

1997

John Clinton Smith v. Maurine Smith : Brief of Appellee

Utah Court of Appeals

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Russell Minas; Attorney for Plaintiff/Appellant.

Shawn T. Farris; Christopherson, Thomas, White and Farris; Attorneys for Defendant/Appellee.

Recommended Citation

Brief of Appellee, *Smith v. Smith*, No. 970619 (Utah Court of Appeals, 1997).

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IN THE UTAH COURT OF APPEALS

JOHN CLINTON SMITH, Plaintiff/Appellant	APPEAL NO. 970619-CA
vs.	Civil No. 834904283 DA
MAURINE SMITH, nka MAURINE ADAMSON, Defendant/Appellee	

Utah R. App. P. 29 Argument Priority #15

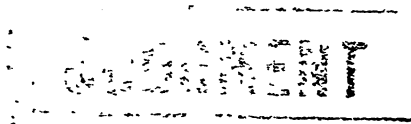
APPEAL FROM THE ORDER
OF THE THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, HONORABLE WILLIAM B. BOHLING

**ADDENDUM TO
BRIEF OF APPELLEE
MAURINE SMITH, nka MAURINE ADAMSON**

SHAWN T. FARRIS (7194)
Christopherson, Thomas, White & Farris, LLC
189 N Main Street
St. George UT 84770
(435) 634-1600
Attorneys for Defendant/Appellee

Russell Minas
261 East Broadway, Suite 300
Salt Lake City, UT 84111-2463
Attorney for Plaintiff/Appellant

PARKER O. LEACH
Attorney for Defendant
USB 1911
850 East 9400 South
Plaza 850, Suite 101
Sandy, Utah 84070
Telephone: 572-2424



RECEIVED 13 OFF OF
CLERK OF DISTRICT COURT

DEC 11 1984

By Bradwell Judge of Court
Clerk of Court

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

JOHN CLINTON SMITH,)	
Plaintiff,	)	DECREE OF DIVORCE
vs.)	
MAURINE SMITH,	)	Civil No. D83-4283
Defendant.	)	Bk 194 NO. 755 12-11-84-9:29am

This matter came on for trial before the Honorable David B. Dee, Third District Judge, at 4:00 p.m. on September 28, 1984. The plaintiff was present with his attorney Edward K. Brass. The defendant was present with her attorney, Parker O. Leach.

The parties resolved the majority of the issues by stipulation. Contested issues were presented to the Court for resolution on an agreed statement of facts. The Court, having entered its Findings of Fact and Conclusions of Law, now enters its Decree of Divorce.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED:

1. The plaintiff is awarded a Decree of Divorce dissolving his marriage to the defendant on the grounds of mental cruelty, the same to become final on entry.

2. The parties acquired certain real and personal property during the marriage which should be divided as follows:

a. The house, adjacent garage, and pump house at 1359 West 14600 South, Riverton, Utah are awarded to the defendant free of any claim by the plaintiff.

b. The defendant is awarded one (1) acre of land in addition to the above property running directly back from the rear of the house. The precise legal description is left for counsel for the parties to acquire. The defendant is awarded a proportionate share of the water rights now jointly owned by plaintiff and defendant.

c. All other real property and structures thereon are awarded to the plaintiff free of any claim by the defendant.

d. The plaintiff is to be given rent-free, unimpeded access to the garage mentioned in paragraph (a) for six months from the entry of the Decree, at which time its possession shall automatically revert to the defendant. Plaintiff shall be responsible for his pro-rated share of utilities during said period of access.

e. The defendant is awarded all of the contents of the house with the exception of the plaintiff's personal effects, belongings, and possessions which are awarded to him, including items such as all tools, horse equipment, and firearms, but not to include any furniture, furnishings, or houseware items.

f. The plaintiff is awarded all stock in ECMS Line Construction Inc., a Utah corporation, and all of the assets of that corporation. Any other stocks shall be equally divided between

the parties.

g. The defendant is awarded the two automobiles in her possession. The plaintiff shall pay the cost of repairing one of them. Defendant shall submit to plaintiff the estimate for repairs and said sum shall be paid defendant within fourteen (14) days after receipt by plaintiff.

h. The plaintiff is awarded all of the farm equipment.

i. The defendant is awarded one-half of the present value of the plaintiff's IBEW pension. This shall be paid to her when and if the plaintiff receives such benefits. She shall be that proportion of each payment that the plaintiff receives as her present share of the pension bears to the total accrued value on the date payments commence.

j. The plaintiff shall pay the defendant \$2,500.00 by July 31, 1985 and another \$2,500.00 by July 31, 1987, representing her "school lunch retirement money" borrowed earlier for business reasons.

k. The defendant is awarded 1/2 the cash value, if any, of the life insurance in effect on the life of the plaintiff.

3. By virtue of the stipulation between plaintiff and defendant, plaintiff shall be required to pay all marital obligations incurred prior to the parties' separation including all liens and mortgages against the real property awarded to the defendant, and the same is in lieu of any further payment to plaintiff for alimony.

4. As security for the marital obligations that plaintiff shall be required to pay the defendant shall have a trust deed or other security device against two (2) acres of land owned free and clear of any liens by the plaintiff in addition to plaintiff hypothecating to defendant all of his ownership interest in ECMS Line Construction Inc., a Utah corporation, with the express provision contained in said hypothecation agreement that plaintiff shall not transfer all or any part of the corporation's assets, other than in the ordinary course of business, without defendant's express approval. Said hypothecation agreement shall include such provisions that will protect defendant's interest in plaintiff's stock in order to carry-out the spirit and intent of the security interest being given to defendant by plaintiff in the specific assets acting as security.

5. The defendant is in need of assistance with the payment of her attorney's fees and the plaintiff shall be required to pay her or Parker O. Leach the sum of \$500.00 for that purpose. Said sum shall be paid forthwith upon entry of Decree.

6. The plaintiff shall pay the taxes and insurance on the home awarded to the defendant for a period of ten (10) years, subject, however, to a petition for modification if her circumstances at present materially change.

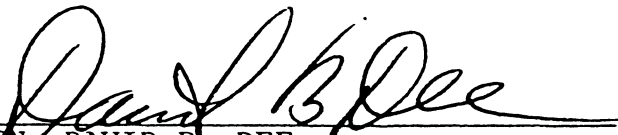
7. Each party is permanently restrained and enjoined from harassing or abusing the other.

