

2008

Martha I. Thompson v. James A. Thompson : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MARTHA I. THOMPSON,

Petitioner and Appellee,

v.

JAMES A. THOMPSON,

Respondent and Appellant.

Appellate Case No: 20080548

Trial Court Civil No: 074500408

BRIEF OF THE APPELLANT

Appeal from the Decree of Divorce
entered on May 21, 2008 by the Fifth Judicial District Court,
the Honorable G. Rand Beacham, Presiding

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UTAH APPELLATE COURTS

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- A. Decree of Divorce.
- B. Findings of Fact and Conclusions of Law.
- C. Trial Brief of Respondent.
- D. Exhibits 25 and 26¹

¹ These Exhibits are copies from the files of Respondent's Counsel; the originals of these exhibits are part of the Record but are contained in the sealed envelope of exhibits.

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JURISDICTIONAL STATEMENT

The Utah Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Ann. §78A-4-103(2)(h).

STATEMENT OF ISSUES AND STANDARDS OF REVIEW

FIRST ISSUE: Whether the trial court erred in failing to utilize the “back-out method” in calculating the marital interest by first subtracting the amount necessary to reimburse Mr. Thompson’s separate, pre-marital contribution, along with appreciated interest which had already accrued thereon, before determining and dividing the marital interest? (R. at 159, 195, 198, 207 and 213).

SECOND ISSUE: Whether it was error for the trial court to fail to award Mr. Thompson’s principal and the appreciated value of his separate, pre-marital contributions held in his 401(k) plan? (R. at 159, 195, 198, 207 and 213).

THIRD ISSUE: Whether it was error for the trial court to fail to award Mr. Thompson’s principal and appreciated value of his separate, pre-marital contribution to the acquisition of the marital home when the marital home was acquired through traceable pre-marital funds belonging only to Mr. Thompson? (R. at 193-196, 206-207 and 213).

Standards of Review:

- a. Correction of Error. Although considerable deference is accorded to factual findings, conclusions of law arising from those findings are to be reviewed for correctness and are given no special deference on appeal. Brigham v. Brigham, 872 P.2d 1065 (Utah Ct. App. 1994);

Howell v. Howell, 806 P.2d 1209 (Utah Ct. App) (cert. denied, 817 P.2d 325 (Utah 1991)).

- b. Abuse of Discretion. Trial courts may exercise broad discretion in divorce matters so long as the decision is within the confines of legal precedence. Whitehead v. Whitehead, 836 P.2d 814 (Utah Ct. App. 1992); Allred v. Allred, 797 P.2d 1108 (Utah Ct. App. 1990). The trial court's decision must be exercised within legal parameters set by appellate courts. Cummings v. Cummings, 821 P.3d 472 (Utah Ct. App. 1991).
- c. Appellate review of the property distribution to determine whether the award is based upon the "standards set by this state's appellate courts." Haumont v. Haumont, 793 P.2d 421 (Utah Ct. App. 1990).
- d. Clearly erroneous standard of review when the trial court fashions an award against the clear weight of evidence, or unless the Court of Appeals reaches a definite and firm conviction that a mistake has been made. Weston v. Weston, 773 P.2d 408 (Utah Ct. App. 1989).

STATEMENT OF THE CASE

This appeal is from a final Decree of Divorce of the Fifth Judicial District Court. Appellant seeks (1) the reversal of the trial court's decision which awards Mrs. Thompson a one-half interest in the monies which had accumulated in Mr. Thompson's 401(k) retirement account during the years of marriage without first backing-out Mr. Thompson's appreciated separate, pre-marital contribution to the

same 401(k) retirement account; and (2) the reversal of the trial court's decision which awards Mrs. Thompson a one-half interest in the entire equity held in the Utah Home without first subtracting the amount necessary to reimburse Mr. Thompson's separate, pre-marital contribution to the subject real property and the appreciation accrued upon that same pre-marital contribution.

STATEMENT OF MATERIAL FACTS

1. Mr. and Mrs. Thompson were married in California on the 14th of February, 2002. (R. at 206).
2. Mrs. Thompson initiated the action for divorce in May of 2007. (R at 1).
3. The Trial Court heard the case on January 29, 2008. (R. at 205 and 212).
4. The Trial Court entered the Findings of Fact and Conclusions of Law on April 14, 2008. (R. at 205-211).
5. The Decree of Divorce was entered on May 21, 2008. (R. at 212-216).
6. In 1990, approximately twelve (12) years before the parties' marriage, Mr. Thompson initiated a 401(k) plan. (R. at 198).
7. This 401(k) account was derived from and funded through his employment with the same employer in both California and Utah. (Id.)
8. Between 1990 and 2002, a period of twelve (12) years, Mr. Thompson made pre-marital contributions to this 401(k) account. (Id.)
9. At the time of the marriage in 2002, the 401(k) account held a value of \$68,784. (R. at 198 and 213 ¶5).

10. Mrs. Thompson did not made any financial contributions to this 401(k) account during the years of marriage. (R. at 198).
11. At the time of trial, the value of the account was \$177,352. (R. at 198 and 213).
12. The average rate of growth within the 401(k) account between and during the marriage, 2002 through 2007, varied between a negative eighteen point twenty-two percent (-18.22%) and a positive thirty-one point sixty-five percent (+31.65%). (R. at 158-159, 198; Exhibits 25 & 26 (Addenda)).
13. Mr. Thompson's original separate, pre-marital amount of \$68,784 had appreciated to \$136,385.21 by the time of trial. (R. at 198).
14. The figure of \$136,385.21 represented Mr. Thompson's appreciated value of his separate, pre-marital contribution. (Id.)
15. The Trial Court concluded that the value in the 401(k) account at the time of trial was \$177,352. (R. at 207 and 213).
16. The Trial Court simply deducted the unappreciated, pre-marital value (\$68,784.00) held in the 401(k) account at the time of marriage from the value held in the 401(k) account at the time of trial (\$177,302.00). (Id.)
17. The Trial Court then concluded that \$108,518 held in the 401(k) plan was the marital value which had accumulated during the marriage and should therefore be divided equally among the parties. (Id.)

18. The Trial Court did not account for, nor back-out, any portion of the appreciated value which had accrued upon Mr. Thompson's separate, pre-marital value held in this 401(k) account. (*Cf.* R. at 207 and 213 w 198).

19. Several years prior to his marriage to Mrs. Thompson, Mr. Thompson purchased and continuously owned a home in California (hereinafter "California Home") as his sole and separate property. (R. at 193, 196 and 213),

20. After the marriage in 2002, the parties resided in the California Home. (R. at 193, 196, 206 and 213).

21. However, Mrs. Thompson did not contribute anything to the California Home, nor was her name ever placed on title or on any indebtedness secured by the California Home. (R. at 193-196).

22. Both before and after the marriage, Mr. Thompson continued to pay all of the expenses, premiums, tax assessments, and all other related costs to the maintenance and retention of the California Home. (*Id.*)

23. In 2005, Mr. Thompson received an employment offer in the State of Utah and the parties subsequently relocated to Utah. (R. at 194 and 206).

24. In 2005, Mr. Thompson sold his California Home and applied \$86,410.25 derived from the net sale proceeds from his California Home to the purchase of a home located in St. George, Utah ("Utah Home"). (R. at 206-07 ¶9).

25. Mrs. Thompson did not make any financial contribution towards the acquisition of the Utah Home. (R. at 194).

26. However, Mrs. Thompson's name was added as a joint tenant to the title of the Utah Home and she had signed on the mortgage secured by the Utah Home. (R. at 158, 194 and 206).

27. Based upon the stipulation of the parties at trial, the present fair market value of the Utah Home at time of trial was \$450,000.00 subject to an existing mortgage of \$326,523. (R. at 207 ¶11).

28. The Utah Home was purchased for \$399,900.00. (R. at 158). Thus, there was an appreciated value between the purchase price and value at the time of trial of twelve point five percent (12.5%). (R. at 196-197).

30. Petitioner argued at trial that the appreciated value of his separate, pre-marital contribution to the Utah Home was \$97,211.53 (the pre-marital contribution plus the 12.5% appreciation); an increase of \$10,801.28. (Id.)

31. Had the back-out method been used by the trial court, the marital equity would have therefore been \$26,965.46 (i.e., the fair market value of \$450,000 less \$326,523 mortgage, less \$97,211.54 (i.e., Mr. Thompson's appreciated pre-marital contribution)). (Id.) Therefore, one-half of the gross marital equity would have been set at \$13,132.73. (Id.)

