

1988

Monica Gillett v. James Anthony Gillett : Brief of Appellant

Utah Court of Appeals

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DOCKET NO. 880413 IN THE UTAH COURT OF APPEALS

MONICA GILLETT,)	
)	
Plaintiff/Respondent,)	
	)	CASE NO. 880413-CA
VS.)	
	)	PRIORITY NO. 146
JAMES ANTHONY GILLETT,)	
)	
Defendant/Appellant.)	

APPELLANT'S BRIEF

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY

THE HONORABLE JAMES S. SAWAYA, PRESIDING

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IN THE UTAH COURT OF APPEALS

MONICA GILLETT,)	
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IN THE UTAH COURT OF APPEALS

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Plaintiff/Respondent,)	
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APPELLANT'S BRIEF

JURISDICTION OF THE COURT

This Court has jurisdiction over this appeal pursuant to U.C.A., section 78-2a-3(2)(h).

NATURE OF THE PROCEEDINGS

Plaintiff, a New York resident, filed an action in 3rd District Court, Salt Lake County, Utah to enforce the terms of a non-judicial Separation Agreement entered into by the parties in 1970 and amended by the parties in 1977. This appeal stems from the trial Court granting Plaintiff's Motion for Reconsideration of the trial Court's earlier denial of Plaintiff's Motion for Summary Judgment, and granting Plaintiff's Motion for Summary Judgment pursuant to the Motion for Reconsideration.

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

1. Under Conflicts of Law, what jurisdiction's law (New York or Utah) is to be applied by the Utah trial court in determining the issues in this case.

2. Is it erroneous for a Utah Court to entertain a Motion for

Reconsideration when there is no statutory basis for such a motion.

3. Was the trial court's granting of Summary Judgment erroneous based upon the facts and law of this case.

4. Is the enforcement of permanent alimony, via contract, against the public policy of the laws of the State of Utah.

STATEMENT OF THE CASE

The Plaintiff/Respondent and Defendant/Appellant were married on May 7, 1938 in Banstead, England. On March 31, 1970 the parties entered into a "Separation Agreement" in the State of New York (R: pg 13-17). On April 28, 1970 the parties were granted a Decree of Divorce (R: pg 10-12) in Juarez, Mexico after some 32 years of marriage.

On March 31, 1970, prior to the Mexican Divorce, the parties entered into a "Separation Agreement" in the State of New York. Among the terms of the "Separation Agreement" there was a provision that the "Separation Agreement" was not to merge into any decree or judgment but should survive and be forever binding and conclusive on the parties. (R: pg 15-16) At the time of the parties separation all of the children of the marriage were of legal age. The Mexican Decree of Divorce incorporated by reference the terms of the "Separation Agreement" but specifically stated that the agreement did not merge into the Decree. (R: pg 12)

Under paragraph 5 of the "Separation Agreement," Defendant agreed to pay to the Plaintiff "the sum of \$650.00 per month, payable on the first day of each month, the first payment to be made on the date of this agreement. In addition, he (Defendant/Appellant) shall pay the monthly rental of an apartment or dwelling occupied by the

second party (Plaintiff/Respondent)." (R: pg 15)

Defendant/Appellant paid these amounts regularly to the Plaintiff through approximately July 1, 1977. In 1977, Plaintiff/Respondent brought an action, in the State of New York to recover from the Defendant/Appellant arrearages under the "Separation Agreement" accruing from its inception through the month of July, 1977. In resolution of the matter, the parties, on September 23, 1977, entered into an "Amended Separation Agreement." (R: pg 18-20) Under the terms of the "Amended Separation Agreement," entered into by the parties, Defendant/Appellant acknowledged that he was in arrears in the support payments through September 1, 1977 in the amount of \$4,000.00, further; that a judgment could be entered in favor of the Plaintiff/Respondent for such amount, further; that the original "Separation Agreement" be amended, as to paragraph 5 only, to read: "That the husband shall pay to the wife \$800.00 per month, \$650.00 for her support and maintenance and \$150.00 for her rental."

Defendant/Appellant continued paying Plaintiff/Respondent \$800.00 per month until approximately May, 1985 at which time he decreased his payments as follows:

May, 1985	\$400.00
June, 1985	\$540.00
July, 1985	\$800.00
August, 1985 through and including August, 1986	\$650.00/month

Defendant/Appellant ceased making payments with the month of September, 1986. From the inception of the "Separation Agreement" through August, 1986 Defendant/Appellant has paid Plaintiff/Respondent approximately \$142,290.00.

In addition, in approximately 1972 Plaintiff received 1/2 of the net equity from the sale of the parties' marital residence in Fulton, New York.

In addition, Defendant/Appellant has, throughout the years since the signing of the "Separation Agreement", contributed at a minimum \$12,000.00 to the Plaintiff's support. (R: pg 106-108)

At the time of the parties' Mexican Divorce in 1970, Plaintiff was not working and basically had few or no marketable skills. Throughout the post-divorce years Plaintiff/Respondent went to college (paid for by the Defendant/Respondent) and became a nurse. Plaintiff/Respondent has actively engaged in the nursing profession, since approximately 1972, working regularly and earning a regular income.

