

2008

Julie Ann Mckenzie Fairbanks v. Peter Nathan Fairbanks : Brief of Appellant

Utah Court of Appeals

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Peter N. Fairbanks; pro se.

Kristin B. Gerdy, Ron D. Wilkinson; Heritage Law Offices; counsel for appellee.

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Peter N. Fairbanks. pro se
2109 127th DR. NE
Lake Stevens, WA 98258

In the Utah State Court of Appeals

**JULIE ANN MCKENZIE
FAIRBANKS,**

Petitioner, Appellee

vs.

PETER NATHAN FAIRBANKS,

Respondent, Appellant

BRIEF OF APPELLANT

Court of Appeals Case No:

20080774

Appeal from the 4th District Court
In and for Utah County, State of Utah

Judge Samuel D. McVey
Civil Case No. 054400186

No Oral Argument Requested

COMES NOW BEFORE THE UTAH STATE COURT OF APPEALS the
appellant, Peter N. Fairbanks pro se, presenting the following brief requesting correction
to Decree of Divorce, filed August 12, 2008 in the Utah 4th District Court and to
associated Findings of Facts and Conclusions of Law.

May the court find arguments presented herein compliant with appellate
procedures and legal prudence.

**FILED
UTAH APPELLATE COURTS**

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Listing of Parties

Appellant pro se

Peter N. Fairbanks, herein referred to as Husband
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Lake Stevens, Washington, 98258

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Appellee

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DESERTION, MALICIOUS: *The act of a husband or wife, in leaving a consort, without just cause, for the purpose of causing a perpetual separation. Vide Abandonment, malicious. Abandonment, malicious....* 7, 32

Lawyers.com

DOCTRINE OF INVITED ERROR: *“the appellate court will not permit a litigant to take advantage of an error that was invited or induced by that litigant. For example, a party may not request a jury instruction and then later complain on appeal that the requested instruction was given.”*
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STATEMENT OF JURISDICTION

The Utah Court of appeals has jurisdiction pursuant to Utah Code 78A-4-103(2). The Ruling to be considered in this appeal was issued from Utah 4th District Court in Provo, Utah.

STATEMENT OF THE ISSUES

Respectful of Utah law and legal process, Appellant (Husband) pro se, finds inequities in Decree of Divorce filed August 12, 2008 in the 4th District court for civil case 054400186, based on errors in associated Findings of Facts and Conclusions of law. Appeal is made, Pursuant to Utah Appellant Procedure Rule 3, to correct errors as described in the following issues with respect to specified standards of review:

- 1) Appeal is made to apply a “clearly erroneous” standard against assessments made in the District Court’s division of the marital estate. Rule 52(a) of Utah Civil Procedure states “Findings of fact, ..., shall not be set aside unless clearly erroneous.” Weigh of evidence preserved in court records demonstrate separate properties were excluded from the accounted for in the findings of facts. Proper accounting for and inclusion of these properties produces material difference in equity calculations used for the divorce decree. Request is made to correct the following errors in accordance with the given authoritative references:
 - (a) Failure to categorize and consistently account for separate marital properties, as directed in Burt v. Burt, 799 P.2d 1166, 1172 (Utah Ct. App. 1990).

- (b) Disallowing appreciation on separate properties exemplified in *Bradford v Bradford* (981745-CA, 1999 UT App 373).
 - (c) Awarding Wife claim on property to which she made no contribution, contrary to Utah Supreme court ruling *Burk v. Burk*, clarified in *Elman v Elman*, 2002 UT App 83, ¶28, regarding contribution to growth in asset value.
- 2) The standard for abuse of discretion is proposed for trial court's dismissing overt cruel and damaging behaviors of the Wife, leading to dissolution of marriage.
- This behavior is evident in the form of:
- (a) Willful malicious desertion of the Husband, the marriage, and the Washington residential property without Husband's agreement to conclude the marriage, in observance of Utah Code 30-3-1-3 (c): willful desertion
 - (b) Blatant intentional harm to the Husband, persisted for at least the last 10 years of marriage, respecting Utah law Utah Code 30-3-1-3 (g) cruel treatment

These behaviors should not be ignored, but considered in dividing marital properties, and awarding alimony, Utah Code 30-3-1-3, or duration of alimony, Utah Code 30-3-5 (8) (h). The Trial Courts dismissal of Wife's deliberate and acknowledged action contributing to dissolution of marriage (Conclusion to Law item #8) equates to Utah's condoning of Wife's desertion and a reward for cruel behavior to Husband, considering state's advantage over Husband's welfare.

Case Law allows a judge's determination to be reversed if the ruling "is so unreasonable that it can be classified as arbitrary and capricious or a clear abuse of discretion " Kunzler v O'Dell, 855 P 2d 270, 275 (Utah Ct App 1993)

- 3) The standard of legal error is applied to expose invited error, through by presentation of false and impertinent testimony, distorting the Findings of Facts and Conclusions of Law Justification for divorce and argument for award was based on, (a) pre-marital issues, (b) claim on expenses settled pre-trial, and c) false claims and witness

CONSTITUTIONAL PROVISIONS

Appeal relies on honored observance of equitable intent in the following provisions of Utah Code and Constitution

30-2-5 (c): Separate Debts

- 1) Neither spouse is personally liable for the separate debts, obligations, or liabilities of the other
- (c) contracted or incurred after divorce or an order for separate maintenance under this title, except the spouse is personally liable for that portion of the expenses incurred on behalf of a minor child for reasonable and necessary medical and dental expenses, and other similar necessities as provided in a court order under Section 30-3-5, 30-4-3, or 78B-12-212, or an administrative order under Section 62A-11-326, or

30-3-1 (3): Grounds for divorce

- (c) willful desertion of the petitioner by the respondent for more than one year,
- (d) willful neglect of the respondent to provide for the petitioner the common necessities of life

- (g) cruel treatment of the petitioner by the respondent to the extent of causing bodily injury or great mental distress to the petitioner;
- (j) when the husband and wife have lived separately under a decree of separate maintenance of any state for three consecutive years without cohabitation.

30-3-2: Husband's right to divorce

The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the wife may obtain a divorce from her husband.

30-3-5 (8) (b): Fault

- (b) The court may consider the fault of the parties in determining alimony

30-3-5 (8) (h): Duration of alimony

- (h) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

30-3-11.1: Utah Family Court Act

“It is the public policy of the state of Utah to strengthen the family life foundation of our society and reduce the social and economic costs to the state resulting from broken homes and to take reasonable measures to preserve marriages...”

STATEMENT OF THE CASE

I Nature of the Case

This case involves a Wife who, without good cause, under conditions devoid of duress, personal threat, or constraint, willfully deserted a marriage, then, after three years filed for divorce, petitioning for portions of the Husband's separate properties and claim for excessive alimony for a period longer than the marriage persisted.

The Husband does not condone divorce. He has, despite divorce proceedings, responded with intent to perpetuate the family unit. In so doing he has industriously, responsibly, and through extreme conservatism, applied himself and his resources to the securing and building of family interests and assets, only to have those assets lucratively consumed through rote divorce ruling.

The Husband asserts the Trial Court took improper action basing decisions on erroneous interpretation of facts, misleading testimony and argument, to award the Wife inequitable claim on separate properties and unlawful alimony. Appeal is made to expose and promote an equitable and appropriate resolution.

This case tests the propriety of routine legal practice for ruling on divorce. The case demonstrates how easily legal process can invert good faith, supportive, and honorable behaviors of a faithful husband, to the advantage of aggressive and opportunistic dissolution of a marriage. The precision of evidences in this case and exactness in application and promotion of familial principles offers the court opportunity to affirm Utah's commitment to support family.

II Course of Proceedings

Course of proceedings is reflected as filed in the submission of record by the district court, dated November 18, 2008. Key events of court record are listed below, augmented with relevant communication and conferences (dates asterisked) outside court purview:

Jan 28, 2005	Petition for Divorce - Willford Hansen (1352)
Mar 14, 2005	Husband was served with notice of filing for Divorce.
Mar 25, 2005	Husband answered divorce plea, pro se.
Jul 17, 2005*	Husband submitted counter-offer on terms of divorce
Oct 15, 2005* ^(@)	Conference - Respondent with Petitioner's Council Location: Payson Utah Subject: Terms of Divorce
Jan 9, 2006 ^(@)	Hearing for temporary alimony in 4 th District Court
Mar 29, 2006 ^(@)	2 nd hearing for temporary alimony in 4 th District Court
Jul 31, 2006	Deferral of divorce proceedings by Petitioner's Council Husband attended by teleconference
Aug 10, 2006	Substitution of Petitioner's Council - G. Blatter (4274)
Mar 2, 2007* ^(@)	Conference with G. Blatter and Wife Location: Orem Utah Subject: Terms of Divorce
Mar 19, 2007*	Husband proposed stipulations based on 3/2/07 conference
Mar 23, 2007* ^(@)	Mediation Respondent Pro se, Wife w/ G Blatter Location: Provo Utah Facilitator: R. Blakelock
Aug 13, 2007* ^(@)	Conference with G. Blatter and Wife Location: Orem Utah Subject: Undisputed Claims
Sep 13, 2007	Request for Admissions by Petitioner
Oct 17, 2007	Appearance of Petitioner's New Council R. Wilkinson (5558)

Oct 22, 2007	Appearance of Council for Respondent C. Howard (11001), A. Bartholomew (10042)
Nov 16, 2007* [@]	2nd Mediation w/ Ron Wilkinson, Caroline Howard Location: Provo, Utah Facilitator: Mrs. F. Howard
Nov 21, 2007	Response to Admissions by Respondent, via C. Howard
May 8, 2008 [@]	Trial of the civil case was heard by the 4 th district court
Aug 12, 2008	Filing of Divorce Decree
Sep. 11, 2008	Notice of Appeal filed by Husband.
Sep. 19, 2008	Motion for stay of Enforcement of Judgment Pending Appeal filed by Husband at 4 th District court.
Oct 10, 2008	Docketing Statement of appeal filed by the Husband.
Dec 2, 2008	Denial of Motion for stay of Enforcement of Judgment Pending Appeal, at 4 th District Court.
Dec 15, 2008	Motion for stay of Enforcement of Judgment Pending Appeal filed by Husband at Appellate Court.
Dec 29, 2008	Motion to Supplement the Record on Appeal, filed by Husband at Appellate Court.
Jan 6, 2009	Denial of Motion to Supplement the Record on Appeal at Appellate Court.
Jan 20, 2009	Appellant's Brief Submitted.
February 5, 2009	Appellants Brief stricken by Appellate Court, With order to resubmit in corrected format.

Throughout these proceedings the Husband has taken personal action to attend to the challenge of divorce, incurring eight distinct trips to Utah (identified by [@]) to attend legal conferences, mediation sessions, and court hearings.

III Disposition in Trial Court

Bench Trial of May 8, 2008 produced the following key conclusions:

1. Factors of the parties' first marriage are resolved by the first divorce and should not factor in this ruling. (Decree, #12)
2. This marriage concluded with Wife's departure (Separation) from marriage in August 8, 2002. (Finding of Fact, #5)
3. The marital estate was valued as of the date of Decree, recognizing Wife's separate investment of \$50,000 from an inheritance. This resulted in order for Husband to compensate Wife \$40,600.26 for equity imbalance. (Decree #9)
4. Interest in stock options yet to be exercised, awarded during the marriage, is divided equally. (Decree #11)
5. Wife was awarded half of 12 years worth of respondent's employment pension benefits. A formula was prescribed, awarding 20.7 % of pension proceeds as of date of Decree. (Decree #12)
6. Wife was awarded half the value of the Husband's 401K investment plan as of August 8, 2002, plus appreciation since that time, less Respondent's pre-marital investment in that plan. (Decree # 13)
7. Wife was awarded alimony of \$2,771.00 per month for 12 years, with scheduled adjustment in Fall 2009 and conditional termination. (Decree #14)

The Husband seeks correction of errors related to conclusions #3 and # 7 listed above.

STATEMENT OF FACTS

1. On July 1, 1990¹ the parties entered into marriage contract in Payson, Utah, at which time Wife, having divorced the Husband previously, expressly committed to “not divorce [him] again.”²

Ref: 1) Finding of Facts #1
2) Trial Court Transcript pg 38, lines 6-8

2. In Spring of 1991, Husband contracted for the building of a residence in Lake Stevens, Washington (Washington Home), with \$15,450 down payment of separate resources, comprised of \$10,000 gifted to Husband and \$5,450 extracted from Husband’s premarital retirement investments.

Ref: Trial Exhibit 7, Req. for Adm. item #11

3. In June, 1991 the family moved into the Washington Home.
4. In August, 1991 (mistakenly stated as August, 1992 in trial hearing) the Wife exercised Forcible Sexual Abuse with acknowledged intent to cause emotional pain and anxiety. She perpetuated that abuse through denied consortium for the remainder of the marriage.

Ref: Trial Court Transcript, Pg 55, ln 10 – 22

5. On August 8, 2002 the Wife, having previously separated¹ from Husband in living arrangements, willingly and without good cause, abandoned marriage and Washington residence in permanence, moving to Utah, and announced “Do with the house as you feel is appropriate, I’m not returning.”²

Ref: 1) Finding of Facts #5
2) Transcript Pg 53, Ln 22

6. At August end, 2002 the Husband extracted \$31,316 from equity in the Washington Home through refinance, nearly the Wife's share of investment in the home, to serve as down-payment for Wife's choice of Utah residence.

Ref: Trial Exhibit #29, adden. sec. 3, pg 7

7. Wife and Husband purchased a home in Orem, Utah (Utah Home) into which equity from the Washington home was applied. On October 1, 2002 Husband contributed additional \$3,184, providing total of \$34,500 for down-payment, with additional to cover loan fees for the purchase of the Utah Home.

Ref: Trial Exhibit 31, adden. sec. 3, pg 8, transaction of \$36,364.02

8. The Wife assumed ownership of Utah Home as of date of purchase, having relinquished ownership of Washington Home to Husband when moving from Washington, and progressively expelled Husband from the Utah home.

Ref: Trial Court Transcript Pg 41, ln 9, 17-18

9. In July 2003 the Wife received an inheritance and applied \$50,000 of that against the Utah home mortgage. Despite the option to reduce mortgage payments due to less interest on reduced principle, the Husband and wife agreed to persist elevated mortgage payment for rapid pay-off of the Utah Home.

Ref: Finding of Facts, Item #8

Note: Argument exposes Finding falsely states "at time of purchase."

10. Despite Wife's Separation, Husband willingly and faithfully supported Wife's interests and education by providing financial support, coverage for mortgage payments, insurance, cell phone, and spousal benefits; from the time of Separation to the date of Decree of Divorce – a total of 6 years.

Ref: Finding of Facts item #17

Note: Argument exposes Finding falsely states "Husband currently pays...temporary alimony pursuant to an order of the Court."

11. On January 2005, the Wife filed petition for divorce in the Utah 4th District Court. Wife rotated through three attorneys in bringing divorce to trial, compounding and delaying proceedings.

Ref: Record on Appeal, Appearances pg. 5, 58, 73,

12. On January 9, 2008, Final Pre-trial hearing, establishing disputed and undisputed issues.

Ref: Final Pre-Trial Order, adden. sec. 5

13. On May 8, 2008, Bench hearing was held in the 4th District court, leading to Divorce Decree, Findings of Facts and Conclusions of Law Aug. 12, 2008,

Ref: adden. sec. 1

14. September 10, 2008, Notice of Appeal filed.
15. October 1, 2008, Docketing Statement submitted.
16. January 20, 2009, Appellant's brief filed
17. February 5, 2009, Appellant Brief Stricken, pending re-submittal correcting content and formatting errors.

SUMMARY OF THE ARGUMENT

This brief addresses inequitable conclusions in the Decree of Divorce. Key factors are misrepresented in the findings of facts, distorting the subsequent court ruling. Argument is made in this Brief that:

- 1) Separate, discernable and traceable separate properties must consistently be observed and protected in division of the marital estate. Husband's separate property investments clearly discernable had been erroneously denied and should be corrected.
- 2) Excessive Award alimony to the party responsible for dissolving the family through aggressive divorce, without considering acknowledged intended, blatant, and destructive behaviors by that party, is abusive of reasonableness, and civil discretion. Both the amount and the duration of alimony should be corrected.
- 3) Alimony coverage for expenses and debt incurred post-separation, agreed to be covered privately by respective parties, is improper. Petition in court for coverage of items excluded in pre-trial stipulations invited and introduced error in court rulings and should be corrected.

DETAIL OF ARGUMENT

Issue 1 Court erred in dividing of the marital estate

Failure to categorize and consistently account for separate investments in residential properties

Findings of facts 7 and 8 read as follows:

- 7. The parties own two marital homes. The home in Lake Stevens, Washington, has a value of \$297,000 and secures a mortgage of \$107,396.19, for equity totaling \$189,603.81. Husband occupies the home and the parties agree he will be awarded title to the home, assume all mortgages and hold wife harmless on all mortgages on the house.*
- 8. The home in Orem, Utah, is worth \$224,000.00, has a mortgage of \$65,636.71 and equity of \$160,403.29. The parties agree wife will get title to the home, assume the mortgage and hold husband harmless on all mortgages on the house. Wife put \$50,000 of her separate property into the home when the parties purchased it in August 2002. The parties refinanced the Lake Stevens home and got cash back of \$31,315.54 which they put into the Orem Home purchase. Husband has paid the mortgage and maintenance of the Orem home since separation.*

Finding Error 1 - in Fact 7, 8

Husband's separate properties investments in each residence, no less traceable than Wife's, are excluded, where Wife's is included. His claim on separate properties are preserved in evidence and itemized in argument given below.

Finding Error 2 – In fact 8

Wife's investment of \$50,000 in the Orem Home was not made at time of purchase, rather in August, 2003, shown by evidence. Husband resolved all financial issues "when the parties purchased" the Orem home, including closing loan costs and extra to supplement down-payment.

The above errors influenced improper Conclusions of Law:

2. *There is no dispute the homes are marital property and the equity in them is a marital asset. Wife placed \$50,000 of separate property in the Orem home. The amount is easily traceable, having gone through no further transformations. The parties also transferred \$31,315.54 of marital property equity from the Washington home. Of the \$160,403.29 equity, wife is therefore credited with the \$50,000.00 and her half of the \$31,315.54, or \$15,657.77. Husband is entitled to a credit of \$15,657.77. The remaining equity, \$79,087.75, will be divided equally. The Court concludes that although husband has paid the mortgage on the home, thus helping preserve wife's separate property, he did so through temporary alimony payments and the mortgage is low enough that it approximates what rent would be if wife leased a house. In fact, it is substantially lower due to the \$50,000.00 being added to the down payment. So husband has benefited from that inheritance amount as well by not having to subsidize a mortgage payment based on \$50,000.00 higher loan principal. Wife thus gets a credit of $\$50,000 + \$15,657.77 + \$39,543.87$ which equals \$105,201.64. Husband gets a credit for the remainder of the equity - $\$15,657.77 + \$39,543.87$ which equals \$55,201.64. This is a formulaic way of simply proving the joint equity in the house is \$110,402.64 to be divided equally.*

Conclusion Error 1

Traceable separate property investments in properties made by the Husband are excluded from the formula to divide marital property.

