

1997

Michael Loy Hansen v. Laura T. Hansen : Brief of Appellee

Utah Court of Appeals

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Laura T. Hansen; Andrew McCullough; McCullough, Jones & Ivins; Attorneys for Defendant/Appellee.

Brent D. Young; Ryan J. Taylor; Ivie & Young; Attorneys for Plaintiff/Appellant.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 970321-CA

IN THE UTAH COURT OF APPEALS OF THE STATE OF UTAH

MICHAEL LOY HANSEN,	:	CASE NO. 970321-CA
	:	
Plaintiff/Appellant,	:	
	:	
vs.	:	ARGUMENT PRIORITY
	:	CLASSIFICATION NO. 15
LAURA T. HANSEN,	:	
	:	
Defendant/Appellee.	:	

APPEAL FROM A FINAL ORDER OF THE FOURTH DISTRICT COURT
OF UTAH COUNTY, UTAH, THE HONORABLE ANTHONY SCHOFIELD

BRIEF OF APPELLEE LAURA T. HANSEN

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FILE

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS OF THE STATE OF UTAH

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	:	
Plaintiff/Appellant,	:	
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vs.	:	ARGUMENT PRIORITY
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TABLE OF CONTENTS

STATEMENT OF JURISDICTION	i
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT OF JURISDICTION	
STATEMENT OF THE ISSUES PRESENTED AND STANDARD OF REVIEW	1
CONSTITUTIONAL PROVISIONS AND STATUTES	
DETERMINATIVE ON APPEAL	1
STATEMENT OF THE CASE	2
Course of Proceedings and Disposition Below	2
Statement of Facts	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4
POINT I	4
UNDER ANY STANDARD OF PROOF, THE COURT'S RULING THAT THERE IS NO COMMON LAW MARRIAGE MUST BE SUSTAINED.	
POINT II	7
THE COURT BELOW USED THE CORRECT STANDARD OF PROOF IN REVIEWING THE EXISTENCE OF A COMMON LAW MARRIAGE.	
POINT III	11
APPELLANT'S CONSTITUTIONAL CHALLENGE HAS NO MERIT; NOR IS IT RELEVANT TO THE ISSUES AT HAND.	
CONCLUSION	12
MAILING CERTIFICATE	13
ADDENDUM	I
A. Findings of Fact and Conclusions of Law	
B. Judgment of Dismissal	
C. Order Denying Motion to Amend	

TABLE OF AUTHORITIES

CASES

<u>Steffensen v. Smith's Management Corp.</u> , 862 P.2d 1342 (Utah 1993)	5
<u>Metropolitan Life Insurance Company v. Johnson</u> , 645 P.2d 356 (Idaho 1983)	9
<u>Whyte v. Blair</u> , 885 P.2d 791, 794 n. 3 (Utah 1994)	6, 8
<u>Bunch v. Englehorn</u> , 906 P.2d 918 (Utah App. 1995)	11

STATUTES

Section 30-1-4.5	1, 4, 10
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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction to hear this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(h) (1996).

STATEMENT OF THE ISSUES PRESENTED

Is the evidence ascertained by the Court below sufficient to sustain its judgment that the parties were not married as a matter of common law, pursuant to § 30-1-4.5 U.C.A.? Ancillary to that question, is whether the legal errors complained of by Appellant are "harmless error" when reviewed in light of the Findings of Fact. This issue was presented to the Court below in Appellee's Memorandum in Opposition to Appellant's Motion to Alter or Amend Findings of Fact and Conclusions of Law. (R.331-4). The Court's Findings of Fact have not been challenged; and no request has been made for a transcript. Therefore, the Court's Findings of Fact cannot be overturned.

CONSTITUTIONAL PROVISIONS AND STATUTES DETERMINATIVE ON APPEAL

The statute determinative on appeal is § 30-1-4.5 U.C.A. set forth in full in Appellant's Addendum.

