

1988

Gary W. Jense v. Sara A. Jense : Brief of Appellant

Utah Court of Appeals

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IN AND FOR THE STATE OF UTAH

GARY W. JENSE,
Plaintiff/Respondent,
v.
SARA A. JENSE,
Defendant/Appellant.

)
) APPELLANT'S BRIEF
)
)
)
)
)
) Court of Appeals No. 98-0016-CA
) Category 14(b)

APPEAL FROM FINAL ORDERS ISSUED BY
THE HONORABLE SCOTT DANIELS, THIRD DISTRICT COURT JUDGE

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IN THE COURT OF APPEALS

IN AND FOR THE STATE OF UTAH

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GARY W. JENSE,)	
)	APPELLANT'S BRIEF
Plaintiff/Respondent,)	
)	
v.)	
)	
SARA A. JENSE,)	
)	Court of Appeals No. 88-0016-CA
Defendant/Appellant.)	Category 14(b)

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IN THE COURT OF APPEALS

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GARY W. JENSE,)	
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JURISDICTION AND NATURE OF CASE

This court has jurisdiction over the matter under Section 78-2a-3(g), Utah Code Ann. (effective January 1, 1988), in that it is an appeal from final orders in a divorce modification proceeding. After hearing on January 14, 1986, the court entered its Findings of Fact, Conclusions of Law, and Decree of Divorce granting Appellant Mrs. Jense a divorce under her Counterclaim on July 9, 1986. On December 7, 1987, the court granted Mr. Jense's "Motion to Amend the Decree of Divorce" and "Motion" to setoff the amount of \$10,000.00 against the divorce judgment. The court's Order modified the original Decree of Divorce without the benefit of discovery or an evidentiary

hearing and vacated a subsequent judgment on the original Decree of Divorce obtained by appellant Mrs. Jense, April 1, 1987. The court's December 7, 1987, Order modifying the Decree of Divorce was entered over counsel for Mrs. Jense's specific objections to the proceeding. The court, on December 8, 1987, additionally denied the Appellant's Motion for a New Trial filed on the basis of abuse of discretion, erroneous Findings of Fact and error in law under Rules 52 and 59 of the Utah Rules of Civil Procedure.

ISSUES PRESENTED FOR APPEAL

The issues before this court flow from the August 24, 1987, proceeding (final Order signed December 7, 1987), wherein the court granted the Plaintiff Mr. Jense's Motion to amend the Decree of Divorce which effected a modification of the original Decree without a full evidentiary hearing and granted Mr. Jense's Motion to setoff against Mrs. Jense's judgment against her husband in an amount of \$10,000.00. The issues presented for review are:

1. That the court abused its discretion in granting Plaintiff's "Motion to Amend Decree" on August 24, 1987, by failing to comply with Rule 9 of the Supplementary Rules of Practice for the Third Judicial District Court (effective June 1, 1987), when the court allowed no evidentiary hearing on the issues, further discovery, and proceeded on an Order to Show Cause basis.

2. That the court abused its discretion by failing to grant Mrs. Jense's Motion for New Trial under Rules 52(b) and 59

after objections to the lack of evidentiary proceeding were entered during the hearing and after the hearing as constituting an abuse of discretion and error in law.

3. That the court abused its discretion or misapplied the law in granting a modification of the Decree of Divorce entered July 9, 1986, and vacating the money judgment thereon entered April 1, 1987:

A. The evidence presented failed to show a "substantial change in circumstances" relating to the property award, alimony and attorney's fee judgment sufficient to warrant modification of each award;

B. The court made an error in law by setting aside the judgment for accrued and unpaid alimony entered April 1, 1987;

C. The court erred by modifying the property award of \$27,500.00 cash which at the time of the Decree "equalized the award of the marital estate" and replaced it with real property having no current equity.

4. Where the Defendant presented specific un rebutted evidence by Affidavit of the value and her possession of silver-ware at the time of the Decree of Divorce, which awarded each party the items of personal property in their possession, did the court err by:

A. Signing an Order which did not reflect the preponderance of the evidence;

B. Setting off the value of the silverware against Mrs. Jense's judgment in an amount equal to an estimate made by Mr. Jense.

STATUTES AND RULES REQUIRED TO BE INTERPRETED

This court will be required to interpret Rule 9 of the Supplementary Rules of Practice-Third Judicial District (effective June 1, 1987), which states:

Rule 9. Modifications of Divorce Decrees.

a. When a modification in the terms and conditions of a Decree of Divorce is sought, the issue shall be raised by filing of a Petition for Modification and service of said Petition and Summons upon the opposing party in accordance with the requirements of Rule 4 of the Utah Rules of Civil Procedure. No request for a change or a modification of a Decree shall be raised by way of an Order to Show Cause.

b. After a responsive pleading is filed, and discovery has been completed, counsel shall file a certificate of readiness for trial, and the matter shall then be heard by the assigned judge.

c. No Petition for modification shall be placed on any law and motion or order to show cause calendar without the consent of the judge to whom the case is assigned.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

1. On January 14, 1986, a divorce proceeding was held before the Honorable Scott Daniels, Third District Court Judge, on Mr. Jense's Complaint and Mrs. Jense's Counterclaim for divorce. (January 14, 1986, Minute Entry, Record p. 85.)

2. At the time of the hearing, the parties had been married 33 years, both were employed, their four children were

emancipated and they had accumulated significant real and personal property. (Findings of Fact and Conclusions of Law, dated July 9, 1986, Record, p. 108-15.)

3. At the trial, each party submitted their proposed property distributions. Both Plaintiff's Exhibit P-2 and Defendant's Exhibit D-14 agreed that the parties' home located at 9200 North 4650 West, Pleasant Grove, Utah, had a value of \$150,000.00 and should be awarded to Mr. Jense; the equity in the property ranged from \$41,000.00 to \$47,926.00. (Exhibit P-2, attached hereto as Exhibit "A"; Exhibit D-14, attached hereto as Exhibit "B"; Record, p. 84.)

4. On July 9, 1986, the Court entered Findings of Fact and Conclusions of Law, and a Decree of Divorce (respectively attached hereto as Exhibits "C" and "D"; Record, p. 108-15; p. 123-29.) The pertinent provisions from the divorce Decree relating to the issues on appeal, state:

"3. The real property of the parties is awarded as follows:

"a. Plaintiff is awarded the equity of the parties in the house and real property at 9200 North 4650 West, Pleasant Grove, Utah, subject to the mortgage liabilities outstanding thereon; the rental home at 582 West 850 North, Pleasant Grove, Utah, subject to the mortgage liabilities outstanding thereon; the Tibble Fork property; and the residence at 45 East 100 North, Pleasant Grove, Utah, subject to Plaintiff assuming and paying the outstanding mortgage owing thereon.

"b. Defendant is awarded the condominium at 29 South State Street, #718, Salt Lake City, Utah, subject to the mortgage outstanding thereon.

"4. The personal property of the parties is awarded as follows:

"a. Plaintiff is awarded the Dasher automobile, the Cadillac automobile, the money in his checking account, and the furniture and furnishings and other items of personal property currently in his own possession except for the items specifically awarded to defendant as provided in the next following subparagraph.

"b. Defendant is awarded the Ford automobile, her retirement, the money in her checking account, all the furniture and furnishings located in the condominium at 29 South State #718, Salt Lake City, Utah, and the following items of furniture and personal property located in the home occupied by plaintiff at 9200 North 4650 West, Pleasant Grove, Utah: Large antique copper frying pan; Antique church pew; French Provincial armchair; Nantucket rocking chair; Antique frame sampler; Hummel figurines; Bowl from Israel; Silver hurricane lamp; Small spinning wheel planter; Collection of antique spoons; Sterling silver goblets; Silver chafing dish; Antique cradle; Rocking chair; Bicentennial pewter plates; Poster bed; Bowl and pitcher (gift from Aunt Louise Watts); Antique quilt/antique valentines; Antique quilt from defendant's grandmother; Moiri chair; cross-stitch quilt; Bowl and pitcher (gift from defendant's sister); Four Lladro figurines; Various Royal Doulton figures; Collection of "Coalport Cottages"; Defendant's clothing and personal effects, including personal papers and books and items which came from her family such as photograph albums, diaries and similar personal items.

"7. In order to equalize the marital estate, defendant is awarded a judgment from plaintiff in the sum of \$27,750 together with interest thereon at the legal rate of 12% from February 24, 1986, until paid in full. This obligation is ordered to be paid by plaintiff on or before April 1, 1987, and until paid this obligation shall constitute a lien against plaintiff's real property located in Utah County as provided in paragraph 3a above.

"9. No permanent alimony is awarded, but Plaintiff is ordered to pay Defendant temporary alimony in the amount of \$500.00 per month for a period of one-year commencing with the month of March, 1986, with each installment due and payable on the 1st day of the month.

"Because of plaintiff's current financial circumstances, however, defendant is ordered to

engage in no action to reduce these installments to judgment or enforce payment thereof through execution until April 1, 1987, in order to allow plaintiff an opportunity to receive his income bonus for the 1986 income year. Each installment of alimony shall bear interest from the date when due until paid at the rate of 10 percent per annum, and if by April 1, 1987, any installments have not been paid, then defendant shall be entitled to reduce any unpaid installments to judgment and enforce collection through execution.

"10. Defendant is awarded a judgment for the use and benefit of her attorney in the amount of \$5,000 plus costs including all appraisal costs incurred by defendant in this proceeding in the amount of \$670. This obligation for attorney's fees and costs shall be due and payable by April 1, 1987, and shall bear interest at the rate of 10 percent per annum until paid.

5. On April 1, 1987, the Court reduced to judgment the accrued amounts due and owing awarded under the divorce Decree for alimony, attorney's fees and property distribution which, with interest, equalled \$43,314.46 (copies attached as Exhibit "E"; Record, p. 144-145; 160.)

6. Mrs. Jense initiated collection by executing on Mr. Jense's car and garnishing his accounts (Record, p. 137-140; p. 161-162.)

7. On April 6, 1987, the Court granted Mr. Jense's ex parte Motion to stay execution of the Judgment until April 14, 1987, at which time a hearing would be held on the issue. The Motion was granted on the basis of Mr. Jense's Affidavit stating that he did not receive a bonus from his employment (Para. 5, Record, p. 154); and that he could not raise money to pay the judgment despite having placed the parties' home for sale (Paras.

6 and 9, Record, p. 155-156); (Order Staying Execution and Return of Property; Record, p. 146-149.)

8. On April 14, 1987, the Court granted Mr. Jense's Motion to stay execution of the judgment for four months and granted Mrs. Jense \$600.00 in attorney's fees. (Minute Entry, Record, p. 158; Transcript, April 14, 1987, p. 51, attached as Exhibit "F".)

9. On June 24, 1987, Mr. Jense filed a "Motion" requesting the Court to set off against Mrs. Jense's \$43,314.46 Judgment, the amount of \$10,000.00 on the basis that Mrs. Jense had obtained silverware after entry of the Decree of Divorce from a safety deposit box at Deseret Bank located in Pleasant Grove, Utah, which he assumed was awarded to him under the Decree of Divorce. ("Motion" and Affidavit in support attached as Exhibits "G" and "H"; Record, p. 167-168; p. 163-166.) Mr. Jense, in his Affidavit based his \$10,000.00 estimate of valuation of the silverware on his own financial statement dated October 31, 1984, submitted to First Interstate Bank which he claimed was "prepared by Mrs. Jense." He offered no other basis for the valuation. Further, Mr. Jense simply stated that to his knowledge, the silverware had been maintained in the safety deposit box for an unspecified three-year period but made no other statement with respect to possession at the time of the Decree of Divorce. Mr. Jense's Affidavit regarding knowledge of possession of the silverware is contrary to the evidence in the record at the time

of the divorce proceeding.¹

10. The next most significant Motion over which this appeal arises was made by Mr. Jense on August 3, 1987. Plaintiff filed a "Motion to Amend Decree of Divorce" wherein Plaintiff moves the Court

"...to amend the Decree of Divorce to delete payments due to the Defendant and vacate the judgment against the Plaintiff based on this change of circumstances and to order that any payments which the court order to be paid to the Defendant by Plaintiff be paid from proceeds of the sale of the parties' home when sold."

(Motion and Affidavit in Support, attached as Exhibits "I" and "L", respectively; Record, p. 169-71; 172-78.)

11. Mr. Jense's Affidavit in support of the Motion to Amend, in pertinent part states:

"a. Mr. Jense has attempted to sell the Pleasant Grove home he was awarded for a period of six months without any success but estimates he will receive \$119,000.00 as gross proceeds from the sale (paragraph 4);

"b. His employment was terminated July 17, 1987 (paragraph 6);

¹On May 29, 1985, in response to Plaintiff's Interrogatories, Mrs. Jense filed Answers with Exhibits. In response to No. 17 regarding safety deposit boxes, Mrs. Jense identifies the safety deposit box at Deseret Bank, Pleasant Grove, Utah, and states, "There are no items in the box and Plaintiff has the keys." (Answer attached as Exhibit "I".) In response to Interrogatory No. 7 to "describe all furniture, fixtures and appliances and household goods owned by you," Mrs. Jense filed "Attachment 2" to the Interrogatories with a four-page itemization. The silverware is identified as being located in her condominium at 29 South State Street, Salt Lake City, Utah. ("Attachment 2" attached as Exhibit "J".)

"c. Upon termination, he received \$6,100.00 (paragraph 7); and

"d. Mr. Jense was employed by American Equity for 15 years where he annually received bonuses of \$10,000-\$72,000, but no bonus was paid during the calendar year 1987 (paragraph 9)."

12. Plaintiff's counsel noticed up the "Motion" for setoff on the silverware and "Motion to Amend Decree of Divorce" for August 24, 1987 (Record, p. 179-80.)

13. On August 21, 1987, Mrs. Jense filed a "Verified Reply to Plaintiff's Motion" with an attached Affidavit of Kay Jacobs, President, Deseret Bank and an itemization of the value of the silverware based upon retail prices for each piece (copies attached as Exhibit "M"; Record, p. 268-74). Mrs. Jense's Affidavit in pertinent part states:

A. She was awarded the personal property in her possession by the Decree of Divorce dated July 9, 1986, then located in her condominium (Para. 1);

B. The silverware had been located in her condominium on July 9, 1986, and had been in her condominium since March, 1985 (Para. 2);

C. Kay Jacobs, President, Deseret Bank, corroborates Mrs. Jense's statement in his Affidavit by stating that the bank records show the last entry to the safety deposit box was March 5, 1985;

D. Mrs. Jense states that Mr. Jense was aware she maintained the silverware in her condominium and that it had only

been temporarily placed in the safety deposit box as a safety measure (Para. 3); and

E. The value of the silverware was not \$10,000.00 as estimated by Plaintiff in his October 31, 1984, Financial Statement for First Interstate Bank, but was \$4,417.50 based upon an itemized retail price for each piece of silverware (Para. 4, Exhibit "B" to Affidavit).

14. On August 21, 1987, Defendant filed an "Answer to Motion to Amend Decree of Divorce" alleging the affirmative defense of res judicata and responding to the specific allegations on the Motion to Amend (attached as Exhibit "N"; Record, p. 265-274).

15. On August 24, 1987, the court held an abbreviated hearing on Mr. Jense's "Motions", at which time the Defendant's counsel consented to go forward with the hearing on the "Motion" for setoff on the basis of proffer of evidence and Affidavits but objected to consideration of the "Motion to Amend Decree of Divorce" stating:

"If the court is genuinely interested and believes that there is a basis for consideration and modification of a property distribution, then I think we have a right to a complete trial to open that issue, rather than this very short hearing and these proffers of counsel which is coming before the court today. (Transcript, p. 9, line 21, through p. 10, line 1.)

"As I am saying (1) we don't believe there is sufficient cause for even a consideration of change of property; but if there is, we believe we are entitled to complete trial on that issue.... (Transcript, p. 10, lines 12-15.) (Complete copy of Transcript of August 24, 1987, hearing attached as Exhibit "O".)"

16. Despite counsel's objections, the Court allowed no discovery on the issues, oral testimony by witnesses or other standard evidentiary proceeding required by Rule 9 of the Supplementary Rules of Practice of the Third District Court and granted Plaintiff's Motion on an Order to Show Cause basis.

