

1986

# Kathleen Clontz v. Harvey James Clontz : Brief of Appellant

Utah Supreme Court

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BRIEF

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DOCKET NO. 860200-CA

IN THE SUPREME COURT FOR THE  
STATE OF UTAH

KATHLEEN CLONTZ,  
Plaintiff and Respondent,  
v.  
HARVEY JAMES CLONTZ,  
Defendant and Appellant.

860200-CA  
CASE NO. 860254

#14

BRIEF OF APPELLANT

Appeal  
From the Judgment of the Second Judicial  
District Court of Weber County, State of Utah  
THE HONORABLE DAVID E. ROTH  
DISTRICT COURT JUDGE

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**FILED**  
AUG 19 1986

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Plaintiff and Respondent,  
v.  
HARVEY JAMES CLONTZ,  
Defendant and Appellant.

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IN THE SUPREME COURT FOR THE  
STATE OF UTAH

KATHLEEN CLONTZ,	)	
	)	BRIEF OF APPELLANT
Plaintiff and Respondent,	)	
	)	
v.	)	
	)	
HARVEY JAMES CLONTZ,	)	
	)	
Defendant and Appellant.	)	CASE NO. 860254

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STATEMENT OF THE ISSUES PRESENTED ON APPEAL

The following issues are presented on appeal:

1. That the Trial Court did not award alimony in a twenty-seven (27) year marriage to the spouse that is not working and is disabled, constituted a manifest injustice contrary to Section 30-3-5 of the Utah Code Annotated.

2. That the Trial Court abused its discretion when it did not award a portion of Plaintiff's retirement benefits to Defendant.

3. That due to the Trial Court's distribution of the marital assets, Defendant was not awarded alimony nor a portion of Plaintiff's retirement. He is therefore forced to sell the home awarded to him in order to distribute the equity awarded to Plaintiff which constitutes a manifest injustice contrary to Section 30-3-5 of the Utah Code Annotated.

### STATEMENT OF THE CASE

This is a Complaint by Plaintiff/Respondent and an Answer and Counterclaim by Defendant/Appellant, each seeking a Decree of Divorce and an equitable distribution of property and alimony rights. Plaintiff alleged in her Complaint, and Defendant, in his Answer and Counterclaim, that each treated the other cruelly, causing mental anguish and distress.

The Honorable DAVID E. ROTH, sitting without a jury, granted Plaintiff a Decree of Divorce based upon the grounds of mental cruelty. The District Court entered an order regarding the distribution of property and Defendant's right to an alimony award.

### STATEMENT OF FACTS

Plaintiff and Defendant were married on the 7th day of March, 1959, in Sunset, Davis County, Utah. There have been five (5) children born as issue of this marriage, but all children are now emancipated. (TR 93)

Plaintiff is employed at Hill Air Force Base and her gross income is over Two Thousand (\$2,000.00) Dollars per month. (TR 103) Plaintiff has accumulated Fifteen Thousand, Eight Hundred Fifty-Six And Eighty-Three/100 (\$15,856.83) Dollars in retirement. (TR 106)

Defendant is medically disabled and receives Civil

Service disability in the amount of Six Hundred Fifty-Five And Forty-Eight/100 (\$655.48) Dollars per month and has no other source of income. (TR 106)

Defendant received an acre of land from his father, before his marriage to Plaintiff . (TR 107) Defendant's father also gave each of Defendant's siblings at this time an acre of land or the sum of Six Hundred (\$600.00) Dollars. (TR 115-116) The estimated value of the land at the time it was distributed was Six Hundred (\$600.00) Dollars. (TR 115) In a prior divorce proceeding, wherein a sibling of Defendant was divorced, the Trial Court held that this land in question was the sibling's separate property as it was an inheritance. (TR 108)

That in 1960 a home was built by the parties upon the property given to Defendant. Presently, the property is unencumbered and the appraised value of the property is Sixty-One Thousand, Five Hundred (\$61,500.00) Dollars. (TR 96-108) The appraised value of the land itself is Sixteen Thousand (\$16,000.00) Dollars. (TR 117)

Plaintiff received between Five Thousand (\$5,000.00) Dollars and Six Thousand (\$6,000.00) Dollars from her parents from the proceeds of the sale of her mother's farm during the marriage of Plaintiff and Defendant. (TR 125)



### SUMMARY OF ARGUMENT

It is Defendant's position that the Trial Court abused its discretion contrary to U.C.A. § 30-3-5. Defendant was not awarded alimony nor a portion of Plaintiff's retirement fund which would have been equitable in view of Defendant's financial situation and the length of the parties' marriage. When the effect of this inequity is combined with the payment of the Court-awarded equity to Plaintiff within six (6) months from the date of the Order, the effect is evaluated, and this abuse of discretion rises to a level requiring a modification of the Trial Court's Order to ensure that a manifest injustice does not occur.

