

1988

# Lawana Egan Lee v. Sterling Calvin Lee : Brief of Appellant

Utah Court of Appeals

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Brent J. Jensen; Attorney for Respondent.

John L. Chidester; Attorney for Appellant.

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BRIEF

CKET NO. 880276-CA

IN THE COURT OF APPEALS OF THE STATE OF UTAH

\* \* \* \* \*

LAWANA EGAN LEE, :

Plaintiff and Respondant, :

-vs- :

STERLING CALVIN LEE, :

Defendant and Appellant. :

Case No. 880276-CA

*Priority # 15*

\* \* \* \* \*

BRIEF OF APPELLANT

-----

APPEAL FROM FINAL DECREE DATED APRIL 28, 1988,  
IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR  
UTAH COUNTY, STATE OF UTAH, THE HONORABLE RAY M.  
HARDING, JUDGE, PRESIDING

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RECEIVED  
JUL 12 1988

COURT OF APPEALS

IN THE COURT OF APPEALS OF THE STATE OF UTAH

\* \* \* \* \*

LAWANA EGAN LEE, :

Plaintiff and Respondant, :

-vs- : Case No. 880276-CA

STERLING CALVIN LEE, :

Defendant and Appellant. :

\* \* \* \* \*

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUES PRESENTED FOR REVIEW.....	1
STATUTES, CONSTITUTION, AND JURISDICTION.....	1
STATEMENT OF CASE.....	1
STATEMENT OF FACTS.....	2
SUMMARY OF ARGUMENTS.....	4
ARGUMENTS	
POINT I        THE COURT ERRED IN REVIEWING CIRCUMSTANCES ONLY FROM THE DATE OF MODIFICATION RATHER THAN TO THE DATE OF THE DIVORCE.....	4
POINT II       UNDER THE UNDISPUTED FACTS AND CIRCUM- STANCES OF THIS CASE, THE COURT ERRED - IN FAILING TO ORDER AN END TO ALIMONY.....	6
CONCLUSION.....	11

TABLE OF AUTHORITIES

CASES CITED

	Page
<u>Bushnell v Bushnell</u> , 649 P.2d 85 (1982).....	8
<u>English v English</u> , 565 P.2d 409 (1977).....	6, 7
<u>Frank v Frank</u> , 585 P.2d 453 (1978).....	6
<u>Holt v Holt</u> , 655 P.2d 677 (1982).....	8
<u>Jeppson v Jeppson</u> , 684 P.2d 69 (1984).....	8
<u>King v King</u> , 27 Utah 2d 303, 495 P.2d 823.....	8
<u>Short v Short</u> , 25 Utah 2d 326, 481 P.2d 54.....	5
<u>Turner v Turner</u> , 649 P.2d 6 (1982).....	8
<u>Walker v Walker</u> , 707 P.2d 110 (1985).....	7
<u>Warren v Warren</u> , 655 P.2d 684 (1982).....	8
<u>Wiese v Wiese</u> , 24 Utah 2d 236, 469 P.2d 504.....	9
<u>Wilson v Wilson</u> , 5 Utah 2d 79, 296 P.2d 977.....	10
<u>Workman v Workman</u> , 652 P.2d 931.....	7

STATUTES AND CONSTITUTION

§ 78-2a-3(g), U.C.A., 1953.....	1
§ 30-3-5, U.C.A., 1953.....	1
Article 1 §24, Utah Constitution.....	1, 10

STATEMENT OF ISSUES PRESENTED FOR REVIEW

ISSUE NUMBER I

Whether the Court erred by reviewing this matter only from the date of modification in 1976 and failing to review events and circumstances prior thereto.

ISSUE NUMBER II

Whether under the undisputed circumstances of this case the Court abused its discretion by failing to order a termination of alimony.

STATUTES, CONSTITUTION AND JURISDICTION

This case involves a review of the trial courts decision made and entered pursuant to §30-3-5, Utah Code Annotated, 1953, and the effect Article 1 § 24 Utah Constitution. Jurisdiction is conferred by §78-2a-3 (g) UCA, 1953.

STATEMENT OF THE CASE

The Plaintiff commenced the current matter by Order To Show Cause in 1986 in Wasatch County. The case was transferred to Utah County and was expanded by stipulation of the parties to include a Motion To Modify, Paragraph 1.C. of a Modification of Decree heretofor entered in this case on the 8th day of June, 1976.

