7. An officer from the same law enforcement agency shall facilitate Respondent's removal of Respondent's essential personal belongings from the parties' residence. The law enforcement officer shall contact Petitioner to make these arrangements. Respondent may not contact the Petitioner or enter the residence to obtain any items.

_____ 8. The Respondent is placed under the supervision of the Department of Corrections for the purposes of electronic monitoring. Within 24 hours of the execution of this Order, the Department of Corrections shall place an electronic monitoring device on Respondent and shall install monitoring equipment on the premises of Petitioner and in the residence of Respondent. Respondent is ordered to pay to the Department of Corrections the costs of the electronic monitoring required by this Order. The Department of Corrections shall have access to Petitioner's residence to install the appropriate monitoring equipment.

VIOLATION OF PROVISIONS "1" THROUGH "8" IS A CLASS A MISDEMEANOR.

Petitioner is granted the following temporary relief which will (expire/be reviewed by the court) 150 days from the date of this order:

- JD a. The Petitioner is granted custody of the minor children named in the Appendix.
- JD b. Visitation shall be as follows: supervised ^{AR} visitation to be on
Saturday from 10:00 am - 6:00 pm at Respondents'
parent's home.
- JD c. The Respondent is restrained from removing the parties' minor children from the state of Utah.
- _____ d. The Respondent is restrained from using drugs and/or alcohol prior to or during visitation.
- _____ e. The Respondent is ordered to pay child support to the Petitioner in the amount stated in the Appendix.
- _____ f. The Respondent is ordered to pay child care expenses in the amount listed in the Appendix.
- _____ g. The Respondent is ordered to pay Petitioner spousal support in the amount stated in the Appendix.
- _____ h. The Respondent is ordered to pay Petitioner's and/or the minor children's medical expenses, suffered as a result of the abuse, in the amount listed in the Appendix.
- JD i. Other: _____
Respondent to get use of organ/chord box of
1986 Plymouth car.
- j. Child support and spouse support orders are subject to mandatory income withholding pursuant to Utah Code § 30-6-4.2(8).

Violation of provisions "a" through "j" may subject Respondent to contempt proceedings.

9. The Division of Child and Family Services is ordered to conduct an investigation into the allegation of child abuse.

10. Other: _____

11. Law enforcement agencies with jurisdiction over the protected locations shall have authority to compel Respondent's compliance with this Order, including the authority to forcibly evict and restrain Respondent from the protected areas. Information to assist with identification of the Respondent is attached to the Appendix to this Order.

12. Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1976, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States Territories.

13. Three years after the date of this order, a hearing may be held to dismiss the remaining provisions of the order. Within 30 days prior to the end of the three-year period, the Petitioner should provide the court with a current address, which address will not be made available to Respondent.

DATED: 6/13/96

Recommended by:

BY THE COURT:

District Court Commissioner



DISTRICT COURT JUDGE Pro Tempore

By this signature, Respondent approves the form, and accepts service, of this Protective Order and waives the right to be personally served.



Respondent

Serve Respondent at:

APPENDIX

(Please write legibly)

★ Petitioner must complete these sections:

Minor Children of the Parties:

Name	Birthdate	Address(es) for past year
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

Family and Household Members (who also require protection):

1. _____	3. _____
2. _____	4. _____

Residence Address: 1575 So. 1000 East #5 Clearfield UT
(List current owner of record: _____)

Other Addresses to be Protected (School, Work, etc.):

Essential Real and Personal Property:

★ The Court will complete these sections:

Prohibited Weapon(s): _____

Law Enforcement Agency: _____

Child Support: \$ _____ per month


Spousal Support: \$ _____ per month

Medical Expenses: \$ _____ Child care: \$ _____ per month

Recommended by:

District Court Commissioner

By the Court:



District Court Judge

Tab 8

RICHARD A. HUMMEL #4057
Assistant Attorney General
JAN GRAHAM #1231
ATTORNEY GENERAL
Attorneys for State of Utah
523 Heritage Blvd., Suite 1
Layton, UT 84041-5611
Telephone: (801) 779-6434

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY

FARMINGTON DEPARTMENT, STATE OF UTAH

STATE OF UTAH, Office of
Recovery Services, *ex rel.*
RAQUEL LEIGH BUSCH,

Plaintiff,

vs.

DAVID SCOTT SIMONSEN,

Defendant.

:

:

:

:

:

:

NOTICE OF RESULTS
OF GENETIC TESTING

Civil No. 974700047

Judge MICHAEL G. ALLPHIN

TO THE PARTIES IN THIS CASE AND THEIR COUNSEL:

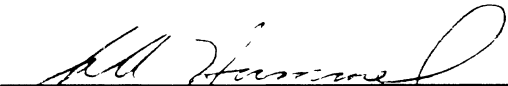
PLEASE TAKE NOTICE that genetic testing has been completed. The test results are attached as Exhibit "A." The paternity index was determined to be 843. Utah Code Ann. § 78-45a-10 (1993) provides that a man is presumed to be the natural father of a child if genetic testing results in a paternity index of at least 100. This presumption may be rebutted only by clear and convincing evidence. The State of Utah intends to request that the Court receive as evidence in this case the genetic test results as set forth in Exhibit "A."

If you object to the court's receipt of this testimony and test results in this manner, you may file a written objection with the court setting forth your objections. This objection must be filed with the Court and a copy of said objection mailed to the State's attorney Richard A. Hummel, Assistant Attorney General, 523 Heritage Blvd., Suite 1, Layton, UT 84041, within thirty (30) days of the date of service indicated on the Certificate of Mailing of this document. Failure to timely file an objection constitutes a waiver of that objection. See Utah Code Ann. § 78-45a-10. If you fail to so object, such testimony and test results may be received by the court in affidavit form and you will have waived any further opportunity to object. See Utah Code Ann. §78-45a-10(4) (1993).