Conclusion Error 2

The assessment of “*So husband has benefited from that inheritance amount as well by not having to subsidize a mortgage payment based on \$50,000.00 higher loan principal*” was unfunded and capriciously made, assuming the mortgage was reduced due to the Wife’s \$50,000 investment. Following Wife’s separate investment in August 2003, the Husband accelerated investment in the Orem home by persisting pre-investment mortgage payment schedule, paying additional to principle at an average of \$231 each month, from August, 2003 through October

2007. This amounted to \$11,892 the Husband paid in excess of required mortgage payments, as investment in the Orem Home.

Conclusion Error 3

The statement: “*The Court concludes that although husband has paid the mortgage on the home, thus helping preserve wife’s separate property, he did so through temporary alimony payments*” is erroneous. Temporary alimony was enforce January, 2006 to May, 2006 as found in Trial Exhibit #8, pg. 2, item #1 and included in adden. sec. 4. Temporary orders for monthly support \$2,350 expired May of 2006, but the Husband exceeded the ordered amount providing \$2,400 in good faith and without orders, persisting support to Wife’s education and out of a sense of propriety, family unity, and to advance family investment and interests. Accordingly, Husband’s support to the Wife for two years preceding the Trial hearing, was made on a good will, cooperative, and supportive basis.

Correction for the above errors is proposed in the following argument:

Correction Division of Marital Residential Properties

Two models are offered for correcting the above errors. The first is proposed as the most equitable and accurate approach, assessing division at time of wife's election to leave the marriage, as clearly presented to the trial court. The second model applies logic the Trial Court used, but recognizes separate investments made by the Husband in each of the residential properties, before dividing shared equity.

Correction Model 1 – Equity Growth

Throughout divorce proceedings, the Husband has insisted on a fair, equitable division of properties, respecting separate properties of both parties, including appreciated growth in those separate properties. He has consistently presented a model of equity division to Appellee, each of her retained lawyers, and to the district court as Trial Exhibit #19. It is also included in adden, sec. 3.

With each review, this model has been neither contested, nor invalidated. By virtue of being the only proposed division of equity, the Trial and Appellate Courts are is obliged to consider validity of this model, consistent with Case Law Argyle v. Argyle acknowledging alternative argument for equity division:.

"If [a party's] position [is] that [an asset] should have been valued by a measure different than the value" that party supplied, that party has "the burden of offering further evidence on alternative methods of valuation."

Argyle v. Argyle, 688 P.2d 468, 470-71 (Utah 1984)

In this model, all separate properties are recognized in dividing marital estates as instructed in Case Law Jensen v. Jensen , 2000, 990465-CA, applying Burt v Burt:

"The procedure set forth in Burt requires the trial court to first determine which property is separate--removing it from further consideration--and then divide the remaining marital estate equally, unless exceptional circumstances are found.

Additionally, in the model, appreciated growth on separate properties is recognized as supported in Case Law *Bradford v Bradford* (981745-CA, 1999 UT App 373), clarifying the *Mortensen* Supreme Court finding:

*In Mortensen, our supreme court considered "property acquired by one spouse by gift and inheritance during the marriage [should be awarded] to that spouse, **together with any appreciation or enhancement of its value.**" see also Haumont v. Haumont, 793 P.2d 421, 424 (Utah Ct. App. 1990) ("[E]quity [generally] requires that each party retain the separate property he or she brought into the marriage."). This rule applies*

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.

Throughout divorce proceedings Husband claimed separate properties invested in the Washington home, as preserved in Respondent's Response to request for Admissions and Interrogatories (A&I):

Request for Admission #11: *Please admit that you did not expend funds from any inheritance or gifts you received , or from your separate property that you own Towards the Lake Stevens Home*

Response: #11: Deny. Respondent applied resources from personal gifts of \$10,000 and pre-marriage personal funds (\$5,450) for down-payment and to cover mortgage closing costs in purchase of the Lake Stevens Home.

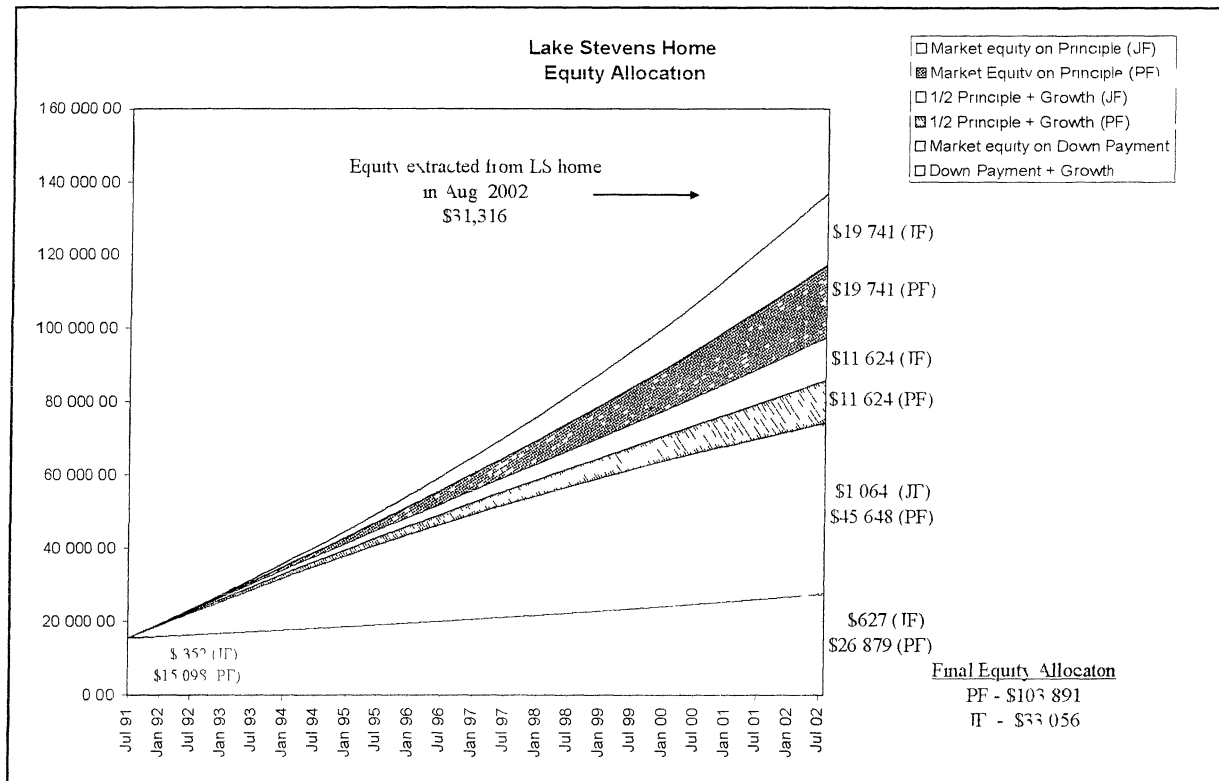
Evidences of the described funds were appended to the A&I and are included in adden. Sec 2. Gift documents, 4 (a) to A&I, are included in sec. 2, pg

1 – 3. Records of funds (\$5450) , 8 (a) to A&I, came from Husband's retirement account, stated of which is found in sec 2, page 4; Outstanding Balance of \$6,769 beginning 1992, remained residual from total withdrawal of \$7,122 extracted May 15, 1991.

Husband's claim on down-payment for the Washington home, comprised of gifted and pre-marital funds, and added investment into the Lake Stevens home qualify as separate properties by Utah Law. These investments were uncontested.

Equitable Division analysis - Separate and Appreciated Properties

The proposed Equity Model argues that distinct investments made in the marital estate can be separately and equitably identified, attracting appreciation at the same rate as growth occurred in property values, compounded at rate of .434615% monthly. Investment growth in the Washington home is shown in Trial Exhibit #19, included in adden. Sec. 3, pages 1 -6. The detail charts demonstrate by month the growth on each distinct investment made in the home, compounding allocable appreciation for each month until the Wife's departure from the marriage and divestiture of the property. Based on appreciated investment, Market Equity is then attributed, as would equity for securities investments. Equity growth on categorized investments is shown in the following graph and chart included in the analysis.



Washington Home Investment Based Equity Assessment, Aug, 2002
(Trial Exhibit 19, adden. sec. 3, Pg 1)

The analysis is also summarized equity division in the following chart.

Lake Stevens House market value as of 8/23/02	\$235,000	
Less remaining mortgage on 8/23/02	98,053	
Total equity to reconcile	\$136,947	

Investments in Property	Wife	Husband
Separate investment down	\$352	\$15,098
Appreciation on down-payment investments	275	11,781
Shared payments to mortgage principle	9,248	9,248
Appreciation on payment to principle payments	2,376	2,376
Total Investment – (basis for market equity allocation)	12,251	38,503
Market equity (total equity less investments)	\$86,193	

Market Equity allocated to shared	23,248	45.81%
Allocation to Wife's separate investment	627	1.23%
Allocation to Husband's investment of	26,879	52.96%
Over Cum Total invested	50,754	100%
Total equity reconciliation	\$33,056	\$103,891

Washington Home Equity Allocation, Aug, 2002
(Trial Exhibit 19, pg 2, adden. Sec 3, pg 2)

Under this Equity Growth model, equity in the Washington Home is fully divisible at the point the Wife separated from the marriage in August of 2002. This model demonstrates that the equity extracted from the Washington home and applied as down-payment on the Orem Home in 2002, closely matches the equity attributable to the Wife's investment, shy by \$1,691. This variance can be considered as being offset by the Husband contributing privately \$3,135 toward purchase of the Utah Home as shown in adden. sec. 3, Pg 8 - October 2002, bank statements.

Under this Equity Growth Model, full divestiture by the wife in the Washington Home can be clearly recognized and cleanly divided at time of her departure from the marriage and invested into the Utah Home. The Utah Home can then be concisely recognized as Wife's complete investment. This simplifies all assessment of equity growth in each home subsequent to the Wife's election to conclude the Marriage. This leaves all benefits of subsequent growth to the party possessing each property.

Judicial opinion supporting this approach is recorded in *Elman v. Elman*, 2005 offered by Judge Gregory K. Orme stating:

"Actually, it might have been conceptually easier had the trial court accomplished the same fair result by simply leaving the husband with his separate property, including all of its post-marital increase in value, while explicitly dividing an appropriate part of the marital estate on other than a fifty-fifty basis.."

Equity Growth model of analysis is also supported in Case Law, *Oliekan v. Oliekan*, Case 20050310-CA, pg 4, ¶11 where premarital assets invested were discretely accounted through the use of discrete accounts for those investments.

¶11 At trial, Husband produced expert testimony by Roger Smith, a certified public accountant who performed forensic accounting services. Smith separated the marital and premarital portions of Husband's three accounts and conducted a retirement analysis on each account. He testified that he believed it would be possible to distinguish between the marital and post-marital interests, "particularly in the 401(k) balance."

The equity analysis applies equivalence of the Oliekan accounting method.

The model also supports sentiments expressed in Pre-Trial Order, undisputed claims and Issues items #13 and #14 (adden. sec. 5 pg 5), stating:

13. *Petitioner should be ordered to pay all money owed the Washington Mutual on the Orem Home and all debts incurred by Petitioner subsequent to the parties' separation in August 2002.*

14. *Respondent should be ordered to pay all mortgage on the Lake Stevens House and all debts incurred by Respondent subsequent to the parties' separation in August 2002.*

Re-wording of Findings of Facts #7, #8 and Conclusion of law #2, recognizing accuracy of the Equitable Division moles is proposed, embolden text revised:

Finding of Facts - Corrected

7. *The parties own two marital homes. To purchase the home in Lake Stevens, Washington, the Husband applied \$15,098 of separate investment as down-Payment. A \$352 down payment was attributable to the Wife, for her share of an amount extracted from Husband's retirement account for this purpose. Appreciated growth on those separate investments equated to \$11,781 and \$275 respectively, at the time of separation. During the marriage the parties paid \$18,496 in mortgage principle, which accumulated \$4,752 in appreciated Growth. Appreciated values are compounded monthly at the same rate as did value of the home. At time of separation, August, 2002, the Market value of the home stood a \$235,000, holding a mortgage of \$98,053, giving market equity of \$86,193 above that owed and appreciated investments in the home. This value allocated to the parties appreciated investments divides into \$65,589 for Husband's investments and \$20, 805 for the Wife's. This division is consistent with Utah Case law and statutory code. Accordingly, equity share at time the Wife elected to leave the marriage, occupancy of the Washington Property, and contribution to the property,*

stood at \$33, 056 for the Wife and \$103, 891 for Husband. In September 2007 the value of the Lake Stevens Home stood at \$297,000 with a mortgage of \$107,396.19, having been reduced from the refinanced amount of \$133,000 by Husband's funds, after agreed payments of spousal support. Husband occupies the home and the parties agree he will be awarded title to the home, assume all mortgages and hold wife harmless on all mortgages on the house.

8. *The home in Orem, Utah, was purchased October 1, 2002 with \$31,315.54 extracted from equity in the Lake Stevens home, described in finding #7, by refinancing the mortgage, August 23, 2002. To optimize financing of the Orem home the Husband contributed an additional \$3,135, producing a total down payment of \$34,451. Husband has paid the mortgage and maintenance of the Orem home since separation. In August, 2003 Wife put \$50,000 separate property investment into the home. Following Wife's separate investment, Husband persisted elevated mortgage payments to expedite mortgage pay-off. In September 2007 mortgage on the Orem home stood at \$65,636.71 and market value stood at \$224,000.00. The parties agree wife will get title to the home, assume the mortgage and hold Husband harmless on all mortgages on the house.*

Conclusion of Law - Corrected

2. *There is no dispute the homes are marital property and the equity in them is a marital asset. Husband is credited with \$15,098 with \$11,78 in appreciated growth, the wife \$352 with \$275 in appreciated growth as separate down-payment property investment in the Washington Home, at the time of wife's separation. During the marriage the parties paid the mortgage down by \$18,496 with \$4,752 in appreciated growth at the point of separation. Market value of the home of \$235,000 at time of separation, less mortgage of \$98,053, leaves \$86,193 above appreciated investments. This allocated over the parties appreciated investments divides into \$65,589 for Husband's investments and \$20, 805 for the Wife's. This division is consistent with Utah Case law and statutory code. Accordingly, equity share at time the Wife elected to leave the marriage stood at \$103,891 for Husband and \$33,056 for the Wife. In August, 2002, the same month of wife's separation, the parties extracted \$31,315.54 of marital property equity from the Washington home and applied it to Purchase of a home in Orem, Utah in October 2002. Husband supplemented this equity amount with \$3,135 to achieve a favorable debt to equity ratio. Wife's vested equity in the Washington home being slightly more than the total down-payment on the Orem Home. Husbands separate investment of \$3,135 in the Utah home is recognized as having sufficiently offset the wife's equity difference,*

representing the Wife's full divestiture in the Washington home at time of separation and full investment in the Orem home, in which she subsequently resided. This is a formulaic way to simply and fairly divide equity in residential properties and equity growth in each residence following separation.

Correction Model 2 – Shared equity, excluding separate properties

Should Appellate court disapprove of the above Equity Growth model and persist the formulaic division selected by the trial judge, additional investment values should be considered as Appellant's separate property investments, including:

a)	\$15,098	Down payment on Washington home June 1991 comprised of gift and pre-marital funds.
b)	\$11,781	Appreciation on separate down payment of Washington Home at time of separation, compounded monthly consistent with house equity growth.
c)*	\$25,604	Reduction in Washington mortgage since separation
d)	\$3,154	Personal Contribution to purchase of Utah Home
e)*	\$11,555	Extra payments to Utah Home principle 8/03 to 10/07 in excess of scheduled principle payments. (Agreed to by parties after Wife's \$50,000 investment)

Claim of these separate properties are preserved in the following evidence:

- a) 1 - Copy of gifting letter, Husband's parents; sons and daughters \$ 10,074, with \$10,000 contributed to down-payment for Washington Home. This is reflected in adden. sec. 2, Pg. 22-23
- 2 - Statement of Husband's retirement account, 1992, showing applied funds; as loan against the account: \$7,122 extracted May 1991, \$5,450 contributed to down-payment for Washington Home, shown in adden. sec. 2, Pg. 31
- b) Equity Analysis, cumulative sum of column 11: Factored Growth on Down Payment. Trial exhibit #19, adden. sec. 3, pg 3-6.

- c) Difference between Washington home mortgage at refinance on 8/23/08 of \$133,000 and residual Loan value of \$107,396 recognized in finding of Fact #7, this difference includes the \$10,500 claimed in A&I :

Request for Admission #13: *Please admit that when you refinanced the Lake Stevens Home, you borrowed more money than was owing on the mortgage on the Lake Stevens Home.*

Response: #13: *Deny. Respondent refinanced in October 2005 to take advantage of a Lower interest rate, existing rate was scheduled to go up significantly: Respondent invested and additional 10,500 into the Lake Stevens Home.*

- d) Husband's added contribution to Down-payment of Orem Home. This is shown as variance between Equity extracted from Lake Steven Home \$31,315.54 and the total of \$36,364.02 paid, withdrawn from Respondent's bank account on 1 Oct. 2002, as shown in Trial Exhibit #31, Pg 1, and included as adden. sec. 3, pg. 8.
- e) Husband's added contribution to monthly principle payments to accelerate pay-down of Orem Home, August 2003 through October 2007, demonstrated in Trial exhibit #18, all pages. Significant pages 1 and 9 are included in adden. Sec. 3, Pg 9 and 10 showing persisted payments.

Appellate Court's recognition of the above listed separate properties and adoption of these properties in the equity division model used by the Trial Court, will significantly reduce the equity variance between Husband and Wife, minimizing undue financial burden in balancing residual inequity. Recognition will also demonstrate genuine interest in the court system to achieve equitable resolution and

show honor to dutiful, collaborative and supportive intentions of the Husband despite spouse's pursuit of divorce.

