

1988

# Wanda Lucile Coffey v. John E. Coffey : Brief of Petitioner

Utah Court of Appeals

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CKET NO. 880379 IN THE UTAH COURT OF APPEALS

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WANDA LUCILE COFFER,	:	
Plaintiff/ Respondent,	:	Case No. 88-0379 CA
vs.	:	
JOHN E. COFFER,	:	Priority 14 b
Defendant/Petitioner.	:	

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BRIEF OF DEFENDANT/PETITIONER

JOHN E. COFFER

---

Appeal from the Eighth Judicial District Court of  
Duchesne County, State of Utah  
Honorable Dennis L. Draney, District Court Judge

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Utah

Court

IN THE UTAH COURT OF APPEALS

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UTAH COURT OF APPEALS

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WANDA LUCILE COFFER, :  
Plaintiff/Respondent, : Case No. 88-0379 CA  
vs. :  
JOHN E. COFFER, : Priority 14 b  
Defendant/Petitioner :

---

JURISDICTIONAL STATEMENT

Defendant seeks review of the Decree of Divorce signed in the Eighth District court on 25 April, 1988, by the Honorable Dennis L. Draney. Notice of Appeal was filed on the 25th day of May, 1988, in the Eighth District Court, Duchesne County State of Utah. Section 78-2a-3 (2)(g) of the Utah Code confers jurisdiction on the Court of Appeals to review Divorce Decrees.

STATEMENT OF ISSUES

Whether it was error to award a portion of retirement benefits, received as a result of a disability, to Respondent in this case.

Whether it was error to award alimony where the testimony of the Respondent indicates that the Respondent has worked in the past, and where Respondent was awarded property sufficient for her personal maintenance while she seeks employment.

Whether it was error to require that Petitioner maintain

Respondent as a beneficiary on his life insurance policy as further alimony.

Whether it is equitable to order the Petitioner to cash-out the amount due Respondent from his retirement fund in the event the Teamster's will not pay it directly to Respondent when the Petitioner has no means of obtaining such a large sum.

#### STATEMENT OF THE CASE

On the 19th day of January, 1988, the divorce trial in the matter of Wanda Lucile Coffey vs. John E. Coffey was held in the Eighth Judicial district Court in and for Duchesne County, State of Utah. On April 25th, 1988, the Honorable Dennis L. Draney, Judge of the Eighth District Court signed a final judgment and decree in this matter dividing the property of the parties and ordering Defendant to pay alimony.

Defendant appeals those portions of the final decree which in paragraph 2 orders Defendant to pay a portion of his pension to Plaintiff and to pay it in a lump sum cash-out if the pension fund will not pay directly to Plaintiff; in paragraph 3 orders Defendant to pay \$200.00 per month alimony and in paragraph 5 orders Defendant to maintain Plaintiff as a beneficiary on his life insurance policy.

#### STATEMENT OF FACTS

In the trial of this matter before the District Court testimony revealed the following facts:

- a) That Defendant had two heart attacks and open heart surgery and therefore could not continue working.

(Record, p. 240)

b) That Defendant is receiving retirement benefits from the Teamster's Pension Fund in the amount of \$650.00 per month until July, 1989 at which time the benefits will be reduced to \$350.00. (Record, p. 241)

c) Defendant receives \$507.00 per month in Social Security benefits. (Record, p.153)

d) Defendant has no other income and no means of obtaining any other income. (Record, p. 241)

e) That Defendant is receiving his retirement benefits earlier than he otherwise would have done because of a disability. Defendant had a heart attack and heart surgery which made it impossible for him to continue working. (Record, pp. 240, 241)

f) That Plaintiff has little or no ability to produce an income or support herself in the way of investments of job skills. (Record, p. 154)

g) That Plaintiff had worked at several occupations prior to marrying Defendant. (Record, p. 198)

h) That Defendant has a life insurance policy.  
(Record, p. 155)

In the divorce decree Plaintiff was awarded a three bedroom house, a car and an R.V. worth \$15,000.00, as well as approximately \$5,000.00 cash from a Money Market account. (Record, pp. 161, 158, 157, 186.)

The decree also ordered Defendant to pay Plaintiff 26.5% of the amount of the pension which is one half of the retirement earned during the marriage and to cash-out Defendant's share of

the retirement fund if direct payments from the pension fund cannot be arranged. (Record, p. 161)

The decree ordered the Defendant to pay Plaintiff \$200.00 per month as alimony. (Record, p. 161)

The decree further ordered Defendant to maintain Plaintiff as a beneficiary on an insurance policy on his life of \$5,000.00 as further alimony. (Record, p. 161)

#### SUMMARY OF ARGUMENT

Defendant's testimony before the District Court indicates that a disabling heart attack forced him to retire early. The case law indicates that a pension received as a result of a disability is not subject to equitable distribution upon divorce, but should be the personal property of the disabled party. Further, ordering the Defendant to cash-out this amount places an undue burden on Defendant.

Alimony should be temporary in nature lasting long enough to assist Plaintiff in regaining financial stability, but not permanent as if it were a pension. Further, where the facts show that the Defendant's sole income will be reduced on a date certain, it is only equitable to reduce any alimony obligation in equal proportion.

Ordering Defendant to maintain Plaintiff as beneficiary on his life insurance policy as further alimony is tantamount to requiring Defendant to pay alimony even when he is deceased and interferes with his right to contract freely and creates a long lasting financial entanglement of the parties which the Court expressly seeks to avoid.

### ARGUMENT

Appellant was forced to retire early due to a disability. The pension he received at that point should be considered his personal property because as Respondent's counsel conceded at trial "the law says if it is a disability it's not dividable."<sup>1</sup> Respondent testified at trial that he had his first heart attack in 1980. That he had another heart attack six months later and subsequently had open heart surgery and by-passes. His testimony further indicated that after his heart attack he could not pass a<sup>2</sup> physical and had no choice but to take his disability pension.