### ARGUMENT

#### Point I

THE TRIAL COURT'S NON-ORDER OF ALIMONY  
TO DEFENDANT INDICATES A MANIFEST INJUSTICE  
CONTRARY TO § 30-3-5 U.C.A. 1953 AND  
CONSTITUTES AN ABUSE OF DISCRETION

"There is no fixed formula which a trial judge in a divorce action must follow in making divisions of properties, but it is the prerogative of the Court to make whatever disposition it deems fair, equitable, and necessary for the protection and welfare of the parties."

Berry v. Berry, 635 P. 2d 68 (Utah 1981).

The Court will not disturb a Trial Court's Findings and Judgment merely because it might have viewed the matter

differently, but would do so only if it appeared that the evidence clearly preponderates against the Trial Court's findings, or that the Trial Court misapplied the law, or abused its discretion, so that an injustice has resulted. It is the Trial Court's duty to do a division of property and income in a divorce proceeding so that the parties may readjust their lives to the new situation as well as possible, but there is no fixed rule or formula for the distribution of a marital estate. Turner v. Turner, 649 P. 2d 6 (Utah 1982). However, it is the duty and prerogative of the Court in equity matters, where the occasion warrants, and after a review of both the facts and the law, to fashion its own remedy as a substitution for the judgment of the Trial Court. Penrose v. Penrose, 656 P. 2d 1019 (Utah 1982).

In the present case, the Trial Court abused its discretion when it did not award alimony to the disabled husband. In MacDonald v. MacDonald, 236 P. 2d 1066 (Utah 1951), the Court held that where there are sufficient assets and income to do so, a wife against whom a divorce decree has been entered is entitled to be provided for according to her station in life and as demanded by her condition of health and lack of ability to work. The facts in the present case are that it is the husband who is disabled and

is in ill health who needs to be provided for according to his station in life. The MacDonald case should be applied regardless of the gender of the spouse and as long as the circumstance of lack of ability to work and the need to maintain the current station in life are met. This would be especially true in a marriage of long duration such as the present one.

The Court observed in Gramme v. Gramme, 587 P. 2d 144 (Utah 1978), that:

"...the purpose of alimony is to provide post-marital support; it is intended neither as a penalty imposed on the husband nor as a reward granted to the wife. Its function is to provide support for the wife as nearly as possible at the standard of living she enjoyed during the marriage to prevent her from becoming a public charge. Important criteria in delivering a reasonable award for support and maintenance are the financial conditions and needs of the wife, considering her station in life; her ability to produce sufficient income for herself; and the ability of the husband to provide support."

In the present case, because the Trial Court did not award alimony, Defendant will be deprived of his home and other luxuries that were the culmination of the parties' joint efforts over the continuation of their marriage. It is the responsibility of the Trial Court to endeavor to provide a just and equitable adjustment of their economic

resources so that the parties might reconstruct their lives on a happy and useful basis. Searle v. Searle, 522 P. 2d 697 (Utah 1974). In a dissolution of a marriage of a substantial duration, the objective is that parties separate on as equal a basis as possible.

In the present situation, the facts are that Plaintiff had a gross income of over Two Thousand (\$2,000.00) Dollars per month and that Defendant receives a disability retirement in the sum of Six Hundred Fifty-Five And Forty-Eight/100 (\$655.48) Dollars per month. Defendant testified that his expenses are over One Thousand (\$1,000.00) Dollars per month. It is apparent that it will be impossible for Defendant to meet his financial obligations on his limited income alone. In English v. English, 565 P.2d 409 (Utah 1977), the Court pointed out that the criteria considered in determining a reasonable award for support and maintenance include financial conditions and needs of the wife, ability of wife to produce a sufficient income for herself, and the ability of the husband to provide support. In the present case, the Trial Court specifically did not award alimony and indicated that if Defendant needed more money to meet his expenses he would have to go out and find a job. The Trial Court made this ruling despite uncontroverted evidence that Defendant had

been medically retired since 1977.

In Bushell v. Bushell, 649 P. 2d 85 (Utah 1983), the Trial Court cited Gramme when the ex-wife testified at trial that she needed alimony to repair the roof on her home, to pay the utilities, and to obtain additional training so that she could secure a job which pays adequately. The Court considered her financial conditions and needs and found that:

"The purpose of alimony is to provide support for a wife as nearly as possible at the standard of living she enjoyed during marriage and to prevent her from becoming a public charge."

Gramme v. Gramme, supra.