Re-wording of Findings of Facts #7, #8 and Conclusion of law #2, recognizing the listed separate properties of equity model 2 is proposed, embolden text revised:

Findings of Facts - Corrected

7. *The parties own two marital homes. The home in Lake Stevens, Washington, has a value of \$297,000 and secures a mortgage of \$107,396.19, for equity totaling \$189,603.81. **Separate property investments in the home have been shown to consist of: down-payment by Husband of \$15,098 comprised of a gift from his parents augmented with \$5,098 extracted from his retirement investment. The Wife is credited with \$352 down payment, for her share of an amount extracted from Husband's retirement account that purpose. Reduction of \$25,604 to mortgage principle since the time of separation is considered separate property of Husband having been made without wife's contribution or interest. Considering separate properties, Equity division of the Washington home reduces to: to \$114,977 attributable to Husband and \$74,627 for the Wife.** Husband occupies the home and the parties agree he will be awarded title to the home, assume all mortgages and hold wife harmless on all mortgages on the house.*
8. *The home in Orem, Utah, is worth \$224,000.00, has a mortgage of \$65,636.71 and equity of \$160,403.29. The parties agree wife will get title to the home, assume the mortgage and hold Husband harmless on all mortgages on the house. . **Separate property investments in the home have been shown to consist of: added down-payment by Husband of \$3,154 made to optimize financing, and \$11,555 excess to principle payment from August, 2003 to October 2007. In August 2003 Wife put \$50,000 of her separate property into the home from inheritance she received. The parties refinanced the Lake Stevens home and got cash back of \$31,315.54 which they put into the Orem Home as down-payment. Husband has paid the mortgage and maintenance of the Orem home since separation. Considering separate properties, Equity division of the Orem home reduces to: to \$61,536 attributable to Husband and \$96,827 to Wife***

Conclusion of Law - Corrected

2. *There is no dispute the homes are marital property and the equity in them is a marital asset. Husband and Wife hold respectively \$114,977 and \$74,627 equity in the Washington home with \$61,536 and \$96,827 equity in the Utah home. The difference between the Wife's equity in the Washington home and his equity in the Utah home is \$13,091. Husband will choose which portion of his share of assets to transfer to his wife to buy the \$13,091 equity amount from her.*

Based on the above refined findings the equity imbalance would result in Husband compensating wife for \$13,091 of equity imbalance.

Proposed Correction - Issue 1

The above argument demonstrates material error in court findings and poses well formed proposal for correction. The appellate court is invited to recognize both the errors in the findings of facts and Conclusions of Law relative to equity division of residential properties. Favor is encouraged to recognize the analytical purity of the Equity Growth model for dividing equity.

The court is encouraged to recognize, purchase of both Washington and Utah homes were made possible by the gift the Husband received from his parents in 1990. It was the Husband's productive application of resources which has enabled the Wife to be well situated post-divorce. The appellant is pleased to have humanely shared benefits of the use of his resources, but requests the court consider protecting those resources from unfounded, aggressive possession as is argued above.

Issue 2 Abuse of Discretion in dismissing Wife's damaging behavior

Assertion: Wife's actions within marriage and in separating from marriage constitute legitimate grounds for divorce. Neglect and cruelty with intent to injure, complement demonstrated willful and malicious desertion. Collectively these and should not be dismissed or excused at the convenience of courts discretionary allowance.

Husband claims right to perpetuate his family and marriage; to maintain hope that general discomforts and disappointments found in a marriage can eventually be borne or recovered from. The filing for divorce by a wife should not require filing of counter-divorce, for a Husband's rights to be protected.

Utah Code, Section 30-3-2 states:

"The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the wife may obtain a divorce from her husband."

Accordingly, Husband has right for this divorce to be recognized for its true and admitted basis, desertion, neglect and cruel behavior, even when divorce is being pursued by the wife.

a) Desertion – Ref: Utah Code 30-3-1 (3) (c) Grounds for Divorce - Desertion

"willful desertion of the petitioner by the respondent for more than one year"

Claim: Trial Transcript records the Wife willfully and intentionally deserted the marriage as of or before August 8, 2002.

On page 16 the wife acknowledges her intent to leave Husband in separation:

13 *At that time [August, 2002], excuse me, there were several reasons*
14 *at that time **I decided to come to Utah.** Pete and I's*
15 *marriage had struggled for many years. And at that time my*
16 *children were grown, two were married and they had all*
17 *graduated high school. We had struggled, I had asked Pete*
18 *several times if he wanted to work on our marriage, he said*
19 *no, things were okay the way it was. And **I a, decided that***
20 *(“no” is refuted by husband, pg 55, line 23-25)*
21 *a, **I couldn't live in that situation anymore,** it was a good*
22 *time to come down here to go back to school, to aid my*
23 *mother. And Pete agreed to move me, help me move down.*

Again the Wife expressed this in testimony on page 30:

14 Q. (Ms. Howard) *But you admit that you told him you were never*
15 *coming back?*
16 A. ***I would not go back to Washington.***

Also on page 31:

3 Q. (Ms. Howard) ***Did you ever separate from Peter by moving out of***
4 ***the master bedroom?***
5 A. ***I did about the last six months of our marriage.***

Repeated on page 41:

19 Q. (Ms. Howard) *Okay. And your claim is that you came out here*
20 *for education. Is that right?*
21 A. *And my mother, and **as a separation.***

In contrast, the Husband did not recognize Wife's move to Utah as a separation, rather he considered this a family growth opportunity as reflected in transcript of testimony, starting on Page 53:

22 Q (Ms. Howard) *Now, when she left the Lake Stevens home*
21 *what did, what did she say to you?*
22 A. *She did say a, “the house do with it as you feel*
23 *appropriate, a, I'm not returning.”*
24 Q. *Okay. So **it was your understanding that the***
25 ***marriage was over?***

Page 54:

- 1 A. *No. I did not necessarily believe that.*
2 Q. *You hoped that the marriage would be reconciled?*
3 A. *I didn't think that it was necessarily*
4 *irreconcilable.*
5 Q. *Okay. Now, can you explain to the court--*
6 A. *And so--*
7 Q. *Go ahead.*
8 A. *Okay. Just an explanation. I thought that coming*
9 *to school a, getting out from the home which she had seldom*
10 *done in Lake Stevens it would be healthy for her. This is*
11 *the first time she returned to Utah in, since '93 I think to*
12 *visit family down here.*
13 Q. *Okay. So you had hoped that she would return to*
14 *the marriage?*
15 A. *I had hoped that a, the marriage would continue.*
16 Q. *Okay.*
17 A. *And in fact a, I thought that potentially we could*
18 *relocate down here as a retirement option.*

At the point of departure, the wife had not advised the Husband of her intentions of divorce or intent of separation. In faithful optimism toward progressive family growth, the Husband applied himself, interests, and investments in the Wife's education, well being, and building of family resources; not in effort of separate. Accordingly, Husband agreed to and supported the move, but did not concur with this as separation leading to divorce.

This is further demonstrated by Husband's continued attention to the wife and their joint investment. Between the Wife's move in August, 2002, to the end of that year, 2002, the Husband made 4 trips to Utah in support of selecting, purchasing, furnishing, and upgrading the home:

- (1) Aug 8-18, 2002. Support move, identify home, make offer
- (2) Oct 1-9, 2002. Finalize house purchase (added extra personal funds)
- (3) Nov 23-30, 2002. House upgrades – wiring, phone lines
- (4) Dec 20 – 31, 2002 Equipment/tools/painting/insulation, lighting

Contrast in the above testimonies and behaviors between Husband and Wife, demonstrate the Husband had no intention of separating, yet the Wife's admitted intent was withdrawal from the marriage and has since been manifested by progressive and aggressive exclusion of Husband from the Utah home and family events held at the Utah home

b) Neglect – Ref: Utah Code 30-3-1 (3) (d) Grounds for Divorce - Neglect

“Willful neglect of the respondent to provide for the petitioner the common necessities of life;”(roles to be reversed in compliance with section 30-3-2)

Claim: Wife intentionally withheld marital support and constrained basic needs:

In testimony the Wife admitted to having made no contribution to or offering emotional support to the Husband since she left the marriage. In court the wife stated, transcript page 39, lines

17 Q. (Ms. Howard) *and after you left in 2002 did you*
18 *contribute at all financially to the Lake Stevens home?*

19 A. *No, I did not.*

20 Q. *Did you ever give Peter any type of financial*
21 *support?*

22 A. *No.*

23 Q. *Did you give him any type of emotional support?*

24 A. *Since I've left?*

25 Q. *Uh-huh* (affirmative).

Page 40

1 A. *No*

As well, the Husband was made unwelcome in the home as expressed in testimony, page 36 of transcript.

4 Q. (Ms Howard) *In fact, you told him he was not welcome in the*
5 *Orem home?*

6 A. *Yes.*

Restricting the Husband from the family home left him to seek lodging elsewhere on occasion to visit for business, maintenance, or family. The wife denied all marital ties, where Husband constrained none, providing housing, transportation, living expense and food for both wife and family.

c) Cruel Behaviors– Ref: Utah Code 30-3-1 (3) (g) Grounds for Divorce (g)

“cruel treatment of the petitioner by the respondent to the extent of causing bodily injury or great mental distress to the petitioner;” (roles to be reversed in compliance with section 30-3-2)

Claim: Wife did intentionally inflict and perpetuate emotional injury on the Husband:

Aside and distinct from the issues of abandonment and neglect, dissolution of this marriage must also account for abuse and cruel behavior. Any incidence of abuse is unfortunate and sensitive, but when appropriate, it should be recognized and respected for its implications. As insignificant an incident may be, and as little as the courts may want to address it, this factor proves pivotal in circumstances leading to dissolution of the marriage and should not be minimized.

The virtual separation of the Husband and Wife took effect about or before August of 1991 (In Court stated as “1992” incorrectly. Incident occurred within summer, following purchase of the Washington home, 1991) when the wife exercised deliberate and intentional harm on the Husband out of anxiety over intimacy, described in testimony by the Wife found in transcript, page 30.

- 18 Q. (MS. Howard) *Do you remember a time back in 1992 when you*
19 *informed Peter that you did not want to have intimate*
20 *relations with him?*
21 A. *What year?*

22 Q. 1992
 23 A. Yes.
 24 Q. *And is it true that in fact you did not have*
 25 *intimate relations with him for approximately 10 years during*
 Page 31
 1 *the second marriage?*
 2 A. Yes.

The Husband's reflection of the incident is found in testimony as transcribed, starting at the end of page 54, line 25:

25 Q. (Ms Howard) *Okay. And is it true that, that Julie refused to*
 Page 55
 1 *be intimate with you?*
 2 A. Yes.
 3 Q. Okay.
 4 A. *I would say that.*
 5 Q. *And that lasted for approximately 10 years during*
 6 *the marriage?*
 7 A. *Well, from '92 on, yes.*
 8 Q. *And can you describe the last incident to the court*
 9 *where the two of you were intimate?*
 10 A. *Yes. We had a, when we did remarry we talked that*
 11 *a, since intimacy was a problem before that we should be*
 12 *playful and a, and that I was hoping to be playful. And a,*
 13 *we had moved into the new home and it was a, something that I*
 14 *wanted to a, have a part of that process. And so I was*
 15 *trying to be playful and a, it turned sour. Afterwards I*
 16 *commented that a, I felt like I had been raped. And a, the*
 17 *response was I'm glad, I wanted you to feel like I'd been*
 18 *feeling. And then the response was don't ever ask for this*
 19 *again.*
 20 Q. *And you didn't. Correct?*
 21 A. *That's correct. I did not ask. It was invited but*
 22 *never asked.*

Intimacy or sexuality is not the focus of this issue. As is frequently recognized in matters of sexual violence, sexuality is the weapon where by offense is delivered, the victim being vulnerable in that state. Accordingly, it is not the act itself, but

that through this act did the Wife inflicted deliberate intended emotional harm to the Husband. It was not this act alone which served to manifest intent of emotional harm, but the perpetuated and prolonged imposing of control over the Husband by denying consortium thereafter.

Generally husbands are not recognized as victims of sexual misconduct, however the actions of Wife do boarder on the violation of Legal Code 76-5-404: Forcible Sexual Abuse:

(1) A person commits forcible sexual abuse if the victim is 14 years of age or older and, under circumstances not amounting to rape . with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, without the consent of the other, regardless of the sex of any participant.

Testimony shows that the Wife intentionally deserted the marriage, neglected the Husband, and applied cruel behavior toward the Husband. These can be considered grounds for divorce, as had they been formally petitioned by the Husband.

Although fault was argued in trial it was lightly passed over in ruling on Decree of Divorce (Conclusion of Law #7, Add. Section #1, Pg__). The Trial Court's discretion for doing so is challenged as abusive. The willful intent of the Wife to inflict and perpetuate emotional injury on the Husband is not a factor that should be ignored or lightly dismissed.

The Husband's tolerance of the Wife's behaviors for the sake of family and perpetuated faith in the institution of marriage makes abuse no less severe. Preference for the initiator of divorce or for gender should be avoided in considering fault.

Proposed Correction – Issue 2

Compliant with Utah code, Husband has the right for reverse claim on divorce, regardless of who filed for divorce. Where fault is obvious, fault should be recognized as ground for divorce, 30-3-1-(3) (c): willful desertion. Damage for divorce should be borne by the party perpetuating that damage. Fault must also be considered in dividing properties awarding alimony and duration of alimony as specified in section 30-3-5 (8) (h). This should be resolved jointly in addressing Issues 1 above.

Trial courts ruling on the Divorce appears to severely contrast with the statement of Utah Legislative, Code 35A-3-503, where is stated;

“public policy should promote and encourage a strong civic sector [which] depend on the strength of families ” leading to “Social Capital”

Decree violates intent of Utah family court act 30-3-11.1. The Husband’s family oriented, pre-separation life-style deserve “strengthening” and should be given prejudicial preference over the “broken-family” election of the deserting Wife or of State’s economic advantage.

Issue 3 Error was invited and introduced through claim of impertinent issues, reversal of pre-trial agreements, and untimely insertion of claims.

Assertion: Error was invited by laying claim on pre-marital issues, untimely entry of debt records, and contradiction with pre-trial agreements. This led to mistaken Findings of Facts and inequitable Conclusions of Law.

Events and issues not pertaining to this marriage have been incorporated in argument to make improper claim on against the Husband. The principle of res judicata should be judiciously applied to reverse claim is on issues resolved by the previous divorce.

a) Contribution to Husband's education and profession

In opening argument Wife's council claimed: (Transcript Pg 10. Ln. 10)

“ what value Utah law places on a woman who gives up her own education to support her husband through his schooling, to support her husband as he continues his employment and his work, who makes sacrifices of her own career in order to honor her obligations to her family and raise a family, and the value placed on decades of her efforts”

It should be recognized that in this marriage the wife gave up no career, no education, and offered no support to the Husband's education. It should also be recognized, the Wife brought children into the marriage, not the Husband, treating the second marriage distinct from first. The Husband, by receiving the wife back into his life, mended a family the wife had previously dishonored and broken. This familial dishonor is repeated through this divorce. It is clearly shown by duration of second marriage that the wife did not place decades of effort in support of family.

Additional pre-marital issues were raised throughout Court hearing, including issues with intimacy identified in Issue 2 c) above.

b) Claim on issues settled prior to trial hearing

Pre-trial dialogue resulted in undisputed claims adden. sec. 5, Pg 4-5. Therein are found agreements:

6. Respondent has agreed to sign the necessary form so that Petitioner can obtain COBRA coverage on Respondent's health insurance for as long as it is viable by law to Petitioner. Petitioner shall be solely responsible for the cost of the COBRA Health insurance.
13. Petitioner should be ordered to pay all money owed to Washington Mutual on the Orem home and all debts incurred by Petitioner subsequent to the parties' separation in August 2002.
14. Respondent should be ordered to pay all mortgages on the Lake Stevens House and all debts incurred by Respondent subsequent to the parties' separation in August 2002.

Separate coverage for post-separation debts was again expressly agreed to by Wife

in Trial hearing, as recorded in Transcript, Pg.39, Ln 13:

- 13 Q. *(Ms. Howard) Okay. Isn't it true, Julie, that you would rather*
- 14 *have Peter pay your debts?*
- 15 A. *No, not the ones I've incurred down here. But yes,*
- 16 *for everyday living, yes.*

Despite these agreements and admissions, Wife and council augmented financial claims the day preceding trial (May, 7, 2008) adding significant debt to Petitioners financial declaration and argued them as marital obligation. This is demonstrated in Wife's dated financial statement included as adden. sec. 6.

In contrast, Husband excluded financial obligations from argument in accordance with Pre-trial agreement.

Specific obligations listed in financial declaration to be removed as a basis if alimony include:

Stove/Microwave payment \$100 (Financial Dec. Pg 2)

Furnace / A.C.¹ payment \$255 (Financial Dec. Pg 2)

Insurance (medical) – COBRA \$400 (Financial Dec. Pg 5)

School² \$375 (Financial Dec. Pg 5)

Notes:

1 Furnace contract was signed with express agreement that this would not be held as Husband's obligation. It was not included in financial declaration prior to that submitted to court, as evidenced by date signed. This late insertion raises concerns over legal ethics.

2 At Wife's election to attend school agreement was that this be funded primarily by her private resources where living expenses would be provided comfortably through Husband's monthly support, supplemented as needed. Education was not established as a marital obligation.

Proposed Correction – Issue 3

Appellate court is requested to recognize errors in the awarding of alimony have been invited by Wife and counsel. Pre-marital issues and pre-trial agreements should not have been entered into consideration of contest at trial. Such material

should be removed from consideration and the basis of alimony appropriately corrected.

Accordingly, consideration for award of alimony may not take into consideration Husband's pre-marital education and professional placement into consideration of alimony award. Post-separation financial obligations entered into by the Wife listed above should also be excluded as basis for Alimony.

Additionally, the legality of introducing revisions to the financial declaration, without adequate time for Respondent to Review, should be brought into question. As recorded on page 1 of Respondent's declaration, this material should have been submitted *pre-trial*, rather than at court.

Correction to alimony excluding the above claims asserted by Trial Court, amount to reduction of \$1,130 monthly. These expenses can be and should be addressed by the Wife personally from resources she has in reserve, evidenced in her financial declaration.

Conclusion -Relief Sought

Appellant's brief gives clear exposure to inequities in the Decree of Divorce.

Legal arguments cited justify equitable relief, including:

1) The \$40,600.26 equity offset for residential properties called for in the Decree of Divorce should be eliminated or significantly reduced in recognition of well formed equity models presented. Precise compliance with Utah Code, Case Law and principles of equity found in Equity Model is requested.

2) Duration of alimony should be reduced, commensurate with the offenses of desertion and intentional cruelty imposed by the Wife in violation of marriage commitment, allowing the Husband to regain the life-style he enjoyed prior to Wife's election to depart from and to dissolve the marriage. Fault should be acknowledged in Decree of Divorce and found deserving of reduced award of alimony and duration.

3) Pre-marital issues and post-separation financial obligations of \$1,130 be excluded from consideration for monthly alimony.

4) Appellant also requests that all legal fees incurred associated with this appeal be born by the respective party incurring them, as provided in appellate Rule 34, Award of Costs "...unless otherwise agreed by the parties.." Appellant has applied all effort to minimize financial burden to all parties in seeking equitable resolution and expects like reciprocation.

Base on argument presented herein the appellant finds himself compelled to request that this court of appeals reverse and remand this case to be reheard for appropriate equity division and re-consideration.