17. Mr. Jense's counsel tendered the proposed Order to Judge Daniels on September 24, 1987, (attached as Exhibit "P"; Record, p. 222-226; p. 260-264.) The Court's Order, which was subsequently signed December 7, 1987, modifies paragraphs 3, 4, 7, 9, and 10 of the original Decree of Divorce and vacates the April 1, 1987, judgment for accrued alimony, court-ordered attorney's fees and payment of \$27,750.00 plus interest as property equalization. The "changed circumstances" identified in the Findings warranting this modification and vacating the judgment were: Mr. Jense did not receive a bonus in 1987; Mr. Jense was terminated from his employment in July, 1987; the selling price for the parties' home, rather than the appraisal price at the time of the Decree of Divorce of \$150,000.00, was scheduled to be a net \$119,000.00 (pp. 2-3, Exhibit "P", Record, 261, 262). (The home of the parties in Pleasant Grove, Utah, did not sell at that time, and there is an anticipated sale which will now produce a net of \$4,000.00 to Mrs. Jense which the court has ordered will satisfy her \$44,000.00 judgment.) The Findings of Fact further state:

"The Defendant, between the time of the trial in this matter on January 14, 1986, and the entry of the Findings of Fact, Conclusions of Law and Decree of Divorce on July 14, 1986, went to the bank where

the parties had stored their silverware and removed that silverware from the safety deposit box. The Plaintiff believed the silverware was worth \$10,000.00 while the Defendant believed that it was worth approximately \$4,500.00;" ("Order", p. 3, Exhibit "P"; Record, p. 262.)

Based upon the change of circumstances, the court ordered:

"A. The Decree of Divorce and all prior orders and judgments would be satisfied upon payment of the proceeds of the sale of the Pleasant Grove home to Mrs. Jense;" and

"B. Mrs. Jense was awarded all right, title and interest to the silverware." ("Order", p. 4, Exhibit "P"; Record, p. 264).

18. On November 5, 1987, Defendant filed her objections to the proposed Orders on the ground that:

A. The Court unlawfully granted a modification of the Decree of Divorce without a full evidentiary hearing and over the Defendant's objections (para. 1, p. 3, Memorandum in Support of Objections; Record, p. 232);

B. That the Findings of Fact and Conclusions of Law did not accurately reflect the court's ruling in the hearing or the language in the Decree of Divorce (pp. 4 and 5, Memo; Record, p. 233-34);

C. That the Findings of Fact and Conclusions of Law did not accurately reflect the court's Order issuing from the April 14, 1987, proceeding (p. 6, Memo; Record, p. 235);

D. That the Findings of Fact and Conclusions of Law did not reflect the evidence in the record regarding the

possession of the silverware at the time of the entry of Decree or its value (pp. 7 and 8, Memo; Record, p. 236-37).

19. On November 5, 1987, counsel for Mrs. Jense filed a "Motion for a Trial" and Memorandum in support thereof, asserting that:

A. The Court failed to follow Rule 9 of the Supplementary Rules of Practice when granting Mr. Jense's Motion on an Order to Show Cause basis and that the court was obligated to grant a full evidentiary hearing on the alleged "changed circumstance" warranting a modification of the Decree (Point I, Memo, Record, p. 243);

B. The Plaintiff failed to meet his burden in showing a substantial change in circumstances (Point II, Memorandum in support; Record, p. 244); and

C. The court erred by modifying the alimony judgment which had been fully vested on April 1, 1987; (Point III, Memo; Record, p. 246).

20. After hearing on December 1, 1987, Mrs. Jense's objections to the proposed Order were overruled and the Motion for New Trial denied. (Minute Entry, December 8, 1987, attached as Exhibit "Q"; Record, p. 254-55.)

21. Judge Daniels signed the proposed Order December 7, 1987 (Exhibit "P"; Record, p. 260-264.)

22. Mrs. Jense filed this appeal regarding the Order of Modification of the Decree of Divorce issuing from the August 24, 1987, hearing and the denial of her Motion for a New Trial.

SUMMARY OF LEGAL ARGUMENTS

1. On August 24, 1987, the court held a short proceeding on Mr. Jense's "Motion to Amend Decree" entered July 9, 1986, and "Motion" to setoff against Mrs. Jense's divorce judgment. The Order issuing from the hearing was an abuse of discretion in that:

A. The Court, after being advised of objections to the proceeding, failed to follow discovery and evidentiary hearing requirements of Rule 9 of the Supplementary Rules of Practice of the Third District Court;

B. The Order modified the alimony, attorney's fees provision and property settlement of the July 9, 1986, Decree. The factors constituting a "change in circumstance," i.e. decrease in value of Mr. Jense's residence since the entry of the Decree, loss of job five weeks prior to the hearing and loss of bonus income for 1987, did not relate to the basis for making each award in the Decree, each were not "substantial and compelling" changes of circumstance and ran only to the ability of Mr. Jense to pay the judgment. Modification of the Decree was, therefore, an abuse of discretion;

C. Under Utah law, alimony becomes vested as it accrues and is not subject to modification. The trial court's order modified the alimony judgment which accrued as of April 1, 1987, which is an abuse of discretion.

2. The Findings of Fact and Order issuing from the August 24, 1987, hearing, should be set aside as not reflecting

the preponderance of the evidence. The intent of the original divorce Decree awarded Mrs. Jense all items of personal property located in her condominium. Mr. Jense filed a Motion to setoff the value of silverware which he claimed was awarded him, in an amount equal to \$10,000.00. His Affidavit did not establish the location of the silverware and his assertion of value was based upon an estimate put on a financial statement he submitted October 31, 1984. Mrs. Jense submitted an Affidavit, which was corroborated by the president of the bank where the silverware was held, that she had obtained the silverware March 5, 1985, more than one year prior to entry of the Decree and had maintained it in her condominium since that date. Furthermore, Mr. Jense was aware of her possession of the silverware through Answers to Interrogatories provided by Mrs. Jense prior to trial. Mrs. Jense established the value of the silverware at \$4,417.50 by itemizing the retail price of each piece of silverware in her possession. The Order issuing from the Findings of Fact should be set aside in that the Order awarded Mrs. Jense silverware which was already in her possession under the Decree of Divorce and established its value at \$10,000.00, which was setoff against Mrs. Jense's judgment.

3. The Court abused its discretion by failing to grant Mrs. Jense's Motion for a New Trial after having been informed of its failure to follow Rule 9 of the Supplementary Rules of Practice and its failure to enter Findings of Fact and issuing an Order which did not reflect the preponderance of the evidence.

LEGAL ANALYSIS

INTRODUCTION

The focus of this appeal is the August 24, 1987, hearing on Mr. Jense's "Motion to Amend Divorce Decree" and "Motion" for setoff against the judgment of the value of the silverware, and the post-hearing objections to the proposed Order and Motion for New Trial. This brief will state applicable legal standards by which the trial court's action should be reviewed and appropriate legal principles which should have been applied by the trial court in ruling on the Motions. Based upon these standards, it will be clear to this court that the trial court abused its discretion and misapplied applicable principles of law when entering its Order modifying the Decree of Divorce and setting off the value of the silverware against the Defendant's April 1, 1987, Judgment.

I.

THE COURT ABUSED ITS DISCRETION AND MISAPPLIED THE LAW IN MODIFYING THE DECREE OF DIVORCE

The court's Order issuing from the August 24, 1987, proceeding modified paragraphs 3, 7, 8, 9, and 10 of the original Decree. Paragraph 3 of the Decree awarded the home at 9200 North 4650 West, Pleasant Grove, Utah, to Mr. Jense; paragraph 4 awarded the items of personal property located in her condominium at 29 South State, #718, Salt Lake City, Utah; paragraph 7 states "in order to equalize the marital estate, the Defendant is awarded judgment from Plaintiff in the sum of \$27,750.00 together

with interest thereon at the legal rate of 12 percent from February 24, 1986, until paid in full" which was ordered paid on or before April 1, 1987. Paragraph 9 awards temporary alimony in the amount of \$500.00 per month for one year commencing March, 1986, and the installments would be reduced to judgment or enforced through execution on April 1, 1987, "in order to allow Plaintiff an opportunity to receive his income bonus for the 1986 income year." Paragraph 10 awards Mrs. Jense attorney's fees in the amount of \$5,000.00, plus costs of \$670.00 which is due and payable April 1, 1987, bearing interest at the rate of 10 percent per annum. Each of those separate awards were reduced to judgment April 1, 1987, in an amount equalling \$43,416.46. The court's Order from the hearing modified each of those paragraphs in that it orders all judgments will be satisfied by payment of the proceeds of the sale of the Pleasant Grove home, and awards the silverware to Mrs. Jense and sets off the value thereof against the total judgment. Mrs. Jense will effectively end up with \$4,000.00 from her \$44,000.00 judgment and silverware which she has possessed for a year and three months prior to the entry of the Decree of Divorce.

The "changed circumstances" alleged by Mr. Jense run solely to his ability to pay the judgment under the divorce Decree rendered July 9, 1986. (Emphasis added.) The alleged "changed circumstances" do not relate to the basis of the award for alimony, attorney's fees or "equalizing the marital estate."

Under existing case law, the modification was a misapplication of law to facts and should be overturned.

A. Legal Standards of Review of Modification of Divorce Decrees.

The standards of review of trial courts' granting modification of the Decree of Divorce is: "Defendant must show that the evidence clearly preponderates against the Findings of Fact or that the trial court has abused its discretion." Thompson v. Thompson, 709 P.2d 360, 362 (Utah 1985), citing Fletcher v. Fletcher, 615 P.2d 1218 (Utah 1980); Turner v. Turner, 649 P.2d 6 (Utah 1982). Although the Fletcher case was a direct review of a divorce proceeding, the review of the rulings by an appellate court should apply the same legal standards. As stated in Fletcher, "On appeal, this Court will not disturb the action of the trial court unless the evidence clearly preponderates to the contrary, or the trial court has abused its discretion or misapplied principles of law." Fletcher v. Fletcher, at p. 1222 (citations omitted).

Additionally, the reviewing Court has broad powers when reviewing modification orders. "Under prevailing standards of review, the appellate court may review both the facts and law of matters in equity, such as a request for modification of the Decree." Boals v. Boals, 664 P.2d 1191 (Utah 1983).

A trial court must apply a variety of legal standards to the equitable proceeding when considering modification of a

divorce decree. Legal principles enunciated by the Utah Supreme Court which are applicable to the modification being reviewed by this court are: the movant has the burden to show a substantial change of circumstances since the Decree that was not originally contemplated within the Decree itself. Woodward v. Woodward, 709 P.2d 393, 394 (Utah 1985); Thompson v. Thompson, supra., at p. 362. The party seeking the modification must prove a substantial and permanent change of circumstances necessitating the modification. Kiesel v. Kiesel, 619 P.2d 1374, 1376 (Utah 1980). Property division, as opposed to alimony and child support awards, are entitled to greater sanctity and modification should be granted "only upon a showing of compelling reasons arising from a substantial and material change in circumstances." Also, the change in circumstance must be "sufficiently radical" to justify modifying a property division. Folger v. Folger, 626 P.2d 412, 414 (Utah 1981). When a substantial change in circumstances is shown, the substantial change must relate to the basis upon which the original award was made by the trial court. Mineer v. Mineer, 706 P.2d 1060, 1062 (Utah, 1985). Equity is not available to remedy a "bad bargain" entered into by a party based upon a request for modification. Land v. Land, 605 P.2d 1248, 1251 (Utah 1980). Courts are required to give divorce Decrees final status accorded to any other civil judgment and apply their doctrine of res judicata where appropriate; the parties are entitled to rely on the finality of alimony awards in

determining the right to receive and the duty to pay.

Sorenson v. Sorenson, 438 P.2d 180, 181 (Utah, 1968); Klein v. Klein, 544 P.2d 472, 474 (Utah 1975).

B. The Court Abused Its Discretion By Failing to Follow Its Own Rules When Granting Modification of the Decree.

The trial court failed to follow the specific provisions of Rule 9 of the Supplementary Rules of Practice of the Third District Court (effective June 1, 1987) and thereby abused its discretion in granting Mr. Jense's "Motion to Amend Divorce Decree". Rule 9 requires that a formal Petition for modification be filed with the court and served on the party under Rule 4 of the Rules of Civil Procedure after which the Defendant has an opportunity to respond to the Petition and conduct formal discovery on the issues raised therein. Further, the rule specifically prohibits modification proceedings on an Order to Show Cause basis.

The Motion to amend the Decree of Divorce was filed August 3, 1987, and the "Motion" for setoff was filed June 24, 1987, with each Motion being noticed for hearing on August 24, 1987 (Record, p. 179-180.) At the hearing, the trial court proceeded based on proffers and Affidavits on file, allowed no further discovery and no full evidentiary hearing on the modification issues despite clear and strenuous objection from Mrs. Jense's counsel. (August 24, 1987, Transcript, pages 10 and 11.) Over Defendant's oral objections at the August 24, 1987, hearing

and further written objections to the nature and course of the proceeding filed November 5, 1987, the trial court entered its orders modifying the Decree of Divorce. The granting of the modification was a clear abuse of discretion, frustrating the clear intent of Third District Court rules.

The Utah Supreme Court has held that it is an abuse of discretion for a district court judge to fail to set aside an Order entered after the district court judge fails to follow the Supplementary Rules of Practice created in the district. Sperry v. Smith, 694 P.2d 581, 583 (Utah 1984). The court's error was pointed out by Mrs. Jense's counsel both during trial and by specific Memorandum filed November 5, 1987, yet the judge allowed the Order to stand. Entry of the Order on December 7, 1987, was a clear abuse of discretion by the trial court.

C. The Court Misapplied the Law When Finding That "Substantial Change in Circumstances" Occurred Warranting Modification.

Although the court has broad discretion in determining what constitutes a change in circumstances warranting modification, it is obligated to follow case precedence when deciding what factors are substantial and significant to warrant modification. In this instance, the court failed to follow clear precedence on the issues raised.

Reviewing the three factual bases which were allegedly sufficient to constitute a "substantial change in circumstance"

shows that, for the most part, each "circumstance" does not relate to the basis upon which the award was made and, therefore, is insufficient to meet the "substantial change" burden.

Mineer v. Mineer, supra. At most, the change in circumstance runs to Mr. Jense's ability to pay the awards one year after the original judgment is entered. In Mr. Jense's Affidavit submitted in support of the "Motion to Amend Decree of Divorce," he alleged the three bases upon which the property award, alimony award and attorney's fee award ought to be set aside were: On June 17, 1987, he lost his job (para. 6); he did not receive his annual bonus from his employer (para. 9); and the house which both parties valued at \$150,000.00 at the time of the Decree of Divorce would sell for only \$119,000.00 (para. 4).

In reviewing the following Findings of Fact which are the basis of each of the separate awards in the Decree, the Court should keep in mind that the marital estate of the parties must be evaluated at the time of the Decree of Divorce and awards based upon the then-current values, assets and income.

Fletcher v. Fletcher, 615 P.2d 1218, 1222-1223 (Utah 1980).

Finding of Fact No. 11 (Record, p. 105) regarding alimony states:

"However, based upon the current financial circumstances of the parties, Plaintiff should pay to the Defendant temporary alimony in order to give Defendant the opportunity to establish herself...an amount of \$500.00 per month for a period of one year...."

The Finding of Fact continues:

"Because of Plaintiff's current financial circumstances, however, Defendant should engage in no activity to reduce these installments to judgment

or enforce payment thereof through execution until April 1, 1987, in order to allow Plaintiff an opportunity to receive his income bonus for 1986 income year."

The alimony award was subsequently reduced to judgment April 1, 1987.

Finding of Fact No. 12 (Record, p. 105, 106) regarding attorney's fees states:

"In light of the disparity of the incomes and the current financial circumstances of the parties, the Plaintiff should be required to pay Defendant's attorney's fees in the amount of \$5,000.00, together with all costs including appraisal costs incurred by the Defendant in the sum of \$670.00. The obligation for attorney's fees and costs should be due and payable April 1, 1987...."

The attorney's fees award was reduced to judgment April 1, 1987.