The parties stipulated the evidence which resulted in Findings of Fact approved by both parties. The Court entered its Conclusions of Law and Decree based upon the stipulated facts and

the record in the court file. This Appeal is from the Conclusions of Law and the Decree entered by the Court.

#### STATEMENT OF FACTS

The parties were married on December 10, 1952, and had three children of this marriage. At the time of this marriage, Plaintiff had two minor children from a prior marriage and was living on welfare. After this marriage the Plaintiff and her children of her prior marriage resided with the Plaintiff until their emancipation and received all maintenance from the Defendant.

Plaintiff commenced divorce action in Wasatch County on May 27, 1964, Civil #2652, which resulted in a temporary order of support and alimony. Parties reconciled and this action was finally dismissed by the Court in 1977 for failure to prosecute. In 1971, Plaintiff again commenced an action in Wasatch County, Civil #3247, which ended in divorce dated March 12, 1971.

On the 8th day of June, 1976, the above District Court entered a Modification Of Decree modifying the 1971 Decree. The modification provided in 1.C.:

"Plaintiff LoWana Egan Lee is hereby awarded and defendant is ordered to pay to said Plaintiff the sum of \$75.00 per month alimony, said payments to be made to the clerk of the court for the benefit of said plaintiff until said plaintiff obtains work and receives gross income of \$200.00 or more per month at which time said alimony shall be reduced to the sum of \$50.00 per month, said payments to be made to the clerk of the court for the benefit of said plaintiff in semi-monthly installments of one-half of the amount of alimony due in that month on the 1st and 16th days of each month commencing May 1, 1976, and continuing on the

same days of each month until said plaintiff remarries, dies, or until the further order of the court, whichever events occurs first."

Pursuant to said divorce Decree, all of the assets of the parties were distributed with the Plaintiff and the Department of Social Services receiving the bulk thereof. In addition, the Plaintiff was ordered to pay support for the one remaining minor child and alimony for the Plaintiff.

That the remaining minor child was emancipated in 1981.

Defendant paid all support and alimony as ordered by the Court until November, 1985, at which point he became disabled and also at which point he learned that the Plaintiff was receiving Social Security disability payments and had been since January of 1985.

The Court found that the Defendant's gross earning have dropped from \$36,000.00 per year, at the time of modification in 1976, to approximately \$1,300.00 per month at the present. That during the marriage the parties gross income never exceeded \$15,000.00 per year.

The Court further found that the Defendant's retirement income was principally due to efforts made by him after the divorce Decree was entered by going to school, learning a trade, qualifying as an operator, and pursuing such training until his disability in 1985.

The Court further found that the Plaintiff had never maintained employment since the marriage or since the divorce except for brief short periods and has never provided the financial resources to support herself or her family since this



marriage - always electing to receive public assistance. The Court found a material change of circumstances and ordered a reduction in alimony but declined to terminate alimony completely, electing to review the facts in comparison with 1976 modification only and refusing to review events and circumstances from the time of the divorce.

The Defendant has since remarried.

### SUMMARY OF ARGUMENTS

#### ARGUMENT NUMBER I

The Court erred in reviewing circumstances only from the date of modification rather than to the date of the divorce. In reviewing dates and circumstances to 1976, the comparison was to circumstances accruing outside the divorce from separate and special effort by the Defendant and thus ignored merit of events prior thereto.

#### ARGUMENT NUMBER II

The facts and circumstances in this case merit a termination of alimony and the Court erred by failing to so rule. Alimony should never be 'til death due us part' and, once all children have been emancipated, alimony becomes a penalty to the husband and a reward to the wife.

### ARGUMENTS

#### POINT I

THE COURT ERRED IN REVIEWING CIRCUMSTANCES ONLY  
FROM THE DATE OF MODIFICATION RATHER THAN TO THE  
DATE OF THE DIVORCE.

The Court erred by refusing to review events and circumstances at the time of the divorce instead of the date of modification.

The Supreme Court has addressed the issue of whether on a petition to vacate alimony the Court should compare present circumstances with time of the Decree or with the time of the last petition for modification in the case of *Short v Short*, (1971) 25 Utah 2d 326, 481 P.2d 54. The Court stated:

"There is but one point on appeal: That the court erred in failing to compare the parties present circumstances in relation to those at the time of the decree.

