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Lowell V. Summerhays; attorney for appellant.
Elaine M. Coates; attorney for respondent.

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UTAH COURT

MENT

DOCKET NO. 880219CA

IN THE COURT OF APPEALS OF THE

STATE OF UTAH

ROGER E. PUCKETT, Plaintiff-Respondent, vs. CAROLYN S. PUCKETT, Defendant-Appellant.	Case No. 880219CA Priority 14b

RESPONDENT'S BRIEF

Appeal from Ruling on Motion to Set Aside Judgment of the Seventh Judicial District Court in and for Grand County, the Honorable Boyd Bunnell presiding.

Elaine M. Coates
36 South 100 West
Moab, Utah 84532

Attorney for Respondent

Lowell V. Summerhays
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Murray, Utah 84107

Attorney for Appellant

FILED

SEP 28 1988

Mary T Noonan
Clerk of the Court
Utah Court of Appeals

IN THE COURT OF APPEALS OF THE

STATE OF UTAH

ROGER E. PUCKETT, Plaintiff-Respondent, vs. CAROLYN S. PUCKETT, Defendant-Appellant.	Case No. 880219CA

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Attorney for Appellant

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(con't.)

TABLE OF AUTHORITIES

CASES CITED

RULES CITED

I.

JURISDICTION

The Utah Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Annotated 78-2a-3(g) as amended which states:

> (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over . . .
>
> (g) Appeals from district courts involving domestic relations cases including, but not limited to, divorce, annulment, property division, child custody, support and visitation, adoption, and paternity.

II.

NATURE OF THE PROCEEDINGS BELOW

This appeal is taken from the ruling on defendant's Motion to Set Aside A Judgment for Divorce based upon the plaintiff's Complaint and the stipulation of both parties entered in Civil No. 5603 in the Seventh Judicial District Court in and for Grand County, State of Utah.

III.

ISSUE PRESENTED FOR REVIEW

The following issue is presented for review:

1. DID THE COURT ABUSE ITS DISCRETION IN REFUSING TO ALLOW THE DEFENDANT A HEARING ON HER MOTION TO

SET ASIDE THE DECREE OF DIVORCE UNDER RULE 60(b) WHERE THE DEFENDANT WIFE ALLEGED IN HER AFFIDAVIT THAT HER SIGNATURE ON THE STIPULATION WAS OBTAINED BY THREATS AND INTIMIDATION, BUT THE ALLEGED CONFRONTATION OCCURRED THREE DAYS AFTER THE STIPULATION WAS SIGNED, AND THE MOTION FOR ORAL ARGUMENT WAS FILED THE DAY AFTER THE COURT RULED ON THE MOTION TO SET ASIDE THE JUDGMENT.

IV.

DETERMINATIVE CONSTITUTIONAL PROVISIONS AND STATUTES

There are no determinative Constitution provisions.

Rule 77(b) of the Utah Rules of Civil Procedure, under Part X, District Courts and Clerks provides:

> (b) **Trials and hearings; orders in chambers.** All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers without the attendance of the clerk or other court officials and at any place within the state, either within or without the district; but no hearings, other than one ex parte, shall be conducted outside the county wherein the matter is pending without the consent of all the parties to the action affected thereby.

Rule 2.8 of the Utah Rules of Practice, District and Circuit Courts, provides in applicable parts:

> (a) All motions, except uncontested or ex parte matters, shall be accompanied by a brief statement of points and authorities and any affidavits relied upon in support thereof. . .
> (b) The responding party shall file and serve upon all parties within ten (10) days after service of the motion, a statement of answering points and authorities and counter-affidavits.
> (c) The moving party may serve and file reply points and authorities within five (5) days after service of responding party's points and authorities. Upon the expiration of such five (5) day period to file reply points and authorities, either party may notify the clerk to submit the matter for decision.
> (f) Decision shall be rendered without a hearing unless requested by the court, in which event the clerk shall set a date and time for such hearing.
> (g) In all cases where the granting of a motion would dispose of the action or any issues thereof on the merits with prejudice, the party resisting the motion may request a hearing and such request shall be granted unless the motion is summarily denied. If no such request is made within ten (10) days of notice to submit for decision, a hearing on the motion shall be deemed waived.

Rule 4.5 of the Utah Rules of Practice, District and Circuit Courts, provides in applicable part:

> (b) **Stipulations.** No orders, judgments or decrees upon stipulation shall be signed or entered unless such stipulation is in writing, signed by the attorneys of record for the respective

> parties and filed with the clerk, provided that the stipulation may be made orally in open court.

Administrative Order 3 of the Supplementary Rules of Practice and Seventh Judicial District provides:

> Copies of motions and supporting memorandums to judges under Rule 2.8 of the Uniform Rules of Practice. When motions are submitted to the Court with supporting memorandums in accordance with Rule 2.8 of the Uniform Rules of Practice, and any requests for ruling, counsel shall file the originals with the Clerk of the Court and mail or deliver courtesy copies to the office of the District Judge in Price, Utah, when the matter is filed in Carbon, Emery, Grand or San Juan Counties, and to the office of the District Judge in Vernal, Utah, when the matter is filed in Duchesne, Uintah or Daggett Counties.

V.