Finding of Fact No. 9 (Record, p. 104) regarding the property award of the marital estate, states:

"In order to equalize the marital estate, Defendant should be awarded a judgment from Plaintiff in the sum of \$27,750.00 with interest thereon at the legal rate of 12 percent from February 24, 1986, until paid in full. This obligation should be paid by Plaintiff on or before April 1, 1987, and until paid, this obligation should constitute a lien against Plaintiff's real property located in Utah County..."

This award was also again reduced to judgment April 1, 1987.

Reviewing each "changed circumstance" as it relates to the basis for each award clearly reveals the court's erroneous determination of a "substantial change in circumstance" warranting modification.

(1) Job loss, July 17, 1987: First of all, the job loss is temporary in nature and should not warrant modifica-

tion of any of the three separate awards. Kiesel v. Kiesel, supra. The Affidavit of Mr. Jense was executed two weeks after the job loss. The court made no further inquiry into his ability to obtain a job or his prospects and allowed Defendant no opportunity for discovery on the issue. Further, the job loss occurred three months after the due date for payment of alimony, attorney's fees and the equalized property distribution. The alimony award was based upon "need" at the time of the Decree of Divorce, the attorney's fees was based upon "disparity of income" at the time of the Decree of Divorce and the property distribution was based on an evaluation of the then-existing value of the assets and not Mr. Jense's income.

(2) Decrease in value of the home from \$150,000.00 to \$119,000.00: Initially, it must be pointed out that both Mr. and Mrs. Jense agreed on the value of \$150,000.00 for the Pleasant Grove home and agreed that the Plaintiff should receive it (Exhibits P-2 and D-14, attached as Exhibits "A" and "B"). Mr. Jense received precisely what he bargained for which turned out to be not as good an investment as he anticipated at the time of the Decree. He is essentially asking the court to overturn a bad bargain which he made which, under the principles of equity of modification, is not an acceptable "changed circumstance." Land v. Land, supra. The decrease in value of the asset does not relate to the court's Findings of Fact regarding the award of alimony, attorney's fees or property distribution. Further, it

must be noted that Mr. Jense did little, if anything, to sell the Pleasant Grove home until March, 1987, for a period of nine months after the entry of the Decree of Divorce. He clearly contributed to the problem by failing to act to liquidate the asset. This is especially true when he must have known that his employer was experiencing financial difficulties and he could not anticipate the bonus for 1987.

(3) Failure to receive 1987 bonus: Mr. Jense's failure to receive his annual bonus is a circumstance which does not relate to the basis of the \$27,750.00 property award. As stated in the Findings of Fact, the award was made "to equalize the assets of the parties" and did not relate to Mr. Jense's income. Not receiving the bonus also does not relate to the alimony award (need of Mrs. Jense as of July 9, 1987, for a twelve-month period) or the award of attorney's fees ("based upon current disparity of income of the parties"). The fact that Mr. Jense did not receive the bonus simply impaired his ability to make the payment due on April 1, 1987, but did not justify entirely setting aside each of the awards. It is not the kind of "compelling circumstances" justifying setting aside the entire property award as envisioned in Folger, supra.

In summation, on the surface, the loss of job, decrease in value of the home and lack of bonus creates a somewhat appealing case for "substantial change in circumstance." However, when reviewed in the light of how each of those factors

relates to the basis for each award, it is clear that it does not justify abrogating alimony, attorney's fees and a property award on a permanent basis. The awards which were made by the court on July 9, 1986, and were due and payable April 1, 1987, were inappropriately modified by misapplication of law to the facts.

D. The Court Misapplied the Law and Abused Its Discretion by Vacating the Judgment for Accrued and Unpaid Alimony.

The court's December 7, 1987, Order effectively vacated the alimony judgment which had accrued for twelve months as of April 1, 1987, and was reduced to judgment in the amount of \$5,549.80 (Record, p. 160). The Utah Supreme Court has been unequivocal on the point. "In this jurisdiction, alimony and support payments become unalterable debts as they accrue; therefore, a periodic installment cannot be changed or modified after the installments have become due." Larsen v. Larsen, 561 P.2d 1077, 79 (Utah 1977). "Installments of support payments ordered in a divorce decree become vested in the recipient when they become due." (Citations omitted.) Coleman v. Coleman, 664 P.2d 1155, 57 (Utah 1983). "Installments of support money vest as they become due." (Citation omitted.) "The court has no power to modify the Decree as to these vested rights, unless it finds that each element of equitable estoppel applies." Adams v. Adams, 593 P.2d 147, 48 (Utah 1979).

II.

THE FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER SIGNED DECEMBER 7, 1987,
ARE CONTRARY TO THE PREPONDERANCE OF THE EVIDENCE
ON THE ISSUE OF POSSESSION AND VALUE OF THE SILVERWARE

The Findings of Fact, Conclusions of Law and court's Order, simply do not reflect the evidence in the record on the issues of possession and value of silverware. With regard to the silverware, the Findings of Fact and Conclusions of Law state:

"In addition, the Defendant, between the time of the trial of this matter on January 14, 1986, and the entry of the Findings of Fact, Conclusions of Law and Decree on July 14, 1986, went to the bank where the parties had stored their silverware and removed that silverware from the safety deposit box. The Plaintiff believed that the silverware was worth \$10,000.00 while the Defendant believed that it was worth approximately \$4,500.00."

The "removal" of the silverware from the safety deposit box was then used as a basis to modify the Decree of Divorce in that it constituted a

"Substantial change of circumstance in that the intent of the Court has been thwarted by events resulting in the Defendant being awarded more than one-half of the marital estate which requires, in equity, a modification of the Decree and prior orders and judgments of the Court, which, even after the modification, results, the Court believes, in the Defendant being awarded more than one-half of the estate of the parties, thus, the court must modify the Decree of Divorce and prior orders and judgments of this court to provide that the Defendant be awarded the silverware that she has removed from the bank deposit box and taken into her possession and the net proceeds of the sale of the home of the parties and that upon payment to her of the net proceeds of sale, that all prior awards, judgments and Orders of the court requiring payment to her should be deemed satisfied and paid in full." (Record, p. 224, 225.)

The Court then files its Order:

2. The Defendant is awarded all right, title and interest of the parties to the silverware that she has removed from the safety deposit box of the parties during the pendency of the action. (Record, p. 225.)

A. Standard of Review and Findings of Fact. Referring to Rule 52(a) regarding the court's findings, the Utah Supreme Court has held that the content of Subdivision (a)'s "clearly erroneous" standard imported from the federal rule, requires that if the findings are against the clear weight of the evidence, or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made, the findings will be set aside. Western Kane County Special Service District No. 1 v. Jackson Cattle Company, 744 P.2d 1376, 78 (Utah 1987).

B. The Decree of Divorce Awarded Mrs. Jense the Silverware.

At paragraph 4 of the Divorce Decree, the Court awards personal property as follows:

"A. Plaintiff is awarded the Dasher automobile, the Cadillac automobile, the money in his checking account and the furniture and furnishings and other items of personal property currently in his own possession except for the items specifically awarded to the Defendant as provided in the next following subparagraph.

"B. Defendant is awarded the Ford automobile, her retirement, the money in her checking account, all the furniture and furnishings located in the condominium at 29 South State Street, #718, Salt Lake City, Utah, and the following items of furniture and personal property currently located in the home occupied by the Plaintiff at 9200 North 4650 West, Pleasant Grove, Utah:" (Items deleted.)

Although the personal property provision does not make a specific award of the silverware to Mrs. Jense, the award con-

templates that she will receive all items which are then in her possession in her condominium at 29 South State Street, Salt Lake City, Utah. With regard to possession as of the date of Decree, the evidence is unequivocal and it is clear from Mrs. Jense's Affidavit and her Answers to Interrogatories that he knows she was in possession of the silverware.

C. The Evidence Clearly Shows Mrs. Jense Was in Possession of the Silverware as of the Date of Decree.

The evidence before the Court on the issue of possession of the silverware consisted of Mr. Jense's Affidavit (Record, p. 163-165, attached hereto as Exhibit H, and Mrs. Jense's Affidavit, attached hereto as Exhibit "M", Record, p. 268-274.) Mr. Jense's Affidavit is totally silent as to the location of the silverware as of July 9, 1986, on the date of the Decree, what dates the silverware was located in the safety deposit box (other than a vague three-year period), or the basis upon which he would assert possession of the silverware as of the date of the Decree of Divorce since he apparently assumed it was in the safety deposit box and "the Defendant was in charge of transferring the silver from the home to the safety deposit box."

In contrast, the Plaintiff's "Verified Response" and the Affidavit of Kay Jacobs, president of Deseret Bank where the safety deposit box was located, unequivocally establish: That on July 9, 1986, the silverware was located in Mrs. Jense' condominium (para. 2). She removed the silverware from the safety

deposit box in March, 1985, and took it to her condominium; Kay Jacobs testifies that the records of the bank show that the last entry into the safety deposit box was March 5, 1985; and that the silverware had been stored in the safety deposit box for only a short period of time and that both Mr. and Mrs. Jense knew and understood the silverware was the property of the Defendant having been acquired prior to her marriage (para. 3). (Also, see Mrs. Jense's Answer to Interrogatories, Exhibits "I" and "J" hereto regarding location of silverware as of May 24, 1985.)

The Findings of Fact are absolutely contrary to the preponderance of the evidence as to possession on the date of Decree, possession prior to the date of Decree, and date of removal from the safety deposit box.

D. The Evidence Clearly Establishes the Value of the Silverware at \$4,417.50.

The only evidence before the court on the issue of value was again the Affidavits of the parties. Mr. Jense's Affidavit at paragraph 6 values the silverware at "approximately \$10,000.00." However, this is based upon his own financial statement submitted to First Interstate Bank on October 31, 1984, which he alleged was "prepared by the Defendant" (Exhibit "H"; Record, p. 163-166). He further acknowledges that "Plaintiff is unable to determine the exact pieces in the safety deposit box." (Para. 6.) Mrs. Jense, in her Affidavit, at para. 4 states the silverware is valued at \$4,417.50 (Exhibit "M"; Record, p.

268-274.) This is based upon her itemization attached as Exhibit "B" of each piece of silver and the retail price therefor based upon the then-current suggested retail price taken from the mail order price of "The Yankee Merchant Group and James Kaplan Jewelers."

The Findings of Fact are erroneous in that they reflect a \$10,000.00 value on the silverware by the court in setting off that value against that judgment of \$43,417.46 awarded Mrs. Jense.

This court should set aside the Findings of Fact on the issues and the Order based thereon, especially where it was the intent of the Order that Mrs. Jense receive those items of personal property located in her condominium on July 9, 1986.

III.

THE COURT ABUSED ITS DISCRETION BY FAILING TO GRANT DEFENDANT'S MOTION FOR NEW TRIAL

Mrs. Jense's Motion for New Trial, pursuant to Rules 52 and 59 was prima facie well founded. The Motions were made November 5, 1987, after Mrs. Jense's counsel belatedly received the transcript from the hearing of April 14, 1987 (See Introduction to Objection to Proposed Order and Motion for Trial, Record, p. 227.) Within the body of the Memoranda in Support of New Trial and Objections to the Proposed Findings and Order, counsel for the Defendant clearly explicated the legal propositions that the court had failed to follow Rule 9 of the Supplementary Rules of Practice of the Third District Court

thereby abusing its discretion (Point I, Memorandum, Record, p. 243-44); that there was not a substantial change in circumstance warranting modification (Point II, Memorandum, Record, p. 244-45); and that the alimony award could not be set aside after it had become vested April 1, 1987 (Point III, Memorandum, Record, p. 246-47). The Memorandum in support of the Objections to the proposed Order also clearly explicated the reason why the Findings of Fact did not reflect the preponderance of the evidence (see generally, Memorandum, Record, p. 239-47). The court, after review of the specific bases for a new trial should have granted Mrs. Jense's Motion under Rule 59(a)(1) ("abuse of discretion by which either party was prevented from having a fair trial"), §(a)(6) ("insufficiency of evidence to justify the verdict or other decision, or that it is against law"); and/or §(a)(7) ("error in law").

Where the trial court's Order denying a Motion for a new trial is a "clear abuse of discretion," the reviewing court should reverse the trial court and remand for a new trial. Jensen v. Thomas, 570 P.2d 695 (Utah 1977); Lembach v. Cox, 639 P.2d 187 (Utah 1981); Schmidt v. Intermountain Health Care, Inc., 635 P.2d 99 (Utah 1981).

CONCLUSION


The trial court's failure to follow Rule 9 of the District Rules of Practice in and of itself justifies setting aside the modification Order as an abuse of discretion which pre-

vented normal and required response and discovery on the issues presented, and an adequate hearing. In addition, the Affidavit and proffer of evidence presented at the August 24, 1987, hearing, did not show a "substantial and compelling change in circumstance" warranting abrogating the alimony, attorney's fees and property award made to Mrs. Jense by the July 9, 1986, Decree of Divorce. It is further abundantly clear that the case law establishes setting aside an accrued and vested alimony award is an abuse of discretion. This court should now rectify the errors of the trial court by setting aside the court's Order of modification and setoff and remanding with instructions to reinstate the judgment and for a new trial on all the issues, or in the alternative, reinstating the Decree of Divorce.

DATED this 6 day of June, 1988.

LITTLEFIELD & PETERSON

By:


E. PAUL WOOD

Attorneys for Defendant/Appellant

CERTIFICATE OF HAND SERVICE

I hereby certify that I caused to be hand delivered a true and correct copy of the foregoing Appellant's Brief to David S. Dolowitz, Attorney for Plaintiff/Respondent, COHNE, RAPPAPORT & SEGAL, 525 East 100 South, Suite 500, Salt Lake City, Utah 84102, this 6 day of June, 1988.

27402-27411.A

EXHIBIT "A"

GARY W. JENSE V. SARA A. JENSE

Proposed Distribution of Assets and Liabilities

<u>Description</u>	<u>Plaintiff</u>	<u>Defendant</u>
*9200 North 4650 West Pleasant Grove, Utah (Value \$150,000 less mtgs. of \$109,000)	\$41,000	
29 South State, #178 Salt Lake City, Utah (Value \$39,000 less mtg. of \$33,740)		\$ 6,260
582 West 850 North Pleasant Grove, Utah (Value \$57,000 less mtgs. of \$46,900)	10,100	
Furniture Pleasant Grove	28,000	7,000
Salt Lake City		3,000
Vehicles		
1980 Dasher	500	
1984 Cadillac	19,000	
1980 Ford		2,000
Checking Accounts		
Zions Checking (H)	2,000	
First Security Checking (W)		2,000
TOTAL ASSETS:	<u>\$100,600</u>	<u>\$20,260</u>
LIABILITIES (See attached sheet)	<u>67,800</u>	<u>18,074</u>
	32,800	2,186
Payment to defendant for cash-out value	<u>(15,307)</u>	<u>15,307</u>
TOTAL DISTRIBUTION TO EACH PARTY	<u>\$ 17,493</u>	<u>\$17,493</u>

*Mortgage fluctuates because of revolving line of credit

52861

EXHIBIT A

EXHIBIT "B"

PROPOSED DISTRIBUTION OF ASSETS AND LIABILITIES
GARY AND SARA JENSE

<u>Assets</u>	<u>Sara</u>	<u>Gary</u>
9200 No. 4650 West, Pleasant Grove (Judd Harward appraisal \$150,000 less mortgages Prudential \$33,743; Beneficial Finance \$46,951; Beneficial Revolving Credit \$21,380. Values from Plntf. Int. Ans. #12)		\$ 47,926
29 South State #718, Salt Lake City (Webber appraisal \$39,000 less mortgage \$32,738)	\$ 6,262	
582 West 850 North, Pleasant Grove (Rental property; Harward appraisal \$57,000 less mortgages GE \$26,900; Fox \$20,000. Plntf. Int. Ans. #12)		10,100
45 East 100 North, Pleasant Grove (Value \$52,000 less mortgage \$32,956; property received by plaintiff from father)		-0-
Tibble Fork, Utah County (Value \$60,000; property received from plaintiff's father)		-0-
Furniture, Pleasant Grove (See list)	Gifted	28,555
Furniture, Salt Lake City	3,185	
1980 Dasher (value from plaintiff's interrogatory answers)		3,000
1984 Cadillac (\$22,800 value purchased with \$24,179 check out of 1984 bonus)		-0-
1980 Ford (value from plaintiff's interrogatory answers)	3,000	
Zion's checking (plaintiff's financial declaration)		2,000
First Security checking	2,000	
Federal retirement (\$3,600 dovetails with Social Security)	---	

EXHIBIT B

<u>Assets</u>	<u>Sara</u>	<u>Gary</u>
1985 Bonus (Gross bonus \$85,000; net paid \$70,304)		\$ 70,304
1986 bonus currently earned to be paid in March, 1986		?
Proceeds, sale of stock T-Bond futures (date of sale 5/11/84 for \$60,002)		?
Loss carryover of \$20,100 assuming tax liability of 50%		10,050 <i>10 -</i>
<u>Liabilities:</u>		
Student loan liability (\$25,175 less pmts \$5,468)	\$(19,707)	
Installment obligations (See exhibit of expenses)	(14,579)	
Zion's Bank loan (fin. decl.)		(8,844)
First Security Financial (fin. decl.)		(32,956)
	<hr/>	<hr/>
TOTALS	\$(19,839)	\$130,135
Payment by plaintiff to defendant to equalize values	+ 74,987	- 74,987
	<hr/>	<hr/>
NET DISTRIBUTION	\$ 55,148	\$ 55,148

Att Fees \$8000

EXHIBIT "C"

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

JUL 9 1986

H. J. DANIELS, JUDGE
BY David S. Dolowitz
Clerk

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---oooOooo---

GARY W. JENSE,	:	
	:	
Plaintiff,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
v.	:	
	:	
SARA A. JENSE,	:	Civil No. D85-702
	:	
Defendant.	:	Judge Daniels

---oooOooo---

The above-entitled matter came on regularly for trial on the 14th day of January, 1986, plaintiff appearing in person and by his attorney, David S. Dolowitz, and defendant appearing in person and by her attorney, B. L. Dart, and each of the parties having testified to matters in their respective complaint and counterclaim and the matter having been argued and submitted and taken under advisement by the Court, and the Court now being fully advised hereby makes the following:

FINDINGS OF FACT

1. Defendant is a resident of Salt Lake County, State of Utah, and has been for more than three months immediately prior to the filing of this action for divorce.

