

1997

Melvon David Turner v. Di Ann Carol Turner : Brief of Appellee

Utah Court of Appeals

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IN THE COURT OF APPEALS

STATE OF UTAH

MELVON DAVID TURNER,

)

Plaintiff/Appellee,

)

Appeal No. 970615 CA

vs.

)

DI ANN CAROL TURNER,

)

Priority No. 15

Defendant/Appellant.

)

BRIEF OF APPELLEE

Appeal from Supplemental Decree of Divorce,
In Fourth District Court
Wasatch County, State of Utah

Honorable Howard Maetani
District Court Judge

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II.

JURISDICTIONAL STATEMENT

This case is before the Utah Court of Appeals, following an appeal from the Fourth District Court in and for Wasatch County. The Utah Court of Appeals has jurisdiction of this matter pursuant to Section 78-2a-3(2)(h).

III.

STATEMENT OF ISSUES/STANDARD OF REVIEW

1. Has Appellant met her burden of marshalling all evidence at trial tending to support the Court's findings and then demonstrating that despite such evidence the Court's findings are so lacking support as to be against the clear weight of evidence? Hagen v. Hagen, 810 P.2d 478 (Utah App. 1991)

2. Has Appellant established the Court clearly and prejudicially abused its discretion in:

(a) Imputing income to Mrs. Turner based on her 1995 earnings?

(b) Calculating child support based on the Uniform Child Support Guidelines?

(c) Not awarding alimony to Mrs. Turner based on the respective income and expenses of the parties and Mrs. Turner's interest in Duke Farms, Inc.?

(d) Awarding each party a one-half interest in the martial home with Mrs. Turner given the option to buy out Mr. Turner's interest in the home immediately or sell the home and divide the equity when (a) the home is sold; (b) the youngest child reaches age 18 and graduates from high school, (c) Mrs. Turner remarries, co-habits with a male or dies; (d) Mrs. Turner ceases to use the home as her primary residence for more than three

months; or (e) at any other time prior to the foregoing events in Mrs. Turner's sole discretion?

(e) Dividing the USAA debt equally between the parties?

(f) Awarding Mrs. Turner \$1,650.00 attorney's fees?

(Trial Court has considerable discretion in determining the financial interests of divorced parties and property and alimony awards will be upheld on appeal absent a showing of clear and prejudicial abuse of discretion. Bingham v. Bingham, 872 P.2d 1065, 1067 (Utah App. 1994)).

3. Mr. Turner requests his attorney's fees and costs on appeal.

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V.

STATEMENT OF THE CASE

A. Nature of Case, Course of Proceedings and Disposition

On or about October 18, 1995, Melvon David Turner, (hereinafter “Mr. Turner”) filed an action in the District Court of Wasatch County, Utah, seeking a divorce from Di Ann Carol Turner, (hereinafter “Mrs. Turner”).

On November 21, 1996, the case was tried without a jury before the Honorable Howard H. Maetani. Following the trial, the Court ordered that the parties’ counsel submit proposed Findings of Fact and Conclusions of Law as to the issues which were not settled prior to trial.

On February 13, 1997, Judge Maetani made and entered his Memorandum Decision setting forth his Findings of Fact and Conclusions of Law. (See Addendum A)

On April 29, 1997, the Court executed its Supplemental Memorandum Decision setting forth additional Findings of Fact. (See Addendum B)

On June 13, 1997, the Court executed the Supplemental Decree of Divorce after having resolved post-trial issues primarily relating to the language to be included in the Supplemental Decree of Divorce. (See Addendum C)

On September 2, 1997, the Court executed the Order on Objection to Supplemental Decree of Divorce, Motion to Correct Clerical Error and Rule 52 and 55 Motions. (See Addendum D)

B. Statement of Relevant Facts

1. Mr. Turner is a twenty-five year employee at the Utah Department of Employment Security earning \$53,534.00 per year or \$4,461.00 per month. Mr. Turner has no other income from any other source. (π 1 FOF; Tr. 12, 26; Exhibit 1).

2. Mrs. Turner is employed at the Veteran's Hospital as a nurse. She has degrees in both education and nursing. Her income from nursing was \$31,246.00 in 1994, \$29,875.00 in 1995 and \$19,783.50 through October 12, 1996. (π 2 FOF; Tr. 78, 110).

3. Mrs. Turner has chosen not to work full time although full time employment is available at Veterans Hospital. Had she worked full time, Mrs. Turner could have made \$33,693.00 at Veterans Hospital in 1996. (π 2 FOF; Tr. 80, 111).

4. At the time of trial seven of the parties' twelve children were residing in the family home and attending school. Their ages at the time of trial were 18, 16, 14, 11, 9, 8 and 5. The other five children are all adults and out of high school. (Tr. 113).

5. In the early 1970's, Mrs. Turner's parents made a gift to the parties of approximately 1/3 acre of ground located at 500 North 550 East, Heber City, Utah. In 1979, the parties built a home on said property. (π 5 FOF).

6. The marital home had a fair market value of \$199,500.00 as of the date of trial and a mortgage balance against the home of approximately \$29,500.00 leaving an equity of \$170,000.00. The monthly payment for the property is \$499.20, which includes an escrow amount for taxes and insurance. (π 6 FOF; Tr. 81).

7. In April, 1975, Mrs. Turner's parents incorporated Duke Farms, Inc. and gave each of their children a 1/5 interest in said corporation. At the time of incorporation, there were 22.28 acres and 17.5 shares of Wasatch Irrigation stock which comprised the assets of Duke Farms, Inc. (Tr. 18, 19, 21, 50, 84, 88).

8. When Duke Farms, Inc. was incorporated in 1975, the property was valued at \$1,000 per acre. (Tr. 82).

9. The value of the Wasatch Irrigation stock at the time of trial is \$5,000 per share or \$87,500.00. (Tr. 88).

10. The 22.28 acres originally comprising the Duke Farms, Inc. property has been reduced by the following:

A. A gift of approximately 1/3 acre to David and Di Ann Turner for construction of their home; (Tr. 84).

B. A gift of approximately 1/3 acre to John Duke for construction of his home; (Tr. 48, 84).

C. A sale of approximately 4 acres to the Church of Jesus Christ of Latter-day Saints; and (Tr. 48, 84).

D. A deed of a small portion of property to Heber City Municipal Corporation for which Heber City has agreed to install a sidewalk and other improvements on the property at a later date. (Tr. 122).

11. There is between 16.1 and 18.17 acres of property, which presently constitutes Duke Farms, Inc. (Tr. 48, 85).

12. At the time of trial the property was appraised at \$25,000.00 per acre or \$454,250.00 although Mrs. Turner indicated she would not sell the property for that amount. (Tr. 50, 85).

13. During the course of the marriage, the parties have incurred the following indebtedness which remained unpaid at the time of trial:

A. Mortgage indebtedness of \$29,300.00; and, (Tr. 81).

B. USAA loan for Christmas and other family expenses of \$11,600.00. (π 24 FOF; Tr. 25).

14. Mr. Turner was transferred to St. George, Utah in connection with his employment and at the time of trial was living rent free in a fifth-wheel trailer pending purchase of a condominium. Mr. Turner qualified and intended to purchase in December, 1996, a condominium in St. George, Utah, for \$85,000.00, which condominium will require a monthly payment of \$797.00 and closing costs of \$1,668.00. (Tr. 26, 27, 28, 30).

15. Mr. Turner's monthly expenses are as follows:

House payment	\$ 797.00
Food	350.00
Child Support	1,453.00
Telephone	40.00
Laundry & cleaning	40.00
Clothing	50.00
Medical	10.00
Dental	10.00
Utilities	100.00
Life insurance	85.00
Accident insurance	15.00
Bank card payment	150.00
Gifts	150.00
Hair	10.00
Attorney's fees	100.00
Car payment	400.00
Federal tax	394.00
State tax	209.00
FICA	284.00
FICA MD	<u>66.00</u>

TOTAL \$4,713.00 (Plaintiff's Exhibit 4; Tr. 26-30).

16. Mr. Turner's has a negative cash flow of \$252.00 per month based on his \$4,461.00 per month salary and \$4,713.00 monthly expenses. (Plaintiff's Exhibit 4; Tr. 26-30).