In the present case, the facts are similar to Bushell. Defendant testified to his expenses, and he testified that he would need alimony to meet his obligations. The Trial Court in its summation did not award alimony and further found that "to get by" Defendant would need to get a job.

The Trial Court appears to disregard the observation of the Court in Gramme that alimony is not a reward, nor a penalty, and that an award of alimony should not be included as a marital asset, because it is a post-marital duty of support and maintenance. Fletcher v. Fletcher, 615 P. 2d 1223 (Utah 1980). This seems especially true in light of the fact that the Trial Court realized that Defendant could

not meet his expenses without additional income of any sort. At the very least, it appears to be an abuse of discretion in that the Trial Court did not award alimony to help maintain Defendant's financial obligations until he could secure employment. In a recent Supreme Court case, Claus v. Claus, 39 Utah Adv. Rep. 22 (1986), the parties were married for approximately four and one-half (4 1/2) years before their separation. The Trial Court awarded alimony to the wife and the Court found no abuse of discretion in the Trial Court's award of twelve (12) month's alimony to provide a cushion to Defendant to return to a self-sustaining status. Both parties brought property to the marriage and the Court found that the wife was employable. The Claus case is almost exactly on point to the present case. Defendant needs a "cushion" until he can secure employment.

In MacDonald, Defendant made the argument that:

"...she was entitled to be provided for according to her station in life and as demanded by her condition of health and lack of ability to work; that she should not be cast aside in her helpless condition to 'sink or swim' or depend on others."

The Court agreed with the argument and added that this was part of the continuing responsibility of the marriage covenant: "...in sickness, in health; for better or worse...", which cannot be entirely avoided, even by divorce. In the present case, it appears that Defendant is

expected to do just that..."sink or swim".

The Court found in Higley v. Higley, 676 P. 2d 379 (Utah 1983), that an award of only One Hundred (\$100.00) Dollars per month alimony was an abuse of discretion because it would not afford the wife a standard of living close to the standard of living enjoyed by the parties during the marriage. This was a thirty (30) year marriage and the husband's gross income was Twenty-Four Thousand, Three Hundred Fifty-Six And Eight/100 (\$24,356.80) Dollars per year. The Court found that the husband had the ability to provide permanent support in an amount greater than One Hundred (\$100.00) Dollars per month.

Although Defendant in this case does have another source of income besides Plaintiff's salary, the Court held in Frank v. Frank, 585 P. 2d 453 (Utah 1978), the fact that the divorced wife has some property or other means to support herself should not preclude an allowance of alimony if husband has far superior resources.

In the instant case, Defendant does have a small income, but as stated before, the Trial Court realized that it was not enough for Defendant "to get by". In Frank, the Trial Court's memorandum decision stated as follows:

"...It is true that the plaintiff through enterprise and perhaps necessity, does have a far better income than the average wife this Court sees. Moreover, the Court acknowledges that in

one sense plaintiff does not need alimony in that she could probably subsist without it, and in fact, has done so for approximately the last two years. However, and despite the foregoing, the Court feels wholly justified in making the alimony award it has and believes this award is amply supportable under guidelines laid down in numerous decisions of our Supreme Court. In making that award the Court has considered, among other things, (1) the length of this marriage, (2) plaintiff's assistance to defendant during the lean years from June 1955 to 1970 and during which defendant prepared himself for his present profession of cardiovascular surgery and particularly, (3) the present disparity in the plaintiff's and defendant's income and the disparity in their income potential."

Frank v. Frank, supra.

Defendant appealed this award of alimony upon the statement: "...that in one sense plaintiff does not need alimony." The Court denied Defendant's appeal and wondered:

"...How the defendant, or any one on his behalf, could even suggest that a wife who had devoted 21 years of her marriage and reared a family should be turned out to subsist on her own is as discordant to our sense of justice as it was to the trial judge. The second is that notwithstanding the remark just referred to, the judge continued on, stating that he 'feels wholly justified in making the alimony award' and proceeded to enunciate the factors he properly considered in such justification."

Frank v. Frank, supra.

Further, the Court found that the fact that Plaintiff



has some property or other means to support herself should not preclude an allowance where the husband had far superior resources.

In the present case, if the Frank alimony guidelines are taken into account by the Court, it will find that the parties have a twenty-seven (27) year marriage, as opposed to the Frank's twenty-one (21) year marriage; that a disparity in the incomes are present because Plaintiff is gainfully employed and Defendant is receiving a disability income; that this disparity will be continuing because Defendant's income potential is low due to a permanent disability since 1977; and lastly, Plaintiff's resources are far superior to Defendant's because Plaintiff's income is over three (3) times greater than Defendant's monthly disability allotment. The Trial Court should have considered the Frank criteria and awarded Defendant a reasonable sum of alimony for a reasonable period of time.

