

1988

Jude J. Nicholes v. James Lewis Nicholes : Brief of Appellant

Utah Court of Appeals

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BRIEF

UTAH
DOCUMENT

IN THE UTAH COURT OF APPEALS

DOCKET NO. 880273 CA

JUDE J. NICHOLAS,

Plaintiff/Appellant,

JAMES LEWIS NICHOLAS,

Defendant/Respondent.

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BRIEF OF APPELLANT

Case No. 880273-CA

Category No. 14 b

BRIEF OF APPELLANT

Appeal from a Decree of Divorce entered by the Honorable
Kenneth Rigtrup, Third District Court, Salt Lake County,
State of Utah.

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ATTORNEY FOR
DEFENDANT/RESPONDENT

FILED

AUG 29 1988

Mary T. Nelson
Clerk of the Court

IN THE UTAH COURT OF APPEALS

JUDE J. NICHOLLES,

Plaintiff/Appellant,

JAMES LEWIS NICHOLLES,

Defendant/Respondent.

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PARTIES TO THE PROCEEDINGS

Jude J. Nicholes, Plaintiff and Appellant. James Lewis
Nicholes, Defendant and Respondent.

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IN THE UTAH COURT OF APPEALS

JUDE J. NICHOLAS,	*	
	*	
Plaintiff/Appellant,	*	BRIEF OF APPELLANT
	*	
	*	
JAMES LEWIS NICHOLAS,	*	Case No. 880273-CA
	*	
Defendant/Respondent.	*	Category No. 14 b
	*	

JURISDICTION AND NATURE OF PROCEEDING

This Court has jurisdiction to decide this appeal pursuant to Utah Code Ann. §78-2a-3(2)(g)(1987). This is an appeal from a Decree of Divorce entered by the Third Judicial District Court, Honorable Kenneth Rigtrup, presiding.

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

Did the trial court abuse its discretion in setting its awards of alimony and child support? Did the trial court abuse its discretion in awarding James Nicholas, Defendant and Respondent, the right to claim the minor children as dependents for income tax purposes?

DETERMINATIVE STATUTES, REGULATIONS AND CONSTITUTIONAL PROVISIONS

U.S. Const. art. VI, §2; 26 U.S.C. §152(e)(1988); Utah Code Ann. §78-45-7(2)(1984).

STATEMENT OF FACTS

Mr. and Mrs. Nicholas were married on June 30, 1964. Mrs. Nicholas was sixteen years old at the time, and received no educational training past high school. Record at 29. She tried

to work in 1985, but was unable to continue because of her medical problems. Record at 81-84. She suffers from a number of ailments that prevent her from being able to work. Record at 4-25. During most of the marriage, Mrs. Nicholes worked primarily as a housewife, raising the three children. James, the oldest, is no longer a minor. The Decree of Divorce awarded Mrs. Nicholes the custody of Jason, born in 1969, and Rebekah Ann, born in 1974.

Mr. Nicholes worked two jobs during most of the marriage. He was laid off from Kennecott for a period in 1985 and 1986, but then was hired back. Record at 182, 184. He has worked there for twenty-three years. Record at 182. He left his job of twenty years at Western States Masonry about the time he moved out of the house in November 1987, though it is unclear from the record whether he quit or was laid off. Record at 35, 36, 132, 178. Between 1982 and 1985 he was working both jobs and earned between \$43,000.00 and \$53,000.00 per year, even though he often took between one and two months off a year to go hunting. Record at 37, 39. The record indicated that there were no savings because of his hunting trip expenses and because he was laid off from one of his jobs. Record at 39, 182.

This appeal is pursuant to a divorce granted to the parties on March 22, 1988, which became final sixty days after entry. Mrs. Nicholes was awarded custody of the two children, Rebekah Ann, age 14, and Jason Manuel, age 18. The court awarded permanent alimony of \$250.00 per month, and child support of \$100.00 per child, until the children reached the age of eighteen or

graduated from high school, whichever came last. There was no provision for an increase in child support or alimony when Jason graduated from high school, although he graduated in June 1988, within one month of the Decree of Divorce becoming final on May 20, 1988. Appellant filed her Notice of Appeal on April 21, 1988.

SUMMARY OF ARGUMENT

The trial court abused its discretion in awarding only \$100.00 per month to Mrs. Nicholes for child support and \$250.00 per month for alimony. Specifically, the trial court failed to make findings concerning the historical earnings of Mr. Nicholes, which findings were necessary to adequately consider his ability to earn. Further, the court abused its discretion by setting inadequate child support and alimony, which awards unjustly left Mrs. Nicholes' household and Mr. Nicholes' household with extremely disparate standards of living. In addition, the trial court should have provided for an increase in alimony and child support to take effect upon the termination of support for one of the parties' children. Finally, the trial court's award to Mr. Nicholes of the right to claim the children as dependents for personal income tax purposes conflicted with the Internal Revenue Code and thus violated the Supremacy Clause of the United States Constitution.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION IN ITS DETERMINATION OF THE ALIMONY AWARD.

The trial court abused its discretion by awarding Mrs. Nicholes an inadequate amount of alimony resulting in a serious inequity between the standard of living of the parties. The underlying purpose of alimony is to "enable the receiving spouse to maintain as nearly as possible the standard of living enjoyed during the marriage and to prevent the spouse from becoming a public charge." Paffel v. Paffel, 732 P.2d 96 (Utah 1986). "[T]he ultimate test of the propriety of an alimony award is whether, given all these factors, the party receiving alimony will be able to support him or herself, as nearly as possible at the standard of living ... enjoyed during marriage". Naranjo v. Naranjo, 751 P.2d 1144, 1147 (Utah Ct. App. 1988). The purpose of an alimony award is to equalize the parties' respective standards of living as much as possible. Olson v. Olson, 704 P.2d 564, 566 (Utah 1985).

The trial court has discretion in setting alimony, but must exercise that discretion within the standards set by the Utah Supreme Court. Jones v. Jones, 700 P.2d 1072 (Utah 1985). The Supreme Court articulated the following three factors a trial court should consider in determining alimony:

- (1) the financial conditions and needs of the wife;
- (2) the ability of the wife to produce a sufficient income for herself; and
- (3) the ability of the husband to provide support.

English v. English, 565 P.2d 409,411-412 (Utah 1977). Failure to analyze the parties' circumstances using these three factors constitutes an abuse of discretion. Paffel, 732 P.2d at 101.

The trial court abused its discretion by failing to analyze the parties' circumstances in the Nicholes case in light of the English factors. The only finding that the trial court made regarding Mrs. Nicholes' financial condition and needs was "[t]hat the plaintiff is unemployed, and has physical problems that prevent her employment." Findings of Fact, Conclusions of Law at 2. There were no specific findings by the court regarding Mrs. Nicholes' needs, although evidence was presented that her total monthly expenses (including the needs of the minor children living with her) ranged between \$1,984.78 to \$2,134.78. Exhibit 5 and Record at 66-67. The trial court made a finding that "the defendant is currently employed at Kennecott and earning, approximately, \$1,665.00 gross, per month." Findings of Fact, Conclusions of Law at 2. The original Findings of Fact, Conclusions of Law submitted by counsel for Mrs. Nicholes included a recitation of Mr. Nicholes' historical earnings in the years 1982 through 1986 which earnings were much greater than his earnings at the time the Decree of Divorce was entered. Original Findings of Fact, Conclusions of Law at 2-3. The trial court ordered that the recitation of Mr. Nicholes' earnings in the previous years be deleted from the final Findings of Fact, Conclusions of Law. Record at 214. The trial court improperly relied on Mr. Nicholes' income at the time of the Divorce Decree instead of his

historical earnings in determining the husband's ability to provide spousal support. Such reliance is contrary to the standard articulated in the English case.

It is an abuse of discretion when the trial court's award of alimony is so inequitable as to result in a great disparity in the standards of living of the parties following a divorce. Canning v. Canning, 744 P.2d 325 (Utah Ct. App. 1987). The Utah Supreme Court and Utah Court of Appeals have reversed and/or remanded a number of cases when the awards of alimony were so inequitable that they constituted an abuse of discretion. Jones, 700 P.2d 1072; Gardner v. Gardner, 748 P.2d 1076 (Utah 1988); Canning, 744 P.2d 325; Rasband v. Rasband, 752 P.2d 1331 (Utah Ct. App. 1988); Martinez v. Martinez, 754 P.2d 69 (Utah Ct. App. 1988).

Following a marriage of long duration, an alimony award should equalize the parties' respective standards of living to the extent possible. Gardner, 748 P.2d at 1081. Like the Nicholes' case, in Rasband, the marriage was long in duration (thirty years) and Mrs. Rasband was severely limited in her ability to earn and had no income at the time of the divorce. 752 P.2d at 1333. The Utah Court of Appeals found the disparity between the alimony award of \$9,600.00 per year and Mr. Rasband's remaining income of \$36,000.00 so striking as to constitute an abuse of the trial court's discretion. Id. "His standard of living will be much nearer that enjoyed during the marriage than will hers." Id. In Canning, the Utah Court of Appeals remanded the case because the record was inadequately developed concerning

the wife's needs and her ability to earn. 744 P.2d at 327. The husband had an annual income of \$24,000.00, while Mrs. Canning received \$350.00 per month in child support, no alimony, and made \$1,200 the previous year. Id. The appellate court found that "David Canning's standard of living will be much closer to what it was during the marriage than will be appellant's". Id.

