

1997

# Linda Kay Clark v. Cecil E. Clark : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS <sup>10</sup>CKET NO. 970635

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LINDA KAY CLARK,  
Plaintiff/Appellee,  
-vs-  
CECIL E. CLARK,  
Defendant/Appellant.

BRIEF OF APPELLANT

Case No. 970635  
Priority No. 15

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**BRIEF OF APPELLANT**

Appeal from the judgment and order of the  
Third District Court, Salt Lake County, State of Utah.

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**FILED**  
Utah Court of Appeals  
MAY 19 1998  
Julia D'Alesandro  
Clerk of the Court

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**BRIEF OF APPELLANT**

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DEFENDANT/APPELLANT (hereinafter "defendant"), submits the following as his opening brief in the above-referenced appeal:

**JURISDICTIONAL AUTHORITY**

Jurisdiction to review the final judgment and order herein, is vested in the Utah Court of Appeals pursuant to the Rules of the Utah Court of Appeals, Rules 3 and 4, and Utah Code Annotated, §78-2a-3(2)(h).

**NATURE OF THE PROCEEDING**

This is an appeal from a final judgment and order declaring a marriage between the parties, and divorcing them.

## **STATEMENT OF THE ISSUES**

1. Did the trial court have jurisdiction to enter the order of December 29, 1997, or was it entered past the one-year deadline?
2. Did the trial court abuse its discretion in declaring a “common law marriage?”

## **DETERMINATIVE PROVISIONS, CASES, STATUTES AND RULES**

Utah Code Ann., 30-1-4.5

Bunch v. Englehorn, 906 P.2d 918 (Utah App., 1995)

## **STANDARD OF REVIEW**

This Court must review the trial court’s interpretation of Utah Code Ann., §30-1-4.5 (1995 as amended), and therefore the lower court’s ruling, under a correctness standard. Utah Sign Inc. v. Utah Department of Transportation, 896 P.2d 632; and Bunch v. Englehorn, supra.

## **STATEMENT OF FACTS/STATEMENT OF CASE**

Defendant submits the following as a summary of the case. Other more detailed facts are set forth below as they pertain to particular points of argument:

1. The parties were previously husband and wife, having been married in a traditional solemnized marriage. That marriage was dissolved by a decree of divorce entered in the Third Judicial District Court in Salt Lake County, State of Utah, in 1986.

2. After the parties were divorced in 1986, they were separated for a period of several months. Then they resumed living together. They lived together continuously for several years. Once again, they separated. Defendant subsequently remarried another woman with the same first name, Linda Marie Clark, and is now married to Linda Marie Clark, whom he married on or about October 12, 1996. (Testimony of plaintiff, Tr. 8/13/97, pp.59,60,61).

3. Plaintiff filed suit against defendant, on October 1, 1996, seeking to declare a marriage between the parties pursuant to Utah Code Ann., §30-1-4.5. (R.O.A., 1-6).

4. The matter came on for trial on or about August 13, 1997, to determine the issue of the alleged "common law marriage." At trial, a factual dispute arose between plaintiff and defendant regarding the date the parties terminated their cohabitation. Plaintiff contended that this occurred August 28, 1996. Defendant contended that this occurred in December 1995. The court found in favor of the plaintiff on this issue, determining that the cohabitation relationship between the parties terminated effective August 28, 1996.

5. Findings of Fact and Conclusions of Law and an order declaring the marriage, and divorcing the parties effective with the date of that order, was entered September 29, 1997. A true and correct copy of that order is attached hereto in the appendix.

6. From the entry of this order, defendant filed a timely notice of appeal. (R.O.A., 311).



## SUMMARY OF ARGUMENT

1. The trial court lost jurisdiction in this matter to enter an order declaring a marriage, pursuant to Utah Code Ann., §30-1-4.5, because the order declaring the marriage was not entered within one year of the termination of the parties' relationship, as required by that statutory provision and as required by the holding in Bunch v. Englehorn, 906 P.2d 918 (Utah App., 1995).

2. The trial court erred in determining, from the facts in this case, that a "common law" marriage existed between these parties, because there was no evidence the defendant ever intended to be married to plaintiff, after their divorce in 1986, nor is there evidence he consented to marry the plaintiff. Further, there is strong evidence from the plaintiff's own tape-recorded statement and own hand-written statement that she did not consider herself to be married to defendant, after their 1986 divorce was entered.

## ARGUMENT

### **POINT 1. THE TRIAL COURT HAD NO JURISDICTION TO ENTER THE ORDER DECLARING THE MARRIAGE, BECAUSE THE ORDER WAS NOT ENTERED WITHIN ONE YEAR OF THE TERMINATION OF THE PARTIES' RELATIONSHIP.**

Utah Code Ann., §30-1-4.5 provides, regarding validation of an unsolemnized marriage relationship, that the establishment of a marriage under Utah Code Ann., §30-1-4.5 ". . . must occur during the relationship . . . or within one year following the termination of that relationship. . . ." [Utah Code Ann., §30-1-4.5(2)]

This statute requires that those who wish to establish a marriage to be recognized by law must obtain a court or an administrative order establishing the relationship within one year of the termination of the relationship. Mere filing of a complaint for enforcement under §30-1-4.5 does not satisfy the one-year requirement. The order itself must be entered within one year of the termination of the relationship sought to be declared a marriage. This is the clear holding in Bunch v. Englehorn, 906 P.2d 918 (Utah App., 1995).

In this case, the first anniversary of the termination of the parties' relationship occurred by at least August 28, 1997. Accordingly, the order terminating the marriage, which was entered in September, had to be signed and entered on or before August 27, 1997. When August 27th came and went, the trial court lost subject matter jurisdiction. Bunch, *supra*.

It might be argued by plaintiff that she complied with the statute by filing her complaint within the one year time limit, (assuming the parties terminated their relationship August 28, 1996, as plaintiff claimed.) This position was taken by the plaintiff in Bunch and expressly rejected by the Utah Court of Appeals.

It might be argued by petitioner that this issue was addressed at trial in August. It clearly was not addressed, because it could not be addressed at the August 13, 1997 trial. This issue could not arise, as a matter of law, until August 28, 1997. (The one-year limitation issue argued at trial had to do with defendant's claim the parties separated in December of 1995, not August of 1996. This argument was rejected by the court below and that ruling is on appeal here.)

Assuming for the sake of argument, that this Court should find that the trial and ruling from the bench on August 13, 1997 satisfies the requirements of the statute and of Bunch v. Englehorn, the declaration of a marriage in this case is still untimely. As set forth in the marshaling of the evidence below, the parties clearly separated in early December, 1995. Since the trial did not occur until August 13, 1997, and the ruling from the bench did not occur until that day, which was some one year and eight months after the parties' separation, the declaration of marriage was untimely.

The evidence, which is further set forth in Point 2 below, establishing that the parties actually terminated their relationship in December of 1995, is as follows:

a. The parties separated in December of 1995. The plaintiff obtained her own apartment at that time. She signed a lease agreement which provided that no one else, other than plaintiff, could reside at her apartment. (Tr. 8/13/97, pp.13,141).

b. When plaintiff moved out in December of 1995, she took all of her personal property out of the joint home. She testified that she moved out "lock, stock and barrel." She testified: "I had had it. I had told him that was it." (Tr. 8/13/97, pp.118-120). Plaintiff testified that, at the time she moved out in December of 1995, she considered her relationship with defendant to be "over." (Tr. 8/13/97, p.122). She testified it was not her intention to go back to Mr. Clark.

c. Defendant testified that, when plaintiff moved out in December of 1995, he considered the relationship to be over. He testified: "We just cut it right

off. It was gone. It was history.” He testified that it was his understanding, “. . . she wasn’t ever coming back.” (Tr. 8/13/97, p.154).

d. When plaintiff moved out of the parties’ residence in December of 1995, she changed her forwarding address, and instructed the **post office** to forward all of her mail to her new apartment. (Tr. 8/13/97, pp.52,127).

e. Plaintiff testified that, when she moved back into the parties’ joint residence in June of 1996, her relationship was different from the relationship she had had before. She described it as being “strained.” Defendant was, at that point, actively and openly maintaining an intimate relationship with another woman, including buying the other woman a car. (Tr. 8/13/97, p.63). Defendant testified that, when plaintiff moved back into his Magna residence in June of 1996, he thought she was going to be there “a few weeks at the most.” He slept in the basement and spent time with his fiancé, Linda Marie, staying one or two nights a week at Linda Marie’s house. The plaintiff and defendant in this action did not resume marital relations. (Tr. 8/13/97, p.156). It is important to note that this testimony about the parties’ sleeping arrangement after June of 1996 went unrefuted by the plaintiff.

f. The parties signed a written agreement in June of 1992, which was admitted at trial as Exhibit P-4. The agreement makes reference to the parties being single persons, and makes reference to their desire to separate their property and their debts. (Tr. 8/13/97, pp.73,74).

g. Plaintiff never wrote a check on the parties’ last remaining joint

checking account after the December 1995 separation. (Tr. 8/13/97, p.122). After December of 1995, there were no further authorized joint uses of credit cards by the parties. (See ¶20 at Point 2.A.ii., below).

h. When plaintiff moved back into the defendant's Magna residence in June of 1996, she put her furniture in the garage. Defendant never consented that she could put her furniture back in his house. (Tr. 8/13/97, p.130). The parties' son-in-law and daughter moved the furniture into the house one day when the garage flooded. (Tr. 8/13/97, p.136). When defendant found furniture moved into the house, he told her to move the furniture and to move herself out. He changed the locks days later to enforce this ultimatum. (Tr. 8/13/97, pp.157,158).

i. Plaintiff filed an income tax return as a single person with the federal government for the 1995 tax year. (Tr. 8/13/97, p.139).

j. When plaintiff returned to the defendant's Magna home in June of 1996, she did not leave the Magna address with her former landlord as a forwarding address. (Tr. 8/13/97, pp.143,144).

k. Defendant testified that, at the time plaintiff moved back into his Magna home in June of 1996, he was already engaged to be married to the person who is now his wife. (Tr. 8/13/97, p.164).

The overwhelming weight of all of this evidence is that the parties separated and

terminated their cohabitation, within the meaning of §30-1-4.5 in December of 1995. There is, in reality, no credible evidence to suggest that the parties actually resumed cohabiting together, and resumed their relationship as husband and wife, after December of 1995. Therefore, the entry of the order declaring their “common law marriage” in August of 1997, is grossly untimely pursuant to the holding in Bunch v. Englehorn, *supra*.

**POINT 2. THE TRIAL COURT ABUSED ITS DISCRETION IN DETERMINING, FROM THE FACTS AT TRIAL, THAT A MARRIAGE EXISTED BETWEEN THE PARTIES, AND/OR THAT DEFENDANT HAD INTENDED TO MARRY PLAINTIFF OR CONSENTED TO BE MARRIED.**

**A. Marshaling of the Evidence.**

Defendant is mindful of his obligation to marshal the evidence and to demonstrate from the evidence wherein the trial court erred in finding a “common law marriage.” All of the evidence at trial, bearing on the issue of the existence of a non-solemnized marriage between the parties is as follows:

**i. Evidence favoring plaintiff’s position:**

1. A neighbor “assumed” that the parties were husband and wife, because they were “Lisa’s mom and dad.” (Tr. 8/13/97, p.24). The parties’ former daughter-in-law also believed them to be married to each other when she met them. (Tr. 8/13/97, pp.34,35). Again, the witness “assumed they were married,” because they have the same last name, and they were “Kelly’s mom and dad.” They slept in the same bed, petitioner cooked the meals, and they acted “like a husband and wife would act.”