Appellant's Sentiment

The Husband has no interest in, nor has he facilitated divorce. Divorce is a demeaning, damaging endeavor for the one causing divorce, the family it breaks, and the society which bears it. Accordingly, the Husband has taken responsibility to avert and minimize damage this divorce imposes, yet has accepted its imposition. He has patiently, openly, and honestly dealt with this challenge, only to be taken advantage of through false claim and misrepresentation, in marriage and in legal process. This appeal seeks remedy for inequity and the unjust application of law and reason. The Husband trustingly exposes and subjects himself to the Utah Appellate Court.

Utah Case law records:

"The overarching aim of a property division . . . is to achieve a fair, just, and equitable result between the parties . . . [by] allocat[ing] property in the manner which 'best serves the needs of the parties and best permits them to pursue their separate lives.'" Burke v. Burke, 733 P.2d 133, 135 (Utah 1987)

The Civil Court ruling August 12, 2008 on case 054400186 virtual enslaves the Husband, seriously constraining him from regaining what has been cruelly denied him. The ruling handsomely rewards the wife for deserting marriage and aggressively seeking a "separate life" at the Husband's expense. The ruling does not align well with Utah aim of equitable division, nor with promoting family.

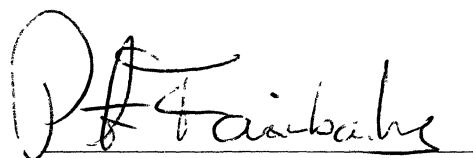
Economies and societies where aggressive, consumptive, and destructive motives are rewarded, eventually fail, as recent world economics attest. This appeal pleads for moral, economic, civic and familial prudence. The court is expected to

favor propriety over rote, manipulative legal practice, Sate's advantage, or gender sympathy. Please, do not steal from the productive and give to the destructive.

In this case, the Husband honored his marital commitments and persisted them long beyond Wife's election to leave the marriage. Despite threat of divorce, the Husband has caringly funded the Wife's endeavors; not out of legal charge, but out of decency, refusing to reciprocate cruelty. Through his support and securing of a second home the Wife is well situated for post-divorce living. He has and will honorably relinquish the Wife's equitable share of resources, according to the principles of equity presented herein and as supported by Utah law. May the state of Utah respectfully reciprocate the Husband's honor and decency by reinforcing precision and propriety of law, rather than intensify divisive inequities the Husband has borne.

Thank You.

Dated: ~~January~~ March 2, 2009



PETER N. FAIRBANKS
Appellant *Pro Se*
2109 127th DR NE
Lake Stevens, WA 98258

Notary recording

State of Washington, County of Snohomish
Signed and sworn to (or affirmed) before me

on 3/2/09 by Peter N Fairbanks

Amy H Pendleton

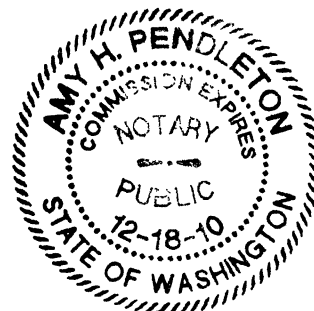
Printed Name

Notary
Title

Amy H Pendleton

Signature

12-18-10
Expires



CERTIFICATE OF SERVICE

I hereby certify that the **Appellant Brief** was served upon the parties listed below by prepaid first class US mail, on this 2nd day of March, 2009, to the following addresses:

Original plus 7 copies:

Utah Court of Appeals
Appellate Clerks' Office
450 South State, Fifth Floor
P.O. Box 140230
Salt Lake City, Utah 84114-0230

Office: (801) 578-3900

Fax: (801) 578-3999 Cover and notarized signature pages only

2 copies:

Ron Wilkinson
Attorney for Appellee
815 East 800 South
Orem, Utah 84097

Office: (801) 225-6040

Fax: (801) 225-6041 Cover and notarized signature pages only

2 copies retained:

Peter N. Fairbanks

A handwritten signature in black ink, appearing to read "P. Fairbanks", written over a horizontal line.

PETER FAIRBANKS

Appellant *Pro Se*

**Appellant's Brief
20080774 – CA**

**Addendum
Section 1**

**Divorce Decree
Findings of Facts
Conclusions of Law**

Ron D. Wilkinson (5558)

The Heritage Building
815 East 800 South
Orem, Utah 84097
Telephone. (801) 225-6040
Facsimile (801) 225-6041

Attorney for Petitioner

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

JULIE ANN MCKENZIE FAIRBANKS,

Petitioner,

vs.

PETER NATHAN FAIRBANKS,

Respondent.

DECREE OF DIVORCE

Case No.: 054400186

Judge: Samuel McVey

The above-referenced matter came before the Court for bench trial on May 8, 2008. The Petitioner, Julie Fairbanks, was present, represented by her attorney, Ron D. Wilkinson, Esq. The Respondent, Peter Fairbanks, was also present, represented by his attorney, Carolyn Howard, Esq. The Court having heard the evidence and arguments of counsel, having entered it's Findings of Fact and Conclusions of Law, and for good cause appearing:

Sec-1
Page 1

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- 1 Petitioner is, hereby, granted a Decree of Divorce from the Respondent,
dissolving the bonds of matrimony heretofore existing between the parties on the
grounds of irreconcilable differences
- 2 In that none of the factors exist for choosing a different date for valuing the
marital estate, the date for valuing the estate is the date of the Divorce Decree
The marital estate shall be divided as equally as possible between the parties
- 3 As the Petitioner placed \$50,000 00 of separate property (an inheritance) into the
Orem home and the amount is easily traceable, (having gone through no further
transformations) Petitioner is, hereby, credited with \$50,000 00 from the
\$160,403 29 equity in said home The remaining equity of \$110,403 29 shall be
divided equally between the parties Therefore, Petitioner is, hereby, awarded
\$105,201 64 of equity in the Orem home and Respondent is awarded \$54,201 64
of equity in said home
- 4 The \$189,603 81 of equity in Washington house equity is, hereby, divided equally
with each party receiving \$94,801 90
- 5 Respondent shall quitclaim ownership of the Orem house to Petitioner Petitioner
shall hold Respondent harmless for the mortgage on the house
- 6 Petitioner shall quitclaim ownership of the Washington house to Respondent
Respondent shall hold Petitioner harmless for the mortgage on the house

- 7 Each party will communicate the change in ownership and hold harmless the agreement for his or her home to all mortgages on that home
- 8 The above transactions shall occur within thirty (30) days from the entry of the decree
- 9 As Petitioner is "holding" \$54,201.64 of Respondent's equity in the Orem house and Respondent is "holding" \$94,801.90 of Petitioner's equity in the Washington house, Petitioner is entitled to be made good for that difference of \$40,600.26 from other marital property, or at Respondent's election, from his separate property. Within thirty (30) days, Respondent shall select which portion of his share of assets to transfer to Petitioner to make good on the \$40,600.26 equity amount due to her.
- 10 The parties are encouraged to refinance the homes into their separate names if an advantageous loan package can reasonably be obtained.
- 11 The interest in the one hundred (100) stock options for Boeing shall be equally divided. Any other Boeing stock shares are considered Respondent's separate property.
- 12 Petitioner is awarded a share of the value of Respondent's Boeing retirement taking into account the following factors: 12 years of the current marriage before separation and 29 years of employment. The first marriage's duration does not factor since interests arising out of that time would have merged into the first decree of divorce in 1987. The formula is, therefore, $12/29 \times 50$, which equals an

1 - (3)

interest in Petitioner of 20.7% in the pension. The parties shall obtain the pension administrator's standard Qualified Domestic Relations Order (QDRO) form and provide it to the Court for signing and entry. The Qualified Domestic Relations Order shall reflect Petitioner's 20.7% of pension proceeds.

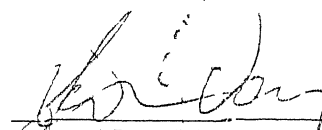
13 The 401k account had a \$59,477.90 balance at separation. Petitioner is entitled to the following: one-half of the 401k account, plus appreciation to the date of the Decree of Divorce, minus Respondent's separate premarital property contribution of \$12,115.00 and minus any contributions he has made since August 8, 2002, the date of separation. The parties shall ask the plan administrator to compute the amount of appreciation and shall ask for the plan's standard QDRO form, put in the computed amount to go to Petitioner and present the form to the Court for entry.

14 Alimony is, hereby, awarded for twelve (12) years in the amount of \$2,771.00 per month to be paid by Respondent to Petitioner at a rate of one-half payment by the 5th and 20th of each month. The Court reserves jurisdiction over alimony and foresees adjusting it in Fall 2009 when Petitioner should obtain her teaching certification. Alimony shall automatically terminate upon Petitioner's remarriage, cohabitation, or death.

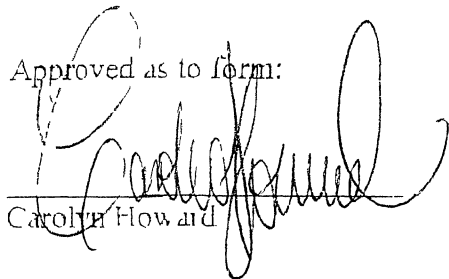
15 The parties shall cooperate in promptly executing all necessary documents and transferring property to carry out the provisions of the decree of divorce

Decree of Divorce entered by the Court

DATED this 12 day of ^{August} July 2008


Samuel D. McVey
District Court Judge

Approved as to form:


Carolyn Howard

I CERTIFY THAT THIS IS A TRUE COPY OF
AN ORIGINAL DOCUMENT ON FILE IN THE
FOURTH JUDICIAL DISTRICT COURT UTAH
COUNTY STATE OF UTAH

DATE

AUGUST 28, 2008

DEPUTY COURT CLERK

NOTICE OF INTENT TO SUBMIT FOR SIGNATURE

Pursuant to Rule 7 of the Utah Rules of Civil Procedure, you are, hereby, notified that the foregoing Order will be sent to the court for signing upon the expiration of five (5) days from the date of this Notice, plus three (3) days for mailing, unless a written objection is filed with the Court prior to that time

DATED this ___ day of July 2008


Ron D. Wilkinson, Attorney for Petitioners

1 - (5)

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

JULIE ANN MCKENZIE FAIRBANKS, Petitioner, vs. PETER NATHAN FAIRBANKS, Respondent.	FINDINGS OF FACT AND CONCLUSIONS OF LAW Civil No. 05440186 Judge SAMUEL D. MCVEY
---------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------

The parties tried this case to the Court at a bench trial on May 8, 2008. Ronald Wilkinson, Esq. presented petitioner's case and Carolyn Howard, Esq. presented respondent's case. Having heard the evidence and arguments of counsel, the Court enters its Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The parties remarried married July 1, 1990 and petitioner has resided in Utah County for at least the past three months. Irreconcilable differences arose during the parties' marriage. The parties were married once before from June 28, 1975 to September 1987.

2. Husband, Nathan Fairbanks, received a bachelor's degree during the parties' first marriage. Wife, Julie Fairbanks, is working toward her bachelor's degree in history education and will receive it in August 2008. She should receive her teaching certificate after another year of schooling and student teaching and be able to begin teaching in the school year beginning Fall 2009.

3. Husband has worked full-time for Boeing as a software engineer for 29 years. Wife works part time at Fabric Mill for about 14-21 hours per week as a clerk.

4. The parties' children are no longer minors and the parties expect no more children.

5. The parties separated on August 8, 2002 after 12 years of marriage. Their previous marriage lasted 12 years and three months.

6. The parties stipulated to a division of much of the personal marital property in their respective possessions. The Court accepted the terms of the stipulation which are incorporated here by reference.

7. The parties own two marital homes. The home in Lake Stevens, Washington, has a value of \$297,000.00 and secures a mortgage of \$107,396.19, for equity totaling \$189, 603.81. Husband occupies the home and the parties agree he will be awarded title to the home, assume all mortgages and hold wife harmless on all mortgages on the house.

8. The home in Orem, Utah, is worth \$224,000.00, has a mortgage of \$65,636.71 and equity of \$160,403.29. The parties agree wife will get title to the home, assume the mortgage and hold husband harmless on all mortgages on the house. Wife put \$50,000 of her separate property into the home when the parties purchased it in August 2002. The parties refinanced the Lake Stevens home and got cash back of \$31,315.54 which they put into the Orem home purchase. Husband has paid the mortgage and maintenance on the Orem home since separation.

9. Husband has a Boeing retirement plan based on 29 years of employment and has a 401k plan through his employer. The 401k had \$12,115.00 of husband's separate property in it when the parties married and a balance of \$59,477.90 in August 2002, when the parties separated. There was a credit union savings account in 2002 but there is no evidence of a current balance in it. The funds were withdrawn in October 2002 and the Court cannot determine what they were used for after that.

10. Husband received a future interest in options for 100 shares of Boeing stock in 1997 through an employee incentive plan. At the time of separation, options in 70 shares had vested in husband. The remaining 30 shares have since vested.

11. Wife received an inheritance of \$100,000.00 during the marriage which included the \$50,000 put into the Orem home. Husband received an inheritance held in a Dodge and Cox funds account. The parties agree the inheritances are separate property with the exception of the \$50,000.00 put into the Orem home which husband claims belongs to the marriage estate. Wife commingled into family expense payments certain other inheritances she received before separation to the extent those inheritance funds cannot be identified or traced at this point.

12. The parties' marital debts consist of the mortgage balances husband currently pays. Neither party has attempted to dissipate, hide nor otherwise mismanage marital assets either before or after the date of separation and the Court commends the parties on that point for being completely honest.

13. Wife will incur an additional \$3000.00 in tuition and books while obtaining her teaching certificate.

14. Wife intends to teach in Utah after obtaining her certificate at a starting salary of about \$29,300. The Court takes notice she would have about two and one-half months summer vacation as a teacher. Husband has rented part of his house in the past to supplement his income and believes wife could do the same thing. There was not evidence the parties rented part of their house out before separating.

15. Husband's gross monthly income is \$7,979.00. After non-discretionary deductions of \$1,406.49 (including medical insurance and union dues), his net monthly income subtotal is \$6,572.55. However the Court finds his deducted discretionary disability insurance payments of \$30.38 per month benefit wife by insuring her security for support if husband is disabled. Taking away this amount, the Court establishes his net income at \$6542.71. The other discretionary deductions for the 401k plan are accounted in husband's expenses below.

16. Wife's gross monthly income is \$613.39 while she is finishing her schooling. After non-discretionary deductions of \$73.41 her net monthly income is \$539.98. The court finds it will benefit both parties for wife to obtain her teaching certificate since in Fall 2009, about 15 months away, she will be able to substantially support herself at a level far higher than she could without a degree. She will also be able to obtain a teaching position with full benefits, reducing her monthly expenses substantially, and will receive periodic raises. While she has no disabilities which would preclude her from working full time now, without a college degree or skills obtained in the workforce over the time of the parties' marriage, she has little hope of being employed for more than she currently makes at Fabric Mill.

17. Husband's monthly expenses consist of the mortgage payment of \$1,229.00 (the Court excludes the \$24.00 extra principal payment husband testified to) and the following: monthly maintenance is \$200.00, food and supplies \$300.00, utilities and city bills \$275.00, telephone and cell phone \$200.00, clothing and laundry \$60.00, incidentals \$200.00, auto expenses including insurance and fuel \$450.00, charity \$750.00, voluntary investment for retirement 401k plan \$294.62 and savings bonds \$2.00. The Court notes husband's employer matches the 3% 401k contribution so it is definitely in husband's best interests to pay it each month but it is discretionary and benefits only husband. Husband has been paying \$250.00 to aid

the parties' adult children. These latter two expenses will not be considered. The expenses thus total \$3664.00. Husband currently pays wife \$2,350.00 in temporary alimony pursuant to an order of the Court and provides certain other periodic payments, but for purposes of this calculation, that amount is not included as an expense since it will be readjusted. Net income minus allowed expenses leaves him a surplus of \$2878.71. Husband has paid wife approximately \$168,000.00 over the past six years. At an average of \$28,000 per year or \$2333 per month, the Court finds the amount consists of the alimony he has been paying.

18. Wife's monthly expenses consist of the mortgage payment of \$599.58 and the following: monthly maintenance \$250.00, food and supplies of \$500.00 (the difference between her and husband's amount is due in part to her dining out more), telephone of \$88.42, utilities \$222.28, clothing and dry cleaning of \$125.00, medical \$50.00, dental of \$75.00, COBRA plan medical insurance of \$380.00, tuition and other school expenses of \$375, entertainment of \$75.00, auto expenses of \$175.00, incidentals \$100.00, and installment payments of \$805.00. Wife's expenses thus subtotal \$3820.28. However, \$450.00 of this amount is for payments on attorneys fees. Since the Court has not addressed the issue of fees, the Court will not recognize that amount as a monthly expense for alimony purposes. Expenses thus total \$3370.28, creating a \$2830.30 monthly expense over income deficit. She makes up part of the deficit between income and expenses by receiving \$2350.00 per month in temporary alimony from husband. When wife begins to teach, her medical and dental expenses will be covered mainly with employer-provided insurance, so her expenses should diminish. However, until then, an award of alimony must take into account her current expenses. Further, the Court finds the COBRA plan amount to be reasonable and very likely much less expensive than any individual medical coverage she could get at present.

19. The parties' expenses for purposes of support appear reasonable, and even roughly equivalent taking into account the difference in mortgages and a less expensive medical plan available to husband. They are also reasonable in light of the parties' pre-separation lifestyles since wife liked to eat out whereas husband did not.

20. As in most divorces, neither party can have a reasonable expectation of maintaining his nor her pre-separation standard of living based on current income because it costs more to maintain two households than one. As stated previously, it is reasonably foreseeable wife will increase her income after graduating from college and getting her teaching certificate. She will then receive annual raises and career ladder raises. Further, her medical insurance cost will decrease to a few dollars and she will no longer have school costs, cutting her expenses more than \$700.00. It will therefore greatly benefit husband in the long run to help finance her teaching certificate the short term. Husband's income will foreseeably increase with cost of living raises.

21. The parties agree to file a joint tax return for tax year 2007 and separate returns thereafter.

CONCLUSIONS OF LAW

1. The marital estate should be divided as equally as possible between the parties. The date for valuing the estate is the date of the Divorce Decree in that none of the factors exist for choosing a different date. In this matter, the Court again remarks on how impressive husband has been in fully disclosing assets and not hiding or dissipating them.

2. There is no dispute the homes are marital property and the equity in them is a marital asset. Wife placed \$50,000.00 of separate property into the Orem home. The amount is easily traceable, having gone through no further transformations. The parties also transferred \$31,315.54 of marital property equity from the Washington home. Of the \$160,403.29 equity, wife is therefore credited with the \$50,000.00 and her half of the \$31,315.54, or \$15,657.77. Husband is entitled to a credit of \$15,657.77. The remaining equity, \$79,087.75, will be divided equally. The Court concludes that although husband has paid the mortgage on the home, thus helping preserve wife's separate property, he did so through temporary alimony payments and the mortgage is low enough that it approximates what rent would be if wife leased a house. In fact, it is substantially lower due to the \$50,000.00 being added to the down payment. So husband has benefitted from that inheritance amount as well by not having to subsidize a mortgage payment based on \$50,000.00 higher loan principal. Wife thus gets a credit of \$50,000 + \$15,657.77 + \$39,543.87 which equals \$105,201.64. Husband gets a credit for the remainder of the equity-- \$15,657.77 + \$39,543.87 which equals \$55,201.64. This is formulaic way of simply proving the joint equity in the house is \$110,402.64 to be divided equally.

