

1997

J. Lynn Wilde v. Sherrie D. Wilde : Brief of Respondent

Utah Court of Appeals

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Kent T. Yano; Attorney for Respondent.

Douglas G. Mortensen; Matheson, Mortensen, Olsen & Jeppson; Attorney for Plaintiff.

Recommended Citation

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BRIEF

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DOCKET NO. 970318-CA

IN THE UTAH COURT OF APPEALS

J. LYNN WILDE,	:	
	:	
Plaintiff/Respondent,	:	BRIEF OF RESPONDENT
	:	J. LYNN WILDE
vs.	:	
	:	
SHERRIE D. WILDE,	:	Case No. 970318-CA
	:	
Defendant/Appellant.	:	

Appeal from Order and Findings of Fact entered on April 17,
1997 by the Honorable Stephen L. Henriod of the Third Judicial
District Court of Salt Lake County.

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FILED

Utah Court of Appeals

JUL 16 1998

Julia D'Alesandro
Clerk of the Court

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UCA Section 30-3-5(7)(g)(ii)

UCA Section 30-3-5(7)(h)

UCA Section 30-3-5(7)(i)

UCA Section 78-2a-3(2)(i)

TABLE OF CASES

Cole v. Cole, 239 P.2d 615 (Utah 1952);

Jacobsen v. Jacobsen, 703 P.2d 1985 (Utah 1985);

Kinsman v. Kinsman, 748 P.2d 210 (Utah Ct App. 1988);

Throckmorton v. Throckmorton, 767 P.2d 121 (Utah App. 1988);

OTHER AUTHORITIES

Family Law in Utah, 2nd Ed, Katherine D. Black, Stephen T. Black, Advocate Publishing (1995, 1997).

IN THE UTAH COURT OF APPEALS

J. LYNN WILDE,

Plaintiff/Respondent,

vs.

SHERRIE D. WILDE,

Defendant/Appellant.

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BRIEF OF RESPONDENT
J. LYNN WILDE

Case No. 970318-CA

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1997 by the Honorable Stephen L. Henriod of the Third Judicial
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JURISDICTIONAL STATEMENT

Sec. 78-2a-3(2)(i) is the basis of this Court's jurisdiction of this appeal.

STATEMENT OF THE ISSUES

1. Is there a legal basis upon which an ex-wife may resurrect an alimony award of seven (7) years after the seven years has run?

2. Does the Amendment to UCA Sec. 30-3-5 which became effective on May 1, 1995 apply to Plaintiff's Petition for additional alimony that was originally filed before May 1, 1995 but which was amended after the effective date of the Statutory Amendment?

3. Should the Plaintiff have been barred by the trial court from addressing circumstances that allegedly occurred prior to the entry of the original Decree of Divorce?

STATEMENT OF THE CASE

References to the parties' in this appeal shall be "Lynn", the husband, and "Sherrie", the former wife. Also, references herein to the transcript of proceedings of the trial court shall be cited as "R. _____ P. _____, L. _____."

Sherrie filed a second Petition to Modify the Decree of Divorce which Decree was originally entered on June 5, 1987. This second petition was filed in August of 1994 and was amended in

January of 1996.

The original Decree awarded Sherrie alimony of \$200 per month for seven (7) years unless she remarried or other events occurred that would, by law, terminate the award earlier.

Within the originally decreed seven (7) year life of the alimony award, Sherrie, pursuant to a Petition to Modify the Decree and by stipulation by Lynn, was awarded an increase of her alimony to \$318.00 per month commencing June, 1992. Paragraph 3 of the Modified Decree of Divorce states that the award of alimony was to terminate in May, 1994. Lynn was also ordered to pay retroactive arrearages as a result of the Court's increase of child support and alimony and was ordered to discharge the arrearages by paying \$1500 per month after the oldest child attained the age of majority, or until July, 1995. Most of the retroactive arrearages represented an increase of child support from \$500 per month to \$1200 per month. No request for an extension of the original seven (7) year duration of alimony was ever made in this first Petition to Modify.

In August 1994, some four (4) months after Sherrie's alimony had terminated in May of 1994, she again petitioned the Court to Modify the Decree and requested additional alimony on a permanent basis or until she was able to retrain herself for another employment. One of the reasons she cited for the increases was an onset of rheumatoid arthritis. Thereafter, Sherrie amended this second Petition to Modify the Decree which Amendment was granted by the Court in January, 1996. This Amended Petition alleged new facts which accused Lynn of orchestrating the original divorce in

such a manner as to deprive Sherrie of a larger share of the marital estate. The Amendment also restated Sherrie's request for more alimony.

At a temporary hearing for alimony, Sherrie was awarded \$800 per month by recommendation of Commissioner Thomas N. Arnett on May 1, 1995. Said recommendation was objected to by Lynn but was affirmed by Judge Kenneth Rigtrup on September 29, 1995.

Thereafter, Lynn attempted to terminate alimony by a Motion to Commissioner Arnett. This Motion alleged that the May 1, 1995 Amendment to UCA 30-3-5 now prohibited the Court from modifying an award alimony to address needs of the recipient that did not exist at the time the Decree was entered. However, Commissioner Arnett denied the Motion because the temporary award of alimony was argued prior to the effective date of the Amendment of May 1, 1995.

At trial Lynn presented a Motion in Limine to bar inquiry by Sherrie into circumstances and facts that allegedly occurred prior to the entry of the Decree of Divorce. Judge Stephen Henriod granted Lynn's motion basing his ruling upon res judicata plus the failure of Sherrie to fulfill the requirements of Rule 60(b) of the Rules of Civil Procedure.

Later in the trial Sherrie admitted that her onset of rheumatoid arthritis commenced in May of 1994, some seven (7) years after the Decree was entered, the same month her alimony award was to terminate. By so testifying Sherrie admitted that her condition did not exist at the time the Decree was entered. Nevertheless, Sherrie testified that until January of 1995, she worked as a

medical assistant up to sixty (60) hours per week at South Valley Intermediate Care as the result of her obtaining post divorce training and a certificate at the Bryman School in April of 1988.

Lynn testified that at the time of the last hearing in 1992 of Sherrie's request for more alimony that he was earning nearly \$105,000 per year but that Sherrie and her attorney only asked for \$318 per month as alimony. R.P.129,L.9-12. Significantly, not only did she did not request an extension of the original seven (7) year duration of alimony, (R.P.128,L.25 and R.P.63,L.2.) she did not allege Lynn had orchestrated events relating to the original divorce.

Furthermore, the amount of the increase was a stipulated and settled amount, and, therefore uncontested.

Lynn also stated his 1992 salary was \$105,000 per annum and currently totals about \$120,000 per year in 1997.