STATEMENT OF THE CASE AND DISPOSITION IN LOWER COURT

This case involves a divorce action filed by Roger E. Puckett (plaintiff) against Carolyn E. Puckett (defendant) on September 25, 1987. The matter was heard in the Seventh Judicial District Court on November 2, 1987, at which time the plaintiff was granted a divorce based on his complaint and on a stipulation which had been filed on October 19, 1987. A Rule 60(b) Motion to Set Aside the Judgment relative to the property distribution was filed on

February 12, 1988. The motion was denied on March 10, 1988. Notice of this appeal was filed on April 6, 1988.

The chronology of events in this case is very relevant to the issue raised for review. The plaintiff first consulted an attorney in this matter on September 19, 1987. The verified complaint was filed on September 25, 1987. Plaintiff moved from the residence on September 27, 1987. A stipulation relative to property division and wherein the defendant stated she did not intend to contest this action was signed, first by the defendant and then by the plaintiff, on Friday, October 16, 1987. It was filed with the court at 2:16 p.m. on October 19, 1987. The confrontation complained of by the defendant wherein the plaintiff attempted to take the credit cards from the defendant occurred the evening of October 19, 1987, three days after the signing of the stipulation, according to the affidavit filed by the defendant.

Because the defendant was anxious to move to Texas and enter nursing school, the ninety day waiting period was waived and the matter was heard in court on November 2, 1987. The court found that the stipulation entered into by the parties was reasonable and ordered that its terms be incorporated into the findings and decree. The judge signed

the findings and decree on November 16th and they were filed with the court on November 17, 1987.

The Notice of Entry of Judgment and a copy of the Findings of Fact and Conclusions of Law and the Decree of Divorce were mailed to defendant at her new address in Texas on November 18, 1987.

Defendant's attorney entered his appearance and filed a Motion to Set Aside Judgment under Rule 60(b) on February 12, 1988. The Memorandum of plaintiff's attorney in answer to the motion was filed on February 22, 1988. There was no reply brief from defendant's attorney and on March 10, 1988, the judge made his ruling on defendant's Motion to Set Aside Judgment, while in his office in Price. The decision was mailed to the clerk of the court in Moab and arrived on March 11, 1988, the same day that the Motion for Oral Argument was received by the clerk of the court in Moab from defendant's attorney.

The Notice of Appeal was filed on April 6, 1988, resulting in this present action.

It should be noted that defendant's attorney never asked the Seventh Judicial District Court for a ruling on his Motion for Oral Argument or raised the matter again in any way with the Seventh Judicial District Court. There is

no indication that Administrative Order 3 of the Supplementary Rules of Practice for the Seventh Judicial District was followed.

The court never refused to allow the defendant a hearing on her motion. Rather, the request was not timely filed. Therefore, it cannot be the basis for a claim of abuse of discretion by the trial court.

Before addressing the legal argument in this matter, it is necessary to address the factual inaccuracies in the Appellant's Statement of the Case.

The only emotional or nervous breakdown of the appellant of which the respondent is aware occurred ten years prior to the institution of this action, not shortly before. (See Affidavit of Roger Puckett, pages 1 and 2, paragraphs 3 and 4, appendix "A".) She was not under the care of a physician for any nervous disorder during the pendency of this action. Based on reports from plaintiff's insurance company relative to doctor's bills and prescriptions, he believes the defendant for the first time in years saw a doctor for any kind of emotional distress on October 29, 1987. (See Affidavit of Roger Puckett, page 7, paragraph 9, appendix "A".) She was not taking any kind of tranquilizer or medication for depression or emotional

distress during the pendency of this action prior to October 29, 1987, unless she was paying for it herself rather than securing it through the family's insurance.

The defendant states she was not advised to seek legal representation during the original action. This is refuted by paragraph 4 of the stipulation which she signed wherein it was stated that she understood her right to be represented by separate counsel and had had all matters pertaining to this action fully explained to her. (See paragraph 4, Exhibit "B".) That language was purposely included because defendant repeatedly resisted suggestions that she obtain counsel. This information was incorporated in the Findings of Fact and the Decree of Divorce.

The affidavit of Connie Navarre states that at the time defendant was in the attorney's office reading the stipulation with her daughter, she was told that if there were any terms she did not agree with, she should not sign the stipulation. (See affidavit of Connie Navarre, page 2, paragraph 5, Exhibit "C".) A modification in one paragraph was made at her request. There was no request at that time by defendant to talk with plaintiff's attorney. Rather, defendant deliberately ignored the attorney, even when spoken to by her.

At the time this action was initiated and pending, defendant was gainfully employed at the Canyonlands Campark in Moab, Utah and had been for several years. She had a checking account in her own name at Williamsburg Savings Bank in Moab and had the complete discretionary use of all of her income as plaintiff paid all the household bills and furnished her $480.00 per month for groceries. She had her own money with which she could have hired her own attorney, if she wished to do so.

VI.

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in not conducting a hearing on defendant's Motion to Set Aside the Judgment when the request for oral arguments was not submitted timely and the decision on the motion had already been made before the request was received.

In considering the Rule 60(b) motion, the trial court addressed the question of fraud and duress and found that the defendant failed to make even a prima facie showing of either.

Upon consideration of the values of marital assets provided in the plaintiff's affidavit, the court concluded there was a reasonable distribution of the marital assets.

The evidence does not clearly preponderate against these findings and there is no showing that any inequity resulted from the order so as to constitute an abuse of the trial court's discretion.