The alimony award of \$250.00 per month to Mrs. Nicholes will not even come close to meeting her monthly expenses of \$1,985.00 to \$2,135.00. More importantly, the alimony award of \$250.00 is unconscionable in its overwhelming disparity. This is so even if the court accepts the trial court's finding that Mr. Nicholes is able to earn only \$1,665.00 per month. The alimony award has the effect of impoverishing Mrs. Nicholes, while Mr. Nicholes standard of living will be much nearer to that enjoyed during the marriage. An alimony award resulting in such a great disparity between the standards of living of the parties constitutes an abuse of the trial court's discretion.

A. The trial court's failure to consider Mr. Nicholes' historical earnings constitutes an abuse of discretion.

When determining alimony, the court is required to make specific findings concerning the ability of the obligor to earn. English, 565 P.2d at 412. The trial court found "that the Mr. Nicholes is currently employed at Kennecott and earning, approximately, \$1665.00, gross, per month." Findings of Fact, Conclusions of Law at 2.

When the husband has experienced a temporary decrease in earnings, the trial court must take into account his historical

earnings. Westenkow v. Westenkow, 562 P.2d 1256 (Utah 1977).

The record shows that Mr. Nicholes' income during the last five years was \$45,962.99 (1982), \$48,500.00 (1983), \$53,979.68 (1984), \$43,665.79 (1985), and \$22,665.65 (1986). Record at 3-7; Exhibit 1.

When the obligor has experienced a temporary decrease in income, it is reasonable for the court to impute the obligor's income based on his historical earning ability. Westenkow, 562 P.2d at 1257. In Westenkow, the husband had quit his job to start his own company. The court said that "plaintiff has an established ability to earn \$18,000.00 annually.... It would be reasonable for the court to infer that either plaintiff's income from his business would increase or he would seek other employment with an adequate remuneration reflecting his historical earning ability". Id. In English, the Utah Supreme Court overruled the trial court award of alimony because the trial judge considered only the husband's tax return of the previous year rather than his historical earnings in determining ability to pay. English, 565 P.2d at 412.

The trial court must consider the obligor's ability to provide support as shown by his historical earnings rather than that shown by his current income. Olson, 704 P.2d at 566. The trial court failed to recognize that Mr. Nicholes had an established ability to earn \$40,000.00 to \$50,000.00 per year. In determining Mr. Nicholes' ability to earn, the trial court considered only the income tax return of 1986. Mr. Nicholes was temporarily laid off from one of his jobs in 1986 and was hired

back in or around December, 1986. Record at 182, 184. Because he was hired back late in 1986, Mr. Nicholes reestablished his ability to earn \$40,000.00 to \$50,000.00 per year.

Counsel for Mrs. Nicholes incorporated past earnings into the original Findings of Fact, Conclusions of Law but the court ordered that that information be stricken. Record at 214, 219. The trial court stated that it was inappropriate to consider past earnings because Mr. Nicholes "doesn't need to work two jobs." Record at 212. It also determined, without any evidence, that Mr. Nicholes had to accept a lower rate of pay when he went back to work at Kennecott. Record at 191. Mr. Nicholes testified regarding his current cash flow. During his testimony, when the issue of work history was brought up, the judge refused to allow testimony of work history into evidence. Record at 167, 172. As a result the judge based his decision on vague findings. For example, the judge found that Mr. Nicholes had only a "meager amount of money," and that "there is just not enough to go around." Record at 177, 189.

It is clear from the record that the trial court refused to hear evidence concerning Mr. Nicholes' historical earnings and his ability to earn in the future. Both Mr. Nicholes' historical earnings and the timing of his departure from Western States Masonry make the trial court's consideration of a single year's tax return inadequate. The trial court lacked the proper evidence to determine whether this decrease in income was temporary. This lack of evidence was because of the trial court's refusal to hear the relevant evidence.

The trial court's improper determination concerning Mr. Nicholes' ability to earn resulted in an inappropriate disparity between the reported needs of Mrs. Nicholes and the actual alimony awarded. Mrs. Nicholes was accustomed to the high standard of living of \$40,000.00 to \$50,000.00 per year. Mrs. Nicholes' alimony award of \$3,000.00 per year is not supported in the trial court's findings. The findings do not account for Mr. Nicholes' established ability to earn \$40,000.00 to \$50,000.00 per year, or his apparent inability to maintain his spouse in a standard of living not unduly disproportionate to that enjoyed during the marriage. One of the goals of alimony is to prevent the spouse from becoming a public charge. Paffel, 732 P.2d at 100. However given the meager amount of alimony awarded and given Mrs. Nicholes' inability to work, it is very likely that she will become a public charge.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN ITS DETERMINATION OF THE CHILD SUPPORT AWARD

The amount of child support awarded to Mrs. Nicholes was inadequate and constituted a manifest injustice. In determining the amount of child support to be awarded, Utah law directs the court to consider "all relevant factors" including but not limited to:

- (a) the standard of living and situation of the parties;
- (b) the relative wealth and income of the parties;
- (c) the ability of the obligor to earn;
- (d) the ability of the obligee to earn;

- (e) the need of the obligee;
- (f) the age of the parties;
- (g) the responsibility of the obligor for the support of others.

Utah Code Ann. §78-45-7(2)(1984).

The underlying objective of child support is to reach an equitable apportionment to each parent of a "reasonable and proper share of the child's expenses." Astorga v. Julio, 564 P.2d 1385, 1386 (Utah 1977). One of the chief functions of child support is to protect the children against the adverse circumstances of their parent's divorce and to maintain a standard of living for them "not unduly disproportionate to that which they would have enjoyed had the marriage continued." Savage v. Savage, 658 P.2d 1201, 1205 (Utah 1983).

The trial court failed to properly evaluate the relevant factors in determining the amount of child support. The trial court's failure to consider all of the relevant factors in setting child support is an abuse of discretion. Stevens v. Stevens, 754 P.2d 952, 958 (Utah Ct. App. 1988). The trial judge made findings "that Mrs. Nicholes is unemployed, and has physical problems that prevent her employment". Findings of Fact, Conclusions of Law at 2. The record indicates that Mrs. Nicholes is 40 years old. Record at 28-29. Mr. Nicholes' age is not determinable from the record. Given Mrs. Nicholes' age, experience and disabilities, she clearly does not have the ability to support herself or the children. Further the trial court's findings concerning Mr. Nicholes' ability to earn are inadequate because they only addressed what he actually earned in the last year.

The trial court also failed to properly evaluate the children's actual needs and the standard of living to which the children became accustomed to during the marriage. Evidence was presented at trial that the needs of Mrs. Nicholes and the children amounted to \$1,985.00 to \$2,135.00 per month. Exhibit 5. The trial court awarded Mrs. Nicholes \$100.00 per month per child in child support. Including the alimony award, the trial court awarded \$450.00 per month for the support of Mrs. Nicholes and two children. Given the trial court's finding of Mr. Nicholes' current monthly income of \$1665.00, that left \$1225.00 per month for Mr. Nicholes. The great disparity between \$450.00 support a household of three and \$1,225.00 to support a household of one is striking. In light of the fact that Mr. Nicholes has shown an established ability to earn \$40,000.00 to \$50,000.00 per year, the alimony and child support awards are outrageously inadequate. Clearly, Mrs. Nicholes and the children were destined to suffer a disproportionately lower standard of living from that enjoyed by Mr. Nicholes. The child support and alimony awards effectively impoverished Mrs. Nicholes and the children, while preserving a much higher standard of living for Mr. Nicholes.

- A. The trial court should have provided for an increase in child support and alimony due to immediate termination of support for one of the parties' children.**

The trial court refused to provide for an increase in child support and/or alimony for Mrs. Nicholes even though support for the child Jason was terminating within a month of the Decree of Divorce becoming final. The Decree of Divorce provided for child

support in the amount of \$100.00 per month per child "until each minor child attains the age of 18 years or graduates from high school in due course, whichever last occurs." Decree of Divorce at 2. The Verified Complaint for Divorce pled for \$300.00 per month per child in child support, to be increased to \$450.00 per month for the support of the minor child, Rebekah, after the child support for Jason terminated. Verified Complaint for Divorce at 3. The Verified Complaint further requested alimony in the amount of \$400.00 per month to be increased to \$550.00 per month when child support terminated for Jason.

The trial court denied Mrs. Nicholes' request for this increase in alimony and child support, even though the change was almost immediate. Jason had already reached the age of 18 at the time that the Decree of Divorce was entered and had graduated from high school within one month of the Decree becoming final. Mrs. Nicholes has been further impoverished by the trial court's failure to account for this change that took place immediately. Mrs. Nicholes and the remaining minor child are living on \$4,200.00 in child support and alimony per year. According to the trial court's finding of his income, Mr. Nicholes has \$15,780.00 per year to support only himself. In light of Mr. Nicholes' historical earnings, Mrs. Nicholes and Rebekah have experienced a change in their standard of living from \$40,000.00 or \$50,000.00 per year to \$4,200.00 per year in the course of this marital dissolution.

The trial court erred in failing to account for an immediate change in circumstances. Parties should not have to return to

court on a petition for modification for a change in circumstances that is before the court at the time of trial and is certain to take place immediately after the order is entered.