After the conclusion of the trial the Court, by written ruling, dismissed Sherrie's Amended Petition for no cause of action reasoning that because of Sherrie's alimony award, having terminated before the present petition was filed, there was no legal foundation upon which to base an increase in alimony. The Court also ruled that the May 1, 1995 Amendments to UCA Sec.30-3-5 were applicable to the case but that the ruling would have been the same even if the amendments had been held inapplicable.

ARGUMENT

I

THE TRIAL COURT CORRECTLY RULED THAT THERE WAS NO LEGAL BASIS TO AWARD SHERRIE AN INCREASE IN ALIMONY.

Sherrie waited too long to file for an increase of alimony since, by virtue of the decree, the alimony ended three (3) months before her second petition to modify was filed.

The case of Cole v. Cole 239 P.2d 615.(Utah 1952) denied the ex-wife's request for more alimony that was filed some twelve years after the original award ended by its terms. The denial was upheld despite the fact that the trial court found a material change of circumstances had occurred. In a separate concurring opinion Justice Henriod noted that the only reasonable interpretation of the original two years award of alimony was "to fix a maximum two year alimony paying period, after which any right to alimony would be foreclosed unless one of the parties sought modification of the award during such period (emphasis added). Justice Henriod further stated that "after the two year period had elapsed the parties were in the same position as though alimony had not been awarded, and the principal enunciated should control." Cole at P.616.

In 1992 when Sherrie petitioned for and obtained an increase of alimony from \$200 per month to \$318 per month Lynn was earning about \$105,000 per year. (R.P.128,L.5 and R.P.69,L.22). Interestingly, Sherrie and her attorney not only accepted \$318 per month as an appropriate increase, but also took the initiative in

offering to settle for that amount. R.P.128,L.11,12 & 22. There was no allegation by Sherrie that Lynn orchestrated the divorce in this first Petition to Modify that was present in the second Petition. It is, therefore, highly questionable that Lynn did anything wrong as is alleged in the Amended Petition.

Furthermore, although there was ample time and opportunity to request an extension of the seven (7) year award, Sherrie and her attorney failed to do so. R.P.63,L.2.

The legislature has given an indication of its support of Lynn's argument that a recipient of alimony must act during the life of the award: UCA 30-3-5(7)(h) imposes a limit upon the duration of an alimony award to the term of years of the marriage "unless, at any time prior to the termination of alimony, the Court finds extenuating circumstances that justify the payment for a longer period of time" (emphasis added). See also Family Law in Utah at P.149,150.

With alimony having ended, the logical conclusion is that Lynn and Sherrie became strangers, legally speaking, after May of 1994. There was no legal Relationship that existed between them that would justify a resurrection of Sherrie's alimony award.

ARGUMENT

II

**THE TRIAL COURT CORRECTLY RULED THAT THE AMENDMENTS
TO UCA 30-3-5 WHICH BECAME EFFECTIVE MAY 1, 1995
WERE APPLICABLE TO THE FACTS OF THIS CASE.**

The second Petition to Modify was filed by Sherrie in August

of 1994. The Amended Petition to Modify was granted by Court in January, 1996. The Amended Petition raised new allegations concerning Lynn's alleged conduct that were not contained in the August 1994 Petition nor in the 1992 Petition. Thus, the Court ruled that the new amendments to UCA 30-3-5 apply. Therefore, the "new" UCA 30-3-5 (7)(g)(ii) provides that "the Court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the Decree was entered, unless the Court finds extenuating circumstances that justify that action."

It is unarguable that Sherrie did not contract rheumatoid arthritis until May, 1994. (R.P.37,L.7 and R.P.63,L.7, and R.P.74, l.4) some seven (7) years after the entry of the original decree. Therefore, Sherrie's affliction did not exist at the time the Decree was entered. The question remains, did extenuating circumstances exist to justify a modification as required by the statute?

Family Law in Utah, second edition, by Katherine and Stephen Black at P.149 takes the position that "Presumably, the legislature decided that subsequent illnesses, accidents, mishaps or bad luck should not be the responsibility of the previous spouse without a showing of extenuating circumstances justifying imposing the responsibility, on the spouse." An extenuating circumstance imposing upon an ex-husband to pay alimony that was previously waived is illustrated by a situation where a husband, who agreed to pay debts of his wife if she agreed to waive alimony "now and

forever" and where he later defaults on that agreement, the wife is not held to her waiver and she may thereafter receive alimony. Kinsman v. Kinsman, 748 P.2d 210, 212-13 (Utah Ct. App. 1988).

In Sherrie's case, she testified that Lynn did not cause her arthritic condition R.P.73,L.22-25 & R.P.74,L.1. Sherrie also had not applied for any other employment for over a year prior to the trial. (R.P.72,L.22-24). Furthermore, Lynn pays for his adult son's schooling, tuition and automobiles. R.P.73,L.10-17.

Despite Sherrie's allegation in August of 1994 that her condition prevented her from working, she in fact was employed at her same job until March of 1996 (R.P.92,L.10), some two (2) years after the onset of her arthritis. Nevertheless, Sherrie obtained her temporary alimony of \$800.00 per month in May of 1995. Furthermore, one reason given for Sherrie's job termination was because her employer believed she was manipulating time sheets (R.P.60,L.24 & 25, R.P.61,L.1-6) and not because of her arthritic condition.

Nevertheless, with apparently full knowledge of her medical condition, Sherrie voluntarily placed a second mortgage on her home in December of 1994. (R.P.67,L.21, R.P.68,L.11). Furthermore, even at trial, with no employment for at least one (1) year with just an alimony of \$800.00 per month, Sherrie was able to remain current on that second mortgage debt and was not being legally pursued by creditors. (R.P.68,L.21-25).

Lynn, pursuant to all prior Court orders of payment, was current in all his obligations to pay alimony to Sherrie. (R.P.133,

L.21-25, R.P.134,L.1 & 2.)

Nothing in the record indicates that Lynn ever did anything to cause Sherrie's economic or medical condition. Thus, it is an inescapable conclusion that no extenuating circumstances exist that would justify imposing additional alimony obligations upon Lynn. Lynn's only "fault" was becoming financially successful after the divorce.

ARGUMENT

III

THE TRIAL COURT PROPERLY DENIED AN ATTEMPT BY SHERRIE TO PRESENT FACTS AND EXHIBITS CONCERNING ISSUES THAT MAY HAVE EXISTED PRIOR TO THE ENTRY OF THE DIVORCE.

Lynn presented to the trial court a Motion in Limine seeking to prevent Sherrie from re-opening and presenting evidence on matters existing prior to the Decree. She alleged, in her Amended Petition that Lynn orchestrated the divorce and in such a manner as to deprive Sherrie of her legitimate share of the marital estate. The trial court properly granted Lynn's Motion in Limine. The case of Jacobsen v. Jacobsen 703 P.2d (Utah 1985) held: "When there has been an adjudication it becomes res judicata as to those issues which were either tried and determined or upon all issues which the parties' had a fair opportunity to present and have determined in other proceedings." Accord, Throckmorton v. Throckmorton, 767 P.2d 121 (Utah App 1988.)