The basis for disturbing the lower court's ruling on either the Rule 60(b) motion or the property distribution would be an abuse of discretion. Clearly, there has been none.

VII.

ARGUMENT

POINT I

THE COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO ALLOW DEFENDANT A HEARING ON HER MOTION TO SET ASIDE THE DIVORCE DECREE UNDER RULE 60(b) WHERE THE MOTION REQUESTING ORAL ARGUMENT WAS NOT FILED UNTIL AFTER THE COURT HAD RULED ON THE RULE 60(b) MOTION.

Regardless of the differences in the proffered evidence of the parties, on appeal the question raised is whether the judge abused his discretion by making a decision on a Motion to Set Aside the Judgment under Rule 60(b) without a hearing.

Rule 77, Utah Rules of Civil Procedure provides under paragraph (b):

> "All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers without the attendance of the clerk or other court officials and at any place within the state, either within or without the district . . ."

Clearly, a district court judge may rule on motions at any place within the state. This ruling was made at the judge's office in Price. At the time of the ruling, no request for oral argument had been filed. (See Ruling on Motion to Set Aside Judgment, page 2, date line, Exhibit "D" and Motion for Oral Argument, page 1, date stamp of District Court, Exhibit "E".)

Section (f) of Rule 2.8 of the Utah Rules of Practice, District and Circuit Courts, (followed in the Seventh District) states that "Decisions shall be rendered without a hearing unless requested by the court . . ." While it is not clear whether this section is applicable only to motions for summary judgment which are covered in paragraphs (d) and (e) or to all motions, we submit that it applies to all motions as there is no limiting language in the text.

Rule 2.8 provides under (g) that the party resisting a motion which would dispose of an action with

prejudice may request a hearing within ten days of the time when the motion is submitted for decision. This time would be after the five day period for submission of a reply brief has expired. If not requested within ten days, a hearing on the motion is deemed waived.

There is no provision in Rule 2.8 for the party submitting the motion to request a hearing. However, in practice, a request for a hearing, if requested, most often accompanies the motion at the time it is filed. That was not done in this case. The defendant did not request a hearing until eighteen days after the plaintiff's reply memorandum of points and authorities was filed with the court and a month after the Rule 60(b) motion was filed. During this time, the judge had already ruled on the motion. In addition, applying the provisions of Rule 2.8(g), a hearing on the motion would be deemed waived.

If the defendant had provided a courtesy copy to the judge in Price, the court would have made a ruling on his Motion for Oral Arguments. As there is no ruling on the motion in file, there is reason to believe Administrative Order No. 3 of the Supplemental Rules of Practice for the Seventh Judicial District was not followed.

The judge did not abuse his discretion by not waiting for a request for oral argument to be filed. He had no indication such a request would be filed. If the defendant's attorney had wanted a hearing on the motion, he easily could have requested it at the time he filed the motion. To call the failure of the defendant's attorney to timely request a hearing on a motion an abuse of discretion by the judge would be grossly inequitable and contrary to the Rules of Practice and the Rules of Procedure.

POINT II

THE COURT DID NOT ABUSE ITS DISCRETION IN RULING DEFENDANT HAD NOT ESTABLISHED FRAUD OR DURESS IN THE SIGNING OF THE STIPULATION WHEN SHE DID NOT PROVIDE ANY DATES OR DOCTOR'S NAMES RELATIVE TO MEDICAL TREATMENT, ALLEGE ANY ACT CONSTITUTING FRAUD, AND THE ONE ACT COMPLAINED OF OCCURRED THREE DAYS AFTER THE SIGNING OF THE STIPULATION.

The allegation by the defendant in the motion to set aside the verdict is that plaintiff fraudulently induced the defendant to sign the stipulation. In his accompanying memorandum and in the accompanying affidavit of defendant, there is not one act alleged that indicates any fraudulent act on the part of the plaintiff.

The case relied upon by appellant, Boyce v. Boyce, 609 P.2d 298 (Utah 1980) involved a situation where the husband had knowingly and purposely provided false information in response to requests for discovery and apparently continued giving false information in the court proceedings. Over an extended period of time, he lied to both the wife and the court. Based on those actions by the husband, the court found that the procedures in the court were not equitable or just and that the trial court had not therefore based its decision on the most accurate information which could have been gathered. In Boyce, the husband defrauded not only the wife but also the court. For that reason, the Supreme Court remanded the case to be reconsidered. The standard for review provided by Boyce is for cases involving fraud by one of the parties.

Nothing of like facts has occurred in this case. No fraudulent act has been alleged or established by the defendant. The plaintiff furnished full and accurate information by affidavit to the court at the time the Rule 60(b) motion was being considered. (See Affidavit of Roger Puckett, pages 3-6, paragraph 8, Exhibit "A".) The defendant had the same opportunity to give estimated values of the marital property. She furnished no factual

information to even raise a question as to the reasonableness and fairness of the property distribution. (See Affidavit of Carolyn Puckett, page 2, paragraph 1.a through l, Exhibit "F".) The plaintiff made full disclosure, under oath.

POINT III

THE COURT DID NOT ABUSE ITS DISCRETION IN USING THE PROPERLY EXECUTED STIPULATION AS PART OF THE FINDINGS ON WHICH THE PROPERTY DISTRIBUTION WAS BASED. FURTHER, THE COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO MODIFY THE PROPERTY DISTRIBUTION WHEN DEFENDANT DID NOT PRESENT ANY EVIDENCE IT WAS NOT A FAIR AND REASONABLE DISTRIBUTION.