STATEMENT OF THE CASE

Course of Proceedings and Disposition Below

Appellee accepts the statement of the case set forth by Appellant, as far as it goes. Appellant has set forth facts as the Trial Court found them. The Trial Court, however, made substantial additional findings of fact which have not been challenged by Appellant. The record on appeal includes no transcript; and the only record of facts which are made part of the record are the Findings of Fact made by the Court below. Those findings substantiate the ruling of the Court, on any standard of proof. Appellant, in his statement of facts, set forth certain facts found by the Court below as part of its Findings of Fact. Appellant did not, however, set forth all of the Findings of Fact by the Court below, which facts are not in dispute. Appellee therefore sets forth additional facts as found by the Court below.

Additional Statement of Facts

1. During the periods of cohabitation the parties spent time with several family friends, including going on trips, like one particular Lake Powell trip. During all of those trips the parties did not refer to each other as husband or wife.

2. The friends who knew the parties best believed that the parties were living together as a couple but not as husband and wife.

3. During the period of cohabitation Laura had an intimate relationship with one of these friends, contradicting any notion that she was married to Mike, although he was living in the marital home.

4. On several occasions during the period of cohabitation Mike told Laura that he wanted to be married to her and asked her to remarry him. On each of those occasions Laura declined to enter into a new marriage with Mike.

5. The parties filed separate tax returns for 1994 and 1995.

SUMMARY OF ARGUMENT

The legal error complained of by Appellant is of little or no relevance to the decision of the Trial Court. That decision is supported by substantial Findings of Fact, which are not being contested. No change in the standard of proof required would change the Court's ruling.

Nevertheless, Appellee believes that the Trial Court used the correct standard of proof in its decision making process.

The time provision of the statute on proving a common law marriage at issue; and it is not necessary to attack the constitutionality of the law to craft a remedy, should one be needed.

ARGUMENT

POINT I

UNDER ANY STANDARD OF PROOF, THE COURT'S RULING THAT THERE IS NO COMMON LAW MARRIAGE MUST BE SUSTAINED.

The Court below first reviewed the standard of proof which it decided was appropriate to determine the existence of a marriage under the controlling statute. Appellee will discuss the standard in Point II of this brief. Because Appellee believes the real issue is whether Plaintiff proved the necessary facts for the existence under any standard, that issue is discussed first.

The Court set out 5 distinct factors which must be proved to meet the requirements of § 30-1-4.5. Those factors were that the marriage must arise out of a contract between two consenting parties who:

- 1) are capable of giving consent;
 - 2) are legally capable of entering into a solemnized marriage under the provision of this chapter;
 - 3) have cohabited;
 - 4) mutually assume marital rights, duties, and obligations;
- and,
- 5) hold themselves out as and have acquired a uniform and general reputation as husband and wife. (R. 235-6).

The Court found that the first four of the five enumerated factors existed, by clear and convincing evidence. The Court

therefore concentrated its analysis on factor five and the underlying and fundamental question of "whether they consented to a common law contract" (R. 235). Appellant does not challenge the points on which the Court based its decision; nor does Appellant contest the Court's Findings of Fact. Those facts must therefore be deemed to be conclusively be deemed to be true. Since Appellant only challenges the standard of proof to which he was held, the Court's decision must be upheld if that same conclusion would have been reached using the standard of proof demanded by Appellant. It is established law that a legal error made by the court below which is deemed by this Court to have played no part in the decision will be insufficient to overturn the decision, if the decision is otherwise correct. This principle was set out by the Utah Supreme Court in Steffensen v. Smith's Management Corp., 862 P.2d 1342 (Utah 1993) when the Court held:

However, to reverse a trial verdict, this court must find not a mere possibility, but a reasonable likelihood that the error affected the result. 862 P.2d at 1347.

The failure of Appellant to challenge the Court's decisional basis or the facts on which it is based forces Appellant to attack the decision on very narrow grounds. Those grounds are simply not sufficient to overturn the Court's ruling, and therefore, the ruling must be affirmed.