Sherrie now raises allegations of Lynn's alleged deceit in

this second petition to modify, but did not do so in her 1992 Petition to Modify. Furthermore Rule 60(b) of the Rules of Civil Procedure requires definite time limits be adhered to in attempting to set aside a judgment or an independent action for fraud upon the Court. None of Sherrie's pleadings conformed to the requirements imposed by Rule 60(b).

Sherrie's evidence at trial was properly limited to circumstances occurring from the last order of modification. After hearing all the evidence, the Court found that Sherrie's arthritic condition was a material change of circumstance that did not exist at the time of the entry of the Decree and that Lynn had the ability to pay the requested increase of alimony. However, Sherrie's Petition to Modify was, untimely filed and, therefore, properly dismissed.

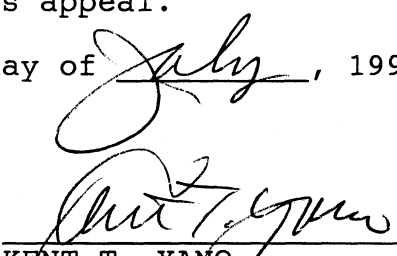
Interestingly, Sherrie, while arguing the "new" May 1, 1995 Amendments to UCA 30-3-5 do not apply to this case, tried to argue the "new" 30-3-5 (7)(i) which provides that when a long marriage dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in determining the amount of alimony. R.P.15,L.22-25, P.16,L.1-5. See trial brief of Sherrie Wilde, at P.13.

Of course, upon Res judicata grounds, the Court disallowed this inquiry. Furthermore a detailed reading of this amendment seems to apply to a Trial Court's analysis to original divorce cases but not to petitions to modify.

CONCLUSION

Lynn does not dispute that Sherrie contracted rheumatoid arthritis in approximately May of 1994. Nor does he dispute that Sherrie was unemployed at the time of trial. Rather, Lynn's position is that Sherrie's petition for a second increase of alimony was not timely filed. Any relief Sherrie wanted from the Court should have been filed prior to May of 1994. Sherrie's alimony award cannot arise from the grave of Lazarus. Throughout the law, time limitations and constraints are placed upon all litigants. Changes of circumstances, no matter how meritorious cannot justify creating an exception to these limitations where the ex-husband is not a causal factor in the change of circumstance. The policy of the law and the time limits for taking action indicates the desire and need for finality. The burden was on Sherrie both in 1992 and prior to May of 1994 to Petition the Court for the relief she now seeks. She did not meet this burden. The judgment of the trial court in dismissing Sherrie's Complaint should be affirmed and Lynn should be awarded all costs and reasonable attorney fees incurred in this appeal.

Respectfully submitted this 16 day of July, 1998.




KENT T. YANO
Attorney for Respondent,
J. Lynn Wilde

CERTIFICATE OF SERVICE

I certify that on the 16 day of July, 1998 a true and correct copy of the foregoing Respondent's Brief was mailed via U.S. Mail to the following:

Douglas G. Mortensen
Attorney for Plaintiff/Appellant
648 East First South
Salt Lake City, Utah 84102



KENT T. YANO
Attorney for Respondent

ADDENDUM

Contents of Addendum

1. June 5, 1987 Decree of Divorce;
2. Stipulation to Modify Decree, June 3, 1992;
3. Family Law in Utah, Pages 149,150;
4. See Addendum to Appellant's Brief for the following:
 - a. June 24, 1992 Modified Decree of Divorce.
 - b. August 23, 1994 Verified Petition to Modify Decree of Divorce.
 - c. January 24, 1996 Amended Petition to Modify Decree.
 - d. March 25, 1997 Judge Henriod's Minute Entry Decision.
 - e. April 17, 1997 Order on Findings of Fact and Conclusions of Law.
 - f. UCA Section 30-3-5 (in effect prior to May 1, 1995).
 - g. UCA Section 30-3-5 (effective May 1, 1995).
5. Family Law in Utah;
Excerpts, pages 149,150.
6. Trial Brief of Defendant Sherrie D. Wilde.

ADDENDUM

THE ORIGINAL DECREE OF DIVORCE

JUN 5 1987

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Attorney for Plaintiff
7001 South 900 East, Suite 340
Midvale, UT 84047
Telephone: (801) 562-5555

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

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

J. LYNN WILDE,

Plaintiff,

vs.

SHERRIE D. WILDE,

Defendant.

3k 213 NC 1764
6-8-87-806am
DECREE OF DIVORCE

Civil No. D86-03929
Civil No. D86-03984

The above entitled matter came up for hearing before the Honorable Kenneth Rigtrup, one of the judges of the above entitled court, at the hour of 4:30 p.m. on the 28th day of May, 1987.

Plaintiff was present along with his attorney, George E. Brown, Jr. Defendant was present, and was represented by her attorney, Richard Nemelka.

The parties stipulated in open court before the judge to the terms of this divorce. Following the stipulation of the parties, the defendant was excused and the plaintiff was placed under oath and gave testimony. Based upon the stipulation of the parties and the testimony of the plaintiff the Court now enters its Decree of Divorce.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Plaintiff is awarded a Decree of Divorce to become final upon entry.

2. Plaintiff and defendant are bona fide residents of Salt Lake County, State of Utah, and have been for more than three months prior to the commencement of this action.

3. Plaintiff and defendant are husband and wife, having been married at Salt Lake City, UT, on the 26th day of June, 1963.

4. Five children have been born as issue of this marriage, to-wit: Three children have reached the age of majority and left the home. Two minor children are left in the home: Michael Andrew Wilde, born April 18, 1975; and Christopher Paul Wilde, born July 27, 1977. Defendant is awarded the sole care, custody and control of the minor children, subject to liberal rights of visitation in plaintiff.

5. During the course of the marriage defendant has treated plaintiff cruelly, causing him great mental distress and suffering and making continuation of the marriage relationship impossible.

6. During the course of the marriage the parties have acquired an interest in certain real property, towit: the real property and residence located at 2590 Sundance Drive, Sandy, UT 84092. Defendant is awarded the ownership and possession of said real property and residence and receive all equity therein and that defendant have possession until the lienholders require defendant to vacate the premises.

7. During the course of the marriage, the parties have acquired certain items of personal property. The personal property of the parties is awarded as follows:

a. To the plaintiff: The pool table, the motorcycle, his own personal clothes, his tools, his tennis racquet, his bowling ball, his own personal effects and belongings, and any interest in his automobile provided by his employer.

b. To the defendant: All personal property of the parties not specifically listed above in paragraph 6a and including a 1986 Hyundai automobile.