Failing to take the immediate change in circumstances into account in the awards made the future standards of living of the parties unconscionably inequitable. This case therefore, involves even more striking inequities than those of cases this court has previously overturned. It is unclear from the record how the trial judge arrived at his determination. Even if this court declines to ascertain the proper amounts to be awarded, it should make it clear on remand that the trial court should increase the amount of child support for Rebekah and alimony for Mrs. Nicholes based on the child support for Jason terminating almost immediately after the divorce decree became final.

III. THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING MR. NICHOLAS THE RIGHT TO CLAIM THE MINOR CHILDREN AS DEPENDENTS FOR TAX PURPOSES.

The trial court erred in awarding Mr. Nicholes the right to claim the minor children as dependents on his income tax return. The trial court failed to comply with the Internal Revenue Code because federal law has given the custodial parent the right to declare the minor children as dependents for income tax purposes since 1985. 26 U.S.C. 152(e) (1988). The 1984 revision of the Internal Revenue Code provides that, for federal income tax purposes, a child of divorced parents shall be considered as having received over half his support from the parent having custody for the greater portion of the calendar year, unless the

non-custodial parent can prove that his or her circumstances meet one of the exceptions to the general rule.

The exceptions to the Internal Revenue Code section giving the custodial parent the tax exemption for the children are if there was a "qualified pre-1985 instrument or if the custodial parent voluntarily signs an agreement to give the exemptions to the non-custodial parent. 26 U.S.C. §152(e) (1988). The Utah Court of Appeals embraced the custodial parent rule from the Internal Revenue Code in Martinez v. Martinez, 754 P.2d at 69, 72 (Utah Ct. App. 1988). In that case the issue rested on whether a stipulation signed in 1983 and revoked in 1985 was a "qualified pre-1985 instrument". The court ruled that the custodial parent is entitled to the tax exemptions absent the ability of the non-custodial parent to establish one of the exceptions to the rule. Id.

The only way that Mr. Nicholes can be given the children's tax exemptions, pursuant to the Internal Revenue Code, is if Mrs. Nicholes signs a written declaration giving him the exemptions. It is Mrs. Nicholes' position that the Internal Revenue Code contemplates a voluntarily written declaration by the custodial parent. Further, it is beyond the jurisdiction of the trial court to order the custodial parent to involuntarily execute the written declaration.

Because there is no exception to the general rule in this case, Mrs. Nicholes is clearly entitled to the right to the children's tax exemptions as the custodial parent. The trial court's decision violates the Supremacy Clause of the United

States Constitution, and thus constitutes an abuse of discretion. This court should reverse the trial court's decision and award Mrs. Nicholes the right to claim the minor children as dependents for income tax purposes.

CONCLUSION

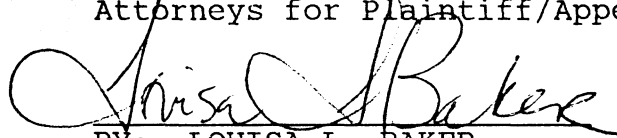
The trial court abused its discretion in its determination of the alimony and child support awards. The trial court's findings on the factors to be considered for both alimony and child support were inadequate to support the court's awards. The trial court further abused its discretion by failing to consider the historical earnings of Mr. Nicholes in setting the alimony and child support awards. The trial court's award of alimony was so low that it resulted in a great disparity in the standards of living of the parties following the divorce. The child support awards for the minor children were so inadequate as to result in impoverishing the children by clearly failing to meet their needs. The trial court further erred by refusing to provide for an increased amount of child support and alimony when the child support for one child was terminating immediately after the Divorce Decree became final. Finally, the trial court abused its discretion in awarding Mr. Nicholes the right to claim the minor children as dependents for tax purposes in violation of the Supremacy Clause of the United States Constitution.

The trial court's awards of alimony and child support should be reversed, and this court should enter awards that are adequate for the support of Mrs. Nicholes and the children. Alternatively,

the case should be remanded for further findings and awards in conformity with federal and state law.

DATED this 26 day of August, 1988.

UTAH LEGAL SERVICES, INC.
Attorneys for Plaintiff/Appellant


BY: LOUISA L. BAKER

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 29 day of August, 1988, I mailed four true and correct copies of the foregoing Brief of Appellant to F. Kim Walpole, Legal Forum Building, 2447 Kiesel Avenue, Ogden, Utah 84401.



(llb/nichole4.bri)

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IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH.

JUDE NICHOLS,
Plaintiff,

VERIFIED COMPLAINT FOR DIVORCE AND
MOTION FOR ORDER TO SHOW CAUSE

-vs-

Civil No.

JAMES LEWIS NICHOLS,
Defendant.

Judge

COMES NOW THE PLAINTIFF to the above-entitled action, by and through counsel, and complains and alleges against the defendant as follows:

1. RESIDENCY. Plaintiff is and has been a resident of Salt Lake County, State of Utah for a period of three months or more immediately prior to the filing of the Complaint in this action.

2. MARRIAGE. The parties to this action are husband and wife, having been married on June 30, 1964 in Magna, Utah.

3. GROUNDS. The defendant has indicated by words and actions that the legitimate ends of the marriage are no longer being pursued, and that the parties' differences have caused the irreconcilable breakdown of the marriage. These words and actions on the part of the defendant have caused the plaintiff great mental and emotional distress and suffering, making continuation of the marriage impossible.

4. CUSTODY. There are two children born as issue of this marriage in need of support, namely, Rebekah Ann, born April 30, 1974, and Jason Emanuel, born December 15, 1969. Plaintiff is a fit and proper person to be awarded the temporary and permanent care, custody and control of said minor children.

5. VISITATION. Defendant should be awarded liberal and reasonable visitation with the minor children.

6. HEALTH AND ACCIDENT INSURANCE. Defendant should be ordered to maintain in force, temporarily and permanently, health and accident and dental insurance for the benefit of the minor children of the parties, when it is available through his employment, until the minor children attain the age of 18 years or graduate from high school, whichever last occurs. Further, the defendant should be ordered to maintain, on a temporary and permanent basis, health and accident and dental insurance for the benefit of the plaintiff. Further, the defendant should be ordered to pay all medical, dental and optical expenses not covered by the insurance until the minor children attain the age of 18 years or graduate from high school, whichever last occurs. Further, the defendant should be ordered to pay for the dental work currently needing to be accomplished on the plaintiff.

7. LIFE INSURANCE. Defendant should be ordered to maintain in force a policy of insurance on his own life, naming the minor children as the primary beneficiaries of said life insurance policy, in the minimum face value of \$80,000.00, until each child reaches the age of 18 years or graduates from high school, whichever last occurs. Once the minor children have attained the age of 18 years or graduated from high school, the defendant should be required to maintain in force an insurance policy on his own life, in the minimum face value of \$50,000.00, naming the plaintiff as the primary beneficiary of said policy.

8. CHILD SUPPORT. Defendant should be ordered to pay to plaintiff the sum of \$300.00 per month, per child, as and for child support, for the support and maintenance of the minor children of the parties, until the minor child, Jason Emanuel, attains the age of 18 years or graduates from high school, whichever last occurs, at which time the defendant should pay to plaintiff the sum of \$450.00 per month, as and for the support and maintenance of the minor child, Rebekah Ann. Said support shall continue until the minor child, Rebekah Ann, attains the age of 18 years or graduates from high school, whichever last occurs. Further, it is reasonable that said support payments be made on or before the 5th day of each month.

If the defendant falls 30 or more days in arrears in his child support obligation, the plaintiff should be entitled to mandatory income withholding relief, pursuant to Utah Code Annotated, Section 78-45(d)-1, et. seq. (1984, as amended).

9. ALIMONY. The defendant is able-bodied and employed and the plaintiff is in need of support to maintain herself, and defendant should be ordered to pay to plaintiff the sum of \$400.00 per month, until the eldest child attains the age of 18 years or graduates from high school, whichever last occurs, and the obligation of supporting that child on the part of the defendant ceases, at which time the alimony should increase to the sum of \$550.00 per month, until such time as the minor child, Rebekah Ann, attains the age of 18 years or graduates from high school, and the obligation on the part of the defendant to pay support for said child ceases, at which time the alimony should be increased to the sum of \$800.00 per month. Said alimony should continue until the death of the plaintiff or the death of the defendant.

10. PERSONAL PROPERTY. During the course of their marriage, the parties

have acquired certain items of personal effects, jewelry, clothing and belongings, and household furnishings, fixtures and appliances, which items have been previously divided by the parties, and this division should be confirmed in each, with each party being awarded those items currently in his or her possession.

11. VEHICLES. During the course of their marriage, the parties have acquired certain automobiles, including a 3/4 ton Ford truck, an Oldsmobile Ciera, a 1957 Jeep and a 1979 Ford 1/2 ton four-wheel drive truck. Plaintiff should be awarded the Oldsmobile Ciera and the Jeep, free and clear of any interest of the defendant. Defendant should be awarded the 3/4 ton Ford truck, free and clear of any interest of the plaintiff. Further, the 1979 Ford truck should be awarded to the parties' son, Jason Emanuel.

During the course of their marriage, the parties have acquired four snowmobiles, a horse trailer and an 8-foot cab-over camper. Plaintiff should be awarded the camper and the defendant should be awarded all of the snowmobiles and the horse trailer.