Mr. Coffey also testified that he has a Social Security disability certificate and that he got Social Security early on the<sup>3</sup> grounds of disability.<sup>4</sup> Respondent's testimony at Trial corroborates Petitioner's testimony on this issue. She testified that he<sup>5</sup> had had heart attacks and open heart surgeries and that he was forced to retire after his open heart surgery. When asked "He was disabled and therefore given a pension, is that correct?" She<sup>6</sup> answered "yes."

The Case law indicates that a disability pension should not<sup>7</sup> be considered a marital asset subject to equitable distribution.

The Teamster's Union provided Petitioner with a disability pension in an attempt to make him whole again. Such a pension is designed to compensate an employee for a loss of earning power. As such, it is personal to the employee and is distinguishable from a retirement pension. The disabled worker, in effect, has traded his good health, which he had before he was married, for a disability pension. As such, it is personal to the employee and

<sup>1</sup> Record, p. 254

<sup>2</sup> Record, p. 240

<sup>3</sup> Record, p. 243

<sup>4</sup> Record, p. 241

<sup>5</sup> Record, p. 187

<sup>6</sup> Record, p. 197

<sup>7</sup> Freeman v. Freeman, 468 S. 2d 326  
(FLA Ct. of Appeals, 1985)

is distinguishable from a retirement pension and should not be considered a marital asset subject to equitable distribution.<sup>8</sup>

During the marriage, disability payments, which replace lost earning capacity, might be considered a marital asset. A divorced spouse, however, should have no more right to a share of disability payments received after dissolution of the marriage than she would have a right to a portion of her divorced spouse's income which he earned after the divorce.<sup>9</sup>

Testimony further shows that Mr. Coffey's Teamster's Pension will be reduced by \$300.00 per month beginning in July 1989. Mr. Coffey's pension and Social Security benefits are the only income he will ever have.

Petitioner lacks the financial resources to cash-out any amount due to Respondent. Furthermore, such a sum would be purely speculation based on an assumption that Petitioner who has already suffered two heart attacks will continue to live a certain period of time. Therefore, it would be inequitable to make Petitioner cash-out his pension.

It was an abuse of the discretion of the Trial Court to order permanent alimony in this case and to order Petitioner to maintain Respondent as a beneficiary on his life insurance as further alimony.

Factors to be considered in determining alimony include:

1. The financial conditions and need of the wife.
2. The ability of the wife to produce sufficient income for herself.
3. The ability of the husband to provide support.

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<sup>8</sup> Freeman v. Freeman, 468 S.2d 326 (FLA. 1985); Griggs v. Griggs, 686 P.2d 68 (ID, 1984); County Attorney, Pima County v. Kaplan, 650 P.2d 912 (AZ. 1980)

<sup>9</sup> Dickman v. Dickman, 606 P.2d 909 (AZ. App. 1980)

Respondent was awarded, in the decree, a furnished frame house with garage and the real estate beneath the buildings. Respondent was also awarded personal property including a 1979 Lincoln Continental Town Coupe, one half of a \$10,000.00 Money Market Certificate as well as a motor home valued at \$15,000.00. Under these circumstances Respondent would not appear to be needy or in danger of becoming a ward of the State.

Respondent's testimony before the Trial Court below indicates that she has the ability to produce sufficient income for herself. She stated that she had worked in a bank as a bookkeeper, for a trucking company as a secretary, and as a dispatcher, that she had acted as an owner, manager of a Dude Ranch and that she has a high school diploma.<sup>11</sup> She further testified that she has no minor<sup>12</sup> children living at home for whom she must provide care. She also<sup>13</sup> works as a waitress at the Hanna Bar. Respondent has not looked<sup>14</sup> for other employment. Respondent is an able-bodied woman in her mid-fifties; there is no testimony before the Court that she is ill or unable to work.

In Dakin v. Dakin, 384 P.2d 639 (WA, 1963) the Supreme Court of Washington noted that it was the policy of that State to place a duty upon the wife to gain employment if possible, quote " alimony is not a matter of right. When the wife has the ability to earn a living, it is not the policy of the law of this State to give her a perpetual lien on her divorced husband's future income." Morgan v. Morgan, 369 P.2d 516 (WA, 1962). "We think that she should be encouraged to rehabilitate herself in that, within a reasonable period, she may become self-supporting." Dakin

11 Record, pp. 198, 199

12 Record, p. 197

13 Record, p. 182

14 Record, p. 196

v. Dakin, Supra.

In the Dakin v. Dakin case the wife was fifty-four years old without any specific trade or profession and without minor children. Similarly Respondent in this case should seek employment and retraining if necessary rather than attempt to depend on payments from Petitioner whose ability to provide support is permanently limited and, in fact, will decrease by \$300.00 per month as of July, 1989 and who, considering his history of heart attacks and heart surgery cannot reasonably be expected to live for any time certain.

Since Petitioner's ability to provide support will significantly diminished as of July, 1989, it would be an abuse of discretion to not also proportionately reduce Petitioner's obligation to provide support at the very least.

In Boyle v. Boyle, 735 P.2d 669 (Utah App. 1987) the Court upheld a lower Court's refusal to award alimony where the evidence below indicated the husband, who was a lawyer, had lost his major client. His practice had diminished and he anticipated a continued reduction of his salary for these reasons. In this case the Court had failed to award the wife alimony even where her testimony indicated she had an asthma condition which she thought had an adverse effect on her ability to be employed. A similar result should have been achieved in Petitioner's case; that is where Respondent is an able bodied woman; who has been employed in the past and where Petitioner's ability to provide support is permanently limited and will soon be significantly reduced. Respondent, who received ample property in the divorce decree

should not have been awarded alimony.

