

1986

Kelly Renee Peterson v. Jerry Allen Peterson : Brief of Appellant

Utah Supreme Court

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Dwight Epperson; attorney for appellant.

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UTAH COURT OF APPEALS
BRIEF

UTAH

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DOCKET NO. 860175 2A

IN THE SUPREME COURT
OF THE STATE OF UTAH

KELLY RENEE PETERSON,	:	
Plaintiff/Appellant,	:	
vs.	:	Civil No. 860120
JERRY ALLEN PETERSON,	:	13-B
Defendant/Respondent.	:	

BRIEF OF PLAINTIFF/APPELLANT

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IN THE SUPREME COURT
OF THE STATE OF UTAH

KELLY RENEE PETERSON,	:	
Plaintiff/Appellant,	:	
vs.	:	Civil No. 860120
JERRY ALLEN PETERSON,	:	
Defendant/Respondent.	:	

BRIEF OF PLAINTIFF/APPELLANT

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STATEMENT OF ISSUES PRESENTED ON APPEAL

I. DID THE LOWER COURT ABUSE ITS DISCRETION BY ORDERING THE PLAINTIFF/APPELLANT AND HER TWO MINOR DEPENDENTS OUT OF THE FORMER RESIDENCE OF THE PARTIES AND FORCING THEM TO SEEK SHELTER ELSEWHERE?

II. DID THE LOWER COURT ABUSE ITS DISCRETION BY CONDITIONING ITS ORDER TO DEFENDANT TO PAY SUPPORT PAYMENTS UPON WHETHER DEFENDANT CONTINUES TO DRAW THE SAME LEVEL OF UNEMPLOYMENT COMPENSATION?

III. DID THE LOWER COURT ABUSE ITS DISCRETION BY REFUSING TO AWARD PLAINTIFF/APPELLANT THE USE OF THE PARTIES WASHER AND DRYER?

IN THE SUPREME COURT
OF THE STATE OF UTAH

KELLY RENEE PETERSON,	:	
Plaintiff/Appellant,	:	
vs.	:	Civil No. 860120
JERRY ALLEN PETERSON,	:	
Defendant/Respondent.	:	

STATEMENT OF FACTS

On January 10, 1981, the parties hereto were married (Tr. at 18). Subsequently, two children were born to them (Tr. at 18). The parties to this action maintained one residence throughout their marriage at Scipio, Utah (Tr. at 8, lines 6-9; Tr. at 19, lines 1-5). This home, together with a 10.5 acre tract upon which it was located, was brought into the marriage by defendant/respondent (hereinafter "defendant") (Tr. at 61, lines 22-23). Defendant testified that he felt the value of the three-bedroom home (Tr. at 23, line 7) and 10.5 acres was \$26,000 (Tr. at 57-58); plaintiff/appellant (hereinafter "Kelly") felt the home and land were worth \$40,000 (Tr. at 56, lines 1-5). At the time of trial, Kelly was attempting to keep her small business

in Nephi from failing (Tr. at 53, lines 103). The business has since failed.

Kelly testified at trial that she needed the home to provide a place to live for herself and the two minor children of the parties (Tr. at 38, line 25), and that she filed a divorce only after defendant requested her to do so (Tr. at 45, lines 21-25) and after she knew that defendant was seeing another woman (Tr. at 35).

Testimony at trial brought out that defendant was unemployed, and that his regular line of work was construction and often required that defendant reside away from the Scipio home (Tr. at 59, 60; Tr. at 3, line 16). Since trial, Kelly and the two minor children have left the former residence of the parties pursuant to the Divorce Decree (D.D. at 4, paragraph 10) and defendant has resided for several months in Southern California. Although Kelly's parents have a small apartment building in Nephi, Utah, any generosity on their part in asking Kelly to reside in an apartment is contingent upon a vacancy (Tr. at 40, lines 10-12).

A washer and dryer were brought into the marriage by defendant (Tr. at 33, lines 20-25) and a horse was purchased by the parties during their marriage, which defendant testified he intended to use for the children's benefit (Tr. at 63, lines 16-19). The horse has since been sold by defendant, and Kelly continues to have difficulty washing and drying the children's clothes because the washer and dryer were awarded to defendant (D.D. at 3, paragraph 7). The Divorce Decree ordered defendant

to pay \$100 per month per child as support money "[a]s long as defendant is drawing unemployment compensation" of \$830.00 per month (D.D. at 2, paragraph 4). At the time of trial, Kelly had been receiving public assistance and her circumstances since trial have necessitated continuous public assistance from the Utah State Department of Social Services since being forced out of the former residence of the parties in June, 1986.