12. RETIREMENT, PENSIONS AND MARITAL FUNDS. During the course of their marriage, the parties have acquired an interest in a pension at Kennecott Copper Corporation, and were paid the sum of approximately \$33,000.00, representing a pension in Western States Masonry. The plaintiff should be awarded one-half of the pension received from Western States Masonry, either in cash or as an offset on the defendant's equity in the real property. Further, the plaintiff should be awarded one-half of the defendant's pension at Kennecott Copper, as of the date of divorce of the parties.

All other marital funds, accounts and monies should be divided equally between the parties, one-half to each.

13. REAL PROPERTY. During the course of their marriage, the parties

have acquired an interest in real property commonly known as 3260 South 7900 West in Magna, Utah. Plaintiff should be awarded the temporary and permanent use and possession of said real property, and all right, title and interest therein, including any reserve accounts, subject to a lien in behalf of the defendant in the sum of one-half of a fair and reasonable equity in said real property, which should become payable to defendant upon the first to occur of the following events:

- a. plaintiff's remarriage or cohabitation in the home with a man other than the defendant;
- b. the youngest minor child of the parties achieving the age of 18 years or graduating from high school, whichever last occurs;
- c. the death of the plaintiff;
- d. the sale of the real property at plaintiff's election;
- e. plaintiff's failure to utilize said real property as her primary place of residence.

Defendant should be required to pay for the costs of an appraisal on said real property and said appraisal should be used in computing the equity and lien of the defendant.

14. DEBTS. During the course of their marriage the parties have incurred certain debts and obligations, which include debts to Peter Nelson and Chase Manhattan. Defendant should be ordered to pay and assume, temporarily and permanently, all debts and obligations incurred by the parties during the course of their marriage.

15. ATTORNEY'S FEES. The plaintiff is without sufficient funds to support herself and pay her attorney's fees. Defendant should be ordered to pay plaintiff's reasonable attorney's fees incurred in bringing this action.

16. EXECUTION. Each party should be ordered to execute and deliver all

necessary documents to transfer the title and ownership of the property of the parties pursuant to the Decree entered in this action.

17. TEMPORARY RELIEF. The defendant has previously been verbally and emotionally abusive of the plaintiff and irreparable harm and damage will occur to her if a restraining order is not entered, and it is reasonable, necessary and proper that defendant be restrained from physically or verbally harassing the plaintiff, or coming around the plaintiff at the marital residence, unless invited for the purposes of scheduled visitation with the minor children.

The plaintiff is in need of temporary possession of the real property of the parties for herself and the minor children so that they can remain in the neighborhood and their school. Further, the plaintiff is able to find minimum employment, and has been unemployed, except for a matter of weeks, during the entire course of the marriage, and it is reasonable, necessary and proper that she be awarded temporary alimony and temporary child support in the sum of \$1,000.00 per month, and that the defendant be ordered to pay all marital debts and obligations incurred by the parties during the marriage, on a temporary basis. Further, it is reasonable that the plaintiff be awarded the temporary care, custody and control of the minor children of the parties, in that the plaintiff has always been the primary caretaker of the children, and that their best interests would be served by an order of temporary custody in the plaintiff.

WHEREFORE, plaintiff prays for the following relief:

1. For a Decree of Divorce dissolving the bonds of matrimony existing between the parties, the same to become final and effective immediately upon the signing and entry thereof by the court.

2. For said Decree to be granted in accordance with the Complaint of the

plaintiff, as set forth above.

3. That an Order to Show Cause be entered requiring the defendant to be and appear before the above-entitled court to show cause, if any he may have, as follows:

a. Why the plaintiff should not be awarded the temporary custody of the minor children of the parties;

b. Why the defendant should not be temporarily and permanently restrained from verbally or physically harassing the plaintiff, or from coming onto the real property except for purposes of scheduled visitation with the minor children of the parties;

c. Why plaintiff should not be awarded the temporary use and possession of the real property of the parties;

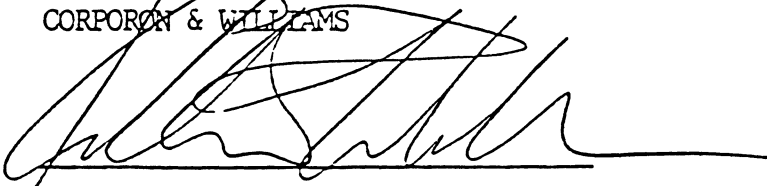
d. Why the defendant should not be ordered to pay to plaintiff temporary alimony and temporary child support in the sum of \$1,000.00 per month;

e. Why the defendant should not be ordered to pay and assume the marital debts and obligations of the parties, on a temporary basis;

4. For such other and further relief as to the court may seem just and proper.

DATED THIS 8th day of January, 1987.

CORPORON & WILLIAMS


KELLIE F. WILLIAMS
Attorney for Plaintiff

KELLIE F. WILLIAMS #3493
Attorney for Plaintiff
CORPORON & WILLIAMS
Suite 1100 - Boston Building
#9 Exchange Place
Salt Lake City, Utah 84111
(801) 328-1162

IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH.

JUDE NICHOLAS,
Plaintiff,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

-vs-

Civil No. D87-89

JAMES LEWIS NICHOLAS,
Defendant.

Judge Kenneth Rigtrup

THE ABOVE-CAPTIONED MATTER having come on regularly for trial on August 14, 1987, at the hour of 10:00 o'clock a.m., and the trial not being completed at that time, and having been reset for trial and heard on October 6th and 7th, 1987 at the hours of 1:30 and 2:00 p.m., the Honorable Kenneth Rigtrup, Judge presiding, and the plaintiff having appeared in person and with counsel, Kellie F. Williams, and the defendant having appeared in person and with counsel, F. Kim Walpole, and the Court having heard the testimony of the parties and their witnesses, and having reviewed the file and having interviewed the minor children of the parties in chambers, and having heard the argument of counsel, more than 90 days having elapsed since the filing of the Complaint in this action, the Court, being fully advised in the premises, now makes and enters the following:

2(orig): 1/26

FINDINGS OF FACT

1. That the plaintiff is and has been a resident of Salt Lake County, State of Utah, for a period of three months or more prior to the filing of this action.

2. That the plaintiff and defendant are husband and wife having been married on June 30, 1964 in Magna, Utah.

3. That the acts of the defendant in removing himself from the marital residence and refusing to return and remain married to the plaintiff caused the plaintiff great mental and emotional distress and suffering, making continuation of the marriage impossible.

4. That there have been three children born alive as issue of this marriage, two of whom are in need of support, namely, Rebekah Ann, born April 30, 1974 and Jason Emanuel, born December 15, 1969. The plaintiff is a fit and proper person to be awarded the permanent care, custody and control of said minor children. The minor child Rebekah, expressed to the Court a desire to reside with her mother, and the minor child Jason, indicated a desire to be in his mother's custody.

5. That the defendant should be awarded reasonable visitation with the minor children as is convenient and appropriate between the minor children and the defendant.

6. That the plaintiff is unemployed, and has physical problems that prevent her employment, and the defendant is employed at Kennecott and earning, approximately, \$1,665.00 per month.

7. The court finds that previous to 1987, the defendant was employed in two occupations, and that the parties' gross wages were, in 1982 - \$45,962.99; in 1983 - \$48,500.00; in 1984 - \$53,979.68; in 1985 - \$43,665.79; and, in

1986 - \$22,655.65. The court does not believe that the defendant is required to remain employed in two jobs in order to support the parties or their children in their lifestyle previously held and, specifically, finds that the defendant is not purposely not seeking employment for the purpose of avoiding obligations.

8. That it is reasonable, necessary and proper that the defendant pay to the plaintiff, as and for child support, the sum of One Hundred Dollars (\$100.00) per month, per child, for a total of Two Hundred Dollars (\$200.00) per month, until each minor child attains the age of 18 years or graduates from high school in due course, whichever last occurs. Said support should be payable one-half on the 10th, and one-half on the 25th of each month. Should the minor child, Jason, be residing other than in the plaintiff's home, then the plaintiff should be responsible for paying that support to the individual who is providing for the minor child, Jason.

9. That it is reasonable, necessary and proper that the defendant maintain in force his health and accident insurance, and such insurance as may be available through his employment, and that he continue to maintain the children as beneficiaries under said insurance policy as long as he is able to qualify said children under his medical/dental plan. Further, it is reasonable that the defendant maintain in force all health, accident and dental insurance for the benefit of the plaintiff until the divorce is final. Further, it is reasonable that each party pay one-half of all medical, dental, optical or orthodontic expenses that are not covered by said insurance.

10. That it is reasonable, necessary and proper that the defendant maintain, for the benefit of the minor children, the insurance policy on his life available through his union and through Kennecott and that he name the

minor children as the beneficiaries of said life insurance policy and that the plaintiff be named as the trustee of said funds.

11. That if the defendant falls thirty (30) or more days in arrears in his child support obligation, the plaintiff should be entitled to mandatory income withholding relief pursuant to Utah Code Annotated, Section 78-45(d)-1, et. seq., (1984 as amended).

12. That it is reasonable, necessary and proper that the defendant pay to the plaintiff the sum of Two Hundred Fifty Dollars (\$250.00) per month, as and for alimony. Said alimony should continue until the death of the plaintiff, the death of the defendant, or the plaintiff's remarriage or cohabitation.

13. That it is reasonable, necessary and proper that each party be ordered to provide the other party with a signed copy of their tax return, on or before April 30th of each year, and keep the other apprised of their employment situations.