3. The \$189,603.81 Washington house equity will be divided equally with each party getting a credit of \$94,801.90. Total marital equity for both homes is therefore \$300,006.46. So each party's half share of the equity for both houses is \$150,003.23. Wife is "holding" \$55,201.64 of husband's equity in the Orem house and husband is "holding" \$94,801.90 of wife's in the Washington house. Husband is therefore holding \$39,600.25 more of wife's than she is holding of his. She is entitled to be made good for that difference from other marital property, or at husband's election, from his separate property. Husband will choose which portion of his share of assets to transfer to wife to buy the \$39,600.25 equity amount from her. This action will leave each party holding total ownership of his or her house. Husband will quitclaim ownership of the Orem house to wife and hold her harmless for the mortgage on the house. Wife will do the same thing for the Washington house. Each party will communicate the change in ownership and hold harmless agreement for his or her home to all mortgagees on that home. The above transactions should be capable of occurring in 30 days from the entry of

the decree. The parties are encouraged to refinance the homes into their separate names if an advantageous loan package can be obtained.

4. The interest in the 100 stock options was acquired during the marriage, although 30 of them vested after separation. They are marital property since their acquisition was based on the pre-separation work of husband. They will be equally divided. The Boeing Stock shares are husband's separate property, all interest in them having been acquired after separation.

5. Wife is awarded a share of the value of husband's pension fund taking into account the following factors: 12 years of the current marriage before separation and 29 years of employment. The first marriage's duration does not factor in since interests arising out of that time would have merged into the first decree of divorce in 1987. The formula is $12 / 29 \times 1/2$ which equals an interest in wife of 20.7% of the pension. The parties will obtain the pension administrator's standard Qualified Domestic Relations Order (QDRO) form and provide it to the Court for signing and entry. The form will reflect wife's 20.7% of pension proceeds.

6. The 401k account had a \$59,477.90 balance at separation. Wife is entitled to half that amount, plus appreciation to the date of the decree, then minus husband's separate property contribution of \$12,115.00. His contribution is easy to trace having not been transmuted and remains his separate property. The \$59,477.90 plus gains on it since the separation will thus be valued as of the date of the decree then the \$12,115.00 will be reimbursed to husband. The remainder will be divided in two and wife will be entitled to her one-half share. Just as wife did not get appreciation on her separate property investment in the Orem home, husband will not get appreciation on his separate property investment in the 401k plan. The parties will ask the plan administrator to compute the amount of appreciation and will ask for the plan's standard QDRO form, put in the computed amount to go to wife and present the form to the Court for entry.

7. With the exceptions noted above, the parties' current expenses are reasonable when viewed in light of available income, the parties' goals and their pre-separation standard of living. The Court should try to maintain both parties' respective living standards, which are reasonable (with the noted exceptions) given the circumstances. This requires an award of alimony to wife, taking into account mandatory considerations of wife's financial condition and need, wife's ability to support herself, husband's ability to pay support and the length of the marriage. The Court also considers equitable and long-term beneficial considerations of the likelihood of wife increasing the support for herself after finishing her teaching certificate, the goal of maintaining respective ownership of the homes and the need for the parties to take a firm first step in adjusting to their future lives. The Court sees wife's graduation and full time employment as future conditions but they will allow a permanent adjustment to alimony in the future. The Court notes there is no dispute the marriage was fairly long term, 12 years. Alimony

will be awarded for no longer than that period of time. It will be subject to adjustment when wife begins teaching in Fall, 2009 and when any other event recognized by statute occurs. The Court would intend to impute a teacher's income and benefits to wife in Fall, 2009, regardless of whether she has her certificate and a teaching position by then. This imputation will be a material change of conditions. Husband raised fault at trial as a consideration for reducing alimony. The Court believes while wife significantly contributed to the divorce occurring, she did not engage in the activities the legislature primarily had in mind when enacting the fault factor. (*See generally* Utah Code Ann. Section 30-3-5). Husband is not entitled to reimbursement for past temporary alimony, including the amount spent on the Orem mortgage.

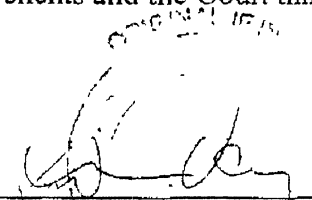
8. Wife's allowed expenses exceed her net income (excluding the temporary alimony income) by \$2770.70, rounded to \$2771.00. Husband's income exceeds his allowed expenses by \$2878.71. Setting aside the current alimony order, husband has enough income after reasonable expenses to fill wife's deficit. Since the statute does not tell the Court to consider tax consequences to alimony payors and recipients, the Court does not do so. Alimony of \$2771.00 per month will be paid by husband to wife at a rate of one-half payment by the 5th and 20th dates respectively of each month. Although not necessary to state expressly, the Court reserves jurisdiction over alimony and foresees adjusting it in Fall, 2009 when wife can get her teaching certification.

9. The Court has jurisdiction, venue is proper and the parties are entitled to a decree of divorce due to irreconcilable differences which have unfortunately arisen between them.

10. The parties will cooperate in promptly executing all necessary documents and transferring property to carry out the provisions of the decree of divorce.

11. Counsel for petitioner will please incorporate the parties' stipulations and these findings and conclusions into a decree and submit the documents in due course. Counsel may obtain an electronic version of these findings and conclusions if desired for ease of drafting the final document by contacting the Court's clerk. The Court commends both counsel on their thorough arguments and efficient use of time saving their clients and the Court time and costs.

Dated this 9th day of May 2008



Samuel D. McVey
District Court Judge

**Appellant's Brief
20080774 – CA**

**Addendum
Section 2**

**Attachments to
Respondents Response to Petitioner's
Request for
Admissions Interrogatories and
Production of Documents**

(Trial Exhibit #7)

2607 VINING STREET • BELLINGHAM, WASHINGTON 98226-4230 • TELEPHONE (206) 733-3852

Dear Family:

At the end of January, we spent a couple days in Olympia, WA while I was Doctor of the Day. Several contacts were made in an effort to have another Marcus Whitman Statue placed in Walla Walla. We were able to visit Suzy, Dan and family on the way down. On the way home, we visited Gene, Carol and family. Peter was also able to have dinner with us. Steven, Mathew and Michael came to Bellingham for the weekend. Then Gene, Carol and Kelsey came up Sunday to return the boys to Bellevue.

The stormy days and cold weather seem to have passed. The spring flowers are beginning to bud out. Crocus and tulips have sprouted up. The days are cool with light rains. Heather is in bloom, so spring will soon follow.

I hope this information about the sale of the lots will help you in your tax calculating.

Dad

Sec II

Pg i

Count and the number of me, her

\rightarrow $t = \gamma - 1, 2, 3, \dots$

FLORENCE AND EUGENE FAIRBANKS

2807 VINING STREET • BELLINGHAM, WASHINGTON 98226-4230 • TELEPHONE (206) 733-3652

Sale of Property Highland and Taylor Streets
 Lots Seven to Twelve
 Gifted to sons and daughters of
 Florence and Eugene Fairbanks

Dec 1963	Original Purchase Price	3500.00
Dec 1972	Paving of Alley LID	3118.42
Feb 1974	Paving Sidewalk LID	514.78
1965 to 1989	Building improvements Materials	392.75
Sept 1990	Selling Costs	
	Title Insurance	541.16
	Recording Fees	72.00
	Excise Tax	1688.00
	Total Costs	9827.11
Sept 1990	Selling Price	110563.90
	Less costs	9827.11
	Net return	100736.79
	one tenth share=	10073.68

Sec. II

Pg 2

MARCUS A. FAIRBANKS, D.D.S.

Meridian Dental Center
3628 Meridian, Suite 1B
Bellingham, Washington 98225
Telephone (206) 676 9050

Sept 20, 1990

Dear family,

Enclosed you'll find a check
for the sale of the property behind our home
on 17th st. The following is a breakdown of the
amount you will have to claim as capital gains

Gross Sale	\$110,563.90
minus - original cost	3,500.00
alleged lid	1,500.00
sidewalk lid	750.00
title insurance	541.16
Recording fees	72.00
excise tax	1,688.36
<hr/>	
	\$102,512.38 ÷ 10 = \$10,251.24

The checks reflect the gross sale minus closing cost etc.
plus some interest from being in an account for a week or two
Also claim 34.09 for 1/2 year of real estate tax to be
file on 1040 form if you're itemizing your deductions
during tax season I'll let you know how much interest
from the account at BNB but it won't amount to much
Give me a call if you have any questions. Also John
suggested making a contribution for a gift for mom's Dad
let me know what you think you'd like to do

(sec II)
Pg. 2

THE BOEING COMPANY/
VOLUNTARY INVESTMENT PLAN
1992

THIS IS A STATEMENT OF YOUR
VIP LOAN ACCOUNT ACTIVITY FOR
CALENDAR YEAR 1992

9487-536469105 OF-FA

PETER N FAIRBANKS
2109 127TH DR N E.
LAKE STEVENS WA 98258

36 36 36 3 36 3 36 36 6 36 3 6 3 6

PAYMENT DATE	PAYMENT AMOUNT	INTEREST PAID	INTEREST OWED BUT NOT PAID	PRINCIPAL PAID	OUTSTANDING BALANCE
PRIOR YEAR BALANCE FORWARD					\$6,769 55
01/01/92	\$115.42	\$55.00		\$60.42	\$6,709.13
02/01/92	\$115.42	\$54.51		\$60.91	\$6,648 22
03/01/92	\$115 42	\$54.01		\$61.41	\$6,586 81
04/01/92	\$115.42	\$53.51		\$61.91	\$6,524.90
05/01/92	\$115.42	\$53 01		\$62.41	\$6,462.49
06/01/92	\$115 42	\$52 50		\$62.92	\$6,399 57
07/01/92	\$115 42	\$51.99		\$63.43	\$6,336 14
08/01/92	\$115 42	\$51 48		\$63.94	\$6,272 20
09/01/92	\$115.42	\$50 96		\$64.46	\$6,207 74
10/01/92	\$115 42	\$50 43		\$64.99	\$6,142 75
11/01/92	\$115.42	\$49.90		\$65.52	\$6,077 23
12/01/92	\$115.42	\$49.37		\$66.05	\$6,011.18
TOTAL	\$1,385 04	\$626 67	\$0.00	\$758.37	\$6,011 18

Sec II
Pg 4

**Appellant's Brief
20080774 – CA**

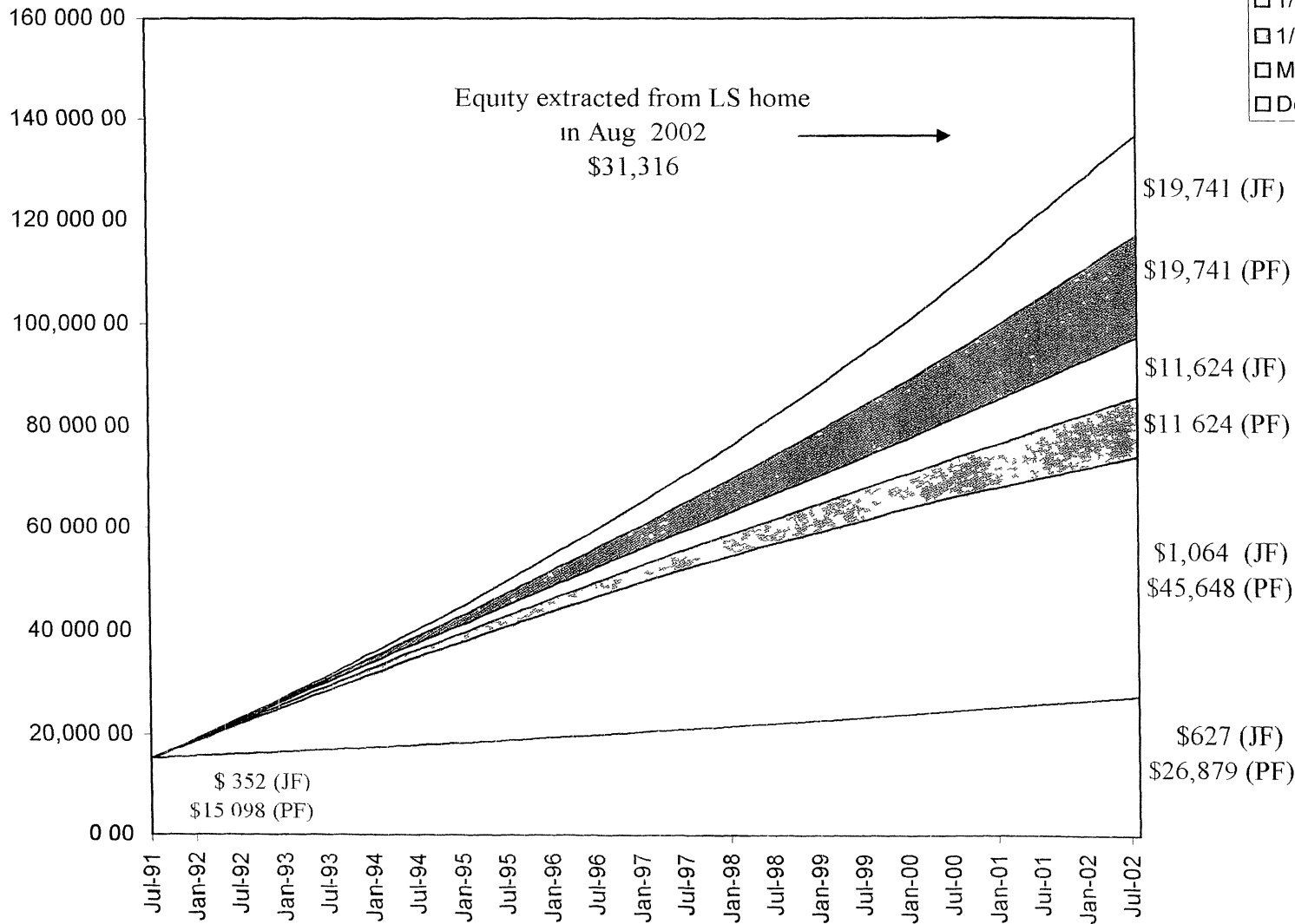
**Addendum
Section 3**

**Equitable Division of Residential
Properties**

**Lake Stevens Equity Analysis
(Trial Exhibit #19)**

**Supporting Materials
(Trial Exhibits #18, 30, 31,)**

Lake Stevens Home Equity Allocation



Sec III
P. 1

**Lake Stevens Home
Equity Division
Summary**

Lake Stevens House market value as of 8/23/02				\$235,000	
Less remaining mortgage				98,053	
Total equity to reconcile (ME)				\$136,947	
Seperate property investments				Petitioner	Respondent
Original investment down @ (after closing costs)				\$352	\$15,098
Factored growth on down payments@				275	11,781
Shared payments to mortgage principle*				9,248	9,248
Shared factored growth on principle payments*				2,376	2,376
Total Investment (basis for market equity allocation)				12,251	38,503
Market equity to be allocated				\$86,193	
Allocation over shared investment* (SM)	\$23,248	45.81%		19,741	19,741
Allocation over JF investment@ (RM)	\$627	1.23%		1,064	
Allocation over PF investment@ (RM)	26,879	52.96%			45,648
Cum Total invested (CI)			\$50,754	100%	
Total equity reconciliation				\$33,056	\$103,891