32. The Trial Court held that the Utah Home was a marital asset. (R. at 206).

33. The Trial Court found that the sale proceeds from the sale of Mr. Thompson's California Home had been commingled into the marital estate, that "[d]uring the next two or three years of marriage [between 2002 and 2005], Petitioner [Mrs. Thompson] acquired some community property interest in

Respondent's [Mr. Thompson's] California home, but the evidence before the Court does not allow this to be quantified", and title to the Utah Home was held by both parties. (R. at 206, ¶¶ 6-10).

34. The Trial Court ordered that the Utah Home should be sold and all of the net proceeds divided equally between the parties; or, in the alternative, either party should be allowed to purchase the interest of the other for \$62,000.00 within six months after the entry of the final Decree of Divorce. (R. at 213 at ¶4).

35. The Trial Court did not award any portion of Mr. Thompson's pre-marital contribution of \$86,410.25 nor any accrued appreciation. (Cf. R. at 206-207, 213 *with* 196-197).

SUMMARY OF THE ARGUMENT

The general rule is that equity requires that each party retain the separate property he or she brought into the marriage. Haumont v. Haumont, 793 P.2d 421, 424 (Utah Ct. App. 1990). In order to properly effect an equitable distribution of property, the Trial Court should have utilized the "back-out method" by subtracting the amount necessary to reimburse Mr. Thompson for his appreciated pre-marital contributions to the marital property before dividing the marital property equally between the parties. Hayes v. Hayes, 20050645 (2006 UT App. 289); Hall v. Hall, 858 P.2d 1018, 1023 (Utah App. 1993); and Burt v. Burt, 799 P.2d 1166, 1172 (UT App. 1990).

Prior to his marriage to Mrs. Thompson, Mr. Thompson opened his 401(k) retirement account through his employer. (R. at 198, 207 ¶13 and 213). Between

1990 and 2002, the years prior to the parties' marriage, Mr. Thompson had contributed \$68,784 in principal to his 401(k) account. (Id.)

During the marriage, the 401(k) account had experienced growth and fluctuation between a negative eighteen point twenty-two percent (-18.22%) and a positive thirty-one point sixty-five percent (31.65%). (R. at 159 Exhibits 25 and 26). Mr. Thompson's separate, pre-marital contribution had therefore appreciated from \$68,784 to \$136,385.21. (R. at 198). Mr. Thompson should have been permitted to retain the principal along with appreciated value of his pre-marital contributions to his retirement account as his sole and separate property. Hayes v. Hayes, 20050645 (2006 UT App. 289); Hall v. Hall, 858 P.2d 1018, 1023 (Utah App. 1993); Burt v. Burt, 799 P.2d 1166, 1172 (UT App. 1990); and Haumont v. Haumont, 793 P.2d 421, 424 (UT App. 1990).

With respect to the Utah Home, Mr. Thompson contributed \$86,410.25 of the net sale proceeds which were derived solely from the sale of his separate, pre-marital asset (i.e., the California Home) to the purchase of the Utah Home. (R. at 195-196). Mrs. Thompson did not make any financial contribution to the acquisition or satisfaction of the mortgage obligations secured by the Utah Home. (R. 196 and 206).

Under Utah caselaw cited above and the general principles of equity recognized by Utah law, Mr. Thompson should have been credited with the principal and appreciated value of this pre-marital contribution before the remaining equity in the home was divided between the parties.

ARGUMENT

I. THE TRIAL COURT ERRED IN FAILING TO UTILIZE THE “BACK-OUT METHOD” BEFORE DIVIDING THE MARITAL INTEREST.

The appropriate treatment of property brought into the marriage by one party may vary from case to case. Newmeyer v. Newmeyer, 745 P.2d 1276, 1277 (Utah 1987). Utah law recognizes that a trial court has the power to effect an equitable distribution of property by considering both parties’ contributions during the marriage. See Hayes v. Hayes, 2006 WL 1917822, 2006 UT App. 289; Hall v. Hall, 858 P.2d 1018, 1023 (UT App. 1993); Preston v. Preston, 646 P.2d 705, 706 (Utah 1982). The general rule is that equity requires that each party retain the separate property he or she brought into the marriage. Haumont v. Haumont, 793 P.2d 421, 424 (UT App. 1990).

In determining the value of marital equity, a trial court should utilize the “back-out method” of “first subtract[ing] the amount necessary to reimburse [a party’s] contribution” to the marital property before dividing the marital property equally.” Hall, 858 P.2d at 1023 (UT App. 1993). In the instant case, the Trial Court erred by failing to utilize the “back-out” method and by failing to award Mr. Thompson the amount necessary to reimburse him for his separate, pre-marital contributions to the marital interests; both in the pre-marital 401(k) account and his equity from the separate pre-marital California Home. See Hall, 858 P.2d at 1023 (Utah Ct. App. 1993); Preston, 646 P.2d at 706 (Utah 1982); and Hayes, 2006 WL 1917822, 2006 Utah Ct. App. 289.

A. The Trial Court Should Have Awarded Mr. Thompson the Principal and Appreciated Value of His Separate, Pre-Marital Contributions Held in His 401(k) Account.

Mr. Thompson is entitled to the principal and appreciated value of his pre-marital contributions to his 401(k) retirement account. Under Utah law, the issue of accrued interest on any pre-marital portions of a retirement account is analyzed pursuant to the rules regarding premarital property and separate property. Dunn v. Dunn, 802 P.2d 1314, 1330 (UT App. 1990). The standard set forth by Utah's appellate courts is that each party retains the separate property he or she brought into the marriage, including any appreciation of the separate property, unless the property has been commingled with marital assets or if the other spouse has by his or her efforts augmented, maintained, or protected the separate property. See Id. at 1320 (holding that the husband was entitled to all of his premarital contributions to three retirement funds, plus the interest attributable to those contributions, because the wife did not, through her efforts, augment, maintain, or protect the separate property. See also Oliekan v. Oliekan, 2006 UT App 405, ¶ 24, 147 P.3d 464 (holding that since the marital and pre-marital funds in a 401(k) account could be separately identified, the trial court correctly divided the funds by awarding the husband his premarital interest, plus appreciation on that amount, and equitably dividing the separate marital portion of the account).

Mr. Thompson's pre-marital contributions of \$68,784 to the 401(k) account were easily determinable by the Trial Court. (R. at 198, 158 #18, 207 ¶13, 213 ¶5). Moreover, the appreciation experienced by Mr. Thompson's pre-marital

contribution to the 401(k) account were likewise easily determinable through Mr. Thompson's exhibit which set forth the annual appreciation and depreciation of the 401(k) account. (R. 159 Exhibits 25 and 26, and R. at 198). Equity and fairness require that Mr. Thompson should have been awarded his separate, pre-marital funds he brought into the marriage, including the appreciated growth of those funds. Burt, 799 P.2d at 1169 and Dunn 802 P.2d at 1320.

During the course of the marriage, it was undisputed that Mr. Thompson continued to make financial contributions to the same 401(k) account through his employment. (R. at 198; see also, 207 ¶14, and 213). Nevertheless, even with contributions during the course of the marriage, it is still possible to trace and identify Mr. Thompson's separate pre-marital contributions and, just as important, the interest appreciation which had accrued upon his separate, pre-marital contribution. See, Preston, 646 P.2d at 706. Additionally, Mrs. Thompson did not, by her own efforts, augment, maintain, or protect Mr. Thompson's premarital contributions in any way. (R. at 194, 198). Thus, Mr. Thompson should have been awarded a total of \$136,385.21 (\$68,784 (pre-marital contribution) plus \$68,601.21 (interest attributed thereto)) and an equitable share of the separate, marital portion of the account. (R. at 159 Exhibits 25 and 26, and R. at 198).

The Trial Court mistakenly relied upon the case of Jeffries v. Jeffries, 895 P.2d 835 (UT App. 1995). The Trial Court erred in finding that Mr. Thompson was only entitled to his principal pre-marital contribution and that he was not entitled to any of the appreciation or growth which had accumulated on his

separate, pre-marital contribution to his 401(k) account. (See, R. at 207 ¶13-15).

The Trial Court made the following findings with respect to the 401(k) account (R. at 207):

13. Respondent's 401k retirement account had a value of \$68,784 at the time of the parties' marriage in 2002.
14. The 401k account had a value of \$177,302 at time of trial.
15. The difference of \$108,518 (sic [was]) accumulated during the marriage and is marital property (Jefferies v. Jefferies is the correct precedent) and Petitioner should be awarded one-half of that accumulate amount.