14. That it is reasonable, necessary and proper that the defendant be awarded the right to claim the minor children as dependents for purposes of the calculation of the state and federal income tax dependent deductions, as long as he is current in his child support obligations at the end of each tax year. The plaintiff should be ordered to sign any necessary waiver permitting said exemption. Should the plaintiff earn in excess of \$7,500.00, per year, then she should be awarded the right to claim the minor child Rebekah Ann, as a dependent for purposes of the calculation of her federal and state tax dependent deductions.

15. That the parties should be ordered to file a joint federal and state return for the year 1987. All refunds resulting from said return should be

applied to outstanding medical expenses owing to Dr. Peter Neilsen, Dr. Simmons, A. Paige Palmer, Dr. Cannon and/or Allied Labs. The defendant should be responsible if there are any amounts found due and owing to the Internal Revenue Service or the State of Utah.

16. That during the course of their marriage, the parties have acquired certain items of personal effects, jewelry, clothing and belongings, which have previously been divided, and which division should be confirmed in each. Each party should be awarded those items in his or her own possession, except for the following:

a. The plaintiff should be awarded the balance of the IRA funds currently in possession of defendant's counsel, to apply to her attorney's fees and court costs. Further, she should be awarded two of the snowmobiles currently in possession of the defendant;

b. The defendant should be awarded the following property as it is currently in plaintiff's possession: 8-foot camper, horse trailer, coin collection, mirror, antique barber accessories, Avon limited edition bottles, sofa rocker, hide-a-bed, gun cabinet, one freezer, oak desk, adding machine, ten-man tent, three-man tent, propane lantern, gas camping stove, sleeping bag, miscellaneous camping gear, family pictures (his family), one telephone, 220 cord, Lincoln welder, air compressor, Homelight chain saw, all but one ladder, wheelbarrows, scaffolding/planks, mechanic's tools and tool boxes (except for a variety of small hand tools to be left for plaintiff), angle grinder, disk sander, belt sander, bench vice, battery charger, cement tools, masonry handtools, any saddles or packs or blankets not associated with either of the children's horses; and 19" television set;

c. Each party should keep the VCR and equipment in their

possession;

d. That the parties' married son should be awarded the snowmobile trailer;

e. That it is reasonable that the minor child, Jason, should be awarded all of his personal property, as well as the Atari game and tapes, and his horse, and all related tack and equipment;

f. That it is reasonable that the minor child, Rebekah, should be awarded all of her personal property and belongings, her personal computer, her horse, and all related tack and equipment.

17. Each party should be awarded one-half of any other marital accounts or stocks.

18. That it is reasonable, necessary and proper that the plaintiff should be awarded the Oldsmobile vehicle, and the defendant should be awarded the 3/4-ton pickup truck. Each party should be ordered to execute and deliver all necessary documents to transfer the title to said property. Further, the minor child, Jason, should be awarded his 1977 Ford pick-up truck, and the minor child, Rebekah, should be awarded the 1958 Jeep, which title should be held in the name of the plaintiff until Rebekah is of age.

19. That it is reasonable, necessary and proper that the minor child, Rebekah, should be awarded all of her share accounts and savings accounts and that the minor child, Jason, should be awarded all of his share accounts and savings accounts.

20. That during the course of their marriage, the parties have acquired an interest in real property commonly known as 3260 South 7900 West in Magna, Utah. It is reasonable, necessary and proper that the plaintiff should be awarded the possession of said real property until such time as the minor

child, Rebekah, attains the age of 18 years or graduates from high school, whichever last occurs, or until such time as plaintiff can sell said real property at a price that she desires. Further, it is reasonable that she should pay and assume the debt and obligation owing thereon to Chase Manhattan Bank, commencing October 1987. However, the court further found that the plaintiff removed herself from the residence, and that the defendant has been making any necessary minimal payments on the obligation owing to Chase Manhattan, prior to the sale of the home, which home has had an earnest money offer made and which sale is pending.

Upon the sale of said home, the proceeds from the sale should be divided as follows:

- a. All costs of sale and commissions should be paid;
- b. The debt owed to Chase Manhattan should be paid;
- c. All outstanding medical bills incurred by the parties up until the date of the divorce of the parties should be paid;
- d. Two Thousand Five Hundred Dollars (\$2,500.00) should be paid to the plaintiff for attorney's fees and costs of litigation;
- e. One Thousand Dollars (\$1,000.00) should be paid to the defendant for attorney's fees and costs of litigation; and
- f. Any real property taxes owing on the real property should be paid;
- g. Defendant should be paid any amount that he paid to Chase Manhattan Bank after October 1, 1987, in order to prevent the foreclosure on the home and should be paid any sums expended to bring the homeowner's insurance current;
- h. The balance should be divided equally between the parties,

one-half to each.

21. That during the course of their marriage, the parties have incurred certain debts and obligations, which include the medical debts owed to Dr. Simmons, Dr. Nielsen, A. Paige Palmer, Dr. Cannon and Allied Laboratories. Said debts should be paid as previously set forth. Further, the plaintiff should pay the debt to Chase Manhattan, as set forth above, until the sale of the home. Each party should pay and assume any debts and obligations incurred in his or her own name since the date of separation of the parties, said date being November 21, 1986, except as set forth above.

22. That during the marriage the parties have acquired an interest in a Kennecott retirement plan and a Salt Lake City Laborer's Union retirement plan, as well as a possible interest in a retirement at Western States Masonry. Plaintiff should be awarded fifty percent (50%) of all accrued benefits through June 30, 1987, which is defined as 23 years of service. Appropriate Qualified Domestic Relations Orders should issue assigning said benefits.

The plaintiff should be awarded all benefits available to her under the United States Social Security Act as a wife of the defendant in excess of 23 years.

23. That each party should be ordered to pay his or her own attorney's fees and court costs, except as set forth above.

24. That both parties should be mutually restrained from bothering or harassing the other party, either physically or verbally, or coming around the home or place of employment of the other party for any reason whatsoever, except for purposes of previously arranged visitation.

25. That it is reasonable, necessary and proper that the divorce of the

parties become final 90 days from the date of entry of the Decree.

FROM THE FOREGOING, Findings of Fact, the court now makes and enters the following:

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this action and over the parties to this action.

2. That the plaintiff and defendant are entitled to a Decree of Divorce, the same to become final and effective 90 days after being signed by the Judge and entered by the Clerk in the register of actions.

3. That a Decree of Divorce should be granted in conformance with the foregoing Findings of Fact.

DATED THIS _____ day of _____, 1987.

BY THE COURT

KENNETH RIGTRUP
District Court Judge

Approved as to form and content:

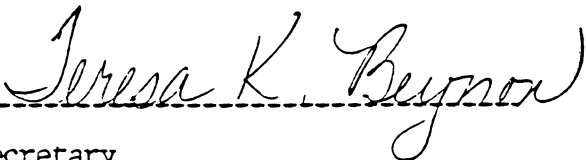
F. KIM WALPOLE
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am employed in the offices of Corporon & Williams, attorneys for the plaintiff herein; that I caused the foregoing proposed Findings of Fact and Conclusions of Law to be served upon defendant by placing a true and correct copy of the same in an envelope addressed to:

F. KIM WALPOLE
Attorney for Defendant
2447 Kiesel Avenue
Ogden, Utah 84401

and depositing the same, sealed, with first-class postage pre-paid thereon, in the United States mail at Salt Lake City, Utah, on the 26 day of January, 1988.



Secretary

KELLIE F. WILLIAMS #3493
Attorney for Plaintiff
CORPORON & WILLIAMS
Suite 1100 - Boston Building
#9 Exchange Place
Salt Lake City, Utah 84111
(801) 328-1162

IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH.

JUDE NICHOLS,
Plaintiff,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

-vs-

Civil No. D87-89

JAMES LEWIS NICHOLS,
Defendant.

Judge Kenneth Rigtrup

THE ABOVE-CAPTIONED MATTER having come on regularly for trial on August 14, 1987, at the hour of 10:00 o'clock a.m., and the trial not being completed at that time, and having been reset for trial and heard on October 6th and 7th, 1987 at the hours of 1:30 and 2:00 p.m., the Honorable Kenneth Rigtrup, Judge presiding, and the plaintiff having appeared in person and with counsel, Kellie F. Williams, and the defendant having appeared in person and with counsel, F. Kim Walpole, and the Court having heard the testimony of the parties and their witnesses, and having reviewed the file and having interviewed the minor children of the parties in chambers, and having heard the argument of counsel, more than 90 days having elapsed since the filing of the Complaint in this action, the Court, being fully advised in the premises, now makes and enters the following:

FINDINGS OF FACT

1. That the plaintiff is and has been a resident of Salt Lake County, State of Utah, for a period of three months or more prior to the filing of this action.

2. That the plaintiff and defendant are husband and wife having been married on June 30, 1964 in Magna, Utah.

3. That the acts of the defendant in removing himself from the marital residence and refusing to return and remain married to the plaintiff caused the plaintiff great mental and emotional distress and suffering, making continuation of the marriage impossible.

4. That there have been three children born alive as issue of this marriage, two of whom are in need of support, namely, Rebekah Ann, born April 30, 1974 and Jason Emanuel, born December 15, 1969. The plaintiff is a fit and proper person to be awarded the permanent care, custody and control of said minor children. The minor child Rebekah, expressed to the Court a desire to reside with her mother, and the minor child Jason, indicated a desire to be in his mother's custody.