At the time of the signing of the "Separation Agreement" both the Plaintiff/Respondent and the Defendant/Appellant resided in the State of New York. At the time of the signing of the "Amended Separation Agreement" the Plaintiff/Respondent resided in the State of New York and the Defendant/Appellant resided in the State of Washington. On or about August 20, 1986 Plaintiff initiated an action in the 3rd District Court, Salt Lake County, Utah, by way of a summons and complaint (R: pg 2-24), to enforce several of the provisions of the March, 1970 "Separation Agreement" and October, 1977 "Amended Separation Agreement" and, of particular importance, to enforce the alimony/support provisions and obtain a judgment against the Defendant for alleged arrearages. At the time of the initiation of Plaintiff/Respondent's action in 3rd District Court the Plaintiff/Respondent resided in the State of New York and the

Defendant/Appellant resided in the State of Utah.

Defendant/Appellant answered the Complaint and raised numerous affirmative defenses (R: pg 25-28). On or about November 21, 1986 Plaintiff moved for Summary Judgment. The Court, by way of its January 2, 1987 Order (R: pg 60-62), denied Summary Judgment ruling that there was ambiguity in the Separation Agreement and Amended Separation Agreement concerning the duration of the Defendant's obligation to pay Plaintiff. The matter was set for trial on January 5, 1988. On or about October 19, 1987 Plaintiff/Respondent filed a "Motion for Reconsideration" (R: pg 71-76) of the Court's January 2, 1987 Order denying Plaintiff's Summary Judgment Motion. On November 30, 1987 the Court heard Plaintiff's Motion for Reconsideration and pursuant thereto, reversed itself and granted Plaintiff's original Motion for Summary Judgment.(R: pg 100-101) Defendant filed objections to the subsequent Proposed Findings and Order (R: pg 103-105) as well as a Motion for Amendment of Judgment or Relief from Order. (R: pg 109-113) The Court held a hearing on Defendant's Objections and Motion for Amendment of Judgment or Relief from Judgment on May 2, 1988. Defendant/Appellant's Motions were denied (R: pg 117-118 and 141-144) and Defendant/Appellant appeals therefrom.

SUMMARY OF ARGUMENTS

1. Under Conflicts of Law, since Utah has the most substantial interests in resolving this matter, Utah Law must govern in deciding the issues presented by this case.

2. Under Utah law there is no such creature as a Motion for Reconsideration and the Court's entertaining such a motion

circumvents the Rules of Civil Procedure and the Appellate Procedure Rules.

3. The facts of the case and the legal issues presented to the trial court were such that the granting of Summary Judgment was inappropriate.

4. Enforcement of permanent alimony, via contract and not judicially mandated, is against the public policy of the laws of the State of Utah.

ARGUMENTS

POINT I

This case involves issues stemming from a "Separation Agreement" and "Amended Separation Agreement" executed in the State of New York; a Mexican Divorce; a Plaintiff/Respondent who has always been a resident of New York; a Defendant/Appellant who has been, throughout the course of events, a resident of New York, Washington, and Utah, and; a Plaintiff/Respondent who chose to voluntarily initiate a legal action in the State of Utah.

With the broad nation flavor of this case apparent the threshold issue becomes what jurisdiction's law is to be applied in deciding the issues presented in this case.

There is no dispute on the part of the parties involved in this action that the issues incumbent in this case sound strictly in the nature of contract. We have a "Separation Agreement" and "Amended Separation Agreement" which are specifically not merged in the Decree of Divorce. Thus it is clear that the interpretation of these agreements must be dealt with under the laws of contracts.

Under the *Restatement of Law 2nd, Conflicts of Law, section 186*, it is stated:

"Issues in contract are determined by the law chosen by the parties in accordance with the rule of section 187 (Law of State Chosen by Parties) and otherwise by the law selected in accordance with the rule of section 188 (Law governing in absence of effective choice by the parties)."

Since the parties two agreements are silent as to the law that will govern the agreements' interpretation, then the rule set down in section 188 of the Restatement must be followed:

"(1) The rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties...."

Defendant/Appellant asserts that Utah has the most significant relationship to the transaction and the parties for the following reasons:

A. The agreements, while executed in New York, involved individuals who lived in various parts of the United States throughout the years. This was contemplated by the parties at the inception of the agreements, based upon Defendant/Appellant's history of "job hopping" and in fact was born out when the "Amended Separation Agreement" was signed at which time Defendant/Appellant was a resident of the State of Washington. As such, the State of New York really has no interests in the parties.

B. While the original "Separation Agreement" was entered into to comply with Section 170(6) of the Domestic Relations Law of the State of New York (R: pg 13), the sole purpose of doing such was "...in the event that either party subsequently desires to initiate a proceeding under said statute...." (R: pg 13) As it turned out,

neither party initiated an action under Section 170(6) of the Domestic Relations Law of the State of New York, however, chose to obtain a Mexican Divorce. As such, the State of New York really has no interest in the contract or provisions of its laws.