SUMMARY OF ARGUMENT

U.C.A. Section 30-3-5(1) specifically suggests that the trial court has discretion to make such orders in the best interests of equity and all parties. After five years of marriage and two children, equity requires that appellant Kelly Peterson and the two children of the parties be permitted to occupy the former home and land of the parties until said children reach majority. The present order subjects Kelly Peterson to an impossible and confining situation of attempting to raise the children with only Social Services' assistance because she has little training. And the divorce decree at present purports to condition defendant's support obligation entirely on the continuation of unemployment benefits at the present level. Only a review and reversal of these orders to allow Kelly Peterson to live in the parties' former residence and a definite support requirement from defendant will correct the misunderstanding and misapplication of law in this matter.

ARGUMENT

I. THE LOWER COURT ABUSED ITS DISCRETION BY FORCING PLAINTIFF/APPELLANT AND HER TWO MINOR CHILDREN OUT OF THE PARTIES' FORMER RESIDENCE

AND FORCING THEM TO SEARCH ELSEWHERE FOR
SHELTER.

The applicable statute in this appeal states as follows: "When a decree of divorce is rendered, a court may include in it such orders in relation to the children, property and parties, and the maintenance and health care of the parties and children, as may be equitable." U.C.A. Section 30-3-5(1) (1979, as amended). The lower court's awarding defendant the former residence of the parties together with its surrounding real property of 10.5 acres as of June 1986, thereafter leaving plaintiff/appellant Kelly Peterson to seek shelter for herself and two small children was apparently based on the fact that said real estate was brought into the marriage by the defendant; however, the above-referenced statute specifically directs lower courts to make "such orders in relation to the children property and parties . . . as may be equitable." U.C.A. Section 30-3-5(1) (1979).

In the Utah Supreme Court case of Englert v. Englert, 575 P.2d 1274, 1276 (Utah 1978), this court took a broad view of the trial court's duty to make an equitable division of property, stating that it encompassed "all the assets of every nature possessed by the parties, wherever obtained and from whatever source derived" And in Dogu v. Dogu, 652 P.2d 1308 (Utah 1981), this court cited its earlier decision in DeRose v. DeRose, 19 Utah 2d 77, 79, 426 P.2d 221, 222 (1967) in which it held as follows:

Changes [in the trial court determination]
should be made if that seems essential to the

accomplishment of the desired objectives of the decree: that is, to make such arrangement of the property and economic resources of the parties that they will have the best possible opportunity to reconstruct their lives on a happy and useful basis for themselves and their children.

Dogu v. Dogu, supra, at 1311. The Dogu court continued that a change in the trial court's determination was required where the appellant "may be deprived of all ongoing financial support at the very time of life when she is most in need" Id. The case of Jorgensen v. Jorgenson, 667 P.2d 22 (Utah 1982) is not on point. In Jorgensen, only one child was born to the marriage, and the marriage lasted just two years. The custodial parent was not required to apply for public assistance. Id. at 23.

The appellant herein has necessarily been deprived of all ongoing financial support due to her being ordered out of the former residence of the parties, predictably losing her business opportunity, and presently being a tenant at will in her parents' apartment subject to availability. In the meantime, Kelly, our appellant, has received no assistance from defendant since the State Department of Social Services promptly takes any support payments in return for its own assistance to Kelly and her two small children. Realistically, the only benefit defendant can continue to provide Kelly during these difficult economic times where defendant is employed for only short periods of time is shelter from the elements. The home and land in Scipio is held in high regard by Kelly and the children, a stark contrast from the defendant's feelings as evidenced by the parties' respective \$40,000 and \$26,000 estimates of its fair market value. Regard-

less of the source of the property, Kelly should be awarded a one-half interest in the property or at least a right to live in the home with the children until they reach majority. This would be an equitable outcome. As it stands, Kelly and the children have no place to go and Kelly's parents are made to feel the burden of support properly attributed to defendant.

