

1986

Glade Stevens, Milton Stevens, and Margaret Stevens v. Ellen I. Stevens : Brief of Appellant

Utah Supreme Court

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BRIEF

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DOCKET NO. 860138-CA

IN THE SUPREME COURT OF UTAH

STATE OF UTAH

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GLADE STEVENS, MILTON STEVENS, :
AND MARGARET STEVENS, :

Plaintiffs and Respondents, :

vs. :

ELLEN I. STEVENS, :

Defendant and Appellant. :

Case No. 20801

860138-CA

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BRIEF OF APPELLANT

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Appeal from Judgment of the Fourth Judicial District Court
for Millard County

Honorable George E. Ballif

---ooo0ooo---

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FILED

APR 24 1986

Clerk, Supreme Court, Utah

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LEGEND OF PAGE CITATIONS

Because the Clerk of the District Court failed to number all pages (pleadings, hearing transcripts, depositions, and exhibits) sequentially, it has been necessary to use different citation for each area as follows:

PL.	Pleadings filed with the District Court
TR.	The trial Transcript
EX., pp.	Exhibits admitted at trial, with page no.'s

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	:	
ELLEN I. STEVENS,	:	
	:	
Defendant and Appellant.	:	

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BRIEF OF APPELLANT

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STATEMENT OF ISSUES

This is an appeal from a Judgment and Decree of the Fourth District Court, entered subsequent to an earlier Decree of Divorce, dividing the assets of the parties, establishing support obligations and ordering costs and attorneys fees. No Cross-Appeal has been filed. Appellant has cited six errors as follows: (1) Whether the Court erred in failing to submit written findings with regard to the value of each of the contested items of property of the marital estate; (2) Whether the Court erred in failing to set a dollar figure on the Respondent's income; (3) Whether there was a fair and equitable division of the property of the parties; (4) Whether the award of child support and alimony was adequate; (5) Whether the order

concerning medical and dental costs is adequate; and (6) Whether it was error for the Court to refuse to award costs incurred in obtaining an appraisal of the farming and trucking businesses owned by the parties.

STATUTORY AND RULES PROVISIONS

Section 21-5-8, UTAH CODE ANNOTATED 1953, (AS AMENDED)

The fees and compensation of witnesses in all civil causes must be paid by the party who causes such witnesses to attend, and no witness shall be obligated to attend court in a civil cause when subpoenaed unless his mileage and fees for one day's attendance are tendered or paid to him on demand, nor unless his fees for attendance for each day are tendered or paid to him on demand. The fees of witnesses paid in civil causes may be taxed as costs against the losing party.

Section 30-3-3, UTAH CODE ANNOTATED (1953), AS AMENDED

The Court may order either party to pay to the clerk a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute or defend the action.

Section 30-3-5, UTAH CODE ANNOTATED (1953), AS AMENDED (In effect at the time of trial)

(1) When a decree of divorce is rendered, the court may include in it such orders in relation to the children, property and parties, and the maintenance and health care of the parties and children, as may be equitable. The court shall include in every decree of divorce an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children. If coverage is available at a reasonable cost, the court may also include an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for those children. The court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the support and maintenance of the parties, the custody of the children and their support, maintenance and health and dental care, or the distribution of the property as shall be reasonable and necessary. Visitation

rights of parents, grandparents, and other relatives shall take into consideration the welfare of the child.

(2) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse shall automatically terminate upon the remarriage of that former spouse, unless that marriage is annulled and found to be void ab initio, in which case alimony shall resume, providing that the party paying alimony be made a party to the action of annulment and that party's rights are determined.

(3) Any order of the court that a party pay alimony to a former spouse shall be terminated upon application of that party establishing that the former spouse is residing with a person of the opposite sex, unless it is further established by the person receiving alimony that the relationship or association between them is without any sexual contact.

Section 78-45-7(4), UTAH CODE ANNOTATED, (1953) AS AMENDED

(4) In determining the amount of prospective support on an ex parte or other motion for temporary support, the court shall use a uniform statewide assessment formula, adjusted for regional differences, prior to rendering the support order. The formula shall provide for all relevant factors which can be readily identified and shall allow for reasonable deductions from the obligor's earnings for taxes, work related expenses, and living expenses. The assessment formula shall be established by the Department of Social Services and periodically reviewed by the Judicial Council under Subsection 78-3-21(3).

RULE 52(b), UTAH RULES OF CIVIL PROCEDURE

(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made either a motion to amend them, a motion for judgment, or a motion for a new trial.

RULE 54(d), UTAH RULES OF CIVIL PROCEDURE

(d) Costs.

(1) To Whom Awarded. Except when express provision therefore is made either in a statute of this state or in these

rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; provided, however, where an appeal or other proceedings for review is taken, costs of the action, other than costs in connection with such appeal or other proceedings for review, shall abide the final determination of the cause. Costs against the State of Utah, its officers and agencies shall be imposed only to the extent permitted by law.

RULE 59(a) & (e), UTAH RULES OF CIVIL PROCEDURE

(a) Grounds. Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes: provided, however, that on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:

. . . .

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment shall be served not later than 10 days after entry of the judgment.

RULE 2.9(b), RULES OF PRACTICE IN THE DISTRICT AND CIRCUIT COURTS

(b) Copies of the proposed Findings, Judgments, and/or Orders shall be served on opposing counsel before being presented to the court for signature unless the court otherwise orders. Notice of objections thereto shall be submitted to the court and counsel within 5 days after service.

STATEMENT OF THE CASE

This is an appeal from the Judgment and Decree of the Fourth Judicial District Court of Millard County, dated May 17, 1985. The Court had previously entered a Decree of Divorce on November 27, 1984, granting a divorce to the Appellant but reserving the remainder of the issues for trial (PL. 232). Following the trial on November 27 and 28, 1984, the Court requested both sides to

prepare written final arguments as an aid to the Court in deciding the issues (PL. 262, 280). The court made a written decision on January 28, 1985, deciding all of the issues reserved for trial and directing that counsel for Respondents prepare Findings of Fact, Conclusions of Law and Decree consistent with the decision and submit it to counsel for Appellant for approval. (PL. 303). The Draft of these documents was mailed to Counsel for the Appellant on February 7, 1985 (PL. 324, 333), on February 21, 1985. Appellant filed an objection thereto on the basis that it did not conform to the Court's Decision. (PL. 308). Counsel for Appellant submitted, along with his objection, proposed Findings of Fact and Conclusions of Law and Judgment and Decree felt to be in conformance with the Court's Decision. (PL. 338, 345). At the same time he filed a Memorandum of Costs and Disbursements. (PL. 310). In a written Ruling dated April 17, 1985, the Court decided that Respondent's drafts did not follow the Court's Decision and directed that counsel for the Respondent re-draft the documents essentially in conformance with those submitted by Appellant. (PL. 349). In a separate ruling that same date the Court approved all of Appellant's claimed costs except those of Certified Business Appraisals, Inc., in the amount of \$2,531.15. (PL. 353).

On May 28, 1985, following the signing and entry of the Judgment and Decree on May 20, 1985, Appellant filed a Motion to

Amend Findings, Motion to Amend Judgment, and Motion for New Trial pursuant to provisions of Rules 52(b) and 59 (a) and (e), Utah Rules of Civil Procedure. (PL. 367). No response was made thereto. By Minute Entry dated June 19, 1985, the Court denied Appellant's motions without comment. (PL.382).

Appellant moved for summary disposition before this court on August 15, 1985. Respondent likewise requested summary disposition on August 22, 1985. This Court denied both motions on September 11, 1985.

Respondent moved to dismiss the appeal on January 4, 1986, on the basis that Appellant had accepted the benefits of the decree and therefore was not entitled to an appeal. Oral Argument was held on the motion on January 20, 1986, and the motion was denied that same date.

STATEMENT OF FACTS

The trial in this matter primarily involved the identification and valuation of the marital estate of the Appellant and the Respondent Glade Stevens. Some of the farm machinery and farm land being utilized in the farming operation by the Respondent Glade Stevens, belonged to his father, the Respondent Milton Stevens. Each of the respondents testified concerning the ownership of and value of numerous items of farm and trucking equipment. (TR 30-58, 75-177, 392-449). They presented the testimony of a cousin Ross Stevens, for the same

purpose (TR. 188-196). They presented the testimony of Gordon S. Ogier, a hay broker, on the value of baled hay. (TR. 188-196). They presented the testimony of Bruce Whatcott and LeGrand Warner, farm implement dealers, on the value of a combine, a windrower, a tractor, a hay hauler, a bale wagon, a diesel truck and a silo (TR. 196-205).

Appellant presented the testimony of a professional business appraiser concerning the value of the items of real property and machinery utilized on the farming operation and Respondent Glade Stevens trucking business, together with the value of the two operations as a going concern. (TR 276-392; Ex. 12). There was a wide disparity between the values alleged. (Ex 9; Ex 12). Further, there was substantial conflict of testimony concerning the Respondent Glade Steven's income for the purpose of determining an appropriate amount of child support and alimony. (TR. 131, 141-143).

After making it's decision concerning the ownership of the property, the Court proceded to divide the marital estate between the Appellant and the Respondent Glade Stevens. The Court failed to attach a value to any of the items of property divided between the parties, failed to make a finding as to the income of the Respondent Glade Stevens, and failed to make a finding concerning the value of farming and trucking operations as going concerns for purposes of distribution and failed to distribute the farming

and trucking businesses to either of the parties.

Such other facts as may be necessary to a resolution of the issues are set forth within the respective arguments.