2. The plaintiff, after moving out of the joint residence in December of 1995, moved back in again in June of 1996. (Tr. 8/13/97, pp.11,12).

3. The plaintiff moved out of the joint residence for the last time in August of 1996. (Testimony of neighbor, Tr. 8/13/97, p.32; testimony of former daughter-in-law, Tr. 8/13/97, p.40; and testimony of plaintiff, Tr., 8/13/97, p.59). Plaintiff testified this occurred August 28, 1996.

4. The parties' son, Kelly Clark, testified that the parties moved in together after their divorce in 1986, and "lived together then as a family" until their final separation. (Tr. 8/13/97, p.43).

5. The parties shared payment of their routine household expenses from the autumn of 1985 until the termination of their relationship. (Tr. 8/13/97, p.82).

6. For tax years 1985 through and including 1994, the parties filed joint married income tax returns with the federal and state governments. (Tr. 8/13/97, p.85). Starting with the 1995 tax year, the parties did not file joint married income tax returns. (Tr. 8/13/97, p.87).

7. The parties had joint banking accounts during a portion of their cohabitation. The last joint bank account was opened July 5, 1994, and was closed in February or May of 1996. (Tr. 8/13/97, p.87).

8. When plaintiff went back to the defendant's home in Magna on June 14, 1996, she testified it was not her intention just to be there for a short while until she could find another place to live. (Tr. 8/13/97, p.123).

9. Plaintiff's former landlord testified that the defendant came around during

the Christmas holiday season of 1995, and made an “anonymous” rental payment in plaintiff’s behalf.

**ii. Evidence favoring defendant’s position:**

1. The parties separated in December of 1995. Plaintiff obtained her own apartment at that time, and lived alone until June of 1996. (Tr. 8/13/97, p.11). The landlord’s representative of the apartment testified at trial that plaintiff leased an apartment on December 5, 1995, which lease was effective through June 30, 1996. The lease allowed for no one other than plaintiff to reside at the apartment. (Tr. 8/13/97, p.141).

2. When plaintiff moved out in December of 1995, she took all of her personal property out of the joint home. (Testimony of plaintiff, Tr. 8/13/97, p.62; and Tr. 8/13/97, p.12). Plaintiff testified that she moved out because of defendant’s relationship with another woman. She moved out “lock, stock and barrel.” She signed a lease indicating that she was renting an apartment in December of 1995 as the “sole resident.” The lease contained a restriction that she was the only person who could reside there for more than two nights. Plaintiff testified that, at this time, “I had had it. I had told him that was it.” (Tr. 8/13/97, pp.118,119,120). Plaintiff moved out in December of 1995, because of the defendant’s intimate involvement with another woman. (Tr. 8/13/97, pp.118,119). Plaintiff testified that, at the time she moved out in December of 1995, she considered her relationship with the defendant to be “over.” (Tr. 8/13/97, p.122). She testified it was not her intention to go back to Mr. Clark. (Tr. 8/13/97, p.123). Defendant also testified that, when plaintiff moved out in December of



1995, he considered the relationship to be over. He testified: "We just cut it right off. It was gone. It was history." He testified that it was his understanding, ". . . She wasn't ever coming back." (Tr. 8/13/97, p.154).

3. By as early as October of 1993, at least one of the witnesses who assumed the parties were married became aware that defendant had a relationship with another woman, when he took his present wife, Linda Maria Clark, deer hunting. (Tr. 8/13/97, p.37). In October of 1993, defendant told the witness, "you know, me and Linda aren't married." (Tr. 8/13/97, p.37). By plaintiff's own testimony, she knew by October of 1994 that defendant had an intimate relationship with another woman, and that this had been going on for about two and one-half years, as of October 1994. (Tr. 8/13/97, p.86).

4. Defendant married Linda Marie Clark, on October 12, 1996, after having had a relationship with her of approximately 3 years. (Testimony of parties' former daughter-in-law, Tr. 8/13/97, p.38; testimony of Linda Marie Clark, Tr. 8/13/97, p.197).

5. The parties' son, Kelly, had no idea whether the parties had joint or separate accounts, or how they managed their finances, after their divorce in 1986. (Tr. 8/13/97, pp.53,54).

6. Though the plaintiff would "help in the business" operated by the defendant, she was never a signator on the business accounts. (Tr. 8/13/97, p.57).

7. The parties were previously husband and wife, having been married in a formal wedding ceremony, and having been married for about 18 years. That marriage was terminated by divorce in August 1985. (Testimony of plaintiff, Tr. 8/13/97,

pp.59,60).

8. When asked a question about her marital status, at trial below, plaintiff herself testified that she had not “remarried” since her divorce in 1985. (Tr. 8/13/97, p.61).

9. When the plaintiff moved out of the parties’ residence in December of 1995, she changed her address. (Tr., 8/13/97, p.52). When she moved out of the Magna house in December of 1995, she instructed the Post Office to forward all of her mail thereafter to her apartment. (Tr., 8/13/97, p.127).

10. Plaintiff testified that, when she moved back into the residence in June of 1996, her relationship was different from the relationship she had had with the defendant before. The relationship was “strained.” Defendant was actively maintaining a relationship with another woman, including buying the other woman a car. (Tr. 8/13/97, p.63). Defendant testified that, when plaintiff moved back into the Magna residence in June of 1996, he thought she was going to be there “a few weeks at the most.” He slept in the basement and spent time with Linda Marie, and stayed one or two nights a week at Linda Marie’s house. The plaintiff and defendant in this action did not resume marital relations. (Tr. 8/13/97, p.156).

11. In 1986, the parties had a residence on Settler Drive. This home was sold after the divorce, and the proceeds used to build on a family farm in Coalville. They lived at the “family farm” for about a year, and then plaintiff purchased a home in Magna. She purchased the home in Magna which the parties occupied from the late 1980s until their separation, in her own name, without the defendant being listed on the

title of that property. (Tr. 8/13/97, pp.64,65,114,115).

12. Eventually, plaintiff conveyed titled of the home in Magna to the defendant. She testified that she did so out of financial pressure, but she nonetheless deeded the property to the defendant, solely, in exchange for \$22,500.00 in cash and his payment of some debts. (Tr. 8/13/97, pp.69,70,114,115).

13. Within the 1985 decree of divorce, plaintiff was awarded rental properties in Coalville, Utah. These were jointly owned and operated before the divorce. After the divorce, title of these properties changed exclusively to the plaintiff, and remained that way. (Tr. 8/13/97, pp.66,67). Those properties were sold in July of 1993. (Tr. 8/13/97, p.67). By the plaintiff's own testimony, the proceeds from the sale of the rental properties went solely into the name of the plaintiff, and not into any account controlled by the defendant. (Tr. 8/13/97, p.111). At various times after the divorce of the parties, the plaintiff complained to defendant that she needed his help repairing or improving the rental properties. His response, according to plaintiff's testimony, was to offer to buy the property from her. He did not perform the repairs. (Tr. 8/13/97, pp.71,72). Eventually, as stated, she sold these properties to third parties.

14. The parties signed a written agreement in June of 1992, which was admitted at trial as P-4. (Tr. 8/13/97, pp.73,74). The agreement makes reference to the parties being single persons, and makes reference to their desire to separate their property and their debts. (Tr. 8/13/97, pp.73,74) (See also exhibit P-4 attached to addendum herein.) Though the parties did not change residences as a result of this agreement, there was a division of vehicles, and a closure of joint bank accounts.

(Testimony of plaintiff, Tr. 8/13/97, p.74). After June of 1992, and the written agreement between the parties, defendant paid plaintiff, over time, to purchase the Magna property. (Tr. 8/13/97, p.75). Though he missed payments, and was often late in his payments, plaintiff never attempted to enforce the payment schedule, and she eventually received the full amount due under the contract. (Tr. 8/13/97, pp.110,111)

15. Defendant filed bankruptcy in the 1980s, after the parties' divorce. (Tr. 8/13/97, p.78). By the plaintiff's own testimony, the defendant was identified in that bankruptcy as a single man, and plaintiff did not join in the bankruptcy. (Tr. 8/13/97, p.116). Defendant concurred in this assessment. (Tr. 8/13/97, p.149).

16. Though the parties shared their household expenses, plaintiff never kept track of how these expenses were shared. The expenses were paid out of plaintiff's separate account, defendant's separate account, or, until the joint account was closed in 1996, out of the joint checkbook. (Tr. 8/13/97, pp.82,83,121). Defendant testified that he ultimately closed the joint account, "after she moved out," in reference to the December 1995 separation. (Tr. 8/13/97, p.163).

17. Plaintiff never wrote a check on the last remaining joint checking account after December of 1995. (Tr. 8/13/97, p.122).

18. Since the divorce in 1986, defendant purchased a recreational lot solely in his own name. (However, a policy of title insurance dated September 1994, shows "Linda Clark," with no middle name, given as an partial owner of the lot.) (Tr. 8/13/97, p.99, Exhibit 22). Defendant testified that he purchased the recreational property with a Ron Chilton for \$22,000.00. Defendant testified plaintiff did not contribute anything to

the purchase of that separate property. (Tr. 8/13/97, pp.161,162).

19. According to plaintiff's own testimony, whenever she received money, as from the sale of the rental properties, or from her sale of the Magna home to defendant, she put those funds in a separate account, on which the defendant was not a signator. (Tr. 8/13/97, pp.110,111). As of the time of trial, plaintiff testified she had a total of about \$37,800.00 in two separate bank accounts, as a result of these investments. (Tr. 8/13/97, p.117).

20. After December of 1995, there were no further joint uses of credit cards by the parties, with the exception of plaintiff attempting to use a J.C. Penney account in July of 1996, to purchase some drapes for the house. Defendant called J.C. Penney and complained that plaintiff had no authority to use the card, and made them take the drapes back. The drapes were actually returned. (Tr. 8/13/97, pp.123,124). With the exception of the attempt to use the J.C. Penney credit account in July of 1996, plaintiff did not sign any checks on any accounts, nor sign defendant's name to any checks or documents, nor attempt to use any other joint credit accounts. (Tr. 8/13/97, pp.125, 11-18). There was a misunderstanding on the part of a retail store about purchases in 1997, but the plaintiff herself intended those to be separate purchases. (Tr. 8/13/97, p.126). Defendant testified that he had had the J.C. Penney credit account before he and plaintiff were originally divorced. He testified that he believed he had removed her name from the account, and he had no idea how she managed to use it. (Tr. 8/13/97, p.164).

21. Though plaintiff testified that she had had occasion to give defendant

\$5,000.00 (see Exhibit 9) for the purchase of a Dodge truck, the defendant repaid her the \$5,000.00 to cover the costs of that truck within a day or two. Though plaintiff testified that she gave money to defendant to purchase business materials in the sum of about \$4,000.00, those monies were also repaid to her by defendant, in a check from his company. (Tr. 8/13/97, pp.129,130).

22. When plaintiff moved back into the defendant's Magna residence in June of 1996, she put her furniture in the garage. The defendant never agreed she could put the furniture in the house. (Tr. 8/13/97, p.130). Plaintiff testified that she thought the furniture was kept out of house, because carpet was being laid in the house, but the fact remained that defendant never agreed to have her furniture put back in place in the house. Defendant testified that he thought she moved back to the Magna home in June of 1996 because she wanted to get an apartment with a washer and dryer, and she needed a place to live for awhile, while she hunted for better apartment. (Tr. 8/13/97, p.156). Defendant never agreed to move the furniture into the house. The parties' son-in-law and daughter moved the furniture into the house one day when the garage flooded. (Tr. 8/13/97, p.136). Defendant testified that he helped plaintiff move her furniture into the garage, but did not tell her that she could put it into the house. He was gone to work one day and came home to find the furniture in the house. He told her to move the furniture out and to move herself out. He eventually changed the locks days later to enforce this requirement. (Tr. 8/13/97, pp.157,158).