Further, ordering Petitioner to maintain Respondent as a beneficiary of his life insurance as further alimony was a clear abuse of the discretion of the Trial Court. Such an order is tantamount to requiring Petitioner to pay alimony even after he is deceased and interferes with his right to contract freely, or at least adds restrictions to a life insurance contract not originally contemplated by the parties. Surely Petitioner's duty, if any, to support his ex-wife does not continue after he is dead. This provision also creates a long lasting financial entanglement of the parties which the Court expressly sought to avoid.

#### CONCLUSION


Petitioner suffered disabling heart attacks which prevented him from continuing his employment as a Teamster. As a result, Petitioner receives a small pension which will be reduced by almost one-half as of July, 1989. To determine a cash-out value of his pension based on his uncertain future would be inequitable and would clearly place an undue burden on Petitioner who has no other source of income than his pension and his disability payment from the Social Security Administration.

It was an abuse of discretion for the Court to order permanent alimony in this case where the Respondent is an able-bodied woman able to seek employment. She has received a generous property settlement and , where due to Petitioner's uncertain life expectancy, Respondent would be more likely to become a charge on the State should she fail to seek employment and should Petitioner die and be unable to continue paying alimony. Petitioner's

obligation to pay alimony should have been ordered reduced. Further, ordering Petitioner to maintain Respondent as the beneficiary on his life insurance policy would be an abuse of discretion by requiring Petitioner to continue paying alimony when he is no longer alive.

WHEREFORE, Petitioner respectfully requests that the court overrule the Trial Court's order that Petitioner pay any amount of his pension to Respondent; that the Court overrule the Trial Court's order that Petitioner pay permanent alimony to Respondent or in the alternative order the Trial Court to consider whether the alimony payment should cease or at least be reduce when Petitioner's pension payment is reduced on July 1, 1989 and that the Court overrule the Trial Court's order that Petitioner must maintain Respondent as a beneficiary on his life insurance policy as further alimony.

DATED this 12<sup>th</sup> day of January, 1989.

  
DIXON D. HINDLEY  
Attorney for Petitioner

MAILING CERTIFICATE

I hereby certify on this 12<sup>th</sup> day of January, 1989, a true and correct copy of the foregoing APPEAL was mailed, postage prepaid, U.S. Mail to:

Machelle Fitzgerald  
Attorney for Respondent  
156 North 200 East  
Roosevelt, Utah 84066

  
-10-

ADDENDUM

ROLAND URESK (3307)  
MACHELLE FITZGERALD (4037)  
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Zions Bank Building  
156 North 200 East  
Roosevelt, Utah 84066  
(801) 722-4668

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

---

WANDA LUCILE COFFER,	)	
Plaintiff,	)	DECREE OF DIVORCE
vs.	)	
JOHNIE EDWARD COFFER,	)	
Defendant.	)	Civil No. 87-Cv-194-D

---

CONCLUSIONS OF LAW

The above-entitled matter came on for trial on January 19, 1988, and for further hearing on April 11, 1988, before the Honorable Dennis L. Draney. The Plaintiff was present and represented by Roland Uresk and Machelles Fitzgerald. Defendant was present and represented by Dixon Hindley. Both plaintiff and defendant were called and did testify and witnesses were called and did testify.

The court having separately made and entered in Findings of Fact and Conclusions of Law, does hereby ORDER, ADJUDGE AND DECREE:

1. Plaintiff is hereby granted a decree of divorce from the Defendant, on the grounds of mental cruelty, to become final upon entry in the register of actions.

2. Defendant's Teamster's Pension is a retirement benefit, of which 53% was earned during the course of the parties' marriage. Plaintiff is entitled to one-half of the pension earned during the marriage or 26.5 of that pension. If direct payment of 26.5% of the retirement can be made to Plaintiff by the Teamster's, Defendant may elect to do so. Otherwise, to avoid the long lasting financial entanglement of the parties, defendant will cash-out Plaintiff's share of the retirement fund.

3. Based on the parties' respective incomes, Defendant will pay Plaintiff \$200.00 per month as alimony.

4. Defendant will maintain Plaintiff as a beneficiary on an insurance policy on his life of \$5,000, as further alimony.

5. Defendant will assume and pay all obligations of the parties incurred prior to their separation, and hold Plaintiff free and harmless therefrom. Without such debt assumption by Defendant, Plaintiff would be unable to support herself.

6. Plaintiff is awarded the frame home, garage, and the real property with a boundry line drawn on the West side of the garage, to within 15 feet of the horse barn, then east to the property line.

7. Defendant is awarded the trailer home, and improvements located on the remainder of the 1.5 acres, excluding the property awarded to Plaintiff.

8. The parties will share equally the cost of surveying the boundary and erecting a fence along that boundary.

9. Plaintiff is awarded the property described in schedule "A" and her personal possessions.

10. Defendant is awarded the property described in schedule "B" and his personal property.

11. The remainder of the property, not specifically divided by this court will be divided in half by the parties, with the exception of their personal belongings, gifts, etc. Each party will have a couch, chairs, beds, etc., as far as possible. Defendant will receive the furniture which belonged to his father as part of his one-half. If the parties cannot reach an agreement on the division of the personal property, Defendant will divide the property into two equal lots and Plaintiff will choose which lot she should be awarded.

12. The parties will move (switch homes) on the weekend of April 22-24, 6:00 p.m. Friday to 6:00 p.m. Sunday.

13. All personal papers of the parties will be delivered to their possession by 6:00 p.m. Sunday, April 24th.

14. All possessions of Mr. Mack's which are in the frame house will remain in Defendant's possession until reclaimed by Mr. Mack, except for the wood stove, which will remain in the

frame house until reclaimed by Mr. Mack.

15. The major appliances will stay in the home in which they are currently located.

16. Any water share(s) on the real property, and water well located behind the garage is divided equally between the parties. The parties will share the costs associated with maintaining the well equally. Defendant is awarded an easement over Plaintiff's property for the sole purpose of access to and use of is half of the well.