The issue on appeal in Jefferies was whether a 401(a) plan can be considered marital property. (Jefferies 859 P.2d at 836). In the instant case, there was not a dispute as to whether or not Mr. Thompson's 401(k) account had a marital-property component. At the time of trial, the 401(k) account was comprised of three components; namely, (1) Mr. Thompson's pre-marital contribution (2) the appreciation/growth on his pre-marital contribution; and (3) the contributions and appreciation/growth on the contributions made during the parties' marriage. (R. at 198).

By failing to account for and factor in the appreciated growth upon Mr. Thompson's pre-marital contribution, the trial court effectively awarded Mrs. Thompson a portion of the appreciation/growth which had accrued upon Mr. Thompson's pre-marital contribution. The Trial Court did not make any finding as to any justification for awarding Mrs. Thompson more than her portion of the marital portion of Mr. Thompson's 401(k) account. Hall, 858 P.2d at 1022-23;

Preston, 646 P.2d at 706; see also, Hayes, 2006 WL 1917822, 2006 UT App 289 (holding that “the trial court properly used a ‘back-out’ method to credit husband’s contribution toward the marital home before applying the fifty percent presumption”). The Trial Court erred when it concluded that the marital portion of the 401(k) account was \$108,518 because this figure included \$67,601.21 of appreciated growth which was only attributable to Mr. Thompson’s separate, pre-marital contribution to his 401(k) account. The Trial Court effectively awarded Mrs. Thompson certain appreciation which was only attributable to Mr. Thompson’s pre-marital contribution.

B. The Trial Court Should have Awarded Mr. Thompson the Principal and Appreciated Value of His Separate, Pre-Marital Contributions to the Acquisition of the Utah Home.

Mr. Thompson should have been credited and awarded his separate, pre-marital contribution towards the Utah Home. Utah courts have long approved the principle that equity requires that each party should recover the separate property he or she brought in to the marriage, together with any interest attributable thereto. Preston, 646 P.2d at 706 (internal citations omitted); See also, Burke v. Burke, 733 P.2d 133, 135 (Utah 1987). Utah law recognizes that trial courts should first subtract the amount necessary to reimburse a party's contribution to the marital property before dividing the proceeds from the sale of the marital property equally. Hall, 858 P.2d at 1022-23; Preston, 646 P.2d at 706; see also, Hayes, 2006 WL 1917822, 2006 UT App 289 (holding that “the trial court properly used

a ‘back-out’ method to credit husband’s contribution toward the marital home before applying the fifty percent presumption”).

Parties should be able to recover the principal and appreciated value of any pre-marital contributions to the acquisition of marital property. Preston, 646 P.2d at 706. In Preston, the district court had awarded the wife one-half of the value of a cabin which had been constructed during the marriage. 646 P.2d at 706. The Utah Supreme Court noted that the husband had paid \$9,310.93 towards the costs of construction, with funds derived from the sale of assets the husband owned prior to the marriage. Id. The Court held that the husband should have been given credit for this \$9,310.93 contribution, together with the appreciation attributable thereto, before the value of the cabin was divided between the parties. Id.

The Utah Supreme Court later reaffirmed this line of reasoning in Newmeyer, 745 P.2d at 1277-78. In Newmeyer, the wife used inherited funds to help purchase several marital homes. Id. at 1277. The trial court gave the wife credit for these contributions before dividing the marital property. Id. On appeal, the husband argued that the trial court should have treated these contributions as marital property because the funds were committed to the common venture of purchasing marital homes. Id. The Court rejected the husband’s argument, stating that the “overriding consideration is that the ultimate division be equitable- that property be fairly divided between the parties, given their contributions during the marriage and their circumstances at the time of divorce.” Id. at 1277-78 (quoting Huck v. Huck, 734 P.2d 417, 420 (Utah 1986)). In reaching its’ decision, the

Court noted that it was readily apparent that the wife had paid a substantial share of the cost of the homes from money she received through inheritances. Id. at 1278. The Court also noted that the trial court was more than fair to the husband by crediting him with an equal share in the appreciation of the value of the homes despite his much lower contribution. Id.

In the instant case, Mr. Thompson acquired the California Home as his sole and separate property. (R. at 198). Mr. Thompson owned and lived in his California Home prior to the marriage. (Id.) Even after the marriage, Mr. Thompson continued to make all financial contributions for the maintenance and mortgage payments secured by the California Home. (Id.) The trial court, however, made a finding, but without any supporting evidence, that Mrs. Thompson somehow acquired “some community property interest” in Mr. Thompson’s California Home. (R. at 206 ¶6). However, this finding was limited by the fact that there was not evidence before the trial court to quantify this finding of a community property interest. (Id.)

Prior to relocating to Utah, Mr. Thompson sold his California Home and used \$86,410.25¹ of the net sale proceeds as the money used in the acquisition of the Utah Home. (R. at 198 and 206 ¶9). During the marriage, Mr. Thompson continued to be the sole contributor to the maintenance and mortgage payments

¹ Although the exhibit admitted at trial specified the amount of \$86,410.26, the trial court decided, without notation for reasoning, to round this figure down to \$80,000 00. (Cf R. at 158 Exhibit 9 and 196 *with* 206 ¶9)

secured by the Utah Home. Mrs. Thompson did not make any financial contributions to maintenance, upkeep or mortgage payments. (R. at 194, 196-197).

At the time of trial, the fair market value of the Utah Home was \$450,000.00 subject to the mortgage balance of \$326,523. (R. at 196-197, 207 ¶14 and 213 ¶4). However, the Trial Court did not back-out the pre-marital contribution of \$86,410.25 made by Mr. Thompson to the Utah Home. Nor did the Trial Court back-out any of the appreciated value which had accrued upon Mr. Thompson's pre-marital contribution. The Trial Court determined the marital equity to be the simply difference between the fair market value and the balance due on the mortgage. (R. at 207 ¶12 and 213 ¶4).

Mr. Thompson should have been given credit for his \$86,410.25 separate, pre-marital contribution, together with the appreciation attributable thereto, before the remaining value of the Utah Home was divided between the parties. The Trial Court erred in failing to do so. In order for the ultimate division to be equitable, Mr. and Mrs. Thompson's contributions during the marriage must be considered. Similar to the parties in Preston and Newmeyer, Mr. Thompson paid \$86,410.25 towards the purchase of the Utah Home with funds derived from his separate, pre-marital property (i.e, the California Home).

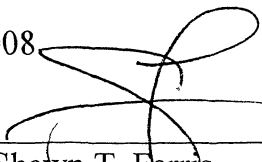
It is readily apparent that Mr. Thompson, similar to the wife in Newmeyer, paid a rather substantial share of the cost of the Utah Home with money he received through the sale of his pre-marital property. Mrs. Thompson did not personally contribute anything financially to the purchase and maintenance of the

Utah Home. Thus, circumstances necessitate that Mr. Thompson should receive credit for his \$86,410.25 contribution, together with the appreciation attributable thereto, before making the determination of the martial portion of the equity and ordering the same to be divided between the parties.

CONCLUSION

For the foregoing reasons, general accounting principles and upon the principles of equity, the Decree of Divorce regarding the determination of the martial equity in the 401(k) account and the Utah Home should be reversed. Mr. Thompson should be permitted to recover his separate, pre-marital principal plus any appreciated value of his contributions to the acquisition of the Utah Home and retain the principal and appreciated value of his separate, pre-marital contributions held in his 401(k) retirement account.

Dated this 3rd day of November, 2008




Shawn T. Farris
Counsel for Appellant

CERTIFICATE OF SERVICE

It is hereby certified that on the 3rd day of November, 2008, a true and correct copy of the foregoing Brief of the Appellant was served by depositing a copy of the same in the U.S. Mail, first class, postage prepaid, and addressed as follows:

Rick Mellen
Attorney for Petitioner/Appellee
187 North 100 West
St. George, UT 84770



Shawn T. Farris
Counsel for Appellant

Tab A

FILED
FIFTH DISTRICT COURT

2008 MAY 21 AM 10:55

WASHINGTON COUNTY

08

BY _____

RICK C. MELLEN (Bar No. 9738)
HUGHES, THOMPSON, RANDALL & MELLEN, P.C.
Attorney for Petitioner
187 North 100 West
St. George, Utah 84770
Telephone: (435) 673-4892

IN THE FIFTH JUDICIAL DISTRICT COURT OF WASHINGTON COUNTY

STATE OF UTAH

MARTHA I. THOMPSON,

Petitioner,

v.