23. The parties each signed a Last Will and Testament. Each party's will, executed in 1991, identified the parties as being "single." (Tr. 8/13/97, p.131).

24. In September of 1996, the plaintiff wrote a letter to defendant, and handed it to him. The letter was introduced at trial as Exhibit 32. (Tr. 8/13/97, p.132). A true and correct copy of Exhibit 32 is attached in the appendix. In that letter, plaintiff stated to defendant: "I feel that if we were married, it would make a difference." She also stated, ". . . I'd give anything in the world if you'd just take me away and get married." (Tr. 8/13/97, pp.132,133). At the end of the letter she stated: "But I know it's not me you want to marry."

25. Plaintiff also tape-recorded a message to defendant in November of 1995, in which she stated that all she wanted was "a ring and a piece of paper." (See tape, admitted as Exhibit 33 at trial.) Defendant testified that plaintiff had wanted to say some things that she couldn't say in person on the tape. On the tape, the plaintiff states (in November of 1995) that she wants the defendant to marry her. (See Exhibit 33; and Tr. 8/13/97, pp.165,166).

26. Plaintiff testified that, when the plaintiff moved out of the defendant's Magna residence on August 28, 1996, she reported to the police that she had been "divorced for quite some time," and that she and the defendant were "living together." Plaintiff called the police because defendant had finally locked her out of the house. (Tr. 8/13/97, pp.137,138).

27. Plaintiff filed a tax return as a "single person" with the federal government for the tax year 1995. (Tr. 8/13/97, p.139).

28. When plaintiff moved out of her separate apartment in June of 1996, though she returned to the defendant's Magna address, she did not leave the Magna

residence with her landlord as a forwarding address. (Testimony of landlord's representative, Tr. 8/13/97, pp.143, 144).

29. Defendant testified, without contradiction, that plaintiff was dating a man in St. George named Joe Wilde between 1991 and 1994. (Tr. 8/13/97, pp.149,150).

30. Defendant testified that he attempted to be nice to plaintiff because: "I didn't hate her. I was trying not to be enemies. She's the mother of my kids. I went down and seen her. I took the grandkids down there." (Tr. 8/13/97, pp.154).

31. Defendant spoke to plaintiff a few times, for approximately two years before his marriage to Linda Marie on October 12, 1996, that he intended to marry Linda Marie. (Tr. 8/13/97, p.155).

32. Defendant testified that, at the time plaintiff moved back into his Magna residence in June of 1996, he did not consider it to be a reconciliation, and he was in fact already engaged to be married to the person who is now his wife. (Tr. 8/13/97, p.164).

33. Plaintiff moved out, taking all of her furnishings and belongings with her, six or seven times during the course of the parties' cohabitation, according to the testimony of the defendant. He would buy other things and "just carry on" and furnish the house himself. (Tr. 8/13/97,p.173).

34. The defendant's business partner testified that he (the partner) asked the plaintiff to do something in the business in September of 1995. Plaintiff became upset. She told the witness that she shouldn't even be doing the books because she and defendant were "not even married," and that they had been divorced for almost ten



years. (Tr. 8/13/97, p.189). She indicated to the witness that she did not believe she was married to Mr. Clark. Defendant's business partner also testified that in December of 1995, or January of 1996 (at about the time the plaintiff moved into her own apartment), the defendant's present wife, Linda Marie, took over the bookkeeping for the business. (Tr. 8/13/97, p.190). The partner also testified that, during the time of June and July, 1996, when the plaintiff had moved back into defendant's residence, it was clear the defendant was sleeping in the basement of the residence. (Tr. 8/13/97, p.191).

35. Defendant's wife, Linda Marie Clark, testified that she married the plaintiff in October of 1996, having been engaged to him since at least January of 1996. Linda Marie Clark also testified that she had first told the plaintiff here, Linda Kay Clark, that Linda Marie was going to marry defendant, and that this occurred in about 1994 or 1995. (Tr. 8/13/97, p.197). From January of 1996 until June of 1996, Linda Marie Clark, defendant's present wife, stayed at the defendant's Magna residence two or three nights per week, and he stayed at her residence two or three nights per week. (Tr. 8/13/97, p.198). She testified that she had also stayed in the Magna home on occasion in 1995. (Tr. 8/13/97, p.202).

Defendant is aware of no other evidence adduced at trial by either party bearing on the issue of whether a non-solemnized marriage existed or not.

**B. No Marriage Existed Between These Parties After Their Divorce in 1986.**

Plaintiff failed to meet her burden of proof at trial to establish the existence of a common law marriage, and the trial court abused its discretion in finding the existence of such a marriage.

The statutory provision authorizing the existence of a “common law marriage” within the state of Utah, is found at Utah Code Ann., §30-1-4.5. This statute sets forth a number of elements which must be proven at trial, in order to establish the existence of a marriage. These elements are as follows:

1. That there exists a contract between two consenting parties who;
2. Are capable of giving consent;
3. Are legally capable of entering a solemnized marriage under the provisions of this chapter;
4. Have cohabited;
5. Mutually assume marital rights, duties and obligations;
6. Who hold themselves out and who have acquired a uniform and general reputation as husband and wife.

Plaintiff failed to prove a number of these elements at trial adequately to establish the existence of a marriage by a preponderance of the evidence. The burden of proof is on the plaintiff here to establish each and every element, and the defendant does not have any burden of proof in these proceedings. White v. Blair, supra.

Plaintiff never established at trial, and the lower court never found, that plaintiff consented and intended to marry plaintiff. The great weight of the evidence at trial is that the defendant did not consent to marry plaintiff, after he was divorced from

her. After all, he was married to her at one time, and went to the trouble and expense to obtain a lawful divorce.

It is the problem with showing consent in this type of case which has led this Court, in White v. Blair, to state that “the best evidence of marital consent is a written agreement, signed by both parties, manifesting their consent. (White v. Blair, at p.794). This Court has also stated that “the testimony of others who were present when the agreement to assume all marital responsibilities was made could also be highly persuasive.” (White v. Blair, at p.794). In the instant case, there is clearly no written agreement, nor any occasion when the parties formally stated their intention to be married.

It is true that other circumstantial evidence may be used to attempt to establish consent to be married in a “common law” relationship. However, what must be shown by all of this circumstantial evidence, with the burden of proof on the party claiming the benefit of the unsolemnized marriage, “. . . is that at some point mutual consent was given.” The trial court made no finding on this issue. Plaintiff cannot establish a specific point in time at which defendant consented.

It is true that the parties filed joint income tax returns through and including the 1994 tax year. However, in utter contradiction to this, they each executed a last will and testament in 1992, declaring themselves to be single. They held title to their real estate as single persons. In the only written declarations and recorded verbal declarations by the plaintiff on the subject, she clearly acknowledges that the defendant had not consented to marry her, because she is, at that point, begging him to do so.

In, cited with approval by White v. Blair, consent to marry was not found by this Court, even though the parties lived together for nineteen years, had had a child together, had a general reputation of being married, and had the mother of one of the parties living with them. This Court declined to find a marriage where the woman in that relationship had refused several marriage proposals, and some of their financial affairs were handled separately. [White v. Blair citing Maria v. Freitas, 832 P.2d 259 (HI, 1992)]. In the instant case, though the parties lived together for at least nine years, until December of 1995, they kept most of their financial affairs separate. The plaintiff, certainly, was very careful to keep the rental property she was awarded in the decree of divorce, and the proceeds from the sale of that property, titled in her separate name. She was very careful to keep the Magna property titled in her separate name, until she sold it for cash from the defendant, pursuant to a written contract for sale of land. This is not the kind of separation of financial issues anyone would expect from a married couple.

Other probative evidence which this Court has found may establish consent to a marriage may include: “ . . . maintenance of joint bank accounts and credit accounts; purchase and joint ownership of property; the use of the man’s surname by the woman and/or children of the union; the filing of joint income tax returns; speaking with each other in the presence of third parties as being married; declaring the relationship in documents executed by them while living together, such as deeds, wills, and other formal instruments.” White v. Blair, at p.795 (citations omitted).

In the instant case, the parties did maintain some accounts, checking accounts,

but primarily maintained the separateness of their financial investments. All of the real property has been owned individually throughout their cohabitation after their divorce. It is true and plaintiff maintains the surname of “Clark” as do the parties’ children, but this should not be dispositive in this case. The parties were, after all, actually married to each other for a long period of time. It is quite common in our culture for divorced women, and especially those with children, to maintain the surnames of their husbands, even after divorce.

Everyone at trial who testified as to the parties’ reputation for being husband and wife, such as the parties’ neighbor, former daughter-in-law, and the defendant’s business partner, testified that they assumed that the parties were married. An assumption made by neighbors and acquaintances is not the basis for a finding that the parties actively held themselves out as husband and wife. The parties simply did not say, one way or the other, and friends and neighbors reached their own conclusions. It is important to note that, at any point when these assumptions became embarrassing (such as when the prospective daughter-in-law wondered why her future father-in-law had another woman with him at a deer hunt camp, or when the business partner wondered why the plaintiff would not help him out in running the defendant’s business), the parties were quick to clarify that the assumptions were wrong, and that they were really single.

The conduct of the parties during their cohabitation does not indicate an intention to be married. The plaintiff maintained a dating relationship with another man for three or four years during the period of cohabitation. (See ¶129 of the facts favoring

defendant's position, set forth above). Simultaneously, the defendant maintained an ongoing relationship with the woman who is now his wife, for years prior to his actual solemnized marriage on October 12, 1996. None of this conduct by either party was disputed by either party. This open conduct in dating others is not conduct commonly associated with an intent to be married, or consent to a marriage.

It is important to note that the plaintiff cannot establish when the defendant specifically consented to be married to her again. The trial court simply went back to the time of the parties' divorce, when they first moved in together, and found that this was the beginning date of their new common law marriage. This is too simple an analysis. There is no indication that at any particular point in time the defendant consented specifically to be married. That is what this Court must find.

The opinion in White v. Blair states as follows: "Care must be given to guard against fraudulent marriage claims . . . especially where a declaration of marriage would reap financial rewards for an alleged spouse. . . . When a reward is available, human nature may choose to strengthen and augment, in retrospect, the consent to marry that was only tentative before the reward became available. . . . Where financial gain is at issue, acknowledgment of marital consent by a woman and the man may be less persuasive if contradictory evidence is presented." The overwhelming weight of the evidence at trial in this case supports the conclusion that the parties did not consent nor intend to be married. Plaintiff's statements as to the alleged common law marriage are financially motivated, made after the fact, and therefore are less persuasive than the majority of the evidence. She is in this case seeking a thousand

dollars per month alimony, which was awarded, seeking ownership of the Magna house, which she already sold once to defendant for the sum of \$22,500.00, cash and the payment of some debts. She is seeking an interest in two functioning businesses, recreational property in Southern Utah, and other parcels of rental property, which she apparently surmises are worth more than the \$38,000.00 she has accumulated as her nest-egg since the 1986 divorce. Because it is clear the plaintiff's claims are strongly financially motivated, this Court must exercise greater scrutiny in looking at the establishment of a marriage. This Court cannot find such a marriage to exist, under this level of scrutiny, under the facts presented at trial.