EXHIBIT C

2. Plaintiff and defendant were married in Las Vegas, Nevada on the 10th day of January, 1953, and since that time have been husband and wife.

3. Plaintiff has treated defendant cruelly, causing her great mental suffering and distress. Among other things, plaintiff has failed to meet defendant's emotional needs and include her in the financial decisions of the marriage, which conduct has made it impossible for defendant to continue with the marriage relationship and entitles defendant to a decree of divorce from plaintiff on her counterclaim.

4. Plaintiff and defendant have four children as issue of this marriage, all of whom are adults and emancipated, and there are no issues of custody or support.

5. The real property of the parties should be awarded as follows:

a. Plaintiff should be awarded the equity of the parties in the house and real property at 9200 North 4650 West, Pleasant Grove, Utah, subject to the mortgage liabilities outstanding thereon; the rental home at 582 West 850 North, Pleasant Grove, Utah, subject to the mortgage liabilities outstanding thereon; the Tibble Fork property and the residence at 45 East 100 North, Pleasant Grove, Utah, subject to plaintiff assuming and paying the outstanding mortgage owing thereon.

b. Defendant should be awarded the condominium at 29 South State Street #718, Salt Lake City, Utah, subject to

the mortgage outstanding thereon.

6. The personal property of the parties should be awarded as follows:

a. Plaintiff should be awarded the Dasher automobile, the Cadillac automobile, the money in his checking account, and the furniture and furnishings and other items of personal property currently in his own possession except for the items specifically awarded to defendant as provided in the next following subparagraph.

b. Defendant should be awarded the Ford automobile, her retirement, the money in her checking account, all the furniture and furnishings located in the condominium at 29 South State #718, Salt Lake City, Utah, and the following items of furniture and personal property currently located in the home occupied by plaintiff at 9200 North 4650 West, Pleasant Grove, Utah:

Large antique copper frying pan

Antique church pew

French Provincial armchair

Nantucket rocking chair

Antique frame sampler

Hummel figurines

Bowl from Israel

Silver hurricane lamp

Small spinning wheel planter

Collection of antique spoons

Sterling silver goblets

Silver chafing dish

Antique cradle

Rocking chair

Bicentennial pewter plates

Poster bed

Bowl and pitcher (gift from Aunt Louise Watts)

Antique quilt/antique valentines

Antique quilt from defendant's grandmother

Moiri chair

Cross-stitch quilt

Bowl and pitcher (gift from defendant's sister)

Four Lladro figurines

Various Royal Doulton figurines

Collection of "Coalport Cottages"

Defendant's clothing and personal effects, including personal papers, books and items which came from her family such as photograph albums, diaries and similar personal items.

7. The parties should agree upon a time when defendant can receive from plaintiff the items of property to be awarded to defendant which are currently in plaintiff's possession, which

time should be consistent with the schedule of the daughter of the parties who is to arrange to pick up the items for defendant.

8. The obligations and liabilities of the parties should be assumed and paid as follows:

a. Plaintiff should assume and pay the various mortgage obligations owing on the real properties awarded to him, the Zion's First National Bank note liability shown on plaintiff's Exhibit P-1, any income tax liability for his 1985 income, and any obligations which he has individually incurred since the separation of the parties in June, 1984.

b. Defendant should assume and pay her student loan, her installment obligations, and any obligations which she has individually incurred since the separation of the parties in June, 1984.

9. In order to equalize the marital estate, defendant should be awarded a judgment from plaintiff in the sum of \$27,750 with interest thereon at the legal rate of 12% from February 24, 1986, until paid in full. This obligation should be paid by plaintiff on or before April 1, 1987, and until paid this obligation should constitute a lien against plaintiff's real property located in Utah County as provided in paragraph 5a above.

10. As an alimony award from plaintiff to defendant, plaintiff should pay defendant an amount equal to one-half of the gross bonus earned by plaintiff in 1985 which will be received in

1986, and upon receipt of the bonus, one-half of the gross bonus should be paid to defendant.

11. The Court finds that defendant based upon her current employment is capable of supporting herself and for this reason, the Court does not award permanent alimony. However, based upon the current financial circumstances of the parties, plaintiff should pay to defendant temporary alimony in order to give defendant the opportunity to establish herself, which alimony should be in the amount of \$500 per month for a period of one-year commencing with the month of March, 1986, and with each installment to be due and payable on the 1st day of the month.

Because of plaintiff's current financial circumstances, however, defendant should engage in no action to reduce these installments to judgment or enforce payment thereof through execution until April 1, 1987, in order to allow plaintiff an opportunity to receive his income bonus for the 1986 income year. Each installment of alimony should bear interest from the date when due until paid at the rate of 10% per annum, and if by April 1, 1987 any installments have not been paid, then defendant should be entitled to reduce any unpaid installments to judgment and enforce collection through execution.

12. In light of the disparity of the incomes and the current financial circumstances of the parties, plaintiff should be required to pay defendant's attorney's fees in the amount of \$5,000 together with all costs including appraisal costs incurred

by defendant in the sum of \$670. The obligation for attorney's fees and costs should be due and payable by April 1, 1987 and shall bear interest at the rate of 10% per annum until paid.

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

CONCLUSIONS OF LAW

1. Defendant is entitled to a divorce from plaintiff on the grounds of mental cruelty, which decree shall be final upon signing and entry.
2. The real property of the parties is awarded as provided in paragraph 5 of the Findings of Fact.
3. The personal property of the parties is awarded as provided in paragraph 6 of the Findings of Fact.
4. The liabilities of the parties are to be assumed and paid as provided in paragraph 8 of the Findings of Fact.
5. Defendant is awarded a judgment from plaintiff in the amount of \$27,750 as property settlement to equalize the marital estate plus interest thereon at the legal rate of 12% per annum from February 24, 1986, until paid in full, with payment to be made upon the terms and to be secured as provided in paragraph 9 of the Findings of Fact.
6. Plaintiff is ordered to pay to defendant an alimony award equal to one-half of the gross bonus earned by plaintiff in 1985 which will be received in 1986, and upon

8

EXHIBIT "D"

JUDGMENT

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

B. L. DART (818)
Attorney for Defendant
Suite 1330
310 South Main
Salt Lake City, Utah 84101
Telephone: (801) 521-6383

JUL 9 1986
H. D. [Signature]
BY [Signature]

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---oooOooo--- BK 208 No. 1071
GARY W. JENSE, : 7-14-86 10:28 AM
Plaintiff, :
v. : DECREE OF DIVORCE
SARA A. JENSE, : Civil No. D85-702
Defendant. : Judge Daniels
---oooOooo---

The above-entitled matter came on regularly for trial on the 14th day of January, 1986, plaintiff appearing in person and by his attorney, David S. Dolowitz, and defendant appearing in person and by her attorney, B. L. Dart, and each of the parties having testified to matters in their respective complaint and counterclaim and the matter having been argued and submitted and taken under advisement by the Court, and the Court having made and entered its Findings of Fact and Conclusions of Law, now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Defendant is awarded a decree of divorce from plaintiff on the grounds of mental cruelty, which decree for good cause shown shall be final upon signing and entry.

2. Plaintiff and defendant have four children as issue of this marriage, all of whom are adults and emancipated, and there are no issues of custody or support.

3. The real property of the parties is awarded as follows:

a. Plaintiff is awarded the equity of the parties in the house and real property at 9200 North 4650 West, Pleasant Grove, Utah, subject to the mortgage liabilities outstanding thereon; the rental home at 582 West 850 North, Pleasant Grove, Utah, subject to the mortgage liabilities outstanding thereon; the Tibble Fork property; and the residence at 45 East 100 North, Pleasant Grove, Utah, subject to plaintiff assuming and paying the outstanding mortgage owing thereon.

b. Defendant is awarded the condominium at 29 South State Street #718, Salt Lake City, Utah, subject to the mortgage outstanding thereon.

4. The personal property of the parties is awarded as follows:

a. Plaintiff is awarded the Dasher automobile, the Cadillac automobile, the money in his checking account, and

the furniture and furnishings and other items of personal property currently in his own possession except for the items specifically awarded to defendant as provided in the next following subparagraph.

b. Defendant is awarded the Ford automobile, her retirement, the money in her checking account, all the furniture and furnishings located in the condominium at 29 South State #718, Salt Lake City, Utah, and the following items of furniture and personal property currently located in the home occupied by plaintiff at 9200 North 4650 West, Pleasant Grove, Utah:

Large antique copper frying pan

Antique church pew

French Provincial armchair

Nantucket rocking chair

Antique frame sampler

Hummel figurines

Bowl from Israel

Silver hurricane lamp

Small spinning wheel planter

Collection of antique spoons

Sterling silver goblets

Silver chafing dish

Antique cradle

Rocking chair

Bicentennial pewter plates

Poster bed

Bowl and pitcher (gift from Aunt Louise Watts)

Antique quilt/antique valentines

Antique quilt from defendant's grandmother

Moiri chair

Cross-stitch quilt

Bowl and pitcher (gift from defendant's sister)

Four Lladro figurines

Various Royal Doulton figurines

Collection of "Coalport Cottages"

Defendant's clothing and personal effects, including personal papers and books and items which came from her family such as photograph albums, diaries and similar personal items.

5. The parties are ordered to agree upon a time when defendant can receive from plaintiff the items of property to be awarded to defendant which are currently in plaintiff's possession, which time should be consistent with the schedule of the daughter of the parties who shall arrange to pick up the items for defendant.

6. The obligations and liabilities of the parties are to be assumed and paid as follows:

a. Plaintiff is ordered to assume and pay the various mortgage obligations owing on the real properties awarded to him, the Zion's First National Bank note liability shown on plaintiff's Exhibit P-1, any income tax liability for his 1985 income, and any obligations which he has individually incurred since the separation of the parties in June, 1984.

b. Defendant is ordered to assume and pay her student loan, her installment obligations, and any obligations which she has individually incurred since the separation of the parties in June, 1984.

7. In order to equalize the marital estate, defendant is awarded a judgment from plaintiff in the sum of \$27,750 together with interest thereon at the legal rate of 12% from February 24, 1986, until paid in full. This obligation is ordered to be paid by plaintiff on or before April 1, 1987, and until paid this obligation shall constitute a lien against plaintiff's real property located in Utah County as provided in paragraph 3a above.

8. As an alimony award from plaintiff to defendant, plaintiff is ordered to pay defendant an amount equal to one-half of the gross bonus earned by plaintiff in 1985 which will be received in 1986, and upon receipt of the bonus, one-half of the gross bonus is ordered to be paid to defendant.

9. No permanent alimony is awarded, but plaintiff is ordered to pay to defendant temporary alimony in the amount of \$500 per month for a period of one-year commencing with the month of March, 1986, with each installment due and payable on the 1st day of the month.

Because of plaintiff's current financial circumstances, however, defendant is ordered to engage in no action to reduce these installments to judgment or enforce payment thereof through execution until April 1, 1987, in order to allow plaintiff an opportunity to receive his income bonus for the 1986 income year. Each installment of alimony shall bear interest from the date when due until paid at the rate of 10% per annum, and if by April 1, 1987 any installments have not been paid, then defendant shall be entitled to reduce any unpaid installments to judgment and enforce collection through execution.

10. Defendant is awarded a judgment for the use and benefit of her attorney in the amount of \$5,000 plus costs including all appraisal costs incurred by defendant in this proceeding in the amount of \$670. This obligation for attorney's fees and costs shall be due and payable by April 1, 1987 and shall bear interest at the rate of 10% per annum until paid.

11. Each of the parties is ordered to execute any documents necessary to effectuate the terms of the Decree of Divorce when it is entered.

DATED this 9 day of July, 1986.

BY THE COURT:

Scott Daniels
DISTRICT JUDGE

ATTEST
H. INGRAM HANLEY
Clerk
By Karen Busch
Clerk

MAILING CERTIFICATE

I hereby certify that on the ____ day of _____, 1986, I mailed a copy of the foregoing Decree of Divorce to:

David S. Dolowitz
P. O. Box 11898
Salt Lake City, Utah 84147
Attorney for Defendant.

EXHIBIT "E"

Attorney for ~~Plaintiff~~ Defendant
142 East 200 South
Guardian Plaza Suite 311
Salt Lake City, Utah 84111
Telephone: (801) 532-3020

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

APR 29 5 14 PM '86

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY

STATE OF UTAH DISTRICT COURT

BY Scott Daniels CLERK

--oo0oo--

GARY W. JENSE,

:

Plaintiff,

:

J U D G M E N T

vs.

:

SARA A. JENSE,

:

Civil No. D85-702

Judge: Daniels.

Defendant(s).

:

--oo0oo--

Bk 213 NO. 161

4-2-87-2.53 pm

Hearing was set in the above entitled court and came on for hearing on the 14th day of January, 1986, before the Honorable Judge Daniels. Plaintiff being represented by its Attorney, David S. Dolowitz, and Defendant(s) ~~being~~ being represented her attorney B. L. Dart; the Court having heard the arguments from present parties, being fully advised in the premises, now therefore:

IT IS HEREBY ORDERED that ~~Defendant~~ ^{Plaintiff} is granted Judgment against ~~Defendant(s)~~ for the principal sum of Forty Three Thousand Three Hundred and Fourteen Dollars and Forty-Six Cents. (\$43,314.46.), all court costs to and from the date of Judgement, interest at the rate of 12% and after accruing costs, attorney's fees.

BY THE COURT:

April 1, 1987

EXHIBIT E

Scott Daniels
HONORABLE SCOTT DANIELS

ATTEST
H. DIXON HINDLEY
CLERK

page two of two

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I mailed a true and correct copy of
the above foregoing Judgment as follows: David S. Dolowitz at:
Box 11898, Salt Lake City, Utah 84147.

4-1-87

A handwritten signature in black ink, appearing to be 'Deanna Taylor', written over a horizontal line.

Deanna Taylor
Legal Assistant

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

AIR 15 11 09 AM '87

ITEMIZATION OF JUDGMENT

1. JUDGMENT in the amount of \$27,750.00 ~~as awarded in~~ paragraph seven (7) of Defendant's Decree of Divorce along with interest in the amount of \$3,607.56 (12% from February 24, 1986 to date.)