JAMES A. THOMPSON,

Respondent.

DECREE OF DIVORCE

Case No. 074500408
Judge G. Rand Beacham

This case came before the Court for trial on January 29, 2008. Petitioner appeared in person and was represented by her counsel of record, Rick C. Mellen. Respondent appeared in person and was represented by his counsel of record, Shawn T. Farris. The Court, having entered its Findings of Fact and Conclusions of Law, hereby **ORDERS, DECREES, and ADJUDICATES** as follows:

1. Residency. Both parties were residents of Washington County, Utah, for at least three months prior to the commencement of this action for divorce.

2. Marriage information. The parties were married on February 14, 2002 in Palm Springs, California.

~~3. Divorce. The parties are awarded a divorce from the other on the grounds of~~

irreconcilable differences.

4. Real property. The parties have acquired a home located at 159 West 3600 South in St. George, Utah. The home is a marital asset in which each party is entitled to an equitable share, because proceeds from Respondent's premarital home in California were commingled into the marital estate and because Petitioner had some community property interest in the proceeds of the California home. The home is valued at \$450,000.00 and debt thereon is currently about \$326,000.00. The home shall be immediately listed for sale and sold at a commercially reasonable price with the net proceeds divided equally between the parties. The parties shall jointly make all major decisions pertaining to the sale of the home such as, but not limited to, choosing a real estate agent, determining the initial listing price, determining any changes to the listing price, and, if presented with an offer, whether to accept the offer or make a counter-offer. The parties shall act reasonably and in good faith in making joint decisions. In the alternative to selling the home, either party should be allowed to purchase the interest of the other party for \$62,000.00 within the next six months after the entry of the final Decree of Divorce.

5. Division of Respondent's 401(k) account. Respondent's 401(k) retirement account had a value of \$68,784.00 at the time of the parties' marriage in 2002. The 401(k) account had a value of \$177,302.00 at the time of trial. The difference of \$108,518.00 accumulated during the marriage and is marital property. Petitioner is therefore awarded one-half that amount—\$54,259.00. Petitioner's counsel shall prepare a QDRO to effectuate the transfer.

6. Shares in SkyWest. Petitioner is awarded 204 shares of SkyWest Stock. Respondent

shall transfer the 204 most recently acquired shares of SkyWest Stock to Petitioner.

7. Stock options. From time to time, Respondent has been able to exercise stock options in connection with his employment. Respondent has been able to sell the options and/or stocks purchased and has used the proceeds for marital expenses. Stock options are not guaranteed to Respondent and are not a vested right. The mere possibility of future stock options is not a marital asset which can be awarded or divided by the Court.

8. Personal property. The parties are awarded the following items of personal property:

Picture in master bathroom Picture in bar TV in master bedroom Computer and printer Children's bedroom set	Premarital property of Petitioner
Mexican furniture set Master bedroom armoire Desks and chairs Entertainment center "downstairs" 1993 Oldsmobile, as is Ford pickup (subject to debt thereon)	Premarital property of Respondent
Dining room set One-half of DVD collection Subaru vehicle (subject to debt thereon)	Marital property awarded to Petitioner

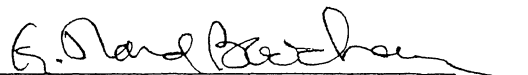
Bar in basement of home Two wall paintings Pool Table One-half of DVD collection Love seat, sofa, chair (subject to debt thereon) 62" TV (subject to debt thereon) ATVs and trailer (subject to debt thereon) Washer and dryer (subject to debt thereon) Ford vehicle (subject to debt thereon)	Marital property awarded to Respondent
---	--

All other personal property should be awarded to the person in possession thereof.

9. Alimony. Neither party is awarded alimony.

10. Attorney's fees. Both parties shall pay their own attorney's fees incurred in this matter.

DATED this 20 day of May, 2008
FIFTH DISTRICT COURT


G. RAND BEACHAM

Approved as to form:

Shawn T. Farris

CERTIFICATE OF MAILING

I hereby certify that a full, true and correct copy of the **DECREE OF DIVORCE** was mailed postage pre-paid, on the 1 day of May, 2008, addressed as follows

Shawn T Farris
2107 W. Sunset Blvd
St. George, UT 84770


LEGAL ASSISTANT

Tab B

FILED
FIFTH DISTRICT COURT
2008 APR 14 AM 9:12
WASHINGTON COUNTY

IN THE FIFTH DISTRICT COURT FOR
WASHINGTON COUNTY, STATE OF UTAH

MARTHA I. THOMPSON,

Petitioner,

vs.

JAMES A. THOMPSON,

Respondent.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Civil No. 074500408
Judge G Rand Beacham

This case came before the Court for trial on January 29, 2008. Petitioner appeared in person and was represented by her counsel of record, Rick C. Mellen. Respondent appeared in person and was represented by his counsel of record, Shawn T Farris. At the conclusion of the trial, the Court required the parties' counsel to submit proposed findings of fact and conclusions of law. Those proposals were received by the deadline, February 11, 2008, and the matter was taken under advisement at that time.

The Court has considered the testimonies of the witnesses, the exhibits received into evidence, the arguments of counsel and the parties' proposed findings of fact and conclusions of law. Neither party's proposals were entirely acceptable to the Court. Accordingly, the Court now makes its Findings of Fact and Conclusions of Law¹:

¹Notwithstanding the requirement of URCP Rule 52 that "the court shall find the facts specially and state separately its conclusions of law thereon," this Court finds no particular merit in the traditional separation of findings of fact from conclusions of law into separate sections, for two reasons. First, the separation of a legal conclusion from the facts on which it depends makes reading and comprehension unnecessarily difficult. Second, the appellate courts may review and characterize a trial court's findings of fact and conclusions of law without deference to what the trial court has called them. Consequently, the Court intends that the "findings" and "conclusions" be considered as a whole and without regard to technical distinctions among them.

1. Both parties were residents of Washington County, Utah, for at least three months prior to the commencement of this action for divorce.

2. The parties were married on February 14, 2002 in Palm Springs, California

3. Differences have occurred in the parties' relationship that prevent the continuation of a viable marriage. Each party should be awarded a divorce from the other on the grounds of irreconcilable differences.

4. The parties do not have any children in common. Petitioner does have two children from a prior marriage. The children lived with the parties during their marriage relationship and during the time the parties lived together prior to their marriage relationship, which was for approximately two years.

MARITAL HOME

5. At the time of the parties' marriage in 2002, Respondent owned a home in California which was his sole property.

6. During the next two or three years of marriage, Petitioner acquired some community property interest in Respondent's California home, but the evidence before the Court does not allow this to be quantified.

7. When the parties moved to Utah in 2005, Respondent sold the California home and the parties jointly purchased a home in St. George, Utah.

8. Title to the Utah home was and is held by both parties as joint tenants, and is subject to a joint obligation for a debt secured by a trust deed.

9. The earnest money and down payment on the Utah home totaled more than \$80,000,

and both were paid with funds from the proceeds of the sale of Respondent's premarital home in California

10 The Utah home is a marital asset, in which each party is entitled to an equitable share, because the California home proceeds have been commingled into the marital estate [Dunn v Dunn is correct precedent] and because Petitioner had some community property interest in the proceeds of the California home.

11. The parties stipulated that the value of the Utah home is \$450,000 and that the debt thereon is currently about \$326,000.

12. The Utah home should be sold and the net proceeds divided equally between the parties, in the alternative, either party should be allowed to purchase the interest of the other party for \$62,000 within the next six months after the entry of the final Decree of Divorce.

410K ACCOUNT

13. Respondent's 401k retirement account had a value of \$68,784 at the time of the parties' marriage in 2002.

14. The 410k account had a value of \$177,302 at the time of trial.

15. The difference of \$108,518 accumulated during the marriage and is marital property [Jeffries v Jeffries is the correct precedent] and Petitioner should be awarded one-half of that accumulated amount.