C. The Mexican Divorce Decree merely states that:

"THIRD:- It is approved and confirmed in all its parts the Separation Agreement executed on March 31, 1970 in Oswego, New York, United States of America, is hereby made a part of this decree, as though herein set forth in full, but is not merged in it, but survives the same and the parties thereto are hereby ordered to comply with it on its terms at all times and places."

As such, Mexico really has no interests in the parties or the Agreement.

D. The Defendant/Appellant resided in the State of Utah at the time that Plaintiff/Respondent initiated the above captioned action in Utah. Further, Plaintiff/Respondent, a resident of the State of New York, thrust the enforcement of the agreements upon the Utah Courts and availed herself of the Utah Courts to seek her remedies though she was not a resident of this state and though she could have, perhaps more easily, initiated an action in her home state of New York. As such, it seems most apparent that at this juncture the State of Utah is the state which, with respect to the issues presented, has the most significant relationship to the transaction and the parties.

However, for arguments sake, if this Court were to determine that New York law was to be applied in resolving the issues at stake, it is interesting to note that New York law apparently sides with the arguments made by the Defendant/Appellant.

The key New York case on the issues presented in this case is

the case of *CHRISTIAN v. CHRISTIAN*, 365 N.E.2d 849 (N.Y., 1977). In that case the New York Court established the following view on

"Separation Agreements":

"Said Court was of the view, however, that the portion of the agreement...was so unconscionable as to be unenforceable." (Pg. 854-855)

"...over the years, an unconscionable bargain has been regarded as one 'such as no [person] in his [or her] senses and not under delusion would make on the one hand, and as no honest and fair [person] would accept on the other' (*HUME v. U.S.*, 132 U.S. 406, 411, 10 S.Ct. 134, 136, 33 L Ed. 393; 1889), the inequality being 'so strong and manifest as to shock the conscience and confound the judgment of any [person] of common sense.' (*MANDEL v. LIEBMAN*, 303 N.Y. 88, 94, 100 N.E.2d 149, 152) Unconscionable conduct is something of which equity takes cognizance, when warranted." (Pg. 855)

"If voidable, such an agreement may be set aside under principles of equity in an action in which such relief is sought in a cause of action or by way of affirmative defense." (Pg. 855)

"there is strict surveillance of all transactions between married persons, especially separation agreements.... Equity is so zealous in this respect that a separation agreement may be set aside on grounds that would be insufficient to vitiate an ordinary contract. these principles in mind, courts have thrown their cloak of protection about separation agreements and made it their business, when confronted, to see to it that they are arrived at fairly and equitably...and to set aside or refuse to enforce those born of and subsisting in inequity."

This view was most recently reaffirmed in the case of *PENNISE v. PENNISE*, 466 N.Y.S.2d 631 (N.Y., 1983):

"Although as a general rule, a person is bound by what he or she signs, agreements between spouses are subject to closer judicial scrutiny than ordinary contracts." (Pg. 633)

"For the reasons that follow, this court...concludes that the *CHRISTIAN* rule- namely that an agreement which is unconscionable when made will not be enforced- continues to apply to marital property agreements." (Pg. 634)

Thus even applying New York law the subject Separation

Agreements are on their faces, as Defendant/Appellant argues, unconscionable and need to be looked at in further detail and possibly denied enforcement.

POINT II

Defendant/Appellant's legal Counsel has not been able to find any authority in the Rules of Civil Procedure and/or the Utah Case law which condones, identifies or acknowledges the existence of a Motion for Reconsideration.

The nearest creature which counsel can identify is a motion under Rule 59 or 60 of the Rules of Civil Procedure or an Interlocutory Appeal pursuant to Rules 5(a) of the Rules of the Supreme Court and Court of Appeals.

For a court to entertain a motion called a Motion for Reconsideration is asking the court to step outside its jurisdictional boundaries and act as its own appeal court. The factual case presented in this case is especially repugnant due to the fact that the motion was not brought by the Plaintiff/Respondent until some ten (10) months after the originally ruling of the Court, obviously after the time limit for all other avenues available to opposing counsel had closed.

Further, the court should note that the very same judge who entertained Plaintiff/Respondent's Motion for Reconsideration and granted Summary Judgment under such motion, Judge James S. Sawaya, recently ruled that such a motion (Motion for Reconsideration) does not exist. (See Order attached hereto as Addendum)

POINT III

In light of the facts and issues stated to this point in this

brief, and in light of the pleadings and affidavits filed in the case at the trial court level, the Court's granting of summary judgment was highly inappropriate.

It is generally held in Utah law that disposition of issues by the trial court by way of summary judgment are highly disfavored. (SEE: *WELLS v. WALKER BANK & TRUST*, 590 P2d 1261; Utah, 1979)

The Court in its January 20, 1987 Order (R: pg 60-62) determined that there was a factual present which could only be resolved by parol evidence. After this order was entered nothing further of a factual nature was presented to the Court by either party that would have dissipated this factual issue found to exist by the Court. Defendant/Appellant contends that this factual issue still exists today.

POINT IV

The trial court had the authority to interpret the terms of the contracts (Separation Agreements) where the language was uncertain or ambiguous. (SEE: *LAND v. LAND*, 605 P2d 1248; Utah, 1980)

Defendant/Appellant contends that the terms of both agreements are uncertain and ambiguous in the respect that neither specifies the length of time for which Defendant was required to make spousal support payments. Plaintiff would argue that Defendant's obligation continues in perpetuity, however, this does not constitute an equitable interpretation of the agreement in light of the underlying facts.