8. During the course of the marriage, the parties have incurred certain debts and obligations. The plaintiff is ordered to hold harmless and indemnify the defendant pertaining to all debts on the real property, including mortgages of the parties and all taxes.

9. Plaintiff is ordered to pay to defendant the sum of \$250.00 per month per child for a total of \$500.00 per month as child support for the benefit of the parties' minor children until such time as each child shall attain the age of 18 years or graduate from high school, whichever event shall last occur. In the event that plaintiff is delinquent in payment of child support, it shall be appropriate for the defendant to utilize the provisions of UCA, Title 78, Chapter 45d in order to collect delinquent child support through appropriate income withholding procedures.

10. Defendant is ordered to pay to plaintiff the sum of \$200.00 per month as and for alimony for seven (7) years, or until the defendant remarries or any other event occurs which pursuant to law would terminate alimony, including the death of the defendant.

11. Plaintiff is ordered to maintain a comprehensive policy of health and accident insurance for the benefit of the parties' minor children until such time as each child shall attain the age of 18 years or graduate from high school, whichever event shall last occur if the plaintiff can obtain the insurance at a reasonable cost. Any medical expenses incurred in behalf of the minor children such as dental, optical, orthodontics, deductibles, or other costs not covered by such insurance shall be borne equally by the plaintiff and the defendant.

12. Plaintiff is ordered to maintain a policy of insurance on his life in the face amount of \$50,000.00, naming the parties' minor children as the sole, irrevocable beneficiaries until such time as each child shall attain the age of 18 years or graduate from high school, whichever event shall last occur.

13. Plaintiff is ordered to pay \$600.00 to defendant for her expenses incurred for attorney's fees.

14. Plaintiff shall be able to claim the two minor children of the parties as tax exemptions until the defendant makes \$6,000.00 in taxable income per year, at which time the defendant shall be able to claim one child as a tax deduction and at such time as the defendant makes \$9,000.00 taxable income per year, she shall be able to claim both minor children as tax deductions.

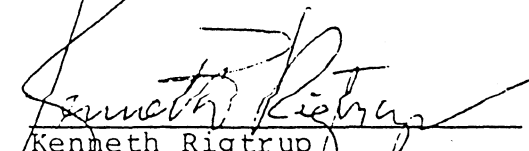
15. Plaintiff and defendant are ordered to sign all documents necessary to effect the terms of this divorce.

16. It is ordered that Case No. D86-3984 be consolidated

into Case No. D86-03929 and that this Decree of Divorce be
controlling in both cases.

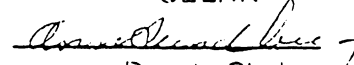
DATED this 5th day of June, 1987.

BY THE COURT


Kenneth Rigtrup
District Court Judge

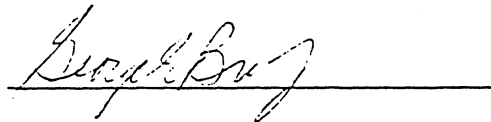
H. DIXON HINDLEY
CLERK

MAILING CERTIFICATE

By 
Deputy Clerk

I hereby certify that I mailed a true and correct copy,
postage prepaid, of the Findings of Fact and Conclusions of Law
and Decree of Divorce in the above matter on the 21 day of May,
1987, to the following individual:

Richard Nemelka
Attorney for Defendant
2046 East 4800 South #103
Salt Lake City, UT 84117

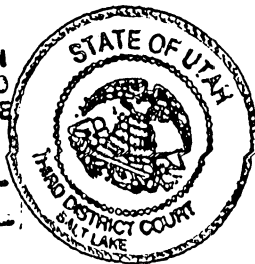


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DISTRICT COURT, SALT LAKE COUNTY, STATE
OF UTAH

DATE 6/11/97

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ADDENDUM

STIPULATION RESOLVING THE FIRST PETITION TO MODIFY

COPY

GEORGE E. BROWN, JR. [A3611]
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Attorney for Plaintiff J. Lynn Wilde

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

J. LYNN WILDE,	:	
	:	
Plaintiff,	:	STIPULATION
	:	
vs.	:	Civil No. 86-4903929
	:	
SHERRIE D. WILDE	:	Judge Rigtrup
	:	
Defendant.	:	

Plaintiff, individually and by and through his attorney,
George E. Brown, Jr., and Defendant, individually, and by and
through her attorney, Richard S. Nemelka, hereby agree and
stipulate as follows:

1. That effective June 1, 1992, the Decree of Divorce may
be ammended and modified pursuant to the terms of this
Stipulation with all other provisions of the Decree not referred
to herein to remain in full force and effect.

2. That the Plaintiff shall pay to the Defendant child
support in the sum of One Thousand Two Hundred Dollars
(\$1,200.00) per month for the two minor children to begin in the
month of June, 1992, until the two minor children reach the age
of 18 or their normal high school class graduates, whichever
occurs last.

3. That the Plaintiff shall pay to the Defendant alimony in the sum of Three Hundred Eighteen Dollars (\$318.00) per month to begin in June, 1992, until it terminates in May, 1994, but the Defendant shall only be required to pay a total of One Thousand Five Hundred Dollars (\$1,500.00) per month towards child support and alimony and the Eighteen Dollars (\$18.00) of alimony per month for 24 months for a total of Four Hundred Thirty Two Dollars (\$432.00) shall accrue to be paid at such time when the child support obligation is decreased based upon one of the children reaching the age of 18 or his normal school class graduating from high school whichever occurs last.

4. That the Defendant shall be awarded judgment for the sum of Eight Thousand One Hundred Seventy-Nine Dollars and Twenty Cents (\$8,179.20) with interest accruing thereon at the rate of eight percent (8%) per annum. Said amount represents the increase in child support retroactive back to June, 1991, the date the Petition was filed by the Defendant, for a total of 12 months at the sum of Six Hundred Eighty One Dollars and Sixty Cents (\$681.60) per month. Further, the Defendant shall be stayed from executing upon said judgment as long as the Plaintiff pays to the Defendant the sum of \$1,500.00 per month. Said judgment shall be satisfied by the Plaintiff continuing to pay the sum of \$1,500.00 per month after the child support monthly payments are reduced based upon the oldest child reaches the age of 18 or his normal high school class graduates, whichever occurs last. That said \$1,500.00 per month payments shall continue until the aforementioned judgment, including

accrued interest and the accrued alimony of \$18.00 per month for 24 months have been paid in full.