By and large in the ordinary divorce case the appellant's contention would be meritorious, and the cases decided by this court sustain his contention, '. . . and we base our conclusion here, not necessarily on any authority to the effect that the court views the facts in relation to the last petition for modification, but because the denial was not caprecious when viewed in the light of circumstances existing at the time of the divorce . . . '".

When we view the facts in relation to the modification rather than the time of the divorce, it becomes possible to ignore the following facts:

1. Due to Appellants efforts after the divorce, while Respondant was collecting support and alimnony, he went to school, learned a trade as an operator, and pursued his trade until no longer able to do so. That because of his effort his present income is more than 70% derived outside of the marriage.
2. The Respondant made no legitimate effort to obtain employment - electing to rely on public assistance

for about 13 years before any claim of disability and approximately 4 years thereafter.

3. That Appellant didn't cause Respondant to become a public charge, in fact he took her and her minor children of a prior marriage off the rolls and provided all their support until their emancipation.
4. That her present income is derived from his Social Security benefits.
5. That the Appellant has been under an alimony Order longer than he was married.
6. That the divorce was the second divorce action commenced by the Respondant. That Appellant paid temporary alimony during their separation.
7. That Appellant is now remarried and has other responsibilities.
8. That their youngest child was emancipated some 7 years ago.

#### POINT II

UNDER THE UNDISPUTED FACTS AND CIRCUMSTANCES OF THIS CASE, THE COURT ERRED IN FAILING TO ORDER AN END TO ALIMONY.

There is great disparity in the rulings of the Supreme Court on alimony. Some cases have held that the length of marriage was a factor and others have had held to the contrary. English v English, 565 P.2d 409 (1977), Frank v Frank, 585 P.2d 453 (1978). Length of marriage, however, standing alone doesn't mean much. It can mean greater contribution to the marriage, but it can also mean greater endurance of the marriage as well. The more one has

put up with it, the more society will require. Tying the duration of alimony to the length of marriage is like the degrees of criminal offenses. If the husband puts up with the marriage for a month, it is a class B Misdemeanor; if 5 years, a Class A; if 10 years, a Third Degree Felony; if 15 years, a Second Degree Felony (1 to 15); if over, it is life.

Other cases have tied alimony to the wife's needs and her income or ability to produce income. *English v English*, Supra. Since everyone has needs, the effect on the payor is controlled exclusively on her income and ability to produce income. Thus, where we have a wife who will not obtain and maintain employment (everyone not physically or mentally handicapped is capable of employment of some type) she still has needs that must be paid for.

Other cases have held that the purpose of alimony is to keep wife off public dole. When looked at from the defendant position, the husband is stuck unless she will support herself. If one is dumb enough to take a person off public assistance, he becomes responsible thereafter so long as he has capacity. Regardless of the wife's track record in prior marriage, the husband must bear the burden if the marriage fails and she won't support herself.

Other cases have held there should be no alimony where the wife is willing to support herself. (*Walker v Walker*, 707 P.2d 110 (1985): 8 year marriage (No Alimony); *Workman v Workman*, 652 P.2d 931: (No alimony))

Other cases have approved limited duration as reasonable

while still other are to the contrary. *Turner v Turner*, 649 P.2d 6 (1982): 11 year marriage, 24 months; *Bushnel v Bushnell*, 649 P.2d 85 (1982): 11 year marriage, 4 years; *Warren v Warren*, 655 P.2d 684 (1982): 27 year marriage, 4 years; *Holt v Holt*, 655 P.2d 677 (1982): 11 year marriage, 6 years; *Jeppson v Jeppson*, 684 P.2d 69 (1984): 10 year marriage, 13 years; *King v King*, 495 P.2d 823, 27 Ut 2d 303: 16 year marriage, no time limit.

The over all view of the cases on alimony by the author leads to the conclusion that there is no consistency. If a person gets caught in a failed marriage, he may escape punishment altogether or do a life term; but the likelihood of a life term is much greater if one has put forth the effort to work and earn and especially so if the wife does not.

The vast discrepancies in the decisions perhaps is a result of the nature of the problem and the rule of appellant review. The temptation of the courts to pass the financial burden to an ex-husband seems too irresistible and simple. However, it oftentimes ignores the element of fairness. What is it that a person has done in getting married that burdens him (not to his children) but to his ex-spouse for life, particularly a first marriage. (Perhaps for a second marriage, if he didn't learn better from the first.) When should alimony be a life sentence? Once the children are emancipated, hasn't the time come when a husband has provided all the required financial assistance for adjustment to their separate lives. When is enough enough? Isn't 17 years enough to demonstrate that she will not make a normal effort to get off the public rolls? Should the substantial discession

afforded a trial court be used to ignore when alimony should cease? How long after emancipation of their children should alimony continue? Is need the sole criteria since those who won't provide for themselves always have needs? When should a pardon be granted or time off for good behavior be given? When has he paid his debt to society?