8. The defendant contends that she is in need of varicose

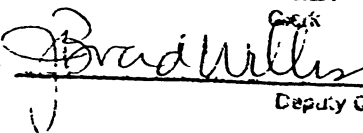
vein surgery and treatment for an hiatal hernia. The plaintiff shall be required to pay for each such surgery and/or treatment if it is a medical necessity. The court will rule on these issues after the defendant gives the plaintiff a medical release for the purpose of acquiring a statement from her doctor and her doctor provides written information regarding the surgery and/or treatment for each of the above-entitled ailments.

DATED this 10 day of ^{Dec.}~~November~~, 1984.

BY THE COURT:


HON. DAVID B. DEE
DISTRICT JUDGE

ATTEST
H. DIXON HINDLEY


By 
Deputy Clerk

Approved as to form:


EDWARD K. BRASS
Attorney for Plaintiff

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Decree of Divorce was mailed to Edward K. Brass, Attorney for Plaintiff, 321 South 600 East, Salt Lake City, Utah 84102, postage prepaid, this 30th day of November, 1984.



FILED
DISTRICT COURT
May 19 8 42 AM '94
FILED
BY *M. J. [Signature]*
CLERK

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

Judge Rokich

SS.

3. As a part of the divorce decree, the defendant was awarded, in paragraph 2(i) as follows:

"The defendant is awarded one-half of the present value of the plaintiff's IBEW pension. This shall be paid to her when and if the plaintiff receives such benefits. She shall be (entitled to) that proportion of each payment that the plaintiff receives as her present share of the pension bears to the total accrued value on the date payments commence."

4. That the defendant herein is not aware when and if the IBEW pension changed its name but has been informed that the present name of the appropriate pension is the National Electrical Benefit Fund and the Eighth District Electrical Pension Fund, or a combination thereof, and that is reasonable for the Court to grant an amended decree of divorce in order to allow the defendant access under the provisions of the Qualified Domestic Relations Order as contemplated by Section 206(d) of the Employees Income Retirement Security Act of 1974 (ERISA) as amended or pursuant to Section 29, United States Code 1056(d).

5. The affiant herein, the defendant in the above captioned matter, believes that it is reasonable for the Court to grant an amended decree of divorce in order to allow her access to the pension funds available to her as is granted by the divorce decree of December 10, 1984, and request the Court enter an amended Decree of Divorce pursuant to the Qualified Domestic Relations Order language so as to have access to the funds rightfully ordered by the Court in 1984.

6. The affiant herein represents to the Court that other than the claim for appropriate compensation through the National

Electrical Benefit Fund and//or the Eighth District Electrical Pension Fund, she has not otherwise received any funds from the alleged entity known as IBEW Pension, and that her only attempt in filing the motion for compensation and amended decree of divorce for QDRO benefits is pursuant to that provided by Section 2(i) of the decree of Divorce of December 10, 1984.

7. The affiant herein believes and represents to the Court that it is reasonable for the Court to permit an amendment to the decree of divorce of December 10, 1984, and that without an amended decree of divorce propounding appropriate QDRO language, she will not receive the funds that were contemplated at the time the parties entered into a Stipulation and Property Settlement Agreement which is a document precedent to the divorce decree entered on December 10, 1984.

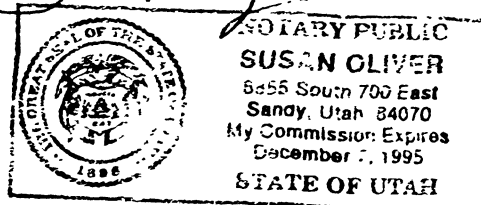
DATED this 17 day of May 1994.

Maurine Christenson
MAURINE CHRISTENSON, f/k/a
MAURINE SMITH

SUBSCRIBED AND SWORN to before me, a Notary Public, this 17 day of May 1994.

Maurine Christenson
Notary Public

Susan Oliver
Sandy Ut



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 17 day of ^{May}~~April~~, 1994, a true and correct copy of the foregoing document was duly served on the following parties by depositing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

John Clinton Smith
8915 South 1300 West
West Jordan, UT 84084

Edward K. Brass, Esq.
321 South 600 East
Salt Lake City, UT 84102

Maurine Christenson

MKCJA-E\C357-3AS.AFF

Mar 13 6 46 AM '94

57 Mitchell

one-half of the present value of the Plaintiff's IBEW pension with the withdrawal date available to her "shall be paid to her when and if the Plaintiff receives such benefits. She shall be entitled (sic) to that portion of each payment that the plaintiff receives as her present share of the pension bears (on December 10, 1984) to the total accrued value on the date payments commence."

3. On or about the 19th day of April 1989, the defendant gave notice that the judgment of divorce had been satisfied in full except that the plaintiff's obligation to convey one-half of his retirement account to the defendant had not then yet been completed.

4. The defendant herein received notice on October 28, 1993, that her divorce decree gave her a right to a portion of the plaintiff's IBEW pension benefit. This information was provided by National Electric Benefit Fund and the defendant has been subsequently notified by the Eighth District Electrical Pension Fund that a QDRO or a similar portion available to her under that pension fund must likewise be granted by the Court in the form of an amendment to the original decree of divorce. A copy of the October 28, 1993, letter from National Electrical Benefit Fund is attached hereto as Exhibit A and a copy of the November 15, 1993, of the Eighth District Electrical Pension Fund is attached at Exhibit B.

5. The defendant herein requests that the Court grant an Amended order to include (A) a qualified domestic relations order for the National Electrical Contractors Association Pension Benefit

Trust Fund, in part provided by Exhibit C, incorporated by reference, and (B) a Qualified Domestic Relation order for the Eighth District Electrical Pension Fund as shown on Exhibit D and incorporated herein by reference, so as to fulfill the requirements of Paragraph 2 (i) of the Court order of December 10, 1984, in order to allow the defendant access to the appropriate funds that are due her in a ratio equal to one-half of the amount available as of the date the divorce was entered on December 10, 1984, as compared to the amount available at the date that the participant, the plaintiff herein, was entitled either in lump sum preferred non-participating party's request) or on a monthly basis, the non-participating employee's secondary priority right, as determined by the National Electrical Benefit Fund and the Eight District Electrical Pension Fund and/or as their governing board shall determine.

8. The defendant herein believes that the plaintiff has no legitimate objection to the modification of the divorce decree as requested herein, but in any event, notice of the hearing shall be sent to John Clinton Smith at 8915 South 1300 West, West Jordan, Utah 84084, and his attorney of record, Edward K. Brass, Esq., 321 South 600 East, Salt Lake City, Utah 84102.