5. Based upon the Stipulation of the parties that the Plaintiff will pay \$1,200.00 per month in child support for the two minor children; \$318.00 per month for alimony, (\$18.00 per month accruing for 24 months for a total of \$432.00); and retroactive child support in the amount of \$8,179.20 at 8% interest; the Plaintiff will pay \$1,500.00 per month in child support and alimony through September, 1994. In October of 1994, the Plaintiff will pay \$104.26 representing the final payment on the retroactive child support and accrued interest, \$432.00 representing the accrued alimony, and \$698.00 representing the child support on the minor child, Christopher, for a total of \$1,130.00. In November, 1994, the Plaintiff will pay the Defendant \$698.00 in child support for the minor child, Christopher. The payment of \$698.00 shall continue through July, 1995 when Christopher reaches the age of 18 which is after his normal high school class has graduated.

6. That the Defendant shall be awarded judgment against the Plaintiff for the sum of One Thousand Dollars (\$1,000.00) in attorney's fees to be paid at Two Hundred Dollars (\$200.00) per month beginning June, 1992, with the same accruing interest at the rate of 12% per annum.

7. That the Plaintiff shall be allowed to claim the minor child, Christopher, as a dependent for income tax purposes.

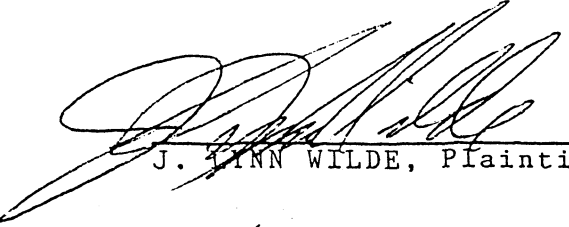
Defendant shall sign any and all documents necessary to meet Internal Revenue Service requirements for the Plaintiff to take the tax exemption.

8. That the Plaintiff shall pay 70% of all medical, dental, orthodontic, optical and therapeutic expenses incurred on behalf of the minor children that are not covered by insurance. The Defendant shall pay 30% of all medical expenses not covered by insurance.

9. That all child support and alimony payments shall be paid one-half (1/2) by the 5th and one-half (1/2) by the 20th of each month.

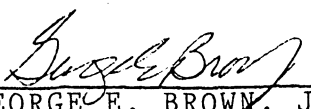
10. That in the event the Plaintiff is more than thirty days (30) in arrears in the payment of any child support or alimony payment that the Defendant shall be entitled to a wage and withholding order pursuant to statute.

DATED this 3 day of June, 1992.



J. LYNN WILDE, Plaintiff

SHERRIE D. WILDE, Defendant



GEORGE E. BROWN, JR.
Attorney for Plaintiff

RICHARD S. NEMELKA
Attorney for Defendant

ADDENDUM

EXCERPT FROM Family Law in Utah

conditioned on the performance by defendant of paying the agreed liabilities. When defendant willfully avoided his required performance through bankruptcy, he failed to perform the condition precedent.⁴⁹¹ Failure of a material condition precedent relieves the other party of any obligation to perform.⁴⁹² The stipulated agreement will not be enforceable against plaintiff. The court should look to the present condition and needs of the parties and modify its order if necessary.⁴⁹³

Interestingly, 30-3-5(7)(g)(ii) added that the court may not modify alimony or issue a new order for alimony to address *needs* of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action. Presumably, the legislature decided that subsequent illnesses, accidents, mishaps or bad luck should not be the responsibility of the previous spouse without a showing of extenuating circumstances justifying imposing the responsibility on the spouse.

R. *Modifications that Extend Alimony for a Period Longer than the Duration of the Marriage*

Code

30-3-5(7)(h) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time *prior* to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time. This puts a further restriction on modification by requiring that modification for a period of time longer than the number of years the marriage lasted must occur, if at all, prior to termination.

⁴⁹¹ See, e.g., *Kinsman v. Kinsman*, 748 P.2d 210, 212-13 (Utah Ct. App. 1988).

⁴⁹² *Kinsman v. Kinsman*, 748 P.2d 210, 213 (Utah Ct. App. 1988).

⁴⁹³ *Kinsman v. Kinsman*, 748 P.2d 210, 213 (Utah Ct. App. 1988).

This creates a trap for unwary practitioners. Prior to passage of § 30-3-5(7)(h), the Supreme Court had held that a wife in her mid-fifties, with little or no work experience, should be awarded permanent alimony. Now, unless the court finds extenuating circumstances to the contrary, she will be awarded alimony for a duration equal to or less than the length of the marriage. A twenty year marriage could result in a twenty year alimony award. This seems fair, but if the recipient spouse whose only support is alimony lives longer than age 75 (age 55 plus 20 yrs.), her only source of income will cut out.

In addition, women who are the same age and who have the same work experience could get vastly different treatment simply because they have been married for different lengths of time. Practitioners who fail to ask for a finding justifying permanent alimony will do their clients a grave disservice.

A modification can be obtained provided that the recipient discovers the problem before the alimony terminates. If the two women in the previous paragraph were neighbors and happened to discover the problem together, one may be barred (because she did not seek modification before the previous award terminates) and the other able to modify her alimony award.

S. Termination Upon Remarriage

Code

30-3-5(8) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

Prior to 1995, in reinstating alimony after an annulment, the courts relied on the language of § 30-3-5(3) which read: "The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties." In 1995, this section was renumbered 30-3-5(7)(g), and the language was changed to:

- (i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material

ADDENDUM

DEFENDANT'S TRIAL BRIEF

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Telephone: (801) 363-2244

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

J. LYNN WILDE,

Plaintiff,

vs.

SHERRIE D. WILDE,

Defendant.

**TRIAL BRIEF
OF DEFENDANT
SHERRIE D. WILDE**

Civil No. 864903929DA

Judge Stephen Henriod

In support of her Amended Petition to Modify Divorce Decree, defendant Sherrie D. Wilde submits this trial brief.

INTRODUCTION

J. Lynn Wilde ("Lynn") and Sherrie D. Wilde ("Sherrie") were married to each other for 25 years. Their union produced five children, all of whom are now adults. The parties were divorced on June 8, 1987.

One month after their divorce, Lynn's debts were discharged in bankruptcy. Thereafter, a business with which Lynn had been affiliated for several years - Beneficial International - rapidly prospered. Lynn began to enjoy great wealth. Later, Sherrie's health began to deteriorate. In the spring of 1994, her health was suddenly and seriously compromised by what was thereafter diagnosed as rheumatoid arthritis. Since then, her condition has worsened dramatically and she is no longer able to maintain gainful employment. At present, her monthly expenses far exceed Lynn's alimony obligation to her and she is dependent upon Welfare assistance from the LDS Church to maintain herself.

In this action, Sherrie seeks an increase in alimony and an Order making such alimony permanent. In addition, Sherrie asks that the divorce decree be modified to award her a reasonable, equitable share of assets acquired by Lynn as a result of profit-motivated, wealth-building efforts expended by him during the marriage. Sherrie also seeks to recover the costs and reasonable attorney's fees she has incurred in this action.