Sec III

Pg 2

Lane Stevens House Equity Analysis

July 1991 - August 2002

Pete Fairbanks / Julie Fairbanks

Date	Paid to Principle	Cum Paid to Principle	Balance	Market Growth at monthly factor of 0.00434615	Cum Market Value	Market Equity ME	Shared			Factored Growth on Down Payment	Respondent's		Shared Market Equity = Market less (investments + growth)	50% Shared Market Equity	Market Down Payment + Growth
							Cum	50% of Cum	Investment Down		Cum Investment (Down Payment) + Factored Growth	RCI	SM	SM/2	MD
7/1/1991	0.00	0.00	116,550.00	0.00	132,000.00	15,450.00	0.00	0.00	0.00	15,450.00	15,450.00	0.00	0.00	0.00	0.00
3/2/1991	57.33	57.33	116,492.67	573.69	132,573.69	16,081.02	57.33	28.67	67.15	15,517.15	15,517.15	1.86	0.93	504.68	
3/4/1991	62.75	120.08	116,429.92	576.19	133,149.88	16,719.96	120.33	60.16	67.44	15,584.59	15,584.59	7.78	3.89	1,007.26	
3/2/1991	63.24	183.32	116,366.68	578.69	133,728.57	17,361.89	184.09	92.05	67.73	15,652.32	15,652.32	17.73	8.87	1,507.74	
1/8/1991	63.74	247.06	116,302.94	581.20	134,309.77	18,006.83	248.63	124.32	68.03	15,720.67	15,720.67	31.73	15.86	2,006.12	
2/3/1991	64.25	311.31	116,238.69	583.73	134,893.50	18,654.81	313.96	156.98	68.32	15,788.67	15,788.67	49.76	24.88	2,502.42	
1/3/1992	64.76	376.07	116,173.42	586.27	135,479.77	19,306.35	380.09	190.04	68.62	15,857.29	15,857.29	71.84	35.92	2,997.13	
2/4/1992	65.27	441.34	116,107.63	588.82	136,068.58	19,960.95	447.01	223.50	68.92	15,926.21	15,926.21	97.95	48.97	3,489.79	
3/4/1992	65.79	507.13	116,041.84	591.37	136,659.96	20,618.12	514.74	257.37	69.22	15,995.43	15,995.43	128.07	64.04	3,979.87	
1/2/1992	66.31	573.44	115,975.53	593.94	137,253.90	21,278.37	583.29	291.64	69.52	16,064.95	16,064.95	162.22	81.11	4,467.92	
5/6/1992	66.83	640.27	115,908.70	596.53	137,850.43	21,941.73	652.65	326.33	69.82	16,134.77	16,134.77	200.39	100.19	4,953.92	
3/4/1992	68.06	708.33	115,840.64	599.12	138,449.55	22,608.91	723.55	361.78	70.12	16,204.89	16,204.89	242.79	121.40	5,437.67	
7/3/1992	68.60	776.93	115,772.04	601.72	139,051.27	23,279.23	795.30	397.65	70.43	16,275.32	16,275.32	289.25	144.63	5,919.37	
3/4/1992	69.14	846.07	115,702.90	604.34	139,655.61	23,952.71	867.89	433.95	70.73	16,346.05	16,346.05	339.75	169.88	6,399.01	
3/3/1992	69.69	915.76	115,633.21	606.96	140,262.57	24,629.36	941.35	470.68	71.04	16,417.10	16,417.10	394.30	197.15	6,876.61	
3/1/1992	70.24	986.00	115,562.97	609.60	140,872.17	25,309.20	1,015.69	507.84	71.35	16,488.45	16,488.45	452.89	226.45	7,352.18	
1/6/1992	70.80	1,056.80	115,492.17	612.25	141,484.43	25,992.26	1,090.90	545.45	71.66	16,560.11	16,560.11	515.52	257.76	7,825.73	
2/3/1992	71.36	1,128.16	115,420.81	614.91	142,099.34	26,678.53	1,167.00	583.50	71.97	16,632.08	16,632.08	582.18	291.09	8,297.26	
1/4/1993	71.92	1,200.08	115,348.89	617.59	142,716.92	27,368.03	1,243.99	622.00	72.29	16,704.37	16,704.37	652.87	326.44	8,766.80	
2/3/1993	72.49	1,272.57	115,276.40	620.27	143,337.19	28,060.79	1,321.89	660.94	72.60	16,776.97	16,776.97	727.59	363.80	9,234.34	
3/2/1993	73.07	1,345.64	115,203.33	622.96	143,960.16	28,756.83	1,400.70	700.35	72.92	16,849.88	16,849.88	806.34	403.17	9,699.90	
1/2/1993	73.65	1,419.29	115,129.68	625.67	144,585.83	29,456.15	1,480.44	740.22	73.23	16,923.11	16,923.11	889.11	444.55	10,163.49	
5/4/1993	74.23	1,493.52	115,055.45	628.39	145,214.22	30,158.77	1,561.11	780.55	73.55	16,996.66	16,996.66	975.89	487.95	10,625.11	
3/4/1993	75.39	1,568.91	114,980.06	631.12	145,845.34	30,865.28	1,643.28	821.64	73.87	17,070.53	17,070.53	1,067.03	533.52	11,084.43	
7/6/1993	75.98	1,644.89	114,904.08	633.87	146,479.21	31,575.13	1,726.40	863.20	74.19	17,144.73	17,144.73	1,162.21	581.11	11,541.79	
3/4/1993	71.95	1,716.84	114,832.13	636.62	147,115.83	32,283.70	1,805.86	902.93	74.51	17,219.24	17,219.24	1,258.50	629.25	12,000.10	
3/2/1993	71.95	1,788.79	114,760.18	639.39	147,755.22	32,995.04	1,885.65	942.83	74.84	17,294.08	17,294.08	1,358.25	679.13	12,457.06	
3/3/1993	71.95	1,860.74	114,688.23	642.17	148,397.38	33,709.15	1,965.80	982.90	75.16	17,369.24	17,369.24	1,461.42	730.71	12,912.69	
1/1/1993	71.95	1,932.69	114,616.28	644.96	149,042.34	34,426.06	2,046.29	1,023.15	75.49	17,444.73	17,444.73	1,567.98	783.99	13,367.06	
2/1/1993	71.95	2,004.64	114,544.33	647.76	149,690.10	35,145.77	2,127.14	1,063.57	75.82	17,520.55	17,520.55	1,677.89	838.94	13,820.20	
1/3/1994	71.95	2,076.59	114,472.38	650.58	150,340.68	35,868.30	2,208.33	1,104.17	76.15	17,596.69	17,596.69	1,791.11	895.56	14,272.16	
2/2/1994	71.95	2,148.54	114,400.43	653.40	150,994.08	36,593.65	2,289.88	1,144.94	76.48	17,673.17	17,673.17	1,907.63	953.81	14,722.97	
3/2/1994	71.95	2,220.49	114,328.48	656.24	151,650.32	37,321.84	2,371.78	1,185.89	76.81	17,749.98	17,749.98	2,027.40	1,013.70	15,172.68	
1/1/1994	71.95	2,292.44	114,256.53	659.10	152,309.42	38,052.89	2,454.04	1,227.02	77.14	17,827.13	17,827.13	2,150.40	1,075.20	15,621.33	
3/1/1994	71.96	2,364.40	114,184.57	661.96	152,971.38	38,786.81	2,536.67	1,268.33	77.48	17,904.60	17,904.60	2,276.60	1,138.30	16,068.94	
3/1/1994	71.96	2,436.36	114,112.61	664.84	153,636.22	39,523.61	2,619.65	1,309.83	77.82	17,982.42	17,982.42	2,405.96	1,202.98	16,515.57	
7/6/1994	86.90	2,523.26	114,025.71	667.73	154,303.94	40,278.23	2,717.94	1,358.97	78.15	18,060.57	18,060.57	2,550.66	1,275.33	16,949.06	
3/5/1994	94.07	2,617.33	113,931.64	670.63	154,974.57	41,042.93	2,823.82	1,411.91	78.49	18,139.07	18,139.07	2,704.89	1,352.45	17,375.15	
3/8/1994	94.68	2,712.01	113,836.96	673.54	155,648.11	41,811.15	2,930.77	1,465.39	78.84	18,217.90	18,217.90	2,863.39	1,431.70	17,799.08	
3/7/1994	95.29	2,807.30	113,741.67	676.47	156,324.58	42,582.91	3,038.80	1,519.40	79.18	18,297.08	18,297.08	3,026.14	1,513.07	18,220.89	

Lake Stevens House Equity Analysis

July 1991 - August 2002

Pete Fairbanks / Julie Fairbanks

Date	Paid to Principle	Cum Paid to Principle	Balance	Market Growth at monthly factor of 0.00434615	Cum Market Value	Market Equity ME	Shared Cum Factored Growth (SP)	50% Share of Cum Factored Growth	Investment Down Payment	Factored Grwoth on Down Payment	Respondent's Cum Investment (Down Payment) + Factored Growth RCI	Shared Market Equity = Market Equity less (investments + growth) SM	50% Shared Market Equity SM/2	Market Equity on Down Paymnet + Grwoth MD
1/7/1994	95 91	2,903 21	113,645 76	679 41	157,003 99	43,358 23	3,147 92	1,573 96		79 52	18,376 60	3,193 13	1,596 57	18,640 58
2/7/1994	96 53	2,999 74	113,549 23	682 36	157,686 36	44,137 13	3,258 13	1,629 06		79 87	18,456 47	3,364 35	1,682 17	19,058 18
11/1995	97 15	3,096 89	113,452 08	685 33	158,371 68	44,919 60	3,369 44	1,684 72		80 21	18,536 69	3,539 76	1,769 88	19,473 72
2/9/1995	97 78	3,194 67	113,354 30	688 31	159,059 99	45,705 69	3,481 86	1,740 93		80 56	18,617 25	3,719 37	1,859 69	19 887 21
3/9/1995	98 41	3,293 08	113,255 89	691 30	159,751 29	46,495 40	3,595 40	1,797 70		80 91	18,698 16	3,903 16	1,951 58	20,298 67
4/7/1995	99 05	3,392 13	113,156 84	694 30	160,445 59	47,288 75	3,710 08	1,855 04		81 27	18,779 43	4,091 12	2,045 56	20,708 13
5/5/1995	99 69	3,491 82	113,057 15	697 32	161,142 91	48,085 76	3,825 89	1,912 95		81 62	18,861 05	4,283 22	2,141 61	21,115 60
6/5/1995	100 33	3,592 15	112,956 82	700 35	161,843 26	48,886 44	3,942 85	1,971 43		81 97	18,943 02	4,479 46	2,239 73	21,521 11
7/7/1995	103 61	3,695 76	112,853 21	703 40	162,546 66	49,693 45	4,063 60	2,031 80		82 33	19 025 35	4,682 33	2,341 16	21,922 17
8/7/1995	109 28	3,805 04	112,743 93	706 45	163,253 11	50,509 18	4,190 54	2,095 27		82 69	19,108 03	4,894 17	2,447 08	22,316 44
9/1/1995	109 98	3,915 02	112,633 95	709 52	163,962 63	51,328 68	4,318 73	2,159 37		83 05	19,191 08	5,110 30	2,555 15	22,708 57
1/10/1995	110 69	4,025 71	112,523 26	712 61	164,675 24	52,151 98	4,448 19	2,224 10		83 41	19,274 49	5,330 72	2,665 36	23,098 58
1/7/1995	111 41	4,137 12	112,411 85	715 70	165,390 94	52,979 09	4 578 94	2,289 47		83 77	19,358 26	5,555 41	2,777 71	23,486 49
2/6/1995	112 13	4,249 25	112,299 72	718 81	166,109 76	53,810 04	4,710 97	2,355 48		84 13	19,442 39	5,784 36	2,892 18	23,872 32
1/5/1996	112 85	4,362 10	112,186 87	721 94	166,831 70	54,644 83	4,844 29	2,422 15		84 50	19,526 89	6,017 53	3,008 77	24,256 11
2/2/1996	113 58	4,475 68	112,073 29	725 08	167,556 77	55,483 48	4,978 92	2,489 46		84 87	19,611 76	6,254 93	3,127 46	24,637 87
1/11/1996	114 31	4,589 99	111,958 98	728 23	168,285 00	56,326 02	5,114 87	2,557 44		85 24	19,696 99	6,496 52	3,248 26	25,017 63
4/5/1996	115 05	4,705 04	111,843 93	731 39	169,016 39	57,172 46	5,252 15	2,626 08		85 61	19,782 60	6,742 31	3,371 16	25,395 39
5/7/1996	115 79	4,820 83	111,728 14	734 57	169,750 96	58,022 82	5,390 77	2,695 39		85 98	19,868 58	6,992 28	3,496 14	25,771 20
1/10/1996	102 30	4,923 13	111,625 84	737 76	170,488 72	58,862 88	5,516 50	2,758 25		86 35	19,954 93	7,231 79	3,615 89	26,159 67
7/5/1996	116 00	5,039 13	111,509 84	740 97	171,229 69	59,719 85	5,656 47	2,828 24		86 73	20,041 66	7,488 60	3,744 30	26,533 12
8/2/1996	116 00	5,155 13	111,393 84	744 19	171,973 88	60,580 04	5,797 06	2,898 53		87 10	20,128 76	7,748 74	3,874 37	26,905 48
9/1/1996	117 00	5,272 13	111,276 84	747 42	172,721 31	61,444 47	5,939 25	2,969 63		87 48	20,216 24	8,013 23	4,006 62	27,275 73
10/1/1996	117 00	5,389 13	111,159 84	750 67	173,471 98	62,312 14	6,082 07	3,041 03		87 86	20,304 11	8,281 01	4,140 50	27,644 96
11/1/1996	118 00	5,507 13	111,041 84	753 94	174,225 92	63,184 08	6,226 50	3,113 25		88 24	20,392 35	8,553 09	4,276 54	28,012 14
12/1/1996	118 00	5,625 13	110,923 84	757 21	174,983 13	64,059 29	6,371 56	3,185 78		88 63	20,480 98	8,828 40	4,414 20	28,378 34
1/3/1997	119 00	5,744 13	110,804 84	760 50	175,743 63	64,938 79	6,518 25	3,259 13		89 01	20,569 99	9,107 99	4,553 99	28,742 56
2/2/1997	119 00	5,863 13	110,685 84	763 81	176,507 44	65,821 60	6,665 58	3,332 79		89 40	20,659 39	9,390 76	4,695 38	29,105 86
3/1/1997	120 00	5,983 13	110,565 84	767 13	177,274 57	66,708 73	6,814 55	3,407 28		89 79	20,749 18	9,677 77	4,838 89	29,467 22
4/1/1997	121 00	6,104 13	110,444 84	770 46	178,045 03	67,600 19	6,965 17	3,482 58		90 18	20,839 36	9,969 00	4,984 50	29,826 65
5/1/1997	130 00	6,234 13	110,314 84	773 81	178,818 84	68,504 00	7,125 44	3,562 72		90 57	20,929 93	10,273 05	5,136 53	30,175 57
6/1/1997	135 00	6,369 13	110,179 84	777 17	179,596 01	69,416 17	7,291 41	3,645 70		90 96	21,020 90	10,585 68	5,292 84	30,518 18
7/1/1997	145 00	6,514 13	110,034 84	780 55	180,376 56	70,341 72	7,468 10	3,734 05		91 36	21,112 26	10,912 32	5 456 16	30,849 05
8/1/1997	151 00	6,665 13	109,883 84	783 94	181,160 51	71,276 67	7,651 56	3,825 78		91 76	21,204 01	11,248 69	5,624 35	31,172 41
9/1/1997	152 00	6 817 13	109,731 84	787 35	181,947 86	72,216 02	7,836 81	3,918 41		92 16	21,296 17	11,589 39	5,794 70	31,493 64
10/1/1997	153 00	6,970 13	109,578 84	790 77	182,738 63	73,159 79	8,023 87	4,011 94		92 56	21,388 73	11,934 40	5,967 20	31,812 79
11/1/1997	154 00	7,124 13	109,424 84	794 21	183,532 84	74,108 00	8,212 74	4,106 37		92 96	21,481 68	12,283 69	6,141 85	32,129 88
12/1/1997	155 00	7,279 13	109,269 84	797 66	184,330 50	75,060 66	8,403 44	4,201 72		93 36	21,575 05	12,637 24	6,318 62	32,444 94
1/3/1998	156 00	7,435 13	109,113 84	801 13	185,131 63	76,017 79	8,595 96	4,297 98		93 77	21,668 82	12,995 01	6,497 51	32,758 00
2/2/1998	157 00	7,592 13	108,956 84	804 61	185,936 24	76,979 40	8,790 32	4,395 16		94 18	21,762 99	13,356 99	6,678 49	33,069 10

Lake Stevens House Equity Analysis

July 1991 - August 2002

Pete Fairbanks / Julie Fairbanks

Date	Paid to Principle	Cum Paid to Principle	Balance	Market Growth at monthly factor of 0.00434615	Cum Market Value	Market Equity ME	Shared Cum Factored Growth (SP)	50% Share of Cum Factored Growth	Investment Down Payment	Factored Grwoth on Down Payment	Respondent's Cum Investment (Down Payment) + Factored Growth RCI	Shared Market Equity = Market Equity less (investments + growth) SM	50% Shared Market Equity SM/2	Market Equity on Down Payment + Grwoth MD
3/1/1998	158 00	7,750 13	108,798 84	808 11	186,744 35	77,945 51	8,986 52	4,493 26		94 59	21,857 58	13,723 14	6,861 57	33,378 27
4/1/1998	159 00	7,909 13	108,639 84	811 62	187,555 96	78,916 12	9,184 58	4,592 29		95 00	21,952 57	14,093 45	7,046 72	33,685 52
5/1/1998	160 00	8,069 13	108,479 84	815 15	188,371 11	79,891 27	9,384 50	4,692 25		95 41	22,047 98	14,467 88	7,233 94	33,990 91
6/1/1998	161 00	8,230 13	108,318 84	818 69	189,189 80	80,870 96	9,586 28	4,793 14		95 82	22,143 81	14,846 42	7,423 21	34,294 45
7/1/1998	162 00	8,392 13	108,156 84	822 25	190,012 05	81,855 21	9,789 95	4,894 97		96 24	22,240 05	15,229 05	7,614 52	34,596 17
8/1/1998	163 00	8,555 13	107,993 84	825 82	190,837 87	82,844 03	9,995 50	4,997 75		96 66	22,336 70	15,615 73	7,807 86	34 896 10
9/1/1998	164 00	8,719 13	107,829 84	829 41	191,667 28	83,837 44	10,202 94	5,101 47		97 08	22,433 78	16,006 44	8,003 22	35,194 28
0/1/1998	165 44	8,884 57	107,664 40	833 01	192,500 29	84,835 89	10,412 72	5,206 36		97 50	22,531 28	16,401 64	8,200 82	35,490 24
1/1/1998	166 59	9,051 16	107,497 81	836 64	193,336 93	85,839 12	10,624 57	5,312 28		97 92	22,629 21	16,800 99	8,400 50	35,784 35
2/1/1998	166 73	9,217 89	107,331 08	840 27	194,177 20	86,846 12	10,837 47	5,418 74		98 35	22,727 56	17,203 39	8,601 70	36,077 70
1/3/1999	167 81	9,385 70	107,163 27	843 92	195,021 12	87,857 85	11,052 38	5,526 19		98 78	22,826 34	17,609 82	8,804 91	36,369 31
2/2/1999	168 89	9,554 59	106,994 38	847 59	195,868 71	88,874 33	11,269 31	5,634 65		99 21	22,925 54	18,020 26	9,010 13	36,659 22
3/1/1999	169 98	9,724 57	106,824 40	851 27	196,719 99	89,895 59	11,488 27	5,744 13		99 64	23,025 18	18,434 69	9,217 35	36,947 45
4/1/1999	171 08	9,895 65	106,653 32	854 97	197,574 96	90,921 64	11,709 28	5,854 64		100 07	23,125 25	18,853 12	9,426 56	37,233 99
5/1/1999	172 20	10,067 85	106,481 12	858 69	198,433 65	91,952 53	11,932 37	5,966 18		100 51	23,225 76	19,275 54	9,637 77	37,518 87
6/1/1999	173 31	10,241 16	106,307 81	862 42	199,296 08	92,988 27	12,157 54	6,078 77		100 94	23,326 70	19,701 91	9,850 96	37,802 11
7/1/1999	178 24	10,419 40	106,129 57	866 17	200,162 25	94,032 68	12,388 62	6,194 31		101 38	23,428 08	20,136 29	10,068 15	38,079 69
8/1/1999	153 96	10,573 36	105,975 61	869 94	201,032 18	95,056 57	12,596 42	6,298 21		101 82	23,529 90	20,547 62	10,273 81	38,382 62
9/1/1999	154 95	10,728 31	105,820 66	873 72	201,905 90	96,085 24	12,806 11	6,403 06		102 26	23,632 17	20,962 73	10,481 36	38,684 23
0/1/1999	155 95	10,884 26	105,664 71	877 51	202,783 41	97,118 70	13,017 72	6,508 86		102 71	23,734 88	21,381 59	10,690 80	38,984 51
1/1/1999	156 96	11,041 22	105,507 75	881 33	203,664 74	98,156 99	13,231 26	6,615 63		103 16	23,838 03	21,804 22	10,902 11	39 283 47
2/1/1999	157 98	11,199 20	105,349 77	885 16	204,549 90	99,200 13	13,446 74	6,723 37		103 60	23,941 64	22,230 62	11,115 31	39,581 13
1/3/2000	184 00	11,383 20	105,165 77	889 00	205,438 90	100,273 13	13,689 19	6,844 59		104 05	24,045 69	22,687 18	11,343 59	39,851 08
2/2/2000	185 18	11,568 38	104,980 59	892 87	206,331 77	101,351 18	13,933 86	6,966 93		104 51	24,150 20	23,147 62	11,573 81	40 119 50
3/1/2000	211 38	11,779 76	104,769 21	896 75	207,228 52	102,459 31	14,205 80	7,102 90		104 96	24,255 16	23,638 20	11,819 10	40,360 15
4/1/2000	212 75	11,992 51	104,556 46	900 65	208,129 16	103,572 70	14,480 29	7,240 15		105 42	24,360 57	24,132 72	12,066 36	40,599 12
5/1/2000	214 12	12,206 63	104,342 34	904 56	209,033 72	104,691 38	14,757 34	7,378 67		105 87	24,466 45	24,631 17	12,315 58	40,836 43
3/1/2000	215 50	12,422 13	104,126 84	908 49	209,942 22	105,815 38	15,036 98	7,518 49		106 33	24,572 78	25,133 51	12,566 76	41,072 10
7/1/2000	216 89	12,639 02	103,909 95	912 44	210,854 66	106,944 71	15,319 22	7,659 61		106 80	24,679 58	25,639 75	12,819 87	41,306 15
3/1/2000	215 14	12,854 16	103,694 81	916 41	211,771 06	108,076 25	15,600 94	7,800 47		107 26	24,786 84	26,146 62	13,073 31	41,541 85
3/1/2000	216 53	13,070 69	103,478 28	920 39	212,691 45	109,213 17	15,885 28	7,942 64		107 73	24,894 57	26,657 34	13,328 67	41,775 98
3/1/2000	217 93	13,288 62	103,260 35	924 39	213,615 84	110,355 49	16,172 25	8,086 12		108 20	25,002 76	27,171 91	13,585 96	42,008 56
1/1/2000	220 68	13,509 30	103,039 67	928 41	214,544 25	111,504 58	16,463 21	8,231 61		108 67	25,111 43	27,691 67	13,845 84	42,238 26
2/1/2000	221 50	13,730 80	102,818 17	932 44	215,476 69	112,658 52	16,756 27	8,378 13		109 14	25,220 57	28,214 64	14,107 32	42,467 05
1/3/2001	401 37	14,132 17	102,416 80	936 49	216,413 18	113,996 38	17,230 46	8,615 23		109 61	25,330 18	28,920 40	14,460 20	42,515 34
2/2/2001	223 63	14,355 80	102,193 17	940 56	217,353 75	115,160 58	17,528 98	8,764 49		110 09	25,440 27	29,449 91	14,724 95	42,741 42
3/1/2001	225 07	14,580 87	101,968 10	944 65	218,298 40	116,330 30	17,830 23	8,915 12		110 57	25,550 84	29,983 16	14,991 58	42,966 07
4/1/2001	226 53	14,807 40	101,741 57	948 76	219,247 16	117,505 59	18,134 25	9,067 13		111 05	25,661 88	30,520 18	15,260 09	43,189 27
5/1/2001	227 99	15,035 39	101,513 58	952 88	220,200 04	118,686 46	18,441 06	9,220 53		111 53	25,773 41	31,060 92	15,530 46	43,411 06
3/1/2001	229 46	15,264 85	101,284 12	957 02	221,157 06	119,872 94	18,750 67	9,375 33		112 02	25,885 43	31,605 38	15,802 69	43,631 46