5. That the defendant should be awarded reasonable visitation with the minor children as is convenient and appropriate between the minor children and the defendant.

6. That the plaintiff is unemployed, and has physical problems that prevent her employment, and the defendant is currently employed at Kennecott and earning, approximately, \$1,665.00, gross, per month.

7. That it is reasonable, necessary and proper that the defendant pay to the plaintiff, as and for child support, the sum of One Hundred Dollars (\$100.00) per month, per child, for a total of Two Hundred Dollars (\$200.00)

per month, until each minor child attains the age of 18 years or graduates from high school in due course, whichever last occurs. Said support should be payable one-half on the 10th, and one-half on the 25th of each month. Should the minor child, Jason, be residing other than in the plaintiff's home, then the plaintiff should be responsible for paying that support to the individual who is providing for the minor child, Jason.

8. That it is reasonable, necessary and proper that the defendant maintain in force his health and accident insurance, and such insurance as may be available through his employment, and that he continue to maintain the children as beneficiaries under said insurance policy as long as he is able to qualify said children under his medical/dental plan. Further, it is reasonable that the defendant maintain in force all health, accident and dental insurance for the benefit of the plaintiff until the divorce is final. Further, it is reasonable that each party pay one-half of all medical, dental, optical or orthodontic expenses that are not covered by said insurance.

9. That it is reasonable, necessary and proper that the defendant maintain, for the benefit of the minor children, the insurance policy on his life available through his union and through Kennecott and that he name the minor children as the beneficiaries of said life insurance policy and that the plaintiff be named as the trustee of said funds.

10. That if the defendant falls thirty (30) or more days in arrears in his child support obligation, the plaintiff should be entitled to mandatory income withholding relief pursuant to Utah Code Annotated, Section 78-45(d)-1, et. seq., (1984 as amended).

11. That it is reasonable, necessary and proper that the defendant pay to the plaintiff the sum of Two Hundred Fifty Dollars (\$250.00) per month, as

and for alimony. Said alimony should continue until the death of the plaintiff, the death of the defendant, or the plaintiff's remarriage or cohabitation.

12. That it is reasonable, necessary and proper that each party be ordered to provide the other party with a signed copy of their tax return, on or before April 30th of each year, and keep the other apprised of their employment situations.

13. That it is reasonable, necessary and proper that the defendant be awarded the right to claim the minor children as dependents for purposes of the calculation of the state and federal income tax dependent deductions, as long as he is current in his child support obligations at the end of each tax year. The plaintiff should be ordered to sign any necessary waiver permitting said exemption. Should the plaintiff earn in excess of \$7,500.00, per year, then she should be awarded the right to claim the minor child Rebekah Ann, as a dependent for purposes of the calculation of her federal and state tax dependent deductions.

14. That the parties should be ordered to file a joint federal and state return for the year 1987. All refunds resulting from said return should be applied to outstanding medical expenses owing to Dr. Peter Neilsen, Dr. Simmons, A. Paige Palmer, Dr. Cannon and/or Allied Labs. The defendant should be responsible if there are any amounts found due and owing to the Internal Revenue Service or the State of Utah.

15. That during the course of their marriage, the parties have acquired certain items of personal effects, jewelry, clothing and belongings, which have previously been divided, and which division should be confirmed in each. Each party should be awarded those items in his or her own possession, except

for the following:

a. The plaintiff should be awarded the balance of the IRA funds currently in possession of defendant's counsel, to apply to her attorney's fees and court costs. Further, she should be awarded two of the snowmobiles currently in possession of the defendant;

b. The defendant should be awarded the following property as it is currently in plaintiff's possession: 8-foot camper, horse trailer, coin collection, mirror, antique barber accessories, Avon limited edition bottles, sofa rocker, hide-a-bed, gun cabinet, one freezer, oak desk, adding machine, ten-man tent, three-man tent, propane lantern, gas camping stove, sleeping bag, miscellaneous camping gear, family pictures (his family), one telephone, 220 cord, Lincoln welder, air compressor, Homelight chain saw, all but one ladder, wheelbarrows, s affolding/planks, mechanic's tools and tool boxes (except for a variety of small hand tools to be left for plaintiff), angle grinder, disk sander, belt sander, bench vice, battery charger, cement tools, masonry handtools, any saddles or packs or blankets not associated with either of the children's horses; and 19" television set;

c. Each party should keep the VCR and equipment in their possession;

d. That the parties' married son should be awarded the snowmobile trailer;

e. That it is reasonable that the minor child, Jason, should be awarded all of his personal property, as well as the Atari game and tapes, and his horse, and all related tack and equipment;

f. That it is reasonable that the minor child, Rebekah, should be awarded all of her personal property and belongings, her personal computer,

her horse, and all related tack and equipment.

16. Each party should be awarded one-half of any other marital accounts or stocks.

17. That it is reasonable, necessary and proper that the plaintiff should be awarded the Oldsmobile vehicle, and the defendant should be awarded the 3/4-ton pickup truck. Each party should be ordered to execute and deliver all necessary documents to transfer the title to said property. Further, the minor child, Jason, should be awarded his 1977 Ford pick-up truck, and the minor child, Rebekah, should be awarded the 1958 Jeep, which title should be held in the name of the plaintiff until Rebekah is of age.

18. That it is reasonable, necessary and proper that the minor child, Rebekah, should be awarded all of her share accounts and savings accounts and that the minor child, Jason, should be awarded all of his share accounts and savings accounts.

19. That during the course of their marriage, the parties have acquired an interest in real property commonly known as 3260 South 7900 West in Magna, Utah. It is reasonable, necessary and proper that the plaintiff should be awarded the possession of said real property until such time as the minor child, Rebekah, attains the age of 18 years or graduates from high school, whichever last occurs, or until such time as plaintiff can sell said real property at a price that she desires. Further, it is reasonable that she should pay and assume the debt and obligation owing thereon to Chase Manhattan Bank, commencing October 1987. However, the court further found that the plaintiff removed herself from the residence, and that the defendant has been making any necessary minimal payments on the obligation owing to Chase Manhattan, prior to the sale of the home, which home has had an earnest money

offer made and which sale is pending.

Upon the sale of said home, the proceeds from the sale should be divided as follows:

- a. All costs of sale and commissions should be paid;
- b. The debt owed to Chase Manhattan should be paid;
- c. All outstanding medical bills incurred by the parties up until the date of the divorce of the parties should be paid;
- d. Two Thousand Five Hundred Dollars (\$2,500.00) should be paid to the plaintiff for attorney's fees and costs of litigation;
- e. One Thousand Dollars (\$1,000.00) should be paid to the defendant for attorney's fees and costs of litigation; and
- f. Any real property taxes owing on the real property should be paid;
- g. Defendant should be paid any amount that he paid to Chase Manhattan Bank after October 1, 1987, in order to prevent the foreclosure on the home and should be paid any sums expended to bring the homeowner's insurance current;
- h. The balance should be divided equally between the parties, one-half to each.

20. That during the course of their marriage, the parties have incurred certain debts and obligations, which include the medical debts owed to Dr. Simmons, Dr. Nielsen, A. Paige Palmer, Dr. Cannon and Allied Laboratories. Said debts should be paid as previously set forth. Further, the plaintiff should pay the debt to Chase Manhattan, as set forth above, until the sale of the home. Each party should pay and assume any debts and obligations incurred in his or her own name since the date of separation of the parties, said date

being November 21, 1986, except as set forth above.

21. That during the marriage the parties have acquired an interest in a Kennecott retirement plan and a Salt Lake City Laborer's Union retirement plan, as well as a possible interest in a retirement at Western States Masonry. Plaintiff should be awarded fifty percent (50%) of all accrued benefits through June 30, 1987, which is defined as 23 years of service. Appropriate Qualified Domestic Relations Orders should issue assigning said benefits.

The plaintiff should be awarded all benefits available to her under the United States Social Security Act as a wife of the defendant in excess of 23 years.

22. That each party should be ordered to pay his or her own attorney's fees and court costs, except as set forth above.

23. That both parties should be mutually restrained from bothering or harassing the other party, either physically or verbally, or coming around the home or place of employment of the other party for any reason whatsoever, except for purposes of previously arranged visitation.

24. That it is reasonable, necessary and proper that the divorce of the parties become final 60 days from the date of entry of the Decree.

FROM THE FOREGOING, Findings of Fact, the court now makes and enters the following:

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this action and over the parties to this action.

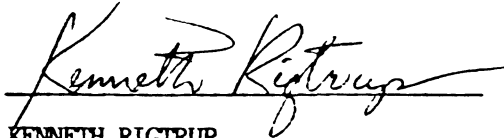
2. That the plaintiff and defendant are entitled to a Decree of Divorce, the same to become final and effective 60 days after being signed by the Judge

and entered by the Clerk in the register of actions.

3. That a Decree of Divorce should be granted in conformance with the foregoing Findings of Fact.

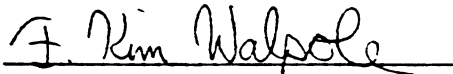
DATED THIS 22nd day of March, 1988.