17. Mrs. Turner's monthly expenses are as follows:

House payment	\$ 511.00
Food	800.00
Clothes	150.00

Medical/dental	80.00
Laundry	10.00
Heat	57.00
Electricity/gas	60.00
Sewer, water, garbage	50.00
Insurance	105.00
Loan payments	20.00
Recreation	100.00
Car payment	400.00
Drugs & cosmetics	30.00
Gifts	25.00
School & education	30.00
Telephone	50.00
Haircuts	50.00
Attorney's fees	100.00
Mandatory payroll deductions	
OASDI tax	67.00
Medicare	16.00
Federal tax	75.00
State tax	<u>44.00</u>

TOTAL \$2,830.00 (π 20 FOF; Tr. 94, 95; Plaintiff's Exh. 10).

18. Mrs. Turner has a positive monthly cash flow of \$1,113.00 based on her monthly salary of \$2,490.00 and child support of \$1,453.00 (total monthly income of \$3,943.00) and her monthly expenses of \$2,830.00. (π 19, 20 FOF; Tr. 94, 95; Plaintiff's Exhibit 10).

19. The parties separated in June, 1995 and had been living apart for approximately 18 months at the time of trial. (Tr. 12).

VI.

SUMMARY OF ARGUMENTS

A. Imputing Income to Mrs. Turner at \$2,490.00 per month is proper in light of her \$2,604.00 per month income in 1994, \$2,490.00 per month income in 1995, \$1,905.00 per month income in 1996 working part-time. Mrs. Turner's attempt to reduce her work hours prior to trial to 16 hours per week is unjustified inasmuch as full time work was readily available and

she worked 36 hours per week in 1995 and 32 hours per week in 1996 through September.

Using the children to justify spending more time at home is not justified on the basis the parties had been separated for approximately 18 months at the time of trial and the minor children are capable of helping at home. Appellant failed to marshal the evidence supporting the Court's finding regarding the imputation of income issue.

- B. The Court's child support award is based on the Uniform Child Support Guidelines and a Child Support Obligation Worksheet admitted into evidence based on the respective incomes of the parties. Appellant has failed to marshal the evidence in support of the child support award and erroneously argued that the Child Support Worksheet was not filed in connection with the Supplemental Decree of Divorce.
- C. The trial Court properly denied alimony to Mrs. Turner based on her financial conditions and needs, her incapacity or ability to produce income, the ability of Mr. Turner to provide support and the length of the marriage. The Court's decision in this regard is supported by appropriate findings which establish that Mrs. Turner has a positive cash flow of \$1,112.00 per month and Mr. Turner has a negative cash flow of \$252.00 per month. The Court's decision not to award alimony is also based on Mrs. Turner's 20% interest in Duke Farms, Inc. which has assets valued at \$541,750.00. Mr. Turner was not awarded any interest in Duke Farms, Inc. in the divorce action. Mrs. Turner failed to marshal the evidence relating to the parties' income and expenses and the value of Duke Farms, Inc. in addressing the alimony issue.
- D. The Court properly awarded Mr. Turner his one-half interest in the family home. Allowing Mrs. Turner the option of buying out Mr. Turner's interest in the home immediately or

selling the home and dividing the equity at a later date is fair and equitable. If Mrs. Turner did not want Mr. Turner to benefit in the appreciation of the property or mortgage pay-down she has the ability to refinance the marital home based on her considerable equity in the marital home and her financial circumstances.

- E. The Court's decision to equally divide the \$11,600.00 USAA marital debt is clearly within the Court's discretion. Mrs. Turner is in a much better position to pay the debt based on her monthly cash flow.
- F. The Court's awarding Mrs. Turner \$1,650.00 for attorney's fees is based on a consideration of the pertinent factors in making an attorney fees award and is further based on the Court's making the requisite findings relating to the time expended, reasonableness of rates charged, legal rates in the community for the type of work involved, the financial needs of the parties, the issues raised in litigation and the \$350.00 offset necessitated by Plaintiff's Motion to Compel.

VII.

ARGUMENT

A. MRS. TURNER HAS FAILED TO SATISFACTORILY MARSHALL THE EVIDENCE TO SHOW THAT THE TRIAL COURT COMMITTED CLEAR ERROR ON THE ISSUES PRESENTED. THE TRIAL COURT'S FINDING SHOULD BE LEFT UNDISTURBED.

The trial court has considerable discretion in determining the financial interests of divorced parties and property and alimony awards will be upheld on appeal unless a clear and prejudicial abuse of discretion is demonstrated. Bingham v. Bingham, supra. Further, the appealing party has the burden to marshal all

evidence introduced at trial tending to support the court's finding and then demonstrate that despite such evidence the Court's finding is so lacking support as to be against the clear weight of the evidence. In Hagen v. Hagen, *supra.*, the Court in addressing the standard of review on appeal stated:

We will not disturb the trial court's findings of fact in a divorce proceeding unless such findings are clearly erroneous. *Jense v. Jense*, 784 P.2d 1249, 1251 (Utah Ct.App. 1989) (citations omitted); *see also* Utah R.Civ.P. 52(a). On appeal, it is the burden of the party seeking to overturn the trial court's decision to "marshall the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be 'against the clear weight of the evidence,' thus making them 'clearly erroneous.'" *In re Estate of Bartell*, 776 P.2d 885, 886 (Utah 1989) (quoting *State v. Walker*, 743 P.2d 191, 193 (Utah 1987)); *see also Riche v. Riche*, 784 P.2d 465, 468 (Utah Ct.App. 1989). 810 P.2d at 481

Mrs. Turner has failed to marshall the evidence in support of the Court's decision on virtually all issues raised on appeal. Such failure will be addressed separately in the following arguments.

B. THE TRIAL COURT DID NOT ERR IN IMPUTING INCOME TO MRS. TURNER.

Utah laws requires that prior to imputing income to a party in a divorce action the Court must first find that the party is voluntarily unemployed or underemployed. Utah Code Annotated Section 78-45-7.5(7)(a), which has been applied in both child support and alimony cases, codifies this requirement and provides:

Income may not be imputed to a parent unless the parent stipulates to the amount imputed or a hearing is held and a finding made that the parent is voluntarily unemployed or underemployed.

Contrary to Mrs. Turner's assertion, the trial court made a finding that Mrs. Turner was voluntarily underemployed and even referred to the above quoted section:

The Court finds that Defendant is employable, and able to work at a level above which she is currently employed. The Court will therefore, impute income to Defendant based on her historical earnings for 1995, or \$2,490.00 per month. This is done in accordance with Utah Code Ann. § 78-45-7.5(7) (1996). (FOF 15 - Addendum A)

The question of what constitutes voluntary underemployment has been the subject of considerable activity in the appellate courts in recent years. In Hall v. Hall, 858 P.2d 1018 (Utah App. 1993), the Utah Court of Appeals explained that a finding of voluntary underemployment must be based on a thorough appraisal of a variety of factors, including the parties' abilities, employment capacity, earnings potential and possible job openings available. In this case, the trial court considered and weighed the above factors and determined that Mrs. Turner was voluntarily underemployed. In this regard, FOF 2 (Addendum A) provides:

2. Defendant has degrees in both education and nursing, but has chosen not to work full time outside the home. Her income from nursing was \$29,875.00 in 1995, and \$19,783.50 through October 12, 1996.

The testimony is undisputed that Mrs. Turner's income in 1994 was \$31,246.00 or \$2,604.00 per month; her income in 1995 working a 36 hour week was \$29,875.00 or \$2,490.00 per month; her income through October 12, 1996 working part-time was \$19,783.50 or \$1,905.00 per month. Further, had she worked full time in 1996 her income would have been \$33,693.00 or \$2,808.00 per month

and she just received a raise prior to trial. Mrs. Turner testified she could have worked full time if she so desired. (Tr. 78-80, 110-112). Mrs. Turner failed to marshal this evidence in her brief.

Notwithstanding the income levels as set forth above, Mrs. Turner testified at trial her income was \$1,123.00 per month. To explain the discrepancy between her yearly earnings in 1996 and her income calculation of \$1,123.00 per month, Mrs. Turner admitted that she cut her work hours to 16 hours per week less than two months before trial. (Tr. 110).