SHARES IN SKYWEST

16. The parties stipulated that 408 shares in Respondent's employer, SkyWest, constituted marital property

17. Petitioner should be awarded 204 shares.

STOCK OPTIONS

18. From time to time, Respondent has been able to exercise stock options in connection with his employment.

19. Respondent has been able to sell the options and/or stocks purchased and has used the proceeds for marital expenses.

20. Stock options are not guaranteed to Respondent and are not a vested right.

21. The mere possibility of future stock options is not a marital asset which can be awarded or divided by the Court.

PERSONAL PROPERTY

22. The evidence was not complete as to all of the parties' premarital and marital personal property. The evidence was sufficient as to the following items:

Picture in master bathroom Picture in bar TV in master bedroom Computer and printer Children's bedroom sets	Premarital property of Petitioner
Mexican furniture set Master bedroom armoire Desks and chairs Entertainment center "downstairs" 1993 Oldsmobile, as is Ford pickup (subject to debt thereon)	Premarital property of Respondent
Dining room set One-half of DVD collection Subaru vehicle (subject to debt thereon)	Marital property awarded to Petitioner

Bar in basement of home Two wall paintings Pool table One-half of DVD collection Love seat, sofa, chair (subject to debt thereon) 62" TV (subject to debt thereon) ATVs and trailer (subject to debt thereon) Washer and dryer (subject to debt thereon) Ford vehicle (subject to debt thereon)	Marital property awarded to Respondent
---	--

23. All other personal property should be awarded to the party who has possession thereof.

ALIMONY

24. Petitioner was unemployed at the time of trial, but she was previously employed and earning at least \$10 per hour until she quit her job and left Utah in late 2007.

25. Petitioner has good work experience and skills, and has a bachelors degree.

26. Petitioner is capable of earning at least as much as she did in Utah, which was about \$1733 per month at her last employment, and she is probably capable of earning much more in California where wages are generally higher than in Utah.

27. Respondent remains employed, and his salary has averaged about \$5125 per month over the past four years.

28. Although Respondent has also received income from exercising periodic stock options, that income is unpredictable and unreliable.

29. Petitioner's necessary expenses² total about \$3117 per month, and her debt payments

²I consider necessary expenses to include those for rent or mortgage, utilities, food and household, telephone, vehicle purchase and operation, insurance, and uninsured medical/dental

are about \$932 more.

30. Respondent's necessary expenses total about \$4606, and his debt payments (which include large marital debts) are about \$660 more.

31. The parties' total gross incomes are less than their total necessary expenses.

32. The parties' total net incomes are far less than their total necessary expenses and debts.

33. Each party is in need of support, and neither party is able to pay support for the other.

34. Alimony is not awarded.

ATTORNEY FEES

35. Neither party is able to pay any amount toward the attorney fees of the other party.

36. The parties should pay their own attorney fees and costs.

37. Petitioner's attorney should submit a final Decree of Divorce which is consistent with these Findings of Fact and Conclusions of Law.

DATED this 11 day of April, 2008.


G. RAND BEACHAM
District Court Judge

CERTIFICATE OF MAILING OR HAND DELIVERY

I hereby certify that on this 14 day of April, 2008, I provided true and correct copies of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW to each of the attorneys/parties named below by placing a copy in such attorney's file in the Clerk's Office at the Fifth District Courthouse in St. George, Utah and/or by placing a copy in the United States Mail, first-class postage prepaid, and addressed as follows:

Rick C. Mellen
Attorney for Petitioner

Shawn T. Farris
Attorney for Respondent

Pf Jordan
DEPUTY CLERK OF COURT

Tab C

ORIGINAL

Shawn T. Farris #7194
Farris & Utley, PC
2107 W. Sunset Blvd, 2nd Floor
PO Box 2408
St. George, UT 84771-2408
Telephone: 435-634-1600
Fax: 435-628-9323
Attorney for Respondent James Thompson
File No. 2037101

FILED
FIFTH DISTRICT COURT
2008 FEB 20 AM 11:49
WASHINGTON COUNTY

BY pf

IN THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

MARTHA I. THOMPSON, Petitioner, v. JAMES A. THOMPSON, Respondent.	TRIAL BRIEF Civil No. 074500408 Judge G. Rand Beacham
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Respondent, by and through his counsel of record, Shawn T. Farris of Farris & Utley, PC, hereby files the following Trial Brief as an assistance to this court in the adjudication of the issues presented and rendering its decision.

STATEMENT OF FACTS

1. Mr. and Mrs. Thompson were married in February, 2002.
2. There are not any children in common between Mr. and Mrs. Thompson. Mrs. Thompson has two children from a prior relationship.
3. Prior to their meeting and marriage, Mr. Thompson owned a home in California.
4. After the marriage, the parties resided in Mr. Thompson's California Home.
5. Mr. Thompson paid all of the expenses related to the maintenance and retention of the

California Home.

6. After the marriage of the parties, Mrs. Thompson did not contribute anything to the California Home nor was her name ever placed on title nor on the indebtedness secured by the California Home.
7. In 2005, Mr. Thompson received an employment offer in the State of Utah and the parties subsequently relocated to Utah.
8. In contemplation of the relocation to Utah from California, Mr. Thompson sold his California Home and used the net proceeds from the sale of his California Home to the purchase of a home located at 1659 West 3600 South (hereinafter "Utah Home") St. George, Utah.
9. Mrs. Thompson did not make any financial contribution to the acquisition nor the maintenance of the Utah Home.
10. In May of 2007, Mrs. Thompson initiated this action for divorce.
11. At the time of the commencement of these divorce proceedings by Mrs. Thompson, both she and Mr. Thompson were gainfully employed.
12. However, soon after initiating this divorce action, Mrs. Thompson voluntarily quit her employment.
13. During the course of this marriage, Mrs. Thompson did not contribute financially to the marital expenses.
14. During the course of the marriage Mr. Thompson has been exhausting savings and stock options in order to meet the monthly expenditures of the parties. These monthly expenditures exceed his monthly income by approximately \$1,500.00 per month.

IDENTIFICATION OF ISSUES

Separate, Pre-Marital Assets of Mr. Thompson.

Mr. Thompson had separate, pre-marital property and assets prior to his marriage to Mrs. Thompson. Mr. Thompson's separate, pre-marital property includes, but is not limited to, the following assets:

Type/Description of Pre-Marital Asset	Notations
California Home	<ul style="list-style-type: none">* California Home sold in 2005. \$86,410.26 of the net sale proceeds were used as the down-payment for the Utah Home. The appreciated value of his pre-marital contribution is \$97,211.* Mrs. Thompson did not make any contribution to the California Home nor to the acquisition of the Utah Home.
1993 Oldsmobile	<ul style="list-style-type: none">* Purchased by Mr. Thompson in 1993 as a brand-new automobile.* This vehicle was damaged while in the temporary possession of Mrs. Thompson and her minor son.
Skywest Stock	<ul style="list-style-type: none">* Mr. Thompson owned 1,078 shares prior to his marriage to Mrs. Thompson.* Mr. Thompson's stock ownership has increased to 1,468 shares as of June, 2007.* Mrs. Thompson has not contributed to any stock acquisitions.
401(k) Account	<ul style="list-style-type: none">* Mr. Thompson initiated this retirement account in 1990. The appreciated value of his pre-marital contributions is \$136,385.21.
2001 Ford Excursion	<ul style="list-style-type: none">* Purchased by Mr. Thompson in November of 2001.
Master Bedroom Set	<ul style="list-style-type: none">* Purchased by Mr Thompson in 1993.
Travel Trailer	<ul style="list-style-type: none">* Purchased by Mr. Thompson in April, 2000.
Mexican Furniture Set	<ul style="list-style-type: none">* Purchased by Mr. Thompson after the flood of the California Home and prior to marriage.
Downstairs Entertainment Center	<ul style="list-style-type: none">* Purchased by Mr. Thompson prior to the marriage
Desks and chairs	<ul style="list-style-type: none">* Purchased by Mr. Thompson prior to the marriage

Real Property.

Prior to the marriage of the parties and before they had met, Mr. Thompson own as his sole and separate property a home located in California. The parties married in February, 2002 in the State of California. Mrs. Thompson did not make any contribution to the California Home after the parties' marriage. Mr. Thompson continued to make all of the financial contributions to the California Home until this home was subsequently sold in contemplation of their relocation to the State of Utah.

The parties relocated from California to Utah in 2005. The Utah Home was purchased with the down-payment of \$86,410.26 from the sales proceeds of his California Home. Mrs. Thompson has not contributed anything to the acquisition, maintenance or retention of the Utah Home.