17. Defendant is awarded \$5,000.00 of the money market fund, and Plaintiff is awarded the balance thereof.

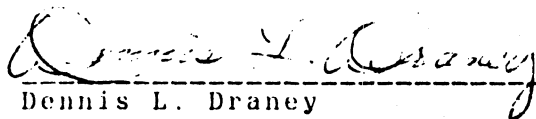
18. Each party will assume and pay for their own attorney's fees and costs incurred in this matter.

19. The parties are permanently and mutually restrained from harassing, annoying, molesting or disturbing the tranquility of the other, or the other's well-being, where ever they may be located, working or staying.

WHEREFORE, let judgment be entered accordingly.

DATED this 25<sup>th</sup> day of April, 1988.

BY ORDER OF THE COURT:

  
Dennis L. Draney  
District Judge

SCHEDULE "A"

1979 Continental Town Coupe	3,000.00
1974 snowmobile	300.00
Mare and foal (gift to plaintiff)	450.00
Tack (saddles, bridles) and hay	355.00
Television (one)	
Deep freezer (one)	
Wood	240.00
Two fishing poles and two life jackets	100.00
Wheelbarrow	30.00
Lawn mower and electric trimmer	35.00
Shovel, rake, ax, hoses and sprinklers	60.00
Nine rolls of chain link fence, 1/4 roll barbed	
wire, 1/2 roll of hogwire	135.00
Motor home	15,000.00
Garage	950.00

SCHEDULE "B"

1986 Ford pickup	\$13,000.00
1980 snowmobile	900.00
Three horses	380.00
Tack (saddles, bridles) and hay	355.00
Television (one)	
Deep freezer (one)	
Log splitter	400.00
Swather (1/3 interest)	400.00
Tractor	1,000.00
1967 15-foot Kit camp trailer	300.00
1976 blue Dodge (motor and parts)	350.00
5th wheel horse trailer	1,500.00
2-wheel trailer	75.00
Welder	150.00
Pickup topper	100.00
Generator (not in motor home)	150.00
Baler (for parts)	200.00
Guns	
Recliner	135.00
Skil saw	310.00
Hummingbird fishfinder	200.00
Karrson Heater	100.00
2 motorcycles and toatgoat	240.00
Bounty Hunter metal detector DE-280 Outlaw	150.00
Portable cassette radio	50.00
Cassette tapes #1 Top County "1 Pop and case	125.00
Soft ice cream machine	150.00
Nine rolls chain link fence, 1 1/4 roll of barbed wire, 2 roll of hogwire	135.00
Trashpump 3 x 3 Model QT-30T s/n 30iT-1239	400.00
Portable CB radios in truck, motor home, boat, and old Dodge truck	240.00
CB base radio and antenna	1,000.00

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IN THE SEVENTH JUDICIAL DISTRICT COURT

IN AND FOR DUCHESNE COUNTY, STATE OF UTAH

---

WANDA LUCILE COFFER,	)	
Plaintiff,	)	FINDINGS OF FACTS and
	)	CONCLUSIONS OF LAW
vs.	)	
JOHNIE EDWARD COFFER,	)	
Defendant.	)	Civil No. 87-CV-194-D

---

The above-entitled matter came on for trial on January 19, 1988, and for further hearing on April 11, 1988, before the Honorable Dennis L. Draney. The Plaintiff was present and represented by Roland Uresk and Machelleg Fitzgerald. Defendant was present and represented by Dixon Hindley. Both Plaintiff and Defendant were called and did testify and witnesses were called and did testify.

NOW THEREFORE, based upon the testimony before the court, the file and records herein, the Court makes and enters the following:

#### FINDINGS OF FACT

1. For more than three (3) months prior to the commencement of this action, the Plaintiff and Defendant were bona fide residents of Duchesne County, State of Utah.

2. Plaintiff and Defendant were married to each other on June 7, 1970, and since that time have been husband and wife.

3. During the last few years of the marriage, the Defendant has treated Plaintiff cruelly and has been unwilling to agree with the Plaintiff on many matters and has insisted on arguing with Plaintiff on many issues or matters, causing Plaintiff great mental anxiety and concern, making the continuation of this marriage impossible.

4. There were no children born as issue of this marriage

5. Defendant receives Social Security in the amount of \$507.00 each month.

6. Defendant is receiving retirement benefits from the Teamster's in the amount of \$650.00 per month, until July 1989, at which time the benefits will reduce to \$350.00.

7. Defendant is receiving his retirement benefit earlier than he otherwise would have done because of a disability.

8. Fifty-three percent (53%) of Defendant's Teamster pension was earned by Defendant during the course of his marriage to Plaintiff.

9. Plaintiff has little or no ability to produce an income or support herself in the way of investments or job skills. Plaintiff was working at the Hanna bar two days a week, and earning \$100.00 to \$125.00 per month, which job she lost when the bar closed in January, 1988. Plaintiff has no other job prospects.

10. During the course of the marriage, the parties have acquired certain real and personal property which needs to be divided by this action.

11. The parties have acquired certain debts and obligations during their marriage.

12. The values placed on the property by Merv Betts and Kay Cloward were fair values for the property owned by the parties.

13. The parties are having difficulty in agreeing with each other and cooperating in completing this divorce.

BASED on the foregoing Findings of Fact, the court makes and enters the following:

#### CONCLUSIONS OF LAW

1. The court has jurisdiction over the parties to this action.

2. Plaintiff ought to be entitled to a decree of divorce from the Defendant on the grounds of mental cruelty, to become final upon entry in the register of actions.

3. Defendant's Teamster's Pension is a retirement benefit, of which 53% was earned during the course of the parties' marriage. Plaintiff ought to be entitled to one-half of the pension earned during the marriage, which 26.5% of the total pension. If direct payment of 26.5% of the retirement benefits can be made to Plaintiff by the Teamster's, Defendant may elect to do so.