Mrs. Turner justifies her use of the reduced monthly income by alleging that there are seven children in the home to support and one of the teenage children threatened suicide since the separation of the parties. The children of the parties are all of school age. Jonathan was 18 at the date of trial and was scheduled to graduate from high school at the conclusion of the then current school year. Katie was 16; Robert was 14, Elizabeth was one month short of 12; Benjamin was 9; Gabriel was 8; and Nathan was one month short of 6. These children are old enough to help in the home and Mrs. Turner can work more than 2 shifts per week. (Tr. 113; R. 8, 9)

The threat of suicide is a serious allegation, but does not justify working two shifts or 16 hours per week. The suicide threat occurred approximately one year prior to trial and shortly after the separation of the parties in June, 1995. There was no testimony that the threat of suicide existed at the time of trial. If anything, Mrs. Turner should be able to work more not less hours as the children grow older and the children become accustomed to having their father not reside at home.

The record is clear that the trial court made the requisite finding under U.C.A. 78-45-7.5(7)(a) that Mrs. Turner was voluntarily underemployed and there is sufficient evidence presented at trial to support the Court's imputing income to Mrs. Turner at her 1995 level.

**C. THE TRIAL COURT DID NOT ERR IN
COMPUTING THE CHILD SUPPORT AWARD.**

Defendant challenges the child support award on the basis that no Child Support Worksheet was filed and the Court made inadequate findings. Such arguments are false.

Plaintiff's Exhibit Six is a Child Support Obligation Worksheet which was admitted as evidence in this case (Tr. 28, Addendum E). This Worksheet uses Mrs. Turner's income of \$2,490.00 per month and Mr. Turner's income of \$4,461.00 per month as found by the Court. (FOF 1 and 15 - Addendum A). Again, Mrs. Turner has failed to marshal this evidence in her brief.

The Child Support Worksheet indicates that Mr. Turner's child support obligation is \$1,452.80 per month which is the amount ordered by the Court in FOF 16 (Addendum A) which provides:

16. Based on the incomes of the parties, child support will be set at \$1,452.80 per month.

The combined child support obligation table (Section 78-45-7.14) provides combined child support obligations for up to six children. U.C.A. Section 78-45-7.7(4) provides:

For more than six children, additional amounts may be added to the base child support obligation shown. Unless rebutted by Subsection 78-45-7.2(3),

the amount ordered shall not be less than the amount which would be ordered for up to six children.

Mr. Turner explained how he calculated child support for seven children when the Child Support Obligation table only goes up to six. Mr. Turner testified:

- Q. And why have you calculated seven if you have six children under eighteen?
- A. I have a son that just turned eighteen, he will graduate from high school in May and I feel like I need to take care of him through his graduation.
- Q. The table for determining the amount of child support goes up to six children, how did you calculate for seven?
- A. I took the difference between five and six and added that same amount to make up for the next column. (Tr. 29)

Mr. Turner's approach which was accepted by the Court is rational and in accordance with the Uniform Child Support Guidelines. Further, Mr. Turner is not financially capable of providing additional child support and Mrs. Turner has more than enough revenues each month to meet her monthly expenditures. (See Argument D below).

D. THE TRIAL COURT PROPERLY DENIED ALIMONY TO MRS. TURNER.

In Jones v. Jones, 700 P.2d 1072, 1075 (Utah 1985), the Utah Supreme Court set forth the well-settled standard for alimony in Utah. The Court stated:

The most important function of alimony is to provide support for the [spouse] as nearly as possible at the standard of living she [or he] enjoyed during the marriage, and to prevent the [spouse] from becoming a public charge. *English v. English*, 565 P.2d [409] at 411 (Utah 1977)... Three factors... must be considered in fixing a reasonable alimony award:

- [1] the financial conditions and needs of the [spouse seeking support];

[2] the ability of the [spouse seeking support] to produce a sufficient income for [himself or] herself; and

[3] the ability of the [payor spouse] to provide support.

Courts have reiterated this legal standard on a regular basis in addressing alimony issues. Bell v. Bell, 810 P.2d 489 (Utah App. 1991), Thronson v. Thronson, 810 P.2d 428, 435 (Utah App. 1991), Willey v. Willey, 333 Utah Adv. Rpt. 8 (Utah 9197), Hill v. Hill, 869 P.2d 963 (Utah App. 1993) and Schaumberg v. Schaumberg, 240 Utah Adv. Rep. 11, 12 (1994).

The 1995 Legislature codified the factors to consider in making an alimony determination. Section 30-3-5(7)(a), Utah Code Annotated 1953, as amended, now provides:

The court shall consider at least the following factors in determining alimony:

- (i) the financial condition and needs of the recipient spouse;
- (ii) the recipients' earning capacity or ability to produce income;
- (iii) the ability of the payor spouse to provide support; and
- (iv) the length of the marriage.

The Court referenced the foregoing statute and set forth the above four factors in FOF 17 (Addendum A). The Court further cited Paffel v. Paffel, 732 P.2d 96 (Utah 1986) wherein the Utah Supreme Court determined that “the purpose of alimony is 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”. Mrs. Turner’s argument as it relates to the alimony issue is that the Court failed to make appropriate findings. However, the Court’s Memorandum Decision clearly establishes that the appropriate findings were made. With respect to the financial condition and needs of the recipient spouse, the Court made the following findings:

19. When imputing income to Defendant at her 1995 level, Defendant has a

gross monthly income for herself and the children, after receiving child support, of \$3,942.80. Gross income was compared in this case since the Court did not have tax figures for Defendant.

20. Defendant has listed her monthly expenses as \$2,830.00.

21. The Court will decline to award alimony in this case. Considering the respective incomes of the parties, and the ability of Defendant to produce income, alimony is not needed to allow her to maintain the standard of living she enjoyed while married, or to keep her from becoming a public charge. (Addendum A)

Based on the foregoing findings, Mrs. Turner has a positive monthly cash flow of \$1,112.00 per month. Further, had the Court not imputed income to Mrs. Turner but used her monthly income in 1996 she still would have a positive monthly cash flow of \$527.44.

\$1,904.64	1996 Monthly income
+ <u>\$1,452.80</u>	Child Support
\$3,357.44	Subtotal
- <u>\$2,830.00</u>	Expenses
\$ 527.44	POSITIVE MONTHLY CASH FLOW

The second factor is Mrs. Turner's earning capacity or ability to produce income. As set forth above, the Court made findings that Defendant has degrees in both education and nursing, her income from nursing was \$29,875.00 in 1995 and \$19,783.50 through October 12, 1996. (FOF 2 - Addendum A). The Court also found that Defendant is employable and able to work at a level above which she is currently employed and imputed income at her historical earnings for 1995 of \$2,490.00 per month. (FOF 15 - Addendum A).

The third factor considered by the Court is the ability of Mr. Turner to provide support. In this regard, the Court found that Mr. Turner earned \$4,461.00

per month and has a gross monthly income after paying child support of \$3,008.20.

(FOF 1, 18 – Addendum A) Further, Plaintiff's Exhibit 4 was received by the Court which sets forth Mr. Turner's monthly income and expense and shows a negative cash flow of \$252.00 per month.

The last factor considered by the Court is the length of marriage. The parties were married on March 18, 1966. The Court obviously considered this factor in not awarding alimony as it set forth this factor as a consideration. Long term marriages do not mean alimony should be paid when the other factors dictate otherwise. It only means that if alimony is justified, it should continue for a longer period.

It is well established in Utah that alimony awards should to the extent possible equalize the parties' respective standards of living and maintain them at a level as close as possible to that standard of living enjoyed during the marriage.

Howell v. Howell, 806 P.2d 1209 (Utah App 1991); Gardner v. Gardner, 748 P.2d 1076, 1081 (Utah 1988); Jones v. Jones, *supra*; Higley v. Higley, 676 P.2d 379, 381 (Utah 1983). In Howell, *supra*, Judge Bench in his concurring opinion indicated that the alimony award should not reduce the standard of living of the paying spouse below that of the receiving spouse:

The alimony award, however, need not be large enough to maintain the receiving spouse at the standard of living enjoyed during the marriage if that amount of alimony would lower the standard of living of the paying spouse below that of the receiving spouse. Alimony may only raise the standard of living of the receiving spouse until it is roughly equal to that of the paying spouse. It is in this sense that alimony should seek "to the extent possible, [to] equalize the parties' respective post-divorce living standards." Rasband v. Rasband, 752 P.2d 1331, 1333 (Utah Ct.App.1988) (Emphasis added) 806 P.2d at 1216.