The Trial Court found that Plaintiff did not carry his burden required by statute that the parties "acquire a uniform and general reputation as husband and wife". In reviewing the statement of witnesses on the point, the Court said:

These witnesses testify that they viewed the parties as a couple but never viewed the couple as married. In other words, in the home where the parties were residing they were not viewed by their most intimate friends as a married couple. Yet these were the friends of the parties, the ones who knew them best. If they did not view Mike and Laura as husband and wife, one well may wonder who did view them as husband and wife (R. 234).

The Court then reviewed the issue of consent. As to Defendant, the Court stated:

Not only does Mike fail to establish by clear and convincing evidence that the parties acquired a uniform and general reputation as husband and wife, he has failed to establish that each party consented to a common law marriage relationship.

In this case there is no single, clear fact demonstrating that Laura consented to a common law marital contract. In fact the evidence is to the contrary. On several occasions Mike asked Laura to marry him. Each time she refused. That she rejected his several proposals is evidence that she had not consented to a marital relationship.

While consent must be established, as noted by the Supreme Court in Whyte v. Blair, 885 P.2d 791, 791, n. 3 (Utah 1994), mutual consent can be shown by acquiescence. The facts establish that for her own financial benefit Laura affirmatively held herself out to the insurance company as Mike's wife. To void embarrassment she held herself out to the church representatives as Mike's wife. For a time she wore a ring on her marriage finger. For several months she allowed Mike to live in the home, enjoying a conjugal relationship and sharing family expenses. All of these demonstrate some measure of acquiescence by her in the existence of a marital relationship. On the other hand that

acquiescence is overcome by her own continued insistence that the parties not remarry. She knowingly chose not to accept Mike's marriage proposals. That evidence, which is clear and convincing, off-sets any alleged acquiescence in a marital relationship. Laura knew Mike wanted to remarry and repeatedly declined. Rather than evidencing consent, this evidence is just the opposite, an insistent lack of consent. (emphasis added). (R. 233).

The findings of the trial court, especially as to consent, deny the existence of a marriage, even under the lower standard of preponderance of the evidence. Reviewing the factual findings as the Court has done, one cannot suggest that a review on any other standard would bring a different result. The Trial Court has reviewed this matter carefully and completely; and there is insufficient evidence on which to base a reversal.

POINT II

THE COURT BELOW USED THE CORRECT STANDARD OF PROOF IN REVIEWING THE EXISTENCE OF A COMMON LAW MARRIAGE.

This is an action in which Plaintiff sought to establish a common law marriage. The parties had previously been married and divorced; but the parties continued to live together for periods of time thereafter. The attempt to establish a common law marriage was made in order to improve the settlement to Defendant as a result of the original decree. The Court first found that the establishment of a marriage in this manner should be by clear and convincing evidence; and the Court then found that the elements of

the common law marriage had not been so established. The Court filed a detailed written decision relying on substantial case law from other states. The Court also reviewed public policy of the State of Utah and found the higher standard of proof was appropriate. In doing so, the Court again cited Whyte v. Blair, in which the Utah Supreme Court stated:

Care must be given to guard against fraudulent marriage claims, especially where a declaration of marriage would reap financial rewards for an alleged spouse. (885 P.2d at 795.

The Trial Court used due care and found that the standard of proof had not been met. In support of that finding, the Court referred to fourteen other states which have used the clear and convincing standard of proof in cases to determine the existence of a common law marriage; and found only nine states which use the preponderance of evidence standard (R. 240-241). Appellant argues that the Trial Court was wrong in its counting of cases. Using a different methodology, Appellant argues that there are only fifteen states which currently recognize common law marriage, and that only five of those use the clear and convincing standard (Appellant's brief, p. 10-11). The numbers of states which fall into each category is open to interpretation and even manipulation. In finding fault with the Lower Court's count, however, Appellant seems to be ignoring the obvious. Many states have abolished common law marriage, apparently believing that the abuses of such

a doctrine outweigh any advantages. One might suggest that this puts a solid majority of other states in a third category; one in which NO evidence is sufficient to prove a common law marriage. This position supports the conclusion of the Trial Court that common law marriages should be declared only in cases where the evidence is clear and convincing; and that extra care is needed to avoid abuse.