Mrs. Thompson argues that because she was able to convince Mr. Thompson to place her name on title that she is entitled to some of the equity of the Utah Home. However, there is not any equity to divide in the Utah Home. Moreover, Utah law supports the "back-out method" of calculating the marital interest by first subtracting the amount necessary to reimburse Mr. Thompson's separate, pre-marital contribution, along with appreciated interest which has accrued thereupon, before dividing the marital interest. (Hayes v. Hayes, 20050645 (2006 UT App. 289); Hall v. Hall, 858 P.2d 1018, 1023 (Utah App. 1993); Burt v Burt, 799 P.2d 1166, 1172 (Utah App. 1990)). Mr. Thompson is entitled to the return, "back[ing]-out" of his pre-marital contribution of \$86,410 plus appreciated interest thereon.

The following calculations demonstrate the absence of any marital equity in the Utah Home

Present Fair Market Value of Utah Home:

\$450,000

- Less the existing mortgage	- \$326,523	\$123,477
- Less pre-marital contribution from Mr Thompson from the sale of his California Home (\$86,410 x 12 5% increase in appreciated value)	- \$ 97,211 54	\$26,265
- Less estimated property taxes for 2008	-\$2,300	\$23,965
- Less estimated real estate commission at 5% if ordered sold at \$450,000 00	-\$22,500	
Estimated Net Sales Proceeds		\$1,465

With respect to the Estimated Net Equity, it is noteworthy that given the current state of the real estate market, there is a likelihood that the Utah Home, if marketed for sale, would require the maintenance of the monthly installment payments, homeowner's insurance, utilities, property taxes, and maintenance of the home and landscaping. Arguably, Mr Thompson would derive some benefit from living in the Utah Home during the pendency of the ultimate sale. However, the entire amount of economic resources needed to maintain this home during the pendency of the sale should not be entirely borne by Mr Thompson alone. The net equity derived from the ultimate sale should be reduced by a figure which represents Mrs Thompson's fair share of the economic expenditures incurred and paid by Mr Thompson during the pendency of the sale. It would be reasonable for her share of the net sale proceeds be reduced by one-half (½) of the monthly installment payments, homeowner's insurance, utilities, property taxes, and maintenance of the home and landscaping paid for and incurred during the pendency of the sale.

401(k) Retirement Account.

Years before this marriage, Mr. Thompson opened a 401(k) account in 1990. This retirement account was derived and funded through his employment in California and continued through his employment in Utah. The 401(k) account is managed and held with Wells Fargo Retirement Services.

At the time of the marriage, the account held a value of \$68,784. Mrs. Thompson has not contributed anything to this 401(k) account. The present value held in this 401(k) account is \$177,352. However, the net difference between the amount held in 2002 and the present holding is not an accurate representation of what may be considered as the contribution and growth during the marriage. This account is a defined-contribution type of retirement account.

The general rule is that equity requires that each party retain the separate property he or she brought into the marriage, including any appreciation of the separate property. *Burt v. Burt*, 799 P.2d 1166, 1168 (Utah Ct.App.1990). Therefore, the proper calculation of what may be possibly considered marital property would be to determine the growth attributable to the pre-marital amount and then deduct this from the present holding. The average rate of growth within this particular account between and during the years 2002 and 2007 is -18.22% and 31.65%. Therefore, the original separate, pre-marital amount has appreciated to \$136,385.21.

The calculation of the marital share of the 401(k) should be the present value of \$177,352 less the appreciated separate, pre-marital value of \$136,385.21 which leaves a difference of \$20,483.44.

Shares of Stock in Skywest Airlines.

Mr. Thompson owned 1,078 shares owned at the time of marriage in February 2002.

These shares of stock are his separate pre-marital property and should therefore be awarded to him as his sole and separate property.

After the marriage, Mr. Thompson continued to purchase shares of stock through his employment. As of June, 2007, Mr. Thompson had increased his stock holdings to 1,468 shares. The only stock which may be considered marital in nature would be 390 shares. Therefore, each party should be awarded 195 shares of the marital 390 shares.

Alimony Should Not be Awarded.

Alimony should not be awarded in this case for several reasons. Alimony is determined by the examination of several factors; namely, the ability to pay, the need to receive, length of the marriage and other circumstances. This marriage was a relatively short-term marriage. There are not any children who were born as issue of this marriage. "In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage." (UCA §30-3-5(f)).

First, Mr. Thompson does not have the ability to pay any alimony due to the fact that his necessary monthly expenses exceed his monthly income. It was argued that he has periodic stock options available to him on an annual basis. However, these stock options have been consistently exercised by the parties during the marriage to supplement and make up the monthly deficits due to the fact that Mr. Thompson's salary is less than the monthly expenditures. Mr. Thompson does not have any option currently available to him; but it is anticipated that he will have one ripen in 2008.

Mrs. Thompson claims that Mr. Thompson has a savings account at Bank of America.

However, there is a designate purpose to this short-lived account. Historically, Mr. Thompson would exercise his stock options, place the net sale proceeds into his Bank of America savings account and use all of these savings over the course of the calendar year to make up the monthly deficits on meeting the household expenses. If this Bank of America account were divided, then the monthly household expenses could not be met.

Mr. Thompson has been servicing, and continues to service without financial assistance from Mrs. Thompson, the following financial obligations:

Creditor	Account No.	Min Mo. Pmyt	Balance Due	Purpose of Debt
Countrywide Home Loans	131543392	\$2,357.04	\$326,523	1659 West 3600 South St. George, UT 84790
Capital One	4305721728091237	\$320.00	\$10,338	Purchase Furniture, Doctor Bills, Care Repair, Entertainment
Bank of the West		\$638.00	\$17,000	Purchase Ford Excursion
Chase Financial	00009895141787	\$491.00	\$29,000	Purchase Subaru Tribeca
Polaris StarCard	420-6011-0351-7014	\$199.99	\$12,897	Purchase of ATV

Secondly, Mrs. Thompson has attempted to create a self-imposed “need” to receive. In May 2007, Mrs. Thompson decides to file for divorce and initiated the present litigation. Contemporaneously with her commencement of this divorce action, she volunteers to quit her employment with First Colony Mortgage where she was full-time employed at the rate of \$12.00 per hour plus bonuses. Thereafter, she remained unemployed for six (6) months and while unemployed she is traveling between California and Utah.

Mrs. Thompson has a four-year Bachelors Degree. She claims to have been active in employment search but cannot remember to whom she interviewed, where she applied, number of resumes sent, etc. However, immediately prior to the temporary orders hearing held in

November, 2007, Mrs Thompson testifies that she has finally acquired a new employment. However, she testified at the temporary orders hearing that she does not recall who is her employer. The only things she recalled about her new employment is that she will be paid \$10.00 per hour. At trial, she testified that immediately after the Temporary Orders hearing in mid-November, 2007, she voluntarily quit her newly-found employment and that she has remained unemployed since that time through the date of trial.

She then claims monthly expenditures which include expenses for her children's support, to which Mr Thompson has no legal obligation to support. She claims \$700 per month in food expense, \$200 per month for new clothing purchases, and \$100 per month entertainment. However, upon cross-examination, she testified that these expenses include expenditures for her two children, one of which is now an adult. She then testified that \$300 of the \$700 claimed food expense was attributable to her alone with the remainder for her children.

Mrs Thompson claims to be financially responsible for the following indebtedness:

Creditor	Min Mo. Pmt	Balance Due	Purpose of Debt
Student Loans	\$68.50	\$3,295.25	Educational loans for her 4-year college degree
Household Bank Platinum	\$40.00	\$1,950.00	Credit card purchases for Petitioner and her children
Dillard's American Express	\$140.00	\$2,671.21	Credit card purchases for Petitioner and her children
Capital One	\$150.00	\$2,904.36	Credit card purchases for Petitioner and her children
THC	\$231.20	\$1,877.39	Uninsured medical expenses for Petitioner and her children

It is reasonable to anticipate that Mrs Thompson should not have any taxation due for the tax year 2007 and the immediate future. For 2007, with her wages for November and December and her unemployment for 6 months, no taxes would be due by her. Her estimated wages for

2007 would be $\$1,300 \times 7 \text{ months} = \$9,100$; less $\$8,450$ exemption if married; but filing separately; plus her exemptions for herself and her dependency exemptions. It is likely then that she would not have any tax liabilities but would receive Earned Income Credit.