The law in Utah includes Utah Code Ann. 30-1-4,5, allowing parties to become married by process not traditional nor officially solemnized. However, the fact that a marriage is not solemnized does not mean that the state of Utah has adopted a procedure whereby persons can be tricked or fooled into a marriage, or can become married without intending to do so. Such a provision would create havoc. (It has already created havoc in this case where the defendant, believing himself in good faith to be a single man, married another woman in 1996. Later, he was declared in the trial court to be married, effective back to 1986, and he was not divorced in that declared marriage until the entry of the order in September of 1997. Are he and his wife now bigamists? What is the status of that marriage? That marriage was solemnized before the lawsuit in this case was even commenced. Defendant had no notice that plaintiff was making a claim of marriage. This is exactly the type of damage to be done and problem to be created by allowing a "marriage" to take place by default or deceit, rather

than by specific intent and consent.)

**POINT 3. THE TRIAL COURT WRONGFULLY DECLARED A MARRIAGE PRIOR TO THE EFFECTIVE DATE OF THE STATUTE.**

Until passage of §30-1-4.5, Utah did not recognize unsolemnized relationships as marriages. Walters v. Walters, 812 P.2d 64 (Utah App. 1991), cert. denied 836 P.2d 1983 (Utah 1992). In 1987, the Utah State Legislature enacted the section of the Utah Code allowing for recognition of unsolemnized marriages.

In the court below, the trial judge recognized a marriage between these parties, and declared the marriage to be effective October 1, 1985. (R.O.A. 279). In other words, the court found that these parties had consented to and intended to create a marital relationship some two years before Utah recognized such marriages. This renders the decision of the trial court invalid. The court could not recognize a marriage effective before the statute was enacted. The parties could not create a marriage without benefit of that statute.

Furthermore, since the trial court failed to find the parties had consented to and intended a marriage after the effective date of the statute, the trial court findings are inadequate to support a declaration of marriage. Before 1987, the trial court found intent and consent to marry, but the unsolemnized marriage could not occur. After the marriage could occur by statute, the trial court failed to make any specific finding of intent or consent. The lower court findings must fail.



## **CONCLUSION**

For the foregoing reasons, the holding in the trial court should be reversed, and remanded for entry of an order that, the trial court having failed to enter an order by August 27, 1997, the court below lost jurisdiction to do so. In the alternative, this Court should issue an order remanding this case to the trial court for entry of an order that no marriage existed between these parties, because the facts at trial simply do not establish, as a matter of law, that a marriage could have existed, and because there was no consent by defendant to be married.

RESPECTFULLY SUBMITTED this 18th day of May, 1998.

CORPORON & WILLIAMS

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MARY C. CORPORON  
Attorney for Defendant/Appellant

### **CERTIFICATE OF MAILING**

I, the undersigned, hereby certify that I caused four copies of the foregoing opening brief to be mailed, postage pre-paid, to:

**SUZANNE MARELIUS**  
Attorney for Plaintiff/Appellee  
426 South 500 East  
Salt Lake City, Utah 84102

on the \_\_\_\_ day of \_\_\_\_\_, 1998.

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190.00

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FILED  
DISTRICT COURT  
97 OCT 28 PM 4:11  
THIRD JUDICIAL DISTRICT  
SALT LAKE COUNTY  
BY *J. Prestler*

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

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LINDA KAY CLARK,

NOTICE OF APPEAL

Plaintiff,

-vs-

Civil No. 964904244DA

CECIL E. CLARK,

Judge J. Dennis Frederick  
Commissioner Lisa A. Jones

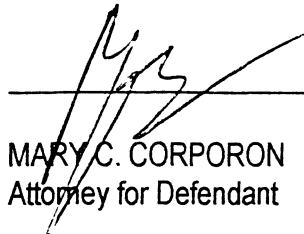
Defendant.

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DEFENDANT TO THE ABOVE-ENTITLED ACTION, by and through his counsel of record, Mary C. Corporon, hereby appeals from the Declaration of Marriage and Decree of Divorce entered herein on or about September 29, 1997.

DATED THIS 28 day of October, 1997.

CORPORON & WILLIAMS

  
\_\_\_\_\_  
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FILED  
Third Judicial District

SEP 29 1997

By C. Bauerley

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

LINDA KAY CLARK,

Plaintiff,

v.

CECIL E. CLARK,

Defendant

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Case No.: 964904244 DA  
Judge: J. Dennis Frederick

The above-entitled matter came before the Court for trial on August 13, 1997, the Honorable J. Dennis Frederick presiding. Plaintiff was present in person and represented by counsel, Suzanne Marelius. Defendant was present in person and represented by counsel, Dean N. Zabriskie. The Court received and approved the Stipulation of the parties that in the event a Declaration of Marriage is made, that the marital assets would be jointly appraised and the parties would enter binding arbitration to divide marital assets. On the issue of whether a common law marriage existed, the Court heard the testimony of witnesses, received evidence, reviewed the Court file and record herein and being thus well advised in the premises, with good cause appearing does make and enter the following:

### FINDINGS OF FACT

1. The Court has considered evidence on the issue of whether the parties have met the requirements for a common law marriage set forth in the statute at UCA §30-1-4.5. The Court finds that the evidence establishes that the parties have met all legal requirements of that statute and should be declared married.

2. On the common law marriage elements, the Court finds that the evidence establishes the following:

a. Both parties to this action are of legal age and capable of giving consent to a marital relationship;

b. The parties to this action are both legally capable of entering into a solemnized marriage and in fact were previously married and divorce from one another by Decree entered in the Third Judicial Court of Summit County, State of Utah on or about August 27, 1985;

c. The parties to this action have cohabited and the Court finds that cohabitation to have commenced on or about October 1, 1985, and continued until the final separation of the parties on August 28, 1996, when the Defendant changed the locks on the residence and Plaintiff relocated to a separate home;

d. The parties to this action mutually assumed marital rights, duties and obligations in numerous ways which will be set forth elsewhere in these findings;

e. The parties to this action mutually held themselves out as wife and husband, and have acquired a uniform and general reputation as wife and husband. Among the

evidence supporting this factor is the consistent filing of joint, married income tax returns with the federal and state tax authorities from 1985 through 1994 (this return was filed 10-1-95 and was the last tax return filed before the separation).

3. The Court finds that the parties mutually assumed marital rights, duties and obligations and have acquired a general reputation as a married couple and relies on the following specific evidence established at trial:

a. Within a few months of their formal divorce in 1985, the parties commenced cohabitation and consistently lived together until August 28, 1996;

b. The parties built a home together in Coalville, Utah, shortly after resuming cohabitation. They later moved to Magna, Utah with their children and purchased a residence in 1988 on 7492 West Jefferson Road, Magna, Utah. The parties lived in this residence together until the final separation and jointly maintained, improved, paid for and enjoyed the benefits of this home ownership;

c. In late 1985, the parties resumed parenting their children together until they reached the age of majority or were emancipated;

d. The Plaintiff retained the married name of "Clark" and used this throughout the period of cohabitation, with Defendant's knowledge and consent;

e. The Defendant purchased a new set of wedding rings for the Plaintiff in 1989 (Plaintiff's Exhibit 16);

f. The parties established joint credit as a married couple would do with Sears and JC Penney's (Plaintiff's Exhibit 17);

g. The parties established and maintained joint bank accounts for several years during their relationship, in addition to having separate accounts. The Court finds that there was no formal distinction during the relationship of the parties as to whether joint living expenses were paid from separate or joint accounts, and that said funds appear to be entirely commingled (Plaintiff's Exhibit 6, 7, 8 11 and 27);

h. The parties filed joint income tax returns claiming the marital deduction from 1985 through 1994, which was the last return filed prior to separation. These returns reflect that all property whether titled in the separate or joint names of the parties was described as marital property and both parties shared the tax impact of rental income, depreciation, etc., on such properties without distinction (Plaintiff's Exhibit 5);

i. During the relationship the Defendant established several businesses which were operated together by the parties. These included Sonny's Heating and Air Conditioning, Mark and Sonny's Heating and Air Conditioning, K & S Properties. The Plaintiff worked on a full-time basis in these businesses doing bookkeeping, payroll, tax filings, record keeping, scheduling, and other general office work. Plaintiff was not paid a formal salary for these services and testified that she was working towards the betterment of the family finances and to augment the value of joint businesses. It is clear that Defendant relied on Plaintiff's ongoing services in this regard and that these businesses are jointly acquired marital assets;

j. During the relationship the parties acquired personal belongings together and acquired real estate together, including the marital residence, the family businesses, a lot on Skyline Drive, rental property in Draper and a four-plex. At various times during the

relationship these assets were titled either in the separate names of the parties or joint names, as circumstances arose;

k. During the relationship in approximately 1991, the parties each prepared a last will and testament which were reciprocal documents where each party left all interest in their property to the other party (Plaintiff's Exhibit 14, 15);

l. During the relationship the parties routinely introduced one another as "husband" or "wife" and in particular, Defendant would make this introduction with the Plaintiff when he hired new employees for his business. The Court finds the testimony of Mr. Jon Nash, a neighbor and friend of the parties for five years and that he assumed the parties were married and did not know that they were not formally married until the time of their separation in December 1995 as credible and reliable evidence on the reputation of the parties as married. The Court finds the testimony of Lisa Hart, the girlfriend of the parties' son since January 19, 1993, and who also stayed with the parties for about three (3) weeks to care for Kelly Clark, that she believed the Clark's were married, based on their conduct and representations to her until Mr. Clark introduced her to a "girlfriend" at a later time, to be credible and reliable testimony on the conduct and reputation of the parties as married;

m. The parties acquired vehicles together and paid for these vehicles from both joint and separate funds. The evidence establishes that Defendant bought a new 1994 Dodge Ram pickup truck on July 2, 1994, and that Plaintiff paid the \$5,000.00 down payment from her separate bank account (Plaintiff's Exhibit 9) which was later repaid to her by the Defendant);



n. During their relationship, the Plaintiff maintained insurance coverage on the Defendant's 1994 Dodge truck and paid for this from her separate account (Plaintiff's Exhibit 10);

o. Shortly after the parties resumed cohabitation, the Defendant restored Plaintiff as the primary beneficiary on his life insurance policy on April 15, 1986 (Plaintiff's Exhibit 12);

p. During the relationship, the parties paid jointly on life insurance for Defendant's mother, Roberta A. Clark, which premiums were paid from joint funds Plaintiff's Exhibit 13);

q. Even during the separation of the parties which began December 1995, during their period of cohabitation, the Defendant would on occasion stay overnight with the Plaintiff and paid her first and last months rent and separate expenses, such as car repairs from his own funds (Plaintiff's Exhibit 20);

r. Throughout the cohabitation of the parties and as recently as May 1996, on Plaintiff's birthday, the Defendant sent cards expressing his love and affection for the Plaintiff (Plaintiff's Exhibit 21).

4. The parties purchased a marital residence at 7492 West Jefferson Road, Magna, Utah, in 1988. Upon purchase of this residence, it was titled solely in the name of Plaintiff, Linda K. Clark even though the home was purchased with the joint funds of the parties. It is undisputed that this was done to preserve the asset during Defendant's bankruptcy proceedings. Thereafter, the parties entered into a written agreement dated June 26, 1992, wherein they

agreed that Plaintiff would Quit Claim her entire equity and interest in the residence to Defendant for the sum of \$22,500.00 payable in installments of \$300.00 per month. The parties both testified that Defendant came up with this number based on his own opinion that the home was worth approximately \$50,000.00 and that this was a fair value after the deduction of certain joint debts. The Defendant made payments under this agreement and often missed payments for as long as ten (10) months. In approximately June 1996, the Defendant made a balloon payment completing the financial terms of this agreement and Plaintiff executed a Quit Claim Deed transferring the entire property to Defendant. Plaintiff claims that she entered into this agreement under duress and pressure from the Defendant and that it was never intended to be a true agreement.