The fact that the Trial Court realized that Defendant needed additional income "to get by", constituted a manifest injustice contrary to § 30-3-5 at the U.C.A. In Delatore v. Delatore, 680 P. 2d 27 (Utah 1984), the Trial Court found that the wife was employable and had actually worked during part of the marriage. Although the marriage was of short duration, just three and one-half (3 1/2) years, the Trial Court awarded alimony for a period of twenty-four (24)

months and the Court again upheld this award.

In light of the non-award of alimony and the preceding case law, it is evident that the Trial Court abused its discretion and Defendant should be entitled to an award of alimony.

#### Point II

THE TRIAL COURT'S DISTRIBUTION OF THE  
RETIREMENT INDICATES A MANIFEST INJUSTICE CONTRARY  
TO § 30-3-5 U.C.A. 1953 AND CONSTITUTES  
AN ABUSE OF DISCRETION

In this divorce action, the Trial Court did not consider Plaintiff's retirement fund as a marital asset to be divided between the parties. In Dogu v. Dogu, 652 P. 2d 1308 (Utah 1982), the Court cited Englert v. Englert, 576 P. 2d 1279 (Utah 1978), and held that the Trial Court's duty to make an equitable division of property in a divorce action:

"...encompasses all of the assets of every nature possessed by the parties, whenever obtained and from whatever source derived; and that this includes any such pension fund or insurance."

The Trial Court should have awarded a portion of Plaintiff's retirement fund to Defendant as a marital asset although Plaintiff has not yet retired and her actual enjoyment of this benefit is purely prospective. The value of Plaintiff's retirement is Fifteen Thousand, Eight Hundred Fifty-Six And Eighty-Three/100 (\$15,856.83) Dollars, and Defendant should be entitled to one-half (1/2) of this

amount as of the date of the divorce. In Dogu the Court held that TIAA and CREF accounts, a Keogh account, and a pension and profit-sharing trust were marital assets and that the Trial Court was required to consider these in its determination of an equitable property division between the parties.

As the Court said in DeRose v. DeRose, 426 P. 2d 221, 222 (Utah 1967):

"[W]hile the determinations of the trial court are given deference and not disturbed lightly, changes should be made if that seems essential to the accomplishment of the desired objectives of the decree: that is, to make such an arrangement of the property and economic resources of the parties that they will have the best possible opportunity to reconstruct their lives on a happy and useful basis for themselves and their children."

The present case appears to be such a case. The equitable thing to do would be to award Defendant his share of Plaintiff's retirement benefits and offset this amount against Plaintiff's share of the Trial Court's determined equity of the marital property.

In the Trial Court's summation, the Court appeared to find that Defendant's right to receive Civil Service Disability income offsets his entitlement to Plaintiff's retirement as a marital asset. There are flaws in the Trial Court's reasoning because of several factors. First of all, Defendant's right to receive his disability income at this

point in his life would more appropriately be considered an income or earnings on a monthly basis. He is accruing no retirement benefits at this time, nor is he in a financial position to put any money aside to build a nest egg or to save for emergencies. He is merely existing on this limited amount of money.

Plaintiff, on the other hand, is earning not only a substantial monthly salary, but accruing retirement benefits at the same time. Her retirement fund is growing, and the size of her paycheck makes it possible for her to save additional sums or to put away for unforeseen expenses. Hence, awarding Defendant one-half (1/2) of Plaintiff's retirement fund which has accrued to date should not be offset against Defendant's disability retirement because at this point in time he has accrued no retirement fund per se, he only has the right to receive the income as long as he is disabled.

Looking at civil service benefits from Plaintiff's view, typically inherent in Civil Service Disability benefits are the surviving spouse's rights to these benefits upon the death of the party eligible to receive them. Title 5 U.S.C.S. 8341 (1980). Defendant's portion of the disability pay is set aside each month for the surviving spouse. Viewed in this light, Plaintiff would herself be entitled to this "marital asset" of Defendant's civil

service disability regardless of any amount of retirement she has accrued herself. (Of course, taking into consideration that if Plaintiff is divorced from Defendant, she would not receive any benefits upon Defendant's death. This argument is presented only to show the inequity of the Trial Court's findings and the disparity between the treatment of the two (2) different retirement types, and the fact that Defendant, if still married to Plaintiff at the time of her death would not necessarily be entitled to her accrued retirement benefits, as she would be to his.)

It is inequitable that Plaintiff has an inherent right to Defendant's benefits if married; yet, on the other hand, in the Trial Court's view Defendant does not have the absolute right to property accrued during the marriage either at the death of Plaintiff if still married, or in divorce where the property is typically divided between the parties at the time the marriage is terminated.