Many of the decisions cited by both the Lower Court and Appellant are somewhat vague, in that public policy arguments are not fully discussed. One case of interest is one that Appellant cites for his contention. In that case, Metropolitan Life Insurance Company v. Johnson, 645 P.2d 356 (Idaho 1983), the Idaho Court admits that it is in the minority in using the preponderance standard:

We note that Idaho is among the dwindling minority of states which continue to recognize common law marriage. In 1952, twenty American jurisdictions could be listed as recognizing common law marriage. By 1960, the number was sixteen, and by 1974 the number had diminished fourteen.

The trend toward abolition of common law marriage indicates an obvious hostility to the doctrine. That hostility is not confined to those states which do not recognize common law marriages. The courts of many jurisdictions recognizing the doctrine also view it with disfavor.

Thus, to discourage common law marriage claims, many jurisdictions recognizing the doctrine impose stringent evidentiary burdens on the party seeking to establish a common law marriage. (Internal citations omitted) 645 P.2d at 359-360.

While Idaho law applies the preponderance standard, it also emphasizes the element of consent. In this case, the Trial Court specifically found a lack of consent; and that finding has not been challenged in this appeal. This Court should be very cautious in overruling the Lower Court and finding a marriage here. Clearly the parties were married at one time; and they have had a very stormy relationship since that time. It would be to Appellant's advantage materially to prove that a marriage continued after the divorce became final, as Appellant contends that the divorce settlement was not fair (R. 244). This is not the time or manner to contest such things, however. He had his opportunity to do so in the context of the divorce action, and chose not to do so. That decision is now binding on him. There is some evidence that Appellant wants to prove the existence of a continuing marriage simply to spite Appellee, as the Trial Court found a pattern of abusive behavior on the part of both parties; and noted that mutual protective orders have been entered to keep the parties apart (R. 243-4). Failing to guard the public interests which the Lower Court cited in determining its burden of proof would indeed result in an injustice in this instance.

POINT III

APPELLANT'S CONSTITUTIONAL CHALLENGE HAS NO MERIT; NOR IS IT RELEVANT TO THE ISSUES AT HAND.

Plaintiff also questions the legality of § 30-1-4.5 U.C.A. as being in conflict with certain portions of the Utah Constitution. Plaintiff argues that the portion of the law which requires proof within one year of the termination of the relationship is unconstitutional as it would not allow Defendant to establish the relationship he seeks even on a successful appeal, as that appeal would be too late. Defendant suggests that this Court is able to craft a remedy as it sees fit. Declaring the statute invalid would not give Plaintiff any remedy. The Court has ruled, based on the facts, that Plaintiff has not proved the existence of a marital relationship. The interpretation of the time provisions is not at issue. Plaintiff has quoted Bunch v. Englehorn, 906 P.2d 918 (Utah App. 1995) in support of his contention that the time provisions "might present a constitutional question in a different context". The Court chose not to review that question at the time, as it was not relevant to its decision. A constitutional ruling is also not relevant here to the decision of the Court. The legislature chose to recognize common law marriages under very strict rules. Defendant contends that the legislature has the power to set the rules for such a recognition, which has long been denied Utah residents under any circumstances. The fact that the legislature

set such strict recognition rules supports the Lower Court's ruling that a higher standard of proof must be used. This is not the type of situation that this court referred to in suggesting that a review of the constitutionality of the law might be appropriate under "different circumstances". Plaintiff has made his showing; and he did so within one year, as set forth in the statute. Because the underlying facts are not in dispute, no further showing after the one year period is necessary. This Court certainly has the power to determine that a legal error was made and to reverse the Lower Court and declare, on the basis of the facts proved, that such a marriage existed. There is no need for a remand or for a further hearing below, if the Trial Court made such a legal error. The act of this court in correcting the legal error would have the effect of declaring the marriage valid as of the time of trial. No constitutional attack on the law is necessary. Appellee, of course, has set forth what she believes to be a very strong case against taking any action. Nevertheless, for the sake of argument, this Court has many options to correct errors without declaring the underlying statute unconstitutional.