5. The Court finds the Plaintiff's claims of duress and intimidation by the Defendant relating to the June 1992, agreement are credible and finds that the agreement is of no force and effect and is void. The Court finds Plaintiff's testimony credible that she would receive the \$300.00 payments and would routinely deposit those either in the parties joint account or her separate account or otherwise use those funds directly for the regular joint expenses of the parties such as groceries. The Court finds Plaintiff to be a timid, unassertive individual who could be easily pressured to enter into such an agreement by the Defendant. The Court finds Defendant to be overbearing and capable of intimidation towards the Plaintiff. The Court finds credible the testimony of the parties' son, Kelly Clark that the Defendant is intimidating and would routinely take advantage of individuals for financial gain. The Court finds clear and convincing evidence that Plaintiff felt compelled to sign this deed and did not have a full and

fair opportunity to consult counsel or otherwise reflect on the consequences of her actions. The deed was prepared by Attorney Nolan Olsen, who was the divorce attorney for Defendant and who, for many years, had been the Defendant's friend and business attorney. The Court finds that this was not an arms length, fair transaction and that equity requires that the Agreement and deed be set aside and given no force and effect.

6. Based on the Court finding that the agreement dated June 26, 1992, is null and void, the Court also sets aside the Quit Claim Deed, dated April 10, 1996, by Plaintiff to Defendant, transferring her interest in the marital residence. The Court finds that the marital residence at 7492 West Jefferson Road, Magna, Utah, is a joint marital asset of the parties.

7. The Plaintiff is requesting an award of alimony. The Court finds that Plaintiff is currently employed full-time earning \$10.00 per hour, which is a gross monthly wage of \$1,720.00 and that she has a net monthly income of \$1,309.00. The Court finds Plaintiff's Exhibit 26 to be an accurate statement of Plaintiff's income and expenses and finds that Plaintiff's reasonable monthly expenses are \$2,409.00 per month. Plaintiff has shown a need for alimony.

8. The Defendant has testified that he is unaware of his current income. The Court recognized Mr. Clark's reluctance to testify as to what his current income is for purposes of alimony, which the Court finds to be troubling and not credible. The evidence has shown inconsistencies in Defendant's statements of his income depending on the purpose for which it is being made, such as an application for credit or for purposes of divorce. The Court finds Plaintiff's Exhibit 39, the Uniform Residential Loan Application a verified document completed

by Defendant, June 20, 1996, to be the best evidence of Defendant's current income and finds that income to be at least \$5,376.00 gross per month. It is clear that during the recent cohabitation of the parties, they acquired considerable assets and have had a very comfortable style of living. Plaintiff's Exhibit 30, the loan application completed by Defendant states his net worth to be \$477,118.00. It is clear that the Defendant has the ability to pay alimony.

9. The Plaintiff's request for \$1,000.00 a month for alimony is appropriate and the Court awards her that amount retroactive to September 1, 1996. Plaintiff is thus awarded a judgment against the Defendant for alimony accumulated during the twelve (12) months this matter has been pending, in the amount of \$12,000.00. This judgment should bear interest at the legal rate of 7.45% per annum until paid. Defendant should commence making ongoing payments of alimony to Plaintiff effective September 1, 1997, which should be paid by the 1st of every month thereafter. Alimony will be payable to Plaintiff until such time as she remarries, cohabits, or until alimony has been paid for a term equaling the length of the marriage of the parties, or until Plaintiff's death, whichever event occurs earlier.

10. Plaintiff has requested costs and attorney's fees. The Court finds Plaintiff has established a need for fees based on her income and that Defendant's income is more than twice that of the Plaintiff's and he has an ability to pay Plaintiff her reasonable costs and fees. The Court directs the Plaintiff's counsel to submit an Affidavit of Attorney's fees and costs under Rule of Judicial Administration, 4-501 and that Defendant may file any objection to that request, which the Court will consider under the terms of that Rule.

11. The Court finds that all property acquired during the marital relationship, which extends between October 1, 1985 and the date of the entry of the Divorce to be marital assets. The Court finds those marital assets to comprise at least the heating, cooling and insulation businesses operated by the Defendant, the marital residence on 7492 West Jefferson Road, Magna, Utah, the rental property at 12251 South 500 West, Draper, Utah, the four-plex rental property at 3667 South 3325 West, West Valley City, Utah, the trailer and lot on Skyline Drive in Sanpete County, the life insurance with a cash value on the life of Roberta Clark, the snowmobiles, 4-wheelers, and vehicles consisting of 1988 Lincoln, 1995 Ford pick-up truck, and business equipment and vehicles, the wedding rings purchased by Defendant for Plaintiff, the bank accounts and any and all other assets purchased during the appropriate time by both parties. The Court approves the parties stipulation that all assets will be appraised at the joint cost of the parties, with jointly agreed upon appraisers. Thereafter, the parties will mutually select and pay for a mediator or arbitrator to make a final division of marital assets between the parties. Both parties have agreed to be bound by the decision of that arbitrator.

12. Plaintiff is entitled to return to her maiden name of "Hammond."

13. The Court finds that during the marital relationship of the parties, they encountered irreconcilable differences and that a divorce should be granted to Plaintiff to be final upon entry.

Based on the foregoing Findings of Fact, the Court now makes and enters its Conclusions of Law:

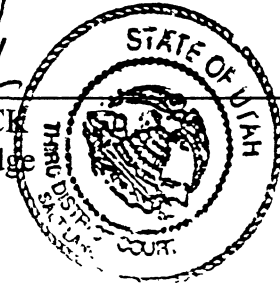
### CONCLUSIONS OF LAW

1. The Plaintiff is entitled to a Declaration of Marriage based on the finding that the elements of the Common Law Marriage Statute at UCA §30-1-4.5 have been met;
2. The Plaintiff is entitled to a Decree of Divorce from the Defendant on the grounds of irreconcilable differences, said divorce to become final upon entry.
3. The Court should enter such orders regarding alimony, division of assets and liabilities as are consistent with the Findings of Fact.

DATED this 19th, day of SEP, 1997.

BY THE COURT:

  
\_\_\_\_\_  
J. DENNIS FREDERICK  
Third District Court Judge



Approved as to Form:

\_\_\_\_\_  
DEAN N. ZABRISKIE  
Attorney for Defendant

**CERTIFICATE OF MAILING**

I hereby certify that I caused to be mailed, a true and correct copy of the foregoing,  
**FINDINGS OF FACT AND CONCLUSIONS OF LAW**, this 10 day of Sept,  
1997, to:

Mr. Dean N. Zabriskie  
Jamestown Square  
Hanover Building, Suite 370  
3507 North University Avenue  
Provo, UT 84604

  
\_\_\_\_\_

S8\23417.ffc

FILED DISTRICT COURT  
Third Judicial District

SEP 29 1997

By C. Baverley

SUZANNE MARELIUS - 2081  
Attorney for Plaintiff  
LITTLEFIELD & PETERSON  
426 South 500 East  
Salt Lake City, Utah 84102  
Telephone: (801) 531-0435

**IN THE THIRD JUDICIAL DISTRICT COURT**

**IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

LINDA KAY CLARK,

Plaintiff,

v.

CECIL E. CLARK,

Defendant

**DECLARATION OF MARRIAGE AND  
DECREE OF DIVORCE**

Case No.: 964904244 DA  
Judge: J. Dennis Frederick

The above-entitled matter came before the Court for trial on August 13, 1997, the Honorable J. Dennis Frederick presiding. Plaintiff was present in person and represented by counsel, Suzanne Marelius. Defendant was present in person and represented by counsel, Dean N. Zabriskie. The Court received and approved the Stipulation of the parties that in the event a Declaration of Marriage is made, that the marital assets would be jointly appraised and the parties would enter binding arbitration to divide marital assets. On the issue of whether a common law marriage existed, the Court heard the testimony of witnesses, received evidence, reviewed the Court file and record herein, and having entered its Findings of Fact and Conclusions of Law and good cause appearing therefore,



**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The above-named parties are hereby declared married effective October 1, 1985, having met all elements to establish a common law marriage pursuant to UCA §30-1-4.5.

2. The Plaintiff has established grounds for divorce from Defendant pursuant to irreconcilable differences and Plaintiff is granted a Decree of Divorce to become final upon entry.

3. The written Agreement entered between the parties dated June 26, 1992 pertaining to a division of equity in the marital residence at 7492 West Jefferson Road, Magna, Utah 84044, is hereby declared null and void. The Quit Claim Deed signed by Plaintiff, pursuant to that Agreement transferring her interest in this residence to Defendant, dated April 10, 1996, is hereby set aside and declared null and void. This residence is a joint marital asset of the parties.

4. The Plaintiff is awarded alimony payable by the Defendant in the amount of \$1,000.00 per month September 1, 1996. Alimony will be paid by the 1st of every month payable to Plaintiff until such time as she remarries, cohabits, until alimony has been paid for a term equaling the length of the marriage of the parties, or until Plaintiff's death, whichever event occurs earlier.

5. Plaintiff is awarded a judgment for alimony accumulated during the pendency of this matter between September 1, 1996 through August 31, 1997, in the amount of \$12,000.00 to bear interest at the legal rate of 7.45% per annum until paid.

6. Plaintiff is awarded all costs and attorney's fees incurred by her in connection with the above-entitled action. Plaintiff's counsel is directed to submit an Affidavit of Costs and Attorney's Fees pursuant to Code of Judicial Administration Rule 4-501 and Defendant may respond or object accordingly. The Court will determine the amount of fees and costs pursuant to that Rule.

7. The parties are ordered to select a mutually agreed upon appraiser to establish the current value of all marital property including the real estate and businesses established during the marriage. The parties are to pay the costs of these appraisals jointly. The parties are to select a mutually agreed upon mediator or arbitrator to oversee the distribution of marital property. The parties are to jointly pay for this arbitration and are to cooperate in good faith in that process.

8. The Court finds that the marital estate is encompassed by all property, of every nature, accumulated either in the sole or joint names of the parties during the term of their cohabitation from October 1, 1985 through the date of entry of the Decree of Divorce. The Court finds that this property includes but is not limited to the following: assets that comprise the heating, cooling and insulation businesses operated by the Defendant, the marital residence on 7492 West Jefferson Road, Magna, Utah; the rental property at 12251 South 500 West, Draper, Utah; the four-plex rental property at 3667 South 3325 West, West Valley City, Utah; the trailer and lot on Skyline Drive in Sanpete County; the life insurance with a cash value on the life of Roberta Clark; the snowmobiles, 4-wheelers, and vehicles consisting of 1988 Lincoln, 1995 Ford pick-up truck, and business equipment and vehicles; the wedding rings purchased by

Defendant for Plaintiff; the bank accounts and any and all other assets purchased by both parties during the designated time.

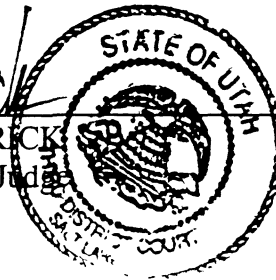
9. The parties are to cooperate as needed to sign titles, transfer property, and to do other things needed to effectuate the terms of this Decree and implement the Court orders herein.

10. Plaintiff is entitled to return to her maiden name of "Hammond."

DATED this 29th, day of Sept, 1997.