Given Kelly's education and training, or lack thereof, she will have no chance to make something of herself for the monetary benefit of her little family under present circumstances, and should be allowed to regain possession of the home and raise the children of the parties. Kelly has been subject to a misunderstanding or misapplication of Section 30-3-5(1) which has resulted in substantial prejudicial error, and requires a change in the trial court's determination.

II. THE LOWER COURT ABUSED ITS DISCRETION BY
MAKING DEFENDANT'S CHILD SUPPORT PAYMENTS TO
PLAINTIFF/APPELLANT CONTINGENT UPON DEFENDANT'S
MAINTAINING A CERTAIN LEVEL OF UNEMPLOYMENT
COMPENSATION.

Under the present divorce decree, defendant technically is under no obligation to make support payments to Kelly or to the Department of Social Services if his unemployment compensation should fall below \$830 per month, or if his unemployment compensation were to cease. This possibility has great impact on both Kelly and the State of Utah. If support obligations can be waived by narrow language in a divorce decree then healthy fathers can suddenly be excused from traditional

support requirements already under severe attack in our society today.

Appellant's counsel has found no cases in point regarding nebulous support obligations such as that promised defendant in the divorce decree in this matter; however, the decree at the least should be revised to require monthly payments not contingent upon employment or an unemployment compensation level.

III. THE LOWER COURT ABUSED ITS DISCRETION BY REFUSING TO AWARD THE USE OF THE PARTIES' WASHER AND DRYER TO PLAINTIFF/APPELLANT AS LONG AS THE PARTIES' CHILDREN ARE MINORS.

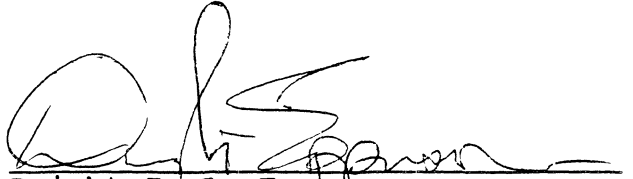
As to property settlement, the parties' stipulation did not touch upon the disposition of the washer and dryer, or the horse. The obvious need of a young mother with two children under five years old for a washer and dryer suggests that the present property settlement did not meet the general intent of Section 30-3-5(1) or provide the parties with those things required to further their happiness consistent with DeRose and Doqu, supra, to the great prejudice of the appellant. Defendant should be required to remit to appellant the proceeds from the sale of the horse, and allow her an opportunity to repurchase said horse.

CONCLUSION

The trial court has summarily dismissed the obvious needs of the parties, the equities of this matter, and applicable law in requiring Kelly and the children to seek another home

after five years of marriage. Short of a one-half interest in the home and property, the lower court's order should be reversed with directions to award Kelly the right to reside with the children in the parties' former home, until said children reach their majority. And defendant's child support obligation should not be made dependent upon his receiving a certain level of unemployment compensation, since the present order shocks the conscience. Finally, a property settlement accordingly is in order insofar as the washer and dryer are concerned.

RESPECTFULLY SUBMITTED this 7th day of November, 1986.



Dwight J. L. Epperson
Attorney for Plaintiff/Appellant

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing BRIEF was sent this 7th day of November, 1986, to the following:

Richard K. Glauser
McKay, Burton & Thurman
Attorneys for Defendant/Respondent
10 East South Temple, Suite 1200
Salt Lake City, Utah 84133



ADDENDUM

30-3-5

HUSBAND AND WIFE

Power of court to vacate decree of divorce or separation upon request of both parties, 3 ALR 3d 1216.

Prayer to impress trust upon property or otherwise settle property rights, propriety of inclusion in bill for divorce or annulment, 93 ALR 327.

Standing of strangers to divorce proceeding to attack validity of divorce decree, 12 ALR 2d 717.

Sufficiency of allegation of adultery in suit for divorce, 2 ALR 1621.

Vacating or setting aside divorce decree after remarriage of party, 17 ALR 4th 1153.