CONCLUSION

The Trial Court reviewed the issues concerning the existence of a common law marriage between the parties hereto according to

the appropriate standard. More importantly, however, the Court found facts in Appellee's favor which deny the possibility of such a marriage under any standard. Because the facts do not support a finding of such a marriage under any level of scrutiny, this Court cannot reverse the trial court on the issue.

DATED this 26th day of September, 1997.

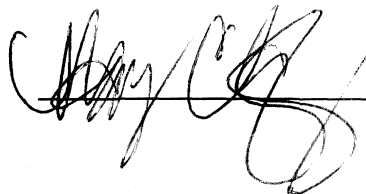
MCCULLOUGH, JONES & IVINS, L.L.C.



W. Andrew McCullough
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of September, 1997, I did send two true and correct copies of the above and foregoing Brief of Appellee, postage prepaid, to Brent Young, attorney for Plaintiff, P.O. Box 672, Provo, Utah 84603.



ADDENDUM

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

---oooOooo---

MICHAEL LOY HANSEN,	:	FINDINGS OF FACTS AND
	:	CONCLUSIONS OF LAW
Plaintiff,	:	
	:	
vs.	:	
	:	
LAURA T. HANSEN,	:	Civil No. 9544-2169
	:	934401325
Defendant.	:	

---oooOooo---

This matter came on for trial on October 24, 1996 and was continued for additional testimony on October 26, 1996. Plaintiff was present with his attorney, Brent Young. Defendant was present with her attorney, W. Andrew McCullough. Kelly Frye was present as Guardian Ad Litem. Closing arguments were held separately on November 27, 1996. The Court, having heard the evidence and the argument of counsel, and being fully advised in the premises, enters its Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The parties previously were married for a period of approximately nine years. Their divorce was final in March 1994.

2. In October 1994 Mike moved back into the former marital home with Laura and resided there with her and the children of the parties until at least May 1995.

3. From May 1995 through September 22, 1995 Mike did not live at Laura's home nor cohabit with her.

4. Judge Hansen previously made a finding in a protective order action between these parties that Mike lived in Laura's home at her request from September 22, 1995, through December 27, 1995.

5. During the periods of cohabitation Mike routinely turned over his paycheck to Laura and then received back some cash as "walking around money."

6. During the periods of cohabitation Laura worked and she pooled her money with the money she received from Mike.

7. Laura used the money she and Mike earned to pay the significant credit card debt which Mike had incurred during the period of separation preceding their divorce, to pay the home mortgage, to pay family living expenses and obligations and to pay her debts.

8. During the period of cohabitation the parties acted much like a family.

9. When the parties' son was of age to be baptized the parties met with the local L.D.S. Bishop to arrange for the son's

baptism. In the process neither party dispelled the appearance that they were a family.

10. After Mike moved back in with Laura the membership clerk from the L.D.S. church came to visit to inquire concerning Mike's church membership records and was told that Mike lived in the marital home. The appearance was that he and Laura were back together.

11. During the periods of cohabitation the parties spent time with several family friends, including going on trips, like one particular Lake Powell trip. During all of those trips the parties did not refer to each other as husband or wife.

12. The friends who knew the parties best believed that the parties were living together as a couple but not as husband and wife.

13. During the period of cohabitation Laura had an intimate relationship with one of these friends, contradicting any notion that she was married to Mike, although he was living in the marital home.

14. Laura used Mike's medical and dental insurance to cover the cost of some of her medical treatments. This insurance coverage was claimed by her as Mike's wife. The coverage was only available to her as a wife and she claimed the benefit of that coverage.

15 During the time the parties cohabited Laura held herself out as Mike's wife to the insurance carrier.

16. During the time the parties cohabited each was capable of giving consent to a marriage and each was legally capable of entering into a solemnized marriage.

17. During the time the parties cohabited they each assumed marital rights, duties and obligations.

18. During the period of cohabitation Laura frequently wore a ring on the finger of her left hand traditionally viewed as her marriage finger.