The Court specifically found that “alimony is not needed to allow her [Mrs. Turner] to maintain the standard of living she enjoyed while married”. Mr. Turner’s standard of living is already below the standard of living of Mrs. Turner and alimony is certainly not justified.

Even if the trial court had not made the appropriate findings, the alimony award should not be reversed or remanded. In Schaumburg v. Schaumburg, *supra*., the husband claimed the trial court abused its discretion in awarding his wife \$800.00 per month alimony because it failed to make findings regarding the wife’s need. Addressing this issue the Court of Appeals stated:

When the trial court has failed to make findings on the three factors listed above, we reverse, unless pertinent facts in the record are clear, uncontroverted, and capable of supporting only a finding in favor of the judgment. **Hall v. Hall**, 858 P.2d 1018, 1025 (Utah App. 1993); **Howell**, 806 P.2d at 1213. So long as the record is clear that the trial court has considered these three factors, we will not disturb its determination regarding alimony unless it has clearly abused its discretion. 875 P.2d at 602

The record is abundantly clear that the Court considered the appropriate factors in denying alimony.

The Court also considered Mrs. Turner’s interest in Duke Farms, Inc. in denying an alimony award.. The Court made the following finding:

22. The Court has also taken into account Defendant’s interest in Duke Farms, Inc., in deciding not to award alimony. The court in *Mortensen*, *supra*, stated: “The fact that one spouse has inherited or donated property, particularly if it is income producing, may properly be considered as eliminating or reducing the need for alimony by that spouse...” at 308. (Addendum A)

The case of Mortensen v. Mortensen, 760 P.2d 304 (1988) is the landmark case in Utah as it relates to how a court should allocate inherited or gifted property in

a divorce proceeding. The Court rejected Mr. Turner's claim that he should have received part of his wife's interest in Duke Farms, Inc. based on his efforts in watering and putting up hay on the property. However, the Court appropriately considered Mrs. Turner's interest in the property as a factor in deciding whether alimony is needed. As set forth above, Defendant has a 20% interest in Duke Farms, Inc. or 20% of an asset valued at \$454,250.00 plus water stock of \$87,500.00. Accordingly, Mrs. Turner's interest in Duke Farms, Inc. is \$108,350.00. This is based on a per acre price of \$25,000.00 and Mrs. Turner adamantly testified she would not sell the property for that price. (Tr. 85).

Mrs. Turner failed to marshal the evidence relating to the parties incomes and expenses and the value of Duke Farms, Inc. in addressing the alimony issue.

**E. THE TRIAL COURT'S DETERMINATION OF MR. TURNER'S
INTEREST IN THE MARITAL HOME WAS PROPER.**

The trial court determined that the marital home was valued \$199,500.00 and had a mortgage at the time of trial of \$29,500.00. (FOF 6 – Addendum A). The Court determined that the equity in the marital residence, both land and improvements, should be divided evenly between the parties. (FOF 7 - Addendum A). The Court awarded Mrs. Turner possession of the marital residence, including all debt thereon, until such time as the parties' youngest child reaches the age of 18, or graduates from high school, whichever occurs later, or until Mrs. Turner remarries, cohabitates with a member of the opposite sex, or dies. (FOF 9 – Addendum A). Mrs. Turner objected to the Court's original Supplemental Decree of

Divorce resulting in a Supplemental Memorandum Decision wherein the Court made the following additional findings relating to the marital home:

1. Defendant has objected to Plaintiff's proposed division of the parties' marital home. Specifically, Defendant objects that if the home is sold at a future date, and the equity divided at that time, then Plaintiff will benefit from Defendant's pay-down of the mortgage. Conversely, it could potentially be another 12 years before the marital home is sold. It would be patently unfair to tie up Plaintiff's equity for that time without providing some sort of compensation. Further, Defendant has the benefit of the use of the home until it is sold.
2. This Court, therefore, will order that the marital home be sold upon the happening of one of the events outlined in the Memorandum Decision, and equity in the home divided at that time, with each party receiving half. If Defendant wishes to prevent Plaintiff from benefiting from Defendant's pay-down of the mortgage, Defendant can choose to buy out Plaintiff's interest in the home; however, the Defendant will have one year from the date of the signing of the Supplemental Decree of Divorce in which to decide whether or not she wants to buy out Plaintiff, and make a substantial effort to do so. In either case, the value of Plaintiff's interest in the home will be determined by taking one-half the equity in the home at the time Plaintiff is paid out, and not the equity that existed on the date of trial. (Addendum B).

Mrs. Turner now argues that it is unfair and inequitable for Turner to benefit from her pay-down of the mortgage or the appreciation of the home pending occurrence of one of the triggering events described in the Supplemental Divorce Decree. She further argues that she is prevented from financing her home to pay Mr. Turner's equity based on the Court's failing to award her alimony or additional child support.

At the time of trial there was an equity in the marital home of \$170,000.00 of which Mr. Turner's share is \$85,000.00. The Court gave Mrs. Turner the option of paying off Mr. Turner's equity or waiting until the home is sold. Further, the Court

gave the parties the option of offsetting their interest in the other parties' retirement against the equity in the home.

The parties, at their option, may offset their respective interests in the other's retirement against the equity in the home, or make other arrangements as they desire in order to avoid the additional paperwork of obtaining a qualified domestic relations order. (FOF 14 – Addendum A).

If Mrs. Turner wanted to reap the benefits of her mortgage pay-down and any appreciation on the property, she could have refinanced the home and paid off Mr. Turner his \$64,416.00 equity after offsetting the retirement plans. Her total indebtedness would have been \$93,916.00 on a home appraised at \$199,500.00 and her principal and interest payment on a 30 year loan would have been less than \$700.00 per month on an eight percent loan. (See Amortization Table-Addendum F) This would have resulted in an increased mortgage payment of less than \$200.00 per month which Mrs. Turner could easily afford based on her income and expenses as set forth above. Again, Mrs. Turner failed to marshal the evidence regarding the home value, indebtedness and right to offset retirement values.

**F. THE TRIAL COURT APPROPRIATELY DIVIDED THE
USAA DEBT EQUALLY BETWEEN THE PARTIES.**

The Court made the following finding with respect to the USAA debt:

23. The USAA loan in the amount of \$11,600.00 is marital debt. As such, it should be divided with each party being responsible for paying \$5,800.00 towards the debt. (Addendum A).

In Boyle v. Boyle, 735 P.2d 669 (Utah Ct. App. 1987) the Court stated:

This Court will refrain from disturbing findings of the trial court in a divorce action unless a clear abuse of discretion is shown. **Searle v. Searle**, 522 P.2d 697 (Utah 1974). The trial court is clearly in the best position to weigh the evidence, determine credibility and arrive at factual conclusions. In this

case the trial judge considered all evidence presented as to the marital assets and debts as they existed prior to and during the marriage, and subsequent to the separation of the parties. It would be inappropriate for this Court to reverse on an isolated item of property or debt distribution. Rather, this Court must examine the entire distribution to determine if the trial court abused its discretion. 735 P.2d at 670

Mrs. Turner argues that the Court should require Mr. Turner to pay the USAA debt in its entirety but fails to indicate the debt was incurred for marital purposes and she is in a better position to pay the debt based on her monthly cash flow.