BY THE COURT



KENNETH RIGTRUP
District Court Judge

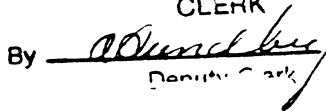
Approved as to form and content:



F. KIM WALPOLE
Attorney for Defendant

H. DIXON HINDLEY
CLERK

By


Deputy Clerk

KELLIE F. WILLIAMS #3493
Attorney for Plaintiff
CORPORON & WILLIAMS
Suite 1100 - Boston Building
#9 Exchange Place
Salt Lake City, Utah 84111
(801) 328-1162

FILED IN DISTRICT COURT
SALT LAKE COUNTY, UTAH

MAR 25 1988

J. A. Smith

IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH.

JUDE NICHOLS,

Plaintiff,

-vs-

JAMES LEWIS NICHOLS,

Defendant.

BK 213 fb. 8677
3-23-88 8.01 am

DECREE OF DIVORCE

Civil No. D87-89

Judge Kenneth Rigtrup

THE ABOVE-CAPTIONED MATTER having come on regularly for trial on August 14, 1987, at the hour of 10:00 o'clock a.m., and the trial not being completed at that time, and having been reset for trial and heard on October 6th and 7th, 1987 at the hours of 1:30 and 2:00 o'clock p.m., the Honorable Kenneth Rigtrup, Judge presiding, and the plaintiff having appeared in person and with counsel, Kellie F. Williams, and the defendant having appeared in person and with counsel, F. Kim Walpole, and the Court having heard the testimony of the parties and their witnesses, and having reviewed the file and having interviewed the minor children of the parties in chambers, and having heard the argument of counsel, more than 90 days having elapsed since the filing of the Complaint in this action, the Court, being fully advised in the premises, and having heretofore made and entered its Findings of Fact and Conclusions of Law, now, therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Plaintiff is hereby granted a Decree of Divorce, dissolving the bonds of matrimony heretofore existing between the parties, the same to become final and effective ^{60 days} ~~90~~ days after being signed by the judge and entered by the clerk in the register of actions.

2. Plaintiff is hereby awarded the permanent care, custody and control of the two minor children of the parties, Rebekah Ann and Jason Emanuel, subject to reasonable visitation in the defendant with the minor children, as is convenient and appropriate between the minor children and the defendant.

3. Defendant is hereby ordered to pay to plaintiff, as and for child support, the sum of One Hundred Dollars (\$100.00) per month, per child, for a total of Two Hundred Dollars (\$200.00) per month, until each minor child attains the age of 18 years or graduates from high school in due course, whichever last occurs. Said support shall be payable one-half on the 10th, and one-half on the 25th of each month. Should the minor child, Jason, be residing other than in the plaintiff's home, then the plaintiff shall be responsible for paying that support to the individual who is providing for the minor child, Jason.

4. Defendant is hereby ordered to maintain in force his health and accident insurance, and such insurance as may be available through his employment, and that he continue to maintain the children as beneficiaries under said insurance policy as long as he is able to qualify said children under his medical/dental plan. Defendant is further ordered to maintain in force all health, accident and dental insurance for the benefit of the plaintiff until the divorce is final. Each party is ordered to pay one-half of all medical, dental, optical or orthodontic expenses of the children that are not covered by said insurance.

5. Defendant is hereby ordered to maintain in force, for the benefit of the minor children, the insurance policy on his life available through his union and through Kennecott, naming the minor children as the beneficiaries of said life insurance policy and naming plaintiff as the trustee of said funds.

6. If the defendant falls thirty (30) or more days in arrears in his child support obligation, the plaintiff shall be entitled to mandatory income withholding relief pursuant to Utah Code Annotated, Section 78-45(d)-1, et. seq., (1984 as amended).

7. Defendant is hereby ordered to pay to plaintiff the sum of Two Hundred Fifty Dollars (\$250.00) per month, as and for alimony, until the death of the plaintiff, the death of the defendant, or the plaintiff's remarriage or cohabitation.

8. Each party is hereby ordered to provide the other party with a signed copy of their tax return, on or before April 30th of each year, and keep the other apprised of their employment situations.

9. Defendant is hereby awarded the right to claim the minor children as dependents for purposes of the calculation of his state and federal income tax dependent deductions, as long as he is current in his child support obligations at the end of each tax year and plaintiff is hereby ordered to execute the necessary waivers. Should the plaintiff earn in excess of \$7,500.00, per year, then she shall be awarded the right to claim the minor child, Rebekah Ann, as a dependent for purposes of the calculation of her federal and state tax dependent deductions.

10. The parties are hereby ordered to file joint federal and state returns for the year 1987. It is further ordered that all refunds resulting from said return shall be applied to outstanding medical expenses owing to Dr. Peter Neilsen, Dr. Simmons, A. Paige Palmer, Dr. Cannon and/or Allied Labs.

The defendant is ordered to pay and assume any amounts found due and owing to the Internal Revenue Service or the State of Utah.

11. The parties' previous division of their items of personal effects, jewelry, clothing and belongings is hereby confirmed in each and each party is hereby awarded those items in his or her own possession, except for the following:

a. The plaintiff is hereby awarded the balance of the IRA funds currently in possession of defendant's counsel, to apply to her attorney's fees and court costs. Further, plaintiff is awarded two of the snowmobiles currently in possession of the defendant;

b. The defendant is hereby awarded the following property currently in plaintiff's possession: 8-foot camper, horse trailer, coin collection, mirror, antique barber accessories, Avon limited edition bottles, sofa rocker, hide-a-bed, gun cabinet, one freezer, oak desk, adding machine, ten-man tent, three-man tent, propane lantern, gas camping stove, sleeping bag, miscellaneous camping gear, family pictures (his family), one telephone, 220 cord, Lincoln welder, air compressor, Homelight chain saw, all but one ladder, wheelbarrows, scaffolding/planks, mechanic's tools and tool boxes (except for a variety of small hand tools to be left for plaintiff), angle grinder, disk sander, belt sander, bench vice, battery charger, cement tools, masonry handtools, any saddles or packs or blankets not associated with either of the children's horses; and 19" television set;

c. Each party is awarded the VCR and equipment currently in his or her possession;

d. The parties' married son is hereby awarded the snowmobile trailer;

e. The minor child, Jason, is hereby awarded all of his personal

KP including his guns, binoculars and property, *KL* the Atari game and tapes and his horse *Smith's KL* and all related tack and equipment;

KL f. The minor child, Rebekah, is hereby awarded all of her personal property *including 10-speed bike, 15" Schwinn bike, sleeping bag and Leary KL.* and belongings, *KL* her personal computer and her horse and all related tack and equipment.

12. Each party is hereby awarded one-half of any other marital accounts or stocks.

13. Plaintiff is hereby awarded the Oldsmobile vehicle and defendant is hereby awarded the 3/4-ton pickup truck. Each party is ordered to execute and deliver all necessary documents to transfer the title to said property. Further, the minor child, Jason, is awarded his 1977 Ford pick-up truck, and the minor child, Rebekah, is awarded the 1958 Jeep, which title shall be held in the name of the plaintiff until Rebekah is of age.

14. The minor child, Rebekah, is hereby awarded all of her share accounts and savings accounts and the minor child, Jason, is hereby awarded all of his share accounts and savings accounts.

15. Plaintiff is hereby awarded the possession of the real property of the parties commonly known as 3260 South 7900 West in Magna, Utah, until such time as the minor child, Rebekah, attains the age of 18 years or graduates from high school, whichever last occurs, or until such time as plaintiff can sell said real property at a price that she desires. Further, plaintiff is hereby ordered to pay and assume the debt and obligation owing thereon to Chase Manhattan Bank, commencing October 1987.

Upon the sale of said home, it is ordered that the proceeds from the sale shall be divided as follows:

- a. All costs of sale and commissions shall be paid;
- b. Debt owing to Chase Manhattan to be paid in full;

c. All outstanding medical bills incurred by the parties up until the date of the divorce of the parties shall be paid;

d. Two Thousand Five Hundred Dollars (\$2,500.00) shall be paid to the plaintiff for attorney's fees and costs of litigation;

e. One Thousand Dollars (\$1,000.00) shall be paid to the defendant for attorney's fees and costs of litigation; and

f. Any real property taxes owing on the real property shall be paid;

g. Defendant shall be paid any amounts that he paid to Chase Manhattan Bank after October 1, 1987, to prevent foreclosure on the home and any sums expended to bring the homeowner's insurance current;

h. The balance shall be divided equally between the parties, one-half to each.

16. The medical debts owed to Dr. Simmons, Dr. Nielsen, A. Paige Palmer, Dr. Cannon and Allied Laboratories shall be paid as previously set forth. Further, the plaintiff is ordered to pay the debt to Chase Manhattan, as set forth above. Each party is ordered to pay and assume any debts and obligations incurred in his or her own name since the date of separation of the parties, said date being November 21, 1986, except as set forth above.

17. Plaintiff is hereby awarded fifty percent (50%) of all benefits acquired by defendant in the Kennecott and Salt Lake City Laborer's Union retirement plans, which is defined as 23 years of service, as well as the retirement at Western States Masonry, if any, accrued through June 30, 1987. Appropriate Qualified Domestic Relations Orders shall issue assigning said benefits.

The plaintiff is hereby awarded all benefits available to her under the United States Social Security Act as a wife of the defendant in excess of 23

years.

18. Each party is hereby ordered to pay his or her own attorney's fees and court costs, except as set forth above.

19. Both parties are hereby mutually restrained from bothering or harassing the other party, either physically or verbally, or coming around the home or place of employment of the other party for any reason whatsoever, except for purposes of previously arranged visitation.