9. The motion is supported by the Affidavit of Maurine Christenson, f/k/a Maurine Smith, attached hereto and incorporated by reference.

WHEREFORE, Defendant prays that the Court:

1. Set a date and time for the hearing in reference to

Defendant's Request for Modification of Divorce Decree consistent with appropriate qualified Domestic Relations Order, Exhibits C and D, and requested by the National Electrical Benefit Fund and the Eighth District Electrical Pension Fund as effects that amount due or to become due John Clinton Smith.

2. The Defendant be entitled to an amended order qualifying, in all intents and purposes, with the qualified domestic relations order(s) as permitted pursuant to Section 206(d) of the Employee Income Retirement Security Act of 1974 (ERISA) as amended;

3. For such other and further relief as the Court deems just and equitable in the premises.

DATED this 24 day of April, 1994.

M. KENT CHRISTOPHERSON & ASSOCIATES

BY: 

M. Kent Christopherson

CERTIFICATE OF MAILING

I HEREBY **CERTIFY** that on the 17 day of ^{May}~~April~~, 1994, a true and correct copy of the foregoing document was duly served on the following party by depositing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

John Clinton Smith
8915 South 1300 West
West Jordan, Utah 84084

Edward K. Brass, Esq.
321 S 600 E
Salt Lake City, UT 84102

Maurine Christenson
PO Box 156
Riverton, UT 84065

Maurine Christenson

MKCJA-E\C357-3AS.DMA



NEBF

NATIONAL ELECTRICAL BENEFIT FUND



2400 RESEARCH BOULEVARD
SUITE 500
ROCKVILLE, MD 20850 3266
(301) 590-8580
FAX (301) 590-9689

John - 568-3635

Anthony J. Salamone
EXECUTIVE SECRETARY-TREASURER

October 28, 1993

Maurine Christenson
14528 South Camp Williams Rd.
Bluffdale, UT 84065

*Maurine Christenson
S.S.# 528-42-4652*

RE: John C. Smith
S.S.# 529-38-0632

Dear Mrs. Christenson:

We are in receipt of your letter dated October 20, 1993 with an enclosed copy of your divorce decree.

Please be advised that your divorce decree states that you have a right to a portion of Mr. Smith's IBEW pension benefit. The order does not name the NEBF. IBEW and the NEBF are two entirely separate and distinct funds with different rules regarding eligibility, amount of benefits, etc. IBEW pension is based upon years of Union membership and the payment of dues goes towards a benefit from that plan, whereas, NEBF pension is based upon years of employment with employers who are obligated to contribute to this fund on behalf of their eligible employees.

Beginning January 1, 1985, a federal law provides that in the event of divorce, a former spouse may have a right to receive some portion of a participant's retirement benefits directly from the Fund. In connection with a divorce or property settlement agreement, a court may direct that a portion of the retirement benefit be paid to the former spouse. The Fund will recognize such a court order and make direct payments to the former spouse, only if it is a "qualified domestic relations order" ("QDRO") as required by federal law. The Fund has written procedures for notifying the participant of the receipt of a court order affecting the benefits and for determining if the court order is a "QDRO".

We are forwarding a copy of the Summary Plan Description for your file and information. We are also forwarding a copy of our Qualified Domestic Relations Order Procedures with the request that your attorney forward a copy of any proposed Order to this office prior to submission of same to Court.

It expedites these matters if you will advise us of the name and address of opposing counsel so that the information may be coordinated.

With best wishes.

Sincerely,

ADD-000015

Anthony J. Salamone
Anthony J. Salamone
Executive Secretary-Treasurer

EXHIBIT A



**EIGHTH DISTRICT
ELECTRICAL PENSION FUND**

Administrative Office

7535 E. HAMPDEN, SUITE 500
DENVER, COLORADO 80231
(303) 745-1539 (800) 858-1876



November 15, 1993



*Send A.D.R.O.
in this*

Maurine Christenson
14528 S. Camp Williams Road
Bluffdale, UT 84065

Dear Ms. Christenson:

The Eighth District Electrical Pension Fund is a Taft-Hartley Fund under the **Labor Management Relations Act** and its pension plan is a multiemployer Fund under the **Employee Retirement Income Security Act of 1974**.

Pursuant to Section 403(c) ERISA (29 USC 1103 and Sec. 302(c)(5) of the Labor Management Relations Act (29 USC 186(c)(5)), the assets of the Fund are held for the exclusive purpose of providing pension benefits to participants of the pension plan and to defray reasonable expenses of administration.

A participant has no interest in the assets of the Fund except through actual pension benefits paid when and if the participant qualifies for such benefits. A participant does not make contributions to the Fund and no individual account is maintained for a participant.

Generally, a participant who has accumulated at least 10 years of credited service without a permanent break in service has a nonforfeitable right to accrued pension benefits. Pension benefits are not payable if the participant dies (except in the case of a survivor annuity) and are subject to suspension for such period as the participant is employed subsequent to payment of such benefits in covered employment within the Eighth District Electrical Pension Fund.

Neither, the Fund nor any of its assets are liable for the debts of a participant nor subject to attachment, execution or process of any court, action or proceedings. Benefits under the pension plan may not be assigned or alienated except pursuant to a Qualified Domestic Relations Order. (29 USC 1056(d).

The above description of the pension plan and the rights and benefits of a participant thereunder do not purport to be definitive or comprehensive and are qualified in their entireties by reference to the Rules and Regulations of the Eighth District Electrical Pension Fund.

Very truly yours,

Nelda G. Younger
Pension Manager

ADD-000016

NGY:dk

0000000000

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION
PENSION BENEFIT TRUST FUND
NEBF

This portion of this Order is designed to be a Qualified Domestic Relations Order as contemplated by Section 206(d) of the Employee Income Retirement Security Act of 1974 (ERISA) as amended.

The name and social security number of the participant is John Clinton Smith, 529-38-0632, whose last known mailing address is 8915 South 1300 West, West Jordan, UT 84084. The name, mailing address and social security number of the alternate payee covered by this order is Maurine Christenson, f/k/a Maurine Smith, 528-42-4652, P. O. Box 156, Riverton, UT 84065.

As of the date the participant starts receiving monthly pension benefits from the National Electrical Contractors Association Pension Benefit Trust Fund ("NEBF") the alternate payee shall be entitled to receive one-half per month. The payments to the alternate payee shall continue as long as benefits are paid to the participant, equal to one-half the value of the pension fund as of December 10, 1984. Payments to the alternate payee shall cease upon the date of the death of the alternate payee or the date of the death of the participant, whichever date shall occur first. If the alternate payee predeceases the participant, the participant shall commence receiving the monthly benefits previously paid to the alternate payee.