The general rule is best set forth in a Washington case, *ENDRES v. ENDRES*, 380 P2d 873 (1963), wherein the court cited the general rule as: "...when a wife has the ability to earn a living, she is not

granted a perpetual lien of alimony on her divorced husband's future earnings. (SEE ALSO: *LOCKHART v. LOCKHART*, 259 P 385; Wash., 1927; *MORGAN v. MORGAN*, 369 P2d 516; Wash., 1962; *WARNING v. WARNING*, 247 P2d 249; Wash., 1952)

As to the issue of permanent alimony, the *ENDRES* case stated:

"Whether permanent alimony will be allowed or disallowed, in addition to a property settlement, depends on the circumstances of each particular case. Under the facts of the case now before us, we do not hold that appellant is entitled to permanent alimony, because appellant being in the prime of life, can re-establish herself in the vocation she followed before marriage, or in some other useful or gainful occupation."

The courts in Utah have consistently held that "The most important function of alimony is to provide support for the wife as nearly as possible at the standard of living she enjoyed during marriage, and to prevent the wife from becoming a public charge."

(SEE: *ENGLISH v. ENGLISH*, 565 P2d 409; Utah, 1977; *GRAMME v. GRAMME*, 587 P2d 144; Utah, 1978; *FLETCHER v. FLETCHER*, 615 P2d 1218; Utah, 1980; *JONES v. JONES*, 700 P2d 1072; Utah, 1985)

The guidelines governing alimony, established by the foregoing cases, derives its impetus from Utah Code Annotated, section 30-3-5, which is strictly equitable in nature. Historically, the power to grant alimony was not inherent in equity jurisdiction. It is of an equitable nature, but of statutory origin. (SEE: *CLARK, The Law of Domestic Relations*, section 14.1; 1968)

Utah has recognized, with great antipathy, the trend in other jurisdictions, notably California, toward "rehabilitative awards" of alimony which provide for a gradual phase-out of alimony, the intent being merely to give the spouse time to become self-sufficient. (SEE: The Course of Change in Family Law, 1978-1979, 5 Fam. L. Rep.(B.N.A.)

4103; 1979) However, Utah does acknowledge that rehabilitative alimony is within the discretion of the trial court, if it is in the best discretion of the trial court, exercised in accordance with the standards set by the Supreme Court in *ENGLISH, GRAMME* and *JONES* (Supra).

As such, the interpretation of the Separation Agreements urged by the Plaintiff/Respondent (alimony in perpetuity) is clearly against the public policy of the State of Utah.

Also, in light of this same philosophy in the Utah Courts regarding permanent alimony, Defendant/Appellant argues that the terms of the Separation Agreements, as to spousal support/alimony are unconscionable. (SEE: *MARTIN v. FARBER*, 510 A2d 608; Md. App., 1986)

CONCLUSION

For the foregoing arguments, Defendant/Appellant requests that this Court:

1. Reverse the Courts granting of the Plaintiff's Motion for Summary Judgment;
2. Determine that Utah law is to be controlling over the issues in this case;
3. Remand the case for further proceedings on the issues of ambiguity and unconscionability.
4. for such further relief as the Court deems appropriate under the circumstances.

Dated this 31st day of October, 1988.

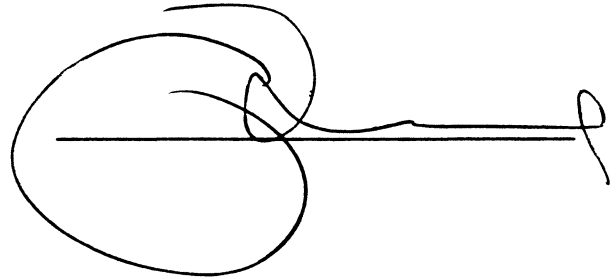


ELLIOTT LEVINE, Attorney
for Defendant/Appellant

CERTIFICATE OF MAILING

The undersigned certifies that they mailed a true and correct copy of the foregoing document, postage prepaid, on this 1st day of November, 1988 to:

LOUISE T. KNAUER, Attorney
559 East South Temple
Salt Lake City, Utah 84102

A handwritten signature in black ink, consisting of a large, stylized 'L' followed by a horizontal line and a small flourish at the end.

ADDENDUM

SEPARATION AGREEMENT

THIS AGREEMENT made in the County of Oswego and State of New York, on the 9th day of March, 1970, by and between JAMES ANTHONY GILLETT residing at the City of Fulton, New York hereinafter referred to as the first party and MONICA COLLEN-JONES GILLETT, residing at the City of Fulton, New York, hereinafter referred to as the second party.