19. During the period of cohabitation Laura admitted to Mike that she felt he had received an inequitable distribution in the divorce. She agreed with him that if the parties subsequently separated that each would be entitled to one-half of the equity in the home.

20. On several occasions during their period of cohabitation Mike told Laura that he wanted to be married to her and asked her to remarry him. On each of those occasions Laura declined to enter into a new marriage with Mike.

21. The parties filed separate tax returns for 1994 and 1995.

22. The complaint in this case was file on October 12, 1995, during the course of the cohabitation and alleged common law marriage of those parties.

23. Each of the parties have violated terms of one or more orders of the Court.

24. This Court previously entered a mutual protective order limiting contact between the parties and specifically restraining any harassing or threatening behavior. In defiance of that order Laura has struck Mike and Mike has spit on Laura.

25. Further, Laura has entered into a pattern of baiting Mike. On one recent occasion she arranged visitation for Mike. When he came to pick up the children with a third-party witness they saw the children enter the home but no one would answer the door when the third party knocked. Mike then went with the third party to a phone and the friend called Laura. A police officer was on the other end of the phone and he asserted that Mike had violated the protective order. Then the officer found out it was not Mike on the phone. This pattern of conduct constitutes baiting by Laura of Mike in an effort to get him in trouble with the courts for violating protective orders.

26. Laura also has made complaints to law enforcement at times when she knew that protective orders have been dismissed by the Court.

27. Laura has denied visitation when there has been a clear, detailed, written order setting forth the visitation schedule. For example, she denied Mike his UEA visitation with Zeb.

28. At least some of Laura's denials of visitation to Mike have been made in response to rulings by the Court that went against ^{Laura} ~~Mike~~. AWS

29. Almost all of the actions of Mike and Laura in each violating the orders of the court, in harassing each other, in involving the police and in fighting and spitting at each other, have been witnessed by the children. That alone is grounds for a stern response by the Court as the children have been significantly impact by the continual fighting of the parents.

CONCLUSIONS OF LAW

1. The Court determines that the appropriate standard to prove the existence of a common law marriage is by clear and convincing evidence.

2. Both parties are and were capable of giving consent, they were and are capable of entering a solemnized marriage under the provision of law, they co-habitated, and they mutually assumed marital rights, duties and obligations. The parties did not, however, acquire a uniform reputation as husband and wife.

3. There is no proof to the legal standard required that Laura consented to the existence of a marital relationship after the previous divorce.

4. Plaintiff's complaint for the determination of a common law marriage should be dismissed, having failed to have proof by clear and convincing evidence of all necessary prerequisites.

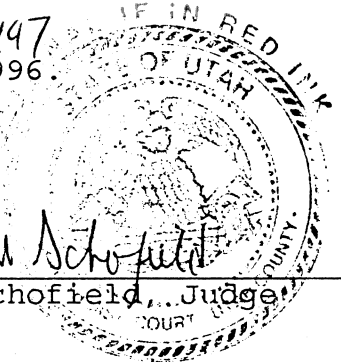
5. The Court finds that both parties have acted in contempt of court by failing to obey previous orders of the Court.

6. The Court intends to impose sanctions as seem appropriate, that will reserve such sanctions until further hearing now set for December 23, 1996.

DATED this 7th day of February 1997 December, 1996.

BY THE COURT:

Anthony W. Schofield
Anthony W. Schofield, Judge



CERTIFICATE OF SERVICE

I certify that on the 27th day of December, 1996, I mailed a true and correct copy of the foregoing Findings of Fact and Conclusions of Law, postage prepaid, to Brent Young, attorney for Plaintiff, Ivie and Young, P.O. Box 672, Provo, Utah 84603 and Kelly Frye, Guardian Ad Litem, 32 West Center Street, Provo, Utah 84601.