G. THE ATTORNEY FEE AWARD WAS PROPERLY MADE.

It is well established that the decision to award attorney's fees, and the amount of such fees is within the trial court's discretion. Rappleye v. Rappleye, 855 P.2d 260, 265 (Utah App. 1993). Further, a party seeking attorney's fees in a divorce action must present evidence which establishes the financial need of the requesting party and demonstrates the reasonableness of the amount of the award. Munns v. Munns, 790 P.2d 116, 122 (Utah Ct. App. 1990). Judge Maetani entered the following findings as it relates to the issue of attorney's fees and costs:

26. In determining the appropriateness of an award of attorney's fees the Court considers the following factors specified in Beals v. Beals, 682 P.2d 862 (Utah 1984); cited in Huck v. Huck, 734 P.2d 417 (Utah 1986), and in Talley v. Talley, 739 P.2d 85 (Utah App. 1987):
 - a. Necessity of the number or hours dedicated by the attorney;
 - b. reasonableness of the rate charged;
 - c. rates commonly charged for divorce actions in the community; and,
 - d. financial need of the requesting party.
27. Defendant is requesting attorney's fees in the amount of \$4,096.00. Plaintiff has requested that each party pay their own attorney fees, but that Plaintiff be awarded \$350.00 in connection to a Motion to Compel.
28. The Court finds that each attorney in this case has expended a reasonable amount of time, and has charged a rate that is in accordance with the going rates in the community for this type of work.

29. The Plaintiff in this action has caused some increase in attorney's fees by pressing an unreasonable claim for the assets of Duke Farms, Inc. The Court will award Defendant \$2,000 in attorney's fees and costs, and offset that amount by the \$350 necessitated by Plaintiff's Motion to Compel. The total award of attorney's fees to be paid to Defendant by Plaintiff is therefore \$1,650.00. (Addendum A).

The trial court is much better suited to determine reasonable attorney's fees than an appellate court. Willey v. Willey, *supra*. Accordingly, the trial court's decision in awarding attorney's fees should be affirmed and Mr. Turner should be awarded his attorney's fees and costs on appeal.

VIII.

CONCLUSION

Mrs. Turner has failed to meet her burden, as one challenging findings of fact, to marshal all evidence introduced at trial that supports the Court's findings and then demonstrate that regardless of that support of evidence, the trial court's factual determination is against the clear weight of the evidence. Absent such a complete presentation of these supported evidence, the appellate court is bound to accept the trial court's findings which clearly establish:

- (1) Mrs. Turner's income was properly imputed at \$2,490.00 per month based on her historical earnings for 1995;
- (2) The child support award was computed properly in accordance with the Uniform Child Support Guidelines and supported by a properly prepared Child Support Obligation Worksheet;
- (3) The trial court properly denied alimony to Mrs. Turner based on her financial condition and needs, her earning capacity or ability to produce income and the ability of Mr. Turner to provide support;

- (4) The trial court properly determined Mr. Turner's interest in the martial home inasmuch as Mrs. Turner was given the option to pay Mr. Turner his equity immediately or postpone payment until one of the triggering events provided for in the Supplemental Decree of Divorce; and
- (5) The division of the USAA debt and attorney's fees award was properly made.

RESPECTFULLY SUBMITTED this ____ day of March, 1998.

Terry L. Christiansen
ADKINS & CHRISTIANSEN, P.C.
Attorney for Plaintiff/Appellee

MAILING CERTIFICATE

I hereby certify that two true and correct copies of the foregoing Brief of Appellee, were mailed, postage prepaid, to Steven Kuhnhausen, Joseph F. Orifici, Attorney for Defendant/Appellant, 450 South 900 East, Suite 240, Salt Lake City, Utah 84102, on this ____ day of March, 1998.

Terry L. Christiansen

IX.
ADDENDUM

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

MELVON DAVID TURNER,

Plaintiff,

v.

DI ANN CAROL TURNER,

Defendant.

MEMORANDUM DECISION

Case No. 954400098

Judge Howard H. Maetani

This matter came before the Court for trial on November 21, 1996, before the Honorable Howard H. Maetani, District Court Judge. Plaintiff Melvon David Turner was present and represented by counsel Terry L. Christiansen. Defendant Di Ann Carol Turner was present and represented by counsel Mary C. Corporon. The Court heard argument, and granted parties 10 days to submit their proposed Findings of Fact and Conclusions of Law. Said documents were received by the Court from both Plaintiff and Defendant on or about December 20, 1996. Plaintiff submitted Objections to the proposed Findings on or about December 26, 1996. Defendant submitted Objections to the proposed Findings on or about January 6, 1997. The Court, having heard the testimony of witnesses, considered the exhibits and arguments of counsel, reviewed the submitted documents, and being fully advised in the premises now makes the following:

MEMORANDUM DECISION

A. Findings of Fact

1. Plaintiff is employed at the Utah Department of Employment Security at the rate of \$53,534.00 per year, or \$4,461.00 per month.

2. Defendant has degrees in both education and nursing, but has chosen not to work full time outside the home. Her income from nursing was \$29,875.00 in 1995, and \$19,783.50 through October 12, 1996.

Duke Family Farm

3. The Defendant has acquired an interest in Duke Farms, Inc. The Court finds that this property was given to Defendant as a gift from her family. The court in *Bingham v. Bingham*, 872 P.2d 1065 (Utah App. 1994), stated:

trial courts should generally award property acquired by one spouse by gift and inheritance during the marriage (or property acquired in exchange thereof) to that spouse, together with any appreciation or enhancement of its value, unless (1) the other spouse has by his or her efforts or expense contributed to the enhancement, maintenance, or protection of that property, thereby acquiring an equitable interest in it, or (2) the property has been consumed or its identity lost through commingling or exchanges or where the acquiring spouse has made a gift of an interest therein to the other spouse.

at 1068-1069 (quoting *Mortensen v. Mortensen*, 760 P.2d 304, 308 (Utah 1988)).

4. The Court finds that Plaintiff has performed some work on Duke Farms, Inc. The work done by Plaintiff, however, did nothing to enhance, maintain, or protect the present value of the land. Furthermore, the property has not been consumed, commingled, or given as a gift to Plaintiff. Under the *Mortensen* test, Plaintiff fails to establish an interest in Duke Farms, and any interest therein acquired by the Defendant during the marriage is the sole property of Defendant.

Marital Home

5. In the early 1970's, Defendant's parents made a gift to the parties of approximately 1/3 acre of ground located at 500 North 550 East, Heber City, Utah. In 1979, the parties built a home on said property.

6. The value of the entire marital residence, land and improvements included, is \$199,500.00. The land on which the residence sits is alone valued at \$42,000.00. There is a current mortgage against the home of approximately \$29,500.00.

7. The Court finds that the equity in the marital residence, both land and improvements, is to be divided evenly between the parties.

8. The Court finds the land upon which the residence sits to be a gift to the marriage, intended for the use and enjoyment of both parties. The parties were married a substantial length of time before they received the land, and there is no evidence at trial that the land was intended to be a gift solely to Defendant. Also, Plaintiff has expended a substantial amount of time and effort maintaining, enhancing, and protecting the value of the property, therefore meeting the standard set forth in *Mortensen, supra*. Furthermore, as stated by the court in *Burke v. Burke*, 733 P.2d 133 (Utah 1987), a trial court has "broad discretion . . . in the division of property, regardless of its source or time of acquisition." at 134-135.

9. Defendant is awarded possession of the marital residence, including all debt thereon, until such time as the parties' youngest child reaches the age of 18, or graduates from high school, whichever occurs later, or until Defendant remarries, cohabitates with a member of the opposite sex, or dies.

Automobiles

✓ 10. Each party is awarded the automobile that is currently in their possession,

including all debt and equity associated therewith.

✓ Retirement Benefits

11. Plaintiff has a retirement plan pursuant to his employment with a cash value of \$50,300.00 as of September 30, 1996.

12. Defendant has a retirement plan with a cash value of \$9,133.00.

13. The retirement plans are marital property, and should be divided, with each party taking a one-half interest in the retirement plan of the other.

14. The parties, at their option, may offset their respective interests in the other's retirement against the equity in the home, or make other arrangements as they desire in order to avoid the additional paperwork of obtaining a qualified domestic relations order.

Child Support

15. The Court finds that Defendant is employable, and able to work at a level above which she is currently employed. The Court will therefore, impute income to Defendant based on her historical earnings for 1995, or \$2,490.00 per month. This is done in accordance with Utah Code Ann. §78-45-7.5(7) (1996).

✓ 16. Based on the incomes of the parties, child support will be set at \$1452.80 per month.