Since the decisions are so varied it is impossible to cite a case for limited duration without also citing cases with unlimited duration. The trend, however, nationally and in Utah does appear to be to limited duration (See cases cited above).

Using language about reward or punishment doesn't seem to equate in any manner to the decisions of our court or to the effects upon the parties. Once all the accumulated assets are dispersed and the children are provided for, all alimony except for a reasonable adjustment period beyond emancipation of dependent children becomes a reward to the wife and a punishment to the husband. Worse still, it becomes an incentive not to pack one's own weight.

Allowing alimony as punishment and reward makes much more sense and at least can be equated with the seriousness of the offense. It has the added advantage in that it doesn't reward lack of effort and industry and punish for it.

It is recognized that under the rules pronounced by the Supreme Court for Appellant review that great latitude is accorded the trial judge, particularly where the evidence is in dispute. However, here the evidence is not in dispute. See *Wiese v Wiese*, 24 Utah 2d 236, 469 P.2d 504 and cases cited

therein. The latitude of a trial court is often stated in terms of a presumption.

"... the trial judge has considerable latitude of discretion in such matters and that his judgement should not be changed lightly, and in fact, not at all, unless it works such a manifest injustice or iniquity as to indicate a clear abuse of discretion."  
Wilson v Wilson, 5 Utah 2d 79, 296 P.2d 977.

The problems with such a rule where there is no rule is that the trial judge is correct regardless of whether he terminates alimony or doesn't. Without the perimeters for termination of alimony being identified it becomes a roll of the dice. A reading of the cases would seem to demonstrate that the court has not pronounced the criteria for the duration of alimony or its termination that the trial courts can use as a guide.

There is a need for a more rational criteria for termination of alimony and a ruling that the total picture can be examined to determine merit not merely a limited time span. 'Til death do us part' should not be a criteria of alimony and, particularly, after all children are emancipated. There should be some consistency in the burdens of marriage and the court is the only body able to affect that consistency.

Our court (it is not alone) has turned marriage into a very foolish venture - likewise honest effort and responsibility. Hopefully this case can provide a forum for some rational, consistent framework for the duration of alimony.

Our Constitution requires that our laws have uniform application. Art 1 §24. When has any court in this state required a wife to pay alimony to her husband for life? Laws

that depend upon discession of the trial court and abuse of discession by the appeals court for reversal produce such disparity that they can have no uniform application without specific guidlines. That is why we get rulings of anywhere from nothing to a lifetime burden. The court should catch up with the trend in this country and view the parties to a failed marriage in a more equal posture. The courts rulings on alimony refute the liberation of woman and their equality and reflect a time in the past when society frowned on a wife working or having a business or career of her own - when society never expected a wife to attempt to carry her own weight financially, merely to be tied to the stove and broom.

#### CONCLUSION

The Court in being able to close its eyes to the totality of the evidence and its merits has been able to ignore the fundamental principle of fairness and has been cast in the position of trying to decide an area of the law without adequate guidelines. In its dilemma, the Court has erred in failing to consider all the evidence and in failing to decide when enough is enough based upon principles of societies value. This case should be remanded with instructions and guidelines on the duration of alimony and its termination.

Respectfully Submitted,

  
JOHN L. CHIDESTER  
Attorney for Appellant



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ADDENDUMS

COURT OF APPEALS

Addendum 1	Amended Decree of Divorce and Judgment
Addendum 2	Findings of Fact and Conclusions of Law
Addendum 3	Modification of Decree of Divorce and Judgment
Addendum 4	Decree of Divorce
Addendum 5	Temporary Order

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-----  
 IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY  
 STATE OF UTAH  
 -----

LOWANA EGAN LEE,	:	
Plaintiff,	:	AMENDED DECREE OF DIVORCE AND JUDGMENT
v.	:	
STERLING CALVIN LEE,	:	Civil No. CV-86-893
Defendant.	:	(Judge Ray M. Harding)