CHRONOLOGY OF IMPORTANT EVENTS

June 26, 1962. The parties married in the Salt Lake LDS Temple. During the ensuing 14 years, Sherrie gave birth to five children.

May 6, 1985: Lynn files a petition for individual bankruptcy (Case No. 85A-01481).

May 28, 1986: Lynn's Chapter 13 bankruptcy action is dismissed.

August 1, 1986: Lynn files a new Chapter 13 bankruptcy petition, Case No. 86A-02705-JHA.

September 29, 1986: Lynn files for divorce from Sherrie.

June 8, 1987: The parties' divorce decree is entered, terminating their 25 year marriage.

July 8, 1987: All of Lynn's debts are discharged through his bankruptcy action.

June 24, 1992: Divorce decree is modified.

August 23, 1994: Sherrie files petition to modify alleging material and substantial changes in circumstances since the June 1992 decree modification, including a substantial increase in Lynn's income; a substantial decrease in Sherrie's income; Sherrie's contraction of rheumatoid arthritis, resulting in substantial increase in her monthly expenses and a decrease in her capacity to maintain gainful employment. Her petition seeks "additional alimony on a permanent basis or until she is able to retrain herself for another employment".

May 1, 1995: Commissioner Arnett issues Minute Entry recommending that Lynn be required to pay Sherrie \$800.00 per month in temporary alimony during the pendency of her petition to modify to the decree. Lynn objects to the recommendation and the matter goes to Judge Rigtrup.

September 29, 1995: Judge Rigtrup issues Minute Entry adopting Commissioner Arnett's recommendation. His Minute Entry states, *inter alia*:

The Court has considered the long duration of the marriage, the medical needs and health limitations of defendant and the large disparity of the incomes of the parties. . . . [I]t is clear to the Court that defendant has demonstrated needs she is incapable of meeting on her own. There is an identifiable tax benefit through the payment of alimony which lessens the actual burden to the obligor. Plaintiff, as a principal in Beneficial International, Inc., is in a position to enjoy prerequisites of employment which effectively enhance his real income. Plaintiff is in a better position than defendant to exploit creative juggling in managing his personal finances. . . .

October 5, 1995: Formal order reflecting Judge Rigtrup's ruling is signed and entered. It expressly states that the decision to grant \$800.00 per month temporary alimony effective March 1, 1995 "shall in no way interfere with the trial court's discretion to make any permanent modification retroactive to the time of service of the petition to modify."

November 1, 1995: Sherrie seeks leave to amend her petition to include the allegation that she may be entitled to an equitable share of Lynn's present wealth due to its having originated in efforts expended by him during the marriage. Sherrie's proposed amended petition alleges that Lynn did substantial groundwork for amassing his present assets while he was married to her and that he minimized his earnings then in order to reduce his marital obligation and burdens. She further alleges this enabled him to thereafter

accelerate the fruition of the wealth-building plans formulated and put into action during his marriage to her. Her request to modify is based on part on her receipt of an unsigned, typewritten note suggesting inquiry into Lynn's assets. The note, placed in her mailbox, stated:

Multi-million dollar public corp. controlling interest and stock owned by partnership - did not have at time of divorce. Bankrupt? So, when did he get stock? How? If he purchased it where did he get the money, and when? If it was given to him, did he claim it on taxes?

After receiving this note, Sherrie caused her counsel to conduct investigation which led her to believe that Lynn orchestrated his divorce and bankruptcy actions in a manner to deprive her of a share of his interest in stock in Beneficial International and other related business entities.

January 29, 1996: This Court grants Sherrie's motion for leave to amend her petition to modify.

July 3, 1996: Sherrie files certification of readiness for trial.

ISSUES PRESENTED

1. Has there been a substantial change of circumstances warranting an increase in the amount and duration of alimony?

2. Does Sherrie have financial needs she is unable to meet?
3. Does Lynn have the ability to meet Sherrie's financial needs?
4. Should the divorce decree be modified to award Sherrie a reasonable, equitable share of assets and wealth acquired by Lynn as a result of efforts expended during the parties' marriage?

GERMANE FACTS

During the first 20 years of their marriage, the parties enjoyed a favorable lifestyle and standard of living. They purchased their first home within a couple of years after their marriage. Their second home was built specially for them in the Willow Creek area. They later moved from that home into another home in the Willow Creek area which had been one of the Home Show homes.

During their marriage, the parties vacationed in Hawaii, California, Las Vegas and St. George. They took their family to St. George at Easter every year for a 1 week vacation. They went to Disneyland. They stayed several times at Vacation Village in Southern California. Each of their children was given a car when he or she reached driving age. Each was awarded a vacation trip for high school graduation. Two of their sons were taken to Hawaii, one with a friend. Lynn paid for their daughter's graduation trip to the Virgin Islands

with her friends. The parties' daughter took piano and dancing lessons. Their sons played tennis and golf. All of their children skied and owned ski equipment.

Four years after the parties married, Lynn received his Bachelors Degree from the University of Utah in Fine Arts. He worked in commercial art, designing and constructing electric signs. For approximately 10 years, he owned his own sign company. In 1979, he co-founded Western Heritage Thrift and Loan. In 1982, his employment with Western Heritage was terminated. From that time until he filed for divorce in September of 1986, Lynn Wilde's reported income was considerably less than it had been during the first 20 years of the parties marriage.

Shortly after leaving Western Heritage, Lynn became affiliated with Beneficial International, a health and beauty products company. He traveled extensively, appearing at trade shows. He was given a substantial block of stock in the company and in time became one of its two principals. He has been a director of the company since at least 1984 - three years before his divorce was entered.

The condition of the company and the value of his interest in it at the time of the divorce is not clear. What is clear, however, is that shortly after the divorce was finalized and Lynn's debts were discharged in bankruptcy, the business began prospering. Its prosperity has increased steadily since the mid-1980's.

Audited financial statements of Beneficial International reflect a near phenomenal growth in prosperity, including these figures for recent financial years ending January 31:

YEARS	TOTAL ASSETS	RETAINED EARNINGS
1990	\$400,291.00	\$150,650.00
1991	\$467,922.00	\$245,806.00
1992	\$1,246,598.00	\$563,088.00
1993	\$1,209,513.00	\$615,882.00
1994	\$1,247,850.00	\$817,329.00
1995	\$1,480,267.00	\$707,824.00
1996	\$1,547,195.00	\$878,972.00

Lynn Wilde is the president and chief executive officer of Beneficial International. The company owns a large building and warehouse comprising 28,000 square feet in Salt Lake. The assessed value of the property is \$460,900. The company is the parent corporation of several wholly owned subsidiaries. Lynn holds some 4,554,793 shares of stock in Beneficial International. The corporation is publicly held and listed with NASDAQ. Its shares have traded within the last year for 7 ¢ a share. Lynn's stock (comprising 27% of the outstanding shares of the company) at that price would have a value of \$318,836.00.