4. Based on the parties' respective incomes, defendant ought to pay Plaintiff \$200.00 per month as alimony.

5. Defendant ought to maintain an insurance policy on his life in the amount of \$5,000.00, naming Plaintiff as beneficiary as further alimony.

6. Defendant ought to assume and pay all obligations of the parties incurred prior to their separation, and hold Plaintiff free and harmless therefrom. Without such debt assumption by Defendant, Plaintiff would be unable to support herself.

7. Plaintiff ought to be awarded the frame home, worth \$12,562.50, and the real property with a boundary line drawn on the West side of the garage, to within 15 feet of the horse barn, then east to the property line, contained approximately .33 acres, worth \$1,000.00.

8. Defendant ought to be awarded the trailer home, worth \$7,300.00 and improvements located on the remaining 1.5 acres, worth \$5,251.50, excluding the property awarded to Plaintiff.

9. The parties ought to share equally the cost of surveying the boundry and erecting a fence along the boundary between the property awarded to each of them.

10. Plaintiff ought to be awarded the property described in schedule "A" and her personal possessions.

11. Defendant is awarded the property described in schdule "B" and his personal property.

12. The remainder of the property, not specifically divided by this court should be divided in half by the parties, with the exception of the parties' personal belonging, gifts, etc. Each party ought to have a couch, chairs, beds, etc., as far as possible. Defendant ought to receive the furniture which belonged to his father as part of his one-half.

13. The parties ought to move (switch homes) on the weekend of April 22-24, 6:00 p.m. Friday to 6:00 p.m. Sunday. If the parties cannot reach an agreement on the division of the personal property, Defendant ought to divide the property into two equal lots and Plaintiff ought to chose which lot she should be awarded.

14. All personal papers of the parties ought to be delivered to their possession by 6:00 p.m. Sunday, April 24th.

15. All possessions of Mr. Mack's which are in the frame house ought to remain in Defendant's possession until reclaimed by Mr. Mack, except for the wood stove, which ought to remain in the frame house until reclaimed by Mr. Mack.

16. The major appliances ought to stay in the home in which they are currently located.

17. Any water share(s) on the real property, and water well located behind the garage ought to be divided equally between the parties. The parties ought to share the costs associated with maintaining the well equally. Defendant ought to have an easement over Plaintiff's property for the sole purpose of access to and use of is half of the well.

18. Defendant ought to be awarded \$5,000.00 of the money market fund, and Plaintiff ought to be awarded the balance thereof.

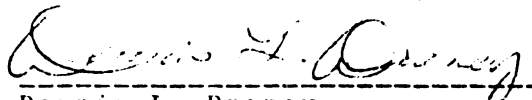
19. Each party ought to assume and pay for their own attorney's fees and costs incurred in this matter

20. The temporary restraining order entered in this action ought to be made permanent.

WHEREFORE, let judgment be entered accordingly.

DATED this 25<sup>th</sup> day of April, 1988.

BY ORDER OF THE COURT:

  
Dennis L. Draney  
District Judge

# COPY

1 IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY

2 STATE OF UTAH

3 -----  
4 WANDA LUCILE COFFER, )

5 PLAINTIFF, )

6 VS. )

7 JOHN E. COFFER, )

8 DEFENDANT. )

REPORTER'S TRANSCRIPT OF  
TRIAL

CIVIL NO. 87-CV-194D  
9 -----

10 BE IT REMEMBERED, THAT ON THE 19TH DAY OF JANUARY,  
11 1988, COMMENCING AT THE HOUR OF 11:00 A.M., THE ABOVE-  
12 ENTITLED MATTER CAME ON FOR TRIAL IN THE DISTRICT COURTROOM  
13 OF THE DUCHESNE CITY AND COUNTY BUILDING, DUCHESNE, UTAH;  
14 SAID CAUSE BEING HEARD BY THE HONORABLE DENNIS L. DRANEY,  
15 JUDGE IN THE EIGHTH JUDICIAL DISTRICT, STATE OF UTAH.

## A P P E A R A N C E S

16  
17  
18 FOR THE PLAINTIFF:

ROLAND URESK, ESQ.  
ZIONS BANK BUILDING  
156 NORTH 200 EAST  
ROOSEVELT, UTAH 84066

19  
20  
21 FOR THE DEFENDANT:

DIXON D. HINDLEY, ESQ.  
D. ARON STANTON & ASSOCIATES  
255 EAST 400 SOUTH, SUITE 101  
SALT LAKE CITY, UTAH 84111

1 BY MR. HINDLEY:

2 Q HAVE YOU HAD IRRECONCILABLE DIFFERENCES IN YOUR  
3 MARRIAGE?

4 A WELL, FOR THE LAST YEAR AND-A-HALF, YES.

5 Q WHAT ARE THEY?

6 A WELL, WE JUST BOTH SEEM TO GO IN THE OPPOSITE  
7 DIRECTION. I DON'T KNOW WHETHER IT'S MY FAULT OR HER FAULT,  
8 BUT WE JUST DON'T SLEEP TOGETHER. SHE QUIT WASHING MY  
9 CLOTHES, QUIT COOKING MY MEALS.

10 Q OKAY.

11 A THEN SHE FILED FALSE CHARGES ON ME AND HAD ME  
12 THROWN OUT OF THE HOUSE.

13 MR. HINDLEY: NO FURTHER QUESTIONS.

14 THE COURT: YOU MAY STEP DOWN. ANY OTHER WITNESSES,  
15 MR. HINDLEY?

16 MR. HINDLEY: I HAVE NO OTHER WITNESSES, YOUR  
17 HONOR.

18 THE COURT: I WOULD LIKE COUNSEL TO ADVISE THE  
19 COURT WHETHER IT MAKES A DIFFERENCE IN HOW THE PENSION IS  
20 DIVIDED, WHETHER IT'S DISABILITY OR RETIREMENT? WHAT DOES  
21 THE LAW SAY ABOUT THAT?