-----

THIS CAUSE came on regularly for hearing before this court, sitting without a jury, on January 6, 1988, Plaintiff appearing in person and through plaintiff's attorney, Brent J. Jensen, and Defendant appearing in person and through Defendant's attorney, John L. Chidester. The Court having heard the evidence of the parties and the cause having been submitted to the Court, and the Court having rendered its decision in writing, which decision consists of Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Paragraph 1.c. of the Decree of Divorce signed by the

court on May 18, 1976 and entered in this case on May 21, 1976, be and the same is hereby modified as follows:

1.C. Plaintiff LoWana Egan Lee is hereby awarded and defendant is ordered to pay to said Plaintiff the sum of \$50.00 per month alimony, said payments to be made to the clerk of the court for the benefit of said plaintiff in semi-monthly installments of one-half of the amount of alimony due in that month on the 1st and 16th days of each month commencing February 1, 1988, and continuing on the same days of each month until said plaintiff remarries, dies, or until the further order of the court, whichever event occurs first.

2. All other paragraphs and provisions of the prior Decree of Divorce shall remain unchanged and in full effect and force as they were before this modification.

3. Plaintiff is awarded judgement against Defendant in the amount of \$1,075.00 for unpaid alimony from October 1985 through January 1988.

DATED: \_\_\_\_\_

BY THE COURT:


\_\_\_\_\_  
District Judge

Approved as to form:

\_\_\_\_\_  
John L. Chidester,  
attorney for defendant

MAILING CERTIFICATE

I HEREBY CERTIFY that I mailed an accurate copy of the Findings of Fact and Conclusions of Law and the Amended Decree of Divorce by first class mail, prepostage paid to John L. Chidester at 51 West Center, P.O. Box 143, Heber City, Utah 84032 on this 28, day of January, 1988.

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 Attorney for Plaintiff  
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 Provo, Utah 84601

IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR WASATCH COUNTY, STATE OF UTAH

\*\*\*\*\*

LOWANA EGAN LEE,	:	
	:	
Plaintiff,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
-VS-	:	
	:	
STERLING CALVIN LEE,	:	Civil No. CV-86-893
	:	
Defendant.	:	(Judge Ray M. Harding)

\*\*\*\*\*

The above entitled matter came on for trial before this court on January 6, 1988. At issue was the defendant's objection to the Domestic Relations Commissioner's recommendation filed on November 24, 1987.

2. Plaintiff was present with her counsel, Brent J. Jensen. Defendant was present with his counsel, John L. Chidester. That the court and all parties approved the presentation of evidence by proffer with evidence to be received if any proffer was contested.

3. The court having thus been fully advised and upon a review of the record in the court's file, the court now renders its decision and makes the following findings and conclusions of law.

FINDINGS OF FACT

1. The court entered a Modification of Decree of Divorce and Judgement on May 18, 1976, which states in the pertinent part:

1.C. Plaintiff LoWana Egan Lee is hereby awarded and defendant is ordered to pay to said Plaintiff the sum of \$75.00 per month alimony, said payments to be made to the clerk of the court for the benefit of said plaintiff until said plaintiff obtains work and receives a gross income of \$200.00 or more per month at which time said alimony shall be reduced to the sum of \$50.00 per month, said payments to be made to the clerk of the court for the benefit of said plaintiff in semi-monthly installments of one-half of the amount of alimony due in that month on the 1st and 16th days of each month commencing May 1, 1976 and continuing on the same days of each month until said plaintiff remarries, dies, or until the further order of the court, whichever event occurs first.

2. Plaintiff filed a motion for an order to show cause on February 11, 1986, requesting judgement for alimony arrearage.

3. Defendant stopped paying alimony in November 1985 when he discovered plaintiff was receiving social security benefits for disability in excesss of \$200.00 per month beginning in January 1985.

4. Defendant has retired due to disability.

5. Defendant's gross earnings have dropped from \$36,000 per year at the time of modification in 1976, to approximately \$1300 per month at the present. That the defendant became disabled and has been unable to work since September, 1985; that during this marriage, plaintiff's income was less than \$15,000 a year.

6. That the plaintiff has never maintained employment since the marriage or since the divorce except for brief short time periods and has never provided the financial resources to support herself and/or family since the marriage.

7. That the defendant after the divorce was able to increase his earning capacity and increase his retirement income by going to school, learning a trade, qualifying as an operator, and pursing said trade until his disability in 1985.