PLEASE GOVERN YOURSELF ACCORDINGLY.

Dated this 25 day of April, 1997.

JAN GRAHAM
ATTORNEY GENERAL



RICHARD A. HUMMEL
Assistant Attorney General

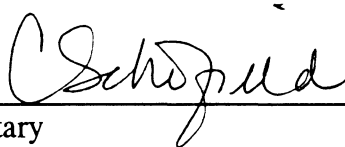
CERTIFICATE OF MAILING

I certify that on this 25 day of April, 1997, I mailed a copy of the foregoing, by U.S.

Mail, postage prepaid, to the following person(s) at the following address(es):

Raquel Leigh Busch
1296 Governors Cir
Woods Cross, UT 84087

George S. Diumentii II
Attorney at Law
505 S Main St
Bountiful, UT 84010



Secretary

ORS Case No. C000221598

Tab 9

Account Information

Acct #: **43000086**
OFFICE OF RECOVERY SERVICES -
Acct Ref 1: C000221598
Acct Ref 2:
Acct Ref 3:
LAYTON, UT 84041

LabCorp Case # C97-026146

Relationship	Party		Race	Date(s) Drawn
Mother	BUSCH, RAQUEL	743-2231-0	Caucasian	04/02/1997
Child	BUSCH, KEZZEKAIH	743-2232-0		04/02/1997
Alleged Father	SIMONSEN, DAVID S	743-2233-0	Caucasian	04/02/1997

DNA Analysis

	D1S80 1,2 (1p36-p35)	CSFR 1,2 (5q33.5-q34)	FES 1,2 (15q26.1)	VWF 1,2 (12p13.3-p13.2)	FGA 1,2 (4q28)	CYP19 1,2 (15q21)
M	24, 31	6, 7	11	15, 18	2, 3	1, 3
C	24, 29	7	10, 11	15, 16	3, 6	2, 3
AF	26, 29	7	10, 12	16, 19	2, 6	1, 2
PI	10.09	1.77	1.56	2.54	3.33	3.58

Attorney General's Office

APR 24 1997

Layton

Conclusion:

The alleged father, DAVID S. SIMONSEN, cannot be excluded as the biological father of the child, KEZZEKAIH BUSCH, since they share genetic markers. Using the above systems, the probability of paternity is 99.88%, as compared to an untested, unrelated man of the Caucasian population.

Combined Paternity Index: **843 to 1**

Probability of Paternity: **99.88%**
(Prior Probability = 0.5)

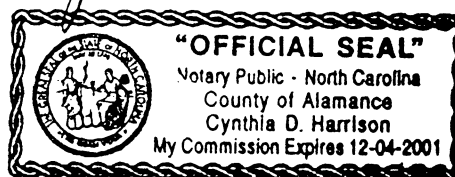

Deborah L. Cutter, Ph.D.

Sworn to and Subscribed before me this

APR 17 1997

at Burlington, N.C.

EXHIBIT "A"



Tab 10

CODE OF JUDICIAL ADMINISTRATION

Rule 4-504. Written orders, judgments and decrees.

(2) Copies of the proposed findings, judgments, and orders shall be served upon opposing counsel before being presented to the court for signature unless the court otherwise orders. Notice of objections shall be submitted to the court and counsel within five days of service.

Tab 11

UTAH RULES OF CIVIL PROCEDURE

Rule 11. Signing of pleadings, motions, and other papers; sanctions.

Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name who is duly licensed to practice in the state of Utah. The attorney's address also shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certification by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(Amended effective Sept. 4, 1985.)

Tab 12

UTAH RULES OF CIVIL PROCEDURE

Rule 15. Amended and supplemental pleadings.

(b) **Amendments to conform to the evidence.** When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court shall grant a continuance, if necessary, to enable the objecting party to meet such evidence.

Tab 13

UNITED STATES CONSTITUTION

AMENDMENT V

[Criminal actions -- Provisions concerning --
Due Process of law and just compensation
clauses.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Tab 14

CONSTITUTION OF UTAH

ARTICLE I, Section 7

Sec. 7. [Due process of law.]

No person shall be deprived of life,
liberty or property, without due process of
law.

1896

Tab 15

UNITED STATES CONSTITUTION

AMENDMENT XIV

Section 1. [Citizenship -- Due process of law -- Equal protection.]

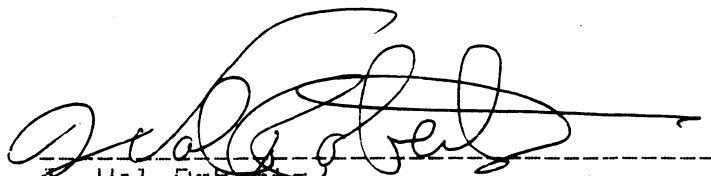
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed in the U. S. Mails, postage prepaid, true and correct copies of the BRIEF OF APPELLANT, KATHERINE A. THRASH, to the following this 13 day of August, 1997:

Jon J. Bunderson, Attorney
Bunderson & Baron
45 North First East
Brigham City, Utah 84302

Richard A. Hummel
Assistant Attorney General
Attorney for State of Utah
523 Heritage Blvd., Suite 1
Layton, Utah 84041-5611


G. Val Roberts
Attorney at Law
Davis County Title XX Legal Aid