Secondly, the Trial Court indicated that Defendant's civil service disability or his right to receive it has a value:

"...upwards of around Fifty  
Thousand (\$50,000.00) Dollars..."

(TR 136)

The Court further indicated that it would not "charge" Defendant for this valued amount, and it will offset the parties' right to the two (2) retirements against each

other's retirement. Again, the Trial Court does not take into consideration that Defendant's disability income is his only income and he is not accruing retirement, while Plaintiff is earning three (3) times what Defendant is making, and accruing retirement at the same time. Appropriately, the Trial Court should offset Plaintiff's salary against Defendant's disability income. Plaintiff should be "charged" the full value of her gross income of upwards of Two Thousand (\$2,000.00) Dollars per month, because in the six and one-half (6 1/2) years it would take Defendant to have received the Fifty Thousand (\$50,000.00), that the Trial Court has assigned as the value of Defendant's disability income, Plaintiff would have earned more than One Hundred Fifty Thousand (\$150,000.00) Dollars, and also accrued additional retirement benefits on top of that.

In the interest of equity, it seems only fair that the Trial Court should have ordered Defendant entitled to the sum of Seven Thousand, Nine Hundred Twenty-Eight And Forty-Two/100 (\$7,928.42) Dollars, which represents his share of Plaintiff's retirement benefits accrued during the twenty-seven (27) year marriage.

### Point III

THE TRIAL COURT'S AWARD OF  
THE COURT-DETERMINED EQUITY IN THE MARITAL HOME OF  
TWENTY-THREE THOUSAND, TWO HUNDRED FIFTY (\$23,250.00)  
DOLLARS TO PLAINTIFF AND ITS PAYMENT BY

DEFENDANT WITHIN SIX (6) MONTHS THEREFROM IS  
A MANIFEST INJUSTICE CONTRARY TO § 30-3-5 U.C.A. 1953

While determinations of the Trial Court are given deference and not disturbed lightly, changes should be made if that seems essential to accomplishment of desired objectives of divorce decree; i.e., to make such an arrangement of the property and economic resources of the parties that they will have the best possible opportunity to reconstruct their lives on a happy mutual basis for themselves and their children. Dogu v. Dogu, supra.

In the present case, because of the Trial Court award of equity to Plaintiff in the amount of Twenty-Three Thousand, Two Hundred Fifty (\$23,250.00) Dollars and its payment by Defendant to Plaintiff within six (6) months, Defendant is forced to sell or mortgage his home. The award and time frame are especially unjust if Defendant is not able to mortgage his home, which is most likely in view of his limited income situation and his monthly obligations. There is little possibility that a lending institution would consider financing a loan for Defendant in view of Defendant's precarious financial situation in that his bills vastly exceed his income. Defendant's only other alternative would be to sell the home. The sale of this home which sits upon land given to Defendant by his father prior to his marriage to Plaintiff, seems particularly unjust and inequitable because the Trial Court has failed to

give sufficient weight and consideration to Defendant's financial situation and has left Defendant with no alternatives in regard to the Order which was placed upon Defendant by the Trial Court itself.

In the Gramme case, the Court found that the responsibility of the Trial Court is to endeavor to provide a just and equitable adjustment of the parties' economic recourses. In the present case, Defendant is deprived of his home and indeed is left to "sink or swim" by the Trial Court's award of equity to Plaintiff and its payment of same within six (6) months. Defendant's financial circumstances should have been a consideration of the Trial Court when making its Order. If the Trial Court did consider Defendant's circumstances, when making the Order, then an abuse of discretion must be found. But, on the other hand, if the Trial Court did not consider Defendant's finances in making its Order, then a serious inequity has resulted and a modification must be implemented.

#### CONCLUSION

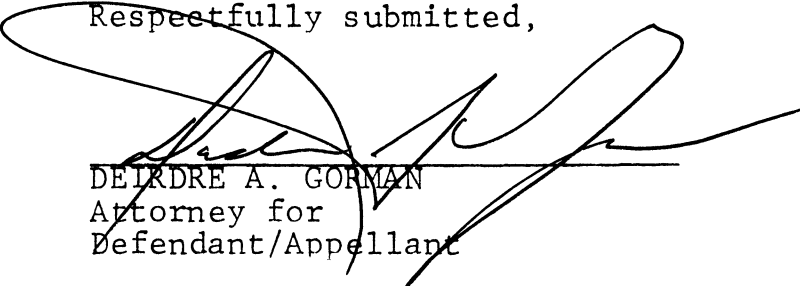
It is submitted to the Court, that the Trial Court entering a Decree of Divorce and distributing the marital assets and making an alimony award abused its discretion by not awarding alimony to Defendant. Further, the Trial Court abused its discretion in not awarding Defendant one-half (1/2) of the property interest of Plaintiff's retirement.