8. Defendant has remarried.

9. Plaintiff and her two minor children were public charges prior to the

marriage of the parties and after the divorce of the parties. Plaintiff is unemployed and her need has not diminished even with the benefits she receives from social security which total \$396.80 per month as set out in her Affidavit on April 20, 1987.

10. The disability payments received by plaintiff are in lieu of wages that plaintiff might otherwise obtain from employment.

11. That the plaintiff and the defendant were married approximately 17 years before their divorce in 1971.

12. That the defendant took the plaintiff and her children off of the public rolls and provided all the support for her and her minor children from their marriage until the emancipation of the two children.

13. That the natural father of the two minor children of the plaintiff from the prior marriage was under a support order, but the natural father never contributed in any manner to their support.

14. That the plaintiff has paid all support and all alimony until he discovered that plaintiff's disability income; that plaintiff has paid alimony since 1971.

15. Based upon the above conditions, the court finds that a material change of circumstances has occurred in that defendant's ability to pay alimony has been reduced dramatically since his retirement for health reasons.

From the foregoing Findings of Fact, the Court now makes and enters the following:

#### CONCLUSIONS OF LAW

1. That the court only reviews the matter from date of modification to the present and does not review events and circumstances prior thereto.

2. In Paffel v Paffel, 732 P.2d 96 (Utah 1986), the Utah Supreme Court determined the purpose of alimony to be to enable the receiving spouse to

maintain as nearly as possible the standard of living enjoyed during the marriage and prevent that spouse from becoming a public charge. Unfortunately, Plaintiff was a public charge prior to the parties' marriage as well as subsequent to the parties' divorce.

3. A material change of circumstances has occurred in that Defendant's ability to pay alimony has been reduced dramatically since his retirement for health reasons, but Defendant still receives approximately \$1,300.00 per month as income.

4. Therefore, Defendant's alimony obligation should have been reduced to \$50.00 per month effective January 1985. As a result, Defendant should be credited for \$275.00 as excess payments until November 1985.

5. Because Defendant has made no alimony payments since October 1985, Defendant is in arrears in the sum of \$1,350.00 through January 1988, minus \$275.00 credited for excess payments made January through October of 1985, for a total alimony arrearage of \$1,075.00. Plaintiff is awarded a judgement for said amount.

6. Defendant is required to continue to be responsible to Plaintiff for alimony in the sum of \$50.00 per month.

DATED this            day of            , 1988.

BY THE COURT:

---

DISTRICT JUDGE

Approved as to form:

---

John L. Chidester  
Attorney for Defendant



*Filed June 8-1976*

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

IN AND FOR WASATCH COUNTY, STATE OF UTAH

-----oO-----

LOWANA EGAN LEE, and STATE OF  
UTAH by and through UTAH STATE  
DEPARTMENT OF SOCIAL SERVICES,

Plaintiffs,

vs.

STERLING CALVIN LEE,

Defendant..

Civil No. 3247

MODIFICATION OF DECREE  
OF DIVORCE AND JUDGMENT

-----

This matter came on for hearing before the court without a jury at

made and filed its Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows, to-wit:

1. The decree of divorce heretofore entered in this case on March 25, 1971, be and the same is hereby modified as follows:

a. Plaintiff LoWana Egan Lee is awarded the care, custody and control of the remaining minor child of the parties, Linda Lee, subject to reasonable rights of visitation by defendant as follows, to-wit: Defendant is given the right to visit and take control of said minor child one day a week on each Saturday, unless defendant's work interferes, in which event the defendant is given the right to visit and take control of said minor child on an alternate day to be fixed by mutual agreement of the parties at least 10 days prior to said change of day. In the event defendant will not visit said child on the regular day, defendant shall furnish plaintiff LoWana Egan Lee at least 24 hours prior oral or written notice of said intent before said day. In the event defendant fails to so notify plaintiff LoWana Egan Lee when he does not plan on visiting said child on any regular day, defendant shall thenceforth be required to give plaintiff LoWana Egan Lee at least 24 hours oral or written notice prior to his visiting or picking up said minor child. In addition to the aforesaid visitation rights, defendant is given the right to visit said minor child at plaintiff LoWana Egan Lee's residence on each Christmas day. Defendant is also given the right to take charge of the minor child of the parties for a period of 2 weeks during July of each year or for such other 2-week period during regular school summer

support of the parties' minor child, Linda Lee, born January 16, 1965, said payments to be made to the clerk of the court for the benefit of said plaintiff in semi-monthly installments of \$50.00 each on the 1st and 16th days of each month commencing May 1, 1976, and continuing on the same days of each month thereafter until said child reaches her majority, dies or until the further order of the court, whichever event occurs first.