Benefits being paid to an alternate payee hereunder shall not be suspended if the participant returns to such employment so as to

cause his benefits to be suspended. However, if the participant re-retires with additional years of credited service, the alternate payee's benefits shall not be increased as a result of those additional years of credited service.

This Order does not require NEBF to provide any types or form of benefit or any option not otherwise provided under the Plan, nor does it require the Plan to provide increased benefits. This Order does not require the payment of benefits to any alternate payee which are required to be paid to another alternate payee under another Order previously determined to be a Qualified Domestic Relations Order.

In the event the alternate payee remarries the participant, or marries another individual, the payments to the alternate payee provided above shall continue to be paid.

The alternate payee authorizes NEBF to recover any overpayments made to her because of her failure to notify NEBF of a change of circumstance which affects her entitlement. This section shall be binding upon the alternate payee and her heirs and/or estate.

EXHIBIT C

MKCJA-ENC357-3AS.EXC

ADD-000018

EIGHTH DISTRICT ELECTRICAL PENSION FUND

This portion of this Order is designed to be a Qualified Domestic Relations Order as contemplated by Section 206(d) of the Employee Income Retirement Security Act of 1974 (ERISA) as amended.

The name and social security number of the participant is John Clinton Smith, 529-38-0632, whose last known mailing address is 8915 South 1300 West, West Jordan, UT 84084. The name, mailing address and social security number of the alternate payee covered by this order is Maurine Christenson, f/k/a Maurine Smith, 528-42-4652, P. O. Box 156, Riverton, UT 84065.

As of the date the participant starts receiving monthly pension benefits from the Eighth District Electrical Pension Fund the alternate payee shall be entitled to receive one-half per month. The payments to the alternate payee shall continue as long as benefits are paid to the participant, equal to one-half the value of the pension fund as of December 10, 1984. Payments to the alternate payee shall cease upon the date of the death of the alternate payee or the date of the death of the participant, whichever date shall occur first. If the alternate payee predeceases the participant, the participant shall commence receiving the monthly benefits previously paid to the alternate payee.

Benefits being paid to an alternate payee hereunder shall not be suspended if the participant returns to such employment so

EXHIBIT D

ADD-000019

as to cause his benefits to be suspended. However, if the participant re-retires with additional years of credited service, the alternate payee's benefits shall not be increased as a result of those additional years of credited service.

This Order does not require NEBF to provide any types or form of benefit or any option not otherwise provided under the Plan, nor does it require the Plan to provide increased benefits. This Order does not require the payment of benefits to any alternate payee which are required to be paid to another alternate payee under another Order previously determined to be a Qualified Domestic Relations Order.

In the event the alternate payee remarries the participant, or marries another individual, the payments to the alternate payee provided above shall continue to be paid.

The alternate payee authorizes NEBF to recover any overpayments made to her because of her failure to notify NEBF of a change of circumstance which affects her entitlement. This section shall be binding upon the alternate payee and her heirs and/or estate.

EXHIBIT D

MKCJA-E\C357-3AS.EXD

ADD-000020

M. KENT CHRISTOPHERSON, #A0657
M. KENT CHRISTOPHERSON & ASSOCIATES
750 West Ridgeview Drive, Suite 102
P. O. Box 2408
St. George, UT 84771-2408
Telephone: (801) 628-8878
Fax: (801) 628-9323

Attorney for Defendant

FILED
DISTRICT COURT
JUN 1 8 23 AM '94
BY *[Signature]*
CLERK

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

JOHN CLINTON SMITH,	)	DEFENDANT'S EX PARTE MOTION FOR
Plaintiff,	)	ORDER TO SHOW CAUSE
vs.)	
MAURINE CHRISTENSON, f/k/a	)	Civil No. D83-4283
MAURINE SMITH,)	
Defendant.)	

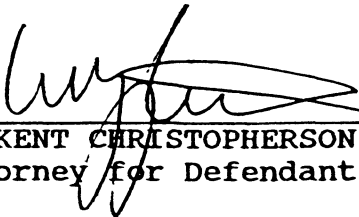
Defendant, Maurine Christenson, formerly known as Maurine Smith, by and through her attorney of record, M. Kent Christopherson, hereby motions the Court, ex parte, for an Order to Show Cause requiring the Plaintiff to appear before Commissioner Judith S. H. Atherton, on Wednesday, the 6th day of July, 1994, at 2:00 o'clock P.M., and then and there show cause why the Defendant's Motion to Amend Divorce Decree for inclusion of Qualified Domestic Relations Order language should not be adopted, in order to clarify the Divorce Decree granted the parties on the 10th day of December, 1984.

This Motion is supported by the Affidavit of the Defendant, Maurine Christenson, formerly known as Maurine Smith, and

Defendant's Motion to Amend Divorce Decree filed with the Court on
May 19, 1994.

DATED this 27 day of May, 1994.

M. KENT CHRISTOPHERSON & ASSOCIATES

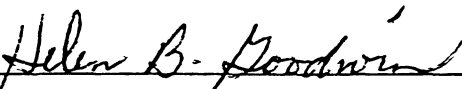
By 
M. KENT CHRISTOPHERSON
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 27 day of May,
1994, a true and correct copy of the foregoing document was duly
served by depositing a copy of same in the U. S. Mail, postage
prepaid, addressed as follows:

JOHN CLINTON SMITH
8915 South 1300 West
West Jordan, Utah 84084

EDWARD K. BRASS, ESQ.
321 South 600 East
Salt Lake City, Utah 84102



M. KENT CHRISTOPHERSON, #A0657
M. KENT CHRISTOPHERSON & ASSOCIATES
750 West Ridge View Drive, Suite 102
P. O. Box 2408
St. George, UT 84771-2408
Telephone: (801) 628-8878
Fax: (801) 628-9323

Attorney for Defendant

FILED
MOTION FOR ENTRY OF AMENDED
DECREE OF DIVORCE
SEP 10 1994
CLERK OF DISTRICT COURT
SALT LAKE COUNTY, UTAH
[Signature]

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

JOHN CLINTON SMITH,)	
)	
Plaintiff,	)	MOTION FOR ENTRY OF AMENDED
	)	DECREE OF DIVORCE
VS.)	
)	
MAURINE CHRISTENSON, f/k/a	)	Civil No. D83-4283
MAURINE SMITH,)	
)	
Defendant,	)	<i>Rebeck</i>

The Defendant's Ex Parte Motion for Order to Show Cause, originally calendared for July 6, 1994 before Commissioner Judith S. H. Atherton, was continued and re-set for hearing on September 7, 1994, at 2:00 P.M., before Commissioner Judith S. H. Atherton.