SUMMARY OF ARGUMENT

Point I. Appellant's first assigned error is that the District Court failed to make specific findings with regard to the dollar value of any of the property of the marital estate when there was a substantial conflict between the parties. Appellant did not prepare the findings signed by the Court and did make a motion to amend them. The case of Jones_v._Jones, 700 P.2d 1072 (Utah 1985) is dispositive of this issue.

Point II. Appellant's second assigned error is similar to the first in that the Court failed to make specific findings with regard to the amount of income being earned by the Husband. This finding is necessary in order for this Court to determine the adequacy of the child support and alimony awards. The case of Montoya_v._Montoya, 696 P.2d 1193 (Utah 1985) is dispositive.

Point III. The third assigned error is that the appellant did not receive her fair share of the marital estate. Although This court cannot make a final determination of this issue without first remanding the case for further findings, two other questions within this assigned error should be addressed at this time. First the ownership by the marital estate of property awarded by the Court to the Husband's parents, and second the

distribution of property not mentioned in the findings and decree.

Point IV. The fourth assigned error is that the level of child support and alimony is inadequate in light of the entire record. Although the District Court failed to make findings concerning the husband's income, there is sufficient evidence in the record from the husband's tax returns to determine that his annual available income, after adding back in the depreciation allowance and travel and entertainment expenses, averaged in excess of \$54,000.00 annually.

Point V. The fifth noted error is that the District Court, in making its order that the husband provide health and dental insurance for the minor children, and requiring the parties to pay equally any expenses not covered by the insurance, failed to set a maximum on the amount of deductible on the insurance policy, thus leaving the wife with the potential for large annual medical and dental expenses.

Point VI. The sixth assigned error is that the District Court refused to award either as costs or as part of the equitable payment of the divorce litigation expenses the cost of obtaining an appraisal of the property in the marital estate. The Court refused to make this award on the mistaken belief that the Appellant had failed to show that property belonging to the husband's parents belonged to the marital estate, when in fact

such was not the purpose of the appraisal, which did not appraise any of the parents farm land and only minimally any farm equipment owned by them.

ARGUMENT

POINT I

THE COURT ERRED IN FAILING TO SUBMIT WRITTEN FINDINGS WITH REGARD TO THE VALUE OF EACH OF THE CONTESTED ITEMS OF PROPERTY OF THE MARITAL ESTATE.

As part of Appellant's Motion to Amend Findings, Motion to Amend Judgment, and Motion for New Trial, Appellant requested the District Court to make and enter findings concerning the value of each item of the parties property as it was required to do when there exists a serious question as to the value of one or more of the assets. This motion was summarily denied.

In Jones_v._Jones, 700 P.2d 1072, 1074 (Utah 1985), this Court held the following with regard to findings of value in property division issues:

On the present record, we cannot determine whether the trial Court distributed the property equitably. In_re_Marriage_of_Martin, 22 Wash.App. 295, 588 P.2d 1235, 1236 (1979). To avoid problems of this nature, we require that when one of the parties to a property distribution raises a serious question as to the value of one or more of the assets, the trial Court's distribution of those assets should be based upon written findings of fact that will permit appellate review. Cf. Chandler_v._West, Utah, 610 P.2d 1299, 1301 (1980).

In so deciding this court accepted the general rule in effect in the surrounding Western states. See Wilford_v._Wilford, 699 P.2d

105 (Nev. 1985); Lawrence_v._Harvey, 607 P.2d 551, (Mont. 1980); Bailey_v._Bailey, 689 P.2d 216 (Idaho App. 1984).

However, this Court, in the Jones case, denied the wife her requested relief with the following language at 700 P.2d 724-5:

Normally, we would grant the remedy sought by the wife and remand for findings on the specific value of the assets. In this case, however, the wife's attorney prepared the inadequate findings of fact she challenges on appeal and the conclusions of law and decree of divorce all of which the court entered without alteration. Counsel for the wife made no motion to have the trial court amend the findings to include values. See Utah R. Civ. P. 52(b). The wife cannot come now, albeit through new counsel, and complain of her own failure to include specific property values in the findings of fact. She has waived the claim.

In the instant case the Appellant's counsel did not prepare the findings or decree and did in fact make a motion under Rule 52(b), Utah Rules of Civil Procedure to have them amended to include the valuations. Respondent has argued, however, that since Appellant submitted a draft Findings of Fact and Conclusions of Law, language from which was incorporated into the accepted findings, that she is thereby foreclosed from complaining about the substance of them. (Reply to Motion for Summary Disposition, filed with this Court, August 22, 1985). However, the Court in Jones stated that both the preparation of the findings, and the failure to move to amend, resulted in a waiver of the requirement that the court specify values. By implication the Court stated that even though her counsel had prepared the

challenged findings, had there been a motion under Rule 52(b), she would have saved her objection.

In the instant case Appellant's counsel did not prepare the offending findings. As part of his objection to the draft prepared by counsel for Respondents pursuant to Rule 2.9(b) Rules of Practice in the District and Circuit Courts, findings and judgment drafts were submitted because, as stated in the Objection, "the deviations [from the written decision] are so numerous and occur throughout both document to such an extent" that it was simpler to prepare new drafts than to list each deficit. (PL. 308). To the extent that the Court construes that the findings ultimately accepted and signed by the lower court were prepared by the Appellant, she adequately cured any claim that she concurred in those findings by filing her motion under Rule 52(b).

More importantly, however, it should not be held that the preparation of the findings in strict conformance with the Court's written instructions, results in a finding that the party ordered by the court to do so may not thereafter object thereto. Such would be an intolerable conclusion.

Although a motion under Rule 52(b), may be made prior to entry of the judgment and may apparently be made in regard to "proposed" findings, Zions First National Bank, v. C'est Bon Venture, 613 P.2d 515 (Utah 1980), there is no requirement that

it be done in that fashion. Rule 52(b) provides merely that the motion be made "not later than 10 days after entry of judgment." In the instant case that was done.

Appellant timely requested that the court make specific findings, citing this Court's decision in Jones_v._Jones, supra. There was no objection to that request by the Respondents. Yet the Court denied the requested relief. Such refusal was an abuse of discretion and the case should be remanded to the District Court for entry of appropriate findings.

POINT II

THE COURT ERRED IN FAILING TO SET A DOLLAR FIGURE ON THE RESPONDENT'S INCOME.

In the Court's ruling, incorporated in the Findings of Fact and Conclusions of Law and the Judgment and Decree, the Court ordered child support in the sum of \$175.00 per month per child for each of three children. The Court further awarded the Appellant alimony in the sum of \$175.00 per month. (PL. 356).

There was considerable conflict in the testimony concerning the Respondent Glade Stevens' income. In addition to his tax returns, submitted at trial, (TR. 445; Ex. Un-numbered), Appellant testified that occasionally the Respondent Glade Stevens received a considerable amount of money in cash which went unreported (TR. 275).

In the Findings of Fact and Conclusions of Law the Court found "that although the income tax returns supplied by the

plaintiff on their face may not justify the award of support and alimony hereinabove provided, the Court has determined from the evidence submitted at the trial, that a substantial amount of tax-free income is generated by the plaintiff's activities, and that he can afford to pay the sums for support and alimony as hereinabove provided." (PL. 358). However, the Court made no finding as to what his income actually was.

As an ancillary to Appellant's argument in her Motion to Amend Findings, Motion to Amend Judgment and Motion for New Trial that the support order was inadequate (Point IV, *infra*), appellant requested the court to enter a specific finding as to the Respondent Glade Stevens' income. (PL. 376-7). The motion was summarily denied. (PL.382).

Following the same logic set forth in Jones_v._Jones, 700 P.2d 1072 (Utah 1985), if it is necessary for the trial court to set forth its formula for valuing and distributing personal property in order to allow for proper appellate review, it is also necessary that the trial court establish a figure for income of the parties when that is in dispute. Not only is this necessary for proper appellate review, but also, for the purpose of fixing that figure for possible future modification based upon an increase, or decrease in the Respondent's earnings. Without knowing the income the Court assessed to the Respondent it is impossible to make either determination.

In Montoya_v._Montoya, 696 P.2d 1193 (Utah 1985), this court recently held that the record was inusufficient to allow appellate review of the adequacy of support obligations in a divorce modification action where the trial court failed to set forth its findings as to the exact income of the parties and their respective needs. In remanding the matter for further findings, the Court reiterated the criteria for determining reasonable alimony (and arguably child support) set forth in Granme_v._Granme, 587 P.2d 144, 147 (Utah 1978) and English_v._English, 565 P.2d 409, 411-12 (Utah 1977), as requiring specific findings of "the financial condition and needs of the wife, her ability to support herself, and the ability of the husband to provide support." 696 P.2d at 1195.

The trial court failed to make sufficient findings in the instant case, although specifically asked to do so. It is appropriate that the matter be returned to the District Court for further findings.

POINT III

THE COURT ERRED IN FAILING TO MAKE A FAIR AND EQUITABLE DISTRIBUTION OF THE PROPERTY OF THE PARTIES.

As set forth in Point I, *supra*, the trial court refused to place a dollar value on each of the items of disputed value. Even without such findings, however, it is evident that the trial court did not make an equitable distribution. Not only did the

Court make erroneous findings concerning the ownership by the Appellant and Respondent Glade Stevens of certain items of farm equipment and machinery, contrary to the testimony of all the witnesses, but the Court completely failed to distribute all of the property of the parties, leaving it, de facto, with the Respondent Glade Stevens.

Although the entire question of division of property should be remanded to the District Court for the entry of further findings, the Court should nonetheless address the question of whether the Appellant and Glade Stevens own the disputed farm equipment and machinery, or whether it is owned by the Respondents Milton Stevens and Margaret Stevens, and whether other assets, not mentioned in the findings and judgment should be divided as part of the marital estate.