c. Plaintiff LoWana Egan Lee is hereby awarded and defendant is ordered to pay to said plaintiff the sum of \$75.00 per month alimony, said payments to be made to the clerk of the court for the benefit of said plaintiff until said plaintiff obtains work and receives ~~a~~ gross income of \$200.00 or more per month at which time said alimony shall be reduced to the sum of \$50.00 per month, said payments to be made to the clerk of the court for the benefit of said plaintiff in semi-monthly installments of one-half of the amount of alimony due in that month on the 1st and 16th days of each month commencing May 1, 1976, and continuing on the same days of each month until said plaintiff remarries, dies or until the further order of the court, whichever event occurs first.

d. The real property of the parties is hereby divided and disposed of as follows: Plaintiff LoWana Egan Lee and defendant Sterling Calvin Lee are each awarded a one-half divided interest as tenants in common to the following real property commonly known by street address of 680 North 500 West, Provo, Utah, located in Utah County, State of Utah, and more particularly described as follows, to-wit:

Beginning at a point on the East line of Fifth West Street,  
thence 30° 00' 00" East and North 80° West 240

defendant and any sums due plaintiff LoWana Egan Lee from defendant. Said property shall be listed for sale for \$35,000.00 and any offer for less than said sum shall be submitted to the court for its approval. The proceeds of said sale shall be divided between plaintiff LoWana Egan Lee and defendant Sterling Calvin Lee as tenants in common after all liens to plaintiff the Utah State Department of Social Services and others are satisfied and all costs and expenses of sale including additional attorney fees of sale are paid.

e. Plaintiff LoWana Egan Lee is awarded the exclusive possession of said real property and home and improvements thereon for as long as she desires until the sale of said property is complete and possession delivered to the new buyer provided said plaintiff pays defendant for his one-half share of the rental value of said property in the sum of \$90.00 per month for each month or portion thereof said plaintiff occupies said premises following May 1, 1976.

f. Plaintiff LoWana Egan Lee and defendant are ordered to each pay one-half of the mortgage payments due on the real property of said parties commencing May 1, 1976, and thereafter until said property is sold and possession delivered to the new buyer.

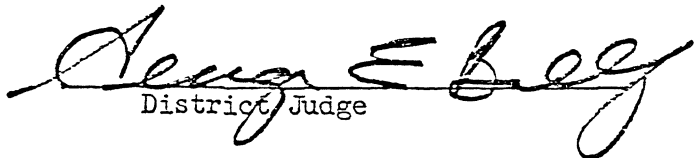
g. Defendant is ordered and he is hereby permanently restrained from in any way using or representing the street address of 680 North 500 West, Provo, Utah 84601, or any portion thereof as or to be his mailing address or place of domicile and he is further permanently restrained from in any way coming on or in the premises of plaintiff LoWana Egan Lee and the minor child of the parties wherever said premises may be hereafter located

all costs of court herein.

4. Plaintiff the State of Utah by and through Utah State Department of Social Services is granted judgment against defendant in the sum of \$7,765.10 for accrued alimony and support through April 30, 1976, under the former decree which is yet unpaid.

DATED this 8<sup>th</sup> day of June, 1976.

BY THE COURT:

  
District Judge

Attest:

\_\_\_\_\_  
Clerk of the Court

State of Utah ) ss  
County of Wasatch )  
4 the undersigned, clerk of the district court of Wasatch  
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 clerk.  
Attest my hand and seal of said court this 5<sup>th</sup>  
Feb, 1986.  
JUDY C. MCNEILLAN  
By: Glenna Moulton  
Deputy

IN THE FOURTH JUDICIAL DISTRICT COURT OF WASATCH COUNTY,  
STATE OF UTAH

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LO WANA EGAN LEE,	:	
Plaintiff,	:	
vs.	:	Civil No. 3247
STERLING CALVIN LEE,	:	DECREE OF DIVORCE
Defendant.	:	

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The above entitled matter came on regularly and duly for trial before the Court on the 4th day of March, 1971, before the Honorable Maurice Harding, Judge, presiding. Plaintiff was present and represented by her attorney, F. H. Butterfield. Defendant was also present and represented by his attorney, John Chidester.