Lastly, there was a manifest injustice in regard to Defendant when the Trial Court required Defendant to give Plaintiff her share of the Court determination of equity in the marital home within a six (6) months period from the Order. The Court is vested with the authority to review the matter and determine an equitable apportionment of the marital property and grant Defendant a reasonable alimony award, as well as offsetting Defendant's share of Plaintiff's retirement against the equity due on the home to Plaintiff. It is respectfully requested that this matter be remanded back to the District Court for trial on the merits and a determination of the above-mentioned alimony and property rights of Defendant pursuant to § 30-3-5 U.C.A.

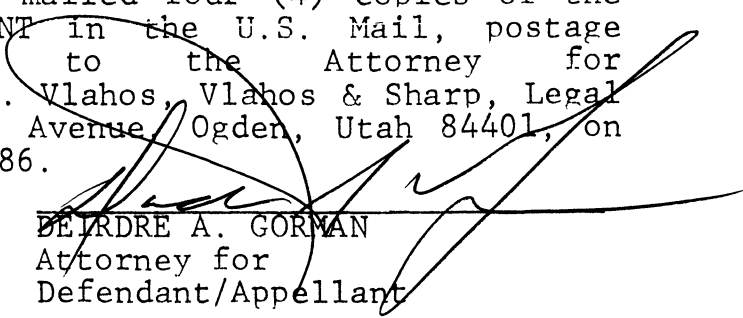
DATED this 19th day of August, 1986.

Respectfully submitted,

  
DEIRDRE A. GORMAN  
Attorney for  
Defendant/Appellant

CERTIFICATE OF SERVICE

I certify that I have mailed four (4) copies of the foregoing BRIEF OF APPELLANT in the U.S. Mail, postage prepaid and addressed to the Attorney for Plaintiff/Respondent, Pete N. Vlahos, Vlahos & Sharp, Legal Forum Building, 2447 Kiesel Avenue, Ogden, Utah 84401, on this 19th day of August, 1986.

  
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A D D E N D U M

1. Findings Of Fact And Conclusions Of Law..... A-2
2. Decree of Divorce..... A-11

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IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY  
STATE OF UTAH

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KATHLEEN CLONTZ,	/	
Plaintiff,	/	FINDINGS OF FACT AND
vs.	/	CONCLUSIONS OF LAW
HARVEY JAMES CLONTZ,	/	Civil No. <u>92534</u>
Defendant.	/	

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This matter having come on regularly for trial on the 25th day of March, 1986, before the Honorable David E. Roth, one of the Judges of the above entitled Court sitting without a jury, and the Plaintiff appearing in person and with her attorney, Pete N. Vlahos, and the Defendant appearing in person and with his attorney, John Blair Hutchison, and it having been shown that the Defendant was duly served with a copy of a Complaint and a copy of the Summons, and wherein the Defendant filed his responsive pleadings, and each of

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

the parties having been sworn and testifying in their own behalf, proffers of proof having been made to the Court in chambers concerning several items, that exhibits having been offered and received, and the Court being fully cognizant of all matters pertaining therein, enters the following:

FINDINGS OF FACT

1. That Plaintiff has been a resident of Weber County, State of Utah for at least three (3) months prior to the commencement of this action.

2. That Plaintiff and Defendant were married in Sunset, Utah on the 7th day of March, 1959, and ever since said time have been and still are husband and wife; that there has been born as issue of this marriage five (5) children, and that all five (5) children are now emancipated.

3. That the Defendant has treated the Plaintiff cruelly, causing her great mental distress and anguish, in that the Defendant has been argumentative, has threatened the Plaintiff, and that the Plaintiff is fearful of the Defendant.

4. That during the course of the marriage, the parties herein have acquired an equity in a home located at 3867 West 2700 South in Syracuse, Utah, and the Court finds that

the land and home have a value of \$61,500.00; that the Court finds that the land was given to the Defendant and can be traced, and at the time of the giving back in 1962, had a value of \$600.00, that the present value of the land is \$16,000.00, but there has been \$1,000.00 worth of improvement on the land.

5. That the parties, during the course of the marriage, have acquired personal property as evidenced by the exhibit introduced in Court, and in addition, the Plaintiff has a 1983 Mercury automobile, which has a fair market value of \$7,500.00, with a mortgage balance of \$3,100.00, having a net equity of \$4,400.00; that the Defendant has a 1985 GMC 4x4 truck having a value of \$10,000.00, with a mortgage balance of \$7,632.00, leaving an equity of \$2,368.00; and that the Plaintiff has purchased a mobile home since the parties separated, and that the mobile home has an equity of approximately \$300.00.