BY THE COURT:

  
J. DENNIS FREDERICK  
Third District Court Judge



Approved as to Form:

\_\_\_\_\_  
DEAN N. ZABRISKIE  
Attorney for Defendant


**CERTIFICATE OF MAILING**

I hereby certify that I caused to be mailed, a true and correct copy of the foregoing,

**DECLARATION OF MARRIAGE AND DECREE OF DIVORCE**, this 10 day of \_\_\_\_

Sept, 1997, to:

Mr. Dean N. Zabriskie  
Jamestown Square  
Hanover Building, Suite 370  
3507 North University Avenue  
Provo, UT 84604

  
\_\_\_\_\_

S8\23417.dmd

**History:** R.S. 1898 & C.L. 1907, § 1186; C.L. 1917, § 2969; R.S. 1933 & C. 1943, 40-1-4.

## NOTES TO DECISIONS

**Foreign common-law marriages.**

This section did not render valid a common-law marriage entered into in a foreign state

where such marriages were recognized. In re Vetas' Estate, 110 Utah 187, 170 P.2d 183 (1946).

## COLLATERAL REFERENCES

**Am. Jur. 2d.** — 52 Am. Jur. 2d Marriage §§ 79-102.

**C.J.S.** — 55 C.J.S. Marriage § 4.

**A.L.R.** — Recognition by foreign state of

marriage which, though invalid where contracted, would have been valid if contracted within foreign state, 82 A.L.R.3d 1240.

**Key Numbers.** — Marriage ☞ 17.

**30-1-4.5. Validity of marriage not solemnized.**

(1) A marriage which is not solemnized according to this chapter shall be legal and valid if a court or administrative order establishes that it arises out of a contract between two consenting parties who:

- (a) are capable of giving consent;
- (b) are legally capable of entering a solemnized marriage under the provisions of this chapter;
- (c) have cohabited;
- (d) mutually assume marital rights, duties, and obligations; and
- (e) who hold themselves out as and have acquired a uniform and general reputation as husband and wife.

(2) The determination or establishment of a marriage under this section must occur during the relationship described in Subsection (1), or within one year following the termination of that relationship. Evidence of a marriage recognizable under this section may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

**History:** C. 1953, 30-1-4.5, enacted by L. 1987, ch. 246, § 2.

**Severability Clauses.** — Laws 1987, ch. 246, § 5 provided that if any provision of Chap-

ter 246, or the application of any provision to any person or circumstance, is held invalid, the remainder of the chapter is to be given effect without the invalid provision or application.

## NOTES TO DECISIONS

## ANALYSIS

**Effect.**  
**Cited.**

**Effect.**

This section has only prospective, and not retroactive, effect. Layton v. Layton, 777 P.2d 504 (Utah Ct. App. 1989).

This section may not be applied retroactively. Walters v. Walters, 812 P.2d 64 (Utah Ct. App.

1991), cert. denied, 836 P.2d 1383 (Utah 1992).

This section establishes "common law marriage" as a lawful form of marriage; thus, if the elements of Subsections (1)(a) through (e) are established, then a lawful marriage may be found to have existed prior to the entry of an order by a court or administrative body. Whyte v. Blair, 251 Utah Adv. Rep. 48 (Utah 1994).

**Cited in** State v. Johnson, 856 P.2d 1064 (Utah 1993).

A G R E E M E N T

This Agreement made and entered into this 22<sup>nd</sup> day of June, 1992, by and between Cecil E. Clark and Linda Kay Clark.

W I T N E S S E T H :

WHEREAS, Cecil E. Clark and Linda Kay Clark were married for approximately twenty years and were later divorced; and

WHEREAS, said parties have been living together for approximately seven years and have purchased real and personal property during that period as well as incurred debts and obligations; and

WHEREAS, the parties desire to enter into an agreement as to the division of said property as well as the debts and obligations.

NOW, THEREFORE, in consideration of mutual covenants and agreements as set forth herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. That Linda Kay Clark will convey by a quit claim deed to Cecil E. Clark a home and real property located at 7492 W. Jefferson Road, Magna, Utah. A copy of said quit claim deed being attached hereto marked Exhibit "A".

2. Cecil E. Clark will execute a promissory note secured by a trust deed as against the above real property in the sum of \$22,500.00 and payable \$300.00 per month commencing July 1, 1992, together with interest at the rate of 8% per annum. A copy of said note and trust deed is attached hereto marked Exhibit "B" and "C".

3. The parties will divide the furniture, furnishings, fixtures and personal property which they acquired during the period they resided together.



4. Cecil E. Clark will receive the 1986 Ford pickup and Linda Kay Clark will execute the title to said vehicle and deliver said title to Cecil E. Clark.

5. Cecil E. Clark shall receive the 1991 Ford Crown Victoria automobile subject to the balance due Ford Motor Credit in the approximate sum of \$5,800.00.

6. Linda Kay Clark shall receive the 1988 Lincoln automobile.

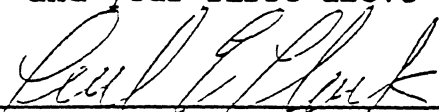
7. Cecil E. Clark will assume and pay Citibank Mastercard in the sum of \$2,541.25; Citibank Visa in the sum of \$1,023.44; Mervyns in the sum of \$110.19; J. C. Penney in the sum of \$36.45; Discover Card in the sum of \$654.95; Levitts Furniture in the sum of \$171.61; and Valley Bank in the sum of \$338.55.

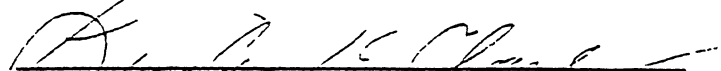
8. That Linda Kay Clark's equity in the home has been reduced by one-half of the above debts and obligations and in the event that Cecil E. Clark shall default on any of the debts and obligations as set forth above wherein said creditors commence an action against Linda Kay Clark, or in the event that Cecil E. Clark shall default for more than sixty days on the promissory note secured by the trust deed, it is hereby understood and agreed that the home at 7492 W. Jefferson Road, Magna, Utah will be placed for sale and sold at the earliest possible date so that the debts and obligations as set forth above and the balance due on the promissory note due Linda Kay Clark can be paid in full from the proceeds of said sale.

9. Both parties acknowledge and agree that the above agreement was discussed and prepared by Nolan J. Olsen, Attorney at Law, and that pursuant to discussion between the parties, Nolan J. Olsen advised said parties that each must waive any conflict of interest in that said attorney had represented both parties, and in executing this agreement said parties waive any conflict of interest and acknowledge and agree that this is their own specific

agreement and that they have been advised that they have an opportunity to contact other counsel and have specifically requested Nolan J. Olsen to prepare this document which sets forth the agreement between the parties.

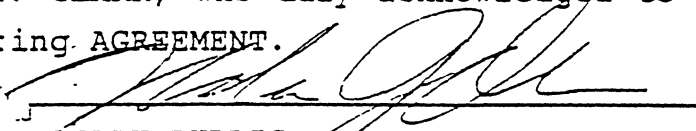
EXECUTED the day and year first above written.

  
\_\_\_\_\_  
CECIL E. CLARK

  
\_\_\_\_\_  
LINDA KAY CLARK

STATE OF UTAH                    )  
                                      : ss  
COUNTY OF SALT LAKE        )


On the 26 day of June, 1992, personally appeared before me CECIL E. CLARK, who duly acknowledged to me that he executed the foregoing AGREEMENT.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at Salt Lake County, Utah

My commission expires: 9-1-97

STATE OF UTAH                    )  
                                      : ss  
COUNTY OF SALT LAKE        )

On the 26 day of June, 1992, personally appeared before me LINDA KAY CLARK, who duly acknowledged to me that she executed the foregoing AGREEMENT.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at Salt Lake County, Utah

My commission expires: 9-1-97



21512 ← 11511  
 8135 → 8072 11511  
 11512 ← 11511  
 8067

TRUST DEED

NOLAN J. OLSEN, Attorney at Law, as Trustee, and LINDA KARY CLARK,  
as Beneficiary.

Lot 46, CENTENNIAL VILLAGE NO. 2, according to the official plat thereof, filed in Book "77-02" of Plats at Page 39 of Official Records of the Salt Lake County Recorder.

FOR THE PURPOSE OF SECURING payment of the indebtedness evidenced by a promissory note of even date herewith, in the principal sum of \$22,500.00, payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth, and payment of any sums expended or advanced by Beneficiary to protect the security hereof.

Trustor agrees to pay all taxes and assessments on the above property, to pay all charges and assessments on water or water stock used on or with said property, not to commit waste, to maintain adequate fire insurance on improvements on said property, to pay all costs and expenses of collection (including Trustee's and attorney's fees in vent of default in payment of the indebtedness secured hereby and to pay reasonable Trustee's fees for any of the services performed by Trustee hereunder, including a reconveyance hereof.

CECIL E. CLARK

On the 26<sup>th</sup> day of June, 1992, personally appeared before me CECIL E. CLARK, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

My Commission Expires:

100

### TRUST DEED NOTE

DO NOT DESTROY THIS NOTE: when paid, this note, with Trust Deed securing the same, must be surrendered to Trustee for cancellation before reconveyance will be made.

---

\$22,500.00

Midvale, Utah,

June , 1992

FOR VALUE RECEIVED, the undersigned, jointly and severally, promises to pay to the order of Linda Kay Clark, at \_\_\_\_\_, Salt Lake County, State of Utah, or at such other place as the holder hereof may designate,

TWENTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500.00), together with interest from date at the rate of eight per cent (8%) per annum on the unpaid principal, said principal and interest payable as follows:

THREE HUNDRED DOLLARS (\$300.00), on or before the 1st day of July and THREE HUNDRED DOLLARS (\$300.00) on or before the 1st day of each month succeeding thereafter until paid in full.

The undersigned acknowledges and agrees that he will pay property taxes and insurance commencing July 1, 1992, directly to Seller based upon the property taxes paid by the payees. The undersigned shall procure insurance on the residence and provide to the Seller a copy of said insurance.

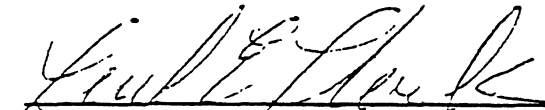
If default occurs in the payment of said installments of principal and interest or any part thereof, the holder hereof, at holder's option and without notice or demand, may declare the entire principal balance and accrued interest immediately due and payable.

If this note is collected by an attorney after default in the payment of principal or interest, either with or without suit, the undersigned, jointly and severally, agree to pay all costs and expenses of collection including a reasonable attorney's fee.

The makers, sureties, guarantors and endorsers hereof severally waive presentment for payment, demand and notice of dishonor and nonpayment of this note, and consent to any and all extensions of time, renewals, waivers or modifications that may be

granted by the holder hereof with respect to the payment or other provisions of this note, and to the release of any security, or any part thereof, with or without substitution.

This note is secured by a Trust Deed of even date herewith.

  
\_\_\_\_\_  
CECIL E. CLARK

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

LINDA KAY CLARK,  
Plaintiff,  
vs.  
CECIL E. CLARK,  
Defendant.

Case No. DOM 964904244 DA  
REPORTER'S TRANSCRIPT  
OF JUDGE'S RULING

THE DISTRICT COURT  
Third Judicial District  
AUG 20 1997  
By *[Signature]*  
Sally Clerk

REPORTER'S TRANSCRIPT OF JUDGE'S RULING  
THE HONORABLE J. DENNIS FREDERICK  
on Wednesday, August 13, 1997

APPEARANCES:

For the Plaintiff:

SUZANNE MARELIUS  
Attorney at Law  
426 South 500 East  
Salt Lake City, Utah 84102  
(801) 531-0435

For the Defendant:

DEAN N. ZABRISKIE  
Attorney at Law  
3507 North University Avenue #370  
Provo, Utah 84604  
(801) 375-7680

ANNA M. BENNETT, CSR  
License No. 22-106796-7801  
240 East 400 South  
Salt Lake City, Utah 84111  
(801) 535-5203

1 \* \* \*

2 THE COURT: All right. I have done a number of  
3 these cases where there's a claim of common law marriage,  
4 since the advent of this statute which some may argue is  
5 ill-conceived, but nevertheless, our legislature has seen  
6 fit to legitimize common law relationships under certain  
7 limited circumstances, and since that time, I've had  
8 occasion to rule on a number of these, and in this instance  
9 I am persuaded that the overwhelming evidence is that there  
10 was a marital relationship post divorce of 1985, which,  
11 coincidentally, I granted.