The Plaintiff and the Defendant have agreed to an Amended Decree of Divorce, wherein in lieu of direct pension benefits, the Plaintiff will remit to the Defendant the sum of \$178.00 per month as is outlined on a copy of the Stipulation to be filed on or before September 7, 1994 with the Court.

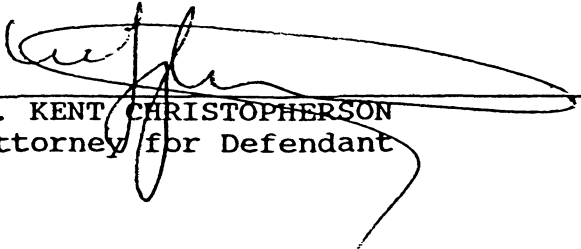
Accordingly, the Defendant requests a short hearing for the purposes only of having the Amended Decree of Divorce entered in lieu of the Order to Show Cause.

This Motion is based upon the Stipulation and the proposed Decree, copies of which are attached hereto as Exhibits "A" and "B" respectively.

DATED this 22 day of August, 1994.

M. KENT CHRISTOPHERSON & ASSOCIATES

By


M. KENT CHRISTOPHERSON
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 22nd day of AUGUST, 1994, a true and correct copy of the foregoing document was duly served by depositing a copy of same in the U. S. Mail, postage prepaid, addressed as follows:

JOHN CLINTON SMITH
8915 South 1300 West
West Jordan, Utah 84084



THIRD JURY OF THE DISTRICT
SALT LAKE COUNTY
BY [Signature]
DEPUTY CLERK

Attorney for Defendant

JOHN CLINTON SMITH,
Plaintiff,
vs.
MAURINE ADAMSON, f/k/a.
MAURINE SMITH,
Defendant.

DEFENDANT'S EX PARTE MOTION FOR
ORDER TO SHOW CAUSE

Civil No. D83-4283
With a Senior Judge
Bohling

(1) Defendant's Motion to Amend Divorce Decree for Inclusion of Qualified Domestic Relations Order Language should not be adopted, in order to clarify the Divorce Decree granted the parties on the 10th day of December, 1984;

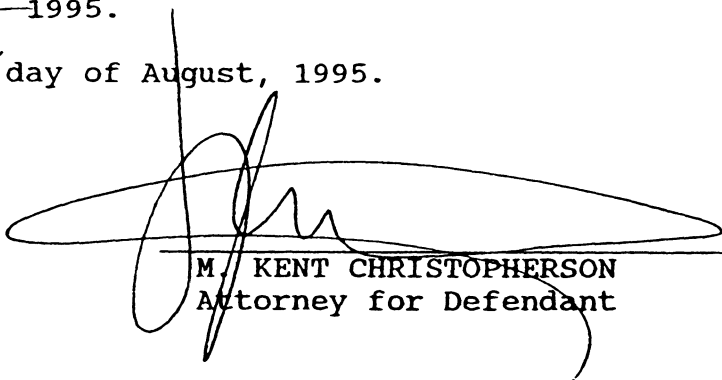
(2) A judgment should not be entered against the Plaintiff for the amounts which Defendant should have been paid by the Plaintiff as her fifty percent (50%) interest in the retirement and pension benefits which has received Plaintiff but has not remitted to the Defendant;

(3) A judgment should not be entered against the Plaintiff for the statutory interest on the judgment described and set forth above in (2);

(4) A judgment should not be entered against the Plaintiff for attorneys' fees and costs incurred in connection with the motion to amend the decree and order to show cause.

This Motion is supported by the Affidavit of the Defendant, Maurine Adamson, f.k.a. Maurine Smith, and Defendant's Motion to Amend Divorce Decree for Inclusion of QDRO Language filed with the Court on 12 of August, 1995.

DATED this 12 day of August, 1995.



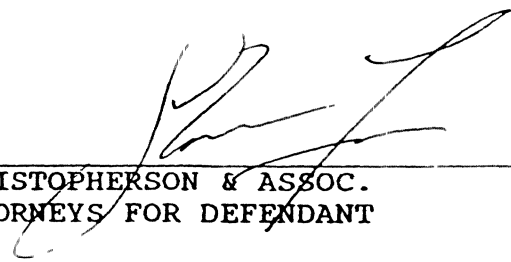
M. KENT CHRISTOPHERSON
Attorney for Defendant

stf\christnsn.ots

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15th day of August, 1995, a true and correct copy of DEFENDANT'S EX-PARTE MOTION FOR ORDER TO SHOW CAUSE was duly served by depositing a copy of same in the U. S. Mail, postage prepaid, addressed as follows:

JOHN CLINTON SMITH
8915 South 1300 West
West Jordan, Utah 84084



CHRISTOPHERSON & ASSOC.
ATTORNEYS FOR DEFENDANT

FILED DISTRICT COURT
Third Judicial District
AUG 07 1995
By [Signature]
Clerk

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

Bohlin

SS.

ADD-000028

3. As a part of the divorce decree, the defendant was awarded, in paragraph 2(i) as follows:

"The defendant is awarded one-half of the present value of the plaintiff's IBEW pension. This shall be paid to her when and if the plaintiff receives such benefits. She shall be (entitled to) that proportion of each payment that the plaintiff receives as her present share of the pension bears to the total accrued value on the date payments commence."

4. That the defendant herein is not aware when and if the IBEW pension changed its name but has been informed that the present name of the appropriate pension is the National Electrical Benefit Fund and the Eighth District Electrical Pension Fund, or a combination thereof, and that is reasonable for the Court to grant an amended decree of divorce in order to allow the defendant access under the provisions of the Qualified Domestic Relations Order as contemplated by Section 206(d) of the Employees Income Retirement Security Act of 1974 (ERISA) as amended or pursuant to Section 29, United States Code 1056(d).

5. The affiant herein, the defendant in the above captioned matter, believes that it is reasonable for the Court to grant an amended decree of divorce in order to allow her access to the pension funds available to her as is granted by the divorce decree of December 10, 1984, and request the Court enter an amended Decree of Divorce pursuant to the Qualified Domestic Relations Order language so as to have access to the funds rightfully ordered by the Court in 1984.