30-3-5. Disposition of property - Maintenance and health care of parties and children — Court to have continuing jurisdiction — Custody and visitation — Termination of alimony. (1) When a decree of divorce is rendered, the court may include in it such orders in relation to the children, property and parties, and the maintenance and health care of the parties and children, as may be equitable. The court shall include in every decree of divorce an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children. If coverage is available at a reasonable cost, the court may also include an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for those children. The court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the support and maintenance of the parties, the custody of the children and their support, maintenance, and health and dental care, or the distribution of the property as shall be reasonable and necessary. Visitation rights of parents, grandparents, and other relatives shall take into consideration the welfare of the child.

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

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

History: R.S. 1898 & C.L. 1907, § 1212; L. 1909, ch. 109, § 4; C.L. 1917, § 3000; R.S. 1933 & C. 1943, 40-3-5; L. 1969, ch. 72, § 3; 1975, ch. 81, § 1; 1979, ch. 110, § 1; 1984, ch. 13, § 1.

Compiler's Notes.

Analogous former statutes, Comp. Laws 1876, § 1155; 2 Comp. Laws 1888, § 2606.

The 1969 amendment deleted a provision that children ten years of age and of sound mind have the privilege of selecting the parent to which they will attach themselves; and substituted the fourth sentence of subsec. (1) for "Such subsequent changes or new orders

may be made by the court with respect to the disposal of the children or the distribution of property as shall be reasonable and proper."

The 1975 amendment added the last sentence of subsec. (1).

The 1979 amendment added subsecs. (2) and (3).

The 1984 amendment substituted "include in it" for "make" in the first sentence of subsec. (1); inserted the second and third sentences in subsec. (1); inserted "and health and dental care" in the fourth sentence of subsec. (1); and made minor changes in phraseology and punctuation.

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IN THE FOURTH JUDICIAL DISTRICT COURT OF MILLARD COUNTY,

STATE OF UTAH

KELLY RENEE PETERSON and
UTAH STATE DEPARTMENT OF
SOCIAL SERVICES,

Plaintiffs,

vs.

JERRY ALLEN PETERSON,

Defendant.

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Civil No. 7958

This cause was tried to the Court sitting without a jury on November 13, 1985, the Honorable Cullen Y. Christensen, Fourth Judicial District Judge presiding, the parties each appearing in person and by counsel, a stipulation having been read into the record wherein and whereby the parties stipulated to a division of certain personal property, evidence having then been offered and received, the Court having issued a memorandum decision, and having directed that the Utah State Department of Social Services be named as a party Plaintiff to facilitate an award of judgment against Defendant for public assistance provided to Plaintiff and her two minor children, now therefore, the Court finds and concludes as follows:

FINDINGS OF FACT

1. Plaintiff and Defendant are wife and husband having married on January 10, 1981.

2. Plaintiff was an actual and bona fide resident of Millard County, Utah for more than three months immediately prior to the filing of the Complaint herein.

3. Two children have been born as issue of said marriage, to wit: Judy Lynn Peterson, a girl, born March 12, 1982 and Jeffrey Allen Peterson, a boy, born January 18, 1984.

4. Plaintiff is a fit and proper person to have the care, custody and control of said minor children, subject to reasonable rights of visitation in and for Defendant, which visitation rights are hereby defined as follows:

- A. One-half of the Christmas holiday.
- B. One-half of the Thanksgiving holiday.
- C. Alternating visits on every other holiday.
- D. Every other birthday.
- E. Each Father's Day.
- F. One month summer visit for each child when age 4 or less.
- G. Five week summer visit for each child when age 5.
- H. Six week summer visit for each child when age 6.
- I. Every other weekend from 6:00 p.m. Friday to 6:00 p.m. Sunday.

5. Defendant should provide Plaintiff with advance notice of his intent to exercise visitation rights, which notice shall be not less than 48 hours for other than summer visits, and not less than 2 weeks for summer visits.

6. That for several months prior to the filing of the action and as a continual course of conduct the Defendant treated the Plaintiff cruelly,

causing her great mental distress and suffering, more in particular as follows:

A. Defendant kept company with another woman over the objections of Plaintiff.

7. That the parties have been separated since July, 1985.

8. That Plaintiff has no net monthly income, however, Plaintiff is receiving Public Assistance; that Plaintiff claims monthly living expenses of \$1,176.00, plus debt service of \$296.13; that Plaintiff is presently residing in the family home at Scipio, Utah and is commuting to Delta, Utah, where she operates a small gift shop; that said gift shop has been operating at a loss; that by reason of Plaintiff's limited job experience and training it is not likely that Plaintiff will be able to earn significantly more than minimum wage; that the condition of Plaintiff's health is good.