22 MR. URESK: THE LAW SAYS IF IT IS DISABILITY IT'S  
23 NOT DIVIDEABLE. BUT I THINK THE FACTS INDICATE--WE HAVE  
24 SUBMITTED A TRIAL MEMORANDUM ON THAT.

25 THE COURT: IT'S IN THE TRIAL MEMORANDUM? HAVE

1 Q (BY MR. HINDLEY) DID YOU RECEIVE A PENSION FROM  
2 THE TEAMSTER'S FUND?  
3 A YES, SIR.  
4 Q WHAT'S THE NATURE OF YOUR PENSION?  
5 A FROM A DISABILITY.  
6 Q IT'S FROM A DISABILITY? HOW WERE YOU DISABLED?  
7 A FROM MY HEART AND HEART SURGERY AND FROM MY HANDS  
8 AND ARMS.  
9 Q WHEN DID YOU HAVE YOUR FIRST HEART ATTACK?  
10 A SOMETIME IN '80, I BELIEVE.  
11 Q AND THEN YOU HAD ANOTHER HEART ATTACK AFTERWARDS?  
12 A ABOUT SIX MONTHS LATER I HAD ANOTHER ONE.  
13 Q DID YOU HAVE HEART SURGERY?  
14 A THEN AFTER THAT I HAD OPEN HEART SURGERY AND  
15 BYPASSES PUT IN.  
16 Q WHAT'S THE DISABILITY TO YOUR HANDS?  
17 A WELL, I HAVE GOT WHAT IS KNOWN AS GOUT. THEY ARE  
18 JUST SLOWLY BUT SURELY CRIPPLING MY HANDS. I HAVE ALREADY  
19 HAD THEM BOTH OPERATED ON ONCE, AND I HAVE GOT TO HAVE MORE  
20 OPERATIONS ON THEM.  
21 Q WERE YOU ABLE TO WORK AFTER YOUR HEART ATTACK?  
22 A NO. I CAN'T PASS A PHYSICAL.  
23 Q YOU ARE TOTALLY DISABLED AND HAD NO CHOICE BUT TO  
24 TAKE THE DISABILITY?  
25 A I HAD NO OTHER CHOICE.

1           A     YES.

2           Q     AND THEN AFTER YOU HAD A HEART ATTACK YOU HAD TO  
3 TURN THAT IN FOR A DISABILITY PENSION, CORRECT?

4           A     YES.

5           MR. HINDLEY: YOUR HONOR, MAY I APPROACH THE  
6 WITNESS?

7           THE COURT: HAVE THEY BEEN MARKED?

8           MR. HINDLEY: IF YOU WOULD MARK THOSE AS EXHIBITS,  
9 PLEASE, IF THE COURT DOESN'T OBJECT.

10          MR. URESK: YOUR HONOR, I'M GOING TO OBJECT TO  
11 THE ADMISSION OF THESE DOCUMENTS, BASED ON FOUNDATION AND  
12 HEARSAY.

13          THE COURT: HAVE THEM MARKED SO WE CAN IDENTIFY  
14 THEM.

15          MR. HINDLEY: MAY I APPROACH THE WITNESS?

16          THE COURT: YOU MAY. BUT SINCE WE KNOW THERE IS  
17 AN OBJECTION YOU MAY ASK HIM WHAT THEY ARE AND THEN PROCEED  
18 WITH ANY FOUNDATION. BUT HE MAY NOT TESTIFY AS TO THE  
19 CONTENTS OF THOSE UNTIL THEY ARE RECEIVED.

20          Q     (BY MR. HINDLEY) I SHOW YOU WHAT'S BEEN MARKED AS  
21 EXHIBIT 4. DO YOU KNOW WHAT THAT IS, MR. COFFER?

22          A     YES, SIR.

23          Q     WHAT IS IT?

24          A     THAT'S MY SOCIAL SECURITY DISABILITY CERTIFICATE  
25 SAYING THAT I'M--

Q WHEN DID YOU BEGIN PAYING INTO THE TEAMSTER'S PENSION FUND?

A I CAN'T REMEMBER FOR SURE. I THINK BACK IN '58 WHEN THEY FIRST STARTED INTRODUCING THE RETIREMENT PLAN INTO THE TEAMSTER'S UNION. I HAVE BEEN PAYING INTO IT EVER SINCE I HAVE BEEN IN. I HAVE BEEN IN ABOUT THIRTY SOME YEARS.

Q DO YOU RECEIVE SOCIAL SECURITY?

A YES.

Q IS THAT A DISABILITY PAYMENT?

A I RECEIVED THAT--I GOT AN EARLY SOCIAL SECURITY  
ON THE GROUNDS OF DISABILITY.

Q OKAY. YOU WERE FORCED TO RETIRE, YOU HAVE ABSOLUTELY NO OTHER WAY OF MAKING A LIVING; IS THAT CORRECT?

A NO, SIR.

Q EXCEPT FOR THE MONEY THAT YOU EARN FROM YOUR PENSIONS?

A NO, SIR.

Q HOW MUCH DO YOU RECEIVE FROM THE TEAMSTER'S PENSION FUND PER MONTH?

A I GUESS \$650.00 RIGHT NOW, BUT JULY OF NEXT YEAR IT DROPS DOWN TO--I LOSE \$300. I ONLY GET \$350.00 STARTING NEXT JULY.

THE COURT: THAT'S JULY 1988 OR--

THE WITNESS: '89.