There was considerable dispute in this matter as to the identification, ownership and value of numerous items of real and personal property, to include ownership and division of the farming and trucking businesses. In its written Decision, dated January 28, 1985, the Court found that the marital estate consisted of "an old and a new home located at Fillmore, each with certain household furniture and fixtures, a 1980 Freightliner hay truck, two Ford Pickups, and a Ford truck used by plaintiff in his farming and business, and a 1980 Mercury automobile and twenty acres of land." (PL. 304). Additionally,

in dividing the property, the court divided to the Respondent Glade Stevens "miscellaneous farm implements and machinery, and the benefit of plaintiff's interest in crops that have been harvested and are being held for sale or have been sold and other income related to his business." (R. 304-305).

Having divided this property to the Appellant and the Respondent Glade Stevens, the Court went on to state that:

[T]he Defendant has failed to establish that the plaintiff, Glade Stevens, has any interest in and to the property identified on the "Security Agreement to Milton Stevens" and also the various items of property listed and identified in the plaintiff's "Appraisal Exhibit" attached to plaintiff's written summation and there identified as "No security agreement items". Although Glade Stevens has had the right to use many of the items in his farming operations, and has economically benefitted from them, there has been no showing that he has any equity interest in and to those items to which the defendant has any proper claim at this time.

The Security Agreement mentioned by the Court (Ex. 4), was executed, obviously in contemplation of the divorce trial, on October 25, 1984, and filed with the State of Utah, UCC Department, on November 2, 1984, by the Respondent Glade Stevens in favor of his father, Respondent Milton Stevens, giving him a security interest in the following property in the amounts stated:

PROPERTY	COST	SECURED INTEREST
Earl Stevens Property	\$18,000	\$10,607.21
Bale Wagon, 1068, Ser. No. 1830	36,000	21,742.00
Baler, 467, Ser. No. 563865	12,333	12,333.00
Combine, 6620, Ser. No. 454324	57,000	40,000.00
Platform Ser. No. 488850		

Windrower	39,400	32,035.00
Grain Drill, 8200, Ser. No. 051390N	6,085	6,085.00
Tractor, 2590 Ser. No. 10262694	38,000	18,500.00
Brown Truck, CA213HL179107	61,000	30,499.00
International Truck, 20-10	18,000	10,000.00
Ser. No D1222HGB10043		
Sprinkling System	11,204	<u>11,204.00</u>
Total Secured Amount		\$193,005.00

It clearly appears, therefore, that these items belong to the marital estate. There was no need to grant to Milton Stevens a security interest if he already owned the property, as the court held. Obviously none of the parties held that opinion. It is instructive that the Respondent Glade Stevens claimed each of these items of property on his income tax returns as his property for purposes of depreciation (EX. Un-numbered). If there is indebtedness on these items, it belongs to the marital estate.

The other items identified by the trial court as belonging to Milton Stevens are as follows: a mower, a gyro mower, a harrow, a Danish harrow, a 970 Case Tractor, a cultivator, a John Deer rake, and a loader. Appellant does not now dispute those claims. But even with the deletion of those items, the total marital estate is not significantly diminished.

In her Written Final Argument, Appellant set forth a side-by-side columnar comparison of the claimed values of the assets. (PL. 290-4; Addendum). Appellant's valuation of the marital estate was \$609,797.00, with liabilities of \$111,100.00 for a net estate of \$498,697.00. Respondents valuation was \$316,386.00

with liabilities of \$239,253.43 for a net estate of \$77,132.57. It is quite apparent that in order to arrive at the division the Court made it would have had to accept nearly every value submitted by the Respondents and their witnesses as opposed to those provided by Appellant's certified appraiser. The division is so contrary to the weight of evidence as to be an abuse of discretion.

Regarding credibility, it should be noted by the court that both the Respondents Glade Stevens and his father Milton Stevens admitted in court to perjury. Glade admitted that he lied in a deposition concerning his keeping of his girl friend in St. George. (TR.160). Milton Stevens admitted, during the second day of trial that he lied in the first days trials about the price paid for a truck because he had defrauded the State Tax Commission in the underpayment of use tax on that vehicle. (TR.396-401)

In addition to the inequitable distribution of the property identified by the Court, the Court also erred in not identifying and dividing all of the marital estate. Excluding those items of farm machinery claimed by the Milton Stevens, the Court failed to list and distribute the following items of personal property by name, some of which may fit within the definition of miscellaneous farm implements and machinery:

ITEM	RESPONDENT'S VALUES	APPELLANT'S VALUES
Honda Three-Wheeler	\$1,300.00	\$1,600.00
Grain Drill	3,500.00	13,500.00*
Crust Buster Plow	1,200.00	1,200.00
Trailor	6,000.00	**
Tractor	300.00	500.00
Morris Rod Weeder	1,600.00	1,600.00
Compressor	100.00	100.00
Ditcher	50.00	50.00
Hay Lift	2,100.00	2,100.00
Snowmobile	450.00	450.00
Children's Savings	4,000.00	3,000.00
Credit Union Acct	4,000.00	4,000.00
Debt from Mike Frazier	4,000.00	4,000.00
Fuel Tank	---275.00	---275.00
TOTAL	\$ 28,695.00	\$32,375.00

* Appellant appraised and valued Three Grain Drills used in tandem at \$4,500.00 each.

** Respondents appraisal appraised the Tractor in conjunction with Freight Liner truck and not seperately.

Because of the considerable value of these items of personal property, far in excess of some of the named items of personal property, and because the Court failed to list them in its earlier list of marital property, it is difficult to ascertain whether or not they were intended to be included within the definition of "miscellaneous farm implements and machinery", and have already been distributed to the Respondent Glade Stevens.

Regardless of whether these items of personal property have been previously distributed, there is one asset which the Court did not address in its opinion, and is not contained in the findings and judgment. This is the valuation of the Respondent Glade Stevens' farming and trucking businesses as a going

concern. Appellant presented expert testimony to the effect that regardless of the ownership of items of farming and trucking equipment, the farming and trucking business had a value as a going concern above the net worth of the assets which could be and was appraised. (TR. 311; EX 12, pp. 17-19). In addition to the value of the tangible assets, Appellant's expert witness, Mr. Thomas O. Kysar, Certified Business Appraisals Inc., submitted an appraisal report which indicated that the businesses had an intangible "goodwill" value of \$101,686.00. He testified that this figure was arrived at not by reference to the ownership of the tangible assets, but by reference to the Respondent's profit and loss statements as contained in his income tax returns. (TR. 300-11). This is entirely reasonable in that many businesses lease all of their equipment or, in service oriented businesses, have no tangible assets, but in both cases the businesses do have value in and of themselves.

Mr. Kysar's credentials as a witness were not challenged, nor was his testimony concerning the goodwill value of the business contradicted by any expert witness provided by the Respondents. Respondents presented no evidence concerning the value of the businesses.

As a general rule, business interests acquired subsequent to a marriage constitute marital property to be divided between the parties even if acquired in the name of one spouse only. 24 Am.

Jur. 2d Divorce and Separation Section 900. Cf. Jones v. Jones, 700 P.2d 1072 (Utah 1985); Wilford v. Wilford, 699 P.2d 105 (Nev. 1985).

The trucking and farming business have value, if not to a potential buyer as established by Appellant's expert, then to Respondent Glade Stevens himself as income-producing property.

Although this Court is not in a position to finally settle this matter without referral to the District Court, it can and should reverse the trial court's finding that the farming and trucking business equipment belonging to Respondent Milton Stevens (except for those few items of older farm equipment) and direct a finding that they belong to the marital estate. The Court should further instruct the District Court to place a value on the businesses and to divide the property not previously divided.

POINT IV

THE AWARD OF CHILD SUPPORT AND ALIMONY ARE INADEQUATE
IN LIGHT OF THE RECORD AS IT NOW STANDS.

Although the trial court made no findings as to the Respondent Glade Steven's income (Point II, *infra*), it is nonetheless possible to make an appropriate resolution of the reasonableness of the amount of support ordered from the record in its present configuration. The criteria for determining reasonable alimony are the financial condition and needs of the

wife, her ability to support herself, and the ability of the husband to provide support. Gramme_v._Gramme, 587 P.2d 144, 147 (Utah 1978); Jones_v._Jones, 700 P.2d 1072 (Utah 1985).

With regard to her need for support, Appellant testified that she has three small children, one of whom was not yet in school. Further that she had not worked outside the home since the time of marriage and that her employment prior to the marriage was only at minimum wage. (TR. 209, 218).

With regard to her ability to support herself, Appellant established, through expert testimony, that she suffered from dyslexia and attention deficit disorder, which learning disabilities rendered her unable to read above fifth grade level, write above fourth grade level, or do math above sixth grade level. (TR. 23-24). It was further established that it was not due to lack of intelligence which was in the normal range (TR. 13); That with tutoring and other assistance she could go on to college-level work, but that the assistance contemplated would be rather costly. (TR. 18-19); that without this assistance it would be difficult for her to compete in the marketplace for significant employment (TR. 28).

The only open question was the Respondent Glade Stevens' ability to pay support. He testified that his income for the year of the trial, 1984, would be less than the previous year, in fact would be a net loss, because of the winter kill and raising

fuel prices. (TR. 130). The parties tax returns for the years 1979 through 1983 were admitted at trial (TR. 455; EX. Un-numbered). They show the following income, depreciation and travel/entertainment expenses:

YEAR	GROSS	FARMING DEPREC	TRUCKING DEPREC	TRAVEL/ ENTERTAIN	TOTAL
1979	\$29,184	\$9,443	\$7,709	\$8,827	\$55,163
1980	26,956	13,051	10,615	13,890	64,512
1981	33,659	17,541	10,615	7,655	53,680
1982	12,404	18,797	11,673	4,616	47,490
1983	4,974	21,974	12,732	12,084	51,764

In each of the preceeding 5 years the Respondent Glade Stevens has had available to him in actual usable income an average of \$54,521.80. When cross-examined on what he did with the monies not reported as income due to farming and business depreciation, he testified that he used it to purchase the two houses. (TR. 143). Further, the trial court found that there was substantial unreported income. (PL. 358).