WITNESSETH:

WHEREAS, the parties hereto were lawfully married on the 7th day of May, 1938 in Banstead, England, and

WHEREAS, there were four children born of the marriage, of the parties hereto, two children who are emancipated and two children, who are on the date of this agreement, unemancipated to wit: Antony Gillett who was born May 23, 1951 and Susan Gillett who was born April 24, 1952; and

WHEREAS, in consequence of disputes and irreconcilable differences, the parties have separated, and are now living separate and apart, and intend to live separate and apart for the rest of their natural lives; and

WHEREAS, the parties desire to confirm their separation and make arrangements in connection therewith, including the settlement of all questions relating to their property rights, the custody of their children and other rights and obligations growing out of the marriage relationship, and

WHEREAS, the parties are entering into this Agreement of Separation to comply with Section 170 (6) of the Domestic Relations Law of the State of New York, in the event that either party subsequently desires to initiate a proceeding under said statute, and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and understandings herein set forth, the

parties covenant and agree as follows:

FIRST: The parties may and shall at all times hereinafter live and continue to live separate and apart for the rest of their natural lives. Each shall be free from interference, authority, and control, direct or indirect, by the other as fully as if he or she were single and unmarried. Subject to the provisions of this agreement, each may reside at such place or places as he or she may select, provided, however, that neither party shall take the children beyond the jurisdiction of the State of New York without the prior consent of the other. The parties shall not molest each other or compel, or endeavor to compel, the other to cohabit or dwell with him or her, by any legal or other proceedings for the restitution of conjugal rights or otherwise.

SECOND: The wife covenants and represents that she has not incurred or contracted, nor will she at any time in the future incur or contract, any debt, charge or liability whatsoever for which the husband, his legal representatives or his property or estate is now or may become liable, and the wife further covenants at all times to keep the husband free, harmless and indemnified of and from any and all debts, charges, and liabilities heretofore and hereafter contracted by her.

THIRD: The minor children, Antony Gillett, who is nineteen years of age and Susan Gillett who is eighteen years of age, who are the unemancipated issue of the marriage and who are now both in the process of securing their college education, shall have the right to live with either of the parties to this agreement; that each of the parties shall maintain a proper home for the said children where the children may come during their vacation periods from college and during the summer months. the intention of the parties hereto, to have a amicable relationship between the children and their parents so that the children may live with either of the parties at their discretion.

FOURTH: The first party agrees to pay all of the expenses for the maintenance and support and education of the two children, Antony Gillett and Susan Gillett while they are at college.

FIFTH: The first party agrees to pay to the second party, the sum of \$650.00 per month, payable on the first day of each month, the first payment to be made on the date of this agreement. In addition, he shall pay the monthly rental of an apartment or dwelling occupied by the second party.

SIXTH: It is agreed that the second party will remove from the home of the parties and take up residence at Mercallus, New York; that the second party may remove from the home at Fulton, New York, all items of her personal belongings and such items of furniture as she may require for the furnishing of her apartment.

SEVENTH: The parties agree that the house at 176 South Third Street, Fulton, New York now owned by the parties hereto, shall be continued to be owned by them and that each shall have an undivided one-half interest in the property; that at such time as the property is sold, the proceeds after the expenses of the sale will be divided equally between the parties.

EIGHTH: The first party agrees that he will either provide for, or maintain a policy of insurance to care for all medical, hospital, doctor and dental expenses of the two children of the marriage.

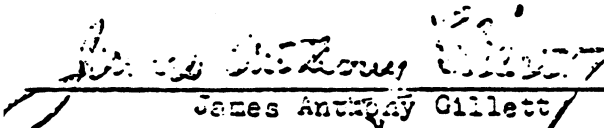
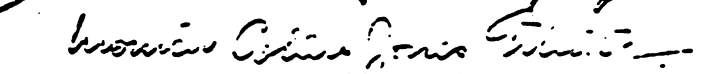
NINTH: It is agreed that the policies of insurance on the life of the first party shall be continued, that the premium shall be paid by the first party and that policy shall not be cancelled at any time and the first party agrees that the beneficiary on the said policy shall not be changed.

TENTH: In the event that an action for divorce is instituted at any time hereafter by either party against the other in this or any other state or country, the parties hereto agree that they shall be bound by all the terms of this agreement and that this agreement shall not be merged in any decree or judgment that may be entered in such action but shall survive in

same and shall be forever binding and conclusive on the parties, and nothing herein contained shall be construed to prevent the decree or judgment in any such action from incorporating in full or in substance the terms of this agreement.

ELEVENTH: Each of the parties, on request agrees further at any time and from time to time to make, execute, and deliver all instruments necessary to effectuate the provisions of this agreement.

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


James Anthony Gillett

Monica Collen-Jones Gillett

STATE OF NEW YORK)
COUNTY OF OSWEGO) SS:
CITY OF OSWEGO)

On this 21st day of March, 1970, before me personally came JAMES ANTHONY GILBERT, to me known and known to me to be the same person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Walter H. H. H.
NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF OSWEGO) SS:
CITY OF OSWEGO)

On this 21st day of March, 1970, before me personally came MONICA COLLEN-JONES GILBERT, to me known and known to me to be the same person described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