Q (BY MR. HINDLEY) HOW MUCH DO YOU RECEIVE PER

1           A     SINCE 1982.

2           Q     NOW, IS THIS A RETIREMENT?

3           A     YES, IT IS.

4           Q     DO YOU RECALL OR TO YOUR KNOWLEDGE WHEN DID MR.

5 COFFER START WORKING FOR THE TEAMSTERS AND USING THIS PLAN?

6           A     HE STARTED IN JUNE OF 1960.

7           Q     AND HE WAS CONTRIBUTING TO THAT PLAN ALL THE WAY UP

8 UNTIL HE STARTED COLLECTING UNDER THE RETIREMENT PLAN IN

9 1982?

10          A     YES.

11          Q     MRS. COFFER, WHY IS IT THAT YOU WANT THIS DIVORCE?

12          A     THERE HAVE BEEN SO MANY CHANGES THAT I JUST--WHY

13 LIVE WITH IT ANYMORE. HE HAD HEART ATTACKS AND I TOOK HIM

14 TO THE HOSPITAL AND SAT WITH HIM. I HAVE GONE THROUGH OPEN

15 HEART SURGERIES AND EVERYTHING. I DEVOTED MY WHOLE LIFE

16 TO HIM, AND AFTER WE MOVED OUT TO HANNA HE STARTED DRINKING.

17 AFTER WE RUN THE CAFE AND DUDE RANCH, AND HE STARTED

18 RUNNING AROUND WITH A YOUNGER GROUP OF PEOPLE OUT THERE.

19 ALL THEY DO IS PARTY AND DRINK AND CHASE AND RUN AND GO AND

20 I JUST CANNOT PUT UP WITH IT. HE DRINKS UNTIL HE PASSES OUT

21 IN THE CHAIR, ON THE TABLE, OR ON THE FLOOR.

22               MR. HINDLEY: OBJECTION, YOUR HONOR.

23               THE WITNESS: I CAN'T COPE WITH IT.

24               MR. HINDLEY: THIS IS PREJUDICIAL.

25               THE COURT: EXCUSE ME, MRS. COFFER.

1 MENT. WHY DID MR. COFFER BEGIN TO DRAW HIS PENSION?

2 A HE WAS FORCED TO RETIRE AFTER HIS OPEN HEART  
3 SURGERY.

4 Q OKAY. HE WAS DISABLED AND THEREFORE GIVEN A  
5 PENSION; IS THAT CORRECT?

6 A YES.

7 Q WELL, I WILL PROCEED WITH SOME DIRECT QUESTIONING,  
8 IF THERE IS NO OBJECTION AT THIS TIME.

9 WHAT PROPERTY DID YOU BRING INTO THE MARRIAGE, MRS.  
10 COFFER?

11 A I DIDN'T BRING ANYTHING INTO THE MARRIAGE.

12 Q DID YOU HAVE CHILDREN FROM ANOTHER MARRIAGE AT THE  
13 TIME YOU MARRIED?

14 A YES, I DID.

15 Q AND THEY ARE NO LONGER MINORS?

16 A NO. THEY ARE ALL OLDER AND MARRIED.

17 Q DID JOHN PROVIDE AND CARE FOR THEM DURING YOUR  
18 MARRIAGE?

19 A MOST OF THE TIME. THE FIRST YEAR OR TWO YEARS THAT  
20 WE WERE MARRIED HE MADE ME STAY ON WELFARE.

21 Q HOW MUCH DID YOU CONTRIBUTE TO THE ACCUMULATION OF  
22 PROPERTY THAT WAS ACCUMULATED DURING THE MARRIAGE? DID YOU  
23 WORK?

24 A I WORKED WHEN WE WERE UP AT THE DUDE RANCH. OTHER  
25 THAN THAT HE WOULD NOT ALLOW ME TO WORK. WHEN HE CAME HOME

1 I HAD TO BE THERE. I WORKED ALL DURING MY PREVIOUS MARRIAGE.  
2 I WORKED UP UNTIL WE GOT MARRIED AND THEN HE REFUSED TO LET  
3 ME WORK UNTIL AFTER WE RETIRED AND MOVED OUT HERE AND THEN  
4 WE LEASED TO THE DUDE RANCH FOR TWO YEARS.

5 Q SO YOU WORKED FOR A NUMBER OF YEARS BEFORE YOU WERE  
6 MARRIED?

7 A BEFORE I WAS MARRIED.

8 Q WHAT TYPES OF EMPLOYMENT DID YOU HAVE AT THAT TIME?

9 A I HAVE WORKED IN A BANK. I WORKED FOR A TRUCKING  
10 COMPANY.

11 Q DOING WHAT? WHAT WERE YOUR JOB TITLES?

12 A IN THE BANK I WAS A BOOKKEEPER, AND IN THE TRUCKING  
13 BUSINESS I WAS A SECRETARY.

14 Q YOU HAVE ACCOUNTING SKILLS AND BOOKKEEPING SKILLS  
15 AND SECRETARIAL SKILLS?

16 A WELL, YEARS AGO, YES. NOT WITH THE NEW COMPUTERS  
17 AND THAT TYPE OF THING.

18 Q WHAT WERE YOU PAID AT THAT TIME, DO YOU RECALL?

19 A I THINK THE MOST I WAS EVER PAID ON A BANKING JOB  
20 WAS \$220.00 A MONTH. FOR THE TRUCKING COMPANY I GOT ABOUT  
21 \$22.00 A WEEK.