It has been held that it is altogether appropriate for the trial court to disregard the amount of depreciation claimed on property in determining income for the purpose of assessing child support or alimony. Smith_v._Smith, 89 Ariz 84, 358 P.2d 183 (1960); Commonwealth_ex_rel_Rankin_v._Rankin, 170 Pa. Super. 570, 87 A.2d 799 (1952). Other cases have held that whether or not the husband's net income should be increased by the amount of depreciation must be determined on a case by case basis, depending on its real effect. Williams_v._Williams, 175 Pa.

Super. 409, 104 A.2d 499 (1954); Commonwealth v. Miller, 202 Pa. Super. 573, 198 A.2d 373 (1964).

Because there was no indication that any of the claimed depreciation went back into replacing worn-out equipment, but rather went into buying the parties homes, the amount of income claimed as depreciation must be viewed as income available to use for the payment of child support and alimony.

In 1984 the legislature, in enacting Section 78-45-7(4), Utah Code Annotated (1953), required that in all temporary support orders that the court follow the formula established by the Department of Social Services and periodically reviewed by the Judicial Council. A copy of that chart is in the Addendum. With an annual income of in excess of \$54,000.00 the Respondent's child support should be \$297.00 per child. Although the court is not mandated to use that chart in setting child support on a permanent basis, it nonetheless provides a practical guide in this process. It was an abuse of discretion for the court to set the child support at \$175.00 per child.

Likewise, in light of the Appellant's demonstrated need and the Respondent Glade Stevens' substantial income, reported and unreported, it was an abuse of discretion to set alimony at the level of \$175.00 per month. An alimony award should, in as far as possible, equalize the parties respective standards of living and maintain them at a level as close as possible to the standard

of living enjoyed during the marriage. Higley_v._Higley, 676 P.2d 379, 381 (Utah 1983).

POINT V

THE COURT'S ORDER CONCERNING THE PROVISION OF HEALTH AND DENTAL INSURANCE BY THE RESPONDENT GLADE STEVENS IS INADEQUATE.

In the Judgment and Decree the trial court ordered the Respondent Glade Stevens to be responsible for maintaining health and dental insurance covering the minor children of the parties. (PL. 364). The Court further ordered that any medical and dental expenses not covered by insurance be divided equally between the parties. This was in furtherance of a legislative mandate incorporated in 1984 into Section 30-3-5(1), Utah Code Annotated (1953). The Appellant objected in her Motion To Amend Findings, Motion to Amend Judgment and Motion for New Trial to the requirement that she be obligated to pay one half of the uncovered medical and dental expenses unless the trial court should designate the maximum amount of deductible the Respondent may have under his insurance program. (PL. 377).

The basis for her objection was that if the court did not designate the maximum amount of deductible the requirement that the Respondent Glade Stevens carry insurance would become meaningless except in the case of a major medical catastrophe. He would be free to select an insurance program where the annual deductible is in excess of \$1,000.00 per year per child. This

type of program and option is available to the general public. Appellant can ill afford paying upwards of \$500 per year on medical and dental treatment of each child on the low fixed income available to her.

Although there is merit in the proposition that the Appellant can petition the court for relief if the Respondent Glade Stevens does in fact purchase such major medical coverage in lieu of the more traditional \$100.00 deductible policy, the court could have short-circuited this necessity by limiting the deductible in its judgment. Particularly where that relief was requested in the Motion to Amend. This Court should now require that that be the order in this case.

POINT VI

IT WAS ERROR FOR THE TRIAL COURT TO REFUSE TO AWARD COSTS INCURRED IN OBTAINING AN APPRAISAL OF THE FARMING AND TRUCKING BUSINESSES OWNED BY THE PARTIES.

In its written opinion dated January 28, 1985, the trial court made the following award with regard to attorneys fees and costs:

As to the attorneys fees requested by the defendant, the Court will allow the following; \$4,000.00 for necessary time and efforts spent in connection with discovery and preparation for trial of this case. The Court will allow the costs of court and the additional expense for hiring Dr. Ingram and \$700.00 for the investigator, Tom Proctor. The Court is of the opinion that the claims against Milton Stevens should not be compensated back to the defendant, since it would not be an appropriate precedent where the Court does not find that the claims against a third party to

this proceeding who has been put to considerable expense to defend his estate, have been proved. (PL. 306).

On February 21, 1985, Appellant submitted to the Court a Memorandum of Costs and Disbursements, pursuant to Rule 54(d), Utah Rules of Civil Procedure, claiming, among other costs, the expert witness fees of Certified Business Appraisals, Inc., for the testimony and professional appraisal work of one of its employees, Thomas O. Kysar, ASA. (R. 310). The Respondents objected to the entire award of costs in an objection dated March 6, 1985. (R. 313). In a ruling dated April 11, 1985, the Court modified its earlier language concerning costs by inserting the words "cost of pursuing" before the word "claims" in the third full sentence set forth above so that it now reads:

"the Court is of the opinion that the cost of pursuing claims against Milton Stevens should not be compensated back to defendant, since it would not be an appropriate precedent where the Court does not find that the claims against a third party to this proceeding, who has been put to considerable expense to defend his estate, have been proved." (Pl. 351).

In another ruling dated the same date, April 11, 1985, the trial court approved all of Appellant's costs except those for the appraisal. (PL. 353).

Section 21-5-8, Utah Code Annotated (1953), as amended, provides for the taxation of witness fees as costs. Further, Section 30-3-3, Utah Code Annotated (1953), as amended, allows the court, in divorce actions to order either party to pay sums necessary to allow the other party to prosecute or defend the

action. This Court has previously held that in an action for wrongful death, expert witness fees are not payable under Section 21-5-8, Utah Code Annotated. Frampton_v._Wilson, 605 P.2d 771 (Utah 1980). The Court cited the lack of specific statutory authority for such an award. However, in a divorce action there is specific authorization for the Court to make such orders as are necessary to allow a matter to be fully litigated. Section 30-3-3, Utah Code Annotated. This may well include ordering one party to pay the costs of experts brought into the court to assist the court in making difficult decisions in divorce matters. The Courts frequently make these types of orders in the area of custody home studies.

In the instant case the Court did not refuse the requested costs on the basis of the reasoning in Frampton_v._Wilson, supra, but rather found that the Appellant's use of the expert witness was an attempt to pursue claims against Milton Stevens, which claims were unsuccessful. That was not the purpose and intent of the use of the appraiser. The primary use of the appraiser was to put a value on all of the property of the marital estate. Because there was considerable controversy as to what property was and was not part of the marital estate he appraised it all and let the court determine who owned what. No real property belonging to Milton and Margaret Stevens was included within Mr. Kysar's appraisal (EX. 12, page 23). The only items of property

belonging to Milton Stevens actually appraised by Mr. Kysar were his obsolete farm implements. This is hardly pursuing a claim against Mr. Stevens property.

Further, even had the trial court properly construed the purpose for the expert testimony and rejected it outright in favor of the testimony of the Respondents, the general rule would still allow compensation for this cost. In 20 Am Jur 2d Costs Section 65, the rule is stated as follows:

Where fees of expert witnesses are allowable as costs by statute, it has been held that the facts [sic] that the expert's opinion was not accepted by the court and that, on the issue on which he testified for the defendant, the defendant was unsuccessful, are no reason for disallowing the fees as costs.

See Glass v. Aetna Casualty & Surety Co. 166 So.2d 552 (La. App. 1964).

The Appellant is entitled to costs in this case expended in protecting her interest in the marital estate. The only reason the claim for the appraisal was rejected was because the appraisal did not establish the ownership of certain property by the marital estate. However, that was not its purpose. Its purpose was to give a value to each item of the estate including, most importantly, the value of the farming and trucking businesses as going concerns. It is unknown whether the Court intentionally failed to address the question of the value of the businesses. However, it is clear that they have value. The

appraisal was necessary in order to present to the court a guide for evaluating the entire marital estate.

CONCLUSION

The Appellant is entitled to an order of this Court requiring that the entire matter be returned to the District Court to complete the fact-finding process. This Court should require the District Court to place a specific value on each substantial item of property of the marital estate and to state the amount of income found to be earned by the Respondent husband at the time of the divorce.

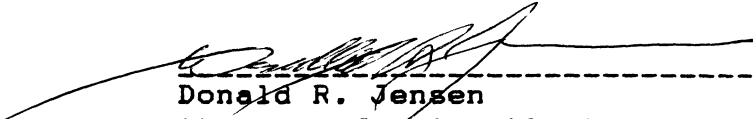
In doing so this Court should first reverse the District Court's determination that those items of equipment upon which a security interest was placed in contemplation of trial belong to the Defendant Milton Stevens and not the marital estate. The Court should also determine that there is a value in the farming and trucking businesses and require the Court to value and distribute the same, together with the other undistributed property.

This Court should require that the District Court specify the level of deductible that the Respondent husband may have on his health and dental insurance, or require the District Court to do so.

Finally, this Court should order that Appellant's costs in

obtaining the appraisal of the marital estate be taxed to the Respondents.

Respectfully submitted this 25 day of April, 1986.