Lynn earns a monthly salary of \$8,770.00. His 1996 W-2 income was \$112,617.00. In addition to his take home draws and bonuses, he is provided a vehicle (Mercedes) and his transportation and car insurance expenses are paid by the company. He also enjoys full health benefits, through the company. He owns and lives in a condominium in Bountiful having an appraised value, as of last year, of \$236,000. It contains a hot tub, sauna, big screen TV, two other TV's and two VCR's. In July of 1995, Lynn purchased a lot in North Salt Lake for \$97,000 in cash. He intends to build a home on that lot. Last Christmas, he took 8 people to Hawaii for a week vacation.

In contrast, Sherrie has become financially destitute. Due to a dramatic worsening of her rheumatoid arthritis, Sherrie has been unable to work, even part time. She is at present unemployed, uninsured and uninsurable. Her monthly medical expenses exceed \$800.00. They are likely to increase. She has received food from the Bishop's Storehouse of the LDS Church. Since January of 1996, some \$9,907.00 of her other living expenses (mortgage obligations, utility payments, etc.) have been paid by her bishop through her ward's welfare program since January 1996 alone.

Contending that Sherrie is not as ill or debilitated as she claims, Lynn demanded an independent medical exam. The independent physician he selected was Dr. W. Patrick

Knibbe. Dr. Knibbe examined Sherrie in January of 1996. His January 19, 1996 medical report states:

This patient has uncontrolled rheumatoid arthritis . . . which bodes poorly for her ultimate prognosis The outlook for her health related expenses is that she is likely to require surgery on her feet, knees and hands eventually and currently she is limiting her prescription drug use based on the expense involved with these medications

I would advocate financial support in the form of health insurance for this patient as a bare minimum of support if at all possible. Other ancillary services such as occupational therapy, physical therapy or orthotics, hand splints, and a regular exercise program are all part of a good program of treatment of rheumatoid arthritis and these are services this patient cannot afford at this point.

(See Exhibit A attached to Sherrie Wilde's April 15, 1996 Affidavit herein).

ARGUMENT

I.

REVISED § 30-3-5(7)(g) DOES NOT APPLY TO SHERRIE'S REQUEST FOR INCREASED, EXTENDED ALIMONY. EVEN IF IT DID, IT WOULD NOT BAR SHERRIE'S CLAIM.

In 1995, the Utah Legislature revised portions of Chapter 3, Title 30 of the Utah Code. The revisions became effective May 1, 1995. They included § 30-3-5(7)(g)(ii) which provides:

The Court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the Court finds extenuating circumstances that justify that action.¹

Lynn contends that this provision precludes this court from increasing or extending the duration of Sherrie's alimony.

Lynn argues that because Sherrie's pending petition to modify was amended after May 1, 1995, this statute applies. This contention is erroneous because the amendment to Sherrie's petition to modify does not concern alimony. It concerns redistribution of property and a claim against Lynn's post divorce accumulation of wealth based on his wealth-building efforts during the marriage. The cited revised subsection of § 30-3-5 concerns alimony only and has no impact on this claim.

Although Sherrie's amended petition does reassert her claim for alimony, the relation back doctrine of Rule 15(c) expressly preserves that claim as relating back to the date of the filing of her original petition to modify (August 19, 1994):

Whenever the claim . . . asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or

¹ The intended meaning of this subsection is difficult to discern. The immediately preceding subsection states almost its opposite:

The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

Rule 15(c), URCP.

Even if the recently revised version of § 30-3-5(7)(g) did apply, it would not defeat Sherrie's alimony claim. This section does not preclude an increase in the amount or duration of alimony to address needs that did not exist at the time of the divorce. It merely provides that such increase must be based on a finding of "extenuating circumstances". If Sherrie's situation does not present "extenuating circumstances", no situation does. Her circumstances are extenuated in the extreme.

The version of § 30-3-5 in effect at the time the parties were divorced contained the following provision as Subsection 3:

The Court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties . . . or the distribution of the property . . . as is reasonable and necessary.

(See Exhibit A, attached)

This Court has full discretionary power and authority to make whatever changes or new orders it considers reasonable and necessary concerning alimony and distribution of property.

II.

ALTHOUGH THE NEW STATUTORY REVISIONS DO NOT APPLY TO SHERRIE'S ALIMONY CLAIM (ASSERTED BEFORE THE AMENDMENTS BECAME EFFECTIVE), THEY DO APPLY TO HER PROPERTY DISTRIBUTION CLAIM (FIRST ASSERTED AFTER THE AMENDMENTS).

The recent revisions to §30-3-5 include a revised subsection (e). That subsection states:

When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the Court may make a compensating adjustment in dividing the marital property and awarding alimony.

This subsection like the rest of the revisions, became effective on May 1, 1995. It applies to Sherrie's request for a compensating adjustment in the property division because she first attempted to assert that claim on November 1, 1995 - 6 months after the statute became effective. The court granted her leave to add that claim to her petition to modify on January 29, 1996.

The Wilde marriage was a marriage of long duration - 25 years. It "dissolved" on the threshold of a major change in the income of Lynn Wilde. During the marriage, the parties endured great financial hardships while Lynn undertook to build the business which

gradually brought him great, increasing prosperity. His present wealth is a result of the groundwork he laid during the last several years of his marriage. During those years, the Wilde family experienced financial difficulties they never had previously known. Lynn's having received a discharge of his debts in bankruptcy simultaneous with the dissolution of his marriage attests to his having achieved a fresh financial start. The prosperity that followed was a result of his efforts during his marriage to Sherrie. Sherrie should be granted a share of the wealth resulting from his industry during the marriage. Lynn's wealth-building efforts during the last few years of the marriage occasioned sacrifices and hardship to Sherrie.

If the other revision applies, this one likewise applies. It is expressly supportive of the claim Sherrie seeks to assert.

DATED this 20 day of March, 1997.

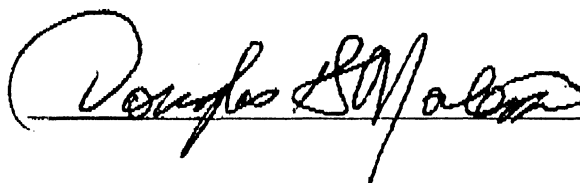
A handwritten signature in dark ink, appearing to read "Douglas G. Mortensen", is written over a horizontal line.

Douglas G. Mortensen
MATHESON, MORTENSEN, OLSEN & JEPPSON, P.C.
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on the 20th day of March, 1997 a true and accurate copy of the foregoing was sent via facsimile and hand delivered to the following:

Kent T. Yano - fax no. 277-7334
2225 East 4800 South, #109
Salt Lake City, Utah 84117

A handwritten signature in cursive script, appearing to read "Douglas S. Malone", is written over a horizontal line.