Lake Stevens House Equity Analysis

July 1991 - August 2002

Pete Fairbanks / Julie Fairbanks

Date	Paid to Principle	Cum Paid to Principle	Balance	Market Growth at monthly factor of	Cum Market Value	Market Equity ME	Shared Cum Principle + Factored Growth (SP)	50% Share of Cum Principle + Factored Growth	Investment Down Payment	Factored Grwoth on Down Payment	Respondent's Cum Investment (Down Payment) + Factored Growth RCI	Shared Market Equity = Market Equity less (investments + growth) SM	50% Shared Market Equity SM/2	Market Equity on Down Paymnet + Grwoth MD
				0.00434615										
7/1/2001	230.94	15,495.79	101,053.18	961.18	222,118.24	121,065.06	19,063.10	9,531.55		112.50	25,997.93	32,153.56	16,076.78	43,850.47
8/1/2001	228.88	15,724.67	100,824.30	965.36	223,083.60	122,259.30	19,374.83	9,687.42		112.99	26,110.92	32,701.99	16,350.99	44,071.56
9/1/2001	230.36	15,955.03	100,593.94	969.55	224,053.15	123,459.21	19,689.40	9,844.70		113.48	26,224.40	33,254.11	16,627.05	44,291.31
0/1/2001	231.85	16,186.88	100,362.09	973.77	225,026.92	124,664.83	20,006.82	10,003.41		113.98	26,338.38	33,809.91	16,904.95	44,509.73
1/1/2001	220.40	16,407.28	100,141.69	978.00	226,004.92	125,863.23	20,314.17	10,157.09		114.47	26,452.85	34,356.99	17,178.49	44,739.22
2/1/2001	234.77	16,642.05	99,906.92	982.25	226,987.18	127,080.26	20,637.23	10,318.62		114.97	26,567.82	34,920.06	17,460.03	44,955.15
1/3/2002	236.00	16,878.05	99,670.92	986.52	227,973.70	128,302.78	20,962.92	10,481.46		115.47	26,683.28	35,486.51	17,743.25	45,170.06
2/2/2002	237.81	17,115.86	99,433.11	990.81	228,964.50	129,531.39	21,291.84	10,645.92		115.97	26,799.25	36,056.86	18,028.43	45,383.44
3/1/2002	239.35	17,355.21	99,193.76	995.11	229,959.62	130,765.86	21,623.73	10,811.86		116.47	26,915.73	36,630.85	18,315.42	45,595.55
4/1/2002	240.89	17,596.10	98,952.87	999.44	230,959.06	132,006.19	21,958.60	10,979.30		116.98	27,032.71	37,208.45	18,604.22	45,806.43
5/1/2002	242.45	17,838.55	98,710.42	1,003.78	231,962.84	133,252.42	22,296.48	11,148.24		117.49	27,150.20	37,789.66	18,894.83	46,016.08
6/1/2002	185.22	18,023.77	98,525.20	1,008.15	232,970.98	134,445.78	22,578.61	11,289.30		118.00	27,268.19	38,319.95	19,159.98	46,279.03
7/3/2002	235.15	18,258.92	98,290.05	1,012.53	233,983.51	135,693.46	22,911.89	11,455.94		118.51	27,386.71	38,898.85	19,449.43	46,496.01
8/2/2002	236.67	18,495.59	98,053.38	1,016.93	235,000.44	136,947.06	23,248.14	11,624.07		119.03	27,505.73	39,481.34	19,740.67	46,711.84

PETER N FAIRBANKS

Statement Period: 10AUG02 - 13SEP02

Account #536469487

Line of Credit Loan 11

	Your balance at the beginning of the period		\$	6219 69
	11 25% ***ANNUAL PERCENTAGE RATE***			
	030822% Daily Periodic Rate			
		FINANCE		
	(PAYMENT)**CHARGE**PRINCIPAL			
07AUG*	Principal advance	600 00	=	6819 69
15AUG	ATM Overdraft transfer to suffix 8			
	Payment (1100 00)	26 25 1073 75	=	5745 94
	POWERLINE TRANSACTION 000000582018			
15AUG	Transfer "STL" 1,100 00 from share 8			
	Payment (25 00)	25 00	=	5720 94
	POWERLINE TRANSACTION 000000582018			
16AUG*	Transfer "STL" 25 00 from share 0			
	Principal advance	100 00	=	5820 94
17AUG*	ATM Overdraft transfer to suffix 8			
	Principal advance	100 00	=	5920 94
20AUG*	ATM Overdraft transfer to suffix 8			
	Principal advance	100 00	=	6020 94
23AUG*	Overdraft transfer to 536469487-S8			
	Principal advance	100 00	=	6120 94
27AUG	ATM Overdraft transfer to suffix 8			
	Payment (6130 00)	22 14 6107 86	=	13 08
	POWERLINE TRANSACTION 000000163532			
29AUG	Transfer "STL" 6,130 00 from share 8			
	Payment (13 09)	0 01 13 08	=	0 00
	POWERLINE TRANSACTION 000000469244			
01SEP*	Transfer "STL" 13 09 from share 8			
	Principal advance	200 00	=	200 00
05SEP	Overdraft transfer to 536469487-S8			
	Payment (200 00)	0 06 199 94	=	0 06
	POWERLINE TRANSACTION 000000180514			
07SEP*	Transfer "STL" 200 00 from share 0			
	Principal advance	100 00	=	100 06
09SEP*	ATM Overdraft transfer to suffix 8			
	Principal advance	200 00	=	300 06
10SEP*	Overdraft transfer to 536469487-S8			
	Principal advance	100 00	=	400 06
09SEP*	Overdraft transfer to 536469487-S8			
	Principal advance	100 00	=	500 06
11SEP	ATM Overdraft transfer to suffix 8			
	Payment (500 00)	0 34 499 66	=	0 40
	POWERLINE TRANSACTION 000000188859			
	Transfer "STL" 500 00 from share 0			
	Your new balance on 13SEP02		\$	0 40
	Your next loan payment is		\$	0 00
	FINANCE CHARGES PAID IN 2002 ON LOAN 11	\$ 420 96		
	Loan limit \$12000 00, your available credit is \$11999 60			

Checking Account Suffix 8

No 536469487	Balance at the beginning of the period	\$	63 59
Deposits:			
07AUG*	Deposit-ATM OD Transfer	600 00	
15AUG	Deposit THE BOEING COMPA (DIR DEP)	2041 14	
16AUG*	Deposit-ATM OD Transfer	100 00	
17AUG*	Deposit-ATM OD Transfer	100 00	
20AUG*	Deposit Overdraft transfer from 536469487-L11	100 00	
18AUG*	Deposit	154 00	
	SOUTHWES DALLAS TXUS Mach # 32292823 Trac		
	e #505743 MCM		
23AUG*	Deposit-ATM OD Transfer	100 00	
26AUG	Deposit	31315 54	
29AUG	Deposit THE BOEING COMPA (DIR DEP)	2075 86	

Equity Deposit of Equity Withdrawal from Washington Home
Ref: Trial Exhibit #30. page 2

Transaction 26 AUG* Deposit.....\$31,315 54

PETER N FAIRBANKS
 JULIE M FAIRBANKS
 2109 127TH DR NE
 LAKE STEVENS, WA 98258-9780

|||||

We have postponed system upgrades
 scheduled for October 11-15.
 Upgrades will now occur on
 the holiday weekend at the
 close of business on Friday,
 November 8.

They will go into effect on
 Tuesday, November 12. Use your old
 account numbers until November 12.

For member service
 please call: (206) 439-5700
 Outside Seattle: 1-800-233-2328

Statement Period: 14SEP02 - 11OCT02

Account #536469487

Accounts at a Glance

Account/Suffix	Beginning Balance	Withdrwl/Advances	Deposits/Payments	Ending Balance
savings-0	27291.65	36464.70	9190.55	17.50
Checking-8	264.74	7075.24	6877.54	67.04
Line of Cre-11	0 40	9752.32	1074.37	8678.35

Savings Account Suffix 0

Your balance at the beginning of the period.....\$ 27291.65

Deposits:

16SEP Deposit-L 668.17
 26SEP Deposit
 THE BOEING COMPA (DIR DEP) 12.50
 26SEP Deposit
 POWERLINE TRANSACTION 1200.00
 Transfer "STS" 1,200 00 from share 8
 01OCT 2% Dividend paid through 30SEP2002 45.06
 Annual Percentage Yield Earned: 2.02% FOR A 30 DAY PERIOD
 Average Daily Balance: 27409.79
 01OCT Deposit-CTR 7252.32
 Transfer 'LTS' 7252.32 from acct: 536469487-11
 10OCT Deposit
 THE BOEING COMPA (DIR DEP) 12.50

Withdrawals:

26SEP Withdrawal
 POWERLINE TRANSACTION -100.68
 Transfer "STL" 100 68 to loan 11
 02OCT Withdrawal-CTR
 OUT WIRE CC REF 38 SALT LAKE CITY UT -36364.02
 Your new balance on 11OCT02.....\$ 17.50
 Dividends Paid To You In 2002 On Suffix 0 \$ 53.37

Line of Credit Loan 11

Your balance at the beginning of the period.....\$ 0 40
 11.25% ***ANNUAL PERCENTAGE RATE***
 030822% Daily Periodic Rate
 FINANCE
 (PAYMENT)**CHARGE**PRINCIPAL
 17SEP* Principal advance 100.00 = 100 40
 Overdraft transfer to 536469487-S8

Down Payment on Utah Home
 Ref: Trial Exhibit #31, page 1

Transaction 02 OCT OUT WIRE...SALT LAKE CITY.....\$36364.02
 (Washington Equity \$31,315 + Added down \$3,184 + loan fee)

SEC III
 P58

11561-721
LOAN NO (CONT'D)

WASHINGTON MUTUAL BANK, F.A

LOAN HISTORY Y-T-D INV 533 CAT 096 INV# 16E3108334 T1: 12/31/01
PAGE 99790

LN# 0025718'27 PETER N FAIRBANKS

JULIE M FAIRBANKS

DUE DATE	PROC DATE	TP	TR	SO	NO	AMOUNT RECEIVED	PRINCIPAL PAID	PRINCIPAL BALANCE	INTEREST PAID	ESCPW PAID	ESCPW BALANCE	ADVANCE BALANCE	STATUS AMOUNT	STATUS BALANCE	UNEARNED INT-BAL	OTHER AMOUNTS	CFD
07-03	07-01	1	71	1		841.97	171.42	136482.60	564.39	101.16	903.10		BATCH 901 EDIT-SEQ 999999			61.00	AA
08-03	08-01	1	71	1		841.97	172.13	136310.47	568.68	101.16	1004.26		BATCH 901 EDIT-SEQ 999999			60.92	AA
09-03	08-01	1	75	2		50000.00	50300.00	86310.47	.00	.00	1004.26		BATCH 901 EDIT-SEQ 999999			60.85	AA
09-03	08-27	3	51	1		CHECK #599039				410.00	594.26		BATCH 781 EDIT-SEQ 700956			08.01	AA
09-03	09-02	1	71	1		841.97	381.18	85929.29	359.63	101.16	595.42		PAYEE CD 70085			46.00	AA
10-03	10-01	1	71	1		841.97	382.77	85546.52	358.04	101.16	796.58		BATCH 901 EDIT-SEQ 999999			36.48	AA
11-03	11-01	1	71	1		841.97	384.37	85162.15	356.44	101.16	897.74		BATCH 901 EDIT-SEQ 999999			36.31	AA
11-03	11-13	3	12	1		CHECK #320938				925.84	28.10		BATCH 901 EDIT-SEQ 999999			38.14	AA
12-03	11-13	1	61	2		28.10	.00	85162.15	.00	28.10	00	28.10	PAYER CD 43049			19.00	AA
12-03	12-01	1	71	1		841.97	385.97	84776.18	354.84	101.16	101.16	28.10				37.97	AA
12-03	12-01	1	68	2		.00	.00	84776.18	.00	28.10	73.06	.00	BATCH 90 EDIT-SEQ 999999				
01-04	12-31	1	60	1		3.83											

Transaction History - Orem home Mortgage
Ref: Trial Exhibit #18, page 9

09-03 08-01 (Aug 03) 50000.00 principle pay down.*
Note: Mortgage payments remained at 841.97, Extra to principle of \$208.*
Extra payments grew to \$255 until Nov, 2005, adjusted with new ARM rate.

Sec III
Pg 9

Mortgagor Name/Address:
 PETER N FAIRBANKS
 2109 NE 127TH DR
 LAKE STEVENS, WA 98258-0000

Requestor Name/Address:
 PETER N FAIRBANKS
 2109 NE 127TH DR
 LAKE STEVENS, WA 98258-0000

Account Number: 25718727

Date: 08/11/2006

Fax Number: 8012219777

Property Address:
 319 E 1655 S O
 OREM, UT 84058-0000

CCS: U139111

Mailstop:

Mortgage Status

Current Payment Calculation		Original Loan Information		Year-to-Date Information	
Principal and Interest	\$740.81	Original Balance	\$138,000.00	Principal	\$3,476.37
Escrow Deposit	\$118.34	Loan Term	30 years	Interest	\$2,450.11
Optional Products	\$0.00	First Payment Due	11/01/2002	Deferred Interest Assessed	\$0.00
Subsidy Funds	\$0.00	Loan Type	Conventional	Taxes Paid	\$0.00
HUD Supplement	\$0.00	Maturity Date	10/01/2032	Hazard Insurance Paid	\$0.00
Miscellaneous	\$0.00			Mortgage Insurance Paid	\$0.00
Total Payment Amount	\$859.15			Interest Earned on Escrow	\$1.87
				Late Charges Paid	\$0.00
Unapplied Funds Balance	\$0.00			Payment Status	
Current Interest Rate	5.0%				
Next Interest Rate Change Date	11/01/2007				
Current Principal Balance	\$71,538.35				
Current Escrow Balance	\$1,290.24				
				Last Payment Posted	08/01/2006
				Next Payment Due	09/01/2006
				Unpaid Late Charges	\$0.00
				Other Unpaid Fees	\$0.00

Transaction History

Date Range: 02/11/2005 - 08/11/2006

Transaction Date	Description	Amount	Interest	Principal	Escrow	Optional Products	Subsidy Funds	Other Fees	Unapplied Funds	Principal Balance	Escrow Balance
08/01/2006	August 2006 - Lockbox Pmt	\$859.15	\$299.91	\$440.90	\$118.34	\$0.00	\$0.00	\$0.00	\$0.00	\$71,538.35	\$1,290.24
07/01/2006	July 2006 - Lockbox Pmt	\$859.15	\$301.74	\$439.07	\$118.34	\$0.00	\$0.00	\$0.00	\$0.00	\$71,979.25	\$1,171.90
06/30/2006	Interest on Escrow Deposit	\$1.17	\$0.00	\$0.00	\$1.17	\$0.00	\$0.00	\$0.00	\$0.00	\$72,418.32	\$1,053.56
06/01/2006	June 2006 - Lockbox Pmt	\$859.15	\$303.56	\$437.25	\$118.34	\$0.00	\$0.00	\$0.00	\$0.00	\$72,418.32	\$1,052.39
05/01/2006	May 2006 - Lockbox Pmt	\$859.15	\$305.38	\$435.43	\$118.34	\$0.00	\$0.00	\$0.00	\$0.00	\$72,855.57	\$934.05
04/01/2006	April 2006 - Lockbox Pmt	\$859.15	\$307.19	\$433.62	\$118.34	\$0.00	\$0.00	\$0.00	\$0.00	\$73,291.00	\$815.71
03/31/2006	Interest on Escrow Deposit	\$0.70	\$0.00	\$0.00	\$0.70	\$0.00	\$0.00	\$0.00	\$0.00	\$73,724.62	\$697.37
03/01/2006	March 2006 - Lockbox Pmt	\$859.15	\$308.99	\$431.82	\$118.34	\$0.00	\$0.00	\$0.00	\$0.00	\$74,156.44	\$578.33
02/01/2006	February 2006 - Lockbox Pmt	\$872.10	\$310.78	\$430.03	\$118.34	\$12.95	\$0.00	\$0.00	\$0.00	\$74,586.47	\$459.99
01/03/2006	January 2006 - Lockbox Pmt	\$859.15	\$312.56	\$428.25	\$118.34	\$0.00	\$0.00	\$0.00	\$0.00	\$75,014.72	\$341.65
12/31/2005	Interest on Escrow Deposit	\$3.82	\$0.00	\$0.00	\$3.82	\$0.00	\$0.00	\$0.00	\$0.00	\$75,014.72	\$337.83
12/01/2005	December 2005 - Lockbox Pmt	\$858.19	\$314.34	\$426.47	\$117.38	\$0.00	\$0.00	\$0.00	\$0.00	\$75,441.19	\$220.45
11/22/2005	December 2005 - Regular Pmt	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$75,441.19	\$133.26
11/22/2005	Misapplication Payment Reversal for Correction	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$75,441.19	\$133.26
11/22/2005	Misapplication Payment Reversal for Correction	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$75,441.19	\$133.26
11/21/2005	Addl Principal Pmt	\$87.19	\$0.00	\$87.19	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$75,441.19	\$133.26
11/12/2005	County Tax Disbursement	\$971.35	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$75,441.19	\$133.26
11/01/2005	November 2005 - Lockbox Pmt	\$858.19	\$316.11	\$424.70	\$117.38	\$0.00	\$0.00	\$0.00	\$0.00	\$75,441.19	\$133.26
10/01/2005	October 2005 - Lockbox Pmt	\$858.19	\$317.87	\$422.94	\$117.38	\$0.00	\$0.00	\$0.00	\$0.00	\$75,441.19	\$133.26

Sec III
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 Trial Exh
 #18 Pg #1
 ①

**Appellant's Brief
20080774 – CA**

**Addendum
Section 4**

Temporary Pre-Trial Order

(Trial Exhibit #8)

FILED
Fourth Judicial District Court
of Utah County, State of Utah
Deputy
APR 18 2006

WILFORD N. HANSEN, JR., P.C. (1352)
123 East 100 North, First Floor
Post Office Box 67
Payson, Utah 84651-0067
Telephone: (801) 465-9288
Facsimile: (801) 465-1917

Attorney for Petitioner

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

JULIE ANN McKENZIE FAIRBANKS,
Petitioner,

vs.