Donald R. Jensen
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I mailed four true and correct copies of the foregoing Appellant's brief, postage prepaid, to Eldon A. Eliason, attorney for Respondents, Box 605, Delta, Utah 84624, this 25 day of April, 1986.



ADDENDUM

Decision, dated January 28, 1985.

Ruling, dated April 11, 1985.

Ruling, dated April 11, 1985.

Findings of Fact and Conclusions of Law, dated May 17, 1985.

Minute Entry, dated June 19, 1985.

Uniform Child Support Schedule

Excerpt from Appellant's Written Final Argument

Filed Jan 28-1984

IN THE FOURTH JUDICIAL DISTRICT COURT OF MILLARD COUNTY

STATE OF UTAH

GLADE STEVENS, MILTON STEVENS,
and MARGARET STEVENS,

Civil No. 7601

Plaintiffs,

vs.

DECISION

ELLEN I. STEVENS,

Defendant.

This matter was tried to the Court on November 27th and 28th, 1984, a Decree of Divorce having been heretofore entered and the issues reserved for hearing at this time were child custody and visitation, child support, alimony and division of property, payment of debts, provision for payment of medical and dental expenses of the minor children of the parties, and in the Decree continued the terms of the interim Order previously entered by the Court to remain in effect until the aforesaid issues were resolved.

The Court now having heard all of the evidence in the case relative to the above-issues, now enters its:

DECISION

The Court finds that the defendant is a fit and proper person to have the primary care, custody and control of the three minor children of the parties, subject to the right of the ^{plaintiff} ~~defendant~~ to

visit with said children liberally at reasonable times and places, not to interfere with school work or church activities, and upon reasonable notice to the defendant as to the time for such visitation. The Court also requires that defendant make the children available for extended summer visitation with the plaintiff of at least two full weeks, visitation during the Christmas holiday, and other major holidays to be alternated between the parties from year to year.

The Court finds that a reasonable sum for the plaintiff to pay to the defendant for the support and maintenance of each child is the sum of \$175.00 per child per month, the same to be payable on the 1st and the 15th day of each and every month commencing with the month of February, 1985. ~~Defendant~~ *Plaintiff* to provide health and medical insurance for the minor children, including dental care. The parties are to split uncovered expenses for these items.

The Court finds that it is reasonable for the plaintiff to pay to the defendant alimony in the sum of \$175.00 per month, the same payable in semi-monthly installments of \$87.50 on the 1st and \$87.50 on the 15th day of each and every month.

The Court finds that the marital assets acquired by the parties consist of an old and a new home located at Fillmore, each with certain household furniture and fixtures, a 1980 Freightliner hay truck, two Ford Pickups, and a Ford truck used by plaintiff in his farming and business, and a 1980 Mercury automobile and twenty acres of land. The Court finds that a proper distribution of the marital assets should be as follows:

TO THE DEFENDANT:

The new home, together with all household furniture, fixtures, and appliances therein. The balance of the mortgage or lien against the home is to be paid and discharged by the plaintiff. The Court also awards the defendant the 1980 Mercury automobile, the same to be free and clear from debt or such debt as is on the vehicle assumed by the plaintiff.

TO THE PLAINTIFF:

The old home and contents, the Ford pickup trucks and the Ford truck, as well as the 1980 Freightliner, and any other miscellaneous farm implements and machinery, and the benefit of plaintiff's interest in crops that have been harvested and are being held for sale or have been sold and other income related to his business. The plaintiff is also entitled to the twenty acres of farm land he owns with another individual.

The plaintiff is required to pay and discharge all the debts of the parties, whether related to business activities or against other items hereinabove distributed. Other debts incurred by either party during the course of separation shall be paid and discharged by the party incurring same. The Court finds that the defendant has failed to establish that the plaintiff, Glade Stevens, has any interest in and to the property identified on the "Security Agreement to Milton Stevens" and also the various items of property listed and identified in the plaintiff's "Appraisal Exhibit" attached to plaintiff's written summation and there identified as "No security agreement items". Although Glade Stevens has had the right to use many of the items in his farming operations, and has economically benefitted from them,

there has been no showing that he has any equity interest in and to those items to which the defendant has any proper claim at this time.

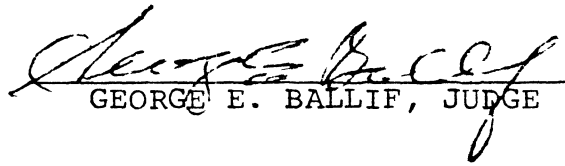
Other claims that the plaintiff owns other real estate in Fillmore and St. George, have not been established. The Court further finds that although the income tax returns supplied by plaintiff, on their face may not justify the award of support and alimony hereinabove provided, the Court in hearing the evidence determined that a substantial amount of tax-free income seems to be generated by said plaintiff's activities, and that he can afford to pay the sums as support and alimony which have been hereinabove provided for.

As to the attorneys fees requested by the defendant, the Court will allow the following; \$4,000.00 for necessary time and efforts spent in connection with discovery and preparation for trial of this case. The Court will allow the costs of court and the additional expense for hiring Dr. Ingram and \$700.00 for the investigator, Tom Proctor. The Court is of the opinion that the claims against Milton Stevens should not be compensated back to the defendant, since it would not be an appropriate precedent where the Court does not find that the claims against a third party to this proceeding who has been put to considerable expense to defend his estate, have been proved.

Counsel for the plaintiff is directed to prepare Findings of Fact, Conclusions of Law and Decree in accordance with the above and foregoing Decision, the same to be submitted to counsel for the defendant

for his approval as to form and content consistent with the above and forgoing Decision, then to the Court for signing and entry.

Dated at Provo, Utah County, Utah, this 28th day of January, 1985.



GEORGE E. BALLIF, JUDGE

Filed April 11-1965

IN THE FOURTH JUDICIAL DISTRICT COURT OF MILLARD COUNTY

STATE OF UTAH

GLADE STEVENS, MILTON
STEVENS and MARGARET
STEVENS,

Civil No. 7601

Plaintiffs,

vs.

R U L I N G

ELLEN I. STEVENS,

Defendant.

The objections to Findings of Fact, Conclusions of Law and Decree filed by counsel for defendant having been reviewed by the Court, and the objections of plaintiffs to defendant's Memorandum of Costs and Disbursements having been reviewed by the Court, the Court now Rules on the objections as follows:

As to the objections of plaintiffs to the findings of Fact, Conclusions of Law, Judgment and Decree the Court Rules as follows:

1. Defendant's objection to paragraph 1 of the Findings of Fact is well-taken and that prepared by counsel for plaintiffs is Ordered stricken and the Court adopts the Findings of Fact prepared by counsel for defendant to cover care, custody and control of the children as well as visitation.

2. The Court finds that the last sentence of said paragraph 2 should read: "In addition thereto, the plaintiffs shall provide health and medical insurance for the minor children, including dental care and the parties shall divide equally any uncovered expenses for these items.

3. This paragraph is consistent with the Court's Decision.

4. The Court Orders that the first full paragraph of paragraph 4 at page 4 be stricken (the paragraph reads: "The Court finds from the evidence adduced that there is a substantial amount of indebtedness and liens against both the homes, truck and vehicles." With this deletion the language of the balance of paragraph 4 substantially complies with the Decision of the Court and may be incorporated into the final findings.

5. Paragraphs 5, 6, and 7 of the Proposed Findings of plaintiffs are approved and may be incorporated into the final Findings to be adopted by the Court.

6. The Court finds that paragraph 8 submitted by plaintiffs is not consistent with the Court's Decision and directs that paragraph 5 submitted by counsel for the defendant be adopted as the appropriate finding on this issue to be incorporated in the final Findings to

be adopted by the Court.

7. The Court finds that paragraph Nos. 9, 10, and 11 of the Findings submitted by plaintiffs are substantially in conformity with the Court's Decision and should be adopted and entered as Findings in the final Findings of Fact adopted by the Court.

As to the language of paragraph 11 of the plaintiffs' proposed Findings the Court intended that the third full sentence of the second full paragraph on page 4 of the Court's Decision should have read as follows:

"The Court is of the opinion that the cost of pursuing claims against Milton Stevens should not be compensated back to defendant, since it would not be an appropriate precedent where the Court does not find that the claims against a third party to this proceeding, who has been put to considerable expense to defend his estate, have been proved."

Counsel for plaintiffs in preparing the final Findings may provide in paragraph 11 language consistent with the intent of the Court in that sentence to be talking of costs of pursuing claims, rather than the claims themselves.

Based upon the foregoing Ruling, the Court directs that counsel for the plaintiffs prepare a new set of Proposed Findings of Fact, Conclusions of Law and Decree based upon the aforesaid changes in the

Findings of Fact, the same to be incorporated into the Conclusions of Law and Decree in this matter.

Dated at Provo, Utah County, Utah, this 11th day of April, 1985.


GEORGE E. BALLIF, JUDGE

Filed April 11 - 1985

IN THE FOURTH JUDICIAL DISTRICT COURT OF MILLARD COUNTY

STATE OF UTAH

GLADE STEVENS, MILTON
STEVENS and MARGARET
STEVENS,

Civil No. 7601

Plaintiffs,

vs.

R U L I N G

ELLEN I. STEVENS,

Defendant.

The defendant having filed a Memorandum of Costs and Disbursements, to which the plaintiffs have filed an objection and the Court having fully reviewed the Memorandum of Costs and Disbursements as well as its Decision relative to costs, and the objections filed by plaintiffs, now settles the matter of costs as follows: Items 10/3/83 covering the filing fee of Answer and Counterclaim is allowed.

Item 11/30/83 Milton B. Steven's Subpoena is allowed.

Item 2/3/84 Millard County Sheriff, Service of subpoena is allowed.