The defendant has made no showing of an abuse of discretion by the trial court in either the ruling on the Motion to Set Aside Judgment under Rule 60(b) or in the division of the marital property.

> Determination of the value of assets is a matter for the trial court which will not be reviewed in the absence of a clear abuse of discretion. Turner v. Turner, 649 P.2d 6 (Utah 1982).

The stipulation, signed by both parties and considered by the judge in the division of the marital property, was found by the court to be reasonable, both initially at the trial and after review in considering the Rule 60(b) motion. (See Ruling on Motion to Set Aside Judgment, page 2, paragraphs 2, 3, Exhibit "D".)

Defendant has presented no evidence, even by her affidavit, that the stipulation was obtained by any misconduct of the respondent. The conduct complained of happened three days after the signing of the stipulation. (See Stipulation, page 2, date line, Exhibit "B" and Affidavit of Carolyn Puckett, page 2, paragraph 7, Exhibit "F".) If the defendant had second thoughts after signing the stipulation she had two weeks before the hearing in which she could have contacted an attorney and changed her mind.

The stipulation clearly meets the requirements of Utah Rules of Practice in District and Circuit Courts 4.5(b) in that it was in writing, signed by the parties and by the attorney of record and filed with the clerk. It was considered by the court in making the property distribution between the parties and the court found it to be reasonable.

In Colman v. Colman, 743 P.2d 782 (Utah App. 1987) at p. 789, the Court of Appeals stated:

> Further, it is well recognized that a parties' stipulation as to property rights in a divorce action, although advisory and usually followed unless the court finds it to be unfair or unreasonable, is not necessarily binding on the trial court. It is only a recommendation to be adhered to if the court believes it to be fair and reasonable. Pearson v. Pearson, 561

P.2d 1080, 1082 (Utah 1977); Klein v. Klein, 544 P.2d 472, 476 (Utah 1975).

The court found it to be reasonable both at the initial hearing and after consideration of the evidence presented by affidavit when considering the Rule 60(b) motion.

The standard of review relative to the division of property by the trial court is provided in English v. English, 565 P.2d 409 (Utah 1977) at page 410:

> The trial court, in a divorce action, has considerable latitude of discretion in adjusting financial and property interests. A party appealing therefrom has the burden to prove there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error; or the evidence clearly preponderated against the finding; or such a serious inequity has resulted as to manifest a clear abuse of discretion.

In Colman, supra, the court stated:

> Regarding challenges to property distribution, the Utah Supreme Court has stated that: "a party seeking reversal of the trial court must prove a misunderstanding or misapplication of the law resulting in substantial and prejudicial error, or that the evidence clearly preponderated against the findings, or that such a serious inequity resulted from the order as to constitute an abuse of the trial court's discretion." McCrary v. McCrary, 599 P.2d 1248, 1250 (Utah 1979). That the property distribution may not have been mathematically equal is not sufficient grounds to constitute an abuse of

> discretion, since a fair and equitable property distribution is not necessarily an equal distribution. (Citation omitted.)

The appellant has presented no evidence indicating an inequitable distribution. She has presented no evidence of a misunderstanding or misapplication of the law resulting in any error, or any evidence that the evidence clearly preponderates against the findings. There is no evidence of any serious inequity that resulted so as to constitute an abuse of the court's discretion.

In Pusey v. Pusey, 728 P.2d 117 (Utah 1986), the Supreme Court states:

> This court endows the trial court's adjustment of financial interests of the parties with a presumption of validity and does not review their values absent a clear abuse of discretion. Argyle v. Argyle, 688 P.2d 468, 470 (Utah 1984); Turner v. Turner, 649 P.2d 6, 8 (Utah 1982). We do not lightly disturb property divisions made by the trial court and uphold its decision except where to do so would work a manifest injustice or inequity. Turner, 649 P.2d 6, at 8.

The trial court found not even a prima facie showing of fraud or duress or that the property distribution was not fair and reasonable. (See Ruling on Motion to Set Aside Judgment, page 2, last paragraph, Exhibit "D".)

By her own evidence the conduct of plaintiff complained of by defendant occurred three days after the signing of the stipulation and thus had no bearing on her signing of the stipulation. The stipulation was not signed by the defendant in the presence of the plaintiff.

Defendant was accompanied to the attorney's office by her daughter, Amber Sargent, at the time she signed the stipulation and absolutely no pressure or influence was applied to secure her signature on the stipulation.

Defendant received her lump sum payment the day of the divorce and was moved to Texas by the plaintiff on the day following the hearing. She has begun her new life as she wished. The plaintiff made every effort to accommodate her in every way and he incurred substantial debt to provide her the cash payment she demanded. Rather than trying to defraud the defendant in any way, he has been entirely honest and accommodating.

In the absence of the showing of a clear abuse of discretion, the ruling of the trial court should stand.

VIII.

CONCLUSION

The trial court clearly acted within the scope of the Rules of Practice for the action and time limits on the

motions which have been filed in this case. The judge waited more than fifteen days after the filing of the reply brief from the party opposing the Motion to Dismiss before ruling on the motion. In his ruling, he set forth his findings as to the relative merits of the positions advanced by each side.