6. That during the course of the marriage, the parties herein have incurred certain debts, to-wit: Approximately \$18,500.00 due and owing on the trailer Plaintiff purchased since the parties separated, approximately \$3,100.00 due and owing on the 1983 Mercury automobile, approximately \$7,632.00 due and owing on the 1985 GMC truck, and that the

parties have incurred debts and obligations since they separated.

7. That the Plaintiff is employed at Hill Air Force Base and has a retirement; and that the Defendant is presently retired and receives income in excess of \$650.00 per month, and the Court finds that the vested retirement of the Plaintiff and the present value of the Defendant's right to receive the retirement is far in excess of the \$15,000.00 that the Plaintiff has vested; that the Court believes that if a present value was placed on the Defendant's retirement, it would be somewhere around \$50,000.00.

8. That the Court finds that the Defendant is employable, in fact, the Defendant has been employed in the past, that he is presently looking for work and will have to find employment if he needs more than the \$650.00 retirement.

9. That during the course of the marriage, the parties herein have also acquired thirteen (13) \$25.00 face value U.S. Savings Bonds.

10. That the Court finds that each of the parties has submitted lists showing the value of items of property, which are drastically different in valuation, including the drastic difference in the diamonds and miscellaneous jewelry that Plaintiff has, and the Court finds that the value of

Plaintiff's jewelry is equivalent to the value of the Defendant's guns, and the Court finds there is about \$600.00 or \$700.00 valuation on each side concerning those items.

11. That the Court finds that in comparing the two (2) lists, the only real item that appears to be in dispute is the Zenith television set requested by the Plaintiff.

12. That the Court finds that the Plaintiff received money from her inheritance, which she has kept in a separate account and also has a joint account with her mother, which is not a marital asset, and that the Defendant had a savings account in his name, which was depleted from approximately \$6,000.00 down to about \$400.00.

13. That the Defendant has incurred attorney fees and costs in the sum of \$800.00.

14. That the Plaintiff will maintain health and accident insurance for the Defendant if it is available through her place of employment.

From the above and foregoing Findings of Fact, the Court arrives at the following:

#### CONCLUSIONS OF LAW

1. That the Plaintiff, Kathleen Clontz, is entitled to a Decree of Divorce from the Defendant, Harvey James Clontz, said divorce to become final upon the signing and entry.

2. That the Plaintiff shall be awarded a lien in the family home in the sum of \$23,250.00, said lien is determined by the Court as follows: That the Defendant shall be awarded the first \$15,000.00 from the total value of the home, which is \$61,500.00, which was from the Defendant's father and had a value of \$600.00 when it was given to the Defendant back in 1962, and the \$1,000.00 has been improvements, so that the appraised value of the land, which was \$1,600.00 will be reduced to \$1,500.00, leaving a net equity of \$46,500.00, with Plaintiff to receive \$23,250.00.

3. That Plaintiff is entitled to receive her money from the home within six (6) months and he must either mortgage the home to pay the Plaintiff or sell it, but must cash her out within six (6) months.

4. That each of the parties are awarded their own individual retirements.

5. That neither party is awarded any alimony.

6. That Plaintiff is awarded her house trailer, subject to the existing mortgage; the 1983 Mercury automobile, subject to the mortgage balance; and those checking and savings accounts in her name and in the name of Plaintiff's mother.



7. That the Defendant is awarded his 1985 GMC 4x4 truck, subject to the indebtedness and those savings and checking accounts in his name.

8. That Plaintiff is to receive those items set forth in her exhibit, plus those additional items that Defendant in his exhibit is willing to give to the Plaintiff, and the Defendant shall receive those items on his list, plus those additional items that Plaintiff is willing to give him.

9. That the items awarded to the Plaintiff are as follows: Zenith television, old poster bed with dresser, five (5) Big O tires, two (2) snow tires on rims, wrought iron bed belonging to Plaintiff's grandmother, cedar chest, rain lamp, antique sewing machine, cream separator, milk can belonging to grandparents, portapote, round mirror, swan mirror belonged to grandparents, stereo-record combination, one-half ( $\frac{1}{2}$ ) of the dishes, macrame, suitcases, hair dryer rug with Indian dolls, crafts that Plaintiff has made, two (2) statues, toy box made by Plaintiff's father, personal belongings, cuckoo clock and/or cocker clock given to Plaintiff by her sister, bug killer, knick-knacks, three (3) drawer cabinet, stereo-record player combination, one-half ( $\frac{1}{2}$ ) of the picture albums of the children, diamonds and miscellaneous jewelry, glue gun, lamp, rocking chair, micro-

wave oven and stand, kitchen utensils in Plaintiff's possession, couch sold by Plaintiff to the parties' daughter, computer and those items of property she has in her possession.