2. ALIMONY in the amount of \$5,549.80 as awarded in paragraph nine (9) of Defendant's Decree of Divorce. See below:

12 months alimony @ \$500.00	= \$6,000.00
Payments received	-500.00
Interest @10%	49.80
	<u>\$5,549.80</u>

3. ATTORNEY'S FEES in the amount of \$5,000.00 as awarded in paragraph ten (10) of Defendant's Decree of Divorce and interest at the rate of 10% per annum until paid. Interest in the amount of \$737.10 has accrued to date. Court costs in the amount of \$670.00.

THEREFORE JUDGMENT AS FOLLOWS:

1. \$31,357.56
 2. 5,549.80
 3. 5,737.10 and Costs \$670.00
- \$43,314.46

EXHIBIT "F"

1 and the time in research, so I think an hour of it could
2 be attributed to being new counsel in the case. The balance
3 would have been incurred whether I was old or new counsel.

4 THE COURT: Okay. Well, I think in light of
5 the testimony presented, I am going to grant the stay of
6 execution for four months only. And I am also going to
7 award attorneys fees to the defendant as partial payment
8 for her attorneys fees in the amount of \$600.

9 In the meantime, the plaintiff will be directed
10 not to sell or encumber any of his real property or personal
11 property without -- obviously he is trying to sell the house.
12 I am not saying he can't do that. I am saying that he
13 can't sell it without immediately accounting to the defendant
14 through her counsel and keeping them informed of any sales
15 of either the real or personal property.

16 If he hasn't got the home sold and is in a
17 position to pay the judgment in four months, then I am
18 going to be very disinclined to grant another stay.

19 MR. DOLOWITZ: I would like to indicate to
20 the Court I would like to pursue the question of the silver
21 and bring that back before you and request a \$10,000 credit
22 for her taking the silver.

23 THE COURT: I think you are certainly entitled
24 to bring that before the Court.

25 MR. DOLOWITZ: Can we request attorneys fees

EXHIBIT "G"

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

JUN 24 4 12 PM '87

H. DAVID HINDLEY CLERK
3rd DIST. COURT
Earlene Matheson
DEPUTY CLERK

DAVID S. DOLOWITZ (0899)
of and for
PARSONS, BEHLE & LATIMER
Attorneys for Plaintiff
185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147-0898
Telephone: (801) 532-1234

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

GARY W. JENSE)	
	)	MOTION
Plaintiff,)	
)	
vs.)	
)	
SARA A. JENSE,	)	Civil No. D85-702
	)	Judge Scott Daniels
Defendant.)	


* * * * *

This court, on the 9th day of July, 1986, entered a Decree of Divorce ordering the plaintiff to pay to the defendant certain sums of money. Execution on those sums was thereafter stayed until April 1, 1987. On April 1, 1987, a Judgment in the sum of \$43,314.46 was entered in favor of the defendant and against the plaintiff to effectuate all of the ordered payments. The defendant, after the entry of the Decree of Divorce, went to the safety-deposit box of the parties and removed from that, silver which the plaintiff has valued at \$10,000.00. Accordingly, the plaintiff moves this court to require the defendant to enter a satisfaction of judgment for \$10,000.00 of

EXHIBIT C

the \$43,314.46 owed to her on the basis that all of the furniture, fixtures, furnishings and appliances, except those specifically enumerated in the Decree were awarded to the plaintiff and that included the silver which has been taken by the defendant from the plaintiff. The plaintiff is willing to allow her to retain the silver, but wishes to require her to enter the Partial Satisfaction of Judgment requested herein based on her taking possession of that property.

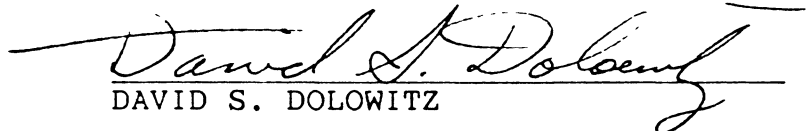
DATED this 24th day of June, 1987.


DAVID S. DOLOWITZ
Attorney for Plaintiff

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing Motion to the following on this 24th day of June, 1987:

Craig M. Peterson
LITTLEFIELD & PETERSON
428 South 5th East
Salt Lake City, UT 84102


DAVID S. DOLOWITZ

FT:061887A

EXHIBIT "H"

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

JUN 24 4 13 PM '87

H. DIXON HINDLEY, CLERK
3rd DIST. COURT
Earlene Matheson
DEPUTY CLERK

DAVID S. DOLOWITZ (0899)
of and for
PARSONS, BEHLE & LATIMER
Attorneys for Plaintiff
185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147-0898
Telephone: (801) 532-1234

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

* * * * *

GARY W. JENSE)	
	)	AFFIDAVIT
Plaintiff,)	
)	
vs.)	
)	
SARA A. JENSE,	)	Civil No. D85-702
	)	Judge Scott Daniels
Defendant.)	

* * * * *

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

GARY W. JENSE being duly sworn deposes and states:

1. I am the plaintiff in the above-entitled matter.
2. A Decree of Divorce was granted to the parties by the above-entitled court on July 9, 1986.
3. During the marriage there was a safety deposit box at Deseret Bank of Pleasant Grove containing several serving pieces and place settings of Grand Baroque silver which had been purchased by the parties during the marriage or given to the plaintiff and defendant as gifts.

EXHIBIT H

4. This silver had been used by the family for special dinners and other occasions.

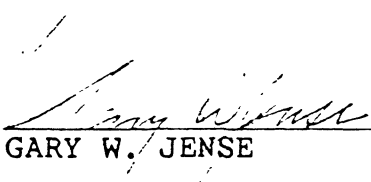
5. Because of the value of this silver, the safety deposit box was obtained and the silver was kept in it for approximately three years.

6. The silver removed by the Defendant from the safety deposit box is valued at approximately \$10,000.00. Since the defendant was in charge of transferring the silver from the home to the safety deposit box, Plaintiff is unable to determine the exact pieces in the safety deposit box. Please see copy of First Interstate Bank Financial Statement attached hereto as Exhibit "A", prepared by Defendant stating the value of the silver.

7. On April 1, 1987 a judgment was entered against me in the sum of \$43,314.46, as a result of the ordered payments from the Decree of Divorce.

8. I am willing to allow the defendant to keep the contents of the safety deposit box, but would require from the defendant a partial satisfaction of judgment in the amount of \$10,000.00.

DATED this 24 day of June, 1987.



GARY W. JENSE

Subscribed and sworn to before me this 24 day of June, 1987.

My Commission Expires:

1-33-89

[Signature]
NOTARY PUBLIC

Residing at: Salt Lake City, Utah

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing AFFIDAVIT to the following on this 24th day of June, 1987:

Craig M. Peterson
LITTLEFIELD & PETERSON
428 South 5th East
Salt Lake City, Utah 84102

[Signature]
DAVID S. DOLOWITZ

FT:061887B

INDIVIDUAL PROPRIETORSHIP FINANCIAL STATEMENT	
NAME <u>John J. Jones</u>	ADDRESS <u>1500 N. 1st St. P.O. Box 1234</u>
BUSINESS <u>John J. Jones</u>	ADDRESS <u>1500 N. 1st St. P.O. Box 1234</u>
LOAN INFORMATION	
Purpose of Loan <u>Personal</u>	TYPE OF CREDIT REQUESTED <u>Individual</u>
Amount of Loan <u>\$15,000.00</u>	<input type="checkbox"/> Joint Applicant is Spouse <input type="checkbox"/> Joint Applicant is Spouse & Child
Terms Desired <u>60 mos.</u>	<input type="checkbox"/> If Joint Applicant is Spouse, Sections A, B, C and E must include information about the spouse's income and assets.
Source of Funds for Repayment <u>Personal</u>	<input type="checkbox"/> UNSECURED <input type="checkbox"/> SECURED BY <u>Real Estate</u>
FINANCIAL CONDITION AS OF <u>12/31</u> 19 <u>78</u>	
FILL IN BLANKS WRITING "NONE" WHERE NECESSARY TO COMPLETE INFORMATION AND SIGN IN INK ON THE REVERSE SIDE	
A ASSETS	
Cash on Hand or on Deposit	Accounts Payable
Accounts Receivable (Collectable)	Notes Payable
Notes Receivable (Collectable)	To Banks
Inventory	To Relatives
Stocks & Bonds (Listed)	To Others
(Describe on other side)	Installment Accounts
Other Current Assets (Itemize)	Automobile
TOTAL CURRENT ASSETS	Small Loan & Finance Co's
Real Estate (Buildings & Improvements (Describe on other side))	Other (Doctor, Dentist, Chg. Accts, etc.)
Furniture, Fixtures & Equipment	Loans on Life Insurance Policies
Life Insurance (Cash Surrender Value)	(Include Premium Advances)
Stocks, Bonds & Investments (Describe on other side)	Other Liabilities due within one year (Itemize)
Automobiles (Year, Make)	TOTAL CURRENT LIABILITIES
Other Assets (Itemize)	Obligations on Real Estate
TOTAL ASSETS	Other Liabilities due after one year (Itemize)
	TOTAL LIABILITIES
	NET WORTH
	TOTAL LIABILITIES & NET WORTH
C SOURCE OF INCOME	
Income from alimony, child support or maintenance payments need not be revealed. However, only the income listed on this credit statement will be considered in determining your creditworthiness. If alimony, child support or maintenance income is disclosed here, credit information concerning the payor may be required to determine the extent that such payments are likely to be consistently made.	
Type of Income	Monthly Amount
<input type="checkbox"/> Alimony	
<input type="checkbox"/> Child Support or Maintenance	
Name of Payor	
Base Salary per Annum	Bonus and Commissions
Dividends and Interest Income	Real Estate Income (Net)
Other Income (Itemize)	
If Proprietorship attach Income Statements	
Total Annual Income	
D PERSONAL INFORMATION	
1 GENERAL	
Occupation or Type of Business	
Employer	
Position Held	No. of Years
Partner or office in any other venture or other employment	
Date of Birth	No. of Dependents
	Social Security Number
2 MARITAL STATUS	
Do not complete this portion of the application if you are applying for an unsecured loan.	
Maid	Unmarried
3 INFORMATION CONCERNING SPOUSE	
Information regarding your spouse (or former spouse) need not be revealed unless such spouse will be co-signing the loan or you are relying upon such spouse's income as a basis for the credit requested.	
Spouse's Full Name	
Date of Birth	Social Security Number
Spouse's Employer	
Are you a defendant in any legal action?	
Are there any unsatisfied judgments?	
Have you ever taken bankruptcy? Explain	
	How Long Employed
	Monthly Salary

EXHIBIT "I"

(g) Not applicable.

14. Describe all bank or other institution in which your name did not appear but in which you deposited money within the last two years and please state with respect to each such account:

ANSWER:

(14) None.

15. Have there been bank or other institution accounts in which your name does not appear, but from which you withdrew money in the last two years?

ANSWER:

(15) No.

16. If the answer to the preceding Interrogatory is in the affirmative, please state with respect to each account:

ANSWER:

(16) Is not applicable.

17. Identify and describe any safety deposit boxes, vaults, safes or other places of deposit or safekeeping in which you have deposited any item of value during the last five years and for each such deposit, state the following:

a. The name and address of the institution or entity where the deposit is located;

b. The identification or account number;

- c. The name and address of each person authorized to enter the deposit;
- d. Whether the deposit is still open, and,
- e. State with specificity each item located within the deposit and its present value.

ANSWER:

- (17) (a) Deseret Bank, Pleasant Grove, Utah, 84062.
- (b) Unknown.
- (c) Sara A. Jense, and Lana Jense Bowles, 10 South 3rd East, Pleasant Grove, Utah 84062.
- (d) Yes.
- (e) There are no items in the box and plaintiff has the keys.

18. Identify any and all real property which you own or owned an interest at any time during your present marriage, stating for each parcel of property;

- a. The street address and legal description;
- b. The size;
- c. A description of each building, structure or other improvement presently on the property;
- d. The method of acquisition of title;
- e. The date of acquisition;
- f. The name and address of the seller or person from whom title was acquired;

EXHIBIT "J"

Attachment No. 2

9200 North 4650 West, Utah County, All in Plaintiff's possession

I. Entry Hall

1. Antique wooden rocking horse
2. Antique church pew - gift to defendant from friend
3. Large wall hanging school clock
4. Large antique copper frying pan circa 1585 - gift to defendant from parents
5. Various framed watercolors, prints, accessories
6. Silver-plated silver bell collection "The Twelve Days of Christmas"

II. Living Room

1. Large corner cupboard - Christmas gift to defendant from plaintiff
2. Red velvet couch
3. Two end tables
4. Two lamps
5. Lighted curio cabinet - Christmas gift to defendant from plaintiff
6. Pair of large wooden candlesticks
7. French provincial arm chair - gift to defendant from parents
8. Nantucket rocking chair - gift to defendant from father
9. Round skirted table
10. Piano - gift to plaintiff from mother
11. Two piece stereo set - one piece gift to plaintiff from mother
12. Large "flax" antique spinning wheel - Christmas gift from defendant to plaintiff
13. Antique framed sampler - gift to defendant from Freda Brey
14. Pair of glass Venetian figurines
15. Four antique glass shoes
16. Four Lladro figurines - gifts to defendant for Mother's Day, anniversaries, etc.
17. Various Royal Doulton figurines - gifts to defendant for various occasions
18. Collection of bells - limited editions, silver and china
19. Collection of "Coalport Cottages" - gifts to defendant for various occasions
20. Numerous pictures, accessories, antique artifacts, etc.
21. Collection of Hummel figurines - gifts to defendant from mother, children, friends

EXHIBIT J

III. Dining Room

1. Refracting table and benches
2. Large china cupboard - Christmas gift to defendant from plaintiff
3. Dry sink
4. Tea cart - birthday gift to defendant from plaintiff
5. Antique "Gone With the Wind" chandelier
6. Collection of pewter plates - Christmas gift from daughter to defendant and plaintiff
7. Various collections of antique china and artifacts
8. Silver hurricane lamp - gift to defendant from sister
9. Small spinning wheel planter - gift to defendant from sister
10. Collection of antique spoons - gift to defendant from mother
11. Sterling silver goblets (4) - gift to defendant from father
12. Silver chafing dish - gift to defendant from father
13. Old books
14. Pink crystal
15. Haviland china
16. Assorted linens

IV. Family Room/Kitchen/Utility Room

1. Built-in vacuum cleaner "central vac"
2. Painted ice chest
3. Antique cradle
4. Couch
5. Rocking chair - gift to defendant from father
6. Stove, refrigerator and dishwasher
7. Various antique artifacts
8. Television
9. Small wall school clock
10. Antique coat rack with tiles
11. Collection of Bicentennial pewter plates - gift to defendant from father
12. Old books and diaries
13. Various sets of dishes, glasses, household items
14. Antique scales and weights
15. Small bench
16. Antique churn

V. Pink Bedroom

1. Poster bed - gift to defendant from mother for birthday
2. Cranberry hurricane lamp
3. Bowl and pitcher - gift to defendant from Aunt Louise Watts
4. Antique quilt/antique Valentines
5. Small bench

NOTE - all other items in bedroom belong to daughter, Holly Jense

VI. Green Bedroom

1. One single bed
2. Two small chests
3. Books
4. Antique wooden box
5. Various antique artifacts

VII. Upstairs Hall Landing

1. Antique kitchen cupboard
2. Stained glass window
3. Small bench
4. Various pictures and accessories (thimble collection)
5. Antique quilt - from defendant's grandmother

VIII. Master Bedroom

1. One brass bed
2. One end table
3. One television
4. One cedar chest - Christmas gift to defendant from plaintiff
5. One Moiri chair - gift to defendant from father
6. One velvet chaise lounge
7. One cross-stitch quilt
8. Various books
9. Various pieces of pewter
10. Collection of Hummels
11. Painiting by "Harriet"
12. Bowl and pitcher - gift to defendant from sister
13. Antique books
14. Various antique artifacts

IX. Garage

1. Riding Snapper lawn mower
2. Master Deluxe Roto-Tiller
3. Freezer
4. Assorted tools

X. Patios

1. Wrought iron table and two chairs - Mother's day gift to defendant from plaintiff
2. Redwood rocker - Mother's day gift to defendant from plaintiff
3. Four redwood benches, chair, chaise with pads

29 South State - Belvedere Condo - In defendant's possession

1. French day bed
2. Television
3. Goddard black front chest
4. Bing and Grohndl figurines
5. Villeroy and Bock china
6. Gale leg end tables(2)
7. Two lamps
8. Butler's tray coffer table
9. Entry hall mirror
10. Wooden mirror (larger)
11. Various accessories
12. Couch
13. Love seat
14. One small TV/radio/tape deck - gift to defendant from plaintiff for birthday
15. one set glasses/silverware/various household items
16. one vacuum (small Eureka)

EXHIBIT "K"

FILED IN CLERK'S OFFICE
Salt Lake County Utah

DAVID S. DOLOWITZ (0899)
of and for
PARSONS, BEHLE & LATIMER
Attorneys for Plaintiff
185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147-0898
Telephone: (801) 532-1234

AUG 3 1967

H. Dixon Hindley, Clerk 3rd Dist. Court
By E. H. H. H. H.
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

★ ★ ★ ★ ★ ★ ★ ★

GARY W. JENSE

Plaintiff,

VS.