At the time of that ruling, the court reviewed again the property distribution based on the affidavits accompanying the submitted memoranda and found no evidence to warrant a change in his initial ruling that the division of property was fair and reasonable. There is no showing of manifest injustice or inequity to cause the appellate court to disturb the apportionment of the property by the trial court.

By appellant's own evidence, the allegation that the stipulation was procured by fraud or misconduct is refuted. The stipulation had been filed with the court before the alleged conduct occurred.

Both parties to a divorce are usually under considerable emotional strain during the pendency of a divorce action but this is not grounds to set aside a properly executed stipulation. There was no abuse by the trial court in using the stipulation and property settlement in the complaint as the basis for the distribution of the marital property.

The only basis for overturning the ruling on the Motion to Set Aside the Judgment or to modify the property settlement is a clear abuse of discretion by the trial court. There is nothing in the record showing any abuse of discretion in this entire case.

IX.

REQUEST OF ATTORNEY'S FEES

Rule 33 of the Rules of the Utah Court of Appeals provides for the payment of attorney's fees when an appeal taken is frivolous and without foundation. By the appellants own evidence, this appeal is without foundation in fact and therefore frivolous. The respondent has been caused considerable emotional stress in this matter both by the filing of the Motion to Set Aside the Judgment which was also without any foundation in fact and in the filing of this appeal. He has suffered unnecessary legal fees and costs. A request for awarding reasonable attorney's fees in this matter to the respondent is respectfully submitted.

DATED this 27th day of September, 1988.

Respectfully submitted,

Elaine M. Coates

Elaine M. Coates
Attorney for
Plaintiff-Respondent

APPENDIX A

ENTRY NO. _____

FEE PAID _____

'88 FEB 22 PM 2:47

FILED BY _____
GRAND COUNTY CLERK

Elaine M. Coates, #4881
Attorney for Plaintiff
36 South 100 West
Moab, Utah 84532
(801) 259-6901

IN THE SEVENTH JUDICIAL DISTRICT COURT

IN AND FOR GRAND COUNTY, STATE OF UTAH

ROGER E. PUCKETT, Plaintiff, vs. CAROLYN S. PUCKETT, Defendant.	No. 5603 AFFIDAVIT OF ROGER E. PUCKETT

STATE OF UTAH)
) ss.
County of Grand)

ROGER E. PUCKETT, being first duly sworn upon oath, deposes and states as follows:

1. That I am the plaintiff in the above entitled matter.

2. That the defendant and I had been married for twenty-seven and one-half (27 1/2) years prior to the granting of this divorce.

3. That I first attempted to divorce the defendant in 1977 when I moved out of our residence in Price, Utah and established a separate residence.

4. That in 1977, about three months after I moved out, the defendant exhibited bizarre and eventually violent behavior and was hospitalized for approximately one month for her condition. That was the only time she has been hospitalized for any emotional problem during the years of our marriage. In 1977, I moved back into the family residence and resumed our relationship for the next ten years until I initiated the present action.

5. I first consulted an attorney in this present action on Saturday, September 19, 1987. Upon advice of counsel, I moved out of the family residence on September 27, 1987. During the pendency of this action, I paid the mortgage payments and all the utility bills (including the telephone) on the family residence. I also gave the defendant $300.00 per month to meet her living expenses during this time.

6. In attempting to come to an agreement on the distribution of the property, I told the defendant she could have any of the marital assets we had accumulated but if she took an asset which had an associated debt, she also had to assume the debt.

7. I made no false representation to the defendant as to any fact contained in the stipulation she signed.

8. The value of all our assets at the time of the divorce on November 2, 1987, was as follows:

a. The home and real property located at 1381 S. N. Kayenta, Moab, Utah: On May 1, 1987, the home was appraised for $61,000.00 and a refinancing agreement was entered into with Williamsburg Savings Banks for a period of fifteen years at 8 1/2% interest on a loan of $61,211.00. I estimate the equity in the home on November 2, 1987 at less than $350.00. The two adjoining acres are financed, the amount owing on the property on November 2, 1987 was $5,470.46. The last two sales of property in the area involved the sale of two 2 1/2 acre lots at $1,600.00 per acre. I estimate there is no equity in the lots as I owe more on them than I could sell them for at this time. The real estate market in Moab for unimproved property is practically non-existent.

b. The 1985 Buick Park Avenue automobile was financed over four years at $409.93 per month. It has 93,300 miles on it as I use it in my job. When I tried to trade it in in August, 1987, I was offered $1,000.00 less than the total of the remaining payments due. I estimate there is no equity in the vehicle.

c. The 1975 Ford pickup truck has a trade-in value of $1,450.00 or a retail value of $2,175.00.

d. The household furniture and furnishings were divided according to the wishes of the defendant. I told the defendant she could take anything she wanted. She took all the antique furniture we had accumulated, the deep freeze, the washer and dryer, the microwave, sewing machines, the dining room set, various lamps, table, etc. She also took all the household pots and pans, small kitchen appliances, all the linens except two sheets, two towels and two washcloths, all the draperies off the windows and all the books. She also took the family movie camera and all the films of the children. She also took a set of leather working tools that were a gift to me from my brother over thirty years ago and are irreplaceable. She took all the dishes and silverware, the stereo and the newer TV. What she did not actually take to Texas with her, I moved into storage in Moab for her.

e. The 1970 GTO Pontiac has an insurance policy on which the replacement value is listed as $3,800.00. It is paid for and in her possession. I paid the insurance through February, 1988 on this vehicle.