6. The affiant herein represents to the Court that other than the claim for appropriate compensation through the National Electrical Benefit Fund and/or the Eighth District Electrical Pension Fund, she has not otherwise received any funds from the alleged entity known as IBEW Pension, and that her only attempt in filing the motion for compensation and amended decree of divorce for QDRO benefits is pursuant to that provided by Section 2(i) of the decree of Divorce of December 10, 1984.

7. The affiant herein believes and represents to the Court that it is reasonable for the Court to permit an amendment to the decree of divorce of December 10, 1984, and that without an amended decree of divorce propounding appropriate QDRO language, she will not receive the funds that were contemplated at the time the parties entered into a Stipulation and Property Settlement Agreement which is a document precedent to the divorce decree entered on December 10, 1984.

8. Plaintiff is required under the existing divorce decree to pay me one-half the value of the retirement and pension benefits (as of the date of divorce). Plaintiff has received benefits from at least one of the two pension funds. (See, copy of check from Eighth District Pension Fund dated November 1, 1994).

9. Plaintiff sent me the check he received from the Eighth District Pension Fund for the period of 11/01/94 to 11/30/94 in the amount of \$315.50. (Id.).

10. Plaintiff has not sent me any other monies, that I am entitled to receive, which he has received from the pension and

retirement funds.

11. I believe that I am entitled to the following:

(1) To have Defendant's Motion to Amend Divorce Decree for Inclusion of Qualified Domestic Relations Order Language adopted in order to clarify the Divorce Decree granted the parties on the 10th day of December, 1984.

(2) To have a judgment entered against the Plaintiff for the amounts which I should have been paid by the Defendant as my fifty percent (50%) interest in the retirement and pension benefits which he has received but which he has not remitted to me.

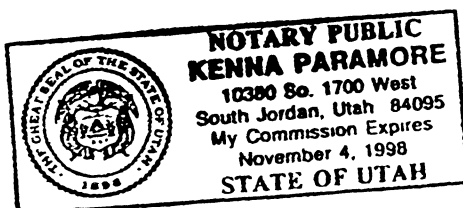
(3) To have a judgment entered against the Plaintiff for the statutory interest on the judgment described and set forth above in (2).

(4) To be awarded attorneys' fees and costs incurred in connection with the motion to amend the decree and order to show cause.

DATED this 11th day of ~~May~~, 1995.
July

Maurine Adamson
MAURINE CHRISTENSON, f/k/a
MAURINE SMITH

SUBSCRIBED AND SWORN to before me, a Notary Public, this
11th day of ~~May~~, 1995.
July

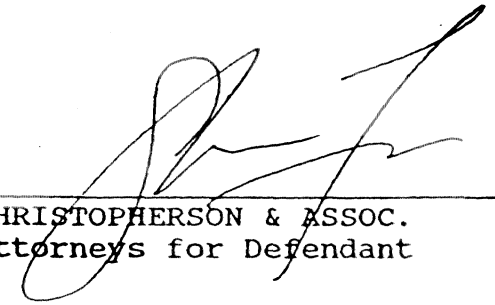


Kenna Paramore
Notary Public

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18th day of August, 1995, a true and correct copy of the AFFIDAVIT OF DEFENDANT IN SUPPORT OF MOTION TO AMEND DIVORCE DECREE FOR INCLUSION OF QDRO LANGUAGE AND FOR JUDGMENTS AGAINST PLAINTIFF FOR ARREARAGES AND INTEREST was duly served on the following party by depositing a copy of same in the U.S. mail, postage prepaid, first class mails, addressed as follows:

John Clinton Smith
8915 South 1300 West
West Jordan, UT 84084



CHRISTOPHERSON & ASSOC.
Attorneys for Defendant

stf\christnsn.aff

AUG 07 1995

By [Signature] Deputy Clerk

Attorney for Defendant

JOHN CLINTON SMITH,

Plaintiff,

VS.

MAURINE ADAMSON, f/k/a
MAURINE SMITH,

Defendant,

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO AMEND
DIVORCE DECREE FOR INCLUSION
OF ODRO LANGUAGE

Civil No. D83-4283

With a Senior Judge

Bohling

ADD-000033

FACTS

1. The Defendant herein was granted a decree of divorce from the Plaintiff, John Clinton Smith, on the 10th day of December 1984.

2. Paragraph 2(i) of the divorce decree provides:

i. The defendant is awarded one-half of the present value of the plaintiff's IBEW pension. This shall be paid to her when and if the plaintiff receives such benefits. She shall be [entitled] to that portion of each payment that the plaintiff receives as her present share of the pension bears to the total accrued value on the date payments commence.

3. On or about the 19th day of April 1989, the defendant gave notice that the judgment of divorce had been satisfied in full except that the plaintiff's obligation to convey one-half of his retirement account to the defendant had not then yet been completed.

4. The defendant herein received notice on October 28, 1993, that her divorce decree gave her a right to a portion of the plaintiff's IBEW pension benefit. This information was provided by National Electric Benefit Fund and the defendant has been subsequently notified by the Eighth District Electrical Pension Fund that a QDRO must be granted by the Court in the form of an amendment to the original decree of divorce. (See, copy of the October 28, 1993, letter from National Electrical Benefit Fund and copy of the November 15, 1993 from the Eighth District Electrical

Pension Fund which are attached hereto as Exhibits A & B respectively).

5. During the summer months of 1994, Defendant attempted to enter into a stipulation with the Plaintiff whereby the Defendant would receive a sum certain directly from the Plaintiff in lieu of pension division as outlined in the divorce decree thereby foregoing the entry of qualified domestic relations orders.

6. As of the date of this memorandum, the Plaintiff has declined to enter into the stipulation with the Defendant described in paragraph 5 above. Therefore, the Defendant has opted to pursue the entry of the appropriate qualified domestic relations orders.

7. The defendant herein requests that the Court grant an Amended order to include (A) a qualified domestic relations order for the National Electrical Contractors Association Pension Benefit Trust Fund, and (B) a Qualified Domestic Relation order for the Eighth District Electrical Pension Fund so as to fulfill the requirements of Paragraph 2 (i) of the Court order of December 10, 1984 (divorce decree), in order to allow the defendant access to the appropriate funds that are due her in a ratio equal to one-half of the amount available as of the date the divorce was entered on December 10, 1984, as compared to the amount available at the date that the participant, the plaintiff herein, was entitled either in lump sum preferred non-participating party's request or on a

monthly basis, the non-participating employee's secondary priority right, as determined by the National Electrical Benefit Fund and the Eight District Electrical Pension Fund and/or as their governing board shall determine.