9. That Defendant has net monthly income of \$830.00 from unemployment compensation; that Defendant, when he is employed, customarily can earn approximately \$11.50 per hour, which will produce gross monthly income based on 40 hours per week of \$1,978.00 per month and net income of \$1,720.00 per month; Defendant claims monthly living expenses of \$750.00, plus debt service of \$146.00; Defendant presently resides out of the family home; that by reason of Defendant's job experience and training it is likely that Defendant will be able to earn as much as last above indicated; that the condition of Defendant's health is good.

10. That the parties respectively brought the following assets into the marriage:

Findings of Fact and
Conclusions of Law
Peterson et al vs. Peterson
Civil No. 7958

- 4 -

Plaintiff: Miscellaneous furniture of undetermined value.

Defendant: (A) Miscellaneous furniture of undetermined value, includes a washer and dryer.

(B) 10.5 acres of land with residence situate thereon and with 5 shares of water stock, all having a fair value at the time of the marriage of \$26,000.00.

10A. That the parties have accumulated the following assets during the course of the marriage:

<u>ITEM</u>	<u>VALUE</u>	<u>ENCUMBRANCE</u>
(A) Increased value in 10.5 acres of land, residence and 5 shares of water stock.	\$ 4,000.00	\$ --0--
(B) Gift shop, Delta	3,000.00	5,700.00 ¹⁰⁰
(C) 1983 Ford and a motorcycle	4,800.00	6,000.00 ²⁵⁰
(D) Horse	800.00	--0--
(E) Camera	500.00	--0--
(F) 1978 Ford truck	1,200.00	1,200.00

11. That the parties owe the following marital debts:

<u>CREDITOR</u>	<u>AMOUNT/PAYABLE</u>	<u>SECURITY</u>
(A) Fillmore Hospital	\$ 200.00	--0--
(B) Nephi Hospital	3,300.00	--0--
(C) Payson Hospital	220.00	--0--
(D) Commercial Credit	1,500.00	--0--
(E) Scipio Garage	170.00	--0--
(F) Valley Bank	1,200.00/146.00 p/m	truck
(G) Zions Bank	6,000.00/296.00 p/m	car and motorcycle
(H) Eva Meeker-	3,000.00	--0--
(I) Classic Sales	2,700.00/30.00 p/m	gift shop

12. That the parties respectively claim attorney's fees incurred in connection herewith as follows:

Plaintiff: \$1,200.00, based on 15 hours at \$80.00 per hour.

Defendant: \$1,600.00, based on 20 hours at \$80.00 per hour.

13. The Utah State Department of Social Services has appeared in this action and claims reimbursement from Defendant in the sum of \$1,100.00 for public assistance paid to Plaintiff and her minor children through November, 1985, which claim Defendant denies, and said issue is reserved for future adjudication between said parties.

14. Medical and dental health insurance coverage for the parties' minor children should be provided by the parties, or the expenses therefor otherwise satisfied by them, as follows:

A. Both Plaintiff and Defendant should procure and maintain such insurance when and so long as offered to her or him as a fringe benefit pursuant to their employment.

B. If neither party can obtain such insurance as a fringe benefit through her or his employment, then each should obtain same through their employment, if offered, and pay the premium expense therefor as a wage or salary deduction.

C. If neither party can obtain such insurance through employment, either as a fringe benefit or by paying for same, then Defendant should obtain such insurance and maintain same by the purchase of a private policy therefor, and the premium expense in that regard should then be satisfied equally by the parties.

D. All expenses for medical and dental care for said minor children which are not covered by insurance should be satisfied equally by the parties.

CONCLUSIONS OF LAW

1. Plaintiff is entitled to a decree of divorce from Defendant on the grounds of cruelty.

2. Plaintiff should be awarded the care, custody and control of the minor children of the parties, subject to reasonable rights of visitation in and for Defendant, which visitation rights are hereby defined as follows:

13. That by reason of the protracted separation of the parties, their estrangement, the length of the marriage and the unlikelihood of reconciliation, the decree of divorce herein should become final upon entry thereof.