f. At the time of working out the divorce settlement, I sold all of the company stock available to me to raise the $16,000.00 paid to the defendant. My stock account on November 2, 1987, including my basic plan and the company's supplement totalled 504 shares. The total value of the stock on November 2, 1987 was $14,136.36 but I have a loan with the company of $8,127.53 which is secured by this stock. This is the maximum amount I could borrow against my contributions to the stock plan. The loan excludes the company's contributions. In October, 1987, I sold 562 shares to obtain the $16,000.00 paid to the defendant as settlement in this divorce action.

g. The value of my pension plan with Utah Power and Light as of November 2, 1987, was $787.93 payable monthly effective at age 65. I am age 53.

h. The value of my only IRA account, with Williamsburg Savings, was $63.34 as of November 2, 1987 and still is $63.34.

i. The savings account with Williamsburg Savings was closed in the summer of 1987 when we withdrew the approximately $700.00 in the account and took a vacation together.

j. The camper fits the back of the pickup truck. It was purchased in 1980 for $1,000.00. I estimate it to be worth at most $500.00 today.

k. I paid $800.00 for the horse about three years ago. The horse suffers from azaturia which has damaged his kidneys and so he is of no value. He cannot be ridden hard or worked. The horse trailer is a 1970 model that was purchased at the same time as the horse for $850.00. It is probably worth approximately $400.00 today.

l. The boat was purchased for $240.00 in 1969, the trailer cost $125.00 at the same time and the motor is a 1958 rebuilt Evinrude that I paid $90.00 for several years ago. I don't know if it is still operable. I would estimate everything is old and fully depreciated.

8. During the pendency of this action from the 25th of September until the 2nd of November, the defendant received $194.00 in dental services, $1,378.00 in podiatry services and $130.00 in services from Grand Junction Ortho Association which was partially paid for through my company insurance. I paid the balance. I made the defendant aware of the COBRA medical provisions which allows her to continue her insurance with my company.

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9. The only additional medical services defendant received during the pendency of this action was one office visit on October 29, 1987, to Dr. Paul R. Mayberry for $25.00. If she was under treatment for a nervous condition, it is not reflected by any bills or insurance payments. Her office visit of October 29, 1987, was after she signed the Stipulation on October 16th.

10. During October, 1987, defendant charged $170.12 on our Mastercard account, $133.56 on our J. C. Penny account, $112.65 on our Sears account and approximately $64.41 in long distance calls, in addition to the $300.00 per month that I was giving her to meet her living expenses. I have paid all these bills even though several of the purchases were made from catalogs after I had retrieved the credit cards.

11. The defendant had her own separate checking account for the last seven or eight years. Twice each month during the last seven or eight years on payday, I wrote her a check for $240.00. I paid all the household bills and mortgage and charge cards and accounts from my checking account. Her only responsibility from her $480.00 per month was to buy groceries for us. The defendant was employed at the time this action was instituted and had been for several years and all her earnings were at her disposal.

12. The defendant alone decided she wanted to move to Texas where she has relatives. I packed and moved everything she wanted to take with her and moved her on November 3rd and 4th, 1987. I allowed the defendant to take any of our possessions that she wanted, the only requirement being that if she took an asset which had an associated debt, she had to assume the debt also. She told me she didn't want the house, truck, horse, camper, etc., that she wanted cash.

13. In negotiating the property settlement, I offered $12,000.00 at first because this was all I thought I could borrow and it was through negotiation and further borrowing that I was able to raise $16,000.00 which was what she wanted.

14. The defendant expressed to me several times her preference for a lump sum so that she would have money to pay tuition to attend nursing school and begin a new life in Texas. I accomodated her in every way I could.

15. In reliance on this divorce being settled and final and the time for appeal having passed, I married my high school sweetheart on December 22, 1987.

FURTHER your affiant sayeth naught.

DATED this 22nd day of February, 1988.

Roger E. Puckett

Roger E. Puckett

52

Subscribed and sworn to before me this 22nd day of February, 1988.

Notary Public
Residing at Moab, Utah 84532

My commission expires:
8-27-90

52

APPENDIX B

ENTRY NO. _____

FEE PAID _____

'87 OCT 19 PM 2 16

FILED BY E
GRAND COUNTY CLERK

Elaine M. Coates, #4881
Attorney for Plaintiff
36 South 100 West
Moab, Utah 84532
(801) 259-6901

IN THE SEVENTH JUDICIAL DISTRICT COURT

IN AND FOR GRAND COUNTY, STATE OF UTAH

ROGER E. PUCKETT, Plaintiff, vs. CAROLYN S. PUCKETT, Defendant.	Civil No. 5603 STIPULATION

COME NOW the Parties and stipulate and agree as follows:

1. That the Parties hereto agree to the property settlement as outlined in the Complaint in this matter.

2. That the Defendant agrees to accept $16,000.00 lump sum payment in lieu of alimony.

3. That the Defendant agrees to waive any and all interest in the Plaintiff's pension plan and stock with Utah Power and Light.

4. That Defendant understands fully her right to be represented by separate counsel and has had all matters pertaining to this action fully explained to her.

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5. That Defendant does not intend to contest this divorce.

DATED this 16th day of October, 1987.