8. The defendant herein believes that the plaintiff has no legitimate objection to the modification of the divorce decree as requested herein, but in any event, notice of the hearing shall be sent to John Clinton Smith at 8915 South 1300 West, West Jordan, Utah 84084. His attorney of record, Mr. Edward K. Brass, Esq., 321 South 600 East, Salt Lake City, Utah 84102 has previously withdrawn as counsel and it is the understanding that Mr. Smith (plaintiff) has not retained other counsel. (See, copy of Mr. Brass' withdrawal of counsel is hereto attached).

9. The motion is supported by the Affidavit of Maurine Christenson, f.k.a Maurine Smith, attached hereto and incorporated by reference.

WHEREFORE, Defendant prays that the Court:

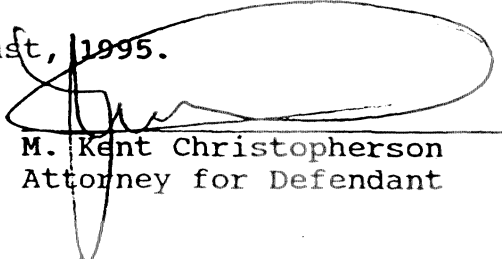
1. Set a date and time for the hearing in reference to Defendant's Request for Modification of Divorce Decree consistent with appropriate qualified Domestic Relations Orders and requested by the National Electrical Benefit Fund and the Eighth District Electrical Pension Fund as effects that amount due, or to become

due, John Clinton Smith.

2. The Defendant be entitled to an amended order qualifying, in all intents and purposes, with the qualified domestic relations orders as permitted pursuant to Section 206(d) of the Employee Income Retirement Security Act of 1974 (ERISA) as amended;

3. For such other and further relief as the Court deems just and equitable in the premises.

DATED this 17th day of August, 1995.


M. Kent Christopherson
Attorney for Defendant

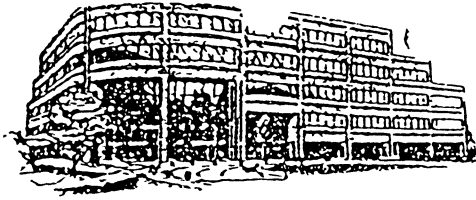
stf\christnsn.mm

MAILING CERTIFICATE

I hereby certify that on the ___ day of August, 1995 a true and correct copy of MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO AMEND DIVORCE DECREE FOR INCLUSION OF QDRO LANGUAGE was served upon the following party by depositing the same in U.S. Mails, postage prepaid, first class, addressed as follows:

JOHN SMITH
8915 South 1300 West
West Jordan, Utah 84084

CHRISTOPHERSON & ASSOC.



NEBF

NATIONAL ELECTRICAL BENEFIT FUND



2400 RESEARCH BOULEVARD
SUITE 500
ROCKVILLE, MD 20850 3266
(301) 590-8580
FAX (301) 590 9689

Anthony J. Salamone
EXECUTIVE SECRETARY-TREASURER

October 28, 1993

Maurine Christenson
14528 South Camp Williams Rd.
Bluffdale, UT 84065

RE: John C. Smith
S.S.# 529-38-0632

Dear Mrs. Christenson:

We are in receipt of your letter dated October 20, 1993 with an enclosed copy of your divorce decree.

Please be advised that your divorce decree states that you have a right to a portion of Mr. Smith's IBEW pension benefit. The order does not name the NEBF. IBEW and the NEBF are two entirely separate and distinct funds with different rules regarding eligibility, amount of benefits, etc. IBEW pension is based upon years of Union membership and the payment of dues goes towards a benefit from that plan, whereas, NEBF pension is based upon years of employment with employers who are obligated to contribute to this fund on behalf of their eligible employees.

Beginning January 1, 1985, a federal law provides that in the event of divorce, a former spouse may have a right to receive some portion of a participant's retirement benefits directly from the Fund. In connection with a divorce or property settlement agreement, a court may direct that a portion of the retirement benefit be paid to the former spouse. The Fund will recognize such a court order and make direct payments to the former spouse, only if it is a "qualified domestic relations order" ("QDRO") as required by federal law. The Fund has written procedures for notifying the participant of the receipt of a court order affecting the benefits and for determining if the court order is a "QDRO".

We are forwarding a copy of the Summary Plan Description for your file and information. We are also forwarding a copy of our Qualified Domestic Relations Order Procedures with the request that your attorney forward a copy of any proposed Order to this office prior to submission of same to Court.

It expedites these matters if you will advise us of the name and address of opposing counsel so that the information may be coordinated.

With best wishes.

Sincerely,

ADD-000038

Anthony J. Salamone

0000000000

Executive Secretary-Treasurer



**EIGHTH DISTRICT
ELECTRICAL PENSION FUND**

Administrative Office

7535 E. HAMPDEN, SUITE 500
DENVER, COLORADO 80231
(303) 745-1539 (800) 858-1876



November 15, 1993

Maurine Christenson
14528 S. Camp Williams Road
Bluffdale, UT 84065

Dear Ms. Christenson:

The Eighth District Electrical Pension Fund is a **Taft-Hartley** Fund under the Labor Management Relations Act and its pension plan is a multiemployer Fund under the Employee Retirement Income Security Act of 1974.

Pursuant to Section 403(c) ERISA (29 USC 1103 and Sec. 302(c)(5) of the Labor Management Relations Act (29 USC 186(c)(5)), the assets of the Fund are held for the exclusive purpose of providing pension benefits to participants of the pension plan and to defray reasonable expenses of administration.

A participant has no interest in the assets of the Fund except through actual pension benefits paid when and if the participant qualifies for such benefits. A participant does not make contributions to the Fund and no individual account is maintained for a participant.

Generally, a participant who has accumulated at least 10 years of credited service without a permanent break in service has a nonforfeitable right to accrued pension benefits. Pension benefits are not payable if the participant dies (except in the case of a survivor annuity) and are subject to suspension for such period as the participant is employed subsequent to payment of such benefits in covered employment within the Eighth District Electrical Pension Fund.

Neither, the Fund nor any of its assets are liable for the debts of a participant nor subject to attachment, execution or process of any court, action or proceedings. Benefits under the pension plan may not be assigned or alienated except pursuant to a Qualified Domestic Relations Order. (29 USC 1056(d).

The above description of the pension plan and the rights and benefits of a participant thereunder do not purport to be definitive or comprehensive and are qualified in their entireties by reference to the Rules and Regulations of the Eighth District Electrical Pension Fund.