W. Allen McCall

2/7/77

CLERK OF DISTRICT COURT
CANTON, MICHIGAN

[Signature]

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

---oooOooo---

MICHAEL LOY HANSEN,	:	JUDGMENT OF DISMISSAL
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
LAURA T. HANSEN,	:	Civil No. <u>934401325</u>
	:	
Defendant.	:	

95-2169

---oooOooo---

Pursuant to the Findings of Fact and Conclusions of Law
heretofore entered in the above entitled action,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

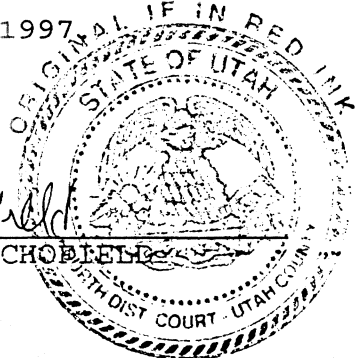
1. The appropriate standard to determine the existence of a common-law marriage is by clear and convincing evidence.
2. The Court has failed to find by clear and convincing evidence the existence of a uniform reputation of the parties as husband and wife or that Laura consented to the existence of a marital relationship after the previous divorce.
3. Plaintiff's Complaint is dismissed, no cause of action.
4. The Court has found that both parties have acted in

contempt of court by failing to obey previous orders of the Court;
and the Court reserves sanctions for further hearing.

DATED this 7th day of February, 1997.

BY THE COURT:

Anthony W. Schofield
JUDGE ANTHONY W. SCHOFIELD



CERTIFICATE OF SERVICE

I certify that on the 30th day of December, 1996, I mailed a true and correct copy of the foregoing Judgment of Dismissal, postage prepaid, to Brent Young, attorney for Plaintiff, Ivie and Young, P.O. Box 672, Provo, Utah 84603, and Kelly Frye, 32 West Center Street, Suite 205, Provo, Utah 84601.

Beverly Sanders

a:\hansen.jd

97 MAY -6 PM 5:21
jm

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

---oooOooo---

MICHAEL LOY HANSEN,	:	ORDER DENYING MOTION
	:	TO AMEND
Plaintiff,	:	
	:	
VS.	:	
	:	
LAURA T. HANSEN,	:	Civil No. 954402169
	:	
Defendant.	:	

---oooOooo---

This matter came before Hon. Anthony W. Schofield, Judge of the above-entitled Court, pursuant to Plaintiff's Motion to Amend Judgment. The Court, having considered the memoranda of counsel, and being fully advised in the premises, now makes and enters the following ORDER:

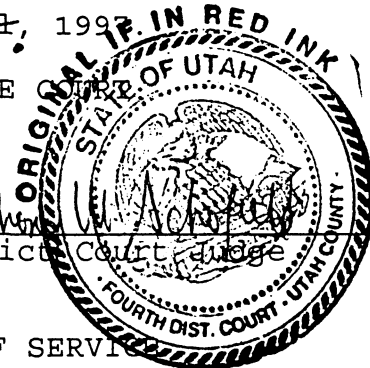
1. The Motion to Amend is denied.
2. The Court concludes, as it previously did, that the correct burden of proof to establish a common law marriage is proof by clear and convincing evidence.
3. Plaintiff has raised a constitutional argument as to whether he would have an adequate remedy if the Court's decision

were reversed on appeal. The constitutional argument is premature as there is no assurance that on appeal the appellate courts will reverse the trial court judgment. If they do and do not address the constitutional argument in their reversal, then the issue of the constitutional argument will be ripe for consideration upon remand.

DATED this 5th day of ^{May}~~April~~, 1997.

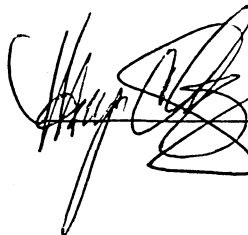
BY THE


District Court Judge



CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of April, 1997, I did mail a true and correct copy of the above and foregoing Order Denying Motion to Amend, postage prepaid to, Brent Young, attorney for Plaintiff, Ivie & Young, P.O. Box 657, Provo, Utah 84603 and Kelly Frye, Guardian Ad Litem, 32 West Center Street, Suite 205, Provo, Utah 84601.



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