Elaine M. Coates
Attorney for Plaintiff

Roger E. Puckett
Plaintiff

Carolyn S. Puckett
Defendant

STATE OF UTAH)
) ss.
County of Grand)

On this 16th day of October, 1987, personally appeared before me Roger E. Puckett, Plaintiff, and Carolyn S. Puckett, Defendant, and being first duly sworn, acknowledged to me that they executed the above and forgoing Stipulation.

Notary Public
Residing in Moab, Utah

My commission expires:
8-27-90

APPENDIX C

ENTRY NO. _____
FEE PAID _____
'88 FEB 22 PM 2 47
FILED BY _____
GRAND COUNTY CLERK

Elaine M. Coates, #4881
Attorney for Plaintiff
36 South 100 West
Moab, Utah 84532
(801) 259-6901

IN THE SEVENTH JUDICIAL DISTRICT COURT

IN AND FOR GRAND COUNTY, STATE OF UTAH

ROGER E. PUCKETT, Plaintiff, vs. CAROLYN S. PUCKETT, Defendant.	No. 5603 AFFIDAVIT OF CONNIE NAVARRE

STATE OF UTAH)
) ss.
County of Grand)

CONNIE NAVARRE, being first duly sworn upon oath, deposes and states as follows:

1. That I am the legal secretary of Elaine M. Coates.

2. I was working in the law office the week of October 16, 1987.

3. The defendant had an appointment to come in at her convenience and sign the Stipulation in this case.

4. At the appointed time, the defendant and her daughter appeared at the office and after reading the Stipulation and a little conversation with me and her

daughter, the defendant signed the Stipulation on October 16, 1987. I notarized the Stipulation and gave her a copy.

5. I specifically told the defendant that if there were any terms of the Stipulation she did not agree with, she should not sign it.

6. At no time did the defendant appear under stress and there was certainly no duress applied by anyone at the time she was in the office.

7. At the conclusion of the signing, the defendant requested that I prepare a Power of Attorney from her to her daughter, Amber Sargent. This was done to her satisfaction.

FURTHER your affiant sayeth naught.

DATED this 22nd day of February, 1988.

Connie Navarre

Connie Navarre

Subscribed and sworn to before me this 22 day of February, 1988.

Peggy L. Taylor

Notary Public
Residing at Moab, Utah 84532

My commission expires:
1-15-91

APPENDIX D

'88 MAR 11 AM 11 01
FILED BY
GRAND COUNTY CLERK

IN THE SEVENTH JUDICIAL DISTRICT COURT FOR GRAND COUNTY
STATE OF UTAH

ROGER E. PUCKETT, Plaintiff, vs. CAROLYN S. PUCKETT, Defendant.	RULING ON MOTION TO SET ASIDE JUDGMENT Civil No. 5603

On November 2, 1987, pursuant to stipulation of the parties regarding the distribution of their property, the Court granted a divorce to the plaintiff. The defendant has now filed a motion to set aside the Divorce Decree as it pertains to the division of assets contending that she was suffering from mental distress at the time of the signing of the stipulation and that the plaintiff forced her to sign the stipulation by duress and threats.

The plaintiff objects to the Motion and denies that the defendant was under any doctor's care for stress and further denies that any duress was used against her and further alleges that the payment of a cash amount of $16,000 and the receipt of certain personal property by the defendant was a reasonable and fair distribution of their assets.

The defendant's Affidavit presents no medical records or names of doctors to substantiate her claim that she

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was under treatment for mental stress at the time. She presents no estimates of value of assets and debts to show that the settlement was not reasonable.

The plaintiff has submitted the Affidavit of the secretary of his attorney which states, in effect, that there was no duress asserted at the time of the signing of the Stipulation, and that the defendant appeared in the plaintiff's attorney's office and signed the Stipulation while accompanied with her daughter and after having coolly and rationally considered the Stipulation. The plaintiff's Affidavit has outlined the accumulation and debts of the parties with estimates of value from which the Court concludes that there was a reasonable distribution of assets in the Stipulation.

The defendant has failed to establish even a prima facie showing of duress, or that she was subject to fraud, or that the agreed Stipulation was grossly unreasonable. Based thereon, the Court denies the Motion to Set Aside the Judgment as prayed for.

DATED this 10 day of March, 1988.

BOYD BUNNELL, District Judge

60

CERTIFICATE OF MAILING

I hereby certify that I mailed true and correct copies of the foregoing RULING ON MOTION TO SET JUDGMENT by depositing the same in the United States Mail, postage prepaid, to the following:

Elaine M. Coates
Attorneys at Law
36 South 100 West
Moab, Utah 84532

Lowell V. Summerhays
Attorney at Law
4609 South State Street
P. O. Box 1355
Sandy, Utah 84091

DATED this 10th day of March, 1988.

Secretary

APPENDIX E

ENTRY # _____

FEE PAID _____

'88 MAR 11 AM 10 47

FILED BY - _____

GRAND COUNTY CLERK

Lowell V. Summerhays - 3154
LAW OFFICES OF LOWELL V. SUMMERHAYS
Attorney for Defendant
4609 South State Street
P.O. Box 1355
Sandy, Utah 84091-1355
Telephone: (801) 942-8008

IN THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR

GRAND COUNTY, STATE OF UTAH

ROGER E. PUCKETT, Plaintiff, vs. CAROLYN S. PUCKETT, Defendant.	MOTION FOR ORAL ARGUMENT Civil No.: 5603 Judge: Boyd Bunnell

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The Defendant, Carolyn S. Puckett, by and through counsel Lowell V. Summerhays herewith moves the above-entitled court for an order granting oral argument in the above-entitled matter.