Alimony

17. Utah Code Ann. § 30-3-5 (1995) states in pertinent part that the Court must consider the following factors in determining alimony:

- (i) the financial condition and needs of the recipient spouse;
- (ii) the recipient spouse's earning capacity or ability to produce income;

- (iii) the ability of the payor spouse to provide support; and
- (iv) the length of the marriage.

See U.C.A. § 30-3-5(7)(a) (Supp. 1995).

In Paffel v. Paffel, 732 P.2d 96 (Utah 1986), the Utah Supreme Court determined that the purpose of alimony is 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.

18. In the present case, Plaintiff has a gross monthly income, after paying child support, of \$3,008.20.

19. When imputing income to Defendant at her 1995 level, Defendant has a gross monthly income for herself and the children, after receiving child support, of \$3,942.80. Gross income was compared in this case since the Court did not have tax figures for Defendant.

20. Defendant has listed her monthly expenses as \$2,830.00.

21. The Court will decline to award alimony in this case. Considering the respective incomes of the parties, and the ability of Defendant to produce income, alimony is not needed to allow her to maintain the standard of living she enjoyed while married, or to keep her from becoming a public charge.

✓ (22. The Court has also taken into account Defendant's interest in Duke Farms, Inc., in deciding not to award alimony. The court in *Mortensen, supra*, stated: "The fact that one spouse has inherited or donated property, particularly if it is income producing, may properly be considered as eliminating or reducing the need for alimony by that spouse . . ." at 308.

U.S.A.A. and Appraisal Debt

✓ 23. The appraisal cost incurred by Plaintiff for the marital home is \$300. The parties should split the cost of the appraisal, with each paying \$150.

✓ 24. The USAA loan in the amount of \$11,600.00 is marital debt. As such, it should be divided with each party being responsible for paying \$5,800.00 towards the debt.

✓ 25. Each party will maintain possession of their own bank accounts, and all monies therein.

✓ Attorney's Fees and Costs

26. In determining the appropriateness of an award of attorney's fees the Court considers the following factors specified in Beals v. Beals, 682 P.2d 862 (Utah 1984); cited in Huck v. Huck, 734 P.2d 417 (Utah 1986), and in Talley v. Talley, 739 P.2d 85 (Utah App. 1987):

- a. necessity of the number or hours dedicated by the attorney;
- b. reasonableness of the rate charged;
- c. rates commonly charged for divorce actions in the community; and
- d. financial need of the requesting party.

27. Defendant is requesting attorney's fees in the amount of \$4,096.00. Plaintiff has requested that each party pay their own attorney fees, but that Plaintiff be awarded \$350 in connection to a Motion to Compel.

28. The Court finds that each attorney in this case has expended a reasonable amount of time, and has charged a rate that is in accordance with the going rates in the community for this type of work.

29. The Plaintiff in this action has caused some increase in attorney's fees by pressing an unreasonable claim for the assets of Duke Farms, Inc. The Court will award Defendant \$2,000 in attorney's fees and costs, and offset that amount by the \$350 necessitated by Plaintiff's Motion to Compel. The total award of attorney's fees to be paid to Defendant by Plaintiff is therefore \$1,650.00.

Conclusions of Law

- ✓ 1. Plaintiff shall take no interest in the property known as Duke Farms, Inc.
- ✓ 2. The marital residence, both land and improvements, are property of the marriage, and the equity therein shall be evenly divided.
- ✓ 3. Each party is awarded the automobile currently in their possession, including all equity.
- ✓ 4. Each party will take a one-half interest in the retirement plan amounts of the other party.
- ✓ 5. Child support is set at \$1,452.80 paid to Defendant by Plaintiff each month.
- ✓ 6. No alimony shall be awarded in this case.
- ✓ 7. The Debt known as the U.S.A.A. loan shall be evenly divided, with each party owing one half the debt.
- ✓ 8. Each party will pay one half the cost for the appraisal of the marital home.
- ✓ 9. Each party will maintain possession of their respective bank accounts, and all monies therein.
- ✓ 10. Defendant is awarded attorney's fees and costs in the amount of \$1,650.00.
11. All other issues now before the Court have been resolved pursuant to the above

Findings of Fact which are, by this reference, fully incorporated herein as the Court's

Conclusions of Law.

12. The Decree of Divorce should be modified in conformity with the foregoing.

13. Counsel for Plaintiff is to prepare an Order consistent with the foregoing, and submit it to the Court for signature.

Dated this 13 day of February, 1997.

BY THE COURT:


HOWARD H. MAETANI
District Court Judge

cc:

Mary C. Corporon
Terry L. Christiansen

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

MELVON DAVID TURNER,

Plaintiff,

v.

DI ANN CAROL TURNER,

Defendant.

SUPPLEMENTAL
MEMORANDUM DECISION

Case No. 954400098

Judge Howard H. Maetani

This matter came before the Court for trial on November 21, 1996, before the Honorable Howard H. Maetani, District Court Judge. Plaintiff Melvon David Turner was present and represented by counsel Terry L. Christiansen. Defendant Di Ann Carol Turner was present and represented by counsel Mary C. Corporon. The Court heard argument, and granted parties 10 days to submit their proposed Findings of Fact and Conclusions of Law. Said documents were received by the Court from both Plaintiff and Defendant on or about December 20, 1996. Plaintiff submitted Objections to the proposed Findings on or about December 26, 1996. Defendant submitted Objections to the proposed Findings on or about January 6, 1997. The Court issued a Memorandum Decision on February 13, 1997, instructing counsel for Plaintiff to prepare a Supplemental Decree of Divorce, and submit it to the Court for signature. The Court received the Supplemental Decree from Plaintiff on or about April 14, 1997. Defendant submitted an Objection to the Supplemental Decree on or about April 18, and Plaintiff submitted a Response to Objection on April 23. The Court,

having examined the record in the present case, reviewed the submitted documents, and being fully advised in the premises now makes the following:

SUPPLEMENTAL MEMORANDUM DECISION

A. Findings of Fact

1. Defendant has objected to Plaintiff's proposed division of the parties marital home. Specifically, Defendant objects that if the home is sold at a future date, and the equity divided at that time, then Plaintiff will benefit from Defendant's pay-down of the mortgage. Conversely, it could potentially be another 12 years before the marital home is sold. It would be patently unfair to tie up Plaintiff's equity for that time without providing some sort of compensation. Further, Defendant has the benefit of the use of the home until it is sold.

2. This Court, therefore, will order that the marital home be sold upon the happening of one of the events outlined in the Memorandum Decision, and equity in the home divided at that time, with each party receiving half. If Defendant wishes to prevent Plaintiff from benefiting from Defendant's pay-down of the mortgage, Defendant can choose to buy out Plaintiff's interest in the home; however, the Defendant will have one year from the date of the signing of the Supplemental Decree of Divorce in which to decide whether or not she wants to buy out Plaintiff, and make a substantial effort to do so. In either case, the value of Plaintiff's interest in the home will be determined by taking one-half the equity in the home at the time Plaintiff is paid out, and not the equity that existed on the date of trial.

3. Defendant objected to Plaintiff's disposition of the retirement accounts. It is this Court's order that the retirement accounts be divided based on their value at the time of trial. The parties should exchange this information within 10 days. If the parties cannot

agree on the mechanics of the division, then each party will prepare, at their own expense, a qualified domestic relations order to obtain their interest in the other's retirement account.

4. Also absent from Plaintiff's Supplemental Decree of Divorce was the Court's ruling on attorney's fees. The Court awarded attorney's fees and costs to Defendant in the amount of \$1,650.00.

5. The foregoing Supplemental Memorandum Decision should be incorporated into this Court's prior Memorandum Decision. In all other respects, Plaintiff's Supplemental Decree of Divorce is in accordance with this Court's intentions.

6. Counsel for Plaintiff is to prepare another Supplemental Decree of Divorce in accordance with the above, and submit it to the Court for signature.

Dated this 29 day of April, 1997.