10. That the Defendant shall be awarded the 1985 GMC 4x4 truck, 16 horse power garden tractor, caterpillar, landscaping trailer, tent trailer, fishing boat with motor, the inoperative Zenith television with the operative Zenith television awarded to the Plaintiff, clothes washer and dryer, fan and kitchen appliances, kitchen utensils in possession, kitchen dining room set, rifles and rounds of ammunition, deep freeze, refrigerator, couch, wood burning stove, RCA television, camp trailer and supplies, blond bedroom set, waterbed, extra dresser and chest of drawers, kitchen set hardwood or maple, Defendant's tools, telescope, power head to Rainbow vacuum and his personal belongings.

11. That the Plaintiff shall be awarded the thirteen (13) U.S. Savings Bonds, however they are to be divided equally in value, with Plaintiff to determine the value of the bonds and one-half ( $\frac{1}{2}$ ) the value to be awarded to the Defendant, and that the total value of the thirteen (13) bonds is \$410.06, of which the Defendant is entitled to \$205.03.

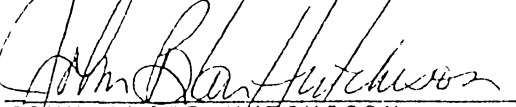
12. That the Plaintiff is entitled to pick up the items awarded to her on Saturday, April 12, 1986, at 10:00 a.m.

13. That Plaintiff is ordered to pay Defendant's attorney, John Blair Hutchison, the sum of \$800.00, and said sum has been paid in full.

DATED this \_\_\_\_\_ day of April, 1986.

\_\_\_\_\_  
DAVID E. ROTH,  
District Court Judge

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JOHN BLAIR HUTCHISON,  
Attorney for Defendant

PETE N. VLAHOS, ESQ., #3337  
VLAHOS & SHARP  
Attorney for Plaintiff  
Legal Forum Building  
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Telephone: 621-2464

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the parties having been sworn and testifying in their own behalf, proffers of proof having been made to the Court in chambers concerning several items, that exhibits having been offered and received, and the Court being fully cognizant of all matters pertaining therein, and having made its Findings of Fact and Conclusions of Law, separately stated in writing, NOW THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That the Plaintiff, Kathleen Clontz, is granted a Decree of Divorce from the Defendant, Harvey James Clontz, said divorce to become final upon the signing and entry.

2. That the Plaintiff is awarded a lien in the family home in the sum of \$23,250.00, said lien is determined by the Court as follows: That the Defendant is awarded the first \$15,000.00 from the total value of the home, which is \$61,500.00, which was from the Defendant's father and had a value of \$600.00 when it was given to the Defendant back in 1962, and the \$1,000.00 has been improvements, so that the appraised value of the land, which was \$1,600.00 will be reduced to \$1,500.00, leaving a net equity of \$46,500.00, with Plaintiff to receive \$23,250.00.

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mortgage the home to pay the Plaintiff or sell it, but must cash her out within six (6) months.

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7. That the Defendant is awarded her 1985 GMC 4x4 truck, subject to the indebtedness and those savings and checking accounts in his name.

8. That Plaintiff is to receive those items set forth in her exhibit, plus those additional items that Defendant in his exhibit is willing to give to the Plaintiff, and the Defendant shall receive those items on his list, plus those additional items that Plaintiff is willing to give him.

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10. That the Defendant is awarded the 1985 GMC 4x4 truck, 16 horse power garden tractor, caterpillar, landscaping trailer, tent trailer, fishing boat with motor, the inoperative Zenith television with the operative Zenith television awarded to the Plaintiff, clothes washer and dryer, fan and kitchen appliances, kitchen utensils in possession, kitchen dining room set, rifles and rounds of ammunition, deep freeze, refrigerator, couch, wood burning stove, RCA television, camp trailer and supplies, blond

bedroom set, waterbed, extra dresser and chest of drawers, kitchen set hardwood or maple, Defendant's tools, telescope, power head to Rainbow vacuum and his personal belongings.

11. That the Plaintiff is awarded the thirteen (13) U.S. Savings Bonds, however they are to be divided equally in value, with Plaintiff to determine the value of the bonds and one-half ( $\frac{1}{2}$ ) the value to be awarded to the Defendant, and that the total value of the thirteen (13) bonds is \$410.06, of which the Defendant is entitled to \$205.03.


12. That the Plaintiff is entitled to pick up the items awarded to her on Saturday, April 12, 1986, at 10:00 a.m.

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DATED this \_\_\_\_\_ day of April, 1986.

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DAVID E. ROTH,  
District Court Judge

APPROVED AS TO FORM:

  
JOHN BLAIR HUTCHISON,  
Attorney for Defendant