The parties were sworn and testified and from the evidence therein adduced, the Court made and entered in writing its Findings of Fact and Conclusions of Law herein;

IT IS NOW BY THE COURT HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff, Lo Wana Egan Lee, be and she is hereby awarded an interlocutory Decree of Divorce from the Defendant, Sterling Calvin Lee upon the grounds of cruelty, said Decree to become final three months from date of entry hereof, unless an appeal or other proceedings for review are pending, or the Court before the expiration of said period for sufficient cause, upon its motion or upon the application of any person, whether interested or not, otherwise orders.

2. The Plaintiff is hereby awarded the care, custody and control of the

4. The Plaintiff is hereby awarded, and the Defendant is hereby Ordered to pay to the Plaintiff the sum of \$200.00 per month as alimony and ~~support until the further Order of the Court~~, the same to be paid in two equal semi monthly installments of \$100.00 payable on the first and sixteenth days of each and every month hereafter commencing March 16, 1971, until the further Order of the Court.

5. The Court makes no disposition of the respective interests of the parties in the dwelling house located at 680 North, 500 West, Provo, Utah County, Utah at this time. However should the Defendant fail to pay to the Plaintiff the sum of \$200.00 per month as alimony and support as provided in paragraph four above, these sums which are not paid are hereby Ordered to become a Lien in favor of the Plaintiff and against the Defendant's interest in the said dwelling house located at 680 North, 500 West, Provo, Utah County, Utah.

6. Defendant is hereby Ordered to pay the family obligations of the Parties and to save and hold harmless the plaintiff therefrom.

7. Plaintiff is hereby awarded Judgment as against the Defendant in the amount of \$300.00 for attorney's fees for the use and benefit of her attorney, F. H. Butterfield, for his services in this action, and Defendant is hereby Ordered to pay this sum to F. H. Butterfield.

Dated and signed on this 17th day of March, 1971.

BY THE COURT:

1       **IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH**  
2                               **IN AND FOR WASATCH COUNTY**

3       \_\_\_\_\_  
4       LOWANA CONNER LEE,

5                               Plaintiff,

6                        -vs-

7       STERLING C. LEE,

8                               Defendant.  
9       \_\_\_\_\_

TEMPORARY ORDER

Civil No. 2652

Recorded in  
JUDGMENT RECORD  
Book 8 Page 325-6

10  
11       This matter came on regularly to be heard by the Court, sitting without  
12 a jury, on the 15th day of June, 1964, upon the Order to Show Cause heretofore  
13 issued by this Court on or about May 27, 1964. Plaintiff appeared in person and  
14 by her counsel, J. Robert Bullock, of the firm of Aldrich, Bullock & Nelson.  
15 Defendant appeared in person and by his counsel, Phillip V. Christenson, of the  
16 firm of Christenson, Paulson & Taylor. Based upon a stipulation of the parties  
17 made in open court, it is now

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19       ORDERED, ADJUDGED AND DECREED:

20       1. That plaintiff is awarded the temporary care, custody and control of  
21 the minor children of the parties, subject to the right of defendant to visit with  
22 said children at reasonable times and places.

23       2. That defendant be, and he is hereby ordered to pay to the plaintiff as  
24 temporary alimony and support money the sum of \$180.00 per month, payable  
25 \$90.00 on the 1st and 15th days of each month until further order of the Court;  
26 provided, however, that for the balance of the month of June, 1964, defendant  
27 shall pay the sum of \$100.00 forthwith.

28  
29       3. That in addition to the foregoing, defendant be, and he is hereby



4 and use of the Pontiac automobile of the parties, and the temporary use and  
5 occupancy of the home located at Provo, Utah.

6 6. That plaintiff be and she is hereby awarded the temporary custody and  
7 use of bunk beds, bedding, and other items of household furnishings and furniture  
8 to be agreed upon by the parties.

9 7. That defendant be, and he is hereby ordered to maintain the medical  
10 and hospital insurance coverage which he now has upon the plaintiff and the minor  
11 children.

12 8. Except as modified herein, the restraining order heretofore entered by  
13 the Court on or about May 27, 1964, be and the same hereby is continued until  
14 further order of the Court.  
15

16 Dated this 17<sup>th</sup> day of June, 1964.

17 BY THE COURT

18  
19 *R. L. Lusk*  
20 Judge  
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