BY THE COURT:


HOWARD H. MAETANI
District Court Judge

cc:

Mary C. Corporon
Terry L. Christiansen

ADDENDUM C

Terry L. Christiansen (#0654)
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Attorneys for Plaintiff

FILED
Fourth Judicial District Court of
Juab County, State of Utah
CARMA B. SMITH, Clerk
TLC 6-3-97 Deputy

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

MELVON DAVID TURNER,)	SUPPLEMENTAL DECREE OF DIVORCE
Plaintiff,)	
vs.)	
DI ANN CAROL TURNER,)	Case No. 954400098DA
Defendant.)	Judge: Howard H. Maetani

THE ABOVE-ENTITLED MATTER CAME BEFORE THE COURT for trial on November 21, 1996, before the Honorable Howard H. Maetani, District Court Judge. Plaintiff appeared in person and by and through his counsel of record, Terry L. Christiansen and defendant appeared in person and by and through her counsel of record, Mary C. Corporon. The court having heard the testimony of witnesses, reviewed the exhibits and considered the arguments and proposed Findings of Fact and Conclusions of Law and objections thereto filed by both counsel, and having resolved the issues remaining after trial pursuant to its Memorandum Decision dated February 13, 1997, which set forth the Court's Findings of Fact and Conclusions of Law on the issues in dispute, and further having resolved the objection to the Supplemental Decree of Divorce pursuant to its Supplemental Memorandum Decision dated April 29, 1997, based thereon and for good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Decree of Divorce heretofore executed on December 18, 1996, is modified herein.

2. Plaintiff is awarded a decree of divorce from the defendant upon the grounds of irreconcilable differences, the same to become final and effective immediately upon being signed by the Judge and entered by the clerk of the court.

3. Defendant is awarded the temporary and permanent care, custody and control of the parties' minor children, subject to plaintiff's reasonable and liberal rights of visitation. Plaintiff is awarded visitation with the children of the parties as agreed upon between the parties, and in the event that they are unable to agree, then visitation shall be according to the schedule of visitation set forth at Utah Code Ann., §30-3-35. Further, plaintiff's visitation with the parties' children shall be conditioned as follows:

a. plaintiff shall give notice to defendant twenty-four hours in advance if he intends actually to exercise the visitation with the children; and

b. plaintiff shall exercise visitation with all of the minor children together, as a group, on at least one of his visitations per month. The remaining visitations may be with fewer than all of the remaining minor children, but this shall be conditioned such that if he takes fewer than all of the children for one visit, the next occasion when he takes fewer than all of the children he shall take some or all of the

children who did not participate in the last episode of visitation; and

c. plaintiff may exercise visitation by coming to the home of the defendant and knocking on the door of the home to seek entry. He may come into the home to wait for the children while they are getting ready for visitation, but he may not wander about the premises, and shall remain in the living room area; and

d. plaintiff will schedule visitation through the defendant directly and not with the minor children, unless defendant is not reasonably available to schedule the visitation.

3. Plaintiff shall pay child support to defendant in the sum of \$1,452.80 each month.

4. Plaintiff shall maintain his current life insurance on his own life naming all of the children of the parties as the sole primary beneficiaries of that insurance until the youngest child of the parties has achieved the age of eighteen years or graduated from high school in due course.

5. Plaintiff shall maintain health and accident insurance coverage as it is available to him through employment. Both parties are ordered to share equally in any medical, dental, orthodontic, optometric or psychotherapeutic expenses incurred for the benefit of the children not covered by plaintiff's policy of health insurance, and each shall hold the other harmless on one-half of any such obligations.

6. Plaintiff shall be permitted to claim the children of the parties, Katie, Elizabeth and Gabriel, as dependents for purposes of calculating his federal and state income taxation, so long as he is current in his total family support obligation to the defendant at the conclusion of any tax year in which the minor children are to be so claimed. In any event, defendant shall be permitted to claim the children of the parties, Robert, Benjamin and Nathan, as dependents for purposes of calculating her federal and state income taxation.

7. No alimony is awarded in this action.

8. The parties' previous division of their household furnishings and fixtures and personal clothing and effects is confirmed in each, and each party is awarded those items currently in his or her possession, without financial set off from the other party.

9. Plaintiff is awarded the 240 Volvo, free and clear of any claim of the defendant, subject to the indebtedness incurred thereon which plaintiff shall pay and assume and shall hold the defendant harmless thereon. Defendant is awarded the 740 Volvo, free and clear of any claim of the plaintiff, subject to the indebtedness thereon which the defendant shall pay and assume and shall hold the plaintiff harmless thereon.

10. Each party is awarded his or her own personal banking accounts, free and clear of any interest of the other party, without further contribution or set off from the other party.

11. Each party is ordered to pay one-half of the \$11,600.00

USAA indebtedness.

12. Each party is ordered to pay and assume any debts or obligations incurred in his or her own name commencing effective with the date of filing of the complaint for divorce in this action, and each shall hold the other harmless thereon.

13. Each party will pay \$150.00 of the \$300.00 cost for the appraisal of the marital home.

14. Defendant is awarded all of the parties' interest in Duke Farms, Inc..

15. Each party is awarded a one-half (1/2) interest in the home and real property located at 500 North 550 East, Heber City, Utah, which property is more particularly described as follows:

BEG 648.42 FT W & 8.25 RD S OF SE COR NW1/4 SEC 32, T3S,
R5E, SLM; E 145 FT; N 105 FT; W 145 FT; S 105 FT TO BEG.
AREA 0.35 ACRE

Defendant is awarded possession of said home and real property, and is ordered to pay all debt thereon, until the first occurrence of any of the following events:

- a. when said home is sold;
- b. when the parties' youngest child reaches the age of eighteen (18) or graduates from high school, which ever occurs later;
- c. when defendant remarries, co-habitats with a person of the opposite sex, or dies;
- d. when defendant shall cease to use said home as her primary residence for a continuous period of more than three (3) months; or,

e. at any other time prior to any of the foregoing events in defendant's sole discretion.

Upon the first occurrence of any of the foregoing events, the home will be immediately sold and the net equity evenly divided by the parties at that time with each party receiving half. Provided, however, if defendant wishes to prevent Plaintiff from benefiting from Defendant's pay-down of the mortgage, Defendant can choose to buy out Plaintiff's interest in the home; however, the Defendant will have one year from the date of the signing of the Supplemental Decree of Divorce in which to decide whether or not she wants to buy out Plaintiff, and make a substantial effort to do so. In either case, the value of Plaintiff's interest in the home will be determined by taking one-half the equity in the home at the time Plaintiff is paid out, and not the equity that existed on the date of trial.

16. Each party is prohibited from placing or causing to be placed any lien, mortgage or any other encumbrance against the home and property described in paragraph 15 above.

17. Defendant is awarded her retirement plan with a cash value of \$9,133.00 free and clear of any claim of plaintiff.

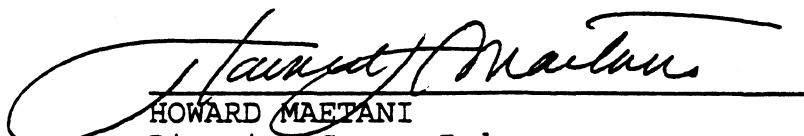
18. Plaintiff is awarded his retirement plan through the State of Utah with Traveler's Insurance subject to Defendant's \$21,016.01 interest therein. Defendant shall be required at her sole expense to have prepared, filed with and executed by the Court any necessary qualified domestic relations order required by plan administrators to receive or separate her \$21,016.01 interest.

19. Defendant is awarded \$1,650.00 for attorney's fees and costs incurred herein.

20. Each party is ordered to execute and deliver all necessary documents to transfer the title and ownership or perfect the liens of the property of the parties pursuant to this decree.

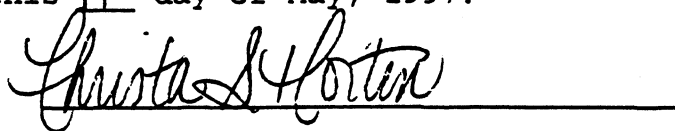
DATED this 13 day of June, 1997.

BY THE COURT:


HOWARD MAETANI
District Court Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Supplemental Decree of Divorce was mailed, postage prepaid, to Mary C. Corporon, CORPORON & WILLIAMS, P.C., 808 East South Temple, Salt Lake City, Utah 84102, on this 14th day of May, 1997.