SARA A. JENSE,

Defendant.

**MOTION TO AMEND
DECREE OF DIVORCE**

Civil No. D85-702
Judge Scott Daniels

★ ★ ★ ★ ★ ★ ★ ★

This Court on the 9th day of July, 1986 entered a Decree of Divorce ordering the plaintiff to pay to the defendant certain sums of money. Execution on those sums was thereafter stayed until April 1, 1987. On April 1, 1987 a judgment in the sum of \$43,314.46 was entered in favor of the defendant and against the plaintiff to effectuate all of the ordered payments. This award was based upon the court's assessment of plaintiff's earning potential and the court directed review of the situation if plaintiff could not make this payment by August 1987. Based on plaintiff's Affidavit attached hereto, plaintiff has a substantial change of circumstance in his financial situation in that:

EXHIBIT K

1. The home of the parties has been for sale for approximately six (6) months and plaintiff has been unable to sell it. Plaintiff believes he will receive approximately \$119,000.00 in the opinion of several realtors. The house at the time of the trial was appraised for \$150,000 and the order of the court was based on that figure. Since the house has not sold and plaintiff believes he will net approximately \$119,000.00 from the sale of the house, he is unable to pay the judgment as ordered.

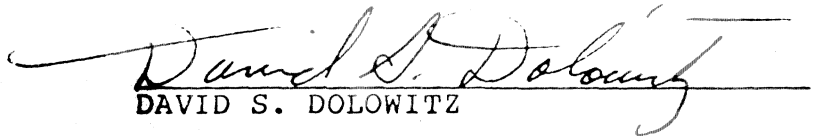
2. Plaintiff is no longer employed at American Equity. He had been employed for 15 years with American equity and received bonuses during that time ranging from \$10,000 to \$72,000.00. In 1986, because of the problem with the thrifts, plaintiff did not receive any bonus.

3. Plaintiff no longer has an income and he is not in a position to pay the judgments as ordered by the court.

4. It is requested that the judgment be removed and the security of payment to defendant be in the form of a lien on the marital residence.

Accordingly, plaintiff moves the court to amend the Decree of Divorce to delete payments due to defendant and vacate the judgment against plaintiff based on this change of circumstances and to order that any payments which the court orders to be paid to defendant by plaintiff be paid from the proceeds of the sale of the home of the parties when it is sold.

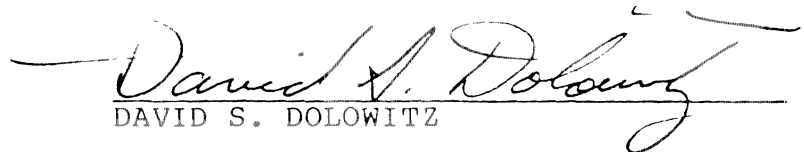
DATED this 3rd day of August, 1987.


DAVID S. DOLOWITZ

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing MOTION to the following on this 3rd day of August, 1987:

Craig M. Peterson
LITTLEFIELD & PETERSON
428 South 5th East
Salt Lake City, Utah 84102


DAVID S. DOLOWITZ

FT:070787E

EXHIBIT "L"

DAVID S. DOLOWITZ (0899)
of and for
PARSONS, BEHLE & LATIMER
Attorneys for Plaintiff
185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147-0898
Telephone: (801) 532-1234

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

AUG 3 3 41 PM '87

DIXON-HINCHLEY CLERK
BY Caroline Mathison
DEPUTY CLERK

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

GARY W. JENSE)	
	)	PLAINTIFF'S AFFIDAVIT
Plaintiff,)	
)	
vs.)	
)	
SARA A. JENSE,	)	Civil No. D85-702
	)	Judge Scott Daniels
Defendant.)	

* * * * *

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

GARY W. JENSE being duly sworn deposes and states:

1. I am the plaintiff in the above-entitled matter.
2. A Decree of Divorce was granted to the parties by the above-entitled court on July 9, 1986.
3. Pursuant to paragraph 3(a) of the Decree of Divorce, plaintiff was awarded the home of the parties at 9200 North 4650 West, Pleasant Grove, Utah.
4. Plaintiff has had the home for sale for approximately six (6) months but due to the depressed real estate

EXHIBIT L

market in Utah County, the house has not sold and plaintiff has been told by several real estate agents that the net amount plaintiff will receive from the sale of the home will be approximately \$119,000.00.

5. Plaintiff since the entry of the Decree of Divorce has serviced the significant debt on the property as well as marital debts during the pendency of the divorce to the present time as set out in detail in Exhibit A attached hereto.

6. Due to plaintiff's employer merging with Zions Mortgage Company, plaintiff's employment was terminated as of July 17, 1987.

7. Plaintiff received \$2400.00 on July 17, 1987 and \$3700.00 on July 30, 1987 as severance pay. There is presently a dispute over an additional \$1,000.00 owed to plaintiff. Please see documentation attached to support severance pay received.

8. Plaintiff is in need of severance pay received to service debts and pay living expenses as outlined in paragraph 5 above and Exhibit B attached hereto. If the debts outlined in paragraph 5 above are not serviced, both plaintiff and defendant will be liable.

9. Plaintiff has been employed by American Equity for 15 years and received bonuses ranging from \$10,000 to \$72,000. There was no bonus paid for 1986.

DATED this 3rd day of August, 1987.

Gary W. Jense
GARY W. JENSE

Subscribed and sworn to before me this 3rd day of July, 1987.

Berkley J. Jones
NOTARY PUBLIC
Residing at: S.L.C., UT

My Commission Expires:

10-1-89

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing AFFIDAVIT to the following on this 3rd day of August, 1987:

Craig M. Peterson
LITTLEFIELD & PETERSON
428 South 5th East
Salt Lake City, Utah 84102

David S. Dolowitz
DAVID S. DOLOWITZ

FT:070787D

"EXHIBIT A"

JENSE V. JENSE

MARITAL DEBTS SERVICED BY PLAINTIFF
(INCLUDED IN EXHIBIT B)

	<u>Monthly Payment</u>
9200 West	\$1,748.57
4650 West	
Repayment on	742.00
daughter's school	
loan	
Pleasant Grove	229.00
Rental Property -	
Receives \$275	
toward payment of \$504.	
	<hr/>
	\$2,719.57 -- Monthly Debt Obligation

Since July, 1986, Plaintiff has paid -- \$32,634.84
(primarily interest -- little principal reduction)

FT070787D

"EXHIBIT B"

GARY W. JENSE V. SARA A. JENSE

PLAINTIFF'S MONTHLY EXPENSES

	<u>Husband</u>
Mortgage payments	\$*1,748.57
Real property insurance	**
Maintenance	**
Food and household supplies	200.00
Utilities	250.00
Telephone	40.00
Laundry and cleaning	50.00
Clothing	50.00
***Medical and dental	200.00
Entertainment	100.00
Incidentals	25.00
Auto expense (gas, oil, repair, insurance)	300.00
Installment payment(s)	<u>1,121.00</u>
TOTAL EXPENSES	\$4,084.57

*Includes first and second mortgage

**Included in mortgage payments

***Because of unemployment, plaintiff is responsible for payment

**** \$ 150.00 Credit Cards
742.00 Repayment daughter's school loan (Holly)
229.00 Rental property, Pleasant Grove - (Net)

FT070787D

ZIONS BANCORPORATION

1380 KENNEGOTT BUILDING
SALT LAKE CITY, UTAH 84133
(801) 524-4787

HARRIS H. SIMMONS
PRESIDENT

July 28, 1987

Mr. Gary Jense
P. O. Box 422
Pleasant Grove, UT 84062

Dear Gary:

As per our discussion the other day, I am enclosing a check representing additional severance pay for 304 hours of work. This brings the total, including the 160 hours paid two weeks ago, to 464 hours. This is 40 hours short of the amount you had requested. The shortfall represents 40 hours of sick leave pay. As a company, we have never paid unused sick leave to any terminated employees under any circumstances. Inasmuch as this liability had not been accrued by American Equity, and inasmuch as this is not a benefit which we would provide for any of our own terminated employees, we cannot justify a payment for those hours.

I want to wish you well in all of your endeavors. Though the circumstances under which we found ourselves working together were somewhat difficult, we appreciate the help you rendered in the aftermath of the purchase of the Foothill Financial assets. Best wishes.

Sincerely,



Harris H. Simmons
President

HHS:mm
enclosure

1380 KENNECOTT BUILDING
SALT LAKE CITY, UTAH 84133

ZIONS
FIRST NATIONAL BANK
ONE SOUTH MAIN STREET
SALT LAKE CITY, UTAH

31-5
1240

DATE July 29, 1987
PAY 3759.68 \$3,759.68

THE
DER GARY JENSE

ZIONS BANCORPORATION

[Signature]
AUTHORIZED SIGNATURE

N FULL PAYMENT OF SEVERANCE CLAIMS

025873 124000054 02 11003 9

IONS RPORATION	DATE	VEND./EMPL.	PAYEE DETACH THIS STATEMENT BEFORE DEPOSITING CHECK.	No 2587
	7-29-87	66 71	GARY JENSE	
	INVOICE NUMBER	DESCRIPTION	NET AMOUNT:	
		304 HOURS GROSS 8040.80 FICA 574.92		
		2556.00 ST 1150.20 NET 3759.68		3,759.68
		DESCRIPTION TO BE KEY PUNCHED		

ZIONS BANCORPORATION
1 SOUTH MAIN STREET SALT LAKE CITY, UT 84111

STATEMENT OF EARNINGS AND DEDUCTIONS

EARNINGS			DEDUCTIONS				YEAR TO DATE	
EARNINGS	HRS/UNITS	AMOUNT						
REGULAR		2327.26	FICA TAX	317.61	FED TAX	1172.59	GROSS PAY	16925.52
VACATION	8000	2115.69	STATE UT	527.66	MED INS	0.00	F.I.C.A.	1205.73
			LIFE INS	0.14	ADDED INS	0.12	FED. TAX	4358.13
							STATE TAX	1961.14
							SICK	800
							VAC	8800
							TEMI	6213
TOTAL EARNINGS		4442.95	TOTAL DEDUCTIONS		2018.92		NET PAY	
							2424.03	

GARY W JENSE

41575500000528409640

FOR PERIOD ENDING 07-30-87

ZIONS BANCORPORATION

ZIONS BANCORPORATION
1 SOUTH MAIN STREET SALT LAKE CITY, UT 84111
IONS BANCORPORATION

DATE
07-30-87

MEMORANDUM

AMOUNT
**2424.03

755JENSE, GARY W

GARY W JENSE

EXHIBIT "M"

CRAIG M. PETERSON - 2579
Attorney for Defendant
LITTLEFIELD & PETERSON
426 South 500 East
Salt Lake City, Utah 84102
Telephone: (801) 531-0435

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----

GARY W. JENSE,)	
)	
Plaintiff,	)	VERIFIED REPLY TO
	)	PLAINTIFF'S MOTION
v.)	
)	
SARA A. JENSE,)	
)	
Defendant.	)	Civil No. D85-702
	)	(Judge Scott Daniels)

-----oo0oo-----

The Plaintiff above named filed a Motion with this Court dated June 24, 1987, seeking relief in the form of a reduction of the Judgment heretofore entered in this matter in the amount of \$43,314.46 by \$10,000.00 for personal property in the form of silverware. The Defendant replies to said Motion as follows:

1. The Decree of Divorce entered in this matter provides at paragraph 4b that the Defendant is awarded all furniture and furnishings located in the condominium at 29 South State, #718, Salt Lake City, Utah.

2. At the time of the entry of the Decree of Divorce, July 9, 1986, the silverware was located in the condominium. The silverware was removed from the safety deposit box in March, 1985, and taken at that time to Defendant's condominium.

EXHIBIT M

Attached hereto as Exhibit "A" is the Affidavit of Kay L. Jacobs, the keeper of records for the bank where the safety deposit box is located showing that the last time anyone had access to the safety deposit was March, 1985.

3. The silverware had been stored in a safety deposit box for only a short time because there had been a series of thefts in the neighborhood where the parties resided at the time of their separation. Each of the parties knew and understood that the silverware was the property of the Defendant having been acquired by her prior to the marriage of the parties and each understood that she had possession of it and would retain its ownership.

4. In any event, the value of the silverware is not \$10,000.00 as stated by the Plaintiff and supported by a Financial Declaration which he prepared and signed. The actual value of the silverware is \$4,417.50. See Exhibit "B", Statement of Suggested Retail Value.

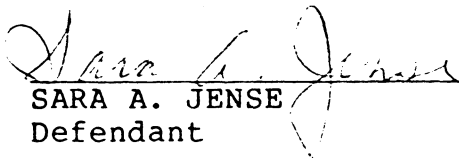
5. It has been necessary for the Defendant to acquire the services of an attorney to represent her in defending against the Motion of the Plaintiff which has been unreasonably brought before this Court and it is reasonable that she be awarded such attorney's fees and costs as she may incur in the defense of this Motion.

WHEREFORE, Defendant prays that Plaintiff's Motion be dismissed, that he take nothing thereby and that Defendant be

awarded her attorney's fees and costs which she may have incurred in these proceedings.

DATED this ____ day of August, 1987.

CRAIG M. PETERSON
Attorney for Defendant




SARA A. JENSE
Defendant

VERIFICATION

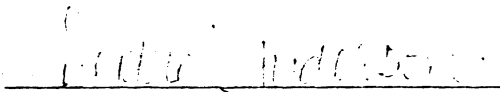
STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

SARA A. JENSE, being first duly sworn upon oath, deposes and says that she has read the above and foregoing Verified Reply to Plaintiff's Motion and knows and understands the contents thereof and the same is true as to her own knowledge except to those matters herein stated upon information and belief and as to those matters, she believes the same to be true.



SARA A. JENSE

SUBSCRIBED AND SWORN to before me this 21 day of August, 1987.



NOTARY PUBLIC

Residing at: Salt Lake County

My Commission Expires:

06/19/91

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of the foregoing Verified Reply to Plaintiff's Motion to David S. Dolowitz, Attorney for Plaintiff, 185 South State Street, Suite 700, Post Office Box 11898, Salt Lake City, Utah 84147-0898, this 21 day of August, 1987.

Robert J. [illegible]

21753

CRAIG M. PETERSON
Attorney for Defendant
426 South Fifth East
Salt Lake City, Utah 84102
Telephone: (801) 531-30435

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY,
STATE OF UTAH

--oo0oo--

GARY W. JENSE,

*

Plaintiff,

*

A F F I D A V I T

of

Kay L. Jacobs

vs.

*

SARA A. JENSE,

*

Civil No. D85-702

Defendants,

*

--oo0oo--

STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

COMES NOW Kay L. Jacobs being first duly sworn,
deposes, and states as follows:

1. That he is the President of Deseret Bank.

2. That in the normal course of business he
supervises, among other things, the safety deposit boxes and the
books and records thereof.

3. That he is personally familiar with the records
regarding box #370. *and Box # 385.*

4. That on April 16, 1982 box #370, *and box # 385* was assigned to and
access was granted as follows: Sara Jense, Gary Jense, and Lana
Bowles.