Very truly yours,

Nelda G. Younger
Pension Manager

ADD-000039


EDWARD K. BRASS, (#432)
321 South 600 East
Salt Lake City, Utah 84102
Telephone: (801) 322-5678

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

JOHN CLINTON SMITH,)	
)	
Plaintiff,	)	WITHDRAWAL OF COUNSEL
)	
vs.)	
)	
MAURINE SMITH (CHRISTENSON),	)	Civil No. D83-4283
)	
Defendant.)	

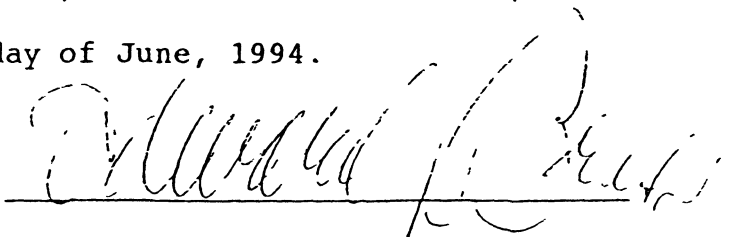
EDWARD K. BRASS hereby withdraws as the attorney for the plaintiff.

Dated this 1 day of June, 1994.


EDWARD K. BRASS

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Withdrawal of Counsel was mailed, postage prepaid, to M. Kent Christopherson, 750 West Ridgeview Drive #102, St. George, Utah 84771-2408 and John C. Smith, 8915 South 1300 West, West Jordan, Utah 84084, this 1 day of June, 1994.



FILED DISTRICT COURT
Third Judicial District
AUG 07 1995
By S. A. [Signature]
Deputy Clerk

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

Bohling

ADD-000041

on the 10th of December, 1984.

DATED the 1 day of August, 1995.



M. KENT CHRISTOPHERSON
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the _____ day of May, 1995, a true and correct copy of DEFENDANT'S MOTION TO AMEND DIVORCE DECREE FOR INCLUSIONS OF QDRO LANGUAGE was duly served on the following party by depositing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

John Clinton Smith
8915 South 1300 West
West Jordan, Utah 84084

CHRISTOPHERSON & ASSOC.
ATTORNEYS FOR DEFENDANT

FILED BY COURT
Third Judicial District

AUG 20 1997

J. J. Jundt

Shawn T. Farris, #7194
CHRISTOPHERSON, THOMAS, WHITE & FARRIS, LLC
189 N. Main Street
P. O. Box 2408
St. George, UT 84771-2408
Telephone: (801) 634-1600
Fax: (801) 628-9323

JUDGEMENT

Attorneys for Defendant

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

<p>JOHN CLINTON SMITH,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MAURINE ADAMSON, f/k/a MAURINE SMITH,</p> <p>Defendant.</p>	<p>1940755</p> <p>FINDINGS AND ORDER</p> <p>Civil No. 834904283</p> <p>Honorable William B. Bohling</p>
--	---

On the 4th of June, 1997, the above-entitled matter came before this Court for an evidentiary hearing before the Honorable William B. Bohling, with Plaintiff present in person with his counsel, Russell Minas, and with Defendant present in person with her counsel, Shawn T. Farris. Having heard arguments of counsel and reviewed the record and evidence presented, this Court hereby makes the following findings and orders as follows:

1. At the time of the Decree, Plaintiff made no distinction among the three different retirement plans of which all three appear to be based upon Plaintiff's affiliation and membership

with International Brotherhood of Electrical Workers Local Union No. 57 (hereafter sometimes referred to as “IBEW”).

2. This Court does not specifically find that the Plaintiff was misleading; however, this Court does find that the term “IBEW” as used by the parties and incorporated in the Decree of Divorce represented all retirement plans in which the Plaintiff participated during the course of the parties’ marriage.

3. Neither the Plaintiff nor the Defendant made any clear distinction among the retirement plans but instead the parties looked at IBEW, NEBF and Eighth District Electrical Pension Fund as a single benefit under the general term of “IBEW”, to be divided equally between the parties pursuant to paragraph 2(i) of the Decree of Divorce.

4. There are no written disclosures in the record to the contrary that the parties viewed the retirement plans as divisible plans and did not intend the term “IBEW” to encompass all retirement plans in which the Plaintiff participated during the course of the marriage.

5. That all three retirement plans (NEBF (“National Electrical Benefit Fund”), Eighth District Electrical Pension Fund, and IBEW) resulted from Plaintiff’s membership and relationship with IBEW Local Unit No. 57 which conforms to the testimonies of both the Plaintiff and Defendant.

6. That there is no indication in the Decree that Plaintiff was to enjoy all benefits of the retirement benefits and the Decree and testimonies of the parties support the conclusion that the parties did not intend to differentiate between the retirement plans.

7. That there is no evidence that the Defendant received a disproportionate interest in the division of marital properties in exchange for Plaintiff receiving one-hundred percent of the retirement benefits payable through the NEBF plan and Eighth District Electrical Pension Fund plan.

BASED UPON THE FOREGOING IT IS HEREBY ORDERED THAT:

(1) The term "IBEW" in paragraph 2(i) of the Decree of Divorce references and applies to all three (3) retirement benefit plans; IBEW, NEBF and Eighth District Electrical Pension Fund;

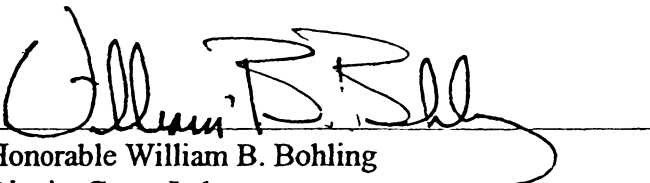
(2) That Defendant is entitled to a money judgment against the Plaintiff in the amount representing one-half (½) of the retirement benefits which Plaintiff has already received plus statutory interest;

(3) That Qualified Domestic Relations Orders should be entered to secure the Defendant's interest of one-half of all gross retirement benefits of the Plaintiff; and,

(4) That each party should bear their own attorney's fees and costs expended by this post-decree litigation.

DATED this 20 day of August, 1997.

BY THE COURT:


Honorable William B. Bohling
District Court Judge

ADD-000045

CERTIFICATE OF MAILING

On this 17 day of February, 1997, I
deposited in the United States Mail, postage prepaid, a true and
correct copy of the foregoing Notice of Appeal to the following:

Shawn T. Farris # 71044
Attorney for Defendant
189 N. Main Street
P.O. Box 2408
St. George, UT 84771-2408

[Signature]

I CERTIFY THAT THIS IS A TRUE COPY OF AN
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY, STATE
OF UTAH.

DATE