22 Q THIS WAS IN WHAT YEAR?

23 A 1955-56 THROUGH '60. ALONG IN THERE.

24 Q ALL RIGHT. WERE YOU EVER AN OFFICE MANAGER?

25 A NO.

1 Q WERE YOU A TRUCK DISPATCHER?  
2 A I DID OCCASIONALLY. MY EX-HUSBAND WAS A TERMINAL  
3 MANAGER, AND WHEN HE WASN'T THERE I HAD TO DISPATCH THE  
4 TRUCKS.  
5 Q WHAT OTHER TYPES OF EMPLOYMENT HAVE YOU HAD?  
6 A I WORKED FOR AMERICAN COMPRESSOR AND ROCK DRILL  
7 COMPANY, JUST AS A SECRETARY ANSWERING THE PHONE FOR A SHORT  
8 PERIOD OF TIME.  
9 Q WHAT DID YOU DO AT THE HANNA DUDE RANCH?  
10 A AT THE DUDE RANCH?  
11 Q YES.  
12 A WE HAD A CAFE AND A BAR AND CABINS TO RENT OUT, AND  
13 I WORKED IN THE CAFE. I WORKED IN THE BAR. EIGHTEEN, TWENTY  
14 HOURS A DAY.  
15 Q SOMETHING LIKE A MANAGER/OWNER OR SOMETHING?  
16 A YES. WE LEASED THE CAFE OR LEASED THE RANCH.  
17 Q YOU DO HAVE AN AUTOMOBILE, DON'T YOU?  
18 A YES, I DO.  
19 Q DO YOU HAVE ANY DIPLOMAS? DO YOU HAVE A HIGH  
20 SCHOOL DIPLOMA?  
21 A. I HAVE A HIGH SCHOOL DIPLOMA, YES.  
22 Q DID YOU OBTAIN ANY EDUCATION BEYOND THAT?  
23 A NO. I DIDN'T.  
24 Q IN YOUR CURRENT LIVING SITUATION YOU LIVE ALONE?  
25 A YES.

1 Q OKAY. SINCE YOU HAVE BEEN SEPARATED FROM MR.  
2 COFFER--WELL, HOW ARE YOU EMPLOYED?

3 A I WORK OCCASIONALLY. I WORK AT THE HANNA BAR AND  
4 CAFE. THEY WERE HAVING ME WORK TWO AND THREE DAYS A WEEK,  
5 AND NOW THEY HAVE CLOSED DOWN. I USED TO WORK SUNDAYS AND  
6 MONDAYS. NOW THEIR BUSINESS HAS DROPPED OFF SO MUCH THEY  
7 ARE CLOSED MONDAYS, TUESDAYS AND WEDNESDAYS. THIS PAST  
8 WEEK I WORKED FRIDAY, SATURDAY AND SUNDAY BECAUSE THEY WERE  
9 DOWN IN BED WITH THE FLU. THE PREVIOUS WEEK I HAD THE FLU  
10 AND THE BAR WAS CLOSED. I ONLY WORK A FEW HOURS A WEEK.

11 Q ABOUT HOW MANY HOURS DO YOU AVERAGE A WEEK ON A  
12 NORMAL WEEK?

13 A PROBABLY TWENTY TO THIRTY. ALSO I GET PAID \$2.00  
14 AN HOUR, PLUS WHATEVER TIPS WE MAKE, WHICH OUT THERE NOBODY  
15 KNOWS WHAT A TIP IS. IT'S JUST THE OUTSIDERS WHO COME IN.  
16 AND I HAVEN'T BEEN PAID. THEY PAID ME IN NOVEMBER AND THEY  
17 PAID ME A LITTLE BIT IN DECEMBER AND THEY HAVE NOT PAID ME TO  
18 DATE NOW BECAUSE THEY HAVEN'T HAD THE BUSINESS COMING IN TO  
19 KEEP UP WITH THEIR BILLS.

20 Q SO FOR THE MONTH OF JANUARY YOU HAVEN'T BEEN PAID  
21 AS OF YET? . .

22 A NO. AND PART OF NOVEMBER, DECEMBER, AND THE REST  
23 OF JANUARY.

24 Q ABOUT HOW MUCH DO YOU BRING IN EACH WEEK, TIPS AND  
25 REGULAR SALARY?

1 Q I HAVE IN MY FILE TWO FINANCIAL STATEMENTS FROM  
2 YOU, ONE OF WHICH SHOWS A TOTAL MONTHLY EXPENSE OF \$775.00,  
3 AND ANOTHER WHICH SHOWS A TOTAL EXPENSE OF \$1,045.. THEY ARE  
4 BOTH DATED THE SAME DAY AND BOTH SIGNED BY BOTH YOU AND YOUR  
5 COUNSEL, AND I'M CONFUSED AS TO WHICH IS THE MORE ACCURATE.

6 A THERE WAS AN INCREASE IN MY INSURANCE, AND THEN  
7 THAT WAS WHEN MY TEETH WERE GOING BAD.

8 Q THESE ARE BOTH DATED THE 21ST OF OCTOBER.

9 THE COURT: THE COURT HAS ONE. IT SHOWS THE TOTAL  
10 MONTHLY EXPENSE OF \$1,045.00, AND INCOME OF \$100.00 TO \$125.00  
11 PER MONTH. APPARENTLY THAT'S THE ONE UPON WHICH THEY ARE  
12 RELYING.

13 Q (BY MR. HINDLEY) MRS. COFFER, IF YOU DON'T MIND  
14 AT THIS TIME I WILL--LET ME ASK YOU ABOUT THE PENSION. DID  
15 YOU KNOW MR. COFFER IN 1960?

16 A NO. I DIDN'T.

17 Q HOW DID YOU KNOW THAT HE BEGAN PAYING INTO HIS  
18 PENSION FUND AT THAT TIME?

19 A BECAUSE THROUGH BEING MARRIED TO HIM. HE SAID HE  
20 STARTED PAYING INTO IT IN '60. THAT'S WHEN HE MOVED TO  
21 SALT LAKE AND WENT TO WORK FOR GARRETT FREIGHTLINES.

22 Q AND YOU HAVE NOT LOOKED FOR EMPLOYMENT AT THIS  
23 POINT; IS THAT CORRECT?

24 A NO. THERE IS NOTHING OUT THERE IN THAT AREA.

25 Q WELL, YOU DID CHARACTERIZE THE PENSION AS RETIRE-