Item 2/27/84 Tipton Reporting Service, Depositions, Milton Stevens, Sr. and Glade Stevens for \$189.00 is allowed.

Item 5/ 17/84 Millard County Clerk, Order to Show Cause, \$5.00 is allowed.

Item 5/21/84 Myron Frazier, preparation of transcript, \$17.00, is allowed.

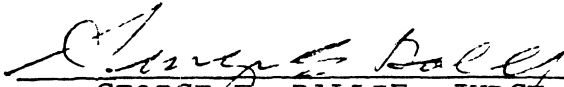
Dr. Greg Ingram, witness & Travel, \$250.00 is allowed.

Certified Business Appraisals, Inc. appraisal & expert
witness fee, \$2,531.15 disallowed.

Proctor Investigations & Consuling, Inc., \$700.00 allowed.

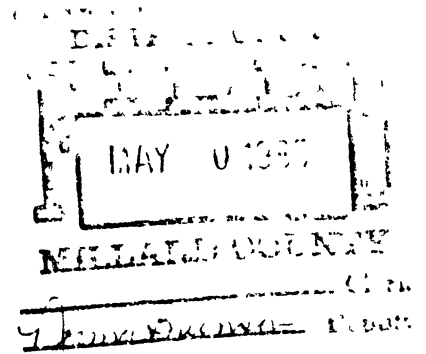
TOTAL FOR ALL COSTS ALLOWED: \$1,224.55.

Dated at Provo, Utah County, Utah, this 11th day of April, 1985.



GEORGE E. BALLIF, JUDGE

ELDON A. ELIASON
Attorney for Plaintiff
Box 605
Delta, Utah 84624
864-2515



IN THE FOURTH DISTRICT COURT OF MILLARD COUNTY, UTAH

GLADE STEVENS, MILTON
STEVENS, MARGARET STEVENS,

Plaintiffs,

vs.

ELLEN I. STEVENS,

Defendant

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FINDINGS OF FACT and CONCLUSIONS
OF LAW

Civil No. 7601

This matter came on for hearing before the Court on November 27th and 28th, 1984. The Court had theretofore entered a decree of divorce reserving for the time of the trial the issues of child custody and visitation, child support and alimony, division of property, payment of debts, provisions for payment of medical and dental expenses for the minor children of the parties, and continued the terms of the terms of the interim order previously entered by the Court. The Court having heard the evidence presented by the parties, having reviewed the exhibits submitted by the parties and having considered the final written arguments submitted in lieu of oral arguments and summation, now makes and enters the following Findings of Fact:

FINDINGS OF FACT

In addition to the Findings of Fact made and entered previously in this same matter, the Court Finds:

1. The defendant Ellen I. Stevens is a fit and proper person to have the care, custody and control of the three minor children of the parties, subject to the right of the plaintiff to visitation with the said children liberally and at reasonable times and places, not to interfere with school work or church activities and upon reasonable notice to the defendant as to the time for such visitation. The plaintiff is further granted extended summer visitation with the minor children of the parties for a period of two weeks or such longer period as the parties may mutually agree to. Plaintiff shall be entitled to visitation with the minor children of the parties on every other major holiday each year, the holidays to be alternated between the parties from year to year. Such holidays are New Years Day, Memorial Day, July 4th, July 24th, Labor Day and Thanksgiving and Christmas.

2. The Court finds that a reasonable sum for the plaintiff to pay to the defendant for the support and maintainance of each child is the sum of \$175 per child per month, the same to be payable on the first and fifteenth day of each and every month commencing with the month of February, 1985. In addition thereto the plaintiff shall provide health and medical insurance for the minor children, including dental care, and the parties shall divide equally any uncovered expenses for these items.

3. The Court further finds that it is reasonable for the plaintiff to pay to the defendant alimony in the sum of \$175 per month, the same to be payable in two semi-monthly installments of \$87.50 on the first and the fifteenth of each and every month.

4. The Court finds from the evidence adduced that there is a substantial amount of indebtedness including liens against the homes, truck and vehicles.

The Court finds that the proper distribution of the marital assets should be as follows:

To the defendant: The New Home, together with all household furniture, fixtures and appliances therein. The balance of the mortgage or lien against the home is to be paid or discharged by the plaintiff. The 1980 Mercury automobile, the same to be free and clear from debt or such debt as is on the vehicle, assumed by the plaintiff.

To the plaintiff: The Old Home and contents, the Ford Pickup trucks and the Ford Truck as well as the 1980 Freightliner and any other miscellaneous farm implements and machinery, and the benefit of the parties' interest in the crops that have been harvested and are being held for sale or have been sold and all other income related to his business. The plaintiff is also entitled to all of the equity in the 20 acres of farm land being purchased from Earl Stevens.

5. The Court finds that the plaintiff should be required to pay and discharge all of the debts of the parties, whether related to business activities or against other items hereinabove distributed. Other debts incurred by either party during the course of separation shall be paid and discharged by the party incurring said debt.

6. The Court finds that defendant has failed to establish that the plaintiff Glade Stevens has any interest in and to the

and also the various items of property listed and identified in plaintiff's exhibit No. D, and identified as No Security Agreement Items.

The Court finds that although Glade Stevens, plaintiff herein has had the right to use many of the items in his farming operation and has economically benefited from them, there has been no showing that he has any equity interest in and to those items to which the defendant has any proper claim at this time.

7. The Court further finds that other claims registered by the defendant that the plaintiff owns other real estate in Fillmore and St. George or elsewhere have not been established.

8. The Court finds that although the income tax returns supplied by the plaintiff on their face may not justify the award of support and alimony hereinabove provided, the Court has determined from the evidence submitted at the trial, that a substantial amount of tax-free income is generated by the plaintiff's activities, and that he can afford to pay the sums for support and alimony as hereinabove provided.

9. The Court finds that it is reasonable to award \$4000 total attorney fees as compensation for the necessary time, efforts, and expenses of defendant and her attorney in the discovery and presentation of the case. The Court further finds that it is reasonable to award expense for the hiring of Dr. Ingram and that his medical services be paid by the plaintiff herein.

10. The Court further finds that the payment of \$700 for an investigator Tom Proctor, be allowed to the defendant.

11. The Court finds that the cost of pursuing claims against Milton Stevens should not be compensated back to defendant, since it would not be an appropriate precedent where the Court does not find that the claims against a third party to this proceeding, who has been put to considerable expense to defend his estate, have been proved.

CONCLUSIONS OF LAW

The Court, based on the said Findings of Fact makes the following Conclusions of Law:

1. A Decree of Divorce having been previously granted and filed effective upon filing the 15th day of November, 1984. The Court further concludes that the defendant is entitled to primary care, custody and control of the three minor children of the parties, subject to the right of the plaintiff to visitation with the said children liberally and at reasonable times and places, not to interfere with school work or church activities and upon reasonable notice to the defendant as to the time for such visitation. The plaintiff is further granted extended summer visitation with the minor children of the parties for a period of two weeks or such longer period as the parties may mutually agree to. Plaintiff shall be entitled to visitation with the minor children of the parties on every other major holiday each year, the holidays to be alternated between the parties from year to year. Such holidays are New Years Day, Memorial Day, July 4th, July 24th, Labor Day, Thanksgiving and Christmas.

2. The Court concludes that it is reasonable for the plaintiff

to pay to the defendant for the support and maintainance of each child the sum of \$175 per month, the same to be payable on the first and fifteenth day of each and every month, commencing with the month of February, 1985. In addition thereto, the plaintiff shall provide health and medical insurance for the minor children including dental care, and the parties shall divide equally any uncovered expenses for these items.

3. The Court concludes that the plaintiff should pay to the defendant alimony in the sum of \$175 per month, the same to be payable in two semi-monthly installments of \$87.50 on the first and the fifteenth of each and every month.

4. The Court concludes that the proper distribution of the marital assets should be as follows:

To the defendant: The New Home, together with all household furniture, fixtures and appliances therein. The balance of the mortgage or lien against the home is to be paid or discharged by the plaintiff. The 1980 Mercury automobile, the same to be free and clear from debt or such debt as is on the vehicle, assumed by the plaintiff.

To the plaintiff: The Old Home and contents, the Ford Pickup trucks and the Ford Truck as well as the 1980 Freightliner and any other miscellaneous farm implements and machinery, and the benefit of the parties' interest in the crops that have been harvested and are being held for sale or have been sold and all other income related to his business. The plaintiff is also entitled to all of the equity in the 20 acres of farm land being

purchased from Earl Stevens.

5. The plaintiff should be required to pay and discharge all of the debts of the parties, whether related to business activities or against other items hereinabove distributed. Other debts incurred by either party during the course of separation shall be paid and discharged by the party incurring such debt.

6. The defendant has failed to establish that the plaintiff Glade Stevens has any interest in and to the property identified on the security agreement to Milton Stevens and also the various items of property listed and identified in plaintiff's Exhibit D, and identified as No. Security Agreement Items.

Although Glade Stevens, plaintiff herein has had the right to use many of the items in his farming operation and has economically benefited from them, there has been no showing that he has any equity interest in and to those items to which the defendant has any proper claim at this time.

7. Other claims registered by the defendant that the plaintiff owns other real estate in Fillmore and St. George or elsewhere have not been established.

8. It is reasonable to award \$4000 total attorney fees as compensation for the necessary time, efforts, and expenses of defendant and her attorney in the discovery and presentation of this case. The medical services of Dr. Ingram should be paid by the plaintiff herein.

9. The payment of \$700 for an investigator Tom Proctor should also be paid by the plaintiff.

Dated this 17 day of ~~April~~ ^{May}, 1985.