DATED this 9th day of March, 1988.

LAW OFFICES OF LOWELL V. SUMMERHAYS

Lowell V. Summerhays

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MAILING CERTIFICATE

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing MOTION FOR ORAL ARGUMENT to the following, first class, postage prepaid, this 9th day of March, 1988:

Elaine M. Coates
36 South 100 West
Moab, Utah 84532

Beverly Lee

58.

APPENDIX F

ENTRY NO. _____

FEE PAID _____

'88 FEB 12 AM 10 56

FILED BY -

GRAND COUNTY CLERK

Lowell V. Summerhays - 3154
LAW OFFICES OF LOWELL V. SUMMERHAYS
Attorney for Defendant
4609 South State Street
P.O. Box 1355
Sandy, Utah 84091-1355
Telephone: (801) 942-8008

IN THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR

GRAND COUNTY, STATE OF UTAH

ROGER E. PUCKETT, Plaintiff, vs. CAROLYN S. PUCKETT, Defendant.	AFFIDAVIT OF CAROLYN S. PUCKETT Civil No.: 5603 Judge: Boyd Bunnell

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STATE OF TEXAS)
: ss.
COUNTY OF)

I, Carolyn S. Puckett, do upon my oath, swear and state as follows:

1. That I am the Defendant in the above-entitled matter.

2. That the Plaintiff and I had been married for twenty-seven and one-half (27 1/2) years prior to our divorce.

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3. That prior to our divorce, I had been hospitalized for a nervous breakdown and was under psychiatric care.

4. That I was under a doctor's care for the treatment of a nervous condition during the pendency of this divorce action.

5. That I was not represented by counsel during the pendency of this divorce action.

6. I could not afford to hire an attorney as I had no income and all our funds were in a checking account under the Plaintiff's name.

7. That on October 19, 1987, the Plaintiff, Roger E. Puckett, came to my residence in Moab, Utah, and asked me to sign the Stipulation for the property settlement in this matter. I refused to sign the Stipulation, and told him that I was not going to accept the terms and provisions of the Stipulation, because I thought I was entitled to a more fair distribution of the marital assets. At that time, Roger E. Puckett pushed me around and threatened me physically. He tore my purse trying to get my credit cards from me; he hit me; pushed me against the wall; and inflicted verbal abuse as well as physical abuse upon me. He repeatedly told me that if I did not sign the Stipulation as it was, that I would end up on the street, and that my mother would end up on the street, with nothing. My mother was a witness to the Plaintiff's violence, and, at that time, called my daughter, Amber Sargent, to come to the house to prevent further violence.

8. The Plaintiff is an employee of Utah Power & Light Co. and he threatened to turn off my electricity and to never give me money for groceries if I did not sign the Stipulation.

9. On the evening of October 19, 1987, in the midst of the Plaintiff's verbal and physical abuse, I attempted to call his attorney, Elaine M. Coates. I left a message on her answering machine, but did not receive a call back from her.

10. After a continuance of the physical and verbal harrassment and violence, I signed the Stipulation, but was under a great deal of stress and physical and mental exhaustion when this Stipulation was signed.

11. At the time I signed the Stipulation, I was not fully aware of the consequences and ramifications of my action. I was confused and under a great deal of emotional stress because of the violence which the Plaintiff had perpetrated upon me, and because of my general emotional state at the time.

12. Since the divorce has been entered, I have moved to the State of Texas where I am gainfully employed, and am in the process of rebuilding my life after the divorce. I now realize that I was forced into signing the Stipulation against my free will, and it is my desire to ask the court for a more fair and equitable distribution of the marital assets which the Plaintiff and I acquired over twenty-seven and one-half (27 1/2) years of marriage.

Further Affiant sayeth not.

DATED this 2nd day of February, 1988.

Carolyn S. Puckett

UNITED STATES OF AMERICA

STATE OF TEXAS)
: ss.
COUNTY OF Orange)

On this 2nd day of February, One Thousand Nine Hundred and Eighty-eight, personally appeared before me, a Notary Public in and for said County, Orange CAROLYN S. PUCKETT, whose name is subscribed to the above instrument as party thereto, personally known to me to be the same person described in and who executed the said annexed instrument as party thereto; and duly acknowledged to me that she executed the same freely and voluntarily, and for the use and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notary Seal at my office in Vidor, Texas, the day and year in this Certificate first above written.

Myra S. Boutwell
NOTARY PUBLIC

Myra S. Boutwell

My Commission Expires:

2/25/88

Residing in Vidor, Tx., Orange County

21.

ELAINE M. COATES, #4881
Attorney at Law
Attorney for Plaintiff
36 South 100 West
Moab, Utah 84532
(801) 259-6901

IN THE COURT OF APPEALS

STATE OF UTAH

ROGER E. PUCKETT, Plaintiff-Respondent, vs. CAROLYN S. PUCKETT, Defendant-Appellant.	Case No. 880219CA CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 28th day of September, 1988, I mailed, postage prepaid, four (4) true and correct copies of RESPONDENT'S BRIEF to the following:

Lowell V. Summerhays
Attorney for Defendant
P. O. Box 1355
Sandy, Utah 84091-8008

Elaine M. Coates