ADDENDUM D

MARY C. CORPORON #734
Attorney for Respondent
CORPORON & WILLIAMS, P.C.
808 East South Temple
Salt Lake City, Utah 84102
(801) 328-1162

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

MELVON DAVID TURNER,

Petitioner,

-vs-

DI ANN CAROL TURNER,

Respondent.

**ORDER ON OBJECTION TO SUPPLEMENTAL
DECREE OF DIVORCE, MOTION TO CORRECT
CLERICAL ERROR, AND RULE 52 AND Rule
55 MOTIONS**

Case No. 954400098DA

Judge Howard Maetani

THE RESPONDENT'S OBJECTION to supplemental decree of divorce, her motion to correct clerical error, and her motions pursuant to Rule 52 and 59 having come before the court for hearing, pursuant to a telephone conference, each party appearing by and through his or her respective counsel of record, and the court having ruled upon the pending motions, based thereon and for good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

The respondent's motions to correct the supplemental decree of divorce and

objection to the supplemental decree of divorce, and her motions pursuant to Rule 52 and 59 of the Utah Rules of Civil Procedure are granted. Specifically, paragraphs 17 and 18 of the supplemental decree of divorce shall be amended as follows:

17. Each party is ordered to share equally in defendant's retirement plan through her employment pursuant to the Woodward formula, one-half to each. Defendant is ordered to prepare a qualified domestic relations order distributing this retirement plan to the defendant, and to bear the expenses of that qualified domestic relations order. The date at which separation of the plans should be effective is the date of trial, November 21, 1996.

18. All plaintiff's retirement plans through the State of Utah, or his other employment, including the retirement plan with Traveler's Insurance, shall be divided equally between the parties, according to the Woodward formula, one-half to each. Defendant shall prepare at her sole expense, a qualified domestic relations order as necessary to accomplish this distribution of this retirement plan or plans. The date at which separation of the plans should be effective is the date of trial, November 21, 1996.

With the exception of this correction, respondent's motions are denied. The supplemental decree of divorce is deemed to be modified, amended and corrected to include the foregoing paragraphs 17 and 18, effective with the date of this order. With this exception, the supplemental decree of divorce previously entered herein shall remain in full force and effect.

DATED THIS 2nd day of Sept, 1997.

BY THE COURT:

HOWARD MAETANI
District Court Judge

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I caused the foregoing to be mailed to:

TERRY L. CHRISTIANSEN

Attorney for Petitioner

P.O. Box 680284

Park City, Utah 84068

on the 26 day of August, 1997.



Secretary

ADDENDUM E

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

MELVON DAVID TURNER,)	
Plaintiff,		CHILD SUPPORT OBLIGATION WORKSHEET
vs.)	(SOLE CUSTODY AND PATERNITY)
DI ANN CAROL TURNER,)	Civil No. 954400098 DA
Defendant.		

	MOTHER	FATHER	COMBINED
1. Enter the # of natural and adopted children of this mother and father for whom support is to be awarded.			seven (7)
2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definition of income.	\$2,490.00	\$4,461.00	
2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case.)	-0-	-0-	
2c. Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1).	-0-	-0-	
2d. OPTIONAL: Enter the amount from Line 12 of the Children in Present Home Worksheet for either parent.	-0-	-0-	
3. Subtract Lines 2b, 2c and 2d from 2a. This is the Adjusted Gross Income for child support purposes.	\$2,490.00	\$4,461.00	\$6,951.00
4. Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here.			\$2,270.00 *
5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	36 %	64 %	
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 817.20	\$1,452.80	

7. BASE CHILD SUPPORT AWARD: Bring down the amount in Line 6 for the Obligor Parent or enter the amount for the Low Income Table.	\$1,452.80
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8. Which parent is the obligor? () Mother (x) Father
9. Is the support award ordered the guideline amount in Line 7?
(x) Yes () No If NO, enter the amount ordered: \$ _____
10. What were the reasons stated by the Court for the deviation?
 () property settlement
 () excessive debts of the marriage
 () absence of need of the custodial parent
 () other: _____

Attorney Bar No. 0654 () Electronic filing (x) Manual filing
 *2,134 (6 children) + 136 = (7th child) until graduates in May 1997

ADDENDUM F

BLENDLED MONTHLY PAYMENTS

8%

AMORTIZATION IN YEARS

AMOUNT	25	26	29	30	35	40	45	50
18000	138.93	137.27	133.20	132.08	127.85	125.16	123.42	122.27
18500	142.79	141.09	136.89	135.75	131.40	128.64	126.85	125.67
19000	146.65	144.90	140.59	139.42	134.95	132.11	130.27	129.07
19500	150.51	148.71	144.29	143.09	138.51	135.59	133.70	132.46
20000	154.37	152.52	147.99	146.76	142.06	139.07	137.13	135.86
21000	162.09	160.15	155.39	154.10	149.16	146.02	143.99	142.65
22000	169.80	167.78	162.79	161.43	156.26	152.97	150.84	149.45
23000	177.52	175.40	170.19	168.77	163.37	159.93	157.70	156.24
24000	185.24	183.03	177.59	176.11	170.47	166.88	164.56	163.03
25000	192.96	190.65	184.99	183.45	177.57	173.83	171.41	169.82
26000	200.68	198.28	192.39	190.78	184.67	180.79	178.27	176.62
27000	208.40	205.91	199.79	198.12	191.78	187.74	185.12	183.41
28000	216.11	213.53	207.19	205.46	198.88	194.69	191.98	190.20
29000	223.83	221.16	214.59	212.80	205.98	201.65	198.84	196.99
30000	231.55	228.78	221.99	220.13	213.08	208.60	205.69	203.79
31000	239.27	236.41	229.39	227.47	220.19	215.55	212.55	210.58
32000	246.99	244.04	236.79	234.81	227.29	222.50	219.41	217.37
33000	254.70	251.66	244.19	242.15	234.39	229.46	226.26	224.17
34000	262.42	259.29	251.59	249.48	241.49	236.41	233.12	230.96
35000	270.14	266.91	258.99	256.82	248.60	243.36	239.97	237.75
36000	277.86	274.54	266.39	264.16	255.70	250.32	246.83	244.54
37000	285.58	282.17	273.78	271.50	262.80	257.27	253.69	251.34
38000	293.30	289.79	281.18	278.84	269.90	264.22	260.54	258.13
39000	301.01	297.42	288.58	286.17	277.01	271.18	267.40	264.92
40000	308.73	305.04	295.98	293.51	284.11	278.13	274.26	271.71
41000	316.45	312.67	303.38	300.85	291.21	285.08	281.11	278.51
42000	324.17	320.30	310.78	308.19	298.31	292.04	287.97	285.30
43000	331.89	327.92	318.18	315.52	305.42	298.99	294.82	292.09
44000	339.60	335.53	325.58	322.86	312.52	305.94	301.68	298.89
45000	347.32	343.17	332.98	330.20	319.62	312.90	308.54	305.68
46000	355.04	350.80	340.38	337.54	326.73	319.85	315.39	312.47
47000	362.76	358.43	347.78	344.87	333.83	326.80	322.25	319.26
48000	370.48	366.05	355.18	352.21	340.93	333.75	329.11	326.06
49000	378.19	373.68	362.58	359.55	348.03	340.71	335.96	332.85
50000	385.91	381.30	369.98	366.89	355.14	347.66	342.82	339.64
51000	424.50	419.43	406.98	403.58	390.65	382.43	377.10	373.61
52000	463.09	457.56	443.97	440.26	426.16	417.19	411.38	407.57
53000	501.69	495.69	480.97	476.95	461.67	451.96	445.66	441.53
54000	540.28	533.82	517.97	513.64	497.19	486.72	479.94	475.50
55000	578.87	571.95	556.96	550.33	532.70	521.49	514.22	509.46
56000	617.46	610.08	591.96	587.02	568.21	556.25	548.51	543.42
57000	656.05	648.21	628.96	623.70	603.73	591.02	582.79	577.39
58000	694.64	686.34	665.96	660.39	639.24	625.79	617.07	611.35
59000	733.23	724.47	702.95	697.08	674.75	660.55	651.35	645.32
60000	771.82	762.60	739.95	733.77	710.27	695.32	685.63	679.28