5. That the last recorded visit, made to box #370, *and box # 385* was
on March 22, 1985, at the hour of 10:45 a.m.

EXHIBIT A


-page two of two-

6. That the last rental payment, on box #370¹ was ^{K.L.J. #388} received February 6, 1985. Said payment secured box to December 31, 1985.

7. That on February 18, 1986 request was received, by the bank, that box #370¹ be closed. ^{box #388 K.L.J.}

8. That statements made and facts contained herein are based upon personal knowledge and substantiated by bank records.

DATED this 14th day of August, 1987.


Kay L. Jacobs
President of Deseret Bank
66 South Main
Pleasant Grove, Utah 84062

Subscribed and sworn to before me this 14th day of August, 1987.


Notary Public
Residing in: Pleasant Grove.

My Commission Expires: December 31, 1990

CURRENT VALUE - SUGGESTED RETAIL FROM MANUFACTURER

SILVER - GRAND BAROQUE PATTERN
WALLACE SILVERSMITHS

* 8, 4 piece place settings @ \$320.00 =	\$2,560.00
*4 piece place setting consists of teaspoon, place knife, place fork and salad fork.	
8 cream soup spoons @ \$90.00 =	720.00
3 ice cream spoons @ \$95.00 =	285.00
3 butter spreaders @ \$80.00 =	240.00
3 cocktails forks @ \$80.00 =	240.00
1 lemon fork	80.00
1 salad set	190.00
1 pie server	<u>102.50</u>
TOTAL	\$4,417.50

1. July 1986 price was \$169.00, 4 piece place setting.
2. August 1987 mail order price from The Yankee Merchant Group, \$133.50 for 4 piece place setting.
3. August 1987 mail order price from James Kaplan Jewelers, \$136.95 for 4 piece setting.

EXHIBIT B

EXHIBIT "N"

CRAIG M. PETERSON - 2579
Attorney for Defendant
LITTLEFIELD & PETERSON
426 South 500 East
Salt Lake City, Utah 84102
Telephone: (801) 531-0435

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----

GARY W. JENSE,)	
	)	ANSWER TO MOTION TO AMEND
Plaintiff,	)	DECREE OF DIVORCE
)	
v.)	
)	
SARA A. JENSE,)	
	)	Civil No. D85-702
Defendant.	)	(Judge Scott Daniels)

-----oo0oo-----

The Defendant above named, by and through counsel,
Craig M. Peterson, answers Plaintiff's Motion to Amend Decree of
Divorce dated August 3, 1987, as follows:

FIRST DEFENSE

Plaintiff's fails to state a cause of action upon which
relief can be granted.

SECOND DEFENSE

1. Defendant admits paragraph 2 of Plaintiff's Motion
insofar as it alleges that he received bonuses. However,
Defendant is without sufficient information to admit or deny that
the Plaintiff did not receive a bonus in 1986 and, therefore,
denies the same.

2. Defendant denies paragraphs 1, 3 and 4 of
Plaintiff's Motion.

EXHIBIT N

FIRST AFFIRMATIVE DEFENSE

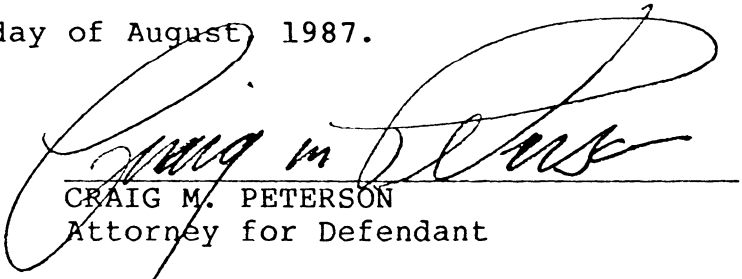
All of the issues raised by Plaintiff's Motion are res judicata, being issues relating to the division of the marital estate of the parties at the time of trial and the entry of the Decree of Divorce in this matter. All such issues were litigated and an Order entered making a division of the estate at that time based upon circumstances and facts which then existed.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's Motion is brought only for the purpose of further avoiding collection in this matter and is not brought in good faith, believing in the merits of his action. It is reasonable that the Defendant should be awarded such attorney's fees and costs as she may incur in her defense of these proceedings.

WHEREFORE, Defendant having fully replied to Motion of the Plaintiff, prays that the same be dismissed, that he take nothing thereby and that Defendant be awarded such attorney's fees and costs as she may have incurred in her defense of these proceedings.

DATED this 21 day of August 1987.


CRAIG M. PETERSON
Attorney for Defendant

CERTIFICATE OF HAND DELIVERY

I hereby certify that I caused to be hand delivered a true and correct copy of the foregoing Answer to Motion to Amend Decree of Divorce to David S. Dolowitz, Attorney for Plaintiff,

185 South State Street, Suite 700, Post Office Box 11898, Salt
Lake City, Utah 84147-0898, this 2 day of August, 1987.

Wm. Anderson

21754

EXHIBIT "O"

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY + STATE OF UTAH

--oo00oo--

GARY W. JENSE,
Plaintiff,

:

--vs--

D 85 702

:

PLAINTIFFS'

MOTION TO AMEND

SARA A. JENSE,
Defendant.

:

BE IT REMEMBERED, that on August 24, 1987, at the hour
of 8:30 a.m., the above-captioned cause of action came on
regularly for hearing before the HON. SCOTT DANIELS, one of
the Judges of the above-named Court.

A P P E A R A N C E S

For the Plaintiff:

MR. DAVID S. DOLOWITZ
Attorney At Law
185 South State St.
Salt Lake City, Utah

For the Defendant:

MR. CRAIG M. PETERSON
Attorney At Law
426 South 5th East
Salt Lake City, Utah

WHEREUPON the following proceedings were had:

1 THE COURT: Gary W. Jense versus Sara A. Jense.
2 Motion to Amend the Decree of Divorce. This your motion, Mr.
3 Dolowitz, you may proceed.

4 MR. DOLOWITZ: Court want to hear testimony? It
5 would be precisely as set forth in the affidavit. Two
6 affidavits and two motions before the Court; and if you want,
7 I can have that testimony and run through it on the basis that
8 it's already before you.

9 THE COURT: I see no problem in just proceeding
10 on the basis of the affidavit unless you have a problem with
11 that.

12 MR. PETERSON: No, Your Honor.

13 THE COURT: You can proceed.

14 MR. DOLOWITZ: Your Honor, on the evidence that
15 we would put forward, we ask for amendment in two areas.
16 First is, we would seek to be credited with ten-thousand
17 dollars for the silver that was taken from the safe-deposit
18 box; that the silver was in the safe-deposit box at the time
19 we came before you for trial. While we were negotiating the
20 Findings of Fact and Conclusions of Law, and Decree, it was
21 removed and taken by Mrs. Jense. At the time we were before
22 you, it was in the possession of Mr. Jense. Your ruling
23 would have left it with him. She removed it. We are willing
24 to give it to her, but we want credit on the judgment. The
25 second item, Your Honor, involves request that the judgment

1 ----the matters that have been reduced to judgment,
2 \$43,314.46 as of April 1st, 1987, be either reduced or deal-
3 -ing from our view, totally terminated based on a change of
4 circumstances;that is, my client has lost his job.

5 Now, as you recall, the system wherein he was working
6 for, ultimately, Foothill Thrift, based on his earnings from
7 the year before, he would be paid a bonus. Based on his '84
8 earnings, there was a substantial bonus in '85. Based on his
9 '85 earnings there was a bonus in '86. That '86 bonus was
10 divided. You had him pay half to Mrs. Jense and he kept half.

11 You also entered, as part of your judgment, that there
12 are \$27,000 some odd dollar judgment, alimony and attorney
13 fees;but after my client had paid off the taxes that were due,
14 there simply wasn't enough cash, so you stayed execution on
15 the judgment until 1987, when the '86 bonus would come in.
16 There was no '86 bonus. What happened in 1986, Foothill did
17 not produce enough, so that there could be a bonus;and when
18 we were before you last, Foothill was facing receivership.
19 But now, at this point, Foothill has been taken over by
20 Zion's Bank. And my client has been released. Not only does
21 he not have a bonus for '86, that will be paid in '87, he
22 doesn't even have a job. The last money that he received
23 from his employment, as we set out in the affidavit, is
24 approximately \$7000, is what he has received. That was the
25 end of his income. He now has to look for a job. The house

1 in Utah County, at least he has an offer on it.
2 At the time we were before you, it was \$50,000. The sale
3 price is going to produce around \$19,000. We will get some-
4 -where between nineteen and twenty-thousand dollars in cash
5 when that sale completes. He has, on the other side, serviced
6 the debt that kept the properties together, and while those
7 assets were awarded to him, if he doesn't service those debts,
8 Mrs. Jense is also a co-signer on those debts. And we have
9 detailed those debts in the affidavit; and she will be equally
10 liable with them.

11 His living expenses continue, consequently, we think,
12 under the criteria that has been set out by the Utah Supreme
13 Court, we meet the test for a substantial change in circum-
14 -stances that is required to modify the property provisions of
15 the Decree in this case, to give her the silver and something
16 to eliminate the rest of the judgment on the change. My client
17 simply can't pay it; and based on the circumstances, that he
18 would have these ongoing bonuses to be able to pay this judge-
19 -ment that you made on the marital estate, it is not what you
20 thought it was. It has been switched by the silver going from
21 my client to Mrs. Jense; and has been switched by the house
22 being over \$30,000 less than the Court determined that it was.
23 Yet it based the judgment on a \$27,000 to equalize the marital
24 estate. Now, that wouldn't equalize it. In fact, it would
25 make it even more unequal than it already is.

1 MR. PETERSON: Your Honor, We filed an Answer to
2 Amended Decree of Divorce. Under the terms of the decree of
3 divorce, the Court directed that Mrs. Jense would receive the
4 property, which was located in her condominium; that Mr. Jense
5 would receive property which he had, and some specific divis-
6 -ions, which the Court ordered on personal property awarded
7 to Mrs. Jense. Those divisions, though they were ordered by
8 the Court, have not yet been made. That is, Mr. Jense has
9 not made the transfer, but the silver which is at issue, clea-
10 -rly was not in the possession of Mr. Jense at the time of the
11 hearing on this matter in 1986; and he knew that it was never
12 in his possession. Knew that it belonged to Mrs. Jense.

13 The silver was located, at the time of the divorce,
14 in the condominium, where Mrs. Jense resided here in Salt
15 Lake City; and that's clear from the affidavit attached to the
16 Reply, which is the affidavit. A Pleasant Grove bank shows
17 the last time these parties had two safe-deposit boxes--by the
18 way, the last time either of those boxes were entered into by
19 anyone was in March of 1985, when the daughter of the parties
20 went to the safe-deposit box and removed the silverware, by the
21 way, silverware, which Mr. Jense knows was accumulated by
22 Mrs. Jense from the time she was a small child up to the
23 date of the marriage; and no addition made to that silverware.

24 But the Court ordered that would be hers, fully one
25 year before this matter was heard by the Court.

1 That was taken from the safe-deposit box and was in
2 her possession. Mr. Jense knows that. I think the represent-
3 -ations in the affidavits here before the Court today are
4 clearly not honest. Those items were removed and were in her
5 possession at the time of the decree as Mr. Jense knows. In
6 addition, the only reason that they were even in the safe-
7 -deposit box was because there had been a series of thefts
8 in the Alpine neighborhood where they lived. And they had
9 removed them and put them in the safe-deposit box for a short
10 period of time for safekeeping. Never anticipated by Mr.
11 Jense they would be his. They were not in his possession at
12 the time of the decree of divorce.

13 The divorce is accurate. It's a misrepresentation to
14 state to this Court-at the time they came before the Court,
15 I wasn't counsel at the time. But it's a clear misrepresent-
16 -ation to state now before the Court, especially based upon
17 the affidavits that they received and acknowledged, that he
18 has, that this was in his possession at the time. It was
19 not. The evidence is clear and I have the records here,
20 though I didn't submit them to the Court--I have the records
21 of entrance into the safe-desposit box, which will clearly
22 show, if the Court wants to review them; the last time anyone
23 entered into either one of these safe-deposit boxes was fully
24 one year before this matter was tried by the Court. I think
25 the motion is not well-founded. I think it is specious and

1 I think that us being here today to defend against that
2 should entitle us to attorney fees and ask for that relief
3 in response to his motion. Without question that's the case.
4 In addition, as an aside, you'll notice from Mr. Jense's affi-
5 -davit, that he bases the value of that silver on a financial
6 declaration that he himself prepared and signed. Has no
7 signature of Sara Jense. He set that value at ten-thousand
8 dollars on that old 1984 loan application, because he was
9 seeking a loan. But you'll notice also from our Answer, that
10 the maximum value, based on full retail suggested manufactu-
11 -rer's price, is \$4,400 for the settings that they had. So,
12 first and most important under the terms of the Order, as it
13 was entered, that property was in her possession at the time
14 this matter came before the Court and had been in her possess-
15 -ion for at least a year--March of this---wasn't heard until
16 April of '86. So, from March '85 until April of '86, that
17 property was in her possession. The Court ordered she would
18 have that property, which was in her possession. Clearly a
19 misrepresentation on that part. Second page, the value of it
20 is nowhere near what Mr. Jense says. Simply trying to gain
21 an advantage by making these misrepresentations to the Court
22 here today.

23 Both of those positions clearly indicated it is not
24 necessary to be here today on that particular issue. We
25 shouldn't be here today; as a result, we are entitled to

1 attorney's fees and should be awarded we believe in this
2 particular hearing.

3 The second matter is more disconcerting to me. That
4 is, Mr. Jense is now before the Court and represents to the
5 Court, that because his job status has changed, that the
6 Court should come in and modify an award of property, which
7 the Court made over a year and a half ago, based upon the
8 circumstances as they existed then. That is, the properties
9 as they existed then.

10 Mr. Jense had the advantage at that time of receiv-
11 -ing the home, which he wanted to receive and placing it for
12 sale and getting the equity out of it; but as the Court will
13 recall from her testimony, Mr. Jense simply left that home.
14 Didn't actively market it. It was his testimony at the
15 previous hearing in April of this year, when we were trying
16 to execute on this judgment that he had, that it wasn't
17 formally listed. But he had a friend, who had been trying to
18 market it to some degree in the Utah County area.

19 Now, I'll advise the Court, that it finally has sold
20 and Mr. Jense is suffering the same thing that everyone else
21 has suffered, who has received parcels of real property.
22 That there is some decline in the market place. The property
23 at that time was listed at approximately \$145 to \$150,000,
24 that is, at the time of the divorce.

25 I'll advise the Court that Mr. Jense now represents

1 to the Court that he has an offer on that at \$119,000.
2 That's not honest either. He has an earnest money contract
3 at \$124,500. He has misrepresented the offering price here
4 today by over \$5000 and he knows that. I am curious as to
5 why he would make that representation. He is down by approx-
6 -imately 15 % on the value the Court determined based upon
7 his representations at that time. I think he is bound by his
8 representation to the Court too, by the fact that he wanted
9 to receive that property. He was willing to assume the risk
10 if he could get the property at that time, and assumed the
11 risk.

12 It's error at this point to come in and make a
13 modification of a property distribution based upon a change
14 of circumstances that has occurred only in the last six
15 months, when clearly I think it is res judicata completely on
16 that particular issue. The Court has determined in Folger
17 versus Folger, that has not just to be a change of circumstan-
18 -ces, but an extraordinary change of circumstances---something
19 akin to misrepresentation at the time of the hearing for a
20 change of property distribution. That's not the case here.

21 If the Court is genuinely interested and believes that
22 there is a basis for consideration of modification of a
23 property distribution, then I think we have a right to a
24 complete trial and open that issue, rather than this very
25 short hearing and these proffers of counsel, which is coming

1 before the Court today;but I think there is not suffi-
2 -cient showing and there is not sufficient reason to come in
3 and set aside a property distribution which the Court ordered
4 at that time;and that's what the Court did.

5 Mrs. Jense didn't get alimony. She was employed and
6 the Court made property distributions and gave her this large
7 sum judgment based upon the property distribution and property
8 values as represented to the Court at the time of the trial.
9 The Court accepted the property values which existed then.
10 The change between then and now is not sufficient reason to
11 simply come in and amend a decree of divorce.