14. Medical and dental health insurance coverage for the parties' minor children should be provided by the parties, or the expenses therefor otherwise satisfied by them, as follows:

A. Both Plaintiff and Defendant should procure and maintain such insurance when and so long as offered to her or him as a fringe benefit pursuant to their employment.

B. If neither party can obtain such insurance as a fringe benefit through her or his employment, then each should obtain same through their employment, if offered, and pay the premium expense therefor as a wage or salary deduction.

C. If neither party can obtain such insurance through employment, either as a fringe benefit or by paying for same, then Defendant should obtain such insurance and maintain same by the purchase of a private policy therefor, and the premium expense in that regard should then be satisfied equally by the parties.

D. All expenses for medical and dental care for said minor children which are not covered by insurance should be satisfied equally by the parties.

DATED this 22 day of January, 1986.

BY THE COURT

15
CULLEN Y. CHRISTENSEN, District Judge

700 PM

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IN THE FOURTH JUDICIAL DISTRICT COURT OF MILLARD COUNTY,

STATE OF UTAH

KELLY RENEE PETERSON and
UTAH STATE DEPARTMENT OF
SOCIAL SERVICES,

Plaintiffs,

vs.

JERRY ALLEN PETERSON,

Defendant.

*

*

*

DECREE OF DIVORCE

*

*

Civil No. 7958

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This cause having been tried to the Court sitting without a jury on November 13, 1985, the Honorable Cullen Y. Christensen, Fourth Judicial District Judge presiding, the parties each appearing in person and by counsel, a stipulation having been read into the record wherein and whereby the parties stipulated to a division of certain personal property, evidence having then been offered and received, the Court having issued a memorandum decision, and having directed that the Utah State Department of Social Services be named as a party Plaintiff to facilitate an award of judgment against Defendant for public assistance provided to Plaintiff and her two minor children, the Court

having entered its Findings of Fact and Conclusions of Law, now decrees as follows:

D E C R E E

1. Plaintiff is awarded a decree of divorce from Defendant, which decree shall become absolute and final upon entry.

2. Plaintiff is awarded the care, custody and control of the minor children of the parties, subject to reasonable rights of visitation in and for Defendant, which visitation rights are hereby defined as follows:

- A. One-half of the Christmas holiday.
- B. One-half of the Thanksgiving holiday.
- C. Alternating visits on every other holiday.
- D. Every other birthday.
- E. Each Father's Day.
- F. One month summer visit for each child when age 4 or less.
- G. Five weeks summer visit at age 5.
- H. Six weeks summer visit when the children reach the ages of 6 years.
- I. Every other weekend from 6:00 p.m. Friday to 6:00 p.m. Sunday.

3. Defendant shall provide Plaintiff with advance notice of his intent to exercise visitation rights, which notice shall be not less than 48 hours for other than summer visits, and not less than 2 weeks for summer visits.

4. As long as Defendant is drawing unemployment compensation in the amount above indicated he shall pay the sum of \$100.00 per month per child as support money, payable one-half on the 1st and one-half on the 15th days of each month beginning on the 1st day of December, 1985. At such time as

Defendant becomes gainfully employed whereby he produces income approximating that customarily earned by him as above indicated, such support shall be increased to the sum of \$185.00 per month per child.

5. Plaintiff is hereby awarded alimony in the amount of \$1.00 per month, commencing on the 1st day of December, 1985, and continuing for a period of three years or until the Plaintiff remarries or cohabits with another person of the opposite sex, whichever event first occurs; provided that should Defendant become employed in his usual employment, the Court shall review the matter of alimony upon petition being filed for that purpose.

6. Plaintiff is hereby awarded the following personal property:

- (A) Bed
- (B) Cedar Chest
- (C) Children's beds and children's items.
- (D) Large dresser which Plaintiff had before marriage
- (E) Two tall 5 drawer dressers
- (F) Small 3 drawer dresser
- (G) Rocking chair
- (H) Television
- (I) Plaintiff's tapes and records
- (J) Camera;
- (K) The 1983 Ford car and the motorcycle, subject to the indebtedness thereon;
- (L) The Delta gift shop subject to the lease obligation incident thereto.