12 The persuasive, credible evidence is that within a  
13 matter of a few months of the time of that original divorce,  
14 which was granted in August of 1985, Exhibit 1, these parties  
15 were back living together as early potentially as October  
16 of 1985. They built a home together. They moved to a home  
17 in Magna together with their two children. They raised  
18 their children to the age of majority. They used the common  
19 last name of Clark. They drafted wills which while state  
20 they are separate individuals and single individuals, the  
21 content of the wills is that they leave to each other their  
22 entire estate, Exhibits 14 and 15.

23 The defendant bought rings for the plaintiff,  
24 Exhibit 16. There was a joint use of credit accounts,  
25 Exhibit 17. They maintained joint bank accounts, Exhibit 6.

1 They commingled funds, business rentals, hair salon, et  
2 cetera, through August of 1996, Exhibits 27, 13, 11, 10,  
3 9, 8 and 7. They filed joint tax returns through 1994, the  
4 last date available prior to the separation, Exhibit 5,  
5 from 1986 on. They jointly worked for the betterment of the  
6 family goals. Plaintiff worked in the business doing the  
7 books, records, banking, et cetera, taxes of the business,  
8 Exhibit 28.

9           They, I find, introduced each other and/or held  
10 themselves out as being married. Their personal belongings  
11 were by and large together in the Magna home which they  
12 treated as if it were their own home, each of them, and  
13 therefore, it is my view that the statutory requirements  
14 of 30-1-4.5 have been met.

15           Certainly one may testify and argue that this all  
16 was done without specific consent. That is, however, not  
17 controlling. Rarely do I have disputes of this nature  
18 where the parties come in and say, "Yes, I consented."  
19 I must, therefore, glean consent from conduct and actions  
20 of the parties.

21           These parties were, in my judgment, capable of  
22 consenting. They were both adults, and after 1985 for at  
23 least a few months they were single adults. They could have  
24 entered into a solemnized marriage relationship during  
25 that time. They did clearly cohabit and they mutually

1 assumed the rights and obligations and duties of a marriage  
2 relationship, and lastly, held themselves out as husband and  
3 wife. At least, it was implicit in their relationship  
4 that they indeed were husband and wife.

5           Consequently, I determine that there was a common  
6 law marriage up to the date of August of 1996, at which  
7 time then the separation, the final separation occurred.

8           I am, moreover, of the view that the claim of  
9 intimidation, duress, overbearing conduct on the part of the  
10 defendant vis-a-vis the plaintiff here is a believable  
11 claim.

12           Now, it may well be in the objective world, Mr.  
13 Clark's attitude and conduct is not such that one would  
14 find him to be overbearing or intimidating, but my observa-  
15 tion of the respective parties here is that Ms. Clark,  
16 number one, is a person of considerable timidity, and I  
17 am of the view, therefore, that her execution of the deed  
18 incident to the Magna property was a situation she felt  
19 compelled to do, did not obtain independent counsel;  
20 indeed, used Mr. Olson who had been the longtime counsel of  
21 Mr. Clark and in fact represented him at the original  
22 divorce trial or stipulated divorce, and therefore find  
23 by clear and convincing evidence that she would not, but for  
24 these circumstances, have executed that deed for the sum of  
25 money that she received, that her will was overwrought, that



1 it was not an arm's length transaction.

2           Consequently, I determine that it is of no force  
3 and effect with regard to her interest in that property.

4           I have considerable trouble with Mr. Clark's lack  
5 of knowledge, or maybe just reluctance to acknowledge what  
6 his income for purposes of determining alimony is. There  
7 is considerable inconsistent information about what his  
8 income is, in all likelihood depending upon the purpose  
9 for which he's disclosing his income.

10           In Exhibit 13, his application for credit, he has  
11 indicated that his income was something in the range of  
12 \$5,376 a month, and that was during the time frame of June  
13 of 1996. In fact, it was executed June 20th of '96. I  
14 find that document most credible in terms of an assessment  
15 as to what his income is and therefore impute that income  
16 to him.

17           He has considerable assets which he has acquired  
18 over the course of the relationship with this Ms. Clark,  
19 Linda Clark, the first, the plaintiff, and I determine that  
20 her list of expenses and income is such that she has shown  
21 a need for alimony, and that in that regard, her stated  
22 income and expenses in Exhibit 26, I believe, I find to be  
23 credible and that is her net monthly income is \$1,309 per  
24 month and her expenses are \$2,409 per month, leaving her  
25 then with a net shortfall per month of approximately \$1,100,

1 and that her claim for alimony in the amount of \$1,000 per  
2 month is neither exorbitant, nor is it in appropriate.

3 I believe that she's shown a need for that and  
4 consequently award \$1,000 per month in the form of alimony  
5 to terminate on the earliest of the typical conditions, and  
6 that that shall be retroactive to the month of September  
7 of 1996.

8 In addition, I award to the plaintiff reasonable  
9 attorney's fees to be determined pursuant to Rule 4-501 of  
10 the Code of Judicial Administration.

11 You submit to me an affidavit, and to Mr. Zabriskie  
12 likewise, Ms. Marelius, the amount of your fees, and then  
13 he will have the opportunity to object, and I will then  
14 rule pursuant to 4-501 on the reasonableness of the fees to  
15 be awarded here.

16 The properties acquired during the course of this  
17 marital term that I have now defined are deemed to be and I  
18 consider them to be marital properties and therefore, the  
19 parties may and will submit the issue of distribution to  
20 binding arbitration as they have stipulated.

21 Now, are there any questions? Ms. Marelius?

22 MS. MARELIUS: My client would like to be awarded  
23 her name of Hammond, if we could add that to the Decree so  
24 it's clear.

25 THE COURT: Insofar as this proceeding is concerned,

1 now that I have determined that there was a marriage, I will  
2 moreover determine that the parties are entitled to a  
3 divorce and grant the plaintiff a divorce on the grounds of  
4 irreconcilable differences in accord with the terms of the  
5 testimony here and give her her previous name back.

6 Do you have any questions, Mr. Zabriskie?

7 MR. ZABRISKIE: Your Honor, I would request of the  
8 Court a specific finding as it relates to the December date  
9 of 1995 as not constituting a termination of what had  
10 heretofore or theretofore been a relationship between the  
11 parties and that the Court is in effect discounting the six  
12 or seven months that -- wherein the relationship was --

13 THE COURT: Yes, I am specifically, by virtue of my  
14 ruling to the contrary, finding that that separation did  
15 not terminate the marriage relationship. In my judgment,  
16 it was one of more than one some separations between the  
17 parties. Maybe at the outset the parties figured that that  
18 was the end, but indeed, as was their habit and style, it  
19 was not the end. They reconciled, got back together.  
20 Consequently, I decide that that was not the termination of  
21 the marriage.

22 Ms. Marelius, you prepare the Findings and Conclusions  
23 and Decree and submit those to Mr. Zabriskie for approval as  
24 to form.

25 We'll be in recess.

(Whereupon, the proceedings were concluded.)

1  
2 REPORTER'S CERTIFICATE  
3  
4

5 STATE OF UTAH                    )  
6 COUNTY OF SALT LAKE        ) ss  
7

8           I, ANNA M. BENNETT, do hereby certify:

9           That I am a Certified Shorthand Reporter, License  
10 No. 22-106796-7801, and one of the official court reporters  
11 of the state of Utah; that on the 13th day of August, 1997,  
12 I attended the within matter and reported in shorthand the  
13 proceedings had thereat; that later I caused my said  
14 shorthand proceedings to be transcribed into typewriting,  
15 and the foregoing pages, numbered from 2 to 7, inclusive,  
16 constitute a full, true and correct account of the Judge's  
17 Ruling only, to the best of my ability.

18           DATED AT SALT LAKE CITY, UTAH, this 20th day of  
19 August, 1997.  
20  
21  
22

23 

24 ANNA M. BENNETT, CSR  
25

LAST WILL AND TESTAMENT

of

LINDA CLARK

I, LINDA CLARK, presently residing at Salt Lake County, State of Utah, and I being of sound and disposing mind and memory and not acting under duress, menace, fraud or undue influence of any person whatsoever, hereby declare this to be my Last Will and Testament, revoking all previous wills, codicils to wills and papers testamentary at any time heretofore made by me.

ARTICLE I

I, LINDA CLARK, declare that I am a single and that I have two (2) children who are now living, whose names are:

Kelly Gene Clark  
Lisa Kay Ostimier

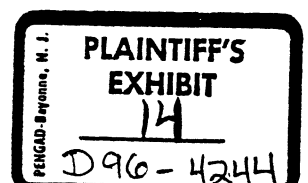
I, LINDA CLARK, declare that I have an ex-husband and the father of my children, to-wit: CECIL E. CLARK.

ARTICLE II

I hereby direct that the expense of my last illness, funeral, burial and all of my just debts and obligations and the cost and expense of administering my estate, including all taxes, fees and other charges, be paid and discharged as soon as can conveniently be paid after my decease by my personal representative hereinafter named.

ARTICLE III

All the rest, residue and remainder of my property, real, personal and mixed, of which I may die seized or possessed, or to which I may be entitled, I give, devise and bequeath to my



LAST WILL AND TESTAMENT

of

CECIL E. CLARK

I, CECIL E. CLARK, presently residing at Salt Lake County, State of Utah, and I being of sound and disposing mind and memory and not acting under duress, menace, fraud or undue influence of any person whatsoever, hereby declare this to be my Last Will and Testament, revoking all previous wills, codicils to wills and papers testamentary at any time heretofore made by me.

ARTICLE I

I, CECIL E. CLARK, declare that I am a single and that I have two (2) children who are now living, whose names are:

Kelly Gene Clark  
Lisa Kay Ostimier

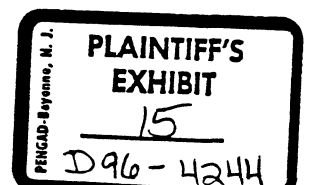
I, CECIL E. CLARK, declare that I have an ex-wife and the mother of my children, to-wit: LINDA CLARK.

ARTICLE II

I hereby direct that the expense of my last illness, funeral, burial and all of my just debts and obligations and the cost and expense of administering my estate, including all taxes, fees and other charges, be paid and discharged as soon as can conveniently be paid after my decease by my personal representative hereinafter named.