12 As I am saying, one, we don't think there is sufficient
13 cause for even a consideration of change of the property;but
14 if there is, then we believe we're entitled to a complete
15 trial on that issue in order to determine, in fact, whether
16 there was or was not some sort of misrepresentation at the
17 time of the hearing on the trial.

18 And again, I think we are here unnecessarily to defend
19 -ing this issue and again, I think we're entitled to our fees
20 and costs as we have incurred them in this proceeding, Your
21 Honor, and based on that, we'll submit it.

22 THE COURT: How much is the judgment that's owed?

23 MR. DOLOWITZ: \$43,314.46 as of April 1st.

24 MR. PETERSON: Plus interest. In addition, a six
25 hundred dollars award of attorney's fees for our appearance

1 before the Court last time, in reality, round figures is
2 forty-four thousand dollars.

3 THE COURT: And you're asking that that be forgiven?

4 MR. DOLOWITZ: That's correct.

5 THE COURT: And what would happen to the \$20,000
6 of equity that he is going to get on the American Fork home?

7 MR. DOLOWITZ: In the situation that he is involved
8 in, that he is in a cash negative situation each month and
9 he has been using the bonuses each year to pay the debt; he
10 has been paying a second mortgage on that home. He didn't
11 get a bonus for '86. He still has on-going debts and those
12 have to be paid off.

13 THE COURT: So, he would get the \$20,000 to pay
14 off his debt and a negative cash-flow situation. If I give
15 you everything you want. But he would get \$44,000 judgment
16 forgiven and that would be in return, she would be able to
17 keep the silverware?

18 MR. DOLOWITZ: That's correct. That would be, if
19 you want to call it that, "our deal". That's our request.
20 There were a number of statements made about misrepresentation
21 I don't think are true and were misrepresented to you. That's
22 an awful strong word for counsel to use; and I believe you
23 ought to look at it. To start out with, he said no alimony.
24 She was awarded alimony for a year. We stayed execution on
25 it. That's part of the judgment. Said there were misrepresentations.
I said he was going to net \$119 on the house.

1 Didn't say that it was 124. I gave the Court the
2 net figure rather than the gross figures, because I thought
3 that was important. That's presented as though that is some
4 kind of misrepresentation to you. If there is any misrepres-
5 -entation it is this business with the silver. When Mr.
6 Dart and I tried this case before you on January 14, 1986,
7 the silver was in my clients's possession in a safe-deposit
8 box. She went to the safe-deposit box after the trial; when
9 we presented our exhibits to you, we presented everything.
10 The silver was in his possession not in her condominium, yet
11 Mr. Peterson stands up before you and says we all knew it,
12 but I didn't say we knew it. But at the time the decree was
13 he says we knew it when we were before you in April of '87.

14 If you want to talk about misrepresentation, that is
15 the kind of misrepresentation I think the Court should look
16 at and examine with particularity. I would suggest that you
17 look over the trial exhibits and you'll see that the silver
18 was in my clients' possession when this matter was tried.

19 THE COURT: When was it tried?

20 MR. DOLOWITZ: Tried in January of 1986.

21 THE COURT: Well, according to the affidavit, the
22 last recorded visit was in March of 1985.

23 MR. DOLOWITZ: The decree recites that we were
24 before you on the 14th of January 1986. My client said that
25 he had the silverware in his possession at that time; was in
his safe-deposit box as far as he knew; that Mrs Jense got it.

1 She got it sometime after Mr. Dart and I were before
2 you for trial. Taken it out of the box at that time. He
3 became aware of it sometime--some months after that. That
4 he and I were talking and he became aware the silverware had
5 been moved, but at the time that we came in before you for
6 trial, it was our belief that that silver was still in the
7 safe-deposit box;and I think that is evidenced by an examin-
8 -ation of the Findings of Fact that are set out too. But you
9 understand what our position is. All I am doing is to reply
10 to what I think was a misrepresentation. If you want a full
11 trial on the matter we're willing to do it. I don't think
12 it's necessary;we've covered it, I think here. What you're
13 dealing with is a situation like Chandler versus Weis. In
14 that case the Utah Supreme Court was confronted with a
15 decree that told the husband to make payments on the house
16 mortgage until it was paid off. The wife remarried, sold the
17 house and then sued on the decree, saying you now have to pay
18 me the money for the rest of the house, because I paid off
19 the money. The trial judge, in that particular case held
20 that the decree meant what it said. You've got to pay off
21 that judgment. The Utah Supreme Court reversed, referring
22 to Chandler versus Chandler and said, when you have signifi-
23 -cant change of circumstances, you have the power to amend
24 the decree;you do not simply enforce it. And we're saying
25 that type of change of circumstances occurred in this case.

1 You entered a ruling that found that there should be
2 payments from my client to Mrs. Tosara and those were based
3 on certain findings, including the value of the house and
4 the pattern of bonuses that my client received. It did not
5 foresee him losing his job so there would be no bonuses with
6 which to be able to pay the judgment that we're talking
7 about;and didn't figure out the house would drop 20 or 30-
8 thousand dollars, which is more than the ammount you ordered
9 paid over in judgment to equal the marital estate. And we
10 are now in a situation where Mrs. Jense is employed and Mr.
11 Jense is not. She's the one who is still in the solid
12 financial position, not my client.

13 THE COURT: Well, I think it's a tough thing to
14 know what to do, because it's true that the property settle-
15 -ment was based upon the presumption that he was going to
16 get a pretty big bonus, because he always had. And I didn't
17 think he would have got a bigger bonus than I anticipated.
18 On the other hand, I don't know that it would have changed
19 the property settlement. I think, based upon the equities
20 of the case, I am going to rule as follows: I am going to--

21 MR. PETERSON: Before you rule, I wuld like to make
22 one point. He did get one big bonus which was distributed.

23 THE COURT: That's right. It was distributed,
24 that's right. And as I recall the ruling,that one was going
25 to be cut in half. That's what happened, but we anticipated

1 that he would get a bonus in 1987 based upon 1986
2 earnings. And just that there is not as much money as they
3 thought there was going to be and I don't know what to do
4 about-----what I am going to do is this, though. I think that
5 the equity from the home should be to her. She should get
6 that \$19 or \$20,000, whatever it is and the silver should go
7 to her; and that's really all there is. And so, I think if
8 that goes to her, the remainder of the judgment, the other
9 \$24,000 will be considered satisfied. Now, I don't suppose
10 either of them are going to be too happy with that outcome.

11 MR. PETERSON: One point you need to be aware of.
12 That \$24,000 satisfaction ruling, Your Honor, Mrs. Jense,
13 were she called to testify, would testify, as you made that
14 ruling, seven-thousand of that was furniture, which he kept
15 and still has, in part of the furniture distribution. if the
16 Court is going to change the ruling in consideration of that,
17 then I guess, we need to reopen all of it, so that you make
18 adequate furniture and personal property distributions as
19 well.

20 THE COURT: Where is that furniture, in the house?

21 MR. PETERSON: Still in the house.

22 MR. DOLOWITZ: We have made repeated attempts to
23 get her to come down and pick it up. None of them have come
24 to fruition.

25 MR. PETERSON: Talking about that which was awarded

1 to him, not the furniture that was awarded to her.

2 MR. DOLOWITZ: Thought you were talking about

3 things that are her's still in the house.

4 MR. PETERSON: We still want those.

5 MR. DOLOWITZ: Been asking her to come down and

6 pick them up.

7 MR. PETERSON: We have made the request. Simply

8 haven't facilitated on the furniture that was awarded to her.

9 Her point is very simply, they are in this judgment. you gave

10 consideration of seven-thousand dollars in furniture that was

11 awarded to him, when you made that judgment. So, as a result,

12 what happened is, he is now receiving satisfaction of \$24,000

13 while there was a seven-thousand dollars consideration in

14 there that he is still retaining.

15 THE COURT: Well, I see your point, but you know,

16 the bottom line is, as it turned out, when all was said and

17 done, she appears to me has ended up with considerably more

18 than half of the marital estate, you know. Maybe that's the

19 way it should be;but seems to me that the bottom line, you

20 know, after everything happened, that we didn't foresee

21 considering the drop in value of the property, considering no

22 bonus there. What was there really to divide up, she still

23 ends up with more than half of it and half was all she was

24 entitled to. She's having to suffer some of the disadvantages

25 of the drop in property and I don't suppose she'll be happy.

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I don't suppose I will either. The problem is, there is not as much money as he thought there would be. That will be the ruling. Under the circumstances, no attorney's fees will be awarded for this particular hearing and I'll ask Mr. Dolowitz to prepare an Order and submit it to Mr. Peterson for approval as to form.

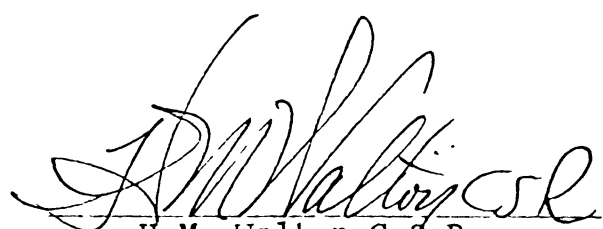
MR. DOLOWITZ: I will.

(WHEREUPON this hearing was concluded.)

C E R T I F I C A T E

STATE OF UTAH)
 :
SALT LAKE COUNTY) ss.

I, Hal M. Walton, do hereby certify that I am a Certified Shorthand Reporter of the State of Utah; that on August 24th, 1987, I appeared before the above-named Court and reported in Stenograph the proceedings outlined in the preceeding 16 pages of hearing transcript and that the same is a true and correct transcription of my shorthand notes as reported by me.


H.M. Walton C.S.R.

Dated: September 23, 1987

EXHIBIT "P"

DAVID S. DOLOWITZ (0899)
of and for
PARSONS, BEHLE & LATIMER
Attorneys for Plaintiff
185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147-0898
Telephone: (801) 532-1234

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

GARY JENSE,)	
	)	ORDER AND JUDGMENT MODIFYING
Plaintiff,	)	DECREE OF DIVORCE AND
	)	PRIOR ORDERS OF THE COURT
vs.)	
)	
SARA A. JENSE,	)	Civil No. D85-702
	)	Judge Scott Daniels
Defendant.)	

* * * * *

The above-entitled matter came before the court, the Honorable Scott Daniels presiding, on Monday, the 24th day of August, 1987. The plaintiff was present in person and represented by counsel, David S. Dolowitz. The defendant was present in person and represented by counsel, Craig M. Peterson. The court, after being advised by the parties that their testimony would be in accordance with the written pleadings and affidavits they had filed with the court, determined with the agreement of counsel for each of the parties, to accept that as being the testimony and then heard and considered the arguments of counsel. Being advised in the premises, the court determined that at the

EXHIBIT P

00020

time it entered a Decree of Divorce in this matter, July 14, 1986, it was the intention of the court to equally divide the marital estate of the parties and the belief of the court was that it had done so; however, there had been significant changes of circumstances which rendered that division ineffective. The plaintiff has had a pattern for many years of being paid a substantial bonus in February or March of each year based on the earnings of his employer for the prior year. Following that pattern, the court divided equally the bonus due in 1986 based upon the earnings in 1985, entered a judgment in paragraph 7 of the Decree which required payment by the plaintiff to the defendant of \$27,750.00 plus interest, required the payment of alimony to the defendant in paragraph 8 of the Decree and for attorney's fees in paragraph 10 of the Decree. In 1986, plaintiff's employer received insufficient income and plaintiff did not receive a bonus in 1987. As a result, this court determined on April 1, 1987, to reduce all of the sums that were due to the plaintiff to judgment in the amount of \$43,314.46 and stayed execution on that judgment until the plaintiff's situation became more clear. The plaintiff was terminated from his employment in July of 1987 as the business entity for which he worked was purchased by Zions UtahBank Corp who merged that entity into its own operations and released the plaintiff as there was no further need for his services. The plaintiff sold the home of the

parties in Utah County which had been valued by the court at the time of the divorce at \$150,000.00 for a gross selling price of approximately \$124,000.00 and a net selling price of approximately \$119,000.00 which will produce a net proceed of sale of approximately \$20,000.00, as opposed to the \$50,000.00 - \$60,000.00 the court believed would be produced by the sale of that property. In addition, the defendant, between the time of the trial of this matter on January 14, 1986, and the entry of the Findings of Fact, Conclusions of Law and Decree on July 14, 1986, went to the bank where the parties had stored their silverware and removed that silverware from the safety deposit box. The plaintiff believed that the silverware was worth \$10,000.00 while the defendant believed that it was worth approximately \$4,500.00. These circumstances in the opinion of the court constitute a substantial change of circumstance in that the intent of the court has been thwarted by events resulting in the defendant being awarded more than one-half of the marital estate which requires, in equity, a modification of the Decree and prior orders and judgments of the court which, even after the modification, results, the court believes, in the defendant being awarded more than one-half of the estate of the parties, thus, the court must modify the Decree of Divorce and prior orders and judgments of this court to provide that the defendant be awarded the silverware that she has removed from the bank deposit box and taken

into her possession and the net proceeds of sale of the home of the parties and that upon payment to her of the net proceeds of sale, that all prior awards, judgments and orders of the court requiring payment to her should be deemed satisfied and paid in full and all financial obligations of the plaintiff to the defendant be deemed satisfied.

Accordingly, IT IS ORDERED, ADJUDGED AND DECREED that:

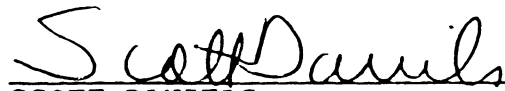
1. The Decree of Divorce and all prior orders and judgments of this court which require financial payments by the plaintiff to the defendant shall be deemed satisfied and paid in full upon the payment by the plaintiff to the defendant of the net proceeds of sale of the parties' home in Pleasant Grove, Utah.

2. The defendant is awarded all right, title and interest of the parties to the silverware that she has removed from the safety deposit box of the parties during the pendency of the action.

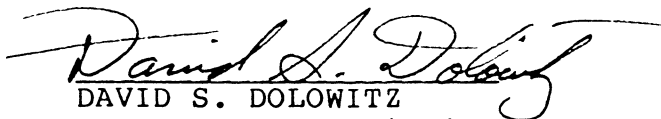
3. Upon the completion of the payment envisioned in paragraph 1 above, the plaintiff shall have met all of his financial obligations to the defendant and all obligations as herein ordered in the Decree of Divorce and the orders and judgments of this court shall be deemed satisfied and the defendant shall sign any document necessary to, as a matter of record, declare that these obligations have been satisfied.

4. Each party should pay their own costs and attorney's fees as incurred herein.

DATED this 7 day of Dec, 1987.


SCOTT DANIELS
District Court Judge

APPROVED AS REFLECTING
THE RULINGS OF THE COURT:


DAVID S. DOLOWITZ
Attorney for Plaintiff

CRAIG M. PETERSON
Attorney for Defendant

DSD:090187D

EXHIBIT "Q"

FILMED

DEC 8 1987

H. Dixon Hindsley, Clerk 3rd Dist. Court
By Karen Bueck
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

GARY JENSE,	:	MINUTE ENTRY
Plaintiff,	:	CIVIL NO. D-85-702
vs.	:	
SARA A. JENSE,	:	
Defendant.	:	

After due consideration of the Objection to the form of the Order in this case, and to defendant's Motion for a Trial, along with the pleadings that have been filed in connection therewith, and my review of the notes in this case, I am of the view that the marital estate was equitably distributed. In fact the defendant received more than half of the total estate. Consequently, the Objection will be overruled, and the Motion denied. I have signed the proposed Order as of December 7, 1987.

Dated this 8 day of December, 1987.

Scott Daniels
SCOTT DANIELS
DISTRICT COURT JUDGE

ATTEST
H. Dixon Hindsley
Clerk
By Karen Bueck
Deputy Clerk

EXHIBIT Q

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, postage prepaid, to the following, this ____ § ____ day of December, 1987:

David S. Dolowitz
Attorney for Plaintiff
185 S. State, Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147-0898

Craig M. Peterson
Attorney for Defendant
426 South 500 East
Salt Lake City, Utah 84102