Walter H. H. H.
NOTARY PUBLIC

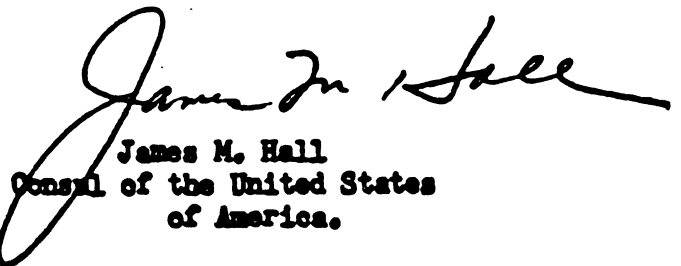
UNITED MEXICAN STATES
STATE OF CHIHUAHUA
CONSULATE OF THE UNITED
STATES OF AMERICA
AT CIUDAD JUÁREZ

ss:

I, James M. Hall, Consul of the United States of America at Ciudad Juarez, Chihuahua, Mexico, duly commissioned and qualified do hereby certify that Lorenzo Holguin Cisneros and Rodolfo Silva, whose true signatures and official seals are respectively, subscribed and affixed to the annexed document, were on the 25 day of APRIL 1970, the date thereof, respectively, Judge and Secretary of the First Civil Court, (Juez y Secretario del Juzgado Primero de lo Civil), Bravos District, Ciudad Juarez, Chihuahua, Mexico, duly commissioned and qualified, to whose official acts, faith and credit are due.

The Consulate assumes no responsibility for the contents of the annexed document, nor for the validity of this document, nor for its acceptability in any state in the United States.

IN WITNESS THEREOF I have hereunto set my hand and affixed the seal of this Consulate at Ciudad Juarez, Chihuahua, Mexico, this 30 day of APRIL 1970.


James M. Hall
Consul of the United States
of America.

Item No. 48
Fee \$2.50

Holguin.

THE HON. ROY O SILVA, CLERK OF THE FIRST CIVIL COURT OF THE DISTRICT OF
BRAVOS, STATE OF CHIHUAHUA, REPUBLIC OF MEXICO, C E R T I F I E S: That in
the suit for necessary divorce instituted by MR. J. ANTHONY GILLETT aga-
inst MRS. MONICA MAY COLLEN-JONES GILLETT a judgment was pronounced
worded as follows:-----

J U D G M E N T: City of Juarez, Chihuahua, April 28, 1970.- That in the
suit for necessary divorce instituted by MR. J. ANTHONY GILLETT against
MRS. MONICA MAY COLLEN-JONES GILLETT, (DOCKET 4055/970) came up for
trial, and, IT APPEARING: By petition dated in this City on this 27th.
day of the instants, MR. J. ANTHONY GILLETT, expressly submitting to the
jurisdiction of this Court, filed suit for necessary divorce against
his wife, MRS. MONICA MAY COLLEN-JONES GILLETT, alleging as grounds for
divorce incompatibility of temperaments, and also stating: That the mar-
riage was contracted on May 7, 1938 in Banstead, Surrey, England, as appe-
ars from the testimonial information offered: That from this marriage
there are two children, to wit: SUSAN and ANTONY, who are under the cus-
tody of the mother, and the parties have signed a Separation Agreement
executed on March 31, 1970 in Oswego, New York, United States of America,
praying that same be approved and confirmed in all its parts and made a
part of this decree, as though herein set forth in full, but it is not
merged in it, but survives the same, and the parties thereto are to be
ordered to comply with it on its terms at all times and places.- THE SUIT
WAS ENTERED ~~and the defendant~~ on the defendant, and the plaintiff, MR. J.
ANTHONY GILLETT, personally appeared before the undersigned Judge,
to this his ~~petition~~ ratified of the order whereby the same was ente-
red and he stated: That he ratifies said petition in all its parts, includ-
ing his express submission to the jurisdiction of this Court. By writ
dated in this City on this 27th. day of the instants, MR. FERNANDO R. DEL-
SUNEAU, as Attorney in fact for the defendant, MRS. MONICA MAY COLLEN-JONES
GILLETT, answered the petition filed against her, confessing it in all
its parts, and expressly submitting herself to the jurisdiction of this
Court, and praying for the resolution today granted, as all legal require-
ments have been met, including the payment for the publication hereof, as
appears from tax payment certificate number: 35-65988 issued by the
Collector's Office of this City; and, W H E R E A S: This Court is compe-
tent to rule in the present case, pursuant to article 23 of the Divorce
Law, as both parties expressly submitted to the jurisdiction of this
Court, and in accordance with the provisions of the same.