W. E. B.
DISTRICT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Findings of Fact, Conclusions of Law postage prepaid this 24 day of April, 1985 to Donald R. Jensen, MCCULLOUGH, & JENSEN, 930 South State, Suite 10, Orem, Utah 84058.

Cheryl Roper

Filed June 21-1985

In the Fourth Judicial District Court

of the State of Utah
In and For ~~Utah~~^{XXXX} County
MILLARD

GLADE STEVENS, MILTON STEVENS,
and MARGARET STEVENS,

Plaintiff

vs.

ELLEN I. STEVENS,

Defendant

MINUTE ENTRY

CASE NUMBER 7601

DATED June 19, 1985

George E. Ballif

JUDGE

This matter came before the court in accordance with Rule 2.8 of the Rules of Practice of the District Courts and the court having considered the matter now enters its

R U L I N G

Defendant's motion to amend Findings, motion to amend Judgment and Motion for New Trial is denied.

Dated this 20 day of June, 1985.



GEORGE E. BALLIF, JUDGE

Copies to: Eldon A. Eliason
Donald R. Jensen

Box 605, Delta, Utah 84624
930 S. State St., Suite 10, Orem, Ut.

UNIFORM CHILD SUPPORT SCHEDULE (Amount To Be Paid Per Child)

Gross Monthly Income (4.3 Weeks)	Total Number of Children							
	1	2	3	4	5	6	7	8
0 - 217	0	0	0	0	0	0	0	0
* 218 - 295	28	21	17	14	12	11	9	8
296 - 384	33	28	22	19	16	14	12	11
385 - 473	47	36	28	23	20	18	15	14
474 - 562	56	42	34	29	25	21	19	17
563 - 651	67	50	40	33	29	25	22	20
652 - 741	76	57	50	39	33	29	25	23
742 - 830	85	64	51	43	36	32	28	26
831 - 919	96	71	57	48	41	36	32	29
920 - 1008	105	80	63	53	46	40	35	32
1009 - 1098	115	87	69	57	49	43	38	34
1099 - 1187	125	94	75	62	54	47	41	37
1188 - 1276	135	101	81	68	57	51	44	40
1277 - 1366	144	109	87	73	62	54	48	43
1367 - 1455	154	116	92	77	66	57	51	46
1456 - 1544	164	123	98	82	70	62	55	49
1545 - 1633	173	130	104	87	75	66	57	53
1634 - 1723	184	138	110	91	78	69	61	55
1724 - 1812	193	145	116	97	83	73	64	59
1813 - 1901	202	152	122	102	87	76	68	61
1902 - 1991	213	159	129	106	91	80	71	64
1992 - 2080	222	167	133	111	95	83	74	67
2081 - 2169	232	174	139	116	99	87	77	70
2170 - 2258	242	181	145	121	104	91	81	73
2259 - 2348	252	188	151	126	108	95	84	76
2349 - 2437	261	197	157	131	112	98	87	78
2438 - 2526	271	204	163	136	116	102	90	82
2527 - 2616	281	211	168	140	121	105	94	84
2617 - 2705	290	218	174	145	124	109	97	88
2706 - 2794	301	226	180	150	129	112	99	90
2795 - 2883	310	233	186	156	133	116	103	94
2884 - 2973	319	240	192	160	137	121	106	96
2974 - 3062	330	247	198	165	142	124	110	99
3063 - 3151	339	258	203	169	148	128	112	102
3152 - 3240	348	265	209	174	152	132	115	104
3241 - 3329	358	273	215	179	156	135	118	107

For incomes between \$218-295, subtract \$217 from the income to arrive at available income. The child support amount must exceed the available income amount.

UNIFORM CHILD SUPPORT SCHEDULE
(Amount To Be Paid Per Child)

Gross Monthly Income (4.3 Weeks)	Total Number of Children							8
	1	2	3	4	5	6	7	
3330 - 3418	368	280	221	184	160	139	121	110
3419 - 3508	377	287	227	189	165	143	125	113
3509 - 3597	387	295	233	194	169	146	128	116
3598 - 3686	397	302	239	198	173	150	131	119
3687 - 3775	407	310	244	203	177	154	134	122
3776 - 3865	416	317	250	208	181	157	138	125
3866 - 3954	426	324	256	213	186	161	141	128
3955 - 4043	436	332	262	218	190	165	144	131
4044 - 4132	446	339	268	223	194	168	147	134
4133 - 4222	455	347	274	228	198	172	150	137
4223 - 4311	465	354	279	233	203	176	154	140
4312 - 4400	475	362	285	237	207	179	157	142
4401 - 4489	485	369	291	242	211	183	160	145
4490 - 4579	494	376	297	247	215	187	163	148
4580 - 4668	504	384	303	252	220	190	166	151
4669 - 4757	514	391	309	257	224	194	170	154
4758 - 4846	523	399	315	262	228	198	173	157
4847 - 4936	533	406	320	267	232	202	176	160
4937 - 5025	543	413	326	271	237	205	179	163
5026 - 5114	553	421	332	276	241	209	183	166
5115 - 5203	562	428	338	281	245	213	186	169
5204 - 5293	572	436	344	286	249	216	189	172
5294 - 5382	582	443	350	291	254	220	192	175
5383 - 5471	592	450	355	296	258	224	195	177
5472 - 5560	601	458	361	301	262	227	199	180
5561 - 5650	611	465	367	305	266	231	202	183
5651 - 5739	621	473	373	310	270	235	205	186
5740 - 5828	630	480	379	315	275	238	208	189
5829 - 5917	640	487	385	320	279	242	211	192
5918 - 6007	650	495	391	325	283	246	215	195
6008 - 6096	660	502	396	330	287	249	218	198
6097 - 6185	669	510	402	335	292	253	221	201
6186 - 6274	679	517	408	340	296	257	224	204
6275 - 6364	689	524	414	344	300	260	227	207
6365 - 6453	699	532	420	349	304	264	231	210
6454 - 6542	708	539	426	354	309	268	234	212

UNIFORM CHILD SUPPORT SCHEDULE
(Amount To Be Paid Per Child)

Monthly Income 3 Weeks)	Total Number of Children							
	1	2	3	4	5	6	7	8
3 - 6631	718	547	431	359	313	271	237	215
2 - 6721	728	554	437	364	317	275	240	218
2 - 6810	737	562	443	369	321	279	244	221
1 - 6899	747	569	449	374	326	282	247	224
0 - 6988	757	576	455	378	330	286	250	227
9 - 7078	767	584	461	383	334	290	253	230
9 - 7167	776	591	467	388	338	293	256	233
8 - 7256	786	599	472	393	343	297	260	236
7 - 7345	796	606	478	398	347	301	263	239
6 - 7435	806	613	484	403	351	304	266	242
6 - 7524	815	621	490	408	355	308	269	245
5 - 7613	825	628	496	412	360	312	272	247
4 - 7702	835	636	502	417	364	316	276	250
3 - 7792	844	643	507	422	368	319	279	253
3 - 7881	854	650	513	427	372	323	282	256
2 - 7970	864	658	519	432	376	327	285	259
1 - 8059	874	665	525	437	381	330	289	262
0 - 8149	883	673	531	442	385	334	292	265
0 - 8238	893	680	537	447	389	338	295	268
9 - 8327	903	687	543	451	393	341	298	271
8 - 8416	913	695	548	456	398	345	301	274
7 - 8506	922	702	554	461	402	349	305	277
7 - 8595	932	710	560	466	406	352	308	280
6 - 8684	942	717	566	471	410	356	311	283
5 - 8773	951	725	572	476	415	360	314	285
4 - 8863	961	732	578	481	419	363	317	288
4 - 8952	971	739	583	485	423	367	321	291
3 - 9041	981	747	589	490	427	371	324	294
2 - 9130	990	754	595	495	432	374	327	297
1 - 9220	1000	762	601	500	436	378	330	300
1 - 9309	1010	769	607	505	440	382	334	303
0 - 9398	1020	776	613	510	444	385	337	306
9 - 9487	1029	784	619	515	449	389	340	309
8 - 9577	1039	791	624	520	453	393	343	312
8 - 9666	1049	799	630	524	457	396	346	315
7 - 9755	1058	806	636	529	461	400	350	318
6 - 9844	1068	813	642	534	466	404	353	320
5 - 9933	1078	821	648	539	470	407	356	323

EXCERPT FROM APPELLANT'S WRITTEN FINAL ARGUMENT

Kysar of Certified Business Appraisals, Inc., concerning the value of the homes of the parties, the 20 acres of farm land titled in the joint names of the parties, the farming and trucking equipment, the finished hay and the intangible "goodwill" value of the businesses identified as the farming and trucking businesses, together with the liabilities owed by the parties.

With respect to each of these items there is some difference between the parties as to the appropriate value of each item, and the amount of the liabilities. I shall attempt to set forth these differences to aid the Court in making its decision with regard to these matters.

ASSETS

<u>ITEM</u>	<u>PLAINT'S VALUE</u>	<u>DEF'S VALUE</u>
1979 Freightliner tractor/trlrs	\$24,000.00 ¹	\$39,000.00
Hesston Windrower/Cutter	16,000.00 ²	28,800.00
Mower	-0- ³	800.00
5' Gyro Mower	-0- ³	300.00
Harrow	-0- ³	300.00
Danish Harrow	461.00 ⁴	1,300.00
1070 (970) Case Tractor	3,800.00 ⁴	8,000.00
Honda 3-Wheeler	1,300.00 ⁵	1,600.00
New Holland hay hauler (Bale Wagon)	32,000.00 ²	30,400.00
Alumax 7' Sprinkling System	⁶	4,400.00 ⁷

1. Opinion offered by Mr. Ogier in comparison to his own truck.
2. Opinion of Mr. Warner based on comparison from book.
3. Testimony of Plaintiff's father that it is worthless and belongs to him
4. Testimony of Plaintiff's father, and that it belongs to him.
5. Plaintiff's original testimony valued this piece at \$1,250.00 but his later testimony placed it at \$1,300.00.
6. Plaintiff offered no evidence as to value.