ARTICLE III

All the rest, residue and remainder of my property, real, personal and mixed, of which I may die seized or possessed, or to which I may be entitled, I give, devise and bequeath to my



6389413

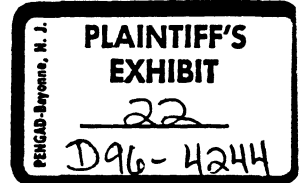
6389413  
06/21/96 3:51 PM 11.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
METRO NATIONAL TITLE  
REC BY: J MORGAN , DEPUTY - WI

Recorded at Request of: METRO NATIONAL TITLE  
File Number: 96014950A

Mail Tax notice to:

CECIL E. CLARK

7492 West Jefferson Rd  
Magna, UT 84044



WARRANTY DEED

G. STEVEN NEFF and BRADLEY T. JENSEN DBA NEFF & JENSEN  
INVESTMENT COMPANY

GRANTOR

of THE COUNTY OF SALT LAKE, STATE OF UTAH, hereby CONVEYS and  
WARRANTS TO:

CECIL E. CLARK, an unmarried man

GRANTEE

of THE COUNTY OF SALT LAKE, STATE OF UTAH, for the sum of TEN  
AND 00/100'S DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION,  
the following described tract(s) of land in SALT LAKE County,  
State of Utah:

Beginning at a point South 0 deg. 05'11" East 582.09 feet from  
the West quarter corner of Section 25, Township 3 South, Range 1  
West, Salt Lake Base and Meridian; and running thence East  
197.00 feet; thence South 0 deg. 05'11" East 132.45 feet; thence  
South 89 deg. 59'52" West 197.00 feet; thence North 0 deg.  
05'11" West 132.46 feet to the point of beginning.

LESS AND EXCEPTING the following:

A 30.00 foot wide strip of the above described property to be  
dedicated to Draper City for a roadway described as follows:

Beginning at a point South 0 deg. 05'11" East 582.09 feet from  
the West quarter corner of Section 25, Township 3 South, Range 1  
West, Salt Lake Base and Meridian; and running thence East  
30.00 feet; thence South 0 deg. 05'11" East 132.46 feet; thence  
South 89 deg. 59'52" West 30.00 feet; thence North 0 deg. 05'11"  
West 132.46 feet to the point of beginning.

SUBJECT TO: County and/or City Taxes not delinquent; Bonds  
and/or Special Assessments not delinquent and Covenants,  
Conditions, Restrictions, Rights-of-Way, Easements, Leases and  
Reservations now of Record.

WITNESS the hand(s) of said grantor(s), this 20th day of JUNE,  
1996.

G. STEVEN NEFF

BRADLEY T. JENSEN

227-25-401-002  
SE

G. STEVEN NEFF and BRADLEY T. JENSEN DBA NEFF & JENSEN  
INVESTMENT COMPANY

GRANTOR

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Reservations now of Record.

WITNESS the hand(s) of said grantor(s), this 20th day of JUNE,  
1996.

G. STEVEN NEFF

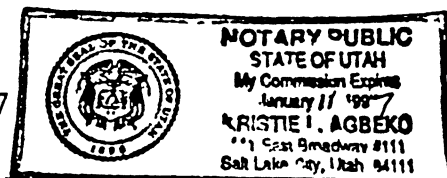
BRADLEY T. JENSEN

STATE OF UTAH, County of SALT LAKE ) ss:

On this date, June 20, 1996 personally appeared before me G.  
STEVEN NEFF and BRADLEY T. JENSEN DBA NEFF & JENSEN INVESTMENT  
COMP the signer(s) of the within instrument, who duly  
acknowledged to me that they executed the same.

NOTARY PUBLIC

My commission expires: January 11, 1997  
Residing in: SALT LAKE CITY, UTAH



BK / 428PGU 111

211-215-401-002 SE



# Residential Rental Agreement

This Residential Rental Agreement entered into this 1st day of July 19 96,  
between Cecil E. Clark (Sonny) of 7492 West Jefferson Road  
of Salt Lake City County of Salt Lake  
State of Utah, hereinafter called Lessor, and Charles R. &  
Barbara H. Clark of 12251 South 700 West  
of Draper County of Salt Lake  
State of Utah, hereinafter called Lessee.

## WITNESSETH

Lessor does hereby lease and rent unto Lessee, and Lessee does hereby take as tenant under Lessor, the dwelling  
accommodations known as 12251 South 700 West  
Draper, County of Salt Lake  
State of Utah to be used by Lessee as a lawful private dwelling from the  
1st day of July 19 96 to the 1st day of July XX 2001  
inclusive, a term of five (5) years  
Said accommodations are rented for occupancy of 2 Adults and 3 Children.

IN CONSIDERATION WHEREOF, and of the covenants hereinafter expressed, it is covenanted and agreed  
as follows:

1. Lessee agrees to pay to Lessor, or Lessor's agent, in advance, at the office of Lessor or said agent, in  
7492 W. Jefferson Road, Magna, Utah 84044

on the first day of each month of said term, as rent for said premises, the sum of \$600.00 Six Hundred  
Dollars (\$ 600.00) per month; the time of payment of each monthly install-  
ment is made the essence of this agreement.

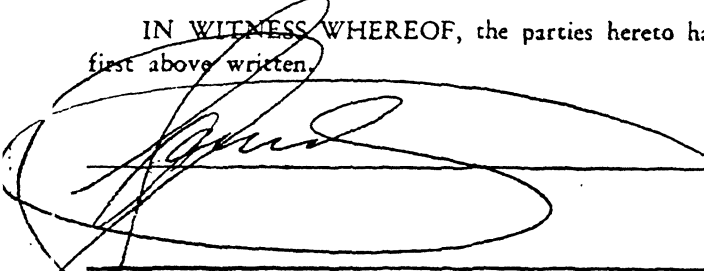
2. Lessee shall not permit any unlawful and immoral practice to be committed on the premises; nor shall he  
permit them to be used as a boarding or lodging house, for rooming or school purposes, nor for any purpose which  
will increase the insurance rate; nor shall he permit to be kept or used on the premises inflammable fluids or explosives  
without the consent of Lessor; nor permit them to be used for any purpose which will injure the reputation of the build-  
ing or which will disturb the tenants of the building or the inhabitants of the neighborhood.


...in good order and repair, and the Lessee agrees to keep said premises in a clean and satisfactory condition, and, upon termination of this tenancy, will leave said premises, equipment and furnishings in as good condition as when entered upon, except for reasonable wear and tear or damage by the elements or by fire; and in the event of damage or injury to said premises, except as otherwise provided herein, said Lessee shall pay for all such damages.

4. Lessee agrees to pay all electric power and light, gas and telephone charges; and for laundering of linens, curtains, and blankets and cleaning of drapes, during tenancy and when vacating said dwelling, if such are furnished. The Lessee also agrees to pay for cleaning said premises at the rate of \$ -0- per day.

5. Lessee shall not have the right or power to sublet the premises or any part thereof, or to transfer or assign this lease without the written consent of Lessor; nor shall he offer any portion of the premises for a sublease by placing on the same any "to rent," "furnished room," "rooms to let" or similar sign or notice or by advertising the same in any newspaper or place or manner whatsoever without the consent in writing of Lessor.
6. It is expressly agreed and understood by the Lessor and Lessee that the Lessor shall not be liable for any damage or injury by water which may be sustained by the Lessee or other person or for any damage or injury resulting from carelessness, negligence or improper conduct on the part of any other tenant or agents or employees.
7. Should Lessee fail to pay the rent, or any part thereof, as the same becomes due, or violate any other term or condition of this lease, Lessor shall then have the right, at his option, to re-enter the leased premises and terminate the lease; such re-entry shall not bar the right of recovery of rent or damage for breach of covenants, nor shall the receipt of rent after conditions broken be deemed a waiver of forfeiture.
8. Should the Lessor be compelled to commence or sustain an action at law to collect said rents or part thereof, or for damages, or to dispossess the Lessee or to recover possession of said premises, the Lessee shall pay all costs in connection therewith, including reasonable attorney's fees.
9. It is mutually understood and agreed that the Lessor and his agents shall have access to the leased premises at all reasonable times to inspect and protect the same, to show the same to a prospective purchaser, tenant or mortgagee, and to make any repairs thereto.
10. Lessee agrees not to keep or maintain a dog, cat or any other animal or pet on the leased premises without the written consent of the Lessor. Three (3) dogs were approved by Sonny.
11. Lessee shall comply with all the reasonable rules and regulations now in force by Lessor, and posted in or about the premises, or otherwise brought to the notice of Lessee, both in regard to the building as a whole and as to the premises herein leased.
12. In the event the leased premises are furnished with furniture of the Lessor an inventory of the furniture shall be attached hereto and made a part hereof, and it is hereby agreed that all furnishings are received in good condition, unless otherwise expressly stated, and the Lessee further agrees to return the same at the expiration hereof in like condition, reasonable wear and tear excepted.
13. It is expressly stipulated that there are no terms of this agreement different from any of the preceding numbered paragraphs or in addition thereto, except the following ~~due to the low rate of rent THE tenant~~ is to keep up the house and premises. All garbage and such to be kept clean at all times. Tenant to pay all utilities because of cheap rent. Late fees; \$20.00 first day \$10.00 each day after until paid in full. Rent to be raised if my cost go up.
14. All covenants and representations herein are binding upon and inure to the benefit of the heirs, executors, administrators and assigns of Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have hereunto set their signatures and seals, the day and year first above written.

  
\_\_\_\_\_  
(Lessor)  
LESSOR

  
\_\_\_\_\_  
Barbara O. Clark  
(Lessee)  
LESSEE

BLANK NO. 111— © GEM PTG. CO. — 3215 SO. 2600 EAST — SALT LAKE CITY

OFFENSE CODE:		SALT LAKE COUNTY SHERIFF'S OFFICE				CASE NUMBER: 96-119001	
		<input checked="" type="checkbox"/> INITIAL REPORT		<input type="checkbox"/> FOLLOW-UP			
Offense Classification & Type of Offense:		Method:		Date of Occurrence:		Time of Occurrence:	
Society      Domestic Dispute		Yelling		MM    08    DD    28    YY    96		1301 hrs.	
Address of Occurrence:				Name of Business, School, Organization:		Phone Number:	
7492 W. Jefferson 3695 S.				N/A			
Comp:	Victim:	Last Name:	First Name:	Middle Name:	D.O.B./Age:	Race:	Sex:
X		Ms. Clark	Linda	K.	05/24/51	W	F
Address:			City:	State:	Zip Code:	Home Phone:	Business Phone:
5542 S. Candace			Magna	Ut.	84044	250-3570	

Suspect: 1. [REDACTED] MA; [REDACTED] 46 [REDACTED]

Premises: 1. Single family residence.

Narrative: On Weds., 08/28/96 at 1301 hrs. I and Dep. Suarez were dispatched on a domestic dispute situation at, 7492 W. Jefferson 3695 S. Upon arrival at, 1307 hrs. we made contact with Ms. Linda K. Clark. She told us that she and [REDACTED] had been married for several years but they had divorced and that a few months ago they got back together and she moved back in with him.

She now stated that they had been arguing about his business' finances and that she left and now he had changed the locks of the home and refused to let her in to get her property. I asked her if there are any signed court orders in effect as to their property and she told me no. I suggested to her that she contact her private attorney to seek out his/her advice on how best to resolve their property issues. She further told me that he carries a .357 revolver and also has a small cal. pistold that he carries. While telling us this he pulled up in his blue pick up truck Utah personalized: [REDACTED] I patted him down for weapons for the safety of all concerned, he had no weapons. The involved parties started up their arguing again & I told them to contact their personal attorneys as we could not decide for thom their property issues.

Case status: Completed.

Deputy Name:		D.P.#		Report Date:		Page	
H. V. Beltran		525W		MM    08    DD    28    YY    96		1 of 1	

DISTRIBUTION				CASE STATUS			
RECORDS	SID	PATROL	S DU	Active	<input type="checkbox"/>	Inactive	<input type="checkbox"/>
MEDIA	JUVENILE	TRAFFIC		Cleared	<input type="checkbox"/>	Completed	<input type="checkbox"/>
CAU	DETECTIVE	BUREAU ROOM		Unfounded	<input type="checkbox"/>	CRP	ARP <input type="checkbox"/>

50-006-01/00