Wilde\Trialbrf.def

CHAPTER 257

H.B. No. 125

Passed February 25, 1991

Approved March 18, 1991

Effective April 29, 1991

CREDIT OBLIGATIONS OF SPOUSES

By David M. Jones

AN ACT RELATING TO DIVORCE AND SEPARATE MAINTENANCE; PROVIDING FOR THE DIVISION OF DEBTS AND OBLIGATIONS OF THE PARTIES; CLARIFYING CERTAIN RIGHTS AND DUTIES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

- 15-4-1, UTAH CODE ANNOTATED 1953
- 30-3-5, AS LAST AMENDED BY CHAPTERS 72 AND 100, LAWS OF UTAH 1985
- 30-4-3, AS LAST AMENDED BY CHAPTER 122, LAWS OF UTAH 1977

ENACTS:

- 15-4-6.5, UTAH CODE ANNOTATED 1953

REPEALS AND REENACTS:

- 30-2-5, UTAH CODE ANNOTATED 1953

As it enacted by the Legislature of the state of Utah.

Section 1. Section Amended.

Section 15-4-1, Utah Code Annotated 1953, Utah Code Annotated 1953, is amended to read:

15-4-1. Definitions.

In this chapter, ~~unless otherwise expressly stated~~:

(1) "Obligation" includes a liability in tort and contractual obligations; ("obligor" includes a person liable for a tort;)

(2) "obligee" includes a creditor and a person having a right based on a tort;

(3) "obligor" includes a debtor and a person liable for a tort;

(4) "several obligors" means obligors severally bound for the same performance.

Section 2. Section Enacted.

Section 15-4-6.5, Utah Code Annotated 1953, is enacted to read:

15-4-6.5. Divorce or separate maintenance of coobligors.

(1) On the entering of a decree of divorce or separate maintenance of joint debtors in contract, the claim of a creditor remains unchanged unless otherwise provided by the contract or until a new contract is entered into between the creditor and the debtors individually.

(2) In addition to his duties as a secured party under Section 70A-9-112 and his duties as a trustee or beneficiary of a trust deed under Chapter 1, Title 57, Conveyances, a creditor, who has been notified by

service of a copy of a court order under Sections 30-3-5 or 30-4-3 that the debtors are divorced or living separately under an order for separate maintenance, and who has been expressly advised of the separate, current addresses of the debtors either by the court order or by other written notice, shall provide to the debtors individually all statements, notices, and other similar correspondence required by law or by the contract.

(3)(a) Except as provided in Subsection (b), a creditor may continue to make negative credit reports of joint debtors under Section 70C-7-107 and may report the repayment practices or credit history of joint debtors under Chapter 14, Title 7, Credit Information Exchange.

(b) With respect to a debtor who is not ordered by the court under Sections 30-3-5 or 30-4-3 to make payments on a joint obligation, no negative credit report under Section 70C-7-107, and no report of the debtor's repayment practices or credit history under Chapter 14, Title 7, Credit Information Exchange, may be made regarding the joint obligation after the creditor is served notice of the court's order as required under Subsection (2), unless the creditor has made a demand on the debtor for payment because of the failure to make payments by the other debtor, who is ordered by the court to make the payments.

Section 3. Section Repealed and Reenacted.

Section 30-2-5, Utah Code Annotated 1953, is repealed and reenacted to read:

30-2-5. Separate debts.

(1) Neither spouse is personally liable for the separate debts, obligations, or liabilities of the other:

(a) contracted or incurred before marriage;

(b) contracted or incurred during marriage, except family expenses as provided in Section 30-2-9;

(c) contracted or incurred after divorce or an order for separate maintenance under this title; or

(d) ordered by the court to be paid by the other spouse under Section 30-3-5 or 30-4-3 and not in conflict with Section 15-4-6.5.

(2) The wages, earnings, property, rents, or other income of one spouse may not be reached by a creditor of the other spouse to satisfy a debt, obligation, or liability of the other spouse, as described under Subsection (1).

Section 4. Section Amended.

Section 30-3-5, Utah Code Annotated 1953, as last amended by Chapters 72 and 100, Laws of Utah 1985, is amended to read:

30-3-5. Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and visitation — Termination of alimony — Non-meritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties.

The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children; ~~and~~

(b) if coverage is available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance ~~for the dependent children(-); and~~

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide the day care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property and obligations for debts as is reasonable and necessary.

(4) In determining visitation rights of parents, grandparents, and other relatives, the court shall consider the welfare of the child.

(5) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(6) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is residing with a person of the opposite sex. However, if it is further established by the person receiving alimony that that relationship or association is without any sexual contact, payment of alimony shall resume.

(7) When a petition for modification of child custody or visitation provisions of a court order is made and denied, the court may order the petitioner to

pay the reasonable attorney's fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted in good faith.

Section 5. Section Amended.

Section 30-4-3. Utah Code Annotated 1953, as last amended by Chapter 122, Laws of Utah 1977, is amended to read:

30-4-3. Custody and maintenance of children — Property and debt division — Support payments.

(1) In all actions brought (hereunder) under this chapter the court may by order or decree:

(a) provide for the care, custody, and maintenance of the minor children of the parties and may determine with which of the parties the children or any of them shall remain; ~~(may award to either spouse possession of any of the real or personal estate of the other spouse, and decree moneys)~~

(b) (i) provide for support of [that] either spouse and the support of the minor children ~~(-and)~~ remaining with that spouse;

(ii) provide how and when support payments shall be made ~~(-); and~~

(iii) provide that either spouse have a lien upon the property of the other to secure payment of the ~~(same. Such)~~ support or maintenance obligation;

(c) award to either spouse the possession of any real or personal property of the other spouse or acquired by the spouses during the marriage; or

(d) pursuant to Section 15-4-6.5:

(i) specify which party is responsible for the payment of joint debts, obligations, or liabilities contracted or incurred by the parties during the marriage;

(ii) require the parties to notify respective creditors or obligees regarding the court's division of debts, obligations, and liabilities and regarding the parties' separate, current addresses; and

(iii) provide for the enforcement of these orders.

(2) The orders and decrees under this section may be enforced by sale of any property of the spouse or by contempt proceedings or otherwise as may be necessary.

(3) The court may change the ~~(allowance)~~ support or maintenance of a party from time to time according to circumstances, and may terminate altogether any ~~(allowance-made)~~ obligation upon satisfactory proof of voluntary and permanent reconciliation. ~~(Such allowance)~~ An order or decree of support or maintenance shall ~~(-however-)~~ in every case be valid only during the joint lives of the husband and wife.