20. The divorce of the parties shall become final ^{60 days} ~~90~~ days from the date of entry of this Decree.

DATED THIS 22nd day of March, 1988.

BY THE COURT

Kenneth Rigtrup

KENNETH RIGTRUP
District Court Judge

Approved as to form and content:

H. DIXON HINDLEY

By H. Dixon Hindley
Deputy Clerk

F. KIM WALPOLE
Attorney for Defendant

STATE OF UTAH
COUNTY OF SALT LAKE

I, THE UNDERSIGNED CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT
THIS 1 DAY OF April, 1988

H. DIXON HINDLEY, CLERK

By Stephanie Johnson DEPUTY

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am employed in the offices of Corporon & Williams, attorneys for the plaintiff herein; that I caused the foregoing proposed Decree of Divorce to be served upon defendant by placing a true and correct copy of the same in an envelope addressed to:

F. KIM WALPOLE
Attorney for Defendant
2447 Kiesel Avenue
Ogden, Utah 84401

and depositing the same, sealed, with first-class postage pre-paid thereon, in the United States mail at Salt Lake City, Utah, on the 15 day of December, 1987.

Jill K. Payton
Secretary

KELLIE F. WILLIAMS #3493
Attorney for Plaintiff
CORPORON & WILLIAMS
Suite 1100 - Boston Building
#9 Exchange Place
Salt Lake City, Utah 84111
(801) 328-1162

IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH.

JUDE NICHOLAS,

Plaintiff,

-vs-

JAMES LEWIS NICHOLAS,

Defendant.

INCOME AND EXPENSES OF PLAINTIFF

Civil No. D87-89

Judge Kenneth Rigtrup

GROSS INCOME:

Gross salary/wages	\$	0
Child support and/or alimony	\$	0
Social security	\$	0
Disability and unemployment insurance	\$	0
Public assistance	\$	0
Dividends and interest	\$	0
Other sources	\$	0
TOTAL GROSS MONTHLY INCOME	\$	0

DEDUCTIONS:

Federal taxes	\$	0
State taxes	\$	0
FICA	\$	0

Other	\$	0
TOTAL MONTHLY DEDUCTIONS	\$	0
NET MONTHLY INCOME	\$	0

EXPENSES:

Mortgage payments (residence)	\$	200.00
Real property taxes (residence)	\$	86.20
Real property insurance (residence)	\$	13.58
Maintenance (residence)	\$	40.00
Food and household supplies	\$	600.00
Utilities (including water, electricity and gas)	\$	250.00
Telephone	\$	35.00
Laundry and cleaning	\$	35.00
Clothing	\$	150.00
Medical (varies)	\$50.00 to \$200.00	
Dental (varies)	\$	10.00
School	\$	35.00
Entertainment (includes clubs, social obligations, travel, recreation)	\$	115.00
Incidentals (grooming, tobacco, alcohol, gifts, donations, including tithing)	\$	240.00
Auto expense (gas, oil, repairs and insurance)	\$	125.00
TOTAL MONTHLY EXPENSES		\$1,984.78 to \$2,134.78

§ 152. Dependent defined

(a) **General definition.**—For purposes of this subtitle, the term “dependent” means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) or (e) as received from the taxpayer):

(1) A son or daughter of the taxpayer, or a descendant of either,

(2) A stepson or stepdaughter of the taxpayer,

(3) A brother, sister, stepbrother, or stepsister of the taxpayer,

(4) The father or mother of the taxpayer, or an ancestor of either,

(5) A stepfather or stepmother of the taxpayer,

(6) A son or daughter of a brother or sister of the taxpayer,

(7) A brother or sister of the father or mother of the taxpayer,

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer, or

(9) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer’s household.

(b) **Rules relating to general definition.**—For purposes of this section—

(1) The terms “brother” and “sister” include a brother or sister by the halfblood.

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual (and a child who is a member of an individual’s household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child satisfies the requirements of subsection (a)(9) with respect to such individual), shall be treated as a child of such individual by blood.

(3) The term “dependent” does not include any individual who is not a citizen or national of the United States unless such individual is a resident of the United States or of a country

contiguous to the United States. The preceding sentence shall not exclude from the definition of "dependent" any child of the taxpayer legally adopted by him, if, for the taxable year of the taxpayer, the child has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, and if the taxpayer is a citizen or national of the United States.

(4) A payment to a wife which is includible in the gross income of the wife under section 71 or 682 shall not be treated as a payment by her husband for the support of any dependent.

(5) An individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

(c) Multiple support agreements.—For purposes of subsection (a), over half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

(1) no one person contributed over half of such support;

(2) over half of such support was received from persons each of whom, but for the fact that he did not contribute over half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year;

(3) the taxpayer contributed over 10 percent of such support; and

(4) each person described in paragraph (2) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that he will not claim such individual as a dependent for any taxable year beginning in such calendar year.

(d) Special support test in case of students.—For purposes of subsection (a), in the case of any individual who is—

(1) a son, stepson, daughter, or stepdaughter of the taxpayer (within the meaning of this section), and

(2) a student (within the meaning of section 151(c)(4)),

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(A)(ii) shall not be taken into account in determining whether such individual received more than half of his support from the taxpayer.

(e) Support test in case of child of divorced parents, etc.—

(1) **Custodial parent gets exemption.**—Except as otherwise provided in this subsection, if—

(A) a child (as defined in section 151(c)(3)) receives over half of his support during the calendar year from his parents—

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and

(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year,

such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year (hereinafter in this subsection referred to as the “custodial parent”).

(2) Exception where custodial parent releases claim to exemption for the year.—A child of parents described in paragraph (1) shall be treated as having received over half of his support during a calendar year from the noncustodial parent if—

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

For purposes of this subsection, the term “noncustodial parent” means the parent who is not the custodial parent.

(3) Exception for multiple-support agreement.—This subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

(4) Exception for certain pre-1985 instruments.—

(A) **In general.**—A child of parents described in paragraph (1) shall be treated as having received over half his support during a calendar year from the noncustodial parent if—

(i) a qualified pre-1985 instrument between the parents applicable to the taxable year beginning in such

calendar year provides that the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, and

(ii) the noncustodial parent provides at least \$600 for the support of such child during such calendar year.

For purposes of this subparagraph, amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

(B) Qualified pre-1985 instrument.—For purposes of this paragraph, the term “qualified pre-1985 instrument” means any decree of divorce or separate maintenance or written agreement—

(i) which is executed before January 1, 1985,

(ii) which on such date contains the provision described in subparagraph (A)(i), and

(iii) which is not modified on or after such date in a modification which expressly provides that this paragraph shall not apply to such decree or agreement.

(5) Special rule for support received from new spouse of parent.—For purposes of this subsection, in the case of the remarriage of a parent, support of a child received from the parent’s spouse shall be treated as received from the parent.

(6) Cross reference.—

For provision treating child as dependent of both parents for purposes of medical expense deduction, see section 213(d)(4).

(Aug. 16, 1954, c. 736, 68A Stat. 43; Aug. 9, 1955, c. 693, § 2, 69 Stat. 626; Sept. 2, 1958, Pub.L. 85–866, Title I, § 4(a)–(c), 72 Stat. 1607; Sept. 23, 1959, Pub.L. 86–376, § 1(a), 73 Stat. 699; Aug. 31, 1967, Pub.L. 90–78, § 1, 81 Stat. 191; Dec. 30, 1969, Pub.L. 91–172, Title IX, § 912(a), 83 Stat. 722; Oct. 27, 1972, Pub.L. 92–580, § 1(a), 86 Stat. 1276; Oct. 4, 1976, Pub.L. 94–455, Title XIX, §§ 1901(a)(24), (b)(7)(B), (8)(A), 1906(b)(13)(A), Title XXI, § 2139(a), 90 Stat. 1767, 1794, 1834, 1932; July 18, 1984, Pub.L. 98–369, Div. A, Title IV, §§ 423(a), 482(b)(2), 98 Stat. 799, 848; Oct. 22, 1986, Pub.L. 99–514, Title I, § 104(b)(1)(B), (3), Title XIII, § 1301(j)(8), 100 Stat. 2104, 2105, 2658.)

78-45-7. Determination of amount of support — Assessment formula for temporary support.

(1) Prospective support shall be equal to the amount granted by prior court order unless there has been a material change of circumstance on the part of the obligor or obligee.

(2) When no prior court order exists, or a material change in circumstances has occurred, the court, in determining the amount of prospective support, shall consider all relevant factors including but not limited to:

- (a) the standard of living and situation of the parties;
- (b) the relative wealth and income of the parties;
- (c) the ability of the obligor to earn;
- (d) the ability of the obligee to earn;
- (e) the need of the obligee;
- (f) the age of the parties;
- (g) the responsibility of the obligor for the support of others.

(3) When no prior court order exists, the court shall determine and assess all arrearages based upon, but not limited to:

- (a) the amount of public assistance received by the obligee, if any;
- (b) the funds that have been reasonably and necessarily expended in support of spouse and children.

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

History: L. 1957, ch. 110, § 7; 1977, ch. 145, § 10; 1984, ch. 13, § 2.

Amendment Notes. — The 1984 amendment added Subsection (4); and made minor changes in style.

Cross-References. — Creation of Department of Social Services, § 63-35-3.

Creation of Judicial Council, Utah Const., Art. VIII, Sec. 12; § 78-3-21.

Divorce, maintenance of parties, § 30-3-5.

Public support of children, Chapter 45b of this title.