PETER NATHAN FAIRBANKS,
Respondent.

ORDER ON REVIEW HEARING
MARCH 29, 2006

Civil No. 054400186

Judge _____

This matter came before the Court on March 29, 2006, at 9:00 a.m., before Commissioner Thomas Patton. Petitioner was present and was represented by her counsel, Bill Hansen. Respondent was present pro se. The parties proffered testimony

Now based thereon and good cause appearing therefor, the Court now makes and enters the following:

ADDITIONAL TEMPORARY ORDERS

IT IS HEREBY ORDERED, ADJUDGED AND DECREED

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1 The previous Court Order remains in full force and effect with the exception of paragraph 4, which is amended to award Petitioner \$2,670 00 per month as temporary support for April, 2006, with the amount to be reduced to \$2,350 00 for May, 2006

2 A final pretrial in this matter is scheduled for May 18, 2006, at 2 00 p m Respondent is to notify counsel for Petitioner by April 15, 2006, if this date is available on his calendar If Respondent

3 The parties are to exchange financial information and to complete all discovery prior to the final pretrial conference in this matter

4 The parties are ordered to attend a mediation conference conducted by Sandra Dredge, telephone number (801) 371-0306 prior to the final pretrial conference

5 The parties are ordered to submit a pretrial order of the issues remaining in this case

DATED this 16 day of April 2006

BY THE COURT

Anthony W Schofield

DISTRICT COURT JUDGE

Tom Patton

COMMISSIONER THOMAS PATTON

APPROVAL AS TO FORM

PETER NATHAN FAIRBANKS

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**Appellant's Brief
20080774 – CA**

**Addendum
Section 5**

Final Pre-trial Order

-

Undisputed Claims

(Trial Exhibit #6)

Ron D. Wilkinson (5558)

The Heritage Building

815 East 800 South

Orem, Utah 84097

Telephone (801) 225-6040

Facsimile (801) 225-6041

Attorney for Petitioner

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

JULIE ANN MCKENZIE FAIRBANKS,

Petitioner,

vs.

PETER NATHAN FAIRBANKS,

Respondent

FINAL PRE-TRIAL ORDER

Case No.: 054400186

Judge: Samuel McVey

The above entitled matter comes before the Court for pre-trial conference on the 24th day of January, 2008, at 2:00 p.m. before Commissioner Patton Counsel, hereby, submit the following for consideration by the Court

- 1 Jurisdiction There are no jurisdictional issues before the Court
- 2 Undisputed Claims The undisputed claims and stipulations are attached as Exhibit A
- 3 Petitioner's Claims Petitioner's disputed claims are attached hereto as Exhibit B

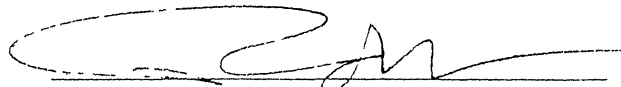
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- 4 Respondent's Claims Respondent's disputed claims are attached hereto as Exhibit C
- 5 Children There are no minor children of issue of this marriage
- 6 Mediation The parties have participated in mediation on at least two (2) occasions. Mediation has been unsuccessful
- 7 Trial Length The length of the trial is estimated to be 1-2 days
- 8 Discovery Discovery will be completed by March 15, 2008
- 9 Judge The case is now assigned to Judge McVey

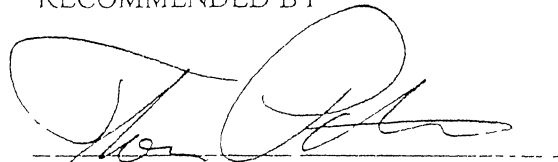
Dated this 29 day of January 2008

see attached
Carolyn E Howard, Counsel for Respondent

DATED this 29 of January 2008


Ron D. Wilkinson, Counsel for Petitioner

RECOMMENDED BY


Commissioner Thomas Patton

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Sec B
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EXHIBIT A

UNDIPUTED CLAIMS AND ISSUES

- 1 Petitioner is a resident of Utah County and has been for more than three months prior to the filing of this action
- 2 Petitioner and Respondent are husband and wife and were originally married on June 28, 1975, and were divorced in September 1987. Petitioner and Respondent were remarried on July 1, 1990, in Payson, Utah County and separated on or about August 8, 2002
- 3 On August 8, 2002, Petitioner moved from Washington to Utah which constituted a separation of the parties
- 4 During the course of the marriage, irreconcilable differences have arisen between the parties causing the irreparable breakdown of the marriage and as a consequence thereof continuation of the marriage is no longer viable
- 5 The parties' children have all reached the age of majority and there are no other children expected from the marriage
- 6 Respondent has agreed to sign the necessary forms so that Petitioner can obtain COBRA coverage on Respondent's health insurance for as long as it is viable by law to Petitioner. Petitioner shall be solely responsible for the cost of the COBRA Health insurance
- 7 The parties own a home located at 319 East 1655 South, Orem, Utah 84058 ("Orem House"). Petitioner should be awarded possession and title to the Orem House, subject to Petitioner assuming all mortgages thereon and holding Respondent harmless therefrom. The fair market value of the Orem House is approximately \$224,000.00, but is subject to change based on the current market
- 8 There is approximately \$65,636.71 due on the mortgage on the Orem House as of September 4, 2007. Respondent should execute and deliver to Petitioner a Quit Claim Deed conveying title to the Orem House to Petitioner at the time she refinances the Orem House
- 9 The parties own a home located at 2109 127th Drive NE, Lake Stevens, Washington 98258 ("Lake Stevens house"). Respondent should be awarded possession and title to the Lake Stevens House, subject to Respondent assuming all mortgages thereon and holding petitioner harmless therefrom. The fair market

value of the Lake Stevens House was approximately \$297,000.00. The value is subject to change given the current market.

10. There is approximately \$107,396.19 due on the mortgage on the Lake Stevens House as of September 4, 2007. The parties agree that Petitioner should be ordered to execute and deliver to Respondent a Quit Claim Deed conveying title to the Lake Stevens Home to Respondent.
11. Each party should be awarded personal property owned prior to the marriage.
12. During the course of the marriage relationship, the parties acquired personal property. Said personal property should be awarded to the parties that are presently in their respective possession, or under their individual control.
13. Petitioner should be ordered to pay all money owed to Washington Mutual on the Orcem Home and all debts incurred by Petitioner subsequent to the parties' separation in August 2002.
14. Respondent should be ordered to pay all mortgages on the Lake Stevens House and all debts incurred by Respondent subsequent to the parties' separation in August 2002.
15. Each party shall notify respective creditors of their responsibility to pay the debts and to hold the other party harmless therefrom.
16. The parties should file joint tax returns for the year ended prior to the entry of the Decree of Divorce, splitting said return equally, and filing separately thereafter.

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EXHIBIT B

DISPUTED CLAIMS BETWEEN THE PARTIES

PETITIONER'S CLAIMS:

- 1 Petitioner should be awarded alimony from Respondent. The Respondent has been paying alimony for the following amounts:
 - \$2,000.00 monthly from August 2002 to March 10, 2006,
 - \$2,670 monthly from January to March 2007,
 - and \$2,400.00 from March 2007 until now
- 2 The amount of equity awarded to each party in the Orem House and the Lake Stevens House is disputed
- 3 Petitioner should receive one-half of Respondent's retirement benefits that accrued during the marriage pursuant to the rule articulated by the Supreme court of Utah in *Woodward v Woodward*, 656 P 2d 431 (Utah 1982). A Qualified Domestic Relations Order should be entered and supplied to Boeing regarding these benefits and that Petitioner's share of the retirement benefits shall be paid directly to her pursuant to the Qualified Domestic Relations Order
- 4 Respondent has accrued retirement benefits in a 401K account and benefits that accrued should be divided pursuant to the rule articulated by the Supreme Court of Utah in *Woodward v Woodward*, 656 P 2d 431 (Utah 1982). On the date of the parties marriage Respondent had \$12,115.46 in his retirement plan. The Petitioner should be entitled to transfer her interest in the 401K into a 401K in her own name
- 5 Respondent has received Boeing stocks and options through his employment during the marriage. Petitioner is entitled to 1/2 of all Boeing stocks and options
- 6 Attorney's Fees and Costs for this action

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EXHIBIT C

RESPONDENT'S DISPUTED CLAIMS:

- 1 Equity in Lake Stevens home should be divided in accordance with equitable share of investment in the home. In taking assertive separation from Respondent and disassociating herself from the Lake Stevens home, she effectively divested herself from further growth in investment in the Lake Stevens home.
- 2 The amount of equity awarded to each party (Petitioner) in the Orem House and the Lake Stevens House is disputed.
- 3 The amount of retirement benefits that accrued during the marriage and the portion that petitioner is entitled to is disputed.
- 4 The amount of the 401K that Petitioner is entitled to is disputed.
- 5 Petitioner should not be awarded any interest in Boeing stocks and options received by Respondent during the marriage. Petitioner divested herself from the marriage to Respondent prior to stock incentive awards or the accumulation of stock option values.
- 6 The inheritance gift that Petitioner received should be considered marital property.
- 7 Petitioner is not entitled to any award of alimony based on several reasons, one of which involves the fact that Respondent supported the Petitioner with an excess of \$80,000.00 paid to the petitioner after the Petitioner left the Respondent and moved to Utah.
- 8 Respondent has helped support the Petitioner in obtaining and seeking her education through BYU, thus Petitioner is able to maintain full time employment and support herself and is not in need of alimony.

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**Appellant's Brief
20080774 – CA**

**Addendum
Section 6**

Petitioners Financial Declaration
(dated 5/7/08)

(Trial Exhibit #1)

Ron D. Wilkinson (5558)
Heritage Law Office
815 East 800 South
Orem, Utah 84097
Telephone (801) 225-6040
Facsimile (801) 225-6041
Attorney for Petitioner

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

JULIE ANN MCKENZIE FAIRBANKS
Petitioner,

v.

PETER NATHAN FAIRBANKS
Respondent

FINANCIAL DECLARATION

Case No 054400186

Judge Samuel McVey

Commissioner Patton

Husband: Peter Fairbanks
Address: 2109 – 127th Dr N E
Lake Stevens, WA 98258
SS No.: 536-46-9487
Occupation: Systems Engineer
Employer: Boeing
Birth date: 7/18/53

Wife: Julie Fairbanks
Address: 319 East 1655 South
Orem, Utah 84058
SS No.: 528-90-5272
Occupation: Student/Laborer
Employer: BYU/Fabric Mill
Birth date: 5/27/55

NOTE THIS DECLARATION MUST BE FILED WITH THE DOMESTIC CALENDAR
CLERK 5 DAYS PRIOR TO THE PRE-TRIAL HEARING
FAILURE BY EITHER PARTY TO COMPLETE, PRESENT, AND FILE THIS FORM AS
REQUIRED WILL AUTHORIZE THE COURT TO ACCEPT THE STATEMENT OF THE
OTHER PARTY AS THE BASIS FOR ITS DECISION
**ANY FALSE STATEMENT MADE HEREON SHALL SUBJECT YOU TO THE
PENALTY FOR PERJURY AND MAY BE CONSIDERED A FRAUD UPON THE
COURT.**

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STATEMENT OF INCOME, EXPENSES ASSETS AND LIABILITIES

(NOTE To arrive at monthly figures when income is received and deductions are made weekly, multiply by 4 3, if figures are on a bi-weekly basis, multiply by 2 167)

	HUSBAND	WIFE
1 Gross Monthly income from wages	\$ 7,146 15	\$ 613 39
Salary and wages including commissions & bonuses		
Overtime (not guaranteed)		
Pension and Retirement		
Social Security		
Disability and unemployment insurance		
Public assistance (welfare AFDC payment etc)		
Child support from prior marriage		
Dividends rents and interest		
All other sources (specify)		
TOTAL MONTHLY GROSS INCOME		\$613 39
2 Itemize monthly deductions from gross income		
State and federal income taxes in 2007		\$20 83
Number of exemptions in 2007		1
Social Security		\$42 58
Medicare tax		
Medical or other insurance		\$10 00
Retirement of pension fund		
Savings plans credit union		
Other specify		
TOTAL MONTHLY DEDUCTIONS		\$73 41
NET MONTHLY INCOME – TAKE HOME		\$539 98

4 DEBTS AND OBLIGATIONS			
Creditor's Name	For	Balance	Monthly Payment/Due Date
Maytag	Stove/Microwave	\$1203 64	\$100 00
Service Experts	Furnace/A/C	\$7947 00	\$255 00
Attorneys	Blatter	\$4958 64	\$200 00
	Wilkinson	\$2 815 00	\$250 00

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	Sub Total	\$16,924 28	\$805 00

- 5 All property of the parties known to me owned individually or jointly (indicate who holds or how title held (H) husband, (W) wife, (J) jointly).

WHERE SPACE IS INSUFFICIENT FOR COMPLETE INFORMATION OR LISTING PLEASE ATTACH SEPARATE SCHEDULE

(A) Household furnishings, furniture, appliances, equipment:	VALUE	OWNED BY:
(B) Automobiles (Year, Make and Model)		
1999 Ford Ranger	\$2,500 00	Julie
1994 Pontiac Grand Am	\$500.00	Julie
BMW		Peter
Toyota		Peter
Ford Explorer		Peter
(C) Securities, stocks, bonds		
Stocks	\$21,232.00	
CD	\$36,943.56	Julie
Central Bank	\$1,705.00	Julie
(E) Life Insurance Name of Company and Policy No.	Face Amount	Cash Value, accumulated dividend or loan amount
(F) Profit Sharing or Retirement accounts	Value of Interest	Amount presently vested
Approx	\$180,000 00	
(G) Other personal property and Assets	Already	Divided

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(H) Real Estate	Type of Property Home	Date of Acquisition August 2002
Address 319 East 1655 South Orem, Utah	Original Cost \$138,000 00	Total Present Value \$225,000 00
Cost of Additions	Mortgage Balance \$64,596 00	Other liens
Total Cost	Taxes	Equity \$160,404 00

(H) Real Estate	Type of Property Home	Date of Acquisition
Address 2109 127 th Drive NE, Lake Stevens, Washington 98258	Original Cost	Total Present Value \$297,000 00
Cost of Additions	Mortgage Balance \$107,396 19	Other liens.
Total Cost	Taxes	Equity \$189,603 81

(i) Business Interest (Specify)

(j) Other assets (specify)

6 TOTAL MONTHLY EXPENSES

Total monthly expenses

Rent or mortgage payments (residence) \$599 58

Real property insurance (residence) Included

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Maintenance (residence)	\$250 00
Food and household supplies	\$500 00
Utilities	\$222 28
Telephone	\$88 42
Laundry and cleaning	\$25 00
Clothing	\$100 00
Medical	\$50 00
Dental	\$75 00
Insurance (medical)	\$400 00
Child Care	N/A
Payment of child support from prior marriage	N/A
School	\$375 00
Entertainment	\$75 00
Incidentals	\$100 00
Auto expense (gas, oil repair, insurance)	\$175 00
Auto payments	
Other expenses SPECIFY	
Installments	
(as set forth in paragraph 4 herein)	\$805 00
TOTAL MONTHLY EXPENSES	\$3,840 28

Proposed Settlement of Pending Divorce Litigation

Child Support	Total (per month) \$ N/A
Alimony	Total (per month) \$3,000 00
Property distribution	

GRAND TOTAL (per month) \$3,840 28

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JULIE FAIRBANKS THE AFFIANT, BEING FIRST DULY SWORN AND UNDER OATH, DEPOSES AND SAYS THAT AFFIANT IS THE PETITIONER IN THIS ACTION, THAT AFFIANT HAS READ THIS DOCUMENT AND UNDERSTANDS THE CONTENTS, AND THE SAME IS TRUE OF AFFIANT'S OWN PERSONAL KNOWLEDGE, UNLESS AN ALLEGATION HAS BEEN MADE ON INFORMATION AND BELIEF

Dated this 7th day of May 2008

Julie M. Fairbanks
AFFIANT

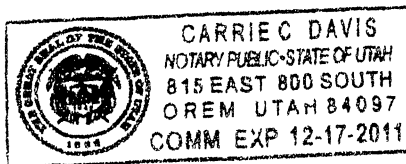
Acknowledgment Certificate

State of Utah)

§

County of Utah)

On this 7 day of May in the year 2008, before me a notary public, personally appeared Julie Fairbanks, who proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged she executed the same Witness my hand and official seal



Carrie C. Davis
NOTARY PUBLIC

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