~~tribunal of the~~ ~~marriage~~. ~~a decree provided for~~ in Section XIX of article
 3rd. of the Divorce Law, and the defendant having admitted the petition
 thereto in all its parts, was proved according to article 370 of the Code
 of Civil Procedures, supplementally applied.- It appearing from the peti-
 tion that from this marriage there are two children who are under the cus-
 tody of the mother, and in accordance with article 14 of the Divorce Law,
 said minor children will remain in the same situation as at the present.
 The Separation Agreement executed between the parties must be approved as
 requested.- Therefore and based on articles 1, 2, 10, 37, 43, 44 and 45
 of the Divorce Law invoked, it is: D E C R E E D: FIRST:- The marriage con-
 tracted by and between MR. J. ANTHONY GILLETT with MRS. MONICA MAY COLLEN-
 JONES GILLETT on May 7, 1938 in Banstead, Surrey, England, is hereby decla-
 red dissolved with all its legal consequences, leaving both parties legall
 free to remarry.- SECOND:- The minor children born of this marriage, to
 wit: SUSAN and ANTONY, will remain under the custody of the mother.-
 THIRD:- It is approved and confirmed in all its parts the Separation Agre-
 ement executed on March 31, 1970 in ~~Osaka~~, New York, United States of
 America, is hereby made a part of this decree, as though herein set forth
 in full, but it is not merged in it, but survives the same and the parties
 thereto are hereby ordered to comply with it on its terms at all times
 and places.- FOURTH:- Record and publish this judgment issue to the parties
 concerned, certified ~~bona fide~~ requested and in due time file records as
 a closed matter. ~~the Hon. Attorney Lorenzo~~
~~Holguin Cisneros~~ of the First Civil Court of the District of Bravon
 I attest:- L. ~~Holguin C. - R.~~ SILVA.- Signatures.

O R D E R. City of Juarez, Chihuahua, April 28, 1976.- That in view of
 the express conformity of the parties with the decree today granted in
 this suit which dissolved the matrimonial bonds existing between J. ANTHONY
 GILLETT with MRS. MONICA MAY COLLEN-JONES GILLETT. is declared an executed
 decree according to Law.- Thus ordered and signed the Hon. Judge of the
 First Civil Court of the District of Bravon, I attest:- L. Holguin C.- R.
 Silva.- signatures.

THIS TRUE AND CORRECT COPY TAKEN FROM ITS ORIGINAL, IS ISSUED TO INTERESTE
 PARTY, IN THIS LEGAL FOLIO, DULY COLLATED; IS AUTHORIZED AND SIGNED AT
 CIUDAD JUAREZ, CHIHUAHUA, MEXICO, ON THIS TWENTY EIGHT DAY OF APRIL NINE-
 TEEN HUNDRED AND SEVENTY. I ATTEST.-

THE CLERK, RODOLFO SILVA.- Signed

SEEN FOR APPROVAL
 THE HON. JUDGE OF THE FIRST CIVIL COURT
 ATTY. LORENZO HOLGUIN CISNEROS - Signed

A AMENDED SEPARATION AGREEMENT

THIS AMENDED AGREEMENT, made this 23rd day of September, 1977 between JAMES ANTHONY GILLETT, of American Lake, Washington, hereinafter referred to as the Husband and MONICA COLLEN-JONES GILLETT, of High Acres Apartments, 108A Ball Road, Syracuse, New York, hereinafter referred to as the Wife;

W I T N E S S E T H :

WHEREAS, the parties hereto entered into a Separation Agreement dated the 31st day of March, 1970, duly acknowledged in accordance with the law by James Anthony Gillett, the Husband, on the 31st day of March, 1970 and Monica Collen-Jones Gillett, on the 31st day of March, 1970; and

WHEREAS, the parties are desirous of amending such Separation Agreement only as it affects the alimony payable to the Wife and the arrears in such payment by the Husband as of this date, and

WHEREAS, an action was brought in Supreme Court, County of Onondaga, State of New York, by the Wife against the Husband on or about the 22nd day of July, 1975 and that such action was on the Day Calendar of such Court, and

WHEREAS, as a result thereof, the parties hereto are desirous of amending their Separation Agreement entered into on the 31st day of March, 1970 and therefore entered into a Stipulation in open Court with their counsel present as to the future payments of such alimony by the Husband to the Wife and also as to the payment of all arrears on such alimony.


NOW, THEREFORE, in consideration of the premises and the mutual promises and undertakings herein contained and for other good and valuable consideration, receipt whereof is hereby acknowledged, the parties agree as follows:


1. That paragraph FIFTH of the parties Separation Agreement dated

Husband shall pay to Wife \$800.00 per month; 50.00 for her support and maintenance and \$150.00 for her rental. That it is agreed upon by the parties that this \$150.00 rental shall not increase in amount due to an inflation in the economy, but that the Husband's payments each and every month shall be \$800.00 per month. Such payments to be made on the 1st day of each month to include the month of September, 1977.

2. That the Husband acknowledges the fact that he is in arrears in his support payments to the Wife and because of this has agreed, through his Attorney in open Court, that the Wife may take a Judgment of \$4,000.00 which represents \$3,000.00 in arrears on the Separation Agreement up to July 1, 1977 and \$1,000.00 on arrears from July 1, 1977 to September 1, 1977. That the Wife will withhold from entering such Judgment until April 1, 1978. That if the Husband should sell his home in Fayetteville, North Carolina prior to April 1, 1978 he will pay to the Wife, out of the proceeds of such sale the \$3,000.00 on such Judgment. That the Husband agrees further to pay the \$1,000.00 in arrears for July and August immediately, along with the September payment of \$800.00.

3. The parties hereto reiterate, reallege and reaffirm all the agreements as previously set out in the Separation Agreement dated the 31st day of March, 1970.