ITEM	PLAINT'S VALUE	DEF'S VALUE
1983 Case Tractor/Disc	30,350.00 ⁸	26,500.00
2-Ton Truck (International)	8,000.00 ⁹	30,000.00
2-Ton Truck (Ford)		20,000.00 ¹¹
22' Mobile Home		3,000.00
3 Grain Drills	\$3,500.00 ¹³	\$13,500.00 ¹⁴
Cultivator	-0- ³	550.00
2 Utility trailers		4,000.00 ¹⁵
1976 Ford Pick Up	2,100.00 ¹⁶	1,500.00
New Holland Hay Baler	8,000.00 ¹⁷	5,600.00
Crustbuster Plow	1,200.00 ¹⁸	1,200.00
Farmall F236 Tractor		2,000.00
2 John Deere Twin Rakes	5,300.00 ⁴	5,300.00
Diesel Tractor (operates pump)	300.00 ¹⁹	500.00 ¹⁹

7. Based upon the evidence of Mr. Ross Stevens Defendant accepts that the system belongs only half to the Plaintiff and now reduces the value to \$4,400.00.
8. Plaintiff's original testimony. The list presented on the second day of trial placed the value at \$26,500.00 without explaining the difference.
9. Appraisal by Plaintiff and by Mr. Warner.
10. Plaintiff denies the existence of this item.
11. Mr. Kysar testified that the truck was present on the premises on both visits. Plaintiff offered no explanation for the truck nor denied that it was present.
12. Plaintiff claims that the trailer belongs to a Mr. Robert De Loge. However he presented nothing other than his testimony. He admitted that the trailer he is now living in the trailer is located on his father's farm and he lives in it.
13. Plaintiff lists only 1 grain drill. In his second list he values it at \$3,500.00 with no explanation. He did not deny the existence of the other 2 grain drills.
14. Mr. Kysar viewed and appraised 3 grain drills used in tandem.
15. Mr. Kysar viewed and appraised 2 utility trailers. Compare Plaintiff's First answer to Interrogatories, page 3, #5 where he lists a 1981 utility trailer purchased in 1981 for \$21,200 with a present value of \$9,000.
16. Plaintiff's second value sheet lists the price at \$1,500.00 with no explanation as to the difference.
17. Plaintiff's second value sheet lists the value at \$5,600, accepting Mr. Kysar's valuation.
18. Plaintiff did not list it on his original sheet.
19. Mr. Ross Stevens testified that this tractor was half his. Plaintiff accepts this testimony and reduces her claim to the \$500.00 listed.

	ITEM	PLAINT'S VALUE	DEF'S VALUE
1	John Deere Combine	37,000.00 ²⁰	38,400.00 ²¹
2	Sioux Silo	1,100.00 ²	2,100.00
	1980 Mercury Cougar	5,200.00 ²²	4,200.00
3	1978 1/2-Ton Truck	10	-0- ²³
	Morris Rod Weeder	1,600.00 ¹⁸	1,600.00
4	Compressor	100.00 ¹⁸	100.00
	Loader	1,000.00 ⁴	1,000.00
5	Ditcher	50.00 ¹⁸	50.00
	Hay Lift	2,100.00 ¹⁸	2,100.00
6	Fuel Tank	275.00 ¹⁸	275.00
	Plaintiff's 2d Pickup	2,400.00 ²⁴	2,400.00 ²⁴
7	Furniture and Appliances	\$5,800.00 ²⁴	\$5,800.00 ²⁴
	Snowmobile	450.00 ²⁴	450.00 ²⁴
8	1980 Monte Carlo	25	4,200.00 ²⁵
	Children's savings	4,000.00 ²⁶	3,000.00 ²⁶
9	Credit Union Account	27	4,000.00 ²⁷
	New Home	65,000.00 ²⁸	50,277.00
10	Old Home	30,000.00 ²⁸	37,063.00
	Canyon Road Home	29	4,000.00 ²⁹
11	20 Acres (Earl Stevens land)	14,000.00 ³⁰	25,000.00

20. Plaintiff's witness, Mr. Whatcott appraised it at \$37,472.00.
21. Defendant accepts Mr. Ross Steven's testimony that one of the combines appraised by Mr. Kysar belongs to him and thus reduces her claim to \$38,400.
22. Appears on both of Plaintiff's lists.
23. Plaintiff is unable to explain this entry. Mr. Kysar could not identify where he obtained this entry. Plaintiff is willing to admit that no such truck exists.
24. This item appears on Plaintiff's first list. Defendant did not have it appraised but accepts Plaintiff's valuation.
25. This is the car being driven by Plaintiff's girlfriend which Plaintiff claims is a gift or loan from his friend Glen Kenworthy.
26. There was a difference in the testimony of the parties on this account.
27. Not discussed at trial but should be divided.
28. Plaintiff's estimate.
29. Plaintiff testified on cross-examination that he was owed \$4,000.00 on this home by Mike Frazier.
30. Estimate of Ross Stevens. 20 acres @ \$700.00/acre.

ITEM	PLAINT'S VALUE	DEF'S VALUE
Finished Hay	10,000.00 ³¹	47,352.00 ³²
Cash in Bank		29,154.00 ³³
Account's receivable		17,040.00 ³⁴
Goodwill Value	----- ³⁵	101,686.00 ³⁵
TOTAL	\$316,386.00	\$609,797.00

LIABILITIES³⁶

ITEM	PLAINT'S CLAIM
1979 Freightliner tractor/trlrs	\$30,499.00

31. Based on agreement by Plaintiff to sell 200 tons to Mr. Ogier at \$50.00 per ton. Defendant feels that this was another of Plaintiff's falsifications.
32. This amount of hay was actually viewed by Mr. Kysar, it appears in the photographs, all but one stack of which is 3-wire bails. Mr. Ross Stevens testified that any 3-wire bails belonged to the Plaintiff. Mr. Kysar's valuation is based upon testimony other than the Plaintiff's and his friends. It was confirmed by the person to whom Plaintiff sells his hay.
33. Plaintiff denied that this was an asset. But see his First Answer to Interrogatories, p. 8, #24. Plaintiff's testimony was something to the effect that if it was being held as security for his mortgage on the new home it was not an asset. The market value was greater than the book value.
34. This figure was obtained from Plaintiff and from His First Answer to Interrogatories. Although Plaintiff testified that some of these accounts receivable are in bankruptcy, the only evidence is chapter 13 filings which have been dismissed. The debt is still there.
35. The goodwill value is a function of discretionary cash, less return on investment times the risk factor multiplier. This was adequately discussed by Mr. Tom Kysar. Plaintiff denies that there is any value in his business; that he has no guarantee that he can continue working in his business; and that he is nearly bankrupt.
36. I have only listed the Plaintiff's claim of liabilities. Defendant maintains that the liabilities are those given to Mr. Kysar by the Plaintiff, or at most those claimed in the Plaintiffs' Response to Defendant's Motion to compel discovery and made an exhibit at trial.

<u>ITEM</u>	<u>PLAINT'S CLAIM</u>
Hesston Windrower/Cutter	32,035.00 ³⁷
Mower	(-0-) ³⁸
5' Gyro Mower	(-0-) ³⁸
Harrow	(-0-) ³⁸
Danish Harrow	(461.00) ³⁸
1070 (970) Case Tractor	(3,800.00) ³⁸
New Holland hay hauler (Bale Wagon)	21,742.00 ³⁹
1983 Case Tractor/Disc	18,500.00 ⁴⁰
2-Ton Truck (International)	16,000.00
3 Grain Drills	6,085.00
1976 Ford Pick Up	930.00
New Holland Hay Baler	12,333.00 ⁴¹
2 John Deere Twin Rakes	(5,300.00) ³⁸
John Deere Combine	40,000.00
Loader	(1,000.00) ³⁸
Plaintiff's 2d Pickup	450.00
1980 Monte Carlo	(4,200.00) ⁴²
New Home	27,117.00
Old Home	9,500.00
20 Acres (Earl Stevens land)	24,062.43 ⁴³
TOTAL CLAIMED LIABILITIES	\$239,253.43
(Questioned liabilities)	(14,761.00)
TOTAL IF ALLOWED	\$254,014.43

13 If the Court accepts the Defendant's position in its
14 entirety, subtracting the Plaintiff's reported liabilities of
15 \$111,100 from his demonstrated assets, of \$609,797 it leaves a

- 16 -----
- 17 37. Only \$13,965 claimed in Response to Motion to Compel.
18 38. If the Court believes that this item belongs to the
19 Plaintiff's father, then it should either not be counted
20 above as an asset or should be deducted here as a liability.
21 39. Only \$9,000.00 claimed in Response to Motion to Compel.
22 40. Plaintiff also claims that an additional \$13,000.00 is due
23 for repairs to the transmission. No documentation was
24 provided for these claimed repairs. Further, Plaintiff
25 testified that the breakdown occurred about 2 weeks prior to
26 the trial, after the hearing on the divorce. If there is
such a loss it is entirely the Plaintiff's.
41. Only \$7,633.00 claimed in Response to Motion to Compel.
42. If the Court believes that this item belongs to Mr.
Kenworthy then it should either not be counted above as an
asset or should be deducted here as a liability.
43. Only \$7,272.47 claimed in Response to Motion to Compel.