7. Defendant is hereby awarded the following personal property:

- (A) 3 antique dressers and dresser now in Defendant's possession
- (B) Stereo
- (C) Other items in house which Defendant owned before marriage
- (D) 1978 Ford truck, subject to the indebtedness thereon
- (E) Horse
- (F) Water stock
- (G) Washer and Dryer, subject to Plaintiff's use thereof for the period hereinafter indicated.
- (H) Defendant's tapes and records

8. Plaintiff shall assume and pay the following debts and hold the Defendant harmless from liability thereon:

- (A) The obligation to Zions Bank.
- (B) The rental obligation on the Delta gift shop.
- (C) Any debts separately incurred by her since the separation of the parties.

9. Defendant shall assume and pay the following debts and hold the Plaintiff harmless from liability thereon:

- (A) Fillmore Hospital
- (B) Nephi Hospital
- (C) Payson Hospital
- (D) Commercial Credit
- (E) Scipio Garage
- (F) Valley Bank
- (G) Eva Meeker *— wrote 10 to for plaintiff May 1986.*
- (H) Any other debts incurred during the marriage except as specifically ordered to be paid by Plaintiff
- (I) Any debts separately incurred by him since the separation of the parties

10. That the real property interest of the parties, including the contracts, are awarded to the Defendant, provided that the Plaintiff shall be entitled to reside in said premises and have the use of the washer and dryer therein until June 1, 1986, at which time Plaintiff shall vacate said premises; provided further that during the period of her occupancy, the Plaintiff shall be responsible for payment of utility charges incurred during such period. Said real property is situate in Millard County, Utah, and is particularly described as follows:

Commencing 831.80 feet East of the South Quarter
Corner of Section 18, Township 18 South, Range 2
West, Salt Lake Base and Meridian; thence North
246.37 feet; thence East 409.00 feet; thence

North 391.0 feet; thence North 73°00'59" East
276.04 feet; thence South 718.00 feet; thence
West 673.00 feet to the point of beginning.
(Containing 6.42 acres, more or less)

Commencing 831.80 feet East of the North Quarter
Corner of Section 19, Township 18 South, Range 2
West, Salt Lake Base and Meridian; thence East
673.00 feet; thence South 264.00 feet; thence
West 673.00 feet; thence North 264.00 feet to the
point of beginning. (Containing 4.08 acres, more
or less)

11. That each party is required to promptly execute and deliver such documents as may be necessary or appropriate to accomplish the transfer and disposition of the assets above noted.

12. The Utah State Department of Social Services, being joined as a party hereto, and claiming from Defendant reimbursement in the sum of \$1,100.00 for support paid to Plaintiff and said minor children, through the month of November, 1985, a fact denied by Defendant, said issue is reserved for further litigation, however, said Department is authorized to withhold and deliver earnings according to law in the event of Defendant's default in payment of any judgment awarded thereby, and for the collection of any future support obligation.

13. That Defendant shall pay to Plaintiff as attorney's fees the sum of \$500.00 plus costs of Court incurred, and Plaintiff is hereby awarded judgment against Defendant in said sum.

14. Medical and dental health insurance coverage for the parties' minor children shall be provided by the parties, or the expenses therefor otherwise satisfied by them, as follows:

A. Both Plaintiff and Defendant shall procure and maintain such insurance when and so long as offered to her or him as a fringe benefit pursuant to their employment.

B. If neither party can obtain such insurance as a fringe benefit through her or his employment, then each shall obtain same through their employment, if offered, and pay the premium expense therefor as a wage or salary deduction.

C. If neither party can obtain such insurance through employment, either as a fringe benefit or by paying for same, then Defendant shall obtain such insurance and maintain same by the purchase of a private policy therefor, and the premium expense in that regard shall then be satisfied equally by the parties.

D. All expenses for medical and dental care for said minor children which are not covered by insurance shall be satisfied equally by the parties.

DATED this 28th day of January, 1986.

BY THE COURT

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CULLEN Y. CHRISTENSEN, District Judge

MAILING CERTIFICATE

I herewith and hereby certify that a copy of the foregoing DECREE OF DIVORCE was placed in the United States mail at Richfield, Utah, with first-class postage thereon fully prepaid, this 9th day of January, 1986, addressed as follows:

Richard K. Glauser, Esq.
McKAY, BURTON & THURMAN
Suite 1200 - Kennecott Building
Salt Lake City, Utah 84133

Robert A. Cowley
Secretary