James Anthony Gillett

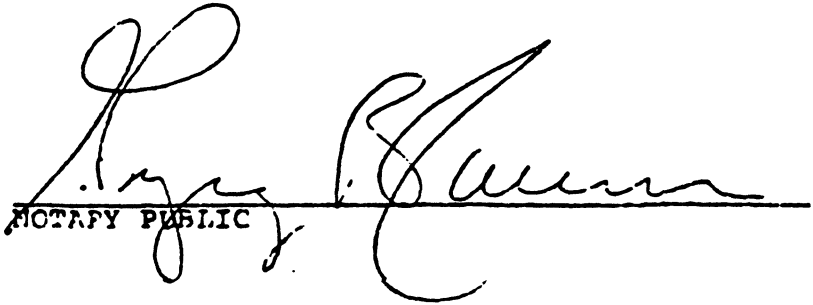

Monica Collen-Jones Gillett

STATE OF WASHINGTON)
COUNTY OF PIERCE) SS.:

On this 24th day of October 1977, before me personally

individuals described, and who executed the foregoing Instrument, and
he duly acknowledged to me that he executed the same.

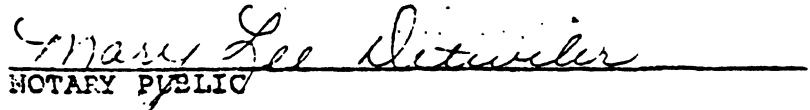
GREGORY B. CURWEN
Notary Public in the
State of Washington
Commission expires 12-13-78


NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF ONONDAGA) SS.:

On this 23rd day of September, 1977, before me personally
came MONICA COLLEN-JONES GILBERT, to me known and known to me to be one
of the individuals described in and who executed the foregoing Instrument,
and she duly acknowledged to me that she executed the same.

MARY LEE DETWILER
Notary Public in the State of New York
Qualified in Onond. Co. No. 34-5067830
My Commission Expires March 30, 1978


NOTARY PUBLIC

FILED

FILED IN CLERK'S OFFICE
Salt Lake County Utah

ELLIOTT LEVINE (USB #1939)
Attorney for Plaintiff
261 East 300 South #150
Salt Lake City, Utah 84111
(801)532-6537

JAN 20 1987

H. Bruce Hordley, Clerk, Salt Lake County Court
By James S. Sawaya
Deputy Clerk

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

MONICA GILLETT,	)	ORDER PURSUANT TO
	)	PLAINTIFF'S MOTION
Plaintiff,	)	FOR SUMMARY JUDGMENT
)	
VS.	)	CIVIL NO. 86-6436
)	
JAMES ANTHONY GILLETT,)	
	)	JUDGE: JAMES S. SAWAYA
Defendant,)	

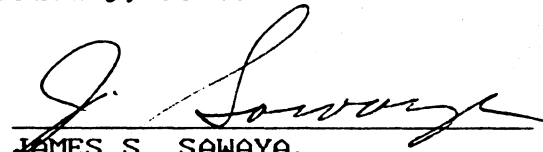
Plaintiff's Motion for Summary Judgment having come on regularly for hearing on the 15th day of December, 1986 before the Honorable James S. Sawaya, the parties' respective counsel having been present and having set forth their positions by way of written memorandum and oral argument, the Court being fully aware of all aspects of this matter and having taken the matter under under advisement,

IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment be, and is hereby, denied, the Court finding that there appears to be an ambiguity in the underlying agreements concerning the duration of Defendant's obligation to pay the Plaintiff. This ambiguity presents a factual issue which can

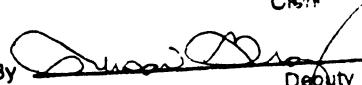
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only be resolved by parol evidence as to the parties' original intent.

Dated this 20 day of January, 1987.


JAMES S. SAWAYA,
DISTRICT COURT JUDGE

ATTEST
H. DIXON HINDLEY
Clerk

By 
Deputy Clerk

Randy S. Ludlow #2011
Attorney for Defendant
311 S. State Street, Suite 280
Salt Lake City, Utah 84111
Telephone: 531-1300

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

JILL BARNES,)	
	)	ORDER
Plaintiff,)	
)	
vs.	)	Civil No. D86-4557
)	
J. PATRICK BARNES,	)	Judge James Sawaya
)	
Defendant.)	
)	

THE ABOVE-ENTITLED MATTER having come on for hearing before the Honorable James Sawaya, Judge of the above-entitled court on Plaintiff's Motion for Reconsideration on the 24th day of October, 1988; the plaintiff being present, however her attorney of record, Elliott Levine was not present before the court; defendant's attorney, Randy S. Ludlow being present before the court and having heretofore filed with the court a Motion and Memorandum of Points and Authorities; the court having reviewed the pleadings as filed herein and based upon such

and good cause appearing herein

IT IS HEREBY ORDERED that the plaintiff's Motion for Reconsideration is denied, there being no such Motion in law and that the sanctions for attorney's fees as sought by the defendant against the plaintiff is also denied.

DATED this _____ day of October, 1988.

BY THE COURT:

Judge James S. Sawaya

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Order was mailed, postage prepaid, this 26 day of October, 1988, to the following:

Elliott Levine
4168 South 1285 West
West Valley City, UT 84119

Lou Clayton