Division of Property

Petitioner's Exhibit 11 sets forth Mrs. Thompson's desires with respect to the division of personal properties. However, this proposed division ignores the existence of separate, pre-marital properties belonging to Mr. Thompson. For example, the Master Bed Armoire, Mexican Furniture set, a portion of the DVD collection, the 3 TVs, Downstairs Entertainment Center and the desks and chairs were all separate, pre-marital property. Mrs. Thompson testified that she had sold her pre-marital personal property and "given" the money, or a portion of these sale proceeds to Mr. Thompson. However, when questioned, she did not recall how much she derived from the sale of her pre-marital property, how much she had given to Mr. Thompson and when she gave these funds. In contrary, Mr. Thompson clearly testified that Mrs. Thompson retained all of these funds and he did not receive any portion of the same.

Additionally, this proposed division by Mrs. Thompson also ignores the fact that some of this marital property was purchased on Mr. Thompson's credit and that he has been, and continues to service the credit card obligations associated therewith. There is a general tenet that the item of personal property should be followed with the debt. The love seat, sofa chair, 62" TV, Bar in basement, etc were purchased on credit which is still being serviced by Mr. Thompson without any contribution by Mrs. Thompson. Therefore, the personal property should be awarded to the party responsible for the indebtedness.

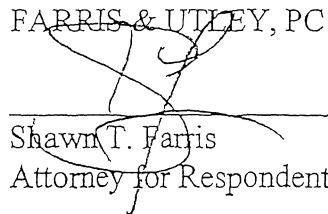
Moreover, separate pre-marital property of Mr Thompson sustained significant damage while in the possession of Mrs. Thompson and her son. Mr. Thompson purchased his Oldsmobile convertible brand-new in 1993. He has maintained and cared for this vehicle since its purchase 15 years ago. Although Mr Thompson specifically prohibited Mrs. Thompson's son to drive this vehicle, Mrs. Thompson permitted her son to use Mr. Thompson's Oldsmobile during the pendency of this divorce action. During this time period, Mr. Thompson's Oldsmobile sustained damages between \$2,289.25 - \$2,384.01 as referenced on the trial Exhibit 31. Mr. Thompson should be compensated for this mis-use of his vehicle.

Attorney's Fees.

During the course of this litigation, Mrs. Thompson sought a greater distribution of property, sought to be awarded some of Mr. Thompson's separate, pre-marital property and also sought to ignore the appreciated value of Mr. Thompson's pre-marital contributions to the Utah Home and the appreciated growth of his pre-marital contributions to his 401(k) which were made between 1990 and the date of marriage. The costs of litigation were significantly increased by these demands made by Mrs. Thompson. Therefore, each party should be ordered to bear their own attorney's fees and costs.

Dated this 15th day of February, 2008.

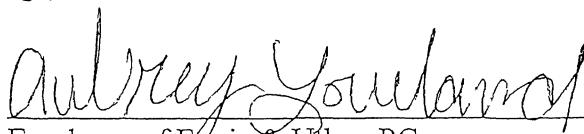
FARRIS & UTLEY, PC


Shawn T. Farris
Attorney for Respondent

CERTIFICATE of SERVICE

On this 19 day of February, 2008, a true and correct copy of the foregoing was duly served upon the Petitioner by depositing a copy in the US Mails, postage pre-paid, first class and addressed as follows:

Rick Mellen
187 North 100 West
St. George, UT 84770



Employee of Farris & Utley, PC

Tab D



Sign Off | Home | Contact Us

Retirement Planning | Financial Matters | Online Seminars | My Account

My Account

Plan Information

Plan Overview

Balance Information

Fund Performance

Closing Prices

Plan Documentation

Manage My Account

Take Money from My Account

Resource Center

My Settings

Pending Transactions

View Another Plan

> Change Plan












Fund Performance

For periods less than or equal to one year, the figures presented represent cumulative, non-annualized returns. Prior 3-, 5-, and 10-year figures represent the average annual compound rate of total return.

Performance Data As of 12/31/2007

Investment Name	Prior Month	Prior 3 Months	Prior 12 Months	Prior 3 Years	Prior 5 Years	Prior 10 Years	Additio Inform
WF COLL STABLE RETURN N	0.36%	1.15%	4.58%	4.32%	4.25%	5.08%	
VANGUARD INTERM-TERM US TREAS	0.29%	4.65%	10.15%	5.25%	4.35%	6.36%	
PIMCO TOTAL RETURN (ADMIN)	0.38%	3.86%	8.81%	5.03%	5.05%	6.46%	
MFS HIGH YIELD OPPORTUNITIES A	0.22%	-1.36%	1.42%	5.80%	10.42%	N/A	
OAKMARK EQUITY & INCOME (I)	-0.45%	1.08%	11.97%	10.46%	12.88%	11.89%	
VAN KAMPEN COMSTOCK (A)	-3.66%	-6.15%	-1.89%	5.86%	12.81%	8.88%	
FIDELITY EQUITY INCOME	-0.92%	-6.12%	1.40%	8.70%	13.19%	6.70%	
DAVIS NY VENTURE (A)	-0.82%	-2.05%	4.97%	10.18%	14.75%	8.03%	
BLACKROCK LARGE CAP CORE (A)	0.49%	-3.03%	4.86%	10.16%	15.22%	N/A	
AMERICAN FUNDS GROWTH FD OF AM	-0.44%	-2.73%	10.88%	11.99%	15.87%	11.42%	
WF ADV CAPITAL GROWTH	1.47%	2.51%	18.54%	11.01%	15.23%	10.58%	
GOLDMAN SCHS MID CAP VALUE (A)	1.10%	-3.14%	2.91%	10.18%	16.42%	10.85%	
OAKMARK SELECT	-4.42%	-12.92%	-14.04%	0.79%	7.70%	10.35%	
CALAMOS GROWTH A	-0.17%	1.20%	23.26%	10.69%	18.03%	17.68%	
TURNER MID CAP GROWTH (INV)	1.85%	1.79%	24.44%	14.16%	19.83%	12.05%	
WF ADV SMALL CAP VALUE FUND	2.89%	-4.20%	10.32%	12.76%	20.69%	17.15%	
NEUBERGER BERMAN GENESIS (TR)	2.46%	4.58%	21.80%	14.96%	18.88%	12.71%	

RESPONDENT'S EXHIBIT

WASATCH SMALL CAP GROWTH	0 21%	-0 34%	8 36%	7 29%	13 98%	12 84%	
ALLIANCEBERNSTEIN INTL VAL A	2 49%	5 54%	5 26%	18 14%	24 19%	N/A	
AMERICAN FUNDS EUROPACIFIC R4	1 20%	- 1 27%	18 87%	20 58%	22 75%	12 15%	
WILLIAM BLAIR INTL GROWTH	2 44%	- -0 81%	18 13%	20 93%	24 40%	15 93%	
JANUS OVERSEAS	0 67%	- 0 11%	27 76%	35 54%	32 20%	15 31%	
SKYWEST STOCK	1 91%	6 37%	4 83%	N/A	N/A	N/A	
SKYWEST CONS PORTFOLIO	0 28%	1 64%	7 28%	N/A	N/A	N/A	
SKYWEST MODERATE PORTFOLIO	0 07%	0 63%	7 61%	N/A	N/A	N/A	
SKYWEST GROWTH PORTFOLIO	0 08%	- -0 30%	7 78%	N/A	N/A	N/A	
SKYWEST AGGRESSIVE PORTFOLIO	0 27%	- -1 30%	8 04%	N/A	N/A	N/A	
SKYWEST VERY AGG PORTFOLIO	0 45%	- -2 08%	8 30%	N/A	N/A	N/A	

Closing Prices for the funds in your plan can be viewed as of the last business day. You can also search for closing prices of any other date.

Key



Fund Descriptor

A one-page summary of an investment fund, including detailed historical performance information.

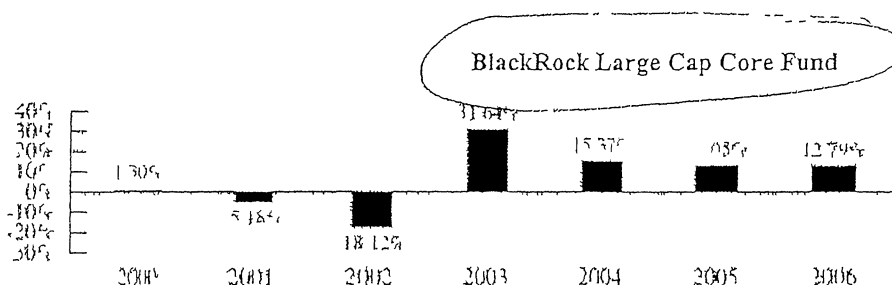


Fund Prospectus

A comprehensive booklet published by the fund company which outlines available information about the selected fund.

Note: Fund Descriptors and Fund Prospectus may not be available for all funds in your plan. Contact your Plan Administrator if you have questions about a specific fund.

Table of Contents



The Fund now uses Investor A shares in this bar chart because Investor A shares are the most widely available share class

During the period shown in the bar chart, the highest return for a quarter was 15.65% (quarter ended March 31, 2000) and the lowest return for a quarter was -15.75% (quarter ended September 30, 2002). The year-to-date return as of December 31, 2006 was 12.79%.

After-tax returns are shown only for Investor A Shares and will vary for other classes. The after-tax returns are calculated using the historical highest applicable marginal Federal individual income tax rates in effect during the periods measured and do not reflect the impact of state and local taxes. Actual after-tax returns depend on an investor's tax situation and may differ from those shown. The after-tax returns shown are not relevant to investors who hold their Fund shares through tax-deferred arrangements such as 401(k) plans or individual retirement accounts, or through tax advantaged education savings accounts.

Average Annual Total Returns (For the periods ended December 31, 2006)	One Year	Five Years	Life of Fund(a)
BlackRock Large Cap Core Fund — Investor A(b)			
Return Before Taxes(c)	6.87%	8.48%	5.79%
Return After Taxes on Distributions(c)	6.16%	8.07%	5.50%
Return After Taxes on Distributions and Sales of Fund Shares(c)	5.35%	7.28%	4.97%
BlackRock Large Cap Core Fund — Investor B(d)			
Return Before Taxes(c)	7.38%	8.51%	5.77%
BlackRock Large Cap Core Fund — Investor C(b)			
Return Before Taxes(c)	10.91%	8.80%	5.78%
BlackRock Large Cap Core Fund — Institutional(e)			
Return Before Taxes(c)	13.08%	9.93%	6.87%
BlackRock Large Cap Core Fund — Class R(f)			
Return Before Taxes(c)	12.59%	9.48%	6.41%
Russell 1000® Index(g)	15.46%	6.82%	1.98%(h)

(a) Fund inception date is December 22, 1999

(b) Prior to October 2, 2006, Investor A shares were designated Class A shares and Investor C shares were designated Class C shares

(c) Includes all applicable fees and sales charges

(d) Returns reflect the 4.50% six-year contingent deferred sales charge in effect as of October 2, 2006. Investor B shares automatically convert to Investor A shares after approximately eight years. All returns for periods greater than eight years reflect this conversion. Prior to October 2, 2006, Investor B shares were designated Class B shares.

(e) The returns for Institutional shares do not reflect the Institutional front-end sales charge in effect prior to December 28, 2005. If the sales charge were included, the returns for Institutional shares would be lower. Prior to October 2, 2006, Institutional shares were designated Class I shares.

(f) The returns for Class R shares prior to January 3, 2003, the commencement of operations of Class R shares, are based upon performance of the Fund's Institutional shares. The returns for Class R shares, however, are adjusted to reflect the distribution and service (12b-1) fees applicable to Class R shares.

(g) The Russell 1000 Index® is an unmanaged broad-based Index that measures the performance of the 1,000 largest companies in the Russell 3000® Index, which represents approximately 92% of the total market capitalization in the Russell 3000® Index. Performance of the Index does not reflect the deduction of fees, expenses or taxes. Past performance is not predictive of future performance.

(h) Since December 22, 1999

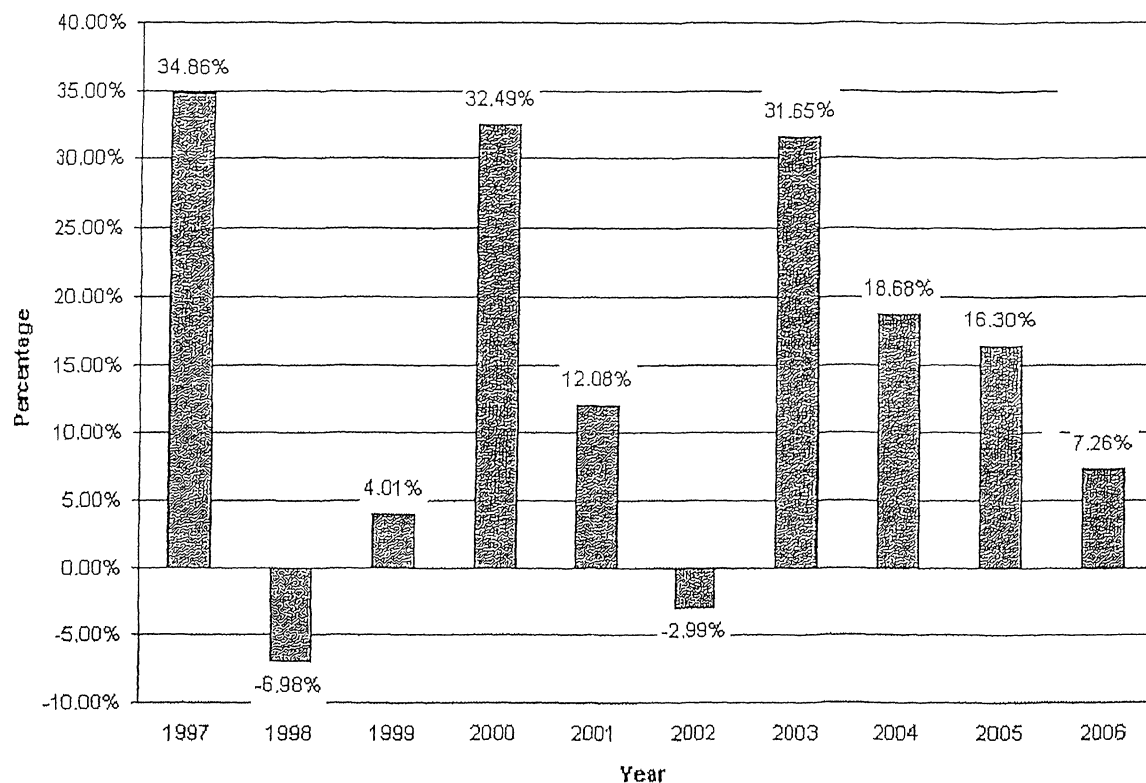


Chart - Neuberger Berman Genesis Fund Trust Class

PERFORMANCE

The table and chart below provide an indication of the risks of investing in the Fund. The bar chart shows how the Fund's performance has varied from year to year. The table next to the chart shows what the return would equal if you averaged out actual performance over various lengths of time and compares the return with one or more measures of market performance. This information is based on past performance (before and after taxes); it is not a prediction of future results.

YEAR-BY-YEAR % RETURNS as of 12/31 each year*

[GRAPHIC OMITTED]

1997	'98	'99	'00	'01	'02	'03	'04	'05	'06
34.86	-6.98	4.01	32.49	12.08	-2.99	31.65	18.68	16.30	7.26

BEST QUARTER: Q3 '97, 20.18%

WORST QUARTER: Q3 '98, -16.44%

Year-to-date performance as of 9/30/2007: 16.47%

Martha Thompson v James Thompson (074500408)

401(k) Account Exhibit RE Appreciated Value of Separate, Pre-Marital Share and Marital Share

Value of Account at time of Marriage.	\$68,784		
BlackRock Large Cap Core:	50% of Total Acct.	\$34,392 (50% of \$68,784)	
	Growth 2002: <18.12%>	\$28,160 17	
	Growth 2003: 31.64%	\$37,070 05	
	Growth 2004: 15.37%	\$42,767.72	
	Growth 2005: 13.05%	\$48,348 91	
	Growth 2006: 12.79%	\$54,532 74	
	Growth 2007: 4.86%	\$57,183.03	\$57,183.03
Neuberger German Genesis	50% of Total Acct.	\$34,392 (50% of \$68,784)	
	Growth 2002: <2.99%>	\$33,363.68	
	Growth 2003: 31.65%	\$43,923.28	
	Growth 2004: 18.68%	\$52,128.15	
	Growth 2005: 16.30%	\$60,625.04	
	Growth 2006: 7.26%	\$65,026.42	
	Growth 2007: 21.80%	\$79,202.18	\$79,202.18
			\$136,385.21
Present Value as of January 2008 less appreciated pre-marital interest:	\$177,352.09 - \$136,385.21		
Marital Interest	\$40,966.88		
		50% of Marital Interest =	\$20,483 44

